

## Constitutional Changes in Bosnia and Herzegovina: What's on the Table

As Bosnia and Herzegovina eyes moving closer to the EU, its postwar constitution - described by a former High Representative as "one of the most complicated constitutional documents blessed by the international community in recent times" - is coming under scrutiny. Many argue that the document, as well as the labyrinthine system of governance it established, poses a hindrance to further development. Others, suspicious as what they see as a disguised effort to overturn the Dayton Agreement, are resisting calls for an overhaul. The international community, meanwhile, has made it clear that any changes will have to be reached by a consensus among Bosnian political forces.

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Once called "one of the most complicated constitutional documents blessed by the international community in recent times" by the first High Representative to Bosnia and Herzegovina (BiH), the country's constitution - which provides for a loose central government, two strong entities and a three-member presidency - is under new scrutiny as it approaches its 10th birthday.

Political forces in BiH that are keen on starting negotiations to move the country closer to the EU say that while the Dayton Peace Accord ended the 1992-1995 conflict, the constitution that came with it has proved a hindrance in peacetime.

European diplomats have said that BiH can move closer to the Union without getting rid of its two post-war entities - Republika Srpska (RS) and the Muslim-Croat Federation of BiH. The problem, they say, lies in the dizzying array of governmental structures and responsibilities. BiH's state-level authorities deal with things like foreign affairs and external trade. Provided all goes smoothly with military reform, they will also be in charge of defence. One state-level court deals with inter-entity crime, but has no jurisdiction over the entities' top courts. There is a state-level border service, but no central authority over the police. BiH has two houses of parliament, but the Federation also has two, the RS has its assembly, and the tiny Brcko District in the northeast has its own as well. BiH doesn't have one president; it has three presidency members, who take turns being the presidency chairman.

The labyrinthine system of governance eats up between 50 per cent and 60 per cent of revenues in a country considered one of the poorest in Europe. It's no wonder, then, that many suggestions for an overhaul have been put forth.

One of the most dramatic comes from the so-called Sarajevo school of thought. Three Social Democratic Party members in the BiH House of Representatives have called for scrapping the entities, organising the state into five geographical areas and establishing the election of presidency members by a nationwide vote.

Such radical changes, however, aren't politically feasible. The school of thought in Banja Luka, the de facto RS capital, is that the constitution is just fine the way it is. The entity received its own flag, police, military and courts at Dayton. Attempts to strengthen the state at the entities' expense - police reform being the latest of these - have not gone over well with RS leaders.

Politicians who look to BiH's international administrator for answers will find themselves knocking at the wrong door. High Representative Paddy Ashdown has made it clear that any constitutional changes will have to come from a consensus among BiH politicians. The foreigners who helped negotiate an end to the fighting almost 10 years ago agree. "Dayton was a framework, and anyone who wants to improve it should go ahead and try. And anything that all three groups agree to is fine with us," said former US negotiator Richard Holbrooke on a visit here in October 2003. Swedish diplomat Carl Bildt, who was the EU's top negotiator towards the end of the war, and the man credited with the "complex document" comment, has made similar comments in interviews.

Other players, like the Russian Federation, are less likely to encourage politicians to talk change. Foreign minister Sergei Lavrov said in January that Dayton should remain the cornerstone of BiH, especially in terms of how it applies to the equal relations among all three peoples.

But those "equal relations" are just what constitutional critics say they are trying to achieve by talking change. The constitution now decrees that presidency members - one Croat, one Muslim and one Serb - must be elected from entity territories. In practice, this means that a Serb living in the Federation can vote only for a Muslim or a Croat, and that Croats or Muslims living in the RS can vote only for a Serb.

This wasn't much of an issue in the years just after Dayton, when the focus was on whether the peace would hold at all, and when refugee returns and property laws only existed on paper. Almost ten years later, however, human rights groups and NGOs see entity-based rules like this as awarding rights to ethnic groups at the expense of the individual.

The Berlin-based European Stability Initiative (ESI) has proposed a novel solution: Get rid of the Federation.

"Brcko has a lot of competencies, RS has a lot of competencies, Tuzla Canton has a lot of competencies, but it's not quite certain where the Federation fits in," said ESI director Gerald Knaus by telephone from London. "What we've suggested, based on consultations with politicians on all sides, is abolishing one level of government that's not popular with anyone - the Croats want to abolish the Federation, the Bosniaks want to abolish both the RS and the Federation - nobody wants to defend the Federation."

Knaus said the plan, which calls for the ten Federation cantons to become "administrative units" along with the RS and the Brcko District, could be a way to get RS politicians willing to discuss changes. But in any case, Sarajevo politicians who want change will have to learn to stump for their initiatives in the manner that their European and US counterparts have done for years.

"What you want to see happening is that people in Sarajevo should go out and explain how a stronger state will benefit Serb farmers or Serb businessmen," he said. "In agriculture, if they

want to introduce a state-level coordination body, they will have to show the Serbian farmers that it's in their interest because through this you can access EU funds."

ESI courted controversy in 2003 by calling for Ashdown's sweeping powers to sack officials and impose laws to be scrapped. This plan may not be as high-profile as that one, but it's no less controversial among RS politicians who want to keep the entities.

"I think that the cantons in the Federation should be abolished, not the Federation," said Petar Kunic, a Banja Luka law professor who is on the state parliament's nine-member constitutional law commission.

Since the Dayton constitution recognises entities, not the ten Federation cantons, there's no need to change it, Kunic says. Instead, it should just be followed to the letter until BiH succeeds in moving closer to European structures.

"There's no constitution in the world that doesn't have flaws," he said. "Right now's not the time to change the constitution. There's no need now to use up energy on things that don't benefit anyone."

Kunic said that anyone bringing this up now has "hidden agendas," a view that's echoed by politicians from the Serb Democratic Party. "There are still parties and individuals in the Federation that are trying to realise some of the goals they didn't achieve during the war," party vice president Bosko Siljegovic said in an article published by the Banja Luka daily *Nezavisne Novine* as part of a series on constitutional change. "These forcible initiatives only close the ranks of all political parties from the RS in the common resistance to changing the constitution."

The siege mentality in the RS, combined with the lingering hope of some in the Sarajevo school of thought that the international community will one day unilaterally abolish the entities, are both keeping politicians from opening any serious discussions on constitutional changes.

"One thing that needs to change is the expectation by some that there will be a radical change imposed from above so they don't need to negotiate," Knaus said. "As long as this is an issue on the table, you'll not have a consensus on reform."