

The Unfinished Business of Building Bosnia-Herzegovina

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Despite the Western efforts to support nation-building and institutional reform, Bosnia-Herzegovina appears to be coming undone. The Bosnian Croat politician Dragan Čović is extorting the national government to force a dubious election reform, while the Bosnian Serb Milorad Dodik is threatening to lead the secession of the Republika Srpska. Aleksandra Zdeb argues that the roots of the crisis lie in the institutions imposed on the country after the Bosnian war that serve the interests of a political class hooked on weaponising ethnic divides.

Post-war Bosnia-Herzegovina (Bosnia) is a country frozen in time. Although the European Court of Human Rights ruled in favour of constitutional reform in the Sejdić and Finci case 12 years ago, a permanent solution is still under discussion. Since general elections were held in 2018, the institutions of the Federation of Bosnia and Herzegovina – one of the country's two self-governing entities – have remained provisional. Its House of the Peoples (one of the two chambers of the parliamentary assembly of Bosnia and Herzegovina) took five months to form while the national government took 14 months. In 2019, Bosnia's parliamentary assembly was never in session because it was blocked by the Alliance of Independent Social Democrats, the strongest Serbian community party in Bosnia, led by Milorad Dodik.

Since then, the Croatian Democratic Union (HDZ BiH) – the strongest Bosnian Croat party led by Dragan Čović – threatened to block the 2022 general elections. In 2020 and again in the middle of 2021, Serb representatives suspended their participation in national institutions. In December 2021, they announced a transfer of competences in the fields of justice, security, and defence to Serbian-dominated Republika Srpska (RS), the other self-governing entity of Bosnia. These deadlocks have paralysed local decision-making and demonstrated that the politics of extortion of the 1990s remains alive and well.

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A state built on weak foundations

Contrary to popular opinion, the main problem in Bosnia is not a dormant ethno-national conflict. Rather, the source of crises since 1995 lies in the state's weakness as well as a political class prone to corruption, nepotism, and abuse of power in the name of ill-defined ethnic interests. The consensus-based political institutions imposed on the country not only created an environment that favours politics along ethnic lines but also a system

vulnerable to blockages, abuses, and violations of the rule of law. Moreover, the Bosnian system has been dominated by a politics “behind closed doors” which obstructs accountability and transparency. This system has pushed Bosnian civil society to the margins.

While the Dayton Peace Agreement of 1995 brought peace and the cessation of hostilities, the state-building mechanisms it imposed allowed a narrow group of elites to take power and subjugate all three constituent nations: Bosniaks, Croats, and Serbs. The pre-war pattern of electoral behaviour has largely survived. Hard-line nationalists regularly win elections due to the views of the electorate or the ever-present networks of nepotism, corruption, and patronage.

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Weaponising ethnicity and vetoes

Since the end of the war, Bosnian Serbs and Croats have supported the provisions for autonomy and division of state contained in the Dayton Agreement but otherwise have scuppered the adoption of common institutions and legislation as well as transfer of competences to the national government.

Dodik had previously stressed in 2008 that there would be no further transfers of competences from the self-governing entities to the national government and demanded a revision of the 50 that had already been made. Invoking their so-called “Bonn powers”, the High Representative for Bosnia and Herzegovina pronounced the powers declared by the Serbs as illegally arrogated (since 1997 the High Representative in Bosnia can impose binding decisions if they determine that the Dayton Agreement is being obstructed). Between 2003 and 2010, Dodik frequently called for referendums, including on the independence of the RS. Eventually, a referendum was organised in 2016 on a ruling by the Bosnian constitutional court that had banned the RS Statehood Day.

Another feature of Bosnian Serb politics is their overuse of blocking tactics. Following the 2018 elections, the Social Democrats blocked the work of the national parliament for more than a year and made unblocking conditional on the party's entry into the Council of Ministers. After the Constitutional Court ruled in 2020 on the constitutionality of the RS Agricultural Land Law, the RS Assembly adopted the so-called Anti-Dayton Activities of the Constitutional Court and announced a suspension of the work of RS representatives in federal bodies.

Serbian anti-centre and pro-autonomy politics has been reinforced by the Croatian Democratic Union's notorious “third entity” discourse that advocates for the heartland of the party in Western Herzegovina to become Bosnia's third self-governing entity. During the

first post-war years, Bosnian Croats created strong parallel institutions. The international community intervened in 2001 to disband these institutions. In 2011, the Bosnian Croat self-government was restructured to form an advisory body. With time this policy has been replaced by attempts to use electoral engineering to safeguard the Croatian Democratic Union's absolute control over Croatian seats in federal institutions.

Responding to a 2021 law from the High Representative introducing a penalty of up to five years' imprisonment for denying genocide, crimes against humanity and war crimes, and for any glorification of war criminals, Dodik announced that he had no choice but to proceed with the RS's secession. All Serb parties agreed to withdraw their representatives from federal institutions. Subsequently, the RS assembly voted in favour of preventing the implementation of the High Representative's law on its territory and amending the Criminal Code in order to make it a criminal offence to accuse RS of committing genocide.

Continuing its streak, the RS parliament adopted a package of resolutions in December 2021 that allowed the state to withdraw the national government's mandate in the areas of defence, justice, and security. The packages also undercut legislation adopted at the central level in these areas, as well as regulations imposed by the High Representative. Within six months of this move, the RS authorities plan to establish independent institutions including an army, intelligence agency, and an anti-corruption office.

The last few months recall pre-war tensions and have been dubbed a return to politics in the 1990s. The January commemoration of the Day of Republika Srpska, which the Bosnia-Herzegovina Constitutional Court had ruled illegal, was accompanied by numerous nationalist incidents in the towns of Prijedor, Brcko, Janja, Foca, and Gacko. Yet Serbs are not the only ones causing problems.

The theme of ethnic autonomy under the banner of "equality" has returned to Čović's discourse as he attempts to amend Bosnia's electoral law ahead of the 2022 parliamentary elections. He claims this would ensure "legitimate representation" of all the constituent nations of Bosnia, but his main intention is to secure the victory of the Croatian Democratic Union candidate and its affiliated parties in the race for the position of Croat member of the presidency of Bosnia-Herzegovina and its other institutions.

The delay in the formation of the Federation's government is no surprise. For over two decades, Bosnian Serbs and Croats have artificially triggered deadlocks and abused the system to force solutions that favour their interests. They have often used ethnic politics to divert public attention from the "bread and butter" issues and consolidate the electorate behind the most radical parties. In the context of a worsening economic situation and growing public dissatisfaction in the RS, which translates into declining support for Social Democrats and the Croatian Democratic Union, the current escalation in tension is nothing new.

Sanctions and superficial reforms

Bosnia's post-conflict reconstruction and state-building efforts were managed with a strong presence of the international community. Consequently, its internal challenges and crises developed within a highly internationalised context. Yet the US and EU's involvement in Bosnia is on a failing course.

The “carrot and stick” approach has dominated relations between local politicians and international actors. But this strategy has lost its momentum. In moments of crisis, local actors promise just enough to temper international pressure before returning to the same rhetoric.

Dodik’s attempts to force the West to make concessions and gradually extend the RS’s autonomy clearly violate the institutional order guaranteed by the international community, but they have not triggered a decisive reaction from EU or US leaders. Ongoing negotiations, such as the US-EU dialogue on constitutional reform and talks under the auspices of the Office of the High Representative, are both superficial processes with little impact on the ground.

In November 2021, European Commissioner for Enlargement Olivér Várhelyi announced progress in these processes toward an agreement with Bosnian “stakeholders”. The same attitude was shown by US State Department official Matthew Palmer and his EU counterpart Angelina Eichhorst who negotiated with the nationalist leaders in January 2022.

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These negotiations risk giving in to the demands of radicals. Dodik hopes to secure a significant chunk of state and defence property in return for calling off secession, while Čović hopes to pass his election law amendments in exchange for unblocking the Federation’s institutions. Such a deal would deepen the ethno-territorial division of Bosnia.

The EU has condemned the recent moves to escalate tensions. Germany’s new foreign minister, Annalena Baerbock threatened sanctions at the EU’s foreign ministers’ meeting in December 2021. The US imposed sanctions on Dodik in January this year but the EU has failed to take any decisive action. The unanimity rule of the EU puts a crimp in its efforts. Hungary, which ignored Bosnia for years, has intensified relations with Dodik since 2019. In December 2021, Viktor Orbán declared a 100 million euros aid package for the RS and promised to oppose any EU sanctions.

At the same time, Russia and China are using Bosnia to denude the flaws of EU enlargement and destabilise a region that is considered an EU and US area of influence. Both countries put together a draft resolution at the UN Security Council to abolish the High Representative that was subsequently rejected. Now Russia and China will only extend the mandate of the EU stabilisation mission EUFOR Althea if references to the High Representative are removed from the text of the resolution. This inevitably leaves the High Representative and the West politically weakened.

A state under siege?

“Bosnia’s crisis has never been so serious” is an oft repeated description of Bosnian politics. Yet, this time, not only is its constitutional, political, and electoral system

dysfunctional, its education and healthcare systems are failing to meet the essential needs of citizens.

Not only are the political institutions at risk, but the very structure of the country is in danger. Implementation of the December 2021 resolutions of the RS parliament would represent de facto secession for the entity. It would disintegrate the institutional system of Bosnia, while RS would achieve financial independence and the ability to defend itself.

Although Dodik's actions resemble those of Bosnian Serb leaders just before the war broke out, they are also symptoms of a captured Bosnian state. Dodik wants to protect the extensive, clientelist system that brings him money and keeps him in power. He is vying for control over the budget which he hopes will help him rebuild an electorate ahead of elections in October 2022.

With a few exceptions, Bosnia's governments, parliaments, and judiciary are plagued by clientelism and patronage linked to politicisation and ethnicisation. As a result, citizens distrust the government. Political parties are led by individuals who grew up within a system imbued with authoritarian tendencies and ethnic fears, and who today kindle ethnic intolerance for political ends.

In this climate, Bosnia's institutions expose the brutal truth about externally managed state-building and the drawbacks of the "democratisation before institutionalisation" approach. Certainly, part of the problem is the international community's answer to the local crisis that is confined to a constitutional reform package that would satisfy only nationalistic politicians. This policy is a slippery slope towards the dissolution of the country - an outcome that would be blamed first and foremost on the EU and the US.

For years the EU's enlargement in the region has been considered the key to the stability and long-term development of Bosnia, but the accession process as well as the EU-backed Berlin Process have stalled. The EU and the US's passiveness and indecisiveness is visible in their declarations of progress after each round of negotiations that bring literally no change. No one knows what the future holds. Certainly, the EU and US must take a strong position against unconstitutional politics by imposing sanctions on politicians who violate the Dayton Agreement - as they used to do 20 years ago. That might even reaffirm Bosnia's European future.



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