

MAKING FEDERALISM WORK – A RADICAL PROPOSAL FOR PRACTICAL REFORM

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Politics in Bosnia and Herzegovina continue to be punctuated by regular calls for fundamental constitutional reform. Some call for the disappearance of Republika Srpska. Some argue for a third Entity. Some advocate for a return to a unitary state, with administrative regions drawn according to historical or economic criteria. It seems that few people believe that the present system of municipalities, cantons, two entities, one district and a distant central government is capable of delivering the kind of government which Bosnia needs – that can lead the country out of its economic crisis and towards Europe.

However, all these constitutional proposals suffer from the same fundamental flaw: they fail to indicate *how* to move forward from a dysfunctional *here* to a functional *there*. They do not begin from the current reality – from the constitutions, parliaments and governments which exist, and the real interests which lie behind them. Their supporters make no serious attempt to persuade anyone who does not already share their particular vision of Bosnia's future. Nothing ever happens with these proposals, because nobody knows where to begin. As a result, many Bosnians feel trapped – dissatisfied with their present constitutional system, but unable to conceive of a practical way forward.

This paper offers a different kind of constitutional proposal. It was developed in recent months through extensive consultations with leading politicians and public figures across the country. Rather than offering a competing view of Bosnia's ideal future, it outlines a practical process of reforms on which Bosnia's politicians and citizens might actually agree.

The proposal is to progressively abolish the Federation, and with it the constitutional category of "Entity". The result would be a simplified, three-layered federal state with twelve autonomous units: the ten cantons of the current Federation, Republika Srpska and the District of Brcko. This would represent a fundamental change to the structure of the state, turning it into a normal, European federal system with central, regional and municipal governments. As all of the institutional building blocks are already in place, it is readily achievable within a few years, before Bosnia begins negotiations for full EU membership. The process of dismantling the Federal government could begin immediately, through legislative actions in the Federation and cantonal parliaments. This is a reform which can be, and indeed would have to be, negotiated and implemented by Bosnia's own democratic institutions.

A map with a difference

The starting point for this proposal is a map of contemporary Bosnia and Herzegovina. It shows Bosnia's existing autonomous regions – the ten Federation cantons, the Republika

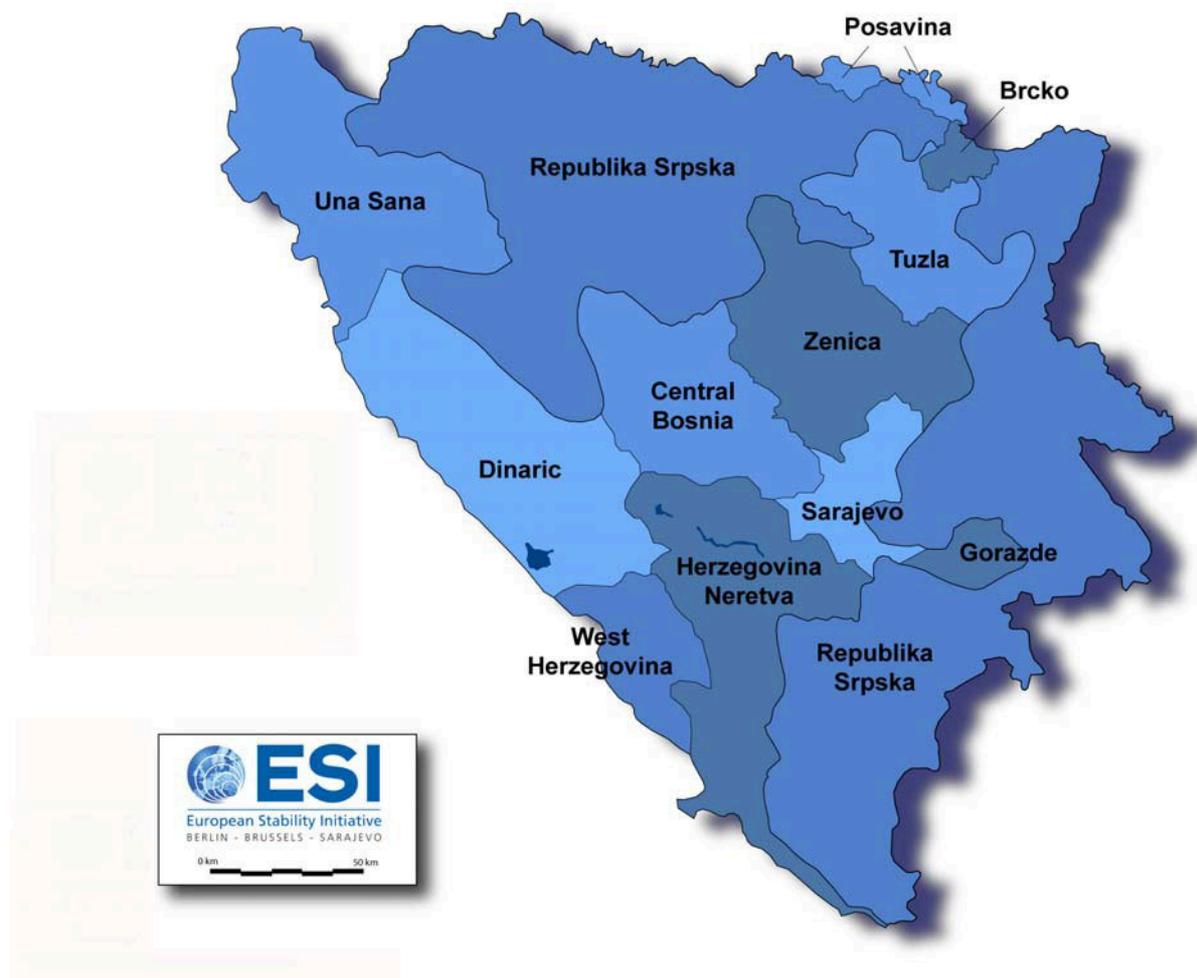
Srpska and the District of Brcko – each with its own flag and constitution, parliament and bureaucracy, revenues and responsibilities. This is the contemporary political and administrative landscape that has emerged from two peace agreements (Washington 1994 and Dayton 1995) and one international arbitration (Brcko 1999).

Yet there is one profound difference in this map. It shows Bosnia and Herzegovina as a three-layered federation, with a central government, twelve autonomous regions and their municipalities. The “Entities” – that curious invention of the Dayton Agreement – have disappeared as a constitutional category, leaving behind twelve equal federal units.

Bosnia and Herzegovina’s recent political history has seen many mapmakers. Redrawing boundaries has been a feature of both local politics and international peace-making for some time, with tremendous costs in terms of individual lives and institutional instability.

In this map, there are no new boundaries. It presents a Bosnia and Herzegovina that is already closer to a normal, European federal model than most people imagine. To show this, it is useful to compare three of the autonomous regions found on this map – the District of Brcko, Republika Srpska and Tuzla Canton.

Map 1: Bosnia and Herzegovina’s federal units



Brcko District, with a population of 71,000, has broad autonomy in regulating its own affairs. It passes its own laws, collects revenues, and exercises responsibility for police, education, health and most economic policy. International officials have often praised the fact that Brcko's autonomy has allowed it to implement bold reforms in a whole range of areas. In a system of two Entities, Brcko is an anomaly. In a system of 12 autonomous federal units, Brcko fits easily. One might call it the first *canton of Bosnia and Herzegovina*.

Republika Srpska, with an estimated population of 1.1 million people, has all the same autonomous functions as Brcko. In addition, it maintains a (rapidly shrinking) army and runs its own pension and veterans funds. Over the past five years, Republika Srpska has built up substantial administrative structures in Banja Luka. It has also agreed to give up some important functions to the state-level institutions. *De facto*, Republika Srpska is today the second *canton of Bosnia and Herzegovina*.

What about Tuzla canton? With its 507,000 people, Tuzla has half the population of Republika Srpska, but six times the population of Brcko. Like Republika Srpska and Brcko, it manages health care, education, policing, and most social and economic policy. Some of its laws are passed at the Federation level, but for all practical purposes, the canton is by far the most important level of government to the people of the Tuzla region. Unlike Republika Srpska and Brcko, Tuzla does not have its own customs or tax administration, but these will in any case soon become state institutions.

Despite the different constitutional label – District, Entity and Canton – Brcko, Republika Srpska and Tuzla play very similar roles in the Bosnian constitutional structure. Like the *Republic of Texas*, the *Commonwealth of Massachusetts* and the *State of New York* in the United States (or the *Hansestadt Hamburg*, the *Freistaat Bayern* and the *Land Brandenburg* in Germany), they are already functionally equivalent federal units.

What prevents Tuzla from acting as the *third canton of Bosnia and Herzegovina* is that there are no direct administrative links between the cantonal administration and the central state government. Instead, Tuzla canton is required to deal with the Federation institutions in Sarajevo. And it is these Federation institutions which are the real anomaly in the Bosnian system.

The Federation Anomaly

The Federation is largely a historical accident. Under the Washington Agreement of 1994, it was intended to be the state. Through the various twists and turns of the peace process, it ended up instead as an Entity of Bosnia and Herzegovina – a federation inside another federation.

In the first few years after Dayton, major efforts were required to transfer across functions and resources from the former Republican institutions in Sarajevo to the Federation. US military assistance built up the Federation army, to create a balance of power across the Inter-Entity Boundary Line.¹ Through its control of customs and excise revenues, the Federation was able to expand its budget, acquiring ministries in areas such as agriculture and education which were never anticipated under the Washington Agreement in 1994.

¹ The former frontline dividing Republika Srpska from the Federation.

Yet the Federation is neither a central nor a regional government. Its institutions are small and weak, and know very little about what is going on across their territory. Federation ministries do not “govern” in Una-Sana or West Herzegovina, or indeed even in Sarajevo, where leading cantonal officials hardly ever interact with the Federation government. Yet neither does the Federation play an effective co-ordinating role between the ten cantons. When the Federation has passed tax laws affecting the revenues of cantons, or major new policy initiatives like the Law on Forestry, its ministries have not even consulted with their cantonal counterparts. In practice, the Federation occupies an institutional universe of its own, consuming an important share of resources while providing few practical services.

There is little loyalty to the Federation from anywhere in the Bosnian political spectrum. In fact, it is international organisations which have been most attached to the Federation, having invested time and resources to create the partner institutions they needed to implement their reconstruction programmes, at a time when the central government did not even have a postal address. The concentration of Federation ministries in Sarajevo made them a convenient “one-stop shop” for donors. However, international policy began to change in 2000, when the Brussels PIC committed the international community to building up the state institutions. Since then, the size of the state budget and administration have grown rapidly, and many of the original responsibilities of the Federation have been moved to the state.

The Federation has a budget of KM 1.25 billion (2002), which is spent on two main tasks: financing the Federation army (30 percent) and veterans’ and war invalids’ benefits (25 percent). Other than these, the Federation provides very few practical services. It is responsible for minor elements of the police and judicial systems, although these are increasingly being taken over either by the state or by independent agencies such as the High Judicial and Prosecutorial Councils. In areas of joint responsibility with the cantons, such as culture, natural resource management or agriculture, the contribution of the Federation ministries is marginal.

Even though its functions have declined in recent times and the Federation army has become significantly smaller, the Federation budget has continued to grow, adding KM 568 million since 1998. There is a simple reason for this. The Federation “owns” customs and excise revenues, both of which depend on the level of imports. The flood of imports associated with the reconstruction programme swelled the coffers of the Federation, enabling it to expand its own administrative expenses dramatically. Most of these additional resources have gone on administrative salaries (35 percent of the budget), rather than on public services.

This dramatic growth of the Federation has been directly at the expense of the cantons and municipalities. The cantons live from sales tax. They bear the most important spending responsibilities (education, public security, social welfare), but lack the resources to fund them adequately. This in turn puts huge pressure on municipal budgets.

This problem is likely to become much worse in the coming years. Customs revenues will decline, as a result of the effect of free-trade agreements with all major trading partners. For the Federation to survive at its current level, it would need to capture a share of cantonal revenue, by taking part of the planned VAT revenues. This will further squeeze the cantons and municipalities, and their capacity to deliver real services.

Europeanisation and vertical state building

As Bosnia and Herzegovina progresses along the path to European Union membership, the state will become a much more important level of government. It is state officials who will negotiate with the European Union on the 31 chapters of the *acquis communautaire*, including on agricultural and industrial policy, justice and home affairs, company and competition law, environment and consumer protection, employment policy and many other areas. This does not mean that the state will regulate these areas directly; no other federal state in Europe does this. It does mean, however, that the state needs to develop direct links and vastly improved communications with the governments that are directly responsible for these areas. The co-ordination role needs to be at the state level, rather than in the Federation, and the state must be able to work equally and effectively with all of the regional governments.

The creation of good working relations between different levels of government is a dimension of state-building which has been largely neglected in Bosnia and Herzegovina. One of the reasons for this is the existence of the Federation, which adds an unnecessary middleman in all intergovernmental dealings. Bosnia will need to make substantial progress on *vertical state-building*, however, if it is to cope with the challenges of negotiating effectively with the European Commission.

Politicians in the Federation therefore face a moment of choice. If they are to preserve and build up the Federation as an intermediate level of government, they must do so at the expense of either the cantons or the state. Conversely, abolishing the Federation would free up resources to improve government at the levels where it is needed the most.

Four perspectives on state-building

The era when constitutional design in Bosnia was hammered out between wartime leaders and foreign diplomats is now well and truly past. From now on, any constitutional change will need to be agreed by Bosnia's elected leaders, on behalf of their constituencies. That means it will be a political process, based upon negotiation and compromise.

Why should the different political players in Bosnia and Herzegovina, with their divergent views on state-building, agree to support this proposal? To explore this question, we offer different perspectives on state-building which we have encountered across the country, which we will call the *Sarajevo*, *Banja Luka*, *Grude* and *Tuzla perspectives*. These are of course simplifications of a more complex reality. They do not represent the views of any particular party, all of which contain a diversity of opinions in their ranks. However, they are recognisable points on the Bosnian political spectrum, and therefore a useful tool of analysis.

The *Sarajevo perspective* is committed to building up a centralised Bosnian state. Its ideal solution would be a return to the pre-1991 system, with a central government in Sarajevo and a number of ethnically mixed, administrative regions. The Sarajevo perspective includes a commitment to ethnic reintegration, not just to reverse the injustices of ethnic cleansing, but also as a way of holding Bosnia and Herzegovina together in the future. It regards Republika Srpska as an illegitimate product of war, and the Dayton Agreement as an unpalatable, if necessary, compromise. From the Sarajevo perspective, Sarajevo is the natural centre of the Bosnian political universe, and rightly benefits from the prestige, power and wealth which comes from a high concentration of public institutions. At the same time, as the wealthiest canton with the highest average wage and the best-funded public services, Sarajevo is inclined

to look with suspicion on any system which requires the transfer of resources from wealthier to poorer cantons.

The *Banja Luka perspective* is focused on defending the wide autonomy of Republika Srpska through a strict interpretation of the Dayton Agreement. In recent years, it has grudgingly and under international pressure accepted an expanded role for the Bosnian state, but continues to fear that the process of state-building is a threat to its autonomy. Since 1997, Banja Luka has developed a substantial bureaucratic apparatus; as in Sarajevo, maintaining the power and privileges of its administration is a key political imperative. This administration has a very different set of interests from the old Pale regime, which was mainly a security structure dependent on the support of Belgrade. While it does not wish to be run from Sarajevo, neither would it accept being reduced to a mere Serbian *okrug*. Its most realistic strategy is therefore to preserve the maximum autonomy possible within Bosnia and Herzegovina, becoming much like a Catalonia, Bavaria or Texas.

However, Banja Luka is also increasingly aware of the extreme economic and social fragility of Republika Srpska. It recognises that working with the Bosnian state is its only means of gaining access to much-needed international assistance. It no longer challenges the visible elements of Bosnian statehood – the currency, passports, licence plates and border service. It even acknowledges (at least in private) that transferring key functions like indirect tax collection to the state may in fact help to preserve its stability through the difficult economic times ahead.

The *Grude perspective* (a small, majority-Croat town in West Herzegovina) has also changed dramatically in recent years. During the war, Grude was a logistical centre for the HVO and lived from transfers from the Croatian ministry of defence, channelled through parallel Herzeg-Bosna structures. The deaths of Susak and Tudjman and the Croatian elections of 2000 brought these transfers to a sudden end, and Grude was forced to accept a whole new political reality. When the HDZ leadership declared Croat “self-government” in 2001, the local Grude HDZ refused to support what it recognised as a futile exercise. In this, it was influenced by its local businesses, which trade extensively throughout Bosnia and Herzegovina. Though some in Grude may still prefer to see Herzegovinian Croats united one day within a single administrative unit, passions on this topic have cooled markedly. While the Grude perspective retains strong emotional and economic ties to Croatia, it now recognises that the Bosnian state is here to stay. In fact, it considers its interests to be better protected at state level than in the Federation, which was never popular among Bosnian Croats. From Grude, Sarajevo is a long way away, and Mostar is the natural centre for regional public services, like health care and higher education. As a relatively prosperous area, Grude shares Sarajevo’s scepticism towards transfers from richer to poorer parts of the country, but is closer to the Banja Luka and Tuzla perspectives in its preference for maintaining the autonomy of regional government.

Finally, the *Tuzla perspective* shares some of the assumptions of the Sarajevo perspective. It considers a functioning central government to be essential, and regards the softening of the nearby inter-entity boundary line through minority return as both a moral and a strategic imperative. However, Tuzla is proud of its own multi-ethnic traditions and autonomy, and does not wish to become merely an administrative district of a unitary state. It does not see a contradiction between strong cantons and functioning central institutions. It is inclined to view its own institutions (such as Tuzla university) as more effective and more attuned to local needs than those in distant Sarajevo. Its economic profile is highly varied: it combines a declining industrial centre (Tuzla city) with profound rural underdevelopment (in areas such

as Kalesija) and pockets of more vibrant, private-sector development (Gracanica and Gradacac). The cantonal government is both better informed and better placed to respond to these specific, regional development challenges than the distant Federation ministries. In this respect, the Tuzla perspective is similar to that of other Federation cities, such as Bihac or Travnik.

Comparing these four perspectives, it is possible to see why a move towards a simplified, three-layered federal state might reflect an area of common ground between them. It is also possible to see how the abolition of the Federation could trigger healthy new dynamics in Bosnian politics.

First, nobody has anything to lose from the disappearance of the Federation and the artificial concept of “entity”. For Sarajevo, Grude and Tuzla, the Federation is largely a superfluous layer of government, absorbing resources that could be better used at other levels. Their long-term interest is in building up the central state and the cantons. Republika Srpska is of course not directly affected by the disappearance of the Federation, but much more likely to accept a reform which does not threaten its current institutional arrangements. In due course, Republika Srpska would lose the constitutional label of “entity”, becoming the largest of a number of equal federal units. In return, what it stands to gain is acceptance as a normal part of the Bosnian constitutional landscape.

Second, this proposal offers the potential to develop, for the first time, a Bosnia-wide approach towards state-building. For all those who have fought to build a viable state of Bosnia and Herzegovina, it represents a substantial step forward. A simplified federal structure enables the state to emerge from the shadow of the entities, and deal directly and equally with all of its regions. It can start to play the natural role of a federal government, helping the regions to pursue their common interests and representing them *effectively* on the international stage. At the same time, this kind of state-building does not need to threaten the viability or autonomy of Republika Srpska or the other regional governments. As a result, the development of the state could occur through common interests, producing more meaningful and lasting results.

Third, and perhaps most importantly, this proposal opens up a new dimension to Bosnian politics, based not upon wartime agendas, but upon the distribution of resources across the country. Most federal states around the world have systems for redistributing resources among their units, in order to ensure more balanced economic development. There are many different systems in use, and they are always the subject of intense political debate. Options include explicit intergovernmental transfers, tax-sharing formulas based on objective development challenges, or joint systems for pension and health funds.

There has never been a public debate on the need for these kinds of mechanism in Bosnia and Herzegovina. Republika Srpska and Tuzla, together with poorer Federation cantons such as Zenica, Una-Sana and Central Bosnia, have a joint interest in seeing the country’s resources shared out more fairly. Grude, Sarajevo and Brcko, being relatively well-endowed, might prefer to retain their financial autonomy. At present, Sarajevo and Brcko have far more revenues per head of population than other Federation cantons or Republika Srpska (see table 2). As a result, Sarajevo is able to spend KM 371 per resident on education, while Una-Sana spends only KM 147.

A simplified federal structure would create the political space in which Tuzla, Zenica, Republika Srpska and other disadvantaged areas could work together in lobbying for a more

equitable federal system, along the lines of the German (“*Finanzausgleich*”) or Swiss model. These kinds of inter-regional alliances would be a great stabilising force in Bosnian politics. It would create the kind of political dynamic familiar from other federations, built around smaller vs. larger; richer vs. poorer; more urban vs. more rural.

*Table 1: Horizontal state-building
Public expenditure inequalities across 12 federal units (2001)*

	Population	Education expenditure		Public security expenditure	
		million KM	per capita	million KM	per capita
Gorazde	35,258	4.6	131	5.0	142
Posavina	43,706	5.9	136	7.6	175
District of Brcko	71,000	20.1	283	8.7	123
West Hercegovina	81,304	18.6	228	12.2	150
Canton 10 (Livno)	83,974	9.8	117	9.1	108
Hercegovina-Neretva	217,333	39.6	182	21.6	99
Central Bosnia	239,728	34.5	144	26.2	109
Una Sana	305,905	44.9	147	29.1	95
Zenica-Doboj	397,201	59.5	150	32.2	81
Sarajevo	400,498	148.4	371	62.1	155
Tuzla	507,490	79.1	156	38.8	76
Republika Srpska I	1,066,324²	129.1	121	92.4	87

Some may fear that, without the Federation, it becomes more difficult to resist pressures from some Bosnian Croats for a single Croat canton in Herzegovina. In fact, there is no link between the existence of the Federation and the shape or number of the present cantons. Any proposal to change the boundaries of the regions would require the agreement of all the main political interests; the constitutions, with their insistence on inter-ethnic consensus, ensure this. Changes to the cantonal boundaries do not become any more or less likely with the disappearance of the Federation.

Taking Federalism Seriously

Would a federal Bosnia and Herzegovina with the twelve existing federal units be workable? Are the federal units not too diverse in size, population and economic potential? Can Bosnia and Herzegovina truly afford so many parliaments and governments?

In analysing this question it is important to distinguish myth from reality. Across all of Bosnia and Herzegovina’s present levels of government there are some 187,523 public-sector employees (excluding public companies), serving a population which is estimated at somewhere between 3.36 and 3.8 million.³ By regional standards this is not particularly high.

² Population figure according to UNDP.

³ The 2002 UNDP Human Development Report gives both figures. See: p. 37. and p. 111.

Today, around 5 percent of the population are working “on the budget”. This is similar to Croatia at 5.3 percent and less than the Czech Republic at 8.1 percent,⁴ both of which have unitary structures of government. The average in all of Central Europe and the former Soviet Union is about 6.9 percent.⁵ There is no reason to believe that federalism itself makes the Bosnian state too expensive.

In fact, transparent federalism may well facilitate the adjustments which are needed to make the Bosnian state affordable. If people in Republika Srpska, Brcko District of Una Sana Canton can see that the costs of “their” administration are direct trade-offs against the benefits of improving their local schools or road-networks one could imagine a process of jurisdictional competition. In one canton a governing coalition could gain political benefits from reducing the size of the cantonal government or reducing or freezing administrative salaries. Some regions might be more disciplined than others; each one would make different political choices. This is healthy in a federal system. In federations like Germany or Austria, inter-jurisdictional competition is seen as a positive dynamic, leading to better government.

Finally, what about the diversity between Bosnia’s regions in terms of size, economic potential and administrative capacity? First, this diversity is already a feature of the present system; it is not changed by this proposal. There may well be arguments for a merger between some of the presently existing cantons. Second, the virtue of a federal system of government is precisely its ability to tolerate diversity. Compare Bosnia and Herzegovina to Europe’s oldest federation, Switzerland.

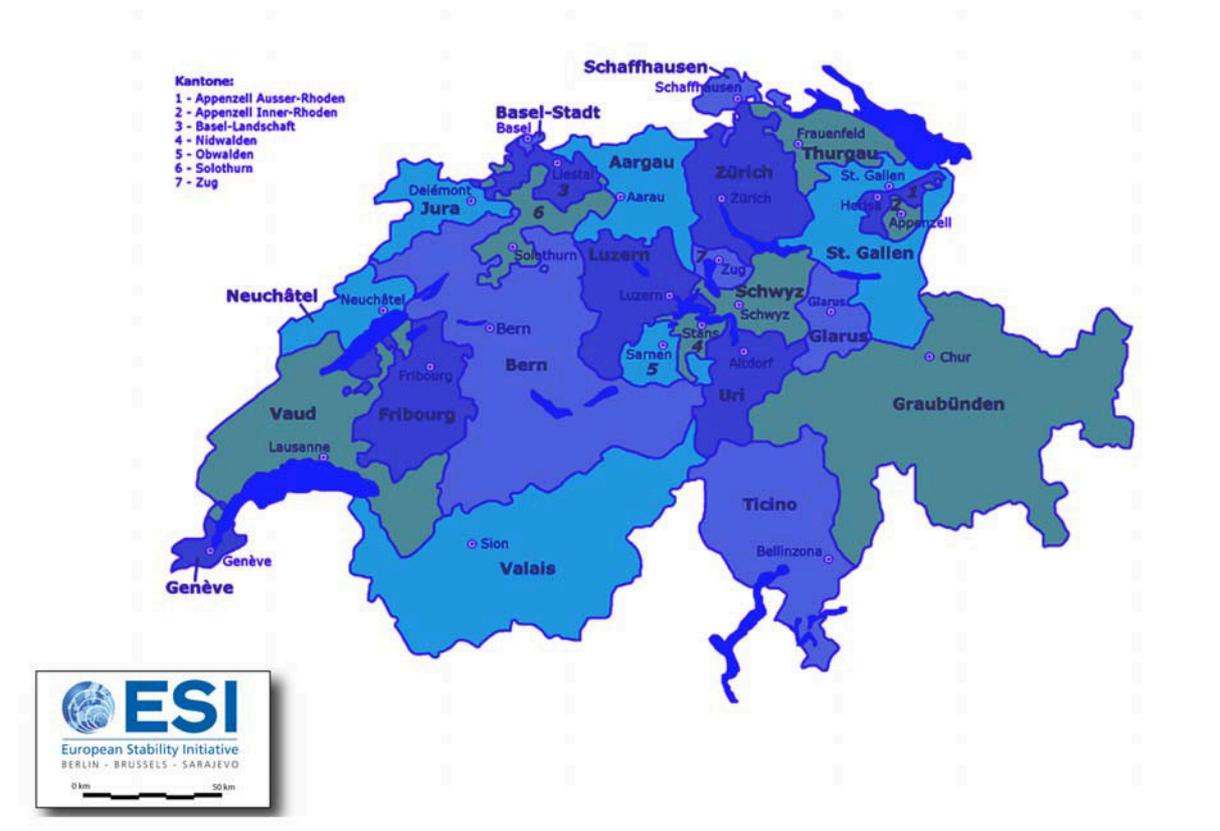
Switzerland has 26 cantons, for a state of approximately the same size as Bosnia and Herzegovina and about twice the resident population. Every Swiss canton has its own constitution and flag, an elected parliament and an executive government. The variation between its most populous canton (Zurich, with 1.1 million people) and its smallest (Appenzell Inner-Rhoden with 13,000) is similar to the difference between Republika Srpska (approximately 1.1 million) and Gorazde canton (35,000).

The Swiss constitution is a unique product of a complex history of conflict and co-operation: it is the system the Swiss have developed over centuries for dealing with the diversity of a country with strong local identities based on different languages and dialects and different political traditions (Catholic and Protestant, liberal and conservative, city and countryside). There are Italian and German-speaking cantons, urban (Basel city) and rural (Basel countryside), French-speaking protestant and French-speaking catholic. In Switzerland there is no discrepancy between strong municipalities (communes) and autonomous cantons. Switzerland is a wealthy country, but its federal model dates from earlier centuries when its economic reality was very different. It was not wealth that generated federalism, rather federalism which provided the stability that enabled Switzerland to prosper.

⁴ World Bank, *Public Expenditure and Institutional Review*, p. 18.

⁵ Asian Development Bank, *Improving Public Administration in a Competitive World*, p. 782.

Map 2: Another European Federation



A Bosnian-Herzegovinian solution

One reason why there has been so little real constitutional debate in Bosnia in recent years has been the assumption among many that in the end the shape of the country - and all decisive issues over distribution of power and resources – will be decided upon by foreigners. Better to wait and see, defend what one has and advance maximalist positions, than to explore how through negotiations and compromise the highly imperfect system bequeathed by years of violent conflict could be made to work better.

Eight years after the end of the war, however, it is clear that the political elites of Bosnia and Herzegovina can no longer expect that a solution to Bosnia's constitutional problems will come from the outside. Not only is such an intervention now extremely unlikely, it also appears increasingly undesirable, as Bosnia and Herzegovina strives to be taken seriously by the European Union. The ability to undertake a domestic debate and implement domestic constitutional reforms would appear to be a central criterion for the maturity of the country, in the eyes of both its own citizens and the outside world. Indeed, it is hard to see any measure that could more quickly change the outside world's perception of this country than the news that a *wholly domestic* process of constitutional change has been initiated by elected leaders, and that Bosnian democracy is able to adapt its post-war constitution to the requirements of the future.

The virtue of this proposal is that it can be achieved step by step, starting immediately. The Federation cantons can already open discussions on which Federation ministries are not required, and can be abolished immediately, moving resources up to the State or down to the

cantons, as required. Later on, the Federation cantons can join together with Republika Srpska and the District of Brcko to create a commission to study options for how Bosnian federalism should work, including the clarification of responsibilities and possible models for horizontal sharing of tax revenues. They can begin to explore the possibilities of asymmetrical federalism – systems of state-level regulation in areas such as pensions, education or environmental protection which the regional governments can choose whether or not to join.

No one can predict at the outset how Bosnian federalism will evolve over the coming decade. What Bosnian politicians can do immediately, however, is start to clear away the most obvious anomalies in the present system on which there is a consensus, creating a framework in which a natural process of constitutional evolution can take place. This would be the first real emancipation of Bosnian politics from the shadow of war and from constitutional system developed on a distant air-force base with the participation of numerous indicted war-criminals.

Disputes on what the ideal system of governance and the best distribution of power and resources should be would undoubtedly continue. This, too, would be increasingly part of a new Bosnian normality. Nine years after the end of its bitter and tragic war, the country would also in terms of its constitutional debate have arrived in contemporary Europe.