

Gender Equality and Prohibition of Discrimination were passed at the state level in 2003 and 2009, respectively.¹³⁷ Together, these laws should ensure full equality in public life, as well as the private sphere.¹³⁸ A Gender Action Plan was adopted at the state-level in 2006 as well, with the attendant establishment of the BiH Agency for Gender Equality and entity-level Gender Centers.¹³⁹

Yet civil society critics believe that these bodies have not prioritized representation of women in political and public life. Article 19 of the Gender Equality Law mandates that 40 per cent of electoral lists consist of women; Article 20 calls for the same percentage of the “less represented gender” in executive political office.¹⁴⁰ But only two of the nine state-level ministers are women; ten of forty-two BiH MPs are.¹⁴¹ A civic coalition led by Sarajevo Open Centre calls for a fifty/fifty split in electoral lists with additional measures to ensure equality with the compensatory mandates, along with provisions to prevent legislature and government formation without the legally mandated 40 per cent female representation.¹⁴²

Yet this might amount to a perverse symbiosis between civil society and party leaders, some of whom have called for closed lists (as opposed to the current open ones, which allow voters to circle their preferences within party candidate lists) ostensibly to ensure gender equality. Closed lists also ensure “democratic centralism” and greater party leader control over already supine legislators. The result of the proposed reforms might well be more gender-balanced oligarchy rather than ensuring women genuine equal involvement in decision-making.

Constitutional Reform Efforts to Date

The root of the problem in BiH is structural. The Dayton system was designed as a power-sharing mechanism, *not* to provide democratic accountability or basic functionality. The vested interests which inhabit and benefit from the system have *no incentive* to adopt reforms, as it would destroy their political and economic life-support system. And the Gordian knot which the EU and other allied actors have yet to confront squarely is how such actors, supposedly *partners* according to the Union’s enlargement model, can be converted into change agents. They cannot – at least not with the current incentive structure. The system is like a bone poorly set in triage, which continues to cripple the patient years later. One has to break it to fix it.

Yet there have been attempts to change the constitutional order. A brief survey of these follows.

The Constitutional Court of Bosnia and Herzegovina, which includes three international justices along with two representing each of the

constituent peoples,¹⁴³ handed down a landmark ruling in 2000. The Court stated that all three peoples (and “others”) were constituent throughout the territory of the country, not just in “their” entity. The potential of this ruling to upend the ethno-territorial carve-up of Bosnia was massive, and its implementation was strongly contested. RS leaders feared the ruling threatened the very existence of the entity and were certain it would at the very least weaken it. While their fears were justified in the latter case, they remain largely unrealized.

When it joined the Council of Europe in 2002, Bosnia and Herzegovina undertook the obligation to bring its governance into conformity with the European Convention on Human Rights. Ever since, provisions in the constitution and Election Law have been the target of criticism by the Council of Europe’s Venice Commission, the Parliamentary Assembly of the Council of Europe (PACE), and the Council itself. The Venice Commission’s “Opinion on the Constitutional Situation in BiH and the Powers of the High Representative” in 2005¹⁴⁴ spelled out these problems in detail. Although its recommendations were not implemented, the Opinion was blunt in its assessment that the Dayton constitutional structure would surely impede the country’s progress toward the EU.¹⁴⁵

The US Institute of Peace and Dayton Peace Accords Project initiated the political negotiations among major parties which became known as the “April Package” after the failure to achieve passage in the BiH Parliamentary Assembly in April 2006 (by then pushed by the US State Department). The package would have done three main things: it would have written the state institutions formed after Dayton (the Armed Forces, etc.) into the constitution, it would have adopted amendments to ensure that no citizens were excluded from public office (obviating the need for the European Court of Human Rights’ Sejdić-Finci ruling in December 2009, which remains unimplemented), and it would have clarified the respective authorities of the entities and the state where there were shared competences. In addition, two new ministries – Agriculture and Science & Technology – would have been established to meet EU requirements. The reasons for the package’s failure to pass were many. Political opportunism on the part of Haris Silajdžić’s SBiH and the HDZ 1990 were two reasons. But a larger one may have been that, although the main RS parties were united in support, their contention that constitutional reform would end with this move had a sobering effect. Some deputies, even one from the SDA, a party which supported the package, determined that what was on offer was simply not compelling enough to warrant a feared American withdrawal from BiH politics and the closure of the OHR. In any case, the failure of the April Package did much to further poison an already curdling political atmosphere.¹⁴⁶

In November 2008, the leaders of the three largest Serb, Croat, and Bosniak parties¹⁴⁷ met in Prud, a village in northeastern Bosnia, after which they announced that they had agreed on how to complete the remaining “5+2” requirements for closure of the Office of the High Representative (OHR), as well as on a census. Among the benchmarks set by the PIC earlier that year was a completion of an agreement regarding the supervisory regime over Brčko District, including a constitutional amendment to define its position as a unit of local self-government and get right of redress at the BiH Constitutional Court. When it came time to operationalize the framework deals, it became clear that there were wide chasms in interpretation. Despite much international cheerleading and wishful thinking, the “Prud process” was dead by early 2009.

At the beginning of October 2009, US Deputy Secretary of State James Steinberg and Swedish Foreign Minister Carl Bildt, representing the EU Council Presidency, announced that they would convene negotiations among BiH party leaders to achieve a package of constitutional changes which would facilitate progress toward EU and NATO membership – and the closure of OHR. It seemed that for the EU representatives that OHR closure was the primary goal.¹⁴⁸ It is noteworthy that, while EUSR and High Representative Valentin Inzko was made a mere observer, his predecessor (now Slovak Foreign Minister), Miroslav Lajčák, was seated with Bildt. The entire process seemed calculated to portray the OHR as an irrelevance or an impediment to progress. By the end of negotiations, the proposed Butmir package provided that the number of members in the House of Representatives was to more than double from forty-two to eighty-seven, with three members set aside for national minorities. The number of members in the House of Peoples was to increase from fifteen to twenty-one, but its method of operation would remain the same, leaving the system just as vulnerable as heretofore to the “vital national interest” veto. The Presidency was to change to have a single president with two vice presidents, rotating every sixteen months. The Council of Ministers would have been strengthened. The talks ended acrimoniously. The SDA alone proclaimed its readiness to accept the proposal, but even then only after it was already dead.

The final attempt at any constitutional change was focused not on state functionality, but simply on getting the European Court of Human Rights’ (ECtHR) December Sejdić-Finci ruling implemented. Soon after the ruling, the Croat nationalist parties – the HDZ BiH and HDZ 1990 – reframed what was a ruling to ensure rights for those not identifying as one of the three constituent peoples as one that had to address whether Croats were assured that they would elect the Croat BiH Presidency member. The RS Government supported the HDZs’ position. The EU Delegation

developed proposals for weighted voting, an “electoral college,” and other ideas to attempt to square the circle. But the SDA and SDP eventually rejected such proposals as infringing on the equality of the franchise. Those close to the process reported that every time there appeared to be a deal in the offing, HDZ BiH leader Dragan Čović would up the ante.¹⁴⁹ Finally, in the immediate wake of the February 2014 public demonstrations in Sarajevo, Enlargement Commissioner Štefan Füle announced that he would no longer pursue the fruitless talks.¹⁵⁰ No attempts at any constitutional or structural change have been made since. The German-British initiative on BiH, adopted by the EU in December 2014 (now termed “the Reform Agenda”), kicks implementation of the Sejdić-Finci ruling into the long grass, along with *any* structural or constitutional reform, in the hope of kick-starting with economic reforms BiH’s long-stalled progress toward ultimate EU membership.¹⁵¹ The fact that an application has been delivered does nothing to facilitate actual progress on the “European path.”

Conclusion: Running on Empty

The nature of BiH’s political system and its incentive structure should now be clear to all those who wish to see. Yet, like former South African President Thabo Mbeki’s stubborn insistence that HIV did not cause AIDS,¹⁵² despite a decade of evidence to the contrary the international community – and particularly the EU – maintains its position that the EU enlargement process *will* impel reform by BiH political elites.

Nor did the results of the 2014 general elections drive fundamental change. The constant international community refrain that citizens should reject current policies and vote for those who will drive change can be gutted by the obvious (and frequent) question: “If I want to vote for change, for whom do I vote?”¹⁵³ At least in the views of many civic actors and citizens at large, there were no such choices on the political menu. Turnout figures demonstrated diminution of the already limited faith in the electoral process. Voters participated under the current systemic incentives – fear of losing jobs, fear of ethnic domination, promise of patronage, etc. – not any hope for meaningful change.¹⁵⁴ Voting behavior for a large segment of the electorate was purely transactional.

Though it is *theoretically* possible to change the system through the system, given the incentives under which political actors and citizens operate, it has proven impossible *in practice*. The only alternatives are: (1) changing the incentives under which political actors operate, to compel them to change the system, and/or (2) to press for or support systemic change from outside the formal political structures.¹⁵⁵

While the February 2014 protests did not lead to any loss of life or inter-ethnic violence, the drivers for these protests have not dissipated. Social discontent is now *more* pronounced, and likely to intensify. Attempts to assess the potential for organized violence have concluded that the ingredients are all there in abundance.¹⁵⁶ While a popular impetus for inter-ethnic violence has not been manifest, political actors did indeed try to deflect or hijack the energy of the February 2014 protests to their own ends, with Dodik and Čović in particular attempting to characterize them as anti-Serb and anti-Croat, respectively, to insulate themselves from popular dissatisfaction in their own fiefdoms.¹⁵⁷ Future unrest may or may not take on an ethnic dimension; if it does, it will most likely be the result of efforts of established elites to steer it in that direction for their own survival or gain rather than anything organic.

The political development of BiH since Dayton clearly stalled some time ago, coincident with a shift in international philosophy of engagement and resulting posture toward BiH. Yet while the level of popular frustration with the functionality of BiH governance became audible and visible beyond the cafés (where it has been so for some time) with the February 2014 protests and plenums, the international response remains autistic. Following the protests and floods there was – at least in BiH – the recognition by many international actors that business as usual could not work. Yet the only result thus far has been the German-British initiative and EU Reform Agenda, which aims to prompt socio-economic reforms while avoiding the fundamental structural impediments to progress. The window of opportunity provided for a fundamental rethink of approach, provided by the “wake up call” of the protests and the display of government haplessness with the May 2014 floods was squandered.¹⁵⁸ Spectacular terror attacks in France, the rise of the Islamic State, and the mass refugee influx into Europe have made stability the *idée fixe* of Western policymakers, reducing the appetite for policy reassessment even further. The policy remains on bureaucratic autopilot and will likely remain so until there is an even stronger shock to the system.

Notes

1. Ola Listhaug and Sabrina P. Ramet (eds.), *Bosnia-Herzegovina since Dayton: Civic and Uncivic Values* (Ravenna: Longo Editore, 2013).
2. Dieter Nohlen and Philip Stöver, *Elections in Europe: A Data Handbook* (Nomos, 2011), cited at en.wikipedia.org/wiki/Bosnian_general_election,_1990 (last accessed on 30 January 2015).

3. Sabrina P. Ramet, *The Three Yugoslavias: State-Building and Legitimation, 1918–2005* (Washington D.C. and Bloomington: The Woodrow Wilson Center Press and Indiana University Press, 2006), p. 388.
4. Ramet, *The Three Yugoslavias*, p. 417.
5. Yet the war came earlier to the Herzegovinan – and Croat-majority – town of Ravno in October 1991, connected to the Yugoslav siege of Dubrovnik. See Duško Doder, “Yugoslav Town Offers up Secrets of Army’s Terror,” in *Baltimore Sun* (10 December 1991), at http://articles.baltimoresun.com/1991-12-10/news/1991344094_1_ravno-yugoslavia-yugoslav-army (last accessed on 17 February 2015).
6. Marko Attila Hoare’s excellent *How Bosnia Armed* (Saqi Books/The Bosnian Institute, London, 2004) covers this process in detail. See in particular chapter 3, “Politicization of the Bosnian Army,” beginning on page 81.
7. This figure will surely be revised further downward when the preliminary census data is finalized.
8. “New War Demographics Feature on ICTY Website,” Press Release, ICTY, 29 March 2011, at www.icty.org/sid/10622 (last accessed on 28 February 2016).
9. From Powerpoint slideshow, “Human Losses in Bosnia and Herzegovina, 1991–95,” received from Research and Documentation Center, Sarajevo, 2007.
10. *Ibid.*, slide 35.
11. *Ibid.*, slide 36.
12. *Ibid.*, slide 43.
13. “Global Overview 2011: People Internally Displaced by Conflict and Violence – Bosnia and Herzegovina,” *UNHCR*, at <http://www.refworld.org/category,COI,IDMC,,BIH,4f97fb679,0.html> (last accessed on 28 February 2016).
14. *2002 UNHCR Statistical Yearbook – Bosnia and Herzegovina*, at www.unhcr.org/414ad5707.html
15. Ramet, *The Three Yugoslavias*, p. 467.
16. Olivera Simić, “Gender (In)equality in Bosnia and Herzegovina: One Step Forwards, Two Steps Back,” in Christine M. Hassenstab and Sabrina P. Ramet (eds.), *Gender (In)equality and Gender Politics in Southeastern Europe: A Question of Justice* (Basingstoke: Palgrave Macmillan, 2015), p. 16.
17. See National Human Development Report, Executive Summary, *The Ties that Bind – Social Capital in Bosnia and Herzegovina*, UNDP, 2009, at www.ba.undp.org/content/dam/bosnia_and_herzegovina/docs/Research&Publications/NHDR/BiH_NHDR_2009_The_Ties_that_Bind_Summary_EN.pdf (last accessed on 28 February 2016).
18. Ramet, *The Three Yugoslavias*, p. 468.
19. “Bosnian Bear Refugees Head for Italy,” in *New Scientist*, 12 February 1994, at www.newscientist.com/article/mg14119121-200-bosnian-bear-refugees-head-for-italy/ (last accessed on 28 February 2016).
20. Nidžara Ahmetašević, “Bosnia’s EU Application Masks Turmoil,” in *euobserver*, 11 February 2016, at <https://euobserver.com/beyond-brussels/132174> (last accessed on 28 February 2016).