

Background

Today's B&H was created by the Dayton Peace Agreement in 1995. The B&H Constitution, which is part of the DPA, established the current political system with two Entities, RS and FB&H, linked by a central government of strictly limited powers. At its substance, the Constitution requires consensus between the entities on all relevant issues for the state. RS and FB&H are a home to the three constituent peoples, Muslims – Bosniaks, Serbs and Croats, as well as other minorities. The federal structure of B&H and the Constitution's protections of B&H's constituent peoples have been instrumental in ensuring peace and stability in the more than 14 years since the war. Despite this, many international representatives and diplomats in B&H – including in the OHR – have sought to destroy these safeguards by imposing dramatic constitutional changes that would highly centralize B&H, contrary to the DPA. These changes do not have widespread support within BiH. Instead, they represent the agenda of certain political leaders in FB&H who advocate a B&H without the entities or with entities that are politically irrelevant and powerless.

Although B&H is an internationally recognized sovereign state, it is often treated – contrary to international law – as if it were a protectorate of the international community. Annex 10 of the DPA created the institution of the High Representative “to facilitate the Parties' own efforts and to mobilize and, as appropriate, coordinate the activities of the organizations and agencies involved in the civilian aspects of the peace settlement” During its presence in the last almost 15 years the OHR has radically exceeded its mandate by exercising executive, legislative, or judicial powers, none of which are to be found in even the most creative interpretation of Annex 10. The OHR's rule by decree has severely degraded the country's political system and violated the human rights of B&H citizens. The OHR has imposed almost 200 laws (most of them influence the Constitution itself). It has overruled decisions by the PA as well as the Constitutional Court of B&H. It has removed nearly 200 officials in B&H from public office and banned them from holding public employment. The High Representative has permitted these individuals no hearings, no opportunity to challenge the allegations underpinning the sanctions, and no any form of due process.

These actions have earned the condemnation of human rights experts. For example, the Venice Commission, in a 2005 Opinion, wrote of the High Representative's removal of individuals from office: "The continuation of such power being exercised by a non-elected political authority without any possibility of appeal and any input by an independent body is not acceptable." Unfortunately the HR has continued to assert these illegal powers and positioned itself as a main source of political instability in B&H.

The High Representative's actions have hindered efforts at political consensus and increased distrust between not just the main political representatives but also the different constituent peoples of B&H. ICG in its latest report wrote: "The OHR has become more a part of Bosnia's political disputes than a facilitator of solutions, and the High Representative's executive powers are no longer effective. The OHR is now a non-democratic dispute resolution mechanism, and that dispute resolution role should now pass to Bosnia's domestic institutions with the temporary and non-executive assistance of the EUSR."

Instead of promoting consensus between the entities and a dialogue between the main political representatives in B&H, the OHR has promoted a system in which impositions of laws and violations of human rights have become a norm. It has been dismaying over the years to see the OHR – which is also the EUSR – consistently disregard the core democratic and human rights principles for which the EU is known and admired.

Impediments to EU Accession

The OHR has become the primary obstacle to B&H's progress towards EU accession. The EU has made it clear that B&H can only become an EU candidate country after the OHR closes. According to the Peace Implementation Council, it will support the OHR's closure upon B&H fulfilling a list of five objectives and two conditions, almost all of which have now been fulfilled. Unfortunately, key parties in the FB&H want the OHR to remain in place because they believe that the OHR will use its coercive influence to help them achieve their political objectives. For this reason, they have

no interest in negotiating to fulfill the remaining requirements for closure of the OHR. This problem has been recognized by third-party experts. For example, in a recent report on B&H, the International Crisis Group raised this concern: “The Bosniak parties, who consider the OHR their main negotiating leverage, will not agree to complete the objectives required for closure until there is a deal on constitutional reform.” In this way, closure of the OHR and progress towards EU accession are held hostage.

The EU has also made it clear that constitutional changes, unlike closure of the OHR, are *not* a requirement for B&H to become a candidate state. Despite this, the OHR, some members of the international community, and key political parties from the FB&H, are using the prospect of EU accession as a pretext to push for the hasty adoption of dramatic constitutional changes to transform B&H into a highly centralized state. The methods to achieve this have not been transparent because they lack the widespread support within B&H needed for constitutional change based on the legal and constitutional requirements.

As I have mentioned, the EU has said that B&H may become a candidate country without changing its Constitution. Moreover, even in the most optimistic scenario, the accession process will take more than a few years. There is simply no need for B&H to act hastily to change its Constitution now. B&H can make any necessary constitutional changes at the appropriate point in the EU accession process. That point is not now—B&H has not even applied for candidate status.

In reality, constitutional changes are simply the wish list of certain parties in the FB&H, the OHR, and other advocates of centralization in the international community, who seek dramatic change for ideological reasons.

The constitutional transformation that these groups seek would scrap the protections built into the Dayton Constitution and introduce a principle of simple majority rule over all of B&H. Due to its larger population, FB&H would be able to dominate the RS by outvoting it on all relevant issues. The RS simply can never accept that. In divided societies from South Tyrol to Northern Ireland or

Belgium for instance, constitutions are designed to prevent one group from imposing its will on the others. The Dayton Constitution, similarly, is designed to protect each of B&H's Constituent Entities. These fundamental protections are what make B&H a viable state, and the RS is committed to preserving them. In any event, the constitutional transformation being pushed by the centralizers is unrelated to the requirements of EU accession and may not fulfill them.

How to move forward?

The EU accession process should not be allowed to be manipulated and politicized for the illegitimate purposes described. Unfortunately, the accession process has been delayed and obstructed by being politicized and departing from normal accession procedures. Instead, B&H should follow the normal procedures of EU accession. During the accession process, B&H leaders will have years to work closely with EU officials to carefully identify and negotiate whatever constitutional changes are necessary to meet EU standards. Any changes to B&H's Constitution must be closely tailored to the requirements of EU accession. B&H's first priorities now with respect to EU integration should be to finish visa liberalization and to fulfill the requirements of the Stabilization and Association Agreement.

Conclusion

The Government of the RS remains committed to the goal of EU accession for B&H. The Office of the High Representative, some members of the international community and certain political parties in the FB&H, are attempting to manipulate the EU integration process to achieve their political aim of a highly centralized B&H state that bears no resemblance to the federal state established by the Dayton Peace Agreement. Their motivation is not EU accession, but is ideologically driven and is highly controversial in B&H. This effort lacks widespread support among B&H citizens and has impeded progress. What is needed is for the accession process to be restored to normalcy and for the straightforward procedures and processes of accession to be followed.