

BHHRG monitors visited Mostar in Bosnia Herzegovina to investigate the stand-off between the international community and the Bosnian Croats. This report reveals the ongoing problems with the implementation of the Dayton Peace Agreement five years on

Bosnia Herzegovina 2001: the international community versus the Bosnian Croats

On 6th April 2001 a well-planned international operation which included SFOR troops and masked security operatives closed down 6 branches of the Hercegovačka bank in Bosnia Herzegovina (BiH). The incident was just the latest in a series of assaults by the High Representative, Wolfgang Petritsch and his office (OHR) on the Croat community in Bosnia and on the leading Croat political party, the HDZ. The British Helsinki Human Rights Group's representatives visited Mostar, the capital of the Herzegovina region of Bosnia, soon after the bank raid. They talked to leading local politicians, journalists, administrators and the deputy high representative, Colin Munro. They also visited the pilgrimage town of Medjugorje whose local branch of the Hercegovačka bank had been raided on 6th April.

Dayton's Diktat grows

The circumstances surrounding the setting up of state and federal institutions in Bosnia after the Dayton Peace Agreement, signed in 1995 have been well-explored.¹ At Dayton, Bosnia was divided into two entities: the Bosnian Serbs were granted the largest part of the cake, so to speak, with their own mini-state of Republika Srpska while Bosnian Muslims and Croats formed a separate federation of two 'nations'. The two units were joined together in a fragile common state with its own parliament and president. However, both state and federal governments were ultimately responsible to a High Representative appointed by the international community. And, on top of this, as the Federation of Bosniaks and Croats had been set up in 1994 in Washington under the auspices of the US, the Americans were regarded as joint guardian of its effectiveness.

As David Chandler has shown, there were several interesting features in the Dayton Agreement. Firstly, the deep revulsion felt towards the ethnic cleansing that had defined the war in Bosnia forced those whose remit was to implement Dayton to devise an elaborate and labyrinthine system for the expression and protection of the three ethnic groups' rights. Serbs, Bosniaks and Croats were each deemed to belong to a constituent nation in the Bosnian state and new mechanisms were set up to provide safety valves so that the interests of one group could not override those of the others. However, although the Dayton provisions were Byzantine in their complexity they were not all new. "One thing was nevertheless absolutely clear, where Bosnia Herzegovina was concerned, whether in olden times or in the days of united Yugoslavia or now, one belonged in each case and at any time to a "nation" and it was a "constituent factor" of the larger community. It would be a complete misunderstanding of the relations in Bosnia Herzegovina if well-meaning Western representatives wanted to operate here within the framework of "minority protection" "²

The second ground-breaking feature of the Dayton Agreement was the international community's intention to impose democracy from 'above'. A whole host of bodies were appointed supposedly to oversee and assist the new state as it abandoned the culture of war and embraced democratic institutions. In this sense, Dayton was a laboratory and a chance for organizations like the OSCE not just to observe the development of civic society but also to help formulate it on the ground.

So, on the one hand Bosnia was to be ruled by international institutions while on the other it would elect its own representatives. Although international and local bodies were meant to interact and complement one another, it will come as no surprise that, in reality, this has led to repeated strains and regular impasses. Much worse, these objectives have often collided in a spectacular fashion. By whom and in what manner the international community wants Bosnia to be governed is often directly opposed to the desires expressed by local populations.

Consequently, although peace has come to Bosnia the country is further away from governing itself than ever. In the past five years the international community has increased rather than reduced its mandate. In his two years as High Representative, Carlos Westendorp imposed 45 laws. But between November 2000 and March 2001 Wolfgang Petritsch had already issued.³ International administration which was originally designed to last a year was renewed indefinitely in 1997. In follow-up conferences held in Sintra (1997), Bonn (1997) and Luxembourg (1998), the High Representative's powers were increased. Despite rumours that the new Bush administration was seeking to disengage militarily from Bosnia, SFOR troops (including the Americans) seem set to stay on indefinitely. Bosnia looks more and more like an international protectorate whose real independence is further away than ever.

Despite the commitment to protect each of the three Bosnian nationalities, the drive is now on to recast the country as a unitary state - something which may be desirable but which is in direct opposition to the Dayton formula. It is also somewhat strangely at variance with the policy presently recommended for Macedonia, where the governing coalition is being encouraged to improve rights for ethnic Albanians by changing the country's constitution to state that the country is composed of two "nations" i.e. Macedonian Slavs and Albanians.

However, the intention to erode the three-nation structure in Bosnia has been proceeding for some time. The HR and the OSCE started to remove candidates and elected officials whom they viewed unfavourably at the time of the first post-war elections in 1996 and the practice has accelerated ever since. Some influential think-tanks, like the International Crisis Group (ICG) pour scorn on all the national parties accusing them of "obstruction" and openly discuss ways in which they might be excluded from the democratic process. The ICG's respect for democracy obviously has its limits. "As in past elections," they say, "the international community had already decided which parties and politicians had the potential to push implementation of Dayton"⁴

This is absolutely correct. The West pours money and logistical assistance into parties like the Bosnian Social Democrats, the Sloga Coalition of Milorad Dodik in Republika Srpska, and the recently constituted Croat National Initiative (HNI) which have next to no support. Since elections held in November 2000, the international community has managed to form governments at state and federation levels made up of representatives of these parties. But this has been achieved, basically, by sleight of hand. It is also possible that the improved electoral performance of these parties is the result of fraud: the OSCE counts both ordinary and postal votes giving them a wide scope to massage the results.

However, despite the US State Department's regular anticipation of success for non-nationalists and death for the nationalist parties, the three constituent nations refuse to abandon them. Muslim Bosniaks support the Muslim Party of Democratic Action (SDA), Serbs support the Serb Democratic Party (SDS), and Croats vote for the Croat Democratic Union (HDZ). All these parties have been targeted by the HR at one time or another over the past five years and their representatives removed from office. The process of defamation is widespread, even if the HDZ comes off worse. The Muslim SDA has long suffered from an intense campaign vilifying it for corruption and economic crime.

Much worse, using what ultimately amounts to 'hate-speech', the West's representatives target ordinary Bosnians as well as their political representatives. On 24th February 2000 the Sarajevo newspaper *Oslobodjenje* quoted Jacques Klein, head of the UN mission in BiH, saying that "We have always known the HDZ consists of communists and fascists." But the present US ambassador to Bosnia, Thomas Miller, is the most egregious example here. Interviewed on Bosnian TV on 7th April 2001 he said, "All you have to do is

drive around Herzegovina, see the companies that these people own, the houses they live in, the cars they are driving, and ask yourself a simple question: where did it all come from? That's what it's about". In fact, in BHHRG's experience, mafia activities on the part of political parties do not lead to any visible improvement in the lives of their constituents; neighbouring, mafia-run Montenegro provides an excellent example of the problem.

In spite of this pressure, attempts to encourage people to vote for non-national parties have met, in the case of the Serbs and Muslims, with limited success. In the case of the Croats, they have met with no success at all. In fact the more pressure that is put on the Croats of Bosnia, the more they shelter under the wings of 'their' party for protection.

The Bosnian Croats and Croatia

Croats comprise the smallest of the three constituent nations in Bosnia with c. 17% of the total population. Their numbers are scattered over northern and central Bosnia but the greatest concentration is in the western Herzegovinan region of the country that backs onto the Dalmatian coast.

The town of Mostar, the capital of Herzegovina, where the river Neretva separates the Muslim from the Croat community, was the centre of heavy fighting between the two sides during the 1993-4 war. The, Bosnian Croat army, the HVO, gained a reputation for viciousness and the Croat community was almost uniquely blamed for crude nationalism and war profiteering, as well as for being heirs to the ruthless wartime Ustashe regime. Seven years after the fighting ceased, the city still bears the scars of war – on both sides of the river - giving credence to the unfashionable view that there were two sides to the conflict.

The Croats of Herzegovina were also unpopular with the outside world for supporting the regime of Franjo Tudjman in Zagreb. Affluent Herzegovinans in the diaspora were reputed to have given generously to the new Croat state, whose minister of defence during the Bosnian War, Gojko Šušak, was a Herzegovinan Croat from Canada. Election rules in Croatia itself permitted (and still permit) Croats living abroad to vote in domestic polls and Tudjman's HDZ party could always anticipate overwhelming support from the Croats in Herzegovina. The Croat state also provided much-needed funds and it was generally accepted that, if feasible, the Herzegovinans would like to join Croatia proper. Bosnian Serbs wanted the same solution – annexation to Serbia.

This state of affairs came abruptly to an end last year. President Tudjman had died the previous November and, in parliamentary elections held in January 2000, the HDZ lost power to a coalition of parties led by the former Communist SDP under its leader Ivica Račan. Presidential elections held in March returned Stipe Mesić– an ally turned enemy of Tudjman and the HDZ – to the presidency.

The new constellation of forces in Zagreb immediately set about distancing itself from the Bosnian Croats, removing both financial and moral support. Whereas the international community had criticized Tudjman for his involvement with the Herzegovinan Croats, it has consistently encouraged Račan and Mesić to take a close interest in Bosnia - but only as a single, multi-national state. They, also want to see the HDZ remain marginalized in Croatia itself, which can be achieved satisfactorily only if the party is destroyed in its Herzegovinan heartland. This is in marked contrast to the situation with the Bosnian Serbs, who in the post-Milosevic era are now permitted to associate more closely with Belgrade. The OHR has recently approved an accord on "special and parallel ties between Yugoslavia and Republika Srpska,"⁴ something impossible to imagine happening - yet - between Zagreb and Herzegovina.

The Bosnian Croats

Swimming against this current of dissolving the national differences in BiH, the Croats, like all the national groups, are determined to hang on to their collective rights. They have various political grievances anyway, especially concerning the right of return of Croat

refugees to Republika Srpska (barely a handful have returned so far) and the apparently disproportionately high number of Croats indicated by the International Criminal Tribunal for the former Yugoslavia. They feel that they have cooperated successfully with the OHR but as the smallest of the three constituent nations in BiH, they stand to lose out more as a group than the Muslims or the Serbs if the country develops towards a unitary state based on a single BiH citizenship.



Ante Jelavić

Ante Jelavić, head of the HDZ and member of Bosnian presidency until he was dismissed from both posts by Petritsch, was originally praised for his cooperation over things like refugee return. Deputy High Representative Colin Munro told BHHRG in Mostar on 24th April that Mr. Jelavić “had a point” when he said that Herzegovina had accepted vastly more returnees than the other entities. However relations started to deteriorate when the Croat parties, especially the HDZ, showed readiness to use their veto power in the House of Peoples of the Federation. Within the Federation, the parliament has two chambers, the House of Representative and House of Peoples. The Federation House of Peoples is elected from members of cantonal assemblies. The purpose of the latter House is to equalise the representative of the numerically weaker Croats within the Muslim-Croat Federation and so it seems natural that veto power should have been used.

The differences between them came to a head in 2000 when the OSCE, under the leadership of the American Robert Barry, and on a suggestion by one his officials, Kåre Vollan, changed the rules for elections to the House of Peoples of the Federation. The details of this, as of the constitution of BiH as a whole, are of an almost unimaginable complexity and obscurity. Indeed, only the international community could have designed a system as impenetrable and obscure as the one which obtains in BiH.

Very few officials, even in the OSCE itself, fully understand these rules. Here is an extract from the memorandum laying out the new rules:

“For each canton, the population according to the 1991 census is divided by the number of seats allocated to the Canton according to Article 1203, first and second paragraph of the Rules and Regulations. The result is called the *Canton quota* of the Canton. The total population of each Constituent people is divided by the total number of seats of the same constituent people in the Federation. The resulting numbers are called *People’s Quotient* of the Constituent People. The total population of the Federation is divided by the total number of seats from all cantons (80). The result is called the *Average Quotient*. For each Constituent People the People’s Quotient is divided by the Average Quotient. The result is called the *People’s Quota* of the Constituent People. The Canton Quota is multiplied by the People’s Quota and the result is called the *Combined Quota* of the Canton and the Constituent People.”⁶

And so it goes on, for pages and pages. Despite this impenetrable complexity, the effect of the changes was to depart from the principle – key for the smallest group, the Croats

– that Bosniaks voted for Bosniak candidates in the House of Peoples and Croats for Croat ones. This principle is laid down both in the constitution of Bosnia & Herzegovina and in the constitution of the Federation of Bosnia and Herzegovina. Article 8 of the Federation's constitution (on the House of Peoples) stipulates that "Bosniac, Croat and Other from each Canton shall be elected by the *respective legislators* in that Canton's legislature" (emphasis added). The same principles, namely that each constituent people elects its own representatives, is embodied in the constitution of the state of BiH.

On 11th October 2000, just one month before the general election, the OSCE under Kåre Vollan changed the rules and regulations. The key provision comes in Article 1212 of Subchapter B, "House of People of the Parliament of the Federation of Bosnia and Herzegovina." The amended provision reads: "Each member delegate in the Cantonal Assembly shall cast one vote for a list." This means that Bosniaks can vote for Croat candidates and vice-versa, whereas previously each constituent people voted only for its representative. The effect of this change is quite simply to allow Croat representatives to be elected from parties which do not command electoral support from Croat voters.

In other words, the very purpose of the House of Peoples – to represent the collective rights of each constituent nation – was destroyed by this measure. The House of Peoples thereby became simply another version of the House of Representatives, elected by the whole Federation. Changes in the rules to the way the cantons themselves were elected also meant, the Croats affirmed, that Croat politicians could be voted into high legislative office even if they had no real electoral support. That way, compliant politicians could be installed in power who would not wield the powers which the Constitution gave them.

The Croats, under the leadership of the HDZ, called this the "Deconstituization of the Croats in BiH". In response, a "Croat National Congress" was convened in Novi Travnik on 28th October 2000. It adopted a Declaration which proclaimed the sovereignty of the Croat nation in BiH and especially of their right as Croats to elect Croats to the political institutions of BiH. When parliamentary elections were held across BiH the following month, the Croats also organised, independently, a "referendum" on this Congress which received over 90% support among Croats. At those elections, moreover, the victors in all parts of BiH were parties deemed by the international administrators of BiH to be "nationalists".

In response to this, the international administrators of BiH and some foreign ambassadors, in particular Thomas Miller (US) and Graham Hand (UK) made it clear that they favoured political parties other than those which had won the election. This caused the relations between the BiH Croat leaders and the international community to deteriorate yet further. Ante Jelavić, the Secretary General of the Croatian Democratic Union of Bosnia and Herzegovina (HDZ BiH), accused them of meddling in the internal affairs of the state to which they were accredited as diplomats. Jelavić accused Hand of "endangering the constitutional position of our country's institutions"⁷. "They went beyond their mandate by expressing open support for the Social Democrats and by putting pressure on other parties," he said. The multi-ethnic Social Democratic Party (SDP) is indeed seen as a way of driving the Muslim, Serb and Croat parties out of power. The Serb member of the federal presidency, Živko Radišić, also objected, suggesting that the two ambassadors should have their credentials withdrawn. (BHHRG observers in April were able to confirm that US Ambassador Miller does indeed enjoy a curious pre-eminence in the political life of BiH. His pronouncements are reported almost daily in the local press as if he were the man really running the country.)

On 2nd and 3rd February 2001, the Constitutional Court of BiH ruled on an appeal lodged with it by the HDZ BiH against the changes in the electoral law. The Court found, in the words of the High Representative himself, that "the Provisional Election Commission Rules and Regulations on the procedure for elections of the Federation House of Peoples, since they were laid down pursuant to the international mandate granted to the OSCE to this end, were not subject to review by the Court"⁸. In other words, the Court said it had no power to overturn a decision made by the OSCE. Yet, in his letter dated 7th March 2001 dismissing Mr. Jelavić, the High Representative concluded that he (Jelavić) "must have known perfectly well that all matters of concern to him are matters which may be redressed by normal constitutional means."

In response to this, on 3rd March 2001, the Croatian National Congress decided finally to “activate” itself and proclaim Croat self-government in BiH. Quoting as the two sources of its legitimacy the results of the referendum held on 11th November 2000 and the allegedly unconstitutional nature of the changes to the electoral law which had been made by the OSCE, it proclaimed the intercantonal-intermunicipal council to be “the Croat self-government”. The Decision laid down state-like organs, including an executive branch and an assembly, for areas covered by the Croat self-government. However, importantly, the decision adopted on 3rd March only refers to an “interim” and “provisional” status for the body. Mr. Jelavić, despite misleading newspaper reports to the contrary, has never advocated a third entity in Bosnia. He merely demands proper respect for the three-nation constitution and compliance with Dayton.

The reaction of the High Representative was swift. He dismissed from their elected posts and from their party positions four members of the Croatian Democratic Union: Mr. Ante Jelavić, the President of the HDZ BiH and member of the collegiate presidency of BiH; Mr. Marko Tokić, Vice-President of HDZ BiH; Mr. Ivo Andrić Luzanski, also a Vice President of the HDZ BiH and Delegate to the House of Representatives of BiH; and Mr. Zdravko Batinić, another Vice-President of the HDZ BiH. Wolfgang Petritsch justified his dismissal of them by saying that they had taken up official positions in the “so-called Croat self-government” and that this constituted an “illegal or anti-Dayton activity”.

In addition to these drastic measures, which were followed by the appointment of place-men to the vacated posts, the High Representative gave an inflammatory interview criticizing the Bishop of Mostar to the Zagreb magazine, *Globus*, which was published on 9th March 2001. In it, Petritsch said, “I am appalled and shocked by the speech of the Bishop Ratko Perić and I cannot even start describing his enormous hatred and his support for convicted war criminals expressed in his speech.” As anyone who reads the Bishop’s speech can see for himself, this is a grotesque and utterly baseless charge, since neither hatred nor support for criminals can be discerned in the address.⁹ The suspicion must be that Mr Petritsch would have quite liked to sack the Bishop as well. Indeed, in a letter written to the British magazine, *The Spectator*, the spokesman for the High Representative, the former *Guardian* journalist Christopher Bird, justified Mr. Petritsch’s attacks on the Bishop by saying “Bishop Perić is more a politician and less a priest.” Throughout history, authoritarian regimes have found “turbulent priests” uncomfortable for secular power and have often sought to remove them. The OHR is no different from other such regimes in this regard. But this was not to be the only instance of the High Representative and his officials using inappropriate language. In the media and in public, the HDZ politicians dismissed by the Office of the High Representative were widely described as “criminals” and “extremists”.

Guilty until proved innocent: the UN’s seizure of Hercegovačka Banka

The campaign against the Croats’ political representatives was soon to be accompanied by attacks on the community’s economic base. The Office of the High Representative moved, on 5th April 2001, to appoint a provisional administrator to one of the three main banks used by Croats in Herzegovina, the Hercegovačka Banka. Allegations had already been made by the international community that the HDZ was financing its activities from illegal accounts held in the bank, even though international auditors, including Deloitte Touche, had only recently given Hercegovačka a clean bill of health.

On the morning of 6th April, armed SFOR troops and police from the Muslim-Croat Federation moved to seize control of the Hercegovačka Banka in Mostar and other parts of BiH. Their presence was intimidating, not least because of the arms they carried and the masks the police wore. They were met by an angry crowd and four people – two civilians and two policemen – were wounded in the ensuing scuffles. OHR has made much of its claims that a “mob” rioted at this point and it and SFOR have used highly inflammatory language to attack the protesters. Curiously, though, there have not been any arrests of the alleged rioters to date. Instead, SFOR returned two weeks later in a massive and brutal show of force. They drove APCs and tanks, smashing their way through a fence at the back into the

bank. Helicopters gave cover from the air. They dynamited open the safe and made off with significant sums of cash. SFOR and the Federation Police also attacked branch offices of the bank in 6 other places in Herzegovina, including at the world famous pilgrimage town of Medjugorje, where the soldiers and masked security operatives were also met by an angry crowd (which included pilgrims).

Press reports of the incident made sure to blame the victims, despite the totally disproportionate level of forces involved. Tanks, helicopters, armoured personnel carriers and masked policemen were pitted against a group of ordinary people worried about their savings going up in smoke. Ralph Johnson, deputy HR, reported that the “mobs” had “beaten police, destroyed records and looted the building”¹⁰ which was blatantly untrue. When BHHRG visited the main offices of the bank on 25th April, it was obvious that the damage had been caused by the armed attack: directions for the intruders were spray-painted *in English* on the walls, safes had been blown apart with gelnite and photographs of the Pope smashed. None of this could have been done by ordinary members of the Croat public, not even an enraged ‘mob’.

The OHR peddled similar untruths about what happened in Medjugorje. OHR spokesman Bird has attacked as “pure fantasy” the claim that pilgrims were harassed in the famous pilgrimage town. “It was a mob of Croats who threw eggs,” he has written. “Pilgrims were nowhere near the operation and certainly didn’t join a violent mob.” A “mob,” it seems, is anyone who protests at SFOR’s brutality; but would the High Representative also describe as a “mob” those who stormed the Federal Parliament building in Belgrade on 5th October 2000 ? In any case, the OHR version of events does not tally with that of the parish authorities in Medjugorje, who issued a statement condemning SFOR’s brutality on the Tuesday of Holy Week and particularly mentioning the way in which peaceful pilgrims were threatened with guns by the troops.

On 25th April 2000, when questioned about the bank raid at a press conference, attended by BHHRG representatives the High Representative’s own representative, Mr. Colin Munro, spared no hyperbole in denouncing the politicians whom his office had dismissed as “criminals”. “I have made it very clear that the office of the High Representative will not talk to criminals,” he said. He later partly repeated himself, making an illuminating slip of the tongue: “As I have already said, the High Representative will not talk to people who have been dismissed.” In other words, in the minds of the people who run BiH, being dismissed is morally equivalent to being a criminal, while the justification for the dismissal is that the person is a criminal. This is totally circular reasoning: in fact, it is not reasoning at all.

Mr. Munro made a number of other revealing remarks which illustrate the depth of the problem. “All these actions against the HDZ,” he told BHHRG, “are based on the remark, made by [the Chief Prosecutor at the International Criminal Tribunal for the former Yugoslavia Carla del Ponte] that former President Franjo Tudjman would have been indicted for war crimes if he had not died.” In other words, the fact that Madame del Ponte would have indicted Tudjman is, according to the OHR, sufficient cause for criminalizing the HDZ in neighbouring Bosnia, even though an indictment for war crimes is very far from being a conviction for them and even though there is no stretch of the imagination by which politicians in Mostar can be held guilty for alleged crimes which the president of neighbouring Croatia is supposed to have committed in 1995.

Mr. Munro also alleged that the HDZ was a direct descendant of the wartime fascist party in Croatia, the Ustashe and that, as such, the party was a criminal organisation against which tough action needed to be taken. Mr. Munro pointed out that the father of a member of his staff had been killed by the Ustashe – presumably during the Second World War - as if to show the extent of the problem. When a BHHRG representative said that his uncle had been killed by the Germans in 1944 but that this did not mean that one would consider the German CDU to be a criminal organisation, Mr. Munro replied, “But the CDU is not the descendant of the Nazi party.” In other words, he considers that the HDZ is a descendant of the Ustashe.

It is difficult to know where to begin with such a distorted perception of truth and history. If the HDZ was the Ustashe party in disguise then there might be reasons for banning

it. It would certainly be illegal in Germany for the Nazi party to reconstitute itself under another name. However, in order to do this, the appropriate legislation would need to be very carefully drafted and very rigorous legal procedures would have to be followed. Until any conviction had been obtained according to the law, the presumption of innocence would have to be rigorously observed. No such proceedings have even been started against the HDZ in BiH. Indeed, there are hardly any proceedings against any of the officials dismissed by the OHR. (The only exception is Dragan Mandić, Interior Minister of the Canton of Mostar.) Despite this, the Office of the High Representative is happy to denounce as a criminal people who have not even been accused of any crime by a prosecutor, let alone convicted of one by a court. Moreover, the Office of the High Representative has repeatedly said that the HDZ was welcome, in its eyes, to join the political institutions of the Bosnian state, a view which is simply incompatible with the repeated claim made by the same OHR that the HDZ is a criminal and crypto-Nazi organisation.

The High Representative has personally used similar highly irresponsible language. He told the Croatian government paper *Vjesnik* on 3rd May that, "there are clear indications that the HDZ leadership was included to a great extent in illegal actions." The true measure of Mr. Petritsch's contempt for the principle of the presumption of innocence is illustrated in the following exchange later on in the same interview:

Vjesnik: "Your office has often been known to accuse Ante Jelavić and the HDZ of involvement in organised crime, yet proof of these accusations is never presented. Do you have any proof and if so will you present it?"

Petritsch: "I stated that within the HDZ there were criminal elements and so far no one has proved the opposite."¹¹

This flagrant failure to understand any of the principles on which the entire Western legal tradition rests is deeply worrying. The only justification for the whole paraphernalia of the UN regime in BiH – which apart from anything else must be very costly to the Western taxpayer – is that the West can somehow help the Bosnians and Herzegovinans to become democratic. This was always a rather doubtful proposition in any case. But if the regime imposed by Dayton itself now deliberately flouts the most elementary principles of the rule of law then it is difficult to see how any progress towards democracy can be made by citizens of BiH themselves.

It should also be pointed out that the raid on the bank and the sacking of its officials are evidently two parts of the same policy. This, again, is highly questionable behaviour on behalf of the High Representative. Either the officials were sacked for constitutional reasons or for criminal ones (in which case, proceedings should be brought). But the actions themselves, as well as the words of the UN regime, are intended to blur the distinction between the two accusations, in a way which can only be described as a smear campaign.

Bosnia's Political Future

BHHRG representatives found the allegations made by the international community against the Bosnian Croats, and the HDZ in particular, still unproved. For instance, Mr. Munro alleged that "all over Mostar" you could see HDZ posters inciting ethnic hatred: in reality, none were to be seen. Until and unless proper evidence of criminal wrongdoing is brought against Mr. Jelavić and other members of the party and tested in court, it has to be assumed that the international authorities in BiH are pursuing these people for political rather than criminal reasons.

BHHRG representatives also found (as is often the case with groups attacked for "extremism" and "ultra-nationalism") that the HDZ leadership is composed of ordinary men and women in suits who have few resources and little power compared with other players in Bosnian politics. For example, the Bosnian Croats have no media outlets of their own: their

only TV station, Erotel, was taken off the air by SFOR troops in February 2000 for alleged "extremism". There is only one (fortnightly) news magazine, Focus, which is truly independent and not indebted to the international community.

It should come as no surprise that Herzegovina's bad reputation in the West continues as the political agenda is still unresolved. But BHHRG members (including a representative who had visited Mostar and its surroundings during the war) were surprised by the amount of reconstruction that had taken place and the amount of level of economic activity that was being pursued. Despite the scars of war, western Mostar has begun to pick up, whereas the Muslim part of the city which has received significantly more Western aid is lifeless and run down. As stated in this report, such regeneration is unlikely to be the result of mafia-based prosperity. The mafia keep their ill-gotten gains to themselves. Our colleague, anyway, remarked on the visible absence of mafia types compared with the situation in 1994 when she was last there.

It is therefore something of a tragedy for the people of BiH (including many Muslims) to see their savings enter a limbo-land with the nationwide closure of the Hercegovacka bank. That, no doubt, was the point of the operation. It has also been suggested that the Austrian bank, Raiffeisen, will come in and take over Hercegovacka once the present international audit is complete. Wolfgang Petritsch is an Austrian national which could be helpful here.

As this report is written, HDZ members of the House of Representatives have reached a compromise with the OHR and returned to parliament. But the campaign of harassment against the party and its supporters will undoubtedly continue. The international community will not be satisfied until the domestic politics for all three nations in the Bosnia state is completely in the hands of 'non-national' parties which seem to be ones under the control of former Communists.

The West's favourite is the current Bosnian Foreign Minister and leader of the Social Democrats, Zlatko Lagumdzia, a former leader in the Yugoslav CP's youth wing and old friend of Zoran Djindjić. A computer scientist, Lagumdzia speaks English learnt in Wisconsin and at Arizona State University. "He could be a politician in a Western European country," pronounces Wolfgang Petritsch. According to Matthew Kaminski in the *Wall Street Journal*,¹² "[Lamagudzia] laughs off attacks on his [Communist] past. Most Bosnians ...remember the Tito-era as a time of peace and prosperity he says."

But, like most 'reform' Communists, Lamugudzia is not advocating a return to the past. Tito-era policies of full-employment, worker self-management and, it seems, a Bosnia constituted on a three-nation basis are not part of a now-familiar platform based on privatisation and reform. The failure of the Social Democrats to achieve a serious electoral breakthrough shows that ordinary Bosnians are unconvinced that he wants to return to a past that they recognize and endorse.

The absence of checks and balances in the UN regime

The reason why there can be such serious breaches of the principles of legal probity in BiH is that there are literally no checks and balances to the mandate of the High Representative and other Dayton-imposed structures. A culture of legal impunity and legal omnipotence has therefore grown up in the United Nations regime.

When confronted with the shortcomings of his position, for instance, Mr. Munro tried to explain the position to BHHRG by saying, "This place is really a protectorate, you know." However, the reference to a protectorate fails to capture the true lawlessness of the UN regime. With the possible exception of the rule of King Leopold of Belgium in the Congo, which he treated as personal property, the powers wielded by the UN High Representative in BiH are far more lawless than those of most 19th century colonial officials.

Nineteenth century Viceroy's of India had to worry about questions being asked about their behaviour in the British House of Commons, and the rule of law applied in India after

Edmund Burke's unsuccessful prosecution of the head of the East India Company, Warren Hastings, for abuse of power in 1788. In the period leading up to the American revolution, moreover, British royal officials in the American colonies were very careful about exercising power without legislative sanction. After the Boston tea party, for instance, Boston was not punished until Parliament itself had acted to close the port. The ministry did not simply issue orders in council, which is the equivalent of what Wolfgang Petritsch has done.¹³

The irony is particularly rich considering the surfeit of human rights documents which are allegedly valid in BiH. Citizens of BiH are supposedly protected by "the highest levels of internationally recognised human rights and fundamental freedoms."¹⁴ Concretely, this has meant integrating into Bosnian law the following charters and treaties: the 1948 Convention on the Prevention and Punishment of the crime of Genocide; the 1949 Geneva Conventions I – IV and the 1977 Geneva Protocols I – II thereto; the 1950 European Convention on Human Rights; the 1951 Convention on refugees and the 1966 Protocol thereto; the 1957 Convention on the nationality of married women; the 1961 Convention on the reduction of statelessness; the 1965 Convention on eliminating racial discrimination; the 1966 convention on civil and political rights and the 1966 and 1989 protocols thereto; the 1966 Covenant on economic, social and cultural rights; the 1979 Convention on the elimination of discrimination against women; the 1984 Convention against torture; the 1987 European Convention against torture; the 1989 Convention on the rights of the child; the 1990 Convention on the rights of migrant workers; the 1992 European Convention on regional and minority languages; and the 1994 Framework Convention on the Protection of National Minorities.¹⁵ Despite this plethora of conventions, however, citizens of BiH have no right to appeal to the European Court of Human Rights in Strasbourg.

A glance at the written justifications for the HR's actions suffice to see this. Wolfgang Petritsch phrased his decision to seize the bank, for instance, in the language of legal reasoning: "in the exercise of the powers vested in me ...," "recalling paragraphs etc. etc.," "observing ...," "noting ..." and so on. But this legalese is purely circular because the catch-all Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) of the General Framework Agreement for Peace (i.e. Dayton) is a straightforward statement of untrammelled power: "*The High Representative is the final authority in theatre regarding interpretation of this Agreement on the civilian implementation of the peace settlement.*" Entitled "Final Authority to Interpret," this is exactly what the High Representative is awarded by this obnoxious article: final authority to adjudicate over his own executive powers, which in any case are totally unlimited¹⁶.

As if these powers were not enough, a meeting of the Peace Implementation Council held in Bonn in December 1997 widened them further. The High Representative was awarded even more powers (although it is not clear by what legislative authority) so that they are now literally defined by himself. Section XI of the Conclusions of that meeting, entitled "High Representative", reads as follows:

"The Council welcomes the High Representative's intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of difficulties by making binding decisions, *as he judges necessary*, on the following issues: (a) timing, location and chairmanship of meetings of the common institutions; (b) interim measures to take effect when parties are unable to reach agreement, which will remain in force until the Presidency or Council of Ministers has adopted a decision consistent with the [Peace Agreement](#) on the issue concerned; (c) *other measures to ensure implementation of the [Peace Agreement](#) throughout Bosnia and Herzegovina and its Entities*, as well as the smooth running of the common institutions. Such measures may include actions against persons holding public office or officials who are absent from meetings without good cause or who are found by the High Representative to be in violation of legal commitments made under the [Peace Agreement](#) or the terms for its implementation."¹⁷ [Emphases added.]

All of these unlimited powers were used to justify the decisions to sack the Croat officials and to raid the Hercegovska Banka.

Conclusion

A whole host of questions is raised by these events. Not the least of these is the potential conflict of interest involved in having a man above the law, of Austrian nationality, closing a bank in a province where Austrian banks already control the other two main banks. Other questions raised include, of course, the wisdom of having a colonial-style administration masquerading as a democratic one. Such an approach, especially when the UN regime is itself lawless, can never promote democracy or stability in BiH. A recent article in *The Washington Post*¹⁸ all too starkly describes where such a policy can lead. Unsurprisingly, it seems that members of the international police force in Bosnia are involved in a range of criminal activities. Officers, have been dismissed for a variety of misdemeanours – one American was sacked in December 2000 for paying \$2,900 for a Moldovan prostitute whom he kept as his personal property. But dismissal seems to be the only sanction available, because in Bosnia itself, international police have diplomatic immunity from prosecution.

The case of BiH also illustrates a very important philosophical point. Human rights remain “chaff and rags and paltry shreds of paper” (Burke) unless they emanate from a sovereign state based on the consent of the governed and the rule of law. If the sovereignty of the state is bogus - as in BiH, where all key decisions are in fact taken by the High Representative who is himself outside the scope of BiH law - then that state’s legal structures can never enforce the principles laid down in its various human rights charters. Human rights can be enforced only when there is the political will to enforce them; but if political will is frustrated by arbitrary and lawless intervention from outside, as it has been in BiH, then that poor country will never evolve towards the responsibility and freedom which are the prerequisites for any state of law.

Footnotes

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- ¹ See, in particular: David Chandler, *Bosnia: Faking Democracy after Dayton*, Pluto Press 1999
- ² *Yugoslavia: A History of its demise* Viktor Meier, Routedledge 1999
- ³ “*The End of Nationalist Regimes and the Future of the Bosnian State*” Published by The European Stability Initiative, March 2001. Available at www.esiweb.org, this report is the only nearly objective analysis of the events described above by an international think-tank.
- ⁴ See *Bosnia’s November Elections: Dayton Stumbles* ICG 18th December 2000 <intern contact group>
- ⁵ Tanjug, 6/6/2001
- ⁶ OSCE Inter-Office Memorandum dated 16th October, 2000
- ⁷ “U.S., British Ambassadors Accused of Interfering in Bosnian Politics” *Agence France Presse* Sarajevo, 7th February 2001
- ⁸ Decision of the High Representative, Nr. 93/01, Sarajevo, 7th March 2001.
- ⁹ The speech is available on the web site of the Croatian National Congress at www.hns-bih.org/biskup-e.htm
- ¹⁰ “Croats Attack Peacekeepers” AP, 6/4/2001
- ¹¹ Interview with Milan Jelovac, *Vjesnik*, 3rd May. The interview may be read in full on www.hic.hr and www.vjesnik.hr
- ¹² “West Pins Hopes for Bosnia On Leader of Moderate Party”, Matthew Kaminski, *Wall Street Journal*, 22nd June, 2000
- ¹³ BHHRG is grateful to Lee Casey for drawing attention to these comparisons.
- ¹⁴ Dayton Agreement, Annex 4, Article 11, paragraph 1.
- ¹⁵ See David Chandler (ibid) pages 91-92
- ¹⁶ These documents can be consulted on the High Representative’s web page, www.ohr.int
- ¹⁷ Article II of the same Annex 10 gives the High Representative the right to “facilitate the resolution of any difficulties arising with civilian implementation”: this article is quoted as the source of Mr. Petritsch’s authority in his Decision to appoint a provisional governor to the Hercegovacka Banka, dated 5th April 2001
- ¹⁸ “Misconduct, Corruption by the US Police Mar Bosnia Mission” Colum Lynch, *The Washington Post*, 29th May 2001