

# **Main challenges in the future of Western Balkans Integration to the EU – The case of Bosnia and Herzegovina**

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## *Abstract*

*This paper asks the question: is Bosnia and Herzegovina (hereafter, simply BiH) – an unfinished state? Is BiH functioning according to the European concept and is it possible to make progress towards the EU accession with the current system in place? There are many obstacles on the European path of BiH, and the main question is how to bridge the way from Dayton to Brussels. European prospective of an international semi-protectorate is hardly achievable without significant structural reforms that should be performed with larger involvement of domestic political factors than it has been done in the past. The international community should take a new approach when it comes to restructuring of BiH, because 16 years after the International Peace Agreement signed in Dayton in 1995 and Annex 4 (which is also the BiH Constitution) BiH still is not a state competent to enjoy the loyalty of its citizens. It seems that all stakeholders, international and domestic, agree on one thing – the only way for success is the European integration, but the question is how far the domestic political elites are willing to pursue this path. When we look at all Western Balkan (WB) countries, it seems that BiH is taking the smallest steps towards EU Integration. The pace of reforms is the slowest in the region - with the Croatian conclusion of the accession negotiations in June 2010, Montenegrin and Macedonian candidate statuses and very palpable Serbian progress towards the EU (even though Kosovo dispute settlement hinders Serbia's accession). BiH on the other hand is facing the threat of remaining an isolated island. This paper will analyze the current state of affairs in BiH and consider possible steps that should be taken in the future towards EU accession, and in the first place towards getting an official EU candidate status.*

**Key words: Western Balkans, EU Enlargement, Conditionality, State building, European Union Special Representative**

## **Problem formulation**

Has the EU contribution to the peace and state building process in BiH been appropriate, effective and sustainable and does the EU need a stable and prosperous BiH as a clear sign of successful peace policy?

Which are the key reforms that should be done on the European path of BiH and for getting the official candidate status in the first place?

## **Methodological approach**

In this paper the main foundation is in the first place the empirical argumentation, however there is some theoretical narration as well, as the problems that BiH as a country is facing on its European path are very complex.

The empirical foundation of this paper is mainly the literature on the subject as well as many reports, communications from the EU institutions, speeches and statements of high ranking officials etc.

The method chosen is both deductive and inductive. Results of surveys conducted by top-ranking professional agencies will also be used in the analysis of the subject.

## **Hypothesis**

The hypothesis of this project is that BiH has a clear European prospective, as well as all the other WB countries, even though the “enlargement fatigue” is present in most of the EU countries.

## **Delimitation and limitation**

In order to enter the subject in proper manner, this paper in its first part will have some reference on the Dayton Peace Agreement that put an end to the conflict that occurred in BiH during the three year period (1992-1995). However, delimitation is set in the paper as the conflict itself, as well as the reasons that led to the conflict will not be discussed thoroughly.

Among main limitations of the research is the fact that BiH did not even apply for EU candidate status and considering the fact that the issues and problems that BiH is facing on its way towards the official candidate status are all highly political questions and not technical ones, it is rather difficult to foresee the outcome. The involvement of the international community in the decision making process in BiH is still huge, as long as there is the Office of the High Representative (OHR) in place. The pace of reforms

also depends very much on the decisions of the High Representative (HR) and not on the domestic decision makers that were democratically elected. This is one of the reasons why the vision of the future mode of functioning of BiH is rather vague.

## **Introduction**

From the preamble of the Annex IV of the Dayton Peace Agreement also known as the Constitution of BiH:

*“Bosniaks, Croats, and Serbs, as constituent peoples (along with “Others”<sup>1</sup>), and citizens of BiH hereby determine that the Constitution of BiH is as follows...”*

If a person without significant academic background not coming from the former SFR of Yugoslavia would just take a look at the preamble of the Constitution of BiH, and to its Article 1, many terms would need an explanation, and the most important one is certainly the “constituent peoples”.

BiH was the only federal republic where clear ethnic majority did not exist in the former SFR Yugoslavia, and the solution for BiH’s problem was never clear, and is not clear even nowadays. The term “constituent peoples” refers to three ethnic groups that are the most numerous ones in BiH, and two of them have their “homeland” – Serbs and Croats. Bosniaks, having only BiH and were always in favor of independent BiH (backed by Croats). Precisely because of that it is very important to understand the complexity of BiH statehood, since the very root of the civil war that took place in BiH is the fact that after many centuries under foreign domination and after the dissolution of Yugoslavia, a country that became independent was not recognized as such by a significant number of its own people and that situation led to a bloody ethnic conflict. BiH was perceived in the eyes of many Europeans in the 1990s as the symbol of a collective failure, while Kosovo later became a catalyst for an emerging Common Foreign and Security Policy<sup>2</sup>. Eventually, it was the US that put an end to the war in BiH and created conditions for the Dayton Peace Agreement. It was clear at the time that the EU was not able to maintain peace at its very proximity, and that the US as a global player had to intervene and exercise its

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<sup>1</sup>Majority of Bosniaks are Muslim, majority of Croats are Roman-Catholic, majority of Serbs are Orthodox (Serbian Orthodox Church) while as “Others” are considered all people belonging to one of national minorities. According to the Law on the protection of rights of persons belonging to national minorities, there are 17 national minorities in Bosnia and Herzegovina (Albanians, Montenegrin, Czechs, Italians, Jews, Hungarian, *Macedonians*, Germans, Poles, Romas, Romanians, Russians, Rusins, Slovaks, Slovenians, Turks and Ukrainians)

<sup>2</sup> Rupnik, European Union Institute for Security Studies: The Western Balkans and the EU “The hour of Europe” 2011:9

military might in Balkans. Nowadays, there is no common sentiment of belonging to something, and the EU seems as the only common reference of all three ethnicities.

Modern day BiH is highly decentralized state, with two entities - Federation of BiH and Republika Srpska, which share sovereignty over Brčko district. Administrative-territorial organisation was finally defined by Amendment I to the Constitution of BiH, entered into force on 26 March 2009, by which the Brčko District was finally incorporated as a condominium into the state constitutional-legal architecture.<sup>3</sup> Cox<sup>4</sup> claims that there have been three phases to the international mission in BiH. The focus of the first one was the military stabilisation and reconstruction in the first place, and its main characteristic was the willingness of the international community to work directly with local power structures, often at the expense of the constitutional order. The second phase was characterized with evolution of the powers of the HR, which allowed some important reforms to be put in a place. The semi-protectorate that was established with this evolution of powers of the HR tended to inhibit the development of domestic political processes. The third phase, which is just getting underway, consists of a more systematic approach to state building.

The current dysfunctional system, with over 150 ministries<sup>5</sup> should be changed, and the international community should realize that BiH is not just another country in transition, but that it is highly complicated and fragile state, that in the first place was its project, because there was never an internal agreement and common sentiment of BiH nationality.

### **BiH as a consociational democracy**

Even though it is necessary to make certain adjustments to the current system in order for BiH to become sustainable functioning state capable of assuming the obligations deriving from the EU membership, the reality on the ground needs to be taken into account as the only way to make BiH function is indisputably as a consociational democracy.

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<sup>3</sup> “Official Gazette of Bosnia and Herzegovina” No. 25/09

[http://www.ustavnareforma.ba/en/short\\_history\\_of\\_bh\\_constitution.html](http://www.ustavnareforma.ba/en/short_history_of_bh_constitution.html) (Last accessed on 10/19/2011)

<sup>4</sup> Cox, Marcus State Building and Post-Conflict Construction: Lessons from Bosnia, Cluster of Competence The rehabilitation of war-torn societies A Project coordinated by the Centre for Applied Studies in International Negotiations (CASIN), Geneva, 2001:3

<sup>5</sup> At the state level, there is the Council of Ministers with 9 ministries; Republika Srpska has 16 ministries while the Federation of BiH has 10 cantons and 10 canton governments.

The consociational democracy is a system that is advocated by many authors (Lijphart<sup>6</sup>, Lehmbruch) and according to this view, if democracy is supposed to function in culturally, ethnically and religiously fragmented societies, new models for regulation of the conflicts need to be used instead of simply deciding by a majority one-man one-vote principle. This theory is backed with empirical results, because throughout the world there are many examples of fragmented societies. In order to avoid the domination of one group it is necessary to consider the reality in each fragmented society and to adapt the system of governance to the given conditions. BiH is a school-book example of deeply divided society. Even throughout the history, there was never a common sentiment of BiH nationality and of belonging to BiH. According to Kasapovic<sup>7</sup> out of three states that ruled BiH since the beginning of the XV century till the end of XX century, Muslims consider as the best time the period of the Ottoman rule, Croats the period of Austro-Hungary and Serbs the period of the reign of the Kingdom of Yugoslavia (initially the Kingdom of Serbs, Croats and Slovenes). For those three states each one of the three ethnic groups developed sort of “myths” about their very own “golden times” in the history of BiH during which their culture and economy bloomed. Nowadays, it is almost unimaginable that some day the Serbs or Croats that live in BiH will feel more like Bosnians or Herzegovians rather than Serbs or Croats. The only constituent people that have this sentiment are the former Bosnian Muslims, nowadays called Bosniaks.

According to Bose<sup>8</sup> BiH has classic features of a consociational or group-based power-sharing system that are evident in the legislature of this state: allocation of seats in a way that takes account of group membership, including a strict parity formula in the House of Peoples, and veto rights for representatives of national segments. The BiH’s principal executive organ, the Presidency, includes these two features as well as a third defining element of consociation: central decision making by grand coalition between representatives of the segments.

## **Main issues**

As even this year’s EC’s Progress Report once again stressed, the issues that need to be indisputably tackled as utmost priority on the European path of BiH are the closure of the OHR and the

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<sup>6</sup> Lijphart, Arend (1999), *Patterns of Democracy*” Government Form and Performance in Thirty-Six Countries. New Haven, Yale University Press

Lijphart, Arend (2004) “Constitutional Design for Divided Societies” *Journal of Democracy*

Lehmbruch, Gerhard (1975) “Consociational democracy in the international system, *European Journal of Political Research*

<sup>7</sup> Kasapović, Mirjana “Bosna i Hercegovina: podijeljeno društvo i nestabilna država” *Zagreb 2005:85,86*

<sup>8</sup> Bose, Sumatra “Contested lands: Israel-Palestine, Kashmir, Bosnia, Cyprus, and Sri Lanka” *Harvard University Press 2007:139*

harmonisation of the Constitution with the European Convention (Sejdić/Finci case<sup>9</sup>), Law on State Aids and Law on Household and Population Census. It is clear what should be the main objective of all the actions of the domestic political elites in the future. Those three key issues are essential for the socio-economic development of BiH and for further steps towards the EU integration. Authorities of BiH need to act urgently in order to put an end to the current deadlock on the European path of BiH, as these three issues have been stressed even by the EUSR as three indispensable conditions that BiH needs to fulfill if it wants to move forward in the EU integration.

## **EU Prospective**

The beginning of the 21<sup>st</sup> century has revived the Euro-scepticism, from the 1980s that had disappeared in the 1990s as a consequence of post-Cold war optimism.<sup>10</sup> Even though the European Council, recalling its conclusions in Copenhagen (December 2002) and Brussels (March 2003), reiterated its determination to fully and effectively support the European perspective of the WB countries, which will become an integral part of the EU, once they meet the established criteria<sup>11</sup> one can not predict with certainty provisional date of actual accession. With the entry into force of the Lisbon Treaty, EU can pursue its policy of enlargement and at the same time work further on deepening of the EU integration. Still, even after the adoption of the Lisbon Treaty, there are some sceptics in EU about further enlargement, especially after the sovereign debt and financial crisis that hit many EU countries. The “enlargement fatigue” has not officially halted further EU enlargement, but undisputedly has made it more difficult in the years to come. However, the positive momentum for further enlargement is maintained with the coming Croatian accession.

According to the research conducted by Gallup Balkan Monitor<sup>12</sup>, it is clear that the majority of citizens of BiH consider the EU as a potential remedy for many of their problems. While the share of

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<sup>9</sup> The origin of the Sejdić/Finci complaint can be found in the fact that the current BiH Constitution states that only ethnic Serbs, Croats and Bosniaks can be elected as the members of a tri-partite rotating Presidency of BiH and as the members of The House of People. Sejdić and Finci, each of the two not belonging to one of the three constituent peoples were the plaintiffs in this case, and the Court found that “ineligibility to stand for election to the House of Peoples violates Article 14 of ECHR (ban of discrimination in the field of Convention rights) taken in conjunction with Article 3 of Protocol No. 1 (free elections) and that their ineligibility to stand for election to the Presidency violates Article 1 of Protocol No. 12 (general ban of discrimination)”

<sup>10</sup> Markovic , Slobodan G. (editor), European Union and the Western Balkans after the Big Enlargement, Belgrade 2005 (ISBN 86-82057-34-4)

<sup>11</sup> Presidency conclusions of the Thessaloniki European Council (19 and 20 June 2003)

<sup>12</sup> Gallup Balkan Monitor – Focus on Bosnia and Herzegovina, November 2010.

people thinking that EU accession would be a *good thing* fell from 66% to 48% between 2006 and 2008, in 2010, 69% of respondents in BiH gave their support to accession.

### **EU's Conditionality Policy**

On the question how to implement the necessary reforms, the answer probably gives the EU Conditionality Policy. During the 1990s the EU's conditionality policy was developed and used as a powerful tool in the transformation of the former Eastern block countries that were under the communist regime. In 2004, when WB countries became the object of the next enlargement (as the accession of Bulgaria and Romania was already a done deal but put on hold) the EU had significant experience in the conditionality policy developed during the previous enlargements. Benchmark provisions set in 1993, known as the Copenhagen criteria, where the main EU admission conditions. Those conditions were not actual criteria set for full membership as it was clear that one of the main features of the new conditionality approach was to insist that the original 1993 Copenhagen criteria are met even before the actual start of negotiations.

The EU's offer was more conditional in the case of WB countries as the situation in the WB region is more challenging and the question is not mere achieving of the EU standards in democratic and economic governance but also the consolidation of statehood of the fragile state structures in the region following the Yugoslav wars of secession in the 1990s<sup>13</sup>. The WB are commonly perceived as the source of the "soft security threats"<sup>14</sup> to the security of the EU, and Trauner<sup>15</sup> finds that constituting major source of "soft security threats", Justice and Home Affairs needs to be the main requisite of cooperation in the region. Also, the fact that the WB region is one of the gateways to the EU for criminal activities, illegal immigration and other threats reinforces the need for wider law enforcement co-operation in the region. This can be found in several reports from the EC to the European Council, and it is obvious now that once Montenegro starts the accession talks, those issues and chapters will be the first ones on the table.

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<sup>13</sup> Noutcheva, Gergana "EU Conditionality, State Sovereignty and the Compliance Patterns of Balkan States" Centre for European Policy Studies, Brussels, 2006:1

<sup>14</sup> At the Ministerial Conference on Organised Crime held in London in November 2002, the countries acknowledged that these problems pose serious threats to their stabilisation and democratisation and made a joint commitment to work together to fight crime at source, in transit and at its destination, and to implement a number of priority actions related to e.g. international standards, legislation, capacity building and co-ordination.

<sup>15</sup> Trauner, Florian "EU Justice and Home Affairs Strategy in the Western Balkans" CEPS Working Document No. 259/February 2007

Conditionality policy of the EU in the WB region has to be used rather wisely and the approach needs to be tactical. Unlike the post-communist countries of the Central and Eastern Europe, where political and public support for the EU membership was high, the countries of the WB region have strong nationalistic and populist political elites that are in constant opposition with the liberal pro-European parties. Anastasakis links the decision to start the dialogue on visa liberalization with Serbia only three days before the presidential elections in early 2008 with the tactical use of the conditionality policy of the EU as it was clearly a gift for the pro-European presidential candidate Tadic in his electoral battle with the rising ultra-nationalist Radical party, considering the fact that Serbia did not meet all the criteria<sup>16</sup>. The strict approach of the EU in relation to BiH and its modification at the later stage, after the clear “No” from the domestic political elites can be perceived in the example of the police reform in BiH, as it was one of the pre-conditions for visa liberalization. The political representatives of the Republika Srpska were quite clear when it came to the police reform – they were not willing to cede the autonomy of their entity and to form a unified police structure in BiH. The EU finally lowered the criteria, and instead of the unified police structure, the formation of some coordinating agencies and bodies at the State level was accepted as good enough, and at the final stage only two laws were required as minimum precondition for the Stabilisation and Association Agreement – Law on independent monitoring bodies of police structures in BiH and Law on Directorate for coordination of police bodies and on Agencies for the support for police structures in BiH.

According to Anastasakis<sup>17</sup> political conditionality<sup>18</sup> generates reaction, polarization and a sense of injustice in most Western Balkan countries, especially when it touches upon nationally sensitive matters and unresolved post-conflict issues.

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<sup>16</sup> Anastasakis, Oton “The EU’s political conditionality in the Western Balkans: towards a more pragmatic approach” South East European Studies at Oxford, St Antony’s College, University of Oxford, Oxford, UK Online Publication Date: 01 December 2008:374

<sup>17</sup> Anastasakis, Oton “The EU’s political conditionality in the Western Balkans: towards a more pragmatic approach” South East European Studies at Oxford, St Antony’s College, University of Oxford, Oxford, UK Online Publication Date: 01 December 2008:366

<sup>18</sup> Anastasakis chooses the term “political conditionality” instead of ‘democratic conditionality’ in order to emphasize the notion of political transformation, and less on that of ‘democratization’. The reason is that the instrument of EU conditionality is not always, strictly speaking, democratic, based as it is on an unequal and asymmetric relationship of imposition, pressure, control and, partly, threats. Moreover, local compliance with some of the criteria is not always the result of democratic dialogue within the countries, their parliaments and/or societies, especially when it has to happen at very high speed. From a substantive point of view, EU political conditionality can run counter to democratization, at least in the short term when some of the prescriptions prioritize law and order instead of elections and/or civil society development. This happens, especially, in post-conflict cases where the rule of law is weak and the goal of law and order takes precedence over other democratic bottom-up goals and criteria.

The problem in BiH is clear - instead of focusing on democratic and economic conditions deriving from the membership, in the case of BiH the focus of the conditionality policy is on complying with the criteria that tend to prioritize the statehood and state structures, institutional setting of the country and redefinition of the internal structures of the country. Limited statehood is seriously hindering BiH's progress towards the EU and it is still unclear whether the prospect of the EU membership is the "carrot" that is big enough for BiH, as it is seriously lagging behind its neighbors, and it seems to be the main cause of ineffective implementation of the EU-induced reforms and the decoupling between formal institutional changes and rule-inconsistent behavior<sup>19</sup>. The legacy of the past in the WB is particularly important and without any doubt, the conditionality policy of the EU needs to be adapted to it, as the same policy used during the fifth enlargement will surely make no significant change in this region. The role of the EU as a State-Builder is very important in the WB but for time being it has been rather mal performing.

Even though BiH is formally not EU Member State, Chandler<sup>20</sup> claims that it can be considered as the part of the EU; in fact more than this, BiH is the first genuine EU state where sovereignty has in effect been transferred to Brussels. Effectively, the concept is following – without clear EU prospective, there is no enough reason and "carrots" for this country to continue its autonomous existence as the statehood is widely disputed in its significant part. One of the proofs that further reinforce this stand is the fact how the flag of BiH resembles the EU flag.

On the question of flags, the similarity with another flag of the "state-building project" in the region is undisputable – the official flag of BiH and Kosovo unquestionably resemble as the stars, blue and yellow are dominant key elements of these flags. According to Carton<sup>21</sup> the exercise of state-building in BiH has created a so-called phantom state, in which domestic politics are basically redundant, policy making is formed by external experts, and local politicians are more accountable to the international community than to the population they are supposed to represent.

### **European Union Special Representative (EUSR)**

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<sup>19</sup> Börzel, Tanja A." When Europeanization Hits Limited Statehood The Western Balkans as a Test Case for the Transformative Power of Europe" KFG Working Paper No. 30 |Berlin 2011:7

<sup>20</sup> Chandler, David "Empire in Denial: The Politics of State-Building" Pluto, London 2006, Chandler, David "Bosnia: Faking Democracy After Dayton" Pluto, London 1999,2000,

<sup>21</sup> Carton, Wim "Beyond the Kosovo status question – The limits to Europe's state building efforts" THE INTERDISCIPLINARY JOURNAL OF INTERNATIONAL STUDIES NO.1 2006:9

According to Grevi<sup>22</sup>, the WB region has been the cradle of ESDP and the source of the strong motivation to develop a serious EU crisis management capacity resulted from the years of impotence during the civil wars in former Yugoslavia. In the Council Decision 2011/426/CFSP of 18 July 2011 of the appointing of the EUSR in BiH, it is stated that *“The Union is further strengthening its policy and its presence on the ground through a single, reinforced Union representative who will take a lead in supporting BiH on Union-related matters to support the country’s progress towards integration with the Union including through a broad and balanced set of instruments”*.

The EU has currently nine<sup>23</sup> special representatives around the globe, and one of them is the EUSR in BiH. The Lisbon Treaty that entered into force on 1 December 2010 reinforces the role of the EU as a global player with the creation of the European External Action Service (EEAS). The main role of the EUSRs is to support Catherine Ashton, High Representative of the Union for Foreign Affairs and Security Policy. The EUSR in BiH exists from 2002, but it was a double-hat role held by the HR. The first EUSR in BiH was Lord Ashdown. This new double-hat position HR/EUSR basically maximized the synergy in the efforts of the International Community in BiH, or according to popular public opinion the “hard power” of the HR was complemented with the “soft power” of the EUSR. The date of the creation of the double-hated HR/EUSR was not accidental, as it corresponded with the launching of ESDP police mission in January 2003<sup>24</sup>. After several years, the EU has finally reinforced its presence in BiH – with the newly appointed Peter Sørensen<sup>25</sup> as the EUSR in BiH. It is clear that a gradual transition from the previously unquestionable OHR with its Bonn powers towards more dialogue-based approach has begun. Sørensen is also acting as the Head of EU Delegation in BiH, so the role of the EUSR is once again “double-hated” only this time the two roles are specifically in the function of EU’s policy in BiH. According to Fride<sup>26</sup> Policy Brief 89 of August 2011 even though the

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<sup>22</sup> Grevi, Giovanni “Pioneering foreign policy – European Union Special Representatives”, Chailiot paper 106, the European Institute for Security Studies, October 2007

<sup>23</sup> The nine EUSRs cover the following countries or regions: Afghanistan, the African Great Lakes Region, the African Union, Bosnia and Herzegovina, Central Asia, Crisis in Georgia, Kosovo (UNMIK 1244), Sudan and the Southern Mediterranean region

<sup>24</sup> Council Joint Action 2002/210/CFSP, 11 March 2002

<sup>25</sup> Peter Sørensen, a Dane, was previously the Head of the EU Delegation in Skopje. He has over 15 years experience in the Western Balkans region. His previous assignments include the posts of Personal Representative of the EU High Representative in Belgrade (2006-2010); Deputy Head of "Pillar IV" (Reconstruction and Economic Development) of the United Nations Interim Administration Mission in Kosovo (UNMIK) (2002-2006); Senior Adviser to the Special Representative of the UN Secretary General in Kosovo (2001-2002); Legal Adviser to the United Nations Secretary General Special Envoy for the Balkans (2000); Head of Political Department and Senior Adviser to the Head of OSCE in Croatia (1997-1999); Legal Adviser to the High Representative in Sarajevo (1996- 1997); and Political Adviser to and Observer in the European Community Monitoring Mission in the former Yugoslavia (1995-1996).

<sup>26</sup> Sebastian, A European think-tank for global action Fride Policy Brief 89 of August 2011

OHR still remains in place, the gradual increase of the EU presence in BiH is obvious, as further reinforcement of the EUSR is envisaged. The Council has long time ago reaffirmed its commitment to strengthen its support to BiH and envisaged the discussion with the international community on the reconfiguration of the international presence in BiH, including its downsizing and possible relocation of the OHR. According to the Policy Briefing of the International Crisis Group<sup>27</sup>, after years of hesitancy, EU member states should make 2011 the year when the lead international role in BiH shifts from the OHR to a reinforced EU delegation.

The US Institute of Peace in its Peace Briefing<sup>28</sup> from May 2009 analyzed the current situation in BiH during two roundtable sessions<sup>29</sup> throughout which views from Washington and views from Brussels were presented. The main conclusions were that while the European focus on BiH is mainly through the lens of enlargement policy, Washington places less stock in process and more on outcomes. The important finding of this Briefing is that the Americans do not believe that BiH is on an irreversible path to EU membership and that with an absent strong HR, Dayton BiH tends to gravitate toward dysfunction and state dissolution.

Nowadays, BiH has clearly outgrown the OHR and Peace Implementation Council (PIC) that were established with Dayton and needs more EU technical assistance and political guidance to become a credible candidate for EU membership. The top-down methods that in the past damaged domestic ownership of the reforms in the governance are now being abandoned, as the role of the HR is constantly decreasing in BiH. Top-down methods were contested long before, as the Council of Europe in its Document 10196 of 4 June 2004<sup>30</sup> found that *“the scope of the OHR is such that, to all intents and purposes, it constitutes the supreme institution vested with power in BiH. In this connection, the Assembly considers it irreconcilable with democratic principles that the OHR should be able to take enforceable decisions without being accountable for them or obliged to justify their validity and without there being a legal remedy”*. The lasting peace in the WB finally depends on the self-

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<sup>27</sup> Policy Briefing of the International Crisis Group Europe Briefing N°59 Sarajevo/Istanbul/Brussels, 11 January 2011

<sup>28</sup> Bassuener, Kurt and Lyon, James “Unfinished Business in Bosnia and Herzegovina: What Is To Be Done?” United States Institute of Peace May 2009

<sup>29</sup> Participants included guests from the State Department, National Security Council and Pentagon, four former U.S. ambassadors to BiH, several former principal deputy high representatives, the current principal deputy high representative, several former heads of mission of the OSCE in BiH, representatives from nongovernmental organizations and academia, a former presidential envoy, congressional staffers and representatives of the EU, its institutions, member states and missions in BiH.

<sup>30</sup> <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc04/EDOC10196.htm> (Last accessed on 19/10/2011)

sustainability of the countries in the region and more endogenous motivations from local governments<sup>31</sup>. The EU Commissioner for Enlargement and ENP Olli Rehn in his speech in the Parliament of BiH held on 24 September 2009<sup>32</sup> stated that much credits for the progress on the European path of BiH goes to former and current HR, but that the closure of the OHR<sup>33</sup>, once that all the conditions are met, should mark a new phase where EU membership prospective of BiH should be the central point.

## Conclusion

On the question whether the EU needs a stable and prosperous BiH and also stable and prosperous WB, as a clear sign of its successful CFSP/CSDP and Enlargement policies the best answer was provided by Günter Verheugen, vice-president of the EC who at the time stated in his speech at the Prime Ministerial Conference of the Vilnius and Visegrad Democracies: “Towards a Wider Europe: the new agenda” held in Bratislava on 19 March 2004 that “*We (Europeans) must never forget that European integration is not about milk quotas and customs duties. It is about peace, stability and prosperity for our citizens. Instability in one part of Europe immediately affects the other parts*”.

The prospective of the membership in the countries of the WB region is becoming less and less attractive as it is not clear whether upon the fulfillment of all the criteria previously set by the EU, the “enlargement fatigue” will be the final word from the EU countries, and the WB countries (except Croatia, which will become the 28 EU member in 2013) will be left aside for many years to come. Still, the top-down approach of imposition used in BiH by the HR in order to accelerate BiH’s progress towards the EU integration could be considered as the undermining of the democratic principles and BiH’s statehood and sovereignty as the democratic bottom-up approach was seriously neglected with

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<sup>31</sup> Zuokui, Liu “EU’s Conditionality and Western Balkans Accession Roads” Institute of European Studies 2010:86

<sup>32</sup> [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/afet/dv/200/200909/20090901\\_speechrehn09-349\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/afet/dv/200/200909/20090901_speechrehn09-349_en.pdf)  
(Last accessed on 19/10/2011)

<sup>33</sup> According to the Foreign Policy Initiative in BiH Policy Analysis, the myth about closing down OHR was born around 2005. Formally, Political Directors of the PIC Steering Board (SB) first announced that OHR would be closed down by 30 June 2007 at their meeting in Sarajevo on 22 and 23 June 2006. The SB agreed to review and confirm in early 2007 the OHR closure, taking into account the overall situation in BiH and then seek endorsement by the UN Security Council. This message was repeated 6 months later, stressing that preparations for the OHR’s closure were ongoing. However, at the next meeting in February 2007, ‘following careful consideration’, the PIC Steering Board decided “against confirming OHR closure at this time”. The Deadline was thus moved to 30 June 2008 instead, but by then the language had changed further and instead of the closure of OHR the PIC spoke about ‘transition’. As a part of that change in approach, the time-driven concept had been replaced by an approach based on meeting benchmarks expressed in terms of five objectives and two conditions that had to be met prior to transition and closure of OHR<sup>4</sup> - commonly referred to as the 5+2 criteria.

the pretext of reinforcement of the state institutions. In effect, this top-down approach can be considered as the source of BiH's inability to assume the ownership of the process and become viable and self-sustainable state.

The role of the EUSR will be important in the coming years, as the ethnic divisions become more obvious during the integration process of BiH – the need to establish new institutions at the State level and reinforce the existing ones through capacity building is one of the key conditions for moving forward towards the EU. The issue of the competences always had hampering effects on the EU's Agenda in BiH as the political elites of Republika Srpska are unwilling to cede any competence that was given to the entity according to Dayton while Bosniak elites have always been advocating for more centralization and constitutional setting of the State without entities. Bearing that in mind, it has always seemed to the Serb population that the International Community is not being neutral and that is taking the stand of the Bosniak political elites. The EUSR can have decisive role in this process as it can offer compromise solutions for all parties in BiH through dialogue and active participation of domestic political elites rather than through the imposed solutions of the High Representative.

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