

BOSNIA: WHAT DOES REPUBLIKA SRPSKA WANT?

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BOSNIA: WHAT DOES REPUBLIKA SRPSKA WANT?

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Republika Srpska's flirtation in June 2011 with a referendum is a reminder that Bosnia's smaller entity still threatens the stability of the country and the Western Balkans. It is highly unlikely that the RS will secede or that the Bosniaks will attempt to eliminate it, but if its Serb leaders continue driving every conflict with Sarajevo to the brink, as they have done repeatedly to date, they risk disaster. The agility of leaders and the population's patience need only fail once to ignite serious violence. Over the longer term, RS's determination to limit Bosnia and Herzegovina (BiH) to little more than a coordinator between powerful entities may so shrivel the state that it sinks, taking RS with it. RS also suffers from its own internal problems, notably a culture of impunity for political and economic elites and a lingering odour of wartime atrocities. Its leadership, especially its president, Milorad Dodik, needs to compromise with Sarajevo on state building and implement urgent entity-level reforms.

The RS threatened a referendum early in 2011 that could have provided support for a Serb walkout of Bosnian institutions and brought BiH back to the brink of war. The situation was defused in June, when the European Union (EU) offered a dialogue process on the judiciary, whose reform the RS was demanding. State and entity officials sat down and began to review the country's complex judicial system with an eye to harmonising it with the EU body of law (*acquis communautaire*). The process will be long and painstaking, but RS can achieve effective change only by working through the BiH Parliamentary Assembly and Constitutional Court.

The international community has wrestled with RS for years. Given a free choice, many in the entity would prefer independence, but this is unacceptable to the rest of Bosnia and the international community. The RS is too weak to fight its way to independence and would not achieve international recognition as a state. Its leaders reject much of the internationally-led state-building project that has given Bosnia its current administrative structure. Some Bosniak and international observers believe international will has flagged, giving Serbs room to sabotage the state, while other international and Serb observers argue international interventions keep Serbs in a bunker mentality.

The EU's response, aided by the U.S. and others, to the political and legal challenge the RS posed in June offers a non-coercive alternative from which it will be difficult for any party to walk away.

Bosniaks, Croats and the international community have little choice but to engage with RS elites, especially President Dodik. He is the most populist and difficult leader the RS has had for years, but he and his party have strong support. The opposition did better than expected in the October 2010 elections, especially in the contest for the Serb position in the BiH presidency, but Dodik's Alliance of Independent Social Democrats party (Savez nezavisnih socijaldemokrata, SNSD) controls the RS government and presidency, as well as the Republika Srpska National Assembly (RSNA). Nationalism and protection of the RS remain the entity's unifying *idée fixe*.

The RS is divided into east-west halves. The SNSD appears invincible in the politically and economically more influential western portion, controlling every municipality either directly or in coalition with a smaller party, and is encroaching on the traditional eastern stronghold of the Serb Democratic Party (Srpska demokratska stranka, SDS). Dodik's government decides all budgetary issues, as well as much of the investment that goes to the east. Many eastern municipalities, especially those run by the opposition, feel deprived and are slowly beginning to seek greater economic and political decentralisation, but this takes a back seat to concerns about protecting RS as a whole.

Corruption and weak rule of law undermine economic growth. The RS, like the rest of Bosnia, is only slowly emerging from the recession that resulted from the global financial crisis. Privatisation of RS Telecom and an oil refinery gave the RS a cash bonanza in 2006-2008, creating a false glow of prosperity. But these funds have done little to further growth, and recent tax increases and expected cuts in social services may breed social dissatisfaction.

Many Serbs believe that they are asked to shoulder all blame for the 1992-1995 war, accused of being occupiers and aggressors. An overwhelming number of the war's victims were Bosniak civilians, who suffered vicious ethnic cleansing and, most horrifically and prominently, mass

murder in Srebrenica. Serbs worry that the RS will be taken away from them if they admit they carried out a genocide at Srebrenica. But this is an empty fear. Rather, RS elites should acknowledge the responsibility of their wartime leaders and support reconciliation efforts so as to become more respected and trusted authorities throughout Bosnia.

RECOMMENDATIONS

To the Government of Republika Srpska:

1. Cease challenging the emergency powers of the Office of the High Representative (OHR) and the legitimacy of state institutions by calling for referendums; work instead to mend contested state institutions, including by:
 - a) using all available procedures in the Parliamentary Assembly of BiH; and
 - b) challenging impugned aspects of the institutions in question in the Constitutional Court of BiH.
2. Improve government-to-government relations with BiH and the (Bosniak-dominated) Federation of BiH, by holding regular and frequent joint sessions.
3. Cease support and funding for divisive commemorations of wartime events.
4. Support and fund actions to establish the historical truth about the war and to reconcile BiH citizens, such as by:
 - a) presenting awards to persons and institutions responsible for saving the lives of members of persecuted communities; and
 - b) publicising options for returnees to maintain links to the Federation, including health and social services.

To the President of Republika Srpska:

5. Promote reforms to:
 - a) strengthen the rule of law and root out corruption;
 - b) increase decentralisation; and
 - c) multiply investment in less developed regions, especially those to which displaced persons have returned and in the eastern RS.
6. Deliver speeches to the Parliamentary Assembly of BiH and at the annual commemoration at Potočari acknowledging fully the responsibility of the wartime RS leadership, including past presidents of RS, for genocide in Srebrenica and crimes against humanity elsewhere in BiH.

To the National Assembly of Republika Srpska:

7. Amend the RS constitution to limit the Vital National Interest veto to matters of genuine national interest and to remove the ambiguity that allows the Constitutional Court to circumvent the veto.

To the European Union:

8. Declare that neither partition nor greater centralisation is compatible with Bosnia's early progress toward EU membership.
9. Continue the high level dialogue on the judiciary and expand its format to address other disputed issues, while keeping international partners fully informed of progress.

To the Government of the United States:

10. Support EU efforts on judicial reform and other issues.

Sarajevo/Brussels, 6 October 2011

BOSNIA: WHAT DOES REPUBLIKA SRPSKA WANT?

I. INTRODUCTION

Republic of Srpska (RS), whose legitimacy was confirmed by the 1995 Dayton Peace Accords, has long been considered a major security problem because of attempts by its leadership to undermine Bosnia-Herzegovina (BiH).¹ The story behind the RS's creation depends on whom one talks to. For most Bosniaks and Croats, it was the result of a bloody campaign of ethnic cleansing; the majority of Serbs claim that it was created before the 1992-1995 war to protect basic Serb interests.

Following Bosniak and Croat moves to proclaim BiH independence from Yugoslavia in October 1991, Bosnian Serbs created the Assembly of Serb People of BiH on 24 October 1991 and the Serb Republic of BiH on 28 February 1992 (the name was shortened later on to Republika Srpska). After the March 1992 Bosnia independence referendum, which most Serbs boycotted, and wide international recognition of Bosnia as an independent state in April 1992, the Serb Republic of BiH severed all ties with the BiH government. At that stage, like today, a modest percentage of Bosnian Serbs – especially in bigger urban areas like Sarajevo and Tuzla – supported Bosnia's independence and multi-ethnic government.

Serious fighting began in April 1992, and as the war escalated, the RS accumulated territory. A vicious campaign of ethnic cleansing over the spring and summer culminated with the Serbs holding as much as 70 per cent of BiH territory. Subsequent battlefield losses and the Dayton Peace Accords reduced RS to 49 per cent of BiH territory. Ethnic cleansing and massive displacement changed RS's demography. Whereas in 1991 Bosniaks and Croats were 28.77 and 9.99 per cent respectively of the population on RS territory, in 1997 they were only 2.19 and 1.02 per cent. The percentage

of Serbs jumped from 54.3 to 96.79 per cent of the estimated 1,437,000 people in the RS.²

The RS is much more centralised and streamlined than the other Bosnian entity, the Federation of Bosnia-Herzegovina, (FBiH), with a strong president and a government headed by a prime minister and sixteen ministries. The parliament has 83 seats. There are 63 municipalities, but their powers are weaker than those in the FBiH, and they rely on the highly centralised system controlled by Banja Luka. Even though most residents of RS view it as a homeland for the Serbian people of BiH, it formally belongs to all three constituent peoples of BiH. Given the large Serb majority, few Croats and Bosniaks are in positions of authority, except as required by specific quotas. Geographically, the RS is split into its more urban, better-developed west and the more rural and isolated east. The two are joined together by Brčko District, an area under the sovereignty of both entities and international supervision.

After the war and the removal of the old political elite, RS worked hard to clean up its image. It implemented BiH Constitutional Court decisions to make itself more inclusive by changing names of towns with the Serbian prefix as well as its official anthem, began to confront its wartime crimes, cooperated with international efforts to strengthen the BiH state government and attracted foreign investment. This helped Bosnia evolve far from what it was at war's end, a minimal caretaker state joining two hostile entities. Cheered by this progress, the Peace Implementation Council (PIC) – the international body responsible for the Dayton Accords – contemplated ending the executive powers of its High Representative, BiH's international governor.

Since 2006, however, RS leaders have blocked most efforts to strengthen BiH's still-weak central institutions. Under the leadership of the charismatic Milorad Dodik (at the time prime minister), RS went backwards, chipping away at state institutions created after the war. It confronted the Office of the High Representative (OHR) in a series of escalating conflicts; spoke openly of seeking independence; and revived an inflammatory nationalism that irritated and alarmed Bosniaks. Serb leaders argued all this was a necessary corrective

¹ The terms Bosnia-Herzegovina, Bosnia and BiH are used interchangeably throughout this report to refer to the state that is composed of two entities: the Serb-dominated Republika Srpska (RS), and the Bosniak-majority Federation of Bosnia-Herzegovina (FBiH, Federation). The Federation also has a substantial Croat population.

² Crisis Group interviews, international officials, March 2011, citing estimates made by aid agencies in 1996.

to years of supine acceptance of international orders and necessary to defend RS prerogatives and very existence. The culmination came in spring 2011, when RS scheduled a referendum purportedly to determine whether its citizens accepted laws imposed by OHR, especially those establishing Bosnia's state-level court and prosecution service.³

In one sense, Serb intransigence has paid off. Today, no one seriously questions the RS's further existence, and Sarajevo's centralising hopes have become much more modest. Yet, the price has been high in worsened personal and political relations among Bosnia's top leaders, international reluctance to close OHR and a steeper economic downturn than the global crisis alone would have produced. All this contributes to BiH's ongoing political paralysis, which has left the state without a governing coalition for almost a year. RS's ties to the rest of Bosnia are fraying. Serbs in RS have few contacts with Bosniaks or Croats and see RS – not Bosnia – as their homeland. Their leaders' exclusive focus on building up RS as a state generates tensions. The EU managed to defuse the referendum crisis with a well-timed intervention in June, offering a "structured dialogue" on judicial issues. But RS's road back to Dayton does not end with the judiciary; other state bodies will be targeted.

Crisis Group has warned in several recent briefings and reports of the dangers inherent in the political conflict between RS, its neighbours in the other Bosnian entity, and the international community. This report is the first in a decade to focus tightly on RS itself.⁴ It is a companion to a September 2010 analysis of problems in the Federation of Bosnia and Herzegovina (FBiH), the other entity.⁵ Building on this work, Crisis Group intends to address the state level and its need for urgent reforms in a subsequent report.

II. THE POLITICAL SCENE

Patriotic parties and politicians, keen on building and defending RS as a state, dominate its political spectrum. They do not necessarily want independence, but insist on minimal interference from Sarajevo. In 2006, the Alliance of Independent Social Democrats (Savez nezavisnih socijaldemokrata, SNSD) took over the Serbian Democratic Party's (Srpska demokratska stranka, SDS) role as the standard-bearer of RS patriotism, and the other parties began searching for new political identities as they lost much of their unique appeal.⁶

A. THE RS GOVERNMENT

The October 2010 elections only slightly eroded the political dominance of the SNSD and its leader Milorad Dodik.⁷ Despite one of the most expensive and media-savvy election campaigns ever seen in Bosnia, it lost several seats in the RS National Assembly (RSNA),⁸ and its candidate for the Serb member of the BiH presidency, Nebojša Radmanović, only narrowly defeated Mladen Ivanić from the Party of Democratic Progress (Partija demokratskog progresna, PDP).⁹ Dodik convincingly won the RS presidency, though his main opponent, Ognjen Tadić from the coalition of op-

⁶ "The international community has created Dodik as a monolith which now cannot be circumvented. Dodik has taken over the SDS program and shifted from the left to the radical right, which appealed to most RS citizens. Dodik took over most of the SDS's ideology, and as SDS and PDP leaders fought their internal battles, people wondered why should they vote for them at all". Crisis Group interview, Zoran Žuža, RS political analyst, Pale, 9 February 2011.

⁷ The governing coalition now includes two smaller parties, the Socialist Party (Socijalistička partija) and the Democratic People's League (Demokratski narodni savez, DNS).

⁸ From 2006 to 2010, the SNSD lost 5.3 per cent of the vote and four seats in the RSNA, going from 41 to 37 seats. The main opposition party, SDS, won 17,000 new votes and went from seventeen to eighteen seats, while other opposition parties also made gains. The new opposition party, Demokratska Partija (Democratic Party, DP) of former RS President Dragan Čavić won 21,604 votes and three RSNA seats in its first election, though one of its delegates later defected to the SNSD caucus. Central Election Commission results, online.

⁹ Radmanović received only 10,000 more votes than Ivanić (50.05 per cent of the vote to 47.15 per cent) and won thanks to his party's strong organisation that brought voters to the polls on election day after initial results showed that he was trailing Ivanić. The SNSD also backed Emil Vlajki – a radical pro-Serb of mixed ancestry – for the position of the Croat RS vice president. Crisis Group interviews, SNSD officials, March-April 2010. While SNSD and the Croatian Democratic Union (Hrvatska demokratska zajednica, HDZ) criticised the SDP for electing the Croat member of the BiH presidency, Željko Komšić, thanks to mainly Bosniak votes, they ignored that Vlajki was elected by Serb votes.

³ See Crisis Group Europe Briefing N°62, *Bosnia: State Institutions under Attack*, 6 May 2011; and Section IV.B below.

⁴ Crisis Group Europe Report N°118, *The Wages of Sin: Confronting Bosnia's Republika Srpska*, 8 October 2001.

⁵ Crisis Group Europe Report N°209, *Federation of Bosnia and Herzegovina: A Parallel Crisis*, 28 September 2010.

position parties led by the SDS, fared well. Direct support from politicians and folk stars from Serbia was of limited value.¹⁰

The presidency is a strong position, whose occupant has the authority to dismiss or convene the government and National Assembly.¹¹ Yet, while Dodik was prime minister, he decided most political, economic, and social matters, relegating the president to the sidelines.¹² This autocratic approach caused problems in daily governance. Dodik and the rest of SNSD's senior leadership thus decided in 2010 to more clearly separate the top two executive roles. As president, Dodik mainly handles political, constitutional and strategic issues, while the new RS prime minister focuses on the economy, social services and the day-to-day business of government.¹³

Identifying the right prime minister to step into Dodik's old shoes took two months, due in part to growing economic challenges.¹⁴ The SNSD finally chose young and ambitious former banker and RS finance minister Aleksandar Džombić.¹⁵ His government, approved on 29 December, included six old and ten new ministers, mostly technocrats who rarely venture into the political arena.¹⁶ So far the division of tasks is working well; Dodik is not

micromanaging and avoids most economic and social issues, while Džombić is staying away from the political ones.

B. THE OPPOSITION

The SDS created Republika Srpska in 1992 and governed it without serious opposition during the blood-soaked 1990s. Friendless after the war, the party yielded to sustained pressure from OHR and the criminal investigations of the International Criminal Tribunal for the Former Yugoslavia (ICTY).¹⁷ Today it is a hybrid of nationalist diehards and technocratic moderates; it opposes the SNSD at the entity level but cooperates with it at the state one. While the SDS's top leaders are unencumbered by war crime charges, the party is careful to keep its nationalist credentials burnished. On 9 July 2011 it discretely re-appointed to its main board a number of officials linked to wartime events, including Dragomir Vasić, police commander during the Srebrenica operation.¹⁸

The SDS is no friendlier to Sarajevo than is the SNSD. Its president, Mladen Bosić, considers the political paralysis after the October 2010 elections a sign that Bosnia is a failed state: "It lives only on foreign infusion, [for] as long as there is this infusion".¹⁹ He has softened his tone, however, announcing a "new political concept" based on "leaving behind the politics of exclusive conflict" and accepting that "RS has been defended, and there is no more possibility for it to be abolished or brought down".²⁰

The SDS still enjoys support from many Serb nationalists, due to its historic role, but during the 2010 elections it struggled to find ways to distinguish itself from the SNSD and lost seats even in the east, its traditional heartland.²¹ It

¹⁰ Serbian President Boris Tadić, Foreign Minister Vuk Jeremić and even the popular Serbian folk singer Svetlana Ceca Ražnatović participated at SNSD rallies, calling citizens to vote for the party and Dodik. This was the first time any Belgrade Serbian leader openly engaged in a RS election campaign. "Tadić podržao SNSD" [Tadić supported SNSD], B92, 29 September 2010 online. "Vuk Jeremić: RS ima samo jedan izbor, a to je Milorad Dodik" [Vuk Jeremić: RS has only one choice and that is Milorad Dodik], Beta news agency report from SNSD rally in Banja Luka, 2 October 2010, online.

¹¹ The position was essentially created at the beginning of the war for Radovan Karadžić.

¹² SNSD candidate Milan Jelić was elected RS president in 2006. After his death from a heart attack on 30 September 2007, another SNSD candidate, Rajko Kuzmanović, was elected to replace him on 9 December 2007. Dodik won the prime minister post in 1997 and 2005.

¹³ Crisis Group interviews, senior SNSD officials and people close to Dodik, Banja Luka, September-December 2010.

¹⁴ The SNSD had already considered sacrificing the future prime minister before the elections if worsening economic conditions caused large-scale public protest, Crisis Group interview, senior SNSD official, Banja Luka, August 2010.

¹⁵ Džombić is an economic expert and not considered part of Dodik's inner circle. Crisis Group interviews, RS expert, Banja Luka, March-May 2011.

¹⁶ Of the sixteen ministers, ten come from SNSD, four from the Socialist Party and DNS. One ministerial post was given to an HDZ Croat and another to a minority. While SNSD criticised the new FBiH government for not having legitimate representatives from Croat national parties, the RS government equally failed to appoint any ministers from parties (SDA and SDP) deemed predominately Bosniak.

¹⁷ Of the SDS's top wartime leaders, one (Nikola Koljević) took his own life and three were indicted by the ICTY along with many of its regional chiefs. Many other senior party officials were removed from office by the OHR; the party's assets were frozen by the U.S. and its leaders subjected to travel bans.

¹⁸ For Vasić, see *Prosecutor v. Momčilo Perišić*, International Criminal Tribunal for the former Yugoslavia (ICTY), trial transcript, 25 May 2009. Other notables include Milenko Stanić (see *Prosecutor v. Radovan Karadžić*, ICTY, trial transcript, 23 August 2011) and Milovan Bjelica (see *Prosecutor v. Momčilo Krajišnik*, ICTY, trial transcript, 6 and 7 April 2006).

¹⁹ Crisis Group interview, Mladen Bosić, President, SDS, Banja Luka, 3 November 2010.

²⁰ Dejan Šajinović, "Mladen Bosić: Ponudit ćemo novi politički koncept" [Mladen Bosić: We will offer a new political concept], *Nezavisne novine* 16 August 2011 (online). Bosić went on to say he expected FBiH-based parties to give up their "constant efforts to curtail RS competences and creating hatred toward RS and Serbs in general".

²¹ On 10 July 2010, just before the commemoration of the Srebrenica massacre, the SDS gave medals of honour to some of its founders, including Biljana Plavšić, who served a war crimes sentence, and Karadžić, who is currently on trial in The Hague.

strongly opposes Bosnia joining NATO and demands that the membership question be put to a referendum.²² The SNSD, which had supported NATO membership, accepted the referendum idea after it was forced into a coalition with the SDS at the state level in 2010.²³

The PDP favours a more inclusive, Bosnia-focused message together with the Democratic Party (Demokratska partija, DP) and other smaller parties. The PDP now has seven RSNA deputies and its candidate only narrowly failed to win the Serb seat in the BiH presidency. The party has only two RSNA seats, but the government seems to go out of its way to marginalise its leader Dragan Čavić, removing the former RS president from the Senate.²⁴ The international support he enjoys will not help him locally.

The opposition is demoralised: “It is hard to imagine getting into power for the next four to eight years”.²⁵ Its ideologies are too diffuse – from far right (SDS and Radicals) and centre right (PDP) to centre left (DP) for a comfortable coalition.²⁶ The parties must guard against defections to the governing coalition and are particularly constrained because the largest of them, the SDS, has established a joint platform with the SNSD at the BiH level. That gives it limited room to oppose the RS government and reduces the potential effect of the other parties’ criticism.

Former Prime Minister Mladen Ivanić²⁷ and ex-President Čavić had their chances in government in 2000-2005, when they opened a window on a less nationalistic and

aggressive RS. Ivanić’s rhetoric was always gentler than Dodik’s, but the PDP also talked about the possibility of organising an independence referendum or linking RS’s status to Kosovo’s.²⁸ It also opposed the transfer of more competences from the entity to the state without full RS consent.

While Ivanić and Čavić are political veterans, some new parties, such as the New Socialist Party (Nova Socijalistička Partija, NSP), centred on Foča Mayor Zdravko Krsmanović, are attracting attention. When Krsmanović took office in 2004, his challenge was to revitalise an area that was under special U.S. sanctions and had been largely bypassed for foreign investment.²⁹ Vigorously tackling crime and helping Bosniaks return, he changed Foča’s image and did not shy from criticising Dodik’s government. Even though returnees face the same problems as elsewhere in eastern RS, little international criticism is levelled against the mayor, and senior foreign delegations often visit. He won municipal elections as an independent and survived attempts to remove him.³⁰

However, Krsmanović has not yet become a strong entity-wide figure. In 2010, the SNSD won five times as many votes in Foča as the NSP coalition.³¹ His new focus on RS politics does not appeal to traditional supporters: “The mayor has lost the compass ... he did many good things but since forming his political party his entire focus has been on fighting with his opponents”.³² International support rarely translates into votes; indeed, it is more likely to produce suspicion among voters.

The smaller opposition parties have limited influence, mostly among intellectuals in urban areas of western RS. Some observers believe many Serbs will vote for the most radical defender of the Serb nation as long as there is a perceived threat to the RS.³³ As long as the SNSD escalates the crisis

²² Many Bosnian Serbs worry that NATO membership might put them on the opposite side of Serbia, which remains committed to military neutrality.

²³ Crisis Group interviews, senior SDS and SNSD officials, Banja Luka, February-May 2011. SNSD offered SDS a state-level coalition agreement to deflect a competing offer from the SDP.

²⁴ The Senate is an advisory body appointed by the RS president. “Dodik je privatizovao RS” [Dodik has privatised RS], Banja Luka Live, 24 January 2011.

²⁵ Crisis Group interview, Mladen Ivanić, PDP President, Banja Luka, February 2011.

²⁶ Dragan Babić, SDS major of Bileća, said, “all parties are changing; who could have imagined a SDS/SNSD coalition? Just look at Dodik’s rhetoric from 1998 up to now. In this situation unification of opposition parties is the only way in which something can be done”. Crisis Group interview, Bileća, 24 March 2011.

²⁷ The pre-war journalist and economy professor Ivanić established the PDP in 1999. While he was never a part of the SDS, his party included many SDS members who defected as their party imploded under internal divisions and external sanctions. Ivanić and his party managed to remain part of various ruling coalitions by balancing between Serb nationalist and pro-Western positions.

²⁸ Senad Pećanin, “There can be no stable government without SDS” (interview with Mladen Ivanić), *BH Dani*, 24 November 2000 (online in English at www.ex-yupress.com).

²⁹ Because wartime leaders and their associates still held much power in the city. Crisis Group interview, Zdravko Krsmanović, Foča, 17 April 2011.

³⁰ All parties in the Foča Municipal Assembly tried to replace him, but their 2007 recall vote failed due to a technicality over absentee ballots. Krsmanović claims the reasoning behind it was personal and political, while opposition parties say they acted because of corruption and financial mismanagement. In the 2008 local elections, Krsmanović was re-elected with 4,780 votes to the SNSD candidate’s 3,358.

³¹ Krsmanović personally received only 874 votes.

³² Crisis Group interview, Izet Kundo, Foča returnee, Foča, 17 April 2011.

³³ “Why does no one stand against the government which is constructing the most expensive highway in the world? Because national interests are still dominant here, and people still choose to vote for empty promises of referendum on secession and protection from illusory threat from Sarajevo. This is shallow politics which gives people nothing to eat, but they still feel nurtured by

in BiH, in other words, it likely will not be seriously challenged over socio-economic problems.³⁴

Some opposition leaders complain that the government-controlled media refused to give them coverage for more than six months.³⁵ In forums in which opposition voices can be heard, such as the RS National Assembly, the lack of live TV limits their reach to the electorate.³⁶ Civil society is dangerously weak. The tight control exerted by the government, more often through soft incentives than repression, appears to have neutralised it to the point that “the most active NGOs seem to be the pensioners”.³⁷ Even organisations known for influencing politics, such as the War Veterans Association, refuse to take any actions that “may destabilise the RS at the time when it is under attack”.³⁸ Student organisations and groups remain impotent, since they believe they cannot influence change; Crisis Group focus groups on RS university campuses revealed a lack of initiative. Students crave EU standards of living but lack ideas on how to help achieve them and appear mainly keen on reaching short-term material goals.³⁹

III. THE IMPENDING ECONOMIC CRUNCH

International aid poured into Bosnia-Herzegovina after 1995, targeting primarily cities and villages in the Federation that had suffered at the hands of the Serbian forces. RS, which was under formal and informal sanctions because indicted war criminals were playing important roles in government and the police, thus obstructing implementation of the Dayton Peace Accords, claims to have received only about \$1.9 billion of the approximately \$12 billion given.⁴⁰

Despite the sanctions and lack of foreign aid, the standard of living of many Serbs increased notably. New roads and electricity now reach isolated parts of eastern RS.⁴¹ East Sarajevo and Pale are no longer picnic spots and empty fields but large residential areas. Serb urban migration accelerated after ethnic cleansing drove non-Serbs from their homes in urban centres like Bijeljina and Trebinje⁴² and deprived cities of their traditional professional classes.⁴³ City life, despite harsh post-war conditions, was a welcome relief for people coming from destitute rural areas. The war contributed to social cohesion and social mobility. Serbs almost universally attribute infrastructure development and greater job opportunities to RS's existence.⁴⁴ Few take a critical look at the entity's origins and the terrible fate of former non-Serb residents.

The global economic crisis has not spared RS, but people boast they “can live off wartime rations of oil and flour as long as they are protecting RS”.⁴⁵ Nationalist politicians capitalise on these feelings, claiming that RS is constantly under threat from Sarajevo and the OHR in order to distract attention from economic woes.⁴⁶ Vinko Radovanović, mayor of East Sarajevo said, “all three groups use inter-ethnic tensions to control social tensions; as soon as people are left without

it. This means that people will still be happy to eat stale bread as long as they can eat it in RS”. Crisis Group interview, Zoran Žuža, RS political analyst, Pale, 9 February 2011.

³⁴ “Dodik is protecting his own capital, not RS. It is easier to rule people in times of conflict, tension and crisis”. Crisis Group interview, Zdravko Krsmanović, Mayor of Foča, 13 April 2011.

³⁵ Crisis Group interviews, opposition leaders, Banja Luka, March-June 2011.

³⁶ Crisis Group interview, Dragan Čavić, DP President, Banja Luka, 2 March 2011.

³⁷ Crisis Group interview, Damir Miljević, NGO activist, Banja Luka, February 2011.

³⁸ Crisis Group interview, Pantelija Čurguz, RS War Veterans' Association, Banja Luka, 19 April 2011.

³⁹ Crisis Group focus groups, Banja Luka Business College/Banja Luka University, February-April 2011.

⁴⁰ Milorad Dodik, RS President, *Utisak Nedelje*, televised interview, B92 TV, 8 May 2011.

⁴¹ Crisis Group interviews, Nevesinje/Gacko/Bileća/Trebinje, 22-24 March 2011.

⁴² Despite brutal campaigns of ethnic cleansing and the fact that sizeable Bosniak minorities left the municipalities, regional centres like Trebinje and Bijeljina have actually increased in population compared to pre-war levels. Trebinje went from 30,000 to 37,000 despite about 5,000 Bosniaks being forced to leave, while Bijeljina went from 92,000 to 110,000 despite losing 30,000 Bosniaks.

⁴³ Since Ottoman times, Bosniaks in many small towns had more respected occupations, such as doctors and lawyers. These turned into family traditions and continued until the war.

⁴⁴ Crisis Group interviews, Nevesinje/Gacko/East Sarajevo/Bijeljina/Trebinje, February-April 2011.

⁴⁵ Crisis Group interview, Damir Miljević, NGO activist, Banja Luka, February 2011.

⁴⁶ Crisis Group interview, Zoran Žuža, RS political analyst, Pale, 9 February 2011.

bread, their attention is drawn to national issues. Media as well as citizens are in the service of governments. People shut up and watch the situation developing”.⁴⁷

A. REVENUES AND REFORMS

The sale of RS Telekom in 2006 to Telekom Srbija for €646 million was the first major foreign investment.⁴⁸ In 2008, a Russian company bought the oil refinery in Brod for €120 million. These two privatisations gave the RS government almost as much cash as its annual budget.⁴⁹ With that influx, the RS developed a sense of superiority over the Federation. Political elites claimed their centralised set-up was more efficient than the other entity’s complex bureaucracy.⁵⁰

The money enabled investment in infrastructure and salary increases but has not generated much economic growth. About €200 million is left of the windfall,⁵¹ with no more big privatisations expected. The 2010 consolidated deficit was 1.1 billion KM (€562 million), up from 731 million KM (€374 million) in 2009.⁵² The government claims the funds were used for “revolving investments”,⁵³ but opposition figures, as well as official bodies like the auditor’s office, question if they were used transparently and effectively.⁵⁴

The RS claim that its economic performance is significantly better than the Federation’s does not withstand scrutiny. An economist remarked: “Despite all this money, RS is not much better off economically than FBiH; maybe it’s even worse. Both entities have been sweeping their real problems under the carpet for many years, but while FBiH has a broader industrial base and several big companies awaiting privatisation, RS has

little more than weak agriculture”.⁵⁵ Local and international experts say that differences between the entities are minor and that the entire country is facing further economic and social trouble.⁵⁶ Across BiH, GDP growth was an anaemic 0.8 per cent in 2010, projected to rise to 2 per cent in 2011. Unemployment in RS is 24 per cent, close to the BiH average of 25 per cent.⁵⁷

The government says it has been forced to increase business taxes in a bid to boost revenues, undermining a key incentive for investors.⁵⁸ It has pledged to compensate publicly-owned firms, suggesting the burden will fall entirely on the struggling private sector. Already reeling from the general downturn, many small companies have laid off workers in 2011 or closed.⁵⁹

Major reforms are needed to improve healthcare and pensions. Officials admit that planned changes will leave about 80 per cent of current pensioners with lower payments.⁶⁰ On 20 July, the head of the pension fund, Zoran Mastilo, was sacked.⁶¹ As elsewhere in BiH and the region, social spending and pensions are unsustainably high. Benefits will have to be better targeted to the neediest, and possibly backed by commercial pension funds.

Without much industry, the RS is trying to develop agriculture and exploit natural resources.⁶² A high-level delegation

⁴⁷ Crisis Group interview, East Sarajevo, 11 February 2011.

⁴⁸ “Telekom Srpske prodat Telekomu Srbije” [Telecom Srpska sold to Telecom Serbia], Radio Free Europe, 5 December 2006.

⁴⁹ The 2011 RS budget is 1.6 billion KM (€818 million); “Usvojen Budžet Republike Srpske” [RS Budget Approved], B92, 22 December 2010.

⁵⁰ Crisis Group interviews, Banja Luka/East Sarajevo/Nevesinje/Trebinje, February-April 2011.

⁵¹ Crisis Group interview, Zoran Tegeltija, RS Finance Minister, Banja Luka, 21 April 2011.

⁵² The consolidated deficit includes deficits of the budget as well as of pension and health funds accrued over the past years. Crisis Group telephone interviews, RS and international financial officials, 9 September 2011.

⁵³ “Revolving investments” mean that money is spent in a way that assures re-investment opportunities, above all by granting low-interest loans, whose repayments finance new loans. Crisis Group interview, Aleksandar Džombić, RS Prime Minister, Banja Luka, 21 April 2011.

⁵⁴ Crisis Group interview, official in the RS auditor’s office, Banja Luka, March-April 2011.

⁵⁵ Crisis Group interview, senior international economic expert, Sarajevo, 29 June 2011.

⁵⁶ Crisis Group interview, international economic expert, Sarajevo, 3 August 2011.

⁵⁷ Crisis Group interview, international economic experts, Sarajevo, August 2011.

⁵⁸ Crisis Group interview, Dragan Čavić, former RS President, Banja Luka, 2 March 2011. The government claims that despite changes, only Montenegro offers more favourable tax breaks in the region. Crisis Group interview, Aleksandar Džombić, RS Prime Minister, Banja Luka, 21 April 2011. Employer contributions in RS are the second lowest in the region at 33 per cent of gross salary, only behind Montenegro at 20 per cent and much lower than the Federation’s 41.5 per cent, Investment and Development Bank of Republika Srpska (www.irbrs.net). Investments include a Russian company entering into a strategic partnership for a zinc mine in Srebrenica; the oil refinery in Brod; a planned \$1.4 billion investment from ČEZ for the power plant in Gacko has collapsed, and the two sides are engaged in a legal battle in a Vienna court.

⁵⁹ Crisis Group interview, Dragan Čavić, former RS President, Banja Luka, 1 March 2011.

⁶⁰ Crisis Group interview, Aleksandar Džombić, RS Prime Minister, Banja Luka, 21 April 2011.

⁶¹ “Vlada RS smijenila Zorana Mastila” [RS Government replaces Zoran Mastilo], *Nezavisne Novine*, 21 July 2011.

⁶² In April 2011, the RS government announced a project to build a hydro-electric plant at Dabar near Trebinje, with an estimated cost of 350 million KM (€179 million). The investment should be provided from RS funds and loans and eventually create 1,700 new jobs. “Nove hidroelektrana osnažice Srpsku” [New hydro-

recently visited China searching for investment and loans.⁶³ Yet, Chinese firms are unlikely to invest large sums and will offer substantial loans only with government guarantees. Much attention is being given to the promised leg of the South Stream natural gas pipeline, construction of which is due to start in neighbouring Serbia in 2013.⁶⁴ However the RS government does not foresee an economic upturn until 2014.⁶⁵ These problems are common to the region, but RS's political tensions and unfavourable image could make economic and social pressure more serious.⁶⁶

B. EAST AND WEST, REGIONALISATION AND CENTRALISATION

The eastern and western halves of RS have long had different levels of development and wealth, but this is now causing growing tensions. The lands west of Brčko District benefit from Banja Luka's gravitation pull on investments, jobs and skilled labour. The SNSD's heartland, western RS, has also grown rich from the party's years in power. Eastern RS consists largely of depopulated, impoverished towns along the Drina River valley and the mountainous backcountry of eastern Herzegovina. There is the perception locally that money made in eastern RS rarely stays there. Profits from hydroelectric plants in Trebinje, for example, were allegedly used to finance sports clubs in Mrkonjić Grad and Prijedor.⁶⁷ Not a single government minister comes from eastern RS.⁶⁸

power plan will strengthen Srpska], 19 April 2011, Capital.ba (online).

⁶³ Prime Minister Džombić headed a delegation to China in May 2011, leading among other things to the signing of a memorandum between the RS Development Bank and the Chinese Export Import Bank.

⁶⁴ "Kraak Južnog Toka Ide Kroz RS" [South Stream pipeline leg for RS], *Nezavisne Novine*, 16 September 2010.

⁶⁵ "Džombić: RS neće izaći iz krize do 2014" [Džombić: RS won't overcome crisis until 2014], *Dnevni Avaz*, 5 May 2011.

⁶⁶ "RS is cutting the very branch on which RS and the whole of BiH sit. By constantly challenging the international community, delaying EU-required reforms and destroying its image, the RS government is pushing development agencies and foreign investors away". Crisis Group interview, senior international economic expert, Sarajevo, 29 June 2011.

⁶⁷ Crisis Group interview, Nebojša Kolak, journalist, Trebinje, 23 March 2011. It is a common practice in both entities and Brčko District that profits from state-owned companies are at the disposal of the government, to be used freely to finance whatever it deems necessary, including support to budgets, financing of local communities, NGOs and sport clubs.

⁶⁸ More people live in western RS than in the east; in the 2010 elections, about 58 per cent of RS votes were cast in the west and 42 per cent in the east.

This imbalance and growing bitterness persuaded the government in Banja Luka to create a Fund for Eastern RS Development in 2007, which has invested about \$145 million on infrastructure,⁶⁹ agriculture development loans and housing.⁷⁰ Opposition figures claim that these projects are overpriced, with the extra money going to government-friendly firms. Mayors say too little is still being done to create the jobs the area needs.⁷¹

While there are opposing views on whether the government treats eastern and western RS equally, the vast majority of local officials and citizens agree that the RS is heavily centralised, if not "the most centralised entity in the world".⁷² This exacerbates political, economic, social and psychological divisions between east and west. Banja Luka controls the flow of capital,⁷³ including entity and municipal investment,⁷⁴ tax collection, municipal budgets⁷⁵ and the distribution of state loans.⁷⁶ Local government is disempowered financially, administratively and politically, which is especially evident in municipalities run by opposition parties (Doboj, Bijeljina, Bratunac, Gacko, Nevesinje, East Sarajevo and its municipalities) or Federation-based parties (Srebrenica).⁷⁷

⁶⁹ Including for a new road linking East Sarajevo to Pale and Jahorina, a new sports hall in Vojkovići, a new tunnel at Stambolčić and a new road across Čemerno. See RS Investment and Development Bank website (www.irbrs.net). Crisis Group interviews, mayors of East Sarajevo, Banja Luka, Trebinje, Gacko, February-April 2011.

⁷⁰ Between 2008 and 2011, KM 86 million (€44 million) was given for agriculture loans across the 29 Eastern RS municipalities while a further KM 37 million (€19 million) went to housing loans. Crisis Group interview, Branislav Subotić, Head of the Fund for Eastern RS Development, East Sarajevo, 9 February 2011.

⁷¹ Crisis Group interviews, East Sarajevo mayors, February 2011.

⁷² Crisis Group interview, Zdravko Krsmanović, Mayor of Foča, Foča, 13 April 2011.

⁷³ "Dodik is centralising things through money, not force". Crisis Group interview, Milan Radmilović, Mayor of Gacko, Gacko, 24 March 2011.

⁷⁴ This RS government interference with local investments has been blocking privatisation and reconstruction of Crni Guber spa in Srebrenica – once one of the biggest companies and employers in town – for several years. Crisis Group interview, Čamil Duraković, acting mayor of Srebrenica, Srebrenica, 30 March 2011.

⁷⁵ The RS government has to approve all municipal budgets. Crisis Group interviews, East Sarajevo mayors, February 2011.

⁷⁶ Crisis Group interview, Višegrad mayor, 17 April 2011.

⁷⁷ While municipal governments run by the SNSD usually manage to influence and get at least minimally-needed support from the RS government through internal party channels, most municipalities controlled by opposition parties feel deliberately neglected, circumvented and starved of funds and projects. Even when the entity government provides some local support, such municipal governments feel that their views are usually not taken into account. Crisis Group interviews, eastern RS, February-April 2011.

Many municipalities, particularly those run by the opposition, feel deprived⁷⁸ and complain Banja Luka ignores even their small loan requests.⁷⁹ An opposition mayor expressed the frustration that “we as municipalities can’t do anything – Banja Luka decides what our priorities are”.⁸⁰ The government strongly denies the imbalance, saying that investment has positively affected every municipality in eastern RS.

While some local leaders think this system just needs to be “fine tuned and made more efficient”,⁸¹ others call for greater decentralisation, with more powers given to municipalities,⁸² or even introduction of an additional, regional layer of administration.⁸³ The new RS government is at least aware of the problem, and Finance Minister Zoran Tegeltija said that in the first few months of his mandate he toured fifteen of 63 RS municipalities to look into their specific problems.⁸⁴ While more local self-government and decentralisation would be beneficial, there is no real appetite in the government to reform while state-level problems persist.⁸⁵

C. CORRUPTION AND THE RULE OF LAW

Corruption and state capture are problems, as in BiH as a whole, but it is more centralised and streamlined in RS.⁸⁶ The SNSD government has yet to take it on; a

senior RS official complained the “media are full of reports of actions against crime and corruption, but in reality, results are very poor. For the fight against crime we need political will, but what we have is a farce”.⁸⁷

Corruption and unacceptable tender processes are especially prevalent in public construction projects and public procurement.⁸⁸ The government has often circumvented legally required public tenders in favour of direct negotiations with selected companies. Since such practices are not acceptable to international financial institutions and development agencies, RS has lost significant investments.⁸⁹ One example involves a company that was directly selected to build a network of roads but was unable to raise funds on the international money market because of the lack of an appropriate bidding process, so had to cancel the deal. As prime minister, Džombić has improved tendering practices and secured co-financing worth some €70 million from the European Bank for Reconstruction and Development (EBRD) to build the Banja Luka-Prnjavor highway.

SNSD-affiliated businessmen have won many tenders by offering very low bids that were later increased drastically through post-contract annexes. Senior officials complained to Crisis Group that contracts for renovation of buildings belonging to RS institutions and agencies were given to firms close to the government that increased costs through additional annexes and included free apartments and other perks for the heads of these institutions to encourage them to ignore corruption.⁹⁰

Many local and international officials suspect that Dodik’s aggressive campaign against Sarajevo and OHR and his referendum move against the state judiciary were driven by fears that state prosecutors might indict him for corruption or misuse of office.⁹¹ In 2009, the local branch of the anti-corruption watchdog Transparency International (TI) accused him of a conflict of interest after the RS Investment

⁷⁸ Crisis Group interviews, East Sarajevo/Bileća/Foča mayors, February-April 2011.

⁷⁹ Crisis Group interview, Vinko Radovanović, East Sarajevo Mayor, East Sarajevo, 11 February 2011.

⁸⁰ “Banja Luka ignores our demands. We have been waiting for six months just to get a reply from the RS investment bank regarding our application for a three million KM loan (slightly more than €1.5 million) for construction of a new municipal building. Most of the investment goes to western RS”, complained Vinko Radovanović, DS mayor of East Sarajevo. Crisis Group interview, East Sarajevo, 11 February 2011.

⁸¹ Crisis Group interview, Tomislav Popović, Mayor of Višegrad, Višegrad, 13 April 2011.

⁸² Crisis Group interview, Milan Radmilović, Mayor of Gacko, Gacko, 24 March 2011.

⁸³ “There are differences between regions in the RS, and regionalisation may not be a bad idea – Austro-Hungarians did something similar here. There were always three distinctive regions here: Trebinje, Semberija and Krajina. Some sort of middle administrative level would serve RS well”. Crisis Group interview, Vinko Radovanović, Mayor of East Sarajevo, East Sarajevo, 11 February 2011.

⁸⁴ Crisis Group interview, Zoran Tegeltija, RS Finance Minister, Banja Luka, 21 April 2011

⁸⁵ “Once the problem is resolved on the state level, we will have to move to RS decentralisation, as well as strengthening of local communities”. Crisis Group interview, adviser to RS President Dodik, Banja Luka, 1 March 2011.

⁸⁶ “RS police are completely under government control, and the judiciary will not move against the government. The gov-

ernment also controls all other segments, media, syndicates, war veterans and other NGOs. There is no corrective to the government. Only the opposition can do that, but the opposition cannot be heard. The only way to show that there is opposition is to go out on the streets and start smashing things, but it is too early for that”. Crisis Group interview, Mladen Ivanić, PDP President, Banja Luka, 28 February 2011.

⁸⁷ Crisis Group interview, RS government official, Banja Luka, 1 March 2011.

⁸⁸ Crisis Group interviews, RS government officials, local and foreign experts, Banja Luka, February-June 2011.

⁸⁹ “RS has probably lost three years in construction projects due to the direct bidding approach”. Crisis Group interview, senior international financial official, Sarajevo, 14 March 2011.

⁹⁰ Crisis Group interview, senior member of RS judiciary, Banja Luka, 19 April 2011.

⁹¹ Crisis Group interviews, local and international officials, 2010-2011.

Development Bank (IRBRS) approved a €1.5 million loan to a company co-owned by Dodik's son.⁹² IRBRS and the RS government dismissed this claim, and shortly afterwards TI suspended operations and withdrew staff from its Banja Luka office due to what it called a government and media harassment campaign.⁹³ In July 2011, the RS Supreme Court upheld a lower court's dismissal of the TI suit, on the technical grounds that there was no RS law on conflict of interest at the time of the loan.⁹⁴

A larger scandal broke in 2009, when the State Investigation and Protection Agency (SIPA) sent a report to the state prosecution implicating Dodik and a dozen other senior RS officials and businessmen in corruption, fraud and misuse of office.⁹⁵ Dodik threatened to pull RS representatives out of state institutions in response.⁹⁶ The case is focused on Dodik and his associates' roles in several projects, including construction of the Banja Luka-Gradiška highway and reconstruction of the RS President's office. According to the RS auditor's office, costs were increased through annexes.⁹⁷ After working on this case for two years, the state prosecution transferred most of the files in June 2011 to the RS prosecutor's office, since it determined that most of the issues fall under entity jurisdiction; it retained only a part of the materials that may be linked to organised crime, a BiH competence.⁹⁸

1. The judiciary and prosecution

Many saw this as another defeat for the BiH State Prosecution, which has failed to secure the conviction of a single top Bosniak, Croat or Serb political leader, de-

spite bringing several to trial for corruption and fraud. Entity and local courts, however, have also failed to convict a top leader. A senior judicial official responded to criticism saying, "everyone is corrupt in RS, but it's not unusual. All the political rhetoric is just smoke and mirrors, lies meant to deceive voters into believing that they're fighting for national interest, while in reality it's just personal enrichment. The situation is the same in the F BiH ... yet all the criticism is aimed at us in RS".⁹⁹

A senior RS judicial official told Crisis Group that in RS, as elsewhere in Bosnia, "at most we can convict a mayor or a mini-director" in charge of some small firm, but all top businessmen and government officials are out of reach.¹⁰⁰ While the judiciary is nominally independent – the state-level High Judicial and Prosecutorial Council in Sarajevo names all judges and prosecutors – it is still embedded in a restrictive social and political fabric. The judiciary cannot take on the RS political leadership. Police drag their feet or lose evidence; witnesses fail to appear; judges acquit on technicalities.¹⁰¹

The principals blame one another. The RS auditor's office issues annual reports raising these issues, but it is up to prosecutors to initiate investigations or press charges.¹⁰² Chief Prosecutor Amor Bukić recently put the blame on the courts, saying they want extraordinary proof, so that even when prosecutors have the courage to bring indictments against important persons, they regularly fail.¹⁰³ "The court is not the problem; the prosecutor's office is the problem – it is very selective in how it selects cases", complained a senior official in the RS Supreme Court.¹⁰⁴ So the blame for allowing corruption to continue is passed back and forth among the RS auditor, prosecutor and courts.

Private owners and managers speak in exasperation about being unable to "get anything at all done without paying a bribe to someone first". "Fictional firms" that do not meet their payment deadlines simply shut down and re-register,¹⁰⁵ and some in the RS business community are demanding legislation against them.

⁹² Transparency International (TI) claimed this was a conflict of interest, since Dodik's son is both the head of the Bank's assembly and the president of its credit board. TI press release (online), 29 June 2009.

⁹³ "Transparency International chapter in Bosnia and Herzegovina forced to suspend operations due to safety concerns", TI press release (online), 9 July 2009.

⁹⁴ They also found the state-level law was too vague to apply. "Dodik nije bio u sukobu interesa" [Dodik was not in a conflict of interest], B92, 21 July 2011 (online).

⁹⁵ "Bosnian Serb leader accused of corruption", *The New York Times*, 24 February 2009.

⁹⁶ "SNSD prijete povlačenjem iz vlasti" [SNSD threatens to withdraw from government], Radio Free Europe, 24 February 2009 (online).

⁹⁷ Crisis Group interview, RS auditor's office official, Banja Luka, 11 March 2011. Details can be found in the auditor's reports at www.gsr-rs.org.

⁹⁸ Crisis Group phone interview, spokesman for the BiH prosecutor, Boris Grubešić, 25 June 2011. The state judiciary is in charge of prosecuting organised crime, while corruption and fraud comes under entity jurisdiction.

⁹⁹ Crisis Group interview, Banja Luka, 20 April 2011

¹⁰⁰ Ibid.

¹⁰¹ Crisis Group interviews, RS judicial officials, Banja Luka, April 2011.

¹⁰² Crisis Group interview, official in the RS auditor's office, Banja Luka, 2 March 2011.

¹⁰³ "More Corruption – Fewer Trials", Centre for Investigative Journalism, CIN, online, June 2011.

¹⁰⁴ Crisis Group interview, Banja Luka, 19 April 2011.

¹⁰⁵ Crisis Group interview, Veljko Golijanin, Majnex Company, Pale, 11 February 2011.

2. The police

Police throughout BiH, having undergone significant international-sponsored training and capacity building for more than a decade, are generally respected as professional.¹⁰⁶ Nevertheless, international experts note that recently police reforms in RS have been “slipping”, as political control over police and their operations has tightened.¹⁰⁷ Officials of the EU Police Mission (EUPM) report that local commanders are reluctant to take decisions without consulting the internal affairs minister.¹⁰⁸

The international community is also concerned with a July 2011 law that allows police who were denied certification by the UN International Police Task Force (IPTF)¹⁰⁹ to be re-hired and promoted to senior positions. Some see this as a violation of UN Security Council decisions.¹¹⁰ In May and July, the EUPM and OHR warned Internal Affairs Minister Stanislav Čađo and RSNA Speaker Igor Radojičić against adopting the law.¹¹¹ The EUPM said the law was not in line with EU principles and “would allow unintended interpretations and abuse in the future”, while OHR stressed it was inconsistent with “international obligations of Bosnia and Herzegovina that stem from the [Security Council] Presidential letter”.¹¹² Čađo brushed this off, informing

both that RS already employed eighteen officers denied certification in July, before the law was passed. With some justification, Čađo spoke of a “problem dumped on his doorstep” by others.¹¹³ The international community is considering its response. The issue is difficult, pitting respect for the Security Council’s authority against fundamental rights to due process that the IPTF process at times violated.¹¹⁴

¹⁰⁶ According to a 2010 Gallup Balkan Monitor poll, 61.8 per cent of RS residents have considerable or some confidence in local police. Gallup Balkan Monitor (online). A 2010 UN poll found 78.4 per cent of RS residents approve of the police. “Early Warning Report 2010”, UN Development Programme (UNDP), p. 78.

¹⁰⁷ Crisis Group interview, senior EU police expert, Sarajevo, 14 July 2011.

¹⁰⁸ Crisis Group interview, EUPM official, Sarajevo, June 2011.

¹⁰⁹ Immediately after the war, the UN International Police Task Force (UNIPTF), charged with overseeing the work of and reforming the local police forces, carried out a stringent certification process that prevented many officers with questionable or tainted war history or unprofessional behaviour to continue serving. This was the basis for crucial reform of local police, but it was tainted with several examples in which UNIPTF decertified some officers on an incomplete or wrong information or assessment.

¹¹⁰ Crisis Group interview, EU official, Sarajevo, 21 July 2011. The UNIPTF role was established by Annex 11 of the Dayton Peace Accord. See “On Mount Olympus: How the UN violated human rights in Bosnia and Herzegovina, and why nothing has been done to correct it”, European Stability Initiative (ESI) report, 10 February 2007; and “Turning point on Mount Olympus”, ESI statement, 16 May 2007. The UN allowed police denied certification to reapply for police jobs but not re-instatement to old positions.

¹¹¹ Correspondence between EUPM, OHR, the RS interior minister and the RSNA speaker provided to Crisis Group.

¹¹² Police decertification is the subject of the UN Security Council Presidential Statement, S/PRST/2004/22, 25 June

2004: “... The Security Council calls upon the Bosnia and Herzegovina authorities to ensure, including through the adoption or amendment of domestic legislation, that all IPTF certification decisions are fully and effectively implemented and that the employment of persons who were denied certification by the IPTF be terminated, and that such persons will be precluded from employment, either now or in the future, in any position within any law enforcement agency in Bosnia and Herzegovina”; also Security Council Presidential letter, April 2007.

¹¹³ Crisis Group interview, Stanislav Čađo, RS Internal Affairs Minister, Banja Luka, 23 August 2011. Čađo claimed police denied certification were not being re-hired to their old jobs and could only apply for regular vacancies. EUPM officials suspect they will then be quietly promoted using the new law. Crisis Group telephone interview, EUPM official, September 2011.

¹¹⁴ Crisis Group Europe Report N°180, *Ensuring Bosnia’s Future: A New International Engagement Strategy*, 15 February 2007, p. 8.

IV. RS AND THE BOSNIAN STATE

With a firm nationalist consensus backing him, Dodik at times threatens secession from Bosnia. But most often he limits himself to voicing deep distrust and dislike for the country, claiming, for example, that there are more mosques in Sarajevo than in Tehran and that if forced to choose between supporting a Croatian or a Bosnian sports team, he prefers the former.¹¹⁵ These comments not only infuriate Bosniaks but also undermine any sense of confidence and trust the average Bosnians Serbs have in state institutions. Yet, in both public and private, Dodik claims that RS can remain part of BiH and that he is committed to working on transforming it into a loose federation, a confederation or a union of independent states. RS already has a huge degree of autonomy within BiH; any further rearrangement of competences can only result from good faith political negotiations. But trust, and strong institutions that can mediate differences, are at the heart of any successful federal system, and the RS leadership is undermining rather than building these.

A. PERCEPTIONS

RS is the focus of most Serbs' primary loyalty; they view BiH with a mixture of resignation and suspicion. Only 13 per cent identify with BiH, while up to 70 per cent identify with the Serb nationality, Orthodoxy and RS.¹¹⁶ Many resent the international community as heavily biased in favour of Bosniaks. They believe theirs was a defensive war against a Croat and Bosniak attempt to drag them away from Serbia and dominate them, and they see RS as that war's hard-won reward. They aim to develop RS as a state within a state, a status they see as guaranteed by Dayton.¹¹⁷

As political tensions have grown, Serbs have turned more and more to Serbia. Support for RS joining Serbia rose from 64 per cent in 2005 to 81 per cent in 2010.¹¹⁸

¹¹⁵“Sarajevo ima više džamija od Teherana” [Sarajevo has more mosques than Teheran], Milorad Dodik interview for Croatian Nova TV evening news, 5 December 2010.

¹¹⁶“Gallup Focus on BiH”, 2010, p. 5.

¹¹⁷Crisis Group interviews, Banja Luka/East Sarajevo/Bijeljina, February-May 2011.

¹¹⁸Sum of those partly and completely in favour. Similarly, in 2005, some 16 per cent of Croats were partially or completely in favour of a separate Croat entity joining Croatia, while 58.4 per cent favoured a separate entity within Bosnia. These figures grew in 2010 to 26 and 70 per cent respectively. At the same time, the number of Bosniaks partially or fully in favour of a centralised Bosnia dropped between 2005 and 2010 from 92.1 to 82 per cent. These surveys were de-

signed and data was collected by Dr Roland Kostic from Uppsala University, in cooperation with Ipsos-PULS.

Young people express their allegiance to Belgrade through wild parties across RS when a Serb sports team has a big win.¹¹⁹ But Serbia is still a foreign country that offers only marginal financial, political and social service benefits. Apart from Bijeljina, no part of RS looks more to Belgrade than to Banja Luka.

Serbs' loyalties and RS leaders' attempts to capitalise on them stir controversy. Claims to statehood and sovereignty alarm internationals and Bosniaks, who point out there is no “room for any ‘sovereignty’ of the Entities and that the Entities' powers are in no way an expression of their statehood”.¹²⁰ But constitutional arguments have little bearing on many Serbs, who consider RS the only state that matters. Reflecting on international efforts to create a common Bosnian police force in years past, a veteran Serb leader remarked, “if they had succeeded with police reform, we would have had a sovereign Bosnia” – clearly pleased the effort had failed.¹²¹ The rest of BiH sees the RS completely differently – as a genocidal creation, with no historical antecedents, based on ethnic cleansing.¹²² Rather than engage in a debate on RS's origins, Serbs see all criticism as a direct and immediate threat to its survival.

Serbs and Bosniaks are creating two opposed historical narratives, undermining allegiance to a common state. Every 1 March Sarajevo marks the anniversary of the 1992 Bosnian independence referendum,¹²³ a media war erupts,¹²⁴ and Serbs lament the day as one “of great misfortune”.¹²⁵ World War II in Socialist Yugoslavia was carefully cultivated as a time of heroic inter-ethnic cooperation. Many Serbs now complain that the Bosniaks ignore Serbian World War II Partisan heroes, while they themselves increasingly commemorate Chetnik fighters and historic Serbian victories, especially in eastern BiH.¹²⁶ Old holidays, like the socialist

signed and data was collected by Dr Roland Kostic from Uppsala University, in cooperation with Ipsos-PULS.

¹¹⁹Crisis Group focus group, philosophy faculty, Banja Luka University, 1 March 2011.

¹²⁰“Statement of the High Representative Valentin Inzko”, OHR press release, 27 July 2011.

¹²¹Crisis Group interview, War Veterans Association, Bratunac, 30 March 2011. On the failure of police reform, see Crisis Group Europe Report N°198, *Bosnia's Incomplete Transition: Between Dayton and Europe*, 9 March 2009, pp. 11-14.

¹²²Crisis Group focus group, Islamic Community Centre, Višegrad, 13 April 2011.

¹²³The turnout in the independence referendum was 63.4 per cent with 99.7 per cent of voters voting in favour. Most Serbs boycotted, but some voted for independence.

¹²⁴“Dan Nezavisnosti BiH između proslave i bojkota” [Bosnia Independence Day between celebration and boycott], Radio Free Europe, 1 March 2011, (online).

¹²⁵Slavko Jovičić Slavuj, SNSD delegate, 64th session of the BiH House of Representatives, 24 November 2009.

¹²⁶Chetniks were royalist resistance fighters, some of whom were driven to collaborate with Axis occupation forces in their compe-

BiH National Day celebrated on 25 November, are dismissed as dates “which will not get any support from us”.¹²⁷ On the other hand, victories from the 1992-1995 war and days relating to the formation of RS are celebrated with much pomp, accompanied by the rehabilitation of buildings, above all monasteries and churches, that often make Bosniak returnees uncomfortable.¹²⁸

Politics aside, inter-ethnic relations are much improved and generally calm: more than 60 per cent of Bosnians from all ethnic groups, including Serbs, claim to trust members of different groups.¹²⁹ Relations between neighbouring municipalities separated by entity lines are improving. Serbs in East Sarajevo see their proximity to Bosnia’s capital as their biggest economic asset, while those in eastern Herzegovina aspire to better ties to Mostar. Local politicians praise cooperation with their counterparts across entity lines – whether in East Sarajevo, Trnovo or Berkovići.¹³⁰ However, even the most moderate Serbs in these municipalities reject any change of the entity setup, for example merging Canton Sarajevo and East Sarajevo into a common district.¹³¹ For them, good relations are dependent on the existence of two entities, while their Bosniak neighbours tend to argue that the entities hamper cooperation.

Serbs are unhappy that media in the Federation labels them as genocidal aggressors and occupiers. Many feel that “they [Bosniaks] need to make us feel welcome in BiH, they need to accept us, not try to replace us”.¹³² “We all like Džeko [a Bosnian football star] but need to feel more welcome in BiH if we are to start rooting for him”, a Serb official said.¹³³ There is no future for BiH, they argue, if the other side “thinks I will find it attractive

to live with someone who ridicules me, abuses me, insults me and tries to outvote me”.¹³⁴

RS officials are proud of the “compact, efficient nature of RS”.¹³⁵ Its economic and administrative superiority to the Federation is an article of faith in the entity, whose leaders claim that Serbs are in effect subsidising the BiH government. They see central institutions as costly and inefficient – “99 per cent of them are economic parasites”¹³⁶ – and question the logic of “artificially”¹³⁷ creating a BiH state with “more central-level employees than old Yugoslavia”.¹³⁸ Attacking central-level institutions for fiscal inefficiency is an easy way for RS leaders to justify demands for greater autonomy. But it is also a self-fulfilling prophecy, because in many cases these institutions do not work because of RS political or financial obstruction.

The RS wants full control over an appropriate share of incomes and expenses based on its concept of “clean accounts”.¹³⁹ This means obtaining a separate account and full control over VAT collected in RS. Revenue redistribution has been changing with the introduction of fiscal cash registers,¹⁴⁰ but this is too little too late for RS leaders, who are suing the Federation for repayment of some 50 million KM (€25.6 million) that were overpaid to the FBiH in the previous three years. While the RS apparently has a strong legal case, its claim that “this sum would make us solvent” are exaggerated.¹⁴¹

B. THE REFERENDUM THREAT

Over the past decade Serbs have repeatedly threatened to hold a referendum to express their dissatisfaction with the BiH state or the OHR. Moderate Mladen Ivanić as early as 2000 set out three conditions that would lead to a referen-

tition with the communist-led Partisans; some Chetniks committed atrocities against Bosniaks and Croats.

¹²⁷ Ibid.

¹²⁸ Crisis Group interview, Bosniak returnees, Višegrad, 13 April 2011. Bosniaks are unhappy that the region’s partisan background is ignored in newly created narratives glorifying nationalist movements. The money pumped in to restore churches and monasteries that then host nationalist gatherings leaves a sour taste for most Bosniak returnees, who are constantly told funds are low.

¹²⁹ “Gallup Focus on BiH”, 2010.

¹²⁸ Crisis Group interviews, East Sarajevo/Trnovo/Trebinje, February-March 2011.

¹³¹ Crisis Group interviews, SNSD/SDS/PDP officials, East Sarajevo, 9-11 February 2011.

¹³² Crisis Group interview, Mićo Mićić, Bijeljina Mayor, Bijeljina, 17 March 2011.

¹³³ Crisis Group interview, city official, Bijeljina, 17 March 2011.

¹³⁴ Crisis Group interview, Branislav Mikević, Nevesinje Mayor, Nevesinje, 21 March 2011.

¹³⁵ Crisis Group interviews, RS officials, Banja Luka, March/May 2011.

¹³⁶ Crisis Group interview, Gavriilo Bobar, SNSD/businessman, Bijeljina, 17 March 2011.

¹³⁷ Crisis Group interviews, RS officials, Banja Luka, March/April 2011.

¹³⁸ Crisis Group interview, adviser to RS President Dodik, Banja Luka, 20 April 2011.

¹³⁹ The phrase *čisti računi* [clean accounts] became prominent during the “Croatian Spring” of 1971 as a rallying cry against exploitation and oppression of Croatia by Belgrade. Crisis Group interviews, Milorad Dodik, Slavko Mitrović, Nikola Špirić, Aleksandar Džombić, Banja Luka, March/April 2011.

¹⁴⁰ This process was completed in RS in 2010 and is being finalised in FBiH in 2011. Fiscal cash registers automatically report purchases and VAT to a central repository. Once implemented countrywide, this will allow VAT receipts to be divided accurately.

¹⁴¹ Crisis Group interview, Milorad Dodik, RS president, 20 April 2011.

dum: to preserve the name “Republika Srpska” from legal challenge; if the international community continued to tolerate Bosniak calls to abolish RS; and if Kosovo became independent.¹⁴² He was joined in 2004 by RS president Dragan Čavić who said, “if Bosniak politicians want a story about changing the BiH constitution, then we will seek the right ... to self-determination”.¹⁴³ Others followed. In March 2006, the National Assembly declared its “full readiness” to call a referendum “to defend our legitimate interests” against a challenge to the RS flag, hymn, seal and public holidays, brought by the leader of a Federation party, Sulejman Tihić of the Party of Democratic Action (Stranka demokratska akcije, SDA) before the BiH Constitutional Court.¹⁴⁴ Despite losing the court challenge and being forced to change its insignia, the RSNA quietly let the threat drop.¹⁴⁵

Dodik has advocated a referendum with the most consistency and earnestness of all Serb politicians. Between 2003 and 2010 he called for this numerous times on at least seven different topics.¹⁴⁶ After Montenegro’s successful independence referendum in May 2006, he

hinted at implications for Bosnia, saying, “I like this manner of democratic expression of the will of the people”.¹⁴⁷ He drew a sharp reaction from OHR but was not dissuaded.¹⁴⁸ The idea of an independence referendum took root in RS politics in summer 2006. By mid-June, thousands of Serbs were demonstrating in Banja Luka demanding secession, and the other major RS parties, the SDS and PDP, came out in favour of a referendum.¹⁴⁹ Dodik rode the tide to a landslide electoral victory in October 2006. In November 2007, the RSNA threatened a referendum – couched in terms of “readiness to use all legal and democratic means” – during a dramatic confrontation with the High Representative after he imposed changes to the rules of procedure of the Council of Ministers and the chambers of the Parliamentary Assembly.¹⁵⁰ That threat was lifted in December 2007, when the OHR pulled back.¹⁵¹

Dodik and the RSNA did not call for a referendum after Kosovo’s declaration of independence in February 2008, when many analysts expected it. The opposition SDS, backed by the Radicals and many NGOs, demanded the same right as Kosovo, but the RS government denounced this as “nationalist opportunism”.¹⁵² A Bosniak leader close to Dodik argues the Serb leader’s decision to pass up the Kosovo opportunity is evidence he does not truly seek independence.¹⁵³ The RSNA contented itself with another vague threat, of an independence referendum if “a larger number of UN member states, and especially the countries of the region and of Europe” recognise the independence of

¹⁴² Ivanić explained that his statement was “meant as a warning and did not call for a referendum at this point, but [rather] after a whole series of ifs”; he also thought that Kosovo independence would produce an “unstoppable” demand for the same among RS Serbs. Senad Pećanin, “There can be no stable government without the SDS” (interview with Mladen Ivanić), *BH Dani*, 24 November 2000 (English translation online at www.ex-yupress.com).

¹⁴³ “Lider SDS-a i RS – Dragan Čavić – najavljuje referendum o nezavisnosti RS”, *Deutsche Welle*, 28 September 2004 (online).

¹⁴⁴ “Deklaracija o predmetu, broj U-4/04 u vezi sa inicijativom pred Ustavnim sudom Bosne i Hercegovine” [Declaration on case U-4/04 in connection with the initiative before the constitutional court of BiH], RSNA declaration 01-267/06, 24 March 2006.

¹⁴⁵ The court ruled against RS on 31 March (flag, hymn and coat of arms) and 18 November 2006 (holidays). It also ordered the Federation to change its flag and seal; years later, the RSNA was complaining that it had complied, but the FBiH had not and was still using its “unconstitutional coats of arms”, by which “all responsible persons were publicly committing a crime, which no one was prosecuting”. “Rezolucija o ciljevima i mjerama politike Republike Srpske” [Resolution on the goals and means of RS policy], RSNA resolution 01-1593/08, 15 October 2008.

¹⁴⁶ On defence reform (November 2003); preserving the RS name (March 2004); police reform (November 2006); defence against attempts to abolish RS (March 2008); NATO membership (October 2009); and OHR’s decisions to extend the mandate of foreign judges and prosecutors (December 2009) and to support the Dayton Peace Agreement (January 2010). Gerard Toal (Gearóid Ó Tuathail) and Adis Maksić, “Is Bosnia-Herzegovina unsustainable? Implications for the Balkans and the European Union”, *Eurasian Geography and Economics*, vol. 52, no. 2 (2011), p. 284.

¹⁴⁷ *Dnevni Avaz*, 27 May 2006, cited in Adis Maksić, “Referendum discourse in Republika Srpska politics 2006-2008: An analysis of its emergence and performative structure”, unpublished thesis, Virginia Polytechnic Institute, 15 October 2009.

¹⁴⁸ “Ambassador Butler asks for clarification from RS prime minister on referenda reports”, press release, OHR, 26 May 2006.

¹⁴⁹ Maksić, “Referendum”, op. cit., pp. 27-28. The SDS’s Čavić accused Dodik of using the issue as an election ploy. Gordana Katana, “Montenegro poll revives separatist dreams in Bosnia”, *Balkan Investigative Reporting Network (BIRN)*, 8 June 2006 (online). Čavić later noted that an independence referendum was illegal under Dayton but could become acceptable if Dayton were “unilaterally broken by any side”; “Čavić: referendum impossible”, B92, 17 August 2006 (online). As elections neared that autumn, he went further, asserting that RS “would not renounce the right to a referendum as long as [that right] exists in the world” and that it was “the only legitimate means against every attempt to abolish RS”. Interview, *Večernje novosti*, 29 September 2006.

¹⁵⁰ RSNA conclusion 01-1720/07, 5 November 2007. See Crisis Group Report, *Bosnia’s Incomplete Transition*, op. cit., p. 13.

¹⁵¹ An “Authentic Interpretation” of the High Representative’s decision was promulgated to address many of the Serb concerns on 3 December 2007, a day after Bosnia initialled its Stabilisation and Association Agreement (SAA) with the EU.

¹⁵² Maksić, “Referendum”, op. cit., pp. 52-56.

¹⁵³ Crisis Group interview, Fahrudin Radončić, president, Stranka za bolju budućnost (Party for a Better Future), Sarajevo, 27 October 2010.

Kosovo.¹⁵⁴ High Representative Miroslav Lajčák, while “deeply concerned” by this resolution, took no steps against it and praised the RSNA and Dodik for their appeals for calm.¹⁵⁵

The government reactivated the referendum option in 2009 during another tense confrontation with OHR.¹⁵⁶ On 14 December, it announced its intention to hold a referendum,¹⁵⁷ after the High Representative extended the mandate of international judges and prosecutors in the BiH judiciary through 2012 (a decision Crisis Group had recommended). Dodik’s intention was as much to undermine OHR’s executive power in general as to reverse the decision on internationals in the state judiciary.¹⁵⁸ Six months earlier,¹⁵⁹ he had already stated that he would not to accept further laws imposed by the High Representative on any subject.¹⁶⁰ This constant shifting – from threatening a referendum on independence to one against OHR authority – suggests that the current

RS leadership may consider the concept as primarily a favoured tool for mobilising public support. However, the holding of such a vote, on literally any issue, would prove, in their eyes at least, that the people of the RS have the right of self-determination.¹⁶¹

The referendum threat loomed throughout 2010. On 10 February, the RSNA passed the draft law, and after Bosniak parliamentarians lost their appeal to the RS Constitutional Court to reverse it as a threat to their vital national interests, it came into force on 19 May, establishing new legal procedures and timeframes for holding referendums.¹⁶² During the October election campaign, Dodik and other SNSD officials frequently pledged to hold a referendum, stressing that it was a crucial part of the right to self-determination.

Dodik did not take long to call for a referendum after taking the presidency. The decision to go ahead in April 2011 was reportedly his and surprised even his closest associates.¹⁶³ The timing was reportedly linked to OHR intervention in the formation of the Federation government, which in the eyes of many Bosnian Serbs and Croats showed international community bias in favour of Bosniak and multi-ethnic parties but also further weakened OHR’s international support.¹⁶⁴

¹⁵⁴ “Rezolucija o nepriznavanju jednostrano proglašene nezavisnosti Kosova i Metohije i opredjeljenjima Republike Srpske” [Resolution on non-recognition of the unilaterally declared independence of Kosovo and Metohija and the commitments of RS], 22 February 2008.

¹⁵⁵ “HR reacts to RSNA resolution”, press release, OHR, 22 February 2008.

¹⁵⁶ See Crisis Group Europe Briefing N°57, *Bosnia’s Dual Crisis*, 12 November 2009, pp. 2-3. In September 2009, the OHR imposed nine laws, all of which Prime Minister Dodik rejected.

¹⁵⁷ Specifically on “whether decisions of the High Representatives are to be accepted if they exceed the mandate effected by Republika Srpska inter alia as a signatory party to the Annex [on Civilian Implementation] as well as all other Annexes to the Dayton Agreement”. “Positions of the Republika Srpska government regarding the decision of the High Representative in BiH as of 14 December 2009”. On 28 December, the RSNA adopted this government conclusion with its own conclusion, 01-1879/09, and instructed the government to draft amendments to the law on referendums (conclusion 01-1880/09).

¹⁵⁸ “Decision Further Extending the Mandate of an International Member of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina and Appointing Sven Marius Urke to Carry Out Such Mandate”. OHR, 14 December 2009; Crisis Group Report, *Bosnia’s Incomplete Transition*, op. cit.

¹⁵⁹ In May and June 2009, the HR forced the RS to retract a set of largely symbolic declarations critical of allegedly improper transfers of competences from the entities to the state. The RS complied, but Dodik told the PIC Steering Board that “RS will not accept [the use] of [the OHR’s governing] Bonn powers any more”. Crisis Group Briefing, *Bosnia’s Dual Crisis*, op. cit., p. 3.

¹⁶⁰ As often, the RS position was less absolute than it seemed; Dodik was prepared to accept extension of foreigners in the Appellate Division of the Court of BiH.; Crisis Group interview, Milorad Dodik, Banja Luka, 25 November 2009.

¹⁶¹ Many international officials and diplomats believe that the current RS leadership will keep insisting on holding a referendum on literally any issue, just to prove that it can. Yet because the RS government constantly pushes the limits, no one is certain where the process would lead once any referendum was held; many fear a first unimportant referendum would be a rehearsal for a referendum on independence. Crisis Group interviews, international officials and diplomats, 2010-2011.

¹⁶² The old RS referendum law from 1993 was prepared for RS wartime leader Radovan Karadžić, who wanted to use it against the peace plan developed by Cyrus Vance and David Owen. It made a result legally binding for all RS institutions. In the referendum on 15-16 May 1993 96 per cent of RS Serbs voted against the peace plan. Yet, the law was not in sync with the RS’s new institutions and decision-making processes, since the short timeframe it required could not be respected in the new administrative environment. The new law extended the timeframe but also softened the extent to which referendum results were legally binding for RS institutions: “relevant institution will adopt appropriate acts within six months from the day when referendum was held, and in line with the Constitution and Law”. Crisis Group interviews, local and international officials and experts, 2010-2011.

¹⁶³ Crisis Group interviews, RS and international officials, Banja Luka and Sarajevo, June-July 2011. Traces of confusion in the RSNA documents also suggest haste. On the same day, the RSNA decided it would call a referendum on “laws imposed by, and violations of the European Convention of Human Rights by High Representatives”, but it actually scheduled one on whether citizens support “laws imposed by the High Representative in Bosnia, in particular the laws on Bosnia’s state court and prosecution”. This suggests the specific issue was incidental and the main point was mobilisation of support against OHR authority.

¹⁶⁴ Crisis Group interviews, RS and international officials, Banja Luka and Sarajevo, June-July 2011.

On 13 April, the RSNA scheduled the referendum; Dodik's incendiary speech at that session reminded members of his own party of SDS wartime rhetoric.¹⁶⁵ He was defiant of High Representative powers that he had once welcomed when they were used to dismiss his political opponents.¹⁶⁶ Dodik can be conciliatory, as when he stopped illegal construction of an Orthodox church near the Srebrenica memorial site in May-June 2011, but such actions are overshadowed when he makes racist statements and threats.¹⁶⁷

The decision to hold a referendum was a mistake. Dodik misjudged the depth of domestic and international aversion. The international community united behind High Representative Inzko, who had looked weak before the referendum crisis broke. It became clear the OHR would forbid the holding of a referendum on its own powers and on state institutions and that RS was heading for a high-stakes confrontation it had not bargained for. OHR, the U.S. and the EU were considering imposing sanctions against the RS leadership.¹⁶⁸ The SNSD prepared contingency plans for withdrawing its officials from state institutions.

The EU provided a way out that can also help diminish tensions on other issues between the RS, Sarajevo and the international community. During her visit to Sara-

jevo and Banja Luka on 13 May, EU High Representative for Foreign Affairs and Security Policy Catherine Ashton offered a high-level "structured dialogue" on the judiciary between the European Commission and Bosnian authorities in return for retreat on the referendum decision. Ashton proposed that an already scheduled sub-committee meeting in Banja Luka as part of Bosnia's EU accession process focus only on the judiciary, with EU Commissioner for Enlargement and European Neighbourhood Policy Štefan Füle chairing and Dodik in attendance. This "amazing convergence"¹⁶⁹ offered Dodik an honourable way out. On 1 June, the RSNA withdrew its referendum decision, concluding that "for now", a referendum "was not necessary", while affirming its right to hold one in the future.¹⁷⁰

The dialogue meeting was held in Banja Luka on 6-7 June. Tensions between state and entity level representatives had to be managed, with RS officials challenging the legality of their Federation colleagues and refusing to talk with them. Many international partners, especially within the OHR, U.S., UK and Turkish embassies, felt poorly informed about Ashton's initiative and were highly sceptical.¹⁷¹ All local actors and their associated media portrayed her visit as their own triumph and the other side's defeat and tried to set EU and U.S. officials against each other. However, the meeting was neither a victory nor a loss for anyone. It was the first step in a complex and technical multi-year process that – if successful – will improve rule of law in Bosnia and bring the country closer to EU membership.¹⁷² Its technical dialogue format could be used in other areas of dispute, replacing Bosnian politicians' futile and dangerous verbal duels.¹⁷³

With trust between leaders so low, referendums are not the way to make policy decisions in Bosnia. Instead, political elites should use the elaborate institutional framework that exists to protect minority rights. In 2007, when the RSNA asked for redress after an imposition, it alleged that OHR was exceeding its authority and requested that domestic institutions, including the BiH court and parliament step in.¹⁷⁴ In 2011, when the RSNA refused to accept OHR's authority, it turned directly to the referendum option without first

¹⁶⁵ For the details see Crisis Group Europe Briefing N°62, *Bosnia: State Institutions under Attack*, 6 May 2011; Crisis Group interview, senior SNSD member, Sarajevo, 19 May 2011.
¹⁶⁶ "It is the right of the High Representative to make this decision, because the Dayton peace accord includes a clause that he is above the BiH and entities' Constitutions". Milorad Dodik in the Belgrade newspaper *Vreme*, commenting on the dismissal of RS President Nikola Poplašen by High Representative Carlos Westendorp, 13 March 1999, online. "Serb people have to clearly state that we had enough of the tyranny of the international community, that we accept no more blackmails and threats, and that we specially do not accept abolition of competences given to us by the Dayton peace accord". "Dodik: Dosta je tiranije međunarodne zajednice [Dodik: Enough of the international community's tyranny], RS television, RTRS online, 15 April 2011.

¹⁶⁷ Crisis group interview, U.S. official, Sarajevo, 30 May 2011.

¹⁶⁸ Immediately after the RSNA adopted the decision to hold a referendum, the international community – with the exception of Russia – supported the first step of OHR's plan: to use Bonn powers to rule the decision illegal. Against the contingency that the RS would ignore this ruling and proceed, OHR and the U.S. State Department were preparing a second response, including sanctions against RS and some of its leaders. In the event of the referendum being held, the U.S. was also contemplating other options, including to appeal against the Brčko arbitration award and request that the Brčko District be given to the Federation, Crisis Group interviews, European and U.S. officials and diplomats, June-August 2011.

¹⁶⁹ Crisis Group interview, EU official, Brussels, June 2011.

¹⁷⁰ RSNA conclusion 01-868/11, 1 June 2011.

¹⁷¹ Crisis Group interviews, diplomatic corps, May 2011.

¹⁷² "The whole point is that this is a very boring technical exercise. Everyone agreed to the first conclusions and are now answering our questionnaire ... It might be sobering to Dodik". Crisis Group interview, EU official, Brussels, June 2011.

¹⁷³ Crisis Group interviews, EU officials, Brussels, June 2011.

¹⁷⁴ "Declaration on the most recent acts and requests of the High Representative in Bosnia and Herzegovina", RSNA declaration 01-1707/07, 30 October 2007. But then the Assembly went on to call for negotiations with OHR, appealed to the BiH parliament to abolish the Bonn powers and asked the PIC to annul its own Bonn conclusions. If these measures failed, the RSNA reserved its right to appeal to the BiH Constitutional Court.

trying to work through local institutional remedies. This is a worrying trend. The RS should seek to mend contested state institutions or decisions first and foremost through domestic institutions: the Parliamentary Assembly of BiH and the Constitutional Court of BiH.

C. SERB AIMS AND GOALS

Dramatic though they are, referendums are merely one tactic in RS's long struggle against the authority of OHR and the Bosnian state. It has been set aside for the time being, but the contest continues. RS goals have been consistent for more than a decade. As early as 2000, Dodik claimed that several decisions that gave powers to the state, including the establishment of the state border service, public utility regulation, common passports and the independent media commission, were unconstitutional.

The RSNA claims that the Bosnian state may only exercise powers expressly granted by Dayton, or "as are agreed by the Entities".¹⁷⁵ Its primary intent is to stop any further transfer of competences and the possibility of "outvoting".¹⁷⁶ Entity voting and vital national interest provisions are RS's defence against outvoting in the BiH legislature, and their efforts focus on protecting these. Although the Serb member of the state presidency can be outvoted or circumvented on certain issues, he can veto most decisions; nevertheless, the presidency seems able to reach consensus on many issues, and there are few complaints about it.¹⁷⁷ The RS is particularly worried about the judiciary, where it has no protection against outvoting. The BiH Constitutional Court has repeatedly ordered the RS to amend its constitution over the objections of both Serb (and, often, both Croat) judges – something that is fully within its powers. Likewise the Court of BiH has no special rules protecting RS interests, and is a favourite RS target.

¹⁷⁵ The state-level constitution, Article III. 5 (a); see RS National Assembly Conclusions 7 and 8, 13 April 2011.

¹⁷⁶ Outvoting in the Bosnian sense refers to the taking of a decision by majority vote against the opposition of a defined ethnic group, whose consent would otherwise be formally or informally required. See Crisis Group Report, *Federation of Bosnia and Herzegovina*, op. cit., p. 9.

¹⁷⁷ The exception is a tendency of presidency members to make policy statements without a common platform; the provocative speech by Haris Silajdžić, then the Bosniak member of the BiH presidency, at the UN General Assembly in October 2008 led to a RSNA resolution in protest. The resolution (01-1593/08, 15 October) required the RS member of the presidency to veto all further trips and statements abroad by Silajdžić, which plainly exceeded the RSNA's competences and was thus unconstitutional.

1. Reversing the transfer of competences

Since Dayton, there has been a gradual transfer of state competences from the entities to the state. Most transfers were done by a state-level law requiring agreement of RS representatives in the BiH parliament.¹⁷⁸ In some cases, the High Representative imposed legislation. A keystone of RS policy is to stop this process. The RSNA argues that the only constitutional way to transfer powers and responsibilities from the entities to the BiH state is by formal inter-entity agreement, in which the RSNA speaks for RS.¹⁷⁹ The Dayton constitution makes inter-entity agreement the primary state-building mechanism, and there is no reason why it should not be used, but some Bosniaks and internationals fear RS would try to reject reforms retroactively that had been done without the RSNA's explicit agreement.

The fullest statement of RS's views is in a March 2009 government document that analyses all 68 transferred competences and alleges that many of the new state powers are being poorly implemented, not that they are inherently illegal.¹⁸⁰ It is unlikely that the RS expects to erase all state institutions created since 1995, yet in addition to the state judiciary, it aims to dismantle or heavily revise the state's regulatory capacity, the Indirect Taxation Authority and the two main intelligence services.¹⁸¹

The SNSD leadership believes it is close to winning its point, and now that the constant pressure to transfer powers to the state level has stopped, Banja Luka can make concessions too. "We need to change our mindset after four years

¹⁷⁸ RS leaders have at times implied that most new state competences were imposed by OHR, which is false; see fn. 180, below.
¹⁷⁹ Resolution 01-1593/08 (15 October 2008); declaration 01-523/09 (25 March 2009); conclusion 01-788/09 (14 May 2009); conclusion 01-610/11 (13 April 2011); and conclusion 01-868/11 (1 June 2011). OHR annulled the May 2009 conclusions but has not responded to the other, similar statements. This may seem like hair-splitting, since RS representatives voted for all the transfers and can (and do) block new ones through entity voting, but there are differences, and inter-entity agreement is a more robust protection than entity voting.

¹⁸⁰ "Informacija o efektima prenosa ustavnih ovlašćenja sa Republike Srpske na institucije Bosne i Hercegovine" [Information on the effects of the transfer of constitutional competences from Republika Srpska to the institutions of Bosnia and Herzegovina], RS government, March 2009. The number of "transferred competences" has varied in RS officials' statements, and in recent Crisis Group interviews has climbed to the mid-80s, but the 2009 document (68 competences) is still the official RS position; it lists 23 transferred by the constitution itself; three by inter-entity agreement; two by OHR decision; and 37 by legislative act. Another three competences are listed as transferred on the basis of European Partnership and the Stabilisation and Association Agreement. Crisis Group interviews, RS officials, Banja Luka, August 2011.

¹⁸¹ Crisis Group interviews, RS and international officials, Banja Luka and Sarajevo, 2011.

of rejecting any transfer of competences”, noted an adviser to President Dodik, though stressing that harmonisation and coordination between the entities remained the RS model of state building.¹⁸² A prominent Serb parliamentarian echoed this, arguing that blocking all attempts to transfer competences had been needed to “train” Sarajevo to stop using the state-building process to weaken RS.¹⁸³

2. Protecting entity voting

To avoid more centralisation, and keep the RS as autonomous as possible, Serbs strongly defend their right to “entity voting”. The Dayton constitution permits the veto of legislation if two thirds of the delegates elected from each entity so vote, a provision called “entity voting” or the entity veto.¹⁸⁴ It is Banja Luka’s chief guarantee that no state-level legislation passes without RS agreement. For ordinary Serbs and political leaders alike, it represents a fundamental guarantee of RS survival, not a mere political tool.¹⁸⁵ Calls by Bosniaks or international observers to abolish entity voting to make the state more functional are interpreted as attempts to abolish RS.¹⁸⁶

RS representatives voted down many important laws using entity voting during the 2006-2010 legislative session. These were not necessarily bad laws, or ones that fundamentally threatened the entity’s survival. RS representatives blocked laws with the faintest hint of strengthening the state at the expense of the entities. The strategy appeared to be: permit only legislation consistent with the RS’s vision of a very loosely federal or confederal Bosnia.

For example, the RS blocked an updated law on witness protection in 2008, even though it was part of Bosnia’s European Partnership agenda and was needed to allow relocation of protected witnesses outside BiH.¹⁸⁷ An RS

delegate proposed limiting the witness protection program to a narrow group of cases.¹⁸⁸ Without these amendments, the law would have allowed entity and cantonal courts in BiH to use the same witness protection program – but left it up to the courts themselves to choose, thus imposing no new obligations.¹⁸⁹ Serb delegates refused a compromise proposal, claiming the law would transfer competences from RS to the state.¹⁹⁰ Debate quickly degenerated, with RS professing to fear abuse. None of the RS objections were well grounded, and the rejection seems to have been an attempt to starve the state’s criminal justice capacities, which RS objects to on other grounds. After the RS amendments failed, the RS struck down the law by entity veto.¹⁹¹

Two years later, the RS put Bosnia’s cooperation with the EU and NATO at risk by vetoing an update to the law on protection of confidential information¹⁹² that would have allowed international partners to share classified information with BiH, including the entity and cantonal police. International experts retained by the EU had prepared the law.¹⁹³ RS delegates announced they could only support it with amendments removing what they saw as transfers of competences from entity to state, specifically the creation of a state-level officer charged with approving security clearances. They said they feared RS officers could be denied security clearances without recourse. Lengthy attempts to find a compromise failed amid mutual recriminations.¹⁹⁴ RS officials now argue the law was an attempt to take over their extensive police databases.¹⁹⁵ RS officials insist that they will no longer give up competences in return for “promises

¹⁸² Crisis Group interview, adviser to President Dodik, Banja Luka, 23 August 2011.

¹⁸³ Crisis Group interview, RS member of BiH parliament, Banja Luka, 22 August 2011.

¹⁸⁴ Article IV (3) (d).

¹⁸⁵ Some blame the absence of any such feature in Bosnia’s pre-war constitution for the fateful decision by Bosniak and Croat delegates to seek independence from Yugoslavia in October 1991 – a vote Serbs blame for the ensuing war. Crisis Group interview, Vinko Radovanović, East Sarajevo Mayor, East Sarajevo, 11 February 2011.

¹⁸⁶ Crisis Group interview, Igor Radojičić, Speaker of RS Parliament, Banja Luka, 2 November 2010.

¹⁸⁷ BiH already had a law on witness protection, as did both entities (but they did not have witness-protection programs); the draft law contained important improvements. Transcript

of 39th session of the BiH House of Representatives, 5 November 2008, p. 47.

¹⁸⁸ Crimes against the integrity of BiH, against international law, war crimes, organised crime, and other violations of the BiH criminal code carrying penalties of three years imprisonment or more. Ibid, p. 48.

¹⁸⁹ Ibid, p. 47.

¹⁹⁰ The compromise would have opened the program to entity and cantonal cases involving violation of state (BiH) laws.

¹⁹¹ Transcript of 60th session of the BiH House of Representatives, 16 September 2009, p. 124.

¹⁹² The draft would have harmonised existing BiH legislation with EU and NATO standards. Transcript of 44th session of BiH House of Peoples, 19 April 2010.

¹⁹³ Crisis Group telephone interview, EU official, Sarajevo, September 2011.

¹⁹⁴ Transcript of 79th session of BiH House of Representatives, 16 June 2010, p. 29. The parliamentary committee took it up on 14 June 2010, reconsidered it on 13 July 2010 and apparently voted it down again. Serbs on the committee accused the Council of Ministers, which had drafted the law, of failing to send representatives authorised to negotiate a compromise text.

¹⁹⁵ Crisis Group interview, Stanislav Čađo, RS Internal Affairs Minister, Banja Luka, 23 August 2011.

of Euro Atlantic integration we want to see results first”.¹⁹⁶

Bosnia’s EU accession process is also affected. In January 2010, the Council of Ministers proposed a 339-page law on contracts.¹⁹⁷ The EU had made passing this law a priority, and it was important to secure the free movement of goods, persons and capital countrywide. A large and diverse team of experts (from Banja Luka and Sarajevo law faculties and from the EU, U.S. and UN) helped prepare the draft, working from Yugoslavia’s contract law and updating it to comply with the EU *acquis communautaire*.¹⁹⁸ Federation parties considered it constitutional, because Dayton provides for the free movement of goods, capital and persons, which requires contract law.¹⁹⁹ But Serb delegates considered it unconstitutional because contract law was not mentioned in the Dayton Accords; they recommended passing identical laws in both entities.²⁰⁰ During the debate, an RS representative proposed asking the BiH Constitutional Court to rule on who could regulate contracts.²⁰¹ Finally, the law was unanimously supported by Federation representatives but vetoed by the RS delegation using the entity vote.²⁰²

Bosnia, including both entities, needs laws on these and other issues. The absence of modern contract law will complicate RS companies’ business in the Federation market; obstacles to police and security cooperation caused by lack of the law on confidential data will hamper action against terrorism and organised crime. Whole areas of economic activity, such as leasing, remain unregulated due to the inability to update legislation.²⁰³ In many cases, RS delegates have acted rigidly and dogmatically; in others, they proposed compromises

that, while painful, their Federation partners would have done well to accept.

Bosniaks would like to do away with entity voting, and at least on certain issues that would make the state more functional; Serbs would prefer a change that safeguards their rights even further. The RS campaign to require inter-entity agreement, rather than mere state-level legislation, for all new state competences would replace the entity veto with a more robust mechanism. But inter-entity agreements in the current state of distrust and suspicion between RS and the Federation would be hard. Entity government-to-government relations need to be improved; one step might be to hold regular and frequent joint sessions. If the RS is serious about inter-entity cooperation as a way to increase efficiency, it should begin by cooperating more forthrightly with the Federation government. A possible area would be better coordination among the entities and the state government on preparation of Bosnia’s request for EU funding.²⁰⁴

While the entity veto seems formidable to Sarajevo, it has a hidden weakness. Ten of the fourteen delegates elected to the House of Representatives from RS territory must agree for the entity veto to operate.²⁰⁵ As a result of the 2010 elections, “patriotic” parties hold thirteen of the fourteen RS seats – more than enough. Yet, this one-sidedness is due to poor opposition strategy rather than the strength of the “patriotic” bloc. If Bosniaks in RS had not split their votes among three parties, they would have captured a second seat, and if the opposition had run as a coalition, it would have won two more, leaving the SNSD and SDS with exactly the ten seats needed to veto and no margin for error.²⁰⁶

¹⁹⁶ Crisis Group interviews, adviser to RS President Dodik, Banja Luka, March/April 2011. He complained the law would have ignored the rule that “the data belongs to those who collect it”.

¹⁹⁷ Draft law on contracts (Zakon o obligacionim odnosima), Article 1.

¹⁹⁸ Transcript of 71st session of BiH House of Representatives, 3 February 2010, p. 62.

¹⁹⁹ Ibid, p. 64. Article I (4) of the BiH constitution provides that “there shall be freedom of movement throughout Bosnia and Herzegovina”, including “full freedom of movement of persons, goods, services, and capital”.

²⁰⁰ Transcript of 71st session of BiH House of Representatives, 3 February 2010, p. 69; Crisis Group interview, RS government official, Banja Luka, 22 August 2011.

²⁰¹ Transcript of 71st session of BiH House of Representatives, 3 February 2010, p. 71.

²⁰² Minutes of 71st session of BiH House of Representatives, 3 and 10 February 2010.

²⁰³ Crisis Group interview, RS government official, Banja Luka, 22 August 2011.

²⁰⁴ Because of poor coordination between the entities and the state, Bosnia did not prepare a common proposal for EU funding for 2012 in time and almost lost €96 million in EU funds. Crisis Group interviews, Renzo Davidi, deputy head of the EU delegation in Bosnia, Sarajevo, 4 August 2011; EU official, Sarajevo, 12 September 2011.

²⁰⁵ Voting takes place in two stages: in the first, one third of the delegates present from each entity are needed to pass legislation, so RS delegates can block laws simply by refusing to attend or vote. When a law fails to obtain the necessary support, it goes to a second round in which it requires only a majority vote, unless it is opposed by at least two thirds of the delegates from an entity, meaning that at least ten RS delegates must vote to block a law. The same mechanism exists in the House of Peoples but is used less often. See Ric Bainter and Edouard d’Aoust, “Article IV – Parliamentary Assembly”, in Christian Steiner et al., *Constitution of Bosnia and Herzegovina: Commentary* (Sarajevo, 2010), pp. 626-28.

²⁰⁶ Crisis Group interview, Sulejman Tihić, SDA President, Sarajevo, 27 October 2010. In November 2009, Tihić challenged the BiH Election Law before the Constitutional Court, specifically its failure to mandate representation in line with the 1991 census. His appeal failed; had it succeeded, the Court could have mandated sufficient Bosniak and Croat seats in the RS delegation to the state parliament to make the entity veto difficult or impossible to use. See BiH Constitutional Court decision U-13-09, 30 January 2010;

Though losing the key tenth seat would be harder, it need only happen once for RS to be in what it would consider existential danger,²⁰⁷ since without the entity veto, RS could not legally stop the BiH parliament from amending the constitution to eliminate the entity's autonomy.²⁰⁸

3. Dreaming of independence?

Looming behind debates over blocking mechanisms and entity-state relations is the emotionally supercharged question of RS independence. For Bosniaks and many Croats, allowing the smaller entity to secede would be a criminal act, an affirmation and reward for the ethnic cleansing, crimes against humanity and genocide that accompanied its birth. A broad consensus of domestic and international observers believes Bosniaks would react with armed force in an effort to prevent an RS breakaway; Crisis Group shares that view.

An overwhelming majority of Serbs want independence.²⁰⁹ SNSD and SDS leaders would also prefer it. Yet, people and leaders alike are content to remain in a Bosnia that does not unduly interfere with their interests. RS leaders are keenly aware of the risks that a breakaway attempt would entail, and no such attempt seems to be on the near- or medium-term agenda. Instead, RS efforts focus on protecting and expanding autonomy within the state structure, with a vague hope of breaking free in the distant future. Their optimal solution is something as close to early Dayton Bosnia as possible: "BiH can be a loose federation, a confederation or a union of independent states ... whatever it is called, its functions at union level need to be consigned to military, market and foreign policy, all of which are to be exercised on the basis of parity and consensus".²¹⁰ Serbs are unsympathetic to the argument that some centralisation is needed to increase state efficiency.

and "Bosnia: Challenge to use of entity vote", U.S. State Department cable, 30 December 2009, made public by WikiLeaks.

²⁰⁷ Crisis Group's analysis of the 2010 elections indicates that while merely combining Bosniak and opposition votes would have been enough to win four seats, a shift of at least 30,000 votes would have been needed to win a fifth seat.

²⁰⁸ Serbs (like Croats and Bosniaks) also have a vital national interest veto that may be exercised by a majority of their delegates in the House of Peoples, but this veto (unlike the entity veto) may be overruled by the BiH Constitutional Court. See Bainter and d'Aoust, *op. cit.*, pp. 628-630.

²⁰⁹ A recent Gallup poll found 88.4 per cent of Serbs in favour of independence. Gallup Balkan Monitor 2010 survey (online). This finding is consistent with other recent polls and anecdotal evidence.

²¹⁰ Crisis Group interview, Milorad Dodik, RS President, 5 April 2011.

However, Serb leaders worry that their efforts to block strengthening of the state will fail, and the central government will grow strong enough to threaten RS autonomy or their own vital interests – either by actions of the international community or by the sheer number of Bosniaks, who may be a majority of Bosnia's population. Most Bosniaks feel that the RS has already been granted too much and that more decentralisation will lead to the country's breakup.²¹¹ If, on the other hand, Serbs fear RS autonomy is seriously threatened, a risky secession attempt may become their most attractive option, and they are manoeuvring to be prepared. Independence is thus both a long-term aspiration and a fallback option. Keeping the issue alive also serves to mobilise nationalist support and to irritate Bosniaks.²¹²

Some prominent Serbs reject the idea that BiH is only a Bosniak homeland and believe "Serbs need to show that BiH is not exclusively Bosniak".²¹³ This sentiment can be felt across RS, but it comes second to worries about adequately protecting Serb rights.

The government in Banja Luka plays a strange game when it comes to independence – shifting from advocating a referendum on independence to reforms to return Bosnia to its Dayton roots.²¹⁴ While Dodik constantly publicly threatens secession,²¹⁵ and the RS leadership continues to harden its positions, Dodik's aides explain that his statements are meant for internal RS consumption and complain that Federation officials and internationals take them seriously. Yet, even far from the public and in bilateral meetings, Dodik and his closest advisers say they do not believe Bosnia has a future.²¹⁶ Opposition figures in the RS express even less op-

²¹¹ In the face of what they consider Serb intransigence and undermining of the Bosnian state, some Bosniak extremists even call for a military solution to "liberate" the RS from Serbian domination. Crisis Group interview, Atif Dudaković, retired BiH general, Sarajevo, 27 October 2010.

²¹² Political opponents also accuse Dodik of wanting to create a murky entity, "the size of Montenegro and with the status of Kosovo, centred around the Krajina" region. Crisis Group interview, Zdravko Krmsanović, mayor of Foča, 13 April 2011.

²¹³ Crisis Group interview, Bishop Grigorije, Žitomislić, March 2011.

²¹⁴ "I am uncertain what Dodik's final goal is. Maximum autonomy or separation? I am still not 100 per cent convinced that he wants separation, but his rhetoric points in that direction. Why is he doing it? Is it necessary? Is he trying to deflect public attention from economic and social difficulties? Only time will tell. But there is a very dangerous link between social and economic difficulties and constant pumping up of nationalist rhetoric". Crisis Group interview, European ambassador, Sarajevo, 14 March 2011.

²¹⁵ "Dodik: Rastaćemo se referendumom za 24 sata" (Dodik: We will split-up with a referendum within 24 hours), RS news agency SRNA, 12 September 2010, report from SNSD's pre-election rally in Banja Luka.

²¹⁶ "It's better to think about ways for a peaceful dissolution. Bosnia can't survive without our efforts. Bosnia is OK with us on the

timism. But there is a line between their pessimism over BiH's future and their active role in ensuring that the country breaks apart. Dodik has told Crisis Group he would like discussion to start on the possibility of a "peaceful dissolution",²¹⁷ but this is impossible when only 21 per cent of Federation residents would agree to such discussions much less accept secession.²¹⁸

RS officials point out that if their preferred option of independence is impossible, there are other solutions to the current problems. Senior figures insist "we are fine with there being no independence if there is no more centralisation".²¹⁹ A strong, united message from the EU that neither more centralisation nor partition would be compatible with early progress toward membership just might be enough to diffuse the current tension between Sarajevo and Banja Luka, as each entity's reactions are dominated by its fear of the other's intentions. With secession, which scares Bosniaks, and loss of autonomy that alarms Serbs, both disqualified by Brussels and through the dialogue process already started on the judiciary, the situation might relax to the point where local cooperation and dialogue can resume.

RS has no credible claim to independence. A region's preference for independence, even as unanimous as in this case, does not translate into a right to statehood. RS has not been "subject to alien subjugation, domination or exploitation", nor has its people been "denied any meaningful exercise of its right to self-determination within the state of which it forms a part".²²⁰ Far from it: Serbs in Bosnia have an uncommonly high degree of self-government and a strong voice in formulating state-level policy. RS politicians have failed to articulate a detailed, coherent set of goals that Bosnia does not provide. Mere complaints about inefficient state institutions, encroachments on prerogatives or unreasonable FBiH partners do not suffice, whatever their merits. Contrary to RS rhetoric, Bosnia already provides an excellent framework and a wide range of institutions within which Serbs can exercise their rights to self-determination. Yet, whatever their ultimate goals, RS should still for-

mulate more specific policy goals for state-level reform, eschewing proposals plainly unacceptable to Bosniaks or merely provocative, and should seek their adoption in state bodies.

In the near term, RS leadership needs to control its independence rhetoric; mixed messages provoke confusion and anger in Sarajevo and serve no constructive purpose. Dodik's statements seem to vary every day – they range from "we did not want to be in BiH and we specifically don't want that today either"²²¹ to "I never wanted to secede from BiH ... we are framed to look like we want that".²²² He cannot expect Sarajevo and the international community to constantly differentiate between those for internal and external consumption. More consistency is needed to calm tensions and create conditions for resumption of normal political communication.

basis of Dayton. We do not want to undertake any adventurous actions against BiH, and we are even ready to build BiH in accordance with Dayton, but even if we refrain from any action, I doubt that BiH will survive", Crisis Group interview, Milorad Dodik, RS president, Banja Luka, 5 April 2011.
²¹⁷ Ibid.

²¹⁸ "Gallup Focus on BiH", 2010.

²¹⁹ Crisis Group interview, Nebojša Radmanović, Serb member of the BiH presidency, Sarajevo, 6 July 2011.

²²⁰ Supreme Court of Canada, Reference re Secession of Quebec, [1998] 2 S.C.R. 217. This opinion has been influential in Bosnian constitutional jurisprudence; see Joseph Marko, "Comments", in Christian Steiner, *Constitution of Bosnia*, op. cit., p. 78.

²²¹ Milorad Dodik, *Svedok* TV interview, RTS, 1 June 2011.

²²² "Dodik: Nikada nisam pozivao na otcjepljenje RS od BiH" [Dodik: I never wanted secession of RS from BiH], *Nezavisne Novine*, 21 July 2011.

V. BARRIERS TO RECONCILIATION AND RETURN

Memory of the 1992-1995 war is the main factor separating Bosnia's peoples, undermining RS-Federation relations and obscuring a common concept of the BiH state. Much effort has gone into promoting truth and reconciliation but with little effect. Few Serbs speak of the war readily, preferring to see it as an unfortunate historical episode that should not distract from a focus on the future. For the small Bosniak community in the RS, it is still an overwhelming reality. Many who live outside the RS see it as a territory created through blood, whose existence can only be accepted if Serbs and their leaders acknowledge wartime crimes.

Throughout Bosnia the war remains part of daily life. Evening newscasts feature stories on wartime attacks, massacres or shocking trial testimonies almost daily.²²³ For most Serbs it is the "Homeland war", a struggle that created their Republic and defended it from vague but frightening threats posed by neighbours.²²⁴ Most Bosniaks see it as foremost an aggression against the Republic of Bosnia and Herzegovina (RBiH) by the rump Yugoslavia (Serbia and Montenegro), in which local Serbs collaborated with the aggressor in a genocidal campaign against the Bosniak people. Croats, whose nationalist forces fought both Bosniaks and Serbs at various times, tend to feel their contributions and suffering are ignored. The differences are stark: when wartime RS president Radovan Karadžić was arrested and transported to the ICTY in The Hague in 2008, 88 per cent in the Federation believed he was guilty of most crimes he was charged with compared to only 6.9 per cent in the RS.²²⁵

A. THE WAR: FACTS

Early estimates of wartime deaths were shockingly high, ranging from a quarter million to 329,000,²²⁶ but determining the actual number has been difficult and highly politicised. Painstaking work by the ICTY and the Research and Documentation Centre in Sarajevo shows that

the actual number of fatalities was around 105,000, about 40,000 of whom were civilians.²²⁷ Both teams found that the Bosniak community suffered a highly disproportionate number of losses, especially among civilians.²²⁸ Some Bosniak scholars see the new, lower estimates as attempts to deny the reality of their people's suffering (and some Serbs use them for exactly that purpose). Yet even the more accurate estimates show a brutally intense level of killing.²²⁹

Counting the dead gives a coldly quantitative view of the war. In Srebrenica and other municipalities of eastern Bosnia (Foča, Višegrad, Nevesinje, Kalinovik, Zvornik), and Prijedor in western Bosnia, the Bosniak population disappeared completely.²³⁰ Most of these areas saw organised mass killing operations; civilian deaths heavily outnumbered military casualties; victims were murdered rather than being caught up in fighting. Except for those in summer 1995, especially in Srebrenica, the majority of such killings took place in a single spasm during the summer of 1992.

The ICTY has consistently found that Serb forces committed genocide in Srebrenica, where more than 8,000 Bosniaks, mainly men and boys, were killed in the last July of the war.²³¹ The International Court of Justice (ICJ) also uses the

²²⁷ The ICTY's final estimate is 104,732 total war deaths, including 42,106 civilians. It is based on an extrapolation from 89,186 unique, named victim records compiled from twelve sources and compared to the 1991 census and the 1997-1998 and 2000 voters registers. See Jan Zwierchowski and Ewa Tabeau, "The 1992-95 war in Bosnia and Herzegovina: Census-based Multiple Systems Estimation of Casualties' Undercount", conference paper for the International Research Workshop on The Global Costs of Conflict, Berlin, 1-2 February 2010. Some of this material is available on the ICTY website at: www.icty.org/sid/10562. The Research and Documentation Centre in Sarajevo independently compiled 97,207 war death records including 39,684 civilians. See www.idc.org.ba.
²²⁸ The ICTY's studies show that 3.6 per cent of the 1991 Bosniak community was killed during the war, compared to 1.7 per cent of Serbs and 1.2 per cent of Croats; among civilians, Bosniak losses were 1.4 per cent, compared to 0.5 and 0.2 per cent for Serbs and Croats respectively. The Research and Documentation Centre's findings are similar.

²²⁹ The Bosniaks' 3.6 per cent losses are the equivalent of more than a million victims in a country the size of the U.S.

²³⁰ Three of the more than 11,000 Bosniaks in Višegrad in 1991 remained by 1997; five remained of almost 15,000 in Foča; and less than 400 of more than 40,000 in Prijedor. "Ethnic composition, internally displaced persons and refugees from 47 municipalities of Bosnia and Herzegovina, 1991 to 1997-98", report of Ewa Tabeau, Marcin Zoltkowski, Jakub Bijak and Arve Hetland, 4 April 2003, pp. 69-72, exhibit P-548.2 in ICTY case IT-02-54 (*Prosecutor v. Slobodan Milošević*).

²³¹ "The law must not shy away from referring to the crime committed by its proper name. By seeking to eliminate a part of the Bosnian Muslims, the Bosnian Serb forces committed genocide. They targeted for extinction the forty thousand Bosnian Muslims living in Srebrenica, a group which was emblematic of the Bosnian Muslims in general". Judgment on appeal, IT-98-33 (*Prosecu-*

²²³ The reporting serves to entrench the opposite views of the war. Reporting from The Hague, for example, often features victim testimony in Sarajevo-based media and points made in cross-examination in RS outlets.

²²⁴ "Homeland war" [otadžbinski rat] is a Serbian echo of Croatia's description of its part in the hostilities.

²²⁵ Gallup poll, survey data for 2008 (online).

²²⁶ For an overview, see Ewa Tabeau and Jakub Bijak, "War-related Deaths in the 1992-1995 Armed Conflicts in Bosnia and Herzegovina: A Critique of Previous Estimates and Recent Results", *European Journal of Population*, vol. 21 (2005), p. 194.

term.²³² The identification of mass graves and victims continues sixteen years later, and remains are buried at a memorial centre in Potočari on the 11 July massacre's anniversary. To date, the remains of 5,137 identified victims have been buried there.²³³

Many more people were forcibly displaced and herded into concentration camps, in numerous instances raped and tortured, as their homes or whole villages were destroyed. There is no authoritative count of deportation, but an ICTY report estimates about 745,000 persons were forced out of a region largely overlapping with RS – in other words, more than one person in three was expelled from this region during the war.²³⁴ An “overwhelming majority [more than 92 per cent]” of mosques in Serb-held territory “were either heavily damaged or destroyed”, especially in large towns like Banja Luka and Bijeljina, the ruins bulldozed and the rubble removed.²³⁵ In these areas, Serb forces systematically obliterated all traces of Bosniak presence in a fit of ethnic cleansing to create an ethnically pure territory. Areas that had clearer Serb majorities and smaller Bosniak populations also saw much of their non-Serb population expelled or heavily discriminated against.

The Army of Bosnia and Herzegovina (ABiH), Croat forces (HVO) and irregular “Mujahidin” groups all committed crimes against Serb civilians and prisoners of war, yet no Serb (or Croat) communities suffered anything approaching the horror inflicted on the Drina

tor vs. Radislav Krstić), 19 April 2004. See also Judgment, IT-05-88 (*Prosecutor vs. Vujadin Popović et al.*), 10 June 2010. The ICTY prosecutor has charged several Serb leaders with genocide outside Srebrenica, but the Tribunal has not convicted anyone of that.

²³² “The Court concludes that the acts committed at Srebrenica falling within Article II (a) and (b) of the Convention were committed with the specific intent to destroy in part the group of the Muslims of Bosnia and Herzegovina as such; and accordingly that these were acts of genocide, committed by members of the VRS [Vojska Republike Srpske, Army of RS] in and around Srebrenica from about 13 July 1995”. Judgement, *Bosnia and Herzegovina v. Serbia and Montenegro*, 26 February 2007, p. 127.

²³³ Srebrenica memorial centre official website (online).

²³⁴ Tabeau et al., “Ethnic composition”, op. cit., pp. 54, 65. The region includes 47 pre-war municipalities and covers most areas where Serb armed forces were active. The estimate includes about 404,000 Bosniaks, 205,000 Serbs, 84,000 Croats and 54,000 others, with Bosniaks the large majority of those displaced from RS territory.

²³⁵ “Destruction of cultural heritage in Bosnia-Herzegovina, 1992-1996”, report of Andrés J. Riedlmayer, 2002, pp.10-12, exhibit P-486 in ICTY case IT-02-54 (*Prosecutor v. Slobodan Milošević*). The report found that in most cases mosques were destroyed deliberately by means of explosives placed inside them, rather than damaged in combat operations.

valley and Prijedor. The worst crimes against Serbs happened in the fall of 1995, in western Bosnian municipalities (Bosanski Petrovac, Ključ, Mrkonjić Grad and Sanski Most) as advancing Bosniak and Croat forces killed hundreds of Serb civilians, many of them elderly. Mainly Bosniak “Mujahidin” also killed upwards of 60 Serb prisoners of war in the Kamenica camp. Serb leaders are right to demand justice for these exceptionally serious crimes, but they must not imply equivalence.

B. THE WAR: DISPUTES

Serbs willingly acknowledge that RS forces committed serious crimes against Bosniaks and that Bosniaks suffered the most,²³⁶ but such admissions are often followed by angry denunciations of Bosniak crimes against Serbs or complaints that Bosniaks exaggerate the extent of their suffering. Under strong international and local pressure,²³⁷ RS President Čavić formed a commission in 2003 to investigate the Srebrenica events. It found that “many thousands of Bosniaks were liquidated between 10 and 19 July 1995, in a manner that represents a grave breach of international humanitarian law”; it also documented attempts to cover-up the locations of 32 new mass graves.²³⁸ In a dramatic televised address on 22 June 2004, Čavić described the results as for him a “shocking confrontation with the tragic truth”. Reading at length from the findings, he concluded that “first as a man and a Serb, then as a father, a brother and a son and only then as president ... I must say that these nine days of the Srebrenica tragedy are a black page in the history of Serb people”.²³⁹

Many Bosniak refugees and Srebrenica survivors see Čavić's speech as the brightest moment in their relations with the Serbs since the end of the war.²⁴⁰ They consider Čavić a brave and honest man, willing to confront and apologise for the enormity of Serb wartime crimes, unlike the leaders who came before and after him. But the international response to

²³⁶ Crisis Group interview, Milorad Dodik, RS President, Banja Luka, 20 April 2011.

²³⁷ Čavić himself felt the brunt of the OHR sanctions in 1998, when the HR removed him from office for his press statements on Kosovo. The next HR, Wolfgang Petritsch, lifted the public service ban on him less than a year later.

²³⁸ “Događaji u i oko Srebrenice od 10. do 19. Jula 1995” [Events in and around Srebrenica from 10 to 19 July 1995], RS Government Commission on Srebrenica, June 2004, p. 42.

²³⁹ Dragan Čavić, “Public address on the report of the Srebrenica commission”, 22 June 2004.

²⁴⁰ Crisis Group interviews, representatives of the Srebrenica victims and survivors' associations, Srebrenica, 29 March 2011. “The Srebrenica report from 2004 is the only meaningful thing that the RS government has done towards reconciliation”, said Emir Suljagić, Sarajevo cantonal education minister and Srebrenica survivor, at a conference in Sarajevo, 15 June 2011.

the Srebrenica report was to increase the pressure.²⁴¹ Consequently, when Dodik took over in 2005, he saw no gains in expressing further regret. His reputation among Bosniaks is generally poor, even though his position on Srebrenica is the same as Čavić's.²⁴² He has acknowledged and condemned the crimes but also drawn attention to Bosniak crimes against Serbs.²⁴³

Čavić believes he is "lucky to be alive" after his speech, while Dodik opposed the SDS during its heyday in the 1990s: both took risks.²⁴⁴ Yet, Dodik's regret for Serb crimes is drowned out by his populist appeal and defiance of Sarajevo and OHR, and he has not persuaded Bosniaks that his revulsion at wartime events is sincere. His 2010 election campaign and the referendum saga were especially provocative.²⁴⁵

Serbs are especially loath to admit that their worst crimes amount to genocide. In an election speech to supporters in Srebrenica, Dodik said "it was not a genocide here, and we won't accept that it was" because "more Bosniaks left Srebrenica in those months ... than died here".²⁴⁶

²⁴¹ For example, on 16 December 2004, OHR ordered the RS government to establish a working group to "identify all officials, with emphasis on those still in the employment of RS institutions", who bear responsibility for the Srebrenica crimes. Eventually RS Prime Minister Dragan Mikerević (PDP) resigned over disagreements with OHR.

²⁴² "It is without question that Srebrenica is shameful, a horrible act in our view too. It is an act that burdens me as a man and as a politician and I have been trying to create a framework within which we would make it possible to depart from this horrible act. First of all we need to accept fully the legitimacy of the Hague Tribunal". Quoted in Daniel Lindvall, *The Limits of the European Vision in Bosnia and Herzegovina: An Analysis of the Police Reform Negotiations* (Stockholm, 2009), p. 123.

²⁴³ Čavić asserted that "1,760 Serbs, for the most part civilians", were killed in the Srebrenica area, and read out a list of 30 villages destroyed by "Muslim armed forces, mostly from Srebrenica". He also noted that if Serbs went after their own criminals, it would strengthen the moral force of their appeal that others do the same. Čavić, "Public address", op. cit.

²⁴⁴ Crisis Group interview, Dragan Čavić, DP President, Banja Luka, 21 April 2011.

²⁴⁵ "We accept the fact that a horrible crime happened here to Bosniaks in 1995, but it was not civilians who were slain here, and this is not genocide. We demand that it is accepted that Serbs too suffered during the war en masse". "Dodik: U Srebrenici nisu stradali civili, i ona ostaje zauvijek u Srpskoj" [Dodik: Civilians were not slain in Srebrenica, and it remains forever in RS], RS news agency, SRNA report from the SNSD pre-election rally in Srebrenica, 10 September 2010.

²⁴⁶ Speech, 1 September 2010, www.youtube.com/watch?v=xMe5XCd3N-Y. Dodik has also described Srebrenica as "one of the greatest crimes, a place where a limited local genocide was committed". "Dodik: U Srebrenici se desio ograničeni lokalni genocid" [Dodik: A limited local genocide happened

Such statements are repeated in speeches, newspaper and TV interviews.²⁴⁷ While there was little focus on recognition of genocide immediately after the war, today it is deeply important for many Bosniaks, who feel that when Serbs deny that genocide happened, they are denying that any crimes happened at all.

The genocide term has many unwelcome connotations dating to Second World War Yugoslavia that contribute to Serbs' reluctance to use it.²⁴⁸ Some fear that admitting that crime would endanger the RS itself.²⁴⁹ A senior Dodik adviser said that if the president were to apologise forthrightly, it would be taken as a sign of weakness or surrender, and worse, as an admission that RS was a "genocidal creation" that has no right to exist.²⁵⁰ This is a mistake. The legal theory on which it rests is dubious and in any case does not depend on whether RS leaders admit anything.

Bosnian Serbs could at least go as far as Serbia's politicians have. The Belgrade parliament adopted a resolution on 30 March 2010 condemning the crime that happened in Srebrenica, as "determined by the ICJ judgement".²⁵¹ President Tadić visited the Potočari memorial site in Srebrenica on 11 July 2005 and 11 July 2010 and expressed his apologies and regret for what happened, though he did not use the genocide word. Like his partners in Belgrade, Dodik should deliver speeches acknowledging the responsibility for crimes of the wartime RS leadership, ideally in highly symbolic settings like Potočari or the BiH Parliamentary Assembly.

But many Serbs continue to feel like victims. Since their leaders agreed to remain in a decentralised Bosnia²⁵² as part

in Srebrenica], Tanjug, 24 February 2010. But he also says more than 3,000 Serbs were killed in the area. According to local and international experts, most of those casualties were soldiers.

²⁴⁷ "First of all, there was no genocide, in Srebrenica or anywhere else". Milorad Dodik, RTS, 1 June 2011.

²⁴⁸ For example, many Serbian nationalists considered Croats a "genocidal people" (because of their attempts to exterminate Serbs during the Second World War) and used this label to deny the legitimacy of Croat aspirations for independence in 1991. Serbs who thought in those terms are understandably reluctant to apply the same logic to themselves.

²⁴⁹ Haris Silajdžić, then the Bosniak member of the BiH presidency, implied this in a speech to the UN General Assembly. Citing the International Law Commission's Articles on State Responsibility ("no State shall recognise as lawful a situation created by genocide"), he asked, "if these principles had been applied, would the institutions identified ... as perpetrators of genocide still exist?" Statement at the 63rd Session of the General Assembly, 23 September 2008.

²⁵⁰ Crisis Group interview, Banja Luka, May 2011.

²⁵¹ It was passed by vote of 127 of the 250 members of parliament; the nationalist parties refused to endorse it; the liberal LDP refused to vote on it because the word "genocide" was not in the resolution.

²⁵² Crisis Group interview, influential Orthodox Bishop Grigorije, Žitomislići, March 2011.

of an international plan that Bosniaks turned down on the eve of the war,²⁵³ many claim the Bosniaks “wanted the war, they were actively provoking it”.²⁵⁴ They argue that “the war started because of outvoting”, when Bosniak and Croat deputies ignored Serb objections and voted for independence, and say that they cannot allow themselves to be outvoted again. Whatever the merits of this view, it misses the point. Bosniaks and Croats blame the RS leadership for massive ethnic cleansing, not for breaking up the old Bosnia.²⁵⁵

In some more isolated rural areas, Serbs are unrepentant of the ethnic cleansing, which they still claim was a necessary defence. “It was either us or them; in 1941, it was our turn” to be cleansed, and in 1992, “it was theirs”.²⁵⁶ In these places, local Serbs killed or drove away virtually all their Bosniak neighbours, with only limited involvement from higher authorities. These regions of eastern RS remain what a senior SNSD leader described as “a compact mass of hatred and intolerance”.²⁵⁷

²⁵³ On 18 March 1992, all three sides accepted a “Statement of Principles”, prepared by the representatives of the then European Community (the former UK foreign minister, Lord Carrington, and the Portuguese ambassador, José Cutileiro); the Bosnian presidency, led by Alija Izetbegović, subsequently withdrew its agreement. The principles, which were to be the framework for additional negotiations, envisaged transforming Bosnia into a state composed of three national units. “Statement of Principles for New Constitutional Arrangements for Bosnia-Herzegovina” (online), University of Liverpool, David Owen Papers, Balkan Odyssey digital archive, BODA 1/1. The U.S. diplomat Herbert Okun called this “the carve-up of Bosnia-Herzegovina into three sub-entities, a Muslim, a Croat, and a Serb. That was the essence of the Cutileiro Plan”. ICTY, IT-04-74 (*Prosecutor v. Jadranko Prlić et al.*), 3 April 2007, transcript p.16,844.

²⁵⁴ Crisis Group interviews, local and entity RS leaders and NGO representative, various locations, March-May 2011.

²⁵⁵ The same is true of the ICTY, which “did not conclude that the Serbian side was responsible for starting the war by devising a criminal plan” to break up BiH, but rather, that RS leaders had intended “the ethnic ... recompos[ition of] the territories under [the] control [of the Bosnian Serb leadership] by expelling and thereby drastically reducing the proportion of Bosnian Muslims and Bosnian Croats living there”. ICTY, IT-00-39-A (*Prosecutor v. Momčilo Krajišnik*), “Decision on appellant Momčilo Krajišnik’s motion to present additional evidence”, 20 August 2008, pp. 28-29.

²⁵⁶ Crisis Group interview, Serb residents, eastern Herzegovina, March 2011.

²⁵⁷ Crisis Group interview, senior SNSD official, Banja Luka, 23 May 2011.

C. COMING HOME: RETURNS IN RS

The return of refugees to their pre-war homes was expected to be one of the main factors supporting reconciliation and long-term stabilisation. Ethnic tensions, inter-ethnic incidents and distrust, lack of social services and job opportunities initially obstructed the process. Of the estimated 2.5 million refugees and displaced persons, slightly over one million have returned to their homes. Some 740,000 returned to the Federation and 270,000 to the RS. Immediately after the war, in 1996, most of the returns were to the former; they picked up to RS only after 2000, when most of the wartime leaders had been arrested or removed from power. About 470,000 are “minority returns”,²⁵⁸ who now rarely face security threats. In Bosniak communities near Srebrenica, Foča and Doboј, where Bosniaks have returned in larger numbers and apparently have re-established lives, they benefit from local services, practice their faith and participate in political and economic life. However, the return of refugees has almost completely halted, and renewed political tensions and politicians’ nationalist rhetoric are causing some returnees to consider leaving again.²⁵⁹

Leaders across the political party spectrum also seem to have lost interest, as promoting return is no longer much of a vote getter.²⁶⁰ In the first few post-war elections, many Bosniak refugees from RS, and to a lesser degree Croats, voted in their original place of residence in RS,²⁶¹ making their Federation-based parties (SDA, SBiH and SDP especially) important political factors in the RS National Assembly. But in election after election fewer did so, and support for Bosniak or multi-ethnic FBiH-based parties dropped from over 220,000 in 1996 to 111,000 in 2000 and to 53,000 in 2010. Those parties, which had fourteen seats in the RSNA in 2000 were left with five in 2010. There was never more than one representative of a predominately Croat party in the RSNA.²⁶² Serb national parties have never been much interested in the FBiH, aside from Dodik’s SNSD

²⁵⁸ This includes Bosniaks who have returned to the RS and parts of the Federation generally controlled by Croats, Serbs who have moved back the Federation and a small number of Croats who have gone to places where they will be in the minority. The breakdown of the 469,594 total minority returns is: FBiH, 275,247; RS, 172,252; and Brčko District, 22,095. UNHCR figures at the end of 2010.

²⁵⁹ Crisis Group interviews, returnees, eastern Bosnia, March-April 2011.

²⁶⁰ Crisis Group interviews, Bosniak, Croat and Serb refugee and returnee communities, throughout Bosnia, 2010-2011.

²⁶¹ Voting was done either by absentee ballots or organised visits to refugees’ pre-war home towns.

²⁶² Predominately Croat parties had one deputy in the RSNA until 2002. Election statistics, Central Election Commission online.

which in 2010 won one compensatory mandate, with 9,500 votes.²⁶³

The UN High Commissioner for Refugees (UNHCR) estimates that some 113,000 internally displaced may still be interested in return if conditions, including housing, job opportunities and social services, are provided.²⁶⁴ Housing is no longer a big concern,²⁶⁵ and legally returnees have full access to RS education, health services and pensions. Lack of job opportunities is the biggest impediment to sustainable return, with returnees complaining that public and private companies deliberately choose Serbs over Bosniaks and others.²⁶⁶ The Bosnian government is still committed to full return, based on Annex 7 of the Dayton Accords, but hundreds of millions of Euros have been spent on return projects, and funds have largely dried up. The substantial international effort to encourage return has levelled off. The million or more who have been living abroad for a generation and have integrated into new communities are unlikely to return.²⁶⁷

The RS Constitutional Court has made this situation worse by weakening the mechanism for protection of Bosniak and Croat vital national interests, thus in effect reducing the position of Croats and Bosniaks in RS from constituent peoples to minorities. The RS constitution (Article 70 as revised by amendment 82) gives minority delegates the right to appeal laws that they believe violate their vital national interests to the RS Constitutional Court,²⁶⁸ which rules on them in a seven-judge panel (two Bosniaks, Croats and Serbs, and one other), with only two votes needed to sustain a claim.

²⁶³ Which was a significant increase from the 1,347 votes it obtained in 2000, when it also secured one mandate.

²⁶⁴ Crisis Group interview, UNHCR officials, Sarajevo, 24 June 2011.

²⁶⁵ Throughout RS there are reconstructed but empty Bosniak and Croat houses and places of worship.

²⁶⁶ RS officials say that jobs, at a time of economic crisis, are scarce for all. Crisis Group interviews, mayors of Foča, Trebinje, Viošegrad, February-April 2011.

²⁶⁷ "The return of refugees is mostly finished". Crisis Group interview, international aid official, 24 June 2011. A 7 July 2009 U.S. embassy Sarajevo cable made public by Wikileaks noted "the story of actual returns in Bosnia is more or less complete" but argued that "Bosnia should have the capacity and the mechanism to assist those who do wish to return, so that it can formally close this chapter by the end of year 2014".

²⁶⁸ In 2001, High Representative Wolfgang Petritsch imposed amendments to entity constitutions after the BiH Constitutional Court in 2000 determined that Bosniaks and Croats were discriminated against in RS while Serbs were discriminated against in the Federation. Part of the package was reinforcing the Vital National Interest clause – a mechanism that all three constitutive people can use on all administrative levels to protect what they believe to be their vital national interests.

But on 14 March 2005 the Court circumvented this provision by enacting a rule of procedure (52) that requires at least five votes to sustain a claim. The rule derogates from the constitution and in effect deprives minorities of protection, but there is no recourse within RS other than to the same tribunal.²⁶⁹

The effect on minority rights is clear: of 34 vital national interest appeals received from 2005 to 2010, the RS Constitutional Court sustained the claim in one and a half cases; it rejected nineteen on admissibility grounds and the rest on the merits.²⁷⁰ Most recently, the RS Constitutional Court has upheld Bosniaks' claim for protection of vital national interest against the latest RS law on holidays.²⁷¹

The RS Constitutional Court should reverse this discrimination by returning its rules of procedure to their original form; a few years ago the OHR would have been in the position to impose a change but did not. Now it would be better if the EU stepped in and helped facilitate a much broader discussion amongst Bosnia's citizens and policymakers for constitutional reform that would limit the vital national interest veto to matters of genuine national interest and reinforce the mechanism for remaining cases at all levels of government. This would be particularly useful, because legal mechanisms for protection of vital national interests are also being questioned in the Federation²⁷² and at the state level. In the current political environment it will take many years for the parties to agree to such fundamental reform, but the discussion should start now.

D. RECONCILIATION

The deep differences in perceptions between Serbs and returnees about what happened during the war, the legitimacy of the RS, and the sustainability of Bosnia as a federal state continue to impede inter-ethnic reconciliation. Returning Bosniaks see their Serb neighbours as living in "non-stop denial" about the war.²⁷³ The same events are remembered very differently. Where Bosniaks recall expulsion, Serbs say "we helped them to leave temporarily" during the war, and

²⁶⁹ Crisis Group interview, OHR staff, 11 November 2010. The OHR says it let this slip by because by that time international support for use of its exceptional ("Bonn") powers had already weakened. Crisis Group interviews, OHR staff, May-August 2011.

²⁷⁰ RS Constitutional Court case archives online.

²⁷¹ The new RS law on holidays sought to introduce Orthodox New Year as an RS entity holiday. The appeal of Bosniak deputies in the RS Parliament was upheld by the RS Constitutional Court on 20 September 2011. "Ustavni sud RS odbacio Zakon o praznicima" [The RS Constitutional Court rejects the law on holidays], *Deutsche Welle* (online), 20 September 2011.

²⁷² Crisis Group Report, *Federation of Bosnia and Herzegovina*, op. cit., p. 6.

²⁷³ Crisis Group focus group, Srebrenica, 29 March 2011.

afterward “[we] helped them to return safely”.²⁷⁴ There have been few attempts to establish a common narrative.

Efforts at reconciliation have also been limited. The ICTY has helped by removing the worst war criminals from public life, but its cases have been long and technical. In RS courts, families are beginning to receive compensation for war losses. Nevertheless, there has been insufficient public discussion and acceptance of responsibility for crimes that involved a significant segment of society. Deep differences in perceptions of the recent past, as well as the incomplete return of refugees have prevented reconciliation and turned this once multi-ethnic country into a sum of mono-ethnic regions.²⁷⁵

Though the international community has financed numerous projects to support reconciliation in the Western Balkans, the results remain meagre. The latest attempt, through the creation of a Regional Commission for Establishing Facts About All Victims of Wars 1991-2001 on the Territory of the Former Yugoslavia (RECOM), was initiated at the beginning of 2011 by a coalition of well-known NGOs and civil society activists. Backed by substantial international financial support and numerous conferences and meetings across the region, 542,660 citizens of the former Yugoslavia signed the petition to establish RECOM. Serbian President Tadić, Slovenian President Turk, Kosovo Prime Minister Thaçi, Montenegrin Prime Minister Lukšić and the Croat member of the Bosnian Presidency, Željko Komšić, are among those who have supported the initiative, but it remains to be seen whether the Commission can be established and can successfully contribute to truth and reconciliation.

²⁷⁴ Crisis Group interview, city official, Trebinje, 23 March 2011.

²⁷⁵ With the exception of a few bigger towns, like Sarajevo, Tuzla and Banja Luka, the residents of most municipalities in Bosnia are almost completely from a single ethnic group. Even in these few larger centres, less than 10 per cent of the residents are from other ethnic groups.

VI. CONCLUSION

Republika Srpska has two chief architects. The first is Radovan Karadžić, who with army chief Ratko Mladić defined its policies, set its borders, expelled or killed most of its non-Serb population and then, on the brink of catastrophic defeat, accepted the Dayton peace agreement. Karadžić and Mladić are on trial in The Hague for genocide and crimes against humanity. The second is Milorad Dodik. While doing much to clean RS’s image, he has also deeply eroded the international community’s power in Bosnia and in effect ended its state-building agenda. For better or worse, all future state-level reforms or transfers of authority to the centre will require Banja Luka’s consent.

Yet, Dodik’s RS remains insecure. Though protected from Sarajevo’s centralising pressure, it is vulnerable within. Repairing these weaknesses should be Dodik’s ambition during his presidential term, but his business skills have not helped make RS economically viable. It is still too dominated by cronyism and corruption; its elites enjoy impunity; its constant battles with Sarajevo and OHR have driven away investment. Seven years after his predecessor’s address on Srebrenica, and despite his personal hatred of war crimes, RS is still not free of its wartime legacy.

At some point in most discussions of RS the question arises: what do its leaders – what does Milorad Dodik – really want, outright independence or mere autonomy within a loose federation? Bosnia’s future hinges on the answer, and on the policies – Serb, Croat, Bosniak and international – it will provoke. The answer is that Serbs, from Dodik on down, do not really like Bosnia and do not strongly identify with it. Given a free choice they would prefer to be independent. Yet, they are well aware that history keeps independence off any realistic agenda and that a breakaway attempt would entail grave risks. At the same time, a Bosnia that places as few restrictions on Serbs’ ability to govern themselves as it currently does is one that Serbs can easily feel comfortable in. The best description of their preferences may be that of an early twentieth-century Albanian asked if his people wanted independence from Istanbul: “they did not; what they wanted was not to be interfered with”.²⁷⁶

This raises two problems. A federation loose enough for Banja Luka is far too loose and weak to satisfy Bosniaks’ hopes for a normal, functional state and may be too feeble to survive the EU accession process. Unless Bosniak and Serb positions change markedly, this will mean permanent political conflict of the kind Bosnia has lived through for the past several years. The parties have danced repeatedly to

²⁷⁶ A. Herbert, *Ben Kendim: A Record of Eastern Travel* (London, 1924), cited in Noel Malcolm, *Kosovo: A Short History* (London, 1998), p. 249.

the edge of the abyss, flirting with breakdown of respect for state authority and inter-ethnic comity. Each time, they have pulled back before violence could break out. However, this brinkmanship need only fail once.

The second problem is that Banja Luka plainly does not trust its Bosniak and international partners, so is positioning itself to be prepared for a breakaway should the state's embrace become too tight or international pressures too strong. These preparations themselves provoke fear and anger in Sarajevo and threaten to create a vicious circle.

Critics who allege Serb leaders are actively trying to destroy Bosnia and blocking every important state reform exaggerate. The leaders have frequently used entity voting to keep as much RS autonomy as possible but are now expressing interest in more inter-entity cooperation to make BiH work as a federation on its way to EU membership. But it is not trying hard or consistently enough. RS leaders are far too defensive and make too few constructive proposals. Dodik's circle often has difficulty concealing its pessimism about the Bosnian project.

The heaviest responsibility for Bosnia's future lies with the state level, those who work within it, and those who primarily identify with it. Whether Bosnia survives will be decided first in Sarajevo. Yet, RS also has a responsibility and a strong interest in Bosnia succeeding, since it might not survive Bosnia's failure. Its leaders will have to do much more to transcend narrow Serb interests; if they claim the loyalty of RS's Bosniak and Croat residents and a place in a federal Bosnian state, they will have to show they deserve it.

Sarajevo/Brussels, 6 October 2011

APPENDIX A

MAP OF BOSNIA AND HERZEGOVINA



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

APPENDIX B

GLOSSARY OF ABBREVIATIONS AND ACRONYMS

ABiH	Army of Bosnia and Herzegovina, armed forces of the Republic of Bosnia and Herzegovina during the 1992-1995 war
BiH	Bosnia and Herzegovina
DNS	Demokratski narodni savez (Democratic People's League), small party run by Marko Pavić currently part of the ruling RS coalition
DP	Demokratska Partija (Democratic Party), new opposition political party of former RS President Dragan Čavić
EBRD	European Bank for Reconstruction and Development
EUPM	European Union Police Mission
FBiH	Federation of Bosnia and Herzegovina
HDZ	Hrvatska demokratska zajednica (Croatian Democratic Union), largest predominantly Croat party in BiH, led by Dragan Čović
HVO	Hrvatsko vijeće obrane (Croatian Defence Council), the name used by the executive and also by the armed forces of the breakaway Croat entity during the 1991-1995 war
IPTF	UN International Police Task Force was charged with overseeing the work of and reforming the local police forces in Bosnia immediately after the war
KM	Convertible Mark (BiH currency)
NSP	Nova Socijalistička Partija (New Socialist Party), new small opposition party led by Foča Mayor Zdravko Krsmanović
OHR	Office of the High Representative, the High Representative is the international official charged with interpreting and enforcing the General Framework Agreement for Peace (Dayton Agreement), including the BiH constitution
PDP	Partija demokratskog progresa (Party of Democratic Progress) the third-strongest Serb party in RS, run by Mladen Ivanić, now in the opposition
PIC	Peace Implementation Council, the international body responsible for implementation of the Dayton Accords that oversees the work of OHR
RBiH	Republic of Bosnia and Herzegovina
RECOM	Regional Commission for Establishing Facts About All Victims of Wars 1991-2001 on the Territory of the Former Yugoslavia
RS	Republika Srpska
RSNA	Republika Srpska National Assembly
SBiH	Stranka za BiH (Party for BiH), predominantly Bosniak party emphasizing defense of the state and its institutions, led by Haris Silajdžić
SDA	Stranka demokratske akcije (Party for Democratic Action), largest and oldest predominantly Bosniak party, led by Sulejman Tihić
SDP	Socijaldemokratska partija (Social Democratic Party), large multi-ethnic party with a predominantly Bosniak support base and successor to the League of Communists of BiH, led by Zlatko Lagumdžija
SDS	Srpska demokratska stranka (Serb Democratic Party), Serb nationalist party that governed RS during the 1992-1995 war and for many years thereafter, now led by Mladen Bosić
SIPA	State Investigation and Protection Agency
SP	Socijalistička partija (Socialist Party) small RS party that is a part of the ruling coalition with SNSD, run by Petar Đokić
SNSD	Savez nezavisnih socijaldemokratska (League of Independent Social Democrats), largest predominantly Serb party, currently the ruling party in RS and led by Milorad Dodik
VNI	Vital National Interest clause, a provision in BiH state, entity and some lower-level constitutions that allows groups to challenge and block legislation that violates their communal interests

APPENDIX C

ABOUT THE INTERNATIONAL CRISIS GROUP

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

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

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

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

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

stan, Nepal, North Korea, Pakistan, Philippines, Sri Lanka, Taiwan Strait, Tajikistan, Thailand, Timor-Leste, Turkmenistan and Uzbekistan; in Europe, Armenia, Azerbaijan, Bosnia and Herzegovina, Cyprus, Georgia, Kosovo, Macedonia, Russia (North Caucasus), Serbia and Turkey; in the Middle East and North Africa, Algeria, Egypt, Gulf States, Iran, Iraq, Israel-Palestine, Lebanon, Morocco, Saudi Arabia, Syria and Yemen; and in Latin America and the Caribbean, Bolivia, Colombia, Ecuador, Guatemala, Haiti and Venezuela.

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The following institutional and private foundations have provided funding in recent years: Carnegie Corporation of New York, The Charitable Foundation, Clifford Chance Foundation, Connect U.S. Fund, The Elders Foundation, Henry Luce Foundation, William & Flora Hewlett Foundation, Humanity United, Hunt Alternatives Fund, Jewish World Watch, Korea Foundation, John D. & Catherine T. MacArthur Foundation, Open Society Institute, Victor Pinchuk Foundation, Ploughshares Fund, Radcliffe Foundation, Sigrid Rausing Trust, Rockefeller Brothers Fund and VIVA Trust.

October 2011

APPENDIX D

CRISIS GROUP REPORTS AND BRIEFINGS ON EUROPE SINCE 2008

Balkans

- Kosovo's First Month*, Europe Briefing N°47, 18 March 2008 (also available in Russian).
- Will the Real Serbia Please Stand Up?*, Europe Briefing N°49, 23 April 2008 (also available in Russian).
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- Armenia: Picking up the Pieces*, Europe Briefing N°48, 8 April 2008.
- Russia's Dagestan: Conflict Causes*, Europe Report N°192, 3 June 2008.
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- Abkhazia: Deepening Dependence*, Europe Report N°202, 26 February 2010 (also available in Russian).
- South Ossetia: The Burden of Recognition*, Europe Report N°205, 7 June 2010 (also available in Russian).
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- Georgia: Securing a Stable Future*, Europe Briefing N°58, 13 December 2010.
- Armenia and Azerbaijan: Preventing War*, Europe Briefing N°60, 8 February 2011 (also available in Russian).
- Georgia: The Javakheti Region's Integration Challenges*, Europe Briefing N°63, 23 May 2011.
- Georgia-Russia: Learn to Live like Neighbours*, Europe Briefing N°65, 8 August 2011 (also available in Russian).

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- Cyprus: Reversing the Drift to Partition*, Europe Report N°190, 10 January 2008 (also available in Greek and in Turkish).
- Reunifying Cyprus: The Best Chance Yet*, Europe Report N°194, 23 June 2008 (also available in Greek and Turkish).
- Cyprus: Reunification or Partition?*, Europe Report N°201, 30 September 2009 (also available in Greek and Turkish).

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- Cyprus: Six Steps toward a Settlement*, Europe Briefing N°61, 22 February 2011 (also available in Greek and Turkish).

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- Turkey and Europe: The Decisive Year Ahead*, Europe Report N°197, 15 December 2008 (also available in Turkish).
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APPENDIX E

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