

## Bosnia: State Institutions under Attack

### I. OVERVIEW

Bosnia faces its worst crisis since the war. State institutions are under attack by all sides; violence is probably not imminent but is a near prospect if this continues. Seven months after elections, there is no state government and little prospect for one soon. The authorities of the larger of the entities, the Federation, were formed controversially – a main state institution said illegally – in March and are disputed by Croats, who have created a parallel Croat National Assembly. The other entity, Republika Srpska, has called a referendum that could provide support for a Serb walkout of Bosnian institutions. With such trends, it is all too easy to imagine Bosniak parties overseeing a failed state whose institutions Serbs and Croats have abandoned. Compromises are needed so every Bosnian side can claim enough victory to justify retreat from the brink. The international community needs to step back from over-involvement in local politics to calibrate goals to a realistic appraisal of diminished powers and best guarantee stability. Then work needs to begin to create a context for renewing Dayton and achieving EU membership.

All involved share blame for the crisis. Two rival Croat Democratic Union parties (HDZ, HDZ 1990) that represent most of the Croat population, violated the Federation constitution by blocking formation of governments and refusing to send delegates to the entity's House of Peoples from the four cantons they control. The two HDZs and the biggest winners of the October 2010 elections, the Social Democratic Party (SDP), all rejected reasonable internationally-brokered coalition proposals. The SDP then formed a Federation government in violation of the entity constitution and against the advice of the state-level Central Election Commission (CEC). The HDZs also chose a dangerous moment to create a Croat Assembly. The RS, in particular President Dodik, provocatively called a referendum on laws imposed by the High Representative, Bosnia's international governor, especially regarding the state court and prosecutor, issues outside RS jurisdiction. Dodik's divisive, nationalistic speech at the RS National Assembly called into question his commitment to reconciliation and a multi-ethnic Bosnia.

On 27 March, the High Representative suspended the CEC ruling annulling formation of the Federation authorities. That suspension, which had the consequence of disrupting the normal appeal process, has undermined state bodies – most directly the CEC – and the rule of law. It would be further detrimental if the harm were compounded by an attempt to annul RS's referendum decision or to impose sanctions on Serb officials, not least because the attempts would likely be defied and make a referendum even more destabilising.

The EU has lost credibility due to its inability for the past nine months to strengthen its delegation in Bosnia and give a new head – who is yet to be appointed – adequate authority and powers to vigorously direct international policy. Virtually all international institutions in Bosnia have lost authority; many, including the Office of the High Representative (OHR), are seen as favouring one side or party. Local leaders demand support from OHR and state institutions alike and ignore rulings that go against them. There is no broadly respected authority in the country, only regional or partisan champions.

Since Yugoslavia broke up, Bosniaks, Croats and Serbs have had three conflicting views on what kind of a state they can share. According to former Slovenian president Milan Kučan, a close observer, "these three concepts never really met, let alone reconciled ... then these three concepts were turned into war aims, but the war itself never really ended; it was only interrupted by the Dayton peace agreement". Dayton created a loose union in which the two entities retained most governing competencies, and important state decisions required consensus of the three major ethnic groups; many posts were assigned by ethnic quotas. This system soon encountered obstruction from nationalists; as an emergency measure, the international community endowed the High Representative with broad powers to keep the state running. Since then, it has supported further centralisation and less consensual decisions, hoping to make the state more functional. This in effect promoted the Bosniak vision at the expense of the Serbs and Croats. It also made Bosnia reliant on regular interventions by High Representatives.

The Federation government crisis and the RS referendum expose two sides of a general, Bosnian problem. In the Federation, community rights and majority rule collide. In RS, the contest is over the international community's

role in governing Bosnia and the balance between state and entity prerogatives. Both represent assaults on the vision of Bosnia's future offered by OHR and accepted by most Bosniak parties. That vision would guarantee that the state could not be sabotaged or paralysed by ethnic conflict. Yet, most Croats and Serbs reject it.

To resolve half of the immediate crisis and form non-contested Federation authorities:

- the High Representative should lift his suspension and allow the CEC decision to take effect; and
- the Federation House of Peoples should meet in full composition, elect the president and, with the House of Representatives, name a government that complies with the entity constitution; the president and government should only transact urgent business until they have been officially inaugurated;

To resolve the other half of the immediate crisis:

- the RS National Assembly should retract its decision to hold a referendum; if the referendum goes ahead, President Dodik should publicly rule out any unilateral acts challenging the Bosnian state court (the Court of Bosnia and Herzegovina), such as withdrawing Serb representatives or rejecting its jurisdiction.

Even though the situation is deeply troubling, the international community should avoid hasty decisions that could deepen the crisis and push the parties to maximalist positions. This is not the time to try to micro-manage the crisis with technical measures or sanctions. Instead, the 9 May UN Security Council discussion on Bosnia and the 13 May European Foreign Affairs Council should be used to launch a strategic rethink of international policy. This should culminate before the planned mid-June RS referendum. Specifically:

- the international community should convene a high-level conference to set its goals in Bosnia, reconfirm its commitment to the Dayton Peace Agreement, remove the High Representative from local politics, develop plans to relocate his office outside Bosnia and give the EU the capacities to become a leading actor.

## II. CRISIS IN THE FEDERATION

The current crisis in Bosnia and Herzegovina<sup>1</sup> began with the extremely complicated process of government formation in the Federation.<sup>2</sup> On 17 March 2011, the Federation<sup>3</sup> House of Peoples, encouraged by the SDP and its allies, met prematurely, elected the entity president and established a government amid accusations of illegality by the two largest Croat parties, the HDZ and rival HDZ 1990.<sup>4</sup> This put an end to months of failed coalition talks between the SDP (the most successful party in the 2010 elections) and the main Croat parties.

A week after the Federation government's formation, the Central Election Commission (CEC) ruled that the House of Peoples had not been properly constituted, and the election of the president was therefore null.<sup>5</sup> But on 27

<sup>1</sup> This briefing uses Bosnia for Bosnia and Herzegovina and "Federation" for the Federation of Bosnia and Herzegovina, one of the country's two component entities, the other being Republika Srpska (RS). For relevant Crisis Group reporting, see Europe Briefing N°59, *Bosnia: Europe's Time to Act*, 11 January 2011; Europe Report N°209, *Federation of Bosnia and Herzegovina – A Parallel Crisis*, 28 September 2010; and Europe Briefing N°57, *Bosnia's Dual Crisis*, 12 November 2009.

<sup>2</sup> See Crisis Group Report, *Federation of Bosnia and Herzegovina: A Parallel Crisis*, op. cit. After national elections, the ten (directly-elected) cantonal assemblies elect delegates to the Federation House of Peoples according to a complicated, two-stage process overseen by the CEC. That body then nominates the Federation president and two vice presidents; they stand as a single slate needing the support of at least one-third of each ethnic caucus (Bosniak, Croat and Serb) to be eligible. The president is then elected by the (directly-elected) House of Representatives and names a prime minister and cabinet, confirmed by the House of Representatives.

<sup>3</sup> The Federation consists of ten cantons, each with an assembly and a government headed by a prime minister; see *ibid*.

<sup>4</sup> The new President (Živko Budimir, from the small, far-right Croat Party of Right, HSP) immediately nominated a prime minister (Nermin Nikšić, SDP) who proposed a cabinet that was approved by the House of Representatives. The composition of the Federation authorities violates Article IV.D.(1) of the Federation constitution, which provides that of six top positions, no more than two may be held by members of any constituent people; currently there are three Bosniaks, two Croats and one Serb.

<sup>5</sup> The CEC decided that "It is established that the election of the President and Vice-Presidents of the Federation ... was not done in accordance with the Election Law of Bosnia and Herzegovina" and that "the election of the President and Vice-Presidents of the Federation ... is annulled". Decision 05-1-07-5-218/11, 24 March 2011. The CEC also decided that "elections for the House of Peoples of the Parliament... were not carried out in all ten cantons in accordance with the requirements of the Election Law of Bosnia and Herzegovina, and that requirements for its formation were not satisfied". Decision 05-1-07-5-219/11, 24 March 2011.

March, High Representative Valentin Inzko issued an order suspending the CEC decision “until such time as the High Representative decides”.<sup>6</sup> The order remains in force; the disputed government in its first session passed the 2011 budget and began securing control over all Federation agencies and public companies.<sup>7</sup> Many in the international community are engaging with the new government, and Bosniak political leaders seem to consider the High Representative’s decision permanent.<sup>8</sup>

Most Croats and Serbs, however, reject the new authorities and are taking steps to challenge them. The RS National Assembly concluded on 13 April that it considered the Federation authorities illegitimate, and RS leaders announced they would limit inter-entity contacts to the technical level until the situation was resolved. On 19 April, the two HDZ parties and eight smaller Croat parties created a Croat National Assembly in Mostar, to serve as an executive body and coordinate Croat-majority municipal and cantonal governments. They also demanded revision of the Dayton agreement to create a third, Croat-majority entity.<sup>9</sup>

The issues are fundamentally political, not legal, their roots in the deterioration of Bosniak-Croat relations over the past decade. Croats still consider the changes High Representative Wolfgang Petritsch imposed on the Federation

constitution in 2001 profoundly unfair.<sup>10</sup> Their sense of grievance deepened after the 2006 election of a Croat SDP candidate, Željko Komšić, to the Croat seat on the state presidency, with the help of Bosniak votes.<sup>11</sup> He was re-elected by a large margin in 2010 even though most Croats did not vote for him.<sup>12</sup> Komšić’s elections posed a basic challenge for the Dayton system: who has legitimacy to act as representative of a constituent people?

The HDZs argue that only an individual or a party supported by a majority of ethnic Croats can legitimately represent their interests. The largest Serb parties hold the same view. Bosnia’s multi-ethnic parties argue that any lawfully-elected Croat can represent the Croats, regardless of the source of his or her support.<sup>13</sup> The difference is fundamental and has far-reaching policy consequences. The Croat and Bosniak communities also have different preferences on many other issues. Should President Komšić, for example, act in line with the interests of the Croats his position exists to represent, or of the SDP voters, mostly Bosniaks, who brought him to power?<sup>14</sup>

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<sup>6</sup>“Order Temporarily Suspending Certain Decisions of the Central Election Commission of Bosnia and Herzegovina Adopted at its 21st Session Held on 24 March 2011 and any Proceedings Concerning Said Decisions”, 28 March 2011. The High Representative obtained the support of the Peace Implementation Council (PIC) for a draft that would have suspended the CEC decision only while related cases were pending before the Federation Constitutional Court, which was expected to rule within a week. The wording was changed at the last moment and without the consent of all EU embassies, making the order open-ended. Crisis Group interviews, OHR, Bosnian and international officials, Sarajevo, April 2011.

<sup>7</sup>All directors of Federation institutions and public companies have been asked to put their mandates at the government’s disposal. Federation government press statement after the fifth session, 21 April 2011.

<sup>8</sup>Yet the Peace Implementation Council (PIC) acknowledged that “legal questions surrounding the creation of the new Federation government” remained open, and urged their “rapid resolution”, while praising the “work and integrity of the Central Election Commission”, which “maintained an independent stance in the context of complex electoral legislation”. Communiqué, 30 March 2011. The PIC is an ad hoc international body that supports the peace process in Bosnia; its Steering Board (Canada, France, Germany, Italy, Japan, Russia, the UK, U.S., the EU presidency, the European Commission and the Organisation of the Islamic Conference represented by Turkey) advises the High Representative, who also chairs its sessions.

<sup>9</sup>Croat National Assembly Resolution, 19 April 2011, www.hdzbih.org.

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<sup>10</sup>In effect, these reforms took away Croats’ ability to block government action, which had been their main tool for influencing policy. Crisis Group Report, *Federation of Bosnia and Herzegovina: A Parallel Crisis*, op. cit.

<sup>11</sup>Citizens have one vote for the presidency, but may use it for a candidate of any ethnicity. In 2006, many Bosniak voters crossed over and supported Komšić for the Croat seat, in part because he was a Bosnian army veteran and in part because they supported his party, the predominantly Bosniak SDP. Komšić won a plurality with 116,062 votes against Ivo Miro Jović of the HDZ (76,681) and Božo Ljubić of the HDZ 1990 (53,325). In parliamentary voting, the SDP received 131,450 votes.

<sup>12</sup>In 2010, the SDP did much better than in the previous election, and Komšić outperformed his party, winning an absolute majority with 337,065 votes – more than any candidate of any ethnicity – despite the Croats being by far the smallest of the three constituent peoples. His rivals from the two HDZs, Borjana Krišto and Martin Raguž, polled 109,758 and 60,266 respectively.

<sup>13</sup>Since the CEC does not track voter ethnicity, there is no hard evidence on the composition of any party’s electorate, and there are many contradictory claims. SDP opinion polling before the 2010 elections reportedly found that 13 to 14 per cent of Croats supported the party, but that since there are relatively few Croats, they comprised only 6 to 7 per cent of its overall support. Bosniaks are up to 90 per cent of SDP voters. The party puts many non-Bosniaks on its tickets, but voters frequently reject them in favour of Bosniak names further down the electoral list.

<sup>14</sup>Dayton’s system of ethnic quotas is slowly breaking down and can no longer effectively protect the interests of the constituent peoples. The need to reform the state-level constitution to comply with the ruling of the European Court of Human Rights (ECHR) in *Sejdić-Finci vs. Bosnia-Herzegovina* will accelerate this process. In December 2009, the court ruled that several features of Bosnia’s constitution limiting certain posts to members of specific ethnicity violate the rights of minorities.

Bosnian leaders must explore and answer fundamental issues of ethnic representation and rights once the current crisis has been resolved. In September 2010, Crisis Group recommended that the Federation's leaders begin this process as soon as possible, since it is easier to achieve in the entity's simpler political arena, and improving the Federation might pave the way for reform at state level.<sup>15</sup>

The behaviour of the multi-ethnic SDP and its chairman, Zlato Lagumdžija, after the October 2010 elections did not encourage compromise. By informal convention, the chair of the state Council of Ministers rotates among the constituent peoples, and it was the turn of a Croat; however, Lagumdžija initially demanded the post for himself, as leader of the party with the most votes. The SDP also insisted that coalition partners adopt its political platform and sought to exclude the largest Croat and Serb parties from the coalition, appealing to their main rivals. This caused further ethnic homogenisation: the two HDZs and the two largest Serb parties allied in opposition to the SDP.

While neither alliance appears to have enough votes to form a government at the state level, the SDP did have a good chance to form a government in the Federation, where, with its main partner, it held a clear majority in the House of Representatives and needed only enough Croat seats in the House of Peoples to clear procedural hurdles.<sup>16</sup> It was in this context that the two HDZ parties attempted

to block the SDP coalition by deliberately violating the constitution's deadline for electing the latter body.<sup>17</sup>

On 4 March, the SDP-led coalition attempted to circumvent the HDZ blockade by convening the House of Peoples, despite the absence of many delegates.<sup>18</sup> The Central Election Commission notified the OHR that it intended to block this session, since the legal conditions for it had not been met.<sup>19</sup> Intensive talks ensued, mediated by the U.S. and Croatian embassies. Blame for their failure remains in dispute. Lagumdžija reportedly rejected an offer the HDZ chief, Dragan Čović, had accepted; Čović then rejected a similar counter-offer. What is clear is that, by 16 March, the talks had collapsed, even though all sides had agreed on an action platform for the new government and most of the other posts on the table, including (as part of a package deal) the state-level Council of Ministers and important non-ministerial jobs.<sup>20</sup>

On 17 March, the SDP bloc defied the Central Election Commission's advice and convened an incomplete House of Peoples that then carried out the remaining procedural steps for electing the Federation president and naming a government. HDZ officials appealed these acts to the Election Commission and to the Federation Constitutional Court. That court, however, does not have jurisdiction over acts such as elections; its mandate is narrowly restricted to reviewing legislation.<sup>21</sup> The only body legally authorised to decide appeals is the Election Commission, and on 24 March it upheld the appeals, striking down the convening of the House of Peoples and the election of the

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ECHR decision, applications 27996/06 and 34836/06. As a result, Bosnia will have to adopt a new mechanism for electing its presidency and one chamber of its parliament. Politicians' ability to declare any ethnicity they choose also renders the system increasingly absurd, as shown by two important actors in the Federation crisis. A key Croat seat in the House of Peoples is held by Elvira Abdić-Jelenković, the daughter of Fikret Abdić, who held the Bosniak seat of the pre-war Presidency of Bosnia and Herzegovina. The current trade minister, son of a Montenegrin father and Croat mother from Mostar, first took public office in 2010, filling a vacancy reserved for Serbs on the city council – yet in 2011, he was named to a ministry reserved for Croats in the Federation government.

<sup>15</sup> Crisis Group Report, *Federation of Bosnia and Herzegovina: A Parallel Crisis*, op. cit.

<sup>16</sup> The rules are found in the Federation constitution, Articles IV.A.8 and IV.B.2, and the state-level Election Law, Articles 9.13-15 and 10.10-16. The procedure is complex; Bosniak cantonal delegates elect a total of seventeen Bosniaks to the House of Peoples, and Croats and Serbs do the same; minority delegates elect seven of their number to the House of Peoples. This means the House of Peoples fills in gradually, as the cantons meet and hold elections and as the CEC fills in unallocated seats according to a complicated formula.

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<sup>17</sup> According to the Federation constitution, the cantons should have formed their cantonal legislatures and elected delegates to the Federation House of Peoples by 2 December 2010.

<sup>18</sup> The decision to convene the chamber falls to the acting chair, in this case Stjepan Krešić, a dissident member of HDZ 1990 friendly to the SDP coalition.

<sup>19</sup> A Central Election Commission official reported that the High Representative's office consented to the Commission's decision. Crisis Group interview, Sarajevo, 18 April 2011.

<sup>20</sup> The HDZs accepted a U.S.-backed proposal giving them four Croat and one Serb Federation ministries, plus the chair of the state-level Council of Ministers (which fell to a Croat in Bosnia's informal system of rotation), plus two other state-level ministries; the SDP rejected this. The Croats then rejected a reduced offer of four Federation ministries mediated by the High Representative's office. Crisis Group interviews, Bosnian and international officials, Sarajevo and Mostar, April 2011.

<sup>21</sup> Crisis Group interviews, Federation Constitutional Court official, Sarajevo, April 2011. As noted in Crisis Group Report, *Federation of Bosnia and Herzegovina: A Parallel Crisis*, op. cit., the Federation constitution (Article IV.C.4) grants the court jurisdiction only on laws and regulations, not acts such as the composition of the House of Peoples or the election of the president. Crisis Group has recommended broadening that mandate, *ibid.*

president.<sup>22</sup> Before reaching its decision, it had ordered the House of Peoples to provide its records for the impugned session, and the House leadership – in SDP-affiliated hands – refused, arguing that the Election Commission should not act before the Federation’s Constitutional Court had ruled.<sup>23</sup>

Several days later, the High Representative took the same position, suspending the CEC decisions because “it belongs to the [Federation] Constitutional Court ... to pronounce itself”.<sup>24</sup> Yet, the most the Court could offer was a non-binding opinion.<sup>25</sup> The order weakens state authority and undermines the respected CEC.<sup>26</sup> Moreover, suspending a state-level body’s binding decision pending an entity body’s non-binding opinion sets a dangerous precedent, not least because RS could use it to justify nullifying decisions of state-level institutions based on its entity constitution and decisions of its Constitutional Court.<sup>27</sup> A consequence of the order was that appeals of the Election Commission’s decision to the state-level Court of Bosnia and Herzegovina were in effect blocked.<sup>28</sup> The CEC claims

it kept the High Representative informed and requested his legal guidance before issuing its decision, but this was not forthcoming.<sup>29</sup> The negative consequences of the order were compounded when the Federation Constitutional Court announced it would not rule on the case because the HDZ appeals were withdrawn.<sup>30</sup>

There is a relatively simple way to resolve the crisis. As of 25 April, all cantons had complied with the constitution and elected their delegates to the House of Peoples, which can now be fully constituted. The situation in the last hold-out, Canton Ten, was very tense.<sup>31</sup> The HDZ was sure to elect one of the canton’s two Croat delegates; the other represented the balance of power between the HDZ and the SDP’s coalition. Whoever won this last seat would be able to elect the Federation president, form the government and control passage of legislation, as well as have a dominant position in the state-level House of Peoples.<sup>32</sup>

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<sup>22</sup> Decisions 05-1-07-5-218/11 and 05-1-07-5-219/11. The Commission also ordered the cantons that had not elected delegates to the House of Peoples to do so without delay. Staff of the High Representative’s office took part in the Central Election Commission’s deliberations and concurred in its decision; the Commission’s chair briefed the High Representative and his staff on the issues on 23 March. Crisis Group interviews, Central Election Commission and OHR officials, Sarajevo, April 2011.

<sup>23</sup> Central Election Commission decision 05-1-07-5-219/11, 24 March 2011, p. 2.

<sup>24</sup> “Order temporarily suspending certain decisions”, op. cit.

<sup>25</sup> Crisis Group interview, Federation Constitutional Court official, April 2011.

<sup>26</sup> The High Representative’s office claims the suspension order mainly aimed to ensure passage of the 2011 Federation budget. On 26 January, the High Representative already issued a decision providing the Federation financing through 31 March 2011. However, if the Federation parliament had not passed the budget by that date, the acting (HDZ) Federation president could have dissolved it and called new elections.

<sup>27</sup> The High Representative’s order claims the CEC decisions “touch on issues which arise under the [Federation] Constitution and therefore may be subject to the jurisdiction of the [Federation] Constitutional Court and therefore go beyond the Election Law” of the state. “Order temporarily suspending certain decisions”, op. cit.

<sup>28</sup> The 24 March CEC ruling provided a two-working day period during which it could be challenged at the Appellate Division of the Court of Bosnia and Herzegovina, that is, until Tuesday, 29 March. But on Sunday, 27 March, the High Representative issued an order temporarily suspending the Election Commission ruling and “all proceedings concerning” it, in effect suspending recourse to the Court of Bosnia and Herzegovina. OHR denies that it has circumscribed domestic legal remedies. Yet the suspension had the effect of leaving open only recourse to an entity court that lacked constitutional authority to rule on this issue, while foreclosing access to a state institution that had

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that power, and whose actions could be further appealed to the Court of Bosnia and Herzegovina.

<sup>29</sup> It asked the High Representative’s office to confirm that its 2001 and 2007 legal opinions on a similar issue were still valid. The 2007 opinion was based on a specific situation in which there were simply not enough Serb representatives in all ten cantons to fill in the Serb caucus in the House of Peoples. The 2001 opinion pertained to the Federation constitution before it was re-drafted and is thus moot. Crisis Group interviews, local and international legal and constitutional experts, March, April 2011. The CEC repeatedly sought legal advice from the High Representative’s office but was rebuffed with the explanation that the legal department was divided. Crisis Group interviews, OHR staff, 27 April 2011; CEC official, Sarajevo, 18 April 2011.

<sup>30</sup> Both Croat officials (former Federation President Borjana Krišto and Federation Deputy Prime Minister Vjekoslav Bevanda) withdrew their appeals to the Federation Constitutional Court after the High Representative suspended the Central Election Commission’s decision, leaving that suspension without its *raison d’être*. Had they not withdrawn them, Krišto’s appeal would almost certainly have been turned away on grounds the Court lacked jurisdiction; Bevanda, who as deputy prime minister is one of only two officials authorised to request a non-binding opinion from the Court, may have fared better, but would likely have received a split opinion. Nevertheless, several former and acting Federation Constitutional Court justices have told Crisis Group they consider that the House of Peoples was formed prematurely, in a “constitutionally defective” fashion. Crisis Group interviews, Sarajevo, April 2011. “Konstuisanje organa vlasti mora se vršiti u skladu s Ustavom” [Governing bodies must be formed in accordance with the Constitution], press release, Federation of Bosnia and Herzegovina Constitutional Court, 23 January 2007.

<sup>31</sup> Canton Ten styles itself “Herceg-Bosna Canton”; it is also sometimes known as the Livno canton after its main town.

<sup>32</sup> If the HDZ gets both seats, it will have a total of twelve (with its partners) and will be the only party with enough support to nominate the Croat presidential candidate; if the HSP gets one seat and remains allied with the SDP block, it would have six seats, just enough to nominate. Invoking the vital national inter-

An SDP ally won the key seat,<sup>33</sup> though the high stakes may already have cost a life, if the murder of a party official in Livno on 17 April turns out to have been politically motivated.<sup>34</sup> Six days earlier, a bomb had exploded under the car of an HDZ House of Peoples delegate from Zenica canton.<sup>35</sup>

To end the dispute, what is now needed is for:

- the High Representative to lift his suspension without delay, so the CEC decision can take effect;
- the full House of Peoples to meet to elect the Federation president and, with the House of Representatives, name a government that complies with the Federation constitution, while the president and government transact only urgent business until they have been officially inaugurated; and
- the state-level parliament to authorise the CEC to fine and otherwise penalise individuals and parties for flagrant violation of deadlines, and the Federation parliament to create a Federation parliamentary commission to work on reform of the entity and to broaden the Federation Constitutional Court's powers to match those of its RS counterpart, including jurisdiction over appointments and the authority to act on its own initiative.

If this is not done, and the Federation conflict remains unresolved, the entity authorities' legitimacy will be contested: the HDZ parties would likely harass them through use (and abuse) of parliamentary manoeuvres and legal challenges, and the four cantons led by HDZ prime ministers could be expected to cooperate with one another but not with it.<sup>36</sup> Since most police functions are in cantonal jurisdiction, the standoff could eventually turn violent. If the SDP-led government were to take steps to cement its

advantage by shifting jobs from HDZ cadres to its own party members, or by packing the Constitutional Court, the resulting rise in tensions would be dangerous. If the tactical alliance of the HDZ parties with the Serb parties holds, no bloc would have enough votes to form a government at the state level. And the greatest risk for the Federation would come from the RS, if Serbs walked out of state institutions and took the Croats with them.

### III. CRISIS IN REPUBLIKA SRPSKA

On 13 April 2011, as though timed to coincide with the crisis in the Federation and to inflict the strongest possible blow on Bosnia's state institutions, the RS National Assembly called a referendum for mid-June on whether voters "support laws imposed by the High Representative in Bosnia, in particular the laws on Bosnia's state court and prosecution".<sup>37</sup> It also adopted 28 conclusions attacking the legitimacy of the High Representative and many state institutions and declared that the High Representative had "violated the law" by suspending the Central Election Commission's ruling, thus making the Federation authorities "illegitimate".<sup>38</sup>

The Assembly's initiative is a Frankenstein's Monster stitched together from unrelated parts: narrow, technical observations about state-level justice combined with a powerful and dangerous mix of wartime grievance, war-crime denial and desire for impunity.<sup>39</sup> All these judicial and quasi-judicial issues are attached to a sophisticated assault on the High Representative, his office and much of the development of the Bosnian state and its institutions.<sup>40</sup> The Serbs' sense of being unfairly singled out for

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est procedure, which allows representatives of the constituent peoples to halt certain types of legislation, requires two thirds (twelve) of the Croat delegates. See Crisis Group Report, *Federation of Bosnia and Herzegovina: A Parallel Crisis*, op. cit.

<sup>33</sup> The seat went to Josip Perić from the HSP, though it remains to be seen how he will actually vote. Crisis Group interview, senior Croat politician, Mostar, 27 April 2011.

<sup>34</sup> Police charged a Croat active-duty policeman (who later attempted suicide) with the murder of Ante Malić, deputy head of a small party that holds a swing vote in the Canton Ten assembly.

<sup>35</sup> The small device was allegedly placed by members of the People's Party (NS, Narodna stranka), one of the SDP's coalition partners, and may have been intended as intimidation; there were no injuries. Mirza Dajić, Darko Omeragić, "Istraga potvrdila: Ispod automobila Ive Tadića eksplodirala pašteta: Uhapšena četvorica osumnjičenih" [The investigation confirms: plastic explosive exploded under the car of Ivo Tadić: Four suspects arrested], *Oslobodjenje*, 15 April 2011 (online).

<sup>36</sup> Crisis Group interview, senior Croat politician, Mostar, 27 April 2011.

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<sup>37</sup> Conclusions, 13 April 2011. The referendum was adopted by a vote of 66 to 10. The decision was published in the RS Official Gazette on 28 April, and the referendum must be held during the week starting 45 days thereafter, the week of 13 June. Deputies from non-Serb parties in the RS National Assembly chose not to use their vital national interest veto, a mechanism that allows them to delay legislation, but instead urged the High Representative to act against the referendum. Dejan Šajinović, "Nije uloženo veto, slijedi referendum" [Veto was not used, the referendum follows], *Nezavisne novine*, 21 April 2011 (online).

<sup>38</sup> The RS National Assembly president, Igor Radojičić, had already denounced the Federation government as illegitimate and questioned whether "Republika Srpska can work together with something that is a revolutionary committee, which is not a constitutionally formed government and parliament". "Radojičić: Uzdrman temelj ustavnog uređenja BiH" [Radojičić: The constitutional foundations of BiH have been shaken], *Nezavisne novine*, 18 March 2011 (online).

<sup>39</sup> Conclusions 1-6, 19-24 and 26-28 deal with various justice issues, the more important of which are described below.

<sup>40</sup> Conclusions 7-18 and 25 deal mostly with the High Representative's office and its role in creating new state-level compe-

prosecution as war criminals, while their own wartime suffering goes unacknowledged, is mobilised to create political support for a different agenda: to insulate RS from the reach of the state Court of Bosnia and Herzegovina and the High Representative. Combining these multiple and diverse issues into a single, vaguely phrased referendum question is a reckless move that the Assembly should retract.

RS President Milorad Dodik's speech to the Assembly to launch this initiative and the parliamentary debate that followed revived themes of Serbian nationalism from the 1991-1992 descent into war. Charging that "in that war, a holy war for Muslims, jihad against unbelievers, non-Muslims in Bosnia, future Islamic terrorists were trained to murder innocent people worldwide", Dodik used divisive, emotionally-charged language.<sup>41</sup> He claimed that Sarajevo was being Islamicised, and that the leader of Bosnia's Islamic community was pushing "the creation of an Islamic state". The creation of Bosnia itself was a "fraud and a trick", he said, the High Representative openly violated the Dayton Agreement, and the state's highest institutions were "openly subservient" to their international overlords.

By exaggerating and distorting grievances shared by many Serbs, the RS leader pushed Bosnia further towards its breaking point. RS officials blame the Federation for violating many rights of Serbs and Croats in its territory, while ignoring similar or worse practices against Bosniaks and Croats in RS. Sensitive to his entity's popular opinion, Dodik seems deaf to the effect his words and actions are having among Bosniaks, who watch with "a growing anger" and speak more and more readily of violent response.<sup>42</sup>

The RS justifies the referendum saying that the state Court of Bosnia and Herzegovina is biased against Serbs. It would like to repeal a provision that allows the state-level prosecutor and court to take over entity investigations and cases. This is the only way the state prosecutor can indict entity officials for corruption, since the state-level criminal code only covers offences committed by state-level officials. The provision has never been used to take cases from the Federation but has been used 29 times in RS. It survived a challenge in the state-level Constitutional Court in 2008, so can thus only be changed by the state-level Parliamentary Assembly, which is unlikely.

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tencies and transferring entity powers to the state. In many respects, they repeat and amplify conclusions passed by the RS National Assembly in May 2009 and annulled, controversially, by the High Representative in June 2009 (see below).

<sup>41</sup> Speech of President Milorad Dodik to the fourth extraordinary session of the RS National Assembly, 13 April 2011.

<sup>42</sup> Crisis Group interviews, international officials, Sarajevo, April 2011.

Removing this power from the Court of Bosnia and Herzegovina would in effect immunise senior RS officials from prosecution, since no RS court has ever convicted the politically powerful.<sup>43</sup>

The Serbs also argue that the state-level judiciary has not dealt adequately with war crimes committed against Serbs.<sup>44</sup> Many of the most serious, especially those committed by Croatian forces, the Army of Bosnia and Herzegovina and affiliated mujahidin units in summer and fall 1995, remain unprosecuted.<sup>45</sup> Chief Prosecutor Milorad Barašin owes Serbs an explanation, and his office should make the cases a high priority. Yet, withdrawing from the Court of Bosnia and Herzegovina would in effect end prosecution of crimes against Serbs, because while the victims and witnesses are in RS, the majority of suspects live in the Federation (or outside Bosnia). The RS also argues that the state court violates the right to appeal a conviction to a "higher tribunal", since the court hears its own appeals.<sup>46</sup>

The existence of the state court itself ought not to be in dispute. Dayton grants the state responsibility for "international and inter-Entity criminal law enforcement", and human rights standards require judicial recourse against decisions taken by state-level institutions. In theory, these could be handled without recourse to a state-level court, but Bosnians failed to do so in the post-Dayton years, and it was reasonable for the High Representative to step in when he initiated creation of the Court of Bosnia and

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<sup>43</sup> Before taking office as RS prime minister in February 2006, with widespread international support, Dodik was indicted on corruption charges by an RS prosecutor; he was later acquitted.

<sup>44</sup> Serbs have long complained the state-level Court of Bosnia and Herzegovina violates their rights by applying the longer sentences for war crimes mandated by the (post-war) state-level Criminal Code, rather than the more lenient Yugoslav law in effect during the war. While this practice has been upheld in the state-level Constitutional Court, cases pending before the European Court of Human Rights may compel a change.

<sup>45</sup> These include the killing of many Serb prisoners of war by the "El Mujahed" detachment of the Bosnian army in the fall of 1995; the International Criminal Tribunal for the Former Yugoslavia (ICTY, case IT-04-83) confirmed these crimes had been committed but acquitted the army commander Rasim Delić of most charges related to them, apart from responsibility for failing to punish cruel treatment. Delić died while appealing his sentence. Other serious crimes in September and October 1995 were identified publicly as priorities by the state-level Prosecutor's Office as early as 2007 but have not been prosecuted.

<sup>46</sup> This point could be addressed relatively simply by separating the court's appeals division. The Court of Bosnia and Herzegovina has three divisions: criminal (itself divided into three sections: war crimes, organised and economic crimes, and other crimes), administrative and appellate (also divided into three sections).

Herzegovina in 2000.<sup>47</sup> However, the political legitimacy of that court is less robust than its legal grounding. The state-level Constitutional Court only upheld the law on it by a controversial five to four vote in 2001, with the three international judges joining two Bosniaks against four Croat and Serb judges.<sup>48</sup> Likewise, the state-level Parliamentary Assembly unanimously adopted the laws on the Court and Prosecutor's Office in 2002 only after the High Representative had already enacted them; the Assembly was in effect rubber-stamping them.

The RS National Assembly conclusions reassert a longstanding claim that the Bosnian state may only exercise powers expressly granted by Dayton, or "as are agreed by the Entities".<sup>49</sup> In May 2009, the National Assembly issued similar conclusions, denouncing the allegedly unlawful and unconstitutional transfer of competencies from the entities to the state. RS leaders acknowledge that some new state bodies work well and criticise the performance, but not the existence or legitimacy, of others.<sup>50</sup> Yet, in their view, many Bosnian state institutions are unconstitutional and should be abolished.<sup>51</sup> In effect, RS

seeks to return Bosnia to something like its original Dayton design, a less functional union in which most governing tasks would be handled by the entities, with the state playing a coordinating role and exercising few powers.

After a tense standoff, the High Representative annulled the earlier set of conclusions on 20 June 2009, arguing they "formally disregard or challenge" the state-level constitution.<sup>52</sup> While RS complied with that decision, Dodik (then prime minister) announced it would not do so again, and RS has ignored High Representative decisions since.<sup>53</sup> The 2011 conclusions seek to repeat the 2009 manoeuvre, drawing the High Representative into conflict, but with more far-reaching consequences. The conclusions set policy lines for implementation of RS legislation and otherwise guide the entity government; they have no legal effect on state-level officials.<sup>54</sup> Likewise, and at least formally, the referendum would be merely advisory.<sup>55</sup>

Even though the RS National Assembly is not precluded from calling an advisory referendum on the state Court, Prosecutor and High Representative, real reform of the state-level judiciary can only be accomplished through state-level institutions.<sup>56</sup> Politically the referendum is a provocation, a show of strength to bait the international community and test its resolve to defend Bosnia's integrity.<sup>57</sup> The vagueness of the question RS voters are meant

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<sup>47</sup> A working group consisting of state and entity representatives together with the High Representative's office drafted a Law on the Court of Bosnia and Herzegovina in 2000; since the parliament had not yet passed it, the High Representative imposed it on 12 November 2000; the first judges were named, again by the High Representative, on 8 May 2002. But alternatives could have also been tried. For example, the state-level parliament could have passed legislation providing that inter-entity criminal cases be conducted in an entity court under state law.

<sup>48</sup> The case, U-26-01, was decided in 2001; a later case, U-16-08, rejected a narrow challenge to the court's newly-granted power to take over entity cases. Dodik acknowledged the decision was valid but pointed out, "for the people, it's not legitimate" because foreign and Bosniak judges outvoted Croats and Serbs. Crisis Group interview, Banja Luka, 20 April 2011. Yet, the ethnic breakdown of the state-level Constitutional Court is itself fixed by Dayton; rejecting majority court decisions on grounds of ethnic outvoting would, therefore, be a rejection of Dayton.

<sup>49</sup> The state-level constitution, Article III.5(a); see RS National Assembly Conclusions 7 and 8. The cited article also provides that Bosnia shall "assume responsibility for such other matters ... as are necessary to preserve [its] sovereignty, territorial integrity, political independence, and international personality".

<sup>50</sup> The RS government's March 2009 "Information" document listed 68 competencies allegedly transferred from entity to state level. The government admits many of the transfers were done lawfully but complains about the poor performance of the new institutions; in some important areas, such as public procurement – a key source of corruption – and the energy sector, the government plainly wants to end the state's supervisory role.

<sup>51</sup> International officials have noticed a worrying gradual decline in RS police cooperation with Federation and state agencies during the past few months. Crisis Group interview, international official, 21 April 2011.

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<sup>52</sup> "Decision repealing the Conclusions of the Republika Srpska National Assembly No. 01-787/09 and No. 01-788/09 adopted on 14 May 2009", 20 June 2009.

<sup>53</sup> See Crisis Group Briefing, *Bosnia's Dual Crisis*, op. cit., p. 3. Dodik recently confirmed RS would not publish any further decisions of the High Representative in its Official Gazette. Crisis Group interview, Banja Luka, 5 April 2011.

<sup>54</sup> Rule 187 of the RS National Assembly Rules of Procedure. The Assembly can also have "conclusions that establish opinions and views about important issues published in the Official Gazette" of RS.

<sup>55</sup> OHR argues the referendum is legally binding, citing article 36 of the RS Law on Referendums, by which "the competent authority shall pass the relevant acts ... within six months"; yet this article concerns referendums on proposed legislation within the powers of the RS National Assembly, undertaken under article 77 of the RS Constitution, under which the Assembly may "take a decision on a question within its jurisdiction after a prior expression of the citizens in a referendum". The question posed in this referendum cannot give rise to the enactment of valid legislation by the RS National Assembly, and is therefore advisory in character.

<sup>56</sup> If such a referendum shows that its citizens oppose the Court of Bosnia and Herzegovina, RS officials could use constitutional avenues to seek to reform or diminish it; mere opposition would not be equivalent to defiance of the Court's authority or that of the Bosnian state.

<sup>57</sup> Crisis Group interview, Dragan Čavić, leader of the opposition Demokratska stranka (Democratic party), Banja Luka, 21 April 2011.



to answer points to its political intent. Having based his 2006 and 2010 electoral campaigns on the promise of a referendum for RS independence, Dodik consider this to be a good opportunity to deliver on at least a part of his promise. Some fear, however, that he might not stop at that but continue pushing for greater RS autonomy or even full independence.<sup>58</sup>

At least one “prominent member” of the Peace Implementation Council (PIC), the international supervisory group for Dayton, reportedly described the referendum as a “direct attack on the foundations of the Dayton peace agreement, the Constitution and institutions” and stated that the decision “must be annulled”, either by the RS voluntarily or by use of the Bonn powers.<sup>59</sup> The High Representative has promised to intervene quickly to annul the referendum law.<sup>60</sup> The European Union (EU) High Representative for Foreign and Security Policy, Lady Ashton,<sup>61</sup> the PIC Steering Board<sup>62</sup> and the Board of Principals<sup>63</sup> have all expressed grave concern. They have underlined that the RS constitution allows the entity’s National Assembly to organise referendums only on issues within entity jurisdiction, while the Court of Bosnia and Herzegovina and the Prosecutor’s Office are clearly state competencies.

The High Representative, the PIC, the EU and other international actors should not be drawn into the fray, at least until the referendum has actually occurred. Annuling the decision to hold a referendum now could be expected to do little more than increase turnout and tear Bosnia’s constitutional fabric more, as the RS would likely proceed

with the exercise. Serb leaders reportedly threaten to withdraw from all state institutions if the High Representative annuls the referendum or sanctions the RS leadership.<sup>64</sup> RS needs the cooperation of the Central Election Commission to compile voter lists, and a High Representative order could block that, probably delaying the referendum, but it would likely prod RS into setting up its own electoral body, further dividing the state.<sup>65</sup>

The RS leadership should be urged to call off the referendum, but if it proceeds, it should be left with the responsibility of deciding how to react to its electorate’s vote. RS authorities appear to believe that the referendum results will give them a strong but flexible political mandate to start a serious discussion on reform of the Court, the state administration and finally the future of OHR. There are signs the international community is receptive to a discussion on court reform, and it is imperative all local actors participate with a willingness to compromise.<sup>66</sup> Concerns about the appellate process, retroactivity and the slow pace of war crime cases all have merit and can be addressed without weakening the state. But tensions raised by the referendum are likely to make Bosniaks even less interested in complying with Serb demands for change. And RS leaders are likely to insist on ending state jurisdiction over entity criminal justice, a more controversial matter. Talks may thus be stillborn or end in failure.

In that event, RS leaders threaten to withdraw Serbs from state judicial institutions. This would have the effect of making the Court of Bosnia and Herzegovina, the Prosecutor’s Office and state law enforcement agency bodies that execute their orders illegitimate in Serb eyes. The RS National Assembly might then step over the brink, by passing an unconstitutional (and anti-Dayton) law depriving that state court of jurisdiction on RS territory. This would be tantamount to a declaration of independence and a clear violation of the Dayton compact. If implemented, it would destroy the Dayton system and call into question the existence of Bosnia. Should that stage be reached, the international community should intervene, ideally through the UN Security Council, to prevent civil conflict.

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<sup>58</sup> Crisis Group interview, international official, 21 April 2011.

<sup>59</sup> Sead Numanović, “RS u vezi s referendumom: Poništite odluku ili će je Inzko poništiti!” [RS in relation to the referendum: Annul the decision or Inzko will annul it!], *Dnevni Avaz*, 22 April 2011 (online). The “Bonn powers” are the High Representative’s extraordinary governing powers and have been used to appoint and dismiss officials, impose legislation and amend the entities’ constitutions.

<sup>60</sup> “EU envoy in Bosnia addresses controversial vote”, *Balkan Insight*, 29 April 2011 (online); see also, “HR on Points Raised During RSNA Special Session”, OHR press release, 13 April 2011. On 5 May, the High Representative told reporters, “If they do not retract the referendum decision, we will do it instead”. “RS ima sedam dana da poništi odluku” [RS has seven days to annul the decision], [www.b92.net](http://www.b92.net), 5 May 2011.

<sup>61</sup> “The Decision adopted yesterday by the Republika Srpska National Assembly has been a step in the wrong direction. Such unilateral steps are not bringing solutions for the country to move forward. Only mutually agreed reforms provide for much wanted and needed progress”. Statement by the High Representative, Catherine Ashton, on the situation in Bosnia and Herzegovina, Brussels, 14 April, online.

<sup>62</sup> Statement of the PIC Steering Board on the Actions Taken on 13 April by the RS National Assembly, 15 April 2010.

<sup>63</sup> Declaration of Members of the Board of Principals, 18 April 2011.

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<sup>64</sup> Dejan Šajinović, “Srbi će napustiti institucije BiH” [Serbs will abandon BiH institutions], *Nezavisne novine*, 3 May 2011 (online).

<sup>65</sup> Likewise, RS plans to hold its own census in October 2011, since a state-wide census remains blocked in the Bosnian parliament.

<sup>66</sup> The High Representative noted that “if there are questions about the State-level judiciary then they should be debated in the State-level parliament. These institutions are there to be used. Serbs have voted for the law at State-level, they can initiate improvements, again at State-level. This could be welcome”. High Representative Valentin Inzko, “Referendum a dangerous political adventure”, *Blic*, 5 May 2011 (taken from OHR website).

#### IV. CREATING AN INTERNATIONAL STRATEGY

The Bosnia crisis risks deepening in the coming months as all sides are moving back to positions they last took during the war, and the legitimacy of all state-level institutions – including police – is under strain. In these circumstances, local unrest at any one of several approaching flashpoints could spark violence. All involved should recognise the need for maximum restraint.

War commemorations in coming months are among the flashpoints. On 3 May, Serbs from RS and Serbia paid tribute to several Yugoslav National Army soldiers and at least one civilian killed in 1992 skirmishes with Bosnian territorial defence units in Sarajevo and Tuzla during the attempted withdrawals of Yugoslav army convoys. A similar ceremony will be held on 15 May. On 11 July, Bosniaks will mark the sixteenth anniversary of the massacre by RS forces of Bosniak civilians and soldiers withdrawing from the Srebrenica enclave. Bosniaks consider the Orthodox church illegally built near the main memorial centre in Potočari subsequent to the peaceful 2010 commemoration a provocation and may try to pull it down.<sup>67</sup> That could ignite a violent Serb reaction.

But the international community's responses are also contributing to this crisis. The EU and U.S. have been losing their ability to positively influence change in Bosnia since 2006. OHR in particular has become enmeshed in domestic politics, taking responsibility for aspects of basic governance, such as passage of a Federation budget, that local decision-makers should not be allowed to abdicate.

One option for the PIC and High Representative might be to use executive authority to remove political leaders whose actions undermine the Dayton Agreement and threaten the country's territorial integrity, first and foremost RS President Dodik, RS National Assembly President Igor Radojičić, HDZ leader Dragan Čović and HDZ 1990 leader Božo Ljubić.<sup>68</sup> But the High Representative lacks the capacity to enforce such removals or any other decisions on RS territory. This option cannot work unless the PIC is willing to return significant military resources to Bosnia,

which is politically and technically unlikely.<sup>69</sup> Most Croats and Serbs would see that as evidence the PIC had sided with the Bosniak community and the parties it supports, notably the SDP.

Nor with the Dayton consensus fraying and credible concerns arising for Bosnia's integrity and peace is this the time to micro-manage the growing crisis through technical measures. A high-level conference – beyond the executive Steering Board of the PIC – is required to set international policy on a firm foundation. The international community must set its goals in Bosnia, calibrate them to a realistic appraisal of its diminished powers and, above all, extricate itself from its counter-productive entrapment in local politics. The conference needs to occur before the planned mid-June RS referendum and should take a number of decisions and actions:

- ❑ All international stakeholders should reaffirm their commitment to the Dayton Peace Agreement, the constitutions of Bosnia and its two entities and the country's territorial integrity and declare that an entity that attempts to secede from the state will receive no diplomatic recognition or assistance.
- ❑ The PIC should commit to removing the High Representative from local politics and scaling down the activities of his office; to give concrete form to this commitment and contribute thereby to rebuilding the High Representative's credibility as a neutral arbitrator and peace guarantor, it should relocate him and his office outside Bosnia, perhaps in Vienna or Geneva.<sup>70</sup>
- ❑ The PIC should also decide that the High Representative's "Bonn powers", which have allowed him to act in an unlimited executive and legislative capacity, will henceforth only be used in an emergency directly threatening the peace.<sup>71</sup>

<sup>67</sup> Crisis Group interviews, international officials, Sarajevo, April 2011.

<sup>68</sup> In its 13 April statement, the PIC already threatened this action, saying "we would like to remind that the High Representative's authorities, including recourse to executive powers, have a firm basis in the Dayton Agreement and relevant Security Council Resolutions.... We strongly condemn any attempt to undermine those [state] institutions or to question their legitimacy. We will not allow such attempts to succeed".

<sup>69</sup> The European Union has about 1,500 troops (EUFOR) in Bosnia, and participating countries are discussing a further reduction that would significantly reduce readiness, especially in western RS and the Bihać area. Crisis Group interview, senior international military official, Sarajevo, 3 May 2011. Given the sharp increase in tensions and the risk of localised unrest, EUFOR should ensure it can respond to more than one hotspot at a time by deploying additional troops with transport.

<sup>70</sup> The PIC, on 29-30 March, restated the High Representative's office cannot close until Bosnia meets the outstanding "5+2 objectives and conditions", especially resolution of the apportionment of state and defence property agreed between state and entity governments. PIC Steering Board Communique, 29-30 March 2011. While resolution of the property issue is important, it does not require the High Representative's presence and could be handed over to the EU delegation as part of its EU reform agenda.

<sup>71</sup> Crisis Group has recommended this several times, most recently in its report, *Bosnia: Europe's Time to Act*, op. cit.

- The EU should appoint a reinforced, single representative to take the lead in supporting Bosnia on EU matters;<sup>72</sup> give the new representative the authority to impose restrictive measures, such as visa bans and asset freezes, against individuals who undermine the sovereignty, territorial integrity, constitutional order or security of the country; significantly increase its Bosnia delegation's staffing and funding under the Instrument for Pre-accession Assistance (IPA); and finalise transfer of the EU Special Representative's staff from the High Representative's office to the EU delegation.

The EU's 13 May meeting of the Foreign Affairs Council, and ultimately the international conference, should also call on all Bosnian leaders to show their commitment to Dayton, the constitutional order, and peaceful conflict resolution by taking the following steps without delay:

- The RS National Assembly should retract its decision to hold a referendum. If the referendum nevertheless goes ahead, President Dodik should publicly rule out any unilateral acts challenging the state-level Court of Bosnia and Herzegovina, such as withdrawing Serb representatives or rejecting its jurisdiction, which would be tantamount to an entity declaration of independence and likely to plunge Bosnia into civil conflict.
- SDP leader Lagumdžija should allow the Federation parliament to elect the entity president and then name a government that complies with the entity's constitution.
- HDZ leaders should instruct their delegates to participate in the Federation government formation session and cooperate with government institutions. The Croat National Assembly should be limited to a coordinating role.

The UN Security Council, which is scheduled to discuss Bosnia on 9 May, should call for the same actions.

In the event that one or another of the Bosnian sides remains intransigent and refuses the recommended measures, the international community should in the first instance refrain from attempting to impose specific penalties on it but instead make clear that it will have to live with the reactions of the other two domestic parties. However, the steps outlined above for the international and Bosnian stakeholders, taken as a whole, would address the immediate crisis by giving each of the Bosnian sides something

that it could consider enough of a victory to justify pulling back from the brink.

## V. CONCLUSION: MOVING TOWARD RENEWAL OF DAYTON

This would be essential progress but insufficient in itself. Bosnia's leaders must also look beyond the immediate situation and seek fundamental agreement on how Bosniak, Croat and Serb interests can best be served in a united country in which tensions between fair representation, decentralisation and establishment of a functional state are no longer at the forefront.

The Dayton architecture that ended the war and gave Bosnia fifteen years of peaceful development is failing under the strain of domestic attacks and international errors. Each of Bosnia's communities, and the High Representative, believe they are defending "Dayton" against attack, but they come into conflict because each has its own definition of the compact and its implications. Arriving at a consensus on Dayton is the responsibility of the Bosnians – they are the ones who will have to honour it – but their friends can and should help create a context for a renewal of the compact on foundations that will eventually take the country into the European Union.

**Sarajevo/Istanbul/Brussels, 6 May 2011**

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<sup>72</sup> Even amidst the current crisis, implementation of reforms to prepare a credible membership application to the EU is not unrealistic. This would include bringing the state-level constitution into compliance with the European Convention on Human Rights and adopting a State Aid Law and a state-level census law. "Foreign Affairs Council Conclusions on Bosnia and Herzegovina", European Union, 21 March 2011, point 3.