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IN BOSNIA AND HERZEGOVINA:
URGENT ACTION NEEDED

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Police and Intelligence Reforms in Bosnia and Herzegovina: Urgent Action Needed

Executive summary

Slashing the sweeping powers of the Office of the High Representative and turning the OHR into a mere monitoring mission of the European Union Special Representative (EUSR) requests to map out in detail the *process* of rendering the OHR's presence politically much less intrusive – a process that was always meant to include some carefully designed facilitation of the remaining reforms.

The fourth CEIS Policy brief outlines the urgency of such an approach in two security-related areas, police and intelligence reform. The successful transformation of Bosnia's police and intelligence agencies is of paramount importance for the country's further democratic development and its bid for closer ties with the EU. It is also a precondition for the smooth transition of international oversight from the intrusive phase under OHR leadership to a facilitating and monitoring role that will begin with the inauguration of the EUSR as the international lead agency in the country.

For these reforms to succeed, key international actors need to robustly engage with the reform process. Already agreed principles of police and intelligence reform must not be compromised. The State should have exclusive competence over these agencies, and their territorial organization should be set up without regard to entity borders. The OSA must become a modern service that gathers and analyzes sensitive information on behalf of Bosnia's decision-makers. The service must serve the interest of Bosnia and the current parallelism in its work must disappear.

Together with the ongoing constitutional reform, these are very likely the last major initiatives the international community needs to undertake prior to its substantive withdrawal into a monitoring role in Bosnia. But without them, both domestic reform and the transformation of the international presence in Bosnia will be put in jeopardy.

Introduction

Slashing the sweeping powers of the Office of the High Representative and turning the OHR into a mere monitoring mission of the European Union Special Representative (EUSR) – that seems to be the determination of the current High Representative, who at the same time also serves as EUSR. But while this milestone transformation of the OHR, a key agency for the ongoing reform of Bosnia's cumbersome structures of governance, has been under discussion for many years and nobody disputes the need for it, the actual *process* of rendering the OHR's presence politically much less intrusive needs to be mapped out in detail. From the day the idea was first mooted, it was assumed that this would be a process rather than a sudden move from intrusive interventionism to disengagement and mere monitoring, a process that was always meant to include some carefully designed facilitation of the remaining reforms. Indeed, the reforms that remain incomplete as of now are of critical importance for the success of the entire project of international stewardship in Bosnia.

The need for this process and its function of reform facilitation must be fully appreciated by the current OHR leadership. In fact, some of the OHR key new staff seems to prefer getting rid of any hint of interventionism in the political processes in Bosnia, disregarding the potential pitfalls of premature disengagement and banking on it that the Stabilization and Association Process (SAP) led by the European Commission (EC) will take care of outstanding issue. They seem to have a preference for a drastic break with the past and contend that local politicians will never learn to do business on their own unless they are allowed to do so right now. In other words, these staff members may underestimate that the OHR's own transition process is also necessary precisely in order to avoid the risk of returning to the bad old days of outright interventionism.

There are clear signals that a too soft approach may soon backfire. If a number of key reforms – of Bosnian's constitution, its security structures, and of its public broadcaster – are not implemented by the end of the year, the Stabilization and Association Agreement (SAA) with the EU will not be signed and the whole SAP process will be significantly delayed, perhaps even put in jeopardy. In order for the general scheme to be successful, OHR must therefore ensure the complete implementation of these key reforms in the near future by getting fully involved in facilitating domestic political processes and, if necessary, cautiously using the Bonn powers.

This briefing outlines the urgency of such an approach in two security-related areas, police and intelligence reform. If the OHR and other international agencies fail to seriously and immediately engage with the reform processes in these two areas, the SAA will not be signed by the end of 2006 as planned and the whole political situation in Bosnia would be exposed to considerable instability.

Police and intelligence reform

Police reform and full co-operation with the Hague war crimes tribunal, which demands an active role of the intelligence agency, are some of the key political conditions for the SAA. In accordance with the police reform agreement of 5 October 2005, the Police Restructuring Directorate (PRD) is to prepare a plan of reform implementation by 30 September 2006 – just one week before Bosnia's general elections. The key element of that plan are maps indicating the boundaries of future police districts, the most contentious issue which led to the failure of previous efforts to reform the police.

There are no indications that the PRD is going to be able to resolve this issue without a decisive push by the key international actors in Bosnia, for which time is running out. After around 10 July, the summer recess starts in Bosnia. The whole of September will be taken up by pre-election campaigning during which nothing substantive is likely to be achieved. Experience suggests that it takes at least three months to form governments after a general election; after that, in January, close to a full month of various holidays follows in Republika Srpska (RS). This means that OHR and the other international agencies have just the coming three months to push for essential changes in security reform. Given how intricate and complex the task is, this is a worryingly short time that should be used without any delay.

Police

Police reform, the most demanding and most comprehensive part of a security overhaul in Bosnia, has been launched for two distinct purposes: technical and political. Technically, the EC Feasibility Study of 2003 and its

subsequent Functional Analysis of Police Forces in Bosnia of 2004 have outlined the need for police restructuring because the current organization, overly fragmented and insufficiently coordinated, cannot deliver adequate services. Indeed, the current organization, with 13 distinct police agencies and their division of responsibility, is almost grotesque – an individual can commit a criminal act in the area of one police agency (be it cantonal, district, or entity) and simply slip into a neighboring area, perhaps as little as a few dozens meters away, and feel safe from any responsible police agency. In addition, these numerous police agencies are consuming ten percent of the total budgets of Bosnia, which makes some streamlining in their organization an imperative.

More importantly, though, police reform was launched by a decision of the OHR as political punishment for the RS' unwillingness to arrest Hague indictees and thus enable Bosnia's entry into NATO's Partnership for Peace (PfP) program. Since the end of the war in Bosnia, the RS police forces have not arrested a single individual indicted by the Hague tribunal. When the RS authorities facilitated the surrenders of several Hague indictees, they did so in a fashion that made abundantly clear their unwillingness to confront indicted war criminals. Most of the men who surrendered enjoyed official audiences with the Interior Minister, broadcast on RS television, and received significant monetary rewards for their surrenders, which were officially proclaimed "courageous acts," for example by the RS President.

During the reform talks, the RS authorities showed once again that they cherish the systemic deficiencies¹ in the security apparatus and have not intention to change anything about them on their own.

In addition to its failure to cooperate with the Hague tribunal, the RS police remains to this day a mono-ethnic institution for all practical purposes, despite calls and constitutional provisions for it to become more inclusive.² Only about seven percent of the RS police officials are non-Serbs, and they tend to be tasked with less important work and kept out of senior positions.

This is the attitude that the OHR sought to punish with its decision that a new police organization be set up, an organization that would no longer serve as a political instrument of the RS leadership. New police districts, which were to cut across entity boundary lines and be organized solely on technical principles, were supposed to be formed and fall under the exclusive competence of the State of Bosnia.

But instead of properly preparing for the anticipated resistance the RS would put up against the plan, the OHR and other international agencies launched into a prolonged and compromising exercise of political negotiations on voluntary changes of the police organization in Bosnia. Throughout 2004, an expensive international commission, chaired by former Belgian Prime Minister Wilfred Martens, tried to extract concessions from the RS leadership on the issue. But what happened was the exact opposite: whereas in the beginning the international community maintained that the best organization would require five police regions organized without regard to entity boundaries,³ it ended up accepting a compromise proposal of ten police districts, most of which would not cross entity lines. Still, the RS leadership rejected the proposal.

Disregarding the essence of the RS rejection, the OHR started a new round of cajoling RS leaders that lasted from January to October 2005. In the final stage of this exercise, RS President Dragan Cavic persuaded the RS parliament to support the Agreement on Police Reform of 5 October 2005, which in its substance offered nothing that would help overcome the major stumbling block in the negotiations since it simply foresaw the formation of a Police Restructuring Directorate (PRD), a common provisional body consisting of professionals

¹ The phrase originated with a speech by the Chief Prosecutor of the Hague tribunal, Carla Del Ponte, before the UN Security Council on 23 November 2004. "I believe," she told the Council, "that there are *fundamental systemic weaknesses* built into the law enforcement and security structures in Bosnia and Herzegovina, and in particular the Republika Srpska. They must be tackled so that these structures finally help, not hinder the country in co-operating with the Tribunal."

² Changes in the entity constitutions adopted in spring 2002 foresee that the ethnic background of employees in public institutions in the entities needed to reflect the ethnic ratio of that entity's population at the time of the last census. The RS Ministry of Interior is clearly one such institution.

³ The five regions were identified after meticulous examination by the EU's Police Mission (EUPM) of relevant police statistics so that they would all be roughly equal with regards to the number of people living in the region, their geographical size, their crime rates, transport and economic indicators, and their ability to effectively co-operate with other law enforcement partners.

and experts from all levels (State, entities, cantons) tasked with developing maps of future police regions by 30 September 2006.

From media reports on the ongoing discussions within the PRD it is obvious that this body is a repeat of the Martens exercise and that it will not be able to overcome the major problem – the insistence by the RS that policing in essence remains an entity competence and that any future organization should leave the RS police intact. RS Prime Minister Milorad Dodik, speaking recently at a ceremony to mark the Day of Police in RS, explicitly stated that no other organization was acceptable for his entity.⁴ If some other proposal was a condition for Bosnia to further advance towards the EU, then, according to Dodik, that strategic goal of all of Bosnia should be sacrificed for the preservation of the RS police.

This and similar statements illustrate how difficult the problem is. It is obvious that local stakeholders cannot overcome this on their own. If international actors refuse to get decisively involved very soon, this reform will not only miss its deadline and delay the signing of the SAA, but fail entirely.

Intelligence agency

The key Bosnian government institution that should gather information to locate the Hague indictees and thus secure the required operational cooperation with the tribunal is the Intelligence and Security Agency (OSA) of Bosnia and Herzegovina, which was established in early 2004 and became operational in June 2004.

The agency was created through the merger of (officially) two pre-existing and mutually hostile entity intelligence agencies. The new personnel were selected from existing entity agency staff through a screening process that was designed to ascertain the professionalism and willingness of new staff to work at a State-level agency. The new agency had around 700 employees and an annual budget of 25 million KM (around 12.7 million Euro).

It is almost impossible to judge the performance of the newly created agency or to assess the situation within it, since there is almost no reliable information available. OSA is violating the law by which it was formed (the Law on Intelligence and Security Agency of Bosnia and Herzegovina) by not providing annual reports on its activities.⁵ The first report on its activities, relating to the period June to December 2004, was presented as confidential material at a closed session of the Bosnian parliament in late February 2006. The decision to apply this procedure for a report that contained almost nothing truly confidential was ridiculed both by the press and by some parliamentary deputies. The OSA's political bosses on the Council of Ministers are also behind schedule: they should adopt an annual Intelligence-Security Policy Platform at the beginning of every calendar year but have done so by habit at year's end.

The international oversight of reform processes at the OSA is planned to end in June 2006, by which time a new management structure and amendments to the Law on OSA should be adopted. In general, sources in the international community seem to be satisfied with how far the reform has advanced. The only problems they identify concern the lack of space for the agency and the poor state of its operational equipment.⁶

But better-informed local sources point to numerous serious deficiencies of the OSA.

According to these sources, the OSA's staff is still very much divided along ethnic lines, and the three separate services have only superficially been merged. The director, the deputy director and the inspector general, who by law come from three different ethnic groups, operate as three co-directors. Ethnically sensitive operations are not shared with OSA members of other ethnicities. Pursuing alleged Islamic radicals becomes the almost exclusive competence of Bosniak members of the OSA, while the search for missing Serb leaders accused of war crimes

⁴ See FENA news agency report from 3 April 2006 and reports in most print media in Bosnia the following day.

⁵ Article 6 of this law demands that "The Agency shall prepare, and make available to the public, an annual report concerning its objectives, policies and the general focus of its activities based on non-confidential information." The full text of the law is available at the official website of the agency at www.osa-oba.gov.ba, a website that contains almost no valuable information.

⁶ CEIS interview, 27 March 2006, Sarajevo.

by the Hague tribunal is the almost exclusive competence of Serb agents. In general, the OSA is not considered capable of locating indicted war criminals or following their movements.⁷

Furthermore, the OSA performs poorly when it comes to cooperate or share information with other State-level law enforcement agencies. The personnel do not possess the necessary knowledge or technical means to operate as a modern intelligence service for decision-makers. The dominant mentality is still that of seeking to please the political masters rather than to meet professional standards of conduct. The OSA has not adopted all bylaws necessary for its proper functioning, and its leaders ignore and disrespect their obligations towards the parliamentary oversight committee. Knowledgeable critics contend that the OSA is not autonomous in setting its priorities, but that it is heavily influenced by its powerful foreign partners.⁸

These are alarming signals to come from one of the most sensitive and most important government agencies. They certainly warrant urgent remedies if Bosnia's most wanted war criminals are ever to be located.

Conclusion

The successful transformation of Bosnia's police and intelligence agencies is of paramount importance for the country's further democratic development and its bid for closer ties with the EU. It is also a precondition for the smooth transition of international oversight from the intrusive phase under OHR leadership to a facilitating and monitoring role that will begin with the inauguration of the EUSR as the international lead agency in the country.

For these reforms to succeed, key international actors need to robustly engage with the reform process. The reforms, after all, pertain to the essence of the problem that Bosnia is still struggling with – whether state sovereignty should primarily be located and the entity or State level. Domestic stakeholders cannot resolve this issue on their own; they still need the skilled persuasion and facilitation, and if necessary a push, from their international partners in Bosnia.

OHR and other international actors, primarily the U.S. embassy, need to be aware of the core of the resistance to reform. They need to remember how much time has already been lost on security reform and what approaches have already been exhausted, and which of them have worked, in trying to forge a proper compromise. Even the elusive Police Agreement of 5 October 2005 required concerted threats from all international partners (OHR, U.S. embassy, EC delegation).

Already agreed principles of police and intelligence reform must not be compromised. The State should have exclusive competence over these agencies, and their territorial organization should be set up without regard to entity borders. The OSA must become a modern service that gathers and analyzes sensitive information on behalf of Bosnia's decision-makers. The service must serve the interest of Bosnia and the current parallelism in its work must disappear. The agency must be exposed to regular and thorough oversight by a multi-ethnic parliamentary committee, and a well-drafted law needs to be adopted in urgent procedure to that end.

Together with the ongoing constitutional reform, these are very likely the last major initiatives the international community needs to undertake prior to its substantive withdrawal into a monitoring role in Bosnia. But without them, both domestic reform and the transformation of the international presence in Bosnia will be put in jeopardy.

Sarajevo, 7 April 2006

⁷ CEIS interviews with OSA personnel and members of the parliamentary oversight committee, March 2006.

⁸ Ibid.

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