



Bosnia and Herzegovina's Hot Summer

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What's new? Ahead of Bosnia's elections, two of its main communities, Bosniaks and Croats, are caught in a bitter dispute over procedures for the vote. Christian Schmidt, a German politician who serves as Bosnia's international governor, or high representative, has threatened sweeping changes in election and other laws to resolve the crisis.

Why did it happen? Having long been wary of the high representative using his office's powers to overrule Bosnian leaders, several Western countries, including the U.S., now support such an intervention. Amid the uncertainty created by Russia's war in Ukraine, they fear that a disputed election could trigger a major crisis in Bosnia.

Why does it matter? The changes touch on long-disputed issues and affect the power balance between Bosniaks and Croats in one of Bosnia's two entities, the Federation of Bosnia and Herzegovina. Antagonism between Bosniaks and Croats could erode the country's ability to survive a separatist challenge by Serbs, the country's other main community.

What should be done? Rather than pushing ahead immediately, Schmidt could see if by threatening action he can nudge Bosnian politicians to avert a bust-up around the vote. If not, he should impose the changes necessary to avoid a crisis. External actors should make a post-election effort push toward farther-reaching reform.

I. Overview

Bosnia and Herzegovina's high representative – the international official overseeing implementation of the 1995 Dayton peace accords – has vowed to impose changes to the country's election law if local leaders fail to make the alterations themselves. The reforms affect the balance of power between predominantly Bosniak and Croat parties in the Federation of Bosnia and Herzegovina, the larger of the two entities into which Bosnia is split. They aim to resolve a lengthy standoff that has taken a nasty turn, with politicians threatening a return to armed conflict. The dispute must be settled for the country to fend off a secessionist threat by the Serb-majority Republika Srpska, the second of Bosnia's two entities. The high representative should test if, by threatening to impose his reforms, he can push Bosnian leaders to adopt the changes themselves or approach the vote in a way that makes them unnecessary. If

not, he should impose the measures needed for a credible election that would give Bosnians a chance to form a government afterward. Either way, the vote should set the stage for talks on deeper reform.

The high representative, Germany's Christian Schmidt, has proposed several reforms. One set would change how officials who represent the three "constituent peoples" – Bosniaks, Croats and Serbs – are elected in the Federation. It deals with indirect elections that take place about a month after the 2 October general election and see local bodies, or cantonal assemblies, select deputies for the upper house of the Federation's legislature. Broadly speaking, it would make it harder for Bosniaks, who enjoy a big majority in the Federation, to choose the deputies who should represent Croats and Serbs, and thus make it easier for the latter two groups to affect policy-making. That reform is broadly in tune with a recent Bosnian constitutional court decision and welcomed by Croats but opposed by Bosniaks. A second set of changes – seemingly partly designed to give Bosniaks something in return – would remove some instruments Croats have abused to block government formation and functioning. Combined, the reforms are balanced but sweeping, with unpredictable long-term effects.

That the high representative is poised to weigh in on Bosnia's legal architecture reflects the gravity of the crisis. While the election dispute itself is confined to one of Bosnia's entities, the Federation, the questions at its core involve issues deeply rooted in Bosnian political culture and jurisprudence that have defeated past attempts at compromise. Nationalist rhetoric evoking memories of the Bosnian war of 1992-1995 dominates the election campaign. Croat politicians, who say the status quo dilutes their say as an ethnic bloc, warn the vote will be illegitimate if the high representative fails to act. Bosniak leaders, for their part, fear that Schmidt's measure would weaken their hand and speak of preparing for renewed fighting if he follows through with it. Bosniak public opinion is aggrieved by a sense that Croats and Serbs are conspiring to make the country ungovernable. The bad blood between Bosniaks and Croats undercuts the united front they should present against Republika Srpska leaders, who over recent years have increasingly threatened to break away.

The foreign support that Schmidt enjoys also shows starkly how far the country has regressed. As late as the autumn of 2021, the outside powers who sit on the Office of the High Representative's Steering Board generally opposed Schmidt using the extraordinary "Bonn powers" that allow him to impose laws and appoint or dismiss officials. Indeed, Schmidt's 2021 appointment over loud opposition from UN Security Council members Russia and China cast doubt on those powers' legality. The exercise of governing powers by an unelected foreigner was justifiable by the legacy of Bosnia's war but that justification has faded as the conflict recedes into the past. Yet the secessionist sentiment in Republika Srpska, combined with Russia's invasion of Ukraine, has upended those calculations. Schmidt now enjoys the backing of the U.S. and several European states, which reason that he needs to use his prerogatives to prevent an escalating crisis.

While local leadership has clearly failed and the high representative's proposal is a final recourse, such foreign intrusion should be avoided unless absolutely required. A better outcome would be for Bosnian politicians to make use of Schmidt's delay to work out a compromise themselves. The high representative should see whether he can use his threat of reforms to that end, privately warning Croat and Bosniak lead-

ers that, if they do not change course, he will use the Bonn powers to stop them from taking advantage of the system. Bosniak parties would have to give up their attempts to poach crucial Croat seats, while Croats cease obstructing the Federation government's functioning. Schmidt's supporters, notably the U.S., should signal strong and unambiguous support for his gambit. If either side fails to act, Schmidt should push through the component of the reforms that addresses that behaviour. Ideally, though, both will back down and the vote pave the way for talks on wider constitutional reforms, essential for avoiding repeated crises in the years ahead, that would supplement or supersede Schmidt's proposals.

II. Backdrop to the Election Dispute

The electoral dispute between Bosniaks and Croats occurs against the backdrop of not only three decades of post-conflict dysfunction and gridlock, but also growing secessionist sentiment among Bosnian Serbs and months of increasing activism by the Office of the High Representative.

The 1995 Dayton peace accord imposed an unwieldy constitution that structured Bosnia and Herzegovina (hereafter, Bosnia) around two autonomous entities – a larger Federation of Bosnia and Herzegovina (hereafter, the Federation) and the smaller Republika Srpska (RS) – and three constituent peoples (Bosniaks, Croats and Serbs). Dayton created a weak central state, giving the entities and the peoples extensive powers.¹ It was to be governed from the national capital, Sarajevo, by a bicameral parliament and a three-person collective presidency comprising one Bosniak, one Croat and one Serb member. The national government had limited powers while the entities were responsible for justice, most policing, taxation, education, health care, defence and security.

Such a minimal state was probably too weak to survive for long. It was impossible for a leadership drawn from wartime factions to agree on much. In response, in 1997, at a meeting held in Bonn, Germany, the Peace Implementation Council, a group of 55 states and agencies helping manage the peace process, endowed the high representative, the official responsible for seeing through the Dayton accord's civil aspects, with broad governing authority (known as the Bonn powers).² Over the next several years, successive high representatives used these powers with increasing effect and transformed the country. Much of the time, they catalysed Bosnian leaders to act on their own. On some occasions, however, high representatives acted themselves – to remove and appoint leaders, to amend both entities' constitutions and to enact important laws, including one creating a state court. Bosnia's Constitutional Court reinforced these changes.

Not surprisingly, this degree of foreign intrusion proved divisive. In general, Sarajevo welcomed it and wanted it to continue, but Croats and Serbs tended to be at best

¹ One of these is the entity veto. Two thirds of either entity's representatives can scuttle any legislation without recourse. Another is the vital national interest veto. A majority of any constituent people's representatives can block a law, though the Constitutional Court can override the veto.

² "Bosnia and Herzegovina 1998: Self-sustaining Structures", communiqué, Peace Implementation Council, 10 December 1997.

ambivalent, at worst angry and hostile. Moreover, the vesting of so much power in an unelected outsider became increasingly controversial over time, and not just inside Bosnia.³ RS officials showed they were willing to go to the brink to resist laws enacted by the high representative, who ceased using his powers from mid-2011 until July 2021. The Peace Implementation Committee's Steering Board, the body that appoints and advises the high representative, supported his decision to refrain.⁴

This hiatus ended in July 2021, when outgoing High Representative Valentin Inzko imposed a law setting criminal penalties for, among other things, denying genocide established by Bosnian or international courts. This law was mainly about the 1995 Srebrenica massacre of 8,000 Muslim men and boys by Bosnian Serb forces, which the International Criminal Tribunal for the former Yugoslavia in The Hague repeatedly characterised as genocide. Many Serbs acknowledge that Srebrenica was a tremendous crime but not that it amounted to genocide. A vocal minority celebrates the killings and their perpetrators. Serbs reacted furiously to Inzko's law, with the main Serb-majority parties denouncing it and boycotting Bosnian state institutions. Their actions were the start of a fresh campaign to redefine, or possibly secede from, Bosnia and its political system.

While the Serbs were launching what looks like a slow-motion breakaway attempt, a simmering dispute between Bosniaks and Croats over elections in the Federation began to boil over. This dispute has poisoned relations between the two groups and damaged governance at the entity and national levels. Unless resolved, it looks set to overshadow the October vote. It also undercuts hopes that the Croats and Bosniaks might present a united front against Serb separatism. Indeed, it has had exactly the inverse effect, drawing Croat and RS leaders together in mutual opposition to Sarajevo. Over the past several years, they have cooperated in blocking legislation and in pushing one another's agendas, though Croats stop short of supporting actual Serb secession.

While the RS's moves toward secession slowed to a near-halt after Russia invaded Ukraine on 24 February, as Banja Luka watched its main backer punished by unexpectedly harsh and swift sanctions, independence remains the Serb leaders' long-term goal.⁵ The lull could well end at some point soon. Most of Bosnia's foreign partners want to see this irritant in Bosniak-Croat relations removed by then.

³ In 2005, the Council of Europe's Venice Commission issued a damning report saying the high representative's powers were "fundamentally incompatible with the democratic character of the state and the sovereignty of [Bosnia and Herzegovina]" and warning of "a strong risk of perverse effects: local politicians have no incentive to accept painful but necessary political compromises since they know that, if no agreement is reached, in the end the High Representative can impose the legislation".

⁴ The Steering Board is composed of Canada, France, Germany, Italy, Japan, the U.S., the UK and the EU, with Türkiye representing the Organisation of the Islamic Conference. Russia is technically also a member but since July 2021 no longer participates in the meetings.

⁵ Crisis Group interviews, international officials, Sarajevo, June 2022. See also Crisis Group Europe Report N°265, *Managing the Risks of Instability in the Western Balkans*, 7 July 2022.

III. The Dispute Itself

At a political level, the Bosniak-Croat electoral dispute is fundamentally about who gets to control the Federation and the linked question of who determines the nation's leadership. Unlike Bosniaks and Serbs, Croats form the majority in neither the Federation nor RS, making it more difficult for them to protect their interests at both the entity and national levels. They are at a disadvantage vis-à-vis the other two constituent peoples and feel a sense of grievance. Bosnian Croats, led by the Croatian Democratic Union (HDZ), seek to address the imbalance through changes to electoral rules that would give them a greater say in Federation governance, but they have been unable to reach agreement with the entity's Bosniak-led parties.

For both Bosniaks and Croats, control of the Federation's government institutions represents high stakes. The country is highly decentralised, and the Bosnian national government has a modest budget. The Federation, Bosnia's better-off half, has a budget over four times larger and oversees thousands of sought-after jobs in public companies, health care, education and other fields.⁶ Bosniak and Bosnian Croat parties alike see control of a portion of its government as the most important political prize.⁷ Much as in the rest of Bosnia (and indeed much of the Balkans), Federation elections tend to see politicians appeal to voters' fears that their patrons will lose to another group's leaders, who will dole out jobs and contracts to their own clients. Bosnian politicians from all sides agree that most parties practise clientelism and skirt the law to benefit favoured groups, making this anxiety not unreasonable.⁸

Federation polls are particularly fraught because control of the Federation hinges on one or two swing seats in the entity's upper legislative chamber, the House of Peoples. House members group along not only party but also ethnic lines, with each of the three officially recognised "constituent peoples" having its own seventeen-member bloc, or caucus. Two thirds of an ethnic caucus – so, twelve members – can block important decisions, including those related to government formation. The key seats are in the House's Croat caucus, because Bosniak-majority parties have had some success enlisting Croat politicians to affiliate with them and getting them elected to that caucus. If Bosniak-majority parties can field Croat candidates and win six or more of the seventeen seats in the House of Peoples' Croat caucus, Bosniaks will be able to do legislative business without the input of Croat-majority parties like the HDZ. They will also be able to shut these parties out of top government positions at both the entity and national levels.

That Bosniak parties can get "their" Croat candidates into the House of Peoples owes to the chamber's indirect election system. Members are chosen by the Federation's ten cantonal assemblies. The seventeen members of each constituent people's House caucus are divvied up among the ten cantons. The Federation's constitution stipulates that each canton gets to elect at least one member of each constituent peo-

⁶ The 2022 Bosnia and Herzegovina budget is 1.07 billion Bosnia-Herzegovina convertible marks (BAM), or roughly \$548 million; the 2020 Federation budget (the most recent available) was 4.95 billion BAM, or roughly \$2.5 billion.

⁷ Crisis Group telephone interview, senior international official, 15 August 2022.

⁸ Crisis Group interviews, current and former Bosnian and international officials, Sarajevo and Banja Luka, June-July 2022.

ple's caucus, no matter how few of that people live in that canton (so even cantons with few Croats, for example, send a Croat to the House of Peoples). This provision slants seat distribution toward "smaller" cantons (those with fewer of a given people's voters), and it also allows Bosniaks to capture Croat seats. Take Bosnia-Podrinje canton. Only two dozen Croats (of a population of almost 24,000) live there. Parties backed mostly by the Bosniak majority thus always choose that canton's Croat delegate. Federation-wide, Bosniak-majority parties expect four or five seats along these lines in the Croat caucus, meaning one or two more would give them a blocking coalition. Competition for those extra swing seats is fierce.

General elections are held every four years, and 2022 is the second time that parties are disputing the rules governing the contest for House of Peoples seats. In 2016, the Bosnian Constitutional Court struck down the part of the election law that guaranteed at least one seat per canton to each constituent people but – because of the high stakes – the parties disagree about how to implement the ruling.⁹ Bosniak parties see it as an HDZ win, which in effect it is, and are reluctant to move ahead with it. Talks mediated by the U.S. and EU in the spring came close to securing agreement not to proceed. A compromise proposal won HDZ approval in late March but a Bosniak party (the Party for Democratic Action) held out, demanding reductions in the House's competences in return, so as to weaken the HDZ and shift the centre of gravity to the lower chamber, where Bosniaks hold a large majority.¹⁰ The HDZ rejected that further concession and walked out.¹¹ Rivalry for the Bosniak vote may be to blame, given the wariness among Bosniak leaders of appearing to compromise in the heat of a campaign.¹²

Against this backdrop, it seemed likely that the October elections would go ahead under a cloud of rancour, with aggrieved Croats poised to obstruct governance in the aftermath.¹³ The HDZ hinted darkly if vaguely that "the future of [Bosnia] would be in question".¹⁴ The party's options include refusing, in cantons it does control, to elect delegates to the House of Peoples, with the possible effect of denying that body a quorum and preventing it from meeting.¹⁵ The long-term effects of such a strategy are unclear, and the gambit may end up in court.

Certainly, there was reason to believe – as Bosnian and international observers worried – that the HDZ might throw a wrench into Bosnia's institutional machinery

⁹ Constitutional Court of Bosnia and Herzegovina, Case U-23/14 (2016), Decision on admissibility and merits ("Ljubić case"). The Court found that provision incompatible with the constitutional requirement of holding "free and democratic elections" (art. 1(2)), specifically the principle that "the right to participate in democratic decision-making is exercised through legitimate political representation, which has to be based on the democratic choice by those represented and whose interests are represented". See para. 49.

¹⁰ Crisis Group Report, *Managing the Risks of Instability in the Western Balkans*, op. cit.

¹¹ Crisis Group telephone interviews, European officials, September 2022. Some European observers believe that neither party negotiated in good faith, accepting proposals only when they were confident the other side would reject them.

¹² Ibid.

¹³ Crisis Group interviews, Bosnian and international officials, Sarajevo, Mostar and Banja Luka, June-July 2022.

¹⁴ Crisis Group interview, senior Bosnian Croat official, Mostar, 27 June 2022.

¹⁵ Crisis Group interviews, Croatian, Bosnian Croat, Bosniak and international officials, June-September 2022.

depending on how the polls played out.¹⁶ The party tends to block whatever it can, holding governance hostage.¹⁷ The HDZ won the key Croat swing seats in the 2014 and 2018 elections and parlayed its victory into control of four important ministries – finance, justice, health and education – at national and Federation levels plus in several cantons.¹⁸ By refusing to agree to a new government since 2018, the HDZ has kept its people in these ministries as caretakers. The HDZ also benefits from a network of cadres that lets its leader “run things from his villa in Mostar”, in the words of a veteran legislator, meaning that he can ensure that party members in government and civil service carry out his directives, even if the government itself is paralysed.¹⁹ A Bosniak member of parliament pointed out that the HDZ had joined the leading Serb party in voting against election reforms sought by the EU and since imposed by the Office of the High Representative.²⁰

Many Bosniaks chafe at having to share power with the HDZ, a party they view as little more than a “joint criminal enterprise” because of its wartime history and some its leaders’ alleged corruption.²¹ The idea of changing election rules just as their representatives are poised to gain a decisive upper hand is less than appealing. This sense of grievance is aggravated by Bosniaks being largely shut out of politics in RS, which is not subject to the same power-sharing arrangements as the Federation. That in turn is a reminder of wartime ethnic cleansing, because RS was once home to hundreds of thousands of Bosniaks who were brutally expelled and mostly have not returned. A leading Bosniak parliamentarian said her people cannot accept being relegated to “a quarter of the country” – by which she meant half of one of Bosnia’s two entities (the Federation).²²

Bosniak resistance to electoral changes in the Federation also reflects discontent with a central, hotly contested feature of Bosnian constitutional tradition: the status of Bosniaks, Croats and Serbs as constituent peoples. The phrase means that specific “peoples” or nations are the framers of the constitution and as such are entitled to equality with one another that does not depend on their relative size. It is a counter-majoritarian concept meant to protect smaller groups – in this case Serbs and Croats – from domination by the biggest, the Bosniaks (who comprise just over half of the population). The Bosnian Croats, as the smallest “constituent people” at 15.4 per cent, invoke the concept most insistently. Serbs, with 30.8 per cent, also support the idea.²³

While rooting Bosnia’s political system in the concept of “constituent peoples” has proven contentious, notably for Bosniaks, that concept is now entrenched in the country’s political culture. While meant to prevent a plurality or bare majority from rid-

¹⁶ Crisis Group interviews, EU and Office of the High Representative officials, member of Bosnian presidency staff, member of Bosnian parliamentary assembly, Sarajevo, June 2022.

¹⁷ Crisis Group telephone interview, European official, Sarajevo, September 2022.

¹⁸ Crisis Group interview, member of Bosnian presidency staff, Sarajevo, 22 June 2022.

¹⁹ Crisis Group interview, member of national legislature, Banja Luka, July 2022.

²⁰ “SNSD I HDZ ne žele obavezu sprečavanja sukoba interesa” [The SNSD and HDZ do not want to prohibit conflict of interest], *Klix*, 12 May 2022.

²¹ The term, taken from International Criminal Tribunal for the former Yugoslavia judgments, has become disparaging shorthand for the Bosnian Croat party among Bosniak Twitter users and media figures.

²² Crisis Group interview, member of Bosnian parliamentary assembly, Sarajevo, 29 June 2022.

²³ Figures taken from the 2013 census, Agency for Statistics of Bosnia and Herzegovina.

ing roughshod over the rest of the population, it is in some ways discomfiting. It sits uneasily with the democratic principle of one citizen/one vote because it affords members of smaller peoples a relatively large say and, at times, a veto. It also stops minorities who belong to none of the three peoples from standing for election to certain offices, which the European Court of Human Rights has found to violate a protocol to the European Convention on Human Rights in the *Sejdić-Finci* line of cases, which dealt with the right to run for offices constitutionally earmarked for members of the constituent peoples.²⁴ Still, the concept is so entwined in Bosnia's constitutional tradition and jurisprudence, and so politically sensitive, that needed reforms are likely years in the future and will need to be approached in incremental steps.

IV. The High Representative Steps In

A. New Crisis, Old Playbook

When mediation efforts ground to a halt in March, Washington and Brussels took the unusual step of looking to the Office of the High Representative to impose a solution. The reason was clear enough – the failed talks revealed that the U.S. and EU lacked the leverage to bring the parties together to make a deal – but the move clearly would have costs. For years, as noted above, high representatives had been reluctant to use their “Bonn powers” to address fundamental governance issues, given domestic criticism and a lack of foreign support for deploying those prerogatives. Schmidt's predecessor, Inzko, had been pilloried for using these powers to impose a law against genocide denial. Moreover, Russia and China's refusal to endorse Schmidt's appointment opened the door to the possibility that his actions would be deemed illegitimate.

Nor were the choices facing the high representative especially attractive. He could allow a coalition of predominantly Bosniak parties, including progressive and civic-oriented ones committed to much-needed reform, to take power through what many Croats regard as a flawed election system and risk the implications that eventuality would have for a growing crisis. Or he could intervene to repair the electoral machinery, knowing that any such action would benefit mainly one side, the HDZ, and meet bitter opposition from most Bosniaks.

Still, in the absence of better options, Schmidt proceeded to make plans to impose a settlement with backing from Washington and Brussels. On 20 July, word leaked that he planned to impose three far-reaching sets of changes to the Federation constitution and Bosnia's election law.²⁵ One change would implement the Bosnian Constitutional Court's 2016 ruling in a manner long sought by Croat leaders; another sought to improve Federation government functionality by making it harder for par-

²⁴ See Crisis Group Europe Report N°232, *Bosnia's Future*, 10 July 2014.

²⁵ Office of the High Representative proposal made available to Crisis Group. The high representative's “Bonn powers” – derived from his role as the “final authority in theater regarding implementation of this Agreement on the civilian implementation of the peace settlement” – have in past been used to impose laws, amendments to the entity constitutions, and appoint and remove officials. As an implementer of the Dayton agreement, however, he cannot amend the Bosnian constitution that is part of it.

ties to block legislation and appointments; a final set, the “integrity package”, took aim at electoral fraud.²⁶

The full package of measures is a slightly updated version of one that Bosniak and Croat leaders came close to agreeing on during the U.S. and EU-mediated talks that broke off in March.²⁷ They are carefully balanced, giving each side some of what it wants. Croats would get more of a say in electing the delegates who represent them in the Federation's House of Peoples. Bosniaks would get several tools to prevent the Federation government from succumbing to unilateral vetoes by any ethnic caucus, which Croat leaders have abused. In effect, it would become harder for the Bosniak majority to form a government without Croat representatives but also harder for those Croats to block government decisions.

Bosniak political leaders nonetheless reacted furiously to what they saw as an international betrayal. A former Federation minister warned that “there would be protests, but also public pressure the likes of which the [Office of the High Representative] has never felt, because this is the first time he is imposing a decision which is opposed by the majority of citizens”.²⁸ Bakir Izetbegović, head of the Bosniak-majority Party of Democratic Action, alluded to the risk of civil strife by saying “we've counted ... how many hunters we have, how many young people and how many drone instructors”, earning swift condemnation from the U.S. embassy.²⁹ Demonstrations in front of the Office of the High Representative in Sarajevo from 25 to 27 July may have attracted as many as 7,000 people, though an international official disputed that figure and said party organisers may have bussed in some of the participants.³⁰

Schmidt appeared to back down, but the reforms are still on the cards. The High Representative imposed only the integrity package on 27 July.³¹ These measures were not controversial because they affect all parties equally, simply making it harder to cheat.³² But Schmidt has not abandoned the other two sets of reforms. Instead, he gave the Federation leadership – meaning the leaders of the parties represented in its parliament – about six weeks (roughly until early or mid-September, though later comments implied a flexible deadline) to come to agreement on some version of them, promising to act if they did not.³³ Technically, he could wait until the cantonal assemblies elected on 2 October take office, which normally happens about a month later. Yet once the preliminary results become public a day or two after the vote, it

²⁶ “Objavljujemo dokument OHR-a” [We publish an OHR document], *Istraga*, 21 July 2022.

²⁷ Crisis Group telephone interviews, European and U.S. officials, August 2022.

²⁸ Tweet by Reuf Bajrović, former Federation minister of energy, @ReufBajrovic, 2:51 pm, 16 August 2022.

²⁹ “Burne reakcije nakon izjave Bakira Izetbegovića” [Tumultuous reactions to Bakir Izetbegović's statement], *Klix*, 26 July 2022; tweet by U.S. Embassy Sarajevo, @USEmbassySJJ, 5:14 pm, 27 July 2022.

³⁰ Crisis Group telephone interview, senior international official, 16 August 2022. “Protests in front of the OHR in Sarajevo to continue today”, *Sarajevo Times*, 26 July 2022.

³¹ “Decision Enacting the Law on Amendments to the Election Law of Bosnia and Herzegovina”, Office of the High Representative, 27 July 2022.

³² They include measures like empowering the Central Election Commission to fine or disqualify candidates for election law violations and prohibiting use of public resources for political campaigns.

³³ He later explained that “those six weeks don't mean that something will happen exactly when they expire”. “Intervju sa visokim predstavnikom Christianom Schmidtom” [Interview with the High Representative Christian Schmidt], *Večernji list*, 17 August 2022.

will be clear which side has carried the day, and any intervention will look like trying to change the result after the fact.³⁴

B. *A Closer Look at the Deal*

Leaked details show that Schmidt's unpublished plans would change the election law to allocate Federation House of Peoples seats in closer proportion to each community's population in each canton.³⁵ At present, each canton sends at least one delegate per constituent people (that is, at least one Bosniak, one Croat and one Serb) to the House, even if very few members of that people live and vote there. Schmidt, following the Constitutional Court's 2016 ruling, would remove that provision and allow only those cantons with at least 3 per cent of a given people's total Federation population to send delegates to the House, dividing seats among those cantons in proportion to each people's population. One at-large delegate per people would represent all the cantons below the 3 per cent cutoff line, elected by all of their cantonal delegates under that threshold.

This change would affect all three of the constituent peoples' caucuses, though the shift would be most consequential for the Croats. It would shift two seats from Bosniak-majority to Croat-majority cantons, and thus make it much harder for Bosniak parties to elect enough Croat delegates to shut the main Croat parties out of government and deny them a veto on key decisions. The Bosniak caucus itself would shift slightly to favour the largest cantons, Sarajevo and Tuzla, where civic-oriented parties tend to do better than Bosniak nationalists. Several Serb seats would shift to cantons in the Herzegovina region where the leading RS party, the Alliance of Independent Social Democrats, is strong. (Appendix B gives a more detailed breakdown.)

This boost to Croat political power is offset by another of the high representative's set of proposals, which involve changes to the Federation constitution making it harder for smaller parties such as the HDZ to obstruct government formation and appointments.³⁶ These would impose deadlines for nominating the president, vice presidents, prime minister, government and constitutional court judges, with various unblocking mechanisms kicking in after they expire. The high representative's proposal would also weaken the so-called vital national interest mechanism, a parliamentary manoeuvre that allows a two-thirds majority of one of the ethnic caucuses in the House of Peoples to delay or veto legislation. (Admittedly, that provision has been little used in the last decade.) Other measures would eliminate a parliamentary "pocket veto" that allows one chamber to defeat bills proposed by the other chamber simply by refusing to place them on the agenda.

The combined effect of these sweeping changes in Bosnia's zero-sum political environment is hard to predict. The intent is clearly to impose a balanced set of measures with something for both sides. Croats would better be able to select their own representatives in the House of Peoples, but they and other minorities would have less power to slow or stop decision-making, which has been a source of frustration for many Bosniak leaders who believe that both Croats and Serbs punch well above their

³⁴ Crisis Group telephone interview, Bosnian civil society representative, September 2022.

³⁵ Draft of Office of the High Representative decision seen by Crisis Group, 19 July 2022.

³⁶ "Objavljujemo dokument OHR-a", op. cit.

demographic weight. Yet the minority veto, while certainly often abused, still plays an important role in ensuring that power is shared among the Federation's larger and smaller constituencies. In this sense, the high representative's intervention goes well beyond the minimum necessary to avert crisis. While the logic of balancing reforms to give something to each side seems sound, the longer-term impact of the proposed reforms could be quite profound – and thus especially risky for a reform imposed by a foreigner without consensus among Bosnian politicians.

V. A Way Forward

The standoff poses an unenviable dilemma to international actors, particularly the Office of the High Representative and its Steering Board. Crisis Group has long argued that this office should be closed, having outlived its utility, and stood against use of the Bonn powers while it endures.³⁷ The Steering Board chose a different course, keeping the high representative in office, but tacitly withdrawing support for the Bonn powers between 2011 and 2021, then reviving those powers fully in April 2022 given the perceived gravity of Serb secession moves. Since then, the high representative has intervened to block an RS claim to Bosnian state property (in April), to overturn an HDZ veto on funding the forthcoming elections in full (June) and to impose the electoral “integrity package” (July). Looking to an unelected international official to step in and make crucial decisions for a democracy is hardly ideal. That these proposed reforms – in contrast to previous interventions – inspire such intense opposition among Bosniaks that have traditionally lent the high representative support hardly helps.

In this sense, divisions on the Office of the High Representative's Steering Board are understandable. The U.S. and UK are urging Schmidt to act, whereas most other members are either opposed (Italy), counselling delay until after election day (Germany) or undecided.³⁸ Schmidt is not bound to follow any of their advice, but all of it inevitably weighs on his decision. His office's credibility and authority depend on international support. He has another dilemma, too. Washington has already invested political capital in reviving support for use of the Bonn powers and may question their usefulness if Schmidt backs down from his reform, having seemingly let domestic opposition dissuade him.³⁹

Overall, the circumstances in this case justify intervention, whatever reservations one might have about the high representative's role. The RS move toward secession has been paused but not abandoned; Banja Luka is waiting for the right moment to resume its campaign.⁴⁰ Russia's invasion of Ukraine has the potential to unsettle long-held norms against breaking up states by force. If Bosnia is to survive as a single state, it can ill afford a disputed election, which could unite Croats and Serbs against Sara-

³⁷ Crisis Group Europe Report N°180, *Ensuring Bosnia's Future: A New International Engagement Strategy*, 15 February 2007; Crisis Group Europe Briefing N°57, *Bosnia's Dual Crisis*, 12 November 2009; and Crisis Group Report, *Bosnia's Future*, op. cit.

³⁸ Crisis Group interviews, diplomats from Steering Board member states, August-September 2022.

³⁹ Crisis Group telephone interview, senior international official, August 2022.

⁴⁰ Crisis Group interviews, European and Office of the High Representative officials, Sarajevo, June 2022.

jevo. Bosnian leaders have tried and failed to resolve the crisis. Awkward as it may be for the high representative to invoke the Bonn powers, it appears to be the only available recourse.

Still, the best outcome would clearly be for Bosnian politicians to make use of Schmidt's delay to work out a compromise. The high representative may be able to use the threat of imposing his draft to facilitate that result. That would involve privately warning Croat and Bosniak leaders that, if they do not change course, he will use the Bonn powers to stop them from taking advantage of the system. Bosniak parties would have to give up their attempts to win the swing Croat seats and the HDZ would have to cease obstructing the normal functioning of the Federation government. Better for both to pull back now than push on and have the high representative thwart them with permanent changes to the law. Strong, unambiguous U.S. support, with Washington assuring both sides of its full backing for the high representative's gambit, is probably necessary for it to work, lest either side think Schmidt is wavering or bluffing.

Such an approach would allow the high representative to separate the components of his package without looking partial. If one side pulls back while the other refuses, he should act only against the holdouts. That is, if the Croats lift their blockade (of appointing the Federation government and filling vacancies on the court) but Bosniaks still try to poach their seats and govern without them, Schmidt should change only the election rules. If it is the Bosniaks who stop their campaign for the Croat seats while the HDZ persists in blocking, he should change only the Federation constitution to take away their veto powers. The idea would be to get both sides to back down and pave the way for post-election talks that would aim for a balanced reform package (which could supplement or supersede some or all of Schmidt's impositions). If that diplomatic approach fails, Schmidt will have until election day or perhaps shortly after to decide whether to act, because after that point, action risks looking like an attempt to pick winners, which would arouse a firestorm of opposition.

There are some risks to Schmidt's reform package. Notably, these come from the balancing measures the Office of the High Representative and its Steering Board believe necessary to avoid an impression of partiality that would alienate Bosniaks. The Bosnian system undoubtedly has too many chokepoints where a political minority can veto government action for no good reason. Schmidt's proposed edits to the Federation constitution, which trim some of those, should improve the entity's governance. Yet the multiple vetoes are a deliberate part of the system, designed to protect smaller groups from ill treatment by majorities. Tinkering with this feature carries an unavoidable risk of upsetting the very balance the high representative is trying to achieve. Ideally, Bosnians themselves would decide how to rationalise their system.

On balance, though, the package as a whole is sound. Its electoral component would bring the law into alignment with the Bosnian constitution, remove an otherwise unjustified bias in apportionment – one that clearly runs contrary to the spirit of the Dayton constitution – and make it harder for parties to game the system. It is also a distillation of provisions the Bosnian parties came close to accepting in the U.S.-EU talks. The Bosniak majority should not try to, or be able to, decide who will represent Croats or Serbs in places such as the House of Peoples. (The state presidency is another matter: its members, while ethnically determined, each still represent the whole country.) The risk in pushing through the other component of Schmidt's reforms –

stripping some of minorities' blocking power – is worth taking if the Steering Board believes the election system can be changed only as part of a package deal including these further measures.

The high representative and the states on the Steering Board should explain the rationale behind his action in a clear, coordinated messaging campaign. If Schmidt does have to weigh in, either set of reforms would clearly stoke resistance, so the more he and his foreign supporters can shape the narrative the better. Coloured by the electoral campaign, Bosnian discourse focuses too much on which party stands to win and which to lose if Schmidt acts. He must show that his intervention is pro-Bosnian, in the sense of being meant to benefit all the country's citizens, regardless of which party they support. He should also address the understandable domestic and international scepticism about his role by making clear that he is making an emergency decision and not trying to revive viceregal governance. A clear reaffirmation of support for shutting the Office of the High Representative and ending its mandate as soon as circumstances permit would be helpful.

Whatever the high representative does, diplomats' attention should also turn to how the parties are behaving in the campaign. The time between now and the election will be crucial. During this period, Bosnian parties would ideally campaign with one eye on the need to work together with rivals immediately after the dust has settled. They should refrain from dredging up toxic ethnic stereotypes or using rhetoric drawn from the war. Those tactics can backfire by making it harder to negotiate after the election. Outside actors with influence over the parties, including Washington, Brussels, Berlin, Ankara and Zagreb, should push them to act responsibly.

The Sarajevo-based, predominantly Bosniak parties should be a priority focus for U.S. and European diplomacy, because those parties' leadership is essential for the country's future. As representatives of the country's majority community, Bosniak leaders will have to articulate a vision that is at least minimally attractive to Croats and Serbs. That entails eschewing campaign rhetoric that paints those communities as a problem for Bosnia. The Bosniak vote is also the most competitive, with at least six major parties vying for its support (compared to two among the Serbs and just one for the Croats). That creates a temptation for parties to outflank each other with nationalist appeals that win votes but alienate minorities. Talks with Bosniak leaders should also aim at staking out a common position on constitutional amendments. The idea would be to create a space within which Bosniak leaders can negotiate with their Croat and Serb counterparts without fear of being denounced as sellouts by their rivals.

VI. Conclusion

Resolving the election dispute is all the more crucial given its impact on prospects for the wider reform on which Bosnia's future depends. If the election goes ahead under the current disputed rules, the two most plausible outcomes would likely hinder any change. If the HDZ wins the swing seats, it would likely then use its victory to secure not only plum ministerial posts and patronage opportunities but also a favourable position in any reform talks that ensue. It would probably resort to the same blocking tactics it has used before. If, conversely, the Bosniak parties win the key spots and

shut the HDZ out, the Croats would do what they can to obstruct the Bosniak agenda, though their efforts would only likely succeed if supported by whoever has won in the RS races. It is hard to imagine reform talks bearing fruit in those circumstances.

If, on the other hand, Schmidt can help Bosnians can get through the election, moving quickly toward talks on that broader reform will be essential. Both the Bosniak-Croat feud in the Federation and RS's slow-motion secession attempt are the product of long-running disagreements over how Bosnia should be run that require constitutional amendments to address. While these remain unresolved, the country will almost certainly lurch from crisis to crisis. The best time for such talks is immediately after an election, when politicians have some time before they again need to face voters and are more likely to compromise. Fostering the necessary trust and goodwill for negotiations requires all parties to show they willing to play by the rules as they are, unsatisfying as that may be to them. This means Serbs continuing to hold their breakaway attempt in abeyance; Croats refraining from abusing their vetoes; and Bosniaks continuing to agree to share power both at state and Federation levels. Washington and Brussels can play a helpful role by policing the parties' behaviour and impartially calling out spoilers.

The immediate priority, though, is getting through the vote in a way that averts a crisis and paves the way for those reforms. Ideally, that would happen without Schmidt using his Bonn powers to impose changes on the country's laws without Bosnian leaders' consent. But if that proves impossible, the gravity of the moment requires that he step in and that Bosnia's foreign partners rally behind him.

Sarajevo/Brussels, 26 September 2022

Appendix A: Bosnia's Election System and the High Representative's Reforms

The Current System and Its Implications

The 1995 Dayton agreement ended the Bosnian war but left the new state with one of the world's most complicated systems of governance, with the aim of ensuring that no ethnic group could easily rule any other. Bosnia has a weak national state, with a bicameral parliament and a collective presidency with one person directly elected to represent each "constituent people". The two "entities" into which Bosnia is split, RS and the Federation, are where most power lies. The Federation is further divided into ten cantons, each with its own government.

According to the Dayton constitution, citizens directly elect a range of officials, including the three members of the state presidency (RS voters choose the Serb member and Federation voters the Bosniak and Croat members); 42 members of the state House of Representatives; the president of RS (elected only by voters in RS); and the lower legislative chambers of both entities. In the Federation, voters also directly elect members of ten cantonal assemblies (each of which contains 20 to 35 delegates, depending on the canton's population size). The direct elections mostly use a method of proportional representation that yields the closest match between percentage of votes received and seats.

Other key offices are elected indirectly. These include the state council of ministers (the government or cabinet, in essence), which is elected by the House of Representatives on nomination by the presidency. The Federation president, vice presidents and prime minister, are elected indirectly in a process described in detail below. Also indirectly elected are the upper legislative chambers, called Houses of Peoples, of Bosnia and of the Federation; it is in these institutions where skewed representation has proven especially contentious. (RS, with a unicameral legislature, is not affected in the same way.)

The challenge lies in the procedures according to which members of cantonal assemblies elect deputies for the Federation House of Peoples. In that upper chamber, equality among the three main ethnic groups, regardless of population size, is enshrined. It comprises seventeen delegates from each "constituent people" and seven delegates for "others", a catch-all category that includes ethnic minorities and persons who profess no ethnic identity at all. (Despite that, according to the last census in 2013, in the Federation, Bosniaks are the majority with 70.4 per cent, followed by Croats with 22.4 per cent, Serbs with 2.6 per cent and others with 3.6 per cent.⁴¹) Each constituent people's caucus in the House of Peoples is elected by the members of cantonal assemblies of that same constituent people.

Once elected to a cantonal assembly, members self-identify by ethnicity, as a member of a constituent people, or as others. This step is obligatory but unregulated; delegates simply declare their ethnic identity. They then divide into four caucuses, or blocs, in each cantonal assembly, and each caucus votes for delegates to the same ethnic caucus of the Federation's House of Peoples. So, in principle, the Bosniak bloc

⁴¹ The national figures in that census were 50.1 per cent Bosniak, 30.8 per cent Serb, 15.4 per cent Croat and 2.7 per cent "other". RS had a large (81.5 per cent) Serb majority, with only 14 per cent Bosniaks, 2.4 per cent Croats and 1.3 per cent others. Agency for Statistics of Bosnia and Herzegovina.

in the cantonal assemblies elects the Bosniak caucus in the upper house, the Croat cantonal bloc the Croat caucus and so forth. Each of the ten cantons gets to select at least one deputy to each of the three constituent people's caucuses in the House of Peoples, provided its cantonal assembly has at least one delegate who has self identifies as that people (with the remaining seven spots distributed proportionally among the cantons).

As a result, parties with broad support in each canton's majority community can put people of the other ethnicities on their list for canton elections, get them elected and then use them to elect those groups' delegates to the House of Peoples.

Examples abound. Only 24 Croats live in the Bosnian Podrinje canton, far too few to elect anyone to the cantonal assembly, where in the last election at least 567 votes were needed to make it in. Instead, a candidate elected on a predominantly Bosniak party list subsequently declared himself a Croat and was duly elected to Croat caucus in the Federation House of Peoples. The same thing happened in Una-Sana. It is even easier to pull off this trick with the Serb caucus because there are so few Serb voters in the Federation; both the Croat nationalist HDZ and the main Bosniak nationalist party have delegates in the Serb caucus. Only three of the seventeen Serb delegates belong to parties that typically do well with the Serb electorate nationwide.

The significance of skewing representation in the Federation House of Peoples lies in its procedures, notably thresholds for key decisions, including nominating the executive. To veto such decisions, a caucus needs twelve of its seventeen members. Any party or coalition that gets six seats in a caucus can prevent any other party from using that caucus's veto. For example, nominees for the Federation president and vice presidents run on slates which include one Bosniak, one Croat and one Serb. A slate needs a majority of the House including at least six members of each constituent people's caucuses (and a majority in the lower house, too). Any party controlling twelve or more seats in any one caucus can block the nomination of rival slates and thus control the presidential election. Put bluntly, if Bosniaks control six Croat seats, no Croat party can block a slate Bosniaks support. The Federation's president, in turn, nominates the premier and government, and appoints judges to the entity's Constitutional Court. Canton elections and the indirect vote to the House of Peoples thus play an outsized role in the entity's governance.

The thresholds are significant in other ways, too. Twelve votes within a single caucus are also needed to claim that a bill violates a people's "vital national interest". In that event, the challenged bill goes to a special panel of the Federation Constitutional Court, appointed by parliament, which decides whether to sustain the caucus's veto. The Court has usually overturned attempted vetoes, but currently lacks the quorum needed to decide, with the consequence that vetoes are automatically sustained. The constitution includes a list of issues of vital national interest (such as matters affecting language and culture, or changes to electoral or administration boundaries) with a catch-all provision that any other issue can be considered vital with the votes of two thirds of a caucus.

The Bosniak and Croat caucuses of the Federation House of Peoples in turn elect the five Bosniak and five Croat members of the state-level House of Peoples, where ethnic parity is also ensured. Each caucus votes separately, with seats distributed proportionally. If a party has twelve or more seats in its caucus, it can choose at least four of the five state-level delegates who can then make vital national-interest claims

in the national parliament. A party with at least six seats at Federation level can similarly secure two seats at the national level, which is enough to block vital national interest claims. When the majority Croat and Serb parties are aligned in the state House of Peoples, and both have at least four seats in their respective caucus, they can also vote down laws by simple majority.

The High Representative's Changes and Their Implications

The Office of the High Representative's proposed reforms to the election system would have several ramifications.

The main change would be to make it harder for one constituent people to elect members of another in the Federation institutions. In the proposed system, only cantons whose population of a given constituent people is at least 3 per cent of that people's total Federation population are assigned a delegate for that constituent people. So, for example, a canton like Una Sana, which has fewer than 3 per cent Croats – and where Bosniaks have often selected the Croat delegate to the House of Peoples, would no longer get that Croat delegate. Cantons under the 3 per cent threshold are grouped together and share a single "at-large" delegate, whom they elect as if they were a single canton. In effect, this change makes the distribution of each constituent people's seats more proportional to the number of that people in each canton. It would reduce the ability of Bosniaks in particular to nominate "their" candidates to the Croat caucus of Federation House of Peoples.

The arrows on Table 1 show the shift from the old to the proposed new apportionment.⁴²

Shifts in Federation House of Peoples Apportionment				
Canton	Bosniaks	Croats	Serbs	Others
Una-Sana	2 ⇒ 3	1 ⇒ 0	2 ⇒ 3	
Posavina	1 ⇒ 0	1 ⇒ 1	1 ⇒ 0	
Tuzla	3 ⇒ 4	1 ⇒ 1	2 ⇒ 2	2
Zenica-Doboj	3 ⇒ 3	2 ⇒ 1	2 ⇒ 2	1
Central Bosnia	1 ⇒ 1	3 ⇒ 3	1 ⇒ 1	1
Sarajevo	3 ⇒ 4	1 ⇒ 1	5 ⇒ 4	2
Bosnian Podrinje	1 ⇒ 0	1 ⇒ 0	1 ⇒ 0	
Herzegovina-Neretva	1 ⇒ 1	3 ⇒ 4	1 ⇒ 2	1
Western Herzegovina	1 ⇒ 0	2 ⇒ 3	1 ⇒ 0	
Canton 10	1 ⇒ 0	2 ⇒ 2	1 ⇒ 3	

⁴² Note that in the old system, cantons send seventeen delegates per constituent people to the House. In the new system they send sixteen, but one "at-large" delegate for each constituent people is also sent to the House to represent all of that people's voters in the cantons that do not have their own delegate. So, the total stays at seventeen, and the apportionment of seven delegates representing "others" also does not change.

The High Representative's measures would also change the way the Federation elects its president, vice president and government. The minimum number of votes needed to nominate someone to the presidency would rise from six to eight, making it even harder to game the system, but if no nominations are made within a month the threshold would fall to five, and after another month to two. That would make it impossible to block the election: a party that tried to do so would simply open the door to its smaller rivals.

These changes would hurt the Party of Democratic Action, which holds the only bloc of seats in the Bosniak caucus large enough to nominate members of the presidency. Already the reapportionment detailed above would likely cost it one or two seats, and the higher threshold would mean it would have to negotiate with rivals over a consensus candidate who could win the support of eight or more delegates. Alternatively, the Bosniak party could wait out the deadline and then send its own candidate to the House of Representatives with only five votes, taking the risk that another party or coalition could nominate a rival. The changes would also benefit the HDZ, both through reapportionment and the higher threshold because it is the only Croat party likely to win eight or more seats. But they would weaken the HDZ as well by taking away its ability to block election of key officials.

Appendix B: About the International Crisis Group

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 120 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries or regions at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international, regional and national decision-takers. Crisis Group also publishes *CrisisWatch*, a monthly early-warning bulletin, providing a succinct regular update on the state of play in up to 80 situations of conflict or potential conflict around the world.

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

The Crisis Group Board of Trustees – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policymakers around the world. Crisis Group is co-chaired by President & CEO of the Fiore Group and Founder of the Radcliffe Foundation, Frank Giustra, as well as by former Foreign Minister of Argentina and Chef de Cabinet to the United Nations Secretary-General, Susana Malcorra.

Comfort Ero was appointed Crisis Group's President & CEO in December 2021. She first joined Crisis Group as West Africa Project Director in 2001 and later rose to become Africa Program Director in 2011 and then Interim Vice President. In between her two tenures at Crisis Group, she worked for the International Centre for Transitional Justice and the Special Representative of the UN Secretary-General in Liberia.

Crisis Group's international headquarters is in Brussels, and the organisation has offices in seven other locations: Bogotá, Dakar, Istanbul, Nairobi, London, New York, and Washington, DC. It has presences in the following locations: Abuja, Addis Ababa, Bahrain, Baku, Bangkok, Beirut, Caracas, Gaza City, Guatemala City, Jerusalem, Johannesburg, Juba, Kabul, Kiev, Manila, Mexico City, Moscow, Seoul, Tbilisi, Toronto, Tripoli, Tunis, and Yangon.

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