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Bosnia's Gordian Knot: Constitutional Reform

I. OVERVIEW

Bosnia and Herzegovina's system of government has reached breaking point and the country's path to European Union (EU) membership is blocked. The constitution requires that the posts in two key institutions, the three-member presidency and the parliamentary House of Peoples, be equally divided among Bosniaks, Croats and Serbs. The European Court of Human Rights (ECtHR) ruled in 2009 this violates the European Convention on Human Rights (ECHR) by restricting others' access. The European court's ruling has exposed long-buried contradictions in Bosnia's constitutional architecture, which have become more acute since the 31 May 2012 collapse of the government coalition. Bosnian politicians need to reform their constitution but reopening the Dayton Agreement will require more than a quick fix. The EU should not make implementing the ECtHR decision a prerequisite for a credible membership application if it seeks thorough comprehensive reform to put the country on a firm footing.

Bosnia's failure to implement the ECtHR's landmark judgment on the Sejdić-Finci case baffles observers. Discrimination against minorities such as Jews and Roma is repugnant. Yet more than two and a half years later, despite strong international pressure and a concerted push to find a solution in spring 2012, Bosnian leaders have made no progress in executing it. Even sympathetic observers wonder why the country persists in its "racist" constitution. The Council of Europe warns that neither it nor the EU would consider the 2014 elections for Bosnia's parliament legitimate without the necessary constitutional amendments.

Yet almost nothing about the Sejdić-Finci case is as it seems. Implementing the judgment will not necessarily improve the situation of minorities, whose marginalisation is due more to political culture than to the impugned constitutional provisions. The dispute is not driven by discrimination which all BiH parties agree must be eliminated. It is about whether, and how, to preserve the rights of Bosnia's constituent peoples, especially those of the Croats who are the smallest group. Their position is likely to get a new boost when Croatia joins the EU in 2013.

Though the ECtHR case is technical, it raises fundamental questions about Bosnia's constitutional architecture and has opened dangerous and important issues buried since the end of the war in 1995. In a stinging dissent, Judge Giovanni Bonello condemned the court's judgment and warned of the dangers of challenging the status quo. Local leaders echo the warning. Bosnia suffers from unresolved issues similar to those which sparked Yugoslavia's collapse, and a botched set of amendments could make keeping the country together much harder. At the same time, more delay in implementing the court's judgment means more delay in progress toward the EU, one of the only points on which all Bosnia's constituencies agree.

Tension between the two aspects of Bosnian federalism – the division into two territorial entities (the Federation of Bosnia and Herzegovina and the Republika Srpska), and three ethnic communities known as constituent peoples (the Bosniaks, Serbs and Croats) – has been growing for a decade. It is no longer sustainable. As Crisis Group described in its reports over the past two years, state institutions are under attack and there is a crisis of governance in the federation and the Republika Srpska. Institutions at all levels are highly inefficient and politicians ignore difficult policy choices and seem immune to domestic or international pressure.

It took fourteen months to form a state government after the October 2010 elections; this fragile coalition broke down less than six months later, on 31 May 2012. A new constellation of parties is trying to assert control, but its former partners in state and federal government are holding on to their positions and the prospects are unclear. What attention they have given to implementing the ECtHR decision has focused on a solution that cements party leaders' already extensive hold on power. In Bosnia the government and its politicians are not only unable to resolve the problems; they have become a key problem themselves.

There is a popular assumption among Bosnia's European friends that implementing the European court's decision and changing its constitution will go some way in improving governance. But there are no quick fixes. It will mean reopening the Dayton Peace Agreement which ended the 1992-1995 war, re-balancing the compromises made in that agreement, and embarking on a comprehensive constitutional reform. Though a return to violence remains unlikely, these issues are highly emotional and risk extending political paralysis and leading to state failure. Bosnia's leaders believe the EU requires only a technical fix, even

if it leaves the country even less governable. Ultimately, the decisions taken will decide whether Bosnia survives to move toward Europe or begins a process of disintegration that will not end peacefully. To avoid this grim prospect:

- Bosnia's political leadership should refocus on constitutional reform, including the execution of the European court's decision. It should adopt measures that: clarify whether and how elected and appointed officials are responsible to specific groups, all citizens, or those who voted them into office; allow voters rather than mid-level officials to choose national leaders; give Croats an effective means of influencing state policy; provide room for those who identify as citizens rather than in ethnic terms to have a voice; and avoid overly complex rules prone to obstruction.
- EU states should lift their conditioning of Bosnia's candidacy on implementation of the court ruling. Comprehensive constitutional reform should be the end goal of membership talks, not its precondition.

This briefing explores the challenge posed to Bosnia's constitutional framework, its key institutions and the constituent people concept by the Sejdić-Finci case. It is the first in a two-part series as Crisis Group plans to elaborate on the options for constitutional reform, from minimalist to maximalist, in a report to be published early in 2013.

II. A COMPLEX INSTITUTIONAL FRAMEWORK

Over the past decade, the international community has urged Bosnia and Herzegovina to overhaul its Dayton constitution. In a 2004 speech cited by the ECtHR,[1] then-High Representative Paddy Ashdown warned that Bosnia's leaders "face a choice: to maintain the current constitution and pay the economic, social and political consequences, or make the constitutional changes required to make [Bosnia] a stable, functional and prosperous country" in the EU.[2] The Council of Europe's Venice Commission concluded in 2005 that "constitutional reform is indispensable and that it will have to be carried out in several stages, with an entirely new Constitution based on a democratic process … as the final aim".[3]

Reforming the presidency and House of Peoples were part of the constitutional reform agenda from the beginning, but the emphasis was on state-building rather than human rights. The state was to be strengthened, assuming some of the competences of the entities. Its elaborate power-sharing rules, which allowed the entities and constituent peoples to delay or block legislation and paralyse government, were to be weakened.[4]

The most ambitious attempt to reform the constitution was led by the U.S. in 2006 and has been baptised the "April Package".[5] The presidency was to be replaced by a weak, indirectly elected president, with most executive functions transferred to a strong prime minister.[6] The House of Peoples was to be abolished entirely, its functions transferred to the House of Representatives.[7] The reform, though coming within two votes of passage in April 2006, failed at the last minute due to opposition from the splinter Croatian Democratic Union 1990 (HDZ 1990) party and Bosniak hardliners in the Party for Bosnia and Herzegovina (SBiH, Stranka za Bosnu i Hercegovinu).[8]

These draft amendments have resurfaced from time to time, and the Bosniak national Party of Democratic Action

[1] In this report, "ECHR" and the "European convention" interchangeably refer to the Convention on Human Rights and Fundamental Freedoms. "The European court", "the court" and "ECtHR" refer to the judicial organ of the Council of Europe that enforces it.

[2] Session report from 60th plenary session of the Venice Commission, CDL-PV(2004)003, 3 November 2004, cited in Case of Sejdić and Finci v. Bosnia and Herzegovina (Application nos. 27996/06 and 34836/06), Judgment, 22 December 2009, paragraph 17.

[3] Venice Commission's opinion on draft constitutional amendments from 7 April 2006 (CDL(2006)027), online.

[4] Ibid.

[5] The Venice Commission did much of the technical work, while U.S. diplomats shepherded the amendments through negotiations with Bosnian leaders. "Draft amendments to the Constitution of Bosnia and Herzegovina", 24 March 2006, available at www.ustavnareforma.ba.

[6] "The best solution therefore would be to concentrate executive power within the Council of Ministers as a collegiate body in which all constituent peoples are represented. Then a single President as Head of State should be acceptable. Having regard to the multi-ethnic character of the country, an indirect election of the President by the Parliamentary Assembly with a majority ensuring that the President enjoys wide confidence within all peoples would seem preferable to direct elections. Rules on rotation providing that a newly elected President may not belong to the same constituent people as his predecessor may be added". Venice Commission's opinion on different proposals for the election of the presidency of Bosnia and Herzegovina, from 17-18 March 2006 (CDL-AD(2006)004), online.

[7] Formally, 21 members of the House of Representatives would serve concurrently as members of the House of Peoples for matters relating to vital national interests and election of the presidency; the House of Peoples would thus not be a separate body, merely a caucus of the House of Representatives.

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

(Stranka demokratske akcije, SDA) still backs them.[9] Late in 2008, the leaders of the HDZ, SDA and the League of Independent Social Democrats (Savez nezavisnih Socijaldemokrata, SNSD), then the dominant Croat, Bosniak and Serb parties, surprised everyone with a nebulous proposal for far-reaching constitutional reform known thereafter as the "Prud Process", after the home village of SDA leader Sulejman Tihić. Prud included several new elements, notably a radical reform or outright abolition of the FBiH, but apart from a successful amendment on Brčko District it produced no further drafts.[10]

A. BiH Presidency

Bosnia has a strong and effective presidency. It is the first state institution to be established and become functional after each national election. Its members – one Bosniak and one Croat directly elected from the Federation of Bosnia and Herzegovina (FBiH)[11] and one Serb directly elected from Republika Srpska (RS) – represent their communities, their entities, and the country as a whole.[12] Seats on the presidency are fiercely contested. Its main responsibilities include setting foreign policy, which is then implemented by the foreign ministry; representing the country at international events; acting as civilian commander of the armed forces; nominating the chairman of the Council of Ministers; proposing the state budget; and appointing ambassadors.

Until 2006, the presidency was mostly reserved for the top leaders of the Bosniak, Croat and Serb national parties, and this institution – and its members – hence played prominent roles.[13] As party leaders, members of the presidency could translate policies on which they agreed into legislation and government action. They could also coordinate policy between the state and entity levels. This changed in 2006 when Bosniak Haris Silajdžić, Croat Željko Komšić and Serb Nebojša Radmanović won. None were the leaders of the strongest parties in their communities (which were then the SDA, HDZ and SNSD, respectively), and this weakened their policymaking ability and link with the entities.[14] They were unable to represent unified presidency policies and were often considered to be advocating personal positions.[15]

Komšić's election in 2006 opened up a core question about Bosnian governmental system: whether elected officials represent their ethnic group or their political party.[16] His

[9] The U.S. and EU pushed a revised version of the April Package in a series of high-level meetings with party leaders starting in October 2009. Dubbed the "Butmir Package" after the Bosnian airbase that hosted the meetings, these amendments failed to secure approval and never made it to parliamentary vote. See Crisis Group Europe Briefing N°57, *Bosnia's Dual Crisis*, 12 November 2009. The SDA put the Butmir package forward as its proposal for resolving the Sejdić-Finci issue, and its leaders still support this and the related April package. Crisis Group interviews, senior SDA leaders, 2011-2012.

[10] The cornerstone of the Prud Process was the principle that BiH should have three levels of government – state, regional and municipal – each with an executive, legislative and judicial branch. This would have meant abolishing either the FBiH entity or its ten cantons. Later disclosures revealed a tentative agreement to replace the FBiH with several regions, one of which would have been predominantly Croat; but controversy over this concession doomed the process, which died out in early 2009. Crisis Group Europe Report N°198, *Bosnia's Incomplete Transition: Between Dayton and Europe*, 9 March 2009.

[11] In this report, "the FBiH" or "the federation" refer to the Federation of Bosnia and Herzegovina, one of the two entities (with RS) that compose Bosnia and Herzegovina. The country is referred to as "Bosnia" or "BiH".

[12] BiH Constitution, Article V. In setting foreign policy the presidency acts together and on behalf of the whole country. Each member can veto a presidency decision he or she considers "destructive of a vital interest of the Entity" that elected them, provided the veto is supported by a two-third majority of the Bosniak or Croat caucuses of the FBiH House of Peoples (for the respective members), or the RS National Assembly. In other matters such as naming ambassadors, each member chooses his or her ethnic quota. See Christian Steiner et al., *Constitution of Bosnia and Herzegovina: Commentary* (Sarajevo, 2010), p. 644.

[13] In the constitution, the presidency overshadows the Council of Ministers which appears as a kind of cabinet; over time the latter has become more prominent.

[14] Silajdžić was the leader of only the second-strongest Bosniak party, the SBiH. Due to his wartime role as Bosnian foreign minister, charisma, strong defence of Bosniak national interests, and strong Islamic community support, he was the most influential among the presidents. Radmanović is a leading member of the SNSD but lacks the influence of his party president (and RS president) Milorad Dodik. Željko Komšić – a civic-oriented Croat from the Social Democratic Party (Social demokratska partija, SDP) – was the first Croat on the presidency who did not come from the HDZ. Komšić won 116,062 votes, and would have probably lost had the two HDZs run with a single candidate. HDZ candidate Ivo Miro Jović won 76,681 votes and HDZ 1990 candidate Božo Ljubić won 53,325.

[15] "National and state leaders of Bosnia and Herzegovina never miss an opportunity to embarrass themselves", Op-ed "Bruka" (Disgrace) by Mirko Šagolj, on the occasion of the appearance of Haris Siladžić at the UN Security Council that was not agreed with other members of the presidency, published in Sarajevo daily *Oslobodjenje* on 24 September 2008.

[16] The SDP does not share the basic policy preference of the majority of Bosnian Croats concerning Bosnia's setup. While the SDP wants a more centralised Bosnia, most Bosnian Croats seek greater political autonomy within Bosnia or outside of it. 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. Survey data collected by Roland Kostić, Uppsala University, in cooperation with Ipsos-PULS and made available to Crisis Group.

re-election by a much greater margin in 2010, apparently scoring more Bosniak votes than there are Croat voters,[17] triggered Croat outrage. HDZ and HDZ 1990 leaders claimed that Komšić could not represent ethnic Croat interests, as he was from the SDP[18] and had been elected in large part by Bosniak votes. They alleged his election deprived most Croat voters of a voice in the collective presidency.[19] In essence this was a case of the "outvoting" that the constitution was supposed to protect Croats from.[20]

Legally there must be a Croat on the presidency but he or she does not have to be the choice of the largest number of Croat voters. Voters are not identified by ethnicity and it is difficult to determine the Croat electorate before the census is carried out in 2013.[21] Croat and Serb parties would like any constitutional change to ensure that their presidency representatives not only share their ethnicity but also represent the will of the greatest number of their voters.

The current presidency, including Radmanović, Komšić and Bakir Izetbegović from the SDA, has so far demonstrated a greater spirit of compromise and cooperation. Yet the institution is now overshadowed by the leaders of the six ruling parties[22] who since September 2011 have been meeting behind closed doors to agree on policy. According to a senior government official:

> The presidency is a huge disappointment. They have never emerged as creators of foreign policy. Wherever they cannot reach an agreement, they do not interfere. Members of the presidency act as if they were indirectly elected. Real political power has been reallocated to informal circles and the six (party) leaders. This is a systematic mockery of democracy.[23]

The 2006 proposal to transform the presidency into a weak, indirectly elected president (mentioned above) has been dropped largely due to Croat and Serb objections.[24] RS parties are insisting on their entity's right to elect one member of the presidency. It is the only directly elected, high-level institution that Bosnian voters can identify with. It is not a broken institution and has not been the cause of any of Bosnia's recent crises. A stronger Council of Ministers would risk falling prey to the petty inter-party squabbles that the government is currently handicapped by and the tensions of coalition politics.

B. HOUSE OF PEOPLES

The fifteen-member BiH House of Peoples is another institution that is often considered superfluous but actually plays a key role. It has the highest-profile membership of any government body, including (in the current term) the presidents of three major parties and former members of the state presidency and Constitutional Court.[25] Since it is one of the last bodies to be appointed, the House of Peoples is often the landing pad for senior leaders who failed to win another office such as a seat in the presidency, or seek a position whose modest demands allow them time to manage their parties.[26] It is the only place in BiH where leading politicians of all communities work together on a regular basis.

The House of Peoples is chosen asymmetrically. Its five Serb delegates are elected by the Republika Srpska National Assembly (which includes a handful of Bosniak

[17] Komšić won 337,065 votes compared to 109,758 votes for HDZ candidate Borjana Krišto and 60,266 votes for HDZ 1990 candidate Martin Raguž. Even if the two Croat national parties – who together usually represent the vast majority of Croat voters – had run with a joint candidate, they would have lost.

[18] The SDP declares itself to be a multi-ethnic, civic-oriented party and has senior members from all three constituent peoples, as well as from minorities and those who refused to declare an ethnic or religious identity. Yet, over the past several years, the party has been increasingly flirting with Bosniak national ideas and been supported by Bosniak voters.

[19] HDZ president Dragan Čović said the election of Komšić sent "a very ugly message" and complained that "neither Komšić nor the SDP representatives ever said that Komšić was the Croat member of the presidency … they speak of the President of BiH". Faruk Vele, "Čović: Izbor Komšića najviše će štetiti BiH" ["Čović: the election of Komšić will damage BiH most of all"], *Dnevni Avaz*, 5 October 2010 (online).

[20] In Bosnia, "outvoting" is a pejorative term for a majority's imposition of its will on a minority; instead, community representatives are supposed to reach decisions by consensus. Komšić cannot repeat his victory since members of the presidency are limited to two terms.

[21] The planned census is generating controversy. "Popis je završetak etničkog čišćenja u BiH" ["Census is the completion of ethnic cleansing in BiH"], Al Jazeera, 8 February 2012 (online).

[22] Until the ruling coalition collapsed in May 2012, the six included the two strongest Serb parties, SNSD and Serb Democratic Party (Srpska demokratska stranka, SDS); two Croat ones, HDZ and HDZ 1990; and the two main representatives of Bosniak voters, national SDA and civic and multi-ethnic SDP.

[23] Crisis Group interview, senior state government official, Sarajevo, 13 March 2012.

[24] RS leaders reject transferring powers to a new prime minister, and argue the presidency needs the legitimacy that comes with direct election to exercise its powers. Crisis Group interviews, Banja Luka and Sarajevo, 2011-2012. Croats want to retain a secure seat.

[25] The three major party presidents are Sulejman Tihić (SDA) and Dragan Čović (HDZ), both former members of the presidency, and Mladen Ivanić (PDP), former foreign minister. Other notable delegates include former Constitutional Court judge Krstan Simić (SNSD), HDZ 1990 vice president, Martin Raguž, and a former presidency member, Halid Genjac (SDA).

[26] Four of the current fifteen delegates ran for the presidency in 2010: Ognjen Tadić (SDS), Mladen Ivanić, Martin Raguž and Borjana Krišto (HDZ 1990).

members, and is directly elected), while the Bosniak and Croat caucuses of the FBiH House of Peoples appoint the five Bosniak and five Croat delegates. It has almost all the powers of the directly elected House of Representatives: both houses can initiate legislation and both must pass it.[27] The House of Peoples is responsible for protecting the vital interests of the constituent peoples.[28] In extreme cases, any three members of a national caucus can halt the work of the Parliamentary Assembly – composed of the House of Peoples and the House of Representatives – by boycott.[29]

This vital national interest mechanism is rarely used. The RS prefers to block legislation it opposes in the House of Representatives, using the so-called "entity voting", which requires that every parliamentary decision is supported by at least one third of votes from each of the two entities.[30] It is virtually impossible to pass legislation over solid Bosniak opposition for demographic reasons, so there is little need for protection of vital interests. Croat delegates have vetoed several decisions in recent years, but most of their vetoes have been overturned by the Constitutional Court.[31]

The FBiH House of Peoples was reformed by the Office of the High Representative (OHR) in 2002 to create space for Serbs and minorities, who had been excluded before. The reform has failed and offers lessons for the implementation of Sejdić-Finci. "In the House of Peoples delegates do not represent the interests of their people, but [rather] of their political parties and other interest groups. So now we have two Houses of the Parliament with identical roles. The [Federation] House of Peoples is useless and should be abolished".[32] The attempt to give Serbs and others a voice in the FBiH foundered on the near-total absence of a Serb electorate.[33] It allowed Bosniaks and Croats to vote for Serbs and "others" and predominantly Bosniak and Croat parties to win most of these seats.[34]

Some argue that a better alternative would have been to convert the Houses of Peoples in the FBiH and in BiH into bodies that represent regions or territories instead of ethnic communities.[35] In a "House of Cantons" or regions, each canton or region would elect an equal number of representatives directly.[36] This would allow all citizens to vote and stand for election – the goal of the OHR's 2002 reform – without creating "cheap seats" that allow majority parties to expand their power at the expense of minorities. Such a reform would be in line with the Venice Commission's observation that "the usual purpose of the second chamber in federal states is to ensure a stronger representation of the smaller entities".[37]

Assuming voters continue to vote along ethnic lines, a switch to an FBiH House of Cantons would mean more Croat delegates.[38] It would probably shrink the number of Serb and "other" delegates in the FBiH House, and the number of Croats in the BiH House, but this need not reduce those communities' influence.[39] Since each delegate would represent the entire population of their canton, delegations from cantons with significant minorities would have an incentive to protect those interests. Allowing a relatively small number of delegates to veto laws could replace the vital interest mechanism.[40]

With key ethnic interests being mostly well protected in the House of Representatives, which has better operation

[27] The House of Representatives alone approves the Council of Ministers on nomination of the presidency.
[28] Any three members of a national caucus in the House of Peoples may veto a law or decision as "destructive of a vital interest" of their people; if the whole house is unable to craft a compromise, the law or decision is referred to the Constitutional Court. BiH Constitution, Article IV.3.e and f.
[29] The House of Peoples cannot meet without a quorum of nine members, including three from each constituent people.
[30] This is more effective than the vital interest mechanism because it cannot be reviewed and overturned by the Constitutional Court. The House of Representatives is also in effect an ethnic body: there have been no Serbs among the 28 federation representatives since 2006, and no Bosniaks or Croats in the RS delegation since 2010.
[31] See BiH Constitutional Court case U 10/05.
[32] Crisis Group interview, Pedja Kojović, Our Party (Naša stranka) deputy in FBiH House of Peoples, Sarajevo, 28 February 2012.
[33] Very few Serbs live in the federation, with the exception of a few municipalities in the Livno canton and a small number in Sarajevo and Tuzla.
[34] "Others" are those who do not identify themselves as Bosniaks, Croats or Serbs; see Section III.A below.
[35] Ibid.
[36] Five delegates per canton would yield an FBiH house of fifty members, slightly smaller than the current 58. For Bosnia as a whole, each FBiH canton could elect two (for twenty from the federation), with ten more coming from RS, perhaps through five electoral units or virtual "cantons" for a total of 30 members.
[37] "Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative", CDL-AD (2005)004, 11 March 2005.
[38] Judging from their share of the vote in the 2010 elections, Crisis Group estimates that predominantly Croat parties would win seats in Posavina canton (four), Zenica (one), Central Bosnia (two), Herzegovina-Neretva (three), Western Herzegovina (five) and Livno (three) for a likely total of 18 out of a 50-seat house, or 36 per cent. Croats currently are assigned 17 out of the 58-seat house, or 29 per cent.
[39] Crisis Group estimates Serb parties would win only one or two seats in a 50-seat house elected on a cantonal basis. The number of "others" is impossible to estimate as it depends in part on personal choice, but multi-ethnic parties would probably score a significant number of seats.
[40] This could be supplemented by judicial protection for the rights of communities too small to elect significant numbers of representatives.

capacity and does not depend on direct voting and popularity among voters, experts, including the Venice Commission have proposed abolishing the BiH House of Peoples.[41] But as this seemed too radical for most Bosnian parties, much of their recent negotiations went in the opposite direction, debating an increase in the number of House of Peoples delegates to accommodate "others". This option opens up a whole new set of questions and uncertainties, mainly about whether the "others" have right of vital interest and if so, how this right will be exercised.

III. THE EUROPEAN COURT RULING

The European court's judgment on the Sejdić-Finci case in 2009 has further exposed the constitution's flaws and the need for reform.[42] The ruling requires Bosnia to cease discriminating on the ground of ethnicity in elections for the state presidency and House of Peoples saying that candidates for these offices must be treated equally, regardless of their ethnicity. A prospective candidate should not be denied the right to run because he/she does not identify as belonging to a "constituent people".

The Court did not condemn the Bosnian concept of "constituent peoples" with collective rights or call for far-reaching constitutional changes, set deadlines or impose significant fines or penalties. [43] Yet, as a perceptive Bosnian study asks:

> How to ensure the execution of the judgment while at the same time keeping the concept of three constituent peoples? Is it possible to reconcile a political and constitutional system essentially based on political privileges of the three dominant ethnic groups with the obligation of the state to adhere to the principles of equality and non-discrimination in the political sphere?[44]

Complying with the Sejdić-Finci ruling will not necessarily improve the position of Bosnia's minorities.[45] Both the presidency and the House of Peoples could be abolished or made hereditary, which would eliminate discrimination by making all candidates equally ineligible.[46] The BiH Council of Ministers or the entity governments could appoint the House of Peoples.[47] None of these measures – all fully compliant with the ECHR and the Sejdić-Finci ruling – would do anything to enfranchise minority voters or candidates.

The spirit of the European convention and the court's decision is to guarantee that all Bosnian citizens can participate in national political life without discrimination based on ethnicity, language or religion. As the court and others have recognised, Bosnia is not yet a place where unrestricted majority and ethnicity-blind rules will necessarily yield good results.[48] Wherever people live in small numbers, be they minorities or constituent peoples, they are vulnerable to marginalisation and effective disenfranchisement. Bosnia has an elaborate system of quotas meant to guarantee local minorities' (whether constituent peoples or "others") participation in decision-making even in areas where they are few in number. But nothing guarantees that these minorities will represent the will and interest of their communities.[49]

A. WHICH MINORITY?

Minorities in Bosnian law are all citizens who do not identify themselves as Bosniaks, Croats or Serbs. No one knows even approximately how many people this represents. The last census (held in 1991 on the eve of war) is irrelevant because most of those who identified as minorities chose

[41] "In its above-mentioned Opinion, the Commission argued in favour of abolishing the House of Peoples. Giving it a strong role in the selection of the presidency cannot therefore be considered a positive step", Opinion on different proposals for the election of the presidency of Bosnia and Herzegovina", Strasburg, 17-18 March 2006 (CDL-AD(2006)004) (online).

[42] Case of Sejdić and Finci v. Bosnia and Herzegovina, op. cit. The court held that the ineligibility of minorities – such as the plaintiffs, Dervo Sejdić, a Roma, and Jakob Finci, a Jew – to contest election to the presidency violated Article 1 of Protocol 12, and that their inability to contest election to the House of Peoples violated Article 14 of the ECHR with respect to Article 3 of Protocol 1. See Edin Hodžić and Nenad Stojanović, *New/Old Constitutional Engineering: Challenges and Implications of the European Court of Human Rights Decision in the Case of Sejdić and Finci v. BiH* (Sarajevo, 2011) and "Second Class Citizens: Discrimination against Roma, Jews, and other National Minorities in Bosnia and Herzegovina", Human Rights Watch, April 2012.

[43] The Council of Europe has flirted with sanctions for non-execution of the ruling from time to time but they are unlikely to pass and would have little effect. Crisis Group interview, European official, Sarajevo, 9 June 2012.

[44] See Hodžić and Stojanović, op. cit., p. 17.

[45] Jakob Finci explained that he did not expect a Jew or a Roma to win election to the presidency even after the constitution is amended. Crisis Group interview, Sarajevo, 21 May 2012.

[46] Liechtenstein's Crown Prince exercises powers comparable to, and in some areas greater than, Bosnia's presidency.

[47] Germany's Bundesrat consists of members selected by the governments of the federal units; the UK's House of Lords consists mostly of appointed life peers but includes 90 hereditary peers and 25 bishops of the Church of England.

[48] Decision, op. cit., paragraphs 44-48.

[49] Instead this system has now been distorted by a self-perpetuating elite, linked to nationalist parties and ideology, to guarantee them more seats. The HDZ and SDA, the leading Croat and Bosniak parties, have been in government for all but two years since 1995.

a category – "Yugoslav" – that no longer exists.[50] The recognised ethnic minority communities are all tiny, most numbering several hundred persons.[51]

In practice the situation is even more complicated because some Bosnians have multiple identities due to family history or personal choice. Others reject the very division into constituent peoples and the constitutional power-sharing mechanisms. They generally prefer to see themselves as citizens of Bosnia without any ethnic label.[52] Persons who identify only as citizens are also legally members of a minority.

When outsiders speak of the Sejdić-Finci case, they mostly treat its merits: challenging the repellent prohibition against minority candidates holding the highest state offices in a modern European state. The issue looks very clear-cut: there can be no legitimate grounds for racial or religious discrimination and it must be eliminated. The ruling is about minority rights, but Bosnians disagree on who is and is not a minority. The confusion arises from the imperfect overlap between levels of identity: ethnic (or religious), political and state.

The simplest solution to Sejdić-Finci is to simply remove the ethnic labels from the presidency and House of Peoples, and allow anyone to run for the three presidency seats or be named a delegate of the House of Peoples, while preserving the allocation of two thirds of the posts for the federation and one third for RS. Most Serb leaders prefer this solution, Bosniaks could live with it, but Croats are adamantly against.[53] If there was no obligation that a Croat from the federation be given a seat in the presidency, most likely two Bosniaks would be elected from the now largely Bosniak-majority FBiH.[54] The SNSD has proposed adding a requirement that the two members elected from the federation must be of different ethnicity.[55]

But this solution is unsatisfactory to the Croats, who are formally a constituent people but are also a numerical minority in both entities of Bosnia and Herzegovina. They insist on equal treatment as a community with the Bosniaks and Serbs. Any solution to Sejdić-Finci must satisfy Croat demands if it is to have a chance of adoption. The Croats are adamant that they not only want a Croat in the presidency, but they also want him or her to be the clear first choice of the Croat electorate – which has not been the situation since 2006 when SDP affiliated, ethnic Croat, Željko Komšić was elected by a multi-ethnic but mainly Bosniak support base.

The Croats have identified a problem in the current system. Minorities benefit from guaranteed seats in many elected institutions and other key state bodies.[56] These seats can be won with very few votes as there are usually few minority voters. Instead, established nationalist parties tend to field their own minority candidates for these posts which are easily won with a few crossover voters (for example, Bosniaks voting for a Croat seat).[57] The same is true of seats set aside for members of the constituent peoples in local bodies where they are few in number. In some areas, the disparate minority communities unite behind a candidate who genuinely represents their interests and works to represent them all. In many, however, the seats go to minority members of leading nationalist parties, who can do little or nothing to benefit their communities.[58]

Three of the four "others" and four of the eight Croats in the RS Council of Peoples belong to the predominantly Serb SNSD; yet the party has not visibly started to pay more attention to the rights of Croats or other minorities in the RS. Furthermore, none of the seven current representatives of the "others" in the FBiH parliament belongs to a minority; all identify as "Bosnian", "Muslim", "Bosnian-Herzegovinian" or simply as undifferentiated "other".

[50] In the 1991 census, about 8 per cent identified as something other than Muslim (ie, Bosniak), Croat or Serb, but most of these – 5.5 per cent – identified as "Yugoslav", no longer a recognised minority. The largest of the official minorities, the Montenegrins, represented 0.23 per cent of the population in 1991.

[51] The BiH Law on National Minorities recognises seventeen minority groups, including Czechs, Italians, Jews, Romas, Slovaks, Turks, and others. For purposes of ethnic quotas in government, these identities are exclusive: one may not be an Italian Jew, a Serbian Roma or a Czech-Slovak. BiH Election Law, Article 1.1a defines "member of a national minority" as "a citizen of Bosnia and Herzegovina who does not belong to any of the constituent peoples" and further specifies that "national minorities are persons of the same or similar ethnic origin … tradition, custom, belief, language, culture and spirituality and similar or related history and other characteristics".

[52] Bosnians who see themselves primarily as citizens "do not accept the consociational model of government". Crisis Group interview, Ahmet Alibašić, professor, Islamic University, Sarajevo, 14 March 2012.

[53] Crisis Group interviews, Bakir Izetbegović, member of presidency of BiH (SDA), Sarajevo, 2 March 2012. All Croat parties reject it. Crisis Group interviews, leading Croat politicians, Mostar and Sarajevo, March-May 2012.

[54] No Croat candidate finished among the top three until Željko Komšić's re-election in 2010.

[55] Crisis Group interviews, SNSD leaders, Banja Luka and Sarajevo, February-April 2012.

[56] These include seven seats in the FBiH House of Peoples, four in the RS Council of Peoples, two in the Brčko District assembly, one in the Mostar city council and at least one in the assembly of each municipality in which minorities comprise at least 3 per cent of the population.

[57] For example, the winning candidates for minority seats got only four votes in Teočak municipality, nine in Ljubinje municipality, and eleven in Velika Kladuša municipality.

[58] Crisis Group interview, Edin Hodžić, director of Analitika (an NGO), Sarajevo, 15 March 2012.

B. STATE OF PLAY

All parties accept the necessity of implementing the Sejdić-Finci judgment and eliminating formal discrimination.[59] But they have been unable to agree on how to do it. Since the judgment affects a basic feature of the Dayton Peace Agreement, its implementation can have large implications for the balance of power between the parties, the entities and the constituent peoples.

The EU moved Sejdić-Finci to the top of the agenda, making it a condition for further progress in accession that in turn would unblock significant funds BiH now badly needs. In March 2011, the Council of the EU concluded that a "credible effort" to implement the decision and bring the constitution into compliance with the ECHR was "key to fulfilling the country's obligations" under the Stabilisation and Association Agreement (SAA).[60] A "satisfactory track record in implementing obligations" under the SAA/Interim Agreement is "a key element for a credible membership application to be considered by the EU".[61] While the ECtHR is not an EU body, the treaty it enforces is incorporated into Bosnia's SAA.[62] So without a "credible effort" to implement Sejdić-Finci, Bosnia's SAA cannot come into force; and without a "satisfactory track record" in implementing the SAA/Interim Agreement,[63] Bosnia cannot submit a "credible application" for EU membership. The hope was that implementing Sejdić-Finci would pave the way for other, more ambitious constitutional reforms, and that making it an EU condition would give Bosnians the impetus to start the process. As time passed with no discernible progress, Brussels softened its conditions. In March 2012, it offered to separate the two parts of the ruling and consider a change in House of Peoples eligibility conditions alone enough of a "credible effort" to bring the SAA into force, though some adjustments to the presidency would still be needed before a "credible application" could be made.[64] By May 2012, some in Brussels would accept submission of draft amendments to the parliament as a "credible effort".[65] But EU members did not formalise the approach in their June conclusions, and Bosnia appears to have rejected this decoupling.[66]

EU enlargement policy assumes "effective implementation of the Stabilisation and Association Agreements is a prerequisite for any further assessment by the EU of the country's prospects for accession".[67] Yet this has historically not meant having an SAA in force at the time of application for membership. Only one state – Albania – has applied for membership with an SAA in effect; the others, Croatia, Macedonia, Montenegro and Serbia, all applied earlier.[68] Croatia and Serbia became candidates without

[59] Crisis Group interviews, Sulejman Tihić, president of the SDA, Sarajevo, 10 May 2012; Dragan Čović, president of the HDZ, Mostar, 9 May 2012; Mladen Bosić, president of the SDS, Sarajevo, 18 April 2012; Igor Radojičić, president of the RS National Assembly and vice president of the SNSD, Banja Luka, 25 April 2012; Božo Ljubić, president of the HDZ 1990, Mostar, 5 March 2012. Leaders of the SDP declined repeated requests for interviews.

[60] Council of the European Union, Council Conclusions on Bosnia and Herzegovina, 21 March 2011. The Stabilisation and Association Agreement (SAA) is a contract between the EU and an aspiring member state, governing many areas of activity.

[61] Council of the European Union, Council Conclusions on Bosnia and Herzegovina, 21 March 2011.

[62] Stabilisation and Association Agreement, Article 2: "Respect for democratic principles and human rights as proclaimed in … the Convention for the Protection of Human Rights and Fundamental Freedoms … shall form the basis for the domestic and external policies of the Parties and constitute essential elements of this Agreement".

[63] The EU's Foreign Affairs Council said on 25 June 2012 that "completing the implementation of the Sejdić/Finci ruling and having a satisfactory track record in implementing its obligations under the SAA/Interim Agreement would be key elements for a credible membership application to be considered by the EU". Council of the EU, Council Conclusions on Bosnia and Herzegovina, 25 June 2012. The June 2012 roadmap for a membership application agreed between Bosnian leaders and the EU noted that amending the constitution to comply with the Sejdić-Finci ruling is "one of the essential elements to ensure a satisfactory track record in implementing Bosnia and Herzegovina's obligations under the SAA/Interim Agreement". It also states that once constitutional changes have been made and the SAA enters into force, Bosnia will be in a position to submit a "credible" membership application. The Interim Agreement itself has been in force since 1 July 2008, so EU members should not demand a period of SAA implementation once there is a credible effort to implement the ECtHR ruling before accepting a credible application. "Joint conclusions from the high level dialogue on the accession process with Bosnia and Herzegovina and the road map for BiH's EU membership application", press release, European Commission, 27 June 2012.

[64] Crisis Group interviews, senior European Commission officials, Sarajevo and Brussels, March 2012. The distinction may have come from a technicality: the ECtHR ruled that only the provisions governing the House of Peoples violated the convention itself, while those on election of the presidency violated Protocol 12, which has not been ratified by all EU members.

[65] Crisis Group interview, EU official, Brussels, 15 May 2012.

[66] Council of the EU, Council Conclusions on Bosnia and Herzegovina, 25 June 2012.

[67] "The Western Balkan Countries on the Road to the European Union", European Commission, Enlargement Directorate website, 30 January 2012.

[68] Serbia applied on 22 December 2009 and as of June 2012 its SAA had not been ratified by all EU members and was not in force. Croatia applied on 21 February 2003, while its SAA came into force almost two years later on 1 February 2005; Montenegro applied on 15 December 2008 with its SAA coming into effect on 1 May 2010, and Macedonia applied on 22 March 2004, just over a week before its SAA came into force on 1 May.

an SAA in force.[69] Arguably, these states were already fulfilling most of their SAA obligations when they applied, though serious breaches remained.[70] Yet the EU now insists that it will not accept a membership application from Bosnia until Sejdić-Finci is resolved. This policy should be changed as it risks either encouraging a quick fix solution which will do more harm than good, or delaying the first step in Bosnia's EU accession process for years until comprehensive rewriting of the constitution is done.

The search for a solution to Sejdić-Finci has run on two tracks. Bosnia's formal institutions went through the motions of working on it. The Council of Ministers established a working group under the auspices of the justice ministry; the group met seven times in the summer and fall of 2010 but failed to make any headway.[71] Starting in October 2011, the Parliamentary Assembly of BiH set up a joint committee on the implementation of the Sejdić-Finci judgment. It has met several times and has published draft amendments received from the parties and civil society on its website.[72] As one of the parliamentarians charged with implementing the judgment noted:

> There is a very wide range of different proposals, in which … everyone is trying to resolve some problem they have. Everyone who proposes has his [own] vision which is different from the others, and now, you have thirteen political parties [in the parliament], in some cases with diametrically opposed positions.[73]

In parallel to this, the six party leaders have held substantive discussions at seven summit meetings starting in September 2011.[74] These meetings have produced results in other areas (see Section III.C below). On Sejdić-Finci they agreed two basic principles: every citizen must be eligible to run for the presidency and House of Peoples, and the winners must have "ethnic legitimacy", meaning they must be the choice of their respective communities.[75] The second principle is vital for the Croats and means in effect that the election of Željko Komšić – a Croat elected largely by Bosniak votes – would not be repeated.

In late May 2012, when there was a final push to try to find a compromise, the HDZ and the SDP made a proposal, whose details remain to be worked out and which RS parties have yet to warm to.[76] The scheme starts in the federation. There, it would create an electoral congress consisting of all the members of the ten cantonal assemblies. This congress would divide into four groups based on its members' declared ethnicity and each group would elect its respective caucus in the FBiH House of Peoples,[77] which would then, together with the RS National Assembly, select the state House of Peoples. There are several ways to do this. The most modest adds two minority delegates from the FBiH and one from RS.[78] The state legislature would then, in a complicated procedure, name the three members of the state presidency.[79]

The RS parties insist that their entity must name its member of the state presidency alone, preferably through direct election without ethnic requirements.[80] They agree to al-

[69] Croatia on 18 June 2004 and Serbia on 1 March 2012.
[70] Croatia, for example, was allowed to apply though its cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), also required in Article 2 of the SAA, was partial at best. "Croatia, which had the responsibility to apprehend only one, well known, indicted accused person, allowed that person to abscond following failed negotiations with him to surrender". "Report of the International Tribunal", S/2003/829, 20 August 2003, p. 53.
[71] See the detailed chronology of its meetings in Hodžić and Stojanović, op. cit., pp. 29-33 ("… one gets the impression that the execution of the judgment has, in actuality, not been a top priority".). The working group could not even agree on the text of a decision establishing *another* committee to prepare constitutional amendments on Sejdić-Finci.
[72] See "Common Bodies", "Joint Ad-Hoc Committees", www.parlament.ba (content only available in Bosnian languages).
[73] Nermin Purić, BHT Klub TV debate, BHRT (Radio Televizija Bosne i Hercegovine), 24 April 2012.
[74] A list of the meetings and agenda can be found here: Maja Rener-Smajović, "Moguć novi sastav vijeća ministara BiH" ["A new Council of Ministers of BiH is possible"], *Nezavisne novine*, 23 May 2012 (online).
[75] Crisis Group interview, Sulejman Tihić, SDA president, Sarajevo, 10 May 2012.
[76] Crisis Group interviews, HDZ and SDP officials, Mostar and Sarajevo, May-June 2012.
[77] The Bosniak, Croat and Serb cantonal assemblymen would each select the seventeen Bosniak, Croat and Serb members of the FBiH House of Peoples, respectively, while minority assemblymen would select seven delegates, for a total of 58 members of the House of Peoples.
[78] Crisis Group interview, Lazar Prodanović, member of BiH House of Representatives (SNSD), Sarajevo, 28 February 2012. Another approach adds Serbs from the FBiH and Bosniaks and Croats from RS, who are currently barred from selection and are the subject of a pending ECtHR case (Pilav vs. Bosnia and Herzegovina).
[79] Members of the House of Representatives would nominate candidates. The minority members of the House of Peoples would "affiliate" themselves with one of the three constituent people caucuses, each of which then selects one candidate by majority vote. The three resulting candidates are returned to the House of Representatives for approval as a slate. If the slate fails, the whole procedure is repeated once, and if the slate fails again, it is nonetheless considered elected. Crisis Group interview, Dragan Čović, HDZ BiH president, Mostar, 9 May 2012; Niko Lozančić, member of House of Representatives, Sarajevo, 14 May 2012.
[80] Crisis Group interviews, Mladen Bosić, SDS president, Sarajevo, 18 April 2012; Igor Radojičić, RSNA speaker, Banja Lu-

low the FBiH to select its two members as they like. The largest RS party, the SNSD, has equivocated on whether or not it will insist on direct election. In any case, bringing the RS on board with the SDP/HDZ proposal means accepting an asymmetric solution where the state presidency would be selected using two different procedures.[81] This might reduce discrimination but would do little to increase democracy or unity of the country's two constituent parts.

C. POLITICAL CRISIS

Since the end of May 2012, talks on Sejdić-Finci implementation have stopped as the coalition backing the state and federal governments has fallen apart. The coalition was always fragile. After the October 2010 elections, the parties failed to form a federation government for five months and a state government for fourteen months. Formation of the federation government in May 2011 without Croat national parties (HDZ and HDZ 1990) and through the intervention of the OHR was controversial.[82] The long delay in the formation of the Council of Ministers damaged Bosnia's credibility, further undermined state institutions and left the country without a budget and its institutions facing funding shortfalls. Personal relations among political leaders are now marked by mistrust and suspicion. An observer noted, "the idea of Bosnia as a normal country is dying".[83] In the RS, SNSD leaders fought over control of the entity government.[84] For almost two years, the two HDZs have been unable to form a government in Western Herzegovina canton.[85]

Faced with an increasingly dire financial situation and mounting public criticism, on 28 December 2011 the six main party leaders finally agreed on the formation of the new BiH Council of Ministers, which was soon after approved by the BiH parliament. By the beginning of March 2012, the BiH parliament had adopted several important laws and decisions.[86] On 9 March, the six leaders agreed on the registration and use of military and state property, long-running disputes which had held up Bosnia's Membership Action Plan (MAP) with NATO.[87] But the burst of activity proved short-lived.

The governing coalitions of the state and the FBiH collapsed on 31 May 2012 with a spectacular, bitter divorce between two leading parties, Zlatko Lagumdžija's SDP and Sulejman Tihić's SDA. The reasons for the split remain obscure as both sides hurl accusations.[88] The breach opened when the SDA voted against the state budget, claiming to have been excluded from drafting it and dissatisfied with its austere provisions. In response, Lagumdžija (backed by the rest of the state coalition) moved to expel the SDA from the state Council of Ministers and followed up over the next days by pushing the SDA out of four cantonal governments (Sarajevo, Tuzla, Zenica-Doboj and Una-Sana). The SDA retaliated by establishing a new government in Goražde canton without the SDP.

By mid-June 2012, a new coalition had formed, with Fahrudin Radončić's Union for a Better Future (SBB, Savez za Bolju Budućnost) and the two HDZs replacing the SDA. The SDA and HSP moved to block attempts to replace them from the Council of Ministers and FBiH government. The SDP has filed criminal charges against FBiH President Živko Budimir with the Sarajevo cantonal prosecutor, while the SDA has appealed to the FBiH Constitutional Court and OHR for protection of constitutional procedure. At time of writing, it remained unclear whether the new coalition would be able to impose itself in the FBiH, where procedures for changing the government are com-

ka, 25 April 2012; Mladen Ivanić, PDP president, Banja Luka, 2 April 2012.

[81] The largest Bosniak party, the SDA, rejects allowing RS to elect its member directly while the two FBiH members are chosen indirectly, because it would introduce too great a disparity into the state executive. Crisis Group interview, Sulejman Tihić, SDA president, Sarajevo, 10 May 2012.

[82] For details, see Crisis Group Europe Briefing N°62, *Bosnia: State Institutions under Attack*, 6 May 2011.

[83] Crisis Group interview, EU member state ambassador, Sarajevo, 27 February 2012.

[84] "Sukobi u vrhu RS: Spinovanje realnosti ili demonstracija moći" ["Conflicts in the RS leadership: spinning reality or demonstrating power"], Radio Free Europe, 13 April 2012 (online).

[85] "'Vruće' između dva HDZa, Ljubić smiruje uzavrele strasti" ["'Hot' between the two HDZs, Ljubić is calming down burning emotions"], Mostar daily *Dnevni List*, 21 May 2012, online.

[86] This includes two long-awaited laws – state aid law and law on countrywide census – which were crucial for Bosnia's continuation along the EU membership path; the 2011 state budget, the global fiscal framework for 2012-2014 – needed for adoption of the 2012 budget and eventually Bosnia's new arrangement with the IMF – as well as law on identification documents.

[87] Implementation of this important decision has been delayed and was reportedly agreed only at the meeting at the end of May 2012.

[88] The SDA complained that the SDP's "central committee" micromanaged everything ("you can't even hire an assistant minister's assistant without their approval") and that its members followed party orders rather than those of their superiors. Crisis Group interview, SDA President Sulejman Tihić, Sarajevo, 10 May 2012. The SDP claimed the SDA was acting like the opposition while in government and was blocking many important initiatives. Crisis Group interview, senior SDP leader, Sarajevo, 12 June 2012. Both sides hinted that the dispute also concerned the privatisation of two of BiH's biggest firms, BH Telekom and Elektroprivreda, "Sulejman Tihić: SDP želi prodati 'BH Telecom' i FDS" ["Sulejman Tihić: SDP wants to privatise BH Telecom and the Sarajevo Tobacco Factory"], Anadolija news agency, 12 June 2012 (online).

plicated and several small parties hold important posts.[89] The SDA still has powerful assets, notably control of the Bosniak caucus in both the state and FBiH Houses of Peoples, allowing it to delay or block legislation. Tihić has also concluded an alliance with the main opposition party, the Party for Bosnia and Herzegovina (SBiH, Stranka za Bosnu i Hercegovinu).

On 27 June 2012, the EU hosted Bosnia's top leaders in Brussels and launched a "high-level dialogue" with a timetable of tasks BiH is expected to accomplish. Implementing the Sejdić-Finci decision features prominently on the EU roadmap; filing of draft amendments at the Parliamentary Assembly is expected by 31 August and adoption by 30 November 2012.[90] This timetable seems likely to slip. Municipal elections are planned for October 2012, and parties are now as much positioning for them as they are focusing on creating stable coalitions or carrying out constitutional reform. No party has yet presented a solution to Sejdić-Finci that can satisfy Bosniaks, Croats and Serbs, while increasing the state's unity, efficiency and democratic accountability to its citizens.

IV. CONTOURS OF A SOLUTION

A. ETHNIC VS. POLITICAL IDENTITY

In Bosnia's constitutional system, many top officials represent their ethnicity. This applies far beyond the presidency and House of Peoples.[91] Though a "sordid business", ethnic quotas are still a reasonable and even necessary feature of Bosnian politics.[92] Yet as applied to the most senior posts in Bosnia, this system has a fatal flaw. Occupants of quota posts are neither chosen by, nor responsible to, the communities they represent. A perceptive journalist argues, "legitimacy comes from those who choose, not from those who are chosen"; merely belonging to a community does not qualify an official to represent that community.[93]

The current system creates irreconcilable conflicts and perverse incentives. Candidates win office by gaining the support of a group of voters who need not overlap with the community they are supposed to represent. When an official wins a post earmarked for a member of one community with votes drawn largely from another, his loyalties are divided whenever the interests of the two groups diverge. If he acts in line with his voters' interests, he violates the spirit of the constitution, which created his office specifically to represent a certain ethnic group, to which he belongs.[94] If instead he acts to advance the interests of this group, he betrays the trust of his electorate.

Since self-declared ethnicity is the only qualification for quota seats, and ethnic identity is unregulated, the main parties have an incentive to compete for the seats set aside for the smallest groups. These "cheap seats" can be won with very few votes. This encourages the bigger parties to field minority candidates who are expected, once elected, to toe the party line. A system created to protect minority interests does little to ensure that those elected will defend these interests, which breeds frustration. If Bosnian officials have a duty to a specific (ethnic) group alongside their general responsibility to the country, based on which constituent group they belong to, then their specific group must have a protected role in their election.

One way to ensure that not only are minorities elected to higher office, but that they are elected by minorities and will represent their interests, is to introduce mandatory national identification. The Italian province of South Tyrol, for example, requires citizens to register an ethnicity at each census, and reserves all public posts for members of three recognised groups: Italian, German and Ladino speak-

[89] The FBiH government is headed by Nermin Nikšić, SDP secretary general, who can step down at will, but FBiH President Živko Budimir, of the small right-wing Croat Party of Right (HSP, Hrvatska stranka prava) which has been jettisoned along with the SDA, has the power to name the new government. Budimir can only be removed by the FBiH Constitutional Court acting on an impeachment motion brought by two thirds of the FBiH parliament.

[90] "Joint conclusions from the high level dialogue on the accession process with Bosnia and Herzegovina", op. cit.

[91] Quotas of various kinds apply to the Council of Ministers (there must be at least one member of each constituent people and one minority), the entity governments (fixed quotas of ministers), six key entity posts (two per constituent people) and houses of peoples, the cantonal assemblies and governments, the Mostar city council and Brčko District assembly and government, and certain municipal assemblies and governments. In general, *all* state-level posts are expected to follow demographic quotas (Article IX.3 of the BiH Constitution); informally, even many private sector executive positions named by the government (for example, in firms in which the state owns shares) are apportioned by ethnic quotas.

[92] Opinion of Roberts, C.J., League of United Latin American Citizens v. Perry, 548 U.S. 399 (2006).

[93] Crisis Group interview, Ivan Vukoja, Mostar, 9 May 2012.

[94] When the Dayton constitution was adopted in 1995, Bosniaks and Croats were the only "constituent peoples" of the FBiH, and Serbs were the only constituent peoples in RS. In being elected from, and thus representing, their respective entities, the members of the presidency also represented the interests of the peoples of those entities. The Constitutional Court and OHR changed this in a series of steps between 2000 and 2002, making all three peoples constituent in both entities, but the members of the presidency are still widely seen as representing the peoples whose ethnicity they share. See also footnote 118 below.

ers.[95] To make this work in Bosnia would require two kinds of ballots: a general one for posts without a national quota like the House of Representatives, and an ethnic one for the presidency and the House of Peoples. If voters could only vote for candidates of their registered ethnicity for the latter ballot, there would be no possibility of poaching seats set aside for minorities. Yet many in Bosnia find the idea repugnant: "You may as well make us all wear ethnic badges or armbands".[96] The Tyrolean law also has been challenged in Italy on similar grounds to the Sejdić-Finci case.

Decentralisation is the alternative to ethnic quotas. Since relatively few Bosnians returned to the areas from which they were expelled during the 1992-1995 war, much of the country consists of regions with a clear local majority. Giving regions a greater voice in state and entity policy would in effect offer ethnic communities the ability to choose their representatives without the need for discriminatory quotas. It would also clarify the relationship between the electorate and its representatives.

B. ELECTION OR SELECTION

All Bosnian parties agree that in principle, direct election is preferable to indirect election, or selection. Elected officials enjoy greater popular legitimacy and take office with a stronger mandate.[97] Indirectly elected presidents can be legitimate but in most European states have powers that are akin to those of constitutional monarchs and serve more as symbols of national unity than true executives. Why, then, do all of the serious proposals for implementing the Sejdić-Finci judgment involve indirect election?

Tensions between Bosniaks and Croats made direct election hard to implement.[98] Croats reject a single electoral district, as it would usually leave them without a seat in the presidency. Bosniaks reject three electoral districts because they fear a precedent for further ethnic division and the creation of a Croat "third entity".[99] Yet Bosnian electoral law already has ad hoc electoral units that have no administrative role.[100] Any electoral unit that included most of Bosnia's Croats would also encompass a significant number of Bosniaks, perhaps enough to swing the election to a moderate Croat or even a non-Croat.

Mainstream Croat leaders actually seem to prefer indirect election, giving only rhetorical support to a third electoral unit.[101] For their part, RS politicians prefer direct election,[102] though the SNSD is reportedly prepared to accept indirect choice, as long as the RS National Assembly rather than the BiH Parliament does its side of the choosing.[103] The main attraction of indirect election cuts across ethnic and ideological lines: it allows party leaders effective control over all key executive and some legislative posts regardless of the outcome of elections. Differences between the RS and FBiH may require a degree of asymmetry in the electoral system. FBiH-based parties largely accept allowing the RS to retain full control over the choice of its member of the presidency and most of its delegates to the House of Peoples through direct election. Some asymmetric models are dangerous, however. If a pattern develops of RS electing its member of the presidency without fuss, while the FBiH's more complicated system repeatedly stalls or breaks down, it will feed the Serb narrative of Bosnia as a failed state.

Yet indirect election need not concentrate power in the hands of unelected (and largely unchallenged) party

[95] Registration is optional but those who decline to choose cannot stand for election or occupy a public post. Citizens can change their identification three or more years after a census, and the new identity comes into effect two years later; they can also declare themselves merely "aggregated" to, but not actually members of, the three groups. See Hodžić and Stojanović, op. cit., pp. 79-80.

[96] Crisis Group interview, Bosnian official, Sarajevo, 13 March 2012.

[97] Crisis Group interview, Lazar Prodanović, member of BiH House of Representatives, Sarajevo, 28 February 2012: "This is not only a question of direct and indirect voting. It is also a question of the legitimacy of … different candidates".

[98] HDZ leaders report their proposals for direct election via three electoral units were always rejected. The party wanted an electoral unit consisting of most municipalities with Croat majority. Crisis Group interview, Dragan Čović, HDZ president, Mostar, 9 May 2012.

[99] Crisis Group interviews, SDA and SDP officials, Sarajevo, April-June 2012.

[100] The BiH House of Representatives is elected in eight ad hoc districts, five in the FBiH and three in RS. The FBiH House of Representatives is elected in twelve districts whose boundaries cross cantonal lines.

[101] Only one Croat leader strongly supported direct election in three districts. Crisis Group interviews, Mostar and Sarajevo, March-May 2012. SDP and SDA negotiators report the HDZs did not make any serious proposals for direct election and never drafted the outlines of an electoral unit that would satisfy them. Crisis Group interviews, Sarajevo, March-June 2012.

[102] Opposition parties such as the Serb Democratic Party (SDS, Srpska demokratska stranka) and the Party of Democratic Progress (PDP, Partija demokratskog progresa) insist on direct election in part because it gives them a fighting chance at winning. Crisis Group interview, Mladen Bosić, SDS president, Sarajevo, 18 April 2012. Nebojša Radmanović, the SNSD candidate, won by fewer than 10,000 votes out of 604,370 cast against Mladen Ivanić, the joint opposition candidate.

[103] Crisis Group interviews, SDP and HDZ negotiators, Sarajevo and Mostar; senior SNSD officials, Banja Luka and Sarajevo, March-June 2012.

chiefs.[104] It can approximate direct election by use of an electoral college that is itself directly chosen by the voters. An ad hoc body of electors pledged to the candidates chosen by voters of their entity, canton or other electoral unit can meet the needs of all three constituent peoples, citizens and others. Crisis Group plans to explore options for this proposal in a later report.

The Bosnian political elite already suffers from low popular trust and support.[105] Removing voters' ability to choose the members of the presidency would leave Bosniaks and Croats without any directly elected leaders and without any means of exerting influence over government policy at state or entity level. Residents of RS alone would have a say in the choice of their executive. Leaders without popular legitimacy can have difficulty making the hard choices facing their country. And long-term unaccountability is largely unacceptable, it generates feelings of aggrieved voicelessness and political alienation that are already crowding out pursuit of more constructive policies.

C. THE FOURTH CONSTITUENT PEOPLE

Formally, anyone who does not identify with one of the constituent peoples is a minority, an "other". Although the exact numbers are unknown and likely to remain so, most self-described "others" are minorities by choice rather than birth. Many see themselves primarily as Bosnian citizens and are offended by being forced to identify in ethnic terms too. Yet identification with Bosnian citizenship is most popular within the Bosniak community, and many Serbs and Croats see these citizen "others" as crypto-Bosniaks trying to game the system. The SDP, the party most identified with the citizen's option, chafes at regular Croat and Serb claims that it is in fact a Bosniak party.

The writers of Bosnia's constitution did not plan for significant multi-ethnic parties, and the current system does not handle them well. The SDP leadership includes many Croats and Serbs in important positions and the party is popular with urban "minority" voters (such as Croats in Tuzla or Serbs in Sarajevo). Yet the overwhelming majority of its voters, more than 90 per cent, are Bosniaks.[106] The party compete for non-Bosniak seats, not only because those can often be won with fewer votes (as explained above), but also because it has senior Croat, Serb and minority members who can serve as good candidates.[107] Anyone can vote for minority seats, so nothing guarantees that the first choice of a minority group will win. Minorities are usually too few in number to compete against crossover votes from larger parties.

Bosnia's demographic structure no longer matches the Dayton election system, which provides no room for the growing number of voters who identify with the country first and a constituent people second or not at all. The "citizen-oriented" are the fourth constituent people, and although they mostly share conservative Bosniak views on the future of the country as a unified society with a strong central government based on majority rule, insisting that patriotic, Bosnia-oriented citizens adopt Bosniak identity will only breed frustration and anger.[108]

D. A POLITICAL HOME FOR THE CROATS

Bosnia's dwindling Croat population has long felt marginalised and disenfranchised. Before war broke out in former Yugoslavia, it represented over 17 per cent of Bosnia's population; today the Croats may be as few as one in ten.[109] Their demographic decline has strained the political compromises that brought the Croat breakaway statelet first into the FBiH and then into Bosnia and Herzegovina. Local and international officials now resent Croat hijacking of the Sejdić-Finci issue, which should not focus on "making ten per cent – or less – of the population happy".[110]

Their established parties, chiefly the HDZ and its offshoot the HDZ 1990, press for "equal rights" for the Croats but seldom explain what that means. Yet the Croats' goal is simple: they want "the ability to decide for themselves" on matters that are important to them as a community.[111] A senior official of the Republic of Croatia described the aim as "an autonomous source of influence over the bodies of [state] authority", that is, a base (not necessarily a territorial one) from which the community could exert its

[104] In recent years, only the SDA's Sulejman Tihić faced, and survived, a leadership challenge.

[105] Bosnia had the lowest rates of approval of state leadership and state government ("excellent" and "good" combined) in the western Balkans in the most recent Gallup Balkan Monitor survey (www.balkan-monitor.eu).

[106] More than 90 per cent of the SDP's support came from Bosniak-majority areas in polls conducted in November 2008, 2009 and 2010; "Early Warning System 2010", UN Development Programme, Table 1.7a, p. 85.

[107] Crisis Group interview, Serb member of SDP leadership, 23 May 2011.

[108] These claims are not limited to nationalist Croats and Serbs. The Islamic community launched a vitriolic attack on the SDP, charging it with "Islamophobia" for allegedly seeking to water down the community's influence in Bosnia.

[109] Exact figures will only be known after the 2013 census. The Catholic Church has records showing about 440,000 parishioners, the vast majority of them Croats. Večernji List, 26 March 2012 (online).

[110] Crisis Group interview, senior U.S. diplomat, Sarajevo, 7 May 2012.

[111] Crisis Group interview, Ivan Vukoja, Mostar, 9 May 2012.

influence.[112] Bosnia's Constitutional Court has ruled that the "efficient participation of the constituent peoples in the bodies of authority" is a key national interest.[113] Achieving this yields the central Croat demand: the community wants to be able to decide itself, without being overwhelmed by the votes of others, on its representatives, and to have significant influence over state policy at all levels. Senior Bosniak officials recognise the need to "respect the legitimate will of the smallest of the three constituent peoples".[114]

Bosnia's Croats enjoyed these rights under the founding documents, the 1994 Washington Agreement and the 1995 Dayton Peace Agreement, which recognised them as an ethnic group. International pressure gradually eroded their influence, however.[115] Since constitutional changes imposed by the High Representative (OHR) in 2002, decision-making can bypass unanimous opposition of all Croat representatives.[116] The creation of a state-level court led to the indictment and trial of political leaders, including the current head of the HDZ, challenging the sense of impunity some Croats had in their cantons. The OHR-imposed statute on the city of Mostar means that Bosnia's only Croat-majority city is also the only city without a directly elected mayor and without effective majority rule.[117] After the 2006 and 2010 victories of SDP candidate Željko Komšić, Croat voters rallied to the nationalist HDZ and HDZ 1990.[118] In 2011, OHR's ill-judged decision to suspend rulings of the state Central Election Commission allowed an illegally elected executive to take office and appoint a government excluding the major Croat parties.[119]

Croat issues have hijacked constitutional reform efforts in Bosnia before and will likely do so again.[120] The leading Croat parties retain enough clout to block most key legislation.[121] With the country divided between separatist Serbs and patriotic Bosniaks, the Croats' allegiances can determine whether Bosnia moves forward or stagnates. If most Serbs and Croats feel alienated and ill-treated by the state, they will band together against the rest. The two blocs are evenly matched and can leave Bosnia paralysed, unable to streamline government or, alternatively, to move toward greater decentralisation.

Most Bosnian Croats also hold citizenship and voting rights in neighbouring Croatia, which is set to join the EU in July 2013. At that point, they will have a direct say in EU policy toward their country.[122] Croatia, which has pursued a "no-problems" foreign policy during its EU accession talks, may become much more assertive. It considers BiH "the most important country [for us] in the world".[123] Croatia strongly backed Bosnia's EU and NATO aspirations and has cooperated with U.S. and EU diplomats in seeking solutions to its neighbour's recent political crises.[124] It has strongly supported Bosnian territorial integrity and steered Bosnia's Croats toward integration for more than a decade.

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[112] Crisis Group interview, senior Croatian official, Zagreb, 4 April 2012.

[113] See Steiner et al., op. cit., p. 972.

[114] Crisis Group interview, Šefik Džaferović, member of BiH House of Representatives (SDA), Sarajevo, 16 April 2012.

[115] Erosion began as early as 2000, with an OSCE decision allowing Bosniak members of cantonal assemblies to participate in electing Croat delegates to the House of Peoples and vice versa. For this, lack of access to television broadcasting, refugee return and other Croat grievances, see Crisis Group Europe Report N°106, *Turning Strife to Advantage: A Blueprint to Integrate the Croats in Bosnia and Herzegovina*, 15 March 2001.

[116] See Crisis Group Europe Report N°209, *Federation of Bosnia and Herzegovina – A Parallel Crisis*, 28 September 2010, and for more detail on the issues, Crisis Group Europe Report N°128, *Implementing Equality: The "Constituent Peoples" Decision in Bosnia & Herzegovina*, 16 April 2002.

[117] See Crisis Group Europe Report N°150, *Building Bridges in Mostar*, 20 November 2003 (outlining a different and more equitable proposal for power-sharing) and Crisis Group Europe Briefing N°54, *Bosnia: A Test of Political Maturity in Mostar*, 27 July 2009.

[118] Before the 2010 election, only 22.9 per cent of Croats agreed that "only national (ethnic) parties or parties carrying a national (ethnic) trademark in BiH can provide for the protection of national interests of the people(s) they represent"; immediately after the 2010 election, 77 per cent agreed with that position (compared to 22.6 per cent of Bosniak respondents and 30.4 per cent of Serbs). UN Development Programme, "Early Warning System 2010", p. 87.

[119] The BiH Central Election Commission ruled that the FBiH House of Peoples was not properly constituted and voided the election of the entity president and vice presidents; in response, High Representative Valentin Inzko set aside the Election Commission's ruling, allowing the disputed president and legislature to name a government, which excluded both leading Croat parties, the HDZ and HDZ 1990. See Crisis Group Briefing, *Bosnia: State Institutions under Attack*, op. cit.

[120] The so-called "April package" failed in part due to the defection of two Croat parliamentarians in April 2006. Disclosures that party leaders were discussing the creation of a Croat-dominated entity scuttled a promising reform effort in 2008.

[121] Croats have had little success with the vital interest mechanism, but their votes are almost always needed to reach the two-third majority needed for constitutional amendment, and often for regular laws too.

[122] A senior Bosnian Croat politician told Crisis Group, "after July 2013, we will be sitting in the European Parliament". Crisis Group interview, Mostar, 5 March 2012.

[123] Crisis Group interview, adviser to the Croatian president, Zagreb, 3 April 2012.

[124] Crisis Group interviews, U.S., EU and NATO member state officials, Croatian officials, Sarajevo, Zagreb, Brussels and Washington DC, 2011-2012.

Yet Zagreb is increasingly unhappy with Bosnia's treatment of Croats.[125] Several European states have blocked their neighbour's EU aspirations over bilateral disputes that seem incomprehensible to outsiders: Greece and Macedonia's name dispute, a maritime border squabble between Slovenia and Croatia, and most recently a threat by Romania to hold up Serbian candidacy over the nomenclature of the Vlach minority are just some recent examples. The outcome of Bosnia's EU membership talks thus depends on the future of inter-ethnic relations.

E. UNBLOCKING FUTURE REFORM AND AVOIDING PARALYSIS

Bosnia will have to address several known problems relatively soon. The amendments adopted to implement the Sejdić-Finci decision should as far as possible facilitate repairs to other constitutional flaws. Chief among these is a challenge similar to the one posed by the Sejdić-Finci case, brought by Ilijaz Pilav and pending before the European court.[126] Pilav is an RS Bosniak who sought to run for the presidency and was prevented by the same mechanism that barred Finci and Sejdić: only a Serb may run in RS, and only a Bosniak or a Croat in the federation. Some proposals to execute Sejdić-Finci would also resolve Pilav's complaint, but several others would leave RS Bosniaks and Croats, and federation Serbs, disenfranchised.

The federation's fault lines ruptured in 2010, leading to a constitutional crisis that was only resolved by a questionable intervention of the High Representative.[127] Under circumstances that can easily recur, the FBiH system will be unable to elect its president and vice presidents, appoint a government or pass a budget. Whatever solution to Sejdić-Finci wins the day, it must not be vulnerable to the same kind of breakdown. For example, the complicated structure of the SDP-HDZ proposal for successive indirect polling does not inspire confidence that it can withstand unanticipated shifts in political allegiance.[128] As an eminent jurist put it, "when you are framing a constitution, you have to anticipate the worst outcomes, because they usually happen. The constitution has to be able to handle them". The 2010 crisis showed that "tiny details can have enormous consequences".[129]

V. CONCLUSION

Bosnia and Herzegovina is slowly reaching the limits of its Dayton constitution. It is increasingly an obstacle to EU accession but also to healthy relations among the country's regions and communities. Constitutional reform has been on the agenda for years, with repeated high-level international initiatives and several courageous local attempts. All of these have failed, each time lowering the expectations for the next attempt. In the spring of 2012, intense pressure and months of promises of a deal just over the horizon appear to have produced yet another drawn-out and obscure power struggle among Bosnia's political elite. A consensus is developing that constitutional reform is a fool's errand.

Yet there is still the European dream that no Balkan politician can safely disavow. The Sejdić-Finci case blocks Bosnia's way to the EU until the constitution is rewritten, at least in part. The country could adopt a quick and dirty reform that meets the letter, but not the spirit, of the court's decision while further complicating its political system and distancing it from the voters by increased use of indirect election. The rationale here is simple: the current generation of leaders can do no better, and even a dirty reform will open the way for EU candidacy and membership talks, which will let the EU "tear the country apart" and repair it.[130] A senior EU official noted that Brussels had given up hoping for a "major breakthrough" and would be content with "a step forward that would be followed by another step forward".[131]

The flaw in this strategy is that it only solves the one problem – Bosnia's European roadblock – that the EU has itself created. The link between Sejdić-Finci and EU candidacy status is technical and weak. The costs of an ill-conceived reform are steep and enduring: it can be the first in many steps backward. If Brussels insists on reform but telegraphs its willingness to accept a mere papering-over of the cracks exposed by the European Court, it will share responsibility for the damage Bosnia's leaders will do in response. It would be sad to see this landmark case produce a political system more remote from its constituents and more amenable to the interests of entrenched elites. And it would

[125] Crisis Group interviews, senior Croatian officials, Zagreb and Sarajevo, April-May 2012.
[126] Crisis Group interview, Council of Europe official, Pristina, 9 June 2012.
[127] See Crisis Group Europe Briefing N°62, *Bosnia: State Institutions under Attack*, 6 May 2011.
[128] A seasoned observer noted, "every indirect election of the presidency is a potential crisis". Crisis Group interview, Igor Radojičić, RSNA speaker, Banja Luka, 25 April 2012. U.S. officials expressed similar concerns. Crisis Group interview, senior U.S. diplomat, Sarajevo, 7 May 2012.
[129] Crisis Group interview, Faris Vehabović, vice president of the FBiH Constitutional Court, Sarajevo, 10 May 2012.
[130] Crisis Group interview, senior EU official, Sarajevo, 14 March 2012.
[131] Crisis Group interview, senior EU official, Brussels, 26 March 2012.

leave real problems unchanged: "As long as the Croats seek a more comfortable position and no one offers it to them, as long as Sarajevo does not recognise the RS and as long as RS reacts" to criticism from Sarajevo with its own provocations, "there will be no real improvement in BiH".[132]

The better approach is to use the Sejdić-Finci case as a springboard toward a modern constitutional architecture. Reform will be a long process and will probably overlap with EU talks, but there is no good reason to defer taking action. Several recent developments offer grounds for cautious optimism. The dispute that did more than any other to scuttle past reform – the furious yet sterile debate over abolishing the entities – has faded to insignificance. Few now seriously question RS's right to exist. Separatist rhetoric notwithstanding, Banja Luka seems resigned to remaining in BiH and its ministers are working hard on the European project, aware that it will also bind them more closely into Bosnia. Long a taboo topic, reform of the FBiH is rising to the top of the agenda; "if you solve the federation, you've solved Bosnia".[133]

Several of the ideas floated in the talks on Sejdić-Finci are innovative and can be part of a more general reform. The electoral college approach is an excellent tool for allowing relatively small communities to choose a representative. In the current SDP-HDZ proposal, it is misused first to segregate electors by ethnicity and then to all but guarantee that party leaders will choose who wins and who loses. Yet the same approach can approximate direct election much more closely and can be blind to ethnicity.

Bosnia can also learn from examples in the region, especially the enhanced municipal powers offered in Kosovo and the streamlined vital interest mechanism in Macedonia. These could become part of a package of reforms that address the concerns of local minorities, especially the Croats. HDZ leaders have long supported strengthening municipal autonomy, and experts close to the SDP like the idea too.[134] RS's enfeebled municipalities could benefit from greater autonomy and stronger regional ties.

The issues pressing on the search for a solution to Sejdić-Finci all point in the same direction: toward a stronger territorial federalism without an explicit ethnic component, an approach that has worked well throughout Europe. A federal state can meet all the imperatives outlined in this report – a clear relation between representatives and those who choose them, addressing the simmering unhappiness of the Croats and the needs of the growing number of non-ethnic and minority citizens, and tackling the burdens of EU accession. Federalism need not challenge Bosnia's current internal boundaries, and can leave intact the entity prerogatives cherished in Banja Luka. It is hard to envision another model that can do the same.

Sarajevo/Istanbul/Brussels, 12 July 2012

[132] Crisis Group interview, Nikola Špirić, BiH finance minister and former chair of the Council of Ministers, Sarajevo, 29 February 2012.
[133] Crisis Group interview, senior EU official, Sarajevo, 14 March 2012.
[134] Crisis Group interviews, senior HDZ and SDP officials, Sarajevo, Mostar, Banja Luka and Tuzla, 2012.

APPENDIX A

MAP OF BOSNIA AND HERZEGOVINA

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

APPENDIX B

GLOSSARY

BiH	Bosnia and Herzegovina
FBiH	Federation of Bosnia and Herzegovina
HDZ	Hrvatska demokratska zajednica (Croatian Democratic Union), largest predominantly Croat party in BiH, led by Dragan Čović
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
RS	Republika Srpska
RSNA	Republika Srpska National Assembly
SBB	Savez za Bolju Budućnost (Union for a Better Future), led by Fahrudin Radončić's
SBiH	Stranka za BiH (Party for BiH), predominantly Bosniak party emphasising defence of the state and its institutions, led by Haris Silajdžić
SDA	Stranka demokratske akcije (Party for Democratic Action), largest and oldest predominantly Bosniak party, led by Sulejman Tihić
SDP	Socijaldemokratska partija (Social Democratic Party), large multi-ethnic party with a predominantly Bosniak 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
SNSD	Savez nezavisnih socijaldemokratska (League of Independent Social Democrats), largest predominantly Serb party, currently the ruling party in RS and led by Milorad Dodik

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.

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