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AN AGENDA FOR BOSNIA AND HERZEGOVINA'S
LAST HIGH REPRESENTATIVE

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An Agenda for Bosnia and Herzegovina's Last High Representative

When Dr. Christian Schwarz-Schilling comes to Bosnia and Herzegovina (Bosnia) on February 1, he will inherit from his predecessor Lord (Paddy) Ashdown not just the exalted title and sweeping powers of a High Representative but also a particularly acute version of the dilemma that has plagued the office for several years. On the one hand, the High Representative is accountable to the wider international community in the form of the Peace Implementation Council (PIC), which wants to replace power with persuasion as the key tool to achieve its goals in the country and to transfer international leadership from the Office of the High Representative (OHR) to the European Union. On the other hand, in Bosnia itself, there is a continuing need for robust international leadership to advance and consolidate a still-fragile state-building process -- leadership of the sort that can only come from the High Representative and the OHR.

This transition period will be marked by frustrations and turf battles, and the High Representative will need all his political skills to navigate the process successfully. This brief aims to highlight some of the key challenges the incoming High Representative is likely to encounter and offers ideas how to address them. While Dr. Schwarz-Schilling and the OHR were aware that this brief was being prepared they were in no way involved in its drafting.

Use the last chance to right the wrongs of Dayton

Dr. Schwarz-Schilling will be the last High Representative; his mandate in that capacity is expected to end once Bosnia signs the Stabilization and Association Agreement (SAA) with the EU, probably by the end of 2006, at which point his only powers will be those of a European Union Special Representative (EUSR). The key difference between the two functions are the Bonn powers associated with the High Representative, which the EUSR will not have.

The Bonn powers, passed at a December 1997 PIC meeting in Bonn, allow the High Representative to vet public appointments in Bosnia, impose legislation, and remove recalcitrant officials. It was exceedingly difficult to introduce them, to provide a clear interpretation, and to persuade various international officials to begin using them. In past years these powers, despite their undemocratic nature, have decisively contributed to the acceleration of democratic processes and the correction of the mistakes made at Dayton. Indeed, most of the successes claimed by the international community would not have been possible without them.

In recent years, however, many observers have been pointing to the negative effects of the Bonn powers. Officials that have been removed or denied appointment re-emerge in different positions of influence, while their posts within the legal government structures are undermined and filled with politically irrelevant officials. Legislation that OHR prepares, lobbies for, enacts, and promotes is often difficult to implement as Bosnian government structures fail to grasp the full meaning of the new provisions or lack the skilled staff necessary to navigate their implementation. The Bosnian authorities themselves, most observers argue, need to assume these powers to vet and remove officials through a legitimate procedure and to draft and implement reform. Otherwise, Bosnia's local administration will continue to be thoroughly dependent and incompetent, utterly incapable of leading the country into its European future.

It has been suggested that the Bonn powers should be revoked at the signing ceremony for the SAA expected by the end of 2006. But the PIC and the High Representative should not be guided by rigid timetables for phasing out the Bonn powers. The High Representative will be the person most immediately responsible for the state in which Bosnia will be left after the phase-out of international oversight. The Dayton accords designate the High Representative as the final authority in theater for the interpretation of the peace deal; it should then be his call that prompts the PIC to revoke the Bonn powers. While he should not shy away from using these sweeping powers when necessary, he must use this last period of their application to ensure that an efficient system is in place for the period after their suspension.

During his tenure, the High Representative should step up the facilitation of negotiations among local partners on the political issues that are most important for the self-sustainable future of the country. He should insist on exhausting all options during negotiations at which local parties commit to a mutually acceptable course of action. But when it becomes obvious that a compromise cannot be reached solely because of malicious obstruction from one side, the High Representative must use the powers at his disposal. Most importantly, he should work to ensure that instruments for de-blocking such deadlocks are incorporated into the Bosnian system of governance before the revocation of the Bonn powers.¹

¹ It should be noted that a majority of Bosnia's political elites support the demise of the Bonn powers, with the notable exception of the Bosniak leadership. Bosnian Serbs and Croats have been pushing for revocation for quite some time, while most Bosniak politicians still feel they are needed. Indeed, the Bonn powers have created a political deficiency that resulted in the total passivity of local elites and unrealistic expectations towards the international community within the Bosniak political leadership.

In his year without the Bonn powers, Dr. Schwarz-Schilling should therefore focus on securing partnership with (and among) local political actors and provide advice, facilitation, and guidance as necessary.

Promote constitutional reform

The last High Representative needs to understand that the need for the High Representative and the Bonn powers stems from the current Bosnian constitution, which simply cannot serve as a foundation for a self-sustainable future for Bosnia. At the same time, and even though this has never been explicitly stated, a key mission of the OHR has perhaps always been to put in place the prerequisites for changing the Dayton constitution. The constitution perpetuates ethnocracy in its worst forms and creates conflict. If Bosnians are left with the current constitution, community divisions and exclusionary policies will persist, increasing the possibility of renewed hostilities.

The daunting challenge of constitutional change cannot be met by Bosnians alone. The current constitution was imposed by the international community; it is the international community that holds ultimate responsibility to ensure that the conditions are in place for a new, fully democratic constitution to emerge from a truly local, participatory process. However, changing a constitution that is embedded in a peace settlement is unlikely to happen in one fell swoop: more likely it will take place as an ongoing process with incremental improvements to the current text. In such a process, the High Representative must ensure that no time is lost on discussing purely cosmetic issues, and that whatever decisions are taken by the parties are in fact implemented: ensuring that mechanisms for effective implementation exist is a critical part of the High Representative's brief. This applies specifically to the current talks sponsored by the United States and the EU: the few modest changes on which agreement could be reached must be implemented in time for the October 2006 general election.

Bosnia needs smaller but more efficient government. Once new institutions have been set up as part of an overhaul of the current arrangements, their redundant counterparts at lower levels should be abolished, following the model of the reformed defense ministries. Since lower-level bodies are a source of considerable patronage, that process should be overseen by the High Representative.

In the longer term, however, Bosnia will need not just amendments to the present constitution but an entirely new document that will scrap all elements that were put into the Dayton text with the sole purpose of stopping the war. The new High Representative needs to jump-start a drafting process after the next general election and should consider various models to that end, notably the option of calling a constituent assembly. The current amendment process is insufficiently inclusive, a deficiency that should not be repeated when it comes to drafting a new constitution that should reflect the aspirations of all of Bosnia's citizens.

Build on past achievements and continue security reform

It has become common practice for any newcomer to the position of High Representative to insist on his own agenda and pay little if any attention to priority tasks launched by the incumbent.² An arriving High Representative wants the freedom to set his own agenda and does not want to be encumbered by his predecessor's agenda. But Dr. Schwarz-Schilling does not have the luxury to ignore some

² A good example for this tendency was Lord Ashdown's lack of interest in enormously important achievements on the constitutional front during the mandate of his predecessor Wolfgang Petritsch. Ashdown's team paid almost no attention to critical follow-up and full implementation of these changes.

unfinished business left to him by Lord Ashdown. He needs to transform newly created agencies in defense, intelligence, and police from paper tigers into fully functioning institutions. Of critical importance here is police reform. The arriving High Representative should insist on a strong coordinating role for his office in the coming, critically important phase of this reform, when maps of future police regions and the competences of state-level institutions are to be defined.

One grand project that should be on the agenda in the security domain is Bosnia's entry into the Partnership for Peace and other NATO structures.³ This is a highly ambitious but attainable goal that would be of profound importance for security not only in Bosnia but in the whole region. By providing an external security umbrella for Bosnia and its neighbors, NATO structures could dampen security fears and thus allow the reform of Bosnia's internal law enforcement agencies to proceed much more smoothly. Such a NATO shield would provide assurances for the long-term stability of the region and could have a positive impact on investment decisions in Bosnia.

Change style but don't waste time

It has been suggested that the incoming High Representative adopt a less intrusive style than his predecessor and that he might want to use his first few weeks in office for travel throughout the country, refraining from making grand speeches in parliaments. While a change of style might be useful, the new High Representative has no time to waste -- especially in light of the fact that he already knows Bosnia perhaps better than any other senior international official.

Dr. Schwarz-Schilling has no time for a warm-up period. He and his key team members need to immerse themselves in the main problem areas from the get-go if they are to create the preconditions for any success during his tenure. Among the first priorities must be to ensure a favorable environment for the upcoming general election. Time is short indeed: the dynamics of an election year mean that any sensitive decision must be taken in the coming months since government will effectively shut down for the summer break (late June through early September) and no-one will be in the mood for compromise once the campaign gets underway.

Prepare the elections

The last High Representative will be remembered not only by his own achievements but also by those of his local partners -- as was the case with his predecessors. Wolfgang Petritsch had the Alliance for Change, Lord Ashdown the ruling nationalists, and Dr. Schwarz-Schilling will also be judged in part by his cooperation with the forces that will gain power in the October 2006 poll. But before that, it will be his choice to decide whether to support any specific political tendency.

Under current conditions and given the track record of the ruling alliance of nationalist parties, it would appear sensible for the international community to offer discreet backing to the political opposition. OHR should not engage in electoral engineering but try to promote parties -- those that exist at present as well as those that may emerge ahead of the elections -- that focus on issues beyond ethnicity, issues evolving around the needs of individual citizens of this country.

Once the new parliament is elected and a government formed, the High Representative must establish a genuine dialogue across the river Miljacka that separates the OHR's headquarters from the seat of government. One way to start is by abolishing the current practice of sending orders or ready-made solutions from his office over to the Prime Minister's office. OHR staff and the cabinet of the new Prime Minister should have regular meetings and work genuinely together for the same cause -- a fully

³ The main precondition for this to happen is the arrest of Karadzic and Mladic, who are widely thought to be hiding outside Bosnia. Thus, ironically, it is Belgrade that holds the key for Bosnia's membership in the PfP.

functional state of Bosnia and Herzegovina. The OHR should ensure that the Prime Minister gets the proper policy planning staff to support him and should oversee the process of making the two new ministries that are likely to be established (one for agriculture and one for science and technology) fully operational.

Preside over the shift in international leadership

The last High Representative is expected to coordinate the shift in leadership from the OHR and the PIC countries to institutions that will report to the European Union. The High Representative should work carefully to avoid or mitigate the institutional rivalries and turf battles that are almost inevitable in this process. It is of enormous importance that he has the full backing of his own country -- not just the Chancellor's office but also the Foreign Ministry. Germany's assumption of the EU Presidency for the second half of this year provides an additional opportunity.

The potential for confusion and overlapping responsibilities is particularly strong between the European Commission and the EU Council since the role of the EUSR has not yet been fully defined. As EUSR, Dr. Schwarz-Schilling will report to the Council, but power and money will lie with the delegation of the European Commission in Sarajevo. The incoming High Representative should initiate an open and honest debate on this issue and secure a clearly defined mandate for his position as EUSR, especially with regards to the SAA process.

Focus on sustainable refugee return

Refugee return -- the voluntary return of pre-war residents to their homes -- has somewhat faded from the headlines in recent years but continues to be a make-or-break issue for the survival of multi-ethnic Bosnia. Regardless of efforts made thus far, the dominance established by means of war by Bosnia's nationalist elites over certain territories continues. Ethnic homogeneity or carefully managed tension in certain areas produce a fear of the other that is a key ingredient of nationalist power. Return is still being obstructed primarily through discrimination in employment. The last High Representative should recommit to refugee return and make it his priority to secure the full implementation of constitutional amendments passed in spring 2002, particularly those that require proportional employment in all public institutions throughout the country.

Put education firmly on the agenda

Recent OSCE polls indicate that most Bosnians would welcome the creation of a state-level ministry for education that would guarantee the same education standards and norms throughout Bosnia. At present, education is a prerogative of Cantons in the Federation and of the Entity government in Republika Srpska: children are educated according to different curricula and, as a norm, in primary and secondary schools that are segregated. For reconciliation and coexistence to take root and flourish in Bosnia its future leaders need to be educated together at institutions that give priority to professional teaching standards rather than to political or ethnic affiliations of staff and students.

Create conditions for economic growth

The new High Representative should make it his number one long-term priority to push reforms that will induce growth and lead to a rise in living standards in Bosnia. Being an entrepreneur himself, Dr. Schwarz-Schilling is ideally placed to focus his team's efforts at removing all obstacles to Bosnia's economic revival. But the most immediate step should be to ensure that past reform measures are indeed implemented. Bosnia is still some way from having a fully functional internal market, impeding trade and other business links.

Support civil society

The current debate on constitutional change has occurred almost without any input from organized civil society and ordinary citizens. Indeed, their voice is rarely heard in any important political matter. The new High Representative should work to strengthen civil society and to encourage citizen participation in relevant debates. One option might be to initiate a project of genuine dialogue on what kind of Bosnia its citizens want, with no issues barred from consideration. Such a debate might even result in the production of a *Charter on the future of Bosnia and Herzegovina*, a document that no political force could ignore.

Commit yourself fully to the job

Last but not least, the arriving High Representative has through his years of public service in Bosnia accumulated considerable political capital. He is aware of the magnitude of the task that awaits him in Sarajevo; his is a job that requires full personal commitment and undivided attention. Dr. Schwarz-Schilling should therefore focus all his energy on his new job -- and his new home.⁴

Sarajevo, 26 January 2006

⁴ Bosnians are known for their intensive scrutiny of the High Representative's life patterns, both professional and private. They were absolutely unimpressed by frequent and prolonged tours home -- justified by the fact that his family decided not to move with him to Bosnia -- undertaken by High Representative Carlos Westendorp of Spain. His gentleman-farmer approach to the task created a distrust that he never managed to mend.

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