

## **Waiting for a miracle? The politics of constitutional change in Bosnia and Herzegovina**

February 3<sup>rd</sup> 2004

Since ESI released its proposal for a process of constitutional change in Bosnia and Herzegovina three weeks ago,<sup>1</sup> a lively public debate has emerged. There have been extensive discussions on Bosnian television and in newspapers and magazines in Sarajevo, Banja Luka and Mostar. The reactions have not divided along traditional ethnic lines, with supporters and critics appearing on all sides. This new, intense debate on constitutional reform has been noted in the international press (*International Herald Tribune*, 13 January and 3 February; the Swiss *Neue Zürcher Zeitung*, 21 January).<sup>2</sup>

Most importantly, there has been an immediate reaction from the very politicians in Bosnia who alone would be able to initiate a process of constitutional change. One of the main governing parties in the Federation, the HDZ, has embraced the vision of a three-layered Bosnian Federation (based on its existing ten cantons, the Republika Srpska and the District of Brcko) as its own and has prepared draft legislation to initiate a process of step-by-step reform. Publicly distancing himself from calls for a third entity, Barisa Colak, HDZ president and state government minister, has suggested that the Federation could be abolished within three years. As the HDZ enters into discussions with its principal coalition partners, there is now a real possibility that a process of negotiated yet fundamental constitutional change could begin in 2004.

The ESI proposal for abolishing the Federation and creating a simplified, federal structure of twelve units was first introduced on 8 January by the Sarajevo weekly *BIH Dani*, which described it as “a brilliant idea for getting out of the post-war constitutional blind alley which paralyses progress.” It received immediate support from the Federation president, Niko Lozancic (*Večernji List*, 12 January 2004). One political commentator noted:

The untenability of the Republika Srpska is written about and discussed all the time, while the Federation of BiH is actually much more pointless. It is hard to find any advantage in its existence... The current BiH organization is definitely unfair, inefficient and expensive.” (*Večernji List*, 12 January).

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<sup>1</sup> ESI, “Making federalism work: A radical proposal for practical reform”, January 2004, [www.esiweb.org](http://www.esiweb.org).

<sup>2</sup> All available on [www.esiweb.org](http://www.esiweb.org) under reactions to the report.

Jakob Finci, head of the BiH Civil Service Agency and former chairman of the Federation constitutional commission, remarked that:

The concept of a Federal Republic of BiH, as a federation of regions, seems a completely acceptable, modern and achievable solution, without destroying the current institutions, but by reshaping, modernising and rationalising them. (*Jutarnje Novine*, 21 January)

The former Federation Minister of Finance in the Alliance government of 2000-2, Nikola Grabovac (NHI), declared:

Abolishing the entities is required first of all in order to save money and strengthen the institutions of the state, which with this complicated political structure will struggle to achieve European integration. Let's organise the equal representation of all three peoples at the state level, but let decisions be made at the level of cantons. (*Večernji List*, 13 January)

Zdravko Grebo, law professor at the University of Sarajevo, commented,

This initiative is good because it moves things forward from a deadlock... The project in its first draft is not the happiest solution, but it is good as a first and serious step towards organising the state. The new reality and the new trends imply that the state can be highly decentralised and permit regional government, which in BiH has always existed. (*Dani*, 16 January)

Ivan Tomljenović, vice-president of Republika Srpska, welcomed the ESI proposal, noting that:

We must accomplish this reorganisation now, so we don't have to do it later when we become a member of the European Union. Naturally Serbs don't agree, because they have an imaginary fear that RS will disappear. Serbs shouldn't fear regionalisation. (*Glas Srpski*, 13 January 2004)

At the same time, leading politicians in Republika Srpska and among two of the main Federation parties, the Party for Bosnia and Herzegovina and the Social Democratic Party, have reiterated their scepticism that fundamental constitutional change could be achieved through negotiation. On the Federation side, those opposed to the initiative argued that it did not go far enough, and that any initiative to reform the Bosnian constitution would need to start by abolishing or dividing Republika Srpska. In Banja Luka, precisely the opposite argument was advanced: that Republika Srpska was "sacred" (RS Prime Minister Mikerevic), and that any assault on its status would be staunchly resisted by the Bosnian Serb political establishment.

Interestingly, however, outside of Republika Srpska nobody has stepped forward to defend the present constitutional arrangements, or to assert that the Federation of ten cantons is serving its citizens adequately. Nor have those politicians who called for a more radical reform been able to offer an alternative strategy for how to achieve it. Their implicit assumption is that the international community will step in to force constitutional change, even against the will of Republika Srpska's political leadership. This prospect has never appeared less realistic than today.

The debate has underlined the fact that constitutional change in Bosnia today can only occur through the Bosnian political process, and not through threats of force or international intervention. This is a sign of the tremendous progress that Bosnia and Herzegovina has made over the past eight years. It shows that Bosnia can now open a fundamental constitutional debate without it threatening the stability of the country.

### **Declining the bait of a third entity**

The strongest opposition to the ESI proposal came from some of the leading politicians in Banja Luka, defending the constitutional status of Republika Srpska. SDS party leader, Dragan Kalinic, sought to derail the debate on a unified federal structure by proposing instead to partition the Federation into separate Bosniac and Croat entities. His remarks were a clear attempt to encourage Bosnian Croats to revive their old ambitions for a third entity.

They did not take the bait. Dragan Covic, member of the state presidency and leading HDZ politician, responded immediately that Kalinic's proposal was outdated and counterproductive.

The future of BiH is in regional associations; the time of ethnic divisions is past. (*Slobodna Dalmacija*, "Kalinic is ten years late", 14 January)

A *Dnevni List* commentator noted that Kalinic was simply trying to divert attention away from Republika Srpska and onto Croat-Bosnian relations (14 January, "Kalinic keeping fingers crossed in his pocket"). The three-entity suggestion was also roundly rejected by SDA Vice-President Bakir Izetbegovic, SBiH President Safet Halilovic, and Sejfidin Tokic, SDU Vice-President.

Instead, HDZ embraced the vision of a unified federal structure for Bosnia and Herzegovina, based on its existing regional units. At a meeting in Neum on 17 January, the HDZ main board called for the Federation's areas of exclusive competence to be transferred to the state level, and for its areas of joint responsibility with the cantons to be exercised solely by the cantons. Announcing that it was "time to work instead of just talking", the HDZ immediately began preparations for introducing draft legislation into the Federation parliament. HDZ President Barisa Colak announced that, with the support of the other coalition partners, the abolition of the Federation could be achieved within three years.

It is clear to us all that this organisation of BiH cannot become functional and economically self-sustaining. Because of that, we have decided to seek the transfer of responsibilities from the Federation to the state. I think that, if there is enough political will, we can achieve this in this electoral mandate... We have been discussing this idea with the representatives of our partners in the government and they were supportive of it. Now it is time to put it into action...

I think that we need to use the model of certain multi-national Western European countries, such as Switzerland or Belgium, in which citizens' rights are strongly protected. I don't want to insist, but I want us to discuss all proposals, because the common goal should be a functional

and economically sustainable state to meet the needs of citizens. (*Nezavisne Novine*, 19 January)

The HDZ's categorical rejection of a third entity in favour of a three-layered, European federation caused some consternation in Republika Srpska. One commentator wrote:

A few days ago was the formal beginning of a Bosniac-Croat post-war offensive on the Dayton Agreement. This idea emerged in such a way that certain parties, which represent these two people, completely changed their orientation and pre-election vocabulary. The greatest surprise is perhaps the position of the president of HDZ BiH, Barisa Colak, whose dream had been the existence of a Croat entity in BiH, who overnight changed to his former nightmare – a unitary Bosnia. (*Blic*, 21 January 2003)

Dragan Cavic, RS president expressed the same surprise:

Until recently, Croat political parties have flinched from the idea of a third entity, and now the Croat political representatives are pursuing the cantonization of BiH. (*Novosti*, date)

In the meantime, HDZ pressed ahead with its initiative. One of its representatives in the Federation, Mile Lasic, prepared a draft constitutional law on reallocating responsibilities. Asked to comment on the ESI proposal, Lasic stated:

Now, 9 years after the signature of the Dayton Peace Accords, we have a right to interpret the ESI message in a way that Europe and the international community want the whole of BiH to be cantonized (regionalised), without entities, which in that way will enter into European and Euro-Atlantic integration. We can and we must help it in these efforts. (*Večernji List*, 26 January)

### **SDA – the pivotal party**

The initial reactions from the SDA, the largest party in the Federation and the leading party in the present Federation government, were cautious. The SDA vice president, Seada Palavric, welcomed the proposal, as did spokesperson Sefik Dzaferovic. Dzaferovic declared the SDA's willingness to participate in any process that would lead to the reorganisation of BiH as a modern and functional state. However, he warned that his party would resolutely oppose any initiative that led in the direction of a third entity. SDA Vice President Elmir Jahic expressed the same concern:

The ESI initiative should be approached carefully. It should be examined from all sides, in order to identify whether it brings unacceptable risks – whether it perhaps opens the possibility of a third entity. (*Dani*, 16 January 2003)

A number of leading SDA figures indicated their willingness to examine the proposal seriously. Former Bosnian prime minister Hasan Muratovic was quoted on FTV as saying:

I see the transfer of Federation powers to the state level as a positive step towards a stronger state structure and the possible abolition of surplus levels in the state structure.

The response of the SDA to the HDZ parliamentary initiative will now be a pivotal factor in the coming debate. No process of constitutional reform is possible without its support. The fact that the SDA has a strong political base at the cantonal level, where many of its leading politicians started their political careers, will be an important factor. If the party accepts that the HDZ has abandoned its old ambitions for a third entity, the prospects for agreement on the reform of the Federation are much increased.

We can now expect to see the two parties begin what must inevitably be complex negotiations on the redistribution of particular responsibilities and resources. The beginning of this more serious discussion represents a big step forward – the evolution of an abstract dream of constitutional change among the Federation parties into a serious and credible political process.

If the HDZ and the SDA are able to agree on a way forward, they still need to attract the support of other Federation parties in order to secure a majority in the parliament for the first element in the process: the shifting of competencies and resources down to the cantons. Later, they will obviously need to develop a package of reforms that would satisfy the concerns of the leading political parties in Republika Srpska.

### **The view from Republika Srpska**

The leader of the Socialist Party of Republika Srpska, Petar Djokic, had already expressed his view on 22 December that abolishing the Federation might represent a constructive way forward for the Bosnian state (*Glas Srpski*, 26 December).

Most politicians in Republika Srpska, however, declared themselves to be solidly opposed to the idea. They were insistent on three points: that the territory of Republika Srpska must be protected; that its constitutional status as an entity should be retained; and that no change to the Dayton Agreement was possible without the agreement of the Serbs.

RS Prime Minister Dragan Mikerevic (PDP) stated: “The RS is something sacred which nobody can abolish” (*Jutarnje Novine*, 10/11 January). RS President Dragan Cavic (SDS) warned: “There is no chance that BiH will continue to exist, if RS doesn’t exist within it as an entity” (*Oslobođenje*, 20 January). The President of PDP and Bosnian Foreign Minister Mladen Ivanic, commented: “Even a thought of having RS at the level of a canton... is unacceptable.”

However, the leading Serb parties did not rule out the possibility of constitutional reform to improve the functioning of the Bosnian state, provided it was based on a genuine agreement of all three constituent peoples. PDP Secretary General Nevenka Trifkovic emphasized that all three peoples in BiH would have to agree on the transfer of authorities from entities to either Cantons or the State. Nebojsa Radmanovic, President of the SNSD Executive Board, stated on RS television,

It does not mean that there is no need to talk about the internal organization of BiH and it does not mean that we don't need to find those solutions that are functional for BiH, for more development and better life in this region.

President Cavic even made a point of reminding his constituency that a functioning state of Bosnia and Herzegovina was in the interests of Republika Srpska.

It is completely clear that an RS exit from BiH would be a painful and thorny path. It is not a realistic possibility, and on that path Serbs would not have the support of the US, the EU or even Russia. Therefore we have had to conclude that the path to Europe for RS lies through BiH. (*Jutarnje Novine*, 20 January)

It is clear that the hostility of Bosnian Serb politicians to the initiative stems from their fear of a joint Croat-Bosniac assault on the constitutional and territorial status of Republika Srpska. This fear is inevitably reinforced by the hostility to the continued existence of Republika Srpska coming from parts of the Federation media and political establishment. If the issue of constitutional reform in Bosnia is reduced to the simple question – should Republika Srpska exist or not? – it leaves no scope for discussion or compromise.

However, the insistence of the RS leadership that changes to Dayton could only come about through the agreement of all three constituent peoples is an accurate statement of the constitutional and political reality, and is also at the heart of the ESI proposal. It is the constitutional process that protects them against any threat that Republika Srpska could be abolished or divided against their will. As to its constitutional status, it remains up to the advocates of any constitutional reform to develop a package of reforms which can be sold to RS citizens and their elected representatives.

### **Starting state-building from scratch**

Some of the most trenchant criticism of the ESI proposal came from former Alliance partners in the Federation: the Party for Bosnia and Herzegovina (SBiH) and the SDP, which is now in opposition.

Leading politicians from both parties objected that the proposal was unacceptable because it tolerated the continued existence of Republika Srpska, thereby preserving the artificial territorial divisions which emerged from the Dayton Agreement. They called for the present constitutional order to be abandoned altogether, and replaced with an entirely new regional structure based on economic or historical principles. As the leader of SBiH, Safet Halilovic, commented on the ESI proposal:

At first sight this initiative looks interesting and progressive; however, if one carefully analyses its contents and what lies behind it, it can be seen that it contains a very dangerous thesis, which leads towards the further fragmentation of BiH. Changes must be made, but on the basis of natural economic-functional regionalisation, and not through the solidification of the administrative, artificial cantonal and entity boundaries which were part of the erroneous construction at Dayton. (*Jutarnje Novine*, 10/11 January)

Haris Silajdzic, long-time foreign minister and post-war Chairman of the state Council of Ministers, was even less compromising:

This initiative is wrong from the outset because it gives the impression that everything is flexible in BiH, that everything can be changed, that even Dayton can be changed, but not the position of RS in BiH. From that perspective I think that this approach is very wrong... In my opinion, the only possible solution is to abolish both entities simultaneously, even if that is done gradually. If we really want the best for BiH citizens, the state must be organised on the principle of economic regions, because they have developed over hundreds of years and only in that way can they serve BiH citizens to develop the economy, open new space for co-operation within and outside BiH. (*Dani*, 16 January)

In short, while SBiH agrees broadly with the vision of a three-layered Bosnian state, it calls for a completely different regional design. It has not made it clear whether these new regions would be constituent units of a genuine federation, with their own elected governments and parliaments, or mere administrative units of a centralised state. Nor is it ever made explicit how the new internal boundaries would be drawn, except that they would be “logically” similar to those of the pre-war socialist Republic or the Austro-Hungarian protectorate.

Practically, this would amount to nothing less than the complete administrative reorganisation of the country. All government agencies between the municipalities and the state would have to be dismantled, relocated and reconstituted. Cantonal institutions together with their staff would move from Bihac to Banja Luka (the traditional administrative centre for the north-west of the country); those in Travnik and Zenica would move to Sarajevo. Herzegovina would be reconstituted as a “natural economic” region – presumably with a Croat majority – incorporating Trebinje, while the rest of eastern Republika Srpska would be governed from Sarajevo and Tuzla.

This uncompromising vision is based on a steadfast refusal to acknowledge any of the social changes and (often painful) political compromises of the past decade. As political rhetoric, it appeals to those for whom the Dayton Agreement represented a deeply unpalatable end to war and ethnic cleansing. A root and branch transformation of Bosnia’s institutions would not just lead to better government; it would also rewrite the last painful decade of Bosnian history.

As a constitutional *reform* proposal, however, the argument advanced by Silajdzic is most striking in its refusal to consider the political and administrative costs of such a total reorganisation. It seems to imply that the past eight years of institution-building could be swept away, without loss of public services. It assumes that creating multi-ethnic administrative regions would lead naturally to multi-ethnic political constituencies, rather than multiplying dysfunctional units like the present Herzegovina-Neretva Canton, or condemning Bosnia to long-term international supervision along the lines of the present District of Brcko. Multiethnic units *are* possible, and helping to make Herzegovina-Neretva Canton work better would be one of the best indications on the part of the HDZ that it is serious in trying to find pragmatic solutions to Bosnia’s constitutional problems. However, creating new, multiethnic regions in the absence of a broad consensus is not going to lead to more effective governance.

The Social Democratic Party (SDP) has been less radical in tone, but its criticism was similar in substance. Zlatko Lagumdžija, President of the SDP and former Chairman of the Bosnian Council of Ministers, insisted:

Although it has interesting parts, creative solutions and thinking, ESI's proposal offers a new, apparently simple solution which preserves most of the old and leads towards new and more complex problems. First and foremost, ESI's proposal doesn't lead towards a multi-ethnic structure for the BiH state and a single society, but protects the proponents of further national division. This would lead to a new, temporary state structure with in-built, further disintegratory mechanisms. In place of one there would be ten temporary, even more expensive and smaller 'Federations', under the pretence that Republika Srpska is a canton and that it is self-sustaining. This would slow down and further complicate the already slow process of strengthening state functions and taking them over from the entities. (*Dnevni List*, 16 January)

Similar criticisms were advanced by Alija Behmen, the former prime minister of the Federation Alliance government.

The fact is that Bosnia needs reconstruction in order to achieve greater functionality by means of regional decentralisation. In ESI's proposal they talk of abolishing the Federation, and that this can begin immediately. I worked in the Federation, I know its problems well and I would not agree with this assertion. The abolishing of the Federation cannot begin unless the central institutions are strengthened at the same time... The only solution is abolishing the entities and introducing regional organisation which would be founded on natural regional units, based on geographic and economic ties. This is the arrangement by which Banja Luka and Bihac would be in the same region, Mostar and Trebinje in another, and Tuzla and Bijeljina in a single region".

If a single Herzegovinian canton were formed, it would be very ethnically clean. RS would also be very 'clean' in that sense and that would inevitably mean that the Bosniacs also, through some kind of inter-cantonal alliance, would form their third part of BiH, and I have no doubt whatsoever that three ethnocratic parties would agree upon that very easily." (*BH Dani*, 16 January)

In essence, it appears that both the SBiH and the SDP agree on two fundamental principles: step-by-step reform proposals like that outlined by ESI must be resisted in favour of the immediate reorganisation of the state; and attempting to find compromises with any government of Republika Srpska is naïve, dangerous and morally repugnant.

However, having abandoned any attempt to seek change on the basis of compromise, the SDP and the SBiH are obviously counting on the international community to impose a new constitutional design on Bosnia, in the face of open opposition from within the country. However, the international community has made it extremely clear that it is up to Bosnians to resolve their own constitutional dilemmas. The Head of the EU Delegation to BiH, Michael Humphreys, has rejected the possibility of organising a new Dayton-style international conference.

We are not going to initiate any changes, but we could support them if they were initiated at the local level. Nonetheless, I reiterate – there will be no new Dayton. (*Jutarnje Novine*, 22 January)



For his part, the High Representative Paddy Ashdown even went so far as to reassure the citizens of Republika Srpska that their Entity was not under threat from international imposition.

My message to the citizens of RS is: don't be afraid, be brave, because only you can change the Dayton Agreement, if that is what you want. (*Dnevni Avaz*, 15 January)

I will not permit anyone to destroy [Republika Srpska], and changes to the structure of BiH can only be made by the citizens of RS and BiH. (*Nezavisne Novine*, 15 January)

The possibility of an international initiative to revise Dayton has never been high, and now appears to be categorically excluded.

Nonetheless, there is obvious appeal in the idea put forward by the SDP and SBiH that Bosnian citizens should enjoy similar rights and benefits throughout country. As former Federation Prime Minister Alija Behmen put it:

There is nothing more natural or logical than that patients from Trebinje who need serious medical assistance go to Mostar, those from Bijac to Banja Luka, and those from Pale to Sarajevo.

Creating a shared vision of a common Bosnian citizenship is a key part of the state-building process. The question is, how would it best be achieved? It does not seem far-fetched that citizens of Republika Srpska would support reforms which allowed them access to health or higher education institutions in Sarajevo or Mostar. For good negotiators presenting their case in terms of practical interests, as Alija Behmen does, there should be no end of constructive solutions to be found. However, this requires a willingness to combine a vision of Bosnia's common future with an understanding of present constitutional realities, and to pursue an incremental process of negotiated change.

This leads to a striking paradox: despite their radical rhetoric, the opponents of *gradual* reform in the Federation end up *de facto* as defenders of the constitutional *status quo*. They may be *constitutional Jacobins* in spirit, but they are *true conservatives* in practice. In political matters, waiting for a miracle is in fact the most conservative option of all.

### **A European Bosnia in 2006**

ESI has argued that to create a workable federal state in Bosnia and Herzegovina, Federation politicians must begin with what they have now, and move forward through compromise and consensus. Abolishing eight years of post-war institution-building and starting all over again with new regions is neither possible nor desirable. To argue that waiting for an international policy is a credible alternative to a domestic reform and debate may be comforting but is based on an illusion.

Constitutional reform is after all not the only challenge; Bosnia and Herzegovina faces enormous social and economic challenges, and is preparing an ambitious programme of European integration. Progressive, negotiated constitutional reform will allow economic reform and the integration process to proceed in parallel. Even were it possible, rebuilding the state on the basis of an international imposition would set these other goals back considerably, ensuring long-term constitutional and administrative turmoil.

For all those who believe in the Bosnian state, the challenge is to create federal structures which actually work. A Federal Republic of Bosnia and Herzegovina based on the existing 12 regions may not be the most elegant solution. It does, however, address many of the concerns expressed by SDP and SBiH politicians: it could be the basis for giving Bosnians similar rights and social entitlements across all 12 regions. As the Federation is abolished, discussions could begin on creating BiH-wide pension or veterans' funds, if this is a goal of the SDP and SBiH. Such initiatives can offer real practical benefits to the citizens of RS, and so could be sold as part of a package which includes further strengthening of the central institutions.

There is a wider context to ESI's proposal to achieve constitutional change within the next three years. In 2007, Bulgaria and Romania are set to join the European Union as full members. By that time, it is likely that Croatia will also be well advanced in its negotiations on EU membership. The EU may also be negotiating with Turkey, as well as with Macedonia following its application for membership at the end of this month.

Where does this leave Bosnia and Herzegovina? Does it wish to remain in the dwindling club of Balkan states able to aspire only to Stabilisation and Association Agreements?

This is why a realistic process of constitutional reform, leading to a new stable equilibrium acceptable to all sides, should be launched soon. Only then would BiH be in a position to achieve the one overarching political goal shared by HDZ and SDS, SDA and SDP politicians: to apply for European Union membership before the end of 2006. It is this realistic vision of European integration that offers the true hope of transforming Bosnia and Herzegovina.