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The hollow threat of secession in Bosnia and Herzegovina: legal and political impediments to a unilateral declaration of independence by Republika Srpska

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The Hollow Threat of Secession in Bosnia and Herzegovina:

Legal and Political Impediments to a Unilateral
Declaration of Independence by Republika Srpska

JAMES KER-LINDSAY

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Unilateral Declaration of Independence by
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Table of Contents

Introduction	2
1. Bosnia and Herzegovina since 1995.....	4
2. Legal and Political Impediments to Secession.....	13
3. The effects of other attempts at secession	23
4. Serbia and an attempted secession.....	32
5. Downplaying the significance of an independence referendum.....	38
6. A unilateral declaration of independence would have little meaning.....	41
6. Conclusion	47

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Introduction

Bosnia and Herzegovina is in dire political straits. Twenty years after the signing of the Dayton Peace Accord, which brought to an end the bloody civil war that had raged during the first half of the 1990s, the country remains deeply divided. Its political institutions are dysfunctional and the economy remains weak.¹ Despite strong international pressure, there appears to be little prospect that the situation will improve significantly in the foreseeable future. A high-profile European Union initiative to introduce much needed constitutional reform failed to bring about meaningful compromise. Meanwhile, many observers are sceptical that a 'new approach' towards Bosnia,² launched by the EU in December 2014, will bring about fundamental political, economic and social change.³

¹ R. Bruce Hitchner, 'Dayton's Successes Offer Reform Lessons for Bosnia', *Balkan Insight*, 18 November 2015. By way of example, per capita incomes are 20 per cent lower than the Yugoslav era. Simon Davies, 'Were Bosnia's 'good ol' days' really that good?', *Brookings*, 30 June 2015 < <http://www.brookings.edu/blogs/future-development/posts/2015/06/30-bosnia-yugoslavia-growth-davies> > (Last accessed 3 November 2015.)

² 'Bosnia and Herzegovina: Progress Report', European Commission, November 2015, p.1.

³ Toby Vogel, 'No strategy for Bosnia - other than enlargement', *EU Observer*, 5 March 2015; Kurt Bassuener, Senior associate at the Democratization Policy Council in Sarajevo, 'Judy Asks: Is the EU Sleeping on the Western Balkans?', *Carnegie Europe*, 13 May 2015.

It is against this backdrop that there has been growing concern that Republika Srpska (RS), the Bosnian Serb entity that makes up 49 per cent of the territory of the country, is laying the foundations for an attempt to break away. While the threat of a unilateral declaration of independence (UDI) has remained a constant, though somewhat background, concern since the end of the war, fears of secession have gained greater currency over the past decade. These worries have been primarily driven by the increasingly confrontational tone adopted by Milorad Dodik, the President of Republika Srpska, who is now openly calling for a referendum on independence to be held within the next few years.⁴ Under the current bleak economic and political conditions, such talk inevitably fuels tensions and instability. Indeed, some observers now suggest that the country could return to armed conflict.⁵

But just how seriously should such threats of secession be taken? This paper seeks to answer this question by looking at the legal and political impediments to a unilateral declaration of independence by Republika Srpska. The first part briefly examines the emergence of Bosnia and Herzegovina as a sovereign state and outlines the current political situation in the country. It then explores the structural

⁴ 'Biggest Serb Party in Bosnia Threatens 2018 Secession', *Reuters*, 25 April 2015.

⁵ James Lyon, 'Is War About to Break Out in the Balkans?', *Foreign Policy*, 26 October 2015.

legal and political constraints on territories wishing to secede. Thereafter, it analyses the specific obstacles to secession in the Bosnian case. Next, it explains why other examples of secession, or attempted secession, such as Kosovo or Scotland, do not have a bearing on Bosnia and Herzegovina. It then explains the reasons why such a move would require Serbia's direct support and why this would not happen. Finally, the paper notes that, given that secession is not a viable prospect, the steps leading up to secession – such as a referendum or even a declaration of independence – should not be given undue significance. In conclusion, the article suggests that secession is not in fact the threat that some present it to be. Instead, the greater factor undermining peace and stability in the country is the perception that a unilateral declaration of independence is a genuine and realistic threat to the territorial integrity of the state.

Bosnia and Herzegovina since 1995

On 3 March 1992, just months after Slovenia and Croatia broke away from the Socialist Federal Republic of Yugoslavia, Bosnia and Herzegovina declared independence. Having strongly opposed any attempt by Bosnia to secede from the Yugoslav state, which was by this stage widely recognised to be in the process of

dissolution,⁶ the Bosnian Serbs retaliated. On 6 April they declared their own independent state, Republika Srpska. Thus began a war that was to last for the next three and a half years. However, while the new Bosnian state was soon recognised internationally, and admitted to the United Nations on 22 May, the Bosnian Serb entity was universally condemned. On 16 November 1992, the UN Security Council passed Resolution 787. This called on states to recognise the territorial integrity of Bosnia and affirmed that, 'any entities unilaterally declared...will not be accepted'.

Despite numerous efforts to broker an end to the fighting,⁷ by the summer of 1995 half the country lay under Bosnian Serb control. However, the tide was turning. The massacre committed by Bosnian Serb forces at Srebrenica, and Croatia's success in ending an attempted secession by ethnic Serbs on its territory,⁸

⁶ Opinion Number 1, Badinter Arbitration Committee. Reprinted in *European Journal of International Law*, Number 3, 1992. For an analysis of many of the legal issues surrounding the break up of Yugoslavia see Ana S. Trbovich, *A Legal Geography of Yugoslavia's Disintegration* (Oxford: Oxford University Press, 2008). On the politics of recognition, see Richard Caplan, *Europe and the Recognition of New States in Yugoslavia* (Cambridge: Cambridge University Press, 2007).

⁷ See James Gow, *Triumph of the Lack of Will: International Diplomacy and the Yugoslav War* (London: Hurst, 1997).

⁸ For more on the secession of Krajina see, Pål Kølsto and Davor Paukovic, 'The Short and Brutish Life of Republika Srpska Krajina: Failure of the De facto State', *Ethnopolitics*, Volume 13, Number 4, 2014; Peter Radan, 'The Serb Krajina: An Unsuccessful Secession

galvanised international opinion. A new peace process was launched. On 21 November 1995, the presidents of Yugoslavia, Croatia and Bosnia – Slobodan Milošević, Franjo Tuđman and Alija Izetbegović – agreed to the General Framework Agreement for Peace in Bosnia and Herzegovina.⁹ Otherwise known as the Dayton Peace Accord, the agreement brought to an end a bloody civil war that had left over 100,000 dead,¹⁰ hundreds of thousands displaced and had seen some of the worst human rights atrocities committed in Europe since the end of the Second World War.

The Accord established a complex and highly decentralised power sharing agreement focused on two sub-state entities:¹¹ The Federation of Bosnia and Herzegovina, which had been formed as a result of an agreement between the Bosniak (Bosnian Muslim) and

from Croatia', in Aleksandar Pavković and Peter Radan, *The Ashgate Research Companion to Secession* (Farnham: Ashgate, 2011).

⁹ The full text of the agreement and the various annexes can be found at < http://www.ohr.int/dpa/default.asp?content_id=380 > (Last accessed, 8 December 2015).

¹⁰ Jan Zwierzchowski and Eva Tabeau, 'The 1992-1995 War in Bosnia and Herzegovina: Census-Based Multiple System Estimation of Casualties Undercount', Conference Paper for the International Research Workshop on 'The Global Costs of Conflict', The Households in Conflict Network (HiCN) and The German Institute for Economics Research (DIW Berlin), Berlin, 1-2 February 2010.

¹¹ It has been noted that eighty per cent of state functions were centred on the entities. Christophe Solioz, *Turning Points in Post-War Bosnia: Ownership Process and European Integration* (Baden-Baden: Nomos, 2007), p.32.

Croatian communities in 1994, and Republika Srpska. Under the terms of Articles 1 and 3 of the Constitution, RS now became an integral part of Bosnia and Herzegovina.¹² While the two entities continued to maintain certain facets of statehood,¹³ such as limited competences over external relations,¹⁴ overall responsibility for foreign policy, traditionally regarded as a key function of statehood, was vested in the central state institutions.¹⁵ At the same time, UN Security

¹² Article 1: 'Continuation. The Republic of Bosnia and Herzegovina, the official name of which shall henceforth be "Bosnia and Herzegovina," shall continue its legal existence under international law as a state, with its internal structure modified as provided herein and with its present internationally recognized borders. It shall remain a Member State of the United Nations and may as Bosnia and Herzegovina maintain or apply for membership in organizations within the United Nations system and other international organizations.' Article 3: 'Composition. Bosnia and Herzegovina shall consist of the two Entities, the Federation of Bosnia and Herzegovina and the Republika Srpska (hereinafter "the Entities").'

¹³ Richard Caplan, 'International Authority and State Building: The Case of Bosnia and Herzegovina', *Global Governance*, Volume 10, Number 1, 2004, pp.55-56.

¹⁴ For example, the constitution states that, 'the Entities shall have the right to establish special parallel relationships with neighboring states consistent with the sovereignty and territorial integrity of Bosnia and Herzegovina.' (Article III, para.2(a)) and 'Each Entity may also enter into agreements with states and international organizations with the consent of the Parliamentary Assembly. The Parliamentary Assembly may provide by law that certain types of agreements do not require such consent.' (Article 3, para.2 (d)).

¹⁵ Article III, paragraph 1 of the Constitution. This did not necessarily make matter easier inasmuch as many decisions required the

Council Resolution 1031, which endorsed the Accord, also reaffirmed the international community's commitment to the sovereignty, independence and territorial integrity of Bosnia and Herzegovina and underlined the importance of recognising the internationally accepted borders of all the states of the former Yugoslavia.¹⁶

In addition to the provisions of the Agreement protecting the sovereignty and territorial integrity of the Bosnian state, certain extra safeguards were created to ensure that the Agreement was respected by the parties. Chief amongst these was the appointment of a High Representative, who was, *inter alia*, given a role in monitoring the implementation of the peace settlement; maintain close contact with the parties to ensure their compliance with the agreement; facilitate the resolution of difficulties arising from the civilian implementation; and report on progress made in the implementation of

unanimous decision of the tripartite presidency. One example is Bosnia's recognition of Kosovo. Although agreed to by the Bosniak and Croatian members of the presidency, this has been rejected by successive Serb members, thus ensuring that Bosnia cannot recognise Kosovo. "Bosnia's current govt. won't consider Kosovo recognition", *B92*, 23 October 2015.

¹⁶ UN Security Council Resolution 1031 (1995): 'Reaffirming its commitment to a negotiated political settlement of the conflicts in the former Yugoslavia, preserving the territorial integrity of all States there within their internationally recognized borders'; 'Welcomes the progress made towards mutual recognition among the successor States to the former Socialist Federal Republic of Yugoslavia, within their internationally recognized borders'.

the agreement to the UN and other interested organisations and states.¹⁷ However, these powers proved insufficient to advance the peace process.¹⁸ In December 1997, the role of the High Representative was dramatically increased to further the implementation of the Dayton Accords. These new competencies – the so-called ‘Bonn Powers’ – included the right to impose legislation where agreement between the parties was not possible and the ability to remove public officials from their posts in the event that they violated the terms of the peace agreement.¹⁹

¹⁷ ‘Agreement on Civilian Implementation’, Annex 10, Article II.

¹⁸ ‘Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative’, European Commission for Democracy through Law (Venice Commission), Venice, 11 March 2005, p.5.

¹⁹ For a comprehensive legal analysis of these powers see Tim Banning, ‘The ‘Bonn Powers’ of the High Representative in Bosnia Herzegovina: Tracing a Legal Figment’, *Goettingen Journal of International Law*, Volume 6, Number 2, 2014. See also Gerald Knaus and Felix Martin: ‘The Travails of the European Raj’, *Journal of Democracy*, Volume 14, Number 3, 2003. As has also been said, ‘the method selected by the HR [High Representative] to promote “democracy” in Bosnia is to create a dictatorship of virtue’. Robert M. Hayden, ‘Bosnia: The Contradictions of “Democracy” without Consent’, *East European Constitutional Review*, Volume 7, Number 2, 1998. For a good overview of how the role of the HR has evolved under various holders, see Adis Merdzanovic, *Democracy by Decree: Prospects and Limits of Imposed Consociational Democracy in Bosnia and Herzegovina* (Stuttgart: Ibidem, 2015).

While Dayton brought an end to the fighting, internally the country remained deeply divided.²⁰ For many Bosniaks, resentment at what they saw as the legitimisation of a Serbian entity created from ethnic cleansing and genocide ran deep.²¹ Meanwhile, although support for violent separatism diminished,²² Bosnian Serbs felt little loyalty to the Bosnian state. Nevertheless, the hope was that with the passage of time a stronger and more united Bosnian national identity would emerge, and with it more political cooperation between the entities. At first, there were some signals that this could happen. In the years that followed, unified customs and intelligence services were created. Likewise, in 2005, the armed forces of the Federation and Republia Srpska were brought together into a single national army – a development that is often cited as one of the most significant achievements of the post-war period in Bosnia.²³ However, in contrast to the

²⁰ Sumantra Bose, *Bosnia after Dayton: Nationalist Partition and International Intervention* (London: Hurst, 2002). See also, Victor D. Bojkov, 'Democracy in Bosnia and Herzegovina: Post-1995 Political System and its Functioning', *South East European Politics*, Volume 4, Number 1, May 2003, p.51.

²¹ Andrew MacDowall, 'Dayton Ain't Going Nowhere', *Foreign Policy*, 12 December 2015.

²² Florian Bieber, 'Bosnia-Herzegovina: Slow Progress towards a Functional State', *Southeast European and Black Sea Studies*, Volume 6, Number 1, 2006, p.45.

²³ Cvete Koneska, *After Ethnic Conflict: Policy-Making in Post-Conflict Bosnia and Herzegovina* (Farnham: Ashgate, 2014), p.94. For more on this see, Heinz Vetschera and Matthieu Damian, 'Security Sector Reform in Bosnia and Herzegovina: The Role of the

progress made in the first decade after Dayton,²⁴ the last ten years have seen the situation deteriorate.²⁵ For example, a high-profile effort to create a single unified police force failed.²⁶ Meanwhile, in 2009, the European Court of Human Rights judged that the ethnic provisions in parts of the state institutions, especially the presidency, but also the House of Peoples, contravened the European Convention on Human Rights.²⁷ This will require a fundamental change to the constitution.

International Community', *International Peacekeeping*, Volume 13, Issue 1, 2006.

²⁴ For a good overview of the first decade see Florian Bieber, 'After Dayton, Dayton? The Evolution of an Unpopular Peace', *Ethnopolitics*, Volume 5, Number 1, March 2006.

²⁵ Robert Belloni, 'Bosnia: Dayton is Dead! Long Live Dayton!', *Nationalism and Ethnic Politics*, Volume 15, Numbers 3-4, 2009.

²⁶ Ana E. Juncos, 'Europeanization by Decree? The Case of Police Reform in Bosnia', *Journal of Common Market Studies*, Volume 49, Issue 2, 2011; Gemma Collantes Celador, 'Becoming 'European' through Police Reform: A Successful Strategy in Bosnia and Herzegovina?', *Crime, Law and Social Change*, Volume 51, Number 2, 2009.

²⁷ 'Sejdić & Finci v. Bosnia and Herzegovina', European Court of Human Rights, App. Nos. 27996/06 & 34836/06, 22 December 2009. For an examination of this case see Samo Bardutzky, 'The Strasbourg Court on the Dayton Constitution: Judgment in the case of Sejdić and Finci v. Bosnia and Herzegovina, 22 December 2009', *European Constitutional Law Review*, Volume 6, Issue 02, June 2010; Marko Milanovic, 'Sejdic and Finci v. Bosnia and Herzegovina', *American Journal of International Law*, Volume 104, 2010.

Meanwhile, political confrontation has grown.²⁸ Just as many within the Bosniak community are determined to centralise power wherever possible,²⁹ many Bosnian Serbs tug in the other direction. As a result, over the course of the past decade, talk has increasingly turned to secession. This first became pronounced in the run up to October 2006 election, when the then prime minister of Republika Srpska, Milorad Dodik, suggested that if Kosovo was allowed to become independent, then so should the Bosnian Serb entity.³⁰ Since then, he has continued to challenge the authority of the central state and now openly states that he believes that RS will eventually emerge as an independent state.³¹ More to the point, he actually appears to be paving the way for a formal attempt to break away. In 2015, Dodik's Party, the Alliance of Independent Social Democrats (SNSD), issued a declaration stating that RS intends to hold a referendum on independence in 2018.³² Inevitably, such talk has

²⁸ For a brief overview of peacebuilding processes over the past 20 years see Soeren Keil and Anastasiia Kudlenko, 'Bosnia and Herzegovina 20 Years after Dayton: Complexity Born of Paradoxes', *International Peacekeeping*, Volume 25, Number 5, 2015.

²⁹ EU official in Bosnia, comments to the author, January 2007

³⁰ Niels van Willigen, *Peacebuilding and International Administration: The Case of Bosnia and Herzegovina* (London: Routledge, 2013), p.148.

³¹ 'Dodik: Republika Srpska Will Be Independent', *Balkan Insight*, 5 October 2012.

³² As Valentin Inzko, the High Representative in Bosnia has stated, 'While it is only a party document that has no official value, I am nevertheless concerned by its threat to hold an independence

fuelled concerns about the continued existence of a unified Bosnian state. This in turn has fed the view that that the country could face the prospect of fighting again. Within the Bosniak community there are those, especially veterans, who are now talking about a return to armed conflict if RS does attempt to break away.³³ This is a dangerous development, especially as there is no realistic chance that Republika Srpska could successfully break away from Bosnia and Herzegovina.

Legal and Political Impediments to Secession

Any territory seeking to secede in the contemporary international system faces enormous structural opposition. In general, the international community has a very strong aversion to acts of secession.³⁴ Wishing to protect their own sovereignty and territorial integrity, over the course of the last two hundred and fifty years states have tended to take a very strong line against separatist initiatives.³⁵ This has

referendum by a specified time.’ ‘Remarks by High Representative Valentin Inzko to the United Nations Security Council’, Office of the High Representative, 10 November 2015.

³³ International official, comment to the author, October 2015.

³⁴ Daniel Fierstein, ‘Kosovo’s Declaration of Independence: An Incident Analysis of Legality, Policy and Future Implications’, *Boston University International Law Journal*, Volume 26, Number 2, 2008, pp.417-442.

³⁵ For an overview of the development of international attitudes to secession, see Mikulas Fabry, *Recognizing States:*

been particularly pronounced since 1945. Over the course of the past 70 years, the territorial integrity of states has come to be seen as a defining principle of international relations,³⁶ even overriding the principle of self-determination.³⁷

International Society and the Establishment of New States Since 1776 (Oxford: Oxford University Press, 2010).

³⁶ As one judge at the International Court of Justice (ICJ) succinctly put it: 'The truth is that international law upholds the territorial integrity of a State. One of the fundamental principles of contemporary international law is that of respect for the sovereignty and territorial integrity of States. This principle entails an obligation to respect the definition, delineation and territorial integrity of an existing State. According to the principle, a State exercises sovereignty within and over its territorial domain. The principle of respect for territorial integrity is enshrined in the Charter of the United Nations and other international instruments.' Judge Koroma, Dissenting Opinion, 'Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo', International Court of Justice, 22 July 2010, para.21.

³⁷ Martti Koskenniemi, 'National Self-Determination Today: Problems of Legal Theory and Practice', *International and Comparative Law Quarterly*, Volume 43, 1994, p.241. Self-determination in these contexts came to be understood as right to self-government or autonomy within the existing state order. Daniele Archibugi, 'A Critical Analysis of the Self-Determination of Peoples: A Cosmopolitan Perspective', *Constellations*, Volume 10, Number 4, 2003, pp.493-499. As Crawford states, 'In international practice there is no recognition of a unilateral right to secede based on a majority vote of the population of a sub-division or territory, whether or not that population constitutes one or more "peoples" in the ordinary sense of the word. In international law, self-determination for peoples or groups within an independent state is

The strong prohibition on secession is evident when one considers the list of secessionist entities that have tried, and failed, to gain international acceptance over the past 70 years. Prominent efforts from the Cold War included Biafra's attempt to secede from Nigeria, Katanga's attempted secession from the Congo and the effort by the 'Turkish Republic of Northern Cyprus' to break away from the Republic of Cyprus.³⁸ All have failed to gain widespread acceptance. Meanwhile, in the post-Cold War era, separatist territories have hardly fared much better. The one case that stands out is Kosovo, which seems to be on course for eventual acceptance by the international community. However, even with considerable lobbying by the United States and key members of the European Union, eight years after

achieved by participation in the political system of the state, on the basis of respect for its territorial integrity.' James A., Crawford, 'State Practice and International Law in Relation to Unilateral Secession', *Report to Government of Canada Concerning Unilateral Secession by Quebec*, 19 February 1997.

³⁸ In the case of Cyprus, the UN Security Council passed Resolution 541 (1983), which condemned the attempt to create the 'Turkish Republic of Northern Cyprus' as invalid and called for the unilateral declaration of independence to be withdrawn. It also called on states not to recognize any Cypriot State other than the Republic of Cyprus. Thereafter, Resolution 550 (1983) called on states, 'not to facilitate or in any way assist the aforesaid secessionist entity'.

declaring independence from Serbia it is still only recognised by just over half the members of the United Nations (109/193 members as of March 2016). Indeed, Bangladesh is still widely regarded as the only truly successful case of unilateral secession since 1945. Even then, it was only accepted as a member of the United Nations after Pakistan, the parent state, had accepted its independence.³⁹

In addition to the strong opposition to acts of secession in a general sense, in the case of Republika Srpska there are also considerable specific impediments. As noted, the constitutional agreement reached in 1995 was endorsed by the UN Security Council. Since then, the peace agreement has been endorsed by the Security Council on numerous other occasions, including in the most recent UN Resolution, passed in November 2015.⁴⁰ These have all reaffirmed the Council's commitment to the territorial integrity of the States of the former Yugoslavia. As frequently emphasised by international officials serving in Bosnia,⁴¹ any attempt by Republika

³⁹ Janet Musson, 'Britain and the Recognition of Bangladesh in 1972', *Diplomacy and Statecraft*, Volume 19, Number 1, 2008.

⁴⁰ UN Security Council Resolution 2247, 10 November 2015.

⁴¹ As Valentin Inzko, the current High Representative in Bosnia and Herzegovina, told the UN Security Council, in November 2015, 'As I have made clear repeatedly, the Peace Agreement does not grant the Entities the right to secede, and any attempt to change the Peace Agreement requires the agreement of all the parties.' 'Remarks by High Representative Valentin Inzko to the United

Srpska to secede would thus contravene these UN resolutions.

Moreover, any Bosnian Serb state would face enormous political opposition from leading powers on the international stage. Since the end of the war in 1995, the European Union and the United States have invested a huge amount of financial and political capital into Bosnia. It is simply inconceivable that they would now let Republika Srpska break away, especially as policy makers are aware that this would almost certainly lead to renewed fighting and bloodshed. EU member states have therefore been unequivocal in their condemnation of any talk of secession. So too have senior EU officials.⁴² Likewise, the United States has repeatedly insisted that it too would stand fully against any attempt by Republika Srpska to secede. As a US official put it, 'Neither the Constitution of Bosnia and Herzegovina nor any other part of the Dayton Accords offers any entity the right to secede...Any action taken by Republika Srpska toward the dissolution of Bosnia and Herzegovina would violate Dayton.'⁴³ There is absolutely no doubt that the United States and the EU would condemn any attempt at secession in the strongest possible terms and

Nations Security Council', Office of the High Representative, 10 November 2015.

⁴² 'Subject: VP/HR — Declarations concerning the secession of Republika Srpska', European Parliament, Parliamentary Questions, E-003801-14, 22 May 2014.

⁴³ 'Conscious Uncoupling, Balkan-Style', *Newsweek*, 29 April 2014.

would actively seek to prevent other countries from recognising a Bosnian Serb state.

Where there is perhaps less certainty is with regard to Russia. However, arguments that Moscow could passively support a unilateral declaration of independence, let alone actively support an attempt to break away, should be treated with scepticism. To be sure, Russia has been playing a mischievous role in the Balkans in recent years.⁴⁴ However, there is nothing to suggest that it would endorse an attempt by Republika Srpska to secede. For a start, all the UN resolutions reaffirming the territorial integrity of Bosnia have been passed with Russia's acceptance, if not support.⁴⁵ Moreover, during the most recent meeting of the Peace Implementation Council, the international body that

⁴⁴ For an overview of Russian activities in the regions, see 'Russia in the Balkans', Conference Report, LSEE-Research on South East Europe and SEESOX South East European Studies at Oxford, 13 March 2015. One area where it has been expanding is the media. 'Western Balkans: EU blindspot on Russian propaganda', *EU Observer*, 10 December 2015.

⁴⁵ That said, there were particular difficulties drafting the most recent resolution due to Russia's opposition to language that reaffirmed Bosnia's Euro-Atlantic integration path. 'Bosnia and Herzegovina: Re-authorisation of EUFOR ALTHEA and Debate', *What's in Blue: Insights on the Work of the Security Council*, 9 November 2015. In the end, the Resolution 2247 (2015) noted, 'the support expressed by the Bosnia and Herzegovina's leadership towards a European perspective, on the basis of the Peace Agreement'.

oversees Dayton, in December 2015, Russia signed up to the concluding Communiqué. This stated the following:

The PIC SB underlined its unequivocal commitment to the preservation of BiH's territorial integrity and sovereignty in accordance with international law. Under the GFAP, entities have no right to secede from BiH and only exist legally by virtue of the BiH Constitution. The PIC SB confirmed that it would view as a serious and imminent threat to peace and security any attempt to undermine the fundamental structure of BiH as a single, sovereign state comprising two entities.⁴⁶

Other supposed indications that Russia could support a Bosnian Serb state should also be treated with scepticism. For example, there is little reason to suppose that Moscow's veto of a Security Council resolution on Srebrenica was designed to undermine Bosnia, even if that may have been the perceived intention.⁴⁷ All the evidence suggests that the decision was in fact meant to secure Serbia's gratitude rather than support Republika Srpska. Belgrade, which had felt that the resolution was too accusatory, specifically asked the Russian

⁴⁶ 'Communiqué of the Steering Board of the Peace Implementation Council', 2 December 2015. However, it is also worth noting that Russia decided it was unable to join paragraphs 10 and 11, which condemned a planned referendum on the judiciary.

⁴⁷ James Lyon, 'Is War About to Break Out in the Balkans?', *Foreign Policy*, 26 October 2015.

Government to veto the resolution.⁴⁸ Moscow obliged,⁴⁹ knowing that this was yet another useful way of shoring up relations with Serbia. Certainly, Serbian officials saw it as being clearly aimed at gathering their support, not that of Republika Srpska.⁵⁰

More broadly, there is actually little to be gained, and a lot to be lost, if Russia did support an attempt by Republika Srpska to secede. To be sure, Moscow could block any UN Security Council resolution explicitly condemning an attempt at secession. However, even if this did happen, it is hardly likely to result in widespread international support for a Bosnian Serb state. As already noted, there are strong steps that can be taken to fend off any attempt by Republika Srpska to gain international acceptance, even with overt backing by Moscow. Once again, the European Union and the United States would certainly issue statements declaring the move to be illegal and would lobby hard against any recognition. This would vastly outweigh any leverage Moscow could exert. The cases of Abkhazia and South Ossetia are instructive in this regard. Despite strong pressure from Moscow,⁵¹ only four or five countries –

⁴⁸ 'Serbs ask Russia to veto UN resolution on Srebrenica', *Associated Press*, 4 July 2015.

⁴⁹ 'Russia Vetoes U.N. Resolution Calling Srebrenica Massacre 'Crime of Genocide'', *New York Times*, 8 July 2015.

⁵⁰ Serbian diplomat, comment to the author, November 2015.

⁵¹ For more on these efforts, see James Ker-Lindsay, *The Foreign Policy of Counter Secession: Preventing the Recognition of Contested States* (Oxford: Oxford University Press, 2012).

Venezuela, Nicaragua and a couple of Pacific Island states – have recognised them.⁵² Even Russia’s closest traditional allies, such as Belarus and the Central Asian Republics, have not been persuaded to recognise them. Similarly, neither territory has been admitted into any international organisations. The lack of recognition afforded to Abkhazia and South Ossetia may in fact provide the single best reason why Moscow would not want to encourage Republika Srpska to secede. Russia’s failure to drum up support for these states has been very embarrassing, especially when compared to relative – but by no means absolute – success the United States and the European Union have had with regard to Kosovo. Having failed to secure wider international backing for secessionist projects so close to its heart, it is unlikely that the Russian government would want to be seen to fail yet again, this time on an issue that has significantly less importance domestically.

Finally, even if the Russian Government did decide to support an act of secession, in terms of day-to-day support there is only so much Moscow could do to help the Bosnian Serbs. Unlike Abkhazia or South Ossetia Russia does not have a land border with Republika Srpska. It would not, therefore, be in any position to provide continuous practical assistance to a breakaway de facto Bosnian Serb state. As will be discussed later,

⁵² The exact number is unclear. Vanuatu has changed its position on several occasions. ‘To Recognize or Not to Recognize Abkhazia? That Is Vanuatu’s Question’, *Radio Free Europe*, 26 August 2012.

such support is absolutely vital if a breakaway state is to have any hope of merely surviving in the medium term. By failing to gain support for Republika Srpska, and by being unable to support it, Russia would be further signalling its isolation and relative weakness on the international stage. In truth, Russia has already lost the Balkans.⁵³ There is no point proving it.

Of course, it is not impossible to rule out the chance that some countries may opt to recognise Republika Srpska as a sovereign state if it did decide to declare independence. However, the numbers would be very low indeed. Dodik has said that he believes that as many as ten countries could do so.⁵⁴ This seems excessive, even if it was just limited to de facto states such as Abkhazia, South Ossetia, Nagorno-Karabakh and Transnistria. In terms of UN members, and given the track record of other secessionist entities over the years,

⁵³ See Dimitar Bechev, 'Russia in the Balkans: How Should the EU Respond?', European Policy Centre, Policy Brief, 12 October 2015; 'In the Balkans, NATO has Outmuscled Russia', *The Economist*, 11 December 2015. As was neatly put, 'Quite possibly, the Kremlin may endeavor to destabilize the Western Balkans by supporting Serbian separatism in Montenegro and Bosnia-Herzegovina or by stirring inter-ethnic conflicts in Macedonia and Kosovo. But Russia possesses no committed allies in the region and even Serbia uses Russia for diplomatic and economic purposes rather than having any ideological, political, or strategic commitments to the Kremlin.' Janusz Bugaski and Srdjan Darmanovic, 'NATO Moves Forward with Montenegro', *The American Interest*, 8 December 2015.

⁵⁴ International official, comments to the author, October 2015.

the weight of evidence suggests that it is highly unlikely that any state would recognise Republika Srpska.

The effects of other attempts at secession

While there are strong international legal and political factors that work against an attempt by Republika Srpska to secede, Dodik has nevertheless pointed to trends in the international system that, in his view, support a Bosnian Serb right to statehood and will eventually lead to independence. One particular case that he has cited on a number of occasions is the 2008 unilateral declaration of independence by Kosovo.⁵⁵ While it is certainly true that, at the time, Kosovo was seen by many groups to be a potential model for unilateral secession without the explicit endorsement of the UN Security Council, or the parent state,⁵⁶ it seems

⁵⁵ For background on Kosovo's secession see James Ker-Lindsay, *Kosovo: The Path to Contested Statehood in the Balkans* (London: I.B.Tauris, 2009).

⁵⁶ See, for example, 'Push at U.N. for Kosovo independence could bolster secessionist demands around the world', *Associated Press*, 17 May 2007; 'The independence precedent: If Kosovo goes free', *The Economist*, 29 November 2007; 'Breakaway regions look to Kosovo precedent', *Reuters*, 9 December 2007; Mark Almond, 'Unrecognized States', *International Herald Tribune*, 6 December 2007; 'Kosovo's looming independence raises question: Why not Scotland or Vermont?', *Associated Press*, 15 February 2008; 'Kosovo

its influence on other secessionist conflicts has in fact been contained. Rather than create a precedent for secession in practical terms, Kosovo has instead highlighted just how important it is to have strong support from major powers. The reason Kosovo is now recognised by more than half of the members of the United Nations is because it has been openly supported by the United States and the leading members of the EU, including Britain, France and Germany. Insisting that Kosovo is *sui generis*, a 'unique case' in international politics that falls outside of the boundaries of normal secession,⁵⁷ these countries have actively lobbied for

report linked to Transnistria independence', *The Tiraspol Times*, 27 March 2007; S. Sathananthan, 'What lessons could Tamils draw from the Kosovo experience?', *NorthEastern Monthly*, May–June 2007; 'Turkish Cypriots eye Kosovo for own future', *Turkish Daily News*, 27 December 2007. 'Kosovo "will boost Karabakh recognition drive"', *Reuters*, 16 February 2008. 'Georgia rebel region seeks recognition after Kosovo', *Reuters*, 5 March 2008. As one commentator noted in response to the claim that Kosovo was a special case, 'Kosovo is unique, and there will be more Kosovos.' Timothy Garton Ash, 'The Kosovo Precedent', *Los Angeles Times*, 21 February 2008.

⁵⁷ See, for example, the statement by EU members following Kosovo's declaration of independence: 'The Council reiterates the EU's adherence to the principles of the UN Charter and the Helsinki Final Act, inter alia the principles of sovereignty and territorial integrity and all UN Security Council resolutions. It underlines its

Kosovo's recognition and have played a crucial role in generating support for its membership of key international organisations, such as the IMF and World Bank.⁵⁸ As already noted, in the event that the Republika Srpska declared independence, these same countries would take a wholly different line. They would actively seek to prevent it from being recognised and would take all available steps to isolate it, both regionally and internationally.

Another aspect of Kosovo that was widely seen to provide an important framework for Republika Srpska was the International Court of Justice (ICJ) Advisory Opinion on Kosovo, delivered in 2010. While the opinion deliberately avoided passing judgement on whether

conviction that in view of the conflict of the 1990s and the extended period of international administration under SCR 1244, Kosovo constitutes a sui generis case which does not call into question these principles and resolutions.' Press Release, 2851st Council meeting, General Affairs and External Relations, External Relations, Brussels, 18 February 2008. For a critique of the 'unique case' argument in the case of Kosovo, see James Ker-Lindsay, 'Preventing the Emergence of Self-Determination as a Norm of Secession: An Assessment of the Kosovo 'Unique Case' Argument', *Europe-Asia Studies*, Volume 65, Number 5, 2013.

⁵⁸ Kosovo joined the two organisations in 2009 due to the voting power of the United States and the other main EU states that recognised it. The previous year, the IMF had undertaken a study and concluded that, 'it has been determined that Kosovo has seceded from Serbia as a new independent state and that Serbia is the continuing state.' 'Statement on Membership of the Republic of Kosovo in the IMF', Press Release No. 08/179, July 15, 2008.

Kosovo is in fact a state, it did affirm that general international law places no prohibition on the right of territories to declare independence.⁵⁹ This was read very positively by Dodik. As he explained at the time, ‘the ICJ decision can serve us as guidance for our continuing fight over our status and our future.’⁶⁰ However, a close reading of the opinion in fact reveals that it further undermined Bosnian Serb efforts to secede. The Court was clear that while there was no inherent prohibition against unilateral declarations of independence, there are circumstances when such a declaration could be expressly banned, for example by a Security Council Resolution. As well as citing the 1983 Turkish Cypriot unilateral declaration of independence, the Court specifically referred to Resolution 787 (1992), which called on states to respect Bosnia’s territorial integrity and specifically precluded the independence of Republika Srpska.⁶¹ In reality, the opinion makes any attempt by the Bosnian Serbs to secede harder, not easier.⁶²

⁵⁹ ‘Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo’, International Court of Justice, 22 July 2010.

⁶⁰ ‘Eastern Europe’s Frozen Conflicts Look to Kosovo Ruling’, *Radio Free Europe / Radio Liberty*, 23 July 2010.

⁶¹ International Court of Justice, ‘Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo’, Advisory Opinion of 22 July 2010, Paras. 81 & 112.

⁶² For more on the wider elements of the case, see James Ker-Lindsay, ‘Not Such a ‘Sui Generis Case After All: Assessing the ICJ Opinion on Kosovo’, *Nationalities Papers*, Volume 39, number 1, 2011.

While Kosovo may not offer a useful model, another potential challenge to Bosnia's territorial integrity would appear to come from the prominent independence movements in Western Europe. As Dodik noted, 'We are following what is going on in Italy (South Tyrol), in Scotland and even in Catalonia. These are crucial experiences for the RS.'⁶³ Scotland, in particular, was felt to be a hugely important case for the Bosnian Serb leader. He genuinely saw this as a means by which to bolster his own case for statehood.⁶⁴ In reality, the Scottish example offered little if any useful lessons for Bosnia. Leaving aside the fact that Scotland had once been an independent state in its own right, a factor that actually has no bearing on subsequent claims to independence under international law,⁶⁵ the key element in the Scottish case was the decision of the British Government to permit the referendum and, if successful, to engage in a negotiated separation. Following in the footsteps of Canada, which had permitted several referendums of Quebec's independence, it was this element of consent that would have made the whole process acceptable had Scotland voted for statehood. For this reason, the international

⁶³ 'Scottish Independence Referendum Raises Bosnian Serbs' Independence Hopes', *AFP*, 15 September 2014. See also, 'Catalans Spurn Links with Bosnian Serbs', *Balkan Insight*, 30 January 2014.

⁶⁴ International official, comment to the author, October 2015.

⁶⁵ For example, the fact that Somaliland was an independent state prior to uniting with Somalia has not assisted its case for recognition as an independent state.

community was quick to emphasise that there could be no link between what was happening in Scotland and efforts by RS to pursue statehood.⁶⁶ Perhaps more to the point, the people of Scotland eventually voted to reject independence. As officials in Bosnia noted, Dodik barely hid his disappointment at the outcome.⁶⁷

While Catalonia could potentially offer a more useful model for Republika Srpska, it also serves to reinforce just how difficult it is to obtain independence, even when there is not deep-rooted international hostility to the cause of secession. Despite considerable, though by no means overwhelming, support for independence in Catalonia,⁶⁸ repeated efforts by Catalan leaders to push statehood onto the national agenda have been rejected by the Spanish Government. Madrid has repeatedly insisted that it will not engage with Catalonia's leaders on the subject of independence and has stood in the way of efforts to pursue statehood. For example, a planned independence referendum, which

⁶⁶ As Paddy Ashdown, a former High Representative, summarised the situation: 'There is no similarity between the referendum in Scotland and the referendum Milorad Dodik is threatening. The first one is peaceful, in accordance with the Constitution and in accordance with an agreement within the UK Parliament and the people. The second has no legal basis, and would represent an obvious and open violation of international law, as well as the end of peace in BiH.' 'Can the referendum in Scotland affect Bosnia?', *Radio Free Europe*, 19 September 2014.

⁶⁷ International official, comment to the author, October 2015.

⁶⁸ 'Catalonia independence movement loses support', *The Local*, 3 July 2015.

was due to be held in September 2014, was cancelled after the Spanish Constitutional Court ruled that it would be unconstitutional and the Spanish Government announced that it would take any and all necessary steps should the vote go ahead.⁶⁹ Instead, the authorities in Barcelona organised a non-binding, unofficial vote on the matter. Despite an active campaign by supporters of independence, this only secured a 30 per cent turnout. Thereafter, regional elections, held on 27 September 2015, were presented as a plebiscitary vote, with almost all the pro-independence parties standing as a unified bloc. While they won a majority of seats in the regional assembly, they did not manage to gain a majority of the vote.⁷⁰ While the pro-independence camp insists that it is pressing ahead with independence, at present it is not clear how this will be achieved. Madrid remains still strongly opposed to statehood. Meanwhile, officials from the European Commission have suggested that Catalonia would not automatically be a member of the EU. It would have to apply to join.⁷¹ At the same time, it seems hard to see how any EU member would recognise a unilateral declaration of independence by Catalonia – a step that would fundamentally break the bonds of EU

⁶⁹ 'Catalonia looks for alternatives after cancelling independence referendum', *AFP*, 14 October 2014.

⁷⁰ 'Catalonia vote: Pro-independence parties win elections', *BBC News*, 28 September 2015.

⁷¹ 'EU warns Catalonia independence means leaving bloc', *AFP*, 17 September 2015.

solidarity.⁷² And without the support of the EU, it is also hard to see how any other states, including the United States, would recognise an independent Catalan state. Lastly, on a side note, it is perhaps worth mentioning that leading pro-independence figures in Barcelona are openly unhappy at the comparisons that might be drawn between their quest for statehood and the case of Republika Srpska. Indeed, the National Catalan Assembly has even issued a public statement criticising Dodik.⁷³

More recently, Crimea's unilateral secession from Ukraine, in March 2014, seems to have been raised as a potential model for Republika Srpska to emulate.⁷⁴ It was telling that at the time Dodik congratulated the people of Crimea on a 'democratic and fair referendum' and welcomed their subsequent decision to 'join the

⁷² For an interesting introductory discussion on the EU and secession in a member state, see Steve Peers, 'Homage to Catalonia? EU law and independence movements', *EU Law Analysis*, 29 September 2015. < <http://eulawanalysis.blogspot.co.uk/2015/09/homage-to-catalonia-eu-law-and.html> > (Last accessed 20 November 2015)

⁷³ In a scathing press release, issued in early 2014, it noted: 'Catalonia aims to build a new and inclusive independent state, where there is a place for everyone regardless of their origin or nationality...Our project is based on tolerance and respect for the rights of minorities, and on European integration. For these reasons we consider that Catalonia is in no way an example for the political projects advocated by Dodik and his party.' 'Catalans Spurn Links with Bosnian Serbs', *Balkan Insight*, 30 January 2014.

⁷⁴ 'Is Republika Srpska About to Be the Next Crimea?', *Vice News*, 26 March 2014.

Russian Federation'.⁷⁵ This led to claims that the Bosnian Serb president had actively planned to secede at that point too, but that this was eventually thwarted by the Serbian Government,⁷⁶ an allegation later refuted by Dodik.⁷⁷ However, of all the recent models of secession or attempted secession, Crimea actually has the least to offer Republika Srpska. For a start, the illegality of Russia's actions over Crimea is not seriously contested.⁷⁸ Although an attempt to condemn the move in the UN Security Council was blocked by Russia, a subsequent UN General Assembly Resolution reaffirmed the 'territorial integrity of Ukraine'.⁷⁹ Meanwhile, the referendum,

⁷⁵ 'Bosnian Serb Chief Hails Crimea Secession From Ukraine', *Balkan Insight*, 19 March 2014.

⁷⁶ Bodo Weber and Kurt Bassuener, 'The Western Balkans and the Ukraine Crisis – A changed Game for EU and US Policies?', A DPC Policy Paper, Democratization Policy Council, September 2014. < <http://democratizationpolicy.org/uimages/DPC%20Policy%20Paper%20Western%20Balkans%20&%20Ukraine%20crisis.pdf> > (Last accessed 13 November 2015)

⁷⁷ 'Bosnia Serb Leader Rubbishes Secession Plan', *Balkan Insight*, 12 September 2014.

⁷⁸ See, inter alia, Roy Allison, 'Russian 'Deniable' Intervention in Ukraine: How and Why Russia Broke the Rules', *International Affairs*, Volume 90, Number 6, November 2014; Mikulas Fabry, 'How to Uphold the Territorial Integrity of Ukraine', *German Law Journal*, Volume 16, Number 3, 2015; Simone F. van den Driest, 'Crimea's Separation from Ukraine: An Analysis of the Right to Self-Determination and (Remedial) Secession in International Law', *Netherlands International Law Review*, November 2015 (Online First).

⁷⁹ United Nations General Assembly Resolution 68/262, 27 March 2014. The resolution passed 100 votes in favour, 11 against and 58

secession and subsequent annexation of Crimea have been strongly condemned by, amongst others, the EU and the United States.⁸⁰ Both of which have imposed sanctions on Moscow for its actions.⁸¹ More to the point, even if it did declare independence, RS would certainly not be annexed by Serbia. Indeed, Belgrade would not recognise a unilateral declaration of independence.

Serbia and an attempted secession

It has long been recognised that any de facto entity, if it is to have any chance of survival, requires some sort of outside patron.⁸² In the face of strong opposition from the international community, this patron becomes a vital lifeline, providing access to goods and services in the face of any sanctions or other punitive steps that may be imposed.⁸³ (In many cases,

abstentions. The countries voting against the resolution were: Armenia, Belarus, Bolivia, Cuba, North Korea, Nicaragua, Russia, Sudan, Syria, Venezuela and Zimbabwe.

⁸⁰ Council of the European Union 'Declaration by the High Representative on behalf of the EU on Crimea', Press Release 16 March 2015.

⁸¹ Council of the European Union, 'Crimea: EU extends restrictions in response to illegal annexation', Press Release, 19 June 2015.

⁸² Pål Kølsto, 'The Sustainability and Future of Unrecognised Quasi-States', *Journal of peace Research*, Volume 43, Number 6, 2006, pp.733-734.

⁸³ As Parrish states: 'Because they lack recognition, they lack the ability to achieve the commercial and economic ties normally

though by no means all cases, such a patron state is also a kin state; a state that is made up of the same ethnic group as the breakaway territory.⁸⁴) The need for such support can be seen in almost every current case of de facto statehood. For example, in the case of Northern Cyprus, Turkey stands behind the Turkish Cypriots. For Nagorno-Karabakh, it is Armenia. In the case of Abkhazia, South Ossetia and Transnistria, the lifeline is Russia; even though Moscow has not actually recognised the last one of these. Indeed, one could argue that one of the reasons why Iraqi Kurdistan, which in many ways meets the requirements of statehood and would be sure to gain a certain degree of support if it did try to secede, does not formally declare independence is because it does not have a regional patron that would be able to

incidental to statehood. These territories have no international airports; no trade agreements or visa arrangements for recognition of their passports; customs and border entanglements with their neighbours, restricting ordinary imports and exports; lack of foreign investment due to their uncertain legal status; no access to international capital markets or international financial institutions; no access to development aid; and a host of other disadvantages that collectively condemn them to financial penury.' Matthew Parrish, 'Bosnian Serb Secession: Could it Ever Happen?', Paper Presented at 'Secession Redux: Lessons for the EU, conference held at the Center for European Studies, University of Texas, 1 March 2013.

⁸⁴ Nina Caspersen, 'Between Puppets and Independent Actors: Kin-State Involvement in the Conflicts in Bosnia, Croatia and Nagorno-Karabakh', *Ethnopolitics*, Volume 7, Number 4, 2008.

support and defend it.⁸⁵ The one solid exception to this rule is Somaliland's quest for independence from Somalia. However, its viability is based on the fact that it has broken away from a state that has an exceptionally weak central government, and which is functionally unable to oppose its de facto statehood, and because it enjoys a high level of international support and legitimacy.⁸⁶ Nevertheless, it has been repeatedly told that it must get Somalia's permission before it will be accepted as an independent state by the international community.⁸⁷

In the case of Republika Srpska, any attempt at secession would require, at the very least, the active support of Serbia. Even then, this would not allow a unilateral declaration of independence to succeed. Instead, it would merely protect it against the most damaging impact of any punitive measures adopted by the European Union and the United States; assuming

⁸⁵ 'An independent Kurdistan? Yes, but not so fast', *Al Jazeera*, 9 July 2014.

⁸⁶ For example, the President of Somaliland, Mohamud Silanyo, was welcomed to the Foreign and Commonwealth Office in November 2010, where he met with the UK Minister for Africa, Henry Bellingham. 'Strengthening the UK's relationship with Somaliland', Foreign and Commonwealth Office, 25 November 2010.

⁸⁷ Matt Bryden, 'Somalia and Somaliland: Envisioning a Dialogue on the Question of Somali Unity', *African Security Review*, Volume 13, Number 2, 2004. The more recent position is that Western states would be willing to recognise if African ones go first. 'Can't get no recognition', *The Economist*, 9 January 2014. However, they will not do so without Somalia's permission.

formal UN condemnation was not possible. However, RS would not receive Belgrade's support.⁸⁸ While Serbia may have been willing to prop up a secessionist Bosnian Serb state during the 1990s, it is inconceivable that it would do so today. For a start, after having sent officials around the world to try to lobby countries not to recognise the unilateral declaration of independence by Kosovo on the basis that it is contrary to international law, it would be an act of monumental double standards for it then to recognise and support secession in Bosnia. Secondly, any indication at all that the Serbian Government is supporting Republika Srpska would immediately bring its EU accession negotiations to a halt. Of course, some may argue that Belgrade would put Serbian solidarity over integration. It would not. Over the course of the past few years Belgrade has been involved in an EU-led process to normalise relations with Pristina. This process, which has gradually seen Serbia loosen its ties with Kosovo, and accept Kosovo's presence on the international stage, has been done as a necessary condition to advance its EU membership prospects.⁸⁹ The Serbian Government has not spent the last five years taking these painful steps on Kosovo in order to further its EU accession prospects only for it to

⁸⁸ Senior diplomat from an EU member state, comments to the author, January 2016.

⁸⁹ For an analysis of the reason why Serbia has been willing to engage with Kosovo in order to advance its EU accession prospects see Spyros Economides and James Ker-Lindsay, "Pre-Accession Europeanization': The Case of Serbia and Kosovo', *Journal of Common Market Studies*, Volume 53, Number 5, 2015.

throw everything away by supporting what would be an entirely unsuccessful effort to secede by Republika Srpska. And, thirdly, under the current Serbian Government ties between Belgrade and Sarajevo have been steadily improving. During his premiership, the Serbian Prime Minister, Aleksandar Vučić, has actively sought to build up better relations with Bosnia. It was particularly noteworthy that his first foreign trip after assuming office, in 2014, was to Sarajevo, not Banja Luka. There he pledged his support for Bosnian unity and territorial integrity; albeit in a form that would not jeopardise the continuing existence of Republika Srpska as an integral part of the Bosnian state.⁹⁰ This effort to enhance the links between the two countries has since been continuing. In November 2015, the two governments held their first joint session and pledged to build up their relations still further,⁹¹ much to the obvious annoyance of the Bosnian Serb leader.⁹²

Having said all this, it is important to note that while Serbia may be strongly opposed to any attempt by Republika Srpska to secede this should not be read to mean that Belgrade would necessarily be able to stop the Bosnian Serb leadership from pursuing a push for independence should it be determined to do so. It is

⁹⁰ 'Serbia pledges support for single Bosnia amid secessionist rhetoric', *Reuters*, 13 May 2014.

⁹¹ 'Serbia, Bosnia Pledge Closer Ties After Tensions', *Balkan Insight*, 4 November 2015.

⁹² 'Dodik not thrilled about Vucic's visit to Sarajevo', *Bosnia Today*, 4 November 2015.

now fairly well established that while a kin state does play an important role in the domestic affairs of a secessionist entity, it cannot always exercise decisive control.⁹³ This has been seen particularly clearly in the case of Serbia and Republika Srpska. Whereas the previous government in Serbia, led by Boris Tadić, had little ability to control Dodik,⁹⁴ Vučić and the Bosnian Serb leader do not enjoy particularly good relations.⁹⁵ This could well limit Belgrade's direct control over events. Nevertheless, its indirect control remains absolute. The fact remains that any attempted secession would simply be unviable without the support of Serbia.

⁹³ Caspersen, 'Between Puppets and Independent Actors'. Interestingly, this happened with the 1983 Turkish Cypriot declaration of independence. The Turkish Government explicitly stated that it was not in favour of UDI. However, the Turkish Cypriot assembly went ahead and seceded anyway. The difference was that Turkey had stated in advance that, if a declaration of independence did occur, it would have no choice but to recognise the new state, which is exactly what happened.

⁹⁴ 'Weber: Dodik wanted to initiate secession of the Republika Srpska; Vucic stopped him', *Radio Free Europe*, 17 September 2014; 'Vucic's Serbia distances itself from Dodik', *Dnevni Avaz*, 8 May 2015.

⁹⁵ 'Weber: Dodik wanted to initiate secession of the Republika Srpska; Vucic stopped him', *Radio Free Europe*, 17 September 2014. This is also understood by diplomats based in the region. Although Vučić has family ties to Bosnia through his father, unlike Tadić, who was also of Bosnian Serb extraction, he appears to have no particular personal ties to Bosnia. As stated to the author by several Serbian officials.

For this reason, as one senior Serbian official stated, ‘RS independence is utopia. It won’t happen.’⁹⁶

Downplaying the significance of an independence referendum

Despite the overwhelming legal and political impediments to an attempted secession, the widespread perception that Republika Srpska could nevertheless try to break away continues to have a deeply destabilising effect. To this end, any steps that could conceivably foreshadow a declaration of independence are becoming a source of tension in their own right.⁹⁷ The most obvious example is the threat to hold a referendum on statehood.

When viewed from a dispassionate perspective, there is very little reason why a referendum on independence should be treated as a particularly serious challenge. If independence is not a viable outcome, then it follows that a public vote on whether to secede should not be given undue significance, either within Bosnia or by the international community. More to the point, even

⁹⁶ Serbian diplomat, comments to the author, October 2015. This was echoed by a Bosnian Serb civil society activist in conversation with the author, in December 2015. This person acknowledged that a declaration of independence would be a disaster for the Bosnian Serbs, and they know it.

⁹⁷ ‘Communiqué of the Steering Board of the Peace Implementation Council’, 2 December 2015.

if a vote did go ahead, and showed overwhelming support for independence, it would have no real bearing on the situation.⁹⁸ It is accepted under international law that a unilateral attempt to secede based on a popular vote is no more legal or legitimate than an attempt to declare independence without a referendum.⁹⁹ In truth, as one diplomatic observer put, such a referendum in Bosnia would amount to nothing more than an opinion poll.¹⁰⁰ Certainly, in other contexts, such votes have been resolutely ignored by the international community. For instance, in February 2012, Kosovo Serbs held a referendum in which 99.7 per cent voted against any rule by Pristina. While it certainly showed that an

⁹⁸ 'In many cases referenda conducted in territories wishing to secede have returned very substantial majorities in favour (in the range of 65-99%). But even in cases where there is a strong and continued call for independence, it is a matter for the government of the State concerned to consider how to respond.' James Crawford, *The Creation of States in International Law*, 2nd Edition (Oxford: Oxford University Press, 2006), p.417.

⁹⁹ As has been noted: 'In international practice there is no recognition of a unilateral right to secede based on a majority vote of the population of a sub-division or territory, whether or not that population constitutes one or more "peoples" in the ordinary sense of the word. In international law, self-determination for peoples or groups within an independent state is achieved by participation in the political system of the state, on the basis of respect for its territorial integrity.' James A., Crawford, 'State Practice and International Law in Relation to Unilateral Secession', *Report to Government of Canada Concerning Unilateral Secession by Quebec*, 19 February 1997.

¹⁰⁰ Senior international official, comment to the author, November 2015.

overwhelming majority of the community wished to remain under Serbia's rule, something that was already widely known, it made absolutely no difference at all to the situation on the ground. The Kosovo Parliament simply wrote it off, stating that it 'does not produce any legally and politically binding effect and as such is not valid.'¹⁰¹ It was also widely condemned internationally.¹⁰² Rather than set the stage for more instability, as many had predicted, the vote had no substantive impact whatsoever on the development of the situation in Kosovo. It was rapidly forgotten. In the case of Bosnia, the same model could be adopted. Moreover, there is always the likelihood that the High Representative, using the Bonn Powers, would simply annul the vote on the grounds that it amounted to a violation of the peace accords.¹⁰³

Of course, this is not to ignore the dangers of such a vote if it were to be held. It would almost certainly pose a grave security risk. Even if there was a widespread understanding within the Bosniak community that it would have little significance, as one official noted, there is always the danger that a polling station could be attacked, even by a single individual.

¹⁰¹ 'Serbs reject Kosovo Albanian rule in referendum', *BBC News*, 16 February 2012. Interestingly, the Serbian Government insisted that it was contrary to Serbia's interests.

¹⁰² 'Commission deplores Serb's Northern Kosovo referendum', *Euractiv*, 14 February 2012.

¹⁰³ Senior international official, comments to the author, January 2016.

Given that tensions would already be raised, this could rapidly lead to an escalation of fighting.¹⁰⁴ Such concerns do need to be taken very seriously. To this extent, if a vote were to be held, it would inevitably necessitate heightened security precautions across the country. The key would be to ensure that such steps are fully explained and should not be seen to signal endorsement of the vote. Instead, it is merely being done to ensure that the referendum, as unwanted and meaningless as it would be, does not lead to confrontation.

A unilateral declaration of independence would have little meaning

Given the weight of opposition to secession, many observers, including some prominent Bosnian Serbs,¹⁰⁵ believe that Dodik has no real intention of trying to break away.¹⁰⁶ Instead, it would appear that his talk of seceding is in fact aimed at bolstering his own position,¹⁰⁷ trying to secure or increase power and autonomy for Republika Srpska, or just merely 'winding

¹⁰⁴ Senior international official, comments to the author, January 2016.

¹⁰⁵ As Igor Crnadak, Foreign Minister of Bosnia stated, look at what he is actually doing, not what he is saying. Interview with BBC Hardtalk, 13 January 2016.

¹⁰⁶ Various international officials, comments to the author, November 2015-February 2016.

¹⁰⁷ Andrew MacDowall, 'Dayton Ain't Going Nowhere', *Foreign Policy*, 12 December 2015.

up' local and international actors in the knowledge that talk of secession solicits a strong response.¹⁰⁸ However, one cannot completely dismiss the possibility that Republika Srpska could attempt to secede at some point. If this were to happen it would inevitably plunge the country into crisis. In such circumstances, it would be vital to manage the situation effectively and ensure that it did not lead to fighting. A key element of this counter-escalation strategy would be to put such a development in its proper context and to emphasise that there are a many non-violent steps that could be taken to manage and resolve the situation.

In the first instance, it is important to stress that a unilateral declaration of independence has little meaning in itself. Ultimately, its significance is based on whether it is recognised by others.¹⁰⁹ For all the reasons highlighted earlier, this will not happen. Nevertheless, the government would want to show that it is taking active steps to deal with the situation. In this context, a usual first step for a country facing such a situation is to assert its continuing territorial integrity and call on states not to recognise the breakaway territory.¹¹⁰ In the case of Bosnia, even if there was no UN Security Council resolution condemning the move, it would seem almost

¹⁰⁸ Former EU official in Bosnia, comments to the author, December 2015.

¹⁰⁹ Ambassador Harun-ur-Rashid [former Bangladeshi Ambassador to the UN in Geneva], 'Side-Stepping the Legitimacy Issue of Kosovo', *The Daily Star* (Bangladesh), 4 August 2010.

¹¹⁰ Ker-Lindsay, *The Foreign Policy of Counter Secession*, pp.77-79.

certain that the declaration of independence would be immediately annulled by the High Representative. Likewise, one would expect strong statements from the European Union, the United States and a number of other countries.

At the same time, it would be almost certain that steps would be taken to isolate Republika Srpska – economically, politically and geographically. It hardly needs to be said that an attempted secession would end most, if not all, international assistance and foreign investment in Republika Srpska. It is also highly likely that the EU and United States, amongst others, would impose sanctions on the RS and its leaders. Perhaps more importantly, one would expect that the Bosnian Government to announce the closure of the border between Republika Srpska and neighbouring Croatia, Montenegro and Serbia and declare the international airport in Banja Luka, the Bosnian Serb capital, off limits.¹¹¹ While some smuggling of goods would certainly

¹¹¹ Article 1 of the 1944 Convention on International Civil Aviation states that, ‘The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory.’ Article 6 ‘No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization’. For more on this issue see, Stefan Talmon, ‘Air Traffic with Non-Recognised States: The Case of Northern Cyprus’, <http://users.ox.ac.uk/~sann2029/FCO_Paper%20by%20Dr%20Stefan%20Talmon.pdf> (Last accessed, 8 December 2015).

occur, it is highly doubtful that this would be on the scale necessary to support the population indefinitely. Meanwhile, not only would Republika Srpska be cut off from the outside world, by virtue of the District of Brčko it would also be physically divided into two.¹¹² This would mean that the western part, which includes Banja Luka, would have no boundary with Serbia. This would lessen the impact of illegal trading. Moreover, it would inevitably have an enormous impact on the effective functioning of the Bosnian Serb state. Of course, some will no doubt claim that the RS could nevertheless survive, as it did in the 1990s. This is unlikely. A breakaway Bosnian Serb state, cut off from the outside world, and with its two parts separated from each other, would face enormous challenges. The general view of observers is that it would be unsustainable.¹¹³

A third factor to consider would be the decision by the Bosnian Serb institutions to cut all cooperation with the central government and for Bosnian Serbs to pull out of the central state institutions.¹¹⁴ Any decision

¹¹² International official, comments to the author, January 2016. Former international official in Bosnia, comments to the author, February 2016.

¹¹³ Former EU official in Bosnia, comments to the author, December 2015; former international official in Bosnia, comments to the author, February 2016.

¹¹⁴ While this would be linked to the attempted secession, it should be noted that this could well occur even without an attempt at independence. Most recently, at the end of 2015, Dodik threatened that all RS officials could walk out of state institutions over a

to boycott the central state bodies would certainly create a highly complicated and destabilising situation. A comprehensive plan would need to be put in place to ensure that the state could continue to operate effectively. This is perfectly doable. Emergency measures could be enacted, with support from the High Representative and other relevant international actors, to ensure that the decision-making procedures continue to function. While unwelcome, such developments are not unknown and, as Cyprus has shown, states can still operate efficiently, and democratically, under such conditions.¹¹⁵ But even if a walkout were to happen,

proposed reform to the Constitutional Court. 'Serb Leader Warns Bosnia could Break Up', *Balkan Insight*, 2 December 2015. Shortly afterwards, RS announced that it had suspended cooperation with state-level police and judicial authorities after five suspected war criminals were arrested and entity offices in RS were searched for evidence; a move that was widely condemned by international authorities in the country, and even by the Serbian Government. 'Bosnian Serbs Halt Cooperation with State Police, Court', *Balkan Insight*, 10 December 2015.

¹¹⁵ For example, in the case of Cyprus, following the departure of the Turkish Cypriot community from the institutions of the state, in late-1963, the doctrine of necessity was adopted. This allowed the Constitution to continue to operate despite the fact that many of its provisions explicitly required Turkish Cypriot participation. Indeed, the doctrine remains in force to this day. More to the point, the fact that the country was operating under what was essentially a stopgap measure did not serve as an impediment to the country's accession to the European Union, in 2004. For more on this see, Achilles C. Emilianides, 'Accession of the Republic of Cyprus to the EU, the Constitution and the Cypriot Doctrine of Necessity', *Cyprus Yearbook of International Relations*, 2007, pp.65-82

there are those who believe that it could be a relatively short term situation. In view of the isolation the Bosnian Serbs would face, it is likely that is a way to persuade people to return to their posts, albeit with some concessions.¹¹⁶

Once again, none of this is intended to unduly minimise, let alone dismiss, the extreme dangers of a unilateral declaration of independence by Republika Srpska. As with a referendum, if not more so, there would be a very serious risk that such a development could plunge the country back into fighting. Rather, this very brief overview of the key steps that could be taken if an attempt at secession were to happen is meant to emphasise that the somewhat natural view that such a step would inevitably lead to renewed conflict should be challenged. If an attempt to break away did occur, it would be crucial to try to maintain as much calm as possible. This is best achieved by highlighting what such a step would mean in practical and legal terms, and by explaining the range of options that would be available to the central state and to the international community in order to counter such a move. In the extremely unlikely event that RS did try to break away, Bosnia would undoubtedly face a period of severe crisis. However, it need not face a return to war.

¹¹⁶ Former international official based in Bosnia, comments to the author, February 2016.

Conclusion

Bosnia and Herzegovina has deep rooted political problems. Twenty years after the end of fighting, the country remains highly divided. In this febrile and fragile environment, threats by the leadership of Republika Srpska to pursue independence only serve to create even greater uncertainty and fuel the view that Bosnia is on the brink of a return to fighting. However, talk of secession should be treated with utmost caution. A declaration of independence does not represent a credible threat to the territorial integrity of Bosnia. As has been shown, the international community retains a very strong structural opposition to secession. In the past seventy years only one country, out of a total current membership of 193 states, has managed to join the UN after unilaterally seceding; and even then it did so only when the parent state accepted its existence. Additionally, Bosnia is protected by a number of other very specific safeguards, ranging from UN resolutions guaranteeing its sovereignty and territorial integrity, through to the support of leading international powers that would do everything to ensure that a Bosnian Serb state does not gain recognition. Meanwhile, claims that Russia would support an attempt at secession should be viewed with scepticism. Russia has a lot to lose by being seen to support what would ultimately be a failed bid to break away.

As for the arguments that some other recent examples of secession, either actual or attempted, have strengthened the possibility the RS could succeed, a closer examination of these cases in fact shows that they work against it and not in its favour. Kosovo has managed to gain considerable international recognition, but only because it has been so strongly supported by the United States and key members of the European Union. And yet, even with this support, eight years after declaring independence, it is still only recognised by just over half of the UN. As for Scotland, its vote on independence was held with the explicit and express support of the British Government. Meanwhile, the strong obstacles to Catalonia's efforts to hold a referendum show just how difficult it is to secede if the central government remains opposed. Lastly, for any attempted secession to succeed, it would need the support of Serbia. This will not happen. Serbia will not ruin its EU accession prospects and again become an international pariah by supporting an endeavour that would have no chance of success. (For this reason, any talk of secession and subsequent union with Serbia is even more unrealistic.) Without Belgrade's backing, RS would have no future as an independent state. At best, it would be internationally isolated and far more impoverished than it is now. As one former official put it, no one in RS wants to become another Transnistria.¹¹⁷

¹¹⁷ Former international official in Bosnia, comments to the author, December 2015.

And yet, despite these factors, the view continues to persist that an attempted secession represents a very real threat to the territorial integrity of the country. This in turn serves to feed tensions. There are several reasons why this might be the case. In part, this may be due to the fact that people are unaware just how implausible secession really is. Few appear to have seriously considered the practical aspects of a unilateral declaration of independence.¹¹⁸ Then again, the view that secession is a threat could also be a deliberate attempt by those close to the problem to generate greater international interest in what is, admittedly, a very unstable situation that is far too often neglected these days.¹¹⁹ Talk of secession may also be a useful smokescreen for failure by all sides. It is a convenient way for Bosnian Serb figures to keep their population focused on an unattainable goal as a means of encouraging unity in the face of growing internal divisions. For the Bosniaks, it is a convenient way to explain away the failings of the Federation. Meanwhile, for the international actors, it is also a good way to justify the ongoing deadlock in the country.¹²⁰

¹¹⁸ Former EU official in Bosnia, comments to the author, December 2015.

¹¹⁹ Former international official in Bosnia, comments to the author, December 2015. Former international official in Bosnia, comments to the author, February 2016. This has also been mentioned by a number of other observers the author spoke to when preparing this piece.

¹²⁰ Bosnian Serb civil society activist, comments to the author, December 2015.

Regardless of the reasons, one thing is clear: Dodik benefits. While it is certain that any attempt by the RS leadership to secede would have no chance of being recognised within the region, let alone by the wider international community, the mere perception that it could succeed is proving to be enough to raise tensions. This raises its political leverage.¹²¹

Ultimately, the idea that secession is a viable prospect is sowing the seeds of the very instability that needs to be avoided. Indeed, the perception that Republika Srpska could break away is in many ways a far greater danger than secession itself. As the old adage goes: what people believe to be real is real in its consequences. The mere fact that many observers, both in and outside the country, believe that secession is a serious possibility and will lead to the disintegration of the state is enough to fuel the very tensions that could lead the country down the path of renewed fighting and fragmentation. In this regard, the past obviously weighs heavily on the present. It cannot and should not be forgotten that the country descended into warfare precisely because of an attempt at secession.¹²² However, it is important to put this past in the proper contemporary context. The chaos and violence of the early 1990s was centred on a specific set of circumstances that do not exist today. Yugoslavia was

¹²¹ Former international official in Bosnia, comments to the author, February 2016.

¹²² Bosnian political analyst, comment to the author, October 2015.

collapsing. Today, there is a clear understanding that the borders of the Balkans are now settled. Officials have repeatedly insisted that there can be no redrawing of the boundaries of the region.¹²³ This needs to be underlined in Bosnia.

The same also applies to his threat to hold a referendum on secession. The international community needs to adopt a calm and measured indifference towards any vote. It needs to be made clear that a referendum, if held, will have no practical consequences and, if necessary, its results will be declared invalid. Certainly, there is a good case to be made that the current approach, whereby observers present a referendum as something to be feared because it could somehow have some sort of practical destabilising effect, is actually doing more harm than the alternative strategy of downplaying its political and legal significance, and allowing it to go ahead with minimum fanfare. Although a referendum would certainly be a highly unwelcome development, it should not be allowed to become a source of tensions merely because there is a prevailing, and erroneous, view that the mere act of holding a popular vote will somehow substantively and adversely legitimise what would still be an illegal act.

In private, every official interviewed for this piece acknowledged that there is no credible threat that RS

¹²³ “Borders will not be redrawn in Balkans”, *B92*, 28 March 2014.

would successfully secede. It may try, although unlikely, but it will not succeed. The problem is that the international actors involved in Bosnia have not as yet found an effective way of countering the threat to stability posed by talk of a referendum or a unilateral declaration of independence. They know that by giving the 'danger' of secession credibility, they are granting Dodik power and leverage over the situation. However, they are also aware that ignoring the issue altogether would merely let the problem brew and suggest to the Bosniak community that they were not taking the threat of separatism seriously.¹²⁴ It is how to strike the balance that is proving difficult. Admittedly, they face a difficult conundrum; especially as some feel that highlighting the threat of secession and renewed conflict is the only way to encourage high-level interest in the region's broader problems.¹²⁵ However, it is nevertheless a dangerous strategy that could ultimately do more harm than good. On balance, it would seem more prudent to put the threat of secession in its proper international legal and political context and seek to dampen concerns. This paper is an attempt to do just that. Suggestions that RS could secede must be more widely challenged. Members of the international community – be they decision-makers or opinion-formers– would be better advised to avoid stoking tensions by giving credibility and undue

¹²⁴ This was stated to the author by several senior diplomats based in the region in conversations with the author in December 2015 and January 2016.

¹²⁵ International official, comment to the author, February 2016.

significance to threats by the leadership in Banja Luka that it intends to hold a referendum and then break away. Instead, efforts should be made to explain more widely why this cannot and will not succeed and by elucidating the various steps that could be taken even if independence were to be declared. Bosnia and Herzegovina certainly faces many problems. However, the secession of Republika Srpska should not be seen as one of them. Such a scenario should not be allowed to create unnecessary instability, and thus inadvertently help create the conditions for renewed conflict.
