

**POWER-SHARING IN BOSNIA  
AND HERZEGOVINA:  
STRENGTHENING IMPLEMENTATION  
OF THE DAYTON PEACE ACCORDS**

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INITIAL WORKSHOP  
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## **I. BACKGROUND TO THE WORKSHOP**

For a number of years after the signing of the Dayton Peace Accords (DPA) in late 1995, progress towards a politically stable and economically sustainable Bosnia-Herzegovina (henceforth Bosnia) has been slow and marred by delays and blockages. During the past year a number of developments have broken with these previous developments. These include an acceleration of refugee returns to minority areas, the constitutional court decision on the constituent people, and the creation of a broad coalition of governments, consisting mostly of non-national parties. At the same time the regional context in which Bosnia finds itself has been significantly altered in the course of the past year. Not only did the change of government in Croatia in January 2000 impact on the political developments in Bosnia but the fall of the Milošević regime in the aftermath of the September 2000 elections also transformed the relations between the countries and between national communities in Bosnia.

While these developments appeared to have confounded the critics of the Dayton agreement and the resulting constitutional structures within Bosnia and Herzegovina, there have however also been destabilizing developments. In particular, the developments earlier this year relating to the Bosnian Croat participation in the Federation arrangements appeared to pose a not insignificant challenge to the Dayton structure. Tensions in Banja Luka also seemed to put into question relations affecting the Republika Srpska (RS).

In the light of these conflicting developments, ECMI set about considering what constructive role it might play in assisting to stabilize and advance the present arrangements. Already in January 2001, it established a small office in Bosnia and Herzegovina, to track developments and lay the groundwork for direct engagement with the communities in that state. That office is headed by Dr Florian Bieber.

It is a key principle of ECMI's practice-oriented approach that it will only launch projects that will serve local actors. Given the significant number of other organizations engaged in the region, ECMI will only become involved in relation to issues where others are not, or cannot be active, and where it can bring to bear its particular expertise to particular advantage. In pursuit of these principles, ECMI undertook a pilot study on the needs of local communities in relation to the strengthening of political processes across the two entities within Bosnia and

Herzegovina. It also engaged in informal contacts with local actors across the entities, including the political parties, academics and NGO representatives. The views of the international implementation agencies were also sought. On the basis of this preliminary work, an initial workshop was held in Sarajevo from 13 to 15 July, attracting participation from all of these groups.

## **II. AIMS AND FORMAT OF THE WORKSHOP**

The primary objective of the workshop was to begin an inclusive discussion between some 30 policy makers, scholars and experts, international organizations, local and international non-governmental organizations on the current system of power-sharing in Bosnia. The aim of the workshop was to build further understanding of the core issues that will need to be addressed in support of a further consolidation of the situation. In relation to these issue areas, ECMI would then develop a detailed, sustained and inclusive round table process to identify areas of success in the administration of public policy across the complex layers of governance in Bosnia and Herzegovina. These examples of best practice might then also be adapted to meet the needs of other areas of governance, where success has as yet been more hesitant.

The format adopted for the workshop was designed to meet these general aims. The workshop lasted over two and a half days. In the first part of the workshop, a review of key aspects of governance under Dayton was conducted, on the basis of expert introductions followed by a broad discussion. Thus, the first four sessions were intended to discuss the basic developments of power-sharing and democratic governance in post-Dayton Bosnia:

The *first session* was devoted to an evaluation of the progress in implementing the DPA. It identified core problem areas, based on the record of the past five and a half years. It looked specifically at the institutional structures and the multiple layers of power-sharing in Bosnia.

The *second session* discussed the role of the international community in the future implementation of the DPA and looked back at the record to date. It attempted to highlight the different levels and types of involvement of the international community in facilitating the development of democratic institutions in Bosnia.

The *third session* was devoted to the significant changes in the structure of power-sharing in Bosnia and Herzegovina that had occurred recently. Both the decision of the constitutional court in 2000, that the constituent people of Bosnia (Bosniaks, Croats, Serbs and “Others”) are also constituent peoples of the entities, and the decision of the High Representative in the light of this court decision to establish constitutional commissions. In both entities to grant the different communities of Bosnia a protection mechanism for their “vital interests”, has arguably had a great impact on the Bosnian structure of government. This session therefore sought to measure the impact achieved thus far and further action that might be taken.

There then followed a *fourth session*, which considered critical issues of governance that are now arising for the future, focusing on joint institutions, rather than the transformation at the entity level.

On the final day, which was attended by a smaller number of participants, the meeting formed two working groups. Working Group I was mandated to continue to consider issues of governance that might be developed and addressed in greater detail as the project proceeds. The group considered three principal areas of governance: democratic practices, the rule of law and transparency in governance.

Working Group II was tasked to work in a concrete way on a specific topic. In this way, it was hoped to pilot and test the round table process that might be established to cover specific issues of governance within the framework of this project. The group considered a background presentation by a local expert and proceeded to adopt provisional recommendations that might be developed further in the future.

A fuller account of the deliberations throughout this workshop is presented below. After the conclusion of the workshop, ECMI continued in its consultations with local and international actors. In view of these further reflections, ECMI has developed the design for a larger follow-on process, which is highlighted in the concluding section.

### **III. PRELIMINARY DISCUSSIONS**

The general proceedings of the workshop were aimed at discussing key areas pertaining to power-sharing in Bosnia-Herzegovina and the process of implementation of the Dayton Peace Accords. The plenary sessions did not aim to arrive at specific recommendations based on the consensus of the participants. The remarks on these

discussions do not therefore necessarily reflect the consensus view but rather significant contributions made during the presentations and discussions.

The presentations and discussions moved from the general to the specific, by first discussing broad trends in the implementation process and its perception within Bosnia and by international actors, followed by an assessment of the role the international community plays and might play in regard to the implementation process, as well as the process of transfer of ownership to local actors. The third part of the general discussions focused on recent trends and developments in Bosnian governance, examining the constitutional court decision from July 2000 and the work of the constitutional commissions established by the High Representative in January 2001 to both protect the vital interest of the three constituent people and others in the two entities and to elaborate constitutional changes in the light of the court decision, which would assure such a protection after conclusion of the work of the commissions. The final discussion focused on recent trends in governance and public administration at the level of the joint institutions.

#### *Session 1: Implementation of the Dayton Peace Accords*

Nearly six years after the signing of the Dayton Peace Accords, there is broad consensus that the DPA successfully established peace and set the foundation for democratic governance in Bosnia. Despite various and changing critiques of the DPA, the agreement forms the basis for the post-conflict reconstruction of the country.

In the course of the past six years of the DPA, different aspects mattered at different times. Thus, when the Dayton Peace Accords are discussed, many references to its success, failure and need to change or implement do in fact tend to refer to different parts, depending on the current context, rather than the document at large. In the early phase, it was the military annex (Annex 1) which generated the most debate and was viewed as being of greatest significance. It has been noted that one indication of some positive developments in governance in Bosnia has been the trend that in the past year attention has been devoted mostly to the institutional arrangements stipulated in the DPA, especially the constitution of Bosnia, and less to other aspects in the Accords.

The debate on the institutional and constitutional aspects of the DPA has been triggered by a number of factors: (a) the IC has become more engaged in the

strengthening of institutions recently; (b) parallel power structures have been weakened through a mixture of change at the regional level (change of authority in Croatia and Yugoslavia) and international community pressure; (c) the constitutional court decision regarding the constitutionality of the entity constitutions; and (d) the change of power in Bosnia on the central level brought a new political elite to power, which shifted the focus on institutions and less on the previous political parties.

In the discussions surrounding the implementation process, four strands of evaluating the DPA and its implementation have emerged:

- Implementation of the DPA according to the spirit rather than the letter of the text
- “Full Implementation” of the DPA, more assertive approach
- Revising the DPA
- Partial Revision of different Parts of the DPA (i.e. Constitution).

The first approach reflected the original position taken by the international community and most implementing agencies in terms of taking a gradualist approach in implementation and focusing on implementing the ‘implementable’. Some political actors in Bosnia support such a less ‘enforced’ approach to implementation.

With the broadening of the mandate and powers of the High Representative in 1997, the international implementing agencies took a more assertive approach towards the implementation of the DPA in terms of removing officials and passing decisions required for a full implementation.

A third strand advocates a significant departure from the original text. While strictly opposed by the international community, some political actors, including some participants of the seminar suggest the substantial revision of the peace accords in the framework of a new international conference.

The final approach to the DPA advocates a partial revision of the agreement, focusing on specific aspects rather than the agreement at large. The focus of this interpretation is the local ownership over a revision process, as opposed to an international revision conference. In particular the constitution (Annex) has been identified as an area of a possible partial revision. The constitution is the only part of the DPA, which has a set procedure for change (Art. X. stipulates that the constitution may be amended by a decision of the Parliamentary Assembly, including a two-thirds majority of those

present and voting in the House of Representative, only the Human Rights catalogue is protected from change or abolition) and could be revised without engaging in a revision of the DPA.

The discussions demonstrated that despite widespread dissatisfaction with different parts of the DPA, there is no, or only little, agreement on the aspects of the institutional set-up which would require revisions, and how such revisions can be achieved. While some participants advocated a new international conference to revise the agreement, others saw the existing agreement as sufficient. A demand voiced by a number of participants from the Federation was the abolition of the Republika Srpska and the *de facto* extension of the Federation's institutional structure to the whole country, as has been advocated by leading political figures in Bosnia and Croatia. Such a demand, however, was met with much opposition by participants from the Republika Srpska and constitute one key reason why political representatives of the RS mostly oppose any revision of the DPA.

Despite the lack of consensus on the nature of constitutional and institutional changes, the participants noted that despite the recent crisis in the implementation process, no major party in Bosnia openly opposes the existence of Bosnia. At the same time, opinion poll results, presented during the discussions, demonstrate a high degree of opposition among Serbs and Croats in Bosnia towards a more integrated Bosnian state as well as an allegiance to the neighbouring 'mother states'—as opposed to Bosnia. While the causes for this popular sentiment were very much in dispute, the participants agreed that the lack of identification of a majority of Bosnian Serbs and Croats with Bosnia highlights one of the key difficulties in the peace implementation process, i.e. the lack of public support amongst significant parts of the population.

A number of participants noted that among the most successful aspects of the implementation of the DPA was the military aspect of the accords (Annex 1). The discussion identified four key reasons for this case: (a) the Annex was very detailed and contained specific instructions for parties which could be easily verified; (b) the main implementing agency (NATO/SFOR) was closely involved in authoring this aspect of the accords, allowing for an agreement which could be implemented, while the agencies charged with overseeing the civilian aspects of the agreement were only set up after the signing of the accords and could thus not modify the agreement in the light of their capacity; (c) the Annex was also modest in its aims and sought to outline

steps which can be achieved in a relatively short period of time; and (d) the military aspects were widely perceived as a precondition for the remainder of the peace process to continue, which in turn enhanced the investment of all parties involved in this particular aspect.

Since the largely successful implementation of the military aspects of the agreement, the public debate has moved beyond the text of the DPA and focused on new areas, such as closer cooperation and the eventual integration of the two armies of Bosnia. Although these topics remain controversial, participants remarked that the discussions in the security and military field have progressed beyond the mere implementation of the peace accords to a dynamic debate on the current needs and assets of the parties. This aspect of the DPA might merit further evaluation to identify particular aspects of successful implementation, which could be applied to civil aspects of the agreement.

The discussion finally centred on the need to enhance local ownership for the implementation process, as well for the initiation of debates moving from implementation to the further development of governance in Bosnia. It was noted that currently a sense of ownership tends to exist in areas of little consensus across national lines, such as state-building. In areas of possible consensus, on the other hand, such as European integration, there are few attempts made to achieve local ownership. In order to foster domestic ownership of political processes which have an integrative potential, some participants argued that the stakes have to be raised for the political elite, and more incentives have to be offered to cooperate.

While the debates on the implementation process are still significant in Bosnia, the discussions have shown a need to examine the development of the Bosnian institutional and constitutional structure beyond the peace accords. As the different contributions to the discussions highlighted, there is some recognition that— independently of the assessment of the DPA—there is room and need for a broader debate and evaluation of new mechanisms on strengthening inter-ethnic cooperation in Bosnia.

### *Session 2: The Changing Role of the International Community*

In recent years, the international community has taken a more active role in supervising and influencing institutions in Bosnia. At the same time international

investment in Bosnia has declined significantly in the past years and will continue to do so in the coming years. As was asserted in the presentation, the mismatch between increasing political involvement and decreasing economic support may generate a 'legitimacy gap' that will render a strong role for the international community more difficult to sustain. In addition, the high degree of international involvement in the implementation process has been dispersed at all levels of governance and throughout all main policy areas. The high degree of international activity both in terms of substance and quantity has not only affected the legitimacy of some actors of the international community but has also lead to 'over-stretch' in resources and capacities. Closely connected to this is the absence of transparent and domestically accountable decision-making processes, while this is expected of local institutions.

While the international community has become more involved in the implementation process, it has been noted that many core areas of original international involvement have shown great improvements in recent years, most notably the so-called minority returns to areas across Bosnia, where such a development was inconceivable a few years ago. In addition, some parallel power structures, which dominated the political process in the first post-war years, have been substantially weakened.

At the same time, many Bosnian institutions are in deep financial crisis. A majority of the cantons of the Federation are either bankrupt or will soon face bankruptcy. These financial difficulties are not only of immediate significance but might reveal the unsustainability of large parts of the current Bosnia institutional set-up. The financial crisis is supplemented by a lack of communication between the different layers of governance in Bosnia.

As was pointed out in the discussion, the main problem with establishing a sustainable Bosnian state today lies less in the implementation of the DPA, where significant progress has been made, but rather in bringing about the conditions to facilitate and enable effective governance in Bosnia.

The discussions focused on the degree of intervention the international community should take in the governance of Bosnia. While some criticized the *de facto* constitutional role of international organizations, others supported the broad influence of different international agencies in Bosnia.

The discussion pointed to some areas where the international community could increase its effectiveness through a change in current policy. These included:

1. *Transparency*

The decision-making process, leading to laws and decisions, as well as the numerous reports issued by different international agencies remain frequently confidential and are often not even available to other international actors. A stronger emphasis on transparency would both increase the legitimacy of international organizations and set a good example for local institutions. Both are required to conduct a transparent policy-making process. In addition, duplication and lack of institutional learning is frequently the result of a lack of transparency.

2. *Focus*

The international community and the implementing agencies are currently tasked with a wide range of issues of governance in Bosnia. A focus on particular areas, where both progress is possible and where local ownership of the implementation process does not always yield the desired outcomes could be envisaged. Examples of such cases are refugee return, property issues and the provision of emergency medical care.

3. *Transfer of Analytical Ownership*

Local analysis and policy recommendations on the implementation process and governance in Bosnia need to be implemented in order to foster local ownership. This is important both in terms of the decision-making process and how this is communicated to the citizens of Bosnia. Local policy institutes and think tanks also need to be supported and included in the policy process.

4. *Long-term Institution Building*

The need for the long-term continued presence of the international community is widely acknowledged by both domestic and international actors. In order to increase the efficacy of the international implementing and supervising agencies, there is a need to develop a long-term plan of action, as well as formal commitment to the establishment of sustainable local institutions in Bosnia. Both would not only facilitate the work of the international community but also discourage political forces that obstruct political process and await the eventual termination of international involvement in Bosnia.

### *Session 3: The Decision of the Constitutional Court and the Work of the Constitutional Commissions*

The third plenary session addressed a more specific issue of governance in Bosnia. This session deliberated the establishment of constitutional commissions in the Federation and the Republika Srpska to propose constitutional amendments to the entity constitutions on the basis of the July 2000 ruling of the constitutional court. These commissions, established by the High Representative in January 2001, have discussed and elaborated numerous amendments, which will be put to vote in the respective parliaments during 2001.

When the constitutional court decision addressed the absence of all three constituent nations in the constitutions of the two entities, it was noted that there was a need to promote the notion of ‘citizenship’ at this level. Furthermore, the discussions concluded that the constitutionality of peoples should not exhaust itself on the symbolic level of the constitution but should translate into practical institutional changes.

While the constitutional revisions need to ensure equal national representation in the entities, it is also necessary to highlight over-institutionalization of ethnicity in the Bosnian institutions. Although unlikely in the current political climate, the constitution of the Republika Srpska, for example, does not prohibit the election of a non-Serb to the office of president, while in the Federation under the current constitution, the president has to be a Croat or Bosniak. Not only does the degree of ethnic representation have to be reduced but there is also a need to define what ‘national interest’ actually constitutes in the context of veto rights of national groups in the institutional set-up. Irrespective of the difficulties associated with defining ‘national interest’ in the abstract, without such a definition the danger arises that political decision will be blocked even in areas where no national issues are touched upon – owing to the unwillingness of political actors to take unpopular decisions.

The work of the constitutional commissions has furthermore drawn attention to the political rights and representations of ‘Others’, including minorities and citizens not identifying themselves in national terms. It was noted that there is a lack of distinction in current debate between traditional minorities (e.g. Roma, Jews, Montenegrins) and

those who identified themselves as ‘Yugoslav’, i.e. children from mixed marriages or who do not wish to declare their national belonging.

It was noted that contrary to opinions espoused in the current political debate in Bosnia, the permanent election law for Bosnia could be passed before the harmonization of the entity constitutions.

Finally, it was noted that there is a danger that the constitutional changes, when passed, are not pursued and enforced sufficiently vigorously. Noting the frequent absence of both implementation mechanisms of existing laws in Bosnia and the sensitivity of these proposed changes, a need arises to supervise the further implementation of constitutional changes, as well as their translation into legal and institutional changes in the respective entities.

#### *Session 4: Developments in the Governance of the Joint Institutions and General Problems of Administration in Bosnia*

The final plenary session shifted its focus from the entities to the joint Bosnian institutions. While there are constitutional changes in preparation for the entities, the Bosnian constitution, as was noted in the earlier discussions, is not likely to be amended in the near future. Instead, the discussions focused on the strengthening of existing institutions and mechanisms to limit political appointments to administrative and judicial posts, and to reduce the emphasis on national belonging over professional qualification when making such appointments.

During the discussions, it was noted that the central institutions are weakened by a relatively small body of civil servants (a total of some 2000 civil servants), who are subjected to a high degree of political influence and whose positions are distributed on the basis of nationality. The central institutions also suffer from a duplication of posts in order to ensure equal national representation, even without professional need.

In order to both satisfy the need for some degree of national representation in the administration and the promotion of professional competence, systems such as the introduction of ‘points’ to account for both qualification and nationality were discussed.

It was noted in the discussion, that there is a need to shift the focus of the administration's work from the 'political' to the 'policy' level. The politicisation of the administration, as was remarked by some participants, was promoted by both the political culture in Bosnia and the international presence. The permeation of politics into governance in Bosnia has hindered significant progress in the fields of policy and law implementation. This has been furthered by the development in recent years that numerous laws and decisions have been formulated and imposed by the international community, while implementation was left to the local administrations, which often lacked the capacity to oversee the process.

During the discussion, participants highlighted the fact that the promotion of the rule of law could be regarded as key to addressing many other problems in the administration (and judiciary), such as corruption, ethnic bias and party-based favouritism.

In addition, pre-existing (informal) structures of governance, mostly on the local level, have been neglected in recent years and have contributed to the inefficacy of the administration.

A key problem in public administration in Bosnia lies in the multitude of levels of governance. These multiple layers have engendered four particular problems in recent practice: the lack of a clear division of competencies and responsibilities across the layers; the high cost of maintaining these layers in the face of severe financial limitations; the limited capacities and personnel located at most individual layers; and the asymmetry of these layers with their basis in ethnicity rather than socio-economic need.

#### **IV. WORKING GROUP I: GOVERNANCE**

This working group considered general aspects of governance across all layers of public authority in Bosnia and Herzegovina. In contrast to Working Group II, it did not aim to produce concrete recommendations. Instead, the discussion was focused on the identification of areas that might merit further attention in future workshops. This brief account reflects only the Chair's general impressions of the debate, rather than the views of all members of the group.

The group decided to consider issues of governance under three main headings:

- Democratic Practices
- Rule of Law
- Transparency and Equal Access

The group also noted that a certain element of basic provision must be delivered, covering physical safety, minimum standards of living, including health and social security, education and special assistance to vulnerable or excluded groups. Otherwise, the benefits of good governance practices are unlikely to take full effect.

By way of preliminary comment, the group also noted the need to emphasize civil society development in its broadest sense, including the empowerment of pre-existing local structures and NGO actors.

##### *1. Democratic Practices*

The group noted that all exercise of public authority must ultimately be based on an exercise of popular will. Given the dramatic background to the establishment of the constitutional arrangements in Bosnia and Herzegovina, this cardinal principle – enunciated in the Universal Declaration of Human Rights – the ICPR and numerous UN and OSCE standards of more recent date, is not reflected in the Dayton arrangements. An important priority would therefore need to be a further increase in efforts to achieve a sense of local ownership of the existing constitutional structures and to increase their effectiveness and legitimacy within the Dayton framework. A number of steps were considered to this end, consistent with the need to enhance genuine and effective democracy.

The group noted the highly complex layering of public authority to municipalities, cantons, entities and the state level. It pronounced itself generally satisfied with the

existence of democratic mechanisms in relation to all of these levels of public authority. The conditions for the formation and operation of political parties, for political campaigning, access to candidature and free and fair elections were generally in place. The difficulty is less connected with the availability of opportunities to exercise democratic choice. Instead, difficulties still persist in relation to the actual nature of that choice. As politics still tend to be dominated by ethnic considerations, as opposed to interests, electoral results are at times a foregone conclusion. There was in some instances a manifest absence of substantial party platforms concerning contested issues. Hence, there was at times no real opportunity to opt for parties or candidates according to considerations outside of ethnic appurtenance or representation by way of cross-party open voting.

The formal quota systems established in constitutional documents, and the informal quota systems in administrative structures, also tend to detract from the pursuit of interest politics. It was felt that an emphasis on the establishment of a grassroots political culture through local initiatives might assist in overcoming some of these problems. NGOs might play an even larger role in advocating interests and in demonstrating in that way the need for parties to focus on issues, not ethnicity. Voter education had thus far mainly occurred in a top-down way, and a reversal of this strategy was advocated.

The issue of the electoral system was discussed at some length. The difficult tension between the desire of some to see the demographic shifts that occurred between 1992 and 1995 reversed, and the need to guarantee the human right to freedom of movement and choice of residence was noted. The hesitant returns to areas of previous residence posed a particular challenge, as did the still significant number of diaspora voters, whose attachment to particular places or even the state might become increasingly tenuous over time. Distrust in relation to these issues might be overcome by making voter registration more transparent, to avoid the possibility of abusive practices. The increase in available documentation since 1996 should now lead to a significantly more credible electoral process. However, the delays in achieving consensus on electoral legislation were seen to reflect the considerable difficulties that still persist.

The group also considered the issue of the disenfranchisement of the population through international action that interfered with the choices it may have made. It was

asked whether such intervention with parties and the holders of elected political offices should only occur where there had been electoral fraud. Intervention on substantive political rather than procedural grounds was an issue that would most likely become increasingly controversial over time. The more subtle influence of the international agencies in seeking to promote election results consistent with their strategic aims in Bosnia and Herzegovina were also noted. Whether such action could be legitimate, given the particular background to the situation in Bosnia and Herzegovina. Once again, the true remedy was seen to lie not in the disqualification of certain political protagonists, but in the long-term struggle to establish a polity driven by interest politics.

## 2. *Rule of Law*

It was noted that the rule of law requires that all public acts must be subject to law. There must exist the possibility of testing their compliance with constitutional, human rights and other legislation through effective and credible judicial procedures. Similarly, all private acts must be consistent with the law and all individuals must have access to remedies to vindicate their rights. It was emphasized that human rights must be applicable throughout the system and their implementation must be ensured at all times. The need for an independent and professional judiciary and for equal access to justice for all was emphasized.

The use of international personnel in some judicial roles was noted by participants in the discussion. The fact that such personnel was not rooted in the community and might not feel sufficiently accountable to it was raised. A similar credibility problem might also lie in the fact that much of the law that was to be applied by the judiciary had its source in international action. On the other hand, it was remarked that such a procedure might remain necessary during a transitory phase.

It was noted by one speaker that in the case of some cantons, judicial control did not extend upwards to the Federal or State level. The speaker also noted that state-level judicial institutions had not yet been sufficiently established. The question of membership in the Council of Europe and the need to prepare for access to the European Court of Human Rights was also noted.

The recent increase in pay to judges was noted as a useful and essential tool in fighting corruption. However, it was also argued that a long way remained in

establishing an independent and fully professional judiciary. The administration of 'ethnic justice' posed a particular challenge. It was felt urgently necessary to accelerate the review of procedures for the training of judges and associated personnel, including continuing education. The appointments process according to clear criteria of professional qualification needed to be strengthened, it was argued. A process of review of the performance of those involved in the administration of justice would be necessary. This would need to be balanced carefully against the need to maintain a judiciary confident in its own independence.

With respect to access to the law, it was noted that the available procedures tended to be reasonably accessible. What was lacking was education and public awareness. Moreover, the utility of invoking judicial processes should be better explained. One might also accelerate the establishment of alternative dispute resolution mechanisms at local level. The use of television, hotlines and the previously existing local citizens advice centres was emphasized in the context of awareness raising.

While the need for the provision of a high level of pay for those working in the judiciary had already been positively remarked upon, the group noted with concern that resources would need to match good intentions. A raise in salary was of little use where no salaries are being paid.

### 3. *Transparency*

It was noted that in principle, there were opportunities for access for all to legislation, regulations and decrees that might affect them, irrespective of the layer of governance from which they might emanate. However, there was a need for a free (as opposed to existing commercially available services) and comprehensive electronic network resource, which would reveal all of this information in the relevant languages. This should also include judicial pronouncements. While it was admitted that not everyone would be in a position to make use of such an Internet-based resource, it was argued that it would be a first and important step in increasing transparency of governance. Indeed, in addition to civil society as a whole, even governmental officers and the judiciary would greatly benefit from such an information network. Again, the need for awareness raising with respect to existing information resources was noted.

It was also argued that legislative projects should be made transparent at an early stage to ensure the possibility of civil society involvement in the drafting process.

Similarly, it was noted that not all public decisions were supported by public reasoning. This appeared to be the case especially where less popular decisions or decrees were concerned – a practice that undermined confidence in the decision-making process, be it legislative, administrative or adjudicative.

Finally, it was noted that the political parties tended not to publish sufficiently detailed political platforms. The absence of programmes published in advance of elections inhibited accountability as well as real choice for voters.

The need to increase accountability for public officials was emphasized. This should extend to areas outside of the spectacular international interventions in governance, but be locally administered. A competent administrative service free of corruption and bias could only be established over the long term if public expectations of standards of performance were raised, and if remedies in cases of failure to achieve the required standards existed.

## V. WORKING GROUP II: THE MEDIA

In contrast to Working Group I, the objective of this Working Group was twofold: first, to consider whether there was a basis and need to establish a semi-permanent Working Group on the media in Bosnia, especially in regard to the regulations imposed pursuant to the DPA; and second to discuss the media regulations that are already shaping the emerging media-landscape. In addition, it was deliberated whether specific recommendations should be formulated on these grounds.

The media had been instrumental in Bosnia in promoting conflict prior to the war, and since the end of the conflict has frequently engaged in disseminating hate speech and re-enforcing the national divide in Bosnia. As a result, the international community has engaged in substantial efforts to both reform the media sector and to enforce standards to prevent the proliferation of hate speech. While the electronic media is regulated by the Communications Regulatory Agency (CRA), the print media is only bound by a system of self-regulation. This system of media regulation and its efficacy formed the focal point of the discussion in the Working Group.

The group concluded that there was a basis for constructing a standing working group with a specific focus on media regulation. It was noted, however, that this should be linked into the work of the OSCE sponsored mission addressing this point. Based on the current system and how it operates, the overall sentiment of the group was that there was room for improvement in the area of regulation as well as a need for a more diverse media landscape than is the case today.

The group agreed on formulating the following specific recommendations:

### *1. Public Debate on Communication Law and Press Code*

There is a need for a public debate on the impending law on communication, including an opportunity for the draft law to be reviewed and commented on by the broadcasters before being promulgated. In addition, it is necessary to initiate an open public debate on the press code. Only through debate can the establishment of a less flawed press code be ensured.

### *2. Transparency of International Organizations*

There is a clear need for increased transparency in international organizations, thus enabling the NGOs to better influence the international community and make their

voices heard. This also applies in the field of media. In the past, blunders have occurred with international organizations and were often blamed on ‘communicative misunderstandings’. Increased transparency would prevent this from reoccurring.

### *3. Regulation of the Press*

There needs to be a mandatory and comprehensive system for the regulation of the press. The current system, based on self-regulation, is not functioning properly. As a regulatory system is currently in place for the electronic media, this should be extended to print media as well.

### *4. Reducing Complexity of Decision Making*

Decision-making in the media needs to be simplified. At present it is too difficult to gain an overview of the different legislative practices. Further, it could be worth exploring the establishment of a court of appeal– possibly within the framework of an *Ombudsman*-style institution – to contest decisions made by the CRA. Currently, if a complaint is lodged the CRA is left to evaluate its own decisions.

### *5. Broadening Membership in the Press Council*

The Press Council should be made up of not just members of the media but also of representatives from human rights organizations and other NGOs whose work pertains to the media.

#### **IV. CONCLUSIONS RELATING TO THE DEVELOPMENT OF THIS PROJECT**

From the discussions at the workshop, and in the light of further consultations with local and international actors in Bosnia and Herzegovina, ECMI has drawn the following conclusions. While ECMI is in a position to continue piloting the implementation of these proposals, full implementation will require external funding:

- 1 There is a need to consider and compare practices of governance across the highly complex layers of the exercise of public authority throughout Bosnia and Herzegovina. At times, these layers are so complex that it is not easy to discern what this practice actually is. In other instances, practices are widely diverging, producing uneven results. It is now timely to take a step back and consider the experiences of the past five years in a comprehensive way – a luxury not ordinarily available to those involved in politics or administration.
- 2 Specific emphasis should be placed on generating a truly inter-ethnic process that focuses on solutions to problems that are equally relevant to all communities in Bosnia and Herzegovina.
- 3 Such an investigation and dialogue should focus on identifying successful models of administration in relation to specific issue areas, whether they have been pioneered at the local, the cantonal, the entity or the state level.
- 4 Separate round tables should be established in relation to the following six specific issue areas:
  - Democratic Governance and Accountability;
  - Regulation of Access to, and Management of, Public Services;
  - Judiciary;
  - Economic Policy;
  - Media Regulation; and,
  - Human Rights, including Minority Rights.

- 5 Each of these round tables will be supported by an expert study, commissioned from an international expert. That study will give an overview of the different approaches to the management of the respective issue area across the differing layers of governance. It will identify in a provisional way best practice and consider how this best practice can be extended across all layers of governance where possible.
- 6 The round tables, which will include representatives from the political parties, officials from the different layers of governance, NGOs and independent academics will draft recommendations for an improvement in governance on the basis of their consideration of the expert paper. If so desired by the round table, additional external expertise, also drawing on comparative experiences in other states or regions will be made available in support of its deliberations. While the project is intended to increase local ownership and capacity in relation to governance, the round tables will also draw upon the experience of the international implementation agencies where that seems appropriate.
- 7 The round tables will develop concrete recommendations about best practice in relation to their respective issue areas. These will be consolidated into a handbook of best administrative practices, bundling together the outcomes of the six round tables. This handbook will be widely distributed and its implications will be discussed with those in public authority and civil society groups across Bosnia and Herzegovina. Advice will be provided on the implementation of the recommendations to the relevant layers of governance.

## 1. Conference Programme

*Friday, July 13 (Day 1)*

<b><i>Time</i></b>	<b><i>Activity</i></b>
13.00	Arrival of Participants
13.00-14.00	Registration
14.00-14.30	<p><i>Opening of the Workshop</i></p> <ul style="list-style-type: none"> <li>○ Welcoming Participants</li> <li>○ Introduction of ECMI</li> <li>○ Presentation of the Project and Workshop aims</li> </ul> <p>Eva Maria Christiansen, Project Associate, ECMI Florian Bieber, Regional Representative, ECMI</p>
14.30-15.00	Coffee Break
15.00-16.30	<p><i>Session 1: Assessing the Status of the Implementation of the Dayton Accords</i></p> <ul style="list-style-type: none"> <li>○ Presentation: Florian Bieber</li> </ul> <p>Discussion</p>
16.30-17.00	Coffee Break
17.00-18.30	<p><i>Session 1: Assessing the Status of the Implementation of the Dayton Accords</i></p> <ul style="list-style-type: none"> <li>○ Discussion</li> </ul>
19.00-	Opening Dinner

*Saturday, July 14 (Day 2)*

<b><i>Time</i></b>	<b><i>Activity</i></b>
9.30-11.00	<p><i>Session 2: The Developing Role of the International Community</i></p> <ul style="list-style-type: none"> <li>○ Presentation: Gerald Knaus, European Stability Initiative</li> <li>○ Discussion</li> </ul>
11.00-11.30	Coffee Break
11.30-13.00	<p><i>Session 2: The Developing Role of the International Community</i></p> <ul style="list-style-type: none"> <li>○ Discussion</li> </ul>
13.00-14.00	Lunch
14.00-15.30	<p><i>Session 3: The Constitutional Court Decision and the Constitutional Commissions</i></p> <ul style="list-style-type: none"> <li>○ Presentation: Jakob Finci, Constitutional Commission, Federation of Bosnia-Herzegovina</li> <li>○ Discussion</li> </ul>
15.30-16.00	Coffee Break
16.00-17.30	<p><i>Session 4: Trends in the Development of Bosnian Governance</i></p> <ul style="list-style-type: none"> <li>○ Presentation: Gianna La Ferrara, European Union Support to the Common Institutions of the State of BiH, Presentation</li> <li>○ Discussion</li> </ul>
19.00-	Dinner

*Sunday, July 15 (Day 3)*

<b><i>Time</i></b>	<b><i>Activity</i></b>
9.30-11.00	<i>Session of the Working Groups</i> <ul style="list-style-type: none"><li>○ Democratic Governance and Accountability (Marc Weller, Director, ECMI)</li><li>○ Media Regulation (Dušan Babić, Media Expert)</li></ul>
	Coffee Break
11.30-13.00	<i>Plenary Session with both Working Groups</i> <ul style="list-style-type: none"><li>○ Democratic Governance and Accountability;</li><li>○ Media Regulation</li></ul>
13.00-14.00	Lunch and Conclusion of the Session

## 2. List of Participants

Note: not all participants were present throughout the entirety of the two and a half days of the workshop. Participation in the smaller working groups at the end of the session was limited.

Name	Affiliation	City
Andreas Accardo	OSCE Democratisation Department	Tuzla
Agnese Andreucci	Delegation of the EC to BiH	Sarajevo
Dušan Babić	European Union Support to the Common Institutions of the State of BiH	Sarajevo
Mirsad Ćeman	Party of Democratic Action (SDA)	Sarajevo
Claudia Croce	OSCE Field Office Bijeljina International Election Implementation Officer	Bijeljina
Stephen Deets	Department of Political Science, Miami University of Ohio	Sarajevo
Jakob Finci	Constitutional Commission FBiH, Jewish Community	Sarajevo
Caroline S. Hornstein	Konrad-Adenauer-Stiftung	Sarajevo
Elizabeth Hughes	Housing Verification and Monitoring Unit (RRTF)	Sarajevo
Tarik Jušić	Media Plan	Sarajevo
MJ Kittredge	International Peace and Conflict Resolution Program, American University	Sarajevo
Gerald Knaus	European Stability Initiative	Sarajevo
Suad Kurtćehajić	Faculty of Political Sciences, University of Sarajevo	Sarajevo
Gianni La Ferrara	European Union Support to the Common Institutions of the State of BiH	Sarajevo
Amy Meyer	UNDP Joint Youth Programme	Sarajevo
Vladimir Mitrović	Helsinki Committee for Human Rights in Republika Srpska	Bijeljina
Svjetlana Nedimović	Media Plan	Sarajevo
Peter Neussl	Office of the High Representative	Sarajevo
Valery Perry	Institute for Conflict Analysis and Resolution, George Mason University	Sarajevo
Draženko Primorac	Croatian Democratic Union (HDZ)	Mostar
Catalina Rojas	Institute for Conflict Analysis and Resolution, George Mason University	Sarajevo
Henriette Schroeder	OSCE Media Affairs Department	Sarajevo
Kulwant Singh	Jammu University (India)	Kashmir
Džemal Sokolović	University of Bergen, Institute for Strengthening Democracy	Bergen/Konjic
Maksim Stanišić	Party of Independent Social Democrats (SNSD)	Banja Luka
Sejfudin Tokić	Parliamentary Assembly of Bosnia-Herzegovina, House of Peoples	Sarajevo
Tanja Topić	Friedrich-Ebert-Stiftung	Banja Luka
Vesna Travljanin	Independent Judicial Commission BiH	Sarajevo
Danilo Vuković	Center for Social Research	Banja Luka
Craig Zelizer	Alliance for Conflict Transformation	Sarajevo

## ECMI Staff

Marc Weller	Director, ECMI
Eva Maria Christiansen	Project Associate, ECMI
Florian Bieber	Regional Representative, ECMI
Amel Kadić	Conference Assistant
Merima Erkočević	Interpreter
Amela Čohadžić	Interpreter

### **3. A Note on ECMI**

The European Centre for Minority Issues (ECMI) conducts practice-oriented research, provides information and offers advisory services concerning minority-majority relations in Europe. It serves European governments and regional intergovernmental organizations as well as non-dominant groups in the European area. The Centre also supports the academic community, the media and the general public through the timely provision of information and analysis. The early monitoring, study and resolution of ethnic tension and potential conflict in all regions of Europe - East and West - provides one of the major focal points for the activities of the Centre.

The Centre organizes its activities around three principal themes. It is concerned with the evaluation and further development of universal, regional, bilateral and national standards that may assist in consolidating democratic governance on the basis of ethnic diversity and human rights. In this context, the ECMI is also particularly interested in the emerging convergence of standards between EU member states and applicant states.

A second area of interest relates to implementation procedures and mechanisms for such standards and the study of their effectiveness. At times, the ECMI may also be invited to consider implementation issues and majority-minority relations in particular states in cooperation with the government of that state and local groups.

A third area is ECMI's active involvement in constructive conflict management, in projects ranging from the Baltic republics to the Balkan states of South Eastern Europe. In the latter region, ECMI maintains three small regional offices in support of its project activities.

ECMI was founded in 1996 by the governments of Denmark, Germany and Schleswig-Holstein. It is a non-partisan and interdisciplinary institution, which can draw upon an international core staff of the highest calibre, supplemented by a number of senior non-resident associates, visiting fellows and summer research associates from all over Europe and elsewhere, bringing the total number at any one time to around 20. The Centre also maintains active relations with other institutions involved in conflict resolution and inter-ethnic relations and engages in collaborative projects with them.

While its core funding is provided by its governmental sponsors, the Centre actively pursues project-based funding to support its rapidly expanding activities. ECMI has attracted funding from the Carnegie Corporation of New York, the European Union and the Council of Europe, several European Ministries for Foreign Affairs and a number of other major foundations.

ECMI occupies a historic building in the centre of Flensburg, where it holds meetings and conferences. The building also houses its specialized library and provides the hub for ECMI's ambitious publishing projects and Internet information programme. This includes the publication of the Internet Journal on Ethnopolitics and Minority Issues in Europe (JEMIE), the launch of the European Yearbook on Minority Issues, and a dedicated series of studies, monographs and handbooks covering ECMI's areas of interest. These activities are supported by a dedicated IT and library team and a small publications office.