

**BOSNIA:**  
**RESHAPING THE INTERNATIONAL MACHINERY**

29 November 2001



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## **BOSNIA: RESHAPING THE INTERNATIONAL MACHINERY**

### **EXECUTIVE SUMMARY AND RECOMMENDATIONS**

After six years and billions of dollars spent, peace implementation in Bosnia and Herzegovina remains far from complete. Reshaping ('recalibrating', in local jargon) the international community (IC) presence is vital if the peace process is to have a successful outcome.

This presence is the result of ad hoc expansion since the Dayton Agreement was signed in December 1995. It is beset by five main problems: lack of a shared strategic vision; uncoordinated leadership; duplication and lack of communication; personality clashes and cross-cutting institutional interests; and ineffectual management of economic reform.

Based on interviews with scores of international and local officials at many levels in Bosnia, this report analyses and assesses the current exercise in IC reform. It urges those involved to agree on a comprehensive proposal – based on the Kosovo 'pillar model' – that can not only be endorsed by the Peace Implementation Council (PIC) Political Directors at the next Steering Board meeting in Brussels on 6 December 2001, but which will mark a break with the muddle, inconsistency and half-measures of the past.

Reform must amount to more than just downsizing, or changing the seating plan at the international top table in Sarajevo. It must reflect a coherent strategy, finally, to make Bosnia a stable, viable state with a robust rule of law and enduring central institutions, capable of making its way towards membership in the European

Union (EU). This requires a plan to complete the implementation of the Dayton Agreement by equipping Bosnia with the institutions it needs to fulfil the strategy. Once declared complete, Dayton implementation can yield to the technical imperatives of European integration.

Above all, however, the reform must acknowledge that if Bosnia cannot be put on its feet by evolution, nudged along by the High Representative, or by some negotiated constitutional settlement, then the IC must be ready to impose a more workable and democratic model than Dayton envisaged. This could involve creating a strong but fully representative central government, clearing away the counterproductive entity and cantonal structures, devolving substantial powers to the municipalities, and designing largely depoliticised structures for regional administration. It is not too soon for the PIC Steering Board to start consultations on post-Dayton structures.

Time is now of the essence. The IC should take advantage of the current Bosnian leadership's commitment to partnership in effecting positive change, and give Bosnians something positive to vote for in next year's elections, rather than find itself starting again with less amenable politicians in 2003.

## **RECOMMENDATIONS**

1. The international community requires much better mechanisms for policy-making and coordination in Bosnia. There should be regular information-exchange meetings of all international parties involved in Bosnia, including bilateral and multilateral organisations, embassies, and think tanks.
2. The international community presence should be reconfigured according to function. A 'pillar' structure – built around the four core functions of institution building, the rule of law, economic reform and refugee return – would work far better than the currently loose and overlapping arrangement. One organisation should bear general responsibility for each core function, and in some instances an interagency coordinating body should be established.
3. The OHR's role is to coordinate and facilitate. It should be the pediment on this pillar structure. The High Representative should be double-hatted as a European Union (EU) envoy, to strengthen the 'Dayton to Europe' transition.
4. OHR should also (a) intensify its efforts to endow the state with as many functioning central institutions as can be justified and funded under Dayton's dispensation, (b) maintain and probably enhance its capacity in economic analysis and monitoring, and (c) work more closely with the international financial institutions (IFIs).
5. Through the European Commission office in Sarajevo, the EU should increase its visibility and amplify its message about Europe. It should also become increasingly involved in the institution-building process and in economic reform.
6. A tangible sign of the IC's acceptance of the centrality of economic reform to everything it does in Bosnia would be to include the IFIs in the Peace Implementation Council (PIC).
7. Civilian implementation continues to require a secure environment and an effective enforcement mechanism. The NATO-led Stabilisation Force (SFOR) should stay – complete with an American contribution – until Bosnia's governing institutions, including its security institutions, are fully viable and self-sustaining.

**Sarajevo/Brussels, 29 November 2001**



## **BOSNIA: RESHAPING THE INTERNATIONAL MACHINERY**

### **I. THE CURRENT INTERNATIONAL STRUCTURE AND HOW IT EVOLVED**

The international community's operation in Bosnia and Herzegovina (in brief, Bosnia or BiH) is universally regarded as needing an overhaul. Its perceived malfunctioning is blamed variously on the nature of foreign engagement during the 1992-95 war, on the inadequacies of the compromise peace at Dayton which brought that war to an end, and on the ad hoc development of international aims and agencies over the past six years. The upshot, however, is that the current international presence lacks both an efficient structure and a strategic vision.

The recognition that remedial action is urgently needed has grown as the funding for and interest in peace-implementation and state-making in Bosnia have dwindled. The current exercise in reshaping the international community (IC) presence – termed 'recalibration' by the IC in Sarajevo – aims to remove overlaps between and among international organisations, as well as to improve their coordination and cooperation. What it must also do, however, is to serve the IC's larger purposes by delivering an IC presence that can both extract the maximum utility and benefit for Bosnia from Dayton, and – if necessary – move beyond Dayton, whether through an evolutionary process or through imposing a set of workable governance structures.

### **A. DAYTON AND CIVILIAN IMPLEMENTATION**

The General Framework Agreement for Peace, negotiated in Dayton, Ohio, and signed in Paris on 14 December 1995, recreated a Bosnian state with weak central institutions and two very different 'entities' — the Federation of Bosnia and Herzegovina,<sup>1</sup> populated overwhelmingly by Bosniaks (Muslims) and Croats; and Republika Srpska, populated almost exclusively by Serbs. The Dayton constitution proclaimed three constituent peoples.

In the pre-planning for Dayton, 'all the European countries were anxious that the major civilian operations were not neglected or swept under the carpet.'<sup>2</sup> As a result of negotiations in September and October 1995 between the European members of the Contact Group<sup>3</sup> and the U.S., the position of High Representative was created to oversee civilian peace implementation. While the High Representative was granted 'final authority in theatre'<sup>4</sup>

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<sup>1</sup> The Federation was the fruit of the Washington Agreement of February 1994, which both settled the Bosniak-Croat war that had erupted in 1993 and left open the possibility of future accession by a Serb-dominated unit.

<sup>2</sup> Carl Bildt, *Peace Journey: The Struggle for Peace in Bosnia* (London: Weidenfeld & Nicolson, 1998), p. 108.

<sup>3</sup> The five- (and later) six-member Contact Group (U.S., UK, France, Germany, Russia, plus Italy) succeeded the Geneva-based International Conference on the Former Yugoslavia (ICFY) in 1994, following the failures of the Vance-Owen and Owen-Stoltenberg peace plans.

<sup>4</sup> From the Conclusions of the Bonn Peace Implementation Conference, December 1997.

regarding civilian implementation of Dayton, the U.S. was adamant that the office must have no say in military matters.

## **B. THE PRINCIPAL INTERNATIONAL ORGANISATIONS**

The principal international organisations involved in civilian implementation under the Dayton Agreement are the Office of the High Representative (OHR), the Organisation for Security and Cooperation in Europe (OSCE), the UN Mission in Bosnia and Herzegovina (UNMIBH) and the UN High Commissioner for Refugees (UNHCR). The NATO-led Implementation Force (IFOR), was to be responsible for military security.

OHR was established formally by the Contact Group and endorsed by the Peace Implementation Council (PIC)<sup>5</sup> as the instrument through which the IC would 'monitor the implementation of the peace settlement'.<sup>6</sup> OHR was to take advice and direction from the PIC Steering Board. It was to be led by a European, but not from a Contact Group country.

The OSCE mission to Bosnia was established by the OSCE Ministerial meeting on 7-8 December 1995. The mission was given a mandate that included the organisation and supervision of elections, the furtherance of democratic values, monitoring and promoting human rights, and the implementation of arms control and security-building measures. The OSCE head of mission

was charged with coordinating closely with the High Representative. It would be OSCE's most significant field mission to that date. In accordance with OSCE practice, the mission's deployment is based on a memorandum of understanding with the Bosnian state. The mission has been led by successive U.S. diplomats.

Jockeying for power and responsibility in many spheres started early and has continued between the European-controlled OHR and the U.S.-led OSCE. There are now many instances of overlap between the functions of OHR and OSCE, as well as among other international agencies.

UNMIBH was established on 21 December 1995 by UN Security Council (UNSC) Resolution 1035. Initially created for one year, its mandate has been periodically renewed. This mandate gave the mission a rule of law function, which involved reforming and restructuring the BiH police and monitoring and auditing their performance – as well as that of others involved in maintaining law and order and related human rights. The primary component of UNMIBH was to be the International Police Task Force (IPTF), which 'monitors and advises local police with the objective of changing the primary focus of the police from the security of the state to that of the individual.'<sup>7</sup> There was also a judicial component: the UN Judicial System Assessment Program (JSAP) was established in July 1998 to oversee and assess the judicial system. This program was terminated in December 2000.<sup>8</sup>

All this meant that the UN role was scaled back significantly from what it had been during the war, when the UN Protection Force (UNPROFOR) had represented both the largest international engagement and the lowest

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<sup>5</sup> The Peace Implementation Council is comprised of the 55 states and agencies that attended the London Peace Implementation Conference on 8-9 December 1995, and was formally created by that Conference. It provides the High Representative with political guidance through the Steering Board, which consists of the G8 countries, EU, EC and the Organisation of the Islamic Conference (OIC).

<sup>6</sup> Dayton Peace Agreement, Annex 10, Article II. Annex 10, Article I provided that the civilian aspects of the peace settlement were: the continuation of the humanitarian aid effort so long as required; rehabilitation of the infrastructure and economic reconstruction; establishment of political and constitutional institutions in BiH; promotion of respect for human rights and the return of displaced persons and refugees; and the holding of free and fair elections.

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<sup>7</sup> UNMIBH Fact Sheet.

<sup>8</sup> This judicial function was deemed to be a nation-building, not a peacekeeping, function by Jesse Helms' Senate Foreign Relations Committee. Accordingly, the function was removed from the UN mission, against UNMIBH's plea to retain it. ICG interview, senior international official, 27 September 2001.

common denominator of what the powers were willing to do in Bosnia.<sup>9</sup>

UNHCR was designated as the lead organisation for refugee return and all humanitarian operations. In addition, the World Bank, the International Monetary Fund (IMF) and the European Bank for Reconstruction and Development (EBRD) all set up shop in Bosnia, alongside missions from the European Commission (EC) and bilateral donors such as the (British) Department of International Development (DFID), the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), the United States Agency for International Development (USAID) and many others.

Another group of actors assuming a significant role in Bosnia were the ambassadors of the major troop-contributing and Contact Group countries: the U.S., Britain, France, Germany, Italy and Russia. Bosnian circumstances have permitted – if not compelled – several of their number to become big players in their own rights.

### C. THE MILITARY PRESENCE

The military operation was entrusted to a NATO-led and American-commanded Implementation Force (IFOR). Its mandate was for one year only, so in December 1996 it was rechristened the Stabilisation Force (SFOR).

Annex 1A, Article VI:3 of the Dayton Agreement provided IFOR with the right ‘to help secure the conditions for the conduct by others of other tasks associated with the peace settlement ... to assist the UNHCR and other international organisations in their humanitarian missions ... to observe and prevent interference with the movement of civilian populations, refugees and displaced persons, and to respond appropriately to deliberate violence to life and

person.’ This right was not an obligation, however, and civilian implementation was greatly handicapped from the outset by IFOR’s reluctance to use this power, due above all to the U.S. fear of casualties and doctrinal opposition to widening the military’s tasks. After the peaceful separation of forces in 1995-96, nothing else came close as a priority — including reconstruction and civilian implementation. In sum, a lack of political will in the capitals left the High Representative without a mechanism to enforce either the peace or his own legal authority.<sup>10</sup>

This report is focused on the IC’s civilian presence. It takes for granted that Dayton implementation continues to depend on the safe and secure environment guaranteed by the presence of SFOR at its present strength. SFOR should stay – complete with an American contribution – until Bosnia’s governing institutions, including its security institutions, are fully viable and self-sustaining.

The current complement of some 18,000 troops is, in ICG’s clear judgement, the minimum level required to sustain refugee returns even at their present rate. Further, if the IC is to keep open – as ICG believes it must – the option of imposing a more workable governance structure in order to complete the Dayton process, then there is no scope for further cuts in SFOR strength.

This year has seen a debate on the U.S. contingent in SFOR. The Bush Administration’s doctrinal reluctance to maintain America’s military commitments in the Balkans has been sharpened since 11 September by the operational pressure to gear up for the ‘war on terrorism’. ICG continues to argue that even after 11 September, the U.S. military presence must be maintained in Bosnia.<sup>11</sup> The visible and credible U.S. military contribution sends an important political message that Washington remains

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<sup>9</sup> UNPROFOR’s record in Bosnia was as undistinguished as its mandate was inadequate. The massacres following the fall of the Srebrenica ‘safe area’ in July 1995 ensured that the UN would carry the stigma of international failure in Bosnia from war into peace.

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<sup>10</sup> See ICG Balkans Report No. 80, *Is Dayton Failing? Policy Options and Perspectives Four Years After*, 28 October 1999, pp. 107-8.

<sup>11</sup> ICG Balkans Report No. 110, *No Early Exit: NATO’S Continuing Challenge in Bosnia*, 22 May 2001; Gareth Evans, ‘Sorry, the boys should darn well stay in Bosnia’, *International Herald Tribune*, 25 May 2001.

engaged. Any of the mooted replacements of the 3,500 American troops by those of other NATO countries would be likely to send a destabilising signal.

## **II. PROBLEMS WITH THE PRESENT STRUCTURE**

The IC's effectiveness has been weakened by the roadblocks and ambushes set up by Bosnian political leaders and institutions. But these stratagems could not have succeeded for so long if the international bodies had done more to address their own failures of performance and state-building in Bosnia. Five main problems can be identified, and are addressed in the following sections.

### **A. ABSENCE OF OVERALL VISION AND EFFECTIVE STRUCTURES**

The IC has had neither a sufficiently strategic view of its purpose in Bosnia, nor adequate mechanisms for making strategy. The PIC Steering Board, for example, has had few strategic discussions. Moreover, the failure to recognise from the outset that economic reform was a prerequisite to long-term stability and security was rooted in the assumption, prevalent in 1995-96, that the IC's engagement would be brief and superficial. Such short-termism has militated against the formulation of an overall strategy.

The clearest illustration of this problem is the reactive nature of the Principals' Meetings.<sup>12</sup> These gatherings in Sarajevo of the major intergovernmental organisations have had little strategic focus. Their agendas have been dictated largely by events. In the words of a senior international official who attends them: 'Meetings would lurch from crisis in region A to crisis in region B. When there were no crises, meetings were frequently cancelled.'<sup>13</sup>

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<sup>12</sup> The Principals' Meetings, held regularly in Sarajevo, are attended by the major international organisations in Bosnia, including UNMIBH, OSCE, UNHCR and SFOR. They are convened and chaired by OHR. Principals' meetings were held twice a week under Westendorp. However, the collegiate atmosphere has since diminished, and the meetings are used less for decision-making than for information exchange.

<sup>13</sup> ICG interview with senior international official, 6 September 2001. Another top international representative described the cold response to his suggestion at a 1997



## B. LACK OF LEADERSHIP AND COORDINATION

The presence of large numbers of organisations with different reporting lines, funding structures and agendas has highlighted the unmet need for an effective strategy-making mechanism. As UNMIBH has noted, 'funding has been disbursed on a disconnected bilateral basis with no unity of vision.'<sup>14</sup> The lacking of a coherent structure has exacerbated problems that inevitably arise where large international operations are deployed. Amid the jostle of contending interests and tangled remits, institutional wires get crossed. For example, there was dissatisfaction within OHR at the way in which U.S. Ambassador Robert Barry, then head of the OSCE mission, had presided over landmark changes to the election laws in 2000, when OHR was supposed to be the lead agency.<sup>15</sup>

For the same reason, certain ambassadors have become local kingmakers. The U.S. and UK ambassadors effectively created the Alliance for Change coalition of moderate parties in 2000. Similarly, the World Bank has often acted as a de facto head of economic reform in Bosnia. While it is arguable that each of these initiatives or seizures of responsibility was necessary to achieve specific ends, such diffusion of leadership has bred inefficiencies, duplication and animosity.

On the other hand, notable successes have been scored where agencies have shown leadership and cooperation. The Return and Reconstruction Task Force (RRTF) has coordinated international

efforts to promote and sustain refugee return.<sup>16</sup> But many substantive issues — such as unrelenting obstruction within Republika Srpska of any move that enhances the competence of the Bosnian state — have not been dealt with because they have been adjudged too costly politically or simply too difficult.<sup>17</sup> Such shortsightedness stores up new problems.

Many argue that the absence of an overall strategic vision is the fault of OHR and its developmental history: 'OHR has never cohered as an organisation. There was never a clear hierarchical set-up on the substantive side or the management side.'<sup>18</sup> This is partly due to the lack of effective management structures and processes, making the strategic deficit all the more apparent. Anecdotal evidence abounds of ad hoc decision-making and supposed strategy meetings that produce no strategy.<sup>19</sup>

OHR's field presence is also poorly organised. OHR has special envoys in seven areas (Bihac, Doboj, Bijeljina, Livno, Trebinje, Foca and Central Bosnia) and regional offices in four (Banja Luka, Brcko, Mostar and Tuzla). These envoys, however, report directly to one of the deputy high representatives, not to the relevant OHR regional office. This line structure is inefficient.

OHR's staff comprises both people on short-term secondments from the home ministries of the PIC countries and specifically contracted employees. This type of organisation must work

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meeting that organisations should set out their five or so priorities for the next year. The agencies demurred, responding that any such effort would be too difficult, since they report to different bosses, have different mandates and agendas, and so on. ICG interview, 19 October 2001.

<sup>14</sup> UNMIBH nonpaper, June 2001.

<sup>15</sup> These changes became acutely controversial in March 2001, when several Bosnian Croat parties cited them as the justification for walking out of the entity structures. Hence, OHR's subsequent complaints at its exclusion may themselves be self-serving. Whichever way one reads it, however, the episode testified to a lack of IC strategic planning and coordination.

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<sup>16</sup> RRTF is an OHR-led interagency body established in 1997 by OHR and UNHCR. It also includes OSCE, UNMIBH, SFOR and the World Bank, and is one of the best examples of effective international coordination in BiH.

<sup>17</sup> See ICG Balkans Report No. 118, *The Wages of Sin: Confronting Bosnia's Republika Srpska*, 8 October 2001.

<sup>18</sup> ICG interview with senior international official, 19 September 2001.

<sup>19</sup> For instance, the 8 November 2001 decision on pre-trial detention, which foreshadows a move from Zenica to Sarajevo of the trial of fifteen Croats charged with war crimes against Bosniaks in and around Zepce, was made at a pre-Principals meeting at OHR. Ad hoc decisions are often taken at these preparatory meetings. OHR Press Release, 'High Representative develops strategy for 'Rules of the Road' Court proceedings', 8 November 2001.

hard to achieve a 'corporate spirit' and a sense of institutional loyalty. As currently configured, OHR has little institutional memory and momentum.<sup>20</sup> Seconded staff are often either very junior or on the verge of retirement. This is a frequent object of criticism by other international actors in Bosnia.<sup>21</sup>

Many of those seconded to work with OHR have little relevant experience, yet they are nonetheless called upon to make decisions in areas beyond their ken. They sometimes attempt to impose theories or models that are not readily applicable to Bosnia's post-war, post-communist and post-industrial circumstances. For example, one senior international official recalls a young lawyer in OHR who wanted the social protection afforded by Bosnia's new labour law to match that of Sweden. The international official explained that this was not a sensible approach when trying to encourage the Bosnian private sector: social provision should be at a level that the country can afford. This exchange initiated a significant internal debate within OHR. Similar effort was expended over a draft maternity law.<sup>22</sup>

Short-term secondment of international staff is one of the more serious problems afflicting OHR. Many transient staff members stay just six months, and a year is considered a lengthy posting. Neither period is long enough to understand Bosnia's complexities, let alone to start providing solutions. However understandable it may be, frequent rotation represents a self-inflicted constraint upon

performance. The rapid turnover of seconded staff limits expertise, dissipates momentum, and undermines institutional loyalty and memory. It means that the wheel needs regularly to be reinvented.<sup>23</sup>

Many local and international officials, both inside and outside OHR, believe the office is over-staffed. OHR employs far more international than Bosnian staff, and the latter are mostly confined to support positions. Specialised agencies such as the World Bank and IMF, by contrast, primarily employ Bosnians.

### **C. DUPLICATION AND NON-COOPERATION**

The problems of duplication and non-cooperation stem from the fact that there are 'five principal organisations with unclear mandates and a loose coordinating mechanism that has been ineffective',<sup>24</sup> with functional overlap being most pronounced between OHR and OSCE. In some areas the overlaps are more or less workable. In the human rights area OHR, OSCE, UNMIBH, UNHCR and the Office of the High Commissioner for Human Rights (OHCHR) all have functions which are in the main complementary. For example, the OSCE human rights department deals, among other matters, with the return of refugees and displaced persons, particularly their efforts to reclaim their properties, while the UNMIBH human rights function entails 'investigating or assisting with investigations into human rights abuses by law enforcement personnel'.<sup>25</sup> But less complementary duplication can be found elsewhere, for example in political analysis, media reform and support (though OSCE is ceding this last function to OHR), and economic policy and reform.

Communication between some agencies has been so poor that occasionally there has been no

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<sup>20</sup> Many OHR documents did not even make the shift when OHR moved to a new building. The current archiving system is said to be inadequate. When Petritsch took over in 1999, and asked for a list of all his predecessors' official decisions, none was to be found. The Press Office reportedly had to scramble to assemble such a seemingly essential attribute of institutional memory.

<sup>21</sup> Two top-ranking international officials noted their disappointment after observing young OHR staffers' rudeness and disrespect towards Bosnian politicians at meetings. ICG interviews, 24 September 2001, 15 October 2001.

<sup>22</sup> Many internationally proposed laws neither fit within the existing legal framework, nor do they complement one another. Moreover, the cost of their implementation is often beyond Bosnia's means. The price of the hardware and software required to set up CIPS is reckoned to be KM 50 million.

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<sup>23</sup> According to an IFI official, proposals that 'will not work' are frequently pondered for days in the OHR economics department. ICG interview, 27 September 2001.

<sup>24</sup> ICG interview with senior international official, 27 September 2001.

<sup>25</sup> UN Security Council Resolution 1088 (12/1996).

awareness that overlaps even exist. On the other hand, where duplication is recognised, time-consuming, frustrating and often fruitless coordination meetings are the order of the day. Real cooperation remains elusive.<sup>26</sup>

Matters are usually no better in the provinces than in Sarajevo. There is significant duplication of field presence between OHR, OSCE and the UN agencies.<sup>27</sup> In Prijedor, OSCE and UNHCR maintain nearly adjacent offices, both dealing with refugee return, even though the Property Legislation Implementation Plan (PLIP) is a common program. Some cooperation does occur in the field between different organisations: 'if there are good people who understand the issues, cooperation is not a problem.'<sup>28</sup>

As one former field worker observed, 'where you sit defines how you see the problem.'<sup>29</sup> Too many internationals are Sarajevo-centric and, therefore, more attuned to Bosniak perspectives in the capital than to those of the other regions and peoples. More effort and resources are put into monitoring and policy-making in the Federation than in the RS.

#### D. PERSONALITY AND TURF WARS

Other intractable issues that undermine international effectiveness relate to personality and to personal and institutional self-interest. Such problems are inherent to any multilateral, long-running, international deployment. Yet the absence of an overall structure for the international effort has permitted these problems to become unduly prominent in Bosnia. International staff members usually have half an eye on their next posting with their home government or international bureaucracy. Their

employers, meanwhile, are also jockeying for position: seeking to demonstrate their indispensability in Bosnia, as well as their continuing relevance in the world at large.

There have from the start been significant personality clashes among international community luminaries in Bosnia.<sup>30</sup> Although sometimes portrayed as a U.S.–European quarrel over the relative merits of boldness and caution in pursuing a basically shared agenda,<sup>31</sup> such differences also seem to reflect the interplay of strictly personal factors. Insofar as OHR is not seen to be offering the requisite leadership, rivals announce themselves. The personalisation of endemic policy differences – or simply of differences of emphasis and nuance – has done much to impair international effectiveness

#### E. MANAGEMENT OF ECONOMIC REFORM

Daunted by the immediate challenges of Dayton implementation, the international community failed, first, to recognise that economic reform was vital to the establishment of a viable peace and, later, to devise mechanisms for making it happen in a coherent and politically salient fashion. Although over U.S.\$ 5 billion of aid has been ladled into Bosnia since 1995,<sup>32</sup> and physical reconstruction has been considerable, there is little sustainable revitalisation. The country urgently needs foreign investment, genuine privatisation, regulatory and structural reforms and, above all, a common market.<sup>33</sup>

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<sup>26</sup> ICG correspondence with senior IC ambassador, 13 November 2001.

<sup>27</sup> OSCE has a considerable field presence and experience. It has learned how to coordinate field and central staff through interchange of assignments. Its chain of command is hierarchical: 27 field offices report to five regional centres (in Banja Luka, Brcko, Mostar, Sarajevo and Tuzla) which, in turn, report to the head office in Sarajevo.

<sup>28</sup> ICG interview with former field officer, 18 September 2001.

<sup>29</sup> ICG interview, 18 September 2001.

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<sup>30</sup> This was constantly referred to in ICG interviews as the 'clash of large egos'.

<sup>31</sup> See, for example, Senad Pecanin, 'Thomas Miller vs Wolfgang Petritsch: Sukob istih interesa', *BH Dani*, No 186, 22 December 2000; Amra Kebo, 'West Considers Radical Bosnia Plan', *Balkan Crisis Report*, No 259, Institute for War and Peace Reporting, 27 June 2001; OHR Media Round-up, Dejan Jazvic, 'The High Representative ends his mandate in BiH – Americans demand Petritsch's departure', *Vecernji list*, 14 June 2001.

<sup>32</sup> Source: OECD Development Assistance Committee, Online Database, at: <http://www.oecd.org/htm/M00005000/M00005347.htm>, Table 2a.

<sup>33</sup> See ICG Balkans Report No 115, *Bosnia's Precarious Economy: Still not open for Business*, 7 August 2001.

The main IC coordination mechanism in the economic field are the Economic Task Force (ETF) and International Advisory Groups (IAG). IAGs are examples of IC cooperation on particular projects. One lead agency is chosen from all of the agencies working in an area, and there is strong coordination with the other agencies. The IAG on payments bureaux was a considerable success. IAGs also exist for privatisation and taxation policy.

The ETF meets every two weeks, and is chaired by OHR. Its membership includes the World Bank, the IMF, the European Commission (EC), the EBRD, the Customs and Fiscal Assistance Office (CAFAO), and various donor organisations and ambassadors. Although regarded as a useful forum for exchanging information, the ETF has failed to fulfil its potential.

The international financial institutions (IFIs) – for present purposes the World Bank, International Monetary Fund (IMF) and European Bank for Reconstruction and Development (EBRD) – should be routinely invited to PIC meetings, where OHR speaks to economic issues. So far this has not been the case. For example, at the PIC meeting in May 2000, which concluded that economic development was the main priority, the heads of the World Bank and IMF missions in Bosnia, and the governor of the Central Bank, were invited to participate only in the first half of proceedings, and were asked to leave when talk turned to corruption. None of the IFIs was present at the PIC meeting in Brussels in September 2001 where economic development was again discussed. This exasperates the IFIs, as it seems to show that the IC has not accepted that economic regeneration is essential. Nor surprisingly, the World Bank has stepped in to fill the perceived vacuum in economic leadership. Exclusive relationships with local politicians and bodies have been established — for example, the Committee for Economic Development and European Integration — without involving OHR.

## **F. CONCLUSIONS**

The current IC set-up has been described as a ‘nightmare of prevarication’.<sup>34</sup> It requires, at the very least, much better mechanisms for coordination. OHR’s main roles are meant to be policymaking and coordinating. But the inadequate progress in strengthening central institutions can be traced, in part, to its shortcomings in both these functions. The need for further economic reform and the consolidation of the rule of law is likewise urgent. The examples of effective interagency cooperation – such as the RRTF and the IAG for the payments bureaux – have been all too rare. Whether the IC is capable of equipping itself to meet these needs remains, however, an open question.

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<sup>34</sup> ICG interview with senior international official, 27 September 2001.

### III PROPOSALS FOR CHANGE

#### A. WHY NOW?

Reshaping has been an issue facing the international community since about 1997, when it became clear to some officials in Bosnia that overlaps, 'ad hocery' and lack of coordination were dissipating the effectiveness of the international effort. In May 1999, the then head of the OSCE mission, Ambassador Barry, argued in print that '[t]he [OSCE] Mission to Bosnia and Herzegovina should be merged with the Office of the High Representative under a prominent official with the broad powers conferred by the Dayton agreement. This will provide better focus for international efforts at much reduced cost.'<sup>35</sup>

Barry noted later that such a merger would take considerable time and become possible only after the High Representative's powers had withered away. Later still, he concluded that OSCE's and OHR's incompatible mandates, reporting lines and funding mechanisms made any such merger impossible.<sup>36</sup> Barry's progressive abandonment of his own proposal was indicative of the lack of will or capacity – or both – by the IC to tackle a long-standing but intractable issue.

Reshaping has risen to the top of the international agenda in 2001 for several reasons. There is pronounced donor fatigue, exacerbated by international organisations' disquiet at the lack of progress in civilian implementation. Every putative success seems to lead not to an earlier exit, but to the revelation of yet more problems to be solved. At the same time, Bosnia has been serially eclipsed as a major preoccupation by events in Kosovo, Belgrade and Macedonia. Moreover, since 11 September there is a whole new international agenda. The war on terrorism and the prospect of

reconstituting Afghanistan have pushed BiH even lower down the list of international concerns, notwithstanding its own vestigial terrorist threat.<sup>37</sup>

The downward trend in international agencies' budgets speaks for itself. OHR – the least costly of the principal organisations – has had its budget cut from Euro 32 million in 1999 to Euro 25 million in 2001. UNMIBH's budget has been reduced from U.S.\$ 189 million in 1998-99 to U.S.\$ 140 million in 2001-02. The OSCE budget has seen a 43 per cent reduction in 2001, and a further 23 per cent cut is planned for 2002 (U.S.\$ 18 million). The budget for the first three years of the World Bank's mission in Bosnia was U.S.\$ 500 million; for the following three years it was U.S.\$ 300 million; but for the next three years it will be \$180 million. The EBRD's budget decreased from Euro 60 million in 2000 to Euro 50 million in 2001; it will decline to Euro 30 million in 2002. UNHCR's budget has shrunk from U.S.\$ 139 million in 1996 to just U.S.\$ 8 million in 2001.<sup>38</sup>

As an OSCE official observed, 'there are no longer the resources for the international presence to be unfocused.' The absence of conspicuous progress to show for all the money spent to date only increases the pressure to cut budgets and programs. This trend has certainly been reinforced since 11 September.

In any case, the election of the Alliance for Change coalition in the Federation in November 2000, followed by its establishment of a coalition at state level, have set the stage for a change in the way the IC operates, or at least would like to be able to operate. The IC has come out of 'war mode' and now stresses its commitment to 'partnership' with the Bosnian authorities: communicating, negotiating and bargaining rather than conspiring, commanding and imposing. The IC may have put the Alliance

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<sup>35</sup> Robert Barry, 'Put OSCE in Charge of Balkan Policy', *Wall Street Journal*, 3 May 1999.

<sup>36</sup> ICG interviews with international officials, 4 and 19 October 2001; communication from IC ambassador, 14 November 2001.

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<sup>37</sup> See ICG Balkans Report 119, *Bin Laden and the Balkans: The Politics of Anti-Terrorism*, 9 November 2001.

<sup>38</sup> OHR Presentation to PIC Steering Board Political Directors, *Recalibrating the Activities of the International Community – the Challenges of Partnership*, Brussels, 13 September 2001.

together, but to help make non-nationalist government a success, the IC will need both to give its partners more responsibility and to demand more responsibility of them – while also still reserving the right to take more robust measures if softer ones fail.

Finally, there is growing foreigner fatigue in Bosnia: the international community and the civilian peace implementation process are coming under increasingly critical scrutiny.<sup>39</sup> While the Alliance seeks to work with the international community on terms of equality, it also shores up its political credibility by exploiting tensions and disagreements with the foreigners. Again, this militates in favour of an overhauled IC presence and a tighter program of peace implementation.

The real push for reshaping came in spring 2001. As a result of mounting concern among several Contact Group states, on 19 March 2001 the EU General Affairs Council ‘encouraged High Representative Petritsch to review current international civilian implementation structures in BiH and to make proposals as to their streamlining with a view to ensuring the most effective coordination of all actors.’<sup>40</sup> At the 11 April Paris ministerial meeting of the Contact Group, the High Representative was tasked with submitting proposals to improve the ‘coordination and efficiency of the international community’s actions in the civilian field.’<sup>41</sup>

There was now a flurry of activity. As one senior international representative observed, ‘When the word got out in mid-spring that the U.S. was pushing for a plan, a thousand proposals bloomed.’<sup>42</sup>

## B. OHR’S OPENING BID

The High Representative outlined his initial proposal – the ‘Table Model’ – to the PIC Steering Board Political Directors on 10 May 2001. It involved drawing ‘all international civilian implementation agencies (OHR, UNMIBH, IPTF, OSCE, UNHCR) around a single table, in a cabinet-style format chaired by the High Representative.’<sup>43</sup> The heads of the OSCE, UN and UNHCR missions would each become deputy high representatives, along with other deputy high representatives for functional sectors. There would also continue to be a principal deputy high representative and a senior deputy high representative. While the mission heads would ‘continue to lead [their] respective organisations’, the High Representative would have authority to seek their replacement in the event of poor performance.

This proposal met pronounced resistance.<sup>44</sup> Criticism from OSCE, UNMIBH, the IFIs, various embassies and donors took two main forms: an objection to the subordination of civilian organisations under OHR; and criticism that the plan was driven by administrative rather than strategic conceptions.

Several heads of mission impressed upon Petritsch that they were accountable to bodies far more august than his. The World Bank made it clear that it was responsible to its Board in Washington; OSCE pointed to its Permanent Council in Vienna; and UNMIBH invoked the Security Council.<sup>45</sup> Missions had their clear-cut mandates, and under no circumstances would they be accountable to OHR.<sup>46</sup>

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<sup>39</sup> See for example Kresimir Zubak, ‘Lagumdžija preispituje odnos prema OHR i OSCE, *Oslobodjenje*, 8 October 2001, and Amra Kebo, ‘Calls for end to Days of the Consuls?’, *Balkan Crisis Report*, No 283, Part 1, Institute for War and Peace Reporting, 27 September 2001.

<sup>40</sup> General Affairs Council, 2338<sup>th</sup> Meeting, Brussels, 19 March 2001.

<sup>41</sup> Contact Group Ministerial Meeting, Paris, 11 April 2001.

<sup>42</sup> For example, the U.S., French and British ambassadors worked on a proposal from March onwards, meeting with Petritsch on several occasions for this purpose.

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<sup>43</sup> OHR proposal. Petritsch reportedly drafted the proposal in the expectation that his successor would accede to these powers.

<sup>44</sup> It has been described variously as ‘disappointing’; ‘King Arthur and the Knights of the Round Table’; ‘Camelot’; and ‘Sun King’. Interviews with senior international representatives, September and October 2001. See ‘Volkang Petrič zeli apsolutnu vlast u BiH’ *Oslobodjenje*, 16 June 2001.

<sup>45</sup> It has also been suggested that some U.S. representatives strongly opposed the proposal because they did not intend to be subordinate to a European-led organisation.

<sup>46</sup> Another example is USAID: a major reason why funding for Republika Srpska has not been coordinated

The political reality that organisations report to different masters and have separate sources of funding is inescapable. Even if an organisation's representatives in Bosnia agreed to be subordinated 'in theatre', the argument ran, the external directorates to whom they answer would not. Other organisations' mechanisms of decision-making – for example, OSCE has 55 member states and works by consensus – also made this suggested hierarchy almost impossible. Legally independent multilateral organisations could not come formally under the jurisdiction of OHR.<sup>47</sup> And global organisations like the UN could not, they asserted, be subordinate to a regional construct. Further, OHR was deemed to lack the expertise needed for such a controlling role. Being *sui generis*, it does not have the experience of working around the world that many agencies possess and on which they pride themselves.

Accordingly, it was agreed that a clear-cut division of responsibilities was indeed needed, but without formal subordination. Petritsch then presented a revised proposal to the PIC Steering Board in Stockholm on 21 June 2001. This envisaged a merger of the OHR, OSCE and UN missions in Bosnia, with the High Representative double-hatted as High Representative of the UN and also Special Representative of the UN Secretary-General.<sup>48</sup> Although this scheme was better received than Petritsch's first proposal, it did not win universal support. Rather, the Steering Board agreed that discussions on streamlining should commence on the basis of a phased, functional and transparent approach. It also extended Petritsch's term of office by a

year.<sup>49</sup> But OHR was told at Stockholm that it too must be streamlined.<sup>50</sup>

### C. OTHER PROPOSALS

Alternative proposals came in two forms: some addressed how the overall IC presence should be structured, and under whose auspices, while others addressed which organisations should perform which tasks — and perhaps expand their mandates in the process. Disagreements ensued between capitals, boards and headquarters, on the one hand, and their offshoots in Bosnia, on the other. The former tend to be keen to save money, downsize and plot exit strategies, whereas the latter find it natural to generate ideas for new or continuing roles. The U.S. position was that each organisation needed to consider giving up some functions in the interest of consolidation.

In relation to the overall structure, most attention has been focused on a Kosovo-type 'pillar model'. In Kosovo, a special representative of the UN Secretary-General (SRSG, currently Hans Haekkerup) leads a mission (UNMIK) comprising four 'pillars', each under a deputy special representative: an EU representative is responsible for economic reconstruction, an OSCE representative for institution-building, and UN representatives head civil administration and police and justice. UNMIK adopted this structure in reaction to the perceived unwieldiness of the IC presence in Bosnia. It is intended 'to ensure the institutional capacities of the agencies cooperating with the United Nations are pooled for optimal effectiveness on the ground, each component [being] assigned to an agency which would take the lead role in a particular area.'<sup>51</sup>

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was that USAID will not be subordinate to any other agency.

<sup>47</sup> There is even some question as to the legal standing of OHR itself.

<sup>48</sup> OHR BiH Media Round-up, 'Wolfgang Petritsch seeks an absolute power in BiH!', 18 June 2001

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<sup>49</sup> 'The Steering Board agrees that discussions regarding the streamlining process shall get under way now, that a phased approach would best facilitate the process, that it should follow a strictly functional approach and that the process would be fully transparent.' Communiqué, PIC Steering Board, Stockholm, 21 June 2001.

<sup>50</sup> Amra Kebo, 'West Considers Radical Bosnia Plan', *Balkan Crisis Report*, No 259, Institute for War and Peace Reporting, 27 June 2001.

<sup>51</sup> Report of the Secretary-General pursuant to paragraph 10 of Security Council Resolution 1244 (1999),

UNMIBH proposed a reconfiguration that would entail only two chains of command, military and civilian. The civilian presence would be headed by a joint EU/UN mission, with the Security Council taking over the role of the PIC. A four-phase process was envisaged: on 1 July 2001, OSCE would merge into OHR; a year later, OHR and UNMIBH would merge under a double-hatted High Representative/Special Representative of the UN Secretary-General; on 1 January 2003, there would be a joint UN/EU mission, which would transmogrify, in January 2004, into a single EU mission under an EU chief.<sup>52</sup>

The advantages adduced included 'UN logistics, administration, communications and physical infrastructure', and the fact that the entire mission could be accommodated in the rent-free UN building.<sup>53</sup> The problems with this proposal, perhaps seen as greater than they should have been, were the apparent lack of capacity and will by the EU to play its assigned part. Russian-backed proposals for a complete UN take-over, but in the context of a pillar model, were also rejected. But, while the other Steering Board states dismissed the idea of yielding control to the UNSC as both a non-starter and inconsistent with streamlining, the attractions of the pillar model itself have grown.

#### D. THE CURRENT STATE OF PLAY

Since July this year, OHR has led a revitalised streamlining push.<sup>54</sup> In an OHR presentation on the rechristened 'recalibration' process at the PIC Steering Board meeting in Brussels on 13 September, IC objectives and priorities were outlined. The presentation set out four core

functions for the IC in Bosnia: institution building, refugee return, economic reform, and the rule of law.<sup>55</sup> It also identified several possible time frames for the completion of the international mission in Bosnia: a three to five-year period, a seven to eight-year period, and a twelve to fifteen-year period.

The PIC was asked to define what it required of the peace process, so that OHR could formulate an appropriate plan.<sup>56</sup> The PIC agreed with OHR that planning should be based on a seven to eight-year time frame. But the Steering Board political directors concluded that they should have an accelerated civilian implementation period from 2002 to 2005, so that withdrawal from Bosnia might start in 2005.<sup>57</sup> Benchmarks — not deadlines — were deemed necessary for each main implementation objective. OHR was tasked with assembling a comprehensive implementation plan that would outline what was needed to achieve the desired end states in the four functional areas. OHR was also charged with streamlining the IC field presence and presenting options as to which agency should undertake a follow-on police monitoring mission. The Steering Board expects to see detailed proposals at its meeting on 6 December 2001.

A joint OHR/OSCE working group, including representatives from the other main civilian agencies and SFOR, has sought to produce a 'design based on common principles'.<sup>58</sup> Meeting nearly every week, the group has seen its main job as to 'define for the IC what should be the functional areas in which it should continue to be engaged, and to what end.'<sup>59</sup> The exercise and the necessary consultations with interested

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S/1999/672, 12 June 1999. See UNMIK web site: [www.un.org/peace/kosovo](http://www.un.org/peace/kosovo).

<sup>52</sup> UNMIBH nonpaper, June 2001. These proposals reflected the expiry of the UN's Bosnian mandate at the end of 2002. UNMIBH had long been planning its exit strategy, an exercise which reportedly helped to spur the general streamlining effort.

<sup>53</sup> UNMIBH nonpaper, June 2001.

<sup>54</sup> The High Representative has been assisted in this process since the summer by Principal Deputy High Representative Donald Hays, the former U.S. Representative to the UN for Management Reform.

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<sup>55</sup> OHR Presentation to PIC Steering Board Political Directors, *Recalibrating the Activities of the International Community – the Challenges of Partnership*, Brussels, 13 September 2001. There are, of course, various sub-units within each of these core functions.

<sup>56</sup> Some capitals were surprised that the presentation was somewhat light on detail, yet then asked the PIC to make decisions: 'This is not [the PIC's] role.' ICG interview with embassy official, 12 October 2001.

<sup>57</sup> Communiqué by the PIC Steering Board Political Directors, Brussels, 13 September 2001.

<sup>58</sup> ICG interview, 12 October 2001.

<sup>59</sup> ICG interview, 28 September 2001.



parties have preoccupied senior managers from many organisations.

The joint OHR/OSCE working group on recalibration has agreed, appropriately in ICG's view, that the international presence should be functionally consolidated into a pillar structure, with one organisation having broad leadership responsibility for each set of core functions, but with OHR at the apex as the supreme coordinator. In those instances where complementary tasks are performed by a number of organisations, interagency bodies to coordinate their work are likely to be established.

It has been accepted that Kosovo's pillar model is superior to the ad-hoc structure that has evolved in Bosnia.<sup>60</sup> Its merits include the ability to consolidate functional expertise, remove overlaps and make clear who is responsible for what task. Although far from perfect, and still capable of generating both intra-agency and interagency disagreements (as, for example, over privatisation policy), such contention in Kosovo has been neither as significant nor as public as the organisational infighting in Bosnia.

The current recalibration effort has been greeted with cautious optimism. Many senior international and Bosnian officials, who had expressed exasperation with the non-structure and dysfunction of the IC effort in the past, believed the effort was now 'moving in the right direction'.<sup>61</sup> Bosnian ministers in particular have welcomed the apparent consensus at the Brussels PIC meeting in September, and claim to have observed a real improvement in coordination over recent months. For example, there were preparatory meetings to devise strategy and set agendas before a recent economics meeting with the Republika Srpska government. This was in marked contrast to previous practice.

There is thus general support for the recalibration process. As one mission head

observed, 'there is only one plan now'. But governments do not yet appear to have firm views as to which organisations should take which portfolios. They want savings, but they also expect international organisations to interact in future in a coordinated and complementary fashion.

To this end, international agencies have been reviewing themselves. Each organisation has been charged with working out what it does and whether or not it actually has a well-defined mandate for particular activities (for example, a PIC document, or the Dayton Agreement itself). This institutional audit has proceeded in parallel with recalibration and has been regarded as a crucial part of the exercise. Organisations and departments have sought to match resources to tasks, and tasks to timelines and outcomes. As a result, the working group has discovered 'areas ripe for cleaning up'.<sup>62</sup>

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<sup>60</sup> ICG interviews with international officials, October 2001.

<sup>61</sup> ICG interviews, September and October 2001.

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<sup>62</sup> ICG interview with senior international official, November 2001.

#### IV. WHAT THE NEW PILLAR STRUCTURE SHOULD LOOK LIKE

The four agreed core areas for international engagement – and the four pillars of the newly reshaped structure – are to be institution building, the rule of law, economic reform and refugee return. In ICG's view, these tasks should be divided along the following lines:

- ❑ OHR should be responsible for *institution building*, particularly of those functions and agencies necessary for creating an effective central government.
- ❑ OSCE should coordinate the *rule of law* function through an interagency body, including the Independent Judicial Commission (IJC),<sup>63</sup> the police follow-on mission and the other rule of law monitoring activities. Its members should also include the relevant non-governmental organisations and bilateral programs such as the U.S. Justice Department's International Criminal Investigative Training Assistance Program (ICITAP). This interagency body might take the form of a task force.
- ❑ The existing Economic Task Force (ETF) should be revived – under OHR chairmanship – to coordinate *economic reform* and agree priorities with the IFIs and bilateral donors. The specialised agencies and donors will continue to implement their own programs, but according to a common plan.
- ❑ UNHCR should continue as the lead agency supporting *refugee return* through the RRTF. This task force remains a conspicuous example of interagency good practice in BiH.

ICG endorses functional consolidation in order to facilitate specialisation and, therefore, maximise effectiveness. ICG also supports the increased use of interagency coordination bodies, using the RRTF as a model. The following is a suggested allocation of some agencies to core functions. Although no attempt is made here to make a comprehensive allocation, the process should be guided by the principles of 'functionality, division of labour, concentration on priorities and coordination under a clear strategic plan shared by all international players'.<sup>64</sup>

##### A. PILLAR ONE: INSTITUTION BUILDING

OHR should be responsible for institution building, including the creation and support of a professional civil service and independent regulatory agencies for such industries as telecoms, broadcasting and energy, which are 'regulators and guarantors of a single economic space and European standards for BiH citizens'.<sup>65</sup> OHR should also intensify its efforts to endow the state with as many functioning central institutions as can be justified and funded under Dayton's dispensation. The state court and border service, as well as authorities for civil aviation, railways, standards and broadcasting have all been created or proposed, but have not yet become either operational or complete. Bosnia will need these and more if it is to move beyond Dayton to Europe. Accordingly, the EU should become increasingly involved in the institution-building process.

##### B. PILLAR TWO: RULE OF LAW

The rule of law function has numerous components, including the police follow-on mission, judicial reform and capacity-building,

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<sup>63</sup> The IJC was established in early 2001 under OHR auspices 'to assist in the process of guiding and coordinating a comprehensive judicial reform strategy in BiH.... [I]t provides assistance to domestic judicial and legal institutions throughout BiH, including the judicial and prosecutorial commissions and councils that deal with matters related to the appointment, discipline, and review of judges and prosecutors.' OHR website, at <http://www.ohr.int>

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<sup>64</sup> The passage quoted is from Ambassador Dieter Woltmann's description of OSCE's aims for the recalibration process. Letter to ICG, 13 November 2001.

<sup>65</sup> OHR Presentation to PIC Steering Board Political Directors, *Recalibrating the Activities of the International Community – the Challenges of Partnership*, Brussels, 13 September 2001.

anti-fraud efforts, human rights' protection (including the support of institutions that defend those rights), and broader rule of law monitoring and analysis. ICG recommends the establishment of an interagency body to coordinate work on these discrete, variously located but interdependent elements.<sup>66</sup> OSCE should provide the umbrella to cover this pillar. Whether it should also take on the police follow-on mission itself is discussed below. OSCE will need to work closely with the IJC, but that commission should (for reasons also explained below) remain within OHR. Legal reform programs (i.e., drafting, amending and commenting on laws), as distinct from rule of law functions, should also stay where they are.

### 1. The Policing Follow-On Mission

The dilemma over what should follow the International Police Task Force (IPTF) – and which agency should take responsibility for it – is the biggest open question (and the biggest budget item) in the recalibration exercise. An intrusive police-monitoring mission remains essential until Dayton is complete. In the wake of the UN Secretary-General's decision against extending UNMIBH's mandate beyond 2002,<sup>67</sup> the issue is now pressing.

UNMIBH will outline what it thinks the follow-on mission should do and look like, but not which agency it believes should perform it. UNMIBH estimates that an appropriately configured mission will cost about U.S.\$ 40 million per year. Since UNMIBH has said that its present headquarters building in Sarajevo will be required to house the remaining UN agencies, whichever body inherits the police mission will need to find extensive (and expensive) accommodation.

There are several candidates, willing and otherwise:

*The EU.* France and UNMIBH chief Jacques Klein favour the EU option. This option accords well with Bosnia's European aspirations, and would reaffirm the EU's commitment to the region. The key issue is whether the EU is politically willing or functionally capable of mounting such a mission. Although it has had a police mission in Albania, it inherited a going concern from the Western European Union. The EU is developing a capacity for intervention under the Common Foreign and Security Policy (CSFP), but may not be ready in time for Bosnia. In any case, many in the EU policy branch are reported to be loath to try to 'jump start' such a role in Bosnia.<sup>68</sup> The UN could shepherd the EU into the job, but the timetable would still be tight. EU representatives were, however, due to inspect the IPTF mission in November.

*OHR.* Some OHR officials favour taking on the follow-on mission. It would make sense to put the police-monitoring, judicial reform and anti-fraud functions together in a rule of law portfolio under one authority – and there is talk in OHR of setting up a Justice and Home Affairs department. Yet UNMIBH has complained of late that the main brake on the completion of its police reform mandate is the absence of corresponding progress in OHR's judicial portfolio. On the other hand, should the High Representative be double-hatted as an EU envoy, putting the police mission under OHR would ease the eventual transfer of that mission to the EU as it built up the requisite expertise. Furthermore, with Paddy Ashdown as High Representative, Britain might be more inclined to support the policing mission logistically and operationally.<sup>69</sup>

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<sup>66</sup> 'Judicial reform is as vital as police reform, but so too is penal reform; therefore simultaneous progress on all three should be matched and coordinated.' Richard Monk, OSCE First Preliminary Report on a Follow-on Mission to UNMIBH and the UN International Police Task Force, October 2001.

<sup>67</sup> The Security Council has not yet ruled, but is unlikely to overturn the Secretary-General's decision.

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<sup>68</sup> In 1991, the then European Community thought it could 'jump start' a common foreign policy by 'solving' the crisis occasioned by Yugoslavia's dissolution. Luxembourg's foreign minister, Jacques Poos, declared on 27 June 1991: 'If there is any problem which Europe can solve, it is Yugoslavia.' The was unsuccessful, and transferred the 'solution' of the Yugoslav wars to the UN before the end of the year.

<sup>69</sup> The British contribution to CivPol in Kosovo has been substantial.

At present, however, OHR manifestly lacks the capacity to take on such a huge job. It would be perverse to seek to acquire it now, as the expansion that would be required would be contrary to the purpose and spirit of streamlining. Moreover, the delay that occurred when the judicial portfolio was transferred from UNMIBH to OHR<sup>70</sup> suggests that OHR is not best suited to assume responsibility for police monitoring.

*OSCE.* The U.S., Germany and Britain favour OSCE. It has the capacity and relevant regional experience in Croatia, Kosovo, Macedonia and southern Serbia. There is logic, too, in bringing responsibility for policing and the rule of law inside a mission that already has the democratisation portfolio and human rights' functions. Perhaps just as importantly, OSCE seems to want to take on this mandate, which is a strong argument in its favour. It will, in any case, be thought politic in some quarters either to beef up OSCE with an important mandate or to compensate it for other losses. On the other hand, OSCE's institutional structure and short-term financing represent real constraints.

While no option is plainly superior, OSCE appears to be the best choice. Regardless of which agency takes on the rule of law portfolio in general and the police mission in particular, it should have close ties with the IJC and the other bodies concerned with the rule of law. Important tasks will remain for the follow-on mission, including dealing with inadequate police pay, corruption, minority recruitment, war criminals, civil disorder issues and cross-entity and regional collaboration.<sup>71</sup>

## 2. Judicial Reform

The judicial reform mandate was transferred from the UN to OHR in December 2000, and the UN Judicial Assessment Program (UNJAP) was reborn as the Independent Judicial Commission (IJC). Much time and momentum were lost in the process, for the IJC has taken many months

to employ staff and find its feet. In these circumstances, it would be folly to contemplate moving the judicial reform portfolio once more. It should stay with OHR.<sup>72</sup>

OHR insiders state that IJC will have a clear mandate with a strict timeline, and will be wound up after eighteen months. But having taken almost ten months to become operational, the IJC is unlikely to be able to complete its job within the period envisaged. Its life will probably need to be extended. In any case, the IJC should work closely – and if necessary, be co-located – with the police follow-on mission and the rule of law function in an interagency arrangement.

## 3. Human Rights

The citizens of BiH possess legal guarantees of their human and political rights as elaborate and extensive as those of any population in the world – in theory. They also benefit – again, in theory – from the presence of a gallery of international and domestic organisations and ombudspersons dedicated to institutionalising and delivering those rights. As noted above, virtually every international agency has a human rights function (including women's rights and children's rights). Some intergovernmental bodies – such as the UN OHCHR – attempt to ride shotgun on the others. The local Helsinki Committees and international NGOs do so as well. This is not a field susceptible to or even needful of rigorous coordination. But OSCE could usefully endeavour to eliminate overlaps among international bodies and facilitate cooperation. It has already expressed its willingness to do so.<sup>73</sup>

## C. PILLAR THREE: ECONOMIC REFORM

The Economics Task Force should seek actively to coordinate all economic reform projects under OHR chairmanship. OHR – in close consultation with the IFIs and specialised

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<sup>70</sup> See below.

<sup>71</sup> ICG will examine these and other policing issues in a forthcoming report.

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<sup>72</sup> OHR was, of course, involved in judicial and legal reform before the creation of the IJC.

<sup>73</sup> OSCE Mission to BiH, Background Report, *Restructuring the International Community in Bosnia and Herzegovina*, 3 July 2001.

agencies – ought to prepare an overall blueprint for the economy, which the agencies would then implement. OHR should therefore maintain and probably enhance its capacity in economic analysis and monitoring. As with institution building, however, economic reform is an area in which the EU should interest itself. It and the IFIs will need to remain engaged in Bosnia after Dayton implementation is complete.

#### **D. PILLAR FOUR: REFUGEE RETURN**

The return of refugees and displaced persons should remain under RRTF coordination, with UNHCR as the lead agency. As noted above, the RRTF has been a particularly successful interagency program. There appears to be no need for a shake-up. Unlike other core tasks, moreover, the timeline for refugee return should be relatively easy to establish. Within eighteen months to two years, given current trends, most of the returns that can be expected before political change and economic growth make self-sustaining return feasible will have occurred. International support for this key Dayton assignment can then cease.

#### **E. THE ROLE OF OHR**

##### **1 Authority**

Political realities will continue to inhibit the capacity of OHR to be more than first among equals in the IC. But while it need not have powers to overrule the other organisations, those other organisations should acknowledge its role as the strategist and coordinator-in-chief. Their plans must fit into and advance the common strategy. OHR must have authority to lead and, when necessary, push its partners. This does not require formal subordination, so much as that plans should be complementary and that coordination mechanisms such as ETF should work effectively.

OHR's Dayton mandate to monitor and coordinate civilian peace implementation needs to be honoured. The office has formal legitimacy. It has also acquired and will maintain an implementation role, for example in institution building, media, the IJC and anti-

fraud. But OHR also has a facilitating role: other agencies need the High Representative's political backing and assistance with 'deconfliction' – across the country and across all problems. OHR needs, therefore, to retain its capacity for broad analysis. It should also have access to a consolidated international field presence to gather information. Since most international personnel are based in Sarajevo, and many agencies have few if any representatives in the regions, OHR should offer an all-Bosnia perspective to fill this gap.

OHR has a substantial legal department of lawyers and constitutional experts who understand Dayton's intricacies and can serve other agencies.<sup>74</sup> They can help establish regulatory frameworks in various sectors.

Not least in order to encourage the perception that the transition from Dayton implementation to European integration is inevitable, it would make sense to double-hat the High Representative as an envoy of the European Union, and charge him to work closely with the EC delegation to raise the profile of EU relevance for Bosnia.

##### **2. 'Bonn Powers' and 'Partnership'**

Most importantly, the High Representative retains sole authority to ensure that legislation and agreements reached with state and entity governments are in fact implemented. When, for example, an economic agency experiences blockage or difficulties, it can raise this issue at the ETF, and the High Representative can 'deblock' it. As a last resort, the High Representative can impose legislation. For example, OHR did this strategically, on the World Bank's recommendation, before the 2000 elections in regard to pension and labour law reform, when there was legislative gridlock. The World Bank did not want to saddle the Alliance

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<sup>74</sup> It was to OHR's legal department that the principals turned in order to draft new or amended counter-terrorist legislation for BiH in the aftermath of the 11 September attacks on the U.S.A., though serious questions about the appropriateness of these drafts have been raised by the UN OHCHR. ICG interview with OHCHR, 2 November 2001.

for Change parties with the burden of responsibility for adopting essential measures that were likely to prove unpopular with their natural constituencies. 'This', according to one senior international official, 'is the sort of thing OHR should be doing.'

Some officials – both inside and outside OHR – and external observers consider that the take-over of Hercegovacka Banka<sup>75</sup> in April 2001 was a mistaken use of the High Representative's power to exercise the highest legal authority in the land – the so-called 'Bonn powers'.<sup>76</sup> Others contend that this was exactly the sort of thing the High Representative should do, and that more such forceful interventions are required, especially in Republika Srpska.

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<sup>75</sup> The High Representative ordered raids on Hercegovacka Banka's headquarters and ten other branches in Mostar and throughout Bosnia on 6 April. Their purpose was to take control of the bank, seize its records and investigate suspicions that it was funding both the Croat Democratic Union in BiH (HDZ) and various criminal enterprises. SFOR was supposed to provide security; but it underestimated the threat of mob violence and police complicity. Foreign and local staff carrying out the raids were taken prisoner in some localities. As a result, not all the bank's records were seized, and a second raid was required ten days later. For background, see ICG Balkans Report No. 106, *Turning Strife to Advantage: A Blueprint to Integrate the Croats in Bosnia and Herzegovina*, 20 March 2001. On the raids, see Jonathan Steele, 'SFOR accused of botching security', *The Guardian*, 14 April 2001; Roy Gutman, 'Bank Job in a Battle Zone', *Newsweek*, 30 April 2001. The first results of the audit conducted under an internationally imposed provisional administration were released on 7 November. They showed that more than KM19 million had been stolen from the bank by its shareholders. *Oslobodjenje*, 8 November 2001.

<sup>76</sup> The PIC meeting in Bonn, 10 December 1997, explicitly welcomed the High Representative's 'intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of difficulties'. The European Stability Initiative (ESI) has argued that OHR should scale back its powers, and desist from using its enforcement powers. See *Reshaping international priorities in Bosnia and Herzegovina, Part Three*, 22 March 2001. See also ESI discussion paper, *In search of politics: the evolving international role in Bosnia and Herzegovina*, 1 November 2001. Available at <http://www.esiweb.org>.

The PIC capitals, however, are now preaching 'partnership' and a restricted use of the Bonn powers. OHR itself seems to have come round to the view that there must be 'less imposing, more cajoling'.<sup>77</sup> The trouble, however, in the words of one senior IC official, is that 'everyone wants partnership, but people also want results'.<sup>78</sup> Hence there is a tendency to defer the day on which effective transfers of authority take place, while limiting the number of potentially awkward decision-makers admitted to IC boardrooms. So, local politicians still feel that they are the objects of IC decisions rather than subjects in the decision-making process.<sup>79</sup>

If the partnership were genuine, there would be little need for the High Representative to exercise his full powers. Imposition would be replaced by the messy and often time-consuming debates of democratic politics. But this is not yet possible.

ICG believes that the High Representative should extend the policy of partnership with the Alliance, both by setting the pace on implementing reforms, laws and decisions already on the agenda, and by building consensus on the steps to be taken. The Bonn powers, however, are an essential tool for ensuring that the IC need not stay in Bosnia forever. They must remain available for selective use and as a last resort: to remove office holders guilty of gross misconduct with whom the justice system cannot or will not cope and, more especially, to impose laws essential to the four core state-building functions.

In sum, a balance must be struck between empowering Bosnian executive, legislative and

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<sup>77</sup> ICG interview, October 2001.

<sup>78</sup> Interview with senior IFI official, September 2001.

<sup>79</sup> BiH Council of Ministers Chairman Zlatko Lagumdžija said at the Brussels PIC meeting in September: 'The time has come for us to start working as the partners in drafting a joint economic program as a precondition for BiH's self-sustained development. We need assistance of the international community at an expert level ... The role of the international community is to help us and not to work, think and make decisions in place of us.' OHR BiH Media Round-up, 'BiH representatives urged PIC members to help them in implementing reforms'.

judicial authorities, on the one hand, and making sure those authorities discharge their responsibilities legally and appropriately, on the other. The Bonn powers ought not be used every time the international community thinks Bosnian politicians are being unwise or dilatory. But they should be employed to protect the integrity of the state and the efficacy of the IC's own peace-implementation mission.

### **3. Management Overhaul**

OHR's hierarchical structure does not work effectively. Management processes should be professionalised and made more effective, leaving as little space as possible for personalities to come into play. There must be clear aims and objectives for the organisation as a whole and for each department, as well as clearer responsibilities for managers up and down the line.

To avoid undue bureaucratisation, the chain of command from the High Representative to his deputies and through to lower-level staff should be direct and transparent. Tasking should be individual-based, not group-based. At present, too many activities are cross-departmental. There should be clear reporting relationships: everyone in OHR should have one boss.

While it is difficult to inculcate institutional loyalty in an organisation staffed largely by short-termers and internationals, this can be done to some extent by giving people responsibility. 'People will forget about their own countries if they are busy doing things which matter, and they are recognised for doing those things.'<sup>80</sup> This requires robust leadership, and an increase in the powers of dismissal and accountability.

Secondments should be longer – a minimum of two years. The balance between seconded and contracted staff should be shifted in favour of the latter. For example, the Political Department has opened up to contracted workers, but the ratio is still overwhelmingly in favour of seconded staff (3:1). RRTF, on the other hand, is based on

contracted employees. OHR needs to reduce staff numbers overall, but to have more experts and local employees dealing with substantive issues. This will be cost-effective, as well as consonant with winding down and handing over.

### **4. The Next High Representative**

Although his appointment as the next High Representative has not yet been confirmed, Lord Ashdown's advent is a given, and there remains speculation only about its timing and impact. Because of his record as a relatively heavyweight politician from a major power, and the likelihood that he will be the last High Representative to dispose of the Bonn powers – if not the last High Representative – expectations are already running high. Rumours abound that the international community is now 'on autopilot', with OHR staff in particular marking time, waiting to see what the new regime will bring.

However understandable, neither the high expectations of the new man nor the incipient 'lame duck' status of the incumbent is helpful. Not only may no transfer of power take place until late spring next year, but – as has been noted above – the intervening period could prove crucial: both for giving effect to recalibration and implementing as many reforms as possible before campaigning begins. Bosnian politicians have naturally observed the foreigners' current navel-gazing and have expressed despair that the IC is 'ruining our country' by wasting precious time. The transfer, therefore, should proceed as positively and seamlessly as possible. Reshaping needs to be complete so that the next High Representative can hit the ground running with an effective machine and shared strategy in place.<sup>81</sup> In the words of an internal UN paper, 'If the goal is to substantially decrease the size and cost of the international presence in BiH without jeopardizing achievements made and leaving an unstable environment which may necessitate further and more costly intervention later, a much more politically intensive and focused

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<sup>80</sup> Interview with top-ranking international official, September 2001.

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<sup>81</sup> ICG interviews, September 2001.

effort is required over the next eighteen months.<sup>82</sup>

## **V. WHAT'S IT ALL FOR?**

The IC is present on such a scale in Bosnia for two reasons: to establish a democratic, secure and economically viable state that can cease to be an international semi-protectorate without collapsing; and to usher this state in the direction of eventual membership in the European Union. The ability to achieve progress towards these goals should give the yardstick for assessing the effectiveness of the IC presence, and guide the reshaping of that presence.

Unfortunately, the Dayton Agreement was not designed to fulfil these objectives. Effective as an armistice in 1995, it has failed to provide a foundation for a functional state. Its constitutional machinery – with a weak central government required to wrestle with a structure deeply divided into two entities, three constitutive peoples, ten disparate cantons in one half of the country, and effectively three armies – is unworkable and self-defeating.

Nor is it calculated to create a viable economy of serious interest to foreign investors. While a vibrant economy with an integrated market would go a long way towards making Bosnia's other problems easier to solve, there is no shortcut to economic renewal without the rule of law and competent central institutions, both of which remain elusive under the Dayton regime.

As for European integration, Bosnia has met only seven of the eighteen conditions on the EU 'Road Map'.<sup>83</sup> Until these conditions have been fulfilled, Bosnia cannot begin to negotiate a Stabilisation and Association Agreement and its path to Europe will remain blocked. Bosnian politicians are no more eager than their counterparts elsewhere to promote and apply

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<sup>82</sup> UN internal document, June 2001.

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<sup>83</sup> EU Internal Briefing. Would-be candidates for EU accession from the Western Balkans (former Yugoslavia minus Slovenia, plus Albania) need to implement steps on the 'Road Map' designed for them before they are deemed fit for a feasibility study, which is the prerequisite for opening negotiations on a Stabilisation and Association Agreement. The latter is a milestone in the process of EU integration, though a country's accession may be many years away.



painful reforms. Although they claim to understand where Bosnia's future lies, many – especially in the RS – continue to insist that Europe will accept the country as it is, with no real central government or single market. They must be disabused. Entry into the EU and economic progress will require transferring many entity powers to state level, turning the entities themselves into empty shells.

International efforts to deliver a viable Bosnian state have been both undermined and constrained by the peace agreement itself. When the narrow imperative of 'implementing Dayton' has clashed with the wider objective of building a viable Bosnian state, the IC organisations have defended the former more often than the latter. While this was probably inevitable, given that the IC presence is the result of Dayton, it has condemned Bosnians and the IC alike to six years of frustrating under-achievement.

The starkest illustration of the IC's preference for defending Dayton to Bosnia's detriment has been its handling of Republika Srpska, the Serb-dominated entity. Successive RS leaderships have resisted any and every development that would enhance the competence of the Bosnian state.

This resistance cannot be dismissed as simply the product of nationalist ideology; it has been *encouraged* by the Dayton Agreement, which gives any government in RS an essential interest in preserving the legacy of wartime 'ethnic cleansing', corruption, patronage, and close ties with Belgrade. Despite appearances to the contrary, the IC has connived to shore up the RS by protecting its inhabitants from the consequences of its leaders' irresponsibility.<sup>84</sup> This has been done because the entity system is intrinsic to Dayton and hence, in IC logic, must be upheld.

For all these reasons, the recalibration debate – and any talk of 'completing Dayton' by a given date – is hollow unless it addresses the fact that the Dayton governance structure has proved

unable to produce a stable, efficiently administrated and economically viable country. If Bosnia is to begin both to satisfy its citizens' basic needs and to move forward into Europe, radical changes to this structure are unavoidable.

These changes must be undertaken by the powers and organisations on the PIC Steering Board as an element of Dayton implementation. The EU will not take on the job of equipping Bosnia with a functional governance structure once Dayton is proclaimed complete. Accordingly, Dayton must be amended while being completed, and its completion will comprise its transcendence. Only at that point can the more technical processes of bringing Bosnia into line with EU norms and standards take over.

What the recalibration process needs to deliver is an IC presence that can extract the maximum utility and benefit for Bosnia from Dayton, while also possessing the decision-making capacity to move beyond Dayton, preferably through an evolutionary process but otherwise through imposing a set of workable governance structures.

Only one evolutionary path to achieving such changes by consensus, from inside the Dayton structures themselves, has emerged. The implementation of the July 2000 Constitutional Court decision on the constituent peoples – a decision based on the Dayton constitution – *will be* constitutional revision.<sup>85</sup> It should transform

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<sup>84</sup> See ICG Balkans Report No. 118, *The Wages of Sin: Confronting Bosnia's Republika Srpska*, 8 October 2001.

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<sup>85</sup> This decision struck down the privileged positions accorded to Serbs in Republika Srpska and to Bosniaks and Croats in the Federation by ruling that all three 'constituent peoples' must have equal rights throughout BiH. The Court decreed that the entities' constitutions and laws must be amended to this effect, eliminating provisions restricting electoral and appointive positions to members of one (or two) national communities in each entity. In the absence of any enforcement powers on the part of the Court, the High Representative moved in January 2001 to establish Constitutional Commissions in the entities which he charged with elaborating implementation plans by mid-March. This deadline has been allowed repeatedly to slip, though the entity commissions did at least begin to meet together in September. The details and implications of the ruling are discussed in ICG Balkans Report No. 108, *After*

the entities and cantons almost beyond recognition. The recent recommitment of both the Alliance for Change and OHR to accelerate this implementation process before the 2002 elections was encouraging. Yet, the process is bound to encounter obstruction and hostility in both entities, particularly Republika Srpska, as the reforms bite.

If this decision cannot be implemented by a process of guided evolution, then the IC must be ready to impose the implementation. Otherwise Bosnia will remain as a dysfunctional, resentful Western dependency. What is more, the IC must be ready to take this tough step in the knowledge that even the successful imposition of these radical measures will not guarantee the emergence of a viable Bosnia. The weakness of central government and the density of overlapping, contending governance structures at cantonal and entity levels would remain, with the potential to substantially counteract the benefits of implementing the Constitutional Court's decision.

The recalibration process must take account of this reality by acknowledging that if Bosnia still cannot be put on its feet by a redesigned IC presence, then a more workable and democratic structure may have to be imposed. This would involve creating a strong but fully representative central government, clearing away the counterproductive entity and cantonal structures, devolving substantial powers to the municipalities, and designing largely depoliticised structures for regional administration.<sup>86</sup> Now is not too soon for the PIC Steering Board to start consultations on what structural reforms will need to be imposed in order to transcend Dayton, if the evolutionary path continues to be blocked by local resistance.

**Sarajevo/Brussels, 29 November 2001**

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*Milosevic: A Practical Agenda for Lasting Balkans Peace*, 26 April 2001, pp.141-42.

<sup>86</sup> See ICG Balkans Report No. 108, *After Milosevic: A Practical Agenda for Lasting Balkans Peace*, 26 April 2001, pp. 159-165.

## APPENDIX A

### MAP OF BOSNIA AND HERZEGOVINA



## APPENDIX B

### ABOUT THE INTERNATIONAL CRISIS GROUP

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The International Crisis Group (ICG) is a private, multinational organisation committed to strengthening the capacity of the international community to anticipate, understand and act to prevent and contain conflict.

ICG's approach is grounded in field research. Teams of political analysts, based on the ground in countries at risk of conflict, gather information from a wide range of sources, assess local conditions and produce regular analytical reports containing practical recommendations targeted at key international decision-takers.

ICG's reports are distributed widely to officials in foreign ministries and international organisations and made generally available at the same time via the organisation's Internet site, [www.crisisweb.org](http://www.crisisweb.org). ICG works closely with governments and those who influence them, including the media, to highlight its crisis analysis and to generate support for its policy prescriptions. The ICG Board - which includes prominent figures from the fields of politics, diplomacy, business and the media - is directly involved in helping to bring ICG reports and recommendations to the attention of senior policy-makers around the world. ICG is chaired by former Finnish President Martti Ahtisaari; former Australian Foreign Minister Gareth Evans has been President and Chief Executive since January 2000.

ICG's international headquarters are at Brussels, with advocacy offices in Washington DC, New York and Paris. The organisation currently operates field projects in nineteen crisis-affected countries and regions across four continents:

Algeria, Burundi, Rwanda, the Democratic Republic of Congo, Sierra Leone, Sudan and Zimbabwe in Africa; Burma/Myanmar, Indonesia, Kyrgyzstan, Tajikistan, and Uzbekistan in Asia; Albania, Bosnia, Kosovo, Macedonia, Montenegro and Serbia in Europe; and Colombia in Latin America.

ICG also undertakes and publishes original research on general issues related to conflict prevention and management. After the attacks against the United States on 11 September 2001, ICG launched a major new project on global terrorism, designed both to bring together ICG's work in existing program areas and establish a new geographical focus on the Middle East (with a regional field office planned for Amman) and Pakistan/Afghanistan (with a field office planned for Islamabad).

ICG raises funds from governments, charitable foundations, companies and individual donors. The following governments currently provide funding: Australia, Canada, Denmark, Finland, France, Germany, Ireland, Japan, Luxembourg, the Netherlands, Norway, the Republic of China (Taiwan), Sweden, Switzerland and the United Kingdom. Foundation and private sector donors include the Ansary Foundation, the Carnegie Corporation of New York, the Ford Foundation, the William and Flora Hewlett Foundation, the Charles Stewart Mott Foundation, the Open Society Institute, the Ploughshares Fund and the Sasakawa Peace Foundation.

November 2001

## APPENDIX C

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## APPENDIX D

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