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Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 3

FONDACIJA
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BÖLL

Zbornik radova i izbor iz diskusije sa konferencije:

PRIMJER BOSNE I HERCEGOVINE: ODRŽIVI KONCEPTI ILI STRANPUTICE MEĐUNARODNE ZAJEDNICE?

Sarajevo, 2007.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 4

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 5

S A D R Ž A J

Uvod
9 Mirela Grünther-Đečević

Pozdravni govor
11 Nj. E. Christian Schwarz-Schilling
15 Nj. E. Michael Schmunk

1. UTICAJ MEĐUNARODNE ZAJEDNICE NA POLITIČKI RAZVOJ BOSNE I HERCEGOVINE

Uvodno izlaganje
21 Nermina Šačić

Komentar
28 Nj. E. Christian Schwarz-Schilling
30 Zlatko Dizdarević

Diskusija
38 Dušanka Majkić
40 Miro Lazović
42 Senad Pećanin
44 Nurko Pobrić
45 Jerko Ivanković-Lijanović

Studija
47 **Nermina Šačić:** Međunarodna zajednica u Bosni i Hercegovini - od decembra 1995. do marta 2007. - politološki uvidi
47 I. Uvod
48 II. Filozofija 'mirovnog procesa'
50 III. Etnostranački pluralizam - lažni politički pluralitet
52 IV. Kontroverze u praksi
56 V. Reforme u Bosni i Hercegovini vs. reforme u međunarodnoj zajednici?
62 VI. Ocjena i analize

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 6

2. PRAVNE REFORME U BOSNI I HERCEGOVINI I UTICAJ MEĐUNARODNE ZAJEDNICE

Uvodno izlaganje
69 Manfred Dauster

Komentar
73 Zdravko Grebo
78 Nedim Ademović

Diskusija
83 Nurija Omerbašić
84 Mirsad Ćeman
84 Manfred Dauster

Studija
85 **Manfred Dauster:** Bilans djelovanja međunarodne zajednice u Bosni i Hercegovini – od decembra 1995. do marta 2007. - pravni aspekti
85 I. Uvod
90 II. Bitni koraci na reformskom putu Bosne i Hercegovine kojim je pečat dala međunarodna zajednica ili ih je sama donijela
101 III. Ocjena i perspektive

3. REFLEKSIJA PRISUTNOSTI MEĐUNARODNE ZAJEDNICE U BOSANSKOHERCEGOVAČKOM DRUŠTVU

Uvodno izlaganje
111 Dino Abazović

Komentar
118 Nada Ler Sofronić
121 Đorđe Čekrlija

Diskusija
124 Tarik Haverić
126 Zdravko Grebo
128 Tarik Haverić
129 Zlatko Hadžidedić
130 Dino Abazović

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 7

Studija

133 Dino Abazović: O međubilansu učinka rada međunarodne zajednice u Bosni i Hercegovini – od decembra 1995. do marta 2007. - sociološki aspekti

133 I. Uvod

136 II. Šta je sve pošlo krivo?

139 III. Demokratiziranje nedemokratskim snagama i (ne)civilno društvo!?

143 IV. Zaključna razmatranja

Završna riječ

147 Dragoslav Dedović

149 Zaključci i preporuke

151 Kratke biografije autora studija

155 Examples of Bosnia and Herzegovina: Sustainable Concepts or Lost Ways of the International Community?

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 9

UVOD

Međunarodna zajednica nastoji da doprinese izgradnji funkcionalne države i da podrži političke snage koje su u stanju nastaviti i iznijeti proces reformi. Međutim, u dosadašnjem radu međunarodne zajednice u Bosni i Hercegovini mogu se prepoznati uspjesi i neuspjesi. S obzirom na trenutnu političku situaciju i pritisak međunarodne zajednice na bosanskohercegovačke političke elite da što brže preuzmu cjelokupnu odgovornost za vlastitu državu i društvo, te na započeti ali veoma spor proces evropskih integracija, javlja se potreba za sagledavanjem učinka prisutnosti međunarodne zajednice i procjenom njene uloge u budućnosti.

Imajući u vidu ovu činjenicu, Fondacija Heinrich Böll, Ured za Bosnu i Hercegovinu, 17. aprila 2007. u Sarajevu organizirala je konferenciju pod naslovom **„Primjer Bosne i Hercegovine: održivi koncepti ili stranputice međunarodne zajednice?".** U pripremama za konferenciju izrađena je studija koja sa politološkog, pravnog i sociološkog aspekta nudi bilansu učinka rada međunarodne zajednice u Bosni i Hercegovini. Studija, koju su pripremili Nermina Šačić (Fakultet političkih nauka, Univerzitet u Sarajevu), Manfred Dauster (Sud BiH) i Dino Abazović (Fakultet političkih nauka, Univerzitet u Sarajevu), čini polaznu osnovu za diskusiju na konferenciji na kojoj su učestvovali predstavnici međunarodne zajednice, civilnog društva i političkog života u Bosni i Hercegovini. Zahvaljujući aktivnom radu i iskustvima stečenim u postjugoslavenskim zemljama a slijedeći svoju temeljnu postavku o nužnosti političkog obrazovanja kao pretpostavke istinskog demokratskog društva, Fondacija Heinrich Böll želi na ovaj način doprinijeti istinskom demokratskom političkom dijalogu.

Konferencija kao i studija imaju za cilju da kroz bilans učinka rada međunarodne zajednice u Bosni i Hercegovini potaknu diskusiju o onome što je za Bosnu i Hercegovinu značilo a i dalje znači prisustvo međunarodne zajednice, budući da se u bosanskohercegovačkoj javnosti sve više govori o zatvaranje Ureda Visokog predstavnika za Bosnu i Hercegovinu (OHR-a) i redefiniranju uloge međunarodne zajednice. U Bosni i Hercegovini se svakodnevnim jezikom sve više govori o „odlasku stranaca", pa smatramo da je vrijeme da se intenzivira javni dijalog između međunarodne zajednice te političkih i građanskih aktera bosanskohercegovačkog društva o bivšim sadašnjim i budućim konceptima, ali i o stranputicama međunarodne zajednice u Bosni i Hercegovini i njihovih partnera na bosanskohercegovačkoj političkoj sceni. Pri tome treba poštovati pravila očuvanja onoga

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 10

što se pokazalo dobrim, uz istovremeno prevazilaženje prepreka koje stoje na putu daljem razvoju Bosne i Hercegovine.

Bosni i Hercegovini je još uvijek potrebna pomoć međunarodne zajednice. No, i međunarodnoj zajednici, a posebno Evropi, potrebna je stabilna i prosperitetna Bosna i Hercegovina – kao konkretan znak uspješne mirovne politike. Stoga je postojanje koncepta ubrzavanja, ali i njegova efikasnost u približavanju Bosne i Hercegovine Evropskoj uniji, jedno od najbitnijih mjerila ukupne uspješnosti međunarodne zajednice.

Na stranicama zbornika koji je pred vama nalaze se uvodna izlaganja, komentari i izbor iz diskusije sa spomenute konferencije te autorske studije date na kraju svakog od tri tematska poglavlja ovog zbornika. Fondacija Heinrich Böll najsrdačnije zahvaljuje autorima studije kao i svim učesnicima konferencije za njihov doprinos i angažman u pripremama same konferencije kao i za izuzetno vrijedne komentare, diskusije, zaključke i preporuke koje ćete čitati na sljedećim stranama.

Mirela Grünther-Đečević
Direktorica Fondacije Heinrich Böll,
Ured za Bosnu i Hercegovinu

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 11

POZDRAVNI GOVORI

NJ. E. Christian Schwarz-Schilling, Visoki predstavnik u Bosni i Hercegovini i Specijalni predstavnik Evropske unije

Ekselencijo, dame i gospodo,

hvala vam na vašem pozivu za ovu konferenciju. Ovo je vrlo zanimljiva tema, koja je došla u pravo vrijeme. Također vam se zahvaljujem na odličnom materijalu koji ste dostavili unaprijed. Radi se o studiji koja je od velike pomoći jer se njom ponavlja, naglašava i ponovo vrši ocjena razvoja situacije od kraja rata, od vremena kada su se sve one grozne stvari događale s početka 1990-ih.

Prije svega, zahvalio bih se Fondaciji Heinrich Böll na njenom izvanrednom radu, te na korisnom razgovoru i idejama koje pomažu poboljšanju situacije. Otkako sam došao u Bosnu i Hercegovinu, znam da Fondacija upravo tako radi. Ne mogu se sjetiti koliko sam se puta do sada sastao sa predstavnicima Fondacije Heinrich Böll. Još jednom želim naglasiti koliko su ova tema i ova konferencija bitne, jer mi treba da unaprijedimo razumijevanje političke situacije i procesa tranzicije u ovoj zemlji.

Zato, smatram da je jako bitno organizirati ovakve konferencije; čini mi se, ispričavam se što ću to sada reći, da u ovom regionu postoji običaj da se, jednostavno, vrlo brzo odredi krivac za neke stvari. Međutim, u ovom slučaju situacija je mnogo složenija. Pristup 'ko je kriv' nije pravi za razmatranje budućnosti. Na samom početku diskusije želim postaviti sljedeće pitanje: kako smo došli do ovog trenutka? Kako su zemlje bivšeg istočnog bloka napredovale ka Evropi?

Proces tranzicije u Jugoistočnoj Evropi i Srednjoj Evropi bio je težak. Međutim, s druge strane, imali smo ratove koje je vodio Milošević i nacionalističke politike koje su imale za cilj genocid i etničko čišćenje. Međutim, prije svega, želio bih s vama podijeliti jednu osnovnu misao o svemu ovome. Nije baš lako reći da su sve poteškoće kroz koje smo ovdje prošli poteškoće koje je izazvala međunarodna zajednica.

Naravno da ima mjesta i za kritiku. Međutim, prostor bivše Jugoslavije je pokazao razliku u odnosu na neke druge zemlje. Bilo je osobito teško djelovati u ovom regionu zbog velikog broja ljudi različitih religija i historije. To su bile otežavajuće okolnosti u kojima se tranzicija odvija s mnogo više teškoća. Moramo reći da je ono što se ovdje dogodilo, prije svega, bio neuspjeh političara ove zemlje, koji su stvorili situaciju s kojom se upravo suočavamo.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 12

Dakle, prvo, smatram da svaki domaći političar mora sa svoje strane prihvatiti činjenicu da nije međunarodna zajednica ta koja je napravila greške, nego je bilo potrebno da međunarodna zajednica dođe ovdje, a da takve potrebe jednostavno nije bilo u drugim zemljama Istočne Evrope, koje su poslije komunizma prolazile kroz tranziciju i krenule putem demokratizacije.

Zaista je bilo tragično vidjeti, na primjer, pokrete u Mađarskoj, Poljskoj, pokrete liberalizacije, a istovremeno je prostor bivše Jugoslavije imao vrlo zaostalog lidera i generalnog sekretara Komunističke partije, koji je naprosto vodio ka nacionalizmu i etničkom razmišljanju.

To je bila stvarnost krajem osamdesetih i početkom devedesetih godina prošlog stoljeća. Bez obzira na sve to, od samoga početka smo znali da je međunarodna zajednica napravila izuzetno mnogo grešaka.

Mi, sa svoje strane, nismo uspjeli zaustaviti ratove u Hrvatskoj; u Bosni i Hercegovini nismo uspjeli spriječiti genocid zato što je politika međunarodne zajednice bila previše fragmentirana. Međutim, s druge strane, pak, situacija je bila takva da apsolutno niko nije vjerovao da će se rat dogoditi. Neki su smatrali da po završetku Hladnog rata više neće biti ratova. Međutim, stvarnost se pokazala drugačijom. Bile su to, na koncu, Sjedinjene Države koje su u Bosni i Hercegovini zaustavile rat i stvorile uvjete za Dejtonski mirovni sporazum.

Međutim, to nije bilo prvi put da Evropa doživi neuspjeh. Evropa je vidjela da se rat dešava. Poznato je da su se SAD već od početka željele uključiti, ali tada Evropa nije bila spremna podržati uplitanje SAD-a u rat, i upravo to je bio razlog zbog kojeg sam se ja itekako suprotstavljao svojoj vladi. Ja sam tada bio ministar u vladi i podnio sam ostavku zato što je moja ocjena situacije bila potpuno drugačija. U Evropi se u to vrijeme smatralo da situacija nakon Hladnog rata još nije sazrela za preuzimanje odgovornosti. Ali, SAD su prepoznale da Evropa nije spremna preuzeti odgovornost, pa su preuzele odgovornost umjesto nje i okončale rat. To je puka činjenica – to više nije samo mišljenje.

Stoga bi trebalo znati da Dejtonski mirovni sporazum nije bio poraz ni Miloševića ni Tuđmana, nego politički kompromis koji je jednostavno razdvojio strane. Bitna razlika između toga mirovnog sporazuma i onog s kraja Drugog svjetskog rata je ta što su na mirovnim pregovorima akteri rata i ratni zločinci zajedno sjedili za pregovaračkim stolom. I to je bilo nešto potpuno drugačije u odnosu na ono što smo imali kada su neonacisti pobijeđeni i kada je Njemačka kapitulirala. Dakle, ovdje smo, prije svega, imali kompromis s ratnim zločincima, što znači da nas uopće ne smije iznenaditi činjenica da pravila Dejtona nisu pravila za neki novi liberalni demokratski

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 13

početak. Krajem 1995. godine u toku je bio razarajući četverogodišnji rat i budućnost je bila neizvjesna. Više od 5% stanovništva Bosne i Hercegovine je ubijeno, više od 20% stanovništva je nasilu protjerano, više od milion vojnika je bilo naoružano, imali smo ogroman broj izbjeglica; također, ekonomija je u cijeloj zemlji bila razorena i zamijenjena crnim tržištem.

Dejtonski mirovni sporazum i njegova vizija Bosne i Hercegovine ovisili su o podršci koja je dolazila od bivših zaraćenih strana; o tome su ovisili i očekivanja i budućnost. Međutim, Dejtonskim mirovnim sporazumom samo je zaustavljen rat, iako su postojala velika očekivanja u pogledu budućnosti. Ali, osnovna funkcija i osnovni cilj Dejtonskog mirovnog sporazuma bio je zaustaviti rat. Prioritet Bosne i Hercegovine jeste da se prihvati barem minimalni kompromis, uz nekoliko logičnih konsekvenci. Isto tako, taj je period zloupotrijebljen, a za sobom smo još imali naslijeđe troipogodišnjeg rata. Međunarodna zajednica je bila tu kako bi spriječila to ratno naslijeđe. Drugim riječima, međunarodna zajednica je pokušala da uspostavi mir. IFOR je bio prisutan i odlučan u ostvarenju svojih zadataka. Zatim je uspostavljen Ured visokog predstavnika. Donatorske agencije i vlade su, isto tako, nastojale primorati bivše zaraćene strane, koje su bile nepomirljive u vezi s bilo kakvim dogovorom, da osiguraju pravo povratka raseljenim i izbjeglim i da osiguraju kompletno političko zastupanje svih građana.

Drugi razlog uspjeha Dejtona je promjena u regionu 1995. godine. Veliki broj Srba i Hrvata u Bosni i Hercegovini željeli su podijeliti zemlju i pridružiti se Srbiji i Hrvatskoj. Međutim, takva nastojanja su nestala. Sada, naprimjer, oni koji podržavaju Dodika, ne podržavaju njegove pozive na referendum.

Šta je sa Bonskim ovlastima? Prve godine implementacije Dejtonskog sporazuma postalo je jasno da više nije moguće provoditi mir bez mnogo jačih ovlasti koje bi bile date Visokom predstavniku. Tada je donesena odluka da se Visokom predstavniku daju tzv. Bonske ovlasti. I moram vam, također, kazati da sam ja u to vrijeme, 1993/1994. godine, bio medijator u BiH. Putovao sam po zemlji, od općine do općine, od grada do grada, i zaista sam vidio da još ima načelnika općina koji jednostavno ne žele provoditi Dejtonski mirovni sporazum. Oni su zahtjeve za povrat imovine naprosto gurali negdje u ćošak, nisu ih razmatrali i ignorirali su sudske presude i odluke.

To je, međutim, nedopustivo. Jedanaest godina poslije toga, Bosna i Hercegovina je na putu potpisivanja Sporazuma o stabilizaciji i pridruživanju s Evropskom unijom i uspostave prvih ugovornih odnosa koji će u konačnici dovesti do članstva Bosne i Hercegovine u Evropskoj uniji. Bosna i Hercegovina je pristupila Partnerstvu za mir i CEFTA-i, a više od milion ljudi vratilo se u svoje domove.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 14

Bosna i Hercegovina je jedna od ekonomija na Balkanu koje najbrže rastu; ona ima politički sistem uspostavljen u Daytonu, i njen napredak je stalan, kao kompromis za nemoć Bosne i Hercegovine da pobjegne od zamke siromaštva, koje je posljedica ratnog razaranja i lošeg upravljanja nacionalističkih politika. To znači da su Bonske ovlasti u ovoj zemlji još potrebne. Potrebne su zbog osjetljive situacije u regionu, u Bosni i Hercegovini, jer bez njih se ova zemlja ne može kretati naprijed. Neki kažu da je međunarodna zajednica zauzela mjesto političkih stranaka i da mi donosimo politički teške reforme, a politički nacionalistički lideri zanemaruju svoju odgovornost.

Dozvolite mi da vam kažem: ja znam kakve kritike dolaze s obje strane. S jedne strane, imamo kritike koje kažu: zašto niste iskoristili bonske ovlasti? Zašto ih niste koristili stalno? Možda se sjećate da je međunarodna zajednica donijela čvrstu odluku da se zatvori OHR krajem juna ove godine. I to je datum na koji sam i ja računao, jer sam smatrao da misiju treba ispuniti do kraja 2006. godine ili u prvom ili drugom kvartalu ove godine. To je bio zaista čvrst stav svih država članica međunarodne zajednice i mislim da je to bilo ispravno: dati jedan prelazni period dok je OHR još prisutan, a ne da se stalno donose određene odluke umjesto da to čine odgovorni ljudi, odgovorni političari u ovoj zemlji, dok OHR kao institucija ne bi više imao iste ovlasti.

Kada je uvedena ova promjena u našu politiku, ja sam zapravo na samom početku mog dolaska želio pokazati koliko je bitno da političari budu zreli i da preuzmu našu ulogu. Bosna i Hercegovina je na putu prema Evropskoj uniji, i ova zemlja već sudjeluje u tom pripremnom procesu. Sporazum o stabilizaciji i pridruživanju će biti potpisan čim se ispune svi uvjeti. Ovdje imamo predsjednika Vijeća Evropske unije, a to je ambasador Njemačke u Bosni i Hercegovini. Mislim da zapravo niko ne može ni zamisliti koliko smo sati proveli zajedno kako bismo riješili situaciju prouzrokovanu sadašnjom političkom retorikom i pokušali da jasno definiramo uvjete do oktobra 2006. godine. Evropska unija će i dalje učestvovati i biti uključena u promociji društva u zemljama budućim članicama Evropske unije i ovo je zaista faza u kojoj sveobuhvatne reforme treba završiti i prevazići sve postojeće prepreke.

Izazov za Bosnu i Hercegovinu, kao postkonfliktno društvo, jeste politička integracija u Evropsku uniju, a u isto vrijeme to predstavlja jedini model za trajni mir na ovom području zapadnog Balkana. Pridruživanje Evropskoj uniji je promijenilo političko djelovanje u ovoj zemlji, a sinergije u cijelom regionu Zapadnog Balkana treba iskoristiti kako bi se sve zemlje približile

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 15

Evropskoj uniji. Također je potrebno uložiti resurse kako bi se pomoglo zemljama zapadnog Balkana da što prije postanu članice Evropske unije.

Međutim, sve ovo će ovisiti i o spremnosti i želji lokalnih aktera da učestvuju u ovim procesima, i Bosna i Hercegovina će se pridružiti konvoju zemalja koje se spremaju za Evropsku uniju. Crna Gora se priprema. Što se tiče Kosova, rješenje više tamo nije veliki problem i znamo da neće biti dobro ukoliko samo ova zemlja, koja je najviše propatila u proteklom ratu, bude posljednja zemlja koja će se priključiti Evropskoj uniji. Sada je zadatak na političkim liderima da pomognu Bosni i Hercegovini.

Nj. E. Michael Schmunk, ambasador Savezne Republike Njemačke i sadašnjeg Predsjedništva Evropske unije u Bosni i Hercegovini

Gospodine Visoki predstavniče, dame i gospodo,

dozvolite mi, prije svega, da se zahvalim Fondaciji Heinrich Böll za organizaciju ove konferencije, koja se desila u pravom trenutku i na kojoj se okupilo toliko uvaženih eksperata. Meni je izuzetna čast što sam pozvan da vam se odmah na početku konferencije obratim. Tema i središnje pitanje ove konferencije i dalje su izuzetno važni: da li je doprinos međunarodne zajednice procesu izgradnje mira, nacije i države u Bosni i Hercegovini (BiH) uistinu odgovarajući, djelotvoran i održiv? Pokušat ću dati odgovor iz vlastitog iskustva koje sam stekao u ovoj zemlji, kao i iz 'lekcija' koje sam naučio radeći u pet poslijeratnih društava na raznim stranama svijeta. Također ću pokušati iskoristiti i iskustvo stečeno tokom istraživanja koje sam kao znanstvenik Harvarda obavio vezano za temu izgradnje mira, nacije i države 2005/2006. godine. Što se tiče analize trenutne političke situacije, svakako, nema se mnogo toga dodati na ono što je već danas izložio naš prijatelj, dr. Christian Schwarz-Schilling – u potpunosti dijelim njegovo mišljenje.

Od početka hiljadu devetsto devedesetih godina svjedoci smo važne promjene paradigme na planu međunarodne sigurnosti. Pomoć u izgradnji mira, nacije i države propalim državama i poslijeratnim društvima postala je i obaveza i prioritet zapadnih vanjskih i sigurnosnih politika. Sve više takozvane „koalicije sposobnih i politički voljnih" pokušavaju izaći nakraj s problemom propalih država i društava koja su doživjela kolaps. Ta nastojanja u pravcu stabilizacije i rekonstrukcije pratila su novu vrstu međunarodne intervencije, čiji je cilj bio zaustaviti brutalne napade na nedužne civile, kao i genocid i masovne povrede ljudskih prava. Kada smo zakoračili u takva nastojanja,

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 16

imali smo vrlo malo iskustva u pogledu onoga što sa svoje strane trebamo doprinijeti, te kako to uraditi na pravi način. Naši priručnici o temi izgradnje mira, nacije i države nisu nam pružili mnogo savjeta, a u kutijama za alat koji smo imali na raspolaganju nedostajalo je djelotvornih instrumenata. Moram priznati da svi mi skupa nismo bili dovoljno pripremljeni za toliko zahtjevan zadatak. Prije dvanaest godina, ustvari, Bosna i Hercegovina je postala naš prvi 'slučaj' izgradnje mira, nacije i države – 'majka' našeg angažmana na Kosovu, u Istočnom Timoru, Makedoniji, Afganistanu i na Srednjem istoku, koji je uslijedio nešto kasnije. Kako su godine odmicale, uspijevali smo prilagoditi svoje koncepte, usavršiti svoje priručnike i stvoriti bolje instrumente.

Međutim, upravo u Bosni i Hercegovini suočili smo se s ograničenjima međunarodne, odnosno 'izvanjske' pomoći u izgradnji mira, nacije i države. U početku, naše intervencije u Bosni i Hercegovini imale su dva cilja: zaustaviti etnonacionalističko krvoproliće i masovne povrede ljudskih prava, i drugo, ponovo ujediniti i reintegrirati podijeljeno bosanskohercegovačko društvo nakon sukoba – uvesti ljudska i građanska prava, vladavinu prava i demokratiju. Osnovni koncepti s kojima smo počeli ovaj proces bili su Dejtonski i Vašingtonski sporazum. I jedan i drugi su obavili dobar posao – sukob obilježen nasiljem je uspješno zaustavljen, s perspektivnom održivosti.

Međutim, poslijeratni poredak pokazao se nedovoljnim za uspostavljanje pomirenog, demokratskog društva, imunog na propadanje a spremnog za ispunjavanje vrijednosti i standarda Evropske unije, kako bi članstvo Bosne i Hercegovine u njoj bilo ostvarivo. Saradnja na pitanjima pomoći u izgradnji mira, nacije i države između Bosanaca i Hercegovaca i međunarodne zajednice dovela je do velikog broja dobrih rezultata – napredak u stabilizaciji, rekonstrukciji i reformama bio je više nego očigledan. Posebno je veliki uspjeh postignut u procesu fizičke rekonstrukcije, pokretanja privrede i izgradnje institucija. Međutim, vremenom smo postali svjesni ograničenja s kojima se suočavamo u izgradnji mira, nacije i države kada se radilo o temeljnijim problemima propalog bosanskohercegovačkog društva. Još uvijek je potrebno rješavati vjersko-etničke podjele, nedefinirana individualna prava i nedovoljno razvijenu ulogu civilnog društva u BiH. I to društvo i međunarodna zajednica do sada nisu ostvarili uspjeh na polju izgradnje povjerenja i početka procesa iznalaženja istine i pomirenja.

U vezi s tim, naši priručnici za izgradnju mira, nacije i države i naše kutije s alatom nisu nam ponudili ono što je bilo potrebno na terenu. Osim toga, potrebno je mnogo više kreativnosti – kreativnosti koja, nažalost, nedostaje i Bosancima i Hercegovcima i međunarodnoj zajednici. Ali, to nas ne oslobađa odgovornosti i to ne znači da ne treba kvalitetnije raditi. Jedna stvar

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 17

ipak mora biti vrlo jasna u ovom kontekstu – najveća odgovornost u ovom pogledu prvenstveno leži na bosanskohercegovačkom društvu. Širok prostor za vođstvo i vlastitu odgovornost, koji je omogućio Visoki predstavnik u proteklih godinu i po dana, praktično nije uopće iskorišten.

Međunarodna zajednica nije savršena kada se radi o zadatku postavljanja propalog društva na noge. Međunarodna zajednica nije nikad bila niti će biti homogena. Nemojte nâs kriviti za našu različitost – umjesto da krivite nâs, prepoznajte našu volju da pružimo znatnu pomoć, i to dugoročno. Međunarodna zajednica je pravila greške, i dalje će praviti greške. Međutim, i ovdje se slažem s Visokim predstavnikom: Bosanci i Hercegovci jednostavno čine sebi život lakšim time što svu krivicu prebacuju na međunarodnu zajednicu. Mi konstantno vršimo procjene i prilagodbe u nastojanju da poboljšamo svoje koncepte, svoje instrumente i svoj cjelokupni rad na izgradnji mira, nacije i države. Daleko bitnije od toga, međutim, jeste nastojanje koje dolazi iz samog poslijeratnog društva. Prava izgradnja nacije trebalo bi da bude posao *i* političkog vođstva Bosne i Hercegovine *i* građana ove zemlje. Da, izborno tijelo mora biti odgovorno – rezignirano povlačenje u sferu privatnosti i porodičnog života politički je opasno i nedemokratsko.

Složio bih se da je takozvani pristup „od vrha prema bazi", kada se radi o reformama u ovoj zemlji, dobrano propao. Izgleda kao da je u proteklih dvanaest godina međunarodna zajednica možda previše fokusirala svoja nastojanja i podršku na lidere političkih stranaka i više dužnosnike. Rezultat toga je, manje-više, samoblokada na bosanskohercegovačkoj strani i paraliziranje BiH već neko vrijeme. Jedan od najnegativnijih rezultata te samoblokade je neuspjeh Bosne i Hercegovine da se blagovremeno uključi u proces stabilizacije i pridruživanja – čime riskira da je 'prestignu' neki od njenih susjeda u natjecanju da postanu punopravni članovi Evropske unije jednoga dana. Kada pogledamo rezultate nedavno provedenih anketa u BiH, očigledan je cilj koji pred sobom ima velika većina građana ove zemlje – potpuna integracija BiH u EU što je prije moguće. Otuda i moj dojam, otkad sam došao u ovu zemlju prošle godine, da takozvani pristup „od baze prema vrhu", kada se radi o izgradnji mira, nacije i države, zahtijeva daleko veći prioritet s naše strane. To je već urodilo rezultatima na općinskom nivou, na kojem je pragmatičan, neideološki rad pokazao kako bi se zemlja eventualno mogla kretati u pravom smjeru. Bilo je ohrabrujuće vidjeti da je na općinskom nivou ideja multietničke saradnje napredovala daleko više nego na entitetskom i državnom nivou. Govoreći u ime Njemačke, ali i u ime Evropske unije, mogu kazati da smo došli do zaključka da je potrebno pružiti daleko više političke, stručne i finansijske podrške gradovima i seli-

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 18

ma širom Bosne i Hercegovine kako bi te općine, koje rade na integriran, nenacionalistički način, mogle postati 'kvasac' procesa političke reforme BiH.

Da naglasim: izgradnja nacije je prvenstveno osnovna dužnost zemlje, društva. Međunarodni, *vanjski* graditelj nacije nikad to ne smije zaboraviti. Vanjski graditelj nacije trebalo bi da koncentrira svoju pomoć na one oblasti u kojima poslijeratno društvo ne može uspjeti bez pomoći izvana. Ta „crvena linija" nikad se ne smije preći. Samoobuzdavanje u izgradnji mira, nacije i države je ključno. Nažalost, angažman međunarodne zajednice u mnogim naporima koju su za cilj imali stabilizaciju i rekonstrukciju pokazali su da ovo „čelično pravilo" nije uvijek poštovano.

Tokom svog nedavnog obraćanja na ceremoniji obilježavanja pedesete godišnjice Evropske unije istakao sam dvije ključne oblasti u kojima sami Bosanci i Hercegovci treba da pokažu više inicijative. Jedna se odnosi na stvaranje „društvenog ljepila" koje je potrebno u svakom pojedinom društvu kako bi se stvorila zemlja, ako ne i nacija. To podrazumijeva izgradnju daleko vitalnijeg civilnog društva od onoga koje danas imamo. Drugi potreban sastojak su djelotvorni, demokratski osnovni zakoni orijentirani na standarde EU i politički poredak u BiH. Krajnje je vrijeme da se do sada nedjelotvorni dejtonski poredak zamijeni modernim, manje kompleksnim i jeftinijim ustavom. Međunarodna zajednica, prije svega Njemačka i EU, čvrsto su obećale da će obezbijediti okvir za proces pisanja ustava, bilo da su to eksperti ili finansijska podrška. A sada je na Parlamentu Bosne i Hercegovine i na političkim strankama da usaglase put i suštinu.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 19

1. UTICAJ MEĐUNARODNE ZAJEDNICE NA POLITIČKI RAZVOJ BOSNE I HERCEGOVINE

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 20

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 21

UVODNO IZLAGANJE

Nermina Šačić, Fakultet političkih nauka Univerziteta u Sarajevu

Dozvolite mi da vas sve toplo pozdravim i da kažem da mi je zaista zadovoljstvo prisustvovati današnjem skupu, jer smatram da je tema o kojoj danas razgovaramo veoma bitna za budućnost i razvoj bosanskohercegovačke demokratije.

Najprije, jedna rečenica o metodološkom pristupu. U svome tekstu pokušala sam se više osloniti na empirijsku argumentaciju, bez neke velike teorijske naracije. Ipak, odmah na početku želim da s vama podijelim neke teorijske dileme, a nakon toga ću izvući samo zaključke koje sam crpila iz empirijske argumentacije. Za početak, evo prve moje dileme.

S obzirom da govorimo o pojmu *međunarodna zajednica,* želim prvo ukazati na to da se radi o pojmu koji figurira u javnoj upotrebi, ali njegovo znanstveno određenje, barem u literaturi koja se bavi ovim pitanjima, nije do kraja određeno. Zbog toga želim problematizirati sljedeće pitanje: Šta je to *međunarodna zajednica*? Šta je to međunarodna zajednica u Bosni i Hercegovini? Ko je predstavlja? Jesu li to Ujedinjene nacije? Jesu li to primarno članice Evropske unije i Ruska Federacija? Jesu li to Sjedinjene Američke Države i NATO, SFOR, itd.? Da li su to OHR, OSCE, EUPM i neke druge vladine i nevladine organizacije? Da li je to MMF, svjetska banka, WTO, predstavnici ambasada, međunarodne korporacije i drugi?

Naravno, pokušala sam definirati ovaj pojam i, evo, mogu samo primijetiti: kada kažem „međunarodna zajednica", referiram na skup različitih anglosaksonskih i evropskokontinentalnih političkih aranžmana o rješavanju bosanskohercegovačkog problema, između kojih - nadam se da ćete se svi ovdje složiti - zaista postoje neke teorijske proturječnosti kada govorimo o pogledu na demokratiju, na naciju, na državu, i o tome ćemo govoriti u diskusiji.

Međutim, politička participacija i odlučivanje o sudbini Bosne i Hercegovine, posebno u Dejtonu, problematizira pitanje da li je Bosna i Hercegovina poluprotektorat ili stvarni protektorat međunarodne zajednice, i da li je ona u tom smislu i ogledalo fundamentalne napetosti između evropske i američke politike? Možemo reći da najveća specifičnost međunarodne zajednice jeste upravo njeno djelovanje pod drugima. „Djelovanje pod drugima" naglašavam, dakle po diktatu izmještenih centara geopolitičke i geoekonomske moći, čiji su predstavnici direktno ili indirektno uključeni u bosanskohercegovački politički život, međunarodnoj zajednici daje legitimitet da pomogne

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 22

u razvoju institucija jednakosti građana, kao i mehanizama za zaštitu osnovnih prava i sloboda građana Bosne i Hercegovine, ali onih koje korespondiraju sa svjetskim standardima.

Sa stajališta međunarodnih odnosa, procesa globalizacije i politika velikih sila, međunarodnu zajednicu možemo doživjeti i kao izvjestan eksperiment, kojem je cilj početi izgradnju praktičnog modela svjetskog društva kroz sistem globalnog upravljanja u lokalnoj zajednici. Mislim na političko angažovanje različitih institucija međunarodne zajednice u svjetskoj lokalnoj zajednici Bosni i Hercegovini. Postoje mišljenja, u teoriji, da je Bosna i Hercegovina prva autentična država Europske unije, prvenstveno zbog institucija Europske unije koje djeluju izvan svojih matičnih nacionalnih okvira - govorim o EUFOR-u, EUPM-u i tako dalje. To međunarodnu zajednicu svodi na realizaciju nacionalnih interesa imperijalnih sila. U prvoj fazi postdejtonske Bosne i Hercegovine bilježimo jači američki uticaj, dok u drugoj fazi postdejtonske Bosne i Hercegovine bilježimo konačno prisustvo i budnost Evrope.

Generalno, međunarodna zajednica jeste uložila ogromne napore u tranziciji, posebno u Bosni i Hercegovini, ali čini mi se, ne u onoj klasičnoj tranziciji koju su prošle druge zemlje, dakle tranziciji prema punoj tržišnoj ekonomiji, parlamentarnoj državi i uopće civilnom društvu, već u tranziciji, i to želim naglasiti - u tranziciji iz rata u mir. S obzirom da ta tranzicija traje duže nego što se očekivalo, zaista pozdravljam ovaj današnji skup i čini mi se da je opravdano govoriti o ovoj temi. Opravdano je, dakle, napraviti bilans učinaka međunarodne zajednice u proteklih dvanaest godina u Bosni i Hercegovini.

Preći ću sada na empirijsku argumentaciju. Dakle, analizirala sam nekoliko političkih segmenata društva u okviru kojih su se provodile reforme koje je pomagala međunarodna zajednica. Riječ je o zakonodavnoj, sudskoj, medijskoj i reformi unutar političkih stranaka i civilnog društva. I evo zaključaka do kojih sam došla. Naime, da bi se premostile blokade u zakonodavnim tijelima koje su uzrokovale (nama je to poznato) etnopolitičke stranke, Visokom predstavniku data su posebna ovlaštenja, takozvane Bonske ovlasti. Nametnuto je niz zakonskih rješenja iz različitih oblasti, kao i odluka; da podsjetim, odluke o uvođenju jedinstvene valute, jedinstvenih registarskih oznaka, pa nametanje zakona o himni, zastavi i tako dalje. Međutim, u donošenju tih novih zakonskih rješenja ima nedostataka, koji uglavnom leže u činjenici da su se ta zakonska rješenja donosila bez konsultacije sa širom društvenom javnošću. Isti je slučaj i sa Dejtonom. Ilustrativan primjer bio je Nacrt Izbornog zakona, koji je dobio podršku svih glavnih aktera

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 23

međunarodne zajednice u Bosni i Hercegovini. On je dva puta naišao na skoro jedinstveno odbijanje domaćih pravnih eksperata. Opozicione stranke nisu bile predstavljene i nisu participirale u donošenju izbornih pravila, toga se možemo sjetiti. Dakle, ključni mehanizam razvoja bosanskohercegovačke demokratije - izborni sistem, ostao je diskriminirajući za građane Bosne i Hercegovine. On je kao takav, po mom mišljenju, legitimirao etnopolitički društveni poredak u kojem etničke elite, a ne narodi koje one predstavljaju, imaju monopol nad Bosnom i Hercegovinom i njenim građanima.

Najveći prioritet međunarodne zajednice u reformskim oblastima odnosio se i na uspostavljanje nezavisnog sudstva i izgradnju vladavine prava. Veliki napredak postignut je i u razvoju institucija, naročito uvođenjem informacionih tehnologija. Međunarodna zajednica je, treba također podsjetiti, omogućila i osigurala konstituisanje i nesmetano funkcionisanje Ustavnog suda Bosne i Hercegovine, i pomogla je u formiranju raznih instituta za obuku sudija, te u formiranju nekih pravnih udruženja. U drugom panelu, koji će se baviti pravnim aspektom, čut ćemo više o tome. Međutim, mene ovdje zanima (i u ovoj studiji je to, također, naglašeno) ovo: da li je do politiziranja došlo s međunarodne strane? Naime, nepristrano i nezavisno sudstvo, odnosno njegovo depolitiziranje bilo je uslov za primanje Bosne i Hercegovine u Vijeće Evrope. Međutim, prema međunarodnim standardima, ono podrazumijeva eliminaciju svih utjecaja na sudstvo koji mogu biti izvršeni izvana, pri čemu se pod onim 'izvana' misli zaista na sve i svakoga izvan sudske vlasti. Iako danas postoji pravni okvir koji bi trebao eliminisati političke pritiske na sudstvo, mogli bismo govoriti i o njihovoj izloženosti pritiscima međunarodne zajednice.

Nekoliko riječi i o medijskoj reformi. Međunarodna zajednica je bila duboko uključena u reformu medijske scene nakon donošenja Dejtonskog mirovnog sporazuma. Pod uticajem nacionalnih oligarhija, u vrijeme rata na vojno osvojenim ili sačuvanim teritorijama nastala su tri tehnički, programski i statusno odvojena RTV sistema. Znamo da su mediji iz Srbije i Hrvatske nesmetano širili svoj utjecaj i interese svojih država na prostoru Bosne i Hercegovine. Međunarodna zajednica će zbog toga, u prvoj fazi svoje pomoći podržati medijsku ekspanziju, prvenstveno svojim obilnim donacijama medijima koji su tvrdili da afirmiraju nezavisnu orijentaciju. Cilj međunarodne intervencije bilo je, dakle, stvaranje pluralizma medija. Međutim, pitanje je da li je on zaista doprinio demokratizaciji i profesionalizaciji medijske scene u Bosni i Hercegovini? Dakle, uprkos dobroj finansijskoj volji međunarodne zajednice, prvi poslijeratni period obilježen je verbalnim ratom koji se vodio preko medija. Godine 1998. međunarodna zajednica će

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 24

otvoriti proces transformacije državne radio i TV stanice u javni servis. Njega je, također, da se podsjetimo, nametnuo svojim odlukama i zakonima Visoki predstavnik nakon neuspjelih pokušaja da taj posao urade domaće vlasti, menadžment i uredništva postojećih RTV sistema. Nametnuto je da u Bosni i Hercegovini rade dvije entitetske radio i TV stanice i javni servis za cijelu Bosnu i Hercegovinu. Time je medijski prostor, po mom mišljenju, zaista formalno-pravno *entitetizovan*, pri čemu je izgubljen kontinuitet Radio-televizije Sarajevo, koja je osnovana 1945. godine. Mi smo prošle godine u Sarajevu obilježavali pet godina postojanja Federalne televizije i pet godina postojanja Javnog servisa Bosne i Hercegovine. Dakle, u okviru zakonskih rješenja, medijska reforma je zaista na zavidnom nivou u odnosu na druge zemlje iz regiona, pa čak i u odnosu na susjede, na Srbiju i na Hrvatsku. Uzmimo samo Zakon o slobodi pristupa informacijama. Međutim, ako pogledamo praksu, očevidan je nedostatak strategije, dakle, primjene tog zakona. On je faktički samo formalno na papiru, a u praksi se uopće ne primjenjuje.

Još nekoliko riječi i o civilnom društvu. Pod sintagmom 'razvoj civilnog društva' međunarodna zajednica je uglavnom podrazumijevala davanje podrške razvoju i radu nevladinih organizacija, često previđajući da je civilno društvo mnogo šire od nevladinog sektora. Iskustva drugih zemalja pokazuju da demokratizaciju nose i iznose, barem tako teorija kaže, i neke druge građanske grupe: sindikati, udruženja mladih, udruženja penzionera i druge. U posljednjim godinama primjećujemo smanjenje međunarodne pomoći u Bosni i Hercegovini i prebacivanje fokusa interesovanja na neke druge zemlje, neke druge krizne regione kao što je, naprimjer, Kosovo. Zbog toga je došlo do značajnog zastoja u razvoju mnogih nevladinih organizacija koje, čini mi se, a i empirija tako govori, nisu razvile strategiju nastavka razvoja nakon nestanka pomoći međunarodne zajednice. Kritičari navode da su mnoge nevladine organizacije poprilično udaljene od društva i građana, što je svojevrsna paradoksalna posljedica pomoći civilnom društvu. Žarko Papić nas upozorava da metod podrške pokriva veoma, veoma malu elitu.

I evo, na kraju, možda je ovo zapravo ključni problem koji sprječava veću efikasnost međunarodne zajednice: naime, međunarodna zajednica pokušala je demokratizovati nacionaliste u Bosni i Hercegovini. S velikim naporom se zaista spoznaje da bosanskohercegovačke elite opstaju na vlasti zahvaljujući podsticaju, ovo naglašavam - podsticaju nesigurnosti, sukoba i nestabilnosti. One kao takve ne mogu producirati stabilnost jer opstaju na vodećoj poziciji upravo zahvaljujući konfliktu. Kada su tri nacionalne stranke u Bosni i Hercegovini - SDA, HDZ i SDS - pod međunarodnim pritiskom bile prisiljene ublažiti nacionalističku retoriku, rivali unutar nacionalnih

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 25

blokova, Stranka za Bosnu i Hercegovinu, HDZ 1990. i SNSD prisvojili su taj vokabular, što im se isplatilo na izborima 2006. godine. Postoje mišljenja da posljednji izbori uopće nisu pokazali da su najradikalnije stranke postale umjerene nego da su najradikalnije upravo umjerene stranke. Zbog toga ima više razloga za tvrdnju da je u Bosni i Hercegovini došlo do radikalizacije nacionalizma prije nego do njegovog smanjivanja.

Međunarodnoj zajednici, čini se, kao da je nedostajala informacija da rat u Bosni i Hercegovini nije bio produkt etničke drevne mržnje koja je vladala na ovim prostorima, već da je isti uvezen i da nije imao uzroke u samoj zemlji. Etničko čišćenje je bilo cilj ratova, a ne njihova posljedica. Povratak nije bio moguć upravo zbog toga što se nije slomila politika koja je isplanirala etničko čišćenje; povratak nije osiguran jer nisu uklonjeni politički nalogodavci etničkog čišćenja, a da ne govorimo o hapšenju ratnih zločinaca Radovana Karadžića i Ratka Mladića. Zato mislim da međunarodna zajednica danas potpuno ignoriše pitanje konstitutivnih manjina smatrajući povratak u Bosni i Hercegovini završenom pričom. Postoje naznake, i to smo već čuli, da će međunarodna zajednica smanjiti svoj angažman; međutim, nekoliko autora spominje da je međunarodna zajednica zapravo i umorna. Bez obzira na to, Vijeće za implementaciju mira u Briselu odlučilo je da OHR i Bonske ovlasti ostaju do juna 2008. godine, jer pomaci u smjeru evropskih integracija u protekloj godini nisu bili dovoljni. Mandat OHR-a je produžen - naglašavam, čini mi se i zbog sazrijevanja svijesti i unutar same međunarodne zajednice da su Bosni i Hercegovini zaista potrebne ustavne reforme. Zahvaljujući etniciziranom Ustavu, pa samim tim i etniciziranom pravu koje je dobilo dovoljno vremena za promidžbu, afirmacija prava individue je potpuno izostala. Mislim da ovaj uvaženi skup zna o kojim ustavnim odredbama govorim i nema potrebe da ih ponavljam.

Želim samo naglasiti da su prevagu u bosanskohercegovačkom društvu, nažalost, odnijela etnička, odnosno kolektivna prava, za koja su se najglasnije zalagali predstavnici etničkih elita, predsjednici nacionalnih stranaka u BiH. S obzirom da je međunarodno partnerstvo sa domaćim etno-političkim strankama trajalo dulje, svaka od njih je imala dovoljno vremena da zagovara upravo ovaj mirovni proces kao svrhu političkog života u Bosni i Hercegovini, a ne mir kao političku vrijednosnu orijentaciju.

Etno-političari su danas gospodari mirovnog procesa i oni tako kontrolišu i rat i mir u Bosni i Hercegovini, što je istovremeno negacija demokratskih principa i latentna destrukcija bosanske države.

Evo kako to izgleda u postdejtonskoj političkoj praksi, tj. kako etno-elite gledaju na mirovni proces, pa samim tim i na međunarodnu zajednicu.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 26

Bošnjačka politička javnost egzistira na tezi da je međunarodna zajednica prisilila građane Bosne i Hercegovine da prihvate entitetsku podjelu, te da takva struktura Bosne i Hercegovine nema ni historijskog, ni ekonomskog, niti ekonomsko-geografskog opravdanja, i da su jedino uporište za nastajanje takve Bosne i Hercegovine agresija i genocid. Srpska politička javnost smatra da je Republika Srpska stekla i održala teritorijalni i legalni kontinuitet od devedeset i druge do danas, te da ista nije, kao što Bošnjaci i Hrvati smatraju, nastala Dejtonskim mirovnim sporazumom, nego da je istim verificirana i da zbog toga postojanje Republike Srpske ne može biti dovedeno u pitanje. Hrvatska, pak, politička javnost smatra da je Dejtonski sporazum otvorio hrvatsko nacionalno pitanje tako što je međunarodne odnose uredio na štetu hrvatskog naroda. Nezadovoljstvo se pokušava riješiti zahtjevima za uspostavljanje trećeg entiteta, koji bi trebalo promatrati „kao logičan, opravdan i pravedan" programski cilj hrvatskog naroda u Bosni i Hercegovini sve dotle dok je ona entitetski uređena i dok u njoj postoji Republika Srpska.

U ovako politički dezorijentisanom sistemu vrijednosti, ovakve centrifugalne, divergentne, reducirane javnosti - koje su posljedica političkog sukoba u Bosni i Hercegovini u vezi s teritorijalnim, administrativnim i pravno-političkim ustrojstvom Bosne i Hercegovine - djeluju razarajuće na bosanskohercegovačku politiku i uopće na bosanskohercegovačke političke slobode.

Ako je suditi po kontroverzama vezanim za ustavne reforme - posebno one koje su propale u bosanskohercegovačkom Parlamentu - onda je ponovno jednakost građana uglavnom ostavljena pritisku izvana. Takvi politički sukobi koje imamo u Bosni i Hercegovini sigurno umanjuju i efikasnost međunarodne zajednice. Treba biti pošten pa reći da je Dejton zapravo ograničio i njenu ulogu. Naime, u postojećem Ustavu bosanskohercegovačko društvo, kao pretpostavljeni nosilac suvereniteta, nije koncipirano kao cjelina nego kao mehanički zbir tri konstitutivna naroda koji su, opet, na neki način projektovani kao nosioci suvereniteta. Dakle, konstitutivni narodi su koncipirani kao tri zasebne etnonacionalne cjeline koje, po logici ugrađenoj u Ustavu, u perspektivi funkcioniraju kao odvojeno društvo sa vlastitim suverenitetom.

Ustavna ograničenja spriječila su i međunarodnu zajednicu u razvoju mehanizama za zaštitu ljudskih prava i sloboda. Tako nam se čini da je OHR danas nova bosanskohercegovačka politička institucija.

Međunarodna zajednica je zamijenila državu u ulozi novog patrona; kao što se nekada u socijalizmu očekivalo da svemoguća država rješava probleme građana, preduzeća i lokalnih zajednica, danas se to isto očekuje od

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 27

međunarodne zajednice. Nametanje mnogih zakona od Visokog predstavnika, s jedne strane, umanjuje povjerenje bosanskohercegovačkih građana u kompetencije vlasti tako da se često događalo da određene grupe protestuju i traže pomoć ne od domaćih institucija nego od OHR-a na primjer. Dakle, iz ćorsokaka etnički monolitnog identiteta koji je legaliziran ustavnim odredbama bilo je teško raditi na državljanskom identitetu čak i za predstavnike međunarodne zajednice. Štaviše, veoma mali broj predstavnika međunarodne zajednice pridavao je važnost tome da bi bilo neophodno pripomoći uspjehu misaone alternative identiteta na temelju državljanstva. Čini mi se da bi koncept državljanskog identiteta možda mogao vratiti izgubljeno povjerenje građana u državu, koja je dužna da štiti sve svoje građane na jednak način.

Česte smjene aktualnih političara od visokih predstavnika za BiH zaista su ohrabrivale jedan dio populacije, tako da je poraslo povjerenje u međunarodnu zajednicu koje je izgubljeno u ratu - nadam se da ćete se složiti sa mnom - na svim stranama.

Kod nekih političkih stranaka koji su bili meta Visokog predstavnika, odnosno njihovih lidera, pojačan je strah tako da se njihova odgovornost više usmjeravala prema OHR-u, a ne prema građanima koji su ih tu izabrali. Bilo je i onih političkih stranaka koje su takve smjene iskoristile za vlastite predizborne kampanje, pa su smijenjeni postali miljenici samo zato što ih stranci ne vole.

Međunarodna zajednica je, bez sumnje, mnogo pomogla Bosni i Hercegovini. Međutim, nije uvijek bila funkcionalna, a da bi bila funkcionalna, po mom mišljenju, morala bi riješiti strukturalni problem Bosne i Hercegovine, a to je slamanje politike etničkog čišćenja, i svih politika koje produciraju sukob, nesigurnost i nestabilnost. Mislim da je onda, u skladu s tim, zaista moguće raditi na izgradnji ne zajedničkih vjerovanja nego zajedničkih institucija, jer se upravo preko zajedničkih institucija mogu riješiti nagomilani politički konflikti i politički problemi kako na individualnom tako na kolektivnom planu, a to je jedini način da građani Bosne i Hercegovine imaju jednaka prava.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 28

KOMENTAR

Nj. E. Christian Schwarz-Schilling, Visoki predstavnik u Bosni i Hercegovini i Specijalni predstavnik Evropske unije

Gospođo Šačić, prvo mi dozvolite da vam se zahvalim na Vašem dobrom izlaganju u kojem ste razmotrili različita pitanja. Možda niste iznenađeni, ali ako ste upoznati s mojom karijerom ovdje, u ovoj regiji, znate da sam uvijek imao kritičko razmišljanje i prema međunarodnoj zajednici, tako da se meni nije teško složiti s mnogim stvarima koje ste pomenuli.

Prvo pitanje: Ko je međunarodna zajednica? To je vrlo dobro pitanje. Moram vam reći da kao Visoki predstavnik svaki dan učim nove stvari o međunarodnoj zajednici. Kada govorimo o međunarodnoj zajednici, moramo imati u vidu jednu širu sliku anglosaksonskog, evropskog i kontinentalnog koncepta država i nacija. Dakle, sve je to jedan vrlo zanimljiv sastav različitih organizacija. Međutim, različite su slike o međunarodnoj zajednici, ovisno o različitim državama i različitim konfliktima. Ovdje je sagledana jedna široka slika, široka perspektiva. Međutim, čak i meni je ponekad teško vidjeti gdje su zaista osnovni izvori političke vlasti, gdje se oni formuliraju i gdje se provode politike međunarodne zajednice. To je vrlo teško analizirati i znati šta dolazi iz Brusselsa, šta dolazi iz Washingtona, Londona, Berlina itd. Moram reći da je vaše pitanje šta je međunarodna zajednica vrlo složeno, i ja se ne bih usudio odgovoriti na to pitanje.

Drugo, u vašoj studiji navodite da se radi o provedbi nacionalnih interesa imperijalističkih sila. Ovdje ja, zapravo, vidim neke ključne tačke. Mislim da političari Bosne i Hercegovine vide međunarodnu zajednicu kao zajednicu koja ima svoje interese, svoju tradiciju, svoju historiju. Međutim, postoje velike razlike između različitih nacija koje su dio ove međunarodne zajednice. Ako, na primjer, pokušam, a usudiću se, napraviti određene razlike: na početku, krajem osamdesetih i početkom devedesetih godina prošlog stoljeća, na kraju Hladnog rata, Evropa nije bila spremna preuzeti odgovornost za ovaj region na način na koji su to uradile Sjedinjene Američke Države.

No, to je ujedno bilo prvi put u historiji da je Evropa, kao unija suverenih nacija, i kao Evropska unija, trebala preuzeti takvu odgovornost. Međutim, moramo sve to posmatrati u historijskom kontekstu. Naprimjer, Njemačka je imala jednu drugu poziciju. Ne možete izbjeći spominjanje nacionalizma koji je bio prisutan u toj zemlji i ne možete reći da mi nismo imali dovoljno poticaja da preuzmemo odgovornost u pravo vrijeme. Isto važi i za Veliku Britaniju. Britanija je imala svoj interes jer je Jugoslavija imala slično iskustvo

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 29

kao što su imali oni nakon Prvog svjetskog rata. Francuska je, s druge strane, imala sasvim drugačiju poziciju, koja je bila zvaničan, nacionalni stav Francuske, koji se odnosio na stvaranje protunjemačke, fašističke alijanse sa Srbima. Dakle, i tu postoji historijska veza, historijski kontekst. Nijemci su nekako bili u iskušenju da potpuno nestanu sa scene jer su bili uključeni u grozne stvari koje su se događale u Drugom svjetskom ratu.

S druge strane, imali smo ustavni problem da učestvujemo u različitim aktivnostima. Ali, ja ne smatram da su ovo bili pravi razlozi. Pravi razlozi su, zapravo, izgovori koje smo pokušavali iznaći za ono što nismo radili. I upravo kao što ste vi i rekli, spomenuli ste nacionalne interese različitih moćnih država, i moram reći da ste upravu, i to je ono što sam kritizirao davno, a to je da je provedba zakona u ovoj zemlji rađena u jednom procesu koji je išao od vrha prema bazi, a ne suprotno, što je dovelo do toga da nije bilo debate u ovoj zemlji koja bi pomogla razvoju društva, i mislim da je to prava greška međunarodne zajednice.

No, bilo je i dobrih stvari, bilo je i kritičnih pitanja. Međutim, mi smo svjesni da postoje različiti izborni sistemi u SAD i u Evropi, i ovdje se pokušava napraviti jedna mješavina onoga što je prisutno u drugim državama. Također, spomenuli ste Ustav i citirali nešto što sam ja govorio i ono što je ambasador Schmunk već spomenuo. Ustav je jedna od osnovnih stvari i moram reći da nisam sretan što je ovakva situacija u vezi s tim, ali je ovo ponovno neuspjeh Evrope. Tek su prije dvije ili tri godine započele temeljne rasprave o promjenama Ustava. Uloga je bila dodijeljena SAD-u. A kada sam na početku svog mandata postavio pitanje: „Šta će Evropa raditi?", vidio sam da u mom mandatu uopće ne stoji da trebam pričati o tome, a da ne govorim o tome da treba da pomognem tom procesu. Ja sam se u Brusselsu borio svim silama da se ovo uključi u moj mandat, što sa na koncu i desilo, tako da smo od početka marta počeli i mi da radimo na tom pitanju. Dakle, sada ćemo i mi raditi na tome, naravno zajedno sa Sjedinjenim Američkim Državama. Naravno, ne možete sada izbrisati činjenicu da su oni počeli raspravu o tome. I ne možemo sada reći: „E dobro, mi ćemo odavde preuzeti i sada biti glavni". Mi ćemo to zajedno raditi u okviru mandata Specijalnog predstavnika EU, u koordinaciji s američkim mandatom i s političarima ove zemlje. Ali, mi znamo šta se ovdje desilo. Bilo bi vrlo teško započeti ustavne reforme ukoliko nije moguća reforma policije. Sjedinjene Američke Države su rekle da trebamo početi nakon što se završi reforma policije.

Međutim, vidimo sad da to nije moguće i da se sve mora raditi paralelno. U suprotnom, nećemo postići uspjeh. Mislim da je reforma Ustava jedan od najbitnijih elemenata i mislim da ćemo sada svi uložiti zajedničke napore.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 30

Međutim, zaista smatram da Evropa nije uspjela prepoznati značaj otpočinjanja ovih pregovora, i da svi građani dobiju ista prava, i da se isključi dominacija etničkog glasanja. Sve su to elementi koje će u suštini promijeniti situaciju u Bosni i Hercegovini. Imamo jednostavno dvije različite stvari i trebamo naći način na koji ćemo ih iskombinirati. Na kraju, želim kazati da ste me zaista ohrabrili svojim dokumentom i drago mi je što vidim da domaći ljudi to rade i da su ljudi iz ove zemlje uključeni u ove procese. Međunarodnih studija o ovim pitanjima ima koliko god hoćete. Zato mi je bitno da intelektualci ove zemlje, da ljudi poput vas, rade na ovim pitanjima. I moj zahtjev svima vama je da vi, intelektualci ove zemlje, preuzimate važniju ulogu u političkim diskusijama koje se vode. Tek u ovoj kombinaciji možemo vidjeti kako se može utjecati na političke stranke kroz pritisak civilnog društva i njegovih organizacija. I drago mi je što možemo reći da se sve više i više glasova čuje upravo sa te strane i da se sve više vide ove aktivnosti koje vi preduzimate da biste napravili vašu studiju. Svima vama čestitam.

Zlatko Dizdarević, novinar i diplomata

Kako danas ovdje nisam u funkciji predstavnika nijedne organizacije niti zajednice, a ne pripadam ni akademskoj zajednici koja se bavi ovim pitanjem, sve što ću reći bit će prezentovano iz nešto drugačije perspektive, vjerovatno iz prilično specifičnog ugla. Na samom početku želim kazati da vjerujem kako je ova konferencija vrlo važna, a radi se o temi o kojoj ima mnogo razloga raspravljati.

Kada kažem 'mi', tu podrazumijevam i strance, međunarodne predstavnike, podjednako kao i domaće predstavnike. Jer jednog dana, a nemam nikakvih iluzija da će se to dogoditi uskoro, doznat će se potpuna istina o tome šta je međunarodna zajednica – ma šta mi pod tim podrazumijevali – uradila u Bosni i Hercegovini za Bosnu i Hercegovinu, ali ništa manje i za samu sebe. Istina će, uvjeren sam, biti u mnogim elementima drugačija od svega što znamo i govorimo sada. Vrijeme će na neka pitanja baciti drugačije svjetlo od ovog danas i bit će interesantno vidjeti u budućnosti koja će vrsta istine o svemu biti relevantna.

Dozvolite mi u uvodu da također kažem da ne pripadam ljudima koji vjeruje da je međunarodna zajednica kriva za sve što se ovdje dogodilo. Lično vjerujem da je naše „pravo na krivicu" za sve što se dešavalo prilično ekskluzivno. To se pravo odnosi na sve nas koji živimo u ovom regionu. Ne krivim, dakle, međunarodnu zajednicu za sve ono što nam se dogodilo.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 31

Imam mnogo rigoroznije mišljenje o nama samima nego o međunarodnoj zajednici, ali je činjenica da je međunarodna zajednica tema današnje konferencije, pa zato mislim da se ovaj put treba fokusirati na ono što mislimo i znamo o njima.

Posmatrajući iz današnje perspektive - kada govorimo o odgovornosti svijeta za ono što se desilo i još dešava u nas – čvrsto vjerujem da svijet nije znao ili nije želio znati kako pomoći ovoj zemlji. Između ostalog i zato što međunarodna zajednica - kad je trebalo - nije imala koncept rješenja krize u regionu. Podjednako, nije imala jasne odgovore i u odnosu na vlastite unutrašnje odnose i mogućnosti. U to vrijeme nije bilo jasno ni kako provesti sve što je proglašeno međunarodnim standardima i vrijednostima u uslovima koji su se stvorili u ratu i poslijeratnoj situaciji. O tome danas možemo govoriti iz perspektive one vama znane stare priče o čaši i dilemi da li je napola prazna ili napola puna. Svakako da će svako govoriti iz vlastite pozicije, pa i na temelju vlastitog interesa i interesa onoga koga je zastupao sve ove godine.

Istina je da danas možemo reći da je Bosna i Hercegovina postigla značajan napredak u evroatlantskim integracijama i da je na putu ka Evropi, ali je isto tako istina da je ova zemlja posljednja na tom putu u ovom regionu, da ćemo Sporazumom o stabilizaciji i pridruživanju koji otvara dalje put prema Evropi potpisati izvjesno nakon što ga potpišu svi naši susjedi i sve zemlje regiona.

Slično je i sa ekonomskom situacijom: Bosna i Hercegovina jeste napredovala i, prema nekim parametrima, izolirano posmatrano, može se reći, čak vrlo dobro. Ekonomski rast države je, recimo, vrlo dinamičan, ali u odnosu na šta, na koje polazne osnove? Činjenica je, recimo, da je 1990. godine izvoz sarajevskog Energoinvesta, dakle samo jednog tadašnjeg preduzeća u zemlji, bio jednak bezmalo cjelokupnom izvozu Bosne i Hercegovine posljednjih godina. Danas, podjednako tako, možemo reći da smo postigli veliki uspjeh u obrazovanju, ali možemo isto tako vidjeti da je 1991. godine broj nepismenih u zemlji iznosio 5 posto, dok se sada spominje dramatičan procenat od 20 posto. Prije rata je bio postignut skoro potpuni obuhvat djece osnovnom školom, danas djeca iz čitavih sela pa i regiona uopće ne idu u školu niti imaju ikakav stalni vid elementarnog obrazovanja.

To su sve perspektive iz kojih možemo posmatrati današnju situaciju. Ovo što govorim je samo moj vlastiti ugao posmatranja, a proističe iz svega onoga što sam u minulih petnaestak godina vidio, doživio, čime sam se bavio. Neke od tih priča ostavile su na mene veoma snažan i, rekao bih, trajan utisak, i ja ih ne mogu zaboraviti kada sklapam generalnu sliku o onome

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 32

što nam se desilo i šta nam se dešava danas, posebno o onome što nazivamo 'međunarodnom zajednicom' u ovoj našoj realnosti. Pri tome moram da kažem da razmišljam iz perspektive nekoga ko je iz Sarajeva i kome je rat potpuno promijenio stajališta o svijetu i međunarodnoj politici. Također govorim i kao novinar, koji je u toj funkciji, kao reporter i dopisnik iz inostranstva, vidio mnoge ratove širom svijeta i danas može povlačiti paralelu s ratovima u Afganistanu, u Libanonu, na Bliskom istoku i dalje. Govorim i kao čovjek koji je aktivni diplomata. Bio sam ambasador u susjednoj zemlji, u Hrvatskoj, zemlji koja je neraskidivi dio bosanske ratne priče. Dozvolite zbog svega ovoga da kažem da o ulozi međunarodne zajednice u nas danas ne govorim iz pozicije građanina koji saznanja o svijetu i njegovom odnosu prema nama stiče samo na osnovu informacija u medijima. Možda zato i jesam u izvjesnoj mjeri nesklon euforičnim osjećanjima ovim povodom.

Evo, u ovom svjetlu, nekoliko intimnih priča koje bih vam želio ispričati a koje su – bar tako mislim – vrlo bitne za razumijevanje mojih ocjena u vezi s današnjom temom. Možda na prvi pogled nije tako, ali ja ću pokušati da ih ispričam na način koji možete razumjeti.

Prva priča se dešava u zimu između 1992. i 1993. godine. Tadašnji komandant UNPROFOR-a britanski general Rose organizovao je u svom štabu neki prijem na kojem je bilo i nekoliko nas novinara 'lokalaca'. U to vrijeme u Sarajevu nije bilo ničeg – bio je stalni i potpuni mrak, nije bilo struje, vode, hrane... Minula je čak i ona početna iluzija da će sve biti gotovo za par sedmica i da će život nastaviti tamo gdje je stao. Grad je bio u čeličnom obruču, bilo je jasno da nema ni vojne intervencije koju su nam obećavali. Depresija je bila potpuna. I, kada sam kod generala to veče vidio vino i meso, sir i kolače, nisam mogao vjerovati da takvo što u Sarajevu uopće postoji. Razgovarajući s generalom, pun emocija u to vrijeme, čak pomalo i patetičan, upitao sam, naivno vjerujući da će ga pitanje uznemiriti: „Shvatate li, generale, da ćete, ako se ovo što se dešava ovdje završi bez minimuma pravde, sutra po evropskim prijestonicama imati na desetine bosanskih mladića koji će podmetati bombe i eksploziv?" General me hladno pogledao i rekao: „Gospodine Dizdareviću, slažem se s vama da možemo imati desetine bosanskih momaka koji će podmetati eksploziv. Ali, znate li šta može biti mnogo gore od tih desetina bosanskih momaka sa bombama? Mnogo je gore ako budemo imali hiljade srpskih mladića koji su u stanju uraditi istu stvar!" Sasvim iskreno, nisam zaspao te noći jer sam počeo otkrivati novi svijet koji mi je do tada bio nepoznat. Svijet tzv. realpolitike, koji s pitanjima pravde i posebno pravednosti nema nikakve veze. Mnogi od ljudi ovdje tu dimenziju tzv. međunarodne zajednice ne razumiju ni danas, a ona je često

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 33

presudna. Pogledajte samo tu strašnu aktuelnu fokusiranost na Srbiju povodom Kosova i potpunu ignoranciju spram svih drugih pitanja u regionu zbog tog odnosa prema Srbiji i pitanju Kosova.

Druga priča nije ništa manje značajna za razumijevanje karaktera ovdašnjeg društva, priča koju tzv. međunarodna zajednica nikada nije shvatila, što je bila ogromna greška. Svi građani Sarajeva koji su ovdje bili u vrijeme samog početka rata, dok se TV program još mogao emitovati, tu priču znaju. Snajperista s brda pogodio je djevojčicu u glavu. Snajper, da podsjetim, nije isto što i granata: snajper čeka, odabere, cilja, vidi i okida. Treba sve to imati u vidu kada se govori o četverogodišnjoj djevojčici kao žrtvi. I, dok je ta djevojčica u bolnici umirala, njen otac, radnik jednog sarajevskog preduzeća, rekao je, skrhan bolom i u suzama TV novinaru: „Volio bih popiti kafu s čovjekom koji je pucao u moju kćerku i pitati ga zašto je to uradio"!?

Nikada nigdje na zemaljskoj kugli novinar ne bi dobio ovakav odgovor od oca umiruće djevojčice. On bi pozvao ubicu na kafu i upitao zašto!? Ta kafa je, tada, bila dio vjekovne kulture odnosa u Bosni i Hercegovini. 'Realpolitike' međunarodne zajednice ona se nikada nije ticala. Za krajnje razumijevanje prilika ovdje, kao i za krajnji učinak tzv. međunarodne zajednice to je, po meni, veoma značajna dimenzija.

Treća priča danas također ima poseban smisao u mom odnosu prema ovoj temi i svemu što nam se minulih petnaestak godina desilo: sreo sam se poslije rata na jednoj od onih mnogih navodno važnih a prilično besmislenih konferencija o "geostrateškoj budućnosti Balkana" što su se održavale u luksuznim ljetovalištima Evrope, sa ser Maracom Goldingom. On je na početku rata bio šef vojnih operacija i savjetnik Boutrosa Boutrosa Ghalija, tada generalnog sekretara UN-a. Bio je to stari, iskusan diplomata. Njegov stav je bio krucijalan za odluku UN-a 1992. godine da li treba plave šljemove rasporediti u Bosnu i Hercegovinu i s kojim mandatom; hoće li, kasnije, biti uspostavljene tzv. sigurnosne zone, među kojima je bila i Srebrenica, ili ne. Bio sam tada novinar i iskoristio sam priliku da ga intervjuišem. Pored ostalog, pitao sam ga, vjerujući da je moje pitanje provokativno: „Gospodine Golding, imate li miran san nakon svega što se dogodilo u Bosni i Hercegovini, nakon odluke o potpuno neučinkovitom razmještanju plavih šljemova u Bosnu i Hercegovinu?" Mislio sam pri tome prvenstveno na Srebrenicu i genocid koji se tamo desio pred očima vojnika UN-a, ali ne samo na to. Na moje ogromno iznenađenje, on je rekao: „U pravu ste s tim pitanjem. Nemam miran san. Dozvolite mi da vam objasnim zašto. Zato što sam 1992. godine, kada sam predlagao Boutrosu Ghaliju da se plavi šljemovi razmjeste u Bosnu, znao da njihova misija neće i ne može biti uspješna. Znao sam da Ujedinjeni narodi

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 34

nemaju svoju pravu vojsku, nemaju sistem, mandat, kapacitet i resurse neophodne za pravu vojnu operaciju, da ne mogu da se suprotstave vojnoj mašineriji koja je harala tamo. Znao sam da će to biti vojska koja može samo lažno da prijeti. Pa ipak, zbog raznih pritisaka i zbog 'realpolitike' predložio sam raspoređivanje plavih šljemova. Posljedice su poznate. Eto, zbog toga nemam miran san."

I konačno, iz te perspektive, iz perspektive ove tri priče - a takvih je mnogo - neozbiljno bi bilo zanemariti bitnu činjenicu: mi razgovaramo o maloj Bosni usred ogromnog geostrateškog prostora. To je sve o čemu danas razgovaramo. Bosna i Hercegovina je još uvijek prvenstveno mali dio krupne globalne slike. I odgovorno tvrdim da je Bosna i Hercegovina - pored svih internih problema i ljudi malih kategorija koji su joj na vrhu - talac svega onoga što se dešava okolo, a prije svega u Srbiji, što će se desiti sutra na Kosovu ili drugdje. Ona je talac predrasuda o islamu u Evropi. Ona je talac neke 'realpolitike' u tzv. međunarodnoj zajednici, ona je talac odsustva dugoročnog i strateškog rješenja za zemlje koje nisu u EU; ona je talac pragmatičnog opreza prema mogućnostima multikulturalizma i susreta civilizacija nasuprot teorijama o sukobu civilizacija. O svemu tome mi malo ili nikako ne govorimo. Stranci se ovdje bave pokušajima preslikavanja inostranih modela demokracije, ekonomije, politike, kulture, sociologije, a ne pada im na pamet da proniknu u ovdašnju autentičnost, koja ima korijene mnogo dublje i mnogo životnije nego što to njima pada na pamet. Ovdje se danas svi bave državom, ustavom, formom, a malo kome pada na pamet da je drama Bosne i Hercegovine u urušavanju društva a ne u urušavanju države.

Moram, u ovom kontekstu, na kraju da ispričam još jednu priču. Možda i najdramatičniju i najznakovitiju, priču opet iz rata. Taj je rat paradigma za sve najgore što se ovom društvu desilo, a tzv. međunarodna zajednica nije prepoznala, zbog 'realpolitike' i odluke da istraje na nemogućoj šemi: ovdje niko nije zločinac i niko nije žrtva, ovdje su svi podjednako ludi i podjednako odgovorni, ovdje nema pobjednika i pobijeđenog. Savršeni rezultat tog pristupa je Dejtonski sporazum, Dejtonski ustav. Ta je šifra bila idealan zabran da se u njega smjeste svi zlikovci i svi pogrešni koncepti koji stoje u osnovi jučerašnje i današnje bh. drame.

Priča glasi: Prisustvovao sam nevjerovatnom dijalogu između jednog visokog zvaničnika s 'druge strane' koji je danas u Hagu i nekoga ko je još prisutan u ovdašnjoj politici. Granatom koja je pogodila Alipašino polje, kvart u Sarajevu, ubijeno je devetoro djece. Bila je zima i informacija je stigla do Aerodroma, gdje su dvije delegacije razgovarale o tehničkim pitanjima,

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 35

o vodi i struji za grad. Predstavnik sarajevske strane je na vijest o ovome sav očajan upitao predstavnika 'druge strane' (Boutros Ghali je to u jednom intervjuu rimskoj "La Repubblici" tokom rata nazvao "strana A i strana B") koji je danas u Hagu: „Dokle ćete ubijati našu djecu?" Ovaj je sasvim hladno odgovorio: „Sve dotle dok budete vjerovali da možemo da živimo zajedno". Njegov odgovor je bio sasvim precizan i hladan. Uslijedio je odmah, refleksno, na postavljeno pitanje. Ovo je jako bitno, ali se ovdje potpuno ignoriše. Svi o tome šute u Bosni i Hercegovini. Društvo u Bosni i Hercegovini je fragmentirano, rastočeno, uništavano u svojoj supstanci daleko brutalnije i daleko dramatičnije nego sama država. A to društvo je na ovim prostorima uvijek bilo mnogo važnije od same države. Bosanci i Hercegovci nikad nisu bili opsjednuti državom. Za razliku od Hrvatske ili Srbije, gdje su vlastiti identitet pronalazili u državi omeđenoj granicama, čovjek je u Bosni identitet dokazivao na odnosu prema komšiji i komšije prema njemu. Na onoj kafi o kojoj sam govorio ranije. Sasvim precizno, u Bosni i Hercegovini vam je komšija bio daleko važniji od toga da li imate državu ili ne. Zato je etnička podjela u školama u Bosni i Hercegovini za mene mnogo dramatičniji i krupniji problem nego izgradnja ili ukidanje entiteta, kantona itd. Hoću reći, nedostatak volje da se shvati ova realnost u Bosni i Hercegovini, nedostatak volje da se prepoznaju u ovom kontekstu objektivni neprijatelji Bosne i Hercegovine, kardinalni je propust tzv. međunarodne zajednice. Funkcionišući na temelju perspektiva vlastitih 'savršenih društava' koja su željeli da precrtaju na ove prostore, inostrani protektori u Bosni nisu mogli ništa više da urade. Oni nikad nisu shvatili da je razaranje duhovne multikulturne i multireligijske supstance ovdašnjeg društva dugoročno pogubniji udarac mogućnostima novog konstituisanja države nego nedovršene ustavne promjene. Sasvim lično, to je moja najveća zamjerka tzv. međunarodnoj zajednici koja, zapravo, nije ni mogla doseći taj nivo razumijevanja ovdašnje stvarnosti, s niskim kalibrom birokrata na koje se oslonila u BiH (čast izuzecima).

O svemu ovome može se govoriti satima pa i danima; veličina bosanske tragedije to omogućava, ali tog vremena, pa i tog interesa, nema. Evo, zato, samo nekih naznaka o tome šta je sve u BiH od strane svijeta bila greška. Neke se od tih grešaka više nikada neće moći ispraviti, a neke bi eventualno i mogle da se koriguju. Redoslijed nabrajanja nije učinjen po važnosti:

Ignorisana je priroda bivšeg društva. Neka rješenja su nametnuta kao da ovdje ranije ničega i nikad nije bilo. Kao da nije postojao prilično konzistentan i s evropskim vrijednostima prilično usaglašen sistem vrijednosti. Išlo se u pravcu nametanja nekih aranžmana i rješenja koja su zahtijevala eliminaciju svega što je prije postojalo, da bi se onda izgradilo nešto novo što nikada

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 36

nije moglo korespondirati s ovdašnjom stvarnošću i društvenim i historijskim genetskim kodovima.

Privreda je i mimo rata, u ime 'novog sistema' i novih interesa potpuno uništena. Insistiralo se na "poništavanju starog i prevaziđenog" koje je funkcionisalo i davalo rezultat u ime "novog i savremenog" koje nikada nije uspostavljeno. Pobijedio je kriminal privatizacije i povratak na apsolutne vrijednosti i pokazatelje koji su još uvijek decenijama ispod predratnih.

Postojeći visoki standardi u kulturi, obrazovanju, medijima, eliminisani su u ime nečega što još uvijek nismo vidjeli na djelu. Kada govorimo o promoviranju javnih medija u Bosni i Hercegovini, svjedok sam pokušaja da se promovišu projekti i standardi sa sanitetskim kapetanima britanske vojske koji su oktroisani kao lideri reforme, a oni su se bavili tzv. reformom na način koji je bio totalno suprotan domaćim potrebama, mogućnostima i mentalitetu. S kraja devedesetih godina dolazili su nam 'instruktori' iz SAD-a da nam drže lekcije o uređivanju dvojezičnih programa, a mi smo na Televiziji Sarajevo 1984. godine imali simultano prenošenje Olimpijskih igara na više od deset jezika. Najveći broj ljudi koji su to tada realizovali još živi u Sarajevu i u stanju su da učestvuju u izgradnji TV sistema, ali se njihovo profesionalno slobodoumlje nije poklapalo s idejama spomenutih kapetana.

Zbog nepoznavanja realnosti, ali i prepotencije i ispraznog osjećanja 'elitizma' spram "balkanske sredine" s jedne strane, i straha od konkurencije kod domaćih trećekategornika na vlasti s druge, ovdašnji resursi se najčešće ignorišu. Kvalitetni resursi se odbacuju, a mladi i obrazovani ljudi obeshrabruju u namjerama da se vrate u zemlju i uključe u njenu izgradnju. Maše se okolo tvrdnjom da je demokratija uvedena i da je sve što imamo na domaćem terenu "rezultat demokratskog opredjeljenja birača". Cinizam je pri ovome ogroman: kako se može govoriti o demokratskim izborima mimo demokratskih institucija, slobodnih i nezavisnih medija, neutralisanja ključne uloge crkve i džamije u politici, mimo obrazovanja i koliko-toliko ozbiljnog nevladinog i sektora i civilnog društva? Percepcija politike ovdje je još uvijek samo i isključivo vlast i ništa više. Formalno, krug se zatvorio na tri tvrdnje: Dejton je završio rat i zato ga ne treba dirati; u bivšu komunističku zemlju je uvedena demokracija i to se pokazuje na izborima - to što imate, rezultat je demokracije. I treće, popravljene su fasade kuća po gradovima, otvoreni kafići i restorani, prodate stare socijalističke tvornice, znači – rekonstrukcija je završena! A u sva ta tri segmenta u pitanju je velika iluzija, najblaže rečeno. Gospodin Schwarz-Schilling našu situaciju upoređuje sa situacijom u Njemačkoj 1945. godine. Vidim ovih dana u novinama i izjavu jednog zapadnog diplomate koji se čudi: „Kako su Njemačka i Francuska deset godina nakon

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 37

rata mogle kreirati EZ, a u BiH još ne mogu sa mrtve tačke". Moram kazati da me u ovakvim situacijama stomak zaboli od muke. Gospoda neće da kažu da su 1945. godine fašisti, zločinci, neprijatelji, nacisti, kolaboracionisti naprosto preko noći spometeni sa historijske scene. Kod nas, mnogi od njih su danas na vlasti. Znalo se onda ko je pobjednik a ko poraženi. Danas se ovdje to ne može ni pomenuti. Svi su isti. Možete li naći tada tumačenje u udžbenicima historije koje hvali Hitlera i pravda fašizam? A pogledajte šta djeca sve uče danas u školama o zbivanjima od prije 15 godina. Da vidimo šta je svijet tada uložio u Njemačku da bi je digao na noge, a šta je od postojeće privrede uništeno kod nas nakon rata da bi se obogatili kriminalci i profiteri, što domaći, što inozemni. Sud u Nürnbergu je tada, po najkraćem mogućem postupku, likvidirao lidere fašističkog pokreta, a Karadžić i Mladić se danas, 12 godina nakon kraja rata, izruguju sa slobode cijelom svijetu s kojim, sasvim izvjesno, imaju čak i različite tajne aranžmane. Čak i njihovi mlađi puleni bježe iz zatvora uz punu logistiku zatvorskih čuvara, njihovih prijatelja iz rata, koji nose uniforme zvaničnika "nove države". U ime 'realpolitike' se na takav način u Bosni ne govori. Može zasmetati Srbiji i Kosovu!

Ukratko, umjesto zaključka, evo natuknice o četiri nezaobilazne stvari koje se moraju imati na umu kada govorimo o ulozi međunarodne zajednice (ma šta to bilo) u minuloj deceniji u BiH.

Prije svega, konstruktivna greška je napravljena na početku. Gospodin Schwarz-Schilling je rekao da je Mirovni sporazum napravljen kao kompromis sa zločincima koji čak i danas djeluju na političkoj sceni. Cijenu te činjenice svi još uvijek plaćamo.

Drugo, ne može se zaobići strateška činjenica da je Evropska unija zajednica nacionalnih država, i prema toj činjenici je strukturirana. Bosna i Hercegovina nije nacionalna država u tom smislu, a Evropska unija, ili tzv. međunarodna zajednica, nema odgovor na tu činjenicu. Oni na Bosnu i Hercegovinu pokušavaju primijeniti ona ista pravila koja važe kod njih, a ona su ovdje neprimjenjiva.

Treće, u Bosni i Hercegovini aktuelno pitanje je kako primijeniti samo one standarde koji ne vrijede ni u jednoj drugoj zemlji svijeta i kako ne primijeniti neka konkretna rješenja za ovu zemlju koja važe kod svih drugih. Ne može se tolerisanje zločinačkih projekata nazivati realpolitikom i u to ime voditi praktična politika.

Četvrto, neko mora povesti računa o tome da kolektivni PTSP koji je proizveden minule decenije u BiH ima limite unutar kojih se može kontrolisati. Nerješavanje ključnih civilizacijskih problema u BiH na temeljima međunarodnih standarda, važećih za sve druge, u jednom će momentu

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 38

postati veliki, novi problem za sve one koji su pokušali "Bosnu gurnuti pod tepih".

Nemam utisak da su predstavnici tzv. međunarodne zajednice ovoga svjesni u punoj mjeri.

DISKUSIJA

Dušanka Majkić, Dom naroda Parlamentarne skupštine BiH

Poštovane ekselencije, dame i gospodine,

dolazim iz Parlamentarne skupštine Bosne i Hercegovine, dolazim iz najvišeg zakonodavnog organa ove zemlje i pripadam političkoj stranci koja je do sada pomenuta mnogo puta, Savezu nezavisnih socijaldemokrata (SNSD).

Željela bih se zahvaliti organizatorima na organizaciji ove konferencije, jer smatram da ovakve konferencije pomažu da se okupimo i saslušamo različita mišljenja i stajališta i pokušamo ih uskladiti. U ovoj zemlji smo davno zaboravili kako se razgovara i, ako je ključna riječ dijalog, onda je to definitivno nešto što nam je sada potrebno. Ali ne samo da ćemo naučiti kako da razgovaramo, nego ćemo naučiti kako da postignemo dogovor. Ne pripadam grupi ljudi koji uveliko kritikuju međunarodnu zajednicu, iako sam potpuno svjesna propusta u proteklom periodu, jer jednostavno smatram da nije pristojno da onoga od koga si dobijao pomoć i od koga još uvijek očekuješ pomoć previše kritikuješ. Ja doista poštujem to što je ovdje uložena ogromna snaga i energija, i kao pojedinac, kao čovjek prvenstveno, nosim dobar dio rezultata koje je međunarodna zajednica ostavila ovdje; zato moja riječ u tom dijelu ne može biti previše kritična, iako bih imala mnogo šta kritično reći o samoj zemlji u kojoj živim. Bilo bi logično da ja, kao parlamentarac, progovorim o nečemu što se zove parlamentarna demokratija, odnosno, da li je Bosna i Hercegovina postigla dovoljno u razvoju parlamentarne demokratije. Za početak, kada sam razmišljala o tom pitanju, odgovori su slijedili sami po sebi. Mi smo zemlja koja ima oktroisani ustav, mi smo zemlja koja još uvijek dobrim dijelom donosi zakone pod uticajem međunarodne zajednice, ili u saradnji s njom. Mi smo zemlja u kojoj je evidentan problem same implementacije zakona, dakle, i za one zakone koje smo donijeli pitanje je kako i kada će oni biti implementirani. Mi smo zemlja u kojoj ni parlament ni izvršna vlast nemaju kapacitet potreban za donošenje odluka koje su toliko potrebne ovoj zemlji. Kakva nam je

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 39

kontrola izvršne vlasti od strane parlamenta, posebno kada je u pitanju budžet? Kakvi su nam nalazi revizorskih izvještaja i koliko je ova zemlja podložna prevarama i korupciji? Kakav nam je izborni zakon, i nije li to velika greška međunarodne zajednice - da smo dobili izborni zakon kakvog nema nigdje, a trebalo bi da bude dobar i da vrijedi jedino za nas? Dakle, to su neka pitanja koja su vezana i na koja svako od nas pojedinačno zna odgovore.

Krucijalno pitanje koje mislim da treba postaviti ovdje jeste: Znamo li kakvu državu želimo? Kakvu državu uopšte žele građani ove zemlje? I danas, u toku ove konferencije, može se prepoznati odakle, iz kojeg korpusa, iz kojeg naroda koji od govornika dolazi. Mislim na domaće govornike, ove koji dolaze iz Bosne i Hercegovine. Naši govori su prepoznatljivi po tome što nam se uvijek čini da preko ograde ima više problema nego u našem dvorištu, a ima ih svuda. I tu moramo biti realni. Kakvu državu želimo? Jesmo li pričali o tome? Ima li smisla pričati o bilo čemu drugom prije nego što se dogovorimo u kakvoj zemlji želimo da živimo?

Evo čuli smo maloprije: ako pitamo predstavnike bošnjačkog naroda, većina njih će veoma žestoko zastupati stav 'jedan građanin jedan glas', a to znači unitarnu Bosnu i Hercegovinu s kojom neće biti zadovoljna druga dva naroda. Ako pitamo predstavnike hrvatskog naroda, oni će zdušno reći da njihova ljudska prava nisu zaštićena u ovom dijelu koji se zove Federacija Bosna i Hercegovina i da bi oni najviše voljeli da budu u nekoj svojoj političkoj zajednici. A ako pitate Republiku Srpsku, i tamo vam je odgovor poznat. Odgovor na pitanje referunduma nije pitanje koje se postavilo samo po sebi. Političari iz Republike Srpske su rekli: svako onaj ko vrši nasrtaj na Dejtonski mirovni sporazum, dakle, vrši nasrtaj na Republiku Srpsku, dobiće referendum po prstima.

Ponašajmo se korektno i mijenjajmo, vodimo ustavne reforme u smjeru kako to zajednički dogovorimo. U ovoj zemlji nikada niko neće dobiti sve, i to je pravilo kojeg moramo biti svjesni. Svi možemo dobiti pomalo, ali to pomalo mora biti zajednički dogovoreno.

Ja sam kao parlamentarac u prošlom sazivu imala čvrstu vjeru da se u ovoj zemlji može mnogo stvari promijeniti nabolje sve do momenta kad su došla pitanja ustavnih promjena. I kada je na sjednici Parlementa četrnaest ambasadora stranih zemalja sjedilo, a zbog dva glasa prestao da bude aktuelan, odnosno izgubio na podršci cijeli paket ustavnih promjena. Onda sam se zapitala gdje sam u stvari, gdje živim, na šta ta zemlja, na koju poziciju treba ona da dođe? I bez obzira na sve to, svoj posao parlamentarca obavljam korektno, zdušno, i radiću na njemu, ali ne dozvoljavam - i mislim da

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 40

je takav stav mnogih političara koji dolaze iz Republike Srpske - pitanje toga kako ćemo živjeti i kako ova zemlja treba da izgleda prije pitanja o reformi policije, prije mnogih drugih pitanja koja se postavljaju; to je osnovno pitanje za koje treba da tražimo odgovor.

Dakle, i dalje nam je potrebna pomoć međunarodne zajednice, mislim posebno u ovom dijelu koji se odnosi na pitanje teme ustavnih promjena o kojoj ćemo morati da sjednemo i da razgovaramo. A i na kraju, ovaj dijalog u Bosni i Hercegovini, u tome također očekujem pomoć međunarodne zajednice koja će nam pomoći da nas iz sadašnjeg stanja paralize naše energije, povede na put budućnosti.

Miro Lazović, Forum parlamentaraca 1991-1996.

Pokušaću u kratkim crtama iznijeti svoju diskusiju s obzirom na broj učesnika i značaj ove konferencije, te zaključke koji će vjerovatno uslijediti nakon konferencije. Odmah da kažem da ja i gospođa Majkić pripadamo istom narodu, dakle, srpskom narodu, ali su nam priče drugačije. Kao čovjek koji je proteklih petnaest-šesnaest godina proveo u Bosni i Hercegovini - i kao jedan od rijetkih Srba, koji je ostao u Skupštini Bosne i Hercegovine i glasao za odluku o referendumu, te kao čovjek koji je učestvovao u svim mirovnim pregovorima o Bosni i Hercegovini - imam mnogo toga reći. Ne želim sada iznositi svoje impresije, niti mi je ambicija da govorim o svim procesima u kojima je međunarodna zajednica imala i pozitivnu ulogu, ali je često i lutala. Da je lutala od 1992. do 1995. godine govori i činjenica da je za Bosnu i Hercegovinu ponuđeno pet ili šest mirovnih pregovora. Sjećam se 1994. godine, kada je pravljen Vašingtonski sporazum. Kao učesnik tih sporazuma upitao sam Čarlsa Redmana: Zašto se ime Federacija Bosne i Hercegovine daje samo za jedan dio Bosne i Hercegovine? Šta je s drugim dijelom? Dobio sam odgovor da će u drugoj fazi teritorij, koji je sada pod kontrolom srpskih snaga, ući u taj prostor Federacije Bosne i Hercegovine i da će se onda cijela Bosna i Hercegovina zvati Federacija Bosna i Hercegovina - što je bilo logično i prihvatljivo za našu delegaciju. Na ovo podsjećam zbog činjenice da su procesi otišli nekim drugim smjerom i da je formirana Republika Srpska, koju je Muhamed Šaćirbegović kao ministar vanjskih poslova prihvatio 8. septembra 1995. godine, i u Dejton se došlo sa već formirana dva entiteta. Dakle, Dejtonski sporazum nije napravio Republiku Srpsku, on ju je prihvatio. Ovo naglašavam jer pripadam onim ljudima koji smatraju da je međunarodna zajednica odigrala značajnu ulogu u

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 41

Bosni i Hercegovini bez obzira na sva njena lutanja, i pripadam onim političkim snagama koje se zalažu za daljnji ostanak međunarodne zajednice upravo zbog činjenice da je na sceni jedan ustavnopravni teritorijalni poredak koji je u suštini pogrešan. Mi ovdje možemo govoriti o nekim stvarima, ekonomskim poboljšanjima standarda života, i u Republici Srpskoj i u Federaciji Bosne i Hercegovine - ali time nećemo riješiti problem. Problem je loše postavljen u temelju. Bosna i Hercegovina neće nikada moći izgraditi svoju sigurnu, stabilnu strukturu sa dva entiteta, s Federacijom BiH i Republikom Srpskom, i to je ono što je bolno i to je ono što se mora mijenjati. Sva ostala pitanja su kozmetičke prirode.

Ne može se govoriti ni o tome kako ovom narodu ne treba istina. Tu se ne slažem sa gospodinom Šilingom, kada kaže da se stalno traži krivac, petnaest godina se traži krivac. Evo, ne tražimo krivca. Tražimo istinu. Šta je sa istinom? Može li se bez istine postići pravda? Može li se bez pravde postići pomirenje i praštanje? Može li bez praštanja i pomirenja biti stabilna i sigurna budućnost ove države? Ja sam siguran da ne može. Ja hoću da moja djeca žive u jednoj sigurnoj Bosni i Hercegovini, ujedinjenoj Bosni i Hercegovini, i neću da žive u državi Bosni i Hercegovini u kojoj će se jedan dio zvati etničkim 'prefiksom' Republika Srpska. Sve dok postoji taj naziv on je suštinski za budućnost ove države. Ako se već ne može promijeniti teritorij, promijenite mu ime. Može li međunarodna zajednica promijeniti ime Republike Srpske? Budite sigurni da će svi građani, i oni srpske nacionalnosti, zdušno prihvatiti Bosnu i Hercegovinu, a pogotovo Bošnjaci i Hrvati, i graditi je zajednički. Dok postoji taj etnički 'prefiks' postojaće problem u Bosni i Hercegovini, postojaće problem za Srbe, ovdje u Sarajevu, u Federaciji. Nikakva garancija i zaštita naših ljudskih prava neće nam omogućiti ravnopravan status sa Bošnjacima i Hrvatima sve dok postoji ime Republika Srpska. U to budite sigurni, jer govorim na osnovu iskustva. Dakle, gospodo iz međunarodne zajednice, razmišljajte na taj način. Pred nama je novi Ustav, razgovor o novom ustavu, i uzmite u obzir te činjenice. Nikakve kozmetičke promjene odbačenih ustavnih amandmana koji bi se ponovo vratili na sto neće riješiti problem. Dakle, razgovor o novom ustavu i jedna potpuno drugačija ustavnopravna i teritorijalna konfiguracija Bosne i Hercegovine može dovesti do stabilnosti i budućnosti ove države.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 42

Senad Pećanin, nezavisni magazin *Dani*

Moram reći da sam jako razočaran ovim što smo čuli od gospodina Schwarz-Shillinga. Mislim da je naslov ovih razgovora, s obzirom na nivo naših rasprava, malo pretenciozan; vjerujem da bi se praktična korist ovog druženja mogla pokazati u razgovoru o vrlo konkretnim temama.

Ja sam jučer radio intervju sa gospodinom Gregorijanom, zamjenikom Visokog predstavnika. Tom prilikom izrekao sam jednu konstataciju koja ga je jako pogodila. Nije mi bila namjera da ga uvrijedim, mada ne isključujem mogućnost da se i to dogodilo. No, istu konstataciju ponovit ću i gospodinu Schwarz-Shillingu. Dakle, već godinama imamo istu priču, sada već mantru, o greškama međunarodne zajednice tokom rata u Bosni i Hercegovini. Nažalost, imali smo klasični obrazac: tri zaraćene strane, vjekovna mržnja i međunarodna zajednica, ovdje predstavljena UNPROFOR-om, a to su snage Ujedinjenih nacija, koje imaju ekvidistancu prema svim „zaraćenim stranama". To nije ništa novo; svi danas o tome mogu mnogo govoriti, i gospodin Schwarz-Schilling, a naročito ambasador Schmunk, s obzirom na njegove akademske reference. Angažman Ujedinjenih nacija u ratu u Bosni i Hercegovini, tj. UNPROFOR-a, već se godinama u teoriji, u stručnoj literaturi, uzima kao primjer katastrofalnog promašaja s tragičnim posljedicama. Međutim, šta imamo danas? Pozicija gospodina Schwarz-Schillinga u dlaku je ista poziciji UNPROFOR-a tokom rata u Bosni i Hercegovini! Pokazat ću to na samo jednom primjeru - aktuelnoj raspravi oko reforme policije. Nakon presuda dva međunarodna suda, a posebno Međunarodnog suda pravde, u kojim se izričito kaže da je policija Republike Srpske, zajedno sa Vojskom Republike Srpske, počinila genocid, imamo - s jedne strane - one koji govore da nakon te presude treba postojati minimum nečega što bi moglo biti ljudski, humano, moralno... te da takva institucija ne može dalje postojati, naročito u kontekstu već postojećih reformi policije. S druge strane, imamo poziciju srpskih lidera, koji jednostavno ne vide ništa problematično u tome da institucija koja je počinila genocid nastavi i dalje postojati. I, sada, imamo Vas, gospodine Schwarz-Schilling, Vas koji ste „neutralni" u sporu koji blokira evropski put Bosne i Hercegovine, sporu oko toga može li organ koji je počinio genocid postojati u reformiranoj, evropskoj Bosni i Hercegovini!? Znate li koja je posljedica vaše neutralnosti? Posljedica vaše neutralnosti je ta da se zbiva tačno ono o čemu je gospođa Majkić govorila maloprije: da se tačno prepoznaje među lokalnim akterima - i ovdje i u parlamentu i u medijima - ko je iz koje nacije. To je najveći problem, a nije problem reforma policije. Takvim Vašim stavom Vi direktno destruirate ono malo oaza što

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 43

je ostalo u Bosni i Hercegovini, ono što smo zvali nenacionalističkim ili civilnim sektorom ili sektorom, koji je budio i podgrijavao nadu u mogućnost zajedničkog života u Bosni i Hercegovini. Žalosno je ako su zalaganja onih koji smatraju da nakon presude Međunarodnog suda pravde o genocidu ne može postojati organ koji se zove „Policija Republike Srpske", žalosno je, dakle, ako su to „bošnjački stavovi" i „bošnjački zahtjevi" - žalosno je i sramno je da to nisu i Vaši stavovi, gospodine Schwarz-Schilling. Vi se ponašate udlaku isto kao UNPROFOR, mislim na Vas osobno: znamo da ste znali potpuno drugačije govoriti o istoj temi u vrijeme kada se genocid događao. Ponašate se ovdje kao lider neke nevladine organizacije, iako znate kakve su vam ovlasti. Posljedica takvog Vašeg ponašanja je da ćete ostatke multietničnosti u ovoj zemlji – koju nisu uspjeli uništiti ni genocid, ni zločini, ni vjerske zajednice, ni nacionalistički lideri – uništiti Vi.

Na primjer, Socijaldemokratska partija BiH je bila praktično jedina relevantna multietnička politička stranka. No, ponajviše zbog protivljenja postojanju „Policije Republike Srpske" i zbog Vaše „neutralnosti", za najveći dio Srba SDPBiH je pretvoren je u bošnjačku političku stranku. A to je - šta god mislili o SDP-u, a ni ja ne mislim previše dobro - šteta za Bosnu i Hercegovinu. I to je katastrofalan učinak Vaše politike, politike ekvidistance, koju ste spremni prepoznati u djelovanju UNPROFOR-a i angažmanu međunarodne zajednice tokom rata i osuditi je, a koju na potpuno isti način provodite i demonstrirate sada. Srećom, trenutno još uvijek ne padaju granate, pa zbog toga Vaša odgovornost izgleda manja.

Sa ovakvim Vašim stavovima, i Vaših kolega koji predstavljaju međunarodnu zajednicu i zapadne države u Bosni i Hercegovini, gubimo mogućnost da i mediji ne budu prepoznavani isključivo u nacionalnom ključu, u zavisnosti od sredine u kojoj se nalaze.

Ja sam recimo – dok nisam čuo Vaš stav - bio naivnog uvjerenja da, ako mislim da „Policija Republike Srpske" ne može postojati pod tim imenom, to nije moj „bošnjački stav". Ja sam mislio da je to evropski, naš, i moj i Vaš, zajednički zahtjev. Mislio sam da ga niko ko ima minimum morala i osjećanja pijeteta prema žrtvama genocida ne može osporavati. Međutim, ne! Vi kažete: „Neka se dogovore Dodik i Silajdžić". Pa, ako već nemate problema s moralom, zar ne shvatate da upravo takvim svojim stavom hranite i Dodika i Silajdžića i njihove nacionalističke politike?!

I na kraju, nemojte potcijeniti mogućnost da, nažalost, ovakvi skupovi za nekoliko godina, upravo zahvaljujući ovakvim Vašim stavovima, budu mogući jedino s mnogo manje predstavnika iz različitih etničkih grupa i mnogo više sigurnosnih provjera i rendgena na ulazima u prostoriju u kojoj se debatira.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 44

Nurko Pobrić, Pravni fakultet Univerziteta „Džemal Bijedić" u Mostaru

Gospodin Zlatko Dizdarević je već kazao da postoje neke konstruktivne ili konstitutivne greške u Dejtonskom sporazumu koje su proizvele političke i društvene prakse i događaje u Bosni i Hercegovini u postdejtonskom periodu. Ja bih, ukratko, u vezi s navedenim dodao slijedeće: Prvo, pogrešna je pravna kvalifikacija rata u Bosni i Hercegovini, koji je u preambuli Dejtonskog sporazuma označen kao „tragični sukob u regionu". Dakle, rat u Bosni i Hercegovini ne može se kvalificirati kao „tragičan sukob u regionu", mada svakako jeste tragičan, ali općepoznata je (bar sada) činjenica o karakteru rata u Bosni i Hercegovini. Drugo, Ustav Bosne i Hercegovine, kao Aneks IV Dejtonskog sporazuma, jeste oktroirani i tačno je da taj ustav, neko je već to rekao, nije trebalo da bude rezultat kompromisa s ratnim zločincima, a ja bih još dodao da je taj ustav, bar djelimično, i rezultat kompromisa ratnih zločinaca, što se, razumljivo, nije trebalo dopustiti. Ustav Bosne i Hercegovine *de facto* su donijeli ovi međunarodni činioci koji se u Dejtonskom sporazumu nazivaju 'svjedoci', pa su 'svjedoci' Dejtonskog sporazuma, ako je među njima postojala saglasnost, mogli Bosni i Hercegovini oktroirati ('podariti) bilo kakav ustav, pa i sadržajno demokratski ustav, da kažem jedan 'normalan ustav'. Međutim, Bosna i Hercegovina je dobila ustav koji je vjerovatno jedini ustav u svijetu koji sadrži diskriminatorske norme (ustav istovremeno i dozvoljava i zabranjuje diskriminaciju), pa je posljedica takvog ustava politička i svaka druga praksa koja se događa u bosanskohercegovačkom društvu.

Prema tome, čini mi se da bilo kakve parcijalne ustavne reforme (revizije), ma koliko one polučivale određene rezultate, neće biti dovoljne da bi se suštinski primijenila politička i društvena zbilja u Bosni i Hercegovini. Samo donošenje novog, od Dejtonskog značajno drugačijeg ustava, može producirati drugačiju, dakako, pozitivnu političku i društvenu realnost u Bosni i Hercegovini. U sadašnjem trenutku, nažalost, ne postoji konsenzus o tome u kojem smjeru treba mijenjati Ustav Bosne i Hercegovine. Zašto taj konsenzus ne postoji? Zato što ne postoji ni konsenzus o postojanju države Bosne i Hercegovine kao takve, odnosno neki stanovnici Bosne i Hercegovine ne smatraju sebe građanima Bosne i Hercegovine i ne priznaju je za svoju državu.

Svakako, može se reći da u dovoljnoj mjeri ne postoji 'pojavnost' koja je u njemačkoj pravnoj teoriji nazvana 'ustavnim patriotizmom'. Naravno, ne postoji u dovoljnoj mjeri ni patriotizam pojmljen u uobičajenom značenju te

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 45

riječi. Kao posljedica navedenog, ne postoji ni tzv. 'ustavni trenutak' (termin iz američke pravne teorije), odnosno u dovoljnoj mjeri ne postoji volja i svijest građana Bosne i Hercegovine da im je potreban novi ustav.

Da odgovorim i gospođi Dušanki Majkić. Vi kažete kako je princip 'jedan čovjek jedan glas' nešto što ne odgovara Bosni i Hercegovini. Pa zar je danas uopće moguće da jedan čovjek ima dva ili tri glasa? Političke grupacije koje se zalažu da Bosna i Hercegovina ne treba biti uređena po navedenom konceptu ('jedan čovjek jedan glas') vrše zloupotrebu prava koje postoji u svakoj demokratskoj zemlji, da jedan čovjek može imati samo jedan glas. Jer, vrijeme pluralnih votuma je davno prošlo. Drugo je pitanje zaštite manjina bilo koje vrste, zaštite ljudskih prava i tako dalje; za zaštitu manjinskih i ljudskih prava uopće postoje odgovarajuća ustavnopravna rješenja nezavisno od principa 'jedan čovjek jedan glas'.

Jerko Ivanković-Lijanović, Zastupnički dom Parlamentarne skupštine Bosne i Hercegovine

U našoj Narodnoj stranci Radom za boljitak pokušavamo se baviti uzrocima kako se ne bismo morali baviti posljedicama, i mislimo da je to daleko učinkovitiji rad. Po našim gledanjima, uzroci svih problema u Bosni i Hercegovini su etničko političko organiziranje i etničko glasanje. Da je ovo jednoetnička država, onda bi to bilo sasvim uredu i sasvim normalno; ali pošto je ovo višeetnička država, onda u višeetničkoj državi etničko političko organiziranje i etničko glasanje je u kontradikciji s vlastitom državom. Izlaz iz te situacije je višeetničko političko organiziranje i onda više neće biti etničkog glasanja, jer će se to samo po sebi eliminirati. Do višeetničkog političkog organiziranja možemo doći na dva načina. Jedan je da se postojeće etničke stranke udruže, a drugi je da nastanu nove višeetničke stranke. To je veoma težak proces, ali da bi ova zemlja bila uspješna, on će se morati preći, jer dok god se on ne prođe, morat će postojati Visoki predstavnik, a ta kombinacije, više jednoetničkih stranaka plus Visoki predstavnik, ne može imati dobar plan, dobru strategiju i njenu realizaciju. To ću potkrijepiti primjerom Parlamenta Europske unije. U Parlamentu Europske unije imamo stranke koje dolaze iz svih država, imamo socijaldemokrate, liberale, zelene, narodnjake i tako dalje, i prvo su nastale europske stranke, pa je onda nastao Europski parlament, i dalje se proces razvija jednim normalnim, prirodnim putem. Mi smo malo otišli, zapravo pobrkali redoslijed, pa smo prvo dobili parlament, a nemamo nijednu stranku koja je u tom parlamentu,

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 46

a koja djeluje na čitavom prostoru Bosne i Hercegovine i koja uspijeva dobiti podršku birača iz sva tri naroda, osim možda, jednim malim dijelom, stranka iz koje dolazim. To se u praksi u Parlamentu svakodnevno proživ-ljava. Moja kolegica iz SNSD-a je govorila, i oni su na izborima imali jako dobar izborni rezultat, imaju prijedlog ustavnih promjena, imaju prijedlog reforme policije, ali to ne mogu provesti jer nemaju partnera u Federaciji koji bi to podržao. Isti takav problem imaju stranke iz Federacije: imaju prijedlog reforme policije, imaju prijedlog ustavnih promjena, ali to ne mogu provesti jer nemaju partnere iz Republike Srpske da to provedu. Kada bismo, recimo, ujedinili SNSD i SDP, oni bi mogli suvereno nositi i ustavne promjene i reformu policije, bez ikakvih posredovanja, vrlo brzo i vrlo efikasno, jer ne bismo imali tih prepreka. Ili kad bismo ujedinili HDZ, SDA i SDS u jednu stranku, oni bi bili stranka koja to može snažno nositi. Ili kad bismo imali neku novu stranku koja dobije podršku i na jednoj i drugoj strani, to bi bio jedan uspješan rad. Mi pokušavamo sve to sami. Znamo da je jako težak put. Naši su favoriti naša stranka. Mi sami pokušavamo dobiti parlamentarnu većinu sa čitavog prostora BiH i znamo da je to dug i težak put i nismo sigurni da li ćemo ga ikada dostići, ali ćemo pokušati. Ono što bi bila moja molba predstavnicima međunarodne zajednice jeste da pomognu u rješavanjima uzroka, jer ako riješe ove uzroke, način političkog organiziranja, onda se neće morati uopće baviti kasnije posljedicama, jer do sada je bila praksa da su se morali uvijek baviti nekim posljedicama.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 47

STUDIJA

Nermina Šačić

Međunarodna zajednica u Bosni i Hercegovini - od decembra 1995. do marta 2007. godine

Politološki uvidi

I. Uvod

Šta je to 'međunarodna zajednica' (MZ) u Bosni i Hercegovini? Ko je predstavlja? Jesu li to Ujedinjeni narodi ili nacija? Jesu li to primarno članice Evropske unije plus Ruska Federacija? Jesu li to Sjedinjene Američke Države plus NATO, SFOR, IFOR, KFOR, itd.? Da li su to OHR, OSCE, IPTF i neke druge vladine i nevladine organizacije? Je su li to MMF, Svjetska banka, WTO, predstavnici ambasada, međunarodne korporacije? Je li Bosna i Hercegovina polu- ili stvarni protektorat međunarodne zajednice? Koliko je ta 'zajednica' zbiljski za BiH i kakvu BiH ona želi: trodijelnu, građansku, održivu, neodrživu?

S politološkog aspekta teško je definisati međunarodnu zajednicu jer se radi o pojmu koji figurira u javnoj upotrebi, a njegovo značenje u politološkoj literaturi nije znanstveno određeno. Na osnovu angažmana predstavnika međunarodne zajednice u krizi na Balkanu, pogotovu u BiH, možemo kazati da je MZ skup različitih anglosaksonskih i evrokontinentalnih političkih mišljenja o rješavanju bh. problema.

U najširem smislu moglo bi se reći ovo: od institucija međunarodne zajednice očekivalo se da pomognu ovoj zemlji da obezbijedi siguran okoliš za sve građane, da razvije institucije zaštite njihovih osnovnih sloboda i prava, te da provede demokratsku tranziciju zemlje. Nažalost, nakon dvanaestogodišnjeg angažmana raznih međunarodnih institucija koji se u najširem smislu mogu odrediti kao MZ u BiH, moglo bi se zaključiti da se angažman međunarodne zajednice u BiH svodi na *realizaciju nacionalnih interesa imperijalnih sila.* Putem umreženih institucionalnih struktura međunarodna zajednica djeluje s ciljem isijavanja moći, interesa i potreba velikih sila.

Politika međunarodne zajednice u BiH je *ogledalo fundamentalne napetosti između evropskog i anglosaksonskog pogleda na demokratiju, naciju i državu.*

Država ili državnost na različitim razinama u Evropi ne služi samo za sigurnost i izvršenje socijalnih zadaća, nego je državnost struktura poretka

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 48

društva uopće. Evropska država nadilazi *horizontalni društveni ugovor*, specifičan za Ameriku. U Evropi je "narodni suverenitet" igrao važnu ulogu. Evropska demokratska tradicija kao arenu razračunavanja poznaje politiku koja se zbiva u parlamentima. Rasprave oko raspodjele moći vode se u političkom procesu čija su središnja politička arena parlamenti. *Borba se vodi oko zakona.*

Američki Ustav nikad nije imao funkciju da apsolutnog vladara zamijeni suverenim narodom, nego se radilo o tome da se *stvore minimalne strukture kako bi se osiguralo daljnje postojanje američke nacije.* U Sjedinjenim Američkim Državama demokratija je mnogo jače povezana s pravosuđem. Institucije suda su najviši rang i posljednja garancija individualne sigurnosti i građanskog priznanja. Američka demokratska tradicija pridaje važnost artikulisanju interesa pojedinaca i manjina. Rasprave oko raspodjele moći odvijaju se direktno – horizontalno, a samo jednim malim dijelom u Senatu. U SAD-u borba se vodi oko prava.[1]

„Evropljani su bili zahvalni Sjedinjenim Državama što su povele borbu koja je napokon okončala rat u Bosni, ali su... evropski zvaničnici bili zbunjeni zbog potrebe za američkim uključenjem", navodi Richard Holbrooke u svojoj knjizi *Završiti rat* (Holbrook, 1998; 318). U tom pogledu najveća specifičnost međunarodne zajednice jeste njeno *'djelovanje po drugima'* koje možemo ilustrovati pomoću ceremonijalne inauguracije Dejtonskog mirovnog sporazuma koja je održana u Parizu, mada je isti parafiran u američkoj zračnoj luci u Ohaju. „Međunarodna zajednica je gabarite svoje moći predala Francuskoj, koja ih je za potrebe isforsirane imperijalne glume i deamerikanizacije mira u Bosni prigrabila kao isključivo svoje, pravilno procjenjujući da Sjedinjene Države neće reagovati kako bi upravo potvrdile *internacionalnost* Dejtonskog sporazuma" (Ćurak, 2002: 126). Takvo djelovanje, po drugima, dakle po diktatu izmještenih centara geopolitičke i geoekonomske moći, međunarodnu zajednicu smješta u okvir institucije bez posebnog koncepta.

II. Filozofija 'mirovnog procesa'

Postoje mišljenja da je međunarodna zajednica i „multilateralni proizvod SAD-a, simbioza američkog nacionalnog interesa i američkog Ethosa kao

[1] Detaljnije u: **Haller Gret**, *Granice solidarnosti: Evropa i SAD u ophođenju sa državom, nacijom, i religijom*, Buybook, Sarajevo, 2006.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 49

svjetskog" (*Ibid.*, 129) koja je zaustavila „simulaciju lažnih suosjećanja i putovanje Bosne u konačnu agoniju" (*Ibid.*, 130) koji su permanentno dolazili od mnogobrojih 'demokratskih' politika evropskih sila kojim je nedostajao etički imperativ.

Drugo mišljenje koje figurira u znanstvenoj literaturi međunarodnu zajednicu vidi kao vrstu eksperimenta kojoj je cilj *praktično* započeti izgradnju svjetskog društva kroz sistem globalnog upravljanja u lokalnoj zajednici. Nakon rata, tačnije nakon potpisivanja Dejtonskog mirovnog sporazuma 1995. godine, taj *prakticizam* formalno je započet u Bosni i Hercegovini kao *lokalnoj zajednici*, i on će u ovom tekstu biti predmet politoloških uvida.

Međunarodna zajednica u BiH je više promovisala kategoriju 'mirovnog procesa' nego mira kao vrijednosne političke / demokratske orijentacije. Politička filozofija 'mirovnog procesa' zapravo je instrument međunarodne zajednice kojim se kontrolišu rat i mir permanentnom proizvodnjom ni rata ni mira. To je oblik političke vladavine međunarodne zajednice u postkonfliktnim zemljama. „Mirovni proces (...) upravo na slučaju Bosna potvrđuje da je Evropa mnogo bliže mirovnom procesu nego miru. Postdejtonska Bosna je obilježena mirovnim procesom kao negacijom demokratskih principa i latentnom destrukcijom bosanske države kojoj se ne dozvoljava mir i ono što je sadržano u miru, dakle demokratija" (*Ibid.*, 157). 'Dayton'[2] kao mirovni sporazum, odnosno kao čuvar 'mirovnog procesa' nije samo instrument međunarodne zajednice kojim je trebalo kontrolisati sukobe i nasilje na ovom području. Njegova najveća slabost jeste što je nametnut *kao norma, konstitucija Bosne i Hercegovine* (Aneks IV Dejtonskog sporazuma je Ustav BiH, što je apsurdno) na osnovu zatečenog ratnog stanja i nedovoljnog uvažavanja kulturno-historijske povijesti Bosne i Hercegovine, što ću pokušati elaborirati u nastavku teksta.

Nakon parafiranja Dejtonskog sporazuma 'mirovni proces' se počinje implementirati prvo prezentacijom onoga što je dogovoreno *izvan Bosne, daleko od očiju bh. javnosti,* ali i *bh. Parlamenta* (BiH ima Ustav koji nije verificirao njen Parlament, što je non-sens). U Daytonu je dogovoreno da BiH jeste država ali koja je sastavljena od dva entiteta, i to Federacije Bosne i Hercegovine i Republike Srpske. Status grada Brčko nije bio riješen u Daytonu, ali je na osnovu ranijih dogovora odlučeno da konačnu odluku o sudbini grada donese Arbitražni sud za Brčko, inače osnovan u ljeto 1996. godine. Federacija Bosne i Hercegovine je doživljena kao država Bošnjaka i

[2] Pojam 'Dejton' u ovom tekstu označava ono što je Mirovni sporazum potpisan u Daytonu.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 50

Hrvata, a Republika Srpska kao država srpskog naroda. Brčko je dobilo supervizora do konačne odluke o 'Distriktu Brčko' (mart 2000. godine), kojom je Brčko pripalo i Federaciji Bosne i Hercegovine i Republici Srpskoj, pa time i svim građanima BiH.

Svako iole upućen u politološku znanost zna da je postojanje Republike u Državi doista *novum* koji bi valjalo detaljnije istražiti. Takav politički skandal onemogućio je realizaciju u javnosti poznatog cilja međunarodne zajednice, a to je 'izgradnja društva i države koja je ratom poljuljana'. Prvi problem za realizaciju ovog cilja leži u ustavnoj diskriminaciji političkih prava građana BiH. Etnički identiteti su ustavno-pravno i institucionalno fiksirani, i sve individue unutar bh. društva bivaju prisiljene da se svrstaju unutar jednog od tri zadata i fiksirana etnička identiteta; nijedna individua ne može realizirati svoja politička prava (niti računati na praktičnu društvenu promociju) izvan njih. Štaviše, individua ne funkcioniše na političkom planu kao građanin, niti na društvenom planu kao individua, već isključivo kao pripadnik zadatog etničkog identiteta.

III. Etnostranački pluralizam - lažni politički pluralitet

S obzirom da je međunarodno partnerstvo s domaćim etnopolitičkim elitama trajalo duže, svaka od njih imala je dovoljno vremena da zagovara 'mirovni proces' kao svrhu političkog života u Bosni i Hercegovini. Zbog toga se na Dayton u postdejtonskoj političkoj praksi gleda ovako: *Bošnjačka politička javnost* egzistira na tezi da je međunarodna zajednica prisilila građane BiH da prihvate entitetsku podjelu, te da takva struktura BiH nema ni historijskog, ni ekonomskog, ni ekonomsko-geografskog opravdanja, i da su jedino uporište za nastajanje takve BiH agresija i genocid. *Srpska politička javnost* smatra da je Republika Srpska stekla i održala teritorijalni i legalni kontinuitet od 1992. do danas, te da ona nije, kao što Bošnjaci i Hrvati smatraju, nastala Dejtonskim mirovnim sporazumom nego je istim verificirana, te zbog toga postojanje Republike Srpske ne može biti dovedeno u pitanje. *Hrvatska politička javnost* smatra da je Dejtonski sporazum 'otvorio' hrvatsko nacionalno pitanje tako što je "međunacionalne odnose uredio na štetu hrvatskog naroda". Nezadovoljstvo se pokušava riješiti zahtjevima za uspostavljenje trećeg – etničkog entiteta, koji bi trebalo promatrati kao "logičan, opravdan i pravedan programski cilj hrvatskog naroda u BiH sve dotle dok je ona entitetski uređena i dok u njoj postoji Republika Srpska" (Žepić, 2002: 27). U politički dezorijentisanom sistemu vrijednosti ovakve centrifugalne,

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 51

divergentne, redukovane javnosti (koje su posljedica političkog sukoba u BiH oko teritorijalno-administrativnog i pravno-političkog ustrojstva BiH) djeluju razarajuće na bh. politiku uopće i na političke slobode.

Problem koji je Dejton također nametnuo, pa samim tim i ograničio ulogu međunarodne zajednice, tiče se strukture bosanskohercegovačkog društva. Pojednostavljeno, to se svodi na pitanje da li bh. društvo postoji kao cjelina ili je nepovratno podijeljeno u tri zasebne etnonacionalne cjeline? U postojećem Ustavu bh. društvo (kao pretpostavljeni nosilac suvereniteta) nije koncipirano kao cjelina, nego kao mehanički zbir tri 'konstitutivna naroda' (neodređenost pojma – *op. aut.*), koji su na taj način projektovani kao nosioci suvereniteta. 'Konstitutivni narodi' koncipirani su kao tri zasebne etnonacionalne cjeline koje, opet, po logici ugrađenoj u Ustav, u perspektivi funkcionišu kao odvojeno društvo s vlastitim suverenitetom.

Iz ćorsokaka etnički monolitnog identiteta koji je legalizovan ustavnim odredbama bilo je uistinu teško raditi na državljanskom identitetu, pa čak i za predstavnike međunarodne zajednice u BiH. Štaviše, „veoma mali broj predstavnika međunarodne zajednice pridavao je važnost i rijetko jednodušno izražavao jasno uvjerenje da bi bilo neophodno pripomoći uspjehu misaone alternative identiteta na temelju državljanstva" (Gret Haller, 2006: 38). Hallerova primjećuje da Dejtonski sporazum u području ljudskih prava sadrži velika proturječja. Evropska konvencija o ljudskim pravima proglašena je direktno primjenjivim zakonom zemlje; međutim, njezin sadržaj nije bio dovoljno poznat u javnosti. U tom bi slučaju bilo poznato da je država BiH trebalo da uspostavi ustavni sud u 'civilnim i krivičnim stvarima' koje Konvencija prinudno propisuje. 'Evropska komisija za demokratiju putem prava', tzv. Venecijanska komisija, koja djeluje u okviru Vijeća Evrope, podržala je osnivanje jednog takvog suda. Tek je u maju 2002. godine Visoki predstavnik imenovao sedam sudija za Sud i time otklonio bitan nedostatak Dejtonskog sporazuma. Međunarodna sudska kontrola takvih pitanja također nije postojala jer Evropska konvencija o ljudskim pravima nije bila međunarodno verificirana sve dok BiH nije postala članicom Vijeća Evrope (u aprilu 2002.). Prema Hallerovoj, koncept državljanskog identiteta vratio bi izgubljeno povjerenje građana u državu, koja je, pak, dužna na jednak način štititi svoje građane, koji imaju pravo da sudjeluju i učestvuju u poslovima javne vlasti. Zahvaljujući *etniciziranom ustavu,* pa samim tim i *etniciziranom pravu* koje je dobilo dovoljno vremena za promidžbu, posustalo se u afirmaciji prava pojedinca. Prevagu su, nažalost, odnijela *etnička/kolektivna prava* – za koja su se najglasnije zalagali predstavnici nacionalnih stranaka u Bosni i Hercegovini. Oni su, inače, smatrani jedinim reprezentativnim

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 52

partnerima domaće vlasti u pregovorima s međunarodnom zajednicom (opozicija je često bila izostavljena). Uzmimo za primjer Izborni zakon.

Opozicione stranke nisu bile predstavljene u PIK-u i nisu participirale u donošenju izbornih pravila jer je šef OSCE-a izabrao da radi isključivo s vladajućim etnopolitičkim strankama. Iz ovoga se može pretpostaviti da je riječ o interesima međunarodne zajednice (jer nadgledanje i provođenje izbora finansijski je isplativ posao) i isključivo etničko-vjerskim interesima nacionalnih stranaka, koje su suštinski protiv građanske Bosne i Hercegovine.

Različita ratna iskustva izdiferencirala su i glasačko biračko tijelo BiH po etničko-vjerskoj osnovi, tako da je ono još uvijek, nažalost, usmjereno da glasa samo za kandidate vlastite etničke grupe.

Nosioci kandidatskih lista tražili su glasove samo svoje etničke baze, jer na druge dvije nikad nisu ni računali, samo da bi pobijedili. Bošnjaci su birani zahvaljujući glasovima samo Bošnjaka, a ne Srba i Hrvata. Srbi također mogu biti izabrani a da nemaju podršku Bošnjaka i Hrvata, Hrvati bez podrške Srba i Bošnjaka. Etnopolitičke stranke nikada nisu napravile iskorak i pokušale pridobiti glasačka tijela drugih naroda. Ključna njihova bitka vodila se oko registracije birača. Što se više Srba registruje u pojedinoj izbornoj jedinici, samim tim 'više' znači više glasova za SDS; i što se više Bošnjaka registruje, to znači više glasova za SDA, a što više Hrvata – više glasova za HDZ.

IV. Kontraverze u praksi

Imajući u vidu da ovi prostori žive na kontradikcijama, kao što reče Predrag Matvejević, međunarodnoj zajednici se posrećilo da se uklopi u ovaj koncept života. Tako se desio paradoks da se, zahvaljujući i međunarodnoj zajednici, u posljednjih nekoliko godina ozbiljno diskutuje o ustavnim reformama. Naime, pored domaćih eksperata, raspravu o potrebi promjene Dejtonskog ustava podupirale su i različite međunarodne institucije. Povodom obilježavanja osme godišnjice potpisivanja Dejtonskog sporazuma donesena je deklaracija „Osigurati mir u BiH daljom nadogradnjom Dajtonskog sporazuma", iza koje su stajali brojni evropski politički zvaničnici. Po njihovom mišljenju, „dejtonska konstrukcija Bosne je dostigla svoje granice" (decembar 2003). Ustavna reorganizacija BiH zatražena je i inicijativom ESI (Evropske inicijative za stabilnost) početkom 2004. godine. Iste godine u aprilu Komitet za politička pitanja Parlamentarne skupštine Vijeća Evrope

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 53

donio je Rezoluciju 1384: *Jačanje demokratskih institucija u BiH*, prema kojoj je dejtonsko ustavno rješenje „složeno i kontradiktorno, te na duži rok ne može osigurati djelotvorno funkcionisanje države". I, na kraju, doprinos raspravama o ustavnim reformama dala je i Evropska komisija za demokratiju kroz pravo (Venecijanska komisija), po čijem mišljenju je „ustavna reforma neizostavna".[3]

Ako je suditi po kontroverzama vezanim za ustavne reforme, posebno one koje su propale u bh. parlamentu, onda je *jednakost građana* uglavnom ostavljena *pritisku izvana*.

Po mišljenju većine stanovnika BiH, međunarodna zajednica je zamijenila državu u ulozi novog patrona. Kao što se nekad u socijalizmu očekivalo da svemoguća država riješi sve probleme građana, preduzeća i lokalnih zajednica, danas se to isto očekuje od međunarodne zajednice.

Nametanje mnogih zakona od Visokog predstavnika, s jedne strane, umanjuje povjerenje bh. građana u kompetencije vlasti, tako da se često dešava da određene grupe protestuju i traže pomoć, ali ne od domaćih institucija vlasti nego, naprimjer, od istog tog OHR-a. S druge strane, da nije bilo intervencija u tom pogledu, BiH bi u mnogim društveno-političkim nivoima zaostajala u reformama koje je vode prema evropskim integracijama. Danas možemo reći da je BiH počela razgovarati o prelasku iz dejtonske u briselsku fazu. Dejtonska faza obilježila je BiH kao zemlju kolektivnih prava, gdje nema mjesta za individualna prava i slobode zbog favoriziranja etničkog principa na račun građanskog, a briselska faza trebalo bi da ojača prisustvo i uticaj Evrope u regionu, zatim izgradnju i jačanje države Bosne i Hercegovine i njenih centralnih institucija. U tom kontekstu treba razmišljati da li jačanje EU i intenziviranje odnosa BiH sa EU znači i svojevrsnu dezamerikanizaciju dejtonske Bosne? Kad govorimo o međunarodnoj zajednici u BiH, još uvijek podrazumijevamo i politiku Američke ambasade, USAID-a, Washingtona itd.

Osim kolektivnih, Brisel sugerira i individualna prava. „Ulazak u briselsku fazu označava završetak procesa upravljanja krizom i početak tranzicije, odlazak IPTF-a i SFOR-a, pripremu odlaska OHR-a i nestanak drugih dejtonskih tekovina" (Hadžikadunić, 2005: 17). Evropska unija intenzivira svoje odnose i postaje, kroz različite oblike suradnje, sve je prisutnija u BiH. Međunarodne policijske snage UN-a (IPTF) i Stabilizacijske snage NATO-a (SFOR) već su otišle iz BiH. O zatvaranju OHR u nastavku teksta.

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[3] Vidi opsežniji uvid u: **Slavo Kukić**, "Postdejtonske ustavne kontroverze" u: *Analitički pogled: žurnal društvenih nauka*, br. 2, Udruženje "Dayton projekt - program za civilni dijelog u BiH", Sarajevo, 2007, 41-57.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 54

Česte smjene aktuelih političara od strane visokih predstavnika za BiH (posebno u vrijeme Wolfganga Petritscha) ohrabrivale su jedan dio populacije, pa je tako raslo povjerenje u međunarodnu zajednicu. S obzirom na to da se u više navrata mogla primijetiti nacionalna izbalansiranost u tom smjenjivanju, povjerenje se smanjivalo. Kod nekih političkih stranaka, odnosno njihovih lidera koji su bili meta Visokog predstavnika, pojačan je strah, tako da se njihova odgovornost više usmjeravala prema Uredu OHR-a, a ne prema bh. građanima koji su ih na tu poziciju izabrali. Bilo je i onih političkih stranaka koje su takve smjene iskoristile za vlastitu predizbornu kampanju, pa bi smijenjeni postali miljenici samo zato što ih 'stranci ne vole'.

Nuđenje *nepolitičkih rješenja s ciljem rješavanja političke krize* i sukoba podsjeća na davanje pogrešne terapije pacijentu koji ne može uticati da se terapija promijeni, a još manje je u stanju da promijeni doktora. Ako doktor pokuša da modifikuje terapiju tokom bolesti nakon nekoliko godina, on ne može nadoknaditi ni izgubljeni novac niti izgubljeno vrijeme i patnje pacijenta. Obnovimo naše političko sjećanje.

Za vrijeme prvog Visokog predstavnika u BiH *Carla Bildta*[4] goruće pitanje nije bilo kako otkloniti posljedice rata ili kako porušenu infrastrukturu ponovo osposobiti; on je „postavio pitanje kako komunističku privredu preobraziti u savremenu tržišnu privredu" (Petritsch, 2002: 77). Stvaranje uslova za slobodnu trgovinu u čitavom regionu sigurno bi osiguralo bržu integraciju zemlje da je ekonomski faktor uistinu bio uzrok rata u Bosni i Hercegovini. „Za mene je *privredna* integracija *ključ integracije zemlje*, i to je ujedno ključ za dugoročnu integraciju u evropske strukture... U ime toga ja ću svoje gledište pomjeriti sa *političkih* na socijalne i privredne probleme BiH." (Petritsch, 2002, 78 – *podvukla N. Š*).

Carlos Westendorp[5] imao je i formalne uslove da reaguje na političke blokade, koje su provodile uglavnom nacionalne stranke. Naime, zbog poli-

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[4] **Carl Bildt**, prvi visoki predstavnik u BiH, bio je predstavnik Evropske unije u bivšoj Jugoslaviji. Bildt preuzima svoju poziciju u atmosferi nepovjerenja prema međunarodnoj zajednici. Bošnjačka politička javnost bila je ljuta jer međunarodna zajednica nije spriječila stravične zločine koji su počinjeni nad nesrpskim stanovništvom. Srpska politička javnost reagovala je također skeptično i s nepovjerenjem. Većina Srba je u jedinicama IFOR-a vidjela saveznika svojih 'neprijatelja'. U hrvatskoj političkoj javnosti vladalo je mišljenje da su rat dobili Hrvati, iako je u Daytonu pokopan san o priključnju jednog dijela BiH Hrvatskoj.

[5] **Carlos Westendorp** stupio je na dužnost 18. juna 1997. godine. Bio je ministar vanjskih poslova u vladi Felipea Gonzalesa. Ubrzo nakon što je preuzeo dužnost, održani su poslijeratni izbori u BiH, na kojima su ponovo pobijedile nacionalne stranke. On je zatekao tri valute u Bosni i Hercegovini (hrvatsku kunu, jugoslavenski dinar i bosanski dinar odnosno kupon). Jugoslavenski dinar i kuna bili su simboli za zajednički privredni prostor Jugoslavije i RS-a, odnosno tzv. Herceg-Bosne i Hrvatske.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 55

tičkih opstrukcija na konferenciji Vijeća za implementaciju mira, koja je na ministarskom nivou održana 9. i 10. decembra u Bonu, Visokom predstavniku je potvrđeno da ima glavnu riječ u politici implementacije mira. Visokom predstavniku date su ovlasti da može proglasiti zakone ukoliko ih zakonodavni organi regularno ne donesu. Ovlasti su podrazumijevale da Visoki predstavnik može razriješiti dužnosti predstavnike parlamentarnih stranaka koji se suprotstavljaju implementaciji Sporazuma o miru, ali ne i same nacionalne stranke, koje su po mišljenju stručne javnosti bile nosioci konflikta u Bosni i Hercegovini.

Westendorp je 1. januara 1998. udario granice političkim blokadama. BiH je dobila svoje državne / političke simbole. Westendorp je u dijelu medijske javnosti zadobio simpatije jer je prvi visoki predstavnik koji je smjenjivao političare koji su opstruirali provedbu Dejtona.[6] Smjenjivanjem osoba, što je bilo *novum* u odnosu na prvog visokog predstavnika, oduzeta je djelimična moć snagama opstrukcije. Ukoliko bi došlo do ponovnih opstrukcija, Visoki predstavnik mogao je uskratiti 'socijalnu pomoć', što je etički problematično. Ovakve odluke etno-političari su koristili za jačanje argumentacije u vezi s tezom da je međunarodna zajednica protiv „naroda koji oni predstavljaju".

Wolfgang Petritsch[7] bio je siguran kako je problem BiH u nedostatku svijesti o vlastitoj odgovornosti. Smatrao je da političari i građani BiH moraju svoju zemlju, njene probleme i potrebe shvatiti kao svoje vlasništvo (*ownershi*): „Prihvatanje vlastite odgovornosti za političke vođe u Bosni koji su za vrijeme rata bili na pozicijama moći i čije mišljenje još važi kao prevlađujuća ideologija iziskuje potpuni zaokret" (Petritsch, 2002: 125). „Kada sam 1999. godine stupio na dužnost visokog predstavnika, postavio sam sebi za cilj da BiH izvedem na put samoodgovornosti, a od političara i građana zahtijevao sam da prihvate odgovornost (*ownership*) kao sudbinu zemlje" (Petritsch, 2002: 5), kaže Petritsch u svojoj knjizi *BiH od Daytona do Evrope.* Očigledno je da je, u odnosu na druge, Petritsch imao političku strategiju u BiH – demokratiziranje nacionalista.

Vrlo brzo je zadobio simpatije u javnosti, posebno nakon prve odluke o smjeni 22 funkcionera. Među smijenjenim našli su se kantonalni guverneri, ministri, gradonačelnici, šefovi stambenih komisija... Međutim, prilikom smjenjivanja vođeno je računa o etničkom balansu: smijenjeno je 9 Srba, 7

6 U Westendorpovom mandatu smjenjeno je 12 bh. političara.

7 **Wolfgang Petritsch** preuzeo je dužnost 1999. godine. Bio je specijalni izaslanik Evropske unije za Kosovo i šef pregovaračke misije u Rombouilletu i Parizu. Godine 2001. produžen mu je mandat, tako da je dužnost visokog predstvnika obavljao 3 godine.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 56

Bošnjaka i 6 Hrvata. Međutim, stranke su bile one koji su suspendovane zamjenjivale jednako opstruktivnim sljedbenicima, a smijenjeni bi često dobio unapređenje ili neko važno mjesto u privredi.

Dok je Petritsch promovisao politiku partnerstva sa domaćom vlašću – uz sankcije za opstrukcije, *Paddy Ashdown* je na samom početku svog mandata pokazao sklonost ka naredbodavnoj opciji,[8] s ciljem da BiH potpiše Sporazum o stabilizaciji i pridruživanju Evropskoj uniji. U toku 2002. godine Visoki predstavnik je nametnuo 32 zakona, godinu dana kasnije 14 zakona, a do sredine druge polovine 2004. godine svega 3 zakona. Po stupanju na ovu funkciju on je kao prioritetni zadatak potvrdio reformu pravosuđa, i to u tri pravca. Prvi segment je reforma sudske vlasti, drugi izbor sudija i tužilaca,[9] a treći reforma zakonodavstva.[10] Sva tri segmenta reforme odvijaju se paralelno i trenutno su u završnoj fazi.

V. Reforme u Bosni i Hercegovini vs. reforme u međunarodnoj zajednici?

Novije politološke teorije podsjećaju nas na to da se politička demokratizacija zemlje prati kroz njenu zakonodavnu, sudsku, izvršnu, medijsku i civilnu sferu. Klasične teorije uglavnom su se zadržavale na prve tri; međutim, novije sve češće govore da politika zauzima sve važnije mjesto u medijskog sferi i civilnom / građanskom društvu. Ako hoćemo prikazati učinak djelovanja međunarodne zajednice u BiH od decembra 1995. do marta 2007. godine, moramo se ograničiti na ovih pet političkih segmenata društva, s tim da ćemo izostaviti druge aktivnosti međunarodne zajednice, koje su sigurno vrijedne pažnje i analize.

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8 **Paddy Ashdown** je dužnost visokog predstavnika pruzeo 27. marta 2002. godine.

9 Drugi vid reforme je reizbor sudija u Bosni i Hercegovini. Visoki predstavnik je uspostavio visoka sudska i tužilačka vijeća koja su sačinjena od domaćih sudija i tužilaca i stranih eksperata, s ciljem da imenuje nove sudije i tužioce. Prema rezultatima može se zaključiti da su visoka sudska i tužilačka vijeća imala dovoljno kritičan stav prilikom izbora sudija i tužilaca i da su uvažavali nacionalni balans. Ovdje posebno treba imati u vidu da su izabrane sudije i tužioci po prvi put u situaciji da budu birani doživotno.

10 Postupak reforme zakonodavstva je gotovo okončan donošenjem novih zakona, a to je Zakon o krivičnom postupku i Zakon o parničnom postupku, kao i donošenjem novih krivičnih zakona u gotovo identičnom tekstu za BiH i oba entiteta.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 57

V.a Zakonodavna vlast

Na nivou države Bosne i Hercegovine zakonodavna vlast je u rukama dvodomne Parlamentarne skupštine, u čijoj je nadležnosti *donošenje zakona,* usvajanje budžeta za institucije BiH i davanje saglasnosti na ratifikaciju međunarodnih ugovora. Kako je ista bila blokirana u radu sve do konstituisanja novog saziva nakon izbora 2000. godine, veći broj zakona neophodnih za normalno funkcionisanje države ili nije donesen ili ga je *nametnuo* Visoki predstavnik.

Na konferenciji u Bonu 10. decembra 1997. godine Visokom predstavniku data su veoma visoka ovlaštenja kako bi se premostile blokade u zakonodavnim tijelima koje su uzrokovali predstavnici tadašnjih nacionalnih / nacionalističkih stranaka.

Iz današnje perspektive, možemo biti zadovoljni zato što je Visoki predstavnik nametno simbolička demokratska obilježja države BiH pošto u vezi s tim nacionalne stranke nisu uspjele postići konsenzus.

Međutim, tu je i niz drugih pozitivnih zakonskih rješenja, čiji nedostaci uglavnom leže u tome što su *donošeni bez konsultacija šire društvene javnosti.* Ilustrativan primjer za to je bio Nacrt izbornog zakona, koji je dobio podršku svih glavnih aktera međunarodne zajednice u BiH (napravljen je pod okriljem OSCE-a, a podržali su ga OHR, Vijeće Evrope, UNMIBH), a dva puta je naišao na skoro *jedinstveno odbijanje domaćih pravnih eksperata.*[11]

Drugi nedostatak leži u tome što je *često izostala strategija primjene zakonodavnih ovlaštenja* (npr. Zakon o pristupu informacijama).

V.b Sudska reforma

Najveći prioritet međunarodne zajednice u reformskim oblastima odnosio se na uspostavljanje nezavisnog sudstva i izgradnju vladavine prava. Nepristrasno i nezavisno sudstvo, te njegovo *depolitizovanje,* bili su zahtjevi koji je Vijeća Evrope postavilo kao uslov Bosni i Hercegovini za prijem u Vijeće Evrope. Prema međunarodnim standardima, to podrazumijeva eliminaciju svih uticaja koji na sudstvo mogu biti izvršeni izvana, pri čemu ono 'izvana' podrazumijeva svakog izvan sudske vlasti. Na osnovu ostvarenog,

[11] "Najveća zamjerka koja se stavlja Zakonu bila je potvrđivanje diskriminacije… naročito kod izbora članova Predsjedništva, koji je diskriminatorski i ograničava pasivno biračko pravo", navodi Sevima Sali-Terzić u svojoj studiji "Pravni sistem" u zborniku *Međunarodne politike podrške zemljama Jugoistočne Evrope: lekcije (ne)naučene u BiH,* (ur. Žarko Papić), Müller, Sarajevo, str. 161.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 58

čini se da je bh. sudstvo u eliminaciji 'domaće' vlasti postalo ovisno o međunarodnoj.

Iako danas postoji pravni okvir koji bi trebao eliminisati političke pritiske na sudstvo, mogli bismo govoriti i o njegovoj izloženosti pritiscima međunarodne zajednice. S jedne strane, ta kontrola vodi bojazni da će rad domaćih sudija i tužilaca biti predmet ispitivanja i revizije, uz nadzor međunarodne zajednice i uz mogućnost korištenja ovlaštenja Visokog predstavnika.[12]

Veliki napredak postignut je u razvoju institucija i njihovom osavremenjivanju, naročito uvođenjem informacionih tehnologija. Dobar su primjer i napori na uspostavljanju sudske vlasti na nivou države, u skladu s preporukama Venecijanske komisije. Opstrukcije tog procesa su uglavnom dolazile 'iznutra'. Međunarodna zajednica je omogućila i osigurala konstituisanje i nesmatano funkcionisanje Ustavnog suda BiH i Ustavnog suda FBiH, te je pomogla u formiranju Instituta za obuku sudija na nivou države i formiranju nekih pravnih udruženja.

Pored aktivnosti koje se odnose na zakonsku regulativu, a njih je bilo uistinu mnogo, međunarodna zajednica je radi ostvarivanja svoga cilja nudila programe obuke za pravnike, uključujući sudije i advokate. Međutim, u okviru tih aktivnosti napravljeni su i neki previdi, koji su u značajnoj mjeri doveli u pitanje postizanje ovih rezultata. Često se dešavalo da domaći pravnici, naročito sudije i tužioci, dožive ove programe kao napad na vlastitu kompetentnost i identitet.

Naročito „zbunjujuće i neefikasno pokazalo se miješanje *common law* tradicije sa *civil law* tradicijom" (Sali-Terzić, 2001: 172). Međutim, programi su imali smisla u ponovnom uspostavljanju pokidanih veza, tj. u obnovi kontakata s kolegama preko 'entitetskih razgraničenja'.

S obzirom na sredstva koja su potrošena u ovu reformu i na učešće velikog broja stranih eksperata međunarodne zajednice, nisu postignuti rezultati koji odgovaraju uloženim naporima i sredstvima. Tome su doprinijeli loša politička klima i nespremnost pravničke zajednice u BiH da prihvati ogroman priliv međunarodne pomoći. S druge strane, protivljenje prijedlozima međunarodne zajednice najčešće se karakteriše kao 'blokiranje procesa reforme' ili 'nepostojanje želje da se BiH odvede u Evropu'. U promovisanju nezavisnosti sudstva i njegove depolitizacije dovedeni su pod znak pitanja ista ta *nezavisnost* i *depolitizacija*.

[12] Način i postupak smjene sudija i tužilaca regulisani su zakonima koje je u oba entiteta nametnuo Visoki predstavnik.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 59

V.c Medijska reforma

Dejtonski sporazum i Ustav BiH gotovo da ništa nisu rekli o medijima. U Ustavu BiH u nadležnostima države nema ni riječi o medijima, čak ni o onim kojima se osigurava identitet države – o državnoj ili javnoj radio-televiziji. Mediji su ostavljeni u nadležnosti entitetima. U Federaciji BiH oni su čak potisnuti u nadležnost kantona.

Vijeće za implementaciju mira često je na svojim sjednicama raspravljalo o medijima. U Sintri je u maju 1997. godine prvi put odgovoreno na pitanja šta da se radi s medijima koji nastavljaju sa širenjem ratnohuškačke propagande. Rečeno je da „Visoki predstavnik može suspendovati bilo koju medijsku mrežu čiji je program u stalnoj i dubokoj suprotnosti sa duhom i slovom Mirovnog sporazuma" (www.ohr.int). Iste godine u decembru u Bonu dat je nalog da se osnuje Nezavisna komisija za medije, koja treba da reguliše stanje u elektronskim medijima. Na Madridskoj konferenciji u decembru 1998. godine donesen je dokument 'Reforma medija', kojim je podržan Visoki predstavnik u svojim aktivnostima na pretvaranju državnih medija u javne servise. Također je zatraženo od zemalja donatora da pomognu rad Nezavisne komisije za medije i da podstaknu donošenje medijskih zakona u oba entiteta. Od OSCE-a i IMC-a zatraženo je da donesu jasna izborna pravila o ponašanju medija.

Međunarodna zajednica je bila duboko uključena u reformu medijske scene nakon donošenja Dejtonskog mirovnog sporazuma. Pod uticajem nacionalnih oligarhija u vrijeme rata na vojno osvojenim ili sačuvanim teritorijama nastala su tri tehnički, programski i statusno odvojena RTV sistema. Mediji iz Srbije i Hrvatske nesmetano su širili svoj uticaj i interese svojih država na prostoru Bosne i Hercegovine. Većina medija je bila propagandno sredstvo, a vrlo mali broj je uspio sačuvati svoju nezavisnu orijentaciju. Međunarodna zajednica će u prvoj fazi svoje pomoći podržati medijsku ekspanziju prvenstveno svojim obilnim donacijama medijima koji su tvrdili da afirmišu nezavisnu orijentaciju. Cilj međunarodne intervencije bio je stvaranje pluralizma medija, koji nije doprinio demokratizaciji medijske scene. Uprkos dobroj finansijskoj volji međunarodne zajednice, prvi poslijeratni period obilježen je 'verbalnim ratom' koji se vodio preko medija. Medijski prostor je podijeljen na nacionalno-vjerskoj osnovi, a govor mržnje je gospodario u medijskim sadržajima.

Uoči prvih poslijeratnih izbora u jesen 1996. godine osnovano je mnoštvo lokalnih medija nezavisnih od politike lokalnih vlasti i uz pomoć inostranih medija. OHR i OSCE u BiH osnivaju i dva velika internacionalna projekta –

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 60

televiziju OBN[13] i radio FERN, s ciljem da se izvrši presudan uticaj na stvaranje povoljnijeg ambijenta na izborima. Međutim, u to vrijeme i dalje su aktivno djelovali mediji iz susjedstva, što je otežavalo 'medijsku demokratizaciju'. Domaće vlasti su medije finansirane od međunarodne zajednice proglašavali nepatriotskim i neprijateljskim, između ostalog i zbog činjenice da se 'novac nije žalio' kada su mediji u pitanju.[14]

Godine 1998. otvoren je proces transformacije državnih radio i TV stanica u javne servise. Njega je nametnuo svojim odlukama i zakonima također Visoki predstavnik, nakon neuspjelih pokušaja da taj posao urade domaće vlasti, menadžment i uredništva postojećih državnih RTV stanica.[15] Nametnuto je da u BiH rade dvije javne entitetske radio i TV stanice i Javni RTV servis za cijelu Bosnu i Hercegovinu. Time je *medijski prostor BiH* formalno-pravno *entitetizovan.*

Nakon osnivanja Nezavisne komisije za medije ugašen je nelegalno uspostavljeni sistem hrvatske radio-televizije u Federaciji BiH (riječ je o filijali Hrvatske radio-televizije iz Zagreba), a govor mržnje polako nestaje iz medijskog prostora. S obzirom na to da je ovu Komisiju osnovao posebnom odlukom Visoki predstavnik, u stručnim domaćim krugovima ona je smatrana „paradržavnom institucijom s nadležnostima međunarodne zajednice" jer su je uglavnom vodili inostrani eksperti. Stručna javnost vidjela je nedostatak u funkcionisanju ove Komisije jer je nadležna za donošenje, praćenje i sankcionisanje pravila ponašanja. Primjedbi ima i na transparentnost Komisije, kao i na žalbeni postupak koji se završava u Komisiji bez prava na višu administrativnu instancu ili sudsku tužbu. Njeno inkorporiranje u Regulatornu agenciju za telekomunikacije izazvalo je negodovanje domaćih stručnjaka.

Početkom 2000. godine međunarodna zajednica čini nagli zaokret u podršci medijima. Ona odustaje od podrške koju je davala internacionalnim projektima – OBN-u i FERN-u. Prvi je ostavila lokalnom osoblju da ga dalje

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[13] U stručnoj javnosti ova televizija se zvala 'Bildtova televizija'.

[14] Najveći donatori u oblasti medija bili su Evropska unija, Soros i USAID. Evropska unija je od 1995. do 2000. godine donirala za razvoj medija u BiH 33 miliona i 249 hiljada njemačkih maraka. USAID je za iste potrebe izdvojio 74 miliona maraka. Soros je za sedam godina (od 1993. do 1999) za podršku medijima uložio 7 miliona i 583 hiljade maraka. U 2000. godini on je napustio program direktne pomoći medijima opredjeljujući se za regionale programe u oblasti komunikacija. Bez sumnje se radi o velikim finansijskim sredstvima.

[15] Visoki predstavnik je pokušao dobiti podršku od tri lidera nacionalnih stranaka, tada članova Predsjedništva. Pošto je srpski član predsjedništva Momčilo Krajišnik odbio da potpiše Memorandum o saradnji, Visoki je predstavnik u julu 1999. godine nametnuo više odluka kojima se uspostavljaju javni servisi na nivou države i Federacije BiH, dok se Srpskoj RTV naloženo da promijeni ime u RTV Republike Srpske.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 61

vodi kako zna i umije, a drugi je sa svojim kadrovskim i tehničkim sredstvima uključila u Javni radio BiH (BH radio 1). Inače, u toj fazi prioritet se daje transformaciji državnih u javne elektronske servise. Ovu fazu pratila je tiha opstrukcija i potpuna nezainteresovanost domaćih vlasti.

U odsustvu političke spremnosti vlasti da predlože odgovarajuće zakone, OSCE je izradio Prijedloge Zakona o slobodnom pristupu informacijama i kleveti.

V.d Civilno društvo

Ustavom BiH, ali i ustavima oba entiteta, garantovano je pravo na slobodu udruživanja, koje je temelj postojanja civilnog društva, odnosno njegovih institucija uopće. S obzirom da je ustavni pravni okvir u BiH takav da centralni državni organi imaju veoma ograničenu nadležnost, te da entiteti imaju veliku autonomiju, pitanje prava na slobodu udruživanja različito je u entitetima. U Federaciji BiH postoje tri zakona koji određuju djelovanje nevladinog sektora, i to: Zakon o udruživanju građana, Zakon o humanitarnim organizacijama i Zakon o fondacijama. U Republici Srpskoj to pitanje je regulisano Zakonom o udruživanju građana koji je preuzet iz bivše SFRJ. Dok sloboda udruživanja u svijetu prelazi nacionalne (državne) granice, u BiH to udruživanje je, zbog Ustava, političke nezainteresovanosti i pasivnosti međunarodne zajednice, ostalo na entitetskoj razini.

Pod sintagmom 'razvoj civilnog društva' uglavnom je međunarodna zajednica podrazumijevala davanje podrške razvoju i radu nevladinih organizacija, često predviđajući da je civilno društvo mnogo šire od nevladinog sektora. Iskustva drugih zemalja nam pokazuju da demokratizaciju nose i iznose druge građanske grupe. Uprkos tome, međunarodni donatori u nevladinim organizacijama vidjeli su centralni segment civilnog društva, smatrajući da tako jačaju civilno društvo u BiH. Ovaj način davanja i usmjeravanja pomoći najčešće su provodili UNDP, UNHCR, UNICEF, Svjetska banaka i Međunarodni monetarni fond.

Posljednjih godina primjećujemo smanjenje međunarodne pomoći u BiH i prebacivanje fokusa interesovanja na neke druge krizne regione (Kosovo). Zbog toga je došlo do značajnog zastoja u razvoju mnogih nevladinih organizacija koje nisu razvile strategiju razvoja nakon nestanka pomoći međunarodne zajednice: „Umjesto da se odgovora potrebama i zahtjevima korisnika, stvorena je situacija u kojoj korisnici odgovaraju potrebama i zahtjevima donatora" (Sali-Terzić, 2001: 183).

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 62

Kritičari navode da su mnoge nevladine organizacije prilično udaljene od društva i građana, što je svojevrsna „paradoksalna posljedica pomoći civilnom društvu". Tako nas Žarko Papić upozorava da metod podrške 'pokriva' veoma malu elitu (Papić, 2001: 28). 'Elita' u tzv. civilnom društvu se 'profesionalizira', odvaja od problema 'baze' i 'socijalne realnosti' tako da se stiče fiktivna slika o velikim naporima koji su uloženi.

Drugi problem je što veliki broj nevladinih organizacija nije koordinisan. Mada je bilo pokušaja koordinacije, desio se bum u formiranju koordinacijskih tijela. Dugo su vremena 'umrežavanje' i 'koordinacija' bile magične riječi koje mogu otvoriti mnoga vrata za dobijanje novih finansijskih sredstava.

Domaćim nevladinim organizacijama još uvijek nedostaje znanja i vještina, a ponekad i motiv da pokušaju uticati na vlast i proces donošenja odluka. U pogledu izbornih rezultata, do promjena u političkom opredjeljenju građana dolazilo je uglavnom tamo gdje su locirane najznačajnije i najaktivnije nevladine organizacije. U područjima u kojima je njihovo prisustvo bilo minimalno rezultati su bili daleko ispod očekivanja.

Uz izuzetke, naravno, ozbiljno pitanje koje se može postaviti odnosi se na *legitimitet* i *kredibilitet* nevladinih organizacija.

VI. Ocjena i analize

Ono što je do sada pozitivno u djelovanju međunarodne zajednice BiH jeste pomoć u tranziciji, ali ne u onoj klasičnoj tranziciji koju su druge zemlje prošle – tranziciji ka punoj tržišnoj ekonomiji, parlamentarnoj državi i uopće civilnom društvu. U osnovi, međunarodna zajednica je uložila ogromne napore u *tranziciju iz rata u mir,* pri tome je finanisirajući. Iako ta tranzicija traje duže nego što se očekivalo, u političkom smislu omogućila je Bosni i Hercegovini stvaranje pretpostavki za ulazak u *evroatlanske integracije.*

Međunarodna zajednica kao da nije imala informaciju da rat u BiH nije bio produkt drevne etničke mržnje koja je vladala na ovim prostorima, već da je isti uvezen i nije imao osnovne uzroke u samoj zemlji. Etničko čišćenje bilo je cilj ratova, ne njihova posljedica. Povratak širih razmjera nije bio moguć bez slamanja politike koja je isplanirala premještanje stanovništva. Povratak nije osiguran jer nisu uklonjeni politički nalogodavci etničkog čišćenja. Velike sume novca potrošene su prvih godina nakon Dejtona, kada je stopa povratka bila mala, a sada, kada je povratak intenziviran, nedostaje finansijska podrška. Međunarodna zajednica danas potpuno ignoriše pitanje 'konstitutivnih manjina', smatrajući povratak u BiH završenom pričom.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 63

Međunarodna zajednica pokušala je 'demokratizovati nacionaliste' u BiH. Zbog toga s velikim naporom spoznaje da bh. političke elite opstaju na vlasti zahvaljujući podsticaju nesigurnosti, sukoba i nestabilnosti. One kao takve ne mogu proizvesti stabilnost jer opstaju na vodećoj poziciji zahvaljujući konfliktu. Kada su tri nacionalne stranke u BiH (SDA, HDZ i SDS) pod međunarodnim pritiskom bile prisiljene ublažiti nacionalističku retoriku, rivali unutar nacionalnih blokova (SBiH, HDZ 1990. i SNSD) prisvojili su takav vokabular, što im se isplatilo na narednim izborima. Postoje mišljenja da posljednji izbori nisu pokazali da su najradikalnije stranke postale umjerene, nego da su najradikalnije upravo umjerene stranke. Ima više razloga za tvrdnju da je u BiH došlo do radikalizacije nacionalizma, a ne njegovog smanjivanja. Analiziramo li predizbornu retoriku uoči, tokom i poslije izbora tzv. umjerenih stranaka, nećemo moći zaključiti da su na posljednjim izborima pobijedile reformisane nad nereformisanim strankama. 'Demokratizacija' nacionalnih stranaka, koju je između ostalog podržavala i međunarodna zajednica, dovela je do njihovog umnožavanja, udvostručavanja.

Činjenica je da se OHR ponekad ponaša kao nova politička institucija u BiH. Iako danas postoji pravni okvir koji je eliminisao političke pritiske na bh. sudstvo i bh. medije, mogli bismo govoriti i o njihovoj izloženosti pritiscima međunarodne zajednice.

Postoje naznake da je međunarodna zajednica umorna i da bi htjela smanjiti svoj angažman u BiH.[16] Uprkos tome, Vijeće za implementaciju mira je u Briselu (23. februara 2007.) odlučilo da OHR i Bonske ovlasti ostaju do juna 2008. godine jer pomaci u procesu evropskih integracija u protekloj godini nisu bili dovoljni.

Također, mandat OHR-a je produžen zbog sazrijevanja svijesti unutar same međunarodne zajednice da su BiH potrebne *ustavne reforme*. Iako već dvije godine to nije tabu tema, aktuelni Visoki predstavnik u BiH Christian Schwarz-Schilling povodom produžetka svoga mandata ističe: „Tokom predstojećih mjeseci namjeravam pokrenuti i proces ustavne reforme zajedno s predstavnicima Sjedinjenih Američkih Država, kako bismo pomogli razvoju ustavne strukture, koja je ovoj zemlji potrebna da bi postala moderna i efikasna država. Iz tog razloga, od 1. marta imam proširen mandat i dodatne resurse u svojstvu specijalnog predstavnika EU" (*Dnevni avaz,* 2. mart 2007).

U pokušaju identifikacije i kritičke elaboracije reformskih oblasti koje je pokretala međunarodna zajednica, dolazimo do slijedećih zaključaka: politi-

[16] Vidi: International Crisis Croup, Europe Report, No. 180, od 15. februara 2007. godine

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 64

ka međunarodne zajednice bila je *reducirajuća / nedemokratska, dakle u suprotnosti s demokratskim duhom,* jer je veliki broj zakonskih regulativa donesen bez konsultovanja *šire društvene javnosti.* Zato se čini važnim razmisliti o tome da se greške u BiH ne ponove u nekim drugim zemljama Jugoistočne Evrope.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 65

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Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 67

2. PRAVNE REFORME U BOSNI I HERCEGOVINI I UTICAJ MEĐUNARODNE ZAJEDNICE

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 69

UVODNO IZLAGANJE

Manfred Dauster, Sud Bosne i Hercegovine

Želio bih vas sve pozdraviti. Veoma sam počastvovan da počnem s panelom dva. Napraviti bilans proteklih jedanaest godina u Bosni i Hercegovini nije jednostavno. Prethodni referenti pokušali su da se osvrnu na historiju i razvoj; ja to neću raditi. Praveći bilans, usredotočit ću se na nekoliko tačaka za koje smatram da mogu dati profesionalni pogled. Prvo bih malo predstavio atmosferu, način na koji percipiram situaciju u Bosni i Hercegovini. Imam dosta prijatelja Bosanaca i Hercegovaca, i kolega u Sudu s kojima često razgovaram. Ne tvrdim da su njihovi glasovi reprezentativni, ali oni daju perspektivu i ocjenu kako normalan građanin posmatra to što je bilo i to što se događa. Jedan dio je i to da se većina ljudi pita je li kasno i koliko vremena je ostalo? Čak je i Visoki predstavnik jutros priznao da smo izgubili dosta vremena i sada moramo da mislimo o tome koliko vremena je ostalo međunarodnoj zajednici za saradnju s lokalnim vlastima. Malo sam zabrinut kad čujem da se javno navode datumi o zatvaranju OHR-a. Prvo smo čuli o zatvaranju OHR-a u junu 2007. godine, a sada možda postoje neki određeni uvjeti za zatvaranje toga ureda naredne godine u junu. Apsolutno svi s kojima sam razgovarao postavili su pitanje: "Možemo li mi jednostavno ikako da ne razmatramo suštinu? Možemo li nekako, recimo, da ne razgovaramo o suštini?" Međutim, mislim da su kolege iz Bosne u pravu s obzirom da nama jednostavno nije jasna suština. Ona nam nije bila jasna nikako do danas, i oni pitaju što je s tom suštinom? Isto tako smo shvatili i shvatamo da međunarodna zajednica finansira samu sebe, i došla je u određenu fazu zamorenosti pa bi željela izaći iz ove zemlje. Svako povlačenje iz ove zemlje košta. Ali, što se tiče pitanja koliko finansijskih sredstava međunarodne zajednice će preostati za planirane reforme, opet, i kad postavimo to pitanje, trebamo se upitati šta je suština. Opet se vraćam na ono pitanje, pitanje građana, pitanje suštine, suštine međunarodne zajednice i domaćih nadležnih tijela. Dakle, kakav je njihov dogovor i šta oni žele da prođe kroz reformu? Ja, ipak, s obzirom na ono što se dogodilo do sada, ne mogu vidjeti tu suštinu. Naime, korištena je formula 'ustavna reforma'. Na šta se ona odnosi? Šta je to? Isto tako postoji toliko ustavnih modela na svijetu, da se ja kao sudac, dakle čovjek iz pravne profesije, pitam: ako prođe ustavna reforma, kako će ustav izgledati? Reforma policije je sada drugo pitanje. Pa se pitam: zašto je toliko ta diskusija netransparentna? Postoji toliko modela policije na svijetu, na ovoj zemaljskoj kugli; pa kako će izgledati ta policija?

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 70

Koji je to model? I je li reforma policije ovisna, eventualno, o ustavnoj reformi, i obratno? Treća zagonetka koju sam shvatio je sljedeća: naime, zbog prisustva međunarodne zajednice i određenih stavova predstavnika međunarodne zajednice, mi moramo priznati da dejtonski sistem saradnje između međunarodne zajednice koju zastupa Visoki predstavnik, s jedne strane, i domaćih predstavnika – gotovo da nije uspio. Greške su pravljene i s jedne i s druge strane. Ja sigurno nisam čovjek koji bi mogao kvalifikovati ili diskvalifikovati domaće i međunarodne političare; ali zato sigurno mogu kazati – ovo sada govorim o međunarodnoj zajednici – moram kazati da sam vidio toliko visokih predstavnika koji su došli u ovu zemlju, sve sam ih ispratio osim jednoga koji je dosad otišao, vidio sam da neki nisu imali nikakve perspektive, nisu imali nikakve programe, neki su imali *ad hoc* programe i, jednostavno, pogled nisu apsolutno usmjerili na implementaciju zakona koji su oktroisali. To je ono što treba mijenjati, barem u ovom preostalom periodu. Kada govorimo o nekim dostignućima, ja sada neću osporiti ta dostignuća, neću kazati da nisu postignuta. Jutros smo čuli riječ demokratizacija. Da, svakako, demokratski izbori se događaju, što znači da se održavaju pod domaćim nadzorom. Izborni zakon možda nije savršen, ali izbori su gotovo demokratski. Ali šta će se dogoditi u naredne četiri godine mandata u Parlamentu? Ja mislim da će započeti neka vrsta kampanje parlamentarizacije jer, kao stranac, vidim da Parlament postoji, donosi zakone, ali bez neke suštinske rasprave, i to se ne radi transparentno. A isto tako Parlament ne vrši kontrolu vlade. Evo, da vam ispričam jednu anegdotu, nešto što se nedavno dogodilo. To je bilo na seminaru OSCE-a, kada su se predstavnici parlamentarne komisije za budžet došli na seminar da nauče, da vide kako se vrši kontrola budžeta. Pošto najveći dio državnog budžeta odlazi na odbranu, predstavnici OSCE-a kazali su prisutnim članovima kako se finansiranje odbrane ne odnosi samo na plaćanje vojnika nego i na plaćanje političke strategije, u suštini, i da oni kao kontrolori vlade traže od vlade strategiju odbrambene politike Bosne i Hercegovine. I o tome niko ništa nije znao. Kada je predstavnik Ministarstva odbrane došao na seminar, članovi Parlamenta su predstavniku Ministarstva odbrane postavili pitanje: "Molim vas, možete li nam vi kazati samu suštinu četverogodišnje odbrambene politike vlade? Koja je suština te politike? Odnosno, mi smo konkretno zainteresirani za finansijski segment." Tada je predstavnica kazala: "Znate, taj finansijski segment nije u nadležnosti Ministarstva odbrane, pitajte Ministarstvo trezora." I onda su ti isti članovi Parlamenta isto pitanje uputili predstavniku Ministarstva trezora. I znate šta je predstavnik Ministarstva trezora kazao? "Pa nije to naša nadležnost, pitajte Ministarstvo odbrane." I, sami članovi

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 71

Parlamenta su onda jednostavno zaključili da naprosto niko nije odgovoran. To je loše, to se mora mijenjati, a mi ćemo vam pomoći upravo u postizanju tih promjena. E, sada, s druge strane, imamo pravosudnu reformu. To jeste postignuće, ali samo u određenom dijelu. Pod pritiskom međunarodne zajednice 2002. godine, te kroz nametanje zakona, u to vrijeme visoki predstavnik Paddy Ashdown je Državnom sudu Bosne i Hercegovine dao nadležnost o krivičnim zakonima. Imamo i ustavnu reformu, inicirali su je Amerikanci, što znači oni su je inicirali i sad ne treba niko drugi biti uključen. Amerikanci su u to vrijeme, kada je bila krivična reforma u toku, kazali sljedeće: Ukoliko vi, OHR, želite od nas pomoć i želite pomoć u uspostavi Državnog suda, mi onda želimo da se i naš procesni sistem barem djelomice uvede u ovu zemlju. I onda je "mala Amerika" uvedena bez nekog razmišljanja. Ali imamo sada to i u zakonu i u primjeni zakona, tu praksu. Međutim, sada, kada iz ove perspektive pogledam Državno tužiteljstvo i Državni sud, malo se pribojavam u pogledu samoodrživosti te dvije institucije. Državna nadležnost u krivičnim stvarima nije potpuna jer, recimo, čujem izjave političara i koji su ovdje pozvani, ali koji nisu došli, koji su govorili u predizbornim kampanjama, odnosno, nazivali Državni sud sudom za Srbe. I to ostavlja prostora za tumačenje. Onda, isto tako, vidim neka kretanja u Banjoj Luci. Državni sud Bosne i Hercegovine sasvim jasno ima jurisdikciju nad krivičnim gonjenjem dijela organizovanog kriminala i to je njegova nadležnost. Ukoliko Državni sud tu nadležnost prenese na niže instance, onda će entiteti, entitetski sudovi to preuzeti. Šta se dogodilo prošle godine? I to je međunarodna zajednica pozdravila. U Banjoj Luci Narodna skupština RS-a uspostavila je specijalne sudove za organizovani kriminal i, isto tako, uspostavila posebna tužiteljstva. Ustavnost takvih stvari svakako podliježe debati. Ali, niko nije poveo tu debatu. Visoki predstavnik, ne znajući zakon i ustavnu situaciju, čestitao je premijeru na njegovim nastojanjima da se bori protiv organizovanog kriminala. U realnosti, u stvarnosti, entitet Republike Srpske je tiho ukrao polovinu naše državne nadležnosti i to se mora jasno kazati. Međunarodna zajednica se uveliko uključila u uspostavu Državnog suda, ali samo poslije takozvanoga perioda tranzicije, i ostat će uključena do kraja perioda tranzicije, do kraja 2009. godine. Prije svega, finansiranje državnih institucija može doći u pitanje. Do sada nemam još uvijek jasnu izjavu Vlade da će preuzeti finansiranje državnih pravosudnih institucija u potpunosti nakon 2009. godine, dakle, da će Vlada zamijeniti taj međuna-rodni finansijski angažman.

To su oni propusti i greške koje sigurno možete prepoznati skupa sa mnom. Ja znam da će ova konferencija inicirati i debatu o ovoj jednoj

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 72

nezgrapnoj situaciji. Svakako sve ovisi o ustavnoj reformi. Do sada se obje strane, međunarodna zajednica s jedne strane i domaći organi s druge strane, mogu okriviti za svoje stavove i ponašanje u prošlosti. Svi su govorili o ustavnoj reformi; međutim, niko od građana nije znao ništa o toj ustavnoj reformi. Zašto? Zato što je ona čuvana kao tajna, sve dotle dok nije završila pred Parlamentom. To se više tako ne smije događati. Isto važi i za tekuće reforme krivičnog sistema. Vi znate, novi krivičnopravni sistem uveden je, odnosno napisan je takvom brzinom koju nikada u životu nisam vidio. Paddy Ashdown je naredio u junu 2002. godine da se napišu novi zakoni najkasnije do 1. oktobra iste godine. To je zaista bio ogroman posao. I ti zakoni, upravo zbog te brzine, zbog te žurbe, nisu savršeni. Oni sigurno imaju u sebi grešaka, propusta, manjkavosti. A sada, kad ponovo sve to analiziram, odnosno kad je ta analiza potrebna, da vidimo sada šta će se uraditi jer je međunarodna zajednica u prošlosti bila toliko fokusirana na krivičnopravni sistem, jer je trebalo da međunarodna zajednica obavi domaću zadaću i sve to usaglasi sa domaćim vlastima. Međutim, ja jednostavno ne mogu da vidim da li iko uopće radi na tom pitanju. I upravo je to činjenica koja može dovesti i državu i entitete, odnosno njihove krivičnopravne sisteme do kolapsa. Osim toga, pravne reforme ne podrazumijevaju samo krivičnopravnu reformu. Prvi put sam došao u ovu zemlju na čelo Odjela za borbu protiv korupcije pri OHR-u. To je bilo u augustu 2000. godine. I u toj jedinici, u tom odjelu OHR-a shvatio sam da građansko pravo u ovoj zemlji jeste staromodno i da više apsolutno ne odgovara vremenu. Neki koraci jesu poduzeti; međutim, još nemamo savremeni zakon o obligacijama niti o imovini, nepokretnoj imovini, niti imamo sada neko novo komercijalno pravo na papiru, i tako dalje. Molim vas, kako to jednostavno srediti? Kako kad je takva situacija? Kako privući strane investitore kada će se oni susresti s onim što su uglavnom preostali socijalistički zakoni? Oni neće pod takvim uvjetima doći. S druge strane, izvršenje sudskih presuda i rješenja u građanskopravnim postupcima jednostavno izlučuju strane investitore, kao i građane, jer znate, to je vrlo teška procedura, pa tek kad se dođe do presude, tek onda dolazi do provedbe, do primjene. Dakle, građanskopravna procedura u ovoj zemlji obično traje nekoliko mjeseci, čak i godina, čak i ako se radi o nekoj maloj, sitnoj stvari. Nakon toga, investitor, faktički kad sve to dočeka, mora jednostavno trčati tražiti svoj novac. Isto je i sa Zakonom o likvidaciji, isto je sa Zakonom o stečaju. Ja sam samo pobrojao nekoliko zakona, nekoliko stvari; međutim, to nije kraj spiska. Isto se odnosi na reformu državne službe. Naime, neki koraci jesu poduzeti i uspostavljena je Agencije za državnu službu. Međutim, niko do sada nije ocijenio koja su to pitanja

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 73

koja moraju, odnosno koja mogu biti privatizirana i liberalizirana. Dakle, za to nema licence, a licence koje su potrebne prema zakonu uglavnom su podložne korupciji. I inače, ako mene pitate, postoji cijela lista stvari koje je međunarodna zajednica mogla uraditi i međunarodna zajednica ih može raditi u saradnji sa domaćim organima, ali je potrebna i sasvim jasna definicija onoga što se može uraditi u narednih nekoliko godina, dvije-tri godine. Ja mislim da je to ono što je hitno.

KOMENTAR

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Radeći domaći zadatak za ovu konferenciju, namislio sam da svoje izlaganje dizajniram i formulišem krajnje provokativno, ostajući u obavezi da za sve izrečeno ponudim argumente. No, prije toga moram da kažem da su, kako to obično biva, ljudi kojima sam namijenio svoje 'otrovne strelice' već otišli. Pri tome mislim prvenstveno na gospodu Visokog predstavnika i ambasadora SR Njemačke, jer sam očajnički htio da uz njihovu pomoć pokušam odagnati svoje noćne more. Međutim, događa se da uvijek govorim 'pogrešnim' ljudima. Loši učenici uvijek bježe sa časova, a disciplinirani ostaju i morat će u narednim minutama trpjeti moju torturu.

Dakle, prvo pitanje za govornika koji je trebao da nas uvede u temu glasi: da li se on ikada iskreno upitao zašto je baš on tu gdje jeste i koji je istinski smisao posla koji upravno on radi? Naravno, ja sam mu zahvalan za ono što radi, ali da ne bih izgubio poentu, izgovorit ću jednu poluestradnu doskočicu. Kada me je neko maloprije upitao šta mislim o ulozi međunarodne zajednice u BiH, sjetio sam se jedne, doduše ljubavne, pjesme i njenog refrena: „Teško meni sa tobom, a još teže bez tebe". Smatram da je to prilično dobra dijagnoza naše ambivalentne pozicije kada razgovaramo o ulozi stvarne ili virtualne, precizno ili maglovito definisane 'međunarodne zajednice', o balansiranju, aktualnoj situaciji i eventualnim perspektivama i prognozama. To bi bila moja prva teza.

Druga teza zasnovana je na pažljivom čitanju predloška koji smo dobili i, kao pravnik po svom temeljnom obrazovanju, rekao bih nekoliko rutinskih opservacija, a potom bih se vratio na 'vruće teme'. Gospodin Dauster, koji nas je uveo u temu, korektno je opisao aktuelnu situaciju i pobrojao uspjehe i izostale rezultate u pogledu očekivanja međunarodnih aktera u reformama pravnog sistema i institucija. To su već opća mjesta. Tamo gdje uspjesi

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 74

odista postoje, npr. imamo himnu (doduše bez teksta), imamo grb i zastavu, pasoš, registarske tablice, konvertibilnu marku; imamo uspješnu reformu krivičnog zakonodavstva i ne tako uspješnu reformu krivično-procesnog zakonodavstva, imamo katastrofalno propali pokušaj ustavne reforme, itd., i takva procjena je apsolutno tačna. Dakle, manji broj pitanja (problema) je riješen, nešto veći broj je od početka bio promašen i isti broj je jednostavno izostao. Stoga moje pitanje glasi: da li naš uvaženi uvodničar, pogotovo što dolazi iz germanske pravno-političke tradicije, ima komentar na moju konstataciju da je razgovor o temama o kojima danas treba da se potrudimo inicijalno besmislen? Takvo pitanje, u situaciji u kojoj država nema vrhovni sud a ima sve atribute države, jeste elementarno, i studenti prve godine pravnog fakulteta koji ne znaju odgovoriti na pitanje da li država bez pravnog jedinstva uopće može funkcionisati u punom kapacitetu, nikad ne dođu do druge godine. Ova država - o Bosni i Hercegovini je riječ - ili ovaj mozaik, lijepo rečeno (kamenolom bi bilo tačnije) sa geografskim (a ne s ikakvim državno-pravnim) određenjem u svom oficijelnom nazivu, sa zapanjujućim brojem sastavnih jedinica: entiteti, kantoni, gradovi, općine - ima sve (doduše često nakaradno sklopljene i nefunkcionalne) institucije, ali nema Vrhovni sud. Postoji, dakle Ustavni sud na nivou države, ali - očigledno iz dejtonsko-političkih razloga - nemamo najvišu pravosudnu instancu koja bi morala da obezbijedi pravno jedinstvo. Svi razlozi i uzroci koji su doveli do temeljnog poništavanja normalnog života ljudi u ovoj zemlji nemogućnost otklanjanja doživljavaju na entitetskom nivou. I tu doživljavaju i svoj kraj. Više je nego jasno da se ishodi sudske odluke protiv trajnih i masovnih kršenja temeljnih ljudskih prava i sloboda sudbonosno moraju završiti na entitetskom nivou, a apelacione instance jednostavno nema.

Drugo, tobože stručno pitanje glasi: na koji način učestvovanje međunarodne zajednice u svim oblicima funkcionisanja vlasti (od EUFOR-a, EUPOL-a, međunarodnih sudija, donedavno guvernera Centralne banke, uz ogromna Bonska ovlaštenja OHR-a) u krajnjoj liniji, na načine o kojima smo slušali, ne predstavlja dodatni problem? Vjerovatno se u najboljoj namjeri - u državi koja je i po sastavu stanovništva i po ustavnopravnom uređenju 'unikatna' u lošem smislu riječi, pokušava – slijedim valjda anglosaksonsku poslovicu „Jedan broj odgovara svakome" – implementirati unificirani model, pa živjeli ljudi u Kanadi, Bangladešu, Pakistanu, Irskoj ili Bosni i Hercegovini. Uzmi ili ostavi. Povrh toga, dok smo još u sferi prava: kako to i na koji način, malo iz Haga, malo iz Strasbourga, malo iz Sarajeva (a bogami i Banje Luke) dobivamo sastojke čudne miksture dviju različitih pravnih tradicija i dvaju različitih pravnih sistema, koji jednostavno nisu konzistentni? Ne

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 75

mogu se neprotivrječno miješati anglosaksonska sudska praksa i evropsko-kontinentalni pravni sistem - kojem smo mi i prije komunista, i za vrijeme komunista, a i poslije komunista pripadali - a da ne izazovete turbulencije. Ako bih htio da budem patetičan, rekao bih da je sa stanovišta senzibiliteta javnosti apsolutno problematično uvoditi institucije zaštićenog svjedoka ili sudske nagodbe u slučajevima suđenja za ratne zločine. To jednostavno nije pojmljivo niti prihvatljivo za žrtve, ali i za ostale ljude u BiH, koji očekuju prvenstveno moralnu satisfakciju.

Treće, bitno pitanje iz domena pravne struke, tiče se karaktera našeg Ustava. Kolega Pobrić je u tom pravcu dobro poentirao. Pitam se, međutim, da li je odgovor na to pitanje uopće moguć, i volio bih da nam je uvodničar ponudio elemente odgovora kao kolega, a ne kao neko ko na rješavanje ustavnih nedoumica može uticati. Ustav Bosne i Hercegovine, a to je Aneks IV, jeste sastavni dio jednog mirovnog sporazuma. Koliko ja poznajem ustavnu historiju, nikada se nije desila takva stvar - da je ustav jedne zemlje dio mirovne nagodbe. Mirovni sporazumi se ne mogu mijenjati. Naš Ustav, koji je sastavni dio Dejtonskog mirovnog sporazuma, predviđa mogućnost amandmanske promjene. Na koji način se može promijeniti nešto što je dio nečega što se ne može promijeniti? Ili, da li je donosilac odluka - koji je bio ovlašten, a prije svega moćan da u Daytonu ili Parizu, svejedno, verifikuje tragičnu situaciju u kojoj se nakon toga nalazimo - makar naknadno pomisli i na vlastitu odgovornost. Ili će se desiti da kao u onom vicu u veš mašini koja beskrajno vrti centrifugiranje jer nema niko da pritisne dugme za prestanak operacije: konstatovat ćemo da su nas zaboravili i počeli da misle o Afganistanu, Iraku, Iranu ili čemu drugom. Nepotrebno je, vjerovatno, podsjećati na opća mjesta. Ipak, sasvim je jasno da naš Ustav spada u kategoriju oktroisanih ustava. Potpisan je u vojnoj bazi na teritoriji druge države. Potpisan je i garantovan od strane tri supotpisnika od kojih je jedan umro u Hagu, a drugu dvojicu je, doduše ne iz istih razloga, smrt spriječila da se tamo nađu. Pri tome su dvojica, mislim na predsjednika Miloševića i predsjednika Tuđmana, bili šefovi država koje su, ponovo ne u istom obimu, izvršile agresiju na državu (Republiku BiH), a garanti su dokumenta koji sadrži budući (sada aktuelni) Ustav te iste države. To ni u pravnom, ni u moralnom, ni u metafizičkom, ako hoćete ni u Božanskom zakonu, nije održiva konstrukcija. Ako je to tako, i ako je taj, ne baš blistavi lik (Richard Holbrooke) upotrijebio ciničnu konstrukciju „luđačka košulja navučena Bosni i Hercegovini", onda su sva naknadna i izvedena pitanja prilično besmislena. Prema tome, ta ista 'međunarodna zajednica', kada razgovaramo o njenoj ulozi u trasiranju pravog puta za BiH (ako pri tome i približno znamo šta

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 76

mantra 'međunarodna zajednica' uopšte znači), ne može biti apsolvirana zbog nametanja okvira u koje mi, kao muha bez glave, treba da kao *stakeholdersi* definitivno riješimo probleme od kojih doslovno zavise naši životi.

Četvrto pitanje, na istom tragu (i veoma mi je žao što će zbog preranog odlaska g. Schwarz-Schillinga i g. Schmunka ostati neodgovoreno), tiče se jedne temeljno uvrjedljive pedagoške poduke koju smo jutros čuli. Da parafraziram: „Mi smo ovdje zato što nas trebate, a trebate nas zato što ste nesposobni". Apsolutno nemam nijednu dilemu u vezi s političkim i moralnim kompetencijama aktuelnih bh. elita, ali smatram da je to jeftin argument kojim se opravdava vječno prisustvo i legitimiziraju vladarske ovlasti tzv. međunarodne zajednice. S druge strane, cijela priča koja se temelji na terminima *ownership* ili *stakehoders*, „stvar je vaša", „izvolite se dogovoriti, a mi ćemo prihvatiti" - jeste nepoštena jer zaboravlja na moć koju te institucije (prvenstveno mislim na tzv. Bonske ovlasti) imaju, te je takav način promišljanja i djelovanja nagovještaj smrtne presude Bosni i Hercegovini. Ako konstatujemo da se domaći političari ni o čemu ne mogu dogovoriti (aktuelno o ustavnim reformama, reformi policije, visokom obrazovanju, reformi javne uprave), onda morate reći ko je u tom političkom cirkusu odgovoran za stanje u kojem se ni o čemu ne mogu dogovoriti. Ne ekskulpiram nikoga, ali ne možete stalno prebacivati odgovornost na nekompetentne domaće političare. Ilustrujući primjere odgovornosti međunarodne zajednice, upotrijebit ću težak argument iz izjave Jeffreyja Nicea za *New York Times* u povodu presude Međunarodnog suda pravde, koja je esnafski *masterpiece*, a u moralnom aspektu skandal. Konstatacija da se radi o „opštinskom genocidu koji je trajao tri dana" duboko je frustrirala ljude u ovoj zemlji. Žao mi je što ću taj podatak, vjerovatno nepristojno, iskoristiti za obrazlaganje negativne uloge međunarodne zajednice u Bosni i Hercegovini.

Vrhunac cinizma jeste da se i za tako bijedno definisan genocid ne može utvrditi počinilac. Jedan od transparenata na nedavnom protestnom skupu u Sarajevu imao je natpis „Marsovci su počinili genocid!". Međunarodna zajednica nije učinila ništa da spriječi ono što se makar u ta tri dana dogodilo u Srebrenici, koja je bila zaštićena zona i pod kontrolom UNPROFOR-a. Naravno da genocid traje od 1992. godine. Prema normama međunarodnog prava i Povelji Ujedinjenih nacija, koja govori o kolektivnoj bezbjednosti, elementarna interpretacija upućuje na obavezu Savjeta bezbjednosti da spriječi agresiju na suverenu državu, koja je u svojoj konačnici rezultirala genocidom!

Sasvim druge naravi je priča o harmonizovanom pristupu međunarodne zajednice užasu i mukama kroz koje smo prošli. To je jednostavno laž. Neće

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 77

biti bez svakog osnova da se u svim (da upotrijebim neutralan termin) balkanskim ratovima unaprijed znalo da će Njemačka i Austrija podržavati Sloveniju i Hrvatsku. Nije bilo nikakvog razloga da posumnjamo da će Rusija i Grčka podržati Srbiju, a da će Bošnjaci bezuvjetno očekivati pomoć svoje arapske i, šire, muslimanske braće. Ako to sinhrono poslažete, tu nema ni naznake jedinstvenog djelovanja 'međunarodne zajednice'. Na djelu su goli interesi i nepremostive političke, tradicijske i ideološke razlike.

Na samom kraju, jasno je daje presuda Međunarodnog suda pravde, koji je jedan od najznačajnijih institucija Ujedinjenih nacija, najviša sudska instanca na planeti – bez obzira da li je za ishod kriva Karla del Ponte zbog nečinjenja ili sutkinja Hastings zbog činjenja – pokazala da je tzv. međunarodna pravda apsolutno osramoćena u Bosni i Hercegovini. Ako govorimo o sramno 'nježnom' verdiktu po kojem je Srbija odgovorna za nesprječavanje i nekažnjavanje zločina genocida, onda se ciničnim logiciranjem može zaključiti da su za isto djelo odgovorne sve države na svijetu, i Litvanija, Makedonija, Peru i Zimbabve. Naravno da svi pristojni i pošteni ljudi znaju koja je država počinilac genocida u Srebrenici (ako se o genocidu u BiH još ne može govoriti). Međutim, ako je iko istinski odgovoran za genocid, pri čemu domaće učesnike uopće ne amnestiram, i ako prihvatimo i ponuđenu minimalističku definiciju genocida, onda su to Ujedinjene nacije. Tek nakon nedvosmislenog odgovora na ovo pitanje možemo razgovarati o izvedenim problemima. Na tom tragu sam bio pripremio pitanja za naše jutrošnje uvodničare.

Ona se tiču kalkulantskog odnosa prema Bonskim ovlastima, koje su na mnogo načina uporedive s onima koja su pobjedničke sile koristile u postnacističkom razdoblju. Dakle, preuzimamo pune ovlasti, provodimo denacifikaciju, ali zauzvrat preuzimamo punu odgovornost. Onog trenutka kada pokažete i dokažete da ste se oprali od nacističkog ludila, apsolutno smo spremni da vam u svakom pogledu pomognemo i, naravno, prepustimo upravljanje u punom kapacitetu. Nipošto prije, ali ni kasnije. Ova toplo-hladna varijanta koja je egzercirana u Bosni i Hercegovini očigledno ne vodi nigdje.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 78

Nedim Ademović, Ustavni sud BiH

Šta je to 'međunarodna zajednica' u BiH?

Kao što je to uvodničar pravilno primijetio, pojam 'međunarodna zajednica' obuhvaća izuzetno širok spektar aktera na terenu civilne implementacije Općeg okvirnog sporazuma za mir u BiH (DMS), koji se kreće od raznih supranacionalnih i međunarodnih institucija, pa sve do diplomatskih predstavništava. Danas, nakon 12 godina djelovanja tzv. međunarodne zajednice, možemo zaključiti da ovako ambiciozno i široko postavljen pojam 'međunarodne zajednice' komplikuje situaciju na terenu pri konkretnoj implementaciji pojedinih civilnih aspekata DMS. Prema tome, ovaj *institutional overkill*[1] djelimično je prepreka za djelotvoran rad na stvaranju funkcionalne BiH. Tipičan primjer komplikovanja situacije jeste segment zaštite ljudskih prava i temeljnih sloboda. Umjesto da se predvide dvije-tri jake i djelotvorne institucije, ovim pitanjem bavila se cijela 'međunarodna zajednica', od međunarodnih institucija što su kao OHR, UNHCR, OSCE, preko domaćih tijela, sudova, upravnih organa u 4-5 instanci, do eminentnih nevladinih organizacija. Običan čovjek, kao adresant i centralna figura ovog sistema, jednostavno nije znao kako da zaštiti svoja prava i slobode, zbog čega je često ostao nezaštićen, mada su kršenja ljudskih prava i sloboda bila i ostala među najvećim problemima postdejtonske BiH. Upravo se zbog toga OHR – *quasi doyen* 'međunarodne zajednice', kako ga je nazvao uvaženi sudija g. Dauster - morao bolje pripremiti za svoju ulogu koordinatora, pazeći da se pojedini segmenti DMS, s jedne strane, djelotvorno štite, a s druge strane, da se akteri na terenu ne preklapaju u svojim nadležnostima.[2]

Pravno definisanje statusa i položaja 'međunarodne zajednice' u Bosni i Hercegovini.

Što se tiče samog statusa, položaja i odgovornosti 'međunarodne zajednice', uvodničar je pravilno primijetio da 'međunarodna zajednica' nije ni međunarodnopravno niti ustavnopravno sama preuzela odgovornost za BiH. Uvodničar, nadalje, smatra da je BiH potpisivanjem DMS dala svoju saglasnost za 'zajedničko djelovanje' države i 'međunarodne zajednice' na

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1 Marko, Joseph, *Friedenssicherung im 21. Jahrhundert: Bosnien und Herzegowina als europäische Herausforderung (Ginther/Benedek/Isak/Kicker, (izd)*, Völkerrecht und Europarecht. 25 Österreichischer Völkerrechtstag, Beč, 2001, str. 55-87 (77)).

2 Dovoljno je analizirati zbunjenost građana kada je riječ o paralelnoj zaštiti ljudskih prava i temeljnih sloboda u konačnoj instanci pred Ustavnim sudom BiH prema Ustavu BiH i Domom za ljudska prava prema Aneksu 6 DMS.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 79

razvoju BiH. To je tačno. Međutim, mislim da je ovdje počinjena velika greška, jer je učinjen određen presedan u međunarodnom pravu, koji ni danas nema svoju jasnu definiciju. Nedefinisano stanje, s jedne strane, oslobađa 'međunarodnu zajednicu' svake odgovornosti za rezultate njenog rada, a s druge strane, ruši njen dignitet u očima nacionalnih partnera. Ustavni sud BiH definisao je odnos 'međunarodne zajednice' spram Bosne i Hercegovine kao tzv. funkcionalni dualizam.[3] Znači, BiH je potpisivanjem DMS priznala da nije u stanju riješiti sama određene probleme, te je dio svojih suverenih ovlasti dobrovoljno prepustila međunarodnim akterima, što isključuje postojanje bilo kakvog protektorata. Međutim, Ustavni sud je naglasio da je, uprkos tome, BiH bila i ostala nezavisna, suverena država, te da se 'međunarodna zajednica', kada preuzima određene ovlasti, morala ponašati u skladu s Ustavom BiH, tj. njenim ustavnopravnim principima demokratije, pravne države, zaštite ljudskih prava itd. Desetine primjera govori o tome da 'međunarodna zajednica' nije djelovala na ustavan način (razvlašćivanje domaćih političara bez prava žalbe i pravičnog postupka,[4] decertifikacija policajaca,[5] otmice građana koji su djelovali antidejtonski,[6] regulisanje štete između građana i međunarodnih institucija itd.). Konačno, mislim da 'međunarodna zajednica', bez obzira što to nije ni u kakvoj vrsti nadležnosti BiH, nije uspostavila interni sistem kontrole i odgovornosti. Zbog svega toga, moram priznati da edukativna uloga 'međunarodne zajednice' nije ispunjena jer je često djelovala autokratski, arogantno, silom, a ne pravno i ustavno. Edukativna uloga trebalo je da bude presudna kada je riječ o uspostavljanju savremenih evropskih standarda, koje bi BiH morala dostići bez obzira na posljedice rata. Samim tim, ovo bi trebala biti daljnja kritika OHR-u s obzirom da je ovaj ured bio i jeste glavni tumač cjelokupnog DMS.

Osnovni zadaci 'međunarodne zajednice' u BiH.

Zadaci 'međunarodne zajednice' u BiH su izuzetno teški. O tome nema sumnje. S jedne strane, 'međunarodna zajednica' u BiH je morala otkloniti posljedice rata, a s druge strane, transformisati društvo prema savremenim evropskim standardima - što bi BiH morala uraditi i da nije bilo rata. Pri tome,

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3 Vidi u tom smislu predmet broj U 9/00, od 29. septembra 2000. godine, poznatiji kao Zakon o državnoj službi. Sve odluke Ustavnog suda dostupne su na Internet stranici: www.ustavnisud.ba.

4 Vidi odluku Ustavnog suda BiH, AP 953/05, od 8. jula 2006. godine.

5 Vidi Mišljenje Evropske komisije za demokraciju kroz pravo (Venecijanska komisija) o ustavnoj situaciji u Bosni i Hercegovini i ovlaštenjima Visokog predstavnika, usvojenom na 62. plenarnoj sjednici (Venecija, 11-12. mart 2005. godine).

6 Vidi odluku Ustavnog suda BiH, AP 696/04, od 23. septembra 2005. godine.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 80

domaći partner je bio i ostao politički, idejno, religijski izuzetno razjedinjen, što je dodatno otežavalo i dan-danas otežava situaciju na terenu. Zbog kompleksnosti zadatka, 'međunarodna zajednica' u BiH nije se mogla baviti svim i svačim, već je svoje djelovanje ograničila na oblasti definisane pojedinim aspektima DMS. To je ujedno bio i pravni okvir djelovanja 'međunarodne zajednice'. Što se tiče same mjere do koje je trebalo reformisati državu u oblastima kojima se bavi DMS, ta mjera se mogla definisati kao 'samoodrživost'. Znači, dostići stepen kvaliteta koji može samostalno nastaviti reformu u jednoj mirnoj i demokratičnoj atmosferi.

Rezultati u postupku ostvarivanja ciljeva iz DMS.

Kada je riječ o vojnim ciljevima, oni - što je uvodničar naglasio, a što ja također podržavam - imaju sporednu, tj. supsidijarnu ulogu za konačni cilj DMS, mada presudnu za početak rada na DMS. Bez mira nema civilne implementacije DMS. Tu je 'međunarodna zajednica', po vlastitom sudu, odigrala dobru ulogu: postepeno je stavila vojne snage pod kontrolu i uredila ovu oblast, pogotovo otkako je država preuzela nadležnost za oružane snage.

Što se tiče civilnih aspekata, tu su rezultati veoma različiti. Ipak, bez obzira na segment DMS, 'međunarodna zajednica' je morala imati u vidu da bez kvalitetnih zakona, institucionalnog okvira, djelotvornih procedura i materijalnopravnih standarda nema reforme. Detaljnom analizom g. Dauster je secirao segment po segment, te ukazao na određene uspjehe, tj. neuspjehe ili djelimična ostvarenja 'međunarodne zajednice'. Tako možemo zaključiti da su pitanja međuentitetske linije ili arbitraže u vezi s Distriktom Brčko uspješno okončana, kao što uvodničar pozitivno ocjenjuje i izborni sistem u BiH prema Aneksu 3 DMS, gdje je upravo školskim primjerom izvršena reforma i predata u nadležnost Bosni i Hercegovini.

Izuzetak, na koji je uvodničar ukazao u vezi s izbornim sistemom, jesu neriješena pitanja ravnopravnosti konstitutivnih naroda i kategorije tzv. ostalih (pogotovo kada se radi o jednakopravosti u učešću u vlasti) i odnosa države kao administrativno-teritorijalne jedinice prema svojim nižim administrativno-teritorijalnim jedinicama, tj. entitetima i Distriktu Brčko. Međutim, kao što je pravilno ukazano u uvodnom izlaganju, to je nešto što dobrim dijelom proizlazi iz samih ustavnih rješenja, tj. Aneksa 4 DMS. Ovo jasno govori da su pojedini aneksi DMS usko povezani. Ipak, da li se 'međunarodna zajednica' može amnestirati od ovih pitanja i njihovih nerješavanja. Mislim da ne može. Upravo ona treba da preuzme sve korake koji su neophodni kako bi se ovo pitanje riješilo, uključujući ustavnu reformu. Ako BiH to ne može sama učiniti, 'međunarodna zajednica' mora naći i nametnuti rješenja

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 81

za pitanja „individualnog *versus* kolektivnog", odnosa kolektiviteta između sebe i organizacije države u smislu odnosa centralne vlasti prema njenim jedinicama. Bonske ovlasti treba da budu korištene kad god postoji problem, ako ga domaće vlasti u razumnom roku ne riješe. Pri tome, 'međunarodna zajednica' mora da djeluje na edukativan, demokratski način, u skladu s principom pravne države. To je ispravno tumačenje odnosa između domaćih vlasti i 'međunarodne zajednice', koji je Ustavni sud BiH definisao kao 'fukcionalni dualizam'. Da je ovo tačno mogu pokazati brojni primjeri. Da li danas samostalno funkcioniše sistem indirektnog oporezivanja? Da li danas samostalno funkcioniše sistem državnog sudstva ili državne vojske? Odgovor je potvrdan. A ko je riješio ova pitanja? Naravno, 'međunarodna zajednica'. U vezi s tim interesantno je spomenuti da bi vrlo brzo nakon intervencije 'međunarodne zajednice' u navedenim oblastima, kritike - uglavnom iz Republike Srpske - splasnule, da bi se na kraju novo stanje prihvatilo kao najprirodnije i kao neophodan dio razvitka BiH. A sada postavljam psihološko pitanje: zašto su negativne reakcije zbog nametanja rješenja od strane 'međunarodne zajednice' vrlo brzo nestajale? Odgovor je logičan: zato što bi se ovim rješenjima uspostavljalo prirodno stanje u jednoj zemlji!

Prema tome, politikom pasivnog odnosa 'međunarodne zajednice' i nekorištenja Bonskih ovlasti zadnjih godina, tj. politikom prebacivanja odgovornosti na domaće vlasti, mislim da je 'međunarodna zajednica' nanijela više zla nego što bi bilo negativnih reakcija da je sama nametnula ispravna rješenja. Da je 'međunarodna zajednica' riješila sva ova pitanja još prije nekoliko godina koristeći se svim ovlastima koje su joj date, danas bismo bili znatno razvijeniji, tj. danas bismo bili znatno bliži Evropskoj uniji, a Evropska unija nama.

Što se tiče Aneksa 7 kao izuzetno bitne pravne osnove za eliminaciju ratnih rezultata, mislim da je 'međunarodna zajednica' napravila katastrofalnu grešku. Aneks 7 podrazumijeva ultimativno vraćanje imovine i imovinsko-pravnih odnosa na stanje iz 1. aprila 1992. godine, a da se pri tome ultimativno ne restituišu radnopravni odnosi u skladu sa stanjem iz 1992. godine u onoj mjeri u kojoj je to moguće. 'Međunarodna zajednica' je dozvolila da Republika Srpska predvidi 'legalizaciju' diskriminatorski otpuštenih radnika nesrpske nacionalnosti, kao što je dozvolila i da Federacija BiH slično napravi sa tzv. institutom 'na čekanju'.[7] To je znatno doprinijelo 'cementiranju' etničkog čišćenja u BiH, tj. *de facto* neuspjehu implementacije Aneksa 7. Nemogućnost ponovnog zaposlenja u prijeratnom mjestu stanovanja jednostavno je odvratilo ljude od stvarnog povratka.

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7 Član 152. *Zakona o radu RS*, član 143. *Zakona o radu FBIH.*

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 82

Na kraju bih spomenuo privredni sistem Bosne i Hercegovine. Uvodničar je jasno naglasio da je opća ocjena ovog izuzetno važnog segmenta negativna, s izuzetkom monetarnog, carinskog i jednog dijela poreskog sistema. Prije svega, Aneks 9 DMS, koji reguliše javne korporacije u BiH, ostao je mrtvo slovo na papiru. Po njegovom mišljenju, osnovne javne korporacije kao što su željeznice, avionski saobraćaj, energetski i PTT sistem itd., morali su biti državni interes, te ingerencija BiH u smislu Aneksa 9. U vezi s ovim pitanjem 'međunarodna zajednica' je ostala potpuno pasivna i dozvolila da se entiteti ponašaju kao države. Nadalje, BiH i dan-danas nema reformisan privredni sistem i formirano 'jedinstveno tržište' na principu tržišne ekonomije. 'Međunarodna zajednica' je zanemarila ovaj segment, mada je, za razliku od nekih drugih problema u državi, imala jasnu pravnu osnovu u članu I/4. Ustava BiH. Vitalni privredni resursi BiH - turizam, voda, šume i rude, te energetski sektor - na znatno su nižem nivou nego što su bili prije rata. Ni 'međunarodna zajednica', kao ni BiH, nisu razvili osnovu za zaštitu, a kamoli dugoročni razvoj ovog dijela privrednog života. Naime, kao što je g. Dauster naglasio, većina zakona za regulisanje privrednog života, s jedne strane, nije usklađena s evropskim standardima, a s druge strane, nije kodificirana na državnom nivou. Ne mogu vjerovati da 'međunarodna zajednica', u posljednjih dvanaest godina, nije našla za shodno da objasni domaćim vlastima kako je nametanje državnih zakona o privrednim društvima, obligaciono-pravnim odnosima, stečaju i likvidaciji, bankovnom sektoru itd. neophodno kako bi BiH funkcionisala na principima 'vladavine prava' i 'jedinstvenog tržišta' u smislu čl. I/2. i I/4. Ustava BiH. Pasivnost domaćih vlasti mogu da razumijem, ali ne i da opravdam, ali pasivnost 'međunarodne zajednice' ne mogu ni da razumijem ni da opravdam.

In conclusio, 'međunarodna zajednica' mora i dalje koristiti svoje Bonske ovlasti u svim oblastima koje su, u najmanju ruku, obuhvaćene DMS. Na to je obavezuje sam DMS i dogovor sa BiH da joj pomogne u stvaranju funkcionalne države. Kada to radi, međutim, 'međunarodna zajednica' mora djelovati demokratski, u skladu s Ustavnom BiH, a ako Ustav BiH predstavlja prepreku za daljnji razvoj, ona ga mora mijenjati ukoliko domaće vlasti propuste da to urade. To je imperativ razvoja. Pri tome, edukacija bh. građana kako voditi državu mora biti paralelan odnos. Prema tome, 'međunarodna zajednica' može napustiti BiH onog momenta kada uvidi da je stvorena kritična masa ljudi koji mogu nastaviti voditi državu u pozitivnom pravcu. BiH je još daleko od toga i BiH treba 'međunarodnu zajednicu', ali ne kao pasivnog posmatrača i teoretskog tumača, već kao aktivnog sudionika u procesu reformi.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 83

DISKUSIJA

Nurija Omerbašić, direktor Instituta za mir i suživot civilizacija

Dame i gospodo, imam veliko zadovoljstvo i čast da vas lično pozdravim u ime Fondacije Institut za mir i suživot civilizacija,[1] koji je osnovan u januaru ove godine. Povod za osnivanje Instituta dao je gospodin Clinton, bivši predsjednik Sjedinjenih Američkih Država, u jednoj izjavi kada je rekao da je polarizacija među civilizacijama došla do tog stepena da zaista prijeti opasnost od sukoba civilizacija i on smatra da bi Bosna, takva kakva jeste, vjekovima multietnička, trebalo da odigra jednu ulogu, jednu sponu na toj relaciji, da nešto uradi i zbliži narode.

U vezi sa Aneksom IV i VII koji su već spomenuti, želim postaviti pitanje odgovornosti međunarodne zajednice: Zašto ne balansira provodivost i jednog i drugog aneksa? Oni su po svom sadržaju, kao sastavni dio Mirovnog ugovora, iste vrijednosti, istog sadržaja. Međutim, manji entitet se samo drži za pravo da postoji na 49 posto teritorije i forsira samo to svoje pravo. Ali, bježi od obaveza koje su date u Aneksu VII. Tu međunarodna zajednica ne može izbjeći svoju odgovornost. Drugo što bih rekao tiče se prebacivanja odgovornosti međunarodne zajednice sa izgovorom: „Eto, vi se dogovorite". Meni je to neshvatljivo, jer uzrok svih problema u ovome cijelom haosu jeste Dejtonski ustav, u kojem je porođeno, projektovano pravo veta manjeg dijela, znači pravo veta manjeg entiteta nad cjelinom. I u takvoj situaciji nema govora o tome da se 'dvojica' ikada mogu dogovoriti. Ako jedan ima pravo veta, kako će se ovaj drugi dogovoriti, jer ispada da se može dogovoriti samo ono što ne dira u ratom stečene pozicije ili da se uzme još više? Nisu to strane za dogovor. U tom slučaju, međunarodna zajednica treba da posegne za onim svojim pravima koje štite prava građana a koja su itekako narušena prema svim usvojenim međunarodnim standardima. Kako izaći iz ovoga problema? Pitanje je zapravo kako promijeniti Dejtonski ustav u onom dijelu koji je uspostavio veto. Upornim insistiranjem na dogovor žrtve i zločinca, sa datim pravom veta zločincu, jeste poraz međunarodne zajednice, poraz dobra i pobjeda zla. Međunarodna zajednica mora naći načina da to riješi. Postavio bih pitanje gospodinu Manfredu Dausteru: kako eliminisati Dejtonski ugovor? Kako ga promijeniti? Smatram da uporište treba tražiti u internacionalnom pravu, internacionalnom ugovornom pravu i ustavnom pravu Bosne i Hercegovine.

Zahvaljujem što sam dobio priliku za diskusiju.

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[1] Više informacija o Institutu možete naći na web adresi www.ipacc.ba

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 84

Mirsad Ćeman, Forum parlamentaraca 1991-1996.

Zahvaljujem se i pozdravljam cijenjeni skup. Potpisujem izlaganja koja sam čuo, i u uvodnim obraćanjima i u komentarima da državi Bosni i Hercegovini - mislim, dakle na državni nivo - treba dati veće nadležnosti, posebno u nekim oblastima koje su spominjane. Bio sam svojevremeno, i ovo je kratki osvrt na prethodnu sesiju, u Ženevi 1993. godine, kada se raspravljalo o konceptu Bosne i Hercegovine. Svjedokom sam da su zapravo oni koji su predstavljali međunarodnu zajednicu tada navlačili luđačku košulju Bosni i Hercegovini, jer u poznatom Stoltenbergovom planu - kao i onima prije tog skupa, a i kasnijim - zapravo se razmišljalo isključivo na principu nacionalnog koncepta. Moj komentar poslije toga je bio da, ukoliko ono što nazivamo međunarodnom zajednicom uopće želi Bosnu i Hercegovinu, onda je ne želi ni kao državu niti kao društvo, prema onoj metafori o tigrovoj koži, više je kao koža krave simentalke, a znamo šta to znači: s velikim flekama koje, evo, sada prepoznajemo kao ovaj ili onaj entitet.

Apsolutno sam obradovan glasom stručne javnosti, u koju spada profesor Grebo, i zalaganjem za Vrhovni sud Bosne i Hercegovine, jer jasno je da bez vrhovnog suda na nivou države Bosne i Hercegovine - a za to ne može biti nadomjestak Sud Bosne i Hercegovine s obzirom na njegove nadležnosti - ni zaštita ljudskih prava u Bosni i Hercegovini neće moći biti garantovana na odgovarajući način. Čak ni Ustavni sud, koji ima određene nadležnosti, zapravo ne može biti kompenzacija za instituciju Vrhovnog suda.

Manfred Dauster

Koncentrirat ću se na pravna pitanja. Slažem se da Bosni i Hercegovini treba Vrhovni sud; no, u datoj ustavnoj situaciji mislim da je nemoguće trenutno uspostaviti Vrhovni sud i oduzeti tu vrstu nadležnosti entitetima, jer kako danas izgleda nadležnost za sudove i tužilaštva, to je trenutno smješteno na entitetskom nivou. Naravno, to treba promijeniti. Ali, dozvolite ponovo da se vratim na ustavnu reformu. Sjećam se Venecijanske komisije, sjećam se kada je trebao biti uspostavljen Sud Bosne i Hercegovine kao jedan upravni sud i sjećam se da su govorili o pravnom okviru Ustava i rekli da je nemoguće objediniti tu dotadašnju podjelu nadležnosti. Ja sam pomalo skeptičan. Ako pogledam rasprave koje se vode u pogledu reforme policije, očekujem i nekako predviđam da će biti ista vrsta rasprave i o Vrhovnom sudu ukoliko se krene rasprava voditi o tome. Ponovo će entiteti izgubiti ovo jedno veoma bitno, bitno ovlaštenje, a isto se može reći i za policiju.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 85

Dakle, isto tako sam skeptičan kada je u pitanju ekonomska situacija, jer jednostavno mislim da stalno jedan entitet neće željeti prebaciti nadležnosti na državni nivo.

STUDIJA

Manfred Dauster*

*Bilans djelovanja međunarodne zajednice u Bosni i Hercegovini – od decembra 1995. do marta 2007. godine**

Pravni aspekti

I. Uvod: Na samom početku prepreke koje imaju svoj osnov – previše neizvjesnih zadataka, previše učesnika kao početna neizvjesnost

'Međunarodna zajednica' je, na osnovu Mirovnog sporazuma iz Daytona, već skoro 12 godina prisutna i aktivna u Bosni i Hercegovini. Ima naznaka da postaje umorna i da bi htjela smanjiti svoj angažman[1]. „*Transition* (uz državnu odgovornost) *remains the goal*", glasio je kominike što ga je 26. i 27. februara 2007. godine[2] izdalo Vijeće za implementaciju mira (*Peace Implementation Council* – PIC). Međunarodna zajednica (putem PIC) od 26. i 27. februara 2007. godine polazi od stava da će ubuduće Bosna i Hercegovina svoju sudbinu uzeti u vlastite ruke. S aspekta odbrambene politike, Bosna i Hercegovina je početkom zime 2006. godine primljena u NATO – Partnerstvo za mir. Razgovori s Evropskom unijom o približavanju

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* Dr. jur. Manfred Dauster, sudija na Sudu Bosne i Hercegovine i predsjedavajući sudija na Pokrajinskom sudu u Minhenu, *Landgericht München I.*

1 Tako su glasile javne izjave sadašnjeg Visokog predstavnika neposredno poslije preuzimanja dužnosti 31. januara 2006. godine u vezi s primjenom tzv. Bonskih ovlasti (*Bonn Powers*) i o zatvaranju OHR-a, uključujući njegovu zamjenu uredom Specijalnog predstavnika EU. 30. izvještaj Visokog predstavnika Generalnom sekretaru UN (*Bericht des Hohen Vertreters an den UN-Generalsekretär*) od 15. jula 2006. godine, S. 1). - vrlo kritički, *International Crisis Croup, Europe Report* No. 180 od 15. februara 2007. godine, S. 1; kritički i *Süddeutsche Zeitung* No. 46 od 24/./25. februara 2007., S. 7; osim toga, *Süddeutsche Zeitung* No. 50, od 01. marta 2007. godine, S. 8.

2 Može se pogledati pod www.ohr.int

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 86

EU su u toku. Ipak, upitno je da li je sve ovo dovoljno da zemlja ne skrene 's pravog puta', a postavlja se i pitanje kako međunarodna zajednica može ovome doprinijeti a da ne smanji svoj angažman. Podvlačenje bilansa dosadašnjeg djelovanja međunarodne zajednice možda može pomoći u procjeni šta se u budućnosti od nje može očekivati. Može se preispitati pozadina naivnog očekivanja da će Bosna i Hercegovina poslije tako dugotrajnog praćenja ostati na 'pravom putu', i može izazvati sumnju da takva očekivanja možda ipak stoje na klimavim nogama. Odlazak međunarodne zajednice će se desiti prije ili kasnije, tako da se podvlačenje bilansa poslije više od jedne decenije u svakom slučaju čini legitimnim. Što se tiče 'pravog puta', svaka pomisao o povlačenju neizostavno donosi i to da će Bosna i Hercegovina u budućnosti imati mnogo veću ulogu u odlučivanju koji je to 'put' i koji je 'pravi'.

Postavimo li sebi zadatak da podvučemo bilans rada međunarodne zajednice u Bosni i Hercegovini, u prvom se redu postavlja pitanje kome se podvlači bilans – ko je, ustvari, ta 'međunarodna zajednica' u Bosni i Hercegovini?[3]

Rad Međunarodnog tribunala za bivšu Jugoslaviju (ICTY) u ovom istraživanju se ne razmatra. Nadležnost ovog suda nije ograničena na Bosnu i Hercegovinu, nego on treba da se bavi ratnim zločinima počinjenim na teritoriji bivše Jugoslavije, čak i ako veći dio sudskih postupaka ima za predmet grozote počinjene u Bosni i Hercegovini u periodu od 1992. do 1995. godine. No, to ne treba umanjiti značaj rada ICTY na gonjenju zločina, osobito za Bosnu i Hercegovinu. Sudsko razmatranje ratnih zločina je odlučujuće za samopoimanje zemlje i za njenu historijsku percepciju, a time je i sastavni dio poimanja države i državnosti zemlje. Skoro da se pomirenje između različitih naroda ove zemlje ne može ni zamisliti bez ovog formalnog sudskog razmatranja i obrade pred ICTY (sada već u saradnji i uz podjelu poslova sa Sudom Bosne i Hercegovine). Neće biti mnogo riječi ni o odluci Međunarodnog tribunala Ujedinjenih nacija (ICJ) koji je, presudom donesenom 26. februara 2007. godine, odlučio ishod pravnog spora između Bosne i Hercegovine i Srbije, a koji se zasnivao na povredi Konvencije o geno-

[3] Tako je Vijeće za implementaciju mira (PIC) sastavljeno od 55 zemalja i drugih međunarodnih organizacija, te promjenjivog broja promatrača. Detaljnije se njegov sastav može pogledati na web stranici OHR-a = www.ohr.int. Osim njega, postoji i Board of Principals, u kojem su permanentno članovi OHR-a, EUFOR-a, NATO HQ Sarajevo, OSCE-a, UNHCR-a, EUPM-a, Evropske Komisije, te Svjetske banke, MMF-a i UNDP-a. Historijat i zadaci Board of Principals se također mogu pogledati na navedenoj Web stranici OHR-a.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 87

cidu Ujedinjenih nacija donesenoj 9. decembra 1948. godine. ICJ je jedan od glavnih organa Ujedinjenih nacija[4]*, bez posebnog mandata koji bi se ograničavao na Bosnu i Hercegovinu.*[5]

Informaciju o tome u prvom redu daje Dejtonski mirovni sporazum i integrisani prilozi dodati Sporazumu. U njima se mogu vidjeti oblasti iz domena politike i zadaci koji su dati u ruke određenim međunarodnim organizacijama – pored nacionalne odgovornosti koja je ostala očuvana, one, u najmanju ruku, vode glavnu riječ. Nećemo ih ovdje sve nabrajati. Dio toga je aspekt vojne sigurnosti koji je – ma koliko bio i ostao važan za obezbjeđenje mira – samo podrška kada je riječ o civilnim aspektima Mirovnog sporazuma. Vojne zadatke koje je obavljao IFOR preko SFOR-a, do onih koje obavlja današnji EUFOR[6] stoga nećemo detaljnije obrađivati. Kako je bila i ostala riječ o civilnim aspektima ponovnog uspostavljanja i očuvanja mirnih okolnosti u Bosni i Hercegovini, u prvom redu treba navesti Visokog predstavnika, koji je prema Aneksu 10 Mirovnog sporazuma trebalo da ima, i dan-danas ima, odgovornost za ostvarenje ovih civilnih aspekata.[7] Oni nisu pojedinačno utvrđeni i shvataju se - i shvatani su - veoma široko. Obuhvataju ekonomsku i privrednu rekonstrukciju, omogućavanje povratka iz-

4 Član 7. stav 1. Povelje Ujedinjenih nacija; član 1. statuta Međunarodnog tribunala.

5 Presuda koju je 26. februara 2007. godine donio ICJ u javnosti u Bosni i Hercegovini izazvala je razočarenje jer je negirala neposrednu odgovornost države Srbije (ranije Savezna Republika Jugoslavija) za zločine počinjene tokom rata 1992-1995. godine, a time je odbijena i obaveza Beograda da plati ratne reparacije. Razočarenje se zasniva na prevelikim očekivanjima koja je javnost Bosne i Hercegovine gajila prema onome što može učiniti ICJ. Sama presuda je značajna za pravnu historiju jer je ICJ po prvi put ustanovio načelnu odgovornost države, a ne samo individualnu odgovornost (presuda: Urteil, S. 58 i dalje = članovi 155. i dalje), a međunarodnoj zajednici je ova presuda dala obavezujuću definiciju genocida. Osim toga, prvi put se presuda bavi zahtjevima koje treba ispuniti da bi se dokazala odgovornost države (Urteil, S. 75 i dalje = članovi 202. do 230.) i daje sasvim jasna pravila priznavanja dokaza (strana 135 i dalje = članovi 377. i dalje). Tako Bosna i Hercegovina nije potpuno izgubila. ICJ je sasvim jasno utvrdio da se u Srebrenici desio genocid i da je Srbija povrijedila svoju obavezu da spriječi ovu i druge grozote u Bosni i Hercegovini iako je Beograd dešavanja prepoznao kao takva i imao mogućnosti i sredstva da to svojim uplitanjem spriječi.

6 27 ministara odbrane Evropske unije su se 1. marta 2007. godine u Wiesbadenu dogovorili da u okviru četverostepenog plana smanje trupe EU, koje trenutno broje 6.500 vojnika. U okviru prvog koraka povući će se 3.500 vojnika. Krajem 2007. godine će ostati ukupno 2.500 stacioniranih vojnika (Süddeutsche Zeitung No 51 od 2. marta 2007. godine, S. 8)

7 Efikasnost Visokog predstavnika u Bosni i Hercegovini i njegovih kompetencija vrijedi podvrgnuti detaljnijoj analizi i mimo ovog eseja, ako ni zbog čega drugog, onda zbog toga što - slijede li se prijedlozi za iznalaženje rješenja koje je dao povjerenik UN za Kosovo - tamošnja 'međunarodna zajednica' treba i na Kosovu da tokom jednog prelaznog perioda uspostavi sličnu instituciju. U tom bi se slučaju greške napravljene u Bosni i Hercegovini mogle izbjeći.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 88

bjeglica u područja iz kojih potiču, dogradnju ustava i uspostavljanje ustavnih institucija. U suštini, nijedna oblast politike nije unaprijed isključena iz razmišljanja. Čak jednostavni predmeti u općinama su u prošlosti izazivali djelovanje Visokog predstavnika, samo ako su se mogli dovesti u vezu s temeljnim pitanjima obezbjeđenja mira. Osim toga, Mirovni sporazum je za Visokog predstavnika predvidio koordinirajuću funkciju, između svih drugih civilnih, međunarodnih organizacija koje su u okviru zadataka što ih postavlja Mirovni sporazum preuzele suodgovornost ili samoodgovornost za određena polja zadataka. Takoreći, trebalo je da se Visoki predstavnik kao doajen međunarodne zajednice pobrine za to da se ne raširi međunarodni politički atomizam, nego da se obezbijedi jedinstven nastup međunarodne zajednice. Uz Visokog predstavnika, OSCE je preuzeo čitav niz zadataka, na primjer u oblasti izgradnje i razvoja ustavnog sistema, pored drugih, kao na primjer Vijeća Evrope, koje je preuzelo oblast zaštite ljudskih prava te demokratizaciju i uspostavljanje demokratskog izbornog sistema u skladu sa zapadnim standardima. UNIPTF/UNMIBH je preuzeo zadatke izgradnje demokratskog aparata kako bi se u zemlji obezbijedila unutrašnja sigurnost, zadatak koji danas nastavlja Evropska policijska misija. Ovim nabrajanje nije završeno i može se nastaviti unedogled. Nisu iscrpno prikazana ni područja zadataka kojih su se međunarodne organizacije htjele i trebale latiti poslije 1995. godine. Programski, one su već poslije potpisivanja Mirovnog sporazuma pokrile cjelokupan civilni život Bosne i Hercegovine. Izričito i s aspekta međunarodnog prava obavezanim članovima međunarodne zajednice, koji su, uz to, bili izvorni pravni nosioci mandata, od samog početka su pristupili drugi, takoreći (samo)izabrani sudionici, čija se uloga ne smije potcijeniti. Tu su bila i ostala diplomatska predstavništva, koja su trajno zastupala i zastupaju posebne interese svoje zemlje u ovoj regiji zapadnog Balkana. Njihov posao svakako dobiva legitimitet dijelom preko njihovog članstva u Vijeću za implementaciju mira (PIC), organu međunarodne zajednice država, vijeću koje treba da savjetuje Visokog predstavnika i da mu pruža podršku. U sjenci diplomatskih predstavništava bile su i ostale organizacije za pružanje pomoći bliske dotičnim vladama, koje su – dijelom značajnim finansijskim sredstvima – uticale na tok stvari u oblastima koje su za njih bile interesantne. Njima se mogu dodati nevladine organizacije iz inostranstva koje su definisale svoje zadatke u izgradnji zemlje i koje su ih pokušavale tokom decenije nakon 1995. godinu provesti, ne uvijek u savršenoj harmoniji s organizacijama koje su obavezne da djeluju u skladu s međunarodnim pravom ili barem politički legitimnim drugim sudionicima.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 89

Muzika koju su zajedno svirali sudionici na koncertu rekonstrukcije u Bosni i Hercegovini nije bila baš uštimana, mada je uspostavom institucije Visokog predstavnika i njemu dodijeljenih koordinirajućih funkcija bilo predviđeno da, u idealnom slučaju, na mjestu dirigenta manifestacije stoji jedan nosilac odgovornosti koji treba i može spriječiti da u koncertnoj dvorani nastane grozna kakofonija.

Međutim, i najbolji dirigent će slabo doprinijeti uspjehu ako muzičari već na probama dobiju samo početak partiture, a potom ih nakon generalne probe uputi da samostalno improvizuju. Ovo je sadržajno bio i ostao ključni problem dodjele zadataka po međunarodnom pravu, zadataka koji su Dejtonskim mirovnim sporazumom dati različitim članicama međunarodne zajednice u Bosni i Hercegovini. Različite tematske oblasti su, prilikom gramatičke analize programskih rečenica sa djelomice veoma nejasnim sadržajem, prikazane opisno, dijelom se preklapaju, a dijelom su u međusobnoj konkurenciji. Kako treba da izgleda demokratska država predmet je koji proučavaju opća teorija države i prava, te politologija, otkad je *Demokratia* prvi put primijenjena u antičkom Polisu. Šta, dakle, znači 'demokratizacija'? Naravno, Bosna i Hercegovina bi trebalo da bude pravna država, kao što to nalaže njen Ustav. No, te pravne države ima isto onoliko koliko i te demokratije. Mirovni sporazum i njegovi prilozi su, stoga, u velikoj mjeri bili otvoreni za razne teme. Možda je to bila greška. S druge strane, nije zadatak jednog mirovnog sporazuma – a pogotovu ne nekog poput Dejtonskog, koji je nastao i morao nastati pod poznatim i izuzetno teškim političkim okolnostima i pod najvećim političkim pritiskom kako bi se prekinulo klanje ljudi – da ponudi nacrt vladinog, do posljednjeg zareza razrađenog programa, na temelju kojeg će se razraditi i pojedinačni stepeni narednih konkretnih mjera na koje će se učesnici obavezati. Općenito gledano, ovo nije moguće, a 1995. godine to pogotovu nije bilo moguće u Bosni i Hercegovini.

Tome treba dodati koncept zajedničkog djelovanja međunarodne zajednice i državnih institucija, što ga je ponudio Dejton. Ni s aspekta međunarodnog prava, niti ustavnopravno, 1995. godine međunarodna zajednica nije preuzela samoodgovornost za Bosnu i Hercegovinu. Da je Bosna i Hercegovina bila pod međunarodnim protektoratom (što su u nekim periodima neki svakako predbacivali nekim visokim predstavnicima i međunarodnoj zajednici), nedostatak jednog sveobuhvatnog programa implementacije, koji bi trajao godinama, međunarodnoj zajednici bi se mogao pripisati kao smrtni grijeh. Međutim, međunarodnopravno i ustavnopravno, koncept Dejtonskog ugovora bio je, i do danas je ostao, zajedničko djelovanje međunarodne zajednice s državnim institucijama koje su ustavnopravno pozvane za

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 90

tako nešto. U ovom osnovnom principu konsenzusa ništa nisu promijenile takozvane *Bonn Powers* (Bonske ovlasti) koje su 1997. godine date Visokom predstavniku. Jer njihova primjena treba da bude izuzetak od konsenzusa. Stoga je princip konsenzusa s obje strane zahtijevao da, na osnovu programskih načela Sporazuma, razviju političke programe neophodne za njihovo provođenje. U narednom periodu do toga nije došlo. Osim toga, Dejton 1995. godine nije samo stavio tačku na trogodišnji rat, nego je istovremeno predstavljao početak jednog mnogo obuhvatnijeg procesa promjena u Bosni i Hercegovini.[8] Zemlju nisu karakterisale samo posljedice rata i propratne štete nastale zbog ratnih djejstava, poput pitanja izbjeglica, iseljavanja uzrokovanog etničkim čišćenjem itd. Zemlja je 1995. godine bila na pragu promjene sistema iz socijalističkog, državnog ekonomskog i društvenog poretka u demokratski, državnopravni i tržišno orijentisan sistem. Ekonomski se situacija dodatno zaoštrila i stoga što je ekonomija Bosne i Hercegovine zbog raspada Jugoslavije izgubila vanjskopolitičko zaleđe, a 1995. je njegovo ponovno uspostavljanje bilo krajnje neizvjesno. Dejton i zadaci Dejtona se 1995. godine s prilično konkretizovanim pojedinačnim programima nisu mogli u dovoljnoj mjeri okrenuti ovim sveobuhvatnim zadacima. Savladati te zadatke bio je naredni zadatak međunarodne zajednice.

Sada treba ustanoviti je li se sa zadacima od 1995. definisanim u oblasti pravnih reformi uspjelo. Vjerojatno je sada jasno koje su se prepreke tu ispriječile.

II. Bitni koraci na reformskom putu Bosne i Hercegovine kojim je pečat dala međunarodna zajednica ili ih je sama donijela

Ne mogu se i ne treba ovdje prikazati sve aktivnosti međunarodne zajednice od 1995. godine. Ovaj 'međubilans' će se ograničiti na značajne i trajne rezultate međunarodnog djelovanja.

Neposredno po sklapanju Mirovnog sporazuma u Daytonu, u jesen 1996. godine, prvi put je trebalo održati demokratske izbore na svim nivoima Bosne i Hercegovine. ***Demokratizacija*** je bila prioritetni zadatak, koji je preuzeo OSCE. U godinama koje su uslijedile nakon 1995. godine stvoren je pravni okvir u koji su postavljene institucije neophodne za održavanje

8 *Ibid. International Crisis Group, Europe Report* No. 180 od 15. februar 2007, S. 2.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 91

demokratskih izbora. OSCE je pratila čitavu seriju zakona, od kojih ćemo ovdje navesti najvažnije:

- (entitetski) zakoni o političkim strankama,[9]
- Opći izborni zakon,[10]
- Zakon o finansiranju političkih stranaka,[11]
- Zakon o sukobu interesa u vladinim institucijama Bosne i Hercegovine.[12]

Sudska provjera izbora u jesen 2000. data je u ruke Državnom sudu Bosne i Hercegovine, koji je uspostavljen odlukom Visokog predstavnika.[13] Pored institucionalizacije provjere izbora, ova odluka je bila značajna za državu Bosnu i Hercegovinu jer je pomoću nje na državnom nivou usađena klica pravosudnih institucija (na druge zadatke koji su kasnije pripojeni Državnom sudu osvrnut ćemo se kasnije).[14] Bosna i Hercegovina danas, zahvaljujući trajnim nastojanjima OSCE-a, raspolaže (u velikoj mjeri) demokratskim izbornim sistemom. Održavanje izbora je od jeseni 2000. godine isključivo u državnoj odgovornosti. Izbori više nisu polučili ozbiljne zamjerke međunarodnih promatrača. Doduše, izborni sistem još uvijek ima ustavnopravne porođajne muke, koje se ne mogu otkloniti bez reforme ustavnog sistema. U nastojanjima da se odgovori svim etničkim komponentama državne nacije Bosne i Hercegovine, Dejtonski ustav je stvorio sistem prepreka i smetnji (kao što je blokada od strane manjine) koje ni danas nikako ne idu uz načelo jednakosti izbora ni uz osnovno pravo na jednak pristup svih građana javnim službama. Ovaj nejednak tretman koji je, između ostalog, kritikovala i Venecijanska komisija Vijeća Evrope, i koji je u suprotnosti i sa kriterijima OSCE-a iz Kopenhagena iz 1990. godine – a oni su u procesu približavanja zemalja kandidatkinja Evropskoj uniji od pomoći prilikom donošenja odluke – ne može se staviti na teret OSCE-u i međunarodnoj zajednici.[15] Međunarodna zajednica se godinama morala snalaziti u datoj ustavnopravnoj situaciji. Reforma ustava je dugo bila tabu tema i o njoj

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9 Federacija Bosne i Hercegovine, *Službeni list FBiH 27/91*; *Službene novine RS 15/96.*

10 *Službeni list BiH* 23/01.

11 *Službeni list BiH* 22/00.

12 *Službeni list BiH* 12/02.

13 *Službeni list BiH 29/00.* U vezi s današnjim zadacima Suda Bosne i Hercegovine vidi kao pregled *Dauster, Das Staatsgericht von Bosnien und Herzegowina, StraFo 2006, 314 ff.*

14 Vidi pod II.

15 Helsinški komitet, *Izvještaj o stanju ljudskih prava u Bosni i Hercegovini*, januar-decembar 2006., str. 2.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 92

se tek posljednjih godina ozbiljnije diskutuje. No, hoće li se u toku predstoječe ustavne reforme otkloniti prepreke koje izazivaju nejednakost kod izbora, i dalje je upitno.[16]

Na drugim poljima, u oblasti demokratizacije i ***parlamentarizacije*** državnih institucija, što je u prvom redu pratio OSCE, ne mogu se zabilježiti značajni uspjesi. Ovo se u prvom redu odnosi na provođenje principa predstavničke demokratije u parlamentarnim institucijama Bosne i Hercegovine, parlamentarno samopoimanje u odnosu na vlade, parlamentarna kontrola izvršne vlasti, osobito u oblasti budžeta, javna parlamentarna odgovornost prema medijima, ali i shvatanje uloge političkih partija u predstavničkoj demokratiji. Ovdje se, kao i do sada, u usporedbi s evropskim standardima, mogu primijetiti nedostaci.[17] Oni se očituju u jedva primjetnoj javnoj kontroli izdataka od strane parlamenata ili u nerazvijenosti političkih stranaka, koja se očituje u njihovoj sposobnosti dugoročnog ili dugoročnijeg planiranja programa, te sposobnosti razvijanja i provođenja programa. Neophodni zakonski okvirni uvjeti za to postoje. Osnova i korijeni deficita i dalje se nalaze u shvatanju uloge dotičnih političkih institucija i njihovih pojedinaca. Prevazilaženje načina razmišljanja koje je zarobljeno u granicama klijenta koji radi u korist stranke ili u granicama etničkog birača, načina razmišljanja čija orijentacija nije na dobrobit cijele države, vjerovatno je i generacijsko pitanje i teško se može prevazići u datom političkom poretku. Koliko god da su nakon 1995. godine, u usporedbi s evropskim standardima, stvoreni savršeni pravni okvirni uslovi za funkcionalnu predstavničku demokratiju, utoliko manje se čini da su dosad u glave odgovornih političara prodrli ideje i principi koji stoje iza toga.[18]

Još jedan primarni cilj koji je slijedila međunarodna zajednica nakon 1995. godine u politici koja se odnosila na Bosnu i Hercegovinu bio je ***povratak izbjeglica i prognanih*** u prvobitna mjesta boravka. Ova je politika

[16] Možda pak pomogne samo pritisak izvana (vidi: izvještaj *International Crisis Group* o tužbi Jakoba Fincija pred Evropskim sudom za ljudska prava, *Europe Report* 180 od 15. februara 2007., S. 11).

[17] Tako je vlada Republike Srpske u zimu 2006/2007. godine objavila bojkot državne televizije BHT i u periodu koji je uslijedio odbijala davati bilo kakve informacije i prekinula svaku saradnju jer je, po njihovom mišljenju, televizija neprimjereno izvještavala o slavljenju nacionalnog praznika Republike Srpske.

[18] Vidi također Helsinški komitet, *Izvještaj o stanju ljudskih prava u Bosni i Hercegovini*, januar-decembar 2006., str. 2, osobito u vezi sa sporošću u provođenju rezultata izbora u formiranju vlada i drugih institucija.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 93

rezultat, koji je godinama postizan uz velike napore,[19] također bila i ostala manje ili više uspješna.[20] Realizacija povratka u pravnom sistemu Bosne i Hercegovine nije ostavila nikakve značajne, nikakve trajne tragove. Napravljen je pokušaj da se ona postigne u okviru datih pravnih uvjeta – ponekad, doduše, s umjerenim uspjehom.[21] Istina, bilo je neophodno stvaranje povoljnih pratećih okolnosti. Možda to nije vrijedno spomena u drugim zemljama. No, u Bosni i Hercegovini je uvođenje novog ***sistema registarskih tablica za motorna vozila*** bilo propratna okolnost koja je, općenito, uspostavila tek fizičku slobodu kretanja u cijeloj zemlji, a osobito je pogodovala povratku izbjeglica. Ako se prije na osnovu kombinacije slova koja je označavala mjesto registracije vozila, kao što je SA bilo za Sarajevo, moglo prepoznati porijeklo nekog vozila, novi sistem je anonimizirao mjesto registracije, a time i vjerovatno mjesto stanovanja, što je za svakog vlasnika motornog vozila predstavljalo slobodu kretanja.

Međunarodna zajednica je uticala i na formiranje svijesti o državnosti međunarodnog pravnog subjekta Bosne i Hercegovine. Zastava i himna zemlje svoje postojanje i današnju prihvaćenost zahvaljuju pritisku međunarodne zajednice. ***Državni simboli*** Bosne i Hercegovine danas nisu predmet spora;[22] ipak, do danas nije bilo moguće dogovoriti se o tekstu državne himne. Ovo se čini znakovito. I još nešto pada u oči kada se vozite kroz zemlju. Zavisno od toga koji je narod u kojoj regiji većina, državna zastava se često pokazuje sa simbolima koji ukazuju na većinski narod. I to se čini

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19 Mnogo optimističniji je *24. izvještaj Visokog predstavnika Generalnom sekretaru UN* (24. Bericht des Hohen Vertreters an den UN-Generalsekretär) od 13. oktobra 2003., S. 1 - kao posljedicu toga s najavom da će se, zbog uspjeha, krajem 2003. godine zatvoriti odgovarajuće odjeljenje OHR-a. Vidi također izvještaje: *24. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 13. oktobra 2003., str. 9 f.; *25. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 3. marta 2004., str. 14 f.; *26. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 18. novembra 2004., str. 20; *27. B Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 12. aprila 2005., str. 14 f.; svakako kritički i diferenciran sada i *30. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 15. jula 2006.,str. 15 f.

20 Kritički: Helsinški komitet, *Izvještaj o stanju ljudskih prava u Bosni i Hercegovini*, januar-decembar 2006., str. 3 ff. S velikim brojem vrlo zabrinjavajućih pojedinačnih slučajeva i konkretnim podacima u vezi s njima. - Mediji su 2006. godine uvijek nanovo izvještavali o napadima na povratnike, koji su bili nasilini i etnički motivisani.

21 Helsinški komitet, *Izvještaj o stanju ljudskih prava u Bosni i Hercegovini,* januar-decembar 2006., str. 4.

22 Drugačija je situacija s entitetskim simbolima. Godine 2006. Ustavni sud Bosne i Hercegovine je ukazao na protuustavnost istih jer jednostrano reflektuju simbole samo jednog entiteta (vidi odluku od 31. 03. 2006. [Službeni list BiH br. 19/01, 12/98, 14/03]).

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 94

znakovito, i moglo bi se tumačiti u smislu još uvijek postojeće krhkosti države.

Za državnost Bosne i Hercegovine i za stabilnost njene valute, koja traje do danas i koja je svakako jedinstvena u regiji, najvažnija je bila odluka – i vjerovatno skoro nezamisliva bez uticaja tadašnjeg međunarodnog guvernera Centralne Banke Petera Nicholla – o ukidanju i zamjeni dinara, koji je bio tradicionalan na prostoru bivše Jugoslavije, i ***uvođenju konvertibilne marke*** kao državne valute 1. oktobra 1997. godine.[23] Njemačka marka je u Bosni i Hercegovini bila nezvanična druga valuta još od rata, a u bivšoj Jugoslaviji, koja je imala galopirajuću inflaciju, bila je zamjenski novac. Tako je naziv nove valute u marka i fenig bio isto toliko blizak kao što je bilo tijesno vezanje zamjenskog kursa konvertibilne marke za njemačku marku (od uvođenja eura 1. januara 2002. za euro). Ovo, kao i novčana i monetarna politika koju je Centralna banka slijedila nezavisno od državnih institucija, spriječilo je porast inflacije koji je bio simptomatična karakteristika jugoslavenskog dinara i stvorilo u Bosni i Hercegovini ostrvo stabilnosti jedinstveno za Zapadni Balkan.

Na drugim poljima, kao na polju ***reformi ekonomske politike ili ekonomsko-pravnih reformi,***[24] uticaj međunarodne zajednice bio je ili manje primjetan ili, u najmanju ruku, nije bio trajan. Osobito do 2000. godine Visoki predstavnik je donosio samo pojedinačne odluke s jačim poticajima za privrednu reformu. To se u istoj mjeri odnosi na sve oblasti privrede i ekonomije koliko i na oblast državne socijalne politike. Doduše, privatni bankarski sektor svoju egzistenciju zahvaljuje posebno političkom i finansijskom uticaju Svjetske banke i Međunarodnog monetarnog fonda. No, novo regulisanje ovog sektora je u velikoj mjeri bilo u rukama nacionalnih zakonodavaca u entitetima, čije su se institucije smatrale odgovornim i za djelomično nezadovoljavajuću provedbu ove reforme. Pogotovu se može ispitati efikasnost javnog nadzora banaka u oba entiteta, s obzirom na mnogobrojne bankrote banaka u Bosni i Hercegovini. Uzdržano treba ocijeniti i sektor privatizacije javnih preduzeća. Privatizacija se provodi sa zastojima, a i različite je brzine u entitetima. Drugi, odlučujući reformski projekti u oblasti ekonomije i privrede i dalje su na ledu, i vjerovatno će ih se neko latiti tek u narednim stadijima približavanja Bosne i Hercegovine Evropskoj uniji. Međunarodna zajednica ne može sebi pripisati napretke ostvarene u okviru

[23] *Službeni list FBiH* br. 26/98, *Službeni list BiH* br. 10/98.

[24] Vidi uz to i *International Crisis Group, Europe Report* No. 180 od 15. februara 2007., S. 24.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 95

ekonomske reforme – iako je već odavno bila i ostala svjesna ekonomskih problema zemlje. Suzdržani koraci koje ne karakteriše trajnost, koraci u preuzimanju suodgovornosti, mogli su se primijetiti tek u vrijeme visokih predstavnika Wolfganga Petritscha i Paddyja Ashdowna.[25] Odgovorni predstavnici međunarodne zajednice ne negiraju ni postojanje deficita.[26] Tako je i dalje nepregledno zakonodavstvo u oblasti nekretnina, nema potpunih podataka u zemljišnim knjigama ili katastrima, ili se ne prikazuju procesi koji se odvijaju izvan zemljišne knjige i katastra. Očito je da to ne pruža osjećaj sigurnosti za investicije, ne samo kod stranih investitora. Privatno trgovinsko i ugovorno (obligacijsko) pravo i dalje čeka jedinstvenu kodifikaciju u zemlji i modernizaciju koja je u vezi s njom. I ovaj deficit je ekonomsko-politička zapreka, osobito za strane investicije. Pravo privatnih trgovinskih društava karakterišu birokratske prepreke i smetnje. Zakon o stečaju i likvidaciji također čeka regulativu koja bi bila jedinstvena na nivou zemlje. Sudovi su s primjenom dosadašnjeg Zakona o stečaju i likvidaciji stručno preopterećeni, a Zakon o parničnom postupku također karakteriše nedostatak podsticaja za ubrzanje postupka. Sporost parničnih postupaka više koristi dužnicima, a sprječava investicije. Kritiku ćemo dopuniti pogledom na građansko izvršno pravo. Povjerilac koji je konačno imao uspjeha u sporom parničnom postupku osjeća se prevarenim zbog birokratskih zapreka i procesnih prepreka koje se pred njega stalno iznova postavljaju.

Mada je međubilans ekonomsko-političkih reformi više negativan, Bosna i Hercegovina uticaju Evropske unije i njenom programu CAFAO (uključujući i programe koji su mu slijedili) zahvaljuje ***zakonodavstvo u oblasti carina i poreza***[27] koje odgovara evropskim standardima. Proces provođenja još nije potpuno okončan, ali je na pravom putu. Ovo se vjerovatno može objasniti i time šta je dio CAFAO programa bila izgradnja

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[25] Njegova takozvana Buldožer inicijativa iz 2002. (sudjelovali su USAID, Svjetska banka, Evropska komisija i Međunarodni monetarni fond pod rukovodstvom OHR-a) trebalo je da otkloni prepreke u ekonomskom i privrednom životu i otvori nova radna mjesta, ali je ostala bez trajnog djejstva (vidi *24. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 13. oktobra 2003., str. 4)(vidi uz to i *25. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 03. marta 2004., S. 6; *27. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 12. aprila 2005., S. 9 f.; *28. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 17. novembra 2005., S. 8 f.). Veoma optimističan je i *30. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 30. jula 2006., str. 11 f.

[26] Vidi intervju s prvim zamjenikom Visokog predstavnika Lawrenceom Butlerom, Bosnia Daily No. 1428 od 23. januara 2007., S. 5, koji, doduše, krivi državne institucije.

[27] *24. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 13. oktobra 2003., str. 5; *25. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 03. marta 2004., str. 6 f.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 96

moderne carinske i porezne uprave. Ovo je postalo jasno 2006. godine, poslije uvođenja poreza na promet,[28] koji je doveo do jasnog povećanja javnih prihoda i vjerovatno upravo taj porez u potpunosti plaćaju porezni obveznici. Mnogo je lošija situacija u sektoru ***javnih rashoda***. Deficiti u parlamentarnoj politici rashoda već su naznačeni. Osim toga, ako posmatramo situaciju sa budžetom u Bosni i Hercegovini, možemo ustanoviti neopravdano visoku državnu kvotu potrošnje. Ona je rezultat finansiranja prekomjernih državnih struktura koje je zemlji donio Dejtonski ustav. Čitavo tuce ministarstava unutrašnjih poslova i pravde, na primjer, jednostavno je previše za zemlju veličine Bosne i Hercegovine koja, uz to, još ima takvu finansijsku moć kakvu ima. Ali i unutar sistema državnih struktura koje je uspostavio Ustav, ni državne institucije niti međunarodna zajednica nisu do sada počele trajnu ***reformu javne uprave*** koja bi se usmjerila ka racionalizaciji.[29] Javna uprava zemlje na svim nivoima se čini kadrovski pretrpana i služi – kao u mnogim zemljama koje su u prelazu iz socijalističkog društvenog poretka u tržišne uvjete – opsluživanju kadrova, a time i pokrivanju nezaposlenosti. Materijalno pravo javne administracije zemlje do sada nije podvrgnuto nikakvoj kritičkoj kontroli, kako bi se vidjelo da li stvarno služi izvršenju neophodnih javnih zadataka ili se, pak, proizvoljno stvaraju zadaci za koje je onda potrebna administracija.[30] U vezi s tim treba navesti veliki broj zahtjeva koje treba ispuniti za dobivanje dozvola, kod kojih se ne primjećuje *stvarni* administrativni *smisao*. Nepristrasan posmatrač ne može se oteti utisku da se ovih zahtjeva drže samo da bi se legitimirao obim postojeće javne službe. Smanjenje birokratije u najboljem smislu slobode trgovine, zanatstva, profesija i ekonomije, u Bosni i Hercegovini od 1995. godine nije bilo stvarna tema, mada između ovih nepotrebnih zadataka javne uprave i korupcije, koji zemlji predstavljaju problem, postoji unutrašnja veza, i ta je veza poznata svim učesnicima.

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[28] Vidi *Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 15. jula 2006., str. 12.

[29] Tako skeptičan je bio i *24. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 13. oktobra 2003., str. 6; vidi dalje *25. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 3. marta 2004., str. 7 f.; *26. Bericht des Hohen Vertreters an den UN*-Generalsekretär od 28. novembra 2004., str. 12, 13; *27. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 12. aprila 2005., str. 10; *28. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 17. novembra 2005., str. 10; *30. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 15. jula 2006., str. 13 f.

[30] Formiranje državne institucije za javnu službu putem Zakona o javnoj službi iz maja 2002. (Službeni list BiH 12/02) u svakom slučaju je obuhvatilo, kao i sam Zakon, samo jedan dio problema, naime, Zakon o javnoj službi i njegovu primjenu. Nije se odnosilo na ključnu problematiku javnih poslova i zadataka.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 97

Osim toga, međunarodna zajednica je suodgovorna za postojanje nekontrolisanih državnih struktura. U dobro shvaćenom legitimnom interesu jačanja državnih struktura, s ciljem unapređenja nacionalnog jedinstva, međunarodna zajednica je na državnom nivou stvarala institucije, ali se istovremeno nije pobrinula da se na nižim, entitetskim nivoima u istom obimu institucije gase, odnosno da se zadaci u potpunosti prenesu na viši, državni nivo.

Problematično međusobno djejstvo preglomazne i loše plaćene javne službe, slabo finansiranih struktura institucija i ekonomije koja trpi zbog prepreka u investiranju – međunarodnoj zajednici je postalo poznato najkasnije 1998. godine, kada je osobito CAFAO u javnosti progovorio o fenomenu ***korupcije,*** koji se u Bosni i Hercegovini sve više širio, te od međunarodne zajednice tražio da pomogne u njenom suzbijanju. Ured Visokog predstavnika je osnovao Jedinicu za borbu protiv korupcije[31] koja je, s obzirom na obim postavljenog zadatka – da se bori protiv korupcije – od samog početka bila kadrovski dosta oskudno popunjena. Ipak se ovoj jedinici ima zahvaliti spoznaja do koje se došlo 2000. i 2001. godine: da djelotvorno suzbijanje kriminala u Bosni i Hercegovini zahtijeva ***sveobuhvatnu reformu sistema krivičnog prava***. Otprilike u isto vrijeme Ured Visokog predstavnika je počeo – doduše, nezavisno od truda Jedinice za suzbijanje korupcije da se napravi reforma formalnog i materijalnog krivičnog prava – ***sveobuhvatnu reformu pravosuđa***. Za tu svrhu je 2001. godine u OHR-u osnovana Nezavisna pravosudna komisija, čiji je zadatak trebalo da bude podnošenje planova za sveobuhvatnu reformu zakonâ o službi sudija i državnih tužilaca na svim nivoima Bosne i Hercegovine, za sveobuhvatnu reviziju državnog sudstva s ciljem da se, po mogućnosti, smanji sudski aparat, da se institucionalno obezbijedi institucionalna i individualna nezavisnost sudija, te da se izvrši sveobuhvatna reforma Zakona o parničnom postupku. Cilj reforme materijalnog krivičnog prava, kako bi se poboljšalo suzbijanje korupcije, bilo je jedinstveno zakonodavstvo na nivou entiteta, uključujući zakonodavstvo Distrikta Brčko, jer su se krivični zakoni u različitim administrativnim jedinicama Bosne i Hercegovine već godinama sve više razilazili. Istovremeno je krivično pravo trebalo modernizovati, uzimajući u obzir nove oblike krimi-

[31] Raniji mandat ove jedinice bio je sveobuhvatan. Jedinica je trebalo da savjetuje i podržava državne institucije u borbi protiv korupcije i organizovanog kriminala na osnovu pojedinačnih slučajeva. Ovaj poluoperativni zadatak proširen je 2001. godine, kada je *Anti-Fraud Department* (Odjel za borbu protiv korupcije), preuzimanjem Hercegovačke banke 6. aprila 2001. godine, trebao osujetiti nastavak aktivnosti radikalnih snaga HDZ-a na državnom udaru, i zaustavio ga je. Osim toga, od početka je zadatak AFD-a bio da se bavi i reformom krivičnog prava, te da sistematski radi na izgrađivanju svijesti stanovništva o štetnosti korupcije.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 98

nala poput pranja novca, organizovanog kriminala i trgovine ljudima. Ako je ustavnopravno bilo na ma koji način dopustivo, trebalo je napraviti jedan krivični zakon za cijelu Bosnu i Hercegovinu koji je, između ostalog, predviđao i mogućnost da se, u skladu s međunarodnim obavezama Bosne i Hercegovine, omogući učinkovito gonjenje ratnih zločina na državnim sudovima. Jer, moglo se primijetiti da će doći do podjele poslova između Međunarodnog tribunala za bivšu Jugoslaviju i institucija pravosuđa Bosne i Hercegovine. U reformi Zakona o krivičnom postupku kojoj se težilo, u prvom redu se radilo o povećanju efikasnosti postupka koncentracijom istražnih nadležnosti na tužilaštvima, uz ukidanje do tada također nadležnog istražnog sudije, kako bi se stvorila naredbodavna hijerarhija između tužilaštva i policije, koje do tada nije bilo - uz sve negativne posljedice. Krivičnopravni glavni postupak je trebalo deformalizovati, istovremeno je trebalo ojačati prava optuženih, pooštriti pravo na pravni lijek i osloboditi ga anahronih formalizama.

Reforma krivičnog prava i pravosuđa, koja je počela u drugoj polovini 2001. godine, bila je najobuhvatniji složeni reformski projekt za koji je međunarodna zajednica preuzela vođenje i odgovornost posredstvom Visokog predstavnika. Državne institucije su, doduše, signalizovale široku spremnost za saradnju, ali su se zadovoljile ulogom učesnika. Istovremeno, ostvarenje ovog zadatka nije išlo bez problema. Svojevremeno je Visoki predstavnik Wolfgang Petritsch bio veoma suzdržan kada je riječ o obavezujućem utvrđivanju jasnih reformskih ciljeva,[32] vjerojatno i zbog toga što je njegov mandat isticao u maju 2002. i on nije htio da prejudicira politiku svoga nasljednika Paddyja Ashdowna. No, njegova suzdržanost je izazvala nesigurnost. Jedinica za suzbijanje korupcije i Nezavisna komisija za reformu pravosuđa reformu su pripremile s previše otvorenim rezultatom. Predmetna otvorenost i otvorenost ciljne orijentacije je, pak, kod drugih članova međunarodne zajednice pobudila apetit za učešćem. Previše se energije moralo utrošiti na kanalisanje raznih struja pomoći. Tome se pridru-

[32] Značajna načelna odluka pala je u jesen 2000. godine, sa osnivanjem Suda Bosne i Hercegovine (vidi odluku Visokog predstavnika od 12. 11. 2000.[Službeni list BiH 29/00.]). Zakonska odluka Visokog predstavnika je, doduše, u prvom redu osnovala Sud kao sud za kontrolu izbora i upravni sud. No, ipak je odluka sadržavala regulativu koja mu je i u budućnosti omogućavala krivičnopravnu nadležnost. Narodna skupština Republike Srpske je sumnjala u ustavnost Zakona i dala ga je na provjeru Ustavnom sudu Bosne i Hercegovine, koji je mu, pak, odlukom donesenom 28. 01. 2001. (Službeni list BiH 32/01) priznao ustavnost. Od tada se s aspekta ustavnopravnosti više nije javila sumnja u vezi s tim da država Bosna i Hercegovina može imati na raspolaganju vlastite pravosudne organe.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 99

žilo i pitanje kojim će se putem krenuti s novim Visokim predstavnikom nakon odlaska Wolfganga Petritscha.

Reformski proces je znatno ubrzan nakon što je mandat preuzeo Paddy Ashdown. Prestrukturisanje unutar Ureda Visokog predstavnika dovelo je do toga da je Jedinica za borbu protiv korupcije preobražena u jednu čisto operativnu organizaciju za borbu protiv kriminala, pa je izgubila svaku nadležnost u procesu reforme krivičnog prava.[33] Dio nadležnosti je prenesen na jednu posebnu jedinicu za reformu tužilaštva, koja je u jesen 2002. godine dala svoje prijedloge za reformu. Predviđali su potpuno ukidanje dosadašnjih općinskih tužilaštava i koncentraciju njihovih nadležnosti na nivou tužilaštava Distrikta i kantona. Kako je Ashdown odlučio da gonjenje teških kriminalnih radnji iz domena organizovanog kriminala koncentriše na Sud Bosne i Hercegovine,[34] prijedlozi su predvidjeli i stvaranje tužilaštva na nivou države. Osim toga, uključivali su i proširenje sudskih nadležnosti Državnog suda za krivičnopravnu nadležnost gonjenja teških zločina. Prijedlozi Nezavisne komisije za reformu ustrojstva entitetskih sudova, koji su u jesen 2002. također predočeni Visokom predstavniku, bili su manje radikalni. Općinski sudovi (kao pandan općinskim tužilaštvima) nisu u potpunosti ukinuti, ali je njihov ukupan broj smanjen[35] sa 78 na 47. Ukidanje općinskih tužilaštava i smanjenje broja općinskih sudova ili sudova prve instance u entitetima bilo je značajno za provjeru broja zaposlenih sudija i tužilaca, koja je kao cilj postavljena još 2002. godine – taj broj se, u usporedbi s prosječnim evropskim standardom, činio previsokim i smatralo se da ga je vremenom nemoguće finansirati. Sudska i tužilačka vijeća su u jesen 2002. također zaživjela, s ciljem da garantuju nezavisnost sudova, tužilaštava, sudija i tužilaca, a kasnije su provjeravala i sudije i tužioce s aspekta osposobljenosti i podobnosti za obavljanje posla. Konačno je broj sudija smanjen na gotovo polovinu.[36] U skladu s odlukom Visokog predstavnika da se krivičnopravno gonjenje teških kriminalnih radnji – osobito organizovanog kriminala – koncentriše na državnom nivou u Sudu Bosne i Hercegovine, neophodno je bilo izraditi državni procesni zakon i državni krivični zakon. Kodifikacije su izrađene već u jesen 2002. godine; izradilo ih

[33] Vidi *24. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 13. oktobra 2003., str. 1.

[34] *24. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 13. oktobra 2003., str. 2.

[35] *24. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 13. oktobra 2003., str. 2.

[36] Ukupan broj tužilaca je u velikoj mjeri ostao isti, jer je planiranim ukidanjem istražnog sudije istražna nadležnost trebalo da se koncentriše na tužilaštvo. To je značilo veći broj slučajeva i opravdalo je odluku da se ne smanjuje broj tužilaca.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 100

je jedno pododjeljenje u Uredu Visokog predstavnika, uzevši u obzir opisane reformske ciljeve; one su 1. marta 2003. godine stupile na snagu.[37] Istovremeno sa stupanjem na snagu državnog krivičnog[38] i krivično-procesnog prava,[39] Državni sud[40] i Tužilaštvo[41] Bosne i Hercegovine preuzeli su svoj posao. U oblasti gonjenja organizovanog privrednog kriminala i korupcije, izmjene koje je predvidio Visoki predstavnik su, osim toga, predviđale (privremenu) saradnju međunarodnih sudija i državnih tužilaca.[42, 43] Kao dopunu ovim zakonima u oblasti pravosuđa, Visoko sudsko i tužilačko vijeće Bosne i Hercegovine[44] kao državni organ sudijske samouprave i samouprave državnih tužilaca je 1. juna 2004. uspostavljeno kao zamjena za dotadašnje Sudsko i tužilačko vijeće.[45] Njegova nadležnost se usmjerava prema nadležnosti vijeća magistrata u drugim evropskim zemljama, ali ih obuhvata[46] mnogo šire. Ono iz uprave pravosuđa potiskuje ministarstvo pravosuđa. U dometu svoje nadležnosti, Vijeće svakako ima karakter evropskog modela.

Početkom 2005. godine pravosuđe je na nivou države Bosne i Hercegovine dobilo svoju posljednju bitnu izmjenu. Uz dosadašnje nadležnosti u oblasti čuvanja i njege krivičnog prava, državni sud je dobio i koncentrisanu

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37 Procesno i krivično pravo na nivou države je u narednom periodu služilo entitetima i Distriktu Brčko za harmonizaciju njihovog formalnog i materijalnog krivičnog prava.

38 Krivični zakon (*Službeni list BiH* br. 36/03; 3/03; 37/03).

39 Zakon o krivičnom postupku (*Službeni list BiH* br. 36/03).

40 Zakon o Sudu Bosne i Hercegovine (*Službeni list BiH* br. 29/00).

41 Zakon o Državnom tužilaštvu Bosne i Hercegovine (*Službeni list BiH* br. 24/02).

42 Saradnja međunarodnih sudija i javnih tužilaca završit će sa završetkom prelaznog perioda 31. 12. 2009. godine. Poslije toga će i Državni sud i Tužilaštvo Bosne i Hercegovine raditi isključivo s domaćim kadrovima.

43 Ranije su međunarodne sudije i državni tužioci imenovani odlukama Visokog predstavnika, na osnovu čega su radili u svojstvu sudije, odnosno državnog tužioca. Od 2006. ovu nadležnost na osnovu međunarodnopravnih sporazuma između Visokog predstavnika i državnog Predsjedništva Bosne i Hercegovine isključivo ima Visoko sudsko i tužilačko vijeće Bosne i Hercegovine (*Službeni list BiH* br. 10/02).

44 *Službeni list BiH* br. 22/02.

45 Vidi *25. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 03. marta 2004., str. 1, 4 f.; *26. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 18. novembra 2004., str. 6.

46 Vidi član 17. Zakona o Visokom sudskom i tužilačkom vijeću (Službeni list BiH br. 62/02; 25/04). Vijeće imenuje, otpušta i disciplinski kažnjava sudije i državne tužioce, te sudjeluje u donošenju svih drugih odluka koje se tiču individualnog statusa. Odgovorno je za planiranje kadrova širom zemlje, te sudjeluje u materijalnom i finansijskom snabdijevanju sudova i tužilaštava. Razvija planove za edukaciju i permanentno obrazovanje, a u vezi sa svim pitanjima koja se tiču pravosuđa mora se barem saslušati njegovo mišljenje.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 101

nadležnost gonjenja ratnih zločina.[47] I u ovoj oblasti njegovog rada će, do kraja prelaznog perioda 31. 12. 2009. godine, sudjelovati međunarodne sudije i državni tužioci. Druge reforme pravosuđa, koje bi promijenile situaciju – mada su bile neophodne – međunarodna zajednica nije ni inicirala niti ih je provodila. Međunarodna zajednica u Bosni i Hercegovini je, pak, finansijski snažno sudjelovala u provođenju dosadašnje reforme pravosuđa. Bez njenog učešća izgradnja državnih pravosudnih institucija bila bi nezamisliva. Do 31. 12. 2006. godine na Državni sud i druge pravne institucije utrošeno je ukupno 16 miliona eura.[48] Još jedna 'donatorska' konferencija u martu 2006. godine je međunarodnoj zajednici donijela dodatne obaveze u visini od 7,7 miliona eura za period nakon 31. 12. 2006. godine, do završetka prelaznog perioda 31. decembra 2009. godine,[49] kada državne institucije Bosne i Hercegovine treba da preuzmu punu odgovornost i za državne pravosudne institucije.

III. Ocjena i perspektive

Više od deset godina sudjelovanja međunarodne zajednice u reformama u Bosni i Hercegovini ostavilo je traga. Ako se danas u BiH može govoriti o demokratskim okvirnim uvjetima – oni se bez međunarodne zajednice ne bi desili. U oblasti izgradnje pravne države napravljeni su pomaci; zaštita ljudskih prava putem ustavnopravne nadležnosti (a nju pomažu ombudsmani) čini se da je obezbijeđena.[50] Ipak, nema razloga da se opustimo zbog

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[47] Postupci koji se protiv vinovnika zločina počinjenih u ratu 1992-1995. na teritoriji Bosne i Hercegovine vode na Međunarodnom tribunalu za bivšu Jugoslaviju se, u skladu sa *Rule 11* (Pravilom 11), do odredaba koje se odnose na postupak ICTY-ja odlukom Suda, prenose na Državni sud Bosne i Hercegovine. Ovu mogućnost ICTY je do 28.02.2007. godine iskoristio u ukupno 5 postupaka sa 9 optuženih. Od toga je u međuvremeno u 2 postupka izrečena presuda u prvoj instanci. Takozvani *11-bis-postupci* obavezno se moraju voditi pred Državnim sudom. Za razliku od njih, Državni sud u prvom redu ima nadležnost za gonjenje ratnih zločina i u svim drugim slučajevima, ali se može odreći svoje primarne nadležnosti i entitetima Bosne i Hercegovine prepustiti nastavak gonjenja. Vidi i *26. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 18. novembra 2004., S. 8.

[48] *25. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 03. marta 2004., S. 2 u vezi s odlukama o preuzimanju obaveza donesenim 30. oktobra 2003. na donatorskoj konferenciji u Haagu (*Verpflichtungsbeschlüsse der Donors' Conference in Den Haag*), koje su se, doduše, odnosile na izgradnju tzv. Odjela za ratne zločine pri Državnom Sudu Bosne i Hercegovine.

[49] *International Crisis Group, Europe Report* No. 180 od 15. februara 2007., S. 13.

[50] Helsinški komitet, Izvještaj o stanju ljudskih prava u Bosni i Hercegovini - januar-decembar 2006., str. 2. 1 ff sa preporukama za institucionalno jačanje zaštite ljudskih prava, S. 13.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 102

postignutog napretka i da (istina, ne tako brojne) lovorove grančice savijemo u vijenac na svojim glavama. Mogu se prepoznati[51] nedostaci. S obzirom na nacionalističku retoriku[52] koja se čula prije i u toku same izborne kampanje 2006. godine, svakako ima povoda za razmišljanje o krhkosti međunarodnog pravnog subjekta Bosne i Hercegovine. Najveći reformski projekt, koji je u znatnoj mjeri proveden u isključivoj odgovornosti međunarodne zajednice, bila je reforma krivičnog prava i, doduše samo djelomično provedena, reforma pravosuđa. Reforma odbrane, koja je 2005. godine završila spajanjem dvije entitetske armije i formiranjem državnih odbrambenih struktura,[53] nije u tolikoj mjeri nosila međunarodni pečat.

Ne uzimajući u obzir navedene reforme, razlozi za činjenicu da je međunarodna zajednica ostavila samo sporadične tragove dijelom su uvjetovani i samim Dejtonskim sistemom, čiji je cilj bio i ostao saradnja između članica međunarodne zajednice i državnih institucija koje su na osnovu ustavnopravnih odredaba pozvane na saradnju. Saradnja između međunarodne zajednice i državnih institucija je u prošlosti bila – iz različitih razloga na koje se u ovom okviru ne možemo posebno osvrnuti – teška, djelomično neuspješna. Za slučaj neuspjeha, Vijeće za implementaciju mira (PIC) 1997. godine je u Bonnu Visokom predstavniku dalo takozvane *Bonn Powers* (Bonske ovlasti), koje su mu, istina, davale ovlaštenje da vakuum u saradnji popuni vlastitim odlukama sa zakonskom snagom. No, razni visoki predstavnici su, osobito kada se radilo o nametanju zakona, zavisno od individualnog shvatanja mandata, sami sebi nametnuli uzdržanost. Nije nam namjera kritika ove uzdržanosti, jer, po samoj ideji, nije zadatak Visokog predstavnika da državne institucije drži u stanju političke nezrelosti. Idealni sistem državno-međunarodne saradnje u praksi nije mogao funkcionisati i postići idealno stanje kakvo je zamišljao Mirovni sporazum. S državne strane, podjela kompetencija između Bosne i Hercegovine i njenih entiteta uvjetovala je, i uvjetuje, da previše partnera može dići svoj glas i zahtijevati

[51] Sposobnost Bosne i Hercegovine za opstanak u budućnosti je kritična. Stoga se nedostaci u vezi sa sistemom obrazovanja u zemlji ocjenjuju vrlo negativno. Osobito sistem višeg obrazovanja, uključujući univerzitete, možemo i dalje opisati kao veoma zaostao (vidi Helsinški komitet, Izvještaj o stanju ljudskih prava u Bosni i Hercegovini - januar-decembar 2006., str. 12). Visoki predstavnik je 16. februara 2007. godine situaciju s obrazovnim sistemom na univerzitetima označio kao `haotičnu' (vidi www.ohr.int). Kritički osvrt i *International Crisis Group*, *Europe Report* No. 180 od 15. februara 2007., S. 1 i S. 17.

[52] Također Helsinški komitet, *Izvještaj o stanju ljudskih prava u Bosni i Hercegovini*, januar-decembar 2006., str. 1, 2.

[53] Vidi *25. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 03. marta 2004., str. 9 f.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 103

da budu saslušani. Njihovi se politički interesi međusobno nisu podudarali, niti se podudaraju. U pogledu slabih ustavnopravnih kompetencija državne vlade Bosne i Hercegovine – njoj je od samog početka nedostajala koordinativna funkcija, i ona s vremenom, od sklapanja Mirovnog sporazuma, nije pojačana. Da li je kod postojećih političara i stranaka koje su u njoj učestvovale uopće bilo volje za tako nešto – također se, u najmanju ruku, može ispitati. Ali, u vezi s međunarodnom zajednicom, i uprkos koordinativnoj funkciji koja je dodijeljena Visokom predstavniku, i bez obzira na političke kompetencije Vijeća za implementaciju mira, možemo reći da su u načelnim i pojedinačnim pitanjima različiti politički interesi i institucionalne ambicije različitih učesnika sprječavali ili otežavali da se govori ***jednim*** glasom koji je bio potreban.

Ono što je zasigurno spriječilo veći uspjeh međunarodne zajednice tokom svih ovih godina bila je činjenica da u oblasti reforme pravne države svakako nedostaju dugoročniji politički programi, kako kod pojedinih visokih predstavnika, tako i kod Vijeća za implementaciju mira. Ovo svakako može važiti i za ekonomske reforme, koje nisu provedene. U svakom slučaju, u oblasti unutrašnje stabilnosti Bosne i Hercegovine niko nije imao koncept za politiku sigurnosnog poretka. Ako ikako, međunarodna zajednica bi djelovala na osnovu povoda koji je postojao, ali nije se doticala struktura koje su za to bile odgovorne. Tokom svojih mandata, pojedini visoki predstavnici – od 1995. ukupno pet – nisu, sa svoje strane, bili zainteresovani da misle u neophodnim dužim vremenskim periodima, ili da jednom sporadično donesene odluke provedu uz dugoročne programe i dugoročne efekte. Politički lomovi između pojedinih visokih predstavnika su, uz to, povremeno bili više nego tek bolni. Politička konzistentnost, u periodima koji su uobičajeni za trajno provođenje politike, a koje u evropskim državama određuju na četiri ili pet godina dotičnog perioda zakonodavstva parlamenata – nije se mogla prepoznati. Neka kao primjer za ovo posluži do tada prilično uspješna reforma krivičnog prava (reforma pravosuđa je, što se tiče parničnog i upravnog sudstva, stala na pola puta). Njeno provođenje, nakon što su bili učinjeni neophodni zakonski koraci, pozdravljeno je i praćeno dosad s mnogo međunarodnog, a konačno i finansijskog angažmana. Taj angažman više nije obezbijeđen,[54] i to čini razliku u odnosu na reformu odbrane. Ovo posljednje u NATO-u, zbog sigurnosno-političkih razloga, ima uza se zainteresiranog mentora, koji garantuje trajnu

[54]Kritički i *International Crisis Group, Europe Report,* No. 180 od 15. februara 2007., S. 12 i 13.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 104

provedbu.[55] Tako nešto nedostaje reformi krivičnog prava. Ona nema prepoznatljivog *amicus curiae*. Zato se, s tog aspekta, svakako smije postaviti pitanje trajnosti i održivosti.[56] Međunarodna zainteresovanost popušta, jer se smatra da je voz postavljen na kolosijek i da neće iskočiti iz tračnica. Pri tome se često ne uzima u obzir stanje pruga u Bosni i Hercegovini. U samoj zemlji nisu dobri politički signali za krivičnopravni sistem čiji će nosilac biti država. Državne institucije zadužene za krivično pravo u oblasti gonjenja organizovanog i privrednog kriminala imaju *de lege lata* kompetencije prednosti u odnosu na entitetske organe gonjenja. No, politička realnost to ignoriše. Republika Srpska je, osim toga, u proljeće 2006. godine, uz odobrenje međunarodne zajednice,[57] a tvrdeći da će obezbijediti najistrajnije krivično gonjenje u oblasti prava prvenstva države, osnovala posebno tužilaštvo i specijalni sud. Tako stvorena konkurentska situacija nameće pitanje da li ova 'krađa' prava prvenstva ima taj smisao da se državi Bosni i Hercegovini oduzmu državne kompetencije koje su joj date zakonom?[58] Sličan razvoj situacije može se naslutiti i na ne manje značajnom području gonjenja ratnih zločina. I ovdje je primarna nadležnost za gonjenje kod državnih organa. Tvrdeći da su ovi organi preopterećeni – pikanterija je da Državni sud, koji nosi glavni teret, nije izjavio da je preopterećen i da njegov dosadašnji rad ne pokazuje tako nešto – predsjednik Visokog sudskog i tužilačkog vijeća je u ljeto 2006. godine javno zatražio izradu državne strategije o gonjenju ratnih zločina, koja za cilj treba da ima jače uvezivanje krivičnih sudova entiteta u gonjenju ovih delikata. Ako se ima na umu da su zakonske sankcije Državnog suda na osnovu prakse izricanja sankcija strožije od entitetskih sudova, nameće se pitanje da li je zahtijevana jača odgovornost entitetskih sudova manje okrenuta navodnoj preopterećenosti državnih krivičnih institucija ili njihovoj praksi izricanja sankcija? Osim toga, sadašnji predsjednik Vijeća ministara Bosne i Hercegovine je u ljeto 2006. godine izjavio da je Sud Bosne i Hercegovine i tako 'samo' sud 'za Srbe'. S obzirom na ovakav razvoj situacije, svakako se smije razmišljati o tome da

55 Vidi 24. Izvještaj Visokog predstavnika za Generalnog sekretara UN od 13. oktobra 2003., S. 7; 25. Izvještaj Visokog predstavnika za Generalnog sekretara UN od 03. marta 2004., S. 2;

56 Drukčiji je 30. Izvještaj Visokog predstavnika za Generalnog sekretara UN od 15. jula 2006. koji, nošen euforijom, govori o tome da Bosna i Hercegovina sada raspolaže neophodnim zakonskim okvirom i potrebnim institucijama.

57 Vidi o tome 30. Izvještaj Visokog predstavnika za Generalnog sekretara UN od 15. jula 2006., S. 7, u kojem se ni na koji način ne postavlja pitanje ustavnosti ovih mjera.

58 *International Crisis Group, Europe Report* No. 180 od 15. februara 2007., S. 7.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 105

li će državne institucije, koje su u početku formirane uz velik angažman međunarodne zajednice, ostati kada međunarodna zajednica smanji svoj angažman, ili čak zemlju prepusti samu sebi. Dosadašnji međunarodni angažman ih održava funkcionalnim. Paralelno uz to, državna se vlada dosad brinula o tome da se plaćaju sudski i nesudski kadrovi. Doduše, hoće li to ostati tako i poslije 2009. godine, stoji pod upitnikom.

Konačno, odgovor na pitanje o stabilnosti započetih reformi, ali i trajnoj stabilnosti zemlje i sposobnosti djelovanja njenih organa, svodi se na ***pitanje Ustava***. Trajan uspjeh reformi na polju krivičnog prava je, osim toga, nerazdvojiv od ***reforme policije,***[59] koja se, pak, može posmatrati samo s aspekta pitanja ustava. Prevencija i represija kriminala dvije su strane iste medalje koja se zove „unutrašnja sigurnosna politika". Ako jedna strana medalje ostane nedovršena, cijela medalja je bezvrijedna.

Reforma Ustava iz Daytona – nakon što su se prvih godina pitanja u vezi s njegovim izmjenama graničila s dogmom tabu teme[60] – 26. aprila 2006. godine je propala u državnom parlamentu.[61] Neka razloge za ovo navedu politolozi, koji su za to pozvaniji od mene. No, meni se čini, ipak ima nešto pozitivno: u suštini, postoji jedinstven stav da je Ustav iz Daytona ispunio svoju funkciju uspostavljanja mira i da se, inače – s državnim strukturama koje je odredio, njihovom tromošću, neučinkovitošću kod donošenja odluka, a još više u njihovoj provedbi i troškovima u vezi s tim, te s ostalim ekonomskim manjkavostima – više ne pokazuje kao nešto što otvara mogućnost budućem razvoju. Ovdje se ne mora raspravljati o pojedinostima dosadašnjeg nacrta ustava. No, ako je reformski cilj koji je još ostao dalje jačanje pravne države, pažnja se mora posvetiti sljedećoj okolnosti – da nacrt gotovo ne uzima u obzir čuvanje i njegovanje prava i da mu jedva poklanja pažnju. Zakonodavna vlast, međutim, nije ništa marginalno, čije spominjanje bi previše opteretilo jedan ustav. Posmatraču nije jasno da li se pri podjeli Bosne i Hercegovine u četiri u velikoj mjeri samostalna pravna područja u najvažnijim oblastima parničnog, trgovinskog, krivičnog prava i zakona o preduzećima, treba ostati, i da li će novi ustav državi omogućiti

[59] Vidi uz to *24. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 13. oktobra 2003., S. 10 f. o zadacima Evropske policijske misije i očekivanjima u vezi s njom. Osim toga, *26. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 18. novembra 2004., S. 3, 13 f.; vidi uz to i *30. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 15. jula 2006., S. 9 f.

[60] *International Crisis Group, Europe Report No.* 180 od 15. februara 2007., S. 9 f.

[61] Vidi uz to i *30. Izvještaj Visokog predstavnika za Generalnog sekretara UN* od 15. jula 2006., S. 2, 4, 6 f.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 106

miješanje u dosadašnje pravosudne strukture. Sa četiri pravna područja ne mogu se uspostaviti pravno jedinstvo i pravna jednakost. Obezbjeđivanje pravnog jedinstva i jednakosti zahtijeva hijerarhijski poredak sistema pravosuđa, na čijem je vrhu Vrhovni sud, koji je simbol jedinstvene primjene prava i razvoja prava. Bosna i Hercegovina ustavnopravno djeluje poput gradilišta. Međunarodna zajednica ovo gradilište ne može tek tako napustiti, osim ako se ne preuzmu rizici za unutrašnje jedinstvo zemlje, kao i rizici za regionalnu stabilnost, pri čemu su ove dvije stvari međusobno povezane. Još je manja mogućnost da se proglasi pobjeda i da se zemlja onda tiho prepusti svojoj sudbini. Sumnje u to da će se ono što je postignuto održati, da će se nastaviti ono što je započeto i da će formirane institucije nastaviti funkcionisati, i dalje su prevelike.[62]

Vijeće za implementaciju mira je 26. i 27. februara 2007. godine razmatralo nastavak puta Bosne i Hercegovine i praćenje zemlje od strane međunarodne zajednice, osobito od strane Visokog predstavnika. Zatvaranje Ureda visokog predstavnika 30. juna 2007. godine, s obzirom na otvorena reformska pitanja, više nije predmet aktuelnih razmatranja. Ovaj će se cilj pokušati ispuniti 30. juna 2008. godine, ali nije donesena definitivna odluka. Naprotiv, Vijeće za implementaciju mira zadržalo je pravo provjere ovog postavljenog cilja u oktobru 2007. godine i u februaru 2008. godine. S obzirom na još otvorenu političku agendu, koju samo Vijeće opisuje u svom kominikeu, čini se da je opcija zatvaranja Ureda visokog predstavnika 30. juna 2008. godine optimistična. U kominikeu se izričito naglašavaju dva važna težišta zadataka: s jedne strane ustavna reforma (kao prvi korak Bosne i Hercegovine ka državi koja će funkcionisati u skladu s evropskim standardima na putu približavanja Evropskoj uniji), s druge strane reforma policije (kao evropski zahtjev u okviru istog ovog procesa). Imajući u vidu događanja tokom najnovije historije u vezi s ove dvije značajne reforme, čak i ako bi one narednih mjeseci postale zakon, kritična tačka je njihovo provođenje. Ova stvarnost poštivanja zakona, koja se još treba uspostaviti – zbog same kompleksnosti materije koju treba regulisati – iziskivat će vrijeme, vjerovatno više vremena nego što ga je ostalo do 30. juna 2008. godine. Stoga bi pretijesni vremenski rokovi za ispunjenje ciljeva u vezi s Uredom Visokog predstavnika mogli biti štetni. Još jedna godina je krajnje kratak period. Vijeće je, osim toga, Visokom predstavniku dalo zadatak da podnese plan rada; on treba da sažme zahtjeve koji nisu ostvareni nakon

[62] *International Crisis Group*, *Europe Report* No. 180 od 15. februara 2007., S. II.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 107

ostvarenja dejtonskih kriterija i nakon konsolidacije reformi na državnom nivou koje su neophodne za stabilnost zemlje. Pored reforme ustava i policije, ovaj plan rada će u znatnoj mjeri uticati na dalje aktivnosti međunarodne zajednice u Bosni i Hercegovini. Nadamo se da će pri izradi ovog plana rada, koji će uticati na odluke, međunarodna zajednica imati neophodnu mjeru samokritike i da će na svjetlo dana iznijeti i vlastite propuste. Kako krhke mogu biti inicirane reforme već sada se vidi po reformi pravosuđa, a u budućnosti će se vidjeti po ustavnoj reformi i reformi policije, koje još nisu ostvarene. Možda će ovaj prilog pomoći izoštravanju ovog kritičkog pogleda. To mu je u svakom slučaju bio cilj. Odluke Vijeća za implementaciju mira donesene 26. i 27. februara 2007. godine pokazuju da još postoje tamne mrlje. I dalje je nejasan odnos kompetencija Visokog predstavnika i Specijalnog predstavnika EU.[63] Prema objavljenim odlukama, Visoki predstavnik je taj koji će narednih mjeseci određivati intonaciju.

[63] *Süddeutsche Zeitung,* No. 50 od 01. marta 2007. godine, S. 8.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 108

3. REFLEKSIJA PRISUTNOSTI MEĐUNARODNE ZAJEDNICE U BOSANSKOHERCEGOVAČKOM DRUŠTVU

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 111

UVODNO IZLAGANJE

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Zahvaljujem i srdačno pozdravljam sve učesnike skupa. Ako govorimo o međubilansu, i kada je bosanskohercegovačko društvo u pitanju, bilježimo najmanje dvije različite i bitne faze razvoja u odnosima međunarodne zajednice prema našem društvu: fazu do 2000. godine i nešto poslije 2000. godine, a o tome ću nešto kasnije konkretnije govoriti.

Dozvolite mi prethodno dvije-tri kratke refleksije na ono što smo već čuli. Prije svega, govorim kao sociolog i osvrnut ću se na ono što je Visoki predstavnik govorio o svom posljednjem metodu rada u prethodnom periodu, i onom kada je rekao da eksperimentiše s pitanjem Bonskih ovlasti. Kao sociologa, kada neko govori o eksperimentisanju uživo u društvenim okolnostima, mene obuzme strah, jer s ljudima se naprosto ne eksperimentiše. Stvari su suviše ozbiljne da bi se radio eksperiment *in vivo.* Da podsjetim, čak su se neke vrlo značajne stručne rasprave vodile nakon određenih eksperimenata uživo, naročito sa stanovišta psihologije i sociologije, pošto se pokazalo na šta su ljudi spremni kada uzimaju druge ljude za pokusne kuniće. Ne želim zaoštravati stav do te mjere da kažem da je ta nesretna sintagma "eksperiment *in vivo*" koju je izrekao Visoki predstavnik trebalo da znači da se oni poigravaju s nama, ali se bojim da veliki broj naših sunarodnjaka koji žive u ovoj državi ponekad zaista doživljavaju ulogu međunarodne zajednice u Bosni i Hercegovini kao eksperiment. I to možete čuti u javnom diskursu, to možete čuti kada razgovarate s ljudima, kao da se neko u određenim stvarima upravo poigrava s nama.

Reći ću i jednu drugu dilemu, koja je bila prisutna dok sam pisao ovaj prilog. Ja ću dijelom referirati na dostavljeni pisani prilog, uz napomenu da nisu isključivo sve stvari koje se dešavaju u današnjem bosanskohercegovačkom društvu proizvod rada ili nerada međunarodne zajednice. Kolokvijalno bismo rekli: "I do nas je puno toga". Ali ovo je prilika da govorim malo više o aspektu uloge međunarodne zajednice.

Budući da smo imali njegovu ekselenciju ambasadora Šmunka kao uvodničara, posebno me zainteresirala jedna od njegovih sintagmi koja je izrečena na engleskom: *"Learning by doing"*; odnosno, ambasador Šmunk kaže da je međunarodna zajednica u određenim fazama ovdje učila radeći. Znate, jedno je učiti, a drugo je naučiti, i meni se čini da su to one stvari koje se, kada je u pitanju međunarodna zajednica, ne razumijevaju. Ako se kaže da se nešto eventualno učilo, pitanje je da li se naučilo i kako se naučilo. Ja ću

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 112

pokušati dati sociološko razumijevanje takvih stvari, tako da ću prethodno govoriti o državi, jer mi je bitno da napravim distinkciju u odnosu na društvo, i po pitanju države sam mnogo, mnogo radikalniji u svojim stavovima nego po pitanju bosanskohercegovačkog društva.

Jedna od relativno malog broja priznatih autorica izvana, Sumantra Bose, a koja je pisala o ovim našim problemima, vrlo efektno kaže da je ova država država međunarodnog dizajna, koja egzistira na međunarodnom dizajnu. Ovakva postdejtonska Bosna i Hercegovina (ovo *post* odnosi se samo na činjenicu da je Dejtonski sporazum ustanovio kao takvu državu), s ovim svojim strukturama kakve jesu, zapravo je država međunarodnog dizajna, i jednostavno ne vidim da bi se moglo diskutovati ikako drugačije. Za navedenu tvrdnju postoji više nego obilje dokaza, ali također ne smijemo zaboraviti da je sve ovo vrijeme, od Dejtona pa nadalje, figurirala jedna jako bitna stvar kada je u pitanju refleksija na društvo - sada prelazim na ovaj kontekst društvenosti.

Postoji u međunarodnoj zajednici (u tekstovima, u analizama) element koji se zove 'lokalna saglasnost'. Lokalna saglasnost za ulazak međunarodne zajednice da radi ovdje to što već radi... I to je taj Dejtonski sporazum. Lokalna saglasnost zapravo dijeli onu tanku liniju poluprotektorata od protektorata. U tom kontekstu, zapravo, niko ne može tvrditi da je Bosna protektorat, u međunarodno-pravnom smislu poput, recimo, Istočnog Timora ili Kosova, sada ovakvih kakvi jesu. Bosna i Hercegovina se razlikuje po elementu lokalne saglasnosti, a također je bitno da su unutar te lokalne saglasnosti učestvovale i dvije susjedne države. Čini mi se da se počesto zaboravi koliki je zapravo uticaj Srbije i Hrvatske i danas na Bosnu i Hercegovinu. Bitno je i pitanje kako se različite društvene manifestacije i dešavanja u tim državama prelijevaju preko granice, odmah, u Bosnu i Hercegovinu. Dakle, imate istoznačnu reakciju na dešavanja u Srbiji i Hrvatskoj, u društvenom smislu, i na Bosnu i Hercegovinu. Naravno, kada to političari uviju u oblande određene političke zainteresiranosti ili konkretnog političkog interesa, stvari postaju mnogo bitnije.

Ali, evo šta su opće odrednice Bosne i Hercegovine u smislu dejtonskog dizajna, odnosno dejtonske tvorevine. Nedavno smo u Bosni i Hercegovini, u javnosti, imali prisutne diskusije o onome što je postala kao neka vrsta mantre - ja se moram izviniti što koristim taj izraz uopće jer nam je javni diskurs bio pretrpan tim pitanjima - dakle, radi se o diskusijama o konsocijaciji, tj. konsocijativnoj demokratiji. Bosna i Hercegovina je *de facto* konsocijacija. Dakle, svako ko vas pita, odnosno ako pročitate u novinama da li je konsocijativni model rješenje, taj ili ne zna šta vam govori, ili vam govori

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 113

stvari tako da ih pogrešno razumijete. Ne radi se o primjeni nečeg novog; model konsocijacije je već primijenjen.

Kada govorimo o konsocijaciji, treba istaći da se radi o prijelaznim modelima uređenja države. Vrlo kratko ću objasniti tu pojavu i u teoriji. Ona jednostavno podrazumijeva neke osnovne principe – prvi je tzv. velika koalicija, koja pretpostavlja i naše Predsjedništvo, pa sve do strukture Doma naroda, bikameralne zastupljenosti, etničke proporcionalnosti, izbor sudija, dakle po pitanju Bosne i Hercegovine navedeni primjeri odražavaju princip velike koalicije. Znači, imate predstavnike svih zainteresiranih strana koji treba da se dogovaraju oko određenih pitanja. Konsocijacija, potom, podrazumijeva princip proporcionalnosti. Proporcionalnost, po meni, nije ništa drugo do svi ovi sastavi, ono što smo nekad zvali nacionalni ključ - to se zapravo zove proporcionalnost u konsocijativnom govoru. Pitanje trećeg principa, principa veta, nije ništa drugo nego nacionalni interes. Mi imamo ugrađen mehanizam 'vitalnog nacionalnog interesa' - iako malo ko zna šta on podrazumijeva, ali se zna da postoji. Čak su mi kolege pravnici rekli da nema nigdje definicije 'vitalnog nacionalnog interesa', ali postoji, dakle, to vam je pravo veta. I, konačno, element autonomije segmenata je struktura autonomija kroz institucije politike, kulturu, kantone, entitete, Distrikt Brčko i tako dalje. Dakle, mi imamo konsocijaciju u Bosni i Hercegovini *par exellence*, i ona je tek jedan od mogućih modela.

A sada ću postaviti pitanje: šta je u tom smislu pošlo krivo? I to je ona sociološka analiza koja će dijelom zahvatiti ono što usko određujemo kao političku sociologiju jer je to, čini mi se, sasvim legitimna disciplina za razumijevanje ovog problema.

Prvo, mislim da je više nego jasno da na državnom nivou imamo pretpostavljenu situaciju *power sharinga* (podjele vlasti), no podjela vlasti ne funkcioniše u institucijama zasnovanim na etničkom principu, na principu proporcionalnosti. Zašto? Zato što umjesto pozitivnog konsenzusa, za koji se pretpostavlja da će se dobiti proporcionalnošću, i *power sharingom*, mi u BiH zapravo imamo negativan konsenzus. U našim zajednicama, u našem političkom sistemu odlučivanja, na snazi je sistematsko blokiranje odluka koje bi omogućile da se krene u rekonstrukciju. Ja ne želim nagađati ko blokira, u kojem momentu, koje odluke, ali problem je u negativnom konsenzusu. Dakle, *power sharing* i proporcionalnost nisu doveli do toga da se gradi pozitivan konsenzus, nego obratno.

U kontekstu autonomije segmenata, bar ondje gdje dolazimo do ovih širokih kulturnih politika, bojim se da je, naprimjer, pitanje segregacije u obrazovanju nešto što nam također pokazuje da takva vrsta insistiranja na

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 114

autonomiji segmenata zapravo vodi upravo i samo segregaciji, podvojenosti, a ne integriranju i približavanju razlika, da ne nabrajam neke stvari koje smo već ranije čuli. Naročito je bitno da se u polju ponovne izgradnje međusobnog povjerenja i pomirenja praktično nije došlo dalje od perioda odmah iza rata, i nemojte da čudi retorika domaćih političara i nekih analitičara koji kažu da Bosna danas više liči na onu iz 1991. nego 2001. godine. Dakle, toliko o ovom institucionalnom dizajnu, ako hoćete konsocijativnom, koji je praktično dejtonska tvorevina i tvorevina onih koji su donosili odluke u samom Daytonu.

Naredni bitan element je element centralnih institucija, ja ih zovem institucije 'vladara-koji-to-nije' i OHR-a, koji je praktično trebalo, shodno svim relevantnim dokumentima i dejtonskom sporazumu, da učiniti da se određene stvari deblokiraju, odnosno, da proces krene naprijed. Neki su skloni tvrditi da su određeni intervencionizmi, pogotovo u kontekstu pravne regulative, bili nešto veoma dobro za ovu državu. Ja se slažem da je to u nekim oblastima bilo neophodno i naročito bitno da bi se krenulo dalje. Ali, s druge strane, također možemo vidjeti da se postkonfliktna obnova i strategija ne mogu graditi mimo volje stanovništva, u smislu da pravni idealizam nužno ne mora dovesti do tranzicije ka samoupravi. Osnovna je pretpostavka, i to nam je poznato, da međunarodna zajednica nije baš mnogo sarađivala sa domaćim ekspertima u oblasti reforme pravog sektora, pogotovo ne nakon 2000. godine. Tu postoji čitav niz analiza koje kažu da je do 2000. godine proces usaglašavanja zakonske regulative išao jako sporo; pa, oprostite mi na nešto malicioznosti, ali eto, do tog perioda su formalno figurirali ponekad i domaći pravnici u pravljenju legislative. Od 2000. pa nadalje nema čak ni formalnog konsultovanja sa domaćim stručnjacima, nego se napiše zakon koji treba da se izglasa. Takav pravni idealizam u kontekstu ovakve zajednice, u kontekstu ovakvog društva, ne pomaže samoupravi, ne pomaže tranziciji ka *local ownershipu* ili kako nas već bombarduju svim tim 'važnim' riječima. Posebno mi se bitnim čini naglasiti da dejtonska logika i nakon 1997. godine, od te ključne tačke uvođenja Bonskih ovlasti, nastavlja proizvoditi paradokse. Kako ih proizvodi? Zato što i sami eksponenti međunarodne zajednice smatraju da je dejtonska struktura dovoljno fleksibilna da se s njom može činiti svašta. Ovo je sada već analiza izvanjskog faktora, a ne unutrašnjeg. A šta ta fleksibilnost podrazumijeva? Ona je zapravo podrazumijevala 'isisavanje', taj izraz je malo nezgodan, ali 'isisavanje' domaćih kapaciteta iz procesa donošenja odluka. I doista, nakon 2000. godine tačno možete uvidjeti da se čak ni formalno ne traži saglasnost domaćih aktera za bilo koju odluku međunarodne zajednice. Domaće organizacije jesu, dodu-

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 115

še, formalno slale zahtjeve Evropskoj uniji da umjesto IPTF-a dođe EUPM, evropska policija... Oni jesu formalno pozvali Evropsku uniju da pošalje svoje vojnike u operaciju ALTEA, ali to je tek formalni zahtjev, zapravo su odluke donesene mnogo ranije, i prije formalnih zahtjeva, s obzirom da se znalo kako će Brisel preuzeti ovlasti unutar PIK-a u smislu približavanja BiH Evropskoj uniji. Dakako, niko nikoga u Bosni i Hercegovini nije pitao šta o tome misli. Stoga te priče oko "manje Vašingtona, više Brisela" ne treba uvijek najnužnije shvatati kao pozitivni razvoj stvari kad se radi o Bosni i Hercegovini.

Šta dalje želim naglasiti u ovom kontekstu priče oko međunarodne zajednice? Centralna institucija, Ured Visokog predstavnika, vraćam se na 1997. i Bonske ovlasti, postaje jedna vrlo specifična institucija aktuelnog sistema vladavine u Bosni i Hercegovini. Dakle, ona postaje umješteni centar moći vladavine u Bosni i Hercegovini, a do 1997. godine to nije bila ni približno na takav način, i to je jedina institucija u Bosni i Hercegovini koja nije formalno zasnovana na principu *power sharinga*. Kolega Ademović je govorio o tome s pravnog aspekta. Međunarodni predstavnik u smislu institucije zaista ne dijeli moć u Bosni i Hercegovini ni sa kim. Ne možete ga pozvati na odgovornost, a formalno-pravno je dio strukture moći i vlasti u Bosni i Hercegovini, ponavljam naročito od dobivanja Bonskih ovlasti. I to je onaj element koji je od tada pa nadalje u Bosni i Hercegovini otvorio dva vrlo nezgodna procesa. Jedan je proces o kojem smo već čuli: pitanje odgovornosti, a drugi je pitanje transparentnosti. I u jednom i u drugom slučaju se radilo veoma loše.

No, samo jedna kratka digresija vezana za prethodni kontekst, o tome šta su domaći akteri, izuzev političara i političkih stranaka, mogli eventualno očekivati. Međunarodna zajednica je praktično gradila strategije mijenjanja stanja u državi i društvu preko civilnog društva. Ja znam da će profesorica Ler govoriti više od mene o tome, a i sam sam pisao o tom problemu, ali tek da spomenem: poražavajuće je da se međunarodna zajednica, kad je civilno društvo u pitanju, samo i isključivo oslonila na nevladin sektor, samo na nevladine organizacije kao takve. I gledajte sada paradoksa: od nevladinih organizacija kao nepolitičkih aktera se traži da djeluju politički na izmjeni situacije! Naravno da se nevladine organizacije bave i politikom, ali tražiti od njih političko djelovanje poput političkih stranaka, to je doista apsurd. Da ne spominjem kakve su pritom bile strategije pomoći zasnovane na *donor driven* strategijama, i tako dalje.

Također, želim dodatno naglasiti bitno pitanje koje se tiče odnosa prema političkoj situaciji u Bosni i Hercegovini. Spomenuti su izbori, spomenuti su

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 116

zakoni i tako dalje u tom smislu. Pazite, Dejtonski sporazum je zahtijevao da se ne kasnije od devet mjeseci nakon potpisivanja Sporazuma provedu izbori u Bosni i Hercegovini. To se i desilo. Molim vas, kome je moglo pasti na pamet da u situaciji razbijenog društva, potpuno podijeljene zajednice kao rezultata rata, govorim uopće i o društvu, sa medijima koji su ispod bilo kakvog nivoa profesionalizma u materijalnom i svakom drugom smislu, sa civilnim društvom koje ne može da ostvari svoje osnovne funkcije i tako dalje, dakle, kome je moglo pasti na pamet da će bilo ko drugi pobijediti na izborima osim onih koji su u ratu vodili politike? Ali, to možda i nije najveći problem – problem je što su oni dobili izbore na demokratski način! Time Dejton zvanično legitimira etnokratiju, koja će se pretvoriti u partitokratiju, a tada više niko nema pravo, nema mogućnost argumenta da kaže: "Pa čekajte, možda bi ljudi glasali za nekog drugog". Šta ovo znači? Ti ljudi koji su 1996. godine glasali nisu imali mogućnost da izaberu ikoga drugog izuzev onih koje su izabrali – dakle nacionalne stranke. I to je paradoks demokratije: ako izbori dođu prerano, mogu biti dio problema a ne dio rješenja. To se desilo u Bosni i Hercegovini.

Pored toga, pitanje građenja demokratije nedemokratskim sredstvima je ono što primjećujem kao specifičan aspekt naše realnosti, tako da se međunarodna zajednica doista nije nimalo potrudila da objasni i javno artikuliše svoje odluke. Javnost, htjeli oni to priznati ili ne, ima pravo da zna zašto se donose određene odluke. U tom smislu, zatvoreni sastanci s nominalnim *office holdersima*, onima koji sjede u izabranoj vlasti, nisu dovoljni za javnu artikulaciju demokratskih politika. Javnost ima pravo da zna. Transparentnost je apsolutno izostala kada je u pitanju mehanizam donošenja odluka unutar međunarodne zajednice. Zapravo, mi ne znamo ništa o tome ko, kada i kako donosi odluke koje se tiču nas samih. O tome se zapravo zna jako malo; međutim, to šalje određenu poruku društvu kao takvom, koje treba da se očituje i o tim pitanjima.

Ako mi iz BiH to i kažemo pa nas ne slušaju, to nekako i mogu da razumijem. Ali, ako se već 1996. godine - sada ću se dijelom osvrnuti na rad Međunarodne krizne grupe sa sjedištem u Briselu (ICG) - ako ICG 1996. godine kažu sljedeću stvar: "Učiti demokratiji i toleranciji, dobroj vladavini - nema boljeg načina nego početi s primjerom." - dakle, ako je to tada primijećeno, a danas je 2007. godina, mislim da donosioci odluka u međunarodnoj zajednici, ako ništa drugo, treba da ponude neke odgovore. Odgovori i do dan danas nisu došli, a nekad vas znaju proglasiti za arogantnog ako uopće postavljate takva i slična pitanja.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 117

Konačno, idući dalje kroz ovu cijelu strukturu, ostat ću na još dva bitna pitanja za društvo. Jedno je pitanje takozvanog *hard* sektora i *soft* sektora razvijanja politika u Bosni i Hercegovini. Ponovo dejtonski paradoks; takozvani problemi *hard* sektora ili *hard* politika rješavali su se veoma brzo: ko se uopće može sjetiti koliko je malo vremena trebalo da vojske koje su ratovale u Bosni i Hercegovini u roku od šest mjeseci po potpisivanju mirovnog sporazuma demilitariziraju i rastjeraju po kasarnama? To je onaj takozvani *hard* sektor, ta tvrda pitanja. A šta je međunarodna zajednica u smislu pomoći uradila u takozvanom *soft* sektoru, koji nisu smatrali tako bitnim: školstvo, zdravstvo, pitanja socijalne pomoći itd.? Ukoliko izuzmemo donacije nevladinim organizacijama - apsolutno ništa. Sa stanovišta društva, smatram da su segregirano školstvo u Bosni i Hercegovini, te famozni eufemizmi tipa "dvije škole pod jednim krovom" i drugo, zapravo mnogo, mnogo ozbiljnije pitanje od nekih drugih pitanja, recimo od vanjske politike Bosne i Hercegovine. Da se razumijemo: međunarodna zajednica, iz meni nejasnih razloga, ništa nije uradila u području *soft* sektora i zato, između ostalog, danas nove generacije odrastaju u Bosni i Hercegovini zapravo na rezultatima etnopolitike i etnokratije.

I konačno, pitanje ustavnih reformi u Bosni i Hercegovini. Prvo, nije mi jasno kako oni koji su doveli do zaključivanja Međunarodnog sporazuma u Dejtonu smatraju da je moguće taj sporazum mijenjati bez njihovog učešća? Zašto misle da ga je moguće promijeniti tek tako, jednostavno, samo da se domaći akteri dogovore? Naravno da je nemoguće! Pogotovo što je fraza koja se često čuje u Bosni i Hercegovini, čini mi se, i dalje ilustrativna: *Oni koji su 1995. bili najveći protivnici Dejtonskog sporazuma danas su njegovi najgovorljiviji zagovornici.* Pa valjda to nekome nešto treba da znači, to nekome nešto treba da kaže, gdje i kako su stvari krenule pogrešno. Ali eto, ostaje Ustav kao ustav, i ostaje jedno ključno i bitno pitanje: javni interes za pitanje Ustava. Mi znamo kako su prethodne ustavne debate išle i kako se šta dešavalo, ko je o tome odlučivao i kako je odlučivao. Kao državljanin ove zemlje, namjerno izbjegavam ove politički 'opasne' koncepte. Ali, kao državljanin koji ima pasoš ove zemlje, imam problem: ko, kako, kada i s kim odlučuje o ustavu i moje države, tim prije ako predano radim i gradim svoju i budućnost svoje porodice ovdje? Gdje je u tim procesima artikulacija javnih politika? Gdje je artikulacija javnog interesa? Gdje su pripadnici kakvog-takvog reduciranog nevladinog sektora? Na kraju krajeva, bilo je ovakvih konferencija još, ali kome mi to sve pričamo? Nije dovoljno pričati, bitno je da neko i sluša. U tom smislu, čini mi se da ta iščašenost, taj nedostatak ustavnog patriotizma, taj pravni idealizam neće puno pomoći zajednici,

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 118

naročito zbog pitanja da u ovoj državi ne postoji saglasnost o prošlosti, sadašnjosti i budućnosti. Vi možete nametnuti zakon kakav god hoćete, ali pitanje konsenzusa i o prošlosti i o sadašnjosti i o budućnosti je nešto što čeka na nas da se s tim suočimo. Međunarodna zajednica, ko god to bio, naprosto mora artikulisati javni forum da se o tim pitanjima javno progovori. A reći ću vam šta sam ja, prateći literaturu, uspio primijetiti. Najmanje je međunarodna zajednica bila uključena u projekte koji su određeni znakom suočavanja s prošlošću. Imate strane vlade koje podržavaju projekte suočavanja s prošlošću, ali institucije međunarodne zajednice, eksponenti međunarodne politike u Bosni i Hercegovini uglavnom bježe, kako naš narod kaže, "kao đavo od krsta" kad se govori o suočavanju s prošlošću. Tamo nemate predstavnike ni OHR-a, ni OSCE-a. Mislim da je to jedno od ključnih pitanja kako bi briselska faza u koju idemo bila izvjesna. Inače, ja ne znam na čemu se zasniva priča o nekom konsenzusu da u našoj državi, oko čega se navodno slažu svi, jeste jedina njena evropsku perspektiva. Po meni, u pitanju je nešto što očigledno ne stoji. Ili mi baš nismo za Evropsku uniju, ili neko ne govori istinu. Samo priča o tome kako su i Srbi, i Hrvati i Bošnjaci - prepoznajte čiji su to termini - zajedno i ujedinjeni na putu ka Evropskoj uniji, meni ne govori puno. Znate zašto? Zato što ćemo mi biti Evropska unija tek onog momenta kad taj moto Evropske unije, zvanični moto Evropske unije – "Ujedinjeni u razlikama"- postane zapravo stvarno domaći moto.

KOMENTAR

Nada Ler Sofronić, izvršna direktorica Centra „Žena i društvo", Sarajevo

Pošto se ovdje svi manje-više saplićemo o pojam šta je to zapravo 'međunarodna zajednica', ja ne vidim drugi način za izbjegavanje nesporazuma nego da svako za sebe definiše šta pod tim konkretno podrazumijeva. Ja, dakle, pod ulogom 'međunarodne zajednice' ovog puta podrazumijevam međunarodnu podršku promociji demokratizacije postsocijalističkog, postratnog tranzicijskog društva Bosne i Hercegovine, koja je između ostalog bazirana i na sasvim određenoj političkoj teoriji.

U svom kratkom, i stoga nužno redukovanom i simplifikovanom komentaru pokušaću da analiziram dijalektiku odnosa između 'međunarodnog faktora' i onoga što nazivamo civilnim društvom u Bosni i Hercegovini.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 119

To znači da se odmah ograđujem od lamentiranja nad tim šta nam je 'međunarodna zajednica' uradila, šta nam nije uradila, šta nam je trebala uraditi, a šta mi kao 'žrtve' ili 'eksperimentalni kunići' u cijeloj ovoj stvari trpimo.

Danas se u politološkoj literaturi već otvoreno govori o 'razočaravajućim uvidima' (Charoters, 2000)[1] - da većina postsocijalističkih društava (a to se odnosi i na Bosnu i Hercegovinu) nije nakon višestranačkih izbora i promjene režima umarširala u demokratiju, već su se mnoga od njih našla u političkoj sivoj zoni pseudodemokratije, 'fasadne' ili 'formalne' demokratije. Politička i teorijska euforija do koje je došlo nakon pada Berlinskog zida brzo je splasnula i zamijenjena je skepsom pred neizvjesnošću i, kako kaže Vukašin Pavlović: „...zapadna politička teorija koja se tradicionalno bavila socijalizmom... kao da se još jednom nasukala na novu i nepoznatu obalu".[2] Iako prevladavajuće shvatanje demokratizacije tranzicijskih društava stavlja ekonomske, političke i institucionalne, dakle državne atribute demokratizacije na prvo mjesto, međunarodna zajednica je od samog početka djelovanja u Bosni i Hercegovini deklarisala svoju sklonost prema akterima civilnog društva kao bitnim promotorima demokratije (zasad ćemo ostaviti po strani da su se pod tim najčešće, ne sasvim ispravno, podrazumijevale uglavnom nevladine organizacije).

Štaviše, čini se da su zapadni promotori demokratije u postsocijalističkim zemljama računali da će civilno društvo biti njihova glavna socio-kulturna uporišna snaga, jer su često bili u uvjerenju ili da se zamišljeno civilno društvo u prethodnom sistemu nalazilo u 'ilegali', u nekoj vrsti disidentskih oaza *undergrounda,* živeći svoj skriveni paralelni život, ili su se nadali da će materijalnom pomoći osnažiti nevladin sektor kako bi ga osposobili da bude što moćniji faktor demokratizacije.

Umjesto toga, na sceni se ukazala jedna veoma slabašna verzija civilnog društva. Naravno, uzroci slabosti civilnog društva kod nas su višestruki, ali ja bih ukazala na onaj koji se meni čini najznačajniji u sociološkom smislu. Mislim da je manjak civilnog društva jedan od neposrednih rezultata marginalizacije, ili čak *iščezavanja njegove glavne socijalne baze koju predstavljaju progresivni urbani i građanski srednji intelektualni slojevi.*

Retradicionalizacija, repatrijarhalizacija i revitalizacija tribalnih i etničkih socijalnih veza gotovo su sasvim zbrisale ove socijalne slojeve s bosansko-

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1 Thomas Carothers, *Aiding Democracy Abroad*, Carnegie Endoewment for international Peace, Washington, 2000.

2 Vukašin Pavlović, *Civilno društvo i demokratija*, Politeia, Beograd, 2004.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 120

hercegovačke društvene i javne scene, a invazivna dominacija etnonacionalnih politika i retrogradnog konzervativizma sve suverenije zauzima naš svakodnevni javni i privatni život.

U nedostatku stvarnog civilnog društva, međunarodne politike pomoći demokratizaciji i nevladinim organizacijama u zemljama u tranziciji već su se srele s problemom podrške "virtuelnom civilnom društvu", neselektivnom pomoći nevladinim organizacijama koje realno ne promovišu ni autentični posebni interes socijalnih grupa niti opšti javni interes.

U postsocijalističkim društvima, nastalim na razvalinama naše bivše zajedničke države, vrlo je teško oživjeti samoregulativnu funkciju civilnog društva koje bi se u socio-kulturnom smislu imalo na šta osloniti. Samoregulativnu funkciju civilnog društva moguće je uspostaviti samo uz velike strukturne reforme i samo uz neophodnu internacionalnu potporu.

Direktan i indirektan pozitivni uticaj međunarodnog faktora na izgradnju civilnog društva, koji ono, po mom dubokom uvjerenju, ne koristi ni izdaleka onoliko koliko bi trebalo, manifestuje se, između ostalog, u sljedećem:

* međunarodnom priznanju legitimiteta civilnog sektora;
* promovisanju institucionalnih kanala i zakona koji zahtjeve civilnog sektora čine legalnim i legitimnim (ženska ljudska prava, pravo na pristup informacijama, sloboda izražavanja, zabrana diskriminacije i govora mržnje, autonomija univerziteta, sloboda sindikalnog organizovanja i zabrana sankcija za sindikalni aktivizam, međunarodno priznata i ustavima BiH zagarantovana prava na život bez nasilja i ugrožavanja okoliša, itd.);
* afirmaciji korištenja mehanizama i akcija *javnog zalaganja* za društvene promjene koje su od posebnog i od opšteg javnog interesa;
* promociji mogućnosti stvaranja koalicija i alternativnog organizovanja;
* promociji *nezavisnog monitoringa* i *pozivanju zakonodavne i izvršne vlasti na odgovornost;*
* podršci animiranja javnosti i *korištenju slobodnih medija za formiranje demokratske javnosti;*
* afirmaciji *globalnog i internacionalnog* zalaganja civilnog društva za pozitivne društvene promjene, posebno onih u *oblasti ljudskih prava.*

Na potezu je, dakle, civilno društvo!

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 121

Đorđe Čekrlija, Filozofski fakultet Univerziteta u Banjoj Luci

Poštovane dame i gospodo, drago mi je što vas mogu pozdraviti i prisustvovati konferenciji, ali isto tako moram reći da mi je, kao psihologu, žao što je ovo naša realnost i što tako mnogo energije moramo trošiti na ovakve teme. Ono čime se ja uglavnom bavim u posljednjih nekoliko godina s kolegama na Filozofskom fakultetu u Banjoj Luci na Odsjeku za psihologiju su različite vrste grupnih identiteta, i to smo identifikovali kao vrlo bitno u određenju ponašanja, znači u društvenom kontekstu, kao nešto što je faktički nemoguće preskočiti. Ovo je jedna od prilika da te identitete pogledamo s drugog aspekta, odnosno kao neku vrstu rezultante koja nastaje ne samo djelovanjem faktora koji su prisutni na ovom području, a koje sami proizvodimo, nego i koji su u određenoj mjeri rezultat djelovanja različitih uticaja koji dolaze van okvira naše zemlje.

Ovdje je nekoliko puta pomenuto pitanje šta je međunarodna zajednica, i postoji više mogućnosti da se međunarodna zajednica definiše ili stavi u neki kontekst. Ukoliko ovo pitanje izaziva ovakve dileme ili nejasnoće u tri posto učenih glava u Bosni i Hercegovini, sa završenim fakultetom, onda je prilično jasna situacija kakve nedoumice se javljaju u glavama običnog življa, odnosno onih koji nisu imali priliku ili nisu stekli fakultetsko obrazovanje.

Što se tiče identiteta, kroz različite empirijske studije smo ustanovili postojanje tri osnovne vrste identiteta koje se isprepliću, odnosno koje su prisutne kod pojedinaca. To su identiteti koji se mogu vezati za etničku pripadnost, pa za državnu pripadnost, a i treći koji je ispitivan - to je evropski identitet. Znači, to su identiteti koji su bazirani na etničkoj pripadnosti, odnosno na određenoj vrsti geografske lokacije. Što se toga tiče, u prvom redu moram istaći da je, vjerovatno, jedna od najtežih stvari ta što grupni identiteti na našem području uglavnom dominiraju nad individualnim identitetima, odnosno, vrlo često etnička pripadnost dominira nad profesionalnom, da ne kažem i nad polnom ili bilo kojom drugom orijentacijom koju osoba sebi nastoji da postavi ili u kojoj nastoji da se afirmiše. Naravno da razlog leži u dešavanjima u zemlji u kojoj živimo, a što se tiče uticaja koji mi dobivamo, znači onaj dio koji nismo sami proizveli, on se može svesti na nekoliko razina. U prvom redu znači nepoznavanje ideje, odnosno samog koncepta ili vrste međunarodne zajednice; javlja se kao neka vrsta reakcije, najprimitivniji mehanizam odbrane, okupljanja u neku primalnu, kako kolegica maloprije reče 'tribalnu' skupinu na nivou etničke pripadnosti. I pored svih dešavanja koja su domaćeg porijekla, određene nejasnoće ili nerazumijevanja inostranih uticaja također dovode do toga da se krug u kome

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 122

žitelji naše države nastoje da se nađu ili da se osjećaju sigurnije sve više sužava. Samim tim, na neki način, običan građanin ove države sebi siječe mogućnost nekih širih vidika i ostvarenja kontakata koji će prevazići granice ove države. Ono što je u vezi s tim tužno je da se, kao psihološki konstrukti, i stavovi ove nabrojane tri vrste identiteta međusobno ne sukobljavaju. Moguće je da sva tri oblika ova tri identiteta budu prisutna kod iste osobe, znači da imaju različite domene u kojima se ostvaruju i da je osoba faktički ispunjena na sva tri fronta tako da se oni međusobno ne sukobljavaju. Ali, s jedne strane, to se, znači, dešava prvo zbog nerazumijevanja same stvarnosti u kojoj živimo i uticaja koji do nas dolaze, a zatim i zbog činjenice da mahom oni koji nas usmjeravaju ili oni koji nas vode potiču iz istih struja koje su i dovele do ovih nesretnih događanja. Znači, jednostavno dovode do toga da ovaj prvi pomenuti - etnički identitet ostaje najintenzivniji.

Ukoliko se stvar još razloži, možemo svakog čovjeka posmatrati kao nekoga ko je vezan za svoju grupu, s jedne strane, a s druge strane je otvoren prema nekim drugim grupama. Upravo veliki broj ovih faktora dovodi do toga da se mnogo više pažnje poklanja onome što nazivamo svoje ili naše, odnosno da dolazimo u poziciju da pravimo podjelu na 'naše' i 'njihovo'. Znači, samim tim svaki pojedinac dolazi u poziciju da pod 'njihovim' ne smatra samo pripadnike druga dva konstitutivna naroda koja žive u Bosni i Hercegovini faktički, već pripadnika bilo kojeg drugog naroda za koji on kaže da nije pripadnik 'njegovog'. Još jednom bih ponovio da je ovakva vrsta okupljanja u neke grupe stvarno posljedica djelovanja najprimitivnijih mehanizama i traženja neke osnovne egzistencijalne zaštite, gdje će jednostavno pripadnost jednoj grupi biti okvir u kojem će se osoba kretati i gdje će osjećati izvjesnu sigurnost.

Što se tiče tri vrste identiteta koje možemo ustanoviti kod svakoga, naravno da je najizraženiji etnički identitet. Međutim, mnogo je zanimljivija činjenica da je evropski identitet građana Bosne i Hercegovine, prema mjerenjima koja se vrše, tri do četiri puta izraženiji nego državni identitet. Ova činjenica u prvom redu važi za hrvatski i srpski živalj u Bosni i Hercegovini, odnosno, bošnjački živalj - sudeći prema onome što se dobija u empirijskim potvrdama - jedini izjednačava etnički i državni identitet, dok druge dvije skupine u potpunosti razlažu ovu komponentu, odnosno državni identitet traže van granica BiH. Ja bih još jednom ponovio da sve studije, sva razmatranja pokazuju da ove tri vrste identiteta nisu nužno suprotstavljene i da se ne moraju sukobljavati. Međutim, i dalje ostaje činjenica da se mnogo više pažnje poklanja vlastitoj grupi. U okviru iskustava s mlađim skupinama, u srednjim školama ili na fakultetima gdje se može dobiti neka korist, shvatili

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 123

smo da treba raditi na nekim olakšicama koje će omogućiti našim mladim koji se školuju da steknu veći broj iskustava koja ne dolaze iz ove zemlje, odnosno koja dolaze van njenih okvira. To, drugim riječima, znači da se faktički međunarodna zajednica, čak i najgrublje, iskoristi da bi se naši mladi proširili, u stvari da bi pogledali na koji način oni mogu imati koristi od ove silne zbrke i od velike količine međunarodnih faktora koji su ovdje prisutni. Znači da iskoriste sve moguće potencijale, od njihovih stipendija do prilika da učestvuju u različitim aktivnostima, a pri tome bi se, vjerovatno, domaćem političkom tkivu zadala zadaća da im u tome pomognu. Ono što se nalazi u okviru otvorenosti prema drugima, u ovom slučaju, možemo reći da predstavlja problem u prvom redu iz vlastitog straha. Ukoliko se počne pretraživati taj strah i njegova realna osnova, u prvom redu dolazimo do dešavanja koja su iza nas desetak-petnaest godina; njihov identitet je i dalje isti i onemogućava nas da se maknemo naprijed, a pripadnici međunarodne zajednice nemaju pretjerano sluha za ove komponente koje se mogu smatrati subjektivnim, odnosno koje se ne pokazuju u objektivnom svijetu kao ekonomija, političko djelovanje ili tome slični aspekti. To faktički znači da je potrebno mnogo više angažovanja da se upravo na ovaj dio koji se tiče mentalnog zdravlja i mogućnosti žitelja BiH prevaziđe i da se i pripadnici međunarodne zajednice upoznaju s takvim stvarima. Jedna od njih je faktički stalno lobiranje i guranje, da kažem, pod nos njima onoga što ne spada i što trebaju da rade, ali u svakom slučaju je nužna njihova saradnja.

Koja je indirektna najveća dobit iz toga? To što bi se izgradnjom državnog, odnosno jačanjem evropskog identiteta upravo razvijao i državni identitet. Znači, širenjem pogleda na veći broj stvari Bosna i Hercegovina bi vjerovatno i svim građanima bila neka bliža vrsta realnosti, tako da bi onda državni identitet dobio svoju snagu i našao svoje mjesto i svoju zasnovanost u ovom trilingu identiteta o kojima sam pričao.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 124

DISKUSIJA

Tarik Haverić, Evropski centar za liberalnu demokratiju (ECLD)

Iznijet ću dva razmišljanja potaknuta vrlo nadahnutim uvodnim izlaganjem gospodina Abazovića. Ona će možda biti nekoherentna, utoliko što ih vadim iz teksta koji je prelomljen i pripremljen za štampu, i čista je koincidencija što sada imam da kažem nešto što sam koliko prekjučer još jednom prošao.

Prvo razmišljanje tiče se eksperimenta *in vivo*. Jasno je da može povrijediti već kad međunarodna zajednica samo evocira to učenje, 'obrazovanje kroz rad', kako mi to kažemo. Međutim, u sociologiji postoje eksperimenti *in vivo,* naravno, ne u tolikoj razmjeri, i preduzimaju ih akteri ili društva, okvirna društva koja su u stanju da ih kontroliraju i da se u svakom trenutku - kada vide da eksperiment nije uspio - bez velike štete povuku i probaju nešto drugo, tako da to ne izaziva slom socijalne strukture (*political decay*, kako vole da kažu autori od kojih to preuzimam).

Međutim, ono što uvijek možemo učiniti jest takozvani misaoni eksperiment. I ja sam se (upravo na stranicama koje su mi pred očima) u takav eksperiment upustio, a povezan je s drugim elementom o kojem ste vi govorili. Aktuelnost, naravno, ne možemo izbjeći. Recimo da je mantra koju ste spominjali samo jedna od supsidijarnih tema ukupnih razgovora u transformaciji državno-pravnog prostora, a zovemo je nepopularnim (ili, za neke, popularnim) imenom *konsocijacija*.

Misaoni eksperiment sastoji se u sljedećem: ako konstatiramo da je konsocijacija model u vezi s kojim nema saglasnosti društvenih aktera, upitajmo se da li postoji jedan model ili element u vezi s kojim takva saglasnost postoji. Naprimjer, ne vidim da bi se iko usprotivio bruto nacionalnom dohotku *per capita* od 23.000 eura u Bosni i Hercegovini. Oko toga će se uvijek postići saglasnost. Da li mislite (ovo je, naravno, retoričko pitanje) da je dovoljno da se društveni akteri (isti oni koji ne mogu da se usaglase o konsocijaciji) usaglase u vezi s ovim ciljem, pa da Bosna sutra postane bogato društvo? Onaj ko postavi takvu tezu vrlo brzo će biti izvrgnut ruglu, zato što i djeca znaju, a ne samo politički teoretičari, da nije dovoljno usaglasiti se u vezi s nekim ciljem pa da se samim time on i ostvari.

Moje pitanje (koje ovoga puta nije retoričko) glasi: zašto mislimo da je jednu takvu dubinsku političku transformaciju moguće postići pukim dogovorom? I vjerovati da je nama tako loše samo zato što dogovor izostaje?

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 125

To me vodi do još jedne teze potaknute izlaganjem kolege Abazovića: nikada nije ustanovljeno, nikad retorički konstatirano da, zapravo (i tu preuzimam tezu američkog autora Immanuela Wallersteina), postoji *svjetski sistem* koji djeluje, kojeg mi možemo a i ne moramo biti svjesni, ali koji se na nas odražava. Ljudi koji su hodali po krovu padali su s krova a da nisu znali za zakon gravitacije, koji je bio 'na snazi' i prije nego što su ga Galilej i Newton formulirali. Postoje neke sile koje oblikuju život današnjih društava a nalaze se izvan tih društava. Da li je Bosna i Hercegovina dio tog sistema kojeg možemo a i ne moramo biti svjesni, sistema koji, u krajnjemu, presuđuje o svim strukturama našeg političkog i društvenog života, htjeli mi to ili ne? Drugim riječima, koliki postotak svega što se događa ili svega što će se dogoditi ne zavisi od nas? 80%? 90%? Nije li prepotentno ponašati se kao da svi parametri naše transformacije zavise samo od nas?

Šta hoću da kažem? U tom svjetskom sistemu, Wallersteinovom (koji je *kapitalistički* sistem, naravno, uza sve korektive), zna se do posljednje pojedinosti kako se odnosi rad prema kapitalu, kako se osiguravaju vozila, kako posluju banke i ko daje naređenja policiji, kakav će sistem zdravstvene zaštite na kraju prevladati, znaju se ekonomski, ekološki, higijenski, tehnički standardi… Hoće li iko povjerovati u mogućnost da se ovdašnji akteri dogovore, na primjer, da se to sve na nas ne odnosi, i da se Bosna i Hercegovina iz toga izuzima? Odnosno, koji je procent onoga što zavisi od nas, i onog drugog što ne zavisi od nas, ali čega možda nismo svjesni? I tu je moja jedina ozbiljna primjedba na zaključak kolege Abazovića, naime, da ne postoji saglasnost o prošlosti, sadašnjosti i budućnosti - za ovo treće ne bih se složio. U našem društvu, saglasnost o budućnosti možda ne postoji, ali to na budućnost neće mnogo djelovati, jer ona nije stvar volje lokalnih aktera. Naša budućnost zavisi od historijskih sila koje su uspostavljene, globalnih pravaca i tokova, kretanja kapitala, modela raspodjele, modela ovladavanja energijama itd. Mi te trendove možemo a ne moramo raspoznati ili voljeti, ali ih ne možemo izbjeći, kao što neoprezan hodač pada s krova, znao on ili ne znao kako glasi zakon gravitacije.

Iznijet ću još jednu poluopasku uz supsidijarnu tezu gospodina Čekrlije, koji izjednačava pametne, umne ljude u Bosni i Hercegovini sa onih 3% koji su završili fakultet. S tim se ne slažem: ljudi koji su završili fakultet nisu nužno umni i pametni.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 126

Zdravko Grebo

Na kraju, ova ogromna količina rezignacije koja je ovdje demonstrirana s moje strane, vjerovatno i pretjerana, trebala bi rezultirati naporom da se poluprazna čaša učini polupunom, i čiju bi formu naši dragi i nedragi privremeni sustanari mogli ispuniti nekim sadržajem i postići cilj. Prvo pitanje koje valja postaviti velikim igračima, čiji smo mi taoci, a naši životi u njihovim rukama, glasi brutalno: da li je Bosna i Hercegovina održiv projekt? tj. jednostavno: treba li da postoji ili ne? Možda i ne treba, ne bih znao! Moj predložak za ovako glupo pitanje jeste: ako odgovori glase da su se nakon raspada Jugoslavije sve države sljednice formirale kao *nation state*, a budući da BiH to nije u stanju učiniti, ne treba ni da postoji. Ako bismo uložili natčovječansku energiju i uposlili svoje najbolje talente, ne možemo biti nacionalna država ili nacija koja ima svoju državu. Dakle, da li smo u 'njihovim' planovima, ako smo uopće u nečijim planovima, izvodljiv projekt? Ili ni pod kakvim uslovima nismo? Jednostavno, da se ne mučimo i da beskrajno ne produžavamo rat drugim sredstvima, jasno i glasno: Vi niste mogući!

A sada skromni komentar na izlaganje kolega Haverića i Abazovića, koja su se odnosila na konsocijacijsku debatu. Ta priča stoji i ima osnova. Ali, ja bih sasvim drugačije čitao ono što je kolega Abazović htio da kaže. Čemu priča o konsocijaciji na kub? Poštenije bi bilo razgovarati da i novoprobuđeni interes za tu temu potajno znači zagovaranje i dovršavanje procesa podjele BiH i u konačnici njen nestanak. I onda, ponovljeno pitanje o smislu Bosne i Hercegovine: da li ona uopće ima supstancu? Možda je još uvijek društvo, ali nije održiva država, ili ni jedno ni drugo. Nakon toga, logično kažeš: Hajde da se rastajemo, kao u scenariju neuspješnog braka. Zašto konsocijacija kao šifra? Ako ne postoji teorija zavjere, onda je i to model koji valja pošteno ispitati. Uostalom, u svim elementima teorije već je imamo na djelu. Čak i u onom 'nenarodnom' narodnom režimu, uz malo ironije, imali smo djejstvujuću formulu: drugovi Hamdija, Branko i Milanko. Čak su i komunisti imali tu vrstu senzibiliteta o potrebi da u okviru jednomisleće ideologije valja respektovati razlike i dati im mogućnost političke reprezentacije. Ali, ako ta tobože teorijska debata, koju simbolizuje zahtjev za 'trećim' entitetom a koju zdušno podržavaju stranke sa hrvatskim predznakom i energično podupire g. Dodik, onda treba razgovarati u jasno formulisanim terminima: to znači kraj Bosne i Hercegovine.

Četvrti kratki komentar odnosi se na konstataciju da mi nismo tek postkonfliktno društvo; mi smo poslijeratno društvo i, uz izvinjenje za patetiku, postgenocidno društvo. Ja sam nekada napisao da me ne interesuje toliko

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 127

je li Republika Srpska genocidna tvorevina, ali znam da je BiH postgenocidna tvorevina, dakle, cijela zajednica koja nije riješila svoje traume i teško da ih može riješiti.

Kako nastaviti živjeti zajedno i planirati zajedničku budućnost ako nismo u stanju dosegnuti momentum i izgovoriti jednostavnu rečenicu: Ja sam državljanin Bosne i Hercegovine. Sve ostalo, uključujući predstavljanje kolektivnih identiteta, dogovorljivo je, i institucionalno i proceduralno provodljivo. Ja, dakle, nemam nikakvu sumnju o potrebi raspravljanja o identitetima, bili oni koncentrični ili preklapajući ili bili kakvi... Ali me u toj priči ponovno intrigira uloga međunarodne zajednice. Preskočit ću cijeli niz argumenata; zaključak jeste da je cijeli Zapadni Balkan crna rupa. Ako je nekome istinski stalo do mira, saradnje, prosperiteta, sprječavanja trgovine drogom, ljudima, oružjem, onda je jedini način da se to postigne, zarad opće dobiti, da se olakšaju i ubrzaju procesi integrisanja u Evropsku uniju, ne mjereći strogo da li smo svi mi 'zapadni Balkanci' do kraja uradili domaću zadaću.

Jasno je da u dogledno vrijeme, imajući u vidu visoke standarde, to nećemo biti u stanju da postignemo. Uzgred, ni mnoge, sada stalne članice EU, nisu bile ni blizu postizanja uobičajenih standarda. Zašto je to važno? Podsjećanja radi, cijela jugoistočnoevropska kataklizma je počela zato da bi svi Srbi živjeli u jednoj državi, da bi svi Hrvati, svi Albanci, svi Bošnjaci (i oni iz Sandžaka) živjeli u jednoj državi. Budući da preovlađujući etnonacionalizam još uvijek jeste *in*, svi oni će živjeti ponovo i zauvijek u jednoj državi ako postanu punopravni članovi evropske porodice. Pri tome, nije nužno postavljati bolno pitanje: zašto smo se morali krvavo rastajati da bismo sada očajnički željeli da budemo zajedno? Čak i pragmatično, rješenje za dodatne probleme koji su danas spominjani: pljačka, privatizacija, korupcija, negativan resor o ljudskim pravima, vladavina prava, nezavisni mediji, neefikasno sudstvo i državna uprava... jedino su rješivi onda kada ste *on board* ili ste član kluba. Tada pravila bespogovorno važe i nema prostora za tipično balkanske političke ekstravagancije i kaprice. Ako je tačno da ćete na ovim prostorima teško pronaći političara koji će, bez obzira na iskrenost, reći da nije za ulazak u Evropu, molim vas da mu pomognete da izvrši svoja obećanja. Tražili ste, izvolite se ponašati. Drugog izlaza nema.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 128

Tarik Haverić

Žao mi je ako će neke stvari ostati nedorečene, ali nisam mislio da treba da se izjašnjavam o stvarima koje su evidentne. To što sam rekao da naša budućnost ne zavisi od toga hoće li se neki akteri ovdje dogovoriti da li će Bosna biti konsocijacija ili ne, ne znači da gajim ikakve simpatije prema tom prijedlogu - iz prostog razloga što on nije u duhu vremena, i što je protiv onih silnica na koje mi ne možemo utjecati, a kojima smo izloženi. Međutim, tačno je, i to je kolega Abazović konstatirao, da je Bosna i Hercegovina *de facto* konsocijacija. Ako treba da budem đavolov advokat, ja ću reći o suprotnoj strani, kojoj ne pripadam, da je možda čine ljudi koji su toga svjesni pa kažu: kad već postoji *de facto*, divlje, nađimo način da je legaliziramo, tako da to na nešto liči.

Ja to razumijem, iako se s time ne slažem. Međutim, ono što je ovdje ključno — a i najkorisnije inicijative propadaju kada se dnevnopolitičke rasprave uguraju u ludačku košulju već gotovih koncepata — jeste ko se u javnosti predstavlja kao nosilac suprotnog koncepta i koga javnost kao takvog identificira.

Kao suprotnost konsocijaciji ističe se građanska (čak liberalno-demokratska) država, ali kao njezini zagovornici ne raspoznaju se Zdravko Grebo i Tarik Haverić, koji su prije 18 godina tražili od Skupštine da prizna Deklaraciju ZAVNOBiH-a o pravima građana Bosne i Hercegovine, već ljudi koji su posljednjih 16-17 godina sve učinili da dođe do situacije kakva sada jeste. Nisam nikakav ekstremist ako kažem: ja tim ljudima ne vjerujem. I ne znam zašto bi im vjerovali današnji 'zagovornici konsocijacije'. Oni su pristajali uz 'dogovor naroda' (dakle, faktičku konsocijaciju!) dok se sve nije podijelilo i privatizovalo, a sada bi htjeli 'jedan čovjek jedan glas'!

Tačno je, u pravu je profesor Pobrić, 'jedan čovjek jedan glas' je univerzalno načelo. Međutim, bili smo protiv njega u Miloševićevoj Jugoslaviji, jer ga je Milošević zagovarao iz podlih namjera. I možda se danas neko protivi načelu 'jedan čovjek jedan glas' ne zato što osporava njegovu vrijednost, već stoga što ne vjeruje u iskrenost namjera onih snaga koje se za njega zalažu.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 129

Zlatko Hadžidedić

Potaknut sam izlaganjima gospodina Haverića i profesora Grebe, i pokušat ću kratko izložiti svoju diskusiju. Mislim da je zaista bilo neophodno reći ovo što je gospodin Haverić spomenuo, a to je da postoji jedan globalni sistem koji nameće određeni poredak, određene sistemske vrijednosti. Osim toga što je to kapitalistički poredak, to je također poredak nacionalnih država. Profesor Grebo je i to spomenuo, na izvjestan način. Međutim, potaknut sam da se javim jer je on rekao: „Mi da se svi upnemo, ne možemo biti nacionalna država". Ja bih podsjetio na samo jednu činjenicu kada je u pitanju angažman međunarodne zajednice. Mi se svi pitamo šta je to međunarodna zajednica, a ta međunarodna zajednica to pitanje nikada nije sama sebi postavila. Ona se angažovala u Bosni i Hercegovini, ja to moram reći, i prije nego što je izbio rat.

Obično se popularno kaže da je međunarodna zajednica ušla da ovdje spriječi konflikt, da nam pomogne da izađemo iz sukoba i tako dalje. Ja odgovorno tvrdim da se međunarodna zajednica prvi put u Bosni i Hercegovini umiješala 1991. i 1992., prije izbijanja rata, s konferencijom kojom je predsjedavao Lord Karington, unutar koje je bila organizovana konferencija kojom je predsjedavao portugalski diplomata Kutiljero. Na toj konferenciji je prvi put promovisan obrazac podjele Bosne i Hercegovine. Zbog čega? Zbog toga što je već tada Bosni i Hercegovini bila planirana luđačka košulja koja je podrazumijevala da Bosna i Hercegovina treba da se podijeli na etničke teritorije, kako bi onda mogla biti podijeljena na etničke državice – pa bi se onda veći nacionalni projekti mogli zadovoljiti. Meni je fascinantno kako niko u Bosni i Hercegovini ne primjećuje da je Bosna i Hercegovina, koja ima sasvim sigurno tri ili čak i više različitih etno-religijskih i kulturnih identiteta, izložena svemu ovome – još od Lisabonske konferencije, do dana današnjeg – zbog toga što se grupe koje posjeduju te identitete, moram tako reći, lažno nazivaju nacijama. Naravno, niko im ne može osporiti pravo da sami sebe nazivaju nacijama, ali grupe koje pretenduju na to da se nazivaju nacijama, sve dok sebe nazivaju nacijama, one automatski imaju pravo unutar tog sistema – a tu se uključuje globalni sistem o kojem je gospodin Haverić govorio – da stvore vlastitu državu. To je jednostavno aksiom iz međunarodnog prava. Isto tako, paradoksalno opet, u Bosni i Hercegovini postoji velika grupa ljudi koji bi se rado nazivali Bosancima i Hercegovcima, pa im se to pravo jednostavno – od strane međunarodne zajednice, koja je projektovala i Lisabonsku konferenciju, i sve dalje pregovore, i Dejtonski ustav ovakav kakav je – ne dopušta, i do dana današnjeg im se

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 130

ta mogućnost osporava, iako bi se vjerovatno empirijski dalo utvrditi da bi barem trećina ili četvrtina stanovništva već u ovom trenutku bila spremna prihvatiti taj identitet.

Dakle, mi permanentno imamo jedan pritisak međunarodne zajednice da se upravo ovako, na etno-religijskom principu, dijelimo i da zaokružujemo nacionalne projekte. U tom smislu pitanje profesora Grebe je apsolutno opravdano, samo ne treba biti nama upućeno; zapravo, to pitanje nije „Da li mi želimo Bosnu i Hercegovinu?" nego „Da li nam međunarodna zajednica dopušta da imamo Bosnu i Hercegovinu koja ne bi bila etnonacionalna tvorevina?" Ona može postati nacionalna država onog momenta kada se svi građani u Bosni i Hercegovini, ili velika većina, budu identificirali s tim identitetom. Tada će se to također zvati nacionalnom državom. Postoji podjela na etnički i na građanski nacionalni identitet, tako da ja tu ne vidim nekakav strukturalni problem, osim što je strukturalni problem unutar međunarodne zajednice, koja je prihvatila ovaj aksiom da Bosna i Hercegovina treba da se raspadne – ali, eto, samo moramo naći neki elegantan način za to.

Dino Abazović

Naprosto, bilo je dosta dobrih teza i diskusija, ali ja bih ipak volio, upravo zbog eventualnih nedorečenosti, kao što gospodin Haverić reče, pojasniti neke stvari. Prvo, koncept priče o konsocijaciji koji sam u današnji razgovor ja uveo, bio je jednostavno koncept međunarodnog dizajna. Ja sam htio naglasiti da je konsocijativno uređenje Bosne i Hercegovine rezultat onoga što sam nazvao međunarodna država međunarodnog dizajna. Dakle, u tom smislu sam govorio o tome. I nisam mislio dalje o tome govoriti, ali kad je već spomenuto, praktično smatram kako ta pitanja treba razmatrati na nivou deskripcije, a bojim se da ova diskusija koju vodimo ulazi u pitanje normativnog karaktera države. Konsocijativni modeli, i u teoriji i u praksi, nisu normativnoga karaktera, jer kad su normativnoga karaktera, oni se legaliziraju, a kad se legaliziraju, oni su priča o trećem entitetu, oni su priča o svim ovim stvarima; onda, na kraju krajeva, mislim da veliki broj građana može imati problem sa takvom vrstom legitimizacije, legalizacije, jer onda ne preostaje ništa drugo do aklamacijski prihvatiti rezultate rata, ako već govorimo o nekom legalističkom konsocijativnom pristupu. To su, ipak, neka druga pitanja. Ja sam, dakle, govorio, čisto da se razumijemo, o deskriptivnom karakteru.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 131

Drugo pitanje je pitanje koje se spomenulo nekoliko puta, pitanje *nation state*, ili nacije-države. I opet, bojim se da ni to nije jednoznačno određeno. Onako kako ja to razumijevam, različite su teorije danas prisutne u struci, a praktično možda su jedine dvije evropske države koje opstaju na principima *nation statea* Francuska i Grčka. Nijedna druga država Evrope nije više klasična *nation state*. Da se razumijemo i oko toga, dakle: ovo o čemu je gospodin Haverić govorio, u izvjesnom smislu, ja razumijevam izvan okvira *nation statea*. Ali zašto ovo pitanje spominjem? Zato što je ostalo nešto neizrečeno. Izvinjavam se, ali želim da to jasno naglasim. Gospodin Schwarz-Schilling je jutros u diskusiji sa kolegicom Šačić govorio o imperijalizmu. Ja upravo mislim da taj stari koncept *nation statea* jeste imperijalistički duh vrijednosti. I u tom smislu nisam htio koristiti ovaj podij da govorim o tome, ali u tekstu izlaganja kolegice Šačić razumijem da se govori o imperijalnim vrijednostima koje se nama nameću kao nekome izvan Evrope, nekome izvan evropskog koncepta, ali ne kao pitanja geografije nego pitanja Evrope kao vrijednosti tako da, nažalost, moram primijetiti kako toga u međunarodnoj zajednici ima jako mnogo.

Evo jedna kratka digresija, jedan kratak dokaz u prilog tome: posljednje antropološke studije, koga interesuje može naći reference u tekstu koji sam priložio, pokazuju da se, recimo, većina predstavnika međunarodne zajednice, one koje mi popularno zovemo internacionalci, ili stranci, ili kako god hoćete - citiram: „... se najčešće isključuju iz domaće zajednice bilo dobrovoljnim samoodvajanjem od bosanskohercegovačkih državnih institucija ili bilo kojih institucija, bilo isključivanjem Bosanaca i Hercegovaca iz zamišljenog europejstva", bez obzira šta oni podrazumijevaju pod tim. Dakle, ovo je antropološka studija jedne vrsne mlade antropologinje koja, eto, nije Bosanka. Dakle, vi imate i tu jednu vrstu imperijalnog vrijednosnog odnosa prema nama, gdje su čak one famozne kartice oko vrata ID kartice, strane tablice, parkiranje automobila tamo gdje Bosanci ne smiju parkirati po glavnim ulicama, i tako dalje, jedna vrsta tog sindroma, sarajevskog aerodroma. Kad slete na Sarajevski aerodrom, oni zaborave da dolaze iz Beča, da dolaze iz Bona i ne znam kojih evropskih gradova i država, i počinju se ponašati imperijalno ovdje, na način koji ne priliči njihovim matičnim državama. Dakle, i to je jedno od pitanja o kojem se može raspravljati. I, konačno, da završim s konceptom jedan čovjek jedan glas. Ja sam možda posljednji čovjek koji bi trebao o tome da govori, jer su tu moji stavovi prilično jasni. Molim vas, nemojte zaboraviti: Bosna i Hercegovina na izborima 1991. godine je imala koncept jedan čovjek jedan glas, i nacionalne stranke su trijumfalno pobijedile.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 132

Dakle, pitanje jedan čovjek jedan glas nije nužno pitanje majorizacije ili minorizacije većine i manjine. Koliko se sjećam rezultata iz 1991. godine, po principu glasanja jedan čovjek jedan glas, zna se ko je ubjedljivo dobio izbore. Znači, ne radi se o načinu glasanja. Radi se o tome da neki drugi modeli diskriminiraju jedan određen broj ljudi u kontekstu zakona. I ako govorimo o tim principima, dajte, molim vas, da se držimo toga da je neprihvatljivo po bilo kojem evropskom međunarodnom standardu da su određeni građani ove države sistematski diskriminirani samo zato što nisu ovog ili onog etničkog porijekla. Ja ne znam zašto je nekima problem to konstatovati. Na kraju krajeva, malo sam uzbuđen, eto i ja sam taj neki nesretni 'ostali' ako hoćete. I šta sad? Hvala lijepo.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 133

STUDIJA

Dino Abazović

O međubilansu učinka rada međunarodne zajednice u Bosni i Hercegovini – od decembra 1995. do marta 2007.godine

Sociološki aspekti

Društvo u kojem nema ničega između 'hipertrofirane države' i 'beskrajnog broja neorganiziranih pojedinaca' prava je sociološka čudovišnost, jer kolektivna aktivnost suviše je kompleksna da bi se mogla izraziti samo jednim organom – državnim. [1]
(E. Durkheim)

Silna energija koju međunarodna zajednica ulaže na racionaliziranje iracionalnog političkog koncepta ne vodi nikud. Ima li za bilo koji geopolitički entitet gore tragedije nego da nestane umišljen da raste; da umire polagano uvjeren u ozdravljenje! [2]
(N. Ćurak)

I. Uvod

U onom tragičnom periodu kada se proces dezintegracije bivše Socijalističke federativne republike Jugoslavije pretvorio u agresiju, rat i krvoproliće, "međunarodni odgovor" bio je doista označen – kao što to sugerira Alexandros Yannis – nedostatkom jedinstva i odlučnosti (Yannis, 2002). Jedna od prominentnih figura međunarodnih centara moći upravo u tom ključnom periodu, David Owen, medijator Evropske unije za bivšu Jugoslaviju, tvrdi da

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1 E. Durkheim, "The division of labour in society", Free Press Glencoe, str.11; vidi i *Professional Ethics and Civil Morals*, Rotledge Kegan Paul, 1957, str. 20-23. (navedeno prema: Robert Pinker, *Socijalna teorija i socijalna politika*, hrestomatija, FPN, Sarajevo, 2000.)

2 Nerzuk Ćurak (2004): *Dejtonski nacionalizam*, Sarajevo, Buybook, str. 106.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 134

> *ono što se činilo da je Clintonova administracija željela do 1994. godine, kada su se po prvi put počeli pozitivno izjašnjavati se o Balkanu, bila je moć bez odgovornosti [...] Zemlje članice Evropske unije i ministri vanjskih poslova tih zemalja prihvatili su odgovornost [...] ali nikada nisu primijenili silu* (Owen, 1995: 366 -7).[3]

Bilo kako bilo, sila je bila prijeko potrebna da bi se zaustavio rat, što se i ostvarilo krajem 1995. godine. Dejtonski mirovni sporazum – kompromis koji je doveo do završetka ratnih sukoba – udahnuo je život današnjoj državnoj strukturi Bosne i Hercegovine, toj „državi međunarodnog dizajna koja egzistira na međunarodnom dizajnu" (Bose, 2005: 232).

Međutim, treba naglasiti da pozicija tzv. međunarodne zajednice[4] u Bosni i Hercegovini i oko nje nije svodiva na manje ili više formalne odnose protektorata (poput, recimo, Istočnog Timora ili Kosova). Među autorima koji ukazuju na ulogu „lokalne saglasnosti" za Sporazum, kao i na implikacije koje proizlaze iz njega, nalazi se i David Chandler, koji smatra da

> *...prije negoli vanjsko nametanje, Dayton se formalno doima kao sporazum koji su postigle lokalne sile – BiH i njeni susjedi, Hrvatska i krnja bivša Savezna Republika Jugoslavija. Nisu međunarodni akteri pozvani da nadgledaju Dayton i da instaliraju privremeni postkonfliktni administrativni mehanizam Ureda Visokog predstavnika (OHR) na osnovu rezolucije Savjeta bezbjednosti UN-a, već na osnovu prisilne fikcije 'lokalne saglasnosti'.*
> *Tako je to ured samo 'konzistentan odgovarajućim rezolucijama Savjeta bezbjednosti UN-a', ali njime formalno ne upravlja UN niti Ured za svoj rad odgovara UN-u."*
> (Chandler, 2005: 337).

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3 Navedeno prema Yannis (2002: 264).

4 Ovdje, i dalje u tekstu, koristim prefiks 'takozvana' ispred odrednice 'međunarodna zajednica' želeći afirmisati stav i podržati nastojanja Johna B. Allcocka, koji rezonuje na sljedeći način: "Ne dopada mi se termin 'međunarodna zajednica' jer konfiguracija državnih i nedržavnih struktura na koje se on obično odnosi ne posjeduje atribute koje sociolozi obično podrazumijevaju pod riječju 'zajednica'. Pa ipak, potencijalne zamjene za ovaj termin na koje sam naišao bez izuzetka su ili jednako zavaravajuće ili daleko nezgrapnije. Stoga protestujem, ali taj termin i dalje ovdje koristim s iskrenom nadom da će uskoro biti smišljeno nešto bolje" (Allcock, 2005: 24).

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 135

Kako god, upravo pitanje odgovornosti mora biti jedno od ključnih mjesta za analizu učinka tzv. međunarodne zajednice u Bosni i Hercegovini od 1995. godine do danas.

No, prethodno nekoliko manje-više općih mjesta o samoj postdejtonskoj Bosni i Hercegovini.

Ukratko kazano, postdejtonska Bosna i Hercegovina sastoji se od dva entiteta (Federacije Bosne i Hercegovine i Republike Srpske), od kojih svaki uživa visok stepen autonomije. Federacija Bosne i Hercegovine kao entitet sastoji se od deset kantona. Grad Brčko, koji je bio predmet međunarodne arbitraže, danas ima status distrikta, i još uvijek je pod direktnom supervizijom posebnog međunarodnog predstavnika.

Imajući na umu da je institucija formirana mirovnim sporazumom, s ciljem implementacije dogovorenog, a naročito zarad održanja mira, „Ured Visokog predstavnika (OHR) je *ad hoc* međunarodna institucija odgovorna za nadgledanje implementacije civilnih aspekata sporazuma. (...) Visoki predstavnik, koji je također i specijalni predstavnik Evropske unije u BiH, sarađuje sa građanima i institucijama BiH i međunarodnom zajednicom kako bi osigurao da se BiH razvije u mirnu i održivu demokratsku zemlju, na putu ka integracijama u evroatlantske institucije."[5] Ostale međunarodne organizacije „izvorno su namjeravale olakšati posao domaćim donosiocima odluka tako što će osiguravati odgovarajuću bezbjednost građana (SFOR, IPTF), stvarati ekonomski okvir za uspješnu upravu (EU, UN) i promovisati demokratske i više tolerantne institucije i procese (OSCE)." (Bieber, 2002: 213).

Kompleksna struktura državnog uređenja takve Bosne i Hercegovine u konačnici se (bez obzira na međunarodni intervencionizam s ciljem postizanja mira) može podvesti pod one modele koji se u savremenoj literaturi određuju kao konsocijacijski modeli.

S ciljem smirivanja konflikta, stabilizacije i izgradnje demokratije, ključni elementi konsocijalizma – velika koalicija, proporcionalnost, uzajamni veto i segmentalna autonomija (Lijphart, 1977) – na taj su način već implementirani; dakle, postdejtonska Bosna i Hercegovina mora se smatrati oblikom konsocijacijske demokratije.

Kao što sam na drugom mjestu šire pisao,[6] što se Bosne i Hercegovine tiče stvari su očigledne – *velika koalicija* određena je izbornim zakonom

5 http://www.ohr.int/ohr-info/gen-info/default.asp?content_id=38528

6 Vidi šire u (Abazović, 2007).

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 136

(napose rezultatima svih dosadašnjih izbora) i procesom formiranja izvršne vlasti ključnih partija zasnovanih na etničkom principu reprezentacije, *proporcionalnost* nije ništa drugo do tročlano Predsjedništvo, potom izbor zastupnika u Parlament (i po etničkom i entitetskom kriteriju, da ne spominjem Dom naroda), sastav Suda BiH, itd.; mehanizam zaštite vitalnog nacionalnog interesa koji se primjenjuje u našoj parlamentarnoj praksi jeste *uzajamni veto,* i konačno, *autonomija segmenata* očituje se, prije svega, kroz institucije i politike (u širem smislu riječi) entitetskih struktura države, odnosno kroz kantone Federacije BiH (četiri kantona s većinskim bošnjačkim stanovništvom plus četiri kantona s većinskim hrvatskim stanovništvom plus dva tzv. mješovita kantona).

II. Šta je sve pošlo krivo?

Već je postalo bjelodano jasno da podjela vlasti i moći institucionalizacijom etničkih različitosti ne dovodi nužno do željenih rezultata, bar ne u smislu funkcionisanja države i stvaranja povoljne klime za ekonomski rast i oporavak ratom razrušene i opustošene zemlje. Na državnom nivou situacija je takva da koncept *power-sharinga* ne funkcioniše u institucijama zasnovanim na etničkoj (*proporcionalnoj*) zastupljenosti – umjesto pozitivnog konsenzusa o kooperaciji kako bi se obnovile institucije, na snazi je nagativni konsenzus oličen u sistematskom blokiranju usvajanja odluka neophodnih da bi se krenulo u rekonstrukciju. Na entitetskim nivoima, naročito do 2000. godine, nije bilo značajnijeg povratka 'manjina' u entitete; u sistemu obrazovanja vlada segregacija, ako ni po čemu drugom a ono u vezi s pitanjem „maternjeg jezika i jezika izvođenja nastave", odnosno pitanjem plana i programa iz tzv. grupe nacionalnih predmeta (maternji jezik, književnost, historija, geografija); presporo je prenošenje ovlasti s entitetskog na državni nivo – da spomenem samo neke od karakteristika.

Čak ni na polju ponovne izgradnje međusobnog povjerenja, a očekivanja su se kretala u pravcu toga da će upravo proporcionalna zastupljenost i princip rotacije (shodno pretpostavljenom dogovoru elita) biti temelj za takvo šta – nisu postignuti značajniji rezultati.

Pokazalo se da su čak i strategije koje je tzv. međunarodna zajednica (napose kroz Ured Visokog predstavnika) forsirala kao deblokirajuće, prije svega izvanjskim nametanjem zakonskih preduslova - skromnog učinka.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 137

> *Zakoni su nametnuti protiv volje stanovništva s uvjerenjem da je pravni okvir osnova na kojoj se može graditi postkonfliktna obnova i strategije nation-buildinga* (kurziv D. A.). *Bosanska iskustva sugeriraju da takav pravni idealizam potkopava političke procese, značaj prava i tranziciju ka samoupravi.* (Chandler, 2004: 589).

Sasvim načelno može se praviti periodizacija međunarodnog učešća u Bosni i Hercegovini kroz prizmu dešavanja sa „institucijom institucija", Uredom Visokog predstavnika, i to za period od 1995. do 2000. godine, te od 2000. godine do danas.

U vezi s pitanjem „izvanjskog" faktora, tj. donosioca odluka unutar tzv. međunarodne zajednice, a prije svih Vijeća za implementaciju mira, ono što je karakteristično za prvi period jeste „malo jasnih političkih smjernica ili krajnjih tačaka za *ad hoc* međunarodnu administraciju." (Chandler, 2005).

Drugi period bio je - i još je - period usmjeravanja ka Evropskoj uniji, pa samim tim i pregrupisavanje snaga ka „Briselu" kao ishodištu za donošenje odluka.

Tako je Vijeće Evropske unije početkom 2002. godine izrazilo spremnost da Visokog predstavnika u BiH imenuje i na funkciju Specijalnog predstanika EU za Bosnu i Hercegovinu. Te iste godine UN-ovu policijsku misiju u BiH (IPTF) naslijedila je EU policijska misija (EUPM), dok će dvije godine kasnije EU uvesti i vojnu operaciju (Operacija Athea) koja će EUFOR-om zamijeniti prisutne međunarodne vojne snage za stabilizaciju (SFOR).

Važno je istaći da su se svi ovi važni procesi odvijali bez formalnih konsultacija s onima kojih se to najviše i tiče, dakle s javnošću u Bosni i Hercegovini. Dakako, zvanični organi države su, *volens-nolens,* formalno upućivali zahtjeve Evropskoj uniji (npr. pozivanje EU da preuzme odgovornost za misiju koja će naslijediti UNIPTF), ali, kao i u Daytonu, izuzev uskog kruga *establishmenta* nije bilo onih koji bi zastupali šire zainteresovanu javnost. Pitanje odnosa civilnog društva i tzv. međunarodne zajednice bit će razmatrano nešto kasnije u tekstu.

Ipak, većina analitičara kao jedan od ključnih momenta u međunarodnom angažmanu ističe Samit Vijeća za implementaciju mira iz 1997. godine, koji je održan u njemačkom gradu Bonnu. Iako su zaključcima sa Bonskog samita ovlasti Ureda Visokog predstavnika (a kasnije i Specijalnog predstavnika EU u BiH) dobile sasvim drugačiji karakter, i umnogome učvrstila poziciju i implementacijsku moć „vladara-koji-to-nije", dejtonska „logika" nastavila je proizvoditi paradokse. Tako je, naprimjer, „fleksibilnost vanjskih mehanizama regulacije bila centralni faktor u 'isisavanju' kapaciteta bosan-

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 138

skohercegovačkih političkih institucija i podrivanju legitimiteta bosanskohercegovačke države" (Chandler, 2005: 337).

Iako su bonske ovlasti Visokog predstavnike bile u funkciji ubrzanja procesa implementacije mirovnog sporazuma, Visoki predstavnik je bio pozvan i da koristi svoja krajnja ovlaštenja i smijeni svakog lokalnog dužnosnika, uključujući izravno izabrane političare, za kojeg Ured smatra da vrše opstrukciju mirovnog procesa.

> *Nakon 1997. godine Visoki predstavnik je opremljen dodatnim ovlastima, što ga je transformiralo iz facilitatora u integralnu instituciju aktualnog sistema vladavine u Bosni. Opremljen i zakonodavnim i izvršnim ovlastima, Visoki predstavnik pojavio se kao najuticajnija institucija u Bosni – i jedina koja nije formalno zasnovana na principu power-sharinga.* (Bieber, 2002: 213).

Do danas je Visoki predstavnik smijenio ili suspendovao više od stotinu osoba, među kojima su bili i član državnog Predsjedništva, gradonačelnici, guverneri, zamjenici ministara, ministri i premijeri na svim nivoima, predsjednik entiteta, šef obavještajne službe entiteta, sudije, javni službenici, menadžeri kompanija itd. Izuzev kratkoročnih efekata, dakako izuzevši konkretne pojedinačne diskvalifikacije, sistemski se promijenilo malo ili nije ništa.

Tek jedan od nusproizvoda bilo je stvaranje dodatne ovisnosti domaćih zvaničnika o tzv. međunarodnoj zajednici i njenim eksponentima moći, a ne o onima koji su ih izbornim procesom doveli na pozicije koje obavljaju[7] – stanovništvu Bosne i Hercegovine.

[7] Čak je i Wolfgang Petritsch (visoki predstavnik u periodu od 1999. do 2002. godine) u više svojih javnih nastupa ukazivao na "sindrom ovisnosti" domaćih zvaničnika, koji se razvija u negativnom pravcu usljed povećane frekvencije korištenja širokih ovlaštenja Visokog predstavnika. Nadalje, Petritsch je izjavio i ovo: "Svjesni moći Visokog predstavnika da nameće zakone i smjenjuje zvaničnike opstrukcioniste, i jedni i drugi… bosanskohercegovački intelektualci i međunarodni posmatrači… zahtijevali su od mene da ekstenzivno koristim takve ovlasti… Ali, po mom mišljenju, 'nametanje' demokratije i civilnog društva doima se kao kontradiktorno. Međutim, u prvih godinu i po mog mandata doista sam morao djelovati kao visoki predstavnik koji je imao najviše intervencija do sada." Navedeno prema: (Bose, 2002:322).

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 139

III. Demokratiziranje nedemokratskim snagama i (ne)civilno društvo!?

Stoga je pitanje izbora sljedeće važno pitanje 'baštine' tzv. međunarodne zajednice u BiH. Prenaglašavanje demokratizacije u BiH u ranoj postkonfliktnoj fazi je, po svoj prilici, bilo pogrešno – izbori koji su došli prerano,[8] bez jakih slobodnih medija i obnovljenog civilnog društva koji bi nadomjestilo etničku 'polarizaciju', nužno su rezultirali time da su nacionalističke elite ponovo utemeljene i demokratski legitimisane.[9]

Neželjeni rezultat zapadnog ishitrenog, apolitičkog pristupa političkom i ekonomskom razvoju ogledao se u tome da umjereni političari nisu dobili priliku da razviju biračko tijelo, a nacionalistički političari ostvarili su kontrolu nad oskudnim radnim mjestima [...] Ne samo da su nacionalisti profitirali financijski, pa i po tome što ih je međunarodna zajednica prihvatila kao legitimne lidere, već im je njihov uticaj na izbor kompanija koje će biti odabrane za međunarodne projekte rekonstrukcije pomogao da steknu lojalne političke pristaše. Međunarodna pomoć ima duboke političke efekte, a rezultat rada sa domaćim izabranim zvaničnicima bez obzira na njihovu političku orijentaciju jeste društvo koje se i dalje zasniva na vezama i podjelama po etničkim linijama, a ne društvo jednakih mogućnosti i vladavine prava. (McMahon, 2004-05: 581).

I umjesto da prihvate posljedice takvih kontradiktornih politika, kako to primjećuje McMahonova, tzv. međunarodna zajednica, kako se čini, prepušta izazove transformacije društva malobrojnim javnih ličnostima kritički orijentisanim prema vladajućim elitama, rijetkim neovisnim medijima (naročito štampanim) i nevladinim organizacijama.

Ali, s obzirom da se u postdejtonskoj Bosni i Hercegovini civilno društvo reducirano razumijeva kroz prizmu nevladinih organizacija, što u ovom društvu uglavnom i jeste slučaj, stiče se dojam da su nevladine organizacije – gotovo paradoksalno – u funkciji očuvanja ovako lošeg stanja jer kompenziraju funkcije koje država neće ili ne može da ispunjava.[10] Naravno, vjero-

8 Dejtonskim mirovnim sporazumom precizirano je da se izbori moraju održati najkasnije devet mjeseci od potpisivanja sporazuma!

9 Vidi šire u (Marko, 2002).

10 Slično je i u kontekstu neoliberalnih država; vidi šire u (Močnik, 2003).

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 140

vatno nijedna nevladina organizacija u BiH ne djeluje s tim ciljem, a situacija u kojoj se nalaze zorno svjedoči da država gotovo elementarno ne funkcioniše – pojedincima stoga ne preostaje ništa drugo nego da se organizuju na ovaj način i pokušaju ublažiti posljedice takvog stanja.

Međutim, ukoliko pri svemu tome imamo u vidu činjenice koje govore da je većina nevladinog sektora najznačajnijim dijelom potpomognuta donatorskim sredstvima izvana – a kako vrijeme odmiče strategije domaćih nevladinih organizacija zasnivaju se sve više na *donor-driven* strategijama, a sve manje na realnom stanju i potrebama – situacija postaje još pesimističnija. Tim prije što tzv. međunarodna zajednica u Bosni i Hercegovini i dalje uporno insistira na tome da su nevladine organizacije centralni segment civilnog društva[11] za „nepolitičko" djelovanje s ciljem promjene političkog stanja.[12]

Gotovo kolonizatorski karakter pomoći dirigovane izvana izgleda kao da je unaprijed i nepovratno sahranio mogućnosti razvoja većine drugih vidova građanskog angažmana, dakle svakog drugog koji nije sveden na nevladine organizacije!

Problem međunarodnog angažmana u Bosni i Hercegovini bio je i ostao problem intervencije koja (je) ima(la) za cilj očuvanje i garanciju mirovnog sporazuma, ali u isto vrijeme institucionalni okviri ustanovljeni tim sporazumom favorizuju one političke opcije koje su najmanje sklone njegovoj implementaciji. Tako, kada su u pitanju domaći akteri, jučerašnji najzagriženiji protivnici Dejtonskog sporazuma postaju njegovi najsmjerniji poštovaoci.

Međunarodni akteri, pak, nikada dovoljno pažnje nisu poklanjali pitanjima transparentnosti i odgovornosti. Već 1996. godine Međunarodna krizna grupa je u jednom od svojih izvještaja ukazala na pitanje transparentnosti, napominjući da „poštovanje prema bosanskohercegovačkim institucijama i osnovno razumijevanje reciprociteta zahtijevaju barem najmanji stupanj transparentnosti koji je neophodan e da bi bh. vlasti i ljudi razumjeli osnove za odlučivanje i za proces donošenja odluka koji tako snažno utiču na njih. [...] učiti o demokratiji, toleranciji i dobroj vladavini [...] nema boljeg načina nego početi s primjerom".[13]

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[11] Vidi više o tome u (Sali-Terzić, 2001).

[12] Tako je i nekoliko mjeseci prije posljednjih izbora u BiH (opći izbori 2006. godine) na regionalnoj konferenciji o civilnom društvu u organizaciji Fondacije Heinrich-Boell (mart 2006. godine) aktuelni Visoki predstavnik Christian Schwrtz-Schilling pozvao predstavnike civilnog društva i NVO da p(r)ozivaju političke partije na odgovornost!

[13] International Crisis Group (1996: 16).

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 141

Srž pitanja odgovornosti danas jeste pitanje odnosa prema stanovništvu teritorije u čijem 'upravljanju' učestvuju. Ovdje se, dakle, ne radi o odgovornosti prema tijelima koja ih imenuju ili formiraju (npr. Vijeće za implementaciju mira ili Vijeće Evropske unije), već o odgovornosti kao konceptu koji se zasniva na javnoj artikulaciji, objašnjavanju i opravdavanju politika čije posljedice ipak najbolje osjećaju sami građani Bosne i Hercegovine. Nedostatak odgovornosti domaćih aktera ne smije biti olakotna okolnost za nedostatak odgovornosti tzv. međunarodne zajednice u BiH.

Stanovnici Bosne i Hercegovine predugo su (bili) suočeni s praksom „prebacivanja odgovornosti". Mislim na onu praksu po kojoj sve što domaći donosioci odluka ne znaju, ne žele ili neće da učine, proglase za sferu odgovornosti međunarodne zajednice u BiH. Izgovori su uglavnom na liniji osjetljivosti i složenosti pitanja, a u principu se radi o nužnosti povlačenja nepopularnih poteza koji bi bili negativno interpretirani unutar homogenizovanog biračkog tijela, koje upravo za njih i glasa po principu zaštite vlastitih, mononacionalnih interesa.

Tzv. međunarodna zajednica, također, kad god je suočena s pitanjima za koja ne postoji širi konsenzus među njenim ključnim akterima, odgovornost delegira domaćim vlastima.[14] Odgovornost koja levitira, reklo bi se!

Stoga se, nažalost, u mnogo situacija do sada pokazalo se da je David Chandler u pravu kada tvrdi da je

> *...dejtonska fleksibilnost bila ključni faktor koji je omogućio vanjskim silama da permanentno odgađaju svaku tranziciju ka bh. ownernshipu. Jedina tranzicija koja se desila bila je da se ad hoc politike ownershipa samoizabranih članova Vijeća za implementaciju mira usmjere ka nadzornoj kontroli pod egidom Evropske unije. Odluka o toj tranziciji donesena je kroz neformalne i neodgovorne mehanizme vanjskih odredbi, i bila je nametnuta odozgo, bez ikakve debate i istinskog učešća stanovnika BiH ili njihovih izabranih predstavnika.* (Chandler, 2005: 337).

Kako god, postignuti rezultati mogli bi se tretirati kao pozitivni znaci za umjereni optimizam, a prije svega ukoliko se analiziraju učinci u vezi s pitanjima integracije entitetskih vojski u jedinstvene oružane snage, kakve-takve uspostave državne granične službe ili djelimično uspješne reforme pravosuđa.

[14] Vidi više o tome u (Abazović, 2003).

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 142

Sva ostala eventualna postignuća, počevši od strukture i obima Vijeća ministara u BiH, preko reformi sektora bezbjednosti, pa do uspostave državnog javnog radio i televizijskog sistema, ovise o (prethodnom) pitanju – reformi Ustava BiH i garancijama za njenu implementaciju.

Iako su u prethodnom periodu intervencijama u ustavni sistem učinjeni pokušaji da situacija promijeni, što je dovelo do toga da Ustavni sud BiH (2000. godina) donese Odluku o konstitutivnosti, već naknadni amandmani na entitetske ustave iz 2002. godine (sljedstveno tzv. Sporazumu Mrakovica - Sarajevo) ponovo proširuju etnifikaciju političkog sistema i smanjuju slobodan prostor pojedincu za neetničku identifikaciju.[15] Podsjećanja radi, do donošenja Odluke o konstitutivnosti načelno se smatralo da jednakost grupa zamjenjuje nediskriminaciju pojedinaca:

> *Trenutni ustavni sistem Bosne i Hercegovine ni u normativnom, niti u pogledu prakse u primjeni i tumačenja nekih njegovih odredbi, ne pruža mogućnosti za daljnji društveni napredak Bosne i Hercegovine. Evidentno je postojanje više nepremostivih nedostataka u tekstu Ustava Bosne i Hercegovine, ali i problema u primjeni ustavnih principa. Ipak, mogu se izdvojiti tri suštinska problema: (1) nerazumijevanje temeljnih ustavnih principa i njihovo pravilno vrednovanje; (2) nedostatak političke volje u prihvatanju zajedničkih ustavnih vrijednosti; (3) pogrešna praksa u primjeni ustavnih odredbi. Dodatna šteta nanesena je (namjernim!?) pogrešnim tumačenjem ionako malih mogućnosti koje pruža sam njegov tekst, potpuno zanemarujući nesumnjiv legitimni interes svake države da osigura da njen institucionalni sistem normalno funkcionira, poštujući principe transparentnosti djelovanja i vlasti kao servisa građana.* (Vehabović, 2006: 61).

Stoga su, uz reformu ustavnog sistema, odnosno veoma konkretne izmjene Ustava BiH, zajedno sa domaćim akterima (što otvara posebno pitanje novog partnerstva koje bi uvažavalo obaveze i odgovornost partnerskih strana), kritične oblasti za djelovanje i reforma obrazovnog sistema, reforma policijskih snaga i, dakako, hapšenje optuženih za ratne zločine (prije svih Radovana Karadžića i Ratka Mladića).

[15] Vidi šire u (Bieber, 2005).

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 143

IV. Zaključna razmatranja

„Samrtno proljeće" Visokog predstavnika, koje izgleda poprilično izvjesno stiže najkasnije sredinom naredne godine, nadamo se, nužno će otvoriti pitanje bilansa učinaka međunarodnog angažmana u postkonfliktnom bosanskohercegovačkom društvu i kod onih faktora koji su bili ključni donosioci odluka i *de facto* i *de iure,* a sa adresom stanovanja izvan Bosne i Hercegovine. Nadamo se i da ono što bi takav jedan bilans morao bar akceptirati jeste "da takva rješenja ne mogu kreirati zemlju zamišljenu na mirovnom ugovoru zato što ih postojeći institucionalni okvir sprečava da to učine. *Nation-building* napori u BiH, kako se to trenutno shvata, ne mogu reintegrisati zemlju ili transformisati njeno društvo zato što su takve strategije, u stvari, u suprotnosti sa vladajućim strukturama…" (McMahon, 2004-05: 583).

Međunarodni dizajn kakav poznajemo i živimo danas u Bosni i Hercegovini (po)odavno je dostigao svoju tačku kulminacije i potencije, te je jedino rješenje – redizajn. Ono sa čime se slažu i 'vanjski' i 'unutrašnji' zainteresovani jeste da je put 'uspjeha' put evropske integracije, a da ova zemlja nije sposobna ići tim putem bez vodiča.

Stoga je nastavak umiješanosti međunarodnog elementa ne samo izvjestan već i neophodan, i doista je to tako. Budući višegodišnji angažman Specijalnog predstavnika EU za Bosnu i Hercegovinu na njenom putu ka Evropskoj uniji [16] (sa Bonskim ovlastima ili bez njih) ovisit će o spremnosti da se suoči s akutnim problemima zaostavštine dejtonske tvorevine, ali jednako tako i o sposobnosti da artikuliše strategije koje će omogućiti posao za potpuno novu generaciju domaćih državnih službenika, političara i eksperata.

> *Kako domaći intelektualni potencijal može pomoći međunarodnoj zajednici u BiH? Tako što će se onaj sluganski dio bh. inteligencije apsolutno i bez zadrške otkazati svoje pritajene i transparentne usluge vladajućim nacionalnim strankama, prestati lagati sebe i druge, te proizvodnjom intelektualnih uradaka koji nisu zavisni od stranačkih sehara ojačati blok nezavisnog mišljenja. Konačno je vrijeme da inteligencija u BiH prestane proizvoditi zablude ukorijenjene u starim i novim mitovima nove klase. To bi otvorilo prostor za dijalog između stvarnih ljudi BiH i međunarodne zajednice. Ovako, međunarodna zajednica se razvija kao zaseban, oktroirani bosanski entitet koji pored tri nacionalne birokracije*

[16] Posljednje procjene pokazuju da će Hrvatska, država iz kontingenta bivših jugoslavenskih republika koja je najdalje otišla na putu pridruživanju EU, dobiti članstvo u toj evropskoj porodici naroda najranije 2009. godine. Bosna i Hercegovina još nije potpisala ni Sporazum o stabilizaciji i pridruživanju (SAA) i, kako svari stoje, bit će jedna od posljednjih evropskih država koja će to formalno i učiniti.

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 144

razvija i svoju, četvrtu birokraciju, četvrti ešalon uzalud potrošenog novca. (Ćurak, 2004: 155).

Međutim, iako bi „put u Evropu" mogao donijeti mnoge pozitivne rezultate i određeni napredak, ključni problem i dalje glasi (te se ne smije skidati s agendi, ni domaćih ni međunarodnih) – u bosanskohercegovačkom društvu izostaje (odnosno ne postoji) fundamentalni konsenzus njegovih članova (naročito onih uokvirenih u kolektivne identitete) o pitanjima prošlosti, sadašnjosti i budućnosti.

Tzv. međunarodna zajednica nikada se nije ozbiljno suočila s tom činjenicom – a različita viđenja uzroka i rješenja „bosanskog problema" koji nerijetko isključuju jedni druge, otvara pitanje ne samo 'lokalnog', već i 'međunarodnog' nesuglasja. Suočena s ovim pitanjima, tzv. međunarodna zajednica doslovno ne postoji. Ono što preostaje su konkretni interesi konkretnih vlada država zainteresovanih za BiH na ovaj ili onaj način. Možda je najočitiji primjer za to tek jedva simbolično učešće institucija tzv. međunarodne zajednice u onome što se naziva „suočavanje s prošlošću".

Internacionalci (pojednostavljeno, osobe koje rade u Bosni i Hercegovini u međunarodnim organizacijama, međunarodnim vladinim i nevladinim organizacijama, agencijama i službama) ipak su značajno prisutni u bosanskohercegovačkoj svakodnevici kao „ambivalentni graditelji":[17] od vojnika i policajaca, preko stučnjaka za ljudska prava, pravnu reformu ili izbore, menadžera u sektoru bankarstva, savjetnika u reformi privatnog sektora i mikrokreditnih organizacija, pa sve do edukatora, trenera, istraživača, humanitaraca... Dakako, tu su i diplomate.

Ali, svojim angažmanom, koji ima za cilj ujedinjavanje i integracije (odnosno misiju *bringing democracy)*, u kontekstu bosanskohercegovačkog društva, sami sebe najčešće isključuju iz domaće zajednice: bilo dobrovoljnim samoodvajanjem od bosanskohercegovačkih (državnih) institucija, bilo isključivanjem Bosanaca i Hercegovaca iz zamišljenog evropejstva (odnosno šta već ko od njih pod evropejstvom podrazumijeva).[18] Takve lekcije 'domaći' učenici najbrže savladavaju, i to je dio problema a ne rješenja.

Jedno je neosporno: ako ova država i društvo doista krenu putem „Brisela", zahtjevi će biti teži, a potrebne promjene radikalnije. Pokazatelj da je ova zemlja sve bliže i bliže onima koji su već „ujedinjeni u razlikama" može biti tek to da taj isti oficijelni moto EU prethodno zaživi upravo u BiH – na istim onim principima i vrijednostima koji vrijede upravo u EU!

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[17] Vidi šire u (Coles, 2007) .

[18] Dobri polazni primjeri za prvi proces jesu famozne međunarodne ID kartice oko vrata ili automobili s posebnim registracijskim oznakama, a za drugi dio tvrdnje ilustrativno je pitanje viza i procedura za njihovo dobivanje. Također vidi šire u ibid.

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Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 147

ZAVRŠNA RIJEČ

Dragoslav Dedović, direktor Regionalnog ureda
Fondacije Heinrich Böll za Jugoistočnu Evropu, Beograd

Dame i gospodo, dragi prijatelji!

Dan je bio dug i ja sam tokom njega dosta naučio, mada sam odrastao u ovoj zemlji. Fondacija Heinrich Böll je postavila pitanje koja do sada iz neutvrđenih razloga nije prečesto postavljano. Postavili smo pitanje koje tokom jednodnevne rasprave nije moglo dobiti konačan odgovor, naročito ako uzmemo u obzir da je prošlo toliko godina a ono nije postavljano.

No, jednom postavljeno pitanje ima neugodnu osobinu da se, ukoliko ga ignorišemo i ne odgovorimo na njega, vraća u sve oštrijoj formi. Tako da se ja nadam povratku ovog pitanja i unutar naših aktivnosti tokom sljedeće godine i u drugim formama. Mislim da ovo nije kraj potrage već njen početak.

Današnje interesovanje je pokazalo i da su oni koji su egzistencijalno, životno vezani za odgovore na to pitanje ostali do kraja na skupu. To je odgovor na pitanje Zdravka Greba zašto su drugi otišli. Pretpostavljam zato što nisu suštinski vezani za današnju potragu za odgovorima na neugodna pitanja. Mislim da je pokretanje procesa dijaloga s međunarodnom zajednicom, koji bi uključio refleksiju njenih stranputica, nešto što je neminovno.

Na skupu je pokrenuto i pitanje definisanja međunarodne zajednice. Meni pada na pamet da međunarodnu zajednicu možemo označiti kao privremenog suverena Bosne i Hercegovine, jer suveren je, po Karlu Šmitu, onaj ko može da uvede vanredno stanje. Na kraju krajeva, međunarodna zajednica će i kao takav suveren biti prisiljena da uključi i domaću pamet u proces refleksije sopstvenih zabluda i dobrih rješenja, kako bi uz domaću pamet eventualno razradili neki alternativni scenariji budućnosti ove zemlje. Ako vam se to čini preambicioznim, onda kratkoročni cilj možemo fokusirati nešto skromnije: važno je da se progovori o alternativnim scenarijima. Pat pozicija, ali i strategija „još više istoga" kao strategija kojom se traži rješenje za Bosnu i Hercegovinu ne može više nigdje odvesti.

Govorili smo danas i o drugim bitnim stvarima. Na primjer, spomenuta je kategorija traume. Mislim da međunarodna zajednica nije zaslužila ime traume, ali jeste dio te traume, izvedene traume, sekundarne traume, jer primarna trauma nije riješena, jer se u ovoj zemlji desio genocid, jer odgovorni nisu izvedeni pred sud, jer je zemlja raskomadana, jer je društvo razoreno. Mislim da se na nivou dijagnostike možemo složiti da ta primarna trauma

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 148

proizvodi takođe refleks sekundarne traume. Da li su ovdašnja velika očekivanja da se golema nepravda koja je učinjena ovim ljudima ovdje donekle ispravi čarobnim štapićem drugih dodatno povećala nezadovoljstvo? S jedne strane, mogu razumjeti ta očekivanja. S druge strane, ima tu i prebacivanja odgovornosti na druge. Nemojmo zaboraviti kulturno-povijesne uslove u Bosni i Hercegovini, u kojima su strani administratori iz austrougarske epohe nazivani kuferaši - to sam našao u jednom tekstu Maka Dizdara. Znači, ksenofobični odnos prema drugome makar on bio 'imperijalan', sve je do danas dio odnosa prema strancima, nepovjerenje samo pronalazi drugi objekat.

Naš cilj je kritički dijalog Bosne i Hercegovine s onim dijelom svijeta koji je preuzeo dio odgovornosti za budućnost ove zemlje. Međunarodna zajednica ne bi smjela biti izgovor domaćim političkim akterima za vlastite greške, kao što greške domaće političke elite ne smiju biti izgovor međunarodnoj zajednici za nedovršavanje započetog posla i nedovoljno kritičko preispitivanje vlastitih nedostataka. Za sada mi nisu poznate evaluacije, autorefleksije, monitorinzi i tako dalje, koji bi sveobuhvatno ustanovili šta jeste a šta nije dobro urađeno. Ako tako nešto ne postoji ili nije dostupno javnosti, onda bi dalji koraci u tom smjeru zaista bili nužni. Drugo, da li postoji ikakvo sustavno znanje o tome šta građani ove zemlje misle o svom suverenu, bez obzira kako se do tih podataka dolazi? Ja o tome takođe ne znam mnogo. Postoji samo poneko parcijalno istraživanje. Sve su to poslovi koje treba obaviti. Posao refleksije nije lak, a vidjeli smo danas da ima dovoljno kontroverzi. Mene to raduje jer, čini mi se da jedno nekreativno klimanje glavom koje ponekad prati ovakve skupove nije njihov smisao.

Ovo pitanje ćemo mi, kao Fondacija, postavljati u ovoj zemlji sve dok ono ne postane suvišno. To bi trebalo da bude naš zajednički cilj. Ovaj put ćemo poslati naše zaključke tamo gdje oni treba da budu pročitani – na stolove suverenima ove zemlje - a drugi put ćemo napraviti radne grupe prije dolaska predstavnika međunarodne zajednice na skup, pa ćemo prezentirati to pred njima, kako bismo izbjegli situaciju da se dijalog zaustavi na protokolarnoj ljubaznosti. Naći ćemo metode da uđemo u taj dijalog, da uđemo u taj proces refleksije i da uključimo regionalnu evropsku i njemačku komponentu u sve to.

Tako nešto nije zadatak koji se može obaviti od danas do sutra. Ova zemlja je, na osnovu svega što se zbilo, izgubila dosta vremena i, čini mi se, nalazi se mentalno, ali i *de facto*, u pat poziciji. Kako izaći iz te pozicije? To je drugo lice istog pitanja: šta je međunarodna zajednica propustila, a šta je dobro uradila? Ovdje su se čuli i neki prijedlozi kao što je onaj da se pre-

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 149

skoče neki domaći zadaci i da Bosna i Hercegovina kao povlaštena zemlja bude ubrzano integrisana u Evropsku uniju. Time bi se možda spriječila prijeteća ideološka regresija na etnički i konfesionalno shvaćen 'sudar kultura'. Tako bi i bosanski pogledi bili permanentno proširivani evropskom dimenzijom. Onda bi Bosna, nepovratno smještena u veliki evropski kontekst, konačno mogla da bude domovina svih ljudi koji tu žive.

Evropska kontekstualizacija Bosne i Hercegovine jeste od pomoći - to je proces koji na individualnom planu poznajemo svi mi koji smo decenijama živjeli vani. Komparativni pristup, pamet koja stalno dovodi sopstvenu stvarnost u odnos s većom cjelinom, jesu potrebniji no ikada.

Pritom ne treba upasti u zamku idealizacije. Nema prečice do idealnog stanja. Što si dalje od predmeta čežnje, čežnja je veća. Ali to je moguće samo uz grubu stilizaciju predmeta čežnje. Nije moguća, a nije ni potrebna prečica do Evropske unije, niti idealizacija evropskog ili bosanskog konteksta. Ne treba se odati ni rezignaciji u teškim periodima. Stoga nam je namjera da širom otvorimo oči pred stvarnošću i da nastavimo ovaj proces kritičkog promišljanja pretpostavki za konačno stabilizovanje Bosne i Hercegovine u Evropi, kao i vrijednosno afirmisanje Evrope u Bosni i Hercegovini.

Mislim da je naš Ured u Sarajevu dobro postavio pitanje i sjajno organizovao prvi korak. Još samo da dodam, da postavljanje neugodnih, kritičkih pitanja dobro stoji Fondaciji Heinrich Böll, s cijelim njenim istorijatom, kao i istorijatom i duhom Zelenih. Uostalom, ugodna pitanja su dosadna.

Zaključci i preporuke

U pripremama za Konferenciju izrađena je studija koja s politološkog, pravnog i sociološkog aspekta nudi bilans učinka rada međunarodne zajednice u Bosni i Hercegovini. Ova studija činila je polaznu osnovu za diskusiju na Konferenciji, na kojoj su diskutirali predstavnici međunarodne zajednice, civilnog društva i političkog života u BiH. U radu Konferencije učestvovalo je oko 90 sudionika, a cjelokupan rad pratili su akreditirani predstavnici medija.

S obzirom na činjenicu da su ovakvu vrstu konferencije, a naročito teme o kojima se diskutiralo, svi učesnici označili kao veoma rijetko dešavanje u javnom životu Bosne i Hercegovine, napose veoma važno i potrebno dešavanje, zaključci i preporuke koje slijede nužno su određeni nešto višim stepenom poopćavanja, iako se to ne bi trebalo razumjeti kao nedostatak konkretne argumentacije i/ili prijedloga učesnika Konferencije. Naravno, iz

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 150

same studije, odnosno autorskih priloga proizlaze veoma konkretne ocjene i preporuke.

Jasno je, međutim, da praksa organiziranja ovakvih i sličnih konferencija, simpozija i konsultativnih savjetovanja treba postati stalna s obzirom da je evidentan izostanak dijaloga između predstavnika međunarodne zajednice i šire zainteresirane bosanskohercegovačke javnosti u vezi s ključnim pitanjima budućnosti ove države.

Sama Konferencija bila je, zapravo, prvi ozbiljniji javni forum za „verbaliziranje" (a u određenom smislu i artikuliranje) domaćeg stava o fenomenu zvanom 'međunarodna zajednica'. Konferencija je tom nastojanju pokašala dati određenu vrstu forme, a to je zapravo fenomen *umještenosti* međunarodne zajednice i moguće kritičke refleksije njene zaostavštine, odnosno njene tradicije ovdje u Bosni i Hercegovini. Uz to, radni dio Konferencije bio je kritička refleksija u vezi s dosadašnjim učincima međunarodne zajednice u BiH, što je izvjestan specifikum imamo li u vidu vremenski period u kojem je međunarodna zajednica prisutna u BiH. U isto vrijeme, iako ne u istom intenzitetu i obimu (naprosto zbog toga što se značajan broj pozvanih predstavnika međunarodne zajednice nije odazvao pozivu), predstavnici međunarodne zajednice imali su priliku iznijeti svoja mišljenja i analizu stanja vezanu za ulogu međunarodne zajednice u BiH.

Da dva odijeljena „svijeta" (domaća percepcija i percepcija unutar krugova međunarodne zajednice) i dalje postoje – nije potrebno dodatno pojašnjavati; ali treba naglasiti da je Konferencija ponudila model premošćavanja praznog prostora i djelimično uspjela u tim namjerama. Stoga je jedan od zaključaka Konferencije da se budući događaji ove vrste pokušaju organizirati i u drugačijem organizacijskom formatu (npr. kroz rad radnih grupa s prezentiranjem zaključaka na panelima i tome slično). U tom smislu čini se gotovo očiglednim da se međunarodna zajednica u Bosni i Hercegovini tretira kao jedna vrsta traume. I zbog toga je veoma važno da su ova pitanja otvorena; ali nismo mogli da se otmemo utisku da slična stvar postoji i na drugoj strani, kod onih koji nisu baš tako zdušno došli da razgovaraju s nama. Nismo baš sigurni da i oni nisu traumatizirani zbog tako loših i poražavajućih rezultata ili eventualno zbog vlastitih očekivanja u Bosni i Hercegovini.

Značajno je naglasiti da na Konferenciji nisu dominirala pitanja tzv. dnevnopolitičkog sadržaja; pažnja prisutnih bila je usmjerena na ključna pitanja i procese u bosanskohercegovačkoj državi i društvu: demokratizacija postkonfliktnog društva, izgradnja demokratskih institucija, vladavina prava, izborni sistem i ustavni okvir, civilno društvo i političke strukture, pitanje domaće odgovornosti i *ownershipa* za ključne procese u državi i društvu,

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 151

suočavanje s prošlošću... Iako neka od ovih pitanja imaju predominantno „domaći / unutarnji" karakter, izgleda da je bilo potrebno otvoriti raspravu o „izvanjskom" faktoru kako bi se o tim pitanjima argumentirano raspravljalo. Dakako, sa stanovništa struke, kompleksnost fenomena zahtijeva interdis-ciplinarnost u pristupu, a to se doista i pokazalo u toku radnog dijela Konferencije.

Treba naglasiti da je u toku Konferencije za diskusiju ponuđena zaista argumentirana refleksija na učinak međunarodne zajednice. Konačno, bilo je više formuliranih pitanja nego ponuđenih odgovora, ali to nikako nije nedostatak samog skupa – naprotiv, dojam koji smo stekli jest da tek jasno i nedvosmisleno identificirani problemi, pa i u formi pitanja, mogu poticajno djelovati na izlazak iz stanja intelektualne konfuzije, i na ponudu strategija za uspješniju budućnost države i društva.

I, na kraju, nadamo se da će bar ova forma otvorenih pitanja, problema koje smo ovdje otvorili, forma ovakve kritičke refleksije, koja se možda prvi put jasno atrikulira na bosanskohercegovačkoj sceni, biti izvjestan korektiv za budući angažman međunarodne zajednice u Bosni i Hercegovini – kakav god on mogao biti.

Kratke biografije autora studija

Nermina Šačić viši je asistent na Odsjeku žurnalistike Fakulteta političkih nauka. Rođena je 1974. godine u Višegradu. Završila je Fakultet političkih nauka, Odsjek žurnalistike, 1994. godine, nakon čega je na istom fakultetu magistrirala 2003. s temom *Uloga medija u političkoj socijalizaciji u Federaciji Bosne i Hercegovine.* Na Fakultetu političkih nauka 2006. godine odbranila je doktorsku disertaciju *Politički konflikti i javno mnijenje u postratnoj BiH.* Svoj angažman na Fakultetu političkih nauka počela je 1998. godine kao asistent na predmetima Tehnike i praksa novinarstva i Metode novinarstva. Uz već spomenute predmete od 2003. godine asistira i na predmetu Javno mnijenje u zvanju višeg asistenta. Radila je kao novinar i urednik na RTVBiH, a kasnije i kao glavni i odgovorni urednik TVSA. Autorskim prilozima sarađivala je u *Odjeku*, *Zeničkim sveskama*, *Kriminalističkim temama*, *Godišnjaku* i drugim časopisima. Učestvovala je u radu više okruglih stolova, kolokvija i skupova koji su se bavili političko-medijskom problematikom. Stalni je saradnik *Internewsa u Bosni i Hercegovini*, i povremeni *Soros centra* u projektima razvoja medija u BiH.

Autorica je knjige *Politička de/resocijalizacija i mediji.* Također je priredila knjige: *Novinarstvo u funkciji ljudskog napretka – printani mediji*, Inter-

Primjer BiH odrzivi koncepti prelom bosanka 23.08.07_korektura.qxd 21.9.2007 14:58 Page 152

news, Bemust, Sarajevo, 2003. i koopriređivač (s prof.dr. Besimom Spahićem) knjige *Novinarstvo u funkciji ljudskog napretka – elektronski mediji*, Internews, DES, Sarajevo, 2004.

Manfred Dauster diplomirao je pravo na Univerzitetu u Saarlandu (Saarbrücken). Doktorirao je 1983. godine na ustavnom i komparativnom ustavnom pravu i radio šest mjeseci kao vanredni profesor ustavnog prava na Državnoj akademiji za državne službenike u Hofu (Bavarska).

Radio je kao javni tužilac u Tužilaštvu grada Münchena i u Odjelu općeg kriminala i u Odjelu privrednog kriminala. Imenovan je za sudiju na Regionalnom sudu I u Münchenu 1989. godine. Bio je viši tužilac u Tužilaštvu od 1990. do 1997. godine, kada je postao predsjedavajući sudija na Regionalnom sudu I u Münchenu. U augustu 2000. godine postao je rukovodilac Antikorupcijskog odjela u Uredu Visokog predstavnika (OHR) u Bosni i Hercegovini. Od jula 2002. godine radio je kao rukovodilac OHR-ove Jedinice za reformu tužilaštava i krivičnih institucija. Potom se vratio u Njemačku i od januara 2003. do 2005. godine radio je kao predsjedavajući sudija na Regionalnom sudu I u Münchenu. Dvadeset godina je bio član Državne komisije Bavarske, koja je radila u okviru Državnog ministarstva pravde, za polaganje diplomskog ispita studenata prava, a bio je i član Državne komisije Bavarske za polaganje pravosudnog ispita. Imenovan je za sudiju Suda BiH 29. 9. 2005. godine.

Dino Abazović rođen je u Sarajevu 1972. godine. Magistar je sociioloških znanosti, radi kao viši asistent na Odsjeku sociologija Fakulteta političkih nauka Univerziteta u Sarajevu, na predmetima Sociologija religije i Sociologija saznanja i morala, a angažovan je i kao stručni saradnik u Centru za ljudska prava Univerziteta u Sarajevu. Član je redakcijskog kolegija revije za umjetnost, nauku i društvena pitanja *Odjek*. Dodatno obrazovanje sticao je na *American Institute on Political and Economic Studies – Georgetown University & Univerzita Karlova v Praze*, na *Raoul Wallenberg Institute for Human Rights and Humanitarian Law, University of Lund*, kao i na *Institut D'Etudes Europeennes, ULB Brussels*. Učestvovao je kao istraživač u više međunarodnih istraživačkih projekata i bio gostujući predavač na nekoliko univerziteta u regiji, Evropi i SAD-u. Autor je knjige *Za naciju i Boga: Sociološko određenje religijskog nacionalizma* i kourednik dva zbornika radova (*Religija i europske integracije* i *Confronting with the Past: Consequences for the Future*). Radovi su mu objavljeni u više domaćih i inostranih časopisa, zbornika radova i knjiga, na južnoslavenskim, kao i na engleskom jeziku.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 153

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 154

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FONDACIJA
HEINRICH
BÖLL

Proceedings from the conference:

EXAMPLES OF BOSNIA AND HERZEGOVINA: SUSTAINABLE CONCEPTS OR LOST WAYS OF THE INTERNATIONAL COMMUNITY?

Sarajevo, 2007

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 156

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 157

CONTENTS

Introduction
161 Mirela Grünther-Đečević

Welcome remarks
163 H.E. Christian Schwarz-Schilling
168 H.E. Michael Schmunk

1. INFLUENCE OF THE INTERNATIONAL COMMUNITY ON THE POLITICAL DEVELOPMENT IN BIH

Introduction
175 Nermina Šačić

Commentary
182 H.E. Christian Schwarz-Schilling
184 Zlatko Dizdarević

Discussion
193 Dušanka Majkić
195 Miro Lazović
197 Senad Pećanin
199 Nurko Pobrić
200 Jerko Ivanković-Lijanović

Study
202 **Nermina Šačić:** *The International Community in Bosnia and Herzegovina - December 1995 – March 2007 - A Political Science View*
202 I. *Introduction*
204 II. *Philosophy of a 'peace process'*
205 III. *Ethno-party pluralism – false political plurality*
208 IV. *Controversies in practice*
212 V. *Reforms in Bosnia and Herzegovina vs. reforms in the International Community?*
218 VI. *Assessment and analyses*

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 158

2. LEGAL REFORMS IN BIH AND INFLUENCE OF THE INTERNATIONAL COMMUNITY

Introduction
223 Manfred Dauster

Commentary
227 Zdravko Grebo
232 Nedim Ademović

Discussion
238 Nurija Omerbašić
239 Mirsad Ćeman
240 Manfred Dauster

Study
241 **Manfred Dauster:** *Taking Stock of the International Community's Actions in Bosnia and Herzegovina – December 1995 – March 2007 - Legal Aspects*
241 I. *Introduction*
246 II. *Important steps on the path of reforms of Bosnia and Herzegovina taken under the international community's pressure or which the international community took them alone*
257 III. *Assessment and prospects*

3. REFLECTION OF THE PRESENCE OF THE INTERNATIONAL COMMUNITY IN THE BIH SOCIETY

Introduction
265 Dino Abazović

Commentary
273 Nada Ler Sofronić
275 Đorđe Čekrlija

Discussion
279 Tarik Haverić
281 Zdravko Grebo
283 Tarik Haverić
284 Zlatko Hadžidedić
285 Dino Abazović

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 159

Study

287 Dino Abazović: *Tallying the Balance of Effects of the International Community in BiH – December 1995 – March 2007 - Sociological Aspects*

288 I. *Introduction*

290 II. *What has gone wrong?*

293 III. *Democratisation by undemocratic forces and the (non)civil society!?*

296 IV. *Final considerations*

Final remarks

301 Dragoslav Dedović

304 Conclusions and recommendations

306 About the authors

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 160

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 161

INTRODUCTION

The international community has tried to contribute to the development of a functional state and to support the political forces capable of continuing and completing the process of political reforms. However, activities of the international community in Bosnia and Herzegovina so far have been marked by both success and failure. In view of the current political situation and the pressure by the international community on the political elites in Bosnia and Herzegovina to take full ownership over its own state and society as soon as possible, and in view of the ongoing, yet very slow process of European integration, there is a need to look at the effects of the international community's presence and to assess its role for the future.

In view of this, on 17 April 2007, the Heinrich Böll Foundation, Office for Bosnia and Herzegovina, organized in Sarajevo a conference entitled **The Example of Bosnia and Herzegovina: Sustainable Concepts or Lost Ways of the International Community?** As part of conference preparations, a study was prepared, offering a tally of effects of the international community in Bosnia and Herzegovina, from the point of view of political science, law and sociology. The study was prepared by Nermina Šačić (Faculty of Political Science, University of Sarajevo), Manfred Dauster (Court of BiH), and Dino Abazović (Faculty of Political Science, University of Sarajevo), and served as the starting point for the conference debate. The conference brought together representatives of the international community, civil society and political life in Bosnia and Herzegovina. On the basis of its activities and experiences amassed in post-Yugoslav countries, and following its fundamental premise that political education is the necessary precondition of a truly democratic society, the Heinrich Böll Foundation wants thus to contribute to a truly democratic political dialogue.

Both the conference and the study are aimed at tallying the effects of the international community in Bosnia and Herzegovina, as well as at triggering a debate on what the presence of the international community meant and continues to mean for Bosnia and Herzegovina. The public in Bosnia and Herzegovina often discusses the pending closure of OHR and a re-definition of the international community's role. In simple terms, "the foreigners' departure" is discussed more and more across Bosnia and Herzegovina, and we thought it was time to intensify public dialogue between the international community and political and civic stakeholders in Bosnia and Herzegovina, on present and future concepts, but also on the lost ways of the interna-

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 162

tional community and its partners in the Bosnia and Herzegovina political arena. At that, one should observe the rules of preservation of things that proved to be good, overcoming, at the same time, obstacles for further development of Bosnia and Herzegovina.

Bosnia and Herzegovina still needs help from the international community. However, the international community, Europe in particular, need a stable and prosperous Bosnia and Herzegovina – as a clear sign of a successful peace policy. That is why the presence of a concept of accelerating Bosnia and Herzegovina's effective accession to the EU is indeed one of the most important measures of the overall success rate of the international community.

In this publication that is in front of you, you will find the introductory speeches, comments and extracts of the discussion from the aforementioned conference, as well as the study which you will find at the end of each thematic chapter of this publication. The Heinrich Böll Foundation wishes to express its sincere gratitude to the authors of the study and to the participants of the conference for their contribution and engagement in the preparation of the conference as well as to the very precious comments, discussions and recommendations which you will read on the following pages.

Mirela Grünther-Đečević
Head of the Heinrich Böll Foundation,
Office in BiH

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 163

WELCOME REMARKS

H.E. Christian Schwarz-Schilling, High Representative to BiH and the European Union Special Representative in BiH

Excellency, ladies and gentlemen,

Thank you for inviting me to this conference. This is a very interesting topic which comes at the right time. Let me also thank you for your excellent materials you have sent in advance. This is a study which is extremely helpful as it repeats, reiterates and re-evaluates the developments since the end of the war, since the time when all those horrible things took place, in the early 1990s.

First of all, I would like to thank the Heinrich Böll Foundation for their extraordinary work and useful discussions and ideas that help improve the situation. The Foundation has done so since I came to Bosnia and Herzegovina. I cannot remember how many times so far I met with representatives of the Heinrich Böll Foundation. Once more I would like to emphasize how important this topic and this conference is, since we have to enhance the understanding of the political situation and the transition process in this country.

This is why I believe that it is extremely important to organize such conferences and it seems to me – I apologize for saying it – that there is a habit in this region of identifying the one to blame for some things so quickly. However, in this case the situation is much more complex. The approach implying guilt is not the proper approach to the future. At the outset of the discussion I would like to ask the following question: how did we reach this moment? How did the countries of the former Eastern Bloc make progress towards Europe?

The process of transition in South-East and Central Europe was difficult. However, on the other hand, we saw the wars waged by Milosevic and nationalist policies aiming at genocide and ethnic cleansing. However, first of all, I want to share with you one basic opinion about this. It is not very easy to say that all the difficulties we went through here were solely the difficulties caused by the international community.

Of course, there is room for criticism. However, the region of the former Yugoslavia has shown to be different from other places. It was extremely difficult to take action in this region because of numerous people of diffe-

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 164

rent religions and history. That was an aggravating circumstance in which transition is much more difficult. We have to say that what happened here was the failure of politicians of this country in the first place, who created the situation we are facing right now.

Thus, first of all, I think that every national politician has to accept that it was not the international community that made mistakes, but that it was necessary to have the international community present here, and that simply there was no such need in other East European countries which went through transition after a communist era, going down the road of democracy.

Indeed, it was so tragic to see, for example, the movements in Hungary, Poland, the movements of liberalization, while at the same time the region of the former Yugoslavia was ruled by a backward leader and the Secretary General of the Communist Party who was simply heading towards nationalism and ethnic-oriented thinking. That was the reality by the end of 1980s and in the early 1990s. Nonetheless, we have always known, since the very beginning, that many mistakes were made by the international community.

We, on our part, did not manage to stop the war in Croatia; we did not manage to prevent genocide in Bosnia and Herzegovina because the international community's policy was too fragmented. However, on the other hand, the situation was such that nobody absolutely believed a war was going to happen. Some believed that at the end of the Cold War there would be no more wars. However, the reality proved different. Eventually, it was the United States of America that put an end to the war in Bosnia and Herzegovina and created conditions for the Dayton Peace Agreement.

But that was not for the first time that Europe saw a failure. Europe saw the war coming in the beginning. We all knew that the United States wanted to get involved right in the beginning, but at that time Europe was not willing to support the US' interference in the war and this was precisely the reason why I was struggling against my government at that time. At that time I was a minister and I resigned because my assessment of the situation was completely different.

At that time Europe believed that the situation had not matured yet, after the Cold War, for taking over responsibility. The US did notice however that Europe was not prepared to take its own responsibility, and the US did that instead and eventually put an end to the war. This is a sheer fact. This is no longer just an opinion.

This is why you should know that the Dayton Peace Agreement was not a defeat of either Milosevic or Tudjman, but a political compromise which simply set the sides apart. An important difference between that peace ag-

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 165

reement and the end of the World War Two is that during the peace talks the actors of the war and war criminals were sitting at a negotiating table together. This was something completely different from what we had after we conquered neo-Nazis, and after Germany capitulated.

Here, first of all, we had a compromise with the war criminals, which means that we should not be surprised at all by the fact that the Dayton rules are not the rules for a new liberal, democratic beginning. By the end of 1995 a devastating war was going on for the fourth year and the future was uncertain. More than 5 percent of the citizens of Bosnia and Herzegovina were killed, more than 20 percent of citizens were forced out of their homes, more than one million soldiers were armed, we had numerous refugees, and also the economy throughout the country was devastated and replaced by the black market.

The Dayton Peace Agreement and its vision of Bosnia and Herzegovina depended on the support coming from what used to be the warring factions. And expectations and the future also depended on that. However, the Dayton Peace Agreement only put an end to the war although there were great expectations about the future. But the main function and the main goal of the Dayton Peace Agreement was to put an end to the war.

The priority of Bosnia and Herzegovina is to accept at least the minimum compromise along with several logical consequences. Also, that period was abused and at that time we still had the legacy of a three-and-a-half-year war. The international community was present here to defend the country against that war legacy. In other words, the international community tried to establish peace.

IFOR was present here, and was firm in its purpose. Then, the Office of the High Representative was established. The donor agencies and governments also tried to force the former warring factions – beyond reconciliation over the agreement - to ensure the right of refugees and displaced persons to return and to ensure the full political representation of all citizens.

The other reason for the Dayton success was a change of the regions in 1995. Many Serbs and Croats in Bosnia and Herzegovina wanted to divide the country, join Serbia and Croatia respectively. However, such attempts disappeared. Now, for instance, those who support Dodik do not support his calls for referendum.

What about the Bonn powers? During the first year of the Dayton implementation, it became clear that it was no longer possible to implement peace without much stronger powers, which would be invested in the High Representative. So the decision was made to provide the High Representa-

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 166

tive with the so-called Bonn powers. I have to say that already at that time, in 1993/1994, I was a mediator in BiH.

I was traveling across the country, from one municipality to another, from one town to another and I realized indeed that there were mayors still in office who simply did not want to implement the Dayton Peace Agreement. What they did was to put property repossession claims somewhere in the corner; they did not process the claims; they ignored court decisions and rulings. They rejected court rulings and decisions.

However, this was impermissible. Eleven years later, Bosnia and Herzegovina is on the road towards signing a Stabilization and Association Agreement with the European Union and establishing first contractual relations which will eventually lead to Bosnia and Herzegovina's membership in the European Union. Bosnia and Herzegovina joined Partnership for Peace and CEFTA, and more than one million people have returned to their homes.

Bosnia and Herzegovina is one of the fastest growing economies in the Balkans; it has a political system which was established in Dayton and progress is indeed constant, as a compromise for the inability of Bosnia and Herzegovina to escape the trap of poverty resulting from the war destruction and a poor management by the nationalist policies.

This means that the Bonn powers are still needed in this country. They are needed because of a delicate situation in the region, in Bosnia and Herzegovina, and without them, this country would not be able to move forward. Some people say that the international community took over the role of political parties and that we are implementing politically difficult reforms, while political nationalist leaders are ignoring their own responsibility.

Let me tell you: I am aware of criticism coming from both sides. On the one hand, the criticism says: why did you not use the Bonn powers? Why have you not used them all the time? You may recall that the international community made a firm decision to close the OHR by the end of June of this year. Me too, I counted on that date as I had believed that the mission should be accomplished by the end of 2006 or in the first or second quarter of this year.

This was firm position of all international community member-states and I think that it was good to allow a transitional period while the OHR was still present, instead taking decisions which should be made by the responsible people, responsible politicians in this country, while the OHR, as an institution, would no longer have the same powers.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 167

After this change was introduced to our policy, right in the beginning of my term in office, I wanted to show how important it is for politicians to be mature and take over our role. Bosnia and Herzegovina is on the road to the European Union, and this country is already participating in this preparatory process. The Stabilization and Association Agreement will be signed as soon as all requirements are met.

Here we have the President of the Council of the European Union, German Ambassador to Bosnia and Herzegovina. I think that nobody can imagine how many hours we spent together in an attempt to solve the situation caused by current political rhetoric here and define clearly the requirements before October 2006. The European Union will continue to take part and be involved in the promotion of the society in the countries, future members of the European Union and this is indeed a phase in which comprehensive reforms should be completed and all existing obstacles overcome.

The challenge for Bosnia and Herzegovina, as a post-conflict society, is political integration in the European Union, and at the same time it is the only model for durable peace in this part of the West Balkans. Association with the European Union has changed political agitation in this country and the synergies in the whole West Balkans region should be used for all the countries to move forward to the European Union. It is also a necessary to invest resources to assist the West Balkan countries in becoming the European Union members as soon as possible.

However, all this will depend on the will and wish of the local stakeholders to participate in these processes and Bosnia and Herzegovina will join the convoy of the countries getting prepared for the European Union. Montenegro is getting prepared. Regarding Kosovo, a solution is no longer a big problem there, as we know, and it will not be good if only this country, which suffered most in the last war, becomes the last country to join the European Union. Now it is the task of the political leaders to assist Bosnia and Herzegovina.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 168

H.E. Michael G. Schmunk, Ambassador of Federal Republic of Germany and current Presidency of the European Union in Bosnia and Herzegovina

Mr. High Representative, Ladies and Gentlemen, let me first thank the Heinrich Böll Foundation for having arranged this timely workshop with such distinguished experts. I feel very honored to have been invited to speak to you this morning. The topic and the central question of this conference remains crucial: Has the International Community's contribution to the peace-, nation- and state-building (PNSB) process in Bosnia and Herzegovina (BiH) been truly appropriate, effective, and sustainable? I will try to give an answer from my experience in this country, as well as from the practical "lessons learned" in my five post-conflict society engagements worldwide. I will also try to draw from my related PNSB research as a Harvard University scholar in 2005/2006. Regarding the analysis of the current political situation, there is, of course, not much to be added to what has been elaborated on today by our friend Dr. Christian Schwarz-Schilling—I fully share his views.

Since the early 1990s, we have seen an important paradigm shift in the international security agenda. Peace-, nation- and state-building assistance to failed states and post-conflict societies has become both a duty and a priority for Western foreign and security policies. Increasingly, so-called "coalitions of the capable and politically willing" have been trying to cope with the problem of failed states and collapsed societies. These stabilization and reconstruction efforts followed a new type of international intervention aimed at stopping brutal attacks on innocent civilians, including genocide, and massive violations of human rights. When we entered such endeavors, we commanded only little experience of what to contribute, and how to do it right. Our PNSB manuals did not provide much advice, and our tool boxes were lacking efficient instruments. I have to admit that we, altogether, were not really sufficiently prepared for such a demanding task. Twelve years ago, it was actually Bosnia and Herzegovina, which became our first PNSB "case"—the "mother" of our later engagements in Kosovo, East Timor, Macedonia, Afghanistan and in the Middle East. Over the years, we have managed to adjust our concepts, to improve our manuals, and to create better tools.

It has been in Bosnia and Herzegovina, though, where we have also been confronted with the limits of international, of "external" PNSB assistance. Initially, our interventions in Bosnia and Herzegovina had two goals:

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 169

To stop the ethno-nationalist bloodshed and end large-scale violations of human rights and, secondly, to reunite and reintegrate the divided Bosnian society after the conflict—introducing human and civil rights, the rule of law and democracy. The basic concepts with which we started this process were the Dayton and Washington Agreements. Both did a good job—the violent conflict was brought to an end successfully and sustainably.

The postwar order however, proved to be insufficient to establish a reconciled, democratic society immune to failing again, and ready to meet EU values and standards, so that a future membership of Bosnia and Herzegovina was within reach. The PNSB cooperation between Bosnians and Internationals produced many good results—stabilization, reconstruction and reform progress have been more than obvious. In particular, the process of physical reconstruction, jump starting the economy, and institution-building has been very successful. However, we have come to realize our PNSB limitations where the more basic problems of the failed Bosnian society are concerned. Still to be tackled are: religious-ethnic divisions, the undefined rights of the individual, and the insufficiently developed role of civil society in BiH. Both this society and the International Community have failed so far, when it comes to confidence building and starting a truth and reconciliation process.

Here, our PNSB manuals and our PNSB tool boxes have not offered us what was needed on the ground. Moreover, much more creativity is called for—a creativity that both the Bosnians and the Internationals have unfortunately been lacking so far. This does not relieve us from our responsibility to still do better. One thing has to be very clear in this context, though—the foremost responsibility in this regard lies with Bosnian and Herzegovinian society. The wide elbowroom of ownership and self-responsibility granted by the High Representative over the past one and a half years has practically not been used at all.

The International Community has not been perfect, when it comes to the job of putting a failed society on its feet again. The IC has never been and will never be a homogeneous one. Do not blame us for our diversity—rather recognize our willingness to help considerably, and over a long time. The IC has made mistakes, and will continue to make mistakes in the future. However, and here again I agree with the High Representative, Bosnians make their life easier by simply blaming everything on the Internationals. We have been permanently reevaluating and adapting in an attempt to improve our concepts, our instruments, and our overall PNSB performance. Much more important, though, is the effort coming from the post-conflict

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 170

society itself. Real nation-building should be the job of both the political leadership of Bosnia and Herzegovina *and* of the citizens of this country. Yes, the electorate must also bear responsibility—a resigned withdrawal into the private sphere and into family life is politically dangerous and undemocratic.

I would agree that the so-called "top down" approach, when it comes to reforms in this country, has failed in large part. It looks as if the IC may have focused its efforts and its support over the past twelve years too much on political party leaders and senior officials. The result has been, more or less, a self-blockade on the Bosnian side, paralyzing BiH for quite some time now. One of the most negative results of this self-blockade has been Bosnia's failure to join the SAA process in time—risking that it may be "by-passed" by some of its neighbors in the competition to become a full member of the European Union one day. If we look at the results of recent polls in BiH, it is very obvious what the clear goal of the large majority of the people of this country is—full integration of BiH into the EU as soon as possible. Thus my impression since I came here last year has been that the so-called "bottom up" approach, when it comes to PNSB, should be given much more priority on our part. This has already born results on the municipal level where pragmatic, non-ideological work has demonstrated how the country could potentially have moved ahead in the right direction. It has been encouraging to see that on the municipal level the idea of multi-ethnic cooperation has progressed much further than on the entity and state level. Speaking for Germany, but also for the EU, I can say that we have come to the conclusion that much more political, expert, and financial support should be provided to the cities, towns and villages in Bosnia and Herzegovina, so that these municipalities, acting in an integrated, non-nationalist fashion, could become the "yeast" in the political reform process of BiH.

To reiterate, nation-building is first and foremost the essential duty of the country, of the society concerned. The international, the *external* nation-builder should never forget this. The external nation-builder should concentrate her or his assistance on those areas where the post-conflict society cannot manage without help from the outside. This "red line" should never be crossed. PNSB self-restraint is of the essence. Unfortunately, the IC's engagements in many stabilization and reconstruction efforts have shown that this "iron rule" has not always been observed.

In my recent address at the ceremony organized to mark the fiftieth anniversary of the European Union, I mentioned that there are two key areas in particular where Bosnians have to take much more initiative themselves.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 171

One is the creation of the "social glue" that is needed in each and every society to form a country, if not a nation. This includes developing a much more vital civil society than the one we see today. The other necessary ingredient is an effective, democratic, EU standards oriented basic law and political order for BiH. It is more than time to replace the by now ineffective Dayton order with a modern, less complex and less costly constitution. The International Community, above all Germany and the EU, have pledged to provide the framework for the constitution writing process, be it with experts or with financial support. It is now up to Bosnia and Herzegovina's parliament and to the political parties to agree on the path and the substance.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 172

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 173

1. INFLUENCE OF THE INTERNATIONAL COMMUNITY ON THE POLITICAL DEVELOPMENT IN BIH

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 174

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 175

INTRODUCTION

Nermina Šačić, Faculty of Political Science, Sarajevo University

Would you, please, allow me to warmly greet all of you and say that it is really my pleasure to be present at this meeting because I think that the topic we are discussing today is extremely important for the future and development of Bosnia and Herzegovina's democracy.

First of all, let me explain briefly my methodological approach. In my text I have tried to rely on an empirical argumentation in the first place, without any major theoretical narration. Still, right in the beginning I would want to share with you some theoretical dilemmas, after which I will draw only those conclusions which I drew from the empirical argumentation. Here is my first dilemma.

As we are talking about the notion of the *International Community,* first of all I want to say that it is the notion which is in public use but its academic definition, at least the one in literature dealing with these issues, has not been fully identified. This is why I would like to raise the following question: What is the International Community in Bosnia and Herzegovina? Who is it represented by? By the United Nations? Is it primarily the European Union member-states and the Russian Federation? Is it the United States of America and NATO; SFOR, etc.? Or the OHR, OSCE, EUPM, and some other organizations, both governmental and non-governmental? Is it the IMF, the World Bank, WTO, Embassies, or the world's corporations and others?

Of course, I have tried to define this term and now I can only make the following observation: when I say the "International Community", I refer to an aggregate of diverse Anglo-Saxon and European Continental political arrangements in addressing Bosnia and Herzegovina's problem, among which – I hope all of you will agree – there are indeed some theoretical controversies when it comes to democracy, nation, state and we shall refer to that during the discussion.

But the political participation and decisions made about the future of Bosnia and Herzegovina, especially those made in Dayton, raise the issue of whether Bosnia and Herzegovina is a semi- or the full protectorate of the International Community and is it the mirror of the fundamental tensions between European and American policies? In this regard, we can say that the major specific feature of the International Community is its *'action on others'*. Let me reiterate 'action on others', under the dictate of *relocated* centers of geo-political and geo-economic powers, the representatives of which

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 176

are directly or indirectly involved in the Bosnia and Herzegovina political life, gives the International Community legitimacy to help develop the institutions of equal citizens, and the mechanisms for the protection of basic rights and freedoms of citizens of Bosnia and Herzegovina, but those which correspond to the world's standards.

From the aspect of international relations, the globalization processes and the policies of the major powers, the International Community can be seen also as a kind of an experiment, the aim of which is to begin to build a practical model of the world's society through the system of the global management in the local community. I mean the political engagement of different institutions of the International Community in the world's local community of Bosnia and Herzegovina. There are opinions in theory that Bosnia and Herzegovina is a first authentic state of the European Union, primarily because of the European Union institutions which operate outside their original national frameworks – I am talking about EUFOR, EUPM etc. This reduces the International Community to the implementation of national interests of imperialistic powers. During the first phase of post-Dayton Bosnia and Herzegovina there was a stronger American influence and the second phase of post-Dayton Bosnia and Herzegovina is marked by the final presence and vigilance of Europe.

Generally, the International Community has invested huge efforts in transition, especially in Bosnia and Herzegovina, but, I would say, not in a classic transition through which other countries have gone – transition to the full market economy, parliamentary state, and civil society in general, but in the transition from war to peace, which I want to stress. Although the transition lasts longer than it was expected, I most sincerely welcome this conference and I think that it is legitimate to discuss this topic. It is legitimate to tally the balance of effects of the International Community over the last twelve years in Bosnia and Herzegovina.

Let me now pass onto an empirical argumentation. I have analyzed several political segments of the society within which the reforms were implemented with the support by the International Community. Those were legislative, judicial, media reforms and the reforms within the political parties and the civil society. These are the conclusions which I have made: with the aim to overcome the blockades in the legislative authorities caused by (which we know) the ethnic political parties, special powers were invested in the High Representative, the so-called Bonn powers. He imposed a series of laws in different areas and decision; let me remind you of the decisions on a single currency, license plates, the anthem, flag and so on. However,

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 177

the making of the new legal arrangements contained some weaknesses, which mainly lie in the fact that the legal arrangements were being made without consultations with the broader public. The same is true for the Dayton. An illustrative example is the Draft Election Law which was supported by all major figures of the International Community in BiH. Still, it was almost unanimously rejected by the national legal experts two times. The opposition parties were not represented and did not participate in drafting of the election rules, something that we can recall, thus, the key mechanism for the development of the democracy in Bosnia and Herzegovina – the election system – remained discriminatory for the citizens of Bosnia and Herzegovina, and as such, in my opinion, it made the ethnic political social order legitimate, in which ethnic elites and not peoples they represent, have the monopoly over Bosnia and Herzegovina and its citizens.

The major priority of the International Community in the reforms referred to the establishment of independent judiciary and the building of the rule of law. A major progress has been made in the development of institutions, especially in the introduction of information technologies. The International Community also enabled and ensured the formation and unimpeded functioning of the Constitutional Court of Bosnia and Herzegovina, which should also be mentioned here, and assisted the formation of various judicial training institutes and the formation of some legal associations. We shall hear more about that during the second panel discussion; however, what I am interested in here (which is also stressed in the study) is the following: does politicizing come from the International Community? Independent and impartial judiciary and its de-politicization was the requirement set by the Council of Europe for Bosnia and Herzegovina to join the Council of Europe. However, under the international standards, it means the elimination of any influence on the judiciary from outside, while 'outside' refers to anyone outside the judicial authority. Although today there is a legal framework which should eliminate political pressure on the judiciary, we could speak about its exposure to the pressure from the International Community.

Some words about the media reform. The International Community was deeply involved in the media reform after the Dayton Peace Accords were signed. Under the influence of ethnic oligarchies during the war on the territories they had occupied or preserved under their control, three broadcasting systems were formed, all of them different in technical terms, programme and status-wise. We know that the media from Serbia and Croatia were spreading their influence and interests across BiH. The International Community supported the media expansion in the first phase of its assistance,

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 178

primarily by its huge donations to the media which claimed they were independent. The purpose of the international intervention was to create the media pluralism. But the question is whether they really contributed to the professionalization and democratization of the media in Bosnia and Herzegovina. Despite a good financial will of the International Community, the first post-war period was marked by the 'verbal war' waged through the media. In 1998 the process of transformation of the state broadcasters to public services began. It was imposed by the decisions and laws of the High Representative after failed attempts to have that job done by the domestic authorities, management and editorial staff of the existing broadcasters. As a result, there are two entity broadcasters and a Public Broadcasting Service for the whole of Bosnia and Herzegovina. This is how, in my view, the media space in BiH was *entitized* formally when the continuity of the Sarajevo Radio and Television, established in 1945, was disrupted. Last year we marked here in Sarajevo the fifth anniversary of the Federation Television and the fifth anniversary of the Public Broadcasting Service of Bosnia and Herzegovina. Within the legal arrangements, the media reform has reached an enviable level in comparison to two other countries in the region, and even in comparison to our neighbors, Serbia and Croatia. Let us take the example of the Freedom of Access to Information Act. But if we look at practice, there is an obvious lack of strategy, the law implementation. It is in fact just a dead letter, lacking practical implementation.

A few words about the civil society. Under the term 'the development of the civil society' the International Community meant in most cases the granting of support to the development and work of non-governmental organizations, often overlooking the fact that the civil society is much broader than the non-governmental sector. The experiences of other countries show that democratization is implemented – at least this is what theory says – by some other civil groups: trade unions, youth organizations, associations of pensioners and others. Over the past years after the war we are seeing international aid to BiH drying up and shifting to other places and crisis spots as Kosovo, for instance. This was the reason why the development of many non-governmental organizations stopped. It seems to me and the theory also says that they failed to develop the development strategy following the cessation of international aid. Critics are saying that many non-governmental organizations are rather distant from the society and citizens, which is a kind of a paradoxical consequence of support to the civil society. Zarko Papic is warning that the method of support covers an extremely small elite.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 179

In the end, and this is perhaps the key problem which prevents the International Community from being more efficient: the International Community tried to democratize nationalists in Bosnia and Herzegovina. It takes a great effort to realize that the political elites in BiH remain in power thanks to their encouraging, let me reiterate, encouraging insecurity, conflicts and instability. As such, they will not produce stability as they remain in power thanks to the conflict. When the three national parties in BiH, SDA, HDZ and SDS, were forced under the international pressure to reduce their nationalist rhetoric, rivals within national blocks – Party for BiH, HDZ 1990 and SNSD – accepted that vocabulary, which paid well at the elections. There is belief that the last year's elections did not show at all that the most radical parties became moderate but that the most radical parties are, in fact, moderate parties. For a number of reasons we could claim that nationalism in BiH became radicalized instead of reduced.

The International Community seems to have lacked the information that the war in BiH was not a product of an ancient hatred in the region but that it came from outside BiH and did not have direct causes in the country. Ethnic cleansing was the aim of the wars and not their consequence. Returns were not possible without defeating the policy which had envisioned ethnic cleansing. The returns were not safe because political architects of ethnic cleansing were not removed from positions, let alone the apprehension of war criminals Radovan Karadžić and Ratko Mladić. This is why I believe that the International Community is ignoring completely the issue of constituent minorities, considering the returns to Bosnia and Herzegovina to be completed. There are indications, and this is what we already heard, that the International Community will shrink its engagement further: some authors are saying that the international community is in fact tired. Despite that, the Peace Implementation Council decided in Brussels that the OHR and the Bonn powers should remain in place until June 2008 as the progress in the EU integration process has not been sufficient. The mandate of the OHR was extended because, I would say, the International Community became fully aware that BiH needs the constitutional reforms. Thanks to the ethnicized Constitution, and thereby to the ethnicized law, which was given a long span of time for its own promotion, the promotion of individual rights lost momentum, I think that the distinguished participants know which constitutional provisions I am referring to and there is no need to repeat them.

I would stress that unfortunately, ethnic/collective rights prevailed in Bosnia and Herzegovina's society – which were most loudly advocated by the national elites, leaders of national parties in BiH. As the international

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 180

partnership with national ethno-political elites lasted for too long, each of them had enough time to advocate the "peace process" as a purpose of the political life in Bosnia and Herzegovina and not peace as a political value. Ethnic politicians are today the lords of the peace process and in this way they are controlling both war and peace in Bosnia and Herzegovina, which is at the same time the negation of democratic principles and a latent destruction of the Bosnian state.

This is how it looks like in the post-Dayton political practice, or how the ethno-elites see the peace process, and thereby the International Community: the Bosniak political public firmly believes that the International Community forced the citizens of BiH to accept the division into two entities and that such a structure of BiH does not have any historical, economic or economic and geographic justification and that the only foundation of such a BiH is aggression and genocide. Serb political public believes that the Republika Srpska acquired its territorial and legal continuity in 1992 and has maintained it ever since and that it was not created by the Dayton Peace Accords, what is claimed by Bosniaks and Croats, but that it was verified by the Accords, which is why the future of the Republika Srpska cannot be challenged. Croat political public believes that the Dayton Agreement opened up a Croat ethnic issue by regulating inter-ethnic relations to the detriment of the Croat people. There is an attempt to solve the current dissatisfaction by requests for a third ethnic entity which should be considered as a "logical, justified and just goal of the Croat people in BiH as long as it is composed of the entities and as long as there is the Republika Srpska.

In a politically disoriented system of values such centrifugal, divergent, reduced publics - which are the consequence of the political conflict in BiH over a territorial, administrative and legal and political organization of Bosnia and Herzegovina - are leaving devastating effects on the BiH politics in general and on the BiH political freedoms.

If we are to judge by controversies surrounding the constitutional reforms, particularly those which were defeated in the Parliament of Bosnia and Herzegovina, then the citizen equality is largely left to the pressure from outside the country. Such political conflicts which we have in Bosnia and Herzegovina certainly reduce the effectiveness of the International Community. One should be frank and honest and say that the Dayton limited its role. In the present Constitution, the BiH society (as a perceived holder of sovereignty) is not envisaged as a whole, but as a mechanical sum of three constituent peoples, projected in a way as holders of sovereignty. Constituent peoples are envisaged as three separate ethnic wholes, which, under

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 181

the logic incorporated in the Constitution, function in the prospect as a separate society with its own sovereignty.

The constitutional restrictions have also prevented the International Community from developing mechanisms for human rights and freedoms protection. So it seems to us that the OHR is now a new political institution of Bosnia and Herzegovina.

The International Community took the role of a state by assuming the role of a new patron; as it was expected in socialism that the almighty state would resolve all the problems of citizens, companies and local communities, the same is now expected from the International Community. The imposition of many laws by the High Representative reduces the confidence of citizens in the competences of the authorities which is why it has often happened that some groups are protesting, seeking assistance not from the national institutions but from the OHR, for instance. The cul-de-sac of an ethnically monolithic identity which is legalized by the Constitution made it impossible to work on the citizenship identity, even for the International Community in BiH. Moreover, only a very small number of international officials attached importance and rarely expressed a unanimous belief that it would be necessary to contribute to a contemplative alternative to an identity on the basis of citizenship. It seems to me that the concept of the citizenship identity could perhaps restore the lost confidence of citizens in the state which is obliged to protect all of its citizens equally.

Frequent removals of politicians by the High Representative to BiH have encouraged some segments of the population to increase their trust in the International Community which was lost at war – I hope that you will agree with me – on all sides.

Some political parties – their leaders, who were targeted by the High Representative, began to feel a stronger fear, resulting in the shift of their accountability from the citizens, who elected them, to the OHR. Some political parties used those removals for their own election campaign purposes, so that the removed politicians barred from public offices were favored only because they were disliked by internationals.

The International Community has helped Bosnia and Herzegovina a lot, there is no doubt. However, it has not always been functional and in order for the International Community to be functional, in my view, it should resolve the structural problem in Bosnia and Herzegovina, which is the final defeat of the ethnic cleansing policy, and all policies which generate conflict, uncertainty and instability. Then, I think, it would be possible to work on building not common beliefs but common institutions, as it is the common institutions that can solve accumulated political conflicts and political problems at both individual and collective levels and this is the only way for the citizens of Bosnia and Herzegovina to have equal rights.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 182

COMMENTARY

H.E. Christian Schwarz-Schilling, High Representative to BiH and the European Union Special Representative in BiH

Ms. Sacic, first of all, let me thank you for your good presentation focusing on different issues. You may not be surprised, but if you are aware of my career here, in this region, you will know that I have always had critical opinions about the international community, too, so it is not difficult for me to agree with you on many things you have discussed.

The first question, "Who is the international community?" is a very good question. I have to tell you that in the capacity of the High Representative, I am learning new things about the international community every day. When we are talking about the international community, we have to have a broader picture of the Anglo-Saxon, European and Continental concepts of states and nations in mind. All that is a very interesting composition of different organizations. However, there are different pictures of the international community, depending on different states and different conflicts.

Here we have a broad picture, a broad perspective. However, even I find it sometimes too difficult to see where the basic sources of power lie, where they are formulated and where the policies of the international community are implemented. It is difficult to analyze that and to know what comes from Brussels, what comes from Washington, London, Berlin etc. I have to say that your question, what is the international community, is a very complex question and I will not dare answer that question.

Secondly, you have said in your study that it is the implementation of national interests of imperialistic powers. Here I can see some crucial points. I think that the politicians of Bosnia and Herzegovina see the international community as a community with its own interests, its own tradition, and history.

However, there are some major differences between different nations which are a part of this international community. For instance, I try, and I will dare, to make a difference: in the beginning, by the end of 1980s and in the early 1990s, at the end of the Cold War, Europe was not prepared to take the responsibility for this region, as the United States of America did.

But it was also the first time in history that Europe, as a union of sovereign nations, and as a European Union, should have taken that responsibility. However, we have to consider that in a historical context. For example, Germany had a different position. You cannot avoid mentioning nationalism

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 183

which was present in that country and you cannot say that we did not have an impetus for assuming the responsibility at the right time.

The same is true for the Great Britain. Britain had its interest as Yugoslavia's experience was similar to theirs after the World War One. France, on the other hand, had a completely different position which was a real national position of France, which concerned the formation of an anti-German fascist alliance with Serbs. Here too there is a historic link, a historic context. Germans were somehow tempted to disappear from the scene completely, as they had been involved in some horrible things during World War Two.

On the other hand, we had a constitutional problem to be involved in various activities. But I do not think these were the real reasons. The real reasons were the excuses we were trying to find for what we failed to do. As you said – you have mentioned national interests of different powerful states and I have to say that you are right and that is something which I criticized a long time ago: that the law enforcement in this country was done through a top-down approach, and not vice versa, which resulted in the lack of a debate in this country which would have helped develop the society and I think this was the real mistake of the international community.

But there were some good things as well, and there were some critical issues. However, we are aware that different electoral systems are in place in the US and in Europe, and here there is an attempt to create a mixture of what is present in other states. Also, you have mentioned the Constitution and quoted what I had said and what Ambassador Schmunk had mentioned. The Constitution is one of the basic things and I have to say that I am not happy about the current situation in that regard, and yet again this is a failure by Europe. It was not until two or three years ago that the fundamental discussions about the constitutional changes began. The role was assigned to the US.

When I asked at the beginning of my term, "What is Europe going to do?" I realized that I was not mandated to talk about that at all, let alone assist in that process. In Brussels I was trying hard to have that issue included in my mandate, which did happen in the end, and as of early March we are also involved. We too shall be working on it, of course, together with the United States of America.

Of course, now you cannot erase the fact that they started the discussion. And we cannot say, "Well, we shall take it from you and run the show from now on". We shall be doing it together, within the mandate of the EU Special Representative, coordinated with the US mandate, and with the politicians of this country. But we do know what happened here. It would be extreme-

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 184

ly difficult to start constitutional reforms if the police reform is not possible. The United States of America said that we should start upon completion of the police reform.

However, now we can see that it will not be possible and that everything has to be done in parallel. Otherwise, we shall not achieve any success. I think that the constitutional reform is one of the most important elements and I think that we all shall invest joint efforts in that. But I really believe Europe failed to recognize how important it was to commence negotiations, to give the same rights to all citizens and to exclude the domination of an ethnic vote.

All these are the elements which will change the situation in Bosnia and Herzegovina substantially. We simply have two different things and we have to find a way of combining them together. In the end, let me tell you that you have really encouraged me with your paper and I am pleased to see that the local people are doing this and that the people from this country are involved in these processes. There are as many international studies about all these issues as you want. This is why it is important for me to see the intellectuals of this country, people like you, engaged in these issues. My request to all of you is that you, the intellectuals of this country, are taking over a more important role in the political discussions which are underway. It is in this combination that we can see how it is possible to put influence on the political parties through pressure by the civil society and its organizations. And I am pleased to say that we can hear more and more voices from that side and see more and more activities which you have taken to produce your study. Let me congratulate you all.

Zlatko Dizdarević, journalist and diplomat

As I am not here today in the capacity of a representative of any organization or community, and as I do not belong to any academic community dealing with this issue, everything I am going to say will be presented from a slightly different perspective, probably from a rather political angle. Right in the beginning I would like to say that I trust that this Conference is very important and this is the issue the discussion of which is possible for so many reasons.

When I say 'we', I mean also the internationals, international representatives, as much as I am talking about national representatives. For, one day, and I have no illusions that it is going to happen soon, the complete truth

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 185

will be known about what the international community – whatever it may mean – has done in Bosnia and Herzegovina and for Bosnia and Herzegovina, and equally for itself. I am sure that the truth will be largely different from what we know now and what we are saying now. The time will shed a different light on some issues and it will be interesting to see which kind of the truth about everything will be relevant in the future.

Let me tell you right in the beginning that I am not one of those who believe that the international community is to blame for everything which happened here. I personally believe that our "right to guilt" for everything which happened here is rather exclusive. This right refers to all of us who live in this region. I am not putting the blame on the international community for everything which happened to us. I have a much more rigorous opinion about us than about the international community, but the fact is that the international community is our topic today and I think that this time we should focus on what we think and know about the international community.

From today's perspective – when we talk about the responsibility of the world for what happened and is still going on – I firmly believe that the world did not know or did not want to know the way in which it could have helped this country. Among other things, because the international community – when it was necessary – did not have a concept for a solution to the crisis in the region. Likewise, it did not have clear responses to its own internal relations and capabilities. At that time it was not clear how to implement everything which was declared international standards and values in the situation which was created during and after the war. We can discuss that today from the perspective of the story which is known to you about the glass and the dilemma as to whether it is half empty or half full. Of course, everyone will be talking from his or her own perspective and on the basis of one's own interest and the interests of those represented here all these years.

It is true that today we can say that Bosnia and Herzegovina has achieved a significant progress in the Euro-Atlantic integration processes and that it is on the road to Europe, but it is also true that this country is the last country in this region on that road, that we shall sign a Stabilization and Association Agreement which will open new roads to Europe certainly after it is signed by all of our neighbors and all the countries in the region.

The situation is similar in the area of economy: Bosnia and Herzegovina has made a progress indeed and according to some parameters, considered in isolation, we can say that it has made a very good progress. The economic growth of the state is, say, very dynamic, but in comparison to what

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 186

benchmarks? The fact is that, say, in 1990 the export of Sarajevo's Energoinvest, one of the companies in the country, was almost equal to the overall export of Bosnia and Herzegovina over the past several years. We can also say that we have achieved a great success in education and we can also say that in 1991 the number of the illiterate in the country was 5 percent, while we can now hear a drastic increase by 20 percent. Before the war, nearly all children received primary education, while today, children from villages, even regions, do not go to school at all nor are they receiving a mainstream primary education.

These are all perspectives that allow us to analyze the present situation. What I am telling you now is only my own view, and it is based on everything which I have seen and experienced over the last fifteen years and what I have done. Some of those stories have a very strong, even permanent impact, and I cannot forget them whenever I am to put together a general picture about what happened and what is happening to us today, especially about what we refer to as the 'international community' in our reality. Also, I have to say that I am thinking from the perspective of someone who is from Sarajevo, someone whose views about the world and the international policy were completely affected by the war. I am also speaking as a journalist, who in that capacity, as a reporter and a correspondent from abroad, witnessed many wars across the world and is in a position now to draw a parallel with the wars in Afghanistan, Lebanon, in the Middle East and so on. I am also speaking as an active diplomat. I was ambassador to our neighbor, Croatia, the country which is an inseparable part of the Bosnian war story. Let me tell you that I am not talking about the roles played by the international community in this country from the position of the citizen who acquires the knowledge about the world and its attitude towards us solely on the basis of the information from the media. Perhaps this is the reason why in a way I have no euphoric feelings over this issue.

Well, in this regard, let me share with you a few private stories which I would like to tell you and which – at least this is my opinion – are very important for the understanding of my assessment. At first sight it might not seem to be the case but I will try to tell my stories in the way in which you will understand them.

So, the first story goes back to the 1992/1993 winter. The British General Rose, UNPROFOR Commander, organized the reception in his headquarters, where a group of journalists, among them myself, were invited. There was nothing at that time in Sarajevo – it was dark all the time, pitch dark everywhere, there was no electricity, water, food... Even the initial illusion that

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 187

everything was going to end in a few weeks and that life would start from where it stopped disappeared. The city was under an iron siege, and it was clear that the military intervention, which they had been promising so much, was not going to happen. The depression was complete. When I saw in the General's residence wine, meat, cheese and cakes, I could not believe that it existed in Sarajevo at all. While talking to the General, I was full of emotions and slightly pathetic: I asked him, believing naively that my question was going to upset him: "Do you understand, General, that if what is going on here ends without a minimum of justice you will have dozens of Bosnian young men planting bombs and explosives in Europe's capitals?" The General looked at me with his cold eyes and said: "Mister Dizdarević, I agree with you that we can be faced with dozens of Bosnian young men planting explosives. But do you know what can be much worse than having dozens of Bosnian young men with bombs? It would be much worse to have thousands of Serb young men able to do the same thing".

Quite frankly, I did not sleep that night because I started discovering a new world which had been unknown to me. The world of the so-called real-politik, which has absolutely nothing to do with the issues and justice and even less with fairness. Many people here have not yet understood that dimension of the so-called international community, and usually it is crucial. Look at that shocking focus on Serbia in connection with Kosovo, and the full ignorance of all other issues in the region only because of the attitude towards Serbia and Kosovo.

Another story is no less important for understanding of the character of our society, the story which the so-called international community has never understood, which was a huge mistake. All the people from Sarajevo, who lived here at the beginning of the war, while we still watched television, will know the story. A sniper shooter hit a young girl in the head, from up the surrounding hill. Let me remind you that a sniper is different from a shell: sniper is waiting, selecting, targeting, it sees and shoots. We should keep in mind all that when we are talking about a four-year old girl who was the victim. She was in hospital dying, and her father, a worker of a Sarajevo-based company, crushed with pain, all in tears, said to a TV reporter: "I would like to have a cup of coffee with the man who shot my girl and ask him why he did that"!?

Nowhere in the world would a reporter ever get that response from the father of a dying girl. He would invite the killer to a cup of coffee and ask him why he did that!? That coffee was at that time a part of the age-long culture of relationships in Bosnia and Herzegovina. The 'real-politik of the in-

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 188

ternational community has never been interested in that. In order to understand fully the situation here, and to understand fully the final effects of the so-called international community, it is, in my view, a very important dimension. The third story has now a special place in my attitude towards this issue and everything which happened to us over the last fifteen odd years: after the war, at one of the many seemingly important but rather senseless conferences on the "geo-strategic future of the Balkans" held in luxurious summer resorts across Europe, I met with Sir Marrack Golding. At the beginning of the war he was the chief of operations and an adviser to Boutros Boutros Ghali, then the UN Secretary General. He was an old, experienced diplomat. His position was crucial for the UN decision on whether the blue helmets should be deployed in Bosnia and Herzegovina and on their mandate; whether the so-called safe havens, among them Srebrenica, should be established or not. At that time I was a journalist and used the opportunity to interview him. I asked him, among other things, believing that my question was provocative: "Mr. Golding, do you have peaceful dreams after everything which happened in Bosnia and Herzegovina and after the decision was made to deploy the blue helmets in Bosnia and Herzegovina, which was quite an ineffective deployment in the end?" I thought of Srebrenica in the first place and genocide which happened there before the eyes of the UN troops, and not only of that. To my great surprise, he said: "You are right. You question is right. I do not have peaceful dreams. Let me tell you why. Because back in 1992, when I was suggesting to Boutros Ghali that the blue helmets should be deployed in Bosnia, I knew that their mission would not and could not be successful. I knew that the United Nations did not have their army, system, mandate, the capabilities and resources required for a real military operation and I knew that they would not be able to oppose the military machinery ravaging the country. I knew that it would be the army capable of making fake threats. But still, because of various threats and the 'real' politik, I proposed the deployment of the blue helmets. You know the consequences. This is why I do not have peaceful dreams."

And finally, from that perspective, from the perspective of those three stories – and there are many other stories – it would not be serious to ignore an important fact: we are talking about a small Bosnia amid a great geo-strategic space. That is all we are discussing today. Bosnia and Herzegovina is still primarily a small part of a big global picture. And I claim with full responsibility that Bosnia and Herzegovina – regardless of all internal problems and people of small caliber who are on top – is the hostage of everything which is going on around, in Serbia in the first place, what is going

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 189

on to happen in Kosovo tomorrow or elsewhere. It is a hostage of the prejudices about Islam in Europe. It is a hostage of some 'real-politik' in the so-called international community; it is a hostage of the absence of a long-term strategic solution for the non-member-states. It is a hostage of a pragmatic caution towards the possibilities of multi-culture and the contact of civilizations opposite to the theories about the conflict of civilizations. We are hardly discussing that. Internationals are attempting to copy some foreign models of democracy, economy, politics, culture, sociology, and they never think of going deeper into the local authenticity with much deeper roots, which is much more vital than they may ever think. Everyone here is dealing with the state, the constitution, the form, and hardly anyone thinks that the drama of Bosnia and Herzegovina lies in the subversion of the society and not in the subversion of the state.

In this context I have to tell you one more story. Perhaps the most dramatic story and the most indicative story, again from the war. That war is the paradigm for all the worst which happened to the society here, and the so-called international community has failed to recognize it, because of the 'real-politik' and the decision to be persistent in implementing an impossible scheme: here nobody is a criminal and nobody is the victim, here, all are equally crazy and equally responsible, here, there is no winner and no loser. A perfect result of that approach is the Dayton Agreement, the Dayton Constitution. That code formed an ideal forbidden ground for the war criminals and all wrong concepts underlying the past and the present BiH drama.

The story goes like this: I was present at an incredible dialogue between a high official from the 'other side' who is at The Hague right now, and someone who is still present in politics here. The shell had fallen on the residential area of Alipašino polje, here in Sarajevo, and nine children were killed. It was winter and the information reached the airport where the two delegations were discussing technical issues, about power and water supplies to the city. The representative of the Sarajevo side, having heard what had happened, desperate, asked the representative of the 'other side' (Boutros Boutros Ghali called them in an interview to the Rome's 'La Repubblica' side A and side B) who is now in The Hague: "How long will you be killing our children?" His reply was cold: "So long as you believe that we can live together." His reflex response was very precise and coldhearted. That is very important but totally ignored. Everybody keeps silent about it in Bosnia and Herzegovina. The society in Bosnia and Herzegovina is fragmented, destroyed in its substance far more brutally and far more dramatically than the state. And that society has in this region always been far more important than the

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 190

state. Bosnians and Herzegovinians have never been occupied with the state. Unlike Croatia and Serbia, where one's own identity was found in the state within its borders, the people in Bosnia proved their identity with their relationships with their neighbors and those their neighbors have with them. The coffee which I have mentioned: quite precisely, in Bosnia and Herzegovina your neighbor is more important than whether you have the state or nor. This is why an ethnic division in the schools in Bosnia and Herzegovina is for me a much more dramatic and bigger problem than the development or abolition of the entities, cantons etc. In other words, the lack of will to understand this reality in Bosnia and Herzegovina, the lack of will to recognize the objective enemies to Bosnia and Herzegovina in this context is the cardinal failure by the so-called international community. Functioning on the basis of perspectives of their own 'perfect states' which they wanted to copy here, the international protectors in Bosnia were unable to do anything more. They have never understood that the destruction of the spiritual multi-cultural and multi-religious substance of the society here is in the long run much more fatal blow to the possibility of the new organization of the state than the constitutional amendments which have not yet been made. Personally, that is my major objection to the so-called international community which, in fact, could not reach that level of understanding of the reality here, with the bureaucrats of a low caliber on which BiH (with few exceptions) relies.

We could be talking about this for hours, even days; the magnitude of the Bosnian tragedy enables us to do so, but there is no time and no such interest. So let me give you a few indications of the mistakes the world has made in BiH. Some of the mistakes will never be undone, and some could possibly be corrected. The order does not reflect the importance:

The nature of the previous society has been ignored. Some solutions were imposed as if nothing had ever existed here. As if there had been no rather consistent system of values which was rather similar to the European system of values. Some arrangements were imposed, as well as the solutions, which required the elimination of everything which existed before, in order to build something which would never correspond to the local reality and the social and historical genetic codes.

Even beyond the war, economy was destroyed fully in the name of the 'new system' and new interests. The 'elimination of the 'old and outdated' was insisted on, although it had functioned and provided the result in the name of the 'new and modern' which has never been established. The crime of privatization and the return to absolute values and indicators which continue, for decades, to be below the pre-war ones, won.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 191

The existing high standards in culture, education, media, have been eliminated in the name of something which has not yet been seen in practice. When it comes to the promotion of the public media in Bosnia and Herzegovina, I am the witness of an attempt to promote the projects and standards with the medical captains of the British army, named leaders of the reform, and they were dealing with the so-called reform in the manner which is totally contrary to the local needs, capabilities and the mentality. By the end of the 1990s 'instructors' were coming from the U.S. to lecture us on the bilingual programs while we had a simultaneous coverage of the Olympic Games on the Sarajevo Television in 1984 in more than ten languages. Most of the people who worked at that time live in Sarajevo now and are able to take part in the development of the television system, but their professional freedom of thought did not fit the ideals of the captains.

Because of the lack of knowledge about the reality, and also because of an overbearing behavior and the vain feeling of 'elitism' towards the 'Balkans' on the one hand, and because of fear of competition felt by the local worthless men in power, on the other, the local resources are usually ignored. Quality resources are being rejected, and young and educated people are discouraged from returning to the country and engaging in its development. Some are boasting that democracy is in place and that everything that we have is the 'result of the democratic choice of the voters'. Cynicism is so big: how can one speak of democratic elections when there are no democratic institutions, free and independent media, the elimination of the key role played by the church and mosque in politics, education and at least a modicum of a serious non-governmental sector and the civil society? The perception of politics is still only the government and nothing else. Formally, the circle gets closed with three statements: The Dayton put an end to the war and this is why it should remain unchanged; democracy is now in place in the former communist country and this is proven at the elections – the result is democracy. And thirdly, the houses were repainted in the towns, there are coffee bars and restaurants, old socialist factories were sold, which means that the reconstruction is over! And in all those three segments, there is a big illusion, to say the least. Mr. Schwarz-Schilling has compared our situation to that in Germany in 1945. I have recently read a statement by a Western diplomat who wonders: "How it was possible for Germany and France to create the EC ten years after the war, while BiH has not moved from the deadlock yet". I have to say that this annoys me. The gentlemen do not want to say that in 1945 fascists, war criminals, enemies, Nazis, collaborationists were wiped off the historical scene over night, practically. Here, many of them are still in power. Winners and losers were identified. But here it is a taboo. All are the same. Can you find in any book of history that

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 192

Hitler was a great leader and fascism a good thing? And look: what the children are learning in schools about the events 15 years ago. What the world invested in Germany in order to raise it back on its feet and which part of economy was destroyed here after the war in order for criminals and profiteers, both local and international, to amass their wealth. The court in Nurnberg removed in summary procedures the leaders of the fascist movement, and Karadzic and Mladic are making fun of the whole world, 12 years after the end of the war, still at large, and have, quite certainly, the deals and secret arrangements with the world. Even their younger pawns are escaping prisons with the full logistical support by the prison guards, their friends from the war, who wear uniforms of officials of a 'new state'. But this is not the way in which things are described in Bosnia, in the name of 'real-politik'. Serbia and Kosovo might get angry!

In short, instead of a conclusion, here is an indication about four unavoidable things which must be kept in mind when we speak about the role played by the international community (whatever it might mean) in the past decade in BiH.

First of all, a constructive mistake was made in the beginning. Mr. Schwarz-Schilling said that the peace agreement was made as a compromise with the war criminals who continue to be present in politics. We are all paying the price for that. Secondly, we cannot avoid the strategic fact that the European Union is the community of nation states and is constructed on the basis of that fact. Bosnia and Herzegovina is not a nation state in those terms, and the European Union, or the so-called international community, has no response to that fact. They are trying to apply in Bosnia and Herzegovina the same rules which are applied in their states, although they cannot be applied here.

Thirdly, the current issue in Bosnia and Herzegovina is how to change only those standards which do not apply in any other country of the world, and how some concrete arrangements which are in place elsewhere should be avoided here. Tolerance of the criminal projects cannot be called realpolitik nor is the policy in that name possible.

Fourthly, someone will have to take care of the fact that the collective PTSP, produced over the last decade in BiH, has its limits within which it can be controlled. The failure to deal with and solve the key civilization problems in BiH on the foundations of international standards which apply to all others will become one day a big, new problem for all those who are trying to push Bosnia under the carpet.

I did not get the impression that the representatives of the so-called international community are fully aware of this.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 193

DISCUSSION

Dušanka Majkić, House of Peoples of the Parliamentary Assembly of BiH

Dear Excellencies, ladies and gentlemen. I come from the Parliamentary Assembly of Bosnia and Herzegovina, I come from the highest legislative authority of this country and I belong to the political party which has so far been mentioned so many times, the Union of Independent Social Democrats (SNSD).

I would like to thank the organizers for this opportunity as I believe that the conferences like this one help us come together and hear different opinions and views and try to bring them into harmony. In this country we forgot communication a long time ago, and if the dialogue is the key word, then it is definitely something that we need now. Not only will we learn to communicate but also we will learn to reach an agreement. I am not one of those who are criticizing the international community a lot, although I am indeed fully aware of its past failures, because I am simply of the view that it is not polite to criticize a lot those who gave us assistance and whom you expect to assist you in the future. I fully appreciate the huge strength and energy invested here and as an individual, as a human being in the first place, I am aware of many results which the international community achieved here; this is why I cannot be too critical although there are so many things that I could criticize in the country in which I live. It would be logical for me, as a parliamentarian, to say something which is referred to as parliamentary democracy, or whether Bosnia and Herzegovina has achieved enough in the development of the parliamentary democracy. To begin with, while thinking about that issue, the responses were not difficult. We are the country on which a constitution was imposed. In this country, most of the laws continue to be made and approved under the influence of or in cooperation with the international community. We are the country in which the problem regarding the implementation of the law is obvious, which means that it is a question when or how the laws which we have made will be implemented. We are the country in which neither the parliament nor the executive branch has the capacity needed for the decision-making crucial to this country. What is the oversight over the government by the parliament, especially when it comes to the budget? What do auditor reports say and how much is this country susceptible to fraud and corruption? What kind of an election law do we have and is it not a mistake

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 194

by the international community – that we have the unique election law, which does not exist anywhere, while it should be a good law and applicable only here? These are some of the questions which are mutually related and all of us individually can answer them.

But the key question which I think we should ask is the following: do we know at all what kind of a state we want? What kind of a state do citizens of this country want? Today, during this conference, it is clear which group, which people the individual speakers belong to. I mean the local speakers, those who come from Bosnia and Herzegovina. Our speeches are recognizable by our conviction that there are more problems on the other side of the fence than in our own yard, although problems exist everywhere. And we have to be realistic. What kind of a state do we want? Have we discussed that? Is there any sense in talking about anything before we agree on the kind of a state we want to live in?

We have just heard: if we ask Bosniak representatives, most of them will promote strongly a 'one citizen one vote' principle, which means a unitary Bosnia and Herzegovina with which the other two peoples will not be happy. If we ask Croat representatives, they will unanimously say that their human rights are not protected in the part which is referred to as the Federation of Bosnia and Herzegovina and that they would like most to live in their own political community. And if you ask Republika Srpska, you know the answer. A response to the issue of a referendum is not an unprovoked issue. Politicians from Republika Srpska have said: everyone who falls on the Dayton Peace Agreement, and thereby on the Republika Srpska, will get a rap on the knuckles – a referendum.

Let is behave in a correct way, and let us change things, let us have the constitutional reforms as we arrange them in an agreement. In this country we shall never get everything and this is the rule which we have to be aware of. All of us can get something, but that something has to be agreed on.

As a parliamentarian in my previous term in office, I firmly believed that many things could change in this country for the better until the constitutional reforms began. When there were fourteen Ambassadors sitting at the Parliament session, the whole set of the constitutional amendments was defeated by two votes only. I asked myself where I was, in fact, where I lived, what this country should become one day. Regardless of it all, I do my job as a Member of Parliament in a correct way, wholeheartedly and I will continue to do so with the same zeal but I will allow – and I think that this position is shared by many politicians from the Republika Srpska – that the question of how we shall live and how this country should look like be

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 195

asked before the police reform and many other questions which are being asked; that is the most crucial question to which a response should be sought.

This means that we need the international community's support in the future, especially in the area of the constitutional reform, which is the issue that we will have to discuss together. In the end, this dialogue in Bosnia and Herzegovina is something that I am also expecting the international community's support to. It will help us move from the present paralysis of our energy to the road of the future.

Miro Lazović, The Forum of Parliamentarians 1991-1996

I will try to be short because of other participants who would also like to take the floor and in view of the importance of this Conference and the conclusions which will probably be made at the end. Let me tell you right at the beginning of my speech that myself and Ms. Majkic belong to the same ethnic group, the Serb people, but our stories are different. As someone who has lived in Bosnia and Herzegovina for the last fifteen or sixteen years – and as one of the few Serbs who remained in the Parliament of Bosnia and Herzegovina and voted in favor a referendum, and as someone who was involved in all peace talks about Bosnia and Herzegovina, I have so many things to say. I am not going to share my impressions with you nor shall I be talking about all the processes enabled by the international community's most crucial role, albeit its frequent hesitation. That it was hesitant in the period 1992-1995 is proven by the fact that five or six peace talks on Bosnia and Herzegovina were organized. I still remember 1994 when the Washington Agreement was being discussed. As a participant of the talks, I asked Charles Redman: "Why is only one part of Bosnia and Herzegovina named the 'Federation of Bosnia and Herzegovina'? What about the other part?" He said to me that in the second phase the territory controlled by Serb forces would join the Federation of Bosnia and Herzegovina, when the whole of Bosnia and Herzegovina would become the Federation of Bosnia and Herzegovina – which was logical and acceptable to our delegation. I am telling you this because the processes took a different direction and eventually Republika Srpska was formed, which Muhamed Šaćirbegović accepted in his capacity of a Foreign Minister on September 8, 1995, and the two entities were formed before the Dayton talks. Thus, it was not the Dayton Agreement that created Republika Srpska; it was he who agreed to

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 196

it. I am stressing this as I am one of those who believe that the international community has played a crucial role in Bosnia and Herzegovina regardless of its hesitation and lack of resolve and I am also among those political forces which are promoting the continued presence of the international community here because of the fact that we have a constitutional order and the territorial organization here which are, in fact, wrong. We can certainly be talking about some things, here, and about improved economic standards in both Republika Srpska and the Federation of Bosnia and Herzegovina – but we shall not solve the problem. The problem was ill-defined right in the beginning. Bosnia and Herzegovina will never be able to build its safe and stable structure with two entities in place, with the Federation of BiH and Republika Srpska, and it is precisely this fact that hurts most and that has to be changed. All other issues are nothing but cosmetics.

We cannot say that the people here do not need to hear the truth. Here I do not agree with Mr. Schwarz-Schilling who has said that we have been identifying the one to blame for some things, for fifteen years. No, we are not trying to identify the one to blame. We are looking for the truth. What about the truth? Is justice possible without the truth? Are reconciliation and forgiveness possible without justice? Can the future of this state be stable and safe without forgiveness and reconciliation? I am sure, it cannot. I want my children to live in a safe Bosnia and Herzegovina, a reintegrated Bosnia and Herzegovina and I do not want them to live in the state of Bosnia and Herzegovina in which one part has an ethnic prefix – Republika Srpska. So long as that name exists, it will be affecting the future of this state. If it is not possible to change the territory, let us change its name. Can the international community change the name of the Republika Srpska? Rest assured that all citizens, including Serbs, and primarily Bosniaks and Croats, will embrace Bosnia and Herzegovina wholeheartedly and will build it together. So long as there is an ethnic 'prefix', the problem in Bosnian and Herzegovina will persist; and the problem will also persist here in Sarajevo and in the Federation for the Serbs. There is no guarantee or the protection of our human rights which will give us an equal status, to Bosniaks and Croats, so long as the name of Republika Srpska exists. Rest assured that I am telling you this on the basis of my experience. Thus, gentlemen from the international community, please think in that way. A new Constitution is ahead of us, the talks about a new Constitution are ahead of us, and please, take into consideration those facts. No cosmetic changes contained in the pervious constitutional amendments, which were once defeated, will – if brought back to the debate - solve the problem. Only the talks about a new Constitution and a

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 197

completely different constitutional and territorial organization of Bosnia and Herzegovina can result in stability and future of this state.

Senad Pećanin, *Dani* independent magazine

I have to tell you that I am quite disappointed by what we have heard from Mr. Schwarz-Schilling. I think that the level of the discussion here makes the title a bit too pretentious: I believe that the discussion about very specific issues could be practically useful.

Yesterday I interviewed Mr. Gregorian, Principle Deputy High Representative. During the interview I said something which shocked him badly. My intention was not to hurt him, although I may have indeed hurt him in the end. Still, let me say the same thing also to Mr. Schwarz-Schilling. For years we have had the same story, which has become a mantra, about the mistakes made by the international community during the war in Bosnia and Herzegovina. Unfortunately, we had a classical pattern: three warring factions, centuries-long hatred and the international community, present here in the form of UNPROFOR, the United Nations Force, equally distant from all "warring factions". This is nothing new: everyone can talk about this today, including Mr. Schwarz-Schilling and especially Ambassador Schmunk, because of his academic references. The United Nations engagement in the war in Bosnia and Herzegovina, i.e. UNPROFOR's engagement, has been taken for many years in theory and in professional literature as an example of a disastrous failure with tragic consequences. However, what do we have now? Mr. Schwarz-Schilling's position is exactly like the position of UNPROFOR during the war in Bosnia and Herzegovina! Let me illustrate that by one example only – the current discussion about the police reform. After two international tribunals delivered their judgments, most notably after the International Court of Justice delivered its judgment which says that the Republika Srpska police, together with the Republika Srpska Army, committed genocide, on the one hand, there are those who claim that now that the judgment was delivered there should be the minimum of something humane, moral... and that such institutions should no longer exist, especially in the context of the ongoing police reform. On the other hand, there is the position of the Serb leaders who simply do not see any problem in having the institution which committed genocide continue to exist in the future. And now, we have you, Mr. Schwarz-Schilling, you who have been "neutral" in the dispute which is blocking the progress of Bosnia and Herze-

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 198

govina on the road to the EU, the dispute over the question whether the institution which committed genocide may exist and be allowed to function in a reformed, European Bosnia and Herzegovina!? Are you aware of the consequence of your neutrality? The consequence of your neutrality is that we have precisely what Ms. Majkic has just talked about: that we know precisely everyone's ethnic identity in the Parliament and in the media. That is the biggest problem. And the problem is not the police reform. With your position you are directly destroying those few oases remaining within Bosnia and Herzegovina, what we call non-nationalist or civil sector or the sector, which arose and fostered hopes of the people living together in Bosnia and Herzegovina. It is so sad if the positions of those who think that following the International Court of Justice genocide judgment it is no longer possible for the institution called 'the Republika Srpska police' to exist are considered to be 'Bosniak positions' and 'Bosniak demands' – it is sad and it is a shame that those positions are not also your positions, Mr. Schwarz-Schilling. You are behaving just as UNPROFOR did, in precisely the same way, I mean, you in person: we know that you talked differently about the same issue when genocide was being committed. Here you act as a leader of a non-governmental organization, although you are aware of your powers. The consequence of your behavior is that what is left of multi-ethnicity in this country – which survived genocide, war crimes, religious communities and nationalist leaders – will succumb to you.

For instance, the Social Democratic Party of BiH was practically the only relevant multiethnic political party. But its opposition to the continued existence of the 'Republika Srpska Police' and your 'neutrality' turned that party into the Bosniak political party in the eyes of the vast majority of Serbs. Regardless of what we may think about the SDP – I myself do not have absolutely the best opinion about it – it is damaging for Bosnia and Herzegovina. And this is a catastrophic effect of your policy, the policy of equidistance, which you were once willing to recognize in UNPROFOR actions and the international community's engagement during the war and even condemn it, while practicing and demonstrating the same equidistance now. Luckily, we are no longer targeted by shells and missiles, which makes your responsibility smaller in the public eye.

With your positions and those of your colleagues who represent the international community and the Western countries in Bosnia and Herzegovina we are losing the opportunity of having anonymous media, which would not be recognized by ethnicity only, depending on the area they come from.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 199

Before I heard your position, I was too naive to believe that if I think that there should be no 'Republika Srpska police' under the same name in the future, this was not my 'Bosniak position'. I thought this was a European, our, my and your shared demand. I thought that nobody with a modicum of morals and respect for the genocide victims could deny it. However, no! You say: "Let Dodik and Silajdzic reach an agreement". If you have no problem with morals, do you not understand that your position is doing nothing but fostering both Dodik and Silajdzic and their nationalist policies?!

In the end, please, do not underestimate the possibility that, unfortunately, such roundtables, in a few years time, thanks to such positions of yours, take place with far less representatives of different ethnic groups and many more security checks and X-rays in front of the conference rooms.

Nurko Pobrić, Law School, "Džemal Bijedić" University, Mostar

Mr. Zlatko Dizdarevic has already said that the Dayton Agreement contains some constructive or constitutional mistakes which resulted in political and social practices and developments in Bosnia and Herzegovina in the post-Dayton period. I would like to make a brief statement in this regard: first, the legal qualification of the war in Bosnia and Herzegovina is wrong: in the Preamble to the Dayton Agreement it is described as a "tragic conflict in the region". Although it was tragic indeed, (at least for now) the fact about the nature of the war in Bosnia and Herzegovina is generally known. Secondly, the Constitution of Bosnia and Herzegovina, as Annex IV to the Dayton Agreement, was imposed indeed and it is true that the Constitution, as someone has already said, should not have resulted from a compromise with the war criminals, and here I would add that the Constitution, as least partly, was indeed the result of the compromise of the war criminals, which, clearly, should not have been allowed to happen. The Constitution of Bosnia and Herzegovina was de facto made by those international factors who are referred to in the Dayton Agreement as 'witnesses' so that the 'witnesses' to the Dayton Agreement, if there was consent among them, could impose on ('present to') Bosnia and Herzegovina just any constitution, even a democratic one, in terms of its content, a 'normal' constitution so to speak. However, Bosnia and Herzegovina got the Constitution which is probably the only Constitution in the world which contains discriminatory provisions (the Constitution both allows and prohibits discrimination), so that its consequence is the political and any other practice in Bosnia and Herzegovina's society.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 200

Thus, any partial constitutional reforms (revisions), no matter how successful they may be, do not seem to be sufficient for making substantial changes to the political and social reality in Bosnia and Herzegovina. It is only a new Constitution, which would be considerably different from the Dayton Constitution that may produce a different, inevitably positive political and social reality in Bosnia and Herzegovina. For the time being, unfortunately, there is no consensus over the changes to the Constitution of Bosnia and Herzegovina. Why is there no consensus? Because there is no consensus over the existence of the state of Bosnia and Herzegovina as such. In other words, some citizens of Bosnia and Herzegovina do not consider themselves to be nationals of Bosnia and Herzegovina and do not identify themselves with BiH.

Of course, we can say that there is the lack of the phenomenon which is referred to in the German legal theory as the 'constitutional patriotism'. Of course, there is a lack of patriotism as well, in its usual sense. As a consequence, there is no so-called 'constitutional moment' (the term from the U.S. legal theory). In other words, there is the lack of will and conscience of the citizens of Bosnia and Herzegovina that they need a new Constitution. Let me also respond to Ms. Dušanka Majkić. You have said the principle of 'one man one vote' is something which does not fit Bosnia and Herzegovina. Is it possible at all for a man to have two or three voices (votes) at all? The political groups which are promoting the concept different from Bosnia and Herzegovina having a 'one man one vote' concept are abusing the right which exists in every democracy as one man can have only one vote. For, the time of plural votes has long been the past. The protection of different minorities and of human rights etc. is another issue; there are the appropriate constitutional and legal arrangements which govern the protection of minority rights and human rights in general, which are independent from the 'one man one vote' principle.

Jerko Ivanković-Lijanović, House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina

We, in the Working for Prosperity People's Party, are trying to deal with the causes rather than conseqences, which we believe is far more effective. In our view, the causes to all the problems in Bosnia and Herzegovina are the political organization and the vote along ethnic lines. If this were a mono-ethnic state, that would be quite all right and quite normal; but as it is a multi-ethnic state, the political organization and vote along ethnic lines are

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 201

in contradition with the state. The solution to that situation is a multi-ethnic political organization, when there would be no etnnic vote any more – it would be eliminated automatically. It is possible to have a multi-ethnic political organization in two ways. That is an extremely difficult process, but in order for this country to be successful, it will have to implement that process. Before that the High Representative will have to be here; no good plan or strategy will be possible, its implementation will not be possible either. To corroborate this, let me give you an example of the European Union Parliament. In the European Union Parliament there are parties from all the states, there are social-democratic, liberal, green and people's parties and many more, and it was first the European parties that were created and only then was the European Parliament formed; the process continues to develop in a normal, natural way. And we did it the other way round: first, we got the Parliament while there is no political party represented in the Parliament which covers the whole of Bosnia and Herzegovina and is supported by voters from all three peoples, except, perhaps, to a small extent, my own party. And this is strongly felt in the Parliament and its everyday work. My colleague from the SNSD said that her party had had a very good election result; they have a proposal for the constitutional amendments, for the police reform; still, they are unable to implement it as they do not have a partner in the Federation who would support it. The same problem exists in the Federation: the political parties in the Federation have their proposals for the police reform, for the constitutional amendments as well, but they are unable to implement it as they do not have partners in the Republika Srpska. If the SNSD and the SDP merged into one party, they would be able to take the sovereign lead in and implement both the constitutional reform and the police reform, without anyone's mediation, quickly and effeciently, as there would be no obstacles which exist now. Or, if HDZ, SDA and SDS merged into one party, it would be a strong, capable party to the same effect. Or, if there were a completely new party which would receive support in both Entities, that would be a success in the end. In the absence of that, we are trying hard to do it alone, within our own ranks. We know that the road is too difficult. Our party is our front runner. We tried to get the parliamentary majority throughout BiH but we know that it is a difficult and heavy road and we are not sure whether we shall ever reach an end of that road. Still, we will be trying hard. What I would ask the international officials here is that they grant their support to dealing with the causes, for if the causes are dealt with and eliminated successfully, the manner of political organization, there will be no need for dealing with the consequences, as the practice has so far been to deal only with the consequences.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 202

STUDY

Nermina Šačić

The International Community in Bosnia and Herzegovina (December 1995 - March 2007)

A Political Science View

1. Introduction

What is the International Community in BiH? Who is it represented by? By the United Peoples or Nations? Is it primarily the European Union member-states plus the Russian Federation? Is it the United States of America plus NATO; SFOR, IFOR, KFOR etc.? Or the OHR, OSCE, IPTF and some other organizations, both governmental and non-governmental? Is it the IMF, the World Bank, WTO, Embassies, or the world's corporations? Is Bosnia and Herzegovina a semi- or full protectorate of the International Community? How much is that "Community" really and truly in favour of BiH, and what kind of BiH would it like to see - divided into three parts, a civic sate, and a sustainable or unsustainable country?

It would be difficult to define the International Community from a political science perspective, as it is a notion which is used in public, and there is no academic definition of the International Community in a political science literature. Nevertheless, based on the International Community's engagement in the crises in the Balkans, and in BiH in particular, we can say that the IC is an aggregate of diverse Anglo-Saxon and European Continental political views on how the problems in BiH could and should be addressed.

In broadest terms possible, we could say that the International Community's institutions were expected to help this country ensure a safe environment to all citizens, develop its own institutions which would protect their fundamental freedoms and rights and implement a democratic transition in the country. Unfortunately, after a twelve-year long engagement of various international institutions of which we can say broadly that they represent the IC in BiH, we can conclude that the engagement of the International Community in BiH comes down to the implementation of national interests of imperial powers. The International Community acts through networked institutional structures with a view to beaming out power, interests and needs of major powers.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 203

The International Community's policy in BiH is a mirror of the fundamental tension existing between the European and Anglo-Saxon views on democracy, nations and state.

Not only does a state of statehood at different levels in Europe serve the purpose of ensuring security and implementation of social tasks, but the statehood is a structure of the social order and political system in general. A European state exceeds a horizontal social contract, which is specific for America. In Europe, "national sovereignty" once played an important role. The European democratic tradition is familiar with the parliamentary policy as a score-settling arena. Debates over the distribution of powers take place in a political process in which the parliaments are central political arenas. Fight is waged over the laws.

The purpose of the US Constitution has never been to replace an absolute ruler with a sovereign people. Rather, it promotes the creation of minimal structures to ensure future existence of the American nation. In the United States of America, democracy is much stronger linked to judiciary? The courts of law are of the highest ranking and are the final warrant of individual safety and civic recognition. The US democratic tradition attaches importance to articulation of interests of individuals and minorities. Debates over the distribution of powers are direct - horizontal, and in Senate to a small extent only. The rights are in the focus of disputes in the US.[1]

"Europeans were grateful to the United States for their efforts to put an end to the war in Bosnia, but European officials were confused over the need to engage the U.S." (Holbrooke, 1998; 318) said Richard Holbrooke in his book To End a War. In this regard, the major specific feature of the International Community is its 'action on others' which may be illustrated by a ceremonial inauguration of the Dayton Peace Agreement in Paris, although it was previously initialled at the Air Force Base near Dayton, Ohio, "The International Community handed over the size of its power to France which in turn seized it as its own, for the needs of a contrived pretence of an imperial power and de-Americanization of peace in Bosnia, assessing correctly that the United States would not react in order to confirm an international character of the Dayton Agreement". (Ćurak, 2002; 126). Such actions on others, under the dictate of relocated centres of geo-political and geo-economic powers, place the International Community within the framework of an institution void of a special concept.

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1 For more details see: **Haller Gret**, *Granice solidarnosti: Evropa i SAD u ophođenju sa državom, nacijom, i religijom*, Buybook, Sarajevo, 2006. (Limits of Solidarity: Europe and the US in communication with the state, nation and religion)

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 204

II. Philosophy of a 'peace process'

According to some views, the International Community is also "a multilateral product of the US, a symbiosis of the US national interests and the US ethos as the world's" (Ibid, 129) which put an end to the "simulation of false sympathies and to Bosnia's journey to a final agony" (Ibid, 130), which were coming permanently from many 'democratic' policies of the European powers which lacked an ethical imperative.

According to some other views described in academic literature, the International Community is a kind of an experiment the purpose of which is to start, in practice, building the world's society through the system of global management in a local community. After the war, or more precisely, after the Dayton Peace Accords were signed in 1995, that practicism formally began in Bosnia and Herzegovina as a local community, which the political science view will focus on in this paper.

The International Community in BiH promoted more the category of a "peace process" than peace as a value political/democratic orientation. A political philosophy of the 'peace process' is in fact the tool of the International Community to control the war and peace through permanent production of what is neither a war nor peace. That is the form of political rule of the International Community in post-conflict countries. "The peace process (…) proves in the case of Bosnia that Europe is much closer to the peace process than it is to peace. A Post-Dayton Bosnia is characterized by a peace process as a negation of democratic principles and a latent destruction of the Bosnian state which is denied to have peace and its elements, that is, democracy" (Ibid, 157). "The Dayton"[2] as the Peace Accords or as the guardian of the "peace process" is not only the International Community's tool for conflict and violence management in this area. Its major weakness is that it was imposed as a norm, a Constitution of Bosnia and Herzegovina (Annex IV to the Dayton Agreement is the Constitution of BiH, which is absurd), based on the given situation on the ground, and an insufficient respect for cultural and historical background of Bosnia and Herzegovina. This will be elaborated further in this paper.

After the Dayton was initialled, "the peace process" began to be implemented first through the presentation of what had been agreed on outside of Bosnia, far from the eyes of the Public, and the Parliament (BiH has a Constitution which was not approved by its Parliament, which is nonsense).

2 The term 'Dayton' means the Dayton Peace Agreement.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 205

It was agreed in Dayton that BiH was indeed a state, but consisted of the two entities, the Federation of Bosnia and Herzegovina and Republika Srpska. The status of Brcko remained unsolved in the Dayton. But further to the earlier agreements, it was decided that a final decision on a status of this town would be made by an Arbitral Tribunal for Brcko, established in the summer of 1996. The Federation of Bosnia and Herzegovina was seen as a state of Bosniaks and Croats, and the Republika Srpska as a state of Serb people. Brcko was given a Supervisor pending a final arbitrary award for "the Brcko District" (March 2000) by which Brcko was given to both the Federation of Bosnia and Herzegovina and the Republika Srpska, and thereby to all citizens of BiH.

Anyone with at least some knowledge of the political science will know that the existence of a Republic in a state is a novelty indeed, which should be analyzed in detail. This political scandal prevented the implementation of a well-known goal of the International Community - "the building of a society and a war-torn state". The first problem which prevents the implementation of this goal lies in the constitutional discrimination of the political rights of the citizens of BiH. Ethnic identities are fixed in constitutional and institutional terms, and all individuals within the BiH society are forced to align himself or herself with one of the three defined and fixed ethnic identities; not a single individual may implement his or her political rights (nor can he or she count on a practical social promotion) outside those identities. Moreover, in a political sence, a person is not functioning as a citizen or as an individual in a social sense, yet only as a member of one of the three strictly determined ethnic identities.

III. Ethno-party pluralism - false political plurality

As the international partnership with national ethno-political elites lasted for too long, each of them had enough time to advocate the "peace process" as a purpose of the political life in Bosnia and Herzegovina. This is the reason why the Dayton is seen in the post-Dayton political practice as follows: The Bosniak political public firmly believes that the International Community forced the citizens of BiH to accept the two entities and that such a structure of BiH does not have any historical, economic or economic and geographic justification and that the only foundation of such a BiH is aggression and genocide. Serb political public believes that the Republika Srpska acquired its territorial and legal continuity in 1992 and has main-

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 206

tained it ever since and that it was not created by the Dayton Peace Accords, what is claimed by Bosniaks and Croats, but that it was verified by the Accords, which is why the future of the Republika Srpska cannot be challenged. Croat political public believes that the Dayton Agreement 'opened up' a Croat ethnic issue by 'regulating inter-ethnic relations to the detriment of Croat people'. There is an attempt to solve the current dissatisfaction by requests for a third ethnic entity which should be considered as a "logical, justified and just goal of the Croat people in BiH as long as it is composed of the entities and as long as there is the Republika Srpska" (Žepić, 2002; 27). In a politically disoriented system of values such centrifugal, divergent, reduced publics (which are the consequence of the political conflict in BiH over a territorial, administrative and legal and political organization of BiH) are leaving devastating effects on the BiH politics in general and on political freedoms.

The problem imposed by the Dayton, which limited the role of the International Community concerns the structure of the BiH society. In simple terms, it comes down to the question as to whether the BiH society exists as a whole or it is irreversibly divided into three separate ethnic wholes. In the present Constitution, the BiH society (as a perceived holder of sovereignty) is not envisaged as a whole, but as a mechanical sum of three "constituent peoples" (an undefined term, note by the author), projected as holders of sovereignty. "Constituent peoples" are envisaged as three separate ethnic wholes, which, under the logic incorporated in the Constitution, function in the prospect as a separate society with its own sovereignty.

The cul-de-sac of an ethnically monolithic identity which is legalized by the Constitution made it impossible to work on the citizenship identity, even for the International Community in BiH. Moreover, "only a very small number of international officials working in BiH attached importance and rarely expressed a unanimous belief that it would be necessary to contribute to a contemplative alternative to an identity on the basis of citizenship" (Gret Haller, 2006; 38). Haller notices that the Dayton Agreement in the area of human rights consists of some major contradictions. The European Convention of Human Rights applies directly in this country, however, the public is not familiar enough with its provisions. Otherwise, it would have been known that the state of BiH should establish the Constitutional Court 'for civil and criminal matters', prescribed as mandatory by the Convention. 'The European Commission for Democracy Through Law', the so-called Venice Commission, within the Council of Europe, supported the formation

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 207

of such a court. It was not before May 2002 that the High Representative appointed seven judges to the Court, thereby eliminating a crucial failure of the Dayton Agreement. The international judicial inspection of such issues did not exist either, since the European Convention for Human Rights was not verified internationally before BiH became a member of the Council of Europe (in April 2002). According to Haller, the concept of a citizenship identity would restore a lost confidence of citizens in the state which is obliged to provide equal protection to its citizens who may take part and participate in the public authorities. Thanks to the ethnicized Constitution, and thereby to the ethnicized law, which was given a long span of time for its own promotion, the promotion of individual rights lost momentum. Unfortunately, ethnic/collective rights prevailed - which were most loudly advocated by the national parties in BiH. They were considered as local, representative partners to the International Community (the opposition was often disregarded). Let us take the Election Law as an example.

The opposition parties were not represented in the OSCE's Provisional Election Commission nor did they participate in the drafting the election rules since the Head of OSCE Mission has chosen to work only with ethnic political parties in power. It can be assumed that this is about the IC interests (as the monitoring and implementation of elections is a profitable job) and about exclusively ethnic and religious interests of national parties, which are, essentially against civic BiH.

Different experiences of the war differentiated the electorate in BiH along ethnic and religious lines, which remains, unfortunately, focused on voting in favour of the candidates from their own ethnic community.

In order to win candidates on the voting lists solicited votes only of their ethnic community members as they have never been encouraged to count on votes of the other two communities. Bosniaks were elected by Bosniaks only, and not by Serbs and Croats. Serbs are also elected without support of Bosniaks and Croats, while Croats are elected without support by Serbs and Bosniaks. Ethno-political parties have never taken an action to change this practice and try to win the votes of other ethnicities. The key battle has always been waged over voter registration. More Serbs registered in particular constituency means more votes in favour of the SDS, more Bosniaks are registered, the more votes in favour of SDA; the more Croats are registered the more votes in favour of HDZ.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 208

IV. Controversies in practice

Since the region here lives on contradictions, as Predrag Matvejević said, the International Community was lucky to fit well into this concept of life. That is how a paradox happened: thanks to the International Community, the constitutional reform is being seriously discussed over the last few years. In addition to local experts, the debate over the need to revise the Dayton Constitution was also encouraged by different international institutions. On the occasion of marking the eighth anniversary of the signing the Dayton Agreement a declaration was made - 'To ensure peace in BiH through building on the Dayton Accords" - which was supported by many European politicians. In their opinion, "the Dayton construction of Bosnia has reached its limit" (December 2003). The constitutional reorganization of BiH was also requested by the ESI initiative (European Initiative for Stability) in early 2004. In April of that same year the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe, approved a resolution 1384 on 'Strengthening of democratic institutions in BiH' under which the Dayton constitutional arrangements were 'complex and contradictory, and as such are unable to ensure an effective functioning of the state in the long run'. In the end, a contribution to the debates over constitutional reforms was given by the European Commission for Democracy Through Law (The Venice Commission) which believes that the 'constitutional reform is unavoidable".[3]

If we are to judge by controversies surrounding the constitutional reforms, particularly those which failed in the BiH Parliament, then *citizen equality* is largely left to the *pressure from outside the country.*

In the opinion of the majority of citizens of BiH, the International Community took the role of a state by assuming the role of a new patron. As it was expected in socialism that the almighty state would resolve all the problems of citizens, companies and local communities, the same is now expected from the International Community.

The imposition of laws by the High Representative reduces the confidence of citizens in the competences of the authorities which is why it has often happened that some groups are protesting seeking assistance not from the national institutions but from the OHR, for instance. On the other hand, without the interventions, BiH would have lagged far behind in the reforms at the social and political levels, which lead eventually to the European inte-

[3] See: **Slavo Kukić**, "Postdejtonske ustavne kontroverze" (Post-Dayton constitutional controversies) in: *Analitički pogled: žurnal društvenih nauka, (Analytical review: journal of social sciences) No. 2*, "Dayton Project - program for civil dialogue in BiH", Sarajevo, 2007, 41-57

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 209

gration. Today it can be said that BiH began to negotiate the transition from the Dayton to the Brussels phase. The Dayton phase marked BiH as a country of collective rights without any room left for individual rights and freedoms because of favouring ethnic principles at the cost of civic principle. The Brussels phase should encourage the presence and influence of Europe in the region, the building and strengthening of the state of BiH, and its central institutions. In this context one should inquire whether a stronger EU and closer relations between BiH and the EU mean a kind of de-Americanization of the Dayton Bosnia. Because, still when we refer to the International Community in BiH we continue to imply the policy of the U.S. Embassy, USAID, and Washington etc.

In addition to collective, Brussels is also suggesting individual rights. "Entry into the Brussels phase marks the end of crisis-management process and the beginning of transition, departure of IPTF and SFOR, preparations for departure of the OHR and the closing down of other Dayton structures" (Hadžikadunić, 2005; 17). The European Union is intensifying its relations and is becoming through various forms of cooperation, ever more present in BiH. The International Police Task Force of the UN (IPTF) and Stabilization Force of NATO (SFOR) have already left BiH. The closure of the OHR will be discussed below.

Frequent removals of politicians by the High Representative to BiH (especially during the term of Wolfgang Petritsch) have encouraged some segments of the population to increase their trust in the International Community. But, as soon as an ethnically balanced approach was noticed in those removals, confidence began to diminish. Some political parties - their leaders, who were targeted by the High Representative, began to feel a stronger fear, resulting in the shift of their accountability from the citizens to the OHR. Some political parties "used" those removals for their own election campaign purposes, so that the removed politicians barred from public offices were favoured only because 'they were disliked by internationals'.

Offering non-political solutions with a view to solving a political crisis and conflicts reminds us of prescribing a wrong therapy to a patient who cannot change the therapy and a doctor. If the doctor tries to modify the therapy in the course of illness a few years later, he cannot return the lost money, lost time or alleviate the patient's sufferings. Let us refresh out political memory.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 210

During the term of the first High Representative to BiH, Carl Bildt[4], the burning issue was not how to remove the consequences of the war or how to repair devastated infrastructure. He 'asked the question of how to transform a communist economy in to a modern market economy" (Petritsch, 2002; 77). The creation of conditions conducive to free trade across the whole region would certainly ensure a faster integration of the country had an economic factor been the cause of the war in BiH. "To me, an *economic* integration is the *key of the reintegration of the country* and it is also the key to a long-term integration in the EU structures… In the name of that I am going to shift my views from *political* to social and economic problems of BiH (Petritsch, 2002, 78 -emphasis added by N.Š).

Carlos Westendorp[5] had also formal conditions at his disposal to react to political blockades set mainly by national parties. In fact, due to political obstructionism the Peace Implementation Council session held at ministerial level on 9-10 December in Bonn empowered the High Representative with a final say in the peace implementation policy. The High Representative was invested with powers to impose laws, which remained in force until they were approved by the legislative authority. The High Representative could also, within his Bonn powers, remove the representatives of parliamentary parties from office on the ground of their opposition to the peace implementation but had no power to ban national parties which played a major role in the conflict in BiH, according to the opinion of the academic public.

On January 1, 1998 Westendorp set limits to political blockades. BiH got its national/political symbols. Westendorp was supported by some media, as he was the first High Representative to remove politicians who had obstructed the Dayton implementation.[6] Removals, which were a novelty, in comparison to the first High Representative, took away some powers from the

[4] **Carl Bildt**, was the first High Representative to BiH and a representative of the EU in the former Yugoslavia. Bildt took over in the climate of distrust toward the IC. Bosniak political public was angry because the International Community did not prevent heinous crimes over non-Serbs. Serb political public was also skeptical and showed lack of trust. Most of the Serbs saw IFOR troops as allies of their 'enemies'. The Croat political public believed that the war was won by Croats although the dream about annexing one part of BiH to Croatia died in Dayton.

[5] **Carlos Westendorp** took over on 18 June 1997. Before that he was the Spanish Foreign Minister in the government of F. Gonzales. Soon after he took over, post-war elections were held in BiH and national parties won again. When he came there were three currencies in Bosnia and Herzegovina (Croatian kuna, YU dinar and Bosnian dinar - a coupon). YU dinar and kuna were symbols of a common economic space of Yugoslavia and the RS and the so-called Herzeg-Bosnia and Croatia.

[6] Westendorp removed 12 politicians in BiH.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 211

forces of obstruction. In case of repeated obstructions, the High Representative could deny 'social assistance' which is an ethical problem. Ethnic politicians used such decisions for their argumentation that the International Community was working against 'the people they represented'.

Wolfgang Petritsch[7] was assured that the problem of BiH was the lack of awareness of one's own responsibility. He believed that politicians and citizens of BiH should take their country, its problems and needs as their ownership. "The acceptance of ownership by political leaders in Bosnia who held positions of power during the war and whose opinions are still a prevailing ideology requires a full turn" (Petritsch, 2002; 125). "When I took over as the High Representative in 1999 I set a goal to myself - to take BiH to the road of self-responsibility and I requested politicians and citizens to accept the ownership as the future of their country" (Petritsch, 2002; 5) - said Petritsch in his book *From Dayton to Europe*. It is obvious that unlike others, Petritsch had a political strategy for BiH - to democratize nationalists.

Shortly after he took over he began to receive support by the public after his first decision to remove 22 officials. Among them were cantonal governments, ministers, mayors, and heads of housing commissions. 9 Serbs, 7 Bosniaks and 6 Croats were removed. However, the parties were replacing the removed officials with equally obstructive successors, and the removed ones were often promoted or given an important position in economy.

While Petritsch promoted the policy of partnership with the domestic government - along with sanctions for obstructions, Paddy Ashdown demonstrated at the outset of his mandate his tendency toward an executive, decision-making option[8] with the aim to see BiH sign a Stabilization and Association Agreement with the EU. In the course of 2002, the High Representative imposed 32 laws, one year later 14 laws, and before mid 2004 only 3 laws. As soon as he took over as the HR, his priority task was the judicial reform, in three directions: the first segment was the reform of the judicial branch of government, second, selection of judges and prosecutors[9]

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7 **Wolfgang Petritsch** took over in 1999. He was a Special Representative of the European Union for Kosovo and a head of the negotiating mission in Rombouillet and Paris. In 2001 his mandate was extended and remained in office for 3 years.

8 **Paddy Ashdown** took over as the HR on 27 March 2002.

9 The other form of reform is the selection of judges in Bosnia and Herzegovina. The HR established High Judicial and Prosecutorial Councils which are made up of national judges and prosecutors and international experts with a view to appointing new judges and prosecutors. The councils have had a sufficiently critical position when selecting judges and prosecutors and they paid attention to ethnic balance. Selected judges and prosecutors were selected for life for the first time.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 212

and third, legal reform.[10] All three segments of the reform are taking place at the same time, and all three have reached a final stage of implementation.

V. Reforms in Bosnia and Herzegovina vs. reforms in the International Community?

The recent political theories remind us of the fact that political democratization of a country is monitored through its legislative, judicial, media and civil spheres. Classic theories mainly focused on the first three, but the recent ones are telling more often that politics takes a large place in the media and civil society. If we are to show the effects of the International Community in BiH from December 1995 to March 2007, we have to limit the discussion on those five political segments of the society, while some other activities of the International Community, which certainly deserve attention and analysis, will not be mentioned in this context.

V.a Legislative authorities

On national level, the legislative authority resides in the hands of a bicameral Parliamentary Assembly which is responsible for *approving laws*, budgets of the institutions of BiH and ratifying international treaties. As it was blocked until a new parliament was formed, after the 2000 elections, many laws, required for a normal functioning of the state, either were not approved by the Parliament, or were *imposed* by the High Representative.

At the Bonn Conference held on 10 December 1997 the High Representative was invested with huge powers with the aim to overcome the blockades in the legislative authorities caused by the then officials of national/nationalist parties.

From today's perspective we can be pleased with the imposition of symbolic democratic symbols of the state of BiH by the High Representative which the national parties could not reach consensus about.

However, there is a whole series of other positive legal solutions, the weaknesses of which lie in the fact that <u>they were made without consulta-</u>

[10] The legal reform is almost completed with the adoption of new laws: the Criminal Procedure Code and the Law on Litigation, and new Criminal Codes in the entities which are almost identical to the BiH Code.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 213

tions with a broader public. An illustrative example is the draft election law which was supported by all major officials of the International Community in BiH (it was drafted under the auspices of OSCE and was supported by the OHR; the Council of Europe, UNMIBH). Still, it was almost unanimously rejected by the national legal experts two times.[11]

The other weakness concerns the fact that a strategy for changes in the legislative authorities did not often exist (e.g. Freedom of Information Act).

V.b Judicial reform

The highest priority of the International Community in the area of reforms referred to the establishment of independent judiciary and the rule of law. Independent and impartial judiciary and its *de-politicization* was the requirement set by the Council of Europe for BiH to join the Council of Europe. Under international standards it means the elimination of any influence on the judiciary by any outside individual or institution, while 'outside' refers to anyone outside the judiciary. Judging by the results so far, it seems that the BiH judiciary eliminated 'domestic' authorities and became dependent on the international authorities.

Although there is a legal framework which should eliminate political pressures on the judiciary, we could discuss pressure from the International Community. On the one hand, the existing control leads to frustrations that the work of Bosnian judges and prosecutors will be subjected to examination and review, under the supervision of the International Community, with a possibility of the High Representative to use his powers.[12]

A major progress has been made in the development of institutions and their modernization, especially after information technologies were introduced. A good example is also the efforts toward establishing the judicial authorities at the level of the state, in accordance with the Venice Commission recommendations. The obstructions of that process were coming from 'inside'. The International Community enabled and ensured the formation and smooth functioning of the BiH Constitutional Court and the Federation

[11] "The major objection to the law was confirmation of discrimination. especially in the election of members of the Presidency, which is discriminatory and limits the right to vote " - said Sevima Sali-Terzić in her study, "Legal System", in: *International Policies of Support to the SEE Countries: lessons (not) learned in BiH*, (editor Žarko Papić), Muller, Sarajevo, page 161

[12] The manner and procedure for removal of judges and prosecutors are regulated by the laws imposed in both entities by the High Representative.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 214

Constitutional Court, and assisted in establishing the Judicial Training Centres, and some legal associations.

In addition to the activities which concern the legislation, which have been numerous, the International Community, for the purpose of attaining its own goal, offered training programmes for lawyers, including judges and prosecutors. However, some things were ignored, which eventually challenged the results. It often happened that domestic lawyers, especially judges and prosecutors, saw the programmes as an attack on their competence and identity.

Particularly confusing and inefficient was the mixture of common law and civil law tradition. (Sali-Terzic, 2001; 172). However, the programmes helped restore broken relations and contacts among colleagues across the 'inter-entity boundary line'.

In view of the funds invested in the reform and a large participation of international experts the results do not correspond to the invested efforts and funds. A poor political climate, unwillingness of the legal community in BiH to accept a huge inflow of international assistance has contributed to such condition. On the other hand, opposition to the proposals of the International Community is most often described as 'blocking of the reform processes or 'the lack of will to move BiH toward Europe'. Within the promotion of independent judiciary and its de-politicization, *independence* and *de-politicization* were called in question.

V.c The media reform

The Agreement and Constitution of BiH said almost nothing about the media. The BiH Constitution does not refer to the media in the sections regarding the state responsibilities, even not to those which ensure the identity of the state - the state or public broadcasters. The media were left to the entities. In the Federation of BiH, the media are even pushed down to the cantonal level.

The Peace Implementation Council often discussed at its sessions the media. In Sintra in May 1997 a response was given for the first time to the question of what should be done with the war-mongering media. It was said that "the High Representative could suspend any media network the programmes of which were in continued and deep contravention of the letter and spirit of the Peace Agreement" (www.ohr.int). In December of the same year it was ordered at the Bonn Conference to establish an Independent

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 215

Media Commission in charge of regulating the broadcasters. The December 1998 Madrid Conference adopted a strategy for the media reform, which supported the High Representative and his activities on turning the state media into public services. The donor countries were requested to support the Independent Media Commission and to encourage the adoption of the media laws in both entities. The OSCE and IMC were asked to develop clear election rules for the media conduct.

The International Community was deeply involved in the media reform after the Dayton Peace Accords were signed. Under the influence of ethnic oligarchies during the war on the territories they had occupied or preserved under their control, three broadcasting systems were formed, all of them different in technical terms, programme and status-wise. The media from Serbia and Croatia were spreading their influence and interests across BiH. Most of the media were used for propaganda purposes, and only few media managed to preserve their independence. The International Community supported the media expansion in the first phase of its assistance, primarily by its huge donations to the media which claimed they were independent. The purpose of the international intervention was to create the media pluralism which in the end failed to contribute to the democratization of the media. Despite a good financial will of the International Community, the first post-war period was marked by the 'verbal war' waged through the media. The media space was divided along ethnic and religious lines, and the hate speech dominated the media content.

Before the first post-war elections in the autumn of 1996 numerous local media independent from the local authorities were established with the support of the world's media. OHR and OSCE in BiH installed two major international projects - OBN television[13] and Radio Fern, with the aim to put a crucial influence on the creation of an environment conducive to the elections. However, the media from the neighbouring countries continued to air their programmes here, which made the 'media democratization' difficult. The domestic authorities declared the media funded by the International Community as non-patriotic and hostile, among other things, because of the fact that 'money was not actually spared' when it came to media.[14]

[13] Known as 'Bildt Television'.

[14] The major donors to the media were the European Union, Soros and USAID. The European Union donated to the development of the media in BiH 33 million and 249 thousand German Marks, from 1995 to 2000. USAID allocated 74 million marks. During seven years (from 1993 to 1999) Soros supported the media with 7 million and 583 thousand marks. In 2000 Soros withdrew from the program of direct support to the media and chose regional programs for communication. There is no doubt that the funds are still huge.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 216

In 1998 the process of transformation of the state broadcasters to public services began. It was imposed by the decisions and laws of the High Representative after failed attempts to have that job done by the domestic authorities, management and editorial staff of the existing broadcasters.[15] As a result, there were two entity broadcasters and a public broadcasting service for the whole of Bosnia and Herzegovina. This is how the media space in BIH was *entitized* formally.

After the Independent Media Commission was established, an illegally established system of the Croatian broadcaster in the Federation of BiH was shut down (it was a branch of the Croatian Broadcaster in Zagreb) and the hate speech began to disappear from the media space. As the Commission was formed by the High Representative's decision, it was considered by various domestic groups as 'a para-state institution with the international responsibilities' as it was chaired mainly by international experts. The local experts noticed some weaknesses in its functioning as it was responsible for the issuance, monitoring of the rules of conduct and punishments. They also complained about the transparency of the Commission and about the appeals procedure before the Commission without a higher administrative body or a court. Its incorporation in the Regulatory Communications Agency caused dissatisfaction among local experts, and eventually their denial of such a procedure.

In the early 2000 the media saw a major change in the International Community's assistance. The International Community gave up the support it used to provide to international projects - OBN and FERN. It left the OBN to the local staff to cope with it as best as they could, and incorporated the radio FERN with its staff and technical equipment in the BiH public radio (BH Radio 1). In that phase the priority was given to the transformation of the state to public broadcasters. This phase saw a silent obstruction by and a complete lack of interest of the authorities in BiH.

In the absence of the political will of the authorities to propose the appropriate laws, OSCE drafted the Freedom of Information and Libel Act.

[15]The High Representative tried to obtain support from three national leaders - the then members of the Presidency. As the Serb member of the Presidency Momčilo Krajišnik refused to sign a Memorandum of Understanding, HR imposed several decisions in July 1999 by which the public broadcasting service was established at the state level and in the Federation of BiH, while the Serb RTV was ordered to change its name to RTV of Republika Srpska.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 217

V.d Civil society

The Constitution of BiH and the Constitutions of both entities guarantee the right to freedom of association which is the basis for the civil society and its institutions in general. As the constitutional legal framework in BiH is such that the central authorities have very limited responsibilities, and as the entities have a huge autonomy, the issue of the right to freedom of enjoyment is different in the entities. In the Federation of BiH there are three laws which define the activities of the non-governmental community: the Law on Civic Associations, the Law on Humanitarian Organizations and the Law on Foundations. In the Republika Srpska the issue is regulated by the Law on Civic Organizations, which was taken over from the former Yugoslavia. While the freedom of association in the world exceeds national borders, in BiH the association remains at the entity level because of the Constitution, lack of political will and passiveness of the International Community.

The 'development of civil society' meant for the International Community provision of support to the development and work of non-governmental organizations. The experiences of other countries show that democratization is also implemented by other civic groups. Despite this, international donors believed that non-governmental organizations were the core of the civil society, believing they were strengthening the civil society as a whole. The assistance was provided and directed in this way most often by UNDP, UNHCR, UNICEF, the World Bank and the International Monetary Fund.

Over the past few years we are seeing international aid to BiH drying up and shifting to other crisis spots (Kosovo). This was the reason why the development of many non-governmental organizations without a sustainable development strategy stopped. "Instead of responding to the needs and requirements of beneficiaries, the situation was created in which the beneficiaries responded to the needs and requirements of donors" (Sali-Terzic, 2001; 183).

The critics say that many non-governmental organizations are too far from the society and citizens which is a "paradoxical consequence of the assistance to the civil society". Žarko Papić is warning that the method of providing support 'covers' a very small elite (Papić, 2001; 28). 'Elite' in so-called civil society is being 'professionalized, and departs from the problems of the 'grassroots' and 'social realty' which means that a fictitious image is being created about major efforts.

The other problem is that numerous non-governmental organizations are not coordinated. Although there have been some attempts to coordinate

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 218

their activities, they, in fact, boosted the number of coordinating bodies. 'Networking' and 'coordination' were magic words for long, and it was believed that they could open many doors to new sources of funding.

Domestic non-governmental organizations continue to lack knowledge and skills and sometimes motives for their attempts to influence the government and the decision-making processes. Regarding the election results, the political affiliation of citizens changed mainly in the areas in which the most important and most active non-governmental organizations were located. In the areas in which their presence was minimal, results were far from initial expectations.

With a few exceptions, a serious question which can be asked refers to the *legitimacy* and *credibility* of non-governmental organizations.

VI. Assessment and analyses

What has been positive in the activity of the International Community in BiH is the assistance in transition, but not in a classic transition through which other countries have undergone - transition to the full market economy, parliamentary state, and civil society. The International Community has invested huge efforts in the *transition from war to peace*, and financed it. Although the transition lasts longer than it was expected, in political terms it enabled BiH to create conditions necessary for *Euro-Atlantic integration.*

The International Community seems to have lacked the information that the war in BiH was not a product of an ancient hatred in the region but that it came from outside BiH and did not have direct causes in the country. Large-scale returns were not possible without defeating the policy which had envisioned relocations of populations. The returns were not ensured because political architects of ethnic cleansing were not removed from positions. Huge sums of money were invested after the Dayton was signed when the rate of returns was minimal, and now when the returns have stepped up, there is lack of financial support. The International Community is ignoring the issue of 'constituent minorities', believing that the returns have been completed.

The International Community tried to 'democratize nationalists' in BiH. For that reason, it took a great effort to realize that the political elites in BIH remain in power thanks to insecurity, conflicts and instability, which they are encouraging. As such they will not produce stability as they remain in power thanks to the conflict. When three national parties in BiH, SDA, HDZ

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 219

and SDS were forced under the international pressure to reduce their nationalist rhetoric, rivals within national blocks - SBiH, HDZ 1990 and SNSD - accepted that vocabulary, which paid well at the elections. There is belief that the last year's elections did not show that the most radical parties became moderate but that the most radical parties are, in fact, moderate parties. For a number of reasons we could claim that nationalism in BiH became radicalized instead of reduced. If we analyze election rhetoric before, during and after the elections of so-called moderate parties, we shall not be able to conclude that the reformed parties won over non-reformed parties. Democratization of national parties which was supported by the International Community led to their multiplication, and replication.

The fact that the OHR sometimes behaves as a new political institution in BiH. Although there is the legal framework which eliminated political pressures on the judiciary and media in BiH, we could also speak of their exposure to the international pressure.

There are indications that the International Community is getting tired and that it would wish to reduce its engagement in BiH.[16] Despite that, the Peace Implementation Council decided on Brussels on 23 February 2007 that the OHR and Bonn powers should remain in place before June 2008 as the progress in the EU integration process has not been sufficient.

Also the mandate of the OHR was extended because the International Community became fully aware that BiH needs the *constitutional reforms*. Although it has not been a taboo for the last two years, the present High Representative to BiH Christian Schwartz Schilling said after his mandate was extended, "In the coming months I am planning to launch the constitutional reforms, together with the officials of the United States of America in order to help develop a constitutional structure needed in this country in order for it to become a modern and effective state. For this reason I have a broader mandate from 1 March and I have additional resources as the EU Special Representative". (Dnevni Avaz, 2 March 2007).

In an attempt to identify and critically elaborate reforms carried out by the International Community, we come to the following conclusion: the policy of the International Community was reductionist/ non-democratic, in contravention to a democratic spirit as many laws were made without consultations with the public at large. This is why it is important to be careful not to repeat Bosnian mistakes in other SEE countries.

[16] See: *International Crisis Croup*, Europe Report No 180 of 15 February 2007.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 220

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Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 221

2. LEGAL REFORMS IN BIH AND INFLUENCE OF THE INTERNATIONAL COMMUNITY

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 222

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 223

INTRODUCTION

Manfred Dauster, Judge, Court of BiH

Let me welcome you all. It is my pleasure to open Panel Discussion II. Tallying the balance of effects in the last 11 years in BiH is not simple. The previous speakers tried to look back at history and the past developments. I will not do that. In tallying the balance, I will focus on several points which I think could provide a professional overview. Let me first describe my own perception of the situation in Bosnia.

I have many Bosnian friends and colleagues in the Court with whom I often discuss. I do not claim that their voices are representative, but still they give a perspective and an evaluation of how a normal citizen sees the past and the present. Among other things, most of the people are wondering whether it is too late and how much time is left.

Even the High Representative admitted this morning that we had lost much time and now we have to think about the time left to the international community for cooperation with the local authorities. I am slightly worried when I hear that the dates of closure of the OHR are stated in public. First, we heard that the OHR's closure date was going to be June 2007, and now there are perhaps some other requirements for its closure, scheduled to take place in June next year. Absolutely all the people I have talked to asked: "Is it possible to talk without discussing the substance?"

I think that my Bosnian colleagues have the point, as substance is simply not clear to us. It has never been clear to us and they are asking about that substance. We have also realized - and we still do - that the international community is funding itself and has reached a phase of its own fatigue and thus would like to disengage. But disengagement does cost. Regarding the question as to how much money of the international community will remain here for the planned reforms, again, we have to ask about the substance.

I am again coming back to the same question, the question asked by the citizens, the question about the substance, the substance of the international community and domestic authorities. What is there response, and what do they want to be reformed? In view of everything which has happened so far, I am still unable to see that substance. One formula has been used – the constitutional reform. What does it stand for? What is that? Also, there are so many constitutional models in the world that myself, as a judge, someone from the legal profession, have to ask the following question: if the

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 224

reform is successful in the end, what kind of a constitution is it going to be? The police reform is another issue. Why is the discussion so non-transparent, I wonder. There are so many police models in the world, on this planet, and how the police will look like in the end? Which model is it going to be? Does the police reform depend on the constitutional reform and vice versa?

The third trick I realized is the following: because of the presence of the international community and certain positions maintained by the international community, we have to admit that the Dayton system of cooperation between the international community represented by the High Representative, and domestic representatives, has failed. Mistakes have been made by both sides.

I am certainly not the one who could qualify or disqualify domestic and international politicians, but I can certainly say – now I am talking about the international community – that I have seen so many High Representatives coming to and leaving this country, except one High Representative so far, and I noticed that some of them did not have any perspective, any program. Some of them had only ad hoc programs and did not focus on the implementation of the laws they had imposed.

This is what should be changed at least during the remaining period. Regarding the achievements, I am not going to deny them nor am I going to say that they have not been made. This morning we heard the word 'democratization'. Of course, democratic elections are taking place, which means that they are taking place under the national supervision. The Election Law is perhaps not perfect, but elections have been almost democratic. But what is going to happen in the next four-year term in the Parliament?

I think that there will be a kind of a campaign for parliamentary democratization. Because, I can see that the Parliament exists, it passes the laws, but without a substantial discussion, and it is not done in a transparent way. Also, the Parliament does not oversee the government. Let me tell you an anecdote, something which has recently happened. It was an OSCE seminar. The representatives of the Parliament's Budget Committee came to the seminar to learn how the budget should be overseen.

As the largest portion of the national budget goes to defense, the OSCE officials said to the participants that the funding of defense does not refer only to the payment of soldiers but also to the payment of the defense policy and that they, as the controllers of the government, should ask the government to show them the defense policy of Bosnia and Herzegovina.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 225

Nobody knew anything about it. When a representative of the Defense Ministry came to the seminar, the Members of Parliament asked her: "Could you, please, explain the substance of the four-year defense policy of the government? What we are specifically interested in is the financial segment".

Then the Ministry's representative said: "You know, the financial segment is not the responsibility of the Defense Ministry. You should ask the Ministry of Treasury". Then, the same Members of Parliament had the same question for the Ministry of Treasury. Let me tell you what the representative of the Ministry of Treasury said. "Well, it is not our responsibility, you should ask the Defense Ministry." The Members of Parliament simply concluded that nobody is responsible.

This is bad and this should change, and we shall help you in making those changes. On the other hand, we have the judicial reform. It is an achievement indeed, but only in one part. Under the pressure by the international community in 2002 and through the imposition of laws, then-High Representative Paddy Ashdown assigned to the Court of Bosnia and Herzegovina jurisdiction in criminal matters.

We also have the constitutional reform, which was initiated by the Americans. Does it mean that they initiated it and nobody else should get involved? During the criminal law reform, the Americans said: If you, the OHR, seek our assistance and if you want us to assist you in establishing the state court, we want to see at least some parts of our procedural system introduced here. And then a "small America" was introduced without any second thoughts.

But now we have it in the law and in law enforcement. However, when I look at the state prosecutor's office and the state court from this perspective, I am slightly scared for the self-sustainability of those two institutions. The state jurisdiction in criminal matters is not full, as I heard some politicians, who were invited to this conference but did not come, saying during the election campaign that the state court was the court for Serbs. This leaves room for interpretation.

I can also see some developments in Banja Luka. The state Court of Bosnia and Herzegovina clearly has jurisdiction in criminal prosecution of organized crime cases. It is the court of BiH's jurisdiction. If the state court transfers that jurisdiction to lower courts, the entities and the entity courts will take it over from the state court. What happened last year? The international community welcomed that.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 226

In Banja Luka, the RS National Assembly established special courts for organized crime cases, and special prosecutor's office. The constitutionality of such institutions is, of course, subject to debate. But nobody has organized a debate yet. The High Representative, without knowing the law and the constitutional situation, congratulated the Prime Minister for his efforts to fight organized crime.

In reality, the Republika Srpska entity has silently stolen one half of the national jurisdiction and this has to be said clearly. The international community got largely involved in the establishment of the Court of BiH, but only during the so-called period of transition and will remain involved until the end of that period, by the end of 2009. After that, the first risk could be the funding of the state institutions.

So far I have not heard a clear statement by the Government that it will take over the funding of the state judicial institutions after 2009, and that the government will take over from the international financial arrangement. Those are the failures and mistakes which you can certainly recognize, just like me. I also know that this conference will initiate a debate about this clumsy situation. Of course, everything depends on the constitutional reform.

So far, both sides, the international community on the one hand, and the national authorities on the other, may be blamed for their positions and behavior in the past. All of them spoke about the constitutional reform. But the citizens did not know anything about the constitutional reform. Why?

Why was it kept a secret before it ended up in the Parliament? This should no longer be the case. The same is true for the ongoing criminal law reforms. You know that the new criminal law system was introduced, or written in such a haste which I had never seen before. Paddy Ashdown ordered in June 2002 that new laws should be drafted no later than October 1 of that same year. That was really a huge task. And the laws are not perfect because of that haste.

There are certainly mistakes, flaws and weaknesses in those laws. And now the analysis is necessary for the purpose of defining the next steps as the international community was so much focused on the criminal law system in the past and had to do its homework and come to an agreement with the local authorities. However, I myself do not see anyone working on that issue any more. This is precisely the fact that could lead both the state and its entities, and their criminal law systems, to collapse.

Besides, the legal reform is not just the criminal law reform. I came to this country for the first time as a head of the Anti-Fraud Unit in the OHR.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 227

It was in August 2000. In was in the OHR's Anti-Fraud Unit that I realized that the civil law in this country is old and that it does not fit into modern times. Some steps have been taken indeed, however, we do not have a modern Law on Obligations or a modern Law on Real Estate, nor do we have a new Commercial Law on paper, and so on.

How could we sort this out? How would it be possible to attract foreign investors when they would face the remaining socialist laws in the first place? They will never come under such conditions. On the other hand, the enforcement of judicial decisions and rulings in the civil law procedures is simply driving both foreign investors and citizens crazy, because, as you know, it is a very difficult procedure. It takes time for a decision to be made and then it takes time to have it enforced.

A civil procedure in this country lasts usually several months, even several years, even if it concerns a minor issue. Thereafter, investors, once they have finally got the decision, have to run around and ask for their money. The same is true for the Law on Liquidation, and the Law on Bankruptcy. I have mentioned only some laws, and some issues, but this is not the end of the list. The same is also true for civil service. But nobody has so far identified the issues which can and should be privatized and liberalized.

There are no licenses for this reason, and licenses, required by the law, are subject to corruption in most cases. I for one believe that there is the whole list of things which the international community could have done and the international community can do it in cooperation with the local authorities. But a clear definition of that can be done in the years to come, in two or three years. It is needed. I think this is urgent.

COMMENTARY

Zdravko Grebo, Law School, Sarajevo University

While working on my assignment for this Conference, I thought that I should design and make my presentation as a complete provocation, while at the same time offering arguments in support of everything I was going to say. But before that I have to say that, as usual, people to whom I intended my 'poisonous arrows' have already left. First of all, I mean the High Representative and the Ambassador of the Federal Republic of Germany, as I desperately wanted to try, with their support, to get rid of my nightmares. However, it always happens that I am talking to the 'wrong' people. Bad

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 228

students always escape lessons, while those disciplined ones stay behind and will have to suffer my torture in the next few minutes.

Thus, the first question goes to the speaker who introduced us to this topic: has he ever asked himself, most sincerely, why he is here and what is the real sense and meaning of the job he is doing here? Of course, I am much grateful to him for what he is doing. My thoughts will not stray away if I share with you a kind of a show-biz quip. When someone has asked me a while ago what I think about the international community's role in BiH, I thought of a love song and its verse: "My life is so hard with you, and even harder without you". I think that this is a good diagnosis of our ambivalent position when we are talking about the role of the real or virtual, precisely or vaguely defined 'international community', about tallying the balance, the current situation and possible prospects and prognoses. That is my first thesis.

The second thesis is based on a careful reading of the study we all received and as a lawyer by my fundamental training, I would share with you several routine observations and then I would return to those 'hot issues'. Mr. Dauster, who was the key-note speaker, gave a correct description of the current situation and listed both the success and failed expectations of international actors in the area of the law and judicial reforms. These are already commonplaces. What has been a success indeed is, for example, an anthem (without the text though), the coat-of-arms and the flag, a passport, license plates, Convertible Mark; a successful criminal law reform and not so successful criminal procedure law reform, a disastrously failed attempt to carry out the constitutional reform and so on, and this assessment is absolutely accurate. A smaller number of issues (or problems) remain unsolved, there was a failure in dealing with the slightly bigger number of issues and the same number of issues saw inaction. This is why my question is the following one: does our distinguished key-note speaker, who comes from the German legal and political tradition, have any comment on my statement that the discussion about the issues we should attempt to discuss today is completely senseless? Such a question, in a situation in which the state has no Supreme Court and has all attributes of the state, is the most fundamental one; the first year law students who do not have an answer to the question whether the state without the legal unity may function in its full capacity never reach a second year. This state – Bosnia and Herzegovina – or this mosaic, to put it nicely (although the more precise word would be a quarry) with a geographic (and without any state) identification in its official name, with a shocking number of its components: the entities, cantons,

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 229

towns, municipalities – has all the institutions (grotesquely put together and still not functioning though) but does not have a Supreme Court. There is the Constitutional Court at the state level but –obviously for the Dayton and political reasons – we do not have the highest judicial instance which should ensure the legal unity. All the reasons and causes which led to the fundamental elimination of normal lives of the people in this country cannot be uprooted at the entity level. And there they end. It is more than clear that the outcomes of the judicial ruling against permanent and large-scale fundamental human rights and freedoms end up inevitably at the entity level, while there is simply no possibility for filing appeals.

Another, seemingly professional question is: does the engagement of the international community in all the forms of government (EUFOR, EUPOL, international judges, the Central Bank Governor until recently, plus the OHR's huge Bonn powers) in all sorts of ways that we have listened to, not pose an additional problem? Probably out of the best intentions – in the state which is by the composition of its citizens and by its constitutional organization a 'unique' state in a negative sense – there is an attempt to implement here – here I am following the line of the Anglo-Saxon proverb 'one number fits all' – a unified model regardless of whether people live in Canada, Bangladesh, Pakistan, Ireland, or Bosnia and Herzegovina. Take it or leave it. Above all, regarding the sphere of law: how is it possible that we are receiving from The Hague, Strasbourg, and Sarajevo (and also from Banja Luka) the ingredients of an odd mixture of two different legal traditions and two different legal systems, which are simply not consistent? It is not possible to mix together, without having a contradiction in the end, the Anglo-Saxon and European Continental legal systems (even before communism and during communism and after communism we belonged to the Continental law system), without causing turbulences? If I am to be pathetic, I would say that from the point of view of sensibility of the public, it is absolutely problematic to introduce here the witness protection or plea bargain in the war crimes trials. This is something that the victims cannot understand and do not accept. And other people in BiH who are expecting to see moral satisfaction in the first place, cannot understand it either, and they do not accept it.

A third important question also from the area of law concerns the character of our Constitution. My colleague Pobric made a good comment. But I ask whether a response to that question is absolutely possible and I would like the key-note speaker to offer us a response like Mr. Pobric and not as someone who can affect the solution to the constitutional dilemmas. The

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 230

Constitution of Bosnia and Herzegovina, which is Annex IV, is indeed a part of the peace agreement. To my best knowledge of the constitutional history, it has never happened that the constitution of a country is a part of the peace accords. Peace agreements cannot be changed. Our Constitution, which is a part of the Dayton Peace Agreement, envisages the possibility of making amendments. How can something which is a part of something which cannot be revised be changed? Or, has the one who made the decisions – who was authorized and primarily powerful to verify in Dayton or Paris, it does not matter, a tragic situation which we all faced later – ever thought of his own responsibility? Or it will happen like in the joke about the washing machine which was rotating laundry at high speed endlessly long as there was nobody to press the stop button: we shall conclude that they have forgotten us and began to think about Afghanistan, Iraq, Iran or other places. There is no need to remind you of the commonplaces. Still, it is quite clear that our Constitution falls under the category of imposed constitutions. It was signed in a military base of another country. It was signed and guaranteed by three co-signatories of whom one died in The Hague, and the other two were prevented by death, caused by other reasons, from ending up in The Hague. Two of them – president Milosevic and president Tudjman – were the heads of the states which carried out an aggression against another state (Republic of BiH) to a different extent, and they were the guarantors of the document which contains the future (the current) Constitution of that state. This is not a sustaining structure in legal, moral, metaphysical even divine law, if you will. If that is so and if that not quite bright person (Richard Holbrooke) used a cynical phrase of a "straitjacket put on Bosnia and Herzegovina", then all the subsequent and derived questions are rather senseless. Thus, that same 'international community' when we are discussing its role in paving the right way for BiH (if we know at all what the 'international community' mantra means) cannot be understood because it is imposing the frameworks within which we, running around in circles, should, as stakeholders, solve definitely the problems which are absolutely vital to us.

The fourth question, along the same lines (and regretfully, it will remain unanswered because Mr. Schwarz-Schilling and Mr. Schmunk left the Conference too early) concerns one fundamentally insulting pedagogical lesson we heard this morning. Let me paraphrase: "We are here because you need us and you need us because you are incapable". I have absolutely no dilemmas about the political and moral competencies of the present elites in BiH, but I think that it is a cheap argument which is used to justify permanent

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 231

presence of the ruling powers of the so-called international community and make them legitimate. On the other hand, the whole story which is based on such terms as ownership and stakeholders, 'it is up to you', 'you should reach an agreement, and we shall accept it' – is not honest as it forgets about the powers which those institutions have (the so-called Bonn powers in the first place) and such thinking and action suggest the death sentence to Bosnia and Herzegovina. If we say that the national politicians are unable to reach an agreement about anything (for the time being, about the constitutional reforms, the police reform, higher education, the public administration reform), then you have to say who in that political circus is responsible for the situation in which no agreement is possible. My intention is not to exculpate anyone but you can no longer be shifting the responsibility to the local politicians. To illustrate the responsibility of the international community, let me use a strong argument from Jeffrey Nice's statement to The New York Times in connection with the International Court of Justice judgment, which is a masterpiece in the legal profession but a scandal in moral terms. The conclusion that it was a 'municipal genocide which lasted three days' caused deep frustrations to the people in this country. I am so sorry for using this fact, impolitely probably, to describe the negative role of the international community in Bosnia and Herzegovina.

The height of cynicism is that it is not possible to identify the perpetrator of such a poorly defined genocide. One of the banners at the recent Sarajevo demonstration read, "Aliens from the planet Mars committed genocide"! The international community did nothing to prevent at least what was happening over those three days in Srebrenica, which was a safe haven, controlled by UNPROFOR. Of course, genocide began in 1992. According to the international law and the United Nations Charter about the collective safety, an elementary interpretation indicates the obligation of the Security Council to prevent aggression on a sovereign state, which resulted in the end in genocide!

The story about the harmonized approach of the international community to the horror and pains we went through is of a different nature. That is simply a lie. With good reason can we say that in all Balkan wars (let me use this neutral term) it was known in advance that Germany and Austria would support Slovenia and Croatia. There was no reason to have doubts that Russia and Greece would certainly support Serbia and that Bosniaks would be waiting for assistance from their Arab and generally Muslim brothers. In synchrony, there is no indication of a unified action of the 'international community'. Those are only pure interests and unabridged policies, traditional and ideological differences.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 232

In the end, it is clear that the judgment of the International Court of Justice, which is one of the most important institutions of the United Nations, the highest judicial institution on the planet – regardless of whether blame should be put on Carla del Ponte's inaction or on Judge Hastings' action – showed that the so-called international justice is absolutely ashamed in Bosnia and Herzegovina. If we are talking about the shameful 'gentle' verdict under which Serbia is responsible for its failure to prevent and punish the crime of genocide, a cynical logic could take us to a conclusion that all the states in the world, including Lithuania, Macedonia, Peru and Zimbabwe, are responsible for the same crime. Naturally, all nice and honest people do know that the state committed genocide in Srebrenica (if we can speak of genocide in Srebrenica any more). However, if there is anyone who is truly responsible for genocide, while I am not amnestying local figures at all, and if we accept the offered minimalist definition of genocide, then it is the United Nations. Only after we get an unequivocal response to this question shall we be able to discuss the problems. I prepared questions along the same lines for the key-note speakers this morning.

Those questions concern the calculating attitude towards the Bonn powers, which can in many ways be compared to those which the winning powers used in the post-Nazi period. In other words, we take the full authority, we implement denazification, but in return we take the full responsibility. The moment you have shown and proven that you have get rid of the Nazi frenzy, we are absolutely willing to assist you in all the ways possible and, of course, hand over the management in its full capacity. No way before or later. This lukewarm option tested in Bosnia and Herzegovina obviously leads to nowhere.

Nedim Ademović, Constitutional Court of BiH

What is the 'international community' in BiH?

As the key-note speaker observed correctly, the notion of the 'international community' covers a very broad range of actors involved in the implementation of the General Framework Agreement for Peace in BiH (GFAP), ranging from different supranational and international institutions to diplomatic missions. Today, 12 years after the engagement of the so-called international community, we can conclude that this ambitious and broadly defined notion of the 'international community' makes the situation complicated in the implementation of individual aspects of the GFAP. This, this

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 233

institutional overkill[1] is a partial obstacle to an effective work on building a fully functioning BiH. A typical example of making the situation complicated is the segment which concerns the human rights and fundamental freedoms protection. Instead of having two or three strong and effective institutions, the whole 'international community' has been involved, from such international institutions as the OHR, UNHCR, OSCE, local bodies, courts, bodies of administration at 4 or 5 different levels, to the eminent non-governmental institutions. An ordinary man, as an addressee and the central figure in the system, simply does not know how he could protect his rights and freedoms, which is why they are left unprotected, although the human rights violations remain one of the biggest problems of the post-Dayton BiH. This is the reason why the OHR – a *quasi doyen* of the 'international community', as the distinguished Judge Dauster called that institution – should have prepared better for its role of a coordinator, making sure that some segments of the GFAP are protected effectively on the one hand, and that there is no overlapping in the field, on the other.[2]

Legal definition of the status and position of the 'international community' in Bosnia and Herzegovina.

Regarding the status, position and responsibility of the 'international community', the key-note speaker observed correctly that the 'international community' has not taken the responsibility for BiH in terms of international law and the constitutional law. The key-note speaker also believes that by signing the GFAP, BiH gave its consent to a 'joint action' by the state and the 'international community' on developing BiH. That is true. However, I think that a big mistake was done as it is a kind of a precedent in international law which has never been given a clear definition. An undefined situation, on the one hand, relieves the international community of any responsibility for its work and results, while on the other, it damages its dignity in the eyes of its national partners. The BiH Constitutional Court has defined the relations between the 'international community' and Bosnia and Herzegovina as the so-called functional dualism.[3] This means that by signing the GFAP, BiH

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1 Marko, Joseph, *Friedenssicherung im 21. Jahrhundert: Bosnien und Herzegowina als europäische Herausforderung (Ginther/Benedek/Isak/Kicker, (izd)*, Völkerrecht und Europarecht. 25 Österreichischer Völkerrechtstag, Vienna, 2001, page 55-87 (77)).

2 It would be sufficient to analyze the confusion of citizens over the parallel protection of human rights and fundamental freedoms at the Constitutional Court of BiH, under the Constitution of BiH, and the Human Rights Chamber, under Annex 6 to the GFAP.

3 See case No. U 9/00, of 29 September 2000, known as the Civil Service Act. All Constitutional Court decisions are available at www.ustavnisud.ba.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 234

admitted that it is unable to solve some problems alone, and voluntarily transferred some of its sovereign powers to international actors, which excludes the existence of any protector. However, the Constitutional Court emphasized that despite that fact, BiH was and still is an independent, sovereign state and that the 'international community', when it is taking some powers, had to act in compliance with the Constitution of BiH and its constitutional principles of democracy, the rule of law, human rights protection etc. Dozens of examples show that the 'international community' has not acted in a constitutional way (removal of local politicians without the right to appeal and without due process,[4] decertification of police officers,[5] kidnapping of citizens who acted against the Dayton,[6] citizens' damage claims disbursement by international institutions, etc.). Finally, I think that the 'international community', regardless of the fact that it falls outside of the scope of responsibility of BiH, failed to establish an internal system of control and accountability. This is the reason why I have to admit that the educational role of the 'international community' has not been fulfilled as it has often acted in an autocratic, arrogant way, with force, instead of acting in a constitutional manner. The educational role should have been crucial to the establishment of modern European standards which BiH should reach regardless of the consequences of the war. For this reason, this should be further criticism of the OHR as that Office was and still is the main institution with the main authority to interpret the overall GFAP.

The main tasks of the 'international community' in BiH.

The tasks of the 'international community' in BiH are extremely difficult. There is no doubt about that. On the one hand, the 'international community' in BiH had to remove the consequences of the war, while on the other, it also had to transform the society under modern European standards – which BiH should do regardless of the war. In doing so, it has the local partners who are largely fragmented in political, ideological and religious terms, which has made the situation in the field even more complex. Because of the complexity of the tasks, the 'international community' in BiH could not deal with all sorts of things: rather, it restricted its actions to the areas defined in the GFAP. This was a legal framework for the action of the 'international

4 See the BiH Constitutional Court decision AP 953/05, of 8 July 2006.

5 See the Opinion of the European Commission for Democracy through Law (Venice Commission) about the constitutional situation in Bosnia and Herzegovina and powers of the High Representative, adopted at the 62. plenary session (Venice, 11-12 March, 2005).

6 See the BiH Constitutional Court decision AP 696/04, of 23 September 2005.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 235

community'. Regarding the extent at which the state should be reformed in the areas covered by the GFAP, it could be defined as 'self-sustainability'. This means that it was necessary to reach the level of the quality at which it would be possible to proceed with the reforms in an independent way, in a peaceful and democratic environment.

Results in the achievement of the goals from the GFAP.

When it comes to military objectives, as the key-note speaker stressed, which I agree with, they have a subordinate or subsidiary relevance in regard to the overall objective of the GFAP, although crucial for the beginning of the GFAP implementation. There is no civilian implementation of the GFAP without peace. Here the 'international community' played a good role by its own judgment: gradually, it put the military under control and regulated this field, especially after the state took the responsibility for the armed forces.

Regarding the civilian aspects, the results are different. Still, regardless of the GFAP segment, the 'international community' had to be aware that without good law, an institutional framework, effective procedures and material and legal standards there would be no reforms. In his detailed analysis, Mr. Dauster ramified each segment and stressed both success and failures or partial achievements of the 'international community'. So we can conclude that the issues of the inter-entity boundary line and the Brcko District arbitration were completed successfully. The key-note speaker also gave a positive assessment of the election system in BiH under Annex III to the GFAP, in which the reform implementation and the BiH taking the ownership is a textbook example.

An exception which the key-note speaker stressed in regard to the election system concerns the issue of equality of constituent peoples and the category of the so-called Others (especially regarding their equal participation in the government) and the relations between the state as an administrative and territorial unit and its lower-level administrative and territorial units, i.e. the entities and the Brcko District. However, as he righteously observed, it largely arises from the constitutional arrangements, i.e. from Annex IV to the GFAP. This shows clearly a close link between some Annexes. Still, can the 'international community' be amnestied from those issues and inaction? I do not think it can. It is the international community that should take every step possible which is necessary to solve that issue, including the constitutional reform. If BiH is unable to do it alone, the 'international community' has to find and impose a solution to the issue of an 'individual versus collective', the relations between collectives and the organization of the state

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 236

in terms of the relations between the central authorities and their units. The Bonn powers should be used whenever there is a problem, which the local institutions fail to resolve within a certain time line. The 'international community' should act in an educational, democratic way, in accordance with the principle of the rule of law. This is a proper interpretation of the relations between the local authorities and the 'international community', which the BiH Constitutional Court defined as a 'functional dualism'. That this is true is proven by numerous examples. Is the indirect taxation system functioning in an independent way? Is the state judicial system or the state army functioning in an independent way? The answer is yes. And who made it possible? Of course, 'the international community'. In this regard, it is interesting to mention that soon after the intervention by the 'international community' in the above areas, the criticism which comes mainly from the Republika Srpska would begin to fade away and eventually, the new situation would be accepted as the most natural situation and as a necessary segment of the development of BiH. Now let me ask a psychological question: why did negative reactions to the impositions by the 'international community' disappear so soon? The response is logical: because the impositions helped establish a natural situation in the country!

Thus, with its passive policy and the failure to use Bonn powers over the past years i.e. with the policy of handing the ownership over to the local authorities, I think that the 'international community' has caused more damage than it would have produced negative reactions by its proper impositions. Had the 'international community' solved all those issues a few years before with all the powers it has, we would be a much more developed country today, and would have moved forward to the European Union and the European Union to us much more.

Regarding Annex 7 as an extremely important legal basis for the elimination of the results of the war, I think that the 'international community' has made a catastrophic mistake. Annex 7 means an unconditional restoration of the property-related issues to that as on April 1, 1992 while the labor relations were not brought back to the level from 1992, which should have been brought back to the extent possible. The 'international community' allowed Republika Srpska to 'legalize' discriminatory dismissals of non-Serb workers, and also the Federation of BiH to do the same through the 'laid-off worker' phenomenon[7]. This largely contributed to the 'cementing' of ethnic cleans-

[7] Article 152 of the RS Labor Law, Article 143 of the FBIH Labor Law.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 237

ing in BiH, i.e. to the de facto unsuccessful implementation of Annex 7. The inability to get re-employed in the pre-war place of residence was simply a strong deterrent to sustainable returns.

In the end, I would like to mention the economic system of Bosnia and Herzegovina. The key-note speaker stressed that the general assessment of this extremely important segment is negative, with the exception of the monetary, customs and a part of the taxation system. First of all, Annex 9 to the GFAP, about public corporations in BiH, remained a dead letter. In his opinion, the basic public corporations such as railways, air traffic, energy and postal and telecommunications system and so on, should have been treated as a state interest and the responsibility of BiH in terms of Annex 9. Regarding this issue, the 'international community' remains passive and allowed the entities to behave like separate states. Further, BiH does not yet have a reformed economic system and a formal 'single market' based on market economy. The 'international community' has ignored this segment, although, unlike some other problems in the country, it has a clear legal basis in Article I/4. Vital economic resources in BiH – tourism, water, forests, mines and energy – are at a much lower level than before the war. Neither the 'international community' nor BiH developed the basis for protection, let alone a long-term development of this segment of economy. As Mr. Dauster emphasized, most of the laws in the area of economy are not harmonized with the European standards, on the one hand, while on the other, this area is not codified at the state level. I cannot believe that the 'international community' has never thought over the last 12 years that it would be necessary to explain to the local authorities that the imposition of the state-level laws on business companies, obligations, bankruptcy and liquidation, the banking sector etc., is necessary for BiH to function on the principles of the 'rule of law' and 'single market', in terms of Articles I/2 and I/4 of the Constitution of BiH. The passive attitude of the local authorities is something which I can understand but cannot justify. The passiveness of the 'international community' is something which I cannot understand nor can I find a justification for their inaction.

In conclusion, the 'international community' has to continue to use its Bonn powers in all areas, at least those covered by the GFAP. It is obliged to do so by the GFAP and the agreement it has with BiH that it will assist this country in building a functioning state. In doing so, however, the 'international community' has to act in a democratic way, in accordance with the Constitution of BiH. If the Constitution of BiH poses an obstacle to further development, it has to change it if the local authorities fail to do so. This is

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 238

an imperative of the development. Education of BiH citizens in how the state should be run has to be a parallel process. Thus, the 'international community' may leave BiH the moment it sees that a critical mass has been developed, which will be able to continue to lead the state in a positive direction. BiH is still too far from it and BiH needs the 'international community', but not as a passive observer and a theoretical interpreter, but as an active participant in the reform processes.

DISCUSSION

Nurija Omerbašić, Director, Institute for Peace and Co-Existence of Civilizations

Ladies and gentlemen, it is my great pleasure and honor to greet you on behalf of the Foundation, Institute for Peace and Co-Existence of Civilizations[8], which was formed last January. The Institute was initiated by Mr. Clinton, former President of the United States of America, when he said that polarization among civilizations had reached such a level that there was a serious threat of the conflict of civilizations; thus he believed that Bosnia, as it is, multi-ethnic for centuries, should play its role and be the link; Bosnia should do something and bring peoples closer together.

Regarding Annexes IV and VII which have already been mentioned here, I would like to raise the issue of the responsibility of the international community: why should we not tally the balance of the effects of the implementation of both Annexes? In terms of their content, and as parts of the Peace Agreement, they have the same value, and the same content. However, the smaller entity puts the fact that it covers 49 percent of the territory before anything else and is forcing only that right. But at the same time it escapes the obligations arising from Annex VII. In this regard, the international community cannot avoid its own responsibility. The other thing which I would like to mention concerns shifting the responsibility of the international community, under the following excuse: „You should reach an agreement." I cannot understand this, as the cause to all the problems in this entire chaos is the Dayton Constitution, which envisages and creates for the smaller entity the right of veto over the whole. In this situation there is no possibility

8 For more information about the Institution, see www.ipacc.ba

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 239

for the 'two' to reach an agreement. If one has the right of veto, how will it be possible for the other one to reach an agreement? It turns out in the end that it is possible to reach an agreement only over the issues beyond the positions created by war or that the aim is to take even more. Those are not the parties which could make an agreement. In this case, the international community should invoke its powers which protect the rights of citizens, which have been seriously violated under all international standards. How could we solve this problem? The question is, in fact, how could we change the part of the Dayton Constitution which created the veto? Persistent insisting on the agreement by and between the victim and the criminal, under the right of veto given to the criminal, is the defeat of the international community, the defeat of the good and the victory of evil. The international community has to find a way to solve that. I have a question for Mr. Manfred Dauster: how could we eliminate the Dayton Accords? How could we change the Accords? I think that we should rely on the international law, international contractual law and the constitutional law of Bosnia and Herzegovina.

Thank you for giving me an opportunity to join the discussion.

Mirsad Ćeman, The Forum of Parliamentarians 1991-1996

Thank you. Distinguished ladies and gentlemen, first of all let me tell you that I fully agree with all the presentations by key-note speakers, other speeches and commentaries that the state of Bosnia and Herzegovina – I mean the level of the state – should be given more responsibilities, especially in some areas which have been mentioned at the Conference so far. Let me make a short reference to the morning session – I was in Geneva in 1993 when the concept of Bosnia and Herzegovina was being discussed. I bear witness to the fact that, in fact, those who represented the international community were putting a straitjacket on Bosnia and Herzegovina as the well-known Stoltenberg's Plan – as well all previous and subsequent plans – were based exclusively on an ethnic concept. My comment after that was that if what we refer to as the international community wants Bosnia and Herzegovina, then it does not want to see it as a state or a society, according to a tiger's skin metaphor, it is rather the skin of the cow which – as we all know – has large patches which we now recognize as the entities.

I am absolutely pleased to hear the voice of the academic community including professor Grebo, promoting the Supreme Court of Bosnia and

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 240

Herzegovina, since it is clear that without the Supreme Court at the level of the state of Bosnia and Herzegovina – which cannot be substituted by the Court of Bosnia and Herzegovina because of its jurisdiction – there can be no protection of human rights in Bosnia and Herzegovina nor will the human rights be guaranteed as they should be. Even the Constitutional Court, with some responsibilities, cannot be a compensation for the Supreme Court.

Manfred Dauster

Let me focus on legal issues. I agree that Bosnia and Herzegovina needs a Supreme Court but under the given constitutional order, I think that for the time being it is not possible to have a Supreme Court and take that responsibility from the entities, just like the jurisdiction of the courts and prosecutor's offices, which is at the entity level. Of course, this should be changed. But let me come back to the constitutional reform.

I remember the Venice Commission. I remember when the Court of Bosnia and Herzegovina was to be established as an administrative court and I remember that they talked about the legal framework of the constitution and said that it was not possible to unite divided jurisdiction. I am slightly skeptical.

When I look at the discussions about the police reform, I am expecting and I anticipate that it will be the same kind of discussion about the Supreme Court, if it begins. The entities will again lose a very important jurisdiction and the same is true for the police. I am equally skeptical about the economic situation for I simply believe that one entity can always say that it does not want to transfer its responsibility to the state level.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 241

STUDY

Manfred Dauster*

*Tallying the Balance of Effects of the International Community in Bosnia and Herzegovina, December 1995 – March 2007**

Legal aspects

I. Introduction: Obstacles right in the beginning - too many uncertain tasks, too many participants as an initial uncertainty

«The International Community» has been present and active in Bosnia and Herzegovina on the basis of the Dayton Peace Agreement for almost 12 years. There are some indications of its fatigue and that it would wish to reduce its engagement.[1] Transition (along with the state ownership) remains the goal», reads the Communiqué issued on 26-27 February 2007[2] by the Peace Implementation Council (PIC). Since 26 and 26 February 2007 the International Community via PIC starts from the perspective that Bosnia and Herzegovina will take over the ownership in the future. From the aspect of the defence policy, in early winter of 2006 Bosnia and Herzegovina became a member of the NATO's Partnership for Peace. The talks with the European Union about Bosnia's moving toward the European Union are underway. Still, the question remains whether all this is enough for the country to remain on the track and there is also a question of how the International Community can contribute to that, without reducing its engagement. Taking stock of the actions of the International Community may help make an assessment of what can be expected in the future. It is possible to examine the background of this naive expectation that Bosnia and Herzegovina

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1 Public statements of the present High Representative immediately after he took over as the HR on 31 January, 2006 regarding the implementation of so-called Bonn Powers and the closure of OHR, including the replacement by the Office of the EU Special Representative 30th report of the High Representative to the UN Secretary General /Bericht des Hohen Vertreters an den UN-Generalsekretär/, 15 July 2006 S. 1). - Very critically, International Crisis Croup, Europe Report No 180 of 15 February 2007, S. 1; critical also Süddeutsche Zeitung No. 46 24/./25. February 2007., S. 7; besides Süddeutsche Zeitung No. 50 of 01 March 2007, S. 8

2 See www.ohr.int

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 242

will remain on the track after such a long monitoring period, and this could cause scepticism that such expectations are shaky. The International Community will disengage and withdraw, sooner or later, so that taking stock after more than one decade seems to be legitimate. Regarding «Bosnia's remaining on the track», any idea about withdrawal inevitably means that in the future Bosnia and Herzegovina will play a much stronger role in choosing the «path», even the «right» path.

If we are to tally the balance of the effects of the International Community in Bosnia and Herzegovina, the first question to be asked is whose stock should be taken, what is the International Community in Bosnia and Herzegovina.[3]

The work of the International Criminal Tribunal for the Former Yugoslavia (ICTY) is not considered in this research paper. The jurisdiction of the tribunal is not limited to Bosnia and Herzegovina, which should be dealing with war crimes committed in the territory of the former Yugoslavia, although most of the trials have been conducted in connection with the atrocities committed in Bosnia and Herzegovina between 1992 and 1995. But this should not diminish the importance of ICTY in prosecuting crimes, especially those committed in Bosnia and Herzegovina. The judicial prosecution of and eventual trials for war crimes is crucial to the country's self-awareness and its historical perception, and thereby it is an integral part of comprehension of the state and its sovereignty. Reconciliation of different groups in the country is almost inconceivable without a formal judicial consideration and procedures at ICTY (now in cooperation with the Court of Bosnia and Herzegovina with which the tribunal has already begun to share the work). There will be no discussion about the judgment of the International Court of Justice of the United Nations (ICJ) which decided in its judgment of 26 February 2007 about the outcome of the dispute between Bosnia and Herzegovina and Serbia regarding violations of the United Nations Genocide Convention, adopted on 9 December 1948. ICJ is one of the main bodies of the United Nations[4] without a special mandate which would be restricted to Bosnia and Herzegovina only.[5]

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3 Peace Implementation Council consists of 55 states and many international organizations and a varying number of observers. See OHR web www.ohr.int. There is also the Board of Principles with permanent members: OHR, EUFOR, NATO HQ Sarajevo, OSCE, UNHCR, EUPM; EC, the WB, IMF and UNDP. The history and tasks of the Board of Principles can also be seen on the OHR web site.

4 Article 4, paragraph 1 of the UN Charter; Article 1 of the ICTY Statute.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 243

The information about that is given first of all in the Dayton Peace Agreement and its Annexes. They cover the areas of politics and tasks assigned to various international organizations – in addition to the national responsibility which was preserved – they have the final say. We shall not name them all here. A part of that is the aspect of military security which – no matter how it was and remains important for peace – is only support to civilian aspects of the Peace Agreement. The military tasks carried out by IFOR, then by SFOR and finally by EUFOR[6] will not be discussed in detail in this paper. Since this paper concerns civilian aspects of restoration of peace and peace- keeping in Bosnia and Herzegovina, we should mention first of all the High Representative who under Annex 10 of the Peace Agreement should be and has been ever since the Agreement was signed responsible for the implementation of those civilian aspects.[7] They are not specified and they have been understood in very broad terms. They include economic recovery, refugee returns, improvements of the constitution and establishment of new institutions, in fact, each area of politics is included. Even the simple cases at the municipal level required actions by the High Representative if they were related to the fundamental issues of ensuring peace. In addition, the Peace Agreement envisages a coordinating role of the High Representative between all other civilian, international organiza-

5 The Judgment of ICJ of 26 February 2007 caused disappointment in the public in Bosnia and Herzegovina as it denied the direct responsibility of the state of Serbia (former Federal Republic of Yugoslavia) for the crimes committed during the war 1992-1995, whereby rejecting the obligation of Belgrade to pay war reparations. The disappointment is based on great expectations of the public in Bosnia and Herzegovina over what ICJ could achieve. The judgment is important for the legal history as it is for the first time that ICJ established the responsibility of a state in principle, and not only an individual responsibility (judgment: Urteil, S. 58 and further articles 155 and onwards), while the international community received a binding definition of a genocide (Urteil, S 75 and further articles 2002-230) and the judgment gives clear rules of recognition of evidence (page 135 and further, articles 377 and onwards). Bosnia and Herzegovina did not lose the case completely. ICJ clearly established that genocide had happened in Srebrenica and that Serbia had violated its obligation to prevent this and other atrocities in Bosnia and Herzegovina, although Belgrade had recognized the events as such and had the possibility to prevent it by its involvement.

6 27 ministers of defense of the European Union agreed on 1 March 29007 in Wiesbaden to reduce troops of the EU within a four-layer plan. The current size of the troops is 6500. Within the first step 3,500 troops will withdraw. By the end of 2007 a total of 2500 troops will remain (Süddeutsche Zeitung No 51 of 02 March 2007, S. 8)

7 The efficiency of the High Representative in Bosnia and Herzegovina and his responsibility should be analyzed in detail also beyond this paper, because if we follow the proposals for solutions provided by the UN envoy for Kosovo, the 'international community' there should also establish a similar situation during an interim period. The mistakes made in Bosnia and Herzegovina should be avoided in Kosovo.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 244

tions which are co-responsible or have the sole responsibility under the Peace Agreement for certain tasks. So to speak, as a doyen of the International Community, he should take care of that, in order to prevent the international political atomism. He should ensure unified approaches of the International Community. Along with the High Representative, OSCE took over many tasks, for instance in the area of building and developing a constitutional system; the Council of Europe took the responsibility for human rights, democratization and establishment of a democratic election system in accordance with Western standards. UNIPTF/UNMIBH took over the task of building a democratic apparatus, in order to ensure security and safety in the country, the task which is now carried out by the European Union Police Mission. The list is not exhaustive and it is much longer. There is no exhaustive list of the tasks which the international organizations wanted to and should deal with after 1995. Immediately after the signing of the Peace Agreement they covered the whole civic life in Bosnia and Herzegovina. Exclusively and from the aspect of the international law, the mandatory members of the International Community who were also mandated to carry out those tasks were joined since the very beginning by other, self-selected stakeholders whose role should not be underestimated. Those were and still are diplomatic missions which represent special interests of their countries in this region of the West Balkans. Their job became legitimate through their members in the Peace Implementation Council, the body of the International Community which provides the advice to the High Representative and support. The organizations which provide support and which remain close to the governments are in the shadow of diplomatic missions. With their significant donations they affected the developments in the areas of their interest. There are also non-governmental organizations from abroad which defined their tasks in the development of the country and which tried to implement their tasks in the decade after 1995 not always in a perfect harmony with the organizations which are obliged to act in accordance with the international law or at least politically legitimate stakeholders.

The music played by all players at the concert of the reconstruction in Bosnia and Herzegovina was not harmonized well, although the institution of the High Representative and his coordinating roles should have ensured that, ideally, there was one conductor with the full responsibility and who should and could have prevented the worst disharmony possible in a concert hall.

However, even the best conductor will hardly make any contribution to success, if musicians get only parts of scores during rehearsals while they

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 245

are allowed to improvise after the general rehearsal. This was and remains the key problem to the allocation of the tasks under the international law, the tasks given by the Dayton Peace Agreement to different members of the International Community in Bosnia and Herzegovina. In a grammatical analysis of the program sentences with some unclear clauses, different thematic areas were described descriptively, they are overlapping partly, and they are vying in part. How a democratic state should look like has been studied by the general theory of the state and law and political science since Demokratia was applied for the first time in antic Polis. What does "democratization" mean? Of course, Bosnia and Herzegovina should be the rule of law, as it is requested by its Constitution. But there is as much of the rule of law as there is democracy. The Peace Agreement and its Annexes were open topics. This was perhaps a mistake. On the other hand, it should not be the task of a peace agreement – and especially not of an agreement such as the Dayton Agreement, which was created and had to be created under known, extremely difficult political circumstances and under the greatest political pressure ever in order to put an end to slaughtering people – to offer a fully elaborated, detailed draft of the government agenda, which should serve as a basis for elaboration of the specific actions, and which would become binding. Generally, this is not possible and it was not possible in 1995 in Bosnia and Herzegovina.

We should add to this a concept of a joint action by the International Community and state institutions offered by the Dayton. Neither from the aspect of the international law nor from the aspect of the Constitution did the International Community take over its own responsibility for Bosnia and Herzegovina in 1995. Had Bosnia and Herzegovina been under the international protectorate (which was said during some periods and for which some High Representatives and the International Community as a whole were reproached) the lack of a comprehensive programme of implementation which would last for many years could be attributed to the International Community as its fatal sin. However, in international law and constitutional terms, the concept of the Dayton Agreement remains a joint action of the International Community together with the state institutions which should be involved on the basis of the Constitution. Nothing has been changed in this main principle of the consensus by so-called Bonn Powers invested with the High Representative in 1997. For, their implementation should be an exception from the consensus. This is why the principle of consensus requested both sides to develop on the basis of the Agreement political programmes necessary for their implementation. This did not happen in the period

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 246

which followed immediately thereafter. Besides, not only did the Dayton put an end to the three-years long war but also represented the beginning of a much more comprehensive process of changes in Bosnia and Herzegovina.[8] The country was not only characterized by the consequences of the war and damages resulting from the war, such as refugees, expulsions as a result of ethnic cleansing etc. In 1995 the country was at the threshold of changing its system from a socialist centralized, economic, and social order to a democratic, sovereign, and market-oriented system. In economic terms, the situation became even more tense and strict, because the economy of Bosnia and Herzegovina lost its foreign policy background after the dissolution of Yugoslavia and its restoration in 1995 was quite uncertain. The Dayton and the Dayton tasks with specified individual programmes could not turn in 1995 to these comprehensive tasks. To cope with these tasks was the next assignment of the International Community.

Now we should establish whether this was the case with the tasks defined in 1995 in the area of judicial reforms. Now it should be clear which obstacles prevented that.

II. Important steps on the path of reforms of Bosnia and Herzegovina taken under the International Community's pressure or which the International Community took alone

Not all activities of the International Community since 1995 should be presented here. Nor can they all be presented. This 'interim' stock will be limited to the important and permanent results of the international actions.

Immediately after the Dayton Peace Agreement was signed in the autumn of 1996 democratic elections at all levels of Bosnia and Herzegovina took place. ***Democratization*** was a priority task which was taken by the OSCE. In the years following 1995 a legal framework was created for the institutions required for democratic elections, the OSCE monitored a whole range of laws, of which we shall mention the most important:

The (entity) laws on political parties,[9]
The general election law,[10]

8 Ibid. International Crisis Group, Europe Report No 180 of 15 February, 2007, page 2.

9 Federation of Bosnia and Herzegovina, Official Gazette of FBiH, 27/91; RS Official Gazette 15/96

10 BiH Official Gazette 23/01

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 247

The law on funding of political parties,[11]
The law on conflict of interest in the government institutions of Bosnia and Herzegovina.[12]

The judicial review of elections was assigned in the autumn of 2000 to the Court of Bosnia and Herzegovina established by the High Representative's decision.[13] In addition to institutionalization of review of elections, the decision was also important for the state of Bosnia and Herzegovina as the seed of judicial institutions was sowed at the state level (we shall focus on other tasks assigned to the state court further below).[14] Bosnia and Herzegovina now has (largely) democratic election system thanks to the permanent efforts of the OSCE. The elections have been the national responsibility since 2000. There are no grave objections by international observers of elections. True, the election system is still going through constitutional and legal early throes which will not be removed without the constitutional reform. In an attempt to respond to all ethnic components of the nation of Bosnia and Herzegovina, the Dayton Agreement created a system of obstacles and hurdles (such as the blockade by the minorities), which run counter to the principle of equality or the basic right to an equal access by all citizens to public services. This unequal treatment which was criticized, among others, by the Council of Europe's Venice Commission, which is also in contravention of the OSCE Copenhagen criteria from 1990, which may help the EU make a decision for a candidate country moving closer toward the European Union, should not be attributed to the OSCE and the International Community.[15] The International Community had to cope for years in the given constitutional and legal situation. The constitutional reform was a taboo for many years, and serious talks began only a few years ago. But whether the obstacles which bring about inequality in elections will be removed in the coming constitutional reform remains a question.[16]

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[11] BiH Official Gazette 22/00

[12] BiH Official Gazette 12/02

[13] BiH Official Gazette 29/00. Regarding the current tasks of the Court of Bosnia and Herzegovina, see Dauster, Das Staatsgericht von Bosnien und Herzegowina, StraFo 2006, 314 ff.

[14] See II

[15] Helsinki Komitee, Human Rights Report for Bosnia and Herzegovina - January-December 2006, page 2.

[16] Perhaps pressure from outside the country could help (see: International Crisis group Report in Jakob Finci's application to the European Court for Human Rights, Europe Report 180 of 15 February 2007., page 11).

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 248

Elsewhere, in the area of democratization and ***parliamentization*** of the state institutions, monitored by OSCE in the first place, there has been hardly any success. This primarily concerns the implementation of the principle of a representative democracy in the parliaments in Bosnia and Herzegovina, parliamentary self-awareness in regard to the government, parliamentary oversight over the executive authorities, especially in the area of the budget, parliamentary accountability to the media, and also the understanding of the role of political parties in representative democracy. Some deficits can be noticed here, in comparison to the EU standards.[17] They concern a hardly perceivable public control of expenditures by the parliaments or underdevelopment of political parties which is manifested in their ability of long-term or short-term planning, the ability to develop and implement programmes. Necessary legal frameworks exist. Deficits continue to be based on the comprehension of the role of political institutions and their individual members. Overcoming of the manner of thinking deeply rooted in the client who works in favour of the party or in an ethnic voter, the manner of thinking which is not in favour of the whole country is probably the issue of generations and can hardly be overcome in the present political environment. No matter how the legal frameworks developed after 1995 are perfect in terms of the fully functioning representative democracy in comparison to the EU standards, the ideas and principles behind them do not seem to have reached the politicians.[18]

Another primary goal which the International Community was implementing in its policy in Bosnia and Herzegovina concerned ***returns of refugees and displaced persons*** to their pre-war homes. This policy - the results were achieved with strong efforts over many years[19] - remains only

[17] The Republika Srpska Government announced in the winter of 2006/2007 a boycott of the state television BH TV and refused to provide any information and cooperation as in its opinion television had released untimely and inadequate reports about the Republika Srpska national holiday celebration.

[18] See also Helsinki Committee, Human Rights Report for Bosnia and Herzegovina - January-December 2006, page 2, especially in regard to slow implementation of the election results in the formation of the governments and other institutions.

[19] Much more optimistic is the 24 High Representative's Report to the UN Secretary General (24. Bericht des Hohen Vertreters an den UN-Generalsekretär) of 13 October 2003., page 1 - as a consequence of that, announcing that due to the failure, by the end of 2003 the apporpriate department of the OHR would be closed. Also see the reports: 24. High Representative's Report to the UN Secretary General of 13 October 2003., page 9 f.; 25. High Representative's Report to the UN Secretary General of 3 March 2004, page 14 f.; 26. High Representative's Report to the UN Secretary General of 18 November 2004, page 20; 27. B High Representative's Report to the UN Secretary General of 12 April 2005, page 14 f.; and a critical and differentiated report, 30. High Representative's Report to the UN Secretary General of 15 July 2006, page 15 f.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 249

partly successful.[20] Its implementation in the legal system of Bosnia and Herzegovina did not leave any important or durable effects. Attempts were made to achieve it within the existing legal framework – with variable success though.[21] True, it was necessary to create the favourable conditions. This may not be worth mentioning in other countries. But in Bosnia and Herzegovina the introduction of a new ***system of license plates*** was a side effect which generally established only physical freedom of movement across the country and was conducive to refugee returns. If the origin of a vehicle could earlier be recognized on the basis of a combination of letters standing for a place of registration of the vehicle, as SA stood for Sarajevo, a new system made the place of registration anonymous, and the time and probably the place of residence and thus gives all owners of cars freedom of movement.

The International Community affected also the creation of awareness of Bosnia and Herzegovina's international legal personality. The flag and the anthem of the country exist and were accepted thanks to the pressure of the International Community. ***The state symbols*** of Bosnia and Herzegovina are no longer a matter of dispute.[22] Still, up until this date they could not agree on the text of the anthem. This seems to be indicative. There is one more thing which catches your eye when driving through the country. Depending on which ethnicity forms a majority, the state flag is often displayed next to the symbols of the majority group. This is further indicative and could be interpreted as a continued fragility of the country.

Crucial to sustainability of Bosnia and Herzegovina and stability of its currency up until this date, which are unique in the whole region, was – and probably inconceivable without the influence of the then international governor of the Central Bank, Peter Nicholl – the abolition and replacement of a dinar, a traditional currency in the former Yugoslavia, by a ***Convertible Mark*** throughout the country[23] ..... The German Mark was an unofficial cur-

[20] Critical: Helsinki Committee, Human Rights Report for Bosnia and Herzegovina - January-December 2006, page 3 ff. With many quite worrying individual cases and specific data about them. - The media in 2006 always reported about the attacks on returnees, which were violent and ethnically motivated.

[21] Helsinki Committee, Human Rights Report for Bosnia and Herzegovina - January-December 2006, page 4.

[22] The situation regarding entity symbols is different. In 2006 the Constitutional Court of Bosnia and Herzegovina found that they were contrary to the Constitution as they symbolize ethnicity of one entity only (see the decision of 31 March 2006. Official Gazette of BIH, Nos. 19/01, 12/98 and 14/03).

[23] Official Gazette of FBIH, 26/98, BiH Official Gazette 10/98,

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 250

rency in Bosnia and Herzegovina, the second currency since the war and it saw a galloping inflation in the former Yugoslavia. This is why the name of a new currency was a mark and a pfennig, the names close to the people, and it was pegged to the German Mark (and later to Euro as from 1 January 2002). This and financial and monetary policy which the Central Bank followed independently from the state institutions, prevented an inflation which was a symptomatic characteristic of the YU dinar and created an island of stability in Bosnia and Herzegovina, which is unique in the West Balkans.

Elsewhere, in the area of ***reforms of economic policy or economic reforms***[24], the influence of the International Community was either less noticeable or least to say, was not durable. Before 2000, the High Representative used to make precise decisions stimulating economic reforms; this equally refers to all areas of economy, and to social welfare. True, a private banking sector exists primarily thanks to the political and financial impact of the World Bank and the International Monetary Fund. But a new regulation of this sector was largely in the hands of the entity legislators, the institutions of which were considered responsible for partly unsuccessful implementation of the reforms. The effectives of the public oversight over the banks in both entities could be examined, in view of numerous cases of bankruptcy of the banks in Bosnia and Herzegovina. The sector of privatization of public companies should also be examined with some reservations. Privatization is being implemented with delays, and under different pace in the entities. Other decisive reform projects in the area of economy remain on thin ice and will probably be addressed in the next stages of accession to the European Union. The International Community cannot be credited for the progress made in the economic reform – although it is aware of the economic problems of the country since long ago. Restrained steps which are not characterized by continuity, the steps taken toward co-responsibility, could be noticed only during the term of High Representative Wolfgang Petritsch and then Paddy Ashdown.[25] The responsible representa-

[24]Also see International Crisis Group, Europe Report No 180 of 15 February 2007., S. 24

[25]His so-called "Bulldozer Initiative" from 2002 (which involved USAID, the WB, EC and IMF under the auspices of OHR) should remove the obstacles in economic life and create jobs but did not have long term effects (see 24. High Representative's Report to the UN Secretary General of 13 October 2003., page 4)(see also 25. High Representative's Report to the UN Secretary General of 03 March 2004., page 6; 27. High Representative's Report to the UN Secretary General of 12 April 2005., page 9 f.; 28. High Representative's Report to the UN Secretary General of 17 November 2005, page 8 f.). Very optimistic was the 30 High Representative's Report to the UN Secretary General of 30 July 2006, page 11 f.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 251

tives of the International Community do not deny deficits.[26] The legislation pertaining to real estate has not been reviewed, there is no complete data in the land registers and the processes taking place outside the land registers are not shown. This obviously does not create a feeling of insecurity among investors only. Private trade and contractual (obligation) law continues to wait for a national code and modernization. This deficit too is an economic and political obstacle, especially for foreign investors. The right of private trade companies is characterized by bureaucratic obstacles. The Law on Bankruptcy and Liquidation is also waiting for adoption at the state level. The courts are overloaded with the cases arising from the Law on Bankruptcy and Liquidation and the Law on Litigation is characterized by the lack of incentives for faster procedures. Slow litigation is in favour of debtors, and prevents investments. This criticism will be broadened in a review of the civil enforcement law. A creditor, who won a procedure in the end, after a long time, feels cheated because of new bureaucratic and procedural obstacles he is facing time and again.

Although the interim stock of economic and political reforms is rather negative, Bosnia and Herzegovina has the ***customs and tax legislation*** in place thanks to the European Union and its CAFAO programme (including the subsequent programmes)[27]. The legislation is in accordance with the European standards. The implementation process has not been completed yet, although it is on the right track. This can probably be explained by the fact that one part of CAFAO programme concerned the construction of modern customs and tax authorities. This became clear in 2006 after the sales tax was introduced[28] which resulted in a clear increase of public revenues and this is probably a kind of tax which is fully paid by tax payers. The situation is by far less satisfactory in the area of ***public expenditures***. Deficits in the parliamentary policy of expenditures are already mentioned above. Besides, in considering the situation with the budget in Bosnia and Herzegovina, an unjustified high consumptive national quota may be established. It is the result of financing of excessive numbers of state structures as a result of the Dayton Constitution. Dozen of ministries of the interior and justice are too much for a country as Bosnia and Herzegovina with such financial abili-

[26] See an interview with the Principle Deputy High Representative Lawrence Butler, Bosnian Daily, No. 1428 of 23 January 2007, page 5, who put the blame on the national institutions.

[27] 24. High Representative's Report to the UN Secretary General of 13 October 2003, page 5; 25. High Representative's Report to the UN Secretary General of 03 March 2004, page 6 f.

[28] See The High Representative's Report to the UN Secretary General of 15 July 2006, page 12

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 252

ties on top. But within the system of state structures established by the Constitution the state institutions and the International Community have not launched a permanent ***public administration reform***, which would be oriented to rationalization.[29] Public administration at all levels is overstaffed and serves – as in many other countries who are in transition from socialist system to the market economy – the purpose of the staff and their employment, substantive law of the public administration has not been critically reviewed, in order to see whether it serves the purpose of executing the necessary public services or the tasks are arbitrarily created which in the end require administration.[30] In this regard, we should mention numerous applications which need to be filled out for licenses and permits, which do not show a real administrative purpose. An impartial observer cannot help the impression that the applications are required only to make the size of the public services and their numbers legitimate. Smaller bureaucracy in well-understood terms of free trade, crafts, professions and economy in Bosnia and Herzegovina has not been a real topic since 1995, although there is an internal link between these unnecessary tasks of public administration and corruption, which is a problem to the country, and the link is known to all stakeholders and participants.

Besides, the International Community is co-responsible for the existence of uncontrolled state structures. In a well-understood legitimate interest of strengthening state structures with the aim to improve national unity, the International Community created institutions at the state level, without taking care of closing institutions at entity level, proportionately, and of transferring tasks fully to the state level.

A problematic mutual link exists between oversized and poorly controlled paid public administration, poorly financed structures of institutions and economy which is suffering due to obstacles to investments – the International Community has been aware of this at least since 1998 when CAFAO spoke

[29] The formation of the State Border Service on the basis of the Law on Public Service from May 2002 (BiH Official Gazette 12/02) included, just as the law did, only one part of the problem, the Law on Public Service and its implementation. It did not refer to the key problem of public affairs and tasks.

[30] The previous mandate of the Unit was comprehensive. The Unit provided advice and support to the state institutions in their efforts to fight corruption and organized crime, in individual cases. This semi-operative task was broadened in 2001 when Anti-Fraud Department after the Hercegovacka Banka was taken over on 6 April, 2001 should prevent actions leading to coup d'etat by radical elements in HDZ, and was successful in that. Besides, the task of AFD was since the beginning to deal with the criminal law reform, and to work systematically on building awareness of people about damages inflicted by corruption.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 253

publicly about the phenomenon of ***corruption*** which was spreading across Bosnia and Herzegovina more and more, and asking the International Community to assist in its suppression. The Office of the High Representative established an Anti-Fraud Unit[31] which, in view of the size of the task – to fight corruption – was understaffed since the beginning. But this Unit is credited for the clear knowledge grasped in 2000 and 2001 that an effective suppression of crime in Bosnia and Herzegovina requires a ***comprehensive reform of the criminal law***. Around the same time the Office of the High Representative began, independently from the efforts of the Anti-Fraud Unit, to reform the formal and substantive criminal law – ***a comprehensive reform of the judiciary***. For that purpose, in 2001 an Independent Judicial Commission was formed within the OHR with the task to make plans for a comprehensive reform of the laws on judicial and prosecutorial service with a view to reducing the judicial apparatus, if possible, ensuring an institutional and individual independence of judges and implementing a comprehensive reform of the law on litigation. The purpose of reforming substantive criminal law in order to improve suppression of corruption, the same legislation was made at the entity level, including the legislation in the Brcko District, as the criminal law in different administrative units in Bosnia and Herzegovina was getting ever more different over the years. The criminal law had to be modernized at the same time, and a new development of crimes such as money laundering, organized crime and human trafficking had to be taken into consideration. If it is permissible in terms of law and constitution, a single criminal code was required for the whole of Bosnia and Herzegovina which, among other things, envisaged the possibility, under international commitments of Bosnia and Herzegovina, of effectively prosecuting war crimes cases by the domestic courts. For, it was noticed easily that the tasks would be shared between the ICTY and the judicial institutions in Bosnia and Herzegovina. The criminal law reform primarily concerned an increased efficiency of the trials, through the concentration of

[31] An important decision was made in the autumn of 2000 regarding the formation of the Court of Bosnia and Herzegovina (see the High Representative's decision of 12 November 2000 (BiH Official Gazette 29/00). The decision of HR established the court for review of elections and an administrative court. But the decision also contained a clause which would later give the court jurisdiction in criminal matters. The Republika Srpska National Assembly had doubts over the legality of the law and filed an application with the Constitutional Court of Bosnia and Herzegovina, which issued a decision on 28 January 2001 and recognized constitutionality of the law (BiH Official Gazette 32/01). There was no doubt over the state of Bosnia and Herzegovina having its own judicial institutions ever since.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 254

investigative powers in the offices of prosecutors, along with the abolition of an investigative judge, with the aim to create an order-issuing hierarchy between the prosecution and the police, which had not existed before, with all negative consequences. The criminal procedure had to be de-formalized, the rights of the accused had to be strengthened, the right to a legal remedy had to be made stricter, and freed from anachronistic formalism.

The criminal law reform and judicial reform which began toward the end of 2001 were the most complex reform project in which the International Community took the lead and responsibility via the High Representative. The state institutions signalized their broad will to cooperate, but in the end were pleased with the role of participants. At the same time: implementation was not problematic. The former High Representative Wolfgang Petritsch remained restrained about a clear definition of reform goals[32] probably because his term was expiring in May 2002 and he did not want to prejudge the actions of his successor Paddy Ashdown or his policy. But his restraint caused insecurity. The Anti-Fraud Unit and the Independent Judicial Commission prepared reforms with too an open result. The broadness of the matter and goals made other members of the International Community interested in getting engaged. Too much energy had to be invested in channelling various paths of assistance. The question was raised about the direction to be taken by Wolfgang Petritsch's successor.

The reform process was largely speeded up after Paddy Ashdown took over as the High Representative. The reorganization of the Office of the High Representative led to a situation in which Anti-Fraud Unit became an operational unit fighting crime and lost responsibility for the criminal law reform.[33] One part of the responsibility was transferred to a special unit in charge of reforming prosecution which made its proposals for the reform in the autumn of 2002. It proposed the abolition of municipal prosecution and transfer of their jurisdiction to the cantonal prosecutors and those of the Brcko District. As Ashdown decided to assign prosecution of serous crimes including organized crime to the Court of Bosnia and Herzegovina[34] the proposals also envisaged the formation of the Office of the Prosecutor at the state level. They also contained the enlargement of jurisdiction of the state court to include prosecution of serious crimes. The proposals of the Independent Judicial Commission regarding the reform of entity courts were pre-

[32]See 24. High Representative's Report to the UN Secretary General of 13 October 2003, page 1

[33]24. High Representative's Report to the UN Secretary General of 13 October 2003, page 2

[34]24. High Representative's Report to the UN Secretary General of 13 October 2003, page 2

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 255

sented to the High Representative in the autumn of 2002, and they were less radical. The municipal courts (as counterparts to the municipal prosecution) were not abolished fully, although their number was largely reduced[35] from 78 to 47. The closure of municipal prosecution and reduction of the number of judges and prosecutors which was set as a goal in 2002 – the number, compared to an average EU standard – seemed too high and it was believed that it would not be possible to fence the whole apparatus. The Judicial and Prosecutorial Councils which began to operate in the autumn of 2002 in order to guarantee independent judiciary, prosecution, judges and prosecutors, vetted judges and prosecutors to judge their skills. Finally the number of judges was reduced by almost one half.[36] Under the High Representative's decision that serious crimes including organized crime will be prosecuted and tried at the Court of Bosnia and Herzegovina, it was necessary to draft a state-level Criminal Procedure Code and the state-level Criminal Code. The codes were drafted in the autumn 2002 by a sub-unit in the Office of the High Representative, which focused on the above-mentioned reform goals, and they came into force on 1 March 2003[37]; simultaneously with entry into force of the state Criminal[38] and Criminal Procedure Codes[39] the State Court[40] and the Office of the Prosecutor of Bosnia and Herzegovina[41] began to work. Regarding prosecution of organized, economic crime and corruption, the changes envisaged by the High Representative also envisaged (temporary) cooperation between international judges and state prosecutors.[42] [43] To supplement the Codes, the High Judicial and

[35] The overall number of prosecutors remained largely the same, as the planned abolition of an investigative judge the jurisdiction for investigations was transferred to prosecutors. This meant many more cases and made the decision not to reduce the number of prosecutors legitimate.

[36] Procedural and criminal codes at the level of the state were used by the entities and the Brcko District to harmonize their procedural and substantive criminal law.

[37] Criminal Code (BIH Official Gazette, 36/03, 3/03, 37/03).

[38] Criminal Procedure Code (BiH Official Gazette, 36/03)

[39] The Law on the Court of Bosnia and Herzegovina (BiH Official Gazette, 29/00)

[40] The Law on the Office of the Prosecutor of Bosnia and Herzegovina (BiH Official Gazette, 24/02)

[41] Cooperation between international judges and public prosecutors will end at the end of the interim period on 31 December, 2009. The state court and prosecution of Bosnia and Herzegovina will remain solely national institutions.

[42] Earlier international judges and state prosecutors were appointed by the High Representative, on the basis of which they would work as judges and prosecutors. Since 2006 this is the responsibility of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, on the basis of an international agreement between the High Representative and the Presidency of Bosnia and Herzegovina (BiH Official Gazette 10/02).

[43] BiH Official Gazette 22/02.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 256

Prosecutorial Council of Bosnia and Herzegovina[44], as a state body of judicial self-rule and autonomy of the state prosecutors was formed on 1 June 2004 instead of the Judicial and Prosecutorial Council.[45] Its responsibility is based on the responsibility of the councils of magistrates in other European countries and is even much broader.[46] It eliminated the Justice Ministry from the judicial management. As for its scope of responsibility, the Council has the character of a European model.

In the early 2005 the judiciary at the level of Bosnia and Herzegovina saw a final important change. Along with the jurisdiction in the area of protection of the criminal law, the state court was also given the jurisdiction for prosecution and trial of war crimes.[47] International judges and prosecutors will be involved in this area of its work by 31 December, 2009. Other reforms of judiciary, which would change the situation, although they were necessary, were not initiated by the International Community, nor were they implemented. The International Community in Bosnia and Herzegovina invested crucial funds in the judicial reform so far. Without that, the building of state judicial institutions would have been inconceivable. Before 31 December 2006 the total of 16 million euro was invested in the state court and other judicial institutions.[48] Another donor conference in March 2006 brought to the International Community additional 7,7 million euro for the

[44] See High Representative's Report to the UN Secretary General of 03 March 2004, page 1, 4 f.; 26. High Representative's Report to the UN Secretary General of 18 November 2004, page 6

[45] See article 17 of the Law on High Judicial and Prosecutorial Council (BIH Official Gazette 62/02, 25/04). The Council appoints, dismisses, and punishes in disciplinary procedures judges and prosecutors and participates in making all other decisions regarding an individual status. It is responsible for planning of the staff throughout the country and participates in ensuring financial and other resources to the courts and prosecution. It develops plans for initial and continued training in judiciary and in all matters concerning judiciary its opinion has to be paid attention to.

[46] The procedures against war crimes perpetrators in the 1992-1995 war in Bosnia and Herzegovina are conducted at the International Criminal Tribunal for the Former Yugoslavia and may be transferred under Rule 11 and provisions regarding ICTY procedures to the court of Bosnia and Herzegovina, if ICTY approves the referral. ICTV referred until 28 February 2007 the total of 5 indictments against 9 individuals. Of that number in 2 cases a first instance decision has been reached. So - called 11 bis procedures have to be conducted before the state court. Unlike them, the Court of BIH has jurisdiction over prosecution of war crimes in all other cases although it can refer its primary jurisdiction to the entities of Bosnia and Herzegovina. See 26. Bericht des Hohen Vertreters an den UN-Generalsekretär of 18 November 2004., S. 8

[47] 25. HR Report to the UN Secretary General of 3 March 2004, regarding the decisions on taking the responsibilities made on 30 October 2003 at the donor conference in the Hague (*Verpflichtungsbeschlüsse der Donors' Conference in Den Haag*), which referred to the construction of the War Crimes Chamber within the State Court of Bosnia and Herzegovina.

[48] International Crisis Group, Europe Report No 180 of 15 February 2007., S. 13

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 257

period after 31 December 29006, and until the completion of an interim phase on 31 December 2009[49] when the national institutions of Bosnia and Herzegovina should take the full responsibility for their functioning.

III. Assessment and prospects

More than 10 years of the presence of the International Community in the reforms in Bosnia and Herzegovina left an impact. If we can speak of democratic framework requirements – it would not be possible without the International Community. In the area of the building of the rule of law, progress was made, human rights seem to be protected through constitutional and legal jurisdiction (and it is also supported by the ombudsmen)[50]. Still, there is no reason for being relaxed over the progress made nor should we be laurel-crowned with not so many bay leaves. Deficits are still present.[51] In view of nationalist rhetoric[52] which we heard before and during the 2006 election campaign, we should think about fragility of the international personality of Bosnia and Herzegovina. The largest reform project which has largely been implemented by the International Community was the criminal law reform and the judicial reform, which has been implemented only partly. The defence reform which was completed in 2005 by the merger of two entity armies and the formation of the armed forces at the state level[53] does not have so strong international imprint.

Regardless of the above reforms, the reasons for the fact that the International Community left sporadic impacts are also partly caused by the Dayton system the purpose of which remains cooperation between the International Community and the state institutions invited to cooperate by

[49] Ability of Bosnia and Herzegovina to survive in the future is critical. This is why deficits regarding the system of education in the country are assessed negatively. Higher education including universities may be described as very old (see Helsinki Committee, Human Rights Report for Bosnia and Herzegovina - January-December 2006, page 12). The High Representative said the situation regarding the system of education at the universities was chaotic, 16 February 2007 (see www.ohr.int). A critical review and International Crisis Group, Europe Report No 180 of 15 February 2007, pages 1 and 17.

[50] Also Helsinki Committee, Human Rights Report for Bosnia and Herzegovina - January-December 2006, page 1, 2.

[51] See 25. HR Report to the UN Secretary General, of 3 March 2004, page 9,f.

[52] International Crisis Group, Europe Report No 180 of 15 February 2007, pages 12 and 13.

[53] See 24 HR Report to the UN Secretary General of 13 October 2003, page 7; 25. High Representative's Report to the UN Secretary General of 3 March, 2004, page 2;

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 258

the Constitution. Cooperation between the International Community and the state institutions was in the past difficult and only partly successful for the reasons which we can not describe in this paper. In case of a failure, the Peace Implementation Council invested the High Representative in 1997 with the so–called Bonn powers which created the possibility of filling the gap of cooperation with the HR's decisions with legal effect. But different High Representatives defined their constraints, especially when it came to the imposition of laws, depending on their individual understanding of a mandate. The intention here is not to criticize restraint because the idea was not to allow the High Representative to keep the state institutions in the state of a political immaturity. An ideal system of the national/international cooperation in practice could not function and achieve an ideal situation envisaged by the Peace Agreement. Nationally, responsibilities are divided between the state of Bosnia and Herzegovina and its entities, which means that too many partners may raise their voice and request that they should be listened too. Their political interests remain different. Regarding poor constitutional and legal competences of the state government of Bosnia and Herzegovina, it has lacked since the beginning the coordinating role and that role has not been strengthened since the signing of the Peace Agreement. Whether the politicians and parties involved wanted that should be examined, least to say. Regarding the International Community and despite the role of a coordinator assigned to the High Representative and regardless of political competences of the Peace Implementation Council, we can say that in principle and in individual issues divergent political interests and institutional ambitions of various participants prevented or made it difficult to speak with much needed ***one*** voice.

What certainly prevented a bugger success of the International Community over the last years was the fact that in building the rule of law there is no political pragmatism on the part of some High Representatives and on the part of the Peace Implementation Council. This is also true for the economic reforms which have not been implemented yet. In any case, it is also true for internal stability of Bosnia and Herzegovina as no one had a concept of a safe order policy. The International Community acted on causes but did not touch upon the structures which were responsible. During their mandates some High Representatives – of the total of 5 since 1995 – were not interested in thinking in the long run or in implementing a sporadic decision under a long-term pragmatics predicting long-term effects. Political clashes among some High Representatives were more than just painful. Political inconsistency in some periods which are common for long policy imple-

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 259

mentation, which lasted four or five years in the European countries, could not be recognized here. An example could be the then rather successful criminal law reform (the judicial reform stopped halfway, when it comes to the litigation and administrative procedures). Its implementation, after the necessary legal steps were taken, were welcomed and supported by international engagement and financially. This engagement has not been secured[54] which makes difference in regard to the defence reform. Due to security and political reasons the defence reform has an interested mentor in NATO, which guarantees permanent implementation.[55] Something similar is missing in the criminal law reform. It does not have recognizable amicus curiae. Thus, from this aspect, the issue of sustainability and continuity can be raised.[56] The international interest is fading away as it is believed that the train is put on the tracks and will remain on the track. But the condition of the tracks in Bosnia and Herzegovina is often ignored. Political signals for the criminal system, which will be the responsibility of the state, are not good in this country. The state institutions have de lege lata responsibility for prosecuting organized and economic crime, as opposed to the entity prosecution authorities. But the political reality ignores it. In the spring of 2006, with the approval of the International Community[57], claiming to ensure the most consistent prosecution of the crimes, the Republika Srpska established special prosecution and the court. This competing institution raises the issue of whether this "theft" of the priority right means the deprivation of the state responsibilities, given to the state of Bosnia and Herzegovina from the state.[58] A similar development is being noticed also in no-less important area of war crimes prosecution. The primary responsibility for prosecution rests with the state institutions. Claiming that these institutions are overloaded – although interestingly the state court, which has the prime responsibility, has never said it is overloaded and its work so far does not show it – the President of the

[54] Different is 30. High Representative's Report to the UN Secretary General of 15 July 2006 which, carried with euphoria, tells that Bosnia and Herzegovina now has the necessary legal framework and institutions.

[55] See 30. High Representative's Report to the UN Secretary General of 15 July 2006, page 7 in which the constitutionality of the measures is not called in question.

[56] International Crisis Group, Europe Report No 180 of 15 February 2007, page 7.

[57] See 24. High Representative's Report to the UN Secretary General of 13 October, 2003., S. 10 f. On the tasks of the EUPM and expectations. Besides, 26. High Representative's Report to the UN Secretary General of 18 November 2004, pages 3, 13 f.; see also 30. High Representative's Report to the UN Secretary General of 15 July 2006, page 9 f.

[58] International Crisis Group, Europe Report No 180 of 15 February 2007, page 9 f.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 260

High Judicial and Prosecutorial Council requested publicly in the summer of 2006 that a state strategy for war crimes prosecution be developed with the aim to bring the entity criminal courts closer to each other in prosecution. If we keep in mind that the legal punishments of the state court are stricter than the punishments of the entity courts, the question is whether an increased responsibility of the entity courts, as requested, is less directed to the alleged overload or the practice of sentencing. Besides, the current Chair of the Council of Ministers of Bosnia and Herzegovina said in the summer of 2006 that the Court of Bosnia and Herzegovina was the court for 'Serbs only'. In view of this, attention should be given to the fact whether the state institutions which were formed with a strong engagement of the International Community will remain after the International Community disengages or will disappear. The international engagement so far keeps them functioning. The state government has taken care of payments of judicial and non-judicial staff. It is a question whether it will remain the same after 2009.

Finally, the answer to the question about stability of reforms and permanent stability of the country and capability of its institutions comes down to the ***issue of Constitution***. Permanent success of criminal law reform is besides an inseparable part of the ***police reform***[59] which can be considered only from the aspect of the constitution. Prevention and repression of crime are the two sides of the coin which is called 'internal security policy'. If one side of the coin remains unfinished, the coin is invalid.

The reform of the Dayton Constitution, after the issue of the changes was on the verge of a dogmatic taboo during the first years,[60] failed on 26 April 2006 at the state parliament.[61] Some reasons for the failure are given by political scientists who are more competent than I am. But it seems to me that there is something positive, in fact, there is a unified position that the Dayton Constitution fulfilled its function by establishing peace and is no longer creating conditions for the future development with the state structures it created, their slowness, inefficiency in making decisions and their implementation and costs. We do not have to discuss the details of the draft Constitution, but if the reform goal remains the same, i.e. to strengthen the rule of law,

[59] See 24. High Representative's Report to the UN Secretary General of 13 October, 2003., S. 10 f. On the tasks of the EUPM and expectations. Besides, 26. High Representative's Report to the UN Secretary General of 18 November 2004, pages 3, 13 f.; see also 30. High Representative's Report to the UN Secretary General of 15 July 2006, page 9 f.

[60] International Crisis Group, Europe Report No 180 of 15 February 2007, page 9 f.

[61] See 30. High Representative's Report to the UN Secretary General of 15 July 2006, pages 2, 4, 6 f.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 261

attention must be given to the fact that the draft does not cover the protection and fostering of law and hardly focuses on it. A third branch of government is nothing marginal the reference to which would be too much for a Constitution. An observer does not understand whether the division of Bosnia and Herzegovina into four and largely independent legal areas in the most important spheres of litigation, commercial, criminal, and company law, and whether a new Constitution will allow interference with the judicial structures. With four legal areas it is not possible to establish a legal unity and equality. Insurance of legal unity and equality requires a hierarchy in the judiciary with a Supreme Court on top, as a symbol of a unified application of law and development of law. Bosnia and Herzegovina looks like a construction site in constitutional and legal terms. The International Community cannot leave the site just like that unless it will take the risks for internal unity of the state and for regional stability, where these two things are mutually linked. It is even less possible to declare victory and to leave the country silently to its own fate. Strong doubts over sustainability of which has been achieved, over continuity of the reforms which have already started and over the continued functioning of institutions continue to persist.[62]

The Peace Implementation Council considered on 26-27 January 2007 the future of Bosnia and Herzegovina and monitoring of the state by the International Community, especially by the High Representative. The closure of the Office of the High Representative on 30 June 2007 is no longer discussed because of still pending reforms. Another attempt to implement this goal will be made on 30 June 2008 although there is no definite decision yet. On the contrary, the Peace Implementation Council retained the right to re-examine the goal in October 2007 and in February 2008. The Communiqué explicitly emphasizes two important tasks: constitutional reform on the one hand (as a first step of Bosnia and Herzegovina toward becoming a state which will be functioning in accordance with the EU standards on the path to the European Union) and the police reform on the other (as an EU requirement within the same process). Keeping in mind the events in the recent history of those two crucial reforms, even if they become the law in the months to come, critical point is their implementation. Respect for the law, which still needs to be built, will require some time because of the complexity of the issue, certainly more time than is left before 30 June 2008. This is why too tight deadlines for the Office of the

[62] International Crisis Group, Europe Report No 180 of 15 February 2007., S. II

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 262

High Representative could be damaging. One more year is too short a deadline. The PIC assigned a task to the High Representative to present a work plan with the requirements which were not implemented after the Dayton criteria were implemented and after consolidation of the reforms at the state level which are necessary for the stability of the country. In addition to the constitutional reform and the police reform, the work plan will largely affect future activities of the International Community in Bosnia and Herzegovina. It is hoped that in developing the work plan which will affect the decisions, the International Community will be self-critical and that it will describe its own failures. How fragile reforms can be is seen in the judicial reform, and will be seen in the future in the constitutional and police reforms which have not been implemented yet. This paper may help sharpen a critical view. It is its purpose, anyway. The PIC decisions made on 26 and 27 February 2007 show that there are still dark blots. The responsibilities of the High Representative and the EU Special Representative remain unclear.[63] According to the decisions, it is the High Representative who will be giving the tone in the next months.

[63] *Süddeutsche Zeitung No* 50 of 01 March 2007, page 8.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 263

3. REFLECTION OF THE PRESENCE OF THE INTERNATIONAL COMMUNITY IN THE BIH SOCIETY

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 264

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 265

INTRODUCTION

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Thank you, and warm greetings to all participants. When talking about the tallying of balance and when it comes to Bosnia and Herzegovina's society, there are at least two different and important phases in the treatment of our society by the international community: the phase before 2000 and after 2000, which I will describe later.

First of all, I would like to make two or three short reflections about what we have already heard. To begin with, I am talking as a sociologist and I will refer to what the High Representative said about his most recent methodology and about experimenting with the Bonn powers. As a sociologist, when I hear someone talking about *in vivo* experiments in the society, I become full of fears as people should never be subject of an experiment. The things are too serious for an *in vivo* experiment. To remind, even some very important professional discussions were held after some *in vivo* experiments were carried out, even from the aspect of psychology and sociology, as it became clear what people were ready to do with their guinea pigs. My intention is not to go that far and say that the unfortunate phase of an '*in vivo* experiment' which was used by the High Representative should mean that they are playing with us, although I am afraid that many of our compatriots, people who live in this country, sometimes see the role played by the international community in Bosnia and Herzegovina as an experiment. This is something that you can hear in a public discourse, when you are talking to other people; they all say that their impression is that someone is playing with us regarding certain issues.

There is one more dilemma, which was present while I was writing this paper. I am going to refer slightly to my paper. But first of all, I want to mention that not all things which are taking place in the society of Bosnia and Herzegovina are necessarily the product of the action or inaction by the international community. Colloquially, we would say: „Blame us". But this is an opportunity for me to speak a bit more about the role played by the international community.

As His Excellency Ambassador Schmunk was delivering his presentation, I was interested very much in one of his phrases which he said in English: „*Learning by doing*". Ambassador Schmunk has said that the international community is learning by doing here. You know, to learn is one thing, and to acquire knowledge is another thing and it seems to me that those are the

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 266

things which are not understood as they should, when it comes to the international community. If we say that one was learning, the question is whether he or she acquired knowledge and if so, how much knowledge. Let me try to give you a sociological understanding of such things. First, I am going to speak about the state, as it is important to me to make a distinction between the state and the society; regarding the state, my positions are far more radical than those about Bosnia and Herzegovina's society.

One of the relatively small number of recognized female authors from abroad, Sumantra Bose, who wrote about our problems, says effectively that this state is the state of an international design and exists on an international design. This post-Dayton Bosnia and Herzegovina (this *post* refers only to the fact that the Dayton Agreement established BiH as such a state) with its structures as they are is, in fact, the state of an international design and simply I do not think that it would be possible to have any other discussion. There is ample evidence to support this but we should not forget that all this time, from the Dayton onwards, there has always been one important fact regarding the reflection on the society – now I am going to talk about the society.

In the international community (in the papers and analyses) there is an element which is called the 'local consent'. The local consent for the engagement of the international community here to do what it is doing... and that is the Dayton Agreement. The 'local consent' is a fine distinction between the semi-protectorate and full protectorate. In this regard, in fact, nobody can claim that Bosnia is a protectorate, in international legal terms like, for example, East Timor or Kosovo. Bosnia and Herzegovina is different by the element of the local consent, and it is also important that the two neighboring states were also involved in the local consent. It seems to me that we often forget the influence of Serbia and Croatia on Bosnia and Herzegovina even today. Another important question is how different social manifestations and developments in those states spill over into Bosnia and Herzegovina, immediately. Thus, you have the same reaction to the developments in Serbia and in Croatia, in social terms, and in Bosnia and Herzegovina. Of course, as politicians are wrapping it all in the frame of politician interest or a concrete political interest, things become much more important.

But these are the main features of Bosnia and Herzegovina in terms of the Dayton design and the Dayton construct. We have recently had discussions in Bosnia and Herzegovina, which became a kind of mantra – please forgive my using that term as our public discourse was abundant in those issues - about consociation, i.e. the consociative democracy. Bosnia and

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 267

Herzegovina is de facto a consociation. If anyone asks you, and if you read in the newspapers whether the model of consociation is a solution, that one either does not know what he is talking about or he is telling you something in order to mislead your thoughts. This is nothing new; the model of consociation has already been applied.

Regarding consociation, we should underscore that those are interim models of the organization of a state. Let me explain briefly that phenomenon also in theory. It simply implies some basic principles – the first is the so-called grand coalition, which also includes our Presidency, the structures of the House of Peoples, bicameral representattion, ethnic proportionality, the selection of judges - all these issues reflect in Bosnia and Herzegovina the principle of grand coalition. You have the representatives of all interested parties who should reach an agreement on some issues. Consociation also implies the principle of proportionality. Proportionality, in my view, is nothing but all those compositions, what we referred to in the past as an ethnic quota – that is in fact proportionality in terms of consociation. The issue of a third principle, the principle of veto, is nothing else but an ethnic interest. We have the mechanism of the 'vital national interest' – although hardly anyone will know what it means, but everyone knows that it exists. Even my colleagues, lawyers, have told me that there is no definition of the 'vital national interest', but it exists and that is the right of veto. And finally, the segmental autonomy is the structure of autonomies through political institutions, culture, cantons, entities, the Brcko District and so on. Thus, we have consociation in Bosnia and Herzegovina par excellence, and it is one of the possible models.

Now let me ask you a question: what went wrong? That is the sociological analysis which will partly include what we narrowly define as political sociology as it is, in my view, quite a legitimate discipline for the full understanding of this problem.

First, it is becoming abundantly clear that we have the situation of power sharing at the state level, but the power sharing is not functioning in the institutions based on an ethnic principle, and on the principle of proportionality. Why? Because instead of a postive consensus believed to result from proportionality and power sharing, we in BiH have, in fact, a negative consensus. In our communities, in our political system of decision making we have a systemic blocking of decisions which would allow reconstruction. I will not guess now who is blocking them, at any moment, or which decisions, but the problem is the negative consensus. Thus, power sharing and proportionality did not lead to the building of a positive consensus, but vice versa.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 268

In the context of the autonomy of segments, at least where we come to broad cultural policies, I am afraid, for example, that the issue of segregation in education is something which also tells us that such a type of insisting on the autonomy of segments, in fact, leads to segregation itself, rather than to integration and bringing the differences closer to each other, and so on, and I will not repeat the things we have already heard. It is particularly important that in the area of restoring mutual confidence and reconciliation we have not gone any further from the period immediately after the war and the rhetoric by local politicians and some analysts who say that Bosnia looks more the 1991 Bosnia than the 2001 Bosnia, should not be strange. So much about this institutional design, the consociative one, if you will, which is practically the Dayton construct and the construct of those who made the decisions in Dayton?

The next important element is the element of central institutions, which I call the institutions of the 'ruler who is not a ruler' and OHR which should have, under all the relevant documents and the Dayton Agreement, helped unblock some things, and the process to move forward. Some tend to claim that some interventions, especially those in the area of law, were very good for this state. I agree that in some areas it was necessary and especially important for any progress to be made. But on the other hand, we can also see that the post-conflict reconstruction and strategy cannot be built beyond the will of the people, which means that the legal idealism does not have necessarily to lead to transition to self-rule. The major presupposition, which we also know, is that the international community has not cooperated much with local experts in the area of the legal reform, especially after the year 2000. There is a whole series of analyses which say that before 2000 the process of making the legislation was very slow; please, forgive my malicious remark, but prior to that, some local lawyers were involved, formally, indeed on occasions in making the law. From 2000 onwards, there is not even a formal consultation with the local experts. Instead, a law is written and should be approved. This legal idealism in the context of this local community, in the context of this society, is not conducive to self-rule, to transition to local ownership or something else, all those 'big' words they are showering us with. It is especially important to stress that the Dayton logic after 1997, since the key moment of instruction of the Bonn powers, continued to produce paradox. How? Even the exponents of the international community believe that the Dayton structure is flexible enough to do with it whatever one wants to do. This is the analysis of the external factor and not of the internal one. What does that flexibility imply? It implies 'sucking

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 269

out', the term is a bit inconvenient, the 'sucking out' of the local capacities from the process of decision-making. After the year 2000 we can see that the consent by the local actors has not been sought even formally for any decision made by the international community. Domestic institutions have been sending formal requests to the European Union to send the EUPM, the EU police, in place of IPTF... They have formally invited the European Union to deploy its troops to the ALTEA operation, but it was only a formal request, while the decisions were made much earlier, even before the formal requests were made, as it was known that Brussels was going to take the lead within PIC in the BiH integration processes. Of course, nobody has ever asked anybody in Bosnia and Herzegovina what he or she thinks about that. This is why the story about 'less of Washington and more of Brussels' should not always be taken as a positive development in Bosnia and Herzegovina. What else would I wish to emphasize in relation to the international community? The central institution, the Office of the High Representative, I have returned to 1997 and the Bonn powers, has become a very specific institution of the system of government in Bosnia and Herzegovina. Prior to 1997 it was far from that, and that is the only institution in Bosnia and Herzegovina which is not formally based on the power-sharing principle. Mr. Ademović has spoken about that from the legal aspect. The international representative in terms of an institution is not sharing powers in Bosnia and Herzegovina with anyone. He cannot be held accountable, and formally, he is a part of the structure of power and government in Bosnia and Herzegovina, especially after he was invested with Bonn powers. This is precisely the element which has ever since opened two quite unpleasant processes in Bosnia and Herzegovina. One is the process about which we have already heard: the issue of accountability and the other one is the issue of transparency. In both cases the work has been poor.

Let me refer briefly to the previous context, about what the local actors, except politicians and political parties, could expect. The international community has practically developed strategies for changing the situation in the state and the society through the civil society. I know that professor Ler will be talking more about that, and I have also written about that problem. But here I have to mention that it is a defeating fact that the international community, when it comes to the civil society, has relied only on the non-governmental community, only on the non-governmental organizations. And look at the paradox: the non-governmental organizations, as non-political actors, are demanded to act in political terms towards changing the situation! Of course, the non-governmental organizations are dealing with politics, but

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 270

it is really absurd to ask them to engage in a political action, like the one performed by the political parties. Let alone the strategies for support based on the donor-driven strategies, etc.

Also, let me stress another important issue which concerns the attitude towards the political situation in Bosnia and Herzegovina. We have heard the elections, the laws and so on in that sense. Look: the Dayton Agreement requests that no later than nine months following the signature, elections should take place in Bosnia and Herzegovina. And this happened. Who could even think of seeing other parties - except those which were in power during the war - win the elections in the situation of a fragmented society, the fully divided community as a result of the war – I am also talking about the society in general – and the media beyond the level of professionalism in material and all other terms, with the civil society unable to perform its main functions, etc.? If this is not the major problem – the problem is that they won the elections in a democratic way! Thereby the Dayton officially legitimized ethnocracy which would later turn into partitocracy, when nobody has the right or possibility to offer arguments and say, 'Wait, people might want to vote in favor of someone else'. What does this mean? Those people who voted back in 1996 did not have a possibility to choose someone else, but those whom they elected – the national parties. This is the paradox of democracy: if elections take place too early, they can be a part of the problem and not a part of the solution. This happened in Bosnia and Herzegovina.

In addition, the issue of building democracy by non-democratic means is what I have noticed as a specific aspect of our reality, so that the international community has not made an effort to explain some of its decisions in public. The public, willy-nilly, has the right to know the reason why some decisions have been made. In this regard, closed meetings with nominal office-holders, elected officials, are not sufficient for the purpose of a public explanation of democratic policies. The public has the right to know. Transparency does not exist in the decision-making mechanism within the international community. We know nothing about who makes decisions, when and how, although those decisions concern us. Very little is known: however, this sends out a message to the society as such, which should present its opinion on those issues as well.

If we from BiH say that and they do not listen to us, that I can understand somehow. But if in 1996 – let me refer briefly to the work of the International Crisis Group in Brussels (ICG) – if ICG said in 1996 the following: "Teach democracy, tolerance and good governance then there is no bet-

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 271

ter way to start than by example". If that was noticed back at that time and now it is 2007, I think that the decision-makers in the international community should, if nothing else, offer some response. The response has not been heard yet and sometimes they say that you are arrogant if you ask such questions.

Finally, going further through the whole structure, let me focus on two more issues which are equally important for the society. One issue concerns so-called hard sector and soft sector of developing policies in Bosnia and Herzegovina. And again, the Dayton paradox: the so-called problems of the hard sector or hard policies were addressed quickly: who can remember how little time was needed for the armies which had waged war in Bosnia and Herzegovina to be demilitarized and pushed back into the barracks within six months only? That is the so-called hard sector, those hard issues. And what did the international community do and how did it assist the so-called soft sector which it did not think was so important: education, health, social welfare etc? Except the donations granted to non-governmental organizations – absolutely nothing else. From the aspect of the society, I think that segregated education in Bosnia and Herzegovina, and those famous euphemisms such as 'two schools under one roof' and so on is far more important issue than some other issues, say, foreign policy of Bosnia and Herzegovina. Let me be clear: the international community, for the reasons not known to me, has done nothing in the area of the soft sector and this is why, among other things, the new generations are growing up in Bosnia and Herzegovina on the results on ethnic policies and ethnocracy.

And finally, the issue of the constitutional reforms in Bosnia and Herzegovina. First, it is not clear to me how the ones, who led to the signing of the International Agreement in Dayton, think that it is possible to change that agreement without their involvement? Why do they think that it can be changed so simply, that the local actors can reach an agreement? It is not possible, of course! Especially the phrase which can often be heard in Bosnia and Herzegovina seems to be illustrative: *Those who were the major opponents to the Dayton Agreement in 1995 are today its major advocates.* This should mean something and shows that things went wrong. But the Constitution remains the Constitution, and remains one of the key issues, important issues: the public interest in the Constitution. We are aware of the previous constitutional debates and we know what happened, who made decisions, which decisions. As a citizen of this country, I am deliberately avoiding those politically 'dangerous' concepts. But as a citizen who has a passport of this country I have a problem: who decides on the Constitution

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 272

of my country, how and when, all the more so as I am a committed worker and I am building my own future and the future of my family here. Where are the public policies in those processes? What about the public interest? What about the members of a narrowed non-governmental sector? Eventually, there have been similar conferences but who are we talking to? It is not enough to talk, it is also important to have someone to listen to what you are saying.

In this regard, it seems to me that this malformation, that absence of the constitutional patriotism, that legal idealism will not help the community very much, especially because of the fact that this state lacks the consent about the past, present and the future. You can impose the law, just any law, but the issue of consensus about both the past and the present and the future is something that we will have to face. The international community, whoever it may be, will simply have to engage in a public debate. Let me tell you what I have noticed in the literature. The international community has been least engaged in the projects dealing with the reckoning with the past. There are foreign governments which support the projects for reckoning with the past but the institutions of the international community, the exponents of the international policy in Bosnia and Herzegovina, are in most cases running away, avoiding by a large margin, 'the way the devil avoids the cross' as our people say, discussions about the past. There are no representatives of the OHR or OSCE. I think that this is one of the key issues in order for the Brussels phase we are embarking on to have prospects. Otherwise, I do not know what the story about a kind of a consensus that the only future of this country is its European prospects, that everybody agrees on, is based on. In my view, it is something different. Either we are not ready for the European Union or nobody is telling the truth. They are only talking about how Serbs, Croats and Bosniaks – you can recognize who used those terms – are united and are together making progress towards the European Union, but this story is not telling me much. Do you know why? Because we shall be in the European Union the moment the motto of the European Union, the official motto of the European Union – United in Diversities – becomes our own motto.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 273

COMMENTARY

Nada Ler Sofronić, Executive Director of the "Women and the Society" Center, Sarajevo

Since all of us seem to be rather perplexed by the notion of the 'international community', for me the only way of clearing the confusion would be that each of us tries to define that notion in his or her own way. So let me try to describe the role of the 'international community': for me, that is the international support to the promotion of democratization of Bosnia and Herzegovina's post-socialist and post-war society in transition; among other things, its role is based on a specifically defined political theory.

In my short commentary, which I will have to curtail and simplify for this purpose, I will try to analyze the dialectic of the relations between the 'international factor' and what we refer to as the civil society in Bosnia and Herzegovina.

This means that right at the outset I want to avoid lamenting over what the 'international community' has done here and what it has not done, what it should have done, and what are the consequences for us, the 'victims' or 'guinea pigs' in the whole story.

The political literature of today is writing about 'disappointing insights' (Charoters, 2000)[1] into the fact that most of the post-socialist societies (including Bosnia and Herzegovina) failed to embark on democratic processes following multi-party elections and the change of the regimes. Instead, many of them found themselves in the political gray area of pseudo-democracy, 'facade' or 'formal' democracy. The political and theoretical euphoria following the fall of the Berlin Wall soon went down and was replaced by skepticism over uncertainty and, as Vukašin Pavlović[2] said, "the Western political theory which traditionally dealt with socialism... seems to have ended up once more on unknown rocks."

Although the prevailing understanding of democratization of the transition societies puts economic, political and institutional, that is, the state attributes of democratization, in the forefront, the international community has declared ever since it arrived in Bosnia and Herzegovina, its preference for

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1 Thomas Carothers, *Aiding Democracy Abroad*, Carnegie Endowment for international Peace, Vašington, 2000.

2 Vukašin Pavlović, *Civilno društvo i demokratija*, Politeia, Beograd, 2004.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 274

the civil society as an important promoter of democracy (let us leave aside for now the fact that the civil society in this case, not quite correctly, is understood to mean the non-governmental organizations).

Moreover, the Western advocates of democracy in post-socialist countries seem to have counted on the civil society being their main socio-cultural support, as they have often believed that the perceived civil society had operated 'in concealment' in the previous system, in a kind of dissident oases of the underground, living its own parallel life, or hoped that the material support would make the non-governmental sector much stronger and capable of becoming as powerful a democratization factor as possible.

Instead, a very weak version of the civil society emerged. Of course, the causes to the weaknesses of the civil society are multiple here, although I would emphasize the one which I think is the most relevant in sociological terms. I think that the weakness of the civil society is one of the direct results of marginalization or even *the gradual disappearance of its main social base which consists of the progressive urban and civic intellectual middle classes.*

Retraditionalization, repatriarchalization and revitalization of tribunal and ethnic social links almost entirely wiped off those social layers from Bosnia and Herzegovina's social and public scene, while the invasive domination of ethnic policies and retrograde conservatism has come to govern sovereignly our everyday public and private lives.

In the absence of the real civil society, the international policies of support to democratization and non-governmental organizations in the countries in transition have already encountered the problem of support to the "virtual civil society", a non-selective assistance to non-governmental organizations which are as a matter of fact not promoting either an authentic special interest of the social groups or the general public interests.

In the post-socialist societies built on the ruins of our common state it is very difficult to revive a self-regulating function of the civil society which would have something to rely on in the socio-cultural terms. The self-regulating function of the civil society can be established only within the sweeping structural reforms and with the necessary international support.

The international factor's both direct and indirect positive influence on the development of the civil society which, in my deep conviction, has hardly used anything of that support, is manifested, among other things, in:

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 275

* The international recognition of the civil society legitimacy,

* Promotion of institutional channels and laws which make the civil sector requirements legal and legitimate (women's human rights, the right of access to information, freedom of expression, right to non-discrimination and prohibition of hate speech, autonomy of universities, freedom of trade unions and prohibition of punishment of trade union activism, internationally recognized and constitutionally guaranteed right to life free from violence and environmental harm, etc.),

* Encouragement of the use of mechanisms and actions of the *public promotion* of the social changes which are of special and general public interest,

* Promotion of the creation of coalitions and alternative organization,

* Promotion *of independent monitoring and holding legislative and executive authorities accountable,*

* Support to encouragement of awareness campaigns *and use of the free media for the creation of democratic public,*

* Promotion *of global and international* advocacy by the civil society of the positive social changes, especially those *in the area of human rights.*

The ball is now in the civil society's court!

Đorđe Čekrlija, Faculty of Philosophy, Banja Luka University

Dear ladies and gentlemen, it is my pleasure to greet all of you and to be present at this conference. I have to say that I, as a psychologist, regret very much that this is our reality and that we have to waste so much energy on these topics. What I and my colleagues from the Department of Psychology at the Faculty of Philosophy in Banja Luka have been doing for the last few years is the research into different types of group identities, which we have identified as something very important for determination of one's behavior in the social context, something which we cannot ignore. This is an opportunity for us to look at those identities from a different angle, as a

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 276

kind of a resultant of not only the operation of the factors which are present in this region, which we produce, but also of the impact of the influences coming from outside the framework of our country.

The question of what is the international community has been repeatedly asked here. The international community can be defined or placed in a context in different ways. If this question causes such dilemmas or obscurity in three percent of learned people in Bosnia and Herzegovina, who have a university degree, then it is pretty clear how obscure it may be in the heads of ordinary people, those who did not have an opportunity to study and do not have a university degree.

Regarding the identity, we have established in different empirical studies three main types of identity, which are interwoven, and are present in individuals. Those are the identities which can be linked to ethnicity, nationality and the third identity which we have examined is the European identity. Those are the identities which are based on ethnicity and on a certain geographic location. In this regard, first and foremost, in all likelihood, one of the most difficult things is that the group identity in this region is put before the individual identity. In other words, someone's ethnicity dominates a professional identity, even the sexual and any other orientation which an individual has and in which he or she is trying to develop fully. Naturally, the reason lies in the developments in the country in which we all live, and the influences on us, those which we have not produced, can be reduced to several different levels. First of all, it concerns the absence of knowledge about an idea, about the concept of the kind of the international community; it appears as a kind of reaction, the most primitive defense mechanism, coming together within a primal, or – as our colleague has just said – 'tribal' group at an ethnic level. In addition to all the developments which originate from inside the country, the lack of clarity or misunderstanding of foreign influences also leads to the situation in which the circle in which the citizens of our country are trying to find themselves or to feel safer is becoming ever smaller. Thereby, in a way, an ordinary citizen of this country is depriving himself or herself of an opportunity to have broader views and establish contacts outside the borders of this country. In this regard, it is necessary to say that those three types of identity, as psychological constructs and positions, are not conflicting. It is possible that all three types of those three identities are present in one individual, when they have different domains in which they are realized and that the individual is, in fact, fulfilled in all three fronts so that there is no conflict among them. But on the one hand, this happens first because of the lack of understanding of the reality

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 277

in which we live and the influence which reaches us, and then because of the fact that mainly those who set our direction or those who rule the people come from the same forces which led to those unfortunate developments. This means that they simply lead to the situation in which the first mentioned – ethnic identity – remains most intensive. If we elaborate further this issue, we can consider every individual as someone who is linked to his or her group, on the one hand, while on the other, he or she is open to some other groups as well. A huge number of those factors lead to the fact that much more attention is given to what we refer to as 'mine' or 'ours', and we came to divide everything into 'ours' and 'theirs'. Thereby, every individual comes to the situation in which he or she does not consider as 'his or hers' the members of the other two constituent peoples who live in Bosnia and Herzegovina and also the members of any other people of whom he or she says that they do not belong to 'his or her' group. Let me repeat that this type of forming a group is a real consequence of the operation of the most primitive mechanism and search for some basic protection of existence where one's belonging to a group is a framework within which the individual will be moving and feeling safe, in a way.

Regarding the three types of identity which we can establish in every individual, the most pronounced is the ethnic identity. However, much more interesting is the fact that the European identity of the citizens of Bosnia and Herzegovina, according to the ongoing research, is three or four times more conspicuous than the national identity. This fact is true for Croat and Serb citizens of Bosnia and Herzegovina in the first place, while Bosniak citizens – judging by the results of an empirical research – are the only group of citizens who equate ethnic and national identities, while the other two groups have broken down this component, or, in other words, they look for the national identity outside the BiH borders. Let me reiterate that all the studies, all considerations show that these three types of identity are not necessarily conflicting and that they do not have to be necessarily conflicting. However, the fact remains that much more attention is given to one's own group. Within our experiences with younger groups, in high schools or at colleges, where some benefits can be obtained, we have understood that some privileges and relaxations would be necessary to allow the young people to receive education and acquire more experiences in other countries, outside the borders of their country. In other words, this means that the international community should be used, as much as possible, even aggressively, to help young people broaden their views and see the benefits from the huge chaos and a huge size of the international presence. In other wor-

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 278

ds, the entire potential should be used, from scholarships to participation in different activities, while the national political tissue should be requested to support them. What falls within the openness to others in this case represents the problem which arises from fears. If we analyze the fears and the grounds, we shall discover that they come from the past ten or fifteen years; their identity remains the same and prevents us from moving forward, while the members of the international community do not show much responsibility for these components which may be regarded as subjective and which do not appear in objective shapes, such as economy, political actions or other similar aspects. In fact, this means that much more engagement is needed to overcome this segment which concerns mental health and abilities of citizens of BiH and to make it possible for the international community members to get to know such things. One of them is constant lobbying for what they should be doing, and forcing them to thrust it down their throats, so to speak. In any case, their cooperation is necessary.

What is the biggest indirect benefit from it? By building the national or by strengthening the European identity, the national identity would get stronger. This means that by raising awareness about many more things, Bosnia and Herzegovina would probably become a closer reality to all citizens, and the national identity would become stronger and have its place, and would also be based on the thrilling set of identities which I have described.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 279

DISCUSSION

Tarik Haverić, European Center for Liberal Democracy (ECLD)

Let me share with you two different thoughts inspired by Mr. Abazovic's presentation. They may be incoherent as I will take them out the text the layout of which is prepared for printing, and it is a pure coincidence that I want to repeat now what I already discussed the day before yesterday.

My first thought concerns an in vivo experiment. It is clear that the international community's evoking 'on the job training' may hurt. But sociology knows of an in vivo experiment, which, of course, is not carried out so often. It is carried out by the actors or societies, the framework societies which are able to control it and that at any moment – as soon as they see that the experiment is successful – without causing much damage, they are able to give it up and try something else, which is why it does not cause a political decay, as the authors from whom I have taken this, say.

However, what we can always do is the so-called thought experiment. I too embarked on that experiment (on the pages in front of me). It is related to the other element which you discussed. Topicality, of course, cannot be avoided. Let us say that the mantra which you have mentioned, only one of the subsidiary topics of the overall debate amid the transformation of the state and legal area, and if we refer to it by an unpopular term (popular to some though), *consociation.*

The thought experiment consists of the following: if we say that consociation is the model which lacks an agreement by the social actors, let us ask ourselves whether there is one model, or an element, which has an agreement. For example, I do not think that anyone would be against the gross national income of 23,000 euros per capita in Bosnia and Herzegovina. This will always receive an agreement. Do you think (this is, of course, a rhetoric question) that it would be sufficient for the social actors (the same ones who are unable to come to an agreement over consociation) to come to an agreement over this goal for Bosnia to become a rich society? Those who think so will soon be held up to ridicule because even children, and not only political theoreticians, know that the attainment of a goal does not depend solely on an agreement. An agreement is no guarantee that the goal will be attained.

Let me ask you a question (which is not rhetoric): why do we think that such an in-depth political transformation is possible through an agreement only? And to believe that it is so bad here only because there is no agreement?

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 280

This leads me to yet another thesis inspired by the presentation by my colleague Abazovic: it has never been established, it has never been rhetorically stated that (here I will take the U.S. author Immanuel Wallerstein's thesis) there is the *world's system* which operates, which we can and do not have to be aware of, but which has an impact on us. The people who were walking up on the roofs were falling down from those roofs without being aware of the gravitation law, which was 'in force' even before Galilei and Newton formulated it. There are some forces which shape the life of today's society and are placed and operating outside those societies. Is Bosnia and Herzegovina a part of that system which we can and do not have to be aware of, the system which, eventually, willy-nilly, makes a judgment on all the structures of our political and social lives. In other words, what percentage of what is taking place or what is going to take place in the future does not depend on us? 80%? 90%? Is it not too a bearing behavior to pretend that all the parameters of our transformation depend solely on us?

What do I want to say by this? In that world's system, Wallerstein's system (which is *capitalist* system, of course, with all the correctives, of course) the minute detail of the treatment of capital, car insurance, banking operations and who gives orders to the police, the health care system which will prevail, economic, environmental, hygiene, technical standards.... are known. Will anyone trust the possibility of the local actors to come to an agreement over, say, all which does not concern us, and that Bosnia and Herzegovina is exempted from that? Or, what is the percentage of what depends on us, and of the other part which does not depend on us, and which we are perhaps not aware of? This is my only serious objection against the conclusion of my colleague Abazovic, that there is no agreement about the past, the present or the future – as for the future, I would agree. In our society the agreement about the future does not perhaps exist, but this fact will not affect the future very much as it is not a matter of the will of the local actors. Our future depends on the opposing historical forces, the global directions and trends, the movement of capital, the distribution models, and the models of controlling energy and so on. We can and we do not have to recognize or love those modes, but we cannot avoid them. Just as an incautious walker falls down from the roof, whether he knows of the gravitation law or not.

Let me make another semi-remark on Mr. Cekrlija's subsidiary thesis in which he equates the knowledgeable, wise people in Bosnia and Herzegovina with those 3 percent who have a university degree. I disagree: the people who have a university degree are not necessarily knowledgeable and wise.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 281

Zdravko Grebo

In the end, this huge, probably excessive quantity of resignation demonstrated here by myself should result in the effort to make a half-empty glass half-full and its form could be filled by our darling and not so darling co-tenants with some content, and achieve the goal. The first question which should be posed to the big players, whose hostages we are, with our lives in their hands, is brutal: is Bosnia and Herzegovina a sustaining project? Simply: should it exist or not? Perhaps, it does not have to, I do not know! The reason why I am asking this silly question is the following: if a response is that after the fall of Yugoslavia all the successor states were formed as nation states, and since BiH is unable to do the same, it should not exist at all. If we invest supernatural energies and employ out best talents, we cannot be a nation state or a nation which will have its state. Are we an implementable project in 'their' plans if we are at all included in anyone's plans? Or, it is absolutely out of question. Simply, let us not bother any more and let us not prolong the war by different means into the future, please, say clearly and loudly: you are not possible!

And now my modest comment on the presentations by Haveric and Abazovic, about the consociation debate. That story is true and has its grounds. But I have a different interpretation of what my colleague Abazovic wanted to say: what is the purpose of such a big story about consociation? It would be better to say that the newly born interest in that issue bears a secret meaning: advocacy and completion of the process of dividing BiH and eventually its disappearance. And then a repeated question about Bosnia and Herzegovina: does it have any substance at all? It may still be a society, but it is not a sustaining state or it is neither of these. After that you logically say: let us get separated, like in a failed marriage. Why consociation as a code? If there is no conspiracy theory, this is the model which should be carefully examined. Anyway, we already have it in place in all the elements of the theory. Even in that 'non-popular' popular regime, with some irony, we had an effective formula: comrades Hamdija, Branko and Milanko. Even the communists had the same kind of sensibility about the need to respect within a one-track ideology the diversities and give them the possibility to be represented in political terms. But in that seemingly theoretical debate, which is symbolized by the request for a 'third' entity which is wholeheartedly supported by the Croat parties and strongly backed by Mr. Dodik, we should be discussing in clearly defined terms: that means the end of Bosnia and Herzegovina.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 282

My fourth, short comment refers to the statement that we are not a post-conflict society; we are a post-war society, and – pardon my pathetic remark – post-genocidal society. Once I wrote that I was not interested so much in whether Republika Srpska was a genocidal construct, but I do know that BiH is a genocidal construct; the whole community which has not resolved its traumas will hardly be able to resolve them.

How can we continue to live together and plan our common future if we are unable to reach the momentum and say a very simple sentence: I am the citizen of Bosnia and Herzegovina? All the rest, including the representation of collective identities, can be agreed and implemented institutionally and procedurally. I for one have no doubts about the need to discuss the identities whether they are concentric or overlapping, just any identity. ... But the role of the international community in that story intrigued me again. I will skip the whole range of arguments; the conclusion is that the whole West Balkans is a black hole (a cloacae, let me use an impolite term). If someone truly cares about peace, cooperation, prosperity, prevention of illicit trade in drugs, human trafficking, trafficking in arms, the only way in which this can be achieved for the sake of the general good is that the process of integration to the European Union is made easier and speeded up, without strictly measuring whether we all, 'West Balkan' people, have done our homework fully.

It is clear that in the foreseeable future, having in mind high standards, we shall not be able to achieve that. By the way, many EU member states were not even close to achieving the usual standards. Why is that so important? Let me remind you that the whole Southeast European cataclysm began over all Serbs living in one state, all Croats living in one state, all Albanians living in one state, and all Bosniaks (including those from Sanjak) living in one state. Since the prevailing ethnic nationalism is still in, all of them will live again and for ever in one state if they become the full member of the European family. There is no need to ask a painful question: why did we have to separate in such a bloody manner in order to desperately wish to be together? Even a pragmatic solution to the additional problems which have been mentioned today: privatization, corruption, human rights, the rule of law, independent media, ineffective judiciary and the public administration...is possible if you are on board or you are a member of the club. Then the rules clearly apply and there is no room for typical Balkan political extravagance and caprice. If it is true that you will hardly find a politician in this region who would say, regardless of how honest he is, that he does not support accession to the European Union, please help him carry

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 283

out his promises. You asked for it. And please, behave yourself. There is no other way out.

Tarik Haverić

I am sorry that some thoughts will remain incomplete, but I did not think it was necessary to speak about obvious things. What I said – that our future does not depend on whether some actors here will agree on whether Bosnia will be consociation or nor – does not mean that I am in favor of that proposal – for a very simple reason that it is not in the spirit of the present time, and that it is against those forces which are beyond us, our influence, but that we are exposed to. However, it is true – and my colleague Abazovic has also said that – that Bosnia and Herzegovina is de facto a consociation. If I am to be the devil's advocate now, I will say of the opposite side which I do not belong to, that perhaps it consists of the people who are aware of that and they say: if it already exists, de facto, without permission, let us find a way to legalize it, so that it gets some shape.

I understand it although I disagree. However, what is key here – and the most useful initiatives are failing when the daily political debates put on a straitjacket of ready-made concepts – is who presents himself or herself in the public as the leader of the opposite concept and who is identified as such by the public.

Opposite to consociation is the civic (even liberal democratic) state, although Zdravko Grebo and Tarik Haveric, who requested 18 years ago that the Assembly should recognize the ZAVNOBIH Declaration on the rights of citizens of Bosnia and Herzegovina; rather, those are people who have done everything they could over the past 16 – 17 years to create the situation we have. I am not an extremist if I say: I do not trust those people. And I do not know why the present 'advocates of consociation' should trust them at all. They accepted 'the agreement of the peoples' (factual consociation) until such time as everything got divided and privatized and now they would like to have 'one man one vote'!

It is true, and professor Pobric is right, 'one man one vote' is a universal principle. However, we were against it in Milosevic's Yugoslavia since Milosevic promoted it out of ill intentions. Perhaps today, someone is against the 'one man one vote' principle not because he is denying its values but because he does not trust the frankness of intentions of those forces which are promoting that principle.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 284

Zlatko Hadžidedić

I find the presentations by Mr. Haveric and professor Grebo quite inspiring and I will try to be short. I think that it was really necessary to say what Mr. Haveric has mentioned – that there is a global system which imposes a certain order, and certain systemic values. In addition to its being a capitalistic order, it is also an order of nation states. Professor Grebo has mentioned that, in a way. However, I wanted to take the floor after he said: "Even if all of us do our utmost, this cannot be a nation state." Let me remind you of only one fact when it comes to the engagement of the international community. All of us are asking what the international community is, while the international community has never asked that question. It got engaged in Bosnia and Herzegovina, I have to say this, even before the war broke out. It is usually said that the international community came here to prevent the conflict, to help us put an end to the war and so on. I claim with full responsibility that the international community got involved in Bosnia and Herzegovina for the first time in 1991 and 1992, before the conflict broke out, with the conference chaired by Lord Carrington, and the other conference within that one, which was chaired by Cuttiliero, Portugal's diplomat. The model of dividing up Bosnia and Herzegovina was promoted for the first time at that conference. Why? Because already at that time a straitjacket had already been tailored for Bosnia and Herzegovina, according to which Bosnia and Herzegovina should be divided into ethnic territories and further into ethnic statelets – which would allow free space for the full implementation of the major ethnic projects. It is fascinating that nobody in Bosnia and Herzegovina has ever noticed that Bosnia and Herzegovina, with three or even more different ethnic, religious and cultural identities, has been exposed to all that – ever since the Lisbon Conference – because the groups which possess those identities – I will take the liberty to say - falsely refer to themselves as 'nations'. Of course, nobody can deny their right to refer to themselves as 'nations', but the groups which prefer to call themselves 'nations' will have the automatic right within that system – including the global system that Mr. Haveric referred to – to create their own states. That is simply an international law axiom. Likewise, which is another paradox, there is a large group of people in Bosnia and Herzegovina who would be willing to be called Bosnians and Herzegovinians and that right is simply denied to them by the international community which was the architect of the Lisbon Conference and all subsequent talks and the Dayton Constitution, and that possibility has been denied ever since although in all likeli-

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 285

hood it would be possible to establish in empirical terms that at least one third or one fourth of the population would be willing, already now, to accept that identity. Thus, we are under permanent pressure from the international community to be divided along ethnic and religious lines and fully ethnic projects. In this regard, professor Grebo's question is absolutely legitimate, although we should not border too much; in fact, the question is not "Whether we want Bosnia and Herzegovina?" but "Whether the international community allows us to have Bosnia and Herzegovina which would not be an ethnic-national construct". It can become a nation state the moment all citizens of Bosnia and Herzegovina, or the vast majority of them, use that identity. Then it will also be a nation state. There is a division into an ethnic and civic national identity, so that I do not see any structural problem here, except that the structural problem lies within the international community which has accepted the axiom that Bosnia and Herzegovina should fall apart – well, we just need to find an elegant way.

Dino Abazović

Simply, we have heard a good number of good theses and discussions, but still I would like, because of incomplete thoughts, as Mr. Haveric said, to clarify some issues. First, the concept of the story about consociation which I have introduced into today's discussion, was simply the concept of an international design. I wanted to stress that consociative organization of Bosnia and Herzegovina is the result of what we refer to as the international state of an international design. This is the context in which I have discussed that. Although I did not plan to elaborate on that any further, as it has already been mentioned here, I think that the same issue should be considered at the level of description, and I am afraid that this discussion is entering the area of a normative nature of the state. Consociative models, in both theory and practice, are not normative in nature because when they are, they become legalized and once they are legalized, they become a story about a third entity, about some new issues; then, eventually, I think, that the vast majority of citizens may have a problem with that kind of legitimacy, legalization, as there is only one thing left: to vote by acclamation in favor of the results of the war, if we are talking about a legalistic consociative approach. There are some different issues. Let me clarify: I have spoken about a descriptive character only. The other issue is the issue which has been mentioned several times, the issue of a nation state. Again, I am

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 286

afraid that it has more than one meaning. According to my understanding, there are different theories, and practically there are only two states in Europe which exist on the principle of a nation state, France and Greece. No other state in Europe is any longer a classic nation state. Let me be clear: what Mr. Haveric spoke about, in a way, I understand to fall outside the nation state frame. Why did I mention this? Because it was not clear enough. I am so sorry, but let me stress it clearly. Mr. Schwarz-Schilling talked about imperialism this morning in the discussion with our colleague Sacic. I think that the old concept of a nation state is an imperialistic spirit of values. In this regard, I did not want to use this opportunity for that issue, but my understanding of Ms. Sacic's presentation is that she talks about imperialistic values which are being imposed on us who are outside Europe, outside the European concept, but not as an issue of geography but as an issue of Europe as the value; so, unfortunately, I have to observe that there is plenty of it in the international community. Let me give you a quick observation and proof: the latest anthropological studies – if you are interested, you can find references in my paper – show that, say, most of the representatives of the international community, whom we refer to as 'internationals' or 'foreigners' in everyday communication, quote «....usually simply exclude themselves from the local community: either by voluntary self-separation from BiH state or other institutions, or by exclusion of Bosnians and Herzegovinians from the imagined Europeanism" (end quote) whatever it is they perceive as Europeanism. This is an antropological study by an excellent young antropologist who, well, is not a Bosnian. Thus, you have also that kind of imperialistic value-based attitude towards us where even those famous IDs around the neck, foreign license plates, parking of vehicles where Bosnians are not allowed to park their cars, on the main streets etc., is a kind of a syndrome of the Sarajevo Airport. As soon as they land at the Sarajevo Airport, they forget that they have flown from Vienna, Bonn or other Europe's cities and states and begin to behave in an imperialistic way, in the way which is different from the ways known to their countries of origin. This too is one of the issues that could be discussed. And finally, let me conclude with the one-man-one-vote concept. I may be the last man who should discuss that, as my positions are quite clear. Please, do not forget: Bosnia and Herzegovina had a one-man-one-vote concept at the 1991 elections and the natio-nal parties saw a triumphant victory. Thus, the issue of one-man-one-vote is not necessarily the issue of ethnic domination or minorization of the majority or the minority, respectively. As far as I can recall the 1991 election results, according to the one-man-one-vote principle, we know who saw a

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 287

sweeping victory. Thus, this does not concern the manner of vote. It is rather that some other models are discriminating against a certain number of people in the context of the law. And if we discuss those principles, let us, please, stick to the fact that it is unacceptable under any European international standard that some citizens of this country are being systematically discriminated against only because they do not have this or that ethnic origin. I do not know why some people find it difficult to say that. Eventually, I am slightly excited, I too belong to the unfortunate 'Others', if you will. And what now? Thank you.

STUDY

Dino Abazović

Tallying the Balance of Effects of the International Community in Bosnia and Herzegovina (December 1995 - March 2007)

- sociological aspects -

"Society in which there is nothing in between 'hypertrophied state' and 'endless number of disorganized individuals' is really sociologically monstrous, since collective activity is far more complex just to be expressed solely by one institution - the State one" [1]

E. Durkheim

"All the enormous energy the international community invests in the rationalization of an irrational political concept leads nowhere. Is there greater tragedy for a geopolitical entity than to vanish while thinking it's growing; to whither away while believing to be healed!" [2]

N. Ćurak

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1 E. Durkheim, "The division of labour in society", Free Press Glencoe, p.11; see also "Professional Ethics and Civil Morals", Routledge Kegan Paul 1957, pp. 20-23. (cited from: Robert Pinker: "Socijalna teorija i socijalna politika", Hrestomatija, FPN Sarajevo, 2000)

2 Nerzuk Ćurak (2004): "Dejtonski nacionalizam", Sarajevo, Buybook, p. 106.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 288

I. Introduction

During the tragic period when the process of disintegration of the former Socialist Federal Republic of Yugoslavia was turning into aggression, war and bloodshed, the "international response" was indeed marked by a lack of unity and determination, as suggested by Alexandros Yannis (Yannis, 2002). David Owen, the EU mediator for former Yugoslavia and a truly prominent figure of international power bases at the key period, stated that

"…what the Clinton Administration seemed to want until 1994, when they first began asserting themselves positively in the Balkans, was power without responsibility [...] The member states of the European Union and their Foreign Ministers did accept responsibility [...] but they never exercised power." (Owen, 1995:366 -7)[3]

In any case, force was necessary to stop the war and that is what happened in late 1995. The Dayton Peace Agreement, the compromise which led to cessation of hostilities, gave life to the present state structure of Bosnia and Herzegovina, this "internationally designed state which functions in international design" (Bose, 2005:232).

However, it should be noted that the position of the so-called international community[4] in and around Bosnia and Herzegovina cannot be reduced to the more or less formal relationships of a protectorate (such as, for example, East Timor or Kosovo). One of the authors indicating the role of "local consent" for the Agreement as well as implications arising from it is David Chandler, who believes that

"[r]ather than an external imposition, Dayton formally appears to be a treaty made by the local powers – BiH and its neighbours, Croatia and the rump former Federal Republic of Yugoslavia (FRY). It was not by UN Security Council resolution but by the coercive fiction of 'local consent' that international actors were invited to oversee Dayton and to install the temporary post-conflict administrative mechanism of the Office of High Repre-

3 Cited from Yannis (2002:264)

4 Throughout the text, I will use the prefix "so-called" before the phrase "international community", wishing to affirm the view and support the efforts by John B. Allcock, who offers the following reasoning: "I dislike the term 'international community', because the configuration of state and non-state structures to which it normally refers does not possess the attributes that sociologists normally understand by the word 'community'. Nevertheless, the potential replacements that I have encountered for it are invariably either equally misleading, or far more clumsy. Under protest, therefore, I continue to use it here in the fervent hope that something better might be devised soon." (Allcock, 2005:24)

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 289

sentative (OHR). This was an office only 'consistent with relevant United Nations Security Council resolutions', not formally run by or directly accountable to the UN." (Chandler, 2005:337)

The very question of responsibility must, in fact, be one of the key foci of analyses of effects of the so-called international community in Bosnia and Herzegovina since 1995 until today.

Prior to that, one should refer to several general features of the post-Dayton Bosnia and Herzegovina.

In brief, the post-Dayton BiH comprises two Entities (Federation BiH and Republika Srpska), each with a very high level of autonomy. In itself, the Federation BiH comprises 10 cantons. The town of Brcko, which was the subject of international arbitration, now has the status of a district and is still under direct supervision of a special international envoy.

As the state was established through an international agreement, for the purpose of implementation and particularly in view of maintaining peace, "Office of the High Representative (OHR) is an *ad hoc* international institution responsible for overseeing implementation of civilian aspects of the accord [...] The High Representative, who is also EU Special Representative (EUSR) in Bosnia and Herzegovina, is working with the people and institutions of Bosnia and Herzegovina and the international community to ensure that Bosnia and Herzegovina evolves into a peaceful and viable democracy on course for integration into Euro-Atlantic institutions."[5] Other international organisations "were originally intended at facilitating the domestic decision-making process by insuring adequate security for citizens (SFOR, IPTF), creating the economic framework for successful governance (EU, UN) and by promoting democratic and more tolerant institutions and processes (OSCE)." (Bieber, 2002:213)

The complex structures of state organisation of BiH can (irrespective of international interventionism aimed at achieving peace) ultimately be subsumed under those models which contemporary sources define as consociational.

In order to accommodate conflict, stabilisation and democratic development, key elements of consociationalisim – a grand coalition, proportionality, mutual veto and segmental autonomy (Lijphart, 1977) – have already been implemented. The post-Dayton BiH must therefore be considered a form of consociational democracy.

5 http://www.ohr.int/ohr-info/gen-info/default.asp?content_id=38519

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 290

As I have alredy elaborated elsewhere,[6] as far as BiH is concenred, things are quite clear – *a grand coalition* is determined by election legislation (and results of all the elections thus far) and the process of establishment of the executive comprising key parties and based on the principle of ethnic representation, *proportionality* is simply the three-member Presidency, as well as election of members of Parliament (following ethnic and entity criteria, let alone the House of Peoples), composition of the Court of BiH, etc.; the mechanism of protection of vital national interest used in our parliamentary practice is, in effect, the *mutual veto,* and finally, the *segmental autonomy* is reflected, first and foremost, through institutions and policies (in the widest sense) of entity structures of the state, i.e. through cantons of the Federation BiH (four with majority Bosniak population, four with majority Croat population and two so-called mixed cantons).

II. What has gone wrong?

It is becoming abundantly clear that division of power and authority by institutionalising ethnic difference does not necessarily lead to the desired results, at least not in terms of a functional state and a climate susceptible to economic growth and recovery of a war-torn and devastated country. The situation at the level of the state is such that the concept of *power-sharing* does not funciton within instutions based on ethnic (*proportional*) representation – instead of a postive consensus on cooperation in order to rebuild instutioins, there is a negative consensus, manifested through systemic blockage of adoption of decisions necessary for reconstruciton to commence. At entity levels, particularly until 2000, there was no major return of "minorities", the education system remained segregated, at least in issues of "mother tongue and language of instruction", i.e. the issue of curricula of the so-called national subjects (mother tongue, literature, history, geography), the transfer of powers from entity to state level is too slow – to mention but a few features.

Despite expectations that proportional representation and the principle of rotation (pursuant to the supposed agreement of the elites) would serve as the basis for it, even the process of rebuilding mutual trust has not attained any major results.

As it turned out, even the stategise promoted by the so-called international community (particularly the Office of the High Representatve) as de-

6 For more, see (Abazović, 2007)

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 291

blocking, primarily by imposing legal preconditions from the outside, rendered modest results.

"The law has been imposed against the will of the population in the belief that the legal framework is the basis on which post-conflict reconstruction and nation-building can be shaped and guided. The experience of Bosnia would suggest that this legal idealism undermines the political process, the standing of the law and the transition to self-government." (Chandler, 2004:589)

A general outline of periods of international participation in BiH can be presented through the prism of developments with the "instituon of instutions", the Office of the High Representative, namely from 1995 to 2000 and from 2000 until today.

As for the "external" factor, i.e. the decision-makers within the so-called international community, primarily the Peace Implementaition Council, one of the key features remains "but with little clear policy direction or end point for the ad hoc international administration." (Chandler, 2005:337).

The second period was and remains the period of alignment towards the European Union, and thus the realignment of forces towards "Brussels" as the focus of all decision-making.

Thus, in early 2002 the Council of the Europena Union expressed its willingness to appoint the High Representative in BiH as the EU Special Representative to BiH. During the same year, the UN Police Mission in BiH (IPTF) was suceeded by the EU Police Mission (EUPM), and two years later, EU introduced a military operation (Operation Athea) replacing all the remaining international military stabilisation forces (SFOR) with EUFOR.

It should be underscored that all these key processes took place with no formal consultations with those they relate to the most, i.e. the BiH public. Formal bodies of the state did, however, *volens nolens,* send formal requests to the European Union (e.g. inviting EU to assume responsibility for the misssion succeeding the UN IPTF), but just like in Dayton, except for the narrow circle of the establishment, there were no representatives of the general public. The issue of relations between civil society and the so-called international community will be considered below.

Still, most anylists agree that one of the key moments in the international engagement was the 1997 conference of the Peace Implememtnation Council held in Bonn, Germany. Although the conclusions of the Bonn conference gave the powers of the Office of the High Representative (and later the EU Special Representative to BiH) a totally new character and solidified considrebaly the position and implementation powers of the "ruler-who-is-

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 292

not-a-ruler", the Dayton "logic" continued to generate paradoxes. Thus, for example, "the flexibility of external mechanisms of regulation has been a central factor in 'sucking-out' the capacity of BiH's political institutions and undermining the legitimacy of the Bosnian state." (Chandler, 2005:337)

Although the Bonn powers of the High Representative served the purpose of acelleration of the peace agreement implementation process, the High Representative was also called upon to use his ultimate powers to remove from office any local official, including directly elected politicians, whom the Office held to be obstructing the peace process.

"[A]fter 1997 the High Representative was equipped with additional powers, which transformed him from a facilitator to an integral institution of the current system of government in Bosnia. Equipped with both legislative and executive powers, the High Representative (HR) has emerged as the most influential institution in Bosnia—and the only one not formally based on power-sharing." (Bieber, 2002:213)

Until today, the High Representative has removed or suspended more than one hundred persons, including a member of the state Presidency, mayors, governors, deputy ministers, ministers and prime ministers at all levels, one entity president, one head of entity intelligence service, judges, civil servants, company managers, etc. Except for short-term effects and excluding the specific individual disqualifications, this has generated few or no systemic changes.

Creation of additional dependence of local officials on the so-called international community and its proponents of power, rather than on those who elected them to the offices they hold,[7] the population of Bosnia and Herzegovina, was merely a by-product.

[7] Even Wolfgang Petritsch (High Representative from 1999 to 2002) indicated in several public addresses the "syndrome of dependency" of local officials, developing negatively due to increased frequency of utilisation of the wide powers of the High Representative. Petritsch has also said the following: "Aware of the powers of the High Representative to impose laws and remove obstructive officials, both . . . Bosnian intellectuals and international observers . . . demanded that I extensively use such powers . . . 'You have to impose the right solutions', I heard over and over again. But to my mind 'imposing' democracy and civil society seemed a contradiction in terms. However, during the first one-and-a-half years of my mandate I indeed had to act as the most interventionist High Representative ever." Cited from (Bose, 2002:322)

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 293

III. Democratisation by undemocratic forces and the (non)civil society!?

That is why the issue of elections is the next important issue of "heritage" of the so-called international community in BiH. Overemphasizing democratisation of BiH in the early post-conflict phase was evidently too soon – elections which came too soon,[8] with no strong media and a revived civil society to compensate for ethnic "pillarisation", inevitably resulted in renewed establishment and democratic legitimacy of nationalist elites.[9]

"The unintended result of the West's rushed, apolitical approach to political and economic development was that moderate politicians were not given an opportunity to develop a constituency and nationalist politicians gained even more control over scarce jobs and housing. Not only did nationalists profit materially from aid monies and the international community's recognition of them as legitimate leaders, but their ability to influence which companies were chosen for internationally funded reconstruction projects helped them gain loyal political followers. International assistance has profound political effects, and the outcome of working with national elected officials regardless of their political orientation is a society that still relies on connections and remains divided along ethnic lines, rather than one based on equal opportunity and the rule of law." (McMahon, 2004-05:581)

And instead of accepting the consequences of such contradictory policies, as noted by McMahon, the so-called international community seems to have handed the challenges of transforming a society over to the few public figures with critical attitudes towards the ruling elites, a handful of independent media (print in particular) and non-governmental organisations.

However, in view of the fact that in post-Dayton BiH there is reduced understanding of civil society as non-governmental organisations, which currently is indeed the case, it seems that NGOs, albeit paradoxically, serve the purpose of preserving this bad situation, as they are the ones to compensate for the functions the state will not or cannot perform.[10] Naturally, no NGO in BiH actually works with this objective in mind, but the situation they are in duly demonstrates that the state is hardly performing its basic

8 The Dayton Peace Agreement specified that elections were to be held no later than nine months following its signing!

9 For more, see (Marko, 2002).

10 This is similar in the context of neo-liberal states. For more, see (Močnik, 2003).

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 294

functions -- individuals are thus left with no option other than to organise themselves in that way and try to alleviate the consequences.

Bearing in mind the facts which indicate that most of the NGO sector mainly operates with donor funds from abroad, and as time progresses the strategies of local NGOs are donor-driven, and far less driven by the real situation and needs, the situation becomes even more pessimistic.

More so since the so-called International Community in BiH continues to insist that NGOs are the central segment of civil society[11] which is to act "non-politically" in order to change the political state of affairs.[12]

The almost colonising nature of assistance directed from the outside seems to be aimed at advanced and irrevocable inhibition and development of most other forms of civic engagement, i.e. any other which is not reduced to non-governmental organisations!

The problem of international engagement in BiH has been and is still the problem of intervention which has strived (and continues to do so) to preserve and guarantee the peace agreement, and yet at the same time the institutional framework established through that agreement favours the political options which are the least supportive of its implementation. Thus, when it comes to local players, yesterday's bitter opponents of Dayton become its most dignified supporters.

International players have never afforded sufficient attention to issues of transparency and accountability. As early as 1996, the International Crisis Group underscored in a report the issue of transparency, stating that "respect for Bosnian authorities and basic notions of reciprocity argue for at least the degree of transparency necessary for the Bosnian authorities and people to understand the basis for decisions, and the decision-making processes, that so affect them [...] to 'teach' democracy, tolerance and good governance [...] then there is no better way to start than by example."[13].

The core issue of accountability is the issue of attitude towards the population in the territory which they "govern". This is not a matter of accountability towards the bodies which establish or appoint them (such as the Peace Implementation Council or the Council of the EU), but rather a mat-

[11] For more, see (Sali-Terzić, 2001).

[12] Thus, several months after the last elections in BiH (2006 general elections), at a regional conference on civil society organised by the Heinrich-Boell Foundation (March 2006), the current High Representative, Christian Schwrtz-Schilling, invited the representatives of civil society and NGOs to call political parties to account!

[13] International Crisis Group, (1996:16)

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 295

ter of accountability as a concept based on public articulation, explanation and justification of policies whose consequences are felt first and foremost by the citizens of BiH. Absence of accountability of local actors must not be a mitigating element in the deficit of accountability of the so-called international community in BiH.

For too long, the inhabitants of BiH have been faced with the practice of ”transferring accountability”. By this I mean the practice whereby whatever local decision-makers do not know, do not or will not do they declare it the responsibility of the international community in BiH. Excuses mainly run along the lines of sensitivity and complexity of issues, but in principle it is always a matter of necessity to make unpopular moves which may be negatively interpreted by the homogenised electorate, which votes for them pursuant to the principle of protection of their own, mono-national interests.

Whenever faced with issues which lack a wide consensus among key actors, the so-called international community also delegates responsibility to domestic authorities.[14] Levitating responsibility, one may say!

That is why in many situations David Chandler has unfortunately been proven right when he says that

”Dayton’s flexibility has been the key factor enabling external powers to permanently postpone any transition to Bosnian ‘ownership’. The only transition which has taken place has been from the ad hoc policy-ownership of self-selected members of the Peace Implementation Council (PIC) to direct regulatory control under the aegis of the European Union (EU). This transition has been brought about through informal and unaccountable mechanisms of external regulation, and has been imposed ‘from above’ without any debate or genuine involvement of the people or elected representatives of BiH.” (Chandler, 2005:337)

Still, the results achieved could be interpreted as positive signs of moderate optimism, primarily through analyses of effects in issues such as integration of entity armies into a single armed force, establishment of a state border service, however good or bad, and the partially successful judicial reform.

All other achievements, starting from the structure and size of the Council of Ministers of BiH, reforms of the security sector, and the establishment of a public broadcasting system, depend on the (preliminary) issue of reforms of the BiH Constitution and guarantees for their implementation.

[14] For more, see (Abazović, 2003.)

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 296

Although all the previous interventions into the constitutional system tried to influence a change, which led to the Constitutional Court of BiH (2000) issuing its "Decision on Constituent Status", all the subsequent amendments to entity Constitutions in 2002 (following the so-called "Mrakovica-Sarajevo Agreement"), further expanded the *ethnification* of the political system and shrunk the free space left to the individual for non-ethnic identification.[15] By way of reminder, until the adoption of the "Decision on Constituent Status", the principal belief was that equality of groups are the replacement of non-discrimination of individuals.

"Neither in terms of norms, nor in terms of practice in application and interpretation of some of its provisions, the current constitutional system of BiH does not provide possibilities for further societal development of BiH. There is evident presence of insurmountable shortcomings in the text of the BiH Constitution, but also of the problem of application of constitutional principles. Still, three essential problems may be identified: (1) lack of understanding of basic constitutional principles and its adequate valuation; (2) lack of political will to accept common constitutional values; (3) wrong practice in applying constitutional provisions. Additional damage was caused by the (deliberate!?) wrong interpretation of the already limited possibilities provided by the text itself, totally ignoring the clearly legitimate interest of any state to ensure normal functioning of its institutional system, respecting the principles of transparency of action and government as a service for the citizens." (Vehabović, 2006:61)

Therefore, along with reforms of the constitutional system, or rather, very specific changes to the BiH Constitution, together with local actors (opening a separate issue of new partnership, which would respect both the duties and the responsibilities of the parties), critical areas of action include reforms of the education system and of the police, as well as, certainly, arrests of indicted war criminals (first of all, Radovan Karadžić and Ratko Mladić).

IV. Final considerations

"The dying spring" of the High Representative, which seems to be approaching clearly, no later than mid-next year, may open the issue of tallying the balance of effects of international engagement in the post-conflict

[15] For more, see (Bieber, 2005)

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 297

society of BiH, and of those factors who were instrumental in decision-making processes both *de facto* and *de jure,* but who continued to reside outside BiH. One can only hope that such a balance may acccept that "these solutions cannot create the country envisioned by the peace agreement because the existing institutional framework prevents them from doing so. Nation-building efforts in Bosnia, as currently conceived, cannot reintegrate the country or transform its society because such strategies are, in fact, at odds with the country's governing structure". (McMahon, 2004-05:583)

The international design we know and live in BiH has long achieved its peak, and the only solution is – redesign. The "external" and the "internal" stakeholders seem to agree in one thing, that the only path to "success" is the path of European integration, and that this country cannot take that path without a guide.

That is why, continued involvement of the international element is not only certain but also necessary, and that is indeed so. The future lengthy engagement of the EU Special Representative for BiH on its path towards the EU[16] (with or without the Bonn powers) will depend on the readiness to face the accute problems of legacy of the Dayton construct, but it will equally depend on the ability to articulate strategies which would provide work for a completely new generation of local civil servants, politicians and experts.

"How can the domestic intellectual potential help the international community in BiH? By ensuring that the servitude-prone part of BiH intelligentsia cancels absolutely and irrevocably its hidden and transparent services to the ruling national parties, stops lying to itself and others, and by producing intellectual services which do not depend on party coffers, thus strengthening the independent thinking block. It is high time for the intelligentsia in BiH to stop generating deception rooted in old and new myths of a new class. In this way, the international community continues to develop as a separate and imposed BiH identity which develops, in addition to the three national bureaucracies, its own, fourth bureaucracy, the fourth echelon of money wasted for nothing." (Ćurak, 2004:155)

[16]Recent estimates indicate that Croatia, a state belonging to the group of former Yugoslav republic which has gone further than others in acceding to the EU, will become a full member state no earlier than 2009. BiH has not yet signed the Stabilisation and Association Agreement (SAA) and as things are at the moment, it is likely to be one of the last European states to complete this formal step.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 298

However, although the "road to Europe" may engender numerous positive results and some progress, the key problem is still (and must not be taken off the agenda, local or international) -- the BiH society lacks (or does not exist) the fundamental consensus of its members (particularly those framed within collective identities) on issues of the past, the present and the future.

The so-called international community has never seriously faced this fact – and different views of the causes and solutions to the "Bosnian problem", which are often mutually exclusive, raise the issue of "local" as well as "international" discord. Faced with these issues, the so-called international community literally does not exist. What is left is a set of specific interests of specific goverments interested in BiH in one way or anohter. Perhaps the most illustrative example is the symbolic participation of institutions of the so-called international community in what is called "confronting the past".

Still, the internationals (or, in simple terms, persons who work in BiH, in international organisations, international governmental or non-governmental organisations, agencies and services) maintain a significant presence in everyday life in BiH, as the "ambivalent builders".[17] Soldiers and policemen, experts in human rights, legal reform or elections, banking managers, advisors in private sector reform and micro-credit organisations, educators, trainers, researchers, aid workers… And diplomats, of course.

However, their engagement aimed at unifying and integrating (or rahter, in the mission of "bringing democracy"), within the context of BiH society, usually simply exclude themselves from the local community: either by voluntary self-separation from BiH (state) Institutions, or by exclusion of Bosnians and Herzegovinians from the imagined Europeanism (or whatever it is they perceive as Europeanism).[18] These lessons are mastered superbly by their "local" students and that is part of the problem, not of the solution.

One thing remains undisputed – if this state and society are indeed on the road to "Brussels", demands will be harder and changes required will be more radical. The progress of this country towards those who are already in their "unity of diversity" can only be measured by the fact that the same official EU motto must first come to life in BiH – with the same principles and values applicable in the EU!

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[17] For more, see (Coles, 2007)

[18] Good starting examples for the former process are the famous international ID cards carried around the neck, or cars with special registration plates, and for the latter, a good illustration is the issue of visas and the procedure for obtaining them. For more, also see ibidem.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 299

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Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 301

FINAL REMARKS

Dragoslav Dedović, Director, Heinrich Böll Foundation Regional Office for South-East Europe, Belgrade

Ladies and gentlemen, dear friends!

This has been a long day and although I grew up in this country, I have learnt a lot today. The Heinrich Böll Foundation has asked the question which, for unknown reasons, has not been asked so often. We have asked the question which could not receive a definite response during a one-day discussion and after so many years in which it has never been asked.

The question which is asked once, and is ignored, and remains unanswered, will be coming back to us in an ever sharper form. So I hope that this question will be asked again within our activities next year and also in other forms. I do not think that this is the end of the quest; rather, this is just its beginning.

Your interest today shows that those who have a vital, existential connection to the responses to this question have remained with us until the end. This is a response to the question asked by Zdravko Grebo why others had left. I presume that they left because they have no substantial links to this quest for responses to unpleasant questions. I think that the launch of the process of having a dialogue with the international community, which would include a reflection of the international community's lost ways, is badly needed.

During the roundtable, the issue of the international community's definition has also been launched. I would say that the international community could be defined as an interim sovereign of Bosnia and Herzegovina, as a sovereign is, according to Carl Schmitt, the one who may declare a state of emergency. Eventually, the international community, even as a sovereign, will be forced to engage the domestic wisdom in the process of reflecting on its own misconceptions and good arrangements, in order to develop, together with the domestic wisdom, an alternative scenario of the future of this country. If you think that this is too ambitious, then we could focus on a short-term goal of something more modest: raising the issue of alternative scenarios is crucial. The stalemate, but also the 'more than that' strategy as the strategy which serves the purpose of looking for a solution for Bosnia and Herzegovina, has reached the limit and will not take us anywhere from here.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 302

We have discussed today some other important issues as well. For example, the category of trauma has been mentioned. I think that the international community does not deserve the name of 'trauma', the secondary trauma, as the primary trauma has not yet been solved after genocide was committed in this country, as the responsible ones have not yet been brought to justice, as the country remains fragmented, as the society has been wrecked. The primary trauma is producing the secondary trauma reflex, which is the diagnosis that I believe all of us agree with. Have the great expectations that a huge injustice done to the people here could have been partly undone by a magic wand of others had an additional impact of dissatisfaction? On the one hand, I can understand those expectations. On the other hand, there is the phenomenon of shifting the responsibility: we should not forget the cultural and historical developments in Bosnia and Herzegovina in which foreign administrators from the Austro-Hungarian epoch were called the 'carpet-baggers' – the term which I found in Mak Dizdar's work. This means that a xenophobic attitude towards others, even the 'imperialistic' one, has remained ever since, with an object changing over time.

Our goal is a critical dialogue between Bosnia and Herzegovina and the part of the world which has assumed some responsibility for the future of this country. The international community should not be the source of the national political actors' own mistakes, just as the mistakes of the national political elite should not be used by the international community as an excuse for its failure to do the job fully and to examine critically its own weaknesses.

For the time being, I am not aware of any comprehensive evaluation, auto-reflection, monitoring and so on, which would analyze in detail the achievements and failures. If they do not exist or they are not available to the public, further steps would be necessary. Secondly, is there any systemic knowledge about what the citizens of this country think about their sovereign, regardless of the source of that information? I do not know much about that. There have been only few partial researches done so far. All that needs to be done. The reflection is not an easy job, and we have seen today that there are enough controversies. I am pleased because it seems to me that a non-creative nodding at such roundtables is not their purpose.

We, the Foundation, will be asking this question in this country time and again until such time as it becomes redundant. That should be our shared goal.

This time we shall distribute our conclusions to the institutions which should read them – directly to the sovereigns of this country – and the next

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 303

time, we shall form the working groups before the international community officials come to the conference and present the conclusions to them in order to avoid a situation in which a dialogue ends with a protocolar courtesy. We shall find methods for engaging in the dialogue and joining the process of reflection, and engaging the regional European and German components in that process.

This is not something which can be done quickly. This country has lost much time after all which happened, and it seems to me that it has reached a deadlock - mentally and de facto. How will it break the deadlock? That is the other side of the same question: what has the international community failed to do and what has it done well?

We have also heard some proposals such as the one that some domestic tasks should be skipped and that Bosnia and Herzegovina, as a privileged country, should be integrated into the European Union in an expedient process. This would, perhaps, prevent a threatening ideological regression on an ethnically and religiously understood 'clash of cultures'. Bosnian views would also be permanently broadened by the European dimension. Then Bosnia, irreversibly placed in the European context, would finally be the home country of all the people who live here.

The European contextualization of Bosnia and Herzegovina is indeed helpful – that is the process which we all, who have lived abroad for decades, are aware of individually. A comparative approach, the wisdom which is constantly bringing its own reality in relation to a larger whole, is more needed than ever before.

In doing so, we should not allow ourselves to be trapped by idealization. There is no shortcut to an ideal situation. The further the object of your longing, the stronger the longing. But this is possible only with a rough stylization of the object of one's longing. The shortcut to the European Union is not possible, not needed, nor is possible or needed idealization of the European and Bosnian context. One should not succumb to resignation in difficult times. This is why our intention is to grasp the reality and to keep our eyes wide open and continue this process of critical thinking about the presuppositions necessary for the final stabilization of Bosnia and Herzegovina in Europe, and of promoting Europe's values in Bosnia and Herzegovina.

I think that our Sarajevo Office has formulated the question quite well and organized this very first step perfectly well. Let me add one more thing: The Heinrich Böll Foundation likes unpleasant, critical questions, in the light of its history and the history and the spirit of the Green. After all, pleasant questions are boring.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 304

Conclusions and recommendations

In preparing the Conference, a study was made to tally the balance of effects of the international community in Bosnia and Herzegovina from the political science, legal and sociological aspects. The study served as a basis for the discussion at the Conference at which the representatives of the international community, civil society and politics in BiH discussed that issue. There were about 90 participants, and the Conference was covered by accredited reporters.

In view of the fact that this type of a conference and especially the themes discussed at the Conference was described by all participants as something which happens rarely in the public life in Bosnia and Herzegovina, and as an extremely important and absolutely required event, the conclusions and recommendations below are rather general, which should in no way be understood as the lack of arguments and/or proposals by the participants at the Conference. Of course, some very specific assessments and recommendations are contained in the study and in the speeches and commentaries by the participants.

However, it is clear that the organization of such conferences, roundtables and consultations should become a practice in view of the obvious absence of a dialogue between the international community officials and the broader public in Bosnia and Herzegovina in regard to the key issues of the future of this country.

The Conference was the first serious public forum for 'verbalization' (and articulation in a way) of the local positions on the phenomenon known as the 'international community'. The Conference tried to give that attempt some form, and that is, in fact, the phenomenon of the '*inherence*' of the international community and the possible critical reflection on its legacy and its tradition here in Bosnia and Herzegovina. The working part of the Conference heard a critical reflection on the effects of the international community in BiH, which is perhaps something specific in view of the length of the presence of the international community in BiH. At the same time, although with a different intensity and scope (because a considerable number of the representatives of the international community did not come to the Conference), the representatives of the international community had an opportunity to present their views and analyze the role played by the international community in BiH.

That the two groups of the „world" (domestic perception and the perception within the groups of the international community) continue to exist

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 305

– does not have to be explained; but it is necessary to emphasize that the Conference offered the model of bridging the void and partly succeeded in that attempt. This is why one of the conclusions of the Conference is that the future events of this kind should be organized in a different format (for example, in the form of working groups and presentation of conclusions at a plenary session, etc.).

In this regard it is rather obvious that the international community in Bosnia and Herzegovina is treated as a kind of trauma, which is why it is extremely important to open those issues; but we could not help getting the impression that a similar thing also exists on the other side, among those who did not come to talk to us. We are not sure that they too are not traumatized over so bad and defeating results or because of their own expectations in Bosnia and Herzegovina, perhaps.

It is important to stress that the so-called daily politics issues did not dominate the Conference; the attention during the Conference was given to the key issues and processes going on in the state of Bosnia and Herzegovina and its society: democratization of the post-conflict society, the building of democratic institutions, the rule of law, the election system and the constitutional framework, the civil society and political structures, the issue of the local ownership for the key processes in the state and the society, reckoning with the past... Although some of these issues have a predominantly „domestic/internal" character, it seems that it was necessary to open the discussion about the „external" factor as well in order to have a meaningful discussion. Of course, from the professional point of view, the complexity of the phenomenon requires an interdisciplinary approach, which emerged indeed during the working part of the Conference.

It is necessary to stress that good arguments were offered about the effects of the international community. Finally, there were more questions than responses, which is not the failure of the Conference – on the contrary, the impression we have is that it is only clearly and unequivocally identified problems, even in the form of a question, that can encourage the way out from the intellectual confusion and the development of the strategies for a successful future of the state and the society.

In the end, we hope that at least this form of pending issues, problems which we opened, the form of this critical reflection, which has perhaps been articulated at the scene of Bosnia and Herzegovina for the first time, will be a certain corrective to the future engagement of the international community in Bosnia and Herzegovina – no matter what that engagement may be.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 306

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She is also the author of the book titled *Politička de/re socijalizacija i mediji.* [*Political de/re/socialisation and the Media*].She was also the editor of: *Novinarstvo u funkciji ljudskog napretka-printani mediji* [*Journalism Serving Human Development – Print Media*], Internews, Bemust, Sarajevo, 2003, and co-editor (together with Prof. Dr. Besim Spahic) of *Novinarstvo u funkciji ljudskog napretka – elektronski mediji*, [*Journalism Serving Human Development – Electronic Media*], Internews, DES, Sarajevo, 2004.

Manfred Dauster received his law degree from the University of Saarland/ Saarbrücken. In 1983 he completed a PhD-Degree in Constitutional and Comparative Constitutional Law and spent six months as an extraordinary Professor for Constitutional Law at the State Academy for Civil Service in Hof/Bavaria.

He worked as a Public Prosecutor in the Prosecutor's Office in Munich both in the Common Crime Department and in the Economic Crime Department. He was appointed as a Judge at the Regional Court I in Munich in 1989. He was the Senior Prosecutor in the Prosecutor's Office from 1990 to 1997 when he became the Presiding Judge at the Regional Court I in Munich. In August 2000, he became Head of the Anti-Fraud Department of the Office of the High Representative (OHR) in Bosnia and Herzegovina. From July to December 2002 he was Head of the Criminal Institutions and Prose-

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 307

cutorial Reform Unit of the OHR. From Jan 2003 to 2005, he returned as the Presiding Judge to the Regional Court I in Munich.

He was a Member of the Bavarian State Committee for the Graduation of Law Students within the State Ministry of Justice for twenty years and he has also been a Member of the Bavarian State Commission on Bar Examinations. He was appointed as a judge on 29th of September 2005 on the Court of Bosnia and Herzegovina.

Dino Abazović, born in 1972 in Sarajevo, holds a masters degree in sociology and works as a senior teaching assistant at the Sociology Department of the Faculty of Political Science, University of Sarajevo, courses in Sociology of Religion and Sociology of Cognition and Morale. He is also an associate of the Human Rights Centre of the University of Sarajevo. He is a member of the editorial board of *Odjek* magazine for art, science and social issues. He has attended The American Institute on Political and Economic Studies – Georgetown University, Univerzita Karlova v Praze, Raoul Wallenberg Institute for Human Rights and Humanitarian Law, University of Lund, as well as Institut D'Etudes Europeennes, ULB Brussels. As a researcher, he has worked on several international projects and has visited several universities in the region, Europe and the US as a visiting lecturer. He is the author of *Za naciju i Boga: Sociološko određenje religijskog nacionalizma* [*For Nation and God: Sociological Determination of Religious Nationalism*], and was the co-editor of two collections of essays (*Religija i europske integracije* [*Religion and European Integrations*] and *Confronting with the Past: Consequences for the Future*). His work has been published by a number of domestic and international magazines, collections of essays and books, in South-Slavic languages as well as in English.

Primjer BiH odrzivi koncepti prelom engleska 23.08.07_korektura.qxd 21.9.2007 15:00 Page 308