Security and accession

Rethinking requirements placed upon Bosnia-Herzegovina by the European Union accession process

A DISCUSSION PAPER

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Author: Théo Lemaire
Research and editorial support: Andrew Lane
Design: Martin Leng
Front cover image: Andrew Lane

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Introduction

On 20 September 2016, European Union (EU) member states agreed to accept the application of Bosnia and Herzegovina (hereafter, Bosnia) which formally launches a process of accession into the EU. Member states noted the efforts that Bosnia had already made to align itself with the EU and asked the European Commission to assess its readiness to join.\(^1\) Bosnia’s accession will be a slow and complicated process, during which it will need to meet a wide range of membership requirements, including reform of economic policy, governance structures and the security sector.\(^2\)

This report considers how the EU defines security in the context of its accession processes.\(^3\) Following an examination of the most relevant policy documents and conversations with members of the QCEA network in the region, the report argues that the requirements of the accession process could better reflect the security needs of Bosnian citizens. The EU should therefore consider how it might develop a clearer and more comprehensive concept of security to guide accession processes.

1. EU Enlargement Policy and Bosnia

The European Union enlargement policy is seen by many as the most successful aspect of the EU’s foreign policy, allowing political reforms to be sustained, including in countries which have experienced instability and war in recent years.\(^4\) This success can be partly explained by the win-win nature of the policy, built upon the common interests of EU member states and the acceding country. EU membership is, however, sometimes perceived as being a solution to all country’s problems, but the truth is more complex.\(^5\)

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More than twenty years after the signature of the Dayton Peace Accords, Bosnia and Herzegovina remains divided. Building sufficient consensus between its constituent parts to manage a single process with the EU remains one of the most difficult challenges facing Bosnia’s accession.

1.1 Government structures in Bosnia

The constitutional arrangements made under the Dayton Accords include a federal-level of government for the state of Bosnia-Herzegovina, and an entity-level of government giving significant autonomy to ‘constituent peoples’. The largest entity is also divided into ten cantons.

Bosnia’s presidency is tripartite. There is one president for each of three constituent identities, one Serb, one Croat, and one Bosniak. No one can stand for more than one seat nor be identified outside of these pre-constituted groups. The same applies for elections to the second chamber of the Bosnian parliament (House of the People), composed of 5 members per community identity (15 in total).

Sejdic and Finci v. Bosnia and Herzegovina

In 2009, the European Court of Human Rights (ECtHR) judged that the ineligibility of a Jewish person and a Roma person to stand for election, because they did not belong to any of the groups listed in the 1995 Constitution, violates Article 14 of the European Convention on Human Rights (ECHR) on the prohibition of discrimination. Bosnia has not yet amended its constitution and remains in breach of the ECHR.

1.2 Bosnia – EU relations

Along with other Western Balkan states, Bosnia was formally identified as a potential EU candidate country during the European Council summit in Thessaloniki in June 2003. Since 2005, the relationship between the EU and Bosnia and Herzegovina has become closer. The EU concluded visa facilitation and readmission agreements in 2007. The Stabilisation and Association Agreement (SAA) on trade and trade related

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6 The General Framework Agreement for Peace in Bosnia and Herzegovina is also known as the Dayton Agreement, Dayton Accords, Paris Protocol or Dayton-Paris Agreement. It is the peace agreement reached at the Dayton Air Force base in Ohio, United States, in November 1995, and formally signed in Paris the following month.


issues was reached in 2008, and entered into force in 2015. The SAA has provided a framework for political and economic dialogue between Bosnia and EU.

EU accession requirements and the related security sector reform agenda represent a broader understanding of the security sector than covered in the Dayton Accords. Whilst the Accords addressed disarmament, policing, security governance, and military issues, they did not refer to judicial, borders, customs or other public sector reforms.⁹

Bosnia and the EU have concluded agreements that allow for the EU to deliver financial assistance to support progress in the Stabilisation and Association Process which involves meeting a set of conditions, known as the Copenhagen criteria.¹⁰ EU conditions for membership include two chapters that are particularly relevant to the security sector. Chapter 24 is entitled ‘Justice, freedom and security’ and includes requirements for policing, courts, customs, borders and good governance. Chapter 31 entitled ‘Foreign, security and defence policy’ includes requirements for the military sector and alignment with a common European foreign policy. The EU accession process therefore includes a broader, but not comprehensive approach to security.

“The cost of violence containment in Bosnia is equivalent to 7 percent of the country’s GDP.”

### 1.3 Stabilisation

One of the underlying concepts of the EU accession process is that of stability, or stabilisation. It appears in lists of objectives and the names of processes and agreements. The problems associated with an absence of stability include high levels of forced migration or poorly governed spaces in which organised crime can flourish. As the Ammerdown Group, a network of security and peacebuilding professionals, have noted, these problems would be better characterised as an absence of justice.”

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¹⁰ The Copenhagen criteria are the conditions candidate countries must satisfy to become an EU member state (named after the European summit in Copenhagen in 1993 which defined them). There are three categories of criteria, as follows:
- political criteria: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- economic criteria: a functioning market economy and the capacity to cope with competition and market forces;
- administrative and institutional capacity to effectively implement the existing treaties and current EU legislation and ability to take on the obligations of membership.

The EU and other international organisations have believed that stable institutions would lead to more security for citizens. As a result, the resources provided by international organisations to support security sector reform (SSR) have been focused on a traditional politico-military and state-centric approach. As the Centre for Security Governance (CSG) has argued, this has been at the expense of developing a broad human security approach.\textsuperscript{12} CSG’s research also shows that international actors have designed and guided the SSR process in the absence of a domestic consensus on reforms, and that the development of statewide security institutions has been achieved for the military sector, but not for the police or judicial sectors.\textsuperscript{13}

1.4 Justice sector

The EU accession process also seeks to improve justice within Bosnia, through Chapter 24 of their membership conditions. Corruption and politically motivated threats to the judiciary continue, whereas efforts to improve the accountability, management and coordination of the justice sector are only making slow progress.\textsuperscript{14}

To comply with the EU’s standards, the Bosnian Department of Justice developed a justice sector reform strategy for 2014-2018. Overall, it aims to make the justice sector a coordinated, well-managed and accountable sector focusing on four long-term priorities: the judicial system, execution of judgements in criminal cases, access to justice and support to economic growth.

\begin{quote}
\textit{“the accession process is a unique opportunity for Bosnia to engage in a serious peacebuilding effort”}
\end{quote}

2. Security Challenges facing Bosnia-Herzegovina

The Institute of Economics and Peace estimates that the cost of violence containment in Bosnia is equivalent to 7 percent of the country’s Gross Domestic Product.\textsuperscript{15} This section looks at three of the most prevalent aspects of insecurity in Bosnia, namely:

- Political violence,
- Gender-based violence, and
- Organised crime and corruption.

2.1 Political violence

QCEA’s 2009 report on the Western Balkans describes how nationalism was identified by peacebuilders as the most significant barrier to lasting peace and stability in the region as a whole, and in particular to Bosnia.\(^\text{16}\)

2.1.1 Peacebuilding

Political forces in Bosnia have different visions for the future of the state, posing an important challenge to the reform of the security sector.\(^\text{17}\) Bosnia can report some process toward internal unification, but it is unclear whether national actors are willing to take further steps toward accession. Over the last year, coordination between Canton-level assemblies has improved, in particular where they have shared powers, and the entity-level parliaments have agreed a new concept agreement.\(^\text{18}\)

Deep divisions within the country are a reminder that peacebuilding will need to continue long after Bosnia has become an EU member state. The EU is not well placed to support peacebuilding inside its own borders, predominantly perceiving peacebuilding as an external activity. Relevant EU peacebuilding and mediation tools have very limited capacity. This means the accession process is a unique opportunity for Bosnia to engage in a serious peacebuilding effort, and to undertake reforms that will underpin its peace and security over the long-term.

Mediation

One of the reforms that the EU is seeking from Bosnia is the introduction of court-annexed mediation in specialist pilot courts. This is in recognition that non-judicial approaches can produce better outcomes for the victim, offender and community. In the year to September 2016, only two cases went to mediation, compared with 6280 cases that underwent a judicial conciliation process.\(^\text{19}\) The EU’s proposal offers the opportunity for more restorative forms of justice, that have the potential of contributing to wider community peacebuilding. An assessment of the current mediation capacity should be undertaken, with particular attention given to what support independent grass-roots peacebuilding organisations can provide.

2.1.2 Education and conflict prevention

Traditional concepts of security prevent policy makers from understanding that real security is about relationships between people. Education is an example of how divisive identities are constructed. In more than 50 schools, pupils are attending classes in the same building, but are taught separate curricula depending on their

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19 Ibid. p16.
ethnic identity. This is known as the ‘two schools under one roof’ system. In 2012, the Supreme Court of the Federation of Bosnia and Herzegovina confirmed a judgement of the Stolac Court that this constituted ethnic segregation of pupils. Despite the Supreme Court judgement, the common core curriculum is still not applied throughout the country and the number of mono-ethnic schools has remained the same in recent years.\(^\text{20}\)

The separation of young people by conflict identities, and the teaching of different histories are both damaging. They contribute to the risk of misunderstanding, stereotyping and prejudice, as well as fuelling violent nationalism. A shared approach should be considered in order to make all identity groups within a community feel safer. Everyday attitudes of citizens, such as caring for other members of society, are as important as the policies of states and international organisations.

In 2008, political leaders in the Republika Srpska challenged the international community (and particularly the EU) through a resolution stating that Republika Srpska would hold an independence referendum if Kosovo’s declaration of independence was backed by EU member states.\(^\text{21}\) The United States, the EU and the UN and even the Serbian president Boris Tadic condemned the resolution invoking that secession would be a clear violation of the Dayton Accords. More recently, on 25 September 2016, Republika Srpska held a referendum on whether the 9 of January (date of the founding of the Republika Srpska in 1992) should be a national holiday. The new holiday was supported by 99.8\% of the voters in the referendum on a turnout of 56\%. This symbolises current tensions within Bosnia and the depth of peacebuilding required.

2.1.3 Hate crime

Hate crime in Bosnia is rarely reported and often the bias motivation is not taken into account when recording the crime. This is despite the state-level criminal code being amended in accordance with international standards and a recent declaration against Hate Speech was also adopted by the National Assembly of Republika Srpska entity.\(^\text{22}\) One such example from Republika Srpska in 2010 illustrates how bias motivations can be ignored or overlooked. In this case a man entered a mosque waving a Serbian flag and a knife. The defendant was charged only with ‘infringing the inviolability of a dwelling’ and the public prosecutor did not take a hate motivation into account, despite the police having based their action on Article 390 of the Republika Srpska’s criminal code: Inciting national, racial or religious hatred.\(^\text{23}\)

\(^{23}\) OSCE, Tackling hate crimes, an analysis of bias-motivated incidents in Bosnia and Herzegovina with recommendations, 2012, p.29
2.1.4 Law and practice

The are many other examples of how hate crime commitments have been made, but not implemented.

- In April 2016, Bosnia’s federal criminal code was amended to include a common definition of hate crime, and a list of protected characteristics, including race, colour, religion, nationality, ethnicity, language, disability, sex, sexual orientation, and gender identity. A data collection mechanism has not yet been developed.
- The additional Protocol to the Convention on Cybercrime criminalises racist and xenophobic acts committed online was ratified by Bosnia more than a decade ago, but has not been effectively implemented.  
- Hate crime victims in Bosnia are able to seek compensation if they suffered both material or non-material damage resulting from an offence motivated by national, religious or racial hatred. In practice, injured parties are not aware that they can claim civil damages during criminal proceedings. This can be convenient for prosecutors as they find that gathering evidence necessary to resolve these claims would prolong the proceedings considerably.

The European Commission has made useful proposals for Bosnia’s pre-accession activity in 2017, including the adoption of a country-wide strategy for human rights and non-discrimination. More ambitious proposals include the introduction of a harmonised, consistent and free legal aid system and ensure non-discriminatory access to justice. If implemented this could make a significant difference.

2.1.5 International violent extremism

Whilst the risk of political violence is overwhelmingly domestic nationalism, some citizens have taken part in Daesh inspired violence in Syria. Between the beginning of the civil war in Syria (2011-12) and 2015 more than 300 Bosnian citizens departed to Syria and Iraq.  

Research has suggested that Daesh-inspired offenders are motivated by a complex range of factors, including personal problems, such as debt or relationships.

26 Ibid. p74.
27 Vlado Azinovic and Muhamed Jusic, the New Lure of the Syrian War, the foreign fighters’ Bosnian Contingent, Atlantic Initiative, Sarajevo, 2016 p.12
EU recommendations relating to the prevention of violent extremism are narrow, focused on policing and intelligence action, and particularly regarding individuals within the Wahhabi community. Bosnia needs to be careful to find the right balance between acting upon genuine risk, and not stereotyping specific groups of already isolated minorities. Placing an unfair burden of intense scrutiny and suspicion on a particular community or identity will deepen the alienation of a group, and risks making political violence more, rather than less, likely.

More attention should be given to supporting Bosnia to implement a detailed prevention strategy. An independent civil society, including grass-roots peace-builders, can make an important contribution to community engagement programmes. However, such programmes require the political and legal space to undertake this difficult work. Whilst policy makers find themselves under-pressure to deliver ‘quick fixes’, longer term approaches are needed to address the causes of insecurity.

### 2.2 Gender-based violence

Like all parts of Europe, domestic violence remains widespread in Bosnia. However, only a very small proportion of cases are recorded annually. Bosnia is also a country of origin, transit and destination for human trafficking and sexual exploitation, and eighty percent of the victims identified are girls or women.

Bosnia adopted their primary gender equality law in 2003, and amended and updated it in 2009. The law introduces a gender perspective into public policies and legislation and also prohibits discrimination based on gender and sexual orientation. This includes social protection, health, labour and education policies. At the entity level, there are laws on protection against domestic violence and the types and purposes of sanctions for offenders. However, the OSCE mission in Bosnia has identified “serious concerns regarding inadequate implementation of the legislation on gender-based violence and a lack of effective protection and assistance to victims.”

There are three gender institutions in Bosnia with strategic functions, a state agency for gender equality and two gender centres, for both the Federation of Bosnia Herzegovina (since 2000) and the Republika Srpska (since 2001). There is no superiority of the state-level agency over the entities’ centres. However, there is insufficient provision for women’s refuges and some have closed due to a lack of funding.

The European Commission has also noted concerns that criminal justice agencies and the police do not have specialist departments for domestic abuse, and free legal aid is difficult to access. Whilst there has been a slight increase in the number

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31 OSCE, Combating Gender-Based Violence, OSCE Bosnia and Herzegovina, Fact sheet, 1 January 2012.
32 Ibid. p25.
of female police officers as part of post conflict security sector reform, it has not been sufficient to change organisational culture or the response to incidents of domestic violence.

### 2.2.1 Legislation

Implementation is not the only issue and there are opportunities to improve legislation on gender-based violence in Bosnia. In the Republika Srpska, victims of rape are not considered a special category and, in order to enjoy special protection, psychological assistance or financial support, must exceed a high threshold of physical harm.\(^{33}\) Further, Bosnian domestic violence legislation has been criticised for not including domestic violence as an aggravating circumstance that would qualify offenders for extended sentences.\(^{34}\)

The OSCE has reported that whilst it is accepted that sexual violence was closely related to other forms of violence used during the war years, of war crimes trials that have taken place at state and entity levels, only a small number have included sexual offences. It has also been noted that, “none of the laws on the state or entity levels explicitly require gender responsive witness protection when listing the necessary measures for care of witnesses in cases of war crimes involving sexual violence.”\(^{35}\)

Whilst the European Commission has reported that there has been a failure to effectively implement legislation on the prevention of and protection from gender-based violence, it seems clear, however, that gender should be higher on the agenda of EU accession processes. The EU should be more focused on this given seriousness of the issue, and the links between gender inequality and violent nationalism.\(^{36}\) Building a shared security requires policies that ensure equal access to security for both men and women.

### 2.3 Organised crime and corruption

Domestic and transnational organised crime networks can operate more easily in Bosnia because of the limited capacity of the security sector, ineffective governance and the legacy of the war. The region is located on important routes for freight transport between Europe and Asia, but also for human trafficking and the illegal trade in drugs and weapons. Previous research has found that organised crime in Bosnia is not a by-product of the war but was present before the war.\(^{37}\) However,

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33 Ibid.
34 Council of Europe, Final report on national campaign to combat violence against women, including domestic violence, report available at: https://www.coe.int/t/dg2/equality/domesticviolencecampaign/countryinformationpages/bosnia/NationalReport_en.asp
36 Lane, A (2014) A Culture of Peace — The Council of Europe has a Part to Play, QCEA. Available at: https://qceablog.wordpress.com/2014/06/27/a-culture-of-peace/
37 Sheelagh Brady (2012) Organised crime in Bosnia and Herzegovina, a silent war fought by an ambush of toothless tigers or a war not yet fought?, p. 5-6
organised crime has become more identifiable during and after the war when light has been shed on the relationships between powerful elites and criminals.

Organised criminal groups tend to be loosely structured, with few strictly hierarchical groups operating.\textsuperscript{38} Low levels of reporting and poor data collection make it difficult to assess the activity of organised criminal groups, including limited mapping of vehicle thefts and organised burglaries. The Bosnian Centre for Security Studies undertook research in 2014 that indicated that more than two-thirds of citizens believe corruption and organised crime reduces their perception of security. This research included a survey in which Bosnians were asked whether they felt safe in their homes; 43 percent said they did, 27 percent felt unsafe and 7 percent felt very unsafe.\textsuperscript{39}

\begin{quote}
“It is important to challenge politically influential individuals and groups that use power in their own interest and at the expense of the common interest of communities.”
\end{quote}

\textbf{2.3.1 Corruption}

The influence of organised crime on governance in Bosnia remains a problem, and judiciary is not able to address this sufficiently.\textsuperscript{40} The EU’s accession process involves clear recommendations on corruption for the Bosnian government to implement in 2017. These include developing action plans for the worst areas, establishing corruption prevention bodies and new legislation to monitor potential conflicts of interest for government officials.\textsuperscript{41} However, the fragmented structures of government in Bosnia make action on corruption more difficult.\textsuperscript{42} In the year to September 2016, there were no final convictions in high-profile corruption cases.\textsuperscript{43}

From an economic perspective, corruption is one of the most significant obstacles to business in Bosnia. The United Nations Office on Drugs and Crime (UNODC) report that more than 10 percent of businesses admit to having paid a bribe to a public official.\textsuperscript{44} According to a survey published by the UNODC, bribery is not reported mostly because it is “pointless to report it as nobody would care” (44 percent) and because “giving gifts to public officials is common practice” (17 percent).\textsuperscript{45} Both health and education sectors have particularly high levels of corruption, with more

\textsuperscript{38} Ibid.
\textsuperscript{40} Interview with grassroots peacebuilding organisation, October 2016.
\textsuperscript{42} Ibid. p5.
\textsuperscript{43} Ibid. p17.
\textsuperscript{45} Ibid. p6.
than 60 percent said informal payments are common place in hospitals.\textsuperscript{46} According to a separate 2012 report, one in four university students reported personal experiences of corruption at their universities.\textsuperscript{47}

A lack of transparency, oversight and accountability is apparent at many levels of government in Bosnia. A series of interviews conducted in 2012 revealed significant concern about the levels of corruption in privatisation and procurement processes, with police services saying their capacity to investigate these complex offences is wholly inadequate.\textsuperscript{48} This is partly due to the failure to develop policing and financial investigation agencies at a state level. When communities across Bosnia are less secure as a result of the common deficiencies in their governance or security sector, then it is time for a common approach to security and reform.

\textit{2.3.2 Speaking truth to power}

It is important to challenge politically influential individuals and groups that use power in their own interest and at the expense of the common interest of communities, whether this be locally, across Bosnia or internationally. A law to protect whistle-blowers was passed in 2014, but only covers officials working at the federal level.\textsuperscript{49} The EU accession process is encouraging Bosnia to develop safe mechanisms for citizens to speak out about corruption.

Journalists revealing corruption in Bosnia are also subject to intimidation and even violence. For example, police raided a popular news website after they had published allegations of corruption in Republika Srpska. Journalists were served with a summons for questioning what may have been an act of intimidation, before charges were dropped.\textsuperscript{50} If communities are to ensure security for all of their citizens, then institutions must be open to challenge and embrace the opportunity to improve.

\textbf{3. Conclusion: An opportunity not to miss}

Accession to the European Union is top of the political agenda in Bosnia and Herzegovina. Most citizens and both local and federal governments perceive EU accession as making a positive contribution toward addressing many of the country’s challenges. However, even though accession would certainly help progress to be sustained, accession should be an event that occurs after problems are addressed. Our review of security and accession in Bosnia, suggests that not enough progress is being made. Indeed many underlying root causes of tension and violence remain unaddressed and risk causing disruption if left unsolved.

\begin{footnotesize}
\begin{enumerate}
\item[{47}] US Embassy in Sarajevo, Ambassador Patrick Moon’s Remarks at USAID ACCOUNT Project Launch Available at: https://sarajevo.usembassy.gov/speech_20120718a.html
\item[{48}] Ibid.
\end{enumerate}
\end{footnotesize}
While (over)optimism and Europhilia rose in the first phase of accession, it is now in decline. The cause is not that Bosnians turned to Euroscepticism, but rather “a consequence of the general idea that the problems of [Bosnia] are so immense that not even EU accession could help solving them.”51 Real progress can only be made by accepting that a deeper process of reconciliation will need to take place over the coming years, based on a more comprehensive understanding of security.

Gender based violence, corruption, organized crime, hate crime and political violence do not constitute an exhaustive list of the security issues that need to be addressed in Bosnia, but they are revealing of the scope of work that should be done before signing the accession agreement. Similarly, it is important for the EU to update their concept of security and create a palpable and visible link between security and human rights. The concept of the security sector was traditionally understood in narrow terms, overemphasising the role of military forces in providing security. The EU accession process would benefit from embracing a concept of security that focuses on the needs of citizens, including environmental, social and economic components.52

By reporting on political progress and cooperating with Bosnian institutions, the accession process has supported a constructive dialogue between Bosnia and the EU. For the first time, Bosnia and the EU seek to build a common future. This objective is most certainly welcomed by most stakeholders and skepticism remains low both in Bosnia and in the European Union. However, it seems difficult to envisage a union between current EU member states and Bosnia until a cohesive Bosnian citizenship prevails over conflict identities. By reporting on political progress and cooperating with Bosnian institutions, the accession process has supported a constructive dialogue between Bosnia and the EU. For the first time, Bosnia and the EU seek to build a common future. This objective is most certainly welcomed by most stakeholders and skepticism remains low both in Bosnia and in the European Union. However, it seems difficult to envisage a union between current EU member states and Bosnia until a cohesive Bosnian citizenship prevails over conflict identities.