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# BOSNIA AND HERZEGOVINA: PROSPECTS FOR THE POST-DAYTON ERA

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## DRAFT GENERAL REPORT

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International Secretariat

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\* Until this document has been approved by the Committee on the Civil Dimension of Security, it represents only the views of the Rapporteur.

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## ***I. INTRODUCTION***

1. On 21 November and 14 December 2005 the international community celebrated the tenth anniversary of the conclusion and signature of the Dayton Accords that put an end to over three years of war in the former Yugoslavia. This anniversary provided an opportunity to take stock of ten years of reconstruction and transition in Bosnia and Herzegovina and to look to the future. Although opinions were divided as to the Dayton legacy, everyone agreed that it was time to move Bosnia into the post-Dayton phase.

2. Given the importance of the Balkans to Euro-Atlantic security, this report is an attempt to review the situation in Bosnia and Herzegovina (BiH), emphasising the reconstruction of the institutions and of civil society and the international community's outstanding contribution to these changes.

3. The years 2005 and 2006 certainly mark a turning-point for Bosnia and Herzegovina that should determine the future of the country, both domestically and in its relations with Euro-Atlantic institutions. On the domestic front a discussion is already under way between local authorities and representatives of the international community on constitutional and institutional reform, and also on a progressive reduction in the role of the High Representative. In the medium term these discussions might culminate in a revision of the framework set up by the Dayton Accords and in the progressive emancipation of Bosnia and Herzegovina. It will then be a question of demonstrating that Bosnia and Herzegovina, with or without intervention by the international community, is a viable and stable State. The general election to be held in October 2006 will be an important pointer.

4. On the international scene, Bosnia and Herzegovina is now involved in the preparatory phase of its accession to the European Union, after the go-ahead for negotiations on a Stabilisation and Association Agreement (SAA) in November 2005. The year 2006 might also be an important stage on the way to integration into NATO. On the occasion of the tenth anniversary of Dayton, many observers were already announcing Bosnia and Herzegovina's transition from the Dayton era to the Brussels era.

5. However, the fact remains that Bosnia and Herzegovina is rebuilding itself in a domestic and regional context that is not yet fully stabilised. Tensions between ethnic groups and constituent entities of the Bosnian State resurface regularly on sensitive issues. Moreover, the referendum on the independence of Montenegro, and above all the issue of the final status of Kosovo, raise particularly tricky questions, which will doubtless have repercussions in the region as a whole. Lastly, the issue of cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) continues to delay Bosnia and Herzegovina's complete integration into Euro-Atlantic institutions.

6. After visits by the Defence Committee in 2004 and by the Political Committee in 2005, the Committee on the Civil Dimension of Security visited Bosnia and Herzegovina on 1-3 March 2006 to witness first-hand progress made in the country's reconstruction. The Committee was also able to meet several high officials of the ICTY in The Hague on 28 February 2006. The information gathered during these visits has provided the food for thought in this report.

## **II. RECONSTRUCTION AND STATE BUILDING IN BOSNIA AND HERZEGOVINA**

### **A. THE BOSNIA AND HERZEGOVINA OF DAYTON: A WEAK AND DIVIDED STATE**

7. The break-up of the former Yugoslavia led in Bosnia and Herzegovina to the most murderous conflict in European territory since 1945. The confrontations culminated in the massacre of nearly 8,000 Bosniac civilians in Srebrenica in the summer of 1995 and ended the following autumn with a death toll of 200,000 and nearly 2 million displaced persons. The “General Framework Agreement for Peace in Bosnia and Herzegovina” (the Dayton Accord), concluded on 21 November 1995 by Alija Izetbegovic, the Bosnian President, Slobodan Milosevic, the Serbian President and Franjo Tudjman, the Croatian President, and signed in Paris on 14 December 1995, put an end to the confrontation. The Dayton peace accords laid down a detailed framework which recognised the existence of a single Bosnian State while organising the difficult coexistence of the various communities, under strong international supervision.

8. The State of Bosnia and Herzegovina that emerged from Dayton is weak and divided. It brings together, under one institutional roof, two “Entities”, a Bosno-Croat or Croat-Muslim Federation (the Federation of Bosnia and Herzegovina or FBH) and a Serb Republic (the Republika Srpska or RS), and recognises three “constituent peoples”: Croats, Serbs and Bosniacs. The inter-entity boundaries closely follow the front lines left over from the conflict. The Federation occupies 51% of the territory, the RS 49%. Within the Entities, particularly the FBH, other demarcation lines separate areas with a Croat majority from those with a Bosniac majority. Thus the Federation is divided into 10 cantons, five with a Bosniac majority, three with a Croat majority and two mixed, plus the autonomous district of Brcko, created in 2000 and directly related to the central level of government.

9. Annex 4 to the Dayton Accord contains the Constitution of the State of Bosnia and Herzegovina. The institutional structure mirrors the complex territorial organisation and includes a whole series of checks and balances to prevent the domination of one community over others. Executive power at the central level is assigned to a collective presidency (one representative of each of the three constituent peoples elected by direct universal suffrage) which rotates (one of the three members chairs the presidency every 8 months) and to a Council of Ministers. Legislative power is exercised on an equal footing by two assemblies, a House of Representatives directly elected by the people of each Entity and a House of Peoples, appointed by the members of the Entity legislative assemblies. The same complex structure is reproduced almost unchanged at the level of each Entity and at FBH canton level. In total, Bosnia and Herzegovina has 14 assemblies and nearly 200 Ministers for a population of 4 million. It is estimated that between 50% and 70% of the gross domestic product goes to fund this gigantic bureaucracy.

10. The responsibilities of the State institutions are reduced to a minimum. Article III.1 of the Dayton Constitution lists ten areas of competence, mainly in the fields of foreign relations in the broad sense and of infrastructure. All other areas of competence go to the Entities. Even the State budget comes from contributions by the Entities.

11. Each of the three constituent peoples has a “right of veto” in the legislative assemblies, enabling it to block any decision that it regards as contrary to its vital interests. Following a judgment in 2000 by the Constitutional Court, this vital interest veto has been extended to the Entities and the cantons, to guarantee the equality of the three communities before the law throughout the territory.

12. The last precaution imposed by Dayton: the whole system operates under strict supervision by the international community, which is the guarantor of interethnic peace and the smooth running of the Bosnian State, through the High Representative and the Peace Implementation Council.

## **B. POLITICAL RECONSTRUCTION**

13. The political and institutional consolidation of the State of Bosnia and Herzegovina has been a long and painful process. Many advances have been made only after substantial pressure exerted by the international community. One of the priorities was extension of the powers of State institutions. The creation of a common currency, a common customs area and common indirect taxation made it possible to consolidate the unification of the country. In the area of security, significant reforms are in progress to reorganise the courts, the police and defence. In all, 27 new institutions have been created in recent years to consolidate the Bosnian State.

14. The fact remains, however, that these transfers of power have not always resulted in greater efficiency or in increased resources. As the Committee learned during its visit to Sarajevo, the BiH parliament, which has only 57 members (42 in the House of Representatives, 15 in the House of Peoples) with more and more extensive powers is quite literally overloaded. This is compounded by unsuitable procedures, a lack of skilled staff and regular political deadlock among representatives of the various communities. This same lack of effectiveness is apparent at all levels of public administration. Several speakers have mentioned reform of public administration as one of the priority issues.

15. Moreover, many remits such as the interior, education or social policy are still exercised at Entity or even lower levels, which still have disproportionate resources.

16. Lastly, political life is still dominated by political parties operating on an ethnic basis. The three main parties are the SDS (Serb Democratic Party, created by Radovan Karadzic), the SDA (Democratic Action Party, representing the Bosniac community) and the HDZ (Croat Democratic Union, representing the Croat community). All are represented in the two Entities, but are dominant in one and carry only limited weight in the other. The opposition consists mainly of the SbiH (the Party for Bosnia and Herzegovina) and the SDP (Social Democratic Party) in the Federation and the SNSD (Social-Democratic Independent Party) in the Republika Srpska.

17. The 2004 municipal elections were the first to be organised and funded entirely by the BiH authorities. The assessment given by the OSCE, which observed the elections, was positive, taking the view that overall they had been conducted in accordance with international standards. Nevertheless the Organisation expressed regret that ethnic nationalism was still the principal theme underlying the electoral campaign. The general election, to be held in October 2006, will provide an opportunity to evaluate progress in the political unification of the country.

## **C. THE ECONOMIC SITUATION**

18. Neither is the economic reconstruction of Bosnia and Herzegovina fully mastered as yet, although considerable progress has been made since the end of the civil war. Since 1995 the gross domestic product has increased threefold, and exports of goods tenfold. Today Bosnia and Herzegovina has the highest growth rate in the Western Balkans (5.6% in 2005) with the lowest inflation (0.5%), as well as exports, direct foreign investment and industrial production up 25% in 2005 relative to the previous year.

19. A number of important reforms have been adopted, here again often under international pressure, in order to make the territory of Bosnia a unified and homogeneous economic entity. The unification of the customs service or the adoption as from January 2006 of a single value-added tax covering the whole of the territory are substantial advances to this end. During its visit to Sarajevo the Committee learned that the national share of the budget would be the greater in 2006 for the first time, thanks to the introduction of the single value-added tax.

20. The fact remains, however, that the economy of Bosnia and Herzegovina is still far below its pre-war levels. With an official unemployment rate of 40% (the true rate is estimated at around 20%) and with 18% of the population below the poverty line, the standard of living of the people is still very low. Moreover, more than half the gross domestic product goes to fund a top-heavy administration. Lastly, efforts still have to be made to combat corruption, to improve the climate for investment in the country and to promote enterprise.

21. Several of the Committee's contacts in Sarajevo pointed out that attention should be concentrated on the economy now that the groundwork on consolidating the institutions was going well. In this sense the opening of negotiations with the European Union on an SAA and the forthcoming elections are in principle a good opportunity to discuss and emphasise the economic and social future of the country. The new High Representative himself, Christian Schwarz-Schilling, has made the economy one of the main priorities for his term of office.

## **D. BUILDING A MULTIETHNIC SOCIETY**

22. The major challenge in reconstructing Bosnia and Herzegovina, as in the rest of the Balkans, is still the consolidation of a multiethnic society in which ethnic affiliation is neither a threat nor a central criterion in citizenship. Substantial progress has been made along these lines, but there are still a number of problems in key sectors.

### **1. Development of civil society**

23. The development of a real diverse and dynamic civil society in Bosnia and Herzegovina is a slow process. Two problems are usually suggested as explanations for this phenomenon. On the one hand, and although the law permits the creation of NGOs throughout the territory, many of these organisations still operate on an ethnic basis and are present in only one of the Entities.

24. A second problem arises from the fact that most of the NGOs in Bosnia were created in the period immediately after the end of the conflict, on the basis of the funding available at the time. They therefore reflect the offer of funding more often than the real demands and needs of society. Thus the Committee learned during its visit to Sarajevo that more than a thousand NGOs in Bosnia and Herzegovina were active in the field of human rights. Nevertheless, as a representative of one of these organisations admitted, this abundance of institutions is counter-productive and has impeded the emergence of a real machinery to protect human rights in Bosnia and Herzegovina. This overkill and lack of harmonisation is also found at the very heart of the authorities responsible for protecting fundamental rights. Thus Bosnia and Herzegovina has nine Ombudsmen, three for the State level and three for each Entity.

### **2. The refugee issue**

25. The conflict in Bosnia and Herzegovina had led to the displacement of over 2 million people. According to the United Nations High Commissioner for Refugees (HCR), 1 million have returned to their homes and almost all have been able to request the restitution of their property. The reform of property law in 1998, under international pressure, has made it possible to break the deadlock in restitution procedures.

26. Nevertheless the issue is far from settled. According to estimates by the BiH authorities, 500,000 people could still apply to return. Only half of those who have returned have resettled in areas in which their community is now a minority. There are also many who, having got their property back, have immediately left again to settle elsewhere. The Croat population decreased to the greatest extent after the conflict. Many Bosno-Croats preferred to settle in Croatia, where they acquire citizenship automatically. In January 2005 the Bosnian, Croatian and Serbian governments

committed themselves to the European Union, the OSCE and the HCR to settle all issues affecting refugees and displaced persons in the Balkans before the end of 2006.

### **3. The position of minorities**

27. The Constitution of Bosnia acknowledges three constituent peoples, and on the basis of the last population census in 1991, 17 ethnic minorities are officially recognised. The principal groups include the Roma (the largest minority, the most realistic estimates varying between 20,000 and 80,000), Albanians, Macedonians, Montenegrins, Serbs and Hungarians.

28. Bosnia and Herzegovina has ratified most of the international instruments dealing with the protection of minorities and has passed a number of important domestic laws. However, implementation of these provisions is still uncertain. During the Committee's visit to Sarajevo, the Ombudsmen for Bosnia and for the Federation all agreed that there was still a great gap between the legal provisions and the situation on the ground. According to them, discrimination based on ethnicity, sex or political affiliation was still too widespread. Some minorities, especially the Roma, were particularly disadvantaged, like the category "others", who belong neither to the constituent peoples nor to the officially recognised minorities.

29. The most important problems relate to education and the use of minority languages in public life. The issue of political representation for persons belonging to minorities is examined below.

### **4. Education**

30. Education certainly provides the best illustration of the gap that must still be bridged in order to create a real multiethnic society in Bosnia and Herzegovina. It is one of the areas in which the Council of Europe takes the view that the commitments entered into by Bosnia and Herzegovina when it joined "to eliminate all aspects of segregation and discrimination based upon ethnic origins" have not been complied with.

31. When the Committee visited Sarajevo, many contacts stressed the fundamental importance of education in securing the advances made in national reconciliation. Unfortunately education reform is hostage to the Bosnian institutional maze and to tensions between communities.

32. Responsibilities relating to education are fragmented. Most are exercised at Entity level, or even at canton level in the case of the Federation. The Ministry for Civil Affairs at the State level is responsible only for human rights and for international commitments entered into by Bosnia and Herzegovina. A total of 14 ministries share the responsibilities.

33. Consequently any initiative taken at the State level can be implemented only with the approval of the local authorities. In reality the State authorities are incapable of giving substance to the Education Reform Strategy submitted in November 2002. In particular, implementation of the framework law on primary and secondary education passed by the BiH parliament in July 2003, which should have led to the rapid harmonisation of laws at Entity and canton levels, was greatly delayed by strong opposition at local level. Pressure from the international community and intervention by the High Representative broke the deadlock in some regions, but the situation in the country as a whole is still highly politicised.

34. Moreover, and despite agreement on a common core curriculum, the course and the teaching manuals still bear the marks of an ethnic approach. In some parts of the country there is only one course available, the one for the majority group.

35. The international community has sought to promote temporary solutions to assist the integration of children from different communities. One of these initiatives, "two schools under one

roof", in fact ended in actual segregation, with all sorts of rotation machinery whereby courses for children from different communities could be organised so that there were never any activities together at the same time. In some cases it was decided in the end to separate the two schools entirely. Despite the introduction of catchment areas for public primary schools, some parents sometimes prefer to send their children to schools in the neighbouring area which suits their requirements in terms of courses better. This has led to a great increase in cases of "bussing".

36. The problem is just as serious at university level, because up to now it has not been possible to pass any law on higher education at the State level. Although a consensus does exist in Bosnia regarding the necessity for implementing European requirements in this area, *inter alia* the Bologna process, opposition is concentrated on the issue of transferring legislative and budgetary powers to the State level.

## **E. THE SECURITY SITUATION**

37. Security is undoubtedly the area in which the most far-reaching changes have been made. During the Committee's visit to Sarajevo many local and international contacts stated that the security threats in the Bosnia of today were different in kind from those that prevailed in the 1990s. Combating organised crime, the state of the economy or the continuing fragmentation and malfunctioning of the security services were mentioned among the main current threats.

38. Reforms in the defence and police sectors have finally made remarkable progress in 2004-2005 after years of stagnation, under pressure from the international community.

### **1. Defence reform**

39. At the end of the war, Bosnia and Herzegovina had two armies, each with its chain of command, 400,000 troops in total, strong ethnic and political allegiances and almost no democratic control. A Defence Reform Committee (DRC) bringing together the main relevant local and international officials was set up in 2003. Long and difficult negotiations culminated in September 2003 in a draft reform in conformity with the principal requirements set by NATO for admission to the Partnership for Peace (PfP): creation of a Defence Ministry at the State level and progressive elimination of Defence Ministries at Entity level; creation of a unified professional army of 10,000-12,000 men, with 5,000-7,000 reservists (as against 60,000 at present). Some major stages have already been completed, with the appointment in March 2004 of the first Defence Minister of Bosnia and Herzegovina, the transfer of all decision-making and budgetary powers relating to defence to the State level in the summer of 2005 and the official ending of conscription on 1 January 2006. On 31 December 2007 the transformation of Bosnian defence should be complete.

40. During its visit to Sarajevo the Committee heard very positive reports on defence reform. A strong consensus among the various partners has made it possible to implement the key elements of reform quickly. NATO has played a central part in this process, contributing its expertise and offering the prospect of accession to the PfP.

### **2. Police reform**

41. The reform of the police was trickier, encountering obstacles and stubborn resistance, particularly from the authorities in the RS. The present police organisation is fragmented and inefficient. The police forces in Bosnia have three constituents, which cooperate only with difficulty: centralised police in the RS, decentralised police in the Federation and a few agencies and institutions at the State level. The latter, in the main a State intelligence agency (Intelligence Security Agency), a local equivalent of the FBI (State Investigation and Protection Agency) and a customs and immigration service (State Border Service) were set up in 2004 and are steadily becoming operational. According to the head of the European Union Police Mission, however, the SIPA has reached only 30-35% of its full capacity as yet.



42. A compromise regarding the overall restructuring of the police could be found only in October 2005, under strong pressure from the international community. This is along the lines of the three requirements imposed by the European Union: a unified structure under the exclusive authority of the State; lack of political interference; the creation of functional and efficient areas of operation. The aim of the reform is to create a unified police under democratic control and conforming to European standards in 5 years.

43. A directorate for police restructuring consisting of local and international representatives is responsible for preparing an action plan for putting the reform into practice; it should be adopted by the Council of Ministers by December 2006. It will be for the directorate in particular to find acceptable solutions to remaining tricky problems, concerning *inter alia* the design of the police areas. The international community has made it known that it would accept only a functional division, in other words one that did not respect the border lines between Entities, while in the past the representatives of the various communities were clearly opposed to any project along these lines. So any compromise will have to be achieved by difficult negotiations.

### **III. EVOLUTION OF THE INTERNATIONAL COMMUNITY'S ROLE IN BOSNIA AND HERZEGOVINA**

44. The former Yugoslavia hosted the first great post-conflict reconstruction operation under the aegis of the international community. This operation called for concerted efforts by the principal States and international organisations with a direct interest in the region, in particular the United Nations, the European Union, NATO and the OSCE. It was also based on a number of original devices, of which the person of the High Representative of the international community is only the most visible sign. Most of this machinery is being reassessed today, to make the necessary emancipation of Bosnia and Herzegovina possible.

45. Nevertheless the fact remains that not all the lessons from the Bosnian experiment have yet been learned. An important indicator will be the capacity of the machinery put in place by Dayton to adapt to the needs of today's Bosnia and to consolidate achievements.

#### **A. THE HIGH REPRESENTATIVE**

46. The High Representative of the international community is certainly one of the most remarkable elements in the machinery set up by Dayton. He is the face, the unified and personified representation, of the international community in Bosnia and Herzegovina. He is the guarantor of implementation of the civilian aspects of the peace settlement.

47. He is completely independent of the local authorities and is responsible only to the Peace Implementation Council (PIC), the principal coordinating body for putting the civilian aspects of the Dayton Accord into practice, consisting of representatives of 55 countries and international agencies involved in the peace process. The PIC appoints the High Representative, who must then be approved by the UN Security Council. Since 2002 the High Representative has also been the Special Representative of the European Union in Bosnia and Herzegovina.

48. In response to the institutional deadlocks caused by constant tension among ethnic communities in Bosnia, the international community decided to increase the powers of its representative. At its meeting in Bonn on 10 December 1997 the PIC adopted a list of extraordinary powers, the "Bonn powers", which are binding on the parties. These include the power to quash decisions by the local authorities, to impose certain decisions and to dismiss local officials.

49. Successive High Representatives have interpreted these powers broadly, imposing decisions as varied and sensitive as choosing the flag for the State of Bosnia and Herzegovina or the Criminal Code. In June 2004 Paddy Ashdown, the High Representative at the time, had sacked 59 officials for failing to cooperate with the ICTY. In December 2004 he had imposed sanctions on several Bosnian Serb officials who were opposed to the adoption of defence and police reforms. The power struggle led to the resignation of the RS government, then to breaking the deadlock regarding the two reforms. In March 2005 Paddy Ashdown had also sacked the Bosno-Croat member of the BiH Presidency, for involvement in corruption. However, there has been some relaxation and a change in the use of the Bonn powers, reflecting the High Representative's wish to encourage the progressive emancipation of local authorities.

50. Today a consensus seems to be emerging that it is time to allow Bosnia and Herzegovina to free itself from supervision by the High Representative. Although intervention by the High Representative was necessary in order to impose difficult reforms, it also has a pernicious effect. It helps to short-circuit essential discussions, takes away local authorities' responsibilities and encourages apathy in a public that has difficulty in identifying with decisions seen as imposed from outside. This is all the more difficult to justify because the exercise by the High Representative of his vast powers is itself not under real democratic control.

51. The PIC has therefore given the new High Representative, Christian Schwarz-Schilling, who took up his duties on 31 January 2006, the task of steadily dismantling the office of the High Representative, retaining in the long term only his duties as European Union representative. In theory this process should be completed in the summer of 2007.

## **B. NATO**

52. The Dayton Accord had entrusted the implementation of its military aspects to an international force under NATO command, IFOR (*Implementation Force*). The mission of this force of 60,000 men deployed in December 1995 was to maintain the ceasefire, disarm the militia and supervise the transfers of territory provided for in the Accord. Once this mission was accomplished the Stabilisation Force (SFOR) took over; deployed in December 1996, its task was to guarantee a stable and safe environment in order to consolidate peace. The initial contingent of 32,000 has been gradually reduced, reaching 7,000 at the end of the mission. The SFOR mission came to an end on 2 December 2004 and was replaced by a European Union mission, EUFOR-Althea.

53. The operations in Bosnia and Herzegovina have been particularly important in the context of NATO's transformation in the post-cold-war world. The intervention in Bosnia and Herzegovina was the first peace support operation by NATO within the framework of a UN mandate. It was also the operation in Bosnia and Herzegovina that persuaded the organisation to develop a doctrine for civilian-military cooperation. Besides IFOR, like SFOR, included a high proportion of contingents from Alliance partner-countries, including Russia and the Mediterranean countries. The progressive handover of the mandate from NATO to the European Union was also a useful test for implementing the Berlin Plus arrangements and cooperation between the two organisations. Lastly, operations in Bosnia contributed to the reassessment of Alliance policy towards the Balkans, changes which proved particularly useful at the time of the intervention in Kosovo.

54. Today NATO retains a reduced presence in Bosnia and Herzegovina. The basic mission of the 150-strong headquarters in Sarajevo is to help the BiH authorities in reforming the defence sector and in preparing Bosnia for accession to the PfP and subsequent integration as a full member. As such, NATO has a primary role in monitoring the implementation of defence reform, and is also giving the BiH authorities operational support in counter-terrorism, intelligence and the arrest of war criminals.

55. Apart from the presence of Alliance forces on the ground, the prospect of joining the organisation has played a key part in encouraging the reform process in the country. Bosnia, with Serbia and Montenegro, is the last country in the Balkans not to have joined the PfP yet. Since the adoption of the defence reform, the issue of cooperation with ICTY is the main obstacle to Bosnia's integration.

### **C. THE EUROPEAN UNION**

56. The role of the European Union in Bosnia and Herzegovina has also changed radically. Today the European Union is in the forefront in implementing the military and civilian aspects of the Dayton Accord. These activities are coordinated on the ground by the European Union's Special Representative, a duty carried out by the High Representative.

57. The current framework for relations between the European Union and Bosnia and Herzegovina is the Stabilisation and Association Process. Negotiations for the signature of a Stabilisation and Association Agreement (SAA) were opened in November 2005, after the compromise on police reform. Signature of the SAA (scheduled in principle for the end of 2006) is the first step towards Bosnia's future accession to the Union. This, however, is a long-term prospect for the country and is unlikely to come pass for a decade, having regard to the technical and political requirements of the accession process.

58. The European Union has contributed to the political and economic reconstruction of the country on the basis of the Stabilisation and Association Process. Over 2 billion euros have been spent on aid since the end of the conflict, *inter alia* through the CARDS programme. A number of community programmes have also been extended to Bosnia and Herzegovina.

59. The Union has also committed itself progressively on the ground, with two large-scale operations, the European Union Police Mission (EUPM) and EUFOR-Althea. The EUPM, launched in January 2003, was the first operation as part of the European Security and Defence Policy (ESDP). It followed a United Nations police mission. In its early years the EUPM has been the subject of criticism. In particular the Union was criticised for dispensing too quickly with assistance on the ground from the UN mission, giving the EUPM too ambitious a mandate without allocating the necessary resources. The European Union Council took these criticisms on board, and in November 2005 it decided to extend the EUPM mandate until the end of 2007, with a reduced presence and a refocused mandate.

60. The EUPM's aim is to establish a "sustainable, professional and multiethnic police service operating in accordance with best European and international standards" through mentoring, monitoring, and inspecting. To this end it has set itself three main tasks: 1. To supervise the implementation of police reform; 2. To support local initiatives in combating organised crime; 3. To check that local police forces are doing their job responsibly and without political interference.

61. Most of the 400 members of the Mission are collocated with the central and local BiH police. As the head of the EUPM explained to the delegation when it visited Sarajevo, the stress is on local initiative and ownership of reforms.

62. The EUFOR-Althea operation was set up in December 2004, as a replacement for SFOR. The number of troops was reduced from 7000 initially to 6500 at the end of 2005. In many ways the European operation resembles its NATO predecessor. The personnel initially deployed were 80% the same as SFOR personnel. The headquarters is in the same premises as the NATO mission and the geographical allocation of manpower is similar to that of SFOR. During the Committee's visit to Sarajevo many contacts said that the handover had taken place with no major problems.

63. EUFOR has a broader mandate than its predecessor, aiming to maintain a stable and safe environment for the implementation of both the military and civilian aspects of Dayton. This mandate refers expressly to combating organised crime, which was not the case with SFOR, and which leads at the same time to cross-checking of the EUPM mandate to some extent. Lastly, EUFOR is cooperating with NATO and SIPA in seeking out and arresting war criminals.

64. To implement its mission, EUFOR has created small eight-man units attached to the local population on a four-month rotating basis. These Liaison and Observation Teams (LOTs) should make action on the ground more effective.

#### **IV. THE PROSECUTION OF WAR CRIMINALS**

##### **A. THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA**

65. The International Criminal Tribunal for the former Yugoslavia was created by a United Nations Security Council resolution in May 1993. It was the first modern example of the establishment of a real international criminal court. Its mandate is to bring to justice persons allegedly responsible for certain violations of international humanitarian law (grave breaches of the 1949 Geneva Conventions, crimes against humanity, genocide, war crimes) in the territory of the former Yugoslavia since 1991. The jurisdiction of the Tribunal has been extended to crimes committed during the conflict in Kosovo.

66. In March 2005, the date of publication of the latest indictments, the Tribunal had indicted 161 persons, 132 of whom have already appeared before it. Most of these cases relate to crimes committed during the conflict in Bosnia. Only six of the accused are still on the run, among them two major figures in the conflict in Bosnia: Radovan Karadzic, the leader of the Bosnian Serbs, and Ratko Mladic, their military commander.

67. However, the Tribunal has seen a notable improvement in cooperation by the authorities in the Republika Srpska during 2005. Although there had been no transfers to The Hague since the end of the war, 12 persons indicted by the Tribunal were transferred by the RS in 2005. However, problems of cooperation and sharing of information persist, and the fact that Karadzic and Mladic are still on the run casts a shadow over relations between the BiH authorities and the international community.

68. Neither is the international community exempt from criticism. As Carla Del Ponte, the Tribunal's Prosecutor, pointed out to the United Nations Security Council in December 2005, problems connected with the sharing of information and cooperation among various services and organisations present on the ground, as well as the lack of human resources, have also helped to slow down the hunt for the two men. Today these problems seem to have been solved.

69. Overall the Tribunal's experience has been very positive. It has created a precedent in international criminal justice and has laid the foundations for the subsequent creation of the International Criminal Court. It has indicted a head of State in office, Slobodan Milosevic, for the first time. It has contributed to the development of international humanitarian law and has defined its key concepts: genocide, crime against humanity and war crime. It has shed light on some of the darkest episodes in the recent history of Europe and has given the victims a voice. Lastly it has contributed directly and indirectly to strengthening the rule of law and the legal system in the Balkan countries.

70. Nevertheless a number of criticisms have been levelled at the Tribunal, particularly in the Balkans. The premature death of Slobodan Milosevic before the end of his trial was also a blow to the prestige of the Tribunal, which was readily citing the former President's trial as the most

convincing example of what international justice could achieve. However, the premature death of the accused prevented the trial from being brought to its conclusion and from getting to the bottom of Milosevic's responsibility and of the events for which he was tried. Also the circumstances of his death, following the Tribunal's refusal to allow his transfer to Russia for medical treatment, gave the Tribunal's critics a weapon ready to hand.

71. Since the Tribunal was created for a specific purpose and for a limited time, its work will soon come to an end. The grouping of trials relating to the same facts and transfers to local authorities have already made it possible to speed up the Tribunal's work. The Tribunal's Completion Strategy provides for the end of all trials at first instance by 2008 and for all work to cease by 2010. Nevertheless the Tribunal authorities all made clear to the members of the Committee that these deadlines could be met only if the last of the accused still at large were quickly arrested.

## **B. THE PROSECUTION OF WAR CRIMINALS IN BOSNIA AND HERZEGOVINA**

72. The ICTY statute provides that the Tribunal has jurisdiction to try war criminals concurrently with national courts. At first, however, the Dayton Accord did not provide for any particular machinery for trying war criminals in Bosnia and Herzegovina. Besides, at the end of the conflict the legal system, like other institutions in Bosnia, was extremely weak. The trials, which were at Entity court level before the creation of a court at State level, were therefore generally regarded by international observers as falling short of international standards.

73. The establishment of the Prosecutor's Office and the State Court of Bosnia and Herzegovina at the end of 2002, as well as the necessity for relieving congestion in the ICTY by refocusing its activities on high-ranking suspects, gave new impetus to initiatives for trying some war criminals at national level. In January 2005 this led to the creation within the State Court of Bosnia and Herzegovina of a special war crimes chamber and of a Registry for war crimes and organised crime which are now fully operational.

74. The War Crimes Chamber of the State Court of Bosnia and Herzegovina, which includes an international presence in its first phase, has jurisdiction to try cases transferred by the ICTY as well as the most sensitive cases initiated at national level. Thus during the Committee's visit to Sarajevo one of the representatives of the Prosecutor's Office had announced the imminent start of a trial involving 11 persons for crimes committed at the massacre of Srebrenica.

75. Nevertheless the present machinery for trying war criminals in Bosnia and Herzegovina raises a number of problems, the first of which relates to continuing difficulties in cooperation among States in the region in arresting and trying war criminals. An agreement on this issue is now being negotiated by the governments of Bosnia and Herzegovina, Croatia and Serbia and Montenegro which should provide for the extradition of persons suspected of war crimes to the countries where those crimes were committed.

76. Another issue that was raised several times during the Committee's visit to Sarajevo related to guarantees given to witnesses who agreed to appear in local trials. According to the ICTY authorities local witness protection machinery still fell far short of what was required.

77. Lastly a more general question arises as to the usefulness and time-limit of these legal proceedings. Apart from their cost, critics stress that subjecting the issue of war criminals to an excess of legal procedures might prevent national reconciliation rather than promoting it. In this context both the ICTY authorities and the local judiciary made clear to Committee members that it was essential to support initiatives aimed at explaining the work of national and international judges on war crimes, involving local communities and media. The ICTY has been actively committed to this approach since 1999, but local initiatives are still fragmentary.

## **V. PROSPECTS FOR POST-DAYTON BOSNIA AND HERZEGOVINA**

### **A. A YEAR OF TRANSITION ON THE DOMESTIC FRONT**

78. The tenth anniversary of the Dayton Accords provided an opportunity to reconsider the constitutional and institutional future of Bosnia and Herzegovina. Its emancipation is seen as an essential preliminary stage that will open the way to Bosnia and Herzegovina's full integration into NATO and into the European Union.

79. Discussions are organised around two main points: a reform of the institutions as established by the Dayton Constitution and progressive reduction in the role of the High Representative. However, ambitions have had to be scaled down, and the timetable for these changes is still uncertain.

80. The European Commission for Democracy through Law (the Venice Commission) issued a very detailed opinion in March 2005 on the constitutional situation in Bosnia and Herzegovina, at the request of the Parliamentary Assembly of the Council of Europe. The Commission stressed that the present Constitution of Bosnia and Herzegovina included certain mechanisms in violation of the European Convention on Human Rights. It recommended rationalisation of this machinery, as well as the adoption of a constitution based on the equality of all the citizens of Bosnia and Herzegovina, not on the equality of the constituent peoples.

81. In particular the Commission criticised the method of election to the House of Peoples, which leads to the exclusion of an entire category of people who can never be elected (Croat or Bosniac members of the RS National Assembly, Serb members of the FBH House of Peoples, members of ethnic groups other than the constituent peoples).

82. The same criticism holds good for the appointment of members of the Presidency. The only possibility under the Constitution of Bosnia and Herzegovina is the election of a Serb member by the people of the RS and of a Croat and Bosniac member by the people of the FBH, thereby excluding the candidature of representatives of minority groups at Entity level and at State level.

83. Lastly, the Commission argued that the powers of the High Representative were disputable today because they were undemocratic in character and lacked democratic control, and were incompatible with the sovereignty of an independent State.

84. The Commission made a number of recommendations based on these analyses. Recognising that the abolition of the Entities, though desirable, was not politically acceptable in the medium term, the Commission's first recommendation was a transfer of responsibilities from the Entities to the State, accompanied by a re-balancing of powers between the State institutions favouring the Council of Ministers and the House of Representatives and to the detriment of the Presidency (which should be unified) and the House of Peoples (which might be abolished). The territorial organisation and institutions of each Entity should also be reviewed and local autonomy should be strengthened, particularly in the RS. Lastly, in the medium and long term the Commission recommended the adoption of a new Constitution "which should enjoy full democratic legitimacy" and the progressive abandonment of the High Representative's extraordinary powers. The Office of High Representative might be replaced by a simple European Union Representative, who would act as mediator rather than decision-maker.

85. Discussions on constitutional reform were opened on the occasion of the anniversary of the Dayton Accords in November 2005, between local parties and spurred on by European and American mediators. After several rounds of negotiation, agreement was finally reached among the

seven main Bosnian political parties on 18 March 2006. This agreement includes a number of important advances but still falls well short of the proposals by the Venice Commission.

86. The most sensitive issue was the reform of the Presidency. According to the agreement, the tripartite presidency would be abolished and replaced by a single president flanked by two vice-presidents. All of these would now be appointed by the parliament and no longer directly elected. Nevertheless the rotation principle has not been abandoned; the presidency is to continue to rotate every 16 months. The president and the vice-presidents must still represent each of the three constituent peoples. This compromise solution had been regarded by the Venice Commission in a consultative opinion on 17-18 March 2006 as the best of a bad job, if establishing a sole presidency was impossible.

87. The second issue was the reorganisation of the parliament. The number of parliamentarians would be increased (from 42 to 87 members for the House of Representatives and from 15 to 21 members for the House of Peoples). The powers of the latter would be reduced substantially. The House of Peoples would lose the power to pass laws, and its function would be the protection of vital national interests.

88. Lastly, the Council of Ministers would be increased from 9 to 11 members. The President of the Council would become a fully-fledged Prime Minister with enhanced powers, particularly with regard to the appointment of Ministers.

89. On 25 March 2006 the BiH Presidency decided to pass these amendments to the parliament, in the hope that they could be adopted in time for the October elections. After the elections there would have to be fresh negotiations on other aspects of constitutional reform.

## **B. PROGRESSIVE INTEGRATION INTO EURO-ATLANTIC INSTITUTIONS**

90. The European Union and NATO have stated repeatedly that in the long term all the Balkan countries should join both organisations. However, the integration of Bosnia and Herzegovina into Euro-Atlantic institutions has been slower than in the case of its neighbours, with the sole exception of Serbia and Montenegro. Thus Bosnia is still not a member of NATO's PfP and, right at the end of 2005, has hardly started negotiations for the signature of a Stabilisation and Association Agreement with the European Union.

91. Progress in the consolidation of institutions and in the rule of law, particularly in the defence and police sector, has made it possible to restart the integration process for Bosnia. Nevertheless the international community is still calling for progress in a number of key sectors such as the reform of public administration, reorganisation of local autonomy, development of civil society, protection of human rights and minorities and education.

92. The fact remains, however, that in the short and medium term the decisive issue is cooperation with the ICTY. That is the issue that should influence NATO's decision whether to admit Bosnia to the PfP or not. It is also the one that should govern the progress of negotiations with the European Union on the SAA. The Union has already shown signs of impatience with Serbia and has stated that negotiations on the SAA would be suspended if Serbia's cooperation with the Tribunal did not improve substantially.

## **C. THE REGIONAL CONTEXT: ASSET OR LIABILITY?**

93. The regional context in the Balkans appears mixed. Conflicting processes are at work, and their impact on the situation in Bosnia and Herzegovina still seems uncertain. Some of the countries in the region are stabilised and on the way to full and complete integration into Euro-Atlantic bodies. This is true in particular of Croatia, with which the European Union decided to open

accession negotiations in October 2005. It is also the case with the FYR of Macedonia\*, which was officially granted the status of candidate in December 2005. Both countries are already in NATO's PfP.

94. The most important source of uncertainty for the region is still the situation in Serbia and Montenegro. On the one hand Serbia has embarked on negotiations with the Union on an SAA. On the other the question of the future of the province of Kosovo, like the referendum scheduled for spring 2006 in Montenegro and which might lead to the break-up of the federation between the two territories, make the country's future particularly uncertain. This might have an adverse effect on the situation in Bosnia. Some representatives of Serb nationalist parties have clearly expressed themselves in favour of the idea of compensation for Serbia on the assumption of independence for Kosovo, by the transfer to Serbia of the Republika Srpska. Even if this scenario has been categorically excluded by the international community, speculation of this kind is not likely to ease relations in the region. The issue of cooperation with the ICTY, and in particular the arrest of Karadzic and Mladic, is still damaging relations between the international community and Bosnia and Serbia.

95. In spite of all, cooperation among States in the region has been greatly strengthened in several areas since the ending of the conflicts in the former Yugoslavia. Negotiations by the Presidents of Bosnia, Serbia and Croatia for an overall regional cooperation agreement are in progress and might provide a useful framework for the future.

## **VI. CONCLUSION**

96. Ten years after the conclusion of the Dayton Accords, Bosnia and Herzegovina is clearly on the right track. The Committee's visit to Sarajevo showed it that far-reaching advances had been made in the institutional, political and socio-economic fields. However, as this report attempts to demonstrate, reforms are still necessary in a number of areas.

97. The prospect of accession to the European Union and to NATO seems to be one of the main driving forces for the reform process. In that sense the recent negotiations with the European Union on the SAA, like the continuing dialogue with the Alliance regarding Bosnia's inclusion in the Partnership for Peace, are a key issue for the country. However, it is also of crucial importance for the BiH authorities to press on with reforms without waiting for the completion of these processes.

98. The reform of the Dayton Constitution in particular is a fundamental stage in consolidating the State of Bosnia and Herzegovina, the process of democratisation and the protection of human rights and fundamental freedoms. Special attention should be given to the issue of minorities.

99. As regards the security situation, local and international stakeholders seem to be in agreement that the principal threats today stem from the state of the economy and organised crime. Relations between constituent peoples are no longer a potential threat. Nonetheless there is still much to be done in order to complete the institutional and political integration of the two Entities – the RS and the Federation. Reform of the education seems to be a particularly difficult challenge, but is essential to the unification of the country and national reconciliation.

100. Ten years after Dayton, the time has also come for a progressive reduction in the international presence in Bosnia. In this respect the planned transition of the office of High Representative to simple Special Representative of the European Union will be an important stage on the way to emancipation of the local authorities. However, this does not mean total disengagement by the international community. On the contrary, supporting the various

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\* Turkey recognises the Republic of Macedonia under its constitutional name.



international institutions is still essential in helping Bosnia to build on the remarkable advances of recent years. The NATO Parliamentary Assembly, through its experience of democratisation processes in transition countries, also has a part to play. It is essential for parliamentarians from Alliance countries to maintain their support for the parliament of Bosnia and Herzegovina and the local authorities in their efforts to achieve full and complete integration into the Euro-Atlantic community.

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