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How Should We Deal with the Discrimination and Dysfunction in Bosnia and Herzegovina? Towards a New European Approach

SUMMARY AND RECOMMENDATIONS

Bosnia and Herzegovina's internal structure is regarded discriminatory and dysfunctional. The process of European integration is stalled.

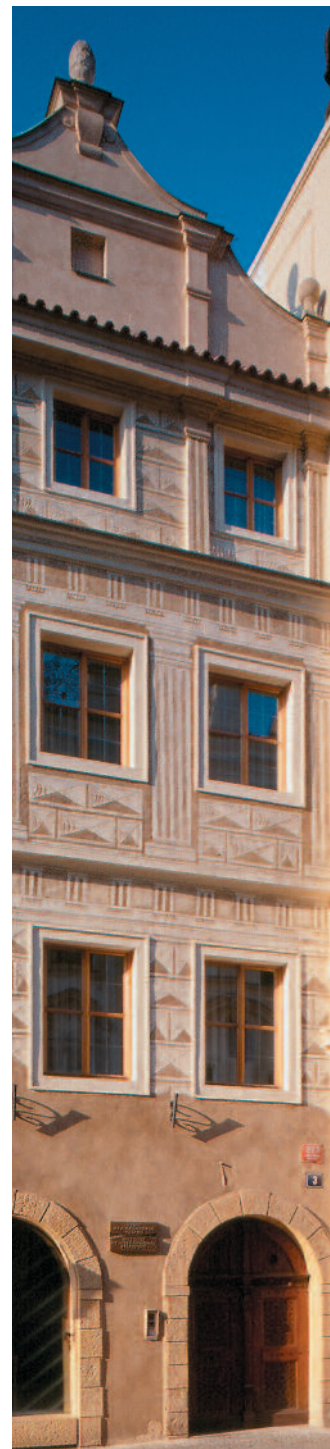
There is an urgent need to increase both the top-down and the bottom-up pressure on the local politicians so that they would pursue the necessary reforms.

The top-down pressure on politicians can be enhanced by a rationalisation of external institutional relations with Bosnia and Herzegovina, namely by the closure of the Office of the High Representative.

The bottom-up pressure on the local political representatives can be improved through societal integration in everyday life.

The current trend of the desintegration of common institutions and material structures needs to be countered.

Societal integration should be nurtured by improving the means for common education, cargo and transport, private business and enterprise, agricultural production, and trade.



The Need for a New Approach

In the last decade in its relations with the Western Balkans countries the EU pursued the strategy of stabilisation through integration. In spite of the considerable success of this strategy it is apparent that the process of Bosnia and Herzegovina's European integration is virtually stalled. In this case the lure of the EU membership has not been strong

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enough to induce the local leaders to carry out the necessary reforms, namely to counter the radical discrimination and dysfunction embedded in the post-conflict governmental setup of Bosnia and

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Herzegovina. Therefore, the question that arises is about the future course of action. The aim of this paper is to take account of the international and European relations with Bosnia and Herzegovina and propose a new approach which could, hopefully, help us to take some steps toward resolving this European puzzle. The urge for a new approach towards Bosnia and Herzegovina is amplified by three current developments and opportunities.

Firstly, a new European Commission was established on 10 September under the leadership of Jean-Claude Juncker. The appointment of Federica Mogherini and Johannes Hahn to be in charge of the EU foreign affairs and enlargement will certainly bring an opportunity for a formulation of a new EU policy towards Bosnia and Herzegovina. The second important feature is the general elections, which will take place in Bosnia and Herzegovina on 12 October 2014. The country's elections renew and perpetuate the divisions between the various political units and the three constitutive peoples recognised within the country's complicated internal structure. However, the elections also have a potential to stir up the waters of the local politics, considerably resize the local power arrangements, and thus make the implementation of reforms more likely. The third important development is that in Bosnia and Herzegovina a certain part of the society has recently begun voicing demands for social improvement, namely in terms of living conditions, working opportunities, and social services for those in need. This message is common to all major public unrests which have occurred in this country in recent years. The most well-known unrests in the country are probably the riots in February 2014, in which several governmental buildings were set on fire.

The Discrimination, Dysfunction, and Illegitimacy of Bosnia and Herzegovina

The main problem with today's Bosnia and Herzegovina is linked to the fact that the country's internal structure has recently been regarded as illegitimate by the EU, as well as by the broader liberal international community. The most well-known case in this respect is probably the December 2009 judgment of the Grand Chamber of the European Court of Human Rights in the case of *Sejdić and Finci v. Bosnia and Herzegovina*. The ruling considers the procedures for the election of individuals to the offices of the Tripartite Presidency, the Head of State, and the House of Peoples, the second chamber of the State Parliament, as discriminatory and conflicting with the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as other important human rights conventions. These procedures discriminate against those citizens of Bosnia and Herzegovina who do not identify themselves as Bosniaks, Croats, or Serbs, the constitutive peoples of BiH, and keep them from standing for the elections for the aforementioned positions.

Manifest or latent discriminatory practices in Bosnia and Herzegovina represent only one part of the problem, though. The other part concerns a wide-spread conviction that Bosnia and Herzegovina's political institutions do not function well in terms of governance. This opinion is being continuously confirmed and entrenched by various symptoms of dysfunction. For example, there has been no reaction to the aforementioned European Court of Human Rights ruling, no implementation of more than 80 decisions of the Constitutional Court of Bosnia and Herzegovina, and no final resolution to the problem of the appropriation of state property and defence property. Finding a solution to the appropriation problem with respect to state and defence property are the last substantial conditions that must be fulfilled for the Office of the High Representative (OHR), which is the formal seat of the international civil authority in Bosnia and Herzegovina and the guardian of the Dayton Peace Treaty, to be finally closed down.

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While thinking about today's Bosnia and Herzegovina it is important to take note that the international community played a crucial role in the setting up of the current constitutional and political system in Bosnia and Herzegovina. According to Richard Hoolbrooke, the US chief negotiator, it even seems that the international mediators had foreseen the current problems already at the time of the negotiation and formulation of the

Dayton Peace Agreement and the Constitution of Bosnia and Herzegovina in 1995. How come, then, that now, after having established Bosnia and Herzegovina in its current form, the international community regards this country's internal structure as illegitimate? The story of how we got to this point is closely linked with the changing nature of the power relations between the "international" and the "local" after the Dayton Peace Agreement entered into force.

In terms of these power relations the post-Dayton development can be divided into three time periods. These are the periods of *imposition*, *push*, and *pull*, which are briefly introduced in the following sections of the text. In the first period the international actors virtually imposed on Bosnia and Herzegovina the basic governmental structures envisioned in the Dayton Peace Agreement. In the second period the international actors used the toolbox of the Dayton instruments to push forward reforms which went beyond the letter of this treaty. And in the current, third period the international actors have abstained from direct intervention into the local political affairs. Instead, their expectations have coalesced around the European integration of Bosnia and Herzegovina, and they seek to pull this country towards the EU.

Imposing the Dayton Structures on Bosnia and Herzegovina

Immediately after the DPA entered in force (December 1995) international actors aimed namely at a stabilization of the security situation in Bosnia and Herzegovina and the wider region. This was pursued by a separation of the former combatants and a "normalization" of their relationships with each other, but also by arming the weaker side of the possible future conflict between them and integrating it into the Army of the Federation of Bosnia and Herzegovina. The international actors also started building the domestic political institutions envisioned in the Dayton Treaty. It was hoped that early elections would initiate the process of post-war reconciliation and democratization by establishing basic democratic institutions and forming new, more legitimate political elites. Only nine months after the signing of the DPA, general elections took place in Bosnia and Herzegovina, as was envisioned in the DPA. For the purpose of this paper the other activities and priorities that the international actors pursued in this period, as well as the issue of how various international policies conflicted with each other, are put aside. What is important is to note that in this period the international actors largely succeeded in imposing the basic structure of the state, as envisioned in the Dayton Peace Agreement, upon the material and social tissue in Bosnia and Herzegovina. This

was achieved mainly through the above mentioned mixture of security measures and provisions for representative democracy.

In 2000, with the democratic changes in Croatia and the Federative Republic of Yugoslavia, the game in Bosnia and Herzegovina changed significantly. Parallel governance structures ceased to be sponsored from the neighbouring countries, the security situation was not the major problem anymore, and mechanisms of representative democracy had been largely established. However, the international actors still regarded the situation as unsatisfactory, mainly because of the overall fragmentation of the state. There were ten cantons, two entities, one district, and a weak state on top of it, all flavoured by special rights for the constitutive peoples; this did not lead towards a sustainable democratic process. Instead, a fractured and polarized polity emerged without a functional economic space as well as without an environment that would be equally safe and secure for all citizens.

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Pushing Bosnia and Herzegovina beyond the Letter of Dayton

In 2000 the international community applauded the developments in Croatia and Serbia and assumed a strong leadership in attempting to make Bosnia and Herzegovina a more functional state. This goal went, to a large extent, beyond the mandate enshrined in the Dayton treaty, and the representatives of the international community were aware of it. This is why in the course of the most important reforms, international actors took great pains to ensure local consent. All the important reforms achieved in this period, be it the establishment of the multinational armed forces or the single indirect taxation authority at the state level, were, in the end, agreed to by the local representatives. In these reforms the letter of Dayton was transcended, but its basic principles were respected, namely the special rights of the constitutive peoples and the internal territorial organisation of Bosnia and Herzegovina. However, the international community used the toolbox of instruments it acquired in Dayton, mainly the Office of the High Representative, for making threats or pursuing sanctions with a clear purpose – to push reforms forward.

This strategy was largely successful in establishing several important institutions at the state level. However, the executive and legislative authority of the High Representative had weakened over time. Several commentators, international organisations, and states have pointed out that such a strong role on the part of the OHR is undemocratic because

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it actually hinders the establishment of genuine accountability between the people and their elected representatives. Moreover, the local actors, chiefly those from Republika Srpska, have increasingly challenged the High Representative and, to a certain

extent, gained the upper hand. In fact, the ability of the High Representative to push the reforms forward began to wither away already at the end of 2004. Since 2005 the special powers of the High Representative were used only occasionally to keep Bosnia and Herzegovina running. In recent times, these powers were not even in use except for their utilisation in revoking removals and suspensions from public offices which had been imposed earlier.

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Pulling Bosnia and Herzegovina towards the EU

Since 2005 the game has changed again, and international actors had to adjust to the new situation. At that time the European integration was, as it is now, virtually the only long term political goal which the local political representatives held in common, at least rhetorically. Thus, facing their diminishing capabilities for “pushing”, the expectations of international actors coalesced around the notion of European integration. This way the most recent period started, and in this period, external actors attempt to utilise the attraction of the EU to induce the desired reforms in Bosnia and Herzegovina, and *thus pull* this country closer to the Union. At first sight this period is not very successful; the reform process became virtually stalled in this period. But if we take a closer look at it, there are some small successes to spot in it. These are namely the reforms accompanying the visa liberalisation regime with the EU countries, which took place in December 2010, and also the realisation of the public census in October 2013.

Thus, in the current period the international actors do not use the Dayton mandate to intervene into the local politics, but they attempt to pull Bosnia and Herzegovina to-

wards the EU. This is one of the main grounds for the plausibility of the argument that the internal structures of the state are illegitimate and that it is the local political representatives who should negotiate, decide about, and implement the necessary reforms. However, the political elites in Bosnia and Herzegovina, a class of a sort, are not very enthusiastic about the reforms. This is mainly because the fragmentation and polarization of politics along the national lines is one of the main sources of their political power. The special rights and authorities bestowed by the Dayton Peace Agreement into the hands of the representatives of the constitutive peoples have helped to generate the political elites of Bosnia and Herzegovina as we encounter them now. These elites do not wish to put the interests and rights of citizens above the interests and rights of the constitutive peoples because it would inevitably weaken their grip on political power.

However, despite all the odds, the attraction of the EU is still, arguably, the best thing the international and European actors can hold on to when thinking about the stabilisation and integration of Bosnia and Herzegovina. Yet, the appeal of the EU has not brought much fruit until now and thus a palpable question arises about the possible courses of action in the near

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future. What can we do to help the European future of Bosnia and Herzegovina to materialise? The point is to understand that the block in the wheelwork of the politics in Bosnia and Herzegovina is linked, in large part, to the overall alienation and fragmentation of the different parts of the population, as well as to the impassability of the system of government. Therefore, a long-term structural approach needs to be adopted, which would significantly alter the social context and thus bring us to the desired end. In this respect the next two subsections consider two issues which have been largely neglected, but which provide a big opportunity for the external actors to act to achieve the needed change in both a top-down and a bottom-up manner. These are the issues of the current role of the OHR and societal integration in everyday life.

The Impact of the OHR: a Security Switch or an Integration Spoiler?

It is well known that Bosnia and Herzegovina operates a plethora of institutions which do not stimulate cooperation and make it difficult to establish fair relations of institutional responsibility and political accountability. Many measures have already been

suggested to counter this fragmentation, such as those included in the narrowly failed April Package in 2006. Changes of this kind are, indeed, the crucial condition for the future membership of Bosnia and Herzegovina in the EU. What is often forgotten, how-

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ever, is that the international community itself is directly involved in this institutional confusion. The OHR, an *ad hoc* international institution with powers to interfere authoritatively in Bosnia and

Herzegovina's internal affairs, is still seated in Sarajevo and formally holds its powers, while at the same time it is not authorised to use these powers anymore, and will probably never be authorised to use them again. This is because the Peace Implementation Council, an *ad hoc* international body establishing the OHR, does not want the OHR to do so. This situation lasts already for many years, but the OHR is still maintained in Bosnia and Herzegovina. This is, in turn, because there is still enough countries that pursue an opinion that this institution should continue to exist, even if only as a kind of safety switch for emergency cases.

The argument that the OHR should be kept as a security switch seems to be salient from the security point of view. However, it is a big question how exactly the OHR could improve the security situation once it gets worse. Currently, the "lame duck" OHR is clearly not in power to change the course of action in Bosnia and Herzegovina, and it will

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probably not be able to do so in the near future. This way the OHR stands only as a good punching bag for the local national leaders, who like to train their nationalist

muscles while invoking the old rivalries and grievances. Moreover, if we assume the lenses that prioritise the European integration of Bosnia and Herzegovina, then we have to face the unpleasant fact that the OHR is consuming attention, energy, and resources of those domestic and international actors who would have otherwise dealt directly with the EU institutions. This way the OHR adds yet another opaque layer to the already very complicated system of institutions and government in Bosnia and Herzegovina. In other words, the continuous existence of the OHR effectively contravenes the European integration of Bosnia and Herzegovina. The closure of this institution would rationalise the external institutional relations with Bosnia and Herzegovina as well as improve the political climate and governance in this country in the long term.

Integration in Everyday Life

Whereas the recent history of Bosnia and Herzegovina is full of (often unsuccessful) international attempts to influence the electoral process in the country, minimal attention has been given to the societal integration at the level of everyday life. And yet, empirical examples of successful post-conflict reconciliation, such as the reconciliation achieved through the process of European integration, suggest that cooperative practice and common experience pursued at the level of everyday life generate common norms and mutual trust that spill over into politics. Close and frequent contacts between the members of different groups facilitate effective solutions to common social and political problems, as well as wear down the edges of exclusive nationalism. In this view societal integration in Bosnia and Herzegovina provides a way for arriving at a situation in the future in which a renewed violent conflict will be unthinkable.

In Bosnia and Herzegovina the potential for integration in everyday life is immense. Measures used to achieve this goal could be of a cross-cutting character, bringing effects for the whole country and all its citizens, such as the establishment of country-wide networks, be they for transport, cargo, education, healthcare, agriculture, or other purposes. On the other hand, these measures can also target specific clusters of the population, and thus prioritise particular sectors of social life. The priority sectors may be defined, for example, along age-related (e.g. youth) or occupational (e.g. policemen) criteria.

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Meanwhile, unfortunately, the situation is rather evolving towards further fragmentation than towards integration. The educational system is, to a large extent, segregated. The closure of the National Museum in October 2012 and the cancellation of the direct train connections between Sarajevo and Budapest and Sarajevo and Belgrade in December 2012 are just some of the symptoms of this trend. Countering the decay of the basic social fabric of Bosnia and Herzegovina should become a priority.

Final Recommendations

A big part of the international community tries to pull Bosnia and Herzegovina towards the EU, while assuming that the EU will provide an incentive for the local politicians to alter the post-conflict structures of this state. The appeal of the EU is, indeed, a valuable asset, but it is obvious that a new approach with a potential to significantly change the social context needs to be formulated. This paper suggests a two-dimensional approach operating in both a top-down and a bottom-up manner. Firstly, in order to make the local politicians more sensitive to the incentives of the EU, external actors should rationalise their institutional relations with Bosnia and Herzegovina. This could be achieved by the long overdue closure of the OHR. Secondly, in order to stimulate cooperative and nondiscriminatory practices and common experience at the level of everyday life, external actors should counter the current decay of common social and material structures in Bosnia and Herzegovina, and help to build new structures of this kind.

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To achieve these ends the following practical recommendations are offered, and a specific division of labour is suggested:

1) The EU should take the lead in the process of the closure of the OHR. This means that it should prioritise the finalisation of the appropriation of state property and defence property, which is a condition for the closure of the OHR. This step is merely a question of formal approval by the local political representatives, who should be induced to deliver it.

2) The EU should stimulate common educational programmes at all levels, and attach them directly to European educational networks. Education is a major feature of social reproduction and thus a key to post-conflict reconciliation.

3) With its financial instruments, the European Commission should facilitate large-scale infrastructural projects establishing functional networks for cargo and transport, namely highways and railways. This could link local micro-regions with each other, and the whole country with the region at large.

4) The European Commission should provide incentives to improve the state-wide cooperation in private business and enterprise activities, agricultural production, and

trade. The basic condition should be that the activities should go beyond the internal boundaries of the entities and cantons.

5) Apart from the EU, the other actors, such as states, international organisations, or non-governmental organisations, have much smaller possibilities and potentials to make an impact. These actors can, nevertheless, embrace in their activities the principles of societal integration in everyday life. This means that in their activities - for example, bilateral development assistance - priority should be given to improving the material and institutional conditions for functional cooperation among subjects originating from the different territorial units in Bosnia and Herzegovina.