

Dayton in Bosnia and Herzegovina: 18 Years of Experiment in Democratic Governance

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Abstract

Bosnia and Herzegovina and its citizens are facing significant challenges within the current geopolitical context in the region, failed constitutional system, lingering divisions, and the political influence neighboring countries continue to exercise in Bosnia. Eighteen years after Dayton was signed there have been recent calls for reforms and revisions to the Dayton agreement in order to provide for a more robust political system and to enable Bosnia to join the European Union. The need for significant political and policy changes supported by the international community is ever more pressing. Bosnia and Herzegovina's current political and legal system is a result of a war which ravaged the country and the hastily constructed Dayton Peace accord. Some of the key elements of Bosnia and Herzegovina's political, legal, economic and judicial systems were created by the U.S. administration. In order to evaluate the current system of Bosnia and Herzegovina and present potential ideas for long term solutions, it is important to review the United States' system of governance and its basic democratic principles. Success of the United States' style of democratic governance and public policy process provides vital clues for Bosnia's political, legal, economic and judicial systems long term sustainability. The most glaring difference between the governance and policy in the United States and the most pressing issue threatening Bosnia and Herzegovina's democracy is that while in the United States, political parties debate economic, political, and social issues, Bosnian politicians debate national and ethnic issues. This hypersensitivity to controversial domestic issues leads to political stalemate and a lack of progress. Most recent social unrests which culminated into mass protests are a direct result of the insufficiencies and lack of implementation of the peace agreement.

Note: The paper builds on the previous analysis on the occasion of 15 years of Dayton Peace Accords published in April of 2011 at the Institute for Research of Genocide, Canada.

Since the Dayton agreement was signed in 1995, there were instances of progress and years of debacles in Bosnia and Herzegovina. A review of the last three years paints an abysmal picture and unwillingness of the international community to make decisive steps necessary to break the gridlock over simple procedural changes. Political gridlock in Bosnia and Herzegovina continued as pointed out by the High Representative, “the political leaders had again missed a chance by failing to correct discriminatory provisions in the electoral system,” as “required by the European Court of Human Rights” (United Nations Security Council, 2013). In November of 2012 country was in turmoil as it did not have as pointed in the Security Council (2011) report “a state-level government, over a year after the October 2010 general elections were held, as the appointment of political leaders in the Council of Ministers remains stalled”. While, most of the country’s ills can be attributed to Dayton Agreement and discourse it created with its ambiguities and complexities of implementation, a lot can be inferred from comments provided in annual reports by the High Representative. In addition to blatant disregard for Bosnia and Herzegovina progress and institution by leaders in the Republika Srpska, inconstancy in implementing the Dayton Agreement adds to the current standstill. Most recent mass protests are the result of politician’s inabilities and lack of interest to deal with social and economic issues, but are mostly a direct result of the insufficiencies and lack of implementation of the Dayton Peace Agreement (Judah, 2014; Hopkins, 2014).

Obstacles imposed by Dayton agreement are furthered by the fact that politicians in the Republika Srpska are unwilling to contribute to positive progress in implementation of the Dayton Agreement, namely with Annex 7, Article I of the Dayton Peace Agreement with the rights of refugees to return to their homes (Dayton Peace Agreement, 1995). Tesser (2013)

argued that Dayton “laid the foundation for a concerted international effort to spur minority return and the reconstitution of a multiethnic BiH” (p.159). During the recent first post war census, there were many reports of irregularities and obstructions, most of them reported in the Republika Srpska. The reports named attempts by enumerators from Srebrenica who “tried to take questionnaires across the border to Serbia” (Jukic,2013; Dnevni Avaz, 2013). While Perry (2013) viewed the Census 2013 as a positive step forward, many roadblocks imposed in the Republika Srpska threatened the validity of the Census. In addition to irregularities with Census in Srebrenica and other towns in eastern Bosnia, where the majority of atrocities occurred in 1992-1995, and as reported by a representative of the Foundation "Census 2013" Dr. Lavic, the obstructions were evident in areas such as Prijedor and Osmaci, all areas were those who were expelled from their homes returned back en masse (World Bulletin, 2013).

With this background, comparing Bosnia and Herzegovina (Bosnia) and the U.S. in terms of governance and public policy is a very challenging task even though some of the key elements of Bosnia’s political, legal, economic and judicial systems were created by the U.S. administration. In terms of evaluating the current system of Bosnia and Herzegovina it is important to review the United States’ system of governance and its basic democratic principles. The long term success of the US style of democratic governance can also be attributed to years of trial and error attempts and a somewhat bloody history of civil rights for all American citizens. Bosnia and Herzegovina’s current political and legal system is a result of a war which ravaged the country and the hastily constructed Dayton Peace accord. Even one of the main creators and chief negotiators during the negotiations, the now late Richard Holbrooke, acknowledged the shortfalls of the Dayton Peace agreement regretting not to have made “a

stronger effort to drop the name Republika Srpska” and further clarifying that the US administration “underestimated the value to Pale of retaining their blood-soaked name” (Holbrooke, 1999, p. 135). The US administration was well aware of the fact that most atrocities were committed by the Serbs in their attempt to create Republika Srpska and that “only the Bosnian Serbs exhibited a clearly organized, large scale campaign of ethnic cleansing” (DCI Interagency Balkan Task Force, 1995).

In order to define representative democracy, constitutional democracy, and republic, one must look into the historical development of these core democratic principles, as well as the current context, and some examples of failed federalism. There are many examples of failed federalism namely in the former Soviet Union and Yugoslavia. The balance needed to sustain the different interests of states which entered into union shifted from federal to state interest. Roust and Shvetsova (2007) argued that “only the states with well-developed (properly institutionalized) democratic electoral competition have a chance to form a resilient federal union and sustain their federal constitutional arrangement not just in form, but in their political practice as well” (p.245). The democratic electoral competition cannot be accomplished in purely singular political systems, where one party rules, as was the case in both of the above-mentioned countries. China will soon face similar problems as well as other non-pluralistic societies.

While constitutional democracy guarantees a contract between the federal government, states and constituents, representative democracy provides for election of representatives who answer to the will of the majority of the populous. But due to the dynamic expressed through the type of federal government the United States offers, the necessary checks and balances are obtained through balance of powers between the Executive, Legislative and Judicial branches.

This view is further supported with the following statement that “the government of the moderns is not defined by election per se, but by the relations between the participation and representation (society and the state), instituted by elections” (Urbinati, 2006, p. 8).

McCoy (2001) contends that “The United States is a federal republic instead of liberal democracy” (p. 12). The United States’ success can be attributed to the governance and strength of states in providing effective republic. As put by Lovett (2006) “The significance of the rule of law for republican liberty ...in the classical republican tradition, this was expressed as the “empire of law” ideal—the notion that in a free republic laws, not men, rule” (p. 17). This rule of law is best expressed in the United States, where sometimes the desire of the majority is overruled by the Supreme Court or other court decisions, as seen in the example of the Arizona Voter ID Law (Brinkerhoff, 2013). This is despite objection from the majority of the population in the United States, if we are to trust national polls.

The necessary adjustment in dynamic relations between the state, local and federal government is best evidenced in many government programs. Boyd (1997) explained American federalism in a historical context and states “in 1981 Congress passed the Omnibus Budget Reconciliation Act that consolidated a number of social programs into nine block grants, which allowed for greater state and local autonomy and flexibility in the fashioning of local strategies to address federal objectives” (para. 20). This change in addressing federal objectives for local governments is further enhanced with the implementation of the American Recovery and Reinvestment Act (ARRA) and the way funding is redistributed to the state and local governments. As argued by Gordon (2010) “Yet, the stimulus act may contain the seeds of a new fiscal federalism” as it “targeted funds to local economic conditions and required extensive,

some say intrusive, reporting” (para. 6). He concludes that “These innovations may hold lessons for the design of an ongoing countercyclical assistance program, a ‘Federalism 2.0’” (Gordon, 2010, Para 6). This makes sense in an ongoing dynamic of give and take and redefined roles of the state and federal governments.

In the above context, Bosnia and Herzegovina’s current complex political system faces insurmountable challenges. This is especially difficult for a relatively small country in Europe, which gained its independence from Yugoslavia in a referendum conducted in 1992 and was recognized by the United Nations, European Union, United States and almost every country in the world soon afterwards (Malcolm, 1994, p. 234). Bosnia survived the tragic “genocidal aggression” and atrocities in the period of 1992-1995, which resulted in over 100,000 dead as reported by various sources and countless injured (Weine, 1999, p. 139; Nettelfield, 2010, p. 97). The Dayton Peace agreement stopped the war and “stipulated the Bosnian constitution” but it “established a highly decentralized state, with weak, sometimes non-existent state-level institutions” (European Forum for Democracy and Stability, 2010, p. 1; Juncos, 2005, p. 92). The Office of the High Representative (OHR) was created as “an ad hoc international institution responsible for overseeing implementation of civilian aspects of the accord ending the war in Bosnia and Herzegovina” (OHR, 2010, para.1).

The United States' administration under former President Clinton led the efforts at stopping the war in Bosnia and supported the post war political, legal, economic, and infrastructure rebuilding efforts. Beyond humanitarian reasons, some in the US administration at that time believed the inaction on Bosnia war was damaging US reputation around the world. For example Chollet (2005) reported that the US ambassador to the UN at that time Albright

“also knew the damage Bosnia was doing to America’s role in the world” and continued that “from her perspective at the United Nations, she saw how Bosnia weakened America’s diplomatic leverage (p. 18). While the efforts were mostly diplomatic, the US involvement was the most persuasive under the intensive bombing campaign against the Serb forces in Bosnia. The diplomatic activity produced most results under intensive pressure on military position of the Serbs as indicated in the declassified CIA document, White House Situation Room report from Richard Holbrooke dated September 25 who argued in favor of intensive bombing campaign until political solution with Serbs can be reached (US Department of State, 1995).

Most of Bosnia’s post-war political system, its governance and public policy structures are a complex mixture of efforts to appease various regional players, the United Nations, the EU, and the U.S. European Forum for Democracy and Stability (2010) reports that Bosnian and Herzegovina’s “political system is a complex and an inefficient one” with “a highly decentralized state with weak state institutions” and “an unhappy mixture of a parliamentary, presidential and half presidential political system” (p.1). Bosnia and Herzegovina, with its complex voting mechanism and political system which requires that “each political unit has its own governing body, accumulating to 700 elected state officials and more than 140 ministers” is still considered a democracy (European Forum for Democracy and Stability, 2010, p.1).

Eighteen years after Dayton was signed there have been calls for reforms and revisions to the Dayton agreement in order to provide for a more robust political system and to enable Bosnia to join the European Union. The Congress of North American Bosniaks (2010), the largest Bosnian American and Canadian organization, called upon the United States government to lead efforts to change the current structure and stated that “the most glaring need and obstacle to

Bosnia's long term peace, progress, and stability are the constitutional reforms," which are necessary for Bosnia to join the EU (para. 2). The United States Institute for Peace (USIP) Vice President Serwer (2009) in his testimony to the Congress insisted that among other elements needed for reform "entity voting should be eliminated for any legislation that the EU determines is required for EU accession" (p. 2). These calls are made for governance and political reforms beyond those "ongoing reforms," which "are mainly the result of pressure over local authorities by the international community" (Open Society, 2006, p. 41).

Perhaps the most glaring difference between the governance and policy in the United States and the most pressing issue threatening Bosnia's democracy is that while in the United States, political parties debate economic, political, and social issues, Bosnians debate national and ethnic issues. This hypersensitivity to controversial domestic issues leads to political stalemate and a lack of progress. As reported by the National Democratic Institute for International Affairs (2009) "because ethnic issues crowd out other issues, and thus repress the formation of other political alignments, Bosnians do not have the possibility to debate and argue over other topics" as unresolved ethnic and national issues continue to dominate and manipulate the policy and governance issues in Bosnia and Herzegovina (p. 7).

Without truly reforming the Dayton agreement, the Bosnian government's hands are tied. Bosnia has a very ethno-centric political system, where nationalistic sentiments easily prevail over economic or other issues. Bosnia and Herzegovina was divided into two political entities, Republika Srpska (RS) and the Federation of Bosnia and Herzegovina. The main problem with this division is that "the ethnic majority in the RS was made possible only by ethnic cleansing" (Stadlober, 2010, para. 7). Unfortunately, it appears that all changes relative to Dayton

agreement knot would have to come from outside, directed by the international community rather than by individual political agreement within Bosnia and Herzegovina parties.

In some cases those who committed some of the worst atrocities and war crimes have accomplished their goals and their supporters remained in power. There is a continuous and flagrant violation of the Dayton agreement and constant denial of the country's sovereignty and right to exist by Serb leadership. One such violation came on September 17, 2010, when the RS—the smaller entity's government—“ordered a plan to be drawn up for the demarcation of the Inter-Entity Boundary Line (IEBL) that separates the RS from Bosnia's other entity, the Federation of Bosnia-Herzegovina” (Hoare, 2010, para. 6). Hoare (2010) further notes that Dayton Agreement “stipulated that adjustments of the IEBL must be carried out with the agreement of both entities, under the supervision of the international military force” (para. 6). Most recently, the RS politicians have threatened the rest of country with a referendum of secession “despite stringent objections from the Western community, which says the move violates the terms of the Dayton agreement” (Dervisbegovic, 2010, para. 2). Until such time as all war criminals are placed behind the bars, it will be hard to see a significant progress.

Bosnia and Herzegovina can make it on its own but not with the current structure in place. The Dayton Peace agreement stopped the war, but now it is time for true reform. The international community failed to intervene in time to prevent some of the most horrific atrocities committed against Bosniaks, including genocide which occurred in Srebrenica in 1995, when “almost 8,000 of them were rounded up and shot in an operation that required extraordinary levels of planning and logistics” (ICTY, 2004; Traynor, 2010, para 4). These atrocities occurred

under the UN watch (Grünfeld & Vermeulen, 2009). What happened in Bosnia was an act of war by neighboring countries, as explained by Dinstein (2003),

“Bosnia-Herzegovina emerged from the political ruins of Yugoslavia as an independent country, the conflict transmuted into an inter-State war by dint of the cross-border involvement of Serbian (former Yugoslav) armed forces in military operations conducted by Bosnian Serbs rebelling against the Bosnian Government (in an effort to wrest control over large tracts of Bosnian land and merge them into a Greater Serbia)(pp.7-8).”

The role of Serbia needs to be viewed in such context, including the fact that Serbian and Croatian presidents signed the peace accords. Serbian politicians’ continuous interference with domestic politics of Bosnia and support for nationalistic and separatist rhetoric, is a constant threat to peace and additional obstacle in implementing the agreement. While the United States made it on its own through difficult times and has progressed throughout history, except during the fight for independence, a separate study would need to be conducted to compare Bosnia and Herzegovina and the United States histories. One would need to take into consideration background information on the geopolitical situation in the Balkan region, the sphere of influences between Russia, United States, and the EU, historic rivalries in the regions, Serbia’s role in the aggression and genocide in Bosnia and its efforts to dominate regional politics, including attempts to influence policies and governance through its proxies in Bosnia and Herzegovina as well.

Furthermore, Bosnia and Herzegovina and its citizens are facing significant challenges within the current geopolitical context in the region, failed constitutional system, lingering

divisions, and the political influence Serbia continues to exercise in Bosnia. The need for significant changes supported by the international community is ever more pressing. The decision by the EU to allow a visa free arrangement for Bosnian citizens was a step in the right direction (Vogel, 2010). However, Jeffrey (2013) posited that “underpinning the process of European integration in BiH is a wider question of the political integration of sovereign states into transnational governmental entities” (p. 157). At such time when the international community calls out and addresses the Republika Srpska politicians’ efforts to what Jeffrey (2013) described as the ability to “create a discursive space to promote Europeanism, while simultaneously blocking constitutional and institutional reform that would assist Bosnian accession to the EU,” the Bosnia and Herzegovina stalemate will continue (p. 166)

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