

**In search of politics:
the evolving international role in Bosnia and Herzegovina**

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On the virtues of politics

There is a tendency to see politics in post-war Bosnia and Herzegovina as a problem – an obstructive and corrupting influence to be minimised as far as possible. One can find this attitude among citizens disillusioned with the quality of representation offered by the narrow circle of political elites. One hears it among international officials frustrated with the slow pace of Bosnia's political process, and constantly tempted to bypass domestic institutions. The Peace Implementation Council at its Brussels meeting in May 2000 laid the blame for the slow pace of peace implementation on “obstructionist political parties and their allies”, whose “narrow nationalistic and sectarian political interests have impeded everything from refugee returns to economic reform to the functioning of government institutions”.¹ Seemingly by common consensus, there is too much politics in Bosnia and Herzegovina.

This paper calls for a re-evaluation of the role of politics in Bosnia. In the political philosophy of ancient Greece and early modern Europe, the notion of “politics” had a very specific usage. In contrast to absolute monarchy, tyranny or oligarchy, it referred to a style of governance in which different interests are articulated and resolved within a set of rules, in order to produce orderly government. 15th century England was considered *dominium politicum et regale* because the king could declare law only with the consent of parliament. Without this, the kingdom would not have been *politicum* at all. The ultimate argument for politics in this classical sense of the word is that it produces orderly government, which is stable because it is based on a broad consensus. It is the best method of aggregating diverse opinions and producing outcomes which are acceptable to all.²

Bosnia and Herzegovina has known its fair share of non-political systems of governance, from foreign imperial domination through repressive domestic rule under Tito's Yugoslavia to the nationalist party-states of the past decade. Since the peace agreement, it has acquired yet another alternative: what liberal imperialists in 19th century Britain spoke of as “progressive superintendence” by benevolent external powers. John Stuart Mill, discussing the British role in India, wrote that in dependencies not yet ready for self-rule, “vigorous despotism” is the best means of preparing them for the modern world. “This mode of government is as legitimate as any other, if it is the one which in the existing state of civilisation of the subject people, most facilitates their transition to a higher state of improvement.”³

This paper argues that in a country as fragmented as Bosnia – socially, geographically and constitutionally – politics is the only glue available to hold the state together. As the peace process moves from Dayton implementation into the complex problems of economic transition and development, the tools developed by the international mission to bypass the domestic political process are no longer appropriate. “Progressive superintendence” by international institutions and the Peace Implementation Council's Steering Board is becoming

¹ Declaration of the Peace Implementation Council, Brussels, 23-4 May 2000.

² Bernard Crick, *In Defence of Politics* (5th ed., Continuum, 2000), p. 19.

³ From John Stuart Mill, *On Liberty*, quoted in Uday Singh Mehta, *Liberalism and Empire*, University of Chicago, 1999, p. 106.

an obstacle to the development of Bosnian politics. It is also increasingly less effective at bringing about real change in Bosnia society.

Politics in diversity

History has bequeathed to Bosnia a polity divided into different regions and constituencies, each with a distinctive political profile. The succession of elections since 1996, each one progressively more representative, has highlighted these patterns.

In the territory of what was once Herzeg-Bosna, the population retains an enclave mentality and high degree of homogeneity. To date there has been no serious challenge to the authority of the war-time Croatian Democratic Union (HDZ), although its war-time institutions have decayed. In Republika Srpska, the war-time political establishment has fragmented into factions and shifting coalitions, although these forces are still able to present a high degree of unanimity in dealing with the outside world. In the former Republic of Bosnia and Herzegovina, there are two main political groupings: an urban political culture committed to the idea of multi-ethnicity and represented principally by the Social Democratic Party (SDP); and a more traditional, rural Bosniac constituency represented by the war-time Party of Democratic Action (SDA).

For the time being, there is no political force with any significant cross-regional support. Republika Srpska parties do not compete for votes in the Federation; the HDZ has little appeal outside its Herzegovinian heartland; the SDP has made no real effort to court the Bosnian Serb and Bosnian Croat electorates. As a result, any form of government in Bosnia above the local level requires co-operation between the different regional parties. Governing Bosnia is therefore all about complex deal-making among the regional parties and the interests they represent. This is not a political system where a single party commanding a majority in the parliament is able to seize the reins of government, consigning all other parties to the role of "loyal opposition" until the next election. Any party which aspires to govern across Bosnia's regions and multiple constitutional layers must do so through consensus building and compromise on every important issue.

There are instances where this is occurring already. Rules governing the sharing out of municipal executive posts have led to *ad hoc*, local coalitions of different political parties all over the country. In Central Bosnia, the cantonal government is a coalition of two national parties together with the SDP, reflecting the unique diversity of the area. In Zenica-Doboj canton, an SDP-led coalition has on occasion depended upon the HDZ for support in the assembly. In Bosniac majority areas, competition between the SDP and the SDA has begun to produce some health dynamics, most recently an effort by the SDA to distance itself rhetorically from its hard-line elements and recapture the political middle ground. Mirsad Kebo, an SDA vice-president, announced after the October 2001 party congress: "After defending the country from aggression and then the reconstruction period, the SDA is now in its third phase. We are adapting to the challenges of changed times and moving towards the centre of the political stage... The emphasis is on public and civic orientation".⁴

The Alliance for Change, brokered after the November 2000 elections, is a good illustration of the unwritten rules of Bosnian politics. It is a patchwork of coalitions and political

⁴ AIM Sarajevo, 17 October 2001.

marriages of convenience, in which more than a dozen parties combine in different permutations and combinations across the regions and levels of government. While the Federation government is based on a coalition between the SDP and the SBiH, with the support of smaller parties such as the Bosnian Croat NDI and Fikret Abdic's DNZ, the state government relies for its majority on parties from Republika Srpska, including Mladen Ivanic's PDP and Milorad Dodik's SNSD – the first of which is in (unofficial) coalition with the nationalist SDS at Republika Srpska level. Through this tangled web, every major party in the country is connected, directly or indirectly, with every other.

Creating a truly Bosnia-wide politics is no straightforward matter. It runs up against vested interests from those who built exclusionary power structures during the Bosnian war. It runs contrary to the instincts of those who learnt about government in the one-party system of socialist Yugoslavia. However, if Bosnia is to make the distance as a viable state, there is no way around politics as a method of governance.

Establishing the preconditions for politics

There are two basic preconditions for a genuine political process to emerge. First, the use or threat of force must be eliminated from the political sphere. Second, there must be a consensus among the main political actors on the basic ground rules.

The Dayton peace agreement set out to secure both of these preconditions. Military disengagement, demobilisation and restructuring under the watchful eyes of a strong international force guaranteed basic security. Regarding the second, Dayton offered a complex constitutional structure, together with international assistance in the establishment of new institutions and electoral machinery.

These tasks raised issues which were necessarily and properly treated as prior to politics. Individuals indicted for war crimes had to be removed from public office and delivered to the Hague Tribunal – a non-negotiable principle deriving from a higher law. Paramilitary forces and illegal security structures had to be dismantled. The rights of refugees and displaced persons to recover their properties was essential to alleviating inter-communal hostility. The war-time regimes had to respect their commitment to establishing new institutions and dismantling illegal parallel structures.

On such matters, the international mission was willing to use its authority and leverage, at times in a coercive manner. Over several years, it developed a range of tools which enabled it to overcome resistance from domestic vested interests, including new forms of economic conditionality, better civil-military co-operation, the legislative powers of the High Representative and intensive field-implementation mechanisms such as the property law implementation plan.

Given the legacy of the war and the chaotic environment in which the mission was established, the achievements have been impressive. Some elements of this core Dayton agenda remain outstanding. The continuing presence of war criminals in parts of the country remains a serious constraint on political development, and there is everything to be gained from pushing the property law implementation process as far as it will go. The instruments for resolving these issues are in place, and what is required is continued focus and perseverance.

However, the most substantial tasks in which the international mission is now engaged are no longer about Dayton implementation. They are problems such as the transition from an economy dominated by socially-owned enterprises to one based on the private sector, creating a common economic space, improving the work of the judiciary and the police, restructuring public broadcasting and reforming public finances. These issues are not prior to politics – they are intrinsically political in nature..

Politics and policy making in Bosnia

The implementation of such complex policy goals depends heavily upon politics. However, international diplomats and officials are often tempted to short-cut Bosnia's painfully slow institutions and use international authority to resolve concrete problems of governance. The High Representative's power to impose laws has led many international officials to believe that they do not have to do the hard work of identifying and building support for their policy initiatives. But unless reforms are grounded in a genuine political process, *ideal* solutions developed by international experts remain precisely that – *mere ideas*.

Creating new institutions

In May 2000, the PIC set out an agenda for the new institutions required to make the Bosnian state sustainable. They included a state treasury, court, professional civil service, border police, standardisation and accreditation agencies, and state regulators in the telecommunications and energy sectors. Several of these institutions have been created by decree of the High Representative.

To succeed, these initiatives need a number of inputs. One is money. At a projected KM 10 million annual budget when it begins operations next year, the state court will be more expensive than any existing state institution except the ministry for foreign affairs. The State Border Service (SBS), estimated by the UN to require KM 60-70 million annually, will consume approximately half of the total state budget. Without adequate resources, its capacity to fulfil its mandate will be limited. The municipality of Trebinje, for example, lies on one of Europe's most prolific smuggling routes for arms and stolen cars. At present, its 190 kilometres of border are patrolled by 110 SBS officers with only 3 cars, 6 radios and a handful of pistols to share between them.⁵

Although the High Representative is the highest legislative authority in the land, he does not control the budgetary process. The state receives most of its revenue in transfers from the entities – originally projected at KM 55.5 million for 2001. Another KM 27.6 million is raised through administrative fees and around KM 10 million in foreign grants. At the time the High Representative imposed laws sharply increasing the burdens on the state budget, it was not clear whether the entity finance ministries were willing or able to meet the additional costs.

The result, predictably enough, are regular crises in the state budget, recently delaying the conclusion of a new IMF Stand-By Agreement. Under pressure from the IMF, the council of

⁵ Report of Secretary-General to the Security Council on the UN Mission in Bosnia and Herzegovina, June 2001, para. 24.

ministers was obliged to ‘re-balance’ the state budget to cover the new expenditures, a controversial process in the face of resistance from the entities. If the entities agree to increase their transfers, the budgetary crisis is in all likelihood passed onto them. In the meantime, the new institutions created by international decree have been delayed, reduced in size or forced to search for ever-scarcer foreign budgetary support. The High Representative may be able to bypass the legislative process by imposing laws, but politics inevitably returns when it comes to finding the resources.

A second input is political support from those who are to use the new institutions, or be bound by their authority. Some of these institutions – particularly judicial bodies and independent regulators – should be to a greater or lesser degree shielded from the political process in order to carry out their work. Close international involvement may be required to protect them against improper interference during their establishment phase. However, these institutions are unlikely to outlast the international mission unless they are supported by active domestic constituencies. Communicating the purpose and the benefits of the new institutions is therefore essential to any institution-building strategy.

The UN considers that the State Border Service will more than cover its costs through increased customs revenues. If so, as the beneficiaries of the customs duties, the Entities should have a clear interest in supporting it. The proposed state electricity regulator and public corporation should increase the efficiency of Bosnia’s energy sector, lowering costs for industry in both Entities. Traders throughout the country should have a strong interest in policies designed to create a common economic space, which would decrease their costs and expand their markets. To succeed in these complex reforms, the international community has to mobilise support from these constituencies – a fundamentally political endeavour requiring time, skilled mediation and a considerable degree of background information. The strategy of state-building through functional integration is all about generating common interests among key interest groups – not simply changing legal or institutional forms on paper.

Fiscal federalism

Fiscal federalism in Bosnia presents particularly complex political problems. The state lacks an independent revenue source to meet its constitutional obligations. There is considerable overlap between the federation and the ten cantons, causing inefficiency, policy incoherence and competition for resources. Bosnia faces declining customs revenues over the next few years as it concludes free-trade agreements with its neighbours, and needs to develop new, broad-based personal and corporate income taxes and possibly a value-added tax to replace prohibitively high pay-roll taxes.

These issues lie at the heart of the state-building agenda. In a country already overburdened with administrative layers, one cannot simply levy new taxes to cover new institutions. Constitutional development requires balancing revenues and expenditure obligations and searching for efficiency gains across 13 governments. Such decisions must be taken collectively. The intergovernmental mechanisms by which this is accomplished form the backbone of any federal system.

For the time being, these systems are *ad hoc* and unreliable. This year, the Federation government lowered various tax rates, cutting Cantonal revenues significantly. The finance minister of Tuzla canton, although belonging to the same political coalition as the federation

and state governments, recently complained that he had not been consulted in advance about the tax reform, and accordingly no adjustments had been made in the cantonal budget. Next week, cantonal finance ministers will have their first ever meeting to develop a common negotiating position towards the Federation in Travnik. Similar unilateral decisions are regularly taken by the District of Brcko, imposing burdens on the entity budgets.

State-building in Bosnia and Herzegovina is not simply, or even predominantly, about centralisation. It is about finding the right balances between the different levels of government – with enough authority at the state level to guarantee an effective state that can take part in the process of European integration, and revenues matched to spending responsibilities throughout the system. To win the consent of the entities, it is essential to demonstrate that an effective state does not represent a threat, but rather a more efficient mechanism for delivering certain public goods. Opposition to the Bosnian state from Republika Srpska may be ideological in origin, but the way to overcome it is to offer solutions to the entity's severe public resource constraints and lobby for them within Republika Srpska.

The cost of rights

The human rights agenda, at the heart of international peace missions, is now reaching the point where it requires balancing the costs of different public goods, in the face of inevitably scarce resources. Now that the immediate insecurity of the post-war period is alleviated, human rights merges into issues of economics, good governance and, therefore, politics. As Stephen Holmes and Cass Sunstein noted recently: “a theory of rights that never descends from the heights of morality into the world of scarce resources will be sorely incomplete, even from a moral perspective. ... In the absence of a political authority that is willing and able to intervene, rights remain a hollow promise and, at present, place no burdens on any public treasury.”⁶ A legal right exists, in reality, only when and if it has budgetary costs.

To give a few examples, reviews of Bosnia's judiciary concluded that the low salaries of judges were increasing the incidence of corruption. In May 2000, the High Representative imposed a new judicial service law which, among other reforms, increased judicial salaries dramatically. In the Federation, cantonal finance ministers, who are responsible for providing the judiciary's budget, complained that they learnt of this decision only in the press, and did not have the means to pay. Without their agreement, judicial salaries have simply fallen further into arrears. Similarly, in Tuzla Canton, officials complain that judges are obliged to let criminals go free, because there is not sufficient funding in the budget to increase the space in prisons.

As the process of implementing the property laws continues to advance, the outstanding obstacles relate increasingly to budgets, economics and municipal governance. In Republika Srpska, a genuine shortage of humanitarian housing is the major limiting factor, while at the same time the resources available to the Ministry of Refugees and Displaced Persons have been dramatically reduced. OHR continues to struggle to control the misallocation of municipal land – an issue which strays into municipal planning laws, the restitution of nationalised land and the development of a private market in real estate. As the legal barriers are resolved, the most pervasive barriers to effective ethnic reintegration are economic –

⁶ Stephen Holmes and Cass Sunstein, *The Costs of Rights – Why Liberty Depends on Taxes*, 1999, p. 19.

access to extremely scarce employment, and the adequacy of pension funds and health services. Demanding equal social and economic rights for minorities is not much use when the problems facing the majority population are almost as severe.

The proper use of international authority

In the face of problems such as these, the idea of “imposing” solutions becomes increasingly questionable. There are no ideal, once-off solutions that can be identified by a foreign expert and written into a High Representative decision, to be imposed in the face of resistance from domestic institutions. Good solutions are those which emerge from a political *process* which mobilises the beneficiaries, identifies the resources and renders the decision acceptable to the key interest groups.

In meeting these new challenges, the Bonn powers risk becoming a liability, perpetuating the illusion of the ‘quick fix’. Every time OHR imposes a law without resolving the budgetary questions or determining the implementing mechanisms, the legislative process itself is devalued. The Asian Development Bank has written about the need for discipline in the policy process:

“Among the key principles of policy formulation, probably the least observed in developing countries, is the principle of discipline. Promulgating policies that are ‘dead on arrival’ because they are unrealistic devalues the policy-making process and reduces the impact of leadership. It is essential, therefore, to introduce concrete provisions for greater discipline in policy formulation, as for example a requirement that no decision can be presented for cabinet approval unless it is fully costed and is consistent with other legislation and rules.”⁷

This does not mean that there is no further role for international authority in Bosnia – simply that the mission must become more circumspect and discriminating in its use. On the outstanding Dayton agenda, it may still be necessary to use international authority from time to time to ensure that local authorities respect their obligations. In addition, the international community plays an important role as constitutional referee. Challenges to the rules of the democratic process, both active and passive, continue to occur. The international community is still required to act as the final guarantor of the constitutional order, ensuring that political power is exercised according to the rules and that the basic Dayton settlement remains intact.

There is, however, a certain line to be trodden. International influence ought not be used in attempts to stack the electoral deck or exclude undesirable elements from power. Campaigns to control who holds public office in Bosnia have consumed a great deal of international attention over the past few years, but with largely perverse results. The Dodik government in Republika Srpska, which received uncritical international support from 1998 to 2000, left behind public finances in chaos and a government mired in corruption. International insistence on excluding the nationalist Serb Democratic Party (SDS) from government after November 2000 despite its strong parliamentary position has left it with a controlling stake over the government but no electoral responsibility.⁸ A series of clashes between the international community and the HDZ in 2001 helped the party to maintain its unity and

⁷ Asian Development Bank: “Improving Public Administration in a Competitive World”, p. 99.

⁸ International Crisis Group, “The wages of sin: confronting Bosnia’s Republika Srpska”, 8 October 2001.

public support, despite its clear failure to arrest the process of economic and social decay in Herzegovina.

The SDA and the HDZ recently re-appointed individuals dismissed by the High Representative to senior party posts. If OHR and OSCE were to be consistent with past practice, they would ban the two parties from participating in future elections until they submitted to international authority. Much more constructive would be to review the use of the dismissals power in the electoral field, including past decisions. What would be clearly unacceptable, however, would be to deploy the High Representative's powers arbitrarily, for reasons of political expediency.

International attempts to control the political process tend to produce distorted outcomes, creating perverse incentives for the moderate politicians who are being assisted. If the international community becomes their most important constituency, they are liable to neglect their own support base. Furthermore, if they are encouraged to believe that they enjoy unconditional support in their fight against the nationalist parties, they have no need to engage in compromise and consensus-building with their political opponents. As a result, their capacity to develop and implement policy is impaired, and they become increasingly dependent on international authority to secure their objectives – an ultimately unproductive cycle. If left to fend for themselves, politically speaking, the natural dynamics of the Bosnian political system would force them to work towards a more inclusive political process, to the ultimate benefit of the Bosnian state.

In the next phase of the international mission in Bosnia, the skill to act as the mediator of domestic political processes and the knowledge to identify local allies will replace the High Representative's powers as the most important weapons in the international armoury. The goal is to develop methods of international assistance which strengthen and support the Bosnian political process, instead of overruling it.⁹

⁹ The ESI Bosnia project continues to examine lessons learned from the Bosnian experience in order to make concrete recommendations for how this could be done. See ESI, "The end of the nationalist regimes and the future of the Bosnian state", March 2001: www.esiweb.org.