

**FEDERALISM IN POST-WAR BOSNIA
WHY IT DIDN'T WORK
AND WHY IT HARMED BOSNIA'S ECONOMY**

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Keywords Bosnia
 State building
 International community intervention in the Balkans
 International law
 Constitutional law in transition economies

Abstract

The Dayton Peace Accords, ending the 1992-1995 war in Bosnia, created a decentralized confederal constitutional structure for the country that was an implicit blueprint for subsequent secession of Croat and Serb statelets. But the international community formed a united stance that the country should remain unified notwithstanding the contents of the Dayton Accords and held that the country's central government should be strengthened to prevent its subsequent disintegration. This proved particularly difficult in light of consociational modes of representation of the country's three ethnic groups in state institutions, meaning that any one group could block a measure advanced by the other two. To promote its centralizing strategy in the face of dogged resistance by politicians representing roughly half the country's population, the international community had to create its own legal authority to push political reforms that domestic politicians would otherwise block, and the office of the "High Representative", an international official created by the Dayton Peace Accords but originally intended to be a mediator, was given dictatorial powers which subsequent holders of the office came to use increasingly broadly. In the mean time, the various local federal units created by Bosnia's constitution began operating in a highly decentralized fashion, for the most part ignoring central state authorities. Where local federal units were multi-ethnic (as in Mostar), they failed to function and mono-ethnic informal institutions were created in lieu that worked on the basis of *de facto* partition. The only sustainable political institutions were mono-ethnic ones.

The international community, desperate to push multi-ethnic institutions, worked against these decentralizing trends by imposing laws, removing officials and a series of more or less veiled threats against senior officials perceived as "obstructionist". A raft of ostensibly multi-ethnic institutions were established at the state level and, through intensive international incubation, at the local level in Brcko District, an area of key strategic importance in northern Bosnia that had been the subject of an international arbitration procedure to establish its status. District institutions functioned passably, contributing to moderate economic growth, but only with significant international exertion. No other multi-ethnic institutions flourished. The resulting political instability contributed to an economic malaise and fostered an environment of extreme institutional corruption, in which investment and trade were hampered by disputes about political

influence and foreign investment was retarded through opacity of domestic institutional function and elite capture. In the capital Sarajevo, multi-ethnic state government departments performed no positive functions, and every important decision had to be taken by international officials appointed by the High Representative. These officials become an international civil service for Bosnia, populating multiple government ministries and even the courts. But on the whole they had little experience of economic reform, and the most serious impediments to domestic economic growth went unaddressed.

By 2004, the international community had tired of its intensive participation in the country, and decided to scale back its efforts in the name of a new philosophy of domestic ownership. The multi-ethnic state building efforts then began to peel apart and have ultimately proved unsustainable, threatening flight of what little foreign direct investment there has been since the end of the war. The country now faces a most uncertain future. A High Representative still ostensibly remains in office, but he is toothless: of around 80,000 foreign peacekeeping troops almost all have departed the country, and international aid flows have dwindled to a trickle. Bosnia's Serbs are in open defiance of the High Representative's orders. At the same time, Russian investment is supporting the Bosnian Serbs and investments from the Middle East are supporting the Bosnian Muslims, creating the potential for new conflict. There is little in the way of European or American investments that might have a stabilizing impact. The federal structure remains quite unstable after all this international statecraft, and while the status quo is manifestly unworkable there is no domestic consensus on the way to change it.

This lecture will conclude by asking four questions. (1) Was there a better strategy the international community could have pursued in post-war Bosnia? (2) Could economic development have been better promoted and could it have fostered political stability? (3) Given where the country is now, what approach by the United States and the EU is most likely to be effective in improving the situation? (4) Can a federal approach can be useful in defusing "frozen" conflicts, and what does the Bosnian experience teach us about how to design such a model?

Reading list: Compulsory

This material should be read to ensure familiarity with the subject matter of the lecture. The first piece should be read in advance; the other two are useful follow-up articles that might be reviewed in advance if students have time. The Kaufmann article is long but the other two are not.

Parish, Matthew. 2008. The Demise of the Dayton Protectorate. *Journal of Intervention and Statebuilding* (forthcoming). Copy attached.

Kaufmann, Chaim. 1996. Possible and Impossible Solutions to Ethnic Civil Wars. *International Security* 20(4): 136.

Knaus, Gerald and Felix Martin. 2003. Travails of the European Raj. *Journal of Democracy* 14(3): 60. Available online at <http://www.britishcouncil.org/brussels-democraticpapers-travails-of-the-european-raj.pdf>

Reading list: Recommended

The following list is a survey of the most interesting material on post-war Bosnia pertinent to this lecture. It is not expected that students will have read all of it, but any opportunity to briefly review this material in advance will help.

Belloni, Roberto. 2004. Peacebuilding and consociational electoral engineering in Bosnia and Herzegovina. *International Peacekeeping* 11(2): 334.

Bieber, Florian. 2005. Local Institutional Engineering: A Tale of Two Cities, Mostar and Brčko. *International Peacekeeping* 12(3): 420-433.

Clarke, Henry Lee. 2005. Changes in the Constitutional Structure of Bosnia and Herzegovina. *East European Studies Occasional Papers at the Woodrow Wilson Center* No. 74 (October 2005). Available at <http://www.wilsoncenter.org>.

European Stability Initiative (ESI). 2004. *Governance and Democracy in Bosnia and Herzegovina: Post-Industrial Society and the Authoritarian Temptation*, dated 11 October 2004. Available at http://www.esiweb.org/index.php?lang=en&id=156&document_ID=63

European Stability Initiative (ESI). 2004. *Making Federalism Work – A Radical Proposal for Practical Reform*, dated 8 January 2004. Available at http://www.esiweb.org/index.php?lang=en&id=156&document_ID=48

Mearsheimer, John, and Steven Van Evera. 1995. When Peace Means War. *New Republic* magazine (Washington, D.C.), 18 December 1995.

Documents

Students should ensure at least passing familiarity with the following documents, to ensure they will obtain maximum benefit from the lecture. The “Supplemental Award” is not of critical importance but students should be aware of its existence; the other documents should be read in their entirety.

The General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Peace Accords), in particular Article 5 of Annex 2 (the Brcko Arbitration clause); Annex 4 (the Constitution of Bosnia and Herzegovina); and Annex 10 (Agreement on Civilian Implementation). The full text of the Dayton Peace Accords is available at http://www.ohr.int/dpa/default.asp?content_id=380

International Legal Materials (ILM). 1997. *Award of the Arbitral Tribunal for the Dispute over the Inter-Entity Boundary in the Brčko Area dated 14 February 1997*, 36 I.L.M. 396 (1997).

The Supplemental Award of the Arbitral Tribunal for the dispute over the Inter-Entity Boundary in the Brčko Area dated 15 March 1998, available at http://www.ohr.int/ohr-offices/brcko/arbitration/default.asp?content_id=5345

The Final Award of the Arbitral Tribunal for the *dispute over the Inter-Entity Boundary in the Brčko Area dated 5 March 1999*, available at http://www.ohr.int/ohr-offices/brcko/arbitration/default.asp?content_id=5358 plus its 5 March and 18 August 1999 Annexes, available at http://www.ohr.int/ohr-offices/brcko/arbitration/default.asp?content_id=5360 and http://www.ohr.int/ohr-offices/brcko/arbitration/default.asp?content_id=5362 respectively