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Beyond international trusteeship: EU peacebuilding in Bosnia and Herzegovina

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Beyond international trusteeship: EU peacebuilding in Bosnia and Herzegovina



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The Dayton Peace Agreement on Bosnia successfully ended the war in late 1995. However, the price for peace was an extremely weak and dysfunctional postwar state that would probably not have survived without substantial international support over the following decade. This paper argues that things have begun to visibly change on the ground in Bosnia and Herzegovina (BiH) only with the emergence of the EU as the main international peacebuilding actor in more recent years, and notably since 2003. The EU's increased peacebuilding role in BiH, carried out within the framework of the European Security Strategy, has allowed for critical progress towards making Bosnia's common state institutions increasingly self-sustaining. There is no doubt that the potential does now exist to turn postwar Bosnia into a sustainable multi-ethnic democracy.

The central hypothesis developed in this paper is that since 2003 EU conditionality has increasingly become a viable alternative to international trusteeship in BiH. This is because conditionality has begun to be assertively communicated by the 'double-hatted' High Representative/European Union Special Representative (HR/EUSR) on the ground and is now clearly linked to the perspective of EU membership. There is evidence that difficult political, administrative and economic reforms have been recently adopted by BiH authorities in compliance with EU conditionality, crucially without straightforward international imposition. But this paper also argues that EU peacebuilders need to further improve their strategic effectiveness and political coordination on the ground, to support continuing reform in BiH once the Office of the High Representative (OHR) is closed down, possibly by late 2007.

Introduction

EU peacebuilding in Bosnia and Herzegovina (BiH) aims to be crucially different from previous efforts at stabilising and reforming the country. Previous external peacebuilders had relied on a rather heavy trusteeship role by the international High Representative (HR), in order to impose fundamental reforms and remove obstructive Bosnian officials from office quite arbitrarily. This made it possible to advance the peace implementation agenda in Bosnia, but at the price of seriously undermining local political ownership and accountability. Moreover, a dangerous syndrome of dependency on the international community's presence had become all but institutionalised, which seriously forestalled the development of local capacities for peace.

Over the past three to four years, the European Union (EU) has become the main international peacebuilder in BiH. The potential does now undeniably exist to turn postwar Bosnia into a sustainable multi-ethnic democracy. The EU has a unique set of tools at its disposal to stabilise, democratise and reform weak states in its periphery that are recovering from violent conflict. Since the launch of a joint European Security and Defence Policy (ESDP) in 1999, the EU has acquired increasingly sophisticated operational capacities in the field of crisis intervention, as well as postwar stabilisation and reform. In postwar Bosnia and Herzegovina, EU peacebuilders aim for an integrated strategic approach, by combining a multi-dimensional ESDP presence on the ground with the 'carrot' of progressive European integration.

The first part of this paper provides a rapid conceptual overview of the central strategic

and ethical dilemmas that postwar peacebuilders have to face in divided societies. For several years now, the standard procedure for combining democracy and political stability in divided postwar societies has been to set up complex power-sharing arrangements, which distribute political responsibility between representative elites from a country's main ethnic or religious groups. But when power sharing results in virtually permanent decisional deadlock, due to high ethnic tensions and a weak domestic institutional structure, international peacebuilders may opt for a more intrusive – and ethically problematic – 'trusteeship' strategy, by assuming a temporary direct control over the domestic political process. This is exactly what happened in postwar Bosnia after 1997.

The subsequent part of the paper illustrates the extremely burdensome and dysfunctional constitutional structure of the Dayton state. There is no doubt that the Dayton Peace Agreement (DPA) successfully ended the Bosnian war after three-and-a-half years of fratricidal ethnic killing. But it did so at the cost of ratifying the results of ethnic cleansing on the ground and produced an extremely weak common state in BiH that would not have survived without a very substantial international commitment over the following decade. The specific contribution of several international peacebuilding agencies in BiH is thus analysed in some detail. Particular attention is devoted to the increasingly relevant EU role in this context, starting with the multi-dimensional ESDP presence on the ground.

Finally, the third part of the paper focuses on the efforts that have been made to move beyond

the dysfunctional institutional structure of the Dayton state since the year 2000, most notably by strengthening BiH's common state institutions as a means to more effective governance. The central hypothesis is that since 2003 EU conditionality has increasingly become a viable alternative to international trusteeship in BiH. This is because conditionality has begun to be assertively communicated by the 'double-hatted' High Representative/European Union Special Representative (HR/EUSR) on the ground and is now clearly linked to the perspective of EU membership. There is evidence that difficult political, administrative, and economic reforms have recently been adopted by BiH authorities in compliance with EU conditionality, crucially *without* straightforward interna-

tional imposition. Thanks to the HR's/EUSR's substantial political leverage and crucial support by other ESDP elements on the ground, the European integration and pre-accession process has begun to show its effectiveness as a tool for fostering viable public institutions in BiH and for providing assistance in ways that develop rather than undermine domestic capacity. The main challenge for EU peacebuilders at this point consists in further improving their strategic effectiveness and political leverage on the ground. This will be crucially necessary to support continuing reform in BiH once the Office of the High Representative (OHR) is closed down, possibly by late 2007, and international trusteeship thus also formally ceases to be an option.

Strategic and ethical dilemmas of international peacebuilding



Bosnia and Herzegovina (BiH)

Source: Perry Castañeda Library Map Collection

2.1 Core elements of peacebuilding strategy

The war in Bosnia and Herzegovina (BiH) was effectively brought to an end in late 1995, following a shift to systematic ‘peace enforcement’ by the NATO military alliance.¹ Once the Dayton Agreement had been signed under heavy international pressure and the threat of continued NATO military action, a complex international peace operation with separate military and civilian components was set up to implement the peace. The current policy debate on international peacebuilding in the aftermath of violent ethnic conflict has been significantly

shaped by the experience in BiH over the past decade.

The notion of postwar peacebuilding first entered the official policy discourse in 1992, when UN Secretary-General Boutros Ghali published his seminal report, *An Agenda for Peace*. There was a crucial insistence in the report on the need to supplement international peace-making and peace-keeping operations with comprehensive efforts ‘to identify and support structures which will tend to consolidate peace in order to avoid a relapse into conflict.’² Postwar peacebuilding was thus conceptualised as an explicit effort to address the underlying ‘root causes’ of violent conflict once a cessation of hostilities has been negotiated or imposed.

In the short run, international peacebuilders should be primarily concerned with establishing a minimally stable and secure political environment. This represents a necessary precondition for all subsequent efforts at reconstruction, institution-building, and progressive reconciliation. Hence, extremists and potential spoilers of the peace either have to be induced to cooperate, by addressing some of their grievances and political demands, or coerced by means of threatened or actually used force.³ Ideally, a credible international military deterrent with a robust mandate and effective enforcement capacities will be able to provide the necessary incentives for all the local parties to abstain from further violence.

In the longer run, successful peacebuilding after ethnic violence needs to go beyond military stabilisation, seeking to *transform* the institutional, political and broader societal contexts to

¹ For an excellent account of international policy towards Bosnia in the 1990s, see Steven L. Burg and Paul S. Shoup, *The War in Bosnia-Herzegovina: Ethnic Conflict and International Intervention* (London: Sharpe, 2000).

² United Nations, *An Agenda for Peace*, New York, 1992.

³ Stephen J. Stedman, ‘Spoiler Problems in Peace Processes’, *International Security*, vol. 22, no. 2, 1997, pp. 5-53.

make sustained coexistence possible. Given that violent ethnic conflict is most often determined by the breakdown of legitimate state authority, international peacebuilders crucially need to concentrate on its successful reconstruction. This can be achieved by helping to establish viable political and economic institutions, while also fostering the (re-)emergence of a pluralistic domestic civil society. The ultimate goal of postwar peacebuilding is to create the conditions for inclusive, self-sustaining governance at the domestic level. International peacebuilding should be guided by strategy throughout, in the ordinary sense of targeting available means to ends.⁴

2.2 *The Dayton dilemma: ethnic power sharing or partition?*

Complex power-sharing arrangements have increasingly been used as a policy tool to stabilise deeply divided societies recovering from violent conflict. One key assumption of power-sharing democracy is that by getting the agreement of group leaders on a common institutional framework in which they actively participate, political stability can be quickly secured without actually changing the sentiments and ethnic prejudices of the masses.

Power sharing essentially relies on the inclusion of political elites from a country's main ethnic or religious groups within the executive and legislative branches of government. Ethnic cleavages are taken as a given in divided societies, and an attempt is made to manage them peacefully by means of *inclusive governance*. The allotment of public administration appointments according to criteria of group *proportionality* also responds to this same logic. In addition, high degrees of *territorial autonomy* are usu-

ally granted to each group so that it can manage its own internal affairs. Finally, to make power sharing acceptable to sceptical group leaders and their followers, each group is typically granted a veto right to block political decisions if they are considered to be contrary to its 'vital interest.'⁵

All the above-mentioned elements of power sharing can be found in the Bosnian state constitution negotiated at Dayton. However, common state institutions in postwar BiH were initially extremely weak: protracted ethnic violence and related population displacements had led to the emergence of segregated ethnic enclaves, which were pragmatically recognised as the central loci of political authority in the DPA itself. Ethnic *self-rule* was thus clearly emphasised at the expense of *shared rule* in postwar BiH, putting into question the very viability of a common state for several years. The problematic nature of Bosnia's postwar institutional setup has led some critics to question the viability of power sharing more broadly as a response to the challenges facing deeply divided societies. Power sharing, those critics argue, may well function in moderately divided countries such as Switzerland or Belgium, but it can hardly stabilise societies torn apart by brutal ethnic war. Even well-intentioned political leaders in deeply divided postwar societies may not be able to cooperate on delicate issues, because if they do they may be quickly discredited and replaced by more extremist rivals.⁶

Territorial partition is thus sometimes put forward as a potentially more viable, realistic solution to the problems facing deeply divided societies after violent ethnic conflict. With specific regard to postwar BiH, pundits and academic analysts have called now and again for a full-scale partition of the country, based on the assumption that this would lead to more homogeneous follower states and thereby resolve the problem of ethnic

⁴ Michael Doyle and Nicholas Sambanis, 'International Peacebuilding: A Theoretical and Quantitative Analysis', *American Political Science Review*, vol. 94, no. 4, 2000, pp. 779-801.

⁵ Arend Lijphart, *Democracy in Plural Societies* (New Haven, CT: Yale University Press, 1977), pp. 25-42.

⁶ Donald Rothchild and Philip G. Roeder, 'Power Sharing as an Impediment to Peace and Democracy', in Roeder and Rothchild (eds.), *Sustainable Peace: Power and Democracy after Civil Wars* (Ithaca, NJ: Cornell University Press, 2005).

conflict.⁷ Partitionist solutions for Bosnia may superficially have the appeal of hard-nosed political realism. However, they have always been politically unfeasible and ethically dubious. In spite of massive population transfers, Bosnia at the end of the war was far from being neatly divided into three ethnically homogeneous territories. A full-scale partition of BiH along the ceasefire line would thus have left behind substantial minority populations in each of the successor states, possibly resulting in renewed refugee flows and ethnic cleansing. Assuming that the majority-Serb parts of BiH had been annexed by Serbia and the majority-Croat territories by Croatia, this would not only have rewarded the ethnic killers or *génocidaires*; it would also have left behind a volatile new Bosniac rump state with significant minority populations in and around Sarajevo.

Overall, the implementation of a partition strategy for BiH would hardly have improved political stability in the region; quite on the contrary, it would have set a dangerous precedent that might well have emboldened other would-be secessionists in FYROM, Serbia, and possibly Croatia. International mediators in the lead-up to Dayton were quite aware that the implementation of any partition strategy for BiH would have created many more problems than it might have resolved, which is why they opted instead for the compromise solution that was eventually adopted.⁸

2.3 *International trusteeship to rebuild failed states?*

When domestic power-sharing arrangements are not yet self-sustaining in divided societies after ethnic war, and territorial partition is likewise not a viable strategic option, international trusteeship may provide a transitional solution

to the problem of domestic political order. International trusteeship implies the partial or wholesale control over the politics and administration of a territory that is not self-governing by external authorities. The underlying justification is that the freedom of any political entity which is unable to manage its own affairs may be legitimately interfered with paternalistically, provided that this interference is exclusively aimed at improving the welfare of the entity's members.⁹ In contrast to previous colonial endeavours, which were based on racist ideology and exploitative practices, today's 'empire lite' is always temporary (and ideally multilateral), justified as a *lesser evil* to assist heavily burdened societies that might otherwise soon relapse into violence.¹⁰

International peacebuilders in postwar BiH opted for a quite intrusive trusteeship role, although they left most domestic political and administrative functions on a day-to-day basis to the local parties themselves. In principle, international authorities ought to have intervened coercively only when the local parties were clearly unable to agree among themselves, with sustained decisional deadlock undermining the progress of peace implementation as well as broader political stability. In practice, however, since late 1997 the international community's 'High Representative' (HR) in BiH has used his special and highly intrusive 'Bonn powers' quite arbitrarily: he repeatedly overruled the decisions of domestic political authorities, imposed legislation upon them, and even removed elected politicians from office whenever he deemed that this would be in the best interest of the local population.

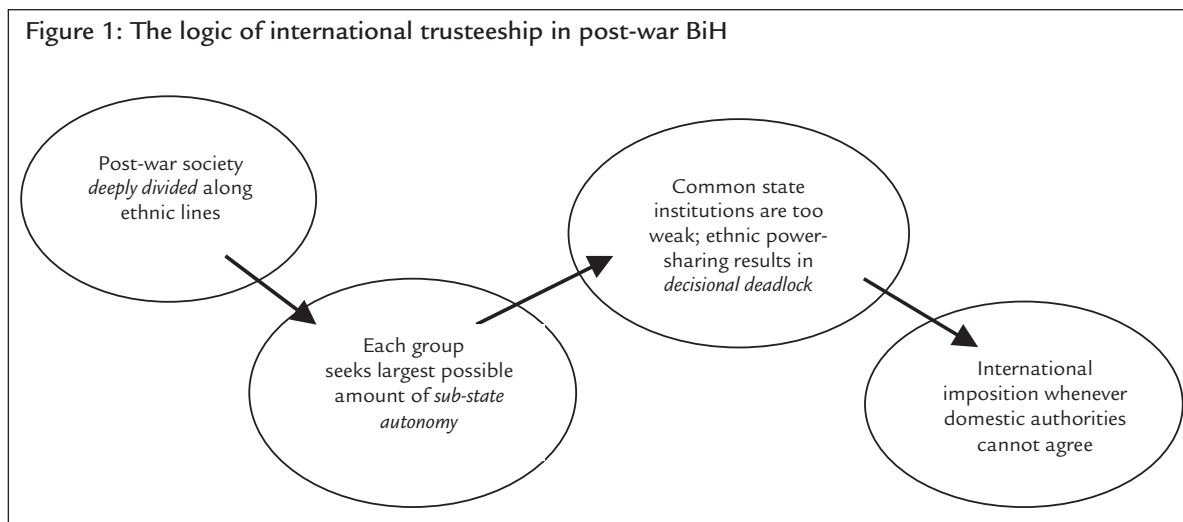
The practice of international trusteeship raises a series of key ethical and strategic dilemmas that contemporary foreign-policy makers need to confront. Failed states and divided societies recovering from violent conflict, it is now

⁷ William Pfaff, 'Time to concede defeat in Bosnia', *International Herald Tribune*, 16 October 2002. For a more refined academic version of the same argument, see Chaim Kaufmann, 'Possible and Impossible Solutions to Ethnic Civil Wars', *International Security*, vol. 20, no. 4, 1996, pp. 136-75.

⁸ Richard Holbrooke, *To End a War* (New York: Random House, 1998), p. 103.

⁹ William Bain, *Between Anarchy and Society: Trusteeship and the Obligations of Power* (Oxford: Oxford University Press, 2003), p. 2.

¹⁰ Michael Ignatieff, *Empire lite: Nation-building in Bosnia, Kosovo, and Afghanistan* (London: Vintage, 2003), p. 114.



increasingly argued, ought to be seen as *conditionally sovereign* at best.¹¹ The current head of policy planning at the US Department of State, Stephen Krasner, goes one step further: observing that ‘the autochthonous political incentives facing political leaders in many failed ... states are perverse’, he boldly suggests that sovereignty over divided postwar societies ought to be more or less permanently ‘shared’ between domestic and international authorities.¹²

Critics of international trusteeship, however, cogently highlight that international authorities are not directly accountable to the local population whose interests they presumably serve; something that has been pointed out repeatedly with regard to the Office of the High Representative (OHR) in BiH.¹³ There is potentially a yet more serious problem resulting from the practice

of international trusteeship: the longer international control over the domestic political process in a postwar society actually lasts, the more it risks undermining local political ownership and responsibility. Sustained trusteeship in BiH has led to the emergence of a worrisome ‘culture of dependency’ on the international community’s presence. Until very recently, local political leaders in BiH could afford to regularly adopt uncompromising nationalistic stances, knowing that external peacebuilders would eventually push through any unpopular but necessary decisions. In sum, while international trusteeship can ensure short-term political stability and help establish a modern institutional structure in postwar societies, protracted intervention seems to actually weaken the prospects for sustainable democratic governance in the long run.¹⁴

¹¹ See Robert O. Keohane, ‘Political authority after intervention: gradations in sovereignty’, in J.L. Holzgrefe and Robert O. Keohane (eds.), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge: Cambridge University Press, 2003).

¹² Stephen D. Krasner, ‘Sharing Sovereignty: New Institutions for Collapsed and Failing States’, *International Security*, vol. 29, no. 2, 2004, p. 89.

¹³ See e.g. Richard Caplan, ‘Who Guards the Guardians? International Accountability in Bosnia’, *International Peacekeeping*, vol. 2, no. 3, 2005, pp. 463-76.

¹⁴ For a particularly trenchant critique, see David Chandler, *Bosnia: Faking Democracy After Dayton* (London: Pluto Press, 1999).

Implementing Dayton: peacebuilding under international tutelage

3.1 Dayton's problematic legacy: a 'weak state' as the price for peace

The Dayton Peace Agreement (DPA) did not result from a decisive military victory by one of the warring parties on the ground. Nor was it the consequence of a 'mutually hurting stalemate', where exhaustion of all the main parties and the impossibility of major military breakthroughs create strong incentives for a negotiated compromise to emerge.¹⁵ Rather, Dayton represents a typical case of 'enhanced consent' – a peace agreement hammered out and ultimately signed under heavy international pressure. The price to be paid for reaching an agreement at Dayton, while the situation in Bosnia was still relatively fluid and none of the parties had a strong commitment to peace, was essentially twofold: first, the DPA *de facto* ratified the results of ethnic cleansing on the ground, with political and administrative functions largely decentralised to autonomous ethnic enclaves and an extremely weak common state at the top; second, the DPA explicitly legitimated the interests of neighbouring states in the Bosnian internal order.

The DPA itself was not signed by the actual representatives of Bosnia's domestic factions, but rather by Serb president Slobodan Milosevic and Croat president Franjo Tudjman, as well as by the Bosnian Muslim leader Alija Izetbegovic. (The latter had formally remained the president of BiH throughout the war.) International

peacebuilders optimistically hoped that Croatia and Serbia, Bosnia's influential regional neighbours that had actively supported their respective ethnic proxies during the war, could now be induced to support BiH's territorial integrity by reining in ethnic extremists in their own camp.¹⁶ As an additional inducement, the new postwar constitution for BiH explicitly authorised Bosnia's autonomous ethnic entities 'to establish special parallel relationships with neighbouring states.'¹⁷ But it is only in recent years, following Tudjman's death in 1999 and Milosevic's removal from office in 2001, that both Croatia and Serbia have become generally more supportive of the international community's peacebuilding agenda in BiH. Given that Bosnia's future is tightly linked to that of its regional neighbours, it seems clear that only a complete stabilisation and progressive European integration of the entire Western Balkans will be able bring lasting peace to the country.

Beyond the regional context, the constitutional setup of the Dayton state itself has been a major obstacle to the building of self-sustaining peace in BiH. The DPA was highly ambivalent in combining exceptionally generous self-government rights for each of Bosnia's 'constituent peoples' with the preservation of a formally unitary and sovereign Bosnian state. According to the postwar constitution attached to the peace agreement, the territory of BiH was to be divided into two sub-state entities: a majority-Serb 'Republika Srpska' (RS) covering 49 percent of the state's territory, and a 'Federation of Bosnia and Herzegovina' (FBiH) where Bosnian

¹⁵ See William Zartman and Saadia Touval, 'International Mediation in the Post-Cold War Era', in Chester Crocker et al., *Managing Global Chaos: sources of and responses to international conflict* (Washington, D.C.: UISP, 1996).

¹⁶ Susan Woodward, 'Compromised Sovereignty to Create Sovereignty: Is Dayton Bosnia a Futile Exercise or an Emerging Model?' in Stephen D. Krasner, *Problematic Sovereignty* (New York: Columbia University Press, 2001), p. 285.

¹⁷ Dayton Peace Agreement (DPA), Annex 4, Article 3.2.

Muslims (Bosniacs) and Croats would share governmental power on an equal basis.¹⁸ This idiosyncratic constitutional settlement was in large part dictated by the logic of ethnic cleansing: at the end of the war, there were hardly any non-Serbs left on what was to become RS territory, where around half a million Bosniacs had lived until 1992. The number of Serbs in the Federation had also fallen to negligible levels compared to before the war.¹⁹ Hence, most legislative and executive functions were devolved to the entity level (within the RS), or further downwards to 10 ethnically more homogeneous ‘cantons’ (within the FBiH). One crucial consequence of this settlement was that for several years after the end of the war, Bosnia’s common state institutions remained the weakest of all levels of government, dependent on budgetary transfers from the entities and without a common army, police, or judiciary in their support.²⁰

The relevance of Bosnia’s common state institutions has been further undermined by some extremely burdensome mechanisms of ethnic power sharing, which affect both the legislative and executive branches of government. The state parliament in BiH consists of a bicameral legislative assembly, with membership in the upper chamber (House of Peoples) corre-

sponding to rigidly pre-determined ethnic quotas. Moreover, in the House of Peoples each of Bosnia’s main ethnic groups has a very generous ‘veto right’ at its disposal. Given that every decision requires approval of both chambers, a majority of Bosniac, Croat, or Serb representatives to the House of Peoples can block any proposed legislation by declaring it contrary to their group’s ‘vital interest.’ The mere *threat* by one group or another to actually use the veto has frequently been sufficient to completely paralyse the state-level legislative process.

Executive power within Bosnia’s weak common state government is also shared on an ethnic basis. The head of state is a three-person collective presidency, composed of a Bosniac, a Croat and a Serb member, respectively. Any one of the presidency’s members can block its decisions, again by declaring that they violate ‘vital’ ethnic interests.²¹ Appointments to state ministerial posts are similarly made along ethnic lines, with each minister being required to have two deputies from different ethnic groups than his or her own. Overall, concerns for ethnic proportionality throughout the state government and overly generous ethnic ‘veto rights’ have led to an inflated, costly, and highly ineffective bureaucracy in postwar BiH.

Principles as foreseen by the Dayton constitution:	<i>Ethnic power sharing</i>	<i>Sub-state autonomy</i>	<i>Minority veto</i>	<i>Proportionality</i>
	All legislative and executive authority shared between BiH’s three ‘constituent peoples’	Extremely generous ethnic self-government at the level of Entities and cantons	Each group has extensive veto power on matters considered to be in its ‘vital interest’	Proportional appointments on an ethnic basis throughout public administration
Undesired effects:	Nationalistic leaders in BiH were often unable to agree on major reforms	Sustained secessionist tendencies, particularly in the RS	Arbitrary determination of what constitutes a ‘vital’ interest contributes to frequent decisional deadlock	Clientelistic relationships between group-leaders and their followers; increased corruption

¹⁸ Following an international arbitration decision, the Brcko federal district was additionally created out of land from both entities in 2000.

¹⁹ Sumantra Bose, *Bosnia after Dayton* (New York: Oxford University Press, 2002), p. 53.

²⁰ The constitution clearly enumerates the residual governmental functions left to the common BiH state: foreign policy and foreign trade, immigration, monetary policy, and inter-entity matters (DPA, Annex 4, Article 3.3).

²¹ DPA, Annex 4, Article 4.3.

3.2 Who does what? The evolving international presence in BiH

The agreement reached at Dayton in November 1995 and the resulting institutional structure offered no single, clear political outcome for postwar BiH. Hence, the establishment of a viable multiethnic state hinged very much on the international community's resolve and its insistence on implementing the more integrationist components of the peace agreement (such as, notably, the return of refugees and the promotion of effective power-sharing institutions at the central state level). Once the fighting had come to an end, a multi-dimensional international peace operation – consisting of separate military and civilian components – was put in place to assist the local parties in the difficult task of peace implementation. The European Union (EU) did initially not play a central role in

this context, and its contribution was largely limited to the provision of humanitarian assistance and financial aid for reconstruction and development. However, over the past several years the EU has become the main international peacebuilder in BiH. The EU has assumed an increasingly high-profile role in BiH within the framework of its joint European Security and Defence Policy (ESDP), which is currently being coordinated on the ground by its Special Representative Christian Schwarz-Schilling. The following sections provide an overview of the role and contribution of the main international peacebuilding agencies in BiH, with specific regard to the increasingly relevant EU participation.

EUFOR: monitoring of security situation and ongoing deterrence

The EU launched its own military operation in Bosnia – Operation *Althea* – in December 2004,

Table 2: Main international peacebuilding agencies in BiH

Name of agency	Key tasks	Relevant Annex of DPA (if applicable)
EUFOR (formerly IFOR/SFOR)	Monitor security situation on the ground; ongoing deterrence; until recently, direct execution of law-enforcement activities in the fight against organised crime.	1A; <i>Military aspects</i> 1B; <i>Regional stabilisation</i> 2; <i>Boundary line & related issues</i>
HR / EUSR	Coordinate civilian peace implementation. Since 1997, special 'Bonn powers' to impose legislation and dismiss local officials (currently being phased out). EUSR's political coordination role will increase substantially.	10; <i>Civilian implementation</i>
EUPM (formerly IPTF)	Train law enforcement personnel; assess threats to public order; inspect local police and promote overall reform of the police sector; no executive policing.	11; <i>International policing</i>
European Commission	Deliver financial aid; monitor compliance with EU conditionality through annual progress reports.	-
OSCE	Confidence and security-building; organise post-war elections; implement human rights; contribute to civil society development, and coordinate education reform.	1B; <i>Regional stabilisation</i> 3; <i>Elections</i> 6; <i>Human rights</i>
UNHCR	Coordinate return of refugees and internally displaced persons.	7; <i>Refugees and displaced persons</i>

taking over from almost a decade of NATO-led peacekeeping in the country (IFOR from December 1995 to December 1996, and SFOR thereafter). When the European Union's peacekeeping Force (EUFOR) took over from NATO-led SFOR, the composition of the force remained unchanged at roughly 7,000 troops. Operation *Althea* is the most ambitious EU military operation to date and thus constitutes a valuable test case for the European Security and Defence Policy (ESDP) set up in the late 1990s. Today, EUFOR deploys about 6,000 troops in BiH; the country is divided into three military areas of operation commanded by British (North-West), Finnish (North) and Spanish (South-East) officers respectively, who all report to EUFOR headquarters in Sarajevo. While the majority of EUFOR troops consists of national contingents from 22 EU member states, in late 2006 there were also 11 non-EU states contributing roughly 850 troops in total. Like previous peacekeeping forces in BiH, EUFOR is equipped with a robust mandate under Chapter VII of the UN Charter, which allows it to conduct peace enforcement operations if needed. The EU's Political and Security Committee (PSC) exercises political control and strategic direction over the operation, while local political advice to the EU Force Commander is provided by the EU Special Representative (EUSR) in BiH.

EUFOR's main objective is to maintain a secure environment in BiH, by monitoring the situation on the ground and providing a continued credible military deterrent. An ongoing robust European military presence also serves to highlight and signal to the local population the EU's strong political commitment to peace and security in the country. In addition, EUFOR has been actively involved in the fight against organised crime in BiH, in cooperation with the OHR and local authorities. Particularly during its first year of operations, EUFOR has participated in or directly conducted several high-profile operations against organised crime in Bosnia through its Integrated Police Unit (IPU). This

latter component of EUFOR's activities in BiH, however, has been recently scaled down in accordance with the EU's objective of progressively empowering local law-enforcement agencies. The explicit policy goal is to have no further direct EU participation in law-enforcement operations on the ground.

The EU undoubtedly provides the bulk of international military assistance to Bosnia today. However, NATO has not entirely withdrawn from the country. There remains a small contingent of some 150 NATO officers who continue to operate in Sarajevo; their main tasks consist in assisting BiH in its military reform and contributing to the search for war criminals indicted by the International Criminal Tribunal for the Former Yugoslavia (ICTY) – in close cooperation with EUFOR. Based on the so-called 'Berlin Plus' arrangements, the EU and NATO share common military assets in BiH to avoid duplication.²² A continued international military presence remains crucial for BiH today, not least due to the risk of political instability that might result from developments elsewhere in the region, such as the outcome of negotiations over the status of Kosovo. Renewed calls by Serb nationalists in BiH for secession of the RS, following the Montenegrin referendum over independence in May 2006, suggest that there could be potentially more destabilising spillover effects if Kosovo also becomes independent. A quite significant proportion of Bosnian citizens also believe that the local peace has not yet become self-sustaining: at the end of 2005, roughly one-quarter of them thought that a hastened withdrawal of EUFOR would reopen the possibility of war.²³

The HR/EUSR: civilian peace implementation and overall coordination

By far the best known and at the same time the most controversial international actor in BiH, due to his extraordinary powers, has been the international community's High Representative (HR). An international Office of the High

²² 'Supporting Bosnia on the way to the EU', *ESDP Newsletter* no. 1 (Council of the European Union, December 2005), p. 22.

²³ UNDP BiH, 'Early Warning System: IV Quarterly Report on Bosnia and Herzegovina' (Sarajevo: 2005), p. 35.

Representative (OHR) was established in accordance with Annex 10 of the DPA, to coordinate and oversee all aspects related to civilian peace implementation. The HR in BiH is not a UN Special Representative of the Secretary-General, but rather an *ad-hoc* figure whose position was established following widespread disillusionment with the UN's perceived dismal performance during the war in Bosnia. As a direct consequence of this arrangement, the HR is answerable in the first instance to a relatively informal 'Peace Implementation Council', which comprises more than 50 donor countries. Although regular reports are also made to the UN Security Council, the latter exercises only secondary oversight. Since March 2002, the international High Representative in BiH has also been 'double-hatted' as the EU's Special Representative (EUSR). The current HR/EUSR is Christian Schwarz-Schilling, a German national with extensive peacebuilding experience in Bosnia.

After the peace agreement was signed in 1995, the international community initially opted for a decentralised approach to Dayton's civilian implementation, which involved several international organisations and left the OHR with a relatively marginal coordination role. In combination with persistent obstructionism on the part of Bosnian domestic authorities, this resulted in a notable lack of progress on civilian implementation during the first two years after the DPA was signed. The international community therefore decided to significantly strengthen the HR's mandate at a meeting of the Peace Implementation Council (PIC) that took place in Bonn in late 1997. The HR was now explicitly granted the authority to develop and enact laws otherwise blocked by the Bosnian leadership, as well as enforcement powers to dismiss obstructionist Bosnian officials.

The so-called 'Bonn powers' of the HR made it possible to implement key political and administrative reforms in BiH, which contributed most notably to the strengthening of

common state institutions. However, the HR's trusteeship powers have recently come under heavy criticism for undermining domestic political ownership and responsibility, as well as for lack of accountability to local stakeholders.²⁴ As of late 2005, over 60 percent of the Bosnian population felt that it was time for the HR's extraordinary powers to be reduced, with peaks of over 70 percent among the Bosnian Serb population.²⁵ An expert commission from the Council of Europe has aptly summarised the problematic nature of the High Representative's intrusive role:

*'The need for the wide powers exercised by the High Representative certainly existed in the early period following the conclusion of the Dayton Agreement. However, such an arrangement is fundamentally incompatible with the democratic character of the state and the sovereignty of BiH. ... There is a strong risk of perverse effects: local politicians have no incentive to accept painful but necessary political compromises since they know that, if no agreement is reached, in the end the High Representative can impose the legislation. ... A dependency culture incompatible with the future development of BiH risks being created.'*²⁶

The new HR/EUSR Christian Schwarz-Schilling, who took over from Paddy Ashdown in early 2006, has promised to adopt a more hands-off approach than his predecessor. Schwarz-Schilling has not dismissed any local politicians (on the contrary, he has reinstated several that were dismissed by his predecessor) and imposed virtually no major legislation since his tenure began. If current plans to close the OHR down entirely as of 30 June 2007 are confirmed by the PIC Steering Board, the EUSR will almost inevitably acquire a much more relevant role of political persuasion and coordination in the framework of Bosnia's progressive European integration. The main challenge for EU peacebuilders will consist in retaining the current HR/EUSR's ability to assertively communicate EU conditionality to local politicians in BiH (for more on this see section 4.3), while aban-

²⁴ See e.g. Gerald Knaus and Felix Martin, 'Travails of the European Raj', *Journal of Democracy*, vol. 14, no. 3, 2003, pp. 60-74.

²⁵ UNDP BiH, *op. cit.*, p. 13.

²⁶ Venice Commission (European Commission for Democracy Through Law), 'Opinion on the Constitutional Situation in BiH and the Powers of the High Representative', Council of Europe, March 2005, p. 22.

doing the HR's intrusive trusteeship approach once and for all. Some related challenges for EU policy-makers will be discussed in the concluding part of the paper.

EUPM: reforming and inspecting Bosnia's police

In January 2003 the EU launched its own Police Mission (EUPM) in Bosnia, to follow up on the work of the UN International Police Task Force (IPTF) that had been established in accordance with Annex 11 of the DPA. In spite of the IPTF's relative success, much remained to be done with regard to the structure of local police forces, their financing, and their relationship to the courts. EUPM was the first ever mission to be launched under the European Security and Defence Policy (ESDP). As of mid-2006, EUPM comprised 198 international staff members drawn from EU member states and nine other countries. EUPM crucially contributes to the Union's growing capacity in the field of civilian crisis management operations, with similar missions launched in the meantime in the Southern Caucasus, Sub-Saharan Africa, the Middle East, and North Africa.²⁷

The EU Police Mission in BiH is not directly involved in operational policing. It does instead concentrate on supporting the preparation and implementation of domestic police reform, with the aim of establishing a sustainable, professional and multiethnic police service in BiH. Within this context EUPM also contributes to improving police managerial and operational capacities, especially at the common state level. In addition, EUPM cooperates with EUFOR in assessing any threats to public order and consequently advising domestic as well as international authorities.²⁸ EUPM's mandate in Bosnia was expected to expire at the end of 2005, but the

European Council decided to extend EUPM's deployment for an additional two years, judging that local law enforcement agencies had clearly not yet become self-sustaining. Moreover, reacting to criticisms about an allegedly too weak and ineffective initial deployment,²⁹ EUPM's mandate has been strengthened, with specific regard to its ability to support domestic agencies in the fight against organised crime.

EUPM is now taking the lead in the coordination of all policing aspects of ESDP efforts in the fight against organised crime in BiH, following the progressive reduction of EUFOR operations in this area. Specifically, EUPM officers will provide ongoing operational advice and support in the planning and conduct of operations against organised crime by local law-enforcement agencies, by monitoring and inspecting local police operations from their early planning stage. Bosnia's domestic political authorities finally reached an important framework agreement on police reform in October 2005, responding to sustained international pressure. The agreement does in principle fully comply with EU conditionality: it foresees in particular a transfer of all legislative and budgetary competencies concerning the police from the entities to the common state level, as well as a reorganisation of local police districts without regard to ethnic criteria.³⁰ Following this agreement, a special EUPM working group has been closely cooperating with the HR/EUSR to assist local authorities towards the implementation of police reform. However, progress so far has remained frustratingly slow in the face of persistent obstructionism by Bosnian Serb politicians. As of early 2007, the BiH domestic political authorities still needed to agree on an implementation plan for police reform (for further details on police reform, see section 4.3).

²⁷ Agnieszka Nowak (ed.), 'Civilian crisis management: the EU way', *Chaillot Paper* no. 90 (Paris: EUISS, June 2006).

²⁸ EU Council Secretariat, 'EU Police Mission in Bosnia and Herzegovina (EUPM)', *Factsheet*, March 2006.

²⁹ See International Crisis Group, 'Bosnia's Stalled Police Reform: No Progress, No EU', *Europe Report* no. 164 (Brussels: 6 September 2005).

³⁰ 'Agreement on Restructuring of Police Structures in BiH', 5 October 2005 (available at: www.ohr.int).

The European Commission: conditionality and financial assistance

The delegation of the European Commission to BiH has played a major role in the implementation of external assistance to the country, as well as in monitoring compliance with EU conditionality. The EU has been the largest international donor in BiH since the end of the war, with assistance in excess of two billion euro granted between 1995 and 2005. In recent years, EU financial aid has increasingly shifted from emergency assistance and postwar reconstruction towards reform and development-related programmes. Since the 'Stabilisation and Association Process' (SAP) was launched in 1999 as a framework for channelling EU conditionality towards the entire Western Balkans, financial aid to BiH has been mainly targeted at domestic institution-building in the political, administrative and economic spheres.

The main source of EU assistance to BiH since 2001 has been a programme called CARDS ('Community Assistance for Reconstruction, Development and Stabilisation'), which was explicitly developed to support the SAP process in the Western Balkans region. More than two-thirds of current EU financial assistance within the CARDS framework are devoted to *good governance and institution building*, with a focus on reforming the country's judiciary, police, and public administration. Another central EU objective in BiH is continuing *democratic stabilisation* (in cooperation with other international agencies such as the OSCE and the UNHCR) by means of supporting the return and re-integration of refugees and internally displaced persons, as well as the development of independent and non-sectarian media. Finally, EU assistance aims at promoting *economic and social development*, by improving the overall investment climate in BiH and developing a fully integrated domestic market. Assistance is also provided to help BiH start participating in selected European Community programmes.³¹

Following the launch of the new EU financial perspective for 2007-2013, aid to the Western Balkans region will be delivered through a new 'Instrument of Pre-accession Assistance' (IPA), which is intended to replace CARDS entirely. Crucially, IPA assistance is supposed to overcome the current rather idiosyncratic nature of EU financial aid to the Western Balkans: so far, advanced candidate countries such as Croatia have had access to more Community funds than their needier regional neighbours, which are often still recovering from violence and/or have to concentrate on costly state-building reforms. Notwithstanding improved technical assistance mechanisms such as IPA, the prospects for sustainable socio-economic development in BiH will remain rather bleak, so long as effective market institutions are not consolidated at the domestic level. Although real GDP growth for 2007 is forecast to reach a healthy 5.4 percent, mainly due to a rise in private consumption and growing export capacity, the country's GDP still remains below pre-war levels and official unemployment is as high as 40 percent.³² One major challenge for the EU thus undoubtedly consists in promoting viable domestic institutions and a solid administrative structure, based on the rule of law and common European standards of transparency and accountability, so that the worrisome trend of postwar economic stagnation can be overcome once and for all.

The OSCE: democratisation and human rights

The main tasks that the DPA assigned to the Organisation for Security and Cooperation in Europe (OSCE) consisted in postwar confidence building and arms control (Annex 1B), human rights implementation (Annex 6), and the organisation and supervision of state-wide elections (Annex 3).

According to the text of the DPA itself, the first postwar elections in BiH were to be held

³¹ European Commission, 'Bosnia and Herzegovina 2005 Progress Report', SEC(2005) 1422, Brussels, 9 November 2005, p. 6.

³² Economist Intelligence Unit, 'Country Outlook: Bosnia-Herzegovina', London, December 2006.

within less than a year from the cessation of hostilities and no later than September 1996. This was probably the single most controversial aspect of Dayton's civilian implementation schedule. Although the prevailing environment in mid-1996 was still one of generalised insecurity, elections were seen at the time as an essential first step to get Bosnia's new institutions off the ground. However, the three leading nationalist parties were ultimately victorious in all offices and could thus further entrench their power. The Bosnian experience has since become a textbook case for why competitive elections should not be organised too soon after violent communal conflict. Scholars in particular have insisted that political liberalisation (i.e., the holding of competitive elections) ought to be systematically delayed in volatile postwar environments, given that the process is 'inherently tumultuous'.³³

Today, the OSCE shares continued responsibility for the oversight of Dayton's human rights provisions with several other international bodies, such as the Council of Europe, the UN High Commission on Human Rights, and the European Court of Human Rights. In an unprecedented move, international peacebuilders at Dayton had decided to directly incorporate the 1950 European Convention on Human Rights and its additional protocols into BiH state law. However, with responsibility for law enforcement mainly left to the sub-state entities, and in the absence of a strong indigenous human rights culture, implementation of those same provisions long remained problematic and has only recently begun to improve. The OSCE has also been involved in civil society development in BiH, with rather mixed results.³⁴ Finally, the OSCE recently assumed a leadership role in the coordination of education reform efforts aimed at overcoming sectarianism in Bosnian schools.

UNHCR: refugee return and reintegration

Over half of Bosnia's pre-war population of 4.3 million was forcibly displaced between 1992 and 1995, either as refugees to host countries abroad (1.2 million) or as internally displaced persons within Bosnia (about 1 million). In one of its strongest integrationist provisions, the Dayton Peace Agreement (Annex 7) stipulated an unqualified right for refugees and displaced persons to 'freely return to their homes of origin' and to 'have restored to them property of which they were deprived' during the war. To facilitate the repatriation and relief of refugees and internally displaced persons, the UN refugee agency (UNHCR) was charged with the coordination of all related international efforts.

Apart from obvious ethical considerations, the underlying strategic aim of refugee return was to foster reunification from below: by reversing ethnic cleansing, it was expected that non-nationalist political parties could be empowered on what might once again become a genuinely multi-ethnic Bosnian territory. This expectation has not been entirely fulfilled, notwithstanding some important progress with regard to refugee return and reintegration. According to official UNHCR statistics, over one million people (442,687 refugees and 572,707 displaced persons as of 31 October 2006) have returned to their homes since hostilities ended more than a decade ago.³⁵ However, the figures of registered minority returns may well be inflated, given that some refugees come back only temporarily to repossess and then sell their property. Also, elderly people are disproportionately represented among returnees, while their offspring have often permanently settled elsewhere. Even official UNHCR data suggests that the return process is practically all but concluded today, given that there were less than 4,000 total returns in 2006, only about 500 of which were refugees actually returning from abroad.³⁶

³³ Roland Paris, *At War's End: Building Peace after Civil Conflict* (Cambridge: Cambridge University Press, 2004), see in particular pp. 97-107.

³⁴ Roberto Belloni, 'Civil Society and Peacebuilding in Bosnia and Herzegovina', *Journal of Peace Research*, vol. 38, no. 2, 2001, pp. 163-80.

³⁵ UNHCR BiH, 'Statistical Summary: Total number of refugees and displaced persons who returned to/within Bosnia and Herzegovina', Sarajevo, 31 October 2006.

³⁶ *Ibid.*

Table 3: Summary of returns to/within BiH from 1996 to 31 October 2006										
Refugees						Internally displaced persons				
	Bosniacs	Croats	Serbs	Other	TOTAL	Bosniacs	Croats	Serbs	Other	TOTAL
1996	76,385	3,144	8,477	33	88,039	101,402	505	62,792	42	164,741
1997	74,756	33,568	11,136	820	120,280	39,447	10,191	8,452	205	58,295
1998	78,589	23,187	6,765	1,459	110,000	15,806	4,325	9,139	300	29,570
1999	18,440	6,299	6,332	579	31,650	24,907	6,760	11,315	403	43,385
2000	7,663	4,834	5,303	837	18,607	36,944	7,779	14,175	449	59,347
2001	4,642	4,244	9,155	652	18,693	48,042	5,960	25,734	436	80,172
2002	12,592	5,933	18,220	389	37,134	41,511	5,319	23,215	730	70,775
2003	5,257	2,852	5,482	421	14,012	21,861	2,267	16,023	152	40,303
2004	976	450	942	74	2,442	12,976	1,028	3,888	56	17,948
2005	805	151	314	3	1,273	3,540	437	1,177	10	5,164
2006	273	69	93	15	450	1,778	155	560	3	2,496
TOTAL	280,348	84,731	72,219	5,282	442,580	348,214	44,726	176,470	2,786	572,196

Source: UNHCR Sarajevo

Beyond Dayton: sustainable statehood and European integration

4.1 2000-2006: *inching towards a self-sustaining state*

One can usefully distinguish between two separate, subsequent phases of international peacebuilding in BiH. During the first phase, which lasted roughly until the end of the 1990s, virtually all international attention focused on *implementing the DPA*: international efforts initially concentrated on Dayton's military component, with particular regard to stabilising the ceasefire, and then moved on to implementing its civilian provisions, such as the organisation of elections, refugee return, and the establishment of the institutions foreseen in the constitution. The second phase of international peacebuilding in BiH can be seen as starting roughly in 2000, and it coincides with the beginning of a more systematic EU involvement. International efforts have now been increasingly aimed at overcoming key deficiencies of the existing institutional setup in BiH, to promote a more integrated and self-sustaining state. In practical terms, this has resulted in a series of attempts to move *beyond the original Dayton framework*.³⁷

Following the landmark 'constituent peoples' decision by Bosnia's Constitutional Court in 2000 (see opposite), and subsequent targeted impositions, as well as effective persuasion of local politicians by the HR/EUSR, over the past years important amendments were introduced that radically revise the institutional setup of the Dayton state. Perhaps most importantly, the powers of the central state in BiH have grown substantially, with several new ministries established and the strengthening of common administrative and judicial institutions. With some real progress achieved on the domestic

reform front and in the face of rising criticisms about the lack of genuine domestic political ownership and accountability, over the past two or three years the international community has begun to gradually scale down its intrusive decision-making role in BiH. This means that important decisions are today no longer imposed by the High Representative. Thanks to an increasingly effective and high-profile EU presence in the country, however, the pace of reform has not significantly slowed down (except for the pre-electoral phase in mid-2006). EU peacebuilders in BiH have begun to provide strong incentives for political, economic, and administrative reform, while crucially stopping short of straightforward coercion.

The landmark 'constituent peoples' decision

A decision of the BiH Constitutional Court in 2000 brought about one first major change of the original Dayton institutional structure. In what has become known as the landmark 'constituent peoples' decision, the court challenged the dominance of one or two ethnic groups in Bosnia's sub-state entities. In particular, the court ruled that provisions in the RS constitution granting a privileged position to Serbs, as well as similar provisions in the Federation (FBiH) granting privileges to Bosniacs and Croats, were incompatible with key democratic principles and human rights as enshrined in the Bosnian state constitution. Subsequent implementation of the Constitutional Court's decision has significantly contributed to the strengthening of common state institutions in BiH.

³⁷ Florian Bieber, 'After Dayton, Dayton? The Evolution of an Unpopular Peace', *Ethnopolitics*, vol. 5, no. 1, 2006, pp. 15-31.

The BiH Constitutional Court is generally perceived as a domestic institution, although decisional responsibility within it is in fact shared between domestic and international judges. There is a minority of international judges sitting on the court's bench (three out of nine), which is often able to crucially influence decisions, particularly when domestic judges are divided on any given matter. Contrary to most other postwar institutions in Bosnia, the Constitutional Court has thus never suffered from ethnic deadlock.³⁸ In the 'constituent peoples' case, the three international and two Bosniac judges formed a majority in support of the court's decision. The two Croat and two Serb judges, on the other hand, opposed the court's decision in key aspects and put forward dissenting opinions.

The implementation of the 'constituent peoples' decision was the subject of much negotiation among Bosnia's three principal ethnic groups. However, due to persistent decisional deadlock, constitutional reforms at the entity level were finally imposed by the HR in April and October 2002. The main result is that the logic of ethnic power sharing between Bosnia's three 'constituent peoples' has now cascaded down to all levels of government, including municipalities. Proportional ethnic representation has also been introduced as a requirement within all public agencies and judicial institutions of the entities and cantons. Crucially, ethnic proportionality has been applied with reference to the population distribution as it emerged from the 1991 census, and the results of ethnic cleansing are thus not taken into account. As a consequence, the reserved posts for Croats and Bosniacs living in the RS, or Serbs in the Federation, are considerably higher than the real number of the communities actually living there today. This type of solution was intended to facilitate the return of refugees and internally displaced persons, by overcoming discrimination and *de*

facto creating employment opportunities for the respective minority group(s) in the public sector.

Implementation of the Constitutional Court's decision has strengthened the authority of common state institutions in BiH, by helping to re-establish and effectively institutionalise a more multi-ethnic Bosnia. Also, it has put into question the very *raison d'être* of Bosnia's sub-state entities: since the entities are no longer 'ethnic autonomies', as originally intended by the negotiating parties at Dayton, little remains to justify their ongoing existence in the long run.³⁹ Although any straightforward abolition of the entities, and particularly of the RS, would be quite unfeasible under current political circumstances, alternative and more functional federal arrangements are already being discussed.⁴⁰

Strengthening Bosnia's common state institutions

Much international pressure and persuasion has been applied in recent years to strengthen the authority of the common state in BiH. The Dayton constitution itself explicitly foresees that the central state institutions of 'Bosnia and Herzegovina shall assume responsibility for such other matters as are agreed by the Entities; ...or are necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina, in accordance with the division of responsibilities between the institutions of Bosnia and Herzegovina. Additional institutions may be established as necessary to carry out such responsibilities' (Art. 3.4). This possibility of strengthening the central state, while remaining within the limits of the Dayton constitution, was relied upon several times: additional state responsibilities in the areas of defence and intelligence services were introduced by means of HR imposition, based on the provision that BiH

³⁸ Joseph Marko, 'Five Years of Constitutional Jurisprudence in Bosnia and Herzegovina', *European Diversity and Autonomy Papers* no. 7, 2004. Available online at: www.eurac.edu/edap.

³⁹ Florian Bieber, *Post-War Bosnia: Ethnicity, Inequality, and Public Sector Governance* (New York: Palgrave, 2005), p. 133.

⁴⁰ See e.g. European Stability Initiative, 'Making Federalism Work – A Radical Proposal For Practical Reform', *Bosnia Report* (Berlin: 8 January 2004).

shall assume responsibility for such matters as are necessary to preserve its sovereignty, territorial integrity, and political independence. On the other hand, following sustained international persuasion by EU peacebuilders (see below), the entities themselves agreed to transfer additional responsibilities in the fields of indirect taxation and the judiciary.

Several new ministries have been set up at the common state level in BiH since the year 2000. The introduction of a state ministry for security in 2003 and a ministry of defence in 2004 have been crucial towards establishing a state monopoly over the legitimate use of force in BiH. The judicial system has also been systematically rationalised and improved, following the guidelines of an Independent Judicial Commission (IJC) set up by the HR in 2001. Several judicial functions have been successfully transferred from the entities and cantons to the common state level, although the structure of the judicial system in BiH continues to reflect the highly decentralised setup of the country (almost 200 different courts were operating in 2005). Moreover, a common State Court for BiH was inaugurated in 2002, followed by the establishment of a State Prosecutor's Office, and a common High Judicial and Prosecutorial Council in 2004. The latter, in particular, has broad powers in relation to the judiciary at all levels of government. Finally, judicial reform marked a significant further step in 2005, with the establishment of a domestic BiH war-crimes court. The court has already begun trying war crimes indictees whose cases have either been brought to it locally or transferred from the ICTY in The Hague.

In the face of staunch domestic opposition by leading nationalist parties, particularly from the RS, key reforms often had to be imposed by international peacebuilders through the HR. Efforts to implement the more integrative elements of the peace agreement, such as refugee return, and to gradually move beyond the Dayton setup have been opposed most vigorously by Bosnian Serb nationalists attempting to

preserve the quasi-statehood status of the RS. However, the pull factor of European integration has increasingly facilitated domestic political agreement on key reforms *without* direct imposition by the High Representative. As will be shown in more detail below, all major state-building and administrative reforms as laid out in the EU's 2003 'Feasibility Study' as a condition for the opening of negotiations on a Stabilisation and Association Agreement (SAA) were essentially adopted by domestic authorities on their own. The HR, who since 2002 has also been 'double-hatted' as EU Special Representative (EUSR), has thus been able to limit his role to facilitating domestic agreement, through vigorous persuasion and an assertive use of EU conditionality. In addition, although much of the reform process in BiH has been externally induced, the new state institutions are gradually becoming domesticated and several of them operate quite effectively. As the common state has begun to exercise real competencies, this dramatically increased the incentives for all domestic political players – including the nationalists – to take part in joint decision-making and effective power sharing.

The international community has increasingly come to realise that nationalist elites are not necessarily the main obstacle to political normalisation in BiH. For several years, international peacebuilders were focusing on particular problematic individuals, with repeated (and often highly controversial) dismissals of elected domestic officials by the HR. But since 2000, and spurred by a growing EU involvement in the region, international attention has shifted towards promoting badly needed reforms of Bosnia's institutional setup. The main underlying insight is that Bosnia's future as a viable multi-ethnic democracy depends less on particular individuals, to be selectively strengthened or disempowered by means of international decrees, than on the presence of sustainable state institutions with effective power-sharing mechanisms.

4.2 *Towards an integrated EU strategy*

The 2003 European Security Strategy, unanimously adopted by the EU's heads of government, identifies violent or frozen conflicts along the EU's borders as a key threat to regional stability. An integrated EU response is thus advocated, which ought to rely on a mixture of political, military, and economic instruments as needed. With specific regard to the Balkans, the Security Strategy envisages the perspective of full European integration as a key strategic objective.⁴¹ Undoubtedly, the potential for an integrated strategic approach by the EU is greatest today with regard to BiH, where the full range of ESDP and Community instruments has been deployed over the past several years.

Implementing the European Security Strategy in BiH

The European Council decided in 2004 that one of the *initial priorities* for implementation of the EU Security Strategy should be the elaboration of a comprehensive policy for BiH. Today, the EU's military and police operations launched in the framework of ESDP in Bosnia aim at supporting the EU's conditional assistance and reform programme within a particularly difficult context, under the political guidance of the EUSR on the ground and in partnership with the European Commission. The EU's short-term strategic objectives in BiH are continued progress in the implementation of the peace agreement, as well as the signing of a Stabilisation and Association (SAA) agreement between the EU and BiH as soon as major state-building and administrative reforms are implemented by domestic authorities. The longer-term strategic objective consists in promoting a stable, viable and democratic Bosnia that will be able to join the EU as a full member.⁴²

The EU involvement in BiH today is unique not only with regard to the levels of political,

military, and economic *commitment* that have been forthcoming. The actual combination of peacebuilding *tools* that the EU deploys in Bosnia is also quite unprecedented. On the one hand, there are several ESDP instruments (EUSR/EUFOR/EUPM) deployed on the ground, which respond to the EU Council of Ministers at the top of their respective chains of commands. On the other hand, BiH has today advanced beyond the stage of immediate postwar recovery and has begun its path towards European integration. The European Commission's Enlargement Directorate oversees the adoption of domestic reforms in BiH as required by EU conditionality, and its annual progress reports assess the situation on the ground, recommending further action to be taken by domestic authorities as necessary. But the long-term integrated approach envisioned by the European Security Strategy itself goes well beyond crisis management, advocating a transformation of the political and socio-economic context in target countries. Hence, while a credible ESDP presence in BiH remains crucial today, effective long-term stabilisation and peacebuilding can best be achieved by providing conditional support for domestic political, economic, and administrative reforms within the framework of clearly outlined political and technical benchmarks.

Institution-building as a condition for further European integration

In several countries of the Western Balkans, and in BiH probably more than elsewhere, the post-communist transition to democracy and market economy has had to advance in parallel with a challenging process of postwar reconstruction and stabilisation. Comparative evidence suggests that the additional short-term strains resulting from political and economic liberalisation can sometimes fuel ethnic tensions in divided postwar societies, thus putting immediate stability at risk. EU conditionality itself

⁴¹ European Council, 'A Secure Europe in a Better World: European Security Strategy', Brussels, 12 December 2003, p.8.

⁴² European Council, 'European Security Strategy – BiH Comprehensive Policy', 17/18 June 2004.

includes market reforms and privatisation requirements that can contribute to short-term economic hardship for the local population.⁴³ This leads to at least two policy-relevant observations with regard to BiH: first, although the risk of large-scale ethnic violence in BiH has today greatly diminished, the integrated approach between ESDP and Community instruments adopted by EU peacebuilders remains crucial. While EU conditionality and Community assistance provide strong incentives for domestic reforms, the EU's ongoing military presence and EUSR coordination on the ground ensure that potential spoilers of the peace are effectively deterred until genuinely self-sustaining institutions are put in place. Second, although EU conditionality in the framework of the Stabilisation and Association Process (SAP) has already been crucially targeted at institution-building, further efforts need to be made in this sense. The aim should be to establish, as far as possible, sustainable common state institutions *before* potentially more disruptive reforms are adopted in the process of wider economic liberalisation required for EU membership.

Following the establishment of a joint EU/BiH Consultative Task Force (CTF) in 1998, the SAP for Bosnia was launched in 1999. Although within the SAP, the same benchmarks are applied to the entire Western Balkans region, each country will advance towards EU membership on its own merits, depending on its progress in meeting the requirements.⁴⁴ EU conditionality has been presented to BiH authorities in a series of successive reform packages, each of which needs to be successfully adopted before the country can enter into the next phase of European integration. Hence, for instance, eighteen initial reform steps set out by the Commission in its 2000 'Road Map' had to be substantially completed, before a 'Feasibility Study' was published in late 2003 on the coun-

try's preparedness to start SAA negotiations with the EU. The Feasibility Study itself laid out sixteen additional reform requirements for BiH authorities, which were specifically targeted at setting up *effective governance capacities* before the opening of SAA negotiations. The underlying rationale is that only coherent and functioning states can successfully negotiate an SAA with the EU, and subsequently begin to implement the EU's legal *acquis* as a condition for further European integration. The main conditions laid out by the European Commission in its 2003 Feasibility Study can be summarised as follows:

1. Compliance with existing international conditionality and international obligations, particularly with regard to the ICTY and the Council of Europe.
2. Ensure a more effective government, public administration, and judiciary, especially at the common state level.
3. Step up the fight against organised crime, and in the process proceed with structural police reform aimed at rationalising police services.
4. Achieve substantial progress towards the establishment of a common state-wide VAT, establish a comprehensive trade policy, and develop the BiH single economic space by eliminating unnecessary administrative requirements.
5. Ensure the viability of an independent single state-wide public broadcasting system for BiH.⁴⁵

Those conditions were clearly developed with the objective of state- and institution-building in mind. Crucially, thanks to the pull factor of European integration, BiH political authorities were able to adopt all major reforms required by the 2003 Feasibility Study on their own. There was no need for the HR to impose any of the main laws or state-building reforms related to the Feasibility Study, such as the law

⁴³ Milada A. Vachudova, *Europe Undivided. Democracy, Leverage, and Integration After Communism* (Oxford: Oxford University Press, 2005), pp. 247-55.

⁴⁴ European Commission, 'Communication from the Commission: 2005 enlargement strategy paper', COM(2005) 561, Brussels, 9 November 2005, p. 9.

⁴⁵ European Commission, 'Report from the Commission to the Council on the preparedness of BiH to negotiate an SAA with the European Union' ('BiH Feasibility Study'), COM(2003) 692, Brussels, 18 November 2003, pp. 40-2.

on the Indirect Tax Authority, the VAT law, and the law on a state-wide public broadcasting system. High Representative Paddy Ashdown nonetheless decided to subsequently impose certain technical amendments to the agreed-upon legislation. Also, when the domestic parties could not agree on a common candidate to lead some newly established agencies, the HR made nominations that were partly related to the Feasibility Study agenda.⁴⁶ However, the political significance of those residual ‘soft impositions’ should not be overestimated, given that those measures were later also adopted by relevant domestic authorities.⁴⁷

In late 2005, the European Commission considered that BiH had made sufficient progress in addressing the sixteen priorities identified in the 2003 Feasibility Study. Progress was deemed particularly satisfying with regard to the strengthening of common state institutions and administrative capacity.⁴⁸ The Commission therefore recommended the opening of negotiations on the conclusion of an SAA with BiH, which the EU Council of Ministers agreed to soon thereafter. The plan was to sign the SAA between the EU and BiH in the course of 2006. However, for several months before the October 2006 general elections, domestic politicians in

Table 4: Adoption of major legislation and state-building reforms in compliance with EU conditionality as laid out in 2003 ‘Feasibility Study’	
Adoption by BiH authorities without OHR imposition	‘Soft imposition’ by OHR
Establishment of BiH Refugee Return Fund	
Completion of transfer of human rights bodies to BiH control	
BiH Ombudsman Law	
Establishment of High Judicial and Prosecutorial Council (HJPC) for BiH	Amendments to HJPC legislation
Law on State Investigation and Protection Agency (SIPA)	Amendments to SIPA law Appointment of SIPA director
Framework agreement on police reform	
Establishment of proper structures to deal with asylum and migration	
Law on the Indirect Tax Authority (ITA) and enabling legislation	Amendments to ITA law Appointment of chairman of ITA governing board
Law on value-added taxation (VAT)	
Law on financing BiH common state institutions	
Law on Foreign Investment Promotion Agency	
Establishment of BiH Competition Council	
Law on state-wide Public Broadcasting System	

⁴⁶ The HR notably imposed amendments to the law on the Indirect Tax Authority, the High Judicial and Prosecutorial Council law, and the Civil Service law. He also appointed the director of the State Investigation and Protection Agency and the chairman of the Indirect Tax Authority’s governing board.

⁴⁷ Personal email exchange between the author and an EU official, 25 July 2006.

⁴⁸ European Commission, ‘Communication from the Commission to the Council on the progress achieved by BiH in implementing the priorities identified in the “Feasibility Study”’, COM(2005) 529, Brussels, 21 October 2005.

BiH were not willing to compromise on questions they perceived as particularly sensitive, such as most notably the implementation of police reform. Given that EU representatives had repeatedly insisted on the importance of police reform for Bosnia's further European integration, the conclusion of the SAA was further postponed and is now high on the agenda for 2007. Once the SAA is adopted, even following the most optimistic scenario, it should still take roughly a decade before BiH will be able to join the EU as a full member. First of all, a satisfactory track-record in implementing SAA obligations will be required once the OHR and his controversial 'Bonn powers' have been withdrawn, before the EU can seriously consider any membership application. Only at this stage would it be possible to grant official *EU candidate* status to BiH. Finally, a sufficient degree of compliance with the Copenhagen criteria for EU membership would be required for the European Council to decide on the opening of formal *accession negotiations*, which typically result in the signing of an EU accession treaty.

Why constitutional reform can hardly be avoided

International peacebuilders have facilitated and sometimes imposed major state-building reforms in BiH over the past several years, but these never formally exceeded what was allowed by the existing Dayton constitution. There is now a growing awareness among reformist Bosnian elites and international peacebuilders alike that key reforms of the Dayton constitution will be necessary to transform BiH into a fully self-sustaining and democratic state. European and other international peacebuilders agree that any constitutional change at the state level in BiH will have to emerge out of a genuine domestic debate and be supported by all major political players to be truly legitimate. The first substantial domestic debate on constitutional reform emerged in late 2004, in view of the tenth

anniversary of the DPA. This debate seems to have been spurred, to a significant degree, by repeated and unequivocal comments from Brussels that 'from a perspective of European integration, it is difficult to argue that the current constitutional order [in BiH] is optimal.'⁴⁹ However, EU peacebuilders have so far refrained from explicitly linking specific constitutional reforms to EU conditionality, either in their 2003 'Feasibility Study' or elsewhere.

The specific direction taken by the recent domestic debate on constitutional reform in BiH has been much influenced by another international body, the Council of Europe. In early 2005, an expert body from the Council of Europe, the 'Venice Commission', put forward a series of specific recommendations aimed at further strengthening the central state and establishing more effective power-sharing mechanisms. The Venice Commission recommended a comprehensive *transfer* to the state level not only of legislative powers, but also of executive agencies and financial resources. If the state of BiH is to become truly self-sustaining economically, it would 'not be possible to continue simply creating further layers of bureaucracy at the State level in addition to the multiple bureaucracies at the lower level.'⁵⁰ The Venice Commission also recommended several specific reforms of Bosnia's existing state institutions:

1. The 'vital interest' veto right, which the Dayton constitution confers to Bosnia's constituent ethnic groups within the state parliament, ought to be precisely and strictly defined. This appears necessary to end persistent abuse of the veto and overcome recurrent decisional deadlock resulting from the mere threat of its use;
2. Bosnia's upper chamber of parliament, the House of Peoples, has little or no stake in the political process at the state level and merely functions as a negative ethnic veto chamber. It should thus ideally be abolished, and the reformed, clearly defined

⁴⁹ European Commission, 'BiH Feasibility Study', op. cit., p.6; and '2005 Progress Report', op. cit., p. 9.

⁵⁰ Venice Commission, op. cit., p. 8.

- ‘vital interest’ veto right should be transferred to the House of Representatives;
3. The collective state presidency has proved unworkable and should therefore be reduced to a single President. At the same time, most of the presidency’s current constitutional powers should be transferred to a strengthened Council of Ministers.⁵¹

Domestic constitutional talks intensified in late 2005, also facilitated by a high-profile involvement on the part of the US embassy in Sarajevo. After several months of negotiations, domestic political agreement appeared to be feasible on a reform package that took up most of the Venice Commission’s principal recommendations: the collective state presidency would be abolished and replaced by a single president; the state-level cabinet would mature into a full-blown government; two new state ministries – one for agriculture and one for science, technology, and the environment – would be established; and the House of Peoples would see its powers significantly reduced. The constitutional reform package negotiated by the leaders of Bosnia’s eight largest political parties also foresaw that the state would no longer have needed to secure the consent of the entities to implement reforms required to comply with EU conditionality. In other words, the BiH state was going to have exclusive jurisdiction over any issue directly linked to European integration. It is no secret that with the current constitutional framework in place (see 3.1.), adoption of the EU’s legal *acquis* would take longer in BiH than in any other Balkan country, with the perspective of EU accession receding into the rather distant future.⁵²

However, the latest efforts to agree on a package of domestic constitutional reforms were ultimately unsuccessful. On 26 April 2006, a vote in the BiH lower house of parliament failed by a narrow margin to produce the required two-thirds majority to adopt constitutional changes.

The opposition of two unlikely bedfellows, a new hardline Croat splinter party (HDZ 1990), which feared a sell-out of Croatian interests, and the largely Bosniac SBiH, for which the proposed amendments did not go far enough, was sufficient to bring the reform process to a halt.⁵³ Admittedly, the reform package had been negotiated rather hurriedly (the aim was to have the reforms in place for the October 2006 general elections) and in an elite-centred process, with little effort to build up broader public support. Parliamentary rejection of the reform package means the end of this particular attempt to amend the Dayton constitution. But renewed efforts need to be urgently made, now that a new state government has been formed, and EU peacebuilders should fully exploit their potential leadership role in this context. If necessary, constitutional reform ought to be explicitly linked to EU conditionality.

4.3 EU conditionality as an alternative to international trusteeship?

The central hypothesis of this paper is that EU conditionality has begun to facilitate a relatively smooth transition *beyond* international trusteeship in BiH, once the HR/EUSR started to communicate it assertively and it was clearly linked to the perspective of EU membership. The recent shift towards more effective domestic decision-making thanks to the ‘pull factor’ of European integration has made it possible to progressively phase out the HR’s controversial ‘Bonn powers’, and they are likely to be also formally abandoned soon, once the domestic parties agree on the implementation of police reform. Thanks to the additional political leverage provided by an effective ESDP presence on the ground, the European integration and pre-accession process has thus begun to show its

⁵¹ *Ibid.*, pp.10-11.

⁵² Personal interview with EU official, Brussels, 13 July 2006.

⁵³ Mirna Skrbic and T.K. Vogel, ‘Constitutional Reform Falters’, *Transitions Online*, 27 April 2006.

effectiveness as a tool for fostering viable public institutions in BiH and for providing assistance in ways that develop rather than undermine domestic capacity.

The perspective of EU membership for the Western Balkans became unequivocally clear on the occasion of an EU-Balkans summit held in Thessaloniki in 2003. The concluding document of the summit formally recognised that the ‘future of the Balkans is within the European Union. ... Preparation for integration into European structures and ultimate membership into the European Union, through adoption of European standards, is now the big challenge ahead.’⁵⁴ Since then, the HR/EUSR on the ground in BiH has been crucially able to cajole and induce local political elites to adopt reforms required for further European integration, mostly *without* resorting to direct international imposition. Although the Bosnian nationalists may disagree about almost anything among themselves, it has today become very difficult for any local politician to openly challenge EU conditionality. The previous BiH Council of Ministers, formed in 2003, had already made Europe its first priority. Following the success of relatively moderate political parties at the October 2006 general elections, and the concomitant weakening of traditional ethnic nationalist hardliners, the new government is likely to be even more receptive to various forms of inducements and persuasion by EU peacebuilders.⁵⁵ This being said, the actual pace of reform remains excruciatingly slow and BiH still has some way to go before it will be a genuinely self-sustaining state, able to autonomously implement the EU’s weighty legislative *acquis* and to fully determine its own future.

Getting the incentives right

The EU’s successful experience in Central and Eastern Europe (CEE) with promoting far-reaching political and economic reforms by holding out the incentive of EU membership generated the expectation that the same ‘carrot’ could become a key policy tool to stabilise the Western Balkans and gradually integrate them into Euro-Atlantic structures. EU conditionality towards the Balkans, however, has not been able to provide the same powerful incentives for domestic political reform that most CEE states experienced throughout the 1990s. The SAP process itself was only moderately effective until it was clearly linked to the perspective of eventual EU membership in 2003. Hence, the original idea of turning the status of an ‘Associate’ (following the conclusion of an SAA) into an attractive longer-term option for the countries of the region clearly didn’t work out as expected.⁵⁶ The SAA is best seen today not as a final objective, but rather as an instrument of early EU conditionality intended to promote state-building and the strengthening of domestic institutions, before the countries of the Western Balkans can further advance on their path toward European integration.

There is no doubt that the demanding, though in many regards necessary, early conditionality channelled through the SAP has made the perspective of eventual EU membership recede into the rather distant future for several Balkan countries. While the implementation of SAP conditionality is likely to improve overall domestic well-being in the long run, political leaders in BiH and elsewhere are often required to adopt difficult domestic reforms, without any immediate pay-off either for themselves or

⁵⁴ EU Council of Ministers, ‘EU-Western Balkans Summit: Thessaloniki Declaration’, 21 June 2003.

⁵⁵ The three traditional ethnic nationalist parties – the Serb Democratic Party (SDS), the Croatian Democratic Union of BiH (HDZ BiH) and the mostly Bosnian Muslim Party for Democratic Action (SDA) – have emerged weakened from the October 2006 elections. The main winners are the more moderate Alliance of Independent Social Democrats (SNSD) in the Republika Srpska (RS) and the Party for BiH (SzBiH) in the Federation.

⁵⁶ Stefan Lehne, ‘Has the “Hour of Europe” come at last? The EU’s strategy for the Balkans’, in Judy Batt (ed.), ‘The Western Balkans: moving on’, *Chaillot Paper* no. 70 (Paris: EUISS, October 2004), p. 122. See also Dimitrios Triantaphyllou, ‘The Balkans between stabilisation and membership’, in Judy Batt et al., ‘Partners and neighbours: a CFSP for a wider Europe’, *Chaillot Paper* no. 64 (Paris: EUISS, September 2003).

for the broader population. Crucially, EU economic assistance to BiH is currently not directly linked to conditionality. The reasoning behind this policy line is that the carrot of economic assistance would probably not make a difference in the case of difficult state-building reforms, with the consequence that the local population would suffer if aid were withheld following sustained domestic decisional deadlock.⁵⁷ However, as a result of this policy, currently the only major reward offered by the EU once a given reform package has been successfully adopted consists in being admitted to the next stage of European integration, with a new set of demanding conditionalities to be complied with.

To strengthen the incentives for domestic reform in BiH that result from the process of European integration, EU policy-makers should seriously think about introducing *intermediate rewards* for local politicians and particularly the Bosnian public at large. In other words, compliance with EU conditionality and the adoption of particularly difficult reforms (such as changing the Dayton constitution) should be clearly linked to immediate and tangible benefits. Possible examples include selective inclusion into community programmes (e.g. with regard to education, agriculture, and regional development), as well as visa-free travel to the EU. The perspective of full visa liberalisation, in particular, would have an enormous power of inducement towards local politicians in BiH. If the perspective of full visa-liberalisation for travel to the EU were linked to the adoption of specific state-building reforms as well as constitutional change, it would become virtually impossible for even the most nationalistic political leaders in BiH not to cooperate with the EU's peacebuilding agenda. Current efforts towards 'visa facilitation' are clearly a step forward, but much will depend on what facilitation ultimately implies and on whether it is explicitly linked to EU conditionality. Finally, lack of progress on the issue of visa liberalisation could have more

dramatic implications in BiH than elsewhere: given that most ethnic Croats in BiH also hold Croatian citizenship, they may soon be able to travel visa-free to the EU once Croatia completes its own accession process. This could have serious repercussions upon inter-ethnic tensions in Bosnia, unless the EU is willing to grant early conditional visa liberalisation to all of BiH's citizens.

There is no doubt that the pre-accession process should retain its current meritocratic nature, in order for the EU to remain a credible actor throughout the Balkans. The EU can hardly afford to be 'flexible', in the sense of lowering the requirements for accession as a means to quickly reward selected countries in the region. The EU itself could not function on that basis.⁵⁸ Yet by granting intermediate rewards to the most heavily burdened countries of the Western Balkans – at relatively low additional costs to current member states – the EU could lock in compliance by creating a set of immediate benefits that could be used as a carrot and stick. With specific regard to postwar BiH, where the adoption of domestic reforms has proved to be particularly difficult due to the country's divided reality and its dysfunctional constitutional framework, the 'carrot' of intermediate rewards would be a powerful tool to be used assertively by the EUSR and other EU peacebuilders on the ground.

ESDP leverage remains critical

The pull factor of European integration has crucially facilitated a gradual transition beyond international trusteeship in postwar BiH. Reacting to the EU's conditionality as laid out in its 2003 'Feasibility study' on BiH's preparedness to negotiate an SAA, local Bosnian politicians have begun to adopt and increasingly implement major state-building reforms on their own. But it would be somewhat simplistic to see EU conditionality *per se* as the cause for reduced domestic political deadlock in BiH, and thus as

⁵⁷ Personal interview with EU official, Brussels, 13 July 2006.

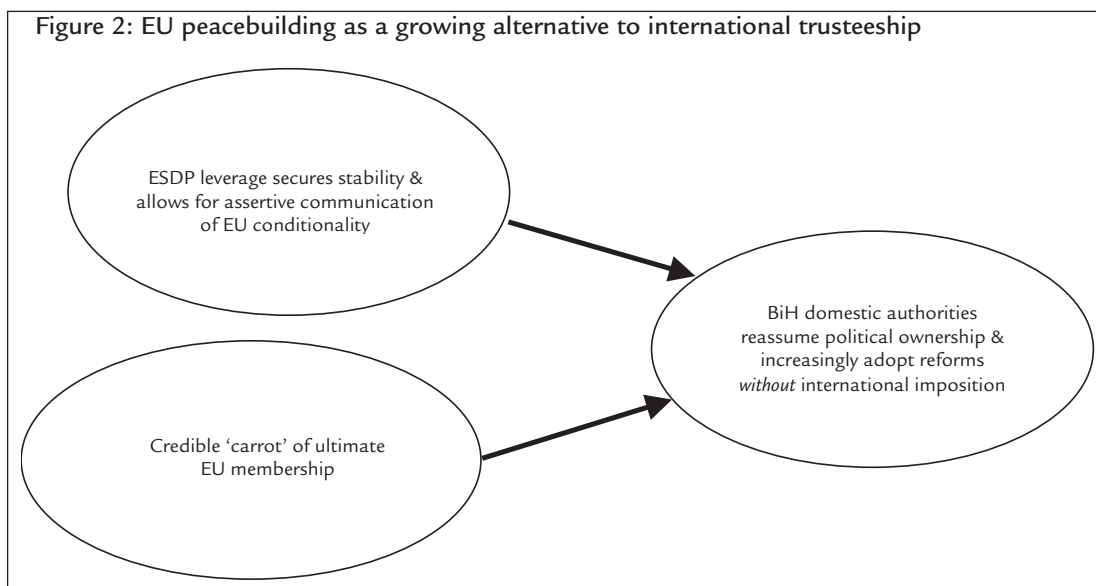
⁵⁸ Judy Batt, 'Conclusion', in Judy Batt, (ed.), *The Western Balkans: moving on*, op. cit., p. 127.

a sufficient alternative to international trusteeship. Substantial external political leverage remains needed in BiH today to advance crucial state-building reforms, although the HR's controversial 'Bonn powers' have clearly outlived their usefulness.

The incentives resulting from the relatively distant perspective of EU membership are not sufficient by themselves to make power-sharing work in a deeply divided society with a dysfunctional constitutional structure, such as present-day BiH. The European Commission has essentially deployed the same type of conditionality towards the entire Western Balkans region through the SAP framework, monitoring compliance in a technocratic and largely non-political way. There is a prominent view among European Commission officials that once basic stability has been secured, the pace of European integration and reform should be decided by the domestic elites and local population within each country and should not be 'artificially' pushed through outside leverage.⁵⁹ This exclusive reliance on the EU's 'soft power' of attraction is certainly appealing in

the abstract, but the problem is that it may not lead to meaningful results in divided postwar societies.

Indeed, evidence thus far suggests that what worked in CEE does not produce quite the same results in the Balkans: divided postwar countries such as BiH are often simply not able to adopt difficult reforms completely on their own, due to the lack of a broad-based domestic political consensus. Entrenched sectarian interests and the permanent threat that moderate nationalists may be outflanked by more extremist rivals are not immediately compatible with the EU's state-building and reform agenda. The mere pull factor of European integration therefore remained too weak in BiH as long as it was communicated in a technocratic manner by the European Commission. Additional assistance – in the form of active leverage targeted at the domestic political level – has been needed. Thus far, this kind of assertive persuasion, short of straightforward imposition, has been quite effectively provided by the ESDP presence on the ground in BiH, under the direct political guidance of the 'double-hatted' EUSR/HR.



⁵⁹ Interview with European Commission official, Brussels, 13 July 2006.

The ‘double-hatted’ EUSR/HR in BiH has been able to link specific reforms to existing EU conditionality in an assertive manner, thus effectively communicating the urgency of compliance to local publics and political leaders. By publicly intervening in the BiH domestic political debate and calling attention to the need for specific reforms as a condition for further progress on European integration (through speeches in parliament, comments on BiH radio and television, and weekly columns published in major BiH newspapers), the EUSR/HR has made ongoing obstructionism increasingly costly for elected Bosnian officials. In the case of recalcitrant nationalistic leaders, explicit ‘naming and shaming’ has been an effective political tool available to the EUSR/HR. Moreover, the EUSR – acting in cooperation with the European Commission – has been able to put specific progress on hold if no compliance was forthcoming, thus transforming technocratic EU conditionality into a real political carrot-and-stick strategy. The EUSR’s assertive deployment of EU conditionality to promote domestic police reform in BiH will be discussed in the next section.

Beyond the EUSR’s efforts, the presence of an EU military force (EUFOR) and an EU police mission (EUPM) on the ground have also significantly contributed to the EU’s political leverage in BiH: the EU’s political commitment is today visibly confirmed to the local population, while the mobile ESDP presence on the ground makes it possible to constantly monitor potentially problematic local developments. By guaranteeing political stability and providing ongoing military deterrence in what still remains a fragile country, the integrated ESDP presence in BiH has crucially facilitated the gradual transition beyond international trusteeship. The potentially destabilising short-term effects of important domestic reforms – particularly in the field of state-building and economic liberalisation – have remained closely circumscribed, making it possible to push forward an ambitious European reform agenda.

The example of police reform

Most recently, the EUSR/HR has deployed EU conditionality assertively in an attempt to advance domestic police reform in BiH. The example of police reform highlights both the great potential as well as the current limits of EU leverage quite nicely. Substantive police reform has long been overdue in postwar BiH. The 1992-1995 war left behind three separate police forces: Bosniac, Croat, and Serb, each with its own jurisdictions. The first two have since merged, at least nominally, but the RS long refused any efforts to reform structures and integrate them with those of other ethnic groups.

Police reform is one of the last major policy issues that must be resolved before international peacebuilders can gradually diminish their decade-long engagement. In late 2005, when long-standing efforts to achieve a domestic agreement on police reform risked being derailed, the EUSR’s political leverage allowed to transform EU conditionality into an effective peacebuilding tool: the main political parties in BiH finally reached a framework agreement on police reform in October 2005, as the RS National Assembly could no longer afford to reject a reform package in line with EU conditionality that had become central to the domestic public debate. The agreement does in principle fulfil all major requirements set out by the EU as a condition for further European integration: all legislative and budgetary competencies concerning the police will be transferred from the entities to the common state level; no political interference will be tolerated with operational policing; and police districts will be determined exclusively by technical criteria, without regard to ethnicity.⁶⁰

However, progress with regard to the subsequent *implementation* of police reform has remained frustratingly slow, in the face of persistent obstructionism by Bosnian Serb politicians. This led Javier Solana, the EU High Representative for CFSP, to issue an unusually blunt statement calling on the RS government to

⁶⁰ Office of the High Representative, ‘Agreement on Restructuring of Police Structures in BiH’, 5 October 2005 (available at: www.ohr.int).

honour its commitments on police reform. Lack of progress on this issue, he noted, would inevitably lead to delays in Bosnia's further European integration.⁶¹ Christian Schwarz-Schilling, the current HR/EUSR, also decided to again assertively intervene in the BiH domestic political debate and explicitly name the spoilers, in an attempt to overcome political deadlock. In one of his weekly columns published in several BiH newspapers in mid-2006, Schwarz-Schilling insisted on the benefits that police reform would bring to the local population, which he hoped would build up domestic support for compliance with EU conditionality. But he also explicitly warned that through their ongoing obstructionism, 'the authorities of Republika Srpska [were] risking delaying finalisation of the SAA, thereby setting back Bosnia and Herzegovina's progress on the road to Europe.'⁶²

The willingness of BiH politicians to autonomously implement difficult reforms in compliance with EU conditionality had weakened significantly during the months leading up to the October 2006 general elections. Several domestic political candidates were clearly

playing the nationalist card as a means to court their electorate. During this pre-electoral period of heightened political tension, the pull factor of European integration was not strong enough as a 'carrot' to promote major state-building reforms, even when the need for compliance was assertively communicated by the EUSR/HR on the ground. But now that a new government is in place and electioneering again gives way to pragmatic day-to-day administration, political leaders in BiH – including the nationalists – will find it very difficult to publicly oppose any reforms explicitly singled out by EU peacebuilders as a condition for further European integration. EU peacebuilding in BiH has thus clearly begun to make a difference. The EU now ought to further step up its efforts, with particular regard to inter-agency coordination and the strategic communication of its conditionality on the ground (see next chapter for specific recommendations). Indeed, this will be necessary if the EU wants to fully take over the coordination of international peacebuilding efforts in BiH once the OHR is closed down and international trusteeship thus also formally ceases to be an option.

⁶¹ EU Council Secretariat, 'EU High Representative for the CFSP expects RS Government to honour commitments on police reform', Press statement, Brussels, 20 July 2006.

⁶² EUSR, 'Police Reform is about making BiH a safer place to live', weekly column by Christian Schwarz-Schilling, published in several BiH newspapers, 28 July 2006.

Conclusion and policy recommendations

Since the ceasefire was consolidated in late 1996, significant progress has been made in BiH towards establishing a viable institutional framework, particularly at the common state level. Although the pace of reform has been painfully slow and direct international imposition often proved to be necessary, today there is no immediate risk of renewed ethnic violence in BiH and the potential undeniably exists to bring about a sustainable multi-ethnic democracy. International peacebuilding in BiH has thus been overall quite successful, especially if compared to other similar cases of postwar reconstruction following sustained ethnic violence, either in Sub-Saharan Africa, the Middle East, or elsewhere. The main reason for Bosnia's relative success undoubtedly lies in the sustained international commitment that has been forthcoming over the past decade.

There are no easy solutions or international 'quick fixes' to the entrenched polarisation and resulting institutional weakness that typically haunt divided societies after several years of ethnic violence. The Dayton Peace Agreement (DPA) on Bosnia successfully ended the war in late 1995, but at the cost of an extremely weak postwar state that would probably not have survived without continuing international assistance. The emergence of the EU as the main international peacebuilder in BiH over the past several years, and notably since 2003, has allowed for critical progress towards making Bosnia's common institutional structure increasingly self-sustaining. EU conditionality has begun to promote crucial state-building reforms in BiH without direct international imposition, once it was: (1) combined with the credible 'carrot' of progressive European integration; (2) assertively communicated by the

'double-hatted' HR/EUSR by means of repeated interventions in the domestic political debate; and (3) underpinned by a credible ESDP presence on the ground that allowed to push forward bold reforms while minimising risks for political stability. EU peacebuilding in BiH has thus made it possible to progressively move *beyond* international trusteeship, while also actively fostering increased domestic political ownership and accountability of local politicians to their electorate. This being said, EU peacebuilders should look forward to a long-term engagement in BiH, and they clearly ought to further improve their strategic approach to maximise their impact.

The main challenge ahead for EU decision-makers at this point will consist in ensuring ongoing political leverage towards BiH authorities, as well as close technical assistance on the ground. This will require the EU to fully take over the coordination of international peacebuilding efforts in BiH once the OHR is closed down, possibly in late 2007. Some specific policy recommendations are put forward below.

- ▶ **Strengthening the EUSR's mandate:** the HR's intrusive 'Bonn powers' have today clearly outlived their usefulness. The best option among those currently envisioned would be to close down the OHR entirely as soon as possible, while replacing it with a significantly strengthened EUSR mandate. Ideally, following the OHR's closure in late 2007, the EUSR would be ready to step in by taking over all non-executive aspects of civilian peace implementation. The central goal of EU peacebuilders should be to make sure that all the positive elements of the OHR's contribution to-date are retained;

particularly with regard to domestic monitoring, political leverage, and the coordination of international efforts on the ground. In other words, the EUSR's mandate should be strengthened so as to transform it into the main coordinating agency of international peacebuilding efforts in BiH, able to successfully carry on the OHR's non-coercive functions as foreseen in Annex 10 of the DPA. The EUSR's mandate with regard to other ESDP elements in BiH – namely EUFOR and EUPM – should also be strengthened so as to ensure a maximum of coherence among EU peacebuilding efforts on the ground.

- ▶ A 'double-hatted' EUSR/Head of EU delegation: to date, the EUSR and the head of the European Commission Delegation to BiH have functioned as separate EU authorities, with no formal hierarchical relationship between them. Notwithstanding sustained efforts at mutual coordination, this has often led to divergent messages to local politicians as well as to the broader public, which has weakened the EU's potential leverage and has clearly not benefited the overall goal of peacebuilding in BiH. EU decision-makers should therefore undertake all necessary efforts to ensure that the EUSR in BiH also becomes 'double-hatted' as head of the European Commission Delegation to the country. Ideally, this should go in parallel with an overall strengthening of the EUSR's mandate and the phasing out of the OHR. The recent, quite successful experience with a 'double-hatted' EUSR/Head of EU delegation in FYROM provides a useful example that could be partially followed in BiH. However, while in FYROM the head of the European Commission Delegation was appointed as EUSR, in Bosnia it will almost necessarily have to be the other way round: given the substantial ESDP presence on the ground in BiH and the need for ongoing strong political lever-

age, the EUSR will almost inevitably have to take the lead. Policy planners at the European Commission are currently still rather sceptical of this possibility, fearing a loss of political influence and prestige. But inter-institutional jealousies between the European Commission and the Council Secretariat should give way to responsible cooperation on the Bosnian issue, given that the EU's international standing as a successful peacebuilder is here crucially at stake.

- ▶ **Strengthening the EU's involvement in constitutional talks:** the current BiH constitution, negotiated at Dayton in 1995, entrenches a cumbersome and essentially unworkable system of ethnic power sharing at the common state level. It is no secret that with the current constitutional framework in place, adoption of the EU's legal *acquis* would take longer in BiH than in any other Balkan country, with the perspective of EU accession receding into the rather distant future.⁶³ Constitutional reforms cannot be imposed from the outside; they need instead to result from a genuine domestic debate, so that the future Bosnian state will be considered as truly legitimate. Following the failure of recent efforts at constitutional reform, EU peacebuilders should become much more seriously involved in the process. One first important goal should be for the EUSR to directly facilitate domestic constitutional talks, by providing crucial expertise and assistance to the local parties, in partnership with the European Commission and other international organs. In addition, the EUSR and other EU peacebuilders in BiH should become much more active on the public information front, by conveying a single coherent message to the domestic public and thus systematically trying to build up public support for constitutional reform among all of Bosnia's communities. This will require sustained efforts and interaction with

⁶³ Personal interview with EU official, Brussels, 13 July 2005.

Bosnian civil society, the media, and the local population.⁶⁴ The majority of the Bosnian public – but particularly local Croats and Serbs, who currently still remain rather sceptical of constitutional reform – have to be convinced that they will effectively benefit from an improved constitutional framework at the common state level. Finally, once a constitutional reform package has been negotiated in principle by the local parties, its adoption should be directly linked to existing EU conditionality.

- ▶ **The dangers of ‘enlargement fatigue’:** the EU’s political leaders today are facing a stark choice between supporting a credible accession strategy for BiH, on the one hand, and permanent crisis management, on the other. On the occasion of an informal EU-Balkans meeting held in Salzburg in March 2006, the EU foreign ministers reaffirmed their ‘full support’ for the Thessaloniki agenda adopted in 2003, which foresees the progressive integration of the entire Western Balkans region into the European Union. However, the EU foreign ministers placed a new emphasis on the need to take the EU’s ‘absorption capacity’ into account before further enlargement.⁶⁵ Following the rejection of the proposed EU constitutional treaty by a majority of French and Dutch citizens in 2005, the political climate within several EU member states has become increasingly hostile to further enlargement. But EU enlargement has overall been an astonishing success story, and it should not become a scapegoat for domestic discontent within current member states. If the EU’s power of attraction fades away, progress made in BiH over the last few years could be lost and even a strengthened

ESDP presence on the ground might find it difficult to promote long-term peacebuilding and political reform. Either Bosnia is transformed into a fully self-sustaining democracy, by progressively integrating it into European structures, or it will remain a constantly unstable state at the EU’s margins where sectarianism and organised crime thrive.

- ▶ **EU peacebuilding beyond BiH:** this paper clearly suggests that the added value of EU peacebuilding is greatest when a strong ESDP presence on the ground is also combined with the credible prospect of progressive European integration. Hence, the recent experience with EU peacebuilding in BiH can hardly be generalised beyond the immediate European periphery, and it does certainly ‘not allow us to extrapolate any glib solutions for Iraq or Afghanistan.’⁶⁶ This leads to a sobering conclusion: EU peacebuilding missions deployed to post-war countries that have no realistic prospects of EU membership will by-and-large have to rely on the same tools currently being employed by other national or multilateral agents, namely military peacekeeping, disarmament and demobilisation, and long-term technical assistance for institutional development and reform. On the other hand, several lessons from EU peacebuilding in BiH could be directly applied to any future European peace operation in Kosovo. If the outcome of current status negotiations points towards guided independence for Kosovo, the ‘carrot’ of eventual EU membership should be combined with a credible ESDP presence on the ground, capable of securing political stability and communicating EU conditionality effectively.

⁶⁴ On the overall need to strengthen the EU’s public information strategy, see Dov Lynch, ‘Communicating Europe to the world: what public diplomacy for the EU?’ *EPC Working Paper* no. 21, Brussels, November 2005.

⁶⁵ EU Council Secretariat, ‘Salzburg EU/Western Balkans Joint Press Statement’, Brussels, 11 March 2006.

⁶⁶ Paddy Ashdown, ‘10 years after Dayton: Lessons for fixing failed states’, *International Herald Tribune*, 20 November 2005.

Annex

Abbreviations

BiH	Bosnia and Herzegovina (Republic of)
CARDS	Community Assistance for Reconstruction, Development, and Stabilisation
CEE	Central and Eastern Europe
CFSP	Common Foreign and Security Policy
DPA	Dayton Peace Agreement
ESDP	European Security and Defence Policy
EUFOR	European Union Force
EUPM	European Union Police Mission
EUSR	European Union Special Representative
FBiH	Federation of Bosnia and Herzegovina (Bosniac-Croat Entity)
FYROM	Former Yugoslav Republic of Macedonia
HDZ	<i>Hrvatska demokratska zajednica</i> (Croatian Democratic Union)
HR	High Representative
ICTY	International Criminal Tribunal for the Former Yugoslavia
IPA	Instrument of Pre-accession Assistance
NATO	North Atlantic Treaty Organisation
OHR	Office of the High Representative
OSCE	Organisation for Security and Cooperation in Europe
PIC	Peace Implementation Council
RS	<i>Republika Srpska</i> (Serb Entity)
SAA	Stabilisation and Association Agreement
SAP	Stabilisation and Association Process
UNHCR	United Nations High Commissioner for Refugees

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