

**BISHOPS CONFERENCE OF BOSNIA AND HERZEGOVINA**

**COMMISSION “JUSTITIA ET PAX”**

**REPORT ON THE  
STATE OF HUMAN RIGHTS  
IN BOSNIA & HERZEGOVINA  
IN THE YEAR 2004**



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## INTRODUCTION

If we would ask an average European person what he knows about Bosnia and Herzegovina, most certainly his/her first impressions would mainly be connected to the negative and dark issues of the recent past. Unfortunately, historical basis of such a picture of Bosnia and Herzegovina goes far, far away to the past. This complicated and neglected part of the European continent, crossroads of civilizations, almost always was under the mystical veil of the brutality of life and survival. During the middle age the rulers and the people of Bosnia were, most often, with no justification and for political reasons, accused of heresies. After the fall of Christian Bosnia under the ottoman power, the west was overpowered by the picture of Bosnia as the “world of perpetual darkness”, space where injustice, chaos, and all the dangers one could possibly imagine were happening. At the beginning of the last century in the current capital of Bosnia and Herzegovina the “Sarajevo assassination” occurred, which was the immediate cause for the beginning of the World War One. In the World War Two the territory of Bosnia and Herzegovina was the scene of bloody conflicts and clashes. After that the period of fifty years long governing of the totalitarian communist regime when all the human dignity had been trampled over – and especially of believers and political opponents.

The hope that the peoples of Bosnia and Herzegovina finally got to the era of democratization in 1990 was early lost. Freedom leaning on multi-party system, because of the wish to dominate and preserve unfair social forms, resulted in relentless political conflicts that, at the end, developed into bloody war.

The history was not favorable towards people of these parts. Bosnia and Herzegovina now lives in some undefined and troubled period, neither here nor there – in conditions of half-protectorate and/or half-democracy, and also in conditions of general poverty and breaching of fundamental human rights.

The gravest issue for the people of Bosnia and Herzegovina today is the issue of hope. They are tormented by the doubt of whether it is possible in this country to reach fair and satisfying solution for all its citizens and peoples? It most certainly is possible. But, it is hard to say and even harder to wait for the day when national and international people in power that are deciding on the future of this country, would be ready to look into the eye of their own institutional injustices and render them. However, it is more than obvious that all of the people who are willing to preserve their human dignity are invited to search for an answer of this question. We are aware that it is almost impossible to state all the reasons and ways of disregard for human rights in this country. That, however, mustn't discourage us. In order to find an appropriate solution, it is necessary to define problems. This report is an attempt to point out to the pressing problems burdening the population of Bosnia and Herzegovina. By it we would like to give a small contribution to the creation of the road towards the common benefit of all the people that hardly survive in this country.

## **I. SITUATION OF HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA**

### **I.1. General Impressions in Relation to 2003**

Generally speaking, it cannot be claimed on proper grounds that the situation of human rights in Bosnia and Herzegovina improved during the previous year. General impression may be reached that serious position of people in Bosnia and Herzegovina has not changed at all. Over nine years passed since the end of the war but citizens cannot get freed of serious consequences of it. Although it is well known that the war does not start with killing and the peace does not arrive by the end of hostilities, the citizens of Bosnia and Herzegovina justifiably expected little more obvious fruits at least of the end of war if not of the beginning of peace. That is the reason why the obvious fact of existing human rights situation and better future of society did not start with the acceleration. And it is all because of unjust but relentlessly imposed political framework.

In the state that is not functional and rational, as it was imposed and directed by the power and “friendly relationships” between nations in Dayton, it would be complicated to realize improvements in the respect of human rights and especially rights of peoples even if much more of good will would exist. Therefore, this Commission is convinced that the most of the problems relating to the realization of individual and joined human rights and freedoms derive from unsolved system issues – the key ones for the functioning of the state and society. It is certain that the citizens of Bosnia and Herzegovina could not expect efficient protection, through the ineffective and non-functional system of state authority, and realization of rights that the Constitution, only generally and thus so broadly proclaim. The analyses made by international and national institutions of civil society indicate that the state structure that was completely unfairly divided by the use national key is one of the reasons for the lack of coordination between the state bodies, and that considerably prevents the rule of law in Bosnia and Herzegovina. The close relation between the corrupt state structures and criminal groups may be noted and all of it for the purpose of preserving the state prerogatives “gained in the war and confirmed in Dayton”. In any case, the dissolved state apparatus and inexistence of will to finalize such situation cannot invoke hope that the equality of all citizens and nations is possible in Bosnia and Herzegovina as it currently is. Unfortunately, the best example of it is the organization of judiciary in Bosnia and Herzegovina that does not mind obvious politically motivated and framed procedures!

The survey made by the UNDP in 2004 indicates that in the perception of citizens the political parties are main source and basis that influence the functioning of the rule of law and thus imperiling the realization of human rights. It is obvious that the existing state suites the profile of politicians that, in order to keep the power, adapt to any political ideology or organization of authority their position depends on. It is easiest to realise striving for personal gain through the one’s position in the milieu of general poverty, and environment where the concentration of power is in hands of political elite, and under such circumstances it is easiest to manipulate by impoverished population by making the climate of continuous tensions and “dangers” caused by other two nations. The establishment of international community that prefers the

existing state in order to keep the well paid positions also contributes to the existing climate of uncertainty.

Anyway, the citizens of Bosnia and Herzegovina, the same as in the previous period, do not get any fruits of democracy or improvement in the conditions of life that are broadly and loudly proclaimed by both, the international representatives and domestic politicians.

## **I.2. Implementation of Annex VII to the Dayton Agreement and demographic movements**

The International Community declared that the implementation of property laws has been successfully finalized on 31 December 2003. Truly, the protection of the ownership rights and other real rights over the real estates is one of the fundamental prerequisites for the implementation of Annex VII to the Dayton Agreement. But it is not the only prerequisite necessary to be fulfilled in order to perform the process of return of all. Notwithstanding the huge aid sent to this country for reconstruction of destructed houses and apartments, the largest number of BH citizens does not currently live in their prewar homes.

Unfortunately, it may be concluded that the process of return of refugees and displaced persons has not succeeded at all. Having in mind the situation in real return in 2004, it may, with certainty, be claimed that the project of Annex VIII to the Dayton Agreement failed. We probably could not expect any better results because of the fact that the Dayton Agreement legalized results of aggression, war and ethnical cleansing. What was made on the wrong fundamentals has to fell down sooner or later. Therefore, our claim that the Dayton solutions disabled the most of citizens of Bosnia and Herzegovina to realize their right to freely choose their home as achievement of civilization and one of fundamental human rights is well-founded.

Since the beginning of the war until the signing of the Dayton Agreement approximately 1.250.000 persons, or 28,4 percent of whole population, were expelled from Bosnia and Herzegovina. Throughout Bosnia and Herzegovina additional 1.370.000 persons, or 31,2 percent of whole population, were internally displaced. So, during the war 2.680.000 refugees and displaced persons left their homes, which represents 59,6 percent of the whole population of Bosnia and Herzegovina. The process of return started immediately after the Dayton Agreement was signed. According to the official, but probably exaggerated, statistics of the Ministry for Human Rights and Refugees of Bosnia and Herzegovina, until 30 June 2003, on the territory of whole Bosnia and Herzegovina the total of 959.561 returns were realized, 701.409 to the territory of the Federation, or 73,1 percent, and 237.512 persons to the territory of Republika Srpska, or 24,75 percent, and to the Brčko District 20.640 persons, or 2,15 percent. The data on return is based on the formula; one property returned is equal to one solved property and legal issue. Real situation in the field confirms that this formula is not correct and that it does not correspond to the implementation of return process. As an example we will give the situation in the return of Croats to Bosnia and Herzegovina. The statistics show that approximately 312.000 Croats were expelled and 154.000 displaced during the war in Bosnia and Herzegovina. The records of the Catholic Church in Bosnia and

Herzegovina<sup>1</sup> indicate that at the beginning of the war there were around 850.000 Catholics<sup>2</sup>, and that is near to the approximate number of Croats. Namely, at the time of Communism, not all the Croats declared themselves as Catholics for a number of reasons, and not all the Catholics in BH are the Croats. With great certainty we may claim that the number of Catholics that are not Croats and the number of Croats that were not declaring themselves as Catholics is almost the same. The Catholic Church in BH considers that in 1993 only around 440.000 Catholics<sup>3</sup> remained in BH (and approximate number of Croats also). By the inspection of the real situation in the field and of the archives of BH Dioceses, the Catholic Church considers that in 2004 around 465.000 Catholics lived in BH, meaning that only around 24.000 of expelled persons returned. It follows that 45,3 percent of nation that was minor in its number permanently left BH, and the large number of displaced persons did not return to their prewar homes as well. It is obvious that this information is substantially different to the one given by the official statistics. That is also confirmed by the assessment that approximately 1.000.000 citizens of BH applied for citizenship in foreign countries<sup>4</sup>. It is indicative that no one insists on the performance of the census because it would most certainly show devastating results of the implementation of Annex VII to the Dayton Agreement.

This year, on several occasions, the representatives of the International Community emphasized their success by the realized return of million returns to BH. If the million of expelled returned how it is possible that the same number requested citizenship in the foreign countries? This unscrupulous game with the number of refugees and returnees is only the continuation of injustice caused by their expulsion as well as the Dayton Agreement is confirmation of injustice done during the war. In that manner the real state of returns shows tragic failure of the policy relating to BH. We will again take Croats as an example, because the Catholic Church has the exact information that in the Republika Srpska currently lives only around 12.000 of approximately 220.000 Croats that were living there immediately before the war. The situation is not much better with the return of Bosniac-Muslims to the Eastern Bosnia where they were explicit majority immediately before the war. We are of the opinion that no more detailed arguments are necessary regarding this issue.

It is clear that the history of this land and its people repeats. Regardless of certain crudeness of life in these parts, their affiliation to this part of world always caused pride in the people of BH. Sometimes such relationship changed into narrow-mindedness, intolerance and extremism; and it regularly caused disaster for its entire population. Because of constant clashes of interests and turbulent events, the people of this country were often in their history forced to leave their fatherland. Therefore, it may be stated that drastic demographic changes are historical constant of Bosnia and Herzegovina. As it was briefly shown, such human tragedy repeated during the last war as well. Sudden demographic changes always left deep marks in BH and

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<sup>1</sup> The Archdiocesan Ordinaries of Vrhbosna, the Diocesan Ordinaries Mostar, the Diocesan Ordinaries Banja Luka

<sup>2</sup> The difference between this number and the census 1991 data appeared because the number of so called "others", and mainly of members of the then recognized nation of Yugoslavs, returned to their national roots at the beginning of the war, and the part of Croats as well. According to the 1991 census there were 5,5 percent of Yugoslavs of the whole population of BH (around 240.000 persons).

<sup>3</sup> Compare *Raspeta Crkva u Bosni i Hercegovini*, Banja Luka, Mostar, Sarajevo, Zagreb 1997.

<sup>4</sup> *Oslobođenje* of 2 and 3 February 2005.

that repeated this time. Thus, in the completely changed situation in the world it is hard to expect that Bosnia and Herzegovina will become what it used to be. Contrary to the statements of the representatives of the International Community in BH, the disastrous trend of emigration from this country continued also after the end of war. Surveys show that more than 60 percent of young people between the ages of 16 and 27 are ready to permanently leave BH if given the chance. According to the insight into the public opinion, that was made by the UNDPBH in February 2004, regarding the emigration from BH, around 50 percent of questioned between the age of 18 to 35<sup>5</sup>, and total of 35,8 percent of population of age, would readily leave the country. To their places in BH return only the old people that no one wants abroad! So, as before, only those that have nowhere to go remained here but, fortunately, also some of those that are the bravest and the most proud of their fatherland and their origin. Despite of all, we would like to believe that they are the seeds of the new future.

### **I.3. Permanent loss of BH citizens**

According to the data of the Ministry of Civil Affairs of BH around 5000 citizens renounce their BH citizenship. The most often reason to renounce citizenship of BH is to acquire citizenship of some western country the legislation of which does not recognize the institute of dual citizenship<sup>6</sup>. According to the information this Ministry has, since the end of the war until 2004, more than 27.000 of BH citizens renounced their citizenship<sup>7</sup>. The person that fulfills conditions prescribed by the law<sup>8</sup> and requests "deletion" from the Citizenship Register is obliged to pay the administrative tax in the amount of 1.700,00 KM<sup>9</sup>. In order to fulfill the needs of huge administrative apparatus, the state got paid over 45.900.000 KM just from these administrative taxes for persons renouncing their BH citizenship, and that is data according to the official information given by the competent Ministry.

It is interesting to note that even in these circumstances the state apparatus found the way to, ruthlessly but with no criteria, manipulate in order to obtain funds. The Law on citizenship of BH prescribes for two manners for the voluntary termination of BH citizenship; renouncing and revocation. The competent state Ministry has not, as a rule, allow citizens to use the institute of renouncing the citizenship that would allow such a decision to be annulled if such a person does not obtain foreign citizenship within a period of one year after renunciation of BH citizenship. That expresses the scope of negligence and shortsightedness of the state institutions with regard to disposal of human resources. It may be briefly stated that the state apparatus has not done anything, not even what easily could be done, to make return of people to their homes and fatherland easier and to stop pouring of human potential from this country during all these years after the war.

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<sup>5</sup> "System of early warning – Quartile Report, April- July 2004.", the UNDPBH

<sup>6</sup> Most often the Republic of Austria and Federal Republic of Germany

<sup>7</sup> Unofficial statistics deal with numbers of around 50.000 citizens. The Alternative Presidency of BH gives the number of million citizens of BH who took citizenship of some other state.

<sup>8</sup> The Law on Citizenship of BH, Official Gazette of BH nos. 4/97, 13/99, 6/03 i 14/03.

<sup>9</sup> 1,00 KM cca. 0,51 EUR

## II. EVENTS MARKING THE YEAR 2004

### II.1. Law on Freedom of Religion and Legal Position of Churches and Religious Communities Adopted

The House of Peoples of the Parliament of B&H adopted the *Law on Freedom of Religion and Legal Position of Churches and Religious Communities in Bosnia and Herzegovina*<sup>10</sup> on 28 January 2004. The basis for the adopted Law was the Draft Law on Legal Position of Churches and Religious Communities that we analyzed in the Report on Situation of Human Rights in Bosnia and Herzegovina for the Year 2002<sup>11</sup>. As announced the Law was adopted on the State level and it is applicable on the whole territory of Bosnia and Herzegovina. This Law created presumptions for elimination of legal lacuna regarding non-existence of the legal subjectivity of Churches and Religious Communities in B&H in the formal and legal sense. However, the State administration has not prepared the enforcement provisions on the basis of which the rights proclaimed by the new Law may be realized in practice<sup>12</sup>. Under Article 20 of the Law, the Ministry competent for relations with Churches and Religious Communities was obliged to issue the Instruction for Enforcement within six months period. That has not been done yet, and the Law still has only declaratory character. For example, the Churches and Religious Communities cannot be legally registered yet. This example, as many others reflects the inefficiency of the legal system and non-existence of the rule of law. Regardless of everything states, standards prescribed by the adopted text of this Law in the formal and legal sense are on the highest possible level and they are following from the constitutionally guaranteed freedom of religion.

The Law proclaims civil principle of separateness of Churches and Religious Communities from State which implies that the State cannot give to any Church or Religious Community the status of "state religion" or State Church or Religious Community. This principle also implies equality of Churches and Religious Communities before the Law (including the prohibition of favoring one of them) and independence in work of any Church or Religious Community.<sup>13</sup>

Smaller Religious Communities or Religious Communities with lesser number of members that coexist in Bosnia and Herzegovina had certain objections that in relation to the smaller Religious Communities the Law favors four traditional Churches and Religious Communities<sup>14</sup> in B&H. The objections also related to the fact that the Law confirmed the continuity of legal entity quality to the historically based Churches and Religious Communities in Bosnia and Herzegovina, whilst other Churches and Religious Communities have to be registered in the manner prescribed by the new Law. Internal, legal and functional organization of every Church or Religious Community was accepted as fundamental framework of operation and organization of Churches and Religious Communities in Bosnia and Herzegovina. It is understandable that the Law restricted actions of the religious institutions in the

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<sup>10</sup> The Law was published in the Official Gazette of BH no. 40/04 of 25 August 2004, and entered into force on 2 September 2004.

<sup>11</sup> Special Report: Odnos države prema crkvama i vjerskim zajednicama u BiH.

<sup>12</sup> Of enforcement provisions only the *Rules on Establishment and Registration in the Unique Register for registration of Churches and Religious Communities, their associations and organizational forms in Bosnia and Herzegovina*, published in the Official Gazette BH no. 46/04.

<sup>13</sup> Chapter IV. – "Relation between the State, Church and Religious Community", Article 14 of the Law

<sup>14</sup> Catholic Church, Serb Orthodox Church, Islamic Community in BH, Jewish Community in BH

activities that would eventually spread intolerance, confessional prejudices or activities that would be contrary to the “*legal order, public security, moral or to the detriment of life and health, or to the detriment of freedoms and rights of others*”<sup>15</sup>. This Commission assesses that the adoption of the Law on the State level is great progress in relation to previous non-existence of legal regulations in this area, and in particular because this Law finally made a legal framework for lawful work of Churches and Religious Communities in Bosnia and Herzegovina. Inexistence of enforcement provisions to practically enable Churches and Religious Communities to realize their religious rights and freedoms indicates that this field has not been completely solved yet.<sup>16</sup> The Draft Law and Agreement on the text of Law were agreed upon in the Inter-religious Council of Bosnia and Herzegovina but specific quality of the Catholic Church to which it was pointed out during the consideration of Draft was not taken into account. The Commission is of the opinion that the legal status of the Catholic Church in Bosnia and Herzegovina may and should be solved through the conclusion of bilateral agreement between Bosnia and Herzegovina and the Holy Chair for which a number of examples exist in the international legal practice. Objections to such an agreement prove discriminatory relation towards the Catholic Church in Bosnia and Herzegovina because it negates its right that the Law gives to all other Churches and Religious Communities, to use its freedom in its own way. Some members of the Inter-religious Council, obviously in coordination with political centers of power, showed that they are not ready to respect differences of the Catholic Church and showed their inconsistency when representing interests of people whose representatives they in public stated to be

## **II.2. Reform in the area of defense**

In December 2003, the Law on Defense of Bosnia and Herzegovina<sup>17</sup> was adopted. The adoption of this Law was conditioned by the International Community and was one of the main preconditions for BH to be accepted to the NATO’s program “Partnership for Peace”. The unique defense system of Bosnia and Herzegovina and the unique chain of command was established by this Law consisting of the Armies of Entities; the Army of the Federation and the RS Army. The Law stipulates that the Presidency of BH would represent the civil Army Commander, and it has to reach all the decisions relating to the defense by the consensus. The democratic control over the Army is given to the Parliamentary Assembly of BH that is also responsible for issuance of all the acts relating to this area. The right to declare the state of war or emergency is exclusively in the competence of the Parliamentary Assembly of BH upon the proposal by the BH Presidency. The Armed Forces of BH consist of professional, serving and reserve force. The serving part of force should be decreased for 50 percent, and the serving of Army should be reduced to four months. During 2004, the process of reorganization of the Army in Bosnia and Herzegovina

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<sup>15</sup> Quotation of Article 4 para. 3 of the *Law on Freedom of Religion and Legal Position of Churches and Religious Communities in BH*.

<sup>16</sup> In declaratory manner the Law obliges the State to regulate by a special provision the pension, invalidity and health insurance of religious officials, and gives the right to churches and religious communities to freely purchase, produce, import, export and distribute religious literature etc. Also, Article 9 of this Law provides for the right of churches and religious communities to “*enjoy benefits on the basis of their status and privileges usual for non-profitable organizations*”.

<sup>17</sup> The Law on Defense of BH was published in the Official Gazette BH no. 43/03

continued. By the Law on Defense it is provided for the establishment of the Ministry of Defense on the state level consisting of Minister and two Deputies. They could not be chosen from the same constitutive nation. The House of Representatives of the BH Parliamentary Assembly appointed both the Minister and his Deputies on 15 March 2004 after the OHR approved their appointment. That way, one of conditions for accepting of BH to the “Partnership for Peace” was complied with.

We have to conclude that the Law on Defense of BH as many others in Bosnia and Herzegovina in direct contradiction to the solutions of the Dayton Constitution, but the rationality or reasons to impose them cannot be disputed<sup>18</sup>.

### **II.3. Bosnia and Herzegovina has not been accepted to the NATO’s program “Partnership for Peace”**

On the NATO Summit held in Istanbul on 28 June 2004, Bosnia and Herzegovina was not accepted to the Partnership for Peace. Non-compliance with the obligation towards the ICTY in Den Hague was given as the main reason. Non-compliance with the international obligations results mostly from the fact that a large number of suspects for the war crimes of genocide are still at large. That especially relates to the inaccessibility of the war leaders of Bosnian Serb, Radovan Kravadić and Ratko Mladić, to the Hague Tribunal. The NATO leaders especially emphasized obstructionism of the Republika Srpska regarding the apprehension of war criminals as the reason for not accepting Bosnia and Herzegovina.

The High Representative in BH, Paddy Ashdown, using his broad authority, removed nine officials of lower rank from their posts in the Republika Srpska. The OHR decisions state that the Republika Srpska did not fulfill even the minimum of compliance with its obligation of cooperation with the ICTY regarding the extradition of accused for war crimes, and therefore, it postponed integration of the BH State into the European Union. It is emphasized that the Republika Srpska has not, within the period of nine years after the signing of the Dayton Agreement, extradited a single person accused of war crimes. It is further stated that the concerned persons were removed from their posts “*for their acts, or failures to act on the important positions*”, and that it is “*the general plan within the Republika Srpska to maintain the culture of silence and deception in which the war crimes accused are protected of justice*”.

In the same time, the USA government prohibited to all politicians of SDS and PDP<sup>19</sup> parties to enter the USA. Amongst others, these sanctions referred to the actual Minister of Foreign Affairs of BH, which meant his removal from position – since he could not perform a public function under such circumstances. As usual, the coordinated reactions of the political position and opposition in the Republika Srpska, and it consisted of withdrawal of the largest number of Serb Ministers from the

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<sup>18</sup> The Law was passed in the regular procedure of the BH Parliamentary Assembly and the BH House of Peoples, but it was also a result of substantial pressure of the OHR and International Community on all institutions to be passed in the existing form.

<sup>19</sup> These are two ruling parties in the Republika Srpska: Serb Democratic Party (SDS), its establisher being Radovan Karadžić and which is the most powerful political party in the RS, and the Party of Democratic Progress (PDP) – its President being Mladen Ivanić, the then Minister for Foreign Affairs of Bosnia and Herzegovina .

Council of Ministers of Bosnia and Herzegovina<sup>20</sup>. The Prime Minister of the Republika Srpska also resigned. This coordinated reaction has the goal of blocking of work of BH institutions and destabilization of the whole State. The message from the politicians of the Republika Srpska was that they did not accept reduce of competencies of their Entity, which (as on many occasions up to this moment) clearly stated the position of Serb politicians regarding the unchangeable status of ethnically cleansed Republika Srpska.

The reasons given not to accept BH to the “Partnership for peace” indicate how far this State is from Euro-Atlantic Integrations. The responsibility lies, first of all, on the national politicians that give no impression as sincerely approach the process of acceptance. Substantial part of responsibility lies also on the International Community that, by imposing unjust solutions and legalizing the results of war, gave signal to Serb and other politicians that they can achieve their goals by any possible means. And in all of it, the future of citizens of this country remains completely uncertain. The policy of concessions to the crime that was accepted in Dayton had to result with the current chaos in the country. Constant transmission of responsibility between national politicians and representatives of the International Community is obvious. National politicians are trying to transfer their responsibility to the Office of the High Representative, avoiding recognizing and accepting their inconsistent acts, i.e. irresponsible performance of duties. Representatives of the International Community (mainly the OHR) also do not want to take the responsibility for the catastrophic situation in the State, and they impute their failures and omissions on almost any occasion to the national politicians. To both such relation gives the political alibi for everything done and it appears that no one is responsible for anything in this country. It all looks like a vicious circle all the time danced by the same dancers who have the same wish to protect their own position and financial gains. This goes for both national and international politicians in BH. It appears that in such constellation of relations Bosnia and Herzegovina has no chance to leave this vicious circle on its own.

The decision not to accept Bosnia and Herzegovina to the “Partnership for peace” is a logical one, having in mind the fact that the authorities of one of its Entities do not care at all for their civilization obligations to realize conditions for tolerant and acceptable coexistence of all its nations and citizens. It appears that the prosperity of the state and citizens who live there is not at all important to the political authorities of that Entity. The striking example gives the announcement of the fact that one of the main Hague accused, Ratko Mladić, was on the pay roll of the Army of the Republika Srpska until 2002 when he was formally-legally dismissed from it. This participant in the Srebrenica and many other war tragedies in BH (and the Republic of Croatia) is still on the pension list of the Army of Serbia and Monte Negro. It is plausible that he International Community only used the finding of co-financing Ratko Mladić, the accused for the war crimes, as a motive to sanction the inflexible and ruthless politics led from the very beginning by the Republika Srpska that has constant support of the electoral body of that Entity.

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<sup>20</sup> Under the BH Constitution, the Council of Ministers is in essence the Government of B&H. The Presidency of B6H appoints the Chair of the Council of Ministers who can take the duty upon approval of the House of Representatives of the Parliamentary Assembly of B&H. The OHR imposed the Law on Council of Ministers by the decision of 3 December 2002 that factually amended Constitutional provisions.

Unfortunately, it may be established that the total social and political milieu indicates that the society of Bosnia and Herzegovina is not even near to the high criteria determined for the acceptance to the Euro-Atlantic Integrations.

#### **II.4. Tax Reform in Bosnia and Herzegovina**

On 10 December 2003, the House of Peoples of the Parliament of Bosnia and Herzegovina passed the Law on the System of Indirect Taxation in BH<sup>21</sup>. This Law is basis for the unique organization of the system of indirect public revenue gathering on the level of the BH State.

Under Annex IV to the Dayton Agreement, the Entities are in charge of tax revenues<sup>22</sup>. The competence of collecting indirect sales taxes is transferred to the State level although the Constitution has not been changed. That is transitional legal solution for adoption of the Law on Value Added Tax as an unique law for the territory of the whole State.

On the basis of this Law, at the beginning of 2004, the Administration for Indirect Taxation as the institution on the State level that unites the Entity Custom Administrations of the Federation of Bosnia and Herzegovina and the Republika Srpska. The Administration for Indirect Taxation became united State custom administration. It will also become the State Agency responsible for introduction and enforcement of value added tax (PDV).

By the force of this Law, the State Administration for Indirect Taxation becomes the only competent organ for collection and distribution of indirect taxes on the territory of BH. Collecting of excise taxes for high-quality goods will be transferred under its competence. The excise tax would be a special turnover tax for high quality goods such as; tobacco, tobacco products, beverage, coffee products, petroleum and petroleum products, etc. In the meaning of Article 25 of the Law, a part of indirect taxes still remained in the competence of Entity Tax Administrations except excises that are to be collected when importing such products.

By the entry into force of this Law decisions on policy of indirect taxation on the State level are to be adopted by the Management Board, and the Indirect Taxation Administration enforces taxation and the administrative implementation of tax reform. Under this Law the Management Board of the Indirect Taxation Administration became the only responsible body in Bosnia and Herzegovina for realization of indirect taxation policy (including custom tax).

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<sup>21</sup> The Law was published in the Official Gazette B&H no. 44 of 31 December 2003 and entered into force on 8 January 2004, and it was amended by the Decision of the High Representative of 25 October 2004 (Official Gazette of B&H no. 54/04).

<sup>22</sup> Article III.1. of the Constitution of B&H (Annex IV to the Dayton Agreement) prescribes competencies of the institutions of the BH State. Article III.3.a) prescribes that: "All governmental functions and competencies that were not given to the institutions of Bosnia and Herzegovina by this Constitution shall be the ones that exist in the Entities".

Under Article 23 of this Law the Management Board of the Indirect Taxation Administration is obliged to prepare the Bill on the Law on Value Added Tax for the territory of the State.

On 29 December 2004, the House of the Representatives and the House of Peoples of the Parliament of Bosnia and Herzegovina passed the Law on Turnover Tax for Goods and Services introducing unique tax rates on the level of the whole Bosnia and Herzegovina. Under this Law payment of turnover taxes are performed on the unique account of the Indirect Tax Administration of Bosnia and Herzegovina. Since the beginning of 2005, all turnover tax gathering for goods and services are performed on the State level, and not on the Entity or Brčko District level. The Law is published in the Official Gazette of Bosnia and Herzegovina no. 62/04 of 30 December 2004 and it entered into force by the date of publishing and shall be applied as of 1 January 2005. Under Article 50 of the Law, all regulations of Entities and the Brčko District relating to taxation of goods and services ceased to apply. It may be seen that on 31 December 2004 no law on turnover tax in Bosnia and Herzegovina could be applied because the new Law started with the application only on 1 January 2005. The fact that taxpayers were not given the possibility to get familiarized with their obligations deriving from this Law indicates of how usuriously this important issue is approached. The *Instructions on Application of the Law on Turnover Tax for Goods and Services*, as the implementation regulation was published in the Official Gazette of Bosnia and Herzegovina on 31 December 2004, and it entered into force with the date of publishing. The Law and implementation regulations entered into force but their text has never been accessible to the taxpayers previous to that. The end of the year was also marked by the issuance of the new Law on Excises, also published on 31 December 2004, which introduced and provided for the unique excise tax rate on the level of Bosnia and Herzegovina. All revenues of excise taxes are also to be paid to the unique account of the Indirect Taxation Administration<sup>23</sup>.

It must be concluded that former system of public revenue collecting in both entities was inefficient and that the reform in this field was necessary. We are of the opinion that it is necessary to simultaneously perform the reform of Entity and the Brčko District civil services rationalization regarding the direct taxation (profit tax, property tax, etc.). If not so, over-capacitating of the administrative apparatus on the State level, through the Entities and Cantons to the level of Municipalities will annul all positive effects of the initiated tax reform. Certainly, there is no justification for keeping the organizational framework of the Entity tax administrations of the in the situation when they lost the largest part of their competencies.

On 11 November 2004, the Representatives of the House of Representatives of the BH Parliament adopted the Draft Law on Value Added Tax. This act proposed introduction of two different value added tax rates; of 0 and 17 percent. Zero rate would be applied for bread, oil and fats, milk, medicaments, books, daily and weakly newspapers, and 17 percent rate to all other products. The Council of Ministers of Bosnia and Herzegovina submitted a proposal for introduction of unique tax rate of 17 percent for all the products. The Law should be applied not later than on 1 July

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<sup>23</sup> The manner of payment of all the revenues to the Indirect Taxation Administration is regulated by the *Rules of Payment of Indirect Taxes and Other Revenues and Payments Paid to the Indirect Taxation Administration*, published in the Official Gazette BH no. 59/04 of 22 December 2004.

2005.

It is not necessary to explain advantages of taxation through the value added tax (PDV). Such system of revenue gathering eliminates “gray market” and substantially improves collection level. By the introduction of the PDV Law the interest of taxpayers to get correctly tax registered goods, because, on the basis of bill as the evidence of payment of goods or services they realize the right to tax refund realized in previous phases of transfer. The insisting of the International Community to introduce the future Law on PDV in such manner that the unique value added tax rate is introduced for all goods and services is disturbing. Such taxation system is socially unfair because it influences the poorest social groups the most. In the expenditure structure, the cheapest foods are the largest item in the family budget. We support the proposal of the House of Representatives of the BH Parliament providing for the zero PDV rate on basic foods. By equalization on tax rates for luxury goods and basic foods would achieve even more serious social disintegration of the BH society. For the stated reason the luxury PDV rate should be increased getting a number of differentiated PDV rates that way.

## **II.5. Reorganization of the Town of Mostar Performed**

By his decision of 28 January 2004, the High Representative in Bosnia and Herzegovina imposed the Statute of Mostar, terminating six former Municipalities<sup>24</sup>. Public competencies were transferred from Municipalities to the Unique Town Administration. In that manner Mostar got one administration, one Mayor and one budget. The decision was issued after the political parties participating in the work of the Commission for Reforming Mostar<sup>25</sup>, did not succeed in finding solution that would fulfill requirements of both, Croats and Bosniacs in Mostar. Practical reasons for issuance of such decision cannot be disputed. It is more cost-effective and easier to have one administration in relation to previous six existing in Mostar. It is much easier to organize civil services to function better for the benefit of all citizens.

Former Municipalities got the status of „town regions“, that under the Decision are electoral basis for election of town councilors, i.e. town administration. Under the new town organization of town, the town administration consists of 35 councilors which prevents the majority Croats to execute power<sup>26</sup>. Each town region and Town Council give three councilors. Remaining seventeen councilors are chosen from the town area as one electoral unit. None of the constitutive nations can have more than fifteen councilors. These are final signs that only in the town of Mostar measures are applied not corresponding to the real will of the electoral body. Town authorities are organized in such way that Croats and Bosniac-Muslims realize fifteen councilor mandates each whilst “others” realize five councilor mandates. The decision was issued regardless of the national composition of citizens of Mostar. Mostar is the only larger urban environment in Bosnia and Herzegovina where the Croats compose the

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<sup>24</sup> Three with Croat majority and three with Bosniac majority.

<sup>25</sup> The Commission was established on 17 September 2003, as imposed by the Decision of the High Representative in BH.

<sup>26</sup> Although the census has not been performed since 1991, the assessments indicate that around 60 percent of Mostar population is of Croat origin.

majority of population and it is not easy to find another reason why only there the “equality” of nations is protected.

It is undisputable that this reform of authority organization in Mostar domination of majority over minority is prevented. It could be positively assessed if the same measures would be applied to other towns in Bosnia and Herzegovina as well. The OHR refuses even to talk of application of the same criteria for example to: Sarajevo, Banja Luka, Travnik, Bugojno, Zenica, Tuzla, Brčko and other towns where the majority are Bosniacs or Serbs and the exodus or ethnic cleansing was not any less substantial than in Mostar if not of larger extent. In particular, this should be looked at in the light of the Dayton constitutional solutions that, for example, provide for organization of the capital of Bosnia and Herzegovina as an open district. The OHR did not intervene when the majority Bosniacs organized Sarajevo as Canton with the Bosniac majority. The issue remains open why the Statute for Mostar was only one imposed and not for other towns in Bosnia and Herzegovina? The Croats also ask, righteously, what is political background for issuance of such decision? It is hard to avoid the impression that this is only one of a number of decisions that the OHR continuously decreases the constitutionality of the Croat peoples in Bosnia and Herzegovina!

In the context of relations in Bosnia and Herzegovina as whole, this Commission cannot assess as fair the selective solutions of problem with no consistent criteria. There are no constitutional grounds for systematic deterioration of constitutionality of one nation and only because of it being the smallest in number of members. If the reform of Mostar represents a fair model of prevention of majority to dominate over minority, we are of the opinion that the International Community, if it wants to be credible and obtain peaceful future of Bosnia and Herzegovina, should apply such model consistently to other towns in Bosnia and Herzegovina. Refusing to do so, through its Office of the High Representative it disables the peace that it should implement.

## **II.6. Constitutional Court of Bosnia and Herzegovina declared renaming of towns and municipalities in the Republika Srpska not in conformity with the Constitution**

On 27 February 2004, the Constitutional Court of Bosnia and Herzegovina adopted a Decision declaring not in conformity with the Constitution names of towns and municipalities in the Republika Srpska that contained in their name the prefix Serb. This Decision of the Constitutional Court ordered the National Assembly of the Republika Srpska to harmonize its legislation on territorial organization and local self-management with the Constitution within three months. This means that all the names of towns and municipalities in the Republika Srpska containing in their title the prefix “Serb” have to return the old titles or get new ones, acceptable for citizens and constitutive peoples living in the Republika Srpska. We consider this Decision to be of extraordinary importance for the whole Bosnia and Herzegovina because it indicates no part of Bosnia and Herzegovina should and could not belong exclusively to one nation. On the contrary, all the constitutive nations and citizens should enjoy all human rights on the whole territory of the State. The aim of excessive emphasizing of ethnic symbols in the Republika Srpska, and also in the titles of

towns and municipalities of the Republika Srpska, most certainly was the creation of ambient not suiting to the non-Serb part of population. Besides doing everything to slow down or prevent the return of non-Serb population to that Entity, by adding the prefix Serb to geographical terms the Serb authorities gave clear signal that refugees and displaced persons from the Republika Srpska that there is no prospect for returnees into that Entity.

Renaming of towns and Municipalities in the Republika Srpska during and after the war is significant example of systematic difficulties and obstacles to the return of displaced non-Serb population to their prewar residences on the Republika Srpska territory. It is hard to imagine the success of return of expelled Croats and Bosniac-Muslims to towns and municipalities that because of and after the war tragedy got their Serb titles. These titles caused repulsion towards return to their prewar homes in the non-Serb part of population, and giving these titles has for an aim losing the feeling of belonging of these people to the settlements they fled from. Therefore, the Decision of the Constitutional Court of Bosnia and Herzegovina is more than logical and fair because it confirms its Decision of July 2000 declaring all the citizens and nations on the territory of Bosnia and Herzegovina equal and constitutive, and thus, titles of towns and municipalities cannot be monoethnic.

Unfortunately, the Republika Srpska authorities did not enforce the Constitutional Court's Decision within the prescribed period. Therefore, the Constitutional Court requested responsibility of the Republika Srpska authorities for non-enforcement of its decision before the State Prosecutors Office; however, the National Assembly of the Republika Srpska did not comply with the Decision. For this reason in September 2004, the Court put out of force all disputable provisions and issued the Decision establishing provisional names for towns that contained the prefix "Serb" in it. Non-compliance with final and binding decisions of the Constitutional Court of Bosnia and Herzegovina is sign of relation of the Republika Srpska authorities towards the State of Bosnia and Herzegovina and its institutions. After these decisions of the Constitutional Court of Bosnia and Herzegovina the paradox of the title Republika Srpska became prominent and it also became obvious that it is untouchable only because it was decided so by the Dayton Agreement.

## **II.7. Law on High Education not Adopted**

Last year was marked by the reform of elementary and secondary education in Bosnia and Herzegovina that the Commission considered in its last year Report on State of Human Rights in Bosnia and Herzegovina. On the direction and manner this reform was performed the briefest summery would be that it was adopted under the pressure of the International Community, in particular of the OSCE<sup>27</sup> and the OHR. It also may be stated that the organization of education under this reform is substantially centralized, contrary to the Dayton Agreement solutions that put the education to the level of one Entity (RS), and in the BH Federation on the level of Cantons. Special objections to this reform may be given regarding undefined joined nucleus of curriculums, or regarding the impreciseness and indisputable possibility of every child's education in the spirit of culture and language of the nation he belongs to. Principles and goals of reform of the education system were defined by green and later on by White Paper made upon the directive of the International Community and

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<sup>27</sup> Organization for Security and Cooperation in Europe (OSCE)<sup>27</sup>

participation of the State officials who had no constitutional or legal competencies to enforce such reform. In truth, some Cantonal Ministers competent for education gave consent for the White Paper but mostly being blackmailed or coercion applied by the International Community representatives in Bosnia and Herzegovina.

In its Report on State of Human Rights in Bosnia and Herzegovina for the year 2003, this Commission expressed its concern and pointed out realistic danger that such education reform may cause cultural decay of the smallest nation in Bosnia and Herzegovina.

On the basis of imposed principles of so called White Paper the reform of high education in Bosnia and Herzegovina was supposed to happen. The concern of this Commission appeared to be well-founded because in accordance with the intended reform of high education BH Croats would have to remain without any University where the curriculum would be performed in Croat language. This time the method of pressure and blackmail of the International Community was fruitless and the Ministers of Croat peoples were not ready to transfer constitutional competencies over the high education from Canton to the Entity. The Croat Caucus in the House of Peoples of Bosnia and Herzegovina initiated the procedure of assessment of constitutionality before the Constitutional Court of Bosnia and Herzegovina regarding Draft Framework Law on High Education. In its Statement of 7 May 2004, the Croat Caucus pointed out before the House of Peoples of Bosnia and Herzegovina that the Draft Framework Law on High Education is destructive regarding the vital national interest of the Croat peoples for the following reasons:

1. „The Framework Law does not contain clearly determined, indisputable and non-ambiguous guaranty provision that the Croats and other two equal peoples in Bosnia and Herzegovina will have at least on University with curriculum in official Croat language and other two nations on their official languages. This is important because such provision in the Statute of Mostar University would depend on the assessment and decision of the competent Entity body as it is prescribed in Article 35 of the Framework Law that this body gives consent for the Statute. Further, the Framework Law does not provide for equal representation of all three constitutive nations in the competent Entity body, and this body is obliged to follow advices and recommendations of the Center for Information, Recognition and Assessment of Quality (CIPOK) where it is not prescribed deciding by consensus as follows from Articles 43 to 55 of the Framework Law.
2. The Framework Law 'seizes' the exclusive competence of Cantons as federal units in the education policy domain and transfers it to the Federation of Bosnia and Herzegovina (hereinafter: the Federation), which is contrary to Article III/4.(b) of the Constitution of the federation where the competence of Cantons for 'determination of educational policy, including the issuance of provisions on education and securing of education' is vividly, precisely and with no ambiguity prescribed. Further, the federal Constitution does not contain a single provision that would prescribe transfer of cantonal competencies to the Federation.
3. Justified and reasonable doubt and concern exists that the outvoting of Croat peoples when deciding on the Federal level, and in particular in federal bodies and those that, according to the Framework Law, should be established in the Federation for Issues in the area of High Education.“

After considering the proposal for assessment of constitutionality, submitted by the Croat Caucus in the House of Peoples of Bosnia and Herzegovina, on its plenary session held on 25 June 2004, the Constitutional Court of Bosnia and Herzegovina adopted the Decision on Admissibility and Merits<sup>28</sup>, declaring the Draft Framework Law on High Education of Bosnia and Herzegovina and manner of adoption of the University Statutes destructive for vital interest of Croat peoples. Regarding the procedure of issuance of the new Framework Law, the Constitutional Court gave instruction that it has to be issued in accordance with the procedure prescribed in the Constitution of Bosnia and Herzegovina. The reasoning part of the Constitutional Court's decision especially emphasizes unconformity of the Draft Framework Law regarding the use of official languages in the curriculum of high education that we (amongst other things) pointed out in our Report for 2003.

This Commission would like to see the reform of high education within the framework of the Bologna Declaration with the possibility for all three constitutive nations to get the chance of obtaining knowledge in the spirit of their language and culture on the whole territory of Bosnia and Herzegovina. Every solution to the contrary would represent discrimination and violation of constitutional rights of any of three nations in Bosnia and Herzegovina.

## **II.8. Local Elections Held**

On 2 October 200, local elections were held in Bosnia and Herzegovina. Of approximately 2,3 million of registered voters on the State level, 1.087.000 or around 46,8 percent<sup>29</sup> voted, and that represents relatively inadequate appearance of voters. In the BH Federation 45 percent, in the Republika Srpska 48,6 percent and in the Brčko District 60,9 percent voted.

Participating in the elections were 68 political parties, 146 independent candidates, 18 coalition parties and 6 coalitions of independent candidates. That indicates how immature and unprofessional the political scene in Bosnia and Herzegovina is.

In the BH Federation the national parties SDA and HDZ were elected in the main part of municipalities whilst in the Republika Srpska the radical SDS gained power in the most of the municipalities. These were the first elections since the begging of the war held completely independently, without international financial and organizational support. The elections mainly passed with no serious incidents and both, international and national observers had no objections of importance.

## **II.9. Commission for Restitution of Bosnia and Herzegovina Established<sup>30</sup>**

The Council of Ministers of Bosnia and Herzegovina by its Decision<sup>31</sup> of 16 November 2004 established the BH Commission for Restitution. This by-law also

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<sup>28</sup> When adopting the Decision, eight of nine judges of the Constitutional Court of Bosnia and Herzegovina were present. Under Article VI.a. the majority of all the members represent the quorum.

<sup>29</sup> Official data by the Election Commission of BH

<sup>30</sup> Problems of restitution were described in detail in our Report on State of Human Rights in BH for the Year 2001, Special Report – Restitution of Property Expropriated Under the Communist Regime.

<sup>31</sup> Decision published in the Official Gazette BH no. 54/04 and entered into force on the same date.

established the Secretariat for Restitution of Bosnia and Herzegovina that should give technical and professional support to the Commission.

Together with the Decision the Annex A was published, promoting the following principles for intended enforcement of the property restitution ceased during the period of totalitarian communist regime:

- To remedy, in fair and objective manner, injustices done by the State and its bodies in past by seizure or expropriation of property from their previous owners;
- To perform the restitution in Bosnia and Herzegovina, “and only in the manner that would not endanger the macro economic stability”;
- To eliminate the problem of restitution as the source of insecurity preventing the privatization process, and preventing the current owners to invest in the improvement of their property;
- To support further development of market economy in Bosnia and Herzegovina.

In the conditions of normal functioning of the economically sustainable state we could agree with all the above principles of the enforcement of the property restitution. However, in the circumstances of totally illiquidity of the state, which is the BH case, such principles seem controversial. The issue arises why to establish new institutions that most certainly are put before the impossible mission in a longer period of time. The process of expropriated property restitution to the previous owners is very expensive one, and especially having in mind the amount of property expropriated during the period of previous totalitarian regimes. Realization of such restitution procedure based on the principle of fairness (as stated by the Annex) would shake even the states with much more powerful economies.

The principles placed this way are directing towards another possible analyses indicating that the restitution process is not intended to be performed in the fairest manner, as promoted by the by-law. This Commission is of the opinion that historical injustices caused to the owners whose property was expropriated have to be remedied. However, new injustices must not be made during that process. We are of the opinion that under the existing circumstances the restitution process of expropriated property must be approached selectively in such way that former owners or their legal inheritors would be enabled to repossess the property that is possible to be returned in the same form as it was when expropriated (so called natural restitution – for example, expropriated agricultural land, restituted agricultural land). Other segments of repossession of property should be entered into in accordance with economic possibilities of the State.

As an example we may give restitution of expropriated residential buildings legally used by the occupancy right holders. When these apartments would be returned to their former owners a serious part of the population would remain homeless, and especially in the urban environment. The occupancy right holder is not to be blamed for being allocated for use an apartment previously expropriated from its former owner. This circumstance put into unequal position in relation to such occupancy right holders that were allocated the occupancy rights over real estates not burdened by the restitution and who used the specific occupancy right to obtain the ownership

right. To perform a fair restitution and not to make any new injustices the restitution of apartments should be performed in the following manner:

1. to pay the owner the appropriate compensation and enable the occupancy right holder to purchase the apartment under the same conditions as other occupancy right holders had, or
2. to perform the natural restitution of property to the former owner and to secure the occupancy right holder the adequate accommodation in the apartment that he could purchase under the same criteria as other occupancy right holders in BH had.

The State most certainly would not be in the position to realize any of two previously mentioned manners of restitution within reasonable time. Therefore, the decision to initiate the process of restitution in BH through the preparation of the institutional framework may be assessed as overhasty. We are of the opinion that establishment of new institutions that could not realistically be expected to perform tasks intended for them, cannot be considered as rational use of funds of already inadequate state budget. Bosnia and Herzegovina should perform a rationalization of its administrative apparatus because of its substantial complexity, and such reorganization would have to aim towards the efficient, economical and professional public administration, able to cope with the tasks citizens put before it. The establishment of the Restitution Commission that cannot perform its tasks within a certain period we could not assess as a move done on the rational grounds.

Before entering into any informal discussion on the future Law on Restitution of expropriated property, the systematic analyses of total costs and expenses that would define complete costs of implementation of the restitution process should be performed. Therefore, we support the intention to use the newly established Commission for legal, fiscal and operative analyses of the Draft Framework Law on Restitution in Bosnia and Herzegovina.

## **II.10. EUFOR Took Over the Mission of SFOR**

The European Community took over the mission of the SFOR on 2 December 2004. That way the operation of peace Stabilization Force (SFOR) was finished, and the operation of European Union Forces (EUFOR) started.

The mission of the EUFOR in Bosnia and Herzegovina is up to this moment the largest military operation of the European Union Forces and it goes under the title of "Althea". This mission is participated by soldiers from 33 countries, amongst these soldiers from 22 countries members of the European Union. The mandate of the EUFOR is in the essence the same as the SFOR's mandate was.

At the end of 2004, in Sarajevo, the NATO Headquarter also started operating with a task to help reform the defense system in Bosnia and Herzegovina and in global struggle against the terrorism. The NATO Headquarter closely cooperates with the EUFOR to achieve goals put before it, and especially to apprehend the war crimes accused.

At the beginning of their mission in Bosnia and Herzegovina, just after the signing of the Dayton Agreement, in December 1995, the NATO had at its disposal around 60.000 soldiers and operated under the title of IFOR (Implementation Forces). In December 1996 the IFOR mission was replaced by the Stabilization forces of the SFOR<sup>32</sup>. At the beginning of its mandate the SFOR had around 32.000 soldiers that was less than half relating to the number at the beginning of the NATO mission in Bosnia and Herzegovina. Between 1996 and 2004 the number of SFOR soldiers has been decreasing and at the end of their mandate it numbered only 7.000 soldiers, the same number as the EUFOR has at the beginning of its mandate. Decrease in the number of foreign soldiers indicates the society in Bosnia and Herzegovina slowly removes the danger of hostilities and it may start solving numerous problems burdening all of the citizens. However, we should not forget that the causes for the war in Bosnia and Herzegovina have not been completely removed yet. The reasons for constant smoldering of hostilities in this area are unfair constitutional solutions and not organized state-legal system. There is always a danger that some of these get to the surface in such extent to escalate this undefined and unorganized situation to the state of war. Therefore, the presence of European Union and NATO is still needed, and this need shall cease when political fractions of former war enemies succeed in reaching the fair agreement that would satisfy the civilization standards of present time.

## **II.11. State Law on Public Procurements Passed**

With the aim of better transparency of public funds expenditure, the Parliamentary Assembly of Bosnia and Herzegovina, on 23 September 2004, on the session of the BH House of Representatives passed the Law on Public Procurements in BH<sup>33</sup>. The Law entered into force on 10 October 2004, and its application immediately started in the institutions of Bosnia and Herzegovina. The legislator's intention was to restrict possibilities of manipulation and unlawful enrichment of civil servants while disposing with public funds on the level of the whole State. Entities and the Brčko District are obliged under this Law to annul all regulations that were applicable in his field within sixty days from the date of entry into force of the new Law. The unique manner of regulating public procurements on the territory of the whole State is an important measure for the fight against corruption and crime in "gloves". However, the question arises whether the provisions of this Law will be applied in practice. The Law also provides for the establishment of the Agency for Public Procurements that would have a task of controlling ways of public funds expenditure. A problem is that the lack of funds in the budget for the work of this institution. Therefore, as the things are currently going on, this Law, as many others, may remain only the dead letter on the paper.

It is also necessary to note that the serious opposition was expressed to the adoption of the Law, especially by the Government of the Republika Srpska. By the adoption of the Law one of conditions of the European Union Feasibility Study was formally fulfilled.

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<sup>32</sup> Stabilization Forces (SFOR)

<sup>33</sup> The Law was published in the *Official Gazette pg BH*, no. 49/04

### **III. CRIME AND CORRUPTION REACHED DISTURBING PROPORTIONS**

Citizens of Bosnia and Herzegovina are especially disturbed by the obvious increase of crime and general insecurity during 2004. The precise analyses of this life segment cannot be made in the systematic manner because no exact statistic information exists made in accordance with the analytic method. Since there is even no precise information on how many citizens this country has<sup>34</sup>, the fact that Entity or State Ministries of Internal Affairs have no information on the crime rate does not come as a surprise. It is almost impossible to get any precise information, having in mind problems of development if the civil society institutions.

#### **III.1. Feeling of General Insecurity**

Apart from insufficient systematic research that would show the real state of affairs in the area of crime in Bosnia and Herzegovina, it may claim with no dilemma that in this area suffered a serious increase. The beginning of year was marked by a number of explosions and gang fights.

The largest number of citizens personally feels effects of the flourishing of crime and corruption. In 2004 breaking in the houses and apartments are especially repeated. The citizens are reasonably concerned and people fear to leave their residences empty even for a short period. All the places that could contain valuables: banks, broker houses, shops, offices, restaurants, hotels, religious facilities, and even courts and police stations. Insecurity is felt almost every where. Means of public transportation are full of small criminals – pick pockets that are mostly targeting woman. Breaks into vehicles are so common that the police does not pay a lot of attention to it any more.

Juvenile crime is also increasing. Their victims are usually children that are deprived of the smallest amount of money for school sandwich by (often juvenile) delinquents. Not infrequently happens that children are forced to give parts of their clothes and even footwear.

What concerns the most is strengthening of the organized crime. For hardened criminals there are no national or any other obstacles. It may be stated that criminals have no problems the national politicians have, and they find common grounds in the mutual interest. They knowingly use division of competencies and uncoordinated actions by police of Entities. As an example we may give widely spread organized vehicle robbery. After taking the vehicle away, the criminals phone the owner requesting certain price for return of it. They inform the owner of the way to “pay” the price and to take over his/her vehicle and especially threaten the owner not to inform the police. These threats are often directed against health of children or other members of immediate family of the injured one. In most of the cases, citizens accept such “offers” and the crime cannot be registered at all. Citizens that decide to request help are usually instructed by the police to pay the offered price. Of course, the

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<sup>34</sup> Last census performed before the war of 1991! Current assessments relating to the number of BH citizens differentiate up to 200.000 persons.

vehicles are in the other Entity which is aggravating circumstance for the police. After the owner takes over his devastated vehicle under the circumstances that look like some crime movie he/she decides to sell the vehicle for the fear that it may happen again, which is not a rare case. The event that occurred at the beginning of 2004 in Sarajevo is indicative. After taking over the vehicle in the other Entity, the owner drove it to the police station. Since it happened in the evening the criminal expertise was to take place the other morning. Until morning the vehicle was stolen again and it disappeared from the police parking fenced with concrete. The owner paid the lower price next time and immediately sold the vehicle to get rid of it. Indolence of police towards this form of organized crime and well informed criminals indicate that some of police officers have their role in such criminal acts.

Besides well organized vehicle thefts, financial institution robberies and gang count-downs, crimes that have never occurred in Bosnia and Herzegovina currently started to happen. At the end of 2004, the abduction of seven years old child happened in Sarajevo with gain as a motive. Fast reaction of the police and cooperation of citizens resulted in finding and arresting the criminals and saving the child. For last century such criminal act has not happen in the capital of Bosnia and Herzegovina. Generally, the conclusion arises that complete state of increase of crime in 2004 caused citizens' concern and feeling of insecurity that almost may be compared to that felt during the war.

Bosnia and Herzegovina is the State the geographical position of which gives it the title of the transit country for drug smuggling and people trafficking towards Western Europe countries. Ever easier accessibility of narcotics for the juvenile population and damping prices on this "market" is especially disturbing. Substantial increase of organized prostitution and procuring cases is evident. Females from Eastern Europe (mainly Moldavian and Ukrainian) are most often used as "white slavery". Special interest of public was caught by the case of death of twenty one years old Ukrainian citizen, Ilona Popik, as it was determined that she died of AIDS, and she was also suffering of hepatitis C, syphilis and very contagious miliary tuberculosis. The autopsy showed that this person consumed hard drugs and large quantities of alcohol. The Chief of the Department for Fight against Trafficking of the Police of Herzegovina-Neretva Canton published that the investigation was initiated for the reasonable doubt of prostitution inducing, or slavery. Until the end of 2004, perpetrators had not been apprehended. This is only one of many examples that point to the occurrences in the BH society that hardly could be marked as marginal. Following this, no wonder citizens are generally concerned for the safety of their families.

Roots of the increase in crime could certainly be found in the increased poverty and loss of prospects within the existing state and social system of Bosnia and Herzegovina, in slow and inefficient judiciary, reduction of police authorities and sped corruption that entered into all pores of society and also into institutions that are in charge of crime suppressing.

### **III.2. Economic Crimes and Corruption**

Lawlessness, inefficiency of public institutions and substantial corruptness of the state administration favors numerous malversations in the area of economic crimes.

Public property is especially devastated through the implementation of privatization legislation giving to the small group of political-financial oligarchy easy access to the easy wealth on the detriment of public property and BH citizens. The Dayton Agreement transferred socially owned property of the former Republic of Bosnia and Herzegovina to the Entities as holders of the state property and the main holders of competencies in the area of economic policy. That is why the privatization of the state property was performed under the legislation of Entities. The misappropriation of funds in the privatization field were performed both in lawful and unlawful manner. We get a feeling that the privatization legislation in both Entities was prepared with the exclusive aim of legalizing the State property plunder. This is a very important issue since Bosnia and Herzegovina is the country in transition from the system of socialist planned economy to the system of market economy, and a large part of assets in this country was in the social and later on State ownership. Impoverished citizens of Bosnia and Herzegovina realized their part of privatization of these assets in so called "certificates" (general claim with the nominal amount) in the BH Federation and "vouchers" (without nominal amount) in the Republika Srpska. Market value of so called "certificates" in the BH Federation went in the scale from 1,5 percent to 2 percent of its nominal value, and the transfer was mostly performed on the gray market<sup>35</sup>. These "securities" had importance for the general population only as means of purchasing socially owned apartments. For BH citizens who could not or were not allocated an apartment in the former communist system these "securities" have almost no importance or practical value.

The privatization started before the new economic framework for the market of capital was made because there were no stock markets<sup>36</sup> for capital or legal and institutional mechanisms of the public property protection. Therefore, the privatization process was condemned to failure from its very beginning, and it happened at the end.

The citizens of Bosnia and Herzegovina are plundered by the entry into force of the Entities legislation on privatization since they were not given the possibility to direct investment of their share in the ownership on public property to the most valuable companies in Bosnia and Herzegovina. Namely, 86 of the most valuable companies in BH were privatized under the principle of so called "privatization by tender" by the Entities, and employees of the mentioned companies or citizens with average income had no practical possibility to participate in it. The privatization by tender went in such manner that 66,6 percent of assessed value had to be paid in cash and the remaining part in securities (certificates or vouchers). The financial brokers were that way enabled to purchase one third of these companies by cheaply purchased securities that were sold by citizens for next to nothing. Other companies, destroyed and devaluated by the war, remained with no proper investors and no fresh capital because they were purchased for invaluable papers. That way, citizens were plundered and the majority of economic subjects remained with no opportunity to reinstate their activities. The direct consequence of such privatization model is enormous unemployment rate and general shortage of money.

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<sup>35</sup> Seeing small dealers selling and purchasing "shares" in front of public financial transaction institutions by loud invitations for customers to purchase or sell looks funny.

<sup>36</sup> The privatization started when BH had no functioning stock market for capital at all!

Since the Entities, or more precisely Cantons, performed sale of already devaluated companies, the money was transferred to the consumer treasuries of the public administration instead to the companies as economic subjects. The privatization of companies was mostly done with no intention of initiation of production but with the aim of exhausting any effective value from them. In that manner the privatization practically transformed into purchase of public property for next to nothing, and the fresh capital was not used to initiate and enliven the production but was spent for needs of huge and expensive administrative apparatus.

In the whole privatization story, we may conclude that out of such “legal” framework only a close circle of political elite and financial brokers, who obtained their capital in the suspicious manner, got rich. The disappointing fact is that omnipresent International Community blessed such plunder by not acting or approving it.

The Police Administration of the Federal MUP (Ministry of Internal Affairs) transmitted information to the Government of the BH Federation in October 2004 regarding the security situation in the BH Federation for first nine months of the year 2004. According to this document approximately three billion Convertible Marks (KM) are yearly laundered in Bosnia and Herzegovina. In the document that was later transmitted to the BH Federation Parliament, it is stated: “during nine months of 2004, the Police Administration of the Federal MUP submitted to the competent Prosecutor’s Offices the reports on two cases of money laundering and seventeen tax evasion cases...”. Further it was stated that the cases of tax evasion were dealt by the State Border Service of Bosnia and Herzegovina, the Entity Banking Agencies, the Financial and Crime Police and Tax Administrations, and “because of lack of coordination no proper results could be expected”<sup>37</sup>.

It is obvious because of the quoted document how inefficient is this huge state apparatus in Bosnia and Herzegovina. The general chaos in all spheres of the social life and especially of the economy is caused by non-functioning of the rule of law and corruptness of the state apparatus. According to sources from the Tax Administration of the BH Federation, during 2004, 1126 of fictive, non-existing, parallel companies, that tax organs cannot reach (they were operating by misuse of some other company’s title and the seat address), were identified in the Federation of Bosnia and Herzegovina. The Tax Administration submitted only 377 criminal charges for business embezzlements even though they identified so many illegalities. Mostly, we are speaking of properly registered legal entities, that gained their legality by entry into court registers of the competent courts, and their legal entity is not at issue. The problem is that they obtained this status by use of falsified or false documents and/or by giving a wrong, incorrect, address. Operations of such companies went mainly in the direction of purchasing high quality or luxury goods under conditions prescribed by the law be freed of turnover tax<sup>38</sup>. To cover its helplessness regarding identification of the economy crime perpetrators, the Tax Administration passes the blame to regular tax payers – sellers who dealt with legal entities that had permit to operate on the basis of valid court registration. The argument of the FBH Tax

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<sup>37</sup> Quotations taken over from the “Nezavisne novine” - <http://www.nezavisne.com>

<sup>38</sup> Under the Law on Turnover Tax of Goods and Services of the FBH, the turnover tax was paid if the sale is performed for final consumption.

Collectors was that if the sale was done with the “fictitious company”<sup>39</sup>, it automatically may be considered that it was done for final consumption that has to be taxed under the Law on Turnover Tax of Goods and Services. It may be seen the State with the budget deficit tries to punish proper tax payers for irregularities performed by third legal entities who did the embezzlement. The possibility that someone operates in the company with no known seat for years, and to be registered on the basis of false documents and operational through the banking system may only be the fault of the State and not the fault of legal entities that have transparently operated with such companies. It is obvious on the basis of information on the success of the Tax Administration to find of real perpetrators of economic crime and tax evasion that public institutions do almost nothing to track real perpetrators.

Finally, it may be concluded that the extent of economic crime occurred mostly because of inappropriate legislation and inefficiency of the state administration apparatus and judiciary in Bosnia and Herzegovina. All of this creates environment of legal uncertainty that also causes that there is no flow of foreign capital to the country.

Besides the increase of crime, for a longer period Bosnia and Herzegovina is shaken by the problem of more obvious corruption. The Transparency International BH Survey<sup>40</sup> showed that the politicians in Bosnia and Herzegovina embezzle around 85 million KM per year. As the main cause for such a situation the Transparency International emphasizes non-existence of appropriate legislation on the public procurements<sup>41</sup>. Further, the Survey showed that 52 percent of citizens considers that the BH Presidency is corrupted while 54,9 percent thinks that the Council of Ministers of Bosnia and Herzegovina is corrupted as well. The work of Entity Governments was assessed as corrupted by 57,9 percent of citizens. Almost all political parties were assessed as corrupted by the inquired citizens. This Survey also showed that the corruption in Bosnia and Herzegovina is more obvious in relation with other countries aspiring admission to the European Union. Regarding the intransparency in the use of public funds and the level of corruption, according to the Survey of 2004, the Transparency International put Bosnia and Herzegovina on the 86<sup>th</sup> place in the World, which puts it between the states with the high corruption rate

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<sup>39</sup> The Supreme Court of the FBH did not accept this term, taking position that legal entity could not be fictitious if registered before the competent court. Under the Law on Economic Associations of the FBH, the legal entity obtains legal subjectivity by the date of registration in the Court register.

<sup>40</sup> The European Union financed the Survey through the European Commission delegation in BH.

<sup>41</sup> At the end of 2004, the Law on Public Procurements was passed and entered into force.

#### IV. ECONOMIC PARAMETERS IN RELATION TO THE YEAR 2003, POVERTY AND DEFICIENCY OF THE ECONOMIC SYSTEM

Statistic economic data indicates that the Bosnia and Herzegovina's economy seriously falls behind other European countries in the transition. Bosnia and Herzegovina is ever far away from its goal to join with the Euro-Atlantic Integrations. The assessment that Bosnia and Herzegovina cannot fulfill the requirements to be admitted to the European Union before 2012 is totally realistic. It is also indicated by the lack of statistic assessments on the economy situation in Bosnia and Herzegovina.

Under the assessment of the Central Bank of Bosnia and Herzegovina based on the information by the Statistics Bureaus of both Entities, the average net salary in Bosnia and Herzegovina in 2004 (at the end of October 2004) amounted 482,25 KM<sup>42</sup>, while the average salary on July 2003 amounted to 480,70 KM (245,78 EUR). In the period January-October 2004, the index of consumer prices in Bosnia and Herzegovina increased for 0,6 percent. Based on given data it is obvious that standard of BH citizens in 2004 is almost identical to the one of 2003 and the purchasing power even decreased for a little bit.

According to the UNDP Survey<sup>43</sup>, during the first five months of 2004 in relation to the same period in 2003, the living costs increased for 0,7 percent in the BH Federation and 3,4 percent in the Republika Srpska. The increase of the living costs was mostly caused by the increase of prices of petroleum, foods (increase under the rate of 5,8 percent), and of the clothes and footwear, the prices of which increased by the rate of 4,1 percent.<sup>44</sup>

The Statistic Bureau of the Brčko District calculated that the average net salary in the Brčko District for the month of July of this year amounted to 701,18 KM, while the consumer basket<sup>45</sup> was substantially cheaper in comparison to both BH Entities. That emphasizes the fact that the Brčko District realized the highest level of the life standard in Bosnia and Herzegovina. It is followed by the Sarajevo Canton with the average net salary in the amount of 668,74 KM, than the Herzegovina-Neretva Canton with the amount of 617,57 KM, while the lowest average net salary in the BH Federation is in the Zenica-Doboj Canton and it amounted to 414,44 KM. The average net salary in June 2004, in the BH Federation amounted to 537,51 KM.<sup>46</sup> The consumer basket for the four members family in July 2004 cost 485,66 KM in the BH Federation<sup>47</sup>, and in the same month in 2003 it cost 455,89 KM.

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<sup>42</sup> 1,00 KM ≈ 0,51 EUR

<sup>43</sup> "System of early warning", the UNDP report for four months, April-June 2004.

<sup>44</sup> Sources: the Federal Statistics Bureau, statistics on economic trends, 6/2004, p. 57. and 60; the Statistics Bureau RS "*Mesečno saopštenje*", no. 5/2004 of 1 June 2004.

<sup>45</sup> The consumers basket represents the minimum of food and other products necessary for survival of an average four members family.

<sup>46</sup> Official data of the Federal Statistics Bureau

<sup>47</sup> According to the Federal Statistics Bureau, the consumer basket for December 2004 in the BH Federation amounted to 451,46 KM. Data took over from the Federal Newspaper Agency: [www.fena.ba](http://www.fena.ba)

Really low level of citizens' purchasing power in Bosnia and Herzegovina indicates that the largest number of citizens live on the very edge of the existential minimum. The older part of the population - pensioners are especially endangered because of the low level of health security funds and their deteriorated health have more expenses they cannot pay by their extremely low pensions. This part of population (as the most of other citizens) usually have no savings as impoverished during the war, and all the prewar savings in the banks of former Yugoslavia are lost, and the State has no intention to refund that in the immediate future.

In July 2004 average net salary paid in the Republika Srpska amounted to only 427,00 KM.<sup>48</sup> The citizens' standard in this Entity of BH neared the very bottom of the existential minimum and it is the lowest one in Bosnia and Herzegovina.

#### **IV.1. High Internal and External Debt of the State**

The internal debt represents serious threat to the economic stability and sovereignty of Bosnia and Herzegovina. Legitimate claims, the Governments of Entities recognized as internal debt, and the unsettled budgetary debts in the period between 1996 and the end of 2002 are assessed to approximately 8,4 billion KM<sup>49</sup>.

According to the information of the Central Bank of BH, the total external debt of Bosnia and Herzegovina on 30 September 2004 amounted to 4.074.116.000 KM which, in relation to the end of 2003, represented insignificant decrease of debt in the amount of 57.436.000 KM<sup>50</sup>.

Considering the described economic situation and public expenditure<sup>51</sup> structures, the internal and external debt is serious ballast to the successful macroeconomic policy.

#### **IV.2. Too scarce jobs and too many socially needed citizens**

According to the records of the Statistics Bureaus of both Entities and the Central Bank of Bosnia and Herzegovina, at the end of October 2004, in Bosnia and Herzegovina were registered 451.294 unemployed and 474.480 pensioners. This information is relative since a large number of unregistered employees (employees with unpaid contributions for pension and health insurance, and practically working for wages) exist because of non-functioning of the rule of law. Correct situation in employment is impossible to give in percentage because no census was performed since 1991 and assessments on the level of the State are varying up to the number of 400.000 citizens.

Inexistence of basic statistical parameters puts any serious analyses under the question mark. The very fact that the State authorities in Bosnia and Herzegovina do

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<sup>48</sup> Data by the Republika Srpska Statistics Bureau

<sup>49</sup> Source: "Plan for implementation" of the OHR, February 2004 - <http://www.ohr.int/ohr-info/ohr-mip>

<sup>50</sup> According to the BH Central Bank, the external debt on 31 December 2003 amounted to 4.017.680.000 KM. Source: WEB page of the Central bank of Bosnia and Herzegovina.

<sup>51</sup> Assessments indicate that each year the state apparatus spends between 60 and 70 percent of total amount of budgetary money!

not take into consideration a precise identification of economic and human resources is in the direct relation to the non-existence of any economic strategy for recovery of Bosnia and Herzegovina. Given circumstances are making the preparation of this report complex. For example, the last officially published data on the amount of an average pension in Bosnia and Herzegovina at the end of this year were available only for the month of May. An average pension for May 2004 in the BH Federation amounted to 198,78 KM, whilst in the Republika Srpska it amounted to 160,69 KM. Under the assessment of the OHR, in October of this year an average pension on the State level amounted to 180,00 KM.<sup>52</sup>

### **IV.3. Extremely high trade deficit**

According to the assessment of the Statistics Bureaus of the Federation and the Republika Srpska between January and August 2004, Bosnia and Herzegovina had a trade deficit of 4.569.383.000 KM. Within that period the import of goods and services amounted to 6.507.037.000 KM and export amounted to only 1.937.654.000 KM.

It follows that the coverage of export by import in the period between January and August 2004 was only 22,94 percent. For comparison, the coverage of import by export in the BH Federation for period between January and May 2003 was 31,6 percent, and in the same period of 2004 it was 34,5 percent, while in the Republika Srpska coverage of import by export in period January-May 2003 was 22,1 percent, and in the same period in 2004 it was 29,2 percent.<sup>53</sup> Creation of the high trade deficit of Bosnia and Herzegovina is influenced by non-competitiveness of national production companies and by the international bilateral free trade agreements that entered into force in 2003 and were signed with the neighboring states: the Republic of Croatia and DZ Serbia and Monte Negro.<sup>54</sup>

Given information indicates that the complete collapse of BH economy and the State bankrupt may be expected with the existing economic trends. All clearly indicates the conclusion that the economy has no permanent prospects in the existing ambient. Under these circumstances, the growth in the BH citizens' standards may not be expected any time soon.

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<sup>52</sup> Economic bulletin of the OHR, volume 7, no. 4, October 2004.

<sup>53</sup> Sources: the Federal Statistics Bureau, statistic data on economic trends, 6/2004, page 30.; the Ministry of Finances RS, the Republic Customs Administration.

<sup>54</sup> By the Accession of the Republic of Slovenia to the European Union, as important trade partner of Bosnia and Herzegovina, the bilateral agreement on free trade with that country ceased to be applied. The Republic of Slovenia in its trade with B&H realized substantial positive trade balance.

## **V. DAYTON AGREEMENT: MOTIVATION OR HINDRANCE TO PEACE AND REALIZATION OF HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA**

### **V.1. Geopolitical and Geostrategic Importance of BH Territory**

In the past, the territory of Bosnia and Herzegovina had, and it currently has, substantial geopolitical and strategic importance. As centuries old borderline between the East and the West, it always has been the crossroad of civilizations. Such geopolitical and strategic position resulted in mixture of numerous different cultures and religions on the whole territory of Bosnia and Herzegovina. Multicultural and multi-religious wealth of Bosnia and Herzegovina, unfortunately, represents also a fertile soil for the creation of conflicts. Reasons for these conflicts have been both of internal and external origin.

We may conclude with certainty that the territory of our country has always been of geopolitical and geostrategic importance in the constellation of Large Powers. Therefore, over it (too) often the conflicts of interest were broken up.

### **V.2. Dissolution of Yugoslavia and Genesis of Existing Constitutional Order of Bosnia and Herzegovina Based Upon the Constitutively of Peoples**

Modern statehood<sup>55</sup> of Bosnia and Herzegovina arises from the status that it gained by its creation within the former Federal Peoples Republic of Yugoslavia (FNRJ), or the later Socialist Federal Republic of Yugoslavia (SFRJ).

It may be said that after the downfall of the Middle Age Bosnia under the Turkish power, the renewal of the State sovereignty of Bosnia and Herzegovina started only in 1943 on the First ZAVNOBiH<sup>56</sup> Conference held on 25 November 1943 in Mrkonjić Grad. On the Second ZAVNOBiH Conference held from 30 June to 2 July 1944 in Sanski Most, the communist revolutionary antifascists definitely confirmed the concept of statehood of Bosnia and Herzegovina.

The Resolution of the First ZAVNOBiH Conference emphasizes “equality and equitability”, “freedom and brotherhood” of all three peoples in Bosnia and Herzegovina. Under the term “peoples”, they meant all three nations in the ethnic meaning (Serbs, Croats and Muslims). The then adopted Resolution of ZAVNOBiH of 1943 also defines the notion of constitutionality of peoples in singular and the term “people” is used in its political meaning, to say citizens of Bosnia and Herzegovina (independent of ethnic origin).

After the World War Two the FNRJ was constituted as Federal Unity of “independent” Republics – one of them being Peoples Republic of Bosnia and Herzegovina within the currently existing borders. Although defined as “Federal Peoples Republic”, the FNRJ and Bosnia and Herzegovina (as its Republic) until 1971 was defined in the

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<sup>55</sup> Middle Age Bosnia lost its statehood in 1462, after it fell under the Ottoman Empire’s boot.

<sup>56</sup> State Antifascist Council of National Liberation of Bosnia and Herzegovina (ZAVNOBiH) was body that was established by the leaders of the Communist Party of Yugoslavia during the World War Two.

Constitution as the State based upon the sovereignty of “people” or “working people”, i.e. citizens.

By the Constitutional Amendments to the Constitution of the Socialist Republic of Bosnia and Herzegovina nos. XVIII, XXX, XXXII and XXXIV of 15 February 1972<sup>57</sup>, radical changes were made in the definition of Bosnia and Herzegovina and changes of the constitutional position of peoples and different ethnic groups (narodnosti) living in it. By the Amendment XVIII Bosnia and Herzegovina was defined as “*socialist, self-governing, state unity of working people and citizens, peoples of Bosnia and Herzegovina - Serbs, Muslims and Croats, and members of other nations and peoples and ethnic groups living in it, based upon the authority and self-government of working class and all other working people (laborers) and upon the sovereignty and equality of its peoples and members of other nations, peoples and ethnic groups*”. Although this amendment keeps civil character of the Stat, it partly reaffirms the ZAVNOBIH principles, where Bosnia and Herzegovina is defined as State based upon the sovereignty of three constitutive nations but also marking it as the State of other peoples, nations and ethnic groups “*living in it*” (i.e. of all citizens).

The concept of constitutionality of peoples was finally affirmed by the Constitution of SFRY of 1974, which formally and legally guaranteed rights to peoples, or Republics to self-commitment to secession. This Constitution was in force until the final dissolution of Yugoslavia as federal association of Republics. The central executive authority in the SFRY legally functioned until the dissolution of the State on parity division of powers between six Republics and two Provinces. The Presidency of SFRY was a collective body consisting of eight members with the rotating position of the Chairman of Presidency<sup>58</sup>. Each of the Republics of the former State had its Constitution, Government, Parliamentary Body and judiciary. As Federal State, the SFRY had its supreme central institutions on the all levels of power. Although the defense of the State was based upon the unique Army (JNA<sup>59</sup>), the supreme Commander of it being the SFRY Presidency, each Republic of the former Yugoslavia had its own Army in the form of Territorial Defense.

The SR B&H Constitution of 25 February 1974, Bosnia and Herzegovina was defined as Socialist Republic with final constitutionality of three nations: Croats, Serbs and Muslims. Therefore, the statehood of this former Republic of SFRY was legally based upon the constitutionally declared will of three constitutive nations.

Following this explanation the wrong conclusion may be reached that the SFRY was organized as loose federal association of independent Republics. On the contrary, the SFRY functioned on the principles of internal single-party state where the whole power of the State was in hands of the Communist Party of Yugoslavia (KPJ), as the exclusive centre of ideological and political power. All segments of social and political life of the SFRY were under the control of the totalitarian single-party system.

At the beginning of nineties of the last century, under the influence of democratic movements in the society of the SFRYJ and Easter Block Countries, the dissolution

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<sup>57</sup> Amendments were published in the Official Gazette SRB&H no. 5, of 9 March 1972.

<sup>58</sup> Communist dictator Josip Broz Tito performed duty of the lifetime President of the SFRY until he died in 1980, and after that the Collective Presidency of the SFRY was established.

<sup>59</sup> Yugoslav National Army (JNA)

of former State started with the appearance of legitimate and lawful requests of the Republics to get their independence. Since almost all central institutions of SFRY were situated in Belgrade, as its capital, and that substantial part of positions in the authority structures was held by Serb political and ideological elite, obstructions to the democratization process and independence strivings of the Republics were coming from that side. The striving of Serbs to dominate and impossibility to agree with their politics, inevitably led to the dissolution of the State. After Croatia and Slovenia declared their independence in 1991, the political conflict escalated into the war. Under the disguise of Yugoslavia's guard, the JNA turned into aggressor. After a brief war in Slovenia, the hostilities escalated in the newly proclaimed Republic of Croatia. It became crystal clear that in essence the intentions of creating the Great Serbia stood behind the disguise of guarding Yugoslavia. It is interesting to mention that in Serbia but also between the Serbs that remained out of the mother country there were no serious political objections to such strivings and brutal methods of dominance realization. The Greater-Serbia policy has been supported by both, Serb political elite and intellectual elite of the Serbian people, as it was indicated in the famous Memorandum of the *Serb Academy of Arts and Sciences (SANU)*. Basic characteristics of this Memorandum are the Serb nation being "endangered" and emphasizing of unsolved, so called "*Serb issue*". They were especially pointing out the necessity of changing "*artificial*" borders set by the AVNOJ. The Memorandum underlined the need for dismissing autonomous regions<sup>60</sup> and the need for urgent action in order to prevent the "*deterioration of Serbia and Serb people*". This document clearly announces the dissolution of Yugoslavia and dismisses the thesis of secessionism as the cause of war. Since the SANU Memorandum was published in 1986<sup>61</sup> it may be concluded that the Serb intellectual elite, leaded by the academics of SANU, the main ideological creator of the Greater-Serbia policy.

After holding the first free and democratic elections in 1990, the coalition of three national parties was in the Government of Bosnia and Herzegovina<sup>62</sup>. The agreement on coalition of these parties was made to create the critical mass in the Parliament of Bosnia and Herzegovina to overpower the political parties of the left wing. Under the last census held in 1991, around 43,7 percent of Muslims<sup>63</sup> lived in BH, 31,4 percent of Serbs, 17,4 percent of Croats, and the remaining percentage (7,6) were so called "others"<sup>64</sup>. Mixed composition of population and mixture of national groups on the whole territory of Bosnia and Herzegovina and completely different policy followed by three different nations were the reasons for impossibility to reach the political agreement regarding the organization of the State system of

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<sup>60</sup> Autonomous Regions SAP Kosovo and SAP Vojvodina were dismissed and administratively joined to the SR Serbia by the Milošević's regime in 1989.

<sup>61</sup> Memorandum was published in the "*Večernje novosti*" newspaper, in two parts, on 24 and 25 September 1986. To see the original text (scanned version) see the web page [www.hic.hr](http://www.hic.hr).

<sup>62</sup> Democratic Action Party (SDA) – as a national party of Muslims, Croatian Democratic Community (HDZ B&H) – as political party of Croats in B&H and Serb Democratic Party (SDS) as political representative of Serbs.

<sup>63</sup> The SFRY Constitution of 1974, authorities of the Tito's Communist Yugoslavia gave the Muslims of Bosnia and Herzegovina the status of nation (peoples), and as of that moment until the collapse of the Communist regime in 1991 they declare themselves as nation of Muslims. Since 1991, under the instruction of the Islamic Religious Community in B&H, BH Muslims started to declare themselves as Bosniacs. The political will regarding the national title of this constitutive nation in B&H was finally defined on the Bosniac Congress of Intellectuals held on 27 September 1993.

<sup>64</sup> The majority of "others" in B&H (5,5 percent) were Yugoslavs as recognized nation in the former State.

Bosnia and Herzegovina. By secession of the two western Republics of the former State this coalition became unsustainable as Bosnian Croats and Muslims were no longer ready to live in the reduced Yugoslavia, where the Serb side would completely dominate. The Bosnian Serbs, as did the Serbs in Croatia, joined the extreme Greater-Serbia politics of Slobodan Milošević. The policy was lead under the slogan “all Serbs in one State”, and the concept of its realization was based upon the concentration of military power, i.e. on means of military and police coercion, that could not be accepted by other two peoples in Bosnia and Herzegovina in any case.

In April 1992, political conflicts escalated in bloody war that started after the referendum on secession that was boycotted by the Bosnian Serbs. Western Powers had no clear strategy in the policy towards the former Yugoslavia. It appeared that the International Community did not have adequate solutions for termination of the war, and it may even be stated that there was no political will for that. The embargo on import of arms was introduced for the whole territory of former Yugoslavia. The embargo represented the aggravating circumstance for almost unarmed newly established states and it went in favor of well armed JNA that openly joined the side of the Greater-Serbia policy inclined to aggression. The embargo on import of arms was concession to the aggressor and was supposed to enable fast ending to the war. The peace in these parts than the fair solution was more important to the International Community.

Thing were not going so easy as presumed by the military analysts. The defenders of the independence of Bosnia and Herzegovina were forced to organize their own armed forces under the war circumstances. During first couple of months of the war the stronger and better armed JNA and Serb paramilitary formations seized over 70 percent of the BH territory. The conquering was followed by massive massacres and exodus of non-Serb population. Croats and Muslims were forced into small space of approximately 30 percent of territory. Because of different positions regarding the future of Bosnia and Herzegovina and their own foolishness, in 1993, the hostilities started between the HVO<sup>65</sup> and the Muslim Army of Bosnia and Herzegovina, and that was only going in favor of Serbs. The methods of fighting in the hostilities between Croats and Muslims were similar to the methods of Serb military forces. A part of Muslims in Cazinska krajina initiated the rebellion against the politics of their nationals from Sarajevo. The state of chaos and insanity took over Bosnia.

The International Community watched peacefully. The military forces of the UNPROFOR in Bosnia and Herzegovina had a totally passive role. The importance of their presence may clearly be understood when considering the Srebrenica massacre of 1995. In the “safe haven” of the UN zone of Srebrenica, in the presence of the Dutch Battalion of UNPROFOR<sup>66</sup> around 7.000 people were killed, and the rest of Muslim population was banished before the eyes of the whole World.

By signing of the Washington Agreement on 13 March 1994, hostilities between Croats and Muslims were terminated and fundamentals of the Federation of Bosnia and Herzegovina were put. The Washington Agreement is in fact the Constitution of

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<sup>65</sup> Croat Council of Defense (HVO) represented the main part of military formation of the Croats in B&H, and it was under the command of the then HR Herceg-Bosna.

<sup>66</sup> United Nations Protection Forces (UNPROFOR)

the Federation of Bosnia and Herzegovina<sup>67</sup>, which was supposed to be organized as flexible federation of cantons. This document in its essence is an International Agreement<sup>68</sup> that guaranteed confederal relations of the BH Federation and the Republic of Croatia. On the legal status of territories of Bosnia and Herzegovina where the majority were Serbs, according to this document, should have been decided on the International Conference on former Yugoslavia.

Upon signing of the Washington Agreement the situation on the military field started to change in favor of Croat and Muslim-Bosniac forces. Because of numerous international sanctions the aid of Belgrade to the Serb rebels was decreasing all the time. The Military forces of Bosnian Serbs and the JNA were using up their strength by protection of the large territory they occupied at the begging of the war. After the successful military actions titled "Bljesak" and "Oluja"<sup>69</sup> in the Republic of Croatia the political concept of Greater Serbia started to collapse. Ever greater successes of joined military forces of HV<sup>70</sup>, HVO and the Army of Bosnia and Herzegovina led towards inevitable collapse of the Serb Military Machinery. The final crash of Serb military forces in Bosnia and Herzegovina and Croatia could be seen. The loss of territories that were marked in the plans in the cabinets of Greater Serbia politicians meant the crash of ruthless politics of Slobodan Milošević, and through it also the crash of his regime. The pattern of political forces in Serbia started to change and the Milošević's regime could remain in power only by the war. After the moment when the war in Bosnia and Herzegovina started to threaten seriously by the escalation in the whole region<sup>71</sup>, the USA and Western Powers finally realized that it is a global threat to peace, i.e. their own interest, and decided to take a military action. The Military action by the NATO pact under the title "Determined Forces" started only after the crash of the Army of the Republika Srpska and fall of Banja Luka, the capital of the Republika Srpska, became inevitable because of Croat-Muslim forces attacks. Although it looks absurd upon the first glance, the beginning of the NATO's actions in Bosnia and Herzegovina only prevented the complete military crash of the Serb forces in B&H. Facing the military crash, Milošević finally agreed to negotiations, and he also made a serious pressure on the Serb Authorities in Pale to do the same. The Agreement on Termination of Hostilities was entered into on 5 October 1995. The conflict in Bosnia and Herzegovina, that took over 200.000 lives, was brought to the end that way. No precise information exists on the number of wounded or killed. During the conflict approximately 2.680.000 people left their homes and that is around 59,6 percent of citizens of Bosnia and Herzegovina.

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<sup>67</sup> The Constitution of the Federation of Bosnia and Herzegovina was published in the Official Gazette FB&H no. 1/94

<sup>68</sup> The Washington Agreement of 1994 was signed by the representatives of Bosnia and Herzegovina, the Republic of Croatia and the United States of America.

<sup>69</sup> Military-Police action "Oluja" started on 4 August 1995 and was finished on 11 August 1995.

<sup>70</sup> Croat Army directly participated in the conflicts on territory of B&H on the basis of so called Split Agreement on military cooperation (Declaration on Realization of the Washington Agreement, on joined defense against the Serb aggression and political solution) of 22 July 1995. Signers of this document were Alija Izetbegović – President of the R BiH, Krešimir Zubak – President of the Federation of B&H and Franjo Tuđman – President of the Republic of Croatia.

<sup>71</sup> The serious threat existed that the SR Yugoslavia (currently DZ Serbia and Monte Negro) would directly interfere in the conflict. Hostilities in Kosovo became more serious and reaching the point of general escalation.

The Western Powers decided upon the restricted military action only after the conflict in Bosnia and Herzegovina became the global threat. The relation towards the war in Bosnia and Herzegovina does not give the moral right to the International Community to organize Bosnia and Herzegovina at its own discretion.

### **V.3. On the Dayton Agreement in General**

After all mentioned war events, the International Community preceded by the USA pressured the States in the region to sit around the negotiation table. The diplomacy of the Large Powers started only after the war on Balkans finally should have got a winner. After the serious break through by the Croat Army and the HVO in the military operation “Maestral”, their forwarding towards Banja Luka was stopped by the decision of the Security Council. After that the diplomatic preparation for the Dayton Agreement started.

After coordination of the fundamental principles for negotiations in August and September 1995, the peace negotiations could be initiated. Dayton, a town located in District Montgomery, Ohio, the American Federal State, was chosen for the negotiations. Negotiations were held in the biggest American Air Force Base, Write-Peterson. The place and manner of negotiations indicated the seriousness of pressure imposed on negotiators. During the negotiations all relevant representatives of the Large Powers and international organizations<sup>72</sup> took part in it. Signers of this international treaty from Bosnia and Herzegovina and closer region were: the Delegation of the Federation of B&H (consisting of representatives of the Republic of B&H<sup>73</sup> and delegation of Croats from B&H, and the delegation of the Croat Republic of Herceg–Bosna<sup>74</sup>), delegation of the Republika Srpska, representatives of the Republic of Croatia and representatives of the SR Yugoslavia<sup>75</sup>. All important representatives of the Large Powers and neighboring countries were present at the negotiations. Conclusion of the Dayton Agreement was confirmed by signatures of; William Clinton – as the USA President, Felipe Gonzales – as Chairmen of the EU Presidency, Jacques Chirac – for the Republic of France, Helmut Kohl – as Cancellor of the Federal Republic of Germany, Viktor Černomirdin – as the President of the Russian Federation and John Major – as Prime minister of the United Kingdom. After three weeks of hard negotiations, on 21 November 1995 the General Framework Agreement for Peace in Bosnia and Herzegovina was signed (hereinafter: the Dayton Agreement). Previous to that some six hundred of disputable issues had to be agreed upon. The Agreement was signed under the serious pressure by the International Community. The General Framework Agreement for Peace consists of eleven Annexes defining aspects and modalities of the termination of war and creation of stability in the region and the Constitutional organization of Bosnia and Herzegovina.

Annex 1A - Agreement on Military Aspects of the Peace Settlement,  
Annex 1B - Agreement on Regional Stabilization,  
Annex 2 - Agreement on Inter-Entity Boundary Line and Relating Issues,

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<sup>72</sup> European Union, UN-a, NATO pact, OSCE and other important international organizations.

<sup>73</sup> Territory was under the control of Bosniacs, i.e. Army of B&H

<sup>74</sup> Territory was under the control of Croat forces, i.e. HVO

<sup>75</sup> Currently DZ Serbia and Monte Negro

Annex 3 - Agreement on Elections,  
Annex 4 - Constitution of Bosnia and Herzegovina,  
Annex 5 - Agreement on Arbitration,  
Annex 6 - Agreement on Human Rights ,  
Annex 7 - Agreement on Refugees and Displaced Persons,  
Annex 8 - Agreement on the Commission to Preserve National Monuments,  
Annex 9 - Agreement on Establishment of Bosnia and Herzegovina Public Corporations  
Annex 10 - Agreement on Civilian Implementation, and  
Annex 11 - Agreement on International Police Task Force.

The Agreement signed (by initials) in Dayton was definitely finalized on 14 December 1995. in Paris.

#### **V.4. Effects of Dayton Agreement and its Application**

It is undisputed fact that the peace in Bosnia and Herzegovina and in the whole region was finally achieved by the Dayton Agreement. The evil gained unbelievable dimensions during the war in Bosnia and Herzegovina. Therefore, the termination of the war was basic fundament for survival of the State and better future of its citizens. But international representatives failed to make the historical turn towards the future of this multinational and multi-confessional state by their unfair and non-enforceable political peace agreement in Dayton.

The General Framework Agreement is a result of reached compromise based upon the existing state in the balance of military forces in the field, after the International Community presided by the USA stopped military actions that were leading to the change in the balance of forces. That action going in favor of one side and also unfair solutions reached, most certainly were conditioned by the Large Powers' interests. The International Community, it seems because of its interest, missed the chance to finalize the bloody war in Bosnia and Herzegovina by the fair peace that would not recognize results of genocide and war crimes.

The Annex IV to the General Framework Agreement for Peace defined the constitutional organization of the new Bosnia and Herzegovina. The State was divided in two Entities: the Federation of B&H and the Republika Srpska, and in the territorial parity of 51 percent to 49 percent, that has enabled the economic or political recovery of Bosnia and Herzegovina since.

Since no agreement could be reached on the strategically important area of Brčko, this issue was left open in the Dayton Agreement for the future arbitration<sup>76</sup>.

Far all stated above it is obvious that the International Community more seriously intervened through diplomatic and military channels in Bosnia and Herzegovina only after the balance of forces in the field started to change in favor of defenders of B&H

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<sup>76</sup> The Decision of the Arbitration Tribunal for the dispute regarding inter-Entity border in Brčko, of 5 March 1999 determined this territory should be organized as district separate of both Entities. That way Bosnia and Herzegovina factually got the third Entity, the Brčko District of Bosnia and Herzegovina.

sovereignty<sup>77</sup>. Determination of borders on the basis of this principle legally incorporated the effects of genocide and war crimes into the constitutional organization of Bosnia and Herzegovina. War crimes and aggression are not only legalized with regard to the territorial division but it also legalized the ethnical cleansing made by the force of war. We already elaborated on the effects of the implementation of Annex VII project, regarding the rights of refugees and displaced persons that at the end appeared to be the failure. It disregarded the unfair division of the State that follows from the Dayton Agreement. After the ten years long negative experience, and large amount of funds invested with no result, the International Community should not permanently maintain its own unfair solutions in Bosnia and Herzegovina.

The Dayton Agreement created Bosnia and Herzegovina that from the very beginning had a little chance to become a modern, democratic legal State. Under Article III.1. of the Constitution responsibilities of the State of Bosnia and Herzegovina are determined and refer to the following matters:

1. Foreign policy,
2. Foreign trade policy,
3. Customs policy,
4. Monetary policy (as provided in Article VII of the Constitution relating to the Central Bank of B&H competencies),
5. Finances of the institutions and for the international obligations of Bosnia and Herzegovina,
6. Immigration, refugee and asylum policy and regulation,
7. International and inter-Entity criminal law enforcement, including relations with the INTERPOL,
8. Establishment and the operation of common and international communication facilities,
9. Regulation of inter-Entity transportation,
10. Air traffic control.

Annex IV prescribes responsibilities of Entities in such a way that whatever is not defined as responsibility of the State of Bosnia and Herzegovina is responsibility of the Entities<sup>78</sup>. It is clear that the responsibilities of the State are substantially deteriorated and the Entities have broad responsibilities under the Constitution of Bosnia and Herzegovina.

The constitution emphasizes the obligation of Entities to stick to the provisions of the Constitution fully when issuing legislation in their competence. Logical consequence of the Dayton Agreement is issuance of the Constitutions of Entities by which the Federation of Bosnia and Herzegovina is organized as an Entity with two state-building nations (Croats and Bosniacs), and in the Republika Srpska the Serb nation is defined as the state-building one. The Federation of B&H was established in the spirit of previously signed Washington Agreement and it is divided in ten Cantons,

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<sup>77</sup> On the referendum on independence of Bosnia and Herzegovina held on 29 February 1992, Croats and Muslims supported the sovereignty of B&H, while Serbs boycotted it (under the census of 1991, Serbs were 31,4 percent of citizens of B&H). Results of referendum were published on 1 March 1992, and the international recognition of the State followed soon after.

<sup>78</sup> Article III.3.1 of the B&H Constitution.

while the Republika Srpska has in the mining of its Constitution unitarily organized Entity.

It may briefly stated that on the basis of the Dayton Agreement complex state was organized and at the moment of the signing it could be known that it would hardly start functioning. At the end, we got a chaotically organized state with no rule of law and the organization of which allows any kind of progress. We wrote in detail on the state of administrative-legislative chaos in Bosnia and Herzegovina in our Report on the state of human rights for the year 2001. It may be concluded that the whole situation did not improve a lot since. It is clear that it would be necessary to perform reorganization of the legal system in Bosnia and Herzegovina, and that was, to certain extent, already done. Unfortunately, these corrections were not often done in the sense and in accordance with the provisions of the Constitution of Bosnia and Herzegovina. That strengthens the deficiency of the whole legal system of the State. Speaking generally, it may be stated that the administrative-legislative organization of Bosnia and Herzegovina changed substantially in due time, but Annex IV (Constitution of B&H) formally and legally remained the same. The process of strengthening of competencies of the State institutions and weakening of competencies of Entities is obvious. The State of Bosnia and Herzegovina gets substantially broader responsibilities that given by the Article III.1 of the B&H Constitution. Often, the review of the Dayton organization was performed inconsistently and in the form of the High Representative's decisions that are contrary to the Annex IV. We already pointed out to this paradox.

As an example of wrong and inconsistent application of the constitutional provisions in the transition of the legal system of Bosnia and Herzegovina we will mention amendments to the Constitutions of the Federation of Bosnia and Herzegovina and the Republika Srpska. As the interpretation that the High Representative's decisions are final and binding is in force than it follows that the Constitution of Bosnia and Herzegovina is derogated by the mentioned amendments. The cause for the issuance of the 19 April 2002 Decision, imposed by the High Representative for Bosnia and Herzegovina, Wolfgang Petritsch, relates to the amendments of both Entity Constitutions for their harmonization with the constitutional principle of constitutionality of all three nations in Bosnia and Herzegovina.

The OHR in fact found proper grounds in the decision of the Constitutional Court of Bosnia and Herzegovina on the constitutionality of all three nations in the whole territory of Bosnia and Herzegovina of the year 2000. This decision of the Constitutional Court of Bosnia and Herzegovina we consider extremely important because it succeeded in mitigation of unjust division of the State imposed by the Dayton Agreement. Namely, Annex IV of the General Framework Agreement for Peace the results of war were legalized and Bosnia and Herzegovina roughly divided into two Entities. The Republika Srpska was established as the Entity in which the only constitutional nation was Serb, and the Federation of Bosnia and Herzegovina was established with two constitutional nations Croats and Bosniacs. The Constitutional Court of Bosnia and Herzegovina assessed the Entity Constitutions were not in conformity with the Constitution since it follows from Annex IV that all three nations are constitutive on whole territory of the State.

After the issuance of such Decision two years of obstruction and equivocation followed, all with the aim of evading to implement the Decision. The most serious opposition came from the Republika Srpska, both on the part of ruling parties and opposition. Because of lack of political will for implementation of the Constitutional Court's Decision, Wolfgang Petritsch organized negotiations between the political parties from the FB&H and the RS on the implementation of the Decision. In the States based upon the rule of law no one even thinks of negotiating such decisions. The Constitutional Courts are the supreme authorities in the hierarchy of the rule of law, where the state is based upon the indisputable principle of legality. Thus, upon our assessment, negotiations bringing into question the appropriateness of the Constitutional Court's Decision should not have been allowed and especially not in the manner imagined by the then High Representative. Only the legitimate representative of three nations could have negotiated on the modalities of implementation of this Decision since the issue of constitutionality of nations was to be solved and protection of their interests,. The obstacle for harmonization of both Entity Constitutions with the Constitution of Bosnia and Herzegovina was the lack of mutual trust. Organization of negotiations by the OHR may be considered as appeasement of policy lead by all political parties in the Republika Srpska. Policy of almost all parties in this Entity is united and goes in the direction of protecting the "statehood" of the Republika Srpska under the principle of exclusive sovereignty of one nation in the ethnically cleansed state. The negotiations were long and large number of parties did not participate. The Agreement was signed on 27 March 2002, and it had no legitimacy since the most important Croat and Bosniac parties in Bosnia and Herzegovina did not accept it.

Paradox of these two decisions is in the fact that they were issued to implement the Decision of the Constitutional Court of Bosnia and Herzegovina on constitutionality of all three nations on the territory of the whole Bosnia and Herzegovina, and these decisions confirmed a certain loss of constitutionality of Croats and Bosniacs in the Republika Srpska and of the Serbs in the FB&H. It is contained in the constitutional solutions that do not secure equal participation of all t here nations in the issuance of legislation in the Republika Srpska regarding the protection of vital national interests. Namely, amendments to the Entity Constitutions defined that the protection of vital national interest in the FB&H shall be realized in the House of Peoples and in the Republika Srpska in the Peoples Council. The House of Peoples of the FB&H has all the competencies as the House of Representatives of the FB&H. All laws passed by the House of Representatives (Parliament) of the FB&H have to go through the procedure before the House of Peoples, while in accordance with the Constitution of the Republika Srpska only around 10 percent of all legislative competencies of the RS National Assembly have to pass thought the procedure of the Peoples Council in the Republika Srpska. Since the constitutional amendments imposed by the OHR prescribe the protection of vital national interests of Croats and Bosniacs in the Republika Srpska through the institution with lesser competencies, the extent of vital interests they have a possibility to protect is narrowed. At the same time the Serbs are enabled to realize full protection of their national interests in both, the FB&H and the Republika Srpska. Thus, the conclusion that such constitutional amendments did not fully comply with the Decision of the Constitutional Court of Bosnia and Herzegovina on the constitutionality of all three nations on the whole territory of Bosnia and Herzegovina is clear.

Loss of constitutionality for Bosniacs and Croats in the performance of legislative competencies of the Republika Srpska reflects in particular through the impossibility

to participate on equal basis in the issuance of laws concerning their own vital national interests in the National Assembly of the Republika Srpska.

Since the Parliament of the FBiH and the National Assembly of the RS did not adopt constitutional amendments defined by the agreement of the illegitimate parties, the High Representative imposed them<sup>79</sup>. Paradox is but also the truth, that the constitutional amendments in the production of the International Community only strengthened the division of Bosnia and Herzegovina instead of lessening it through the harmonization of the Entity Constitutions with the Constitutional Court's Decision.

The Office of the High Representative created even more serious disproportion between the executive competencies performance in both Entities. The FB&H Government consists of the President of Government, 8 ministers of Bosniac, 5 ministers of Croat and 3 ministers of Serb peoples. Besides mentioned 16 ministers, the President of Government may appoint one minister from the group of "others". Such appointment may not be performed by the President of Government of Croat or Serb origin under the constitutional amendments of the OHR. The OHR's decision implies that the President of Government must be Bosniac, and that with the additional vote from "others" (that may be appointed solely by Bosniacs) Bosniacs in the FB&H may become majority over two other nations in the executive power.

By the Decision of 19 April 2002, the High Representative also allowed amendments of the RS Constitution that was issued by the National Assembly of the Republika Srpska under the pressure by the International Community for harmonization of the RS Constitution with the Constitutional Court's Decision on the constitutionality of all three nations on the whole Bosnia and Herzegovina. This Decision legalizes almost identical solutions regarding the executive power as in the FB&H. The RS Government consists of 8 Serb, 5 Bosniac and 3 Croat ministers. The Prime minister of the government have the right to appoint one minister from the group of "others" which enabled full domination of Serbs over other two constitutive nations in the executive authority.

It is obvious that regarding possible equal participation in the executive authorities in the FB&H Croats and Serbs lost their constitutionality while in the Republika Srpska that happened to Croats and Bosniacs. By the intervention of the OHR in the provisions of the Dayton Agreement, the Croats are reduced to minority in the realization of their rights on the whole territory of Bosnia and Herzegovina. If their representatives express that in a democratic manner, they are removed from post and condemned for "overthrow of the system of government of the country"!

By such constitutional provisions the OHR cemented the Republika Srpska as the Entity of the Serb peoples, which is directly contrary to the Decision of the Constitutional Court of Bosnia and Herzegovina. Instead of realization of its constitutional rights on the whole territory of Bosnia and Herzegovina, Croat peoples in Bosnia and Herzegovina, because of such decision by the OHR and war exodus, are brought to the position of national minority.

The Dayton structure of B&H has been changed also regarding the performed reform of defense. The competence in the field of defense was transferred to the State of Bosnia and Herzegovina. The reform of Police, in the field of collecting public

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<sup>79</sup> National Assembly of the RS adopted the amendments to the Constitution in the last moment, and the High Representative confirmed and partly added these by his Decision of 19 April 2002, and the amendments to the Constitution of the FB&H are imposed in whole.

revenues (PDV), in the judiciary (the Court of BH introduced<sup>80</sup>), Decision on the Law on the Council of Ministers of B&H<sup>81</sup> and other decisions and laws that are incompatible with Annex IV to the General Framework Agreement for Peace are done in the same manner.

It cannot be disputed that a large number of these reforms is justified and necessary in the functional sense but that does not give the right to the International Community to impose unfair solutions. If the goal is to avoid any nation to become majority and to obtain equality of all the citizens before the law, reforms have to be performed using the same measurements for all citizens and nations on the level of the whole State. If not so, new injustices may be caused in striving to remedy the old ones.

Centralization of power and striving towards realization of principle of rule of civil majority over minority becomes constant in this process. In the multinational countries with national issues that are not solved in the democratic manner (such as Bosnia and Herzegovina) *civil principles* in translation usually mean tyranny of majority over minority. Let us hope that it is not the final aim of the International Community in Bosnia and Herzegovina.

#### **V.5. Legitimacy of the Dayton Constitution and Legality of Amendments Thereeto**

Having in mind the circumstances and manner of issuance of the Constitution of Bosnia and Herzegovina we may claim that the Constitution of Bosnia and Herzegovina as the highest political and legal act of the State has no legitimate democratic grounds since it was imposed by the International Community and signed by people that did not get the legitimate support from the BH citizens through the democratic elections. So, the Dayton Constitution does not represent the will of peoples and citizens of Bosnia and Herzegovina but it is the result of will of the international subjects who dictate the situation in this State.

Annex IV to the Dayton Agreement cannot be called the supreme and sacrosanct legal act because the International Community draws competences for changes of constitutional provisions from the Annex X to the General Framework Agreement for Peace.

The Constitution of Bosnia and Herzegovina confirmed independence of the State but it may not be said that the State realized its sovereignty through the General Framework Agreement for Peace.

Although the International Community took the right to issue laws and even to amend the Constitution upon its own opinion, such competencies do not follow from the provisions of Annex X to the Dayton Agreement. It must be concluded that the existence of arbitrariness in the political decisions or better to say ruling is result of autocratic and authoritarian and not of the democratic systems. If Annex X gave authority to one person to issue laws and amend the constitutional provisions "when he finds it necessary" the logical conclusion would be that by the Dayton Agreement the democratic World in Bosnia and Herzegovina installed non-democratic (autocratic) legal system. We consider that such competencies cannot be derived

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<sup>80</sup> Decision imposing the Law on Court of Bosnia and Herzegovina of 12 November 2000.

<sup>81</sup> Decision was imposed by the High Representative Wolfgang Petritsch on 3 December 2002.

from the General Framework Agreement for Peace. Article II of Annex X regulates competencies of the High Representative in Bosnia and Herzegovina and we use this opportunity to quote:

**“Article II: Mandate and Methods of Coordination and Liaison**

*The High Representative shall:*

- a. Monitor the implementation of the peace settlement;*
- b. Maintain close contact with the Parties to promote their full compliance with all civilian aspects of the peace settlement and a high level of cooperation between them and the organizations and agencies participating in those aspects.*
- c. Coordinate the activities of the civilian organizations and agencies in Bosnia and Herzegovina to ensure the efficient implementation of the civilian aspects of the peace settlement. The High Representative shall respect their autonomy within their spheres of operation while as necessary giving general guidance to them about the impact of their activities on the implementation of the peace settlement. The civilian organizations and agencies are requested to assist the High Representative in the execution of his or her responsibilities by providing all information relevant to their operations in Bosnia-Herzegovina.*
- d. Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation.***
- e. Participate in meetings of donor organizations, particularly on issues of rehabilitation and reconstruction.*
- f. Report periodically on progress in implementation of the peace agreement concerning the tasks set forth in this Agreement to the United Nations, European Union, United States, Russian Federation, and other interested governments, parties, and organizations.*
- g. Provide guidance to, and receive reports from, the Commissioner of the International Police Task Force established in Annex 11 to the General Framework Agreement.*

The analyses of the High Representative’s competencies under Article II.3 indicate that in the listing of his responsibilities he was not given the right to issue legal provisions. Quoted part of Annex X shows that alleged competencies of the direct intervention of the OHR in the legislative system of Bosnia and Herzegovina is not in accordance with and cannot be derived from the Dayton Agreement.

When issuing his “final and binding” decisions, the High Representative derives his powers by referral to Article II.1.d) and Article V of Annex X.

On this occasion we will quote also the “key” Article V:

*“Article V: Final Authority to Interpret*

*The High Representative is the final authority in theatre regarding interpretation of this Agreement on the civilian implementation of the peace settlement.*" (quotation finalized)

Quoted Article V of the Agreement on Civil Implementation indicates that the High Representative is final authority in the interpretation of provisions his competences are based upon. This Article represents legal absurd because it renders the Annex X completely unnecessary. Namely, in the sense of Article formulated this way it follows that the High Representative himself decides on his competencies in the civil implementation of the peace agreement. In translation, it would mean that he has powers of Protector. Following all of this, the conclusion imposes that Bosnia and Herzegovina was put in the classical status of colony by the Dayton Agreement. In that case the whole responsibility lies on the Protector who joins in his function all segments of power (legislative, executive and judicial). Therefore, it appears inappropriate and hypocritical to transfer guilt for the situation in Bosnia and Herzegovina to the politicians of this country, since the OHR has all the authority to remedy the situation.

That legislative and constituent powers of the High Representative do not really derive from Article V of Annex X to the Dayton Agreement is shown in the following analyses.

Preambles of the High Representative's decisions contain the following reasoning of his legislative competence:

*"Recalling paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative's intention to use his final authority in theatre **regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement** in order to facilitate the resolution of any difficulties as aforesaid **"by making binding decisions, as he judges necessary"** on certain issues including (under sub-paragraph (c) thereof) **"measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities,"***

It is clear that in the lack of real competencies the High Representative refers to the conclusion of the Peace Implementation Council as the legal grounds for his authority. Thus, his competence, in our opinion, is not based upon the Dayton Agreement and it represents unauthorized interference of the International Community with the internal affairs of sovereign State.

Interpretation of Article V as legal basis for legislative competencies of the OHR puts the importance of the Constitution and institutions of Bosnia and Herzegovina to the lowest possible level. In the sense of that Article, Annex IV ceases to be the Constitution as fundamental legal act because no obligation exists to realize the principle of harmonization of the law with the Constitution. If the Peace Implementation Council or International Community interprets well-foundedness of such competencies of the OHR, then Annex X is contrary to Annex IV to the Dayton

Agreement. Namely, Article I.2. defines Bosnia and Herzegovina as democratic state functioning by the rule of law<sup>82</sup>,

Since the General Framework Agreement for Peace has the character of international agreement, the issue arises of its legality with a good reason, because as such it was not ratified before the Parliamentary Assembly of B&H<sup>83</sup>. Paradox of the Dayton Agreement and inconsistency of the International Community may clearly be reflected by the fact that the into the Annex IV to the Dayton Agreement were incorporated provisions on the organization of the BH Federation as federation of Cantons in the sense of the Washington Agreement. In that way the Constitution of the BH Federation of 1994 from Dayton to 2002 remained completely unchanged and chronologically speaking it is older than the BH Constitution. The Constitution of the BH Federation was issued in the context of Washington Agreement by Croats and Bosniacs on modalities of coexistence in the joined State. However, Croats as the constitutive peoples scarce in their number almost nothing remained of what they agreed upon in Washington. Namely, the Washington Agreement, as international one, guaranteed Croats confederal relations of BH Federation with the Republic of Croatia. That was very important for Croats in the context of national, cultural and economic existence. That solution substantively influenced consent to the signing of the Dayton Agreement. International Community finally took position that for this international agreement the will of those concerned (peoples of BH) is not important at all. By the opinion of the *European Commission for Democracy Through Law* (hereinafter: the Venice Commission), formed within the Council of Europe, amongst other things, the assessment was given that the *Preliminary Agreement on the Establishment of a Confederation between the FB&H and the Republic of Croatia* of 18 March 1994 does not have the importance of the international agreement<sup>84</sup>. The assessment of the Venice Commission states as follows:

*“The Commission considers the establishment of a confederation between an Entity and another State as clearly inconsistent with the sovereignty and territorial integrity of BH and therefore as unconstitutional. While the Agreement itself falls short of the establishment of a confederation, this purpose is not legitimate under the BH Constitution which provides as an alternative the possibility to conclude agreements on special parallel relationships. It is clear that, as from the entry into force of the new Constitution, the Washington Agreement may be used as a basis for the conclusion of agreements only to the extent it is compatible with the new Constitution.*

*This Agreement, which was concluded before Dayton, has to be regarded as superseded by the new Constitution.*”<sup>85</sup>

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<sup>82</sup> Article I.2. of the Constitution of Bosnia and Herzegovina states: “**Democratic principles** – B&H shall be democratic state functioning under the rule of law and on the basis of free democratic elections.”

<sup>83</sup> For the above reason the whole text of the General Framework Agreement for Peace or the Constitution of Bosnia and Herzegovina have not been published in the Official Gazette of Bosnia and Herzegovina.

<sup>84</sup> Preliminary Agreement on the Establishment of Confederation between the FB&H and the Republic of Croatia and the Agreement on Adoption of the FB&H Constitution and the Preliminary Agreement on Future Economic and Military Cooperation between the FB&H and the Republic of Croatia are, so called, Washington Agreement.

<sup>85</sup> WEB page of the Venice Commission of the Council of Europe, <http://www.venice.coe.int/docs/1998>

The Venice Commission clearly state at the introduction of its opinion that the opinion does not concern the constitutionality in relation to the Constitution of the Republic of Bosnia and Herzegovina (as internationally recognized State at the moment of signing of the Washington Agreement), but it assessed the constitutionality of the Washington Agreement in relation to Annex IV to the Dayton Agreement. Such statement is real nonsense because it negates the very provision on the continuity of Bosnia and Herzegovina in Article I.1. of Annex IV to the Dayton Agreement. We also find it absurd that an international legal agreement is assessed from the position of the Constitution adopted after it and, in particular, because that Constitution confirmed a part of solution of the Agreement and Bosnia and Herzegovina under its Constitution was organized in such way that Croats gave consent to the status of constitutive nation that divides its sovereign powers with other constitutive nation in one Entity.

Since the Constitution of the FB&H of 1994 is incorporated into the Dayton Agreement itself, the Venice Commission accepts, inconsistently and unskillfully, the *Agreement on Adoption of the FB&H Constitution* and the *Preliminary Agreement on Future Economic and Military Cooperation between the FB&H and the Republic of Croatia* as second part of the Washington Agreement. To show objectivity, the Venice Commission points out that the appropriateness of their opinion regarding the “constitutionality” may anyway be corrected by the decision of the Constitutional Court of Bosnia and Herzegovina. The importance of this statement is clear in the light of fact that the International Community through the High Representative’s Office may amend the provisions of the Constitution of Bosnia and Herzegovina on its own.

## V. CONCLUSION

Formulating its competencies by Article V of Annex X to the Dayton Agreement and the Opinion of the Venice Commission, the will of two constitutive nations in Bosnia and Herzegovina is made irrelevant by the International Community. Therefore, the Dayton Agreement cannot be considered as treaty because it is not the result of agreement of wills but of the International Community's dictate. The presumption has to be fulfilled that the Constitution is made in accordance with the will of one nation for that nation to be constitutional. It seems that the will of two nations is not considered important because of such interpretation of the Dayton Agreement. Since their will regarding the constitutional organization of the State was passed by it follows that in the sense of Annex IV to the Dayton Agreement and legal practice of the International Community, Croats and Bosniacs are not constitutive nations in Bosnia and Herzegovina. Readiness for compromise of these two nations is fully misapplied and the status of constitutive nation was given only to Serbs that are enabled by the Dayton Agreement to establish unitarian, one-national and ethnically cleansed Entity.

Overbearing of the representatives of the International Community in Bosnia and Herzegovina and the manner of "lecturing" the democracy cast shadow to the positive achievements of the Dayton Agreement. The Dayton Constitution formally guarantees to all the citizens realization of all human rights in whole. It formally guarantees the existence and international subjectivity of the State of Bosnia and Herzegovina. It proclaims the principles of democratic state based upon the rule of law and system of market economy. Basic principles of the BH Constitution indicate it is giving a proper direction for B&H to take, but it does not represent the appropriate framework for better life of all the people of this country. Presence and activities of the representatives of the International Community should be the tailwind on the path towards the civilizational prosperity of this State. It appears that the ship lost the direction and compass on this trip for a while.

Fruitless policy towards the tragedy of Bosnia and Herzegovina and silent observation of the realization of the genocide policy in this part of the World give no moral right to the International Community to treat problems of Bosnia and Herzegovina with condescension. However, that gives no alibi to the citizens of this county. The International Community, upon this Commission's opinion, has the substantive part of guilt regarding the existing situation in Bosnia and Herzegovina. If it creates the policy and organization of this country, the International Community should show more responsibility and promptness for that, with the respect of constitutionality and dignity of all three constitutive nations.

After certain conflicts, the complex correlation of relations and interests of three nations may elegantly be eliminated with the accession of Bosnia and Herzegovina to the European Union. The only real help of the International Community may be the one regarding the fulfillment of high criteria in protection of human rights through the functioning of the rule of law based upon respect of identity of all three nations in Bosnia and Herzegovina. Accession to the European Union cannot be expected before realization of these goals and the cutting of Gordian knot of Bosnia and Herzegovina have to found in this direction.

The interpretation of the Dayton Agreement and manner the International Community changed the constitutional organization of this country are not in accordance with the fundamental democratic principles the modern civilization lies upon. By non-democratic methods cannot achieve the democratic goal. Unfair acts do not lead to justice. Therefore, fair solutions should be looked for in the new constitutional solutions that would represent grounds for functioning of Bosnia and Herzegovina under the rule of law where noble principles of the Dayton Constitution and efficient protection of individual and mutual rights are realized. We may only reach this goal through the creation of mutual respect climate and the culture of dialogue development. Fair and democratic solution of the legal state organization may be expected only under such circumstances.