

Dayton dieci anni dopo: guerra e pace nella ex Jugoslavia

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A cura di Francesco Guida

Introduzione
di Francesco Guida

Ringraziamenti

Indirizzo di saluto
di Guido Carli

Intervento introduttivo
di Pier Virgilio Davoli

Parte prima

I Balcani oggi e il ruolo dell'Europa

Bosnia and Herzegovina Ten Years after Dayton: Ethnic
Apartheid or Civic Democracy?
by Hans Sjundberg

L'Unione europea e i Balcani
di Fabrizio Barbero

Andare oltre Dayton
di Umberto Ranieri

L'Italia, la Bosnia e il Kosovo
di Roberto D'Amico

I Balcani protagonisti
di Luca Caracciolo

Intervista ad Adriano



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Serbia under Milošević. Constitutional and Political Issues in Light of the Dayton Peace Accords

by *Stevan Lilić**

1. Being the most liberal of the European socialist countries, particularly in the late 1980's, Yugoslavia initiated various economic, social and political reforms. However, soon after the Fall of the Berlin Wall in 1989, the Yugoslav Federation consisting of six republics disintegrated as a result of ethnic conflict. During 1991-1992, Slovenia, Croatia, Bosnia and Herzegovina and Macedonia proclaimed independence. Economic sanctions, imposed upon Yugoslavia by the UN Security Council in May 1992, were suspended after the Dayton Peace Accords of November 21st 1995, and the signing, by Bosnia and Herzegovina, Croatia and Yugoslavia, of the Paris Peace Agreement of December 14 1995.

During the 15-odd years that Serbia was under the regime of Slobodan Milošević a number of controversial constitutional and political issues were generated. Long after the fall of Milošević in October of 2000 and this consequent transfer to the International Criminal Tribunal for the Former Yugoslavia (ICTY), these issues would continue over not only to menace Serbia's social and political existence, but threaten the stability of the region as well.

In September 1990, Serbia adopted the so-called Milošević Constitution. This Constitution is still in force¹ and represents the main bulwark of the *ancient regime* even at present. The bottom line of the "constitutional debate" is the issue of "continuity/discontinuity", i.e. as long as the Milošević Constitution is in force, "Milošević still (politically) lives". Resistance to adopt a new democratic Constitution for Serbia has been so legally sophisticated and politically resolute, that the European Union recently added the adoption of a new Constitution as one of the conditions for a successful stabilization and association process.

In April 1992, again under the command of Milošević, the Yugoslav Parliament adopted a new Constitution for a federal entity consisting of Serbia and Montenegro, the two remaining republics, claiming "unbroken continuity" with the socialist state. This project ended in a political fiasco when in 2001 Milošević Federal Republic of Yugoslavia was accepted as new state to UN membership. On the constitutional level, FRY disappeared in February 2003, when the State Union of Serbia and Montenegro was created under the patronage of the European Union.

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Finally, the autonomous provinces Vojvodina and Kosovo that exist within Serbia, were deprived by the 1990 Constitution of their special status as constituent parts of the Federation and were left with only limited autonomy. The crisis of 1998 and 1999 (NATO air strikes on Serbia) has created further problems for the constitutional status of the Kosovo and has also resulted in the imposition of new sanctions upon Serbia. The final resolution of the Kosovo problem may well affect the whole of the constitutional order of Serbia and indirectly also that of State Union and Montenegro.

As consequence of the years under Milošević, Serbia is still pending democratic and transparent constitutional and political solutions regarding its own constitutional future, as well as the future of the State Union and the relations with its "eternal ally" Montenegro, on one hand, and Kosovo, on the other.

2. After the Fall of the Berlin Wall in November 1989, communism gave way to the processes of post-communist transition. The world that existed before was forever changed. This included the so-called socialist federations – the USSR, Yugoslavia and Czechoslovakia. It is interesting to note that none of these federations have survived. The Soviet Union dissolved through into a complex post-soviet system called the Commonwealth of Independent States, with Russia the direct successor of the Soviet Union, while Czechoslovakia dissolved through its specific "Velvet" Revolution process. Finally, Yugoslavia disintegrated in bloody inter-ethnic conflicts that tore the country apart in the first half of the Nineties. In this period, all the republics of the former Yugoslavia proclaim independence, except for Serbia and Montenegro now in the form of the Federal Republic of Yugoslavia (FRY), claiming under the leadership of Slobodan Milošević that Serbia and Montenegro were the sole legitimate successors of the former Yugoslavia. Arguing the position that FRY had in the conflicts in Bosnia and Croatia, the United Nations introduced sanctions to FRY in 1992.

From the constitutional aspect, in 1990 while the former Yugoslavia was still one state, Serbia's Communist Parliament adopted a multiparty Constitution – also called the "Milošević Constitution". However, this Constitution had deficiency with legitimacy and problems with persistence, due to the fact that only one political subject (the former Communist Party of Serbia) was the real constitutional maker and the opposition parties did not take part in adopting it.

Thus Serbia was faced with the issue of constitutional revision. This issue was so important that the EU had put it as a special condition for Serbia's European integration. Our hardcore legalists say that the only way to change the Constitution is by provisions in the constitution. Realists say you must take another way to change Constitution.

In 1992, during the crises and wars in Croatia and Bosnia, Milošević created the Federal Republic of Yugoslavia. This was a two-member federation. The reason Milošević did this was because he wanted to preserve political and legal continually with the former Yugoslavia. The argument of his legal experts and political advisors was that Slovenia and Croatia, then Bosnia and Macedonia made secession, while the international community (EU, UN etc.) said that this was not secession but "disintegration".

This Federal Republic of Yugoslavia was a *fiasco*. It was a creation only to suit Milošević. The two members of the federation, Serbia and Montenegro,

were disproportionate because Montenegro is a small state while Serbia is a big one. The end came when Milošević fell from power (October 2000). The new Yugoslavia had to apply as a new member for United Nations membership, definitely making it clear that the Federal Republic of Yugoslavia had no continuity with the former (socialist) Yugoslavia.

The Federal Republic of Yugoslavia disappeared in 2003 when a new arrangement, supported by the EU, called the State Union of Serbia and Montenegro was made. The State Union has a Constitutional Charter with a validity of a three years period², after which a referendum on the further existence of the State Union could be held. In the background, the main political issue was Kosovo which, by virtue of the Security Council resolution 1244 (June 1999) was on paper under Yugoslavia's, but technically under Serbia's sovereignty. The road to the European Union which is very important to Serbia is complicated by this situation, even more so because on accession issues the EU authorities have a "two-track" policy (one for Serbia one for Montenegro), but at the same time the EU also says that the State Union is one country, not two. Thus we have two roads for one country. The case of Czechoslovakia is an interesting reference case, because after the disintegration, the Czech Republic and Slovakia entered the EU as two states. Why not apply this model to Serbia and Montenegro?

The 1990 "Milošević Constitution" was centralized. It practically took away the autonomy that Tito has given to the autonomous provinces of Kosovo and Vojvodina. This was one of the reasons of the crisis within Serbia, particularly in Kosovo. UN Security Council Resolution 1244 states that Kosovo is part of Yugoslavia, not part of Serbia, notwithstanding the fact that technically is part of Serbian territory. Consequently, we have Serbia, Kosovo and Montenegro, a three-element complex. Some say, and I share this political opinion, that Montenegro wants independence to "wash its hands" from the question of Kosovo; as for all practical purposes, Kosovo is a problem of Serbia not of the State Union. Since June 1999, Kosovo is under the administration of the United Nations. The civil administration is under UNMIK (United Nation Mission in Kosovo), while the military administration is under KFOR (Kosovo Protection Force). At the moment, talks on the future status of the independence of Kosovo are pending.

In Vojvodina, the other Serbian autonomous province, after the fall of Milošević, the reformist government of Zoran Djindjić adopted a special "Omnibus Law" that bypassed the Constitution and give Vojvodina back a large portion of the autonomy that Milošević took.

3. Reflecting on the situation of Bosnia and Herzegovina and the Dayton Peace Accords ten year after, it may be worthy to quote some analytical opinions³, which, *inter alia*, state: ten years have passed since the main parties to the Balkan Wars gathered in Dayton to hash out a cease-fire arrangement. Their agreement was praised for ending the brutal conflict in which civilians bore the brunt of wartime atrocities. Yet it was also roundly criticized for rewarding the aggressor and cementing ethnic tensions into the architecture of the new state. The signatories to the agreement included two politicians from neighbouring states who had long disavowed their participation in the conflict: Serbia's Slobodan Milošević and Croatia's Franjo Tudman. Cease-fire lines became the new boundaries of a most unusual new state of Bosnia-Herzegovina. Meanwhile,

uncertainty over the final *status* of Kosovo continues to unsettle prospects for long-term peace and justice in Bosnia. The tenth anniversary of the Dayton Peace Accords reveals Bosnia-Herzegovina to be a troubled, ethnically divided state. Political leaders and civil society advocates throughout Bosnia have called for a comprehensive reconsideration of Dayton to address its deficiencies. The Dayton Accords may indeed have been the only possible solution for ending an atrocious war. But that time has passed, and much more can be done to promote a sustainable, long-term peace with justice in the Balkans.

The Republic of Bosnia-Herzegovina must improve its capacity to perform the basic tasks of a central government, including the task of safeguarding the security of the state. As a first step, the central government should have control over one central military; the two separate armies of the sub-entities should be disbanded. The ethnically-defined sub-entities will resist centralization of the military and will struggle against any effort to strengthen the central government. Yet, even the most nationalist leaders in the sub-entities can be convinced to relinquish some control, if doing so is the only path for self-preservation. Central to achieving this goal, *Republika Srpska* should be warned that its future does not include any kind of union with neighbouring Serbia-Montenegro. Continuing to strive to meet European benchmarks while not being driven solely by the quest for European integration. EU standards are important, and Bosnia should strive to achieve them, particularly in the field of human rights. Additionally, however, Bosnia should be able to develop its own priorities for building its own society. Given the freedom to make its own agenda, Bosnia may in fact identify issues unaddressed by the EU model and prepare strategies that provide even greater protections than that mandated through EU agreements.

Participatory democracy is no guarantee against the election of people who articulate repulsive ideas such as chauvinistic nationalism. Under the recent period of international control, chauvinist nationalists elected through procedures deemed by international observers to be fair and free were simply removed by the UN High Representative. A free and independent Bosnia would have to live with all politicians elected through fair democratic procedures. The incentives for fostering civic education to safeguard against a repeat of this scenario would be great. *Republika Srpska* has come to be regarded as a "safe haven" for ethnic Serbs under international criminal indictment. The leaders of both of the Bosnian sub-entities, however, could do more to cooperate with the requests of the international community for assistance with locating and arresting accused war criminals. In particular, they could direct their police forces to assist with arrests. For its part, the central government of Bosnia-Herzegovina has generally maintained a public stance of support for international trials for war crimes, while also failing to realize that support on a consistent and effective basis. In general those whose interests in the political *status quo* are sustained by cooperation with the Tribunal do so. Where cooperation would seem to undermine their political future, they do not. Under such circumstances, the international community may consider utilizing the very public award of "carrots" (i.e., financial assistance) as an inducement for cooperation with international investigations.

4. What are the consequences of Serbia after Milošević? It is a difficult situation not only for Serbia, but also for Bosnia-Herzegovina. A part of Bosnia-

Herzegovina consists of an entity called *Republika Srpska* which has agreements on “special relation” with Serbia. The nature of the relations is not always very clear.

Serbia is still pending democratic constitutional and political solutions, particularly in regard to Kosovo. Some opinions state that a Dayton-type model should be used in the case of Kosovo, meaning a partition of Kosovo into two entities – northern Kosovo (basically Metohija) to be incorporated into Serbia and the rest of the province to peruse the *status* of monitored independence.

Note

1. Un referendum tenuto il 28 e 29 ottobre 2006 ha approvato una nuova Costituzione (N.d.C.).

2. In seguito a un referendum popolare il Montenegro ha dichiarato ed ha visto riconosciuta la sua indipendenza nel giugno 2006 (N.d.C.).

3. Julie Mertus, *False Dawn: Bosnia Ten Years after Dayton*, Policy Reports FPPIF, November 23, 2005, www.fpif.org.