

Towards a new constitutional blueprint for Bosnia and Herzegovina

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“The present constitutional architecture is dysfunctional”.
International Commission on the Balkans, 2005.

Almost ten years have passed since that stark assessment was made of the situation in Bosnia and Herzegovina by the International Commission on the Balkans, in its report “The Balkans in Europe’s future”.¹

Today, the country is even more deadlocked by corruption, political recriminations and institutional failure. General elections loom in October.

In his latest report to the UN Security Council on May 15th, the international community’s High Representative, Valentin Inzko, clearly singled out the country’s political leadership as being largely responsible for the dire situation in which the country finds itself:

The same old mistake – putting the interests of a privileged political class before those of the country and its citizens, continues to be made.

Even the recent floods, which claimed many victims and unearthed landmines and other memories of past atrocities, were used by the leaders of the different ethnic communities to score petty political points, as if setting out their stalls for the October elections.

At all levels, central government has failed to deliver on its commitments to reform and on its international obligations, despite concerted efforts by the EU, in particular the Commissioner for Enlargement, Stefan Füle. His repeated visits in recent months and over countless days and nights were spent trying to convince the country’s leaders to honour its commitments – not least in implementing the judgment of the European Court of Human Rights in the *Sejdić and Finci* case² – but came to nothing.

¹ International Commission on the Balkans, *The Balkans in Europe’s Future* (Sofia, CLS 2005), p. 24.

² ECtHR, Grand Chamber, Joined cases 27996/06 and 34836/06, *Sejdić and Finci v. Bosnia and Herzegovina*, 22 December 2009: a Bosnian Roma and Bosnian Jew challenged the law that only Bosnians, Serbs or Croats, can be elected to serve state and legislative positions. The Strasbourg Court

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There was some hope that the demonstrations that flared up in several cities last year and earlier this year, and the subsequent ‘Plenums’ that brought together citizens’ groups clamouring for change would have had an impact on the divided leadership. But that hope was short-lived. Instead of responding with commitments to move forward on the reform agenda, the leaders used the same old tactics seen in other countries of the region of discrediting the citizens’ groups behind the demonstrations as troublemakers out to wreck law and order. This is all the more tragic if one considers that what motivated the protesters was precisely to move beyond ethnic politics to solve the country’s critical economic and social situation as well as to decry the unacceptable levels of corruption.

In normal circumstances, the forthcoming elections would be an opportunity for voters to get rid of a discredited political leadership that has spent more time lining its pockets with ill-gotten gains than governing. However, in the case of Bosnia and Herzegovina today, the elections alone will not offer a lasting solution.

What is needed is an immediate and more robust engagement on the part of the international community, in particular the EU and US. The ‘hands off’ policy pursued since 2006, while praiseworthy in its sentiments of promoting local ownership by the country’s leaders in finding the right solutions, has simply not worked. At times, the EU gave the impression of being a mere bystander to unfolding events, with a weak presence on the ground. A more determined ‘hands on’ policy by both the EU and US working together to push the leadership to move on the much-needed reforms is the only way forward.

The ‘economic governance’ initiative contained in the European Commission’s enlargement strategy last October, promoted by EU High Representative Ashton during her March visit to Sarajevo, was aimed at encouraging the country’s leaders to respond to citizens’ demands for economic reforms and employment opportunities. While progress in this area would go some way to meeting the repeated demands of the citizens, on its own it will not be enough. It needs to be accompanied by greater emphasis on political governance, not only in terms of a more effective fight against corruption and human rights protection, but also in getting the admittedly complex institutional structures laid down by the 1995 Dayton peace agreement to function better and to ensure greater legitimacy and accountability from the elected leaders. The recently adopted money-laundering legislation is a step in the right direction, albeit a very timid one.

To be successful in the long run, the push for better economic and political governance will need to go hand-in-hand with a more systematic and intense dialogue with civil society. The ‘Plenums’ demonstrated the potential role for civil society and citizens’ groups at local level in overcoming the leadership gridlock. Their voices must be heard, so that both the constitutional and policy solutions put forward reflect their concerns. The EU should be more active out in the field engaging with and supporting grass roots organisations through capacity-building and financial incentives. There also needs to be greater support for the media, including financial support for investigative reporting.

A wider effort is needed to get Bosnia and Herzegovina out of the constitutional mess it is in. As advocated by the International Commission on the Balkans almost a decade ago, a new constitutional debate is called for. This should result in a congress that drives forward reform of the provisional constitutional system created by Dayton, which can facilitate Bosnia and Herzegovina’s transition from its current status as international protectorate defined by the

backed Sejdić and Finčić, stating that Bosnia’s constitution was discriminatory against Roma, Jews and other minorities in political life. The EU has repeatedly called for Bosnia and Herzegovina to implement the Court’s ruling and change its constitution to allow minorities to run for office.

'Bonn Powers'³ held by the High Representative to sustainable self-government, and guided by the EU pre-accession process. This process could take the form of a constitutional convention, for which there are a number of useful precedents. The Irish Constitutional Convention, for example, which has just completed its work, offers some useful guidance such as that regarding the method of inclusive representation in the convention.

With its repeated promises that all of the Western Balkans will be integrated, the EU is under a moral obligation to do more for Bosnia and Herzegovina. As the main architect of the Dayton agreement, the US also bears responsibility to achieve a lasting solution for peace and stability in Bosnia. There is no doubt that the combined leverage of the US clout and the attraction of the EU could make a difference. Working in tandem, the EU and US should force the fractious leadership in Bosnia and Herzegovina to work together with civil society in defining the country's future constitutional blueprint. What the Bosnian political leaders proclaim should no longer be taken at face value.

One hundred years on since the start of the First World War there is inevitable soul-searching on the lessons of history. The decision to hold a constitutional convention would be a fitting way to demonstrate the capacity of the country's leaders to find common cause for a better future.

³ The intrusive powers to intervene in and overrule domestic institutions were developed in mid-1997 with the intention of heading off threats to public order and attempts by the former warring parties to challenge the integrity of the state. Several High Representatives have used these powers to 'hire and fire' government officials.