

IV INSTITUTION BUILDING – THE SECOND PHASE OF STATE BUILDING (1998 – 2000)

The second phase of the implementation of the Dayton Agreement in Bosnia-Herzegovina took place roughly in the period 1998-2000. The reader has to be reminded that the definition of phases in the implementation of the peace agreement serves two purposes: one is empirical and describes the progress of the implementation in Bosnia-Herzegovina, and the other is theoretical and discusses the evolution of the role of a third party in a post-war peace process.

While the first phase of the international engagement in post-war Bosnia-Herzegovina focused on military stabilization, the second phase saw a dramatic evolution in the scope of activities the international community took upon itself in order to create the institutional structure of the Bosnian state. However, this escalation did not come as a result of any consensus among the local parties as to what was to be achieved. Rather, it was the international community that set the stage and defined the rules by which they had to play. The international community, despite possessing enormous power and resources compared to the local actors, had difficulties in offering a comprehensive formula for devising an institutional structure that would first make Bosnia-Herzegovina a functional state, and second set the new state on the path to reintegration and full stabilization.

The complexity of the Bosnian post-war state building process is reflected by its duality: alongside the process of implementing very specific state-building projects, a discussion of different scenarios for the future of the Bosnian state runs in parallel. That is, while the international community is implementing one scenario for the future of Bosnia-Herzegovina, at the same time it permits the discussion of other scenarios that do not necessarily correspond to the one that is being implemented.

Thus, on the one hand there is the implementation characterized by clear deadlines and specific targets, while at the same time there is an open-

ended debate about the ultimate solution for the country. Thus, although the international community has pursued a certain path in state building in Bosnia-Herzegovina, it has not been able to obtain consensus on its state building model from all the local sides in Bosnia-Herzegovina.

In setting the stage for the process of institution building in Bosnia-Herzegovina, the international community stated that it “considers multi-ethnicity a fundamental goal for the consolidation of a stable and democratic Bosnia-Herzegovina. It therefore recognizes the need to support the establishment of new multi-ethnic parties and to strengthen the existing ones.”³⁰⁰

The seriousness of the situation is reinforced by the fact that the institutional design created by the international community is not an indigenous solution, but is being imposed on the Bosnian people. Will the Bosnian people, after a rather long international presence, endorse the structure that is being created and sustain it in the future without the international supervision, as did Germany and Japan? Or will they discard it the moment the internationals leave? Are interveners capable of making a lasting change in another place, a change that will remain in place once they are no longer present on the ground? And if such a change is possible, what kind of policies should interveners pursue to make the intervention more effective and less costly? Is time the only credible factor that counts?

An intervention as profound and encompassing as the one being carried out by the international community in Bosnia-Herzegovina has strategic manipulation built into its basic structure. Manipulation as a word generally bears a negative connotation – a non-transparent activity directed at influencing someone into a certain kind of behavior that he or she would not necessarily choose. For better or worse, strategic manipulation represents an indispensable part of the interventionist

³⁰⁰ *OHR Documents*, Bonn Peace Implementation Conference, “Bosnia and Herzegovina 1998: Self-sustaining Structures”, Bonn, December 10, 1997, p. 17. Available at www.ohr.int

package. Whether it contributes to the realization of the goals of the intervention is another question. But I do not *a priori* take it as being a “lethal mechanism” for destroying the “healthy fabric” of either the Bosnian society or any other.

Manipulation, although many avoid the word because of its negative connotation, is part of human relationships in all aspects of life. It is only much more so in situations where profound change is taking place. The real scope of the effect of international presence may not be even evident immediately. Once the international mission is terminated, assessments may begin to accumulate. In this regard, contemporary assessments of the role of the international community in Bosnia-Herzegovina, including this one, are premature since they lack information about how the intervention will finish. Thus, these assessments are limited, and their value lies not only in the fact that they collect and systematize the data, but also because, one after another, they raise new issues and open topics for further discussion. An example of this is the issue of strategic manipulation. Manipulation should not be taken lightheartedly since a few million people will live with its consequences. These are serious problems and they cannot be left in charge of bureaucrats who are forced to make *ad hoc* solutions to the problems they face for the first time.

The issue of responsibility in carrying out these profound changes has to be mentioned. The progress in peace implementation after the first couple of years was judged as slow and the international community explained that local conditions undermined the peace process. As a result, the Peace Implementation Council granted extensive powers to the High Representative in Bosnia-Herzegovina at its Bonn meeting in late 1997. It commended the efforts of the High Representative in creating conditions for a self-sustaining peace in Bosnia-Herzegovina. In addition, “The Council welcomes the High Representative’s intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of difficulties by making binding

decisions, as he judges necessary.”³⁰¹ However, the report ends without the Peace Implementation Council making any reference to the responsibility of the High Representative in exercising such a broad mandate.

Responsibility has been a highly arbitrary concept, but it cannot remain so if interventionism is to continue. If the international community has the ambition to change the order of things in one place, it has to bear the responsibility for the change it instigates and the new order it creates. The argument of an intervener that it is invited to become engaged and that for this reason it has not imposed the solution upon the parties to a conflict does not suffice, since it is still the free will of the intervener to decide whether to engage itself in such a project or not. Once it makes a decision, it has to bear the consequences of that decision – good or bad.

IV-1 INSTITUTIONAL TRANSFORMATION OF POST-CONFLICT SOCIETIES

Institution building in Bosnia-Herzegovina followed the blueprint of the Dayton Agreement. The formula for the existence of the future Bosnian state devised in Dayton has been to extensively grant rights to each of three ethnic groups, allowing for extensive divisions of powers at all levels of government and for internal territorial partition. The basic premise upon which the international community acted was to facilitate power sharing among Bosnians. Thus, the idea was that Bosnia-Herzegovina would remain *de iure* one state, while *de facto* each of its peoples would retain extensive powers to pursue the political goals that best suited their interests. The unarticulated hope was that these minimum common institutions and decision-making bodies would gain in relevance as time passed and emotions cooled down. The hope was that time would work for integration, bearing in mind the legacy of mutual coexistence and downplaying the consequences of the recent war. However, over the years these proved to be false hopes as they never materialized. Instead of facilitating the voluntary renunciation of the initially granted autonomous rights, the Dayton Agreement came in

³⁰¹ *OHR Documents*, Bonn Peace Implementation Conference, “Bosnia and Herzegovina 1998...”, p. 29. Available at www.ohr.int

fact to reinforce the cleavages that existed between the three groups and that were legitimized by the Peace Agreement.

The international community then found itself in a position to reinterpret some elements of the Dayton Agreement that would allow it to prevent a further deepening of institutionalized cleavages and to facilitate, where possible, their undercutting. The reason for this change was that by allowing for further segmentation of Bosnian society and by not creating stronger integrative institutions for the Bosnian state, the international community faced the imminent prospect that its intervention in Bosnia-Herzegovina would fail. As a result, it put forward policies that were designed to foster the reintegration of the country. However, this has been done cautiously and to a limited extent, for fear of not antagonizing those who opposed such a reorientation on the part of the international civilian force.

Whether the international community was right in changing its course, but wrong for not making it more transparent and forceful is not yet fully clear. Additionally, it cannot yet be determined whether it was right in changing its course if the result eventually is to be a Bosnian state so weak that it would cease to exist if left to its own devices. However, this last point becomes irrelevant if the international community decided to stay in Bosnia-Herzegovina as long as necessary to realize their goals.

IV-1a Reasserted powers of the High Representative

As the goals of the peace mission broadened from physical reconstruction and containment of conflict to the reintegration of society, economic reform and a more determined effort to create central institutions, the international community became increasingly frustrated with the political obstructionism it encountered and came to see the continuing power of the three nationalist parties as the core problem. The presence of the international force contributed to the tendency towards political irresponsibility among Bosnia's domestic leaders.³⁰²

³⁰² "Whither Bosnia", *International Crisis Group* (Sarajevo: September 1998); available at www.crisisweb.org/projects/bosnia/reports/bh39

The institution-building phase went along the lines set in the consolidation plan and was initially to last for two years.³⁰³ The Bonn Implementation Conference in December 1997 reformulated the consolidation plan, placing it within a new ten-year time framework. In the document entitled “Bosnia and Herzegovina 1998: Self-sustaining Structures” the Peace Implementation Council reiterated its previously set goals and added a few more, which were judged as essential for advancing state building in Bosnia-Herzegovina.

The Council considers multi-ethnicity the fundamental goal for the consolidation of a stable and democratic Bosnia-Herzegovina. It therefore recognizes the need to support the establishment of new multi-ethnic parties and to strengthen the existing ones.³⁰⁴

The Peace Implementation Council reiterated its conviction that until all persons indicted for war crimes were brought before the International Criminal Tribunal for the former Yugoslavia, there would not be normalization and reconciliation in Bosnia-Herzegovina. The Council also stated that the remaining parallel and para-constitutional structures in the territory of Bosnia-Herzegovina were illegal and detrimental to the reintegration of the country. Therefore, the Council demanded that they be dissolved immediately.

Another goal of the international community in the institution-building phase was to be the implementation of anti-corruption measures.³⁰⁵ Therefore, the Council supported the establishment of the Anti-Fraud Unit with the Office of the High Representative in 1998 to assist the

³⁰³ See Bosnia and Herzegovina 1997: Making Peace Work – Regional Stabilization”, Peace Implementation Conference, London, December 5, 1996; available at www.ohr.int/pic

³⁰⁴ “Bosnia and Herzegovina 1998: Self-sustaining Structures, Conclusions”, Bonn Peace Implementation Conference, December 10, 1997; available at www.ohr.int/docu/d971210a.htm, p. 17.

³⁰⁵ “Foreign aid must not be a substitute for diverted state resources. Donors have to protect their assistance funds from possible misuse, as well as from having to compensate for misappropriation”, concludes the Peace Implementation Council at its Bonn Conference. “Bosnia and Herzegovina 1998: Self-sustaining Structures”, p. 20.

authorities in Bosnia-Herzegovina to identify illegal activity and coordinate international technical assistance.

With regards to reconstruction and economic reform, the Council reconfirmed that the international community was to continue to apply conditionality to international reconstruction assistance, both by excluding non-compliant municipalities from reconstruction as well as by applying positive measures. However, the conditionality strategy delivered meager results in tying aid with political cooperation. As the ultimate goal in economic reform, the Council emphasized the need to increase the pace of transition to a market economy in order to create conditions for sustained growth based on private investment, exports and privatization.³⁰⁶

In the end, the Council granted the High Representative broader powers to take ‘interim measures’ where state institutions failed to act consistently with the Dayton Agreement, and to take “actions against persons holding public office... who are found by the High Representative to be in violation of legal commitments made under the Peace Agreement or the terms for its implementation.”³⁰⁷ These powers amounted to an almost unlimited power by the High Representative to direct the peace implementation, pass laws and dismiss officials. The use of these powers set the implementation process in fast gear.

A series of laws on media reform reduced political influence and facilitated the development of professional standards.³⁰⁸ The creation of a comprehensive legal framework facilitated the return of refugees.³⁰⁹ A

³⁰⁶ “Bosnia and Herzegovina 1998: Self-sustaining Structures”, p. 19.

³⁰⁷ Ibid., p. 30.

³⁰⁸ See “Decision on the establishment of the Independent Media Commission”, June 11, 1998; “Decision on the appointment of members of the Council and the Enforcement Panel of the Independent Media Commission”, August 5, 1998.

³⁰⁹ See “Decision imposing the Law on Amendments to the Law on Housing Relations in the Federation, restoring to displaced persons and refugees occupancy rights cancelled under Article 47 of the old law and extending from 6 to 12 months the deadline for requesting”, September 17, 1998; “Decision extending for three months the 4 April 1999 deadline for filling claims to socially-owned apartments in the Federation, April 1, 1999; “Decision amending the Law on Housing Relations in the RS and annulling all court-ordered cancellations of occupancy rights of refugees and

series of decisions were directed at strengthening the central state institutions.³¹⁰ The High Representative also introduced a common currency, a prerequisite for a necessary economic reform.³¹¹ The introduction of a common vehicle license plate and national passport facilitated the freedom of movement.³¹²

IV-2 THE STATE INSTITUTIONS OF BOSNIA-HERZEGOVINA

The institutional structure created in Bosnia-Herzegovina has been extremely diffuse. Multi-level governance, territorial divisions, exclusive identities – these have been the elements employed to (re)construct a multiethnic Bosnia-Herzegovina. A multiethnic government was seen as a buttress against the aggressive nationalism that had plagued the country and the region for years.

If there is to be a post-Cold War peace in Europe – and not a cold peace, but a real one – it must be based on the principle of multiethnic democracy... The United States is one of the first and one of the greatest examples of that principle. What's more, the civic behavior and constitutional structures associated with pluralism are conducive to regional peace and international trade.

displaced persons since April 1992 and re-allocations of apartments made on the grounds of space rationalization", April 14, 1999; "Decision canceling all permanent occupancy rights issues in RS during and after the war in BiH and converting them into temporary occupancy rights", April 14, 1999; "Decision canceling all permanent occupancy rights issues in the Federation during and after the war in BiH and converting them into temporary occupancy rights", April 14, 1999.

³¹⁰ See "Decision imposing the Law on Citizenship of BiH", December 16, 1997; "Decision imposing the Law on the Flag of BiH", February 3, 1998; "Decision on flying the flag of BiH", April 2, 1998; "Decision on the shape and design of the coat-of-arms of BiH", May 18, 1998; "Decision on the implementation by the BiH authorities of the GFAP [General Framework Agreement for Peace, i.e. the Dayton Agreement] with a view to reconciliation and multi-ethnicity", July 1, 1998; "Decision ordering a session of the Presidency of BiH after a long break", April 15, 1999.

³¹¹ See "Decision imposing the Draft Law on the Policy of Foreign Direct Investment in BiH", March 5, 1998; "Decision imposing the design of bank notes", March 27, 1998; "The Letter of the Governor of the Central Bank of BiH", September 28, 1998.

³¹² See "Decision on the deadlines for the implementation of the new uniform license plate system", May 20, 1998.

Hence, it is in our interest that multiethnic democracy ultimately prevails.³¹³

Common state institutions are based on the principle of full proportional national representation, a principle that was taken from the former socialist system. Annex 4 of the Dayton agreement outlined the constitutional procedures and powers in relation to the Presidency, the Council of Ministers and the Parliamentary Assembly.

The following matters were to be the responsibility of the institutions of the *state* government of Bosnia-Herzegovina:

- Foreign policy,
- Foreign trade policy,
- Customs policy,
- Monetary policy,
- Financing the institutions and the international obligations of Bosnia-Herzegovina,
- Immigration, refugee, and asylum policy and regulation,
- International and inter-entity criminal law enforcement, including relations with Interpol,
- Establishment and operation of common and international communications facilities,
- Regulation of inter-entity transportation,
- Air traffic control.³¹⁴

The structure of the government of Bosnia-Herzegovina is as follows:

- Legislative branch (Parliamentary Assembly),
- Executive branch (Presidency and the Council of Ministers),
- Judicial branch (Constitutional Court and the Court of Bosnia-Herzegovina).

The state institutions are financed by the two entities of which the Federation provides two-thirds and the Republika Srpska one-third of

³¹³ “US Leadership and the Balkan Challenge”, Deputy Secretary of State Strobe Talbott, remarks at the National Press Club, Washington, D.C., November 9, 1995, released by the Office of the Spokesman, US Department of State; available at www.state.gov. Quoted in David Chandler, *Bosnia: Faking Democracy After Dayton* (London: Pluto Press, 2000, 2nd edition), p. 66.

³¹⁴ Annex 4, Article III of the Dayton Peace Agreement.

the revenues required by the budget. The Parliamentary Assembly, on the proposal of the Presidency, adopts a budget covering expenditures required to execute the responsibilities of the central institutions and the international obligations of Bosnia-Herzegovina.

IV-2a Parliamentary Assembly of Bosnia-Herzegovina

The Parliamentary Assembly has two chambers: the House of Representatives and the House of Peoples. All legislation requires the approval of both chambers.

The Parliamentary Assembly has responsibility for:

- Enacting legislation as necessary to implement the decisions of the Presidency of Bosnia-Herzegovina or to carry out the responsibilities of the Assembly under the Constitution of Bosnia-Herzegovina,
- Deciding upon the sources and amounts of revenues for the functioning of the institutions of Bosnia-Herzegovina and its international obligations,
- Approving a budget for the institutions of Bosnia-Herzegovina,
- Deciding whether to consent to the ratification of treaties, and
- Such other matters as are necessary to carry out its duties or as are assigned to it by mutual agreement of the entities.

The House of Representatives has 42 members, of which two-thirds are from the territory of the Federation and one-third from the Republika Srpska. Members of the House of Representatives are elected directly from their own entity. Among its members, the House of Representatives elects one Bosniak, one Croat and one Serb member to assume the duties of Speaker, first deputy speaker and second deputy Speaker. The Speaker cannot be of the same constituent people as the Chairman of the BH Presidency and the Chairman of the Council of Ministers. The Speaker rotates automatically every eight months, starting with the initial election of the Speaker. The Speaker has to consult the first and the second deputy in carrying out his or her responsibilities.

The House of Representatives has eight permanent commissions to cover the following areas: constitutional and legal issues; foreign affairs;

foreign trade and customs; finances and budget; human rights, immigration, refugees and asylum; transport and communications; administration; and gender. The formation of commissions also has to follow the ethnic key, i.e. two-thirds from the Federation and one-third from the Republika Srpska.

The House of Peoples has 15 delegates where two-thirds are from the Federation (5 Bosniaks and 5 Croats) and one-third from Republika Srpska (5 Serbs). Nominated Croat delegates are elected by the Croat delegates in the Federation House of Peoples and the nominated Bosniak delegates are elected by the Bosniak delegates in the Federation House of Peoples. Nominated Serb delegates are elected by the Republika Srpska National Assembly. Among its members, the House of Peoples elects one Croat, one Serb and one Bosniak member to assume the duties of the Speaker, first deputy Speaker and second deputy Speaker. The Speaker of the House of Peoples cannot be of the same constituent people as the Speaker of the House of Representatives. The Speaker rotates every eight months, starting with the initial election of the Speaker and he or she consults with deputies in carrying out the responsibilities.

IV-2b The Presidency

At the top there is a three-member Presidency with a four-year mandate. The Croat and the Bosniak member of Presidency are directly elected from the territory of the Federation, while the Serb member is directly elected from the territory of Republika Srpska. The Chair of the Presidency changes every eight months by the principle of rotation among the members of the Presidency.

The Presidency has responsibilities for:

- Conducting foreign policy,
- Appointing ambassadors and other international representatives of Bosnia-Herzegovina, no more than two-thirds of whom may be selected from the territory of the Federation,
- Representing the country in international and European organizations and institutions and seeking membership in those in which Bosnia-Herzegovina is not a member,

- Negotiating, rejecting, and ratifying treaties of Bosnia-Herzegovina,
- Executing decisions of the Parliamentary Assembly,
- Reporting as requested, but not less than annually, to the Parliamentary Assembly on expenditures of the Presidency,
- Coordinating as necessary with international and non-governmental organizations in Bosnia-Herzegovina,
- Performing such other functions as are necessary to carry out its duties.

Another central institution is the Standing Committee on Military Matters (SCMM). The members of the Presidency are members of the SCMM and select other members of the Committee. Other members are the Federation defense minister, the Federation deputy defense minister, the Republika Srpska defense minister, the chief of the Federal army joint command, the deputy chief of the Federal army joint command, and the chief of the Republika Srpska army. The current structure of the Bosnian state provides for two separate armed forces who on top are united by the state's Presidency, which acts as the supreme commander of the armed forces. Each member of the Presidency, by virtue of the office, has civilian command authority over the armed forces.

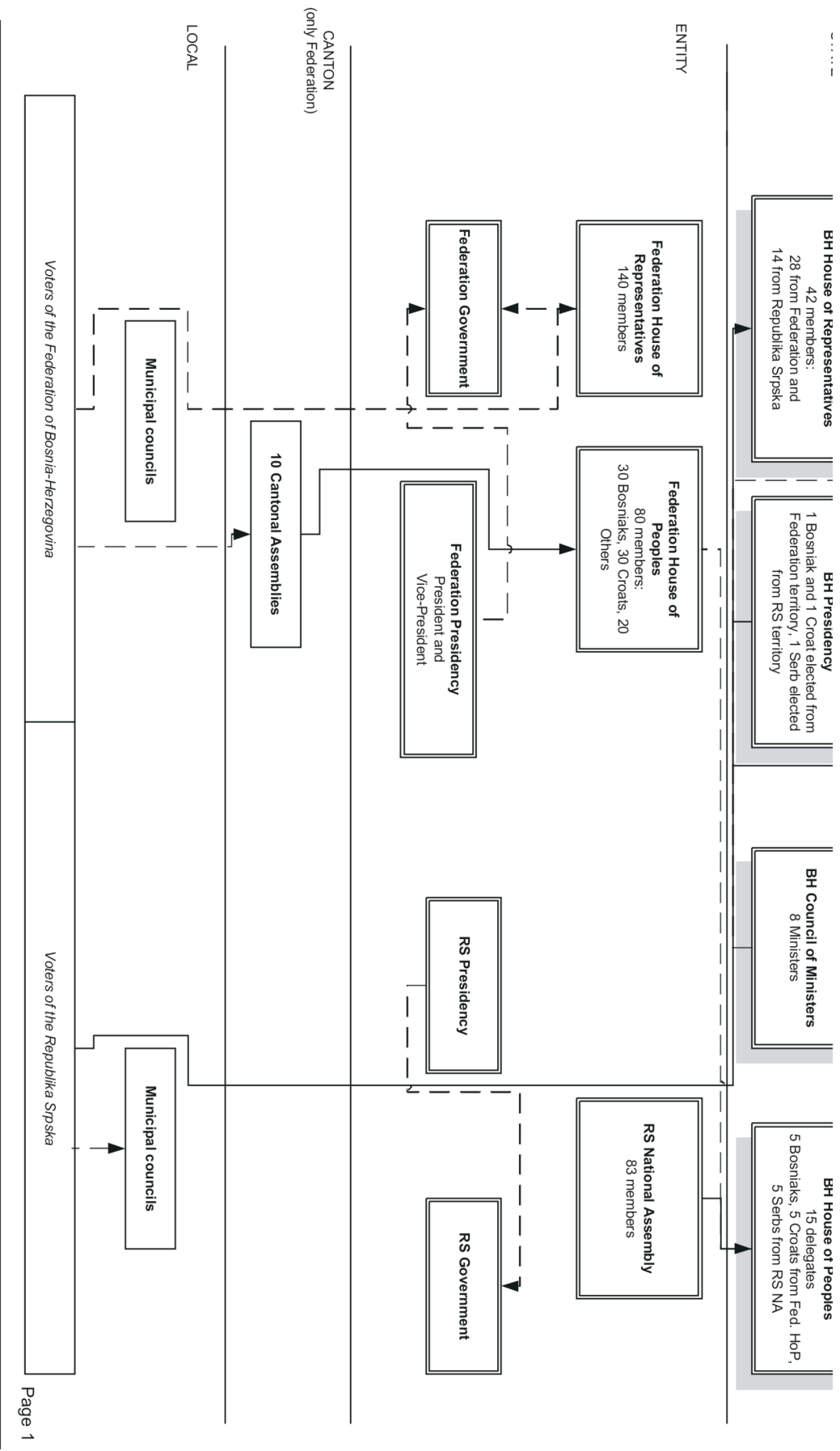
The forces consist of the army of the Federation and the army of Republika Srpska. The Federation army is further divided into two components, a Bosniak one and a Croat one, but at the headquarters it is manned by officers and soldiers of the two components working together. The Republika Srpska army, just like the entity it belongs to, is centrally organized. Ensuring the forces are under civilian control, each of the two entities has a ministry of defense. Entities' armed forces are under no circumstances to enter into or stay within the territory of the other entity without the consent of the government of the latter and the Presidency.

In 2002 there were 34,000 professional troops and about 15,000 reservists in the armed forces in Bosnia-Herzegovina. Steady personnel reductions over the previous years helped to bring the number of troops down, especially from a 1995 end-of-war estimate of 430,000. Still, in a country of less than 4 million, supporting 34,000 troops is a great

economic burden when levels of unemployment are at a level of almost 40 per cent. The intention of the Dayton agreement was to have the two forces working together in the name of common defense, that it to operate consistently with the sovereignty and territorial integrity of Bosnia-Herzegovina. While great strides in the cooperation between the two militaries have been made, much work still needs to be done to restructure and downsize the armed forces. Military expenditures are too high and the forces too large to justify such a burden on a peacetime economy.

IV-2c The Council of Ministers

The Council of Ministers (CoM) is responsible for the implementation of decisions in the areas specified by the Constitution. The organization of the Council has changed substantially over the years. At Dayton, the CoM was granted limited powers since the parties opposed to the reintegration of Bosnia-Herzegovina objected to strong central institutions. The devolution of power, however, was so extensive that it rendered the CoM almost completely ineffective. The virtual lack of any capacity to carry out the tasks that are normally expected of a cabinet frustrated efforts to move Bosnia-Herzegovina towards the goal of self-sustainability. The international community stepped in on several occasions to amend the law on the Council and gradually, particularly under U.S. diplomatic pressure, the CoM was expanded to include new ministries in addition to the three ministries established in Dayton.



The Bosnian Serbs refused to participate in the Council of Ministers even in the initial limited design and a compromise was found with the institution of the co-chairmen of the Council. Thus, the reformed CoM was to have two co-chairmen and one deputy co-chairman instead of a permanent chair as earlier planned. The first High Representative, Mr. Carl Bildt, who was to supervise the creation of the Council of Ministers, says the following,

And when the final agreement on the structure of the Council of Ministers at the session of the Presidency was reached on November 30 [1996], the solution was the following: to introduce a position of deputy co-chairman in addition to the two co-chairman. And therefore, on Saturday, November 30, one month after the envisaged date, agreement was reached on the Council of Ministers, using the principle of 3+3+6. (...) It was a significant success, although it contained some troubling elements. We were forced to capitulate on the solution of the important question of the prime minister. I realized that such a solution was unavoidable, but I was still worried what might happen in the long run. Was this structure capable of integrating the country in the coming years and solving all those problems that worried common people?³¹⁵

From its creation until the September 1998 elections, the Council of Ministers comprised the following individuals – two co-chairmen (a Bosniak and a Serb), the deputy co-chairman (a Croat), the foreign minister (a Bosnian Croat), the minister for foreign trade (a Bosniak), and the minister for civil affairs and communications (a Serb). Each minister had two deputies from the other two constituent peoples.

After the September 1998 elections, the Council of Ministers was reorganized and expanded. There were six ministries in the Council and the post of chairman, who continued to perform the duty of a minister while acting as a chairman of the Council of Ministers. This post rotated every eight months among the ministers. The distribution of the portfolios (foreign affairs, European integration, finances, foreign trade and economic relations, civil affairs and communications, human rights

³¹⁵ Carl Bildt, *Misija mir*, p. 412.

and refugees) was based on the ethnic principle where two ministers came from each constituent people. Each of the six ministers had two deputies who came from the other two constituent peoples.

The seat of the Council of Ministers is in Sarajevo. Initially, the CoM had two seats – one in Sarajevo and another in Lukavica, a suburb of Sarajevo that belonged to Republika Srpska. The sessions of the CoM interchangeably took place between the two seats. As of 1998, the CoM received a permanent seat in Sarajevo.

On December 2, 2002 the High Representative passed a new law on the Council of Ministers, as the Presidency was not able to reach consensus on improving the operational capacity and the efficiency of the Council. The new law established two new ministries, which means that as of December 2002 the CoM was to have eight, instead of the previous six ministries.³¹⁶

Subsequently, the CoM consisted of the chair and the following ministries:

- Ministry of foreign affairs,
- Ministry of foreign trade and economic relations,
- Ministry of finance and treasury,
- Ministry of communications and transport,
- Ministry of civil affairs,
- Ministry of human rights and refugees,
- Ministry of justice, and
- Ministry of security.

The Council is also made up of a number of agencies, services, commissions and other bodies. These include a Foreign Investment Guarantee Agency (IGA), a Foreign Investments Promotion Agency (FIPA), and a Communications Regulatory Agency (CRA). The latter is the only body in Bosnia-Herzegovina responsible for regulating the area

³¹⁶ “Law on the Council of Ministers of Bosnia-Herzegovina”, High Representative’s Decision relating to State Symbols and State-Level Matters, *OHR Documents*, December 2, 2002; available at www.ohr.int/decisions/statemattersdec/default.asp?content_id=28609.

of telecommunications and electronic media. The Agency was established by the decision of the High Representative by merging the Independent Media Commission (IMC) and the Telecommunication Regulatory Commission (TRC) that had hitherto worked separately. It is responsible for three main segments of modern communications: telecommunication, frequency spectrum management and electronic media. Among some twenty different bodies and agencies under the CoM, this is the only one whose director is a foreigner.

The Chairman of the CoM is appointed by the Presidency and he or she assumes the duty upon approval of the House of Representatives of Bosnia-Herzegovina. The Chairman of the Council of Ministers cannot be of the same constituent people as the Chair of the BH Presidency. The new law also abolished the earlier principle of rotation and instead introduced a permanent position of a chair of the Council of Ministers and two deputies. This amounted to a revolutionary step in tailoring the CoM to resemble functioning governments in other countries. The term of the CoM coincides with the mandate of the Parliamentary Assembly of Bosnia-Herzegovina.

The chair of the Council of Ministers is responsible for:

- Coordination of the work of the CoM,
- Coordination of the constitutional relations of the CoM with the work of the BH Presidency and the Parliamentary Assembly, as well as with the entities,
- Convening and chairing sessions of the CoM,
- Taking the minutes of the sessions and recording decisions issued by the CoM,
- Ensuring cooperation between the CoM and the governments of the entities.

The overall composition of the Council of Ministers is to fully respect the Constitution of Bosnia-Herzegovina to ensure equal representation of the constituent peoples of Bosnia-Herzegovina. The chair and deputy chairs cannot come from the same constituent people. Another change from the previous model is that each minister has one deputy instead of two deputies as before. The deputy, as before, cannot be of the same constituent people as the minister.

The Council of Ministers is responsible to the Parliamentary Assembly. In line with its duties, it prepares proposals of law, documents and other material as requested by the Parliamentary Assembly. The CoM has the right to participate in the sessions of both Houses of the Parliamentary Assembly and working commissions.

IV-2d Constitutional Court of Bosnia-Herzegovina

Among other notable common institutions is the nine-member Constitutional Court made up of two representatives from each constituent people and three international judges. Four members are selected by the House of Representative of the Federation and two members by the National Assembly of Republika Srpska. The remaining three members are selected by the President of the European Court of Human Rights subject to prior consultation with the Presidency. These three judges cannot be citizens of Bosnia-Herzegovina or of any neighboring state.

The seat of the Court is in Sarajevo. The term of judges initially appointed is five years, unless they resign or are removed by consensus of other judges. Judges initially appointed are not eligible for reappointment, but those subsequently appointed can serve until the age of 70.

A decision on the equal constitutional status of all three ethnic groups throughout the territory of Bosnia-Herzegovina arose from the case that Alija Izetbegović, a former Bosniak member of the Presidency, brought in 1998 before the Constitutional Court for the purpose of evaluating entities' Constitutions with respect to the state Constitution.³¹⁷ The decision in favor of equal constitutional status was backed by the three international judges and the two Bosniak judges, and opposed by the Croat and Serb judges. The Constitutional Court ruling came in 2000 and enabled the High Representative in 2002 to make a binding decision on both entities to bring the entities' constitutions in accordance with the state constitution, which guaranteed the equal constitutional status for all

³¹⁷ "Constituent Peoples' Decision of the BiH Constitutional Court", September 14, 2000; available at www.ohr.int/ohr-dept/legal/const/

three ethnic groups (and others) on the whole territory of Bosnia-Herzegovina. The “Agreement on the Implementation of the Constituent Peoples’ Decision of the Constitutional Court of Bosnia and Herzegovina” was imposed by the High Representative after the entities’ parliaments failed to adopt it. This Agreement was a long-awaited breakthrough in the peace process and although it could not solve all outstanding issues, it stood out as a firm step forward in reinforcing the principle of multi-ethnicity. In effect, the provision of the Agreement annulled, to a greater extent than any decision before, the effect of ethnic cleansing. Thus, with regard to the minimum representation in the government of the Federation and of the Republika Srpska, the Agreement specified that half of the ministries would be given to the other two constituent peoples. Thus, in the Republika Srpska government, out of 16 ministers, 8 would be Serb, 5 Bosniak, and 3 Croat, while in the Federation government, out of 16 ministers, 8 would be Bosniak, 5 Croat, and 3 Serb. In both governments there would be a prime minister who would have two deputy prime ministers from different constituent peoples selected from among the ministers. Moreover, one member in both governments had to come from the group of Others, nominated by the prime minister from the quota of the largest constituent people.³¹⁸

Entities’ presidents were also to have two vice-presidents coming from different constituent peoples. Moreover, the High Representative instructed that the overall distribution of key political functions had to observe the equal representation principle. Thus, out of the following positions not more than two may be filled by representatives of any one constituent people or of the group of Others:

- Prime Minister,
- Speaker of the House of Representatives/ RS National Assembly,
- Speaker of the House of Peoples/ Council of Peoples,
- President of Constitutional Court,
- President of Supreme Court,

³¹⁸ “Agreement on the Implementation of the Constituent Peoples’ Decision of the Constitutional Court of Bosnia-Herzegovina,” *OHR Document*, March 27, 2002, Item III; available at www.ohr.int/ohr-dept/legal/const/

- Public Prosecutors,
- Presidents of entities.³¹⁹

There was also to be proportional representation in public institutions in the Federation and in Republika Srpska. “As a constitutional principle, such proportionate representation shall follow the 1991 census until Annex 7 is fully implemented.”³²⁰ Those who opposed reintegration rejected the Court’s Decision and opposed the High Representative’s imposition of the Agreement because it undermined their efforts in uprooting multi-ethnicity. Those who favored reintegration welcomed both the Decision and the Agreement, although many criticized the Agreement as not going far enough in wiping out ethnic separatism.

IV-2e Central Bank of Bosnia-Herzegovina

The Central Bank of Bosnia-Herzegovina was established on June 20, 1997, as defined in the Dayton Agreement, and started its operation on August 11, 1997. It is responsible for achieving and maintaining the monetary stability of the domestic currency (convertible mark or KM) in accordance with the ‘currency board’ arrangement (1KM: 0,51129 EURO), managing official foreign currency reserves made by domestic currency emission, coordinating the activities of entity banking agencies that are in charge of bank licensing and supervision, assisting and maintaining appropriate payment and settlement systems, as well as such other tasks in accordance with the Law on the Central Bank. It is also the only authorized institution for money printing and monetary policy covering the entire state of Bosnia-Herzegovina.³²¹ The first KM banknotes were issued on June 22, 1998 in the value of 50 pfenings, 1 KM, 5 KM, and 10 KM. The other banknotes followed in the course of the year.

³¹⁹ “Agreement on the Implementation of the Constituent Peoples’ Decision of the Constitutional Court of Bosnia-Herzegovina”, March 27, 2002, Item II, *OHR Document*; available at www.ohr.int/ohr-dept/legal/const/

³²⁰ Ibid., Item IV. Annex 7, the Agreement on refugees and displaced persons, of the GFAP guarantees the right to all refugees and displaced persons to return to their homes of origin. The decision to base the proportional representation following the 1991 census in effect annuls the result of ethnic cleansing.

³²¹ For more information on the Central Bank see the Bank’s website www.cbbh.gov.ba.

The Governing Board is the senior body of the Bank and is responsible for establishing and supervising monetary policy. The Board consists of the governor (who is at the same time the chairman) and three members, out of whom two members (one Bosniak and one Croat) are from the Federation and one member (Serb) is from Republika Srpska. The governor is appointed by the International Monetary Fund (IMF) after prior consultations with the BH Presidency. The three members are appointed by the BH Presidency. The governor cannot be a citizen of Bosnia-Herzegovina or of a neighboring country for the first six years.

The establishment of the Central Bank is used as an example of successful institution building in a post-conflict society. At the time of the Dayton Agreement, four different currencies were in circulation in Bosnia-Herzegovina. Despite opposition from nationalist leaders and weak economy, the new currency has replaced its rivals. International management of the establishment of the Central Bank included the following elements:³²²

- Transitional international management: under the Dayton Agreement, the Central Bank is placed under international management for the first six years of its operations. The International Monetary Fund (IMF) appointed an international governor with the technical and managerial expertise to build up the institution. During its period of international management, the Bank's role is limited to that of a currency board, with no authority over monetary policy. The path to full autonomy has been a gradual one, but the locals are steadily taking over from the internationals.
- Transitional budgetary support: the first DM 25 million in reserve capital for the Bank was provided by the IMF, which also contributed to the initial operating costs. Within a short period of time, the institution was able to meet its operating costs from regular operations.

³²² This insightful analysis of the combination of methods to strengthen the Central Bank was done by Marcus Cox; see "State Building and Post-Conflict Reconstruction: Lessons from Bosnia", pp. 17-18.

- Technical support: the IMF remained involved in the development of the institution, providing technical advice in the drafting of the law and helping to develop operating procedures and management systems.
- Training and identity building: local staff in the Central Bank have been trained in such a way as to help the institution acquire a corporate identity. For example, this has included fostering contacts with other central banks in the region.
- Dismantling parallel structures: the development of the Central Bank was complemented by a concerted international campaign to dismantle extra-constitutional parallel structures. The Bosniak authorities sought to preserve the National Bank which they had established during the conflict. The IMF insisted on its liquidation as a condition to its May 1998 Stand-By Agreement and the OHR was instrumental in appointing a foreign liquidator.
- Introduction of the new currency: the process of introducing a single currency, the Convertible Mark (KM), met with intense political resistance by anti-Dayton forces, which manifested itself in a refusal to agree upon a common design.³²³ A concerted international campaign led by the OHR was required in order to resolve these disputes and the international community arranged and paid for the new currency to be printed in Western Europe and introduced into circulation in July 1998. Once in circulation, OHR encouraged international agencies to pay their staff in KM, which made it uneconomic for traders to refuse it, and within a short period of time the KM replaced the parallel currencies in most transactions.

IV-2f The Human Rights Ombudsman of Bosnia-Herzegovina

Annex 6 of the Dayton Agreement established the Commission for Human Rights, which consists of the Human Rights Ombudsman and the Human Rights Chamber.

³²³ There was much arguing about which Bosnian historical figure would appear on bank notes. For example, agreeing to have Ivo Andrić, the writer and the Nobel Prize winner, on one of the bank notes caused much rancor with regards to his ethnic and political background.

The Human Rights Ombudsman is an independent institution, set up in order to promote good governance and the rule of law and to protect the rights and freedoms of natural and legal persons, as guaranteed by the constitution and the international treaties to which Bosnia-Herzegovina is a signatory.³²⁴

The Ombudsman considers matters of inadequate functioning or violations of human rights and freedoms made by any government body, including the military authorities. Also, the Ombudsman is authorized to make investigations on all complaints concerning the inadequate functioning of the court system or the irregular processing of individual matters.

The institutions of the Ombudsman in the entities and the Ombudsman of the state of Bosnia-Herzegovina cooperate and citizens may, in most cases, choose which one to appeal to. However, the Ombudsman of Bosnia-Herzegovina has exclusive competence over cases referring to:

- Bodies of Bosnia-Herzegovina,
- A body of the government of an entity and a body of Bosnia-Herzegovina at the same time,
- Bodies of government of both entities at the same time.

IV-2g Election Law of Bosnia-Herzegovina

The Election Law of Bosnia-Herzegovina was passed by the BH House of Representatives at its session of August 21, 2001 and by the BH House of Peoples at its session of August 23, 2001, with a view to promoting free, fair and democratic elections ensuring the achievement of democratic goals.

This law, amended by the Decision of the High Representative of April 19, 2002³²⁵, regulates the election of members and delegates of the

³²⁴ DPA, Annex 6, Chapter Two.

³²⁵ The Decision refers to the “Decision amending the BH Election Law in accordance with the new Entity Constitutions.” On the same day, the High Representative issues two other Decisions regarding constitutional amendments in the Federation and Republika Srpska in accordance with the Constitutional Court decision on the constituent status of all three peoples in Bosnia-Herzegovina.

Parliamentary Assembly of Bosnia-Herzegovina and members of the Presidency, and defines the principles applicable to elections at all levels of government in Bosnia-Herzegovina. The election law is a mixed formula of direct and proportionate voting, open lists, compensatory votes, multi-member constituencies, and other elements. The constituencies and the number of mandates allocated to each of them that is established in the election law is to be reviewed every four years by the Parliamentary Assembly of Bosnia-Herzegovina to ensure that they are drawn in a manner that reflects proportionality between the number of mandates and the number of registered voters.

IV-3 THE FEDERATION OF BOSNIA-HERZEGOVINA

The Federation of Bosnia-Herzegovina is one of the two entities comprising the state of Bosnia-Herzegovina and covers 51% of Bosnian territory. After the signing of the Washington Agreement on March 18, 1994 by the Bosniak and the Bosnian Croat sides, as well as by the Croatian leadership, the first session of the Parliament of the Federation was held in Sarajevo on March 30, 1994. The assembly included representatives elected in the 1990 elections for the Parliament of the Republic of Bosnia-Herzegovina from the territory defined by the Washington Agreement as belonging to the Federation. This Parliament ceased to exist in October 1996, following the elections for the Parliament of the Federation of Bosnia-Herzegovina.³²⁶

Chapter I, Article 1 of the Federation Constitution identifies Bosniaks and Croats, along with Others, as constituent peoples of the Federation.³²⁷ This article of the Federal constitution was amended to include Serbs as a constituent people in line with the 2000 Constitutional Court decision on the constituent status of the three people on the territory of Bosnia-Herzegovina.

³²⁶ More information on the Federation can be obtained from the official Federation government website at www.fbihvlada.gov.ba.

³²⁷ Constitution of the Federation of Bosnia and Herzegovina, "Official Gazette" of the Federation of Bosnia and Herzegovina, 1/94, 13/97.

The Federation, a decentralized unit, consists of ten cantons with equal rights and responsibilities, named exclusively after the cities where the seats of cantonal authorities are located or after their regional and geographical features. Each canton has legislative, executive and judicial powers, which operate in accordance with the Federal constitution.

The cantons in the Federation are:

1. Una-Sana canton, seat: Bihać,
2. Posavina canton, seat: Orašje,
3. Tuzla canton, seat: Tuzla,
4. Zenica-Doboj canton, seat: Zenica,
5. Bosnian Podrinje canton, seat: Goražde,
6. Central Bosnia Canton, seat: Travnik,
7. Herzegovina-Neretva canton, seat: Mostar,
8. West Herzegovina canton, seat: Široki Brijeg,
9. Sarajevo canton, seat: Sarajevo,
10. Canton 10, seat: Kupres.

The official name of the Federation is the Federation of Bosnia and Herzegovina, and the capital is Sarajevo. Under the constitution of the Federation, the entity has a coat-of-arms, a flag, a national anthem, a seal, and other symbols as decided by the Parliament of the Federation. The official languages are Bosnian, Croatian, and Serbian. Other languages may be used as a means of communication and teaching. The official scripts are Latin and Cyrillic. The capital of the Federation is Sarajevo.

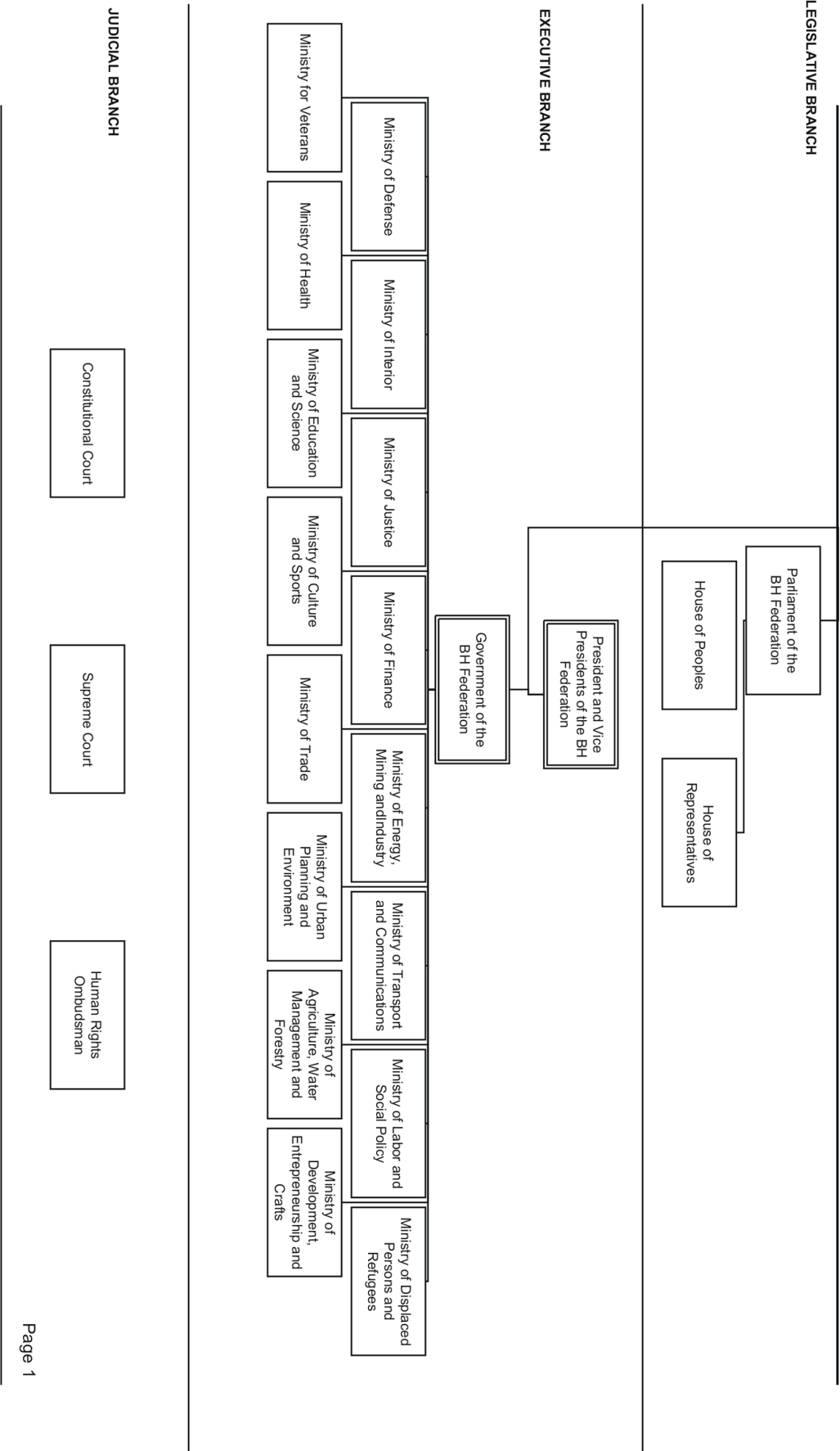
The Federation has all the authority, powers and responsibilities that, under the constitution of Bosnia-Herzegovina, are not the exclusive responsibility of the state institutions of Bosnia-Herzegovina. Some areas are the exclusive responsibility of the Federation government, and in some areas the Federation government and cantons share responsibility.

The exclusive responsibilities of the Federation government are the defense of the entity and the joint command of the armed forces; citizenship; economic policy, including planning and reconstruction;

finances and fiscal policy; telecommunications and allocation of electronic frequencies; the fight against terrorism, international crime, inter-cantonal crime, drug trafficking, and organized crime; energy policy; financing of the Federation institutions.

The Federation and cantonal governments share responsibilities for: health policy; social policy; environmental policy; protection of and implementation of human rights; communication and transport infrastructure; implementation of laws on citizenship and travel documents; tourism; and exploitation of natural resources. Each canton may further delegate its functions to municipalities and is required to do so to a municipality whose population majority is different from that of the canton. Each canton has a legislature consisting of one House comprising a number of legislators determined in proportion to its population but no

The Government Structure of the Federation of Bosnia-Herzegovina



fewer than thirty and no more than fifty. The term of cantonal legislators was previously two years but was later changed to four years.³²⁸ Each canton has a president, who is elected by a majority of the cantonal legislature from among candidates nominated by legislators. The cantonal president serves a term of four years and may not serve more than two successive terms.³²⁹

Municipalities exercise self-rule on local matters. Each municipality has a statute, consistent with the Federal constitution and the constitution of its canton, and has to conform to any relevant cantonal legislation.³³⁰ Each Municipality has a governing council. The term of the members of municipal governing councils is four years (previously two), provided that the term of the first members of the municipal governing councils was one year.³³¹ The city of Sarajevo in the Sarajevo canton is established as a unit of local self-government.

The structure of the government of the Federation of Bosnia-Herzegovina is as follows:

- Legislative branch (Parliament of the BH Federation),
- Executive branch (the President and Vice-President of the Federation and the government of the Federation),
- Judicial branch (Federal Constitutional Court, Federal Supreme Court, and Office of the Ombudsman for Human Rights).

IV-3a Parliament of the Federation of Bosnia-Herzegovina

The Parliament of the Federation consists of the House of Representatives and the House of Peoples. Unless stipulated otherwise, decisions of the Parliament require confirmation by both Houses, except

³²⁸ Ibid., Chapter V, Item 2, Article 5.

³²⁹ Ibid., Chapter V, Item 3, Article 8.

³³⁰ Ibid., Chapter VI, Article 2.

³³¹ Ibid., Chapter VI, Article 3.

for rules and procedures, and declarations passed independently by both Houses. Other decisions are passed by simple majority vote in each House.

The House of Representatives consists of 140 delegates. The mandate of the delegates is for a period of four years and they are elected by secret ballot in direct elections across the entire territory of the Federation. The House of Representatives elects from among its members a Speaker and Deputy Speaker who may not be from the same constituent people.

The House of Peoples consists of a total of 80 delegates: 30 Bosniak, 30 Croat, and 20 from among Others, whose number is “in the same ratio to 60 as the number of cantonal legislators not identified as Bosniak or Croat is in relation to the number of legislators who are so identified.”³³² Delegates are elected from among members of cantonal legislatures. The number of delegates elected to the House of Peoples in any canton is proportional to the ethnic make-up of the canton’s population.³³³ The mandate of the delegates is four years. As elsewhere, the Speaker and the Deputy Speaker may not be from the same constituent people.

Decisions concerning the vital interests of any of the constituent peoples require the approval of a majority of delegates. The vital interests are defined as follows:

- The exercise of legislative, executive, and judicial authority;
- The identity of a constituent people;
- Constitutional amendments;
- The organization of public government authorities;
- Equal rights of constituent peoples in the decision-making process;
- Education, religion, language;
- Preservation of culture, tradition, and cultural heritage;
- Territorial organization;
- Public information system;

³³² Ibid., Chapter IV, Section A, Item 2, Article 6.

³³³ Ibid., Chapter IV, Section A, Item 2, Article 8.

- And other issues if considered vital by two-thirds of one of the caucuses of delegates of constituent peoples.³³⁴

IV-3b President of the Federation

Nominees for the president and vice-president require joint approval by majority vote in both Houses, including a majority of the Bosniak delegates and a majority of the Croat delegates. Should either House reject the joint slate, the caucuses must reconsider their nominations. The persons elected serve alternative one-year terms as president and vice-president during a four-year period. Successive presidents may not come from the same constituent people. The president serves as the head of the Federation executive branch and the commander-in-chief of the military of the Federation. The president nominates the cabinet (with the prime minister), after which the cabinet needs to be approved by a majority in the House of Representatives.³³⁵

IV-3c Government of the Federation of Bosnia-Herzegovina

The government of the Federation consists of a prime minister, two deputy prime ministers, and ministers, each of whom has a deputy. No deputy, including the deputy prime ministers, may be from the same constituent peoples as his/her minister. The mandate of the government is four years, but is used to be two during the period when elections were held every two years. The government may be removed either by a decision of the Federation president, with the approval of the vice-president, or by majority vote of no confidence by both Houses. The president removes ministers and deputy ministers upon the proposal of the prime minister.

On the basis of the April 19, 2002 High Representative's Decision, the Federation government is made up of 8 Bosniak, 5 Croat, and 3 Serb ministers, plus the prime minister and deputy prime ministers.³³⁶ One

³³⁴ See the High Representative's "Decision on Constitutional Amendments of the Federation of Bosnia-Herzegovina", April 19, 2002, *OHR Documents*; available at www.ohr.int/decisions.

³³⁵ Ibid., Chapter IV, Section B, Item 1, Article 2.

³³⁶ "Decision on Constitutional Amendments of the Federation of Bosnia-Herzegovina", April 19, 2002, *OHR Documents*; available at www.ohr.int/decisions.

Other may be nominated by the prime minister from the quota of the largest constituent people.

Decisions of the government that concern the vital interest of any of the constituent peoples require consensus. This provision may be invoked by one-third of the ministers excluding the prime minister and the deputy prime ministers, unless otherwise determined by the Constitutional Court in an expedited procedure requested by the prime minister or the deputy prime ministers.³³⁷

The Federation ministries are the following:

- Ministry of Defense,
- Ministry of Interior,
- Ministry of Justice,
- Ministry of Finance,
- Ministry of Energy, Mining, and Industry,
- Ministry of Transport and Communications,
- Ministry of Labor and Social Policy,
- Ministry of Displaced Persons, and Refugees,
- Ministry of Health,
- Ministry of Education, Science,
- Ministry of Culture and Sports,
- Ministry of Trade,
- Ministry of Urban Planning and Environment,
- Ministry of Agriculture, Water Management, and Forestry,
- Ministry of Development, Entrepreneurship and Crafts,
- Ministry for Veterans.

There are a number of working bodies of the government for the discussion of issues falling under its jurisdiction. In addition, there are institutions and agencies dealing with specific issues, such as the Privatization Agency, Budget Review Office, Public Health Institute and so on.

³³⁷ Constitution of the Federation of Bosnia-Herzegovina, Section B, Item 2, Article 6.

IV-3d Judiciary of the Federation of Bosnia-Herzegovina

The judicial function in the Federation is carried out through the courts of the Federation (the Constitutional Court, the Supreme Court, and the Human Rights Court, i.e. Ombudsman's Office), cantonal courts, and municipal courts. The Federation president, with the approval of the Federation vice-president and confirmation by the majority of delegates of the House of Peoples, appoints the judges of Federation courts. On May 23, 2002 the High Representative passed a new law that established the High Judicial and Prosecutorial Council.³³⁸ The Council is an independent constitutional body of judicial authority in the Federation, whose task is to ensure an independent, impartial and professional judiciary and to establish a professional and effective judicial system and prosecutorial function.

Among other responsibilities, the Council selects and appoints judges, lay judges, reserve judges, prosecutors, and deputy prosecutors. The following courts and prosecutor's offices fall under the jurisdiction of the Council: the Federation Supreme Court, cantonal and municipal courts, magistrate courts, the Federation Prosecutor's Office, cantonal and municipal prosecutor's offices in the Federation.

The Office of the Ombudsman for Human Rights has three judges – one Bosniak, one Croat, and one Other – and its competence relates to any question concerning a constitutional or any other legal provision relating to human rights. The House of Representatives and the House of Peoples appoint and relieve the ombudsmen. The Office of the Ombudsman, as provided by the Federal constitution, protects human rights, as well as the dignity and freedom of persons. The Bosnian and the Federal constitutions provide for the highest guarantees of human rights and freedoms and the ombudsmen work to eliminate the consequences of violations of human rights and freedoms, in particular the consequences of ethnic persecution and discrimination. The Office of the Ombudsman does not interfere with the judicial responsibilities of Federation courts, but may institute judicial proceedings, in accordance with the relevant provisions of the law.

³³⁸ "The Law on Federation BiH High Judicial and Prosecutorial Council", May 23, 2002, *OHR Documents*; available at www.ohr.int/laws.

IV-4 REPUBLIKA SRPSKA

The Republika Srpska, an entity of the state of Bosnia-Herzegovina, occupies 49% of the territory of Bosnia-Herzegovina. It was proclaimed on January 9, 1992 and was officially recognized as a sub-state entity by the Dayton Peace Agreement. The capital of the Republika Srpska is Banja Luka. The war-time capital Pale (a mountain village near Sarajevo) was seen as the stronghold of hard-liners. In order to curb their influence, the international community assisted forces that defied rule from Pale and instead transferred the power to Banja Luka. The central area of dispute with the Office of the High Representative was over the powers and authority that elected representatives could wield over the entity. The desire for greater autonomy was interpreted as the pursuit for statehood and thus in violation of the Dayton Agreement.

The Republika Srpska, in contrast to the Federation and the state of Bosnia-Herzegovina, is markedly centralized with a strong presidency, a unicameral legislative assembly, a cabinet, as well as a constitutional and supreme court. The High Representative's decision, following the Constitutional Court ruling on the constituent status of all three peoples throughout Bosnia-Herzegovina, changed the unicameral legislature into a bicameral one. Thus, apart from the National Assembly, the High Representative instructed the establishment of a Council of Peoples whose function is the protection of vital interests. The Council of Peoples is composed on the basis of parity so that each constituent people has the same number of representatives (minimum 8 and maximum 17 representatives), elected by the respective caucus of delegates of the RS National Assembly.³³⁹

Republika Srpska is divided territorially into five regions, and the power rests with the central entity's institutions and municipal institutions, which operate in accordance with the entity's constitution. Under the RS Constitution, the entity's bodies regulate and ensure its integrity,

³³⁹ "Agreement on the Implementation of the Constituent Peoples' Decision of the Constitutional Court of Bosnia-Herzegovina", March 27, 2002, *OHR Document*, available at www.ohr.int.

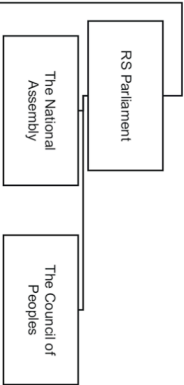
territorial unity, defense, security, constitutionality and legality. Constitutional amendments introduced during the peace implementation (esp. the 2000 the Constitutional Court decision) guarantee to constituent peoples and members of the group of Others proportionate representation in public institutions in both entities. In the same package of amendments, the official language and script in Republika Srpska were expanded to include, apart from the Serbian language and the Cyrillic script, “the language of the Bosniak and Croat people” and the Latin script.³⁴⁰

The advisory body of the highest constitutional institutions in Republika Srpska is the Senate. The Senate discusses issues of particular importance for the political, national, economic and cultural development of Republika Srpska, and forwards its opinion to the highest constitutional institutions concerning the issues falling within their competence. The Senate consists of 55 members appointed by the president of the entity. Appointed Senate members are distinguished persons from public, scientific and cultural life. The Senate members enjoy the same immunity as the Assembly deputies. Sessions of the Senate are convened and

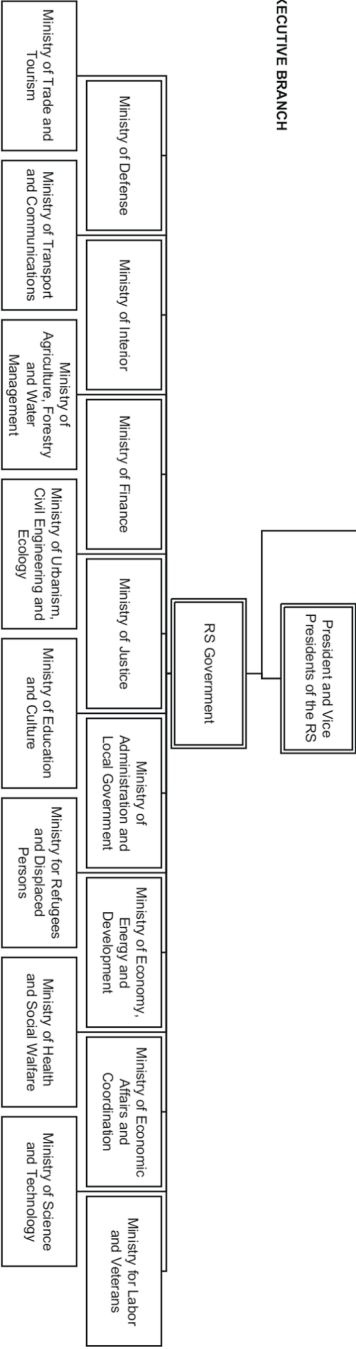
³⁴⁰ “Decision on Constitutional Amendments in Republika Srpska”, April 19, 2002, *OHR Document*; available at www.ohr.int/decisions.

The Government Structure of the Republika Srpska

LEGISLATIVE BRANCH



EXECUTIVE BRANCH



JUDICIAL BRANCH



chaired by the president.³⁴¹ Power in Republika Srpska is divided among the legislative (the National Assembly and the Council of Peoples), executive (the President and the Government), and judicial bodies (the Constitutional Court, the Supreme Court and the Human Rights Court).

IV-4a National Assembly of Republika Srpska

The National Assembly numbers 83 deputies elected directly for a four-year term.³⁴² The deputies elect from among themselves a president and two vice-presidents of the National Assembly. A minimum of four members of each constituent people have to enter the National Assembly.

The National Assembly carries out duties as they generally apply to a parliamentary body, such as decisions on amending the Constitution; the enactment of laws and other regulations; the adoption of the budget, urban planning and development planning; decisions concerning the territorial organization of the entity; referendums; the election and dismissal of officials; the ratification of treaties; control over the work of the government; the election of delegates to the House of Peoples of Bosnia-Herzegovina; declaration of war; as well as other activities in accordance with the Constitution and the law.

IV-4b President of Republika Srpska

The president of the entity is elected for a four-year mandate³⁴³ in direct elections by secret vote. Constitutional amendments of 2002 with regards to the constituent people status introduced a second vice-president in Republika Srpska. Thus, the president has two vice-presidents coming from different constituent peoples, elected at the same time. The president has broad powers, is the commander-in-chief of the army of Republika Srpska, nominates to the National Assembly the candidate for a prime minister and proposes to the National Assembly

³⁴¹ *Constitution of Republika Srpska*, Chapter V, Item 2, Article 89.

³⁴² Until 2002 elections took place every two years.

³⁴³ Until 2002 constitutional amendments, the mandate of the president and the vice-president was five years.

candidates for the Constitutional Court “upon proposal by the High Judicial and Prosecutorial Council.”³⁴⁴

IV-4c Government of Republika Srpska

The government is elected for four years, every time a new Assembly is elected, and consists of the prime minister, two deputy prime ministers and ministers. After the constitutional amendments of 2002, the Republika Srpska government is composed of a prime minister and 16 ministers – 8 Serb, 5 Bosniak, and 3 Croat ministers. One Other may be nominated by the prime minister from the quota of the largest constituent people. The prime minister has two deputy prime ministers from different constituent peoples selected from among the ministers. After Annex 7 of the Dayton Agreement³⁴⁵ is fully implemented (although indicators for determining the end of the implementation are mixed), a minimum of 15% of the members of the government will have to come from one constituent people, a minimum of 35% of the members of the government will have to come from two constituent peoples, and one member of the government will have to come from the group of the Others.³⁴⁶ Bureau for relations with International Tribunal for War Crimes is also a body of the government.

- The government has boards for internal affairs, the economy and finance, and social affairs, as well as a commission for personnel. Prior to the 2002 constitutional amendments there were 19 ministries that were reorganized into 16 ministries:
- Ministry of Defense,
- Ministry of the Interior,
- Ministry of Education and Culture,

³⁴⁴ “Decision Amending the Constitution of Republika Srpska”, May 23, 2002, *OHR Document*; available at www.ohr.int/decisions.

³⁴⁵ Agreement on Refugees and Displaced Persons guarantees refugees and displaced persons their right to return to their homes of origin. In this regard, the implementation of Annex 7 has been taken as a yardstick for measuring success in the peace process because the full implementation of Annex 7 in effect annuls the effect of ethnic cleansing.

³⁴⁶ “Agreement on the Implementation of the Constituent Peoples’ Decision of the Constitutional Court of Bosnia-Herzegovina”, March 27, 2002, Item III; available at www.ohr.int.

- Ministry of Finance,
- Ministry of Justice,
- Ministry of Administration and Local Government,
- Ministry of Health and Social Welfare,
- Ministry of Economy, Energy and Development,
- Ministry of Transport and Communications,
- Ministry of Agriculture, Forestry, and Water Management,
- Ministry of Science and Technology,
- Ministry of Trade and Tourism,
- Ministry of Urbanism, Housing, Civil Engineering and Ecology,
- Ministry of Labor and Veterans,
- Ministry of Economic Affairs and Coordination,
- Ministry of Refugees and Displaced Persons.

IV-4d Judiciary of Republika Srpska

In Republika Srpska there are basic courts, district courts, the Supreme Court, the Constitutional Court and the Office of the Ombudsman for Human Rights.

Judicial power belongs to courts that are established and abolished by law. The number of judges in the courts and members of the jury are determined by the High Court Council at the proposal of the Minister of Justice. The National Assembly elects and removes court presidents and judges at the proposal of the Council. A judge cannot be a deputy, a councillor, a member of a political party, perform political or administrative functions or any other service, job or duty that may influence his/her autonomy and/or diminish respect for the court.

The function of courts in Republika Srpska is equal to corresponding courts in the Federation, which have already been described. As in the Federation and in Bosnia-Herzegovina, the Ombudsman in Republika Srpska may not change or cancel court and administrative decisions and measures, but it may propose correction criteria to be used at their adoption.

IV-5 BRČKO DISTRICT

One major challenge facing the civilian implementation of the agreement relates to the Brčko district in the north of the country, administered by an international supervisor as of 1997. The status of the town of Brčko was not solved at the negotiations in Dayton and the parties agreed that the final status of Brčko would be decided by international arbitration, although it would remain within the Bosnian Serb entity until the Tribunal made the final decision.

In 1999 the Arbitration Tribunal, presided over by Roberts Owen, a U.S. lawyer, made a final ruling on the status of Brčko. Three alternatives had been on offer. One was to transfer Brčko to the Federation, which claimed the right of governance on the essential grounds (a) that historically the Brčko municipality was predominantly Bosniak and Croat, as well as the fact that it was a vital northern gateway between central Bosnia and Europe, (b) that it would be intolerable for the Republika Srpska to retain exclusive possession of a city which the Serbs captured and “ethnically cleansed” during the war, and (c) that the only just result would be to award the Brčko area to the Federation.

A second alternative was to confirm the RS’s claim to the right of permanent governance on the essential ground that, whatever its history, the Brčko corridor along the Sava River provided a vital strategic connection between the two halves of the RS. It claimed that any change in its exclusive possession would be inconsistent with the alleged principle of territorial continuity and the Dayton objective of allowing the RS to control 49% of the territory of Bosnia-Herzegovina.

A third alternative was to remove Brčko from the exclusive control of either entity and place its governance in the hands of an independent District government under the exclusive sovereignty of Bosnia-Herzegovina.

The third option was chosen. The Brčko area would be governed by a new multiethnic democratic government to be known as “The Brčko District of Bosnia and Herzegovina” under the exclusive sovereignty of Bosnia-Herzegovina and subject to the powers of the common

institutions of the state. Responsibility for overall coordination and for issuing directives to ensure that the entities fulfilled their obligations with respect to the new District was to fall to the Supervisor, who might delegate that responsibility to an appropriate Bosnian institution.³⁴⁷ To answer the criticism of changing the 49-51% ratio, the Tribunal provided that upon the establishment of the new District, the entire territory within its boundaries was to be held in “condominium” by both entities simultaneously.³⁴⁸

To the RS complaint that this ruling by the Tribunal was a direct threat to the security of the Bosnian Serb entity because it would be prevented from moving its armed forces from one part of the RS to another, the Tribunal gave three answers to this contention. First, whenever the RS had a legitimate need to move military forces through the District, it only needed to make an application to SFOR for an appropriate transmit permit. Second, as long as Bosnia-Herzegovina remained a unified and peaceful state as provided at Dayton, the RS had neither a military or “strategic” need for an RS-controlled corridor. Third, apart from military transit, the RS and its citizens would continue to have an absolutely unrestricted right to move freely through the District – a right that was to be vigorously enforced by the new multiethnic District police force. Thus, the desired corridor would remain open for all legitimate purposes, and all legitimate “territorial continuity” was to be preserved.³⁴⁹

Both entities were required to withdraw their armed forces from the area and the only military force to remain was SFOR. The multiethnic police force was to provide for the safety of the District. The District government was to consist of (a) the District Assembly, a legislative body whose membership was to be selected through democratic elections to be scheduled by the Supervisor; (b) an Executive Board, to be selected by the Assembly; (c) an independent judiciary, consisting of two courts, trial and appellate; and (d) a unified police force operating

³⁴⁷ See “Brčko Final Award”, Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brčko Area, March 5, 1999 at www.ohr.int [accessed June 11, 2002].

³⁴⁸ Ibid., Article 11.

³⁴⁹ Ibid., Article 53.

under a single command structure with one uniform and badge, with complete independence from the police establishments of the two entities.³⁵⁰ The expenses for the District were to be shared between the two entities, although the District also received direct donations from international donors. Supervision of the District was to continue until terminated by the Steering Board of the Peace Implementation Council.

IV-7 COMPREHENSIVE APPROACH TO PEACE IMPLEMENTATION

In May 2000 the Peace Implementation Council laid down an agenda for building the Bosnian state in a systematic way.³⁵¹ This Declaration has been taken as a ‘turning point’ in the state building agenda for Bosnia-Herzegovina, marking a dramatic shift in international management.³⁵² The international community pledged to concentrate its resources on building the core structures required for Bosnia-Herzegovina to function as an integral and independent state. The PIC Declaration contained a specific program for the next phase of the peace process for building effective institutions at state level and creating a single Bosnian economic space. It called for:

- State institutions to have their own funding;
- Donor assistance to be channeled to Bosnia-Herzegovina through state institutions;
- A professional state civil service to be urgently established;
- The Office of the High Representative to rapidly develop state-level regulatory bodies in telecommunications, energy, transport, and media;
- All international policies to support the creation of a single economic space; and
- Direct international involvement in the restructuring and privatization of strategic industries.

³⁵⁰ Ibid., Article 36.

³⁵¹ “Declaration of the Peace Implementation Council” and “Annex to the PIC Declaration”, Brussels, May 24, 2000; available at www.ohr.int/pic

³⁵² “Turning Point: The Brussels PIC Declaration and a State-Building Agenda for Bosnia and Herzegovina”, European Stability Initiative (ESI), Sarajevo, June 7, 2000; available at www.esiweb.org/reports/bosnia

The Brussels PIC Declaration was shorter and more concrete than its predecessors. It indicated the priority areas in which the High Representative was to mobilize international influence to create Bosnian institutions capable of taking responsibility for the new state. It thus established clear benchmarks to measure the performance of both Bosnian and international institutions in the coming years.³⁵³

With these issues on the agenda, the international community closed yet another chapter of its intervention in Bosnia-Herzegovina and opened a new one. The norm-building phase of the state building intervention came as a further upgrade on the efforts invested since 1995. The elements and the rationale of this third phase I analyze in the next chapter.

³⁵³ “Annex to the PIC Declaration” contains a list of specific benchmarks for carrying out state building in Bosnia-Herzegovina. In the economic sphere, the PIC asked for the following:

- Complete dismantling of the Payment Bureau (December 2000).
- A catalogue of trade and investment barriers to be drawn up and urgent steps taken to remove these barriers, especially the full adoption of harmonized FDI legislation at state and entity level.
- Legislation on political party financing and conflict of interest to be passed by September 2000.

A list continued with exact laws to be passed by precise dates. The Declaration also set explicit targets in areas of return issues, institution building, exhumations, military issues, public security, media, sport, and education.