

The 2016 REFERENDUM IN BOSNIA AND HERZEGOVINA

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Outline

- The referendum, the first since the 1992-1995 war, was held on September 25, 2016 in the Republika Srpska (RS), one of the country's two entities.
- The referendum was called by RS President Milorad Dodik as a plebiscite on maintaining January 9 as Republika Srpska Day, which the BiH Constitutional Court ruled unconstitutional.
- The referendum unsurprisingly elicited a vote in favor of maintaining RS Day, although turnout, at just under 56%, was lower than Prime Minister Dodik desired.
- The RS opposition fared poorly in the municipal elections which followed a week later, on October 2.
- RS President Dodik stated immediately afterward that he would hold a referendum on RS independence in 2018.

Background

Bosnia and Herzegovina (BiH) has a particularly complex governance structure, owing to the 1992-1995 war and the Dayton Peace Accords which ended it. The country is comprised of two entities, the Federation of Bosnia and Herzegovina (hereafter “the Federation”) and the Republika Srpska (hereafter RS), each comprising roughly half the territory, as well as the Brcko District, created by binding arbitration after the war, which was disputed in the Dayton negotiations. BiH’s state structure at Dayton was largely designed around the prerogatives of the entities (and in the Federation’s case, ten cantons), including many governing functions that would typically be held at the state level, such as justice, defense, and internal affairs. In addition to the entities,

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the country's three "constituent peoples" – Bosniaks, Croats, and Serbs – were fundamental building blocks of the state, given equal representation in a tripartite state presidency. Dayton's Annex 4 is BiH's Constitution. An international High Representative was empowered in Dayton's Annex 10 as the "final authority in theatre" for the Peace Implementation Council, an international body established to ensure fulfillment of the Accords. The High Representative's powers included the ability to annul laws, impose laws, and remove officials if – in his discretion – they violated terms of the Dayton Peace Accords. These powers were applied strategically, particularly between 2000 and 2005, in the development of state institutions and prerogatives, though the overwhelming majority of these were not imposed. The final domestic authority, written into the Dayton constitution, was the Constitutional Court, comprised of nine judges – two from each constituent people, plus three international judges.¹

Since coming to power in Republika Srpska as prime minister in March 2006, Milorad Dodik has railed against what he calls "legal violence" against the RS, (RT 2010) most notably what he characterizes as efforts at forced centralization from the international community on behalf of the state-level government in Sarajevo. Beginning in May 2006, following the failure of the US-sponsored "April package" of proposed constitutional reforms and the success of the Montenegrin independence referendum, he touted a referendum as a possible political tool to resist what he described as internationally-driven efforts to support Bosniak domination. (B92 2006). For some years, Dodik remained vague on the actual question; for the majority of his audience a "referendum" could only imply a vote on RS independence. In 2009, the threat took form with a call to hold a referendum on the legitimacy of state-level judicial institutions and a host of other state-level competences that allegedly had been wrested from the RS through an inter-entity agreement. (Katana 2009). While preparations to hold the referendum were made in May 2009, it ultimately was not held, as the High Representative Valentin Inzko annulled the legal act enabling it. When the same threat was resurrected in 2011, the then-EU High Representative for the Common Foreign and Security Policy, Catherine Ashton, visited Dodik in Banja Luka and secured a retraction of the referendum "for now," in exchange for launching a "structured dialogue on the judiciary." (Hadzovic and Remikovic 2011). This was (correctly) portrayed as a victory by Dodik, who used the "structured dialogue" to pursue his goal of reducing the scope and power of the state legal

¹ For a more complete description of BiH's postwar construction and trajectory, see Bassuener (2017).

infrastructure, which had been constructed in the decade after Dayton, as well as a humiliation for Inzko.

On November 26, 2015, the BiH Constitutional Court ruled 5-3 in a case initiated by Bosniak member of the BiH state Presidency, Bakir Izetbegovic, that Republika Srpska Day violated the Dayton Constitution, since it was held on a Serb Orthodox religious holiday and thus discriminates against non-Serbs in the entity. (klix.ba 2015). In the request Bakir Izetbegovic submitted to the Constitutional Court of BiH, he stated that January 9, 1992 was the date when the Assembly of Serb nation in BiH adopted the Declaration on the establishment of the Serb Peoples' Republic in BiH. According to him, there was a clear intention to form a state for one, dominantly Serb nation, with the absolute exclusion of – and discrimination against – all other peoples. Therefore, the petition argued, celebration of the holiday was inherently discriminatory and exclusionary. But the judges split along ethnic lines: the two Bosniak and three international judges formed the majority; the two Serb judges and one Croat judge dissented, while the other Croat judge wasn't present at the vote due to illness. (B92 2015).

The entire Serb political spectrum decried the ruling. With general elections approaching on October 2, RS President Dodik seized the opportunity to call a referendum on maintaining RS Day, defying the Court's ruling *and* the international community, while homogenizing the RS electorate just before the election. The RS People's Assembly voted to approve holding the referendum in mid-July, 2016 (klix.ba 2016); it was set for September 25 – just a week prior to long-scheduled municipal elections. The question would read: “Do you support the marking and celebration of January 9 as the Day of Republika Srpska”?

The RS passed its own Law on Referendum and Citizens' Initiative in 2010. (Blic 2010). It is the only such law in BiH, though the Federation's Law on Local Self-Governance does stipulate procedures for municipal-level referenda. The law empowers the RS President, the RS Government, at least 30 of the RS People's Assembly's (RSNA) 83 members, or 10,000 eligible citizens, to call for a republic referendum. The RSNA must affirm the referendum by simple majority vote (e.g., 42 members). The referendum is held to be valid if more than 50% of the registered electorate takes part. A simple majority is required for a referendum measure to pass. So, in theory, just over 25% of the registered electorate is required to pass an issue put to referendum. Interestingly, the referendum's results are not binding on the RS Government – there is no stipulation in the

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Law that requires this or directly enacts a “yes” vote as law. The referendum is of advisory character.

As the RS Day referendum planning went ahead in Banja Luka, Western ambassadors made several statements discouraging the referendum, including a joint statement on July 14, 2016 that stated that “the proposed referendum would represent an unconstitutional attempt not to reform but to undermine and weaken those authorities, and would thus pose a direct threat to the sovereignty and security of the country as a whole. This cannot be tolerated.” (European Western Balkans 2015). The RS National Assembly passed legislation the following day to enable the referendum to be held. In response to a statement by US Ambassador Maureen Cormack against the referendum, Dodik replied that she was “creating instability in BiH with her statements and working exclusively in the function of Bosniak policy.” (Sarajevo Times 2016). The PIC’s Steering Board,² with Russia’s absence noted, called on the RS to adhere to the judgment of the BiH Constitutional Court and “urge(d) the RS authorities not to hold the referendum.” (OHR 2016).

Despite the diplomatic flurry, there was no political will to actively prevent the referendum from going forward through a High Representative annulment of the RSNA enabling act, as had been the case with previously-threatened referenda. (Latal 2016). Russian Ambassador Petr Ivantsov openly supported the conduct of the referendum and just days before the vote stated, “the people of Republika Srpska have the right to declare themselves on vital issues.” (Pantovic, Kovcevic and Latal 2016). Interestingly, Serbian President Aleksandar Vucic cautioned against holding the referendum, indicating a rift between him and Banja Luka – and Moscow. (Ibid). As the RS’ appeal of the initial ruling before the Constitutional Court and the date of the referendum approached, Western ambassadors continued to call for dialogue, but applied no leverage. (EU Delegation to BiH 2016).

On September 17, 2016, the Constitutional Court held its 99th plenary session and in a 7-2 vote (klix.ba 2016) denied the RSNA appeal of the Court’s decision on the constitutionality of RS Day, and imposed a measure to temporarily ban

² The PIC Steering Board is a subset of the 55-member PIC, meeting regularly (now biweekly) in Sarajevo at the ambassadorial level, and semi-annually at a more senior level. The PIC Steering Board consists (alphabetically) of representatives of Canada, the European Commission, France, Germany, Great Britain, Italy, Japan, the Netherlands (observer), the Organization of Islamic Cooperation (represented by Turkey), the Russian Federation, Spain (observer), and the United States.

the RS referendum. (EBL News, 2016). In a press release, the US Embassy called on the RS to respect the BiH Constitution and ruling of the Court: “defiance of the Constitutional Court is a threat to the rule of law and thus a threat to the stability, security and prosperity of the country.” (US Embassy Sarajevo 2016). EU High Representative Federica Mogherini and Neighborhood/Enlargement Commissioner Johannes Hahn were less categorical in their statement, calling for respect for rule of law and “constructive dialogue.” (Mogherini and Hahn 2016). The referendum was held as scheduled.

Campaign

While the formal campaign for a “yes” vote in the referendum began in the summer doldrums beginning in mid-July, in effect, it began with the BiH Constitutional Court ruling and the RS official and popular reaction to it. In another sense, the referendum was a delivery on a long-mooted threat (or commitment, depending on one’s vantage point) to hold a referendum, test domestic and international reaction. Given the wording of the ballot question, the result was a nearly foregone conclusion; only the level of voter interest was unknown. Holding the referendum so close to the scheduled municipal election, to be held the following week, had a clear political motive.

Days before the referendum took place, Radio Television Republika Srpska (RTRS) began broadcasting a promotional video for the referendum: *Srpska te treba* (Srpska needs you - <https://youtu.be/C4NaoOuKUcU>), which contains clips from the war and clearly played to people's emotions. The protagonist of the video is a young boy who "Did not have the chance to meet his father," but his father left him his homeland and his "celebration." The people should vote in the referendum, because Republika Srpska needed them now. RTRS also broadcast the "Kosovo Battle" movie on the night before the referendum, which was clearly another effort to play to popular emotion and motivate voters against would-be oppression.

The content and timing of the referendum were precisely calibrated to undercut the RS opposition, the Alliance for Changes, consisting of the Serb Democratic Party (SDS), Party for the Democratic Progress (PDP), and People’s Democratic Party (NDP). Already reeling from unforced errors and constant accusations from Dodik of effectively being sellouts to Bosniak parties and the state (ATV, 2016) for participating in the BiH ruling coalition, these RS-based parties, particularly the SDS, could hardly afford to be seen as “offside” on the RS Day issue. This left them to attempt to straddle the divide, decrying the Court ruling while questioning the referendum. (Slobodna Bosna 2016). Therefore, in the campaign for the October 2 municipal elections, in which the

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opposition had hoped to follow its 2014 general election gains by focusing on corruption and malgovernance by the RS authorities, dominated by Dodik since 2006, the Alliance found its ability to differentiate itself constrained.

Within the Federation, vocal resistance and calls for the High Representative to intervene to prevent the referendum being held were pronounced. The domestic legal and political remedies were indeed exhausted with the RS Government's rejection of the Constitutional Court's ruling. The international High Representative, Valentin Inzko, was called upon to intervene by a host of Sarajevo-based political parties and civil society. But the collective political will to confront the RS referendum simply did not coalesce in the Western diplomatic community, so the ritualistic condemnations of the referendum rang hollow even before it was held. The lack of response likely only encouraged the RS Government to pursue the referendum.

Tensions further increased after the wartime Army of the Republic of BiH Commander Sefer Halilovic, during an interview for the TV1 television, said that the correlation of forces in BiH was significantly different from the 1992-1995 war, and that attempts at secession "would not pass peacefully." (B92 2016).

The referendum was held on September 25 largely without incident. Unsurprisingly, the overwhelming majority of those who voted – a reported 677,722 (99.81%) – voted in favor of maintaining RS Day. Yet turnout – 55.7% – though well above the threshold for validity, was disappointing for President Dodik, who in his victory speech decried those who did not go to the polls. (Dnevno 2016). It is worthy of note that the election turnout was marginally higher – 59.5% - than the referendum turnout. But the turnout figures were comparable with prior general and municipal elections.

Table 1: Voter turnout at the 2016 referendum compared to previous elections

2016 referendum voter turnout	680,116 (55.67%)
2016 municipal elections (RS)	707,711 (59.49%)
2014 general elections (RS)	683,220 (56.49%)
2012 municipal elections	689,392 (59.18%)

Source: Radio Sarajevo 2016, Izbori.ba 2016, BHAS 2014, Izbori.ba 2013.

Immediately following the referendum, the US Embassy issued yet another statement calling for "competent institutions to address that violation in accordance with the laws of BiH, while we evaluate appropriate consequences." (US Embassy Sarajevo 2016).

In an interesting twist, official results remain unpublished, since the RS Constitutional Court decided the results were illegal because they were published in the RS official gazette prior to being validated by the RS Council of Peoples, in which Bosniak deputies can object. (Slobodna Bosna 2016) There has been almost total official silence on the referendum since it was concluded, despite the import with which it was promoted by RS authorities.

Table 2: Results of the 2016 referendum

Date of Referendum	September 25, 2016.
Electorate	1,219,399
Total votes cast	680,116 (55.67%)
Invalid ballots	2,264
Referendum question	Do you support that 9 January be observed and celebrated as the Day of Republika Srpska?
Votes in favor	677,721 (99.81%)
Votes against	1,291 (0.19%)

Source: www.radiosarajevo.ba

Epilogue

In the October 2, 2016 municipal elections, Milorad Dodik's ruling Union of Independent Social Democrats (SNSD) won 33 mayoral positions; 11 positions more than in 2012. The SDS lost the same number of municipalities, holding only 17. (Radio Sarajevo, 2016). Party leader Mladen Bosic resigned following the defeat. (Klix.ba 2016). While pre-election polling is hardly definitive, the effect of the referendum and attendant campaign in braking the momentum of the united opposition to a party in government for a decade appears significant. (BN Televizija 2016; Istinito 2016).

The RS held a high-profile parade to commemorate RS Statehood Day on January 9, 2017, which included heavily armed militarized police. (Klix 2017). Serbian President Tomislav Nikolic attended, along with several other Serbian officials; Prime Minister Vucic did not. Dodik called on members of the overwhelmingly ethnic Serb 3rd Infantry Brigade to march in the parade, making their participation a sort of loyalty test. The BiH Defense Ministry and NATO Headquarters Commander Brig. Gen. Giselle Wilz had specifically warned against BiH soldiers participating. (Kovacevic 2017). In the end, Serb members of the BiH Armed Forces participated as an honor guard for Mladen Ivanic, Serb member of the BiH Presidency, but did not march. (Rose, 2017). Expert opinion is that in the event of hostilities, the BiH Armed Forces would collapse into its

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ethnic components, concentrated heavily in nine infantry battalions. (Democratization Policy Council 2011).

RS President Milorad Dodik upped the ante before, during, and after the RS Day celebrations, threatening to hold an independence referendum the following year. On January 8, he stated that a referendum would not be against anyone, just defend RS rights. “We want to hold a referendum every year to bring us closer to strengthening our institutional and state rights.” (Klix.ba 2017). Dodik told the crowd at the RS Day parade that “the Serb Republic will not stay inside Bosnia” unless it gets enough autonomy to “live its life as a state.” (EU Observer 2017).

Immediately prior to US President Donald Trump’s inauguration, and pursuant to the consequences foreshadowed in the US Embassy’s statement, the US Treasury Department placed personal sanctions on Dodik for his actions against the Dayton Peace Agreement. (Reuters 2017) He has subsequently said that secession is not the primary goal of the Republika Srpska. (Sarajevo Times 2017).

The referendum – and the weak international reaction to the challenge – has accelerated discussion of Bosnia and Herzegovina’s further division. Croat member of the BiH Presidency, Dragan Covic, who has called Dodik a “partner,” has amplified his calls for federalization of the country, backed by Croatia’s president and foreign minister. (N1 2016)

The impact of the referendum, despite the fact that the RS Government has effectively consigned its results to the archives, is likely to be far greater than what may seem an arcane issue surrounding holiday commemoration. It might well be seen as the event which demonstrated, were there any residual doubt, that there is no credible restraining international hand on the competing nationalist agendas in BiH or the Balkans more broadly. (Klix.ba 2016)

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