

Burying the Lede: The Priebe Report's Surprisingly Clear Recommendation



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The long-awaited “Experts’ Report on Rule of Law issues in Bosnia and Herzegovina” – in short, the so-called Priebe Report on BiH – dropped on December 5. In light of continued human suffering in Syria; impeachment news from the US; the ongoing self-inflicted wound of Brexit politics; migrants freezing in Bihac and being relocated to Sarajevo’s outskirts; and the not-unexpected yet still disgraceful breakdown of civic (and civil) politics in Sarajevo canton, it was easy to miss. However it was also easy to miss because the most important takeaway was buried.

A Weak State

Beginning on page 20 – paragraph 94 – after pages and pages of commentary on the well-known but now formally confirmed deficiencies in the judiciary, Section V finally addresses the underlying structural foundation for all of the preceding described deficiencies: “Overcoming constitutional weaknesses.”

Even more importantly, Paragraph 95 references a document not mentioned for years – the 2005 Venice Commission opinion (“Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative adopted by the Venice Commission at its 62nd plenary session,” hereinafter “VC opinion”).

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By Senada Selo Sabic,
Valery Perry and Kurt Bassuener
The Democratization Policy Council

over the past decade likely forgotten the main points. The most critical point to remember is that the report’s recommendations included two main elements: a critique of the human rights provisions of the current constitution (e.g., related to the Sejdic-Finci lawsuits and other cases challenging the primacy of the constituent peoples), and a critique of the functionality of the government and its institutions that have emerged from the current constitution. Both are needed in a country that purports to want to join the EU. The VC opinion says as much in paragraph 26: “With such a weak state Bosnia and Herzegovina will not be able to make much progress on the way towards European integration.”

Since the failures of the April Package and the progressively weakened Prud and Butmir constitutional talks, there has been very little stomach among the international community – and particularly within the EU – to discuss this issue. There will be strong temptation by most to continue to ignore this foundational criticism. As with the introduction of the “Reform Agenda” in 2014, which followed widespread citizen protests, ongoing international and domestic elite support for the status quo will lead to a default position of pouring more funds and projects into a system that demonstrably resists reform. This has suited political actors who have little

interest in either rights-based or functional reform.

To ensure the issue stays off the radar screen, the mere utterance of the words “constitutional reform” has long been painted in dark terms, conjuring dissolution and the specter of renewed violence. It has become the BiH political equivalent of Harry Potter’s Voldemort, in spite of the fact that with the exception of Poland and Cyprus, every country that moved through the enlargement process needed to change their constitution in ways large and small. (Fun facts: Poland had so quickly updated their constitution even before beginning its EU journey it didn’t need to do so once it formally began accession. Cyprus benefited from the unwavering sponsorship of and pressure on the EU from Greece, but that’s another story.) However, it is precisely the structural reality and the polarizing incentives that the current BiH constitution provides that actively prevent the emergence of reforms that would serve citizens: the opportunity to enhance health care mobility throughout the country; to improve BiH’s agricultural opportunities through a coordinated statewide agriculture strategy and Ministry of Agriculture; to ensure equal maternity benefits and rights for women whether they live in Zepce or Maglaj or Doboj; and to allow for apolitical local and regional tourism and business development through common-sense development and promotion initiatives that could, for example, treat Herzegovina as a cohesive region ready to make

investment easier across Stolac, Trebinje, and Blagaj, for example. To be clear, this is not the job of the international community. BiH is not going to be reformed from the outside; it has to be reformed from within by reformers whose political work focuses on public interests. This is the only way to make BiH functional, stable and prosperous. Such reformist forces, if they exist, are presently too weak to challenge a status quo that has taken root over nearly 25 years. What the international community does need to do, however, is to acknowledge that constitutional reform is an unavoidable and essential step to make BiH functional, stable and prosperous; and then assist those who rise to the challenge of developing a popularly saleable alternative. Awaiting that social and political reform force, the international community could as a first step consciously limit its engagement with the existing political options that undermine BiH as a state.

A Decade of Stagnation

Moving forward all of these issues deserve considered attention, in an open forum not dominated by back-room divide-and-conquer politics, but

one including a strong expert-led and bottom-up process. There are process examples that could focus on function - for example, the one used in Iceland, following the massive breach of social trust in the wake of the financial crisis. While the reality of politics hindered sweeping constitutional reform in Iceland, the process did demonstrate what is important to citizens, giving reform-minded policymakers a recalibrated baseline. Iceland's democracy was strengthened simply by the process. While the natural skepticism fueled by over a decade of stagnation and, more recently, even regression, makes it easy to wave off any possibility for discussion of such issues ("turkeys don't vote for Christmas"), it would be not only a disservice to BiH citizens but would be a further abrogation of the international community's post-war engagement to once again pretend that the Dayton constitution is suitable for a country with EU ambitions.

Perhaps it took a German legal scholar like Priebe to point out the elephant in the room, using dry but correct language. Priebe and his colleagues have stated in their quasi-official document what has been readily apparent for well over a decade: the problem is structur-

al. What is surely unwelcome in some quarters is that this contradicts the EU's stated policy since 2006.

Whether this will be yet another opportunity lost will depend on two factors. First, which partners the EU seeks in 2020 - those with a proven record of obstructing reform, or citizens who are fed up with being ignored and increasingly voting with their feet. And second, how much pressure the EU is willing to exert on the governing elites who have long hamstrung the country's development and infringed upon popular dignity. At the very least, Priebe and Co have undercut the incrementalist default setting of EU and Western policy - and offered a potential tool to BiH citizens who demand a substantially better social contract. They should seize it.

Senada Selo Sabic, a native of Gracanica, is a Senior Research Associate at Institute for Development and International Relations (IRMO) in Zagreb. Valery Perry and Kurt Bassuener are Senior Associates of the Democratization Policy Council, and live in Sarajevo and Dundee, Scotland

Bosnian Serb Opposition Demands Minister's Resignation after Slap

Republika Srpska Interior Minister Dragan Lukac slapped an opposition MP who confronted him during a debate on a sealed document concerning Bosnia's relations with NATO, triggering outrage from opposition lawmakers.

Opposition lawmakers in Bosnia's Republika Srpska called for the resignation of the entity's interior minister after he slapped an opposition MP on Monday during a debate on Bosnia's future relationship with NATO. The incident occurred during heated exchanges on Monday evening over a sealed document - the 'Reform Program' - that Bosnian Serb leader Milorad Dodik agreed to with Bosnian Croat and Bosniak leaders during negotiations on the creation of a new state-level government.

Opposition lawmakers in the mainly Serb Republika Srpska have condemned the confidential document, drafted for NATO as the latest step deepening Bosnia's relationship with the Western military alliance, as opening the door to future membership of the bloc. Dodik and his Alliance of Independent Social Democrats reject this, saying they will never allow Bosnia's accession to NATO.



As Interior Minister Dragan Lukac addressed the debate, 26-year-old opposition MP Drasko Stanivukovic interrupted him. The two men began arguing and Lukac challenged Stanivukovic to approach him, which he did. Lukac tossed papers at him and then slapped him. Opposition MPs left the parliament in protest.

"He hit me," Stanivukovic told reporters. "The interior minister threatened me. The man who leads the police, that man issues threats. He told me that I would end up like NATO flags broken on the floor. I'm going to sue him." Stanivukovic called for a protest on Thursday in Banja Luka, the administra-

five centre of the Republika Srpska, "until Lukac resigns."

"We have a monster here," he said." Lukac said he had acted in self-defence, accusing Stanivukovic of throwing a NATO flag at the prime minister and approaching him in a threatening manner. "I don't know what he had in his hands, what he intended and if he might make a move that could endanger me," Lukac told reporters.

After hours of debate, the Republika Srpska assembly endorsed the Reform Program, though the vote has no bearing on what happens to it since it was adopted by the Bosnian tripartite presidency on November 19.