

## Introduction: Inside the Bosnian Crisis

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On 1 November 2007 Bosnia's Serbian prime minister Nikola Špirić resigned bringing government to a standstill (Zuvela 2007a). Richard Holbrooke, the US architect of the Dayton peace agreement, highlighted in the *Washington Post* the warning of Raffi Gregorian, the US deputy High Representative in Bosnia, that 'Bosnia's very survival could be determined in the next few months if not the next few weeks' (Holbrooke 2007). The European Union has circulated to its member state ambassadors a document recognising that: 'The eruption of the long-simmering political crisis in Bosnia-Herzegovina has painfully exposed the failure of the most intensive effort ever at internationally-supervised statebuilding.' (Batt 2007) However the current crisis is resolved, it is the underlying problems of the framework of international regulation in the country, which is the central concern of this special supplement of the *Journal of Intervention and Statebuilding*.

Bosnia seems to be in the midst of its most serious political crisis since the Dayton agreement brought the Bosnian war to an end in November 1995. Dayton established a federal Bosnian state composed of two entities, the Federation of Bosnian Muslims (Bosniaks) and Croats, and the Bosnian Serb entity, Republika Srpska (RS). The central state institutions were relatively weak and over the last twelve years international actors have focused on strengthening and legitimising these institutions with mixed success. The current crisis follows a long period of negotiating police reforms, part of a centralising international agenda, against opposition, largely from Bosnian Serb representatives. Delays, obstructions and disagreements have resulted in Bosnia being refused the offer of an EU Stabilisation and Association Agreement and in attempts by the High Representative to prevent obstruction through reforming the procedures of the Bosnian state institutions. It was in response to these institutional reforms that Špirić resigned.

What makes this crisis different to many of the previous political crises which have marked the twelve years of international statebuilding in the tiny state is that at the centre of international controversy are the powers and authority of the international statebuilding institutions themselves. In particular, the powers of one individual: the international High Representative; the current incumbent of the post is Slovak diplomat Miroslav Lajčák. Since 2002 this post has combined the roles of international High Representative and EU Special

Representative, meaning that the High Representative's powers - which include the authority to impose legislation and to dismiss elected representatives and government officials without any right of appeal - can be used both under the aegis of upholding the Dayton peace agreement and of facilitating the reforms necessary for EU membership.

Nikola Špirić's resignation as the Chair of the Council of Ministers has highlighted the increasing contradiction between the powers accrued by the international statebuilding institutions, particularly the Office of the High Representative, and the need to develop political institutions which are responsive to the popular demands generated through Bosnia's federal democratic system of representation. Špirić argued that, for statebuilding in Bosnia to go forward, the Office of the High Representative needs to become less involved in the domestic political process. In his resignation speech, Špirić stated that:

The mechanisms of governing Bosnia cannot be held by the international community while I'm supposed to be taking over responsibilities... Twelve years after Dayton, Bosnia-Herzegovina is unfortunately not a sovereign state. Twelve years after Dayton, foreigners have exclusive rule over this country and I believe this isn't good for this country or its citizens. (AFP 2007)

The current political crisis in Bosnia, which brings into question the legitimacy and authority of the international institutions tasked with statebuilding, has come at an inopportune time for the US and the European Union: in the midst of the final delicate negotiations over the future status of Kosovo. This is particularly the case as the European Union is preparing to bring in mechanisms of 'guided sovereignty' for Kosovo based on the Bosnian model. The crisis has also been played upon - and some commentators argue, in fact, instigated - by Serbia and Russia, strengthening their hand over the Kosovo negotiations and making the transfer from UN to EU administrative authority more problematic (Holbrooke 2007; Tisdall 2007; IHT 2007).

With so much at stake, it seems that the international community may have taken their eye off the ball in Bosnia. With international attention focused on the failures of international statebuilding in Iraq, many commentators and policy officials appear to have assumed that the problems of statebuilding in Bosnia have been successfully resolved by international institutional engagement. This has been the explicit basis for the former High Representative Lord Paddy

Ashdown's policy speeches on the 'lessons learned' from Bosnia which could assist post-conflict planning in Iraq. International perceptions of his success in the region were undoubtedly a major reason for Ashdown's invitation to join the new UK prime minister Gordon Brown's 'government of all the talents' (Ashdown 2007).

Bearing in mind the generally positive gloss applied to post-war EU and international policy-making in Bosnia, it is little surprise that many analysts have looked outside Bosnia for the source of the problems. Rather than look too closely at international statebuilding policy practices, the US and EU official position has been to argue that the manipulative intentions of Serbia and Russia explain why Bosnia has been thrown into crisis today (Holbrooke 2007; Tisdall 2007). This position would appear to be supported by declarations from the Office of the High Representative (OHR) that Špirić's resignation over OHR attempts to streamline the policy-making process has been an act of irresponsible exaggeration and over-reaction.

The Steering Board of the Peace Implementation Council (the ad hoc international body which formally appoints the High Representative) stated that 'the only objective of the measures is to streamline the decision-making process in the Council of Ministers'. High Representative Lajčák himself has argued that: 'It is paradoxical that the Chairman of the Council of Ministers should resign over measures that are designed to make the Council of Ministers, the body that he chairs, more efficient.' (OHR 2007) Presenting the recently imposed constitutional changes as designed merely to facilitate efficient governance has made Lajčák appear to represent the rational interests of Bosnian citizens, enabling him to denounce Špirić and Bosnian Serb concerns as 'over-emotional, irresponsible and insufficiently rational' (Lajcak 2007).

The constitutional changes are complex. To understand their implications it is necessary to read Lajčák's imposed reforms of 19 October 2007 (OHR 2007a) in conjunction with the legislation amended (OHR 2002). The key amendments are stated in Articles 4 and 5 of the 19 October decision. Article 4 removes the need for at least two members from each constituent people to be present for the Council of Ministers to be able to hold a session and adopt decisions. Article 5 changes the decision-making majority from a majority of all the members of the Council to a majority of 'those present and voting', and makes a consensus necessary only for 'those present and voting'. Therefore, decisions made by governing institutions no longer require support from all three of Bosnia's segmented ethnic communities (Bosnian Muslims, Croats and Serbs).

The High Representative's director of communications, Frane Maroevic, has written in clarification that: 'The intervention does one thing - it obliges representatives of the constituent peoples to attend sessions of the Council of Ministers.' (Maroevic 2007) The reforms posit that the consensus rule is of secondary importance compared to the efficiency of Bosnian institutions. For those, particularly the Bosnian Serb representatives, who oppose this change, undermining the need for a consensus of support from all three of Bosnia's constituent people is seen to be a major change to the constitutional framework. Nevertheless, the High Representative's office argues that this is neither a major nor a problematic change as: 'If they are present there is simply no possibility of one constituent people being outvoted by the other two.' Maroevic goes on to argue that: 'This intervention is fully in line with the Bosnia-Herzegovina constitution and has not in any way reduced the cabinet's voting rights or representation of Bosnia's three constituent peoples - Serbs, Croats and Bosnians.' (Maroevic 2007)

Article 5 of the 19 October reforms states that if all the members of the Council of Ministers attend and vote, and there is no consensus, then a majority decision can be reached if only one member of each constituent people supports it. This reduces the previous necessary quorum by half and potentially means that an individual can vote against the majority of a constituent people to enable legislation to pass. Previously a consensus of support was needed within each constituent people. Therefore, effectively, state institutions would no longer have to take into account the majority opinions of a constituent people, such as the Serb representatives of the Republika Srpska entity (Chandler 2007).

The full legal implications of the High Representative's intervention into the constitutional set-up are, in fact, not yet clear. Lajčák himself stated that: 'We have commenced talks with legal experts in order to explain and clear up any possible misunderstandings. We will resume those talks... We are willing to come to a legal solution that will ultimately be crystal clear, and that will remove all doubt.' The High Representative has also insisted that similar reforms should be carried through to amend the procedures of both houses of the Bosnian state parliamentary assembly by 1 December 2007. While there are legal doubts over the implications of the reforms, the crisis is difficult to resolve as no statements are necessarily definitive. What appears beyond question, however, is the fact that the Bosnian constitutional framework now appears increasingly under question, considering the ease with which the High Representative has justified and imposed constitutional reform. It also seems clear that the direction of

reform will be that of undermining or at least severely weakening the Dayton principle of inter-ethnic consensus.

The EU and the US are standing firmly behind the High Representative and threatening punitive measures if opposition to his reforms continues to hold up Bosnia's political process. US Ambassador Charles English warned Bosnian political leaders that opposition to Lajčák would only hurt Bosnia: 'Do not challenge the High Representative. A challenge to him is a challenge to the United States... It diverts Bosnia from the European path, towards isolation and instability.' (Zuvela 2007b) The EU has issued similar warnings against opposition to the rulings of the High Representative. It is little surprise, therefore, that Lajčák has been unmoved in the face of widespread Bosnian Serb opposition, including protests across the Republika Srpska by as many as 10,000 people, a petition against the recent measures signed by 300,000 Bosnian Serbs and the threat by the members of the leading Bosnian Serb party, the Party of Independent Social Democrats (SNSD), led by the RS prime minister Milorad Dodik, to resign from all governing posts (Alic 2007; Bancroft 2007).

Lajčák's response to widespread protest has been to be dismissive of this 'artificial crisis' (B92 2007). The High Representative has argued that only he has the right to interpret what is needed both under the Dayton agreement and in order for EU accession, stating that:

It would be better if people in this country did their job, concentrated on their own work. It is interesting that when we were working on police reform everyone here saw it fit to interpret the European principles themselves, and today they are all interpreting the Dayton Peace Agreement. I think that both those subjects are my mandate, and the politicians have a different mandate - to do their jobs, to go to work and fulfil the commitments and obligations they have undertaken. (Lajčák 2007)

For Lajčák, elected politicians are wrong to concern themselves with questioning issues of the constitution, the Dayton agreement, or EU requirements; their job is to follow his instructions and to ensure the smooth working of the policy process. For Bosnia's resigning prime minister Nikola Špirić, this line of approach means that 'Bosnia-Herzegovina is absurd... If the international community always supports the High Representative and not the institutions of Bosnia-Herzegovina, then it doesn't matter if I am the head of that state, or Bart Simpson.' (MacDonald 2007)

For many observers and policy-makers, at stake here is much more than a personal stand-off between Lajčák and Špirić. On the resolution of this crisis rests the direction of international policy in Bosnia and the Western Balkans. The EU appears to be caught between a rock and a hard place: either the EU will act to reinforce the authority of the High Representative, further delaying self-government in Bosnia, or attempt to roll back the powers of the High Representative, risking a loss of control over the policy agenda. Either option seems likely to result in a setback to the enlargement process. The crisis is also likely to lead to a rethink in the practice of the EU policy of enlargement through member statebuilding in the Western Balkans. The fact that the crisis has highlighted the danger that the international administration may have set back the development of statebuilding in Bosnia and possibly delayed Bosnia's admission into EU frameworks will also provide central policy lessons for the future development of Kosovo's EU-guided 'independence'.

This special on-line supplement of the *Journal of Intervention and Statebuilding* is designed to give those involved in research and policy-making immediate access to some of the key documents and analysis on the current Bosnian crisis. Three articles set out the context of the current crisis in the post-1997 development of the 'Bonn' powers of the international High Representative and the tendency to use these powers to go beyond the framework of the Dayton agreement. From 2002 onwards the blurring of the sphere of competency of the High Representative from implementing Dayton to overseeing the transition to EU membership meant that aspects of reform specific to the Bosnian context were transformed into conditions for negotiating EU membership.

Matthew T. Parish's article on 'The Demise of the Dayton Protectorate' provides the insight of a serving OHR Legal Department Head (2005 – 2007). He charts the rising level of power and activism of the Office of the High Representative, culminating in the centralizing agenda of Lord Paddy Ashdown and the problems of attempts to disengage under his successor Schwarz-Schilling. He suggests that Ashdown's decision to tie police reform with EU negotiations resulted in putting both the credibility of the OHR and of European enlargement on the line. He recommends that the EU should salvage its policy by integrating Bosnia without insisting on making it a centralized state as a precondition for membership.

The second article is the work of Gerald Knaus, chairman and co-founder of the European Stability Initiative (ESI) and Kristof Bender, a senior analyst with the ESI. They have allowed *JISB* to republish a recent ESI report, 'The Worst in Class: How the International Protectorate Hurts the European Future of Bosnia

and Herzegovina'. This report highlights the incongruities of the decision to allow Serbia to recently sign a Stabilisation and Association Agreement with the European Union while excluding Bosnia because of a lack of progress over police reform. The report then reconsiders the rationale for police reform and the use of EU conditionality, warning that the imposition of additional conditions is setting back Bosnia's progress.

The third article is a detailed analysis of the background to the police reform proposals under the leadership of High Representative Lord Paddy Ashdown, which is forthcoming in the *Journal of Intervention and Statebuilding*, Vol.2, No.1, (March 2008). Thomas Muehlmann, a member of the Austrian foreign ministry and formerly the Chief Political Advisor of the European Union Police Mission in Bosnia-Herzegovina (2003 - 2005), is highly critical of the approach taken by the OHR in forcing through a controversial political reform as if it was merely a matter of technical and administrative management. Muehlmann argues that Paddy Ashdown's confrontational approach was counterproductive in terms of building support for his reform programme, both within Bosnia and within the international institutions responsible for providing support to the work of the OHR.

This special supplement also includes a range of immediately relevant documentation. Included here is the Institute for Security Studies, 'Institute Note' on the crisis, written by Judy Batt. This document was issued to the EU Political and Security Committee (COPS) which includes all EU member state ambassadors. This note is very much an admission of EU failure in Bosnia, suggesting that 'the EU's much-bruited "soft power" is not working' and that 'the legitimacy and credibility of the OHR have been seriously weakened'. However, even more striking, is the allocation of blame, not to EU policy but to the Bosnian political elite, described as comprising: 'an obnoxious mix of ruthlessly single-minded masters of obstruction and brinkmanship; short-sighted obsessives; and corrupt, feeble-minded provincials lacking in strategic vision, political judgement and courage. Their politics are not irrational, but their rationality is patently not that of EU integration'. Bearing in mind the analysis, the conclusions are not surprising: that the OHR needs to be strengthened, to become a 'Leviathan' which bears 'undisputed authority'.

Also included amongst the documentation provided are two letters from Bosnian Serb representatives. The letter of Republika Srpska prime minister Milorad Dodik to the European Parliament of 20 November 2007, highlights the destabilising nature of the constitutional reforms and reasserts that there is neither any intention to link the Bosnian crisis with the situation of Kosovo nor

any intention of raising the issue of secession, and reaffirms the wish for Bosnia to join NATO and the EU but with the institutions of the Republika Srpska entity preserved. Also included is the letter of Dr Milorad Živković, Speaker of the Bosnia-Herzegovina Parliamentary Assembly House of Representatives, to the Secretary-General of the Council of Europe, of 21 November 2007. In the letter, Živković lays out his opinion of the impact of such reforms on the Bosnian parliament, explaining the reasons why Bosnian Serb representatives feel so strongly about these measures.

The final three documents included in this special supplement are available from the Office of the High Representative. The first is the 'Press Conference by the High Representative Miroslav Lajčák, following the PIC meeting' of 31 October 2007. This speech provides a good example of Lajčák's view of the clarity of the situation and his mandate and the discourses through which disagreement is delegitimised, for example, in his statement that: The Decisions I passed are in the best interests of all Bosnia-Herzegovina's citizens and all constituent peoples. The only people who may have a problem with the Decisions are those who do not care whether the institutions of this country function properly and effectively or not.' The final two documents are those relating to the 19 October reforms: the 'Decision Enacting the Law on Changes and Amendments to the Law on the Council of Ministers of Bosnia and Herzegovina' and the 13 December 2002 'Law on the Council of Ministers of Bosnia and Herzegovina' which it is necessary to read in conjunction with the 19 October legislation.

1 December 2007

London

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