

High Representative and EU Special Representative Miroslav Lajčák: The Challenges of Integrating Bosnia and Herzegovina in Europe



Also published as a discussion paper by The Centre for the Study of Global Governance at the London School of Economics
www.lse.ac.uk/depts/global

Thank you for offering me this opportunity to speak to you today. It is a pleasure to be here.

In his 2002 book, *Bosnia after Dayton*, your own Professor Sumantra Bose entitled his first chapter 'An Important and Complex Place'. Both adjectives are as appropriate now as they were then or, I would go as far as to say, over the past two centuries.

Unfortunately, any broad or deep understanding of the continuing importance of Bosnia and Herzegovina – and of the peace-implementation and state-building efforts on which the international community has been engaged since 1995 – has

faded markedly of late. There has been little readiness to come to grips with the fact that Bosnia and Herzegovina's fate still hangs in the balance.

In part, attention has faded because governments, journalists and the general public have had much else to worry about since the 1990s – and even more so over the past month. Only occasionally, as when Kosovo declared its independence in February and Serbia finally arrested Radovan Karadzic in July, are the wars of Yugoslav succession recalled. Otherwise, they have been relegated to history – as something now called the 'Balkan wars of the 1990s'.

Interest has also faded because Bosnia and Herzegovina is widely and rightly regarded – at least in comparison to Afghanistan, East Timor, Iraq or Kosovo – as a brilliantly successful example of international post-conflict intervention. The country is peaceful, many refugees and displaced persons have returned to their pre-war homes, the economy has been growing at a healthy rate, the currency is strong and, until recently, inflation has been low. Moreover, the long-mooted 'European perspective' for BiH was turned into a reality, into a contractual relationship and the promise of eventual haven in the European Union when Bosnia and Herzegovina signed a Stabilisation and Association Agreement with the EU in June this year. The accession process, it has been assumed, will take care of remaining problems. Unfortunately this is yet to happen.

Although I will try to avoid too much detail and complexity in seeking to convince you that Bosnia and its problems still matter; that the international community needs to stay fully engaged; and that the country, its citizens and the wider region will not be wholly secure until they are all integrated in the European Union and NATO, I cannot avoid a bit of history.

The Dayton Peace Accords of November 1995 put an end to three

and a half years of warfare during which at least 100,000 were killed and half the country's population displaced. Such displacement – or 'ethnic cleansing' – was in fact both the principal means *by which* and the main end *for which* the war was fought.

The authors of the wars of Yugoslav succession were wholly domestic and the scriptwriter-in-chief was Slobodan Milosevic. But the major powers were complicit in both permitting them to start and allowing them to continue for such an incomprehensibly long period of time.

Western Europeans may not remember any of this, but most Bosnians do. It is one of the challenges we are facing in using the prospect of EU membership as a motor for post-war reconciliation and state-building.

The foreigners made partial amends at Dayton, but at the same time saddled Bosnia and Herzegovina in the process with a two-entity structure that simultaneously ensured both peace along the former front lines *and* limited capacity for governance. As had been the case during the war, the powers' domestic political imperatives rather than the future interests of the peoples of Bosnia and Herzegovina were paramount.

The primary aims of ending the war and saving NATO were wholly successful. The 60,000-strong Implementation Force that arrived in Bosnia and Herzegovina at the beginning of 1996 suffered no casualties.

Then, the premature elections of September 1996, which had constituted the original exit strategy for the international community, gave the nationalist parties that had fought the war new democratic legitimacy. Since their wartime aims remained in place, for them politics became the continuation of war by other means. Unfortunately, this hasn't changed much.

Together, however, these developments – physical peace and

political warfare – both opened the prospect and underlined the necessity of a long-term international effort to realise the potential of the Dayton Accords and, in fact, to go beyond them in building a viable state capable of integrating in Europe.

The late 1997 specification of the so-called Bonn Powers lurking in Annex 10 to the Dayton Accords provided the High Representative – who is the top civilian peace coordinator – with the authority to impose laws and to sack obstructive officials. These powers to substitute for stalemated domestic institutions and to create an environment conducive to reforms paid substantial dividends over ensuing years. Refugees reclaimed their properties and a half million brave ones returned to live in them. The virtual state created by Dayton began to acquire real responsibilities.

It was High Representative Wolfgang Petritsch who identified Bosnia and Herzegovina's European integration as the international community's new exit strategy. The foreigners would get out when the Bosnians got in. The reforms required to make the country a potential candidate for both EU and NATO membership would gradually also make international supervision redundant.

Petritsch's successor, Paddy Ashdown, pursued this strategy with assurance, assisting the state to assume competencies provided by Dayton in order to equip the state with more institutions, ministries and authority. At the same time mediating formal transfers of competency from the entities to the state. He achieved enviable results: defence reform (creating a single army), intelligence reform (creating a single intelligence agency), rule-of-law reform (creating a state-level High Judicial and Prosecutorial Council), and tax and customs reforms (creating an Indirect Taxation Authority that launched VAT and made the state the entities' banker).

Just as importantly in some ways, Lord Ashdown was also able

to persuade and compel Republika Srpska both to acknowledge and document the extent of the war crimes committed in and around Srebrenica in July 1995 and to cooperate with the International Criminal Tribunal in The Hague in pursuing indicted war criminals.

The cumulative effect of all these advances, however, was paradoxical – and goes a long way towards explaining why we have been having such difficulties in maintaining forward momentum over the past two and a half years. Lord Ashdown's last reform effort – the negotiation of police restructuring according to principles set by Brussels – encountered stiff resistance from domestic politicians who insisted on either much more or much less reform.

This made continuing progress towards Europe and a Stabilisation and Association Agreement hostage to police reform. And arguments over police reform – and, particularly, over whether the entities and cantons should retain control of their own police forces – became, in effect, arguments over the future shape of the country's constitution. To complicate matters even further, the efforts to negotiate constitutional amendments were taking place at the same time. In other words, any decision on police reform was seen as prejudging of further constitutional reform.

I will come back to this later, as the narrow defeat of the resulting packet of fairly modest reforms in April 2006 set the scene for the difficulties we have been confronting ever since.

Having either transferred or tolerated the assumption of ever more powers by the state, Republika Srpska's leaders were by 2005 determined to yield no more. Police reform turned out to be a reform too far. And because they had cooperated in the state-building project over previous years, both their legitimacy in the eyes of the international community and their ability to say 'no' this time had been fortified. On top

of it, the fact that the wartime Serbian Democratic Party – the party founded by Radovan Karadzic – yielded power to Milorad Dodik's Alliance of Independent Social Democrats early in 2006, further reinforced Republika Srpska's position.

Current RS Prime Minister Milorad Dodik is only conditionally loyal to Bosnia and Herzegovina as a state. The condition is that the state must be loyal in return to Republika Srpska – as a fully legitimate, permanent and territorially untouchable part of it. He wants a formally federal or, in fact, confederal order for BiH. He also demands the return of all competencies supposedly as he defines it 'stolen' from his entity in the past and also an audit of the effectiveness of those state institutions created on the basis of transfer of competencies agreements.

Although Dodik favours Bosnia's European integration, he appears to believe that Republika Srpska could equally well go it alone, following the example of Montenegro, which the EU embraced after the 2006 dissolution of its 'state union' with Serbia. As a consequence, Dodik talks regularly about staging a referendum on independence and seems to relish outlining scenarios that might compel him to move in that direction.

In the Federation – the other part of BiH – meanwhile, the predominantly Bosniak and Croat parties are split both between and among themselves and, thus, at a disadvantage in coping with Dodik. The Federation's subdivision into ten cantons, each with full-fledged governments and Parliaments, hardly helps – and also assures fiscal wastefulness.

The two main Bosniak parties favour a unitary state without entities, but differ as to how this is to be achieved: whether gradually, by incremental amendment of the Dayton constitution, or in a big bang that would replace it altogether. Both count, however, on the international community and my office to help achieve that.

For their part, the two largest Croat parties, feeling disadvantaged in the Bosniak-majority Federation, insist that the Dayton order must be scrapped and Croats provided with an entity or federal unit in which they would predominate. They also expect the international community to deliver this happy result before it leaves the country.

The current state-level government, the Council of Ministers, reflects these national and party-political divisions. It is a six-party coalition composed of two Serb, two Bosniak and two Croat parties. It is united in paying lip service to European integration as its overarching goal, but disunited in doing what is necessary to get there. This means that progress has lately depended much less on institutions – whether the Council of Ministers or the Parliamentary Assembly – and much more on periodic meetings of the leaders of the six ruling parties.

It was they, for example, who last autumn produced a deal on police reform that unlocked the SAA by decoupling the resolution of this most contentious issue from constitutional reform. In other words, Bosnia would get a bit of police reform now, but the main event would follow rather than precede future constitutional changes. The municipal elections that took place on 5 October, out of the way, the six party leaders are set to meet again next week to discuss outstanding issues, including, once more, how to approach constitutional reform.

Constitutional change was the elephant that had long sat unacknowledged in the room as my predecessors sought to get as much as possible out of what the Dayton model offered. In 2005, however, the US government decided to initiate negotiations among the main party leaders designed to produce explicit improvements to Dayton constitution in time for the tenth anniversary of the Dayton Accords in November of that year.

As it happened the target date was missed, the parties could strike no deal until March 2006, at which point the second largest Bosniak party, Haris Silajdzic's Party for BiH, rejected this fairly modest package and the Croatian Democratic Union of BiH splintered over it. Both Silajdzic's party and the Croat dissidents preferred no constitutional reform to half a loaf of reform. As a consequence, in April of that year the constitutional amendments failed – by just two votes – to win the two-thirds majority required in the lower house of parliament.

Although, as I noted, the proposed reforms were relatively modest, their passage would have set a highly encouraging precedent. Their failure, on the other hand, set off the downward spiral that has gripped the country ever since – despite the progress registered this year by the signing of the SAA.

Last month's municipal elections, on the other hand, delivered victories for the more moderate Federation-based parties, parties which supported the constitutional reform package back in 2006, even if they also confirmed Dodik's domination of Republika Srpska. This turn of events may bode well for renewed talks on constitutional reform, but, then again, it may not. The radicalisation we have witnessed since spring 2006 means that any reforms that could now be agreed would be far less ambitious even than those offered by the April package.

Unfortunately, the postponement of constitutional reform will also entail the postponement of Bosnia and Herzegovina's hopes of joining the EU. As Enlargement Commissioner Olli Rehn has often remarked, Bosnia cannot aspire to membership with a constitution in place that denies the state the ability to enact or enforce EU legislation – or the constitution which violates European human rights standards in several respects. That does not mean that the entities must go, but it does mean that the Entities need to accept the state's primacy in many

spheres. It will eventually be necessary for Brussels to explain exactly what has to change with the current constitution, which is something EU has so far been very reluctant to do.

It will also be necessary at some stage to shut down my (HR's) Office, abandon the Bonn Powers and reinforce the Office of the EU Special Representative: a position that must be granted a strong mandate in line with Bosnia's unique (and uniquely difficult) circumstances, and has that must be supported by firm and sustained political commitment to back him up from capitals.

When, back in 2005, it seemed as if Bosnia and Herzegovina was indeed on a good track towards self-sustaining reform and ever-increasing viability, the Peace Implementation Council (PIC) decided to aim to close OHR, and to begin the 'transition' to a EUSR, and hand over full 'ownership' to the country's own authorities by June 2007. Given what followed in 2006, this proved impossible. The PIC then set a new target date of June 2008. When matters failed to improve, we decided this February to adopt a new approach: to set specific objectives and conditions to be fulfilled before transition could occur. In other words – to speak about achieving defined political quality – rather than to wait for a certain date.

The idea is to provide an incentive to complete five important reforms for those, like Dodik, who want to see the back of OHR, and reassurance to those, like most Bosniak and Croat politicians, who want to build the state and keep OHR. There has been substantial progress on three of the five objectives and fulfilment of one of the preconditions: signature of the SAA. We are currently stuck, however, on the issues of state property (that is, which level of government should own or use former 'socially owned' real estate) and also on the issue of the Brcko District (a product of post-Dayton arbitration whose constitutional status remains undefined). More importantly, fulfilment of the second condition – which is 'a positive

assessment of the situation in BiH by the PIC Steering Board based on full compliance with the Dayton Peace Agreement' – seems an increasingly remote prospect.

The PIC Steering Board meets again later this month in Brussels to review developments. I doubt, on present form, that its members will deem that progress has been sufficient to set a date for OHR closure.

We cannot, however, maintain the status quo. It is leading us nowhere., in which the Dayton constitution's negative attributes prevent substantive political and institutional progress, while at the same time the international community's focus on transition militates against regular or robust intervention to resolve disputes. The International Community, and in particular the EU, needs to fully reengage in Bosnia and Herzegovina. I have strongly advocated this approach in my recent visitvisits to key capitals in the EU and PIC.

This is not a recognition of failure. It is a recognition of the need to make a decisive tactical change in order to deal with a new set of circumstances. Peace implementation is not static; it is a process, and one that requires creativity as well as resolve. It would be important for the EU to formulateis imperative, therefore, that the EU formulates a clear and tailor-madecustomised strategy for Bosnia and Herzegovina that would allow it to step into the breach as soon as the OHR closes, ideally some time next year and after the completion of the necessary criteria. But the EU Special Representative would have to be equipped with a uniquely strong mandate, backed by adequate political commitment from the capitals, to make this possible.

Bosnia deserves and requires special treatment. It is not a normalstandard EU candidate country and cannot fulfill the normal EU conditionality and accession criteria on its own.

Regardless of their national persuasions, between 70 and 80

percent of Bosnian citizens tell pollsters that they want to join the EU. This is a huge number. Their reasons are not difficult to understand. They want the prosperity, freedom to travel without visas, and security that EU membership would guarantee. NATO membership, which is closer to hand, should help in the latter respect too.

BiH politicians say they want these same things. But they have thus far failed to demonstrate the capacity or industry or flexibility required to ensure any such outcome. Meanwhile, every two years, citizens continue to give their votes to parties and politicians whose basic strategy is to mobilise their separate electorates on the basis of fear of the 'others' and solidarity with one's own.

As a multinational state, Bosnia and Herzegovina is naturally prone both towards nationalistic politics and periodic re-negotiation of the terms on which its peoples live together. These are 'givens'. The trouble, however, is that the current constitutional disorder promotes extremism, zero-sum games, and stalemate. Advances towards European integration could and should change that dynamic.

But it has not happened yet. The boost we expected from signing the SAA was fleeting. The gap between what people and politicians say they want – and what they actually say and do – remains wide. The establishment of a virtuous circle of self-reinforcing progress remains elusive. The possibility that Bosnia and Herzegovina could rejoin the ranks of failing or failed states remains real. That is why Bosnia and Herzegovina still matters and why the international community – above all, the EU – must re-engage.

The meeting of EU Foreign Ministers in exactly a week's time from now and then the meeting of the PIC Steering Board some ten days later will both show how much is the International Community ready to assume the role it has been designed to play in Bosnia and Herzegovina. Thank you.