



*President Slobodan Milošević of the Federal Republic of Yugoslavia, President Alija Izetbegović of the Republic of Bosnia and Herzegovina, and President Franjo Tuđman of the Republic of Croatia initial the Dayton Peace Accords. The Balkan Proximity Peace Talks were conducted at Wright-Patterson Air Force Base Nov. 1-21, 1995. Photo courtesy of: U.S. Air Force/Staff Sgt. Brian Schlumbohm*

## FIXING DAYTON: A New Deal for Bosnia and Herzegovina

*Report and Recommendations Global Europe Program Working Group on the Western Balkans*

Twenty-five years ago this month, the Dayton Peace Agreement stopped Europe's worst conflict and genocide since World War II. More Europeans died in the Bosnia war than during the entire Cold War. The inability of the United States and its European partners to agree on ways to stop the killing was the biggest transatlantic failure in seventy years. This record of tragedy and disaster is why the peace achieved at Dayton in 1995 was such a striking and surprising success.

Today, however, the Dayton arrangements are associated less with peace than with dysfunction. In part that is because Dayton was more a truce than a settlement. The elaborate governing architecture

created at Dayton froze in place the warring parties (Republika Srpska and the Federation) and rewarded their commitment to ethnically-based control of territory. Since then, kleptocratic ethno-nationalists have manipulated Dayton's provisions to entrench their power at the expense of the country's viability.

Without a decisive overhaul of Dayton, Bosnia and Herzegovina risks becoming a disaster on the doorstep of a new U.S. administration and during the remaining term of the current European Commission. Bosnia's implosion risks renewed bloodshed, refugee flows, border changes, and widespread economic disruption that could strengthen Russian and Chinese influence



The Old Bridge, Mostar, Bosnia-Herzegovina, Photo courtesy of: Mikael Damkier/shutterstock.com

in the broader region, further fray the NATO alliance, and disrupt U.S. ties with the European Union (EU).

As Dayton's midwife, the United States bears particular responsibility to extend Dayton's success by fixing its deficiencies. Fortunately, Dayton's architects never intended its arrangements to remain static. Within its provisions are the means for reform. Fixing Dayton is also an opportunity for the United States to revive its partnership with the EU and to work with Bosnia's citizens to achieve a functional and effective Bosnian state that enjoys popular legitimacy, adheres to the rule of law, curbs corruption, ensures equal rights for individuals and protection for minorities, jumpstarts economic growth, and contributes to the security and stability of southeastern Europe.

## Stopping the Slide

Until now there has been insufficient political will to change the Dayton superstructure. Corrupt politicians and judges profit from it; separatists gain influence from it. The United States, proud that it ended the war and removed Bosnia from the world's hot spots,

stepped back in hopes that Europe would "backfill" responsibility for the Balkans so that Washington could address other global dangers. Yet European leaders, relieved that violence had been quelled, have been unprepared to catalyze the changes needed for Bosnia and Herzegovina, or other untethered parts of the Western Balkans, to join the European mainstream. The EU and the United States were content to fool themselves with the old Habsburg adage that the situation, while hopeless, is not really serious.

This complacency is deeply misplaced. Dayton's core achievement – peace – is deteriorating. Bosnia and Herzegovina has been captured by kleptocratic elites and outside influencers who empower them. It ranks just behind Haiti and Venezuela as the country with the most severe brain drain in the world. Almost half of people born there now live in another country and the number of those emigrating or hoping to emigrate continues to rise year after year. The country is less secure, and the prospects for violence greater, than a decade ago.

Even though neighboring Serbia and Croatia signed on to the Dayton Peace Accords, and are thus bound to respect and affirm Bosnia and Herzegovina's sovereignty and territorial integrity, leaders in both countries have joined like-minded collaborators in Bosnia and Herzegovina to weaken Bosnian state institutions.

These negative trends are further fueled by external actors. The country has become both a target and a conduit for opaque investments and flows of monies from a growing number of sources around the world with little interest in transparency, accountability, or the rule of law.

Although not a major investor, Moscow acts opportunistically in the region by sowing distrust among local actors, encouraging and emboldening separatist politicians, expanding selective energy, security and intelligence relationships, and exploiting the cyber space with disinformation and disruption. It is arming and training paramilitary forces in Republika Srpska, Bosnia's ethnic Serb-dominated entity. It bribes and threatens its way into Bosnia's domestic politics, in part to derail or delay the country's NATO and EU membership.

China's interest in Bosnia and Herzegovina and the Western Balkans continues to grow, as the region lies between the Chinese-owned port of Piraeus in Greece and the rest of the EU's big Single Market. Chinese energy, mineral, and transport investments in Bosnia and Herzegovina now total \$3 billion, a significant sum for a poor country of 3.2 million people. Yet many projects are being undertaken by Chinese suppliers and workers rather than with local resources. Chinese money further fuels the corruption that is endemic to the country. It is also plunging the country deeper into debt.

As these dangers gather steam, Bosnia and Herzegovina risks becoming the black hole of the

Balkans: a small gravitational center of corruption and ethno-nationalist fervor so dense that it pulls in even more negative energy and malign influence, thereby disrupting its neighborhood and the entire region's ties to the rest of Europe.

## Interlocking Problems, Interlocking Institutions

Bosnia and Herzegovina faces three simultaneous and mutually-reinforcing challenges: structural problems embedded in the Dayton Accords that have empowered ethno-nationalists who hold the country back; endemic corruption; and severe economic difficulties.

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Dayton has many virtues. It stopped the war. The truce has held. Dayton affirmed the continuation of Bosnia and Herzegovina as a sovereign country, which is foundational to the further legal evolution of the state. It created an obligation on the part of its guarantors to ensure that its provisions would be respected, and it created the Office of the High Representative (OHR) to make good on that obligation.

Dayton also has its problems. To stop the war, the Dayton architects felt compelled to maintain the continuity of the state by according paramount rights

to “constituent peoples” (Bosnian Croats, Bosnian Serbs, and Bosniaks) over the rights of individual citizens. The constitution also essentially recognizes the continued authority of the warring parties via two entities: the Federation, mostly inhabited by Bosniaks and Bosnian Croats; and Republika Srpska, where the majority of Bosnian Serbs live. Brčko District is an additional condominium of the two entities.

More powers are vested in the entities than in the weak central government, which is led by a rotating tripartite presidency and a council of ministers also divided among the three “constituent peoples.” Decision-making structures are further complicated by an unwieldy welter of institutions. The parliamentary assembly is composed of two chambers with identical duties. There are two vice presidents, four vice presidents, 13 prime ministers, 14 parliaments, 147 ministers and 700 parliamentarians, all for a population less than that of the city of Berlin and about half that of metropolitan Washington, DC.

These structures entrench an ethnocracy ripe with clientelism that inflames ill-will among the country’s citizens on a daily basis. Corruption is endemic and growing; it has degraded the country’s governance, undermined its democracy, reduced public trust in state institutions, distorted the economy, and attracted dubious financial flows that ripple through the rest of Europe. Bosnia and Herzegovina is not uniquely corrupt, but its constitution is being uniquely manipulated to enable corruption.

The country’s dysfunctional judicial system has been captured by kleptocratic ethno-nationalists. Individual judges are routinely bribed; they participate actively in partisan political activities or simply let cases pile up unresolved, thus delaying justice and further eroding trust in existing structures. This politicization means citizens do not accept judicial rulings. It also means that the judiciary, which eventually must be part of the solution, is currently part of the problem.

Legal judgments are simply not enforced, whether from the European Court of Human Rights (ECHR), the Constitutional Court or ordinary courts. Article 11/2 of the constitution states that the European Convention on Human Rights is above all other law, including the constitution. In a series of rulings between 2006 and 2016, the ECHR determined repeatedly that the constitution violates the European Convention on Human Rights, and needs to be changed without delay, to ensure that individual citizens have equal rights in an electoral process. This provides the impetus to jumpstart a reform process, yet nothing has been done.

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## Corruption is endemic and growing; it has degraded the country’s governance, undermined its democracy

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Dayton’s institutional framework is also retarding the country’s economic development. Bosnia and Herzegovina is one country, but it is not one economy; barriers to economic activity reflect and reinforce ethno-political differences. The country ranks near the bottom globally of the World Bank’s Ease of Doing Business Report. Each level of government has its own business rules and procedures. Communications infrastructures do not operate reliably across political divides. Transportation links are fractured and underdeveloped. Because both public institutions and the large state-owned sector are in the hands of its ethno-nationalist political parties, patronage has boomed while privatization has lagged. High structural unemployment is one result: nearly half the population is economically inactive; only about a quarter of the total population is employed; and youth unemployment is over forty percent. Remittances from abroad are declining. More people are leaving the country.

The result is a country on life-support: without deep structural reform, there is no foreseeable end to Bosnia and Herzegovina's reliance on the international community, and its plundering politicians are the real beneficiaries of Western largesse.

## Rescuing Dayton's Peace by Fixing Its Dysfunction

The people of Bosnia and Herzegovina can and must rouse themselves from this fate. They cannot do so on their own. The country's constitution is embedded in the Dayton Agreement, which obliges the United States and the EU, as its guarantors, to help foster the political space in which the citizens of the country can do the hard work necessary to bring about change. Citizen-driven action can define and sustain reform; international action can catalyze it. If the international community does not now choose to help Bosnia and Herzegovina succeed, it will be complicit in its deterioration and eventual implosion.

A renewed push for change requires the United States and the EU to rebuild their badly frayed partnership on Bosnia and Herzegovina. Without this, no initiative has much chance of success. In the past, Brussels has had the means, but has often lacked the will, to press needed reforms, whereas Washington has often demonstrated the will, but failed to devote necessary resources. When the two work at cross-purposes, each is weaker. When they engage together as partners for reform, each can enhance the other's strengths. A new bargain will require a heavy lift from each side: the United States must be prepared to help revise Dayton in line with European standards; Brussels must be prepared to work with Washington to address core political obstacles to the country's European path, not just socio-economic hurdles. Both must be willing to deploy the necessary political will and tools, including sanctions against those in the country who would obstruct reforms.

The European Commission and key EU member states see constitutional reform as too hard and risky, and therefore want to avoid it -- hence the EU focus on economic and social reform, and rejection of U.S. efforts to take on those reforms. They have taken this stance despite clear ECHR and EU Council decisions that Bosnia and Herzegovina needs to fix its constitution, and despite their own interest in fundamental structural change.

For years, the EU has relied on the promise of eventual accession as its primary means to prompt Bosnians to realize reforms in their country. Yet the continued ambivalence of the EU's own members about further enlargement has undermined the EU's credibility and rendered EU approaches to the country, and to the region as a whole, sluggish and erratic. Europe cannot build its common home if turmoil in its southeastern corner spreads corruption, sparks renewed conflict, and generates new waves of migration.

The problem is compounded because the EU is dangling its carrot of eventual accession in front of kleptocrats who would much rather loot the country's institutions than change them. The EU's distant promise does little to remedy the country's immediate ills: it is the policy equivalent of giving malaria pills to a COVID-19 patient. Bosnia and Herzegovina's dysfunction is structural; until the structural deficits are remedied, the country is unlikely to progress along the path to eventual accession. The EU itself has said that constitutional change is a precondition for progress towards eventual EU accession. It is time for the EU and the United States together to make that happen.

The EU has put the cart of integration before the horse of basic state functionality. It needs to reverse the sequence. It must first join the United States to provide a safe space for citizen-led structural reforms, using a wider range of tools at its disposal. Only then,

after those changes are in place and capacity is built, will the accession process offer relevant leverage for reform.

Renewed U.S.-EU engagement would be a powerful sign of support to the dispirited people of Bosnia and Herzegovina that they may no longer need to countenance suppression of their individual rights and the rule of law as they watch their neighbors continue toward the European mainstream while they fall even further behind. It is time for more young people, more women, and more individuals who do not identify with one of the “constituent peoples,” to be heard and be able to design and implement a new architecture of the state more responsive to their needs.

In this sense, Bosnia and Herzegovina is an opportunity, not just a crisis waiting to happen. The citizens of the country want democracy. They are not allergic to reform – in fact, they have many ideas on how to achieve it. They repudiated ethno-nationalist politicians in local elections last week. There is common recognition that the country is headed in a direction that could lead to disaster, and widespread awareness that the Dayton structures are costly, duplicative, and unsustainable. They know that fixing Dayton will be hard, but they believe it is doable.

## A New Framework

While responsibility for the country’s evolution lies with its people, significant change is unlikely without a fundamental overhaul of the Dayton constitution. The role of the United States and the EU in this effort is to establish and enforce a framework that clears a space for serious citizen-driven efforts at reform and prevents spoilers from blocking the process.

1. The United States and the EU must make it clear that territorial swaps and secession are not on the table. They should affirm that the Office of the High Representative still has recourse – if

necessary – to its so-called “Bonn Powers:” the authority to adopt binding decisions when local parties seem unable or unwilling to act; and the ability to remove from office public officials who violate legal commitments or, in general, the Dayton Peace Agreement.

2. The European Union force (EUFOR) stationed in the country needs to be enhanced and positioned strategically as a presence supportive of the safe and secure environment needed for reform. Currently, EUFOR consists of about 600 troops spread out into 17 “liaison and observation teams” and a small Sarajevo headquarters unit, with no apparent strategic rationale in mind. These small isolated troop units are not a protective force; they are potential hostages. Only a very small fraction is capable of responding to violent riots or other outbreaks of conflict. Instead, EUFOR, or a NATO-led force, should post a company in Brčko District as a clear sign to the Bosnian Serb leadership that obstructionist tactics and separatist goals will not succeed. They should also base mobile, carabinieri-style units in Sarajevo that can deploy anywhere in the country on short notice. They should not just monitor conflict but be able to deter police and paramilitary from cracking down on civil disobedience, as has happened in Republika Srpska, and to enforce High Representative decisions.

3. Washington and Brussels must be clear that implementation of ECHR judgments is obligatory and an essential basis for reform. The EU has made implementation of court rulings a precondition for Bosnia and Herzegovina’s further integration with the EU. The High Representative should remove officials who violate their obligation to implement those rulings, and should ensure that media and other non-state actors who investigate legal evasion and corruption, and who protest police abuse, are protected.

4. The United States and the EU must be prepared to sanction corrupt officials and those who seek to spoil a broad-based process of citizen-driven reform. As they do so, they must remain determined and even-handed with regard to all parties. The goal is to make Bosnia and Herzegovina function for all of its citizens, not to privilege or disadvantage any group.
5. These actions must be complemented by forceful messages to external actors, including Zagreb and Belgrade, that they must respect Bosnia and Herzegovina's sovereignty and territorial integrity. Bosnian citizens of ethnic Croat and Serb background are not diasporas, they are indigenous to Bosnia and Herzegovina. Croatia, which is already an EU member, and Serbia, which aspires to become one, should align their influence in Bosnia and Herzegovina with the reforms Washington and Brussels seek, not against them. The U.S.-EU tandem should also send a clear message to Moscow that it must halt its financial assistance and paramilitary training to separatist-minded obstructionists in Republika Srpska. They should counter Russian disinformation efforts, including through enhanced support to Voice of America, Radio Free Europe, Deutsche Welle and other means.
6. The U.S. International Development Finance Corporation should use its new and only office outside of the United States in Belgrade to serve the entire Western Balkans through investments and other connective infrastructures that can more effectively link the countries of the region to each other and to the EU.
7. The EU should use new money it has already allocated, and new tools it has devised for its own members, to leverage political and economic reform in Bosnia and Herzegovina. It must be prepared to use sticks as well as carrots. This includes sanctions and denying financial and political support for illiberal political parties.

Brussels recently unveiled an Economic and Investment Plan for the Western Balkans that offers 9 billion euros for the region plus up to 5 billion euros more in additional loan guarantees and commitments. Its conditionality, however, remains weak. The intended monies are heavily oriented to the public sector – precisely the parts of the economy that are captured by kleptocratic, ethno-nationalist elites. Instead, the EU should identify priority projects that can help power reform, and send a clear message that its money is going elsewhere if that process is blocked. It should consider how these new monies can be leveraged to facilitate a sustainable energy transition for the region. It should eliminate the current “coordination mechanism” it supports in Bosnia and Herzegovina that gives veto power to corrupt elites in both entities.

The EU has also created two new tools for its own members that it could also apply to the Western Balkans. The first are rule of law requirements attached to funds intended to help countries recover from the COVID-19 pandemic. The EU could attach similar conditions to its new monies for the region. The EU's second new tool is a special prosecutor for corruption. A dedicated unit within the prosecutor's office could at a minimum track the use of EU money to the region, and other donors could either promise similar rules or give the EU prosecutor access to information. More could be done along these lines.

8. Brussels and Washington should also support Western Balkan efforts to forge a regional common market, including through conditions that facilitate the region's movement toward the EU.
9. Washington and Brussels should use their considerable clout to encourage the International Monetary Fund and the World Bank to shift their assistance away from the entities toward a new frame in which the central government works with the country's municipalities, whose leaders

are democratically elected, to disburse funds. This will require constitutional change. That assistance should embody vigorous enforcement of anti-corruption laws and recovery of ill-gotten gains stashed outside the country.

10. As the United States and the EU set this framework for reform, they must maintain a clear message that the doors to the EU and NATO remain open should the people of Bosnia and Herzegovina create the conditions by which they could meet the standards for membership and walk through those doors. There is no consensus at present within the EU about the possibility of ultimate membership. Hence, the reform efforts must not be linked solely to the EU accession process. Clear support for the principle of the Open Door, on the other hand, can help the citizens of Bosnia and Herzegovina build the courage and political will to implement tough reforms at home—not as a favor to others, but because they understand it is in their own interest to do so. And if they implement reforms that promise to move their country further along the road to the European mainstream, their actions can affect what leaders in EU capitals are willing to offer.

## Elements of Change

By establishing these framework conditions, the United States and the EU can set the stage for a domestically-driven reform process. The people of Bosnia and Herzegovina need to look to each other to make a future that is better than their present. At the moment Bosnians agree on what their state is not. The West should help them define positively what it should be, by convening citizens to determine changes to the country's constitution and decision-making structures that are feasible in the short- to medium-term, and by dealing decisively with obstructionist actors who have blocked previous reform efforts.

Without dictating particular changes, the U.S.-EU tandem should set minimum parameters or categories of reforms. Legal rulings by the ECHR offer a sound and largely incontrovertible basis for initiating reforms.

A first basket of issues relates to how decisions are made. Currently, most power resides with the country's two entities – Republika Srpska and the Federation. The entities are the territorial expression of the warring parties of the 1990s and have preserved the political power of ethnic nationalists for 25 years. They are responsible for much of the dysfunctionality and resistance to reform that characterizes Bosnia and Herzegovina today. A central question is how to rationalize or reform the power of the entities, empower the state government to take on the responsibilities and authority required to meet NATO and EU requirements, and give the country's municipalities and Brčko District the resources needed to provide public services. Consideration should also be given to how critical decision-making bodies could be unblocked, how the power of ethnically-based political parties can be circumscribed, what types of cross-ethnic electoral incentives could be introduced, and how party patronage networks can be dismantled. Some current ideas include changing or reducing the powers of the House of Peoples, reducing or removing the requirement for bloc entity voting in the Parliamentary Assembly, changing the size and role of the parliament, and amending the election law so that Bosnia and Herzegovina can move from ethnocracy to more representative democracy.

A related basket has to do with strengthening the functionality of the state government – the tripartite presidency and the Council of Ministers. The current bifurcated structure is an ineffective throwback to old Yugoslav governance models. Bosnia and Herzegovina needs an integrated state government with proper ministries. It would benefit from either having a stronger Council of Ministers or a stronger





Bosnia and Herzegovina, Srebrenica November 2017, Memorial of Srebrenica massacre in Bosnia and Herzegovina with gravestones in the background. Photo courtesy of: shutterstock.com

state presidency. It doesn't need both. As early as 2005 all major parties had reached agreement that it was constitutionally acceptable to elect the presidency indirectly, through parliament. This would meet the EU requirement for all citizens to have an equal franchise in the election of the presidency. It would also respect the ECHR ruling that any individual, regardless of ethnic identification, could run for the presidency. All major actors still say that they are open to the possibility of the president being indirectly elected. Whichever way the country's citizens choose to go, a functional state government could jumpstart other difficult reforms.

Another basket is structural reform of the judiciary so that individuals in Bosnia and Herzegovina have an assured right of due process from courts and governments, regardless of their ethnic background.

Issues under consideration include reform of the judicial appointment system, including vetting and potential removal of current judges, establishment of a Supreme Court and a single judicial system, and ways to ensure that the rulings of the ECHR and other courts are respected and implemented.

Few reforms are likely to be successful without dedicated efforts to eliminate the systemic opportunities for corruption that political leaders exploit to perpetuate the current dysfunctional system and stymie reform. Proposals include empowering independent prosecutors.

Economic reforms are another important basket of concern. A more productive and inclusive economic sector is reliant on successful efforts to dismantle the political party patronage system and the financial

rules governing and propping up that system, in part through privatization on terms that do not perpetuate corruption and that respect the rule of law.

## Unfinished Business

Few of these ideas are new; all have become newly important as Bosnia and Herzegovina deteriorates.

Given the country's many challenges, it would be tempting for Western policymakers, besieged with other priorities, to turn their backs on Bosnia and Herzegovina. This would be a strategic mistake. They would not only abdicate their own responsibility for the current situation, they would miss an important opportunity to advance their broader goals for the region. Bosnia and Herzegovina is the linchpin of the Balkans. The United States and the EU have a strong stake in a functioning and effective multi-ethnic democracy, secure in its borders and politically stable. Fixing Dayton is hard. It is not impossible.

A dysfunctional ethnocracy, in contrast, threatens to generate instabilities throughout Europe's southeastern corner. It powers malign ethno-nationalism in Croatia, a member of the EU. It makes it harder for Serbia to become more aligned with the European mainstream. It exacerbates tensions and distorts relations among all three countries and their neighbors. It creates opportunities for Russia to exploit and undermines the prospects of countering China's growing regional presence. It enables opportunistic politicians to manipulate narratives of grievance in a country and a region that still have an historically rare moment to transcend the tragedies of their past divisions.

We have reached another inflection point in southeastern Europe. After 25 years, it is time to fix Dayton. Europe whole and free is still a worthy objective. It cannot be achieved if Bosnia implodes. Dayton's peace is also a warning: Whenever we ignore the Balkans, we end up paying a higher price later.

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*This report is the result of discussions among participants in the Global Europe Program's Working Group on the Western Balkans. It is endorsed by the following individuals in their personal capacity. Views do not necessarily reflect those of any institution or organization.*

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The opinions expressed in this article are those solely of the authors.

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