

# Bosnia's Future

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## *Executive Summary*

Bosnia and Herzegovina (BiH, or Bosnia) poses little risk of deadly conflict, but after billions of dollars in foreign aid and intrusive international administration and despite a supportive European neighbourhood, it is slowly spiralling toward disintegration. Its three communities' conflicting goals and interests are a permanent source of crisis, exacerbated by a constitution that meets no group's needs. The political elite enjoys mastery over all government levels and much of the economy, with no practical way for voters to dislodge it. The European Union (EU) imposes tasks BiH cannot fulfil. A countrywide popular uprising torched government buildings and demanded urgent reforms in February 2014, but possible solutions are not politically feasible; those that might be politically feasible seem unlikely to work. Bosnia's leaders, with international support, must begin an urgent search for a new constitutional foundation.

The international project to rebuild Bosnia has had success: war's physical scars are largely gone, and the country is peaceful. The political agonies, however, show the intervention's limits. Years of well-intentioned reforms, imposed or urged, have left a governing structure leaders circumvent, ignore or despise. May's floods left scores dead and thousands homeless, exposing the price of poor governance. With growing frequency, Bosnians ask the questions that preceded the 1992-1995 war: shall it be one country, two, or even three; if one country, shall it have one, two or three constituent entities, and how shall it be governed?

The heart of the problem is in Annex 4 to the Dayton Peace Agreement, known as the constitution (and in several changes imposed by courts and international officials). It defines BiH as a state of two entities, in effect but not explicitly federal, but also the state of three constituent peoples (Bosniaks, Croats, Serbs), and yet, simultaneously, of all citizens. A suffocating layer of ethnic quotas has been added, providing sinecures for officials increasingly remote from the communities they represent. The tensions created by constitutional schizophrenia are pushing BiH to the breaking point. A new design is needed: a normal federation, territorially defined, without a special role for constituent peoples, but responsive to the interests of its three communities and the rights of all citizens.

The state administration's need to reform is made acute by a 2009 decision of the European Court of Human Rights (ECtHR) that in effect requires BiH to change the ethnicity-based way it chooses its chief executive and part of its legislature. Existing proposals try to squeeze the constituent peoples into an ostensibly ethnicity-blind structure on top of which a complicated network of indirect elections would allow party leaders to choose the executive with as little democratic input as possible. The EU and the outside world support this tinkering with Dayton to satisfy the decision, though such proposals have manifestly failed. Bosnians need to rebuild their political structure from the bottom up.

There is no consensus on where to start, but Bosnia may have to break from its political system based on constituent peoples and their rights. Crisis Group has not reached this conclusion lightly. It reflects long experience and observation that no one has been able to frame a broadly attractive vision on the existing flawed basis. With stresses and frustrations accumulating in all communities, Bosnia must con-

ceive new foundations to survive. Agreement may take years and much experimentation and debate, but the search should begin.

BiH is home to three political communities: those primarily loyal to the Bosnian state, usually but not always Bosniaks; those loyal to Republika Srpska (RS), usually Serbs; and those desirous of Croat self-government, usually Croats. Giving the Croats what they want, their own entity to make a three-entity Bosnia, is absolutely rejected by Bosniaks. Building virtual representative units for the three communities, possibly with new emphasis on municipalities as basic building blocks, is intellectually plausible but requires a leap of faith few seem ready to take. A purely civic state is inconceivable to Serbs and Croats.

Neither leaders nor civil society have deeply explored alternatives to three constituent peoples in two entities; any consensus would take time. Nevertheless, the goal should be clear. The head of state should reflect Bosnia's diversity, something a collective does better than an individual. The same body could be the executive government. Some decisions should require consensus, others a majority. All three communities should be represented, not necessarily in equal numbers. There should be no ethnic quotas; representation should reflect self-defined regions and all their voters. Poorly performing, unnecessary state agencies and ministries should be slimmed or abolished, with powers reverting to the entities; but the state would need new ministries and agencies required for EU membership. The ten cantons in the larger of BiH's two entities, the Federation (FBiH), are an underperforming, superfluous layer. They could be abolished, their powers divided between the municipalities and the entity government.

Political culture is part of the problem; an informal "Sextet" of party leaders in effect controls government and much of the economy. A multi-ethnic coalition persists, election to election, with only minor adjustments. Membership is earned by winning opaque intra-party competitions in which voters have little say. Change in this system can only come from within: Bosnians should join parties and participate in genuine leadership contests. Sextet power is further buttressed by control of hiring, investment and commercial decisions at state-owned firms, a situation that chokes private investment and growth.

Bosnia is unimaginable without the work of international officials who did much to shape political institutions and implement peace, but the international community has become more obstacle than help. BiH is trapped in a cycle of poorly thought-out, internationally-imposed tasks designed to show leaders' readiness to take responsibility but that put that moment forever out of reach. The only way to encourage leaders to take responsibility is to treat the country normally, without extraneous tests or High Representatives. The EU could signal a new start by stating it will receive a membership application – the first of many steps on the long accession road. It should then be an engaged, not over-didactic partner in Bosnia's search for a way to disentangle the constitutional knot.

## *Recommendations*

*To set the country on a firm new constitutional foundation*

**To the government of Bosnia and Herzegovina (BiH), the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS):**

1. Initiate a debate on fundamental reform.
2. Study elimination of the ten FBiH cantons and transfer of their responsibilities and revenue to municipalities and entity or state governments.
3. Set up, where possible, administrative districts for courts and police that match the boundaries of municipalities.

*To build a responsive, transparent government and foster sustainable economic growth*

**To the citizens of Bosnia and Herzegovina:**

4. Join political parties and take an active role in setting their agendas and electing their leaders.
5. Participate in civil society organisations whose aim is party democratisation.

**To the international community, notably the EU, U.S. and donors:**

6. Sponsor training programs and other initiatives to boost party membership and democratisation.

*To support Bosnia's evolution toward a modern federation on the path to EU and NATO membership*

**To the Presidency of Bosnia and Herzegovina:**

7. Submit an application for EU membership.
8. Direct the defence ministry to prepare a Membership Action Plan for NATO and submit it on completion.

**To the EU:**

9. Welcome an immediate membership application, with a view to opening negotiations at the earliest practical date.
10. Support the reform effort by offering expertise on European models of federalism and community participation in states with multiple language areas.

**To the members of the Peace Implementation Council (PIC), in particular the EU and U.S.:**

11. Treat Bosnia as a normal country by closing the Office of the High Representative, dissolving the PIC and sponsoring a UN Security Council resolution welcoming these steps.

**Sarajevo/Brussels, 10 July 2014**

# Bosnia's Future

## I. Introduction

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Bosnia and Herzegovina has changed almost beyond recognition since war ended with the 1995 Dayton Peace Agreement.<sup>1</sup> Crisis Group's early reports tackled issues like shooting, rioting and arson targeting refugees and local minorities; grossly fraudulent elections; war criminals entrenched at all levels of government; wartime shadow governments running much of the country; three hostile armies and militarised police forces; no control over borders, no common documents and no free movement.<sup>2</sup> International agencies seemed resigned to failure almost as soon as they arrived:

... [with] one international agency after another reporting failure to advance against a wall of nationalist prevarication and procrastination. Some show signs of developing an "exit syndrome", regarding partition as inevitable and counting the days to their own departure.<sup>3</sup>

Three years after the peace agreement the situation was still awful:

It is no exaggeration to state that to date domestic political institutions have failed to function; that every issue has been viewed in "zero-sum" terms; and that almost all "breakthroughs" have required disproportionate, indeed often ridiculous, amounts of time and effort on the part of the international community. In practice, the political impasse has created a position in which, on one hand, most public offices have to be filled simultaneously by three Bosnians (a Serb, Croat and Bosnia[k]); and, on the other hand, these Bosnians do less and less work of any substance because they cannot reach accord.<sup>4</sup>

Add to this the near total destruction of the country's productive capacity and the devastation of its urban infrastructure, and the result was a truly bleak picture.

Today Bosnia is at peace, with minimal threat of relapse into armed conflict. Its standard of living has caught up with the neighbourhood; its cities, towns, roads,

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<sup>1</sup> Throughout this report, the state of Bosnia and Herzegovina is also referred to as BiH, "the state", or Bosnia; the bigger of its two constituent entities, the Federation of Bosnia and Herzegovina, is referred to as FBiH or the Federation, its second constituent entity, Republika Srpska, as RS. From 1992 to 1995 it was called the Republic of Bosnia and Herzegovina, a name many Serbs and some Croats associate with territory controlled by the Sarajevo-based government; "Republic" was dropped from at the Dayton peace conference.

<sup>2</sup> See, for instance, Crisis Group Europe Reports N°19, *Grave Situation in Mostar: Robust Response Required*, 13 February 1997; N°23, *Going Nowhere Fast: Refugees and Internally Displaced Persons in Bosnia and Herzegovina*, 1 May 1997; N°24, *House Burnings: Obstruction of the Right to Return in Drvar*, 16 June 1997; and N°103, *War Criminals in Bosnia's Republika Srpska: Who are the People in Your Neighbourhood?*, 2 November 2000.

<sup>3</sup> Crisis Group Europe Report N°5, *Bosnia Policy Framework*, 30 April 1996.

<sup>4</sup> Crisis Group Europe Report N°47, *State of the Balkans*, 4 November 1998.

bridges, mosques and churches have been rebuilt or repaired.<sup>5</sup> Former enemies socialise across the once-impassable line between wartime rivals without a second thought.<sup>6</sup> Common institutions and services like the border police, indirect tax authority, passports, licence plates, currency, parliament and diplomatic corps are widely accepted. Others, such as the state investigative body and court, arouse rhetorical opposition but little practical resistance.

In this sense Bosnia is an example of successful conflict resolution, going from hellish wartime conditions to near-normalcy in less than a generation. The cost has been great: three years after the end of war Crisis Group estimated the annual price of international missions in Bosnia at \$9 billion.<sup>7</sup> Aid by 2010 may have totalled \$14 billion;<sup>8</sup> the U.S. share alone was over \$2 billion.<sup>9</sup> Sundry other costs add billions more.<sup>10</sup> There are intangible costs too; for many years international officials in effect ran the country, undermining the national government.

Bosnia has overcome many challenges, sometimes against odds. NATO's decision to maintain its Stabilisation Force (SFOR) secured a peaceful environment and gave civilian implementation a needed boost.<sup>11</sup> The international community overcame its resistance to arresting and indicting persons for war crimes, proving that threats of reprisal and fears of the peace deal's collapse were exaggerated.<sup>12</sup> Massive fraud in internationally-supervised elections was overcome.<sup>13</sup> Breakdown over the mixed-population Brčko District linking the two halves of RS – an issue left open at Dayton – was avoided by a judgment that denied it to either RS or FBiH and became a keystone for Bosnia's functionality.<sup>14</sup> Property restitution and modest return have gradually become realities.<sup>15</sup> The media has achieved a measure of independence.<sup>16</sup> Mostar, still-

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<sup>5</sup> According to World Bank data, Bosnia's per capita Gross National Income rose 460 per cent from 1996 to 2012 (\$830 to \$4,650). Only Bulgaria (almost 500 per cent) had a higher rate, due in part to EU membership benefits; regionally, Macedonia was closest (125 per cent, to \$4,700).

<sup>6</sup> Crisis Group interview, Council of Ministers member, Sarajevo, 5 June 2013.

<sup>7</sup> Crisis Group Report, *State of the Balkans*, op. cit. Most of this would have paid for the NATO-led Implementation Force (IFOR) and the follow-up Stabilisation Force (SFOR).

<sup>8</sup> Sofia Sebastian, "Assessing Democracy Assistance: Bosnia", FRIDE Project Report, May 2010.

<sup>9</sup> Steven Woehrel, "Bosnia and Herzegovina: Current Issues and U.S. Policy", Congressional Research Service, 24 January 2013.

<sup>10</sup> For example, the UN International Criminal Tribunal for the former Yugoslavia has cost about \$2 billion from 1993 to 2014, much spent dealing with war crimes in Bosnia.

<sup>11</sup> Crisis Group Europe Reports N°3, *Security, Repatriation, Elections and Reconstruction*, 1 April 1996; N°4, *Military Security Post-IFOR*, 15 April 1996; and N°28, *A Peace or Just a Cease-Fire: The Military Equation in Post-Dayton Bosnia*, 15 December 1997.

<sup>12</sup> Crisis Group Report *Bosnia Policy Framework*, op. cit.; and Europe Report N°11, *Inside Radovan's Republika: The Struggle for Power in Republika Srpska*, 11 July 1996.

<sup>13</sup> Crisis Group Europe Reports N°8, *Elections in Mostar*, 28 May 1996; N°9, *ICG Statement on Elections in Bosnia*, 5 June 1996; N°12, *Lessons from Mostar*, 13 July 1996; N°14, *Why the Bosnian Elections Must be Postponed*, 14 August 1996; and N°16, *Elections in Bosnia and Herzegovina*, 22 September 1996.

<sup>14</sup> See Crisis Group Europe Reports N°15, *Brčko Arbitration*, 3 September 1996; N°18, *Brčko Arbitration: Proposal for Peace*, 20 January 1997; and N°55, *Brčko: A Comprehensive Solution*, 2 February 1999; also N°31, *Brčko: What Bosnia Could Be*, 10 February 1998.

<sup>15</sup> Crisis Group Europe Report N°23, *Going Nowhere Fast: Refugees and Internally Displaced Persons in Bosnia and Herzegovina*, 1 May 1997; see also N°29, *A Hollow Promise? Return of Bosnian Serb Displaced Persons to Drvar*, 19 January 1998; N°30, *Rebuilding a Multi-Ethnic Sarajevo: The Need for Minority Returns*, 2 February 1998; and N°73, *Preventing Minority Return in Bosnia and Herzegovina: The Anatomy of Hate and Fear*, 2 August 1999.

divided and without an elected government for almost two years, has survived multiple crises. Reform of the Federation is now on the agenda, and RS and the international community have managed to avoid an open breakdown in ties.<sup>17</sup>

Although Bosnia is at peace, it is still failing to catch up with its neighbours. Its success or failure matters a great deal to its people, but it should also matter to anyone interested in the durability of peace in divided, post-conflict societies. Many now-common therapies were first used there, while others were tried and rejected. The patient is in remission, but survival is uncertain. A veteran of Crisis Group's BiH work described listening to recent radio broadcasts:

[The] discourse filling the radio waves for almost two hours sounded like the country I was driving through had just exited a war the day before ... or was about to enter a new one the day after ... locked in a horrible limbo that was neither war nor peace.<sup>18</sup>

A minor technical flaw almost delayed the general election scheduled for October 2014.<sup>19</sup> Its people agree the current state structure is unacceptable, but for opposite reasons. Some see the Dayton constitution as a shackle that must be broken for Bosnia to thrive, while others hope the country will die a natural death and fall apart. Domestic and international actors see an urgent need for deep reforms but little capacity to undertake them. It is hard to imagine Bosnia in anything like its current form achieving its ambition of NATO and EU membership.

After years of drowsy grumbling, Bosnia erupted in February 2014. On 5 February, police manhandled protesters in Tuzla, sparking much larger demonstrations there and elsewhere. Two days later, protesters torched cantonal government offices in Tuzla, Mostar and Sarajevo; burned the state Presidency building (inadvertently destroying part of the Bosnian archive stored there); and burned the offices of the leading Croat and Bosniak parties in Mostar. Demonstrators pitched officials' cars into the river in Zenica; governments fell in Bihać, Tuzla and two other cantons. Demonstrations continued the next week, as popular committees organised and drafted demands for root and branch reform.

Protesters quickly adopted a novel institutional framework, the "citizens' plenum", an open meeting at which all comers may speak for two minutes and which formulates demands.<sup>20</sup> The demands are far-reaching: mass resignations, prosecution of corrupt officials, installation of non-party technocratic government and, poignantly, the return of lost factory jobs and better benefits. Participants describe early meetings

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<sup>16</sup> Crisis Group Report *Bosnia Policy Framework*, op. cit.; also, Europe Report N°21, *Media in Bosnia and Herzegovina: How International Support Can Be More Effective*, 18 March 1997.

<sup>17</sup> Crisis Group Europe Briefing N°54, *Bosnia: A Test of Political Maturity in Mostar*, 27 July 2009; Report N°209, *Federation of Bosnia and Herzegovina – A Parallel Crisis*, 28 September 2010; and Briefing N°62, *Bosnia: State Institutions Under Attack*, 6 May 2011.

<sup>18</sup> Srećko Latal, "Neither war nor peace in Bosnia", *Balkan Insight*, 27 January 2014 (online).

<sup>19</sup> Elvira M. Jukić, "Bosnia changes law to call 2014 elections", *Balkan Insight*, 24 January 2014 (online). The Election Law had to be amended after RS changed the names of several municipalities in compliance with an earlier Constitutional Court decision.

<sup>20</sup> The largest plenums were in Sarajevo and Tuzla; others were in Brčko, Bugojno, Cazin, Fojnica, Goražde, Konjic, Mostar, Orašje and Zenica. See [www.bhplenum.info](http://www.bhplenum.info) for their demands [in Bosnian]. There have been protests but no organised plenums in RS.



as a form of “group therapy”.<sup>21</sup> For many, the plenums are deeply emotional affirmations of national unity and a homespun, nostalgic patriotism.<sup>22</sup> “This is the first time after 22 years that Bosnia and Herzegovina is unified”, said a leading participant.<sup>23</sup> Yet, the plenums achieved only modest results and have gradually faded.

Poverty and joblessness are the impetus for this “Bosnian spring”, but the protests also reveal a deep rage at the governing class without distinction of party or nationality. The largest were in the Bosniak heartlands of central Bosnia, but RS had a number, and Mostar’s seems to have been a joint Croat-Bosniak affair.<sup>24</sup> Though the future of the movement is uncertain, it has shown the depth of disaffection, the gulf between people and leaders and the incapacity of Bosnia’s institutions to respond. It is a radical challenge that explicitly champions direct democracy and draws its legitimacy from consistent mass protests.<sup>25</sup> It is not yet possible to say to what extent the plenums really speak for “the people”, but they show how comprehensively the Bosnian system has failed.

In May, the cumulative dangers of chronically poor regulatory oversight, bad governance and political infighting were vividly illustrated by devastating floods that swept away thousands of homes in Bosnia (and Serbia), as river after river burst its banks. The affected regions and their neighbours showed solidarity across ethnic lines, but government response mixed hysteria and incompetence. Leaders blamed one another while the country drowned.<sup>26</sup>

The treatments imposed from abroad at Dayton and afterwards have not worked as expected; the simplest tasks in today’s political climate require Herculean effort. The absence of vision is itself an obstacle. Without a sense of what Bosnia could be in the future, of how it could better satisfy the wishes of its three communities, reform initiatives are pointless. Crisis Group has written 80 reports and briefing papers on the Balkans over nearly eighteen years. This paper – the last presently planned in the series – offers its diagnosis of the basic troubles and some thoughts on the prognosis that might see Bosnia through to a future as a fully normal state.

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<sup>21</sup> “Plenum građanki i građana TK 22.02.2014, Tuzla” [Tuzla canton citizens’ plenum, Tuzla], video, Youtube, 22 February 2014, [www.youtube.com/watch?v=4kzoY2Wg6S4](http://www.youtube.com/watch?v=4kzoY2Wg6S4).

<sup>22</sup> From the start, protesters avoided national or ethnic issues. Some symbolism (the terms “plenum” and “comrades”, championing workers’ rights against government) harkened back to the communist system that many recall fondly, not least because of subsequent mayhem.

<sup>23</sup> “Plenum građanki i građana”, op. cit.

<sup>24</sup> In addition to plenum towns listed above, Banja Luka, Bihać, Bijeljina (protest/counter-protest), Donji Vakuf, Maglaj, Orašje, Prijedor, Tešanj, Travnik and Zavidovići had protests. The blog [www.bhprotestfiles.wordpress.com](http://www.bhprotestfiles.wordpress.com) collects information on them and their demands.

<sup>25</sup> Comment at European Fund for the Balkans conference, plenum member, 24 February 2014.

<sup>26</sup> Edward P. Joseph and Srećko Latal, “Bosnia’s other calamity”, *The New York Times*, 20 May 2014. For reaction in Serbia, see Milica Jovanović, “Serbia’s leaders have generated a tidal wave of panic”, *Balkan Insight*, 20 May 2014.

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## II. The Quest for Identity

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“There is a limit to how long a human being can deal with Bosnia”, a senior EU official admitted after years of frustration.<sup>27</sup> There is so much effort, so little to show for it. The same problems come up repeatedly. Domestic political rhetoric is stuck somewhere in the 1990s. State institutions need desperate circumstances or heroic outside pressure to coax them into completing basic tasks like issuing ID cards, opening border checkpoints or holding elections. Each actor has his stock of villains to blame, and they are always the same. Bosniaks complain the state is weak and prone to paralysis, blaming Serb and Croat ethnic nationalism and separatism, and demand justice for atrocities and genocide. Serbs light candles at the shrine of “the original Dayton”, blaming foreigners and Sarajevo for subverting RS rights and dreaming of independence. Croats demand equality – a third entity or its equivalent – and accuse Bosniaks of pushing them around.<sup>28</sup>

Debate on state structures and international policy toward them is equally sterile, with three related root problems. First, Bosnia is trapped in a cycle of internationally-imposed labours for which it has little aptitude, most recently the need to amend its constitution pursuant to a European Court of Human Rights (ECtHR) decision.<sup>29</sup> Secondly, its population is divided by conflicting visions of the state. Bosnian patriots – those seeking a unified, civic BiH state<sup>30</sup> – paint an attractive picture of a multi-ethnic state of equal citizens in which at least some war injuries (ethnic cleansing, separatism, genocide) may be healed. Yet, many Croats and Serbs consider this a disguise for a state that would destroy their protections, convert them to marginalised minorities and, in effect, disenfranchise them. A state without guaranteed equality for its three peoples, they argue, is worse than none at all.

Thirdly, the state is divided constitutionally in an unstable way into two entities, but also into three peoples. In 2002, Crisis Group observed that “[t]he model of three constituent peoples and two entities can be pushed in one of two directions: either toward recognising the right of the third and smallest people, the Croats, to have their own mini-state, or toward making both entities truly and effectively multinational.”<sup>31</sup> Bosnia has avoided this choice – without coming up with a clear alternative – through a mix of procrastination and internationally-imposed piecemeal reform. The dilemma remains and may be more acute.

Constitutional reform; citizenship or nationality; three pieces or two: these are the strands of the rope strangling Bosnia. Its political tradition has no resources sharp

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<sup>27</sup> Crisis Group interview, Sarajevo, May 2012.

<sup>28</sup> Results of Bosnia's first post-war census, in October 2013, are not available. Crisis Group estimates the population as roughly one half Bosniak or otherwise undifferentiated Bosnian, one third Serb and one sixth Croat, with minorities a few per cent. Most of RS is Serb; the FBiH is some three quarters Bosniak/Bosnian, one fifth Croat, with small numbers of Serbs and others.

<sup>29</sup> *Sejdić and Finci v. Bosnia and Herzegovina*, nos. 27996/06 and 34836/06, judgment of 22 December 2009. Sejdić, a Roma, and Finci, a Jew, sued BiH for excluding them from elections to the Presidency and House of Peoples, bodies limited to the “constituent peoples” (Bosniaks, Croats, Serbs). The Court found that Bosnia's constitution violates articles of the European Convention on Human Rights and its additional protocols.

<sup>30</sup> In this report, the term “Bosnian patriots” describes those, mainly Bosniaks, with primary loyalty to the Bosnian state.

<sup>31</sup> Crisis Group Europe Report N°128, *Implementing Equality: The “Constituent Peoples” Decision in Bosnia & Herzegovina*, 16 April 2002, p. 25.

enough to cut through them. Yet, BiH is not unique: Europe has many divided societies with recent histories as bloody or oppressive. Exasperated diplomats note that twenty years after the Second World War, former enemies were absorbed in European unification. In Bosnia, leaders still debate the issues that arose during their war or before. What is it about this country that causes it to struggle so?

The problem lies in how the Bosnians define their country and themselves. The constitutional phrasing “Bosnia[k]s, Croats, and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina” is correct but misleading.<sup>32</sup> There are five separate identities in that preambular clause: three peoples, all of whom are citizens, and (capital “O”) Others, citizens who do not belong to a people. The term “constituent people” is supremely important but without exact definition.<sup>33</sup> Each constituent people is a nation in the usual European sense, roughly a group of people with shared ethnic, cultural or linguistic ties and a claim to sovereignty.<sup>34</sup>

Citizenship is always dual, entity and state;<sup>35</sup> some feel passionately it must outweigh ethnic belonging; others feel as strongly that ethnic identity is trump. At first glance, Bosnia is a tangled mess of competing, layered identities. At second glance, all talk is about the need for a functional state versus entity prerogatives, rights of citizens and minorities versus rights of peoples.

Yet, the noise and confusion are misleading. The reality is simpler: Bosnia has three, and only three, political communities that are not precisely identical to the three constituent peoples named in the constitution. Each is loyal to a set of political institutions that represent it, centred on a capital city. Bosnian patriots, the largest community, are loyal to the BiH state and Sarajevo. They disagree on much but want that state to thrive, as they see in it the representation and protection of their interests. The second community is loyal to RS and Banja Luka; it wants the best for that entity and dreams of its independence. The third and smallest community lacks a clear institutional focus but has a capital of sorts in Mostar and an aspiration to some kind of self-rule for Croat-populated areas.

Political communities overlap with constituent peoples but are not identical. The constituent peoples are nations in the formal, ethnic sense, and the political communities are nations in the informal, civic sense. Membership in a people is understood to

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<sup>32</sup> Dayton Peace Agreement, Annex 4: Constitution of Bosnia and Herzegovina. Its 1990 constitution defined the republic of Bosnia and Herzegovina inherited from Yugoslavia as “a sovereign and independent state of equal citizens, the peoples of Bosnia and Herzegovina – Muslims, Serbs, Croats, and members of other peoples who reside there”. See below for “Others”.

<sup>33</sup> In a landmark case that turned on its meaning, Constitutional Court Judge Hans Danelius wrote that “in the minds of many people [it] has a symbolic significance and is emotionally coloured”, but it “can hardly be said to have a clear and precise meaning”. Concurring opinion on Partial Decision of the Constitutional Court, no. 5/98, 1 July 2000, p. 43. The term arose during the war, in international agreements and peace plans. Joseph Marko, “Bosnia and Herzegovina: Multi-Ethnic or Multinational?” in “Societies in Conflict: the contribution of law and democracy to conflict resolution”, European Commission for Democracy through Law, 2000, p. 9.

<sup>34</sup> See Ivo Banac, *The National Question in Yugoslavia: Origins, History, Politics* (Ithaca, 1988). The communist regime actively promoted national identity in Yugoslavia and elsewhere; Yuri Slezkine, “The USSR as a Communal Apartment, or How a Socialist State Promoted Ethnic Particularism”, *Slavic Review* vol.53, no.2 (1994), pp. 414-452.

<sup>35</sup> It is impossible to be “only” Bosnian: a person who loses citizenship in one entity without gaining it in the other loses state citizenship. Swapping between entity citizenships is easy: the requirement is residence; changing citizenship is optional. Law on Citizenship (1997), Art. 27.

be objective, bestowed by birth, though neither the peoples themselves nor membership of these peoples are defined or regulated. Whatever his or her ancestry, a Bosnian may claim membership in any of the three peoples or any minority and may change identity at any time.<sup>36</sup> Belonging to a political community is strictly voluntary. Yet, the sense of loyalty is exclusive: no one is left out; there are no minorities or dual identities.

Whatever the details of their family trees, everyone in Bosnia looks to either Sarajevo, Banja Luka or Mostar as their focus of political activity and figurative capital. Nor are they based on heredity, culture or specific territory. Most but not all Bosniaks are Bosnian patriots, but so are many Croats and Serbs. Most Serbs are loyal primarily to RS, joined by smaller numbers of Bosniaks and Croats who feel at home there. Most Croats but also some Serbs and Bosniaks gravitate to Mostar. Ethnic minorities thrive in all three communities. Each community's adherents range from apathetic to fanatical.

This fact is widely understood but seldom openly acknowledged. Even moderate Croats, for example, refer to their nominal representative on the state presidency, Željko Komšić, as its "second Bosniak member". They do not mean he has converted to Islam or has covert Bosniak parentage; they do not question his Croat national identity. Rather, they know he is loyal to Bosnia, not the Croat political project, so is not one of them. Bosniaks label kin in the RS administration "Dodik's Bosniaks";<sup>37</sup> Banja Luka complains about "Sarajevo Serbs".

Yet, at root and despite the long debates over nationhood among the South Slavs, the Bosnian crisis is about politics, not personal identity or ethnicity. The mismatch between constituent peoples and political communities is unsurprising, but in BiH's constitutional system it makes room for mischief. Loyalty to a political community determines basic political orientation, but membership in a constituent people brings specific benefits and supports claims to general rights. Employment in state institutions follows a constitutionally mandated quota system.<sup>38</sup>

Many executive and legislative posts are similarly reserved for the constituent peoples and others.<sup>39</sup> This allows each political community to game the system, wherever it is a local majority, by tactically positioning its supporters of various ethnicities in government seats assigned by quota. Minority representatives who belong to a

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<sup>36</sup> "[N]one of the seven current representatives of the 'others' in FBiH parliament belongs to a minority; all identify as 'Bosnian', 'Muslim', 'Bosnian-Herzegovinian' or simply as undifferentiated 'other'". Crisis Group Europe Briefing N°68, *Bosnia's Gordian Knot: Constitutional Reform*, 12 July 2012, p. 7.

<sup>37</sup> Milorad Dodik is the RS president.

<sup>38</sup> Art. 9(3) of the constitution requires government appointments to be "generally representative of the peoples of Bosnia and Herzegovina".

<sup>39</sup> Quotas are not limited to the constituent peoples; posts are reserved for other groups too. Bosnian law recognises seventeen minorities (Albanians, Montenegrins, Roma, Jews, etc.) and leaves room for other, similar groups to claim such status. Law on Minorities (2003) cited in Edin Hodžić and Nenad Stojanović (eds.), *New/Old Constitutional Engineering: Challenges and Implications of the European Court of Human Rights Decision in the Case of Sejdić and Finci v. BiH* (Sarajevo, 2011), p. 49, n.97. These minorities are only a few per cent of BiH's population. Montenegrins (0.23 per cent) were the most numerous of the seventeen in 1991, the last available census, Ruthenians (0.01) the smallest.

large party generally vote on party lines, not on behalf of their ethnic group.<sup>40</sup> Each people has a right to protect its “vital national interests” by blocking government acts.<sup>41</sup>

Each political community corresponds to one of the political projects – a strong Bosnia, a strong RS or a Croat unit – and their competition constitutes Bosnia's political struggle. Each has its own political parties, civil society organisations, media and patron-client networks. Individuals, factions and parties within a community fight over issues, spoils and the like but agree on the overall political agenda and cooperate easily when it is threatened.<sup>42</sup> Multi-ethnic parties exist, but none cross the divide between the political communities.<sup>43</sup> There is little variation on basic national issues within each political community's leadership. Whether in power or opposition, whether praised as progressive or criticised as nationalistic and corrupt, leaders agree on each community's core issues.

Unlike the constituent peoples, the political communities are intolerant of organised groups committed to a different political project but welcome outsiders from minorities or other ethnic groups willing to commit to their cause. This allows leaders to drape a multi-ethnic cloth over a monolithic political goal. RS leaders can conceal their overwhelmingly Serb appeal under a veneer of ostensibly non-ethnic institutions studded with non-Serbs.<sup>44</sup> Bosnian patriots can present themselves as above ethnic considerations and champions of equality:

We consider the ethnic, along with all other identities of Bosnians and Herzegovinians, to be a question of personal choice and thus [that it] must not be the basis for any kind of discrimination or judgment. We hold that each person should have equal access to the full spectrum of basic rights and freedoms, that is, that all social and political functions and positions must be open to all on the basis of equal opportunity, as with professional positions.<sup>45</sup>

A BiH patriotic current runs through civil society: a coalition of 24 NGOs is running a campaign urging “Be a Citizen” above all and calling for abolition of ethnic quotas.<sup>46</sup>

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<sup>40</sup> In 2013 there were eleven Roma members of municipal assemblies, but only four independent or citizens' list candidates; majority parties elected the other seven. Crisis Group interview, Roma community leader, Sarajevo, 5 June 2013.

<sup>41</sup> For a description of the vital national interest veto, see Crisis Group Report, *A Parallel Crisis*, op. cit., p. 6.

<sup>42</sup> Crisis Group interviews, current and ex-Council of Ministers members, Banja Luka, Sarajevo, June 2013.

<sup>43</sup> The Social Democratic Party (Socijaldemokratska partija, SDP) is the main explicitly multi-ethnic party; others include the Democratic Front (Demokratska fronta, DF); “Our party” (Naša stranka), the Social Democratic Union (Socijaldemokratskaunija, SDU) and the Party for BiH (Stranka za BiH, SBiH). All have Croats and Serbs in their top leadership and appeal to Croat and Serb voters, with modest success, but are squarely within the Bosnian patriotic community.

<sup>44</sup> There has been one experiment in founding a state on the citizenship principle in Bosnia, that of RS between 1991 and 2002. Its constitution had “no provisions establishing any kind of ethnic representation or participation in the supreme organs of the state or in judicial or administrative machinery. In ordinary acts and in practice, the end result of this ‘ethnically indifferent’ Constitution based on the citizenship principle is, however, that only Serbs are to be found in the supreme organs, courts and police force”. Joseph Marko, “Bosnia and Herzegovina: Multi-Ethnic or Multinational?”, op. cit., p. 111.

<sup>45</sup> “Manifest Demokratske fronte” [Manifesto of the Democratic Front Party], 7 April 2013.

<sup>46</sup> Information on the Jednakost [Equality] coalition and its campaign is on its website, [www.budigradjanin-ka.org](http://www.budigradjanin-ka.org).

Appealing rhetoric and a multi-ethnic leadership obscure the reality of a political program that other communities reject as majoritarian. This can be seen in some of the few places in Bosnia where different political communities rub against one another in close proximity, often with high tension. Mostar is a good example: claims it is the “Croatian capital city” enrage its many Bosnian patriots. Srebrenica, site of the 1995 genocide, has seen several conflicts, including attempts to remove it from RS.

Members of each political community agree on one core point and disagree on much else, often bitterly. In the struggle for patronage or power they ally tactically with politicians loyal to incompatible projects against members of their own loyalty community. Some Bosnian patriots view BiH’s multi-ethnic identity as supreme; others see BiH as a vehicle for Bosniak national aspirations; both want to build the same state. Some Croats insist on a third entity; others, outside its likely boundaries, want to realise rights differently but agree there should be a territory, literal or virtual, where they can feel at home. Today’s political institutions cannot contain the three at least partly incompatible political projects.

Many Croats and Serbs go further and consider the equality of constituent peoples Bosnia’s keystone.<sup>47</sup> They see the peoples as each holding an equal share in the state, so that it may legitimately act only when there is a consensus among its constituent peoples and their representatives. In this view, to be a member of a constituent people means having the right to participate in determining that people’s policy goals and, further, the right to have those goals determine state policy. Constituent status means “no one can impose anything on you”.<sup>48</sup>

This paradox torments Bosnia: if its citizens are equal as individuals, then its three peoples are unequal, since some are much larger than others and have more political power. If its peoples are equal, then its citizens are not, since members of the smaller peoples have votes that weigh more heavily than those of the larger community. Measures to secure equality at the group level undermine those to protect it at the individual level and vice versa. Clearly, a new constitutional arrangement is needed to better match legal frameworks and political reality.

Crisis Group has long argued that this identity-based system, the product of Dayton and internationally-imposed modifications, is fatally flawed: officials in posts earmarked for constituent peoples “are neither chosen by, nor responsible to, the communities they represent”.<sup>49</sup> The peoples do not have a right to representation in this scheme, only a guarantee that some persons claiming membership in the constituent peoples shall be named or elected to certain positions. This can and has been done against the will of an overwhelming majority of the relevant people’s wishes, for example election of an intellectual known for Serb nationalist views to the vice-presidential seat earmarked for RS Croats.<sup>50</sup>

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<sup>47</sup> Crisis Group interviews, BiH Parliamentary Assembly members from SNSD and Croatian Democratic Union (Hrvatska demokratska zajednica, HDZ), Sarajevo, Mostar, October 2013.

<sup>48</sup> Crisis Group interview, leading member of Croatian Democratic Union 1990 (Hrvatska demokratska zajednica, HDZ 1990), Mostar, 15 October 2013.

<sup>49</sup> Crisis Group Briefing, *Bosnia’s Gordian Knot*, op. cit., p. 11.

<sup>50</sup> Emil Vlajki won the Croat seat in 2010 with 6,101 votes on the ticket of the predominantly Serb National Democratic Party (Nacionalna demokratska stranka), beating two rivals on Croat tickets (5,487 and 4,128 votes respectively). For his political opinions, see “Emil Vlajki: Priprema se velika demonizacija Srba” [Emil Vlajki: A big demonisation of the Serbs is being prepared] *Nezavisne*

Bosnians should be protected from discrimination on the basis of ethnicity, whether as members of a constituent people or a minority; but the peoples are not a sound foundation for building state government. No one has yet devised a workable way for the peoples to elect the officials charged with representing them. There is no obvious reason the peoples even need representation. Yet, organising government by giving political communities the institutions to govern themselves makes sense. Unlike the peoples, the communities do have a form of elected leadership: the political parties, none of which cross community lines. Sections VI and VII below describe several ways to make government better fit Bosnians' real interests and preferences.

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### III. A Patronage Economy

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Bosnia has a famously complicated government structure. It is also famously dysfunctional. Yet, somehow life goes on not far out of step with conditions in neighbouring states.<sup>51</sup> The ship of state lacks a captain and a pilot, but even when floods expose the deep dysfunction of the status quo, it sails on unperturbed.

#### A. *The Sextet*

Part of the answer to this mystery lies in what is widely seen as Bosnia's real government, the "Sextet" (*šestorka*).<sup>52</sup> Located in no formal institution, this group (which can sometimes number seven) comprises the leaders of the two largest parties from each of the three communities. Its members can have high government office, a sinecure or no formal post at all. Its senior Croat, Dragan Čović, has sat in the Bosnian Presidency, the House of Peoples and (as a private citizen) prison, without noticeable affect to his role.<sup>53</sup> When international officials want to negotiate an important issue with Bosnia's leadership, these are the men they call. At times the international community focuses on a new official, like the chair of the Council of Ministers, but "his hands and legs are tied", and once people realise he cannot deliver "they turn their backs on him and go do business with the party leaders".<sup>54</sup>

Joining the Sextet is an opaque process. Electoral success is no guarantee. Presidency member Željko Komšić won more votes than any candidate in Bosnia's history, significantly more than his party (SDP), but never got in. Losing an election is no barrier. The Group is in effect self-selecting, an informal coalition that operates by consensus. Its members sharply attack one another publicly but get on well in private. One usually arrives by climbing to the top of the party hierarchy.<sup>55</sup> Few parties have

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<sup>51</sup> During the global expansion to 2007, Bosnia's economy grew faster than Croatia's and Macedonia's, slower than Serbia's. Since then, Bosnia has outperformed Croatia and Serbia and lagged Macedonia. In both periods differences were modest. Crisis Group analysis based on World Bank and IMF GDP data. Since 2010, Bosnia has improved from 60th to 86th on the Fund for Peace's Failed State Index. Serbia struggled with the May 2014 floods almost as much as BiH.

<sup>52</sup> The term "šestorka" (sextet, or "group of six", is common in Bosnian political speech. See, eg, "Sporazum bh. šestorke razljutio opoziciju" [BiH sextet's compromise angers the opposition], Al Jazeera Balkans, 21 November 2012 (online); "Čović: Šestorka odlučuje o šestorci" [Čović: the Sextet decides about the Sextet], Oslobođenje, 31 May 2012 (online); Elma Godinjak, "Za promjene Ustava odgovorna je šestorka" [The Sextet is responsible for amending the Constitution], Oslobođenje, 14 February 2013 (online).

<sup>53</sup> Crisis Group interviews, Dragan Čović, 2009-2013. The six leaders are Sulejman Tihić (SDA), Zlatko Lagumdžija (SDP), Milorad Dodik (SNSD), Mladen Bosić (SDS), Dragan Čović (HDZ) and Martin Raguž (HDZ 1990). At times, a third Bosnian patriot is a seventh Group member (making it a *sedmorica*). Currently that is Fahrudin Radončić (SBB). Two of these seven are on the Council of Ministers (Lagumdžija, Foreign Affairs, Radončić, Security); one (Dodik) is RS president; the others are in the Parliamentary Assembly. Neither the chair of the Council of Ministers nor any members of the Presidency are part of the Group. Dragan Čović was convicted in November 2006 on charges relating to wrongly exempting a company of import duty while FBiH finance minister; the conviction was overturned on appeal and returned to a lower court that on retrial acquitted Čović of all charges.

<sup>54</sup> Crisis Group interview, senior Bosnian politician, Sarajevo, February 2012.

<sup>55</sup> Crisis Group interviews, Sextet members, other leading politicians, 2012-2013. Other leaders are often reduced to sporadic, confrontational relations with key decision makers beyond their constituency. The other way to join is to start a party; Fahrudin Radončić's League for a Better Future won



effective internal democracy; they have been criticised as being “run like authoritarian fiefdoms, serving the personal agendas of party leaders”.<sup>56</sup> With little ability to choose leaders or influence policies, Bosnians hold parties in contempt and blame them for BiH's problems. Only 17 per cent said they were willing to join one; Bosniaks (13 per cent) were least willing.<sup>57</sup>

The Group's rule has developed over the past several years and seems to suit both Bosnia and the international community.<sup>58</sup> Its structure is that of Bosnia's pre-war Yugoslav socialist presidency.<sup>59</sup> No important decisions are taken without these leaders' consent.<sup>60</sup> Ministers and legislators at all levels defer major legislation, policy choices and ties with the international community to their party leaders, who “send their second and third people to the Presidency, their fourth and fifth to the Council of Ministers, while they hide in the Parliament” or elsewhere.<sup>61</sup> But the Group's most important task may be dividing spheres of influence: control over public utilities, privatisation, concessions, state-owned banks, government tenders and other sources of revenue and patronage.<sup>62</sup>

Each member of the Group enjoys vast power with little accountability. They can make or break political careers by control of election lists; even popular local leaders refrain from challenging their party head. Negotiations within the Group determine the governing coalition at all levels and often include distribution of senior government posts.<sup>63</sup> Efforts at reform by creating a non-partisan civil service have stalled if not failed.<sup>64</sup> Some internationally-sponsored measures appear to have backfired, en-

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enough support for him to join the Group in the 2012 crisis, when the SDA was expelled from government.

<sup>56</sup> Milada Vachudova, “The Thieves of Bosnia”, *Foreign Affairs*, 24 February 2014 (online). The director of Transparency International BiH argues that “a narrow political party leadership appoints its supporters as delegates who then vote for them at [party] congresses and assemblies, giving them mandates for leadership positions in the party .... In return loyal supporters ... are named to posts in public companies or posts at lower levels of government”. Srđan Blagovčanin, “Stranke ustrojene po sistemu mafije” [Parties organised on the mafia system], *Al Jazeera Balkans*, 5 May 2014 (online). The main exception is the SDA, whose leader, Tihić, narrowly defeated BiH Presidency member Bakir Izetbegović for the top party post in May 2009. The SDS and HDZ 1990 have also had leadership contests. Crisis Group interview, senior Serb leader, Sarajevo, 5 June 2013.

<sup>57</sup> More than 87 per cent expressed little or no confidence in parties, with scant difference among regions or groups (though slightly greater Croat confidence). 86 per cent blamed politicians for BiH problems. Croats, at 23.6 per cent, were most willing to join a party. PRISM Research survey, May 2013, made available to Crisis Group.

<sup>58</sup> Crisis Group interviews, members, Council of Ministers, BiH Presidency, Sarajevo, 5 June 2013.

<sup>59</sup> The Socialist Republic's presidency had two Bosniaks, Serbs and Croats each and an “Other”.

<sup>60</sup> “Informal groups make decisions which state institutions must implement”. Crisis Group interview, FBiH Presidency member, Sarajevo, May 2012.

<sup>61</sup> Crisis Group interview, senior foreign ministry official, Sarajevo, March 2012.

<sup>62</sup> Crisis Group interviews, members, BiH presidency, Sarajevo, June 2013; Council of Ministers, Sarajevo, June 2013; OHR official, Sarajevo, June 2010; senior European Bank of Reconstruction and Development official, Sarajevo, June 2010.

<sup>63</sup> It took fourteen months to form a government after the 2010 elections, in part due to disagreements over distribution of posts, Crisis Group interviews, Bosnian party leaders, EU, U.S. diplomats, Sarajevo, 2011.

<sup>64</sup> The Council of Ministers' civil service reform working group is moribund. Crisis Group interview, senior Bosnian official, Sarajevo, 12 September 2013.

trenching a nominally professional class that refuses to follow instructions from titular superiors but readily obeys party orders.<sup>65</sup>

### B. *The Economic Paradox*

Bosnia routinely is near the bottom of international rankings on ease of doing business.<sup>66</sup> It can be prohibitively hard to start a company, build a factory or shopping mall or generally make a living, yet somehow the impossible economy sustains its population and grows. This paradox, which exists to a degree throughout the western Balkans, has not been comprehensively researched, and only provisional conclusions are possible. The prevailing opinion among informed Bosnians, diplomats and international financial institution (IFI) officials is that government officials circumvent regulations to operate the economy in a complex, informal system of patronage and corruption.<sup>67</sup>

If correct, this goes some way to explaining politicians' power and resilience, and the population's passivity (until recently). Most jobs are dependent on the favour of officials. The civil service is bloated, especially in the FBiH.<sup>68</sup> Government also has large shares in a vast number of privatised firms, can name their executives and directors and influence hiring. This is especially true in the big-money areas: energy, telecommunications, infrastructure construction, banking and forestry.<sup>69</sup> As a result, "the patronage part of the economy is most of it".<sup>70</sup>

Party leaders are said to exercise power through subordinates in posts at all levels of government, who in turn have an array of tools for directing money and jobs to chosen targets. Regulatory authority can be used to open business opportunities, block competitors and increase or decrease real estate value. Tax and other inspectors reportedly have a way of visiting out-of-favour firms and levying heavy penalties for technical slips. Procurement reform requires competitive bidding, and governments select best offers, but this is often a favoured firm pitching a low bid later inflated by annexes.<sup>71</sup> Reforms have put a dent in abuse of tenders but may have unintentionally created further opportunities for mischief.<sup>72</sup>

At lower levels, it can be difficult or impossible to get permits to buy property, build or expand a structure or start a company without a political blessing or bribe.<sup>73</sup>

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<sup>65</sup> Ministers complain they can hire only "a secretary, an adviser and a driver" and that ministry staff openly refuse orders; Crisis Group interview, Council of Ministers member, June 2013. A prominent local official wondered why the SDA bothered about elections, since they could run much of the country through thousands of civil servants "you cannot remove even with a bulldozer". Crisis Group interview, Naša Stranka (Our Party) member, Sarajevo, February 2012.

<sup>66</sup> In 2013, Bosnia was 131st in the World Bank's Doing Business ranking, third worst in Europe. In such areas as "Starting a Business" and "Dealing with Construction Permits", it is among the world's worst, 174th and 175th respectively, and sinking (2014 rankings).

<sup>67</sup> Crisis Group interviews, Sarajevo, Banja Luka, Mostar, Brussels, 2009-2013.

<sup>68</sup> Crisis Group interview, senior State Employment Agency official, Sarajevo, November 2010.

<sup>69</sup> Crisis Group Report, *A Parallel Crisis*, op. cit., pp. 3-4; interview, OHR official, Sarajevo, June 2010.

<sup>70</sup> Crisis Group interview, senior EU officials, Sarajevo, 10 September 2013.

<sup>71</sup> Crisis Group interview, senior RS official, Banja Luka, July 2010.

<sup>72</sup> The communications minister complained the new procurement law makes it too easy for losing bidders to appeal: "We did the tender for [television] digitalisation three times; each time we took the lowest offer with the shortest deadlines, and each time it was appealed and overturned". Crisis Group interview, Sarajevo, 5 June 2013.

<sup>73</sup> See Crisis Group Briefing, *Bosnia: A Test of Political Maturity in Mostar*, op. cit., p.11.

A senior politician with broad business experience said, “the deliberately difficult [rules and procedures are] a tool to encourage bribery .... Basically nothing is done properly in Bosnia, it’s all done by working around the rules”. A prominent businessman complained: “It is impossible to do business legally in BiH; if you try, you go out of business. The whole economy is run informally”.<sup>74</sup>

After each election, shifts in governing coalitions translate to seismic shifts in patronage across the country. A party long out of power that joins a governing coalition, as during big shake-ups such as those of 2011 and 2013, can take years to settle its people into the patronage system.<sup>75</sup> “Hundreds or even thousands of jobs” can change hands after a senior official is replaced.<sup>76</sup> A disgruntled party leader accused ex-partners of devoting “all their efforts ... [to] taking over and filling positions with their people ... to a certain degree this is understandable ... [but it was being taken to] the assistant of the assistant of the assistant”.<sup>77</sup>

Rank-and-file workers feel powerless in this system. Some put up with astonishing abuse from managers, such as not being paid for a year or more, afraid that objecting would result in dismissal with no chance to recover wages. Others have stopped applying for vacancies, assuming they have been promised to clients of some powerful person.<sup>78</sup> The system is not entirely exploitative; it is also a way of life. In some areas, corruption is an “alternative social system” that people turn to instead of “failing or non-existent” social services.<sup>79</sup> The system connects thousands of people in transactions impossible to prosecute effectively.<sup>80</sup> Even clear violations of law almost never result in successful prosecution despite intense international pressure and assistance.<sup>81</sup>

The patronage economy is resilient, having survived communism’s fall, war and intrusive international administration. It delivers subsistence to workers and wealth to the elite, but there are many reasons Bosnia needs to escape it. It likely is dependent on what may be unsustainable levels of foreign aid and loans. An ambassador expressed incredulity at the lack of receptivity to investment.<sup>82</sup> Friendly investors are sometimes frozen out of the local market by a cartel whose members prefer all of a small cake to a slice of a larger one.<sup>83</sup> Finally, the system generates popular frustration, cynicism and anger and erodes stability.

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<sup>74</sup> Crisis Group interviews, FBiH Parliamentary Assembly senior member, Sarajevo, September 2013; business owner, Široki Brijeg, October 2010.

<sup>75</sup> Crisis Group interviews, party officials, Sarajevo, 2011. In 2011, SDA and SDP ousted the HDZ and HDZ 1990 from government in the Federation and several cantons; in 2013, the SDP joined with the HDZs and SBB to expel the SDA from state government, with smaller cantonal changes.

<sup>76</sup> Crisis Group interview, ambassador of neighbouring state, Sarajevo, September 2010.

<sup>77</sup> Crisis Group interview, Bosnian party leader, Sarajevo, May 2012.

<sup>78</sup> Focus group interview, East Sarajevo workers, made available to Crisis Group, 26 May 2013.

<sup>79</sup> Focus group (women), made available to Crisis Group, Sarajevo, 31 May 2013.

<sup>80</sup> A senior Bosnian prosecutor said officials know the laws, are experienced at staying within them, and much of what people consider corruption is either not illegal or impossible to prove. Crisis Group interview, Sarajevo, October 2008.

<sup>81</sup> Crisis Group interview, senior RS prosecutor, Banja Luka, April 2011.

<sup>82</sup> Crisis Group interview, long-serving Arab ambassador, Sarajevo, September 2010.

<sup>83</sup> Crisis Group interview, prominent businessman, Sarajevo, October 2010.

### C. Some Remedies

Bosnia's political and economic elite has strengthened its grip on the economy and the state over several decades; there are no quick fixes. Any plan for making a more transparent government responsive to citizens' needs and open to initiative and investment has to overcome a daunting hurdle: the people who must implement it are the same leaders who stand to lose through reform. The international community's rhetorical appeal to them can be summarised as:

Please abandon, if not betray, your constituencies' most cherished nationalist issues; adopt reforms that will dissolve the patronage networks on which your tenure depends; reduce corruption and with it your personal net worth; and adopt rule-of-law policies that will lead to your allies' arrest and imprisonment and put your own liberty at risk. In return, after an unspecified (but long) time, whoever is in office – probably not you – will lead your country into the EU.

Not surprisingly, the response is lukewarm. As a senior leader said, describing the frequent rounds of EU-sponsored dialogue, "we're not going to agree on anything; we're just pretending to talk".<sup>84</sup> Nevertheless, several reforms could improve matters. Party leaders used to take the top government posts, which came with greater transparency and accountability. The state and federal reforms outlined in Sections VI and VII below would funnel party leaders back to the executive and give voters more chance to decide who gets top jobs.<sup>85</sup>

Party leadership contests are likely to be more consequential than elections for some time, and civil society and the international community can work to democratise parties. The key step would be to increase party membership. Leaders can hardly be expected to rewrite party statutes to disempower themselves, but over time an active membership could take over local and regional boards and ultimately the top leadership. Few Bosnians belong to parties – membership is not publicly disclosed – and few rank-and-file members know how to organise at the local level; international training and membership drives should help.

A further reform might be to hold local and national elections at the same time. The current electoral cycle leaves only a few months to govern free of campaign pressure, because municipal elections alternate with those for cantonal, entity and state government every two years; it takes months to certify results and get winners into office (partly inefficiency, partly time-consuming indirect elections); campaigning starts a year in advance; summer holidays take care of the rest. Officials countrywide support this idea; it deserves international support.<sup>86</sup>

The patronage system could not survive integration of the EU *acquis communautaire* unchanged.<sup>87</sup> The EU regulatory system would help but on its own may not be enough. States further along the integration path (Macedonia, Montenegro, Serbia) have similar patronage systems, as do (to a lesser extent) members Croatia and Slovenia. The phenomenon can be seen throughout the south-eastern EU, from Hungary and Romania to Cyprus and Greece.

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<sup>84</sup> Crisis Group interview, member of BiH Parliamentary Assembly, October 2013.

<sup>85</sup> In contrast, most reforms under discussion recently would have the opposite effect, allowing the Sextet to choose the presidency and ministers with little democratic interference.

<sup>86</sup> Crisis Group interviews, senior Bosnian officials, Banja Luka, Sarajevo, 2008-2013.

<sup>87</sup> European diplomat, comment at international conference on Bosnia, Stockholm, June 2009.

Privatisation and investment should also help. A left-leaning civil society leader advises, “sell everything”, as the only way to free the economy of the political elite’s claws.<sup>88</sup> Divestment of major state concerns like BH Telecom and Elektroprivreda would reduce the patronage basket; private sector expansion would put more jobs beyond politicians’ gift. Ministries should be pushed to sell majority shares of ostensibly private companies and invest pension funds in diverse portfolios to dilute patronage potential. Privatisation has been abused to political elites’ benefit throughout Eastern Europe, so the process needs monitoring.<sup>89</sup> EU officials should be alert to abuse or attempts to conceal ownership by layers of holding companies. The EU and IFIs should prioritise business regulation reform, via conditionality and other tools. Making it easier for foreign capital to penetrate the economy would dilute patronage networks.

Two strategies that have not worked should be abandoned. The international community’s narrative of “bad leaders and good citizens” is worn out and unproductive. No one achieves real power in Bosnia without enduring countless rounds of personal abuse and accusations of nationalism, selfishness, corruption, sloth, criminality and worse, from rivals, the media, civil society and diplomats. A thick skin comes with the job, and the criticism can backfire: how effective can someone who routinely describes leaders as perfidious and calls for their dismissal be in persuading those same leaders? The idea of “returning to the institutions” – ignoring party leaders and confining contacts to formal leaders – is also hopeless, as these officials defer all important decisions to the Sextet.

The international community’s favoured medicine for corruption has been criminal prosecution. Croatia, which jailed its ex-prime minister in 2011, is its model. Yet, this approach has problems. Criminal justice deals with illegal acts; Bosnia’s corruption and patronage are coherent systems, not individual acts. Prosecution of top officials is challenging and traumatic for stable, well-entrenched democracies and may be too much to ask, too soon, of a state like Bosnia. While there is no European (or other) future for Bosnia without rule of law, front-loading, high-level prosecutions can backfire, by persuading leaders they have nothing to gain and much to lose on the path to the EU.

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<sup>88</sup> Crisis Group telephone interview, NGO leader, Sarajevo, October 2013.

<sup>89</sup> Crisis Group email correspondence, Stefan Wolff, University of Birmingham, 19 February 2014.

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## IV. The Trouble with the Entities

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Loved by some of her citizens, barely tolerated by others, Bosnia lacks a common narrative, but her people and leaders agree on one point: the state in its current form is bad. “Everything is slowly dying away”, observed a senior Bosniak on the Council of Ministers. Bosnia is worse off even than Kosovo, he added, which “many states do not recognise, but most of its own citizens do”.<sup>90</sup> Although “no one is hampering the system, [it] doesn’t work anymore”, because “it is obvious that we have created an abominable government where there is no more mutual trust”.<sup>91</sup> A Serb member of the Council of Ministers observed that while everyone paid lip service to Dayton, “essentially all are against it”.<sup>92</sup> The foreign minister celebrated the national football team’s victory not with the current national flag but with that of the wartime republic: “I was wounded under the fleur-de-lys flag. It is, therefore, my flag.”<sup>93</sup>

Popular sentiments bear this out. There is no reason to believe today’s numbers would be any better than a few years ago, when only 10 per cent of Serbs and 20 per cent of Croats said they took pride in Bosnian state symbols like the flag and coat of arms; more than 80 per cent felt “nothing” on the 1 March state holiday; 79 per cent of Croats and 87 per cent of Serbs considered Croatia’s and Serbia’s hymns “reflect their feeling toward the homeland”. Bosniaks reported greater affection, but with a twist: most said they “completely disagree” that the country should stay as constituted (with its entities and cantons).<sup>94</sup> Whether a state so unloved (hated is not too strong a word for some) can achieve EU and NATO membership – or survive – is unclear.

Finding such disaffection only one generation after a war is not a surprise, but the intervening years are also to blame. Dayton’s constitutional architecture was clear and sound: Bosnia was a loose federation of three component parts, two of which shared an entity.<sup>95</sup> Initially, at least, the three parts corresponded to the three political communities. Each ran its own affairs without interference, while common issues operated on a consensus basis. “Dayton was written by people who really understood us and how we work”, said a member of the presidency.<sup>96</sup>

The Dayton system was quickly under siege, however. It shuddered under repeated attempts to undermine it, mostly by Serb leaders who longed for and expected in-

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<sup>90</sup> Crisis Group interview, Sarajevo, 3 June 2013.

<sup>91</sup> Crisis Group interview, HFZ member of Parliamentary Assembly, Sarajevo, 23 May 2013.

<sup>92</sup> Crisis Group interview, Sarajevo, May 2013.

<sup>93</sup> “Lagumdžija: Na zastavi s ljiljanima sam vidio svoju krv” [Lagumdžija: I saw my own blood on the fleur-de-lys flag], *Oslobodjenje*, 16 September 2013 (online). The current BiH flag is a blue field with a yellow triangle bordered on one side with stars; the wartime flag was a white field with a blue fleur-de-lys coat of arms in the centre.

<sup>94</sup> PULS-Ipsos survey, January-February 2010, made available to Crisis Group. 75 per cent of Bosniaks took pride in state symbols, and 68 per cent thought BiH “should be a centralised state without entities or cantons”, a view shared by only 5 per cent of Serbs and 16 per cent of Croats.

<sup>95</sup> RS was the entity of those loyal to it, while Bosnian patriots and those who sought a Croat entity shared the Federation of BiH. The tripartite nature of the state can be seen in the three-member Presidency, the three-way division of the House of Peoples, the three bodies authorised to approve presidential vetoes, the tradition of allotting two spots on the Constitutional Court to each community, and the allocation of seats on the board of the Central Bank. See separate opinion of Justice Mirko Zovko, case U-5/98, third partial opinion, Constitutional Court.

<sup>96</sup> Crisis Group interview, BiH Presidency member, 5 June 2013.

dependence but also by Croats. Partly in response, international officials began changing the design in order to protect it. These early measures were probably necessary and are widely accepted by Bosnians of all stripes. Yet over time, repeated interventions have tangled Bosnia's lines into thick knots, producing insoluble contradictions and an unworkable system without popular support.

#### A. *Ambivalence in the Federation*

The FBiH is friendless, shared by Bosniaks and Croats on a basis that leaves both cold.<sup>97</sup> Many Bosnian patriots, a majority of its population, would like to abolish it eventually, paving the way for a state without entities. Croats hope to break away to form their own entity; meanwhile they chafe under what they see as Bosniak domination.<sup>98</sup> International officials and Bosnians believe the current Federation is unsustainable: it has “no future without constitutional reform”.<sup>99</sup> Its government and those of its ten cantons are equally and overwhelmingly unpopular, with almost 80 per cent of respondents reporting little or no confidence in them. A senior international official said, “if we solve the Federation, we solve the state”, but added it was hardly Bosnia's only problem and that focusing all attention on it raised defences that put a wider solution out of reach.<sup>100</sup>

With many responsibilities divided between entity and cantons and inconsistent regulation, it is expensive and inefficient. Entity “framework laws” seek to regulate some shared competences, but cantons often fail to implement them.<sup>101</sup> The cantons vary widely in size and composition, with the largest “almost like small states”.<sup>102</sup> They take different approaches to many tasks. Aside from its municipal, cantonal and federal administrations, the Federation has two major cities (Sarajevo and Mostar) with their own legislatures and executives. These administrative levels regulate everyday issues like education, civil service and construction independently; what one requires another often prohibits.

Mostar illustrates the impossible structure. In January 2012, the Constitutional Court struck down parts of the state law governing elections to its city council.<sup>103</sup> Local leaders failed repeatedly to agree on amendments, and no local elections took place when the rest of the country voted that October. It is hard to blame the locals. Elections are regulated by city statute, the FBiH and Herzegovina-Neretva canton constitutions and the BiH Law on Elections. A solution to Mostar's problem requires

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<sup>97</sup> See Crisis Group Report, *Federation of Bosnia and Herzegovina*, op. cit.

<sup>98</sup> 58.8 per cent of FBiH residents said they thought the entity should be abolished. Puls-IPSOS survey, op. cit. A senior Croat official complained: “Bosniaks want a citizens' state [unrestricted majority rule] in Bosnia as their plan A, and plan B is a citizens' FBiH, which they already have”. Crisis Group interview, BiH Parliamentary Assembly member, Sarajevo, 23 October 2013.

<sup>99</sup> Crisis Group interview, FBiH House of Representative member, Sarajevo, September 2013.

<sup>100</sup> PRISM Research survey, op. cit. Crisis Group interview, Sarajevo, March 2012.

<sup>101</sup> For example, some cantons have yet to implement the 2009 FBiH framework law on health care. Crisis Group interview, Roma community leader, Sarajevo, 5 June 2013.

<sup>102</sup> Crisis Group interview, senior Bosniak leader, Sarajevo, 21 May 2013. The largest is Tuzla, with about half a million residents in thirteen municipalities; the smallest is Goražde, with just over 30,000 people in three municipalities. Three cantons have a large Croat majority, five a large Bosniak majority, while two (Herzegovina-Neretva and Central Bosnia) are mixed.

<sup>103</sup> Case U-9/09, rulings of 26 November 2010 and 18 January 2012. All elections in Bosnia are regulated by the state Law on Elections.

simultaneous changes to at least two of these, possibly all four, but each jurisdiction has a different governing coalition. The city statute cannot be amended until the (currently non-existent) city council formally adopts it, which Croat leaders promise never to do.<sup>104</sup> In effect, there is no legal way to make this work, but Mostar's mayor continues in office, and life goes on.<sup>105</sup>

The FBiH entity government has its own structural problems. Election involves many steps: voters elect cantonal assemblies that divide into constituent peoples' caucuses and elect cantonal representatives to the entity House of Peoples, which together with the (directly elected) House of Representatives chooses the president and two vice presidents, who then nominate the prime minister. The government is so dysfunctional that at one point in 2013 all parliamentary parties were in opposition. Even when the same parties control a majority in parliament and government, the latter still rejects laws the former proposes.<sup>106</sup> Conflict between Bosniak and Croat leaders – the one thing the Federation was meant to alleviate – so escalated in 2010 that it was impossible to elect the entity president and two vice presidents lawfully, holding up appointment of the prime minister and cabinet and adoption of the budget.<sup>107</sup>

On top of this, federal ministers control large sums with little oversight or accountability, especially through transfers. These payouts rose from some KM150 million (€76.7 million) in 2000 to some KM1.1 billion (€562 million) in 2010 (entity and cantonal ministries combined).<sup>108</sup>

The federal malaise goes deeper. No group is committed to the entity's long-term survival. Most Bosniak leaders have long seen it as a temporary, until a reconfigured Bosnian state can exercise full powers. Most Croat leaders see it as a Bosniak-dominated entity that offers them little. Neither Bosniaks nor Croats have much interest in the current Federation's wellbeing, but they have opposite views on how it should evolve.

Much of the blame rests with a controversial court decision and the ill-judged Office of the High Representative (OHR) intervention that implemented it. In June 2000, the Constitutional Court ruled that the three constituent peoples were constituent in all parts of the country; until then, Serbs were the constituent people in RS

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<sup>104</sup> High Representative Paddy Ashdown imposed the City Statute and amendments to the constitutions and the BiH Election Law in January 2004; High Representative-imposed laws take effect immediately but must be formally adopted before they can be amended. Mostar Croats despise the Statute; Current Mayor Ljubo Bešlić said Croats dislike the Statute so much it would never be formally adopted. Crisis Group interview, Mostar, July 2009.

<sup>105</sup> A senior Croat leader noted: "Mostar hasn't had a city council since the last election and does it show? No". Crisis Group interview, Mostar, 15 October 2013.

<sup>106</sup> Crisis Group interview, FBiH minister, Sarajevo, June 2010.

<sup>107</sup> Crisis Group Briefing, *Bosnia's Dual Crisis*, op. cit. The High Representative suspended parliament's annulment of the presidential election, a move still rejected by most Croat political leaders. Crisis Group Briefing, *Bosnia: State Institutions Under Attack*, op. cit. The president was subsequently indicted for abuse of office and illegal possession of a weapon; on 5 December 2013 the Court of BiH ruled that it lacked jurisdiction on the abuse-of-office charges, and on 10 December the Prosecutor appealed. The weapons charge is on trial in Sarajevo municipal court.

<sup>108</sup> Crisis Group interview, senior FBiH official, Sarajevo, June 2010.



and Bosniaks and Croats in the FBiH.<sup>109</sup> The ruling was five to four, with all Croat and Serb judges in dissent. Crisis Group praised the ruling in 2002:

As blueprints for a functional and equitable multinational state, the DPA [Dayton Peace Agreement] and the constitution it contains are deeply flawed. The constituent peoples case and the debates surrounding it in the two entities have highlighted the fundamental Dayton contradiction of attempting to guarantee the highest level of individual rights while, at the same time, accommodating the demands of nationalists and separatists to preserve and reify collective rights in “cleansed” enclaves. The constituent peoples decision is important because it attempts to square this particular circle and to use Dayton to improve upon Dayton.<sup>110</sup>

In retrospect, this was a mistake. Crisis Group's focus was on RS, but the ruling had a far greater impact in the Federation. Some flaws were immediately visible.<sup>111</sup> Others became apparent after the OHR imposed 27 amendments to the FBiH constitution, implementing but going far beyond the ruling.<sup>112</sup> Collectively, the amendments crippled FBiH institutions that had protected Bosniak and Croat interests and did nothing much for the tiny Serb community.<sup>113</sup>

The case introduced a sordid percentage game into Bosnian politics, in which leaders agreed that each constituent people would have a set percentage of key seats. The

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<sup>109</sup> Case U-5/98, Third Partial Decision, 30 June and 1 July 2000. See Crisis Group Report, *A Parallel Crisis*, op. cit., and for more on the issues, Crisis Group Europe Report N°128, *Implementing Equality: The “Constituent Peoples” Decision in Bosnia & Herzegovina*, 16 April 2002.

<sup>110</sup> Crisis Group Report, *Implementing Equality*, op. cit., p. 25.

<sup>111</sup> Only four of the nine judges agreed with the basic premise that the entities' definitions as states of the Serb (RS) and Bosniak and Croat (FBiH) peoples violated the last clause of the BiH constitution's preamble (“Bosnia[k]s, Croats, and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina hereby determine that the Constitution of Bosnia and Herzegovina is as follows”), and that all three peoples were “constituent” in each entity. The deciding vote of Judge Hans Danelius relied on reasoning that implied the Dayton constitution violated fundamental human rights principles. Danelius, also a justice Sweden's Supreme Court, rejected the view that the preamble contained normative rules. He found that Art. 1 of the RS constitution (defining it as “the State of the Serb people and of all its citizens”) discriminated against Bosniaks and Croats, so violated Art. 2.4 of the BiH constitution. He applied the same reasoning to the FBiH constitution. However, the same argument can be used to show the BiH constitution discriminates against those who are neither Bosniaks, Croats nor Serbs. Cf. Danelius, concurring opinion; Judge Mirko Zovko, dissenting opinion, op. cit. Contributing to controversy over the decision, two judges in the majority had taken opposite positions previously.

<sup>112</sup> “Decision on Constitutional Amendments in the Federation”, 19 April 2002. OHR imposed a smaller number of amendments on RS the same day. Before amendments, the FBiH had two constituent peoples, Bosniaks and Croats. The FBiH House of Peoples had equal numbers of Bosniak and Croat delegates, plus Serbs and others in proportion to their population. Bosniak and Croat legislators nominated the president and vice president, who alternated yearly. At least one third of ministers had to be Croats; no deputy could be from the same people as the minister. The House of Representatives had 140 proportionally elected members. Few changes were required by the court's ruling, but OHR modified all this, cutting the House of Representatives to 98 and introducing a quota of at least four representatives from each people; cutting caucuses in the House of Peoples for Bosniaks and Croats to seventeen and adding an equal number of Serbs plus seven “Others”; adding a second vice president but eliminating rotation; and adding a rigid ministerial quota: eight Bosniaks, five Croats, three Serbs.

<sup>113</sup> Croats uniformly despise the OHR amendments; a religious leader described them as the moment Croats “lost their equality” in FBiH. Crisis Group interview, Sarajevo, 14 January 2010.

original idea was to ensure no part of the state was under any community's monopoly: the highest percentage allowed was 49, so the actual majority could always be overruled by the minorities.<sup>114</sup> But it quickly mutated, as leaders realised they could co-opt members of other peoples or have persons loyal to them elected in quotas intended for others. The entity constitutions now stipulate that after "the full implementation of Annex 7" of Dayton, at least 15 per cent of government members must be from each constituent people, at least 35 per cent from the two smaller peoples, and at least one seat must go to an "other".<sup>115</sup>

After the amendments, predominantly Bosniak parties held most seats in the Bosniak, Serb and "Other" caucuses in the FBiH House of Peoples, plus a share of the Croat seats; rotation of positions was abolished, enabling them to make policy without seeking consensus.<sup>116</sup> There were and are too few Serb and "Other" voters to elect their share of upper house seats, which often go to other parties with token candidates. A member described the FBiH House of Peoples as "useless", in part because deputies vote on party lines rather than their communities' interests.<sup>117</sup> In response, Croat parties have resorted to other manoeuvres to block decisions, leading to constitutional crises (in Mostar in 2008 and 2012; in the Federation since 2010) and a general deterioration of ties with Bosnian patriots.

The intent behind these constitutional changes was to make Bosnia workable, but the effect has been devastating. By imposing constitutional changes without meaningful participation by local leaders, the interventions backfired. Croats (and, where they are a local minority, Bosniaks) found ways to subvert the rules, and local leaders' ability to find common ground gradually broke down. The amendments cemented the idea that what mattered was the claimed ethnic identity of certain officials; citizen or community preferences were irrelevant. Whatever happens, the Federation government will contain exactly eight Bosniaks, five Croats and three Serbs, but need not (and generally does not) reflect the views and interests of actual Bosniak, Croat and Serb voters. Similar quotas afflict the presidency, House of Peoples, and six other senior posts. There is something absurd in the idea, enshrined in these amendments, that the equality between communities can be expressed by giving the vast Bosniak majority and tiny Serb minority an equal seventeen seats in the FBiH upper house.

## B. *Republika Srpska's High-Stakes Gamble*

The Federation's stumbles make RS look good in comparison despite its own growing problems.<sup>118</sup> The smaller entity's troubles are not structural and do not call for immediate reform. Its match between demography and territory is stronger, with only one municipality lacking a clear Serb majority, largely due to wartime ethnic

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<sup>114</sup> A number of parties agreed to this proposal in March 2002, but it was never fully implemented. See Crisis Group Report, *Implementing Equality*, op. cit. p.7.

<sup>115</sup> Federation constitution, IV.B.1.4 (2). Annex 7 deals with the return of wartime refugees.

<sup>116</sup> See Crisis Group Report, *A Parallel Crisis*, op. cit.

<sup>117</sup> Crisis Group interview, FBiH House of Peoples member, February 2012.

<sup>118</sup> A senior RS official described his entity as "maybe in a little bit better shape than the Federation, but nothing is certain in this economy". Crisis Group interview, Banja Luka, 30 May 2013. The entity government is unpopular, though less so than in the FBiH. A recent poll reported 33.5 per cent expressed "a great deal" or "quite a lot" of confidence; 64.3 per cent had little or no confidence. PRISM Research survey, op. cit.

cleansing.<sup>119</sup> RS is heavily dominated by the entity government in Banja Luka, with weak municipalities and no cantons or other intermediate layers.<sup>120</sup> There is a strong executive headed by a directly-elected president and prime minister. Its unicameral National Assembly is the most efficient of Bosnia's major legislatures; a small Council of Peoples meets only to consider alleged violations of vital national interests.<sup>121</sup>

RS could benefit from implementing some of the reforms outlined in Sections VI and VII below for the BiH and FBiH. It could replace its Council of Peoples with a municipally-elected upper house, for example. Municipalities should be given broader powers and allowed to form associations; the eastern Herzegovinian municipalities have much in common and are far from Banja Luka. They could profitably cooperate with neighbouring regions of BiH, Croatia and Montenegro.<sup>122</sup> These and other reforms would strengthen RS, but unlike FBiH troubles, not impinge on BiH functionality, so should be a matter for RS voters.

RS poses a grave but simple challenge to Bosnia's survival: its leaders want BiH to disintegrate. They resist most state-level reforms and espouse a return to the "original Dayton" of minimal state government, with most powers left to the entities. Sarajevo fears RS is creating a self-fulfilling prophecy, complaining the Bosnian project is a failure while doing everything to ensure it cannot succeed. It is within RS leaders' power to do this: the state cannot lawfully function without their consent. But state failure harms Serb interests too. Seeking independence through it is a high-stakes gamble. The entity's administration is almost as bloated as the FBiH's, and its economy is a little better. Without the administrative reforms, aid and investment offered by EU accession, RS's prospects are bleak.

There is another problem: RS and FBiH territories overlap at Brčko, which belongs to them equally but is autonomous.<sup>123</sup> Neither entity government has any authority in the district, which both joins and separates the two RS halves. It has long been plain that "without Brčko, Republika Srpska is effectively sunk"; it cannot unilaterally secede.<sup>124</sup>

Most Serbs see RS as their entity and want it to thrive. Their leaders consider building entity institutions their task, with little or no reference to the state level: "our goal is to get our house in order economically without thinking about Bosnia at all".<sup>125</sup> In contrast, many outside RS see it as a product of genocide, created in 1992 expressly for ethnic purity and rewarded at Dayton.<sup>126</sup> RS leaders' goal is separation and independence, but they are in no hurry. They have public support: 59.3 per cent of Serbs

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<sup>119</sup> There are also only four sparsely populated Serb-majority municipalities in the FBiH: Drvar, Glamoč, Grahovo and Petrovac.

<sup>120</sup> Police and courts are a partial exception, with five vestigial districts centred on Banja Luka, Bijeljina, Doboj, East Sarajevo and Trebinje.

<sup>121</sup> The National Assembly elects the Council of Peoples, which comprises eight delegates for each of the constituent peoples and four "Others".

<sup>122</sup> Crisis Group Report, *Bosnia: What Does Republika Srpska Want?*, op. cit.

<sup>123</sup> For more on Brčko's status, see Crisis Group Europe Briefing N°66, *Brčko Unsupervised*, 8 December 2011.

<sup>124</sup> Crisis Group Report, *Inside Radovan's Republika*, op. cit.

<sup>125</sup> Crisis Group interview, senior SNSD official, Banja Luka, 18 October 2013.

<sup>126</sup> See Crisis Group Report, *Bosnia: What Does Republika Srpska Want?*, op. cit., p.21 ff for background on wartime events.

prefer independence, and another 11.1 per cent desire union with Serbia.<sup>127</sup> As with the Croats' desire for a third entity, independence is a long-term project that could take many forms:

We are headed for some kind of separation, which could be violent, or peaceful like Czechoslovakia; it could be in 30 years. It could be a complete breakup into [separate] states ... or it could be some kind of loose federation or confederation. In either case, we are talking about two or more de facto independent countries, whatever the form. But none of this can happen without deep change in Sarajevo.<sup>128</sup>

Another RS leader warned that crisis has been the “modus vivendi here for twenty years”, and “this situation [may] last even longer, without war, without conflict but also without political agreement”.<sup>129</sup> If the mechanics are open to discussion, the goal is set: “When we say we want a confederation, what we mean is we want that as a transition to separation”.<sup>130</sup> Some Bosniaks speak as though they would relish a war over the question, warning Serbs not to expect “the Kosovo solution” (partially recognised independence) or even “the Cyprus solution” (unrecognised independence), since there is also “the Croatian solution” (military defeat).<sup>131</sup> At tense moments, Sarajevo echoes with grumbles that “there are only 70,000 Serbs between here and the Drina [River, the border with Serbia], so let's finish it”.<sup>132</sup>

Almost nobody really wants another war, however, and RS secession is not inevitable. The leading parties in RS, the League of Independent Social Democrats (Savez nezavisnih socijaldemokrata, SNSD) and the Serb Democratic Party (Srpska demokratska stranka, SDS), both count many senior figures at ease with the idea of Bosnian unity. An SNSD parliamentarian observed: “It is in the interest of RS to be in the European Union and that can only be through Bosnia”.<sup>133</sup> The entity's institutions comply with Bosnian law in sensitive cases, something that is not always the case in the FBiH.<sup>134</sup>

Overall, RS is likely to remain ambivalent. Its president says two incompatible things: that Bosnia will disintegrate on its own, leaving RS independent without the need for secession; and that RS will secede once one or more EU member states break up and establish the right way to do it. The atmosphere in Banja Luka has for several years been uninterested in Bosnia, a “failed marriage”.<sup>135</sup> Still, Serb officials in Sarajevo who represent the same parties in power in Banja Luka take a different line, even privately; for them BiH can work as a loose federation, if Bosniaks give up their ambitions to run the whole show.

<sup>127</sup> Only 16.8 per cent preferred living in Bosnia as currently structured. PRISM Research survey, op. cit. An earlier survey found 81 per cent of Serbs partly or wholly agreed RS should be part of Serbia. Puls-IPSOS survey, op. cit.

<sup>128</sup> Crisis Group interview, senior SNSD official, Banja Luka, 18 October 2013.

<sup>129</sup> Crisis Group interview, senior RS leader, Banja Luka, 30 May 2013.

<sup>130</sup> Crisis Group interview, senior SNSD official, Banja Luka, 18 October 2013.

<sup>131</sup> Crisis Group interview, retired Army of BiH general, Sarajevo, October 2010.

<sup>132</sup> Crisis Group interview, European diplomat, Sarajevo, November 2010.

<sup>133</sup> Crisis Group interview, BiH Parliamentary Assembly member, Sarajevo, 6 June 2013.

<sup>134</sup> The RS Constitutional Court struck down several municipal symbols, including Banja Luka's and Prijedor's, as discriminatory against non-Serbs. Crisis Group interview, ex-RS minister, Banja Luka, 30 May 2013. RS consistently complies with the constitutional requirement to share top posts equally among the constituent peoples, a provision the FBiH often violates.

<sup>135</sup> Crisis Group interview, diplomat, April 2009.

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## V. The International Treadmill

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A leading RS official described Bosnian politics as a long-running soap opera: “It is addictive, but when you miss a few episodes and then tune back in, you realise nothing has changed and you haven’t really missed anything”.<sup>136</sup> The myth of Sisyphus or the popular American film “Groundhog Day”, in which the hero is condemned to live the same day repeatedly, may be better comparisons. Many Bosnians still look to the international community for salvation.<sup>137</sup> Yet ministers, representatives and leaders of all communities expect little good to come from international representatives in their country.<sup>138</sup> In some ways the international community stands in Bosnia’s way, blocking its development.

Since about 2007, Bosnia’s relationship with its international sponsors has repeated a sad cycle. First, foreign officials announce that it is time to treat BiH as a normal country – after it fulfils one final, seemingly minor condition. The task has some practical value but is largely seen as a symbol of political maturity and proof the country can function normally. Some assignments are related to widely shared principles, but the precise task is always uniquely tailored to Bosnia. Next, Bosnian leaders start negotiations on how to cross the last hurdle. Inevitably the issue is politicised: Sarajevo insists on handling it at state level, while Banja Luka rejects this as unconstitutional usurpation of entity prerogatives, and Mostar watches for encroachments on Croat rights. Years pass.

The first of these cycles, the 2005-2007 attempt at a comprehensive police reform that would in effect move policing from entity to state responsibility, set the pattern.<sup>139</sup> The goal seemed sensible at the time, when RS police were alleged to be obstructing the hunt for war crimes suspects and preventing refugee returns. A solution seemed within reach. International leverage was high: there could be no Stabilisation and Association Agreement (SAA) with the EU without police reform. Failure, when it came in 2007, was described as choosing “isolation over integration” and a rejection of the European perspective.<sup>140</sup> All these assumptions proved wrong. The reform never happened, but the police improved anyway.

The pattern has been repeated at least four times. In February 2008, the Peace Implementation Council (PIC) set five conditions and two objectives – the “five plus two” – for Bosnia to fulfil before it would close the OHR.<sup>141</sup> Later that year, when the

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<sup>136</sup> Crisis Group interview, RS National Assembly member, Banja Luka, 30 May 2013.

<sup>137</sup> Focus groups struggled to grasp even the possibility the international community would not eventually intervene decisively. Crisis Group focus groups of workers and demobilised soldiers, Sarajevo, East Sarajevo, May 2013.

<sup>138</sup> A senior international official said local leaders had given up on the High Representative’s special powers; Crisis Group interview, Sarajevo, 10 September 2013. A senior Bosniak leader agreed, arguing that official should remain only to deal with “anti-Dayton” threats, while local leaders handled all else, even if it took long. Crisis Group interview, Sarajevo, 12 June 2013.

<sup>139</sup> See for background Crisis Group Europe Report N°198, *Bosnia’s Incomplete Transition: Between Dayton and Europe*, 9 March 2009, pp.11-12.

<sup>140</sup> High Representative Miroslav Lajčák, cited in Crisis Group Report, *Bosnia’s Incomplete Transition*, op. cit., p.12.

<sup>141</sup> These call for resolution of state property and defence property share-outs, old decisions on Brčko, fiscal sustainability and rule of law (the “five”), and signing an SAA and international approval that the Dayton deal has been implemented (the “two”). <http://bit.ly/1h7NhSf>. The PIC, consisting of 55 states and agencies, convened in 1995 to support and guide Dayton implementa-

BiH Presidency inquired about applying for EU membership, it was told OHR had to close before Brussels would accept an application.<sup>142</sup> In 2009, the EU and U.S. attempted to get Bosnia on the road to NATO and EU integration by persuading leaders to adopt constitutional amendments and finish the “five plus two”. After that failed, NATO offered Bosnia a Membership Action Plan (MAP), but only after it completed an earlier “five plus two” condition.<sup>143</sup>

The only result of all these failures was delay in Bosnia's EU and NATO accession hopes. Some conditions persist, while others, such as EU refusal to receive a membership application while OHR remains, have been quietly dropped. “While we are wasting our time working on these petty changes, we are not doing what is really important”, complained a Bosnian legislator. “We have an oversized administration, excessive public spending, weak economy; these are all products of the existing system. The current situation is not sustainable in the long run”.<sup>144</sup>

Bosnia is now caught in the most recent, in some ways most difficult of these cycles: it must amend Dayton, eliminating ethnic assignment of top posts, to comply with the ECtHR decision in the Sejdić and Finci case. Without doing major surgery on Dayton, that cure is worse than the disease. Simple solutions would deprive Croats of rights they have without effectively touching the positions of Bosnian patriots or Serbs; Croat leaders unsurprisingly insist on something in return.

Neither Roma nor Jews are likely to be elected to senior office after such reforms. “If Sejdić-Finci were resolved today”, a prominent Roma activist said, “it would not change the dreadful situation in which Roma find themselves in BiH”, with unemployment at 96 per cent and most children unschooled.<sup>145</sup> EU representatives have put no visible pressure on Bosnia to improve its treatment of this minority, while several EU member states are in the midst of highly visible efforts to remove their own resident Roma.

A prominent European think tank has published a devastating report on EU policy, pointing out that several member states have constitutional provisions similar to, or worse than, those condemned in Sejdić-Finci.<sup>146</sup> It is clear there is nothing to be gained and much to be lost from setting Bosnia these “final” tasks. No condition specifically designed for it is likely to meet with success. A local analyst described the issue as a “cold” compared to the “cancer” of the constitutional structure and said the EU prescribes decongestants while withholding the chemotherapy of accession negotiations.<sup>147</sup>

The EU should apply to Bosnia the same conditions it uses elsewhere in the Balkans. By making acceptance of a “credible application” for membership conditional upon implementation of the ECtHR decision, it has put itself in the position of tack-

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tion. Since its last full meeting in May 2000, a Steering Board has met several times annually, comprising Canada, France, Germany, Italy, Japan, Russia, the UK, U.S., EU and European Commission and the Organisation of the Islamic Conference represented by Turkey.

<sup>142</sup> Crisis Group interview, BiH Presidency member, Sarajevo, 5 June 2013.

<sup>143</sup> It required “all immovable defence properties identified as necessary for future defence purposes [be] officially registered as the state property of BiH”. NATO press release, 22 April 2010.

<sup>144</sup> Crisis Group interview, Sarajevo, May 2012.

<sup>145</sup> Crisis Group Briefing, *Bosnia's Gordian Knot*, op. cit.; interview, Sarajevo, June 2013.

<sup>146</sup> “Lost in the Bosnian Labyrinth: Why the Sejdić-Finci case should not block an EU application”, European Stability Initiative, 7 October 2013. See also the follow-up, “Houdini in Bosnia: How to unlock the EU accession process”, 17 October 2013.

<sup>147</sup> Crisis Group interview, Mostar, 9 May 2012.

ling the hardest problems (constitutional reform) with the weakest tools in its arsenal, while reserving its big guns for comparatively easier problems. The EU is at its most transformative during a long negotiation process, as it tests every aspect of a state. It should welcome an application for membership, while making clear membership is only possible once Sejdić-Finci is settled. That would allow it to bring its full powers to bear on Bosnia now, when most needed.

Meanwhile, the international community should close the OHR, as Crisis Group has urged since 2007, and drop ineffective warnings that BiH risks falling behind its neighbours (“the train is leaving the station”). There is no train to miss, Bosnia will be able to move forward whenever it is ready.

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## VI. Rebuilding the Dayton Institutions

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There is no easy overall strategy to balance the competing demands of Bosnia's political communities, which will require fundamental and controversial constitutional reform (see Section VII below). There are, however, some less controversial steps toward making BiH a more functional government and state, though many of these would need constitutional amendments as well.

### A. *The Errors of the Past*

The international community's belief that Bosnia "must become a cohesive state, with central state structures that exercise real power" was a motor of change.<sup>148</sup> High Representative Paddy Ashdown imposed laws creating vast new powers for the state, sometimes at entity expense.<sup>149</sup> During his tenure, Bosnian leaders established many more state bodies and expanded state jurisdiction.<sup>150</sup> Serb leaders challenged some of these new bodies and powers as unconstitutional departures from Dayton, but the Constitutional Court upheld them.

The fate of the Court of Bosnia Herzegovina, the state court, shows how state building can go wrong. Dayton allotted judicial matters to the entities, apart from a state Constitutional Court.<sup>151</sup> In 2000, the PIC ordered Bosnia's leaders to create a state court; when the legislature did not, OHR imposed a law creating the Court of BiH.<sup>152</sup> It was meant to fill a gap in Dayton: no one had jurisdiction over violations of state law. But OHR went farther, amending the law to create special panels for organised crime and corruption in 2002; giving the Court jurisdiction over violations of entity criminal law and imposing a criminal code and a code of criminal procedure in 2003; and in 2004, adding a war crimes department.<sup>153</sup> The new code adopted Anglo-American adversarial norms foreign to Bosnia's lawyers, trained in the continental inquisitorial system.

The results of this major revision of the Dayton design are mixed. The war crimes division has done well, taking over cases from the International Criminal Tribunal for the former Yugoslavia and originating many of its own. Yet, a mistaken decision

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<sup>148</sup> Speech by High Representative Wolfgang Petritsch to the UN Security Council, 9 May 2000.

<sup>149</sup> For example, he created three new ministries (communication and transport, justice, and security) in 2002 ("Decision enacting the law on the Council of Ministers", 2 December 2002), a state court and prosecutors service ("Decision on appointment of judges and on the establishment of the Court of Bosnia and Herzegovina", 9 May 2002), a communications regulatory agency ("Decision regulating various matters", 21 October 2002) and other bodies.

<sup>150</sup> A 2009 study by the RS government found 68 competencies "transferred" from entity to state level; "Informacija o efektima prenosa ustavnih ovlašćenja" [Information on the effects of transfer of constitutional competencies], March 2009. OHR compelled the RS National Assembly to retract a set of conclusions adopting this study. "Decision repealing the conclusions of the RS National Assembly", 20 June 2009.

<sup>151</sup> Constitution, III.3.a (all powers not "expressly assigned" to the state remain with the entities), VI (establishment of Constitutional Court).

<sup>152</sup> "Decision establishing the BiH State Court", 12 November 2000.

<sup>153</sup> Decisions "enacting the Law on Amendments to the Law on the Court of Bosnia and Herzegovina", 6 August 2002; "enacting the Law re-amending the Law on Court of Bosnia and Herzegovina", "enacting the Criminal Code" and "enacting the Criminal Procedure Code", all 24 January 2003; and "on Appointment of the International Registrar to the Registry for Section I for War Crimes and Section II for Organised Crime", 22 December 2004.



to apply the 2003 code retroactively has voided many convictions.<sup>154</sup> The organised crime division has yet to secure a high-level conviction for corruption that survived appeal. Serb opposition created a grave crisis in 2011, when the RS called a referendum against OHR-imposed laws, specifically on the courts. Some RS complaints were sensible; others stirred nationalist resentment.<sup>155</sup> It took a top-level EU intervention to defuse the crisis and usher in a dialogue on justice issues that limps into a third year with little to show for itself.<sup>156</sup>

This pattern of internationally-sponsored state building without local buy-in has recurred repeatedly. It produced a “flood” of new agencies, many of which set up offices and hired staff but lacked clear tasks, so did little or nothing.<sup>157</sup> Some were created at EU request but functioned poorly due to political deadlock, lack of proper legislation or insufficient professional and technical capacity.<sup>158</sup> A minister from a party traditionally in favour of building state-level institutions said there are about twenty “useless” state agencies: “we have no idea what they do, but we cannot say that in public”.<sup>159</sup> Some state bodies perform worse than the entity institutions they replaced; a prominent businessman complained an agricultural export project went nowhere because the BiH Veterinary Office never issued permits.<sup>160</sup>

RS officials like to describe costly agencies sprouting like mushrooms in Sarajevo, draining their entity of vital powers.<sup>161</sup> But a Council of Ministers initiative to review state bodies has gone nowhere, with Serb ministers showing no great interest.<sup>162</sup> RS commissioned a study to find superfluous agencies but has apparently decided not to publicise the results.<sup>163</sup> State officials observe that RS seems more interested in taking back important powers like taxation, intelligence and criminal justice than in repatriating those state agencies exercise inadequately.<sup>164</sup>

The result is a zombie administration, providing full employment for civil servants but few services to citizens.<sup>165</sup> The Communications Regulatory Agency has accomplished little in seven years and seems powerless to tame notoriously politicised pub-

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<sup>154</sup> *Maktouf and Damjanović v. Bosnia and Herzegovina*, ECtHR, 2312/08 and 34179/08 (18 July 2013). The 2003 code increased war crimes penalties; the court should have applied the more lenient code in effect at the time.

<sup>155</sup> Crisis Group Briefing, *Bosnia: State Institutions under Attack*, op. cit. RS leaders complained of the retroactive use of the 2003 code; having first instance and appeals panels within the same court reporting to the same presiding judge; excess use of a provision allowing the court to take over cases from entity courts; and alleged anti-Serb bias.

<sup>156</sup> Crisis Group interviews, Council of Ministers member, Sarajevo, 12 September 2013; senior SNSD member, Banja Luka, 18 October 2013.

<sup>157</sup> Crisis Group interview, senior official, Civil Service Agency, Sarajevo, September 2010.

<sup>158</sup> Crisis Group interview, senior state official, Sarajevo, November 2010.

<sup>159</sup> Crisis Group interview, 2013.

<sup>160</sup> Crisis Group interview, Široki Brijeg, October 2010.

<sup>161</sup> For example, an RS minister said the Public Administration Reform Coordinator oversaw a large bureaucracy whose real task was to “coordinate” a handful of people in the entities; Crisis Group interview, Banja Luka, March 2012.

<sup>162</sup> Crisis Group interview, senior Council of Ministers official, Sarajevo, September 2013.

<sup>163</sup> Crisis Group interview, SNSD member of Parliamentary Assembly, Sarajevo, October 2013. A 2009 RS study focused on transfer of competencies from entity to state level, a 2013 study on effectiveness of state agencies.

<sup>164</sup> Crisis Group interview, senior BiH official, Sarajevo, November 2010.

<sup>165</sup> The state administration failed to spend its budget in recent years; Crisis Group interviews, Council of Ministers members, Sarajevo, June 2013.

lic broadcasters.<sup>166</sup> The State Aid Agency, created with much effort, met once, whereupon its director resigned.<sup>167</sup> The commission on concessions has made no awards in its twelve years; the foreign investment promotion agency has never secured an investment.<sup>168</sup> Agencies proliferate and perform badly or not at all but view criticism as an attempt to subvert their independence.<sup>169</sup>

### B. *Making Government Map the Power Structure*

Bosnia has a three-person Presidency and a Council of Ministers with a weak chair. In practice, both take orders from political party leaders. Eclipsing the powers of all these in theory is the appointed and foreign High Representative. International reform efforts have pushed for a more powerful prime minister as head of government, in combination with a weaker president and two vice presidents.<sup>170</sup> However, the usual European model of a mainly ceremonial head of state and stronger head of government is a bad fit for Bosnia. While some consider a collective presidency distasteful, it reflects the reality of Bosnia's multiple communities. A single head of state could prove deeply divisive.<sup>171</sup> The track record at state and entity levels shows that a strong head of government will either represent the largest constituency or rotate among them; both possibilities have drawbacks.<sup>172</sup>

Weakening the Presidency and creating a strong prime minister would fix something that is not broken. The Presidency works well even when members are at odds.<sup>173</sup> It devises common positions even on sensitive issues, such as the legacy of war and war crimes.<sup>174</sup> There is rare consensus on the institution's value.<sup>175</sup> All agree the Council of Ministers is less effective, its chair's powers limited in effect to meeting foreign representatives.<sup>176</sup> Ministers complain they draft laws only to see them disappear in-

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<sup>166</sup> Ibid; Crisis Group interview, senior Council of Ministers official, Sarajevo, September 2013.

<sup>167</sup> Establishing the agency, which is to regulate state aid to firms, was a key EU priority. Crisis Group interview, EU member-state ambassador, Sarajevo, May 2013.

<sup>168</sup> Crisis Group interview, former Council of Ministers member, Banja Luka, May 2013.

<sup>169</sup> Crisis Group interview, senior Council of Ministers official, Sarajevo, September 2013.

<sup>170</sup> Both the "April package" (the nearest BiH got to comprehensive constitutional reform), which failed by two votes in 2006, and the "Butmir package" of 2009 were along these lines.

<sup>171</sup> Crisis Group interview, Parliamentary Assembly member, Sarajevo 23 October 2013. European divided states are headed by a hereditary monarch (Belgium, Spain, the UK) or a collective (Switzerland).

<sup>172</sup> Croats resent that the FBiH prime minister is normally a Bosniak. Yet, when rotation gives a Croat the chair of the state Council of Ministers, the political manoeuvres needed can weaken his mandate: "First you lose a year forming [the coalition], then there are two reconstructions [of the government]. It looks like it is done so the job is not important when a Croat is in it". Crisis Group interview, Parliamentary Assembly member, Sarajevo, 23 October 2013.

<sup>173</sup> Crisis Group interview, BiH Presidency member, Sarajevo, 5 June 2013. This is consistent with numerous earlier Crisis Group interviews with Presidency members and their staff.

<sup>174</sup> Ibid. The Presidency worked for ten days to draft a major UN address on war crimes issues that was acceptable to its members, one of whom is a decorated veteran of the 1992-1995 war.

<sup>175</sup> Bosniak leaders value the Presidency as the only directly elected state-level office; Serb leaders like its consensus rules; Croats appreciate formal equality between the three peoples. Crisis Group interviews, Banja Luka, Mostar, Sarajevo, 2009-2013.

<sup>176</sup> The chair sets the agenda but only by consensus with the two deputies; in effect, these three represent the constituent peoples. Crisis Group interview, senior staff member, Council of Ministers, Sarajevo, 12 September 2013. The previous incumbent, Nikola Špirić (2007-2011), described the chair as "a man without competencies" and argued it was so weak as to be all but useless; Crisis

to the state machinery.<sup>177</sup> The Council accomplished much during the chairmanship of Adnan Terzić (2003-2007), but insiders attribute this to the context of internationally-driven state building that peaked then.<sup>178</sup>

The real weakness of the Bosnian executive is the absence of the Sextet. These most senior party leaders – the real decision makers – have migrated into marginal official posts, depriving the Presidency and Council of Ministers of much of their role as forums where policy is made. Crisis Group recommends a novel solution, to fuse all elements into one executive body: a government that would also, collectively, be the head of state.<sup>179</sup>

This government, the Council of Ministers, should be directly elected and have a mandatory coalition.<sup>180</sup> Bosnia needs an executive with the legitimacy and political heft that only direct election can provide. Its state-level coalitions are usually broad but often require long, unseemly political barter. The trading of posts between party leaders, when today's ally becomes tomorrow's enemy, emphasises to voters how little influence they have over selection of their country's leadership. A mandatory coalition, whose cabinet seats are based on election results, would produce equitable results more quickly and transparently, while giving voters a greater voice.

Any new Bosnia-wide election system would need to be adjusted to how fundamental constitutional reform is sorted out (see below), but the system for the state-level government and lower house of parliament could work as follows. Parties would put forward candidates on nation-wide party lists. The lists would be "open", allowing voters on election day to select their preferred candidate within a list. Seats in the Council of Ministers would be allocated to each party proportionally based on the share of total votes the candidates on its lists won. The parties with the most votes from each of the three political communities would nominate the three co-chairs of the Council, who would be the candidates with the most votes from each of those three parties. Each co-chair would also choose a ministry to head. There would be no seats without portfolio.

The remaining seats would be distributed proportionally between the parties in the same way that seats in the House of Representatives are now.<sup>181</sup> After all were allocated in the Council, the process would continue in the House. In sum: the top candidate from the top party of each of the three political communities would be a co-chair (making three co-chairs); and the remainder of cabinet seats would be divided proportionally between all winning parties, with parties again awarding seats to those candidates with the most votes on their lists. Parties would also win legisla-

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Group interview, Banja Luka, October 2008. A senior Bosniak leader said bluntly, the Chair "does nothing". Crisis Group interview, Sarajevo, March 2009. The current chair, Vjekoslav Bevanda, is a Croat; Croat leaders say it is important that one of theirs represents BiH but have previously acknowledged the position has "no real authority"; Crisis Group interviews, Sarajevo, Mostar, October 2008, June 2013.

<sup>177</sup> Crisis Group interview, Council of Ministers member, Sarajevo, 5 June 2013.

<sup>178</sup> Crisis Group interviews, Adnan Terzić, Sarajevo, February 2009; senior Council of Ministers official, Sarajevo, September 2013.

<sup>179</sup> The Swiss Federal Executive Council is an example of a combined, collective government and head of state.

<sup>180</sup> The Northern Ireland Executive is an example of a mandatory coalition government, with seats apportioned among parties using a system similar to what Bosnia uses for parliamentary elections that gives each party seats proportional to its vote share.

<sup>181</sup> Bosnia uses the Sainte-Laguë method for allocating seats.

tive seats according to their total vote share and would nominate for those seats the candidates with the most votes who had not already taken cabinet positions.

Had this system been in place in 2010, it would have yielded co-chairs from the parties that won the most votes: the Bosnian SDP (Željko Komšić or Denis Bećirević), the Serbian SNSD (Nikola Radmanović or Nikola Špirić) and the Croat HDZ (Dragan Čović).<sup>182</sup> The rest of the Council seats would have gone to the SDA (two), SDS (Mladen Bosić), SBB (Fahrudin Radončić), SBiH (Haris Silajdžić or Beriz Belkić) and an additional seat each for SDP and SNSD.<sup>183</sup> With a larger, thirteen-member council, the SNSD, SDP and HDZ 1990 (Martin Raguz) would have had seats. The system could be extended to deputy minister posts if desired.

The Council of Ministers would thus comprise the most popular politicians and always at least one minister, a co-chair, chosen by voters of each community. Much of the time, the heads of the winning parties would sit in the Council.<sup>184</sup> Normal business would be settled by majority vote, though given Bosnia's political culture, there should be a premium on reaching consensus. Sensitive matters, including setting agendas, proposing budgets, concluding international agreements, defence, foreign policy and the like would require consensus at least among the co-chairs.<sup>185</sup> Each co-chair should be able to veto any decision, provided a super-majority of the relevant legislature or caucus sustains that act.<sup>186</sup>

The creation of a single executive body would also mitigate risk of a breakdown in command and control. During a 2007 political crisis, the defence minister worked through his party chief rather than the Presidency; the U.S. ambassador worried that "in a real military crisis ... such contacts would create a parallel ethnic and politically based chain of command".<sup>187</sup> A collective head of state representing all major political forces would be better placed to resist parallelism and exercise effective civilian command.

The bicameral legislature should work faster, become larger and end discrimination against minorities. The lower house should grow from 42 to about 150 members. The upper house, consisting of delegates chosen by the entity legislatures, might be replaced by a senate that contains a representative elected by each of the 142 municipalities; alternatively, several municipalities might form an electoral district to reduce the overall number, but as in many federal systems, the smaller units should be

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<sup>182</sup> With the system proposed here, presidential candidates would likely have joined the party list, with Komšić and Radmanović winning.

<sup>183</sup> This would be five Bosniaks, three Serbs and two Croats; in this case, both Croats would be co-chairs: Čović elected in the Croatian community and Komšić in the Bosnian.

<sup>184</sup> More precisely, it would put the heads of the major parties' electoral lists in government; most parties give their leader the first spot on the list. Some RS parties prefer to run their leader for entity, not state office; this would leave them outside state government, but citizens would know in advance whom the party nominated for state office and could vote accordingly.

<sup>185</sup> A similar system is already in effect: the chair sets the agenda, but after reaching consensus with two deputies; this trio must agree on all matters on which the Council's decisions are final.

<sup>186</sup> For the co-chair associated with the Serb community, virtually identical to RS, this should be the RS National Assembly. For the other co-chairs, it should be the relevant caucus of the BiH or FBiH upper house.

<sup>187</sup> "Bosnia – Defense Minister on Security Situation", U.S. embassy Sarajevo cable, 27 October 2007, made public by WikiLeaks. The minister also described a worrying "but not necessarily nefarious" meeting between RS Prime Minister Dodik, the (Serb) deputy defence minister and all four Serb generals.

slightly over-represented.<sup>188</sup> A certain number of senators could enjoy a right to veto legislation on a narrow range of topics. This basic model for the BiH state level could also work for the Federation.

The above Council of Ministers framework would fulfil the central aspirations of each community and empower citizens. The mostly Bosniak Bosnian patriots would likely win a majority of Council seats and often get first pick of ministries; their ministers would have more political weight than now due to the direct election the patriot parties demand.<sup>189</sup> The Croat community might only be able to win one seat but would be guaranteed a co-chair and so the right to participate in forming consensus positions. The biggest Serb party would usually have first or second pick and would preserve the consensual decision-making model the RS prizes.

RS also prefers its own voters to elect state officials, rather than have them chosen by the BiH Parliamentary Assembly.<sup>190</sup> A directly-elected Council would have legitimacy to assume presidential prerogatives of foreign affairs and military command.<sup>191</sup> All sides would benefit from an executive that could take office promptly and be immune to the delays and breakdowns that presently plague the indirect election and coalition-forming processes at state and Federation levels.

For ceremonial purposes, a member of the Council could serve as titular president on a rotating basis, receiving foreign dignitaries and delivering important addresses (texts of which would continue to be adopted by consensus). Alternatively, Bosnia might choose a separate, purely ceremonial head of state.

Croats might object that fewer ministerial seats would dilute their constitutional equality as a "constituent people". Bosnian patriots have in the past staunchly rejected three electoral districts, something that "smells like [creating a] third entity" and risks "cementing ethnic division".<sup>192</sup> Serbs might continue to rule out all but the most necessary Dayton reforms for fear that the above measures to strengthen the state executive and reduce the role of entity legislatures in naming state officials would unbalance the state and further erode RS powers. But overall, the benefits of a single, directly elected executive for the country and each of its three communities should outweigh these objections. An additional safeguard might be agreement that all further constitutional amendments would require entity ratification. Giving the RS National Assembly such a veto would be a low-cost way of relaxing political tensions.

Finally, virtually all government bodies in Bosnia have rules purporting to safeguard the rights of constituent peoples, minorities and Others and quotas guaranteeing them seats. These are subject to abuse and are ineffective. Yet, numerical minorities still need protection. Bosnia should abandon quotas and instead strengthen prohibitions of discrimination based on local minorities' ethnicity, gender, sexual orientation, religion and other forms of identity.<sup>193</sup>

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<sup>188</sup> Entities should not be allowed to increase their senators by creating more municipalities; change in the body's size should require BiH legislative action with cross-community support.

<sup>189</sup> Crisis Group interview, senior SBiH official, Sarajevo, 2009.

<sup>190</sup> RS "insists on direct election of the Presidency" because it preserves the power of "RS citizens at the state level". Crisis Group interview, RS National Assembly senior member, Banja Luka, November 2010.

<sup>191</sup> Crisis Group interview, BiH Parliamentary Assembly member, Sarajevo, February 2012.

<sup>192</sup> Crisis Group interviews, senior SDA and SDP leaders, Sarajevo, May 2012.

<sup>193</sup> Bosnia has anti-discrimination provisions in its constitution and laws, with modest effect.

### C. *Out with Cantons, in with Municipalities?*

The Federation refers formally to its ten constituent cantons, each a mini-state with its own government, assembly, courts and police. While the courts and police jurisdictions seem to function within this framework, politics and local government machinery are unable to work. Cantonal leaders say they simply break laws or ignore provisions of the entity and state constitutions with which they do not know how to comply.<sup>194</sup> RS officials accuse them of ignoring rulings of the BiH and FBiH constitutional courts. A dispute over jurisdiction in civil service hiring practices has led to a situation where most cantons have not been able to recruit staff legally, since they are barred from using the federal personnel service but have no such agency of their own.<sup>195</sup>

The cantons are an extravagance the Federation cannot afford – financially but also politically. Even Croat officials, their biggest supporters, acknowledge Bosnia has “at least one government level too many” and expect them to be abolished in a constitutional reform.<sup>196</sup> RS has no cantons, and their Federation existence is an historical accident.<sup>197</sup> Meant to give Croats autonomy while blocking a single Croat unit that could secede, they no longer satisfy the Croats and impose heavy costs.<sup>198</sup>

“What is the reason for the cantons to exist right now? Only to have 150 more ministers”, mused a senior international financial official.<sup>199</sup> He estimated the cantonal administration increases administration costs in the FBiH by 20 per cent. A federal official argued that only Sarajevo and Tuzla cantons are self-sustaining, and none is near ready to participate in the EU accession process.<sup>200</sup> Brussels concurs, noting that Federation officials are far less receptive to training and meetings than their state or RS counterparts.<sup>201</sup>

Doing away with the cantons is a radical proposal that is widely discussed and praised in private: “Everyone knows this is the solution, but no one will say it”.<sup>202</sup> There are many variants, some involving a few “super-cantons”, others full removal.<sup>203</sup> Their exclusive powers, including policing and judicial responsibilities, might devolve to municipalities, with shared competences reverting to the FBiH government.

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<sup>194</sup> “Inzko: Una-Sana and Bosnian Podrinje cantonal assemblies must adhere to the rule of law”, OHR press release, 16 December 2013; comment at Ditchley Foundation western Balkans conference, February 2013.

<sup>195</sup> Crisis Group interviews, senior RS official, Banja Luka, 30 May 2013; senior civil service agency official, Sarajevo, September 2010.

<sup>196</sup> Crisis Group interview, Herzegovina-Neretva cantonal government minister (HDZ 1990), *Mostar*, 13 May 2009.

<sup>197</sup> The cantons were originally to be the middle level of BiH government – in effect, entities – in a Federation that would absorb the RS. See Crisis Group Report, *A Parallel Crisis*, op. cit.

<sup>198</sup> “The Croats feel degraded [in the Federation], partly with cause”. Crisis Group interview, senior Bosniak leader, Sarajevo, September 2013.

<sup>199</sup> Crisis Group interview, Sarajevo, June 2010.

<sup>200</sup> Crisis Group interview, FBiH official working EU accession issues, Sarajevo, March 2012.

<sup>201</sup> Crisis Group interview, senior Directorate of Enlargement official, March 2012.

<sup>202</sup> Crisis Group interview, FBiH Constitutional Court justice, Sarajevo, May 2012.

<sup>203</sup> A Croat member of a recent FBiH reform initiative proposed five cantons (Herzegovina; Tuzla and Posavina; Zenica and Central Bosnia; Sarajevo and Goražde; Bihać with the Serb municipalities); a senior SDA leader proposed the same number but with weaker powers and stronger municipalities. Crisis Group interviews, Sarajevo, October 2010. A prominent SDP leader suggested abolishing the cantons and making it impossible to outvote the constituent peoples at the entity level; Crisis Group interview, March 2010.

Demolishing these decrepit structures would remove many Federation problems but leave Croats politically homeless. Their representatives would agree to dissolve the only governments with Croat majorities if an alternative political forum resulted from reform at FBiH or state level. The state level option – amounting to creation of a third entity – is discussed in Section VII below.

At Federation level, part of the solution might be found in copying the previous section's recommendations for state-level government. That would allow the Croat community to elect a member of the FBiH executive with a strong role in setting policy by consensus, while Croat-majority areas would elect a number of senators with veto power over key entity legislation. Yet, even with stronger municipalities, Croats would need some vehicle for communal self-government. This could involve giving Croat-majority municipalities additional powers, including over higher education, secondary health care and radio/television, to be exercised cooperatively in a union of municipalities. Alternatively, they might form an autonomous province within the FBiH, with an elected regional government exercising these powers and a regional police and judiciary.

#### D. *Untangling the Bureaucracy*

State administration is due for reform too. Several new agencies are needed to cope with EU integration demands. The lack of an agriculture body, for example, seriously hampers trade.<sup>204</sup> Environmental problems could benefit from central management.<sup>205</sup> Though their opposition has blocked new bodies since 2007, senior RS officials privately admit they will go along if it can be shown there is no alternative. The key, for Serbs, is to ensure state authorities only operate consensually, in other words that they are not a means to impose unwanted rules on RS.<sup>206</sup> Balancing new bodies with reduction or abolition of unnecessary or poorly performing ones could prevent needless growth of state government.

The BiH Parliamentary Assembly should review performance of the many independent regulators, some of which do little useful. Statutory independence of public administrative bodies is attractive to internationals seeking to minimise corruption and foster an impartial civil service, but political party tendrils extend everywhere, and independence is often a veneer for unaccountability. Commissioning an expert panel well versed in Bosnian law and administration to review these bodies and seek consensus on new ones would be a good start.<sup>207</sup>

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<sup>204</sup> Sanela Klarić, "A wall of Bosnia's own making", *European Voice*, 25 July 2013 (online).

<sup>205</sup> The May 2014 floods affected both entities; the speaker of the RS National Assembly tweeted: "it is clear we need close cooperation on further measures and actions at the BiH level"; @Radojicic IgorMr, 13:28 23 May 2014.

<sup>206</sup> Crisis Group interviews, adviser to President Dodik, Banja Luka, August 2011; Parliamentary Assembly member, Sarajevo, October 2013.

<sup>207</sup> "We need ten good people who know the administration and the law to review [the state bodies] and come up with recommendations". Crisis Group interview, senior Council of Ministers official, Sarajevo, September 2013.

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## VII. Possible Roads Ahead

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Bosnia's problems go down to its foundations. Conflicts over basic constitutional issues infect everything and make progress on everyday matters achingly slow. A new constitutional compact is needed urgently, yet the leadership is unprepared and unambitious. A long period of gradual, uncontroversial reform related to EU candidacy could help create a context in which to handle harder, deeper issues but may be impossible, due to EU insistence on resolving Sejdić-Finci first. Something drastic must change, but how? One of the two schools of thought favours a "big bang" – comprehensive constitutional reforms to set the country on a firm foundation – the other evolution, ideally via EU accession. Some want bigger bangs than others, ranging from a few amendments to a new constitution.<sup>208</sup> The evolutionary approach varies between a fast or glacially slow pace.<sup>209</sup> But Bosnia's preference seems to be neither approach.

In a sense, there is no dilemma: there is no real possibility of a big bang now. "No one has the capacity for a big reform, because anyone who tries will be destroyed by rivals using it against him".<sup>210</sup> Bosnia would do well to set controversial issues aside for a time and focus on uncontroversial reforms related to EU accession. There is a vicious circle here, however: everything takes a long time because of deficiencies in the constitutional architecture, and there may not be the luxury to take this course. The February 2014 "Bosnian spring" shows how easily crisis can arise that might require addressing some of the most divisive questions raised by the war and Dayton. The minimum required by the EU, implementation of the ECtHR Sejdić-Finci decision, is hardly a small or easy reform. Twenty or more laws hinge on the constitutional articles in question, and much jurisprudence would have to be unravelled and rewoven.<sup>211</sup>

Bosnia is in effect a strongly decentralised federation and will remain one. There is nothing wrong with that as a basic design; decentralisation is common and growing in Europe. Bosnia's troubles with it stem in part from a struggle for power between government levels and in part from its unique feature: it is a federation both of two entities and of three constituent peoples. The latter problem is more acute, keeping the larger FBiH entity locked in near-permanent political conflict, embittering Bosniaks and Croats and blocking the road to the EU.

Bosnians think they cannot agree on anything. The current situation entrenches ethnic identity, with Dayton acting as a mirror of the past, not a roadmap for the future. Constitutional reform is vital for the EU process but impossible to achieve in practice. The Croats are a fundamental difficulty. In Dayton, they were forced to

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<sup>208</sup> The three main initiatives have been the internationally-driven "April" and "Butmir" packages, and the locally-driven "Prud process". Crisis Group Europe Reports N°180, *Ensuring Bosnia's Future: A New International Engagement Strategy*, 15 February 2007, p. 9; N°198, *Bosnia's Incomplete Transition*, op. cit., p. 4; and Briefing, *Bosnia's Dual Crisis*, op. cit.

<sup>209</sup> Some EU officials describe the approach as "laying down layer after layer of guano ... eventually, you have an island". Others would raise the tempo: once Bosnia starts accession negotiations, "we will tear the country apart" and rebuild it. Crisis Group interviews Brussels, February 2013; Sarajevo, March 2012. Some in RS lean toward minimum necessary reforms, then a twenty-year freeze.

<sup>210</sup> Crisis Group interview, senior RS leader, Banja Luka, April 2012.

<sup>211</sup> Crisis Group interviews, BiH Parliamentary Assembly member, Sarajevo, September 2013; former FBiH Constitutional Court justice, Sarajevo, May 2012.



merge with Bosniaks in FBiH, partly due to the West's effort to expiate its sense of guilt for allowing a genocidal war of ethnic separation to go so far. The result is that no credible, overall solution seems to have a constituency. The EU must and should be engaged, but on what grounds is not yet clear. Still, Bosnians must start the discussion of alternatives, quickly and deeply, because some of the most plausible ideas require a leap of imagination. To focus the debate, Crisis Group sketches five options.

#### A. *Muddling Through*

It is too late to amend the election law before the October 2014 elections. The winners will be under a cloud, having been chosen under a code the ECtHR condemned. With few potent policy levers at their disposal, they will confront simmering popular anger and a bleak economy. The first challenge will be to form state and entity coalitions, usually a long, dispiriting process. By convention, the Council of Ministers chair will rotate to a Bosniak, ideally one with strong community backing and disposed to compromise with Croat and Serb leaders.

The temptation to return to business as usual (patronage, management of social payments, shuffling of foreign loans and grants) should be resisted. The "Bosnian spring" has quieted, but the grievances that brought people onto the streets have not been assuaged. Renewed mass protests could easily go wrong. In Mostar they could turn into street fighting between the Bosniak east and Croat west banks; fatalities would sour relations with Croatia and the EU for years. Banja Luka could take its long threatened but unwise decision to secede.

Instead, the new leaders should revive the spirit of the initiative launched by the SDA's Sulejman Tihić, the SNSD's Milorad Dodik and the HDZ's Dragan Čović in 2008. They initialled several agreements, including the budget, census law and first amendment to Bosnia's constitution. A later meeting produced a tantalising sketch of a new constitutional design: BiH would have three levels of government (central, regional and municipal), each with executive, legislative and judicial powers; the middle level would have four regions.<sup>212</sup> The proposal soon was destroyed by controversy over the boundaries of the four regions. Yet, for the first time since Dayton, leaders had negotiated the deepest questions of state structure and, briefly, agreed on a way forward. The design was ideal for none of their parties but was a big advance over the status quo.

The initiative failed not only because its authors did not secure the support of their parties and potential allies and addressed the most controversial issues too soon, but also because Bosnia was not ready. Tihić, in particular, kept some very close associates out of the loop.<sup>213</sup> The core four-unit middle level implied territorial rearrangement and guaranteed bitter dispute. However, Bosniak opposition to RS survival in anything like its current form is no longer as strong.<sup>214</sup> A more careful approach might work today.

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<sup>212</sup> "Bosnia – Prud III yields progress on Brčko and sparks firestorm on constitutional reform", U.S. embassy Sarajevo cable, 27 January 2009, made public by WikiLeaks.

<sup>213</sup> Crisis Group interview, senior SDA official, Sarajevo, March 2009.

<sup>214</sup> U.S. diplomats reported that Bosniak Presidency member Haris Silajdžić told them "he intended to radicalize BiH politics and block compromise" rather than support the Prud Agreement. "EUR A/S Fried and Ambassador English meetings with Bosnia leaders in Brussels", U.S. mission to EU cable, 25 November 2008, made public by WikiLeaks.

## B. *A Three-Entity Bosnia*

If Bosnians are unsatisfied with muddling through, they must cut the Gordian knot of their constitution. One way would be to give the Croats the entity they want. The FBiH would be split into two entities, with a Bosniak and Croat majority respectively. To avoid “third entity” language toxic for Bosniaks, a federal district around Sarajevo could be added as a fourth entity. The RS could remain as it is, since a large majority of its residents support its continued existence. That option was explored in the 2008 initiative, and it may return in the future. Croat leaders insist that any new dispensation must include control of their own middle level of government, with executive, legislative and judicial branches.<sup>215</sup>

There is nothing inherently wrong with a Croat entity. It would solve many problems: there would be no further need for cantons, and relations between state and entity, and between entity and municipality, could be consistent throughout Bosnia. Instead of a tangled federation of entities and peoples, the country would be a normal federation of territorial units, a design with many successful European examples. Ethnic quotas could be replaced by regional representation and protection of fundamental human rights.

At the beginning, FBiH was a federation not of cantons but of two political communities and the areas they controlled: the “Muslim-Croat Federation”. The federal partners were the rump Republic of Bosnia and Herzegovina headquartered in Sarajevo with its army, and the breakaway Croatian Community (later Republic) of Herceg-Bosna, with its military wing, the Croatian Defence Council.<sup>216</sup> Traces of Herceg-Bosna persist, notably in the electricity utility Elektroprivreda HZ H-B, which covers most areas of Croat habitation. Croat leaders cite this to illustrate their vision for self-rule.<sup>217</sup> The utility’s structure, divided into several non-contiguous areas, is in this view a model for a future Croat-majority political unit. The Croatian postal service is another vestige.<sup>218</sup>

The main obstacle to a Croat-majority entity is political: it is highly offensive to Bosniaks.<sup>219</sup> Yet, rationales for their rejection ring hollow. A senior SDA leader ruled out the entity because its leaders allegedly would call a referendum and secede.<sup>220</sup> RS has not done this, and a small, scattered Croat unit would lack capability to break away and face opposition from Zagreb and Brussels.<sup>221</sup> Others have emotional objections to realisation of the wartime “dream” of Herceg-Bosna, an ethnically clean Croat ter-

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<sup>215</sup> Crisis Group interviews, senior HDZ, HDZ 1990 leaders, Mostar, February 2010, March 2012.

<sup>216</sup> Adding to the confusion, the Croatian Defence Council (Hrvatsko vijeće odbrane, HVO) was the name for both the government and the armed forces of the community (Hrvatska zajednica Herceg-Bosna, HZ H-B), which upgraded itself to a “Croatian Republic” in 1993.

<sup>217</sup> Crisis Group interview, BiH Parliamentary Assembly member, Mostar, 15 October 2013.

<sup>218</sup> Bosnia has three postal services; the others are the Serbian and the Bosnia-Herzegovina posts. Telecommunications are also divided, but the three operators (state-owned BH Telecom and privatised MTEL and HT-Eronet) increasingly compete for business countrywide.

<sup>219</sup> 91 per cent of Bosniaks oppose, 3 per cent support a third entity. Puls-IPSOS survey, op. cit.

<sup>220</sup> Crisis Group interview, senior SDA leader, Sarajevo, March 2009.

<sup>221</sup> There are three, widely separated Croat-majority regions. Western Herzegovina is the largest; many Croats live in scattered enclaves in central Bosnia; a small population is in Posavina canton. There is no practical way for the central Bosnian enclaves to secede.

ritory achieved by war crimes.<sup>222</sup> Some simply ask the international community to rule a third entity out of bounds.<sup>223</sup>

### C. *National Communities*

An alternative to a three-entity structure might be found in development of the political communities into a formal basis for government. The advantage would be to avoid the bruising business of creating new territorial divisions. As a constitutional category, the idea has one main problem: it does not match the two-entity structure. However, ingenuity could remedy this disadvantage. The concept of constituent people could be dropped and replaced with the civic nationality of the political communities. In place of three privileged peoples and “Others”, there would be three equal communities: Bosnian, Bosnian Croat and Bosnian Serb. Each would be understood as inclusive civic identities open to minority residents without question. The elaborate structure of ethnic civil service quotas – the “national key” – would have to be dismantled and replaced by prohibition of discrimination against minorities.

Bosnian national communities could resemble Belgium's language communities and might even be defined in linguistic terms, with language serving as a proxy for community loyalty, and thus political orientation.<sup>224</sup> The law recognises three languages, Bosnian, Croatian and Serbian, with equal status, and unlike the constituent peoples, languages leave no one out.<sup>225</sup> Bosnians overwhelmingly use their own national name to refer to the language they speak.<sup>226</sup> Roma, Jews and other minorities already describe themselves as Bosnian, Croatian or Serbian speakers without feeling their identity is eroded.<sup>227</sup>

In other divided states, language serves as a proxy for communal identity. Belgium has four linguistic regions, and the members of its House of Representatives divide based on language.<sup>228</sup> Switzerland requires its Federal Executive Council to represent both regions and language communities.<sup>229</sup> Using language to refer to people has an

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<sup>222</sup> Crisis Group interviews, public company managers, Mostar, July 2009.

<sup>223</sup> Crisis Group interview, presidential adviser, Sarajevo, January 2009. A Sarajevo diplomat told Crisis Group (February 2012) his state indicated FBiH reform should avoid a third entity.

<sup>224</sup> All Bosnians speak what most people would consider one language; all understand one another without interpreters. See for background Selma Boračić and Ajdin Kamber, “Language politics in Bosnia”, Institute for War and Peace Reporting, 5 December 2011 (online).

<sup>225</sup> “If today [the differences between Bosnian, Croatian and Serbian] bear the three national names, that does not come from the language but from the political right of each people to call the language it uses by its national name. That is why among us the names of languages ... actually have the role of political[ly] distinguishing, while in the linguistic sense they are mostly synonymous”. Ivan Lovrenović, “Promemorija o (hrvatskoj) jezičnoj politici u Bosni i Hercegovini” [A note on (Croatian) language policy in BiH], [www.ivanlovrenovic.com](http://www.ivanlovrenovic.com), 22 November 2012. Lovrenović, a well-known Bosnian Croat author, notes Bosnian Croats and Serbs speak very similar dialects that differ significantly from the literary Croatian and Serbian used in Zagreb and Belgrade. A foreigner seeking naturalisation must show understanding of one of the constituent peoples' languages. Law on Citizenship, *op. cit.*

<sup>226</sup> 97 per cent of Serbs said they speak Serbian, 86 per cent of Croats that they speak Croatian and 94 per cent of Bosniaks that they speak Bosniak or Bosnian. Puls-IPSOS survey, *op. cit.*

<sup>227</sup> Croats were most likely to use a different name (9 per cent said they speak Bosnian, 3 per cent Bosniak); 3 per cent of Bosniaks reported speaking Croatian. *Ibid.*

<sup>228</sup> Belgian Constitution, Arts. 2, 3, 4, 43.

<sup>229</sup> Federal Constitution of the Swiss Confederation, Art. 175(4).

ancient pedigree in the region too.<sup>230</sup> The ECtHR has ruled that language-based electoral qualifications are legitimate.<sup>231</sup>

Whether defined in national or language terms or otherwise, three Bosnian communities could become the basis for a supple, inclusive governing structure. For coordination and representation in Sarajevo, one way would be to group municipalities into three units based on election results. All municipalities in which Croat or Serb parties won a plurality would comprise the election district for those communities' representatives in the state executive and the upper house of the legislature.<sup>232</sup> The municipalities in which parties without a national name, or Bosniak parties, won would be the district for Bosnian community representatives.<sup>233</sup> The process would be repeated in each national election.

This would give territorially flexible political substance to the three communities. One objective would be to allow them to act together without creating a new level of government, thus allowing a virtual Croat unit or units to emerge within FBiH without threatening that entity's territorial integrity. The municipalities where Croat parties won could become the self-governing unit, with the upgraded powers outlined in Section VI.C. RS obviates the need for a similar Serb unit, though Serb-majority municipalities in the FBiH could form a smaller association to pursue common interests. But it should be easy to opt out: local communities should have the right to organise services in whatever language they choose; a Bosniak village in a Serbian-language municipality should have the option of Bosnian-language primary education.<sup>234</sup>

Reform on these lines would resolve the Sejdić-Finci case and contradictions between ethnic and citizen interests that are choking growth. All public offices would be open to persons of any ethnicity, resolving issues in another ECtHR case in litigation.<sup>235</sup> This structure, like the three-entity option, would empower citizens and give communities a better forum for setting state policy.

#### D. *Dissolve the FBiH*

Instead of dissolving cantons or breaking the FBiH into two or more entities, Bosnians could follow a think tank proposal to:

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<sup>230</sup> A chronicle of the epic 1493 Battle of Krbava Field describes the Ottoman Turks as "fall[ing] upon on the Croatian language", meaning attacking the Croatian population; Banac, *op. cit.*, p. 22.

<sup>231</sup> *Podkolzina v. Latvia* (2002), cited in Hodžić and Stojanović, *op. cit.*, p. 62.

<sup>232</sup> Most municipalities have a large majority of one community. Main exceptions are Mostar and several in central Bosnia, Brčko and Srebrenica. Brčko should remain outside the division as it is outside the entity division; its residents should be able to choose any community as they can now choose an entity. Mostar's complications could be addressed by proposals to create several municipalities there. Crisis Group interviews SDA, HDZ leaders, Mostar, 2012-2013.

<sup>233</sup> All parties that have won large numbers of Bosniak votes have neutral or Bosnian names: the Party for Democratic Action, the Party for BiH and the Social Democratic Party.

<sup>234</sup> Parents in an RS municipality have been boycotting the local primary school, which teaches the Serbian curriculum even though all pupils are Bosniaks. Rodolfo Toč, "Bosnia: The Konjević Polje protest", *Osservatorio Balcani e Caucaso*, 7 November 2013 (online). Former refugees complain their children are taught the majority group's language; Crisis Group interviews, focus group, Srebrenica, 29 March 2011; mayor, Grahovo, 25 March 2010. Some Croat parents worry their children will learn a different dialect from television, since there is no Croatian-language national station; Crisis Group interview, religious leader, Mostar, 3 July 2009.

<sup>235</sup> *Pilav v. Bosnia and Herzegovina*. The plaintiff, a Bosniak from RS, sought to run for that entity's presidential seat. ECtHR Application 41939/07, filed 24 September 2007.

Progressively abolish the Federation, and with it the constitutional category of “Entity”. The result would be a simplified, three-layered federal state with twelve autonomous units: the ten cantons of the current Federation, Republika Srpska and the District of Brčko. This would represent a fundamental change to the structure of the state, turning it into a normal, European federal system with central, regional and municipal governments.<sup>236</sup>

ESI launched this idea in 2004 with broad support among leaders of all three communities, but it assumes a much stronger role for central state institutions than RS leaders are willing to consider today.<sup>237</sup> Some FBiH competences could be transferred to the cantons, but others would have to be raised to the state level to avoid ruinously costly duplication, so would come up against RS opposition to most new state powers. The proposal aims at the same goal as some others discussed here – a simpler, three-level structure – but would need to be revised to work in today’s political constellation. The National Communities described in Section VII.C as a middle ground between the Croat third entity and ESI’s twelve units may offer a compromise. Another could be a Bosnia of five, six or seven entities tailored from the RS (in one piece or divided into its eastern and western parts), the Sarajevo and Tuzla regions, Central Bosnia and Herzegovina.

The ESI idea offers possible shock therapy: by abolishing itself, the Federation could force the hand of RS leaders and make addressing state-level constitutional reform unavoidable. The Dayton constitution cannot operate without the FBiH; Bosnian leaders would have to negotiate over a new framework. The stakes would be high, with all options, including dissolution and a unilateral RS declaration of independence on the table. Such a risky FBiH move makes sense only if the country faces hopeless stagnation and decline or worsening communal strife.

#### E. *A Federal but Liberal Bosnia*

The simplest solution is also the most radical: abolish entities and cantons and build the state anew without reference to community rights, protecting only individual rights. Middle layers of government could be eliminated, replaced by stronger municipalities or federal regions. New constitutional guarantees could protect minorities, languages, education and religion. The Party for BiH, among others, has proposed something like this.<sup>238</sup> Yet, almost no one in RS and few politically active Croats will even discuss it today. The civic model has attractions, including simplicity and an emphasis on equality, but in Bosnia it would be easy to abuse institutions blind to ethnicity. Government largesse could be funnelled to favoured places and peoples, leaving minority areas neglected if not actively oppressed.<sup>239</sup>

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<sup>236</sup> “Making Federalism Work – A Radical Proposal for Practical Reform”, European Stability Initiative (ESI), 8 January 2004, p. 1.

<sup>237</sup> “Waiting for a Miracle? The Politics of Constitutional Change in Bosnia and Herzegovina”, ESI, 3 February 2004, summarises reactions. The SBiH and SDP were opposed in part because RS would remain intact.

<sup>238</sup> “Politička i ustavno-pravna platforma SBiH” [Political and constitutional-legal platform of the SBiH], Party for BiH, 2006.

<sup>239</sup> The one attempt at this, in RS (see fn. 38 above), ended up strongly discriminating against minorities. Joseph Marko, *op. cit.*, p. 111.

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## VIII. Conclusion

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Bosnia needs to break from its decades-long political tradition of a system based on constituent peoples and their rights. This is not a conclusion Crisis Group has reached lightly or expects Bosnians to accept overnight. It reflects cumulative experience as much as observation that no one has been able to frame a broadly attractive vision for BiH on such a flawed foundation. Stresses and frustrations are accumulating in all three communities. If the country is to survive, it must search for new foundations. That may take many years and involve much experimentation, but it should begin now.

Raising a possible new approach to citizenship and identity does not imply rejection of the existence of Bosnia's three peoples or endorsement of the civic ideal of Bosnian patriotism. No constitutional project can succeed unless it takes the citizens as they are, and they are overwhelmingly divided into three communities. Any new approach would mean a big change but benefit from the fact that many working parts of such a change have been widely discussed and have significant constituencies of Bosnian support.

Bosnian patriots, and the Bosniak people as the largest group, bear the heaviest responsibility for the country's success. Bosnian patriotism may some day win over most citizens, but its adherents should reflect on the trajectory of Yugoslav identity, in which pressure to conform to the civic ideal strengthened rather than weakened Croat, Serb, Slovene and Bosniak identity. Unity cannot be forced or won through foreign pressure. It must be built on the engagement and consent of a broad cross-section – more than a majority – of the population. Nor can RS be shifted by litigation or parliamentary manoeuvre. A better way for Bosnian patriots to affect change in the RS character is by moving (back) there, becoming part of its civic life at all levels and accepting that most Serbs are loyal to the entity.

Objectively, Banja Luka is in the strongest position. It has overcome the foreign dictates of OHR and stopped state building in its tracks. Dayton gives it a chokehold on the state legislature. It can sink Bosnia, but the shipwreck would most probably take RS down too, since few would want to reward the entity that caused another Bosnian disaster. Serb leaders should understand that RS needs a viable Bosnian framework to thrive. It would be important to acknowledge the depth of Bosniak suffering at the hands of those who built RS.<sup>240</sup> Sarajevo still views it through the wartime prism; the burden of changing that is with RS.

Croats' importance outweighs their small size: Bosnia cannot be reformed or reliably governed without their consent. With disgruntled Croats, it breaks down into two roughly equal camps, with little common ground: Bosnian patriots and revisionists. But Croats and Bosnian patriots together form a critical mass. Croatia's EU membership enhances its kin's weight in Bosnia. Yet, Bosnia's Croats should not seek communal equality in every respect nor insist on over-compensation due to their status as a constituent people. Experience shows the limits of this legal fiction. Their key interests are self-rule and a place at the state and entity tables, with the ability to choose who represents them there.

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<sup>240</sup> See Crisis Group Europe Report N°214, *Bosnia: What Does Republika Srpska Want?*, 6 October 2011. RS has not taken the steps recommended in it to address wartime wrongs.

Neither Bosnia's survival nor its integration into the EU and NATO are guaranteed. A well-performing federation is the best outcome, on the lines sketched above and within NATO and the EU. The current hobbled environment has brought some predictability, areas of progress and three community-based telecommunications companies that increasingly compete countrywide, showing that the right structure can make Bosnia work. But other outcomes are possible, and disintegration is not the worst. BiH might reform sufficiently to complete EU accession but split peacefully. It might hold together but stagnate and never join the EU. Worst, it could split into parts that would languish in corruption and conflict.

Hard years separate Bosnia from its European future. Its people must answer, at least tacitly, the questions of state identity and loyalty that drove it apart in 1992. Its leaders must find common ground in circumstances that reward those who denounce compromise and promise to deliver nationalist demands. However, the country has come far since 1995. With the help of those in Europe who have travelled from war to federalism and union, Bosnia can go on to build a country in which all its peoples find their home.

**Sarajevo/Brussels, 10 July 2014**

Appendix A: Map of Bosnia and Herzegovina



Based on UN map no. 3729 Rev. 6, March 2007.



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## Appendix B: Glossary of Terms

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**April Package** – Proposal for constitutional reform crafted by U.S. and European diplomats; came within two votes of passing in Parliamentary Assembly in April 2006.

**Butmir Package** – Proposal for constitutional reform modelled on April package and urged by EU and U.S. diplomats in October 2009.

**DF** – Demokratska fronta (Democratic Front), Bosnian patriotic party founded by Željko Komšić.

**EUFOR** – EU-led peacekeeping force in BiH.

**ECtHR** – European Court of Human Rights, highest judicial body of the Council of Europe

**FBiH** – Federation of Bosnia and Herzegovina, larger of the two BiH entities, comprising ten cantons.

**HDZ** – Hrvatska demokratska zajednica Bosne i Hercegovine (Croatian Democratic Union of BiH), leading Croat party in Bosnia, headed since 2005 by Dragan Čović.

**HDZ 1990** – Hrvatska demokratska zajednica 1990 (Croatian Democratic Union 1990), Croat party that broke away from HDZ in 2006, partly in disagreement with latter's support for April Package; headed since 2013 by Martin Raguž.

**HVO** – Hrvatsko vijeće obrane (Croatian Defence Council), name for both executive government and armed forces of breakaway Croat entity during 1992-1995 war.

**HZ H-B** – Hrvatska zajednica Herceg-Bosna (Croatian Community of Herceg-Bosna), breakaway Croat entity during 1992-1995 war; re-named Hrvatska Republika (Croatian Republic) Herceg Bosna in 1994.

**IFI** – International financial institution, eg, European Bank for Reconstruction and Development, International Monetary Fund, World Bank.

**KM** – Konvertibilna marka (convertible mark), unit of currency of BiH, fixed at roughly €0.51.

**MAP** – Membership action plan, a NATO program designed to lead to membership.

**OHR** – Office of the High Representative, the international official charged with overseeing implementation of the civilian aspects of the Dayton Peace Agreement. The current High Representative is Valentin Inzko.

**PIC** – Peace Implementation Council, an ad hoc body of 56 states and international organisations supporting implementation of the Dayton Peace Agreement; often used as shorthand for the Steering Board, a smaller group of eleven

states and organisations that oversees and guides OHR.

**Prud Process** – A reform initiative launched in November 2008 by leaders of the HDZ, SDA and SNSD in the village of Prud, including a mix of short-term goals and longer, constitutional reform proposals.

**RS** – Republika Srpska, smaller of the two BiH entities.

**SAA** – Stabilisation and Association Agreement, the contract between the EU and aspiring member states in the Western Balkans, establishing a free trade area and guiding the accession process.

**SBB** – Savez za Bolju Budućnost (Union for a Better Future), predominantly Bosniak party formed in 2009 and still led by Fahrudin Radončić.

**SBiH** – Stranka za BiH (Party for BiH), Bosnian patriotic party founded by Haris Silajdžić and led by Amer Jerlagić.

**Sextet** – Informal group of leaders of six main political parties of Bosnia, currently the HDZ, HDZ 1990, SBB, SDP, SDS and SNSD, at times joined by the SDA.

**SDA** – Stranka demokratske akcije (Party of Democratic Action), predominantly Bosniak party led by Sulejman Tihić.

**SDP** – Socijaldemokratska partija BiH (Social Democratic Party of BiH), Bosnian patriotic party led by Zlatko Lagumdžija.

**SDS** – Srpska demokratska stranka (Serb Democratic Party), predominantly Serb party led by Mladen Bosić.

**SNSD** – Savez nezavisnih socijaldemokrata (League of Independent Social Democrats), predominantly Serb party led by Milorad Dodik.

**SFOR** – Stabilisation Force, NATO-led peacekeeping force in Bosnia, replaced by EUFOR.