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HOW (NOT) TO END:  
THE OHR'S LAST DAYS IN BOSNIA

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## How (Not) to End: The OHR's Last Days in Bosnia

### Executive summary

The endgame for the international peace implementation mission in Bosnia has now begun with the announcement by the Office of the High Representative (OHR) that it would close its doors on 30 June 2007. But the OHR's work plan for its last year makes for disturbing reading: instead of resolutely engaging with unfinished business, it is a bureaucratic list of technical issues that will keep the OHR's staff busy for the coming twelve months while Bosnia may well be slipping into a serious crisis. The CEIS calls on the OHR to resolutely engage with three critical issues: supporting necessary changes to the constitution, working towards more secure borders, and preparing the transfer from the OHR to the EU Special Envoy.

### Background

The Office of the High Representative (OHR), the key international agency in Bosnia and Herzegovina (Bosnia), has just announced that it intends to close its doors on 30 June 2007. The decision is controversial since it comes amidst worrying political trends in Bosnia and its immediate neighborhood that could signal a deteriorating situation. Increasingly radicalized political forces in Bosnia's Republika Srpska (RS) are blocking police reform; threaten to reconsider their position towards reform measures already adopted (including a new system of revenue distribution); and talk ominously of an independence referendum for the entity. Since this last threat was triggered by Montenegro's own referendum of May 2006 and its subsequent declaration of independence, even more vigorous initiatives are to be expected if Kosovo gets its independence, which may happen as early as the end of this year. The spill-over from these developments may well coincide with the OHR's closure.

The wisdom of setting an exit date is as questionable as the OHR's work plan for the last twelve months of its lifespan. Interviews with well-placed sources indicated that the OHR intends to spend these critical twelve months mostly on the technicalities of its shutdown rather than on the finalization of the major ongoing reforms. Expect no push on the stalled police reform, while on the constitutional front the OHR will merely try to revive a set of amendments that failed to garner the required two-thirds majority in the Bosnian parliament earlier this year.

OHR strategists defend this minimalist approach by pointing to the fact that these are difficult reforms that will take some time to draw up and implement, and that the office of the European Union Special Representative (EUSR) -- the OHR's successor -- will continue to support the process. This explanation fails to acknowledge that both police and constitutional reform began several years ago and are stuck because of irreconcilable political positions that go back to day one of the international engagement in this country. If the OHR with its sweeping powers has failed to resolve these issues in past years, how might a more encouraging outcome be expected under the mandate of the EUSR, which -- though as yet undefined in detail -- will certainly be weaker?

These developments come at a time when many Bosnians detect a distinct ambivalence in the EU's rhetorical commitment to the Western Balkans. Current disagreements over the future course of enlargement diminish the pull of the integration perspective at precisely the moment when the international community on the ground has begun relying on it almost exclusively, to make up for the loss of formal authority over peace implementation. This ambivalence will make it difficult for Europe's decision-makers to draft a credible mandate for the EUSR that goes beyond mere administration of technical processes.

This policy brief -- the sixth in a series by the CEIS -- examines the reasons behind the decision to announce an exit date for the OHR, its work plan for next twelve months, and the prospects for the incoming EUSR. It outlines an alternative, realistic plan that OHR should urgently consider in order to secure the success of its mission in Bosnia.

### **Setting an Exit Date**

The OHR's eventual closure has been the subject of vigorous debate in Bosnia for several years. The key question has always been how to determine the most propitious moment for its departure. The OHR operated on the principle that its downsizing and withdrawal needed to respond to processes on the ground; in that spirit it compiled an ambitious Mission Implementation Plan (MIP), which identified transition points and end results in key reforms after which the OHR would no longer be needed. The ultimate objective, according to the MIP, was "to make peace in Bosnia truly self-sustaining, and to put the country irreversibly on to the road to statehood within the European Union."

But the latest meeting of the Peace Implementation Council (PIC), held on 22-23 June 2006, effected a major policy shift and severed this link between the OHR's departure and developments on the ground by setting an exit date one year from now. Indeed, the OHR appears determined to exit on 30 June 2007 regardless of the state of reform at that time. This may be questionable on legal grounds, but it is certainly wrong politically.

Annex 10 of the Dayton agreement ascribes to the High Representative the final authority in theater to interpret the civilian aspects of the agreement, without giving any guidance on the termination of his mission. OHR legal experts interpret this to mean that the High Representative, on 30 June 2007 or at any other time set by the PIC, may determine that the level of civilian implementation justifies closing down the OHR. After such a decision, the legal experts suggest -- for purely technical reasons -- that a United Nations Security Council (UNSC) resolution endorsing the decision be sought. Not everyone, however, agrees with that opinion.

A different line of reasoning maintains that the main mission of the High Representative, entrusted with interpreting an agreement which contains Bosnia's constitution as one of its annexes, consists of creating the conditions for that constitution to be changed in a way that it would no longer need an interpreter. In consequence, this view holds, the High Representative should not leave Bosnia as long as there is no new constitution since the current charter enshrines ethno-centric politics and produces conflicts that make his presence indispensable. As long as there is a Dayton constitution, this view goes, there needs to be a High Representative as well.

Legal reasoning aside, setting an exit date regardless of circumstances on the ground is wrong politically. The OHR's political planners are fully aware that various worrying political trends may intensify over the coming twelve months but counsel against postponing the OHR's exit date since that would send a negative political signal, undermine the ownership concept, and create significant problems for establishing the office of the EUSR. (An additional reason given concerns the anticipated lack of funding for OHR beyond June 2007.)

It is evident that the OHR is currently focusing much of its energy on creating the conditions for a successful handover to the EUSR, perhaps encouraged by the fact that the present High Representative will continue his mission in Bosnia as EUSR. The mandate for the EUSR is undefined as of yet, and a range of options exist. Theoretically, the EUSR could even retain the so-called Bonn powers -- the most robust instrument of compelling compliance with Dayton -- for the first few months in office, but this is highly unlikely. In fact, it is all but certain that the EUSR's future mandate will be considerably weaker than the OHR's, which raises its own set of concerns. Speaking at a recent diplomatic gathering in Paris, former High Representative Paddy Ashdown warned that it was unclear whether the European Commission or the Council of the European Union was in charge of the Balkans. Given the historic experience with the EU in the region, Bosnians understandably view the handover to the EUSR with a certain skepticism, even nervousness.

Indeed, the question of transitioning from the OHR to the EUSR arises at an extremely awkward time in terms of the EU's agenda. At the precise moment that the international community is replacing the hard power of the Bonn mandate with the soft pull of European integration, the EU itself is deeply divided over the prospect of admitting additional poor and troubled countries. Beyond a generic commitment to eventual membership of all the states of the Western Balkans, Brussels has so far failed to develop a true vision for the region, and the region's place in an enlarged EU.

On the ground, this is not a time for fine-tuning institutional arrangements: a lot of concrete work still needs to be done. Tough political challenges have emerged in recent months, and it is of the utmost importance that the OHR as well as the EUSR are prepared to address them decisively.

Over the past two months, Bosnia has witnessed the most dramatic threats since the end of the war not just to key reforms but indeed to its very foundations. Political forces from the RS have made it clear that they are determined to block any serious progress on police reform; they have also threatened to reconsider their support for the indirect taxation system and the new model for distributing public revenues, one of the most important pieces of post-war reform that is already being implemented. (This is especially worrying in light of the fact that the crisis that led to the break-up of Yugoslavia in the 1990s also began with inter-republican quarrels over resource allocation.) But the most disturbing challenge came when RS politicians raised the possibility of holding a referendum on independence, and perhaps union with Serbia.

### **A Question for a Referendum?**

The controversy began with an interview by RS Prime Minister Milorad Dodik in which he said that with Montenegro's referendum and subsequent independence, the "era of the referendum has started"

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and that RS may well go down that road at some point in the future. Dodik's inflammatory statement generated much comment, but perhaps the most important aspect of it has not been fully understood: Dodik's call was most likely a trial balloon, designed to gauge the public mood in the RS and the reaction of the international community. Dodik then toned down his rhetoric; but there can be no doubt that he will bring up the issue again, probably more forcefully, if and when Kosovo goes independent, which might happen as early as the end of this year.

Public opinion in RS quickly swung behind the idea; all major political parties supported it, and so did numerous non-governmental groups -- in fact, some even began collecting signatures for a referendum initiative, even though the Bosnian constitution does not foresee such a possibility. The episode highlighted how depressingly small the support for a unified Bosnia is among Serbs in the RS.

But if this was also a test for the international community, the OHR flunked it. The High Representative dispatched his principal deputy to Banja Luka to meet with the RS Prime Minister and convey the message that a referendum was not an option "as long as the OHR is present in Bosnia" -- a rather unfortunate statement for which the OHR was harshly criticized. But any hopes that the criticism might prompt a more robust stance by the OHR were dashed when the PIC, just weeks later, decided on an exit date, which allows the non-cooperative parties to simply sit out the issue and wait for the OHR to depart.

The episode triggered one of the most serious crises in Bosnia since the end of the war. The influential Sarajevo newsweekly *Dani* wrote an analysis concluding that separatist tendencies would intensify, possibly even lead to renewed hostilities. Whether one accepts that conclusion or not, it is difficult not to agree with the assessment which precedes it -- that the essence of political contention has not changed much since the war. Experts interviewed for the article said that the current situation in Bosnia resembled nothing more than a "cold peace".<sup>1</sup>

One of the most perceptive political strategists in the region, former Slovenian President Milan Kučan, has also expressed concern that separatist tendencies among Bosnia's Serbs and Croats will only grow and warned that the process of EU integration could not serve as a cure for this type of problem. He suggested that the international community mobilize all its resources and that the region's leaders produce a declaration on the inviolability of Bosnia's borders to be endorsed by both the UN and the EU as guarantors.<sup>2</sup>

### **Planning the Final Year**

Despite all these warnings about the challenges ahead, the OHR appears determined to keep its low profile and focus above all on technicalities for the twelve remaining months of its existence. It seems that the OHR is incapable of recognizing that the two opposing policies at the heart of the wartime conflict, and hence the principal reason for the OHR's existence -- the policy of destroying Bosnia and the policy of unifying it -- are still, after eleven years of OHR supervision, equally strong and equally legitimate in Bosnia. Instead of focusing on this major problem of its *mission*, the OHR intends to spend the last twelve months focusing on *itself*.

Thus, much of the energy of the OHR staff will be consumed by administrative activities linked to the forthcoming closing of the office. Top of the list will be the review -- and, eventually, lifting -- of all decisions, more than 300, made under the Bonn powers, which allowed the OHR to impose laws, remove public officials, issue binding orders, and appoint domestic and international officials to certain positions. The toughest bit of that review concerns imposed legislation that has not subsequently been adopted by domestic bodies, a category that includes 102 distinct pieces of

<sup>1</sup> Senad Pećanin, "Početak novog rata?," *Dani*, 29 June 2006.

<sup>2</sup> "Srbi i Hrvati žive u uvjerenju da je BiH privremena država," *Dnevni Avaz*, 1 July 2006.

legislation, most prominently amendments to the entity constitutions made by OHR in spring 2002. To this date, these decisions have not been adopted by entity parliaments. OHR now hopes that Bosnia's central and entity parliaments will adopt a declaration by which all imposed legislation would be incorporated into the domestic legal system, a process that will still consume a lot of time and energy. Without it, such legislation will still be applied by the courts but cannot be amended or revoked by domestic bodies.

While tying up the loose ends of its eleven-year presence in the country, OHR will inevitably neglect the two major pieces of unfinished business that still remain: police reform and constitutional change.

OHR planners correctly forecast that agreed deadlines for different phases of police reform will be missed but wrongly blame the delay on the electoral campaign. They seem to hope that the dust will settle after the October poll. But the fundamental dynamics of the issue will not change after the election, and the RS leadership will not stop blocking police reform. A clear indication of the political priorities and strategies that will be pursued in the RS after October comes from the candidate lists for the forthcoming poll, which reveal that key figures of Bosnian Serb politics will run for office in RS and leave positions in the central institutions to less important candidates. For example, the principal leaders of the three main parties in the RS (SNSD, SDS, and PDP) are all running for positions in RS rather than at the central level.

Police reform shares its fate with constitutional reform: both began some time ago and have proven fraught with difficulty and delay. Now, the OHR takes that fact as an excuse to disengage from them. All it seems prepared to do on the constitutional front is resubmit the set of amendments that failed earlier this year.

### **Steering Bosnia Away from the Brink**

While the CEIS fully appreciates the need for the OHR to close eventually and to carefully plan for that moment, we also believe that the OHR's planning is inadequate in light of the serious challenges ahead. At a time when many of the OHR's past achievements are under threat, the OHR must focus on its mandate, not on shutting down. We believe that an alternative set of priorities is needed to respond to the current crisis in Bosnia, and call on the OHR to engage in following key initiatives:

1. Improve the existing constitutional proposals and shepherd them through parliament. Given the complexity of constitutional change and the time constraints under which it operates, the OHR will not be able to develop an entirely new set of proposals. Yet, it is imperative that the existing proposals be revised and the provisions on entity voting scrapped. As outlined in detail in our previous policy brief, this mechanism is redundant, discriminatory vis-à-vis Croats, and treated as a political tool by the Serbs.<sup>3</sup> The amendments should also be used to change the current names of Bosnia's two entities, which are unconstitutional, discriminatory, or just plain nonsensical. Replacing these designations with less charged and less illogical names would reinforce the thrust of the other constitutional changes and signal that Bosnia is leaving the wartime thinking behind, engaging instead in a constructive adaptation of its governance structures to the demands of today. This will need to take place while the OHR is still around, or else it may never take place. European policymakers need to be clear that Bosnia will not be able to enter the EU with its present system of governance; it is therefore in Bosnia's best interest to reform it.

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<sup>3</sup> *Overcoming the War in the Heads: Renewing Bosnia's Constitutional Debate*, CEIS Policy Brief, 4 May 2006, available at [www.ceis-eu.org](http://www.ceis-eu.org).

2. Consider the idea of a declaration on the inviolability of the international borders of Bosnia and Herzegovina, which would be deposited with the UN, EU, and NATO. Such a document, to be signed by the leaders of Bosnia, Croatia, and Serbia, would have a calming effect both within Bosnia and in the wider region. OHR might consider working with the forthcoming German EU presidency to secure a high-profile summit in the first half of 2007 when such a declaration could be signed.
3. Properly map out the shift from the OHR to the EUSR. This would need at least three elements: an honest evaluation of the OHR's successes and failures; a clarification, in principle, of the roles and mandates of the EUSR vis-à-vis the Delegation of the European Commission; and providing the EUSR with a basis from which it could operate as a key facilitator in the process of EU integration. The current work plan leaves the impression that the OHR is mainly concerned with the technical handover; but if it leaves many unfinished jobs behind, it will produce stalemate for the EUSR. (A similar process could be seen by the handover from the IPTF to the EUPM.) Given the importance of both the OHR and its successor, this transition needs to be done with much more care.

For any decision on the merits of the PIC's announcement that the OHR would close in a year's time, what happens in the coming twelve months is of critical importance. More importantly, it is also critical for the future of Bosnia as a viable, self-sustaining state on an irreversible path to the EU. For that process to be successful, Bosnia's own decision-makers need to take equally clear positions on the main questions confronting the country. The OHR, and perhaps even the PIC, might be content with ticking off the boxes on a bureaucratic to-do list; for Bosnia, this will not do. Without resolute action on the part of the OHR during its last twelve months, its very mission is in question. The OHR has a moral obligation towards Bosnia as well as a legal obligation towards the PIC to do everything in its power to avert a crisis that would threaten the very existence of Bosnia -- the core of its mandate.

Sarajevo, 12 July 2006

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