



**BISHOPS CONFERENCE OF BOSNIA AND HERZEGOVINA
COMMISSION "JUSTITIA ET PAX"**

REPORT ON THE STATE OF HUMAN RIGHTS IN BOSNIA & HERZEGOVINA IN THE YEAR 2006

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INTRODUCTION

Regardless of where on the territory of Bosnia and Herzegovina (the BiH, or BH) they are situated, the citizens of this state continuously have difficulties to realize their constitutionally guaranteed human rights. Although it has been under the specific protectorate of the international community for eleven years already, the polarized society of Bosnia and Herzegovina not only failed to emerge from the crisis caused by the war but the crisis even intensified and the divisions between its three constituent peoples became even deeper.

By the General Framework Agreement for Peace in Bosnia and Herzegovina¹, as a concession to peace, the law of the force was legalized and the state of the “ethnically cleansed” areas that was established by the war, aggression and open genocide. Although some benefits relating to the end of hostilities arisen from the Dayton Agreement, Bosnia and Herzegovina remained completely paralyzed especially in its economic and democratic development by the new complex and dysfunctional state organization.

The unsustainable state organization is obstacle for the democratic, economic, social and any other progress of the state. For the given reasons Bosnia and Herzegovina remains the last in the line of European states waiting for the desirable association with the European institutions. Besides the unjust constitutional and legal organization and non-functioning of the rule of law, even in 2006 the largest number of citizens of this country is exposed to the state of utter poverty and social uncertainty. It is obvious that the international community’s project in Bosnia and Herzegovina reached the dead end that from the very beginning has not led to the affirmation of the high human right standards proclaimed first of all in Annex IV and in the other Annexes to the Dayton Agreement such as Annexes VI and VII. Although the International Community has been actively present all the time since the end of war in our country, it has not achieved the necessary minimum of the standard for the civilized civil democratic state.

By the unjust solutions from Dayton that divided the state to two ethnical entities, i.e. the way that it was planned by the war lords, prevented the creation of preconditions for sustainable return of refugees and displaced persons, citizens of Bosnia and Herzegovina. The same reason prevented solution of the very complex and important issue of the relations between nations of three constituent peoples. For all of these reasons the citizens of Bosnia and Herzegovina still suffer the general poverty and deprivation of rights. The Dayton Agreement and the acts of the International Community after the conclusion of the Agreement have failed to remove the causes or consequences of the war in Bosnia and Herzegovina. The large contribution to that is given by the national politicians who care only for their own benefit and interests of their parties instead of benefit of the citizens and peoples.

¹ General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter the „Dayton Agreement“) was initialed in Dayton (USA) on 21 November 1995, and officially signed in Paris on 14th December 1995.

1. SYSTEMATIC DENIAL OF HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA²

The thesis has spread through the diplomatic lobbies in Bosnia and Herzegovina as an anecdote on the state in Bosnia and Herzegovina that there are three kinds of states in Europe; members of the European Union, candidates for the membership in the EU and... Bosnia and Herzegovina.

Although it is only an anecdote, unfortunately, we cannot escape the impression that this statement is closer to truth than to joke. But what is the truth in Bosnia and Herzegovina? It appears that everyone has some truth that is his own. The manipulations of national and international politicians by "truths" on Bosnia and

² On 14 December 2006 the Justitia and Pax Commission organized the Round Table with the topic „BiH – the structure of negations of human rights“. In the opening speech, the President of the Commission, Dr. Pero Sudar, amongst other things, stated: "This Commission decided on the given topic because of its belief that the organization of B&H does not only enable but stimulates the systematic negation of the fundamental rights of all citizens. When hundreds of thousands individuals were brutally forced out of their life and millions out of their homes and world by the terror of war because of completely opposite visions of the organization of this country, the tragedy of survivors and others has continued for longer than a decade. The state of fundamental human rights in all spheres of life starting from a kindergarten to the Supreme Court, today, in this country, primarily depends on the place of residence and the ethnic origin. The project of such structurally established conditioning of the fundamental human rights is sealed by the stamp of the world that claims justice but keeps the injustice alive. I do not believe that there is an honest person in this world that does not concern the state in this country a nightmare. That is confirmed by the avalanche of symposiums, round tables, discussions, polemics, and some even speak of it as of the soap opera because it never ends, and we have every right to feel tired by all of it. And while the caravan passes the hopeless situation of the largest number of citizens becomes a kind of tangible apathy. Any effort towards a different path even strengthens the feeling of helplessness. Regardless of that, or even more because of that, it seems necessary for us not to give up efforts to find an acceptable solution. Notwithstanding the success or the lack of it is not and cannot be the same whether we speak or be silent on some phenomenon in the society. That is especially the case with the state of injustice!

It is more and more obvious that no one will or could determiningly help to this country and its citizens and peoples if the decisiveness and strivings of national forces fail to happen. Very important question is, therefore, whether, after all that happened, there is enough strength to believe that the solution exists and enough prudence to search for it? It is said that there is no individual or nation or society that does not have its, often hidden, acceptable part. It is recognized and used for the common good only by the rear individuals who have enough patience and motive to understand and in certain measure tolerate the other ugly and intolerable part of it. I am afraid that that is the chest in which the key is hidden for the possible recovery of the society of Bosnia and Herzegovina. I strongly believe that people in Bosnia and Herzegovina have enough brains and strength to help them. Justitia and Pax Commission would like to participate and give its contribution in finding all that is positive and acceptable in and amongst all of us so that this country would become the place for reconciliation of differences and respect for human rights far all of us equally. "

And the opening speaker Prof Dr Asim Mujki_ stated: "No state may be a candidate for legitimacy if it systematically oppresses the dignity of a free citizen, if, on the constitutional basis, it not only lives of the parliamentary crises caused by the nationalism but it generates crises by its form that prevents any kind of rational state organization showing continuous lack of need to act in the direction of 'common good'. In Bosnia and Herzegovina, the humiliating ethnic maltreatment of citizens is at issue and it is performed by the ethnic politics joined around so called "national parties" and the representatives of the International Community, which is legalized by the Constitution with the devastating realization that the Dayton Bosnia exists on the basis of the worst kind of discrimination based upon the collective characteristics of ethnic origin constructed as biological where notorious right of peoples to self-determination totally exterminated the other civilizing older right, the right of a citizen to self-determination. The story of the Dayton Bosnia is the story on what happens if the right to self-determination of an individual is subjected to the right of self-determination of a nation, and if, only from the context of collective right, individual rights and freedoms may be deducted and implemented."

Herzegovina are endless but still we do not even have the basic information that would precisely show the consequences of war. For example, we still have no idea on the exact number of people killed during the war, number of wounded, the new demographic structure of citizens, amount of material damage, etc. Although the war ended long time ago the basic census has not been performed.

It would be proper to finally count the dead, wounded and war damages and to see what is left on the disposal of this state. Such census does not go in favor of the Serbs because it would point out to the crushing results of the ethnic cleansing and genocide in their entity. Besides, the census would show unacceptably insignificant representation of Bosniacs and Croats in the Republika Srpska. The political representatives of Croats are afraid that the devastating result with regard to, by the results of war, halved number of their national body in Bosnia and Herzegovina would have the detrimental effect to the future solutions of the participation in the authorities. Politicians that represent Bosniac peoples are mostly afraid that the basic census and analyses of the war effects would shake the political perception of Bosniacs – Muslims as the exclusive victim of the aggression as they strive to present that on the international level as a thesis of their nation. At the same time, the Office of the High Representative (the “OHR”)³ that performs, for eleven years already, the highest power in Bosnia and Herzegovina, is the one that the least of all would favor the thorough census of the population and assets because it would finally draw attention to the failed projects of reconstruction and return. It is undisputable that the OHR, within the meaning of the Bonn powers⁴, could prescribe such census by the simple act but it has not done so. It could be the cause to put forward the question of where vast financial assets are that were invested to this country by the International Community.

Be that as it may, it is obvious that it does not suit the OHR or prevailing national politics to establish the truth, and that is the precondition for transformation of Bosnia and Herzegovina into the civilized, democratic state.

With regard to the credibility of historical, sociological and political–science presentations of the truth it may be stated that Bosnia and Herzegovina is fairly invalid and morally disabled. Media in Bosnia and Herzegovina are on the day by day basis full of partial interpretations of war events and auctions regarding the number of killed people and numerous lies or half-truths on the events that determined the faith of the Bosnia and Herzegovina citizens. Interested political and quasi intellectual elite have spread such “information” most often for the purpose of national homogenization of their own peoples, in order to make it feel endangered by everything and everybody different. Behind all of it most often stands the close interest of the elite in question for the preservation of the existing state of separation and disagreement. It is obvious that, eleven years after the end of war, the politic elite of all three peoples in Bosnia and Herzegovina or the International Community do not have in mind the wellbeing of the people, i.e. to finally overpower the atmosphere of

³ OHR - Office of the High Representative;

⁴By the Venice Commission’s decision issued on the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, the OHR was given broad powers of intervention into the all pores of the BH society (legislative, executive and judicial authority) that were used in abundance by the predecessors of the current High Representative, Christian Schwarz-Shilling. The German diplomat Schwarz-Shilling took over the duty of the High Representative in Bosnia and Herzegovina from the British Lord Paddy Eshdown on 31 January 2006, and he is the only one in that function who really used the broad Bonn powers to interfere with the work of national institutions.

hostility and uncertainty, and to start building a better future for all nations and citizens.

Described social environment keeps all citizens of Bosnia and Herzegovina under the impression that the war has never ended. One thing is certain, in auctions of victims and quasi interpretation of war events for the current political purposes and more and more present manipulation with the human tragedy by the media, an individual has been forgotten and his personal sufferings. In this Report, our goal is not to present some "truth" of ours but to focus on the rights of that individual which is forgotten in a way, and who completely realizes his/her own un-repeatability by the recognition of personal, religious and ethnic disposition. Such total affirmation of a human being as an individual in the layered society such as in Bosnia and Herzegovina is possible to achieve only under the hospices of the pluralist democratically organized society and pluralist (multiethnic, multi-confessional and multicultural) society is unavoidable destiny of complex states such as Bosnia and Herzegovina.

2. EVENTS THAT MARKED THE YEAR 2006

Almost any interference and especially non-democratic one into the politic and social system of the state unavoidably impacts the state of human rights and civil freedoms. In Bosnia and Herzegovina it is additionally interfering with the equality of peoples. It, therefore, appears necessary to us to at least mention the events that directly influenced the level and quality of human rights and position of the constituent peoples.

2.1. The Attempt of the Constitutional Amendments Implementation

During 2005, until the last days of March 2006, the attempts of amending the constitutional and legal organization of Bosnia and Herzegovina were current issue. Negotiations started under the hospices of the American Peace Institute, and the main administrator of the negotiation among political parties project was former Deputy of the High Representative in Bosnia and Herzegovina, the American diplomat Donald Hays. Under the certain pressure all political parties of importance from both entities participated in these negotiations⁵.

Negotiations were held in secret and with no presence of media. Since the Dayton Constitution has never been ratified by the Parliamentary assembly of Bosnia and Herzegovina, the aim of political pressure of the International Community (mainly of the USA) was to legitimize this international constitutional and legal document, under the mask of cosmetic constitutional amendments, that would be harmonized and adopted through the parliamentary procedure. That way, besides the Annex IV, the legitimacy and form of constitutional will of all three constituent peoples would be

⁵ The SDA, SBiH, SDP, SDS, SNSD, PDP, HDZ of BiH and HNZ parties participated in the final negotiations. Only the SBiH gave up the negotiations in the end, and the representative of the HDZ did not sign the final Agreement.

given to the direct interventions in the constitutions of entities⁶ and also to a number of peaces of legislation on the level of the state that had been imposed in the meantime by the International Community. On its session in Mostar on 22 March 2006, the Bishop's Conference expressed its negative position towards the proposed amendments⁷.

Pressures imposed by the International Community have not give fruit although the final agreement was reached between six political parties because the session of the House of Representatives of the Parliament of Bosnia and Herzegovina of 26 April 2006 did not give the necessary majority of votes to the proposed package of constitutional amendments.

⁶ Decisions of the High Representative Wolfgang Petritsch on the amendments to the Constitution of the FBiH and the Constitution of the RS, nos. 161/02 and 162/02 of 23 May 2002 were published in the Official Gazette of B&H no. 13/02.

⁷ Statement of the Bishop's Conference of B&H state as follows: " *Following the course of negotiations on the amendments of the Constitution of B&H through the period of several month, we, the Catholic Bishops in B&H have to conclude with regret that the modification of this fundamental document of statehood and democracy of our country has been performed in non-democratic and almost conspiracy manner. We asked ourselves, and we now ask the organizers and participants of negotiations on the amendments to the Constitution, how and with whose authority they are changing the International Peace Agreement from Dayton without participation or consent of all the signing states and without asking the opinion of citizens of this country? Since when the international agreements are not changed at least in the same manner in which they were originally made? Having in mind the Agreement, as the result of negotiations conducted in such manner, we rightfully fear that it represents the direct threat for the better future of citizens and equality of peoples because this constitutional category would confirm the ethnic cleansing realized by the war and legalized by the Dayton and unjust division of B&H as well. Namely, is it possible not to ask, in the critical moment of such importance for our country, in the name of what democracy and justice and future of B&H the entity principle of deciding in the Hose of Representatives is introduced (Article IV, para. 10 f), and by what constitutional category the destiny of this country is put to hands of delegates of two peoples that are the only ones to secure "one third of delegates or members from the territory of each of the entities"?*

We deeply regret that our numerous appeals remained fruitless during ten years of "silent review" of the Dayton Agreement establishing unfair division of B&H and systematic degradation of the Croat peoples to the level of minority. Even so, we con do anything else but ask by what principle of democracy the Croat peoples that are constituent peoples in this country are deprived of their fundamental right to participate on equal grounds in the political life and adoption of legislation with other two constituent peoples? Who has the interest in bringing to question the possibility of coexistence of its peoples in this country and notifying that there is no place in it for al of its citizens and peoples?

Because of that, in this moment crucial for future of the Croat peoples and B&H we invite the representatives of the Croat peoples and all authorized politicians and other people that have the multi-ethnicity and democracy of this country in their hart to do everything possible to prevent constitutional amendments as prepared currently to get the parliamentary confirmation, all of it with the common good and democratic principles as a leading point.

We would like to notify that ten years of experience and quality of the "first phase" of constitutional amendments give no guarantees that in some "second phase" anything better could and would be done. The fear that the acceptance of proposed amendments would open the way for annulment of remaining Washington-Dayton mechanisms protecting the interests of Croat peoples such as Cantons and vital national interests has its grounds. If, notwithstanding guarantees of the Dayton Agreement, the Croats in B&H cannot even have their television channel or schools in Croat language, these are the clearest signs of what standards we should be dedicated to at the beginning of third millennium!

As the Catholic Church bishops and members of the Croat peoples, we maintain the encouragement of our believers to determining stand up for their inalienable rights and to build just peace in this country together with all others."

At the beginning of 2006, the given episode of the political life of Bosnia and Herzegovina was the main topic in the media of Bosnia and Herzegovina raising a lot of discussions, and as a final result it pointed out to the immaturity of democracy and non-existence of professionalism on the political scene in Bosnia and Herzegovina. While Serbs show that they have harmonized positions turned towards close protection of their interests, the incredibility, inconsistency and irresponsibility of politicians in the Federation of Bosnia and Herzegovina that were supposed to represent interests of their peoples was expressed in the fact that under the political pressure the Agreement on Constitutional Amendments was signed by leaders of the biggest ethnic parties of Croats and Bosniacs⁸, although such agreement would totally cemented and worsen already discriminatory position of both their peoples in the Republika Srpska (the RS), and of the Croats on the whole territory of Bosnia and Herzegovina. Namely, by signing of the agreement the political representatives of Croats and Bosniacs gave consent to finally cement solution given in Dayton that give them no possibility of being constitutive peoples on the territory of the Republika Srpska. Besides, by the constitutional amendments imposed in 2002 the discrimination of Bosniacs and Croats in the RS was confirmed and the Croats lost their position of constitutive peoples in the FBiH.

Besides all stated above, the Agreement on amendments to the Constitution of Bosnia and Herzegovina harmonized by six political parties contained the amendments worsening the position of Croats with regard to the catastrophic constitutional solutions made in 2002.

Namely, under the political agreement on the constitutional amendments of 2006, the competencies of the House of Peoples as the upper house of the Parliamentary Assembly of Bosnia and Herzegovina would be reduced and the House of Representatives would get more importance, and in it the Croats cannot in any way realize the majority and in such way protect their interests, i.e. block issuance of laws that are detrimental for their interests. On the other hand, such solution would enable Serbs and Bosniacs to protect their interests through the entity voting because they could stop through the provided entity majority in the House of Representatives. Above mentioned amendment in fact is of no fundamental importance since under the existing constitutional solutions when the Parliamentary Assembly of Bosnia and Herzegovina is deciding the entity voting exists that is temporarily transferred to the House of Peoples of Bosnia and Herzegovina, where the Croats, by the majority vote of their representatives, may initiate the protection of their vital national interest⁹. Namely, the initiation of the institute of the protection of the vital national interest through the House of Peoples of Bosnia and Herzegovina in the meaning of the applicable Article IV(3)(e) of the BiH Constitution has a restricted character because if one of the remaining to peoples objects the request for protection of the vital national interest, the disputed decision is transferred to the Constitutional Court of

⁸ For the HDZ of BiH the President of the party Dragan Čović and for the SDA the President of the party Sulejman Tihić – both of them former members of the Presidency of BiH. On the previous general elections in 2002 the HDZ of BiH got almost complete plebiscitary support of Croat peoples, while the SDA then had the position of the most influential Bosniac political party with the largest number of representatives in the Parliament.

⁹ The House of Peoples consists of five Croats, five Serbs and five Bosniacs, and the procedure of protection of the vital national interest may be initiated on the basis of request of the majority of delegates regardless of their ethnic origin.

BiH for deciding. Since the quorum of the Constitutional Court of BiH consists of at least five judges¹⁰, two judges of ethnic origin of the peoples that claim protection of the vital national interest always may be outvoted, as it already happened in 2006, so that the effective protection of vital national interest does not exist in practice.

The fact is that by the diminishing of the powers of the House of Peoples in accordance with the signed political agreement, the right of veto of the nation that is the least in its number would be limited in the decisions of the Parliament. However, since the Croats already are not in the position to block decisions through the entity vote or through the institute for protection of the vital national interest, these amendments may be assessed as cosmetic ones and initiated with the aim of legitimizing the existing solutions through the BiH Parliamentary Assembly's procedure. In that manner, namely, Bosnia and Herzegovina would definitely be divided not only between two entities but also between two peoples.

Negotiations on the constitutional amendments cleared to the bone all the hypocrisy of the Croat and in a certain measure of Bosniac politicians in power in Bosnia and Herzegovina who, by putting signature to such an Agreement, put their small private interests before the crucial interests of the peoples they represent.

In the attempt to make the constitutional amendments we have to mention a positive fact, that is that the politicians of both entities, even under a strong pressure, agreed on something. That is another confirmation that the International Community representatives may efficiently influence the national politicians. As the modification of the Constitution is the condition for normalization of the situation in Bosnia and Herzegovina and its association to the EU, the hope remains and the suggestion that all international and national factors maintain in their efforts to find a fair political solution for this country.

2.2. *The Law on Defense of Bosnia and Herzegovina*

Upon the adoption of the Law on Defense of BiH in 2003, its gradual implementation was finalized on 1 January 2006 when the entity ministries of defense were closed and the system of mandatory military serving ceased.

New Army Forces consist of 10.000 members that are exclusively professional staff. The active military reserve is restricted to the half of the active military forces number. The application of the unique state budget for the defense started on 1 January 2006. It is provided that the complete reform of the defense in Bosnia and Herzegovina should be finalized before 31 December 2007.

This reform established the unique army defense system on the state level; although the Annex IV to the Dayton Agreement prescribes that the defense is under the

¹⁰ In accordance with Articles VI(1)(a) and VI(1)(b) of Annex IV to the Dayton Agreement (the Constitution of Bosnia and Herzegovina), the Constitutional Court of Bosnia and Herzegovina has nine members of which two from each of the constituent peoples and remaining three appointed by the President of the European Court of Human Rights. The quorum for the adoption of decisions represents the majority of all members of the Court, thus, at least five members (judges) and two judges of Croat origin cannot get the necessary majority in any case.

competence of the entities¹¹. It must be noticed, therefore, that this Law as many others imposed by the OHR, has not been harmonized with the BiH Constitution or the entity Constitutions of the FBiH and the RS. However, the reform of the defense may be assessed as completely rational and necessary because it decreases unnecessarily high budgetary expenses made by the ministries of defense of both entities. Also, the joined Army on the state level is a prerequisite to our joining to the NATO pact.

2.3. The VAT LAW

In Bosnia and Herzegovina the application of the Value Added Tax (VAT) Law started on 1 January 2006. This Law provides for the flat tax rate for all products under the flat rate of the VAT of 17 percent. Many anticipated that the introduction of VAT under the flat rate will cause the substantial increase of prices, and thus also the social turmoil. The fact is that the increase of prices occurred and the social status of the largest part of the population in Bosnia and Herzegovina worsened but it may be concluded that the larger scale social turmoil did not occur.

Of course, we should not avoid the positive effects of the VAT introduction. According to the data of the Indirect Tax Administration, 4.109 billion KM¹² was collected on the basis of the indirect tax in 2006. For the first time in the period of last eleven years the foreign trade deficit of BiH was reduced from 7.5 billion KM to 5.9 billion KM. Unfortunately, the fact remains that the introduction of VAT has not helped to eradicate generally spread "gray market" in Bosnia and Herzegovina.

Nevertheless, the taxation system under the flat rate of VAT cannot be assessed as socially fair because it mostly influences categories of population that are socially the most endangered. It is illogical and unfair to equally burden with taxes the luxury products and the essential foodstuffs under the flat rate. The assessments show that in the structure of expenditure of the most endangered categories of population in BiH the food amounts to 50 to 70 percents of monthly costs. By the price increase of the essential foodstuffs¹³ additionally aggravated already impoverished majority of the population, while the rich classes of society gained more in such tax reform because the luxury tax is decreased by the introduction of the flat rate taxes. We estimate that for the sake of the social fairness it is necessary to introduce the taxation system with a number of different tax rates within a certain period of time, and it would be preferable that the essential foodstuffs, books, baby cosmetics etc. would have zero value added tax rate.

¹¹ Competences of the Federation of BiH in the area of defense are derived from Article III(1)(b) of the Constitution of the FBiH. Article III(1) of the Constitution of BiH prescribes competencies of the institutions of the State of B&H amongst which the competences of the State in the defense area are not prescribed while Article III(3)(a) provides for: "All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities".

¹² Fix rate is KM 1.00 cca. EUR 0.51

¹³ The majority of basic living foods was taxed according to the previous tax system under the 10 percent rate (Tb-1 of the turnover tax);

As the VAT does not flow to the treasuries of entities¹⁴ but to the state treasury as of 1 January 2006, the serious problem with the introduction of the unique VAT system on the state level represents the non-existence of the agreement on the criteria of the funds allocation between the Federation of BiH, the Republika Srpska and the Brčko District of Bosnia and Herzegovina, which resulted by the blocking of the unique account on several occasions during 2006. If the issue of the VAT fund allocation is not systematically solved it could become the cause of constant fiscal crisis on the whole territory of the state in the future.

Finally, it is necessary to emphasize that the tax reform in Bosnia and Herzegovina has not been harmonized with the constitutional solutions as well, which indicates the disorganization of the state legal system of Bosnia and Herzegovina. It is completely clear that the tax reform should have been conducted as a matter of necessity. This example, as many others, indicates the necessity of the restructuring of the constitutional and legal organization of Bosnia and Herzegovina.

2.4. Negotiations on the association of Bosnia and Herzegovina to the European Union and admission to the Partnership for Peace

On 25 January 2006, Bosnia and Herzegovina commenced its negotiations on the association to the European Union, when the technical part of negotiations started, and at the beginning of December 2006 the technical part of negotiations ended on the signing of the Agreement on Stabilization and Association to the EU. However, the EU insists on the implementation of the PBS reform and police restructuring¹⁵ that are currently representing the biggest obstacle on the BiH's road to Europe.

After not being admitted to the NATO's Partnership for Peace Program¹⁶, the green light for Bosnia and Herzegovina was given on the NATO Summit held in Riga on 28 November 2006. Upon finalizing the defense reform, Bosnia and Herzegovina signed the framework document for the Partnership for Peace but it does not guarantee Bosnia and Herzegovina its permanent and full (valid) participation.

2.5. Decision on non-compliance of the entity symbols with the Constitution

Deciding upon the appeal by the Bosniac member of the Presidency of Bosnia and Herzegovina, the Constitutional Court of Bosnia and Herzegovina, on its session held

¹⁴ The turnover tax on goods and services was the revenue of the entities and the District of Brčko before the introduction of VAT, and in the sense of Annex IV to the Dayton Agreement the authority in the area of tax collection also belonged to the entities.

¹⁵ The police reform that should, according to the directions given by the OHR, be performed on the regional level (and not on the entity level as before) has started in 2005 but the implementation in 2006 remained completely blocked by the authorities of the Republika Srpska.

¹⁶ On the NATO summit held on 28 June 2004 in Istanbul, Bosnia and Herzegovina was not accepted to the "Partnership for peace" primarily because of failure to fulfill its obligations towards the Haag Tribunal for War Crimes. On that occasion the NATO leaders especially pointed out as the reason for not accepting us the obstruction by the RS to cooperate in the arrest of the accused for the war crimes. Radovan Karadžić and Ratko Mladić have not been arrested and brought before the justice to this date.

on 31 March 2006 issued the Decision that the entity symbols of both entities and provisions of the entity legislation on the coat of arms and flag¹⁷ are not in conformity with the Constitution of Bosnia and Herzegovina. The Decision was issued in the sense of previous Constitutional Court's Decision that all of three peoples are constituent on the whole territory of Bosnia and Herzegovina¹⁸.

Although the Constitutional Court of BiH gave time limit of six months to the entities to bring their legislation in line with the Decision, until the end of 2006, both entities failed to act according to the Decision within the given time limit and that clearly indicates to non-existence and non-functioning of the rule of law in Bosnia and Herzegovina.

2.6. *The Law on PBS of BiH and assessment of conformity of the Law of PBS of the FBiH with the Constitution*

At the beginning of 2006, to be precise, on 5 January, the Law on PBS of Bosnia and Herzegovina entered into force regulating the Public Broadcasting Service of Bosnia and Herzegovina.

On 43rd session of the House of Peoples of the Parliamentary Assembly of BiH, held on 29 June 2005, the Draft Law on the PBS of BiH was adopted in the first reading without a single vote of the Croat caucus and in that manner the initiative was started for the adoption of this Law. The Law was passed through the legal procedure of the Parliamentary Assembly of BiH after the issuance of the Decision of the Constitutional Court of BiH in the case no. U-10/05 of 22 July 2005 dismissing the appeal by the Croat parliamentary representative for the protection of the vital national interest in relation with the new legislative solutions in the area of the public media. In accordance with the said Decision of the Constitutional Court of BiH, the Parliament of the Federation of BiH was obliged to harmonize the Entity Law on the PBS of the Federation of BiH and in that sense the new Bill of entity law was prepared, and it entered in the Parliamentary adoption procedure.

The Draft Law on the PBS of the Radio and TV Service of the Federation of Bosnia and Herzegovina (the "PBS FBiH") entered into proceedings of assessment of its conformity with the Constitution on the proposal of Croat caucus and it was conducted before the Council for Protection of Vital National Interest of the Constitutional Court of the FBiH. The same as in the proceedings conducted before the Constitutional Court of BiH, the initiative was made because Croats, as the constituent peoples, have no public media in the Croat language or appropriate presentation time in the programs of media of the FBiH (the same as on the state level)¹⁹. The procedure of protection of the vital national interest was initiated because the given Draft enables full domination of Bosniacs in the media presentation in the Public Radio and Television Services of the FBiH.

¹⁷ The initiation of the procedure on protection of vital national interest implied simultaneous contesting of the Law on Holidays of the RS;

¹⁸ The politics was that in the RS exclusively the Serbs were constituent peoples and in the FBiH only Bosniacs and Croats were constituent peoples until the said Decision of the Constitutional Court of BiH in the case no. 5/98 of 30 June and 1 July 2000.

¹⁹ In the FBiH the Croats have no public television station in Croat language, and no funds are delegated out of the budget of the FBiH to finance any radio station of this Constituent peoples in their mother's tongue. In the RS only the media in Serb language are functioning.

Regardless of the fact that the Constitutional Court of BiH issued the Decision on 22 July 2005 confirming the Draft Law on the PBS of BiH is not destructive for the vital interest of the Croat peoples²⁰, the Constitutional Court of the FBiH established in its additional Decision of the Panel of the Constitutional Court FBiH in the case no. U-11/06 of 19 July 2006 that in the said Law there is a violation of the vital national interest, i.e. that it is destructive for the interests of Croats in BiH²¹. A paradox that the Constitutional Court of the FBiH adopts the decision contrary to the previous decision of the Constitutional Court BiH arises from the disharmony between the Constitutions of entities and the Constitution of BiH (Annex IV to the Dayton Agreement)²², but also from the fact that under the provisions of the Constitution of the FBiH the possibility of over-voting of judges of one nation in the procedure of assessment of destructiveness of certain law on the vital national interest does not exist.

It is undisputable that the Decision of the Constitutional Court of BiH of 2005 the interest of Croats as a constituent peoples was circumvented although its legitimate parliamentary representatives clearly expressed their thoughts on that issue.

All of this is a consequence of unfair constitutional legal organization imposed by the International Community in Dayton and confirmed in a different form in 2002. In this constellation of relations, the RS is established as entity of only one peoples where the Serbs are the exclusive holders of power, while de-constitution of Croats in the Federation of BiH was finalized through the constitutional amendments imposed by

²⁰ The Decision of the Constitutional Court of B&H of 22 July 2005 (according to which the laws of entities in this area should have been harmonized) was published in the OGBiH no. 64/05 of 19 September 2005 (pages 5110 - 5117).

²¹ We quote a part of Reasons of the Decision of the Constitutional Court of the FBiH establishing the violation of the vital national interest of the Croat peoples as follows: *"And this is for the reason that the principle of program is the basic principle that is crucial for the functioning of the Public Radio and Television Broadcasting Service (the PBS) of the Federation of Bosnia and Herzegovina and in that part it is necessary to clearly establish the legal instruments of protection for all three constituent peoples and citizens in such way that any possible favoring of any ethnic group and thus also to prevent any discrimination with regard to the equal use of language and script, respect of national, regional, traditional, religious, cultural and other particularity of the constituent peoples and all citizens of Bosnia and Herzegovina. To substantiate this claim we have standards of the European Court for Human Rights and the principle of the rule of law, that the bill of law must contain clear and precise statements and the legal consequences have to be certain and appropriate for the needs of those that will apply them which does not follow from the proposed Draft law... Also, the protection from over-voting of one of the constituent peoples in the issuance of decisions has not been secured..., because under Article 24 of the Draft law any decision may be passed by two members of the Steering Board of the PBS of the FBiH..., where the vote of the Chairman is the casting vote. In such situation the decisions of the Steering Board do not guarantee full equality established by the stated Article of the Draft law, which is guaranteed by the Amendment XXVII to the Constitution of the Federation of Bosnia and Herzegovina. Namely, according to the Draft law the decision may be passed by two of the members of the Steering Board meaning the representative of one peoples and one of the others witch puts in the unequal, discriminatory position the representatives of other two peoples and in that sense no effective legal protection exists..."*

²² The Constitution of the Federation of BiH was passed on 30 March 1994, and it was harmonized on the basis of the Washington Agreement signed on 18 March 1994. Therefore, the Constitution of the FBiH is older than the Constitution of BiH (Annex IV to the Dayton Agreement) since the Dayton Peace Agreement was initialed on 22 November 1995 in Dayton - USA, and signed on 14 December 1995 in Paris.

the High Representative in 2002. After the OHR's constitutional reform the institute of protection of the vital national interest remains the only instrument of protection of the constitutive position of Croats²³. Systematic discrimination of Croats as the least in numbers amongst the constituent peoples in Bosnia and Herzegovina primarily follows from Article IV(3) of Annex IV to the Dayton Agreement in the meaning of which the Croats as the constituent peoples in Bosnia and Herzegovina cannot block issuance of decisions in the Parliamentary Assembly of BiH through the parliamentary procedures, as it was previously described. In accordance with the previous elaborate on the constitutional solutions in this case the Croats have been over-voted in the Constitutional Court of BiH as well.

The Decision of the Constitutional Court on the PBS of BiH of 2005 clearly shows that the protection of the vital national interest, as the only remaining instrument of the protection of the constitutive position of the Croats, cannot be realized through the Constitutional Court of BiH because in that highest body of the judicial authority decisions are passed by the majority of votes of the members of the Court where two of the judges that are elected from the Croat peoples are not in the position to block the assessment of destructiveness of any piece of legislation or decision for the vital interest to the peoples they belong to. And well known practice is that in all bodies and all levels of the authorities, ministers, representatives and even members of courts mainly vote in accordance with the interests of the peoples they belong to or the party that appointed them.

It is clear that existing constitutional solutions from Dayton and the solutions imposed after that, in themselves negate the constitutive position of the Croat peoples because even the assessment of all Croat parliamentary representatives on the destructiveness of the proposed Draft Law on the PBS of BiH or the assessment of both judges of the Constitutional Court of BiH of Croat origin that the law is detrimental for the vital national interests of Croats were not enough to block the issuance of the Law that negates the constitutive rights of Croats.²⁴

This example obviously shows that the state legal organization from Dayton, amended by unilateral decisions of the OHR does not contain mechanisms for protection of constitutive position of the peoples that are smallest in number in Bosnia

²³ Namely, amendments of the entities' Constitutions imposed by the OHR in 2002 defined that the protection of vital national interests in the FBiH be realized in the House of peoples and in the RS in the Council of Peoples (bicameral entity legislative bodies). The House of Peoples of the FBiH has all the competences possessed also by the House of Representatives of the FBiH while the Council of Peoples in the RS has insignificant competencies in relation to the National Assembly of the RS. As well as in the legislative deprivation of the constitutive status of Croats has been performed in the executive authorities of the FBiH. Since 2002 the Government of the FBiH is composed of the President of the Government, 8 Ministers of Bosniac, 5 Ministers of Croat and 3 Ministers of Serb origin. Besides six Ministers mentioned here, the President of the Government of the FBiH may appoint from the Bosniac peoples one Minister from the "others". Such appointment may not be made, according to the OHR's amendments, by the representatives of the executive authorities of Croat or Serb origin. The OHR's decision suggests that the President of the Government must be Bosniac. With the additional vote of "others" (exclusively appointed by Bosniacs) Bosniacs in the FBiH are enabled to realize majorisation in relation to other two peoples in the executive authority and the Serbs are in the same position in the RS.

²⁴ By the separate dissenting opinion, both judges of the Constitutional Court of B&H appointed from the Croat caucus expressed their position that the said law is detrimental for the vital national interests of the Croat peoples. Their separate dissenting opinions stating their disagreement with the decision of the majority of judges were published in the OGBiH no. 64/05 of 19 September 2005 (pgs. 5118 - 5119), immediately after the disputed Decision of the Constitutional Court of BiH no.U-10/05.

and Herzegovina. On the contrary, this example clearly indicates that the Croats in Bosnia and Herzegovina are subjected to the minorisation by the majority and that *de facto* they no more posses instruments to preserve relevant political subjectivity of the constituent peoples. The right to media in the national language (mother's tongue) is guaranteed in the democratic world to all national minorities. To the Croats, that are said to be the continuant peoples in Bosnia and Herzegovina, are systematically denied such rights even through the institution of the Constitutional Court of BiH. All of this is the consequence of unjust social organization that was tailored by the International Community in and after Dayton.

2.7. General elections

On 1 October 2006, fourth postwar elections were held for all levels of authorities except for the level of Municipalities as the smallest territorial units of local self-government.

The following were elected in the elections:

- Members of the Presidency of Bosnia and Herzegovina (one member from each of three constituent peoples),
- Delegates in the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina (42 delegates),
- Delegates in the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina (140 delegates),
- President and Vice-presidents of the Republika Srpska,
- Delegates in the National Assembly of the Republika Srpska (83 delegates) and
- Delegates in the Cantonal Assemblies of the Federation of Bosnia and Herzegovina (ten Cantonal Assemblies).

Of 2.755.207 registered voters in BiH, on the territory of the whole state approximately 55 %²⁵ voted, which is substantially increased number in relation to the last general elections held in 2002.

The results of election indicated that traditionally the most represented nationalistic parties in Bosnia and Herzegovina have had the worst ever results. In the Federation of BiH that is in the most part the result of disgracing of the Bosniac SDA and Croat HDZ of BiH in which they participates during the previously described negotiations on the constitutional amendments. Anyway, the results of recent elections are indicating that in Bosnia and Herzegovina appears a new political scene with larger number of parties that achieved the status of parliamentary politic parties.

A number of interesting analyses could be made with regard to the results of general elections of 2006 but we will concentrate only on two segments in more detail.

In the Republika Srpska the party with traditionally best results, the SDS, lost its first position and it is take over by the SNSD with, for Serbs, charismatic politic leader

²⁵ According to the incomplete information 53,93 percent of voters voted in the FBiH, 56,11 percent of voters voted in the RS, and 45,76 percent of voters voted in the District Br_ko.

Milorad Dodik who succeeded showing in the election campaign as the best protector of the Dayton Republika Srpska. Namely, in the elections for delegates in the Parliamentary Assembly of BiH from the RS (which is one third of all members) the SNSD got 46,93 percent of votes (7 mandates) while the traditionally most represented SDS party got only 19,44 percent of votes. On the catastrophic results of the implementation of Annex VII to the Dayton Agreement²⁶ relating to the return of refugees and by the war displaced persons best evidence gives the information that the best result from the nationalistic parties from two other non-Serb constituent peoples was realized by the Bosniac Party for BiH (the SBiH) that got 4,16 percent of votes (1 compensation mandate), while the best result of the Croat parties was realized by the HSP _api_ – Juri_i_ and the NHI – coalition for equality with 0,88 percent of votes (no mandate). Information that Bosniacs, i.e. all non-Serb candidates in the elections succeeded to obtain two compensating mandates of the total number of 14 for delegates from the RS and that the Croats have no political representative from the Serb Entity that consists of 49 percent of the territory of BiH indicates that Croats as the constituent peoples in BiH have almost disappeared from that Entity after the war while the Bosniacs returned in the really insignificant ratio in relation to the prewar demographic situation²⁷.

It is interesting to draw conclusions from the results of the elections for the members of Presidency of BiH to get clear conclusions on the position of the Croat peoples in Bosnia and Herzegovina. In accordance with the BiH Constitution, the highest executive body on the state level consists of three members, of one from all of three constituent peoples. Leaders of nationalistic parties won the elections among Bosniac and Serb peoples; Haris Silajd_i_, candidate of the SBiH with the program of unitarist citizens' BiH and Neboj_a Radmanovi_, candidate of the SNSD with the program of strengthening of the RS position with the election campaign program that used the threat of referendum and propagation of the right of secession of the RS from Bosnia and Herzegovina.

The candidate of the SDP party _eljko Kom_i_²⁸ is elected for the Croat member of the Presidency mostly by the votes of non-Croats of citizens' option. This candidate did not get more than 10 percent of votes in any of the electoral units where the Croats are the majority²⁹. In the election campaign this member of the Presidency of

²⁶ At the beginning of 2004, the International Community announced that the implementation of Annex VII "is successfully finalized with 31 December 2003".

²⁷ After the war the census has not been performed to get the exact data. According to information by the Catholic Church, before the war, approximately 220.000 Croats (Catholics) lived in the RS and currently remained a little bit less than 12.000. The Muslims – Bosniacs were the absolute majority in the areas of the Eastern Bosnia (currently the RS territory) and having in mind the colorful prewar demographic structure of population they had the majority in other parts of the RS as well, and for example, the Croats were majority in Posavina (mostly the part of RS). More than 90 percent of population in the RS is of the Serb origin after the war. On the demographic movements in BiH see Chapters I.2. and I.3. of our *Report on the human rights state for the year 2003* (www.ktabkbih.net/justitiaetpax);

²⁸ _eljko Kom_i_ (the SDP) realized the victory on the elections with 39,56 percent of votes while his direct opponents obtained the result of 26,14 percent of votes for Ivo Miro Jovi_ (the HDZ of BiH) and 18,18 percent of votes for Bo_o Ljubi_ (the HDZ 1990- Croat unity). Such election result for the Croat member of the Presidency was enabled by the total and unbridgeable division in the Croat political body that is motivated, in our opinion, exclusively by personal interests.

²⁹ We will take as an example the election results in two Municipalities that have the largest number of Croats in percentage (over 95 percent), one from Herzegovina, and the other from Bosnia. Namely, the current member of Presidency of BiH, elected from the Croat peoples, in the Municipality Grude

BiH had especially emphasized that in his mandate as the Croat member of Presidency he would not explicitly represent the Croats but all the citizens (allegedly, also the Croats). During the election campaign Mr. Kom_i_ also pointed out on several occasions that he does not have strong feelings about his Croat national identity and also Croat language or culture. That, nevertheless, represented no obstacle for him to appear as a candidate for the position of the Croat member of the Presidency of BiH.

In the election campaign, Mr. Kom_i_ was rightfully sending message to his counter-candidates that even if united, he could win the elections solely with votes from one of electoral units in Sarajevo³⁰. Without underestimating personal qualities and not prejudging future work of this elected high state official, we cannot avoid the statement that the position of Croats as *de iure* "constituent peoples" in BiH feels as cynical, because the existing constitutional solutions and the electoral law of BiH does not even allow them to elect their own representatives in the authorities any more.

Elections of the year 2006 clearly point out that the State needs the new Constitution and the new Electoral Law that would, regardless of numbers, guarantee the constitutive position, equality and political sovereignty of all peoples on the whole territory of the State. Existing state legal organization of Bosnia and Herzegovina is totally unacceptable and as such generates instability in the whole region.

3. SOCIAL INDICATORS OF THE STATE OF SOCIETY

Economy – the social picture of BiH in comparison to previous years has not substantially changed. It may be roughly assessed that because of comparative lagging behind of BiH economy but also because of the introduction of the VAT the position of the most endangered categories of population even worsened in certain measure during 2006.

The pensioners remained the most endangered and their average pension in 2006 in the Federation of BiH amounted to KM 248.61 (cca. EUR 127.30), while in the RS it amounted to KM 210 (cca. EUR 107.70)³¹.

According to the official statistic information the average salary in the Federation of BiH in 2006 amounted to KM 618.96, and in the Republika Srpska it amounted to KM 537. The consumer basket for family of four in the FBiH amounted to KM 488.22 and in the RS it was little less and amounted to KM 461.88³². Small increase of salaries and pensions has not followed the increase of living costs and the position of impoverished population in Bosnia and Herzegovina worsens on the day by day basis.

got 119 votes, 2,93 percent of voters, while in the Municipality Dobrati_j he got 4 votes, i.e. he realized the result of 1,72 percent of votes. It is clear from this example that _eljko Kom_i_ does not have the support from the Croat electoral body.

³⁰ According to the last census of 1991, 6 ,6 percent of population was Croats and during and after the war their number has been halved.

³¹ Statistic data of the Federal Bureau of Statistic and the Republic Bureau of Statistic of the RS for November 2006.

³² The same.

State of employment indicates that Bosnia and Herzegovina has not improved. Total number of employed persons in the Federation of Bosnia and Herzegovina in November 2006 was 392,839 and registered number of unemployed persons was 360,469.³³ Official data on the state of employment in the RS for the year 2006 have not been published; therefore, we are not in the position to present it here. Since the unemployed persons generate almost no social benefits, a large number of unemployed people are not registered in the official registers of the employment bureaus of the entities and a large number of people work in the field of "black labor". All of the above mentioned makes previously given data incomplete and inadequate. Total external debt of Bosnia and Herzegovina has increased and according to information of the Central bank of Bosnia and Herzegovina, on the date of 30 September 2006, it has amounted to KM 4.132.692.000³⁴. Disorganization and poverty of the state directly influences the position of the majority of BH population, and in such disorganized state no serious strategy of economic development or guidelines for appropriate long-term social politics exist.

4. GORDIAN KNOT OF THE NATIONAL ISSUE - INTERNATIONAL COMMUNITY'S FAILURE TO ADAPT

A Greater-Serbian strivings for domination over other sovereign peoples of the former Yugoslavia initiated the dissolution of that communist state. Relations between three constituent peoples living on the territory of Bosnia and Herzegovina severely tensioned in the new historical context. During the disintegration of Yugoslavia the unsolved ethnic (national) issue that the most of European nations solved in XIX century surfaced. Unsolved ethnic issue culminated after the referendum on the independence of Bosnia and Herzegovina. Namely, the Bosnian Serbs, leaning on the war machinery of the former state, boycotted the referendum and with the aid of the Yugoslav National Army (the JNA) started the war and persecution of non-Serb population with the consent and under the leadership of the Belgrade's political and intellectual circle³⁵. Because of the war pressure, restrictions of the living space, different national interests and different visions of the state organization and the active participation of some of the international factors, not long after the beginning of the aggression the unsteady alliance between Croats and Muslims³⁶, victims of the aggression, broke down and the war continued between all three peoples in Bosnia and Herzegovina.

The assessments are that during the bloodiest conflict in Europe after the World War Two approximately 200,000 persons got killed or went missing, the largest number being the civilian population. It is assessed that there were around 2,680,000

³³ Official data of the Federal Bureau of Statistic.

³⁴ For the comparison, according to the official data of the Central Bank of BiH the total external debt of B&H amounted to KM 4,074,116.00 on 30 September 2004;

³⁵ On the causes for dissolution of Yugoslavia and genesis of creation of the current constitutional organization of BiH we gave more detailed description in the Report on the State of Human Rights in BiH for the year 2004 (www.ktabkbih.net/justitiaetpax);

³⁶ The constitutional solutions of 1974 gave the Muslims in BiH the status of nation (peoples) and all the time until 1993 they declared themselves as Muslims. The political will regarding the title (name) of the national title (name) of this constituent peoples was finally defined on the Bosniac Congress of Intellectuals on 27 September 1993, and since then they declare as Bosniacs and no more as Muslims.

refugees and displaced persons, which is approximately 59,6 percent of the total prewar number of BH citizens. Displacement and movement of citizens have continued after the war and it may be said that the agony of all citizens of this country that had begun in the autumn of 1991 have continued since.

Unfortunately, the “democratic” world, divided by its narrow geographic and economic interests, watched for four years this serious human tragedy that occurred in the heart of Europe. Moreover, to the obvious genocide that was performed by the aid of well armed JNA for realization of the aim of Greater Serbia, the International Community hypocritically answered by the embargo on arms import, that way additionally aggravating the position of victims. It is obvious that from the very beginning the pragmatic “democratic world” favored unjust peace (that should have been imposed to the attacked, unarmed peoples of Bosnia and Herzegovina by the military force of the JNA) to the prosperity of pluralism and democracy in these parts.

UN forces (UNPROFOR³⁷) that were sent to BiH by their mostly passive presence offered almost no protection to the civilian population. As the most drastic example we would like to mention the genocide that was performed by the Serb military and police forces in the *UN protected zone of Srebrenica* in July 1995. On that occasion more than 7,000³⁸ of captured mostly Bosniacs³⁹, were liquidated right in front of Dutch Battalion of UNPROFOR, and the remaining population was forced out of their homes.

Only threatened by the escalation of general conflict in the wider region and when the Serb forces started losing with the zooming speed the territories occupied by the war⁴⁰, the International Community terminated the conflicts by the swift military intervention in 1995. Then the International Community, in its shortsighted pragmatism, tailored in Dayton the unsustainable organization of the state union that was doomed from the very beginning.

The course and manner of Dayton negotiations indicate that the solution Bosnia and Herzegovina is based upon was the result of pressure made by major forces (primarily the USA) and definitely not the fruit of agreement made between the three constituent peoples⁴¹.

³⁷ UNPROFOR - United Nations Protection Forces

³⁸ The exact number of citizens killed and went missing is not known yet because the bodies of liquidated soldiers and civilians were firstly thrown to the mass graves and then moved to the secondary graves that are situated on the number of places.

³⁹ The Dutch Battalion of the UNPROFOR turned over around 5.000 Bosniacs that were situated in their base in Srebrenica to the Serb Military or paramilitary forces. After that the majority of men from that group were brutally liquidated. According to the Record on missing persons published by the International Committee of Red Cross (the ICRC) at least 1.889 persons went missing in the village of Poto_ari, where the military base of the Dutch Battalion of UNPROFOR was located (source: www.srebrenica.ba)

⁴⁰ That was done during the military operation the *Oluja*, performed by the joined forces of Croat Army, HVO and the Army of BiH. On the basis of the *Split Agreement on the military cooperation* of 22 July 1995, signed between the Republic of BiH and the Republic of Croatia, the Croat Army directly participated in the military operations on the territory of Bosnia and Herzegovina.

⁴¹ The Dayton Agreement has never been ratified in the Parliamentary Assembly of BiH or published in the Official Gazettes of BiH or Entities. Until 2006 there was no official translation of the Annex IV, i.e. the Constitution of BiH from English language to the languages of Bosnia and Herzegovina. The manner of negotiations and the aspects of illegitimacy of this constitutional and legal act are described

Instead of basis in the democratic achievements following from the legitimate will of all three peoples, the Dayton Agreement incorporated the results of genocide and so called “ethnic cleansing” in the very fundamentals of the state organization which remains the stumbling block to any progress of this state. Therefore, any review of the constitutional solutions cannot obtain the attributes of legitimacy, at least not before the fundamentals are accepted by the ratification of will of all three peoples through the Parliamentary Assembly of Bosnia and Herzegovina.

However, the Dayton Constitution divided nationally entwined Bosnia and Herzegovina as the state of three constituent peoples to two entities; the ethnically cleansed RS, as the Entity of Serb peoples and the Federation of Bosnia and Herzegovina, as the Entity to which two remaining constituent peoples (Croats and Bosniacs) are driven together. On 5 March 1999, BiH obtained by the additional Decision of the Arbitration Tribunal, in the dispute over the inter-entity borderline, the separate unit of the District of Brčko which has all the competences of the Entity. The most complex relations are established in the FBiH that is divided in ten Cantons with substantial constitutional competencies. All in all, by the Dayton Agreement, the peoples of Bosnia and Herzegovina gained the ethnically divided, non-functional state with huge, expensive and inefficient state apparatus.

The International Community has remained actively present in the political life of Bosnia and Herzegovina, mainly through the OHR but also through other international institutions. Notwithstanding the fact that by so called Bonn powers the International Community had unrestricted power in Bosnia and Herzegovina (legislative, executive and judicial) in the proclaimed projects that were supposed to normalize life in this state it has not realized acquirements of the civilized democratic state in Bosnia and Herzegovina in which the peoples and citizens could realize equality and high standards of human rights in the safe environment. Moreover, the acts of the International Community cemented divisions in Bosnia and Herzegovina and it may be concluded with the certainty that causes of war on the territory of this state have not been removed and that the clear vision of the just constitutional and legal organization of BiH that would enable at least legislative equality of citizens and equality of the constituent peoples. However, wrong and inconsistent politics of the International Community does not liberate the representatives of any of three constituent peoples of their responsibility for the situation existing in this state.

4.1. Necessity of the New Constitution

Eleven years after the end of war activities Bosnia and Herzegovina, together with its international protectors, makes no progress. It has no possibility to get rid of the war consequences and to start its voyage towards better life for all its peoples and citizens. The International Community was unsuccessful in the realization of projects in BiH, especially of the project of return⁴², and in the extremely sensitive moment it announced its withdrawal from Bosnia and Herzegovina in 2007 in the manner of a loser.

in more detailed manner in our *Report on the State of Human Rights in BiH for the year 2004* (www.ktabkbih.net/justitiaetpax).

⁴² On the implementation of Annex VII to the Dayton Agreement we wrote in detail in our Reports on the state of human rights in BiH for 2002, 2003 and 2004, and the situation has not changed since (see www.ktabkbih.net/justitiaetpax).

In the existing state of international relations in u BiH we have to state that nothing changed in the quality of state as it was previous to the escalation of war conflicts. Moreover, the situation, in some sensitive segments, may be assessed as more complex and dangerous than it was at the end of 1991. Therefore, the fear of the intensification of ethnic tensions is not without any grounds.

Currently, eleven years after the end of war, it is totally clear that the political and administrative organization of Bosnia and Herzegovina made in Dayton prevents democratic and economic prosperity of Bosnia and Herzegovina. The unfair solutions imposed in Dayton on the peoples and citizens of BiH appeared expensive and non-functional. The Dayton framework cemented the results of war and thus disabled the democratic reform of society. The majority of BiH citizens agree that it is necessary to modify the existing legal state organization. But that is the only thing that politically opposing forces in BiH could agree upon. Anyway, a part of European Parliamentarians issued the declaration⁴³ on that. The determining issue remains

⁴³ The text of declaration states as follows:

“DECLARATION on the occasion of the eight anniversary of the signing of the Dayton Agreement

Secure peace in Bosnia and Herzegovina by the further development of the Dayton Agreement

Soon, it would be ten years since the war in BiH ended by the Dayton Agreement. Within this time a lot of positive things were done for the reconstruction of BiH. But, within this time it became clear that the Dayton construction reached its limits, and the peace in BiH has not been secured yet. Illusive peaceful situation and unhealthy peace in the country must not deceive us. With that regard the dangerously worrying fact is that the interest of the International Community for the future development of BiH is losing its strength. The International caravan left a long time ago. More and more people in the western countries ask themselves for how long the international actions in BiH would continue.

Peaceful coexistence of different groups remains endangered. It may easily be seen that BiH is in the serious situation if you look closely. BiH is the state divided in accordance with the ethnic key and that is the reality. The Dayton guarantees the return of refugees and displaced persons but only 50 percent of them returned. The return was mostly possible where the refugees supposed to be safe of discrimination or persecution on the basis of their ethnic origin. Distrust among them is deeply set and it determines the everyday life in different manners. The ethnic discrimination happens every day. .

Necessary unity of the state is too weak for the economic and political development. *The state is too weak in relation to the entities. The constitutional structure prevents effective functioning of the united state and thus also of the politics that should develop regardless of the ethnic interests. The expenses of the state are too big because of double or triple functions in the state apparatus, and therefore the economic perspective of the country is highly burdened. The serious legal uncertainty is the practical consequence of such structure. This situation cannot continue for long regarding the economy and politics.*

Role of the International Community is more and more ambivalent. *BiH is half-protectorate subordinated to the International Community, living on the drops of international subventions, with no perspective of sustainable economic development. Although the work of the High Representative is really valuable, as of lately, the critical statements that indicate to the problematic consequences of such protectorate to the democratic development of BiH are heard. Current structures are helping the dangerous mentality regarding the economy and politics. If BiH needs to secure its future it is necessary to create conditions for its peoples to continue their democratic perspective development on their own.*

Resignation, stagnation and increasing problem of poverty undermine foundation of peace that is still weak. *The current situation is characterized by resignation and stagnation. Having in mind the official data on unemployment of 42 percent, and ever increasing poverty and dark economic prognosis it is of no surprise that the majority of the population, especially the young (65 percent) do not see their future in such country. The corruption and crime are the evils that are flourishing under the dangerous circumstances and strengthening the feeling of insecurity in the population. The fact that numerous war criminals are still at large, says all. Unfortunately, the social situation of the majority*

of the population in BiH cannot give the secure foundation to peace. Thus, the obvious dangers are following from it.

Dayton construction reached its limits. It may not be denied that only on the basis of Dayton Agreement the necessary peaceful framework perspective could be created for BiH. The Dayton Agreement was a painful compromise within the frame of circumstances of that time. Whoever wanted BiH had to accept the Dayton willingly or not. The deep ambiguousness of this agreement is in the fact that it did a lot of good but its ambiguousness has never been overpowered, because it allowed the division on two entities and practical division according to the results of genocide. It enabled creation of two legal systems in one state. While enabling the end of bloody war and first steps towards the new beginning and reconstruction, today it prevents future development of BiH on its way towards the rule of law and real European society. Whoever wants BiH today has to wish for the solution of the Dayton's ambiguity. This consists of the clear definition of the International Community's role and the development of long-lasting but realistic perspective of joining the European Union.

Peace process needs new and strong incentive. The time has come to give a new incentive to the peace process in BiH. The time has come to build good fundament for peace in BiH. The time has matured to reconsider and reconstruct the Dayton construction. BiH will only have the future as the state and society if it succeeded in building the state structures that would offer security to all its peoples and help economic and social development of the whole country. The reconciliation process between the peoples will only prosper under the condition that political framework and economic and social structures of the whole country be successfully developed.

Further reconstruction of Dayton is necessary at this point. Therefore we request the International Community, especially the signing parties to the Dayton Agreement, European Union governments and neighboring states and competent individuals in BiH to take the nearing tenth anniversary of the Dayton Agreement in 2005 as the cause for preparation of critical balance of the development up to that moment within the frame of the international states conference. In doing that it would be necessary to support what has been positive and at the same time to find ways to overcome the obstacles for future development of BiH. We request that the competent and responsible prepare a peace agreement for BiH that would offer the long-lasting security and sustainable unity from now on.

Responsibility for BiH is the responsibility for Europe. BiH needs help of the International Community. But the International Community, and especially Europe, needs BiH as the concrete example of the successful peace politics that accepts abundance of differences. The partial success or failure would endanger the stability of the whole region and the perspectives of joining the EU of the neighboring states and not to mention the destinies of many individuals at all. The eventual partial failure would be the failure of the EU and it would strike a serious blow to the joined external and security politics and thus to the European interests and European vision.

Preventive politics is the expression of the increasing responsibility. If the competent people on the general political level would lack the political bravery and the political will to do now what is necessary and prudent, the politics could soon be confronted with the new crisis in BiH. The politicians, unfortunately, are inclined to postpone what is current and sensitive, i.e. they are giving priority to the problems that are not so crucial over the unpleasant crisis. Contrary to such scenario we are putting our hope into the capability of learning as the characteristic of democratic societies.

SIGNATORY – UNTERZEICHNER DER ERKLÄRUNG

Elmar Brok – member of the European Parliament (EP), Chairman of the Board for Foreign Politics; Daniel Cohn-Bendit- member of the European Parliament, co-Chairman of the Green Fraction in the EP; Detlef Dzembritzki - member of the German Parliament, responsible for BiH; Prof. Dr. Bronislaw Geremek – former Minister of Foreign Affairs of Poland; Jose Maria Gil Robles Gil Delgado – member of the EP, former President of the EP, President of the International European Movement; Gret Haller – former Ombudsperson for Human Rights in BiH; Thilo Hoppe - member of the German Parliament; Hans Koschnick –former Administrator of the EU for Mostar; Sergej Kovaljov – formerly responsible for human rights at the Russian President's Office; Jacek Kuron – former Polish Minister for Work and Social Politics; Joost Lagendijk – member of the EP, rapporteur of the EP on the project of stability in the South-East Europe; Prof. Dr. Vytantas Landsbergis – former President of the Republic of Latvia; Tadeusz Mazowiecki –former Prime minister of Poland and formerly responsible for the OUN for human rights in BiH – presented the Declaration in Warsaw; Phillipe Morillon – member of the EP, commanding general of the UNPROFOR in BiH 1992-1993.;Martin Müller – member of the EP, deputy chairman of the SPE fraction; Christa Nickels – member of the German Parliament, Chairman of the Human Rights and Humanitarian Aid Board; Dietmar Nietan – member of the German Parliament; Arie Oostlander – member of the EP, Head of the Board for Foreign Politics, European National Party; Doris Pack – member of the EP, President of the delegation of the EP for South-East Europe – presented the Declaration in Bruxeles; Prof. Dr. Hans Gert Pöttering – member of the EP, President of the EVP-ED fraction – presented the Declaration in Berlin; Dr. Rainer Stinner – member of the German Parliament.; Johannes Swoboda – member of the EP, President of the EP delegation for the SE Europe; Dr. Antje Vollmer- member of the German Parliament, Vice-president of the German Parliament; Dr. Ludger

which political and just solution could and should satisfy justified strivings of all three constituent peoples and enable democratization of society that is such importance. Although this issue is of severely complex nature it remains to be solved by all who care for peace and clear conscious, because just and democratic Bosnia and Herzegovina is the only alternative to the continued tensions and dissolution of this paradigm of coexistence in differences.

4.2. Review of the Dayton Agreement

Immediately after the Dayton, Annex IV⁴⁴ to the Dayton Agreement turned out to be non-functional and for that reason the unbridgeable obstacle for the democratization of BiH society. In accordance with stated above, in the newly arising administrative and normative chaos it was necessary to modify the legal system on the whole territory of the state. By the OHR interventions performed systematically since the end of war the constitutional and legal system of Bosnia and Herzegovina has been substantively modified. Unfortunately, by its interventions in the constitutional solutions the International Community has not obtained any positive results. We already wrote about the situation in which regarding the implementation of Decision of the Constitutional Court of 2000 on the constitutive nature of all three peoples on the whole territory of Bosnia and Herzegovina the High Representative imposed in 2002 the amendments on the Entity constitutions that instead of affirming constitutive nature additionally de-constituted Croats and Bosniacs in the RS and Croats in the FBiH⁴⁵. By such amendments the Croats were brought to position that while adopting any decision in both of the entities or on the state level they could be over-voted, which *de facto* means that they lost their constitutive nature. These imposed constitutional amendments deepened divisions in already divided Bosnia and Herzegovina as already done by Dayton.

With the intention to remedy the problem originating from Dayton, the International Community brought the "democratization" of BH society to the level of absurd and blocked the development of BiH even more. By the Dayton Agreement, the International Community extinguished the fire but it did not succeed in the extinguishing of the focus of inflammation. It is the last moment to extinguish all the fires in Bosnia and Herzegovina by the permanent solution! Numerous initiatives of the International Community for reorganization of BH state clearly indicate that the International Community is aware of these problems as well.

The Dayton Agreement in BiH is structural source of tensions, and it is structural destructiveness and destructive structure. Therefore it is necessary to make it enforceable. It is established through the dictate of the International Community and its improvement is not possible without the political will of the International Community that is lacking and, so, the Dayton has remained the source of all tensions in Bosnia and Herzegovina.

Volmer – member of the German Parliament, portparol of the fraction of the Union 90 and green for the foreign politics.”

⁴⁴ Annex IV is the Constitution of Bosnia and Herzegovina

⁴⁵ On the imposed constitutional amendments and their particular solutions we wrote in more detailed manner in the Chapter V.4. of the *Report on the State of Human Rights in BiH for the year 2004* and in the previous Reports (www.ktabkbih.net/justitiaetpax)

5. OFFERED MODELS OF THE STATE ORGANIZATION

Person thinking on the possible solutions for Bosnia and Herzegovina asks if the constitutional solution exists for establishment of the fair state that would guarantee equal legal position for all peoples and equality, prosperity and security for citizens. The existing solutions of the octroyed Dayton constitution “strengthened” by the amendments imposed by the OHR do not satisfy even the fundamental civilized criteria of democratic pluralist society as legal framework for realization of human rights. It is totally clear that the fundamental modifications are necessary. Although the future model of complex state is not visible in the moment we give and briefly analyze some of offered solutions.

5.1. *Civil State*

The insisting on the model of the unitaristic citizens’ state under the principle of “*one citizen, one vote*” seems unsustainable to us because, in the context of the results of war and unsolved national issues in BiH, it brings the peoples that are smaller in numbers to the position of minorization by the peoples that are in majority. Naturally, such model is the most diligently supported by some political and intellectual circles of Bosniacs – Muslims, as numerically the largest in Bosnia and Herzegovina. In all of it this national current forgets that the aggression of Greater Serbia to this territory started with the aim of maintaining the Serb majorisation in the former state.

5.2. *The Federation of Peoples Entities*

This model is supported by some of the Croat politicians and as of lately it is supported by the Serb politics as well; obviously aiming to maintain the RS in the easier way but not expressing any will to review unfair division of the country from Dayton.

The democratic model of the union of a few state-building peoples is possible only with the consensus of all three nations in BiH regarding the future organization of the state. For that the position and consent of each of the peoples is equally important regardless of the numbers of the peoples. Since the Dayton Agreement established the state consisting of two entities and three constituent peoples, the model of tripartite state seems fair in the grater extent than the current solution. However, this model hides the danger of possible deeper division of the state than the current one and additional permanent exodus of the population of Bosnia and Herzegovina (especially from the territory of the FBiH).

5.3. *The Federation of Cantons*

The state organization of this kind implies dissolution of the entities and transfer of the entities’ competencies to a number of smaller territorial units. The competencies of the state would be performed in the bodies of the state authority where the cantons would delegate their representatives. The form of the federation would depend on the broadness of competencies performed on the cantonal level. The

condition for survival of such state union is non-existence of the cantonal competencies to self-determination with the right to separation. Advantages of this model are primarily in the fact that it would enable more equal realization of constitutive rights for all of three peoples while its disadvantages are hidden in the organizational complexity and the large administrative expenses of such state. This model as well hides the danger of additional permanent exodus of the population within the state that would only worsen the existing situation.

This solution could have been the option of the state organization previous to the exodus of population started by the war and after the largest part of the territory has been ethically cleansed we are of the opinion that it is no longer possible to perform the fair canonization of Bosnia and Herzegovina by the national key that would reflect demographic situation of the prewar times.

5.4. *The Federation of no National Regions (Districts)*

According to this model of the state reorganization, the existing entities and federal cantons would dissolve and the state would be divided in several federal units (regions or districts) as administrative units. The municipalities would exist within the regions as units of local self-management. The regions or districts would represent functional units joined by the nature, history and communications the borders of which would not be established by the ethnic key. In each of the federal units all of three peoples would have equal part in the legislative, executive and judicial authority, thus, no possibility of majorisation of the majority over the minority would not exist.

Each of three constituent nations would appoint their representatives in the state government that would be established on the basis of party. The key functions in the executive and legislative authorities of the federal units and on the state level would be performed by the rotation system. .

5.5. *The state of existing entities*

The proposal of such model appeared in the Preliminary Opinion on the Draft Amendments to the Constitution of Bosnia and Herzegovina⁴⁶ that was expressed by the Venice Commission on 7 April 2006. Since the OHR passed the previously described reforms of the constitutional order of Bosnia and Herzegovina exactly on the basis of the opinion given by the Venice Commission we are not surprised by this simplified and discriminatory approach to the reorganization of Bosnia and Herzegovina. Namely, all previous constitutional solutions imposed by the OHR were going in the direction of centralization of state authorities with the direction towards the civil model of authorities, under the principle “one man, one vote”. The OHR attached itself to the principle of the “politics as realization of possibilities” where all the solutions went mainly to the detriment of Croats as the peoples smallest in the

⁴⁶ Opinion 375/2006, European Commission for Democracy Through (Venice Commission) – Strasbourg, 7 April 2006

numbers but at the same time the most cooperative of all constituent peoples in BiH⁴⁷.

This solution would annul already diminished constitutive rights that Croats may realize through decreased competencies of cantons. That way they would lose the characteristic of constitutive nature in whole and the state would factually remain divided to two ethnically homogeneous entities; Bosniac and Serb. Such solution does not lead to the stabilization of Bosnia and Herzegovina because it fully negates the rights of one of the constituent peoples.

5.6. Proposal by the Bishop's Conference

With the wish to offer their contribution to the striving of finding just and sustainable solution for organization of Bosnia and Herzegovina, at the end of 2005, the Catholic Bishops announced their proposal. It, amongst other things, states:

The principle of multi-states is defended in Bosnia and Herzegovina and it survives or definitely crumbles. Many of expelled citizens of Bosnia and Herzegovina that are forced to live in other countries are showing by their own example that they are capable to live in well organized democratic states. Such is also the opinion of the majority of population that currently resides in the country, and it is certainly ready and willing to live together and to build this country as multinational, multicultural and multi-religious one. Citizens and peoples of BiH have the right to fair legal framework and unambiguous support in the realization of equality of all three peoples and strengthening of civil rights and freedoms.

It is certain that the constitutional and legal position of Croat peoples and thus of other two peoples in BiH as well would be of better quality and fairly organized in the united, whole and decentralized state without the current entity partition. Such strong decentralization of Bosnia and Herzegovina should go in two directions; towards the municipal and towards the regional level of authority. The authorities on the municipal level should be organized proportionally under the principle "one man, one vote" and that would be the level on which the competencies of the civil society would be realized. The power on the regional and federal level should be limited in such way that the minimum of representation should be determined for all of three constituent peoples in the legislative and executive authorities.

The municipalities, as administrative units already exist and they could continue their functioning in the present form while that is not the case with the regions. Instead of keeping the current disproportional and unjust forms with two entities and ten cantons in one of these, it would be wise to start reorganization on the regional level of authority. One of the possible models could be the following: Bosnia and Herzegovina organized in four cantons (or regions, provinces, districts, federal units...) Sarajevo, Banja Luka, Mostar and Tuzla, with the borders formed under the economic, communicational, natural, historical, geographic and (multi)national criteria. With the eventual corrections, the regions could be organized in the manner they were organized for their own needs, for example, by the OSCE in BiH. It,

⁴⁷ When signing the Dayton Agreement, the Croats gave the biggest territorial cessions, and as the cession to the peace they accepted organization of the state of three constituent peoples in two entities. That way they definitely renounced their right to participate in the authorities of the RS and accepted the participation in sharing the authorities of the other entity with the more numerous Bosniacs.

however, would be very important that in each of four cantons (or regions, provinces, districts, federal units, etc.) all of three constituent peoples would have at least 30 percent of participation in the legislative and executive authorities in order to prevent that members of one peoples over-vote other two, ever.

It seems to us that in the line of this proposal it would be possible to solve some fundamental issues and remove the focus of ethnic tensions such as; the level of cultural autonomy of the constituent peoples and their equal participation in the management of the state and its regions that seems to be the condition for preservation of the integrality of Bosnia and Herzegovina.

6. CONCLUSION

The complexity of national relations between three peoples in Bosnia and Herzegovina necessarily implies transformation of Bosnia and Herzegovina into the complex model of the state. Such union may be realized in the BH environment only if all three peoples have legitimately determined will to live in the unity of legally equal peoples and equal citizens.

We are convinced that the fundamental issue for the possible state reorganization of Bosnia and Herzegovina into the democratic state union is not in the territorial modes of state organization but in the general acceptance of the positive discrimination of minority principle both on local and state level, which should be transparently incorporated in the future constitutional solutions. In all of that it would be necessary to enable realization of the constitutive rights of all three peoples regardless of their numbers in each of the territorial units of the complex state, i.e. regardless of whether any of the constitutive peoples is minority in any of the territorial unit of the complex state.

The impossibility to realize human rights on almost all levels of Bosnia and Herzegovina is a direct consequence of unorganized constitutional legal system in Bosnia and Herzegovina indicated by previously given examples actual in 2006. Regardless of the part of the state, suffering citizens of Bosnia and Herzegovina had hard times to survive in this postwar period and the deprivation of rights of simple individuals is felt on all levels of society and in the whole territory of Bosnia and Herzegovina. The condition for affirmation of human rights is, primarily, creation of organized and fair state union that would respect the dignity of each and every human being, regardless of his/her ethnic belonging. For the state union of three constituent peoples, i.e. complex, multicultural and multireligious society such as Bosnia and Herzegovina is, it is primarily necessary to have the consent and will of three constituent peoples to live in such union with or at least beside different others. That *conditio sine qua non* of the fair and democratic BH society organization has not been fulfilled yet and it does not seem possible unless the culture of dialogue and the respect of the right of others to be different are established. Nevertheless, current situation does not give us an alibi to give up trying to find a solution acceptable for all of three peoples in Bosnia and Herzegovina. Although it looks as Don Quixote's fight with windmills, we feel that it is possible to find an organizational solution for this multinational, multicultural and multireligious country that would help it to become the meeting point of differences instead of the place of conflicts. That will not be possible,

however, without a determined positive and democratic participation of the International Community. The position of the International Community representatives that they do not want to force anything upon anyone is not fair or acceptable in our opinion. Namely, if it was ready to impose unfair solution in Dayton in 1995, preventing this country to develop democracy, in the name of which democracy it should not help, if necessary even with the enforcing, to reach the fair organization of the state. The majority of citizens of this country are convinced that it is moral obligation of all that were present in Dayton to take active role in it, and the USA to be the first of all. We are aware that this Report does not look like many others that are dealing with the quantitative and qualitative analyses of lack of human rights and possible patterns for the change of situation in societies all over the world. Any further analyses remains meaningless until the fundamental issues of the state and social organization are not solved positively with the aim of protection and legal equality of all nations and citizens. Bosnia and Herzegovina remains the problem for both its citizens and the International Community that undertook the task of solving the key issues and consolidation of state in this country and some circles are lobbying for withdrawal of the serious engagement of the International Community representatives and the transmittal of problems to the national politicians. That way the International Community would admit its defeat leaving behind the huge amount of invested funds and years of substantial used energy that could remain fruitless. Therefore, the Commission invites the International Community representatives to aid with much more determination to the political forces and intellectuals of Bosnia and Herzegovina to give their effective contribution for realization of the sought goal in the name of more human and better future of peoples and citizens of our common homeland!