

# **BOSNIAK AMERICAN ADVISORY COUNCIL FOR BOSNIA & HERZEGOVINA**

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## **THE COMPLEXITIES AND THE NECESSITIES BEHIND CONSTITUTIONAL REFORM IN BOSNIA AND HERZEGOVINA**

### **POSITION PAPER**

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## **I. INTRODUCTION**

The matter of constitutional reform in Bosnia and Herzegovina is characterized by the following propositions:

- 1.) The current constitutional arrangements make Bosnia's democratic and economic progress and Euro-Atlantic integrations impossible, thus, reform is imperative;
- 2.) Considering the complexities of the current system, the international community, led by the United States, must exert considerable influence in order to secure truly democratic and functional constitutional arrangements;
- 3.) The current U.S. State Department strategy of placating radical sentiments in Serbia and in the Republika Srpska entity (RS) of Bosnia and Herzegovina must be abandoned in favor of a solution that eliminates Bosnia's inefficient ethno-territorial divisions, and which fully guarantees Bosnia's viability and eligibility for EU and NATO membership;
- 4.) In that regard, the misguided and failed constitutional amendments must not be revived. Instead, the process must be based on the mandate enunciated by the Council of Europe in its Resolution 1513 and the accompanying Report; and
- 5.) The U.S. handling of Bosnia's Constitutional reform will have major implications on America's attempts to usher in democracy elsewhere in the Muslim world.

## **II. NECESSITY FOR CONSTITUTIONAL REFORMS**

There is a consensus within NATO and the EU that Bosnia cannot enter these institutions as long as its discriminatory and cumbersome constitutional arrangements remain in place. Bosnia's complex and vast constitutional structure is the primary culprit for the economic woes of the country, and every significant piece of legislation has been promulgated by the Office of the High Representative (OHR) due to deadlock caused by the ethno-territorial political framework.

Moreover, the Dayton Constitution cannot be viewed in a vacuum, as it is but a single annex of a comprehensive peace agreement. Its functioning is not possible without the presence of that agreement's other elements. Namely, the Dayton Constitution cannot function without NATO to keep the peace, international aid to supplement a bloated budget, and, most importantly, without the OHR to eliminate blockades that lurk at every corner under the Dayton arrangements.

These factors demonstrate that constitutional reform is not only desirable and necessary, but that such reform cannot be conducted in a piecemeal manner. To be successful, any reform must replace the current constitution, designed to end a war by recognizing the facts on the ground established through genocide, with a constitution designed to establish a clear and viable path toward the EU and NATO through the promotion of democracy, prosperity and stability.

The international community must not misuse this need for reform to force upon Bosnia constitutional amendments which are designed to cement ethno-territorial divisions. The purpose of the reform process must not be to serve itself, or to satisfy regional or geopolitical interests. Rather, constitutional reform must be in the long-term interests of Bosnia and its people.

The course *and the extent* of the reforms must not be limited by factors external to Bosnia. The planned resolution of Kosovo's status at Serbia's expense must neither be allowed to satisfy Serbia's nationalist demands, *nor* to curtail the necessary breadth and scope of reforms in Bosnia. The continued attempts to impose flawed and dangerous constitutional amendments in Bosnia prior to the solution of the Kosovo problem only further exacerbates this problem.

### III. THE ROLE OF THE INTERNATIONAL COMMUNITY

The State Department's approach to Bosnia's constitutional reform promises to undermine Bosnia's stability and democratic progress. The good will that the United States traditionally exhibited toward Bosnia, and vice versa, should be reaffirmed through the abandonment of a strategy aimed at preserving and enhancing Bosnia's divisions in order to placate Serbia's nationalist sentiments. A strategy that supports those sentiments threatens long-term U.S. foreign policy interests not only in Bosnia, but also in Kosovo, as history demonstrates that concessions to Serbia's nationalists on one front never lead to positive results on any other fronts.

Reforms based on the proposed amendments that were rejected by a coalition of Bosniak and Croat deputies in April 2006 lack substantive improvements, and also contain severe dangers specifically designed to cement the territorial and institutional divisions in Bosnia along ethnic lines, as well as to enable the RS entity to control the fate of Bosnia and its central institutions.

The sole effect of the proposed amendments would be to: 1) alter legal and constitutional *terminology*; 2) replace flawed solutions with even worse options; 3) endanger Bosnia's most sensitive state interests; 4) be replete with superfluous and *pro forma* provisions; 5) all but eliminate any possibility for future meaningful reform; and 6) ensure that Bosnia remains ineligible for EU and NATO membership for the long term.

In the proposals, the entities' "right to establish parallel relations with neighboring States" was further affirmed, even while Serbia continues to express territorial aspirations toward Bosnia, and while Croatia develops normal relations with the Bosnian state. The Vital National Interest was to be elevated into an "*inalienable veto right*." The amendments provided Bosnia with no new competencies with respect to Euro-Atlantic integrations, and in fact specified that the state must seek concurrence of the entities at practically every stage of that process.

The amendments' most dire and retrograde provision mandates the dissolution of Parliament whenever the House of Representatives fails to elect the Presidency or the Prime Minister after three rounds of voting. This provision guarantees to leave Bosnia *with no State-level legislative or executive powers whatsoever* until new elections have been held. It was designed to enable one entity and one people (a handful of Serb deputies coming from RS, constituting only *twenty-three percent* of the Parliament) to exercise complete domination over the state and the other two peoples, or to effect a *complete absence* of state legislative and executive authority.

In the October 2006 elections, the vast majority of Bosnia's voters backed those parties whose platform rejected the amendments and called for constitutional reform along the lines contained herein. Despite the voters' clear message, the State Department is again attempting to force the adoption of these amendments. RS entity deputies are uniformly supportive, and Bosniaks and Croats are again facing intimidation.

Moreover, the promised "second phase" of the reform process contains further dangers, as it envisions federalization of Bosnia. This scenario would make the RS entity a federal unit within

Bosnia, bestowing upon it the international legal right to secession. Considering that the entire political elite of this entity advocates independence even now when such a course is unattainable under international law, there is little doubt that they would cause the partition of Bosnia at the first opportune moment if the RS entity, which is completely ethnically-cleansed of its Bosniak and Croat population, is given a federal unit status. At the very least, the threat of partition would constantly loom over Bosnia, debilitating its progress and deepening its division.

This approach only serves to destabilize Bosnia and undermine its already fragile democracy. As a result, the current strategy must be replaced by an approach mandated by the Council of Europe. Only such a process and the goals envisioned by it, strongly backed by the United States, has a chance to erase Bosnia's ethnic divisions, usher in a full-blown democracy, and place the country on the road to Euro-Atlantic integrations.

#### **IV. THE ROAD TO MEANINGFUL REFORM**

In June 2006, the Parliamentary Assembly of the Council of Europe adopted Resolution 1513 on the subject of constitutional reform in Bosnia. The Council of Europe declared that "drafting a completely new constitution would...be preferable to trying to improve the Dayton version," and gave Bosnia's leaders a clear and achievable set of mandates: Immediate elimination of entity-based voting and adoption of a completely new Constitution by 2010.

The Resolution states that any such new Constitution must 1) replace the ethnic representation mechanisms by those of civic representation; 2) employ efficient and rational decision-making procedures to the principle of involving all constituent peoples; and 3) reexamine the territorial organization of Bosnia, including its division into entities.

As for entity-based voting, this mechanism mandates that all decisions, in addition to receiving absolute majority, must be supported by at least one-third of the deputies coming from each entity. This means that *only ten*, out of fourteen, deputies coming from the RS entity can block *any* proposed law or decision. This number, in turn, constitutes only 23.8 percent of the 42-Member House. Moreover, this mechanism is practically not available to the Bosniak-Croat Federation, as the total of nineteen (45.2 percent of the entire House) deputies coming from that entity is required to block a decision through entity-based voting, only two less than an absolute majority. Hence, the votes of the deputies from the RS entity, mostly Serbs, are worth almost *twice* the votes of the Federation deputies, mostly Bosniaks and Croats.

The Council of Europe identified entity-based voting as the main obstacle to Bosnia's development and the country's ability to enter the EU and NATO. Entity-based voting serves no legitimate purpose, because a strong separate mechanism for the protection of vital national interests already exists in the House of Peoples. Entity-based voting serves exclusively as a weapon for blockade whenever only 23 percent of deputies want to impose their will on the other 77 percent. In fact, in each of the hundreds of instances in which the OHR imposed a certain law, its action was necessitated by the RS deputies' use of entity-based voting. This mechanism cannot, hence, remain following OHR's departure.

The argument that entity-based voting serves as a guarantee against domination is patently false. The RS entity deputies demonstrated their true motives in August 2006 when, for the third time, they vetoed through entity-based voting the attempt to reform the Citizenship Law, which currently mandates loss of Bosnian citizenship of persons who acquire citizenship of another country. This action was undertaken for one purpose only: to take away Bosnian citizenship of over half a million

people, mostly Bosniak Muslims, who left Bosnia under the threat of genocide and ethnic cleansing, and who subsequently acquired citizenship of their host countries in order to secure better lives there. Entity-based voting is a mechanism that allows only ten deputies to add a half million exiled Bosniaks to the 200,000 who were killed during the Bosnian genocide.

Therefore, Bosnia must follow the mandate of the Council of Europe and begin the constitutional reform process through the elimination of entity-based voting. Such a step would ensure the immediate and speedy economic and social recovery of the country for the benefit of all its peoples. This, in turn, would create the necessary conditions for the adoption of a completely new and modern constitution. All mechanisms for the protection of vital national interests would be completely preserved, and there would be no possibility for domination over any of Bosnia's national groups.

Elimination of entity-based voting would not only improve Bosnia's economic health, but would also foster conditions for other meaningful reform. Namely, mutual trust would increase exponentially as it would soon become evident that substantive and constructive reforms can be carried out without endangering any one-people's interests. The reform process along the lines enunciated by the Council of Europe could then develop at a healthy pace, through public debate, expert discussions, and constructive negotiations, with enough time to create completely new and meaningful constitutional arrangements by the Council of Europe 2010 deadline.

## **V. SPREADING DEMOCRACY AND REFORM THROUGH THE BOSNIAN EXAMPLE**

Attempts to force upon Bosnia constitutional arrangements that exacerbate undemocratic and discriminatory ethno-territorial arrangements, while cementing the effects of genocide against its Bosniak Muslim population, is also at considerable odds with strategic U.S. foreign policy interests. Specifically, the current reform strategy: 1) runs contrary to President Bush's "Freedom Agenda," which encourages the spread of democracy and freedom throughout the world; and 2) promises to cast doubt on the U.S. commitment to advance moderate and reformist forces and causes elsewhere in the Muslim world.

It was only following the massacre of 8,000 Bosniak Muslim men and boys at Srebrenica, three years after the Bosnian genocide began, that the Serbs were forced to the negotiating table. The international community, however, acquiesced to preserving an apartheid-like structure in one half of Bosnia in the form of the *Republika Srpska entity* – a creation of Radovan Karadzic and Ratko Mladic, who have evaded genocide indictments with Serbia's support. Perversely, Srebrenica remains within the Republika Srpska entity. Additionally, the Council of Europe mandates that the Republika Srpska entity cannot remain, at least "not under that name."

That name literally means "the Republic *of* the Serbs," hardly a misnomer considering that from the pre-war population of over forty-five percent Bosniak Muslims, only four percent remain. The Bosniaks who remain are denied government jobs and public services, and attacks on those who attempt to reclaim their property are rampant. Moreover, the famed war-time Srebrenica surgeon, Ilijaz Pilav, was *officially* barred this summer from running for Bosnia's Presidency "because he identified himself as a Bosniak Muslim." The Serb leadership simply refuses a constitutional structure that would allow Bosniak Muslims from the Republika Srpska entity to run for this office.

A strategy that cements these exceptionally undemocratic and discriminatory arrangements in order to placate nationalist and radical sentiments starkly undermines America's credibility regarding the promotion of democratic forces and values—the key precepts of President Bush's Freedom Agenda. Any continuation of this strategy, as opposed to the restoration of Bosnia into a fully democratic

society with human rights and freedoms for all, is certain to give rise to misgivings about America's true commitment to supporting democracy and freedom in other parts of the globe.

More importantly, a continuation of the current constitutional reform policy toward Bosnia will severely weaken America's efforts to support moderate and reformist forces in the Muslim world. The Bosniaks, an indigenous Muslim population in the heart of Europe, who serve as models of democratic, moderate and tolerant Muslims for the entire Islamic world, should have their aims of democracy and freedom fully supported by the United States.

Despite their tragedy (with continuing repercussions), no Bosniak Muslim was ever involved in any act of terror anywhere in the world. Moreover, while the Serbs leveled over a thousand mosques in Bosnia, no church or synagogue was destroyed by the Bosniaks. Bosniak Muslim women enjoy freedom and equality greater than women elsewhere in Eastern Europe. Finally, Bosnian soldiers are serving alongside American forces in Iraq, the only troops from a majority-Muslim country there. These Bosniak Muslims epitomize the very pinnacle of values of democracy, freedom and reform that America advocates throughout the Muslim world.

America's treatment of the Bosniak Muslims sends a powerful message to the rest of the Muslim world. Muslim extremists in the Arab and Muslim world often interpret the Bosnian genocide as proof that moderate Muslim populations can only expect to have their cities shelled, their women raped, and their men and boys slaughtered. Cementing the effects of the Bosnian genocide through the proposed constitutional amendments will, over time, confirm and proliferate such views in the parts of the globe that are of strategic significance to America's paramount foreign policy interests.

Hence, America must support constitutional reforms that will cause the restoration of Bosnia's multi-ethnicity in all parts of the country and that will truly allow EU and NATO membership for Bosnia, something that is impossible with the retention of apartheid-like arrangements and the inevitably dysfunctional system of governance in Bosnia. In terms of wider ramifications, if America does not stand with the Bosniak Muslims, already the most moderate, the most liberal, and the most western-oriented in the world, the perception among other Muslims across the globe will be that America will never stand with them, no matter the degree of reform and modernity they undertake.

## **VI. CONCLUSION**

It is evident on the basis of the foregoing facts that thorough and meaningful constitutional reform in Bosnia is imperative; that such reform must be supported and influenced by the international community, particularly by the United States; that the current strategy of placating Serbia and the RS entity must be replaced by a drive for a constitution that ensures a truly democratic and fully functional Bosnia; that the package of the already-rejected constitutional amendments must not be revived; and that the process must instead be based on Council of Europe Resolution 1513. Bad reform is worse than no reform, and constitutional reform that does not create the conditions required for EU and NATO membership would be an exercise in irrelevance and, in the current form, would mark a drastic step backwards.

By pursuing a strategy of meaningful reform in Bosnia, the United States will not only ensure the continued march of freedom and democracy in southeastern Europe, but will also send a message to the Arab and Muslim world that those Muslims who engage in progressive, democratic political discourse will be rewarded and not punished for their moderation. If a different standard is applied to Bosnia's Muslim, America's calls for democratic reform elsewhere in the Muslim world will ring hollow, and reformers will view President Bush's Freedom Agenda as little more than rhetoric.