

European Colony or an Associated Member of the European Union

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Original paper
UDC 327(497.6: 061.1EU)
Received in April 2005

Contrary to the period 1992 to 1995, when the European Union did not manage to react either multilaterally or unilaterally in BiH, and afterwards when the EU, whilst trying to solve the crisis abandoned the European ideal of individual rights and chose the way of real politics, collective rights and the respect for the relation of the powers in the region. Today's proposals and initiatives go clearly in the direction for the integration of BiH into the EU and the strengthening of the state institutions. Current European diplomacy shares a common position regarding BiH. Starting with 1996, the EU help is constantly increasing, from the PHARE and Obnova to the CARDS and some new and more complex and effective programs. After 1999, and especially after the Thessaloniki Summit it is clear that the Council of Ministers of the EU is supporting the European future of BiH. The process of association of BiH into the EU has started and cannot be stopped.

Key words: Bosnia and Herzegovina, European future of BiH

The relations of BiH and the European Union prior to the signing of the Dayton Peace Agreement

The crisis in Bosnia and Herzegovina took place in an inconvenient time. It was too early for the European Union to react. Brussels was absent from the area of foreign and security politics. The co-operation between the member states of the EU functioned on the basis of the European political co-operation during that time, which was established in 1970 and partly developed in 1986 and 1987 by the Single European Act.¹ The mentioned mechanism envisioned regular meetings between Ministers of Foreign Affairs and the establishment of a common work direction. All decisions were unanimous. Brussels was also caught in a discrepancy. During the

time of the crisis eruption in BiH, the European Economic Union reformed itself into the European Union, which was officially established with the ratification of the agreement signed in Maastricht at the beginning of the 1990s. Only at the end of the 1990s, after the ratification of the Copenhagen Agreement, the joint foreign and security policy became more operative. This was demonstrated with the Kosovo and Macedonia examples. Carl Bildt noticed that the United States must harmonise "institutional attitudes", while Europe must co-ordinate "national attitudes".²

During the crisis in BiH, European officials, Government and State Presidents did not have the political will and the courage to multilaterally or unilaterally undertake serious preventive measures. Regardless of some of the joint European peace initiatives, during that time no two-member states shared similar opinions, not to mention a joint policy towards BiH. The member states performed as an

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out of tune orchestra. The European steering engine, France and Germany, due to the unification of the latter one, were inactive. This was the time of political realism and the great weakness of the Union. Haris Silajdzic, the Minister of Foreign Affairs of the Republic of Bosnia and Herzegovina at that time, emphasises that the fall of the Berlin Wall was celebrated for too long. "In that intoxication, Europe allowed itself the attitude it had towards the aggression and genocide in BiH. There is no doubt that the war in Bosnia represented the lowest level the European Union sank to during the second half of the last century."³ "Europe betrayed us, Americans helped us" stated Dr. Mustafa Cerić, Reisul-u-lema of the Islamic community in BiH. "It is not debatable that at the beginning of the war we made incorrect steps and that we could not guarantee the safety of the country at the time,"⁴ said Jorgen Kosmo, President of the Norwegian Parliament. The absence of Europe during the first half of the 1990s has not been forgotten. The official Brussels also admitted its lack of judgement and non-engagement during that period. Whilst addressing the participants of the International Forum on the Prevention of Genocide in Stockholm in January 2004, Xavier Solana, the High Representative of the EU, confirmed the mistakes of the EU. "We also made mistakes,"⁵ he said, looking back at the poor judgement that genocide could ever be committed in Srebrenica and Rwanda. "Not being able to foresee and to react means to allow catastrophic consequences."⁶ The absence of Europe did not make a good impression on the Americans. Richard Holbrooke believes that Bosnia and Herzegovina defined "the first phase of the relations between Europe and the United States after the Cold War, showing Bosnia as being dangerous for relations in the Atlantic Alliance." Finally, the Dayton Agreement put the European Union to shame. In order for the world not to see that, France insisted that the peace agreement should be signed in Paris.

The condition for the recognition of Bosnia and Herzegovina by the member states of the EU, was to hold a referendum to see whether the citizens of Bosnia and Herzegovina were in favour of a sovereign and independent state. That is how Brussels, in the case of BiH, asked for an additional point of support and argumentation for its decision. Also, it was buying time, since there were different opinions on whether to accept BiH prior or following the internal agreement by the three peoples of BiH. On the day of the publication of the results of the referendum, the daily *Oslobodenje*, appeared with the title "A Convincing Answer for Europe" on the cover page. Out of the 64.5% of citizens who voted at the referendum in March 1992, 99.5% were in favour of

a sovereign and independent Bosnia and Herzegovina. After this the European Union recognized Bosnia's independence on 6 April, in the same year. Full diplomatic relations were established in March 1993. After the international acceptance, the European Union left Bosnia and Herzegovina at the mercy of the nationalistic ideologies and ambitions for greater states.

Since the international recognition of BiH, Brussels and other European capitals came a long way in growing up and maturing. At the very beginning of and during the aggression⁷ the EU did not offer any political support to the independent BiH. On the contrary, the suggested propositions caused the division of the state, according to ethnic lines. The initiatives by the European mediators, Lord Carrington, Lord David Owen, as well as peace proposals Cuthileiro 1992, Vance-Owen 1993, Owen-Stoltenberg 1994, and so on, came one after the other. The common trait shared by all of them was the respect for the reality in the field and distorted state constitution. The European ideal of individual rights was replaced by *real* politics, collective rights and respect of the power relations within the region where Croatia, and especially Serbia, were treated as stronger partners the future of a third country can be agreed with. The greatest misfortune of such relations was not the contents of all European initiatives, but the wrong signal that one could conquer territories by armed conflict and cleanse them of the members of other ethnic groups, and go unpunished. Tadeusz Mazowiecki, special UN appointee for human rights in the former Yugoslavia, pointed out in his report of November 1992, that Vance-Owen's plan stimulated ethnic cleansing.⁸

Contrary to the 1992 to 1995 period, current suggestions and initiatives have established the integration of BiH, strengthening the central institutions for the benefit of all its citizens. Today European diplomacy is unified on the issue of the Western Balkan and Bosnia and Herzegovina. However, this has not happened over night or at one summit, it was a gradual process of taking the control over the region from the United States of America.

Relations between BiH and the EU at the time of crisis management

After the signing of the Dayton Peace Agreement, the European Union suggested one initiative after another, which should have established a European perspective of Bosnia and Herzegovina. The first suggestions of the EU were more under the influence of Dayton, and less under the influence of Brussels. Their characteristics were the slow entrance of the

EU into the region, the absence of the strategic relations towards the countries of the Western Balkans, the absence of the precise framework of approaching Brussels. The first such initiative was launched by France at the time of its presidency over the EU, December 1996, within the framework of the so-called Royauumont Process. The suggestion was exclusively related to the stabilisation of the South Eastern Europe, with the aim to support the Dayton Agreement implementation. This was the first version of the regional accession to the EU. The French suggestion was added at the meeting of the Council of Ministers of the European Union in Luxemburg, 29 April 1997. Chief diplomats from the member states established "a joint strategy" and accepted exclusively "regional access" in deciding political⁹ and economic criteria¹⁰ for the development of bilateral relations and signing contracting relations with five states from the Western Balkans.¹¹ The willingness to develop the institutional relations was shown through the signing of the Co-operation Agreement. The concept of *conditionality* was mentioned then for the first time. A year after the "regional access", the Council of the European Union issued the Declaration¹² on special relations with BiH in Luxemburg, 8 June 1998. Declaration expressed the hope that BiH would follow the path towards European integrations. Also, the emphasis was placed on the readiness of the Union and member states to help BiH on its way. At the same meeting the Consultative Task Force of BiH and the EU (BiH&EU - CTF) was established as a mechanism of co-operation and consultation of the two sides. It was envisaged that the meetings of CTF would be held within the framework of working and monitoring groups, as a lower form of co-operation, while the plenary sessions were envisaged as the high level of consultations. The first meetings was held in Brussels on 10 May 1998.

At the end of the 1990s, the Western Balkans was again the focus of ethnic clashes. The Milosevic regime, problems in Kosovo and the potential danger in Macedonia additionally engaged Brussels. This time it was the joint access of the EU member states and the efficient use of the Western foreign and security policy. With the establishment of "the prevention culture", new humanitarian catastrophe was not allowed. By recognising the weaknesses of the post-Dayton suggestions, the prestigious Centre for European Policy Studies (CEPS) from Brussels, initiated the forming of a Working Group at the end of 1998, which discussed "the future of South Eastern Europe". This was the introduction into defining the Stabilisation and Association Process, the strategy direction that enabled the beginning of the integration of the Western Balkan countries into the EU.

The process marked the entrance of the strategy of the EU into the region and the exit of the strategy of the United States of America.

In addition to the promotion and practice of "the prevention culture", during 1999 and 2000 the region was flooded with new suggestions and initiatives from Brussels, such as Stabilisation and Association Process, Stability Pact for South Eastern Europe, status of the "potential candidate", CARDS, marketing preferences, offers for contractual relations and later pre-accession funds. Out of the seven starting characteristics, three European "carrots" have separated themselves and especially marked the Stabilisation and Association Process: contractual relations, trade preferential and financial help through the CARDS programme. The first one regulates the relations of the prosperous Europe and the five countries of the Western Balkans, which are leaving the phase of management crisis and entering the institution-building phase. Besides the possibility of making contractual relations, in the form of Stabilisation and Association Agreement, in September 2000, the EU introduced trade preferential¹³ for the entire region due to its economic development. A few months later it introduced the CARDS programme, the financial instrument of support to the entire process. Instead of development projects, stabilisation projects were preferred. The contractual relations, trade preferential and CARDS assistance are still the three most important characteristics of the Stabilisation and Association Process. New elements were successfully built upon this foundation, additional financial help and mechanisms of political co-operation. Europe has increasingly participated in the reforms of the Western Balkan states. In September 2004 already, the delegation of the European Commission announced new financial help for the next financial quarter, referring to the period between 2007 and 2013.

All these initiatives resulted in the European supervision of the reforms in Bosnia-Herzegovina. The European Union offered its help in the majority of transitional issues, integration of customs, taxation, legislation, and intelligence sector. It enabled the creation of a single economic area, single taxation system, single banking space, institutional building at the level of BiH and so on. Only a few years ago the reconstruction of BiH and the agricultural reform in the area of privatisation, capital market and finances were under the supervision of the USA through USAID projects. Two entity and ten cantonal agencies for privatisation were formed, including the special arrangements for the Brcko District.

For the sake of comparison the financial support from the EU donated over 2.5 billion Euro,¹⁴

not counting the donations from the member states, the government of the USA, donated a bit over 1 billion dollars since 1995.¹⁵ The most significant assistance from the American Government was in 1997, at the time of the Dayton phase, when 217 million dollars were donated to Bosnia and Herzegovina, most of which was allocated for reconstruction, which amounted to 154 million dollars. Since then, the help from the USA decreased gradually each year to come to some 50 million dollars¹⁶ in 2003. Whereas, on the other hand, the European assistance increased. Between 2000 and 2003, BiH was granted 391 million Euro from the EU.¹⁷ This help does not include the support of the European Commission to the income balance of BiH and the bilateral donations from the member states. Current USAID projects are in the shadow of the CARDS programme, which is financed by Brussels. Besides the last one, the new, more accessible funds are opening: TWINNING and TAIEX, while even more complex ones are being announced "ISPA and SAPARD.

Besides the monitoring of the work of the police structures, the EU has replaced the stabilisation forces of NATO with EUFOR. Referring to event, Xavier Solana stated: "All this is part of a journey towards the only possible destination – the European institutions."¹⁸ Europeans learnt their lesson six years ago from the Americans. On 2 December 2004, at the inauguration of the EUFOR mission in BiH we did not find out how long it will last. "He also said in his speech, that the "mission continues until it will be achieved."

The European perspective of – "Brussels" BiH

"The unification of Europe will not be complete until the five countries from the Western Balkan join the European Union."¹⁹ After introducing the Stabilisation and Association Process in 1999, conclusions of the European Council from Santa Maria da Feira in mid 2000, the Zagreb Summit at the end of 2000, confirmed the European perspective of Bosnia and Herzegovina was confirmed several times, as was done in the following years, at the meetings of the European Council at the end of 2002, in Copenhagen and in March 2003, and in Brussels.

This was the introduction into the Thessaloniki Summit of the heads of state or government of the EU member states, ten accessing states and five states from the Western Balkans on 19 and 20 June 2003. The European Council confirmed the decisiveness of the Council of Ministers of EU at the meeting, to fully and productively support the European perspective of Bosnia and Herzegovina, Serbia and

Montenegro, Croatia, Macedonia and Albania. Also, it was announced that these countries "will become an integral part of the EU when they fulfil the established criteria". Besides the declarative confirmation of the European perspective, the suggestion to develop the Stabilisation and Association Process was accepted by introducing new instruments used in the pre-association phase by the countries of Central and Eastern Europe. The first novelty regarded the introduction of the European partnership modelled on the Accession Partnership²⁰ from 1997. Besides the European partnership and additional instruments of financial help, new ways for political co-operation were opened. A political forum of the EU and the Western Balkans was created. Regular annual meetings were envisaged and exchange of opinion by Ministers with different portfolios at the forum. Already in November 2003, the forum gathered Ministers of Justice and Internal Affairs, from the member states and five countries of the Western Balkans.

Following the Thessaloniki Summit, the European Union continued to send positive signals. Every decision in Brussels additionally encouraged Bosnia and Herzegovina and its attempts to join the EU one day. Directorate General for the Enlargement of the European Commission took over the responsibility for the Western Balkans from the Directorate General for Foreign Affairs. Instead of Benita Ferrero-Waldner,²¹ Commissar for Foreign Affairs, communication with the official Sarajevo will be conducted by the Finish, Olli Rehn, the new Commissar for Enlargement. In contrast to the previous Commissar who was responsible in the early phases of European integration, this one prepares states for the full membership.

All European initiatives confirm the entrance strategy of the European Union, with the determination towards the long-term political support and financial help. They are not two-faced in their guarantee of the European perspective for the Western Balkan countries, among which is Bosnia and Herzegovina. It is evident that this is a process of the strategic character. The best example of this is Croatia, which has passed all the phases of the Stabilisation and Association Process, from a potential candidate to associate member for the candidate for membership.

Future steps

Dayton is becoming the past of Bosnia and Herzegovina, and Brussels more and more its future. The first one ended the war and ensured peace, the other opened up possibilities for its internal integration, regional co-operation and gradual inclusion into the European current. Dayton symbolises political

will and global strength of the United States of America, and the weaknesses and absence of the EU and its member states in the first half of 1992. The Agreement showed that the USA is still the European power.²² At the time of the signing of the Agreement, it was the "lifeline" of Bosnia and Herzegovina and it became the "straitjacket" a long time ago.²³ With its organisation, the existence of several incoherent legal systems, split market, management of economic affairs was unable at the state level, and the creation of an expensive, complicated and inefficient apparatus were confirmed. The "Daytonian" Bosnia and Herzegovina was created at the negotiating table in a military base with the consent of the two neighbouring countries. The exit from this phase is understood by the distancing from Dayton and approaching Brussels.

Brussels symbolises the return of the Western Balkans²⁴ and its presence and influence in the region that is growing stronger as well as the building and strengthening of the BiH state and its central institutions. The "Brussels BiH" enables the creation of a single economic space, management of economic issues at the state level, decrease of entity and cantonal apparatus for the benefit of the state one, harmonisation and connection of the legal systems of BiH with the European legal heritage. Instead of assimilation, which certain ethnic groups fear of integration is being offered. The "Brussels Bosnia and Herzegovina" will not be constituted with the approval of its neighbours, it will be created in years to come, and will be the result of the political will and needs of its citizens, business people, academia and civil society. As such, it will last longer and will have greater value than the one created in the American military base.

After almost ten years since the signing of the peace agreement, Bosnia and Herzegovina is leaving behind the time characterised by the stabilisation, crisis management, Bonn authorities and American *hard* diplomacy. From such a state it is entering a phase dominated by institutional building and decrease of the OHR's authority despite the transitional problems. If the first phase was characterised by the strong engagement of the White House, frequent visits by American political and military representatives: Bob Gelbard and Wesley Clark, freedom of movement, then the last period is characterised by the weak interest of the USA for the reforms in BiH, its gradual withdrawal from the region and the greater interest, financial and political engagement of the European Union, by the introduction of the added value tax, joint customs, reform of the judiciary in BiH, etc.

After the implementation of the 18 directions of the Road Map to the EU, and the recommendation from the Feasibility Study in 16 priority fields, the

third round of duties, then the fourth, fifth and so on will follow. The first two rounds marked the beginning of the long-term process of harmonisation and building of the state structure and its capacities in accordance with European standards. Out of all the laws adopted by the Parliamentary Assembly of BiH in 2004, more than half are in the function of approaching of BiH to Brussels. There are still many years, as well as duties on the path to the end goal. In the best-case scenario, the recommendation for the beginning of the negotiations between BiH and the EU regarding the signing of the Stabilisation and Association Agreement can be expected in the first half of 2005. The recommendation from Brussels will come if the implementation of more than 40 laws adopted in 2004 begins, if formation or reconstruction of 25 institutions at the state level from the judiciary, security, internal market, intellectual property, competition, consumer protection, metrology, veterinary, standardisation, food safety and other areas begins. Without the full co-operation of the smaller BiH entity with the Hague Tribunal, negotiations with the EU will be postponed for a more favourable time.

The signing of the Stabilisation and Association Agreement marks the passage from the voluntary into the phase of obligatory harmonisation of the BiH Legal system with the judiciary of the EU. When the Agreement is ratified and is in force, BiH will enter the phase of the contractual relations with the EU. If the High Representative decreases his responsibilities prior to and during the negotiations, then during the time of the implementation of the Agreement Bonn authorities of the "international sovereignty" will not be valid anymore. During 2002, the High Representative imposed 32 laws, a year later 14, and by the second half of 2004, only three laws.²⁵ If this trend is reflected upon all other decisions by the High Representative, which will finally represent the exiting strategy further development of BiH in the process of stabilisation and association will be enabled.

The implementation period of the Agreement is also the period for the possible change of the Dayton Constitution and the creation of a functional and rational BiH, which will enable efficient functioning of all parts of the Dayton Peace Constitution. Considering the experiences of the countries from the Central and Eastern Europe that became full members of the EU in 2004, in each of the following phases of the relations with the EU, new institutions will be formed, new personnel will be educated, new state services will be built, that work in the interest of its citizens. In 1997, BiH had three State Ministries. Due to the European integrations process, BiH now has nine State Ministries and over 30 other agencies at the state level.

This process is irreversible. It can be faster or slower, depending upon political will, available funds, human resources and knowledge. The implementation of the agreement enables BiH to submit the request for full membership. The negotiations on the membership will be the most complex task and the greatest challenge. Adoption and implementation of the complete European legal system, at the end it will result in a number of some 50 State Ministries and some 100 agencies, offices and institutes, which will serve the market, strengthen the export capacities, supervise the market, environment protection, etc. The number of entity or cantonal authorities will be highly reduced. All of these formal steps are followed by significant reforms in the economy, judiciary, internal affairs, defence, agriculture, customs, etc. In the end, BiH will transfer a part of its sovereignty onto the European commu-

nity due to the supremacy of the communitarian law and its implementation in all EU member states. The analysts of the ESI believe that it is not possible for BiH to begin negotiations on the full membership before 2007.²⁶

In the process of European integration, most likely not all of BiH internal problems will be solved. Perhaps it will not be organized in accordance to the will of all its citizens, while the economy will not even be close to the European average. However, with the harmonisation of national laws and practice with the European provisions²⁷, directives²⁸, decisions²⁹ and recommendations³⁰, market economy, parliamentary democracy and rule of law will be established according to the European Union model. Political and economic space will integrate into one whole, to the same extent as the unified Europe.

NOTES

1 The special act of the European Union which is the first supplement to the Rome Agreement. The act provides for the full realisation of the joint market until 1992 and gives the Union new authorities in the area of foreign political co-operation among other things. It also provides the voting on the principle of qualified majority in the area of joint market, strengthened role of the European parliament, etc.

2 Holbrooke, Richard, *Getting to Dayton*, p. 381.

3 Interview with Haris Silajdzic, DANI, 27 August 2004, p. 14.

4 Dnevni avaz, 21 September 2004

5 News Agency SENSE, 28 January 2004

6 *Ibid.*

7 The notion of aggression is suggested in the majority of the resolutions of the UN Security Council, 757, 758, 760, 762 and others from 1992. They ask for "the forces of Yugoslav People's Army to withdraw from the BiH territory". Due to the violation of this and other resolutions, sanctions have been imposed upon the former Yugoslavia. In the sentences to Tadic and Krstic The Hague Tribunal has also confirmed that this was an international conflict which Serbia and Montenegro participated in.

8 Binyon, Michael, *The Times*, 20 May 1993.

9 Respect of democratic principles, human rights, rule of law and minority protection.

10 Market economy, regional co-operation.

11 Albania, BiH, Croatia, Macedonia, Serbia and Montenegro (then the Federal Republic of Yugoslavia)

12 Declaration on the special relations between the European Union and Bosnia and Herzegovina

13 Regulation of the Council 2007 – 2000 from 18 September and amended by the Regulation of the Council 2563 – 2000 from 20 November, regarding almost all products, with a very small number of exceptions, until 31 December 2005.

14 More information at: http://europa.eu.int/comm/external_relations/see/bosnie_herze/index.htm#5

15 More information at: <http://www.usaid.ba/>

16 Source: USAID BiH, for more information contact Kasey Vannett

17 Report of the European Commission on the Stabilisation and Association of BiH, for 2004, p. 16. More details available at the Web pages of the EU, Delegation of the European Commission in BiH and the Directorate for European Integrations of BiH.

18 From the Xavier Solana speech, inauguration of the EUFOR mission, 2 December 2004.

19 Part from the suggestion of the European Commission for the Council of Ministers of EU and the European Parliament prior to the beginning of the Thessaloniki Summit.

20 The Accession Partnership joined the help of the European Commission to the Central and Eastern Europe countries in one document, as well as the priorities each state needs to fulfil on its way towards the final accession to the EU. The accession partnerships served as a support for other pre-accession instruments including the joint assessment of the short-term and mid-term priorities for economic policies, the pact on the organised crime, national plans for development and other sector programmes necessary for the participation in the Structural funds of the EU after the accession, for the application of ISPA and SAPARD.

21 In the previous convocation of the European Commission, Chris Patten was the commissar for foreign affairs.

22 Richard Holbrooke, *Getting to Dayton*, p. 373.

23 Wolfgang Petrich, *Večernji list*, 28 January 2005.

24 In the EU terminology, the concept of the Western Balkan means the area "west from Greece and south from Slovenia" or the area of the former Yugoslavia without Slovenia and including Albania, i.e. Croatia, BiH, Serbia and Montenegro, Macedonia and Albania.

25 Source: Office of the High Representative for BiH

26 From the conference in Wilton Park, 10 June 2004.

27 The provisions are for direct implementation and in the entirety obligation in the EU member states, without the need of bringing the measures for the implementation at the national level. They enable the Union institution the largest influence on the legal system of the EU member states. They are considered for the unification of laws throughout the Union.

28 The directives are not directly implemented in all member states. They require bringing the measures for the implementation at the national level till the deadline defined by a certain directive. They do not oblige member states in their entirety, only in the results they need to achieve. The directives leave a certain level of freedom to authorised national bodies in deciding in which way they will incorporate and implement the goals of the Union within their legal system.

29 The decisions are entirely obligatory for those they are directed at. They can be directed at one or all member states, market subjects or individuals.

30 The recommendations are non-obligatory declarative instrument. They are foreseen by the Establishing Contracts and used by institutions, the communities for expressing the opinion to member states and in some cases to individuals as well. They do not impose any legal obligation to those they are directed at.