

## BOSNIA AND HERZEGOVINA – REPORT

### INTRODUCTION

This Report was prepared in agreement with the President, the Prime Minister and the Minister of Foreign Affairs (MFA) of the Republic of Slovenia. It is intended for Slovenia's deliberations on the relevant topic before the EU Summit on Bosnia and Herzegovina (BH). As agreed, this Report was written as a classified document, meaning that I neither used "diplomatic" terminology nor paid any attention to the balance between my assessments and the achievements, which are a result of long-standing efforts made by various stakeholders in BH and the international community (IC). I was solely interested in problems.

The Report was prepared on the basis of a series of talks held in November and December with the representatives of Bosniak, Serbian and Croatian political elites, the representatives of civil society, the academic circles and international organisations in BH and the insiders from Slovenia, as well as on the basis of the insight in BH-related documents from 1990 until today. The professional team at MFA and the Slovenian Ambassador in BH and his team proved to be of great help.

The basic conclusion, which may be drawn from these talks and on the basis of the work done is, to recapitulate, that for BH, the last four years can be considered utterly wasted and that the maintenance of the status quo would mean an irreparable loss in terms of economic and social development and lagging behind the countries in the immediate neighbourhood in all aspects. The maintenance of the status quo does not secure development and welfare in BH and involves threat to peace and stability in both, BH and SE Europe. Moreover, the question as to whether the existence of the country can still be considered reasonable could be posed with all seriousness and consequences.

By contrast to several evaluations, particularly those put forward by the international community, I believe that considerations about the future of BH cannot be restricted to frameworks, within which it is almost forbidden to raise certain questions which, in my opinion, are fundamental: for example, the question whether BH has a long-term future and which conditions must be met to this end. My experience and findings, which result from an extensive knowledge of the situation in BH, also tell me that in reflecting on the country's future, we must proceed from cruel realities, such as they are, and not from fictitious conditions. This will facilitate the resolution of the existing and real problems faced by people, without any pretensions that things can be changed retroactively.

The central part of the Report includes the evaluation of circumstances and a brief recapitulation of the main problems of BH outlined in ten points. I do not claim that all problems have been covered or listed by their political relevance. For easier understanding, key observations are written in bold letters, while conclusions are summarised in the final part of the Report.

### SITUATION ASSESSMENT AND FINDINGS

#### 1. **Three opposing concepts of the country's future and existence (Serbian, Croatian and Bosniak)**

- Among political elites of all three constituent nations of BH there is no agreement on the country's future.

In order to be able to understand the situation in BH and reflect on its future, it needs to be recalled that **there is no (none whatsoever) agreement between political elites of the three constituent**

nations on the existence of BH itself. This was already the case in 1990 after the introduction of parliamentary democracy and after the first democratic elections. This fact must be taken into account in understanding the background of the war and its objectives, as well as in understanding the positions of individual entities in their efforts for political change, including the current efforts to amend the Constitution (Annex IV to the Dayton Peace Agreement!) and join the Euro-Atlantic associations.

These opposing concepts can, in abridged form, be defined as follows:

- a. **unitary (single citizenship) state** advocated by the Bosniak political elite (the elite of the most numerous nation in BH);
- b. **national Serbian state**, loosely linked to other parts of the state (confederation) or fully independent, which is the concept of the Serbian political elite;
- c. **union of three ethnic units (entities)** or annexation of the Croatian part to the Republic of Croatia, which is the concept of the Croatian political elite! (Herzeg-Bosnia).

The Dayton Peace Agreement (DPA) partly covered these three concepts, but did not and obviously could not unify them.

Following the internationalization of the Yugoslav crisis through the Peace Conference on the former Yugoslavia (Brussels, 1991), the **international community (IC) became the decisive factor in the resolution of the conflict in BH as well**. All three sides, i.e. the internal participants in war, due to insisting on their concepts, could not agree on a compromise solution on either the constitution or the future of the State of BH. It was the international community who proposed and ultimately enforced the solutions (DPA) without, however, making any one truly satisfied with these solutions or sincerely believe in them.

In its solutions (imposed), the IC did (could) not sufficiently take into account the fact that **BH is a divided society consisting of three national, religious and social communities (ethnic groups) that cannot be governed according to the principles of a universal model of parliamentary democracy founded on libertarian principles, without considering its national division**. There are several reasons – historical, territorial and others –, **why its constitutional and political structure cannot be regulated by applying the principles of classical federation**.

The IC's premise was that BH should be constituted as a multi-ethnic, multi-cultural and multi-confessional society and that the system of government should be adjusted accordingly. The DPA has created the appearance of BH, where everything is seemingly the same as before the war. In reality, everything is different. BH has changed profoundly and in regulating its internal relations, old patterns cannot apply any longer. The multiculturalism-related basic premises were accepted by none of the ethnic communities, because each of them wanted and still wants (after having experienced war) to protect and exercise their right to its national and cultural identity and territory (as ethnically clean as possible, also at the expense of other ethnic groups). Historically, ethnic groups in BH belong to different orientations in terms of interests and values, with profound national, religious, ethnic, language, cultural and social differences. Without internal and external integration factors, they cannot function as a citizen society based on the libertarian model of democracy with pronounced civil society.

The DPA, including Annex IV, did not consistently develop the basic premises of multi-ethnicity either. **It incorporated the ethnic principle in the basic premises of the constitutional order**. All political elites of the three ethnic groups refer to this principle. In considering the future of BH, they focus on interests of their own community rather than considering the common interest of BH. **Any proposal for amendments, including the constitutional amendments, attempted to be enforced from the outside is bound to fail without considering this fact (Office of the High Representative)**.

The current constitutional order makes it possible to misuse the protection of national equality, thus, in its own way, generating nationalism as well.

## 2. European Union and Bosnia and Herzegovina

- Pro-European stance of political elites in BH is the most reliable foothold for a reasonable international engagement, in particular that by the EU.
- The process of BH's progress towards EU integration must be a two-way road.

At present, the **only common objective (at least on declarative level) of the key (national) political parties is BH's accession to the EU** (to a lesser extent, also NATO). In this context, their expectations, interests, knowledge, willingness and the understanding of the nature and the profundity of change required for the achievement of this goal are quite different. Nevertheless, a **pro-European stance of BH's political elites is, at present, the most reliable foothold for a reasonable international engagement**, in particular that by the EU, as well as for the introduction of a political dialogue within BH.

**The process of BH's progress towards EU integration should be a two-way road. It should reflect the determination of both, BH and the EU that this is a common interest and objective and consequently, also a common task.** Moreover, in order to make the EU attractive enough for political elites to agree on changes, the **timetable should be adjusted to the objective and the procedures to BH's special features.** The accession process is indeed more difficult, but also more ambitious, because it is simultaneously the **process of building the state (in particular, its functionality) and building peace.**

This requires a change in practices previously applied by the EU in enlargement procedures. **It requires an adjusted pre-accession strategy** (also financial), which will facilitate the EU engagement (expert and political assistance) from the very beginning of the process (Stabilization and Association Agreement) and not only during the final negotiations. The **granting of candidate country status** should also be adjusted to this objective. This does not mean any derogation from or relaxation of criteria to be fulfilled by a particular country. **These criteria must be consistently observed**, because accepting the idea that all rivalries and tendencies towards disintegration will simply disappear once BH has joined the EU is quite risky. Tailoring the strategy to BH's special features would indeed shorten the time required for country's preparations for EU membership and its capacity building. This is a very important factor in terms of motivation of political structures. The current generation of BH's politicians should have a feeling that they are the one who will bring the country into the EU. Otherwise, they will not be motivated to agree on compromises and make commitments and will in fact fail to sufficiently engage themselves. The relationship between the EU and BH is not only a matter of reviving the "spirit of Salonika". It should be understood that BH needs the EU as much as the EU needs BH (security and stability).

An important element of BH's integration into the EU is **informing its citizens about the EU**, about the benefits of its membership for individual people and the country (multinational), about the way it functions and about values it stands for. The provision of information is poor, the information system is not up to this task and civil society is not sufficiently involved. Thus, the image of the EU is inadequate and not objective, and cannot mobilize the general public to become, within its entities, an element of pressure on political parties and make them abandon the current pronounced predominance of national priorities and rhetoric in their political platforms and agendas (except SDP).

## 3. Obstacles to efficient BH's progress towards EU integration

- Any obstacles to an efficient BH's progress towards EU integration must be removed.
- This objective can only be achieved through a binding formal agreement between political parties.

This particularly applies to obstacles in the procedures related to the harmonisation of BH's legislation with the EU legal order. A major **obstacle is the system of entity and national vetoes**, introduced by the system of decision-making at the state level (in bicameral Parliament and in the Council of Ministers) and partly also at the FBH level for the purpose of protecting (special) vital interests of entities (the Republika Srpska entity – RS and the Federation of Bosnia and Herzegovina entity – FBH) and the vital interests of ethnic groups (Bosniaks, Serbs and Croats) under the Constitution (DPA – Annex IV).

**It is not realistic to expect that this obstacle can be overcome by an intervention in the Constitution (DPA – Annex IV) with the so-called European amendment.** The change to the Constitution (except the amendment *Sejdić-Finci*) will be strongly opposed by at least the RS. This is explicitly noted in the Platform for joint action at BH level, signed by the SNSD and the SDS, the two most powerful (national) political parties in the RS. The main reason for their resistance to constitutional changes is the awareness that **interventions in the constitutional order in principle undermine the position of the RS** and, once a process of change begins, cannot be limited.

Given that, in BH, **political parties and not institutions of the state hold the actual power**, the goal (removal of obstacles) may be quite efficiently reached through a binding agreement of parties that they would strive for the implementation of the common goal of the EU integration and that, regarding this goal, they would not use the right to a veto. In its legal character, the agreement would be between the RS and the FBH, sponsored (and monitored) by the EU. **With the so-called April package (2006), parties in BH were close to such an agreement!** The implementation of the agreement will require an active role of the EU, namely, through a special representative upon whom the agreement would confer the powers to interpret whether the changes to legislation entail the documents for the harmonisation with the *acquis*. In this respect, it should be taken into consideration that external pressures on BH politicians appeared to have a counterproductive effect. The eloquent proof in this regard is **public commitments from the RS that in case of an alternative choice between the EU and the RS, they will always opt for the RS.**

Because of specific relations between Bosniaks and Croats within the FBH, a consensus about the path towards eliminating the obstacles in approaching the EU should **first be reached between Bosnian and Croatian parties within the BH Federation**, through an agreement of political parties of all three entities. They would also invite the RS parties to join the agreement (formal and political)!

#### 4. Constitutional changes

- The present Constitution, which is a part of the DPA (Annex IV), must undergo changes resulting in the Constitution of BH.
- Bosniaks, Serbs and Croats must reach an agreement on the conditions under which they would like to live together in one country.

**Constitutional changes are only possible if introduced gradually, in the Bosnia and Herzegovina's EU integration process and on the basis of the agreement of political parties and without external pressure (Butmir).** At present, there is only a general political consensus among the parties on the enforcement of the European Court of Human Rights judgment (*Sejdić-Finci* case) on the elimination of discrimination. As regards the specific change to the Constitution, which is needed for this

purpose, the views are different (since this is not only about the elimination of discrimination against minorities but also the discrimination against members of constitutive nations); and this change will not be introduced quickly. Also because it will necessitate the change of the electoral legislation, which will be a demanding task, in particular in the FBH (and the population census law)!

When considering a change to the Constitution, it should be taken into account that **BH does not have a real Constitution. The Constitution is part of the peace agreement (DPA – Annex IV).** It is not a result of the agreement among constitutive nations of BH on principles of constitutional order, structure and State institutions and decision-making processes. In other words, it is **not a result of an agreement of all three nations, whether they wish to live together in one country and under what conditions.** Such an agreement has not been reached and was also not possible. Sooner or later, an answer and an agreement will have to be obtained; however, **the path of gradual interventions in the DPA and Annex IV is not the right path towards achieving this goal.**

The DPA was created under special conditions (the same applies to Annex IV) of war, crimes, ethnic cleansing and conquest of territories ("blood and soil"!). **The prevailing situation at that time created a high degree of mutual distrust and frustrations.** In fifteen years the situation has changed, while the arrangement, which was supposed to substitute war and violence, i.e. one nation against another, for coexistence of nations, is still in force. **It should be replaced by a normal, peacetime and democratic constitution,** which would be based on human rights, parliamentary democracy, national equality and free market, enabling coexistence of its nations and would form the structure of the country on the basis of these principles. Delaying these considerations (in the process of joining the EU) means consenting to and maintaining the status quo of neither war nor peace!

Moreover, urgent considerations about the Constitution of BH certainly require a great deal of sensitivity and precision in the choice of time to initiate this discussion.

#### 5. Confederation between the RS and the FBH

- Confederation between the RS and the FBH as a transitional period

**The reality of a political and state system of BH, created by the DPA (and enforced by Annex IV), is a confederation between the RS and the FBH.** The longer such status is maintained, the more is consolidated. The OHR interventions, through which certain competences (powers) of the RS were transferred to the level of BH state, increased the resistance to improving the functionality of the state and also the **belief that it is necessary to maintain the status quo of the confederation and the competences the RS has pursuant to the Dayton Peace Agreement (DPA).** Hence the insistence that the DPA be interpreted "by the letter" and not "by the spirit". **These positions are clearly stated in the Platform for joint action of the SNSD and SDS (Dodik – Bosić) at the BH level and in the inauguration speech of the President of the RS, Milorad Dodik.** According to this interpretation, **the dissolution of the DPA would also be the dissolution of BH, the state into which, they believe, the RS brought its subjectivity (territory) and sovereignty (and can on this basis also secede).**

Oppositions to a consistent implementation of the Dayton confederation status of the RS by both the FBH and the international community (OHR) brought BH to a collapse. **The RS and the FBH are each other's hostages;** the system functions on the basis of mutual blockades, conflicts and double-crossing. In the RS, it strengthens radical demands for secessions, while in the FBH it encourages the Bosniaks to require a unitary arrangement. Consequently, under the appearance of the unity of the state, which should be ensured by the territorial integrity of BH, a quiet internal secession is under way.

The compliance with status of the RS under the DPA and consistency with the Dayton agreement concerning certain competences delimited among the RS, the FBH and the state of BH, would **establish clear relations and responsibilities** among these three decision-making subjects in BH. The **relations** between the confederation units, which are of mutual interest, except those being as the competence reserved for the state of BH, **would be settled through agreements (arrangements)**, as known in the (yet modest) practice of confederations.

**The implementation of the confederation is to be understood and accepted as a transitional solution.** It would enable the functioning of the state, its economic development and it would intensify the Bosnia and Herzegovina's EU accession process; moreover, it would enable a dialogue about the future of BH, about the will and conditions for living together, which would be implemented through a new (actual) Constitution of Bosnia and Herzegovina.

In this respect, two objections are important. The first is that this **means a dissolution of the state.** Such a possibility exists; however, it is less likely to happen if the Bosnia and Herzegovina's accession process to the EU is intensified and the engagement of the EU in BH is substantially increased, if the IC messages on non-supporting the secession are uniform and clear and if the positions of the Republic of Croatia and Serbia are clear and harmonised with the IC positions. The second objection holds a position that this would **mean the victory of Milošević.** In fact, the victory of Milošević is a current status quo, i.e., ethnically cleansed Serbian territory and a blockade in the functioning of the state of BH, which questions the sense of its existence. At present – viewed as a non-state rather than the state – **it fails to provide any of the two basic principles that are essential for the existence of multinational state communities – the principle of national equality and the principle of functionality.** This also explains why it is not capable of providing integration mechanisms in the regulatory framework of the state and its implementation policies (legal system, economic system, single market, judiciary, police, security, defence, etc.). This is also the reason why it cannot cope with the organised crime and corruption on the one hand, and ensure economic development, social stability and the rule of law, on the other hand.

## 6. Federation of Bosnia and Herzegovina

- The situation of Croats
- Non-functionality and inefficiency
- Changes to the Constitution of the FBH

**Any serious changes in BH, including the choice that the state would follow the "pro-European path", are related to the solving of the situation in the FBH, i.e., the relations between the Bosniak majority and the Croatian minority, between the two nations that are equal constitutive parts of the state of BH.** The latter constitutes a bigger issue confronted by the state than the status of the RS itself.

**Croats are the smallest nation in BH and live on non-integrated territory, also partly in the area of the RS. Croats do not have their own entity, hence, neither an entity veto when it comes to protecting their vital interests decisions taken at the level of BH. Within the FBH, they are deprived of institutional levers for the protection of their equality;** the implementation of the principles of proportionality is inconsistent in the composition of FBH authorities and in the decision-making process. The electoral legislation is not adjusted to this feature. So, representatives of Croats may be elected by non-Croatian (Bosniak) majority. Thus, for example, a Croat (who is denied the legitimacy by the Croats) has been elected member of the BH Presidency for the second time. **All this leads to great frustrations and dissatisfaction of Croats.** Instead of positive discrimination, which would be warranted by the endangered status of Croats as a minority ethnicity, the domination of Bosniaks takes place. **The consequence is the radicalisation of Croatian demands to establish a third entity**

(and even to unite Herzegovina with Croatia). It is interesting that the idea brought forward by Croats is also supported by the politicians of the RS without their preparedness to any territorial changes of their own entity or the establishment of a Croatian canton in the RS. The support, therefore, does not relate to the principle of equality but to the redistribution of political powers within BH. With respect to Croats, a feeling can be perceived that it is not possible for them to recognize BH as their own state, which results in an **intensive process of emigration of Croats**, including from the Posavina and central Bosnia regions. The latter is also accelerated by the system of dual citizenship and, consequently, double voting rights. The DPA provisions and requirements relating to the refugee repatriation require a critical analysis. The expressions of political will for the implementation of such important actions do not suffice.

The proposals for the third entity (supported by the RS) have met the resistance of Bosniaks who believe this poses threats to their territory ("blood and soul") and "their" state. **They are not in favour of the changes to the Constitution of the FBH**, which are essential for ensuring institutional equality of Croats not only at the FBH level but also in each canton.

**Changes in the FBH are urgently needed.** Without them, it is not possible to establish a serious dialogue on changes to the Constitution of the BH and a new constitution, as well as on the definition of BH's European path as a key and common goal of all the most important political parties of all three entities.

**The second reason requiring the amendment of the Constitution of the Federation of Bosnia and Herzegovina (and its electoral legislation) is the FBH non-functionality.** At the level of the Federation, there are 16 ministries at the FBH; the number of ministries in cantons (10 cantons) varies, the Sarajevo Canton alone has 12 ministries. (It should be mentioned that at the level of the BH state there are 9 ministries, while there are another 16 ministries in the RS.) ... Decision-making processes are complicated and lengthy... The Administration is massive and expensive, ineffective and at the same time determined to defend positions (privileges) enjoyed under the current arrangements and consequently **opposes changes. Critical findings on the BH non-functionality are largely connected with the non-functionality of the FBH.** No state (not even confederate) can be functional unless all its parts are functional and effective. From the viewpoint of functionality, the RS is much less problematic; it opposes interventions in the Constitution and competencies of the entities, which are justified by the necessity to enhance the functionality of the state, also by presenting an argument that this issue should first be regulated in the FBH. Islamic radicalism is a specific problem. An objective assessment of this phenomenon is needed, especially on the Wahabi influence and the connections of Sandzak mufti Zukorlić with this movement. It is difficult to face this problem if no objective assessment is made; at the same time, this often provides an alibi for accusing Bosniak politicians and political parties.

## 7. Dayton Peace Agreement (DPA)

- A normal development of BH is not possible within the DPA arrangements
- The DPA can be changed gradually through BH's EU accession process
- BH's EU accession process is at the same time a process of building the state and a process of building peace

**Within the framework of the DPA, long-term changes in BH, including the reintegration of the State, are not possible. The DPA is a safeguard for peace, but, at the same time, also the primary obstacle to change.** The DPA is not just a peace agreement that ended the war; it also established the structure of BH and the manner of its functioning (Amendment IV). The formula 3+2 (three nations, two entities) is in essence a **confederate formula forced through the war** (wars – including the Bosniak-Croat war).

**The DPA is not a typical peace agreement.** It was not concluded after hostilities and war operations had ceased, but the DPA ended hostilities. In the war against BH, in the war of BH citizens against their own State, fought with foreign support, at the moment the hostilities ceased there were no winners and no losers. None of the three parties engaged in the war realised its goals (three concepts on BH!!) and none has abandoned those goals, either. The goals have been best achieved by the RS. Bosnian Serbs got their *state in a state* and have no reason to want any change.

**The DPA recognised the results of the war** – ethnic cleansing, territorial annexations. To a large extent, these facts have been achieved through war crimes. The perpetrators were or will be held accountable before the Hague International Criminal Tribunal, but the **consequences of their misdeeds prevail and have effect.** The demographic picture of BH has changed substantially; it has been divided into more or less ethnically clean territories. The DPA put a stop to achieving their goals by military means but did not, and could not, prevent the parties engaged in the war from attempting to achieve their goals by using and abusing the instruments of a state structure and the manner of its functioning. **It enables a continuation of war by political means. Most of these acts are legal (under the letter of the DPA), but non-legitimate from the perspective of DPS objectives and democratic values!** This situation results from the fact that each ethnic community in BH lives in the belief that its national interests are adversely affected on account of other communities. The political elites are messengers and, at the same time, advocates of such thinking. A catharsis, essential for a new beginning, has not occurred. Though welcome, mutually extended apologies by BH politicians for committed crimes are not enough.

**BH lives with the DPA as if confined in a straitjacket.** It is afraid to undo it, because this could threaten the safety, also revive hostilities, but wearing it makes BH uncomfortable, prevents it from living a normal life, it does not stimulate its development and economic growth, does not prevent the growing social tension, nor does it ensure the full promotion of human rights and equality of citizens regardless of their nationality or religious beliefs; BH lags behind other neighbouring countries in every respect.

Despite the principle that peace agreements cannot be amended, the **change, or more precisely, the substitution of the DPA is a conceived though not a recognised necessity.** When and in what way is another question. **To the greatest extent, the Dayton BH was shaped by the international community.** The DPA ensured the territorial integrity of the State and its external borders; however, it failed to ensure that the inside of the state be built *from foundations to the roof*. It established a political system in which two entities are *de facto* states, and a State which only exists *de jure* and not *de facto*. It introduced a political order, which is structured so as to preclude changes, regardless of which parties or coalitions rule the country. It forces the parties into a position in which they cannot have ideological or value-oriented platforms, but are national in themselves or coerced (SDP) into nationalistic options.

**The DPA is a product of international community and a guarantor of peace and, consequently, it would only be possible to change it in cooperation with its authors and signatories.** The DPA can only be changed gradually through BH's EU accession process, which is, as already mentioned, also a process of building a State and a process of building peace (which is also the DPA's goal). **Changes in the DPA aim at accelerating this process and are also a result thereof.** The key objective of BH in taking a European path is a normal democratic state, capable of living according to the EU principles and criteria and in line with its values, without threatening peace and stability in the country and peace and stability in the region and the integration. **By achieving this objective, the DPA becomes obsolete.** Until such time and because of its fundamental function of ensuring peace, the DPA must remain in force and be strictly implemented, in particular in the areas which are most important in this respect. (BH is a central security issue in the SN Europe!)



## 8. Office of the High Representative (OHR)

- The OHR must be maintained
- The OHR is a guarantor of peace in compliance with the DPA
- Discussions about its closing down are not productive

**The institution of the OHR is an important element of the DPA. It is a guarantor of Dayton arrangements and, given its nature, also a main guarantor of peace and stability. Until the DPA is in force – until there is a need for it to have effect – the OHR must exist. It must be noted that all key documents, which enable the State to function more or less efficiently, were adopted by the OHR and not by the State authorities through democratic parliamentary procedures! The OHR is (together with the EUFOR) also the key (sole) factor limiting violations of the DPA and arbitrariness of political actors in BHB. Regardless of its formal (constitutional) position, the OHR – and also the EU through the OHR – is part of political system in BH and part of the authorities' functioning. As such, it must act when action is required. Otherwise it is in fact superfluous. The scope and intensity of its powers or its interventions into political and state processes in BH is another question.**

**Pretended ignorance, possibly also ambiguities about its role and position within the Dayton arrangements among political actors within BH and IC, and resulting demands to close it down are rather an impediment than a contribution towards a regular building of BH statehood.**

**Its role and the need concerning the scope and intensity of its powers (the Bonn powers) can be and will be reduced in objective terms and in line with the development of the process of Europeanisation of BH. In light of this ultimate goal, the OHR can also be an accelerator of this process leading towards European BH.**

**Cautiousness is warranted with the assessments that the OHR exceeds its powers defined in Annex X to the DPA in an arbitrary manner. It is necessary to evaluate the need to maintain the Bonn powers, but it is not possible to agree with the assessments that, instead of serving as means to resolve the problem, the OHR has become part of the problem; it is further not possible to agree with the assessments that it destroyed a dialogue among national politicians and prevented internal consensus to be reached among those who were given a mandate in the elections to lead the country. This applies more to other non-formal missions that came to BH and coerced solutions without having a mandate to do so. The OHR and shuffling off responsibility for the situation upon the OHR is an alibi for political elites and their unwillingness to engage in dialogue and reach consensus on fundamental issues concerning the functioning and future of BH. The discussion about closing down the OHR is completely unproductive and encourages tendencies towards abusing its decisions. The OHR must be maintained. A reflection is needed on its future rather than on its existence, especially in light of the increased EU engagement in BH and in view of assuming greater responsibility for stability, building of statehood, peace and European path for BH.**

## 9. Role of the international community in resolving the crisis in BH

- The IC cannot leave the destiny of BH in the hands of political elites of Bosniaks, Croats, Serbs
- A common perspective on BH and coordinated action is indispensable
- Unity of the IC is a prerequisite for pro-European path of BH

**In order to successfully fulfil the role and responsibility for resolving the crisis in BH, undertaken by the international community or its various actors, which were given different mandates for carrying out their missions (UN, EU, NATO, OSCE, Council of Europe, EUFOR, etc.), it is vital to adopt a concept for the future of BH, harmonise actions and maintain a consistent policy implementing this**

concept. BH itself, trapped in its reality, is a serious problem, but the international community's functioning and attitude are a serious problem as well.

The fact is that the Dayton BH resulted from the efforts of the IC to stop the war and that it was imposed on the ethnicities engaged in warfare. This was caused by the fact that war actors were only willing to adopt solutions that met their national (war) goals and kept rejecting all other proposals. It was, therefore, not possible to reach an agreement. There is still no agreement on the future of BH (on whether they wish to live together and under what conditions), which would be reached through dialogue facilitated by BH politicians themselves on the basis of their responsibilities. But the constitutional order that has been forced on them, and which they have consented to because it is better than war, becomes ineffective at some time or other. In these circumstances and after the failed attempts to coerce some urgent changes, one can understand the position (EU, U.S.A.) that it should be left to BH itself to reach an agreement *without external interference into its internal affairs*; but such position is neither principled nor rational. So far, they have not been able to agree on anything (with the exception of visas!). A tin can (DPA) cannot be opened from within! After the 2010 elections, which brought about a formation of national blocs and *arithmetic* rather than programme-based coalition, it is very likely that it would only be possible to agree on *division of the spoils*, i.e. on the distribution of positions which exert state functions and those of managing state-owned enterprises.

The IC cannot abandon its responsibility for BH before the necessary conditions are created and domestic actors are ready to assume this responsibility. According to the DPA, the IC constitutes part of the political system of BH that is actually a protectorate. Conditions enabling dialogue and consensus between the actors in BH still have to be created. The agreement on a European path for BH and a waiver of veto on this path will test whether there is at least minimal consensus and willingness to start a dialogue. One should examine what would be the most efficient manner to encourage such an agreement that may even have a broader content. A conference of all key political actors (parties) in BH sponsored by the EU or one of the most influential EU member states in BH (Germany) with an EU mandate may be the most suitable form of such verification. A precondition for an EU engagement is a prior agreement within the EU on the future concept for BH, including its European perspective, followed by a uniform and consistent policy in the implementation of this concept. This is the only way to face the conference participants (and they must be faced) with the consequences of their unwillingness to reach an agreement, and to let them know that in the future the IC will not stand being blackmailed. (including potential territorial modifications and war compensation!) But above all, they must be reminded that BH within the existing borders gained international sovereignty and that only this BH is a member of the United Nations.

Too many institutions or international actors are engaged in BH and their actions are not coordinated, based on a clear concept and always in the best interest of BH. A proposed enhanced EU engagement is based on the assumption that countries which sponsored the DPA and have influence and interest in BH will also participate – USA, Turkey, Russia – but their activities would have to be coordinated with the EU! The elimination of the acute centre of destabilisation and source of threat to peace in South East Europe, building of peace and state should be the common goal, taking into consideration that this would be a state of three equal nations organised functionally in order to be efficient. The decision that this goal can be achieved through an intensive process of bringing BH closer to the EU, whereby BH will be provided with assistance and understanding, must be a joint decision. Unity of the IC is essential for the success of this path.

#### 10. The roles of Belgrade and Zagreb

- Croatia and Serbia are co-responsible for resolving the crisis in BH

- They must adopt a clear position on the future of BH

The success of efforts to accelerate the integration of BH into European structures and, in particular, to find long-term solutions and changes very much depends on the two neighbouring countries, the Republic of Croatia and the Republic of Serbia. **A crystal clear and unambiguous position of the neighbours on the future of BH is required to accelerate an internal dialogue** between political actors in BH without any interference from the outside – this is primarily endorsed by politicians in the RS. A political as well as formal and binding statement is needed to the effect that **the two countries renounce any territorial aspirations towards BH and support its existence within the existing state borders**. A clear message must be sent that BH is a state of Bosnian Croats and Serbs (as well as Bosniaks) and that Sarajevo is its capital. We also need a clear position that Bosniaks, Croats and Serbs themselves have to agree on internal relations in BH and that **the two countries will respect such an agreement**. We also need two declarations that in the promotion of an internal dialogue, the two countries will **cooperate within the endeavours of the IC**, a part of which they are as sovereign countries. This could even be possible in the current atmosphere which has definitely been improved by presidents Josipović and Tadić.

Such positions would provide Croatian and Serbian politicians in BH with fewer opportunities for abusing the need for an internal dialogue and for shifting responsibility to Zagreb and Belgrade. Bosniaks would less have the feeling that Croats and Serbs do not perceive BH as their homeland and their state, that they do not wish to tie their destiny to it and assume responsibility for it. It would not be possible any longer to sustain a political thesis that Croats and Serbs have their own states while Bosniaks do not, in the background of which is the tendency towards Bosniak domination of BH.

In the light of this, we should check if reasonable grounds still exist for special and parallel relations between the entity of RS and the Republic of Serbia, and between Croats in Bosnia and the Republic of Croatia as defined in the DPA. When the DPA was drafted there were reasons to this end but in the current circumstances these possibilities are often exploited and abused, thus working in a disintegrating manner. Croatia in principle gave up these possibilities, while Serbia insists on them, and ties between the RS and the Republic of Serbia are therefore strengthening. **Bosniaks, who do not have a »state protector« specified in the DPA, increasingly more see Turkey in this role** which, in turn, with its intensive contacts gives reason to believe this.

**Positions and definitions of Zagreb and Belgrade are certainly extremely important so that BH politicians of Serbian or Croatian nationalities would perceive Bosnia as their mother country and state in which they should regulate the conditions of living together by themselves alone.** In order to guarantee that, in seeking solutions, none of the interests of any ethnic groups will be hindered or none of the interests of certain groups to the loss of the other ones will be implemented, international factors - the EU through their institutions, UN through OHR and NATO or EUROFOR - have to play a decisive role. **Taking into consideration the international context and not ignoring it, the guarantee role of Croatia and Serbia is being put in practice.**

## CONCLUSIONS

The core of the problem is the fact that there are no uniform political views of Bosniak, Serbian and Croatian political elites about the future of BH and that there is no readiness for discussion about the will and conditions for living in the common state. The Constitution as a basic act that should result from the agreement achieved on the basis of such a dialogue is currently replaced by the DPA.

The long-term common objective of the IC and BH political elites should be an agreement on the living together of Bosniaks, Serbs and Croats in a common state formalised in the Constitution of Bosnia and Herzegovina. This Constitution should replace the DPA.

The DPA created a state acting as protectorate originally through the OHR measures obscuring the fact that the state inside is divided and non-functional, instable and unprotected from the possibility of outbreak of new hostilities as well as externally ineffective.

Due to many reasons, it should be necessary to encourage political elites of all three BH nations to start a dialogue and reach an agreement about the way in which they should live together, about the state they wish to live and about the way in which it should be organised and in which it should operate. The agreement should define how the equilibrium between two fundamental principles which are considered essential for the existence and operation of multi-national community should be established: the principle of national equality and the principle of the functionality of the state. All the IC efforts should be focused on reaching this objective.

If this is also the objective of the EU, then it is reasonable to expect that it will implement its decision by actual involvement in accelerated accession of BH to the EU. The fact that the process of accession of BH to the EU is at the same time the process of building the state and process of building peace requires additional great involvement of the EU. The prerequisite for the success is the unity of the IC as regards the future of BH and its consistent and coordinated policy in implementing the decisions taken.

However, despite this orientation of the IC, it is necessary to reflect on what should be done in the event that political elites rejected living in BH as a common state and its European future. It is better to part peacefully under supervision and intervention of the IC than to further tighten mutual blockades, aggravate conflicts and lag behind in the economic and social development. In this case, too, the IC has to play an active role since the dissolution of BH would have consequences for the relations and peace as well as security in the territory of former Yugoslavia and in the wider area of SE Europe.

Certain actions within the existing situation that was improved by DPA are currently possible.

1. Short-term measures:

- Inauguration of the Council of Ministers of BH (realistically to be expected in the next year)
  - The Government will be coalition consisting of three nationalities. The coalition will be a mathematical (2+2+2) and not a programme coalition. There is little probability that it will be capable of carrying out major changes.
- The implementation of the European Court of Human Rights judgement on the elimination of discrimination (Sejdić-Finci case)
- Change of the electoral legislation and the adoption of the People Count Law
- Agreement of government coalition parties on common commitment to following a pro-European way of BH and on cancellation of the use of entity and ethnic vetoes in the procedure of harmonising the BH legislation with the European legislation.
- Agreement of the EU Member States on the future of BH and the mode of involvement of the EU bodies in BH in accelerating this process (a significant role played by Croatia and Serbia)
- Calming down the discussion about the future role and fate of OHR
- The amendments to the Constitution of the FBH that have to provide the following:

- a. Institutional equality of Croats in the FBH, who are currently a deprived nation with regard to their equality
  - b. FBH operational functionality (BH state non-functionality is largely connected with the non-functionality of the FBH)
  - Respect for BH confederation introduced by the DPA with two confederation units - entities, the RS and FBH and regulation of relations between them on that ground
2. Long-term policy:
- Promotion of a dialogue between the BH political parties on the future of the state. The objective is a creation of the BH Constitution and through this the creation of conditions for cessation of the DPA and abolishment of an international protectorate over BH.

An alternative to the above mentioned proposals is the maintenance of the status quo which does not provide development and welfare in BH and threatens the peace and stability in both, BH and in the wider region.

**ABBREVIATIONS:**

- BH - Bosnia and Herzegovina
- RS - Entity of Republika Srpska
- FBH - Entity of Federation of Bosnia and Herzegovina
- OHR - Office of the High Representative
- DPA - Dayton Peace Agreement
- IC - International Community
- MFA - Ministry of Foreign Affairs
- SNSD - Alliance of Independent Social Democrats, leading political party in Republika Srpska
- SDS - Serbian Democratic Party, the second leading political party in Republika Srpska
- SDP - Social Democrat Party of Bosnia and Herzegovina

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