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Bosnia and Herzegovina – *Plus Ça Change*

Introduction

In 2012, Bosnia and Herzegovina celebrated the 20th anniversary of its independence from Yugoslavia and commemorated the outbreak of war in the spring of 1992. Twenty years ago, the country was recognized by the EU member states, becoming an OSCE participating State in April 1992 and a member of the United Nations in May. International recognition and UN membership, however, could not prevent the war, and the failure and disunity of the international community in the face of ethnic cleansing and genocide continue to influence the situation of the country to this day.

The three nations and two entities – the (Bosniak-Croat) Federation of Bosnia and Herzegovina and the (Serb) Republika Srpska – commemorated the wars that devastated the country between 1992 and 1995 in different ways.¹ These differences reflect the basic dividing lines of the conflicts of the 1990s.

In the Federation, the focus was on the siege of Sarajevo, the start of ethnic cleansing, and the defence of the country's territorial integrity. In the Republika Srpska (RS), there were numerous celebrations of the 20-year anniversary of the founding of the RS and its institutions. These events were characterized by defensive rhetoric that focused on celebrating the achievement represented by the existence of the Republika Srpska in the presence of senior representatives of the Republic of Serbia.

The citizens and political actors of Bosnia and Herzegovina are not alone in facing these contradictions. Foreign observers and actors who have been following or helping to shape the development of the country – some of

1 Two wars took place between 1992 and 1995. The first began in early 1992, when the Republika Srpska (supported by the Federal Republic of Yugoslavia, which consisted of Serbia and Montenegro) attacked the Republic of Bosnia and Herzegovina. It ended with the Dayton Peace Agreement of 1995. The second began in mid 1993; it was waged by the Croatian Republic of Herzeg-Bosnia against the Republic and led to a collapse in relations between Bosnian Croats and Bosniaks, who had previously fought together against Serbian aggression. This war was ended by the Washington Agreement of 1994, which also established the Federation of Bosnia and Herzegovina. The aim of the aggressor in each war was to break up the Republic and combine part of the country with the neighbouring state of Serbia or Croatia, respectively, either in association or full union. The strategy of both wars was directed primarily at the civilian population, who were to be driven out in so-called ethnic-cleansing operations in order to create largely ethnically homogenous territories. This military strategy seriously damaged social cohesion and created lasting mistrust between the various population groups and their political representatives. Cf., e.g., Marko Attila Hoare, *The History of Bosnia: From the Middle Ages to the Present Day*, London 2007; Gerard Toal/Carl T. Dahmann, *Bosnia Remade: Ethnic Cleansing and its Reversal*, New York 2011.

them for many years – were also moved by the anniversary of the start of the siege of Sarajevo on 6th April 1992. During the “Sarajevo Red Line” memorial event, directed by the artist Haris Pašović, which commemorated the 11,541 Sarajevo citizens killed in the war, an argument erupted spontaneously between, on the one side, the Swedish foreign minister, Carl Bildt, and his wife, the MEP Anna-Maria Corazza Bildt, who had worked for the UN during the war, and, on the other, the journalist Florence Hartmann, a former spokesperson for the International Criminal Tribunal for the Former Yugoslavia (ICTY), and Ed Vulliamy, a journalist who reported on the camps set up near the town of Prijedor by the Republika Srpska in 1992. Hartmann was filmed by television reporters accusing Bildt of having no right to be in Sarajevo on this day: “He should have come when he could do something. When he could do something he was saying that Milošević was a nice guy.”²

These events encapsulated numerous disappointments and misunderstandings of the last 20 years: the passivity of the international community in the face of the war in Bosnia and Herzegovina; the ambivalent policies of the European Union, which has supported both the unity of the state of Bosnia and Herzegovina and the Republika Srpska; and the attempt to prosecute war criminals, which is seen by many people in the country as having stalled, as exemplified by the extradition of Ratko Mladić, which was only accomplished in 2011.

However, the twentieth anniversary commemorations also made clear how far the country has come in the last two decades, and that there can be no return to the pre-war society. Recent years have seen signs of change in the international community’s policies towards Bosnia and Herzegovina as well as in domestic politics within the country itself. In few other European countries are these two levels of politics so intertwined. Nonetheless, since the 1990s, international actors have all too often been “intent on outcomes, not processes: they ignore the [...] history of state formation [...] and can tell us only what it should be, not what it is or how it is evolving.”³

In the 2000s, to accompany the “state-building” undertaken by the Office of the High Representative (OHR), EU conditionality was deployed in order to achieve “outcomes” such as the imposition of lifetime bans from political office on certain politicians and civil servants, the creation of new government agencies, and a new constitution. Since then, however, this phase of international intervention began visibly to unravel, and today the international community no longer has the strength or the will to overcome the consequences of the war by regulatory means.

Since early 2011, the EU appears to be willing to abandon this approach completely. It has put forward a road map for the membership application

2 A video of the exchange can be viewed online at: <http://www.youtube.com/watch?v=iTQATrhPzBQ>.

3 Mahmood Mamdani, *The Invention of the Indigène*, in: *London Review of Books* 2/2011, pp. 31-33, here: p. 33.

process that is based on existing conditions in the country. In Brussels, in June 2012, the EU Commissioner for Enlargement, Štefan Füle, presented the political leaders of Bosnia and Herzegovina with an ambitious road map for an EU membership application by the end of 2012.

The fundamental question that now needs to be faced concerns whether the political elites of Bosnia and Herzegovina wish to head towards Europe and whether they can and are willing to extricate themselves from the rhetoric of conflict and partition that they have pursued for decades.

A Permanent State of Crisis

Bosnia and Herzegovina does not appear to be able to lift itself out of the crisis of state, economy, and society that has been manifest since at least 1987. The intensification of the crisis was closely linked to Slobodan Milošević's de facto assumption of power in Serbia the same year. The general structural crisis of the Yugoslav system saw an intensification of aggressive Serbian nationalism. In Bosnia and Herzegovina, the influence of the once-dominant Communist Serbian elites waned. This was also reflected in the full recognition of the Bosnian Muslims (now known as Bosniaks) as the constituent people in Bosnia and Herzegovina in the 1970s. The strengthening of the republics and the provinces by the 1974 Federal Constitution underscored the statehood of the Republic of Bosnia and Herzegovina, not least because it explicitly established a right to leave the Federation.

The decline of the Yugoslav economy, manifest since 1979, and the conflict over the Yugoslav constitution that had been smouldering since the death of Josip Broz Tito in 1980 led to a dead end in the late 1980s. In Bosnia and Herzegovina, the power and legitimacy of the League of Communists collapsed in the aftermath of the Agrokomerc Affair in 1987;⁴ the communist leadership stepped down almost as one body. While hope grew in urban centres that Bosnia and Herzegovina could undergo a transformation *à la* Central Europe, and a flowering of youth and alternative culture took place, a new kind of nationalism established itself in the power vacuum in the early post-communist era, above all in rural areas.⁵

The first multi-party elections, held in 1990, dramatically reflected the communists' loss of legitimacy. The election was won by the three nationalist

4 The Agrokomerc Affair is symbolic of the failure of Yugoslavian socialist self-management and its corrupt practices in the face of the deferred bankruptcy of the state. For contemporary portraits, cf. Harold Lydall, *Yugoslavia in Crisis*, Oxford 1989, pp. 168-171; Jugoslawien: Höheres Recht [Yugoslavia: Higher Legitimation], in: *Der Spiegel* 37/1987, pp. 179-180, at: <http://www.spiegel.de/spiegel/print/d-13523801.html>; Jugoslawien: Bus ohne Fahrer [Yugoslavia: A Bus without a Driver], in: *Der Spiegel* 42/1987, pp. 169-172, at: <http://www.spiegel.de/spiegel/print/d-13524876.html>; Jugoslawien: Im Denver-Stil [Yugoslavia: A Dynasty like Television's Carringtons], in: *Der Spiegel* 52/1987, pp. 98-99, at: <http://www.spiegel.de/spiegel/print/d-13526547.html>.

5 Cf. Neven Andjelić, *The End of Legacy*, London 2003.

parties of Bosniaks (Party of Democratic Action, SDA), Serbs (Serbian Democratic Party, SDS), and Croats (Croatian Democratic Union of Bosnia and Herzegovina, HDZ BiH), who were to dominate the political scene for the next two decades. With Milošević's support, Radovan Karadžić and the SDS worked systematically to build up the Republika Srpska. The goal was to achieve complete control over large parts of Bosnia and Herzegovina and ultimately annex this territory to Serbia. The unity of Bosnia and Herzegovina was something a majority of the Serbian elite were willing to dispense with, if they were unable to control the country as a whole. They did not believe that the Republic of Bosnia and Herzegovina should have a right to independence, but rather the Serbian nation, which should thus also be entitled to secede from Bosnia and Herzegovina. The key elements of this policy have never changed and continue to determine the positions of the Republika Srpska (and Serbia).

These issues lay behind the outbreak of war in 1992. The Dayton Peace Agreement of November 1995 cemented the partition of the country on the basis of ethnicity and nationality, which had been brought about by violence and at a high cost in human suffering. The structures and areas of competency established within Bosnia and Herzegovina then have been consolidated over the following 17 years. The international community's efforts to establish state-level institutions can only be considered a partial success. There is too much resistance, particularly in the Republika Srpska, to sharing, let alone giving up, powers guaranteed at Dayton. Domestic politics has thus tended to focus on questions relating to constitutional conditions within the country and to the nature of Bosnian-Herzegovinan statehood. The debate has been determined by political elites that demonstrate a high degree of continuity in terms of personnel. The political system is therefore characterized at every level by clientelism and a dearth of economic and social competition. Vested interests that seek to preserve the status quo – above all their control of the country's limited resources – are thus not exclusive to the Republika Srpska. As the political elites of all three sides consolidated their positions, there was little momentum to reverse the results of the war and the division of the country.

Nonetheless, the October 2006 general elections marked a turning point.⁶ In a major rhetorical clash between the then prime minister of the Republika Srpska, Milorad Dodik, and the Bosniak candidate for the collective tripartite state Presidency, Haris Silajdžić, the various concepts of Bosnian statehood collided with a new degree of clarity. Dodik demanded full autonomy for the Republika Srpska, even including the right to unilaterally

6 General elections combine elections to the state-level presidency and house of representatives, the entity presidencies and parliaments, and the ten cantonal assemblies in the Federation.

decide on its own independence.⁷ His case was strengthened by Montenegrin independence and the start of negotiations on the status of Kosovo. At that time, the EU was weak in foreign-policy terms as a result of the failure of its proposed Constitutional Treaty. Silajdžić, however, insisted on “100 per cent Bosnia and Herzegovina”, in other words, the abolition of the entities. He supported his demand with reference to the judgment of the International Court of Justice, which had ruled in February 2007 that the crimes in Srebrenica in July 1995 fulfilled the criteria for genocide.⁸ In his view, this justified calling the legitimacy of the Republika Srpska into question and demanding a return to the Republic of Bosnia and Herzegovina.

Behind this dispute lies a fundamental question: Does the Republic of Bosnia and Herzegovina (1992-1995), which was accepted into the United Nations in May 1992, continue to exist in the form of Bosnia and Herzegovina (since 1995), or is the Dayton Peace Agreement a constitutive act that created the state of Bosnia and Herzegovina out of the two entities? This dispute is also the background to the stalemate in the country's efforts to join NATO. It creates legal obstacles that mean that the agreed apportionment of state and military property between the entities cannot be carried out. The Republika Srpska insists on direct transfer to the entities, while Federation politicians call for property to be registered with the state and then distributed to the entities. The resolution of the issue of military property is, however, a precondition for NATO to activate the Membership Action Plan.

These questions of the nature of the state and hence the nature of the war have dominated the domestic political scene in recent years, thereby blocking “Euro-Atlantic integration”. Progress towards EU integration only proved possible once the EU had substantially watered down its previous preconditions. Police reform was accepted as a formulaic compromise, since a new distribution of competencies in police-related questions proved impossible to push through. As a result, the Stabilisation and Association Agreement (SAA) was signed in 2008, and ratified by all member states in February 2011. The only area in which the EU was able to enforce technical conditions for concrete improvements in police and cross-border co-operation was the visa dialogue led by the European Commission from 2008 to 2010. The lifting of the visa requirement for Schengen countries in December 2010 is the most notable step “on the path to Europe” for the citizens of Bosnia and Herzegovina thus far. Once the visa-free regime had been achieved, the Republika Srpska withdrew once more from police co-operation activities at state level.

7 An example of the attitude of the authorities and institutions of the Republika Srpska to Bosnian statehood is their avoidance of the Bosnian internet domain (.ba). The website of the government of the Republika Srpska, for example, is found at www.vladars.net.

8 *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, 26 February 2007.

The general elections in October 2010 consolidated Milorad Dodik's power in the Republika Srpska. Haris Silajdžić, on the other hand, was punished by the electorate. He lost his office as the Bosnian member of the Presidency to Bakir Izetbegović, who was only just able to defeat the media entrepreneur Fahrudin Radončić. While the state-level governing coalition from 2006-2010 still enjoyed a majority large enough to enable rapid formation of a government, this did not come to pass, as the election's winner, the Social Democratic Party (SDP), undertook instead to transform the Federation's domestic political landscape.

Domestic Policy in Upheaval?

In retrospect, Bosnia and Herzegovina's noisy stalemate appears to have drowned out the creeping upheaval that has transformed domestic politics in recent years. Although Milorad Dodik uses robust rhetoric in defence of the autonomy of the Republika Srpska, his Alliance of Independent Social Democrats (SNSD) cannot be compared with the likes of Radovan Karadžić's SDS. Since taking office in 2005, Dodik has reformed the Republika Srpska. He has largely cut the entity's connections to war criminals and their support networks. Initial steps to modernize the economy have also been taken, though these have been slowed down by clientelistic interests. The administration of the Republika Srpska has been professionalized and structures created to facilitate European integration. While the Republika Srpska can hardly be described as a democracy, it is no longer the criminal and violent polity it was in the 1990s. The SNSD under Dodik's leadership can be characterized as a populist, leader-driven movement that understands well how to marginalize the opposition in the Republika Srpska.

Yet its successes in modernization do not mean that the Republika Srpska should be spared critical analysis of its origins and history. In late January 2012, for instance, Čedomir Jovanović, leader of the Liberal Democratic Party of Serbia (LDP), declared that the Republika Srpska was founded on genocide and ethnic cleansing. (*"RS je nastala na genocidu i etničkom čišćenju nezabilježenim u Evropi"* – "The Republika Srpska was founded on genocide and ethnic cleansing unprecedented in Europe"). Shortly thereafter, Jovanović and Dodik publicly debated this question. Dodik challenged Jovanović's claim on the basis that the Republika Srpska had already been proclaimed in January 1992, i.e. before the campaign of expulsion and conquest that began in the spring of that year. Dodik thereby negated the judicially determined and well-documented fact that the founding of the Republika Srpska was necessary precisely to enable complete control over the territories it claimed and to enforce the programme of expulsions.⁹ This episode

9 Cf. Emir Suljagić: *Ethnic Cleansing: Politics, Policy, Violence. Serb Ethnic Cleansing Campaign in former Yugoslavia*, Baden-Baden 2010, p. 267.

showed that the elites of the Republika Srpska were still unwilling to take an objective look at their recent history.

In the Croatian camp, there have also been shifts in recent years. The start came in the early 2000s, when the then president of Croatia, Stjepan “Stipe” Mesić, announced that the HDZ Croatia would no longer interfere in the internal affairs of its sister party in Bosnia and Herzegovina. The split of the HDZ BiH into two factions – the HDZ BiH and the HDZ 1990 – prior to the 2006 elections signalled the end of the monolithic front that the HDZ had presented under Dragan Čović. The HDZ 1990 conceived of itself as a party focused on the development of Bosnia and Herzegovina. However, it failed to produce convincing leaders. The split in the Croatian camp in the 2006 and 2010 elections resulted in the election of a candidate for the office of the Croatian member of the Presidency who was not nominated by the HDZ: Željko Komšić, a representative of the SDP, which describes itself as a multi-ethnic party. His re-election in 2010 angered the leadership of the HDZ, who accused Komšić of not being a genuine representative of the Croatian people. When SDP leader Zlatko Lagumdžija then began to form a coalition without the participation of either HDZ party, Čović proclaimed this a crisis of Croatian representation in Bosnia and Herzegovina. It thus proved impossible to form a state-level government in late 2010.

The formation of a government in the Federation by the SDP and the SDA astonished many observers. Under the leadership of these two parties, a coalition was formed that sought to introduce reforms by way of a “European platform”. The path to the formation of this coalition was strewn with legal problems and controversial decisions regarding the implementation of the results of the election by the High Representative, Valentin Inzko.¹⁰ By passing these decisions, Inzko removed the obstacles that had been set up by the HDZ parties, to their further annoyance. Thus, 2011 was characterized by numerous domestic conflicts and disagreements, which also revealed the role being played by parts of the international community in the domestic politics of Bosnia and Herzegovina. Not least due to pressure from the EU, but also as a result of the need to adopt a state budget, a state-level government was formed at the end of 2011. Once more, it was a coalition consisting of six parties. From the Serbian camp, these were Dodik’s SNSD and the SDS; the Croatian parties included were the HDZ BiH and the HDZ 1990, while the

10 Inzko initially relieved the pressure on the parties in the Federation to form a government rapidly by imposing a budget in January 2011 and ordering that decisions of the Electoral Commission standing in the way of the formation of a government by the SDP and the SDA should be suspended. Cf. Office of the High Representative, *Decision Enacting the Decision on Temporary Financing of the Federation of Bosnia and Herzegovina for the Period January-March 2011*, 26 January 2011, at: http://www.ohr.int/decisions/econdec/default.asp?content_id=45733; Office of the High Representative, *Order Temporarily Suspending Certain Decisions of the Central Election Commission of Bosnia and Herzegovina Adopted at its 21st Session Held on 24 March 2011 and any Proceedings Concerning Said Decisions*, 28 March 2011, at: http://www.ohr.int/decisions/statemattersdec/default.asp?content_id=45890.

Bosniak camp was represented by the SDA and the multiethnic SDP, which replaced Haris Silajdžić's Party for Bosnia and Herzegovina (SBiH) in the state government.

After adopting the 2011 budget, the new government and the parliamentary majority landed in a new crisis regarding the state finances for 2012. This was triggered by planned budget cuts, which, among other measures, affected the two ministries controlled by the SDA: security and defence. The SDA voted against the budget, triggering another crisis of government. However, an alternative was available in the form of media entrepreneur Fahrudin Radončić's Union for a Better Future (SBB), and this was grasped by SDP leader Zlatko Lagumdžija. Radončić is the owner of Bosnia and Herzegovina's largest newspaper, *Dnevni Avaz*, and has sought to monumentalize himself in Sarajevo in recent years by undertaking several major construction projects. His entry into politics was seen by many commentators as an attempt to escape allegations of corruption while opening up new sources of income. Despite these accusations, and from a standing start, he received 142,359 votes in the election for the state Presidency, equivalent to 30 per cent of voters in the Bosniak list. The SBB, which he founded, succeeded in attracting experienced individuals whose parliamentary work has given them a high political profile. Although no detailed analyses of the election are available, his party appears to have appealed particularly to members of the Bosniak electorate with fewer links to the pre-war system, who are self-employed or owners of small businesses. After initially flirting with religious conservative circles, the SBB now appears to want to position itself as a right-wing populist party.

The sealing of an alliance between the SDP and the SBB in the spring of 2012 sent shockwaves through Bosnian politics. Now, after a year-and-a-half in which the SDP had strained the patience of the HDZ parties and kept them away from key roles in the government of the Federation, now the SDA, which had been in power for 22 years, was also threatened with a spell in opposition. For many party members, opposition is synonymous with the loss of positions, contracts, and income. This is not limited to government offices, but also jobs, right down to the caretaker, in large public corporations such as BH Telekom or in the energy sector, which is largely still under state ownership in the Federation.

Tensions between the SDA and the SDP had already increased during 2011. Shortly after taking office, the interior ministers of the Federation, Predrag Kurteš, and of the Canton of Sarajevo, Muhamed Budimlić, (both SDP) presented amendments to the laws on internal affairs in their respective areas of authority. Both in the Federation and in Sarajevo, the SDA and the SDP governed in coalition. The European Union Police Mission (EUPM), in particular, had long called for these laws to be amended, and the SDA had supported such a course of action prior to the elections. For the EU, the goal was to enhance civilian control of the police while simultaneously increasing

operational independence. The laws then in force originated in the immediate post-war period and had been imposed by the OHR. After the election, however, the SDA vehemently rejected the option of reform, claiming that the SDP wanted merely to place the police under political control. What the SDA omitted to mention, however, is that it had been the SDA itself that had taken control of part of the security apparatus in 1990 and had controlled it ever since. After the 1990 elections, the SDA, HDZ, and SDS had shared out the strategic divisions of the state security apparatus among themselves.¹¹ Efforts by the United Nations International Police Task Force (IPTF), the United Nations Mission in Bosnia and Herzegovina (UNMIBH), and the OHR to depoliticize the police in the late 1990s had limited success. While the police in the Republika Srpska had always been under the direct political control of, first, the SDS and then, from the middle of the 2000s, the SNSD, depoliticization of the police in the Federation and the cantons was successfully carried out, at least on paper. However, in practice, the HDZ and the SDA retained a decisive level of control in those areas where they possessed a majority. It was thus no wonder that the SDA's response to the reform initiative was rejection and suspicion. Not even the Venice Commission's supportive opinion¹² was able to dissuade the SDA from its fundamental opposition to further police reform. However, the SDA's argumentation does not appear to be founded on facts. This is because, ultimately, the proposed reforms were only partly concerned with improving the effectiveness of the law enforcement agencies. Given the widespread corruption in political parties, the SDA elite feared that the reforms called for by the EU and the consequences of the efforts to combat corruption could eventually lead to investigation of more than 20 years of government activity. This has already been seen in Croatia in recent years, where the long-term leadership of the HDZ was prosecuted as a criminal organization. Croatia's EU accession process has also seen reforms and improvements in the fight against criminality and, in particular, corruption come to the fore. The intensity of the dispute over the improvement of police laws in Bosnia and Herzegovina also demonstrated the necessity of these reforms. For the SDA, it thus appeared risky to give up control over this process without a struggle.

In summer 2012, when the state-level government that had been formed in late 2011 lost its ability to function, the two SDA ministers, Sadik Ahmetović (security) and Muhamed Ibrahimović (defence) refused to give up their offices, and their dismissal became a matter for the courts. As in the case of police reform, this demonstrates how much the political process is exploited by parties for their particular interests.

11 Cf. Hoare, cited above (Note 1), p. 347.

12 Cf. European Commission for Democracy through Law (Venice Commission), *Opinion on the draft law on internal affairs of the Federation of Bosnia and Herzegovina and on the draft law on internal affairs of the Canton of Sarajevo*, adopted by the Venice Commission at its 89th plenary session, Venice 16-17 December 2011, at: <http://www.venice.coe.int/docs/2011/CDL-AD%282011%29048-e.pdf>.

With the diminishing role of the international community, and following a number of failed attempts at fundamental reform of the political system, Bosniak and Bosnia-oriented politics appear now to be dominated by actors that have given up hope of a “grand solution” to the Bosnian question for the time being. This is typified by the reporting of Radončić’s newspaper *Dnevni Avaz*. During 2012, it has increasingly emphasized the need for effective political action at the domestic level and has not refrained from criticism of the OHR.

The populist clientelism of the SDP (supported by the SBB) is thus following a pattern of behaviour reminiscent of Dodik’s SNSD. While the historical traumas of the war and the displacement still have their rhetorical role to play, the constraints on action associated with EU accession appear to have created space for an attempt at a more businesslike dealing with the issues relevant to EU accession. At the same time, however, 2012 has seen a further consolidation of the de facto division of the country, which was also influenced by the EU’s conditionality.

The New Role of the European Union

To this day, the EU’s reputation as a political actor in Bosnia and Herzegovina suffers as a result of its failure to prevent the outbreak of wars in Slovenia, Croatia, and Bosnia and Herzegovina in 1991 and 1992. Thanks to its hesitant attempts at mediation, the belated recognition of the country as a result of the call for a referendum, and the plan for the division of the country along ethnic lines drawn up by EU special envoy José Cutileiro, the EU has no little co-responsibility for the situation and the problematic constitutional situation.¹³ The fact that it took US leadership to end the war has weakened belief in the EU’s resoluteness to this day.

By raising the prospect of EU accession at the European Council meeting in Thessaloniki in 2003, the EU hoped to improve its profile. By dispatching its first European Security and Defence Policy (ESDP) mission, the 2003 deployment of the EUPM, launching EUFOR Althea as the successor to the NATO-led IFOR/SFOR in 2004, and making High Representative Paddy Ashdown simultaneously EU Special Representative (EUSR) in 2002, the EU demonstrated a renewed commitment to Bosnia and Herzegovina. Although the EU deployed all its foreign policy and enlargements instruments in the 2000s, in 2012, Bosnia and Herzegovina is still not a credible candidate country.

Despite the unanimously declared and regularly reconfirmed prospect of accession for the countries of the Western Balkans, the EU member states remain disunited in their analyses of the dissolution of Yugoslavia and its

13 Cf. Josip Glaurdić, *The Hour of Europe. Western Powers and the Breakup of Yugoslavia*, New Haven 2011, pp. 249-302.

consequences. The prospect of the break-up of the state union between Serbia and Montenegro in 2006 was supported only hesitantly by some member states and tested the EU's coherence. On the recognition of the Republic of Kosovo (2008), unanimity had already impossible been to find. Croatia's accession process, while relatively uncontroversial, slowed down as a result of the "creeping nationalization" of the enlargement process that the member states introduced following the 2004 and 2007 enlargement rounds.¹⁴ This was evident in Greece's blocking of the process for the accession of the former Yugoslav Republic of Macedonia, and in Slovenia's policy of blocking negotiations with Croatia in order to strengthen its position in the dispute over territorial waters. There is also widespread scepticism regarding the extent to which the countries of the region – including Bosnia and Herzegovina – would be in a position to make long-term progress on questions of justice and rule of law. The European Commission reacted to this in 2011 by adopting a new negotiating strategy. It is now the intention to deal with this sensitive chapter of the shared European *acquis* as early as possible in the accession process.¹⁵

The ten years since the European Council met in Thessaloniki have also shown that EU enlargement should not be considered exclusively as a foreign policy instrument, but rather as a cause of change to the EU itself.¹⁶ Recent developments in EU member states in South-eastern Europe (Hungary, Greece, Romania) have again fed doubts in a number of capitals about the ability of the region to implement reforms while also contributing to the shift in the character of the EU.

The requirements for EU membership have thus not only increased objectively during the last ten years as a consequence of the expansion of the *acquis*. Subjective political factors, including public opinion and national narratives in the member states, have also increasingly played a role. For the EU heads of state or government, these domestic political debates play a crucial role. The strengthening and institutionalization of the European Council in the Treaty of Lisbon mirrors the influence of the heads of state or government. Furthermore, Germany, among others, is opposed to including additional unresolved national conflicts on the model of Cyprus within the EU. Consequently, Bosnia and Herzegovina's fragile political system faces the challenge of demonstrating sufficient credibility, ability to adhere to treaty commitments, and coherence before it can launch an application for membership.

14 Cf. Christophe Hillion, *The Creeping Nationalisation of the EU Enlargement Policy*, Stockholm 2010, at: <http://www.sieps.se/en/publikationer/the-creeping-nationalisation-of-the-eu-enlargement-policy-20106>.

15 Cf. European Commission, *Communication from the Commission to the European Parliament and the Council. Enlargement Strategy and Main Challenges 2011-2012*, p. 5, at: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/strategy_paper_2011_en.pdf.

16 Cf. Jean-Claude Piris, *The Future of Europe. Towards a Two-Speed EU?* Cambridge 2012, p. 55.

On the other hand, the Treaty of Lisbon appears to have enhanced the EU's coherence on the ground in Bosnia and Herzegovina. For the first time in more than 20 years, the EU has a "single presence" in the country. In September 2011, the separation of the OHR from the EUSR was completed, with the appointment of Denmark's Peter Sørensen as EUSR and Head of the EU Delegation. The closure of the EUPM on 30 June 2012 marked the end of civil crisis management, which was replaced by stronger EU conditionality in the area of rule of law. With regard to the extension of the EUFOR mandate, a number of EU member states have signalled their willingness for the further transition of the mandate into an advisory mission.¹⁷ These steps mean that the EU can now make autonomous decisions on individual progress towards accession. This was not possible as long as the EUSR and the High Representative were the same person and could thus not distinguish clearly between questions of state-building and the fulfilment of the Dayton Peace Agreement, on the one hand, and matters relating to EU accession, on the other. The EU's goal was to situate fundamental discussions of the "Bosnian question" in the Peace Implementation Council (PIC), where it would be kept separate from the accession process. This had not proved possible in the past. Police reform, initiated by High Representative Paddy Ashdown and made a matter of EU conditionality by Chris Patten as EU Commissioner for External Relations is typical of the failure of an approach that mixed "state-building" with "member-state-building".¹⁸

The unified EU presence enabled by the Treaty of Lisbon was accompanied by a catalogue of requirements put together by the EU foreign ministers, which sought to signpost the way to a "credible membership application".¹⁹ The EU demanded the adoption of two laws at state level, a State Aid Law and a Census Law. Both have since been adopted, though doubts remain as to the seriousness of the political class's intentions regarding their enforcement. The regulation of state aid at state-level, which is a foundation of the common market, threatens the basis of party clientelism. The census, which should in fact have been carried out during 2011, when all EU states were required to perform a census, is necessary because the most recent census data was gathered in 1991. This data is completely obsolete, as the war

17 The leadership of the EUFOR Althea military operation makes use of NATO structures (under the Berlin Plus arrangement). Althea has a mandate from the United Nations Security Council under Chapter VII of the UN Charter and thus represents a continuation of the United Nations Protection Force (UNPROFOR) and NATO mandates. Political and strategic responsibility rests with the EU, though the Union cannot make decisions on the future of the force without consulting closely with its NATO partners, in particular Turkey and the United States, in the North Atlantic Council.

18 Cf. Dominik Tolksdorf, *Der Einsatz von EU-Konditionalität bei den Verhandlungen um eine Polizeireform in Bosnien und Herzegowina* [The Deployment of EU Conditionality in the Negotiations over Police Reform in Bosnia and Herzegovina], in: *Südosteuropa* 4/2011, pp. 412-447.

19 Council of the European Union, *Council conclusions on Bosnia and Herzegovina, 3076th Foreign Affairs Council meeting*, Brussels, 21 March 2011, p. 1, at: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/120066.pdf.

brought about a massive change in structures of population and settlement. The EU does not require collection of data on ethnic identity, but exclusively household and demographic information necessary for the planning of investment and infrastructure projects. However, the question of what data on ethnicity would be gathered and how it could be used was once again a cause of political turmoil, as the parties insisted on the inclusion of questions relating to ethnicity in the census questionnaire.²⁰

However, the greatest difficulty for local politics arose from the EU's demand that action be taken following the decision of the European Court of Human Rights (ECtHR) in the case of *Sejdić and Finci versus Bosnia and Herzegovina*.²¹ In December 2009, the ECtHR ruled that the constitution of Bosnia and Herzegovina violated human rights by excluding minorities from specific offices. The complainants, Dervo Sejdić and Jakob Finci, a Rom and a Jew, were not eligible to stand for the Presidency, as this position is only open to people with a declared affiliation to the "constituent peoples": Bosniaks, Serbs, and Croats.²²

The ECtHR's ruling placed Bosnia and Herzegovina in contravention of Article 2 of its Stabilisation and Association Agreement, which covers the universal obligation to observe human rights. As a consequence, the EU resolved not to put the agreement into effect, even though it had already been ratified. The ruling in the case of *Sejdić and Finci* raises complicated constitutional questions. The EU therefore demanded that if no solution can be found to all the related questions in the short term, that at least "serious efforts" be made to end discrimination based on the constitution.²³

As Bosnia and Herzegovina's domestic crisis meant that there had still been no breakthrough in this question by the spring of 2012, EU Commis-

20 The proposed questions on ethnicity and religion were criticized by civil society organizations and experts from the Council of Europe. Cf. Steering Committee of the International Monitoring Operation on the Population and Housing Censuses in Bosnia and Herzegovina, *First Assessment Report*, sections 60-74, Sarajevo 2012, at: http://www.bhas.ba/census/779849_Report%20First%20Mission%20BiH%20Census%20revised.pdf.

21 Cf. European Court of Human Rights (Grand Chamber), *Case of Sejdić and Finci v. Bosnia and Herzegovina* (Applications nos. 27996/06 and 34836/06), Judgment, Strasbourg 22 December 2009, at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-96491>; cf. also http://www.coe.org.rs/eng/news_sr_eng/?conid=1545.

22 It is not only minorities that are excluded from specific offices by the constitution. Members of the constituent peoples are also not permitted to stand for certain offices. For instance, a Croat cannot stand for the State Presidency if he or she is resident in the Republika Srpska.

23 The Treaty of Lisbon, which came into force on 1 December 2009, amends the Treaty on European Union (TEU), enhancing the political conditions applying to potential member states in the area of human rights protection. Since 1 December 2009, Article 2 of the Treaty on the European Union has had the following wording: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail." *Consolidated Version of the Treaty on European Union*, Official Journal of the European Union, C 83/13, 30 March 2010, at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:020:en:PDF>.

sioner for Enlargement Štefan Füle invited the Presidency of Bosnia and Herzegovina, the chair of the Council of Ministers, the prime ministers of the entities, and the leaders of the strongest parties to talks in Brussels. This meeting also sought to reach agreement on a co-ordination mechanism for EU matters within the country. On 27 June 2012, agreement was reached on an ambitious road map to resolve the question by the autumn. The delegations from Bosnia and Herzegovina were led to believe that if this road map were followed, an application for EU membership could be discussed at the European Council meeting in December 2012.

Road Map for Bosnia and Herzegovina's EU Membership Application

By 31 August	Proposal to the Parliamentary Assembly to amend the Constitution of Bosnia and Herzegovina (BiH) to make it compliant with the Sejdić/Finci ruling. This is the essential missing element for a Decision of the Council on the entry into force of the Stabilisation and Association Agreement (SAA).
1st half of September	High Level Mission of the European Commission to BiH and mid-term review of this Road Map to prepare the second meeting of the High Level Dialogue on the Accession Process
7 October	Local Elections in Bosnia and Herzegovina
10 October	Adoption of the Annual Progress Report by the European Commission on BiH.
By 31 October	Reply by Bosnia and Herzegovina to the 2 lists of sectoral questions handed over on 27 June (Chapters 5 and 27). Definition of an efficient EU coordination mechanism.
November	Second meeting of the High Level Dialogue on the Accession Process in Sarajevo.
By 30 November	Constitution has been amended to make it compliant with the Sejdić/Finci ruling. On the condition that the SAA enters into force: submission of a credible EU membership application.

Source: European Union, *Joint Conclusions from the High Level Dialogue on the Accession Process with Bosnia and Herzegovina and the Road Map for BiH's EU membership application*, 27 June 2012, at: http://europa.eu/rapid/press-release_MEMO-12-503_en.htm.

The issues around the case of Sejdić and Finci also illustrate clearly what difficulties and limitations are involved in the planned separation of progress towards EU membership from the fundamental conflicts concerning the statehood of the country. In its report of July 2012, the International Crisis Group (ICG) noted that “almost nothing about the Sejdić-Finci case is as it

seems”.²⁴ As a result of domestic political developments, there are now two challenges that need to be faced. Not only does discrimination against minorities need to be abolished, the Croatian HDZ parties’ call for guaranteed representation also needs to be addressed. As described above, neither the HDZ BiH nor the HDZ 1990 succeeded in winning a majority of votes in the Federation for their candidates for the Croatian member of the Presidency in the 2006 and 2010 elections, which was won both times by the SDP candidate, Željko Komšić; in 2010, he won almost twice as many votes as the two HDZ candidates combined.²⁵ As representatives of the smallest of the three constituent peoples, the HDZ parties fear that they face a structural disadvantage. They have made their agreement to constitutional change contingent on the Croatian representatives in state institutions being elected by a majority of Croatian voters and not merely a majority of eligible citizens. With regard to the EU road map, the HDZ parties brought a motion in the state parliament in late August 2012 proposing that the members of the Presidency be elected indirectly by the state parliament.²⁶ An identical proposal, previously discussed by the HDZ parties and the SDP, had been the cause of Željko Komšić’s departure from the SDP in late July 2012.²⁷ He argued, as did representatives of civil society groups, that a constitutional amendment of this kind would reinforce ethnic discrimination rather than reducing it.²⁸ The proposal will also meet with the resistance of the Republika Srpska, which insists that one member of the Presidency be elected exclusively by its citizens.

From the EU’s perspective, it would be desirable if this question could be resolved before Croatia becomes an EU member. Waiting until after Croatia’s accession to deal with it threatens to complicate the situation, as it would grant Croatia an equal right to contribute to formulating the conditionality for enlargement, as well as the right to a veto. If the “Croatian question”

24 International Crisis Group (ICG), *Bosnia’s Gordian Knot: Constitutional Reform*, Europe Briefing No. 68, Sarajevo, 12 July 2012, p. 1, at: <http://www.crisisgroup.org/~media/Files/europe/balkans/bosnia-herzegovina/b068-bosnias-gordian-knot-constitutional-reform>.

25 “Komšić won 337,065 votes compared to 109,758 votes for HDZ candidate Borjana Krišto and 60,266 votes for HDZ 1990 candidate Martin Raguž. Even if the two Croat national parties – who together usually represent the vast majority of Croat voters – had run with a joint candidate, they would have lost.” International Crisis Group, *Bosnia’s Gordian Knot: Constitutional Reform*, cited above (Note 24), p. 4.

26 Cf. Volkgruppen ORF, *BiH - Kroaten wollen Verfassung ändern* [BiH – Croats Want to Amend Constitution], 28 August 2012, at: <http://volksgruppen.orf.at/kroaten/aktuell/stories/170101>.

27 Indirect election of the Presidency would also hinder Komšić’s chances of being re-elected as the Croatian member, as the HDZ parties would use the initiative to underscore their claim to the office.

28 Cf. Civil Society warns: HDZ proposal isn’t a credible contribution, in: *Bosnia Daily*, 29 August 2012, p. 1.

in Bosnia and Herzegovina is not resolved, the EU can expect Croatia to block enlargement from mid-2013.²⁹

Resolving the constitutional questions thrown up by the Sejdić/Finci case requires local decision makers to show a willingness to compromise that has not been evident in recent decades. The implementation by the political elites in Bosnia and Herzegovina of the demands made in March 2011 has also become a test of the robustness of EU enlargement and foreign policy in the region, as the EU's current crisis is also perceived in Bosnia and Herzegovina. As a result, the political elites do not expect Bosnia and Herzegovina to become a member any time soon. This has the effect of diminishing the willingness to reform. The renunciation of power and control and the creation of competition and openness is currently unattractive if the benefits and gains of EU membership lie in an uncertain future. At a more fundamental level, the EU itself also appears to be changing. Solidarity with peripheral and economically weak countries such as Bosnia and Herzegovina is being made contingent on increasingly stringent compliance with rules, something that the current generation of political leaders appears highly unlikely to achieve. Doubts as to whether the prospect of EU membership is sufficiently attractive to bring about behavioural change in the local elites are thus not without justification.

Outlook

Twenty years after independence, the key features of the domestic political dividing lines in Bosnia and Herzegovina are still determined by the dispute over the country's statehood. The Republika Srpska still regularly calls the continued existence of the state and its institutions into question.³⁰ The EU reacted to Dodik's threat to hold a referendum on independence in May 2011 by opening a dialogue on the competencies and role of the state and the entities in the area of justice and on judicial reform. This attempt by the EU to contain the situation influenced the domestic political conflict lines. The EU now accepts that the entities as dialogue partners, as demanded by the Republika Srpska. However, even given this concession, the prospect of EU

29 Article 6 of the Act on the Relations between the Republic of Croatia and the Croatians Outside the Republic of Croatia of October 2011 obliges Croatia to intercede for the "full achievement of equality and constitutiveness of the Croatian people in Bosnia and Herzegovina". *Act on the Relations between the Republic of Croatia and the Croatians outside the Republic of Croatia*, 21 October 2011, Article 6, at: http://www.mvep.hr/Portals/US/File/111219_zakon_hrvati_izvan_rh_eng.pdf.

30 Cf. *Dodik: Lagumdžija must go, Bosnia won't survive*, daily.tportal, 15 August 2012, at: <http://daily.tportal.hr/209451/Dodik-Lagumdžija-must-go-Bosnia-won-t-survive.html>. This article concerns Dodik's criticism of Lagumdžija's actions as foreign minister. Lagumdžija had instructed Bosnia's UN representative to vote in favour of the EU-sponsored resolution on Syria in the General Assembly. Dodik accused him of having failed to agree his policy with the Presidency, describing the events as evidence that Bosnia and Herzegovina "did not work".

membership does not appear to be enough to bring about a fundamental change of policy in the direction of common sovereignty and shared competencies. In the Republika Srpska, it appears rather to be nourishing hopes of a dual-track approach of the kind used at times in negotiations with the State Union of Serbia and Montenegro. As there is currently no binding legal arrangement between the EU and Bosnia and Herzegovina, there are elements among the elites of the Republika Srpska that hope to enter into entirely independent negotiations with Brussels. It also remains to be seen how the change of government in Serbia will affect the political situation in Bosnia and Herzegovina, particularly if Serbia's further integration with the EU continues to be blocked by the Kosovo question. Statements made in late August 2012 following a meeting between Belgrade and Banja Luka (Republika Srpska) mentioned neither the common prospect of EU membership nor the necessary reforms in Bosnia and Herzegovina.³¹

However, against the background of Croatia's EU accession and the European economic crisis, the possibility that pressure will grow on the political elites to deliver concrete results in the area of economic and social policy cannot be ruled out. The joint protests by farmers from the Federation and the Republika Srpska in August 2012 may be an indication of how things could develop. Despite years of preparation and technical assistance from the EU, it has not proved possible to certify certain of the country's agricultural products according to EU norms. The Republika Srpska has long resisted the creation of an office with responsibility for this at state level, though this is the norm in EU member states. In contrast to the political criteria for membership, the elements of the EU *acquis* relating to the common market is not readily negotiable. In the absence of the appropriate export documents, Bosnia and Herzegovina's agricultural sector is threatened with the loss of one of its most important export markets – Croatia – on 1 July 2013.³² This example shows how the pressure could increase to instigate the necessary political and economic structural reforms to prepare Bosnia and Herzegovina for the competition its industries will face within the EU. Every successful step on the path towards membership, including, finally, candidate status,³³ would help to confront the political elites with the concrete challenges of European integration. This process may then be the way to create the necessary space for a constructive approach to deal with the traumas of the 1990s.

However, with a dysfunctional governing coalition at state level, the incompleteness of the reform of the political landscape in the Federation, and

31 Cf. *Dačić, Džombić for Serbia-RS special relations*, tanjug.rs, 28 August 2012, at: <http://www.tanjug.rs/news/56677/dacic--dzombic-for-serbia-rs-special-relations.htm>.

32 Cf. Elvira M. Jukic, *Bosnian Exports Already Hit By Croatian EU Membership*, in: *BalkanInsight*, 31 July 2012, at: <http://www.balkaninsight.com/en/article/bosnian-export-already-hit-by-croatian-eu-membership>.

33 Candidate status comes with a significant increase in the pre-accession assistance. This assistance is provided to all sectors. Before a country gains candidate status, assistance concentrates on the achievement of the political criteria.

the intensification of rhetorical attacks on Bosnia and Herzegovina by the leaders of the Republika Srpska, the signs are not promising. How the local elections on 7 October 2012 will affect future political developments remains to be seen. Many observers expect that the failure of the SDP's attempted change of policy will lead to a political realignment in the Federation, which will not necessarily enhance stability at the level of the state.

All in all, 2013 looks like being another decisive year for Bosnia and Herzegovina.