

**The West's Dirty Mostar Deal:
Deliverables in the Absence of a BiH Policy**

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EXECUTIVE SUMMARY

Last June, the ambassadors of the European Union and the US to Bosnia and Herzegovina (BiH), together with the UK ambassador to BiH, struck a deal on Mostar with the main Croat and Bosniak parties, the Croatian Democratic Union of BiH (HDZ BiH) and the Party of Democratic Action (SDA). The agreement ended a ten-year deadlock on implementation of a Constitutional Court of BiH (CC BiH) ruling that suspended the Election Law of BiH and provisions in the Mostar city statute that regulated local elections on the grounds they were discriminatory, and returned the right to vote to the Herzegovinian city's citizens, who on December 20 will vote for the first time in 12 years to elect their local representatives. The deal was praised by the West as a major breakthrough, a long-awaited return of local elites to a policy of compromise, and even an expression of a "thriving democracy." Nothing could be further from the truth.

The agreement is an exercise in muddling-through, a transactional bargain between the Western negotiators and the leaders of the HDZ and SDA, Dragan Čović and Bakir Izetbegović, that signs off on the ethno-territorial division of Mostar after 25 years of international efforts towards reunification of the once multi-ethnic city that was divided during the Bosnian war. Even worse, the deal contains a major Western concession to Čović's long-standing project of creating a *de jure* or *de facto* third entity designed to conceal the disintegration of the country. The Mostar deal is just the latest chapter in a decade and a half of a failed Western BiH policy with the EU formally and jealously in the lead, further aggravated over the last several years by the accelerating crisis of the West's global role, and of liberal democracy in the West – on both sides of the Atlantic. It bears all the hallmarks of that combination: no strategy, no leadership, no (serious) defense of the values and principles of liberal democracy or of the core principles that guided the West's Balkan policy of the last three decades and no adherence to the lessons learned from it.

The Mostar deal is in fact a set of three agreements: The first, an amendment to the Election Law of BiH, formally replaces the discriminatory provisions and regulations in the election law and in Mostar's city statute that regulated local elections in Mostar, and which were suspended by the CC BiH in 2010. The second, an amendment to the existing 2004 city statute, establishes a new HDZ-SDA power-sharing arrangement based on the ethno-territorial division of Mostar, by shifting the city's power center to a semi-formal governance level below the central level, in the form of so-called city areas – which are also electoral districts for the city council elections. This arrangement defies all principles of democracy, rule of law and local self-governance. Even worse, it renders the return of the right to vote to Mostar's citizens moot, and establishes new forms of discrimination. With the third agreement, the West has for the first time given the seal of approval to HDZ's terminology "legitimate political representation of constituent peoples," – a means by which Čović's generational project to establish a *de facto* third, Croat entity in BiH may enter through the back door of electoral system reform – and put pressure on the SDA to do the same.

The Mostar deal rests on three transactional foundations: It was the first international negotiation on Mostar with no defined political principles and aims; it was the first negotiation on Mostar conducted

with only two of the nine political parties of Mostar; and it was a bargain for the HDZ and SDA in which the West got one agreement (on the electoral law) in return for accepting two others, negotiated between the two parties with almost no intervention by the West.

Since the deal was signed, it has been met with criticism. Western actors have begun to seek a way out of a mess of their own making. Western capitals have shifted blame onto their negotiators in Sarajevo. In turn, the negotiators have looked to the Mostar actors they have betrayed – opposition parties, civil society actors, and citizens – to help them out of their predicament by voting in the elections on December 20 and preventing the two-thirds majority win for HDZ-SDA needed to adopt the new statute. In the meantime, negotiations over the third agreement have stalled, leaving open the possibility the entire deal will collapse in the end.

There is hope for a U-turn on Western BiH policy: First, in the European Commission's May 2019 *Avis* that presents the outlines of an initial masterplan for a long-term, strategic policy on BiH of the EU and the wider West based on conditionality for comprehensive, structural reform, with constitutional change at its core (but that has not yet been followed up by the member state governments); and second, in the impending inauguration of US President-elect Joe Biden in January 2021 and the potential for change that it represents. But first, the damage that the Mostar deal has inflicted upon Mostar, the Federation of BiH, the country as a whole, and to Western policy towards BiH must be addressed.

Recommendations

For immediate damage control

To Mostar citizens:

- Mostar voters need to save their city from ethno-territorial disintegration by voting on December 20 for any party or independent candidate except HDZ and SDA, thus denying them the two-thirds majority they need to adopt the draft city statute.

To the West:

- Key EU member states such as Germany need to seize leadership on the Mostar issue post-election, push for an EU position against the new city statute, and re-define/establish red lines against the ethnic disintegration of Mostar and the Čović-HDZ project that is behind the political agreement on changing the electoral system.
- The incoming Biden administration needs to reverse the policy pursued by Deputy Assistant Secretary of State Matthew Palmer of appeasing the nationalist parties, join the EU in re-defining/establishing red lines on Mostar and electoral reform, and refrain from any past inclination towards the “need to give something to the Croats” (i.e., the HDZ BiH). It needs to refrain from rushing to achieve any quick deliverables under newly established US leadership, but instead work in close cooperation with the EU.
- The EU and the US should refrain from engaging in negotiations on the implementation of Sejdić-Finci and other court rulings until they define a joint, strategic policy that aims to move BiH out of its trajectory of accelerating regression.

For the longer term

- The EU and the US need to start an initiative on a long-term comprehensive BiH policy that puts constitutional change at its core with comprehensive conditionality, by turning the EC Avis and the Priebe report into a master plan, using the international community's Dayton instruments to create a conducive environment for reform, and preventing further deterioration of the political and security situation in BiH.

Introduction

On December 20, 2020, citizens of the Herzegovinian city of Mostar will vote in local elections for the first time in 12 years to select 35 members of the Mostar city council which subsequently will vote a mayor into office. Mostar is among a few cities in the post-Yugoslav space that emerged from the 1990s Balkan wars as (ethnically) divided cities, and in which the international community has invested significant time and resources to reintegrate. The long-awaited upcoming election is a result of the June 17, 2020 signing of the so-called Mostar agreement,¹ which is in fact a set of three agreements, by the leaders of the two main parties in Mostar and the Federation of Bosnia and Herzegovina – Croatian HDZ BiH president Dragan Čović and Bosniak SDA president Bakir Izetbegović. The signing of two Mostar-related documents – one on a draft amendment to the Election Law of Bosnia and Herzegovina and a draft city statute and one on broader changes to the electoral system in Bosnia and Herzegovina (BiH) – followed months of negotiations mediated by the EU Special Representative to BiH, Johann Sattler, and the US ambassador to BiH, Eric Nelson, with the UK ambassador to BiH, Matthew Field, also playing a crucial role. Adoption of the election law amendment by the Parliamentary Assembly of BiH paved the way for local elections on December 20, two months after regular local elections were held throughout BiH. With the signing of the agreement and the holding of elections, BiH will fulfil one of the first conditions set out in the European Commission’s (EC) May 2019 Opinion on BiH’s application for EU candidate status.²

Mostar citizens’ right to vote was suspended by a 2010 decision of the Constitutional Court of BiH (CC BiH) that ruled parts of the Election Law of BiH and of the 2004 city statute related to the Mostar electoral system discriminatory. The six-month deadline set by the CC BiH to adopt amendments generated endless rounds of negotiations, most of which were mediated by the international community, but failed to produce an agreement. This failure of international mediation occurred in the context of the West’s post-2005 BiH policy shift from the post-war, so-called Dayton phase, in which external actors employed enforcement tools to implement the peace agreement and drive reforms towards the goal of a BiH which could function, to the Brussels phase, in which BiH would propel itself forward and undertake required further reform, induced by the prospect of EU (and NATO) membership.

That shift put the EU in the driver’s seat in BiH, but left the West without a defined, strategic policy based on clear political principles and aims. It enabled political elites in BiH, particularly ethno-nationalist elites, to revert to their comfort zone of maintaining popular consent through application of patronage and fear, pursuing an accelerating and systematic rollback of achieved reforms. These actions successfully exploited the limitations of the Dayton constitutional order to provide the basis for a functional state and resolve wartime controversies over the identity of the state. In such a destructive political environment, implementation of the Mostar ruling failed, just as implementation of the Sejdić-

¹ HDZ BiH, “Potpisan sporazum HDZ-a BiH i SDA o izborima u Mostaru, Domu naroda FBiH i Predsjedništvu,” June 17, 2020; available at: <https://www.hdzbih.org/hr/node/5248>.

² European Commission, *Commission Opinion on Bosnia and Herzegovina’s application for membership of the European Union*, May 29, 2019, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-bosnia-and-herzegovina-opinion.pdf>.

Finci case and others like it had failed which called into question the constitutional order of BiH. In the same way, various limited constitutional reform initiatives launched by the EU and the US after 2005 to remove some of the deficiencies of the Dayton order also failed. In the case of Mostar, in a case brought by private Mostar citizen and local politician of the multi-ethnic Our Party (Naša Stranka), Irma Baralija, who claimed a violation of her right to run or vote in local elections in Mostar, the European Court of Human Rights (ECHR), in an October 2019 decision, ruled in her favor and renewed the pressure on political parties in Mostar and the international community to finally reach an agreement by setting a new six-month deadline.

Not surprisingly, the June Mostar agreement has been praised by the relevant actors as a major breakthrough. Bakir Izetbegović called the agreement a “victory for Mostar’s citizens and voters.” The HDZ BiH stressed that the wider political agreement would “ensure the legitimate choice and legitimate political representation of constituent peoples and citizens at all administrative-political levels.”³ In a joint statement, the EU Commission’s High Representative for Foreign and Security Policy, Josep Borrell, and Enlargement Commissioner, Olivér Várhelyi, welcomed the agreement that would “pave the way for the citizens of Mostar to exercise their right to vote in the municipal elections after 12 years.”⁴ One month later, the EU delegation to BiH greeted the parliamentary adoption of the election law amendment as a demonstration “that political leaders and BiH institutions are able to take ownership, compromise and resolve difficult issues.”⁵ The US State Department in a similar fashion praised the political leaders, stressing that “both SDA President Bakir Izetbegović and HDZ BiH President Dragan Čović demonstrated leadership and political courage in pursuit of the necessary compromise,” and noted that such compromise was an “essential feature of thriving democracies.”⁶

Despite all that praise, the Mostar agreement drew growing criticism from opposition parties in Mostar excluded from the negotiations and from civil society activists. They criticized the opaque and exclusive manner in which negotiations had been conducted during the Covid-19 lockdown. They also asserted that the deal only served the interests of the two ethno-nationalist parties and that it violated European principles and values.⁷

This policy note aims to lay bare the very nature of the Mostar deal, i.e., the substance of the three agreements and the process that led to their signing, and reveal that the deal does *not* represent a

³ “Potpisan sporazum HDZ-a BiH i SDA o izborima u Mostaru, Domu naroda FBiH i Predsjedništvu;” SDA, “Izetbegović: Pobjednici su građani i glasači u Mostaru, gradom će se zajednički vladati,” June 17, 2020, available at: <http://www.sda.ba/vijest/izetbegovic-pobjednici-su-gradani-i-glasaci-u-mostaru-gradom-ce-se-zajednicki-vladati/708>.

⁴ “Joint statement by HR/VP Josep Borrell and Commissioner Olivér Várhelyi on political agreement on the electoral law for Mostar,” June 17, 2020, available at: <https://europa.ba/?p=69147>.

⁵ “Local EU statement on the adoption of amendments to the BiH Election Law and 2020 State budget,” Delegation of the EU to BiH & EUSR BiH, July 8, 2020, available at: <https://europa.ba/?p=69339>.

⁶ “US State Department, German official welcome political agreement on Mostar,” available at: <http://ba.n1info.com/English/NEWS/a441731/US-State-Department-German-official-welcome-political-agreement-on-Mostar.html>.

⁷ “Irma Baralija: Politički dogovor HDZ-a i SDA o održavanju izbora u Mostaru „pakleni plan“ u dvije faze,” *Interview.ba*, August 6, 2020, available at: <https://interview.ba/2020/08/04/dosje-mostar-irma-baralija-politicki-dogovor-izmedu-hdz-a-i-sda-o-odrzavanju-izbora-u-mostaru-pakleni-plan-u-dvije-faze/>.

breakthrough. It will show that the agreement is not in line with the EU's roadmap of a strategic, comprehensive EU/Western BiH policy based on Western democratic principles and values set out in the 2019 EC BiH Opinion which includes a candid analysis of the current status of the Dayton state, its clear reform conditionality and a vision for the final outcome of the comprehensive reform process BiH must undertake to become a member of the EU. The policy note will also specifically demonstrate that the Mostar deal directly contravenes the principles for future constitutional reform contained in the 2019 EC BiH Opinion.

Section one provides a brief historical overview of the post-war international efforts to reform the Mostar city statute and Mostar electoral system, and of the 2010 CC BiH ruling on Mostar and subsequent failed efforts at implementation. Section two analyses the three agreements, their substance and impact, and the motives of the two parties, HDZ BiH and SDA, behind the deal. Section three analyses the negotiating process, i.e., the role of the West and its relationship with local actors in striking the deal and perceptions of Mostar citizens and pro-democratic and pro-European civil society activists of the West's role in negotiating the deal. Section four looks at potential post-election scenarios, particularly regarding implementation of the remaining two agreements. The fifth and final section draws conclusions and provides recommendations on how the West can prevent the emergence of further damage from the deal following the December 20 Mostar elections.

The paper is based on extensive desk research, analysis of relevant documents and background interviews with Western diplomats, representatives of the negotiating parties, as well as Mostar opposition and civil society representatives.

“Implementing” the 2010 CC BiH Mostar Ruling: The History

The recent Mostar agreement is just the latest in a long line of international community efforts over the last two and a half decades that aimed to help Mostar overcome the burden of its recent past. Mostar was a multi-ethnic city before the war. According to the 1991 census, it had 127,000 inhabitants with roughly an equal number of Bosniaks (34.6%) and Croats (34%), 18.8% Serbs, and 13.6% of those who declared themselves Yugoslavs or Others. During the 1992-95 Bosnian war, the town became the victim of two wars – first of Serbian aggression, and later of the so-called Bosniak-Croat war. It emerged from the war physically devastated and ethno-territorially divided by the Neretva River (the front line ran along a street on the Western side, close to, and paralleling the river) with a largely ethnic Croat half on its Western bank and a mostly ethnic Bosniak half on its Eastern bank. Most Serbs had fled the city. The violence of the war had created a Croat majority; 2000 statistics put the number of citizens living in the Western part at roughly 55,000 of a total 105,000 Mostar inhabitants.⁸

Prior to the June Mostar deal, all international negotiation efforts with the political parties of Mostar had focused on the following aims:

1. Reunification of the ethnically divided city;

⁸ *Commission for Reforming the City of Mostar: Recommendations of the Commission Report of the Chairman*, December 15, 2003, p.55.

2. Establishment of the basic features and institutions of local democratic rule;
3. Striking a balance between ethnic and civic state concepts through ethnic power-sharing arrangements that nevertheless guarantee individual (political) rights; and
4. Establishment of an efficient city administration at the service of its citizens based on European principles of local self-governance, i.e., an administration that guarantees local service delivery and enables local economic development.

Institutionally, those efforts focused on two elements that represented the most contentious issues in negotiations with the political parties of Mostar:

- a. the post-war city municipalities; and
- b. the so-called Central Zone.

International efforts prior to the 2010 decision of the CC BiH can be divided into two phases that correspond with the adoption of Mostar's two post-war city statutes (and corresponding changes to the Election Law of BiH) – the 1996 Interim Statute⁹ of the City of Mostar (the Interim Statute), and the 2004 Statute of the City of Mostar (the 2004 Statute)¹⁰ that superseded it.

The 1996 Interim Statute

The basic international documents that ended the war in BiH – the March 1994 Washington Agreement that established the Federation of BiH and the November 1995 Dayton Peace Agreement, plus a separate, February 1996 Mostar Agreement – laid the foundations for the Interim Statute adopted that same month. It defined the political and administrative structure of the city and followed a two-year EU Administration that ended at the beginning of 1997. The Interim Statute, as evident by its very name, was designed as an important transitional stage in the immediate post-war recovery of the town.

The Interim Statute established a two-tier system of governance levels – a central level and a city municipality level – both representing units of local-self-governance.¹¹ At the central level, a city administration, a city council and a mayor with two deputies were established. At the lower level, six city municipalities were established, each with its own city municipality administration and council. In local elections, Mostar citizens cast two votes for the central level city council: With the first vote, half of the 48 members are elected from among candidates on a city-wide list. With the second, the other half is selected from among candidates on city municipality voting district lists, with 4 councillors to be elected from each municipality. With a third, separate vote, citizens in their respective city municipalities elect the 25 members of the city municipality council. Ethnic quotas for the city council and the six city municipality councils, as well as veto rights, were introduced to prevent ethnic majority rule. In addition, the mayor and his/her deputies were to be chosen from among the three different

⁹ *Interim Statute of the City of Mostar*, Official Gazette of the City of Mostar No.1, February 7, 1996.

¹⁰ Statute of the City of Mostar, February 2004, Art. 38.2., available at: <https://www.mostar.ba/statut-181.html>.

¹¹ That two-tier system of local self-governance was established during the Socialist Yugoslav era in most capitals of Yugoslavia's Republics and other big cities. Following the break-up of Yugoslavia in the 1990s, some Republics left the system intact, while others reduced the competences of the city municipalities (in some cases also taking away their status as units of local self-governance).

ethnic groups or “constituent peoples” (Croats, Bosniaks and Serbs). The six city municipalities’ boundaries simply reflected the wartime-established demarcation lines: the three in the West – Mostar South, South-West and West – were Croat, i.e., HDZ BiH-dominated, and the three in the East – Mostar North, Old Town and South-East – were Bosniak, i.e., SDA-dominated. In addition, a Central Zone, a tiny strip of land in the city center along the former front line, was established with the aim to serve as the key element for the ultimate reunification of Mostar. The Zone, directly administered by the city administration, hosted key institutions of the city, and was planned to host higher governance level institutions as part of an original plan to move the capital of the Federation of BiH to Mostar.

With the establishment in 2003 of an international commission for reforming Mostar, decreed by then High Representative Paddy Ashdown, the international community admitted the failure of its goals behind adoption of the Interim Statute. As the Commission’s final report noted, the ruling parties’ “implementation” of the Interim Statute entrenched ethnic division, authoritarian rule, corruption and inefficiency due to the city municipalities’ usurping of power and authority from the city council and administration, and “rampant parallelism” at the city level between the mayor and his deputies and within the administration (two separate, ethnic-based treasuries emerged). In addition, the Central Zone was never established as originally planned, and plans to move the Federation capital to Mostar were abandoned. The report concluded, that:

“The disconnect between politicians and the citizenry is growing, as there is a perception that politicians are only interested in securing their own interests, not doing the will of the people. The triumph to date of cronyism and corruption in government has tarnished the notion of public service, replacing this concept with one of personal gain through public means. Citizens’ electoral choices are not based upon serious consideration of the issues, platforms and qualifications of candidates, but on the ongoing manipulation of voters through the politics of fear.”¹²

The 2004 Statute

The Mostar Commission assembled representatives of all relevant Mostar parties and was headed by a former German mayor, Norbert Winterstein, and supported by Western experts. Extensive negotiations took place in an overall political framework in BiH in which the international community had enabled an environment conducive to a policy of (limited) dialogue and compromise among the domestic political elites, including both the SDA and the HDZ BiH which, for a limited time, accepted the overarching aim of reuniting the city.¹³ The Commission’s principal goal was to unite the city, leaving as much of the existing institutional setting in place as possible. Although the parties reached agreement on many issues, some things remained contentious and could not be resolved. Ultimately, the High Representative exercised his power and imposed a new city statute in February 2004 as well as related amendments to the Election Law of BiH (and cantonal and Federation constitutions) based on the parties’ discussions. Like the Interim Statute, the 2004 Statute was intended as a compromise transitional arrangement but by default became permanent. The new statute abolished the city

¹² *Commission for Reforming the city of Mostar*, pp.52-53.

¹³ Interview with a former Office of the High Representative (OHR) official involved in the negotiations and statute drafting, October 2020.

municipalities and established a unified city administration with only one budget, one mayor and no deputies. In the city council, the previous fixed quotas for the ethnic groups and the Others were replaced by minimum and maximum ethnic quotas. Instead of 48, the city council would consist of 35 councillors. Citizens would still cast two votes for the city council – 17 were now elected from a city-wide list, and 18 from six election districts, the former city municipalities and now city areas (3 from each).

The new statute and related election law amendments contained two political compromises: First, the city areas retained one competence, the “decision on the distribution of revenues deriving from allocated construction land”¹⁴ – a concession to the SDA which had insisted on keeping the city municipalities as a means to prevent Croat (HDZ) majority rule. The statute established city area “commissions” consisting of the three city council councillors elected to the city council with citizens’ second vote from their respective city area voting district that would manage that competence. Second, the failed idea of a Central Zone was dropped. Unity of the city was to be achieved through abolishment of the city municipalities and uniting the city administration. However, the Central Zone was neither merged with any of the neighboring city areas, nor were its inhabitants given the possibility to cast their second vote in a neighboring city area. As a result, the Central Zone appeared in the new statute only as the “former Central Zone,” and its inhabitants were the only Mostar citizens with only one vote in local elections – that for the city-wide list. This was a concession to the HDZ that feared (for good reason) that giving a second vote to Central Zone inhabitants would give an additional councillor to Bosniaks.¹⁵

The 2010 Constitutional Court of BiH Decision

In a November 2010 decision,¹⁶ the CC BiH confirmed parts of a request that the Croat Caucus to the House of Peoples of the Parliamentary Assembly of BiH had lodged, and ruled that two elements of the Mostar electoral system were discriminatory, i.e., in violation of both the Constitution of BiH and the International Covenant on Civil and Political Rights: the regulation by which an equal number of councillors is elected from each city area independent of the number of inhabitants/registered voters, and the regulation that prevents inhabitants of the former Central Zone from casting a second vote in local elections. On the first issue, the Court granted that the specific historical circumstances of BiH allow for certain power-sharing arrangements that violate the principle of one man, one vote, but concluded that electing the same number of councillors from each city area, of which the smallest has four times fewer registered voters than the largest one, was too much of a deviation, and also took into account that 14 years had already passed since the end of the war. On the issue of the Central Zone, the Court did not accept OHR’s argument¹⁷ that discrimination against its inhabitants was the result of what was politically feasible to accomplish.¹⁸ The CC BiH annulled the relevant provisions of the Election Law of BiH and of the 2004 Statute, and ordered the Parliamentary Assembly of BiH and the Mostar city

¹⁴ Statute of the City of Mostar, February 2004.

¹⁵ Interview with a former Office of the High Representative (OHR) official, October 2020.

¹⁶ Constitutional Court of BiH Decision No. U 9/09, available at: http://www.ustavnisud.ba/dokumenti/_en/U-9-09-386218.pdf.

¹⁷ OHR Amicus Opinion, presented in writing to the CC BiH.

¹⁸ Interview with a former OHR legal expert, October 2020.

council to bring them in line with the ruling and the BiH Constitution.

“Implementing” the ruling – a mission impossible

A toxic political atmosphere prevailed in BiH in the wake of the post-2005 shift to “Brussels.” Already, it had informed the Croat party’s (HDZ’s) partially successful request to the CC BiH on Mostar, and witnessed the SDA and HDZ BiH dropping their preliminary support for reuniting Mostar after the (last) 2008 elections. Endless rounds of party negotiations, most mediated by the international community, followed in the decade after the court ruling – to no avail. The failure of political parties to negotiate a solution to enable local elections to be held in 2012, led then Deputy High Representative Roderick Moore in October that year to initiate an intensive eight-month mediation effort that included one-hundred or so meetings held with party representatives that ended in May 2013 without an agreement. It produced a compromise framework for Mostar, based on the principles of merging the city areas into several multi-ethnic voting districts and incorporating the Central Zone into one of them, and was endorsed by the Peace Implementation Council’s Steering Board (PIC SB). In July 2014, Moore’s successor Tamir Waser sent an amendment proposal for the Election Law of BiH to the BiH Parliamentary Assembly proposing three multi-ethnic districts based on the PIC SB document. It, too, found no political support.¹⁹ A new mediation attempt, led by then US and UK ambassadors to BiH, Maureen Cormack and Edward Ferguson, that considered a model based on only one, city-wide electoral district, also failed. In 2018, the political parties of Mostar negotiated a solution without international involvement. They were the first multi-party negotiations without pre-defined principles of reform. Instead, they focused entirely on finding a formula for electing city councillors from the six city areas in line with the one man, one vote principle.²⁰ Two written models were discussed: The first, Model A, was quickly dismissed, as it only enjoyed the support of the HDZ BiH. A second model proposal, Model B, received the most support, but nevertheless no agreement could be reached. It was Model B that would form the basis for the June 2020 Mostar deal.²¹

A broken city

The consequences of the decade-long failure to reach a power-sharing agreement have been detrimental for the citizens of Mostar. Local elections have not been held since 2008. Since 2012, the city is without an assembly. Mayor Ljubo Beslić continues to be in office thanks only to emergency authorization by the Parliamentary Assembly of BiH. The budget is co-signed by the Bosniak head of the administration’s finance department, ensuring a totally informal Croat-Bosniak power-sharing arrangement.²² All this comes at the expense of a dramatic decline in the city administration’s capability to maintain even core municipal functions such as the delivery of basic services. There is a crisis in the

¹⁹ Interviews with former international officials, OHR documents.

²⁰ Interview with Mostar opposition party representative, October 2020.

²¹ *Prijedlog izbornih pravila za izbor Gradskog vijeća Grada Mostara – Model A i B*, 2018. Interview with Mostar opposition party representative.

²² “Hronologija izbora u Mostaru od 1997. do danas,” July 20, 2020, available at: <https://ba.boell.org/bs/2020/07/29/hronologija-izbora-u-mostaru-od-1997-do-danas>,

regular collection of garbage and a landfill site (Uborak)²³ that has been run for several years without a license and which is poisoning Mostar's citizens.

In 2019, two developments lent new urgency to solving the Mostar deadlock. In May, the European Commission published its Opinion (Avis), which made enabling local elections in 2020 through the implementation of the CC BiH 2010 ruling one of the key reform conditions.²⁴ In October, the ECHR ruled²⁵ in favor of Mostar private citizen and local opposition politician Irma Baralija's request and set a new six-month deadline for BiH to implement the 2010 court ruling.

The Mostar Deal: Making Sense of the 3 Agreements

The Mostar Agreement, signed on June 17, 2020, in fact is a package of three agreements and four documents: The two Mostar-related agreements are a “Law on Amendments and Changes to the Election Law of BiH” and a new “City Statute.” These two items are bound together by a brief, four-point “Political Agreement,” that sets deadlines for their adoption (15 days after the signing of the agreements at the first inaugural session of the new City Council following Mostar local elections on 20 December). The third agreement, the “Political Agreement on the Principles of Amendments to the Election Law of BiH,” is a written commitment to broader electoral system reform that refers to unimplemented CC BiH and ECHR rulings and international organizations’ (ODIHR, Venice Commission) recommendations on improvements to the electoral system that also includes deadlines (a six-month deadline for implementation of the agreement, i.e., by the end of 2020 and parliamentary adoption by the end of 2021 to ensure the conduct of the October 2022 general elections under the new system). The four documents to date have been published only in Croatian – on the HDZ BiH website. Both the Bosnian and the English language versions remain unpublished.²⁶

The main elements and rationale of each of the three agreements are as follows:

1. The Mostar election reform agreement: “implementing” the 2010 CC BiH ruling

The agreed changes to the BiH election law, also reflected in the new statute, address the two elements of discrimination identified by the CC BiH in 2010, in the following way:

First, the principle of one person, one vote is established by the decision to elect councillors to the city council (citizens’ second vote – the first being the vote from a city-wide list) from the six city areas based on the total population of each area with one councillor to be elected per roughly 4,000 registered

²³ “Bosnian police forcibly break up protest over landfill site,” *ABC News*, December 9, 2019, available at: <https://abcnews.go.com/International/wireStory/bosnian-police-forcibly-break-protest-landfill-site-67595994>.

²⁴ *Commission Opinion on Bosnia and Herzegovina’s application for membership of the European Union*.

²⁵ European Court of Human Rights, Case of Baralija v. Bosnia and Herzegovina, (Application no. 30100/18), Judgement, Strasbourg, October 29, 2019, available at: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-197215%22%5D%7D>).

²⁶ The Croatian versions are available at: <https://www.hdzbih.org/hr/node/5248>.

voters.²⁷ This formula leads to the following distribution: City Area 1/North – 2, City Area 2/Old Town – 5, City Area 3/South-East – 2, City Area 4/South – 2, City Area 5/South-West – 7, City Area 6/West – 4. Under this new voting regime, the post-war balance between the number of councillors elected from the city-wide list and those elected from the city areas/municipalities constituencies is shifted towards the city areas (22 councillors to 13).

Second, the citizens of the former Central Zone can cast their second vote in the city area of either South-West or Old Town.²⁸

2. The draft City Statute: ethno-territorial disintegration annuls the implementation results

The “new” city statute, is in fact an amendment to the existing 2004 statute. Apart from copy-pasting the new formula for electing the 22 city councillors from the city areas, all other changes relate to only one issue: the reintroduction of the pre-2004 city municipalities, only this time in a semi-formal way, under the institutional cover of the existing city areas. This is based on two novelties. First, the statute substantially beefs up the city areas’ competences. Article 40 adds eight additional competences to the one competence delegated to the city area committees by the 2004 statute. These extra competences enable broad self-management of city area affairs; in addition, the committees gain a role in planning the city budget, and a *de facto* veto right on all of Mostar’s spatial planning documents – in other words, on all land use, permit and construction decisions. Second, the amendment changes the definition of the relationship between the city of Mostar and the city areas. The 2004 statute simply noted that “in the City, six (6) City Areas shall be formed”. That wording was changed to “the City consists of 6 (six) City Areas” (Art. 7.1).²⁹

By shifting power and authority back from the city’s central authorities and institutions to the city areas and their committees, and by adding veto rights, the statute legalized the ethno-territorial re-partition of Mostar into the three Croatian (HDZ)-dominated Western and the three Bosniak (SDA)-dominated city areas. This new-old ethnic power-sharing arrangement contravenes one of the principles for future constitutional reform as laid out in the 2019 EC Opinion – to reduce the role of ethnic power-sharing in the state.

Also, while the election law amendment returns the right to vote for City Council to Mostar citizens after 12 years without it, changes made to the statute shift the power center to the city areas which almost entirely renders this moot. At the same time, while the election law amendment removes discrimination against voters residing in the former Central Zone, the new statute permits another form of discrimination by not designating the former zone a newly beefed-up city area. This largely invalidates

²⁷ The number of registered Mostar voters in 2020 is roughly 86,000, while official statistics put the number of overall citizens at 105,000. CEC BiH Mostar voters’ database (dated November 19, 2020); “Procjena ukupnog broja stanovnika u Federaciji BiH, 2020, stanje sredina godine,” *Saopćenje Federalnog zavoda za statistiku*, August 31, 2020, available at: <http://fzs.ba/index.php/publikacije/saopcenjapriopcenja/stanovnistvo-i-registar/>.

²⁸ Oddly, that provision was not put into the law amendment itself, but only into the accompanying explanation to the law, as warned by the Central Election Commission of BiH (CEC BiH) in a letter sent to both houses of the Parliamentary Assembly of BiH ahead of the final parliamentary reading. This legal gaffe demonstrates the HDZ BiH and SDA’s ignorance of legislation, and of the rule of law more generally. CEC BiH letter, dated July 3, 2020.

²⁹ Draft *City Statute* (English translation).

the negotiating parties' ticking the box on implementation of the CC BiH ruling.

The new status of the city areas as shadow city municipalities contravenes another constitutional reform principle defined in the EC Opinion – a clear division of competences between the different levels of government. Many newly attained competences of the city area committees are not clearly delineated. In addition, the composition of the city area committees remains the same as in the 2004 statute - they are composed of the councillors elected (by citizens' second vote) to the city council from the city area voting districts. Worse yet, that construct also blurs the line of demarcation between the powers of the various divisions of government. It is practically impossible to determine whether the committees that elect a president from among its members (Art. 38.3.), constitute a legislature, an executive, or both. Taken together, these statute changes demonstrate the HDZ BiH and SDA's total disregard for the principles of democracy, local self-governance, rule of law and constitutionality. This impression is reinforced by the provision in the Political Agreement that stipulates the adoption of the new City Statute at the first session of the newly elected city council – a move analogous to the adoption of a new constitution at the inaugural session of a newly elected national parliament.³⁰

3. The written commitment: breaching the West's red line against a third entity

The third, and broader political agreement on principles of amending the BiH election law is the most surprising of the three agreements. On the surface, it requires implementation of relevant decisions of the CC BiH and the ECHR that refer to half a dozen rulings (Sejdić-Finci, Zornić, Pilav et al. and others) on discrimination against citizens who do not identify as members of one of the three constituent peoples in the Dayton constitution's ethnic power-sharing arrangement, some of which date back to before the 2010 CC BiH Mostar ruling. In the post-2005 political environment, the international community never came close to establishing conditions for successfully negotiating agreements on implementation. The substance of the agreement – a political concession to the HDZ BiH and its leader, Dragan Čović – is condensed into the wording of point 2 of the agreement. It defines the aim of the rulings' implementation “concerning the elimination of all forms of inequality and discrimination in the electoral process” as

“ensuring the legitimate choice and legitimate political representation of the constituent peoples and citizens across all administrative and political levels.”³¹

The terminology of “legitimate political representation” forms the core cover for Dragan Čović's and the HDZ BiH's generational project of the ethno-nationalist transformation of Bosnia and Herzegovina's constitutional order, i.e., the introduction of a third, Croat entity through the backdoor of election “reform,” using Sejdić-Finci and other rulings as cover for his intentions. This indirect, half-hidden approach originates in Čović's loss in the 2010 election of the Croat member seat of the BiH State Presidency to Željko Komšić, then member and candidate of the multi-ethnic Social Democratic Party (SDP). The victory of the first non-HDZ candidate in post-war BiH, elected into office partly with the

³⁰ According to Western officials involved in the negotiations, the parties were warned that technically-procedurally, it was almost impossible to adopt the new statute at the new council's inaugural session – but the parties ignored that advice. Interview with Western official, November 2020.

³¹ *Political Agreement on the Principles of Amendments to the Election Law of BiH.*

votes of Bosniak voters from the Federation of BiH, was fully in line with the Dayton constitution and the electoral system. But the political move of the SDP, devoid of any political strategy,³² sparked the outrage of the HDZ BiH that has since nurtured that outrage among Bosnian Croats by campaigning on alleged structural discrimination of the Croat constituent peoples in BiH, an allegation proven unfounded.³³ What the SDP move threatened was not the equality of constituent peoples, but of the “constituent parties,”³⁴ i.e., the ethnic parties’ notion of the Dayton power-sharing arrangement as constituting the joint ruling of the three peoples’ dominant ethnic parties based on a politics of patronage and fear. Cementing the position of the HDZ BiH as the Croat constituent party through changes to the BiH election law and constitution has since become the primary aim of the party's policy. Those changes would indisputably lead to the *de facto* establishment of a third entity within the territory of the Federation. For that same reason, the HDZ's political project and the terminology of “legitimate political representation” and “equality of constituent peoples” have long represented a red line for both the West and Bosniak political parties, including the SDA. Acceptance of the wording of the agreement, even if only a written commitment, and even if its implementation at the moment of signing, let alone within the defined deadlines, seemed entirely illusory, nevertheless marks a major watershed moment, and created a precedent.

What's in it for the political parties?

The substance of the Mostar agreement package consented to among the leaders of the HDZ BiH and the SDA under Western mediation raises the question of their motives behind the deal – what’s in it for them?

The answer may lie in the previously noted post-Dayton phase of waning acceptance among the HDZ BiH and the SDA of the political aim of reuniting Mostar, and in the shifting ethno-demographic of the city. Though not reflected in official statistics that still put the number of Mostar citizens at roughly the same as it was in 2000, i.e., 105,000,³⁵ and not publicly admitted by the parties,³⁶ the post-war ethno-demographics have shifted over the last three or four years as part of the country-wide mass emigration from BiH to Western Europe, resulting from the destructive impact of the governing of the ethnic political elites and of citizens having lost hope for change and deciding to leave. While the degree of the shift remains unclear, there is agreement among observers that Croats have lost the majority among the city’s citizens to Bosniaks.³⁶ The Mostar deal thus established a new equilibrium: The HDZ BiH, fully aware it will never again dominate central city institutions, gains full, formalized control over the

³² Asked in 2011 by the author about the political aims and strategy behind the move, a then member of the SDP leadership replied: “None – we did it because we were able to.”

³³ A 2010 study on the ethnic affiliation of persons occupying the leading posts in political and administrative institutions of BiH at all governance levels, commissioned by the conservative Konrad-Adenauer-Foundation, proved exactly the opposite – that Croats were over- not under-represented: *Analysis of the Implementation of the Constitutional and Legal Framework on the Ground. The Constitutional, Legal and Factual Position of the Croat Constituent People*, Konrad Adenauer Stiftung (KAS) BiH, February 2014.

³⁴ I owe this term to my DPC colleague, Valery Perry.

³⁵ Saopćenje/ Priopćenje Federalnog zavoda za statistiku No.14.2.1, Sarajevo, August 31, 2020.

³⁶ Some assess that Bosniaks in today’s Mostar outnumber Croats by 5,000, others put the number as high as 10,000. Interviews with Croat opposition party representatives, Mostar 2019-20.

Western part of Mostar, as well as one half of the power-sharing control over central institutions. The SDA is fully aware of the newly gained demographic dominance of Bosniaks in Mostar, but without elections and a city council, this potential advantage is of no political use. In addition, as the SDA has not established nearly the control over Bosniak voters as the HDZ has over Croat ones, it is easier for the SDA party to keep a majority among the three Eastern city areas' committees, and through it control the city authorities, rather than through the City Council under the 2004 system.³⁷

Still, the question remains as to why the SDA gave in on the HDZ's long-held ambition for broader electoral reform and on "legitimate political representation" as part of the deal. According to a Mostar opposition party representative, who echoes the assessment of other political analysts, "The SDA is in disarray. Bakir [Izetbegović] struggles to keep the party together amidst various political scandals [the Asim and the OSA director cases³⁸]. In addition, he was under pressure from Sattler and Nelson, and was convinced that they represent the West's political position."³⁹

A Transactional Bargaining Deal: The Role of the West

The new HDZ-SDA Mostar power-sharing arrangement and the huge Bosniak-Western concession to Dragan Čović can be understood by taking a closer look at the role the West and its mediators played in striking the deal. By all accounts (including their own), their aim was to get a deliverable, without any serious regard for the substance, principles and mid- and long-term impacts of the deal.

The transactional foundations of the deal

The role of the West, and its relationship with the domestic negotiating parties that enabled the Mostar deal, rested on three transactional foundations that can be described in shorthand as no principles; 2 out of 9; and 1 for 2.

No principles

Western officials involved in the Mostar negotiations explained that the foundation of the deal was the Model B proposal of the Law on Amendments and changes to the Election Law of BiH from the 2018 Mostar parties' negotiations. "The law amendment agreed to in June is 95 percent identical to the 2018 proposal," an official insisted.⁴⁰ That makes perfect sense, given that the 2018 negotiations were narrowed exclusively to finding a mathematical formula for electing councillors to the city council from the city area districts without defining any political principles or aims. As a former OHR official commented, "had the negotiations been based on the political principles that guided our negotiations of

³⁷ Interviews with opposition party representatives and political analysts, Mostar November 2020.

³⁸ "Corruption Scandal Shakes Bosnia's Largest Political Party," *BIRN*, March 3, 2020, available at: <https://balkaninsight.com/2020/03/03/corruption-scandal-shakes-bosnias-largest-political-party/>; "Osmica krije diplomu," *Dnevni Avaz*, April 12, 2020, available at: <https://avaz.ba/vijesti/bih/475226/osmica-krije-diplomu>.

³⁹ Interviews with Mostar opposition party representatives and Sarajevo-based political analysts, October-November 2020.

⁴⁰ Interview with Western official, November 2020.

2012-13, the June deal would have never materialized.”⁴¹

The EU Delegation/EUSR to BiH praised the July adoption of the law amendment by both houses of the Parliamentary Assembly of BiH.⁴² Adoption proceeded under expedited procedure to prevent the political parties excluded from the Mostar negotiations from tabling amendments to the law proposal. The excessive use of expedited procedure is regularly criticized by the European Commission in its annual reports for the countries of the Western Balkans as a sign of the deficiency of parliamentary democracy.

2 out of 9

The negotiations led by the three Western diplomats from April to June this year were the first ever negotiating efforts in a decade that did not include all the relevant Mostar parties. Asked why they had only negotiated with the two largest of the nine parties, an official involved in the negotiations was blunt:

“Because otherwise we would not have been able to strike a deal.”⁴³

Not only did the EU, US and UK exclude representatives of the other seven Mostar political parties from the negotiations, they also excluded representatives of other relevant international organizations in BiH such as the OSCE and the OHR from the negotiations (except for in the end inviting the head of the OSCE Mission to BiH, Kathleen Kalavec, and the High Representative, Valentin Inzko, to Mostar to observe the signing ceremony and to co-sign on behalf of the international community and thus provide a veneer of legitimacy) but also the EU member states’ representatives in Sarajevo. The 2020 Mostar negotiations marked the first time the EU and US did not involve the OHR in negotiations on even a technical level, despite that current members of OHR’s legal department *drafted* the 2004 statute and constitute the only living institutional memory of the BiH international community on Mostar. The Western negotiators clearly were not too concerned about any substance.⁴⁴

1 for 2

Asked about the role of the West in negotiating the three agreements, an official clarified that “we only took part in negotiating the text of the election law amendment, but were not involved in drafting the Mostar city statute or the political agreement on wider election system reform.” As another official explained, the West negotiated over only two articles of the draft statute – with limited impact. Moreover, the official stated, the warning that it was totally unrealistic to adopt the new city statute at the first inaugural session of the newly elected city council was ignored. The official continued, “we insisted on including the ODIHR recommendations on electoral reform in the political agreement,

⁴¹ Interview with former OHR official involved in the 2012-13 Mostar negotiations.

⁴² “Local EU statement on the adoption of amendments to the BiH Election Law and 2020 State budget,” available at: <https://europa.ba/?p=69339>.

⁴³ Interview with Western official involved in the Mostar negotiations, November 2020.

⁴⁴ Interviews with representatives of international organizations in BiH and EU member state diplomats, August-November 2020.

although Čović did not want to have them in there.⁴⁵ In the end, none of the three Western negotiators present at the June 17 signing ceremony, as instructed by their headquarters, signed Čović's political agreement, and neither did the representatives of OSCE and OHR – a last minute move that infuriated the HDZ BiH leader. A representative for the negotiators explained the one agreement in exchange for two bargaining deal:

“Listen, we are fully aware this was a bargaining exercise, and also about the problematic wording on legitimate political representation, but this was the only way to get a deal.”⁴⁶

“This was locally driven” – Yes and No

“This was a locally driven initiative,” an EU member state diplomat said when describing the lead role of the three ambassadors from the EU, the US and the UK in Sarajevo in the negotiating process.⁴⁷ When confronted with a critique of the substance of the Mostar deal agreements, a Brussels official and a representative of another Western capital shifted equal blame to their colleagues on the ground, insisting that “when it comes to such complicated political-legal issues like Mostar, we have to rely on the expertise of our colleagues in Sarajevo.” Indeed, an official involved in the negotiations confirmed the lead role of the ambassadors in BiH, noting that “when we started the talks in April, nobody believed we could strike a deal.”⁴⁸ More worrying, there are indications that at least one of the three negotiators, whether consciously or unconsciously, has partly bought into Čović's narrative on equality of peoples and legitimate representation.⁴⁹

Yet, it would be too easy to place blame primarily on the West's representatives in Sarajevo. The performance of the three ambassadors and their partially independent actions are the direct result of the West's policy towards BiH and the wider Western Balkans, or the lack thereof. And the EU and the US, as well as the UK, have all had a hand in it. The UK, despite London's post-Brexit referendum reassurance that it will remain engaged in the region, suffers from a post-EU loss of credibility and relevance, and from the fact that due to the post-Brexit mess of British politics the country currently is *de facto* left without a foreign policy.⁵⁰ On the US side, the Mostar deal served as a means for the State Department's Special Representative for the Western Balkans and Deputy Assistant Secretary Matthew Palmer to demonstrate his and State's political relevance after having been cut out of the Kosovo-Serbia negotiations issue by President Trump's parallel, special envoy for the region, Richard Grenell.⁵¹ On the EU side, EUSR Johann Sattler found himself in a bind between additional pressure on Mostar exerted by the 2019 ECHR Baralija ruling and by Mostar having become one of the reform conditions in the 2019 EC

⁴⁵ Interviews with Western officials involved in the negotiations, October-November 2020.

⁴⁶ Interview with a representative of the Western negotiators, November 2020.

⁴⁷ Interview with an EU member state foreign ministry official, corroborated by Sarajevo-based diplomats from several other member states, August-November 2020.

⁴⁸ Interviews with Western officials, including some involved in the Mostar negotiations, October-November 2020.

⁴⁹ Author's personal observations, corroborated by several Western diplomats headquartered in Sarajevo.

⁵⁰ Interview with UK government representative, November 2020.

⁵¹ Interviews with Western officials, October-November 2020. In addition, Palmer could build on the work of one of his predecessors, who, having a blind spot for Croats, was convinced of the “need to give something to Croats in BiH.”

Opinion on the one hand, and the continued lack of a strategic EU policy on BiH, as the member states had not picked up the ball on the Avis, on the other hand.

“It wasn’t me”

Faced with criticism since the June striking of the Mostar deal, the Western negotiating parties in background conversations are trying to wash their hands of it, insisting that they have not signed the two problematic agreements (ignoring the fact that by signing the political agreement document on Mostar, they have at least put their name to the draft city statute⁵²). Official EU documents published since June reveal the evidently great efforts made to try to hide the existence of the two agreements. Thus, the October EC country report on BiH only noted that “amendments adopted in July 2020 should allow holding local elections in Mostar for the first time since 2008,” while the 2020 Communication on EU enlargement policy added that “political leaders also reached an agreement on further electoral reform.”⁵³ “Political circles in the EU and in BiH know we did not sign the agreements,” one negotiator insists, adding that “it is not a done deal that HDZ and SDA will reach a two-thirds majority at the Mostar elections to adopt the statute,” giving hope to the opposition parties and Mostar’s civil society. These are the same parties and civil society representatives that, alongside Mostar citizens who for the most part do not know that the West does not stand behind the two agreements, for good reason feel betrayed by the West.⁵⁴

After Elections: Future Scenarios on the Implementation of the Three Agreements

Despite all the efforts the West made to get a deliverable on Mostar at any price, it is all but certain that in the end the deal will not add up to anything. Judging by post-signing developments, it seems highly likely that implementation of the remaining two agreements will stall following the December 20 Mostar local elections. As expected when the deal was signed, and despite concessions made by the other negotiating parties to the HDZ BiH on broader electoral system changes, it seems there is no more basis for an agreement now than there has been for the last decade to implement the agreement, let alone to meet the six-month deadline. Consequently, in a letter Čović sent in October to the five international officials present at the June signing ceremony, the HDZ leader warned that four of the six months for implementation have passed with no progress in talks with the SDA, accusing the party and its

⁵² Interestingly, none of the signed versions have been made public by any of the negotiating parties. It seems clear why the Croatian version of the four documents of the Mostar deal, published by the HDZ BiH, are not those containing the signatures – because the party and its leader Dragan Čović have an interest in hiding that the political agreement on “legitimate political representation” has not been signed by the representatives of the international community.

⁵³ *Bosnia and Herzegovina 2020 Report, 2020 Communication on EU enlargement policy*, European Commission, October 6, 2020, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/bosnia_and_herzegovina_report_2020.pdf, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20201006-communication-on-eu-enlargement-policy_en.pdf

⁵⁴ Minutes of the October 2020 “Citizens Forum Mostar,” organized by the Heinrich-Böll-Foundation office in BiH, that assembled the town’s most important civil society representative, to discuss the Mostar deal and upcoming local elections.

leadership of “not wishing to meet the agreed, but resorting to various tactics of time-buying, consciously avoiding and ignoring undertaken commitments.” Čović has subsequently publicly threatened to block implementation if there is no movement. In his reply letter to the five internationals, SDA leader Izetbegović redirected the blame, noting that the HDZ is engaging in blackmail by blocking the formation of a Federation government two years after the October 2018 elections and by blocking filling the vacant posts at the entity's constitutional court.⁵⁵ An EU official, worried about the collapse of the deal, noted that “when it comes to implementation of the agreement on electoral reform, we have limited maneuvering space to give in to HDZ and SDA demands, as we are bound by EC and Council statements and conclusions that any agreement shall not complicate implementation of Sejdić-Finci and other court rulings.”⁵⁶ The official noted that it was already clear to both parties that negotiations will extend into 2021. However, given how much Western negotiators have already invested in the deal, to include the selling out of Western principles and values, one cannot entirely exclude the possibility that in the end the West will go the extra, final mile and entirely surrender to Čović on the election law/third entity issue in order to rescue the deal to save face.

The fate of Mostar will depend as much on the outcome of those negotiations as on the result of the December 20 vote. Despite opposition parties having made surprise inroads into the electorate of the HDZ and the SDA at the country-wide local elections in BiH, it will be hard for Mostar citizens to prevent an HDZ-SDA majority in the city council at the ballot box, because of the tight grip the two parties hold over the instruments of the policy of patronage and fear. There are basically two potential future scenarios:

Scenario #1

HDZ and SDA get a two-thirds majority in the new city council either at the ballot box, or, if not, through buying sufficient additional councillors during post-election coalition building. Following this, the HDZ sees sufficient progress in the negotiations on electoral system changes. The new statute is adopted, though probably not at the first inaugural, but at one of the subsequent sessions of the new city council. The ethno-territorial division of Mostar is solidified two and a half decades after the end of the war. Corruption continues to flourish, as both parties are able to govern in their respective fiefdoms unabated, based on the principles of patronage and fear. Mass emigration from Mostar accelerates. In the end, the new statute is partly suspended by the CC BiH (or the ECHR).

Scenario #2

Against all odds, Mostar citizens manage to deny HDZ and SDA the necessary majority to pass the new city statute, or they get the majority but negotiations over the electoral reform agreement falter, and Dragan Čović realizes his threat and successfully blocks adoption of the new Mostar statute. Mostar will have had elections, but the newly elected city assembly is blocked from functioning, and the election of a new mayor is blocked. Mostar returns to the pre-deal blockage status of its institutions and Mayor Beslić continues to govern based on a new emergency authorization.

⁵⁵ Dragan Čović letter of October 2, 2020; Bakir Izetbegović letter of October 15, 2020.

⁵⁶ Interview with EU official, November 2020.

Conclusions and Recommendations

The June Mostar deal is just the latest, and one of the most damaging, chapters in a decade and a half of a failed Western BiH policy with the EU formally in the lead, further aggravated over the last half decade by the accelerating crisis of liberal democracy in the West – on both sides of the Atlantic. It bears all the hallmarks of that combination: no strategy, no leadership, no (serious) defense of the values and principles of liberal democracy, no defense of the core principles that guided the West’s Balkan policy of the last three decades and no attention paid to the lessons learned from it.

The Mostar deal represents just another muddling through exercise, much like the West’s previous, post-2005 attempts at minimal constitutional reform (for example, the 2009 Butmir negotiations), or the 2014 EC talks on “implementation” of the ECHR’s Sejdić-Finci ruling. Those failed attempts to secure deliverables were not only a mechanism for the West to escape any political responsibility for BiH, but actually represented an act of collusion with domestic ethno-political elites. The choice on the negotiating table in those cases, just as it was in the case of Mostar, was between further assisting the “constituent parties” in their self-serving mission to disintegrate the state, society and economy of BiH and further entrenching their state capture system of patronage and fear, and failing to strike a deal. All those negotiations left dedicated Western diplomats and observers hoping in private for damage control – that is, failure – in spite of their role in allowing it to get to this point.

The Mostar deal is signed, but its implementation is not a done deal. Negotiations on Čović’s political agreement on broad electoral “reform” could fail, and if history is any guide, that is highly likely. Implementation of that agreement would require the West to surrender its commitment to any policy or liberal democratic principles, and will ultimately lead the country to disintegrate, a process that will not end peacefully or escape regional repercussions. However, given how much political capital, including the selling out of principles and values, Western negotiators have already invested in the deal, one cannot exclude the possibility that the West will go that extra, final mile. The role of some Western representatives in the recent Kosovo-Serbia negotiations over a final, comprehensive agreement must serve as a strong warning sign: They colluded with the local parties’ on their land swap proposal for ethno-territorial division, giving up on any liberal democratic principles and on the principles that historically guided the West’s Balkan policy, and at some point came very close to striking a dangerous deal.

It is not surprising that negotiating the Mostar deal fell to the West’s local representatives in Sarajevo, or that they were conducted during the pandemic lockdown, under the radar of EU member states and the BiH public.

And it is true to form that higher-ups in Brussels and Washington believe that the HDZ-SDA bargaining deal is the long-awaited return of a policy of dialogue and compromise in BiH, that it is an expression of a “vibrant democracy,” and that until recently EU member states’ capitals thought there was finally some good news coming out of BiH.

It is not surprising that in the wake of the criticism they have received, Western capitals have begun to shift blame for their dirty deal onto their local representatives, and that the negotiating teams are

searching for a way out, looking to those they betrayed in June – opposition parties, civil society actors and ultimately, Mostar’s citizens – to rescue them.

Two new developments have raised hopes for a U-turn in Western BiH policy after 15 years of a downward trajectory. The first is the 2019 EC Opinion and the accompanying Priebe report on rule of law. These are the first EU documents in a decade that assess the status of BiH based on the reality of the dire situation on the ground, and provide a set of conditions for structural reform that includes constitutional reform and that can serve as an initial masterplan for a long-term, strategic policy concept of the EU (the West) on BiH. The second is the US election win for Joe Biden and the incoming Democratic Biden administration which brings with it a Bosnia policy tradition and an historical commitment and obligation towards Bosnia and Herzegovina.

But first, the damage that the recent Mostar deal and prior negotiations have inflicted upon Mostar, the Federation, BiH and upon the West’s policy towards BiH needs to be addressed.

Recommendations

For immediate damage control

To Mostar citizens:

- Mostar voters need to save their city from ethno-territorial disintegration by voting on December 20 for any party or independent candidate except HDZ and SDA, thus denying them the two-thirds majority they need to adopt the draft city statute.

To the West:

- Key EU member states such as Germany need to seize leadership on the Mostar issue post-election, push for an EU position against the new city statute, and re-define/establish red lines against the ethnic disintegration of Mostar and the Čović-HDZ project that is behind the political agreement on changing the electoral system.
- The incoming Biden administration needs to reverse the policy pursued by Deputy Assistant Secretary of State Matthew Palmer of appeasing the nationalist parties, join the EU in re-defining/establishing red lines on Mostar and electoral reform, and refrain from any past inclination towards the “need to give something to the Croats” (i.e., the HDZ BiH). It needs to refrain from rushing to achieve any quick deliverables under newly established US leadership, but instead work in close cooperation with the EU.
- The EU and the US should refrain from engaging in negotiations on the implementation of Sejdić-Finci and other court rulings until they define a joint, strategic policy that aims to move BiH out of its trajectory of accelerating regression.

For the longer term

- The EU and the US need to start an initiative on a long-term comprehensive BiH policy that puts constitutional change at its core with comprehensive conditionality, by turning the EC Avis and the Priebe report into a master plan, using the international community’s Dayton instruments to create a conducive environment for reform, and preventing further deterioration of the political and security situation in BiH.