

**FEDERATION OF BOSNIA AND HERZEGOVINA –
A PARALLEL CRISIS**

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FEDERATION OF BOSNIA AND HERZEGOVINA – A PARALLEL CRISIS

EXECUTIVE SUMMARY AND RECOMMENDATIONS

The Federation of Bosnia and Herzegovina (FBiH), the larger of Bosnia and Herzegovina's two entities, is in crisis. Disputes among and between Bosniak and Croat leaders and a dysfunctional administrative system have paralysed decision-making, put the entity on the verge of bankruptcy and triggered social unrest. Much focus has been on the conflict that pits the Serb-dominated Republika Srpska (RS) against the Federation, but the parallel crisis within the Federation also deserves attention. The need for overhaul of the FBiH has been ignored because of belief that state-wide constitutional reform would solve most of its problems, but any state-level reform seems far off. Bosnia's challenges all have echoes at Federation level, though in simpler form. Reform in the Federation, starting with establishment of a parliamentary commission, is achievable and could give impetus to state-level reform, while improving the livelihoods of the people in Bosnia's larger entity. If it does not happen, Bosnia, which was wracked by three and a half years of war in the 1990s, may well slide toward new political and economic ungovernability.

General elections on 3 October 2010 will likely produce more unwieldy, divided coalitions at state and Federation levels that will have to confront urgent economic and social woes. In stark contrast to RS, however, the Federation, primarily a Croat-Bosniak condominium, is highly decentralised. It is loved neither by the Bosniaks, who would like to abolish it together with RS in favour of a unitary Bosnian state, nor by the Croats, who want an entity of their own. A workable balance between majority rule and minority rights eludes the Federation. Its elaborate, internationally-designed mechanisms and quotas are easily circumvented and subverted.

The Federation is endowed with only a few areas of exclusive jurisdiction and shares most of its competencies in a haphazard way with lower levels of administration. The result is a dense bureaucracy, whose various parts function in competition or open conflict with one another, and a suffocating thicket of confusing and often contradictory legislation and regulation. Federation administrative bloat

and disorder make Bosnia's larger entity one of Europe's worst places to do business and choke its people's economic potential.

Long dominated by two large parties, the Bosniak Party for Democratic Action (Stranka demokratske akcije, SDA) and the Croatian Democratic Union (Hrvatska demokratska zajednica, HDZ), the Federation political scene has fragmented. The SDA-HDZ duopoly broke down in acrimony a number of years ago, as both lost dominance of their respective ethnic constituencies to hard-line or civic-oriented competitors. A bizarre five-party coalition of rivals, with no common platform or interests apart from retention of power and sharing economic spoils, governs the Federation but since 2009 has been unable to take basic decisions, such as the appointment of judges to the Constitutional Court. As the coalition spans the political and ethnic spectrum, however, it is hard to unseat.

Nevertheless, the Federation cannot ignore the economic crisis for long. It has resources and revenues, but they are ineffectively exploited and distributed. Big industries are beholden to party leaders. Friends in high places are indispensable to cut through complex regulations even for simple transactions. Private companies – often belonging to politicians' families or friends – exploit the poorly-regulated natural resources for their own gain, with little benefit to local communities. Voters expect their share of benefits, too; Bosniak parties especially have bought support with costly state payouts to favoured groups – notably veterans, pensioners and persons with disabilities – who often abuse the system. International Monetary Fund (IMF) mandated cuts sparked violent demonstrations in 2009-2010. The new government will face a difficult choice; to cave in to protests and lose international financial support, which would lead to Bosnia's financial collapse, or make long-needed budget cuts and reforms and face public wrath.

Revitalising the Federation is essential for Bosnia's survival. A well-functioning entity would be more attractive to Bosnian Croats and Serbs and would be more convincing in negotiations with RS at the state level. There are signs

of a more realistic attitude among some Croat and Bosniak leaders, a willingness to consider reforms short of their respective ideals. The Federation has much unrealised economic potential waiting to be unlocked by privatisation and regulatory reform. Its successful overhaul could turn the tide and create positive momentum for state-level compromises. On the other hand, continued worsening of relations among Bosniak, Croat and Serb leaders, compounded by a fiscal meltdown after the 2010 elections, could transform public dissatisfaction into ethnic tensions and violence.

RECOMMENDATIONS

To the Parliamentary Assembly of the Federation:

1. Establish a commission to recommend constitutional, legal and structural reforms, through consultations with parties, civil society and international and Bosnian experts, including improvements to:
 - a) the division of legislative, executive and judicial authority among all three of the Federation's levels;
 - b) shared competencies between the cantons and the Federation; and
 - c) the Vital National Interest (VNI) protection mechanism.
2. Strengthen the Constitutional Court of the Federation by reforming its mandate to match that of the RS Constitutional Court.
3. Adjust the territorial division of the Federation cantons to better reflect the preferences of local populations.
4. Pass the law on natural resource concessions.

To the Government of the Federation:

5. Initiate privatisation of the largest state-owned concerns in consultation with Bosnian and international experts.
6. Equip ministries with officials tasked to harmonise legislation and regulations with the European Union (EU) *acquis communautaire*.
7. Unblock international investment in the energy sector through transparent tender procedures.
8. Reform the social assistance sector urgently to improve delivery of services to the poorest citizens, while reducing overall spending, including by:
 - a) speeding up revision of lists of eligible veterans and persons with disabilities to remove fraudulent beneficiaries;

- b) shifting spending from passive benefits into measures that increase employment and integrate beneficiaries into the economy; and
- c) preparing for a shift from a rights-based to a needs-based social assistance system.

To the President of the Federation:

9. Nominate new judges to fill the vacant spots on the Constitutional Court of the Federation.

To the EU and its member states, the U.S. and other members of the International Community:

10. Encourage Federation-level reform, for example by providing expertise related to the EU *acquis communautaire* and lessons learned about power sharing and federalism in the EU to the parliamentary reform commission recommended above.

To the International Financial Institutions:

11. Take a stricter line on the Federation's macroeconomic stability, while working with local authorities to implement needed reforms, including by designing strategies for sustainable development and ensuring competitive tenders for state contracts.

Sarajevo/Istanbul/Brussels, 28 September 2010

FEDERATION OF BOSNIA AND HERZEGOVINA – A PARALLEL CRISIS

I. INTRODUCTION

The Federation of Bosnia and Herzegovina (FBiH) is in crisis.¹ Since August 2009, its five-party governing coalition – Bosniak, Croat and nominally Serb – has in effect broken down, and the government has ground to a standstill.² All three levels of government – entity, cantonal and municipal – are affected. Difficult coalition talks are likely to follow the 3 October 2010 general elections, paralysing matters for many more months.

The Federation may start 2011 with neither a government nor a budget, and it could face serious new financial and social crises during the coming year, if it fails to reform its pension and social security systems, a condition for the continued international financial support without which it cannot function.³ If the cost-saving reforms are implemented, veterans, persons with disabilities and pensioners are likely to launch street protests or worse to protect their benefits, which are proportionally the region's highest. Past government attempts to cut allocations led to massive demonstrations that rocked Sarajevo, including on 21 April 2010, when more than 70 protesters and police

were injured and the FBiH government building was ransacked.⁴

The global financial crisis is causing similar social protests across Europe, but in FBiH the tensions are causing a rise in ethnic incidents. On 4 October 2009, a Croat veteran shot and killed Vedran Puljić, a 24-year old Sarajevo football fan, in the predominantly Croat town of Široki Brijeg, as the largely Croat local police battled predominantly Bosniak fans, including many hooligans, causing scores of injuries.⁵ The incident triggered massive protests that blocked the centre of Sarajevo for several days, as citizens demanded that the perpetrators be brought to justice and arrested fans be released from Široki Brijeg prison.⁶

But the Federation's problems are deeper and structural, and affect the whole of Bosnia and Herzegovina (BiH). The FBiH was never expected to survive long in its current form. It covers just over half of Bosnia's territory,⁷ 75 per cent of its economic activity and 70 per cent of its population⁸ and was created by the 18 March 1994 Washington Agreement, a U.S.-led effort to end two years of vicious fighting between the Croatian Defence Council (Hrvatsko vijeće obrane, HVO) and the largely Bosniak-

¹ For background on Bosnia and the Federation, see Crisis Group Europe Briefings N°57, *Bosnia's Dual Crisis*, 12 November 2009; and N°54, *Bosnia: A Test of Maturity in Mostar*, 27 July 2009; and Europe Report N°198, *Bosnia's Incomplete Transition: Between Dayton and Europe*, 9 March 2009. In this report, Bosnia and BiH will be used interchangeably for the country of Bosnia and Herzegovina, and FBiH and "the Federation" for the entity of the Federation of Bosnia and Herzegovina.

² Bosnia's Croats and Serbs dislike the terms "Bosnian Croat" and "Bosnian Serb", which they feel imply a false ethnic distinction with their kin in neighbouring countries; unless otherwise indicated, in this report the terms Croat and Serb refer to residents of BiH. Most Bosnian Muslims, whether practising or nominal, self-identify as Bosniaks. Bosnian is used to identify citizens of Bosnia and Herzegovina regardless of faith or ethnicity.

³ From the International Monetary Fund (IMF), World Bank (WB) and European Commission (EC) pre-accession funds.

⁴ Veterans and civilian war victims have held recent protests in Sarajevo on 24 February, 18 June, 16 July and 6 and 17 December 2009, as well as 21 April 2010.

⁵ By coincidence, the victim was an ethnic Croat supporter of the Sarajevo team.

⁶ A few hours after the incident in Široki Brijeg, local police arrested a resident, Oliver Knezović, as the main suspect for the killing. On the same night, guards allowed Knezović – who has admitted the shooting – to walk out of the prison and flee. He crossed into neighbouring Croatia and remains at large.

⁷ The Federation covers about 26,000 sq km. "Federacija u brojkama 2008" [The Federation in numbers 2008], Federation statistics office, 2009, p. 6.

⁸ According to the 1991 census, the Federation has slightly over 2.7 million inhabitants, including 52.3 per cent Bosniaks, 21.9 per cent Croats, 17.6 per cent Serbs, 5.9 per cent Yugoslavs and 2.3 per cent "Others". The population is presently estimated at 2.3 million, including over 70 per cent Bosniaks, some 25 per cent Croats and 1-2 per cent Serbs. The Federation's share of Bosnia's population, according to the 1991 census, was 62.1 per cent before the war.

staffed Army of the Republic of Bosnia and Herzegovina (ABiH).⁹ A confederation between the Republic of Croatia and the FBiH was planned, in part to reassure the Croats, but was quietly dropped after the Dayton Peace Accord ended the wider Bosnia war the next year. The Washington Agreement included a constitutional framework dividing administrative responsibility between federal, cantonal and municipal levels.¹⁰ The FBiH has ten cantons¹¹ and 79 municipalities;¹² each of the three administrative levels has executive, legislative and judicial powers. There is a bicameral legislature, president and two vice presidents, representing the three main ethnic groups, and a government with a premier and sixteen ministers.¹³

War-time political loyalties still largely apply. Most Bosniaks supported the Republic of Bosnia and Herzegovina (RBiH) as the sole legitimate and multi-ethnic authority.¹⁴ It had token non-Bosniak officials and military officers but attracted very few Croats or Serbs, because it was viewed essentially as a Bosniak entity that did not represent them. Croats and Serbs saw the war-time RBiH as one of three successors – together with the breakaway Republika Srpska (RS) and Croatian Republic of Hercegovina (Hrvatska Republika Herceg-Bosna, HR H-B) – to the pre-war Yugoslav Republic of Bosnia and Herzegovina, and therefore the legitimate representative only of Bosniaks and territory they controlled.

⁹ Originally the two fought the Serbs together, but the alliance broke down in 1993, and the HVO and ABiH fought a brutal war in the ethnically-mixed towns and villages of central Bosnia and the Neretva River valley. Many Bosniaks still resent what they saw as a Croat betrayal, and the memory of war crimes on both sides still affects relations. Both sides committed massacres, the worst being the HVO killing of 127 Bosniak civilians in Ahmići village on 16 April 1993 and the killing of 74 Croat civilians and POWs in the villages of Grabovica and Uzdol in September 1993.

¹⁰ The agreement was signed by Haris Silajdžić, prime minister of the RBiH, Krešimir Zubak, president of the presidency of the HR H-B, and Mate Granić, foreign minister of Croatia.

¹¹ The framework left much unsaid, including the number and territorial division of cantons and their competencies. The cantons were originally meant to be based on economic, geographic and cultural, not ethnic criteria. Crisis Group interview, Kasim Trnka, legal expert on the Bosniak negotiating team at Dayton, Sarajevo, 20 April 2010.

¹² Cantons have their own governments and assemblies, while municipalities have mayors and councils.

¹³ Eight Bosniak, five Croat and three Serb ministers.

¹⁴ The Republic of Bosnia and Herzegovina (RBiH), a successor to one of the six republics of the former Yugoslavia, declared independence in October 1991. The next month, the HDZ announced the Croatian Community of Herceg-Bosna, which became the self-declared Croatian Republic of Herceg-Bosna.

The Washington Agreement sought to reconcile these competing visions and thus introduced a lasting ambiguity into Bosnian politics. Formally, the Federation was the creation of two parties, the governments of the RBiH and of the breakaway HR H-B. The preamble to the agreement states first that, “the peoples and citizens of Bosnia and Herzegovina” create a Federation “based on the sovereignty and territorial integrity” of RBiH. Most Bosniaks thus see the Federation as subordinate to the RBiH. But the agreement goes on to say that, “Bosniaks and Croats ... in the exercise of their sovereign rights, transform the internal structure of territories with a majority of Bosniak and Croat population” into the Federation.¹⁵ This lends credibility to the Croat belief that the Federation superseded the RBiH, which became merely one of its two parts.

The FBiH was also foreseen as an administrative umbrella that was to take in Serb-dominated territories as additional cantons, after the war.¹⁶ This did not happen; Dayton accepted and recognised RS as a separate, highly autonomous entity. This was a heavy blow to the Bosniaks, who had expected that Serb war-time atrocities would be punished and that the overarching state whose territory covered all of Bosnia and Herzegovina – BiH – would be highly centralised once the Bosnian Serbs were reincorporated. Dr. Christian Schwarz-Schilling, the international mediator for the Federation (1994-2004) and the international community’s High Representative (2006-2007), tried to persuade the Bosnian delegation at Dayton to place their strategic interests first on the level of the Federation and then on the state.¹⁷ He compared this with West Germany’s strategy after the Second World War, which ultimately achieved East Germany’s peaceful re-integration.¹⁸ The delegation, persuaded by then-BiH Premier Haris Silajdžić, rejected this advice.

¹⁵ On the eve of the Dayton Agreement, the Federal parties admitted that “the process of strengthening the Federation and building trust between its constituent peoples has still not produced satisfactory results” and called for “radical steps”; the main problem was persistent overlap and confusion between the FBiH and RBiH. “Dayton Agreement on Implementing the Federation of Bosnia and Herzegovina of 10 November 1995”, UN General Assembly A/50/810-S/1995/1021.

¹⁶ Crisis Group interviews, former High Representative Dr. Christian Schwarz-Schilling, March and April 2010.

¹⁷ The delegation of the Republic of Bosnia and Herzegovina represented territory inhabited almost entirely by Bosniaks and was led by prominent Bosniak politicians.

¹⁸ “Instead of engaging in daily political scuffles with East Germany, we have focused on creating better policies, knowing that sooner or later East Germany will rejoin Germany, not because they have to but because they want to”. Crisis Group interview, Dr. Christian Schwarz-Schilling, 31 March 2010.

Since then, Bosniak parties have focused their attention on the state level and largely ignored the Federation, which they could have more easily dominated and which had more robust administrative competencies. This strategy has had some success: BiH has acquired new competencies, though most require consensus between the Federation and RS, thus giving the Serbs a veto that irritates and offends the Bosniaks. Meanwhile, the Federation has degenerated into a vast patronage network for the leading Bosniak and Croat parties that funnels public money and influence to favoured clients but delivers poor public services.

The Croats, who are unlikely to be more than 25 per cent of the FBiH's population, have similarly ignored the Federation, focusing instead on a quixotic campaign to consolidate the cantons they control and carve a third entity out of the state. But Croat emigration and Bosniak and Serb returns have weakened their position even at this level. In Central Bosnia canton, the prime minister is now Bosniak, and in 2008 the Bosniak-dominated SDA party won local elections in the previously Croat-run municipalities of Busovača and Novi Travnik.¹⁹

BiH reform must include and should start with the Federation. This report surveys its structural and political weaknesses and proposes a number of solutions. Later reporting will examine the equally serious problems in RS and at the state level. Yet, without a reformed and effective Federation, it will be harder for the state to cope with RS's growing defiance of its authority, a confrontation that could have grave consequences.

¹⁹ Until recently, Croat politicians dominated five of the Federation's ten cantons: Herceg-Bosna ("Canton Ten"), which has a Serb minority; Western Herzegovina, which has long been almost purely Croat-populated; Northern Posavina; and the two mixed Croat-Bosniak cantons, Herzegovina-Neretva and Central Bosnia. However, some 275,000 people (out of an estimated 740,000 Federation returns) have gone back to areas dominated by other ethnic groups, partially reversing war-time ethnic segregation, especially Bosniaks going back to central Bosnia and Serbs to the south west. Crisis Group interview, aid official, Sarajevo, May 2010. Nevertheless, those returning to where they are in the minority generally continue to feel discriminated against and tempted to move to where they can be in the majority. Crisis Group interview, Nikola Simić, deputy, Central Bosnia Canton Assembly, Bugojno, 26 March 2010.

II. COLLECTIVE RIGHTS VERSUS MAJORITY RULE

Decision-making in the Federation is weighed down by the large number of institutions involved in governance, the influence of non-elected officials, consensus rules which should make it possible for all ethnic groups to protect their vital national interests but do not, and fears – predominantly Bosnian-Croat – of outvoting. In the Federation, Bosniaks, Bosnian Croats and Bosnian Serbs are all considered constituent peoples, with equal collective rights.²⁰ Even though Bosniaks are the clear majority in the entity, Croats and Serbs reject the "minority" label, which in Bosnia connotes non-constituent status. While other multi-ethnic states grapple with tensions between individual and collective rights, in the FBiH the real tensions are between the rights given to the constituent peoples in the constitution (collective rights), and the political influence of the Bosniak majority. This conflict impedes effective government.

A. ADMINISTRATION AND INSTITUTIONS

The FBiH is an administrative nightmare, with three levels of government (federal, cantonal and municipal) each of which has executive, legislative and judicial authority.²¹ Many responsibilities are shared by two or more levels, and regulations are often inconsistent or incompatible. The Federation accounts for the large majority of Bosnia's proverbial administrative bloat: eleven of its thirteen premiers and eleven of its fourteen legislatures, for example. It had almost double the expenditures of the RS in 2009 – respectively, 6.2 billion KM (€3.2 billion) and 3.3 billion KM (€1.7 billion).²² While it has almost double the RS population, even this does not justify such a big administration. It has created a large class of bureaucrats, whose vested interests exercise strong influence within Bosnia's political parties and over policy.

²⁰ In Bosnian constitutional theory, inherited from the former Yugoslavia, the state was created both by individual citizens and by specific national groups, its constituent peoples. Constituent peoples enjoy collective rights regardless of their numerical size.

²¹ The city of Sarajevo, comprising four municipalities, has a separate city-wide administration; Mostar city is governed by a special statute imposed by the High Representative; Brčko District is legally part of both the Federation and RS, but is self-governing and exempt from entity oversight.

²² Statistics provided to Crisis Group by an international financial expert.

An immediate problem is that the Federation lacks enough quality personnel to fill all these functions.²³ Politicised, ethnic-based recruitment means that officials are often accountable first to their party leaders and only then to their direct supervisors. Merit is often overlooked in the interest of political, ethnic or entity balance.²⁴ Decision-making tends to be managed by high-level authorities. Lower-level professionals often have to seek approval from their party leaders even for purely technical issues.²⁵

The Federation has a bicameral legislature, with a House of Representatives (98 members, including at least four from each constituent people) elected proportionally and a House of Peoples (58, including seventeen from each constituent people and seven “others”) elected indirectly by the cantonal legislatures. The number of delegates elected from each canton is proportional to its population and ethnic breakdown in 1991, but must include at least one Bosniak, Croat and Serb each.²⁶ Because many cantons have undergone enormous ethnic shifts during and after the war, some have virtually no minority voters left to elect the constitutionally-required delegates. In such places, it is easy for a majority party to win minority-quota seats, simply by including one or more minority candidates on its list.

Elected by the Parliamentary Assembly in a complicated procedure, the largely ceremonial Federal presidency, with its president and two vice presidents, must include one Bosniak, Croat and Serb each.²⁷ With so few Serbs in the FBiH, Bosniak deputies usually elect the Serb member. Currently the president is Borjana Krišto (HDZ); the vice presidents are Spomenka Mičić, an ethnic Serb from the Party for BiH (Stranka za BiH, SBiH), and Mirsad

Kebo (SDA). Their original agreement to reach joint decisions has broken down.²⁸

The presidency nominates the premier and the ministers and fills vacant ministerial posts; all nominations must then be confirmed by a majority of the House of Representatives.²⁹ This gives each presidency member a veto over all ministerial posts. In the first half of 2009, Mičić on behalf of the SBiH blocked the replacement of the unpopular premier, Nedžad Branković, who had lost the support of his own (SDA) party, in part because Branković supported a key SBiH minister.³⁰ Later that year, Krišto blocked the replacement of Salko Obhodadž, an important SDA minister. The president alone can dismiss ministers, on the premier’s recommendation, and nominates judges to the Constitutional Court, but since the presidency’s powers – apart from blocking – are limited, several Bosniak and Croat politicians, such as Sulejman Tihić from the SDA and Zvonko Jurišić from the HSP, have proposed abolishing it.³¹

The FBiH executive is composed of the premier and sixteen ministers, who must include eight Bosniaks, five Croats and three Serbs.³² The premier has two deputy ministers from different constituent peoples. In practice, the government is chosen by the leaders of the largest Bosniak and Croat parties. By informal consensus, the premier has always been a Bosniak, with the powerful finance ministry (and deputy premiership) going to a Croat. Except during the 2000-2002 dominance of the Social Democratic Party (Socijaldemokratska partija, SDP), the SDA and HDZ have taken these posts.

Each Federation canton has its own assembly with twenty to 35 delegates. Cantonal assembly chairpersons nominate cantonal premiers, who nominate their ministers. The required proportional representation in government of constituent peoples and members of the group of “others”

²³ “In BiH we have over 170 ministers, 500 parliamentarians. It makes no sense. It uses up all our brains and all of our money. We simply do not have enough experts to prepare quality legislation on all levels”. Crisis Group interview, Jasmin Imamovic, mayor of Tuzla (SDP), Tuzla, 10 March 2010.

²⁴ “Governance Structures in BiH”, Foreign Policy Initiative report, May 2007.

²⁵ “There is no one to prepare laws in ministries; for example only four people are employed in the FBiH sector for self-governance, while in RS there is an entire ministry working on that”. Crisis Group interview, Zlatan Orhanovic, director, Centre of Civic Initiatives (CCI), Sarajevo, March 16 2010.

²⁶ Some cantons fail to honour this requirement; the Western Herzegovina cantonal assembly, in an overwhelmingly Croat area, for example, has 22 Croats, one Serb and no Bosniaks.

²⁷ At least one third of the delegates of the Bosniak, Croat and Serb caucuses in the House of Peoples nominate the Federation president and two vice presidents, who must come from the three constituent peoples. Their election requires the list’s joint approval by a majority vote in the House of Representatives, and then a majority vote in the House of Peoples, including the majority of each constituent people’s caucus. FBiH constitution, IV.B.1.

²⁸ Crisis Group interview, FBiH Vice President Mirsad Kebo, 17 November 2009.

²⁹ FBiH constitution, IV.B.2.5.1.

³⁰ Crisis Group interview, FBiH Vice President Mirsad Kebo, 7 April 2009.

³¹ “Zvonko Jurišić: Federacija može i bez predsjednika” [Zvonko Jurišić: We can work without the President of FBiH], *Slobodna Dalmacija*, 27 July 2009; “Krišto: Tihićeva inicijativa nije ozbiljna” [Krišto: Tihić’s initiative is not serious], *Biznis.ba*, 9 September 2009 (online).

³² The constitution allows one “other” to be nominated by the premier from the quota of the largest constituent people, but that has never happened. This ethnic quota holds until Dayton’s Annex 7 (refugee return) is considered implemented, at which point it will be replaced by a requirement to give each constituent people at least 15 per cent and the smaller two peoples together at least 35 per cent of ministerial posts; FBiH constitution, IV.B.2.4.

must be based on the 1991 census until the return of refugees is deemed fully implemented, or until a new state-wide census is held. Cantonal governments are confirmed by majority vote of the cantonal assemblies. Cantons where two or more constituent peoples each are more than 30 per cent of the population according to the 1991 census require a two-thirds majority. Municipal mayors and eleven to 31-seat councils and city councils are elected directly. In Sarajevo, formed by four city municipalities,³³ municipal councils elect the city council, which then elects the mayor.

B. OUTVOTING AND CONSENSUS

One of the Federation's most mystifying terms is "out-voting". It amounts to nothing more than winning a vote – an uncontroversial and everyday event in democracies worldwide – but in the FBiH, as in all Bosnia, it evokes fears of oppression and corruption. The term dates back to socialist Yugoslavia, where consensus was the preferred decision-making method.³⁴ Instead of resorting to a vote, politicians were expected to negotiate until they arrived at a position acceptable to all. While rigidly applied consensus rules often lead to majority frustration, simple majority rule can cause the disenfranchisement of a minority.³⁵ To complain about outvoting in the Bosnian context is not to complain about having lost a vote; it is to complain that a vote was taken at all.

In Bosnia, consensus rules exist in both written and unwritten form, especially at the state (BiH) level.³⁶ The Federation has no analogue to the entity voting that ensures both the FBiH and RS must agree for a matter to pass at

the state level. The FBiH government functions largely by majority vote, though there is a popular expectation that party leaders will seek consensus and avoid a vote. All groups complain of outvoting when things do not go their way, though the Croats, being the smallest ethnic community, tend to complain most.³⁷ Ethnic divisions are not the only problem: in June 2010, the SDA's six ministers walked out of the Sarajevo cantonal government to protest being outvoted by the seven SBiH ministers over appointments to a public institution's board of directors,³⁸ though both parties are overwhelmingly Bosniak, as are nine of the thirteen ministers.³⁹

High Representative Valentin Inzko has said that, "BiH is like the E[uropean]U[nion] – a unity of differences, and this works only through dialogue and compromise". Outvoting "creates dissatisfaction" and "political frustration", he said, and was "not good for BiH".⁴⁰ He has warned against the practice, even in the management of public corporations, saying efforts to build consensus should not lead to blockage but to compromise.⁴¹ His predecessor, Miroslav Lajčák, warned the UN Security Council that Bosniak parties outvoting their Croat counterparts "increased political tensions between the two ethnic groups and [was] indicative of broader concerns about the position of the Croats in the Federation".⁴²

Accusations of outvoting are also a favourite rhetorical weapon. The Mostar branch of the small Croat Party of the Right (Hrvatska stranka prava, HSP) has claimed that Croats have paid 4.5 billion KM (€2.3 billion) more into the Federal treasury than the FBiH has spent on Croat areas over the years, a consequence of "Croats being

³³ Until adoption of the local self-governance law in 2006, the Federation had only two unions of municipalities with city status; Sarajevo has four municipalities; Mostar had six until January 2004, when they were abolished by OHR decision.

³⁴ The title of a book by two reform communists, Ciril Ribičić and Zdravko Tomac's *Usuglašavanje ili nadglasavanje* [Coordination or outvoting] (Zagreb, 1986), illustrates the idea's salience in the post-Tito years.

³⁵ One factor that propelled the break-up of Yugoslavia was the dominant Serbs' rejection of consensus and espousal of direct majority rule, which awoke fears among non-Serbs of being outvoted and dominated.

³⁶ At the state level, laws require the support of at least one third of the delegates from each entity, a principle known as "entity voting" that in practice applies only to RS (because a measure that failed to attract one third of the votes from the Federation would also fail to gain a simple majority). The House of Peoples has a second set of consensus mechanisms, permitting Bosniak, Croat or Serb delegates to invoke the vital national interest (VNI) clause discussed below. The Council of Ministers has limited consensus rules but functions largely by majority vote. See Crisis Group Report, *Bosnia's Incomplete Transition*, op. cit., pp. 12-13.

³⁷ See, for example: "Croats outvoted in FBiH government on the law on the origin of public revenues", Pincom.info, 15 April 2008; "FBiH House of Representatives adopts law on veterans' benefits, against Croat votes", *Nezavisne Novine*, 22 April 2008; "FBiH government adopts law on public TV services, rejecting Croat ministers' demand for Croat TV channel", *Svevijesti.ba*, 14 May 2007; "FBiH government decided to write off debt for mines: Croats will pay debts of Bosniak mines", Monet news agency, 29 July 2008; "Key nominations agreed without Croat ministers", *Oslobodjenje*, 30 April 2010.

³⁸ Jelena Milanović, "Preglasavanje je odbačeno protokolom!" [Outvoting is prohibited by the protocol!], *Oslobodjenje*, 2 June 2010 (online).

³⁹ Curiously, despite having ten delegates to the SBiH's eight in the cantonal assembly, the SDA still has a minority of ministers in the government.

⁴⁰ "Preglasavanje Hrvata stvara nezadovoljstvo. To nije dobro" [Outvoting the Croats creates dissatisfaction. That is not good], *Večernji list*, 29 May 2010 (online).

⁴¹ "Inzko: Onemogućiti preglasavanje u 'Elektroprenosu'" [Inzko: Prevent outvoting in Elektroprenos], *Capital*, 28 September 2009 (online).

⁴² 5894th meeting of the Security Council, S/PV.5894, 19 May 2008, p. 4.

robbed in a systematic and [technically] legal way through outvoting”.⁴³ Zagreb’s colourful mayor, Milan Bandić, used the issue in his unsuccessful 2010 candidacy for the presidency of neighbouring Croatia. Claiming that if outvoting continued, Bosnian Croats would have no alternative but to seek a third entity, Bandić won the vast majority of their vote.⁴⁴

C. PROTECTING VITAL NATIONAL INTERESTS

Outvoting has been a chronic issue since 2002. In the Federation’s early days, Croats and Bosniaks enjoyed a theoretical right to block parliamentary decisions by resorting to the constitution’s vital national interest (VNI) clause; the mere threat of its use to stall important legislation was often enough to wring unrelated concessions from the majority.⁴⁵ Yet, since Croats and Bosniaks controlled equal shares of the government and the House of Peoples, in effect each held a veto over legislation and executive action even without activating the formal mechanism. Indeed, no VNI cases reached the Constitutional Court between 1994 and 2002.⁴⁶

Protective mechanisms, whether via consensus requirements or VNI rules, were usually more important for Croats because of their smaller numbers, but Bosniaks could avail themselves of similar protection in areas where they were a minority, notably in the nationally-mixed Central Bosnia and Herzegovina-Neretva cantons and Mostar town.⁴⁷ On paper, VNI was easy to invoke, needing only a simple majority of either group’s caucus in the House of Peoples (or cantonal assembly), and could only be overruled by the FBiH Constitutional Court.⁴⁸

All this changed in 2002, when High Representative Wolfgang Petritsch imposed amendments to bring the FBiH and RS constitutions into conformity with the 2000 BiH Constitutional Court’s landmark “constituent peoples” decision that all three peoples enjoy equal rights in both entities.⁴⁹ By including the Serbs in the Federation portion of his action, he in effect reduced the Croat share of the entity’s government and both Croat and Bosniak shares of its House of Peoples. Decision-making no longer necessarily depended upon consensus between Croats and Bosniaks, so Petritsch thus removed the most potent protective mechanism the Croats had wielded.⁵⁰

At the same time, new rules made the VNI mechanism ineffective,⁵¹ since it became virtually impossible for just one national group to stop legislation by claiming it undermined its vital interests. Instead, two of the three top FBiH office-holders (president/two vice presidents) are needed to invoke VNI protection, thus requiring the bill in question to obtain for passage a concurrent majority of each caucus in the House of Peoples.⁵² In theory, the Serb and Croat president/vice presidents could agree to block a Bosniak bill, but such a law would almost certainly fail even without the VNI mechanism, because two caucuses can always form a majority in the House of Peoples.⁵³

Alternatively, a single president or vice president can invoke VNI if supported by one of the three caucuses in the House of Peoples.⁵⁴ In this case, however, the bill goes to the FBiH Constitutional Court’s Council for Protection of

⁴³ “HSP: Zašto SDP nije niti jednom reagirao na preglasavanje Hrvata” [HSP: Why has the SDP not reacted even once to outvoting the Croats], press release, 2 August 2008.

⁴⁴ Almost all Bosnian Croats have dual citizenship, so were eligible to vote in the Croatian elections. Dalibor Drlje, “Nastavi li se preglasavanje treći entitet je neminovan” [If outvoting continues a third entity is unavoidable], *Dnevni List*, 15 December 2009 (online).

⁴⁵ Crisis Group Europe Report N°128, *Implementing Equality: the “Constituent Peoples” Decision in Bosnia & Herzegovina*, 16 April 2002, p. 20. Article IV.A.4.18 of the constitution allowed a simple majority of Bosniak or Croat delegates to block any measure they felt violated their vital national interests, with the Constitutional Court empowered to resolve disputes.

⁴⁶ Crisis Group interviews, Kata Senjak, presiding judge, FBiH Constitutional Court, March-April and September 2010.

⁴⁷ FBiH constitution V.12.2. as revised by amendment I. See also Crisis Group Briefing, *Bosnia: A Test of Political Maturity in Mostar*, op. cit.

⁴⁸ FBiH constitution IV.A.18.

⁴⁹ Crisis Group Report, *Implementing Equality*, op. cit.

⁵⁰ Until 2002, Croats and Bosniaks had equal shares of ministerial and deputy-ministerial posts and 30 seats each in the House of Peoples; Serbs and others had only a few positions. In effect, decision-making required Bosniak-Croat consensus. After 2002, Bosniaks had eight ministers plus the premier, Croats had five ministers and Serbs three, while the three groups had seventeen seats each in the House of Peoples, alongside seven for “Others”. This made it easier to make “outvoting” decisions.

⁵¹ “Decision on constitutional amendments in the Federation”, OHR, 19 April 2002. The impositions were largely based on a compromise hammered out between Federation and RS parties under OHR pressure. The compromise weakened the Federation’s strong VNI rules as a concession to RS, which to that time had no parallel mechanism. The HDZ, representing most Croats, rejected it. For background, see Crisis Group Report, *Implementing Equality*, op. cit. RS adopted its own amendments implementing the court’s decision, and Petritsch imposed only a few modifications.

⁵² There are four such caucuses: one each of Bosniaks, Serbs and Croats and one for “Others”.

⁵³ The Serb vice president is from the predominantly Bosniak SBiH and unlikely to agree to this never-used procedure.

⁵⁴ Crisis Group interview, Izmir Hadžić, general secretary, FBiH House of Peoples, Sarajevo, April 2010; FBiH constitution, IV.A.6.18, 18a as revised by amendments XXXIX and XL.

VNI.⁵⁵ Since 2003, the Council has confirmed only one of the five cases (four Croat and one Bosniak) submitted at the entity level.⁵⁶ Simpler rules obtain at the cantonal and city levels, and the largest number of requests has come from the cantons and Mostar town (eleven Croat, five Bosniak, three Serb),⁵⁷ but only three of these lower-level requests have succeeded, and the number of applications has fallen off in recent years.⁵⁸

Since the 2006 schism in the Croatian Democratic Union (Hrvatska demokratska zajednica, HDZ), Croats are rarely united enough to seek VNI protection. No Croat party holds more than seven seats in the 58-seat House of Peoples. Three of the Croat delegates are from predominantly Bosniak parties unlikely to support VNI claims.⁵⁹ Invoking VNI protection would require uniting delegates from at least three rival parties and gaining the support of twelve of the remaining fourteen delegates. Most Serbian delegates belong to predominantly Bosniak or Croat parties and have never made a VNI motion.

In practice the VNI mechanism is nearly useless. Nevertheless, because Federation leaders have been unable to agree on judges to form its VNI Council, that body has been unable to process the three VNI applications made in 2009 – one each from Bosniak, Croat and Serb officials – so the laws in question cannot be implemented.

Finding the best way to protect vital national interests while not paralysing legislation is a key challenge in multi-ethnic societies. In Macedonia, which has an ethnic breakdown similar to the Federation, the VNI clause is limited to matters “that directly affect culture, use of language, education, personal documentation, and use of symbols, as well as laws on local finances, local elections”, the capital and municipal boundaries. These laws require a concurrent majority of delegates “claiming to

belong to communities that are not in the majority”.⁶⁰ There is thus a positive incentive to draft legislation on these issues that is attractive to minorities. Invoking the protection is simpler and easier and non-majority interests are effectively protected. The Macedonian VNI rules have not caused government paralysis.⁶¹

The status quo in the Federation leaves the court short-handed, the Serbs almost entirely unprotected, the Croats resorting to procedural stalling tactics and the House of Peoples unable to fulfil one of its chief functions.

⁵⁵ Crisis Group interviews, Kata Senjak, presiding judge, FBiH constitutional court, Sarajevo, March-April 2010; FBiH constitution, IV.A.6.18a as revised by amendment XL. Five of the seven judges on the Council for the Protection of VNI must first agree to admit the case; only two judges are required to uphold a finding that the law violates a VNI.

⁵⁶ FBiH Constitutional Court case U-11/06, affirming that a law on public broadcasting violated Croat vital interests.

⁵⁷ Bosniak officials also requested protection of vital national interests twice at the city level and twice at the municipal level.

⁵⁸ The Constitutional Court received six VNI motions in 2004, five in 2006 and three each year from 2007 to 2009; Crisis Group interviews, Kata Senjak, presiding judge, FBiH Constitutional Court, Sarajevo, March-April 2010.

⁵⁹ The SDP, the tiny Social Democratic Union (Socijaldemokratska unija, SDU) and the Bihać regional Democratic National Community (Demokratska narodna zajednica, DNZ).

⁶⁰ Ohrid Agreement of 13 August 2001, Article 5.2. The “non-majority” circumlocution, used to avoid a widespread Balkan aversion to “minority” status, has the effect of bundling all minorities together and thus slightly reducing the weight of the predominant Albanian minority.

⁶¹ Crisis Group interviews, Macedonian Albanian leaders, Tetovo and Skopje, 8 July 2010.

III. ETHNIC INTERESTS AND REPRESENTATION

Obstacles to governance and coalition-building are not only due to inter-ethnic disputes. From 1994 to 2009, the two largest national Bosniak and Croat parties, the SDA and the HDZ respectively, cooperated closely, governing the Federation and many cantons and municipalities. Much of the conflict was actually inside each ethnic group, between the SDA and SBiH, and between the HDZ and HDZ 1990. But splintering of the ethnic political communities is leading to each party trying to outflank its rivals by being more nationalistic, thus making compromise increasingly difficult.⁶² Personal animosities among political leaders are also growing.

Power is concentrated in the hands of non-elected party leaders. None of the Federation's key decision-makers – Sulejman Tihić, Dragan Čović, Haris Silajdžić, Božo Ljubić, Zlatko Lagumdžija and Fahrudin Radončić – hold entity-level office, and some (Čović and Radončić) hold no public posts at all.⁶³ The formal government posts of president and vice president, premier and member of the legislature carry little real power of their own. Ministers have authority, but most follow their party's policy and are un-elected.⁶⁴ Indeed, there are very few professional, apolitical posts; virtually all major appointments are based on party loyalties, not merit. Together, the international

community and Bosnian politicians have designed a political system that is virtually immune to public pressure, rendering any calls to “throw the rascals out” ineffective and unrealistic.

Yet, while government service needs to be depoliticised, political parties should be properly politicised, instead of being only personality and ethnic based. Most of the larger parties essentially differ only over whether Bosnia should be a centralised or a decentralised state. They offer few solutions to bread and butter issues such as job growth, economic development, schooling and regional and wider European integration.⁶⁵

A. THE BOSNIAKS

The Bosniak political elite has never been more divided. Split into four major parties and a number of smaller ones that compete without much ideological difference, leaders are distracted by acrimonious personal squabbles. They see the Federation as an interim solution that will disappear along with the other entity, RS, as the country moves closer to the EU. Hence all focus on the state level, ignoring FBiH's gradual degeneration. In recent polls, Bosniaks overwhelmingly reject Bosnia's division into two entities, while also expressing deep concern over its staggering unemployment and poor economic prospects.⁶⁶

Since 2006, relations between the two strongest Bosniak parties, the SDA and SBiH, have soured due to personal and economic policy differences between their leaders, Sulejman Tihić and Haris Silajdžić.⁶⁷ In elections that year, Silajdžić, rode rejection of constitutional reforms and calls for abolishing RS to a seat on the Bosnian presidency, defeating Tihić.

Additional cracks have appeared within SDA itself. Once the party of the overwhelming majority of Bosniaks, it has a heterogeneous ideological legacy.⁶⁸ It cherishes the

⁶² Power-sharing in the state as well as the Federation has been established in line with the theory of consociationalism. This functions well when each community has a dominant party, whose heads meet and agree on policy as community leaders. When communities are divided, parties win elections and government positions not by finding compromises but by staking out positions that are so extreme that no compromise with the other community is possible. See Arend Lijphart, *Democracy in Plural Societies: A Comparative Exploration* (New Haven, 1977), and *Thinking about Democracy: Power Sharing and Majority Rule in Theory and Practice* (Abingdon, 2008); Donald L. Horowitz, *Ethnic Groups in Conflict* (Berkeley, 1985).

⁶³ Tihić is president of the Party for Democratic Action (Stranka demokratske akcije, SDA) and deputy chair of the BiH House of Peoples; Čović, president of the Croatian Democratic Union (Hrvatska demokratska zajednica, HDZ), is now a candidate for the BiH House of Representatives; Silajdžić, president of the Party for BiH (Stranka za BiH, SBiH) is a member of the BiH presidency; Ljubić, a member of the BiH House of Peoples, heads the HDZ 1990 party; Lagumdžija, president of the Social Democratic Party (Socijaldemokratska partija, SDP) sits in the BiH House of Representatives; and Radončić is a businessman, head of the Party for a Better Future for BiH (Stranka za bolju budućnost BiH, SBB) and candidate for the BiH presidency.

⁶⁴ The constitutional requirement to implement the premier's instructions is usually ignored. FBiH constitution, IV.B.3.7.e. Crisis Group interview, Federation Vice President Mirsad Kebo, Sarajevo, 7 April 2009.

⁶⁵ Valentin Inzko, “A realistic plan of action”, *Dnevni Avaz*, 2 August 2010, available at www.ohr.int.

⁶⁶ Separate public opinion polls, carried out in March and April 2010 and obtained by Crisis Group, show consistent 64 and 69 per cent of the Bosniak population in favour of abolishing both BiH entities.

⁶⁷ For years, SDA and SBiH had a tactical agreement for SDA to control the country's most profitable company, BH Telecom, and SBiH to control the main power company, Elektroprivreda BiH. It collapsed in 2009 after SBiH government officials tried to bring in several questionable companies as strategic partners. Crisis Group interview, FBiH government official, June 2010.

⁶⁸ “On the question what is SDA, is it a Muslim, a Bosniak or European party, we have to respond that it is all of that at the same time, and one of these three elements must not dominate the other two. An important part of the mission of this party is to integrate Bosniaks in Europe, proud self-aware tall-standing

heritage of the wartime struggle to defend the multi-ethnic Bosnian state and aspires to be a pan-Bosniak national party and the representative of practicing Muslims.⁶⁹ It also vacillates between turning inward and catering to its conservative Bosniak constituencies and appealing to the international community, which it sees as an indispensable ally. Tihic's attempt to bridge this gap by supporting inter-ethnic compromise (the Prud process) proved highly unpopular.⁷⁰ He defeated a leadership challenge by Bakir Izetbegović, son of SDA founder and first Bosnian president Alija Izetbegović, at the fifth party congress (26 May 2009), but tensions remain. Although he now supports Izetbegović as the SDA candidate for the Bosnian state presidency,⁷¹ the two have not reconciled. Some in the SDA and SBiH leaderships maintain friendly relations and prioritise strengthening the Bosnian state and its institutions – especially when challenged by RS.

The SBiH emphasises state building and Bosnian patriotism over specifically Bosniak or Islamic identity, though Silajdžić has benefited from the strong support of the Islamic community leader, Mustafa ef. Cerić. The party has been losing support, because Silajdžić's 2006 election promise to abolish the RS was not kept, and it lacks infrastructure and a clear platform. An SBiH leader wondered "how much health and strength Haris has to continue pushing. Everything has come down to four or five people".⁷² Silajdžić's participation at the Istanbul summit on 26 April 2010 with Serbian President Boris Tadić and Turkish President Abdullah Gül returned him to the public spotlight, however, and national tensions, such as produced by confrontations between RS and the Office of the High Representative (OHR) and radical pre-election rhetoric from RS politicians, tend to benefit the party.

The SDP, which calls itself Bosnia's biggest multi-ethnic party, increasingly caters to Bosniaks and attracts traditional SDA and SBiH voters. In the early years, it was the

only major party that appealed to voters regardless of ethnicity. This paid off, and in 2000-2002 it led a coalition government, but it has spent the rest of the decade in opposition and decline, losing more than half its voters. Many blame long-time leader Zlatko Lagumdžija, though internal power struggles have contributed.⁷³ It recently rebounded, mainly due to widespread disillusion with the government and dissemination of a clear platform based on economic growth, social justice and clean government.⁷⁴ It also adroitly manoeuvred through the complicated electoral system to win positions earmarked for Serb and Croat candidates, notably the Croat post on the Bosnian presidency in 2006.⁷⁵ But the party's multi-ethnic image has been tarnished.⁷⁶ Jasmin Imamović, Tuzla's popular mayor, argued it must "get back to its revolutionary message, to social and national liberation" – that is, move beyond nationalism to address economic concerns.⁷⁷

These three parties share space with a new competitor, the Party for a Better Future of BiH (Stranka za bolju budućnost BiH, SBB). Founded in 2009 by Fahrudin Radončić, owner of the *Dnevni Avaz* newspaper and much else,⁷⁸ it

⁷³ Crisis Group interviews, SDP officials, March-April 2010.

⁷⁴ Crisis Group interview, SDP official, July 2010.

⁷⁵ Željko Komšić, the SDP candidate, won with 97,267 votes, trailed by the HDZ and HDZ 1990 candidates with 59,831 and 42,424 respectively. It is impossible to know how many of his votes came from Bosniaks – which is legitimate – but the overall total of votes for the Croat presidency that year was 238,246, up from 177,607 in the previous election, while the vote for the Bosniak post declined from 488,530 to 464,254, and the two HDZ candidates combined scored about the same number in 2006 as their (winning) candidate had in 2002.

⁷⁶ "SDP has in effect become a Bosniak party. Sometimes they are even fighting for the far-right position on the Bosniak political spectrum". Crisis Group interview, Srđan Dizdarević, well-known human rights activist who recently joined the new multi-ethnic "Our Party" (Naša Stranka), Sarajevo, 12 July 2010.

⁷⁷ "SDP did not do well in this situation. We have to get back onto our revolutionary message, onto social and national liberation". Crisis Group interview, Tuzla, 10 March 2010. But the Sarajevo and Tuzla branches of the SDP have had different approaches. In a recent demonstration of this on 3 May 2010, Alija Behmen, the SDP mayor of Sarajevo, tried to prevent RS veteran associations from holding a memorial service for Yugoslav People's Army (Jugoslavenska narodna armija, JNA) soldiers killed in the city in 1992. Although this event was seen as a Serb pre-election stunt, his move sparked criticism from Sarajevo's civic community; see, for example, Eldin Hadžović, "Ispit za Sarajevo" [Test for Sarajevo], *BH Dani*, 30 April 2010. By contrast, Imamović fully supported a request to honour JNA soldiers who were killed in a similar incident in Tuzla in that year.

⁷⁸ Radončić's Avaz company publishes several daily and weekly newspapers. After his initial interest in media, Radončić shifted his main focus to the construction business. Over the past several years, his company has built three large business centres in Sarajevo and is building a new one in Tuzla.

Bosniaks who live in peace with their neighbours and who can give a specific contribution to the diversity and richness of the oldest continent". Bakir Izetbegović, speech at SDA congress, May 2009.

⁶⁹ Crisis Group interview, Adnan Terzić, ex-SDA vice president and ex-chair, Council of Ministers, Sarajevo, 9 May 2009.

⁷⁰ The Prud process had limited success (agreement on the state budget and approval of a constitutional amendment regulating the status of Brčko district) but failed in its more ambitious aims of constitutional reform; see Crisis Group Report, *Bosnia's Incomplete Transition*, op. cit. The Butmir process, launched by the U.S. and EU in October 2009, failed to produce any agreement; see Crisis Group Briefing, *Bosnia's Dual Crisis*, op. cit.

⁷¹ Izetbegović is challenging Silajdžić for the prestigious but mostly ceremonial post.

⁷² Crisis Group interview, member of SBiH presidency, 26 February 2010.

is polling at about the level of the SBiH.⁷⁹ Through his ever-growing media empire, Radončić was a Bosniak kingmaker for fifteen years, shifting electoral alliances between the SDA, SBiH and SDP. Now aspiring to be a Bosnian Silvio Berlusconi, fusing media savvy and political power, Radončić, who primarily protects Bosniak national interests, has good business relations with Serbs and claims he can work with RS and Croat leaders.⁸⁰ Radončić has been subjected to media allegations of links with shady Serbian and Albanian businessmen.⁸¹ He says, however, that there are no legal investigations against him, that he is financially well off and is entering elective politics out of patriotism to save the state.⁸²

Support of the Islamic community may decide the contest among Bosniak parties, but it is also divided, and its leaders will find it even more difficult to rally behind one candidate now that SBB has entered the fray.⁸³

B. THE BOSNIAN CROATS

From 1990 to 2006, the Bosnian Croat political scene was largely dominated by the HDZ, which had a clear, hard-line, nationalist agenda, promoting the resettlement of Croats from northern and central Bosnia to Croatia or Herzegovina. Until the 1999 death of the Croatian wartime president, Franjo Tuđman, it favoured the establishment of a separate ethnic Croat entity in BiH.⁸⁴ Hard-line Croats attempted to establish a separate Croat entity one more time, in 2001, but failed.⁸⁵ Since then, the HDZ has been weakening, most dramatically in April 2006, when a group of its senior figures, led by Božo Ljubić and Martin Raguž, broke away to form the HDZ 1990 party. The split was prompted by personal disagreements over power-

sharing more than policy or ideological differences. The HDZ allied with the SDA and the HDZ 1990 with the SBiH. The latter two joined to defeat the U.S.-sponsored package of constitutional amendments, and both parties benefited in the October 2006 elections.

The HDZ has now recovered much of the support it lost to the HDZ 1990, which is in decline; both have been wooing the smaller Croat parties, HDZ 1990 with greater success.⁸⁶ The HDZ may emerge as leader of the Croat political scene, but balanced by a loose grouping of four or five smaller rivals.⁸⁷ Most Croat parties show increased concern this year over what they see as growing marginalisation by Bosniak parties.⁸⁸ In spring 2010, leaders of the six Croat parties tried and failed to choose a joint presidency candidate to challenge the popular SDP incumbent, Željko Komšić. HDZ⁸⁹ and HDZ 1990⁹⁰ leaders have over the past few months renewed calls for a separate Croat entity in BiH, yet remain open to more realistic reforms.⁹¹ Further divisions and purely personality-driven politics among predominately Croat parties will likely lead to further marginalisation of Croat positions.

C. SERBS, BOSNIANS, MUSLIMS AND “OTHERS”

Federation politics leave little room for those who do not identify with ethnic politics. Several parties claim a multi-ethnic outlook and a degree of diversity in their leadership, but no major party attracts significant inter-ethnic support.⁹² The appeal of the Bosnian patriotism desired by internationals as an alternative to ethnic nationalism is mostly confined to a part of the Bosniak community and a few thousand Croats and Serbs living primarily in Sara-

⁷⁹ Surveys conducted by the Ipsos agency for the U.S.-based National Democratic Institute (NDI), in April and August 2010 showed the SBB closing on the SBiH in the race for FBiH Parliament. In April the SBB trailed the SBiH, 6 per cent to 5 per cent; in August, this was narrowed further: 6.1 per cent to 5.3 per cent.

⁸⁰ Crisis Group interview, Fahrudin Radončić, Sarajevo, 26 February 2010.

⁸¹ “Novi Srpki Džoker” [New Serb Trumpcard], *BH Dani*, 17 September 2010; “Radončić pod istragom zbog poslovnih veza sa Albanskom mafijom” [Radončić under investigation for business links with Albanian mafia], *Oslobodjenje*, 15 September 2010.

⁸² Crisis Group interview, Fahrudin Radončić, Sarajevo, 26 February 2010.

⁸³ Crisis Group interview, member of Islamic community, Sarajevo, February 2010.

⁸⁴ Crisis Group interview, local and international officials, Mostar and Sarajevo, March-July 2010.

⁸⁵ For more details, see Crisis Group Europe Report N°106, *Turning Strife to Advantage: A Blueprint to Integrate the Croats in Bosnia and Herzegovina*, 15 March 2001.

⁸⁶ Crisis Group interview, Bosnian Croat politician, Kupres, 25 March 2010.

⁸⁷ Survey conducted by *Dnevni List*, 23 April 2010.

⁸⁸ Crisis Group interviews, Croat leaders, Sarajevo, Mostar and Livno, March-July 2010.

⁸⁹ “Čović otvoreno traži hrvatski entitet” [Čović openly calls for Croat entity], Radio Free Europe, 8 December 2009 (online).

⁹⁰ “As long as in BiH there are two entities – one with the Bosniak majority and institutional dominance and the other one with the Serb majority and absolute dominance – the question of [a] third entity is legitimate”. Interview with HDZ 1990 President Božo Ljubić, Poskok.info, 11 February 2010.

⁹¹ Crisis Group interviews, Božo Ljubić and Dragan Čović, Sarajevo and Mostar, 22 January 2010 and 27 April 2010.

⁹² Of the smaller parties, “Our Party” [Naša stranka] has a genuinely multi-ethnic leadership and constituency, but polls in the low single digits; the People’s Party – Progress through Work [Narodna stranka – Radom za boljitak, NS] offers mostly younger candidates of all ethnicities but appeals heavily to Croats, especially in the western Herzegovinian home base of its patrons, the Lijanović business family of Široki Brijeg.

jevo, Tuzla and a few other cities.⁹³ The majority of those Serbs – if politically active – are attracted to the SDP or other opposition parties. Serbs who have returned since the end of the war to the western Bosnian towns Glamoč, Grahovo, Drvar and Petrovac tend to support the SNSD. Otherwise, the RS ruling parties (SDS and later SNSD) never had much of a following in the Federation and have made few efforts to attract one.⁹⁴

Serbs have been an equal constituent people of the Federation since the 2002 constitutional amendments. Though they are only about 2 per cent of the population, a third of the House of Peoples seats and one of the three seats on the presidency, are reserved for them. These seats must be filled by Serbs, but because they are elected by all FBiH voters regardless of ethnicity, they are rarely filled by representatives from Serb parties. By placing a few Serbs on their electoral lists, the SDP in 2006 won seven Serb seats in the House of Peoples, compared to the SNSD's four; the People's Party – Progress through Work (Narodna stranka – Radom za Boljitak, NS) also has four, despite its largely Croat electorate. The SBiH holds the Serb seat on the presidency and the Serb deputy premier portfolio, plus one seat in the House of Peoples.

Serb and "Other" seats can also be won with far fewer votes, allowing the major parties to maximise their power. In Mostar town, which also has guaranteed minimum representation, the SDA elected the first three members of its list, each of whom needed more than 2,000 votes – and the sixteenth, who won a reserved minority seat with 237 votes.⁹⁵ The HDZ and SDP won similar seats with even fewer votes. This distortion is amplified by the seven seats reserved for Others – persons not of Bosniak, Croat or Serb ethnicity – in the House of Peoples. The major parties realise that since national identity is entirely unregulated, they are open to anyone who self-identifies in the appropriate way.⁹⁶ Currently, they are held by delegates who self-identify as "Bosnian" or "Bosnian-Herzegovinian" (four), "Muslim" (one) and "Other" (one); only one delegate identifies as a genuine minority (Roma). A majority are held by the same parties that win most Serb posts: the SDP (three), SBiH (one).

⁹³ Serbs in 1991 were some 17 per cent of the overall Federation population. Now they are mostly settled in Sarajevo and Tuzla canton, as well as Bihać, Livno and Zenica-Doboj cantons. Data from cantonal web sites and Federation statistics office.

⁹⁴ Crisis Group interview, ethnic Serb official in Federation institutions, Sarajevo, 18 March 2010.

⁹⁵ The Mostar city assembly reserves five seats for non-Bosniak, non-Croats: four for Serbs (since each constituent people gets a minimum of four) and one for "others", since each people has a maximum of fifteen. In the 2008 election, the "other" seat went to an HDZ Macedonian.

⁹⁶ Crisis Group interview, Dragan Čović, HDZ BiH president, Mostar, 27 April 2010.

IV. INSTITUTIONAL PARALYSIS

No party has ever won a majority in a BiH or FBiH general election. The October 2006 vote produced an unwieldy five-party coalition in the Federation, which took until 30 March 2007 to hammer out⁹⁷ and has broken down frequently over both contentious issues and day-to-day administration.⁹⁸ Political infighting has slowed important economic and social reforms and blocked key decisions. Local leaders have not been able to agree on a new FBiH flag, coat-of-arms and anthem.⁹⁹ Judges have not been appointed to the new FBiH Constitutional Court since 2008, and it has had to operate without its Council for Protection of Vital National Interest.¹⁰⁰ Reflecting the depth of the Federation's malaise, the government in sixteen years has yet to purchase or build its own premises and keeps renting expensive office space in Sarajevo. The election campaign highlights divisions, as new political actors enter the fray and old ones search for new ways to attract votes. Assembling a stable coalition and forming a government after the October election could be an even more lengthy and difficult process than in 2006.¹⁰¹

A. CRISIS IN THE FBiH GOVERNMENT

The SDA-HDZ alliance, a frequently strained feature of almost every governing coalition since Dayton, collapsed entirely in early 2010. Personal and political relations between party leaders deteriorated after breakup of the Prud process, a briefly promising initiative launched by the

⁹⁷ The SDA, SBiH, HDZ, HDZ 1990 and SNSD govern the state and FBiH levels; the same parties in various permutations govern most cantonal and municipal administrations.

⁹⁸ Crisis Group interview, Western diplomat, Sarajevo, June 2010.

⁹⁹ The Constitutional Court of BiH found that the flags, coats-of-arms and anthems of both state entities violated constitutional rights of the three constituent peoples: Federation symbols discriminated against Serbs and RS symbols against Bosniaks and Croats. The ruling became effective in June 2007 after publication in the Official Gazette 45/07.

¹⁰⁰ Judges of the Federation Constitutional Court are proposed by the state High Judicial and Prosecutorial Council, formally nominated by the FBiH president with the consent of both vice presidents and confirmed by the House of Peoples by majority vote. Although the Council has proposed new candidates, disagreements between the president and vice presidents (or rather the parties they represent: HDZ, SDA and SBiH) have prevented their nomination. Until new judges are appointed, the Court cannot constitute its Council for Protection of Vital National Interest, the crucial instrument for protection of national rights in the Federation. Crisis Group interview, Kasim Trnka, legal expert, 1 September 2010.

¹⁰¹ "After the next elections we will get parties which will have even greater difficulties to form governments". Crisis Group interview, Sulejman Tihić, Sarajevo, 26 February 2010.

SDA's Sulejman Tihić, Dragan Čović of the HDZ and RS Prime Minister Milorad Dodik in that eponymous village late in 2008.¹⁰² After initial successes, the process ran aground when the three leaders announced in January 2009 that they had agreed to reform Bosnia into a state with three layers of government and four territorial units, which implied dissolving the Federation.¹⁰³ Criticism, concentrated among Bosniaks, drove Čović and Tihić apart. The SDA also became suspicious of increasingly warm HDZ relations with Dodik and his SNSD party. A year-long confrontation over election of the Mostar mayor, featuring accusations of bad faith and broken promises, further strained ties.¹⁰⁴ The SDA has been recruiting alternative Croat allies from the smaller parties, including HDZ 1990 and HSP.

Croat leaders consider that they are increasingly being outvoted and have no way to protect their national interests.¹⁰⁵ Federation President Borjana Krišto, a Croat from the HDZ, claims there is "an ongoing campaign in which Croats in FBiH institutions are being outvoted by Bosniaks".¹⁰⁶ Tensions reached crisis point on 27 August 2009, when Bosniak and Serb ministers outvoted their five Croat colleagues on a key international development project, the Herzegovinian portion of Trans-European corridor (highway) 5c.¹⁰⁷ The ministers proposed altering the route of Bosnia's biggest infrastructure project in ways

the Croats perceived as damaging their interests.¹⁰⁸ In response, the Croats announced a governmental boycott and returned days later only when the government agreed to set up an expert commission to identify a compromise.

The highway crisis briefly brought the HDZ and splinter HDZ 1990 parties together; the latter proclaimed that "outvoting a constituent people's ministers in the FBiH Government is unacceptable" and that it was a "harmful and dangerous decision, both economically and politically".¹⁰⁹ But this harmony did not last long; and the search for compromise in the government also quickly failed. At 9:00 am on 12 October 2009, Federation Premier Mustafa Mujezinović called a snap government session for two hours later, while three of the five Croat ministers were at a funeral. He used this to push through a highly disputed decision on financing the FBiH's oil terminals in the Croatian port town of Ploče.¹¹⁰ By this time, however, the SDA had detached the HDZ 1990 from its temporary alliance with the HDZ, and over the following months was able to confirm a series of government appointments with the small party's support.

The struggle has shifted to government-appointed posts, whose incumbents remain in office through electoral cycles and control extensive patronage. Unable to determine Federation policy, the HDZ has made winning these jobs – and denying them to the SDA – a priority.¹¹¹ On 15 September 2009, FBiH President Krišto accepted the resignation of Urban Planning Minister Salko Obhodaš (SDA), but refused to appoint a replacement from that

¹⁰² The SDA, HDZ and SNSD leaders, Tihić, Čović and Dodik, held a surprise meeting in the small village of Prud near the northern town of Odžak on 8 November 2008. The absence of other parties, international community representatives and media initially seemed to have created a positive environment for agreement on a number of issues. The leaders held several other meetings before what was dubbed "the Prud process" fell apart in mid-2009, over difficult constitutional issues and under pressure from political competitors and the public.

¹⁰³ The boundaries of the four units were never published and may never have been defined; Dodik said RS would be one of the four in its current form. The plan was widely seen as mandating a de facto Croat entity beside two Bosniak-dominated entities on Federation territory and was roundly criticised by Bosniaks. Tihić, scrambling to recover, claimed it envisaged redrawing all internal boundaries, including those of RS. Crisis Group interviews, Milorad Dodik, Banja Luka, 25 November 2009; Sulejman Tihić, Sarajevo, 26 February 2010; Dragan Čović, Mostar, 27 April 2010.

¹⁰⁴ See Crisis Group Briefing, *Bosnia: A Test of Political Maturity in Mostar*, op. cit.; Crisis Group interview, Western diplomat, Sarajevo, June 2010.

¹⁰⁵ Crisis Group interviews, Federation Finance Minister Vjekoslav Bevanda, 17 November 2009; Dragan Čović, HDZ president, Mostar, 27 April 2010.

¹⁰⁶ Crisis Group interview, Federation President Borjana Krišto, Sarajevo, 17 November 2009.

¹⁰⁷ Corridor 5c is planned to run from Budapest through Croatia and BiH to the Croatian port of Ploče, which mostly serves BiH shipping; it is Bosnia's largest highway project.

¹⁰⁸ The highway is estimated to run 330km in Bosnia and cost €1.3 to €1.5 billion; Crisis Group interview, international bank official, Sarajevo, 6 April 2009. The dispute brewed through much of 2009, with Bosniak communities alleging the route intentionally defaced the historic town of Počitelj and was drawn to benefit Croat politicians who owned land that would be expropriated at a high price, and Croats claiming the changes were designed to bypass Croat areas, change the terminal from Ploče (in Croatia) to Neum or Stolac, narrow the highway to two lanes south of Mostar and skirt Mostar itself. Crisis Group interview, Srećko Boras, Herzegovina-Neretva canton premier, Mostar, 13 May 2009.

¹⁰⁹ "Reagiranje na preglasavanje hrvatskih ministara u Vladi Federacije BiH oko Koridora Vc" [Reaction to the outvoting of Croat ministers in the FBiH Government over the 5c highway], *Blijesak*, 28 August 2009 (online).

¹¹⁰ The remaining HDZ minister, Feliks Vidović, pulled out in protest, leaving one Croat government member, the social welfare minister, Perica Jelečević (HDZ 1990), who felt compelled to stay as his ministry's issues were central on the agenda. V. Bjelica and D. Bradavica, "Sramotno: Koriste smrtni slučaj za preglasavanje Hrvata" [Shame: They use a death as an occasion for outvoting the Croats], *Dnevni List*, 13 October 2009 (online).

¹¹¹ Crisis Group interview, Dragan Čović, HDZ president, Mostar, 27 April 2010.

party. HDZ-SDA disputes left vacancies in more than 35 key positions in FBiH institutions, agencies and public companies. The SDA and SDP tried and failed in the FBiH House of Representatives to remove Krišto from office.

The government voted on a number of long-pending appointments on 29 April 2010, although the HDZ and HDZ 1990 ministers again walked out.¹¹² Bosniak ministers stress that such votes are legal, but by damaging trust between Bosniaks and Croats, they can undermine the foundations of the Federation and state.¹¹³ Some international officials have little sympathy for Croat frustration and stress that “outvoting” is a normal democratic practice, and local leaders should seek to protect their true national interests through constructive negotiations and compromise.¹¹⁴

The poisonous political scene has damaged the effectiveness of executive and legislative institutions throughout the Federation as well as at cantonal and municipal levels.¹¹⁵ The FBiH government acted as a minority government over the past months, but parties did not want to pass a vote of no confidence because they doubted early elections would strengthen their position.¹¹⁶

So far the political conflict between Bosniaks and Croats politicians has not led to a significant increase in ethnic distrust much less hatred among average citizens. A March 2010 survey found that while Bosnian Serbs, Croats and Bosniaks do not share a common vision of the state’s future constitutional arrangement, they also do not object to close relationships with each other and that, “primarily different political interests, rather than ethnic hatred, lie behind differences in visions of a common state”.¹¹⁷ Reported ethnic incidents remain relatively scarce, though they increased in 2008 and 2009.¹¹⁸

B. LEGAL MAZES, OVERLAPPING COMPETENCIES

Shared, overlapping competencies and complex, overlapping legislation paralyse the Federation.¹¹⁹ It has eleven constitutions, one for itself, ten for cantons. The Federation, cantons and municipalities have adopted laws and decisions for fifteen years, mostly ignoring the effect on other legislation. A vague FBiH constitution, the Constitutional Court’s limited competencies and lack of other controlling mechanisms add up to an almost impenetrable chaos of legal loopholes, contradictions and confusion.¹²⁰ A consultant retained by the government to review laws and regulations and recommend improvements (the International Finance Corporation, IFC, “guillotine process”) estimated 30 to 40 per cent of laws and regulations differ between administrative units. With limited powers, Federation institutions in some areas appear to compete with, not coordinate, cantons and municipalities. This affects all aspects of personal and economic life, making a single economic space impossible.¹²¹

Yugoslav legislation is sometimes still applied (the oldest law in force is a 1947 mining regulation). Some fines are still denominated in old Yugoslav dinars or German marks, so it is easiest to impose an ad hoc euro penalty. “Some FBiH laws have been changed or amended more than ten times and are still in use although no one can understand them anymore”, the “guillotine” consultant said adding that the Federation lags far behind RS, which overhauled regulations in 2006 and by 2008 had harmonised its legislation with the BiH constitution.¹²² Every RS ministry also tries to harmonise new regulations and laws with the EU *acquis*.

¹¹² “Appointments without Croat ministers”, *Oslobodjenje*, 30 April 2010.

¹¹³ Crisis Group interviews, Bosniak governing and opposition politicians, March-August 2010.

¹¹⁴ “There are only few governments in the world where decisions are made by consensus. Government is the place where ministers constantly outvote each other. In case there is a need for protection of some special rights, you have parliaments for that”. Crisis Group interview, international official, Sarajevo 12 May 2010.

¹¹⁵ There are several examples of political infighting hampering public institutions’ work, most obviously Mostar, whose city administration could not be formed for more than a year; Crisis Group Briefing, *Bosnia: A Test of Maturity in Mostar*, op. cit.

¹¹⁶ Crisis Group interview, Slaviša Šućur, deputy, FBiH House of Peoples, Sarajevo, 3 February 2010.

¹¹⁷ Ipsos Puls survey, www.puls.hr, 30 March 2010.

¹¹⁸ Crisis Group interviews, international security experts, March-April 2010. According to an international organisation in Bosnia, the country averaged 9.26 ethnic incidents per month

in 2006, 7.08 in 2007, 9.16 in 2008 and 12.5 in 2009. However, a drop was registered in the first three months of 2010 to 6.92.

¹¹⁹ “BiH seems to have acquired the worst and little of the best of both federal types. The system of competencies that has emerged as a result of the Dayton agreement and the subsequent state-building process has put in place a hybrid mix of both exclusive and shared competencies. However, in each case, the conditions required to implement the different ‘federal’ models are missing in BiH. In the face of a marked lack of cooperative political or administrative ‘culture’ in post-war BiH, there are few institutional mechanisms or even incentives to make the current division of responsibilities function”. “Governance Structures in BiH”, Foreign Policy Initiative report, May 2007.

¹²⁰ Crisis Group interviews, Kata Senjak, president, Federation Constitutional Court, March-April 2010.

¹²¹ Crisis Group interviews, Tarik Šahović, IFC, Sarajevo, March-April 2010.

¹²² Crisis Group interviews, FBiH official, March-April 2010.

Passage of new legislation is slow.¹²³ In 2009, the Federation government submitted only half its planned 93 laws.¹²⁴ The parliament was worse, adopting fifteen of 103 planned laws. The Civic Initiatives Centre, a non-governmental watchdog, complained that “[c]atastrophic results of the work of the FBiH government and parliament – including ignorance towards people’s biggest problems and chronic inefficiency – is one of the main reasons and generators for the crisis in this entity”.¹²⁵ Serbia’s parliament achieves more in a month than the FBiH body in a year.¹²⁶ The cantonal governments and assemblies are more efficient but still implement on average only about 70 per cent of their work plan.

Legislation is complex due to the many competencies shared between entity, cantons and municipalities.¹²⁷ The Federation has exclusive jurisdiction over citizenship, economy, trade, financial and energy policies, organised crime and terrorism. It shares with cantons responsibility for human rights, health and social protection, environment, telecommunications and transport, immigration and asylum, tourism and national resources. Cantons are in charge of their police, education, culture, construction, public services, housing and zoning, as well as “all matters that are not expressly entrusted to the Federal government”.¹²⁸ They have made much use of the latter provision. The result, the FBiH Constitutional Court’s president said, is a “terrible mélange of competencies”.¹²⁹

The Federation government also has superfluous ministries, several for areas outside its jurisdiction. Education and culture are purely cantonal matters, for example, yet there is an FBiH education and science ministry with a 27 million KM budget (€13.8 million) – of which it spent about a quarter, and a culture and sport ministry that

spent less than half its allocated 20 million KM (€10.2 million).¹³⁰ Several other ministries use their budget almost exclusively on staff, transfer payments and grants. The largest of these (agriculture, water and forestry), budgeted over 100 million KM (€51.1 million) in 2009 and spent 57 million KM (€29.1 million) – 50 million KM for agricultural subsidies. While water and forest use are shared competencies, agriculture is a purely cantonal responsibility. There is a ministry for trade – a state-level competency – with 37 employees and a 2.3 million KM (€1.2 million) budget. The transport and communications, development and entrepreneurship and refugees ministries are similar, and each has the same weight in government decision-making as the larger, proper ministries, and is a potential source of conflicting legislation on cantonal matters.

Municipalities are responsible for all local issues not exclusively entrusted to other administrative levels.¹³¹ The law on local self-government, which came into effect in September 2006, gave more powers to the local level but never became fully effective, because other administrative levels failed to harmonise their legislation with it.

There are numerous examples in almost every sector of weak legal coordination and supervision, conflicting legislation or overlapping competencies creating everyday confusion:

- ❑ the Constitutional Court struck down a Federation effort to centralise hiring of civil servants as a usurpation of cantonal authority. As a result, years into the public administration reform process, nine of the ten cantons have no system for appointing civil servants,¹³²
- ❑ Federation and cantonal inspectors tasked with enforcing identical codes perform cumbersome audits on the same companies, sometimes within days of one another.¹³³

¹²³ Comparative analysis of the effectiveness of domestic institutions by the CCI found the Federation government and parliament to be the worst performers of all administrative levels, www.ccibh.org.

¹²⁴ CCI monitoring project, www.vlastibih.com.

¹²⁵ Compared to the Federation, RS was somewhat better: the government implemented 75 per cent of its 2009 action plan; its Assembly adopted 56.6 per cent of 113 planned laws. RS government prepared an additional 53 unplanned laws in 2009. At the state level (BiH), the Council of Ministers realised 52.4 per cent of planned activities, up from 28 per cent in 2007 and 45 per cent in 2008. The parliament adopted 42 per cent of 53 laws from its 2009 action plan and a further nine unplanned laws.

¹²⁶ In 2009 the legislatures of neighbouring Croatia and Serbia adopted 223 and 264 laws respectively, over seventeen times more than in the FBiH and four times more than in the BiH.

¹²⁷ “Competencies must be clear. Here our competencies are clear; in FBiH, it is a nightmare”. Crisis Group interview, Mirsad Djapo, speaker, Brčko District Assembly, Brčko, 10 March 2010.

¹²⁸ FBiH constitution, III.3.

¹²⁹ Crisis Group interview, Kata Senjak, president, Federation Constitutional Court, 18 March 2010.

¹³⁰ 2009 figures. Both ministries’ budgets were sharply cut in 2010.

¹³¹ They also have exclusive competencies in communal infrastructure; water, liquid and solid waste management; exploitation and reimbursement for the exploitation of public goods; construction land; policies for exploitation of natural resources and distribution of its revenues; pre-school education; management, financing and development of elementary schools; cultural and sport facilities; assessment of the work of institutions responsible for health and social protection; protection of human rights; local development plans; creation of conditions for business development and employment; urban planning, zoning and environment; and housing development and policies.

¹³² Crisis Group interview, BiH employment agency official, Sarajevo, 1 September 2010; FBiH Constitutional Court judgment U-27/09, 20 April 2010.

¹³³ Crisis Group interview, Kata Senjak, president, Federation Constitutional Court, September 2010.

- ❑ a 2009 FBiH law on pre-school education gives responsibility for planning and implementation to cantons and financing to municipalities. But almost no municipality has funds to implement the canton plans;¹³⁴
- ❑ lack of legal supervision has allowed the cantons to avoid implementing FBiH-approved 10 per cent salary cuts to meet IMF loan requirements. In reaction, the FBiH redirected 30 million KM (€15.3 million) to its pension fund instead of the cantonal budgets;¹³⁵
- ❑ requirements for opening businesses and constructing apartment buildings or industrial facilities differ from municipality to municipality. A new FBiH law on registration of a business exists, but many municipal registration courts still apply the old one.¹³⁶

Law enforcement is a rare sector where canton and canton-Federation cooperation has become better, though because of top police officials and international support, not legal requirements.¹³⁷ Although police reform has never been fully finalised, coordination is improving. The FBiH constitution gives cantons the lead in policing and the FBiH responsibility on organised crime. Federal police work well with RS counterparts on inter-entity crime.

The “guillotine” process will only scratch the surface of overlapping competencies; the FBiH needs a thorough overhaul, starting with extending the Constitutional Court’s competencies and scope and increasing the subjects who can invoke its jurisdiction. The court proposed a law to give it competencies like those of the RS equivalent,¹³⁸ but the parliament refused.¹³⁹ Another important reform

would be the establishment of a Regulatory Impact Analysis System [RIAS] office at every administrative level to ensure that all decisions and laws are harmonised. Federation ministries should also build their capacity to harmonise future laws and regulations with the EU *acquis*.¹⁴⁰

C. TERRITORIAL DISPUTES

Federation cantons are inefficiently divided, with some too small to be financially viable or too remote from their administrative centres. Two of the ten are little more than glorified municipalities. The Goražde canton in eastern Bosnia has about 34,000 residents (20,000 registered voters), while Posavina in the north has some 41,000 (30,000 registered voters).¹⁴¹ But because the boundaries were drawn as part of the Dayton peace agreement, local politicians refuse to change them for fear that would trigger a wave of requests.¹⁴²

Over fifteen years, a number of municipalities have asked to be reallocated to another canton or entity. The FBiH’s four predominately-Serb municipalities (Glamoč, Grahovo, Drvar and Petrovac), are in neighbouring cantons (the first three in Livno, the last in Una-Sana), would prefer to be in RS¹⁴³ but would settle for being in the same canton, so they could jointly lobby for their interests.¹⁴⁴ Croat majority Kiseljak and Kreševo would like to move from the increasingly Bosniak-dominated Central Bosnian canton to Croat-dominated Herzegovina-Neretva.¹⁴⁵

Olovo municipality, assigned by Dayton to Zenica-Dobojo canton, would like to join Sarajevo 40km to the south. Obtaining the most basic services (health care, documents) is an all-day ordeal, as residents must travel 140km to the canton capital through Sarajevo. Consequently, many have moved to Sarajevo. All local parties in Olovo support the transfer, but state and Federation party leaders are op-

¹³⁴ It is estimated that only 4 per cent of Bosnia’s pre-school age children attend institutions that offer appropriate education, meaning municipalities should find money to improve conditions for 96 per cent of such children. Crisis Group interview, Zorica Lesić, World Bank specialist for education, Sarajevo, 19 April 2010.

¹³⁵ Crisis Group interview, Goran Mirašćić, adviser to Federation Vice President Spomenka Mičić, 13 July 2010.

¹³⁶ Crisis Group interview, IFC experts, July 2010. “Some 53 signatories are needed to get building permits in Sarajevo. It’s crazy. If only 10 per cent of those 53 officials are corrupt, that is already a big problem. This is not acceptable”. Crisis Group interview, Giulio Moreno, head, European Bank for Reconstruction and Development (EBRD), Sarajevo, 11 June 2010.

¹³⁷ Closer coordination among administrative levels is optional in every sector; most officials stick to their powers and compete rather than coordinate. Police and health officials have realised better coordination is in the interest of ordinary people and makes their work more effective and easier. Crisis Group interview, EU Police Mission (EUPM) official, 12 May 2010.

¹³⁸ Crisis Group interviews, Kata Senjak, president, Federation Constitutional Court, March-April 2010.

¹³⁹ “It seems that it is not in someone’s interest to have proper legal and constitutional oversight. This way [politicians] can do

whatever they like”. Crisis Group interview, international financial expert, Sarajevo, 22 March 2010.

¹⁴⁰ Crisis Group interviews, IFC officials, Sarajevo, March-July 2010.

¹⁴¹ BiH’s Central Election Commission and Federation statistics office.

¹⁴² “Parlamentarne stranke ne žele otvarati Pandorinu kutiju preustroja FBiH” [Parliamentarian parties do not want to open Pandora’s Box of FBiH reorganisation], *Oslobodjenje*, 24 March 2010.

¹⁴³ Moving them into another entity is highly unlikely because it would shift the 51-49 territorial distribution between the Federation and RS set by Dayton. Crisis Group interview, mayor of Drvar municipality, Anka Papak-Dodik, 25 March 2010.

¹⁴⁴ Crisis Group interviews, municipal and civil society representatives, Drvar, Grahovo and Livno, 25 March 2010.

¹⁴⁵ “Ako se Olovo pripoji Sarajevu i Kiseljak i Kreševo će prema Mostaru” [If Olovo joins Sarajevo (Canton), Kiseljak and Kreševo will move towards Mostar], *Dnevni List*, 2 April 2010.

posed, and the House of Peoples has twice voted against. After several demonstrations, including blocking a main highway, residents are planning an appeal to the FBiH Constitutional Court.¹⁴⁶ Other municipalities, including Vareš, Visoko and Breza, would also like to be moved from Zenica-Doboj to the Sarajevo canton, for economic, transportation and administrative reasons.¹⁴⁷

Bosniak politicians mainly fear that changes in municipal and cantonal boundaries would encourage creation of a third (Croat) entity. But Croat parties do not have sufficient numbers to make such a fundamental constitutional change. Locally-supported modifications of cantonal borders – for example, combining predominately Bosniak Sarajevo and Goražde cantons, or the largely Croat Western Herzegovina and “Canton Ten” – would not change the ethnic balance but could improve financial management and service delivery. SDA and HSP leaders began discussions on this in 2009 and may continue after the 2010 elections, especially if the economic crisis continues.¹⁴⁸

The constitution allows formation of inter-cantonal councils “to coordinate policy and action related to questions of common interest for their communities”. However, three Croat-dominated cantons ran into stiff opposition when they tried to create such a body in December 2008. Bosniak parties largely condemned the move, the SDA claiming it would create a “de facto third entity against the Dayton [BiH] and Washington [FBiH] constitutions”. Bakir Izetbegović added, “nothing will come of joining cantons, and borders cannot be changed We will very easily put [the radical Croats] where they belong, through the FBiH Constitutional Court”.¹⁴⁹ Others, like retired General Sefer Halilović, were harsher: “If they did not succeed in this with the Croatian army, tanks and airplanes, then they have even less of a chance now”.¹⁵⁰ The incident showed how sensitive territorial questions still are in the FBiH.

V. FINANCIAL MELTDOWN

The Federation plunged into a financial crisis in 2008 from which it shows no sign of emerging.¹⁵¹ The global recession hurt, but the real culprit is excessive spending, especially to fulfil 2006 election promises to interest groups, including veterans and persons with disabilities.¹⁵² Since 2009, Finance Minister Vjekoslav Bevanda has repeatedly warned of bankruptcy. This was averted in 2009 only after the IMF promised the state (BiH) €1.2 billion in budget support, but repayment must begin in 2012.¹⁵³

The stand-by arrangement has so far failed to have the desired economic effects. Although the IMF has already disbursed three tranches worth €338 million,¹⁵⁴ FBiH officials still delay key reforms and try to renegotiate conditions.¹⁵⁵ IMF and FBiH officials continue to discuss the conditions that were to have been met in order to keep the stand-by arrangement on track, but many of the required measures have not been implemented.¹⁵⁶

The Federation and cantonal governments established after the October elections will, therefore, face the almost impossible mission of servicing the FBiH’s growing debt without triggering massive public unrest. Increased budget cuts, negatively affecting public spending, may cause a broader economic slow down. If the Federation fails to meet the conditions for the next tranche of the IMF stand-by arrangement (\$40 million), it will also lose over €200

¹⁵¹ The RS is still in somewhat better shape because of the streamlined administration and proceeds from privatisation in 2007-2008. Local and international experts estimated that in mid-2010, RS government escrow accounts retained some €100 million from the total of €700 million obtained from the privatisation of RS Telecom and RS Oil. Crisis Group interview, local economic expert, Sarajevo, March 2010.

¹⁵² Consolidated income of all BiH administrative levels dropped from 10.9 billion KM (€5.57 billion) in 2008 to 10.3 billion (€5.27 billion) in 2009. In the same period, BiH increased spending by about 100 million KM (€51.1 million), almost entirely due to increases in social transfers. Data provided by an international financial organisation.

¹⁵³ A new €1.2 billion IMF stand-by arrangement for BiH was approved on 8 July 2009.

¹⁵⁴ Crisis Group interview, IMF official, Sarajevo 17 September 2010.

¹⁵⁵ “We have already changed our Letter of Intent with IMF four times. The IMF and the World Bank should stick to the originally agreed terms but instead they offer us a straw and that straw gets longer and longer. This attitude only delays the crisis and longer this lasts, then a worse crisis it will be”. Crisis Group interview, FBiH official, Sarajevo, 20 September 2010.

¹⁵⁶ Assuming adoption of these measures and approval by IMF management, a second review could be considered by the Executive Board by the end of September 2010, which would enable BiH to draw a further €40 million for entity budget support.

¹⁴⁶ Crisis Group interview, Olovo Mayor Alija Hadžiabdić, Olovo, March 10 2010.

¹⁴⁷ Crisis Group interview, Federation official, 3 February 2010.

¹⁴⁸ “Đapić i Tihjić o spajanju kantona” [Đapić and Tihjić on merging cantons], *Dnevni Avaz*, 31 August 2009.

¹⁴⁹ “Izborni gubitnici za Herceg-Bosnu” [Electoral losers for Herceg-Bosna], SDA press release, 10 December 2008; Faruk Vele, “Međukantonalno vijeće: Herceg-Bosna neće proći” [The inter-cantonal council: Herceg-Bosna will not pass], *Dnevni Avaz*, 11 December 2008.

¹⁵⁰ Vele, op. cit.

million from the World Bank and EBRD and be unable to pay salaries, social benefits and pensions.¹⁵⁷ Cantonal budgets already face a 30 million KM (€15.3 million) deficit. An FBiH official warned: “It cannot go on like this anymore. The IMF loan could have bought us some time under the condition that the governments implement agreed measures that were supposed to free up additional resources and pump them into the economy. They have done none of this, and now we don’t have enough money to buy any more time”.¹⁵⁸

A. REVENUE COLLECTION

1. The tax system

A serious overhaul of finances occurred after 2006, when a country-wide 17 per cent value-added tax (VAT) replaced the entity-level sales tax.¹⁵⁹ The state-level Indirect Taxation Authority (ITA) collects all indirect revenues, including excise and customs fees, and puts them in a single treasury account. After Bosnia’s foreign debt is serviced and the state budget financed, revenues are distributed to the entities and Brčko District. The distribution formula is the subject of much political debate. Indirect revenues are the main source of state-level financing, while entity, cantonal and municipal levels have additional sources. The Federation and cantons share corporate taxes; the Federation collects from the most lucrative companies, the cantons from smaller ones registered in their territory. Cantons and municipalities share income tax revenue.¹⁶⁰ The 2006 reform increased indirect tax revenues at all levels, but rather than put this into stimulus measures like infrastructure and lowering high employment taxes, leaders chose to increase government salaries and create expensive new social benefits.

Nonetheless, revenue collection reform has paid off, reducing differences between administrative units and leaving cantons such as Goražde and Posavina, which had been completely dependent on Federation grants and other cantons, fiscally sounder.¹⁶¹ However, many serious problems remain, including financial imbalances between cantons caused by difference in wealth but also political allegiances. Tuzla has 110,000 residents and 30,000 refugees more than Sarajevo, but a budget only half as large.¹⁶²

2. Public companies

Several mammoth corporations, largely or entirely owned by the Federation, contribute to the budget. They also finance political parties and elites, especially through subcontractor contracts for politicians’ friends or family members.¹⁶³ Dividing control over the most lucrative companies, especially in the energy and telecom sectors, has been a key part of the post-election coalition-making process for a decade. Party leaders appoint boards of directors, which then name the chief executive.¹⁶⁴ The SDA and SBiH have fought epic battles over big-money energy projects since 2008, when the SDA blocked an SBiH-sponsored, multi-billion euro plan to issue energy concessions to several dubious international companies. SDA clans squabble over BH Telecom riches, while a similar rivalry for HT Eronet telecom split HDZ and HDZ 1990 leaders.¹⁶⁵ These contests contribute to growing divisions among politicians. Losers are deprived of personal and party funds and patronage for the next election.

SDA-SBiH rivalry has halted privatisation of a number of strategic companies and development of the energy sector. Today, the political disputes seem to have been resolved, but the global economic downturn has put larger privatisations on hold. According to economic experts, the delays may have deprived FBiH of billions of dollars in foreign investments. The Federation has no clear strategy when

¹⁵⁷ Less than half the €1.2 billion IMF stand-by arrangement has been disbursed. Conditions include adoption of a new law on salaries and strategy for pension reform and revision of veterans’ benefits. Only the pension condition has been met.

¹⁵⁸ Crisis Group interview, Goran Mirašćić, advisor to FBiH Vice President Spomenka Mičić, Sarajevo, 13 July 2010.

¹⁵⁹ “This asymmetric and decentralised solution for revenue assignment left the central government without any real tax leverage. As a consequence of this there were huge disparities in the revenues of the sub-national governments, most notably between cantons and between municipalities”. “Fiscal equalization in the Federation of BiH”, Open Society Institute policy brief, April 2007.

¹⁶⁰ BiH administrative units also collect property taxes, rental and sales fees, administrative and court taxes and court and traffic fines, as well as domestic and international grants and loans. Crisis Group interview, Jasmina Djikić, Governance Accountability Project, Sarajevo, 6 May 2010.

¹⁶¹ Crisis Group interviews, World Bank, IMF, NGOs and government representatives, March and April 2010.

¹⁶² Sarajevo canton’s budget for 2010 is 709 million KM (€362.5 million); Tuzla canton’s is 364 million KM (€186.1 million). The 2002 ratio was 3:1.

¹⁶³ Crisis Group interviews, former and current government officials, June-July 2010. A senior prosecutor said it was hard to go after such practices, because many were technically legal. Crisis Group interview, Sarajevo, October 2008. A World Bank official described the problems as “ramifications between political and economic elites, which exercise control over economic resources”, leading to “state capture”, that is “public contracts bypassing procurement laws to the benefit of connected businesses”. Crisis Group interview, Sarajevo, 7 April 2009.

¹⁶⁴ Crisis Group interview, former government official, Sarajevo, July 2010.

¹⁶⁵ Crisis Group interview, international anti-corruption expert, Sarajevo, June 2010.

and how to privatise its strategic companies, nor how to develop its energy sector.¹⁶⁶

Most local and international experts say the 2005 law on public procurement significantly reduced corruption in the country,¹⁶⁷ but the problem has shifted to lower levels. “Among all administrative levels, corruption is the biggest problem in cantons”, an expert said, “because there is the least control and judicial oversight. Our constitution has turned cantons into federal units. Ministers have almost limitless power. There is no scrutiny by media and the international community”.¹⁶⁸

B. (OVER)SPENDING

Excessive social spending is a chronic Bosnian problem, especially in the Federation. Together with its cantons, the FBiH spends over 825 million KM (€421.8 million) annually on social transfers – 40 per cent of their combined budgets. “In 2000 the FBiH budget was some 700 million KM, and that covered everything ... including the cost of the FBiH army. Now the budget is 1.8 billion KM, and even without army costs, which are state level now, this budget is not sufficient”, an official complained.¹⁶⁹ Bosnia’s spending on non-insurance cash transfers, such as war-related benefits, is almost twice the regional average.¹⁷⁰ A World Bank official said, “while RS has more problems with overspending on salaries, in the FBiH the main problem is spending on social transfers”,¹⁷¹ notably rights-based payments to veterans, their families and those with disabilities.¹⁷² Many are modest, but others considerable, and “the aggregate is enormous”.¹⁷³ Veterans get grants and low interest loans to buy apartments or cars

or start businesses, accelerated pension eligibility, special unemployment benefits and payments for holders of military honours.

Nevertheless, associations of veterans and persons with disabilities wanted even more, and their lobbying won steep rises in benefits in 2006 only days before the elections. Neither the Federation government nor parliament knew the financial cost. Since most of the payments are “based on notions of right and reward rather than a demonstrable material need”, they foster pressure groups dedicated to their preservation and expansion. Politicians confront them at their peril, and especially Bosniak political leaders have “often used veterans associations in their own internal power struggles”.¹⁷⁴ What was initially conceived as a temporary post-war benefit has become a systematic allocation, prone to abuse, based on fake claims, documents and witnesses.¹⁷⁵ Medical boards that can be bribed grade degrees of disability;¹⁷⁶ employers collect subsidies for veterans or those with disabilities, who in turn claim unemployment.¹⁷⁷ An FBiH official estimated that 50 to 70 per cent of veterans receive social benefits illegally and that 80 per cent work but remain registered as unemployed for free health insurance.¹⁷⁸

Bosnia’s very high social spending does virtually nothing to alleviate poverty,¹⁷⁹ because the Federation does the worst job of targeting recipients in Europe. The social programs of neighbours all reach over 40 per cent of the poor (in Serbia, over 60 per cent).¹⁸⁰ Veterans’ benefits are the worst-targeted of all social benefits in the FBiH, with some 27 per cent going to recipients in the richest fifth of the population and less than 15 per cent to those in the poorest fifth.¹⁸¹

¹⁶⁶ Crisis Group interviews, local and international economic experts, March-May 2010.

¹⁶⁷ Crisis Group interview, government official, June 2010.

¹⁶⁸ Crisis Group interview, Srdjan Blagovčanin, Transparency International, Sarajevo, 10 June 2010.

¹⁶⁹ Crisis Group interview, Sarajevo, June 2010.

¹⁷⁰ “Social transfers in Bosnia-Herzegovina: Moving toward a more sustainable and better targeted safety net”, World Bank policy note, 30 April 2009.

¹⁷¹ Crisis Group interview, Orhan Nikšić, World Bank country economist in BiH, 30 April 2010. Total expenditures on public salaries at all levels of government in the RS are almost the same percentage of entity GDP as in the FBiH, even though the latter has an additional (cantonal) layer of government. The World Bank estimated the Federation and the RS spent 10.6 and 10.2 per cent of their entity GDP, respectively, on public sector salaries in 2009.

¹⁷² “Social transfers in Bosnia-Herzegovina”, World Bank, op. cit.

¹⁷³ Crisis Group interview, senior World Bank official, Sarajevo, 7 April 2009. There are many more registered veterans and families of dead soldiers in the larger entity, the Federation, than in RS.

¹⁷⁴ Crisis Group interview, international official, 16 March 2010.

¹⁷⁵ “Some people abuse their status; there are some fake unemployed, people working under the table and drawing unemployment benefits anyway”. Crisis Group interview, Mehmet Šišić, former head, Association of Demobilised Soldiers of BiH, 2 April 2009.

¹⁷⁶ Medically-attested infirmity did not prevent dozens of activists from breaking through security cordons and demonstrating inside the Federation parliament on 24 February 2009.

¹⁷⁷ Crisis Group interview, official, work and social issues ministry, 24 August 2010.

¹⁷⁸ “They are inflicting double damage on the FBiH budget; they receive social benefits which they shouldn’t, and they work but are not paying contributions for pension and social funds”. Crisis Group interview, Goran Mirašić, adviser to FBiH Vice President Spomenka Mičić, Sarajevo, 13 July 2010.

¹⁷⁹ All social transfers combined only reduce the poverty level from 19.2 per cent to 18 per cent. “Social transfers in Bosnia-Herzegovina”, World Bank, op. cit.

¹⁸⁰ Ibid, p. 19, figure 12.

¹⁸¹ Crisis Group interview, international financial expert, April 2009.

In early 2010, the government was told to start reducing social transfers to secure a large international financial package.¹⁸² All veterans and disability licenses were to be revised through means testing. Veterans' associations protested, saying the government should cut its own salaries instead¹⁸³ and threatened to topple it. Though salaries in the FBiH public sector vary between institutions, many officials are underpaid.¹⁸⁴ The institutions' best course would be to speed up social sector and other financial reforms, including overhauling and balancing salaries between different levels and units.

A small hardcore group of veterans and those with disabilities has become both highly politicized and prone to political manipulation.¹⁸⁵ After its 21 April 2010 demonstration ended with some 70 police and protesters injured, SDA leader Sulejman Tihić accused Fahrudin Radončić and his SBB party of orchestrating the violence to undermine the government and win additional votes in the October elections.¹⁸⁶ Protest violence "revived painful apprehensions that [new] civil hostility in Sarajevo is a stone's throw away".¹⁸⁷ Local leaders should see it as another warning that they may be losing control over the agitated citizenry.¹⁸⁸ "Social unrest could develop into national conflict if demagogic politicians try to move it in that direction", warned a trade union leader.¹⁸⁹

The Federation government faces new financial pressure, because public sector employees have started suing it for unilaterally reducing their salaries in 2010 by 10 per cent

or more.¹⁹⁰ In the first few cases, the courts have ordered it to repay the salary cuts plus court expenses. If most employees sue as expected and their cases are similarly successful, the 2010 and 2011 budgets will be burdened with an estimated 90 million KM (€46 million).

Another area requiring control is the distribution by cantonal and entity governments of non-refundable, one-off grants. These were previously at ministers' discretion, but public procurement procedures have been established so that government commissions now distribute them. Nevertheless there is still little or no oversight.

C. RESOURCE (MIS)MANAGEMENT

The Federation has rich timber, mineral and hydroelectric resources, but these are poorly managed, a magnet for corruption and bring only limited benefits to local communities. General resource management is under Federation authority, with the cantons nominally in charge of direct exploitation. Municipalities where the resources are located have no control over how the rights are given and exploited and how much profit they turn. Consequently, even resource-rich municipalities, like Olovo, Vareš, Drvar, Grahovo, with abundant forests, water, mines and quarries, are slowly dying, because of uncontrolled private exploitation.¹⁹¹

- ❑ forestry has always been one of the most misused and unregulated sectors. In April 2009 the FBiH Constitutional Court ruled the relevant law unconstitutional because it violated local self-governance provisions.¹⁹² More than a year later, and the municipalities association is still preparing a new draft;¹⁹³
- ❑ the Grahovo and Olovo mayors say local sawmills are going bankrupt despite rich resources, because private companies are illegally exporting raw materials, not processing them locally, despite improved police, customs and inspections services.¹⁹⁴ Grahovo's mayor

¹⁸² The package included the €1.2 billion IMF stand-by arrangement, a World Bank project for support of the social reform worth €82.3 million and €100 million from the European Commission.

¹⁸³ "Luxurious government spending creates a bad impression". Crisis Group interview, Mehmet Šišić, former head, Association of Demobilised Soldiers of BiH, 2 April 2009.

¹⁸⁴ Administration salaries registered only a moderate increase from 22 per cent of overall public revenues in 2006 to 24 per cent in 2008. At the same time, spending on social transfers jumped from 11 to 18 per cent. Crisis Group interview, Orhan Nikšić, World Bank country economist in BiH, 30 April 2010.

¹⁸⁵ Crisis Group interviews, veterans, Sarajevo, March-April 2010. International financial organisations estimate there are 114,000 veterans in FBiH and 50,000 in the RS; not more than 4,000-5,000 turn up for protests.

¹⁸⁶ "On the other side we have Radončić, who is radicalising Bosniaks, who is telling us tales about how jeopardised we are and who is instigating violence of the social and veteran population". Sulejman Tihić, in FTV evening news, 24 April 2010.

¹⁸⁷ Crisis Group interview, official, international security agency, August 2010.

¹⁸⁸ Crisis Group interview, international official, Sarajevo, 13 May 2010.

¹⁸⁹ Crisis Group interview, Edhem Biber, former president, League of Independent Trade Unions, Sarajevo, 8 April 2009.

¹⁹⁰ The cuts, part of budget reductions agreed with the IMF, were done without changing employee collective agreements.

¹⁹¹ Crisis Group interviews, mayors of Olovo, Drvar, Grahovo, Tuzla, Alija Hadžiabdić, Anka Papak-Dodik, Uroš Makić, February-April 2010.

¹⁹² Konjic municipality and the Association of Municipalities and Cities complained to the Federation Constitutional Court that the law prevented municipalities from benefiting from their resources. The court ruled that municipalities were being excluded from decisions about natural resources on their territory and ordered that the forestry and self-governance laws be harmonised. Federation Constitutional Court, Case U-26/08.

¹⁹³ Crisis Group interview, FBiH official, 3 February 2010.

¹⁹⁴ Crisis Group interviews, Uroš Makić, mayor of Grahovo, Grahovo, 25 March 2010; and Alija Hadžiabdić, mayor of Olovo, Olovo, 10 March 2010.

estimates the annual profit from nearby logging at \$30 million, while the municipality in 2009 received only \$32,000.¹⁹⁵

- ❑ cantons issue most medium and small concessions but lack capacity to properly monitor and supervise use and payments, creating opportunities for misuse of forests, as well as hydropower, water and quarries. An FBiH official estimated the entity loses at least \$150 million annually in uncollected compensation.¹⁹⁶

Legislation is being prepared but slowly. The Federation parliament rejected a draft concessions law in 2009, but ordered the government to end all concessions not harmonised with existing law. It has yet to comply.¹⁹⁷ Meanwhile the Constitutional Court on 16 February 2010 ruled that Živinice municipality is being prevented from influencing the concessions price, in violation of the self-governance law.¹⁹⁸ This is expected to trigger a wave of demands from municipalities seeking greater control over natural resources.

VI. REFORMS AND CHALLENGES

Domestic and international reform efforts have focused almost entirely on the BiH state level. Internationally-supported attempts to reform the BiH constitution and make the state more functional failed in 2006 and 2009, largely due to divergent Bosniak, Serb and Croat preferences for a centralised or highly decentralised state.¹⁹⁹ This has dampened international expectations for early comprehensive changes.²⁰⁰ It is widely anticipated that the constitution will be amended to meet a European Court of Human Rights (ECHR) obligation after the October 2010 elections, but this is not expected to affect the FBiH.²⁰¹

U.S. and EU failure to press constitutional reform on BiH leaders has at least had the positive effect of persuading some of those leaders to seek solutions through compromise rather than foreign intervention. “This is the time of the crisis of the international community’s strategy for Bosnia and Herzegovina. This situation encourages status quo and is generating new problems”, said Martin Raguž, HDZ 1990 vice president. “The international community’s weakness may be a chance for local leaders to reach an agreement among themselves. We should burn down the illusions that someone else will do it for us”.²⁰² But there appears to be little urgency. Most local leaders still ignore the country’s worsening living standards and growing tensions and believe the country can survive continued economic and social crises, while they fight for their own political and economic benefits. This behaviour is reminiscent of the period that led to the breakup of Yugoslavia, when politicians engaged in infighting oblivious to its destructive effect on society.²⁰³

¹⁹⁵ Private firms are required by law to refund communities 5 per cent of the profit from concessions, but these payments go through cantons, whose governments have little or no interest and capacity to keep track of profits. Companies often deliberately under-report profits and sometimes avoid any local payments. These violations frequently pass unnoticed or at least unpunished. Crisis Group interview, Uroš Makić, mayor of Grahovo, Grahovo, 25 March 2010.

¹⁹⁶ Crisis Group interview, Federation official, 3 February 2010.

¹⁹⁷ Federation Premier Mustafa Mujezinović said such hasty moves could seriously increase the price of public services, *Dnevni List*, 20 April 2010.

¹⁹⁸ Federation Constitutional Court, Case U-25/09, 18 February 2010.

¹⁹⁹ The U.S.-sponsored package of constitutional changes failed to gain necessary parliament support in April 2006; between November 2009 and March 2010 top party leaders rejected a similar package during the so-called Butmir negotiations. Both attempts failed for a variety of reasons, including that they came too close to general elections. For details, see Crisis Group Europe Reports N°180, *Ensuring Bosnia’s Future: A New International Engagement Strategy*, 15 February 2007; and *Bosnia’s Incomplete Transition*, op. cit.; and Crisis Group Briefing, *Bosnia’s Dual Crisis*, op. cit.

²⁰⁰ Crisis Group interview, senior U.S. diplomat, Sarajevo, 10 July 2010.

²⁰¹ The European Court of Human Rights (ECHR) found in *Sejdić and Finci vs. Bosnia and Herzegovina*, 22 December 2009, that the BiH constitution violates human rights by discriminating against persons not belonging to one of the three constituent peoples. The constitution specifies that only those who declare themselves Bosniaks, Croats or Serbs can be elected to the state presidency and to its House of Peoples. Efforts to agree on a non-discriminatory solution have stalled.

²⁰² Crisis Group interview, 21 January 2010.

²⁰³ Crisis Group interview, local legal expert, Mostar, 17 February 2010.

In light of the looming crises, the Federation government formed after the elections should start with practical economic issues, prioritising social sector and pension system reform to meet international financial institution obligations.²⁰⁴ Better use and supervision of natural resource concessions on both the federal and cantonal level should provide job opportunities and financial resources to improve basic services in communities. The government should also start working on a new strategy for privatising FBiH's main public companies, not only to generate development revenue but also to reduce opportunities for corruption and patronage.

Resistance to reform is strong. Most Bosniak leaders, regardless of party, are more focused on state-wide changes. A leading SDA official said Bosniaks would reject deep Federation reforms not linked to a state-level process, because they saw this as "ghettoisation" that would confine them to the Federation alone or, worse, to Bosniak areas of it. This would be tantamount to giving up on the multi-ethnic Bosnian ideal.²⁰⁵ Hostile to the RS, many prefer doing away with both entities and reorganising Bosnia into four or more economic regions.²⁰⁶ Most still strongly reject a separate Croat entity, though they also realise that the prospect such an entity would secede and join Croatia is no longer realistic.²⁰⁷ Some Bosniak officials support abandoning ethnic governing principles in favour of fully civic ones (one person one vote),²⁰⁸ which most Bosnian Croat and Serb leaders reject because it would favour the much more numerous Bosniaks.²⁰⁹

²⁰⁴ Principally, the World Bank suggests reducing overall spending to sustainable levels, moving from a rights-based to a needs-based system, improving administration to reduce abuse and reducing disability benefits for those able to work. "Social transfers in Bosnia and Herzegovina", World Bank, op. cit.

²⁰⁵ Crisis Group interview, Mirsad Kebo, Federation vice president, Sarajevo, 7 April 2009.

²⁰⁶ "Sooner or later we will get back to the Prud solutions (dividing Bosnia into four economic regions)", Crisis Group interview, Sulejman Tihić, SDA president, 25 February 2010.

²⁰⁷ Croat hopes of a third entity were considered serious when they enjoyed almost equal power at the Federation level and when such a move could have been supported by the Tudjman regime in Croatia. Today's political reality is that Bosnian Croats lack power in the Federation parliament to obtain such a decision, and Croatia has severed ties with their leaders and would not support the initiative. Some EU countries would also likely oppose a separate Croat entity out of concern that a purely Bosniak entity might become more vulnerable to Islamic radicalisation. Crisis Group interviews, Western diplomats, March–July 2010.

²⁰⁸ "BiH needs a different approach, a civic approach, not ethnic". Crisis Group interview, Haris Silajdžić, Bosniak member of BiH presidency, 13 March 2009.

²⁰⁹ Crisis Group interviews, HDZ, HDZ 1990 and SNSD officials, November 2009–July 2010.

Aware of their political weaknesses, Croat leaders are open to several options.²¹⁰ Immediately after the war, hardliners felt safe in cantons where they were in the majority, since no state security or judicial bodies could touch them there. This changed as state prosecution, police and inspection agencies were established. Croat national parties continue to desire a separate entity, but community leaders warn this could mean major migration from other parts of FBiH.²¹¹ As these "old solutions" appear ever less realistic, some leaders now tacitly accept options such as regionalisation or municipalisation, as long as minimum ethnic representation is guaranteed at state level.²¹²

Common ground may be emerging. Some Bosniak leaders propose keeping the Federation framework but reducing cantons, which could be acceptable to some Croats. Cutting canton competencies in favour of greater coordination at the FBiH level is more controversial but could be balanced by stronger municipal self-government.²¹³ This would unclutter the legislative framework and free financial and professional resources that could be better used elsewhere.²¹⁴ According to various federation and cantonal officials, merger of Sarajevo and Goražde and Livno and West Herzegovina cantons, as well as transfer of some

²¹⁰ "BiH is not possible in two ways, as a centralised country and in its current shape. It is possible in several other ways". Crisis Group interview, Božo Ljubić, HDZ 1990 president, Sarajevo, 22 January 2010.

²¹¹ Crisis Group interview, Fr. Luka Markešić, Sarajevo-based Franciscan, historian and civic activist, Sarajevo, May 2010.

²¹² Crisis Group interview, senior Croat national leader, Mostar, 27 March 2010. Regionalisation refers to the idea of dividing Bosnia into four or more regions. Municipalisation would involve restructuring Bosnia to include only state-level and municipal government. See "BiH – a source of instability and threat to peace or a future member of the EU", recommendations of the Bosnian Bishops' conference, Sarajevo, 29 October 2005.

²¹³ "Cantonal administration has become a purpose for itself. Political leaders don't dare to initiate reforms for abolition of cantons because politicians from cantons are telling them that this would affect their re-election. As long as cantons are here, there will be no national and social liberation, no human rights". Crisis Group interview, Jasmin Imamović, mayor of Tuzla, 10 March 2010.

²¹⁴ "The most radical reform option would be to simply abolish the Cantons, thereby creating a situation similar to the RS. This option seems in principle desirable and would provide for more efficient government. It may however ... not seem acceptable to Croats who do not have their own Entity and would thus be without a territory in which they are in the majority. It may be easier to reduce the number of Cantons From the point of view of the Commission, a logical step forward would be to concentrate the legislative function at the FBiH level, making the Cantons structures of a mainly executive nature". "Draft opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative", Council of Europe, Venice Commission, March 2005.

competencies from cantonal to FBiH level, could be the first step in reforming the Federation.

To do this, however, the FBiH should follow a democratic process and create a parliamentary commission to propose constitutional and structural changes. Such a commission should engage in broad public consultations and include a wide range of opinion formers, including local experts, NGOs and media. International input should be welcomed, which could include counsel about EU member states' experiences with power sharing, federalism and protection of minority interests, as well as expert advice to help ensure that measures are in conformity with the EU body of law (*acquis communautaire*), but Federation institutions and actors should drive the process.

VII. CONCLUSION

The Federation was born from a realisation that Bosniak and Croat forces could only hope to overcome the war-time challenge posed by RS together. This insight has a peacetime analogue. United, Bosniaks and Croats form a critical mass sufficient to keep Bosnia and Herzegovina together and make RS hopes for secession financially, politically and even militarily unfeasible. As long as the Federation remains functional, Bosnia is viable. Yet, the opposite is also true: Bosnia cannot last without its larger entity in good working order. Nor can it survive if it loses the support of both Croats and Serbs. For both reasons, the Federation's troubles, and the neglect with which they are met, are cause for deep concern.

Bosnia's most difficult challenges all have echoes on the Federation level, though in simpler form. Balancing majority rule and the rights of the constituent peoples has created an unwieldy power-sharing architecture that frustrates Bosniaks, fails to protect Croats and has created numerous quotas that agile parties easily subvert. Confusion between the jurisdictions of the Federation and its component units produces inconsistent legislation, stifles investment and lowers state services. The state's large share of the economy creates a nexus of political and economic power exploited by a political elite resistant to democratic change. The key political offices – the state Council of Ministers and the Federation government – are filled through opaque coalition-building exercises in which the same (party) players appear time after time.

The Federation's highly decentralised structure makes it an awkward partner for the very centralised RS. This is also true on the political level, where no Federation party equals the popularity of the ruling RS party. Yet, all of these problems are more easily solved in the Federation than in the BiH. The FBiH has no barrier to legislation nearly as formidable as the entity voting procedure, which in effect gives RS an absolute veto over new state laws. Despite changes imposed by the OHR, the Federation remains a two-player game, with Serbs too few to challenge any agreement Bosniaks and Croats make. And the two players are decidedly unequal: Bosniaks outnumber Croats by three or four to one and can claim a leading role that is elusive at the state level.

The basic Federation structure pleases no one. Bosniaks wanted no cantons, Croats wanted an entity they could control. As a compromise, ten cantons were set up, creating administrative and territorial fragmentation that unacceptably hampers government. Squaring a centralised entity government with strong territorial autonomy is no easier today than in 1994, yet more elegant and effective compromises exist and should be sought. Reducing cantons is a good place to start and could be done in parallel

with eliminating redundant Federation ministries. Transferring competencies from cantons to the entity would be more controversial and might require more extensive surgery to constitutional architecture.

Structural reform should not be delayed, but much can be done even before it is well under way. The Federation's economic woes are obvious, and the solutions are equally plain: reform the social assistance system and privatise large state-owned companies. This would help revive Bosnians' flagging faith in their leaders. Coupled with more far-reaching constitutional reform, it would make the Federation much stronger to negotiate with RS.

These tasks must be the primary responsibility of the largest parties, the SDA, SDP and SBiH. All three advocate a much stronger role for the BiH state, with clear supremacy over the entities. Yet, none have articulated how they would use this supremacy, notably over the RS. Nor have they used their dominant position in the Federation to enact reforms. This erodes what little political will exists among Croats and Serbs for state building on a civic, non-ethnic basis. Commitment to a multiethnic BiH is today at best grudging among most Serbs and RS, whose policies make the country all but ungovernable. Further deterioration and continued political infighting may inflict irreparable damage to the fragile ethnic relations and so put the state's viability in question. Only by endorsing compromise politics, offering full protection to Croats, ignoring RS provocations and accepting the reality that the country's future is as a decentralised state can Bosnia's leaders revitalise first the Federation and then Bosnia itself.

Sarajevo/Istanbul/Brussels, 28 September 2010

APPENDIX A

MAP OF BOSNIA AND HERZEGOVINA



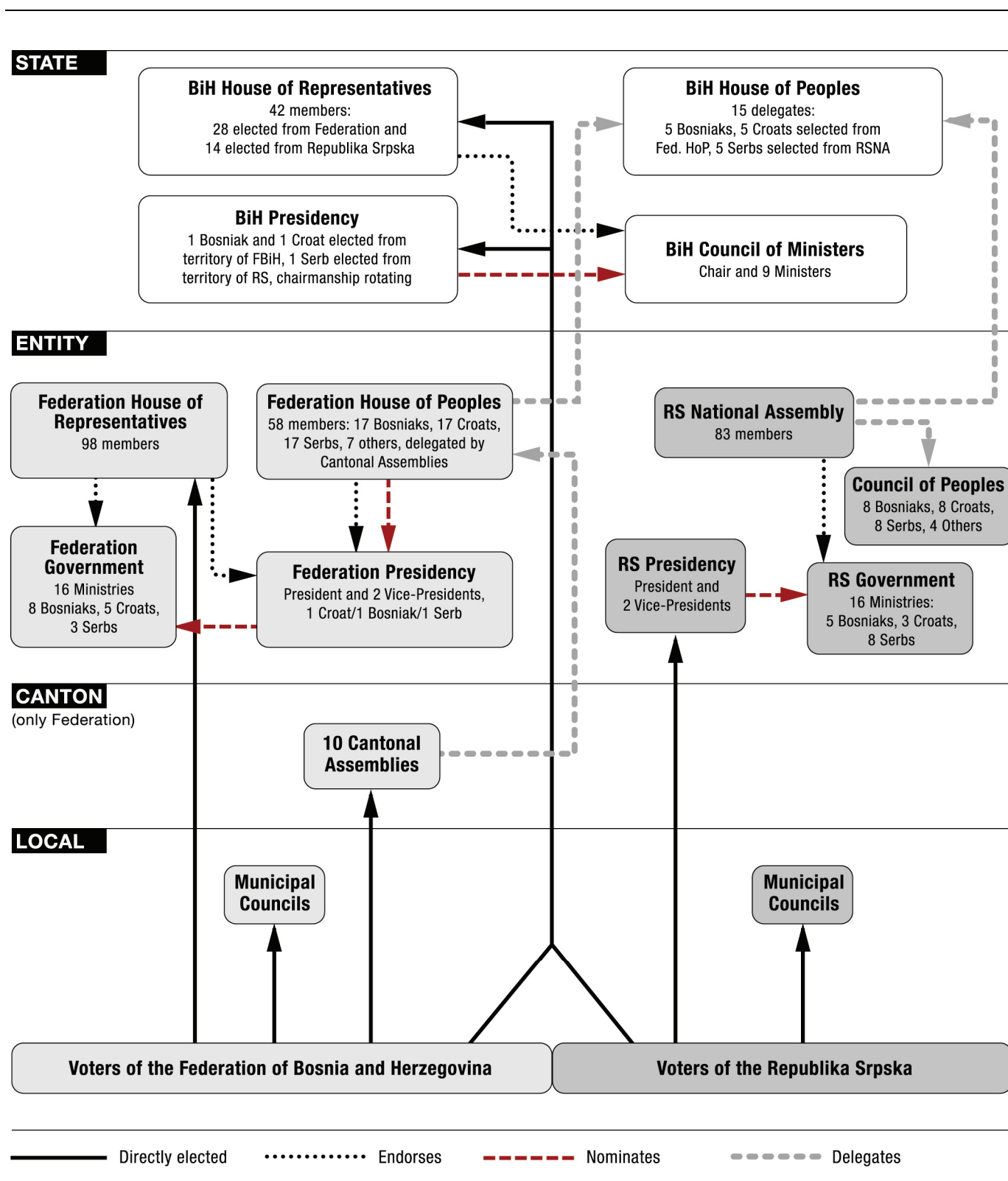
APPENDIX B

GLOSSARY OF ABBREVIATIONS AND ACRONYMS

ABiH	Army of Bosnia and Herzegovina, armed forces of the Republic of Bosnia and Herzegovina during the 1991-1995 war
BiH	Bosnia and Herzegovina
CCI	Centre of Civic Initiatives, a non-governmental organisation that monitors performance of elected officials and governing institutions throughout BiH
DNZ	Demokratska narodna zajednica (Democratic National Community), a small, predominantly Bosniak party led by Rifat Dolić and strongest in north-western BiH
EBRD	European Bank for Reconstruction and Development
ECHR	European Court of Human Rights
EUPM	European Union Police Mission
FBiH	Federation of Bosnia and Herzegovina
FTV	Federal Television, state-owned and controlled broadcaster of the FBiH
HDZ	Hrvatska demokratska zajednica (Croatian Democratic Union), largest predominantly Croat party in BiH, led by Dragan Čović
HDZ 1990	Croatian Democratic Union 1990, second-largest predominantly Croat party, led by Božo Ljubić and consisting mostly of persons who broke away from the HDZ in 2006
HSP	Hrvatska stranka prava (Croatian Party of the Right), small, nationalist party led by Zvonko Jurišić
HVO	Hrvatsko vijeće obrane (Croatian Defence Council), the name used by the executive and also by the armed forces of the breakaway Croat entity during the 1991-1995 war
IFC	International Finance Corporation, part of the World Bank group, providing advisory services in emerging markets
ITA	Indirect Taxation Authority, the state-level body charged with collecting Value-added Tax and other forms of indirect tax in BiH and distributing proceeds to the state and entity governments
JNA	Yugoslav People's Army, the armed forces of the Socialist Federal Republic of Yugoslavia until its dissolution in 1992 and involved in early stages of the war in BiH
KM	Convertible Mark (BiH currency)
NS	Narodna stranka – Radom za boljitak (People's Party – Progress through Work), multi-ethnic but predominantly Croat and business-friendly party led by agribusiness magnate Mladen Ivanković-Lijanović
OHR	Office of the High Representative, the international official charged with interpreting and enforcing the General Framework Agreement for Peace (Dayton Agreement), including the BiH constitution
RBiH	Republic of Bosnia and Herzegovina
RS	Republika Srpska
SBB	Stranka za bolju budućnost BiH (Party for a Better Future of BiH), a newly-formed predominantly Bosniak and business-friendly party led by publishing and construction magnate Fahrudin Radončić
SBiH	Stranka za BiH (Party for BiH), predominantly Bosniak party emphasising defence of the state and its institutions, led by Haris Silajdžić
SDA	Stranka demokratske akcije (Party for Democratic Action), largest and oldest predominantly Bosniak party, led by Sulejman Tihić
SDP	Socijaldemokratska partija (Social Democratic Party), large multi-ethnic party with a predominantly Bosniak base of support and successor to the League of Communists of BiH, led by Zlatko Lagumdžija
SDS	Srpska demokratska stranka (Serb Democratic Party), Serb nationalist party that governed RS during the 1991-1995 war and for many years thereafter, now led by Mladen Bosić
SDU	Socijaldemokratska unija (Social Democratic Union), small left-oriented and multi-ethnic party led by Nermin Pećanac
SNSD	Savez nezavisnih socijaldemokratska (League of Independent Social Democrats), largest predominantly Serb party, currently the ruling party in RS and led by Milorad Dodik
VNI	Vital National Interest clause, a provision in BiH state, entity and some lower-level constitutions that allows groups to challenge and block legislation destructive of their communal interests

APPENDIX C

BOSNIA GOVERNMENTAL ORGANISATION CHART



APPENDIX D

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 130 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is co-chaired by the former European Commissioner for External Relations Christopher Patten and former U.S. Ambassador Thomas Pickering. Its President and Chief Executive since July 2009 has been Louise Arbour, former UN High Commissioner for Human Rights and Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and for Rwanda.

Crisis Group's international headquarters are in Brussels, with major advocacy offices in Washington DC (where it is based as a legal entity) and New York, a smaller one in London and liaison presences in Moscow and Beijing. The organisation currently operates nine regional offices (in Bishkek, Bogotá, Dakar, Islamabad, Istanbul, Jakarta, Nairobi, Pristina and Tbilisi) and has local field representation in fourteen additional locations (Baku, Bangkok, Beirut, Bujumbura, Damascus, Dili, Jerusalem, Kabul, Kathmandu, Kinshasa, Port-au-Prince, Pretoria, Sarajevo and Seoul). Crisis Group currently covers some 60 areas of actual or potential conflict across four continents. In Africa, this includes Burundi, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Guinea-Bissau, Kenya, Liberia, Madagascar, Nigeria, Rwanda, Sierra Leone, Somalia, Sudan, Uganda and Zimbabwe; in Asia, Afghanistan, Bangladesh,

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