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The hour of Europe has not yet passed: The need for a proactive EU policy in Bosnia and Herzegovina

The EU's policies in the Balkans have been a dizzying zig-zag in the past year. First, the refusal to open accession talks with North Macedonia and Albania, although later reversed, sent a horrible signal of lack of EU engagement in its own backyard.¹ Then Croatia sought to invigorate policy through an EU-Western Balkans Summit in May, which probably had its impact limited by being forced online by the Corona pandemic. Then, in October 2020, the European Commission (EC) congratulated itself on the “major developments” on its enlargement agenda since taking office.² And then in November came Bulgaria's blockage of talks with North Macedonia, over a bilateral issue that, frankly, baffled all but the two countries in question. Even so, these developments still leave Kosovo and Bosnia and Herzegovina (BiH) as the last two countries in the region not yet on an actual membership track. Of the two, Kosovo's main problem concerns international recognition; BiH, on the other hand, is simply falling behind the rest.

Twenty-five years after the country's war ended with the Dayton/Paris Agreement, Europe's third poorest country remains fragile and dysfunctional. As for the EC, its formal *avis* on BiH's membership application, in May 2019, was damning, all but saying that its political system stands in the way of progress, and that the political accession criteria cannot be met under the current constitution.³

The goal of EU membership is one which all leading Bosnian politicians pay at least lip service to, and which nobody publicly oppose. Public opinion – 75% supporting accession and only 18% against – is clearly in favour across all three major ethnicities.⁴ The attractions of membership are obvious: BiH would gain access to structural and regional funds significantly larger than the currently available pre-accession funds. The EU already accounts for 65% of BiH's foreign trade, and deeper integration in the single market would boost the economy.⁵

For the EU, the calculus is of a different sort. Clearly, a small and relatively poor country will not add much economically to the EU. However, risking a BiH permanently left behind is not in the EU's interests either, nor in the interest of regional stability.

And if recent history has shown anything, it is that the enlargement process has been the EU's most effective tool for pursuing stability and positive change in its neighbouring regions.

The political situation in Bosnia and Herzegovina is dire, and the EU is the only external actor with the right capabilities for pushing change. Doing so will require significant rethinking of policy, and significantly more attention than the EU has devoted to BiH in a long time, but it has to be done if positive change is going to come.

Why is BiH in trouble?

To understand BiH's political problems, one must note that the country does not so much have a constitution as a peace agreement. The Dayton Agreement's Annex 4 contained an interim constitution, which created a byzantine political system in which the country was split into two 'entities' – Republika Srpska (RS) and the Federation, the latter further subdivided in ten cantons with significant autonomy. While Dayton succeeded in its primary purpose – ending the war – it also contributed to freezing the ethnic divisions along the old ceasefire lines. Its framework is unloved on all sides; nobody ever voted for it, nobody feels much ownership to it, and it is widely blamed for the country's toxic political culture – the failure to change the interim constitution being in itself symptomatic of the deeper political malaise.

A notable example of consociationalism, Dayton shared power between the three main ethnicities – Bosniaks (50%), Serbs (31%) and Croats (15%) – whether through territory or ethnic quotas. Ethnicity determines who can be members of the country's tripartite presidency, and who can sit in the parliamentary upper chamber, the House of Peoples – a state of affairs that the European Court of Human Rights in 2009 ruled in violation of the Convention on Human Rights. The EC's *avis* noted the constitution's emphasis on ethnic belonging rather than civic citizenship: “The country faces a number of structural issues stemming from its complex institutional set-up coupled with ethnicity-related procedures that adversely affect its functionality.”⁶

Nationalist parties dominate politics. The three major parties SDA (*Stranka demokratske akcije*) among Bosniaks; SNSD (*Savez nezavisnih socijaldemokrata*) among Serbs; and HDZ (*Hrvatska demokratska zajednica*) among Croats – are all openly sectarian, ethno-nationalist parties. The system's decentralised nature, and the fact that most elected positions need only pluralities within each ethnicity, encourages divisive positions and nationalist posturing, and mostly leave moderate forces unable to break through. The informal norm of *majorizacija* – that any major decision must be passed by majorities within each of the three main ethnicities to be 'legitimate' – creates further potential for political logjam, leaving some commentators to lament, that political progress only ever happens through insistent diplomatic efforts from the West.⁷

The international High Representative (HR), Valentin Inzko's regular report on the situation in BiH to the UN Security Council, in May 2020, reads like a litaney of complaints about obstructive politicians.⁸ Nobody is innocent. SNSD leader and presidency member, Milorad Dodik, often complains, not entirely unjustified, that Bosniak politicians are obsessed with RS and consider it an end in itself to move competences from the entities to the central level. Yet, he provides plenty to obsess over, as RS frequently (mis)uses its powers to pursue divisive, nationalistic projects, stoking separatism and militarizing the entity-controlled police force.⁹ And so, any talk of future constitutional reform often descends to the SDA calling for a unitary state, i.e. abolishing RS, which is anathema to Serbs. Their leaders, on the other hand, talk of RS secession, whether for independence or to join with Serbia, or, as their 'moderate' fallback position, to completely gut all national institutions, not least the Constitutional Court, and transfer powers back to the entities. The Croats of HDZ, for their part, mostly seek to perpetuate the worst aspects of Dayton, demanding a third ethnic-based entity similar to RS.

This political play-acting has real consequences. Since 2015 BiH has become a notorious bottleneck for migrants seeking passage to Europe. Although strengthening the capacity of national border guards and migration agencies might seem the rational approach, the two entities instead seek to fob the problem off on each other.¹⁰ After the October 2018 general election it took more than a year to form a government, a major hold-up to the coalition talks being BiH's potential membership of NATO. Shortly thereafter, in February-March 2020, followed an example of Dodik's brinkmanship, as he

once more pushed the threat of secession, demanding significant reforms to the Constitutional Court and the winding down of the international presence.

This was soon overshadowed by the Corona crisis, which was itself not handled, not even coordinated at the national level, the entities each charting their own, sometimes mutually contradicting strategies. However, even the pandemic led to some eyebrow-raising, many say corrupt decisions in procurement of medical equipment.¹¹ Even the local elections, held on 15 November, came close to cancellation due to lack of funding, as no state budget for 2020 was passed until late July.

Against this backdrop, the economy underperforms: growth averaged 3.8% in 2014-2019, but with a GDP p/c of \$6,073, just 35% of the EU average, convergence will take several decades.¹² Attracting foreign investments is difficult, not helped by BiH's low rankings of 90 for 'ease of doing business' and 183 for ease of starting a business.¹³ Official unemployment stands at 16%,¹⁴ and most worryingly for the country's long-term viability, many young and educated people have already left BiH, seeking better opportunities elsewhere; the World Bank estimated in 2018 that 44% of the overall Bosnian population lived outside the country.¹⁵

The many layers of government – national, entity, cantonal and municipal – drain state coffers, make BiH a grotesquely over-governed country, and provide a ready source of corruption, patronage and clientelism for the elite. Transparency International ranks BiH 101st for corruption.¹⁶ An EU-commissioned study found "...a considerable degree of "dysfunctionality" of public institutions at all levels and across the country", and continued, "...key actors show no determination to address or overcome dysfunctions ... Rather, they seem to do everything to obstruct any change that they consider not to be in their own interest."¹⁷

Not surprisingly, the political elite is widely despised. In a 2019 survey, 85% believed the country headed in the wrong direction, against only 11% thinking it was going right. Asked about the political elite, only 21% thought they were even trying to do right, against 64% thinking they were not.¹⁸ Few believe that normal politics can change things, 68% professing disinterest in politics, and a combined 51% saying that voting changes nothing, or that votes are manipulated, with an additional 20% saying that all parties are the same anyway.

What is the EU doing in Bosnia and Herzegovina?

The EU, together with the United States, has been the main external guarantor of the peace agreement. In 2004, the EU took over the peacekeeping mission from NATO, and EUFOR Althea still deploys app. 600 troops.¹⁹ While the low number suggests a low threat assessment, that the force exists at all, shows nobody quite trusts the stability in BiH either.

The EU and BiH signed a Stability and Association Agreement (SAA) in 2008, which entered into full force in 2015, and the following year BiH formally applied to join the Union. In theory, the EU enlargement process provides a template for reform, as well as a monitoring process for implementation. Between 2007 and 2020, the EU also provided €1,9bln in pre-accession funding.²⁰ The EU's Special Representative, heading the permanent delegation, is tasked with helping BiH prepare for eventual membership negotiations.

However, the sincerity of the country's political elite is questionable, considering the amount of reforms not undertaken. As the EC noted, BiH's implementation of the SAA is only partial: the country does not have the required national program for adopting the *acquis*; nor mechanisms for ensuring legislative compliance at entity or canton level with EU law and/or other international obligations.²¹ In fact, in preparation for the *avis*, the EC submitted its customary questionnaire on the candidate's preparedness; in BiH's case, it consisted of 3897 questions in total. Answering these questions proved contentious and cumbersome – resulting in delays on the initial deadline, and even a few questions not answered at all (which the EU chose to ignore).

The sum of the 2019 *Avis*'s complaints and recommendations is that BiH's institutional set-up is not up to scratch, and it will probably take the rest of the decade to reform sufficiently to start actual membership negotiations. As the past twenty years have shown, however, BiH does not reform without outside pressure, and the EU has done little proactively for a long time.

The matter has a certain urgency, as the wider implications of a fragile state left permanently behind should not be underestimated. At the time of writing, Serbia and Kosovo are seemingly discussing land swaps as a way of settling their relations – seemingly with US approval. That makes it even more important that the EU ups its commitment to BiH, lest others get ideas for carving it up too.

Although both Croatia and Serbia currently recognize BiH's borders and sovereignty, the potential for another Cyprus-like situation, in which member states can harass applicants, looms large – which is not in the EU's interest.

Moreover, it has to be the EU acting. Most Bosnian nationalist parties have close ties with various outsiders – in Turkey, Serbia, Russia and Croatia – whose activities are often unhelpful and divisive. Only the EU and the US seek to engage with the whole country. The US's own interests are limited, though, and pursued only erratically since 2016. The EU alone can offer BiH both closer political and economic integration.

Not only does the EU itself possess some leverage on Bosnian politicians, not to mention public opinion on its side, it furthermore has the Office of the High Representative (OHR) as a potential avenue for influence. The OHR, led since 2009 by the Austrian diplomat Valentin Inzko, does in theory possess significant powers, both to remove officials and to legislate by decree in order to break stalemates. These powers saw extensive use in the 1990s and 2000s, but hardly at all in the past decade. This restraint has been a conscious decision by an international community not blind to their eternal dilemma: While nationalist politicians impede responsible politics and practical progress for the country, removing such nationalists from elected positions also disables democratic processes, thereby impeding accountability.

The OHR's restraint has faced criticism from Bosniaks in particular, who credit its early activism with what progress the country has seen, and wish to see more action, especially against Dodik and his people. Republika Srpska, on the other hand, has repeatedly clashed with the OHR and called for its closure, or at least to have its powers curtailed. Russia has echoed this sentiment, and has for a while now blocked the appointment of a successor to Inzko (who turned 71 this year).²²

The international community's ambition has long been to close the OHR completely – indeed, some academics even argue that the international community and the OHR did far too much after the war, mostly at the expense of Serbs, and thereby undermined 'sustainable peace' – which mostly goes to show, that criticism is in greater supply than alternatives.²³ In principle, the EU supports closing the OHR, as its existence is incompatible with proper state sovereignty. As a consequence, the OHR today

has only 1/5 the budget and 1/7 the staff it did in 2002,²⁴ and its powers have gradually been hollowed out. However, the international community's conditions for the OHR's closure remain unmet. Until the OHR can be safely closed, the EU should support it in a concerted (and hopefully final) push for change.

The way forward

To be clear, the EU cannot solve all Bosnia and Herzegovina's problems for it, nor should it. Only Bosnians themselves can do that. Similarly, the EU cannot and must not impose a new constitution; but it can force a reform process into motion.

The EU must speak blunt truths, use its bully pulpit to call out obstructive politicians on all sides. EU leaders, with support from the US, must vocally support the OHR in flexing its muscles again, and be willing to ignore Russian complaints.

Through cajoling and threats, the OHR and the EU must jointly champion a constitutional convention that brings together politicians and, crucially, civil society from across the ethnic divides. To be sure, such a convention would have its work cut out for it: Balancing federalism and regional autonomy with state functionality and capability; creating credible procedural and institutional checks and balances to replace the current emphasis on ethnicity; reorganize and consolidate administrative units, especially in the Federation; and ensure better independence for courts and administrative agencies, to name but a few difficult items.

A new constitution will not magically bring with it a new political culture, or make the OHR redundant. Yet the fact is, constitutional change is vital if BiH is to move forward. Its current system of government is broken; it has become a recipe for corruption, for political inaction, for reproducing old divisions, and is incapable of reform without international pressure.

It was Jacques Poos who infamously declared, as Yugoslavia was sliding towards war, "this is the hour of Europe", a statement that has haunted EU policymakers ever since. It is a promise, though, that the EU still has to deliver on in Bosnia and Herzegovina. Constitutional change has to happen if BiH is to take its proper place as an integrated European country. That will be the best outcome for BiH, best for regional stability and ultimately best for the European Union itself.

***Dr. Kristian L. Nielsen** is Assistant Professor, PhD Department of International Relations, International University of Sarejevo.

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