



ORIGINAL PAPER

Democracy in Bosnia and Herzegovina: Moving Beyond Dayton

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Abstract

This article will focus on post-conflict development in Bosnia and Herzegovina and explore the legacy of the Dayton agreement which not only divided the country but also established a perplexing political system and the lasting international supervision. The article will seek to analyze the underlying conditions that hinder Bosnia's political and economic development and the role of internal and external actors in the process of achieving consolidated statehood.

Keywords: *Bosnia and Herzegovina, limited statehood, consociationalism, state-building, Dayton agreement, democracy, international protectorate*

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Introduction

Last year marked the twentieth anniversary of the Dayton agreement that ended the bloodiest conflict in Europe since the World War II. This was an opportunity for scholars and policy makers to reflect on the current political situation in Bosnia and Herzegovina and draw conclusions about the success of the international state-building and democracy promoting engagements in the Western Balkans. Foreign observers as well as local political leaders agree that the Dayton agreement has ran its course and prevents the country from moving forward in implementing necessary and long overdue reforms. Nevertheless any amendment to country's Constitution (which is in fact integral part of the peace agreement) threatens to potentially destabilize the fragile ethno-political balance and trigger a new wave of violence. This article will analyze the political framework established by the 1995 Dayton agreement and examine it in the light of pervasive ethnic divisions, broken consociational democracy and continuous international supervision. It will argue that the long-lasting political gridlock is caused and cemented by the peace agreement itself which continues to impose serious constraints to development and achieving stable and consolidated statehood. The first section will introduce the political setting in BiH that was established by the Dayton agreement and focus on main challenges it poses to democracy and good governance. The following section will provide a brief overview of consociational democratic systems and conditions necessary for its success. The final part will examine possible ways to reform the system and move closer to becoming a sovereign democratic state rather than persisting in its position of a weak and fragmented state under international supervision.

Dayton political system

Dayton is one of the most frequently used words on the evening news. It is a noun, a verb, an adjective – a synonym for inertia, neglect and despair.

J. Berger

After numerous attempts to end the war in BiH that took more than 100.000 lives and destabilized the whole region, the Clinton administration lead by Richard Holbrooke made the final attempt to work out an agreement. The peace agreement that was hammered out in Dayton, Ohio (and officially signed a few weeks later in Paris) was a compromise that left all sides unsatisfied, it *'formally ended the war, but did not address the underpinning conflict. The major conflict lines within Bosnian society thus remain essentially unresolved.'* (Dzihic-Weiser, 2011: 1804). This condemned the citizens to living in a state of continuous tensions, in the absence of war, but never quite at peace (Berger, 2015). The Constitution which is the article IV of the Dayton Agreement was meant to be a temporary solution that would hold the country together until a new, more effective and more democratic constitution would be designed in cooperation with the local parties. Instead, it became a major obstacle to moving forward and a source of continuous instability. The political system that was established in BiH as a result of the Dayton Agreement is one the world's most complicated and least effective political systems. If there is a single feature that captures the essence of the state structure of BiH, it is decentralization in extreme forms (Bose, 2002). The Dayton Agreement divided the country into two entities, the Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS), as well as a third, self-governing unit, Brcko District (Brcko District was

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established in 1999 as a result of international arbitration. It was decided that it would be shared between RS and FBiH as a condominium. The city is in fact a mini-state possessing its own government, constitution and institutions). The territory was divided almost equally between the entities (RS 49%, FBiH 51 %) and this principle provided legitimacy and international recognition for territorial gains made during the war. Entities were granted extensive competencies that turned them into “states within state” and made the central state government weak and dysfunctional. Entities have almost all features of independent states such as defined territory, population, government, constitution, judiciary, flag, anthem, and right to conclude foreign treaties (called ‘special parallel relationships’). The central government exercises little control over the entities and its competencies are limited to areas of foreign relations, customs and monetary policies (Kasapovic, 2005: 5). Fragmentation of state authority was increased by additionally dividing FBiH into ten cantons that also have their own governments and administration structures. As a result, for the past twenty years the country has been governed by no fewer than 14 governments – one at the state level, two at the entity level, ten at the cantonal level and one for Brčko District (Noutcheva, 2007: 6). Such degree of fragmentation of power makes the political system ineffective, costly and locked in overlapping competencies of various state institutions. Apart from central and entity governments the political system is overseen by the Office of the High Representative whose initial role was to oversee the implementation of the Dayton agreement and ensure peaceful cooperation between ethnic groups. However, his competencies as well as his role in domestic politics gradually grew to the point where he could issue binding decisions, remove democratically elected politicians from office and impose laws (the so called ‘Bonn powers of the High Representative’).

This degree of international supervision seriously undermined state institutions and turned the country into an international protectorate that cannot exercise full sovereignty on its territory. Besides establishing the perplexing political system, the Dayton agreement also divided the country on ethnic lines by creating constitutional categories of ‘constitutive peoples’ which included Bosniaks/Muslims, Serbs/Orthodox and Croats/Catholics and a category of ‘Others’ which comprised of citizens who did not identify themselves with any of the above mentioned ethnic groups (primarily ethnic minorities and citizens of mixed origin). The last population census that was held in 2013 revealed that around 3 % of the total population belonged to the category of ‘Others’ (see Table 1).

Constitutive groups were given political dominance while pushing minority groups to political marginalization and limiting their rights and influence (most notably the case of *Sejid-Finci vs. BiH* attracted international attention to constitutional discrimination of minorities in BiH; In 2009 the European Court for Human Rights ruled that the Constitution had to be amended in a way that would ensure equal rights to all citizens, regardless of their ethnic and religious background; in the following period the implementation of the ruling became a stumbling block on the country’s path to EU membership and lead to suspension of Stabilization and Association Agreement; the ruling has still not been implemented as political elites fail to agree on necessary reforms of the electoral law). Commenting on the position of minorities in BiH, Bosnian political scientist, Nenad Velikovic, points out that Bosnian citizens continue to “*vote for parties that use threats and fear to maintain the fragile balance of the Dayton iceberg, and by doing so accept to keep their Jewish and Roma neighbors at the level of lower beings in*

the evolution of Bosnia and Herzegovina as a society where hatred is cherished as culture“ (Veličkovic 2014).

Table 1. Population by national/ethnic affiliation

| Population by national/ethnic affiliation, Level of FBiH, RS and BD | | | | | | | |
|---|-----------|-----------|---------|-----------|--------------|--------|-----------|
| Area | Total | Bosniak | Croat | Serb | Not declared | Other | No answer |
| BiH | 3,531,159 | 1,769,592 | 544,780 | 1,086,733 | 27,055 | 96,539 | 6,460 |
| FBiH | 2,219,220 | 1,562,372 | 497,883 | 56,550 | 18,344 | 79,838 | 4,233 |
| RS | 1,228,423 | 171,839 | 171,839 | 1,001,299 | 8,189 | 15,324 | 2,127 |
| BD | 83,516 | 35,381 | 17,252 | 28,884 | 522 | 1,377 | 100 |

Source: data according to Agency for Statistics of BiH retrieved from: <http://www.popis2013.ba/popis2013/doc/Popis2013prvoIzdanje.pdf>

Political dominance of constitutive groups was additionally secured through the introduction of veto rights that were extensively used to block any laws and reforms that were not in line with self-defined national interests of the constitutive peoples. Since Dayton, the entity veto has blocked over 160 legal acts and proposals. The RS has used the entity veto to block 140 of these 160 laws. Due to this blockage, the High Representative has used the Bonn Powers to impose legislation 112 times (Dzihic-Weiser 2011: 1806). The veto right not only led to increasing polarization and hostility in domestic politics but also pushed the state parliament to the margins of decision-making, turning it into a passive observer of negotiations between entities. Every single aspect of life in BiH is hostage to ethno-nationalist discourse that dominates activities of political parties, media and civil society actors. Atajic draws attention to this reality: *“Everything – from the greeting you use to the dialect you speak and the newspaper in your coat pocket – is judged, commented upon and categorized in terms of an omnipresent, mysticised ‘ethnicity’. Under such circumstances, defining oneself as a citizen of the BiH state is tantamount to a betrayal of one’s national identity”* (Atajic, 2002: 118).

Based on this, many scholars (Mujkic, 2007; Dzihic-Wieser, 2011; Gromes, 2007; Solioz and Vogel, 2004; Bieber, 2006; Brljavac, 2011) came to agree that the current Bosnian political system can be identified as ‘ethnocracy’. This type of system gives precedence to ethnicity as the main bearer of political rights and relies on inter-ethnic tensions for gaining political legitimacy: *“In the context of this kind of politics, a preference for collective representation strips the category of citizens of any legitimacy and leads to a situation in which constitutional and institutional discrimination pervades virtually all public life. Such a deeply internalized form of discrimination creates a fertile ground for a deepening of differences, maintaining negative tensions and therefore utilizing ‘ethnicity’ for political purposes”* (Dzihic-Weiser, 2011: 1805).

Considering that national interests of individual groups are diametrically opposed, (e.g. Bosniak’s desire to abolish entities and create a unitary state, separatist ambitions of the Republika Srpska that hopes to achieve independence and Croats’ wish to create a third entity that would ensure their equality and an escape from being dominated by Bosniaks in FBiH) it is extremely difficult to reach a compromise and find solutions that would be acceptable for all parties.

Political parties exercise unchallenged power over reforms and decision-making process and their strong position lead to labeling Bosnia’s political system as partitocracy

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– the rule of political parties. Interestingly, the political scene continues to be dominated by the same political parties that led the country to conflict and their power limits the chances of new parties to compete and make any significant impact. Since the introduction of multi-party system three parties have regularly won the elections - the Bosniak's Party of Democratic Action (SDA), the Croat Democratic Union (HDZ BiH) and the Serb Democratic Party (SDS), representing Bosniaks', Croats' and Serbs' interests, respectively (see Table 2).

Table 2. Major political parties in BiH

| | Founded | Party Profile | 2014 result |
|--|---------|---|-------------|
| SDA (Party of Democratic Action) | 1990 | <p>Profiled itself as the main representative of Bosniaks, and has regularly won cross-country elections.</p> <p>Defines itself as “the bearer of the political emancipation of the Bosniaks and a key political factor in the defense of the state and legal continuity of BiH.” The party strongly supports the EU integration</p> | 18.74 % |
| SDS (Serb Democratic Party) | 1990 | <p>Centre-right, conservative party founded by Radovan Karadžić</p> <p>Emphahizes the importance of historic roots and traditional Serbian political thought and the preservation of traditional national (Serbian) spiritual, cultural, and democratic values Strong connections to the Serbian orthodox church as a basis for spiritual renewal. Supports the EU membership (but stresses the importance of referendum on such issue)</p> | 12.97% |
| SNSD (Alliance of Independent Social Democrats) | 1996 | <p>Nationalist conservative party representing the interests of Bosnian Serbs and openly advocating independence of Republika Srpska. The party is dominated and inseparable from its leader Milorad Dodik who is also the president of Republika Srpska (preceeded by two terms as a prime minister).Despite the anti-Western rethoric the party supports the EU membership and promotes efforts to fullfil all necessary conditions.</p> | 15.64 % |
| HDZ (Croatian Democratic Party BiH) | 1990 | <p>Offshoot of the same political party in Croatia. Profiles itsel as a party protecting vital national interest of Croats living in BiH. Keeping close ties to the Catholic church and political leadership in Croatia. Supports the EU integration (as a way of bringing Croats in Bosnia closer to Croatia)</p> | 7.54 % |

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|---|------|--|--------|
| SDP (Social Democratic Party of Bosnia and Herzegovina) | 1991 | Offshoot of the League of Communist of Bosnia and Herzegovina. Profiles itself as multi-ethnic party, protecting the interests of allconstitutive nations (despite that it gains limited support from Serbs and Croats). EU membership is a long-term strategic goal | 6.66 % |
| DF (Democratic Front) | 2013 | Newly formed left oriented party. The party adheres to an absolute equality of all individualities, religions, nationalities, and respect of individual freedom and to the recognition of distinct ethnic identities. Strong support for EU and NATO membership | 9.24 % |

Source: Author's own compilation

Foreign observers have noted that when it comes to political parties, the biggest threat to Dayton system is posed by repeated calls for holding a referendum for independence in Republika Srpska that would result in increased tensions and destabilization of the entire region. The leader of SNSD and the current president of Republika Srpska, Milorad Dodik, on many occasions stated that what happens in central institutions or in FBiH is to him foreign policy and does not concern him (Dodik: *Za mene je inostranstvo to sta HDZ i SDA rade u Federaciji BiH*, 2016). On the other hand, Bosniak leaders have referred to Republika Srpska as an entity built on genocide. This type of rhetoric increases inter-ethnic tensions and forces the citizens to choose a side in the never-ending cycle of political quarrels. The complexity of the political system also reflects on the attitude of political leaders who denied responsibility for country's problems and refuse to reach a compromise even under growing international pressure: *"Bosnia's political leaders have demonstrated in abundance that they are unwilling to agree to anything that would make the central government more effective. They feel comfortable in a dysfunctional state whose laws and constitution guarantee them the power of patronage and of a never-ending stream of finance from public and semi-public enterprises without any sort of accountability"* (Vogel, 2015). Moreover there is an all-present and increasing frustration among politicians and citizens for being forced to live in a dysfunctional system that was imposed from the outside and could not be reformed for more than two decades.

Challenges to consociationalism in BiH

Building democracy in mixed and divided societies is a difficult task and even more so if a country carries a heavy legacy of genocide and inter-ethnic conflict. BiH remains the most divided country in Europe (Reilly, 2001: 143) and its political culture is dominated by fear, mistrust and suspicion. During the peace agreement negotiations, consociational system of government seemed as the only viable type of democratic system that would accommodate various ethnic interests and enable cooperation and consensus among different groups. According to Kasapovic (2005) opting for consociational type of democratic system in BiH was justified by the fact that the country was ethnically and religiously divided, it had previous experience with some sort of consociational set-up and the fact that national cleavages were territorialized and politically institutionalized in the post-war period (Kasapovic, 2005, 8-9). The author mentions previous experience dating "from the millet system in the Ottoman Empire", and of the "model of political consociationalism based on the principles of proportionality and

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parity during the Austro-Hungarian Monarchy, to the “national key” quota system also based on the principles of proportionality or parity in the representation of Muslims, Serbs and Croats in party, government and even social institutions and organizations in the communist Yugoslavia” (Kasapovic, 2005: 7). Nevertheless, the country also faced significant unfavorable factors, most prominently radical nationalism and external threats coming from neighboring countries. According to Arend Lijphart’s classification, consociational model of democracy is built on following grounds: 1. Executive power sharing in broad coalition cabinets; 2. Executive-legislative balance of power without resignation of the government; 3. Multiparty system ; 4. Proportional representation; 5. Interest-group corporatism; 6. Federal and decentralized government. The power is shared between the central (federal) government and the federal units in the composition thereof; 7. Strong bicameralism; 8. Constitutional rigidity; 9. Judicial control (revision); 10. Independence of central bank (Lijphart, 2003: 97-105). The emphasis is put on consensus building on the level of political elites as the key to success and stability of the system. Ideally this type of system should be home grown and not imposed from the outside. Moreover, consociational system should be only transitional and eventually replaced by standard democratic system. Robert Dahl further develops these ideas and stresses that consociationalism requires other favorable conditions (Dahl, 1999: 348). The most essential condition is that political elites are convinced that consociational system is desirable and motivated to make the system work. They should also be aware that other alternatives to this system are likely to lead to conflicts with serious consequences. Political elites should therefore play the role of consensus builders and encourage an atmosphere of cooperation and respect. Sartori (2003) points to the contradictions that are ingrained in this type of system that defines the most important condition for successful functioning of a consociational democracy as :*„cooperation between elites which are consistent in their decision to fight against dis-integrative tendencies of their societies; however, this necessary and indeed decisive condition disappears in the definition of consensual democracy“* (Sartori, 1994: 91) He further criticizes the proportionality principle and veto rights for encouraging divisions: *“If you award divisions and the spirit of division (and that is exactly what proportionality and veto right do), the divisions and the spirit of divisions are increased and enhanced. And then the mechanism which Lijphart ultimately recommends can rather cause the termination of consensus than its production“* (Sartori, 1994: 93).

When these principles are applied to BiH it becomes clear that the Dayton political system poses serious constraints to proper functioning of consociationalism. While the main idea was to make all three ethnic groups in BiH feel equally represented in a state that would be built on consociational foundations, important aspects have been overlooked and given scant attention. The first weakness of the system lies in the attitude of political elites. The ruling elites in BiH that are meant to be the guardians of the consociational system and encourage inter-ethnic cooperation and the spirit of unity and reconciliation, are the very actors that cause the fall of the constitutional order. Their persisting ethno-nationalist rhetoric and policies that threaten and undermine positions of other groups are contrary to functioning of the consociational system. The system did not develop naturally and was established with minimum consent of local parties and overwhelming international pressure to end the conflict. This reality compromised the system from the very beginning as the leaders saw other alternatives as potentially better and more fitting to their ambitions (e.g. winning the war and gaining the whole territory or establishing political dominance of their respective ethnic group). BiH therefore faces

a paradoxical situation as the implementation of the Constitution depends on those who are most likely to sabotage it (Belloni, 2006: 338). Another weakness is found in established veto rights that increase ethnic divisions and encourage discrimination of minority groups. Veto rights given to constitutive groups work against consensus-building and allow political leaders to block any reform process. Lijphart imagined consociational system as a temporary set-up that would eventually be replaced by a standard democratic system. In regards to political reality in BiH it is difficult to imagine that the country could be transformed into a standard democratic state in the foreseeable future. The attempt of establishing a consociational state in hopes of later transforming it „represents nothing more than an attempt of a “trade-off” between accepting a weak state or conflict that would result in the state’s collapse“ (Balic-Izmirlija, 2013). The potential success of consociationalism in BiH is further burdened by deteriorating economic situation, high unemployment, wide-spread corruption and low living standards. According to data from Eurostat, in 2015 Bosnia was ranked as the poorest country in Europe measured by GDP per capita, which is only 28 % of the EU average (Eurostat NewsRelease, 2015).

Such conditions lead to alienation of citizens from the state and identification with national leaders who are perceived as the only legitimate representatives. Active involvement of neighboring countries into domestic politics of BiH is another major obstacle to consociationalism as they encourage local political leaders to continue defending their ethno-nationalist positions while rejecting and obstructing the functioning of the central state government. For example, Republika Srpska enjoys significant support from Serbia and maintains close ties with Serbian political leadership while not hiding its ambitions to eventually create a union with Serbia. Similarly, the most popular Croat party in BiH, HDZ is an offshoot of the same party in Croatia. They maintain close relations and define common strategies for improving position of Croats in Bosnia and resolving the so called “Croat question” in BiH (‘Croat question’ in BiH is used to refer to unequal status of Croats among constitutive groups considering that they are the smallest in number and sharing the same entity with more dominant Bosniaks. This situation and the lack of clarity in the electoral law lead to election of Croat member of tripartite state presidency (Zeljko Komsic) by majority of Bosniak votes). All listed factors negatively reflect on possibilities of reforming the constitution and overcoming the complexities of the current system.

Moving beyond Dayton?

In the aftermath of conflict the EU took a more active role in BiH and gradually evolved from being a civilian power to becoming the main normative power that provided both, guidelines and incentives, for implementing reforms that would eventually bring the country closer to EU membership. It was expected that with such level of EU’s commitment, country would quickly move from Dayton era to Brussels era and finally overcome its troublesome past. This was easier said than done as the progress has been painfully slow and challenges seemed to be increasing in number and gravity. In February 2014 the country experienced wide-spread riots and protests that turned into violence against state institutions and government officials. It seemed that the political crisis had reached its peak and citizens were no longer willing to remain silent. The media quickly labeled the protests as “Bosnian Spring” with hopes of getting long over-due reforms back on track. Even though the protests quickly gained momentum, they only lasted for a few weeks and failed to achieve any profound political change. Following the weeks of civil

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unrest the country was hit by severe floods that caused serious damage to country's infrastructure and deepened the economic and political crisis. As a result, the EU had initiated a new approach which provided for "the re-sequencing of the conditionalities in order for the country to progress towards the EU and address the outstanding socio-economic challenges it faces" (EC Progress report 2015: 1). The EU adopted a pragmatic approach and reduced some of its immediate demands in hopes of encouraging political leaders to implement more pressing reforms. The responses to EU's policies were mixed considering that the EU membership perspective seemed illusive and standing at the end of a very long and a very dark tunnel. Moreover, the political elites became disillusioned and frustrated with the EU's demeaning attitude towards them. Gerald Knaus captures the essence of this frustration in the following statement: "For more than a decade now European institutions have discriminated against Bosnia, demotivating reformers, disheartening civil servants and undermining progress. The EU has acted like a strict teacher constantly telling her pupils how lucky they are to be allowed into the school canteen despite being corrupt, lazy and generally hopeless; and that every achievement or successful reform is the result of the work of foreigners, while for every failure Bosnians are the only ones to blame" (Brussels – European future of Bosnia and Herzegovina – 20 years after Dayton-Paris Peace Agreement, 2015). Despite the fact that the success of the EU's involvement in BiH has been limited and disproportional to the scope of invested efforts and financial funds, the EU membership perspective remains the country's most optimistic scenario for the future. All other alternatives seem to be far more risky and threaten to turn the Dayton agreement into a mere ceasefire.

A way out of this political gridlock cannot be found in trying to make the EU membership carrot more attractive for the current political leaders but in shifting the focus to educating a new generation that would be able to see beyond the ethno-nationalist narrative. This approach would be the start of the real transformation of the political culture that would no longer perceive compromise as political defeat. Only then the focus can move from counting the dysfunctionalities of the Dayton system to actually reforming it.

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