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A CHALLENGE FOR DAYTON?**

**Florian Bieber**

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## **CROAT SELF-GOVERNMENT IN BOSNIA – A CHALLENGE FOR DAYTON?**

ECMI Brief #5, May 2001

Florian Bieber

Political developments in Bosnia since the signing of the Dayton Peace Accords in 1995 have been gradual and slow. Many observers over the years have noted the lack of progress in numerous fields, especially in the return of refugees, the absence of economic reform and the continuous stranglehold of nationalist parties on the institutions of the state and its entities. In the course of the past year the pace of change has accelerated, putting into question some of the established patterns in the country, culminating in the decision of the main Croat party in Bosnia, the Croatian Democratic Community (*Hrvatska Demokratska Zajednica Bosne i Hercegovina*, HDZ BiH), and its allies to withdraw from the institutions of the Federation of Bosnia and Herzegovina, one of the two Bosnian entities,<sup>1</sup> and to form the so-called “Croat Self-Government” in its stronghold in Herzegovina in March 2001.

This decision was largely overshadowed by the episode of fighting in Macedonia and received only limited attention from the international media. Although unrelated, both events form a pattern of new conflicts emerging in the former Yugoslavia in the aftermath of the disintegration of the country and the wars of the 1990s. In both cases, the conflict revolves around the role of the minority in the respective states. Furthermore, both the fighting in Macedonia and the move by the HDZ in Bosnia highlight the strong link between nationalist forces and criminal activity.<sup>2</sup>

Since October 2000 the HDZ has been engaged in establishing fora circumventing the institutions of the Federation. That month it founded, together with some minor Croat

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<sup>1</sup> The Federation of Bosnia-Herzegovina, covering 51 % of Bosnia, is predominantly populated by Bosniacs and Croats while the other entity, the *Republika Srpska*, is predominantly Serb. Both entities hold significant political power, while the state and its institutions are weak and equipped with only few competences (mostly relating to foreign affairs). The Federation is highly decentralized into ten cantons, four predominantly Croat, four predominantly Bosniac and two mixed cantons.

<sup>2</sup> In an additional parallel, both the HDZ and the new UÇK (*Ushtria Çlirimtare Kombëtare*, National Liberation Army) in Macedonia, claim not to pursue secession with their policies, but rather just

parties, the Croat National Congress (*Hrvatski Narodni Sabor*, HNS), which sought to safeguard Croat interests in Bosnia. During the elections on 11 November, the Croat National Congress held a simultaneous “referendum” on Croat rights, declared illegal by the OSCE. In this referendum Croats were asked whether “Croats should have their own political, educational, scientific, cultural and other institutions on the entire territory of Bosnia and Herzegovina.” According to the HDZ, over 70 percent of the registered Bosnian Croats participated in the vote, with nearly 99 percent supporting the question asked in the referendum.

When the establishment of the new governments at the joint and entity level after the November 2000 elections excluded the HDZ at most levels, the main Croat party left the federation institutions. On March 3, 2001 the Croat National Congress declared Croat self-government by establishing an “inter-cantonal council”. While the HDZ attempts to dispel the suggestion that this new Croat autonomy would promote separation from Bosnia, representatives of the international community and Bosnian authorities quickly condemned the move. Only a few days later, on March 7, the High Representative Wolfgang Petritsch removed the president of the HDZ, Ante Jelavić, from his post as Croat member of the joint Bosnia Presidency. The subsequent tensions between the international community and the HDZ culminated when the takeover of the *Hercegovačka Banka* by SFOR, closely tied to both HDZ and the financing of Croat self-government, was met with violence and temporary hostage-taking by supporters and members of the HDZ.

During the five and a half years since the end of the war, there have been violent incidents and conflicts between the international agencies overseeing the peace process and Bosnian political actors. They focussed, however, mostly on specific, rather than on isolated events. Most violent clashes involved local politicians attempting to prevent the return of refugees, thus localizing the conflict. While the High Representative has dismissed over 60 officials since 1997, most notably the President of the *Republika Srpska* in 1999, these dismissals were not as openly anticipated by the dismissed official, as by Jelavić, when he declared the Croat self-government. In this sense the events

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“equality” of their respective national group. This rhetoric has clearly been adopted for international audiences.

surrounding the Croat self-government broke with the previous pattern of obstruction, which involved little overt confrontation with the existing structures.

In order to understand the recent crisis in Bosnia, one has to take into account four factors which contributed significantly to the declaration of the Croat self-government.

### *1. Election Rules*

The OSCE Mission in Bosnia has organized all the elections since 1996. The OSCE also established the election rules, pending the passing of a permanent election law, due later this year. In a modification of the previous election rules, the OSCE altered the rules for the November 2000 election of the members of the House of Peoples of the Federation, which was an important trigger for the establishment of the Croat National Congress. Before late 2000, the representatives in the House of the Peoples were elected by the Cantonal Assemblies on the basis of two national caucuses—the Croat members determined the Croat members of the upper house of parliament in the Federation, the Bosniak members decided on the Bosniak representatives. According to the new regulation, the Croat (and Bosniak) members were to be elected by the Cantonal Assemblies as a whole and not by their respective national deputies.<sup>3</sup>

This new regulation was viewed by HDZ as a threat to its own role in the Federation and to the adequate representation of the Bosnian Croats, as the Bosniacs, having the overall majority in the Federation, would now be able to elect Croat members who might not represent Croat interests. Although the HDZ secured a sufficient number of seats in the cantons to avoid being “minorized” as a result of the new rules, some international observers have deemed the HDZ’s criticism of the new electoral rules to be partly legitimate.<sup>4</sup> In addition, some international officials also have voiced their criticism of the election rules used for the November vote.<sup>5</sup>

The permanent election law, as proposed jointly by the OSCE and the Office of the High Representative (OHR), does not specify whether the deputies to the House of Peoples are

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<sup>3</sup> Maja Jurcic, “Bosnien und Herzegowina: Wahlen unter internationaler Verwaltung,” *Südosteuropa*, Vol. 40, No. 11-12 (2000), p. 571.

<sup>4</sup> See for example International Crisis Group, “Turning Strife to Advantage. A Blueprint to Integrate the Croats in Bosnia and Herzegovina,” Sarajevo/Brussels, 15.3.2001.

to be elected by representatives of the respective nations or by the whole Cantonal Assembly, but leaves this decision to the election commission instead: “The Election Commission of Bosnia and Herzegovina shall determine the rules for allocation of seats for Bosniac, Croat seats, and Others from each canton in a manner that distributes the seats amongst constituent peoples and Others by taking into account the 1991 Census, and so that there is at least one delegate from each constituent peoples and Others that has at least one member in the Assembly of that canton.”<sup>6</sup> The reason for not defining the election mechanism for the members of the Federation House of Peoples derives from the need of the entities to amend their constitutions on the basis of the Constitutional Court’s decision on the constituent people of Bosnia (see below). The move towards strengthening more civic aspects of the current institutional arrangement by the international community and the new Bosnian government would suggest a continuation of the November 2000 election rules. As a result, the proposed electoral law attracted the criticism of the leaders of the Croat Self-Government.<sup>7</sup> Furthermore, Croat politicians participating in the new central and Federation government also demanded the re-establishment of the pre-November 2000 election rules for the House of Representatives.<sup>8</sup> While the controversies surrounding the new election rules for the November elections and the need to establish a permanent electoral law triggered the Croat self-government and constitute possibly one of the keys to the resolution of the crisis, a number of other factors contributed to HDZ departure from Bosnian institutions.

## 2. *Victory of the Non-nationalist Parties in Bosnia*

Although, as the OHR and the OSCE have pointed out repeatedly, representation of HDZ in the institutions of the Federation were only marginally affected by the election rules, the overall outcome of the elections led to a substantial reduction of the power of the HDZ. The results of the elections in November 2000 were originally a disappointment for the international community, as the two nationalist parties HDZ and the Serbian

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<sup>5</sup> The head of the Foreign Policy Committee of the European Parliament, Doris Pack, for example, called the effect of these rules counterproductive and observed that “they have in a way strengthened some radical forces.” *Reuters*, 19.4.2001.

<sup>6</sup> Article 12.3, Draft Election Law.

<sup>7</sup> *Večernji List* (Zagreb), 4.5.2001.

<sup>8</sup> *Večernji List* (Zagreb), 8.5.2001; *Vijesnik* (Zagreb), 5.2.2001.

Democratic Party (*Srpska Demokratska Stranka*, SDS) achieved a better result than widely expected. Extensive post-election coalition building between moderate and multinational parties led to the creation of the Alliance for Change, which, together with allied parties in the *Republika Srpska*, yielded sufficient seats in the Federation, the *Republika Srpska* and at the joint level to form governments. For the first time since 1990, neither SDS, nor the Bosniac Party of Democratic Action (*Stranka Demokratska Akcija*, SDA) nor HDZ are included in government on the entity or joint state level. This change of power had received a clear mandate only in the Bosniak majority areas where the Social Democratic Party (SDP) of Zlatko Lagumdžija won over the SDA. In the predominantly Croat areas in Herzegovina, the HDZ lost some votes, but maintained its dominant position.<sup>9</sup> Exclusion from political power thus appeared unjust to the HDZ.

On a different level, the nature of the new government also posed a threat to the nationalist parties, including the HDZ. Since the three nationalist parties won the first elections in 1990, they created a *modus vivendi*, which came to an end after the 2000 elections. While in the pre-war years the parties engaged in a flawed attempt of “power-sharing”, the cooperation after the Dayton Peace Accords amounted largely to a division of power. Each party largely respected the “right” of the other nationalist parties to govern their respective nation, and cooperation, if required by the institutions, was limited to a division of access to state assets and resources. Effective governance, combined with power-sharing instead of resource-sharing, by the new governments poses a serious threat to the long-term viability of the nationalist parties. As these parties, and the HDZ in particular, present themselves as the sole protector of national interests and view themselves less as parties, but rather as cross-issue national movements, successful alternatives not only threaten the strength of the party, but also its *raison d’être*.<sup>10</sup>

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<sup>9</sup> In the whole Federation it received 19,3 % of the vote (1998: 19,7%), in the canton 10 (Livno) it obtained 53 % (1998: 61 %) of the vote, in canton 8 (Western Herzegovina) 70 % (1998: 84%), in canton 7 (Herzegovina-Neretva) 46 % (1998: 50%). All election results are taken from <www.oscebih.org>.

<sup>10</sup> The HDZ suggested after declaring the Croat self-government, that it would dissolve itself if the OHR and the OSCE fulfilled its demands. This “promise” is, however, not to be taken as a serious possibility.

### 3. Constitutional Court & Constitutional Commissions

The policies of the HDZ were not only imperilled by the election outcome but also by the broader constitutional developments in Bosnia. The Constitutional Court took a major decision in July 2000 by declaring parts of the entity constitutions, which declared the respective nations to be the constituent nations of the entities, as unconstitutional.<sup>11</sup> As a result, the entities are forced to change their constitution so as to include all three nations as constituent nations. While the court decision does not directly affect the institutional set-up of the two entities, changes in the nature of their governance are to be expected once the court decision is incorporated into the entities' constitutions. The High Representative did, however, establish two constitutional commissions for both entities in January 2001, which are charged with safeguarding the interests of the three constituent nations, and the "Others."<sup>12</sup> Both commissions contain four members from each of the four groups and the majority of each group can object to a proposed regulation, law or decision of the entities, if it discriminates against their group. The commission is charged with resolving the claim, and, if it cannot agree, refers it to the High Representative. As such, the court decision and the constitutional commission weakened the national division of the state into three areas with mono-national monopolies and thus threaten the policies of the HDZ in Herzegovina. The Croat weekly *Hrvatska Riječ* reflected this perceived threat by criticizing the court ruling: "In the current situation this decision is as if you told Israelis and Palestinians that they were sovereign everywhere in Israel. Tell that to Palestinians and you are giving them legitimacy to conquer all of Israel!"<sup>13</sup> The HDZ itself did not question the decision of the constitutional court and the establishment of the constitutional commissions,<sup>14</sup> and even promised an end to Croat self-rule should these decisions be fully implemented.<sup>15</sup> At the same time, the HDZ refused to nominate members to the constitutional commission as offered by Wolfgang Petritsch.<sup>16</sup> The rhetoric of cooperation seems to reflect less the policy of the HDZ, but rather aims at

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<sup>11</sup> Constitutional Court of Bosnia-Herzegovina, Partial Decision, Case No. U5/98-III (1.7.2000).

<sup>12</sup> OHR Press Release, "High Representative issues Decision establishing interim procedures to protect vital interests of Constituent Peoples and Others, including freedom from Discrimination," 11.1.2001; OHR Press Release, "High Representatives names Members of the Constitutional Commissions of the Entity Parliaments," 7.2.2001.

<sup>13</sup> *Hrvatska Riječ* (Sarajevo), 17.2.2001.

<sup>14</sup> *Slobodna Dalmacija* (Split), 3.4.2001.

<sup>15</sup> *Radio Bosnia-Herzegovina* (Sarajevo), 21.4.2001, available from *Bosnia Press Digest*, 21.4.2001.

pacifying opposition from the more moderate wing within the HDZ and intends—unsuccessfully—to convince the international community of the legitimacy of its actions.

#### *4. The Change of Power in Croatia*

The interrelationship between developments in Southeastern Europe is frequently either under- or overestimated and linear “domino theories” are constructed. Developments across the region in the past years demonstrate that positive developments in one country can have negative repercussions on others. The change of regime in both Croatia and Serbia has had mixed effects on Bosnia. While it strengthened some more nationalist forces in the *Republika Srpska* through Koštunica’s support for nationalist politicians in the November elections in Bosnia,<sup>17</sup> the initial impact of the victory of the anti-Tudjman coalition in Croatia in January 2000 was positive. The new government cut funding to the HDZ and the parallel Croat power structures in Bosnia. The new president, Stipe Mesić, who broke with Tudjman over Croatia’s role in the Bosnia War, went to great lengths to distance Croatia from the previous regime and point to Croat responsibilities in Bosnia.<sup>18</sup> This shift of policy diminished the privileged position of the HDZ in Bosnia and in Spring 2001 also abolished voting rights for the Croat “Diaspora” in Croatian elections, effectively depriving the HDZ in Croatia of a major support base and reducing the influence of Bosnian Croats on Croatian politics.<sup>19</sup>

The weakening of the HDZ through these changes were met by the party with fierce resistance in both Croatia and Bosnia. The party succeeded in mobilizing well over 100,000 Croats in demonstrations in early 2001, mostly in Dalmatia, against the persecution of alleged Croatian war criminals by the new government.<sup>20</sup> The first successful mobilization against the Croatian government by the HDZ coincided with the self-declared Croat self-government in Bosnia. The success in Croatia at least emboldened the HDZ in Bosnia, but the frequent visits of Ivic Pašalić, former chief-of-staff of Tudjman and member of the hard-line faction of the HDZ, to Mostar and

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<sup>16</sup> *OHR Press Release*, “High Representative appoints Croat Members,” 23.4.2001.

<sup>17</sup> Željko Cvijanović, “Koštunica rescues Bosnian Serb Nationalists,” *IWPR Balkan Crisis Report*, 6.12.2000.

<sup>18</sup> *Reuters*, 26.2.2001.

<sup>19</sup> *Jutarnji list* (Zagreb), 29.3.2001.

<sup>20</sup> *New York Times*, 12.2.2001.

Herzegovina in early 2001 indicate a degree of coordination with the HDZ in Croatia.<sup>21</sup> The “cause” of Croats in Bosnia might have thus played a role in the domestic calculations of the HDZ for the Croatian local elections on 20 May 2001.

### *Conclusion*

In addition to these factors contributing to the establishment of the Croat self-government, economic/criminal factors most certainly played a role.<sup>22</sup> As the response of the HDZ to the takeover of the *Hercegovačka Banka* seems to suggest, the economic interests of the party and its leadership were threatened by the change of government in Bosnia and the more assertive policies of the international community in Bosnia.<sup>23</sup>

The Croat self-government is beyond doubt a considerable challenge to the Dayton Peace Accords. The demand of the Croat leadership for a third entity can only be dismissed with difficulty in light of the existence of a Serb entity. Despite this development being a challenge to the existing arrangement, the argument can be made that some effects have been positive. The call by the HDZ for Croat soldiers to desert the Federation army and the public display of the parallel Croat power structures have given the High Representative an opportunity to render the Federation more effective by excluding those officials, who have not only now, but throughout the past five and a half year, obstructed the implementation of the Dayton Peace Accords.

At the same time, the Croat self-government highlights a practical and theoretical challenge to establishing functional multinational states. The High Representative, Wolfgang Petritsch, in justifying his removal of Ante Jelavić from the Bosnia Presidency for establishing the Croat self-government, repeatedly sought to make a distinction between protection of legitimate national and minority rights and unacceptable nationalist

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<sup>21</sup> *Neue Züricher Zeitung*, 12.4.2001.

<sup>22</sup> A number of assassination attempts against moderate Croats, as well as heavy involvement in corruption and smuggling by Croat nationalists suggest a link to organized crime, see *Guardian*, 16.4.2001. The ICG concluded from the resistance to audit the bank that it “highlighted the nexus of crime and corruption that underpins Bosnia’s entrenched nationalist parties.” International Crisis Group, *No Early Exit: Nato’s Continuing Challenge in Bosnia*, Sarajevo/Brussels, 22.5.2001. See also the interview with Wolfgang Petritsch in *Slobodna Dalmacija*, in which he emphasizes the link between crime and the HDZ, *Slobodna Dalmacija*, 11.4.2001.

<sup>23</sup> Janez Kovac, “Bank Closure Provokes Croat Wrath,” *IWPR Balkan Crisis Report*, 12.4.2001.

demands.<sup>24</sup> While the means chosen by the Croatian Democratic Community and its motivations point to self-serving interests in breaking with the Federation, there are undeniably some legitimate concerns for the Croat community. Considering that the Croat population constitutes the smallest of the three dominant Bosnian nations and the junior partner in the Federation, a simple move towards a more civic concept of statehood, through election rules or otherwise, runs the risk of placing Croats in a permanent minority position where voting for a national party such as the HDZ seems like the only means of protection.

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<sup>24</sup> *OHR Press Statement*, “The High Representatives TV Address On the Dismissal of Mr Jelavic and three other HDZ Officials,” 7.3.2001.