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**Bosnia and Herzegovina:
a Case Study for the
Unfinished EU Agenda in
the Western Balkans**

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*“If there is ever another war in Europe,
it will come out of some damned silly thing in the Balkans”*

Otto Von Bismarck, Chancellor of the German Empire, 1897

1. Introduction

Bosnia and Herzegovina (BiH) provides a strategic case study to examine the engagement of the European Union in the Western Balkans. In February 2018, together with Serbia, Montenegro, Albania, the Former Yugoslav Republic of Macedonia (FYROM) and Kosovo, BiH was given a European perspective with accession negotiations moving forward. In the words of the High Representative of the Union for Foreign Affairs and Security Policy, it is “merit-based, each under different conditions and at its own pace, but with a strong commitment on the part of the EU to make this goal credible and finally become true.”¹ The accession negotiations are a promising development for a region that needs to leave behind tumultuous conflicts, cycles of external and internal oppression, dysfunctional state structures, underdevelopment, as well as an impoverished citizenry and issues of depopulation.

1 Speech by High Representative/Vice-President Federica Mogherini at the European Parliament Plenary Session on the Western Balkan Strategy, online at: http://eeas.europa.eu/headquarters/headquarters-homepage/39451/speech-high-representativevice-president-federica-mogherini-european-parliament-plenary_en. Last accessed 18 July 2018.

However, the new European perspective is only the beginning of a long and challenging task for the country. For years, the EU has been involved in a variety of interventions within BiH with mixed results.² Past failures can be primarily found with governance structures which prevented essential reforms from being implemented at the national level, and the limits imposed by prior actions, including the Dayton Peace Agreement (DPA). This has been viewed as preventing to facilitate transformation of BiH into a functional state.³ This Discussion Paper intends to address and examine these failures. Furthermore, the role of EU instruments, including the Stability and Association Agreement (SAA), the Instrument for Pre-Accession Assistance (IPA), and the European Perspective in the Strategy for the Western Balkans in enhancing the rule of law and respect for human rights will be explored.

2. Academic Perspectives on BiH, the Dayton Peace Agreement, the Rule of Law and Human Rights

A solution to BiH's quandary includes two key elements: *first*, pressure from the international community, and *second*, the need to reform the basic framework that fails to provide functional and inclusive institutions within the country.⁴ In her legal analysis,

2 Ana E. Juncos, 11/01/2005, "The EU's Post-Conflict Intervention in Bosnia and Herzegovina: (Re) Integrating the Balkans and/or (Re) Inventing the EU?" in: *Southeast European Politics*, 6 (2): 88-108.

3 Ibid; David Harland, 07/2017, "Never again: International intervention in Bosnia and Herzegovina", online at: <http://www.hdcentre.org/wp-content/uploads/2017/07/Never-again-International-intervention-in-Bosnia-and-Herzegovina.pdf>. Last accessed 26 July 2018.

4 Based on a review of related literature authored by the following have been made: Fionnuala Ni Aolain, "The Fractured Soul of the Dayton Peace Agreement: A Legal Analysis", in *Reconstructing Multiethnic Societies: The Case of Bosni-Herzegovina*, Routledge, 2018: 73-104.; Nedim Kulenovic and Jasmin Hasic, "The Influences of Dayton Agreement on Institutions: Legislatures in Bosnia and Herzegovina", in: Ludovica Benedizione and Valentina Rita Scotti, ed., *Proceedings of the Conference Twenty Years after Dayton, The Constitutional Transition of Bosnia and Herzegovina*, 2016: 61-80; Maria Dicosola, "Ethnic Federalism and Political Rights of the Others in Bosnia and Herzegovina", *ibid.*: 95-112.

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Fionnuala Ni Aolain proposed an approach that engages the international community as a key actor for reform. She asserted that the DPA, as a transitional structure, could lead to a more sustainable solution and that a renegotiation of the peace agreement, in light of its issues is undesirable in the short term.⁵

Simultaneously, Maria Dicosola emphasized the importance of the role of the international community in that regard. She identified international intervention as the main driver of change, including the Council of Europe pressing the parliament of BiH to reform the system of ethnic federalism, as well as the Venice Commission welcoming the introduction of a rotation among constituent peoples within the Presidency.⁶

Finally, Kulenović and Hasić tackled the role of the EU integration in BiH. They see European integration as an important driving factor for reforms. However, here the focus lies on “conditionality”.⁷ The shape of the Copenhagen criteria, which Dicosola also noted as critically important, was set out during the European Council in Copenhagen in 1993⁸ as the fundamental conditions for Eastern European countries to join the EU. They include a focus on the commitment to respect the democratic values of the EU as well as the commitment of promoting those values.⁹

5 Aolain (1998).

6 Dicosola (2016).

7 Kulenović and Hasić (2016).

8 European Council in Copenhagen, 21-22 June 1993, Conclusions of the Presidency, online at: <https://www.consilium.europa.eu/media/21225/72921.pdf>
Last accessed 15 July 2018.

9 European Council in Copenhagen, 21-22 June 1993, Conclusions of the Presidency, online at: <https://www.consilium.europa.eu/media/21225/72921.pdf>
Last accessed 15 July 2018.

3. Overview of the History of BiH

Europe's history creates a myriad of crossroads, cultural and political hot spots and heavily disputed territories, changing borders as well as identities. It is possible to note the same about the history of BiH and the wider region. A narrative of self-serving political ends underlines the history of BiH.¹⁰ An anachronistic approach that forces BiH's complex past into a modern and distorting interpretation of its history, where the establishment of official ethnic identities, expansionist or totalitarian projects, moving borders and impositions can be seen.

While the past can be brushed aside, and often is in modern politics, the past cannot be forgotten, it is always present in the present, and very much so in politics. Especially in BiH the past still greatly impacts the formation of the government and the society in general. While, societies have to look back into the past, especially in a place like Europe, they have to do so even more in the Balkans. All past choices and decisions, condition the present and in effect create a path dependence that limits and guides what reforms may be introduced, having an influence in their effectiveness and durability. For BiH a confrontation with the past is not only necessary but also indispensable in order to create and implement the reforms necessary to accede to the EU. The same principle applies to the EU itself which, in order to effectively intervene in BiH, has to deal with the consequences of the country's past.

The history of the BiH consists of a series of episodes of foreign interventions, colonization by the Ottoman, and then the Austro-Hungarian empires, Communization, World Wars and various foreign interventions that may have reached its zenith with the conclusion of the Dayton Agreement in 1995, which ended the three-year war in BiH¹¹ Nevertheless, BiH is still rife with ethnic divisions and religious discrimination.¹² The final chapter of the war, the one that prompted

10 See author's comments in footnote 4 and Malcom (1996), *infra*.

11 Noel Malcolm, "Bosnia: A short history", *NYU Press*, 1996.

12 *Ibid*.

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the intervention of foreign powers was the massacre of Srebrenica, starting on the 16th of July 1995. After Serbian forces were almost faced with defeat in Croatia and BiH, by the combined attacks of the Croatian and NATO forces, diplomatic efforts produced the basic document that until today dictates the political affairs in BiH. It protected *de jure* its integrity, but enshrined *de facto* its almost partition based on ethnicity.¹³

Overall, the Dayton Agreement was a critical development in the history of the country that confronts programmatic and policy interventions by the EU.¹⁴

It should be noted, that in 1995, when Dayton was adopted, BiH was a territory with no independent past upon which its future could be build. The medieval Bosnian state was too far away in memory. However, centuries of foreign domination had left a profound footprint in the country. BiH was a territory with no experience as a sovereign state;¹⁵ it had no experience in diplomacy or the management of state institutions or in governance. In communist Yugoslavia, even being the most open of all communist countries, the notions of human rights were not implanted due to the nature of the regime and its ideology. On top of that, BiH, in 1995, emerged from a savage war that had cost 100,000 lives on Bosnian soil in just three years.¹⁶ After all the deaths, forced displacements and torture, abuse and violations, there were two competing and completely incompatible trends in BiH.

13 Ibid.

14 Richard Caplan (2000) Assessing the Dayton Accord: The structural weaknesses of the general framework agreement for peace in Bosnia and Herzegovina, *Diplomacy and Statecraft*, 11:2, 213-232, DOI: 10.1080/09592290008406163. Last accessed 12 November 2018.

15 See author's comments in footnote 4 and Malcom (1996), *infra*.

16 Ibid.; Frida Ghitis, "Is Bosnia heading back to the dark old days of the 1990s?", online at: https://www.washingtonpost.com/news/democracy-post/wp/2018/05/28/is-bosnia-heading-back-to-the-dark-old-days-of-the-1990s/?utm_term=.a8c48bdf0038. Last accessed 19 November 2018.

The Serbian population, or mostly its leaders, did not want to take part in any Bosnian state.¹⁷ They sought separation and wanted to join the Serbian Republic. The Muslims leadership within, however, wanted a centralized state, in which they would be dominant due to their demographic weight and therefore stronger representation.¹⁸ Simultaneously, the Croats wanted a decentralized state at best, or having the areas with a Croatian majority joining the recently created Croatian Republic.¹⁹

From all these observations, it would seem that the framers of the Dayton Peace Agreement, found a hostile territory to reconcile the parties, based on the violent recent past and a dependence on principles of governance that has been shaped by foreign rule. It is true that the DPA stopped the war and brought peace in the region. However, it also created a country that remained complex in regard to its internal ethnic divisions. It forced three antagonistic communities into a relationship that presented serious challenges in governance and especially values. This is where the EU comes in.²⁰

17 Sumantra Bose, “Untangling the Truth: The War in Bosnia,” online at: <http://fathom.lse.ac.uk/Features/122275/>; “Bosnian Genocide”, online at: <https://www.history.com/topics/1990s/bosnian-genocide>; Tony Barber, “The Bosnia Crisis: Serbs, Croats and Muslims: who hates who and why: Tony Barber in Zagreb traces the ancient roots of a culture clash that has shattered what was Yugoslavia into warring pieces”, online at: <https://www.independent.co.uk/news/world/the-bosnia-crisis-serbs-croats-and-muslims-who-hates-who-and-why-tony-barber-in-zagreb-traces-the-1539305.html>. Last accessed 29 October 2018.

18 Ibid.

19 Ibid.

20 Jonathan Steele, Self-serving leaders keep Bosnia divided, online at: <https://www.theguardian.com/world/2001/apr/16/jonathansteele>. Last accessed 12 November 2018.

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4. *Today's BiH*

With the current status of political and economic governance, BiH has seen slow economic development²¹ and depopulation²² due to the effects of war and recent trends in employment and migration.²³

BiH is a decentralized state consisting of “entities”, which include the Republic Srpska and the Federation of Bosnia and Herzegovina, plus the multinational Brčko district. The Federation has 10 cantons and 80 municipalities.²⁴ Article III (11) of the Dayton Accord states, “all governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.”²⁵ Article III (12) further equips the presidency of Bosnia and Herzegovina with the “coordination power to facilitate inter-entity coordination on matters not responsibility of the Entities.”²⁶ This means that the power of the central government is limited to only 10 competences,²⁷ which may be clustered into three main domains: foreign affairs, including international relations and representation, monetary policy, as well as transport regulations in its national dimensions.²⁸

21 Online at: http://www.bhas.ba/?option=com_publicacija&id=2&lang=en. Last accessed 5 August 2018.

22 Online at: <https://data.worldbank.org/country/bosnia-and-herzegovina>; www.cia.gov/library/publications/the-world-factbook/geos/bk.html; <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/DDN-20170215-1?inheritRedirect=true>. Last accessed 5 August 2018.

23 Online at: <http://data.worldbank.org/country/bosnia-and-herzegovina>. Last accessed 5 August 2018; Population grew from 3.2 million up to 4.5 between 1960 and 1988 to start declining from that year on. It plummeted once the war started in 1992 to reach a minimum of 3.75 in 1998 to a slight recovery until 2005, with 3.78. Then the decline started again, slightly at first, and much more marked after 2008. From 2014 on it continues but with much smaller figures, ranging from 30.041 between 2014-2015 to 19.145 between 2015 and 2016.

24 See Dayton Agreement; Bosnia and Herzegovina, Division of Powers, online at: <https://portal.cor.europa.eu/divisionpowers/countries/Potential-Candidates/BAH/Pages/default.aspx>. Last accessed 13 November 2018.

25 Dayton Agreement, article III (11), online at: <http://www.osce.org/bih/126173?download=true>. Last accessed 18 July 2018.

26 Dayton Agreement, article III (12).

27 Dayton Agreement, article III (10).

28 Ibid.

Although, essentially, BiH's central government key powers are foreign affairs and monetary policies, according to Dayton.²⁹

A further issue lies with the country not having a common national social security, a central pension system,³⁰ nationally operated or controlled airports, a national taxation policy, and a national police force or national railways. Neither does it have any power to approve or implement basic national policies in essential areas, including in education, healthcare, environment, energy, or civil infrastructure.³¹ Furthermore, it does not have a national single citizenship, but instead a two-level citizenship – one at entity level, and one at national level, which supersedes the one at entity level. The issuance of passports is also not an exclusive power of the central state.³² Nevertheless, the entities have the power to “establish special parallel relationships with neighboring states consistent with the sovereignty and territorial integrity of Bosnia and Herzegovina”.³³

5. Rule of Law in BiH

In 2015, the World Justice Project assessed the performance of BiH in the domain of Rule of Law.³⁴ While there were promising developments in this area, the country has a long way to go to meet the demanding standard required by accession to the EU. Analyzing constraints on government powers, absence of corruption, open

29 See Dayton Agreement; Bosnia and Herzegovina, Division of Powers, online at: <https://portal.cor.europa.eu/divisionpowers/countries/Potential-Candidates/BAH/Pages/default.aspx>. Last accessed 13 November 2018.

30 Online at: http://journals.euser.org/files/articles/ejms_jan_apr_16_nr2/Nikolina.pdf. Last accessed 13 July 2018.

31 See Dayton Agreement; Bosnia and Herzegovina, Division of Powers, online at: <https://portal.cor.europa.eu/divisionpowers/countries/Potential-Candidates/BAH/Pages/default.aspx>. Last accessed 13 November 2018.

32 Dayton Agreement, article I (13) (e).

33 Dayton Agreement, article III (10).

34 “World Justice Project Rule of Law Index 2015,” online at: https://worldjusticeproject.org/sites/default/files/roli_2015_0.pdf. Last accessed 12 June 2018.

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government, fundamental rights, order and security, regulatory enforcement, civil justice, criminal justice and informal justice as indicators of performance.³⁵ BiH shows a 0.50 rate in rule of law, only slightly better than Moldova, which scored 0.48. With ranking 40th, BiH occupies a better position than Bulgaria, which achieved the 45th position despite it having been a EU member state since 2007. It is closely behind FYROM, another candidate country. Croatia, another EU member since 2013, is in a better position, in the 35th place with 0.60. Germany boasts a 0.81 rate and it is in 8th place. France takes the 18th with 0.74. If Slovenia, a former republic in Yugoslavia, Germany and France are benchmarks for BiH, clearly a lot of work still needs to be accomplished also in cooperation with the EU.³⁶ Current EU initiatives discussed below may further improve the performance of BiH.

6. Human Rights in BiH

In 2017, Human Rights Watch (HRW) identified the failure to resolve war crime cases, to amend the constitution of BiH, and to enforce the decision of the European Court of Human Rights in the *Sejdić-Finci*³⁷

35 Ibid.

36 Ibid.

37 Dervo Sejdić, of Roma ethnicity, and Jakob Finci, of Jewish ethnicity, brought a case to the European Court of Human Rights on the 3rd of July and the 18th of August 2006. They complained about the impossibility for them to stand for election to the House of Peoples and the Presidency of Bosnia and Herzegovina, positions reserved for members of the three constituent peoples. This landmark case shows clearly to what extent the Dayton Agreement, and the Constitution it created, provided for the protection of the rights of the peoples of BiH but left the rights of the other minorities unprotected and under permanent discrimination. It also shows how current arrangements created a two-level citizenship system, affecting directly the political rights of some of the citizens of BiH. The European Court of Human Rights, on the 22nd of December 2009, ruled that “*there has been a violation of Article 14 of the Convention taken in conjunction with Article 3 of Protocol No. 1 as regards the applicants’ ineligibility to stand for election to the House of Peoples of Bosnia and Herzegovina*”, online at: <http://hudoc.echr.coe.int/app/conversion/pdf/?library=eCHR&id=001-96491&>. Last accessed 30 August 2018.

case as obstacles to genuinely addressing human rights issues in the country, also based on discrimination on ethnic and religious grounds.³⁸ An aspect of human rights in BiH deals with the consequences of the war, particularly internally displaced people (IDPs) and refugees. Data from the Ministry for Human Rights at the end of 2015 showed that there were 98,234 IDPs in BiH.³⁹ Nevertheless, HRW underscored the lack of reliable information from BiH or the United Nations High Commissioner for Refugees (UNHCR) about the repatriation of refugees.⁴⁰

Another critical aspect is the accountability for war crimes. The most complex cases were supposed to be concluded by 2015.⁴¹ However, 346 war crime cases involving 3,383 individuals are still pending.⁴² Worse yet, in August 2016, cantonal courts and the Basic Court in Brčko have allowed five war crime convicts who had been sentenced to up to one year in prison to pay fines instead.⁴³ In the Sejdić-Finci case, the European Court of Human Rights ruled, that “there has been a violation of Article 14 of the Convention taken in conjunction with Article 3 of Protocol No. 1 as regards the applicants’ ineligibility to stand for election to the House of Peoples of Bosnia and Herzegovina.”⁴⁴ In relation to this particular case, and if the EU is to adopt an active role in promoting the improvement of the whole situation of human rights in BiH, the enforcement of this decision has

38 Human Rights Watch, Bosnia and Herzegovina Events of 2017, (no date), online at: <http://www.hrw.org/world-report/2017/country-chapters/bosnia-and-herzegovina>.

Last accessed 12 June 2018; Human Rights Watch, Bosnia: A Move to End Discrimination Minorities Side-lined in Panel to Oversee Change, November 2, 2011, online at: <http://www.hrw.org/news/2011/11/02/bosnia-move-end-discrimination>. Last accessed 30 June 2018.

39 Ibid.

40 Ibid.

41 Ibid.

42 Ibid; *see also*, Human Rights Watch, Bosnia and Herzegovina, Country Summary, January 2017, online at http://www.hrw.org/sites/default/files/bosnia_3.pdf. Last accessed 30 June 2018.

43 Ibid.

44 Online at: <http://hudoc.echr.coe.int/app/conversion/pdf/?library=eCHR&id=001-96491&>. Last accessed 22 August 2018.

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to be promoted during the accession negotiations in order to amend the basic law and to reflect the ruling laid down by the European Court. Nevertheless, the EU dropped the implementation of the 2009 European Court ruling as a condition for the entry into force of the Stabilization and Association Agreement (SAA), thus possibly weakening a key instrument to improve the human rights situation in a post-war scenario.⁴⁵ Nevertheless, mechanisms remain within the SAA that may be used to insist on the enforcement of the decision. Accordingly, the European Commission observed in its 2018 Report on BiH that its constitution “remains in breach of the European Convention on Human Rights, as per the Sejdić-Finci and related cases.”⁴⁶

7. Stabilisation and Association Agreement (SAA)

The SAA has been described as a long-term “integrationist approach to the [Western Balkans] region”.⁴⁷ The SAA entered into force on the 1st of June, 2015.⁴⁸ Its objective is to bring about needed reforms in the areas of the economy, the rule of law and good governance⁴⁹ in order to prepare the country for accession.⁵⁰ Furthermore, it provides

45 Human Rights Watch (2017).

46 “Key findings of the 2018 Report on Bosnia and Herzegovina,” online at: http://europa.eu/rapid/press-release_MEMO-18-3408_en.htm. Last accessed 17 April 2018.

47 Claire Gordon, Gwendolyn Sasse, Sofia Sebastian, “Specific report on the EU policies in the Stabilisation and Association process,” online at: http://www.eurac.edu/en/research/autonomies/minrig/Documents/Mirico/24_SA_P.pdf. Last accessed 29 August 2018.

48 Stabilisation and Association Agreement with Bosnia and Herzegovina enters into force today, European Commission, Press Release, June 1, 2015, online at: http://europa.eu/rapid/press-release_IP-15-5086_en.htm. Last accessed 12 June 2018.

49 “Bosnia and Herzegovina: Conclusion of Stabilisation and Association Agreement,” online at: <http://www.consilium.europa.eu/en/press/press-releases/2015/04/21/bih-conclusion-stabilisation-association-agreement/>. Last accessed 12 June 2018.

50 See IPA II, *infra*.

mechanisms to ensure that changes in the institutions will be achieved over time. This is confirmed by the Instrument for Pre-Accession Assistance (IPA).⁵¹ SAA's goals such as supporting "the efforts of Bosnia and Herzegovina to strengthen democracy and the rule of law" and contributing "to political, economic and institutional stability in Bosnia and Herzegovina, as well as to the stabilization of the region" are particularly applicable. Furthermore, the preamble to the SAA provides the context for its implementation. There, two clauses underline the need for "political, economic and institutional stabilization" and the commitment to respect human rights and the rule of law.⁵²

Recently, the Commission has reported on the implementation of the SAA within BiH.⁵³ While it recognized that progress has been made, it also observed that the pace was slow and that institutions, notably in the area of human rights need to be further improved.⁵⁴ Widespread corruption and the lack of progress of reforming public administration were also identified as problem areas, which need to be addressed. The Commission has therefore called on BiH to "adopt and start implementation of a new country-wide strategic framework for public administration reform"⁵⁵ and to "adopt a national program for legal approximation with the EU *acquis*."⁵⁶ Furthermore, a countrywide

51 Instrument for Pre-Accession Assistance (IPA II) 2014-2020, Bosnia and Herzegovina Enhanced Justice Sector and cooperation in Rule of Law, online at: http://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/bosnia_and_herzegovina/ipa/2015/ipa_2015-037888.05-bih-enhanced_justice_sector_and_cooperation_in_rule_of_law.pdf [IPA II]. Last accessed 12 June 2018.

52 Ibid.

53 Commission Staff Working Document Bosnia and Herzegovina 2018 Report Accompanying the document, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2018 Communication on EU Enlargement Policy {COM(2018) 450 final}, online at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-bosnia-and-herzegovina-report.pdf>. Last accessed 28 August 2018.

54 Ibid.

55 Ibid.

56 Ibid.

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strategy for human rights and the adoption of an anti-discrimination program were highlighted as goals.⁵⁷ That the Republic Srpska still has to repeal the death penalty from its constitution was also pointed out by the Commission.⁵⁸

8. EU Initiatives on the Rule of Law and Human Rights

The EU announced the revised Strategy Paper for BiH for the 2018-2020 period of the IPA II funds with a total budget of €314.9 million.⁵⁹ It includes, among the different packages, “support in the rule of law sector [that] will further improve access to justice for all citizens” and “support [for] further reforms to ensure protection of fundamental rights, in particular of the most vulnerable groups, including Roma and refugees and internally displaced persons”.⁶⁰

Current EU efforts in BiH consist of the implementation of various projects. The main instruments that are used are the IPA and the European Instrument for Democracy and Human Rights (EIDHR). Furthermore, the EU is also the biggest donor to BiH and was reported to provide €3.2 billion worth of funding between 1991-2013 for projects in the areas of “post-conflict reconstruction to rule of law, public administration reform, social and economic development, demining and ammunition destruction, environment, agriculture, civil society, and cross-border cooperation”.⁶¹

57 Ibid.

58 Ibid.

59 “More than 300 million Euro of pre-accession aid planned for BiH for 2018-2020,” online at: <https://euinfo.ba/en/article/more-than-300-million-euro-of-pre-accession-aid-planned-for-bih-for-2018-2020/9550>. Last accessed 1 August 2018.

60 Ibid.

61 “Grant contracts awarded during December 2016 and February 2017,” online at: http://europa.ba/?page_id=682. Last accessed 28 August 2018.

Instrument for Pre-Accession Assistance. This instrument is used by the EU to promote the rule of law and human rights in a country being considered for accession. In 2015, the EU, adopted the IPA II to be implemented in BiH from 2014 to 2020, based on the following rule of law issues⁶²:

- Insufficient efficiency, effectiveness, transparency and accountability of the judicial / prosecutorial institutions, including their mutual-cooperation with law enforcement agencies;
- Inadequate infrastructure and equipment conditions of institutes for the execution of criminal sanctions throughout BiH;
- Inadequate infrastructure and equipment conditions of courts and prosecutor's offices throughout BiH.

European Instrument for Democracy and Human Rights. Another instrument used by the EU in promoting human rights in third countries is the European Instrument for Democracy and Human Rights (EIDHR). As of 2016, projects on engagement of schools and student councils, tobacco control, and access to drinking water were reported to have been financed by the EU.⁶³

9. Other Initiatives by the UN Development Program and OECD

The projects of the Organization for Economic Co-operation and Development (OECD) also focus on improving the rule of law. Just like the EU, the initiatives pertain to enhancing the independence of the judiciary and prosecutors to make sure that war crimes and other human rights cases would be effectively handled. Corruption in BiH

62 IPA II.

63 "Grant contracts awarded," *supra* [Objectives are direct quotes from the table available in the website], online at: https://ec.europa.eu/europeaid/how/finance/_eidhr_en.htm_en. Last accessed 8 November 2018.

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has also been a concern for the organization.⁶⁴ In the area of human rights, it has also focused on housing projects, while assisting the Ombudsman in handling discrimination cases to ensure compliance with international standards. Capacity-building of human rights advocates is also a component of its mission.⁶⁵

The United Nations Development Program (UNDP) has implemented several development projects in BiH. They relate directly to the issues it identified in a research conducted in cooperation with the EU, “the Socio-economic perceptions of young people in Bosnia and Herzegovina”.⁶⁶ Perceptions on “political awareness and activism, mobility and EU accession” were among the lines of inquiry adopted in the research.⁶⁷ With a sample consisting of 1200 correspondents and focus group reports in Mostar, Sarajevo, Banja Luka, and Brčko, it was found out that young people in between the ages of 15-30 years in BiH, perceive that nothing has changed in the country for the past two years, and that accession to the EU promises employment.⁶⁸

It must be noted that it is not the first time that the UN and the EU worked together in addressing problems in BiH. The United Nations Mission in Bosnia and Herzegovina, established by the Security Council in December 1995 to ensure the rule of law in the post-conflict and war-torn BiH turned over its work to the European Union Police Mission on 1 January 2003.⁶⁹

64 “Rule of Law,” online at: <https://www.osce.org/mission-to-bosnia-and-herzegovina/rule-of-law>. Last accessed 12 June 2018.

65 “Human Rights,” online at: <https://www.osce.org/mission-to-bosnia-and-herzegovina/human-rights>. Last accessed 12 June 2018.

66 Bosnia and Herzegovina,” online at: http://www.ba.undp.org/content/bosnia_and_herzegovina/en/home.html. Last accessed 27 August 2018.

67 Ibid.

68 “Socio-economic Perceptions of Young People in Bosnia and Herzegovina,” online at: http://www.ba.undp.org/content/bosnia_and_herzegovina/en/home/library/publications/young-people-in-bih-share-their-socio-economic-perceptions-and-e.html. Last accessed 27 August 2018.

69 “Bosnia and Herzegovina – UNMIBH-Background,” online at: <http://peacekeeping.un.org/mission/past/unmibh/background.html>. Last accessed 12 June 2018.

10. Opportunities for EU Action

The EU has invested a significant amount of resources in its attempt to bring about reforms in BiH. Nonetheless, there are areas of improvement that should be further explored and pursued. This includes the formulation of a broader rule of law initiative that would encompass legislative and executive functions, and the enforcement of accountability of public officials. Another area of improvement would be the coordination of initiatives with other international organizations that have been working in BiH. Synergies with the OECD and the UN should be explored and taken advantage of. This is not a novelty as it has been done in the past and still continues to this day. This would prevent inconsistent approaches and would lead to the formation of a more holistic and solid front necessary to brave the challenging political landscape in the country.

11. Influencing the Path: EU and other International Organizations

Path creation presupposes a path that is followed by BiH.⁷⁰ Through its programmatic interventions, the EU is seeking to influence the path followed by BiH, which was institutionalized in the Dayton Agreement.

The opportunity for path creation now being opened may be taken advantage of by the EU with the help of the international community. In the past the international community already supported the development of the country through the endorsement and logistical support of the referendum in BiH, which was held in 1992. Despite many flaws in its implementation, the Serbian boycott, a clear

70 Labiba Sheikh and Muhammad Zafar Iqbal Jadoon, “Path dependency and Path Creation: Exploring the Possibility of Integration”, online at: [http://www.wiwiiss.fu-berlin.de/forschung/pfadkolleg/Archiv/_NEU_Veranstaltungen/konferenzen/download_center_2011/papers/Iqbal Mohammad.pdf](http://www.wiwiiss.fu-berlin.de/forschung/pfadkolleg/Archiv/_NEU_Veranstaltungen/konferenzen/download_center_2011/papers/Iqbal%20Mohammad.pdf). Last accessed 23 August 2018.

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majority voted in the referendum in favor of independence from Yugoslavia. Now BiH is looking for a further expression of support – a strong EU presence in the Balkans, the EU leading the way.

Taking into account that historical decision, both internally and externally, and the deep involvement on the side of the USA, the EU and the UN, it is clear that the opportunity for path creation could again be seized upon in order to make the Dayton Framework evolve, eventually amend BiH's constitution and conclude the stabilization process.

For this to be successful, progress in regard to the rule of law should not merely focus on enhancing the independence of the judiciary, including more cases actually being heard⁷¹ but also, the improvement of law enforcement, including adjustment of local policies and processes to the *acquis*. Programs should not be merely reactive but future oriented.⁷² Under the leadership of the EU, stabilization – a key element of security in the Union – can be fully implemented. One single institution, however, cannot direct the entire process alone. It must be a shared endeavor. The Office of the High Representative (OHR) in BiH, the UN, the OECD, as well as other international organizations that are working in the region and the EU

71 International Crisis Group, "Rule of Law in Public Administration: Confusion and Discrimination in a Post-Communist Bureaucracy," December 15, 1999, online at: <https://d2071andvip0wj.cloudfront.net/rule-of-law-in-public-administration.pdf>. Last accessed 1 August 2018. In this regard, the following observation is relevant: In BiH relatively few people come into contact with a court of law. In contrast, the system of public administration sees a constant flow of individuals through its various layers. Whether obtaining birth certificates or identity papers, registering a car or attempting to acquire permits and certificates required by the complex BiH administrative system, virtually all BiH citizens queue in front of municipal and cantonal officials at some point. It is there that the citizenry and government meet, and it is there that the vast majority of legal abuses occur, as government officials – protected by a wall of seemingly incomprehensible laws and regulations – intimidate ordinary people. Public administration in BiH is a labyrinth of pre-war, wartime and post-war institutions, often exercising overlapping administrative authority.

72 See, Leo Katz, "A Theory of Loopholes," *The Journal of Legal Studies* 39, no. 1 (2010): 1-31. doi:10.1086/649046.

(through the SAA) must cooperate closely to realize the objectives of stabilization, reform and eventually accession.

Influencing the future of BiH also requires further resource allocation. Apart from being its biggest trading partner, the EU is also the largest provider of financial assistance to BiH.⁷³ With the accession process receiving new wind in recent months, it can be expected that the EU will assume more and more financial responsibility in the future. In the light of High Representative Mogherini's pronouncement, the EU is going to speed up all the current processes to bring BiH into the EU in the next few years. That means, in terms of the rule of law, that the EU will have to support the authorities in BiH to realize the following reforms:

- implementation without delay of the *Sejdić-Finci* ruling from 2009;
- speeding up the resolution of pending war cases in the national courts;
- accelerating the return of internally displaced people;
- advancing the constitutional amendment to guarantee equal rights of all citizens, without differentiation between constituent peoples and other minorities;
- providing a functioning legal system that is rooted on citizenship rather than ethnicity, and democratic representation across all ethnic lines, in line with the EU system.

73 Online at: http://europa.ba/?page_id=558. Last accessed October 21, 2018.

12. EU Intervention in BiH

The engagement of the EU in the area of rule of law and human rights can still be further improved by strategically addressing key issues that would bring lasting change in BiH. In the area of human rights, it would be important to address the issue of discrimination based on ethnicity. This issue cuts across the country and could be moved forward through the enforcement of the *Sejdić-Finci* case, which could potentially challenge the institutional structures in BiH. Furthermore, such development could provide more space for the Dayton Agreement to evolve or to be reviewed and for the institutions established pursuant to it be developed further in alignment with the country's goals. The fact that it was dropped as a condition for the conclusion of the SAA in 2015 does not militate against the EU considering that the instrument itself is full of references to human rights, the value of the individual, and freedom from discrimination. In terms of legitimacy, it may even be validly argued that the *Sejdić-Finci* ruling possesses more weight considering that the European Court of Human Rights handed down the jurisdiction to trial such case. In the area of the rule of law, the EU must not limit itself to strengthening the judiciary. It is true that a strong and independent judiciary is essential for a democracy. However, legislative and executive (or administrative) activities should likewise be closely examined as they provide the basis for the interpretive and adjudicative role of the judiciary.

The SAA also provides the following mechanisms to realize its stated objectives that are geared towards realizing reforms in BiH: following-up on compliance (Article 8), political dialogue (Article 10), approximation of laws (Article 70), and cooperation on public administration reform (Article 111). The instrument is replete with mechanisms to influence policies and the overall institutional framework for the rule of law and human rights in BiH. The EU has at its disposal measures to ensure that the continued engagement in BiH will deliver specific results. The strength of the mechanisms lies with

its capacities of dispute resolution and the enforcement of the provisions of the SAA. Furthermore, the subject matter that may be covered, particularly by “compliance follow-up” in Article 8, is phrased wide enough to encompass changing definitions of rule of law and human rights.

It should, however, not be forgotten that there is and always will be a delicate balancing of interests in EU-BiH relations. Nevertheless, the reality is that the SAA, signed by BiH, allows the parties to use the mechanisms enshrined to accomplish the objectives of the Agreement. The SAA continues to be a binding instrument between the EU and BiH. For this reason, it can be effectively used to go around the limitations created by prior policy decisions and local preferences. This provides another perspective on how to make the engagement of the EU in BiH more meaningful and strategic in the transformation process.

13. Conclusion

Moving forward, the EU will have to make its weight in all possible ways felt. It will have to continue its “carrots and sticks” approach to demand that local elites cooperate to affect changes to the constitution, to implement the European Charter of Human Rights and the *acquis communautaire* in all legal fields, to respect all rulings from the European Court of Human Rights and to promote a true reconciliation based on justice for all victims of the war. It will also have to keep cooperating with international organizations, which have gathered a vast amount of knowledge on the realities of the country in recent years.

Moreover, the EU must continue to work on multiple levels. BiH’s population will see the EU at work only if it can feel the effects of the projects that are being implemented, if the political situation improves and the economy starts to provide them with more opportunities and a functional administration. Any project endorsed and supported by the EU that help solve the situations of those displaced, as well as

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accelerating the resolution of pending cases will create a direct impact on the population. BiH has been ruled from outside, and from beyond its borders. It needs to develop as a self-ruling political entity.

Hopefully, the EU will be the leading political and historical entity in charge of helping this small country battered by history into the path of stability, prosperity and above all, peace. Winston Churchill said in one of his famous quotes: “The Balkans have produced more history than they can consume.”⁷⁴ The EU, BiH and other international organizations involved need to work together to produce lasting results once and for all.

74 Online at: https://historia-europa.ep.eu/sites/default/files/files/event/programme_consuming_balkan_history_final_2017.pdf. Last accessed August 28, 2018.

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