



## FINAL ANALYTICAL REPORT

### On Constitutional Building Processes in Bosnia and Herzegovina

By  
Senad Slatina

This final analytical report summarizes the finding of a six-month period of monitoring of constitutional building processes in Bosnia and Herzegovina. It aspires not only to present what has been discussed in this period in terms of possible constitutional changes but also to point to the most likely ways that constitutional debate will evolve in the future.

#### **Political Background**

Current Constitution of Bosnia and Herzegovina (in further text Bosnia) is an integral part (Annex Four) of internationally sponsored peace settlement known as General Framework Agreement for Peace in Bosnia (or shorter the Dayton Peace Agreement - DPA), which ended the war in Bosnia in late 1995. Being the part of the political *deal* to end the war, the Constitution has reflected in its provisions both military situation and political will that existed at the time of the end of war. In search for compromise acceptable for all, moderating parties – in particular the United States administration – offered the settlement that was supposed to anger and please to similar extent both major sides, those who strived to preserve state of Bosnia and those who wanted it to fail or even disappear.

Thus, a weird constitutional structure was adopted with a very few and weak state-level institutions and with two-entities that have had almost all prerogatives of sovereign states (police, military and intelligence services included).

This was perhaps the only possible solution at the time and it certainly served its main purpose of stopping the war. However, while DPA was a solid foundation for peace making, it soon became obvious that its provisions – particularly those in its Annex Four – were not good base for development of functional state in Bosnia.

It became obvious that Dayton Constitution of Bosnia has given primacy to ethnic rights and ethnic ruling to the extent that was almost negating any citizen-centered political development. Instead of serving to heal the wounds of past ethnic conflicts and correct the wrongs they established, the Constitution was only perpetuating them. Provisions on electing Presidency members to a collective Head of State, for example, have favored not only ethnic exclusivity (a citizen as such can not be member of Presidency, (s)he needs to be a member of one of three

ethnic groups to be elected) but in addition have prescribed specifically that members of presidency can be elected only from territory of entity where their ethnic group was in majority. Provisions on elections of members of Council of Peoples were equally segregationist, and it soon became obvious that they were violating international norms in domains of human rights. Constitutional building process (CBP) has started very early on after the DPA was signed. The essence of all attempts at changes the Constitution was the premise that for Bosnia to function as self-sustaining state some shifts of competencies from entity to the State are necessary. Yet, local partners – particularly members of ethnically based political parties – were incapable to reach any consensus on changes on their own.

The only base for changes of Constitution was provided in constitutional text – it could happen if two thirds of delegates of Parliament of Bosnia would support changes. Yet, overly complicated structure, ways of electing members into the Parliament, manners of Parliamentary procedure and its voting have effectively prevented any locally initiated debate on constitutional changes in Bosnia. For a proposal on any changes to the Constitution to come to the delegates of Parliament it needs to pass the Commission for Constitutional affairs, which was comprised of members of three major ethnic groups and their respective nationalistic parties, who could have never agreed to support any proposal and to pass it to the Parliament.

The Dayton agreement, however, has inaugurated the institution of the Office of the High Representative (OHR), which was given authority of final interpreter of provisions of the Dayton agreement and which was tasked with civilian aspects of implementation of the peace agreement. Yet, even with rather strong authorities for intervening in political processes in Bosnia, the OHR was not there to change Constitution, since it was the part of a peace settlement. By its definition, OHR was there not to change it but to assure implementation and functioning of the peace agreement (and within that task, the Annex Four of that agreement).

An important milestone in CBP in Bosnia happened through decisions of the Constitutional Court of Bosnia in 2000. When the Dayton Agreement was signed (and within it Constitution of Bosnia) it prescribed that entity constitutions - which were much more segregationist in its provisions and which made two entities almost exclusive territories for members of only dominant ethnic group(s) - need to adjust their provisions to those of Constitution of BiH within two months of the signing of Agreement. Since that has not happened, a procedure has been launched at the Constitutional Court of Bosnia (the Court is comprised of nine judges, six that are elected by entity parliaments – and they are always two Bosniaks, two Croats and two Serbs, and three foreign justices by the European Court of Human Rights). In July 2000 this Court ruled that entity constitutions were not in line with the State Constitution and ordered their adjustments so that each citizen and each member of any constituent peoples enjoy equal right in any part of the territory of Bosnia. Regardless of the fact that they were ordered by the Constitutional Court these changes could not have been adopted in entity parliaments and thus were imposed by the OHR in spring 2002 (OHR could have imposed changes in entity constitutions since they were not part of the DPA. OHR could not, however, impose changes to the Constitution of BiH).

Although they tackled only entity constitutions, these changes represent indeed a milestone since they provided foundation for further alterations of constitutional framework in Bosnia.

### **Stakeholder Analysis**

As Dayton Constitution established an ethnicity-centered politics as major modus operandi in processes in Bosnia, ethnically based political parties became most important among local political actors. In most of post-war elections ethnically based parties established themselves at all relevant positions in executive, legislative, and judicial branches of power. It appears that without their consent no constitutional changes can be possible.

#### Serb political parties from Republic of Srpska

There is no much, if at all, difference between political parties from Republic of Srpska (RS) concerning possible changes of Constitution of Bosnia. All of them defend the wide autonomy that RS was given by the Dayton Peace Agreement. Their strategy is to try to preserve the maximum possible autonomy for RS if it is to stay within state of Bosnia. Parties from RS have understood in past period that they could not openly seek the break up of Bosnia and joining of RS territory with Serbia. However, when the first convenient occasion arose with discussions on possible independence for Kosovo, public figures from RS have openly threatened that they are going to seek the independence for RS as well.

Serb political parties from RS have not proposed any changes of Constitution of Bosnia. In all debates in Parliamentary Committee for Constitutional Issues representatives of these parties have always blocked any initiative toward changes of current constitutional setup.

#### Croat political parties from Federation of Bosnia

Croat political parties are also unanimous but toward opposite directions – all of them want the change of current constitutional framework. Croat political elite have been dissatisfied with its share of power at the State, but – it seems more importantly – at the entity level. As smallest of three peoples in number, Croats want to protect its status of equality with other two constituent peoples by mechanisms that guarantee that equality in all aspects. “If Serbs have their own entity, why such privilege is denied to other peoples in Bosnia”, Croats’ leaders often publicly ask. While they retain strong emotional ties with Croatia, they have abandoned its war-time separatist ambitions and reconciled with the notion that the Bosnian state is there to survive.

The main Croat political party in Bosnia, the Croat Democratic Union (HDZ) in constitutional debate supports the idea of a decentralized state with three main levels of authority: 1. state, 2. regions, and 3. municipalities. They insist that there should be three or more federal units comprising the middle level of organization. The HDZ has not specified territorial delineation of these units, nor has it stated whether there should be more than three. It contends, though, that a state with only two entities is not acceptable as long-term solution for Croats in Bosnia.

Some intellectuals close to HDZ propose partition of Bosnia into three republics, each with a national majority. Three republics would be multinational, but in each of them one of the constituent peoples would be numerically predominant. Sarajevo would preserve its status of the state capital, but as a capital-district. The only way to achieve this, these sources say, is through a new international conference on Bosnia.

#### Bosniak parties from Federation

Bosniak political parties, and most of nominally non-nationalistic, but dominantly Bosniak parties support the two layer organization of Bosnia: with central institutions at the top and municipal administration at the bottom of the scheme. As second best option they allow that there could be another, regional layer of regional administration but that the regions can not be formed on ethnic criteria.

First and preferred model is defined as a state organization with a strong, centralized state authority and municipalities as basic administrative units of local self-government. It secures simple, inexpensive state with only two levels of administration. This model would simplify the decision-making process and would be consistent with pre-war experience in Bosnia. Yet, this model brings risks of outvoting, makes co-ordination between state and numerous (over 100) municipalities very problematic, and perhaps most importantly fails to offer persuasive guarantees that three peoples would have equal rights in such organization. There is no support from any Serb or Croat party to this model.

Second best model for political elites stemming from Sarajevo is regionalization, a system that implies territorial organization of the state based on regions as administrative units of intermediate-level government. The main criteria for their establishment could include demographic, economic, transport, geopolitical, cultural and historical factors. Regions provide a simple model for a relatively decentralized state with three levels of government: state, region and municipality. Yet, there is no recent historical experience with regions and it would be difficult to establish them.

In both models described here, the state level would have only those prerogatives that are necessary for a sovereign State, while at lower layers – municipal, or regional and municipal – would be all other authorities.

#### Citizens' associations and NGO's

Different, both domestic and international, NGOs and other citizens' groups have suggested proposals on new constitutional framework that would be citizen-centered and not ethnically based. However, none of such proposals received any serious attention in decision making institutions dominated by personnel from major political parties.

#### International Community in Bosnia

Having realized both that the foreign stewardship over Bosnia can not last indefinitely and that with current Constitution Bosnia would never be self-sustainable state, main international agencies in Bosnia have also started participating in or even facilitating and orchestrating the debate on Constitutional changes in Bosnia. Among many different initiatives, two projects were of especial importance: one run by Council of Europe's Venice Commission, and second run by the US Administration.

In March 2005 the Venice Commission issued its "Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative", which represented the most authoritative call on the need for constitutional change if Bosnia is to proceed towards

membership in the EU. The Venice Commission concluded that, “With respect to the EU, it is unthinkable that Bosnia can make real progress with the present constitutional arrangements.” Current arrangements, in opinion of Venice Commission, lack democratic content and are neither efficient nor rational.

As a short term measure, in order to make European integration possible, the Venice Commission has suggested transfer of responsibilities from entities to the State. It has also urged streamlining of decision-making procedures, particularly in respect of the vital national interest veto, and reform of the provisions on the composition and election of the Presidency and House of Peoples. In the longer term, more thorough reforms will be needed to change the emphasis from “a state based on the equality of three constituent peoples to a state based on the equality of citizens”. In the end, Commission concluded, the people of Bosnia will need to decide if they want to replace a constitution imposed along with a peace treaty with “an entirely new Constitution which would enjoy full democratic legitimacy as the fruit of a democratic constituent process in BiH.”

The US Administration’s approach was much more pragmatic – it has taken to facilitate constitutional change by mediating discussions among key political parties in Bosnia. The meetings were focused on constitutional amendments required for Bosnia if it wants to become a serious candidate for EU membership. The goal of this initiative was to secure necessary majority that would back up minimal changes in Parliament and thus set a precedent for further changes in Constitution that will be necessary. American efforts in different forms started in April 2005 and have ended in April 2006 with the vote in Parliament. In the end, in mid March 2006, the project resulted in agreement of several political parties, representing all ethnic groups living in Bosnia, to back up changes relating to state level institutions. This has become the only relevant proposal for constitutional changes but Parliament in its historic vote on 26 April 2006 failed to secure two-third majority that would back this proposal.

**What is important to notice here** is that with skilful mediation provided by the US embassy in Sarajevo, leaders of seven political parties have reached the agreement on a set of constitutional changes acceptable to all sides. The idea was that this achievement should be only a first step and that negotiations would continue on further changes that go deeper into lower levels of organization of Bosnia.

Regardless of the fact that American presence has played important or even critical role, representatives from key political parties have engaged into the process and occasionally looked genuinely ready to consider arguments that opposing side would present. This is an interesting phenomenon of political hypocrisy in Bosnia - representatives from mutually hostile parties are civic and engaging in discussions in presence of important foreign moderators, whereas alone they fail to negotiate and commit to any compromise. This is how some truly amazing achievements have been made in reforms of defense, intelligence or indirect taxation. It appears that if any new constitutional setup is to be achieved any time soon, this model will have to be replicated again.

Yet, opponents to the deal thought that achievements made in this phase of constitutional changes were not sufficient to provide for self-sustainable Bosnia once the international community relinquishes its stewardship over this country. They thought Bosnia needed more thorough changes.

The debate in Parliament during which the set of proposed constitutional changes was rejected can serve as a useful guidance on major angles of thinking on this issue in Bosnia.

Sarajevo-based and dominantly Bosniak parties SDA and SDP promoted the agreement as significant step toward strengthening authorities of the state and a model supported by the whole international community which will accelerate Bosnian journey toward Euro-Atlantic structures. They have invited all those opposing the deal to propose something better if they are to reject the proposal.

Political parties from RS expressed their support to the deal, but refrain from any passionate advocacy of it.

Opposing parties' representatives have, however, skillfully pointed to the essential shortcomings of the deal, particularly the so called entity voting system, by which all decisions of State Parliament can be blocked. They have pointed that entity voting is redundant and politically dangerous. It is redundant because if it is national interests that it should protect, those interests can be protected in House of Peoples. It is politically dangerous, opponents have noted, because entity voting is protecting and cementing the entity organization of Bosnia. In any other phase of debate it will not be possible to discuss entity organization of Bosnia if entity voting is kept intact, they pointed out.

As stated earlier, during the vote on 26 April, the proposal did not get necessary majority. The whole process came to an impasse.

## **AFTER AMERICAN INITIATIVE FAILED**

After the failure of the American package in Parliament general political situation in Bosnia has deteriorated - there are serious misunderstandings about further reforms, radical political demands have re-emerged and debate on constitutional changes has departed from influential political elites into domain of non-governmental organizations and liberal intellectuals.

For the debate itself this development may even be beneficial since some truly new, honest and politically courageous ideas have emerged. Yet, the decision making on possible changes and formulation of a coherent set of changes has certainly been significantly delayed.

### **Political deterioration**

Negative vote on constitutional change in Parliament has marked the beginning of several politically negative trends in Bosnia, all of them being related to Bosnian constitutional structure and divisions of authorities between the state and entity institutions. First problems to come to surface were those related to the police reform. Prepared for long time this reform has been understood to imply shifting of authorities in police from entity to the state level. Authorities of Republika Srpska have from the day one opposed to this idea. However, in October 2005 they have supported the general framework for further reform in this area, which specified that authorities and financing of police will shift from entity to the state level. However, RS authorities have now started disputing this interpretation on the end-result of police reform and

insist that police has to remain entity competence and that Ministry of Interior of RS can not diminish its competences over police.

Skirmishes have also started between entities and state over the distribution of revenues collected at joint single account, which started operating from January 2006, and which presents perhaps one of the most important reform in Bosnia in its post-war reconstruction. In the past entities have had full sovereignty in revenue collection and distributions. State level institutions in that regard have been hostages of entities and depended on the mercy from entity budgets. Since successful finalization of the reform in indirect taxation and since introduction of the Value added taxes (VAT) all revenues are being collected on one single account and then from that account being distributed in accordance with pre-arranged quotas to final users. Important difference in comparison to earlier period is the change in priorities for distribution – it is now state institutions that are being paid first, prior to entity institutions. Government of RS has started making serious allegations that the established model is to the detriment of RS and threaten to reconsider its support for the reform of indirect taxation.

Furthermore, leader of the strongest political party in RS, Milorad Dodik, has announced that his party will condition any further constitutional arrangement with demand that it includes the right for referendum on self-determination including the right for secession. Dodik thinks that Bosnia needs to be organized as federal state with current RS as one federal unit, which would have right for secession. He pointed that international community currently does not allow referendum, but that it does not mean that it will not allow it at some point in the future.

International officials have condemned Dodik's statement, but in much milder fashion than it would have done in the past in similar situations. Enlargement Commissioner Olli Rehn said that referendum was "not good idea", while principal deputy High Representative Larry Butler said that there will be no referendum as long as there is Office of the High Representative (OHR) in Bosnia.

Both Dodik's statement and initial international responses were harshly criticized in Federation of Bosnia and Herzegovina. Calls for referendum and secession from Bosnia represent in essence continuation of the war time politics, these critiques say, and should have been condemned in strongest terms. Butler's statement have been subject of several critiques by prominent commentators who wondered what kind of message that should be if it is well-known that OHR will close down in mid 2007.

In Republika Srpska, however, mentioning the idea of referendum has received a wide popular support. Dozens of NGO groups, as well as most of other political parties have embraced the idea, and have started collecting signatures for referendum to be officially discussed in Parliament of RS and for date for it to be set. The referendum issue is likely to linger in public debate and may come to its climax at the time when Kosovo final status be announced.

### **Council of Europe**

In June additional important events took place that both may have serious implications on constitutional building process in Bosnia - Resolution by the Council of Europe and announcement on the concrete date for closure of the Office of the High Representative.

Parliamentary Assembly of the Council of Europe (CoE) on 29 June 2006 adopted the Resolution on Constitutional reform in Bosnia and Herzegovina in which it called for substantive changes in Bosnian constitution that would move from a system based on ethnic representation to a system based on representation of citizens. The resolution caused totally opposite reactions in two Bosnian entities: with parties and elites from Federation commending it, while parties from Republika Srpska (RS) strongly condemning it.

The Resolution expressed regret that package of Constitutional amendments, prepared with assistance of US administration, failed to get support of two-third majority in Parliament in April 2006. Curiously, CoE document mentions that this package may have not been either comprehensive or far-reaching, which is a first instance that a reputable international institution questioned the quality of the US brokered proposal.

CoE invited Bosnian political elites to reopen constitutional reform discussion immediately after the general elections, and if they decide to do this on the basis of the proposals agreed upon so far, to eliminate at least the entity voting in the House of Representatives and to define more precisely the vital national interest and the related veto mechanism. To this goal, CoE urges Bosnian Parliament to take into account all the different recommendations made by the Venice Commission.

As a second step, CoE recommends by its strongly worded document, that authorities in Bosnia should by October 2010 at the latest draft and adopt a new constitution. This suggestion is a resolute call to abandon Dayton Constitution and come up with totally new charter for Bosnia. Among numerous proposed changes, the new constitution should: review territorial organization of Bosnia and its division into entities, cantons and municipalities, replace ethno-centric policy with system focused on interest of individual citizens, and simplify decision-making procedures with a particular focus on what is and what is not a vital national interest that requires consensus of all constituent peoples. The resolution also calls on domestic political elites to consider introducing a state level Supreme Court.

### **OHR Closure**

The second event that may prove very relevant for a long-term process of constitutional debate in Bosnia was a Peace Implementation Council (PIC) meeting in Sarajevo on 22 and 23 June 2006 at which a concrete date, 30 June 2007, was announced as the date when the Office of the High Representative (OHR), the key international agency in Bosnia, shall cease to exist.

This decision came in the midst of deteriorating political trends in Bosnia – blockage of police reform, problems in implementation of tax revenue distributions, referendum on cessation of RS. Despite of all this, international community is obviously announcing a major shift in its thinking and replaces its current approach of linking possible withdrawal with processes on the ground, and setting instead - an exit date. The decision on “30 June 2007” will be reviewed once more in February next year, but chances that it changes are very thin.

From the internal OHR documents it is visible that OHR is not only determined to close its doors on 30 June next year regardless on the situation on the ground, but also not to engage decisively



in any major reform in last months of its life span. OHR will have to spend these critical twelve months mostly on the technicalities of its shutdown. When it comes to constitutional reform, OHR will merely try to revive a set of amendments that failed to get the required two-third majority in the Bosnian parliament earlier this year.

This is essentially an announcement that any major constitutional reform in Bosnia will need to be organized by local stakeholders alone, without leadership or initiative of international actors. Although very fair and stimulating on the first sight, this approach in prevailing political atmosphere will most likely leave Bosnia to suffer with Dayton constitutional model for quite some time. The past experience shows that local initiatives on constitutional changes – no matter how progressive they might have been – stand no chances to be approved in Parliament, almost exclusively because parties from RS are not ready to verify any constitutional changes that would sacrifice entity sovereignty to the sovereignty of state. This will be even less likely to expect amidst seriously deteriorating trends both in Bosnia and in wider Balkan region.

Announcement on OHR's closure, same as CoE resolution, incited totally opposite reactions in two major political clubs: while parties from RS have praised it, parties in Federation of Bosnia expressed serious concerns over its possible consequences.

### **Debate in NGO groups and among intellectuals**

Reacting to announcement on closure of Office of the High Representative (OHR), Center for European Integration Strategies (CEIS), a NGO with offices in Geneva, Vienna and Sarajevo, has published the policy brief heavily criticizing the way how the closure of OHR is being planned and warned on possible consequences. The brief points to awkward timing of such decision – it comes at the moment when inside BiH international community has started replacing the hard power of the Bonn mandate with the soft pull of European integration, while outside of BiH, the EU itself has proved to be deeply divided over the prospect of admitting additional poor and troubled countries. Beyond a generic commitment to eventual membership of all the states of the Western Balkans, Brussels has failed to develop a true vision for the region, and for the region's place in an enlarged EU. Considering this worrying wider trend, and many potentially frightening regional and domestic tendencies, this briefing has called on new constitutional changes and official declaration on protection of borders in Bosnia.

This initiative calls for urgent, short term constitutional improvements that go beyond what was planned by US-moderated proposal, which failed to attract necessary majority in April. It calls on dropping provisions on entity voting and on changes of current names of BiH's two entities. Current names are unconstitutional, discriminatory, or simply nonsensical. Replacing these designations with less charged and less illogical names would reinforce the thrust of the other constitutional changes and signal that Bosnia is leaving the wartime thinking behind, the CEIS briefing said. These changes would need to happen while the OHR is still around, or else it may never take place.

Second major idea of the brief was a call for signing a declaration on the inviolability of the international borders of BiH, which would be deposited with the UN, EU, and NATO. Such a

document, to be signed by the heads of state of Bosnia, Croatia, Montenegro, and Serbia, would have a calming effect both within Bosnia and in the wider region.

In reactions to this briefing OHR said that there were some valuable initiatives in there, but dismissed the need for declaration on the inviolability of BiH's borders, saying that there are already sufficient guarantees on that.

### **Debate on Consociation Model for Bosnia**

In most of domestic public discussions the debate focused on the applicability of the consociation model for Bosnia's future constitution. The key issue here is what should be the starting point for future constitutional setup: current political situation (arranged by recent war and ethnic cleansing), or some other, earlier existing (or wished to have been existing) situation in which peoples living in BiH were not so much obsessed with national homogenization.

Some commentators say that consociation is only a nice name for ugly idea of partition of BiH. They criticize promoters of consociation model since they justify their ideas with, as they say "historical realities", which point that Bosnia's past has consistently proved that that state has always had three separated histories, societies and cultures. Critics of this thinking say absolutely contrary – that Bosnia's is full of examples of ethnic co-existence, and the sole culprit for current partition is recent war and its results.

Is Bosnia living its last days, one of prominent intellectuals has publicly asked. Does not the debate on consociation in its essence mean negation of multi-ethnic Bosnia? Is consociation a democracy at all? If consociation model for Bosnia should be in its essence the system of exclusive ethnic representation, which coincides with religious identities, then it is a disastrous model for Bosnia, another intellectual pointed.

Yet, proponents of consociation model say that consociation should not be looked at as an ideal solution for Bosnia, but rather as the only one for stabilization of political system in Bosnia.

Prominent professor of Sarajevo University argued that the current system, imposed by Dayton accords, is in fact a consociation model. Another opinion former called on answering what gives the sovereignty to Bosnia or what subject(s) are there to take away the legitimacy of that country. Are those subjects peoples, nations, citizens, political elites, intellectual elites or international community? Who is to set parameters of design of this state? He suggested that in most of multi-national states, ethnic groups have the sense of belonging to a wider state only because the wider state acknowledges and respects their own, particular national existence.

Intellectuals pointed to a reality of today's Bosnia, which presents a deeply partitioned society. Anyone thinking on future for Bosnia should not pretend otherwise, run away from reality and then outside reality construe some projections and illusions on what reality is or should be. That is happening in Bosnia on daily basis and a reader of newspapers can recognize such phenomenon in any discussion on future constitution of Bosnia. Politicians in particular construe some desirable projections, which – and that is the key point – can not be realized. When

somebody in such atmosphere suggests that we should put the veil from our eyes off, that one is immediately declared an enemy of Bosnia.

Yet, some intellectuals point that there is no end to decentralization of Bosnia and that process is becoming absurd with further calls on consociation model. Bosnia is the most decentralized state today in Europe, and it should remain such. However, its decentralization needs to have a sense and reason, and it needs to be such for the benefit of all its citizens. Senseless decentralization has no reason. If we are to implement consociation community we need to secure application of principle of unconditional tolerance, as guiding principle of political behavior in Bosnia. Yet, we can't be farther from that. In Republika Srpska there is not a single political force that would accept any discussion on territorial decomposition within that entity, and Bosnia is doomed to look for new arrangements only for 51 percent of Bosnian territory. It is important to realize that there is a precondition that needs to be met in order for consociation to be successful model and that is that political elite, which represent consociation groups, would have to reach consensus on common state. Bosnian political elites could not have reached such compromise for more than 15 years, though they have worked and lived in a form of ethnic consociation. In other words, the consociation experience negates the consociation as a right solution for Bosnia. The consociation in this radical, post-conflict environment has not created the feeling of political belonging to a community. The consociation would reduce and block development of any other, but ethnic identities in Bosnia.

### **Debate in political circles**

Outside focused and polite debate in academic community, in the world of politics constitutional changes have become one of the key topics in electoral campaign and after elections held on 1 October, and some truly hostile remarks have been exchanged between main political players.

Reacting to repeated threats with referendum on independence of Republika Srpska, the head of largest Bosniak political party, Sulejman Tihic said that those in Republika Srpska who promote such scenario should stop deceiving its public since such ideas are never to be realized.

“Those who still dream of the Greater Serbia project or some sort of a Serb state in BiH can go somewhere else, but cannot take with them or usurp a single piece of BiH“, Tihic said. The message infuriated politicians from Republika Srpska, who interpreted it as call for expulsion of Serbs from Bosnia.

Prime Minister of Republika Srpska Milorad Dodik continued with threats of referendum and with threats that competences that have been removed from entity to the state level during the tenure of earlier High Representative, Lord Ashdown, should be returned back to entity. Asked what if such stance leads to suspension of Stabilization and Association Agreement, RS PM Dodik said *“let them be suspended, so what”* adding if *“we could have lived without Europe until now, we will be able to live without it for another ten years”*, during which time the EC composition would change and perhaps its stance would change as well.

A truly important event happened when the international supervisor for Brcko district, Susan Johnson, made the decision that entity laws can no longer be applicable on the territory of district Brcko. In the context of current affairs, it meant that referendum of Republika Srpska – if at some

point government of that entity would organize one – would not be applicable in Brcko district. Bosniak and Croat political representatives have praised the decision, while Serb leaders denounced it as creation of third entity in Bosnia.

Stronger and stronger critiques of the work of the Office of High Representative (OHR), keep being published by prominent and concerned Bosnian commentators. They point to fallacies of the thesis that without OHR Bosnia will slow down its path toward European Union, a thesis that is being used heavily in preparations of final OHR's departure from Bosnia. The issue is not how fast will Bosnia get to the EU, but how fast this country will get into total political, institutional and security chaos, commentators point. Without OHR Bosnia is much closer to total lawlessness and - in the end - to new war, than to Europe. To those who have lived in Bosnia long enough to learn the patterns of political behavior the scenario is already discernable: first there will be a withdrawal of Serb representatives from all state-level institutions, then Republika Srpska parliament will vote to get back all competencies that in earlier reforms had been shifted from entity to the state, and then the referendum will be organized. The real dilemma thus is not OHR or EU, but OHR or total chaos, commentators warn.

## **Conclusion**

Dayton agreement has never meant to be the last word in creating a sustainable state. Status quo is really not an option. Bosnia such as designed by the Dayton Constitution Bosnia can not move further on in its path toward European integrations and can not secure efficient system of governance. The time of substantive international withdrawal from Bosnia is rapidly approaching, and informed discussions on what are the best constitutional options are still needed.

Although starting position of two main opposing blocks in local political elites are opposite there are important common grounds. The most important one is that neither side ever considered the violence even as a final option to secure its approach. Both side are committed to negotiated way of reaching some sort of acceptable compromise. Two sides remain pretty much attracted by the idea of further European perspective for Bosnia. Yet, without any tangible benefits some leaders in Republika Srpska have started questioning and challenging this common premise. Third, and very important common characteristic is unconditional respect for mediating role of the United States. While EU approach may have occasionally been mocked by certain local leaders it is noticeable that American officials enjoy unquestionable respect by all sides in Bosnia. The role of the United States, the international actor that secured the piece for Bosnia, remains indispensable in any substantive alterations of Bosnian constitution.

All that is presented in this report spells out the most logical and pragmatic way ahead in further constitutional building processes in Bosnia – an interested and professional mediation by the United States and European Union (with some tangible political rewards prepared for success of the whole mission) among the local political partners in Bosnia. Although it looks simple, it won't be easy. Although it does not look promising at the start, it is not without chances of reaching a long-lasting and good deal.