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Crime, Corruption and Endangerment of Bosnia's Statehood

Five years after the signing of the Dayton Peace Agreement, little progress has been made to fulfill its goals of building a sovereign, democratic and accountable Bosnian state, to reconstruct the country's infrastructure, and to allow for the return of the 2.3 million refugees and internally displaced people to their pre-war homes. According to a July 2000 General Accounting Office (GAO) report, the successful implementation of the agreement has been obstructed by crime and endemic corruption, which continue to "pervade Bosnia's political, civil service, law enforcement, judicial, and economic systems."¹ Although such problems were not fully addressed at the Dayton Peace Conference, they have acquired more relevance today, and are likely to have an increasing impact as international aid programs, which have provided the necessary "life support" for the survival of the state, decline and as Bosnia continually tries to reform economically.

Indeed, endemic crime and corruption in any state exacts heavy economic costs, distorts the operations of free markets, slows down economic development, and destroys the ability of institutions and bureaucracies to deliver the services that society may expect.² In Bosnia, the pervasiveness of corruption is even more detrimental to the state because they exist at a time when the country is trying to make the simultaneous

¹United States General Accounting Office, "Bosnia Peace Operation: Crime and Corruption Threaten Successful Implementation of the Dayton Peace Agreement." July 2000.

²W. Paati Ofusu-Amaah, Raj Soopramanien, and Kishor Uprety. *Combating Corruption: A Comparative Review of Selected Legal Aspects of State Practice and Major International Initiatives*. Washington, D.C.: International Bank for Reconstruction and Development/The World Bank, 1999.

transitions from war to peace, communism to democracy, centrally-planned to market economy, and from rural to an urban population.³ Like many countries in transition, Bosnia's crime and corruption problems have flourished in this unstable atmosphere and have prevented the emergence of a system of checks and balances, thereby blurring the line between accepted and unacceptable political and economic practices. In fact, without an effective system of checks and balances, crime and corruption are beginning to undermine the legitimacy of Bosnia's democratic government, and are weakening most of Bosnia's institutions. The weakened institutions are impeding Dayton's ability to create an accountable and transparent state, which is a vital element needed to maintain peace and stability within the country and region. Although many scholars, including David Chandler, persuasively argue that even under the best conditions, it is unlikely that the Dayton Peace Agreement will achieve all of its intended goals, other than stopping the fighting in Bosnia.

This paper will examine the corrosive effects of corruption, defined by the World Bank and other multilateral institutions as being "the abuse of public office for private gain," on Bosnia's political, economic, and social system and how the current situation in Bosnia may lead the state towards the trappings of a kleptocracy.

Background

Bosnia has never experienced stable liberal democracy, nor does it have the history of building transparent and accountable institutions. Historically, Bosnia has been ruled by the Ottoman Empire (1463-1878), the Austro-Hungarian Empire (1878-1918), then monarchical rule under the First Yugoslavia (1918-1941), followed by integration into the

³See GAO Report, supra note 1.

quisling Croatian state during World War II, then Yugoslav communism until free elections in 1990 and the fragmentation of Yugoslavia, followed by internationally recognized independence in 1992, war and the imposition of an external international administration created by the Dayton Peace Agreement.⁴

The Dayton Peace Agreement, hailed by the international community as a major step forward in the development of Bosnian sovereignty, created the opportunity for Bosnians to establish a democratically accountable state after years of war and division. The agreement was unique because unlike any other peace treaty of modern time, Dayton reflected the new post-Cold War interventionist approach of international institutions involvement in post-conflict peace-building and the necessity for the long-term involvement of international organizations in political institution-building and governance.⁵

The Dayton Agreement itself was a short two-page text, with eleven annexes detailing the international community's power over government functions usually associated with an independent state, including the highest levels of military, political, judicial and economic regulation.⁶ One of more important annex's of the Dayton Peace Agreement was the Civilian Implementation aspect of the agreement and the establishment of the Office of the High Representative (OHR). The OHR has significant powers, including the power to impose laws and remove any government official that engages in anti-Dayton Agreement activities.

⁴David Chandler, citing Susan Woodward, *Bosnia: Faking Democracy After Dayton*. 2nd Edition. London: Pluto Press, 2000.

⁵*Ibid.*

⁶*Ibid.*

The agreement also recognized two entities, the Croat-Bosniak Federation and the Republika Srpska, which were created during the war. The Croat-Bosniak Federation, established by the Washington Agreement in 1994, occupies 51 percent of Bosnia-Herzegovina territory and the Serb entity, Republika Srpska, occupying the remaining the 49 percent. Each entity has its own government, army, and police force. The Federation is further divided into 10 cantons, which retain considerable power and have their own government. The responsibilities of the state and entity institutions were outlined in Article III of the Bosnian Constitution (which was written by the international community). These institutions were responsible for foreign policy, foreign trade, customs, monetary policy, inter-entity communication and inter-entity law enforcement, and transportation.⁷ In order to safeguard the interests of the three groups, the central state institutions were organized ethnically therefore guaranteeing representation to all three sides and the protections of “vital interests.”

Political Structures

During 1991-92, after the collapse of the Republic of Yugoslavia and Bosnia’s formal declaration of independence, the nationalist parties of the Croats (Croatian Democratic Union [HDZ]), the Serbs (the Serb Democratic Party [SDS]), and the Muslims (Party for Democratic Action [SDA]), became the local successors to the communist party and inherited a political culture in which the party controls the social, political, judicial and economic institutions of state. By maintaining communist apparatus of control during the war, the nationalist parties acquired direct control over the

⁷See GAO Report, supra note 1.

administrative organs of the state, the military command, and the management of economic assets.

At the political level, the war allowed the nationalist parties to gain considerable control and authoritarian power over various regions within the state. Within these regions, these parties were able to fund their political and military activities by controlling the movement of fuel, tobacco, alcohol and foodstuffs.⁸ In many ways, the war created and solidified networks premised on trust and loyalty and created alliances between politics and crime. Many members of the nationalist parties became and are still linked to these political-criminal networks whose structure is difficult to dismantle. For most part, these alliances remained even after the peace agreement was signed in Dayton, Ohio.

Hence, the Dayton Peace Agreement added a new layer of foreign institutions on top of the three separate ethnic territories that were governed by one of the three ruling nationalist parties. These foreign institutions were never really accepted by Bosnians. Therefore, the population identifies the most with the party representing their ethnicity. Since Dayton has failed to dismantle existing domestic power structures in Bosnia, the Bosnian people have been forced to rely on more narrow and parochial survival mechanisms, which has meant that ethnicity has maintained its wartime relevance as a political resource.⁹ In his presentation to the Council of Europe, Wolfgang Petritsch, the High Representative of the International Community in Bosnia-Herzegovina, stated “The main political parties still rule Bosnia along ethnic lines. They are interested in political power, not because it allows them to serve the interests of all citizens of Bosnia, but

⁸Phil Williams. “Organized Crime, Corruption and Illegal Market in Bosnia.” Unpublished working paper. University of Pittsburgh, December 2000.

⁹See Chandler, *supra* note 3.

because it allows them to pursue their own ethnic agenda [on the national and canton level].”¹⁰ This is the weak and fragile institutional background on which corruption found a prosperous ground to flourish.

For example, after the war, the political parties control the allocation of apartments, which in a situation of housing shortages is a powerful weapon. Most often in Bosnia, one will rent an apartment out to someone with the same ethnic background. An example of this is seen with the case of Bakir Izetbegovic, one of the wealthiest and most powerful men in Bosnia, and the son of the former Bosniak President Alija Izetbegovic. As of July of 2000, Bakir controlled the City Development Institute, which determines the occupancy rights of 80,000 publicly owned apartments in Sarajevo. The apartments, many of which formerly belonged to Serbs or Croats before the war, have been given to members of the governing Muslim-led Social Democratic Party (SDA). Other non-party affiliated Bosnians must pay a \$2,000 fee to Izetbegovic.¹¹ By maintaining their power over the housing situation in Bosnia, the political parties can determine refugee returns to a certain area, therefore safeguarding their political majority in a canton or municipality.

In many respects, the old *nomenklatura* system of the Soviet era is thriving in Bosnia within the individual parties. According to the International Crisis Group, “the pervasiveness of nepotism and the tendency to use contacts to achieve one’s rights has become the norm. Almost every segment of administrative procedure is based on a grid of connections, from friendships to those of political and often criminal nature.”¹² The all-pervasive infiltration of public institutions by party personnel keeps them subordinate

¹⁰See GAO Report, supra note 1.

¹¹Christopher Hedges. “Leaders in Bosnia Are Said to Steal Up to \$1 Billion.” *The New York Times*. 18 August 2000.

to the party, which maintains the loyalty and discipline by excluding dissenting voices from influential positions. Bosnia's *nomenklatura* eliminates the separation of powers, regardless of what the constitution may provide, and severely undermines the significance of the electoral process. This modern day *nomenklatura* system is similar to the one found in the former Soviet Union, because like the Soviet *nomenklatura* one party is able to dominate, through its various bodies and committees control, all significant appointments, promotions, allocation of privileges and dismissals within the institutions of the state, particularly the legislature, the judiciary and key managerial positions in the economy. By keeping this structure, the nationalist parties, not the Office of the High Representative as conceived in the Dayton Agreement, maintain the personal and financial power of their members and authoritarian control over the country. Also, in many ways, this means that Bosnia has no institutional separation between politics and the economy in the private or public sector.

Indeed, not only is the political system very weak, but so is the legal system. The judiciary is institutionally incapable of effectively administering justice because political involvement occurs at many stages of the judicial process, including the selection of judges and the prerogative to dismiss judges, which is determined by political patronage.¹³ Therefore, elected officials exercise considerable leverage over the judiciary influencing decisions and their scope of inquiry. Bosnian legal scholars have noted that the state does have the laws that could be used to prosecute crime and corruption. These laws, however, are not applied and due to the lack of judicial independence. Political influence over the court prevents cases from being heard. According to the GAO report,

¹²See GAO Report, supra note 1.

judges, prosecutors, and all who are involved in the judicial process are vulnerable to political, ethnic, and economic pressures, including physical threats and beatings.

Law enforcement is equally susceptible and in many ways is one of the reasons why corruption can be so pervasive in Bosnia. In many cases, law enforcement in Bosnia is unwilling to investigate or prosecute known corrupt practices because many law enforcement officials maintain their strict alliances with the political parties. Some are even hired to protect the business interests of local party officials, intimidate citizens, and prevent the return of refugees.

Corruption also extends to the domestic administration of international aid. Recent reports have indicated that pilfered funds have been diverted into private pockets or party coffers. In more than one cases, the money that was embezzled was aid donated by the international community to reconstruct Bosnia. In fact, according to Chris Hedges' seminal New York Times article, the OHR anti-fraud unit is examining 220 cases of embezzled cash intended to help rebuild roads, buildings and schools and to provide municipal services across the country. For example, in the town of Sanski Most, which was heavily damaged during the war, municipal funds were being used to build a horse-racing track. The town's Mayor, Mehmed Alagic was charged with 358 counts of corruption. One charge included the theft of \$450,000 in relief aid from Saudi Arabia, which was supposed to buy feed and farm equipment, but instead was allegedly given to the Mayor's brother to start a bank. Mayor Alagic has denied the charges and accused the OHR of mounting a conspiracy against him.¹⁴

¹³*Ibid.*

¹⁴See Hedges, *supra* note 11.

Another case involved \$935,000 in U.S. Embassy operating funds and USAID Business Development Program loan payments, which were deposited into BH Banka. According to Mirsad Bajraktarevic, head of the 120-member financial police unit that is investigating corruption in Bosnia, BH Banka collapsed owing foreign embassies and international organizations \$15 million. The bank owner, Mr. Alija Delimustafic, was the Bosnian interior minister in the early 1990's, and the foreign trade minister during the Yugoslav Wars.¹⁵ Ambassador James Pardew, the special adviser to the Secretary of State and the President of the United States on Democracy in the Balkans, has pushed for an in depth investigation on this matter and the return of the money. It is highly unlikely that the missing funds will be returned to the U.S. Embassy or to any other international organizations. As a result, international donors have been more cautious in giving aid to Bosnia and have implemented strict auditing procedures to prevent future theft. Unfortunately, international aid is being withheld at a time when Bosnia critically needs development assistance to promote economic growth. Within the past five years, the international community, including the World Bank, the European Union, and the United States, committed more than \$4 billion to finance the international effort to implement the civilian aspects of the Dayton Agreement.¹⁶ It is suspected that once international assistance recedes, the Bosnian GDP, which has been falsely inflated by aid, will sharply plummet.

¹⁵Carlotta Gall, "Arrest of Banker in Graft Case Poses a Test of Bosnia's Resolve." *The New York Times*. 10 August 2000.

¹⁶See United States General Accounting Office, "Bosnia Peace Operation: . . ." supra note 1. It must be noted, approximately \$1 billion, of over \$4 billion in assistance funding was pledged by the United States. This does not include U.S. contributions to international organizations, such as the U.N. mission in Bosnia, or military costs. As of March 2000, the U.S. military costs for operation in Bosnia totaled approximately \$10 billion.

Economic Structures

The war decimated the Bosnia economy; therefore, foreign direct investment is indispensable to restarting the country's growth and sustainability. According to a World Bank report, "the war shattered Bosnia's economy and productivity to a standstill." In 1990, Bosnia and Herzegovina had a GDP of US\$11 billion and a per capita income of US\$2,400. By 1995, GDP had plummeted to US\$2 billion per capita income was estimated at US\$500. Industrial production had fallen to 10 percent of its pre-war level and unemployment had risen to 80 percent.¹⁷

In neoclassical political economic theory, economic activity is enhanced by a stable social and legal order, which enforces property rights and contracts. However, governmental powers can be abused to appropriate some of the economic surplus of an ordered society. Indeed, in states that lack adequate democratic checks and balances, like Bosnia, the apparatus of orderly government is too often hijacked by political elites who siphon the national treasury and transform government bureaucracies into bribe-collection agencies, which impede business. Moreover, corruption in Bosnia creates an atmosphere of ambiguity that stymies businesses from investing and initiating operations. Certainty premised on the rule of law is a prerequisite for investment.

Pervasive corruption in Bosnia has long-term consequences on the country's economic development. Corruption has also played a pivotal role in driving away foreign investment, because most foreign companies, including McDonalds, have refused to set up operations after demands by officials to pay bribes and do business exclusively with local party officials. Even some Italian and German companies have pulled out of Bosnia

with heavy losses, complaining of interference from the state, an inability to collect debts and demands by officials for bribes and kickbacks.¹⁸

Even official state organs are engaged in quasi-legitimate activities. The existence of the payment bureau, a communist-era institution that controls all financial transfers, as well as collect and distribute taxes in each region of Bosnia. Until recently, all companies, domestic and foreign were required to register and open an account with this bureau. The payment bureaus were originally developed to maintain the Yugoslavian control over the creation and use of socially owned capital and decision-making in a decentralized system. Unlike most other socialist states, Yugoslavia had a “socially owned” economy where most firms were owned and controlled by the workers and not the state.¹⁹ The five basic functions of the payment bureau are:

- a) payments;
- b) government finance;
- c) central bank;
- d) private sector bank; and
- e) statistics and information.

Until recently, no financial transactions were legal unless conducted through the payments bureau, which was closely managed by the ruling parties and became an effective way for ensuring their political control over the economy. The bureaus are incompatible with a market economy and their activities lack transparency. In essence, the payment bureaus are a source of soft money for political parties who use the payment

¹⁷“Reconstruction of Bosnia and Herzegovina: Priorities for Recovery and Growth.” *The World Bank Group*. <http://www.worldbank.org/html/extdr/extme/bhgen.html>

¹⁸See Hedges, *supra* note 11.

¹⁹Charles R. Chittle. *Industrialization and Manufactured Export Expansion in a Worker-Managed Economy, The Yugoslav Experiment*. Kieler Studien, Institut für Weltwirtschaft and der Universität Kiel. Herausgegeben von Herbert Giersch, 1977: 3.

bureau's funds to maintain their power. Withdrawals are unaccounted for and fail to assist in the promotion of Bosnian reconstruction as ostensibly intended.

The normal economy suffers a considerable drain from black market activities. Economically, the wartime conditions - lack of free movement of people and of goods, collapse of the banking sector, the barter economy, the sanctions imposed by the international community, the arms trafficking, and the presence international humanitarian aid - created the ideal environment for many military and civilian officials to become brazen profiteers.²⁰ Many prospered off the black market sale of illegal arms, cigarettes, sugar and flour. Others entered the profitable business of selling registration cards, driver licenses, identity cards, and passports to people who were forced to flee to save their lives or else otherwise face the ethnic cleansing conducted by the Serbs. In many ways, Dayton has been unable to dismantle the black market economy that was created during the war. The wartime experience established expertise in smuggling and other kinds of illegal activities that continue to be useful. Subsequently, illegal markets have become almost institutionalized as a result of the Bosnian state's inability to provide basic goods and services to its public. In order to facilitate continued black market activity, the Bosnians have become increasingly interactive with their neighbors, particularly the Albanians.

According to United States Agency for International Development (USAID), about 50 percent of Bosnia's GDP is based on black-market commerce, which has become a key survival strategy. The existence of flourishing black market has "fueled the rise of a wealthy criminal class that wields enormous political influence and annually diverts

hundreds of millions of dollars in potential tax revenue.”²¹ The lack of tax revenue prohibits the government from engaging in public expenditures such as infrastructure, cultivating foreign investment and maintaining expensive government owned enterprises.

The greatest symbol of black market entrepreneurship is the so-called Arizona Market in Brcko, a border town between the Bosnian Federation and the Republika Srpska. One can obtain everything from a fake Adidas tracksuit to Moldovan prostitutes to Afghan heroin.²² An estimated 20,000 people earn an income from the market. The market’s success is undermining legitimate enterprises within the area. What is remarkable and perhaps indicative of Bosnian crime is the cooperation between Serbs, Croats and Bosniaks.

Privatization in Bosnia is moving incrementally mainly because it is feared that government corruption may undermine the process, which is determined and implemented by the government, and serves as another opportunity for party officials to profit from corrupt activities. The primary form of privatization being used in Bosnia is voucher privatization. This means that the government provides citizens with a specific number of vouchers dependent on a certain criteria such as age or military service. The vouchers can then be sold for cash or used to purchase shares in privatized companies. Moreover, privatization has been impeded by fears that patronage may influence both the distribution of entities as well as impact hiring processes.

²⁰*European Stability Initiative*. “Reshaping International Priorities in Bosnia and Herzegovina. Part One: Bosnian Power Structure.” Sarajevo, 14 October 1999. <http://www.esiweb.org/Report1-1999.html>

²¹*Ibid.*

²²Philip Sherwell. “Guns, Girls, Drugs, Fake Track Suits: It’s All Here In the Wildest Market in the World ... the Arizona Market, a Booming Balkan Hub for Business, Smuggling and Crime Where the Serbs, Croats, and Muslims Have Put Aside Their Old Enmities to Trade.” *The Sunday Telegraph*. 19 November 2000.

Privitization, implemented by the government, is moving incrementally because of fears that patronage, along ethnic lines, may influence the distribution of businesses and other entities. The voucher system employed towards the goal of mass privatization opens the door for considerable corruption. The vouchers are distributed upon the preference of government officials, engendering discrimination, and may be used to purchase shares in privatized entities or sold for cash. Those possessing shares may continue to discriminate along ethnic lines with respect to hiring and firing employees. Power can be accumulated through the reception of multiple shares in multiple entities, therefore creating monopolies or worse oligarchies as has occurred in Russia. Russian oligarchs in accumulating material wealth have also gained substantial political clout, which thwarts democratic governance. **Corruption Corrosive Social Affects**

Bosnians lack a civic identity.²³ They fail to perceive themselves as members of a Bosnian state. Rather, their identity derives from their ethnic background; hence only ethnic leaders and parties are regarded as legitimate representatives of their interests.

There is reason to believe that the public would idealize their respective parties and attribute to them the unique ability to overcome Bosnia's ills. However, a certain degree of apathy has settled in. Because of the prevalence of corruption and perversity committed before, during, and after the war, Bosnians as a whole have come to accept the leader's failings. One might say that is indeed regarded as the means of conducting business and state affairs. Three stages can be traced in societies experiencing and managing corrupt government: permissiveness, acceptability, and expectation. First, corruption becomes permissive among officials, which allows it to become pervasive as

one witnesses in Bosnia. Second, the public accepts that crime and corruption are part and parcel to the task of running government. Therefore, they have few qualms with electing officials at all levels of government regardless of their shady practices or previous dealings. Third, and perhaps most dangerously is agnostic government. The public no longer cares if the government engages in corruption. There is an utter divorce with any semblance of accountability. When scandals occur, the public is unsurprised and raises little protest. It is the contention of this paper that Bosnia has yet to reach this stage though it is discernible for example in Colombia. However, Bosnia precipitously is dangling on the brink. Without an accountable government and with the tacit permission to engage in corrupt and criminal practices, a government reaches the state of being known as kleptocracy. Kleptocracy is the complete and total criminalization of the state. No one is immune from engaging in illicit practices. It is perceived as a mechanism for survival and a pre-requisite in the bid for power. In Bosnia, where three acrimonious parties vie for power, the illegitimate becomes legitimate as long as the ends are justifiable. The ends of course being that they are the justifiable heirs to the throne of power and the true victors of the Bosnian war.

Conclusion

What we see in Bosnia is a situation where corruption is accepted, and will likely become expected. This not only corrodes the effective ability of the state to function, but for Bosnia it is slowly, dismantling the country's fragile democracy and instead creating a full functioning kleptocracy. The hallmark of democracy is accountability. While conceptually accountability is marginally possible under a kleptocracy, the fundamentals

²³Interview with Karen Turo, OSCE Election Monitor, University of Pittsburgh, 17 January 2001.

of representative government are eroded. For example, officials feel free to use public coffers as their personal bank. International aid is pilfered for personal gain. Discrimination is exercised without recrimination. Black market activities detract from the critical tax base needed to reconstruct Bosnia. Perhaps, worst of all, the public will become alienated from the creation of its state and without civic participation a democracy is a hollow shell. Bosnia cannot afford such abject apathy when it is attempting to forge the mechanisms of democratic government. If the public fails to intervene through the normal channels of democratic governance, then corruption will seize democracy and render their collective rights as citizens impotent and meaningless. Rights will not be inalienable, but at the mercy of virtual warlords who will use the public as pawns in their elaborate criminal schemes.

Democracy is not a given. Despite the international communities' aspiration to deliver the gift of democracy to Bosnia, it cannot be merely bestowed. It requires cultivation and work. To date, the ethnic factions within Bosnia do not seem up to the task. In essence, the country is very much at a crossroads. Two roads diverge: democracy and kleptocracy. The Bosnians have the unique opportunity to chart their own course.

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