Introduction: Bosnia and Herzegovina 20 Years after Dayton

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Introduction

It has been 20 years since the Dayton Peace Agreement (DPA, official name: General Framework Agreement for Peace in Bosnia and Herzegovina) ended the bloodiest war in Europe since World War II. The violent conflict and the peace agreement demonstrated many of the tectonic changes that Europe and the world as a whole went through after the end of the Cold War. First, the wars highlighted the inability of the European Community (after 1993 European Union (EU)) to either end the conflict, because of its Member States' disagreement on strategies and options, including the threat of military intervention, and the brilliant recognition and manipulation of this wavering by Balkan leaders. Reflecting this European discord, the DPA secondly highlighted the importance of the United States as the only remaining superpower capable of decisively intervening to end the violence in Southeastern Europe. The perception of a weak EU and a strong US willing to use military force would be further strengthened when NATO, significantly led by the US, intervened in the Kosovo war in 1999. Third, the war, and the consequent peace agreement also highlighted that the end of the Cold War by no means resulted in an end of violent conflict in Europe and beyond. Francis Fukuyama's thesis of the "End of History" and the victory of capitalism and democracy proved to be wrong, shortly after it was formulated.[2] Finally, the war in Bosnia and the resulting peace agreement raised new discussions about the drivers of political violence and conflict, the role of ethnicity in democratic systems and institutional options available to overcome such wars and build and consolidate democracies.[3]

Since late 1995, Bosnia has become a laboratory. It has become a laboratory for peace-builders aiming to understand and address the root causes of the conflict;[4] it has become a laboratory for international state-builders, who aim to establish state-structures which will manage ethnic relations in this multinational country, and ensure basic democratic governance standards.[5] It has been a laboratory for political parties and leaders – many of whom were directly engaged in the war – to learn how to pursue unfulfilled wartime goals in peacetime. Last but not least, Bosnia has become a laboratory for the EU, offering a challenging case for the Union's ability to apply its still evolving and not always common foreign and security policy, and a chance to test how transformative the promise of future membership in the EU really is.[6]

This Introduction provides a brief overview of political developments in Bosnia and Herzegovina (BiH) since 1995 in order to provide context for the papers in this 20th anniversary special Forum. As will be demonstrated below, while there have been many attempts to overcome the legacy of war and make the DPA work, overall the situation in the country remains problematic at best. While peace has

been established and a return to large-scale violence seems unrealistic for now, Bosnia is neither a functioning state nor a democratic one. Instead, the parties that were responsible for the war in the countries remain the most dominant political actors, who have captured the state in order to facilitate their own individual, financial and political ambitions. While international pressure *has* resulted in a number of critical reforms between 1998 and 2006, in the last decade there has been a recognisable withdrawal of international attention on Bosnia. The USA is dealing with critical situations in the Middle East, Afghanistan/Pakistan, Ukraine and the South Chinese Sea, and increasingly eager to cede responsibility for Bosnia policy to the EU; however, in spite of 25 years of experience with the false commitments and broken promises of Balkan politicians, the EU has remained unwilling to effectively leverage local elites to adopt reforms or to marginalize spoilers – two conditions that are necessary to strengthen democracy and overcome the systematic problems built into the Dayton system.

The Political Development of Bosnia and Herzegovina 1995-2015

When the Presidents of Yugoslavia, Croatia and Bosnia and Herzegovina signed the DPA in Paris in December 1995, the main task was indeed to end the violence – something acutely desirable after the massacre in Srebrenica, in which Bosnian Serb forces and paramilitaries killed 8,000 men and boys within a few days. . Hence, it is no surprise that in the first post-war years, international attention focused first on the aspects of military peace implementation, to try to established an environment in which the outbreak of new violence would not only be unlikely but impossible. NATO's 60,000 strong Implementation Force (IFOR) was tasked with separating the warring armies, collecting weapons and destroying heavy artillery. This task was completed relatively quickly and successfully. IFOR was very well resourced, organized and staffed, and the DPA military annexes were highly detailed, as Keil and Kudlenko highlight in their contribution. Questions over NATO's mandate in Bosnia remained, for example when it came to the arrest of alleged war criminals. At the same time, the main European powers and the US also began to focus on physical and political reconstruction, to establish political institutions, re-build the heavily damaged infrastructure and ensure the freedom of movement throughout BiH. While important, these tasks were more difficult to successfully achieve than demilitarisation. While infrastructure was reconstructed and a substantial amount of money was provided for post-war reconstruction and economic development and transition, little progress was initially visible in terms of establishing a political system that would bring Bosniak, Serb and Croat parties and leaders (Bosnia's constituent peoples and the main warring parties during the war) together in viable political coalitions. Instead, ethnic cleansing continued after the end of direct hostilities,[7] refugee return was slow and undermined by local resistance[8] and none of the three main groups was willing to make the newly outlined state institutions (Annex IV of the DPA includes a constitution with a new political framework) work.[9] Further, the non-military terms of the DPA were

drafted with little attention to detail, and the civilian implementers paled in comparison to the military (IFOR) in terms of numbers, resources and mandate.

As a result of persistent local resistance, which aimed at confirming, establishing and enhancing the dominance of certain groups over ethnically homogenised territorial units, international actors decided to enhance the powers of the High Representative, a position originally foreseen as a weak tool to oversee civilian implementation of the peace agreement. However, in December 1997, the major powers involved in the peace-building exercise in Bosnia decided to give the High Representative additional powers, including the right to impose legislation and to dismiss Bosnian officials if they were obstructing the implementation of the peace agreement.[10] In light of these developments, the High Representatives between 1998 and 2006 became the most important actors in the country, pushing through reforms in spite of recalcitrant local officials uninterested in reform. Numerous High Representatives imposed laws[11] on such important issues as citizenship legislation, a reform of the border security system, new taxation legislation, constitutional changes to the two Entity constitutions and laws on state symbols, amongst many others. In addition, hundreds of MPs, civil servants and members of the state, Entity and local governments were removed from office as they were seen to be obstructing the peace implementation. While international pressure showed some success in encouraging local elites to find solutions before they would be imposed, overall the state-building and political reform agenda in this period was driven by the High Representative.[12] However, while the central state was clearly strengthened during this period and some important progress was made in terms of democratization (such as the recognition that Bosniaks, Serbs and Croats are constituent peoples throughout the territory of Bosnia), overall this phase of extensive outside imposition failed to establish a functional Bosnian state for two major reasons. First, despite the many policy reforms implemented by the High Representatives and the dismissal of hundreds of officials including a member of the State Presidency, external intervention did not overcome the dominance of major ethnically-exclusive parties with competing and contrasting visions for the country. As the papers by Jelena Džankić and John Hulsey highlight in this Forum, while there is a high number of parties represented in Bosnia, the actual number of parties involved in major decisions is rather limited, and in fact nearly identical to the warring parties of 1991/2. These parties have been able to transform the war economy into profitable post-war networks,[13] in which they control a certain (homogenised) territory and therefore do not only have access to revenue from taxes and state-owned companies, but also take the major decisions in the areas of welfare policies, employment, state contracts and the distribution of financial resources, creating a classic patronage system. Indeed, it would not be wrong to talk about localised state-capture in Bosnia, in which local elites have become nested into clientilistic and nepotistic structures that ensures their grip on power and their access to key resources, but at the same time it prevents any progress in Bosnia in areas that would undermine this form of state-capture (such as any reforms that would strengthen the state over Entity and cantonal governments, a stronger and more independent rule of law, an independent police force, and

the movement towards more competitive and independent allocation of state contracts).[14] Ironically, the ethno-centric system established at Dayton, including ethnically-clean electoral units and an election law which encourages ethnicity rather than issue-based campaigns maintains this state-capture.

Second, interventions by the High Representative failed to overcome the main premise of the Dayton Agreement – the mixture of strict ethnic power-sharing between Bosniaks, Serbs and Croats on the one side and far-reaching autonomy in a highly decentralised and asymmetrical federal structure on the other side.[15] This combination, often promoted by supporters of the consociational approach to power-sharing,[16] has worked in deeply-divided societies in Western Europe such as in Belgium and Switzerland, but its application and functionality in post-war societies such as Bosnia, which have limited or no experience with democratic governance, has been rather problematic. One of the key conditions for this kind of power-sharing to work is a willingness of different groups (as represented by their political elites) to live and work together, to respect each other and demonstrate the ability to compromise and seek consensus. In a post-war society, however, all forms of politics are seen as zero-sum-games, any reform effort can be interpreted as a threat to a group's vital national interest, and the willingness to work together with groups that were seen as enemies and fought against violently not long ago is also not very high. Further, it has been clear that political elites have continued to pursue their wartime aims in peacetime. The basic assumption that autonomy and elite power-sharing would provide the basis of group cooperation in post-war societies is flawed, as has been demonstrated in the last 20 years in Bosnia and more recently as well in Iraq. While supporters of the consociational approach will argue that the approach is not perfect but the best of a number of problematic choices for institutional design in deeply divided societies,[17] the political development of post-war Bosnia clearly challenges this approach. Other scholars have in fact begun to challenge consociationalism more generally, pointing out that non-integrative solutions in post-war societies can in fact generate increasing calls for more autonomy, undercutting the state and putting the country's future cohesion at risk.[18] The focus on ethnically-exclusive parties and their dominance over certain parts of Bosnian territory has only facilitated and enhanced manifestations of state-capture, nepotism, patronage and clientilism throughout the country. The case of Bosnia leads to the question of whether consociationalism in post-war societies can only work if an outside actor such as the High Representative puts permanent pressure on the parties to come to agreement, and if the consociational institutions are designed in a way to prevent state-capture and encourage forms of post-war integration so that ethnic diversity can be respected but spaces are created for those that cannot or do not identify with the dominant ethnic groups. Fixing identities and enforcing cooperation between a small number of actors does not only make compromise more unlikely but also enhances the chances of post-war nepotism in a society that has faced long-term violence and continuing political conflict.

Because of the failure to address these underlying issues, Bosnia remains a country at stalemate. Since 2007 the international involvement has been massively reduced in terms of the scope of presence and substance of engagement, there have been no major reforms implemented in the country. The failed attempts at constitutional reform in 2006 and 2008, as discussed by Valery Perry in this Forum, have also contributed to a situation in which there is a clear lack of progress. While the EU has taken over as the most important international actor, it too has faced substantial local political resistance to any reform efforts, including proposals to ensure an independent rule of law, to strengthen political accountability and to step up the fight against corruption. As Perry argues, Bosnia has not only been lacking behind in terms of reforms, but the effective removal of the imposition and dismissal powers from the High Representative without accompanying changes in the constitution and election law to force more political accountability, has resulted in a backlash, where even achieved reforms are now being questioned and undone by local elites. The Republika Srpska's elites have consistently attacked and de facto reversed reforms in the media sector, which were implemented to limit political interference in the media. Challenges to the country's justice sector have been consistent since 2011, based less on support for a truly independent judiciary than on elite interests in controlling the judicial structure at lower levels to avoid prosecution for corruption and abuse of office. Likewise, new laws on the issuance of personal identification numbers and establishing residence risk undermining previous international efforts to undo the effect of ethnic cleansing committed during the war. Bosnia's economy has more recently been hit very hard by the international financial crisis, and the lack of political progress has meant that the country remains one of the poorest and least developed in Southeastern Europe.[19] While public dissatisfaction is growing and resulted in protests in 2013 and 2014, these have not had any massive impact on the current situation. For local elites, the current system is profitable and comfortable; for international actors and especially the EU, the current system is not sustainable but a known status quo is preferable to potential dramatic social and political shifts; and for Bosnian citizens it continues to be a lose-lose situation. If anything, things might just be getting worse, and threats by the authorities of the Republika Srpska to call for a referendum on judicial reform and the power of the High Representative,[20] as well as the continuous demand of Bosnian Croats for their own territorial unit, demonstrate that some local elites are willing to challenge the current situation in order to enhance their grip on power.

Despite this negative outlook (or perhaps because of it), Bosnia remains a fascinating case study of international state-building, post-war democratization and the Europeanization of the Southeastern periphery.[21] As the contributions in this Forum demonstrate, only an interplay between citizens, local elites and international actors will be able to shift the current development. Whether the EU is willing to aggressively push for more conditionality and accountability (as they have done in Greece) remains to be seen; however the signs are not good and it increasingly looks like local political obstruction and

intransigence will be awarded with appeasement. Likewise it remains to be seen if and how local elites will continue their tight grip on power amidst growing tensions amongst the ordinary population. One thing is for sure: Bosnia 20 years after Dayton remains an interesting case for researchers, and one which is still changing and shifting, although the direction of these changes and shifts is not yet clear. More broadly, it offers many lessons to be learned for other post-war divided states.

Contributions to this Forum

This special issue consists of four papers. Each of them looks at different facets of the current situation in Bosnia, and highlights some of the developments in post-war Bosnia discussed above.

In the first paper, Soeren Keil and Anastasiia Kudlenko provide an assessment of the Dayton Peace Agreement, arguing that the Agreement aimed to achieve three things - namely peace-building, state-building and democratization - and then assess the success of the Agreement in these different areas. Their main argument is that while Dayton was successful in ending the war and providing a more peaceful environment in the country, overall Dayton has neither established a functional state, nor has it led to deep-rooted democratization. By assessing the interplay of international involvement and local politics, they highlight that a main reason for this limited success of the DPA can be found in its goals, which were ambitious and ambiguous at the same time.

In the second paper, Valery Perry looks at the issue of constitutional reform in Bosnia. Reform of the Dayton constitution was demanded soon after the DPA, yet no fundamental changes to Bosnia's current institutional set-up have taken place through constitutional reform. Perry highlights that while there has been a substantial push for constitutional reform between 2002 and 2008, after 2009 the focus was downgraded to primarily cosmetic changes, to remove the most obvious discriminatory parts of the constitution and enable BiH to move towards EU membership. However, even this limited approach, very much supported by the EU, has not resulted in any fundamental change, and more recently there is a fear that the undoing of previous reforms and the move towards a more confederal system of governance could in fact be sanctioned by the EU, as the Union is inclined to seek any form of "progress," even if for many such short-term progress would actually undermine the very essence of the Bosnian state.

In the third paper, John Hulsey examines the development of Bosnia's party system and shows that the traditional ethnic parties, which have existed since the early 1990s, have been able to stay in power and dominate politics both at a central and at local levels in Bosnia. He explains this phenomenon by assessing voting rules and comparing the performance of multi-ethnic parties. The paper concludes that the current incentive structure does not favour any electoral change and that it is unlikely that the dominant ethnically exclusive parties will be voted out of office.

Following on the discussion of the party system and voting rules, Jelena Džankić's paper examines the impact of current voting and electoral rules on citizenship and citizenship rights. She highlights how certain groups are excluded from voting or standing for certain offices and argues that this is a key defect in the political system, which not only strengthens the nationalist parties' grip on power, but also prevents more deep-rooted democratization.

All authors come to similar conclusions. When looking at Bosnia in 2015, the glass is half-empty rather than half-full. Until a consolidated effort based on a realistic understanding of the political incentives in post-Dayton Bosnia is made by the EU, the most important international actor in Bosnia, in conjunction with the US and other international stakeholders, to listen to the dissatisfaction of the Bosnian population in every corner of the country, change is unlikely to occur. Twenty years can seem like a long-time when assessing the success of a peace agreement; however, as a peace agreement it ended the violent pursuit of political aims, while not actually fulfilling the aims of any of the signatories. In this respect, Dayton has ensured peace, to a higher degree than many would have predicted in 1996. Nonetheless, Bosnia remains caught in a straightjacket with a dysfunctional political system, local elites who are not interested in change, and a population that is either demobilised or finding it hard to get its voice heard, even when they are shouting their demand for reforms out in mass protests. Bosnia's journey towards democracy and consolidated statehood is neither successfully finished, nor is it well underway. If anything, a long journey remains along a very bumpy road.

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[2] Francis Fukuyama, 'The End of History' *The National Interest*, Summer 1989, pp. 3-18, see also Francis Fukuyama, *The End of History and the Last Man*, New York: The Free Press, 1992.

[3] On this debate, see for example: Mary Kaldor, *New and Old Wars*, 3rd edition, London: Polity Press 2012.

[4] Elizabeth Cousens and Charles Cater, *Towards Peace in Bosnia – Implementing the Dayton Accords*, London and Boulder: Lynne Rienner Publishers 2001.

[5] Sofia Sebastian, *Post-War Statebuilding and Constitutional Reform – Beyond Dayton in Bosnia*, Basingstoke: Palgrave MacMillian, 2014.

[6] Ana E. Juncos, *EU Foreign and Security Policy in Bosnia – The Politics of Coherence and Effectiveness*, Manchester and New York, Manchester University Press, 2013.

[7] Louis Sell, 'The Serb Flight from Sarajevo – Dayton's First Failure' *East European Politics and Societies*, Vol. 14, No. 1, 1996, pp. 179-202.

[8] International Crisis Group, *The Continuing Challenge of Refugee Return in Bosnia & Herzegovina*, Europe Report No. 137, 13 December 2002 (http://www.crisisgroup.org/en/regions/europe/balkans/bosnia-herzegovina/137-the-continuing-challenge-of-refugee-return-in-bosnia-herzegovina.aspx)

[9] Carrie Manning, 'Political Elites and Democratic State-building Efforts in Bosnia and Iraq' *Democratization*, Vol. 13, No. 5, 2006, pp. 724-738.

[10] For the full text of the Bonn Summit Decision, see: www.ohr.int/pic/default.asp?content_id=5182

[11] It is important to note that imposed laws were nearly always ultimately formally adopted by the appropriate local legislative bodies.

[12] On this discussion see for example: Roberto Belloni, *State Building and International Intervention in Bosnia*, London: Routledge 2008.

[13] See for the role of money and organised crime during the war: Peter Andreas. *Blue Helmets and Black Markets: The Business of Survival in the Siege of Sarajevo*, Ithaca: Cornell University Press 2008..

[14] On the issue of state-capture see: Plamen Georgiev, *Corruptive Patterns of Patronage in South East Europe*, Heidelberg: Springer VS Research.

[15] On this issue see Soeren Keil, *Multinational Federalism in Bosnia and Herzegovina*, Farnham and Burlington: Ashgate 2013.

[16] Arend Lijphart, *Democracy in Plural Societies*, New Haven: Yale University Press, 1977.

[17] Arend Lijphart, 'Constitutional Design for Divided Societies'. *Journal of Democracy*. Vol. 15, No.2, pp. 96–109.

[18] Matthew Hoddie and Caroline A. Hartzell (eds.). *Ethnopolitics Special Issue: Segment States in the Developing Wolrd: Conflict's Cause or Cure?* Vol. 13, No. 1, January 2014.

[19] Soeren Keil, 'The Political Conditions of Economic Development in the Western Balkans' *Südosteuropa Mitteilungen*, Vol. 55, No. 2, 2015, pp. 82-94.

[20] Valery Perry. 'Return of the Structured Monologue' *Democratization Policy Council Blog*. 14 July 2015. (available at http://www.democratizationpolicy.org/return-of-the-structured-monologue)

[21] For a thorough assessment of the development in post-war Bosnia and more recent developments, see: Soeren Keil and Valery Perry (eds.), *State-Building and Democratization in Bosnia and Herzegovina*, Farnham and Burlington: Ashgate 2015.