

9. Specific Issues of Post-Conflict Rehabilitation

9.a. The Case of Bosnia and Herzegovina

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Introduction

2005 marked the 10th anniversary of the Dayton-Paris Peace Accords (DPPA), which put an end to the brutal war in Bosnia and Herzegovina (BiH). Ten years after Dayton, BiH is now ‘almost like one country’.

First and foremost, all Bosnians now carry the same passport. Out of 2,2 million of refugees more than 1 million have either gone back home or claimed their properties. More than 500,000 have returned or claimed their properties in the areas they represent a minority. There are free and fair elections and functioning institutions at all levels of government. The country has been undergoing an extensive reform process, covering a wide range of areas including defense, intelligence, customs, taxation and border security.

This progress has also started to yield tangible results in the international arena. BiH has been accepted as member to the Council of Europe in 2002. The country is on its way to integrate with Euro-Atlantic institutions, joining NATO’s Partnership for Peace (PfP) Program and starting negotiations for a Stabilization and Association Agreement (SAA) with the European Union (EU) being its primary foreign policy priorities. Finally, BiH has recently been re-categorized by the World Bank, as a ‘country in transition’ instead of a ‘post-conflict country’.

There is no doubt that over the past ten years, BiH has become politically stable. However, can one possibly argue that the ‘model’ created in Dayton is a true ‘success story’ or are there embedded problems emanating from the system, not really visible from the surface?

Visible Challenges

In the aftermath of the war the Bosnian policy agenda was focused on peace implementation tasks. However now as the reconstruction and return process have been achieved, economic and social problems emerge as the main preoccupation of Bosnian citizens.

The most visible indicator of success in the post conflict war society would be the state of its economy. Here unfortunately, the situation of BiH is everything but success. The absence of a full-fledged market economy, the rule of law, an efficient public administration, a transparent and light regulatory environment for business and modern infrastructure all combine to drive away investors and exasperate entrepreneurs, who prefer to invest their money elsewhere –and increasingly to other countries in the region. The result is alarmingly high levels of unemployment and widespread poverty. Economy will probably be the major challenge for the current and future BiH governments.

Embedded Flaws

Less obvious maybe are the flaws embedded in the system created by DPPA itself. In the words of the chief negotiator Richard Holbrooke himself, DPPA was probably the only way possible ‘to end a war’. Whether or not it led to a sustainable state structure is very much questionable.

The DPPA established BiH as a highly decentralized state, giving extensive powers to two new entities, Republika Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH) and only limited and specific powers to BiH’s common institutions. Until the recent reforms, BiH had no countrywide system of administration, no single army and an at best embryonic judicial system. Moreover, limited formal powers were matched by a very limited ability to raise revenue – the State relying mainly on Entity contributions. Most of these have changed with the recent reforms, but whether or not they will effectively be implemented is yet to be seen.

A modern society is based on individuals enjoying equal status of ‘citizens’. According to the constitutional arrangement within the DPA, however, BiH society is composed of ‘constituent peoples’, not citizens. This means that the ‘constituent peoples’ function as three parallel, ethnically defined and separate societies. So far the constitution does not recognize Bosnia-Herzegovina's citizens but only Bosniaks, Croats and Serbs. Unfortunately it still carries built-in flaws creating permanent social fragmentation to the detriment of overall development of the country.

As far as legislative power is concerned, the BiH parliament consists of two chambers: the House of Peoples and the House of Representatives. All legislation requires approval by both houses, but a proposed decision may be declared “destructive of a vital interest of the Bosniak, Croat or Serb people” by a majority of either Bosniak, Serb or Croat deputies and therefore blocked.

The BiH state parliament has faced several challenges. The willingness of some deputies to block State-level legislation which they see as incompatible with their particular entity interests has depressed parliament’s legislative record – and has raised questions about the level of identification with BiH State interests. Despite these difficulties there is agreement that parliamentary performance has gradually improved.

By the same token, the three-headed State Presidency represents the three constituent peoples. With its constitutional prerogatives in the areas, such as foreign policy and state security, this collective body is often blocked by disagreement, thus undermining the reform process and the very prestige of the country.

External Dependency

There is also the element of ‘external dependency’. According to DPPA, the civilian implementation has been given to the Office of the High Representative (OHR), headed by the High Representative. With the extraordinary powers (so-called Bonn powers) given to him in 1997, the High Representative can impose legislation, remove democratically

elected state officials from office for ‘obstructing Dayton’ or on similar grounds, prevent legislation adopted by the Parliament from entering into force. By the very nature the powers of the High Representative, the OHR intervenes almost on a daily basis in the affairs of the state. It is often the case that it is the OHR, rather than the elected state officials, who initiates reforms or even drafts legislation. This ‘soft totalitarianism’, in turn, results in apathy among the democratically elected leaders, as they are very often not responsible for policy making and creates a dependency.

Linked to the OHR, there is also the concept of the ‘international community’. The ‘international community’ was ill prepared for intervention in the Balkans; its performance has improved over the past decade, but there is more room for further improvement. The OHR reports to the Peace Implementation Council (PIC), composed of 55 countries assisting BiH. The ‘international community’ is omnipresent in BiH, both by the influence it has on policy-making through to the OHR, but also by the still substantial amounts of foreign aid given to the country. In this sense, the state of BiH could hardly be considered independent’.

Road to Emancipation – ‘Moving from Dayton to Brussels Phase’

As one of the five Western Balkan countries, BiH is embraced by the EU policy for Southeast Europe – ‘Stabilization and Association Process’ (SAP). Through the SAP, the EU offers a roadmap for a stable and prosperous future culminating in eventual EU membership, which is BiH’s declared foreign policy priority.

Up to date, BiH has made ‘substantial progress’ in fulfilling preconditions for opening negotiations for an SAA given by EU Commission. Police reform and full cooperation with the International Criminal Tribunal for former Yugoslavia (ICTY) remain the last obstacles for the opening of the negotiations with EU.

Despite remarkable progress on the defense reform front placing the armed forces under state control, and fulfilling almost all NATO’s reform benchmarks, in December 2004 NATO once again turned down

BiH's application to join PfP due to its failure to co-operate fully with the ICTY. The ICTY Chief Prosecutor Carla del Ponte noted in her presentation to the UNSC in late 2004 that there were fundamental systemic weaknesses built into the law enforcement and security structures in Republika Srpska which hindered its co-operation with the ICTY and which needed to be addressed.

European integration process is currently the main driving force for reforms in BiH, as in the rest of the Western Balkan countries. There is a broad consensus among all political actors in BiH in terms their support for an eventual EU membership, albeit their differences of opinion in other policy-making areas. Nevertheless, the road to Europe is a long and arduous one.

The feasibility study for BiH, announced by the European Commission on 18 November 2003 highlights, *inter alia*, BiH's "independence" problem. By underlining that "only coherent and functioning states can successfully negotiate an agreement with the EU", the study draws a guideline for BiH on its road towards Europe.

First and foremost, to become a competent SAA partner, "BiH would need to demonstrate that the Bonn powers are rapidly becoming redundant, permitting the High Representative to become at most a facilitator and mediator." In other words, BiH is required to "mediate its own internal options and preferences in order to present a single, coherent national position to EU counterparts." The 16 conditions presented by the study all aim at the ultimate objective of making BiH a coherent, effectively functioning state, able to make policies without outside interference. The study reveals that progress is being made to that end, but "significant progress", the ultimate benchmark for the SAA negotiations, is not yet recorded.

Since the adoption of the laws establishing the State Investigation and Protection Agency (SIPA) in July 2004, the agency has moved steadily towards full operational capability. The Special Projects Team of the Rule of Law Department continues to work closely with other international organizations, including the EUPM, the European Commission,

and the International Criminal Investigative Training Assistance Program (ICITAP), on establishing SIPA as a full-fledged, state-level police agency with the resources and authority to combat organized and international crime, corruption and terrorism. In the second half of 2004, SIPA became the primary agency in BiH responsible for compiling and analyzing information from financial transactions in order to initiate appropriate criminal investigations.

Progress in defense reform continued, with further implementation of the reforms agreed in 2003 and the fulfillment of all but one of NATO's 13 technical benchmarks for entry into PfP. The last remaining technical benchmark was the requirement for 65 percent staffing of state defense institutions. Such staffing has proceeded slowly, but it is hoped that this benchmark will be met early in 2005. During the period under review, the downsizing of the entity armies was completed as planned. The active forces now stand at 12,000. With the turn of 2004, the successful role of OSCE in defense reform ended, and NATO has taken over.

The establishment of the Intelligence-Security Agency (OSA) has proceeded according to the transitional provisions set forth in the Law on OSA. As a result of a review process for all employees, the staff of OSA has been reduced, rulebooks have been drafted and approved by the Council of Ministers, and OSA has signed a comprehensive Memorandum of Understanding with its main law enforcement counterpart, SIPA.

Significant progress has been achieved in unifying the city of Mostar. The imposition of the outstanding elements of the Statute in January 2004 set in train a process that is putting an end to the parallel structures and segregation that prevailed in that city since the war. The city council elected in October chose a moderate Croat as the first mayor of a unified Mostar. Furthermore progress has been made in joining ethnically divided institutions, and a degree of cooperation between the moderate majorities of the main political parties has started to emerge. The new mayor has started appointing a multi-ethnic, unified city administration, and there is clear majority support in the city council and among the community as a whole to press on with the unification process.

BiH marked the return of one million refugees. The BiH authorities successfully assumed responsibility for the implementation of Annex VII. The State Ministry has been successful in securing loans from financial institutions such as Council of Europe Development Bank and OPEC, while the BiH State Commission for Refugees and DPs continued to act as the main coordinating body between the state, the entities and Brcko District.

Therefore, it is possible to argue that in BiH, the “push” of the OHR’s role is gradually giving way to the “pull” of the European “(and Euro-Atlantic) integration¹⁹⁸. In terms of independent policy-making and breaking the spiral of the external dependence, this might actually be the road to emancipation.

Need for a Constitutional Reform

In summer 2000, the BiH Constitutional Court, in the “Constituent Peoples case” ruled that entity constitutional provisions identifying a particular entity with a particular people were incompatible with the State constitution. The Court confirmed the right of Bosniaks, Serbs and Croats as ‘constituent peoples’ to equality throughout the territory. There can be no special privilege for any people through segregation based on territorial separation. A process of change to entity constitutions was set in motion but has made slow progress.

After more than 90 hours of intense negotiations under the auspices of the High Representative, which began on 8 March 2002, the leaders of eight political parties in BiH finally agreed on the elements for the implementation of the Constitutional Court’s ‘Constituent Peoples Ruling.’ The Mrakovica-Sarajevo Agreement spells out a new institutional set-up

¹⁹⁸ Significant progress in implementing the Mission Implementation Plan and OHR’s core tasks has been achieved during the reporting period, while two critical mileposts – membership in NATO’s PfP and the launch of SAA negotiations with the EU – are within reach. Of 26 programs, 4 have been completed. In the updated MIP document can be found that ‘significant progress in implementing the Mission Implementation Plan and OHR’s core tasks has been achieved during the reporting period. At OHR’s website: www.ohr.int

in the RS and the Federation, turning the two entities into multiethnic communities.

Mrakovica-Sarajevo Agreement could be considered as the first concrete step towards the 're-opening of Dayton'. This was the first sustained direct dialogue between the parties on the issue of inter-communal relations since the signing of DPPA. Even though the actual implementation was imposed by the OHR, the content was actually negotiated by domestic politicians.

In the 10th anniversary of DPPA, it is becoming more and more clear that additional steps are needed for further debate and constitutional change is becoming an inevitable necessity. With the key reforms geared towards strengthening the state structures and weakening the entities, such as the defense reform, the DPPA structure has gradually and tacitly started to be amended. However, these are mostly unsystematic, 'on the spot' changes. In order for BiH to move forward on its way to Euro-Atlantic integration, the endemic flaws of the DPPA should be addressed through a more systematic and substantive debate. Time has now come domestic political representatives and the public to discuss the reconstruction of the BiH's Constitution and its compliance with international conventions, particularly the European Convention of Human Rights.

It is encouraging to observe that large public has embraced the constitutional debate. The subject is being discussed more and more on various fora, concrete proposals are put forward both by political parties as well as civil society institutions. The common ground for all this collective debate is the vision of 'the road to Europe'. It has instilled a nascent sense of collective endeavor for change, which is promising for the future of BiH.

Bosnian Fears and Hopes

In the aftermath of the last elections in BiH held in 2002, the majority of foreign observers expressed fears regarding possible 'restoration of old

politics' by triumphant nationalist parties waiting in the wings since the election in October 2000¹⁹⁹.

It is evident that the implementation of October 2002's general election results has not been easy. This is partly due to the narrow margin obtained by victors, but also because of international misgivings over capabilities of nationalistic parties to provide for Bosnia's well being.

In dealing with the Bosnian political landscape and trying to establish development, one must not lose sight of the particular fears belonging to each ethnic community: Serbian fear of a state not exclusively or dominantly Serbian; Bosniak Muslim fear of 'genocidal' neighbors, exacerbated by a deep suspicion of Islam present in international anti-terrorism ideology, and Croatian fear of being the smallest ethnic group on the road to progressive disappearance. Such collective (ethnic) fears could be stilled and eventually dissipated in an atmosphere of security, welfare and rule of law. These are for the time being rather remote goals, but getting closer with the integration of the whole region to the Euro-Atlantic mainstream.

The Muslim community in Bosnia, representing the majority of the population, is both grateful and deeply aware that the US-led military intervention in the Balkans was crucial for its own survival and for the very existence of this multiethnic state. However, Bosniaks are seriously concerned by the 9/11 stigma attached to Muslims and by the double standard approach to the Middle East and to the conflict in Chechnya which is for them a strong reminder of *the international festival of hypocrisy* during the three and half year siege of Sarajevo. Moreover, there is fear that the war declared to terrorism has eclipsed efforts for the essential capture of indicted war criminals; in particular Karadzic and Mladic.

This spiral of insecurity has been aggravated by the poor results delivered within the two-year rule of 'non-nationalist' parties Alliance for Re-

¹⁹⁹ Across both entities, and irrespective of ethnicity, the direct election of mayors saw a higher vote for the individual candidate than for the party.

forms. Although some progress was achieved, this Alliance, composed of too many parties, was lacking solid cohesion, ridden with self-serving aims and rivalry of its leaders.

Bolstered by their successful election results, the leadership of the front running SDA (main Bosniak Muslim party) maintains that the international community has been making a terrible mistake by dealing exclusively with a weak and futile Alliance for Changes, led by 'dictatorial, non-reformed communists'.

As a consequence, the SDA and HDZ (main Bosnian Croat Party) were banned from sharing power, having been labeled 'nationalist parties'. They insist that they represent the true constituent peoples' interests, recognized in the DPA. These two parties consider themselves genuinely reformed and comparable to any member of the Group of Peoples Parties in the European Parliament. Moreover, they adamantly reject any idea to remake the anachronistic political embargo 'imposed by foreigners against the people's will', which was the case in the aftermath of the elections in October 2000.

Similar post-election claims have been made by the SDS (main Bosnian Serb Party), in spite of having their dominance challenged by promising results of moderate Serb parties. In any event, SDS party will have insurmountable difficulties to establish a credible partnership as long as they are under the remote control of chief indicted war criminals.

High Representative Lord Paddy Ashdown, rightfully played down the 'disappointment' of the international community with the election results. He said that the so-called nationalist parties would have to work long and hard to convince the Bosnian people and Bosnia's friends that they were now genuinely committed to the reforms this country needs. In spite of earlier expressed suspicions, the EU welcomed the formation of the Council of Ministers in Bosnia. In the related formal declaration, EU Presidency stressed that the new government is given the opportunity to pursue a significantly more ambitious and practical policy agenda due to the fact that its term in office will be extended to four years from the present two, under the terms of the new election law.

In order to maintain the highly regarded international joint venture into Bosnia's future, the carrier of the new politics and concepts should re-establish credibility and trust. This is an achievable goal if they provide for a stronger cross-entity coalition – re-assembling all parties committed to nation building and integration with mainstream Europe. Their track record of almost three years in power demonstrates that they are becoming aware of this necessity.

A Truth and Reconciliation Commission (TRC)

A Truth and Reconciliation Commission (TRC) is to be launched in Bosnia – in the aftermath of recent second try to establish the truth of what genuinely occurred 10 years ago in UN “Safe Haven” of Srebrenica . The report has been presented by the mixed cross entity commission upon the adamant request from Human Rights Chamber of BiH.

No doubt a Bosnian Truth and Reconciliation Commission will receive support from the international community. It is guaranteed to grant governments more publicity than any long-term and less sensational solutions for alleviating suffering. Certainly it is the politically correct thing to do. And certainly any such commission in Bosnia will belong passed before the worst victims of this dark tragedy will ever see a stable home (any home), a stable income, a stable faith in their future.

In an attempt to endorse public opinion, it is often the more cosmetic or newsworthy steps that are taken in the wake of conflict. Monuments are being built and ceremonies marking anniversaries are being held. Media hype surrounds events that honor the dead, but ignore the living, as we have seen in the aftermath of Srebrenica.

A population betrayed once and abandoned twice admonishes us to confront some fundamental measures that need to be implemented before one begins to talk about such elusive concepts as reconciliation. For many of Srebrenica's women, there is no hope for a brighter future. These are not sentiments expressed in a fit of despair, but very real considerations of those who have lost everything that constitutes life beyond mere survival.

The transfer of the principal architect of this destruction and his henchmen to the International Crimes Tribunal for ex-Yugoslavia and the imperative capture and transfer to The Hague of his fugitive chief collaborators indicted for genocide in Bosnia will clearly pave the way for reconciliation.

Conclusion

Instead of conclusion remarks which are indeed given by the end of each separated paragraph, it is appropriate to finish by quoting part of the final address of the High Representative Mr. Paddy Ashdown's before UN Security Council in the end of March 2005:

“. . . Mr Chairman, this will be my penultimate report to this Council as High Representative and EU Special Representative. I will relinquish my post at the end of the year. But there are nine months left between now and then, and we need to make full use of every single day.

Because this is a crucial year for BiH. The tenth anniversary of Srebrenica. The tenth anniversary, later in the year, of Dayton.

Like most people in BiH, I want this to be a year in which BiH remembers its past, but looks to its future. More than that, I want this to be the year in which BiH makes a decisive break with that past by meeting the requirements for SAA and PfP, and starts to embed itself firmly into the Euro Atlantic structures. Those structures are the best guarantee of BiH's long term stability, security and prosperity. Once that happens, BiH really will be into a new era. The era of stabilization under Dayton is drawing to a close. The next phase – integration and Brussels – is beginning.

That opportunity is now available to BiH – the chance to show that, a decade after Dayton, it is a viable state, irreversibly on course for European integration, with politicians at the helm who accept the duties, obligations and standards expected of high office in equal measure.

If this happens, it should open the way very soon, I suggest, for a different kind of international engagement on the ground, less intrusive, more like the support structures in other transitional democracies”.