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SPECIAL REPORT

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ABOUT THE REPORT

In 2004 the European Commission for Democracy through Law issued a report on constitutionalism in Bosnia-Herzegovina, noting several changes Bosnia would have to make to begin the EU accession process. With the help of the United States Institute of Peace, the Public International Law and Policy Group, and the Dayton Peace Accords Project, the leaders of Bosnia's major political parties began a consensus-driven process to produce constitutional amendments to address these issues. This was the first time since Dayton that Bosnia's political leaders sat down to discuss constitutional reform on their own initiative.

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The views expressed in this report do not necessarily reflect the views of the United States Institute of Peace, which does not advocate specific policy positions.

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Don Hays and Jason Crosby

From Dayton to Brussels

Constitutional Preparations for Bosnia's EU Accession

Summary

- The citizens of Bosnia are united in wanting EU accession and its benefits. However, the constitution as it stands will greatly inhibit Bosnia's ability to move toward accession. Under the current constitution, ethnically based political parties still can thwart the state and prevent Bosnia from entering the EU.
- The constitution vests power in two entities, the Federation and the Republika Srpska, granting most governmental functions to them and only the most limited powers to the central government. Despite numerous state-building reforms, it is questionable whether the state can implement the broad range of measures the EU requires for accession. With the high representative's departure scheduled for June 2007, the state's capacity to implement the accession requirements becomes critical. A recent report by the Venice Commission outlines the reforms necessary to prepare the state for the accession process.
- Only Bosnia's politicians can undertake the fundamental changes required for accession. In response to this challenge the leaders of the major political parties undertook a consensus-driven process facilitated by representatives of the Institute, the Public International Law and Policy Group, and the Dayton Project. The goal was to produce a package of constitutional amendments by October 2005 to strengthen the state.
- Over twelve months, representatives developed amendments clarifying group rights, individual and minority rights, and mechanisms for protecting the "vital national interests" of Bosnia's constituent peoples. They also included reforms to strengthen the government and the powers of the prime minister, reduce the president's duties, and streamline parliamentary procedures. The parties presented their agreement to parliament, and on April 26, 2006, the package failed by two votes to achieve the necessary two-thirds majority.
- To answer the question of where Bosnia-Herzegovina (BiH) goes from here, the parties decided to wait until after elections in October 2006 to resubmit the package to parliament, in hopes that its political alignment will change enough to ensure passage.

ABOUT THE INSTITUTE

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Introduction

The European Commission for Democracy through Law, also known as the Venice Commission, is an internationally recognized, independent legal think tank and advisory body on constitutional matters created by the Council of Europe. The commission was established in 1990 as a tool for emergency constitutional engineering and has come to play a unique role in disseminating the European constitutional heritage, managing crises, and preventing conflict through constitution building.

In March 2005 the Venice Commission criticized the constitutional situation in BiH, noting, "There is a powerful wish [among the citizens of Bosnia] for the country to participate in European integration with the final aim of becoming a member of the EU."¹ However, the commission and the European Parliament believed that "a stabilization and association agreement, as the first step in this direction, will require institutions at the state level far more effective than those [that] exist [today]." Bosnia's future lies in Europe, but its constitution is anchored in the postwar Dayton peace agreement. Safeguards to ensure ethnic parity were necessary to secure the peace ten years ago, but in the words of the commission, "it is unthinkable that [Bosnia] can make real progress with the present constitutional arrangements."²

The Venice Commission report was issued at the request of the Bosnian government to facilitate future constitutional deliberations in Bosnia. However, the impetus for change accelerated with the initiation of the EU's Stability and Association Agreement (SAA) and the pressing requirement for Bosnia's government to face hard fiscal realities as it responded to the demands of EU accession. Without constitutional change and reordering of governmental authorities, the country cannot realistically address the imperatives of the SAA; nor can it hope to finance the required state institutions. How has Bosnian constitutional reform proceeded to date, and what additional steps will be needed?

The Dayton Constitution

The constitution of Bosnia-Herzegovina was part of the Dayton peace agreement negotiated by the warring parties (Bosnians, Croats, and Serbs) and signed in Paris December 14, 1995. It provides for an anemic central government with a rotating, tripartite presidency, a bicameral parliamentary assembly in which both houses have identical duties, and a council of ministers divided among the three constituent peoples.

The constitution also recognizes the existence of two entities (the Federation, or FBiH, and Republika Srpska, or RS) and calls on them to support the state in various ways. Only enumerated powers are given to the state; all others are vested in the entities. All legislation, as well as the budget, must meet the approval of all three institutions of government. In many cases the entities must give prior approval as well. Thus political parties representing ethnic constituencies have multiple opportunities to affect legislation, exacerbating the state's difficulties in carrying out critical reforms required for EU accession.

The government faces additional problems because the council of ministers can schedule meetings only with a quorum including at least one member of each constituent people; decisions require approval by a majority of the ministers. In the case of nonparliamentary actions, at least one minister from each constituent people must vote for the action. The council of ministers is therefore a collaborative body and not a government. All too often it is paralyzed by ministers' absence or the council's inability to reach consensus. The chair has no independent authority to run the government and must seek either unanimity from the council or the approval of the tri-presidency to implement major governmental decisions.

The upper house of parliament must contain equal numbers of members from each of the three ethnic groups. All legislation must pass through both houses, and decisions in

the House of Representatives require the approval of a majority of the members present and voting, which must include at least one-third of the members from each entity. This means that legislation must accord with not only ethnic political interests, but also entity political interests. To further complicate matters, any parliamentary decision can be declared destructive of a "vital national interest" (VNI) by a majority of one of the constituent groups. The issue is then sent to the constitutional court for a procedural review. But since the court itself is formed along ethnic lines, it frequently favors the view of those raising the issue.

Article III of the constitution makes it clear that the state derives its authority from the entities. The state government has an extremely narrow range of powers compared to other European states and depends on the entities even to meet its international obligations. The entities have the authority to enter into international agreements with other states and international organizations, in effect acting as sovereign states vis-à-vis Bosnia's neighbors. Until January 2005, when the value-added tax was introduced in Bosnia, the government relied predominantly on the entities for financial support.

As a result of these checks on state authority by the entities, the Bosnian government required the supervision and intervention of the Office of the High Representative (OHR), the international community's agency overseeing implementation of the peace agreement's civilian aspects. Without this presence, the government would be a supplicant before the entities, seeking their approval and funding for all state activities.

Accession to the EU

A European state must fulfill five basic conditions to be eligible for EU membership:

- Stable institutions guaranteeing democracy;
- Rule of law and respect for and protection of minority and human rights;
- A functioning market economy;
- The capacity to cope with market forces and competitive pressures within the union; and
- The ability to take on the obligations of membership, including economic and monetary union.

Before joining the EU, a prospective member state must adopt the *acquis communautaire*, 80,000 pages of EU law governing thirty-three major subjects, including taxation, commerce, judiciary, fundamental rights, and environmental regulations. A state must have central institutions with both the capacity and the authority to deal with the wide range of issues covered by the *acquis*. More important, it must have the ability to ensure compliance with the *acquis* by all levels of government and society.³

Currently the Bosnian state does not have the capacity or authority necessary to implement the broad range of requirements for accession. In addition, the OHR, which has provided expertise and political will to undertake such actions on behalf of the state, will close its offices as of June 2007. Therefore, if Bosnia is to successfully undertake the accession process, the Bosnian authorities and the political parties that form the government must sufficiently empower the state to meet the EU's stringent requirements.

The Venice Commission Report

In March 2005, the Venice Commission published its "Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative," known as the Venice Commission report. The commission raised four major issues related to the current constitution and the prospect of EU membership for Bosnia-Herzegovina.

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The weakness of the state government vis-à-vis the entities was of particular concern to the commission. At present, the state lacks the capacity to ensure compliance with the conditions of accession, since most areas covered in the *acquis* are outside its competency. In addition, the VNI veto, the two-chamber parliamentary system, and the collective presidency make effective government extremely difficult, if not impossible. The commission suggested several reforms to make the government more efficient and effective.

Defining and restricting the circumstances in which the VNI veto could be used would remove one of the greatest obstacles to efficient and effective governance in Bosnia. The commission recommended streamlining the legislative process by abolishing the House of Peoples and moving the VNI veto to the House of Representatives. It also recommended replacing the collective presidency with a single, indirectly elected president with limited powers as head of state and concentrating executive power in the council of ministers.

The Venice Commission expressed concern that ethnically linked entity structures prevented the formation of a national identity. Realizing that any effort to abolish the entities would be unrealistic at that time, the commission recommended that BiH take steps toward greater centralization of substate levels of government.

Finally, the commission expressed serious concern about the composition and method of election of the presidency and the House of Peoples. The commission stated that the current system is incompatible with the International Convention on Civil and Political Rights and the European Convention on Human Rights and has the effect of reinforcing and reproducing ethnic divisions. This is a serious impediment to future membership in the EU. To address this problem, the commission recommended either abolishing the collective presidency or creating an electoral system ensuring proper representation of the citizens of both entities, as well as all three peoples. In addition, it recommended either abolishing the House of Peoples altogether or, at the very least, fixing a maximum number of seats to be occupied by representatives from each constituent people as a less discriminatory means of ensuring an ethnic balance in parliament in the interest of peace and stability.

The commission stated that the current system is incompatible with the International Convention on Civil and Political Rights and the European Convention on Human Rights.

The Will to Change

The Venice Commission's report provided Bosnia with a checklist of issues to be addressed, but it made it clear that the Bosnian political leaders themselves would have to undertake the necessary reforms. The issuance of this report was one of the critical motivating factors in the political debate on this subject throughout 2005. According to the report (paragraph 14), leaders in the FBiH were unanimous in their belief that the current governmental structure is "neither efficient nor rational."

One member of the Bosnian presidency stated, "The current constitution is promoting an [ethnic] national concept of the government, which makes functioning of the state of Bosnia-Herzegovina as a normal, modern, European state more difficult."⁴ On the ninth anniversary of the Dayton Accords, he expressed his wish on the radio that the next year Bosnia would be celebrating the replacement of the Dayton constitution with a "Brussels" constitution.⁵

On the same radio program, a former member of the presidency agreed that the Dayton constitution needs to be adjusted to suit the current needs of BiH society, and the current system, with five levels of government, is unsustainable. And the state security minister remarked, "The present constitutional framework fails to fully guarantee the equality of all three peoples and does not enable a normal and sustainable economic system."⁶

While the leaders of the Serb parties were equally enthusiastic about moving BiH toward EU accession, they were decidedly less eager to change the Dayton constitution, fearing that it would be a Trojan horse leading to abolition of the RS. They countered on the radio program that the Dayton constitution has enabled progress and development in numerous areas and "represents a good foundation for a sustainable state." The Serb Democratic Party (SDS) president stated that Serbs in Bosnia-Herzegovina "oppose any

revision of the Dayton accord,” and “the SDS will not take part in any debate on revising the BiH constitution or enter into any talks on abolishing the RS.”⁷ A former speaker of the RS national assembly claimed (on the Korak current affairs program on Bosnian TV Hayat) that because some authorities necessary for EU accession had been transferred to the state, changes in the Dayton constitution were not necessary. During 2004 the EU held a series of talks with BiH representatives to discuss the possibility of its EU candidacy. However, when members of the House of Representatives attempted to initiate discussions regarding the need for constitutional changes, RS delegation members resolutely refused to participate.

The Working Group

The OHR, the European Commission (EC), the World Bank, and the International Monetary Fund (IMF) all recognized the critical need for constitutional change. In December 2004 they noted that the unusually high cost of governance in Bosnia meant that attempts to expand the existing government structure to meet the demands of accession probably would bankrupt the state. At the same time, Bosnian political leaders sought assistance from international actors to start the process of constitutional reform, realizing that they could not initiate such talks without international mediators. The presidents of the Party of Democratic Action (SDA) and the Croatian Democratic Union (HDZ) separately approached the American deputy high representative, Ambassador Don Hays, for help in facilitating and moderating constitutional reform talks among the major political parties. After consulting with the high representative and various colleagues, he agreed to facilitate the process on his departure from the OHR. To facilitate this process, the U.S. deputy secretary of state had Hays assigned to the United States Institute of Peace.

Joining with colleagues Paul Williams, of the Public International Law and Policy Group (PILPG), a U.S.-based nonprofit that provides free legal assistance to developing countries in conflict, and Dr. Bruce Hitchner, director of the Dayton Peace Accords Project at Tufts University, Hays developed a protocol for the constitutional reform process.⁸ In March 2005 this group met with officials of all the major political parties in Sarajevo and Banja Luka, as well as the leaders of both houses of Bosnia's state parliament. They outlined their concept of a consensus-driven process to create a package of constitutional reforms focused on strengthening the state and thereby facilitating Bosnia's EU candidacy.

They envisioned all the significant political parties working together to address the shortcomings outlined in the Venice Commission's report. The three visitors would act as the working group's “secretariat,” facilitating this dialogue and providing useful analysis of European constitutional options.⁹ The parties unanimously accepted the proposal, and each nominated representatives to the working group. The party representatives comprising the working group lacked the authority to conclude an agreement themselves, but they set a goal of presenting the political party leaders with proposals for the necessary amendments by October 2005. The secretariat agreed to keep the parliamentary leaders fully informed at every step in the process, so that at the appropriate time the leadership could sponsor the agreed amendments in parliament.

Positions of the Parties

The working group discussed the issues raised in the Venice Commission report and the parties' individual, explicit positions. It was clear that both mutual confidence and compromise would be needed if any significant reform were to result from the talks.

The main Croat political party, the HDZ, endorsed expansion of the presidency's powers in accordance with competencies transferred to the state level. The party supported the transformation of the council of ministers into a normal “state government,” with all

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the normal competencies of a European state, and questioned the continued existence of the two-entity structure. Finally, they wanted to terminate what they viewed as discriminatory provisions in the election of presidency members, parliament, and the council of ministers.

The Republika Srpska's Party for Democratic Progress (PDP) wanted to empower the House of Peoples to call for constitutional rulings on legal and political subjects, and to allow other levels of government to initiate VNI cases in the state constitutional court. They supported maintaining a tripartite presidency but remained open to discussion of the competencies of the BiH presidency and the election of presidency members. They supported increasing the number of parliamentarians but were open to discuss the process of electing those delegates. The PDP believed that a call for transformation of the council of ministers into a government did not reflect the intention of the BiH constitution and was a backdoor attempt to undermine the existence of the RS.

The Party for Bosnia-Herzegovina (SBIH) proposed a single president with strictly representational duties and transfer of executive power to the prime minister. The SBIH also supported the concept of a unicameral parliament with a committee chosen from the members of the House of Representatives to deal with VNI issues. Finally, they proposed a traditional parliamentary system, with a prime minister chosen by parliament and a government replacing the current council of ministers.

The Social Democratic Party of Bosnia and Herzegovina (SDP) had developed a comprehensive set of reform proposals but agreed to limit the proposals to those the group was discussing. They supported a president or presidency elected by the parliament. Its duties would be to represent BiH internationally, sign treaties with other states, and appoint ambassadors and a prime minister. The SDP endorsed the concept of a bicameral parliament, with both houses approving decisions. They envisioned a parliamentary government, responsible for the implementation of policy and decisions of state bodies within the framework of the constitution and laws. Finally, the SDP supported expanding government functions to include taxation, health, labor law and the pension system, defense and security, the financial and banking system, protection of human rights and freedoms, the higher education system, and others. The SDP emphasized that it was willing to consider all changes to the constitutions that were in keeping with modern European norms.

The Croatian National Union (HNZ) wanted to keep the tripartite presidency representing constituent peoples, but have the presidents elected by the parliament. They believed that a unicameral parliament would be more functional and efficient, with majority or consensus decision making that included clubs of all constituent peoples, and they endorsed the need for constitutional protections of VNI. The HNZ supported changing the name of the council of ministers to "the government" and granting it all competencies traditionally given to governments in sovereign parliamentary democracies. The president would nominate the prime minister, and the parliament would confirm the government by two-thirds majority.

The SDS supported keeping the bicameral parliament while changing the method for electing members of the presidency to conform better to the requirements of the Venice Commission report. The SDS would give the presidency responsibility for nominating the chair of the council of ministers. The chair would propose a slate of candidates for the council of ministers, and he and the council would be approved by a majority of the House of Representatives. Two-thirds of the ministers would come from the Federation and one-third from the RS. State government functions would be expanded through the creation of two additional ministries.

History of the Process

The secretariat established a routine of working one week a month in Sarajevo throughout the spring and summer. During each visit, the working group held two-day sessions, fol-

lowed by consultations with the political leaders and representatives of the international community. The SBiH representative chaired the working group meetings. Under his adroit direction, the group developed a broad consensus on a text regarding group rights, individual rights, and minority rights; mechanisms to protect those rights at the state level; and the definition of VNI. Though discussed, other issues proved to be more difficult, with numerous options developed for presentation to party leaders. At the request of the working group, the secretariat sought to engage outside individuals and groups, including reform-minded young professionals, religious leaders from the three main religious groups, and Bosnian human rights and media experts in support of this effort. All these individuals assured the group of their commitment but did not take a proactive role in supporting the process.

By September the critical issues for each party had been defined. All the parties continued to be engaged and supported the process, but it was difficult for the group to reach further consensus-based solutions, given their limited authority to negotiate necessary compromises. The SDA, SBiH, HNZ, and SDP were fairly close in their positions, despite the absence of a single defined position. However, the HDZ wanted to maintain guarantees and safeguards for the constituent peoples at all levels of government, but it had no proposal for doing this while strengthening the state.

The Serb parties were united in their refusal to consider any proposal they considered threatening to the existence and core powers of the RS. The SDS supported only modest change that failed to address the criticisms in the Venice Commission report. The PDP and SNSD (Alliance of Independent Social Democrats) were reluctant to clarify their views while claiming to support both the process and the need to strengthen the state. It was apparent that they were waiting for the SDS to present proposals.

At the request of the working group, the secretariat presented two models of government based on the group's discussions: a pure and a modified parliamentary system. The working group unanimously supported the parliamentary model, with the majority of duties currently held by the presidency transferred to the council of ministers. There was general agreement that the parliament needed to be streamlined and the House of Peoples should focus solely on VNI, the budget, social issues, treaties, and government formation. The lower house would have exclusive responsibility for actions related to EU membership requirements. The parliament would elect both the president and the prime minister, who would form a government by selecting ministers from a list of qualified candidates.

They also agreed that the state would need additional powers and duties in line with the requirements for EU accession. These additional powers were left unspecified. Finally, they agreed on a definition of VNI and individual and minority rights, as well as a mechanism for protecting those rights.

The Institute hosted the final working group meeting in Washington at the end of October. The secretariat prepared drafts reflecting the parties' various positions and their effectiveness in addressing the recommendations in the Venice Commission report. The group discussed the drafts but found it impossible to resolve the outstanding issues regarding elections and duties of the presidency, the parliament, and the role and functions of the government. Working group members acknowledged that they had gone as far as they could, since they lacked the authority to conclude an agreement on behalf of their parties. Only the party leaders could do that, and it was now up to them to find solutions to the outstanding issues. Nonetheless, the working group endorsed the next step in the process: the engagement of the party leaders.

While in Washington, the group met with James O'Brien, the original drafter of the Dayton constitution; Rosemary DiCarlo, deputy assistant secretary of state for European and Eurasian affairs; and Jonathan Davidson, a representative of the EU Mission to the United States. On behalf of the group, the chair, Beris Belkic, stated in a speech at the Institute on October 25 that it had reached a consensus on the need to resolve the issues raised by the Venice Commission. It had agreed on the need to "reinforce the state structure with such competencies that could lead our state towards EU integration and negotiate

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with the EU.” The process had to be elevated to a discussion with the party leaders. The EC sponsored that meeting in Brussels in mid-November.

There, Commissioner Ollie Rehn and Western Balkans Director Reinhart Preibe addressed the leaders, emphasizing the need for constitutional reform. This meeting marked the first time since Dayton that the Bosnian political leadership sat around one table and discussed constitutional reform seriously. Difficulties related to the entities inevitably came up. The Serb representatives sought to embed the existence of the RS in every amendment, and several other parties called for the elimination of the entities, which, in reality, meant elimination of the RS. Also, despite unanimity among the working group members, one of the party leaders wanted to move toward expanding the role of the president, rather than shifting power to the prime minister.

During these discussions the party leaders confirmed their general agreement that the House of Peoples would handle VNI issues on a defined set of topics. The question regarding electoral procedures for the House of Peoples was narrowed to one of three options: voting from the House of Representatives, voting in the entity parliaments, or direct election, as with the House of Representatives. Real progress was made on the role of the government and human rights: The parties quickly agreed to the human rights package proposed by the working group. On the issue of the government, the SNSD leader laid out a proposal for empowering the prime minister, giving him or her the ability to select a cabinet, remove members, and set the agenda for government. They also agreed on two additional ministries—agriculture and one to be decided at a later date. With regard to government functions, the Serbs agreed to language that would give the state sole competency to pass laws, establish institutions, implement policy, and enforce compliance with requirements for EU membership accession. But at the same time, the Serbs were unwilling to accept the proposal of the SDA, SBiH, and SDP that the powers previously transferred to the state be enumerated in the constitution.

After two days of discussion, the parties agreed to accept the Institute's invitation to continue the discussions in Washington. This meeting coincided with the U.S. government's celebration of the tenth anniversary of the signing of the Dayton agreement. Two days before the celebration, party leaders assembled at the Mayflower Hotel in Washington in an attempt to bridge the remaining differences. On the first day, discussions appeared to be making progress, but this was largely illusory. Differences over the importance of the entities affected discussions about electing representatives to the House of Peoples and the presidency; whether to have one president or a president and two vice-presidents; and what the mandate and responsibilities of the presidency should be. The meetings defined the issues without advancing any solutions. Nonetheless, in a meeting with the undersecretary of state, the leaders committed themselves to conclude an agreement on these reforms and present it to parliament by March 2006.

The meetings defined the issues without advancing any solutions.

Following the Washington visit, the parties met in Sarajevo on December 15th at the Central Bank. This meeting was preceded by a number of meetings with various parties to help them develop a consensus-based package. Unfortunately, despite their written commitment to seek a package of reforms, the leaders still could not find common ground on the remaining issues. It became clear during the meeting that new impetus was required if progress were to be made. So on December 16th, at the direction of the undersecretary of state, the U.S. Embassy took over the role of the secretariat, with the U.S. ambassador, supported by the U.K. ambassador, chairing the meetings. The party leaders completed a detailed text granting more and clearer human rights to individuals and minorities and providing an avenue of redress for violations of those rights. They also agreed to provide greater authority to the prime minister, giving him authority to hire and fire ministers and streamlining decision making in the council of ministers. In addition, the party leaders finally began to sketch the outline of a general agreement on a presidency with one president and two vice presidents.

With regard to the parliament, however, they could not agree on whether to limit the powers of the House of Peoples and how it should be elected. The issue of government authorities was not even broached during these meetings because of lack of time, although they did agree that the government should have the power to take all actions necessary to meet EU membership requirements.

The parties met again in December and twice in January, each time with the U.S. ambassador and the EU presidency in the chair. However, they continued to face obstacles in resolving the outstanding issues regarding the parliament and the presidency. At their last meeting in January, progress finally seemed imminent. The parties agreed on the roles of the president and vice presidents, crafted an acceptable proposal for the functioning of the House of Peoples, and significantly narrowed differences on the elections of both the House of Peoples and the president. At the last minute, however, the issue of “entity voting” in the parliament blocked an agreement. The Serb parties made it clear that without public endorsement of this procedure in the agreement, they could not accept the final set of proposals. The SDA and SBiH found this totally unacceptable and sought the elimination of entity voting altogether. This meeting ended without an agreement on the remaining issues or on proceeding with the discussions.

Despite this outcome, all sides agreed that a drafting committee composed of members of the government, parliament, and the election commission should begin drafting the amendments on issues already agreed to in the meetings. They began immediately after the last meeting in January. During the first two weeks of February a number of individual discussions took place among the parties, seeking a solution to the outstanding issues. The leaders of the SDA and SNSD agreed to a set of proposals in return for SDA support in forming the new RS government under the SNSD's leadership. In the end, political expedience helped ensure the successful conclusion of this round of negotiations. With the solid support of the United States and EU, the parties concluded the agreement in early March. Having signed the package, they submitted it quickly to the parliament for ratification.

The parties continued to face obstacles in resolving the outstanding issues regarding the parliament and the presidency.

The Proposed Amendments

The parties proposed keeping a tripartite presidency, but with members elected by the House of Representatives rather than the entities' citizens. The chair of the presidency would rotate among the members every eighteen months rather than every six months. The parties also proposed reducing the number of decisions requiring joint approval by the members of the presidency to the selection of constitutional court judges and the Central Bank board, as well as military policy.

With regard to the House of Peoples, the parties agreed to move electing delegates from the entities to the House of Representatives. They also agreed to limit the House of Peoples' function to reviewing legislation related to VNI issues. To reach this agreement, they had to compromise by proposing to increase the number of delegates to twenty-one, seven from each of the constituent peoples.

For the House of Representatives, the parties proposed doubling the current size to eighty-four, twenty-eight from each constituent people. They also proposed adding three delegates to represent minorities not from either of the major constituent peoples, bringing the total size of the House of Representatives to eighty-seven.

Finally, the parties proposed expanding the authorities of the state government. The proposed amendments would add two new ministries at the state level, agriculture and environment. They also would give the state government authority over defense and security, the state court, the state prosecutor, the high judicial and prosecutorial council, intelligence, and indirect taxation administration. Perhaps most important, the proposed

amendments would give the state government all authority necessary to implement all requirements for EU accession and membership.

Conclusion

The package of amendments represented a consensus of five of the seven parties that began the process.

The package of amendments represented consensus of five of the seven parties that began the process. And for the first time, support for the development of the state was based not on entity or ethnic issues but on party lines. The amendments dealt with the Venice Commission's concerns with regard to the presidency, the House of Peoples, minority representation in parliament, and the role of government. They did not eliminate all the problematic issues, such as the tri-presidency, bicameral parliament, entity voting in parliament, or the existence of the entities themselves. However, the agreement represented a significant step forward for the Bosnian political leaders. In a groundbreaking step, Bosnian politicians found both a process and the political will to reach consensus on the state constitution.

Unfortunately, after leading the working group deliberations in an extremely constructive manner and indicating that the parties had reached consensus on the major issues and the process, the SBiH broke ranks with the other parties and withdrew from the process. The party's leadership decided it would fare better in the upcoming elections by attacking both the process and the results as a plot imposed by foreigners to consolidate the powers of the RS by cementing them in the constitution. Despite his earlier support for the process and leadership of the working group, the SBiH representative denounced the proposed amendments in parliament, declaring, "I was against the proposed amendments, and this is how I am going to treat them at the committee's session."¹⁰

The result was that parliament failed to ratify the amendments by the required two-thirds majority.

As a result of internal party disputes, former members of the HDZ in parliament joined with the SBiH in voting against the package. The result was that on April 26, 2006, in a 26-16 vote, parliament failed to ratify the amendments by the required two-thirds majority. After some deliberation, those supporting the package decided to wait until after the October election to resubmit the package for consideration. They speculated that the elections would change the political alignment in parliament enough to ensure passage.

The Council of Europe, EC, EU, and the U.S. government all expressed disappointment with this outcome. There is no doubt that if the next government is formed on the basis of the existing constitution, four years will pass before needed reforms can be undertaken. This failure will ensure a significant delay in the EU membership process and leave Bosnia-Herzegovina with a weak and dysfunctional government just as the OHR closes.

On the other hand, if a new parliamentary coalition passes the amendments in October or November 2006, the new government can begin work with a newly empowered executive and a streamlined decision-making process. This new framework will create the possibility of a more functional government and give the EU confidence that it is dealing with a state that can uphold its commitment to the EU. The country then can turn to other needed reforms: strengthening and granting greater independence to local government, redefining the roles of all levels of government, improving government services, and reducing the cost of government to the average citizen.

The second phase will require vision, political will, and a commitment to making government work for the citizens, not just for the country's politicians.

The first phase of negotiations was extremely difficult, and the second phase will be no less difficult. It will require vision, political will, and a commitment to making government work for the citizens, not just for the country's politicians. Change in government should be motivated not only by the demands EU accession places on the country, but should be anchored in commitment to the citizens, making everyone feel that the citizenry will play a growing role in the country's future.

Recommendations

- Once a new parliament is at work, the political parties in Bosnia-Herzegovina should pass the constitutional amendments the parties agreed to before the election. At the same time they should seek to develop support for creating a concept of government acceptable to all parties. They also should raise awareness of the structural changes required if Bosnia is to meet the EU requirements. Such changes must promote the interests of the citizens in more service-oriented governmental structures.
- The parliament of Bosnia-Herzegovina should create a commission on governance to discuss necessary changes to facilitate Bosnia's candidacy in the EU. The commission should have a clear mandate to review the operation of government at all levels (municipal, cantonal, entity, and state) and recommend an operational plan for making agreed changes. This commission should include all levels of government, representatives of civil society, and experts on public administration, both domestic and foreign. It should develop an outreach strategy to engage the people and incorporate their views into its work.
- The U.S. government should take the lead in meeting with parliamentary caucuses, political parties, and opinion leaders in Bosnia-Herzegovina to promote clear understanding of the need for such a commission and for structural changes in government at all levels. The United States also should assist in building a coalition of friends (including the EU, Canada, Switzerland, Norway, and Japan) to help sustain this process.
- The EC should initiate direct conversations with the citizens of Bosnia regarding the SAA and EU candidacy requirements, to increase understanding of the changes required in every aspect of national life. Citizens also need to understand what actions will be required of their government if it is to meet the EU requirements, as well as the connections between levels of taxation, economic growth, and the size of government. The country is still undecided about how the social compact between government and the citizen is to be implemented; now is the time to clarify this relationship in the EU context.
- Besides the United States, EC, and key governments, the IMF, the World Bank, and the Organization for Security and Cooperation in Europe could be crucial. These groups must come to a consensus about how best to inform the process and provide critical information to the commission, to supplement the information it has or will gather during its mandate. To make such a commission work, the United States, the EU, Canada, and others must offer experts in public administration to the commission. The IMF and the World Bank have a body of research regarding the functioning of governments in Bosnia; they can assist the commission in evaluating existing structures and providing options for those structures. It also will be vital for both the World Bank and the IMF to assist the commission in costing options—both savings and expenses of establishing new structures and carrying out a transition.

The political parties should pass the constitutional amendments the parties agreed to before the election.

Citizens need to understand what actions will be required of their government if it is to meet the EU requirements.

An online edition of this and related reports can be found on our Web site (www.usip.org), together with additional information on the subject.

Notes

1. See www.venice.coe.int/site/main/presentation_E.asp.
2. European Commission for Democracy through Law (Venice Commission). *Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative* (Venice: March 11, 2005), paragraphs 20, 26.
3. See www.ec.europa.eu/enlargement/enlargement_process/accession_process/index_en.htm.
4. Bosnian TV Hayat, "Korak Current Affairs Program," November 8, 2004 (in Bosnian, Serbian, and Croatian).
5. BH Radio 1, "Jelena Kusic Reporting for BH Radio 1," November 22, 2004 (in Bosnian, Serbian, and Croatian).
6. Miroslav Vasilij, "All Croat Parties Agree on Abolishing B-H Federation." *Vecernji List*, October 18, 2004 (in Croatian).
7. Alenko Zornija, "Bosnian Serbs Once Again Threaten to Secede." *Vjesnik*, September 29, 2004 (in Croatian).
8. The PILPG's chief representative throughout the process was Meghan Stewart, who oversaw all of its support work and traveled to Bosnia regularly to attend working group meetings.
9. The Carnegie Endowment for international Peace, the Swedish International Development Cooperation Agency, and the governments of Norway and Switzerland provided generous financial support, without which the process would not have been possible. A number of others in BiH and the United States also contributed to the functioning of the process.
10. H. Orahovac, "Five of Nine Committee Members Against Amendments?" *Dnevni Avaz*, April 12, 2006 (in Bosnian).



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