

SOUTHEAST EUROPEAN STUDIES



MULTINATIONAL FEDERALISM IN BOSNIA AND HERZEGOVINA

Soeren Keil



MULTINATIONAL FEDERALISM IN BOSNIA
AND HERZEGOVINA

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Multinational Federalism in Bosnia and Herzegovina

SOEREN KEIL

Canterbury Christ Church University, UK

ASHGATE

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For Claire and Malindi

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List of Acronyms

BiH	Bosnia and Herzegovina
CoM	Council of Ministers (Bosnia's government)
EC	European Community (After 1 November 1993 EU)
EU	European Union
EUFOR	European Force in Bosnia and Herzegovina
ESI	European Stability Initiative
EUPM	European Union Police Mission in Bosnia and Herzegovina
FBiH	Federation of Bosnia and Herzegovina
HDZ BiH	<i>Hrvatska demokratska zajednica Bosne i Hercegovine</i> [Croatian Democratic Union of Bosnia and Herzegovina]
HR	High Representative for Bosnia and Herzegovina
ICTY	International Criminal Tribunal for the former Yugoslavia
ICG	International Crisis Group
IMF	International Monetary Fund
MP	Member of Parliament
NATO	North Atlantic Treaty Organisation
NCA	National Cultural Autonomy
OHR	Office of the High Representative in Bosnia and Herzegovina
OSCE	Organisation for Security and Cooperation in Europe
PDP	<i>Partija demokratskog progresa RS</i> [Party of Democratic Progress]
PfP	Partnership for Peace
PM	Prime Minister
RS	<i>Republika Srpska</i> [Serb Republic]
SAA	Stabilisation and Association Agreement
SBiH	<i>Stranka za Bosnu i Hercegovinu</i> [Party of Bosnia and Herzegovina]
SDA	<i>Stranka Demokratske Akcije</i> [Party of Democratic Action]
SDP	<i>Socijaldemokratska Partija Bosne i Hercegovine</i> [Social Democratic Party of Bosnia and Herzegovina]
SDS	<i>Srpska Demokratska Stranka</i> [Serbian Democratic Party]
SFOR	Stabilisation Force for Bosnia and Herzegovina
SNSD	<i>Savez Nezavisnih Socijaldemokrata</i> [Alliance of Independent Social Democrats]
SU	Soviet Union
UNDP	United Nations Development Programme [here meant the programme for Bosnia]

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Chapter 1

Introduction

The introductory chapter will help to understand the reasons why it is important to study federalism in Bosnia and Herzegovina.¹ It will explain the background of this book and some of its evolutionary features. Furthermore, it will highlight the methodology used and define the major terms used in this study. The overall aim is to understand that Bosnia and Herzegovina as a federal country is studied as one case of a number of countries that demonstrate the evolution of new models of federalism, understood here as a political ideology and the normative basis of federation, which shall refer in this piece to a federal state.² This conceptual distinction between federalism and federation informs the book throughout. Therefore, in particular the concluding remarks will refer to some comparative aspects of Bosnian federalism and federation. Finally, the introduction will discuss the structure of this study and the rationale behind it. In short, the book is structured so that the first chapter introduces the reader to the current debates on multinational federalism and multinational federations, whilst the following three chapters will analyse Bosnia and Herzegovina as an example of a new model of multinational federalism and federation. The aim of the concluding chapter is to widen the research findings and provide some insights into the wider comparative merit of this study.

Introduction to the Topic

I first became interested in federalism in Bosnia in 2005. Since 2005, however, we can witness important changes in Bosnia and Herzegovina, including the introduction of a countrywide Value-Added Tax in 2006. Democracy and peace have been stable in the whole Western Balkans over the last years and all countries of the former Yugoslavia are now on the way to membership in the European Union (EU), even if this might be a long way. Bosnia managed to sign a Stabilisation and Association Agreement with the EU in 2008. However, since then no major progress has been made on the country's path towards membership in the EU. Bosnia has seen important changes in its party system in the 2006 election and

1 Bosnia and Herzegovina will be referred to as 'Bosnia, Bosnia and Herzegovina and BiH.' This follows the general use of term in the academic literature.

2 This distinction was first pointed out in: King, Preston: *Federalism and Federation*, Croom Helm: London 1982. Later, other authors have applied and further developed this methodological distinction.

again in the 2010 election, and has gone through positive and negative phases. The ambiguous role of the international community and, in particular, of all High Representatives after Lord Paddy Ashdown contributed to a sense of insecurity in Bosnia and Herzegovina, both amongst the leaders of the country and amongst its ordinary people. With Afghanistan, Iraq, Iran and the wider Arab world being at the centre of attention of Western leaders, Bosnia and Herzegovina, because it was peaceful, risked losing out. The political crisis that followed the 2006 election, and the debate about a police reform that finally resulted in the resignation of the Chairperson of the Council of Ministers reminded internal actors that whilst Bosnia is at peace, it is far from being a stable self-sustaining country.³ The long negotiations to form a government after the 2010 election, the failed process of political reform and the lack of progress in the Europeanisation process have also contributed to a sense of Bosnia as a state in permanent crisis.⁴ Additionally, federalism in Bosnia and Herzegovina has become an often-debated topic in the framework of further talks on constitutional reform. There is a lively debate about federalism in Bosnia between the Bosnian elites as well as between representatives of the international community. What is often lacking is a clear understanding of federalism and its advantages and disadvantages in plural societies in general, and in BiH in particular.

This study of federalism and federation in Bosnia and Herzegovina aims at examining the international state-building and democratisation project in Bosnia and Herzegovina from the perspective of its federal nature. It is important, because more than 15 years after the end of the Bosnian conflict we are now able to come to an assessment of international policy in Bosnia that focuses, in particular, on the building of a federal state. This book will focus on assessing its federal features but by doing so will inevitably also contribute to a deeper understanding of international state-building and democratisation. Bosnia is considered a successful example of international intervention by scholars of conflict studies, since we see no large-scale recurrence of violence after 1995. However, such optimism is not appropriate when it comes to the assessment of federalisation, state-building, and democratisation. Whilst there have been major successes, as mentioned above, the latest problems in Bosnia demonstrate that the country is far from self-sustaining and that its only future is the eventual integration into European structures. In contrast to other post-conflict countries, such as Afghanistan or Iraq, the international community has the

3 On the crisis and the lack of international involvement see the critical comments of Paddy Ashdown and Richard Holbrooke in: Ashdown, Paddy and Holbrooke, Richard: 'A Bosnian Powder Keg' in: *The Guardian*, 22 October 2008, also available at: <http://www.guardian.co.uk/commentisfree/2008/oct/22/ashdown-holbrooke-bosnia-balkan-dayton> (accessed 15 February 2013).

4 On the permanent crisis in Bosnia and Herzegovina see: Dzihic, Vedran: 'Bosnien und Herzegovina in der Sackgasse? Struktur und Dynamik der Krise fünfzehn Jahre nach Dayton' in: *Südosteuropa*, Vol. 59, No. 1, 2011, pp. 50–76.

carrot of European integration in its own hands. To this extent, the success of Bosnia and Herzegovina will also be a success of the EU.

Methodological Concerns

The aim of this book is twofold. On the one hand it aims to examine the federal political system of Bosnia and Herzegovina as it has been implemented (and developed) as a result of the Dayton Peace Agreement of November 1995. This means that the federal system in Bosnia, as well as its normative basis (“federalism as the ideology behind federation”), is the object of the research. In this respect, Bosnia and Herzegovina is a case study where the explanation of a certain social reality within the case is the research focus, namely the application of federalism and federation in Bosnia and Herzegovina after 1995. On the other hand, the federal system of Bosnia and Herzegovina after 1995 is also studied as one *case* in a wide range of new federal models in the post-Cold War era. In this way, the application of federalism and federation in Bosnia becomes a unit within the research ‘for the purpose of understanding a larger class of (similar) units.’⁵ Consequently, it can be argued that the discussion and analysis of federalism and federation in Bosnia and Herzegovina will help us to understand similar phenomena in other countries.⁶ This is why we will refer to other countries when appropriate and we will apply methods of comparative politics in this study whenever applicable.⁷ As the comparative discussion of new models of federalism and federation will demonstrate in the concluding chapter, we can witness the evolution of a number of new models of federation in nearly all parts of the world, including Ethiopia in Africa, Nepal in Asia, Iraq in the Middle East, and Bosnia and Russia in Europe. The main reason why Bosnia and Herzegovina is an appropriate example for the study of the broader phenomena of new models of federalism and federation is the fact that Bosnia and Herzegovina has been a federal state for nearly two decades. Furthermore, the role of international actors in the set-up and implementation of a federal system in Bosnia also calls for further analysis. To underline this issue, it is important to highlight that Bosnia did not become a federal state because Bosnian political elites thought this would be the best political organisation to accommodate the multinational character of the country whilst still preserving its territorial integrity. In fact, the Bosnian leaders could not agree on territorial decentralisation after the first free elections in 1990, although this organisational principle was preferred by Bosnian Croats and Bosnian Serbs. Instead,

5 Gerring, John: ‘What is a Case Study and What is it Good for?’ in: *The American Political Science Review*, Vol. 98, No. 2, May 2004, pp. 341–54, here quoted p. 342.

6 *Ibid.* p. 341.

7 Landman, Todd: *Issues and Methods in Comparative Politics*, 2nd edition, Routledge: London 2003, p. 34.

they installed a unitary system and elite power-sharing in the central state institutions.⁸ However, this was also before Bosnia declared its independence from Yugoslavia and a three and a half year long war massively changed the population distribution. Nevertheless, even during the Dayton negotiations there was no Bosnian party that particularly favoured a federal state organisation. As will be demonstrated in Chapter 4, it was the international community and, in particular, American politicians and civil servants that “imposed” a federal system on Bosnia and Herzegovina. Ever since then, parts of the Bosnian elite have attempted to get rid of this imposed system, either by pursuing secession and inclusion in Bosnia’s neighbouring states or by demanding centralisation and the abolition of the entity system.

The categories used to describe Bosnian federalism as “imposed” and the Bosnian federation as “internationally administered” are, therefore, very specific to Bosnia and Herzegovina. Only in recent years, with the intervention of a US-American force in Iraq and the establishment of a federal state in this Middle Eastern country, has a second case evolved that might match Bosnia’s characteristics. However, with the international community becoming more active in state-building projects, it can be considered most likely that further attempts will be made to “impose” federalism as a solution in countries with deep national cleavages. Current discussions in Afghanistan to implement a federal system highlight this point.⁹ Similar discussions have also started in Libya, although international actors play a lesser role in the actual constitutional and political negotiations in the country following the end of Gaddafi’s dictatorship.¹⁰

However, the choice of Bosnia and Herzegovina can also be explained by a lack of literature on the topic of federalism in the country. Whilst there is a substantial body of literature about state-building and international involvement in Bosnia, as well as on its power-sharing institutions, there has been little detailed study of the federal features, not as part of power-sharing or peace-building but as independent and distinct elements of the state organisation and its constitutional character.

Finally, some words about the research methodology of this piece are important. The main research method applied throughout this book is contextual interpretation. This will be applied to the history of Bosnia and Herzegovina as well as to the constitutional features of the country. The interpretation will help to understand Bosnia and Herzegovina as a federal political system. Therefore,

8 For more on this issue, see: Andjelić, Neven: *Bosnia-Hercegovina: The End of a Legacy*, Frank Cass: Portland 2003.

9 For example, see: Tremblay, Reeta C.: ‘A Federal Arrangement for Afghanistan’ in: *Federations*, Special Issue on Afghanistan, October 2001, available at: <http://www.forumfed.org/libdocs/Federations/V1afgh-af-Tremblay.pdf> (accessed 15 February 2013).

10 Gluck, Jason: ‘Debating Federalism in Libya’ US Institute for Peace News Feature, March 2012, available at: <http://www.usip.org/publications/debating-federalism-in-the-new-libya> (accessed 15 February 2013).

literature about the history of the Ottoman Empire will be discussed in the light of the continued importance of historical elements within the Bosnian federal system, more concretely the application of the Ottoman millet system to Bosnia and Herzegovina. In this way, existing literature will not just be reviewed but will be discussed in the light of its importance for the federal discourse in Bosnia and Herzegovina. To understand the current debates on federalism in Bosnia, I held a number of elite interviews with government and party representatives in Sarajevo, Banja Luka and Mostar between July and September 2008.¹¹

Whilst the Bosnian constitution does not define Bosnia and Herzegovina as a federal state per se, the application of the principle of self-rule and shared-rule, the territorial organisation of the country, and the interpretation of the constitution by the Bosnian Constitutional Court and other international actors allow for the definition of Bosnia and Herzegovina as a federal country.¹² In light of these interpretations it is the main research aim of this study to understand the origins and nature of Bosnian federalism and analyse its implementation within the Bosnian federation and to discuss the wider implications of federalism and federation in Bosnia and Herzegovina.

Definition of Key Terms

The key to the analysis of the Bosnian federal system is the development of an appropriate theoretical concept of multinational federalism. Before developing this concept, it is necessary to look at the definitions of key terms. As will be seen later, democracy, federalism and nationalism are directly connected in all multinational federations; therefore, we must look at these terms in depth and develop an appropriate framework of multinational federalism and federation in the following chapter.

Democracy

The simplest definition of democracy is “rule by the people” but this definition is not specific enough for the purposes of a wider framework on the relationship of democracy, federalism and nationalism.

11 The majority of interviews were held in English and German, however, some were also held in the local language with a translator. For the purposes of data protection and consistency, no interviewee names are listed but it is clearly indicated which organisation the interviewee represents.

12 For the interpretation of the Bosnian Constitutional Court, see: Constitutional Court of Bosnia and Herzegovina: Judgment U 5/98-III. For the interpretation of other international actors, see: European Commission for Democracy through Law (Venice Commission): *Opinions on the Constitutional Regime of Bosnia and Herzegovina, September 1994–June 1998*, CDLF-INF (1998)015, here part C.

Wolfgang Merkel argues an embedded democracy can be described by five core characteristics:¹³

1. Democratic elections.
2. Political rights.
3. Civil rights.
4. Horizontal accountability (separation of powers, rule of law).
5. Monopoly of power lying in the hands of democratic elected representatives.

This definition is closer to a substantial definition of democracy. Merkel offers a much more inclusive definition. The core of democracy is the holding of regular democratic (therefore, free and fair) elections, because those elections ensure that the political authority of the representatives is legitimate, since ‘political authority can only be called legitimate, if the people are the holder of sovereignty.’¹⁴ Anthony Birch defines democratic elections as the core of every democracy, because only those elections fulfil the task of an open and fair recruitment process, provide competition and guarantee an effective control of the representatives by those who are represented.¹⁵

Furthermore, political and civil rights must be guaranteed. Civil rights, such as the freedom of the person or the freedom to own property, as well as fundamental political rights, such as the freedom of speech and the freedom of information, must be constitutionally guaranteed and interference by politicians must be prohibited. Furthermore, the state has to protect those rights as this is the initial reason why individuals sign the social contract.¹⁶ Additionally, citizens must have the right to participate actively in the political sphere by having the ability to run for office as well as controlling their representatives.

The separation of powers and horizontal accountability are especially important for democratic systems because they prevent elected representatives from abusing power. As Pierre Manent argues, democracies are characterised by the sovereignty of the people and the guarantee of liberty for the people. Therefore, he speaks of democracies as ‘a system of separations.’¹⁷ Horizontal accountability is also connected to the rule of law.

13 Merkel, Wolfgang: ‘Embedded and Defective Democracies’ in: *Democratization*, Vol. 11, No. 5, December 2004, pp 33–58, here p. 36.

14 Vorländer Hans: *Demokratie (Geschichte, Formen, Theorien)*, Bundeszentrale für Politische Bildung: Bonn 2003, p. 111 (translation by KEIL). All other translations from German into English, if not explicitly highlighted, by KEIL.

15 Birch, Anthony H.: *The Concepts and Theories of Modern Democracy*, 2nd edition, Routledge: London and New York 1995, pp. 76–7.

16 For example, see the explanations of John Locke: Locke, John: *Two Treaties of Government*, 3rd edition Cambridge University Press: Cambridge 1988, §87, §88 and §134 especially.

17 Manent, Pierre: ‘Modern Democracy as a System of Separations’ in: *Journal of Democracy*, Vol. 14, No. 1, January 2003, pp. 114–25, here pp. 114–16.

Finally, the monopoly of power must lie in the hands of the democratically elected representatives. No other institution or group should have any influence in governmental affairs, although this point does not exclude the development of corporatist mechanisms within democratic systems. However, it does exclude the influence of the military, multinational corporations and other national or international actors on the direct legislative and executive process.

A definition of democracy needs to be compact and include a wide-range of qualities, instead of the limitation to an electoral democracy. This analysis can be summarised with Leonardo Morlino's statement, that a 'good democracy can be said to be one that presents *a stable institutional structure that realizes the liberty and equality of citizens through the legitimate and correct functioning of its institutions and mechanisms.*'¹⁸

Democratisation and Democracy Promotion

As it is one aim of this book to analyse the state of democracy in Bosnia and Herzegovina, we must look at democratisation theory and the idea of democracy promotion as both have been utilised in Bosnia since the beginning of the 1990s.

Democratisation is described by Geoffrey Pridham as 'the whole process of regime change from authoritarian rule to the rooting of a new liberal democracy.'¹⁹ This transition has different forms; Pridham,²⁰ as well as Claus Offe,²¹ distinguish between three forms of transition, which are inherent in a democratisation process. They describe the establishment of democratic institutions and democratic decision-making rules as *the political transition*. The development of a market economy and the establishment of some form of a social state are, meanwhile, defined as *the economic transition*. Finally, the formulation of a *national identification*, which includes the creation of a citizenship and the "nationalisation" of the political system including the introduction of a new anthem, a new flag and new symbols, is described as *the identity transformation*. In the Bosnian context these transformations overlap with the transition from war to peace, from membership in Yugoslavia to independent statehood and from independent statehood to integration into the EU. However, it is particularly important to highlight the importance of the third transformation discussed by Pridham and Offe, namely the creation of some form of national identity. Because this form of transition has not taken place in Bosnia in a way where there has been a development towards a

18 Morlino, Leonardo: 'What is a Good Democracy?' in: *Democratization*, Vol. 11, No. 5, December 2004 pp. 10–32, here p. 12 (Italics in the original version)

19 Pridham, Geoffrey: *The Dynamics of Democratization*, Continuum: London and New York 2000, p. 16.

20 Ibid. p. 17.

21 Offe, Claus: *Varieties of Transition (The East European and the East German Experience)*, MIT Press: Cambridge (Mass.) 1997, p. 32.

Bosnian identity but towards *multiple identities within Bosnia*, the establishment of a democratic regime has been further complicated.

There is generally no agreement on the path of democratisation and the different spheres affected by it. Juan Linz and Alfred Stepan focus in their analysis on five core elements of a consolidated democracy, which are the development of free and fair elections, the existence of an autonomous political sphere, the rule of law, a functioning bureaucracy and the economic sphere.²² Geoffrey Pridham focuses on eight key areas, namely historical determinants, the authoritarian breakdown and collapse, the regime transition and the design of the new regime, the political dimension and the role of actors and linkages, the economic transformation, the role of civil society, the finding of stateness and a national identity and the international dimension of democratisation.²³

Both analyses see democratisation as a linear process, beginning with the breakdown of an authoritarian regime and ending in the establishment of a consolidated democracy. It was not until recently, that this linearity was questioned. Wolfgang Merkel developed the theory of “defective democracies” and argued that it is possible for states to get stuck in the transition.²⁴

Democratisation processes will differ depending on peaceful or violent transitions. Democratisation after a violent transition includes elements of a peaceful transition, however, it must also consider the reasons for the war. The new democratic forces have to take the former enemies into account, they must offer a forum for reconciliation and the transformation must include the restructuring of the country after the war.²⁵ We shall look at the establishment of democratic rule and post-war reconciliation in Bosnia in Chapters 4 and 5, when discussing Bosnia’s federal development since the Dayton Peace Agreement.

The international environment plays a key role in the process of democratisation. Often it is in the hands of external actors to support processes of change and democratic consolidation.²⁶ The support for democratic change by external actors, either in situations of regime change or by continuously focusing on the implementation of democratic governance, is called democracy promotion. There are different forms of democracy promotion, both peaceful and violent.²⁷ However, there are ongoing debates about the success of democracy promotion

22 Linz, Juan J. and Stepan, Alfred: *Problems of Democratic Transition and Consolidation (Southern Europe, Southern America and Post-Communist Europe)*, The John Hopkins University Press: Baltimore and London 1996, p. 7.

23 Pridham, Geoffrey: *The Dynamics of Democratization*, 2000, pp. 26–7.

24 Merkel, Wolfgang: ‘Embedded and Defective Democracies’, 2004, pp. 48–9.

25 For example, compare: Schmitter, Marc F.: ‘Building Democracy after Conflict: Introduction’, in: *Journal of Democracy*, Vol. 16, No. 1, January 2005, pp. 5–7.

26 Buxton, Julia: ‘Securing Democracy in Complex Environments’ in: *Democratization*, Vol. 13, No. 5, December 2006, pp. 709–23, here p. 710.

27 Ethier, Diane: ‘Is Democracy Promotion Effective? Comparing Conditionality and Incentives’, in: *Democratization*, Vol. 10, No. 1, Spring 2003, pp. 99–120, here p. 100.

by international actors. As was the case in Afghanistan and Iraq, so too have international actors intervened in Bosnia's political transition, and supported the establishment of democratic governance.

We can summarise the transition of the countries of the Western Balkans as follows:

1. The transition from a dictatorship under the rule of the League of Communists to a democracy with a multiparty system.
2. The transition from communist economic policies (workers' self-management) towards market economy.
3. The transition towards national identity and surrounding debates about citizenship and minority integration.

However, those three transitions should be amended by two other core transitions, which are in this form specific for the countries of former Yugoslavia:

4. The transition from war to peace (for Bosnia, Croatia, Serbia and Kosovo).
5. In the case of Bosnia it is also important to highlight the transition from one republic within federal Yugoslavia to independent statehood.²⁸

There have been a number of very good studies about the democratisation processes in South-Eastern Europe as a whole and in selected countries specifically.²⁹ What can be observed in Bosnia is a much more complex transition to democracy, in which multiple transformations overlap and numerous actors are involved.

Federalism

The definition of federalism has seen various problems over the last centuries. Although one might have some form of union with a regional and a federal level

28 More on this can be found in: Silber, Laura and Little, Alan: *The Death of Yugoslavia*, revised edition, Penguin Books and BBC Books: London 1996 and Bunce, Valerie: *Subversive Institutions (The Design and the Destruction of Socialism and the State)*, Cambridge University Press: Cambridge and New York 1999

29 Among many, see for example: Brusis, Martin: 'Assessing the State of Democracy, Market Economy and Political Management in Southeastern Europe' in: *Southeast European and Black Sea Studies*, Vol. 6, No. 1, March 2006, pp. 3–24, Krastev, Ivan: 'The Balkans: Democracy without Choice' in: *Journal of Democracy*, Vol. 13, No. 3, July 2002, pp. 39–53; Grugel, Jean: *Democratization*, Palgrave: London 2002; Keil, Soeren: 'Explaining Democratic Stagnation in the Western Balkans' in: European Institute of the Mediterranean (Ed): *Mediterranean Yearbook 2012*, European Institute of the Mediterranean: Barcelona 2012, pp. 198–291; Bieber Florian and Ristić, Irena: 'Constrained Democracy: The Consolidation of Democracy in the Yugoslav Successor States' in: *Southeastern Europe*, Vol. 36, No. 3, 2012, pp. 373–97.

in mind when talking about federalism, the analysis will show that we will have to look at two important “re-conceptualisations” when talking about federalism. On the one side, until the foundation of the American federal polity, federalism was used to describe a loose union or alliance. It was the misleading definition of the Federalists, namely Alexander Hamilton, James Madison and John Jay that led to the understanding that federalism defines a state based on a regional and a national level of government.³⁰ On the other side, different authors have tried to distinguish between federalism, federation and a federal political system. As will be seen in the following pages, the distinction used in this book goes back to the work of Preston King,³¹ who influenced this distinction enormously before authors such as Michael Burgess³² and Ronald Watts³³ enriched King’s definition with theoretical depth.

Finally, our task shall be to look at different “traditions” of federalism. Whilst there has been some research done on the Anglo-American Tradition and the Continental European Tradition, little research has been completed on the importance of socialist federations. The argument presented in this chapter, therefore, will be that federalism has been used as a tool, not an ideology, by socialist multinational states (especially the Soviet Union and Yugoslavia). The reason for this instrumental use of federalism was the attempt to manage multinational states by a form of “pseudo”-autonomy and to combine the diversity of nations within multinational states with the unity of the socialist identity.

Federalism, Federation, and Federal Political Systems

There is a long debate about the advantages of regional and federal governance, going back to the writings of Althusius in the 17th century and heavily influenced by the Federalists in the United States.³⁴ However, this discussion shall focus on the evolution of a more academic discourse on federalism, federation and federal political systems in the 20th century.

The academic debates in the 20th century started shortly after the Second World War. These were based on three key events, namely the success of the United States and the Soviet Union (which was at least a self-defined federation),

30 Hamilton, Alexander; Madison, James and Jay, John: *The Federalist Papers*, Clinton Rossiter (ed.), Penguin Books: London 2003.

31 King, Preston: *Federalism and Federation*, Croom Helm: London 1982.

32 Among a lot of other important literature key features of Burgess’ federalism definition are developed and summarised in: Burgess, Michael: *Comparative Federalism: Theory and Practice*, Routledge: London 2006.

33 Among a lot of other important literature key features of Watts’ federalism definition are developed and summarised in: Watts, Ronald: *Comparing Federal Systems*, 2nd edition, McGill Queen’s University Press: Montreal and Kingston, 1999.

34 For more information on the historical development, see: Karmis, Dimitros and Norman, Wayne (eds): *Theories of Federalism. A Reader*, Palgrave Macmillan: London 2006.

the idea of a federal (united) Europe, as can be found in the writings of Altiero Spinelli,³⁵ and finally the decolonialisation movements and the introduction of federal systems in all parts of the world.³⁶

One of the major inputs in the academic debate about the origin, practical application, and development of federal states was written by Kenneth Wheare in 1946 in his book *Federal Government*.³⁷ Wheare defined a federal government as follow:

Federal Government exists [...] when the powers of government for a community are divided substantially according to the principle that there is a single independent authority for the whole area in respect of some matters and that there are some regional authorities being co-ordinate with and not subordinate to the others within its own prescribed sphere.³⁸

The basis of federal government is, in Wheare's terminology, the federal principle defined as 'the method of dividing powers so that the general and the regional governments are each, within a sphere, co-ordinate and independent.'³⁹ Kenneth Wheare's work on federalism can be described as a major theory on federalism. His distinction between federal principle and federal government demonstrates for the first time the methodological distinction between the normative ideology of federalism and its practical application in a federation. Furthermore, his in-depth analysis of the development of federations and about actors' behaviour greatly influenced the work of contemporary authors on federalism.⁴⁰ Although Wheare does not directly mention the connection of federalism as a political ideology and the principle of democracy, there can be no doubt that his definition of federalism is based on the precondition of a democratic form of government.

One author who does not make this important connection between democracy and federalism is William Riker. It is worth mentioning Riker here, as his theory will be the basis of the discussion of the Dayton Peace Agreement, what Riker

35 Most notably his manifesto about a federal Europe, which would be the basis of peace and prosperity on the continent: Spinelli, Altiero and Rossi, Ernesto: 'The 1944 Ventotene Manifesto Towards a Free and United Europe' in: Karmis, Dimitros and Norman, Wayne (eds): *Theories of Federalism. A Reader*, Palgrave Macmillan: London 2006, pp. 199–202.

36 For example: India became independent 1947, Nigeria became independent in 1960. Both states adopted federal systems, although with different success.

37 Here used: Wheare, Kenneth: *Federal Government*, 4th edition, Oxford University Press: Oxford, 1964.

38 Ibid. p. 12.

39 Ibid. p. 10.

40 Indeed, Ronald Watts, one of the most important political scientists in the field of comparative federalism today, was a PhD student of Wheare in Oxford. In addition, the works of authors such as Preston King, Michael Burgess, John Pinder and John Kincaid are heavily influenced by Kenneth Wheare's definition.

would call the “federal bargaining” for the Bosnian federation. Riker was the first to apply rational choice and bargaining theory to federalism. As Mikail Fillipov summarises:

Riker’s federal theory is based on the assumption that federalism is an outcome of institutional bargaining among politicians. Dependent on the positions that they occupy in the political process, politicians are divided over the core provisions of the federal constitution, most importantly, over degree of the state centralization. The crucial problem that the theory must solve is that institutional bargaining among rational politicians leads to instability of any “balanced” institutional solution, and, as a result, either the federal government or the constituent governments will dominate.⁴¹

Riker’s bargaining theory has two important disadvantages, which will also be discussed later in the Bosnian case. First, he claims that he has developed a general theory of the origins of federations. The federal bargaining, however, has seen major differences to Riker’s theory in countries like Belgium, Bosnia and Iraq. Second, Riker’s use of empirical political science methodology does not allow him to distinguish between federalism as a normative political ideology and a federation as an empirical reality of federalism in a state. This leads to Riker’s assumption, that all states who claim to be federal can be studied with the same tools. Indeed, Riker does not distinguish between federalism in the United States and in the Soviet Union.⁴²

The definitions of federalism, federation and federal political systems used in this study are based on the works of three authors of federal theory. Firstly, the distinction between federalism and federation will be used, which was first introduced by Preston King in his work *Federalism and Federation* in 1982.⁴³ King argues that federalism can be defined as ‘taken philosophically or ideologically rather than institutionally, most frequently appeals for a marked degree of regional independence and autonomy.’⁴⁴ In his analysis, federalism describes an ideology, namely the idea of regional autonomy within one state. It is the application of the principle of shared sovereignty. He continues by defining a federation as ‘an institutional arrangement, taking the form of a sovereign state, and distinguished from other states solely by the fact that its central government incorporates regional units into the decision procedure on some constitutionally entrenched basis.’⁴⁵ By distinguishing both terms, King did not ignore the connection of both, ideology and practical application and he argues:

41 Filippov, Mikhail: ‘Riker and Federalism’ in: *Constitutional Political Economy*, Vol. 16, 2005, pp. 93–111, here quoted p. 95.

42 Riker, William.: *Federalism: Origins, Operation, Significance*, 1968, pp. 38–9.

43 King, Preston: *Federalism and Federation*, Croom Helm: Beckenham 1982.

44 Ibid. p. 74.

45 Ibid. p. 77.

Although there may be federalism without federation, there can be no federation without some matching points of federalism, [...] some form of federalism is always implicit in any given federation at any given time.⁴⁶

Federalism and federation, therefore, necessarily belong together as every federation is based on the underlying idea of federalism. It is based on the federal tradition of the country in question, its institutional design is influenced by the federal bargaining of local and national elites and its functionality depends on the political culture, historical deterrents and the international environment. These definitions of Preston King laid the foundation for two key authors who enriched the definitions with more academic clarity and applied them to certain examples of federations. Michael Burgess and Ronald Watts developed King's theory further by applying comparative patterns to the analysis of federations and opened King's terminological and methodological work for hybrid systems such as Spain or the European Union.

Michael Burgess' understanding of federalism follows King's idea of a political ideology that is based on the idea of constitutionally granted regional autonomy. However, he develops this ideology by claiming that federalism in every country is underlined by a federal tradition.⁴⁷ Furthermore, he argues that the establishment of a federation is an act of 'circumstantial causation' and that the historical circumstances, together with the national and international situation at the time, are the core influences on the establishment of federal states, in addition to the political federal bargaining.⁴⁸ In his latest work he has examined the "federal spirit" and the conditions for its maintenance, in particular the important link between federalism and liberal democracy. Therefore, he makes an important conceptual contribution by underlying the importance of the federal spirit as the normative justification for federal governance, whilst at the same time arguing for the value-compatibility of federalism and democracy.⁴⁹ Indeed, Burgess clearly links federalism and democracy and we shall come back to this discussion in the following chapter.

In a similar vein, Ronald Watts defines federalism as follows:

Federalism is basically not a descriptive but a normative term and refers to the advocacy of multi-tiered government combining elements of shared-rule and regional self-rule. It is based on the presumed value and validity of combining unity and diversity and of accommodating, preserving and promoting distinct identities within a larger political union. The essence of federalism as a

46 Ibid. p. 76.

47 Burgess, Michael: *Comparative Federalism*, 2006, pp. 162–208.

48 Ibid. pp. 97–100.

49 Burgess, Michael: *In Search of the Federal Spirit (New Theoretical and Empirical Perspectives in Comparative Federalism)*, Oxford University Press: Oxford and New York 2012.

normative principle is the perpetuation of both union and non-centralization at the same time.⁵⁰

He identifies four core underlying elements of federalism. First, the importance of a democratic form of decision-making, as the distinction between regional and national level has to be based on free and fair elections, democratic decisions and the competition of different ideas. Second, he argues for non-centralisation, as this is an inherent feature of federalism. Third, Watts argues that bargaining is the key form of decision-making in federal states. Therefore, the underlying elements of federalism must be co-operation and the will to compromise. John Kincaid summarises in this context peace, prosperity, democracy, liberty, efficiency, innovation and equity as the core values of a federal union.⁵¹ Finally, Watts inherently defends the rule of law and the importance of a strong and rigid constitutionalism within a federal state.

Turning to the empirical application of federal theory, Ronald Watts offers a definition of federation, which has become standard in most textbooks:

A federation is a compound polity combining constituent units and a general government, each possessing powers delegated to it by the people through a constitution, each empowered to deal directly with the citizens in the exercise of a significant portion of its legislative, administrative, and taxing powers, and each directly elected by its citizens.⁵²

He argues that the core elements of a federation are the following:

1. The existence of two or more levels of government which are directly elected and each act directly upon citizens.
2. The distribution of powers between those levels is constitutionally guaranteed.
3. Federations are always characterised by a bicameral legislature (whereby most of the time the second chamber is a forum of representation of the regional units).
4. 'Supreme written constitution' meaning that core elements of the constitution can only be changed with the agreement of the regional units
5. Constitutional Courts and/or referendums take the role of a mediator in the case of constitutional conflicts about the distribution of powers between the levels.
6. Provisions for inter- and intra-level co-operation.

⁵⁰ Watts, Ronald: *Comparing Federal Systems*, 2nd edition, McGill Queen's University Press: Montreal and Kingston, 1999, p. 6.

⁵¹ Kincaid, John: 'Values and Value Tradeoffs in Federalism' in: *Publius: The Journal of Federalism*, Vol. 25, No. 2, Spring 1995, pp. 29–44.

⁵² Watts, Ronald: 'Federalism, Federal Political System, and Federation' in: *Annual Review of Political Science*, Vol. 1, No. 1, 1998, pp. 117–37, here quoted p. 121.

Watts finally introduces a third category in his analysis to accommodate the growing number of hybrid polities that are neither a unitary state, nor a confederation or a federal state. He describes those systems as federal political systems.⁵³ Watts argues that federal political systems are a large category and federations, as well as confederations, are special forms of federal political systems. However, with the term federal political systems, Watts develops the possibility of categorising polities such as Spain, South Africa and the EU as they are neither unitary states nor federations.

Federal Traditions

There are two established federal traditions in the academic literature, namely the Continental European Tradition and the Anglo-American Tradition. The Continental European Tradition focuses on the tradition of subsidiarity and sovereignty and has been heavily influenced by leading authors of the Enlightenment. The Anglo-American Tradition is less based around questions of subsidiarity and focuses instead on federalism as a permanent contract, the connection between federalism and democracy and the idea that federalism goes hand-in-hand with strong central government that was a result of the writings of The Federalists (John Jay, Alexander Hamilton and James Madison).⁵⁴

Taking into account the fact that the current Bosnian constitution was written in the United States of America, but also that Bosnia is part of continental Europe with the aim to join the EU as soon as possible and has been part of major European empires,⁵⁵ it can be argued that the Anglo-American and the Continental European Traditions have influenced federal debates in Bosnia as well. However, as will be seen later, it is the Socialist Tradition of Federalism that is at the centre of contemporary debates in Bosnia, which shall be discussed in more detail in this part.

Federalism and Socialism – a Socialist Tradition of Federalism

In recent years, publications have examined the rise of other traditions of federalism in different parts of the world.⁵⁶ Nevertheless, important issues about federalism, especially in Eastern Europe and Russia, have not been sufficiently analysed. Although there is some literature on federalism in both Yugoslavia and the Soviet Union, as well as on the Russian Federation, the normative debates behind these federations have not been discussed in any analytical depth. This is why this section examines a Socialist Tradition of Federalism which influenced

53 Ibid. pp. 120–1.

54 For more on this, see Burgess, Michael: *Comparative Federalism*, 2006, pp. 162–208.

55 The Ottoman Empire (1463–1878), The Habsburg Empire (de facto 1878–1918).

56 Compare, for example: Basta, Lidija and Ibrahim, Jibrin (eds): *Federalism and Decentralisation in Africa (The Multicultural Challenge)*, University of Fribourg: Fribourg (Switzerland) 1998.

the political constructions of the three socialist federations, the Soviet Union, Yugoslavia and Czechoslovakia, and continues to influence the policies of their successor states. The analysis of such a Tradition is not only important because of the federal tradition of Bosnia and Herzegovina and, in this respect, the Russian Federation as the two successor states of socialist federations which are still organised federally, but the discussion of the Socialist Tradition of Federalism will make clear that important issues of day to day politics in the successor states of the three socialist federations are directly connected to those historical debates. On-going debates about citizenship policies, minority rights and decentralisation in many parts of Eastern Europe demonstrate the importance of historical legacies.

If the claim is that there is a Socialist Tradition of Federalism, it is necessary to identify the sources of this Socialist Tradition. The argument presented here is that the Socialist Tradition of Federalism is based on three core sources:

1. The ideas of national-cultural autonomy of the Austro-Marxists, Otto Bauer and Karl Renner (and their application in the Habsburg Empire).
2. The definition of self-determination and the construction of the multinational Soviet Union by Lenin and Stalin.
3. The practical application of federalism in the Soviet Union, Czechoslovakia, and Yugoslavia.

To understand the importance of the Socialist Tradition of Federalism and its impact on the countries of the former multinational states, it is important to explain those three sources in depth.

Otto Bauer and Karl Renner belong to a group which is known as the Austro-Marxists. Their political legacy starts with the question of how to reform the Austro-Hungarian Empire in the second half of the 19th century, so that it would accommodate the nationalist claims of its several minority nations, could prevent national conflict, especially between the Germans and the Czechs in the Austrian part of the Empire, and between Slavs and Hungarians in the Hungarian part, and would allow the continued existence of the multinational state. In sharp contrast to the standard definitions of the “conservative” Marxist view of the Russian Marxists and most of the German Marxists,⁵⁷ Otto Bauer defined the term nation as an independent form of a “community of character” combined through a common language and a shared culture. The nation itself becomes only a nation by historical determination via the recognition of a current belongingness, a bond which Bauer calls the “community of fate.”⁵⁸ For Karl Renner, it was the cultural community that was most important in the definition of a nation. He argues that a ‘language community is at the same time a cultural community’ and that ‘nation [...] is

57 The exception is Rosa Luxemburg who criticised Lenin and Stalin heavily for their understanding of nationalism and self-determination.

58 Bauer, Otto: *Die Nationalitätenfrage und die Sozialdemokratie*, Europa Verlag: Wien (Vienna) 1907, pp. 95–7.

a political term' which only awakes after the defeat of the universalist Catholic church as a term for a group of people that shares a common language, culture and history.⁵⁹ The very important feature in Bauer's and Renner's definition of the nation is that it does not combine nation and territory. In the words of one of the most important researchers on non-territorial cultural autonomy, Bauer and Renner 'showed almost a century ago that at the very least in theory, the idea of the nation-state and the political representation of ethnic diversity are diametrically opposed.'⁶⁰ Instead, Bauer and Renner define a nation by a shared culture, a shared language and a sense of belonging together. From this point onwards, both developed the famous concept of *non-territorial national cultural autonomy*.

The best definition of the concept of national cultural autonomy was given by Lenin, ironically, since he was one of the key opponents of the concept.

Every nation, irrespective of place of domicile of its individual members (irrespective of territory, hence the term "extra-territorial" autonomy) is an officially recognised association conducting national cultural affairs. The most important of these affairs is education. The determination of the composition of the nations by allowing every citizen to register freely, irrespective of place of domicile, as belonging to any national association, ensures absolute precision and absolute consistency in segregating the schools according to nationality.⁶¹

As we shall see later, one of the core criticisms of the concept was the separation of nation and territory. However, although Bauer and Renner argue for non-territorial representation, they do not argue for the complete abolition of territorial representation. On the contrary, whilst non-territorial national cultural autonomy describes 'an ingenious mode for a two-tier system of government that devolved considerable non-territorial autonomy to national communities, whilst keeping the administrative unity of the multinational state,'⁶² Renner also argues for the organisation of mono-cultural municipalities and their organisation in federal sub-units.⁶³ Those federal units were intended to focus on economic and social matters and Renner was aware that some multi-lingual and multi-cultural sub-units might be necessary, but for him this was not a key problem since the core demands of minorities would be settled with non-territorial national cultural autonomy.⁶⁴

59 Renner, Karl: *Die Nation: Mythos und Wirklichkeit*, Europa Verlag: Vienna, Colgne, Stuttgart and Zurich 1964, p. 26 and p. 28.

60 Nimni, Ephraim: 'Nationalist Multiculturalism in Late Imperial Austria as a Critique of Contemporary Liberalism: The Case of Bauer and Renner' in: *Journal of Political Ideologies*, Vol. 4, No. 3, 1999, pp. 289–314, here p. 292.

61 Lenin, Vladimir I.: *Complete Collected Works*, 2nd edition, Vol. 19, Progress: Moscow 1968 p. 503.

62 Nimni, Ephraim: 'Nationalist Multiculturalism', 1999, p. 291.

63 Renner, Karl: *Die Nation: Mythos und Wirklichkeit*, 1964, pp. 103–4.

64 Ibid. p. 104.

Furthermore, Renner argued for the establishment of a nationalities chamber as the core parliament. All nationalities within one state would be represented in this chamber in proportion to their representation in the country's population.⁶⁵ To some extent, it can be argued that the Bosnian House of Peoples reflects this organisation principle as it represents the three constituent peoples of Bosnia. However, it represents them equally rather than proportionally and it does not represent any Bosnian who does not identify with one of the three constituent people. It is worth noting further that both Renner and Bauer argued for a democratic organisation of the government: 'National self government is only possible, if they [the national minorities] are administered by democratic representatives and not by a central bureaucracy.'⁶⁶ Renner argued for a three-level form of state organisation (local, sub-unit and central), with all levels fulfilling certain tasks, whereby the municipalities have the special task of granting cultural autonomy, and the nationalities of the country would be represented at all levels of government. This proposal can be described as the first suggestion for the organisation of a multinational federal state.⁶⁷

As was already mentioned, Vladimir Lenin and Josef Stalin, together with other important Marxists from Germany, Russia and other European countries, opposed the idea of non-territorial cultural autonomy. As Lenin argued,

It is no accident, that in Russia this idea of Cultural National Autonomy was accepted only by all the Jewish bourgeois parties, then (in 1907) by the conference of the petty bourgeois Left Narodnik parties of different nationalities, and lastly by the petty bourgeois opportunist elements of the near Marxist groups, ie the Bundists and the liquidators.⁶⁸

Josef Stalin further argued in his important essay *Marxism and the National Question*:

Springer [another author of the Austro-Marxist idea of non-territorial cultural autonomy S.K.] and Bauer's cultural-national autonomy is a subtle form of nationalism.

Furthermore:

Bauer [...] substitutes for the socialist principle of the class struggle the bourgeois "principle of nationality."⁶⁹

65 Ibid. p. 105.

66 Ibid. p. 104.

67 Ibid. p. 105.

68 Lenin, Vladimir I.: *Complete Collected Works*, 1968, p. 503.

69 Stalin, Josef: 'Marxism and the National Question' first published in: *Prosveshcheniye*, No. 3–5, March–May 1913, here used: www.marxists.org/reference/

This highlights that Stalin and Lenin were not only aware of Bauer's and Renner's ideas, but that they also fundamentally opposed any form of non-territorial autonomy. It demonstrates the variety of ideas and their contrasting nature that form the Socialist Tradition of Federalism.

Stalin's and Lenin's criticism of Bauer's and Renner's work can be summarised in three points. First, the Russian Marxists argue that the universal approach of Bauer's and Renner's theory does not apply to the Russian Empire. As Stalin puts it, 'the immediate tasks facing Russia and Austria are entirely different and consequently dictate different methods of solving the national question.' Stalin argued that Russia should focus on the Agrarian Question, and that the nationalities issue is particular to Austria-Hungary.⁷⁰ Second, the Russian Marxists claim that Bauer and Renner took their definitions and their policy proposals from the bourgeoisie and, as Stalin argued above, Renner and Bauer supported the fight for the separation and recognition of nations instead of the fight for the unity of the proletariat. Finally, Stalin and Lenin criticise Bauer and Renner for their definition of a nation. Whilst Renner and Bauer focus on the cultural aspects of the nation, Stalin defines it as follow:

A nation is a historically constituted, stable community of people, formed on the basis of a common language, territory, economic life and psychological make-up manifested in a common culture.⁷¹

Two core elements of Stalin's definition of the nation distinguish him from Bauer and Renner. First, Stalin highlights the combination of a nation as a people bound to a common territory and, second, the importance of a shared economic life. As Stalin argued, the territory is the core condition for the common economic life but also for the common language and the common culture.⁷² Hence, for Stalin and Lenin a solution to the national question has to be grounded on territorial principles.

Centred on different definitions of the nation, the Russian Marxists also develop different concepts of the self-determination of nations. As Lenin puts it, 'no one can seriously question [...] the fact that self-determination implies only the right to secede or that the formation of independent national states is the tendency in all bourgeois democratic revolutions.'⁷³ In fact, Stalin and Lenin support the idea of external self-determination of nations, namely secession. However, they analyse

archive/stalin/works/1913/03.htm (last accessed 15 January 2012) pp. 26–7.

70 Ibid. p. 19.

71 Ibid. pp. 5–6.

72 Ibid. pp. 6–7.

73 Lenin, Vladimir I.: 'The Right of Nations to Self Determination' originally published in: *Collected Works*, 4th English Edition, Progress Publishers: Moscow 1964, here used: <http://www.marxists.org/archive/lenin/works/1914/self-det/index.htm> (accessed 15th February 2013).

secession in the eyes of the development of the working class and their argument is that whenever secession supports the development of the proletariat, then it should be supported by the Marxists.⁷⁴ Stalin put it more trenchantly by describing the case of the Caucasus:

The national question in the Caucasus can be solved only by drawing the belated nations and nationalities into the common stream of a higher culture. It is the only progressive solution and the only solution acceptable for Social-Democracy. Regional autonomy in the Caucasus is acceptable because it would draw the belated nations into the common cultural development; it would help them to cast off the shell of small nation insularity; it would impel them forward and facilitate access to the benefits of higher culture. Cultural national autonomy, however, acts in a diametrically opposite direction, because it shuts up nations within their old shells, bind them to the lower stages of cultural developments and prevents them from rising to higher stages of culture.⁷⁵

Stalin and Lenin's definition of self-determination can be based on three core elements:

1. Self-determination has to be based on a territorial principle so that autonomy, federation and independence are the core choices for the territorial solution of self-determination.
2. The cultural development of a nation defines which of the territorial solutions is to be chosen. If a nation is culturally more highly developed than the multinational state it is part of, secession will support further cultural development, however, if the nation (or national minority) is culturally "under-developed" in comparison to the dominant nation within the multinational state, then autonomy or some form of federalism should be applied.
3. All solutions to the national question have to be seen in the light of an awakening of the proletariat's consciousness. Whilst Stalin and Lenin support secession in some cases, they still argue for the unity of the working class.

It is important to recognise the problematic terms of culturally "developed" and "under-developed" nations. Going one step further and looking at the application of federalism in the socialist states of Czechoslovakia⁷⁶ and the Soviet Union, it can be seen that the argument of cultural development has been used to force states to stay in these unions. However, when looking at the socialist Yugoslav federation,

⁷⁴ Ibid. p. 19–20.

⁷⁵ Stalin, Josef: 'Marxism and the National Question', 1913, p. 40.

⁷⁶ Although Czechoslovakia was a socialist federation as well, this part will focus on the analysis of the federal practice in the Soviet Union and Yugoslavia.

it can be argued that although it applied the territorial principle of Stalin and Lenin, the internal policies of national diversity management within the federal system were much more oriented towards creating a ‘balance of power system.’⁷⁷ What distinguished the Yugoslav experience in particular from the developments in the Soviet Union, was the much higher level of decentralisation in Yugoslavia after 1963, as well as a much clearer focus on national power-sharing between the representatives of the republics within the Yugoslav federation.

It can be argued that “the fathers” of the first constitution of the Union of Socialist Soviet Republics (1924) had one major problem. They had to form a socialist state, based on the Marxist principle of democratic centralism, in an atmosphere of minority nationalism in Russia, Eastern Europe, and central Asia.⁷⁸ Paul Gronski assessed the first Soviet constitution by arguing: ‘In terms of governmental structure, they [the fathers of the first Soviet constitution S.K.] attempted to fit together these two incompatible political ideas: the practice of absolutism with the idea of federalism.’⁷⁹ Both, Gronski and Vernon Aspaturian identify the administrative centralism of the Soviet Union and the absolute practices of the Politburo as key features of the Soviet model of federalism.⁸⁰ Indeed, the Soviet Union used federalism not as a goal and a value in itself, but to transform a multi-ethnic and multinational empire into a pure socialist society, and thereby legitimise its government of democratic centralism.⁸¹ The dominance of the Communist Party, the absolute power centralisation in the Executive Committee of the Communist Party and the centralisation of nearly all policy areas through a highly centralised administrative bureaucracy, are key features of the Soviet Union’s application of federalism. Federalism was used as an instrument to apply the ideas of equality and self-determination of the nations in theory, whilst the reality was nothing else but the dominance of the Communist Party. However, Lenin and Stalin’s definition of self-determination influenced the Soviet Union so far as it allowed a right of secession for its republics.⁸² The right of secession was constitutionally guaranteed. However, as Aspaturian argues ‘the so called right of secession was a myth; its only purpose was to serve as an ideological bromide to lull the various republics into believing that the Union was “voluntary amalgamation.” Any attempt to assert this right would be regarded *ipso facto* an

77 Ramet, Sabrina P.: *Nationalism and Federalism in Yugoslavia (1962–1991)*, 2nd edition, Indiana University Press: Bloomington and Indianapolis 1992, p. 19.

78 Aspaturian, Vernon V.: ‘The Theory and Practice of Soviet Federalism’ in: *The Journal of Politics*, Vol. 12, No. 1, February 1950, pp. 20–51, here pp. 21–5.

79 Gronski, Paul P.: ‘The Soviet System of Federalism’ in: *The America Political Science Review*, Vol. 23, No. 1, February 1929, pp. 159–67, here p. 159.

80 Ibid. pp. 159–60; Aspaturian, Vernon V.: ‘The Theory and Practice of Soviet Federalism’, 1950, pp. 29–39.

81 Aspaturian, Vernon V.: ‘The Theory and Practice of Soviet Federalism’, 1950 p. 25.

82 Later only for the border republics but as we can imagine if one of the border republics would have seceded, new border republics would have been created.

act of counter-revolution.’⁸³ Finally, it is worth mentioning that Soviet federalism was also built on the power of the Red Army. Several members of the Union were forced militarily into the Union and the threat of military intervention was one of the enforcing mechanisms of Soviet unity especially after the Second World War.

The Yugoslav socialists started from the same point as Lenin and Stalin. They wanted to build a socialist state in a multinational country, whose people went to war with each other during the Second World War and committed horrible crimes against each other.⁸⁴ However, the story of the socialist partisans’ victory over the German and Italian occupiers, and the idea of “unity and brotherhood” were very important for the moral foundation of the Yugoslav federation.⁸⁵ Whilst the 1946 constitution of Yugoslavia was characterised by a high degree of centralisation, the dominance of the federal government in Belgrade and the Communist Party, and modelled after its Soviet predecessor, the 1974 constitution described a completely different federation. All constitutions after 1946 (1953, 1963) led the way towards decentralisation of decision-making and strengthening of the republics in the Federation. Consequently, Yugoslavia after 1974 can be described as a loose federation with far reaching autonomy for its republics and autonomous provinces, and the federal government was restricted to foreign and defence policy, currency policy, and economic co-ordination. Furthermore, national representation within the federal institutions was strengthened and a complicated system of veto rights was installed.⁸⁶ Whilst the Yugoslav experience of federalism was also characterised by the dominance of the Communist Party,⁸⁷ national conflict-management features in the constitution were much more important, however, at the same time those mechanisms were one of the reasons for the failure of federalism in Yugoslavia after Tito’s death.⁸⁸ Furthermore, the role of the head of state and head of the League of Communists, Josip Broz (Tito), was a key factor for the stability of Yugoslavia. He was respected in all republics, seen as a true representation of the multinational character of the state and as a true Yugoslav.⁸⁹ Finally, in

83 Ibid. p. 27. (Italics in original version)

84 Donia, Robert J and Fine, John V. A. Jr.: *Bosnia and Hercegovina: A Tradition Betrayed*, Hurst and Company: London 1994 pp. 138–9.

85 Ibid. pp. 146–9.

86 For a good overview of the 1974 constitution and its consequences see: Ramet, Sabrina P.: *Nationalism and Federalism in Yugoslavia*, 1992, pp. 61–80.

87 In 1952 the Communist Party of Yugoslavia changed its name to League of Communists of Yugoslavia. This was a first step that represented the beginning decentralisation of the state. Consequently, republican party organisations became more and more important.

88 Vejvoda, Ivan: ‘Yugoslavia 1945–1991 – from Decentralisation without Democracy to Dissolution’, in: Dyker, David A and Vejvoda, Ivan (eds): *Yugoslavia and After*, Longman: London and New York 1996, p. 17.

89 In fact, Tito’s family background played an important role in creating this picture. His father was Croat and his mother was Slovene. The Serb population of Yugoslavia

contrast to the Soviet Union, the Yugoslav federation recognised and responded to necessary changes. By granting Kosovo the status of an autonomous province in 1974, the socialist elite reacted to important issues in the same way as they had in 1968 when they allowed Bosnian Muslims to identify as an ethnic group.

However, both federations, whilst starting from similar positions and then developing very differently, also ended in a similar way, namely through the break-up of the state. Both socialist states collapsed under the pressure of economic downturn, political reforms, democratic movements and tensions between their minority nations.⁹⁰ Whilst the Soviet Union managed this break-up relatively peacefully, Yugoslavia saw the most violent conflict in Europe since the end of the Second World War.

When trying to summarise the features and characteristics of the Socialist Tradition of Federalism, what should be highlighted? First, different debates and theories are included in the Socialist Tradition of Federalism, at least two major theories about the national question and questions of self-determination and several theories about its practical application. Different ideas and their practical application form a composite unity, which shall be called the Socialist Tradition of Federalism. Second, the Socialist Tradition of Federalism questions the important relationship of democracy and federalism. Whilst the European and the Anglo-American Traditions take this connection for granted, Lenin and Stalin talked about democracy only in the belief that the Socialist Party would have the majority, in line with Marx' definition of democracy. Renner and Bauer accepted some form of democracy but, again, they claimed that their proposal and their form of non-territorial cultural autonomy was a step towards a world community and socialist society.⁹¹ The universalistic tradition, combined with the historical determination of Marxism, and the focus on class conflicts rather than on the national question, can be described as an important feature of the Tradition. Third, the discussions between Stalin/Lenin and Renner/Bauer have had, and continue to have, a great impact on the discussions about autonomy, federalism and minority rights in Eastern Europe,⁹² Russia⁹³ and also on the

respected him also because he chose Belgrade to become the capital of the new Federal People's Republic of Yugoslavia.

90 For further reference to the reasons of failed federalism in socialist states, see: Seroka, Jim: 'The Demise of Socialist Federations: Developmental Effects and Institutional Flaws of the Soviet Union, Yugoslavia and Czechoslovakia' in: Heinemann-Grüder, Andreas (ed.): *Federalism Doomed? European Federalism between Integration and Separation*, Berghahn Books: New York and Oxford 2001, pp. 103–15.

91 Renner, Karl: *Die Nation: Mythos und Wirklichkeit*, 1964, pp. 124–5.

92 Dorff, Robert: 'Federalism in Eastern Europe – Part of the Solution or Part of the Problem?' in: *Publius: The Journal of Federalism*, Vol. 24, No. 2, 1994, pp. 99–114.

93 Bowring, Bill: 'Austro-Marxism's Last Laugh?: The Struggle for Recognition of National Cultural Autonomy for Rossians and Russians' in: *Europe-Asia Studies*, Vol. 54, No. 2, 2002, pp. 229–50.

debates about international agreements on minority protection.⁹⁴ Finally, the debates between Stalin/Lenin and Renner/Bauer resulted in an academic debate about the best form of recognition for national minorities, the multinational character of a state and the understanding of the nation in historical and Marxist concepts. The Socialist Tradition of Federalism summarises a concept which attempts to address the existence of multiple nations within a state, within a socialist political order. Consequently, questions of self-determination, internal and external autonomy, federalism, power-sharing, centralisation and decentralisation, are overshadowed by the focus on the implementation of a socialist political and economic order. The application of federalism in the Soviet Union and in Yugoslavia, therefore, took place outside of a democratic framework since it was undermined by one-party rule. The fundamental element of “self-rule” and “shared-rule” was, therefore, not implemented since the leaders of the sub-units and the leaders of central level did not have opposed interests; after all, they were united by their belief in the socialist ideology. However, there have been different implications of the federal organisation for the Soviet Union and for Yugoslavia. In the latter, due to decentralisation, the republican elites identified with their republic first and allowed for a limited form of federal discourse, whilst in the former, the whole discussion on federalism has been overshadowed by the power of the Central Committee in Moscow.

Nationalism, the Nation-State and Multinational States

As the phenomenon of nationalism has been the subject of a vast amount of literature, this part shall focus on some of the core authors in order to develop a working definition of the term. After all, democracy and federalism in Bosnia and Herzegovina cannot be understood without further looking at the importance of nationalism.

Nationalism and the Nation-State in the Western Political Tradition

As has been argued for federalism, nationalism is an ideology that unites a certain group of people and, in contrast to federalism, consequently excludes others. The ideological concept of nationalism as an ideology of a group must, therefore, result in a definition of this group, namely the nation. The most appropriate definition of a nation has been given by Benedict Anderson, who refers to the term as:

94 For example, see *Framework Convention for the Protection of National Minorities* of the Council of Europe, here especially the articles 4/2; 5/1; 9/1; 10/1; 12; 13/1; 15, available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/157.htm> (accessed 15 February 2013).

[I]t is an imagined political community and imagined as both inherently limited and sovereign.⁹⁵

Anderson goes on to explain that a nation is imagined in the way that most of the members who identify each other as part of the same nation do not know each other and will never get to know each other. Nevertheless, they feel some form of “belongingness” that connects them. He furthermore explains that the imagined limitation of a nation describes the separation of one nation from other nations. The link to modern nationalism is created by focusing on the homogeneity of nation and territory, i.e. the nation-state. As Gellner has argued in this context, it is ‘Nationalism which engenders nations’⁹⁶ and the focus on territory is the main connection between both concepts.

He defines nationalism consequently as ‘primarily [...] political principle, which holds that the political and the national unit should be congruent.’ He continues by outlining that ‘nationalism is a theory of political legitimacy, which requires that ethnic boundaries should not cut across political ones.’⁹⁷ What creates ethnic boundaries in this context is culture, which he defines as ‘a system of ideas and signs and associations and ways of behaving and communicating.’⁹⁸ It is the development of distinct cultures that leads to the development of nationalism in the industrial age: The idea of political and cultural convergence then leads to the development of nations who use the ideology of nationalism to claim a distinct territory as their homeland, their *cultural* motherland.

However, Gellner did not identify those common features that make a common culture. In other words, can a nation claim to be a nation because it shares the same culture? The historian Eric Hobsbawm, amongst others, identified the importance of religion, language and an invented history and tradition as key elements of a nation.⁹⁹ Anthony Smith has further developed those characteristics by examining the different concepts of a nation in a Western ‘civic’ definition of nationalism and an ethnic non-Western definition of nationalism.¹⁰⁰ For Smith, nationalism is generally defined as a form of culture, political ideology and a form of a social movement.¹⁰¹ In short, Smith argues that the core element of civic nationalism is that ‘people and territory belong together.’¹⁰² In contrast to the civic form of

95 Anderson, Benedict: *Imagined Communities (Reflections on the Origin and Spread of Nationalism)*, Verso: London and New York 1983, p. 15.

96 Gellner, Ernest: *Nations and Nationalism*, Cornell University Press: Ithaca and New York 1983, p. 55.

97 Ibid. p. 1.

98 Ibid. p. 7.

99 Hobsbawm, Eric: *Nations and Nationalism since 1780*, Cambridge University Press: London 1992, pp. 80–101.

100 Smith, Anthony D.: *National Identity*, University of Nevada Press: Las Vegas and Reno 1991, pp. 6–15.

101 Ibid. p. 71.

102 Ibid. p. 9.

nationalism, ethnic nationalism refers to the importance of birth and native culture and ‘a community of common descent.’¹⁰³ Much more than in civic nationalism, myth, history and linguistic ties are important in the creation of a common bond.¹⁰⁴ In fact, historical myths, used by charismatic leaders (often academics), are created from within society and not from an overarching bureaucracy, as is the case in civic nationalism. Stefan Berger describes this contrast by arguing that civic nationalism is promoted by leaders who were ‘close to the state and far from the nation (*Staatsnähe und Nationsferne*)’ and in ethnic nationalisms, leaders were ‘close to the nation and far from the state (*Nationsnähe und Staatsferne*).’¹⁰⁵ He, nevertheless, points out that every form of nationalism has elements of civic and ethnic nationalism.¹⁰⁶

Having developed a core definition of nationalism and the nation, we shall again combine both terms in Gellner’s sense and look at the evolution of the nation-state. As mentioned above, the nation-state refers to the ideological demand of nationalism, which is the similarity of a nation and a state. The nation-state in this sense refers to the combination of territorial and cultural forms of identification.¹⁰⁷ In the language of nationalism, self-determination of a certain group that identifies with one particular culture (a nation) can only be realised through territorial self-determination on the homeland of the nation (the nation-state).

The Multinational State

As we have demonstrated above, nationalism always refers to the relationship of the nationalist ideology, the nation and the state. Multinationalism does, in this matter, also refer to the relationship of several different nations to the one state they are living in. In short, the descriptive term “multinational state” used in this book shall refer to the existence of three or more distinct national identities within the borders of one state. Whilst the definition of multinationality as a number of national identities within the borders of one state is a sociological concept, its consequences and implications are of a political nature.

The multinational state has to be distinguished from a multicultural state, as in the latter different aspects of culture between different groups of the state might vary, such as language, and religion, but the different groups within a multicultural state do not identify themselves as separate nations and have a common bond to

103 Ibid. p. 12.

104 Ibid. p. 12.

105 Berger, Stefan: ‘Narrating the Nation: Die Macht der Vergangenheit’ in: *Aus Politik und Zeitgeschichte*, No. 1 and 2, 2008, December 2007, pp. 7–13, here p. 8.

106 Ibid. p. 13.

107 Penrose, Jane: ‘Nations, States and Homelands: Territory and Territoriality in Nationalist Thought’, in: *Nations and Nationalism*, Vol. 8, No. 3, 2002, 277–97, here p. 284.

the joint nation.¹⁰⁸ Switzerland in this respect is a multicultural state, but not a multinational one, since all Swiss language groups identify themselves as members of the Swiss nation and the differentiation between the groups follows through the addition of an additional language feature such as *German-speaking Swiss*.¹⁰⁹ Multicultural states become multinational when the different cultural groups aspire for independent statehood. As a result of this aspiration, we can witness the establishment of different national identities within a state. Kenneth McRoberts examined the nature of the Canadian state in terms of multinationality and came to the conclusion that different qualities of a state and a state's behaviour, as well as different qualities of the nations within the state and their behaviour, have to be taken into account before formulating the final conclusion about the multinational character of a state.¹¹⁰ He identifies first the importance of a substantial amount of the population of one state identifying with different nations as a key precondition.¹¹¹ Indeed, neither the Sorbs, nor the Danish minority make Germany a multinational state. Whilst in Bosnia, the Bosnian Croats constitute around 15.4 per cent of the population, the Bosnian Muslims (Bosniaks) comprise around 48.3 per cent of the population and the Bosnian Serbs make up about 34 per cent of the population, therefore, according to this criterion Bosnia clearly identifies in this term as a multinational state, although these numbers are at best guesses since there has been no census in Bosnia since 1991.¹¹² Second, McRoberts identifies the coherence of the internal nations as a key precondition of multinationality.¹¹³ In Bosnia, there is a strong coherence between the three national identities and there is also a strong separation from the other identities. Ethnicity, religion, culture, history and, to a much lesser extent, language, are the key factors behind this separation. Finally, McRoberts refers to the constitutional practices of a state and concludes that 'within federal political discourse [in Canada S.K.] the only nation is the *Canadian* nation and that is the nation of the Canadian *nation-state*.'¹¹⁴ The

108 Compare for the notion of 'multiculturalism' also the comments of Charles Taylor: Taylor, Charles: *Reconciling the Solitudes: Essays on Canadian Federalism and Nationalism*, McGill-Queen University Press: Montreal 1993, p. 183.

109 Compare for the mononational character of Switzerland among others, Dardanelli, Paolo: 'Multi-national Switzerland? A Comment on Ipperciel' in: *Swiss Political Science Review*, Vol. 14, No. 3, 2008 pp. 551–77.

110 McRoberts, Kenneth: 'Canada and the Multinational State' in: *Canadian Journal of Political Science*, Vol. 34, No. 4, December 2001, pp. 683–713.

111 *Ibid.* p. 688.

112 These numbers are taken from the homepage of the Bosnian Presidency and refer to the year 2003. See: www.predsjednistvobih.ba/O-BIH/?cid=8143,1,1 (accessed 15 January 2012). However, these numbers have to be treated with caution, since no census has been taken place in Bosnia since 1991. Additionally, it should not be forgotten that the category of "Others" constitutes about 2–5 per cent of the population. Those are mainly Roma, Jews, Montenegrins and those who identify themselves still as "Yugoslavs".

113 McRoberts, Kenneth: 'Canada and the Multinational State', 2001, p. 693.

114 *Ibid.* p. 694. (italics in original version).

Bosnian constitutional practice is characterised in part by national separation. In fact, the Bosnian constitution of 1995 states in the preamble ‘Bosniacs, Croats, and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina hereby determine that the Constitution of Bosnia and Herzegovina is as follows [...]’¹¹⁵ Again, Bosnia and Herzegovina fulfils this criterion of multinationality.

Bogdan Denitch has argued that ethnic nationalism was the key feature of the destruction of Yugoslavia and the key instrument in the creation of new *nation*-states.¹¹⁶ Nationalism in South-Eastern Europe developed about 50 years after it first led to violent revolts in Western Europe. The demands of the French Revolution and the discussions on a German *Kultur*nation equally impacted on the area. Furthermore, it is important to highlight that nationalism in South-Eastern Europe developed in the form of independence movements and unification demands. The area that would later become Yugoslavia was ruled by Austria-Hungry (Slovenia and Croatia, as well as Bosnia after 1878) and the Ottoman Empire. Nationalism was a way to express a nation’s desire to be independent and free. The Serbian politician Svetozar Miletić wrote in 1869 about Serbian nationalism:

Nationality and freedom [...] is one and the same, nationality is the inherently embodied freedom of each nation.¹¹⁷

Different nationalisms developed at different times in South-Eastern Europe. Serbian and Croatian nationalism developed in the second half of the 19th century whilst, for example, the nationalism of the Bosniaks is a product of the second half of the 20th century. Religious beliefs played a key role in the creation of different nationalities, since the Ottomans organised society through the millet system, which categorised people by their religious beliefs and also guaranteed some degree of religious autonomy.¹¹⁸

Today, nationalism continues to play a major role in the region. Questions of minority recognition and inclusion, the continued political conflict between Albanians and Macedonians in Macedonia, the Serbia-Kosovo relationship and the conflict between different parties in Montenegro can all be explained by focusing on rival nationalisms and contesting concepts of nationhood and statehood.¹¹⁹

115 Bosnia and Herzegovina, constitution of 8 September 1995, Preamble.

116 Denitch, Bogdan: *Ethnic Nationalism. The Tragic Death of Yugoslavia*, 4th edition, University of Minnesota Press: Minneapolis 1997.

117 Miletić, Svetozar: ‘Über Nationalität und Freiheit’ in: Alter, Peter (ed.): *Nationalismus*, Piper: Munich and Zurich, 1994, pp. 100–1, here p. 101.

118 Singleton, Fred: *A Short History of Yugoslav People*, Cambridge University Press: Cambridge 1985, p. 36.

119 On this, see: Glenny, Misha: *The Balkans 1804–2012 (Nationalism, War and the Great Powers)*, Granta: London 2012.

Structure of the Book

The book starts with a theoretical chapter on different concepts of multinational federalism. As will be shown, there is no clear definition of the term multinational federalism, and the term remains both, descriptive and contested.

Chapter 3 discusses the federal tradition of Bosnia and Herzegovina. As will be shown, although Bosnia has neither been an independent nor a federal country before the 1990s, there are elements of territorial decentralisation and ethnic/national power-sharing within Bosnian history that can be understood as a history of federal-like arrangements. Furthermore, it will be demonstrated that the idea of a federal state organisation is not an indigenous Bosnian idea, but has been developed by international diplomats as a possible solution to the war in the early 1990s.

Chapter 4 will analyse the structures of the Bosnian state that was created mainly at the Dayton Peace Conference in November 1995. Special attention is given to the power-sharing arrangements as well as the centre-periphery relations and their changes since 1995. It will be shown that major changes within the federal balance in Bosnia were not based on compromise amongst the centre and the entities or amongst the three national groups, but were imposed on them by international actors, mainly the High Representative. Therefore, Bosnia and Herzegovina after 1995 is qualified as an internationally administered federation.

Chapter 5 discusses federalism in post-Dayton Bosnia and Herzegovina. It is argued that Dayton imposed federalism on Bosnia and Herzegovina as a peace-building solution and as a tool to manage the national diversity of the country. However, the analysis of key policy areas and their evolution over recent years will demonstrate that, whilst changes have been mainly imposed, there has also been an increasing engagement by the Bosnian nations in the debates about the future of the Bosnian state and its federal nature. The core weakness of post-Dayton Bosnia is that there is no consensus on the Bosnian state and that all Bosnian peoples are unhappy with Dayton Bosnia but for different reasons. Whilst Dayton was supposed to be an interim constitution in the aftermath of the war, it has now influenced policy in Bosnia for many years. Therefore, the current debates about constitutional reform and federalism should be seen as the chance for a real “Bosnian federal bargaining” that will result in either a completely new constitution or a major revision of the existing constitution.

The Conclusion will summarise the concepts of “internationally administered federation” and “imposed federalism” in the Bosnian context. It will also highlight where future research might be fruitful and, most importantly, the Conclusion will discuss federalism and federation in Bosnia in comparative perspective. By comparing the Bosnian experiences of federalism and federation with similar debates in Iraq, Cyprus, Russia and Ethiopia, it is highlighted that we can indeed talk about the evolution of new models of federalism and federation.

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Chapter 2

Theories of Multinational Federalism

In this chapter, we will look first at the relationship between democracy and multinationality. This section will introduce the concepts of *Liberal Nationalism* and *Consociationalism* as two ways of addressing the multinational character of a state within a democratic framework. The second section will look at the perspective of federalism as an instrument to manage different nations within the borders of a single state. Multinational federalism is often seen as an appropriate concept, so the advantages and problems of this conception need to be discussed in more detail. To do so, this chapter will discuss different perspectives on multinational federalism. Finally, the relationship between democracy and nationalism within a multinational federation shall be examined. The chapter will end with the discussion of three core problems of multinational federations, namely citizenship, secession and asymmetry.

Democracy in Multinational States

If democracy can be described as “rule by the people”, which in the age of representative democracy means “rule by the representatives of the majority of the people,” it can be argued that this concept clashes with the basis of a multinational state as consisting of multiple *demoi*. As the alternatives to “multinational democracy” are assimilation, discrimination, population transfer, ethnic cleansing, and physical extinction,¹ the accommodation of national diversity within democratic structures is central to the discussion of multinational federalism in Bosnia.

About the Relationship of Democracy and Nationalism

An examination of democratic ways to accommodate national diversity within a state has to start with a discussion on the relationship of democracy and nationalism. A first analysis of both terms might come to the conclusion that democracy and nationalism are completely contradictory, since democracy stands for individual human and fundamental rights, the rule of law and the separation of powers, equality and accountability of democratic representatives;

¹ For a comprehensive list of State policies towards minorities, see: Heraclides, Alexis: ‘Ethnicity, Secessionist Conflict and the International Society: Towards Normative Paradigm Shift’ in: *Nations and Nationalism*, Vol. 3, No. 4, 1997, pp. 493–520, here: pp. 495–8.

whilst nationalism, on the other side, represents national homogeneity, inclusion and exclusion and the importance of culture and ethnicity. Whilst liberal democracy focuses upon individuals and their rights, nationalism focuses upon the group comprising the nation.

This contrast can be best demonstrated in the empirical reality of France, where the majority of people in Corsica demand to be recognised as a nation within France, whilst the French constitution does not recognise any other nation besides the “French nation.” It does give, however, every citizen of Corsica equal rights compared to all other citizens of France.² The basic conflict lines between democracy and nationalism, therefore, can be summarised in two points. On the one hand, both ideas clash in their perception of the dominant actors. Whilst democracy focuses on individual rights, nationalism points out the importance of the nation as a group. Second, nationalism and democracy have contradicting ideas about the inclusion of opposition groups. Whilst nationalism distinguishes between nations and demands the homogeneity of territory and nation, democracy on the other hand, distinguishes between different parties, different candidates and different coalitions. Consequently, whilst liberal democracies exclude opposition parties from government, this is usually limited until the next election when the opposition has a chance to become part of the government. Furthermore, in consociational democracies, grand coalitions ensure the participation of all major segments of society in government and consequently minimise (but do not abolish) exclusion. In contrast, nationalism has a permanent exclusive nature, in particular in the form of ethnic nationalism. Those who do not have the same descent, will not be part of the group and ultimately have no chance of becoming part of the nation. On the other side, this can also lead to circumstances where minority nations, as such, are not recognised by themselves but as part of another nation. Bosnian Serbs and Bosnian Croats claimed, during the Second World War and also during the conflict in the 1990s, that Bosnian Muslims were “Islamised Serbs” or “Islamised Croats” respectively. The nation, as a consequence, answers the question of who “the people” are by defining them through a common culture, language, religion, and history or by its ethnic origins.

As a result of these contradictions, several authors have claimed that democracy works best when it does not clash with different nationalisms. Most notably, Robert Dahl has argued that the best precondition for a democracy to develop sufficiently is homogeneity of the state.³ Similarly, Adrian Karatnycky argued that ‘democracy has been significantly more successful in mono-ethnic societies than in ethnically

2 Töpperwien, Nicole: *Nation-state and Normative Diversity*, Helbing & Lichtenhahn: Basel, Geneva and Munich 2001, p. 204. However, as a “territorial collectivity” Corsica does enjoy some more autonomy than the other regions in France.

3 Dahl, Robert: *Polyarchy: Participation and Opposition*, Yale University Press: New Haven 1971. The same was argued by Lijphart later: Lijphart, Arend: *Democracy in Plural Societies*, Yale University Press: New Haven 1977.

divided and multiethnic societies.⁴ This is because the potential for deep-rooted conflict, ie, conflict between different segments of a society, is lower when the vast majority of the country identifies clearly with one nation and sees the polity they live in as their nation-state. Therefore, the prospect of consensus building is better and the potential for inter-group violence is lower. Furthermore, secessionist movements are more unlikely and political decisions are easier to accept when those who made them are part of the same national group.⁵

However, Steven Firsh and Robin Brooks have challenged the assumption that mononational states are more likely to become a stable democracy than multinational states.⁶ They come to two major conclusions; firstly that '[g]reater ethnic homogeneity is *not* associated with more open political regimes' and secondly, that 'the degree of diversity is not shown to influence democracy's prospects.'⁷ Instead, they argue that it could not be demonstrated that multinational states have necessarily a worse political and economic performance.⁸

For multinational states this raises the following question: How can a democratic political system accommodate national diversity within a multinational state?

Liberal Nationalism

Liberal Nationalism has become the core theory to address the issue of diversity and liberal democracy over the last decade. Although Liberal Nationalism itself does not offer an inclusive solution to the problem of diversity (multinationality) and liberal democracy, it does highlight core problems and offers some important remarks.

Yael Tamir summarises Liberal Nationalism as 'predicated on the idea that all nations should enjoy equal rights' and deriving 'its universal structure from the theory of individual rights found at its core.' She further argues that '[i]f national rights rest on the value that individuals attach to their membership in a nation, then all nations are entitled to equal respect.'⁹ The connection between liberal and national values, their common focus on cultural affiliations and personal autonomy, as well as their shared commitment to social justice, are the foundation of Liberal Nationalism.¹⁰ In short, Liberal Nationalism is about minority rights.¹¹ Whilst

4 Karatnycky, Adrian: 'The 2001 Freedom House Survey: Muslim Countries and the Democracy Gap' in: *Journal of Democracy*, Vol. 13, No. 1, January 2002, pp. 99–112, here p. 107.

5 Firsh, Steven and Brooks, Robin: 'Does Diversity Hurt Democracy?' in: *Journal of Democracy*, Vol. 15, No. 1, January 2004, pp. 154–66.

6 Ibid.

7 Ibid. p. 160.

8 Ibid. pp. 162–4.

9 Tamir, Yael: *Liberal Nationalism*, Princeton University Press: Princeton 1993, p. 9.

10 Ibid. p. 6.

11 David Miller refers to the "nationality principle." See: Miller, David: 'Nationality in Divided Societies', in: Gagnon, Alain and Tully, James (eds): *Multinational Democracies*,

the process of nation-building in Western Europe and other parts of the world has been dominated by negative actions towards minorities, Liberal Nationalists argue that nation-building and the nation-state require a new definition in the light of the existence of minority nations within the borders of a nation-state.¹² The core demand of Liberal Nationalists is, therefore, that the state ‘protects[s] and promotes[s] the national cultures and languages of the nations within its borders.’¹³

Will Kymlicka¹⁴ describes nine core elements of Liberal Nationalism:

1. The promotion of a common national identity within the multi-nation state.
2. The existence of a more expansive private sphere and a more restrictive public sphere to allow cultural differences.
3. The guaranteed freedom of political and cultural expression.
4. An open concept of national community.
5. A thin concept of national identity.
6. The nation itself is not the supreme value.
7. The state is cosmopolitan, open and respectful towards diversity.
8. The national identity is inclusive instead of exclusive; common values dominate the identification instead of a common nationality.
9. Minority nations are publicly recognised.

The arguments of Liberal Nationalism rest on the assumption that the promotion of diversity itself becomes a core value. Usually, authors refer to two core reasons why minority nations should be protected. These tend to be (1) the protection of minority nations and recognised national minorities is part of the protection of individuals and their identities through group affiliation and (2) the protection of minority nations and national minorities allows greater universal justice, both within the borders of the multinational state and as a universal principle.¹⁵

If the promotion and the acceptance of national diversity within a state is a core value in itself, and if, therefore, the inclusion and respect of national diversity becomes a key state goal, the question that follows is: How can such an inclusion

Cambridge University Press, Cambridge 2001, pp. 299–318. When referring to the rights of minorities, we mean the rights of nations within a state, often these are minority nations. However, in Bosnia we cannot speak of minority nations as such, as constitutionally the three main Bosnian nations are recognised as “constituent peoples” whilst there are also a number of recognised national minorities in Bosnia. These national minorities are, however, marginalised in the political system, as Chapter 4 will demonstrate.

12 Kymlicka, Will: ‘Nation-building and Minority Rights: Comparing West and East’ in: *Journal of Ethnic and Migration Studies*, Vol. 26, No. 2, April 2000, pp. 183–212, here p. 187.

13 Kymlicka, Will: *Politics in the Vernacular (Nationalism, Multiculturalism and Citizenship)*, Oxford University Press: Oxford and New York 2001, p. 39.

14 Kymlicka, Will: ‘Nation-building and Minority rights’, 2000, pp. 196–9.

15 ‘Nationalism’ in: Stanford Encyclopedia of Philosophy, here used: Online version: <http://plato.stanford.edu/entries/nationalism> (accessed 15th February 2013).

be guaranteed? Liberal Nationalists are not fully clear about the inclusion of minorities, but Tamir and Kymlicka see cultural and territorial autonomy as the best solution to this key question.¹⁶ Federalism provides such a form of cultural and territorial autonomy and offers the additional benefit of guaranteeing the inclusion of a given minority nation in decision-making at the (federal) state level.

Consociationalism

Consociational democracy has become the second important concept of the implementation of democracy in a divided society. Whilst Liberal Nationalism is, in its nature, normative, consociationalism consists of both normative and empirical elements.¹⁷ As Arend Lijphart, the most important scholar on consociationalism, argues, '[u]nder the unfavourable circumstances of segmental cleavages,¹⁸ consociational democracy, though far from the abstract ideal, is the best kind of democracy that can realistically be expected.'¹⁹ Consociationalism is characterised by four major elements, two of them identified as of core importance, namely grand coalition and segmental autonomy, and two secondary attributes, proportionality and minority veto.²⁰ Grand Coalition refers here to a situation in which the 'political leaders of all the significant segments'²¹ of the plural society cooperate [...] to govern the country.'²² This feature already demonstrates two core problems of consociational theory.

First, Daniel Elazar argues that the focus on elite cooperation creates the necessity of a hierarchical structure of society.²³ This hierarchical structure of society then leads to questions of the accountability of the elites and their legitimacy. A second problem arising from the need for elite grand coalitions is that it discriminates against all those segments of society that might argue for an end of segmental division. Thus, inclusive forces addressing the society as a whole, and not its different segments, might be marginalised whilst, on the other side, extremists addressing only the selected segments will be strengthened. Whilst Lijphart admits that

16 Kymlicka, Will: 'Nation-building and minority rights', 2000, p. 189 and Tamir, Yael: *Liberal Nationalism*, 1993, p. 151.

17 Lijphart, Arend: *Democracy in Plural Societies (A Comparative Exploration)*, Yale University Press: New Haven and London 1977.

18 Lijphart refers to segmental cleavages as political divisions along religious, ideological, linguistic, regional, cultural, racial, or ethnic lines. Compare: *Ibid.* pp. 3–4.

19 *Ibid.* p. 48.

20 Lijphart, Arend: 'Non-Majoritarian Democracy: A Comparison of Federal and Consociational Theories' in: *Publius: The Journal of Federalism*, Vol. 15, No. 2, Spring 1985, pp. 3–15, here p. 4.

21 Segments are defined by Lijphart as the conflicting groups, for the purposes of this discussion we can treat segments and national groups as synonyms.

22 Lijphart, Arend: *Democracy in Plural Societies*, 1977, p. 25.

23 Elazar, Daniel: 'Federalism and Consociational Regimes', in: *Publius: The Journal of Federalism*, Vol. 15, No. 2, Spring 1985, pp. 17–34, here p. 32.

consociationalism will result in further divisions in the short term, he, nevertheless, promotes it as a long-term solution to stability in divided societies. However, as will be seen in chapters four and five, the focus on strict power-sharing mechanisms has been a key problem in Bosnia and Herzegovina, not only because it has slowed down political progress, but also because it has contributed to the continuation of a permanent conflict amongst the three national groups.

The second core feature of consociationalism refers to segmental autonomy. Lijphart defines this as a form of 'rule by the minority over itself in the area of the minority's exclusive concern.'²⁴ He refers to a decentralised decision-making process in which 'the decisionmaking is delegated to the separate segments as much as possible.'²⁵ One method of decentralising decision-making is federalism. However, it only applies to those consociational democracies which have their segmental cleavages territorialised and the different segments live isolated from each other.²⁶

The third characteristic of consociationalism is proportionality. Proportionality refers to proportional representation of the major segments of the society in the civil service, as well as proportional spending of subsidies and the proportional influence of the segments in the decision-making process.²⁷

The importance of proportionality is completed by the fourth feature of consociationalism, namely mutual veto rights. This 'represents negative minority rule' and refers to the protection of a minority nation's vital interests as a 'complete guarantee of political protection.'²⁸ It could be argued that a veto right for each segment of society will result in obstruction and deadlocks. Lijphart argues against this by pointing out that the veto is mutual, thus everyone abusing it must fear revenge; furthermore, the sheer existence of the right to veto gives security to minority nations.

In conclusion, consociational democracy offers important features to manage diversity within a democratic framework. However, the features mentioned above raise many questions. In a multinational state, consensual decision-making is of key importance. The different nations within a state need to be included in the decision-making process at central level and they need to be provided, where possible, with territorial and cultural autonomy. The ideas of shared-rule and self-rule as the basis of federalism, therefore, go hand-in-hand with consociationalism in multinational states. Whilst federalism focuses on the territorial distribution of power in a multinational state, consociational elements ensure the participation of minority nations in decisions taken at the central level. Rather than seeing them as conflicting or one supreme over the other, they are two sides of the same coin, as will be demonstrated below in the case of Bosnia and Herzegovina.

24 Lijphart, Arend: *Democracy in Plural Societies*, 1977, p. 41.

25 Lijphart, Arend: 'Non-Majoritarian Democracy', 1985, p. 4.

26 Lijphart, Arend: *Democracy in Plural Societies*, 1977, p. 42.

27 Ibid. pp. 38–9.

28 Ibid. pp. 36–7.

Federalism in Multinational States

Both Liberal Nationalism and consociational democracy offer forms of accommodating diversity within the settings of a liberal democratic state. Both theories highlight the importance of autonomy for different nations within one state in questions of identity, culture and language. Both theories demonstrate that the application of federalism would be a useful tool to guarantee autonomy while, at the same time, promoting participation in central institutions. Will Kymlicka, as a representative of the Liberal Nationalist school, argues: '[w]here national minorities form clear majorities in their historic homelands, and particularly where they have some prior history of self-government, it is not clear that there is any realistic alternative to TA [Territorial Autonomy S. K.] or multinational federalism.'²⁹

From Liberal Nationalism to Multinational Federalism

Multinational federalism refers to the intention 'to accommodate the desire of national minorities for self-government, principally by creating a province (or provinces) in which one or more minority groups can constitute a clear majority of the citizens and in which they can exercise a number of sovereign powers.'³⁰ Thus, we see the direct link between the Liberal Nationalist claim of minority self-determination and multinational federalism. Furthermore, Kymlicka has demonstrated the connection between Liberal Nationalism and multinational federalism and argues that 'over the past thirty years, Western democracies have developed a number of interesting, and [...] effective models for accommodating ethnocultural diversity. One of these models involves the use of federal [...] forms of territorial autonomy to enable self-government for national minorities and indigenous peoples.'³¹ Multinational federalism, Kymlicka argues, promotes the liberal values of peace and individual security, democracy, individual rights, economic prosperity and inter-group equality in the multinational polity.³² Even more importantly, '[d]emocratic federalism has domesticated and pacified nationalism, whilst respecting individual rights and freedom.'³³

Whilst generally positive about the potential of federalism as a tool of conflict-management in divided societies, Kymlicka argues that the introduction of federalism in multinational states was not the end of discussions about secession

29 Kymlicka, Will: 'Federalism and Secession: At Home and Abroad' in: *Canadian Journal of Law and Jurisprudence*, Vol. 13, No. 2, July 2000, pp. 207–24, here p. 217.

30 Norman, Wayne: *Negotiating Nationalism (Nation-Building, Federalism, and Secession in the Multinational State)*, Oxford University Press: New York and Oxford 2006, pp. 87–8.

31 Kymlicka, Will: 'Federalism and Secession', 2000, p. 207.

32 Ibid. pp. 212–13.

33 Ibid. p. 213.

in multinational states, but instead ‘recognizes and affirms the sense of national identity amongst the minority group’ and, therefore, ‘secession becomes more conceivable and a more salient option, even with the best-designed federal institutions.’³⁴ Therefore, it is important to point out that federalism provides neither an answer to all relevant questions in multinational states nor does its implementation lower the demand for further autonomy and secession.

*The “Canadian School” of Multinational Federalism*³⁵

The combination of Liberal Nationalist thinking and its practical application in a multinational federation was first discussed in Canada. To date, the literature about normative debates on multinational federalism demonstrates a clear dominance of authors who take Canada as their prime example to explain the relationship of democracy, federalism and nationalism.³⁶

The first contribution develops out of the arguments of the Liberal Nationalism School. Will Kymlicka argues that Canada needs ‘to find some form of asymmetrical multinational federalism.’³⁷ He refers to Canada as a ‘federation of peoples’ and the importance of ‘national recognition’ for the Québécois.³⁸ In short, starting from the argument of self-determination and self-expression of national minorities (and in other works he also includes indigenous peoples in Canada³⁹), Kymlicka highlights the importance of recognising national diversity, self-government for the different nations in Canada and asymmetrical

34 Kymlicka, Will: *Politics in the Vernacular*, 2001, p. 113.

35 By referring to a “Canadian School” I am aware that not all authors who will be mentioned are native Canadians nor work in Canada. However, their communality is their interest in the Canadian polity as a form of multinational federation.

36 Among others, see the above mentioned works by Kymlicka, as well as: Kymlicka, Will: *The Rights of Minority Cultures*, Oxford University Press: Oxford 1995; Kymlicka, Will and Ian Shapiro (Ed): *Ethnicity and Group Rights*, New York University Press: New York and London 1997, Kymlicka, Will and Magda Opalski: *Can Liberal Pluralism be Exported? (Western Political Theory and Ethnic Relations in Eastern Europe)*, Oxford University Press: Oxford and New York 2001; Gagnon, Alain and James Tully (Ed): *Multinational Democracies*, Cambridge University Press, Cambridge 2001; Taylor, Charles: *Reconciling the Solitudes*, 1993; Tully, James: *Strange Municipality (Constitutionalism in an age of diversity)*, Cambridge University Press: Cambridge 1995 (here used 7th reprint 2006); Keating, Michael and Gagnon, Alain (Ed): *Political Autonomy and Divided Societies*, Palgrave MacMillian: Basingstoke 2012.

37 Kymlicka, Will: ‘Multinational Federalism in Canada: Rethinking the Partnership’ in: *Policy Options*, March 1998, pp. 5–9, here p. 9. See also his arguments in: Kymlicka, Will: *Finding Our Way: Rethinking Ethnocultural Relations in Canada*, Oxford University Press: Oxford and New York 1998.

38 Ibid. p. 5 and p. 8

39 Kymlicka, Will: *Politics in the Vernacular*, 2001, especially chapter 6.

arrangements⁴⁰ within the federal state. These demands have been met by the arguments of other authors: Alain Gagnon argues that special recognition of diversity and self-government of minority nations combined with asymmetrical federalism, contributes to equality and a stronger democracy within the multinational state.⁴¹ Wayne Norman focuses on similar normative values by arguing that ‘when considerations of identity, justice and stability are all given equal footing in the public deliberation of constitutional negotiations there should be a greater chance of finding acceptable solutions for all parties.’⁴² Finally, Alan Patten argues that the core of a multinational federal system is a ‘right to equal recognition of identity in the public sphere.’⁴³ Different authors focus on the links between the normative values of equality, liberty, and democratic participation and connect these to the values of communal identity, self-determination of minority nations and the right of recognition.

Furthermore, scholars of the “Canadian School” focused on practical suggestions for the implementation of recognition, self-government and participation. We have already discussed Gagnon’s and Kymlicka’s suggestions for asymmetrical federalism in Canada and the recognition of the Québécois as a constituent people. Additionally, we have seen that the demand for asymmetrical federalism does not only comprise some units having more decision-making powers than others, but also some units (those representing minority nations) having special veto rights in central institutions as well as reserved seats.

40 Asymmetrical federalism can refer to different qualities of the multinational polity. All federations are characterised by a form of “natural” asymmetry, which refers to the difference in size, population, economic development and wealth of the constituent units in the federation. Secondly, a federal constitution can create differences between the constituent units in their relationship to each other and to the federal government. This form of asymmetry is characterised by an “unequal” distribution of power between the federal units and the federal government and between the federal units themselves. This distribution of power can include further self-governing rights for one or some units in comparison to others as well as further financial resources for one or some units (possibility to introduce additional taxation). It can, furthermore, refer to the possibility of different influence of the units at the centre. Often this form of asymmetry includes some form of asymmetrical voting rights in central institutions as well, for example, special minority veto rights. For further reference to asymmetrical federalism, see: Agranoff, Robert (ed.): *Accommodating Diversity: Asymmetry in Federal States*, Nomos: Baden Baden 1999.

41 Gagnon, Alain: ‘The Moral Foundation of Asymmetrical Federalism: A Normative Exploration of the Case of Quebec and Canada’ in: Gagnon, Alain and Tully, James (eds): *Multinational Democracies*, Cambridge University Press, Cambridge 2001, pp. 319–37.

42 Norman, Wayne: ‘Justice and Stability in Multinational Societies’ in: Gagnon, Alain and Tully, James (eds): *Multinational Democracies*, Cambridge University Press, Cambridge 2001, pp. 90–109, here p. 108 (in original in Italics).

43 Patten, Alan: ‘Liberal Citizenship in Multinational Societies’ in: Gagnon, Alain and Tully, James (eds): *Multinational Democracies*, Cambridge University Press, Cambridge 2001, pp. 279–98, here p. 282.

Whilst the application of the above arguments to Bosnia might not be without its problems, since Canada and Bosnia are very different political systems with very different histories, there are, nevertheless, some important lessons to be learnt from the Canadian School. In particular, the link between federalism as a tool of conflict-management in democratic societies for the accommodation of national diversity is directly applicable to Bosnia. Furthermore, the institutional suggestions focusing on asymmetry and veto rights for the different nations within a multinational state have also been applied in Bosnia.

Multinational Federalism Revisited

As has been demonstrated previously, the argument of the Canadian School follows closely the conceptions of Liberal Nationalism. This view has been questioned over the last years and its critics can be categorised into three groups:

1. Authors who agree with the values of Liberal Nationalism but expand its application to countries other than Canada and also to countries which are still democratising.
2. Authors who argue that Liberal Nationalism cannot be the basis of a systematic theory of federalism in divided societies and instead suggest different approaches that focus on state-building, democratisation and the strengthening of “national” identity in multinational states.
3. Authors who generally deny the applicability of federalism in diverse societies and instead either argue for strong unitary states or for the creation of multiple states. They argue strongly for the possibility of secession.

Whilst the first two groups of authors retain the concept of “multinational federalism” but question its foundation on the values of Liberal Nationalism, the third group of authors argues that federalism will have no or very little success in diverse societies. They argue that, especially in the context of democratisation and after ethnic conflicts, federalism cannot be seen as an argument for creating “unity in diversity” but instead strengthens nationalist parties and, therefore, supports secessionist movements and further conflicts.⁴⁴

Ferran Requejo and Rainer Bauböck can be seen as authors belonging to the first category. Both authors built their arguments on the normative framework of Liberal Nationalism. However, they expand their arguments to other federations

44 Authors of this school of thought are often debating the broader issues of democratisation and state-building. Their criticisms focus on outside state-building, which has neither a consensus between the governed nor the acceptance of the society in question. See, for example: Fukujama, Francis: ‘Stateness First’ in: *Journal of Democracy*, Vol. 16, No. 1, January 2005, pp. 84–8. Since it is our aim to develop a useful theory of multinational federalism, we will not analyse the arguments of these authors in detail. However, we will refer to parts of their criticism.

including especially the “federalising” countries of Spain and Belgium and, to a lesser extent, Italy and the United Kingdom (UK). Bauböck justifies the strength of multinational federalism and, particularly, asymmetrical arrangements in multinational federations on the basis of the values of freedom of choice, a new conception of equality that allows special recognition, and the argument that diversity itself is a value to preserve.⁴⁵ In contrast, Requejo develops a theory of “value pluralism” which refers to a ‘greater ability to provide a version of political liberalism that is more sensitive to the goods, values and identities of national and cultural pluralism.’⁴⁶ Value Pluralism is a defence of the ‘existence of a multiplicity of heterogeneous values’⁴⁷ and a focus on the liberal values of liberty, equality and individual dignity.⁴⁸ Both authors focus on the triad of recognition, autonomy/self-government and participation in the central institution for minority nations, all of which have already been discussed previously. They also share further arguments: they both agree on the importance of asymmetrical federalism; both argue for the possibility of secession and both focus on the importance of a plural citizenship conception, which allows minorities to identify with their national group as well as with the state in which they live in.⁴⁹

The second group of authors studies federalism in a different context. Whilst the Canadian School, Requejo and Bauböck debate their claims and arguments on the basis of the established democracies of Belgium, Canada and Spain; a second group of authors discuss federalism in the context of ethnic conflict, democratisation and conflict-management. We shall discuss the contributions of Alfred Stepan and Nancy Bermeo as important contributors to this group of authors.

Alfred Stepan and Nancy Bermeo have both contributed to the discussion of federalism in multinational states in three ways. First, they have contributed by conceptualising the origins and nature of federations. Second, both have argued for a strong connection of democracy and federalism in multinational states. Third, both have contributed to the discussion of stability, security, secession and the appropriateness of federalism as a tool in conflict-management.

45 Bauböck, Rainer: *United in Misunderstanding? Asymmetry in Multinational Federations*, IWE Working Paper No. 26, Austrian Academy of Sciences, Vienna, May 2002, available at: <http://eif.univie.ac.at/downloads/workingpapers/IWE-Papers/WP26.pdf> (accessed 15 February 2013), pp. 22–38.

46 Requejo, Ferran: *Multinational Federalism and Value Pluralism (The Spanish Case)*, Routledge: London 2005, p. 15.

47 Requejo, Ferran: ‘Value Pluralism and Multinational Federalism’ in: *Australian Journal of Politics and History*, Vol. 50, No. 1, 2004, pp. 23–40, here p. 25.

48 Requejo, Ferran: *Multinational Federalism*, 2005, p. 27.

49 Ibid, pp. 35–8, Bauböck, Rainer: *United in Misunderstanding?*, 2002, pp. 4–38, as well as: Bauböck, Rainer: *Multination Federalism: Territorial or Cultural Autonomy?*, Willy Brandt Series of Working Papers in International Migration and Ethnic Relations, No. 2, November 2001, available at: <http://dSPACE.mah.se:8080/bitstream/2043/690/1/Workingpaper201.pdf> (accessed 15 February 2013), pp. 3–15.

In a well known essay in the *Journal of Democracy*, Alfred Stepan introduced a concept important to the origins of federalism. He claimed that the Rikerian model of “federal bargaining” cannot explain the origin of several federations and introduced the concepts of “coming-together federalism” and “holding together federalism”. The former he described as the free association of formerly independent states (USA, Germany, and Switzerland) and the latter as the federalisation of a former unitary state (Belgium, Spain).⁵⁰ Furthermore, in his description of the relationship of democracy and federalism in multinational states, Stepan highlights the importance of the overrepresentation of minorities at the central level, the influence of the national groups in the upper chamber and the autonomy for the nations in their constituent unit.⁵¹ Although he refers to the debate of Liberal Nationalism and bases his arguments on the same values of equality between all national groups and the value of diversity itself, he points out that, in every multinational federation, there exists a conflict between individual rights, mostly protected by central institutions, e.g. a bill of rights, and group rights, protected by the constituent parts (for example, special language rights and bank holidays). This conflict is the reason why Liberal Nationalism, according to Stepan, cannot give an answer to the question of multinational federalism.⁵² Finally, Stepan makes a clear argument for the importance of federalism in multinational states: if multinational states want to establish a functioning democracy, they will have to take federal solutions into account.⁵³

The same argument is presented by Nancy Bermeo. Basing her analysis on statistical data of the *Minorities at Risk* project, she comes to the conclusion that federalism has contributed to a peaceful conflict-management in ethnically and nationally divided countries.⁵⁴ She presents federalism as a viable solution to societies that face ethnic conflicts and claims against critics that ‘it is historically inaccurate to argue that it [federalism S.K.] brings on separation.’⁵⁵ For her, the core of a functional federation in divided societies is the voluntary character of the federation; in fact a stable multinational democratic federation can only work if it is voluntary. ‘If political leaders are to adopt federalism voluntarily, they will have to know which institutional variations suit their countries best.’⁵⁶ She argues

50 Stepan, Alfred: ‘Federalism and Democracy: Beyond the U.S. Model’ in: *Journal of Democracy*, Vol. 10, No. 4, 1999, pp. 19–34. He also introduces the concept of “putting together federalism” which refers to the forceful and non-democratic nature of a federation and he names the Soviet Union as an example.

51 Ibid. p. 24.

52 Ibid. pp. 30–2.

53 Ibid. p. 24.

54 Bermeo, Nancy: ‘The Import of Institutions’ in: *Journal of Democracy*, Vol. 13, No. 2, April 2002, pp. 96–110, here p. 99. Bermeo also introduces the category of “forced together federalism” which refers to the forced creation of a federal system by outsiders. This system lacks the core element of a “voluntary union.”

55 Ibid. p. 107.

56 Ibid. p. 108.

for the introduction of asymmetrical federalism to accommodate the different demands of different national groups, too. Finally, her arguments why federalism is a “merit” in multinational states go in the same direction, it allows national autonomy on the one side whilst providing inclusion in the central institutions on the other. Furthermore, it can enhance the political and economic participation of all national groups within the federation and therefore again refers to the Liberal Nationalist value of equality.⁵⁷

Finally, the third group of authors denies the applicability of federalism in a multinational and, particularly, in a post-conflict society. Coming from the background of conflict analysis, Chaim Kaufmann has become one of the most popular authors of this group. He argues that federalism will institutionalise conflicts that took place on the battlefield and will consequently lead to permanent blockade and a high risk of renewed inter-group violence. Instead, he suggests the possibility of secession and even population transfers, arguing that, in the long-term, this will lead to more stability and higher chances for a permanent absence of violence.⁵⁸ Whilst his conclusions might not be applicable to Bosnia, his discussion about federalism as a mechanism of institutionalising conflict is very relevant and important for Bosnia.⁵⁹

Donald Horowitz does not completely deny the applicability of federalism in multinational states, however, he argues strongly against the creation of homogenous sub-units in the multinational federation. Instead, Horowitz argues for the creation of multinational regions that will enhance co-operation between the different national groups. Horowitz’ integrative concept is further strengthened by a preferential electoral system, which would favour moderate candidates and demand that representatives of different national groups must gain the support of representatives of other groups in order to be elected to public office. In a nutshell, Horowitz argues that the institutional framework of a multinational state should not enhance further separation but should enhance and favour co-operation between different national groups.⁶⁰

Where does this discussion about multinational federalism leave us? Multinational federalism, after all, remains a mainly descriptive term that refers to the implementation of a federal political system to “manage” different nations within one

57 Bermeo, Nancy: ‘Conclusion: The Merits of Federalism’ in: Bermeo, Nancy and Amoretti, Ugo (eds): *Federalism and Territorial Cleavage*, John Hopkins University Press: Baltimore 2004, pp. 457–83.

58 Kaufmann, Chaim: ‘When All Else Fails: Ethnic Population Transfers and Partition in the Twentieth Century’ in: *International Security*, Vol. 23, Nr. 2, Autumn 1998, pp. 120–56. Also: Kaufmann, Chaim: ‘Possible and Impossible Solutions to Ethnic Civil Wars’ in: *International Security*, Vol. 20, No. 4, Spring 1996, pp. 136–75.

59 See the chapters “The Bosnian Federation” and “Federalism in Bosnia” for this discussion.

60 Horowitz, Donald: *Ethnic Groups in Conflict*, 2nd edition, University of California Press: Los Angeles 2000.

state. Based on Daniel Elazar's conception of federalism as self-rule and shared-rule,⁶¹ multinational federalism offers autonomy (self-rule) to nations who are concentrated in a clearly defined territorial unit, whilst at the same time, ensuring their participation in decision-making at the central level through shared-rule provisions such as their representation in second chambers and/or in grand coalitions.

Multinational Federalism and Multinational Federation

As can be seen in the above discussions, the core issues in multinational federations will be concerned with the quality of democracy and the concurrent strength of nationalism in these federations. The departure point of this part shall, therefore, be the agreement that federalism is an appropriate tool to manage the aspirations of different nations within the borders of one state.

Democracy in Multinational Federations

There is a continuing debate in the recent literature about the effects of federalism on democracy and vice versa.⁶² Whilst there has recently been some important research on the connection between federalism and democracy,⁶³ there has yet to be a wider academic discussion on the interplay of the two ideas in an environment of rival nationalisms, ie, in a multinational state.

The debate about democracy in multinational states is affected in two ways by the introduction of a federal system. First, the normative foundation of the democratic state shifts away from a focus on individual to group rights. Multinational federations are formed by different *demoi*, instead of one legitimating *demoi*.⁶⁴ Furthermore, the liberal values of equality and justice as underlying values of democracy need to be reconsidered in a plural environment. Equality becomes a 'right to diversity' and liberty has to be conceptualised as 'freedom of choice' and, therefore, a freedom to choose a culture to identify with. Finally, citizenship and

61 Elazar, Daniel: *Exploring Federalism*, The University of Alabama Press: Tuscaloosa 1987.

62 See, for example: Lane, Jan-Erik and Errson, Svante: 'The Riddle of Federalism: Does Federalism Impact on Democracy?' in: *Democratization*, Vol. 12, No. 2, April 2005, pp. 163–82. They argue that according to their data, federalism has little or no impact on democracy. Conversely, Kevin Rous and Olga Shvetsova argue that representative democracy is a necessary condition for federalism. See: Rous, Kevin and Shvetsova, Olga: 'Representative Democracy as a Necessary Condition for the Survival of a Federal Constitution' in: *Publius: Journal of Federalism*, Volume 37, No. 2, 2007, pp. 244–61.

63 This gap in the literature has been filled by: Burgess, Michael and Gagnon, Alain (eds): *Federal Democracies*, Routledge: London 2010.

64 Maiz, Ramon: 'Democracy, Federalism and Nationalism in Multinational States', in: Safran, William and Maiz, Ramon (eds): *Identity and Territorial Autonomy in Plural Societies*, Frank Cass: Portland 2000, pp 37–8.

identity have to be conceptualised in a framework that allows for plural citizenship and multiple identities.⁶⁵

The second impact on democracy can be described as a shift towards recognition, national self-government and group rights in the empirical reality of the multinational federation. The first evidence for this shift is the federal constitution. The recognition of all nationalities in the constitution as ‘constituent peoples’ of the state, the clear separation of powers between the central and provincial level and clear guarantees of group rights, such as multilingualism, are typical characteristics of a constitution of a multinational federation. Furthermore, federal constitutions in multinational states need to be relatively flexible, Ramón Máiz argues even for federalism as an ‘open process’⁶⁶ and Requejo highlights the importance of the flexible and open character of a federal constitution in a multinational state.⁶⁷ Indeed, events in India and Canada demonstrate the necessary ability of a federal constitution to redraw borders within the federation.⁶⁸ We might extend the flexibility argument of multinational federation when examining the constitutional practice of asymmetrical federalism. Taking a first look at asymmetrical arrangements, especially concerning the distribution of powers between the central level and different constituent units, it could be argued that these forms of “unequal” treatment lead to undemocratic practices in reality. Asymmetrical distributions of power, as well as a veto right of nations within central institutions on all matters that concern their identity, do not counterbalance democratic decision-making within a multinational state but it enforces the legitimating agreement of the federation as a ‘partnership among equal nations’ whose main aim it is to preserve and promote the different national identities within the federation. Therefore, the essence of a democratic multinational federation is a form of democracy which is characterised by the consociational elements of grand coalitions (inclusion of all major nations at the central level) and minority veto rights. It, furthermore, promotes an asymmetrical distribution of powers between the central level and the provincial level and between the sub-units themselves. Finally, this mode of democracy decouples the nation from the state and acknowledges the composite and multinational character of the state.⁶⁹

65 Ibid. pp. 37–42.

66 Ibid. p. 53.

67 Requejo, Ferran: ‘Federalism in Plurinational Societies: Rethinking the Ties between Catalonia, Spain and the European Union’ in: Karmis, Dimitros and Norman, Wayne (eds): *Theories of Federalism. A Reader*, Palgrave Macmillan: London 2006, pp. 311–20, here p. 312.

68 Burgess, Michael: *Comparative Federalism*, 2006, p. 107. In 2000, India created the three new states of Chhattisgarh, Uttaranchal and Jharkland. Canada recognised Nunavit, a territory in the eastern Arctic and gave self-government to the inhabitant Inuits in 1999.

69 In this way it fits in Sammy Smooha’s category of a ‘multicultural democracy.’ However, he argues that minority nations in ‘multicultural democracies’ are not allowed to fully participate in the democratic decision-making body. See: Smooha, Sammy: ‘Types of Democracy and Modes of Conflict Management in Ethnically Divided Societies’ in: *Nations and Nationalism*, Vol. 8, No. 4, 2002, pp. 423–31, here p. 425.

Nationalism in Multinational Federations

By now it should be clear that the main task of federalism and democracy in multinational states is the accommodation of ‘sub-state nationalism, that is, the collective needs and requirements of the nation or nations that coexist within the larger, overarching nationality of the federation taken as a whole.’⁷⁰

Both federalism and democracy consist of accommodating qualities which can be summarised in the values of recognition, participation and self-government. However, the question that remains is how federalism and democracy affect nationalism. Will Kymlicka has more than once argued that ‘[d]emocratic federalism has domesticated and pacified nationalism.’⁷¹ Murray Forsyth, in his analysis of federalism and nationalism, came to the same conclusion.⁷² However, he also linked the “success” of federalism as a tool of conflict-management⁷³ to other conditions such as democracy, the nature of the conflict including the size and strength of the groups in the conflict, and the will of the groups to unite.⁷⁴ When considering this argument a little more in detail, the nature of the relationship between nationalism, democracy and federalism in a multinational federation can be summarised as follows:

If different nations within a state demonstrate the will to live together, then a democratic federalism (that highlights group rights and enables the different nations to preserve their own identity within their province, whilst at the same time enabling them to participate at the central level through a second chamber, proportional representation and the inclusion in grand coalitions) is the most promising concept. Participation (including recognition) and self-government, therefore, offer different nations within the multinational state the highest degree of self-determination.

Democracy and Federalism, in this case, allow the preservation and promotion of different national identities. One core element of multinational federations is, therefore, a ‘plurinational identity’ which allows the identification with the national group as well as with the state.⁷⁵ Recognition in multinational states, therefore, refers

70 Burgess, Michael: *Comparative Federalism*, 2006, p. 108.

71 Kymlicka, Will: ‘Federalism and Secession’, 2000, p. 213, see also: Kymlicka, Will: *Politics in the Vernacular*, 2001, p. 93 and Kymlicka, Will: ‘Nation-building and Minority Rights’, 2000, p. 189.

72 Forsyth, Murray: ‘Introduction’ in: Forsyth, Murray (ed.): *Federalism and Nationalism*, Leicester University Press: Leicester and London 1989, pp. 1–10.

73 He argues that ethnic cleavages and national conflicts are not solved in multinational federations, but they are managed to enable a fair accommodation and democratic participation. Indeed, this argument is very persuading and we shall from now on refer to conflict-management in multinational states. See: *Ibid.* p. 5.

74 *Ibid.* p. 6.

75 Requejo, Ferran: *Multinational Federalism and Value Pluralism*, 2005, p. 72.

to the recognition of more than one nationalism, national identity and finally nation. But the question which arises immediately is: if democratic federalism recognises and promotes self-determination of different nations within one state, what then makes the state hold together? The answer to this question was mentioned in the previous point: The existence of different levels of national identities and loyalties. Multinational federations need the existence of at least two layers of national identity to hold together and work properly, namely, national identification with the nation one belongs to and identification with the common state. All nations within the multinational federation need to have some form of shared identification with the common state.⁷⁶ The absence of a common vision on the state and the lack of any feelings of belonging to this state, will result in long-term political instability and the question of external self-determination, ie, secession. It will be argued below that the lack of identification with any form of Bosnian statehood amongst Bosnian Serbs and Croats is one of the main reasons for the continued political deadlock and the quest for secession amongst both groups.

Core Problems of Multinational Federations

Citizenship and Loyalty Citizenship and Loyalty are two major factors in multinational federations that need our further attention. Pierre Elliot Trudeau argued that the (multinational) federal state ‘reduces the national consensus to the greatest common denominator between various groups composing the nation.’⁷⁷ It follows that the agreement to federalism as a form of minimal consensus between different peoples, reproduces minimal loyalty of the different peoples towards their state. The question that arises is twofold, first, how can such a loyalty be constructed or supported in the first place and, second, how can citizenship policies contribute to ensuring the concept of dual political loyalty (loyalty to the own people/nation and loyalty to the state)? Here seems to lay the core problem of multinational federations since, in mono-national states, both forms of political loyalty overlap and the state represents the nation (or at least claims to do so). Loyalty, and with it, identification, are very abstract and multidimensional concepts. The question of how to create and support the loyalty of all nations towards the state can be answered in two ways. Trudeau argues that ‘the whole citizenry must be made to feel that it is only within the framework of the federal state that their language, culture, institutions, sacred traditions and standard of living can be protected from external attack and internal strife.’⁷⁸ It is, therefore, the guarantee of self-government and autonomy on the one hand, and the inclusion of all the nations in the central institutions on the other hand,

⁷⁶ Maiz, Ramon: ‘Democracy, Federalism and Nationalism in Multinational States’, 2000, p. 43.

⁷⁷ Trudeau, Pierre Elliott: ‘Nationalism and Federalism’ in: Karmis, Dimitros and Norman, Wayne (eds): *Theories of Federalism. A Reader*, Palgrave Macmillan: London 2006, pp. 221–6, here p. 221.

⁷⁸ *Ibid.* pp. 222–3.

that can support and create the feelings of loyalty and identification. The constant review and maintenance of the agreement between peoples gives the multinational federation legitimacy.

The second way to support the creation of loyalty and identification is the support of common values. The common state represents certain values that all nations share. Starting from universal human rights, these values will focus on the protection of cultural diversity, the respect and solidarity for others in the state and finally the creation of federal comity (*Bündnistreue*).⁷⁹ Federal comity in a multinational state can be reduced to some key values, namely the belief in the legitimacy of the federation, democracy, human rights, the protection of cultural diversity and the aim for a common future. These values are very close to Jürgen Habermas' concept of *Verfassungspatriotismus* (constitutional patriotism).⁸⁰ Habermas argues that democracy will help to integrate different national identities into the joint state. However, some authors have criticised Habermas' concept of constitutional patriotism and claim that it is not sufficient for multinational federations.⁸¹ The creation of a non-ethnic identity and a common value system has lately played a key role in the debates about European citizenship. Indeed, it is common agreement that the majority of the peoples of the Western Balkans do see themselves as Europeans and as part of European history and a shared European destiny.

What remains to be discussed is in which way citizenship policy can contribute to a strengthening of dual political loyalty and identification. Some multilingual countries like Switzerland have introduced dual citizenship; a citizenship of a canton and the Swiss citizenship. Indeed, it seems as if the concept of dual citizenship either with the kin-state of a nation or regional and national citizenship seems to be an appropriate tool to address the demand for self-determination whilst at the same time supporting loyalty for the common state.

Territoriality and Secession One of the major debates between authors on multinational federalism and federation is the question of territoriality and, combined with it, the question of secession. However, to assess fully the debates about secession we have to distinguish between two concepts:

1. The question of whether federalism in multinational states *necessarily* leads to secession.
2. The question of whether a multinational federation should include a right to secede in the constitution and, if so, what the criteria for secession and separation should be.

⁷⁹ Burgess, Michael: *Comparative Federalism*, 2006, p. 113.

⁸⁰ Habermas, Jürgen: *Die Einbeziehung des Anderen*, Suhrkamp: Frankfurt am Main 1996, pp. 138–9.

⁸¹ Maiz, Ramon: 'Democracy, Federalism and Nationalism in Multinational States', 2000, p. 43.

Will Kymlicka argues that '[t]he more that federalism succeeds in meeting the desire for self-government, the more it recognizes and affirms the sense of national identity amongst the minority group, and strengthens their political confidence [...], secession becomes more conceivable and a more salient option, even with the best-designed federal institutions.'⁸² Other authors have questioned the argument that federalism in multinational societies supports secessionist ambitions.⁸³ Kymlicka's argument is weak because the granting of autonomy and self-rule is only one side of the coin. The inclusion of representatives of the nation in the central institutions of the state, special veto rights and the respect and promotion of diversity at the central level (for example, through multilingualism, proportional representation in the civil service) promotes the creation of a shared responsibility for the political space and the polity. The idea is that the inclusion of different nations within the decision-making processes manages conflicts and creates long-term stability. The political reality of Canada, Spain and India demonstrates that there is an on-going debate about internal and external self-determination and secession. However, it also has to be recognised that these states have successfully stayed together over many decades and managed numerous political crises.

The second question is the more difficult question. It refers to a case where a given state is not willing to respect (any more) the rights of different nations in its borders. Indeed, this remains one of the core questions in today's debates about multinational states: if minorities should have a right to secede when the central state does not respect their right to (cultural) self-determination. Allen Buchanan has argued that, under certain circumstances which include human rights abuses, tyranny, attempted genocide and unlawful occupation of a territory, secession might be morally justified.⁸⁴ In the literature on multinational federalism and federation, it seems that most authors support Buchanan's arguments and some even adjust less stringent criteria for secession.⁸⁵ Other authors, such as Donald Horowitz, argue instead that, for societies facing ethnic conflicts, 'conciliation will not be helped by providing a [...] right to secede.'⁸⁶ Secession, therefore, does not address the core of the problem, and neither is it a solution.⁸⁷

To find a position in this debate is very difficult. On the one hand we might sympathise with Buchanan and others, and say that a clear break of the federal

82 Kymlicka, Will: *Politics in the Vernacular*, 2001, p. 113.

83 Bermeo, Nancy: 'The Import of Institutions', 2002, p. 107.

84 Buchanan, Allen: 'Theories of Secession' in: *Philosophy and Public Affairs*, Vol. 26, No. 1, 1997, pp. 31–61, here pp. 34–8.

85 See Kymlicka Will: *Politics in the Vernacular*, 2001, Chapter 4, Requejo, Ferran: 'Value Pluralism and Multinational Federalism', 2004, p. 36, Bauböck, Rainer: *Multination Federalism: Territorial or Cultural Autonomy?*, 2001, p. 14, Norman, Wayne: *Negotiating Nationalism*, 2006, pp. 170–215.

86 Horowitz, Donald: 'The Cracked Foundations of the Right to Secede' in: *Journal of Democracy*, Vol. 14, No. 2, April 2003, pp. 5–17, here p. 15.

87 Ibid. pp. 8–12.

contract must lead to a right to leave the federal union, which, after all, was based on the consent of all people and peoples. On the other hand, it is particularly difficult to bring stability and co-operation to multinational states even through the incentives of self-government, autonomy and inclusion. A constitutional right to secede might, therefore, support the ambitions of different nations to manipulate the state in general. The debate about secession in Bosnia and Herzegovina is linked to Bosnia's experiences with the Socialist Tradition of Federalism. The experiences of the dissolution of Yugoslavia, and the subsequent war in the country to create a Greater Serbia and a Greater Croatia, plus the undefined nature of the Bosnian state and its permanent political crisis, result in permanent claims for external self-determination among Serbs and (less frequently) Croats in Bosnia. However, an evolving debate in international law might also have important consequences for Bosnia. According to this debate, minority nations and other minorities have a 'right to autonomy' instead of a 'right to secession.'⁸⁸ This might provide a solution to this problem in normative perspective as well as in the future development of international law. Instead of granting minorities a right to secede in the constitution, an international norm of a "right to autonomy" could be established.

Centralisation, Decentralisation, Symmetry and Asymmetry To understand the need for national self-determination and the response multinational federalism can offer to these demands, we must examine some policy areas that are directly connected with self-determination. Kymlicka argues that minorities should have exclusive decision-making rights in the area of education, language, culture, and immigration.⁸⁹ To this list one could add the area of financial autonomy, which is of key importance for self-governance.

In a multinational polity it is of vital importance to find the balance between centralisation and decentralisation. On the one hand, it could be argued that different nations within the state should decide as much as possible by themselves and the state should only decide when a decision can be implemented solely by the central institutions and bureaucracy. On the other hand, it could be stated that such a high degree of decentralisation would lead to the polity having more the characteristics of a confederation than a federation. Indeed, Kymlicka argues that minority nations see the federation more as a looser union (a confederation).⁹⁰ The same is argued by Ferran Requejo who even supports the introduction of confederal-like mechanisms in the federation.⁹¹ However,

88 I am grateful to Dr Jens Woelk for bringing this debate to my attention. For a first sketch of the debate, see: Woelk, Jens: 'Minderheitenschutz durch territoriale Autonomie: „Reservate“ oder nachhaltige Integrationsprozesse?', in: Europäisches Zentrum für Föderalismusforschung (ed.): *Jahrbuch des Föderalismus 2002*, Nomos: Baden Baden 2002, pp. 117–37.

89 Kymlicka Will: *Politics in the Vernacular*, 2001, p. 95.

90 Ibid. 113.

91 Requejo, Ferran: 'Value Pluralism and Multinational Federalism', 2004, p. 36.

to analyse these demands we have to distinguish the concepts of centralisation/decentralisation and symmetry/asymmetry. Centralisation and decentralisation refer to the distribution of decision-making powers between the central level and the provincial level. Decentralisation, therefore, means that the provincial level has a substantial amount of decision-making competences whilst centralisation refers to the dominance of the central level in the decision-making process. In this context, the balance between centralisation and decentralisation in fiscal affairs is of key importance. While the federal units have often ensured fiscal autonomy, frequently imposed uniform practices can limit this autonomy drastically. However, as we shall see in chapter four, the radical fiscal autonomy of the entities in Bosnia and Herzegovina led to the limitation of the abilities of the central institutions. This was only overcome in recent years by introducing a countrywide Value-Added-Tax, which contributes now to the budget of the central institutions of Bosnia and Herzegovina.

Centralisation and decentralisation, however, are always discussed along the lines of symmetry, meaning if province A has a lot of decision-making power, provinces B, C, D, etc, have the same amount of decision-making power. Thereby, decision-making power refers to both levels, decision-making power in the form of self-government and decision-making power at the federal level. Asymmetrical federalism refers to a different distribution of power between the units themselves and between the units and the central level. It means that province A might have more (or less) decision-making power than provinces B, C, D, etc. Again, decision-making power refers to self-government and the influence at the central level. A key form of asymmetrical decision-making power at the central level is a minority veto.⁹²

What does this distinction tell us about multinational federations? It demonstrates that multinational federations are likely to be characterised by asymmetry. This does not mean that the whole federation is decentralised; it means that some units, which represent different nations, have more rights than other units.

After outlining the theoretical framework of multinational federalism and its consequences for a multinational state, we shall now start our analysis of the political system of Bosnia and Herzegovina. The following chapter will discuss Bosnia's historical development since the Middle Ages, with a special focus on those features that are important for Bosnia's federal system today.

92 For a full debate, see: Kymlicka Will: *Politics in the Vernacular*, 2001, pp. 104–10.

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Chapter 3

Bosnia and Herzegovina's Federal Tradition: Continuity, Change and Foreign Powers

The study of a country's federal tradition is of key importance for the understanding of federalism and federation. Histories of self-government, independent regions that form a common state (such as in the case of the German and the Swiss federation), or the break-up of a former unitary state into federal units (eg, Belgium) are all examples of the importance of historical developments in current political issues.

In Bosnia, history will explain why and how different national identities developed in the territory that covers the state of BiH. Furthermore, a historical analysis helps to examine if there have been any previous experiences with regionalism and federalism. Finally, the role of international actors in the historical state- and nation-building processes in Bosnia needs further analysis. This will help to link Bosnia's current political development to past experiences and will also demonstrate that contemporary discussions on Bosnia's political system are still centred around questions that evolved in the 19th and 20th century and concern the relationship of different nations to the state and to each other, and the nature of the Bosnian state internally and within the regional context.

In the case of Bosnia and Herzegovina, the discussion of a "federal" tradition is complex and difficult. It is complex because Bosnia and Herzegovina has not been an independent state before 1992 and its history until then is a history of being part of different empires and states, from the Roman Empire to communist Yugoslavia. It is difficult because an independent history of Bosnia in this sense, therefore, does not exist.¹ Therefore, the study of Bosnian history and its political development is, at least to some extent, also a study of the history and the political development of these empires. Furthermore, together with the establishment of an autonomous Serbian state after 1815, it is also possible to trace a long history of involvement by Bosnia's neighbouring states into the internal affairs of BiH. The study of Bosnian history, of which the study of the federal history is an essential part, is additionally complicated by the fact that the authors who write about Bosnian history sometimes do so without a clear separation of academic research and political statement. The three key books in English about the history of Bosnia and Herzegovina are all written by authors who supported the creation of an independent multinational Bosnian state during the war in 1992–1995. Noel Malcolm argues in the introduction to his book

¹ Bosnia was an independent kingdom in medieval times, but was conquered subsequently by the Ottoman Empire.

Bosnia – A Short History, that most of Bosnia's history is characterised by peaceful coexistence of different religious groups and that the main cleavage in Bosnian society in the past was not between different national groups and their relationship to the Bosnian state and the neighbouring states, but an economic cleavage between landowners and peasants.² In the same manner, the American historians Robert Donia and John Fine argue that 'propaganda, historical precedent and superficial analogies' have been used by representatives of all the Bosnian peoples to deconstruct the idea of a multinational and united Bosnia and Herzegovina.³ On the other side, scholars and politicians have argued that, because Bosnia has never been an independent country before 1992, its borders should have been renegotiated in 1991–1992.⁴

This chapter examines Bosnia's federal tradition in three parts. Part one will give a short sketch of Bosnian history since the Middle Ages. It will focus on traditions of self-government, the territorial organisation of Bosnia and the relationship between the different religious groups in Bosnia. The second part of the chapter will look at these points in more detail by discussing some of the continuities in Bosnia's federal tradition. In particular, the territorial organisation of BiH and the relationship between its three peoples shall be of special interest. Finally, the third part looks at some of the challenges for Bosnia and Herzegovina resulting in the declaration of independence in April 1992 and the Dayton Peace Accords of November/December 1995.

A Short Sketch of Bosnian History

As the historian Marko Attila Hoare argues, 'Bosnia-Hercegovina in its contemporary form, as a country with a specific social structure inhabited by three principal nationalities, was the product of its medieval statehood and the Ottoman, Austro-Hungarian and Yugoslav periods of rule.'⁵ Contemporary issues are highly connected to historical experiences. This is true for all countries, but in South Eastern Europe it is even more relevant. Some examples shall demonstrate this connection: When Bosnia and Herzegovina declared its independence in 1992, many Bosnians, especially Bosniaks, referred to the tradition of the Kingdom of Bosnia which existed before the Ottoman conquest of the area in the mid-15th century. When Bosnian Serb and Bosnian Croat nationalists agreed on the partition

2 Malcolm Noel: *Bosnia – A Short History*, Pan Books: London 2002, p. XXI.

3 Donia, Robert and Fine Jr., John: *Bosnia and Hercegovina: A Tradition Betrayed*, Hurst and Company: London 1994, p. 3.

4 For this arguments see, for example: Owen, David: *Balkan Odyssey*, Victor Gollancz: London 1995, chapter 3. Hayden, Robert: *Blueprints for a House Divided: The Constitutional Logic of the Yugoslav Conflict*, University of Michigan Press: Ann Arbor 2000.

5 Hoare, Marko Attila: *The History of Bosnia (From the Middle Ages to the Present Day)*, Saqi Books: London 2007, p. 33.

of Bosnia and Herzegovina in 1992, they referred to the *Sporazum*⁶ between the Croats and the Yugoslav government in 1939, which gave the Croats autonomy and their own *banovina*⁷ in the Royal Yugoslavia and included the partition of Bosnia and Herzegovina. When Radovan Karadžić declared the right of all Serbs to live in one state, he referred to the centuries old desire of Serbian nationalists to unite all Serbs in one state. These historical legacies are very important for this discussion and, therefore, this part will focus on historical developments that remain of fundamental relevance today.

From the Bosnian Kingdom to the Ottoman Empire

The study of Bosnian history is usually dominated by the analysis of Ottoman rule in the area, which lasted from 1463 until 1878.⁸ As Hoare argues, it is in the period of the Ottoman Empire's rule over Bosnia that the country developed its multinational character, as well as its internal and external borders.⁹ As a consequence of more than 500 years of Ottoman rule, relatively little is known about Bosnia in the period before the Ottoman conquest. Research has shown that Bosnia was part of the Roman and the Byzantine Empire before local elites began to take control. The first official mentioning of Bosnia (proper) dates back to a Byzantine handbook of the year 958.¹⁰ Noel Malcolm argues that, in the high Middle Ages, an independent Bosnian Kingdom developed that reached its highest point under King Stephen Tvrtko who conquered a land named "Hum" at the time and united Bosnia and Hum (=Herzegovina) in 1326.¹¹ The period before the Ottoman conquest is important for several reasons: First, in particular, Bosnian Muslims argued after 1991 that Bosnia and Herzegovina had a tradition of independence and sovereignty before the Ottoman conquest; second, as Malcolm argues, Bosnia was already multi-religious

6 The *Sporazum* was an agreement between Serbian and Croatian leaders to reorganise the first Yugoslavia and included the establishment of a Croatian *banovina* (territorial unit), which included most of Bosnia and Herzegovina. Franjo Tuđman would refer to the *Sporazum* in the early 1990s to underline Croatian claims to Bosnian territory. The *Sporazum* was never implemented due to the intervention of the Axis in Yugoslavia and the establishment of the Independent State of Croatia under a Fascist government.

7 *Banovina* is the name for the territorial units of the royal Yugoslavia that were introduced in 1929. Purposely, these *banovinas* were drawn in a way that Serbs would dominate in the majority of them and they were named after rivers to break with historical traditions.

8 In 1463 Bosnia proper was conquered by the Ottoman Armies. Jajce and other local towns held out longer, but were eventually conquered by the Ottoman Army as well. In 1878 Bosnia and Herzegovina, formally still part of the Ottoman Empire, came under the administration of the Austro-Hungarian Empire. In 1908, the Austrian Empire annexed Bosnia and Herzegovina.

9 Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 41.

10 Malcolm Noel: *Bosnia – A Short History*, 2002, p. 10.

11 *Ibid.* p. 13.

in the 14th century, although there were no Muslims in Bosnia yet,¹² finally, the quest for Bosnian autonomy and independence connected to the fight against outside interference, especially from neighbouring states, dates back to this time.

The period of Ottoman rule is of special interest for this study, as this period did not only see the conversion of a large part of the Bosnian population to Islam and the development of the Bosnian Muslims from a religious group and an economically dominating group to a more ethnically conscious group, but important developments between the three Bosnian religious groups took place and influenced the multi-religious and, later, multinational character of the state. The two major developments in Bosnia and Herzegovina during the Ottoman Empire's rule were, therefore, the development of a new Bosnian religious group and the development of Bosnia and Herzegovina as a distinct territory within the Ottoman Empire.

The development of an indigenous Muslim population in Bosnia has been part of controversial debates. Francine Friedman argued in her study that the conflict in BiH between 1992 and 1995 was only the final stage of a long denial of Bosnian Muslim nationhood by Serb and Croat nationalists.¹³ Indeed, the anthropologist Tone Bringa supports Friedman's argument by claiming that Serb and Croat nationalists never accepted the creation of Bosnian Muslim nationhood, which was officially recognised in 1971.¹⁴ The Islamisation, meaning the acceptance of the Muslim faith by some Bosnian locals, has its main origins in the 15th and 16th century.¹⁵ There are many reasons why Bosnians, of all faiths, converted to Islam. Hoare lists Bosnia's isolation from Rome, the absence of a dominant church in pre-Ottoman times and the general religious fluidity in Bosnia and Herzegovina as the main reasons.¹⁶ Furthermore, Muslims enjoyed certain privileges in Ottoman society. Those privileges included some tax exemptions¹⁷ but especially the possibility for Muslims to join the Ottoman administration and military.¹⁸ The Ottoman period saw the development of three different religious groups within Bosnia as the dominant actors. The distinct multi-religious character of a country dominated by Muslims, followers of the Orthodox faith and Catholics alike, plus the existence of Jewish and Protestant minorities gave Bosnia its multi-religious and later multinational character.

12 Malcolm argues that in the 14th century Western Christian, Christian Orthodoxy and the Bosnian Church, a sect and a mixture of the two previous religions, were the dominating religions in Bosnia. *Ibid.* p. 17.

13 Friedman, Francine: *The Bosnian Muslims (Denial of a Nation)*, Westview: Oxford 1996.

14 Bringa, Tone: 'National Categories, National Identification and Identity Formation in "Multinational" Bosnia' in: *Anthropology of East Europe Review*, Vol. 11, No. 1–2, Autumn 1993, here used online version: <http://scholarworks.iu.edu/journals/index.php/aer/article/view/591> (accessed 15 February 2013).

15 Donia, Robert and Fine Jr., John: *Bosnia and Hercegovina*, 1993, p. 36.

16 Hoare, Marko Attila: *The History of Bosnia*, 2007, pp. 42–3.

17 Donia, Robert and Fine Jr., John: *Bosnia and Hercegovina*, 1993, p. 41.

18 Hoare, Marko Attila: *The History of Bosnia*, 2007, pp. 46.

Bosnia and Herzegovina enjoyed a high degree of autonomy in the Ottoman Empire. In the mid-16th century, Bosnia received the status of an eyelet in the Ottoman Empire which is comparable to an autonomous province. The eyelet was organised in three sandžaks (districts), namely the sandžak of Bosnia (proper), the sandžak of Herzegovina and the sandžak of Zvornik, today a town in North-East Bosnia.¹⁹ It is also important to recognise the territorial unity of Bosnia and Herzegovina during the whole time of Ottoman occupation. Furthermore, the development of regional centres in Bosnia can be observed which were used by the Ottomans in the 19th century to reorganise the eyelet. Regional centres developed around the larger towns and cities of Sarajevo, Banja Luka, Mostar, Tuzla, Travnik and Bihać, which were to become the six Bosnian sandžaks in 1877.²⁰

Bosnia's internal organisation in different districts, as well as its external borders, is, therefore, a result of the Ottoman rule and the Ottoman administration of Bosnia and Herzegovina. As shall be seen later, politicians who want to overcome the current national division of the country often argue for "regionalisation along multinational regions" and when they refer to the historically grown regions in Bosnia and Herzegovina, it is the sandžaks of the Ottoman Bosnian province, that they mean.²¹

Finally, inter-ethnic relations in Ottoman Bosnia need to be discussed. As has often been pointed out, until the 19th century the main conflict in Bosnia was not between different ethnic groups but rather between the landowning elite (Muslims) of the country and peasants (mainly Christians).²² Having said this, it must be noted that the Ottomans organised society along religious lines. The so-called millet system distinguished between Muslims and non-Muslims with the duty of non-Muslims to pay additional taxes. However, the millet system also allowed for a certain degree of autonomy for non-Muslims as their religious leaders were responsible for tax collection and, therefore, enjoyed some degree of cultural and religious autonomy.²³ This autonomy expanded to the areas of legal affairs, civil affairs and tax collection.²⁴ Besides this extraordinary cultural autonomy for non-Muslims, it must be acknowledged that the Ottoman society openly discriminated against non-Muslims and especially against Catholics or, as Fine and Donia put it, 'Muslims ruled over Christians.'²⁵ Catholics in the Ottoman Empire, especially in Bosnia, were subject to several discriminations when it came to religious freedom and religious activity. The reason for this was the common support for the Austro-Hungarian Empire amongst Catholics. They saw the arch-enemy of the

19 Malcolm Noel: *Bosnia – A Short History*, 2002, p. 50.

20 Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 39.

21 See, for this in more detail, the Chapter: "Federalism in Bosnia" and here especially the debates about a constitutional reform in Bosnia.

22 Malcolm Noel: *Bosnia – A Short History*, 2002, p. xxi.

23 Donia, Robert and Fine Jr., John: *Bosnia and Hercegovina*, 1993, p. 65.

24 Mazower, Mark: *The Balkans (From the End of Byzantium to the Present Day)*, Phoenix: London 2001, p. 64.

25 Donia, Robert and Fine Jr., John: *Bosnia and Hercegovina*, 1993, p. 63.

Ottoman Empire as their protector. In the 19th century this discrimination was to be extended to believers of the Orthodox faith in connection with the rise of an autonomous and later independent (Orthodox) Serbian state.

It is in the 19th century that one must locate the development of national consciousness amongst the three Bosnian groups.²⁶ The millet system as the core organising principle of Ottoman society has already been discussed. This system has had a major impact on the development of different national identities in Bosnia and Herzegovina. Aydin Babuna argues that '[i]n the framework of the Millet system, religion and nationality were closely intertwined and often synonymous.'²⁷ During Ottoman rule in Bosnia, it was obvious who was a Muslim and who was not a Muslim. Different tax categories, but also different clothes, clearly distinguished between these groups. However, only in the late 18th and early 19th century did these differentiations develop into ethnic and national forms of identification. This has to do with the overlapping economic separation of Muslims and Christians, as argued by Malcolm, but it also has to do with the rise of neighbouring states. After 1815, Serbia became an autonomous state within the Ottoman Empire and, already in the late 17th century, Austria–Hungary took control over Croatia, which borders Bosnia to the West and the North. Both countries would consequently lay claim to Bosnia and Herzegovina and religious groups were used to justify territorial claims. The combination of religion, ethnic identity and territorial claim in the 19th century can, therefore, be seen as the main catalyst in the development of three distinct nations in Bosnia. However, this process was not completed in the 19th century, but continued until the second part of the 20th century. The best description of the origin of the different national identities in Bosnia and Herzegovina is given by Marko Attila Hoare, who argues that the core of the Bosnian Serb identity is the Christian Orthodox faith, combined with the memory of the medieval Serbian state and the economic situation as mainly poor peasants in Bosnian society. However, as mentioned above, Hoare states that only the emergence of an autonomous Serbia and the dream of a "Greater Serbia," plus the anti-Islam and anti-Ottoman ethnically exclusive radicalism of the Serb peasantry led to the development of a Bosnian Serb nationalism.²⁸ As is the case with any nationalism, there was, of course, also a movement within the Bosnian Serb elite which argued for inter-ethnic co-operation and which identified strongly with Serbia *and* Bosnia and Herzegovina. Several joint protests and revolts of Serb peasants and Muslim landowners against the Ottoman state in the 18th and 19th century demonstrate the existence of this form of Bosnian Serb nationalism, which could be found mainly in bigger cities.²⁹

26 Although we might argue that the Bosnian Muslim national consciousness did not develop before 1878 or even 1918, we shall explain later to what extent we can explain the rise of Muslim identification in an ethnic sense in the 19th century.

27 Babuna, Aydin: 'Nationalism and the Bosnian Muslims' in: *East European Quarterly*, Vol. 23, No. 2, June 1999, pp. 195–216, here p. 199.

28 Hoare, Marko Attila: *The History of Bosnia*, 2007, pp. 51–7.

29 *Ibid.* p. 55.

The origins of the Bosnian Croat national identity can be traced back to the role of Franciscan friars in the 14th century. Hoare argues that, in contrast to the Bosnian Orthodox believers, who always kept the memory of the medieval Serbian state, the Bosnian Catholics had, for a long time, no connection to Croatia. Instead, the preservation of Catholicism and folk memory, combined with the influence of the Austrian Empire, stirred the development of this nationalism. Nevertheless, Hoare argues that, only after 1878 when Bosnia was occupied by the Austrian Empire, did the Bosnian Croatian identity fully develop, because Bosnia and Croatia were both part of multinational Austria-Hungary and the Catholic faith became the faith of the ruling elites.³⁰

Finally, the identity of the Bosnian Muslims in an ethnic and, later, national sense, dates back to the Islamification of Bosnia, the economic and administrative rule of the Muslim elite in Bosnia and Herzegovina, and Bosnia's special geopolitical situation in the 18th and 19th century as a direct front-state, having a common border with the Austrian enemy. Babuna argues that, because of this frontline situation of BiH, the Bosnian Muslims 'identified themselves with the state, more than the [Bosnian] Serbs and [Bosnian] Croats.'³¹ Having said this, it has to be mentioned that the full development of the Bosnian Muslims into an ethnic and national group did not happen before the end of the Ottoman rule in Bosnia and Herzegovina, and it was under the Austrian occupation that the Muslim elite would demand political rights and concessions, and would create political parties and organisations.³² Bosnian Muslims would be recognised as an ethnic group by the Yugoslav Communists in 1968 and would receive the official status of a nationality in Yugoslavia only in 1971. The development of national identities in Bosnia did, of course, not happen linear or as one coherent process. As demonstrated by the example of the Bosnian Serb nationalism, there were always several variations of nationalism and national identification. Furthermore, the process of "national awakening" and the development of different national discourses, also occurred differently in towns and cities on the one hand, and rural areas on the other:

National consciousness in Bosnia-Herzegovina was born in towns and, among members of each of the three nationalities, possessed a Bosnian character that was ready to embrace members of the others. Yet it was the ethno-religiously 'pure' character of the villages that ultimately imposed its stamp on the national movements, ensuring that they would be unable to bridge the religious divide.³³

In the 19th century we can also witness the slow development of national identification amongst the Bosnian peoples, first amongst the Bosnian Serbs

30 Ibid. pp. 57–61.

31 Babuna, Aydin: 'Nationalism and the Bosnian Muslims', 1999, p. 199.

32 Ibid. p. 196.

33 Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 57.

and later amongst Bosnian Croats and Bosnian Muslims as well. Furthermore, the development of ethnic consensual decision-making (which at the time can be more characterised as religious-consensual decision-making) falls into the Ottoman era. In 1867 the new Ottoman constitutional law allowed for the creation of a Consultative Assembly in Bosnia and Herzegovina, which consisted of representatives of the sandžaks. Each sandžak was allowed to send three Muslim representatives, two Christian and one Jewish representative.³⁴ Even so, this Assembly was only allowed to advise the administration and the Pasha for Bosnia and Herzegovina. Nevertheless, it can be characterised as the first multi-religious assembly in BiH which was based on the consociational principles of grant coalition and minority representation. Indeed, when combining the organisation of the Bosnian Assembly after 1867 with the Millet system, which guaranteed cultural and religious autonomy, we can surprisingly trace back the origins of consociationalism to 19th century Ottoman Bosnia.

Ottomans and Austrians as Foreign Powers

When Austria-Hungary was appointed as administrator of Bosnia and Herzegovina at the Congress of Berlin in 1878, it was decided that, although Austria would administer BiH, the country itself would still be considered a part of the Ottoman Empire. This decision had no practical relevance for Bosnia because, firstly, the Austrian-Hungarians ruled Bosnia as if it was their territory and, secondly, because in 1908 Austria-Hungary officially annexed Bosnia and Herzegovina.³⁵

Whilst Bosnia enjoyed self-government under the Ottoman occupation and the ruling elite of the country was mainly of Bosnian origin, Austria governed Bosnia from Vienna, namely, the joint Austrian-Hungarian Ministry of Finance.³⁶ Whilst the new rulers introduced new policies in the administration, they followed the Ottoman example when it came to the territorial organisation of BiH. The former eyelet, which included the whole of Bosnia and Herzegovina, now became an Austrian-Hungarian Reichsland. The sandžaks became Kreise and the Ottoman districts became Austrian Bezirke.³⁷

The rule of the Austrian-Hungarian Empire, which lasted until 1918, left an important heritage in Bosnia and Herzegovina. First, Bosnia and Herzegovina was industrialised under the Habsburg monarchy. Railroads were built, Bosnia's rich natural resources were exploited and industries such as the print industry developed.³⁸ The introduction of a Bosnian school system that was not focused on religion or nationality, was the result of the Bosnian policy of the first Administrator of Bosnia and Herzegovina, the Finance Minister Benjamin Kállay. He supported

34 Ibid. p. 40.

35 Donia, Robert and Fine Jr., John: *Bosnia and Hercegovina*, 1993, pp. 93–7.

36 Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 72.

37 Ibid. p. 72.

38 Ibid. p. 97.

the idea of a “Bosnian identity” for all citizens of Bosnia and Herzegovina, mainly to counterbalance Serb nationalist demands. But, as Hoare argues, this policy had exactly the opposite effect as it strengthened the different religious and ethnic identities of the Bosnian groups even more.³⁹ In fact, Noel Malcolm has argued that the Austrian occupation of Bosnia had some very important consequences, such as the development of “Greater Croatia” ideas amongst leading Croatian and Bosnian Croat politicians, but also the idea of creating a *Tripate State*⁴⁰ out of Austria-Hungary, with the South Slavs acquiring the status of the third part of the empire. Finally, the birth of the idea of South Slav unity, which came to dominate the Western Balkans and consequently Bosnia and Herzegovina from 1918 until 1991, was also an idea which emerged during the Austrian occupation of Bosnia and Herzegovina, although this idea was much more widespread amongst Croatian and Serbian elites.⁴¹

The most important development in Bosnia and Herzegovina during the Austrian occupation is, certainly, the development of political parties and organisations of the three dominant groups. In 1906 the Muslim National Organisation was created, the first Muslim and first ever Bosnian party.⁴² This party was followed by the Croat National Union in 1906 and the Serb National Organisation in 1907.⁴³ Whilst Muslims and Serbs demanded religious freedom and Bosnian autonomy in the Austrian Empire,⁴⁴ Bosnian Croats supported the idea of close co-operation between the South Slavs in the Austrian Empire. The development of party politics in Bosnia and Herzegovina in the early years of the twentieth century found its appropriate forum when, for the first time, Bosnia and Herzegovina was granted a constitution in 1910 which presaged the creation of a Bosnian parliament. This constitution, which granted Bosnia limited autonomy, is a very important document in the history of Bosnia and Herzegovina. For the first time the major religions in Bosnia were officially recognised.⁴⁵ Furthermore, the constitution gave religious communities self-rule over religious and cultural matters. Here, one can clearly see the influence of the Austro-Marxist theory of cultural autonomy on Bosnia and Herzegovina. As described earlier, Otto Bauer and Karl Renner argued for non-territorial autonomy of the different cultural groups of the Austrian Empire. This form of autonomy was applied in Bosnia with regard to the religious communities and it was constitutionally guaranteed.

39 Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 75.

40 Consisting of the Austrian, the Hungarian and the South Slav part.

41 Malcolm Noel: *Bosnia – A Short History*, 2002, pp. 136–7.

42 Babuna, Aydin: ‘The Emergence of the First Muslim Party in Bosnia-Herzegovina’ in: *East European Quarterly*, Vol. 15, No. 2, June 1996, pp. 131–51.

43 Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 80.

44 Ibid. p. 79.

45 Siegel, Julius (ed.): *Verfassungsgesetze der Länder Bosnien und Herzegovina*, Madsche k u k Hofverlag: Vienna 1910, Article 1, Paragraph 8.

Additionally, the constituted Landtag (Bosnian Parliament) was to consist of representatives of all major beliefs and was to be elected on a proportional representation system.⁴⁶ Consequently, out of the 72 seats in the Bosnian Parliament, 31 were reserved for Orthodox Christians, 24 for Bosnian Muslims, 16 for Catholics and one for a Jew.⁴⁷ This represented Bosnian society more or less accurately with Orthodox Christians being the largest group, followed by Bosnian Muslims and Bosnian Croats.⁴⁸ Whilst the powers of the Landtag were limited, it can still be argued that this formal constitutional law of 1910 marks the beginning of consociational decision-making in Bosnia and Herzegovina as, in contrast to the Ottoman Assembly in Bosnia, the members of the Landtag were elected in relatively democratic elections. Marko Attila Hoare summarises the development of Bosnia and Herzegovina under Austria-Hungary as ‘the end of absolute Muslim domination of Bosnia-Herzegovina and the start of a more balanced competition for power between the embryonic nationalities.’⁴⁹ Having said this, it needs to be pointed out that the development of party politics, the economic development and the introduction of non-territorial cultural autonomy in Bosnia and Herzegovina also led to further distinctions between the main religious groups which, in the context of party politics and the influence of the neighbouring states of Croatia and Serbia (and to some extent also the Ottoman Empire), influenced the further development of ethnic groups with national claims to the Bosnian territory.

The Austrian rule over Bosnia and Herzegovina ended as a consequence of the First World War and the disintegration of the Austro-Hungarian Empire. Whilst the War saw far-reaching inter-communal violence in Bosnia and Herzegovina, with most Croats and Bosnian Muslims being loyal to Austria and Bosnian Serbs supporting the occupation of Bosnia by Serbia, the War also saw the growing idea of a joint state for all South Slavs.

The First Yugoslavia and the Second World War

The first Yugoslavia, which existed from 1918 until 1941,⁵⁰ was a state of contradictions. It was a multinational state with strong segments that demanded autonomy and regionalism, yet it was organised centrally. The national question, and the relations between the different peoples of the state, were at the centre of all political discussions within the state, yet the state was dominated by Serbs. Whilst

46 Ibid. Article 3, Paragraph 5.

47 Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 82.

48 The first reliable census in Bosnia and Herzegovina dates back to 1879. According to this there were 42.88 per cent of the Bosnian population Orthodox Christian, 38.75 per cent were Muslims and 18.08 per cent were Catholics (and 0.31 per cent “Others”). See: Ibid. p. 72.

49 Ibid. p. 72.

50 Only after 1929 was the state called “Yugoslavia” before that it was called “Kingdom of Serbs, Croats and Slovenes.”

all major peoples of the future Yugoslav state supported the idea of unification in 1918, the Vidovdan constitution of the Kingdom of Serbs, Croats and Slovenes resulted in massive regional protests. The core source on interwar Yugoslavia was written by a Croatian scholar, and he summarises the Kingdom's contradictions as follow:

The superior power of Serbian government led to a unification that did not meet even the basic desires of those who wanted a federal state organization [Slovenes and Croats S.K.]. It did not establish any guarantees against the dominance of Belgrade, whose armies were already occupying former Habsburg South Slavic possessions and Montenegro, realizing the age-old dream of Serb unification. Given the role of the Serbian state in the formation of Yugoslavia and the actual, if not formal continuation of Serbian state institutions after the unification, the Serbs could adjust to the new circumstances without a feeling of loss, without being deprived of their sense of national individuality. For the other nationalities, the unification was not so simple.⁵¹

The first Yugoslav state was built on different expectations. As Sabrina Ramet, a leading scholar on the development of Yugoslavia in the 20th century argues, the Serbs saw the first Yugoslavia as the fulfilment of the old dream of Serbian nationalism after which all Serbs need to be united in one common state.⁵² This part of Serbian nationalism goes back to the ideas of Ilija Garašanin, who lived in the 19th century and argued that Serbia should be the lead nation to unite all South Slavs and create a "Greater Serbia" in which Serbs would dominate all the other South Slav nations. Consequently, as Judah argues, the interwar Yugoslavia was a form of Greater Serbia 'in all but the name.'⁵³

Croats and Slovenes, however, saw the advantages of a joint Yugoslav state in a better situation for their countries in the post-war peace negotiations. They also saw the economic advantages; however, they argued and hoped for the creation of a South Slav Federation.⁵⁴ Additionally, the Bosnian Muslims argued in 1918 for the creation of a decentralised unitary state which would guarantee its constituent parts some autonomy.⁵⁵

In the end, the Vidovdan constitution of 1921 created a highly centralised state, in which the Serbian Royal Family of the Karadjordjević, the Serbian state tradition, the dominance of the Serbian army in the state and the dominance of the two main

51 Banac, Ivo: *The National Question in Yugoslavia (Origins, History, Politics)*, Cornell University Press: Ithaca and London 1984, p. 138.

52 Ramet, Sabrina: *The Three Yugoslavias (State-Building and Legitimation, 1918–2005)*, Indiana University Press: Bloomington 2006, p. 37.

53 Judah, Tim: *The Serbs (History, Myth & the Destruction of Yugoslavia)*, 2nd Edition, Yale University Press: New Haven and London 2000, p. 106.

54 Ramet, Sabrina: *The Three Yugoslavias*, 2006, p. 37.

55 Ibid. pp. 52–3.

Serbian parties in the parliament would ensure Serb hegemony.⁵⁶ After 1929, the King established a royal dictatorship that strengthened Serb domination in the state and discriminated against other nations in the first Yugoslav state. Yugoslav unity, therefore, was forced on the non-Serbian nations in the state, ensured by the dominance of Serbian royalty, Serbian parties and the Serb army.

As can be easily imagined, the Bosnian Serbs welcomed the unification under Serbian leadership and saw Yugoslavia as the realisation of their dream of a Greater Serbia that included Bosnia and Herzegovina. Having said this, it has to be mentioned that there were also considerable segments of the Bosnian Serbs unhappy with the new state, because it did not establish a formal unity of Bosnia and Herzegovina and Serbia in a Greater Serbian state.⁵⁷ Bosnian Muslims saw the Yugoslav state as a 'new form of colonial rule'⁵⁸ and the violence of the Serb Army against Bosnian Muslims strengthened their reservations against the new state. As a result of this violence, the Bosnian Muslims united in the Yugoslav Muslim Organisation.⁵⁹ The Bosnian Croats united in the Croat National Union and supported the idea of Bosnian autonomy and the federalisation of Yugoslavia in six units, of which Bosnia and Herzegovina was supposed to be one.⁶⁰ However, Bosnia and Herzegovina was mainly governed by Serbs and Serbs also dominated Bosnia's representation in central state institutions.⁶¹ The main achievement of the Bosnian Muslims and the reason why they supported the centralist constitution of 1921, was the guarantee of territorial continuity of BiH in the constitution:

According to the law on demarcations of oblasts [municipalities or communes S.K], Bosnia-Hercegovina will be divided into oblasts within its present borders. Until this has been determined by law, the [existing] okrugs in Bosnia-Hercegovina will function as oblasts.⁶²

The continued territorial existence of Bosnia and Herzegovina was the major political aim of the Yugoslav Muslim Organisation, together with the protection of the cultural rights of Bosnian Muslims. They feared that, a partition of Bosnia and Herzegovina between Croatia and Serbia, or the inclusion of BiH in either one country, would not only undermine their interests, but threaten their very existence.

56 Banac, Ivo: *The National Question in Yugoslavia*, 1984 p. 153.

57 Although, as we have mentioned above, this unity was existing in everything but the name. However, because Croatia was part of the joint political state, Croatian claims on Bosnia and Herzegovina had to be taken seriously as the developments in the late 1930s demonstrated. See: Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 104.

58 Ibid. p. 103.

59 Banac, Ivo: *The National Question in Yugoslavia*, 1984 p. 368.

60 Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 108.

61 In the first Yugoslav Parliament after the elections in 1920 there were 21 Serbs representing Bosnia and Herzegovina, 11 Muslims and 10 Croats. See: Ibid. p. 105.

62 Vidovdan constitution of 28 June 1921, Clause 135, Subsection 3, as quoted in: Ibid. p. 110.

Their fears came true when Bosnia was first deprived of its autonomy in political and cultural terms and, in 1929, also of its territorial integrity as the King of the newly renamed state of Yugoslavia divided the countries into banovinas, regions which cut across the historical states and were mainly based on natural borders. Bosnia was divided between four banovinas, the Drina Banovina, which included Eastern Bosnia and Western Serbia, the Primorje Banovina which included Western Herzegovina, central Bosnia and northern and central Dalmatia, the Zeta Banovina which included Eastern Herzegovina, Montenegro and parts of Southern Dalmatia, and Southern Serbia and the Vrbas Banovina which included Western Bosnia and parts of the Croatian Krajina.⁶³ Additionally, in none of the banovinas, were the Bosnian Muslims a majority, instead Serbs dominated three and Croats one of the banovinas.⁶⁴ The territorial integrity of Bosnia and Herzegovina was destroyed for the first time in centuries and the ensuing laws of the 1930s deprived Bosnian Muslims of their last resort, namely their religious autonomy.

In 1939, Croatian Autonomists and representatives of the Serb elite signed the Cvetković-Maček Sporazum, which united the Sava and Primorje banovina to a joint Croatia banovina.⁶⁵ Thirteen Bosnian communes were to join the new banovina Croatia and the other 38 communes were left in Serb-dominated banovinas, which openly discussed the establishment of a Greater Serbia banovina.⁶⁶ Bosnia and Herzegovina was eventually partitioned and Bosnian Muslims were neither involved in this partition, nor were they offered any political alternatives.

The first Yugoslavia failed because the Yugoslav state, although finding acceptance between the different peoples of Yugoslavia, 'could not [...] create political consensus.'⁶⁷ Sabrina Ramet argues very critically that it was the national identification of the parties that led, amongst other things, to the constant political crisis of the interwar Yugoslav state:

What needs to be emphasized is that it is not the multiethnic composition of a state which is destabilizing, but ethnic politics, defined here as the alignment of ethnic cleavages with political cleavages.⁶⁸

Indeed, as we have discussed above, the different ethno-national groups in Yugoslavia aligned with ethno-national parties. In the case of the Serbs, these were the Radical and the Democratic Party; in the case of the Croats, these were the Croatian Peasant Party and, as concerns the Bosnian Croats, the Croat National Union whilst the Bosnian Muslims united in the Yugoslav Muslim Organisation. It

63 Ibid. pp. 116–17.

64 Ibid. p. 117.

65 Ramet, Sabrina: *The Three Yugoslavias*, 2006, p. 106.

66 Banac, Ivo: *The National Question in Yugoslavia*, 1984 p. 376.

67 Lampe, John: *Yugoslavia as History (Twice there was a Country)*, 2nd edition, Cambridge University Press: Cambridge 2000, p. 186.

68 Ramet, Sabrina: *The Three Yugoslavias*, 2006, p. 37.

was not the ethnification of politics, per se, that led to the Yugoslav crisis, but the unwillingness of these ethnic parties to agree on the fundamental principles of the common state, its organisation and the relationship of the different peoples living in it.⁶⁹ Ivo Banac argued that, ‘since Yugoslavia’s national question was, more than anything, an expression of mutually exclusive national ideologies, the chances for its internal stability were not very good.’⁷⁰ It was different and competing national ideologies of Serbs and Croats, and their influence on Bosnia and Herzegovina, that led to the constant crisis of the first Yugoslav state. It was, however, not until the changing international scene finally affected Yugoslavia, that the state broke down completely when Germany invaded the country in 1941.

As a result of the German invasion, Yugoslavia was partitioned into three different zones of interest,⁷¹ a German occupation zone, an Italian occupation zone and the Independent State of Croatia, which included the whole territory of Bosnia and Herzegovina. Within the fascist-ruled Croatian state, Bosnia was divided into 15 provinces and ruled directly by Croatian fascists without any form of autonomy.⁷² More importantly, the ustaše (Croatian Fascists) committed genocide against Jews and Serbs, to an extent that even their German allies were worried about the widespread violence of the Croatian regime. This policy led to inter-ethnic violence as Serb militia known as četniks, who supported the Yugoslav government in exile and fought for continued Serb domination, killed thousands of Croats and Bosnian Muslims in return. As can already be seen, the Second World War was not one war in Yugoslavia but many. There was the war that included the occupation of the country by Germany and Italy, and the establishment of the Independent State of Croatia. Then there was the war of the Independent State of Croatia against at least two major resistance movements, namely the Communist Partisans under the leadership of Jozip Broz, better known by his wartime code name “Tito” and the četniks. There also was a violent conflict between the Partisans and the četniks. Finally, the German and Italian occupiers were also involved in the fighting. Marko Attila Hoare wrote the best description of Bosnia and Herzegovina during World War Two⁷³ and, for our purposes, it is important to

69 This distinction between pure „ethnic politics” as defined by Ramet as the creation of ethno-national parties on the one side, and the behavior and the attitudes of the parties on the other side, is of key importance especially when discussing the political situation in Bosnia and Herzegovina after 1995. We will come back to this point in the chapter “The Bosnian Federation” when discussing the Bosnian party system since 1995.

70 Banac, Ivo: *The National Question in Yugoslavia*, 1984 p. 413.

71 There were, however other border changes after the German invasion, as well such as the occupation of Macedonia by Bulgaria.

72 Banac, Ivo: ‘Bosnian Muslims: From Religious Community to Socialist Nationhood and Post-Communist Statehood, 1918–1992’, in: Pinson, Mark (ed.): *The Muslims of Bosnia and Herzegovina*, 2nd Edition, Harvard University Press: Cambridge 1996, p. 135

73 Hoare, Marko Attila: *Genocide and Resistance in Hitler’s Bosnia: The Partisans and the Chetniks, 1941–1943*, Oxford University Press: London 2006.

keep in mind that the Second World War saw BiH as a part of a Greater Croatian state, whose genocidal policies led to large-scale inter-ethnic violence.

The Second Yugoslavia

The practices and political realities of the second Yugoslavia are of key importance to understand the political culture of post-1995 Bosnia and Herzegovina. It is, therefore, rather surprising that historians and political scientists have failed to compare both political systems with each other, even if a variety of authors recognise the similarities.⁷⁴ Communist Yugoslavia was based on the decisions of the First and Second Meeting of the Council on National Liberation (AVNOJ), a Partisan controlled provisional parliament-style wartime creation. AVNOJ concluded in its second session in November 1943 that:

1. [...]
2. Yugoslavia is being built on the federal principle, which will ensure full equality to the nations of Serbia, Croatia, Slovenia, Macedonia, Montenegro, Bosnia and Herzegovina.
3. In accordance with the federal organization of Yugoslavia [...] organs of the people's authorities have been established in different lands of Yugoslavia in the form of National Liberation Committees and Provincial Anti-Fascist Councils of National Liberation.
4. National minorities of Yugoslavia will be secured all their rights.⁷⁵

Bosnia and Herzegovina became one of six Yugoslav republics, a decision that was mainly based on the wishes of the Bosnian Partisans (especially the Muslim and Croat ones) as well as Tito's consideration about the avoidance of a Serb-Croat conflict over BiH.⁷⁶ Some Bosnian Serb Partisans, as well as some members of the Communist leadership including Milovan Djilas and Montenegrin and Serbian

74 The similarities in terms of political structures and federalism are mentioned but not discussed in detail in: Bebler, Anton: 'South-East European Federalism and Contemporary Bosnia and Herzegovina' in: *Acta Slavica Iaponica*, No. 24, 2008, pp. 1–23. Bieber, Florian: *Post-War Bosnia (Ethnicity, Inequality and Public Sector Governance)*, Palgrave Macmillan: Basingstoke 2006. Woelk, Jens: 'Federalism and Consociationalism as Tools for State Reconstruction? The Case of Bosnia and Herzegovina' in: Tarr, Alan et al.: *Federalism, Subnational Constitutions and Minority Return*, Prager: Westport and London 2004, pp. 179–98.

75 Final conclusions of the II. Session of the Antifascist Council of National Liberation in Jajce, 29 November 1943, as quoted in: Frankel, Joseph: 'Federalism in Yugoslavia' in: *The American Political Science Review*, Vol. 49, No. 2, June 1955, pp. 416–30, here p. 420.

76 Ramet, Sabrina: *The Three Yugoslavias*, 2006, p. 164.

Partisan leaders, argued against republican status for BiH, instead favouring the status of an autonomous region or even the unification of Bosnia with Serbia.⁷⁷ It is important to keep in mind, that, whilst the Yugoslav socialist federation was set up according to the principle of nationality, meaning that each republic had its “host-nation,” this principle did not apply to Bosnia and Herzegovina,⁷⁸ ‘which is neither Serb nor Croat nor Muslim but Serb and Croat and Muslim.’⁷⁹

This is naturally a break with Bosnia’s past. Whilst Bosnia was seen as Serb land in the first Yugoslavia and, in 1939, divided between Croatia and Serbia, in the period of 1941–1945, Bosnia was part of the Greater Croatia project of the ustaše regime. The establishment of Bosnia and Herzegovina as a Yugoslav republic of Serbs, Croats and Muslims can, therefore, be considered as the recognition of Bosnia and Herzegovina as the homeland of three equal constituent peoples⁸⁰ for the first time in Bosnian history. The creation of a Yugoslav multinational federation was the result of two important developments; on the one side, the experiences of the first Yugoslavia and its failure, and on the other side, the experience of the Soviet Union as the first multinational socialist federation. The Yugoslav constitution of 1946 ‘has indeed been a slavish copy of the Stalin constitution [Soviet Union constitution of 1936 S.K.], but Yugoslav institutions developed independently and were much more a political reality than their Russian prototypes.’⁸¹ One of the leading Yugoslav Communists described his admiration for the Soviet Union and Stalin at the time by arguing that Stalin is the symbol of ‘the victorious battle of today and the brotherhood of man of tomorrow.’⁸² The continuation of Stalin’s influence on the first socialist Yugoslav constitution, and the shift towards inter-republican bargaining, demonstrates the influence of the Socialist Tradition of Federalism on Bosnia and Herzegovina.

Since the first communist Yugoslav constitution of 1946 followed its Soviet predecessor of 1936, it established a centralist federation which secured and guaranteed the power of the Communist Party of Yugoslavia. Steven Burg argued that ‘[f]ederalization of the state apparatus did not mean, however, federalization of political power within the state.’⁸³ Following the tradition of the Soviet Union,

77 Ibid. p. 164. Hoare argues that it was the intervention of Tito himself, which settled Bosnia’s contested status. Compare: Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 286.

78 Frankel, Joseph: ‘Federalism in Yugoslavia’, 1955, p. 420.

79 Conclusion of the First Session of the Bosnian Anti-Fascist Council held in Mrkonjić-Grad, 25–26 November 1943, as quoted in: Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 288.

80 The Bosnian Muslims were not considered a nation in 1945/46 but became recognised as an ethnic group in 1963 and as a nation in 1971.

81 Frankel, Joseph: ‘Federalism in Yugoslavia’, 1955, p. 425.

82 Djilas, Milovan: *Conversations with Stalin*, Penguin Books: Harmondsworth 1962, p. 49.

83 Burg, Steven: ‘Ethnic Conflict and the Federalization of Socialist Yugoslavia: The Serbo-Croat Conflict’, in: *Publius: The Journal of Federalism*, Vol.7, No. 4, Fall 1977, pp. 119–43, here p. 120.

federalism was not seen as a way to share sovereignty with the constituent units, but 'it helped satisfy important psychological needs of the Yugoslav peoples for recognition of their national individuality, and [...] it gave each nationality the assurance, for the first time, of enjoying a truly special status with the other national groups.'⁸⁴ This was also supported by the introduction of a dual citizenship system, in which each citizen had the citizenship of the republic of origin and the Yugoslav citizenship.⁸⁵ The recognition of different nations and their active promotion was, however, counterbalanced by the policy of "brotherhood and unity" and the support for a policy of "Yugoslavism," which Hoare defines as 'a surpa-national, socialist ideology that was intended increasingly to supersede the separate national ideologies of the Yugoslav nations.'⁸⁶ This policy was especially directed towards Bosnian Muslims, who were not recognised as one of the nations of Yugoslavia in 1945/46, but it was also aimed at Bosnian Serbs and Bosnian Croats who tended to identify more often than the inhabitants of the other Yugoslav republics as "Yugoslavs." The reason for this is Bosnia's multinational character, the high number of inter-ethnic marriages and the popular support for the Yugoslav federation in Bosnia and Herzegovina.⁸⁷ The policy of Yugoslavism failed because of new economic and national conflicts between the republics and the recognition of the Communists that only further decentralisation could guarantee further stability in the state.⁸⁸

The resulting decentralisation of the Yugoslav state was based on the break with Stalin's Soviet Union and the development of a "Yugoslav way" of socialism based on the concept of workers' self-management and decentralisation. Daniel Elazar, one of the leading experts on federalism, has argued that federalism in Yugoslavia was first enforced on the Yugoslav peoples by the Communist Party and later protected by the common threat of the Soviet Union.⁸⁹ The Stalin-Tito split resulted in a series of reforms in Yugoslavia, which were eventually recognised in the second constitution of the state in 1953. Whilst the 1953 constitution meant some decentralisation of the highly centralised state, it did not mean more power for the constituent units of the federation, but enhancement of the power of workers' and producers' councils.⁹⁰ Joseph Frankel argues that both republics and the federation were seen as "superstructures" over the more

84 Shoup, Paul: *Communism and the Yugoslav National Question*, Columbia University Press: New York 1968, p. 119.

85 Frankel, Joseph: 'Federalism in Yugoslavia', 1955, p. 423.

86 Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 326.

87 Sekulić, Dusko et. al: 'Who Were the Yugoslavs? Failed Sources of a Common Identity in the Former Yugoslavia' in: *American Sociological Review*, Vol. 59, No. 1, February 1994, pp. 83–97, here p. 84.

88 Burg, Steven: 'Ethnic Conflict and the Federalization of Socialist Yugoslavia', 1977, p. 122.

89 Elazar, Daniel: 'Will Federalism Preserve Yugoslavia?' in: <http://jcpa.org/dje/articles2/yugoslavia.htm> (accessed 11. June 2007, printout in possession of the author).

90 Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 326.

important workers' and producers' councils.⁹¹ The mixture of a multinational federation with elements of local workers' representation is one of the most important and unique features of Yugoslav federalism.⁹² However, further tensions between the republics, both with an economic and a national background, led to further decentralisation in the 1960s.

The decentralisation of Yugoslavia towards more decision-making power for the constituent parts really began in the 1960s. Although the Communist Party of Yugoslavia had already federalised in 1952 and became the League of Communists of Yugoslavia, Sabrina Ramet argues that Yugoslavia can be considered a 'balance of power system' after 1963.⁹³ What is clear is that the Yugoslav constitutions of 1963 and 1974 devolved key decision-making competences to the republics and autonomous regions, and furthermore enhanced the role of the constituent units' representatives in decision-making at the centre.⁹⁴ This devolution, which was originally based on economic decentralisation, resulted also in further conflicts between the different federal units but, in particular, between the richer units in the North of the country (Slovenia and Croatia) and the poorer regions in the Centre and the South (Kosovo, Bosnia and Herzegovina, Serbia). Nevertheless, the League of Communists attempted to ensure some form of unity: In economic terms, this was done through the creation of the "Special Fund for Crediting the Development of the Underdeveloped Republics and Provinces," which can be described as an instrument of fiscal federalism to transfer money from the developed to the underdeveloped units of the federation, comparable to the "*Länderfinanzausgleich*" in German federalism.⁹⁵ In political terms, this was done, on the one side, by securing the monopoly of the League of Communists and, on the other side, by providing the federal units with decision-making competences that demanded compromise and consensus.⁹⁶ William Dunn points to the dialectic of decentralisation and centralisation processes in Yugoslavia happening simultaneously.⁹⁷

Bogdan Denitch, writing in 1977, argued that the Yugoslav federation was successful in managing national diversity within its borders because decentralisation

91 Frankel, Joseph: 'Federalism in Yugoslavia', 1955, p. 426.

92 Djordjević, Jovan: 'Remarks on the Yugoslav Model of Federalism' in: *Publius: The Journal of Federalism*, Vol. 5, No. 2, Spring 1975, pp. 77–88.

93 Ramet, Sabrina: *Nationalism and Federalism in Yugoslavia 1962–1991*, 2nd edition, Indiana University Press: Bloomington and Indianapolis 1992, p. 6.

94 Koštunica, Vojislav: 'The Constitution and the Federal States' in: Rusinow, Dennison (ed.): *Yugoslavia – A fractured Federalism*, The Wilson Center Press: Washington D.C. 1988, pp. 79–86.

95 Ramet, Sabrina: *Nationalism and Federalism*, 1992, p. 9.

96 This feature has also been adopted by Bosnia and Herzegovina in 1995 as we shall see in the chapter "The Bosnian Federation."

97 Dunn, William: 'Communal Federalism: Dialects of Decentralization in Socialist Yugoslavia' in: *Publius: The Journal of Federalism*, Vol. 5, No. 2, Spring 1975, pp. 127–50, here p. 149.

and the political significance of the republics would secure the stability of the federal system.⁹⁸ However, a lack of deep-rooted democratic reforms, worsening economic conditions and rising national tensions would eventually result in the break-up of the Yugoslav state. These defects can ultimately be described as a lack of multinational federalism, as described in the previous chapter. The national ambitions of Serbs, Croats, Slovenes, Macedonians, Bosnian Muslims, and Albanians were all forced and transmitted through the Communist Party and, since this Party claimed to have solved the national question in Yugoslavia, these claims were not transmitted at all. Whilst the Communists realised that devolution of power would calm national sentiments and were rather successful with this policy in the 1960s and 1970s, the death of Tito also marked the beginning of the development in which the republics were not willing to recognise the needs of the common state, and the rise of Slobodan Milošević in the 1980s also marks the end of consensual decision-making in the common institutions.

Bosnia and Herzegovina, as part of communist Yugoslavia, was first dominated by Bosnian Serbs before, in the late 1960s and 1970s, a system of strict proportionality was introduced.⁹⁹ Each of the Yugoslav republics had their own constitution, although the first constitutions were mere copies of the Yugoslav constitution. However, with the introduction of proportionality in Bosnia and Herzegovina and general decentralisation in Yugoslavia, one can observe the development of a “constitutional spirit” in the republics. They became more and more, the centre of decision-making. This system of proportional representation of Serbs, Bosnian Muslims and Croats in the Communist Party in BiH, the country’s political and administrative organs, and civil service, is also connected to the recognition of Bosnia’s Muslims, first, as an ethnic group in 1963 and, finally, as a nation in 1971. Consequently, the Bosnian constitution of 1963, mentions Serbs, Bosnian Muslims and Croats and Others as the peoples of Bosnia and Herzegovina.¹⁰⁰ The 1974 constitution of Bosnia even mentions the sovereign rights of the republics and demonstrates, therefore, the above stated further decentralisation.¹⁰¹ This decentralisation can be understood as a process of federalisation. The republics became the key decision-makers and received more constitutional power, and the implementation of strict power-sharing in central institutions resulted in negotiations amongst republication elites and the following of consociational principles. Whilst these national elites were never legitimised through democratic elections, they negotiated not (only) as Communists but as representatives of their national group and their republic. This development is also important because it distinguishes Yugoslavia from the Soviet Union and Czechoslovakia, where decentralisation to this extent never took place.

98 Denitch, Bogdan: ‘The Evolution of Yugoslav Federalism’ in: *Publius: The Journal of Federalism*, Vol. 7, No. 4, Fall 1977, pp. 107–17, here pp. 116–17.

99 Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 324.

100 *Ibid.* p. 327.

101 *Ibid.* p. 333.

It was clear from the beginning of socialist Yugoslavia, that all problems threatening the federation would consequently also be a threat to Bosnia, the often acclaimed “Yugoslavia in miniature.” Events in Serbia, Slovenia and Croatia in the second half of the 1980s, heavily affected political discussions in Bosnia. With Serbia and Croatia debating the future of Yugoslavia, they also opened the debate about Bosnia and Herzegovina.

The Dissolution of Yugoslavia and the War in BiH

The dissolution of Yugoslavia had its very origin in the nature of the political system. As Burg argued already in the 1970s, ‘[t]he structure of the Party in Yugoslavia, and the coincidence of federal, ethnic, and economic boundaries, provides a natural basis for the emergence of conflicting interests within the Party leadership.’¹⁰² Sabrina Ramet argues that the death of Edvard Kardelj in 1979 and Tito in 1980, as well as the economic crisis of the late 1970s and early 1980s and finally the eruption of violence in the autonomous province of Kosovo in 1981,¹⁰³ undermined the very foundations of the Yugoslav state.¹⁰⁴ Whilst Serbia, which was controlled by Slobodan Milošević after 1987, supported a re-centralisation of the Yugoslav federation,¹⁰⁵ Slovenia and Croatia supported further decentralisation and the official transformation of the Yugoslav state into a confederation.¹⁰⁶ Without going into too much detail, it was the eventual deadlock between Milošević’s supporters in Serbia, Montenegro, Kosovo, and Vojvodina on the one side, and Croatia and Slovenia on the other, that led to the final breakdown of the Yugoslav political system. Bosnia was torn between different positions during the last years of the Socialist Yugoslav federation, and was unable to position itself clearly because of its multinational character and the different preferences of Bosnian Serbs, who mainly supported Milošević, Bosnian Croats, who supported further decentralisation of the federation, and Bosnian Muslims, who, above all, wanted to avoid Bosnia becoming a victim of the Serbo-Croat rivalry again.¹⁰⁷ As Yugoslavia became a ‘wildfire of nationalism,’ Bosnian Serbs and Croats, but also their fellow countrymen in the kin states, began openly to question the nationhood of Bosnian Muslims

102 Burg, Steven: ‘Ethnic Conflict and the Federalization of Socialist Yugoslavia’, 1977, pp. 142–3.

103 Kosovo, which has a majority Albanian population, became first recognised as an autonomous district in 1946 but later received the same status as Vojvodina, namely as an autonomous province. However, both regions were part of the Socialist Republic of Serbia, despite having far-reaching autonomy in decision-making competencies and having their own representatives in the federal political organs.

104 Ramet, Sabrina: *The Three Yugoslavias*, 2006, p. 328.

105 See, for the Serbian arguments: Koštunica, Vojislav: ‘The Constitution and the Federal States’, 1988, pp. 79–92.

106 Ramet, Sabrina: *Nationalism and Federalism*, 1992, pp. 215–18.

107 Ibid. p. 249.

and 'Bosnia became [a] political battleground.'¹⁰⁸ The Agrokomerc scandal¹⁰⁹ is seen as the start of both the economic and the political crisis in the late 1980s in Bosnia and Herzegovina, and resulted in the political leadership of the country losing its legitimacy.¹¹⁰ The result was the complete loss of control and trust of the Communist Party in Bosnia and Herzegovina and the emergence of nationalism, which mainly came as an import from Bosnia's neighbours, and divided the Bosnian population along national lines in 1989.¹¹¹ Consequently, the Communist Party agreed to multiparty elections in Bosnia in November 1990. Other republics had elections earlier that year, which already undermined the monopoly of the Communist Party throughout Yugoslavia. The election in Bosnia was won by a coalition of nationalist forces, namely the Party of Democratic Action (SDA, a Bosnian Muslim party), the Serb Democratic Party (SDS) and the Croatian Democratic Union (HDZ). These exclusively nationalist parties had completely different visions about the future of Bosnia and Herzegovina, and, although they agreed to share power at the central level and district levels, this agreement resulted in conflicts, first at the local level and then at the central level. Andjelić argues that the nationalist parties had two major things in common, they were incompetent to tackle Bosnia's economic and political crisis, and they lacked an 'understanding of the meaning of democracy. [...] Electoral success was translated into a "green light" for the elected to do, or attempt to do, whatever they wanted.'¹¹² He concludes by arguing that 'political ethnic elites had different aims and this, as well as incompetence, is what prevented their co-operation in power. The leaderships of the Serbs and Croats in Bosnia and Herzegovina simply followed their leaders in Belgrade and Zagreb, whilst Moslems tried to underline the issue of Bosnian sovereignty, just as the communists had attempted earlier.'¹¹³

It is very important to keep in mind that Bosnia and Herzegovina was *not* an independent state before 1992. Bosnia remained part of the Yugoslav federation and was never an independent political unit after the end of the Bosnian kingdom in the 15th century. Furthermore, Bosnia also was *not* a democratic state before 1990. If we consider fair and free elections as the only criteria for democracy, we can argue that Bosnia became a democratic political entity with the multiparty elections in 1990. If we, however, focus on Wolfgang Merkel's criteria for an embedded democracy, we can see that although BiH

108 Ramet, Sabrina: *The Three Yugoslavias*, 2006, p. 367.

109 Agrokomerc was a company in Western Bosnia and its mismanagement demonstrated the weaknesses of the self-management style that characterised Yugoslav economic policy. The economic consequences of the scandal reached far beyond the company.

110 Andjelić, Neven: *Bosnia-Herzegovina*, 2003, pp. 62–3.

111 Ibid. pp. 75–108.

112 Ibid. p. 195.

113 Ibid. pp. 196–7.

held free and fair elections in 1990, political and civil rights for the Bosnian population were limited due to the rise of nationalism and nationalist tensions (and some cases of nationalist violence) and the monopoly of power in Bosnia did not lay with the democratic leaders, but key decisions were taken outside of Bosnia and Herzegovina, namely in Serbia and Croatia. Finally, it is important to recognise that Bosnia and Herzegovina itself was *not* organised federally until the signature and implementation of the Dayton Peace Accords in 1995. As part of communist Yugoslavia, Bosnia was organised first in regional units focusing on the cities of Sarajevo, Banja Luka, Bihać, Travnik, Tuzla, Mostar and later Doboj¹¹⁴ and, as a result of the decentralisation and self-management of the Yugoslav federation, Bosnia was consequently reorganised into 106 smaller administrative units, named *općinas*.¹¹⁵ These municipalities existed after the end of the Second World War and they grew in importance during the socialist period because of decentralisation in Yugoslavia, in general, and the self-management style of Yugoslav socialism, in particular. Because the newly elected nationalist elites were unable to agree on a new territorial organisation of Bosnia, they introduced a consociational decision-making system in central institutions, in which all decisions needed the agreement of the three nationalist parties. The most important agreement between the three nationalist parties was reached in March 1990, and established a National Board in which 20 MPs of each of the three different constituent peoples would be represented and whose unanimous consent was needed for any changes to the Bosnian constitution and the Bosnian border.¹¹⁶ The continued power-sharing agreement between the different national groups in Bosnia is a logical consequence of the situation in the country. Bosnia and Herzegovina, besides being still part of Yugoslavia, could not introduce any form of “ethnic” federalism in 1991. The different national groups were scattered all around the country with no group being able to claim a larger unified part for their self-rule.

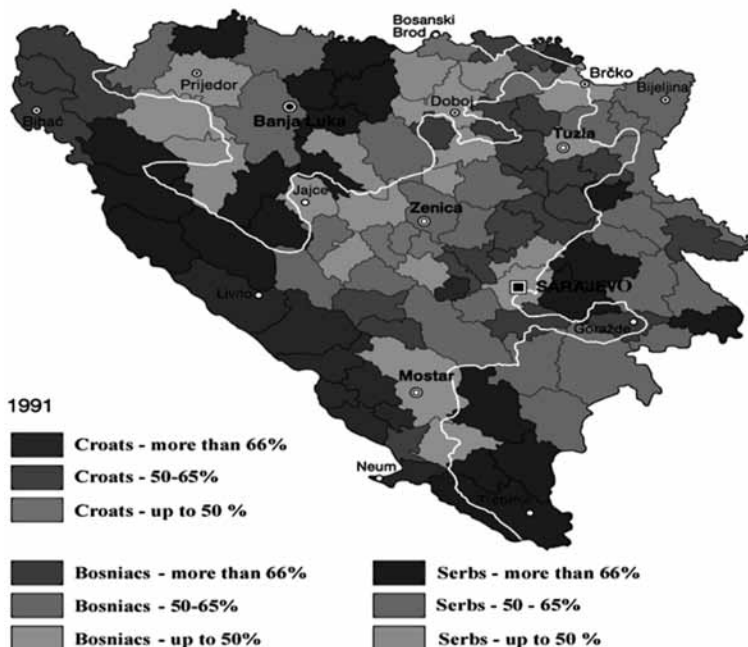
Furthermore, none of the three nationalist parties was interested in a federal solution in 1991, although the SDS did bring this option to the table. However, the real interests of the SDS and the HDZ were outside of Bosnia and the SDS focused in 1991 on keeping the whole of Bosnia within the Yugoslav federation. The SDA, on the other side, preferred a consociational power-sharing arrangement because federalism was seen as the first step towards the break-up of BiH. The SDA would be the only party amongst the nationalists that supported the long-term independence and unity of Bosnia and Herzegovina.¹¹⁷ However, it is important to point out that until mid-1991 the key question in Bosnia was not about the internal organisation of the country but whether to stay in Yugoslavia or opt for independence.

114 Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 376.

115 Ramet, Sabrina: *The Three Yugoslavias*, 2006, p. 272.

116 Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 345.

117 Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 347.

Ethnic composition before the war in BiH (1991)**Map 3.1 Distribution of National Groups in Bosnia and Herzegovina in 1991**

Source: Map available at: <http://reliefweb.int/map/bosnia-and-herzegovina/bosnia-and-herzegovina-ethnic-composition-war-1991>

Note: All Maps provided courtesy of the ReliefWeb Map Centre, UN Office for the Coordination of Humanitarian Affairs. Disclaimer: The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

The war in Bosnia broke out, because the three main parties representing the dominant national groups had completely different and contested visions about the future of Bosnia and Herzegovina. Whilst Bosnian Muslims and Bosnian Croats were unwilling to accept the domination of Serbia and Bosnian Serbs in Yugoslavia, the Bosnian Serbs were unwilling to accept the independence of Bosnia and Herzegovina and their separation from Serbia, which they considered their mother land.¹¹⁸ The arguments about the future of Bosnia and Herzegovina, however, were overshadowed by active preparations of the Bosnian Serbs for secession. Already, after the

¹¹⁸ Glenny, Misha: *The Fall of Yugoslavia*, 3rd edition, Penguin Books: London 1996, pp. 143–4.

elections in 1990, the Bosnian Serb-dominated municipalities began to form the Association of Serb Municipalities which, in September 1991, was transformed into the Serb Autonomous Oblasts (regions).¹¹⁹ After the decision of the Bosnian Muslim and Bosnian Croat representatives in the Bosnian parliament to vote on the independence of BiH and the resulting boycott of all republican institutions by the Bosnian Serbs, Serbs began active preparation for the departure of the Serb Autonomous Oblasts from Bosnia and Herzegovina. They claimed that Muslims and Croats were unwilling to accept the concerns and demands of the Serbs, and were undermining the role and the agreement of the National Board. In an atmosphere of nationalism and the outbreak of violence in neighbouring Croatia, the willingness of all parties to find a common solution was even lower than after the elections. Consequently, the Bosnian Serb leadership prepared for an alternative. First, they introduced a Bosnian Serb parliament and, in November 1991, they held a referendum in the Serb dominated areas about remaining in Yugoslavia. This referendum, which saw an overwhelming majority of Bosnian Serbs voting to keep their territories in Yugoslavia, was neither accepted by the Bosnian government nor by the international community.¹²⁰ However, the Republika Srpska (RS) was established in January 1992 and, therefore, *before* the official declaration of independence of Bosnia and Herzegovina,¹²¹ although the RS was, by then, still part of Bosnia and not formally independent. When Bosnia and Herzegovina declared its independence from Yugoslavia in March 1992, the RS was already established and the government of BiH already had no control over one-third of Bosnia's territory.¹²²

Without going into too much detail about the war in Bosnia and Herzegovina,¹²³ a number of points need to be highlighted. First, the three different national groups had completely different war aims. Bosnian Muslims¹²⁴ fought for the preservation of BiH in its historical borders and the continued existence of a

119 Hoare, Marko Attila: *How Bosnia Armed*, Saqi Books: London 2004, pp. 34–5.

120 International community in this sense refers to the United Nations that admitted Bosnia but not the Bosnian Serb para-state, as well as the European Community that outlined the guidelines for the independence of the Yugoslav republics in the Badinter Commission and also financed the Bosnian referendum on independence from Yugoslavia.

121 Ibid. pp. 34–8.

122 Ibid. pp. 37–8.

123 This has been done by others, including the very good analysis by Marie-Janine Calic, see: Calic, Marie-Janine: *Krieg und Frieden in Bosnien-Herzegowina*, Suhrkamp: Frankfurt am Main 1995. Probably the best description of the war in Bosnia and Herzegovina in English is: Burg, Steven and Shoup, Paul: *The War in Bosnia-Herzegovina (Ethnic Conflict and International Intervention)*, M.E.Sharpe: Armonk and London 1999. See as well the above cited work by Misha Glenny and Silber, Laura and Little, Allan: *Yugoslavia: Death of a Nation*, Penguin Books: London 1997. Woodward, Susan: *Balkan Tragedy: Chaos and Dissolution after the Cold War*, The Brookings Institution: Washington D.C.: 1995.

124 After 1993 referred to as Bosniaks.

multinational Bosnian state (in which they would be the majority).¹²⁵ Bosnian Croats would support the SDA and the Bosnian Army at the beginning of the war against the aggression of the Bosnian Serb Army and the Yugoslav People's Army. However, as a consequence of the Vance-Owen Peace Plan (1993), which suggested the cantonisation of Bosnia and Herzegovina, Bosnian Croat troops started a war against their former allies, the Bosnian Army and the Bosnian Muslims, to create ethnically homogenous cantons. Consequently, in August 1993 the HDZ leadership proclaimed the Croat Republic of Herzeg-Bosna, which covered Herzegovina and parts of central Bosnia.¹²⁶ However, whilst the Bosnian Serb Army, with the help and equipment of the Yugoslav Army, was very successful in its military campaign and controlled 70 per cent of territory in Bosnia and Herzegovina very quickly, the Bosnian Croat Army suffered several defeats against the Army of Bosnia and Herzegovina. As a result of this military development in Bosnia and continued international pressure on Franjo Tudjman to stop his support for the Croat secession movement in Bosnia, negotiations between Tudjman and Izetbegović, the leader of the SDA, as well as representatives of the HDZ in Bosnia and Herzegovina, started taking place in 1994 and were finalised in the Washington Agreement.¹²⁷ The Agreement saw the formal end of the Croat Republic of Herzeg-Bosna. It furthermore created a military alliance between Bosniaks and Croats. Future co-operation between Bosniaks and Croats in Bosnia and Croatia proper was also foreseen in the Agreement.¹²⁸ It was only in spring and summer 1995, that the situation on the battlefield changed and Bosnian Serb troops had to suffer defeats. Military defeat, American engagement, and the split between Serbia and the Serb secessionists in Croatia and Bosnia, resulted in a new political environment which enabled the start of negotiations in November 1995 in Dayton, Ohio.

Two things about the war in Bosnia and Herzegovina are of key importance for the country's federal tradition. Bosnia itself has never been organised federally before 1995. Indeed, the option to federalise (or confederalise) Bosnia is not a solution based on the will of the different peoples of Bosnia. Instead, it was the international community (at the beginning the representatives of the EU), that suggested federalism as a viable option. The first plan to decentralise Bosnia and

125 The best description of the change of the SDA's war aims and plans for the future of BiH can be found in: Hoare, Marko Attila: *How Bosnia Armed*, 2004, pp. 85–98.

126 *Ibid.* pp. 86–98.

127 However, Silber and Little argue, that no direct talks between the Bosnian government and the Croatian representatives took place in Washington. Instead, it demonstrates the important negotiation skills of the US-American negotiators, who fostered an agreement that brought an end to the fighting. See: Silber, Laura and Little, Allan: *Yugoslavia: Death of a Nation*, 1997, p. 322.

128 About the Croatian war aims in Bosnia and Herzegovina and the resulting political arrangements see: Hoare, Attila: 'The Croatian Project to Partition Bosnia-Herzegovina, 1990–1994' in: *East European Quarterly*, Vol. 16, No. 1, March 1997, pp. 121–38.

Herzegovina along national lines, was the Carrington-Cutiliero Plan of 1992, which preceded the eruption of violence. Whilst, at first, all three parties agreed on the Plan that also included extensive power-sharing provisions on all levels of government, it was the leader of the Bosnian Muslims, Alija Izetbegović, that withdrew his support by arguing against the national division of Bosnia. Furthermore, the Vance-Owen Plan, and its idea of cantonisation, can be seen as evidence for the statement that federalism was not a “home-grown” option. Marko Attila Hoare, amongst others, has argued that the Vance-Owen Peace Plan finalised the national partition of Bosnia and Herzegovina and that ‘[t]he International Community would push the Bosnian leadership into accepting partition!’¹²⁹ Whilst federalism certainly is anything but partition, Hoare’s statement does have some truth in it. The introduction of federalism on a national (ethnic) basis would have resulted in massive population transfers in 1991. The war in Bosnia and Herzegovina created three more or less homogenous areas in Bosnia and Herzegovina, as can be seen opposite in Map 3.2.

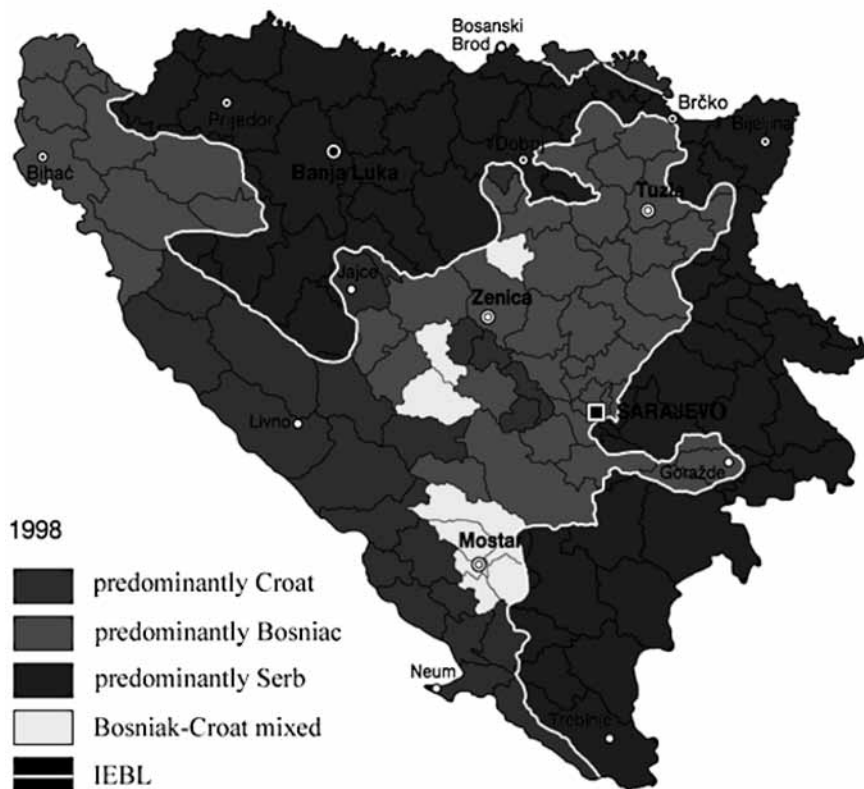
The war in Bosnia and Herzegovina and, in particular, ethnic cleansing, resulted in territorial homogenisation which would allow for the introduction of a multinational federal system. The territorial concentration of different national groups in specified areas is a core precondition for the introduction of multinational federation. Where no territorial concentration of different nations exists, such as in Bosnia before 1991, non-territorial autonomy is generally a more appropriate solution to ethnic conflicts. However, the Bosnian state that was created at Dayton in 1995 was built on the results of ethnic cleansing during the war. Dayton Bosnia being based on ethnic cleansing and homogenisation is the most problematic legacy of the Bosnian federation that evolved in late 1995. The federal arrangement that is in practice in Bosnia today, is based on the results of the war in Bosnia and Herzegovina which is also demonstrated by the fact that the inter-entity-boundary line is more or less the same line as the front line between the different warring parties in the summer of 1995. The introduction of an internationally negotiated federal system as part of a peace plan is unique to Bosnia and Herzegovina and underlines the main claim of this book, namely that Bosnia and Herzegovina represents a new model of federalism and federation.

Continuities in Bosnia’s History

The following section will discuss the four major continuities in Bosnia’s federal tradition, focusing on the relationship between the different peoples, the internal organisation and the influence of neighbouring and foreign states in Bosnia’s internal affairs. It will become clear that, although Bosnian history is characterised by change, there are also important continuities which play a key role in today’s federal system.

129 Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 376.

Ethnic composition in 1998



Map 3.2 National Composition of Bosnia and Herzegovina in 1998

Source: Map available at: <http://reliefweb.int/map/bosnia-and-herzegovina/bosnia-and-herzegovina-ethnic-composition-1998>

Note: The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations

Multinationality and Ethnic Power-Sharing

Bosnia and Herzegovina has always been an area of different religions, ethnicities, and peoples. Marko Attila Hoare states that '[t]he Bosnians never comprised a single nation, nor have they ever comprised three wholly separate nations.'¹³⁰ Indeed, since the first record of different religious communities in Bosnia and

¹³⁰ Hoare, Marko Attila: *The History of Bosnia*, 2007, pp. 413–14.

Herzegovina in the 16th century, they were always identified as “Bosnians.” Today we speak about Bosniaks as the national group of the *Bosnian* Muslims, *Bosnian* Croats and *Bosnian* Serbs. Often forgotten are other minorities living in Bosnia, including Jews, Turks, Montenegrins, Albanians, Vlachs, Roma and others. Bosnia, therefore, has been multi-religious and multi-ethnic for a long time and, since the 19th century, also multinational. The importance of the Ottoman millet system cannot be overestimated, since it is responsible for the division of society in different religious groups.¹³¹ It was in the 19th century that these different religious groups developed into nations, first the Bosnian Serbs followed by Bosnian Croats and Bosnian Muslims. This development was largely influenced by Bosnia’s two large neighbours.

The different groups in Bosnia have dominated the country and discriminated others at different times, however, there is also a long tradition of co-operation and power-sharing between the three groups in Bosnia and Herzegovina. Whilst Bosnian Muslims dominated the country when it was part of the Ottoman Empire, the Bosnian Serbs dominated the country when it was part of the first Yugoslavia. They were over-represented in the administration and the army, and Bosnian Muslims lost their religious autonomy in the late 1920s. Bosnian Serbs also dominated Bosnia and Herzegovina when it first became part of the Socialist Yugoslav federation, however, later the Communists introduced a system of power-sharing and proportional representation.¹³² The Bosnian Croats, finally, dominated the country during the Austrian occupation in late 19th and early 20th century¹³³ and again after the country became part of the Independent State of Croatia in 1941. Whenever one religious/national group dominated the country, it witnessed outbreaks of religious and ethnically based violence: whether it was the violent actions of the Ottoman troops and their Bosnian supporters against the Serbs, who were accused of conspiracy with Serbia, or the spread of violence against Muslims during the creation of the first Yugoslavia, or the wide-spread violence and destruction of Serbs in Bosnia during the rule of the Croatian ustaše. Having said this, there have also been many historical episodes of co-operation and peace. This was realised by the Bosnian peoples as well as by the occupying empires. The first forum of co-operation was the introduction of a Consultative Assembly by the Ottoman administrators of Bosnia and Herzegovina in 1867. This Assembly, although only limited to consultation powers, was nevertheless composed of all major segments of Bosnian society, and each sandžak was allowed to send three Muslims, two Christians and one Jew to the Assembly.¹³⁴

131 The millet system divided Ottoman Bosnian society only in two groups, namely Muslims and non-Muslims. However, the non-Muslim group was further differentiated in Catholics, Orthodox, Jews etc. and at different times the Ottoman rulers preferred co-operation with different groups.

132 Ibid. p. 331.

133 In 1912, for example, 57.87 per cent of all Bosnian bureaucrats were Bosnian Croats or Croats from Croatia proper. See: Ibid. p. 78.

134 Ibid. p. 41.

The Austrian-Hungarian Empire continued the policy of inter-ethnic co-operation and ethnically balanced decision-making. Most notably is the constitution granted by the Austrian Emperor for Bosnia and Herzegovina in 1910, which stated that Bosnia has limited self-governing power and that the Bosnian parliament would represent the different religious and ethnic communities of Bosnia, including reserved seats for the major groups.¹³⁵ The resulting party politics that developed in BiH in the early 20th century also saw the rise of major religiously and ethnically based parties. Indeed, whenever multiple parties were allowed to form in Bosnia, an ethnically based party system developed.¹³⁶ Sabrina Ramet, amongst others, tends to blame the current political standstill and the permanent crisis in the past in Bosnia and Yugoslavia, on the dominance of *ethnic politics*.¹³⁷ She argues that the ethnification of politics, meaning the focus of all political actions on the relations between different national groups, was the key reason for the end of both Yugoslavias. There might be some truth in this, however, taking into account Bosnia's experience with ethnic power-sharing, it becomes obvious why power-sharing is the only option for Bosnia and Herzegovina. Indeed, even the Communists realised this when they introduced proportional representation in Bosnia and an ethnic power-sharing system at the centre, although it was undermined by the monopoly of the Communist Party.

Territorial Integrity and Regionalism

'Bosnia-Herzegovina existed both as a country and as a state or administrative entity, in unbroken continuity, from the tenth century, and probably earlier, until 1929.'¹³⁸ Hoare's statement confirms Bosnia's territorial continuity and statehood based on the fact that both have a tradition of more than ten centuries.

After the full occupation and integration of Bosnia and Herzegovina into the Ottoman Empire in the second half of the 15th century, the country did not become an autonomous administrative unit immediately. Only about 100 years after the Ottoman occupation did Bosnia receive the status of an eyelet, comparable to an autonomous province. This eyelet, however, did not exist continuously and its internal organisation was changed several times. It was only in 1877 that the eyelet of Bosnia was organised into six regional units (*sandžaks*) and acquired the form of the state today known as Bosnia and Herzegovina. Whilst the territory has

135 Siegel, Julius (ed.): *Verfassungsgesetze der Länder Bosnien und Herzegovina*, 1910.

136 During the Austrian Empire, the dominant parties in Bosnia were: The Muslim National Organisation, The Serb National Organisation and Croat National Union. During the first Yugoslavia, the dominant parties were: The Yugoslav Muslim Organisation, The Radicals (Serb party) and the Croatian Peasant Party. In 1990, new parties formed along national lines, including the Party for Democratic Action SDA (Bosniak party), The Serb Democratic Party SDS (Serb party) and the Croatian Democratic Union HDZ (Croat Party).

137 Ramet, Sabrina: *The Three Yugoslavias*, 2006, p. 37.

138 Ibid. p. 413.

changed and there have been different forms of internal organisation, Hoare is, nevertheless, right when pointing out that Bosnia has existed as a territorial and administrative unit for many centuries.

However, the same cannot be said about Bosnian statehood. Bosnia has never been an independent state before 1992 and whilst other countries in Europe and beyond became independent states from 1648 onwards, Bosnia remained part of different empires and multinational states.

For the purposes of the discussion on federalism and federation in contemporary Bosnia, it is also important to discuss the internal organisation of the territory throughout history. This is particularly difficult since Bosnia has not been an independent state, but its internal division was very often determined by the organisation of the empires that ruled over BiH. This is true for the internal organisation of BiH in sandžaks by the Ottomans, as well as the organisation in *Kreise* and *Bezirke* by the Austrians. However, there is a clear continuation of Bosnia's internal organisation into six regional areas around the cities of Sarajevo, Banja Luka, Mostar, Tuzla, Travnik and Bihać, which were both sandžaks in the Ottoman Empire and *Bezirke* under Austrian rule. Whilst the first Yugoslavia destroyed these historical regions by focusing on smaller territorial units in Bosnia and Herzegovina, the six dominant regions were recreated after the Second World War as oblasts that ensured the full restoration of Bosnia and Herzegovina.¹³⁹ Later, the Communists organised Bosnia and Herzegovina into much smaller local government units following their policy of self-management, however, the six Bosnian regions around the major cities of BiH became increasingly important after the outbreak of violence in 1992. The Bosnian Army, that was the Army of the government of BiH, organised itself into five major corps around the historically grown regions of Bosnia and Herzegovina.¹⁴⁰ It is very important to note that these regional units, until the ethnic cleansing of the 1992–1995 war, were multinational regions based on historical, economic, transportation and geographical factors. At no time in history has Bosnia been organised territorially along national lines, before the developments in the 1990s. This was, in any case, impossible, since Bosnia's population lived mixed all over the country. There was no basis for a territorial organisation along national lines. The war between 1992 and 1995 created this basis which, today, is a fundamental principle of the Bosnian federal system.

Influence of Foreign Powers

It has often been argued that Bosnia and Herzegovina, with its three main religious communities, lies at the fault-line of different religions, different empires and even different civilisations.¹⁴¹ Indeed, the examination of Bosnian history since the

139 Ibid. p. 299.

140 Hoare, Marko Attila: *How Bosnia Armed*, 2004, p. 79.

141 The most prominent of these authors is Samuel Huntington who, in his famous work about the clash of civilisations, positioned Bosnia and Herzegovina right on the

Middle Ages at the beginning of this chapter has demonstrated that Bosnia was part of different empires. Starting with the Ottoman occupation of BiH in the 15th century, Bosnia came under Austrian administration as a result of the Congress of Berlin in 1878 and, after the First World War, it became part of the first Yugoslavia which was dominated by Serbia. In the Second World War, Bosnia was occupied by German and Italian Forces and became part of the fascist Independent State of Croatia, before it became part of socialist Yugoslavia in 1945. It was only in 1992 that Bosnia declared its independence; yet the peace plan was signed in 1995 in the United States and international actors played a key role during the peace negotiations and during the years that followed. Over 60,000 international troops were sent to BiH to preserve the peace and guarantee the military implementation of the Dayton Peace Agreement (DPA) and, since 1997, the Office of the High Representative has become a key player in the Bosnian political system. Some commentators argue that Bosnia still is not independent but run like a 'feudal fiefdom.'¹⁴² For this discussion, a number of observations are important:

First, Bosnian political affairs have not been decided by Bosnians for a long time. The developments in Bosnia and Herzegovina, therefore, very often reflected the developments in the occupying countries. For example, Bosnia and Herzegovina underwent economic development and industrialisation, at the same time as the other major parts of the Austrian Empire.

Second, the foreign powers that controlled the country influenced inter-ethnic relations in Bosnia and Herzegovina. Marko Attila Hoare argues that it was the different policies of the Ottomans, the Austrians and the Socialist Yugoslavs that led to the ethnic mixture of different religions and different national groups in modern Bosnia and Herzegovina.¹⁴³ The empires that ruled Bosnia for most of its history, recognised that inter-ethnic cooperation in BiH was the key to peace and stability. That is why, first the Ottomans and later the Austrians and the Socialists, introduced power-sharing mechanisms. The international community, mainly the EU and the USA, who influenced Bosnia and Herzegovina's development since 1990, also recognised the importance of power-sharing but too late to avoid the conflict. When Bosnian Croats and Bosnian Muslims decided to vote for Bosnian independence, they did not make any attempt to address the fears of the Bosnian Serbs. The European Community (EC) recognised Bosnia and Herzegovina, nevertheless. It was, therefore, also a misjudgement of the international community to allow Bosnian independence without recognising that a large number of Bosnian people do not want this independence, or at least would like to have further guarantees

line between different cultural and religious civilizations. See: Huntington, Samuel: 'The Clash of Civilisations', in: *Foreign Affairs*, Vol. 72, No. 3, Summer 1993, pp. 22–49, here especially pp. 37–8.

142 Chandler, David: 'The High Representative for Bosnia Still Runs it Like a Feudal Fiefdom' in: *The Guardian*, 20 November 2007.

143 Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 33.

before agreeing to an independent Bosnia and Herzegovina.¹⁴⁴ Some argue that the international community is responsible for Bosnia's ethnic partition,¹⁴⁵ but what is clear is that BiH, as we know it, is 'a state by international design and of international design.'¹⁴⁶ The 'Internationalisation of the Bosnian Question', as the Bosnian political scientist and former politician, Mirko Pejanović, has described the solution to the problems of Bosnia's international status and the relationships of its three peoples to each other and to the state, reached a high point with the DPA and the resulting international involvement in Bosnia.¹⁴⁷

The Influence of Neighbouring Countries

As the debate at the beginning of this chapter has demonstrated, Bosnia and Herzegovina's development was heavily influenced by the policies of its neighbouring states. In particular, the role of Serbia as the kin state of the Bosnian Serbs and Croatia as the kin state of the Bosnian Croats, needs further discussion. It has been demonstrated above that the development of national consciousness in Bosnia was influenced by the political situation in the kin states. Therefore, the Bosnian Serbs developed a political identity as a result of the fight of Serbia proper against the Ottoman Empire, and the consequent establishment of Serbian autonomy in 1815. Thus, Bosnian Serb national consciousness was influenced by the will to unite with the newly autonomous kin state and the opposition towards Muslim rule in Bosnia after 1815.¹⁴⁸ Marko Attila Hoare argues that Bosnian Serbs always had a connection to the Serbian kin state, however, they also had a connection to Bosnia and Herzegovina as their home country. Bosnia and Herzegovina and Serbia were twice united in a common Yugoslav state, whereby the first can be characterised as Greater Serbia 'in all but the name.'¹⁴⁹ However, the radicalisation of politics in Yugoslavia after 1980 also resulted in demands for a re-drawing of republican

144 This point is singled out by Sumantra Bose, in a very good argumentation. See: Bose, Sumantra: *Bosnia after Dayton (Nationalist Partition and International Intervention)*, Hurst & Company: London 2002, p. 162.

145 Among others, this is clearly argued in: Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 376.

146 Bose, Sumantra: *Bosnia after Dayton*, 2002, p. 60.

147 Pejanović, Mirko: *The Political Development of Bosnia and Herzegovina in the Post-Dayton Period*, Šahinpašić: Sarajevo 2007. His arguments are correct and need academic consideration, however, the pure description of Bosnia and Herzegovina as a "Ping-Pong ball" between different international actors leads easily to the assumption that Bosnian politicians did not have any influence. This is a problematic argument, since all international mediation and peace-negotiation efforts until 1995 failed exactly because of the decisions taken by Bosnian politicians.

148 Judah, Tim: *The Serbs*, 2000, pp. 56–62.

149 Ibid. p. 106.

borders.¹⁵⁰ The break-up of socialist Yugoslavia and the wars that resulted from it, were fought with the Serbian war aim of creating a Greater Serbia that would include either all of Bosnia and Herzegovina or at least most of the country.¹⁵¹ Consequently, as Andjelić argues, nationalism and ethnic rivalry was imported to Bosnia from its neighbouring states.¹⁵² Until today, Serbia acts as a patron of the Republika Srpska in Bosnia and Herzegovina and the former Serbian Prime Minister Kostuniča, in a statement in 2007,¹⁵³ even hinted at the possibility of uniting Republika Srpska with Serbia. Serbia has a right to protect and support its ethnic kin in neighbouring states. In fact, the Venice Commission of the Council of Europe supports the protection of minorities through their kin states, but limits this protection to the areas of culture and education, and highlights the importance of non-discrimination and territorial integrity.¹⁵⁴ Having said this, it must also be noted that the High Commissioner on National Minorities argues in one of his reports that national minorities need 'to participate in cultural, social, economic life and in public affairs, thus integration into the wider national society.'¹⁵⁵ What this means for the relationship of the Bosnian Serbs, Bosnia and Herzegovina and Serbia respectively is twofold: First, it is legitimate that the RS and Serbia sign co-operation treaties in the areas of education, culture, religion and other areas, as long as these treaties do not undermine the territorial integrity or discriminate against another group.¹⁵⁶ Second, the Bosnian Serbs need to integrate into Bosnia and Herzegovina as their home country and participate in public life. They cannot undermine the territorial integrity or stability of BiH through their special relations with Serbia, and Serbia also has the responsibility to support Bosnia's stabilisation according to the Dayton Peace Agreement and the international principle of good neighbourly relations. Whilst the Serbian leadership does not get tired of pointing

150 The most important document demonstrating Serbian nationalism at this time is the Memorandum of the Serbian Academy of Arts and Science in 1986 – See: Serbian Academy of Arts and Science: Memorandum 1986, see: http://www.trepca.net/english/2006/serbian_memorandum_1986/serbia_memorandum_1986.html (accessed 6 May 2009)

151 Malcolm, Noel: *Bosnia: A Short History*, 1996, p. 246.

152 Andjelić, Neven: *Bosnia-Herzegovina*, 2003, pp. 75–108.

153 Simon, Susanne: 'Bosnien droht der Zerfall' in: Die Welt Online, 3. November 2007, see: http://www.welt.de/welt_print/article1326461/Bosnien_droht_der_Zerfall.html (accessed 15 February 2013).

154 European Commission for Democracy through Law (Venice Commission): *Report on the preferential treatment of national minorities by their kin-states*, 19–20 October 2001, CDL-INF, p. 19.

155 High Commissioner on National Minorities: *The Bolzano /Bozen Recommendations on National Minorities in Inter-State Relations & Explanatory Note*, June 2008, Explanatory Note to Rec. 7, p. 15.

156 Serbia and the Republika Srpska signed a Treaty on Special and Parallel Relations in September 2006. This form of co-operation of the entities of BiH with Serbia and Croatia is part of the Dayton Peace Agreement and, therefore, in line with the legal framework and international law, as long as it does not undermine the territorial integrity of BiH.

to the right of the Republika Srpska to exist,¹⁵⁷ it should also point out its support for the territorial integrity of Bosnia, as Croatia's former President has done.¹⁵⁸ The extensive autonomy of the RS, the position of the international community against secession of the RS, and the possibility that even Serbia has no interest in an independent RS, are all reasons for the RS to integrate into the Bosnia state. Yet, the relations between the RS and Serbia continue to influence politics in Bosnia and wider regional stability.

Whilst the case of Serbian nationalism and Bosnian Serb demands for the unity of Bosnia and Serbia is rather straightforward, the relationship between Bosnian Croats and Croatia is more complex. This is for two main reasons. The relationship of Croatia proper to Bosnia and Herzegovina is underlined by several important paradigms. The first paradigm is that Croatian demands for the inclusion of BiH into Croatia are built on very limited ground. Croatia and Bosnia were divided between the Austrian and the Ottoman Empire until 1878 and the Bosnian Croats have always been the smallest of the three nations in Bosnia and Herzegovina. Furthermore, an important part of "Croatianess" is Croatia's self-definition as a European country in contrast to *The Balkan*, which includes Bosnia and Herzegovina. In particular, Croatia's inclusion in the Austrian Empire and the inclusion of the rest of the Western Balkans in the Ottoman Empire, are seen as a qualitative difference between the Croatian "Europeans" and other "Balkan" peoples.¹⁵⁹ However, with the joint inclusion of Bosnia and Croatia in the Austrian Empire, as a result of the Congress of Berlin 1878, Croatian ideas of a Slav state or a Slav territorial unit within the Austrian Empire grew. It was, however, not until the national problems of the first Yugoslavia, that Croatia and parts of Bosnia were united as a consequence of the 1939 Sporazum, although some areas of Bosnia and Croatia were united in some of the Yugoslav banovinas after 1929. Croatia and Bosnia were, again, united in the Independent State of Croatia after the German and Italian intervention in Yugoslavia. This period is characterised by wide-spread inter-ethnic violence, mainly against Serbs and Jews, but also against Muslims and Croats who did not support the fascist regime.¹⁶⁰ It has already been mentioned that a key reason for the construction of BiH as the sixth republic of socialist Yugoslavia after World War Two was to avoid new conflicts between Serbia and Croatia over Bosnia and Herzegovina. These conflicts, however, escalated again in the early 1990s, when Croatian President

157 Dervisbegovic, Nedim: 'For Bosnia's Dodik, Referendum Law Means It's Make-Or-Break Time' in: *Radio free Europe*, 11 February 2010, see: http://www.rferl.org/content/For_Bosnias_Dodik_Referendum_Law_Means_Its_Make_Or_Break_Time/1955580.html?page=2&x=1 (accessed 15 February 2013).

158 Hoare, Marko Attila: 'Croatia Must Defend Bosnia. So Should Serbia' in: *The Bosnian Institute-News and Analysis*, 30 January 2010, See: http://www.bosnia.org.uk/news/news_body.cfm?newsid=2676 (accessed 15 February 2013)

159 Ceh, Nick and Harder, Jeff: 'Imagining the Croatian Nation' in: *East European Quarterly*, Vol. 18, No. 4, January 2005, pp. 409–17, here pp. 410–11.

160 Hoare, Marko Attila: *Genocide and Resistance in Hitler's Bosnia*, 2006.

Tudjman and Serbian President Milošević both denied Bosnia and Herzegovina the right to statehood and, instead, argued for the partition of the country along national lines. Tudjman was particularly focused on the denial of Muslim nationhood and would later argue that Muslims threatened Croats in Bosnia.¹⁶¹ As shall be seen later, Bosnian Croats, although formally allied to the Muslims and connected in the Federation of Bosnia and Herzegovina, undermined the Bosnian state many years after the Dayton Peace Agreement. As long as the HDZ (Croat Democratic Union) was in power in Croatia,¹⁶² Bosnian Croats were ensured political, financial and economic support for their separatist policies from Zagreb. Only the loss of power for the HDZ in Croatia in 2000 led to the end of this support.¹⁶³ Until today, however, Croatia continues to issue passports to Bosnian Croats, a policy that undermines the Bosnian state and has been criticised by the High Commissioner on National Minorities.¹⁶⁴ In recent years, Croatia has become a champion of Bosnia's territorial integrity and a supporter of Bosnia's bid to join the EU. The main issue between the two countries today, is the continued exodus of Croats from Bosnia to Croatia, because of better job opportunities. Whilst the Bosnian Croat elites argue that they are being marginalised and demand their "own" Croat entity, this project has found little support among Croatia's elites.¹⁶⁵

Challenges in Bosnia's History

Focusing on the challenges of statehood, democracy, federalism and European Integration, it will be demonstrated that Bosnia and Herzegovina has undergone a complex process since 1995, which includes elements of post-conflict reconstruction, democratisation, federalisation and Europeanization. This complex matrix will help in understanding the complexities, continuities and developments of post-Dayton Bosnia's federal system and federal ideology, which will be discussed in the following chapters.

161 Uzelak, Gordana: 'Franjo Tudjman's Nationalist Ideology' in: *East European Quarterly*, Vol. 16, No. 4, January 1998, pp. 449–72, here pp. 466–7.

162 Tudjman died in 1999 and his successor, Stipe Mesić was much more moderate. Also in 2000 the HDZ lost the parliamentary elections in Croatia. The end of HDZ rule is connected with the beginning of Croatia's post independence democratisation and integration into European structures.

163 For the political development of the Bosnian Croats after the Dayton Peace Agreement, see: Bieber, Florian: 'Croat Self-Government in Bosnia – A Challenge for Dayton?' in: *ECMI Brief*, No. 5, May 2001.

164 High Commissioner on National Minorities: *The Bolzano /Bozen Recommendations*, 2001.

165 'A third entity would harm Bosnia-Herzegovina', Interview of Nezavisne novine with Stejpan Mesić, in: *Bosnia Report*, No. 49–50, December–March 2006. see: www.bosnia.org.uk/bosrep/report_format.cfm?articleid=3049&reportid=170 (accessed 15 February 2013).

The Challenge of Statehood and Independence

Bosnia and Herzegovina is a state which is very young. Critics of Bosnia's political system and progress often forget this.¹⁶⁶ Being a young state poses a number of challenges for the country. First, most countries struggled to establish democracy after they became independent. Bosnia and Herzegovina has just started the process of becoming a consolidated state. Whilst countries, such as the USA, France and Germany, needed centuries to establish democratic systems, Bosnia and Herzegovina does not have this time. The processes of state-building, democratisation and integration into Euro-Atlantic structures demand a much faster establishment of a democratic system. Statehood, defined as the building of efficient state structures, the "creation" of state citizens and the control over a state territory, is not something that a state has by declaring its independence. Instead, statehood needs to be created, indeed, states need to be built. This process includes the creation of efficient administrative services including border controls, police and military. The building of states also means building state-citizens, meaning people who identify with the new state. This has been a particularly hard task in Bosnia and Herzegovina because two out of three major peoples see their national kin group in neighbouring countries.¹⁶⁷ State-building also means the building of "state" politicians, who accept their responsibility for the whole state and all of its citizens.¹⁶⁸

State-building is secondly important, because it is linked to democratisation. When the creation of efficient administrative bodies is discussed, efficiency has to be measured in terms of democracy. This does not necessarily mean that, because Bosnia and Herzegovina has not already transformed into a *liberal* democracy, that the country is a failure. Instead, because Bosnia and Herzegovina is a post-conflict and deeply divided society, one would expect to see the implementation and final stabilisation of some form of consociational power-sharing agreement. This power-sharing agreement has been implemented with the DPA, with some remarkable success in some policy areas and failures in others.

Third, state-building in Bosnia and Herzegovina is logically connected to post-war reconstruction. This includes, not only the aspects of administrative and political system stabilisation mentioned above, but also such aspects as economic

166 Generally about state-building in Bosnia and Herzegovina see the very good analysis of Joseph Marko: Marko, Joseph: 'Post-conflict Reconstruction through State- and Nation-building: The Case of Bosnia and Herzegovina', in: *European Diversity and Autonomy Papers* 4, 2005.

167 On the aspect of creating Bosnian citizens or a Bosnian demos, see the very critical opinion of Robert Hayden: Hayden, Robert.: 'Democracy without Demos? The Bosnian Constitutional Experiment and the Intentional Construction of Nonfunctioning States', in: *Eastern European Politics and Societies*, Vol. 19, No. 2, Spring 2005, pp. 226–59.

168 On the issue of state-building in post-conflict societies, see more generally: Ghani, Ashraf and Lockhart, Clare: *Fixing Failed States*, Oxford University Press: Oxford and New York 2009.

recovery and reconciliation. All of these processes need time and, often, external support, because a deeply divided society like Bosnia and Herzegovina, in which the memories of the recent conflict are still alive, might not be willing or even able to undergo these processes without external guidance and assistance. This is why the role of international organisations and other states is so important in Bosnia.¹⁶⁹ Whilst the Organisation for Security and Cooperation in Europe (OSCE) in BiH has contributed a great deal to implement a modern electoral system that would not favour national parties, and has supported the development of local government agencies,¹⁷⁰ other organisations, such as the Office of the High Representative, have actively promoted inter-ethnic dialogue and reconciliation. As shall be demonstrated in the following chapter, many international organisations used a rather "pushy" way of assistance, including imposition of decisions and the exclusion of Bosnian politicians. This has not always been an advantage, as a certain culture of "dependency", not only from the decisions of the High Representative, but also from general international involvement, has developed. Whilst EU conditionality has resulted in some progress,¹⁷¹ there, nevertheless, remains a lot to do. Bosnia is still not fully consolidated in its statehood and the state remains internally and externally contested. The country's EU integration process has come to a standstill in recent years and there has been no progress in constitutional reform, economic development and other areas of state consolidation and democratisation.¹⁷²

Fourth, it is important to keep in mind that state-building in Bosnia and Herzegovina aims to create a special kind of state, namely a *federal* state. Therefore, debates about competencies, harmonisation, centralisation and decentralisation, but also such issues as co-operation with the neighbouring states and the impact of administrative professionalism and Europeanization, will necessarily impact on the federal construct of Bosnia and Herzegovina. Whilst Bosnians and international state-builders attempt to build a functional state in Bosnia and Herzegovina that fulfils the criteria to join the EU, they also "federalise" the state in the way that they adjust the relationship between the entities and the central level, as well as

169 For external state-building in Bosnia and Herzegovina, see: Caplan, Richard: 'International Authority and State Building: The Case of Bosnia and Herzegovina' in: *Global Governance*, Vol. 10, 2004, pp. 53–65.

170 For an assessment of the OSCE efforts see: Manning, Carrie: 'Elections and Political Change in Post-War Bosnia and Herzegovina', in: *Democratization*, Vol. 11, No. 2, 2004, pp. 60–86.

171 For some of the aspects of EU conditionality and EU state-building in Bosnia, see: Juncos, Ana.: 'The EU's post-Conflict Intervention in Bosnia and Herzegovina: (re) Integrating the Balkans and/ or re/Inventing the EU?', in: *Southeastern European Politics*, Vol. 6, No. 2, Spring 2005, pp. 88–108.

172 For a general assessment of the problematic development since 2006, see: Džihić, Vedran and Wieser, Angela: 'Incentives for Democratisation? Effects of EU conditionality on Democracy in Bosnia and Herzegovina', in: *Europe-Asia Studies*, Vol. 63, No. 10, 2012, pp. 1803–25.

between the entity and the cantons in the case of the Federation of BiH, and also the relationship between the entities.

Other countries that became independent after the dissolution of socialist federations, such as Slovenia or the Czech Republic, struggled much less with the transformation to independent statehood. In Bosnia, however, the transformation is further complicated because of the war, the complicated political structure, and, finally, the fact that Bosnia has had no previous historical experiences of independence and statehood.

The Challenge of Democracy

Bosnia has never been organised according to democratic principles before 1990. There are several authors who argue that Bosnia and Herzegovina is also not organised along democratic principle since 1995. Amongst these critics, most notably David Chandler argues that the lack of human rights protection and the involvement of international, not democratically legitimised actors in Bosnia's political system, are key reasons to talk about the country as a "faked democracy."¹⁷³ In a later article, Chandler criticises, in particular, the role of the High Representative by arguing:

One of the key problems of bureaucratic rule over Bosnia since 1995 has been the tendency of international actors to seek to impose reforms over the heads of the Bosnian public. Rather than engage in public debate, international administrators have sought to argue that every reform is essential in order to fulfil Bosnia's obligations under Dayton agreement or in order to meet EU membership requirements. This has meant that Bosnian political institutions have been reduced to rubber stamps for externally decided policies or have degraded into nationalist grandstanding in an attempt to convince voters that politicians are standing up for their interests.¹⁷⁴

Other authors have been more careful with the assessment of democratisation in Bosnia. Victor Bojkov argued that Bosnia can be described as a "controlled democracy," whereby international administrators take decisions after Bosnian politicians failed to agree on necessary reforms.¹⁷⁵

173 Chandler, David: *Bosnia: Faking Democracy after Dayton*, 2nd Edition, Pluto Press: London 2000.

174 Chandler, David, 'What about Democracy for Bosnia?' in: *Spiked Online*, 6 November 2007, see: www.spiked-online.com/index.php?/site/article/4046 (accessed 15 February 2013).

175 Bojkov, Victor: 'Democracy in Bosnia and Herzegovina: Post-1995 Political System and its Functioning', in: *Southeast European Politics*, Volume 4, Number 1, Winter 2003, pp. 41–67.

When assessing the progress of democratisation in Bosnia, it is important to make a conceptual distinction. The first point follows Bojkov's and Chandler's focus on the international involvement in Bosnian decision-making, in particular, the powers of the High Representative, who can impose law and dismiss elected officials. Returning to the earlier definition of democracy at the beginning of this study, one can characterise these interferences as a state in which democratically elected Bosnian representatives do not have the full monopoly of decision-making. Instead, the High Representative (and other organisations) can take certain decisions without the agreement of the democratically legitimised Bosnian politicians. Additionally, it must be mentioned that all legislation of Bosnian politicians is also scrutinised by the High Representative. This defect in the democratic system of Bosnia is a result of the war and the resulting peace-making efforts by the international community. It was argued that a final negotiator and arbitrator is needed in a political system that was, before and after the war, dominated by nationally exclusive parties which demonstrated no interest in working together. Interestingly, however, the powers of the High Representative were only extended in late 1997, so the Bosnian politicians had two years to prove their will to co-operate and find consensus. It was exactly the lack of progress in the key areas of human rights, constitutional implementation, and consensual decision-making, that was given as the main reason for the extension of the High Representative's Powers.¹⁷⁶

Even when ignoring the role of the High Representative and other external actors, it is possible to conclude that Bosnia is not a fully consolidated democracy. Florian Bieber has highlighted the weak protection of minority rights in the consociational system,¹⁷⁷ whilst Sabrina Ramet argues that the whole institutional system of Dayton Bosnia is 'completely dysfunctional.'¹⁷⁸

The challenge of establishing a consolidated democracy in Bosnia is not only influenced by its consociational character, but also by the fact that the country is organised according to federal principles. However, whilst constitutionally Bosnia should function as a federal state, the theoretical implications of federalism in Bosnia remain contested because the national groups are unable to find a consensus on the definition of the state.¹⁷⁹ Bosnia has not existed for very long as an independent state and has no tradition of democratic government and decision-making.

176 Peace Implementation Council: *PIC Bonn Conclusions: Bosnia and Herzegovina 1998 – Self Sustaining Structures*, 12 December 1997, available under http://www.ohr.int/pic/default.asp?content_id=5182 (accessed 15 February 2013).

177 Bieber, Florian: 'Power-Sharing and International Intervention: Overcoming the Post-conflict Legacy in Bosnia and Herzegovina' in: Weller, Marc and Metzger, Barbara (eds) *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice*, Martinus Nijhoff Publishers: Leiden and Boston 2007, pp. 193–241, here especially p. 232.

178 Ramet, Sabrina: *The Three Yugoslavias*, 2006, p. 475.

179 See in more detail the chapters on the Bosnian Federation and the Federalism in Bosnia.

The Challenge of Federalism

Bosnia and Herzegovina has never been organised federally, however, it has been part of federal or quasi-federal states as a constituent unit (as a republic in socialist Yugoslavia and as a territorial unit enjoying some degree of autonomy in the Ottoman and Austrian Empires). The introduction of a federal system with the Dayton Peace Agreement has seen a lot of criticism in the academic literature, in particular, because it was argued that Bosnia was never divided along national lines.¹⁸⁰ The territorial division of Bosnia and Herzegovina along national lines, which resulted from the conflict in the early 1990s and the connected ethnic cleansing, is a challenge for contemporary Bosnia and Herzegovina.

Federalism, as it can be seen in Bosnia and Herzegovina since 1995, therefore, is a result of the long process of historical evolution of BiH that resulted in its multinational character and the creation of three distinct national identities, which all claim Bosnia and Herzegovina as their home country. However, the territorial division of Bosnia and Herzegovina in two entities and one of the entities into ten cantons, is the result of the recent war and its de-facto creation of three more or less homogeneous areas in Bosnia and Herzegovina. When authors, such as Hoare and Malcolm, criticise the international community for proposing to institutionalise this national division of the country, first through the Vance-Owen Plan and finally through the Dayton Peace Agreement, it is important to keep in mind that the international peace- and state-builders only institutionalised what already existed on the ground. The territorial division along national lines is, therefore, *not* an invention of the international community, but a result of the war. This territorial concentration of the three main peoples as a consequence of ethnic cleansing and homogenisation campaigns, created the basis for the introduction of a multinational federal arrangement in Bosnia. Spain, Canada and Belgium as multinational federal systems, also work on the principle of autonomy and self-rule for territorially concentrated ethnic and national groups. However, international peace- and state-builders have attempted to overcome the legacy of a state that is built on the results of ethnic cleansing in post-war Bosnia, by creating the highest standards for human rights' protection and, additionally, focusing on the return of refugees to counterbalance the territorial division along national lines.¹⁸¹

180 Amongst others, see the very critical comments about Bosnia's ethnic federal structure in: Bebler, Anton: 'South-East European Federalism and Contemporary Bosnia and Herzegovina' in: *Acta Slavica Iaponica*, No. 24, 2008, pp. 1–23.

181 Annexes Six and Seven of the Dayton Peace Agreement particularly focus on Human Rights and Refugee Return. Additionally, Article II of the Bosnian Constitution provides also for the protection of Human Rights. Noteworthy is the introduction of the European Convention for the Protection of Human Rights and Fundamental Freedoms in the Bosnian Constitution. Article II, 1 of the Bosnian Constitution reads: 'The rights and freedoms set forth in the European Convention for the Protection of Human Rights and

The challenge of federalism influences politics in post-war Bosnia in many ways. Federalism is connected to state-building, the process of democratisation, and Bosnia's EU integration. The implementation of EU law requires co-ordinated and consensual measures by different levels of government. In Bosnia and Herzegovina, EU conditionality has been the most important incentive for reforms of the federal and consociational regime. These reforms have mainly led to a stronger central government. As we shall see in the following chapter, in contrast to most federal countries in the world, Bosnia and Herzegovina does not suffer because of too much influence of the central government, limited decision-making and financial authority of the sub-units, but BiH is a decentralised federation in which the central level has very limited powers.

The challenge of federalism in Bosnia and Herzegovina can be summarised in the process of creating a multinational federation that fulfils the criteria to join the EU, whilst at the same time preserving the distinct autonomy and self-rule of its units, and protecting the different national identities without discriminating against non-members of the three constituent peoples. This is why federalism in Bosnia must be considered more as a process than as a fixed constitutional arrangement.¹⁸² The adjustment of a federal system that allows for Bosnia to join the EU and protect its different national groups, is a process that involves constitutional reforms, the creation of a federal political culture and the implementation of a fully consolidated democratic form of government.

The Challenge of European Integration

It is one of the many paradoxes of the Bosnian state that, whilst Bosnia and Herzegovina attempts to build a functional state after the recent conflict, it also prepares for a huge transfer of decision-making powers to the European level.¹⁸³ The challenge for the EU in Bosnia and Herzegovina and other former Yugoslav states, is the connection of European integration, state-building and democratisation.¹⁸⁴ Hoda Dedić argues in this context that Bosnia has to go beyond the Dayton constitution and overcome the domination of nationalist parties within its political structures.¹⁸⁵

Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.'

182 The first (and only) political scientist who argues that federalism is a process is Carl Friedrich. Unfortunately, his work has not received the deserved recognition. See: Friedrich, Carl: *Trends of Federalism in Theory and Practice*, Praeger: New York 1968.

183 Wolk, Jens: 'Bosnia-Herzegovina: Trying to Build a Federal State on Paradoxes' in: Burgess, Michael and Tarr, Alan (eds): *Constitutional Dynamics in Federal States*, McGill Queen's University Press: Kingston and Montreal 2012, pp. 109–39.

184 See, for Kosovo: Erler, Gernot: 'Kosovo – 120 days after the Constitution's Adoption' in *Südosteuropa Mitteilungen*, Vol. 48, No. 5–6, 2008, pp. 16–21, here p. 20.

185 Dedić, Hoda: 'Die Integration von Bosnien und Herzegwina in die Europäische Union' in: *Südosteuropa Mitteilungen*, Vol. 48, No. 5–6, 2008, pp. 23–31, here p. 29.

The integration of Bosnia and Herzegovina into European structures¹⁸⁶ marks the voluntary integration of Bosnia and Herzegovina into a larger multinational polity for the first time. It will also serve as a mechanism to consolidate and reconcile with its neighbours, and will change the relationship between Bosnian Serbs and Serbia, and Bosnian Croats and Croatia, since they will all be united in the EU. The International Commission on the Balkans argued in the context of Bosnia's EU integration:

The EU accession process will provide the requisite incentives for the strengthening of the state's federal structures and for the development of policy-making capacity.¹⁸⁷

Reform of Bosnia's complex political system and the preparation for EU membership go hand-in-hand. Europeanization has already influenced Bosnia's federal system by leading to the centralisation of decision-making powers in areas such as defence policy, certain areas of taxation, and border control. Leading researchers on Bosnia and Herzegovina's post-war development have always highlighted EU membership as the key carrot that motivates Bosnian politicians to reform, to compromise and to work together.¹⁸⁸ Therefore, the processes of state-building, democratisation and federalisation are interlinked, and part of Bosnia's integration into the EU. The integration of Bosnia into European structures can provide a forum for state reform and democratic consolidation and, in line with the evolving nature of European federalism, it also offers the possibility to establish a functional federal system in Bosnia and Herzegovina. However, Bosnia's EU integration is complex and, because the Bosnian state remains contested in its very existence and nature, the "pull of Brussels" has had limited success so far.¹⁸⁹

186 Since 2003, Bosnia and Herzegovina, and most other countries of the Western Balkans, are considered potential candidates for EU membership. See: European Council: *Thessaloniki Summit: Final Declaration*, Thessaloniki 21 June 2003, see: http://ec.europa.eu/enlargement/enlargement_process/accesion_process/how_does_a_country_join_the_eu/sap/thessaloniki_summit_en.htm (accessed 15 February 2013).

187 International Commission on the Balkans: *The Balkans in Europe's Future*, April 2005, p. 25.

188 See, for example: Bieber, Florian: *Post-War Bosnia (Ethnicity, Inequality and Public Sector Governance)*, Palgrave Macmillan: Basingstoke 2006 and Woelk, Jens: *LA Transizione Costituzionale Della Bosnia Ed Erzegovina*, CEDAM: Milan 2008, especially chapter 9.

189 On the relationship of EU foreign policy and Bosnian state-building see: Juncos, Ana: 'Power Discourses and Power Practices: The EU's Role as a Normative Power in Bosnia' in: Whitman, Richard (ed.): *Normative Power Europe (Empirical and Theoretical Perspectives)*, Palgrave MacMillian: London and New York 2011, pp. 83–102.

Chapter 4

The Bosnian Federation

Florian Bieber pointed out that power-sharing and ethnic federalism are the core elements of the post-Dayton political system in Bosnia and Herzegovina.¹ Indeed, to understand the workings of the Bosnian federation, it is important to analyse these two factors. Therefore, the discussion of power-sharing mechanisms at central, entity, cantonal and local levels, will be at the focus of the first part of this chapter. In terms of federal language, we can argue that this part will discuss the elements of “shared-rule” in Bosnia and Herzegovina. The second part will examine “self-rule” by discussing the powers of the different levels of the Bosnian federation. As will be shown, Bosnia is a highly decentralised state that continues to suffer from a weak central level. However, there have been many improvements in the Bosnian federation, mainly in the form of centralisation policies and a reduction of strict power-sharing mechanisms. However, power-sharing was enforced by a decision of the Constitutional Court in 2000, after which the entity constitutions changed and introduced ethnic power-sharing mechanisms. Therefore, processes of centralisation and a reduction of power-sharing at the central level, can be observed until 2006, whilst, at the same time, power-sharing was strengthened at entity, cantonal and local levels after the decision of the Constitutional Court. Finally, the third part will discuss the developments of the party system in post-Dayton Bosnia which, according to William Riker, is a key indicator for the development of a federal state.² Our main focus in this chapter will be the nature of the Bosnian state. There is a tendency in the literature to argue that Dayton introduced an ethnic federal system.³ However, we will see that a careful constitutional analysis of the Bosnian constitution will show that this is *not the full story*. Instead, the Bosnian constitution focuses on ethnic⁴ and territorial power-

1 Bieber, Florian: ‘Governing Post-War Bosnia-Herzegovina’ in: Gál, Kinga (ed.): *Minority Governance in Europe*, Open Society Institute: Budapest 2002, pp. 319–37, here p. 330

2 Riker, William: *Federalism: Origins, Operation, Significance*, 1964, p. 129.

3 Compare, for example: Cohen, Lenard: ‘Fabricating Federalism in “Dayton Bosnia” (Recent Developments and Future Options)’ in: Heinemann-Grüder, Andreas (ed.): *Federalism Doomed? (European Federalism between Integration and Separation)*, Berghahn Books: Oxford and New York 2002, pp. 116–45. Bieber, Florian: *Post-War Bosnia*, 2006. Woelk, Jens: ‘Federalism and Consociationalism’ 2004 pp. 179–98. Wolk, Jens: ‘Bosnia-Herzegovina: Trying to Build a Federal State’ 2012, pp. 109–39.

4 Using the term “ethnic power-sharing” follows the general literature on post-war institutional design in deeply divided societies. What we refer to as “ethnic power-sharing” or “ethnic federalism” can be understood as power-sharing between the different nations in

sharing, with a stronger focus on territorial elements. Therefore, Bosnia cannot be considered as an ethnic federation from a constitutional point of view. However, as will be argued in part three and in the following chapter on “Federalism in post-Dayton Bosnia,” in reality, Bosnia works as an ethnic federation. This, however, is not due to constitutional prerogatives, but because of the continued dominance of nationally exclusive parties which interpret politics in Bosnia as a zero-sum game between its different peoples.⁵

Multinational Power-sharing among Bosnian Elites

As has been mentioned above, power-sharing among different Bosnian national elites is a key feature of the political post-Dayton system. It is not only a very complex power-sharing system, but it is also one of the key issues that have been criticised by international organisations.⁶ To understand the arrangements of power-sharing in Bosnia, it is important to find a suitable definition of power-sharing. One of the first schools to discuss power-sharing were authors who theorised the concept of consociational democracy. Among them, Arend Lijphart argues that:

the successful establishment of democratic government in divided societies requires two key elements: power-sharing and group autonomy. Power-Sharing denotes the participation of representatives of all significant communal groups in political decision-making, especially at the executive level; group autonomy means that these groups have authority to run their own internal affairs, especially in the areas of education and culture.⁷

Consequently, Lijphart sees proportional representation, executive power-sharing, federalism, group and minority rights including veto rights, and proportionality in the civil service, the judiciary and the security services as key elements of consociational democracy, as has already been pointed out previously.⁸ The major issue in Lijphart’s power-sharing arrangement is the recognition of different

Bosnia (mainly the constituent peoples) and ethnic federalism can be understood as what was previously discussed as multinational federalism.

5 Toal and Dalman argue that Bosnia is a country, in which an ethnoterritorial order of space has been connected to an ethnocratic political order upon space during, and shortly after the war. See: Toal, Gerard and Dahlman, Carl: *Bosnia Remade (Ethnic Cleansing and Its Reversal)*, Oxford and New York: Oxford University Press 2011, p. 5.

6 See, for example, the comments of the Venice Commission in: European Commission For Democracy Through Law (Venice Commission): *Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative*, Council of Europe/ Venice Commission: Strasburg 11–12 March 2005.

7 Lijphart, Arend: ‘Constitutional Design for Divided Societies’ in: *Journal of Democracy*, Vol. 15, No. 2, April 2004, pp. 96–109, here p. 97.

8 Ibid. pp. 100–5.

groups within a polity, by providing them with autonomy in the areas of culture and education and by including them in central decision-making through grand coalitions.⁹ A very different approach is taken by Donald Horowitz. He points out that the focus on the distinct recognition of groups might further polarise the system, and will not necessarily lead to consensual decision-making, but might block and halt the whole political discourse. Instead, Horowitz argues for an “integrative approach” which focuses, in particular, on electoral rules that favour pre-election multinational coalitions. Candidates will need the votes of a different national group and will, therefore, automatically be more moderate and willing to compromise.¹⁰ Both political scientists agree on the use of federalism as a useful tool in divided societies, however, Lijphart favours homogenous regions within a federation, whilst Horowitz argues that multinational regions will enhance co-operation, mutual understanding and, eventually, will lead to co-operation without a sole focus on nationality.

Timothy Sisk has pointed out that power-sharing should not be considered as a choice between Lijphart and Horowitz, but instead the appropriate elements of both approaches should be taken into account and applied, depending on the nature of conflict, the role of the parties involved, and the historical background.¹¹ A similar argument is presented by Stefan Wolff, who defined what he calls complex power-sharing as

a practice of conflict settlement that has a form of self-governance regime at its heart, but whose overall institutional design includes a range of further mechanisms for the accommodation of ethnic diversity in divided societies, including those recommended by advocates of liberal consociationalism [...], integration [...], and power-dividing [...]. Complex power-sharing thus, is the result of the implementation of a self-governance regime whose success as an approach to conflict settlement requires a relatively complex institutional structure that cannot be reduced to autonomy/ (ethno-) federalism (traditional) models of power-sharing and power-dividing.¹²

To understand the power-sharing mechanisms in use in Bosnia and Herzegovina at all levels of government, it is very important to highlight the complex nature of power-sharing. Therefore, two important issues need to be kept in mind:

9 See, for the detailed analysis of Lijphart’s consociationalism theory: Lijphart, Arend: *Democracy in Plural Societies*, 1977.

10 See, for example: Horowitz, Donald: ‘Democracy in Divided Societies’ in: *Journal of Democracy*, Vol. 4, No. 4, October 1993, pp. 18–38, here pp. 34–5.

11 Sisk, Timothy: *Power-Sharing and International Mediation in Ethnic Conflict*, United States Institute of Peace: Washington D.C 1996, here used fourth printing 2002, p. 48.

12 Wolff, Stefan: ‘Complex Power-sharing and the Centrality of Territorial Self-governance in Contemporary Conflict Settlements’ in: *Ethnopolitics*, Vol. 8, No. 1, March 2009, pp. 27–45, here p. 29.

first, socialist Yugoslavia was based on power-sharing mechanisms, although these were controlled by one party rule. However, after 1980 the Presidency of Yugoslavia rotated regularly¹³ and the representatives of the republics and the autonomous provinces had several veto rights at the central level. Furthermore, it is important to point out that the development towards decentralisation was a key feature of socialist Yugoslavia, and was another mechanism to manage the multinational state. The same features, namely executive power-sharing and territorial autonomy, can be found in post-Dayton Bosnia and Herzegovina. Bosnia is, in this context, the only country in former Yugoslavia that has applied these two principles as strictly as the former Yugoslav state. However, Macedonia practices executive power-sharing and Kosovo also allows some territorial autonomy and at least guarantees the representation of minorities at the executive level.¹⁴ After the first free elections in Bosnia in 1990, the three nationalist parties exercised a form of executive power-sharing in a grand coalition without any reference to territorial autonomy. As has been argued above, territorial autonomy in the form of federalism was only implemented after the war in Bosnia because this war laid the foundations for multinational federalism by creating ethnically homogenous territorial units within Bosnia. Second, it is very important to highlight, again, the nature of the Dayton Peace Agreement. The Agreement was negotiated in the United States by representatives of Bosnia and Herzegovina, Serbia and Croatia. and under enormous pressure of the international community, in particular the United States. Therefore, core elements of the Agreement were decided in the US State Department and were modelled after the Yugoslav example. However, the Bosnian parties themselves, Serbs, Croats and Bosniaks, have not, themselves, agreed on these measures but they are, nevertheless, the ones who apply them in the Bosnian political system.

Power-sharing at Central Level

Bosnia and Herzegovina's central institutions are characterised by their weakness in terms of decision-making competences and by their organisation along power-sharing principles. To understand the power-sharing elements within the central institutions, we will use the framework of Arend Lijphart's consociationalism and discuss the composition of Bosnia's central institutions in regards to grand coalitions, proportional representation, veto rights and autonomy, although the last point will more clearly be pointed out in part two of this chapter. With the use of consociationalism as the analytical framework, this discussion follows the argument that Bosnia and Herzegovina can be understood as a consociational

13 Although the Yugoslav Constitution of 1974 foresaw annual rotation of the Presidency, Tito remained President until 1980 and rotation began only thereafter.

14 Bieber, Florian and Keil, Soeren: 'Power-Sharing revisited: Lessons learnt in the Balkans?' in: *Review on Central and East European Law*, Vol. 34, 2009, pp. 337–60.

democracy.¹⁵ In this context, Sumantra Bose argues that the constitutional framework of Bosnia after 1995, is based on the ‘confederal, consociational system of the last two decades of Titoist Yugoslavia.’¹⁶ Indeed, analysing Bosnia’s post-war structures, one can firstly recognise that Bosnia is a semi-presidential political system. The executive is divided between a three-member, directly-elected Presidency, which is responsible for, among other areas, foreign affairs, the appointment of international representatives of BiH and the appointment of the Chair of the Council of Ministers, and a Council of Ministers, which is elected by the House of Representatives based on multiparty coalitions. The Presidency, as the highest organ of the state, consists of one Bosniak and one Croat, who are elected on the territory of the Federation, and one Serb member, who is elected in the RS. The Presidency, itself, is modelled after the Yugoslav Presidency that took over power after the death of Tito in 1980. As in the Yugoslav case, the Chair of the Presidency is a rotating position, as each member of the Presidency holds this office for eight months. As Article V of the Bosnian constitution outlines, decisions reached need to be consensual. However, each member of the Presidency also has a so-called “vital interest veto” as outlined in Article V.2 (d):

A dissenting Member of the Presidency may declare a Presidency Decision to be destructive of a vital interest of the Entity from the territory from which he was elected, provided that he does so within three days of its adoption. Such a Decision shall be referred immediately to the National Assembly of the Republika Srpska, if the declaration was made by the Member from that territory; to the Bosniac Delegates of the House of Peoples of the Federation, if the declaration was made by the Bosniac Member; or to the Croat Delegates of that body, if the declaration was made by the Croat Member. If the declaration is confirmed by a two-thirds vote of those persons within ten days of the referral, the challenged Presidency Decision shall not take effect.¹⁷

The Bosnian Presidency represents the three constituent peoples. Furthermore, each representative within the organ has a de-jure veto right, as it is very unlikely that the members of the RS assembly, or of the Federation House of Peoples, will vote against their representative in the Presidency. Additionally, until 2006, the major parties of SDA, HDZ and SDS controlled the Presidency. Finally, it needs to be pointed out that the strict power-sharing rules of the Presidency have been criticised as a key reason for the inflexible and slow nature of the whole political

15 See, for example: Woelk, Jens: ‘Federalism and Consociationalism as Tools for State Reconstruction? The Case of Bosnia and Herzegovina’ in: Tarr, Alan et al.: *Federalism, Subnational Constitutions and Minority Return*, Prager: Westport and London 2004 pp. 179–98.

16 Bose, Sumantra: *Bosnia after Dayton*, 2002, p. 68.

17 Bosnian constitution, Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina, available at: http://www.ohr.int/dpa/default.asp?content_id=372

system. They have also been criticised for being discriminative against all those who do not identify with any of the constituent peoples in Bosnia, as well as against Serbs in the FBiH, and Croats and Bosniaks in the RS, who cannot vote for a representative of their national group and cannot stand for the office of the Presidency because of their place of residence. This double discrimination based on nationality and location has also been pointed out by the Venice Commission of the Council of Europe.¹⁸ In December 2009, the European Court of Human Rights ruled that the Bosnian constitution discriminates on the basis of race against all those citizens that do not identify as constituent peoples, in particular, the composition and electoral procedures for the Presidency and the House of Peoples were pointed out by the Court.¹⁹

In the second branch of the Bosnian executive, there is an even clearer application of grand coalition, proportionality and veto rights. The Council of Ministers (CoM) consists of representatives of all three constituent peoples who belong to the governmental coalition in the House of Representatives. No more than two-thirds of CoM members can come from the FBiH, according to Article 4b, and one-third must be from the Republika Srpska. However, the constitution does *not* prescribe any national composition of the Council of Ministers. For most of the post-war period, however, there has been a coalition of the Bosniak SDA, the Serb SDS and the Croat HDZ in power, and they agreed on parity among Bosniaks, Croats and Serbs in the CoM. Since 2006, however, there have been important shifts in the political system. The Council of Ministers is headed by a Chair, which was a rotating position until the High Representative abolished the rotation and made it a permanent position. The number of Bosnian ministries has risen from three in 1996 to nine today. In the first years after Dayton, each minister had two deputy ministers of the different constituent peoples, and decisions in the Council of Ministers were taken by consensus. Whilst these strict power-sharing mechanisms have been abolished, mainly through international intervention, there continues to be a high demand for consensus within the Council. Additionally, it is important to note that the Council of Ministers' provisions in the constitution are listed under Article V.4, within the section of the Presidency, *de facto* subordinating the CoM. Whilst the Council was very weak in the first post-Dayton years, the increase of ministries and decision-making competences has also led to a professionalisation of the Council. However, since the CoM needs the confidence of the House of Representatives, the different parties representing the constituent peoples have indirect mechanisms to veto decisions.

The House of Representatives is the lower of the two Bosnian houses. It is elected directly by the Bosnian people and consists of 42 members, two-thirds of

18 Venice Commission: *Opinion on the Constitutional Situation in Bosnia and Herzegovina*, 2005.

19 See: European Court of Human Rights: *Decision in case: Sejdic and Finci v. Bosnia and Herzegovina*, application nos. 27996/06 and 34836/06, 22 December 2009.

them elected in the FBiH and one-third elected in the RS.²⁰ Decisions are taken with a simple majority, however, there exists the provision of a so-called “entity veto” in Article IV.3 (d). According to this Article, all decisions need to be approved by one-third of the representatives of each entity. Therefore, abstention can become a form of veto. Further requirements apply to constitutional changes, which need a two-thirds majority in the House of Representatives. All decisions in Bosnia and Herzegovina have to be passed by both Houses, making Bosnia and Herzegovina one of the few countries in the world with a perfect bicameral system. The upper House of the Bosnian Parliamentary Assembly is the House of Peoples, which consists of five Bosniaks, five Serbs and five Croats. The Bosniak and Croat representatives are selected by the Bosniak and Croat delegation respectively of the House of Peoples of the Federation of Bosnia and Herzegovina, whilst the five Serb Representatives are selected by the National Assembly of the RS. The House of Peoples, therefore, combines territorial representation (10 out of 15 members come from the Federation and five from the RS) with national representation of the three constituent peoples. Important to note is also the two-thirds/one-third representation formula according to territorial representation (this is also applied in the CoM, the House of Representatives, the Presidency and the Constitutional Court), and the equal representation formula applied to the national representation of the peoples (which is also applied in the Presidency). This highlights the mix of territorial and national representation in Bosnian central institutions, but it also demonstrates that territorial and national representation overlap, making every issue not a debate between federal units themselves or federal units and the centre, but between national groups.²¹ For all decisions in the House of Peoples, three Bosniaks, three Croats, and three Serbs need to be present. Furthermore, a majority of those present of each national group is necessary for a decision to be passed. Therefore, veto power within the House of Peoples lies with the national groups and *not* with the territorial units, which is very uncommon for a second chamber in federal states, which usually represents the interests of the federal units.²² Furthermore, a majority of representatives of each of the three groups in the House of Peoples can object a decision, which leads to the establishment of a Joint Commission consisting of one Bosniak, one Serb and one Croat representative. If the Joint Commission fails to reach a unanimous decision, the issue is forwarded to the Constitutional Court, which has to decide on the procedural regularity of the objection.

20 Bosnian constitution, Article IV.2.

21 Bieber, Florian: ‘Power-Sharing and International Intervention: Overcoming the Post-conflict Legacy in Bosnia and Herzegovina’ in: Weller, Marc and Metzger, Barbara (eds) *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice*, Martinus Nijhoff Publishers: Leiden and Boston 2007, pp. 193–241.

22 Watts, Ronald: ‘Federal Second Chambers Compared’ in: <http://www.federalismi.it/AppOpenFilePDF.cfm?dpath=document&dfile=27072006094033.pdf&content=Federal+second+chambers+compared+-+stato+-+dottrina+-+>, 26 July 2006. (accessed 15 February 2013).

The Constitutional Court consists of nine members; four members are selected by the House of Representatives of the Federation, two by the National Assembly of the RS, and three are appointed by the President of the European Court of Human Rights. There is no provision regarding the national composition of the Court, but in reality the judges selected by the Federation have always been two Bosniak and two Croat judges and the judges selected by the RS have always been Serbian judges. However, since all decisions in the Court are taken by simple majority according to Article VI.2 (a), the three international judges have a very important function. They can “team up” with two of the other judges representing one group and constitute a majority. There are no provisions for veto rights or delays. In fact, as Joseph Marko has argued, the Constitutional Court has proven to be one of the most efficient and effective institutions in Bosnia and Herzegovina.²³

Altogether it can be argued that Bosnia’s central institutions are classical power-sharing arrangements. However, they mix territorial (federal) representation with national representation and contribute, therefore, to the continued national polarisation of Bosnian politics. Additionally, whilst provisions for grand coalitions, proportionality, veto rights, and federalism are built into the institutional structure, these provisions lack efficient minority protection mechanisms and continue to discriminate against all segments of Bosnian society that do not identify with one of the three constituent peoples. Moreover, the existence of international actors within political institutions such as the Constitutional Court, makes Bosnia a new model of power-sharing.²⁴ Finally, it has been argued that the High Representative has changed some important features of the power-sharing system, such as the rotation of the Chair of the Council of Ministers. These impositions by the High Representative have been directed towards loosening the strict power-sharing arrangements to allow for quicker decision-making and more efficiency in the Bosnian institutions. However, these controversial interventions also demonstrate how the international community, that had a major influence on the creation of Dayton Bosnia, continued to “administrate” the country and make it more efficient. As will be outlined below, post-Dayton Bosnia can be characterised as an *internationally administered federation* that is based on *imposed federalism*.

Power-sharing at Entity and Local Levels

Power-sharing at entity and municipality level in Bosnia are a relatively new phenomenon.²⁵ They are the result of constitutional changes of the entity

23 Marko, Joseph: ‘Five Years of Constitutional Jurisprudence in Bosnia and Herzegovina: A First Balance’, in: *European Diversity and Autonomy Papers*, 7, 2004.

24 Bieber, Florian: ‘Power-Sharing and International Intervention’, 2007.

25 However, the two mixed cantons in the FBiH and the FBiH itself practised power-sharing before but limited it to a power-sharing between Bosniaks and Croats.

constitutions in 2002, following a decision of the Constitutional Court regarding the legality of certain provisions of the entity constitutions in comparison to the Bosnian state constitution.²⁶ The nature of this judgement was about those provisions of the entity constitutions, which referred only to the “Serbian People” in the case of the RS, and “Bosniaks and Croats” in the case of the FBiH, as constituent peoples. A Serbian NGO in the FBiH argued that it is against the provision of the Dayton constitution, which characterises Bosniaks, Serbs and Croats as constituent peoples in Bosnia and Herzegovina. Consequently, the provisions in the entity constitutions provide the ground for continued discrimination of Bosniaks and Croats in the RS and Serbs in the FBiH.²⁷ The Constitutional Court, in a very close decision,²⁸ followed the arguments of the former Bosniak member of the Presidency, Alija Izetbegović, and the Serbian NGO, and declared parts of the entity constitutions unlawful and not in line with the constitutional framework of Dayton-Bosnia. The Court argued that there is a difference between a civic understanding of minority protection and the recognition of constituent peoples and their participation in institutions. Consequently, the Court argued for the introduction of multinational power-sharing in the entities:

[E]quality of groups is not the same as equality of individuals through non-discrimination. Equality of the three constituent peoples requires equality of the groups as such whereas the mix of the ethnic principle with the non-ethnic principle of *citoyenneté* in the compromise formula should avoid that special collective rights violate individual rights by definition. It thus follows that individual non-discrimination does not substitute equality of groups.²⁹

As a result, the entities introduced constitutional changes that led to the introduction of multinational power-sharing mechanisms at both entity and, later, also cantonal and municipality levels. As Florian Bieber argues in this context, ‘the institutional structure in both Entities is a rigid power-sharing arrangement, with constitutionally

26 The judgment of the Constitutional Court is the following: Constitutional Court of Bosnia and Herzegovina: Judgment no. U89/5 I-IV, 2000. For the connection of the judgment and the resulting entity constitutional changes see: Neussl, Peter: ‘The Constituent Peoples Decision of the Constitutional Court and the Sarajevo-Mrakovica Agreement – A “Milestone Product” of the Dayton Concept? In: Solioz, Christophe and Vogel, Tobias (eds): *Dayton and Beyond: Perspectives on the Future of Bosnia and Herzegovina*, Nomos: Baden-Baden 2004, pp. 65–73.

27 Pejanović, Mirko: *The Political Development of Bosnia and Herzegovina in the Post-Dayton Period*, Šahinpašić: Sarajevo 2007, pp. 177–214.

28 Only 5 out of 9 judges supported the decision and declared parts of the entity constitutions unlawful. The two Serb judges and the two Croat judges formulated dissenting opinions.

29 Constitutional Court of Bosnia and Herzegovina: Judgment no. U89/5 III, 1 July 2000, paragraph 71.

required grand coalition, veto rights and proportional representation. The only thing lacking in the Entities is autonomy for the communities.³⁰

As a result of the constitutional changes of 2002, Peter Neussl³¹ distinguishes three categories of changes in the entity constitutions:

1. *Equality of Representation*

The FBiH changed the composition of its second chamber, the House of Peoples, to include an equal number of Bosniaks, Croats and Serbs, as well as half the number of “Others” in the chamber. The Republika Srpska introduced a second chamber, namely the Council of Peoples, with the same composition as the reformed House of Peoples of the Federation. However, whilst the House of Peoples is involved in most decision-making in the Federation, the Council of Peoples in the RS is only involved in decision-making that concerns vital interests. Additionally, the three constituent peoples developed complex mechanisms for equal representation in leading offices of the entities, including the speaker of the two Parliamentary chambers, the President of the Supreme Court and the Constitutional Court, and the Public Prosecutors. Finally, new deputies were introduced for different positions to ensure equal representation. Therefore, both the FBiH and the RS have one President who has two more or less powerless Vice-Presidents of the other constituent group.

2. *Minimum Representation in Government*

The three main parties and the High Representative introduced a formula for the representation of all three constituent peoples in government. Consequently, the RS government includes eight Serbs, five Bosniaks and three Croats, whilst the FBiH government includes eight Bosniaks, five Croats and three Serbs. This representation will only change once the implementation of Annex VII of the DPA (Refugee Return) has been declared completed by the Office of the High Representative. Whilst there are some provisions for minorities (“Others”) in the constitutional changes, they are still not fully integrated in the institutional and administrative framework of the entities.

3. *Proportional Representation in Entity Institutions*

Based on the 1991 census, the leaders of the major parties and the Office of the High Representative agreed that all ministries, courts, administrative agencies, etc, should be filled with personnel on a proportional basis. This was relatively easy to achieve for entity institutions and also in some larger

30 Bieher, Florian: ‘Towards better Governance with more Complexity?’ in: Solioz, Christophe and Vogel, Tobias (eds): *Dayton and Beyond: Perspectives on the Future of Bosnia and Herzegovina*, Nomos: Baden-Baden 2004, pp. 74–87.

31 Neussl, Peter: ‘The Constituent Peoples Decision’, 2004, pp. 68–70.

cities, but, as Mirko Pejanović points out, most municipalities continue to be mono-national in the composition of the local government and administration.³²

In fact, the only area in Bosnia in which the decision has been fully implemented in government, administration, judiciary and police, is The District of Brčko.³³ The Brčko District was created after a decision of an Arbitration Tribunal from territory of both entities.³⁴ The inclusion of Brčko District in the constitutional framework of BiH and its access to the Constitutional Court in 2009 also marks the only formal change of the Dayton constitution so far. However, whilst Brčko can be considered one of the success stories of post-Dayton Bosnia,³⁵ its improper status within the constitutional framework and the inability of RS and FBiH to agree on the future development of the District in the Dayton framework, continue to obstruct the development of the District.³⁶

Finally, it is worth mentioning that, as a consequence of these constitutional changes, the cantons of the FBiH as well as municipalities, also adopted elements of power-sharing to comply with the ruling of the Court. However, the city of Mostar, where a strict power-sharing regime between Bosniaks and Croats is applied, demonstrates the problem of power-sharing in Bosnia.³⁷ One of the core elements of power-sharing in all shades of the approach, is the focus on moderate elites, who are willing to co-operate and compromise.³⁸ But, because power-sharing in Bosnia is reduced to co-operation between representatives of the three constituent groups who have been bitter enemies in a recent violent conflict, there continues to be the application of politics as zero-sum-games. Furthermore, the focus on institutional representation as demonstrated by the constitutional changes in the entities, is not counterbalanced by group rights. In fact, non-territorial autonomy, meaning cultural rights, is not part of the Dayton constitution or the entity constitutions.

32 Pejanović, Mirko: *The Political Development of Bosnia and Herzegovina*, 2007, pp. 204–5.

33 Ibid. p. 206.

34 Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brcko Area, Final Award, 5 March 1999, available at: http://www.ohr.int/ohr-offices/brcko/arbitration/default.asp?content_id=42738

35 On the development of Brčko particularly, see: Parish, Matthew: *A Free City in the Balkans: Reconstructing a Divided Society in Bosnia*, I.B. Tauris: London 2009.

36 Clarke, Henry: 'Ten Years of Unfinished Change in the Constitutional Structure of Bosnia and Herzegovina' in: Gelazis, Nida (ed.): *The Tenth Anniversary of the Dayton Accords and Afterwards: Reflections on Post-Conflict State- and Nation-Building*, Woodrow Wilson International Center for Scholars East European Studies: Washington D.C. 2005, pp. 61–8.

37 International Crisis Group (ICG): *Bosnia: A Test for Political Maturity in Mostar*, Europe Briefing No. 54, 27 July 2009.

38 Sisk, Timothy: *Power-Sharing and International Mediation*, 1996, p. 117.

Finally, what is important to note is that, whilst we can observe a slow change of the strict power-sharing mechanisms at central level in Bosnia through the interventions of the High Representative, the imposition of constitutional changes at entity level had exactly the opposite effect. They made the mono-national/bi-national political systems of the entities much more complicated and complex, without reducing the predominance of nationalist interests. In fact, the position of the international community towards power-sharing mechanisms at central, entity and local levels, demonstrates a key weakness of internationals in Bosnia: They lack a coherent long-term strategy that goes further and is more detailed than the wish for Bosnia's membership in the EU. Additionally, it is important that many power-sharing theorists point to the importance of indigenous arrangements in power-sharing, meaning that the conflicting parties themselves must arrive at the best set of power-sharing instruments for their country.³⁹ This has not been the case in Bosnia. Instead, power-sharing was imposed on the parties. It will remain to be seen whether the Bosnian parties will be able to agree on indigenous arrangements.

The Role of the International Community in the Bosnian Power-sharing System

Representatives of the international community have had a massive impact on the power-sharing arrangements in Bosnia and Herzegovina. As Srđan Dizdarević has argued, the international community had two main functions in post-Dayton Bosnia. First, through the Peace Implementation Council and the Office of the High Representative, the international community acted as the guarantor of the DPA and also as its final interpreter. Second, through NATO, OHR, EU, IMF and many other international governmental and non-governmental organisations, the international community became part of the implementation of Dayton.⁴⁰ The international community thus played an important part in the implementation and development of Bosnia's political system after the Dayton Peace Agreement. First, international representatives took part in important decisions and became actors in the power-sharing negotiations. This is most clearly symbolised by the international judges in the Constitutional Court. However, in addition to the involvement of the High Representative and EU and US representatives in core discussions in Bosnia, their direct influence on the negotiations demonstrates how these internationals influence decision-making.⁴¹ This form of external participation in power-sharing must be distinguished from impositions by the High Representatives. Whilst in the former case internationals themselves

39 Ibid. p. 177.

40 Dizdarević, Srđan: 'The Unfinished State?' in: Solioz, Christophe and Vogel, Tobias (eds): *Dayton and Beyond: Perspectives on the Future of Bosnia and Herzegovina*, Nomos: Baden-Baden 2004, pp. 37–44, here p. 39.

41 See here also the following chapter: "Federalism in post-Dayton Bosnia" in which we discuss some of the policy areas which have been influenced by international intervention.

become an actor in the power-sharing arrangement, impositions ignore power-sharing arrangements completely. Theorists of power-sharing always highlight its complicated and complex nature, as well as its costly character both in terms of money and in terms of time. Therefore, whenever the High Representative imposed a decision, he undermined the fundamental principles of power-sharing, namely reciprocity and consensual decision-making. Bieber puts it the following way: 'Equipped with both legislative and executive powers, the High Representative [...] has thus emerged as the most influential institution in Bosnia – and the only one not formally based on power-sharing.'⁴² This does not mean that the impositions were not necessary, as the obstructing parties in Bosnia demonstrated no willingness to reach a consensual decision, but it is important to highlight that, through the use of impositions, the High Representative also negatively influenced the development of a political culture of consensus and reciprocity. Instead, the parties became more and more dependent on the HR to take decisions for them. This was also easier to sell to the electorate than complicated decisions, which are based on consensus and compromise. The development of a dependency culture is a core danger of international involvement in post-conflict settlements. It is also in this context that authors such as David Chandler, have criticised the international intervention in Bosnia and Herzegovina.⁴³ The problem of international intervention in the Bosnian power-sharing arrangement has its origins in the rigid power-sharing arrangements created by the architects of the Dayton Agreement. Therefore, each imposition of the HR is also a recognition of the weaknesses of the DPA, which itself was negotiated with massive input by international representatives.

Distribution of Power within the Bosnian Political System

Bosnia and Herzegovina can be characterised as a highly decentralised federation. Indeed, several authors even claim that the Bosnian political system after Dayton is closer to a confederal arrangement of two more or less independent entities.⁴⁴ Whilst this debate demonstrates the new features of the Bosnian political system, it is important to clarify here why Bosnia and Herzegovina is a federal state. Carsten Stahn points out that whilst the entities have some state-like features, such as control over most of the revenues, their own military and the control over the border police, nevertheless, the Dayton constitution lists several features that underline Bosnia's federal (in opposition to confederal) character. Concretely, Stahn points out that only the central state has the competence to decide on Bosnian

42 Bieber, Florian: 'Governing Post-War Bosnia-Herzegovina' 2002, p. 330.

43 Chandler, David: *Bosnia (Faking Democracy After Dayton)* 2000) Chandler, David, 'What about Democracy for Bosnia?' 6 November 2007.

44 Bose, Sumantra: *Bosnia after Dayton*, 2002, p. 88. Woelk, Jens: 'Federalism and Consociationalism', 2004, p. 180.

citizenship and, furthermore, that the Dayton constitution as a legal document, has precedence over the entity constitutions.⁴⁵ Additionally, one can add that Bosnia is the only internationally recognised state that continues the legal existence of the previous “Republic of Bosnia and Herzegovina” as outlined in Article I.1 of the constitution.⁴⁶ The Dayton constitution, therefore, whilst giving a lot of competences to the entities, does not give them any statehood attributions. In fact, the constitution purposely avoids two important references, firstly, any reference to “self-determination” and, secondly, any reference to “federalism” or Bosnia as a “federal” country. Both omissions can be explained by the experience of the former Yugoslavia, and the history of the war in Bosnia and Herzegovina. The 1974 constitution of Yugoslavia referred to the country as a federal republic and gave the right to self-determination to the *peoples* of Yugoslavia. The federal features of the country within a one-party system would later constitute a main source of internal conflict and instability. Furthermore, the reference to self-determination of the Yugoslav peoples was Milosević’s main argument for the creation of a Greater Serbia. Shortly after the independence of Slovenia, the Serbian leadership recognised that it would not be able to hold Yugoslavia together, therefore, its aim shifted from keeping Yugoslavia together to keeping all those in Yugoslavia that did not want to secede, which meant the creation of a Greater Serbia through the adoption of the Croatian and Bosnian Serb territories to Serbia proper.⁴⁷ The mothers and fathers of the Dayton constitution recognised the potential dangers in the term federalism, which could easily be identified as a gateway to secession and self-determination. In fact, the only reference to federalism in the constitution is the name of one of the entities, namely the *Federation* of Bosnia and Herzegovina. This is, however, not completely uncommon. India is a federal state and does not use the term in its constitution, neither do the quasi-federal states of Spain and South Africa. The opposite is the case in Switzerland, where the constitution still refers to the *Swiss Confederation*, although outlined in the document is the political system of a federal state. What has become clear is that, in reality, Bosnia and Herzegovina has all the attributes of a federal state, the most important being at least two layers of government, each directly elected and responsible to the people and each with its own competences. There can be no doubt that this definition fits Bosnia, in fact Bose has pointed out that Bosnia applies a system of ‘layered sovereignty.’⁴⁸ Additionally, Bieber argues that

45 Stahn, Carsten: ‘Föderalismus im Dienste der Friedenssicherung: Bosnien-Herzegowina unter dem Friedensabkommen von Dayton’ in: Europäisches Zentrum für Föderalismusforschung in Tübingen (ed.): *Jahrbuch des Föderalismus 2002 (Föderalismus, Subsidiarität und Regionen in Europa)*, Nomos-Verlagsgesellschaft: Baden-Baden 2002 pp. 388–403, here p. 393.

46 Compare also the debate in: Yee, Sienho: ‘The New Constitution of Bosnia and Herzegovina’ in: *European Journal of International Law*, Vol. 7, 1996, pp. 176–92.

47 Malcolm, Noel: *Bosnia: A Short History*, 1996, p. 246.

48 Bose, Sumantra: *Bosnia after Dayton*, 2002, p. 52.

‘Bosnia could be considered a loose multi-national federation.’⁴⁹ As the following discussion of the competences of the central state, the entities, and municipalities will demonstrate, Bieber’s classification as a “loose multinational federation” fits best to describe the political system of Bosnia and Herzegovina. However, the Bosnian federal system has demonstrated a remarkable amount of flexibility and power has gradually shifted to strengthen the central level. These shifts, mainly imposed by international representatives, have been part of a long-term strategy of state-building and democratisation.

Central Level

Article III.1 lists all responsibilities of the central institutions, which are foreign policy, foreign trade policy, customs policy, monetary policy, immigration and asylum policy, international and inter-entity law enforcement, common and international communication facilities, inter-entity transport and air traffic control. There are no provisions in this article for military control, border control, control over media or any responsibilities for taxation. This underlines the weakness and decentralisation of post-Dayton Bosnia. In fact, Article III.2(b) states about the finances of the central institutions:

Each Entity shall provide all necessary assistance to the government of Bosnia and Herzegovina in order to enable it to honor the international obligations of Bosnia and Herzegovina, provided that financial obligations incurred by one Entity without the consent of the other prior to the election of the Parliamentary Assembly and Presidency of Bosnia and Herzegovina shall be the responsibility of that Entity, except insofar as the obligation is necessary for continuing the membership of Bosnia and Herzegovina in an international organization.

This means that the finances of the central state depend on the contributions of the entities. This arrangement is very uncommon for federal countries and is more comparable to the financial arrangement within the EU, whose budget is mainly based on the contributions of the member states. However, the introduction of a countrywide uniform Value Added Tax (VAT) gave the central institution an independent form of revenue in 2006.

Having pointed out the weakness of the Bosnian state, it is also important to recognise that there has been a gradual process of centralisation in Bosnia. As already mentioned above, the number of Bosnian ministries increased from three in 1996 to currently nine, and the establishment of more ministries is discussed among political elites. New ministries include, for example, a Defence Ministry, which has controlled all military forces in Bosnia since 2006. Furthermore, several important agencies were created at central level, such as a state border agency

49 Bieber, Florian: *Post-War Bosnia*, 2006, p. 61.

and a media control agency, which has further strengthened the central level.⁵⁰ However, it is important to highlight that most of these changes were based on international intervention and impositions by the High Representatives.⁵¹ The multinational power-sharing arrangements in Bosnia and Herzegovina, and the implementation of a highly decentralised federal system, made it very difficult for change to occur through a gradual process of reform based on compromise and co-operation of the local elites. The most important problem of the Bosnian state is the continued absence of a consensus on the nature of the state, and the relations of the three constituent peoples to the state. Because of this absence, no fundamental change can be achieved and, as long as this consensus is non-existent, there will be no major change in Bosnia. Therefore, it was the imposition of the High Representative that filled the absence and “administered” the state in the post-war years by correcting and changing some of Dayton’s major flaws. A transformation from a loose federal union in a post-conflict society towards a decentralised multinational federation on the way to membership in the EU, might be the best description for the changes in Bosnia’s development since 1995. Yet, it is also necessary to underline that this process of state-strengthening, centralisation and democratisation is not complete, and further reforms, in particular with regard to making the state more inclusive for all its citizens and more efficient in terms of policy output, are required.

The Entities

The entities are the main level of decision-making in Bosnia and Herzegovina. The constitution of Bosnia and Herzegovina states in Article III.3 (a) that:

All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.

However, they are asymmetrical, both in their internal structure and in their decision-making authority.⁵² Whilst the Federation of Bosnia and Herzegovina has rather limited powers and has devolved powers further to ten cantons, the unitary Republika Srpska is the main sphere of decision-making with little competences

50 See on the issue of changes in post-Dayton Bosnia: Bieber, Florian: ‘After Dayton, Dayton? The Evolution of an Unpopular Peace’ in: *Ethnopolitics*, Vol. 5, No. 1, March 2006, pp. 15–31. See also chapter “Federalism in post-Dayton Bosnia” for the processes surrounding these centralisation policies.

51 Chollet, Derek: ‘Dayton at Ten: A Look Back’ in: Gelazis, Nida (ed.): *The Tenth Anniversary of the Dayton Accords and Afterwards: Reflections on Post-Conflict State- and Nation-Building*, Woodrow Wilson International Center for Scholars East European Studies: Washington D.C. 2005, pp. 23–30, here p. 25.

52 Bieber, Florian: *Post-War Bosnia*, 2006, p. 61.

for the municipalities in the RS. Additionally, Brčko District can be considered a third entity, as it has the same decision-making authority as the other two entities, however, it is not represented in the central institutions and, therefore, not fully integrated into the federal structures of the state.

The Federation of Bosnia and Herzegovina The Federation of Bosnia and Herzegovina consists of ten cantons. It is the result of the Washington Agreement of 1994, which ended the Bosniak-Croat war and abolished all plans of a Croat Republic Herzeg-Bosna in Bosnia. Out of the ten cantons, five are dominated by a Bosniak majority, three are dominated by a Croat majority, and two cantons are mixed. According to the Dayton Peace Agreement, the Federation covers 51 per cent of Bosnian territory.⁵³ The Washington Accord created a power-sharing system between Bosniaks and Croats at the level of the Federation, whilst in the cantons the dominant majority would rule mainly independently. Consequently, decision-making was decentralised to the smallest homogenous unit, namely the cantons. Whilst the constitution of the Federation states in Part I Article I, that the Federation has all decision-making competences which are not those of the central institutions,⁵⁴ Part III Article 4 outlines a long list of decision-making competences for the cantons, including police, education, cultural policy, housing policy, public services, local economic policy, energy policy, media policy, welfare, tourism and the rights of the cantons to introduce taxation and to borrow money. Consequently, the powers of the Federation itself were limited to military agreements (changed after the centralisation of military resources), Federation citizenship, economic planning, fight against organised crime and terrorism, inter-cantonal energy and telecommunications policy, and, finally, the right of the Federation to introduce taxes (Part III, Article 1, constitution of the Federation of Bosnia and Herzegovina). Article 2 of the same Part outlines a list of joint tasks of the Federation and cantons, something the Dayton constitution does not provide for between entities and the central level. These joint tasks include: the enforcement of human rights, health and environmental policy, infrastructure, social welfare, tourism and natural resources. It is important to recognise that, in some areas, such as tourism and energy policy, although the involvement of the Federation is foreseen in the constitution, the cantons are the dominant actors.

Furthermore, the principle of devolving decision-making competences to the smallest homogenous unit was further applied in the two mixed cantons of Central Bosnia and Herzegovina Neretva, where core issues like education policy were left to the municipalities.⁵⁵ However, some of this decentralisation in the

53 Although, as mentioned above, it had to give territory to the District of Brčko after the final decision on the District in 2000.

54 Constitution of the Federation of Bosnia and Herzegovina, available at: www.ohr.int/ohr-dept/legal/oth-legist/doc/fbih-constitution.doc

55 Florian Bieber: *Post-War Bosnia*, 2006, p. 118.



Map 4.1 Entities and Cantons in Bosnia and Herzegovina

Source: Map available at: <http://reliefweb.int/map/bosnia-and-herzegovina/federation-bosnia-and-herzegovina>

Note: The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations. The name of canton 10 had to change after the Constitutional Court of the FBiH found it illegal according to the guidelines of the FBiH constitution. Since then the canton is simply referred to as Canton 10.

mixed cantons has been reversed since 2002 and even the divided city of Mostar in the Herzegovina Neretva canton has been united in 2004 under a joint city administration. Nevertheless, national segregation is a continued feature in the Federation as in all of Bosnia and Herzegovina.

The cantons themselves differ in size and population and are the result of the rather artificial application of the Vance-Owen Plan to only one part of Bosnia and Herzegovina.

The names of the cantons are taken from names of rivers and cities in the Federation and follow the tradition of the first Yugoslavia's banovinas. The reason for this choice of names lies in the fact that the US-American negotiators in Washington wanted to avoid any reference to nationality in the name of the canton, in particular, because of a focus on refugee return. Unfortunately, this principle was not applied to all of Bosnia, as the RS continued to keep the name "Serb Republic."

In recent years, the high level of decentralisation, inefficiency in the administration, and the complex process of decision-making in the Federation, have resulted in calls for Federation reforms. Numerous proposals have been published, including a reduction of cantons and a complete restructuring of Bosnia into three ethnically homogenous entities. However, no concrete steps towards reform have been implemented, despite international demands for far-reaching reforms.⁵⁶

The Republika Srpska The RS is a unitary entity, modelled according to the Serbian tradition of statehood. It was created in 1991 with the aim of independence from Bosnia and, possibly, later admission to Serbia. For a long time after the Dayton Peace Agreement, the RS continued to focus on its independence and its statehood attributes, referring, for example, to “borders of the RS” in its constitution. Most elements that apply any form of statehood have been removed from the RS constitution as a consequence of the 2002 constitutional changes. Other elements, such as the RS military or the use of the Yugoslav Dinar as the currency in the entity, have been removed in the process of centralisation. As in the case of the Federation, the RS constitution explicitly states:

All State functions and powers shall belong to the Republic, with exception of those which were by the Constitution of Bosnia and Herzegovina explicitly transferred to its institutions.⁵⁷

The constitution of the RS does not devolve any decision-making powers to lower levels of government. Instead, the Republic’s organs are the main carrier of decision-making competences as outlined in Part IV Articles 66–8 of the constitution. According to Part VI Article 102 of the constitution, the role of municipalities in the RS is only to “enact”, “regulate”, “execute”, and “attend”. Consequently, the municipalities in the RS only have an administrative role and no direct input in the decision-making process. It is the entity government that takes decisions and the task of local government units is to implement these decisions. Similar arrangements can be found in Serbia and have been applied in the first Yugoslavia.

Brčko District The Dayton Peace Agreement found a special arrangement for Brčko. The city, which was conquered and ethnically cleansed by Bosnian Serb forces, was

⁵⁶ For example, the European Union stated in its 2012 Progress Report that ‘The Federation’s Constitution entails costly and complex governance structures with certain overlapping competences between the Federation, the Cantons and the municipalities.’ See: Commission of the European Communities: *Bosnia and Herzegovina 2012 Progress Report*, Brussels, 10 October 2012, p. 8 available at: http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ba_rapport_2012_en.pdf (accessed 15 February 2013).

⁵⁷ Constitution of the Republika Srpska Part 1, Article 3 available at: <http://www.ohr.int/ohr-dept/legal/const/>

placed under the administration of the Republika Srpska, whilst the suburbs of the city became part of the Federation. Indeed, during the conflict in Bosnia, some of the most intensive fighting occurred in Brčko, which is of key importance for the RS because it links the Eastern and the Western parts of the entity. However, in a last minute demand, Bosnian President Izetbegović requested control over Brčko, which would have meant that it would be part of the jurisdiction of the Federation of Bosnia and Herzegovina. The Serb delegation was not willing to accept this, and agreement was reached to decide on the fate of Brčko later through an International Arbitration Tribunal.⁵⁸ As a result of this decision, the Arbitration Tribunal decided on several key issues before it issued a final award in 1999. One of the most important issues decided by Arbitration was the introduction of an International Supervisor for the District, who would have the power to nominate the mayor and the members of the city council, as well as take over the full administration of the city.⁵⁹ Consequently, the Supervisor introduced a joint city administration, a multinational police force, and supported arrangements for refugee return.⁶⁰ In 1999, the Arbitration Tribunal decided on the final status of the city:

Pursuant to the commitments made by BiH and both entities to “implement without delay” the Tribunal’s decision, upon the effective date to be established by’ the Supervisor each entity shall be deemed to have delegated all of its powers of governance within the pre-war Brcko Opstina to a new institution, a new multi-ethnic democratic government to be known as “The Brcko District of Bosnia and Herzegovina” under the exclusive sovereignty of Bosnia and Herzegovina. The legal effect will be permanently to suspend all of the legal authority of both entities within the Opstina and to recreate it as a single administrative unit.⁶¹

This decision is remarkable in several instances. First, it changed the dynamics of the Bosnian federal system, away from a dyadic to a triadic federal system. However, Brčko is simply too small to have a major influence on the behaviour of the other two entities, which continue to undermine the District’s autonomy until today. Furthermore, its limited representation in Bosnia’s central institutions means that it also lacks proper influence at the central level. Second, the decision

58 Holbrooke, Richard: *To End a War*; The Modern Library: New York 1999. Here used the German translation of the Book: Holbrooke, Richard: *Meine Mission*, Piper: Munich and Zurich 1999 p. 467 (All further use of the source refers to the German edition).

59 Brcko Arbitral Tribunal for Dispute Over the Inter-Entity Boundary in Brcko Area Award, Decision of the 14 February 1997, part VII “International Interim Supervision of Dayton Implementation in the Brcko Area”, available at: http://www.ohr.int/ohr-offices/brcko/arbitration/default.asp?content_id=5327 (accessed 15 February 2013).

60 Bieber, Florian: ‘Local Institutional Engineering: A Tale of Two Cities, Mostar and Brčko’ in: *International Peacekeeping*, Vol. 12, No. 3, 2005, pp. 420–33, here pp. 426–31.

61 Brcko Arbitral Tribunal for Dispute Over the Inter-Entity Boundary in Brcko Area Final Award, Decision of 5 March 1999, Article 9, available at: http://www.ohr.int/ohr-offices/brcko/arbitration/default.asp?content_id=42738 (accessed 15 February 2013).

creates a multinational unit that is not characterised by decentralisation and rigid power-sharing as happened, for example, in Mostar. Instead, the power-sharing arrangements in Brčko are more integrative, such as the focus on supermajorities for decisions on vital interests instead of veto rights.⁶² This could be a precedent for further reforms of the entities and the power-sharing mechanisms at central level. Third, the decision also impacts on the dynamics within the Bosnian federation as it technically divides the Republika Srpska in East and West without territorial connection between the two parts. Therefore, peaceful secession of the RS as, for example, supported by the current President Dodik⁶³ is not possible without violating the international agreement on Brčko. Finally, the decision of the Arbitration Tribunal is also important, because the adoption of the District into the constitutional framework of Bosnia and Herzegovina has resulted in the first adoption of a constitutional change of the Dayton constitution in Bosnia.

Due to massive international intervention, and the creation of more inclusive power-sharing mechanisms in Bosnia, Brčko today has a higher than average income, less unemployment and is one of the only areas in Bosnia that has integrated schools. Additionally, refugee return to Brčko has been higher than the Bosnian average.⁶⁴ Certainly, the development of the District can be considered a success, although this success is not based on the willingness of the politicians but on massive international intervention. Nevertheless, Brčko is often seen as an example for the rest of Bosnia and Herzegovina.⁶⁵

Municipalities Bosnia and Herzegovina has a multilayered system of governance. Municipalities are the lowest level. However, unlike the situation in many other federal countries, municipalities in Bosnia lack coherent powers and tasks.⁶⁶ There exist different legislative frameworks for municipalities. Whilst in the RS municipalities are mainly administrative units under direct control of the entity, in the FBiH it is the cantons that are responsible for local government.⁶⁷ Additionally, most municipalities include provisions for power-sharing as, for example, Article 102 of the RS constitution outlines. This further limits the capacities of local government because often seats cannot be filled due to a lack of representatives, or seats are filled by the majority party that supports minorities on its list.⁶⁸ Whilst there have been some important local government

62 Bieber, Florian: 'Local Institutional Engineering', 2005, pp. 426–8.

63 International Crisis Group: *Bosnia: What does Republika Srpska Want?*, Europe Report No. 214, October 2011.

64 Bieber, Florian: 'Local Institutional Engineering', 2005, pp. 426–31.

65 International Crisis Group: 'Brcko: What Bosnia Could Be', *Europe Report No. 31*, 10 February 1998.

66 Pejanović, Mirko: *The Political Development of Bosnia*, 2008, p. 163.

67 Ibid. p. 163.

68 See for the example of Mostar: Bieber, Florian: 'Local Institutional Engineering', 2005, pp. 422–6.

reforms in both entities since 2004 to implement the provisions of the European Charter for Local Self-Government in Bosnia and Herzegovina, there continues to be a lack of financial resources, decision-making competences and often also professionalism within local government institutions. Furthermore, corruption is most effective at this level of government, although the OHR, the OSCE, the EU Military Mission in BiH (EUFOR) and the EU Police Mission (EUPM) attempt to scrutinise elected officials. Long after the end of hostilities it was, in particular, local authorities that would make it hard for refugees to return to their pre-war homes.⁶⁹ Today, local authorities are very often interwoven with state-owned and local industries. A radical reform of local government needs to be an essential element of a constitutional reform in Bosnia and Herzegovina. The competences of municipalities need to be unified throughout Bosnia and there should be a more balanced application of administrative tasks between entities and municipalities. Furthermore, municipalities should be able to raise their own financial resources.⁷⁰ International state-builders have focused intensively on the strengthening of the central level in BiH and consequently the weakening of the entities. Stronger municipalities would also weaken the predominant position of the entities, and would assure decision-making closer to citizens and more efficiency in the implementation of central decisions.

Elections and Party System

Elections, Democratisation and the International Community in Bosnia

Elections have been part of the institutional design and democratisation efforts of the international community in Bosnia and Herzegovina. Therefore, elections were held regularly and numerous and electoral rules were changed by internationals. Kimberley Coles argues in her study about electoral design in Bosnia and Herzegovina, that ‘it may be productive to think of Bosnia-Herzegovina [...] as a large laboratory.’⁷¹

Elections in divided societies are always problematic. The electoral system can easily be used to exclude minority nations from ever coming into power and

69 Nowak, Manfred: ‘Has Dayton Failed?’ in: Solioz, Christophe and Vogel, Tobias (eds): *Dayton and Beyond: Perspectives on the Future of Bosnia and Herzegovina*, Nomos: Baden-Baden 2004, pp. 45–60, here p. 46.

70 Since the introduction of a state-wide Value Added Tax administrated by a central Indirect Taxation Authority in 2006 the municipalities receive a small part of their budget from the VAT revenues. Most of their shares come however from the RS budget or the cantonal budgets.

71 Coles, Kimberley: *Democratic Designs (International Intervention and Electoral Practices in Postwar Bosnia-Herzegovina)*, University of Michigan Press: Ann Arbor 2007, p. 27.

reduce them to a constant marginalised minority.⁷² Therefore, electoral rules need to be designed to be inclusive. This can be done through a number of ways, the two most common ones are a proportional electoral system that ensures coalition governments, as argued for by Arend Lijphart, and an inclusive electoral system that encourages cross-national voting and pre-electoral coalitions, as supported by Donald Horowitz. However, elections in Bosnia and Herzegovina are not only complicated because the country is multinational, but also because the first elections in the early 1990s were held in a climate of nationalism and the decline of socialist Yugoslavia. The one-party Communist system that, at the end of the 1980s, lost all legitimacy, and the rising tensions between the different nations in Yugoslavia, led to an exchange of a Communist one-party system with a nationalist multiparty system.⁷³ In Bosnia, this meant that each of the three national groups had one major party that was exclusively elected by the national group and would represent their interests. The same parties that were one major reason for the war in Bosnia and Herzegovina and that ruled parts of Bosnia during the war, were elected again after the war. In fact, the three nationalist parties of SDA, SDS and HDZ stayed in power until 2006 at the state level, with only one short interruption of a ten-party non-nationalist government called “The Alliance for Change” in 2001–2002. Certainly, the constant national tensions and different nation-building processes in the Bosniak, Serb and Croat communities played a key role in the parties’ continued success, as well as their control over financial and economic resources, and their control over the media (at least until the international community stepped in after 1998). However, the continued success for the nationalist parties has to be examined in the background of constant electoral engineering by the Organization for Security and Cooperation in Europe (OSCE) and the High Representative. These interventions included frequent changes of the electoral law, control of the media, ban of parties and party officials if they obstruct the Dayton Agreement, introduction of power-sharing in municipalities, change to a voting system of preferential voting (as advocated by Horowitz) for the RS Presidency in 2000 and changes in the election of the House of Peoples in the Federation.⁷⁴ The International Crisis Group has pointed out that these interventions were based on ‘hopes that moderate, co-operative Bosnian partners will come to power through elections.’⁷⁵ Similarly, Manning argues:

72 The classic study about electoral design in divided societies that also discusses some of the problems discussed here is: Reilly, Benjamin: *Democracy in Divided Societies: Electoral Engineering for Conflict Management*, Cambridge University Press: Cambridge 1997.

73 Snyder, Jack: *From Voting to Violence: Democratization and Nationalist Conflict*, W.W. Norton & Company: New York and London 2000, pp. 189–219.

74 Manning, Carrie: ‘Elections and Political Change in post-war Bosnia and Herzegovina’ in: *Democratization*, Vol. 11, No. 2, 2004, pp. 60–86, here p. 65.

75 International Crisis Group (ICG): ‘Bosnia’s November Elections, Dayton Stumbles’ *ICG Balkans Report No. 104*, Sarajevo and Brussels 2000.

OHR and OSCE, together with some of Bosnia's biggest aid donors, have actively and explicitly sought to use repeated elections at various levels to diminish the power of particular political parties that were seen as bearing a large part of the responsibility for the war there, and to encourage the emergence of 'moderate' parties.⁷⁶

International state and democracy-builders used electoral engineering as a tool to encourage the elections of moderate, non-nationalist parties. Although the OSCE and the OHR (representing the international community) have intervened several times and taken sides in the electoral process in Bosnia, there has been no significant change in the powers of the three nationalist parties of SDA, SDS and HDZ until 2006. Additionally, the changes that occurred in 2006 were not in the direction the internationals hoped for. Following the argument of William Riker, namely that the nature of the party system is key in the development and survival of a federal state, we shall now discuss the Bosnian party system.

The Bosnian Party System

Riker argued in his 1964 work *Federalism (Origins, Operation, Significance)*, that it is the two-party system, based on strong local parties, that has ensured the survival of the American federation.⁷⁷ He argues that because the local branches of the two American parties have such an important impact upon the recruitment of the political elites that go to Washington, they ensure that the federation will not become over-centralised. It is, therefore, the local (with local Riker refers to "state") branches of the parties that have a massive influence on the central level.

The main cleavage that underlines the Bosnian party system is the cleavage between the three national groups.⁷⁸ As discussed above, in the early 1990s, Bosnian citizens voted along national lines for parties that stayed in power until 2006, and were created before the first free elections in Bosnia and Herzegovina, and, whilst the SDA and HDZ supported the independence of Bosnia from Yugoslavia, the SDS, under the leadership of Radovan Karadžić, argued against Bosnia's departure from Yugoslavia and close links between Bosnia and Serbia. All three parties were nationally exclusive in their membership as well as in their electorate. During the war, the SDS and the HDZ were secessionist movements and wanted to carve-up Bosnia. The Dayton Peace Agreement put elections at the centre of democratisation and state-building in Bosnia. Annex III of the DPA is solely focused on elections and the role of the OSCE in the process. Regarding the timing of elections, it states that: 'Elections shall take place on a date ("Election Day") six months after entry into force of this Agreement or, if the OSCE determines a delay necessary, no later than nine months after entry

76 Manning, Carrie: 'Elections and Political Change', 2004, p. 62.

77 Riker, William.: *Federalism: Origins, Operation, Significance*, p. 51.

78 See, for example: Bose, Sumantra: *Bosnia after Dayton*, 2002, p. 206.

into force.⁷⁹ It is generally considered that early elections after a conflict might lead to further fragmentation and might hinder the democratisation process. However, as Carrie Manning has demonstrated, international state-builders in Bosnia used elections as their first point in the process of democratisation. Only later did they focus on socialising party elites and creating the social and economic background that would justify free and fair elections in a country that has seen massive destruction and ethnic cleansing.⁸⁰ Manipulation, the continued use of hate-speech, and massive polarisation of the media, led to a victory of the three nationalist parties again in the first post-war elections in 1996. However, whilst the OSCE, often together with the OHR, intervened in elections after 1996, the three nationalist parties stayed in power, at municipality, entity and state-level. The major opposition party was the Social Democratic Party SDP. It was this party that led the “Alliance for Change” government that forced the nationalists out of office in 2001–2002. However, the SDP remains a structurally weak party, although it was able to secure some of the funds and buildings of the former Bosnian League of Communists. The main weakness of the SDP in recent years has been its centralist tendencies in which the whole party is centred on the party leader Zlatko Lagumdžija.⁸¹ This has become even more apparent after the 2010 elections, which the SDP won. However, the party was unable to promote its programme and instead agreed on some problematic compromises (such as a further weakening of the central State Court) to ensure that Lagumdžija would retain a seat in the Council of Ministers. The SDP remains the main multinational party in Bosnia, with members and office holders from all communities, however, with their electorate being mainly moderate Bosniaks.

It is important to note that, whilst the three nationalist parties continued to stay in power until 2006 (and again since 2010), there have been important developments nevertheless. In particular, the development of intra-group party competition needs to be highlighted, which means that the nationalist parties lost their position as the only party within each of the three national groups. Most clearly this can be exemplified by the developments within the Bosniak community, where the SDP has managed to gain support from disappointed SDA voters and non-radical Bosniaks. Additionally, Haris Silajdžić, during and after Dayton a leading figure within the SDA, then broke away and formed the Party for Bosnia and Herzegovina, SBiH. Originally, the SBiH was seen as a more moderate Bosniak party that focused on stronger central institutions

79 General Framework Agreement for Peace in Bosnia and Herzegovina, Annex III (Agreement on Elections), Article II.4.

80 Manning distinguishes the processes in Bosnia from the processes in Iraq, where the United States focused first on finding the right elites and only later on elections. See: Manning, Carrie: ‘Political Elites and Democratic State-building Efforts in Bosnia and Iraq’ in: *Democratization*, Vol. 13, No. 5, 2006, pp. 724–38.

81 Sebastián, Sofia: ‘Elections in Bosnia and Herzegovina’ in: *FRIDE Democracy Backgrounder Nr. 17*, September 2008, p. 4.

and the abolition of the entity system in Bosnia.⁸² The SBiH was also part of the “Alliance for Change” government. However, since the negotiations for constitutional reform in Bosnia took place in late 2005 and 2006, the SBiH has become more and more radicalised. Since 2006 the SBiH has emerged as one of the leading parties in Bosnia and Herzegovina and Silajdžić was able to win the Bosniak seat in the Presidency in the 2006 elections, but lost in 2010 against Bakir Izetbegović from the SDA, the son of former Bosnian President Alija Izetbegović.

Having said this, the SDS has also been faced with party competition within the Bosnian Serb electorate. Already in 1997, Bilijana Plavšić, a former ally of Karadžić, broke away from the party and managed to bring into power a non-nationalist government from 1997–2000. Important to note is the fact that the RS was more or less divided during this time, with the East of the RS supporting the SDS, whilst the richer West, including the capital Banja Luka, supported the pro-Western forces. This was also the beginning of the rise of Milorad Dodik, the leader of the SNSD, the Alliance of Independent Democrats. He was seen as a moderate politician whom the Internationals wanted in power in the RS, and consequently he was installed as Prime Minister of the RS. Whilst Plavšić was later sentenced for war-crimes during the conflict in Bosnia, and the SDS managed to come back to power in the RS very quickly, Dodik’s SNSD managed to become the strongest party in the RS in the 2006 elections and, additionally, the SNSD became one of the strongest parties throughout Bosnia. However, Dodik has become more radical in recent years, strongly focusing on the autonomy and independence of the RS, and openly threatening a referendum on independence. Since the defeat of the SDS in 2006, the party has been in disarray and searched for a new political identity,⁸³ whilst the SNSD has managed to take over complete power in the RS, and also in most municipalities. However, the SDS joined the government coalition together with the SNSD after the 2010 elections and won the regional elections in the RS in 2012. They did so by ethnically-outbidding the SNSD, which had disappointed most voters. The SDS has moved more strongly in a direction of secessionism and more direct confrontation with international representatives in Bosnia. Finally, the PDP (Party of Democratic Progress) has developed as a second party in the RS besides the SDS from 2000 onwards. However, the party never developed further than into a small coalition partner and its organisation is based around its leader Mladen Ivanić.

Generally speaking, until 2006, the Croat HDZ has managed to keep up its monopoly within the Croat Community in Bosnia. Although challenged by a number of smaller parties, there has never been any serious competition. However, since 2006 this has been different. Over the negotiations of constitutional reforms in Bosnia and Herzegovina, a wing of the HDZ broke away and formed a new party called HDZ 1990. In the 2006 general and entity elections, the vote of the Croat

82 Bieber, Florian: *Post-War Bosnia*, 2006, p. 41.

83 Sebastián, Sofia: ‘Elections in Bosnia and Herzegovina’, 2008, pp. 5–6.

community was split between the two parties, although the HDZ BiH remained the stronger party. However, because of the vote split, the candidate of the SDP, Željko Komšić was elected as the Croat member in the Bosnian Presidency in 2006 and again in 2010. This has resulted in demands for Croat unity in Bosnia, in particular, by the Catholic Church.⁸⁴

There are a number of important trends to note in the development of the Bosnian party system since 1995. First of all, the number of parties has gone up. This is due to the fact that the three nationalist parties of SDA, SDS and HDZ lost their monopoly within their communities. The SDP, however, continues to be the only large multinational party. Therefore, democratisation has taken place only *within* the three national groups in Bosnia, but not in general terms as the lack of countrywide and civic parties underlines. Additionally, it is important to note in this context that the ethnic cleavage has continued to influence the party system as the leading determination factor. Finally, new parties that came to power after 2006, such as the SNSD and the SBiH, have continued in the footsteps of their predecessors in the use of nationalism, fear and absolute demands as mobilisation techniques. The OSCE concluded in its final report about the 2006 general elections, that '[t]he election campaign was generally calm, but was marked by sharp nationalist rhetoric and occasional inflammatory statements from key election contestants.'⁸⁵ After the elections of 2010, it took 16 months to form a government at central level, only for it to collapse shortly afterwards.⁸⁶ Politics remains a zero-sum-game among Bosnia's elites and each party remains focused on its own political advantage, rather than on genuine progress for the country.

The Bosnian Federation as an “Internationally Administered” Power-sharing System

The discussion above explained the complex nature of the Bosnian political system. However, it has also been shown that the complicated institutional structure has seen some important changes, such as centralisation of core policy areas and the loosening of rigid power-sharing in central institutions, in particular, in the Council of Ministers. Whilst these changes have helped Bosnia to sign a Stabilization and Association Agreement with the EU in 2009, they also highlight the continued need for international intervention in the system. Changes at central and entity levels have nearly exclusively been based on impositions by the High

84 Ibid. p. 8.

85 Organization for Security and Cooperation in Europe (OSCE): *Bosnia and Herzegovina General Elections 1st October 2006 (OSCE/ODIHR Election Observation Mission Final Report)*, Warsaw, 5th February 2007, p. 3 available at: http://www.osce.org/documents/odihr/2007/02/23206_en.pdf (accessed 15 February 2013).

86 International Crisis Group: *Bosnia's Gordian Knot: Constitutional Reform*, Europe Briefing No. 68, July 2012.

Representative. Therefore, this development demonstrates two key features of the Bosnian political system:

1. The system is alive and changes occur.
2. Most changes are based on imposition by the High Representative.

Consequently, we can speak of Bosnia and Herzegovina as an internationally administered federation. Bosnia is not a protectorate in the original understanding of the term, because the High Representative always left space for Bosnian parties to reach an agreement before he imposed a decision.⁸⁷ However, the complicated nature of the Bosnian system and its in-built rigid power-sharing, plus the inability of political leaders to reach compromises, has led to further needs for international decision-making.

The key nature of the Bosnian political system is its power-sharing between three national groups. This includes the institutions usually designed for federal power-sharing between sub-units and central level, such as the second chamber of the Bosnian parliament. Therefore, Bosnia can be characterised as a multinational federation, because the introduction of a federal system originates in the holding-together of a country with strong regionally concentrated nations. This has to be distinguished from an ethnic federal system, which is exclusively focused around ethnicity. Many provisions of the political system in Bosnia, such as the composition of the Council of Ministers, the House of Representatives and the Constitutional Court, do not have any nationality-based preconditions. Instead, it is the result of the ethnically divided party system that all political issues have been interpreted in terms of “bargaining of national leaders” instead of bargaining between federal units and the central level. It also seems clear that there is no alternative to power-sharing in Bosnia, although many promote the introduction of a civic, nationally blind state.⁸⁸ Today, the Bosniak segment in the society is around 50 per cent and, therefore, any form of civic state would also mean for Croats and Serbs the potential threat of being a constant minority. Having said this, power-sharing in Bosnia is not the problem per se, but the problem is its rigid and strict application. There is little space for informal arrangements among political elites and there is also a lack of identification of the elites with the power-sharing system, because it has not originated naturally through compromise but was imposed. The most important development, therefore, must be towards a countrywide consensus

⁸⁷ Bojkov, Victor: ‘Democracy in Bosnia and Herzegovina’, pp. 41–67.

⁸⁸ See, for example, the arguments in: Pejanović, Mirko: *The Political Development of Bosnia and Herzegovina*, 2007 pp. 55–60 and pp. 215–30. For a more balanced debate about the nature of Bosnia-Herzegovina and the need for the recognition of the nations in Bosnia, see: Hayden, Robert: ‘Constitutional Structures in a Nationless State’ in: Gelazis, Nida (ed.): *The Tenth Anniversary of the Dayton Accords and Afterwards: Reflections on Post-Conflict State- and Nation-Building*, Woodrow Wilson International Center for Scholars East European Studies: Washington D.C. 2005, pp. 51–60.

on the nature of the Bosnian state and, consequently, its institutional design. It is also important to note in this context, that the Bosnian political system attempts to combine two political-historical traditions unsuccessfully. On the one side, we find the rigid power-sharing institutions, which are based on the traditions of national power-sharing in Bosnia during the Ottoman Empire, the Austrian rule over the country and most strictly in the 1970s when Bosnia was a republic in socialist Yugoslavia. On the other side, Article II of the Bosnian constitution outlines a long list of fundamental freedoms and human rights, which found their place in the constitution because of Western, in particular US-American, influence on the Bosnian constitution. They underline a liberal tradition in which parts of the constitution also have to be situated. In fact, Bosnia probably has one of the best human rights regimes in the world. This includes the direct application of the European Convention on Human Rights and Fundamental Freedoms as part of Bosnian constitutional law. Nevertheless, the reality in Bosnia is very different. Human rights are limited to the rights of the nations and even these are not secured in all parts of the country, as the absence of any form of cultural autonomy for Bosniaks and Croats in the RS, and Serbs in the Federation demonstrates.

The discussion of the Bosnian party system furthermore demonstrates that, when and if change occurs in Bosnia, it turns out to be not in favour of those who seek moderation and compromise. Even the formally moderate parties, SNSD and SBiH, have developed into fully-fledged nationalist parties who are unwilling to compromise, focused only on their own national group and are willing to challenge the international community in Bosnia. Politics remains a zero-sum-game in Bosnia, and it is the key challenge for Bosnian elites and for international representatives in the country to change the parameters of the system so that ethnically exclusive policies will no longer prevail over progress for the whole country and all of its citizens.

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Chapter 5

Federalism in Post-war Bosnia and Herzegovina

Preston King understood federalism ‘philosophically or ideologically [...], most frequently [referring to] a marked degree of regional independence and autonomy.’¹ It is in this context that we have to discuss Bosnian federalism. The ideological core of the debates about the nature of the Bosnian state, its territorial organisation, and the distribution of powers between different levels of government constitutes the foundation of Bosnian federalism.

The multifaceted nature of Bosnian federalism becomes more complex when EU integration is taken into account. There are at least three core developments that require attention:

1. Debates about federalism amongst Bosnian elites from 1995 until today.
2. The use of federalism as a state-building instrument.
3. The prospect of membership in the EU and the influence of EU conditionality on the Bosnian political system.

This complex nature of Bosnian federalism becomes further distorted when considering the findings of the previous chapters regarding Bosnia’s federal experience. Indeed, one argument presented here, is that federalism in Bosnia is heavily influenced by the country’s federal experience and the debates focus on three core points:

1. The understanding of federalism and the distribution of powers between different levels of government.
2. The territorial dimension of federalism.
3. The impact of international actors on the Bosnian state.

What emerges after this short conceptualisation of Bosnian federalism, is a matrix that already demonstrates the complex nature of Bosnian federalism. The argument presented in the first part of the chapter will be that the two underlying issues of federalism in Bosnia and Herzegovina are comprised of the cleavage between different national groups on the one side, and heavy involvement of international actors on the other. Second, the chapter will discuss these underlying issues and the nature of the Bosnian state by examining selected policy areas. By focusing

1 King, Preston: *Federalism*, 1982 p. 74.

on the areas of constitutional reform, identity politics, security sector policies and fiscal federalism, it will be demonstrated how national differences impact on federal debates; and how international actors have, themselves, influenced debates about federalism in Bosnia. Finally, this chapter will locate federalism in BiH according to some of the theories and concepts discussed in chapters one and two. It is argued in the third part of the chapter, that Bosnia and Herzegovina is an example of a new type of federal system and, therefore, it is necessary to re-conceptualise federalism and federation according to the experiences in Bosnia and Herzegovina.

Bosnian Federalism: Core Ideas and Debates

The task for the following paragraphs will be to contextualise the political discourse in Bosnia into the debates about federalism. It is, therefore, necessary to remind ourselves that we discussed two main theories of federalism, namely the federalism of William Riker and others, who see federalism mainly based on a federal bargain, and focus in their analysis on the federal constitution and its origin. Scholars like Kenneth Wheare focus on the federal bargain and the foundation of the federal state, however, they additionally examine the development of the federal state to fully understand the ideological concept of federalism. Furthermore, another theorist needs to be added; Carl Friedrich described federalism as a process and attempted to conceptualise federalism by examining the process of constitutional amendments in the USA.²

Positioning Bosnia and Herzegovina in the Federal Debates

Every debate about federalism in Bosnia and Herzegovina must begin with an analysis of the General Framework Agreement for Peace in Bosnia and Herzegovina (GFAP).³ The Dayton Peace Agreement is the basis of the Bosnian state. Its eleven Annexes focus on the military and civilian aspects of peace-building and post-war reconstruction, as well as state-building.

As the DPA can be seen as the “birth certificate” of the post-war Bosnian state, the negotiations that comprised the agreement can be characterised as Bosnia’s federal bargaining. Riker argued that the federal bargaining is the political discussion about the future (federal) nature of the state. Participants in this bargaining are local and national elites and, depending on the strengths of each, the nature of the outcome will be either a more centralised federation or a more

2 Friedrich, Carl: *Trends of Federalism*, 1968.

3 This is the official name of the document, which was signed in Paris on the 14 December 1995 and officially ended the war in Bosnia. It was negotiated in November 1995 in Dayton, Ohio (USA) and was signed by the Presidents of Croatia (Franjo Tuđman), Bosnia-Herzegovina (Alija Izetbegović) and Serbia (Slobodan Milošević).

decentralised federal state. Riker lists two core reasons why local and national elites agree to unite in a federal state, namely the existence of an external threat in the form of a foreign invading army, and the prospect of territorial enlargement and better economic perspectives through the federation. Riker argues that both conditions must always exist otherwise, whilst a federal state might be created, it will not be sustainable.⁴

How does the Dayton Agreement fit into Riker's theory? First, by looking at the preconditions for the federal bargaining, it becomes clear that Bosnia does not fit into Riker's framework. Neither did the Bosnian politicians agree on a federal state because they saw it as an advantage for territorial expansion, nor was federalism an answer to a foreign military invasion. In fact, the introduction of federalism was seen as the only possible solution to guarantee the territorial integrity of Bosnia and Herzegovina. This is also the reason why all major proposals of the international community were based on the principle of federalism.⁵ The introduction of a federal political system became the answer to the conflict between the three national groups in Bosnia and was designed to ensure Bosnia's territorial integrity. The continued existence of Bosnia and Herzegovina was seen as the best way to stabilise the region of the former Yugoslavia, and the use of federalism within Bosnia and Herzegovina was seen as the best way to pacify the country. Thus, for international peace-makers, the introduction of a Bosnian federation would effectively address the main reasons for the war in BiH and secure the existence of Bosnia as a sovereign country; Carsten Stahn argues that the core reason for federalism in Bosnia and Herzegovina was "peace-keeping."⁶ The main reason for the outbreak of violence in 1992, was the question of self-determination, not only of Bosnia and Herzegovina as one of the republics of Yugoslavia, but also of the Bosnian Serbs who opposed the independence of BiH.⁷ Taking the nature of the Dayton Agreement as a peace treaty into account, it cannot be denied that aspects of international stability in the wider Balkans region and the pacification of Bosnia and Herzegovina itself were the core intentions of the treaty.

There are two further elements of Riker's federal bargaining that do not fit the Bosnian example. First, he argues that the federal bargaining is a negotiation between local and national (from the central level) elites. However, the Presidents of Croatia, Bosnia and Serbia signed the DPA. Richard Holbrooke, the American mediator during the Dayton negotiations, has demonstrated in his memoirs, that the three presidents discussed the major issues on the future Bosnian state, starting with the borders between the entities, the future of the Bosnian institutions, and

4 Riker, William: *Federalism*, 1964, chapter 1.

5 This is especially true when analysing the Vance-Owen Peace Plan. See, for example: Owen, David: *Balkan Odyssey*, Victor Gollancz: London 1995, especially ch. 4 "The Vance-Owen Peace Plan".

6 Stahn, Carsten: 'Föderalismus im Dienste der Friedenssicherung' 2002, p. 397.

7 Calic, Marie-Janine: *Krieg und Frieden*, 1996, pp. 70–97.

the main distribution of powers between the different levels of government.⁸ Although there were representatives of the Bosnian Serbs and the Bosnian Croats present in Dayton, they were marginalised by the dominance of the Serbian and Croatian Presidents. In fact, due to the strategy adopted by Holbrooke, which was centred on the quick formulation of an agreement, the presidents were granted full decision-making powers.⁹ Although there have been some negotiations between representatives of the central level and the local level, key debates were between the presidents of the three countries. The federal bargaining in Dayton was a bargaining between national groups, a representative of the Croats (the Croatian President and his delegation which included Bosnian Croats), a representative of the Serbs (the Serbian President and his delegation that included Bosnian Serbs)¹⁰ and a Bosniak (the Bosnian President and his delegation). Furthermore, the three representatives had completely different goals at Dayton. It was only the Bosniak delegation that was really concerned about the future of Bosnia and Herzegovina as a whole, whilst the Croat delegation focused on the situation in Croatia and the Bosnian Croats, and Milošević was most interested in obtaining a lift of the sanctions on Serbia and Montenegro.¹¹ The situation of the Bosnian Croats and Bosnian Serbs was that they were not free to take decisions but were subordinated to the Presidents of Serbia and Croatia. Additionally, representatives of the international community played a key role at Dayton. Anton Bebler argues that the constitution ‘was elaborated by foreign (mostly American) experts and inserted into an omnibus international treaty under the title Annex 4.’¹² He continues by claiming that ‘as many times before the country’s fate was once again decided by foreign powers.’¹³ This is a link to the previously discussed Bosnian history. One of the main claims of the above chapter was that foreign powers, and their perceptions of the situation in Bosnia and Herzegovina, have played a key role in the creation of autonomy and local self-governance. Bebler’s arguments confirm this observation for the DPA. The importance of international actors during the Dayton negotiations has to be highlighted, even more so, when looking at the final point of Riker’s theory of a federal bargaining.

8 Holbrooke, Richard: *Meine Mission*, 1999 pp. 364–470. It should be noted that the finalisation of the Bosnian constitution was written in the US State Department and, although Bosnian politicians were consulted during this process, the constitution and its details were heavily influenced by the views of the lawyers in the state department.

9 Ibid. p. 314.

10 The “Patriarch’s Agreement” gave all decision-making power in the Serb delegation to Milošević so that the Bosnian Serbs were without any influence in Dayton. In fact, the Patriarch’s Agreement stated that the Serb delegation at the Dayton Peace conference would consist of three delegates from Yugoslavia (Serbia and Montenegro) and three delegates from the Bosnian Serbs. In case of any conflict, it would be Milošević’s vote that decided. Practically, this left the Bosnian Serbs without any influence at the Dayton negotiations. See: Ibid. pp. 170–1.

11 Ibid., p. 364.

12 Bebler, Anton: ‘South-East European Federalism’, 2008, p. 14.

13 Ibid. p. 14.

Riker emphasises in his work the importance of the voluntary character of the agreement between the different representatives. Several authors in federal theory have emphasised the importance of the voluntary and consensual character of the federal agreement. Thomas Franck has described this commitment to the common state as follows:

[F]or a federation to be able to resist failure, the leaders, and their followers, must “feel federal” – they must be moved to think of themselves as one people, with one, common self-interest-capable, where necessary, of overriding most other considerations of small-group interest. [...] This then, is tantamount to an ideological commitment not to federation as means [...] but to federation as an end, as good for its own sake, for the sake of “answering the summons of history”.¹⁴

This point is of key importance as it underlines the essence of federal ideology. Federalism, seen as “an end in itself” rather than a tool, describes, therefore, the willingness of leaders to unite in a common state (the federal state) and to share power between themselves at the national level, as well as between the state and the sub-unit level. Whilst other authors focus on additional criteria for the success of federal union,¹⁵ for this study it is important to focus on the nature of federalism as a voluntary contract between different elites of the sub-units and the central level. In this context, the Dayton Agreement does not represent a voluntary contract. Neither did the major actors in Bosnia and Herzegovina agree on the federal solution for their country, nor was the agreement reached in good faith and through co-operation and compromise. Instead, international actors put pressure on all sides during the negotiations.¹⁶

None of the Bosnian parties was interested and willing to unite in a common federal state. The Bosniaks needed to be pressured to agree on the Dayton Agreement. Their leader Izetbegović believed that Bosniaks should play a major role in Bosnia and should be rewarded for their fight against the Serb and Croat aggression against Bosnia. Indeed, Lara Silber and Alan Little have argued that the main success of the Washington Agreement (which ended the Bosniak-Croat war in 1994) was that it ended the war between the two groups but co-operation, as envisaged by the Agreement, did not take place.¹⁷ Lenard Cohen raised the point

14 Franck, Thomas: ‘Why Federations Fail’ in: Franck, Thomas (ed.): *Why Federations Fail (An Inquiry into the Requisites for Successful Federalism)*, London University Press: London 1968, pp. 167–200 here pp. 173–4.

15 See, for example: Hicks, Ursula: *Federalism: Failure and Success A Comparative Study*, The Macmillan Press LtdCh: London and Basingstoke 1978 and Filippov, Mikhail et al.: *Designing Federalism: A Theory of Self-Sustainable Federal Institutions*, Cambridge University Press: Cambridge 2004.

16 See, for these circumstances surrounding the Dayton negotiations: Holbrooke, Richard: *Meine Mission*, 1999, pp. 240–72.

17 Silber, Laura and Little, Alan: *The Death of Yugoslavia*, 1996, 323.

that the Washington Agreement was ‘substantially designed by American lawyers, not the major actors from Bosnia.’¹⁸ It was the pressure of the US government on the Bosniaks to agree to a military and political union with the Croats that forced Izetbegović into the Agreement. The same pressure brought Izetbegović’s agreement to the Dayton Agreement. The vision of the Bosniaks on Bosnia and Herzegovina saw a multinational state, which was not based on national separation, and a majoritarian democracy with limited cultural autonomy for the different national groups. This idea of Bosnia “without entities”, and as a liberal democracy, influences the major policy proposals of the Bosniak parties until today.

The Bosnian Croats had no reason to trust either the Bosniaks or the Bosnian Serbs. They were forced into the Washington Agreement because the US threatened to stop all military aid for Croatia. In fact, the Croats were as afraid of Bosniak domination in a future unitary state as the Serbs. However, for them, the Washington Agreement, as well as the Dayton Agreement, was a success, as it guaranteed far-reaching autonomy for the Croatian community in Bosnia. Until 2000, the Bosnian Croats continued to have parallel structures in the Federation and were extensively supported by Croatia.¹⁹ Even today, some Croat parties voice the need of a third “Croat” entity in Bosnia to be fully represented at all levels of government. Finally, the Bosnian Serbs had the fewest reasons to agree to the Dayton Agreement. The war aim of the Bosnian Serbs was the creation of a homogenous Republika Srpska (RS) and its union with Serbia.²⁰ The continued union of the RS and the Federation was, therefore, a defeat of the main Bosnian Serb war aim. They felt threatened by the dominance of Bosniaks in Bosnia and had no intention of joining a state with their former enemies. It was the political pressure on Milošević, through the isolation of Yugoslavia, which changed his view on the situation in BiH. His agreement to a unified Bosnia was, therefore, in the best interest of his people, namely those living in Serbia and Montenegro. The Bosnian Serbs themselves were the biggest opponents of the Dayton Agreement, since it did not only mean the end of the “Greater Serbia dream” but it also meant the reduction of territory, the need to co-operate with Bosniaks and Croats in central institutions, and the label of the main aggressors in the Bosnian war.

To go back to the earlier debate, it can be stated that there was no will to unite in a federal union. The main features of the Dayton Agreement in terms of federal bargaining are:

1. The DPA did not evolve because of the need of an economic union or to extend territory and because of an external threat, instead, it was the answer to internal conflict in Bosnia and Herzegovina.

18 Cohen, Lenard: ‘Fabricating Federalism’ 2002, p. 121.

19 Bieber, Florian: ‘Croat Self-Government in Bosnia – A Challenge for Dayton?’ in: *ECMI Brief*, No. 5, May 2001, pp. 7–8.

20 Toal, Gerard and Dahlman, Carl: *Bosnia Remade*, 2011, pp. 112–41.

2. The DPA has not been a bargaining between local and central actors.
3. The DPA was neither voluntarily signed by the parties, nor was it based on the will or the capacity of the parties to unite in a federal union.

To place the DPA into the theory of federalism, it is important to utilise the concept of “imposed federalism.”²¹ This concept, although not fully developed yet, is based on the assumption that federalism as an ideology, and federation as federal state structures, are imposed on warring parties mainly to pacify a country and to keep it together. The international community plays a key role in the creation of federal union and the agreement of all parties is *not* required. Federalism, in this concept, is used as a form of “peace-building” and a method of “conflict resolution.”²² The instalment of imposed federations has been discussed, particularly in those countries which have faced civil war with one or more warring parties demanding self-determination. Examples include, the Annan Plans for a unified bi-national Cyprus union and the different talks about federalism in Sri Lanka. The only two existing federations, which have been effectively imposed, are Bosnia and Herzegovina since 1995 and Iraq since 2005. Imposed federalism as an organisational principle of the state is, therefore, based on four key requirements:

1. Federalism is seen as a tool to end a violent conflict between different groups.
2. The federalisation of Bosnia is seen as a tool (a guarantee), by giving far-reaching autonomy to the different groups in conflict to address their demand for self-determination (guarantee of internal self-determination).
3. The warring parties do not necessarily have to agree on the federal agreement since,
4. The agreement is backed by the international community, not only through the creation of the federal agreement but also through “trusteeship” over the state.²³

21 Bahcheli, Tozun and Noel, Sid ‘Imposed and Proposed Federations: Issues of Self-Determination and Constitutional Design in Bosnia-Herzegovina, Cyprus, Sri Lanka and Iraq’ in: *The Cyprus Review*, Vol. 17, No. 1, Spring 2005 pp. 13–36.

22 Woelk, Jens: ‘Föderalismus als Mittel permanenter Konfliktregelung: der Fall Bosnien-Herzegowina’ in: Weber, Karl and Wimmer, Norbert (eds): *Vom Verfassungsstaat am Scheideweg (Festschrift für Peter Perenthaler)*, Springer: Vienna and New York 2005, pp. 467–93.

23 ‘Trusteeships exist, when parts of a state’s internal sovereignty are transferred to international actors or other countries.’ For more on the theory of trusteeships, see: Bain, William: *Between Anarchy and Society: Trusteeship and the Obligations of Power*; Oxford University Press: Oxford 2003. See, also: Caplan, Richard: *International Governance of War-Torn Territories: Rule and Reconstruction*, Oxford University Press: Oxford and New York 2005.

When comparing the nature of those imposed federal arrangements with the existing theories of federalism as a voluntary contract between different groups to form a joint union based on the principles of equality, reciprocity, self-rule and shared-rule, it is easy to identify the contradiction of both theories. Indeed, when understanding federalism in terms of the American, Swiss and German experience, one might argue that imposed federations violate the core elements of the federal agreement. However, there is another side to this coin. In the American, Swiss and German experience, federalism was seen as part of a state-building process. Therefore, imposing federalism can also be conceptualised as part of a longer external state-building and democratisation strategy.²⁴ However, it is important to distinguish between federalism and federation. Whilst it seems possible (as the Bosnian and, to some extent, the Iraqi experience demonstrate) to impose federal state institutions and create sub-units, it is hard to imagine how federalism as an ideology can be imposed. Indeed, most authors who argue that Bosnia is a form of imposed federation, do not distinguish between these two very important concepts.²⁵ As one of few authors, Cohen has clearly demonstrated how the two concepts clash, by arguing that international imposition might be able to create state institutions but ‘[t]he fabric of statehood, leave alone democracy, cannot be easily tailored.’²⁶

In this debate about imposed federalism, what is the position of Bosnia and Herzegovina? As we have demonstrated above, the Dayton Peace Agreement was not based on the will of the three constituent peoples of Bosnia and Herzegovina (or of the “others”). Especially, the pressure from the United States and the European Union forced the parties to agree on the Agreement, which created a state based on ‘bientity and triethnic segregation.’²⁷ In the Bosnia and Herzegovina of 1995, there was ‘no commitment to countrywide federal practices’²⁸ and the different national groups interpreted the Agreement in different ways. Bosniaks saw the Dayton Agreement as the foundation of a strong united state which has devolved some powers to entities and cantons. Bosnian Croats and Bosnian Serbs, on the other side, saw in the Agreement the final approval of their “sovereign” territory within Bosnia and Herzegovina.²⁹ It is, indeed, in the nature of the Dayton Agreement to allow for these different interpretations. However, what Dayton created was a ‘strongly

24 A similar argument is presented by Michael Burgess, who argues that imposed federations might need time to develop a federal political culture and strong federal democracy. See: Burgess, Michael: *In Search of the Federal Spirit*, 2012.

25 See, for example: El-Mufti, Karim: ‘Power-Sharing Imposed – The Case of Bosnia and Herzegovina’ in: Hanf, Theodor (ed.): *Power Sharing: Concepts and Cases*, Letters from Byblos: International Centre for Human Sciences and Friedrich-Ebert Stiftung, Lebanon 2008 pp. 55–66.

26 Cohen, Lenard: ‘Fabricating Federalism’, 2002, p. 132.

27 Ibid. p. 135.

28 Ibid. p. 124.

29 Ibid. p. 125.

decentralised federation with weak central institutions.³⁰ Willingness to compromise and to agree did not exist at the time of the signing of the Agreement. This is often a major problem for post-conflict societies, and many scholars have been very negative about the possibility of imposing federalism. Nancy Bermeo's criticism of "forced together federalism" underlines the major issues of imposed federations, namely that the voluntary character of the union does not exist.³¹ However, the issue of imposing federalism as an ideology and federal structures cannot be fully understood by focusing on the nature of the Dayton Agreement only. Instead, the development of the Bosnian state and its on-going debates about federalism need to be at the centre of this discussion. It has been argued that federalism has to be analysed as a process rather than the one time event of the federal bargaining. Carl Friedrich argued that federations develop over time, becoming more centralised or decentralised, they change their constitutions, and some countries even change the number of sub-units.³² He argues concretely that:

Federalism should not be seen as a static pattern or design, [...]. Federalism is also and perhaps primarily the process of federalizing a political community, that is to say, the process by which the number of separate political communities enter into arrangements for working out solutions, adopting joint policies, and making joint decisions on joint problems, and, conversely, also the process by which a unitary political community becomes differentiated into a federally organized whole.³³

It is our task to examine the federal development in Bosnia and Herzegovina after the Dayton Agreement, in order to prove Friedrich's thesis of federalism as a process, and also to understand the issue of imposed federalism and its consequences for Bosnia. For now, the argument can be made that Bosnia is an imposed federal system due to the nature of the Dayton negotiations. This federal system developed into an internationally administered federation after 1995. Federalism, as the ideology of shared-rule and self-rule was imposed with the DPA, since the Agreement confronted all parties in Bosnia, as well as the Bosnian people, with the fact that they had to continue to live together in a federal state.

Before looking at the development of different policy areas in post-Dayton Bosnia and Herzegovina, it is important to discuss the Bosnian system in the light of our findings in chapter two, where we discussed and developed a theory of multinational federalism.

30 Graf Vitzthum, Wolfgang and Mack, Marcus: 'Multiethnischer Föderalismus in Bosnien und Herzegowina' in: Graf Vitzthum, Wolfgang (ed.): *Europäischer Föderalismus (Supranationaler, subnationaler und multiethnischer Föderalismus in Europa)*, Duncker&Humblot: Berlin 2000 pp. 81–127 here p. 88.

31 Bermeo, Nancy: 'The Import of Institutions', 2002, pp. 105–10.

32 Friedrich, Carl: *Trends of Federalism*, 1968.

33 Ibid. p. 7.

Multinational Federalism and Bosnia and Herzegovina

Going back to the discussion in the second chapter, five main points about multinational federalism will be at the heart of the discussion on federalism in Bosnia. These five points are:

1. The importance of the federal values of the preservation of diversity, ethno-cultural justice and equality.
2. The voluntary agreement of the federal union.
3. The ambiguity of federalism and democracy in a multinational state.
4. The importance of recognition, autonomy and participation of the major segments of society.
5. The importance of inclusive mechanisms.³⁴

Furthermore, one would expect debates about citizenship and “constituent peoples,” as well as issues of territorial autonomy and secession, at least as potential problems in the multinational arrangement in Bosnia and Herzegovina.

The federal state in Bosnia was not established because the peoples of Bosnia believed in the values of diversity, justice and equality, but because federalism was seen as the only way to end the war and guarantee the continued existence of Bosnia’s territorial integrity, whilst simultaneously addressing some of the demands of Bosnian Serbs and Bosnian Croats for self-determination. However, the Dayton constitution does highlight these values. In fact, the guarantees of national equality, as well as parity between the two entities, are major elements of the constitution; it is consociationalism which guarantees the realisation of these values in the institutions. Jens Woelk, amongst others, has clearly demonstrated how grand coalitions, proportional representation, autonomy, veto-powers, and mechanisms of conflict-resolution and constitutional change, make Bosnia a perfect example of a *power-sharing* system.³⁵ Nevertheless, how the constitutionally integrated values of equality, justice and diversity of the three national groups have developed within the Bosnian political culture, must be questioned. Since it is much easier to examine the development of institutions, it is extremely difficult to analyse this development. However, the hypotheses for the further development of the chapter shall be that the federal values of equality, justice and diversity have not yet fully become a part of the Bosnian political culture. There are developments which indicate that a will to cooperate and the development of inter-ethnic trust, have taken place to a limited extent. The lack of these values is mainly associated with the nature of the political system as being imposed on the Bosnian people and politicians. Furthermore, continued external intervention and nationalist rhetoric have also prevented the development of a federal political culture.

³⁴ See above the discussion on Multinational Federalism.

³⁵ Woelk, Jens: ‘Föderalismus als Mittel permanenter Konfliktregelung’ 2005, here pp. 475–8.

By looking at the second point, one can immediately conclude that Bosnia is not a federal system that is based on the free will of the parties, there are 'great doubts about the voluntary nature (*Freiwilligkeit*) of the life together.'³⁶ Having said this, it is important to examine further, whether there has developed a "Bosnian debate" about federalism in which different actors discuss their vision of the common state, and also demonstrate that they have a common vision of what their state is today.

The problematic combination of federalism and democracy in Bosnia has already been highlighted by arguing that an over-federalised system created spaces for nationalist parties to dominate the system. Furthermore, several authors have acknowledged that the contradictory approach taken at Dayton (which, de facto, recognised national homogeneous regions and, on the other side, promoted the return to a multinational state) has had serious implications for the implementation of human and minority rights throughout the whole territory of Bosnia and Herzegovina.³⁷ Although Bosnia clearly lacks major elements of a democratic state,³⁸ it will be demonstrated that there has been substantial progress within the political system to strengthen democracy. The relationship of federalism and democracy suggests that majoritarian rule is not the most appropriate form of governance in a multinational state. In Bosnia, consociational elements prevent the domination of one national group over the others. Florian Bieber has argued that Dayton created an ethnic federalism in which autonomy and self-rule of the national groups are the dominant features.³⁹ In the context of Bosnia and Herzegovina and its character as an imposed federal system, it must be kept in mind that the heavy involvement of international actors creates a further constraint on democracy. It has been argued that the influence of the international community results in Bosnia being a "controlled democracy."⁴⁰ Those democratic institutions which are based on the citizens' will, do not function properly because of veto powers (more often the threat of a veto) and the uncompromising positions of several Bosnian parties.

Democracy and federalism are, therefore, limited by two sides in Bosnia and Herzegovina. On the one hand, they might contradict each other through the nature of Bosnia being a multinational state in which federalism preserves the autonomy of several different nations, on the other hand, federalism and democracy are seriously influenced by the involvement of the international community in the political system. It can be argued, therefore, that a strengthening of the central institutions and the full implementation of the human rights provisions of the Dayton Agreement, will greatly contribute to the strengthening of both an efficient federal system and a multinational democracy.

36 Ibid. p. 479.

37 For example: Woelk, Jens: 'Federalism and Consociationalism' 2004, p. 186.

38 See, for this argument: Chandler, David: *Bosnia (Faking Democracy After Dayton)*, 2000.

39 Bieber, Florian: 'Governing Post-War Bosnia-Herzegovina' 2002, p. 323.

40 Bojkov, Victor: 'Democracy in Bosnia and Herzegovina:', 2003, pp. 41–67.

The importance of recognition, autonomy and participation is one of the major arguments of Liberal Nationalists. In fact, the Bosnian constitution does recognise Croats, Serbs, Bosniaks, alongside Others as the citizens of Bosnia and Herzegovina, however, only Croats, Serbs and Bosniaks are directly recognised as constituent peoples.⁴¹ Furthermore, until 2002, Serbs in the FBiH and Bosniaks and Croats in the RS were seen as de-facto national minorities rather than constituent peoples. Only the decision of the Constitutional Court in July 2000 changed this and, since 2002, Croats, Bosniaks, and Serbs are constituent peoples in the state, the entities, and the cantons.⁴² However, it has been pointed out that discrimination of other minorities and those people who refuse to identify with one of the constituent groups, is still a key feature of the Bosnian political system.⁴³ Autonomy, for the different segments of a society, is a key feature in the Bosnian political system based on the nature of the DPA but, more specifically, resulting from the experiences of the war in Bosnia. Internal self-determination of the Bosnian Croats, and especially the Bosnian Serbs, was seen as a necessary element of a peace settlement because only internal self-determination would address some of the fears of both groups, namely being dominated by Bosniaks. Finally, participation as a form of inclusion of all major segments of a society at the central level, is also very important in Bosnia. The key feature of the central Bosnian institutions is its *power-sharing* qualities.⁴⁴ Again, these power-sharing features discriminate against all citizens of Bosnia and Herzegovina who do not identify with one of the three constituent peoples. This discrimination has been characterised as the main deficiency of Bosnian democracy. The Venice Commission of the Council of Europe, for example, argues that the composition of the Presidency and the (state-level) House of Peoples and their election are not in line with the European Convention on Human Rights.⁴⁵ Concretely, the Commission argues that:

[T]he rules on the composition and election of the Presidency and the House of Peoples raise concerns as to their compatibility with the European Convention on Human Rights. The rules on the composition and election of the House of

41 The preamble of the Bosnian constitution says: ‘Bosniacs, Croats, and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina hereby determine that the constitution of Bosnia and Herzegovina is as follows’.

42 See Constitutional Court of Bosnia and Herzegovina: Judgment U 5/98-III. See additionally: Woelk, Jens: ‘Federalism and Consociationalism’, 2004, pp. 188–91

43 Marko, Joseph: ‘Bosnia and Herzegovina – Multi-Ethnic or Multinational?’ in: Council of Europe (ed.): *Societies in Conflict (The contribution of law and democracy to conflict resolution)*, Council of Europe: Strasburg 2000, pp. 92–118, here especially pp. 100–18.

44 Bieber, Florian: ‘Governing Post-War Bosnia-Herzegovina’, 2002, p. 323.

45 European Commission For Democracy Through Law (Venice Commission): *Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative*, 11–12 March 2005 pp. 12–20.

Peoples seem incompatible with Art. 14 ECHR, the rules on the composition and election of the Presidency seem incompatible with Protocol No. 12, which enters into force for BiH on 1 April 2005.⁴⁶

The discrimination of “Others” in the House of Peoples and the Bosnian Presidency was also declared illegal by the European Court of Human Rights in December 2009, and Bosnia will have to change its constitution to comply with its international obligations.⁴⁷ Finally, it should be recognised that the federal system itself lacks inclusive mechanisms. Christophe Solioz argues that the rule of law and the strengthening of the common institutions are key elements to enable a better internal integration of the state.⁴⁸

Federalism has cemented more “diversity in unity” rather than the other way around. Dayton did not create these divisions, which today are manifested through decentralisation, autonomy and national power-sharing. These were created through a war that destroyed the country and its people for 3.5 years. In fact, those who argue that ‘Dayton is [the reason] of everything which appears not to be well in Bosnia and Herzegovina’ forget that Dayton merely recognised the political and territorial reality of 1995.⁴⁹ Bosnia remains a divided society, where identification with the ethno-national kin group is much more important than identification with the Bosnian state (with the exception of Bosniaks who strongly identify with the state).

The Bosnian federation is not based on a voluntary character; its institutions practice extensive power-sharing by excluding other segments of society from direct and indirect political participation, and the international community played, and continues to play, a key role in the political development of the country. Bosnia and Herzegovina is an example of a new kind of multinational federal system which needs to be theorised in different terms and by using a different perspective.

However, what this short analysis of Bosnian federalism through the lenses of multinational federalist theory has demonstrated, is that there are two dominant features which underline all major aspects of multinational federalism in Bosnia and Herzegovina. The first feature is the massive influence of outsiders on the system, who contribute with their own visions of federalism and state-building to important policy debates. The second dominant feature of Bosnian federalism is its focus on ethnic power-sharing in which all major political provisions attempt to accommodate different national groups. Bosnia, therefore, represents

46 Ibid. p. 20.

47 European Court of Human Rights: *Decision in Case: Sejdic and Finci v. Bosnia and Herzegovina, Application nos. 27996/06 and 34836/06*, 22 December 2009.

48 Solioz, Christophe: ‘Bosnien und Herzegowina zwischen Abhängigkeit und Selbstverantwortung’ in: *Südosteuropa Mitteilungen*, No. 4, 2002, pp. 36–44 here p. 38.

49 Bieber, Florian: ‘After Dayton, Dayton? The Evolution of an Unpopular Peace’ in: *Ethnopolitics*, Vol. 5, No. 1, March 2006, pp. 15–31, here pp. 16–17.

a perfect example of Burgess' argument that nationalism is the federalism in multinational states.⁵⁰

The hypotheses for the following parts of the chapter shall, therefore, be as follows: Bosnia and Herzegovina represents a new form of a multinational federal system due to the involvement of international actors in the daily political process and, consequently, the involvement of these actors in the debates about federalism. Although Bosnia is characterised as an ethnic federalism, it is challenged and contested internally and externally. To understand the basis of Bosnian federalism, it is important to look at some of the major debates within the Bosnian political system and to examine these by focusing on the points of a) their relevance for the federal debate, b) the actors involved in the creation and execution of certain policies, c) the different understandings of federalism of the actors and, finally, d) the long-term effects of the policy issue and its implementation.

Debating Bosnian Federalism

The following part will look at the debates about federalism in certain policy areas where changes have occurred over the last years. A special focus will lie on the involvement of Bosnian and international actors in these debates and their position on the broader conception of the state. It will help to understand the dynamics and contests between (and within) Bosnian parties and the international community, especially the Office of the High Representative.

The Debate about Bosnian Federalism as Part of the Constitutional Reform Process

The constitution is the most important document of a state. Constitutions outline the design of a political system and describe the interplay of political institutions; they affect political decision-making and its outcome by outlining a 'basic system of rules.'⁵¹ However, a constitution does not only describe the basic features of political institutions, their origin and their relations, but it also 'regulates the

50 Burgess, Michael: *Comparative Federalism*, 2006, p. 102. It is not the only cleavage. Some Bosnian parties (such as the Party for Bosnia and Herzegovina and the Social Democratic Party of Bosnia and Herzegovina) have put forward proposals for the regionalisation of Bosnia and Herzegovina along economic and historical lines. See, for example: 'Proposed Changes and Amendments to the BiH constitution by the Social Democratic Party of Bosnia and Herzegovina' in: Social Democratic Party of Bosnia and Herzegovina (ed.): *Social Democratic Party of Bosnia and Herzegovina and Constitutional Changes in Bosnia and Herzegovina*, Amos Graf: Sarajevo, December 2006, pp. 1–14, especially p. 4 and pp. 9–10.

51 Berggren, Nikolas et. al: 'Introduction' in: Berggren, Nicolas et. al (eds): *Why Constitutions Matter*, Transaction Publishers, London and New Brunswick 2001 pp. VII–XVII, here p. XII.

relationship between the state and the individuals in a society and can, hence, be seen as a kind of contract between those in office and the people.⁵² Constitutions are of key importance to all states, but particularly for those which are organised federally, because they outline the division of power between the different levels of government and specify an institution to settle conflicts (usually a court). As a consequence, constitutional change is of key importance in federal states since the change of the constitution might affect the relationship between central (federal) and sub-unit level.

The Bosnian constitution clearly outlines the process of constitutional change in Article X of the constitution:

1. [...] This Constitution may be amended by a decision of the Parliamentary Assembly, including a two-thirds majority of those present and voting in the House of Representatives.
2. [...] No amendment to this Constitution may eliminate or diminish any of the rights and freedoms referred to in Article II of this Constitution or alter the present paragraph.⁵³

Furthermore, concerning the relationship between the entities and the central state, the constitution states that:

Bosnia and Herzegovina shall assume responsibility for such other matters as are agreed by the Entities; are provided for in Annexes 5 through 8 to the General Framework Agreement; or are necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina, in accordance with the division of responsibilities between the institutions of Bosnia and Herzegovina. Additional institutions may be established as necessary to carry out such responsibilities.⁵⁴

We have already highlighted that the Bosnian federation is extremely decentralised with most of the decision-making competencies lying with the entities. This weakness of the central institutions resulted in the boycott of these institutions by the nationalist parties of the Bosnian Serbs and the Bosnian Croats, and the focus on maximising self-governance. Only the strengthening of the central level through the transfer of competencies from the entity to the state-level, “forced” the nationalist parties to participate actively at the state level as well.⁵⁵ A central element in the constitutional development of Bosnia and Herzegovina is, therefore, the strengthening of the centre and the reduction

52 Ibid. p. XII.

53 Bosnian Constitution, Article X.

54 Bosnian Constitution. Article III, 5a.

55 Bieber, Florian: ‘After Dayton, Dayton?’, 2006, p. 20.

of decision and administrative powers of the entities. However, these changes have not always been based on the consent of the Bosnian parties and national groups, but also on the imposition of the High Representative as part of his policy of the implementation of the Dayton Accords.⁵⁶ Whilst the political development in the first years after the Peace Agreement has been described as a phase of “implementing Dayton,” this discussion shall focus on the period that Bieber called “going beyond Dayton.”⁵⁷ It has been argued that, since the merger of the OHR with the EU Special Representative (EUSR) in 2002, a process of EU conditionality began which motivated local elites to take more decisions on their own.⁵⁸ However, since 2006, nationalist rhetoric coupled with weak international actions has, once again, slowed down the reform process in Bosnia. New elites came to power after the election in 2006 and turned out to be even more radical than their predecessors, whilst the international community is discussing the closure of the OHR since 2006 and cannot come to any agreement about its future involvement in Bosnia.⁵⁹ Even worse, the EU missed the opportunity to take control of the Bosnian transformation and post-war development. This was clearly demonstrated by the fact that the offices of the EU Special Representative and the OHR were separated again in 2011, to highlight a distinction between Bosnia’s EU integration process and the country’s post-war reconstruction and state-building. However, most observers have been very critical of the role of the EU in Bosnia and have argued that it fails to deliver a comprehensive framework for Bosnia’s integration, state-consolidation and post-war reconstruction.⁶⁰

The focus on the constitutional reform debate in this part of the chapter has three advantages. First, it demonstrates how different parties in BiH present their understanding of the Bosnian state and, as a consequence, how they assess the role of federalism in the political system. Second, it will highlight the development of a “federal political culture” in Bosnia which is not only influenced by the proposals of the parties, but also by three other actors, namely the international community,

56 According to Annex 10 of the DPA it is the High Representative, who has the final authority to interpret the DPA.

57 Bieber argues that, through the imposition of the HR, a stronger central level in BiH was created. This policy, however, has reached its limits and all parties and the international community have realised that only a consequent reform of the Dayton constitution will enable Bosnia to continue the path towards EU and NATO integration. He distinguishes therefore between “implementing Dayton” (state-building through HR imposition), “Changing Dayton” and “Moving beyond Dayton” – the discussion about Bosnia’s long term goal of integration into NATO and EU. See: Bieber, Florian: ‘After Dayton, Dayton?’, 2006, p. 17.

58 Ibid. p. 1.

59 See on this issue: Zaum, Dominic: ‘Exit and International Administrations’ in: Caplan, Richard (ed.): *Exit Strategies and State Building*, Oxford University Press: Oxford and New York 2012, pp. 137–58.

60 See, for example: Juncos, Ana: ‘Member State-building versus Peacebuilding: The Contradictions of EU State-building in Bosnia and Herzegovina’ in: *East European Politics*, Vol. 28, No. 1, 2012, pp. 58–75.

the Constitutional Court of Bosnia and Herzegovina and, most recently, by Bosnia's civil society organisations. Finally, a debate about constitutional reform will shed light into those areas of the political system which will need to be reformed to conform with international human rights standards.

However, debates about constitutional reform are not new to Bosnia and Herzegovina. In fact, the constitutions of the entities have been changed several times. Furthermore, a key change of entity constitutions took place in 2002 after the "Constituent Peoples Decision" of the Constitutional Court of Bosnia and Herzegovina.⁶¹ However, the centralisation of power and the change of the relationship between entity level and central level did not result in a reform of the Dayton constitution. The discussion about constitutional reform started in 2000 as an NGO initiative and developed until 2005 into a full-scale constitutional debate, partly because of the EU Thessalonica Conference and the renewed promise of a future membership for Bosnia and other countries of the Western Balkans, but mainly because locals, as well as internationals, saw the tenth anniversary of the Dayton Peace Agreement as a useful moment to discuss the further development of the country and address some of Dayton's weaknesses. The discussions calmed down after the failed "April Package" of 2006 but, after the Sejdić-Finci decision of the European Court of Human Rights in late 2009, a new discussion on constitutional reform started.

The first input to the discussion was given by external actors, namely the European Stability Initiative (ESI) that asked, in early 2004, for a reform of the Bosnian federal model. It focused on the abolition of the Federation of Bosnia and Herzegovina and argued for the cantonisation of the country into 11 cantons; ten cantons which form the FBiH plus the RS as one canton.⁶² The proposal of the ESI focused mainly on the territorial dimension of the Bosnian federation, although it did develop some ideas about the distribution of power between the different levels. It did, however, not address important institutional changes within the existing system. Indeed, the ESI focused more on a practical suggestion, instead of an in-depth proposal, arguing in a later report that any kind of constitutional reform in Bosnia would be a "miracle."⁶³ The real initiative for Bosnian political leaders to start thinking about constitutional reform, was the opinion of the Venice Commission of the Council of Europe on the constitutional situation in Bosnia and Herzegovina.⁶⁴ The Venice Commission's report supported the idea

61 For the decision, see: Constitutional Court of Bosnia and Herzegovina, Decision U-5/98 especially part III. For the consequences of the Constituent Peoples Decision please refer to the chapter "The Bosnian Federation."

62 European Stability Initiative (ESI): *Making Federalism Work – A Radical Proposal for Practical Reform*, 8 January 2004, see: www.esiweb.org

63 ESI: *Waiting for Miracle? The Politics of Constitutional Reform in Bosnia and Herzegovina*, 3 February 2004, see: www.esiweb.org

64 European Commission For Democracy Through Law (Venice Commission): *Opinion on the Constitutional Situation in Bosnia and Herzegovina*, March 2005.

of constitutional changes and argued for a further strengthening of the central institutions in Bosnia and Herzegovina. It suggested that:

- Veto rights should be clearly defined and limited.
- The consent of the entities in the voting process in both Houses should be abolished.
- The House of Peoples should be abolished and the “national interest veto” should be transferred to the House of Representatives.
- There should be a single President instead of three members of the Presidency and the President should be elected by the parliament rather than directly by the people.
- A transfer of competencies from the Presidency to the Council of Ministers.
- A transfer of competencies from the cantons to the Federation of Bosnia and Herzegovina.

The report of the Venice Commission had an important impact on the future Bosnian constitutional reform debate. By highlighting the main obstacles in the decision-making process in the Bosnian institutions, and also suggesting “soft” reforms to the Dayton constitution instead of “hard” reforms that involve a new territorial order in BiH, the Commission outlined the programme for further political debate. An American initiative called “The Dayton Peace Project” started to work on concrete proposals and managed to get the US embassy in Sarajevo involved. The US embassy motivated Bosnian politicians to start talks about a constitutional reform. These discussions resulted in a series of party leader meetings and the agreement on what became known as the “April Package,” which suggested three major reform proposals: Amendment I focused on the strengthening of Bosnian central institutions by updating the constitution to include those reforms that were already achieved (such as the creation of a joint Defence Ministry) and the creation of two new ministries for Environment and for Agriculture. Amendment II described the changes in the parliamentary system, with the House of Representatives being directly elected on the basis of one person, one vote, and the House of Peoples being elected by the House of Representatives; it would consist of seven Bosniaks, seven Croats and seven Serbs. Additionally, the “perfect federalism”, in which both Houses have to agree on all forms of legislation, would have changed and the House of Peoples would have decided only on those pieces of legislation that would have involved constitutional changes and the national interest veto. The House of Peoples would, furthermore, be involved in the election of the President and the two Vice-Presidents. As stated in Amendment III, the three-member Presidency would be abolished and, instead, the office of a permanent President would be created with two Vice-Presidents (President and Vice-Presidents all being from a different national group). Furthermore, the amendment foresaw the transfer of the competencies of the Presidency to the Council of Ministers, where the post of the Chair of Council of Ministers would be transferred into the position of a Prime Minister. The “April Package” failed on 26 April 2006 to gain the required two-

third majority in the House of Representatives by two votes. Even the international press recognised this failure and again created the picture of Bosnia as a failed state that only exists because of the will of the international community.⁶⁵ One expert on Bosnia even argued that “a weak state becomes even weaker.”⁶⁶ However, the reasons for the failure of the Package are more complex. First, the negotiations for the reform package were based on elite discussions under the moderation of the American ambassador, without any consultation of civil society or parliamentary groups. Second, although the April Package was much more “Bosnian” than the Dayton constitution,⁶⁷ the input and the framework for reform still came from outsiders. Third, the consultations about a reform of the constitution left important aspects out, such as a new territorial organisation of the system, a reform of the Federation of Bosnia and Herzegovina and, most importantly, a discussion about the understanding of Bosnia’s current situation. Particularly, the last point proved to be a key reason for the rejection of the reform package which was based on the “NO” vote by the Party for Bosnia and Herzegovina (SBiH) (because they saw it merely as a minimum reform that would legitimise the results of the war), and the Croatian Democratic Union 1990 (HDZ 1990), which was created as a separation from the HDZ BiH, because it felt that the HDZ BiH did not address the needs of the Croatian people during the negotiations. Contested visions of the state, and contested ideas of the future development of Bosnia and Herzegovina, were, therefore, the main reasons for the failure of the April Package. As a result of this failure, all major Bosnian parties developed their own concepts regarding the future constitutional development of Bosnia and Herzegovina. If nothing else, the April Package helped to create a lively discussion about constitutional changes and the development of BiH, not only amongst Bosnian elites, but also amongst academics and in the Bosnian civil society.

Today, we can identify three mainstream discussions about the process of constitutional reform. These discussions are embedded in an international demand for the reform, especially from the EU, the Office of the High Representative and the Peace Implementation Council, the Council of Europe, the OSCE, NATO, the USA and other state and non-state actors, such as international non-governmental organisations and the important international financial organisations (International Monetary Fund (IMF) and World Bank). The process, which has been started by NGOs and the proposals of the ESI, and the Council of Europe, has, therefore, developed in two directions. On the one side, external actors, such as the EU and the OHR, have continued to demand constitutional changes from Bosnian

65 For example: Kaps, Carola: ‘Gespalten (Länderbericht Bosnien und Herzegovina)’ in: *Frankfurter Allgemeine Zeitung*, 4 December 2006 and Domljan, Vjekoslav: ‘Bosnia and Herzegovina: Revised Constitution loses by two votes’ in: *Federations*, Vol. 5, No. 2, March-April 2006, pp. 11–12.

66 Marko, Joseph: ‘Bosnien – ein schwacher Staat wird noch schwächer’, in: *Süddeutsche Zeitung*, 28. April 2006.

67 Bebler, Anton: ‘South-East European Federalism’, 2008, p. 19.

elites. Additionally, these international actors have also developed programmes for constitutional reform, such as the Council of Europe did in his latest report, arguing that ‘no progress has been made on the constitutional reform front.’ The Council, again, argues for a reform which will strengthen the “civic elements” in the state, such as the abolition of the entity voting, the empowering of the “others” in the entity and state institutions, and the abolition of the practice of “national segregation” in primary and secondary schools.⁶⁸ On the other side, major Bosnian parties have put out proposals for constitutional reform. These proposals are particularly interesting for this discussion as they all engage, in some form or another, in the debate about federalism in Bosnia and Herzegovina. Thereby, one can identify three main directions in the constitutional reform debate amongst Bosnian parties. These directions are largely influenced by the main contradiction of the Dayton constitution, namely the contrast between ethnic federalism on the one side, and features of a civic state and a territorial federal system on the other side.⁶⁹ The three different concepts of constitutional reform can be summarised as follow:

1. Full implementation of an ethnic federation, especially through the creation of a third entity.
2. Creation of a “civic state” through the abolition of the entities and the introduction of regions along historical and economic lines.
3. Reform of the current system to overcome its main obstacles without a solution to the “ethnic federalism” vs. “civic state” conflict.

Discussion leaders of the first stream argue that Dayton based the main institutions and the federal structure on the principle of nationality. Dayton created a multinational state which consisted of three more or less mono-national areas.⁷⁰ The only reason why Dayton did not create a three-entity state was that the Federation of Bosnia and Herzegovina, as an alliance of Croats and Bosniaks, was seen as a key factor in the stabilisation of post-war Bosnia against further Serb aggression. Additionally, the Bosnian Croats and the Tudjman government in Croatia should not be rewarded for their ambitions to ethnically cleanse and separate the para-state of “The Croat Republic of Herceg Bosna” from Bosnia and Herzegovina. Consequently, followers of the first argumentation highlight the fact that the FBiH is not functioning properly and, that the Croats as a minority, are discriminated in

68 Parliamentary Assembly of the Council of Europe (PACE): *Resolution 1626–Honouring of the Obligations and Commitments by Bosnia and Herzegovina*, 30. September 2008, see: <http://assembly.coe.int/documents/adoptedtext/ta08/ERES1626.htm> (accessed 15 February 2013).

69 For an in depth discussion of this point, please refer to the chapter “The Bosnian Federation”.

70 Marko, Joseph: ‘Bosnia and Herzegovina – Multi-Ethnic or Multinational?’, 2000, pp. 110–15.

the Federation by Bosniaks. In my interview with a leading member of the HDZ BiH and former state minister, the fact that Serbs and Bosniaks have “their” entity, whilst Croats suffer under the dominance of the Bosniaks in the Federation, was highlighted.⁷¹ The interviewee pointed out that the only way to guarantee and implement the equality of the three constituent peoples in Bosnia and Herzegovina, would be to create a third Croat entity.⁷² He highlighted the importance of equality and reciprocity between the national groups and argued that these could only be guaranteed through the creation of a federal unit for each of the constituent peoples.⁷³ Finally, when asked about the distribution of competences in such a three-entity based federal system, he argued that the federal units should be responsible for culture, language, education, and TV. This, of course, would mean a massive strengthening of the central institutions which would be responsible for foreign policy, military, economy, security and many other important policy areas. It is important to highlight that the HDZ representative described the creation of a third (Croat) entity as a form of “federalisation” of Bosnia and Herzegovina.⁷⁴ Indeed, from the perspective of federal theory, the creation of a third Croat identity would only follow the basic idea of Dayton to divide the country along national lines and give the different constituent peoples far-reaching autonomy within their respective territory. It should, therefore, not be surprising that the President (and former Prime Minister) of the Republika Srpska, Milorad Dodik has shown his support for the idea of a third Croat entity.⁷⁵ After all, it would support the Serb view on Bosnia and Herzegovina as a composed country of three national groups, each with their own territory. Even political scientists, who write about Bosnia’s federal development, have highlighted that the creation of a third entity for the Croats in Bosnia is a possible solution.⁷⁶ However, although the idea of a third entity seems to be justified in light of the ethnic federation which Dayton created, it needs to be highlighted that further ethnic separation could have far-reaching consequences. First, no concept has been developed about the distribution of powers between central state and the entities. In particular in the policy areas of foreign policy and relations to neighbouring countries, as well as in economic policy, citizenship, and possibly police, there is a high potential for conflict. Second, none of the three entities would be homogenous.⁷⁷ This would not only bring up moral questions about the

71 Interview with a leading member of the HDZ BiH, Sarajevo 11. September 2008.

72 Ibid.

73 Ibid.

74 Ibid.

75 ‘SNSD insists constitutional reform should be based on federal principle’ in: *Balkantimes*, 11 May 2007, see: http://setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/newsbriefs/2007/05/11/nb-04 (accessed 15 February 2013).

76 Bebler, Anton: ‘South-East European Federalism’, 2008, p. 21.

77 Sherril Stroschein has brought up this argument already for the two existing entities and the cantons in the Federation. See: Stroschein, Sherrill: ‘What Belgium can Teach Bosnia: The Uses of Autonomy in ‘Divided House’ States’ in: *Journal on Ethnopolitics and Minority Issues in Europe*, No. 3, 2003, pp. 1–30, here pp. 10 and 16.

legitimation of ethnic cleansing during the war, but it would also question the legitimacy of refugee return. Furthermore, the demand for cultural autonomy as a counterbalance to territorial autonomy, would be even greater and the introduction of cultural autonomy would complicate the Bosnian political system even more.⁷⁸ Third, the question of “the Others” in Bosnia’s political system would not be solved and neither would be the implementation of the strict human rights provisions of Article II of the constitution. Finally, this proposal of the Bosnian Croat community has no support amongst leading Croatian politicians⁷⁹ and the international community has also been unsupportive. The attempt of the HDZ BiH to create independent structures outside of the FBiH framework and declare Croatian self-government in 2000/2001, ended with the intervention of the High Representative and the removal of HDZ leader Ante Jelavić from the State Presidency.⁸⁰

The second group of proposals for constitutional reform includes all those proposals that argue for the abolition of the entities and the regionalisation of Bosnia and Herzegovina along historical and economical lines. These ideas are favoured by the major Bosniak parties, such as the Party of Democratic Action (SDA) and the Party for Bosnia and Herzegovina (SBiH), and are also supported by the main multi-national party, the Social Democratic Party in Bosnia and Herzegovina (SDP BiH). These proposals also found support amongst academics and representatives of the Bosnian civil society,⁸¹ as well as amongst some of the foreign scholars studying Bosnia.⁸² The main arguments for the supporters of a radical abolition of the entities and a strengthening of the central level, are that Dayton was a peace treaty and, therefore, the constitution can only be discussed in this context. However, a fundamental reform of Dayton is needed for Bosnia to become a “normal” European country. Furthermore, they argue that the negative development of the economy and slow political progress, are a result of political

78 For the usefulness of cultural autonomy in Bosnia and Herzegovina, see: Bieber, Florian: ‘Consociationalism – Prerequisite or Hurdle for Democratisation in Bosnia? The case of Belgium as a Possible Example’ in: *South-East Europe Review for Labour and Social Affairs*, Vol. 2, No. 3, October 1999, pp. 79–94.

79 ‘A Third Entity Would Harm Bosnia and Herzegovina’, Interview of Nezavisne novine with Stejpan Mesic, in: *Bosnia Report*, No. 49–50, December–March 2006. see: www.bosnia.org.uk/bosrep/report_format.cfm?articleid=3049&reportid=170 (accessed 15 February 2013).

80 Office of the High Representative (OHR): *Decision removing Ante Jelavic from his position as the Croat member of the BiH Presidency*, 7 March 2001, see: www.ohr.int/print/?content_id=328 (seen 4 October 2008).

81 Nezavisne novine (ed.): *Future of BH Constitution (Compilation of Participant’s Lectures on Theme “The Future of Constitution of Bosnia and Herzegovina” in 2005)*, NIGD “DNN”: Banja Luka 2006. (Grammar Mistakes in the original version) In this collection several representatives of the Bosnian civil society and academics offer their view on the constitutional reform debate. One key feature is the overcoming of the dominance of ethnicity and the entity system.

82 Bebler, Anton: ‘South-East European Federalism’, 2008, p. 21.

blockades created in the Dayton constitution. Additionally, they put forward that the national separation and the “ethnocracy” created in Dayton have only contributed to a further separation of Bosnian society along national lines.⁸³ Consequently, the supporters of this radical approach argue that, in Bosnian history, the conflict between national groups has never been the primary cleavage in society. Usually, economic cleavages, as well as class cleavages, dominated Bosnia before Dayton.⁸⁴ Finally, it is argued that Dayton legitimised the results of ethnic cleansing by legitimising the Republika Srpska. The ambitions of the Republika Srpska for more autonomy and self-determination are also critically addressed, and it is argued that only the abolition of the RS will guarantee Bosnia’s territorial integrity.⁸⁵

The SDA, SBiH and SDP agree on the proposal of how to overcome the main obstacles in Bosnia and Herzegovina, arguing for the centralisation of decision-making competencies and the abolition of the entities. Instead, Bosnia is supposed to be organised along five to six regions, which are chosen by historical and economic criteria. Indeed, as the chapter on “Bosnia’s federal tradition” has demonstrated, since the rule of the Ottoman Empire over Bosnia, there has been a clear tradition of dividing the countries into core regions in order to govern it. It is also important to note that these regions are supposed to have limited competencies, mainly as administrative units and in economic planning. Since the regions seek to overcome the dominance of nationality, there is also no reference to nationality in the political institutions and all three parties argue for elections on the basis of “one person, one vote.” It also needs to be highlighted that the main reason for these changes is the argument that fundamental human rights need to be implemented, and Bosnia needs to develop into a “civic state.”⁸⁶ Only this civic state would be able to join the EU. Finally, all three parties have a negative

83 See, for all the above presented arguments of the supporters: Social Democratic Party of Bosnia and Herzegovina (ed.): *Social Democratic Party of Bosnia and Herzegovina and Constitutional Changes in Bosnia and Herzegovina*, 2002. Silajdzic, Haris: ‘Why Dayton Must Be Changed’ in: *Bosnia Report*, No. 15–16, March–June 2000, see: www.bosnia.org.uk/bosrep/report_format.cfm?articleid=2865&reportid=129 (accessed 15 February 2013). Hadžidedic, Zlatko: ‘The Constitutional Debate in Bosnia-Herzegovina’ in: *Bosnia Report*, No. 53–54, August–December 2006, see: www.bosnia.org.uk/bosrep/report_format.cfm?articleid=3133&reportid=172 (accessed 15 February 2013).

84 See, for the historical argument: Malcolm, Noel: *Bosnia, A Short History*, 2002, especially the Introduction.

85 Huseinovic, Samir: ‘Bosnien-Herzegowina: Serbenrepublik auf der Anklagebank’ in: Deutsche Welle: Fokus Ost-Südost, 18 September 2008, see: <http://www.dw.de/bosnien-herzegowina-serbenrepublik-auf-der-anklagebank/a-3655421> (accessed 15 February 2013).

86 All of the above mentioned arguments for the reform of the state are taken from: Social Democratic Party of Bosnia and Herzegovina (ed.): *Social Democratic Party of Bosnia and Herzegovina and Constitutional Changes in Bosnia and Herzegovina*, 2002. Silajdzic, Haris: ‘Why Dayton Must Be Changed’, 2000. *Proposal for a Constitution for Bosnia and Herzegovina*, SBiH- website, see: http://zabih.ba/downloads/19_2.pdf (accessed 15 February 2013).

opinion of federalism⁸⁷ as they understand it in terms of secession and weak central power. Federalism and the federalisation of Bosnia and Herzegovina are seen as a further division amongst national lines and the continued fight over territory and people. This understanding of federalism reflects the experiences with the Socialist Tradition of Federalism. All three parties talk about “regionalisation” and “decentralisation” instead of a federalisation.

Having argued that the SDA, SBiH and SDP share, currently, the same view on Bosnia, and have similar ideas for its improvement, the ways they suggest constitutional reform differ drastically. Whilst the SDA and the SDP argue for a gradual centralisation of power and a long-term approach to abolish the entities, the SBiH argues for completely new constitutional negotiations under US-American leadership.⁸⁸ The proposal of the SBiH has often been characterised as “Dayton II,” based on the idea that all major Bosnian parties which represent the citizens of BiH and the constituent peoples, should negotiate a new constitution. To guarantee an effective outcome of the debate, the United States would be asked to supervise the negotiations and “guide” the parties. The final outcome of these negotiations should be a “Bosnian Constitution” based on the civic state model, and equal treatment of all Bosnian inhabitants as “citizens” without any segregation along national lines. These arguments are based on the major assumption that ‘Bosnia [currently] has no constitution. The Dayton Peace Agreement is a peace treaty and cannot be [treated as] a constitution.’⁸⁹ The overcoming of the identification of territory and nationality was highlighted by a leading adviser to the leadership of the SBiH as the key problem in the Bosnian political system. The constellation of homogeneity of territory and national group, which resulted as a consequence of ethnic cleansing, can only be overcome if the entities are abolished and multinational regions are created.

In contrast to the SBiH, the SDP and the SDA believe in a more gradual approach towards regionalisation. Both parties supported the April Package reforms and both parties accept that the current Bosnian political system is based on the existence of the entities. A leading politician of the SDP said during the interview, that he believes that the re-creation of one Bosnian society must be the key goal of Bosnia’s long-term development. He pointed out that the current system is inefficient and expensive and negatively impacts upon Bosnia’s economic development. A gradual reform of the constitution, and a further strengthening of the central state institutions, were highlighted as the way to reach the final aim, namely to discuss the abolition of the entities and organise Bosnia along five historically grown regions (Mostar, Sarajevo, Banja Luka, Zenica and Tuzla).⁹⁰

87 In the interview a leading politician for the SDP, he opened our talk by arguing that his party does not support any form of federalism in Bosnia and Herzegovina.

88 Interview with a leading politician of the SDP, Sarajevo, 19 August 2008, and Interview with a leading adviser to the SBiH leadership, Sarajevo 31 July 2008.

89 Interview with a leading adviser to the SBiH leadership, Sarajevo 31 July 2008.

90 Interview with a leading politician of the SDP, Sarajevo, 19 August 2008.

He, furthermore, highlighted that the April Package was a first step in the right direction. Any future change of the Bosnian constitution must be based on the will of the Bosnian political elites.⁹¹ Following its support for the April Package and the political statements by its leaders, it can be argued that the Party for Democratic Action has a similar view on Bosnia, although they highlight the “one person, one vote” principle even more.⁹²

It should be added that several international actors have demonstrated their support for proposals that want to overcome the dominance of nationality and the power of the entities in the system. Lenard Cohen has pointed out that, whilst, in particular, Bosnian Serbs understand federalism in Bosnia based on a national principle, international actors and, especially the Office of the High Representative, have intervened in the political system to move it towards a territorial federal system which is ‘ethnically neutral.’⁹³ The impositions of a common flag, a common currency, a national anthem and a coat of arms, all without any reference to Bosnia’s multinational character, can be seen as a good example to reinforce Cohen’s thesis. Therefore, the international community’s view on Bosnia is of key importance. As shall be seen in the progress of this chapter, this view has heavily impacted upon the development of the Bosnian system, especially, the process of centralisation and strengthening of the state level institutions can be explained through the perspective of the international community on Bosnia’s federalism and federation.

Finally, the third group of suggestions for constitutional reform focuses on the “improvement” of the Dayton constitution, without actually touching the main principles of it. In particular, representatives of the Bosnian Serbs follow this line of argument. The main idea behind the proposals of the Serb Social Democrats from Dodik’s SNSD and the SDS, is that the existence of the Republika Srpska cannot be questioned; Dayton laid the foundation of a multinational federal state in which the Serbs would have far-reaching autonomy in the Republika Srpska. Consequently, the two interview partners from Bosnian Serb parties argued that the process of centralisation and transfer of power from the RS to the state-level was completed, and that all further reforms should only make minor adjustments to the Dayton constitution.⁹⁴ When asked why both representatives of the Bosnian Serbs insisted on autonomy for the RS, they highlighted the “fear” of the Serb population as the major reason for their continuous support for the Republika Srpska. Indeed, the fear of the Bosnian Serbs to live in a state that is dominated by the Bosniak

91 Ibid.

92 For the persistence of the SDA on a regional state in BiH, see: ‘Tihic, Covic Meet to Bridge Differences Prior to Coalition Meeting in BiH’ in: *Balkantimes*, 20 August 2008, see: http://www.setimes.com/cocoon/setimes/xhtml/en_GB/newsbriefs/setimes/newsbriefs/2008/08/20/nb-03 (accessed 15 February 2013).

93 Cohen, Lenard: ‘Fabricating Federalism’, 2002, p. 137.

94 Interview with a leading politician and MP from the Serb Democratic Party (SDS), Sarajevo, 9 August 2008 and Interview with a leading adviser to the SNSD leadership, Sarajevo, 12 September 2008.

majority or by a Bosniak-Croat alliance against the Serbs, is a dominant feature of the Bosnian system and goes back to the outcomes of the war (1992–95). It demonstrates that the existence of an autonomous Republika Srpska is of core importance for the Bosnian Serb population. Independent from the history of the creation of the Republika Srpska, it should be highlighted that this is a legitimate claim by Bosnian Serbs. The basic idea of multinational federalism is to address the self-governance needs of national groups and protect their cultural identity. It can be argued that those who want to adjust the existing system see Dayton as the main protector of national autonomy for the Serb nation in Bosnia. Bosnian Serbs, radical or not, have more than once highlighted their interpretation of Bosnia as a “union” of two entities and three constituent peoples. Ljubomir Berberovic summarises this by arguing that ‘[t]he government in Banja Luka views Dayton above all as a guarantee of the separateness of the Serb entity.’⁹⁵ The proposals of the Bosnian Serbs, therefore, focus on two elements: first, the guaranteed existence of the Republika Srpska and its far-reaching autonomy in decision-making, as well as financially and, second, the absolute equality of the three national groups at central level. Both Bosnian Serb interview partners highlighted the problems of the FBiH, especially its weak competences and financial resources as one of the key priorities, whilst the representative of the SNSD also pointed out that reforms are needed to develop the economy in Bosnia.⁹⁶ The representative from the SDS, furthermore, argued that he sees the equality of the three constituent peoples as the core element of the Dayton constitution, and that he sympathises with the demand for a third (Croat) entity in Bosnia.⁹⁷ The ruling party in the RS, the SNSD, has also demonstrated its sympathy for the creation of a third entity. Interestingly enough, the SNSD refers to the process of creating a third Croat entity as “federalising Bosnia.”⁹⁸ Finally, a key proposal of Milorad Dodik, the President and former Prime Minister of the RS, should be discussed. He suggested that, as part of a constitutional reform in Bosnia, the territorial units and the constituent peoples should have a right to self-determination.⁹⁹ This underlines the understanding of the Bosnian Serbs of Bosnia as a union, and their understanding of a federal Bosnia based on a contract between three constituent peoples, which can also be cancelled at any time.

95 Berberovic, Ljubomir: ‘What Is to Be Done?’ in: *Bosnia Report*, No. 51–52, April–July 2006, see: www.bosnia.org.uk/bosrep/report_format.cfm?articleid=3088&reportid=171 (seen 5 September 2008).

96 Interview with a leading politician and MP from the Serb Democratic Party (SDS), Sarajevo, 9 August 2008 and Interview with a leading adviser to the SNSD leadership, Sarajevo, 12 September 2008.

97 Interview with a leading politician and MP from the Serb Democratic Party (SDS), Sarajevo, 9 August 2008.

98 ‘SNSD insists constitutional reform should be based on federal principle’ in: *Balkantimes*, 11 May 2007.

99 ‘Dodik insists RS has right to self-determination’ in: *B92 News*, 9 March 2008, see: http://www.b92.net/eng/news/region-article.php?yyyy=2008&mm=03&dd=09&nav_id=48307 (accessed 15 February 2013).

Again, one can link Dodik's understanding of federalism to the Socialist Tradition of Federalism and the way it was exercised in Yugoslavia. Whilst Dodik and other SNSD representatives have used more aggressive language since 2009 focusing on self-determination and secession, it can, nevertheless, be argued that the RS authorities focus on the autonomy of "their" entity, as well as equal representation and veto rights for Serbs in central institutions. The key to understanding the Bosnian Serb intentions is to recognise that they want to protect the autonomy of the RS and, whenever possible, transfer authority back from the central level to the entity level.¹⁰⁰ Constitutional reform, therefore, should focus on economic reforms, a new order for the FBiH and fully guarantee the equality of the three constituent peoples at state level. Bosnian Serb politicians refuse further centralisation and any debate about the abolition of the entities. In fact, they demonstrate understanding for the Croat demand of a third entity. They understand the Dayton constitution as an institutionalised form of ethnic federalism that needs to be improved over time, but its main feature, namely the vast autonomy of the constituent peoples, cannot be changed. As federalism is understood as a contract amongst equal constituent peoples, Bosnian Serbs tend to understand it as a guarantee for their autonomy. If, however, this autonomy is in danger or questioned, the contract can be cancelled at any time, leading to secession.

To summarise the debate about constitutional reform in Bosnia and Herzegovina the following points shall be highlighted:

1. There is no common understanding of what kind of state BiH currently is and what it shall become in the future.
2. Fear, mistrust and a lack of tolerance, and the unwillingness to co-operate still underline the Bosnian political system, and they are also part of the discourse about constitutional reform.
3. Federalism is contested in Bosnia as there is no joint understanding of the concept and its implications.

The three constituent peoples and their representatives share no common understanding of the state. Whilst Bosniak parties see Bosnia as a "civic state" that focuses on its citizens rather than on national groups, Croats and, especially Serbs, see Bosnia as a union of three equal constituent peoples.¹⁰¹ As a consequence of these different views, the proposals of the different groups for the future constitutional development of the country differ greatly. It is, therefore, necessary to discuss the current situation in Bosnia and Herzegovina, before any long-term decisions about the constitutional development can be taken.

100 See on this point, also: International Crisis Group: *Bosnia: What does Republika Srpska Want*, October 2011. The Crisis Group argues in the same direction and urges the international community to lay the foundations for further reforms (without imposition) and support long-term stability in Bosnia.

101 Cohen, Lenard: 'Fabricating Federalism', 2002, p. 125.

The main reasons for the war in Bosnia and Herzegovina in the early 1990s have not been fully addressed in Dayton. Furthermore, a key feature of Bosnia's post-war system is the 'absence of a comprehensive reconciliation process.'¹⁰² The process of international involvement, democratisation, and federalisation has not yet built sustainable trust between the different national groups. Because of blockade and international imposition, a climate of co-operation and consensus has not yet developed. Continued aggressive rhetoric from all national groups, be it the threat of secession or the demand for the abolition of the entities, demonstrate that Bosnia is far from a political system in which the different groups trust each other, negotiate together, and share a common idea of their state. Because of this lack of trust and will to co-operate, consociationalism is not working in BiH. Ownership is of key importance in this context; Bosnian elites have to be responsible for their actions and they need to decide on their vision of the state, not on the vision of international actors. However, the efforts of international actors, mainly the EU, the USA and the OHR, to re-start discussion on a constitutional reform package and, at the same time, implement the conditions for the closure of the OHR, have led to failed attempts of what was titled the Prud Process (2008) and the Butmir negotiations (2009). Both attempts failed because the leaders of the main Bosnian parties could not find agreement on minimal reforms, and international actors lacked co-ordination and consultation.¹⁰³ These attempts, however, also demonstrate the latest features of the international presence in Bosnia, namely the desperate desire to close the OHR whilst, at the same time, ensuring that Bosnia will not slide back into political chaos and stagnation once the High Representative has left and internationals have limited direct power over the political elite. Even when Bosnian party leaders presented a first joint proposal about constitutional reform in 2009, which would have divided the country into four regions, it became clear very quickly that representatives of the Bosniaks, Serbs and Croats had very different visions on the size and responsibilities of these regions. Whilst Bosniaks saw it as a way to overcome the entity system and strengthen the central state, Serbs insisted on the continued existence of the RS, whilst Croats saw it as a further step in the establishment of a homogenous Croat territory in Bosnia. It is, therefore, no surprise that this proposal did not play a major role in further discussions amongst Bosnian elites themselves and with international actors.¹⁰⁴ However, since the Sejdić-Finci decision of the European Court of Human Rights, there have been new initiatives for constitutional reform in Bosnia. The Parliament has created a Joint Committee on Sejdić-Finci

102 El-Mufti, Karim: 'Power-Sharing Imposed – The Case of Bosnia and Herzegovina', 2008, p. 56.

103 Rolofs, Oliver Joachim: 'Bosnien-Herzegowina: Kein Licht am Ende des Tunnels' in: *Südosteuropa Mitteilungen*, Vol. 50, No. 1, 2010, pp. 42–59.

104 On the proposal and continued disagreement, see: International Crisis Group: *Bosnia's Incomplete Transition: Between Dayton and Europe*, Europe Report No. 198, 9 March 2009.

Implementation and, more importantly, a number of leading NGOs in Bosnia have presented proposals on constitutional reform. These include the suggestions of the Alumni Association of the Centre for Interdisciplinary Postgraduate Studies, the Law Institute (previously the Young Lawyers Association), and the Forum of Citizens of Tuzla. Whilst these proposals are different in content, with the first set of proposals focusing on more minor changes in the composition of the House of Peoples and the Presidency, the proposals of the Law Institute and the Forum of Citizens of Tuzla are more extensive. All three NGOs (along with others) presented their suggestions in 2010, however, because of an on-going electoral campaign, they found little recognition. However, their proposals entered the political scene again in 2011 and were published widely in leading media outlets in 2011 and 2012.¹⁰⁵ However, the reform process, as such, and discussions on constitutional reform in Bosnia, remain focused on political elites. Whilst there continues to be an on-going debate about constitutional changes in Bosnia, it remains dominated by the extreme positions of the leading political elites. Whilst constitutional reform needs to be an incremental, step-by-step reform process in Bosnia, and must go hand-in-hand with the country's integration into European structures,¹⁰⁶ civil society organisations and ordinary citizens should play a much stronger role in the process. The success of citizens' involvement in Iceland and the on-going consultation process in Ireland, demonstrate that citizens are essential to ensure that constitutional reforms are legitimate and accepted.

Finally, it should be noted that, nearly fifteen years after the war and the introduction of a federal system through the Dayton constitution, there is still no agreement on what federalism is and how it should work in practice in the Bosnian federation. In fact, several of my interview partners denied that Bosnia is currently a federal system at all because the constitution does not give any reference to federalism. But what is even more alarming than the dispute about labelling Bosnia's system, is the abuse of the concept of federalism by Bosnian elites. The Bosnian Serbs misinterpret federalism to underline their demand for more autonomy and, eventually, secession. Bosnian Croats see federalism as a tool to argue for a third entity for Croats. Bosniaks discuss the scenario of regionalisation and have not yet distinguished between regionalisation and federalisation. However, Liberal Nationalists have argued that federalism will be interpreted differently in multinational states.¹⁰⁷ This is not different in Bosnia but, here, federalism is not seen as a theory of state construction, but mainly as a tool for the advantage of the own national group. It is not considered '*as an end, as good for its own sake, for the*

105 Perry, Valery: 'Constitutional Reform Processes in Bosnia and Herzegovina: Top-down Failure, Bottom-up Potential?' in: Keil, Soeren and Perry, Valery (eds) *Statebuilding and Democratization in Bosnia and Herzegovina*, Ashgate: London, forthcoming 2014 (draft printout in possession of the author).

106 'Bieber, Florian: Constitutional Reform in Bosnia and Herzegovina: preparing for EU accession' in: *EPC Policy Brief*, April 2010.

107 Kymlicka, Will: 'Multinational Federalism in Canada,' 1998, p. 5 and p. 8

sake of “answering the summons of history”’,¹⁰⁸ to use Thomas Franck’s analogy. Instead, it remains a contested concept which is interpreted differently by the three main groups and their representatives. The concept, itself, remains challenged in a political environment of on-going turmoil, mistrust, and a lack of co-operation.

Bosnian Federalism and Identity Policy

Identity politics is of key importance in a multinational federal state. The provisions that allow all national groups within the multinational state to express their identity, are often complex and multidimensional. It is, therefore, important to go back to the Liberal Nationalist literature which highlights the importance of identity protection and preservation, and the inclusion of minority nations at all levels of the state.¹⁰⁹ The key of identity politics in a multinational environment is ‘to find a status for the dissident area sufficiently attractive to serve as a substitute for their longing for independent statehood, whilst at the same time we have to assure the government and people of the larger country of which the dissident area forms a part that their fatherland has not lost its identity and territorial integrity.’¹¹⁰ The war in Bosnia was overshadowed by questions of identity and belonging. The identity politics of the DPA were not only aimed at addressing the needs of the dissident nation(s), but also, and foremost, to create peace and address the reasons that led to the violent conflict.

Identity politics in the Dayton constitution attempts to give to the constituent peoples decision-making powers in ‘those aspects of daily life that preserved and safeguarded their national identity.’¹¹¹ The writers of the Dayton constitution decided to give relatively homogenous regions, be it the Republika Srpska at entity level, or the Croat cantons in the FBiH, far-reaching autonomy. In fact, some authors even argue for a ‘de-facto statehood of the entities’ in the DPA.¹¹² Furthermore, the Republika Srpska was allowed to keep its name as the Serb Republic¹¹³ implying, technically, both a homogenous territory (Serb) and a form of sovereignty (Republic).¹¹⁴ It is important to note that Richard Holbrooke, the main architect of the Dayton Agreement, later regretted that the name “Republika

108 Franck, Thomas: ‘Why Federations Fail’, 1968, pp. 174.

109 Bauböck, Rainer: *United in Misunderstanding?*, 2002, p. 39.

110 Dent, Martin: *Identity Politics (Filling the Gap between Federalism and Independence)*, Ashgate: Aldershot 2004, p. 1.

111 David Owen argues this as being part of the strategy to address some of the needs of the Bosnian Serbs. Owen, David: *Balkan Odyssey*, 1995, p. 71.

112 Lippman, Peter: ‘Bosnian Crisis and Resolution: A Turn-around At Last, or More Chaos Ahead?’ in: *Washington Report on Middle East Affairs*, Vol. 27, No. 2, March 2008, pp. 36–7.

113 Holbrooke, Richard: *Meine Mission*, 1999, p. 208.

114 This is also in line with the Yugoslav federal experiences, where most the federal sub-units were called Republics.

Srpska” was accepted¹¹⁵ because it legitimised the demand for autonomy and, eventually, secession of the RS. The key feature of Bosnian identity politics is, therefore, the high degree of autonomy for the Republika Srpska and the Croat cantons (and Bosniak cantons) in the FBiH.¹¹⁶ This autonomy is guaranteed and enlarged with wider mechanisms of identity protection, inclusion of the constituent peoples in the major state, entity and cantonal institutions, and the development of structures to preserve equal representation. Bosnia and Herzegovina is a prime example of consociational democracy which guarantees all major segments autonomy, proportional representation and inclusion in grand coalitions. Whilst Dayton allowed an impressive protection of identity through consociationalism and the creation of a highly decentralised federation in which the entities had the right to have close foreign relations with their kin states, the post-war period saw the introduction of several important identity policies which were ethnically neutral. As it is the core of every federal system to develop two levels of loyalty, one to the territory or nation (in multinational states) and one to the central state level, it is important to examine these two layers in multinational states. Liberal Nationalists have argued that, for minority nations, the main identification will be with their sub-unit and their national group, however, it has been suggested that every multinational federation needs inclusive mechanisms which allow for the development of multiple identities. In Bosnia, this is especially complicated since identification occurs on several levels:

1. Identification with the national group.
2. Identification with the territory in which the national group is a majority (Republika Srpska for Bosnian Serbs, Croat cantons for Bosnian Croats, and Bosniak cantons for Bosniaks).
3. Identification with the kin state in the case of Serbs and Croats in Bosnia.
4. Identification with Bosnia and Herzegovina.
5. Identification as Europeans.

Bosnian Croats and Bosnian Serbs identify mainly with their own national group and the respective territory under the control of the national group, whilst Bosniaks, who have no kin state (other than Bosnia and Herzegovina), identify mainly as Bosnian and Herzegovinian.

The Dayton constitution is ambivalent about identity politics. On the one side, as mentioned above, it gives the territorial units, controlled by one national group, far-reaching autonomy. It, furthermore, guarantees proportional

115 Ibid. p. 554.

116 The name Herceg Bosna was first used for a canton in the FBiH. However, later, the Constitutional Court of the FBiH banned the name. However, during the height of Croatian demands for self-government in the FBiH in 2000, the name of the “Republic of Herceg-Bosna” was again used amongst supporters of the Croatian self-government movement.

representation of the three constituent peoples in all state institutions.¹¹⁷ Very important to mention is the “vital national interest veto,” which different groups have in case any piece of legislation affects their identity and their position within the Bosnian system. On the other side, Dayton provides an extensive framework for the protection and implementation of human rights, going as far as putting the European Convention on Human Rights above all law in BiH, including the constitution.¹¹⁸ Furthermore, Annex Six of the DPA strengthens this human rights protection regime through the creation of the Human Rights Chamber and an Ombudsman. Additionally, Annex Seven gives all refugees and internally displaced persons, the right to return to Bosnia and more than one million people have, indeed, returned.¹¹⁹ This right to return undermines the national-exclusive structure of the entities and cantons, and can be seen as a counter-mechanism to the exclusive politics of the dominant nationalist parties.¹²⁰ These provisions address the protection of all Bosnians as citizens and support, therefore, the overarching identity as a Bosnian citizen in opposition to the exclusive policy of national belonging. The post-Dayton period saw competition between both layers of identity through different proposals and policy decisions. On the other side, the national groups attempted, in their respective territory, to strengthen an exclusive ethno-national understanding of identity and prevent the development of a civic form of identification. However, several organisations, international and national, attempted to counter-balance these attempts by undermining the dominance of national groups in parts of Bosnia and Herzegovina. Two parallel processes of identity formation and change have taken place in post-war Bosnia. There are the nationalist parties, especially the SDA, HDZ and SDS (but later also SNSD), which argue for the protection and further deepening of national identity, and focus on the combination of national group and territory. In opposition to these groups, there is the international community, especially the Office of the High Representative, the UNHCR, the OSCE, and Bosnian actors such as the Constitutional Court, the Social Democratic Party of BiH and the Party for Bosnia and Herzegovina, which support the creation of an overarching *Bosnian* identity.

To understand the conflicts over identity politics in Bosnia, it is important to look into the measures that the two opposing sides took. The camp of the nationalist parties, which ‘are primarily interested in institutions they may have under their own control, ruling over territories where their own ethnicity is a

117 Since 2002, this is also the case for entity and cantonal institutions. These changes resulted from the decision of the Constitutional Court on the Constituent Peoples case.

118 Marko, Joseph: ‘Bosnia and Herzegovina – Multi-Ethnic or Multinational?’ 2000.

119 As of 31 December 2007, 446.611 refugees returned and 578.400 internally displaced persons returned. See: UNHCR in BiH: *Statistics Package (as of 31 December 2007)* see: http://www.unhcr.ba/updatejan08/SP_12_2007.pdf, p. 3.

120 The contradiction in the constitution is explained in: Woelk, Jens: ‘Federalism and Consociationalism’, 2004, p. 186.

majority,¹²¹ and, therefore, strengthening the national identity and (the HDZ and SDS especially) attempting to avoid any reference to a “Bosnian” identity, used several mechanisms to support their policy:

- The HDZ and the SDS ignored the central government in Bosnia for a long time after the DPA and acted against state integration.
- All nationalist parties attempted to prevent refugees of the other national group from returning to the area that was under their control.
- The HDZ and the SDS continue to have strong connections to the kin states; in the past this included the use of the currency of the kin state and their integration into the economic area of the kin state.
- The use of symbols by the HDZ, SDS and SDA in their territory that clearly refers to the dominance of one national group.¹²²
- Close political partnerships between the Croat cantons and Croatia, and the RS and Serbia (including financial assistance for the HDZ and SDS from the kin state).
- Until today, frequent use of violence and discrimination against the other national group through economic and social exclusion.
- Dual Citizenship for the Bosnian Croats and (not as frequently) for Bosnian Serbs offered by the kin states.

Bieber has argued that the three constituent peoples have an ‘asymmetric commitment to the state,’ with Bosnian Croats and Bosnian Serbs focusing much more on their territory within the state, whilst the Bosniaks identify completely with the whole state of Bosnia and Herzegovina.¹²³ When discussing the policies of exclusion, discrimination and national homogenisation,¹²⁴ one can observe the importance of the regional level for the analysis of the political development in Bosnia and Herzegovina. The massive support for the HDZ in Bosnia through the “mother-party” in Croatia, ended only after Franjo Tudjman’s death and the defeat of the HDZ (Croatia) in the elections of 2000. Until today, the HDZ (Croatia) supports its Bosnian counterpart and Bosnian Croats have a key impact on the political process in Croatia. In the first post-war years, further homogenisation of

121 Domljan, Vjekoslav: ‘A Bosnian Diplomat Reflects on a Federation on the Fault Lines of Three Civilizations’ in: *Federations*, Vol. 4, No. 4, 2005, pp. 17–18, here p. 18.

122 Until today, the Croat flag can be seen in most areas of the Herzegovina and the Serbian flag in most areas of the RS. The SDA used the symbol of pre-war Bosnia and of the Army of Bosnia and Herzegovina to strengthen the national identification of their group. Until today, the use of the “Lily” as an identification of those who identify with Bosnia and Herzegovina is also used mainly by Bosniaks.

123 Bieber, Florian: ‘After Dayton, Dayton?’, 2006, p. 21.

124 See, as one example of the politics of homogenisation the analysis of the Serb flight from Sarajevo by: Sell, Louis: ‘The Serb Flight From Sarajevo: Dayton’s first Failure’ in: *East European Politics and Societies*, Vol. 14, No. 1, Winter 2000, pp. 179–202.

Bosnia and the integration of the Croat and Serb settlements into their kin state took place. Therefore, the Peace Implementation Council (PIC) had to take action. The High Representative, the highest international figure in Bosnia, was supposed to be 'the final authority in theatre regarding interpretation of this [the DPA S.K.] agreement on the civilian implementation of the peace settlement.'¹²⁵ Instead, he acted as a 'toothless tiger', lacking financial resources, personal and imposition rights.¹²⁶ Indeed, Carl Bildt, the first High Representative, was disappointed with his mandate and the organisation of the civilian implementation of the Dayton Agreement, and describes the proper organisation and installation of the OHR as his main success.¹²⁷ The strengthening of the High Representative, which happened at the Bonn Summit of the PIC in December 1997, had serious consequences for the Bosnian political system and, particularly, for the development of identity politics in Bosnia. First, a completely new political actor entered the scene, an actor which is not democratically legitimised and whose decisions are not subject to constitutional review. Second, this international actor brought his own perspective of Bosnia with him and, consequently, implemented policies in this direction. Third, this actor made it much easier for the Bosnian parties to obstruct the Dayton Agreement. Although they had to fear dismissal, Bosnian politicians were freed from all responsibility. Finally, a new layer of conflicts developed in the federal system which includes the battle of several Bosnian parties with the HR, especially the conflicts between representatives of the RS and the HR.

What followed in the post-1997 period, was the imposition of an identity policy that was not based on nationality, but attempted to reflect the inhabitants of BiH as citizens and support the creation of a civic layer of identity. Examples of these impositions include the imposition of a flag,¹²⁸ a common currency,¹²⁹ a national anthem,¹³⁰ a new coat of arms¹³¹ and a new law on citizenship.¹³² All these important decisions regarding identity policy aimed to counterbalance exclusive ethno-national identity and create a Bosnian civic identity. Therefore, neither the Bosnian flag nor the currency and the coat of arms, refer to any particular national identity. Instead, historical symbols were used, as well as famous Bosnian academics, writers and politicians from the 19th and 20th century, for printing on bank notes. However, two important points have to be mentioned in the context of imposing identity-constructing policies. First, as Bieber has

125 Dayton Peace Agreement, Annex 10, Article V.

126 Marko, Joseph: 'Post-conflict Reconstruction', 2005, p. 10.

127 Bildt, Carl: *Peace Journey (The Struggle for Peace in Bosnia)*, Weidenfeld and Nicolson: London 1998.

128 OHR: *Decision Imposing the Law on the Flag of BiH*, 3 February 1998.

129 OHR: *Decision Imposing the design of bank notes*, 27 March 1998.

130 OHR: *Decision Imposing the Law on the National Anthem of BiH*, 25 June 1999.

131 OHR: *Decision on the Shape and Design of the Coat-of-Arms of BiH*, 18 May 1998.

132 OHR: *Decision Imposing the Law on Citizenship of BiH*, 16 December 1997.

observed, the imposed flag and currency have become accepted in Bosnia.¹³³ Second, as Bojkov argues, the impositions were not based on a colonial style of government, instead, Bosnian representatives in the parliament, Council of Ministers and in the Presidency, were always given the chance to find a decision on the policy issues first.¹³⁴ In fact, the OHR used a tactic of conditionality which gave Bosnian actors deadlines to implement a decision, otherwise there would be a resultant HR imposition. This policy of conditionality and external state-building, as it can effectively be characterised, had some limited success, for example, the three members of the Presidency did agree, under the pressure of the OHR, on the introduction of neutral licence plates for cars.¹³⁵ The policies of the High Representative counterbalanced the attempts of the nationalist parties to undermine the Dayton Agreement and further strengthen the exclusive national identity. The understanding of Bosnia and Herzegovina, which is represented in the decisions of the High Representative, is one of a multinational state in which the citizens of Bosnia and Herzegovina are the holders of all power, in contrast to the national groups. In fact, this examination proves Lenard Cohen's argument right, that the international community tends to see Bosnia as a territorial rather than an ethnic federal system.¹³⁶ It can be concluded that the nationalist parties continued to undermine the Dayton Agreement by strengthening the dominance of national-exclusive policies in the territory under their control, on the one side, and by connecting it to the kin state (in case of the RS and the Croat cantons) through economic and political integration, on the other side. However, since 1997, the Office of the High Representative became a key actor in the political system, supporting policies which would integrate the country and de-legitimise the policies of the nationalist parties.

A third process in the development of identity policy in Bosnia and Herzegovina, is the input of Bosnian actors other than the nationalist parties. Especially, the role of the Constitutional Court of Bosnia and Herzegovina is of importance as it has undermined the exclusive policies of the nationalist parties, and condemned the dominance of nationality in the political system of Bosnia and Herzegovina several times. Already in 1999, the Constitutional Court took a major decision regarding the position of the Chair of the Council of Ministers. According to common practice of the nationalist coalition, the position would rotate every several months amongst a representative of each of the three constituent peoples. The Constitutional Court found this unconstitutional and argued that the Chair of the Council of Ministers is a fixed position which cannot rotate between the national groups.¹³⁷ The Court attempted to counterbalance the weakening of the central institutions through the nationalist parties, by defining the mandate of the institutions and,

133 Bieber, Florian: 'After Dayton, Dayton?', 2006, p. 16.

134 Bojkov, Victor: 'Democracy in Bosnia and Herzegovina', 2003 p. 56.

135 OHR: *Uniform Licence plates in BiH*, Press Release, Sarajevo 31 January 1998.

136 Cohen, Lenard: 'Fabricating Federalism', 2002, p. 137.

137 Constitutional Court of Bosnia and Herzegovina, Judgement in the case U-1/99.

therefore, de-legitimising the policy of rotation. The most important decision of the Constitutional Court, so far, is the case of the “Constituent Peoples of Bosnia and Herzegovina.”¹³⁸ The Court declared it unconstitutional that the constitution of the RS refers to “the state of Serbs” whilst the constitution of the FBiH referred to Croats and Bosniaks as constituent peoples. In the opinion of the Court, the Preamble of the Dayton constitution clearly outlined that “Bosniaks, Croats and Serbs, amongst others” are the constituent peoples of Bosnia and Herzegovina. The Court concluded that this provision has to be applied throughout the whole territory of Bosnia and Herzegovina. In fact, the Court referred to Bosnia as a federal system which is not based exclusively on nationality (“ethnic federation”) but a system *sui generis*. In its decision U-5/98, the Constitutional Court of Bosnia and Herzegovina, therefore, proved the argument presented above that Bosnia and Herzegovina is a new form of a federal system. What the Court effectively decided upon is the illegitimacy of the connection of national identity and territory. It argued against the use of the territory of the Republika Srpska as the “state of the Serbs” and, instead, demanded the respect of all constituent peoples in Bosnia and Herzegovina. The decision effectively undermined all policies of the nationalist parties towards homogenisation and clearly argued against the introduction of an ethnic federalism throughout Bosnia and Herzegovina. The Court saw equality of the constituent peoples as a key feature of the Dayton constitution undermining, therefore, the exclusive dominance of either one of them. The decision of the Court had a huge impact on the political situation in Bosnia and Herzegovina. To name only the two most important changes, both the RS and the FBiH constitutions needed to be changed and announce “Bosniaks, Croats and Serbs” as constituent peoples. Furthermore, the RS introduced a second chamber in which the different national groups would be represented. The second chamber of the FBiH was modified so that Serbs could participate in it as well.¹³⁹ It is worth mentioning that these constitutional changes were imposed by HR Petritsch in 2002, despite intensive negotiations and pressure from the OHR on the main parties to come to an agreement. The latest decision of the Constitutional Court regarding identity politics, is the decision regarding the flags and symbols of the entities. Both the flag and symbol of the RS and the FBiH were introduced during the war and the Court found these symbols to be out of line with the Dayton constitution as they represented para-states and discriminate against other national groups.¹⁴⁰ It can, therefore, be argued that the third important development in identity politics in post-Dayton Bosnia, is the strengthening of a civic concept of identity by the

138 Constitutional Court of Bosnia and Herzegovina, Judgement in the case U-5/98 especially part III.

139 For an in-depth analysis of the Court’s decision, see: Bieber, Florian: *Post-War Bosnia*, 2006, pp. 121–32 and International Crisis Group (ICG): *Implementing Equality: The “Constituent Peoples” Decision in Bosnia and Herzegovina*, ICG Balkans Report No. 128, Sarajevo and Brussels 16 April 2002.

140 Constitutional Court of Bosnia and Herzegovina, Case No. U 4/04.

Constitutional Court through the undermining of the dominance of nationality in the political system in general, and the connection of nationality and territory, in particular.

Having discussed the main features of Bosnian identity policy since 1995, it is important that the identity of all those citizens of BiH, who do not identify with one of the constituent peoples, is still very much unsecured. Even so, BiH does recognise 17 national minorities; they continue to be underrepresented in the political system (although changes to counterbalance this occurred in 2002 and 2003) and in the administration including the security forces.¹⁴¹ Furthermore, as the European Court of Human Rights pointed out in its decision on *Sejdić-Finci*, “the Others” remain openly excluded from two key offices at state level, namely the Presidency and the House of Peoples.¹⁴² By doing so, Bosnia discriminates those not identifying with one of the three constituent peoples and breaches its international obligations as a member of the Council of Europe.

Bosnian Federalism and Security Sector Policy

As a consequence of the war in Bosnia and Herzegovina, the country had more than 419,000 military, police and paramilitary forces, divided into three national contingents, and without any co-operative links between them.¹⁴³ Furthermore, these security forces included and protected several war criminals, supported organised crime structures, such as drug and weapons smuggling, and were under direct influence of the three nationalist parties. Demilitarisation and restructuring the security forces were, therefore, key tasks assigned mainly to the international Stabilisation Force (SFOR) and the International Police Task Force (IPTF). It is, consequently, not surprising that the first two Annexes of the DPA dealt with military issues, whilst Annex 11 furthermore regulates the mandate of the IPTF. The Bosnian constitution, itself, lacks a reference to security policy, only Article II refers to the implementation of a secure environment:

The Entities shall provide a safe and secure environment for all persons in their respective jurisdictions, by maintaining civilian law enforcement agencies operation in accordance with internationally recognized standards and with

141 Bajramovic, Jasmina: ‘Die Anderen in der Verfassungsordnung Bosniens-Herzegowinas’ in: *Schweizerische Zeitschrift für Internationales und Europäisches Recht*, Vol. 16, No. 2, 2006, pp. 217–36.

142 The wider implications of this court case for Bosnia’s political system are discussed in: O’Leary, Brendan and McCrudden, Christopher: *Courts and Consociations: Human Rights versus Power-sharing*, Oxford University Press: Oxford 2013.

143 This statistic is taken from a report of the European Stability Initiative and they base them on an interview with an official of the Ministry of Defence. See: ESI: *The Worst in Class (How the International Protectorate Hurts the European Future of Bosnia and Herzegovina)*, 8 November 2007, p. 2, footnote 4.

respect for the internationally recognized human rights and fundamental freedoms [...]¹⁴⁴

In fact, the DPA accepted the national division of the security forces and transferred the rights over military and police to the entities.¹⁴⁵ Bosnia had three armies, three police contingents, three intelligence agencies, and several paramilitary organisations operating on its territory at the end of 1995 and in 1996. The decentralisation of competencies in the field of defence is used as an example for the construction of Bosnia and Herzegovina as a confederation, rather than a federal state by several authors.¹⁴⁶ A reform of the security sector consequently affects the very basic principle of the Dayton constitution (namely decentralisation with quasi-statehood for the entities/cantons). As shall be demonstrated, reforms in the security sector have resulted in a strengthening of the central government, whilst the driving forces behind these reforms were international actors, namely the OHR, NATO, the EU and the OSCE. State-building through conditionality and pressure, characterised as “empire-light”¹⁴⁷ is, therefore, of importance when discussing security sector reforms in Bosnia.

Police reform had been the dominant feature of Bosnian politics from 2003 until an agreement on police reform was finally reached in 2008. Whilst impositions of the High Representative strengthened the central institutions through the establishment of several policing agencies, such as the State Border Service¹⁴⁸ and a State Investigation and Protection Agency,¹⁴⁹ the main problems of Bosnia’s ordinary police remained. As an important think tank put it,

During the 1992–1995 war, police forces were key instruments of ethnic cleansing—particularly in the RS and Croatian areas of the Federation. The war left Bosnia with three de facto forces [...]. The police have remained highly politicised, acting at the behest of politicians to obstruct implementation of the

144 Bosnian constitution, Article III, 2c.

145 In the FBiH, the policing rights were further transferred to the cantons, whilst the implementation of a joint Croat-Bosniak military in the FBiH took place only after several interventions of the international community, especially the USA.

146 For example: Woelk, Jens: ‘Federalism and Consociationalism’, 2004, p. 179; Bieber, Florian: *Post-War Bosnia*; 2006, p. 61; Stahn, Carsten: ‘Föderalismus im Dienste der Friedenssicherung’, 2002, p. 394.

147 Ignatieff, Michael: *Empire Light (Nation-Building in Bosnia, Kosovo and Afghanistan)*, Vintage: London 2003.

148 OHR: *Decision Imposing the Law on State Border Service*, 13 January 2000.

149 In fact, the introduction of the State Investigation and Protection Agency was based on a consensus by the parties and was passed in parliament in June 2004. However, the Agency was not able to function properly, because the representatives of the national groups could not decide on a director for the agency. Therefore, the proper functioning of the agency depended again on imposition by the HR: OHR: *Decision Enacting the Law on Amendments to the Law on the State Investigation and Protection Agency*, 23 December 2004.

Dayton Peace Accords, in particular refugee return. The BiH constitution and relevant entity laws prevent police from crossing into the territory of a different entity. [...] Organised crime, petty criminals and corrupt politicians regularly exploit Bosnia's fragmented police: numerous offences cannot be resolved, simply because criminals skip across the entity boundary to the safety of another jurisdiction. Some criminals cooperate with or act under the protection of the police in their entity, particularly in the RS, where persons indicted for war crimes by the Federation or the ICTY have found refuge.¹⁵⁰

As a consequence of these weaknesses, the EU announced police reform as a key condition for the negotiation and, finally, initiation of a Stabilisation and Association Agreement (SAA) – the first major step towards eventual EU membership.¹⁵¹ The need for a reform of the police organisation and structure was generally accepted, even amongst Bosnian politicians, however, the direction of the reform would become the major obstruction. It was High Representative Lord Paddy Ashdown who decided, in 2004, to establish a Police Restructuring Commission¹⁵² with the clear mandate to 'be responsible [...] for proposing a *single structure of policing of Bosnia and Herzegovina* under the overall political oversight of a ministry or ministries in the Council of Ministers.'¹⁵³ The EU, meanwhile, announced three core principles for a police reform in Bosnia and Herzegovina:

1. Exclusive competence (including legislative and budgetary) for all police matters at the state level.
2. No political interference in policing.
3. Local police areas designed on the basis of technical, policing considerations, rather than politics.¹⁵⁴

The outline of the reform was, therefore, set by the EU rather than by Bosnian elites. As police reform became part of EU and NATO conditionality, the pressure on local elites increased. After the presentation of the Report of the Police Restructuring

150 ICG: *Bosnia's Stalled Police Reform: No Progress, no EU*, Europe Report No. 164, 6 September 2005, p. 2.

151 *Report from the Commission to the Council on the preparedness of Bosnia and Herzegovina to negotiate a Stabilisation and Association Agreement with the European Union [widely known as "EU Feasibility Study"]*, Council of Ministers, Document 692/2003, 18 November 2003.

152 The Commission consisted of several representatives of the entity governments, the Brčko district, central institutions, international organisations such as the OHR and the European Police Mission (EUPM).

153 OHR: *Decision Establishing the Police Restructuring Commission*, 5 July 2004, Article I.1.

154 These conditions were established on a series of letters from the EU Commissioners for Enlargement Patten and Rehn and the High Representative for the Foreign and Security Policy of the EU, Solana. See: ICG: *Bosnia's Stalled Police Reform*, 2005, p. 5, footnote 27.

Commission in December 2004, known as the Martens Report, and the general agreement on police reform by Bosnian elites in 2005, the EU started negotiations on a SAA with Bosnia and Herzegovina. However, whilst there was a basic agreement on police reform amongst the politicians, its implementation turned out to be the core problem. What followed was a series of conflicts between the High Representative, on the one side, and the representatives of the Republika Srpska, on the other side. This conflict was a second layer upon the major conflict between Bosnian elites, with Bosniak and Croat representatives supporting major parts of the reform, whilst the RS Assembly decided that ‘any kind of model of organisation of police in BiH whose local police regions cross entity boundary lines is unacceptable.’¹⁵⁵ The RS politicians, from the SDS until 2006 and from the SNSD thereafter, rejected any proposal that would allow police units to cross the inter-entity boundary line (IEBL).

What followed, for more than two years, was the request and demand by the OHR to the Bosnian politicians to agree on police reform and several political stalemates. Whilst Bosniaks were not willing to support a “watered down police reform,” the RS representatives objected to the abolition of the RS police. When Dodik was finally willing to agree on the transfer of competences for police to the state level by guaranteeing the existence of the RS police as one of the new units, the leader of the Party for Bosnia and Herzegovina and former Bosniak Member of the State Presidency, vetoed this compromise arguing that the continued existence of the name “RS police” would obstruct all initial intentions of the reform.¹⁵⁶ The hands of the OHR, to put further pressure on the parties, were tied since imposition was not an option because the EU insisted on the reform as part of its conditionality. The discussions between the OHR and the parties involved were significantly impacted by a serious lack of understanding of the reasons for such a reform, and the additional pressure coming from the importance of police reform for EU integration. Consequently, the OHR attempted to sell police reform as a way of “Europeanising” Bosnia, whilst in reality several European states have police units that are organised on the sub-unit level. Furthermore, the OHR and the EU attempted to argue that police reform would be more cost efficient, whilst other studies demonstrated an actual increase in spending in case of a police reform.¹⁵⁷ Police reform threatened Bosnia’s EU perspective and resulted in a serious showdown when High Representative Lajčak changed the decision-making procedure in the Council of Ministers in October 2007.¹⁵⁸ The Bosnian Serb representatives saw these changes as a punishment for their opposition to police reform.¹⁵⁹ As a consequence, the former RS Prime Minister Dodik

155 Conclusions of the National Assembly of the RS, 30 May 2005.

156 OHR: *Interview: Raffi Gregorian, Principal Deputy High Representative: “Silajdzic and Ivanic have blocked police negotiations”*, Press Release, 18 March 2007.

157 ESI: *The Worst in Class*, 2007, pp. 4–7.

158 OHR: *Decision Enacting the Law on Changes and Amendments to the Law on the Council of Ministers of Bosnia and Herzegovina*, 19 October 2007.

159 ESI: *The worst in class*, 2007, p. 8.

threatened a Serb boycott for all state institutions. At the beginning of November 2007, the Chair of the Council of Ministers, Dodik's political ally, Nikola Spirić, resigned, leaving Bosnia effectively without a government. In an interview, Spirić said about his reasons for the decision:

Bosnia-Herzegovina is absurd. If the international community always supports the high representative and not the institutions of Bosnia-Herzegovina, then it doesn't matter if I am the head of that state or Bart Simpson.¹⁶⁰

After several weeks of further tensions and a standstill in negotiations, the High Representative had to give in. The leaders of the six major Bosnian parties (representing all three national groups) agreed, in 2007, on the Mostar Declaration, a core commitment to police reform. Finally, in April 2008, police reform passed both Houses of Parliament. Bosnian politicians connected, however, the final solution of the police reform to the debate about constitutional reform.¹⁶¹ Solveig Richter argues that the "odyssey" of the police reform left the international community damaged and demonstrated that EU conditionality has clear limits when it comes to sensitive issues such as police.¹⁶² The limits of external state-building, through the use of conditionality, were clearly visible during the process of police reform negotiations. The external attempt to strengthen the central institutions further by centralising the police has, de facto, failed. The conflict lines between the OHR, Bosniaks and Croats, on the one side, and the Bosnian Serbs, on the other side, have eventually strengthened those that are against further centralisation and insist on the autonomy of the entities. The SNSD has become the most important player in the Bosnian political system and, as an official of the OHR said, there can be no further impositions without Dodik's agreement.¹⁶³ Indeed, since discussions around a police reform have weakened the OHR and the whole international presence in Bosnia, there has been permanent stagnation in the system. Shortly after the agreement on police reform passed in the Bosnian parliament, the High Representative announced the final conditions which needed to be fulfilled for the closure of the OHR.¹⁶⁴ However, these conditions have not been met as of February 2013, and major concerns remain over the willingness of the Bosnian parties to find compromises and co-operate in important policy areas. The OHR, meanwhile, has become an

¹⁶⁰ Nikola Spirić, cited in: MacDonald, Neil: 'Bosnian Prime Minister Resigns amid Tensions' in: *Financial Times*, 2 November 2007.

¹⁶¹ Topic, Lidija: 'Making Bosnia and Herzegovina's Transformation Irreversible' in: *EPC Policy Brief*, June 2008, p. 1.

¹⁶² Richter, Solveig: 'Ende einer Odyssee in Bosnien-Herzegowina', *SWP Aktuell 41*, May 2008, p. 3.

¹⁶³ Interview with an OHR official, Sarajevo, 26 August 2008.

¹⁶⁴ OHR: *Address of the High Representative to the UN Security Council*, OHR Press Release, 19 May 2008.

obsolete institution; it is unable to intervene and impose legislation because of the strong opposition it faces amongst Bosnian Serbs, yet it is also unable to close, because the conditions for its closure have not been met.

Whilst the police reform is discussed as an example of failed conditionality and failed external state-building, military reform is often acknowledged as one of the major successes of conditionality and external state-building. The war left Bosnia with three divided armies which operated independently from each other and, in fact, continued to see each other as enemies. Even so, the Croat and Bosniak forces were supposed to merge into an FBiH army; this has been successfully undermined by the Bosnian Croats and by the Tudjman government in Croatia. The addressing of the inefficient and expensive nature of separate military units first took place in Bosnia's attempt to join NATO's programme, Partnership for Peace (PfP).¹⁶⁵ NATO identified key areas that needed reform before Bosnia could be considered a candidate country for PfP and, eventually, join the Partnership programme.¹⁶⁶ Furthermore, other international bodies, such as the OHR and Bosnian politicians from the Bosniak and multinational parties, argued that the creation of a single army for Bosnia and Herzegovina would be necessary under the constitutional framework, which argues that 'Bosnia and Herzegovina shall assume responsibility for such matters as are agreed by the Entities [...] or are necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina [...]'.¹⁶⁷ The existence of three separate armies would bring Bosnia closer to a confederation, instead of a federation, and would, therefore, threaten the sovereignty of BiH as a whole, as well as its single international personality. On the basis of these demands, the High Representative Lord Paddy Ashdown, established a Defence Reform Commission whose task it was to draft regulation for the reform of the defence system in BiH, in accordance with Euro-Atlantic standards, and to ensure that 'command and control [over military forces] at State level must be guaranteed'.¹⁶⁸ Ashdown requested that the Commission, which consisted of representatives of the entities, the EU, NATO, SFOR, and the OSCE, would develop effective regulations and legislations to transfer power over defence to the state level. The creation of a Ministry of Defence at state level should, therefore, be the greatest success of centralisation in Bosnia and Herzegovina thus far. During the negotiations, several lines of conflict arose but, especially, the conflict between the supporters of the reform (OHR, Bosniak parties, Croat parties) and the opponents was much more

165 Bosnia and Herzegovina applied for membership in NATO's PfP in July 2001.

166 Hartog, Merijn: 'Defence Reform and PfP Membership Aspirations in BiH and SCG' in: Boonstra, Jos (ed.): *Defence Reform Initiative for Bosnia and Herzegovina/ Serbia and Montenegro (The DRINA Project)*, Centre for European Security Studies: Groningen 2005, pp. 1–5.

167 Bosnian constitution, Article III, 5a.

168 OHR: *Decision Establishing the Defense Reform Commission*, 9 May 2003, Article 2/4.

blurry than during the negotiations for police reform. The first package of military reform was passed in 2003 and enabled the transfer of decision-making power from the entity level to the central level. Whilst the entities kept control over the troops in their territory, and the equipment and training of the troops, the final authority over the military was given to the Bosnian state institutions.¹⁶⁹ It was the second package about the final transfer of all authority to the state level, that provoked more opposition, especially from Bosnian Serbs. However, since NATO had made it clear that there would be no progress for BiH in the alliance without a unified army, and since the RS itself was suffering under the burden of expenditure for military which regularly accounted for the largest part of the RS annual budget, even the most nationalist Assembly members in Banja Luka found it easy to let go of this burden. As Dragan Čavić, the President of the RS and Head of the SDS at the time, put it: ‘the RS would win more than it would lose.’¹⁷⁰ As a consequence, the Bosnian parliament, as well as the parliaments of the two entities, passed the second law on defence reform in 2005 and effectively put all military units under the control of the central state whilst, at the same time, limiting Bosnia’s forces to 9–10,000 persons and establishing ethnic keys for the new ministry and the officers’ corps. Furthermore, the known 1:2 formula of the Dayton constitution was applied to the distribution of troops, with 2/3 being stationed in the FBiH and 1/3 in the RS.¹⁷¹ The reform became law on 1 January 2006 and the full implementation was finished by the end of 2007. The OSCE, as well as EUFOR and the OHR, continue to monitor the implementation of the reform. Overall, military reform has, indeed, been a clear success as it fulfilled its original goal, strengthened the central level and opened Bosnia’s way for NATO’s PfP. NATO invited Bosnia to join PfP in late 2006 and, in 2010, it invited Bosnia, conditionally, to join the Membership Action Plan, which is seen as the major step towards full membership in the Alliance. However, since then, important policy issues remain unresolved, such as the registration of immovable defence property as state property. Conflicts between the major party representatives have, so far, contributed to stagnation and a slow-down of Bosnia’s integration into NATO.¹⁷²

For our main argument, namely that BiH represents a new model of federalism, the debates and reforms in the security sector have established that international actors played a key role in the initiation, discussion and implementation of key reforms. In fact, some reforms, such as the State Border Service, go back to direct imposition of the OHR. Other reforms, started by international actors, were picked up by the OHR to become domesticated. This process has been very successful

169 Prljic, Dijana and Krause, Christina Catherine: ‘Verteidigungsreform in Bosnien und Herzegowina beschlossen’ in: *Konrad-Adenauer-Stiftung in BiH-Länderberichte*, 10 October 2005 p. 1.

170 Dragan Cavić, cited in: *Ibid.* p. 2.

171 *Ibid.* pp. 2–4.

172 ‘NATO’s Relations with Bosnia and Herzegovina’ 14 February 2013, available at: http://www.nato.int/cps/en/natolive/topics_49127.htm (accessed 15 February 2013).

concerning defence reform, which established a unified army under central state control. The reform of the defence system has further strengthened the central level and helped to overcome a major force behind national separation and a threat to security in BiH. Police reform saw the EU and the OHR entering a critical stage of state-building. All reforms of the security forces attempted to overcome national segregation and install multinational security forces which would cooperate independently of the IEBL.

Fiscal Federalism in Bosnia and Herzegovina

The analysis of fiscal federalism is a key element in the study of federal political systems. As federalism is about “shared sovereignty” and, consequently, also about “shared responsibility,” the distribution of fiscal resources between different levels of government is of key importance. The state level, sub-unit governments and municipalities will only be able to participate in the federal decision-making process if they are equipped with the necessary financial resources. The distribution of a state’s income, therefore, impacts upon the actual functioning of the state. Since it is of key importance that sub-unit governments and municipalities can fulfil their tasks and strengthen their connection to the citizens, fiscal federalism also impacts on identity formation.

The Dayton constitution is clear about fiscal relations in the state. It states:

Each Entity shall provide all necessary assistance to the government of Bosnia and Herzegovina in order to enable it to honor the international obligations of Bosnia and Herzegovina.¹⁷³

Article VIII, which deals with the finances of the state level furthermore states:

1. The Parliamentary Assembly shall each year [...] adopt a budget covering the expenditures required to carry out the responsibilities of institutions of Bosnia and Herzegovina and the international obligations of Bosnia and Herzegovina.

[...]

3. The Federation shall provide two-thirds, and the Republika Srpska one-third, of the revenues required by the budget, except insofar as revenues are raised as specified by the Parliamentary Assembly.¹⁷⁴

It is the task of the entities to provide for the budget of the central state. As Paul Bernd Spahn puts it, ‘[t]he State is fiscally dependent on the Entities and neither possesses fiscal autonomy nor a proper revenue source of its own except for some

173 Bosnian constitution, Article III, 2b.

174 Bosnian constitution, Article VIII, 1 and 3.

administrative fees.¹⁷⁵ The central level of government is completely dependent on entity governments. There is no other federal state in the world where the centre is so weak. In fact, Bosnia can be compared to the EU, whose budget also nearly exclusively consists of member states' contributions. The comparison to the EU demonstrates that the financial dependency of the central government in Bosnia and Herzegovina is a clear indication for Bosnia being a confederal rather than a federal system.¹⁷⁶

During and after the war 'the unified fiscal system of the old Republic of BiH was broken up, and [...] there were three totally different fiscal systems in the country—one in the Croat-majority area of the Federation, one in the Bosniac-majority of the Federation and one in the Republika Srpska.'¹⁷⁷ Dayton, therefore, ratified a system which already operated on the ground, although the state constitution and the FBiH constitution made provisions for the merger of Croat and Bosniak fiscal authorities in the Federation. The financial autonomy of the entities is, indeed, a quality of a confederal rather than a federal system, however, when analysing Bosnia in 1995, it has to be highlighted that financial autonomy followed the logic of the DPA. Decentralisation and far-reaching competences for the entities and cantons was one underlying principle which legitimised the existence of, officially, two, de-facto, three armies and, consequently, also legitimised fiscal decentralisation. The problematic approach of the DPA in the area of fiscal relations became obvious in the first years after the Agreement, when the entities did not fulfil their obligations towards the state and payment was delayed. This seriously affected the working conditions of the already weak central institutions. A World Bank report in 1997 concluded that '[t]he State's sustainability is a concern in this environment, where a strong degree of distrust exists.'¹⁷⁸

Taxation was decentralised and part of the competences of the entities (and in the FBiH further decentralised to the cantons). Therefore, co-ordination, co-operation and fiscal harmonisation were of key importance to prevent financial crimes, corruption, and to implement the grants of the international community effectively. However, since the original competence for taxation was with the entities, all co-operation had to be voluntary.¹⁷⁹ It is, therefore, no surprise that the lack of co-operation and harmonisation resulted in the intervention of the international community.¹⁸⁰ In the

175 Spahn, Paul Bernd: 'A Federal Bosnia and Herzegovina: Can a Weak Centre Lead the Way?' in: *Federations*, Special Triple Issue: Themes of the International Conference on Federalism, 2002, pp. 19–20, here p. 20.

176 Stahn, Carsten: 'Föderalismus im Dienste der Friedenssicherung', 2002, p. 394.

177 Fox, William and Wallich, Christine: 'Fiscal Federalism in Bosnia and Herzegovina (The Dayton Challenge)', *Policy Research Working Paper Nr. 1714*, The World Bank Central Europe Department, January 1997, p. 2.

178 Ibid. p. 11.

179 Tesche, Jean: 'Tax Reform in Bosnia and Herzegovina and Serbia and Montenegro: Progress and Problems' in: *Zbornik rad.-Sveuč. U Rij, Ekon. Fak.*, Vol. 23, No. 2, 2005, pp. 293–311, here p. 297.

180 Ibid. p. 297.

first post-war years, international donors demanded further reforms in fiscal policy, leading to more co-operation and co-ordination between the entities whilst, after 1997, the OHR took over and imposed several pieces of legislation.¹⁸¹ The direction of international policy was clear: Bosnia and Herzegovina needed to create a single economic space across its territory, therefore, tax systems between different sub-units need to be harmonised. Furthermore, the effective functioning of the central government must be ensured at all times and the central institutions should have their own independent revenues.¹⁸² The centralisation of revenues and the creation of independent income for the state were completed in two major steps. The first saw the centralisation of those revenues, which are “contested” in the DPA. Especially, the centralisation of customs revenues can be seen as a good example, since the DPA stated that the central institutions are responsible for customs policy, but the entities are responsible for customs administration.¹⁸³ Since the introduction of a central State Border Service in 2000, customs revenues became part of the state budget, the first independent income of the state besides administrative fees.¹⁸⁴ As a consequence, the parties at the state and entity level were pressured by the OHR and major international donors, such as the EU,¹⁸⁵ to agree on the establishment of an Indirect Taxation Agency (ITA) which would be responsible for customs and all indirect taxation at state level. The introduction of the ITA was connected to the introduction of a single Value Added Tax (VAT) throughout the country under the authority of ITA.¹⁸⁶ The introduction of a VAT was adopted by the two chambers of

181 The impositions of the OHR were usually directed in two ways. They either led to more harmony between the taxation systems of the entities and cantons, or they led to a centralisation of taxation. Examples of these policies include: OHR: *Decision on the Law on the State Border Service*, 13 January 2000; OHR: *Decision on Law Amending the Law on Customs Policy*, 20 December 2000; OHR: *Decision Establishing the Indirect Tax Policy Commission to Establish the Indirect Tax Authority*, 12 February 2003; OHR: *Decision Enacting the Law on Amendments to the Law on the Indirect Taxation System in BiH*, 25 October 2004; OHR: *Decision on Enacting the Amendments to the Law on the Sales Tax on Products and Services in BiH*, 14 July 2005; OHR: *Decision on Enacting Amendments to the Law on Excise Duties in BiH*, 14 July 2005.

182 See, for example: World Bank: *Bosnia and Herzegovina: Addressing Fiscal Challenges and Enhancing Growth Prospects*, Poverty Reduction and Economic Management Unit, Report Nr 36156-BiH, September 2006, especially pp. 15–26.

183 Fox, William and Wallich, Christine: ‘Fiscal Federalism in Bosnia and Herzegovina’, 1997 p. 10.

184 Werner, Jan et al.: ‘Fiscal Federalism in Bosnia and Herzegovina: Ten Years after the Dayton Treatment and Still not in a Steady Condition’ *Institute of Local Public Finance Working Paper 01-2006*, January 2006, p. 3.

185 The introduction of an Indirect Taxation Agency together with a VAT was a condition for the opening of SAA talks between Bosnia and the EU. See: *Report from the Commission to the Council on the preparedness of Bosnia and Herzegovina to negotiate a Stabilisation and Association Agreement with the European Union [widely known as „EU Feasibility Study“]*, Council of Ministers, Document 692/2003, 18 November 2003.

186 Werner, Jan et al.: ‘Fiscal Federalism in Bosnia and Herzegovina’, 2006, pp. 12–13.

the state parliament in early 2005 and, since January 2006, there is a single VAT rate in use throughout BiH. The revenues of the VAT are distributed amongst different levels of government, with most shares going to the budget of the state and a further share providing, for the first time, independent revenues for the municipalities in the FBiH and the RS.¹⁸⁷ The introduction of the VAT has further strengthened the central level, since it became financially independent from the entities. It has, however, also empowered municipalities, which demand more competencies and more possibilities to provide necessary services to citizens. Indeed, after the introduction of the VAT, a reform of the local government system became more important and several municipalities were strengthened. After all, it has to be mentioned that the Bosnian economy is still far from recovering from the results of the war. Different tax rates between the entities still exist in important areas, and the implementation of a single economic area throughout Bosnia is still underway. Public spending is strictly monitored by the Central Bank and the EU, and the World Bank continues to criticise the spending policy of the entities and the state which mainly focus on administration and social policy, leaving little room for new investment and the support of education and the transportation system.¹⁸⁸ The situation has deteriorated since 2009, when Bosnia was hit by the global economic crisis. Since then, unemployment has gone up, public spending has increased, and Foreign Direct Investment, as well as financial assistance from ex-pats, has decreased. Whilst there was some improvement in 2012, the situation remains fragile.¹⁸⁹

Fiscal policy in post-Dayton BiH contributed to the strengthening of central institutions and stronger independence of these from the entities. The High Representative and other international actors, especially the EU, played key roles in this centralisation process. The Bosnian parties were willing to agree on the establishment of ITA and the introduction of a general VAT in 2005, which underlines the observation that, if the representatives of the national groups have incentives to agree on reforms, especially when those reforms support their position in the political system, then there is a chance for co-operation and consensus amongst Bosnian politicians.

Summarising Bosnian Federalism

After discussing the debates about federalism and state-building in Bosnia, it is important to return to the initial discussion on federalism in Bosnia and Herzegovina, and Bosnia as a new model of federation. It seems, at this point, useful to understand Bosnian federalism by focusing on six key characteristics of the federal idea in BiH.

187 Ibid. p. 13.

188 World Bank: *Bosnia and Herzegovina*, 2005, pp. VI-X.

189 See the comments of the EU in the 2012 Progress Report: Commission of the European Communities: *Bosnia and Herzegovina 2012 Progress Report*, October 2012, pp. 23–49.

I. Contested Visions of Federalism Amongst Bosnian Elites

Bosnian political parties, as well as civil society organisations and Bosnian institutions, have no common understanding of federalism. The same needs to be said about federation and the nature of the Bosnian state. In fact, some Bosnian parties, such as the SBiH, deny the existence of federalism and federation in BiH. Others, such as the SNSD, see Bosnia as a union of peoples and entities. These contested ideas about federalism are the most important element of Bosnia's federal political culture. Bosniaks, as the majority, identify most commonly with the whole state of Bosnia and Herzegovina. The observation that majority nations tend to 'understand their own nationality in terms of the central state' was already made by McRoberts back in 2001.¹⁹⁰ In Bosnia, this is even more important because the Bosniak nation is the only nation in BiH that has no kin state. The creation of an overarching "Bosnian" identity has been attempted by the High Representative and the Constitutional Court. Both institutions have tried to provide incentives for citizens to identify with fundamental values of the state, such as the protection of human rights, equality of the constituent nations and strengthening the central institutions. However, a shared understanding of the nature of the Bosnian state and the role of federalism in the organisation of the state, are key preconditions for any future constitutional reform. Federalism in Bosnia, as well as the whole Bosnian state, remains deeply contested amongst the constituent peoples.

II. International Actors as Key Factors in Bosnia's Political System

Federalism in BiH is not only contested between the Bosnian parties, but international actors have provided additional input into these discussions. The origin of Bosnian federalism goes back to the imposition of the federal idea as a consequence of the Dayton negotiations. Furthermore, the massive impact of international bodies in BiH's political system, of which the High Representative is only the most important one, has resulted in a new layer of conflicts in BiH. The impact of external state-building is remarkable; due to pressure of international actors, especially the HR, Bosnia today has a common army, the state has independent financial resources, and the power of the central institutions has increased. These gains of the central institutions have resulted in the loss of entity power in several fields, such as defence policy and indirect taxation. Daniel Elazar argued that federalism, in short, means shared-rule and self-rule between central and sub-unit levels of government.¹⁹¹ It is, therefore, possible to argue that the High Representative has become a new, third actor in the realisation of shared-rule and self-rule. By imposing decisions, the HR undermined all forms of shared-rule and self-rule between different levels of government in Bosnia and between different parties. Furthermore, the High Representative contributed to the debates about the understanding of federalism

190 McRoberts, Kenneth: 'Canada and the Multinational State', 2001 p. 684.

191 Elazar, Daniel: *Exploring Federalism*, 1987, p. 12.

in BiH by interpreting the DPA in his own terms. These interpretations usually saw a strengthening of central institutions and a weakening of the entities as its core element. The HRs have supported a strategy of de-nationalisation of Bosnian federalism and, instead, focused on ethnically neutral policies, particularly when imposing a new flag, a new currency and new symbols. The HRs have also promoted their own understanding of federalism based on territorial autonomy, rather than in terms of a contract between national groups.

It cannot be denied that the role of the High Representative contributed to a “culture of dependency” amongst Bosnian elites. It was easier to blame the HR for policies than to agree on them. It would, however, be too easy to argue that the OHR contributed to a lack of democratic progress and the development of a political culture based on tolerance and the will to co-operate. If this would be the case, it would be difficult to explain the reforms in the military and taxation policy over the last years. Instead, the High Representative changed its role since 2002 to become more a facilitator than a direct negotiator. This change has also resulted in the domestication of most policy developments. Negotiations between Bosnian elites are a constant factor of today’s political system. It is, however, also important to note that Bosnian politics has seen a slow-down in decision-making and a rise in tensions since the OHR stopped intervening drastically in 2006. Bosnia is far from being a consolidated democracy and international actors remain important on the outset as guarantors of peace and stability in the country. However, Bosnian elites need to be responsible for further reforms in the country.

III. Bosnia and Herzegovina Goes Through a Process of Democratisation and Federalisation at the Same Time

Democratisation and federalisation go hand-in-hand in the case of Bosnia and Herzegovina. The centralisation of defence policy, for example, contributed to the strengthening of central institutions in federal terms and supported accountability, efficiency and the rule of law in terms of democratisation. Federalism is used in Bosnia to support the country’s transition into a modern multinational democracy.¹⁹² This has far-reaching consequences. First, federalism in Bosnia should be seen as a process rather than a static framework. Second, democratisation and federalisation have a lot of things in common and future research has to prove the connection between these two processes. Third, democratic institutions and values, together with the appropriate instruments of federalism, can contribute to peace and stability in a multinational environment. Finally, it is important to point to the importance of federalism and consensual democracy in Bosnia. Whilst the political system remains slow and trust remains low amongst the main actors, there

192 Graf Vitzthum, Wolfgang: ‘Multiethnische Demokratie: Das Beispiel Bosnien-Herzegowina’ in: Classen, Claus Dieter et al. (eds): “*In einem vereinten Europa dem Frieden der Welt dienen...*” (*Liber amicorum Thomas Oppermann*), Duncker&Humblot: Berlin 2001.

is no promising alternative to federalism and consociationalism in the Bosnian case. Only by protecting group autonomy, on the one side, and enhancing group co-operation on the other side, will Bosnia be able to adopt to the challenges of democratisation and EU integration.

IV. Compromise and Co-Operation as the Main Values of Bosnia's Federal System

The imposed Dayton Agreement did not institutionalise any core values of federalism. What was institutionalised was a system of strict power-sharing between three constituent peoples. Consociational democracy and federalism are based on the values of co-operation and compromise, therefore, there has to be room for the development of these values. In fact, democratisation and federalisation were seen as appropriate methods to support the development of a federal political culture based on the values of co-operation, the will to compromise, and trust. There have certainly been some developments towards the creation of co-operation and trust, as the establishment of a state level defence ministry has shown. However, what is of core importance for the federal system and its underlying issues, is the space for informal decision-making and consultation bodies. They allow different segments to negotiate freely without the threat of vetoes and blockade, and they make it easier for elites to "sell" political compromises to their national group. These mechanisms need to be strengthened, so do co-operative instruments in the political system. There is hardly any co-operation between the central institutions and entity institutions, and decisions that fail to pass both Houses of Parliament are not renegotiated in a Committee, as it is done in most bicameral systems. James Tully has demanded that multinational federations should institutionalise 'constitutional dialogue, or multilogue, of mutual recognition.'¹⁹³ If federalism is, indeed, a process rather than a static constitutional architecture in BiH, then there must be provisions to renegotiate this process on a constant basis. Informal and co-operative institutions can contribute to these renegotiations as the experiences in Belgium demonstrate.

V. Bosnia and Herzegovina moved from a "Confederal-like" System in 1995 to a Multinational Federation

In 1995, Bosnia looked more like a confederation than a united federal state. The statehood character of the entities cannot be denied, taking into account that they were exclusively responsible for taxation and defence policy in 1995. Since then, however, Bosnia and Herzegovina has developed into a fully-fledged multinational federation, in which central government and entity governments have exclusive competences and share tasks. This centralisation has reduced the influence of the entities but they continue to be major players in the Bosnian political system. The

193 Tully, James: *Strange Multiplicity*, 1995, p. 24.

centralisation has also helped to overcome the identification of BiH as a model of “ethnic federalism” and move towards a “territorial interpretation of federalism.”

Further reforms towards efficiency and practicality will need to be done and a deeper reform of the Federation of BiH is without alternative. There is no reason why Bosnia will be unable to join the EU with its existing entities still in place. After all, Belgium is also a decentralised multinational federation based on more or less homogenous regions.¹⁹⁴ Bosnia will not become a federal state which is purely based on the territorial dimension of the federation, such as Austria or Germany. Nationalisms will continue to play a major role in the federal arrangement of BiH. For Bosnian elites this means it is important to develop a common understanding of the state.

VI. Bosnia and Herzegovina is a Federal System Sui Generis

Bosnia and Herzegovina represents a new model of federalism and federation. The federal system is influenced by outsiders who have their own vision on federalism in BiH. These outsiders originally imposed their vision of federalism. However, what started as external state-building has become domesticated. On-going debates about a constitutional reform and contested visions on Bosnia’s federal system, demonstrate that a political culture has developed in which federalism is a key (if contested) element in the discussions.

Furthermore, the federal system is situated between the lines of an ethnic federal system and a civic-territorial federal system. It is just wrong to argue that Bosnia represents a pure ethnic federal system. Those who argue this cannot explain the centralisation process over the last years especially in the areas of defence and taxation (which were not based on external imposition). Additionally, those who argue for BiH as an ethnic federalism underestimate the importance of civil elements in the constitution. The protection of human rights across the country has the highest standards worldwide in theory. Flag, Anthem and currency avoid references to ethnicity and nationality and, even though they were imposed, they have become accepted and respected by the Bosnian people.

With all the debates mentioned above, there can be no doubt that Bosnia and Herzegovina represents a new model of federalism and federation and only the future will show, which way the Bosnian system will develop.

194 The exception is the Brussels Capital Region.

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Chapter 6

Conclusion

Before discussing and summarising the main arguments of this study, it is important to highlight some general remarks about the results of this analysis of Bosnian federalism and federation. The introduction outlines three main aims, namely to shed light upon the nature of Bosnian federalism and federation, to discuss federalism and federation as part of a long-term state-building and democratisation project in Bosnia and Herzegovina, and, finally, to assess this state-building process in Bosnia from the perspective of its impact on the federal future. This discussion achieved these aims in two ways. First, chapter four examined the federal political system of Bosnia and Herzegovina as it has been implemented by the Dayton constitution, whilst the third part of this conclusion will demonstrate that Bosnia is only one case in a wide range of countries that can be characterised as new models of federalism and federation. Second, chapters three and five have explained the origins and development of federalism as a normative theory in Bosnia, and chapter five pointed to the need for further conceptualisation of federalism in countries like Bosnia and Herzegovina. It is, in particular, the role of international actors that have imposed federalism and administrate the Bosnian federation, that makes it hard to conceptualise Bosnia within the standard literature on federalism and federation. It has been attempted to fill this gap by discussing Bosnia as a model of imposed federalism and internationally administered federation.

It has been demonstrated that Bosnia is an internationally administered federation, which means that Elazar's theory of shared-rule and self-rule is hardly applicable. However, because of the demonstrated dynamics within the Bosnian federation described in chapters four and five, it would be too easy to argue that Bosnia is "only" administered by international authorities. Bosnian elites also have an impact on decisions, even if they veto them or refuse to implement them. Bosnian actors matter in the Bosnian federation. As the arguments surrounding constitutional reforms in Bosnia have demonstrated, there is a lively debate about the nature of the Bosnian state and its federal future. Elites discuss federalism in Bosnia and the way it should be implemented in the Bosnian federation. There is not *one* discourse on federalism in Bosnia, but many. However, this underlines the multinational nature of the state and the different visions of the nations. History plays a key role in these visions and we can see that the socialist experience and the Socialist Tradition of Federalism still influence the debates on federalism in Bosnia. Federalism remains a contested concept in Bosnia and the federal architecture of the Bosnian state is unique. As has been demonstrated throughout this discussion, Bosnia represents a new

model of federalism and federation, and is a key example for the revival of the federal idea in the post-Cold War era, and for the use of federalism as a tool of conflict resolution by external actors.

Bridging the Gap: Studying Bosnia and Herzegovina in the Light of Federalism, Conflict and Democratisation Studies

It seems as if scholars working on democratisation and post-conflict management and conflict resolution on the one side, and academics studying federal governmental structures and federal theory on the other side, work and live in two different and parallel universes. Whilst there was the beginning of a very fruitful debate between Daniel Elazar, Arend Lijphart and Ivo Duchacek in 1985 in a special edition of *Publius: The Journal of Federalism*, this debate has since dried up.¹ However, to understand the new models of federalism and federation that evolved after the end of the Cold War, it is important to reactivate the dialogue between scholars from the two different fields. As this study on federalism and federation in Bosnia and Herzegovina demonstrates, the introduction of federalism in the post-Cold War era goes hand-in-hand with the introduction of power-sharing, be it through consociational democracy, integrative power-sharing or power-division. Further, these mechanisms are introduced as post-conflict management and conflict-reduction mechanisms that help to secure the territorial integrity of a country whilst, at the same time, offering autonomy to minority nations. To understand the full extent to which Bosnia and Herzegovina represents a new model of federalism, namely imposed federalism, I demonstrated that the consociational power-sharing of 1991/1992 in Bosnia failed because the leaders of the three nationalist parties were unable to agree even on the most basic questions. However, Dayton introduced a radically decentralised federation which applies rigid power-sharing in its central institutions. Therefore, power-sharing (partly based on consociationalism) can be considered as the shared-rule dimension within the Bosnian federation. It is, furthermore, the undermining of this form of shared-rule through interventions of outside actors, most notably the High Representative, that allows for the conclusion that Bosnia and Herzegovina can be considered an internationally administered federation.

Furthermore, it is important to understand the fluidity within post-Dayton Bosnian politics and discuss the developments of the Bosnian state, and the debates about federalism in Bosnia, in the light of an ongoing state-building and democratisation process. This large scale state-building process is not managed by Bosnian actors alone, but different international actors are also involved. In particular, the Office of the High Representative and, more recently, the EU, have influenced the state-building agenda in a way that is aimed at ensuring Bosnia's

1 See the contributions of Lijphart, Elazar and Duchacek in: *Publius: The Journal of Federalism*, Vol. 15, No. 2, Spring 1985.

future integration into Euro-Atlantic structures. This highlights the connection of different processes in Bosnia, namely,

- a. A process of peace-building.
- b. A process of state-building that is ongoing and will only be concluded with a new constitution in which the Bosnian peoples find a common definition of the nature of their state.
- c. A process of integration into European structures.
- d. A process of democratisation.
- e. A process of post-conflict integration of Bosnia including refugee return, reconciliation and economic reconstruction.

To fully understand these processes and their impact on federalism in Bosnia and Herzegovina, it was important to study and, indeed, reconcile literature from the different fields of conflict studies, democratisation and (federal) government. It is, therefore, important that scholars bridge the gap between conflict, democratisation and government studies, and use all the tools they have at their disposal to analyse and understand these new developments. The connection between federalism and power-sharing can also help to understand what actually is “new” in the new models of federalism. With the preceding study, a first contribution to bridging the gap has been made and it has been very fruitful and, indeed, very important in identifying the nature of Bosnian federalism and federation.

Bosnia and Herzegovina as a New Model of Federalism and Federation

In his famous study, *Making Democracy Work*, Robert Putnam pointed out that the key for effective democratic institutions is social capital. He defines social capital as ‘features of social organization, such as trust, norms, and networks that can improve the efficiency of society by facilitating coordinated actions.’² Putnam, furthermore, argues that ‘[t]he greater the level of trust within a community, the greater the likelihood of cooperation. And cooperation itself breeds trust.’³ This, according to Putnam, is the key reason for the “civic-ness” of Northern Italy. Finally, Putnam concludes that ‘[b]uilding social capital will not be easy, but it is the key to making democracy work.’⁴

If we apply Putnam’s argument to Bosnia and Herzegovina, it could be argued that Bosnia had a low or even no social capital in 1995. There was no trust between the three different national groups, they had fought each other in the bloodiest war in Europe since World War II and terms such as “ethnic cleansing” and “mass rape”

2 Putnam, Robert: *Making Democracy Work (Civic Traditions in Modern Italy)*, Princeton University Press: Princeton 1993, p. 167.

3 Ibid. p. 171.

4 Ibid. p. 185.

were used to describe some of the war crimes committed. There was no will to live together in Bosnia in 1995, no will to cooperate, and certainly no trust amongst the different peoples. Disillusioned by Western policy, Bosniaks gained their main war aim – a united Bosnia and Herzegovina. But it was far from multinational in the sense that the ethnic groups are mixed. Ethnic cleansing and heavy fighting have created three homogenous areas in Bosnia. Bosniaks, of all political orientation, argue that the Republika Srpska is a product of genocide. Bosnian Serbs, on the other side, see the RS as their only protection from Bosniak and Croat domination. They have not forgotten that they have been outvoted and ignored when Bosniaks and Croats decided that Bosnia should become independent from Yugoslavia in 1992. In the eyes of most Bosnian Serbs, this was a form of “betrayal” and demonstrated that Bosniaks, in particular, but also Croats, are unwilling to recognise the needs of the Serbian nation in Bosnia. Consequently, Bosnian Serbs insist on a strong and autonomous Republika Srpska, which protects them from the domination of the Bosniak-Croat alliance. Similar to this, they also insist on strong power-sharing at the central level, in particular, veto rights, to ensure that the Serbian voice is heard and no decisions can be taken against their will. Finally, the Bosnian Croats are in a quagmire. They are the smallest of the three constituent peoples in Bosnia and, also, numerically much weaker than the Bosniaks in the Federation of Bosnia and Herzegovina. Their project of creating a third Croat entity has failed thus far, and they feel that only the three cantons with a Croat majority in the FBiH ensure their autonomy.

Fears of domination by the other national group, threats of exclusion and a rhetoric of secession and separation, are part of the complicated and multidimensional relationships between the Bosnian peoples. Additionally, minorities who do not belong to one of the three constituent peoples, are continuously politically excluded, face open discrimination, and often also suffer economic and social disadvantages.⁵ What does this tell us about federalism in Bosnia and Herzegovina? Michael Burgess has argued that ‘faith, mutual trust, partnership, dignity, friendship, loyalty, consent, consultation, compromise, reciprocity, tolerance and respect [...] form the moral foundation of the federation.’⁶ If we compare the norms and values that Burgess points out as the foundation of a federation with what Putnam called social capital, it can be seen that Burgess and Putnam focus on the same virtues. Whilst Putnam attempts to explain the performance of democracy, Burgess highlights the key values and principles that need to underline a federal partnership, and need to be respected by all sides of the partnership. According to Putnam and Burgess, Bosnia and Herzegovina in 1995 did not fulfil any of the criteria required for a stable and effective federal democracy. However, it is worth mentioning, with respect to Putnam, that today

5 See, for example: Bieber, Florian and Milosheva-Krushe, Mariana: *Minority Rights in Practice in South-East Europe 2004–2008*, King Baudouin Foundation: Brussels, September 2009.

6 Burgess, Michael: *Comparative Federalism*, 2006, p. 113.

there is a high number of associations, sport clubs, citizen assemblies and similar elements of civil society in Bosnia. The core problem is that these organisations are mainly organised along national lines, which consequently means that social capital is not uniting and leading to a more efficient democratic performance in a divided society like Bosnia, but it is instead further dividing the society and making decision-making, implementation and inter-group cooperation more complicated.

Nevertheless, what evolved out of the three-week bargaining on the Wright-Patterson Airbase on the outskirts of Dayton, Ohio, was a united Bosnia and Herzegovina that labels itself a “democratic country” in its constitution and that is organised along federal principles. However, this Bosnian state was not based on the will of the three Bosnian peoples, in fact, they were not even the main negotiators during these important November days in Dayton. Federal democracy in Bosnia and Herzegovina was the result of an international peace treaty, which ended the conflict in Bosnia and ensured the start of what would become the most ambitious project of international state-building. It was the lawyers of the US state department, together with the pressure of European and US representatives in Dayton, that *imposed* federalism on the Bosnian peoples. In the eyes of Europeans and Americans, federalism ensured the continued existence of Bosnia and Herzegovina as a united country on the one side, whilst providing the Republika Srpska with substantial autonomy on the other. Therefore, federalism was seen as a fair compromise on all sides. Daniel Elazar described federalism as a combination of self-rule and shared-rule, and it can be seen how European and US negotiators applied this principle to Bosnia and Herzegovina.⁷ It was the will of the international community, in particular, the United States and the EU, that Bosnia and Herzegovina continues to exist as one country. The organisational principle they used to ensure this was federalism. Federalism was, therefore, *not* an indigenous solution. It was not based on a partnership agreement following the principles of trust, mutuality, reciprocity and cooperation. In fact, these principles were non-existent between the Bosnian leaders and between the leaders of Bosnia, Croatia and Serbia. Each of the three Bosnian peoples would have preferred a different solution, the Bosniaks a centralised state, the Serbs an independent RS, and the Croats either unification with Croatia or a third Croat entity. Federalism meant that all three peoples had to compromise and give up their ultimate ambitions. Generally, federalism is always based on a compromise. However, the essence of federalism in a multinational state is the relationship of different nationalisms to each other (and to the joint state). Therefore, it can be considered fundamentally problematic that the international community imposed a federal solution on three peoples to live together in one

7 Richard Holbrooke, the chief architect of the Dayton Agreement pointed out that, besides agreeing on a peace treaty for Bosnia, the creation of a multinational Bosnian state was a key aim of the Dayton conference. He also points out that it was American and European pressure on all three sides on nearly every question (Sarajevo, inter-entity border, organisation of FBiH, Brčko, elections, distribution of power in state institutions) that led to the final deal signed in Dayton. See: Holbrooke, Richard: *Meine Mission*, pp. 359–478.

country, in which two of them did not want to live. In Burgess' terms, Bosnian Croats and Bosnian Serbs felt no federal *comity* at all. In fact, they felt what might be considered the opposite of comity, namely a strong urge to secede. It was in this flawed normative environment that the only possible way to introduce federalism was imposition. This is why Bosnia and Herzegovina represents a new form of federalism, because the recognised preconditions for federal union were not met in Bosnia. Consequently, the federal arrangement was not based on a compromise between the representatives of the Bosnian peoples, but on a peace treaty between Bosnia, Croatia and Serbia, and, in particular, on massive political pressure by the international community. Nancy Bermeo argued that "forced-together federations" lack the voluntary character inherent in federal unions since the creation of the United States.⁸ The Bosnia that was created in 1995 was forced together. However, since then, whilst still being held together by an international presence in the country, we can detect the development of a rudimentary federal political culture. Having said this, it is important to remember that, because federalism was never an indigenous solution in Bosnia, the Bosnian parties never accepted it as such. Instead of re-building Bosnia after the war, they focused on their interest zones, and the state institutions did not work properly for many years after 1995, although elections were held already in 1996. However, because the three nationalist parties of SDA, HDZ and SDS continued to be in power, they continued to focus on their spheres of influence and the central state was further weakened because the Serbian and Croatian areas in Bosnia introduced different currencies, integrated into the economic area of the neighbouring countries and undermined the Bosnian state. It was only after the December 1997 decision of the Peace Implementation Council to enhance the powers of the High Representative, that the Bosnian state-building project really began. It was to become an international project because major reforms (mainly towards centralisation) were initiated, negotiated, and, often, also imposed by the High Representative. Consequently, a remarkable process of centralisation took place in Bosnia which tackled such important areas as military, taxation, border control, secret service, the establishment of a state-police, and, ultimately, also the beginning of a centralisation of all police forces in Bosnia and Herzegovina. Certainly, these reforms changed the nature of the Bosnian state. Whilst the state institutions continue to suffer from limited decision-making competences and strict power-sharing rules, they cannot be ignored anymore, as they had been in the first post-war years. War has become unlikely, if not impossible, because all military units are under the command of the defence ministry at state-level and all military units are multinational. The success of military integration is also symbolised by the reduction of foreign troops on Bosnia's territory. After 1995, NATO stationed over 60,000 troops in Bosnia; currently there are little more than 1,000 troops remaining. Bosnia signed a Stabilization and Association Agreement (SAA) with the EU in the first half of 2008 and has, since then, concluded a European Partnership Agreement

8 Bermeo, Nancy: 'The Import of Institutions' 2002, pp. 96–110

with the EU. The country is on the way towards European integration, although this is a slow and often rocky road.

All of these developments have had a positive influence on Bosnia and Herzegovina as a state and, to some extent, also on the relationship between its peoples. However, most of these successes are founded upon international impositions. It was the High Representative that eventually imposed the unification of the two Bosnian armies, and it was the HR that mediated the negotiations and, finally, imposed the creation of an Indirect Taxation Authority. Because centralisation has affected the workings of the Bosnian federation very distinctively, it is possible to characterise the Bosnian federation as a new form of federal polity. Reforms and changes in the balance of power within the federal system are not (only) based on compromises of representatives of Bosnia's peoples and the two entities, but also on the imposition by the High Representative. This is why we have labelled Bosnia and Herzegovina an internationally administered federation. Sumantra Bose has summarised this complicated and unique character of the Bosnian state: 'Bosnia is a state by international design and of international design.'⁹ Bose points out that Bosnia is of international design and, therefore, fits the category of imposed federalism and he also argues that it is a state by international design, which means the state itself has been designed and developed by internationals. Consequently, his description also fits the analysis of Bosnia as an internationally administered federation.

What can be witnessed in Bosnia and Herzegovina over the last 15 years, is the evolution of a new model of federalism as well as a new model of federation. We cannot, however, say if these models are successful because, first of all, the time span might be too short; as Robert Putnam has pointed out, '[t]hose who build new institutions and those who would evaluate them need patience.'¹⁰ The last two decades have, at least, given some empirical evidence to categorise and assess Bosnia and Herzegovina as a new federal model. There is some evidence of success in Bosnia, although the developments since 2006 point in a different direction. Confrontation and blockade have, once again, become the main features of the Bosnian state. Having said this, Bosnia is now contractually integrated into the European enlargement process due to the signature of the SAA, as well as the development of a European Partnership between Bosnia and the EU. Mirko Pejanović has pointed out how important EU integration is for Bosnia: 'Bosnia and Herzegovina will not have a certain or stable political future if it does not become a part of the historical process of European [integration].'¹¹ Similarly, Sofia Sebastian points out that there is a direct connection between Bosnia's EU integration and the state-building process in the country.¹² Bosnia and Herzegovina, as a new model of

9 Bose, Sumantra: *Bosnia After Dayton*, 2002, p. 60.

10 Putnam, Robert: *Making Democracy Work*, 1993, p. 60.

11 Pejanović, Mirko: *The Political Development*, 2007, p. 21.

12 Sebastian, Sofia: 'The Role of the EU in the Reform of Dayton in Bosnia-Herzegovina' in: *Ethnopolitics*, Vol. 8, No. 3, 2009, pp. 341–54, here p. 351.

federalism and federation, can be successful if the EU is willing to assist it on the rocky road to membership. Current debates in Bosnia and Herzegovina demonstrate that the country is undergoing a dual crisis, one based on the slow and stagnant process of reform of the complicated political structures and, connected to this, the development of a self-sustaining political system in which it is no longer the international community that takes major decisions.¹³ The EU will play a decisive role in this process and, whatever the future institutional development of the country will be, the goal of EU membership should remain and the EU and other international actors should allow Bosnians to find their own compromise on the state.¹⁴

Bosnian Federalism and Federation in Comparative Perspective

The comparative discussion of Bosnia's federal architecture and the normative ideology behind this is, of course, problematic because of the unique circumstances that led to the creation of the Bosnian federation. Having said this, it is important to point out that each of the following states discussed has its unique historical context and the golden rule of "context is everything" certainly applies. However, when comparing Bosnia to other post-Cold War federal systems, one can see an emerging trend towards new institutional designs, a move towards the involvement of international actors in the setting up of federal states, and the continued importance of conflict, secessionist movements and demands for autonomy in numerous states.

The comparative discussion of federalism and federation in Bosnia shall focus on two major points: first, the use of federalism as a tool of conflict resolution and, second, the growing involvement of international actors in post-war settlements that include federal and power-sharing solutions to intra-state and ethnic conflicts. However, the arguments presented here are only a small snapshot of a wider discussion on the use of federalism, power-sharing and decentralisation as instruments of conflict resolution by international actors in intra-state conflicts.¹⁵

Federalism and Federation as Tools of Conflict Resolution

Federalism has become one of the most important tools in managing intra-state conflicts in the post-Cold War era. Whilst this is not necessarily a new feature, since the Canadian federation and India have also implemented federal systems

13 International Crisis Group: *Bosnia's Dual Crisis*, Europe Briefing No. 57, Sarajevo and Brussels, 12 November 2009, in particular p. 1.

14 Bieber Florian: 'Dayton Bosnia might be over – But what next?' in: *BalkanInsight*, 10 December 2009, available at: <http://www.balkaninsight.com/en/article/dayton-bosnia-may-be-over-but-what-next> (accessed 15 February 2013).

15 For more on the overall discussion, see: Brancati, Dawn: *Peace by Design: Managing Intrastate Conflict through Decentralization*, Oxford University Press: Oxford and New York 2009.

to manage cultural diversity, there, nevertheless is a new trend to address violent intra-state conflict by providing conflicting groups with a large amount of autonomy, and co-opting them in the decision-making process through shared-rule arrangements. The debates about the federal architecture of the Russian Federation after the collapse of the Soviet Union, and the reorganisation of Ethiopia after the end of the military dictatorship in the African country, teach us that the debate between ethnic and territorial forms of federalism, as well as the degree of internal (and external) self-determination of minority nations, is a continuing feature of the current political landscape. The Russian Federation has proven to be extremely inventive when it comes to the management of a massive country and numerous minority nations. Whilst this management has not been without conflict as the struggle in Chechnya demonstrates, it is, nevertheless, remarkable that the Russian Federation did not break apart and, as Andreas Heinemann-Grüder points out, one of the main reasons for this was the introduction of a decentralised, asymmetrical federal system. He argues that ‘Russia combined the state-building agenda with federalization and thus profoundly reduced the potential for nationalist center-periphery conflicts.’¹⁶ Federalism was also used to keep the multi-ethnic country of Ethiopia together. As Alem Habtu points out, ‘[i]n 1991, following the collapse of military rule, Ethiopia’s new leaders established a federal system composed of largely ethnic-based territorial units. The main purpose was to achieve ethnic and regional autonomy, while maintaining the state of Ethiopia as a political unit.’¹⁷ We can see that federalism as an instrument to protect the unity of the state, whilst simultaneously allowing self-governance for local minority nations has become a key feature of federations established after 1990. What however distinguishes federalism in Ethiopia and Russia as well as Bosnia and Herzegovina from older federations such as Canada and India is their historical legacies and the inclusion of elements of the Socialist Tradition of Federalism in their current federal systems. As Burgess has argued, ‘[i]n the case of the Russian Federation, the Soviet legacy of federalism has to be confronted and addressed as a historical and ideological specificity.’¹⁸ Similarly, a study of the International Crisis Group (ICG) has pointed out that the main principle of the leading Ethiopian party is democratic centralism, based on Leninist ideology.¹⁹ Chapter two of this study demonstrated

16 Heinemann-Grüder, Andreas: ‘Why did Russia not Break Apart? Legacies, Actors, and Institutions in Russia’s Federalism’ in: Heinemann-Grüder, Andreas (ed.): *Federalism Doomed? (European Federalism between Integration and Separation)*, Berghan Books: New York and Oxford 2002, pp. 146–66, here p. 164.

17 Habtu, Alem: ‘Multiethnic Federalism in Ethiopia: A Study of the Secession Clause in the Constitution’ in: *Publius: The Journal of Federalism*, Vol. 35, No. 2, 2005, pp. 313–35, here p. 313.

18 Burgess, Michael: ‘Between a Rock and a Hard Place: The Russian Federation in Comparative Perspective’, in: Ross, Cameron and Campbell, Adrian (eds): *Federalism and Local Politics in Russia*, Routledge: London and New York 2009, pp. 25–53, here p. 25.

19 International Crisis Group: *Ethiopia: Ethnic Federalism and its Discontents*, Africa Report No. 153, 4 September 2009, p. 6.

that Bosnia and Herzegovina, as a federal system, cannot be understood without taking into consideration the historical legacies of Yugoslav federalism and the debates about territorial federalism and non-territorial federalism. This legacy is also important to emphasise, because it helps to understand the problematic relationship of federalism and democracy in Bosnia, Russia and Ethiopia. Cameron Ross has argued for Russia that ‘federalism and democratization in Russia exist in contradiction rather than in harmony.’²⁰ Similarly, the report of the ICG points out the main flaws of Ethiopia’s ethnic federalism:

‘The absence of consensus regarding ethnic federalism results from contradictions that date back to the formation of the modern state in the nineteenth century and have become virulent since 1991: ethnically defined politics that decentralise rather than mitigate inter-ethnic relations; government-propagated democratisation inhibited by the ruling party’s unwillingness to share power; and rapid economic growth and increasing urbanisation accompanied by growing inequality and social tensions.[...] Politics are intensively contested.’²¹

Because federalism is used as a conflict resolution tool in the diverse societies of Russia, Ethiopia, Bosnia, and, for that matter also Iraq, it naturally cannot be implemented without conflict. However, what is particularly striking about the above mentioned federal states, is the absence of a real consensus on the state. In Bosnia, federalism was imposed by international actors, while in Iraq the federal bargaining was flawed due to the absence of the Sunnis in the process and the continued violence, as well as due to the moderation and active participation of US representatives in the bargaining. However, the federal political system in Iraq is much more flexible than that of Bosnia, and the Iraqi constitution even leaves space for redrawing the boundaries between federal units and creating new regions. In this way, whilst federalism might be imposed in Iraq as well by the US administration, it has become part of the standard political discourse, and there are constant developments going on in the country to shape its future federal order.²² In Russia, federalism is flawed due to the presidential constitution of 1993 that was imposed on the federal units and not accepted in a number of them.²³ In Ethiopia, violent eruptions in a number of regions connected with secessionist claims, and territorial claims of the neighbouring states, underline the weakness of its system.

20 Ross, Cameron: ‘Federalism and Democratization in Russia’ in: *Communist and Post-Communist Studies*, Vol. 33, 2000, pp. 403–20, here p. 418.

21 International Crisis Group: *Ethiopia: Ethnic Federalism*, 2009, p. 1.

22 For some of the ongoing debates in Iraq, see: Visser, Reidar and Stansfield, Gareth (eds): *An Iraq of its Regions*, Hurst&Company: London 2007.

23 Ross, Cameron: ‘Russia’s Multinational Federation: From Constitutional to Contract Federalism and the ‘War of Laws and Sovereignties’’ in: Burgess, Michael and Pinder, John (eds): *Multinational Federations*, Routledge: London and New York 2007, pp. 108–26, here p. 112.

The comparison of the Bosnian federation to institutional designs in other countries is more difficult. None of the above mentioned countries has seen such a massive and long international presence and involvement in the adjustment of the federal system. We see, however, similar trends towards an institutionalisation of international administration in one of the world's youngest countries, namely Kosovo. With a presence of a UN civil administration and an EU-led mission that focuses on the establishment of the rule of law, we can see that international actors institutionalise their own participation in what would normally be considered the internal affairs of a country.²⁴

Having said this, the developments of a number of federations in terms of managing intra-state conflict can be compared to those observed in Bosnia. The Russian Federation and Ethiopia for example, also adjusted their federal systems in regards to centralisation and decentralisation. Russia became an extremely decentralised state until 1993 because the centre was weak, due to the conflict between the President and the Parliament. Consequently, in particular the ethnically defined republics gave themselves new constitutions with far-reaching autonomy, including citizenship and references to sovereignty, although only Chechnya declared itself independent.²⁵ After the introduction of the constitution in 1993, Russia developed stronger asymmetrical tendencies in its federal system due to Boris Yeltsin's "contract federalism," and the signing of a number of bilateral treaties between the President and the Executive of several federal subjects, which ensured further autonomy for these subjects.²⁶ However, since the Presidency of Vladimir Putin, one can observe the Russian Federation developing in the opposite direction, namely towards symmetry and centralisation. Cameron Ross argued that Putin developed Russia into 'a fully fledged authoritarian and unitary state.'²⁷ However, the federal system under Yeltsin was dominated by clientelism, extreme asymmetry and already existing undemocratic practices in the federal units. Consequently, Richard Sakwa points out that Putin's reforms of the federal system made it 'more structured, impartial, coherent and efficient.'²⁸ It remains to be seen if the Russian Federation can develop successfully without a clear appraisal of the values of democracy, human rights and liberalism.

In Ethiopia, the multinational coalition of the Ethiopian Peoples' Revolutionary Democratic Front took over power in 1991, and has developed the state into a progressively more authoritarian system, in which democratisation only takes place

24 See, for example: Hehir, Aidan (ed.): *Kosovo, Intervention and State-Building*, Routledge: London 2010.

25 Ross, Cameron: 'Russia's multinational federation', 2007, p. 111.

26 Ibid. p. 115.

27 Ross, Cameron: *Local Politics and Democratization in Russia*, Routledge: London and New York 2007, p. 26.

28 Sakwa, Richard: *Putin: Russia's Choice*, Routledge: London 2004, p. 235.

in the spheres that the ruling coalition allows. The 1993 Ethiopian constitution states in the preamble that

‘We, the Nations, Nationalities and Peoples of Ethiopia: Strongly committed, in full and free exercise of our right to self-determination, to building a political community founded on the rule of law and capable of ensuring a lasting peace, guaranteeing democratic order, and advancing our economic and social development.’²⁹

The reference to democracy and the rule of law was praised by the international community but the latest events in the country, in particular, the violent oppression of the political opposition during the 2005 electoral campaign, have demonstrated that the country is far from democratic consolidation, and remains centralised under the rule of a small minority that controls military and security forces.³⁰ Whilst the nine regions in Ethiopia enjoy some autonomy, major decisions are taken by the ruling elite that also controls the regional and local elites. Conservative estimates, furthermore, claim that since 1991, several thousand people have been killed in inter-ethnic violence, which demonstrates that the country is far from stable and peaceful.³¹ This fact also highlights another feature of new federal models. Very often they are challenged by autonomous groups and open violence breaks out. We have seen that the Bosnian federation was created after a war in which the Serb segment of the population (and the Croat segment) wanted to secede; in Russia the army needed to intervene twice in Chechnya, in Ethiopia violent conflict between different peoples and regions continues³² and Iraq is far from peaceful.

What this demonstrates is the need for a general consensus on a state and its federal nature. Only such a consensus in Bosnia, as well as in Iraq, Ethiopia, Russia, and also Cyprus will ensure stability and the willingness of all segments of society to accept and participate in the federal system. The foundation of a federal union on consensus, even after it has been imposed, will be the only solution to ensure the workability of the federation and its legitimacy in the eyes of its political elites and ordinary people.

International Actors, New Federations, and Managing intra-state Conflict in the Post-Cold War Era

The trend of internationalisation can be explained by the rising number of interventions by the international community, both through the UN and without a

29 Constitution of The Federal Democratic Republic of Ethiopia (1994), Preamble, see: <http://www.erta.gov.et/pdf/Constitution.pdf>

30 International Crisis Group: *Ethiopia: Ethnic Federalism*, 2009.

31 Abbink, Jon: ‘Ethnicity and Conflict Generation in Ethiopia: Some Problems and Prospects of Ethno-regional Federalism’ in: *Journal of Contemporary African Studies*, Vol. 24, 2006, pp. 389–413, here p. 408.

32 International Crisis Group: *Ethiopia: Ethnic Federalism*, 2009, pp. 24–5.

UN mandate, as in the case of Iraq. A solution to the more than 30-year long conflict in Cyprus was discussed along federal lines in the United Nations long before Kofi Annan published the famous Annan Report that failed to gain a majority in the Greek part of the Island in 2004.³³ The internationalisation of the federal bargaining can furthermore be observed in Iraq, where the current constitution is based on the interim-constitution that was imposed by the US–American administration shortly after the removal of Saddam Hussein.³⁴ Current debates about a federal solution to the slow state-building process in Afghanistan, and the suggestion of federalism as a solution to on-going regional conflicts in Libya and Syria underline the argument that there is a trend not only towards international state-building in general, but towards federal state-building through international actors in particular.

Furthermore, power-sharing has become a key strategy used to solve intra-state conflicts. Indeed, Donald Rothchild and Philip Roeder, two critics of power-sharing arrangements, have nevertheless argued that ‘power sharing has become the international community’s preferred remedy for building peace and democracy after civil wars.’³⁵ Indeed, Bosnia is a prime example in demonstrating how grand coalition and segmental autonomy have been used by external actors to promote democracy, peace and avoid partition.³⁶ There are many more examples of power-sharing as a tool of peace-building and democratisation in post-conflict societies. The former Yugoslav Republic of Macedonia witnessed violent conflict in 2001 between Albanian Separatists and Macedonian security forces. The Ohrid Framework Agreement, which was signed in August 2001, introduced a complex power-sharing system, which is more flexible than the provisions in Bosnia, yet also ensures Albanian participation in central decisions. The first Constitutional Framework for Kosovo in 2001, as well as the country’s constitution of 2008 also include mechanisms for minority representation in parliament and government, as well as provisions for autonomy of the different minorities in Kosovo.³⁷

33 Burgess, Michael: ‘What is to Be done? Bicomunalism, Federation and Confederation in Cyprus’ in: Burgess, Michael and Pinder, John (eds): *Multinational Federations*, Routledge: London and New York 2007, pp. 127–49.

34 Eklund, Karna et.al: ‘Negotiating a Federation for Iraq’ in: O’Leary, Brendan, McGarry, John and Salih, Khaled (eds): *The Future of Kurdistan in Iraq*, University of Pennsylvania Press: Philadelphia 2005, pp. 116–42.

35 Rothchild, Donald and Roeder, Philip: ‘Dilemmas of State-Building in Divided Societies’ in: Roeder, Philip and Rothchild, Donald (eds): *Sustainable Peace: Power and Democracy after Civil War*, Cornell University Press: Ithaca and London 2005, pp. 1–26, here quoted p. 5.

36 Hartzell, Caroline and Hoddie, Matthew: ‘Institutionalizing Peace: Power Sharing and Post-Civil War Conflict Management’ in: *American Journal of Political Science*, Vol. 47, No. 2, 2003, pp. 312–32.

37 For a comparison of Bosnia, Kosovo and Macedonia, see: Keil, Soeren: ‘Alter Wein in neuen Schläuchen? – Konkordanzdemokratie im Westlichen Balkan’, in: Kranenpohl, Uwe and Köppl, Stefan (eds): *Konkordanzdemokratie: Ein Demokratietyp der Vergangenheit?*, Nomos: Frankfurt am Main 2012, pp. 371–94.

International actors played a key role in the development and implementation of these power-sharing arrangements. The Ohrid Framework negotiations were moderated by the EU and NATO representatives, who also influenced the outcome. Since 2001, the EU has made a key element of its conditionality for Macedonia, that the provisions of the Framework Agreement are implemented properly. The Constitutional Framework for Kosovo was issued by the UN Special Representative in Kosovo in 2001, and its constitution of 2008 is heavily based on the provisions of the Ahtisaari Plan.³⁸ In fact, when comparing the power-sharing arrangements in Macedonia, Kosovo, and Bosnia with those in Northern Ireland (as a result of the Good Friday Agreement), and in Lebanon; it is possible to conclude that imposed forms of power-sharing are a main feature of conflict resolution in the post-Cold War era.³⁹ While federalism played no role in Northern Ireland and Lebanon, current debates about the federalisation of Macedonia demonstrate that there is an on-going discourse about different forms of decentralisation in the country. Furthermore, a solution to the continued crisis in Northern Kosovo will most likely involve a form of territorial autonomy/federalism.⁴⁰ Bosnia, Iraq and the Annan Plan for Cyprus are examples for the combination of power-sharing and territorial autonomy via federalism. It was argued in the introduction, as well as in the conclusion of this book that consociationalism and federalism should not be seen as exclusive theories in themselves, but should be seen as different sides of the same coin. The study of these two theories as mechanisms of peace-building and democratisation promises to widen our understanding of new models of federalism and federation in the post-Cold War era, and might help to contribute to a better understanding of possible solutions to violent conflicts in deeply divided societies. As this short survey has demonstrated, more comparative research promises further insights, and since state-failure and intra-state conflicts have become main security challenges of the early 21st century, it can be predicted that a better understanding of federalism, federation and power-sharing, as possible solutions to these challenges, might contribute to a more peaceful world, and more effective forms of institution-building and external intervention.

38 The Ahtisaari Plan was published in 2007 as a suggestion for a solution to Kosovo's status. It suggested that Kosovo would become independent from Serbia, but would remain under the supervision of the UN and the EU. It also contains a long list of minority rights and provisions to ensure the protection of the Serb Community in Kosovo. The Ahtisaari Plan was written within the Framework of the UN. See: United Nations Security Council: *Comprehensive Proposal for the Kosovo Status Settlement*, 26 March 2007, available at: http://www.unosek.org/docref/Comprehensive_proposal-english.pdf (accessed 15 February 2013).

39 Kerr, Michael: *Imposing Power-Sharing: Conflict and Coexistence in Northern Ireland and Lebanon*, Irish Academic Press: Sallins 2005.

40 International Crisis Group: *North Kosovo: Dual Sovereignty in Practice*, Europe Report No. 211, March 2011.

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