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Multinational Federalism in Bosnia and Herzegovina

PhD thesis in International Relations

Soeren Keil

May 2010

Abstract

Bosnia and Herzegovina offers the most remarkable and extensive example of international peace- and state- building in recent times.

This thesis will analyse the post-war political system of Bosnia and Herzegovina from the perspective of its federal features. By following the methodological distinction between federalism as an ideology and federation as a state, it will be argued that federalism is not an indigenous ideology of the Bosnian elites, but it was imposed on them by international actors, the results of the war and the circumstances surrounding the peace negotiations. None of the three Bosnian constituent peoples (Bosniaks, Serbs, and Croats) preferred a federal option in 1995. Furthermore, the thesis will demonstrate that as a consequence of this “imposed federalism,” the Bosnian parties in post-war Bosnia were not willing to identify with or even accept the new state, and this resulted in a lack of decision-making and political process in the immediate post-war period. Consequently, it was the international community through the Office of the High Representative that had to intervene and take over decision-making competences. Key decisions regarding constitutional reform, identity politics, security questions and fiscal federalism were implemented by the High Representative as a consequence. These decisions have impacted on the relationship between the federal units themselves and between the federal units and the central institutions and this is why Bosnia and Herzegovina can be characterised as an “internationally administrated federation.” Categorising Bosnia as a model of “imposed federalism” and “internationally administrated federation” contributes to the acknowledgment that we witness the rise and development of a new model of federalism and federation in Bosnia. The main challenge for the Bosnian model of federalism is that the Bosnian elites have to find a common definition of their state and its nature. The main challenge for the Bosnian federation is the reform and simplification of the political system to abolish discriminatory elements in the institutions and to make the system more flexible so that Bosnia is eventually able to integrate into European structures. The new model of federalism and federation that can be found in Bosnia has to become domesticated as its biggest challenge. However, other countries in the world have undergone similar developments to Bosnia, so the success of Bosnian federalism and federation is not only important for Bosnia and the international actors involved in the state-building and democratisation project, but also for a number of other countries in the world.

Preface

I became interested in the study of federalism in 2005. In 2006, I read an article about the slow state-building process in Bosnia and Herzegovina¹ in a German newspaper² and became interested in this highly complex and complicated country that has seen so much blood-shed in his recent history.

Since then however I have fallen in love with Bosnia and Herzegovina. I have travelled numerous times to the country and enjoyed my stay there every time. Bosnia and Herzegovina has become much more than the subject of a PhD degree, it truly has become a part of my life. I have many friends in Bosnia and was lucky to travel to all parts of Bosnia. I have spoken to many Bosnians about my research and they have shown deep interest in my studies. Surely not all of them agreed with my arguments, nevertheless they were open to listen and accepted my ideas.

This PhD thesis aims at shedding light into the complicated nature of Bosnian federalism and the Bosnian federation. It aims not, however at bringing an understanding to the country of Bosnia and Herzegovina or its history. While I discuss the history in Chapter Three, I do so under the considerations of Bosnia's federal tradition. Bosnia's federal development is part of a larger state-building and democratisation agenda. As will be argued in this thesis, this process is heavily driven by external actors and the key challenge for Bosnia and Herzegovina today is that its political elites have to find a compromise on the nature of the Bosnian state. Federalism is likely to be part of this answer as it ensures autonomy for Bosnian Serbs and Bosnian Croats while at the same time preserving Bosnia's unity, a main aim of Bosniaks. Therefore, we can see that federalism can be in everybody's interest.

I have attempted to be as objective as possible during my research and my argumentation in this thesis. I am aware of the fact that my personal background and my personal beliefs will influence my work but I have attempted to look at Bosnia and Herzegovina's federalism and federal system without any preference for any of the Bosnian parties or peoples. This does not mean that I legitimise the ethnic cleansing committed in the name of the Serbian Nation during the war in Bosnia in the early 1990s. Nevertheless, I believe that the Bosnian Serbs have a fair claim when they argue that the Republika Srpska (RS) protects them from dominance of the Bosniak-Croat alliance. It provides the Bosnian Serbs with autonomy but more importantly with security. If there is a threat or not is therefore not the main issue, but that the Bosnian Serbs perceive a threat to their national interest as part of Bosnia.

This PhD aims at contributing to our understanding of Bosnian federalism and federation in the light of the long-term state-building and democratisation project in Bosnia. Writing it has been a journey full of joy and adventure. I as a young academic have become much more conscious of

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

² Hornstein, Caroline: 'Kampf um das Leopardenfell' in: *Das Parlament*, Nr.41, 10th October 2005, also available at: <http://www.das-parlament.de/suche/suche.asp?f=%2Fdasparlament&q=bosnien> (accessed 4 October 2009).

federalism and federation and of Bosnia and Herzegovina. I am looking back at my research with a smile in my face and recognise that this project was not only important for Bosnia and Herzegovina, but also for me.

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Many people deserve respect and thanks for their part in supporting this project. There are too many to list them all, but I want to highlight some of them. Special thanks go to Prof. Michael Burgess and Dr. Florian Bieber, the supervisors of this research. Their guidance and help, their support and their friendship has helped me to develop the arguments and has massively contributed to my understanding of federalism and federation in Bosnia and Herzegovina. Furthermore, it is important to point out that it was Prof. Burgess who introduced me to the “ideology” of federalism back in 2005. I am very grateful for this as it has become my major research focus.

I would like to thank my parents Peter and Regina Keil and my brother Andreas, who have always supported me. In particular during the summer of 2009 it was the love and shelter they gave me that motivated me to complete this project. Additionally, I am also grateful to my aunt Monika Kiewald, who has been an emotional and financial supporter ever since I started studying for an undergraduate degree in 2002. My grandma Edith Kleinwächter has always ensured my well-being and her moral and financial support have helped me to develop into the person I am today. I also would like to thank my grandmother Elfriede Keil for although she died in 2007, she nevertheless contributed to my development through unlimited support and love.

There are also a number of friends that I want to thank for their support. In particular Meghaen Anderson, Zeynep Arkan, Dr. André Barrinha, Kathrin Bierwirth, Dr. Alexandre Christoyannopoulos, Govinda Clayton, Dr. Ismene Gizelis, Dr. Amelia Hadfield, Rosalind Holbrook, Angus Hombrado Martos, Natia Kalandarishvili-Mueller, Helmut Kurth, Sean Mueller, Carsten Richter, Elmira Satybaldieva, Seelay Srak, Georgios Triantafyllou, Tom Vandenkendelaere, Sebastian Wagner and Thomas Wagner. Also special thanks go to Marie-Louise Burgess and Marijana Trivunović, who have always supported me and took care of me when I was in doubt about my work. Important to mention and to thank is Jasmina Hostert, who has not only been a great friend and supporter of my research but also helped me with conducting the research in Bosnia because she volunteered to work as a translator. Claire Parker’s love and care has helped me to stay focused and motivated during the final edition of the thesis. Additionally, I am grateful to the team members of the Friedrich-Ebert Stiftung office in Sarajevo, who have hosted me and advised me on my work during the summer of 2008. I am also deeply indebted to my interview partners for their time and their openness.

Finally, it is important to point out that this work would not have been possible without the generous financial support of the Friedrich-Ebert-Stiftung and I am grateful to Marianne Braun for all her support during my undergraduate and postgraduate studies. I also received a tuition fee scholarship from the James-Madison Trust in London and I am very thankful to its chairperson Terry Bishop. While all these people influenced my thinking and my work in a number of ways, all mistakes naturally remain mine.

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Acronyms

BiH	Bosnia and Herzegovina
CoM	Council of Ministers
EC	European Community (after 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	Hrvatska demokratska zajednica Bosne i Hercegovine (Croatian Democratic Union of Bosnia and Herzegovina)
HR	High Representative for Bosnia and Herzegovina
ICTY	International Criminal Tribunal for the former Yugoslavia
IGC	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	Partija demokratskog progresa RS (Party of Democratic Progress)
PfP	Partnership for Peace
PM	Prime Minister
RS	Republika Srpska (Serb Republic)
SAA	Stabilisation and Association Agreement
SBiH	Stranka za Bosnu i Hercegovinu (Party of Bosnia and Herzegovina)
SDA	Stranka Demokratske Akcije (Party of Democratic Action)
SDP	Socijaldemokratska Partija Bosne i Hercegovine (Social Democratic Party of Bosnia and Herzegovina)
SDS	Srpska Demokratska Stranka (Serbian Democratic Party)
SFOR	Stabilisation Force for Bosnia and Herzegovina
SNSD	Savez nezavisnih socijaldemokrata (Alliance of Independent Social Democrats)
SU	Soviet Union
UNDP	United Nations Development Programme (here meant the programme for Bosnia)

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Introduction

The introductory chapter will help us to understand the reasons why it is important to study federalism in Bosnia and Herzegovina. It will explain the background of the thesis and some of its evolutionary features. Furthermore, we will highlight the methodology used in this thesis and explain in this context also some of the ontological considerations of the author. We have to underline 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 an political ideology and the normative basis of federation, which shall refer in this thesis to a federal state.³ This conceptual distinction between federalism and federation informs the thesis throughout. Therefore, in particular the concluding remarks of this thesis will refer to some comparative aspects of Bosnian federalism and federation. Finally, the introduction will discuss the structure of this thesis and the rationale behind it. In short, the thesis is structured so that the two first chapters introduce the reader to the different concepts used and the remaining three chapters apply these concepts to Bosnia and Herzegovina. The centrepiece of this PhD thesis is the concept of multinational federalism in Bosnia and Herzegovina as an example of a new model of federalism (imposed federalism, because federalism was not a voluntary choice of the Bosnian parties), as well as the study of Bosnia and Herzegovina as a new federal political system, characterised as an “internationally administrated federation,” because major changes and reforms of the Bosnian political system were imposed by international actors on the Bosnian political elite and the Bosnian people.

1.1 Introduction to the Topic

I have been studying federalism in Bosnia and Herzegovina since 2005. What started as an MA dissertation project has become a complex dissertation that aims to demonstrate that Bosnia and Herzegovina represents a new model of federalism and federation.

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 so this might be a long way. Bosnia managed to sign a Stabilisation and Association Agreement with the EU in 2008. Bosnia has seen important changes in its party system in the 2006 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, have contributed to a sense of insecurity in Bosnia and

³ 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. See for further detail Chapter Two.

Herzegovina, both among the leaders of the country and among its ordinary people. With Afghanistan and Iraq 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 ended up in the resignation of the Chairperson of the Council of Ministers and new turmoil among the different Bosnian leaders reminded internal actors that while Bosnia is at peace, it is far from being a stable self-sustaining country.⁴ Additionally, federalism in Bosnia and Herzegovina has become an often-debated topic in the framework of further talks on broad 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-Herzegovina from the perspective of its federal future. It is important, because almost 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 dissertation 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 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.⁵ While 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 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.

1.2 Methodological Concerns

The aim of this dissertation is twofold. On the one hand I want 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

⁴ 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*, 22nd October 2008, also available at: <http://www.guardian.co.uk/commentisfree/2008/oct/22/ashdown-holbrooke-bosnia-balkan-dayton> (accessed 4 October 2009).

⁵ A good summary of arguments in favour of peace-building as successful in Bosnia, but state-building and democratisation being much more controversial can be found in:

Gromes, Torsten: *Demokratisierung nach Bürgerkriegen: Das Beispiel Bosnien und Herzogowina*, Campus: Frankfurt 2007.

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. Having said this, there is on the other hand another side to this research project. 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.’⁶ 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.⁷ This is why we will refer to other countries when appropriate and we will apply methods of comparative politics in this PhD thesis.⁸ As the comparative discussion of new models of federalism and federation will demonstrate in the concluding chapter of this thesis, we can indeed 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. This however, opens the door to the question of the “representativeness” of Bosnia as a case study for new models of federalism and federation.⁹ 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 almost 15 years by the conclusion of this thesis. While there are lively discussions about federalism in many of the cases mentioned above and many more countries including Sri Lanka and Cyprus, only Bosnia, Russia, Ethiopia and Iraq can be considered as federal states that represent a new model. However, in none of these countries has federalism and the workings of the federation been influenced by international actors as much as it has been in Bosnia and Herzegovina. Therefore, it is important to highlight at this point of the methodological considerations that because international actors influenced federalism and federation in Bosnia neither the federal system nor the ideological construct of federalism can be considered as “independent variables” in this study. In fact, the demonstration of the massive changes within the Bosnian federal system will indeed be a major argument for Bosnia’s qualification as an “internationally administrated federation.” Instead, the long-term aim of democratisation and state-building by international actors must be considered as the “independent variable,” as the framework in which the federal discourse in Bosnia evolved and developed. To underline this issue it is important to highlight that Bosnia did not become a federal state because the Bosnian political elites thought this would be the best political organization to accommodate the multinational character of the country while still preserving its territorial integrity. In fact, the Bosnian leaders after the first free elections in

⁶ 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. 341-354, here quoted p. 342.

⁷ Ibid. p. 341.

⁸ Landman, Todd: *Issues and Methods in Comparative Politics*, 2nd edition, Routledge: London 2003, p.34.

⁹ On the issue of representativeness in case study selection see:

Seawright, Jason and Gerring, John: ‘Case Selection Techniques in Case Study Research’ in: *Political Research Quarterly*, Vol. 61, 2008, pp. 294-308, here p. 294.

1990 could not agree on territorial decentralisation, although this was the preferred organisational principle of the Bosnian Croats and the Bosnian Serbs. Instead, they installed a unitary system and elite- power-sharing in the central state institutions. However, this was also before Bosnia declared its independence from Yugoslavia on the one side and a three and a half year long war changed the Bosnian population distribution massively on the other side. Nevertheless, even during the Dayton negotiations there was no Bosnian party that particularly favoured a federal state organisation. As will be demonstrated in Chapter Five, it was the international community and in particular the USA 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 and the introduction of historically and economically relevant regions within a decentralised unitary system.

The categories used to describe Bosnian federalism as “imposed” and the Bosnian federation as “internationally administrated” 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 that 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.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. While 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 so far 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 organization and its constitutional character. Federalism is a key feature of the Bosnian political system and its historical origins, its normative background and its practical application need explanation. This is what will be attempted in this PhD thesis. Furthermore, there has developed a lively discourse about the nature of Bosnian federalism among the leading elites. In fact, competing versions of federalism can be identified and it again needs to be examined why this is the case and what consequences this has for the state and its future development.

Finally, some ontological considerations are important to understand the nature of this research. Marsh and Stoker define ontology as the nature of being, asking the question if there exists a

¹⁰ See the commentaries in the special issue of *Federations* ‘What’s new in federalism worldwide- special issue on Afghanistan’ October 2001, available at: <http://www.institute-for-afghan-studies.org/AFGHAN%20CONFLICT/Federalism/Federations%20Magazine%2010-26-01.pdf> (accessed 9 October 2009).

real world independent of our knowledge.¹¹ Colin Hay adds, that being must be divided between the two questions 'What is' and 'What exists.'¹² The danger for a researcher is that he will find what he is looking for if he only designs his research in the right way. To understand the ontology applied in this research, we need to discuss the three main research methods used in this thesis. The main research method applied throughout this dissertation 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 us to understand Bosnia and Herzegovina as a federal political system. Therefore, 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. Secondly, Chapter Four discusses the constitutional features of the Bosnian federation. The research method applied here is constitutional analysis, again in the light of the federal elements within the constitutional order. Finally, Chapter Five discusses extensively the current debates about federalism in Bosnia and Herzegovina. To understand these debates I held a number of elite interviews with government and party representatives in Sarajevo, Banja Luka and Mostar between July and September 2008.¹³

While 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 defining Bosnia and Herzegovina as a federal country.¹⁴ Therefore, the analysis of this state is based on the discussion of the federal features of the Bosnian Constitution. However, whenever I discuss federalism in Bosnia as a normative ideology that focuses on self-rule and shared-rule, I cannot claim absolute objectivity and I am fully aware of this fact. But, this does not mean that this thesis itself as a discussion of federalism and federation cannot claim academic objectivity and the high standards required for independent research. I do claim all of the above; however I want to bring it to the attention of the reader that my own personal views on federalism, my upbringing in a federal country, my experiences in Bosnia and Herzegovina, and my intellectual development over the last few years have had an impact on my research. Nevertheless, I have attempted to underline all my arguments with sufficient support from other social scientists in the

¹¹ Marsh, David and Stoker, Gerry (Eds): *Theory and Methods in Political Science*, 2nd edition, Macmillan: Basingstoke, 2002, p. 18.

¹² Hay, Colin: *Political Analysis*, Palgrave: Basingstoke 2002, p. 61- 62.

¹³ The majority of interviews were held in English and German, however some were also held in the local language with a translator.

¹⁴ 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.

field, or where originality is claimed, I have attempted through logical reasoning to bring it to the understanding of the reader why we can conclude one thing or have to dismiss another. There is no need to go into further theoretical discussions in this part of the thesis, as Chapters One and Two will discuss in detail the theoretical framework applied throughout this piece of work.

1.3 Structure of the Thesis

The thesis starts with two theoretical chapters. The first of these discusses the terms “Democracy, federalism and nationalism” and their importance in the context of Bosnia and Herzegovina. It might be worth highlighting here that this chapter discusses the existence of a “Socialist Tradition of Federalism” by discussing the conceptual relationship of socialism, nationalism and federalism as well as the use of federalism in Yugoslavia and the Soviet Union. This Socialist Tradition will play a key role in the understanding of the Bosnian federation and the current debates about federalism in Bosnia and Herzegovina, and we will refer back and forth to it in this thesis. The Second Chapter relates these terms to each other within a multinational state by discussing the theoretical issues involved in “Multinational federalism.” As will be shown, there is no clear definition of the term multinational federalism, although we do have a common understanding of what a multinational federation is. However, even if we limit multinational federalism to a mere descriptive label, it can still tell us something about the nature of a state. It will characterise the state as federal in its organisation and multinational in its composition and therefore will also identify the use of federalism as a tool to manage the ethnic and national diversity.

After laying out the theoretical framework that is applied in this thesis, Chapter Three 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, we will demonstrate 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.

Consequently, Chapter Four 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 among the centre and the entities or among 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 administrated federation. It is also identified that the key challenge for international administrators and diplomats as well as Bosnians must be the move towards full Bosnian ownership over the future direction of the Bosnian state. In particular Bosnia’s integration into

European structures will require equipped and independent Bosnian politicians to negotiate on a fair basis with the EU. However, the move towards Bosnian ownership requires far-reaching constitutional changes to make decision-making easier and give the different national groups the securities they need to continue their peaceful coexistence and cooperation within a united Bosnia and Herzegovina. Therefore, constitutional reform should be the last benchmark for the international administrators in Bosnia, before the Bosnians should take over under the guidance of the EU.

Finally, Chapter Five 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 while changes have been indeed very often 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. Therefore, we can conclude that there is the development of a federal political culture and a discourse on the subject among the Bosnian peoples. These discussions, mainly in the form of debates about the future constitutional nature of Bosnia, should be guided by the EU and should enable the Bosnians of all nationalities to find a compromise on the nature and the organisation of Bosnia and Herzegovina as a state. 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. While Dayton was supposed to be an interim Constitution in the aftermath of the war, it has now influenced policy in Bosnia for more than a decade. 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. If the EU encourages this process, it can also send signals of security and protection to the different Bosnian peoples. Besides dissolution of the state, the negotiations should not exclude anything and if the Bosnian Serbs insist on the future existence of the Republika Srpska then it shall be so. However, then they will have to compromise on other areas such as the power of the entities or the distribution of fiscal resources. What must be clear is that Bosnia will join the EU eventually and that the current entity structure is not a reason to deny Bosnia’s entry. Therefore, there is no reason to insist on the abolition of the entities. However, certain provisions within the Bosnian constitutional framework and daily political practices will need to be reformed before Bosnia can join. But most importantly, the Bosnians will need to prove that their state is based on a consensus of its entire people. The EU will not allow the admission of a second Cyprus.

The conclusion will summarise the concepts of “internationally administrated 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 once again, that we can indeed talk about the evolution of new models of federalism and federation. Furthermore, the comparison to

Iraq will suggest that imposed federalism and administrated federation might become very important in the future, since international interventions and international state-building projects will probably occur more often in the 21st century.

2. Democracy, Federalism and Nationalism

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

Our analysis will show that all three theories coexist in the contrast between a normative (political) theory and a practical empirical reality. We will see however, how this normative and empirical contrast influences the theories and their practical application. Furthermore, all three concepts have their origin in Western political thought. We shall see in addition that democracy and federalism are rather new concepts in the Western Balkans region,¹⁵ while nationalism has been a dominant feature of the development of the Western Balkans since the 19th century.

2.1 Democracy

Defining democracy has become a tough task. Not only do definitions differ between empirical democracy and normative democracy, but within the two terms many authors emphasise different issues as key parts of an inclusive definition. We shall therefore start with a minimalist definition and then build a proper definition of democracy, which we will use throughout this document. In the second step we will have to discuss the ideas of democracy promotion and democratisation, since Bosnia- Herzegovina only became a democracy in 1991 and the Dayton Constitution of 1995 ensured a high degree of international involvement in the democratic decision making processes of the country. Finally, we have to ask ourselves, how familiar is the Balkan region with the concept of democracy? As we shall see, democracy is a relatively recent phenomenon that started to spread only after the dissolution of Yugoslavia. Authors often argue that the international environment is very important for the smooth transition to democracy. As we shall see, none of Bosnia's neighbours are considered to be "first class" democracies, although we can see a cultural clash between the former border of the Ottoman Empire and the Austro- Hungarian Empire, with Slovenia and Croatia being nowadays the most advanced democracies of former Yugoslavia.

2.1.1 Democracy in the Western Political Tradition

The Oxford English Dictionary defines democracy as a 'government by the people; that form of government in which sovereign power resides in the people as a whole, and is exercised either directly

¹⁵ The region of the Western Balkans usually refers to those successor states of Yugoslavia that have not joined the European Union as of 2007 (Croatia, Bosnia and Herzegovina, Serbia, Montenegro, Macedonia and Kosovo) and additionally Albania is included in this group of countries.

by them [...] or by officers elected by them. In modern use [it is S.K.] often more vaguely [characterised as S.K.] denoting a social state in which all have equal rights, without hereditary or arbitrary differences of rank and privilege.¹⁶ This definition states key issues of a modern democracy:

1. Rule by the people, who are the holder of sovereignty
2. Representative democracy as a form of government in which all people elect their representatives
3. A social state
4. Equal rights and equality

However, this definition does not answer all of the core questions about the concept of democracy. While some authors argue that the democratic tradition of Europe dates back to the old Greek cities and the Roman Republic,¹⁷ we shall see that modern democracy is a continuously developing concept going back to the American and French Revolutions in the late 18th century as well as the influence of the authors of the Enlightenment.¹⁸ Wolfgang Merkel argues an embedded democracy can be described by five core characteristics:¹⁹

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 brings us closer to a substantial definition of democracy. Merkel offers a much more inclusive definition. The limited definition of democracy as free and fair elections will neither allow an in- depth analysis of a democratic system, nor will it help us much when we will look at the relationships between federalism, nationalism and democracy. Having said this, we can still argue that the core of democracy is the holding of regular democratic (therefore free and fair) elections, because only those elections ensure that the political authority of the representatives is legitimate, since

¹⁶ 'Democracy' in: *Oxford English Dictionary* here used: Online version through the Library of the University of Kent:

http://dictionary.oed.com.chain.kent.ac.uk/cgi/entry/50060570?single=1&query_type=word&queryword=democracy&first=1&max_to_show=10, (seen 11. October 2007, printout in possession of the author).

¹⁷ For a short but compact discussion see: Vorländer, Hans: 'Grundzüge der athenischen Demokratie' in: Bundeszentrale für Politische Bildung (Ed.): *Demokratie*, Informationen zur politischen Bildung 284, Bundeszentrale für Politische Bildung: Bonn 2004, pp. 6-12, as well as Vorländer, Hans: 'Prinzipien republikanischen Denkens' in: Bundeszentrale für Politische Bildung (Ed.): *Demokratie*, Informationen zur politischen Bildung 284, Bundeszentrale für Politische Bildung: Bonn 2004, pp. 13-15.

¹⁸ Vorländer, Hans: *Demokratie (Geschichte, Formen, Theorien)*, Bundeszentrale für Politische Bildung: Bonn 2003, pp. 49-75.

¹⁹ Merkel, Wolfgang: 'Embedded and Defective Democracies' in: *Democratization*, Vol. 11, No. 5, December 2004, pp 33-58 here p.36.

‘political authority can only be called legitimate, if the people are the holder of sovereignty.’²⁰ 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.²¹

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 civil and political rights such as the freedom of speech and the freedom of information must be constitutionally guaranteed and interference by politicians must be prohibited. The tradition of those fundamental natural rights goes back to the writers of the Enlightenment who argued that every person is born with natural rights such as freedom and therefore the state has no right to take these from them. Furthermore, the state has to protect those rights as this is the reason why the individuals sign the social contract in the first place.²² 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 the elected representatives from abusing their 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.’²³ Horizontal accountability is also connected to the rule of law. Merkel defines the rule of law as ‘the principle that the state is bound to uphold laws effectively and to act according to clearly defined prerogatives.’²⁴ Again, those constitutional rights and the obligation of a state to guarantee those show the influence of the Enlightenment and the liberal tradition of the 19th century.²⁵

Finally, the monopoly of power must lie in the hands of the democratic 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. Wolfgang Merkel calls political systems that cannot guarantee the monopoly of the democratic elected government ‘domain democracies.’²⁶ He lists Turkey as an example, where the military has still a big influence on decision-making in particular in foreign policy decisions. What Merkel offers with this definition is a compact analysis of the term as an empirical issue. However, as Vorländer argues, ‘democracy [is] never only

²⁰ Vorländer Hans: *Demokratie*, 2003, p. 111 (translation by KEIL).

All other translations from German into English, if not explicitly highlighted, by KEIL.

²¹ Birch, Anthony H.: *The Concepts and Theories of Modern Democracy*, 2nd edition, Routledge: London and New York 1995, pp. 76-77.

²² See for example the explanations of John Locke: Locke, John: *Two Treaties of Government*, 3rd edition Cambridge University Press: Cambridge 1988, §87, §88 and §134 especially.

²³ Manent, Pierre: ‘Modern Democracy as a system of separations’ in: *Journal of Democracy*, Vol. 14, No. 1, January 2003, pp. 114-125, here pp. 114-116.

²⁴ Merkel, Wolfgang: ‘Embedded and Defective Democracies’, 2004, p. 39.

²⁵ Ibid. p. 39.

²⁶ Ibid. p. 49.

an empirical description, but always describes a normative ideal as well.²⁷ He continues his argumentation by stating that every democracy should ideally fulfil six criteria which are: a small community where people know each other; cultural homogeneity among the people; social and economic equality; positive behaviour of the people, stable political institutions and a strong and active civil society.²⁸ Those conditions however, only apply to the ideal case and are more philosophical than practical. Nevertheless, especially the importance of the behaviour of the people and their attitude towards democracy is worth to have another look at.

As Steffen Kailitz has shown in his description of democracy, a key issue of modern democracies is the management of the welfare state.²⁹ Kailitz presents with this argument a discussion that can easily be described as one of the core debates within democracy theory, namely if a definition of democracy must include the dimension of a social / welfare system. The arguments for and against the inclusion of a welfare state in the democracy debate are clear-cut. Authors such as Merkel argue that ‘a well-developed and prospering economy is not *the condition sine qua non* for a democracy.’³⁰ However, Merkel acknowledges the importance of social equality, since equality is one of the important descriptive terms of a democracy.³¹ On the other hand, Claus Offe represents those authors who argue for the importance of a welfare state in the definition of a democracy. In his opinion, modern democracies can only continue to gain support from their citizens if they manage to close the gap between poor and rich and answer to the problems of free market economy and capitalism.³²

The question arising out of the debate about the “social” character of a democracy is, if citizens have to believe in democracy, or as Mark Warren puts it, what the relationship between democracy and trust is.³³ This theoretical question arises out of the fact that although the liberal tradition of democracy promotes a high form of distrust of the people in government,³⁴ and therefore argues for a separation of power and a limitation of power by regular elections, it nevertheless needs the support of the people. As Vorländer argues, ‘citizens have to accept democracy and they have to trust its institutions.’³⁵ Indeed, as we shall see later in the relationship between federalism and democracy, there needs to be some form of trust in the elected government, in democratic decision-making procedures and in the consensus building principle as part of civilian conflict-resolution. However, this form of trust does not exclude the existence of the “citizen” that questions its

²⁷ Vorländer Hans: *Demokratie*, 2003, p. 9.

²⁸ Ibid. pp. 94-97.

²⁹ Kailitz, Steffen: ‘Staatsformen im 20. Jahrhundert II: Demokratische System’ in: Gallus, Alexander and Jesse, Eckhard (Ed.): *Staatsformen (Von der Antike bis zur Gegenwart)*, 2nd edition, Bundeszentrale für politische Bildung: Bonn 2007, pp. 281-328, here p. 302.

³⁰ Merkel, Wolfgang: ‘Embedded and Defective Democracies’, 2004, p. 44. (Italics in the original version)

³¹ Ibid. p. 45.

³² Offe, Claus: ‘Bewährungsproben. Über einige Beweislasten bei der Verteidigung der liberalen Demokratie’ in: Weidenfeld, Werner (Ed.): *Demokratie am Wendepunkt. Die demokratische Frage als Projekt des 21. Jahrhunderts*, Siedler Publishers: Berlin 1996, pp. 141-157 here pp. 152-153.

³³ Warren, Mark E. (Ed.): *Democracy and Trust*, Cambridge University Press: Cambridge 1999.

³⁴ Hardin, Russell: ‘Do we want trust in government?’ in: Warren, Mark E. (Ed.): *Democracy and Trust*, Cambridge University Press: Cambridge 1999, pp. 22-41, here p. 23.

³⁵ Vorländer Hans: *Demokratie*, 2003, p. 101.

government. The opposite is the case- every active democratic government needs the support and the scrutiny of an active civil society, which questions the governments and asks for improvements and also scrutinises the power limitations of the government.

As we have seen, a definition of democracy needs to be rather compact and include a wide- range of qualities, instead of the limitation to an electoral democracy. We can summarise the analysis 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*.'³⁶ Therefore, citizens must trust their elected representatives in the way that those representatives will, to some degree fulfil the promises of the election campaigns. Even more importantly those representatives will limit themselves in the power they were given by the people and they will be willing to leave their offices again, when the citizens do not support them anymore. Those forms of trust can be supported by an active civil society that monitors the performance of democratic institutions thus the civil society is building trust by controlling the institutions.

2.1.2 Democratisation and Democracy Promotion

As it is one aim of this thesis to analyse the state of democracy in Bosnia and Herzegovina, we must have a 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.'³⁷ This transition has different forms; Pridham³⁸ as well as Claus Offe³⁹ 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 is 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*. Taking these transitions into account, it is clear that democratisation is a process that involves different areas such as civil society, political rights, the rule of law and the economy.⁴⁰ In the Bosnian context these transformations overlap with the transition from war to peace, from membership in Yugoslavia to independent statehood and from

³⁶ 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)

³⁷ Pridham, Geoffrey: *The Dynamics of Democratization*, Continuum: London and New York 2000, p. 16.

³⁸ Ibid. p. 17.

³⁹ Offe, Claus: *Varieties of Transition (The East European and the East German Experience)*, MIT Press: Cambridge (Mass.) 1997, p. 32.

⁴⁰ Pridham, Geoffrey: *The Dynamics of Democratization*, 2000, p.21.

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 of national identity. Because this form of transition has not taken place in Bosnia in a way that there has been a development towards a *Bosnian identity* but towards *multiple identities within Bosnia*, the establishment of a democratic regime has been further complicated.

There is no clear agreement in the literature on democratisation such as what levels of the process can be described as key in the development of a liberal democracy. 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.⁴¹ 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 the 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.⁴² Having said this, we can see the distinction between both approaches. While Linz and Stepan focus on the outcome of the transition and therefore look at areas which have been earlier described as key points of a functional democracy, Pridham sees democratisation and its different levels as a process, focusing on the historical legacies, the actual transition, the international dimension and the outcome of the transition. However, both analysis' see democratisation as a very 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.⁴³ Merkel explains precisely the core defects certain democracies can show. He distinguishes between four categories of defective democracies:⁴⁴

1. Exclusive Democracies
2. Domain Democracies
3. Illiberal Democracies
4. Delegative Democracies

Merkel includes his definition of an "embedded democracy" to explain the faults in the four types. Exclusive democracy refers thereby to the exclusion of a wide range of the population from elections and the participation in the political institutions.⁴⁵ Serbia and Croatia after the end of Socialist Yugoslavia are examples of this form of democracy, since both countries were ruled by semi-authoritarian regimes until their democratic transitions in 2000. Domain democracy describes the

⁴¹ 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.

⁴² Pridham, Geoffrey: *The Dynamics of Democratization*, 2000, pp.26-27.

⁴³ Merkel, Wolfgang: 'Embedded and Defective Democracies', 2004, pp. 48-49.

⁴⁴ Ibid. pp. 49-50.

⁴⁵ Ibid. p. 49.

influence of “outsiders” on the decision making in the democratic institutions.⁴⁶ Outsiders can be the military, big international cooperations, militia and with respect to the Bosnian democracy we also have to include representatives of the international community in this category. An illiberal democracy exists, when the decision makers are not bound to constitutional principles. Illiberal democracies often show a weak or non- existing rule of law.⁴⁷ Illiberal democracies furthermore do not guarantee fundamental human and civic rights of their citizens.⁴⁸ Finally, delegative democracy refers to a break in the separation and control of the powers, mainly the dominance of the executive power over the judiciary and the legislative power.⁴⁹ This concept of “defective democracy” helps us to understand the problems of the democratisation process. Democratisation is a process driven by different actors, who have different interests. The civil society will focus on the importance of human and civil rights; political parties will focus on the establishment of free and fair elections; trade unions will work for the establishment of a social market economy; representatives of the economy will focus on the economic transition; the old regime, if involved in the process, will focus on a smooth transition without the breakdown of the state; and the international community will monitor these transitions, intervening in some areas and might even slow down the process of democratisation by getting too involved. Success and failure of democratisation processes are hard to identify, and are always country and transition specific. It can likely be the case that the parties that argued for free and fair elections once in power establish an electoral rule that favours the party in power. Strong civil society movements can break down after the main goal, namely the breakdown of the old regime, is achieved as can be seen in the Polish case with the breakdown of Solidarność.

What can be said about democratisation processes is that they are long, costly and involve all segments of society. No elite can establish a democracy without the support of the people. Even the best system of checks and balances will not work, if the actors do not accept the rules of democratic decision- making and the separation and limitation of powers. Furthermore, 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 power- sharing has to take the former enemies into account, it must offer a forum of reconciliation and the transformation must include the restructuring of the country after the war (including new infrastructure, demilitarisation measures, rebuilding destroyed buildings, dealing with refugees and internally displaced persons etc.)⁵⁰ We shall look at the establishment of democratic rule and post-war reconciliation in Bosnia in Chapters Five and Six, when discussing Bosnia’s federal development since the Dayton Peace Agreement.

⁴⁶ Ibid. p. 49.

⁴⁷ Ibid. p. 49.

⁴⁸ Ibid. p. 49.

⁴⁹ Ibid. p. 50.

⁵⁰ Compare for example: Schmitter, Marc F.: ‘Building Democracy after Conflict: Introduction’, in: *Journal of Democracy*, Vol. 16, No.1, January 2005, pp. 5-7.

Finally, the international environment plays a very important role in the establishment of a democratic regime in a country. Julia Buxton has summarised the main reasons for the support of democratisation by the international community.⁵¹ She argues that there are four key reasons for the promotion of democracy: First the liberal peace thesis, which states that democracies will not go to war with each other. Therefore, democracy promotion becomes part of an international security strategy. Second, the fight for human rights and the fight against their abuses can be a dimension for democracy promotion. In fact, this is the core idea of democracy promotion which leads directly to the discussion within international law, whether people have a right to democracy.⁵² Furthermore, Buxton presents the fight against terrorism as a reason for democracy promotion. The intervention in Afghanistan and Iraq can be seen as the best examples for this, as both interventions had their reasoning in the fight against terrorism and established more or less democratic regimes in the countries. Finally, Buxton argues that democracy is often promoted to stop war either between states or civil wars within states. She argues that 'democracy promotion has become an integral element of peace- building, with the construction of democratic institutions and practises serving as a key instrument of conflict management, reduction and resolution.'⁵³ There are obviously more reasons for democracy promotion, such as the importance of stability in different areas of the world and economic security. However, Buxton draws a rather negative picture of the effectiveness of democracy promotion; mainly questioning its effectiveness and legitimacy.⁵⁴ Taking the reasons and the challenges of democracy promotion into account, it is important to discuss how democracy effectively works. Diane Ethier distinguishes between three types of democracy promotion.⁵⁵ Firstly, *control* can be a form of democracy promotion when a foreign power or a coalition of states directly intervenes in a country and establishes a democratic form of government. *Conditionality* is another form of democracy promotion, whereby a country is motivated to initiate democratic reform by offering a benefit once the reforms have been initiated. Conditionality can be combined with punishment and the advantage of democratic reforms can be achieved rather in the middle and long term than in short-term. EU conditionality towards candidate and potential candidate countries includes elements of democracy promotion since democratic governance is one of the Copenhagen Criteria for membership in the Union.⁵⁶ Finally, Ethier describes *incentives* as a form of democracy promotion whereby a country receives a gift for democratic reforms. Those gifts are usually given immediately and the

⁵¹ Buxton, Julia: 'Securing Democracy in complex Environments' in: *Democratization*, Vol. 13, No. 5, December 2006, pp. 709- 723, here p. 710.

⁵² Franck, Thomas: 'The Emerging Right to Democratic Governance' in: *American Journal of International Law*, Vol.86, January 1992, pp. 46-91.

⁵³ Buxton, Julia: 'Securing Democracy in complex Environments', 2006, p. 710.

⁵⁴ *Ibid.* p. 711.

⁵⁵ Ethier, Diane: 'Is Democracy Promotion Effective? Comparing Conditionality and Incentives', in: *Democratization*, Vol. 10, No. 1, Spring 2003, pp. 99-120, here p. 100.

⁵⁶ The Copenhagen Criteria outline the conditions a country has to fulfil before it can become a member state of the EU. These conditions are to be a liberal democracy, to have a functioning market economy and to be able to accept and implement the EU's acquis, the legal norms of the Union.

possibilities for punishments of a failed reform are very limited. The development programmes of the World Bank can be seen as an example of this category.

After analysing the types of democracy promotion, its origins and challenges, we must ask ourselves how effective can democracy promotion really be? We will see that in the case of Bosnia it is only conditionality that guarantees democratic reforms. This demonstrates that democracy promotion has limits on two ends of the scale. On the one side it is problematic, because countries might not actually go through a process of democratisation, but only fulfil short-term goals in order to see light at the end of the tunnel. On the other side, democracy promotion is only effective, if the forces within a country are willing to take the international support as a chance and as a helping hand in their long road towards embedded democracy. Too much involvement by the international community can lead to dependency and too little involvement can easily lead to a defective democracy. However, the right balance between local ownership and democratisation assistance is the key to a successful establishment of a democratic form of government.

2.1.3 Democracy and the Western Balkans

It is important to realise that democracy is a rather new concept for the countries of the Western Balkans. It was only at the beginning of the 1980s and later combined with the dissolution of Yugoslavia, that the countries in the region began the path towards liberal democratic governance. The First Yugoslavia was considered a constitutional monarchy and included free elections and some decision-making power for the Yugoslav parliament. Nevertheless, the role of the monarch and the Serbian parties were dominant in the political system, and in particular the growing conflict between Serbian and Croatian interests in the First Yugoslavia and the establishment of a Royal dictatorship in 1929 meant that there was never a complete application of democratic principles and decision-making.⁵⁷

Following the analyses of the three different transitions during democratisation given earlier by Pridham and Offe, 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 modern democracy with a multiparty system
2. The transition from communist economic policies towards market economy
3. The transition towards national identity, the inclusion of minorities and mechanisms for an inclusive citizenship

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

⁵⁷ For more on Bosnia-Herzegovina's politics during the First Yugoslavia see Chapter Three.

4. The transition from war to peace
5. The transition from a federal Yugoslavia to an independent statehood that has never existed before for Bosnia

While the first three transitions follow the pattern discussed above, and will be assessed later, it is necessary to have a look at the transition from war to peace and from a federal unit to an independent country.

The transition from war to peace requires special mechanisms, which range from the involvement of the international community to a reconstruction of the destroyed infrastructure, from refugee return to a process of reconciliation. Focusing our analysis on Bosnia, we will see later that this transition is far from being finished. In fact, the memories of the war between 1992 and 1995, combined with the limited return of refugees and the unsatisfactory prosecution of key military and political leaders are still obstacles in the process of reconciliation. Furthermore, Bosnia only became an independent country in 1992.

The development from a one party system to a multiparty system in Yugoslavia had its origin in Slovenia. The “Slovenian Spring” marked a period in the 1980s that was symbolised by the toleration of alternative groups, including non- governmental organisations and different political parties.⁵⁸ Combined with Slovenian liberalisation is the rise of Slobodan Milosević as the leader of League of Communists of Serbia and his centralisation measures in the second half of the 1980s. As Silber and Little argue, it was the conflict between Serbian centralisation of the Yugoslav federation and the Slovenian and Croatian desire for decentralisation and transformation of the federation into a confederation that laid the foundation of the conflict, ending in the dissolution of Yugoslavia.⁵⁹ Without going too deep into the process of Yugoslav disintegration, it is worth noting that two key developments surrounded democratisation in the Western Balkans: Firstly, it was socialist elites that started the reform process in Slovenia, Croatia and later to a lesser extent also in Bosnia. Secondly, the democratisation process in Slovenia and later in Croatia in 1989 has been combined with the dominance of nationalist polarisation on two sides, the Serbian / Yugoslav side and the Slovenian and Croatian side. Noel Malcom describes this revoking of nationalist sentiments on the example of the revoking of the 2nd World War memory and the linkage of the Croats with the “Ustaše” (The Croatian Fascists, who support Nazi- Germany) and the counter development of strong Croatian nationalist feelings.⁶⁰ The first multiparty elections in Slovenia, Croatia and later in Bosnia- Herzegovina were consequently won by nationalist parties. However, only in Slovenia did the government and the opposition accept democratic rules of the game and established a liberal democracy. Croatia and Bosnia were governed after the elections by nationalists that controlled the institutions, the media and

⁵⁸ Silber, Laura and Little, Alan: *The Death of Yugoslavia*, revised edition, Penguin Books and BBC Books: London 1996, p. 46.

⁵⁹ Ibid. p. 49.

⁶⁰ Malcom, Noel: *Bosnia, a short history*, PanBooks: Basingstoke and Oxford, 2002, p. 214.

the military. As Jean Grugel has argued very persuasively, because nationalists continued to stay in power in Croatia, Bosnia and Serbia 'nationalism [became] a vehicle for policies of exclusion.'⁶¹ It was only in 1999/2000 with the death of Franjo Tudjman and the defeat of his HDZ in the following elections that Croatia took the step from a semi-authoritarian regime towards full democracy. The following democratic government started to cooperate with the international organisations such as the Office of the High Representative in Bosnia and the International Tribunal for the Former Yugoslavia (ICTY) in The Hague. This opened the way for discussions about a Croatian membership in the European Union. In Serbia, President Milosević was defeated in the elections in 2000 after Serbia had become completely isolated internationally as a consequence of the Kosovo war the previous year. However, until today Serbia's democracy is weak and the democratic control of parts of the military, secret service and police is still in parts not established. However, since 2000 Serbia has gone through a remarkable process of democratic reforms and has also advanced on its way to membership in the EU. With the independence of Kosovo in 2008 a possible new challenge for Serbia's democracy has risen, although in the first post-Kosovo independence elections in 2008 the Serbian people voted mainly for pro-Western parties instead of nationalists. For now at least it seems as the people of Serbia prefer their country's integration into European structures rather than isolation and return to nationalism. As is the case with Bosnia and Croatia, it is the potential membership in the EU that acts as the key motivation for politicians in Serbia to implement democratic reforms and orientate towards European standards. Democratisation in the former Yugoslavia is therefore linked to the mobilisation of contrasting nationalisms,⁶² war and the dissolution of the country.⁶³ It was the lack of commitment to the common state, which resulted on the one side in the Serbian demand for centralisation measures and domination attempts inside the federation. On the other side, because of the dissolution and disintegration of the Warsaw Pact and the new international position of Yugoslavia the option for independence became more preferable for some Republics.⁶⁴ The crisis in Yugoslavia in the second half of the 1980s saw the contrast between the liberalisation of the socialist party of Slovenia and their demand for further decentralisation of the state and the establishment of stricter party rule and demands for re-centralisation in Serbia.⁶⁵ The trigger for conflict between these different developments was the conflict over Kosovo, which saw a number of violent protests from 1980 onwards (and even before). As a consequence of these unrests, Milosević discovered the potential of national mobilisation and forced the Kosovan party leadership to resign to reappoint his allies for the

⁶¹ Grugel, Jean: *Democratization*, Palgrave: London 2002

⁶² However, nationalist rhetoric existed also in Socialist Yugoslavia, the Croatian Spring and the protests in Kosovo in 1981 are only two examples. It can be argued that as long as socialism and the commitment to the federation existed, these outbursts could be controlled. However, when the commitment to the state became weaker and weaker and the perspective of independence became actually a real option, those nationalisms could not be controlled anymore.

⁶³ See on this the brilliant discussion in: Bunce, Valerie: *Subversive Institutions (The Design and the Destruction of Socialism and the State)*, Cambridge University Press: Cambridge and New York 1999

⁶⁴ Malcom, Noel: *Bosnia, a short history*, 2002, p. 214.

⁶⁵ Bunce, Valerie: *Subversive Institutions*, 1999, pp. 77-101.

major positions. The same happened in Vojvodina and Montenegro and this shifted the internal balance in Yugoslavia. No decisions could be taken at this without the agreement of Milošević, since he had control over four of the eight federal units.

If nationalism, independence and the perspective of the membership in the European Community have been the reasons for the democratisation of the republics of former Yugoslavia and the followed dissolution of this state, we must ask ourselves now, where are the Western Balkans countries today?

If we analyse the situation of democracy in the countries of former Yugoslavia today, we see that 'in the course of the last decade, democracy and market economy have been consolidating in Southeastern Europe.'⁶⁶ Indeed, all countries of the area regularly hold free and fair elections; have changing governments; a civil control over the military and even the people have accepted democracy.⁶⁷ However, Ivan Krastev identifies instability, a lack of trust in democratic institutions and politicians as well as the growth of anti- democracy and anti- Western ideas as additional qualities of the democracy in the area.⁶⁸ He sees the problem of weak states as the key challenge for the establishment of a deeply democratic government, since weak states help to produce organised crime, corruption, and the "politics of displacement".⁶⁹ Martin Brusis sees the challenges for the new democracies in the area in 'settling unsolved statehood and ethnopolitical conflicts and [the preparation] for accession to the EU.'⁷⁰

For us, the countries present themselves very differently. Slovenia established a democratic form of government immediately after its independence and joined the EU in 2004. Croatia established free elections; however the political system has been dominated by President Franjo Tuđman and his party the Croatian Democratic Union (HDZ). Only after Tuđman's death and the defeat of the HDZ in the elections of 2000, the country began to fully democratise. Nevertheless, minority issues and the inclusion of minorities in the political system as well as the whole state remain obstacles, which continue to be addressed by the EU.⁷¹ Having said this, it is important to highlight that Croatia has massively improved its minority protection and a Party representing the Croatian Serbs is now part of the HDZ-led government.

⁶⁶ 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, here p. 5.

⁶⁷ Krastev, Ivan: 'The Balkans: Democracy without Choice' in: *Journal of Democracy*, Vol. 13, No. 3, July 2002, pp. 39- 53, here p. 39.

⁶⁸ Ibid. pp. 39- 40.

⁶⁹ Ibid. pp. 51- 53.

Krastev refers not only to the millions of refugees and internally displaced persons who were a consequence of the Balkan wars at the beginning of the 1990s, but he also argues that due to the lack of security and economic stability, millions of people left their home and moved to other regions or countries.

⁷⁰ Brusis, Martin: 'Assessing the state of Democracy', 2006, p. 6.

⁷¹ Commission of the European Communities: *Croatia 2007 Progress Report*, Brussels 6. 11. 2007, see: http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/croatia_progress_reports_en.pdf, pp. 12- 13.

All countries of the former Yugoslavia have signed a Stabilisation and Association Agreement (SAA) with the EU.⁷² Minority issues, defects in the rule of law and corruption and the relationships with their neighbouring states remain key challenges for all countries in the Western Balkans. Internal conflicts and the consequences of the latest economic crisis have further contributed to a deepening of political cleavages in a number of countries. The political situation in Serbia remains fragile after Kosovo's independence and the ongoing political crisis in Bosnia and Herzegovina may also affect the whole region. Macedonia's ongoing name dispute with Greece and Albania's internal problems remain key challenges for the political elites of the countries and for the EU to address and to moderate. Peace and stability in the Western Balkans is in the self-interest of the EU and its "actorness" in foreign affairs⁷³ and conflict resolution will heavily depend on its engagement in the Western Balkans.

2.2 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 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.⁷⁴ 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 thesis goes back to the work of Preston King,⁷⁵ who influenced this distinction enormously before authors such as Michael Burgess⁷⁶ and Ronald Watts⁷⁷ enriched King's definition with theoretical depth.

Finally, our task shall be to look at different "traditions" of federalism. While there has been some research done on the Anglo- American Tradition and the Continental European Tradition; little research has been finished 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

⁷² The exception is Kosovo.

⁷³ The concept of EU actorness is developed in: Bretherton, Charlotte and Vogler, John: *The European Union as a Global Actor*, Routledge: London 1999: chapter 1.

⁷⁴ Hamilton, Alexander; Madison, James and Jay, John: *The Federalist Papers*, Clinton Rossiter (Ed.), Penguin Books: London 2003.

⁷⁵ King, Preston: *Federalism and Federation*, Croom Helm: London 1982.

⁷⁶ 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.

⁷⁷ 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.

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 the multinational states by the unity of the socialist identity. Therefore, we will have to discuss to what extent we can talk about a Socialist Tradition of Federalism as a key element that influences Bosnian federal arrangements as well as probably the Russian Federation.

2.2.1 Federalism, Federation, Confederation and Federal Political Systems

To fully understand the development and the changes of federalism as a political form of organisation and an ideology, and federation, confederation and federal political systems as empirical examples of different degrees of federal implementation, it is necessary to have a short look into the development of the federal idea and its key conceptualisations and redefinitions.

Among the first authors developing ideas of a federal organisation of a country was Johannes Althusius in 1603. Althusius for the first time developed the idea of shared sovereignty, by defining politics as ‘the art of associating.’⁷⁸ For him states are based on the voluntary union of different units, which form a commonwealth and unite their diversity into the unity of a state:

‘Thus the needs of body and soul, and the seeds of virtue implanted in our souls drew dispersed men together into one place. These causes have built villages, established cities, founded academic institutions, and united by civil unity and society a diversity of farmers, craftsmen, laborers, builders, soldiers, merchants, learned and unlearned men and so many members of the same body [...]. [A]ll came together into a certain public body that we all call the commonwealth, and by mutual aid devoted themselves to the general good and welfare of this body.’⁷⁹

Starting from a religious perspective, Althusius defines the commonwealth as a voluntary union, based on ‘consent and agreement.’⁸⁰ For his era, we can describe Althusius as somewhere between a revolutionary man and one of the first constitutional theorists; certainly his ideas make him naturally become a federalist.⁸¹

It were the key debates about sovereignty, that motivated authors such as Althusius to discuss forms of association as parallel developments to state- building in contrary to the dominant empire and colonial form of state- building promoted by key authors of the time.⁸² While Johannes Althusius does not distinguish between different forms of federalism and different types of unions, Samuel Pufendorf

⁷⁸ Althusius, Johannes: ‘Politics as the Art of Associating’ in: Karmis, Dimitros and Norman, Wayne (Ed): *Theories of Federalism. A Reader*, Palgrave MacMillan: London 2006, pp. 27-33, here p. 27.

⁷⁹ Ibid. p. 32

⁸⁰ Ibid. p. 32.

⁸¹ Hueglin, Thomas: ‘Johannes Althusius: Medieval Constitutionalist or Modern Federalist?’ in: *Publius: The Journal of Federalism*, Vol. 9, No. 4, Fall 1979, pp.9-41.

⁸² The most important one being Jean Bodin: Bodin, Jean: *The six books of a commonweale (a facsimile reprint of the English translation of 1606)*, McRae, K.D., (Ed.), Harvard University Press: Cambridge, 1962.

for the first time does make this distinction. By analysing early military alliances and again discussing the ideas of sovereignty, he comes to the conclusion, that '[w]e speak of systems of states when more than one are so held together by some special and strict bond that they appear to form one body, each of whose members, however, retains supreme sovereignty over its own affairs.'⁸³ Pufendorf offers with this definition of "systems of states" a first discussion on what we would characterise as confederations. As Ronald Watts puts it, confederations 'occur where polities are joined together to form a common government for certain limited purposes [...] but the common government is dependent upon the constituent governments.'⁸⁴ The core elements of a confederation therefore include that the common government has a very limited purpose and sovereignty lies in the hands of the constituent units. Since the central government has no real authority, decisions are taken unanimously and the free will to join a confederation coexists with the possibility to leave a confederation at any time.

Having defined a confederate form of government, it is important to mention, that until the writings and interpretations of the Federalists, confederalism and federalism were used interchangeably. Indeed, it seems to be a kind of "accident in history" that Madison, Hamilton and Jay, known as the Federalists, were anti- federalists; they were in favour of centralisation, and for the creation of a strong central government by reducing the influence and power of the sub- states. Most authors of federalism identify two major reasons for the creation of a federation, which are on the one side a better defence policy and the chance to defend themselves against an external threat, and secondly the prospect for economic prosperity through the development of a common (larger) market.⁸⁵ However, the Federalists saw another reason for the introduction of a federal system, namely the implementation and protection of a democratic form of government. However, authors tend to overestimate the influence of federalism promotion by the United States.⁸⁶ Indeed, the success of the American federation and the rise of the United States of America as a world power are based on core principles, which continue to influence the debates about federalism. Those principles include the strict separation of powers, the dominance of the rule of law, the limitation of powers of the chief executive and the continuing strong autonomy of the sub-states. However, as for the definition of our terms we can summarise the influence of the Federalists in four major points:

1. For the first time federalism was combined with a strong central government and therefore the idea of a loose union (= confederation) was given up. The Federalists' use of the term

⁸³ Pufendorf, Samuel: 'Regular States vs. Systems of States' in: Karmis, Dimitros and Norman, Wayne (Ed): *Theories of Federalism. A Reader*, Palgrave MacMillan: London 2006, pp. 35- 50, here p. 40.

⁸⁴ Watts, Ronald: 'Models of Federal Power Sharing', in: *International Social Science Journal* 167, 2001, pp 23-32, here p. 26.

⁸⁵ See for example: Burgess, Michael: *Comparative Federalism*, 2006, pp. 81-96.

⁸⁶ As we will see later, the United Kingdom of Great Britain and Northern Ireland has been much more successful with the implementation of federalism in its colonies. One example of this overestimation can be found in: Ordeshook, Peter and Shvetsova, Olga: 'Federalism and Constitutional Design' in: *Journal of Democracy*, Vol. 8, No. 1, 1997, pp. 27-42, here especially pp. 27-28.

federalism and their plan for a central government allow us today to distinguish between federalism and confederalism. Furthermore their use of the terms also led to the misleading concept that federalism is something “good” and worth implementing, while confederalism is “bad”, only limited and will fade away over time.

2. The Federalists allow us to define federalism on the basis of a modern liberal democracy (although they called it republicanism), focusing on free and fair elections, separation of powers, accountability of elected representatives and the rule of law.
3. Through the conceptualisation of the Federalists, federalism became a suitable organisation for states. While the period before the late 18th century saw federalism as a form of an unfinished state, the success of the American federal system made it a suitable model for other countries. This is without doubt the biggest success of the Federalists in terms of federalism promotion.
4. Finally, we learn from the Federalists, that the introduction of a federal political system always depends on historic circumstances, internal and external influences, a country’s culture and background and the international environment. It was the experience of British tyranny that promoted the idea of democracy in the former colonies and it was the historical independence of the 13 colonies that made a federal arrangement unavoidable.⁸⁷

After looking at these historical developments of the key terms, we can now turn into the 20th century and follow the academic discussions about federalism, federation and federal political systems.⁸⁸

The academic debates in the 20th century started shortly after the Second World War. This was based on three key events, namely the success of the United States and the Soviet Union (which was at least a self- claimed federation), the idea of a federal (united) Europe as can be found in the writings of Altiero Spinelli,⁸⁹ and finally the decolonialisation movements and the introduction of federal systems in all parts of the world.⁹⁰

⁸⁷ Having said this, it does not mean that comparative federalism is not necessary. However, different authors tend to assess a federal system only on the basis of the United States’ federal experience. Compare for example: Duchacek, Ivo: *Comparative Federalism: The Territorial Dimension of Politics*, University Press of America: Lanham, 1987. Another author analysed the American federal tradition and developed out of it a “general” theory of what he called “the federal bargaining”, compare: Riker, William.: *Federalism: Origins, Operation, Significance*, Little Brown: Boston, 1964.

⁸⁸ The most precise and critical introduction to these debates can be found in: Burgess, Michael: *Comparative Federalism*, 2006 pp. 9-49.

⁸⁹ 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 (Ed): *Theories of Federalism. A Reader*, Palgrave MacMillian: London 2006, pp. 199-202.

⁹⁰ For example: India became independent 1947, Nigeria became independent in 1960. Both states adopted federal systems, although with different success.

One of the major input on 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*.⁹¹ 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.’⁹²

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.’⁹³ 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 about the development of federations and about actors’ behaviour greatly influenced the work of contemporary authors on federalism.⁹⁴ 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.⁹⁵

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 would call the “federal bargaining” for the Bosnian federation. Riker was the first to apply rational choice and bargaining theory to federalism. As Mikhail 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.’⁹⁶

⁹¹ Here used: Wheare, Kenneth: *Federal Government*, 4th edition, Oxford University Press: Oxford, 1964.

⁹² Ibid. p. 12.

⁹³ Ibid. p. 10.

⁹⁴ 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.

⁹⁵ About the connection of democracy and federalism see Chapter Three: Federalism and Democracy.

⁹⁶ Filippov, Mikhail: ‘Riker and Federalism’ in: *Constitutional Political Economy*, Vol. 16, 2005, pp. 93-111, here quoted p. 95.

Riker's bargaining theory has two important disadvantages, which we will have to discuss later in the Bosnian case as well. 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.⁹⁷ 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 the federalism in the United States and in the Soviet Union.⁹⁸

The definitions of federalism, federation and federal political systems used in this thesis are based on the works of three authors of federal theory. Firstly, we will use the distinction between federalism and federation, first introduced by Preston King in his work *Federalism and Federation* in 1982.⁹⁹ 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.'¹⁰⁰ 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.'¹⁰¹ As we have already seen he applies federalism to a state and argues that a state, which grants its regions constitutional autonomy and some form of sovereign decision-making powers, can be called a federation. However, by distinguishing both terms, King did not ignore the connection of both, ideology and practical application and he argues:

*'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.'*¹⁰²

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

⁹⁷ Compare for example: Watts, Ronald: 'The Contemporary Relevance of the Federal Idea' in: University of Kent Centre for Federal Studies (Ed.): *Federal Studies Annual Lecture Series, Lecture 1 12th October 2006*, University of Kent: Canterbury 2007, p. 16.

⁹⁸ Riker, William.: *Federalism: Origins, Operation, Significance*, 1968, pp. 38- 39.

⁹⁹ King, Preston: *Federalism and Federation*, Croom Helm: Beckenham 1982.

¹⁰⁰ Ibid., p. 74.

¹⁰¹ Ibid. p. 77.

¹⁰² Ibid. p. 76.

functionality depends on the political culture, historical determinants and the international development. 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 developing comparative patterns for 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.¹⁰³ 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 times are the core influences on the establishment, in addition to the political federal bargaining.¹⁰⁴

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 normative principle is the perpetuation of both union and non- centralization at the same time.'*¹⁰⁵

He identifies four core underlying elements of federalism.¹⁰⁶ 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. This idea applies not only to the political power and the decision- making processes but also to elements such as concerning the economy, transportation systems, and the localisation of national political institutions, resource income, and other important decisions. Third, Watts argues that bargaining is the key form of decision- making in federal states. Therefore the underlying elements of federalism must be cooperation and the will to compromise. We will come back to this important feature when discussing the political system of Bosnia and see how complicated decision-making is, if there is no will to cooperate and compromise. Finally, he inherently defends the rule of law and the importance of a strong and rigid constitutionalism within a federal state. Indeed, authors such as William Livingston¹⁰⁷

¹⁰³ Burgess, Michael: *Comparative Federalism*, 2006 pp. 162- 208.

¹⁰⁴ Ibid. pp. 97- 100.

¹⁰⁵ Watts, Ronald: *Comparing Federal Systems*, 2nd edition, McGill Queen's University Press: Montreal and Kingston, 1999, p. 6.

¹⁰⁶ All four elements and their description can be found in: Watts, Ronald: 'The Contemporary Relevance of the Federal Idea', 2007, p. 7.

¹⁰⁷ Livingston, William: 'A note on the nature of federalism' in: *Political Science Quarterly*, Vol. 67, No. 1, March 1952, pp. 81- 95, here p. 82.

and Cheryl Saunders¹⁰⁸ underline that constitutional rigidity and the special protection of the constitution are the most important element of a federation. John Kincaid summarises that peace, prosperity, democracy, liberty, efficiency, innovation and equity are the core values of a federal union.¹⁰⁹

If we turn now 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.’¹¹⁰

He argues that the core elements of a federation are the following:¹¹¹

1. The existence of two or more levels of government which are directly elected and each act directly on the 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 cooperation

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.¹¹² 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. After discussing the core elements of confederalism, federalism, federation and federal political systems we shall now move

¹⁰⁸ Saunders, Cheryl: ‘Constitutional Arrangements of Federal Systems’ in: *Publius: The Journal of Federalism*, Vol. 25, No. 2, Spring 1995, pp. 61- 79, here especially pp. 63-78.

¹⁰⁹ Kincaid, John: ‘Values and Value Tradeoffs in Federalism’ in: *Publius: The Journal of Federalism*, Vol. 25, No. 2, Spring 1995, pp. 29- 44.

¹¹⁰ Watts, Ronald: ‘Federalism, Federal Political System, and Federation’ in: *Annual Review of Political Science*, Vol. 1, No. 1, 1998, pp. 117- 137, here quoted p. 121.

¹¹¹ Watts, Ronald: ‘The Contemporary Relevance of the Federal Idea’, 2007, pp. 5-6.

¹¹² Watts, Ronald: ‘Federalism, Federal Political System, and Federation’, 1998, pp. 120-121.

onto a short discussion of the two most important federal traditions, before we will develop an argument for a new tradition, namely the relevance of a Socialist Federal Tradition.

2.2.2 Federalism in the Western Political Tradition: The Anglo- American and Continental European Traditions of federalism

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,¹¹³ it is arguable that the Anglo- American and the Continental European Traditions have influenced federal debates in Bosnia as well. As will be highlighted in Chapter Three, Bosnia's federal tradition is indeed a mix of a number of traditions. However, the most important tradition to point out is the Socialist Tradition of Federalism. This "new" tradition needs to be conceptualised here because it has such an important impact on Bosnia and Herzegovina's political discourse today. Therefore it is necessary to briefly survey those Traditions, their normative roots and values and their practical influences.

However, without further examining the concept of a federal tradition we shall start from the point that recent research in federal history and the origins of modern federations has confirmed those two schools of thought. It was not until 2006 when Michael Burgess contrasted both traditions and identified their core values, separated them from each other and demonstrated their overlapping areas.¹¹⁴

The Continental European Tradition of Federalism

The Continental European Tradition of Federalism arose from different sources and ideas. The two main foundations of the tradition were the already mentioned debate about the nature of sovereignty in the 16th and 17th century and combined with this debate the discussion around a social contract theory of the 17th and 18th century until the authors of the Enlightenment.¹¹⁵ Therefore, the Continental European Tradition of Federalism is not only older than the Anglo- American version, but its 'roots are medieval and feudal as well as modern.'¹¹⁶ Indeed, there is a long tradition of federal thought starting with Johannes Althusius in the 17th century and reaching to the 20th century federal ideas of Altiero Spinelli. It is in this long tradition that authors such as Montesquieu and Immanuel Kant combined the republican tradition with the federal organisation principle. They link the debate about

¹¹³ The Ottoman Empire (1463- 1878), The Habsburg Empire (de facto 1878- 1918).

¹¹⁴ Burgess, Michael: *Comparative Federalism*, 2006, pp. 162- 191.

¹¹⁵ Ibid p. 165.

¹¹⁶ Ibid p. 163.

the nature of sovereignty to the discussion about fundamental natural rights, representative government and a separation of powers.¹¹⁷

Michael Burgess argues for three main sources of the Continental European Tradition of Federalism.¹¹⁸ On the one side there exists a German federal tradition, which reaches back to the writings of Althusius, Hugo and Leibnitz.¹¹⁹ On the other hand, Burgess argues for the existence of a French tradition, focusing especially on the writings of Pierre- Joseph Proudhon.¹²⁰ Indeed, Proudhon's *Du Principe federatif*, written in 1863 marks the connection of radical democratic and socialist ideas with federalist theory.¹²¹ Finally, the third source of the tradition is the Catholic Social Theory of the 19th and 20th century. Based on different papal encyclicals,¹²² the Catholic theory describes a picture of men and society based on the principles of 'pluralism, personalism, solidarism and subsidiarity'.¹²³

Furthermore the existence of several multinational empires and their quasi- federal administration from the medieval times until the beginning of the 20th century gave birth to practical experiences of federalism and influenced the Continental European Tradition heavily.¹²⁴ Indeed, particularly the governmental practices of the Holy Roman Empire and the rise of the multinational Habsburg Empire symbolised embryonic stages of federal arrangement to accommodate diversity, share sovereignty and combine self- rule and shared rule.¹²⁵ What then, are the core features of the Continental European Tradition of Federalism? Michael Burgess highlights six important features,¹²⁶ firstly the focus on the society; secondly the close links of federal theory and pluralism; thirdly the links of federal theory and communitarianism; fourthly the importance of territorial and non- territorial representation patterns; fifthly the highly ethical and normative characteristics of the tradition and its focus on human dignity, as well as the fellowship of all human beings; and finally the importance of the value of *Bundestreue* (federal comity), based on the ideas of 'partnership,[...], human dignity, tolerance, respect and recognition'.¹²⁷ The importance of the Continental European Tradition especially in the building of the EU cannot be overestimated. However, the direct connection of the

¹¹⁷ Compare: Montesquieu: 'Combining the advantages of Small and Large States' in: Karmis, Dimitros and Norman, Wayne (Ed): *Theories of Federalism. A Reader*, Palgrave MacMillan: London 2006, pp. 55- 58. as well as: Kant, Immanuel: 'Toward Perpetual Peace' in: Karmis, Dimitros and Norman, Wayne (Ed): *Theories of Federalism. A Reader*, Palgrave MacMillan: London 2006, pp. 87- 100.

¹¹⁸ Burgess, Michael: *Comparative Federalism*, 2006, p. 167.

¹¹⁹ Riley, Patrick: 'Three 17th century German Theorists of Federalism: Althusius, Hugo and Leibnitz' in: *Publius: The Journal of Federalism*, Vol. 6, No. 3, Summer 1976, pp. 7- 41.

¹²⁰ Burgess, Michael: *Comparative Federalism*, 2006, p. 172.

¹²¹ Proudhon, Pierre- Joseph: 'The Principle of Federation' in: Karmis, Dimitros and Norman, Wayne (Ed): *Theories of Federalism. A Reader*, Palgrave MacMillan: London 2006, pp.173- 188.

¹²² For example: 1891 *Rerum Novarum* and 1931 *Quadragesimo Anno*.

¹²³ Burgess, Michael: *Comparative Federalism*, 2006, p. 174.

¹²⁴ *Ibid.* p. 169.

¹²⁵ I have developed this argument for Germany by discussing the importance of the loose union of the Holy Roman Empire and the German Union (Deutscher Bund) after 1815 and their impact on German federalism and nation- building in: Keil, Sören: 'Why is Germany (still) a federal state?' in: Papers of the Institute for Federalism (PIFF): *Best of Student Papers Summer University 2007*, University of Fribourg: Fribourg (Switzerland), 2008, pp.43-57.

¹²⁶ Burgess, Michael: *Comparative Federalism*, 2006, pp. 176- 177.

¹²⁷ *Ibid.* p. 177.

European Tradition and the building of a federal Europe have only partly been researched¹²⁸ and more research on the very foundations of federal thought in general and in particular with reference to a federal Europe needs to be conducted.

The Anglo- American Tradition of Federalism

The Anglo- American Tradition of Federalism is based on three core sources, which influenced the Tradition and the development of federalism and federation. The Tradition is younger than the Continental European one; however, it dates back to the 17th century works of Heinrich Bullinger, a Swiss priest and philosopher.¹²⁹ Bullinger developed a theory of federalism and covenant, a ‘biblical perspective of federalism’ arguing that federalism is based on ‘normative principles [which] bind partners together in a moral contract or an agreement of trust.’¹³⁰ The most important research on the influence of covenant theory on federalism especially in the United States of America has been done by Daniel Elazar and John Kincaid, whose work is heavily influenced by the impact of covenant theory.¹³¹ Kincaid and Elazar show in their work that the covenant theory has influenced the Declaration of Independence and also the Constitution of the United States. Donald Lutz supports these arguments by arguing that: ‘most state constitutions can be seen as reflecting a direct link with religious covenants traced through the compacts written by colonists during the seventeenth century.’¹³²

The second core influence on the Anglo- American Tradition is the practical experience of federalism.¹³³ The focus of these experiences lies especially on the debates about an imperial federalism for the British Empire during the 18th century¹³⁴ and the early introduction of local self-government in the British colonies in Northern America.

Finally the third source of the Anglo American Federal Tradition is the impact of *The Federalist*.¹³⁵ While the Bosnian Constitution was mainly written by lawyers of the US State Department, we will see later that the Anglo-American Tradition of Federalism had very little relevance (if any) for the future Bosnian state. Instead, the staff of the State Department looked at the historical experiences of Yugoslavia and other multinational quasi-federal states, to outline the guiding principles of a new Bosnian state. Naturally, they also accepted the situation on the ground in Bosnia. As we will discuss in the Fourth Chapter, the origins of the current Bosnian political system lie with

¹²⁸ Burgess, Michael: *Federalism and European Union: the Building of Europe, 1950-2000*, Routledge: London 2000.

¹²⁹ Burgess, Michael: *Comparative Federalism*, 2006, p. 178.

¹³⁰ Ibid. p. 179.

¹³¹ Kincaid, John and Elazar, Daniel (Ed): *The Covenant Connection: Federal Theology and the Origins of Modern Politics*, Carolina Academic Press: Durham 1985.

¹³² Lutz, Donald: ‘From Covenant to Constitution in American Political Thought’ in: *Publius: the Journal of Federalism*, Vol. 10, No.4, Fall 1980, pp. 101- 133, here p. 128.

¹³³ Burgess, Michael: *Comparative Federalism*, 2006, p. 182.

¹³⁴ Burgess, Michael: *The British Tradition of Federalism*, Leicester University Press: London 1995 pp. 23- 80.

¹³⁵ Burgess, Michael: *Comparative Federalism*, 2006, p. 185

these main sources. One of them, the experiences of Yugoslavia and other multinational quasi-federal states in Eastern Europe will be discussed below titled “The Socialist Tradition of Federalism.” It is important to point out that American politicians and diplomats have a hard time to understand the internal workings of Bosnia precisely because their federal tradition is so different. For them, federalism is an eternal contract between equal partners. After the end of the American Civil War this definition became widely accepted. For Bosnians, federalism first and foremost is a contested concept that can be applied to demand the implementation of reforms in favour of one’s own national group.

2.2.3 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.¹³⁶ 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 deeply. Having said this, the claim of this Chapter is no less than to argue for a Socialist Tradition of Federalism, which influenced the political constructions of the three socialist federations, the Soviet Union, Yugoslavia and Czechoslovakia and continues heavily 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- 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 federation are directly connected to those historical debates. We might only think about the importance of citizenship questions in Eastern Europe (especially in the Baltic States), the role of secession movements and the demand for regional autonomy (e. g. in Moldova, Georgia, Ukraine, Serbia, Russia) and the importance of minority protection and recognition within multinational polities (e. g. in Slovakia, Romania, Croatia, Serbia, Macedonia, Hungary, Russia, the Baltic States).

If our 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

¹³⁶ Compare for example: Basta, Lidiya and Ibrahim, Jibrin (Ed): *Federalism and Decentralisation in Africa (The multicultural challenge)*, University of Fribourg: Fribourg (Switzerland) 1998.

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 for the debates we are looking at 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,¹³⁷ 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.”¹³⁸ 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 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.¹³⁹ 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.’¹⁴⁰ 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

¹³⁷ The exception is Rosa Luxemburg who criticised Lenin and Stalin heavily for their understanding of self-determination.

¹³⁸ Bauer, Otto: *Die Nationalitätenfrage und die Sozialdemokratie*, Europa Verlag: Wien (Vienna) 1907, pp. 95-97.

¹³⁹ Renner, Karl: *Die Nation: Mythos und Wirklichkeit*, Europa Verlag: Vienna, Colgne, Stuttgart and Zurich 1964, p. 26 and p. 28.

¹⁴⁰ 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.

*domicile, as belonging to any national association, ensures absolute precision and absolute consistency in segregating the schools according to nationality.*¹⁴¹

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, while 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, while keeping the administrative unity of the multinational state,’¹⁴² Renner also argues for the organisation of mono-cultural municipalities and their organisation in federal subunits.¹⁴³ Those federal units were intended to focus on economic and social matters and Renner was aware that some multi- lingual and multi-cultural subunits might be necessary, but for him this was not a key problem since the core demands of the minorities would be settled with non- territorial national cultural autonomy.¹⁴⁴ 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.¹⁴⁵ To some extent we can argue that the Bosnian House of Peoples reflect 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.’¹⁴⁶ Renner argued for a three- level form of state organisation (local, sub-unit and central), all levels fulfil 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.¹⁴⁷

As we have 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

¹⁴¹ Lenin, Vladimir I.: *Complete Collected Works*, 2nd edition, Vol. 19, Progress: Moscow 1968 p. 503.

¹⁴² Nimni, Ephraim: ‘Nationalist multiculturalism’, 1999, p. 291.

¹⁴³ Renner, Karl: *Die Nation: Mythos und Wirklichkeit*, 1964, pp. 103-104.

¹⁴⁴ Ibid. p. 104.

¹⁴⁵ Ibid. p. 105.

¹⁴⁶ Ibid. p. 104.

¹⁴⁷ Ibid. p. 105.

*parties of different nationalities, and lastly by the petty bourgeois opportunist elements of the near Marxist groups, ie the Bundists and the liquidators.*¹⁴⁸

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

'Springer'¹⁴⁹ 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."*¹⁵⁰

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.' As for the Russian Empire Stalin identifies the Agrarian Question as the core question of the time, the Austrian Empire is in his view directly concerned with the national question.¹⁵¹ 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. While 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.'*¹⁵²

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

¹⁴⁸ Lenin, Vladimir I.: *Complete Collected Works*, 1968, p. 503.

¹⁴⁹ Rudolf Springer was used by Karl Renner as a pseudonym.

¹⁵⁰ Stalin, Josef: 'Marxism and the National Question' first published in: *Prosveshcheniye*, No. 3-5, March- May 1913, here used: www.marxists.org/reference/archive/stalin/works/1913/03.htm (accessed 13. 01. 2008; printout in the possession of the author) pp. 26- 27.

¹⁵¹ Ibid. p. 19.

¹⁵² Ibid. pp. 5-6.

common economic life but also for the common language and the common culture.¹⁵³ 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.'¹⁵⁴ In fact, Stalin and Lenin support the idea of external self-determination of nations, namely secession. However, they analyse secession in the eyes of the development of the workers class and their argument is that whenever secession supports the development of the workers class, then it shall be supported by the Marxists.¹⁵⁵ 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.'*¹⁵⁶

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 higher developed than the multinational state it is part of, secession will support further cultural development; however, if the nation (or national minority) is culturally "underdeveloped" 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 workers class consciousness. While Stalin and Lenin support secession in some cases, they still argue for the unity of the working class

¹⁵³ Ibid. pp. 6-7.

¹⁵⁴ Lenin, Vladimir I.: 'The Right of Nations to Self-Determination' originally published in: *Collected Works*, 4th English Edition, Progress Publishers: Moscow 1964, here used: www.tamilnations.org/selfdetermination/14lenin.htm (seen 22. 10. 2007; printout in possession of the author) p. 65.

¹⁵⁵ Ibid. p. 19- 20.

¹⁵⁶ Stalin, Josef: 'Marxism and the National Question', 1913, p. 40.

It is important to recognise the problematic terms of culturally “developed” and “underdeveloped” nations. If we go one step further and look at the application of federalism in the socialist states of Czechoslovakia¹⁵⁷ and the Soviet Union, we will see that the argument of cultural development has been used to force states to stay in the union. However, if we look at the Socialist Yugoslav Federation, we shall see that although it applied the territorial principle of Stalin and Lenin as well, the internal politics of national diversity management within the federal system was much more a ‘balance of power system.’¹⁵⁸ 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 Republics of the Yugoslav federation.

Without going in- depth into the Soviet federal experience, 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.¹⁵⁹ 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.’¹⁶⁰ Both, Gronski and Vernon Aspaturian identify the administrative centralism of the Soviet Union and the absolute practices as key features of the Soviet model of federalism.¹⁶¹ Indeed, the Soviet Union used federalism not as a goal and a value in itself but to transform a multiethnic and multinational empire into a pure socialist society and democratic centralism.¹⁶² 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, while 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.¹⁶³ 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

¹⁵⁷ Although Czechoslovakia was a socialist federation as well, this part will focus on the analysis of the federal practise in the Soviet Union and Yugoslavia.

¹⁵⁸ Ramet, Sabrina P.: *Nationalism and Federalism in Yugoslavia (1962- 1991)*, 2nd edition, Indiana University Press: Bloomington and Indianapolis 1992, p. 19.

¹⁵⁹ 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. 21-25.

¹⁶⁰ Gronski, Paul P.: ‘The Soviet System of Federalism’ in: *The America Political Science Review*, Vol. 23., No. 1, February 1929, pp. 159- 167, here p. 159.

¹⁶¹ Ibid. pp. 159- 160; Aspaturian, Vernon V.: ‘The Theory and Practice of Soviet Federalism’, 1950 pp. 29- 39.

¹⁶² Aspaturian, Vernon V.: ‘The Theory and Practice of Soviet Federalism’, 1950 p. 25.

¹⁶³ 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. (“Domino- effect”)

regarded *ipso facto* an act of counter- revolution.¹⁶⁴ 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.¹⁶⁵ 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.¹⁶⁶ While 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 federations. 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 coordination. Furthermore, national representation within the federal institutions was strengthened and a complicated system of veto rights was installed.¹⁶⁷ While the Yugoslav experience of federalism was also characterised by the dominance of the Communist Party,¹⁶⁸ the 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.¹⁶⁹ 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, as a true Yugoslav.¹⁷⁰ Finally, in 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 as did they in 1968 when they allowed Bosnian Muslims to identify as an ethnic group.

¹⁶⁴ Ibid. p. 27. (Italics in original version)

¹⁶⁵ Donia, Robert J and Fine, John V. A. Jr.: *Bosnia and Hercegovina: A Tradition Betrayed*, Hurst and Company: London 1994 pp. 138- 139.

¹⁶⁶ Ibid. pp. 146- 149.

¹⁶⁷ For a good overview of the 1974 constitution and its consequences see: Ramet, Sabrina P.: *Nationalism and Federalism in Yugoslavia*, 1992, pp. 61-80.

¹⁶⁸ 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.

¹⁶⁹ Vejvoda, Ivan: 'Yugoslavia 1945- 1991- from Decentralisation without Democracy to Dissolution', in: Dyker, David A and Vejvoda, Ivan: *Yugoslavia and After*, Longman: London and New York 1996, p. 17.

¹⁷⁰ 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 respected him also because he chose Belgrade to become the capital of the new Federal People's Republic of Yugoslavia.

However, as similar as the starting point is also the end point of both federations. Both socialist states collapsed under the pressure of economic downturn, political reforms, democratic movements and tensions between their minority nations.¹⁷¹ While the Soviet Union managed this break- up rather peacefully, Yugoslavia saw the most brutal and bloody war in Europe since the end of the Second World War.

If we try to conclude the features and characteristics of the socialist tradition of federalism, what should we need to highlight? First, we saw that 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. As we have seen before with the Continental European and the Anglo- American Tradition of Federalism, different ideas and their practical application form a composite unity, which we shall call the Socialist Tradition of Federalism. Second, the socialist tradition of federalism questions the important relationship of democracy and federalism. While the other two 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.¹⁷² 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,¹⁷³ Russia¹⁷⁴ and also on the debates about international agreements on minority protection.¹⁷⁵ 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, while important elements of the Tradition are overshadowed by the focus on the implementation of a socialist political and economic order. The application of federalism

¹⁷¹ For further reference to the reasons of failed federalism in socialist states see: Seroke, 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- 115.

¹⁷² Renner, Karl: *Die Nation: Mythos und Wirklichkeit*, 1964, pp. 124- 125.

¹⁷³ 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.

¹⁷⁴ 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- 250.

¹⁷⁵ See for example *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. see:

www.conventions.coe.int/treaty/en/Treaties/Html/157.htm (seen 10. 01. 2008; printout in possession of the author)

in the Soviet Union and in Yugoslavia therefore was not within 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 fundamentally opposed interests, after all they were united by their belief in the socialist ideology. However, there have been different implications of the federal organisations 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, while in the former the whole discussion on federalism has been overshadowed by the power of the Central Committee in Moscow. Let us now turn back to some of the fundamental elements of the Socialist Tradition, namely the definition of the nation, nationalism and the nation state.

2.3 Nationalism, the nation state and multinational states

After having engaged with some definitions of the nation and ideas how to manage multinational empires, we shall now turn to an analysis of nationalism. As the phenomenon of nationalism has been the subject of a vast amount of literature, we shall focus on some of the core authors 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 has proven itself to be the core issue in Bosnian politics, and to fully understand the importance of nationalism and its impact on democracy and federalism, it is necessary to outline the history, objectives and characteristics of nationalism.

2.3.1 Nationalism and the nation state in the Western Political Tradition

Nationalism and its political goal, namely the creation of a homogeneous nation state are classic European phenomena. The first countries to witness national speeches, and later national movements were Germany and France in the 18th century.¹⁷⁶

Before debating some core features of nationalism, the nation and the nation state, we shall start with a simplified definition of nationalism. The Oxford English Dictionary defines nationalism as the ‘[a]dvocacy of or support for the interests of one’s nation, especially to the exclusion or detriment of the interest of other nations. Also: [the] advocacy of support for national independence.’¹⁷⁷ Nationalism in this definition cannot be understood without defining the term nation. As has been argued for federalism, nationalism is an ideology that units a certain group of people and in contrast to

¹⁷⁶ Safi, Louay: ‘Nationalism and the multinational state’ in: *American Journal of Islamic Social Science*, Vol. 8, No. 2, September 1991, pp. 221- 234, here p. 226.

¹⁷⁷ ‘Nationalism’ in: *Oxford English Dictionary* here used: Online version through the Library of the University of Kent:

http://dictionary.oed.com.chain.kent.ac.uk/cgi/entry/00321451?single=1&query_type=word&queryword=nationalism&first=1&max_to_show=10 (seen 11. 01. 2008; printout in possession of the author)

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:

*'[I]t is an imagined political community and imagined as both inherently limited and sovereign.'*¹⁷⁸

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. As he argues, even the largest of (nation) - states have borders behind which another nation can be identified. He finally distinguishes the term "sovereign" as a characteristic of a nation by pointing out that the self- proclamation of nations took place in the time of Enlightenment and revolution. The historical circumstances of the development of nations into self conscious objects therefore were significantly influenced by the ideas of freedom and sovereignty.¹⁷⁹

However, we cannot understand the term nation without having a developed conceptualisation of nationalism. Both terms inherently need each other in order to arrive at a sufficient definition. This is confirmed by one of the leading scholar in nationalism theory, who supports the claim, that nationalism and the nation are inherently symbiotic terms by arguing that it was 'Nationalism which engenders nations.'¹⁸⁰

Ernest Gellner defines nationalism on the very first page of his influential book *Nations and Nationalism* as a '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.'¹⁸¹ The key to understanding Gellner's theory is his definition of the above mentioned ethnic bond. For Gellner, the core element in the definition of nationalism is the element of culture. He develops his theory based on the analysis of the developments during the industrial age, namely universal literacy, a high degree of general sophistication, mobility, important forms of generic training and the development of communication and therefore common languages between different groups of people.¹⁸² These developments, plus the centralisation of the educational system and the Reformation led to the creation of distinct cultural identities.¹⁸³ Going from here, Gellner defines nationalism:

¹⁷⁸ Anderson, Benedict: *Imagined Communities (Reflections on the Origin and Spread of Nationalism)*, Verso: London and New York 1983, p. 15.

¹⁷⁹ Ibid. pp. 16- 19.

¹⁸⁰ Gellner, Ernest: *Nations and Nationalism*, Cornell University Press: Ithaca and New York 1983, p. 55.

¹⁸¹ Ibid. p. 1.

¹⁸² Ibid. p. 35.

¹⁸³ Ibid. pp. 35- 43.

*'as the striving to make culture and polity congruent, to endow a culture with its own political roof,
and not more than one roof.'*¹⁸⁴

Consequently, Gellner defines a nation in the context of standardisation, homogenisation and unification of the 18th century as follows:

*'Under these conditions [...] nations can indeed be defined in terms both of will and of culture, and indeed in terms of the convergence of them both with political units. In these conditions, men will to be politically united with all those, and only those, who share their culture.'*¹⁸⁵

The element of culture, defined by Gellner as 'a system of ideas and signs and associations and ways of behaving and communicating',¹⁸⁶ is therefore the core to the understanding of the nation and of nationalism. 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. It is exactly this connection between a group that is aware of its shared culture and heritage, which can be called an ethnic group, and the claim to a historic territory as the homeland of this ethnic group, that marks the development from an ethnic group into a conscious nation in modern times. Gellner influenced the mainstream discussion about the ideas of nationalism and nearly all later authors of the ideology refer to Gellner's definition of nationalism and the importance of culture. However, Gellner did not extensively 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 among others identified the importance of religion, language and an invented history and tradition as key elements of a nation.¹⁸⁷ 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.¹⁸⁸ For Smith, nationalism is generally defined as a form of culture, political ideology and a form of a social movement.¹⁸⁹ As with democracy and federalism above, we can see that nationalism has a normative ideological form of expression and an empirical practical side in the form of social movements. In Western civic nationalism, the emphasis is laid on common institutions, social spaces, territory and a feeling of togetherness.¹⁹⁰ In short, Smith argues that the core element of the civic nationalism is that 'people and

¹⁸⁴ Ibid. p. 43.

¹⁸⁵ Ibid. p. 55.

¹⁸⁶ Ibid. p. 7.

¹⁸⁷ Hobsbawm, Eric: *Nations and Nationalism since 1780*, Cambridge University Press: London 1992, pp. 80-101.

¹⁸⁸ Smith, Anthony D.: *National Identity*, University of Nevada Press: Las Vegas and Reno 1991, pp. 6- 15.

¹⁸⁹ Ibid. p. 71.

¹⁹⁰ Ibid. p. 9.

territory belong together.¹⁹¹ This significant connection of a people and a territory and the development of a homeland together with the development of historic myths about the homeland and the nation itself can be traced back to the ideas of the French Revolution, which was based on the ideas of STATE equals PEOPLE equals NATION.¹⁹² In contrast to the civic form of nationalism, ethnic nationalism refers to the importance of birth and native culture and 'a community of common descent.'¹⁹³ Much more than in civic nationalism, myth, history and linguistic ties are important in the creation of a common bond.¹⁹⁴ In fact, historical myths, used by charismatic leaders (often academics) are created from within the 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*).'¹⁹⁵ Ethnic nationalisms are often combined with secessionist movements, Diaspora nationalisms and 'pan'-nationalisms¹⁹⁶ which intend to include all settlement areas of a nation in one state- the pure ethnic homogeneous nation state. While both forms of nationalism argue for a certain selection of people to a special territory, civic nationalism can be seen as more integrative and open towards minorities. As we shall see in the next Chapter, it is the form of civic nationalism on which Liberal Nationalists built their assumptions. However, Smith points out, that every form of nationalism has elements of civic and ethnic nationalism.¹⁹⁷ Indeed, taking this perspective into account we cannot argue that one form of nationalism is good and another form is bad. David Brown suggests that instead of focusing on good and bad aspects of nationalism itself, the core to the analysis of nationalism might lie in the circumstances of mass mobilisation, fear and insecurity.¹⁹⁸

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.¹⁹⁹ 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 state itself is classically defined by Max Weber as 'a human community that (successfully) claims the *monopoly of the legitimate use of physical force*

¹⁹¹ Ibid p. 9.

¹⁹² Hobsbawm, Eric: *Nations and Nationalism since 1780*, 1992, pp. 14- 20.

¹⁹³ Smith, Anthony D.: *National Identity*, 1991, p. 12.

¹⁹⁴ Ibid. p. 12.

¹⁹⁵ 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.

¹⁹⁶ Ibid. pp. 82- 83.

¹⁹⁷ Ibid. p. 13.

¹⁹⁸ Brown, David: 'Are there good and bad nationalisms?' in: *Nations and Nationalism*, Vol. 5, No. 2, 1999, pp. 281- 302, here p. 298.

¹⁹⁹ Penrose, Jane: 'Nations, states and homelands: territory and territoriality in nationalist thought', in: *Nations and Nationalism*, Vol. 8, No. 3, 2002, 277- 297, here p. 284.

within a given territory.²⁰⁰ Therefore the state itself controls certain branches of human life, which consequently help to create or integrate a nation. In particular the enforced use of a national language, the enforced educational system²⁰¹ and therefore a state- controlled value transfer can be seen as the final steps toward full integration of state and nation. Consequently, the pure nation state is the highest form of political ideological realisation and social mobilisation in the eyes of nationalists.

There is, however, one clear problem of nationalism and the nation state, which is the problem of minorities. On the one side, minorities within the borders of a nation state have often felt discrimination either in forced assimilation, forced emigration or ethnic cleansing, while on the other side, minorities of a nation who live outside the borders of the nation state provoked violent conflicts, population transfers and the redrawing of borders.

2.3.2 What is a multinational state?

As we have demonstrated above, nationalism always refers to the relationship of the nationalist ideology, the nation and the state.²⁰² 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 thesis shall refer to the existence of three or more distinct national identities within the borders of one state. While 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 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 the joint nation.²⁰³ 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.²⁰⁴ Multicultural states become consequently multinational when the different cultural groups aspire for statehood. As a result of this aspiration, we can witness the establishment of different national identities within a state. All these nations aspire for different nation- and connected state-building projects. Identification of the different

²⁰⁰ Weber, Max: *Politics as a Vocation*, Lecture given in Munich in January 1919. Later published, here used the Ebook on: http://www.ne.jp/asahi/moriyuki/abukuma/weber/lecture/politics_vocation.html (accessed 15. 01. 2008; printout in possession of the author). (Italics by S.K.)

²⁰¹ Birch, Anthony: *The Concepts and Theories of Modern Democracy*, 1995, pp. 19- 20.

²⁰² ‘Nationalism’ in Stanford Encyclopedia of Philosophy, online version: www.seop.leeds.ac.uk/entries/nationalism (accessed 15. 01. 2008)

²⁰³ 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.

²⁰⁴ 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. 551-577.

groups takes place firstly to the own cultural group, to one's own nation and secondly to the state as such.²⁰⁵ Kenneth McRoberts examined the nature of the Canadian state in terms of multinationality and came to the result 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.²⁰⁶ He identifies first the importance of a substantial amount of the population of one state identifying with different nations as a key precondition.²⁰⁷ Indeed, neither the Sorbs, nor the Danish or Frisian minority make Germany become a multinational state. While 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 number are at best guesses since there has been no census in Bosnia since 1991.²⁰⁸ Second, McRoberts identifies the coherence of the internal nations as a key precondition of multinationality.²⁰⁹ Therefore he denies the existence of one Aboriginal nation in Canada, since the Aborigines would identify as several separate nations.²¹⁰ In Bosnia, however, 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*.'²¹¹ As we shall see later, the 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

²⁰⁵ Most of the time, the identification with the state is much weaker than the identification with the nation among members of minority nations. Furthermore, in some states there is no identification of a distinct nation with the state they live in anymore, which necessarily will end up in a secessionist movement. Such an identification gap can be found among Kosovo Albanians in the former Serbian province of Kosovo until it became an independent country in 2008.

²⁰⁶ McRoberts, Kenneth: 'Canada and the Multinational State' in: *Canadian Journal of Political Science*, Vol. 34, No. 4, December 2001, pp. 683- 713.

²⁰⁷ Ibid. p. 688.

²⁰⁸ This 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 July 2008)

The Organisation for Security and Cooperation in Europe (OSCE) uses different data: 45.3 per Cent Bosniaks, 31.3 per Cents Bosnian Serbs, 17.6 per Cent Bosnian Croats.

See: OSCE (Ed.): *The Parliamentary Assembly of BiH: Who is Who 2006-2010* see: <http://www.oscebih.org/documents/11559-eng.pdf>, p. 2 (accessed 15 July 2008)

However, to further complicate the "game of the numbers" it has to be said that since 1991 there has not been a national census in Bosnia. The data of the 1991 census are: 43.7 per cent Bosniaks, 31 per cent Bosnian Serbs and 17.3 per cent Bosnian Croats.

See: <http://www.oscebih.org/overview/?d=7> (accessed 15 July 2008)

The newest research suggests that the number of Bosnian Croats is decreasing and is about 10 per cent nowadays, which would move Bosnia in the direction of a binational state. However, it is extremely complicated to access reliable data.

Finally we should not forget the category of "Others" that constitute about 2-7 per cent of the population. Those are mainly Roma, Jews, Montenegrins and those who identify themselves still as "Yugoslavs".

²⁰⁹ McRoberts, Kenneth: 'Canada and the Multinational State', 2001, p. 693.

²¹⁰ Ibid. p. 693

²¹¹ Ibid. p. 694. (italics in original version).

constituent peoples (along with Others), and citizens of Bosnia and Herzegovina hereby determine that the Constitution of Bosnia and Herzegovina is as follows [...]²¹² Again, Bosnia and Herzegovina fulfils this criterion of multinationality.

Finally we have to add a criterion of multinationality which is often left out. Although McRoberts distinguishes between multinationalism and binationalism, he does not conceptually distinguish both terms. The recognition that there is a difference between two opposing nations living in one state such as the Czechs and the Slovaks in the federation of Czechoslovakia, and the existence of three or more nations within the boundaries of one state is very important, because it directly impacts on the possibilities for compromise, bargaining and consensus among these groups.²¹³ Historically, Czechoslovakia and the Federation of Rhodesia and Nyasaland demonstrate the higher level of conflicts and the complicated nature of finding agreement in binational states. Multinational federal political systems such as Spain and the EU are relatively successful because the bargaining and negotiations change within these systems, because there are a variety of actors.²¹⁴ The key problems of binational states can be identified as: harder political bargaining, less coalition options, the lack of third party conflict management interventions, and often open secession movements. Examples for binational states in this respect are Belgium, Canada, and the binational federation of Serbia and Montenegro until 2003 and the confederation of Serbia and Montenegro between 2003 and 2006. Of course it is possible to argue that Belgium also has a sufficient German speaking population and Canada has an Aboriginal nation and Serbia and Montenegro had an Hungarian minority in the Serbian province of Vojvodina and an Albanian minority in the Kosovo province, but as McRoberts argued, the key to the understanding of binationalism lies in the perception of the internal nations, their coherence, the constitutional reality of the state and the political reality in the day to day practice. Therefore the recognised minorities played either no role in the day to day political practice or their roles are marginal in comparison to the key debates within these states.²¹⁵

2.3.3 Nationalism and multinationalism as traditions of the Western Balkans

We have already mentioned that extreme nationalism combined with violence were key features during the break-up of Yugoslavia and the introduction of democracy in the successor states at the

²¹² Bosnia and Herzegovina, Constitution of 8th September 1995, Preamble.

²¹³ This distinction is very important. Authors who have introduced the concept of “plurinationalism” recognise the different internal developments in bi- and multinational states by focusing on the importance of multiple identities but fail to point out the major differences and consequences of these. For the theoretical framework of this PhD therefore, the literature on plurinationalism does not any arguments, which we cannot find in the literature on multinationalism and multinational federalism/ federations.

See for example: Keating, Michael: *Plurinational Democracy*, Oxford University Press: Oxford and New York 2001

²¹⁴ Duchacek, Ivo: ‘Dyadic Federations and Confederations’ in: *Publius: The Journal of Federalism*, Vol. 18, Nr. 2, pp. 5-31.

²¹⁵ Compare for example the situation of the German speaking population of Belgium: Mertens, Evelyne: ‘Die Deutschsprachige Gemeinschaft in Belgien’ in: *Aus Politik und Zeitgeschichte*, No. 8, 2008, February 2008, pp. 3-5, especially p. 4.

beginning of the 1990s. 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.²¹⁶ Wars, and Yugoslavia was not different in this, have numerous reasons and it is very hard to pinpoint one of them. Usually a mixture of political, economical and international reasons leads to internal and inter-state conflict.²¹⁷ Valerie Bunce argues that the reasons why the Yugoslav federation broke up violently in contrast to the Soviet Union and Czechoslovakia are the high level of decentralisation of the Yugoslav federation, the institutional framework of the dominant republic namely Serbia, that had in contrast to Russia and the Czech part of Czechoslovakia its own institutional architecture and this led to two opposing forms of nationalism, namely the one in the other republics, in particular in Slovenia and Croatia that demanded more autonomy and ultimately independence and the Serbian nationalism that focused on stronger centralisation of the Yugoslav state and later on the unification of all Serbs in one state. Finally Bunce points out that the structure and the aim of the Yugoslav army was to protect the state and socialism and that when both were threatened by Slovenian and Croatian independence demands, it became an easy tool for the nationalists led by Milosević that demanded the centralisation of Yugoslavia and later the unification of all Serbs within one country.²¹⁸

Competing nationalisms and different nation- and state-building project have had a long tradition in the Western Balkans. It is important to mention, that the development of nationalism in the Western Balkans took place under three special circumstances. First, national identities can be traced back only to the second half of the 19th century in the Western Balkans. The construction of identities took place around 100 years after the identity formation in Germany and France and most other Western European countries. Second, the identity formation in the Western Balkans occurred during a particular historical period when the area was ruled by multinational empires, the Ottoman Empire and the Austro- Hungarian Empire. Therefore, national identity was defined against these multinational empires and connected with the demand for secession and independent statehood as well as part of freedom and liberalisation movements. The Serbian politician Svetozar Miletić wrote in 1869 about the Serbian nationalism:

*'Nationality and freedom [...] is one and the same, nationality is the inherently embodied freedom of each nation.'*²¹⁹

Third, we can witness the development of a number of ethnic and later national identities in the area of the Western Balkans. While surely Serbian and Croatian nationalism were the first and most dynamic

²¹⁶ Denitch, Bogdan: *Ethnic Nationalism. The tragic Death of Yugoslavia*, 4th edition, University of Minnesota Press: Minneapolis 1997.

²¹⁷ See for this argument and its consequences:

Woodward, Susan: 'Do the Root Causes of Civil War Matter? On Using Knowledge to Improve Peacebuilding Interventions' in: *Journal of Intervention and Statebuilding*, Vol. 1, No.2, June 2007, pp. 143-170.

²¹⁸ Bunce, Valerie, *Subversive Institutions*, 1999, p. 121.

²¹⁹ Miletić, Svetozar: 'Über Nationalität und Freiheit' in: Alter, Peter (Ed.): *Nationalismus*, Piper: Munich and Zurich, 1994, pp. 100- 101, here p. 101.

and influential of these identities, the development of a Bosnian Muslim identity, the slow development of Macedonian nationalism and the rise of Albanian nationalism are all phenomena that took place over a long period of time in a very small territory. Religion in this context played a key role in the development of national identity, because it was the main criterion of distinction between the different inhabitants of the Western Balkans. After all, according to their descent they were mainly Slavs. It was therefore their religious beliefs and all cultural practices connected to religion that distinguished them more than anything else. Therefore, it is easy to justify Gellner's and other authors' categorisation of the Balkan nationalisms as dominated by the ethnic features of nationalism. Religious beliefs played a key role in the creation of different nationalities, since the Ottomans organised the society through the millet system, which categorised people by their religious beliefs and also guaranteed some degree of religious autonomy.²²⁰ However, ethnic tensions especially between Muslims, Croats and Serbs characterised the 19th and the beginning of the 20th century in the Western Balkans. Often those tensions ended in rivalries, which then were an excuse for the Great Powers especially Austria, Russia and to a lesser extent the Ottoman Empire, to intervene.²²¹ Furthermore it is important to note, that different nations within the area have attempted to dominate the whole region. This happened under Serb domination in the First Yugoslavia between 1918 and 1941, under the Croat fascists between 1941 and 1945 and again an attempted Serbian domination with the rise of Slobodan Milošević in the late 1980s. However, all those domination attempts ended in ethnic violence between the groups and violent patterns developed especially between Croats and Serbs. The Second World War marked a time when Croatian fascists massively supported the deportation and killing of Serbs,²²² while Serbian *četnik* resistance fighters took revenge on Croatian and Muslim civilians.²²³ Although the Yugoslav leader Marshal Tito stated in 1948 that 'the national question in Yugoslavia has been solved. And it has been solved very well, to the happiness of all our nations',²²⁴ the national question in Yugoslavia was not solved. In fact, the institutional design of the highly decentralised federation of 1974 and the nationality policy of the Yugoslav Communists played a key role in the violent break-up of Yugoslavia.²²⁵

Until recently the combination of multinationalism and the dominance of ethnic nationalism led to tensions, ending up in ethnic cleansing. However, by looking at the region today, one still can identify the multinational character of all states of former Yugoslavia. While we will look at national composition and power-sharing in Bosnia later in this thesis, it is worth mentioning that all states have

²²⁰ Singleton, Fred: *A Short History of Yugoslav People*, Cambridge University Press: Cambridge 1985, p. 36.

²²¹ The best description of the situation in the area between 1850 and 1918 can be found in Ivo Andrić's novel *The bridge over the Drina*, compare: Andrić, Ivo: *The bridge over the Drina*, The Harvill Press: London 1994.

²²² Donia, Robert J. and Fine, John V. A Jr.: *Bosnia and Hercegovina*, 1994, p. 139.

²²³ 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. 143.

²²⁴ Tito in a speech during the meeting of the Slovenian Academy of Sciences and Arts in November 1948, quoted in: Alter, Peter (Ed.): *Nationalismus*, Piper: Munich and Zurich 1994, p. 223.

²²⁵ Bunce, Valerie: *Subversive Institutions* 1999, p. 103.

adopted different forms of ethnic power-sharing and minority protection regimes.²²⁶ In 2008, for the first time since its independence in 1991, the Croatian government included representatives of the Serb minority.²²⁷ Macedonia practises a complicated form of decentralisation and elite power sharing based on the Ohrid Agreement to accommodate especially its Albanian minority.²²⁸ Serbia offers some local autonomy to all of its minorities irrespective of the territory.²²⁹ Montenegro, which only achieved its independence in 2006, implemented immediately after independence core minority protection legislation and joined international treaty regimes which cover minority issues.²³⁰

However, the sources of continued ethnic nationalism still exist in the region: The independence of Kosovo, the continued political conflicts between Macedonians and Albanians in Macedonia and of course the Bosnian crisis since 2006 have all demonstrated that nationalism and the state-building projects of minority nations still play a key role in the Western Balkans. Ideas of a Greater Serbia and a Greater Albania continue to exist. Although all countries of the former Yugoslavia are today ruled by democratic governments, national tensions continue to exist.

Bosnia Herzegovina marks the only country in the region that has adopted a federal system to manage the multinational character of the state. The specialities of multinational federalism shall be examined in the next Chapter.

²²⁶ Bieber, Florian: 'Institutionalizing Ethnicity in the Western Balkans. Managing Change in Deeply Divided Societies' *ECMI Working Paper*, No. 19, February 2004.

²²⁷ Radic, Natasa: 'HDZ ministers dominate Croatia's new government' in: *Balkantimes*, 14. 01. 2008, see: http://balkantimes.com/cocoon/setimes/print/en_GB/features/setimes/features/2008/01/14/feature-03 (seen 14. 01. 08; printout in possession of the author).

²²⁸ The Ohrid Agreement signed in 2001 can be found online under:

http://www.coe.int/t/e/legal_affairs/legal_co-operation/police_and_internal_security/OHRID%20Agreement%2013august2001.asp

²²⁹ Bieber, Florian: 'Serbischer Nationalismus nach dem demokratischen Machtwechsel in Jugoslawien' *Gutachten der Arbeitsgruppe Balkan*, 29. January 2001, Berlin pp. 34- 37.

²³⁰ Commission of the European Communities: *Montenegro 2007 Progress Report*, see: http://www.ec.europa.eu/enlargement/pdf/key_documents/2007/nov/montenegro_progress_reports_en.pdf pp. 14- 15.

3. Theories of Multinational Federalism

After defining the concepts of democracy, federalism and nationalism, it is important to analyse the relationships of these in a multinational federation. Only a detailed understanding of this relationship will enable us to understand the origin, development and prospects for the multinational federal concept in Bosnia and Herzegovina in the following chapters of this thesis.

Therefore, 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. In the second section we 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 a highly appropriate concept to national conflict- management, but it will be demonstrated to be a complicated conglomerate of *Liberal Nationalism*, *Consociationalism* and *Federalist Theory*, which shall be called “Multinational Federalism.” To understand the philosophical and ontological framework of those authors writing about “Multinational Federalism”, it is important to discuss the origins of the theory. I use the term “Canadian School”²³¹ to summarise the works of several authors whose interest in studying the normative foundations of multinational federations was the empirical reality of binational Canada. However, the concept of “Multinational Federalism” has lately been of interest for other authors, coming especially from Spain, the United States and those studying the EU. Their approaches shall be considered in Part Two. Finally, the relationships of 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.

3.1 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,” we can see that this concept clashes strongly with the basis of a multinational state as a reality of several *demoi*. Therefore, the relationship of democracy and nationalism needs to be examined as well as ways of how to address multinationality successfully in a democratic framework. As the alternatives to “multinational democracy” are assimilation, discrimination, population transfer, ethnic cleansing, and finally physical extinction,²³² the accommodation of national diversity within democratic structures is of key importance.

²³¹ Michael Burgess refers to the evolution of a Canadian School of thought on multinational federalism in: Burgess, Michael, *Comparative Federalism*, 2006, pp. 121- 123.

²³² 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. 495-498.

3.1.1 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 about 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; while nationalism on the other side represents national homogeneity, inclusion and exclusion and the importance of culture and ethnicity for the nation. While liberal democracy especially focuses on individuals and their rights, nationalism focuses on 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, while the French Constitution does not recognise any other nation besides the “French nation.” It does give, however, every citizen of Corsica the same equal rights as all other citizens of France.²³³ The basic conflict lines between democracy and nationalism therefore can be summarised in two points. One the one side both ideologies clash in their perception of the dominant actors. While democracy focuses on individual rights, nationalism points out the importance of the nation as a group. Secondly, nationalism and democracy have contradicting ideas about the inclusion of opposition groups. While nationalism only distinguishes between nations and finally demands the homogeneity of territory and nation; democracy on the other hand distinguishes between different parties, different candidates and different coalitions. Consequently, while 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. Nationalism on the other side 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 have ultimately 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 origin.

The main contrast between cultural affiliation and ethnic origin is the recognition of a common belonging. While, for example, all Catholics share the same religion and therefore an important element of culture, they do not identify themselves as a common ethnic group, based on joint historical

²³³ 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.

experiences, language and blood ties. Benedict Anderson pointed this out very precisely when he argued that ethnic groups and consequently nations can be considered as “imagined communities.”²³⁴ On the other side, Eric Hobsbawm argued that the focus on ethnicity and later nationalism is a modern phenomenon. According to his line of argument (which was also supported by other authors on nationalism such as Ernest Gellner²³⁵) groups were able to develop a form of “belongingness” and common identification that reached further than the focus on shared cultural experiences. This was a result of the Peace of Westphalia which led to the establishment of modern states with central administration and centralised school systems so that the state was able “to create” loyalty. Furthermore, Hobsbawm points out that industrialisation played a key role in the creation of ethnic and later national identities as it led to the spread of national newspapers, new class consciousness and later to the introduction of universal suffrage.²³⁶ The ethnic ties between members of the same ethnic group combine elements of cultural affiliation with the invention of a joint history and the focus on common descent. These elements are further used to justify the claim of an ethnic group to a homeland. The argument for ethnic homogeneity of the homeland marks the further qualitative development from ethnic identification to national consciousness.

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.²³⁷ Even the former President of Freedom House argued in 2002 that ‘democracy has been significantly more successful in mono-ethnic societies than in ethnically divided and multiethnic societies.’²³⁸ However, these arguments open two important questions that return to the relationship between democracy and nationalism: firstly, why are mononational states more receptive to democracy and secondly, what are the underlying issues in the relationship between nationalism and democracy?

The arguments for the better prospect of democracy in mononational states can be summarised quickly. It could be argued that the potential for “deep rooted conflict” is much smaller in mononational states.²³⁹ Therefore, the prospect of consensus building is better and the potential for inter- group violence much lower. Furthermore, secessionist movements are more unlikely. Political decisions are easier to accept when those who made them are part of the same national group and

²³⁴ Anderson, Benedict: *Imagined Communities*, 1983, p. 15.

²³⁵ Gellner, Ernest: *Nations and Nationalism*, 1983.

²³⁶ Hobsbawm, Eric: *Nations and Nationalism since 1780*, 1992.

²³⁷ 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.

²³⁸ 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.

²³⁹ This particularly refers to inter-group or inter-nation conflict within a state. However, political conflicts and crisis can be found in every democratic state. Ultimately, political conflict and different opinions on core issues concerning the state is a key criterion for democracy as it demonstrates a plurality of political opinions.

identification with the state itself is higher when the state is mononational, which raises the prospects of the implementation of decision.²⁴⁰

However, Steven Firsh and Robin Brooks have challenged the theory that mononational states are more likely to become a stable democracy than multinational states.²⁴¹ 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.'²⁴² Instead, they argue that it could not be demonstrated that multinational states have necessarily a worse political and economic performance.²⁴³ Indeed, the successes of the binational states of Canada and Belgium and the multinational states of Spain and India are only some examples to strengthen their thesis. Furthermore, dictatorships in Fascist Germany, modern North Korea and Iran demonstrate that mononational states have a potential to become authoritarian regimes, too.

What, then, are the key issues in the relationship between democracy and nationalism? First, although we have seen that nationalism and democracy conflict in two major categories, they also have several similarities. Nicole Töpperwien argues that the feature of self-determination and equality are common values of both ideologies.²⁴⁴ Furthermore, national movements in the past have often been characterised by the demand for '*Freiheit und Einheit*'²⁴⁵ (freedom and [national] unity). In fact, the American and French revolutions, as well as the German '*Vormärz*' movement, all unite the ideas of national self-determination and equal and universal rights within a democratic (although the French and the Americans called it "republican") framework. The preamble of the American Constitution demonstrates this connection:

*"We the People of the United States,
in Order to form a more perfect Union,
establish Justice, Insure domestic Tranquillity,
provide for the common defense,
promote the general Welfare,
and secure the Blessings of Liberty
to ourselves and our Posterity,
do ordain and establish this Constitution
for the United States of America."*

²⁴⁰ Firsh, Steven and Brooks, Robin: 'Does Diversity Hurt Democracy?' in: *Journal of Democracy*, Vol. 15, No. 1, January 2004, pp. 154-166.

²⁴¹ Ibid.

²⁴² Ibid. p. 160.

²⁴³ Ibid. pp. 162-164.

²⁴⁴ Töpperwien, Nicole: *Nation- state and Normative Diversity*, 2001, p. 159.

²⁴⁵ Compare for Germany: Winkler, Heinrich August: *Der lange Weg nach Westen (Deutsche Geschichte 1806-1933)*, Bundeszentrale für politische Bildung: Bonn 2002, p. 80.

For a multinational state this connection raises the question: How can a democratic political system accommodate the national diversity within a multinational state? Or, if we change the focus of the analysis, does democracy have the necessary instruments to accommodate national diversities? Two theories, Liberal Nationalism and Consociationalism, which argue this is possible, shall be the focus of our analysis now.

3.1.2 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.’²⁴⁶ 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.²⁴⁷ In short, Liberal Nationalism is about minority rights.²⁴⁸ While the process of nation-building in Western Europe and other parts of the world has been dominated by negative behaviour towards minorities, which includes everything from assimilation to social exclusion to ethnic cleansing, 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 the nation-state.²⁴⁹ 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.’²⁵⁰ Liberal Nationalists focus on the notion of self determination of minority nations within the borders of the state and refer to “cultural self determination.”²⁵¹ Tamir describes cultural self- determination as the demand of national minorities for institutional self- rule

²⁴⁶ Tamir, Yael: *Liberal Nationalism*, Princeton University Press: Princeton 1993, p. 9.

²⁴⁷ Ibid. p. 6.

²⁴⁸ David Miller refers to the “nationality principle.” See: Miller, David: ‘Nationality in Divided Societies’, in: Gagnon, Alain and James Tully (Ed): *Multinational Democracies*, 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” while there are also a number of recognised national minorities in Bosnia. These national minorities are however marginalised in the political system, as Chapter Five will demonstrate.

²⁴⁹ 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.

²⁵⁰ Kymlicka, Will: *Politics in the Vernacular (Nationalism, Multiculturalism and Citizenship)*, Oxford University Press: Oxford and New York 2001, p. 39.

²⁵¹ Tamir, Yael: *Liberal Nationalism*, 1993, p. 69.

and autonomy for the minority nations' communal life.²⁵² Liberal Nationalism in this perspective is based on tolerance, acceptance and the promotion of diversity. It has been argued that it is based on the values of ethical humanism as far as it refers to the idea that the people who live together in a community shall be responsible for their own lives.²⁵³ When cultural self-determination is the key message of Liberal Nationalism, it follows that Liberal Nationalists respect others (and their cultural self-determination) and the welfare of other nations, especially in the common state, as a core element of the theory.²⁵⁴

Will Kymlicka describes nine core elements of Liberal Nationalism:

1. The promotion of a common national identity within the multinational 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, which the members can voluntarily join and leave
5. A thin concept of national identity to allow the development of multiple identities
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 recognised²⁵⁵

In relation to liberal democracy Liberal Nationalists argue that democracy cannot be neutral. Neutrality towards minority nations based on the assumption that all citizens share equal rights will lead either to ignorance and finally assimilation of minority nations or, if the state wants to avoid this, it has to lead to the positive promotion and protection. Either way, Liberal Nationalists argue that a state cannot be neutral.²⁵⁶ Of course, this argument rests 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.²⁵⁷

If the promotion and the acceptance of national diversity within a state is a core value itself, and if therefore the inclusion and respect of national diversity becomes a key state goal, the question

²⁵² Ibid. p. 70.

²⁵³ Ibid. pp. 83-90.

²⁵⁴ Ibid. p. 108.

²⁵⁵ Kymlicka, Will: 'Nation-building and minority rights', 2000, pp. 196-199.

²⁵⁶ Tamir, Yael: *Liberal Nationalism*, 1993, p. 146.

²⁵⁷ 'Nationalism' in: Stanford Encyclopedia of Philosophy, here used: Online version: <http://plato.stanford.edu/entries/nationalism> (accessed 03. 04. 2008)

that follows is: 'How can such an inclusion 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.²⁵⁸ Federalism provides just such a form of cultural and territorial autonomy and offers the additional benefit of guaranteeing the inclusion of a given minority nation in the decision-making at the (federal) state level.

3.1.3 Consociationalism

Consociational democracy has become the second important concept of the implementation of democracy in a divided society. While Liberal Nationalism is in its nature normative, consociationalism consists of both normative and positivist elements.²⁵⁹ As Arend Lijphart, the most important scholar on consociationalism, argues, '[u]nder the unfavourable circumstances of segmental cleavages,²⁶⁰ consociational democracy, though far from the abstract ideal, is the best kind of democracy that can realistically be expected.'²⁶¹ 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.²⁶² Grand Coalition refers here to a situation in which the 'political leaders of all the significant segments²⁶³ of the plural society cooperate [...] to govern the country.'²⁶⁴ This feature already demonstrates two core problems of consociational theory.

First, Daniel Elazar argues that the focus on elite cooperation creates the necessity of an hierarchical structure of the society.²⁶⁵ 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. South Africa after the end of the Apartheid regime chose purposely not to implement strict consociational democracy but to identify itself as the "Rainbow nation." Thus, inclusive forces addressing the society as a whole and not its different segments might be marginalised, while on the other side extremists, addressing only the selected segments will be strengthened. As will be demonstrated later, the Bosnian Social Democratic Party, as the only major

²⁵⁸ Kymlicka, Will: 'Nation-building and minority rights', 2000, p. 189 and Tamir, Yael: *Liberal Nationalism*, 1993, p. 151.

²⁵⁹ Lijphart, Arend: *Democracy in Plural Societies (A Comparative Exploration)*, Yale University Press: New Haven and London 1977.

²⁶⁰ Lijphart refers to segmental cleavages as political divisions along religious, ideological, linguistic, regional, cultural, racial, or ethnic lines. Compare: Ibid. pp. 3-4.

²⁶¹ Ibid. p. 48.

²⁶² 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.

²⁶³ Segments are defined by Lijphart as the conflicting groups, for the purposes of our paper we can set segments and ethnic groups/ minority nations as synonyms.

²⁶⁴ Lijphart, Arend: *Democracy in Plural Societies*, 1977, p. 25.

²⁶⁵ Elazar, Daniel: 'Federalism and Consociational Regimes', in: *Publius: The Journal of Federalism*, Vol. 15, No. 2, Spring 1985, pp. 17-34, here p. 32.

multinational party, is an example of the marginalisation of inclusive forces within the society due to the use of consociationalism.²⁶⁶

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.'²⁶⁷ He refers to a decentralised decision making process in which 'the decisionmaking is delegated to the separate segments as much as possible.'²⁶⁸ 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.²⁶⁹ While Lijphart argues in this context that federalism is a sub-form of consociationalism, this view has been challenged by authors on federalism, especially Daniel Elazar who argues that 'federalism is a matter of the form of a polity while consociationalism refers to a polity's regime.'²⁷⁰ He refers to federalism as applying to processes and structures, while consociationalism only applies to processes.²⁷¹ Furthermore, he argues that federalism has proven itself to be lasting much longer than consociationalism.²⁷² Finally, he argues that it is consociationalism that needs federalism to be implemented successfully in order work correctly and not the other way around.²⁷³ We can remind ourselves of the existence of multiple non-consociational federations from Germany to the United States, while those states that adopted consociationalism without federalism either moved towards a non- consociational type of democracy over time (The Netherlands) or became federalised (Belgium).²⁷⁴

However, returning to consociationalism and its accompanying controversies, the third characteristic thereof democracy is proportionality. Proportionality here 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.²⁷⁵ 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.'²⁷⁶ Immediately, we

²⁶⁶ See here Chapter Five: The Bosnian Federation and the subchapter "The Party System" as well as Chapter Six: Federalism in Post- War Bosnia.

For a detailed analysis of consociationalism in Bosnia- Herzegovina see: Bieber, Florian: *Post- War Bosnia (Ethnicity, Inequality and Public Sector Governance)*, Palgrave McMillian: Basingstoke 2006.

²⁶⁷ Lijphart, Arend: *Democracy in Plural Societies*, 1977, p. 41.

²⁶⁸ Lijphart, Arend: 'Non- Majoritarian Democracy', 1985, p. 4.

²⁶⁹ Lijphart, Arend: *Democracy in Plural Societies*, 1977, p. 42.

²⁷⁰ Elazar, Daniel: 'Federalism and Consociational Regimes', 1985, p. 29.

²⁷¹ Ibid. p. 23.

²⁷² Ibid. p. 29.

²⁷³ Ibid. p. 30.

²⁷⁴ Ibid. p. 30.

The exception to this general rule is Lebanon. However, the long civil war and the current fragility in the political system demonstrate also some of the weaknesses of consociationalism if the common agreement is not continuously reviewed and revised. We shall return to the importance of reforms within a multinational state later in this thesis, when applying the ideas of Carl Friedrich to Bosnia's federal political system.

²⁷⁵ Lijphart, Arend: *Democracy in Plural Societies*, 1977, pp 38-39.

²⁷⁶ Ibid. pp. 36- 37.

could argue that a veto right for each segment of society on the national level will end up in obstruction in the democratic process and dead-locks. 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. Finally Lijphart demonstrates a strong faith in the abilities of the political leaders by arguing that as everyone is aware of the possibilities of obstructions, they become unlikely.²⁷⁷ However, as will be demonstrated later,²⁷⁸ the notion of a “national interest veto” is one of the key reasons for dead-locks in the political system of Bosnia-Herzegovina as well as the major reason for its inability to reform.

In conclusion, consociational democracy offers important features to manage diversity within a political system and at the same time keep the democratic features of the polity. However, the features mentioned above raise many questions. In a multinational state, consensual decision-making is of key importance. Minority nations 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. While 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 form an important unity in the Bosnian political system and shall be treated as such in this thesis.

3.2 Federalism in multinational states

As we have seen in the section above, both National Liberalism and consociational democracy offer forms of accommodating diversity within the settings of a liberal democratic state. Both theories highlight the importance of autonomy for minorities 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 the participation of minority nations in the central institutions of a state. 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 multination federalism.’²⁷⁹

²⁷⁷ Ibid. p. 37.

²⁷⁸ Please refer to Chapter: “The Bosnian Federation”.

²⁷⁹ Kymlicka, Will: ‘Federalism and Secession: At Home and Abroad’ in: *Canadian Journal of Law and Jurisprudence*, Vol. 13, No. 2, July 2000, pp. 207-224, here p. 217.

3.2.1 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.'²⁸⁰ 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 federalism²⁸¹ 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.'²⁸² 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.²⁸³ Even more importantly, '[d]emocratic federalism has domesticated and pacified nationalism, while respecting individual rights and freedom.'²⁸⁴

If we were to follow Kymlicka's argument, it would seem that federalism has been entirely a success in multinational states. Indeed, there is little doubt that the successful accommodation of the people of Quebec, the several language groups and national minorities in India, the Catalans, Basques and Galicians, the holding-together of Belgium, and to some extent also the successful accommodation of the Bosnian Croats and the Bosnian Serbs can be linked to the introduction of federal or quasi- federal systems in Canada, India, Spain and Bosnia- Herzegovina. Having said that, we will have to define the concept of "successful accommodation" and it has been argued recently that success and failure in federal systems are not easy to assess.²⁸⁵ Kymlicka himself argues that the introduction of federalism in multinational states was not able to end the discussions about secession 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.'²⁸⁶ We shall discuss the question of secession in a multinational state a little bit later in this chapter, for now we shall summarise that Liberal Nationalists

²⁸⁰ Norman, Wayne: *Negotiating Nationalism (Nation- Building, Federalism, and Secession in the Multinational State)*, Oxford University Press: New York and Oxford 2006, pp. 87-88.

²⁸¹ He refers to "multination federalism" while I prefer multinational federalism. Both terms refer to the introduction of federalism as an instrument to manage the different ambitions of several nations within a state. Conceptually, however, I refer to multinational federalism when three or more nations within the borders of one state conflict while Kymlicka refers to two or more nations. Please see Chapter Two for further reference to the concept of multinationality.

²⁸² Kymlicka, Will: 'Federalism and Secession', 2000, p. 207.

²⁸³ Ibid. pp. 212-213.

²⁸⁴ Ibid. p. 213.

²⁸⁵ Burgess, Michael: 'Success and Failure in Federation: Comparative Perspectives', Paper presented at the Conference: The Federal Idea: A Conference in Honour of Ronald Watts, 18-20 October 2007, Kingston, Canada, available on: <http://www.queensu.ca/iigr/conf/Watts/papers/Burgess.pdf> (seen 17 April 2008).

²⁸⁶ Kymlicka, Will: *Politics in the Vernacular*, 2001, p. 113.

(and some Consociationalists, like Lijphart, would agree) argue that the introduction of federation in a multinational polity, in which the minority nations are territorially concentrated, can be a successful form of the demand for self-determination. However, federalism provides neither an answer to all relevant questions in multinational states nor does its implementation lower the demand for further autonomy and finally secession. Instead, the establishment of self-government for national minorities which includes the building of an effective administration and democratic and effective institutions might even increase the demand for secession. For the first empirical application of their demands, Liberal Nationalists chose Canada, as we shall see, not by coincidence.

3.2.2 The “Canadian School” of multinational federalism²⁸⁷

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 of multinational federalism demonstrates a clear dominance of authors who take Canada as their prime example to explain the relationships of democracy, federalism and nationalism.²⁸⁸

Our aim in this section is not to look at the detailed analysis of the above mentioned authors. Instead, we shall focus on their contribution to the general study of multinational federalism, both in terms of normative political theory and the practical application of federalism in the multinational polity. These contributions can be split into two separate arguments; one referring to the philosophical legitimacy of multinational federalism in the light of liberal theory and the second contributing to the empirical features of a multinational federation by analysing the day-to-day working of the Canadian federation and its special features, which attempt to accommodate diversity.

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.’²⁸⁹ He refers to Canada as a ‘federation of peoples’ and the importance of ‘national recognition’ for the Québécois.²⁹⁰ In short, starting from the argument of self-determination and self-expression of national minorities (and in another work he also includes indigenous peoples in Canada²⁹¹), Kymlicka

²⁸⁷ 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.

²⁸⁸ 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).

²⁸⁹ 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.

²⁹⁰ Kymlicka, Will: ‘Multinational Federalism in Canada,’ 1998, p.5 and p. 8

²⁹¹ Kymlicka, Will: *Politics in the Vernacular*, 2001, especially chapter 6.

highlights the importance of recognition of diversity, self- government for the minority in “their” federal unit and asymmetrical arrangements²⁹² 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.²⁹³ Wayne Norman focuses on similar normative values in 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.’²⁹⁴ Finally, Alan Patten argues that the core of a multinational federal system is a ‘right to equal recognition of identity in the public sphere.’²⁹⁵ These examples are enough to explain the following argument: starting with the debate about the origin and nature of the Canadian federation, 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. The arguments presented can be summarised by the following categories:

1. If Canada is a federation of peoples, all constituent peoples need to be recognised as such.
2. If Canada is a federation of peoples, the Québécois and the indigenous peoples need to have more forms of self- government than the provinces of English- speaking Canada, especially in areas concerning culture, language and education. Furthermore, the constituent peoples need to have special veto powers in central institutions, especially concerning constitutional

²⁹² 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.

A third version of asymmetry refers to the distribution of power between the two chambers that form the central legislature. The German case is used as a reference point, where the Bundesrat has only limited possibilities to influence the decisions of the first chamber, the Bundestag. Only matters concerning the Länder have to be approved by the Bundesrat, however in a federal state like Germany, where the Länder carry out most of the administration, a majority of bills touch Länder responsibilities, at least when it comes to the administration. For the purposes of this paper, we refer to the second form of asymmetrical federalism, namely the different distributions of powers between the constituent units themselves and between the constituent units and the central institutions.

For further reference to asymmetrical federalism see: Agranoff, Robert (Ed.): *Accommodating Diversity: Asymmetry in Federal States*, Nomos: Baden Baden 1999.

²⁹³ Gagnon, Alain: ‘The moral Foundation of asymmetrical federalism: a normative exploration of the case of Quebec and Canada’ in: Gagnon, Alain and James Tully (Ed): *Multinational Democracies*, Cambridge University Press, Cambridge 2001, pp. 319-337.

²⁹⁴ Norman, Wayne: ‘Justice and stability in multinational societies’ in: Gagnon, Alain and James Tully (Ed): *Multinational Democracies*, Cambridge University Press, Cambridge 2001, pp. 90- 109, here p. 108 (in original in Italics).

²⁹⁵ Patten, Alan: ‘Liberal Citizenship in multinational societies’ in: : Gagnon, Alain and James Tully (Ed): *Multinational Democracies*, Cambridge University Press, Cambridge 2001, pp. 279-298, here p. 282.

changes. Only those provisions enable all citizens and peoples within the federation to participate equally.

3. If Canada is a federation of peoples it must enable its citizens to develop different forms of identification.

This normative framework focuses on the ideas of recognition of diversity, promotion of difference and finally enabling equal participation. James Tully explained it in this way: 'if the cultural ways of the citizens were recognised and taken into account in reaching an agreement on a form of constitutional association, the constitutional order, and the world of everyday politics it constitutes, would be just with respect to the dimension of politics.'²⁹⁶

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. Wayne Norman summarised the policy areas affected by the demand for multinational federalism in an extensive list, highlighting the constitutional recognition of minorities, the division of powers within the federation, identity policies, and representation of minorities in central institutions, questions of constitutional amendments, fiscal federalism and finally the question of the legality of secession.²⁹⁷ This summary demonstrates that the authors of the "Canadian School" have persuasively argued that the change of Canada as a federation of regions to a federation of peoples would seriously affect several core issues of day- to- day politics.

However, after demonstrating the arguments of the "Canadian School" some words of caution are important. In Chapter One, we have defined Canada as a binational federation, in which the English speaking Canadians (although they do not see themselves as a nation other than the Canadian nation) and the Québécois are the two dominant actors. Conflicts that arise between those two groups have the potential to create a permanent constitutional crisis and result in a constant questioning of the union. However, one "advantage" of a multinational federation as opposed to a binational one is that three or more national groups within the borders of one state allow different forms of coalition building and therefore different forms of conflict- management in the federation. While some of the problems addressed by scholars of the Canadian School are very important and will come across our line of argumentation later in this thesis, we need to keep in mind that the critics of federalism in a multinational state have yet to come up with a durable alternative.

²⁹⁶ Tully, James: *Strange Municipality*, 2006, p. 6.

²⁹⁷ Norman, Wayne: 'Justice and stability in multinational societies', 2001, pp. 92-93.

3.2.3 Multinational federalism revised

As we have seen above, 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 agreed with the values of Liberal Nationalism but expanded 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 strengthening of the “national” identity in multi- national states; and
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. Often authors of this school argue strongly for the possibility of secession.

While the first two schools of thought retain the concept of “Multinational Federalism” but question its foundation on Liberal National values, the third school 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 the nationalist politics and therefore supports secessionist movements and further conflicts.²⁹⁸ Often authors of this school confront those who argue for federalism with the works of Dicey, who was already critical about the application of federalism in mono- national states.²⁹⁹ However, authors of this category have to be distinguished from the authors of the second category, who might criticise elements in the origin of federalism in the society in question and its application; but they generally support the idea of federalism as a form of conflict- management in a multinational society. It is useful to have a further look at the arguments of the first and the second categories.

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 including especially the “federalising” countries of Spain

²⁹⁸ Authors of this school of thought are often debating the broader issues of democratisation and state- building. Their criticisms focus then on the 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. 84-88.

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.

²⁹⁹ Dicey, Albert Venn: *Introduction to the Study of the Law of the Constitution*, 8th ed., Macmillan: London 1914.

Dicey argues that federalism is generally an instable form of government and will result in centralisation and finally in a unitary- state.

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.³⁰⁰ Requejo on the other hand, 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.’³⁰¹ Value Pluralism here is a defence of the ‘existence of a multiplicity of heterogeneous values’³⁰² and a focus on the liberal values of liberty, equality and individual dignity.³⁰³ Both authors develop their theories of multinational federalism based on these values. Both highlight three core elements of a normative theory of federalism, which differ only slightly as we shall see. Bauböck focuses on the three core elements of:

1. Self- government for minorities within their constituent unit
2. Recognition of diversity and promotion of difference on sub- unit and central level
3. Symmetric Representation and Powers of national minorities in the central institutions³⁰⁴

Requejo simultaneously highlights the following three points:

1. Constitutional and political recognition of the multinational character of the state
2. High degree of national self- government for minorities through asymmetrical and confederal arrangements
3. A multinational regulation of shared rule³⁰⁵

As we can see, both authors focus on the triad of recognition, autonomy/ self- government and participation in the central institution for minority nations, all of which we have already discussed when we were analysing the Canadian School. They also share further features which we will discuss a little later in more detail: 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 they live in.³⁰⁶

³⁰⁰ Bauböck, Rainer: *United in Misunderstanding? Asymmetry in Multinational Federations*, IWE Working Paper No. 26, Austrian Academy of Sciences, Vienna, May 2002, see: <http://www.eif.oeaw.ac.at/05workingpapers/archive05.html> (seen: 20 November 2007), pp. 22-38.

³⁰¹ Requejo, Ferran: *Multinational Federalism and Value Pluralism (The Spanish Case)*, Routledge: London 2005, p. 15.

³⁰² 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.

³⁰³ Requejo, Ferran: *Multinational Federalism*, 2005, p. 27.

³⁰⁴ Bauböck, Rainer: *United in Misunderstanding?*, 2002, p. 39.

³⁰⁵ Requejo, Ferran: ‘Value Pluralism and Multinational Federalism’, 2004, p. 36.

³⁰⁶ Ibid, pp. 35- 38, 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, at: <http://dspace.mah.se:8080/bitstream/2043/690/1/Workingpaper201.pdf> (seen 20. November 2007), pp. 3-15.

The second group of authors studies federalism in a different context. While the Canadian School, Requejo, and Bauböck, debate their claims and arguments on the basis of the established democracies of Belgium, Canada and Spain; the authors of the second school discuss federalism in the context of ethnic conflict, democratisation and conflict- management. This school represents a newer look at federalism as a tool of conflict- management, which can be successful in countries that suffered internal conflicts and where the different groups are territorially organised. We shall discuss the contributions of Alfred Stepan, Nancy Bermeo and Lidija Basta- Fleiner as important contributors to this school.

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 eventually about the appropriateness of federalism as a tool in conflict- management.

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).³⁰⁷ 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.³⁰⁸ 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 the central institution 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.³⁰⁹ 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.³¹⁰

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

³⁰⁷ 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.

³⁰⁸ Ibid. p. 24.

³⁰⁹ Ibid. pp. 30- 32.

³¹⁰ Ibid. p. 24.

peaceful conflict- management in ethnically and nationally divided countries.³¹¹ She presents federalism as a viable solution to societies that face ethnic conflicts and claims against the critics of the third school that ‘it is historically inaccurate to argue that it [federalism S.K.] brings on separation.’³¹² 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.’³¹³ She argues 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 while 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.³¹⁴

Lidija Basta- Fleiner represents a different tradition. While Bermeo and Stepan are political scientists specialised in the fields of comparative politics and democratisation, Basta- Fleiner is a constitutional lawyer who has published mainly on democratisation and constitutional design in transitional countries in addition to work on political development in central and Eastern Europe.³¹⁵ However, in a strong contribution to the literature, she has not only argued that Liberal Nationalism does not provide an answer to the solution of national demands in multinational states, but she has also doubted the role federalism can play in such a multinational state.³¹⁶ This argument might bring her closer to the third group of scholars, which denies the success of federalism in multinational states generally. However, while these authors usually claim that federalism supports further disintegration and finally leads to secession, Basta- Fleiner presents a different argument. She argues that ‘a major paradox of multicultural federalism’³¹⁷ lies in the fact that it should create trust and tolerance, which in fact are its own preconditions.³¹⁸ Concurring with Bermeo, she highlights the importance of a ‘federal consensus’ and argues against ‘internationally imposed federal arrangements’ as they lack consensus,

³¹¹ 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.”

³¹² Ibid. p. 107.

³¹³ Ibid. p. 108.

³¹⁴ 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- 483.

³¹⁵ Compare: Basta- Fleiner, Lidija and Fleiner, Thomas (Eds): *Federalism and Multiethnic States: The case of Switzerland*, 2nd edition, Helbing & Lichtenhahn, Basel, Geneva and Munich 2000, Basta- Fleiner, Lidija, Nakarada, Radmila and Samardzic, Slobodan (Eds): *The Labyrinths of the Crisis: Prerequisites for the Democratic Transformation of the Federal Republic of Yugoslavia*, Helbing & Lichtenhahn, Basel, Geneva and Munich 2001 as well as: Basta, Lidija (Ed.): *Constitutional Prerequisites for a Democratic Serbia*, Etudes et Colloques Vol. 20, Institute for Federalism, University of Fribourg (Switzerland), 1998.

³¹⁶ Basta- Fleiner, Lidija: *Trust and Tolerance as State Making Values in Multicultural Societies*, Paper presented at the International Jean Nordmann Colloquium on Federal Co- Existence in the Near East, organised by the Institute for Federalism (Fribourg, Switzerland), 14- 17 March 2004.

³¹⁷ While Basta-Fleiner uses the term “multicultural federalism,” she means the same as what we have identified as “multinational federalism”.

³¹⁸ Ibid. p. 2.

agreement of the governed and any form of a common identity.³¹⁹ Her criticism discusses the very roots of a multinational federation.

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 the 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 long-term this will lead to more stability and higher chances for a permanent absence of violence.³²⁰

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 cooperation 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 the different national groups must also gain the support of representatives of other national groups in order to be elected to a 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 cooperation between the different national groups.³²¹

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 state. Based on Daniel Elazar's conception of self-rule and shared-rule,³²² multinational federalism offers autonomy (self-rule) to nations, who are concentrated in a clearly defined territorial unit, while 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.

At this point, we can summarise some initial conclusions about multinational federalism:

1. Federalism in a multinational state must be based on the (liberal) values of a) preserving diversity as a value itself; b) justice as a form of ethno- cultural justice and c) equality as 'the right to diversity'³²³ and equality in form of equal opportunities. Some form of trust must exist between the different nations in a state and there must be a will to cooperate. These can only

³¹⁹ Ibid. pp. 14-16.

³²⁰ 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. 120-156.

Also: Kaufmann, Chaim: 'Possible and Impossible Solutions to Ethnic Civil Wars' in: *International Security*, Vol. 20, No.4, Spring 1996, pp. 136-175.

³²¹ We shall return to Horowitz's theory in Chapter Four and discuss his influence on concepts of power-sharing. For his main arguments, see his outstanding monograph:

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

³²² Elazar, Daniel: *Exploring Federalism*, The University of Alabama Press: Tuscaloosa 1987.

³²³ Ibid. p. 9

be created over a long period of time and through mechanisms that encourage cooperation and built trust.

2. Federalism in a multinational state needs to be voluntary. However, the imposed form of federalism that we can find in Bosnia might be able to become voluntary if the Bosnian peoples will be able to agree on a new “contract” about the nature of their joint state i.e. a new constitution.
3. Federalism and Democracy are in a two way relationship with each other within a multinational federation. While they enforce each other (e.g. minority participation in central institutions strengthens democracy and federalism) they also seem to be conflictual (asymmetrical federalism).
4. The triad of RECOGNITION-AUTONOMY-PARTICIPATION is *the* important underlying core of multinational federations. This also means that the elements of consociationalism (grand coalition, veto rights and proportionality) should be implemented together with multinational federalism. The constitutional recognition of federalism and the assurance of participation and veto rights can lead to a more positive view on the common state by minority nations.
5. All multinational federal polities need ‘inclusive’ mechanisms. Multinational Federalism promotes both democracy and diversity, however for the stability of multinational federation further instruments of ‘inclusion’ need to be installed. Support of minority self- determination on the one side, has to be “counterbalanced” by the creation of loyalty and identification with the joint state on the other side.

3.3 Multinational federalism and multinational federation

Having examined the different roots of multinational federalism and conceptualised five core elements of a normative multinational federalism theory, we will now look at the application of multinational federalism in the state, namely a 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. We will conclude the chapter with a short discussion about problems of multinational federations, focusing on territoriality, citizenship and asymmetry.

3.3.1 Democracy in multinational federations

There is a continuing debate in the recent literature about the effects of federalism on democracy and vice versa.³²⁴ While for a general statement about the relationship between federalism and democracy further research is needed,³²⁵ we can draw some important lessons about this relationship in multinational states.

The debate about democracy in multinational states is affected in two ways by the introduction of a federal system. Firstly, the normative foundation of the democratic state shifts away from a focus on individual- to group rights. Multinational federations are formed by different *demos*, instead of one legitimating *demos*.³²⁶ 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 equal opportunities instead of equal treatment. Liberty has to be conceptualised as 'freedom of choice' and therefore a freedom to choose a culture to identify with. Finally, citizenship and identity have to be conceptualised in a framework that allows plural citizenship and multiple identities.³²⁷ Norman has highlighted the importance of justice in a multinational democracy and the necessary shift from combining justice and stability to combining justice and democracy through the enhancement of group rights.³²⁸ The normative debates within a multinational federation shift from individual rights and participation to group rights, recognition and autonomy.³²⁹

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 very obvious empirical evidence for this shift is the federal constitution. The recognition of all nationalities in the constitution as 'constituent people' 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'³³⁰ and Requejo highlights the importance of the flexible and open

³²⁴ 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- 182. 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- 261. It remains to be discussed if there is a general truth in the claims that democracy is a necessary condition for federalism and on the other side, federalism strengthens democracy.

³²⁵ This gap in the literature has been filled by:

Burgess, Michael and Gagnon, Alain (Eds): *Federal Democracies*, Routledge: London 2010.

³²⁶ 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 37-38.

³²⁷ Ibid. pp. 37-42.

³²⁸ Norman, Wayne: 'Justice and stability in multinational societies', 2001, pp. 92-94.

³²⁹ This argument is of course taken from the Liberal Nationalism school. See for example: Kymlicka, Will: *Politics in the Vernacular*, 2001, chapter 3.

³³⁰ Maiz, Ramon: 'Democracy, Federalism and Nationalism in multinational states', 2000, p. 53.

character of a federal constitution in a multinational state.³³¹ Indeed, events in India and Canada demonstrate the necessary ability of a federal constitution to redraw borders within the federation.³³² We might extend the flexibility argument of multinational federation when examining the constitutional practice of asymmetrical federalism. Taking the first look at asymmetrical arrangements, especially concerning the distribution of powers between the central level and different constituent units, we might argue that these forms of “unequal” treatment lead to undemocratic practices in reality. Indeed, looking at migration politics in Canada for example, we can see that while Quebec has an extensive amount of legislative power on provincial level concerning immigration policy,³³³ the other Canadian provinces have not. Immigration policy, which affects them, is decided in Ottawa by the federal government. Taking into account the nature of the upper chamber in Canada, it would be possible to argue that the unequal treatment clearly leads to an unequal reality in different Canadian provinces. However, taking into account the revised definition of equality in a multinational federation (and a binational one), we can see that it is only fair that Quebec manages its own immigration policy, since the main purpose of Quebec self- government is the preservation of the French- speaking Canadian identity, culture and the Québécois as a nation. Therefore, asymmetrical distributions of power, as well as a veto right of nations within central institutions on all matters that concern their identity does 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.³³⁴ Only this form of compound democracy accommodates the diversity to a degree where the future existence of the state is not permanently questioned.

³³¹ 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- 320, here p. 312.

³³² Burgess, Michael: *Comparative Federalism*, 2006, p. 107.

In 2000, India created the three new states of Chhattisgarh, Uttaranchal and Jharkland. Canada recognised Nunavut, a territory in the eastern Arctic and gave self- government to the inhabitant Inuits in 1999.

³³³ Based on the Cullen-Couture Agreement of 1974.

³³⁴ 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- 431, here p. 425.

3.3.2 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.'³³⁵ Burgess argues further that in multinational federations it is nationalism that is the federalism of the state.³³⁶ We cannot be certain about such a generalisation, since this would reduce economic diversity and a tradition of local government to side effects of nationalism.³³⁷ However, he *is* right in claiming that nationalism is the major driving force of the multinational federation.

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.'³³⁸ Murray Forsyth came, in his analysis of federalism and nationalism, to the same conclusion.³³⁹ However, he also linked the "success" of federalism as a tool of conflict- management³⁴⁰ 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.³⁴¹ If we consider 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, while 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 the different nations within the multinational state the highest degree of self- determination.

³³⁵ Burgess, Michael: *Comparative Federalism*, 2006, p. 108.

³³⁶ Ibid. p. 102. His arguments construct nationalism as the ideological framework of the federation.

³³⁷ Spain can be seen as an example in which the demands of the minority nations (especially the Basques, Catalans and Galicians) drive the state towards federalisation. However, the economic differences within the Spanish state and even more the importance of a history of local self- government strengthen this federalisation process.

³³⁸ 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.

³³⁹ Forsyth, Murray: 'Introduction' in: Forsyth, Murray (Ed.): *Federalism and Nationalism*, Leicester University Press: Leicester and London 1989, pp. 1-10.

³⁴⁰ He argues that ethnic cleavages and national conflicts are not solved in multinational federations, but they are managed to enable a fair accommodation and a 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.

³⁴¹ Ibid. p. 6.

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 and maybe even with a supranational body (to take the Spanish example: one can be Basque, Spanish and European at the same time).³⁴² Recognition in multinational states therefore, means the recognition of the existence of more than one nationalism, national identity and finally nation.

We can argue that democratic federalism can accommodate the diversity of different national identities within one state by recognising them and enabling them to a high degree of self- government on the one side and the participation in the central institution on the other side. 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.³⁴³ For now, we shall leave this discussion with the argument of the necessity of a dual identification within the multinational state. How this dual (or multiple) identification can be created will be discussed in the following part of the chapter.

3.3.3 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.'³⁴⁴ 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. This is not worrying, as long as there is a general loyalty towards the state. However, the question that arises is twofold, firstly, how can such a loyalty be constructed or supported in the first place and, secondly, 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 (and even in mono- national federations) both forms of political loyalty overlap, the state represents the nation (or at least claims to do so). Loyalty, and with it, identification, are very

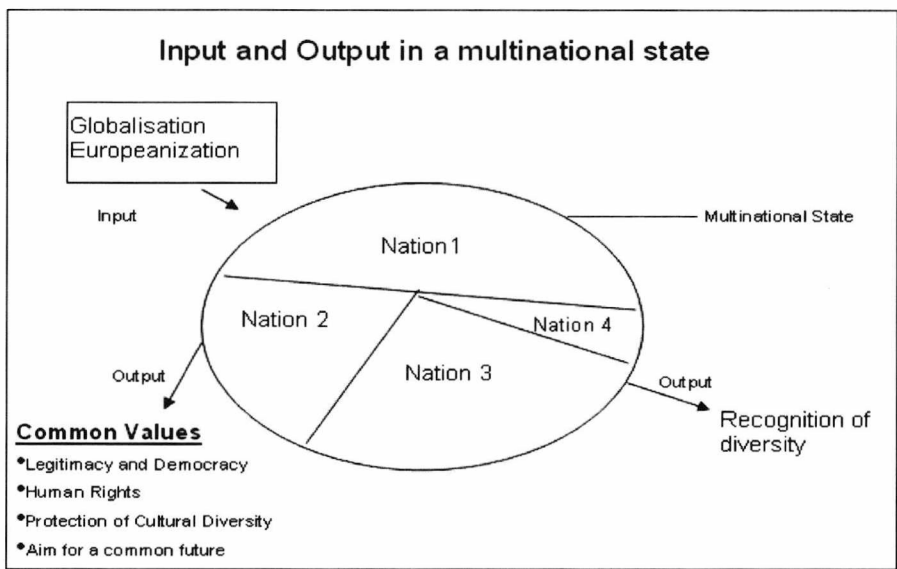
³⁴² Requejo, Ferran: *Multinational Federalism and Value Pluralism*, 2005, p. 72.

³⁴³ Maiz, Ramon: 'Democracy, Federalism and Nationalism in multinational states', 2000, p. 43.

³⁴⁴ Trudeau, Pierre Elliott: 'Nationalism and Federalism' in: Karmis, Dimitros and Norman, Wayne (Ed): *Theories of Federalism. A Reader*, Palgrave Macmillan: London 2006, pp. 221-226, here p. 221.

abstract and multidimensional concepts. The question of how to create and support a loyalty of all nations towards the state which they comprise 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.’³⁴⁵ 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, 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. Legitimacy is therefore a key precondition for loyalty and identification.³⁴⁶

The second way to support the creation of a joint 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*).³⁴⁷ 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, and 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) that focuses on the values of the constitution as well as on the respect towards others.³⁴⁸ Habermas’ concept of constitutional patriotism is summarised in picture 1:



Picture: Keil
Based on: Habermas, Jürgen: *Die Einbeziehung des Anderen*, 1996, pp. 174- 175

Figure 1: Input and Output in a multinational state

³⁴⁵ Ibid. pp. 222- 223.

³⁴⁶ This argument is especially important, because some authors argue for the development of a „Staatsvolk“ and mean a core group of the society which holds the values of the state high and guarantees the functioning of the state. But how can a state function if only one group accepts it? It is critical to address the question of legitimacy here. See for an example of “Staatsvolk” federalism:

O’Leary, Brendan: ‘An iron law of nationalism and federation? (A (neo-Diceyan) theory of the necessity of a federal *Staatsvolk* and of consociational rescue)’ in: *Nations and Nationalism*, Vol. 7, No. 3, 2001, pp. 273- 296.

³⁴⁷ Burgess, Michael: *Comparative Federalism*, 2006, p. 113.

³⁴⁸ Habermas, Jürgen: *Die Einbeziehung des Anderen*, suhrkamp: Frankfurt am Main 1996, pp. 138-139.

Habermas argues that democracy will help to integrate the different national identities into the joint state. We have already seen that a consociational democracy combined with the territorial granting of self- rule through federalism can indeed support the stability of a multinational federation. However, some authors have criticised Habermas' concept of constitutional patriotism and claim that it is not sufficient for multinational federations.³⁴⁹ According to him, modern societies in Europe are influenced by globalisation and Europeanization, which ultimately leads to a slow decline of ethnic identification. Instead, the inhabitants of Western European countries should find a common bond through shared values, namely the focus on democracy and human rights and the protection of cultural diversity. These values will unite the population and create a form of loyalty called "constitutional patriotism." The creation of a non-ethnic identity and a common value system has lately played a key role in the debates about a European citizenship. Indeed, it is common agreement that the majority of the peoples of the Western Balkans do see themselves as Europeans and have a widely support the membership of their countries in the EU. This offers the EU an important tool in the demand for reforms and further efforts towards the political elites. The EU, after all is a multinational polity and can its values of cooperation and compromise, tolerance and inclusion can help diverse societies like Bosnia and Herzegovina to find an internal consensus on the basis of the common aim to join the EU.

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 while at the same time supporting loyalty for the common state. However, the visa free travel to the EU for all those Bosnian Croats who also have Croatian citizenship and their participation in Croatian national election have also led to conflicts within Bosnia and Croatia. The concept of dual citizenship therefore is not without its pitfalls.

Territoriality and Secession

One of the major debates between authors writing about 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. We have to address the question of whether federalism in multinational states *necessarily* leads to secession.
2. We have to address 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 shall be.

³⁴⁹ 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.'³⁵⁰ Other authors have questioned the argument that federalism in multinational societies supports secessionist ambitions.³⁵¹ Taking both arguments apart we can argue: Federalism does seem to strengthen the national consciousness through self- government and autonomy. It also provides a nation within the federal unit with the necessary precondition for secession, namely functional decision- making bodies and a bureaucracy. However, the reason why Kymlicka's argument is lacking is that 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) will signal to the different nations in the state not only that the state is aware of its multinational character, but also that it is willing to promote this diversity and support the nations in their demand for cultural self- determination. This will enable the establishment of dual forms of loyalty and identification and the security for a nation (and especially for a minority nation) that its interest is best met within the state. Secession therefore can not be a political option in a functional multinational federation, at least as we have described it above. Again, the political reality of Canada, Spain and India demonstrates that the accommodation of diversity in those countries has been successful to that extent that it has held the countries together thus far. This said, it does not imply that federalism in those countries is perfect or that they do not have secessionist movements. But the Canadian federation has held together for more than 100 years, Spain has addressed the issues of minority self-determination successfully over the last 30 years and India has managed great linguistic, cultural and national diversity now for more than 50 years. Were we to wish to add another country to the list, we could even argue that Bosnia- Herzegovina has survived for nearly 15 years now. Although the Office of the High Representative and other external actors were of key importance in keeping the Bosnian federation together, there has been no call for a referendum on independence so far and there has been the confirmation from all sides that they see the Bosnian state on the basis of the Dayton Agreement as their legitimate country. However, this commitment is based on the pressure of international actors, in particular the Office of the High Representative and the EU.³⁵²

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 the 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 or does not continue to respect their right to (cultural) self-

³⁵⁰ Kymlicka, Will: *Politics in the Vernacular*, 2001, p. 113.

³⁵¹ Bermeo, Nancy: 'The Import of Institutions', 2002, p. 107.

³⁵² 'Top EU, US Officials begin Bosnia Visit' in: *Balkaninsight*, 6th April 2010
See: <http://www.balkaninsight.com/en/main/news/27096/> (seen 6 April 2010)

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.³⁵³ 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.³⁵⁴ One of the main authors who explicitly argue against a right of secession in the context of multinational states is Donald Horowitz. He argues that for societies facing ethnic (or in this way: national) conflicts, 'conciliation will not be helped by providing a [...] right to secede.'³⁵⁵ Secession therefore does not address the core of the problem, and neither is it a solution.³⁵⁶

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 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 cooperation to multinational states even through the incentives of self-government, autonomy and inclusion. A constitutional right to secede might therefore support the ambitions of minority 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 Bosnia and Herzegovina to create a Greater Serbia and a Greater Croatia plus the undefined nature of the Bosnian state led to a political climate in which constituent peoples feel that they have a right to external self-determination and because Bosnian Serbs and Bosnian Croats define the territory in which they are a majority as "their" territory, secession from the Bosnian state is permanently on the political agenda. 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.'³⁵⁷ 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. This would demand all states to grant their minorities cultural autonomy and, where possible, territorial autonomy. It has yet to be seen if such an international norm will develop over the next years.

³⁵³ Buchanan, Allen: 'Theories of Secession' in: *Philosophy and Public Affairs*, Vol. 26, No. 1, 1997, pp. 31-61, here pp. 34-38.

³⁵⁴ 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.

³⁵⁵ 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.

³⁵⁶ Ibid. pp. 8-12.

³⁵⁷ I am grateful to Dr Jens Woelk to 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. 117-137.

To understand the need for minority nation 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.³⁵⁸ To this list we can add the area of financial autonomy, which is of key importance for the self- governance of the nations. If we accept these areas as having to be decentralised on the provincial level as constitutional guaranteed rights of minority self- government, other policy areas come to our mind, which will not be decentralised to provincial level, but which need the approval of the nation/ province. Most noteworthy are constitutional changes. Therefore, there has to be a more substantial categorisation. For the purposes of our case- study of Bosnia-Herzegovina, we might look at four layers of competences:

1. Exclusive competence of the provincial level: In multinational federations, this includes in particular culture and language.
2. Central “framework” competences: These decisions need central ‘orientation’ legislation but have to be administrated and specified by the provinces. These include for example education, immigration and social policies.
3. Those competences that are in the exclusive decision- making competence of the central level (usually currency policy, foreign policy, defence policy).
4. Competences that are shared and need the approval of both levels. These include for example constitutional changes and most fiscal arrangements. Often the inclusion of sub-unit participation is ensured by their representation in the Second Chamber of Parliament, which needs to approve these fundamental decisions. Therefore, the political system must include some in-built consensus and conflict- resolution mechanisms.

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 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).³⁵⁹ The same is argued by Ferran Requejo who even supports the introduction of confederal- like mechanisms in the federation.³⁶⁰ However, to analyse those two 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

³⁵⁸ Kymlicka Will: *Politics in the Vernacular*, 2001, p. 95.

³⁵⁹ Ibid. 113.

³⁶⁰ Requejo, Ferran: ‘Value Pluralism and Multinational Federalism’, 2004, p. 36.

the provincial level. Decentralisation therefore means that the provincial level has a substantial amount of decision- making competences while 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 Five, 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 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, D, 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.³⁶¹

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 minority nations, have more rights than other units. Therefore, asymmetrical federalism does not necessarily imply anything about the degree of centralisation / decentralisation of a federation. In fact, asymmetrical federalism makes it harder to assess a federation in these terms. We shall therefore refer to the asymmetrical character of multinational federalism, and define centralisation and decentralisation according to the province we look at and according to the policy issue.

After outlining the key definitions of terms used in this thesis and discussing the theoretical framework of multinational federalism and its indications on a multinational state, we shall now start our analysis of the political system of Bosnia and Herzegovina. The following Chapter will briefly 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.

³⁶¹ For a full debate see: Kymlicka Will: *Politics in the Vernacular*, 2001, pp. 104- 110.

4. 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 within a country in our times. Students of German federalism usually start with the Holy Roman Empire to demonstrate that the major reason for Germany's adoption of a federal system in 1871 was the belated nation- building centred on a cultural nation rather than a territorial state.³⁶² Additionally, students of the US-American federal system have to study the Federalist Papers, the Declaration of Independence and the importance of self-government in the 13 former colonies.³⁶³ The same of course is true for bi- and multinational states as the literature on Canada, Belgium and even Iraq demonstrates.³⁶⁴ 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 (e.g. Belgium) are all examples of the importance of historical developments in current political issues. History therefore is of key importance for many of the phenomena of today's world. In Bosnia history will explain to us why and how different national identities developed in the territory that covers today the state of BiH, we will furthermore examine if there have been any previous experiences with regionalism and federalism, a point that is very important in the history of federal states in general, and we will also discuss the role of international actors, mainly empires in Bosnia and their influence on the internal development of the country. This will help us to link Bosnia's current political development to past experiences and will also demonstrate that the elite's debates in Bosnia today are still fundamentally centered around questions that evolved in the 19th and 20th century and concern the relationship of the different nations to the state and to each other and the nature of the Bosnia state internally and within the Western Balkans context.

In the case of Bosnia and Herzegovina, the discussion of a "federal" tradition is complex and complicated. It is complex because Bosnia and Herzegovina has not been a (modern) independent state before 1992 and its history until then is a history of being part of different empires, from the Roman Empire to the Second- Communist Yugoslavia. It is difficult because an independent history of Bosnia in this sense does therefore not exist.³⁶⁵ Rather we have the history of Bosnia in the Roman Empire, the history of Bosnia as part of the Ottoman Empire or the history of Bosnia in Socialist Yugoslavia.

³⁶² Compare for example: Münch, Ursula and Meerwaldt, Kerstin: "Geschichtlicher Rückblick", in: Bundeszentrale für politische Bildung (Ed.): *Föderalismus in Deutschland*, Informationen zur politische Bildung 275, Bonn 2002, pp.9-15.

³⁶³ On some of these aspects see: Dinan, John: *The American State Constitutional Tradition*, University Press of Kansas: Lawrence 2006.

³⁶⁴ See for Belgium: Wouter, Pas: 'A Dynamic Federalism built on Static Principles: The case of Belgium', in: Tarr, Alan et.al: *Federalism, Subnational Constitutions and Minority Return*, Prager: Westport and London 2004 pp. 157-176.

For Canada see: Burgess, Michael: *Canadian Federalism: Past, Present and Future*, Leicester University Press: London 1990.

For Iraq see: Eklund, Karna et.al: 'Negotiating a Federation in Iraq' in: O'Leary, Brendan et.al (Eds.): *The Future of Kurdistan in Iraq*, University of Pennsylvania Press: Philadelphia 2005, pp. 116-142.

³⁶⁵ Bosnia was an independent kingdom in medieval times, but this is not relevant for our argument. Although it is worth noting that some Bosniak nationalists claimed that Bosnian statehood goes back to the independent Bosnian kingdom before the Ottoman conquest.

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 we also see the involvement of Bosnia's neighbouring states into the internal affairs of BiH. Therefore, we will have to discuss the development of Serbia and Croatia as well and their influence on Bosnia and Herzegovina. 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 because of a political motivation. 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 already in the introduction to his book *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.³⁶⁶ 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.³⁶⁷ On the other side legal and political scholars have argued that because Bosnia has never been an independent country before 1992 and the borders of the state were artificially drawn by the Partisans in 1943 while still fighting against the fascist occupation and the internal opposition of the mainly Serbian četniks, the borders of Bosnia should have been renegotiated in 1991-1992.³⁶⁸ These debates and motivations characteristic of such authors does certainly not make their work useless for our purposes but it does require a careful evaluation of the authors' arguments and their underlying motivation. We will come back to these debates when discussing some of the continuities in Bosnia's history and how these have been challenged by authors like Hayden.

This Chapter examines Bosnia's federal tradition in three parts. Part one will give a short sketch of Bosnian history since the Middle Ages. We shall especially focus on Bosnia's traditions of self-government, the territorial organisation of Bosnia and the relationship between the different religious groups in Bosnia. In the second part of the Chapter we 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 for us. Finally, we shall look at some of the challenges for Bosnia and Herzegovina resulting in the declaration of independence of April 1992 and of the Dayton Peace Accord of November/December

³⁶⁶ Malcolm Noel: *Bosnia- A Short History*, Pan Books: London 2002, p. XXI.

³⁶⁷ Donia, Robert and Fine Jr., John: *Bosnia and Hercegovina: A Tradition Betrayed*, Hurst and Company: London 1994, p.3.

³⁶⁸ 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.

1995. We will see that although Bosnia has never been an independent country before 1992 and has itself never been organised federally, there are important lessons from Bosnian history, which continue to play a key role today.

4.1 A short sketch of Bosnian history

Before giving a short overview of the development of the territory and the people of today's Bosnia-Herzegovina, we must keep two important things in mind. First, we have to ask ourselves where our broad impressions and opinions about Bosnia and Herzegovina come from. The reader who does not have an in-depth knowledge of Bosnia and Herzegovina and the Balkans will find that the main source of information is the media, and here especially the reports about the wars in Croatia and Bosnia in the early 1990s and in Kosovo in 1999. The image this implies of the Balkan area is heavily influenced by the work of Robert Kaplan, who argued about the Balkans in 1993:

*'Here men have been isolated by poverty and ethnic rivalry, dooming them to hate. Here politics has been reduced to a level of near anarchy that from time to time in history has flowed up the Danube into Central Europe.'*³⁶⁹

More specifically, about Bosnia and Herzegovina the same author writes that 'Bosnia is rural, isolated and full of suspicions and hatreds.'³⁷⁰ Kaplan's Bosnia picture is only one of many international journalists who have little or no experience in the Balkans before the war broke out in 1991, first in Croatia and in April 1992 also in Bosnia and Herzegovina. It is this image of old ethnic hatred and brutal warfare between the peoples of the Balkans that Maria Todorova labelled as the "imagination" of the Balkans.³⁷¹ Western European and US- American journalists contribute to the creation of the Balkans as anarchic, brutal and violent. This picture of the Balkans is not only erroneous for those journalists and pseudo- scientists who drew and still draw it, but also for all Western European people whose countries have committed horrifying crimes against other countries and often even against their own population. The treatment of the Irish under British rule, the French war in Algeria, the Spanish fascist government under Franco and at the top of the list the crimes committed by the National-Socialists in Germany against minorities, political opponents and other countries are only some of these examples. The Balkans and Bosnia and Herzegovina are part of Europe. They are part of European history and European experiences. Above all, the majority of the population of all Western Balkans countries sees themselves as Europeans and want their countries to join the EU. There is no such thing as ancient hatred in the Western Balkans, at least no more ancient hatred than there has been between Germany and France in the post- World War II period. Times of war and violence have

³⁶⁹ Kaplan, Robert: *Balkan Ghosts: A Journey through History*, Vintage Departures: New York 1994, p. xxiii.

³⁷⁰ *Ibid.* p. 22.

³⁷¹ Todorova, Maria: *Imagining the Balkans*, Oxford University Press: Oxford and New York 1997.

been followed by decades of peace and stability in the Balkans. The major crimes of the peoples of the Balkans committed against each other have been followed by the joint Yugoslav Federation and 40 years of peaceful coexistence.

The second important information we need to keep in mind when discussing the history of Bosnia and Herzegovina and its impact on the current federal political system is the inter-connection of history. First, we have to keep in mind that to some extent we are compelled to read history backwards and interpret it as if certain events anticipated developments many years later. Unfortunately we will not be able to avoid this as this is the destiny of the researcher of today looking back in time. Second, the understanding of Bosnian history very much depends on the impact of historical events on the current situation in Bosnia and Herzegovina. As Marko Attila Hoare, the author of the best current Bosnian history, argues, 'Bosnia-Herzegovina 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.'³⁷² 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 mid-15th century. When the Bosnian Serb and the Bosnian Croat nationalists agreed on the partition of Bosnia-Herzegovina in 1992, they referred to the *Sporazum*³⁷³ between the Croats and the Yugoslav government in 1939, which gave the Croats autonomy and their own *banovina*³⁷⁴ 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.

It is in the light of the above mentioned comments that we have to discuss Bosnia's federal tradition. We shall focus our attention in particular on the period of Ottoman rule in Bosnia and Herzegovina, because the developments of modern Bosnia's territorial borders, as well as its multinational character go back to Bosnia's inclusion in the Ottoman Empire. A second special focus shall lie on the analysis of Communist Yugoslavia's federal system because, as we shall see later, this was one of two main sources of the Bosnian federal system today.

³⁷² Hoare, Marko Attila: *The History of Bosnia (From the Middle Ages to the Present Day)*, Saqi Books: London 2007, p.33.

³⁷³ 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 Tudjman 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.

³⁷⁴ Banovina is the name for the territorial units of the Royal Yugoslavia that were introduced in 1929 and partitioned most of the Yugoslav states. 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.

4.1.1 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 1878.³⁷⁵ 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.³⁷⁶ As a consequence of this domination 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 958.³⁷⁷ 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 1326.³⁷⁸ During the period of the high Middle Ages the Bosnian Kingdom saw itself in competition with the Serbian Kingdom as well as with the Hungarian Kingdom that repeatedly conquered parts of Bosnia. The struggle for Bosnian autonomy and independence from outside interference can to some extent be dated back to this period. 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 in the 14th century, although there were no Muslims in Bosnia yet;³⁷⁹ finally, the quest for Bosnian autonomy and independence connected to the fight against outside interference, especially from neighbouring states, dates back to this time. After the declaration of independence in 1992 the Bosnian Republic adopted the symbol of King Tvrtko as its flag and coat of arms and the soldiers of the Army of the Republic of Bosnia used it on their uniforms.



Picture 1: Coat of Arms of Republic of Bosnia and Herzegovina 1992-1995

³⁷⁵ 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.

³⁷⁶ Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 41.

³⁷⁷ Malcolm Noel: *Bosnia- A Short History*, 2002, p. 10.

³⁷⁸ Ibid. p. 13.

³⁷⁹ 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.

The period of Ottoman Rule is of special interest for our 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 conscious identity; but important developments between the three Bosnian religious groups, which only developed into national groups in the 19th century 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 slow development of Bosnia and Herzegovina as a distinct territory within the Ottoman Empire. Furthermore, we will have a look at the development of the national consciousness of the peoples of Bosnia and Herzegovina in the late years of Ottoman Rule.

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.³⁸⁰ 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 1971.³⁸¹ The Islamisation, meaning the acceptance of the Muslim faith by some Bosnian locals, has its main origins in the 15th and 16th century.³⁸² 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.³⁸³ Furthermore, even though it was not the main reason, it has to be mentioned that Muslims enjoyed certain privileges in the Ottoman society. Those privileges included some tax exemptions³⁸⁴ but especially the possibility for Muslims to join the Ottoman administration and military.³⁸⁵ However, we should not overestimate the importance of Islamisation, as Hoare argues '[t]he Ottoman occupation was a motor not only for conversion to Islam but also, prior to the eighteenth century, for conversion from Catholicism to Orthodoxy.'³⁸⁶ As in the periods before the Ottoman Empire, religious beliefs were fluid in Bosnia and one could very easily be Catholic one day and become Orthodox or Muslim the next day. This fluidity aside, we clearly see the development of the three main religious groups within Bosnia as the dominant actors for the centuries to come. The distinct multi- religious character of a country dominated by Muslims, followers of the Orthodox faith and Catholics alike plus the

³⁸⁰ Friedman, Francine: *The Bosnian Muslims (Denial of a Nation)*, Westview: Oxford 1996.

³⁸¹ 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://condor.depaul.edu/~rrotenbe/aeer/aeer11_1/bringa.html (seen 15. March 2009, printout in possession of the author)

³⁸² Donia, Robert and Fine Jr., John: *Bosnia and Hercegovina*, 1993, p. 36.

³⁸³ Hoare, Marko Attila: *The History of Bosnia*, 2007, pp. 42-43.

³⁸⁴ Donia, Robert and Fine Jr., John: *Bosnia and Hercegovina*, 1993, p. 41.

³⁸⁵ Hoare, Marko Attila: *The History of Bosnia*, 2007, pp. 46.

³⁸⁶ Ibid. p. 42.

existence of Jewish and Protestant minorities gave Bosnia its multi- religious and later multinational character.

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 at the border with Serbia.³⁸⁷ As a consequence of the new provincial status for Bosnia and Herzegovina we also recognise the growing number of Bosnian natives that were involved in the administration of the province and the districts. Besides some further administrative reforms in the 17th and 19th century, we can observe the territorial unity of Bosnia and Herzegovina more or less during the whole time of Ottoman occupation. Furthermore, we can also identify the development of regional centres in Bosnia, 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 1877.³⁸⁸



Ottoman Bosnia, Borders in 1870

Map 1: BiH under the Ottoman Empire 1815-1830³⁸⁹

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 we shall see later in this thesis, 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, which they mean.³⁹⁰

³⁸⁷ Malcolm Noel: *Bosnia- A Short History*, 2002, p. 50.

³⁸⁸ Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 39.

³⁸⁹ Bihke= Bihać, Banjaluka= Banja Luka, Izvornik=Zvornik, Saray= Sarajevo, YeniPazar= Novi Pazar (in 1877 seperated from Bosnian eyelet) and Hersek= Herzegovina

Picture taken from: McCarthy, Justin: 'Ottoman Bosnia 1800- 1878', in: Pinson, Mark (Ed.): *The Muslims of Bosnia and Herzegovina*, 2nd Edition, Harvard University Press: Cambridge 1996, p. 56.

³⁹⁰ See for this in more detail the Chapter: "Federalism in Post-Dayton Bosnia" and here especially the debates about a constitutional reform in Bosnia.

Finally, we need to have a look at inter-ethnic relations in Ottoman Bosnia. 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 the peasants (mainly Christians).³⁹¹ 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 to the Ottoman Empire. However, the millet system also allowed for a certain degree of autonomy for non-Muslims in the empire as the religious leaders were responsible for tax collection and they therefore had some degree of cultural and religious autonomy.³⁹² This autonomy expanded to the areas of legal affairs, civil affairs and tax collection.³⁹³ 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'.³⁹⁴ Catholics in the Ottoman Empire, especially the Bosnian Croats, 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 among Catholics. They saw the arch-enemy of the Ottoman Empire as their protector. In the 19th century this discrimination was to be extended to believers in the Orthodox faith in connection with the rise of an autonomous and later independent (Orthodox) Serbian state.

It is in the 19th century that we have to locate the development of national consciousness among the three Bosnian groups.³⁹⁵ We have already mentioned the millet system as the core organising principle of the Ottoman society. This system has had a huge impact on the development of the 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'.³⁹⁶ This symbiosis of nationality and religion, which would consequently mean that all Christian Orthodox believers would identify as Serbs and all Catholics as Croats has been questioned in recent years.³⁹⁷ Instead it has been argued that the Ottoman society was characterised by the conflict between landowners and peasants and that only in the 19th century did this conflict develop into a conflict between Muslims and Christians as all landowners were Muslims and the majority of peasants were Christians.³⁹⁸ For the purposes of our argumentation we can put it like this: during Ottoman Bosnia it was obvious who was a Muslim and who was not a Muslim. Different tax categories but also

³⁹¹ Malcolm Noel: *Bosnia- A Short History*, 2002, p. xxi.

³⁹² Donia, Robert and Fine Jr., John: *Bosnia and Hercegovina*, 1993, p. 65.

³⁹³ Mazower, Mark: *The Balkans (From the End of Byzantium to the Present Day)*, Phoenix: London 2001, p. 64.

³⁹⁴ Donia, Robert and Fine Jr., John: *Bosnia and Hercegovina*, 1993, p. 63.

³⁹⁵ 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.

³⁹⁶ Babuna, Aydin: 'Nationalism and the Bosnian Muslims' in: *East European Quarterly*, Vol. 23, No.2, June 1999, pp.195-216, here p. 199.

³⁹⁷ One of the first authors to question the "national" segregation of the Ottoman society in Bosnia and Herzegovina was Noel Malcolm.

See: Malcolm Noel: *Bosnia- A Short History*, 2002, p. 95.

³⁹⁸ Ibid. p. 95.

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 on the one side 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. The emergence of an orthodox state to the East of Bosnia and the continued threat of Catholic Austria-Hungary in the West consequently led to new developments within Bosnia and Herzegovina.

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 faiths, combined with the memory of the medieval Serbian state and the economic situation as mainly poor peasants in the 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, which we have seen in its full embrace again in the early 1990s.³⁹⁹ As is the case with any nationalism, there was of course also a movement within the Bosnian Serb elite which argued for inter-ethnic cooperation and which identified strongly with Serbia and Bosnia-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 the bigger cities of BiH.⁴⁰⁰

The origins of the Bosnian Croat 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.⁴⁰¹

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.’⁴⁰² Having said this, it has to be mentioned that the full development of

³⁹⁹ Hoare, Marko Attila: *The History of Bosnia*, 2007, pp. 51-57.

⁴⁰⁰ Ibid. p.55.

⁴⁰¹ Ibid. pp.57-61.

⁴⁰² Babuna, Aydin: ‘Nationalism and the Bosnian Muslims’, 1999, p. 199.

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 found political parties and organisations.⁴⁰³ The 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. Until today radical Bosnian Serb and Bosnian Croat politicians deny the national identity of the Bosnian Muslims. As will be seen later on, the argument that Bosnian Muslims are Islamised Serbs or Croats was not established in the early 1990s but much earlier.

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, as Bosnian Muslims would identify with Bosnia and Herzegovina and the Ottoman Empire simultaneously, so would Bosnian Croats in the 19th century with BiH and Croatia and Bosnian Serbs much earlier with BiH and Serbia. Additionally, we have to distinguish between different identities that developed in towns and cities and those that developed in rural areas:

*'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.'*⁴⁰⁴

To summarise the development of national consciousness in Bosnia and Herzegovina it can be said that:

- ➔ Religion and the Ottoman Millet system played a key role in the differentiation of the Bosnian groups (as the peoples of Bosnia all speak the same language)
- ➔ National identification developed in BiH in connection with the rise of Serbia and Austria-Hungary as neighbouring states
- ➔ Nationalism among the different Bosnian groups was much more a movement "against" a different group or a state (be it the Ottoman state and the Muslim religious group, in the case of the Bosnian Serbs and Croats or the Austrian Empire, the Ottoman taxation and the Serbian nationalism in case of the Bosnian Muslims), in contrast to a cultural consciousness with religion providing the uniting band

⁴⁰³ Ibid. p. 196.

⁴⁰⁴ Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 57.

If we want to summarise Bosnia and Herzegovina's history and development as a part of the Ottoman Empire, we can say that the country was heavily influenced by the Ottoman period. The Islamisation of a large part of the Bosnian population happened under the Ottomans, as well as the first signs of regionalism in Bosnia and Herzegovina, supported by the administrative structures of the Ottomans, who organised the eyalet of Bosnia in different sandžaks. Interethnic relations during the Ottoman period can be described as mainly peaceful but based on a clear differentiation of the society according to the Ottoman Millet system. In the 19th century we can also witness the slow development of national identification among the Bosnian peoples, first among the Bosnian Serbs and later among 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 also 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.⁴⁰⁵ Even so this Assembly was only allowed to advise the administration and the Pasha for Bosnia and Herzegovina, it nevertheless can be characterised as the first multi-religious assembly in BiH, which was according to its organisation based on the consensual principles of grant coalition and minority representation. Indeed, if we combine 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, long before Lijphart developed his theory by studying 20th century Netherlands.

4.1.2 Ottomans and Austrians as foreign powers

When Austria-Hungary was appointed the administrator of Bosnia and Herzegovina at the Congress of Berlin in 1878, it was decided that even though 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.⁴⁰⁶ For both, Austrians and Ottomans Bosnia and Herzegovina was of key strategic importance. For the Ottomans Bosnia was the frontier against the Austrian enemy and for the Austrians after 1878 Bosnia and Herzegovina was the first step in their pursuit of domination of the Balkans but also for their rivalry with Serbia and consequently Russia, a rivalry that would later be one of the main causes of the First World War. While Bosnia and Herzegovina 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.⁴⁰⁷ While the new rulers introduced new policies in the

⁴⁰⁵ Ibid. p. 40.

⁴⁰⁶ Donia, Robert and Fine Jr., John: *Bosnia and Hercegovina*, 1993, pp. 93-97.

⁴⁰⁷ Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 72.

administration, they followed the Ottoman example when it came to the territorial organisation of BiH. The former eyelet or vilayet as it was called later, 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.⁴⁰⁸



MAP 6.1 — BOSNIA AND HERZEGOVINA UNDER AUSTRO-HUNGARIAN RULE (1878-1918)

Map 2: BiH as part of Austria- Hungary⁴⁰⁹

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 the print industry developed.⁴¹⁰ 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 the idea of a “Bosnian identity” for all citizens of Bosnia and Herzegovina, mainly to counterbalance Serbian nationalist demands for the creation of a Greater Serbia, which included the whole of Bosnia and Herzegovina. 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.⁴¹¹ 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 among leading Croatian and Bosnian Croat politicians, but also the idea of creating a *Tripate State*⁴¹² 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

⁴⁰⁸ Ibid. p. 72.
⁴⁰⁹ Donia, Robert and Fine Jr., John: *Bosnia and Hercegovina*, 1993, p. 98.
⁴¹⁰ Ibid., p. 97.
⁴¹¹ Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 75.
⁴¹² Consisting of the Austrian, the Hungarian and the South Slav part.



emerged during the Austrian occupation of Bosnia and Herzegovina, although this idea was much more spread among Croatian and Serbian elites.⁴¹³

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.⁴¹⁴ This party was followed by the Croat National Union in 1906 and the Serb National Organisation in 1907.⁴¹⁵ While the Muslims and Serbs demanded religious freedom and Bosnian autonomy in the Austrian Empire,⁴¹⁶ the Bosnian Croats supported the idea of close cooperation between the South Slaves of the Austrian Empire. Indeed it were the Bosnian Croats that profited the most from the Austrian occupation as the new rulers over BiH shared the same religion and as the Bosnian Croats were now united with the Croats in Croatia proper. The development of party politics in Bosnia and Herzegovina in the early years of the twentieth century found its appropriate forum, because 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 some limited autonomy, is a very important document in the history of Bosnia and Herzegovina. For the first time we see the official recognition of the major religions in Bosnia and Herzegovina including besides Catholic and Orthodox Christianity also Islam and Judaism.⁴¹⁷ Furthermore, the Constitution gave the religious communities self-rule over their religious and cultural matters. Here we can clearly see the influence of the Austro-Marxist theory of cultural autonomy on Bosnia and Herzegovina. As described earlier in the thesis, 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. This is a fascinating achievement both in respect to the recognition of cultural diversity and the management of the multi- religious (and developing multi-ethnic) polity of Bosnia and Herzegovina, and this already as early as 1910.

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.⁴¹⁸ 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.⁴¹⁹ This represented the Bosnian society more or less accurately with Orthodox Christians being the largest group, followed by Bosnian Muslims and

⁴¹³ Malcolm Noel: *Bosnia- A Short History*, 2002, pp. 136-137.

⁴¹⁴ Babuna, Aydin: 'The Emergence of the First Muslim Party in Bosnia-Herzegovina' in: *East European Quarterly*, Vol.15, No.2, June 1996, pp. 131-151.

⁴¹⁵ Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 80.

⁴¹⁶ Ibid. p.79.

⁴¹⁷ Siegel, Julius (Ed.): *Verfassungsgesetze der Länder Bosnien und Herzegovina*, Mazsche k u k Hofverlag: Vienna 1910, Article 1, Paragraph 8.

⁴¹⁸ Ibid. Article 3, Paragraph 5.

⁴¹⁹ Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 82.

Bosnian Croats.⁴²⁰ While the powers of the Landtag were limited, we can still argue 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 more or less 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.’⁴²¹ Having said this, we need to keep in mind 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, as has been the case of the idea of a “Greater Croatia.”

The Austrian rule over Bosnia and Herzegovina ended as a consequence of the First World War and the disintegration of the Austro-Hungarian Empire. While the War saw far-reaching inter-communal violence in Bosnia and Herzegovina, with most Croats and Bosnian Muslims being mainly 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. Especially in Croatia this idea was very popular, but it also found supporters among all Bosnian nationalities to guarantee the peaceful coexistence of the major Bosnian people in Bosnia and the larger Yugoslav state.

4.1.3 The First Yugoslavia and the Second World War

The First Yugoslavia, which existed from 1918 until 1941,⁴²² 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. While 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.

These are only some of the contradictions of the first joint South Slav state. The core source on the interwar Yugoslavia was written by a Croatian scholar, and he summarises the Kingdom’s contradictions as follow:

⁴²⁰ 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.

⁴²¹ Ibid. p. 72.

⁴²² Only after 1929 was the state called “Yugoslavia” before that it was called “Kingdom of Serbs, Croats and Slovenes.”

'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 [the Slovenes and the 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.'*⁴²³

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.⁴²⁴ 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.'⁴²⁵

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 and regional advantages; however they argued and hoped for the creation of a South Slav Federation.⁴²⁶ Additionally, the Bosnian Muslims argued in 1918 for the creation of a decentralised unitary state, which would guarantee its constituent parts some autonomy.⁴²⁷

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 Serbian parties in the parliament would ensure Serb hegemony.⁴²⁸ 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 more and more forced on the non-Serbian nations in the state, ensured by the dominance of Serbian royalty, the Serbian parties and the Serbian army.

After debating the general political situation in the First Yugoslavia, we need to have a look at the role of Bosnia and Herzegovina in the first joint South Slav state. As can be easily imagined, the Bosnian Serbs welcomed the unification under Serbian leadership and saw Yugoslavia as the

⁴²³ Banac, Ivo: *The National Question in Yugoslavia (Origins, History, Politics)*, Cornell University Press: Ithaca and London 1984, p. 138.

⁴²⁴ Ramet, Sabrina: *The Three Yugoslavias (State-Building and Legitimation, 1918-2005)*, Indiana University Press: Bloomington 2006, p.37.

⁴²⁵ Judah, Tim: *The Serbs (History, Myth & the Destruction of Yugoslavia)*, 2nd Edition, Yale University Press: New Haven and London 2000, p.106.

⁴²⁶ Ramet, Sabrina: *The Three Yugoslavias*, 2006, p. 37.

⁴²⁷ Ibid. pp. 52-53.

⁴²⁸ Banac, Ivo: *The National Question in Yugoslavia*, 1984 p. 153.

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.⁴²⁹ Bosnian Muslims saw the Yugoslav state as a 'new form of colonial rule'⁴³⁰ and the violence of the Serbian Army against Bosnian Muslims strengthened their reservations and frustrations with the new state. As a result of this violence the Bosnian Muslims united in the Yugoslav Muslim Organisation.⁴³¹ 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.⁴³² However, Bosnia and Herzegovina was mainly governed by Serbs and Serbs also dominated Bosnia's representation in central state institutions.⁴³³ 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-Herzegovina will be divided into oblasts within its present borders. Until this has been determined by law, the [existing] okrugs in Bosnia-Herzegovina will function as oblasts.'*⁴³⁴

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 the Bosnian Muslims. They feared that in the case of 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. 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 cross-cut the historical states and were mainly based on natural borders. Bosnia was divided among 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

⁴²⁹ 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.

⁴³⁰ Ibid. p. 103.

⁴³¹ Banac, Ivo: *The National Question in Yugoslavia*, 1984 p. 368.

⁴³² Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 108.

⁴³³ 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.

⁴³⁴ Vidovdan Constitution of 28 June 1921, Clause 135, Subsection 3, as quoted in: Ibid. p. 110.

Southern Serbia and the Vrbas Banovina which included Western Bosnia and parts of the Croatian Krajina.⁴³⁵

Additionally, in none of the banovinias were the Bosnian Muslims a majority, instead Serbs dominated three and Croats one of the banovinas.⁴³⁶ The territorial integrity of Bosnia and Herzegovina was destroyed for the first time in centuries and the ensuing laws of the 1930s deprived the Bosnian Muslims of their last resort, namely, their religious autonomy.⁴³⁷



Map 3: The Kingdom of Yugoslavia 1929-1941⁴³⁸

However, there was worse to come. In 1939 Croatian Autonomists and representative of the Serb elite signed the Cvetković-Maček Sporazum, which united the Sava and Primorje banovina to a joint Croatia banovina.⁴³⁹ Thirteen Bosnian communes were to join the new banovina Croatia and the other 38 communes were left in Serb dominated banovinas, which debated the establishment of a Greater Serbia banovina.⁴⁴⁰ Bosnia and Herzegovina was eventually partitioned and the Bosnian Muslims were neither involved in this partition nor were they offered any political alternatives. It would, furthermore, be the 1939 Sporazum that Croatian President Franjo Tudjman suggested in 1991 and 1992 as the basis of the Bosnian partition between Serbia and Croatia.

The First Yugoslavia failed because the Yugoslav state, although finding acceptance between the different peoples of Yugoslavia 'could not [...] create political consensus.'⁴⁴¹ Sabrina Ramet argues very critically that it was the national identification of the parties that led, among other things, to the constant political crisis of the interwar Yugoslav state:

⁴³⁵ Ibid. pp. 116-117.

⁴³⁶ Ibid. p. 117.

⁴³⁷ Ibid. p. 118.

⁴³⁸ Source: www.montenet.org/history/banovina.gif (accessed 24th April 2009)

⁴³⁹ Ramet, Sabrina: *The Three Yugoslavias*, 2006, p. 106.

⁴⁴⁰ Banac, Ivo: *The National Question in Yugoslavia*, 1984 p. 376.

⁴⁴¹ Lampe, John: *Yugoslavia as History (Twice there was a Country)*, 2nd edition, Cambridge University Press: Cambridge 2000, p.186.

*'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.'*⁴⁴²

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 while the Bosnian Muslims united in the Yugoslav Muslim Organisation. While this ethnic politics in itself was certainly not a reason for conflict or crisis, the behaviour of the different parties and their attitudes towards the common state and the other peoples in the state were. It was therefore not the ethnification of politics per se that led to the Yugoslav crisis, but the unwillingness of these national parties to agree on the fundamental principles of the common state, its organisation and the relationship of the different peoples living in it.⁴⁴³ In the end we can conclude with Ivo Banac, who 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.'⁴⁴⁴ It was exactly the different and competing national ideologies of in particular 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,⁴⁴⁵ 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 the Croatian fascists without any form of autonomy.⁴⁴⁶ Much more important is the genocidal policies of the ustaše (Croatian Fascists) against Jews and Serbs, which was criticised even by their German and Italian allies. 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

⁴⁴² Ramet, Sabrina: *The Three Yugoslavias*, 2006, p. 37.

⁴⁴³ 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.

⁴⁴⁴ Banac, Ivo: *The National Question in Yugoslavia*, 1984 p. 413.

⁴⁴⁵ There were, however other border changes after the German invasion as well such as the occupation of Macedonia by Bulgaria.

⁴⁴⁶ 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

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 Two⁴⁴⁷ and for our purposes it is important to keep in mind that the Second World War saw BiH as a part of a Greater Croatian state, whose genocidal policies led to inter-ethnic violence unknown in its quality and quantity. At the same time, the Communist Partisans and the četniks fought an internal struggle about the future organisation of Yugoslavia.

4.1.4 The Second Yugoslavia

The practices and political realities of the Second Yugoslavia, the state that resulted in the victory of the Communist Partisans in the struggle against foreign occupation and conservative opposition (četniks), is 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 recognises the similarities.⁴⁴⁸ 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:

‘On the basis of the right of all nations to self-determination, including the union or secession from other nations, and in accordance with the true will of all the nations of Yugoslavia, the Anti-Fascist Council of National Liberation of Yugoslavia passes the following decision: [...]

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.

⁴⁴⁷ Hoare, Marko Attila: *Genocide and Resistance in Hitler's Bosnia: The Partisans and the Chetniks, 1941-1943*, Oxford University Press: London 2006.

⁴⁴⁸ 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 McMillian: 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. 179-198.

4. National minorities of Yugoslavia will be secured all their rights.⁴⁴⁹

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.⁴⁵⁰ Some Bosnian Serb Partisans, as well as some members of the Communist leadership including Milovan Djilas and Montenegrin and Serbian Partisan leaders argued against the republican status for BiH, instead favouring BiH as an autonomous region or even the unification of Bosnia with Serbia.⁴⁵¹ It is therefore important to keep in mind, that while 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,⁴⁵² 'which is neither Serb nor Croat nor Muslim but Serb and Croat and Muslim.'⁴⁵³



Map 4: The six Republics of Socialist Yugoslavia⁴⁵⁴

This is naturally a break with Bosnia and Herzegovina's past politics. While Bosnia was seen as Serbian lands 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 also be considered as the recognition of Bosnia and Herzegovina as the homeland of three equal constituent peoples⁴⁵⁵ for the first time in Bosnian history. The creation of a Yugoslav multinational federation, based on proportionality was the result of two key influences, namely the experiences of the First

⁴⁴⁹ Final conclusions of the II. Session of the Antifascist Council of National Liberation in Jajce, 29th November 1943, as quoted in: Frankel, Joseph: 'Federalism in Yugoslavia' in: *The American Political Science Review*, Vol.49, No.2, June 1955, pp.416-430, here p. 420.

⁴⁵⁰ Ramet, Sabrina: *The Three Yugoslavias*, 2006, p. 164.

⁴⁵¹ 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.

⁴⁵² Frankel, Joseph: 'Federalism in Yugoslavia', 1955, p. 420.

⁴⁵³ Conclusion of the First Session of the Bosnian Anti-Fascist Council held in Mrkonjić-Grad, 25-26th November 1943, as quoted in: Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 288.

⁴⁵⁴ Cohen, Leonhard J.: *Broken Bounds (Yugoslavia's Disintegration and the Balkan Politics in Transition)*, Westview Press: Oxford 1995, p.25.

⁴⁵⁵ The Bosnian Muslims were not considered a nation in 1945/46 but became recognized as an ethnic group in 1963 and as a nation in 1971.

Yugoslavia and its failure to if not solve at least manage the national question and secondly the experience of the Soviet Union as the first multinational socialist federation. The first 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.'⁴⁵⁶ Indeed, one of the leading Yugoslav Communists describes his admiration for the Soviet Union and Stalin at the time by arguing that Stalin is 'the victorious battle of today and the brotherhood of man of tomorrow.'⁴⁵⁷ We have argued in an earlier chapter of this thesis, that there exists a Socialist Tradition of Federalism, which has its origins in the writings of Lenin and Stalin, the Austro-Marxist Tradition of Karl Renner and Otto Bauer and the political experiences of federalism in multinational socialist federations of the Soviet Union, Czechoslovakia and Yugoslavia. The continuation of Stalin's influence on the first Yugoslav Constitution and the shift toward inter-republican bargaining that was ultimately a bargaining between the national elites (although they were all united as Communists), demonstrates the influences 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. Indeed, Steven Burg argued that '[f]ederalization of the state apparatus did not mean, however, federalization of political power within the state.'⁴⁵⁸ Following the tradition of the Soviet Union, 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.'⁴⁵⁹ 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.⁴⁶⁰ This national equality was, however, counterbalanced by the policy of "brotherhood and unity" and the support of the Communists 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.'⁴⁶¹ This policy was especially directed towards the Bosnian Muslims, who were not recognised as one of the nations of Yugoslavia in 1945 /46, but it also was 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 in Bosnia

⁴⁵⁶ Frankel, Joseph: 'Federalism in Yugoslavia', 1955, p. 425.

⁴⁵⁷ Djilas, Milovan: *Conversations with Stalin*, Penguin Books: Harmondsworth 1962, p. 49.

⁴⁵⁸ 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.119-143, here p.120.

⁴⁵⁹ Shoup, Paul: *Communism and the Yugoslav National Question*, Columbia University Press: New York 1968, p.119.

⁴⁶⁰ Frankel, Joseph: 'Federalism in Yugoslavia', 1955, p. 423.

⁴⁶¹ Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 326.

and Herzegovina for the Yugoslav federation.⁴⁶² 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.⁴⁶³

The resulting decentralisation of the Yugoslav state was based on the rupture of Yugoslavia 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.⁴⁶⁴ The Stalin- Tito split, which was mainly based on the rejection of the Yugoslav Communist elites to accept Soviet dominance,⁴⁶⁵ resulted in a series of reforms in Yugoslavia, which were eventually recognised in the second Constitution of the state in 1953. While the 1953 Constitution meant some decentralisation of the over-centralised state, it did not mean more power for the constituent units of the federation, but enhancement of the power of workers' and producer councils.⁴⁶⁶ Joseph Frankel argues that both republics and the federation were seen as "superstructures" over the more important workers' and producers' councils.⁴⁶⁷ The mixture of Yugoslavia's political system as a mixture of a multinational federation with elements of local workers' representation is one of the most important and unique features of Yugoslav federalism.⁴⁶⁸ 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 of the federation 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, who wrote the major work on Yugoslav federalism, argues that only after 1963 can Yugoslavia be considered as a 'balance of power system'.⁴⁶⁹ 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

⁴⁶² 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.

⁴⁶³ Burg, Steven: 'Ethnic Conflict and the Federalization of Socialist Yugoslavia', 1977, p. 122.

⁴⁶⁴ Elazar, Daniel: 'Will Federalism Preserve Yugoslavia?' in: <http://jcpa.org/dje/articles2/yugoslavia.htm> (seen 11. June 2007, printout in possession of the author).

⁴⁶⁵ For a debate on the split see the works of two leading Yugoslav Communists of the time:

Djilas, Milovan: *Conversations with Stalin*, 1962 and Kardelj, Edvard: *Der Übermacht zum Trotz*, Drava Verlag: Klagenfurt 1984.

⁴⁶⁶ Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 326.

⁴⁶⁷ Frankel, Joseph: 'Federalism in Yugoslavia', 1955, p. 426.

⁴⁶⁸ Djordjević, Jovan: 'Remarks on the Yugoslav Model of Federalism' in: *Publius: The Journal of Federalism*, Vol.5, No.2, Spring 1975, pp. 77-88. Djordjević argues that Yugoslavia is a polyvalent federation, which 'derives not only from a multi-ethnic community but primarily from the superstructure of a society based on the social ownership of means of production and social self-management.' Ibid. p. 77.

The inclusion of workers' councils in a decentralised political system associated with federalism can also be found in the Western European Tradition,

See for example the work of Proudhon that has been described in Chapter One.

⁴⁶⁹ Ramet, Sabrina: *Nationalism and Federalism in Yugoslavia 1962-1991*, 2nd edition, Indiana University Press: Bloomington and Indianapolis 1992, p.6.

centre.⁴⁷⁰ 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 of the country: 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.⁴⁷¹ 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 among them such as the introduction of a collective Presidency in 1974.⁴⁷² We can therefore follow William Dunn’s argument about the dialectic of decentralisation and centralisation processes in Yugoslavia happening simultaneously.⁴⁷³

The Yugoslav federation disintegrated not primarily because of the economic crisis of the 1980s or the death of Tito in 1980. It did not disintegrate because of the dissolution of the Eastern Bloc at the same time as suggested by Elazar,⁴⁷⁴ but the multinational federation broke down because it was unable to democratise and allow real pluralism and diversity. Bogdan Denitch writing in 1977, argued that the Yugoslav federation was successful in managing the national diversity within its borders because decentralisation and the political significance of the republics would secure the stability of the federal system.⁴⁷⁵ The inability of the League of Communists, however, to allow for free and fair elections and therefore to guarantee the parliamentary representation of different political groups and the competing nationalist ideologies, especially in Serbia, Croatia and Slovenia, that were debated openly led to the institutional paralysis of a federal state whose foundations were compromise, consensus and conformity. These defects in the political system can ultimately also be described as a lack of multinational federalism, as we have established it earlier in this thesis. The national ambitions of Serbs, Croats, 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. While the Communists realised that devolution of power would calm the 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 acted very egoistically.

⁴⁷⁰ 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.

⁴⁷¹ Ramet, Sabrina: *Nationalism and Federalism*, 1992, p.9.

⁴⁷² This feature has also been adopted by Bosnia and Herzegovina in 1995 as we shall see in chapter “The Bosnian Federation.”

⁴⁷³ Dunn, William: ‘Communal Federalism: Dialects of Decentralization in Socialist Yugoslavia’ in: *Publius: The Journal of Federalism*, Vol.5, No.2, Spring 1975, pp. 127-150, here p. 149.

⁴⁷⁴ Elazar, Daniel: ‘Will Federalism Preserve Yugoslavia?’

⁴⁷⁵ Denitch, Bogdan: ‘The Evolution of Yugoslav Federalism’ in: *Publius: The Journal of Federalism*, Vol.7, No.4, Fall 1977, pp. 107-117, here pp. 116-117.

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.⁴⁷⁶ Each of the Yugoslav Republics had their own written 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, we can witness the development of a “constitutional spirit” of 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.⁴⁷⁷ The 1974 Constitution of Bosnia and Herzegovina even mentions the sovereign rights of the Republics and demonstrates therefore the above stated further decentralisation.⁴⁷⁸ This decentralisation can indeed be understood as a process of federalisation. We have already mentioned in Chapter One and Two that a federal political system needs to function within a democratic framework to allow the full implementation of the principle of shared rule and self rule. Yugoslavia democratised in the early 1990s and consequently dissolved. However, because the Republics became more and more the key decision-makers and received more constitutional power and the implementation of strict power-sharing in central institutions, we can witness the development of true inter-republican and inter-national (between the Yugoslav nations) negotiations in Yugoslavia after 1980 (Tito’s death). While these national elites were never legitimised through democratic elections, they more and more negotiated not 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.

In the 1960s also the Bosnian Muslims overtook the Bosnian Serbs as the largest Bosnian nation; according to the 1971 census there were 39.6 per cent of the Bosnian population Muslims, 37.2 per cent Serb and 20.6 per cent Croat.⁴⁷⁹ The development of the Bosnian Muslims as the majority of the Bosnian population together with the recognition of their nationhood and the introduction of proportional representation in the major state and party organs led to some hard feelings especially among Bosnian Serbs, who ‘would be good Bosnians while they could be first among equals in Bosnia-Hercegovina;[but] faced with the prospect of Muslim leadership of the common homeland, they abandoned the Bosnian project.’⁴⁸⁰ Hoare’s statement might be too radical as there is enough evidence of Bosnian Serb support for Bosnia and Herzegovina, but the growth of Serbian nationalism and the denial of statehood for BiH and nationhood for the Bosnian Muslims is a phenomenon that

⁴⁷⁶ Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 324.

⁴⁷⁷ Ibid. p. 327.

⁴⁷⁸ Ibid. p. 333.

⁴⁷⁹ Ibid. p. 330.

⁴⁸⁰ Ibid. p. 331.

grew among the Bosnian Serbs simultaneously as the Croatian Spring resembled Croatian claims on Bosnia and Herzegovina.⁴⁸¹ The recognition of Bosnian Muslim nationhood also demonstrates the nature of the Yugoslav nationalities policy. Indeed, it was the failed policy of “Yugoslavism” that led to the strict introduction of proportionality and national equality in Yugoslavia in general and in Bosnia in particular. Consequently, we can argue that it was the Yugoslav nationalities policy that “made” the Bosnian Muslim nation by recognising that this religious group must have proportional representation and equal rights within the Bosnian and Yugoslav institutional framework.⁴⁸²

It was clear from the beginning of the Socialist Yugoslavia that all problems threatening the federation would consequently also be a threat for Bosnia and Herzegovina, the often acclaimed “Yugoslavia in miniature.” It is therefore not surprising that the nationalist rhetoric and the behaviour of the Republics of Croatia, Slovenia and Serbia would lead Yugoslavia and consequently Bosnia and Herzegovina into doom. With Serbia and Croatia debating the future of Yugoslavia, they also opened the debate about Bosnia and Herzegovina- a debate that would after 1992 “be discussed” on the battlefield in Bosnia and Herzegovina.

4.1.5 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 Steven 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.”⁴⁸³ 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 undermined the very foundations of the Yugoslav state.⁴⁸⁴ Indeed, after Kardelj’s and Tito’s death the old Communist elite became more and more unimportant and new elites came to power in the republics, elites that were not united through their common fight against the fascist occupiers; and in particular Tito’s role as the final arbitrator between the different interests would not be filled again. The economic crisis at the same time, that resulted in inflation rising to 30 per cent,⁴⁸⁵ would lead to further conflicts between the Republics, in particular between Croatia and Slovenia on the one side and Serbia on the other. Finally, the eruption of violence in Kosovo was a result of the deteriorating economic situation in the autonomous province, coupled with the political demand of the Kosovo Albanian majority to recognise Kosovo as the seventh republic of Yugoslavia.⁴⁸⁶ The conflicts of the late 1980s erupted along the lines of the future

⁴⁸¹ Ramet, Sabrina: *Nationalism and Federalism*, 1992, p.115.

⁴⁸² More on this see: Shoup, Paul: *Communism and the Yugoslav National Question*, 1968

⁴⁸³ Burg, Steven: ‘Ethnic Conflict and the Federalization of Socialist Yugoslavia’, 1977, pp.142-143.

⁴⁸⁴ Ramet, Sabrina: *The Three Yugoslavias*, 2006, p. 328.

⁴⁸⁵ Ibid. p. 328.

⁴⁸⁶ 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 an autonomous province. However, both regions were

political organisation of Yugoslavia in 1989/1990. While Serbia, which was controlled by Slobodan Milošević after 1987, supported a re-centralisation of the Yugoslav federation,⁴⁸⁷ Slovenia and Croatia supported further decentralisation and the official transformation of the Yugoslav state into a confederation.⁴⁸⁸ 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. This alone, however, did not pave the way towards war. This way was paved by the emergence of conflicting and competing nationalist ideologies in the 1970s and 1980s in Yugoslavia, which would so heavily impact on Bosnia and Herzegovina. BiH itself 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.⁴⁸⁹ 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 and 'Bosnia became [a] political battleground.'⁴⁹⁰ Neven Andjelić argues that it was the "Agrokomerc" scandal in 1987,⁴⁹¹ which led to economic problems in Western Bosnia and demonstrated the problems in the self-management system but also the inability of the Communist elites in Bosnia to tackle unreasonable behaviour in the economy.⁴⁹² The Agrokomerc scandal is therefore 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.⁴⁹³ The result, according to Andjelić 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 1989.⁴⁹⁴ As a result the Communist Party agreed to multiparty elections in Bosnia for 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

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.

⁴⁸⁷ See for the Serbian arguments: Koštunica, Vojislav: 'The Constitution and the Federal States', 1988, pp.79-92.

⁴⁸⁸ Ramet, Sabrina: *Nationalism and Federalism*, 1992, pp. 215-218.

⁴⁸⁹ Ibid. p.249.

⁴⁹⁰ Ramet, Sabrina: *The Three Yugoslavias*, 2006, p. 367.

⁴⁹¹ The scandal arose around the financial management of the Agrokomerc company in Velika Kladusa. Investigations brought to light that the company had issued promissory notes worth billions of Yugoslav Dinars, which could not be refunded.

See: Andjelić, Neven: *Bosnia-Herzegovina: The End of a Legacy*, Frank Cass: Portland 2003, pp.56-57.

⁴⁹² Ibid. p. 61.

⁴⁹³ Ibid. pp.62-63.

⁴⁹⁴ Ibid. pp. 75-108.

(HDZ). These exclusively national 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 (or communes), this agreement led quickly to conflicts, first at the local levels and then at the central level as well. Andjelić argues that the nationalist parties had two major things in common, they were firstly incompetent to tackle Bosnia's economic and political crisis, and secondly 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.'⁴⁹⁵ He concludes by arguing that 'political ethnic elites had different aims and this, as well as incompetence, is what prevented their cooperation in power. The leaderships of the Serbs and Croats in Bosnia-Herzegovina simply followed their leaders in Belgrade and Zagreb, while Moslems tried to underline the issue of Bosnian sovereignty, just as the communists had attempted earlier.'⁴⁹⁶ Indeed, the Bosnian Serb party SDS was following very closely the direction of Slobodan Milošević and the leaders of the Bosnian Croat HDZ followed their leaders in Croatia, in particular Franjo Tuđman, the HDZ President of Croatia, who already in 1990 began to question the legitimacy of Bosnia and Herzegovina's borders.⁴⁹⁷

Before looking at the developments in Bosnia and Herzegovina during the war between 1992 and 1995 and its consequences on BiH as a whole and the federal architecture of Dayton in particular, we have to discuss some core statements of BiH under Communist rule and under the rule of the nationalist parties 1990-1992. 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 held free and fair elections in 1991, 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, and most importantly for our purposes, we have to recognise that Bosnia and Herzegovina itself as a political unit was *not* organised federally until the signature and implementation of the Dayton Peace Accord 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 Doboje⁴⁹⁸ and as a result of the decentralisation and self-management of the Yugoslav federation, Bosnia was consequently reorganised in 106 smaller administrative units, named

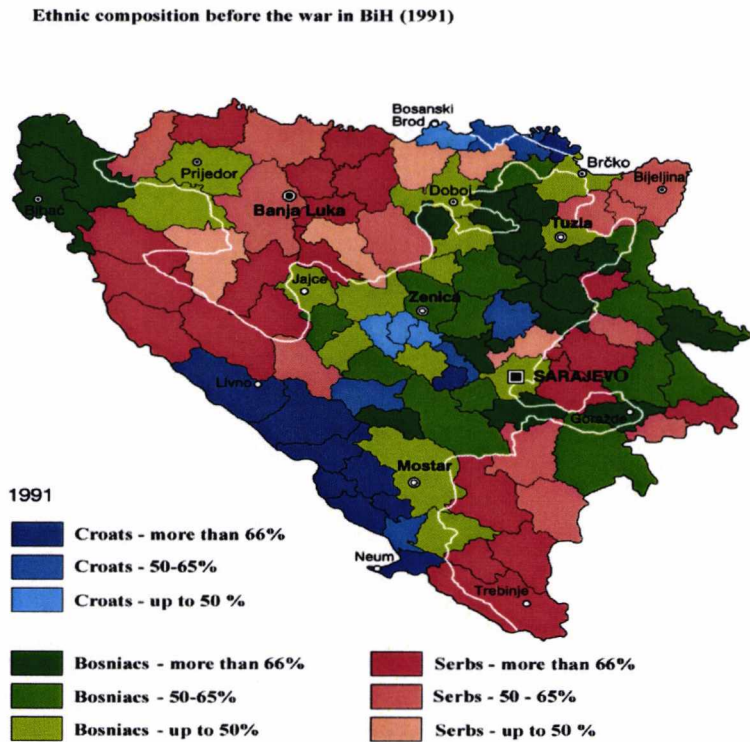
⁴⁹⁵ Ibid. p. 195.

⁴⁹⁶ Ibid. pp.196-197.

⁴⁹⁷ Uzelak, Gordana: 'Franjo Tuđman's Nationalist Ideology' in: *East European Quarterly*, Vol. 16, No.4, January 1998, pp. 449-472, here p. 457.

⁴⁹⁸ Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 376.

općinas.⁴⁹⁹ These municipalities existed already shortly after the end of the Second World War and the 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 basically 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.⁵⁰⁰ 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.



Map 5: Distribution of National Groups in Bosnia and Herzegovina in 1991⁵⁰¹

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, as we have already mentioned the real interests of the SDS and the HDZ were outside of Bosnia and the focus in 1991 in particular concerning the SDS was much more on keeping the whole of Bosnia and Herzegovina intact in Yugoslavia. The SDA on

⁴⁹⁹ Ramet, Sabrina: *The Three Yugoslavias*, 2006, p. 272.
⁵⁰⁰ Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 345.
⁵⁰¹ <http://www.ohr.int/ohr-info/maps/> (seen 15th July 2006)

the other side preferred a consociational power-sharing arrangement because federalism was seen as the first step towards the break-up of BiH. Additionally, the SDA realised that debates about the introduction of an ethnic federal arrangement would necessarily be based on either a “humanitarian transfer of people” or on ethnic cleansing. The SDA would consequently be the only party among the nationalists that supported the long-term independence and unity of Bosnia and Herzegovina.⁵⁰² 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.

While the power- sharing between the SDA, SDS and HDZ at the central level was symbolic for Andjelić’s stated incompetence, it was at the local level where real conflicts including tensions and violence arose. The violent conflict, that would end up in full-scale war in 1992, erupted therefore for reasons that had to do with the incompetence of the three parties in power and their inability to find an agreement on the status of Bosnia and Herzegovina, either as part of a reduced and Serb- dominated Yugoslavia or as an independent state, following the declarations of independence of Slovenia and Croatia in 1991. While 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.⁵⁰³ The arguments about the future of Bosnia and Herzegovina however, were overshadowed by active preparations of the Bosnian Serbs for secession. Already after the 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).⁵⁰⁴ 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, the latter began active preparation for the departure of the Serb Autonomous Oblast from Bosnia and Herzegovina. They claimed that the Bosnian Muslims and the Bosnian Croats were unwilling to accept the concerns and demands of the Bosnian Serbs and were undermining the role and the agreement of the National Board. This was a very serious argument by the Bosnian Serbs and indeed the Bosnian Muslims and the Bosnian Croats should probably have done more to come to an agreement with their fellow citizens. However, 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

⁵⁰² Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 347.

⁵⁰³ Glenny, Misha: *The Fall of Yugoslavia*, 3rd edition, Penguin Books: London 1996, pp.143-144.

⁵⁰⁴ Hoare, Marko Attila: *How Bosnia Armed*, Saqi Books: London 2004, pp. 34-35.

naturally neither accepted by the Bosnian government nor by the international community.⁵⁰⁵ However, the Republika Srpska (RS) was established in January 1992 and therefore *before* the official declaration of independence of Bosnia and Herzegovina,⁵⁰⁶ 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 had already no control over one-third of Bosnia's territory.⁵⁰⁷ Without going into too much detail about the war in Bosnia and Herzegovina,⁵⁰⁸ we have to keep in mind a number of things.

First, the three different national groups in Bosnia and Herzegovina had completely different war aims. While the Bosnian Muslims⁵⁰⁹ fought for the preservation of BiH in its historical borders and the continued coexistence of the different peoples in a multinational state, they would accept later the partition of Bosnia and even the creation of a homogenous mini-state for themselves.⁵¹⁰ The 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, the Bosnian Croat troops started a war against their former allies, the Bosnian Army and the Bosnian Muslims to create nationally homogenous cantons. Consequently, in August 1993 the HDZ leadership proclaimed the Croat Republic of Herzeg-Bosna, which covered Herzegovina and parts of central Bosnia.⁵¹¹ However, while the Bosnian Serb Army, with the help and equipment of the Yugoslav Army was very successful in its military campaigns and controlled very quickly about 70 per cent of territory in Bosnia and Herzegovina, 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

⁵⁰⁵ 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 Union 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.

⁵⁰⁶ Ibid. pp. 34-38.

⁵⁰⁷ Ibid. pp.37-38.

⁵⁰⁸ 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.

⁵⁰⁹ After 1993 referred to Bosniaks.

⁵¹⁰ 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.

⁵¹¹ Ibid. pp. 86-98.

in the so called Washington Agreement.⁵¹² The Agreement saw the formal end of the Croat Republic of Herzeg- Bosna and the war between the Army of the Bosnian Croats and the Bosnian government and it foresaw the creation of a military alliance between the two and a political alliance in form of the Federation of Bosnia and Herzegovina, a ten canton based federal arrangement that was supposed to preserve the peace between Bosniaks and Croats, help coordinate their military efforts against the Bosnian Serbs and ensure political power- sharing.⁵¹³ It was only in the spring and summer of 1995 that the situation on the battlefield changed and the Bosnian Serb troops as well as their allies in Croatia had to suffer defeats and had to seize territory. This change on the ground plus the US-American involvement in the peace talks in late 1993 and the final break of Serbia with its allied para-states in Bosnia and Croatia opened a window of opportunity, which resulted in the peace 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. We have mentioned above, that BiH itself has never been organised federally before 1995. Indeed, the option to federalise (or confederalise) Bosnia and Herzegovina is not a solution based on the will of the different peoples of Bosnia. Instead, it was the international community, at the beginning, in particular the representatives of the EU, that suggested federalism as a viable option. The first plan to decentralise Bosnia and Herzegovina along national lines was the Carrington- Cutiliero Plan of 1992, which preceded the eruption of violence. While 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 cantonization of BiH can be seen as evidence for the statement that federalism was not a "home-grown" option. Marko Attila Hoare among 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!'⁵¹⁴ We have already established that federalism certainly is anything but partition, but Hoare's statement has some truth in it. We have to keep in mind the national distribution in Bosnia and Herzegovina in 1991 and the argument why it was not an option to introduce federalism after the first multiparty elections in the country. We have seen that it was the very nature of BiH being nationally mixed and its peoples being scattered all over the country, which were the reasons for the neglect of the federal option in 1990-1991. The introduction of federalism on a national basis would therefore necessarily lead to vast population transfers, either peacefully or in the form of ethnic cleansing. Indeed, more than two million people had to leave their homes during the

⁵¹² 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.

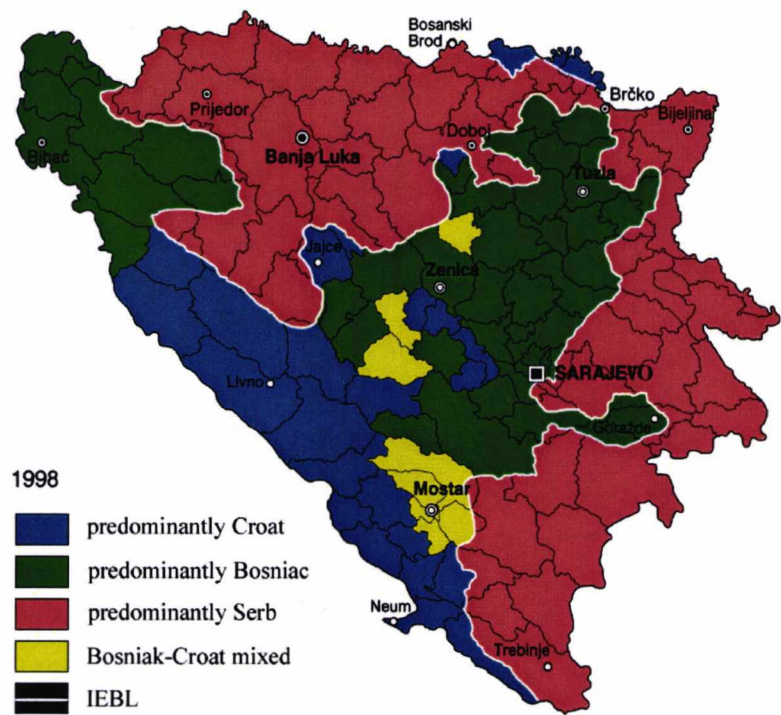
See: Silber, Laura and Little, Allan: *Yugoslavia: Death of a Nation*, 1997, p. 322.

⁵¹³ About the Croatian war aims in Bosnia and Herzegovina and the resulting political arrangements see: Hoare, Attila: 'The Croatian Project to Partition Bosnia-Hercegovina, 1990-1994' in: *East European Quarterly*, Vol. 16, No.1, March 1997, pp. 121-138.

⁵¹⁴ Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 376.

war in Bosnia and Herzegovina. The war in Bosnia and Herzegovina created three more or less homogenous areas in Bosnia and Herzegovina, as can be seen in the picture below.

Ethnic composition in 1998



To ask whether ethnic cleansing and resulting homogenisation of territory was a result of the peace plans by international negotiators or if these negotiators only accepted the situation on the ground cannot completely be answered. What is clear is that the war in Bosnia and Herzegovina and in particular the ethnic cleansing, which was practised by all sides but extensively by the Bosnian Serb Army and paramilitaries, led to territorial homogenisation, which would allow later for the introduction of a multinational federal system. The territorial concentration of the different national groups in specified areas is the core precondition for the introduction of multinational federation. Where no territorial concentration of the different nations is given, such as in Bosnia before 1991 or Lebanon today, consociationalism and non-territorial autonomy would seem to be more likely to succeed compared to a territorial division of power. However, the Bosnian state that was created at Dayton in 1995 was therefore created on the outcome of the ethnic cleansing of the war. Having said this, it must be noted that the international politicians at Dayton attempted not to ratify ethnic cleansing and homogenisation by providing a variety of instruments for refugee return, but the political reality of Bosnia today is that only half of the refugees have returned and that they mainly returned to areas where their national group is now a majority.⁵¹⁶ Dayton Bosnia being based on ethnic

⁵¹⁵ <http://www.ohr.int/ohr-info/maps/> (accessed 15. 07. 2006)
⁵¹⁶ See the figures of the UNHCR: Until the end of 2008 1026692 refugees and displaced persons returned.

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 therefore 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 federal arrangement is furthermore based on the commitment of the international community to introduce a federal system in Bosnia and Herzegovina and persuade the three peoples to agree on that arrangement. We will discuss the negotiations in Dayton later but it needs to be said here that federalism as a solution to the war in Bosnia and Herzegovina and the question of the relationship between its three main peoples was not a Bosnian answer but an international solution. The introduction of an internationally negotiated federal system as part of a peace plan is unique in Bosnia and Herzegovina and underlines the main claim of this thesis, namely that Bosnia and Herzegovina represents a new model of federalism and federation.

4.2 Continuities in Bosnia's history

Our short analysis of Bosnia and Herzegovina's development since the middle ages has demonstrated the variety of empires that ruled Bosnia and it has underlined the different statuses for Bosnia within these multinational states. While we have witnessed a vast amount of change and diversity concerning inter-ethnic relations, territorial organisation, internal and external status of BiH and relationships to the neighbouring countries, we have also mentioned important continuities. The following section will discuss the four major continuities in Bosnia's (federal) tradition, focusing on the relationship between BiH's different peoples, the internal organisation of Bosnia and the influence of neighbouring and foreign states in Bosnia's internal affairs. We shall see that although Bosnian history is characterised by historic changes, there are also important continuities, which play a key role in the Bosnian federal system of today.

4.2.1 Multinationality and ethnic power-sharing

Bosnia and Herzegovina has always been an area of different religions, ethnicities, and peoples. Marko Attila Hoare makes this point very clear when arguing that '[t]he Bosnians never comprised a single nation, nor have they ever comprised three wholly separate nations.'⁵¹⁷ Indeed, since the first record of different religious communities in Bosnia and 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 on the

170,237 Bosniaks and Croats returned back to the RS between 1996 and 2008. On the other side 274,965 Serbs returned into the FBiH. While these data confirm that the entities are by no means homogenous, they also confirm the numerical dominance of one (RS) or two (FBiH) national group(s) in the entities.

All Data are taken from: UNHCR: *Statistics Package*, 31 December 2008, available at: www.unhcr.ba

⁵¹⁷ Hoare, Marko Attila: *The History of Bosnia*, 2007, pp. 413-414.

territory of BiH, including Jews, Turks, Montenegrins, Albanians, Vlachs and others. Bosnia, therefore, has *always* been multireligious, multiethnic and since the 19th century also multinational. It has developed as a multinational polity, influenced by different empires that occupied it. While the Bosnian Muslims became a recognisable group in Bosnia and Herzegovina as a consequence of Islamisation of parts of the Bosnian population in the Ottoman Empire, it was additionally the societal and economic organisation of the Ottoman rulers that gave Bosnia the national mix of its modern form.⁵¹⁸ Indeed, we cannot overestimate the importance of the Ottoman millet system and its division of society in different religious groups.⁵¹⁹ It was in the 19th century that these different religious groups developed slowly into nations, first the Bosnian Serbs followed by Bosnian Croats and Bosnian Muslims. This development was largely influenced by Bosnia's two large neighbours.⁵²⁰

If we conclude that Bosnia has been a multi-religious and since the 19th century also a multinational political entity, it is important to discuss the relationships between the different religious and later ethnic and national groups and in the case of the Bosnian Croats and Bosnian Serbs also between them and their kin states in order to understand the Bosnian quagmire. While at different periods of time the different groups in Bosnia have dominated the country and openly and indirectly discriminated against the other groups, there is also a long tradition of cooperation and power-sharing between the three groups in Bosnia and Herzegovina. While the Bosnian Muslims dominated the country when it was part of the Ottoman Empire and discriminated against Catholics and Orthodox Christians at one point or another, the Bosnian Serbs dominated the country when it was part of the first Yugoslavia. They were overrepresented in the administration and the army, and the Bosnian Muslims lost their religious autonomy in the late 1920s. The Bosnian Serbs also dominated Bosnia and Herzegovina when it first became part of the Socialist Yugoslav federation, and only as a consequence of the recognition of the Muslims as a nation did the Communists introduce a system of power-sharing and proportional representation.⁵²¹ The Bosnian Croats, finally, dominated the country during the Austrian occupation in late 19th and early 20th century⁵²² and again after the country became part of the Independent State of Croatia in 1941. Whenever one religious/national group dominated the country, it saw outbreaks of religious and ethnically based violence. Whether it was the violent actions of the Ottoman troops and their Bosnian Muslim supporters against the Bosnian Serbs, who were accused of conspiracy with Serbia, or the spread of violence against Muslims during the creation of the first

⁵¹⁸ Ibid. pp. 39-43.

⁵¹⁹ 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 cooperation with different groups. After the late 17th century, Bosnia bordered directly on (Catholic) Austria. Therefore, the Bosnian Croats were seen as a potential threat, while the Orthodox Bosnians were seen as a potential partner, since their religious leader sat in Istanbul. This changed in the 19th century with the emergence of an autonomous and later independent Serbia, which resulted in harsh political and economic measures taken by the Ottomans against members of the Bosnian Orthodoxy.

⁵²⁰ See for the development of ethnic and national identities in Bosnia and Herzegovina: Ibid. pp. 46-70

⁵²¹ Ibid. p. 331.

⁵²² In 1912 for example 57.87 per cent of all Bosnian bureaucrats were Bosnian Croats or Croats from Croatia proper.

See: Ibid. p. 78.

Yugoslavia or the wide-spread violence and destruction of Serbs in Bosnia during the rule of the Croatian ustaše, when domination is connected to violence, the alternative naturally is support for inter-ethnic cooperation and inclusion. This was realised by the Bosnian peoples as well as by the occupying empires. The first forum of cooperation 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.⁵²³ The Austrian- Hungarian Empire continued the policy of inter-ethnic cooperation 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.⁵²⁴ 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 and Herzegovina, an ethnically based party system developed.⁵²⁵ Sabrina Ramet, among 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*.⁵²⁶ 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 and the alternative to this as domination by one nationality and inter-ethnic violence, it becomes more obvious why power-sharing and national politics 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. We have to remember that liberalism and the development of a left-right party spectrum were never fully introduced in Bosnia and Herzegovina. Instead, the overarching cleavage in Bosnian society, economy and consequently also politics has always been the cleavage between different national groups. Ever since the awakening of different consciousnesses through the Ottoman millet system this has been the underlying issue in Bosnia and Herzegovina. Those authors who argue that until the 20th century Bosnia's main cleavages⁵²⁷ were economic between landowners and

⁵²³ Ibid. p. 41.

⁵²⁴ Siegel, Julius (Ed.): *Verfassungsgesetze der Länder Bosnien und Herzegovina*, 1910.

⁵²⁵ 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).

⁵²⁶ Ramet, Sabrina: *The Three Yugoslavias*, 2006, p. 37.

⁵²⁷ The main work about cleavages in societies can be found in:

Lipset, Seymour and Rokkan, Stein: 'Cleavage Structures, Party Systems and Voter Alignments: An Introduction' in: Lipset, Seymour and Rokkan, Stein (Eds.): *Party Systems and Voter Alignments*, Free Press: New York 1967, pp. 1-64.

peasants and urban cleavages between the developing cities and the rural areas forget that these cleavages were also discussed along national lines. The landowner-peasant cleavage in the 18th and 19th century was a cleavage between Muslim landowners and Christian (mainly Orthodox) peasants.⁵²⁸ Furthermore, the urban-rural cleavage was also focused on the role of ethnicity, as Hoare explains. He argues that while the towns and cities saw the development of multinational communities and inter-ethnic marriages, it was the rural areas where homogenisation was the important basis for exclusive nationalist tendencies.⁵²⁹ Bosnia and Herzegovina has been a multi-religious, multi-national polity since the Middle Ages. The development of different national identities during the Ottoman and Austrian occupation of BiH is a reality. We therefore have to be careful with demands for the introduction of a more “Western-style” political system and a party system that operates along the class cleavage. Instead, we have to accept the reality in Bosnia and Herzegovina and recognise that political progress in the country needs the cooperation of the different national parties. Instead of debating the abolition of national politics, we should consider how we can make these more willing to create an atmosphere of cooperation and compromise. This was already recognised by the Ottomans in 1867, the Austrians in 1910 and the Yugoslav Communists in the late 1960s and early 1970s. Because the nationalists that ruled Bosnia and Herzegovina in the early 1990s were unwilling to compromise and drove the country into war does not mean that ethnic power-sharing and consociationalism within the Bosnian federal system are forever doomed to fail. Instead, we should look at the factors that promote cooperation such as the joint willingness of all Bosnian peoples and parties to join the EU and integrate into European structures.

4.2.2 Territorial integrity and regionalism

‘Bosnia-Hercegovina existed both as a country and as a state or administrative entity, in unbroken continuity, from the tenth century, and probably earlier, until 1929.’⁵³⁰ Hoare’s statement confirms Bosnia’s territorial continuity and statehood based on the fact that both have a tradition of more than ten centuries. As we have seen above, the argument is not that easy. While it is difficult to talk about any form of Bosnian “statehood” in Middle Ages, we know that a Bosnian Kingdom existed, which at

Lipset and Rokkan argue that historical cleavages influence the development of party systems and the voting behaviour of the population. They distinguish between four core cleavages, namely the Church-State Cleavage, the Rural-Urban Cleavage, the Class Cleavage and the Center- Periphery cleavage. The last one applies to the relationship between a majority nation and minority nations in a state and the demand of the minorities for autonomy or even independence. Spain and modern UK would be examples of this cleavage. However, since we cannot talk about minority- majority relations in BiH, this cleavage does not fully cover of what we have called “the ethnic cleavage.” While in most European countries different cleavages influence the party system and voting behaviour (to go back to Spain and the UK, it would be the Center- Periphery cleavage but also the Class cleavage), in Bosnia and Herzegovina, the four traditional cleavages are all connected to the question of the relationships of the different Bosnian peoples to each other. This is why we can use the term “ethnic cleavage” to describe the fractions and political conflicts between Bosnia’s nations.

⁵²⁸ Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 56.

⁵²⁹ Ibid. p.57.

⁵³⁰ Ibid. p. 413.

different periods of time however, also included parts of Croatia, Serbia and Montenegro. Furthermore, after the highest point of the Bosnian Kingdom, Bosnia proper had to seize territory from its Turkish and Hungarian neighbours in the early 15th century.⁵³¹ 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 immediately an autonomous administrative unit. 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. Bosnia as an eyelet would lose some territory to neighbouring eyelets, most famously the Sandžak, which is today divided between Serbia and Montenegro. It would gain territory such as Hum, today better known as the territory of Herzegovina. It was only in 1877 that the eyelet of Bosnia was organised in six regional units (sandžaks) and acquired the form of the state we know today as Bosnia and Herzegovina. While we can agree with Hoare to the extent that the territory of Bosnia and Herzegovina indeed existed at least from the 16th century onwards as a territorial unit within the different empires of the Ottomans and the Austrians and was only destroyed through the reorganisation of the first Yugoslavia along natural boundaries in 1929, it is much more difficult to agree with Hoare on the question of Bosnian statehood. If we follow the common assumption that the modern (European) state system developed after the Peace of Westphalia, which ended the 30-year War in 1648, then we have to challenge Hoare and recognise, that Bosnia and Herzegovina has not been an independent state before it declared independence in 1992. We shall return to this discussion a little later in this chapter.

If we assume that Bosnia and Herzegovina indeed existed as a territorial unit from the middle of the 16th century onwards, we also need to look at the territorial organisation of this unit. 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, we can see 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. While the first Yugoslavia destroyed this regionalisation 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 after World War II.⁵³² While the Communists later organised Bosnia and Herzegovina in much smaller local government units following their policy of self- management, the six Bosnian regions around the major cities of BiH became increasingly important after the outbreak of war 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

⁵³¹ Ibid. p. 37.

⁵³² Ibid. p. 299.

Herzegovina.⁵³³ 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 its history before the fatal developments in the early 1990s has Bosnia and Herzegovina been organised territorially along national lines. This was in any case impossible, if we consider our findings earlier, where we saw that Bosnia's population lived mixed all over the country. There was absolutely 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 federation.

However it is also important to mention that several Bosnian parties, which argue against the ethnic federal system in BiH, focus on Bosnia's historically grown regionalism and offer this as an alternative to the division of the country into nationally homogenous areas.⁵³⁴ But this is not so easy. Apart from the fact that the Bosnian Serbs would probably not agree to an abolition of the RS and the regionalisation of Bosnia and Herzegovina, we also have to keep in mind that the majority of the six Bosnian regions is also nationally homogenous. Banja Luka and Travnik are regions situated in the RS, Sarajevo, Bihać and Tuzla are strongholds of Bosniaks and Mostar in Herzegovina is a divided city in a divided canton, but the greater Mostar area is mainly occupied by Bosnian Croats. Regionalisation, at least along the historically grown regions would therefore not necessarily offer an alternative to the territorial division of BiH along national lines.

4.2.3 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 civilizations.⁵³⁵ Indeed, our examination of Bosnian history since the Middle Ages at the beginning of this Chapter has demonstrated that Bosnia and Herzegovina was part of different Empires at different times. 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 and Herzegovina 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, but we have seen above that BiH did not independently decide on its own affairs

⁵³³ Hoare, Marko Attila: *How Bosnia Armed*, 2004, p. 79.

⁵³⁴ See for example the statement of Haris Silajdžić, Member of the Bosnian Presidency and Party leader of the second largest Bosniak Party, the Party for Bosnia and Herzegovina in: Rožajac, Sanita: 'Reformom Ustava Do Ekonomskih Regija' in: *Oslobodenje*, 12th August 2008.

⁵³⁵ The most prominent of these authors is Samuel Huntington, who in his famous work about the clash of civilizations positioned Bosnia and Herzegovina right on the 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- 38.

thereafter as a result of the violent conflict in the country, but also because of the peace-keeping and peace-making efforts of the international community. As we shall see later in this thesis, the Dayton Peace Agreement (DPA)⁵³⁶ was therefore not a “native” Bosnian Peace Plan, but an internationally mediated and negotiated treaty, that also included the Constitution for the “new” Bosnian state and introduced federalism for the first time as an organisational principle to Bosnia and Herzegovina. After the war the international community stayed in Bosnia and Herzegovina both militarily and politically. Over 60000 international troops were sent to BiH to preserve the peace and guarantee the military implementation of the 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.’⁵³⁷ We will discuss the role of the EU and the High Representative later, but what is important for our purposes is to understand several key things.

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 was crisis-ridden in the 19th century, the same time when the occupying Ottoman Empire was losing control over vast parts of its territory and while part of Austria-Hungary, Bosnia and Herzegovina saw economic development and industrialisation, at the same time as the other major parts of the Austrian Empire.

Second, the foreign powers that controlled Bosnia and Herzegovina heavily influenced the 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.⁵³⁸ When discussing the importance of ethnic power-sharing in BiH’s history, we have already seen that at different times different empires cooperated with different ethnic groups in Bosnia and discriminated against others. Indeed, as Hoare states, when looking at the history of Bosnia and Herzegovina we can recognise that ‘the relationship of nationally conscious Muslims, Croats and Serbs to the common Bosnian homeland is one that has continuously changed and any understanding of the relationship requires it to be viewed as a work-in-progress rather than as a constant.’⁵³⁹ The same can consequently be said about the relationships of the different nations to each other. Times of conflict with each other have been followed by times of inter-ethnic cooperation. Even 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 in Bosnia and Herzegovina. The international community, mainly the EU and the USA, who influenced Bosnia and Herzegovina’s development since 1990 also recognised the

⁵³⁶ DPA can also stand for Dayton Peace Accords. What it refers to is the General Framework Agreement for Peace in Bosnia and Herzegovina that was negotiated in November 1995 in Dayton, Ohio and signed one month later in Paris and ended the war in Bosnia and also included its federal constitution.

⁵³⁷ Chandler, David: ‘The High Representative for Bosnia still runs it like a feudal fiefdom’ in: *The Guardian*, 20th November 2007.

⁵³⁸ Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 33.

⁵³⁹ *Ibid.* p.29.

importance of power-sharing, but too late to avoid the conflict. As we have seen above, when the Bosnian Croats and the 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. While we can in no way justify the violent actions of the Bosnian Serb military that followed, we have to recognise that it was 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 before agreeing to an independent Bosnia and Herzegovina.⁵⁴⁰ Some argue that the international community is responsible for Bosnia's national partition,⁵⁴¹ but what is clear is that BiH as we know it is 'a state by international design and of international design.'⁵⁴² The Dayton Peace Conference, which gave birth to Bosnia and Herzegovina as we know it today, resulted in an internationally negotiated and mediated peace treaty, which additional to bringing peace to BiH and the former Yugoslavia as a whole also contained the Constitution of Bosnia and Herzegovina. 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.⁵⁴³

Finally, when looking at the role of foreign powers in Bosnia and Herzegovina and their influence on the internal and external policies of Bosnia, we always need to keep in mind that the historically grown dependence of Bosnia on foreign rulers, as some commentators argue, is nothing but a polemic. We have seen in the last 20 years the birth of many states, that had very limited or no experience with independence before and they still managed peaceful transitions to independence and democracy. In particular the mainly peaceful dissolutions of the Soviet Union and Czechoslovakia and the resulting independence of a number of "new" states demonstrate that violence and state-dissolution are not inevitable connected. On the other side, states such as the USA and Ireland have seen violent conflicts that led to their independence and violent conflicts resulting from the independence and undecided status questions. Bosnia and Herzegovina is no special case in this regard. Instead, Bosnia and Herzegovina should be given the time to consolidate and integrate peacefully in the EU, which

⁵⁴⁰ 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.

⁵⁴¹ Among others, this is clearly argued in:

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

⁵⁴² Bose, Sumantra: *Bosnia after Dayton*, 2002, p. 60.

⁵⁴³ 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 very problematic logic, since all international mediation and peace-negotiation efforts until 1995 failed exactly because of the decisions taken by Bosnian politicians.

will not rule over Bosnia but in which the country will see the final unification with its neighbours and its former occupiers in a peaceful way.

4.2.4. The Influence of neighbouring countries

As our 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 attention. We have demonstrated above that the development of national consciousness in Bosnia and Herzegovina was influenced by the political situation of the kin states. Therefore, the Bosnian Serbs developed a clear 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 new autonomous kin state and the opposition towards Muslim rule in Bosnia and Herzegovina after 1815.⁵⁴⁴ We have also mentioned above, that one of the key intellectuals of modern Serbian nationalism, Ilija Garašanin saw Bosnia and Herzegovina as an integral part of Serbia, last but not least because in the first half of the 19th century the Bosnian Serbs were still the majority population in Bosnia and Herzegovina (although they probably had no absolute majority).⁵⁴⁵ Marko Attila Hoare argues more differentiated that Bosnian Serbs certainly always had a connection to the Serbian kin state; however, they also had a connection to Bosnia and Herzegovina as their home country. Therefore, he suggests that while the liberal elites of the Bosnian Serbs argued for tolerance and inter-ethnic cooperation, it was in the rural areas where ideas of exclusive Serbian nationalism were promoted, based on the ideas of Serbian dominance and the supremacy of the Serbian nation in Bosnia and Herzegovina.⁵⁴⁶ However, whenever new proposals about the reorganisation of the Western Balkans were debated, be it after the First and Second World War or be it after the most recent wars in the area in the 1990s, the majority of Bosnian Serbs supported the unification of Bosnia and Serbia. 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'.⁵⁴⁷ However, the radicalisation of politics in Yugoslavia after 1980 can also be witnessed by rising demands for a redrawing of the republican borders and the voicing of dissatisfaction and discrimination of certain nations within Yugoslavia.⁵⁴⁸ Interesting is also the argument that the Bosnian Serb and Serbian radicals (as well as their Bosnian Croat and Croat counterparts) denied the

⁵⁴⁴ Judah, Tim: *The Serbs*, 2000, pp. 56-62.

⁵⁴⁵ Ibid. pp. 56-59.

⁵⁴⁶ Hoare, Marko Attila: *The History of Bosnia*, 2007, p. 55.

⁵⁴⁷ Judah, Tim: *The Serbs*, 2000, p. 106.

⁵⁴⁸ 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 (seen 6. May 2009)

existence of Bosnian Muslim nationhood, and instead argued that these were ethnic Serbs with Islamic faith. 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.⁵⁴⁹ Consequently, as Andjelić argues, nationalism and ethnic rivalry was imported to Bosnia from its neighbouring states.⁵⁵⁰ Until today Serbia acts as a patron of the Republika Srpska in Bosnia and Herzegovina and the former Serbian Prime Minister Kostuniča even hinted at the possibility of uniting Republika Srpska with Serbia in a statement in 2007.⁵⁵¹ What is clear is that it cannot be avoided that Serbia will protect the Serbs of Bosnia and Herzegovina. 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.⁵⁵² This is a constitutional right already foreseen in the Dayton Constitution. 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.'⁵⁵³ 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 cooperation 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.⁵⁵⁴ Second, however, 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 neighbouring relations. While the Serbian leadership does not get tired of pointing to the right of the Republika Srpska to exist,⁵⁵⁵ it should also point out its support for the territorial integrity of Bosnia, as Croatia's former President has recently done.⁵⁵⁶ The extensive autonomy of the RS, the position of the international community against secession of the RS and the

⁵⁴⁹ Malcolm, Noel: *Bosnia: A Short History*, 1996, p. 246.

⁵⁵⁰ Andjelić, Neven: *Bosnia-Herzegovina*, 2003, pp.75-108.

⁵⁵¹ 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 (seen 7th May 2009, printout in possession of the author)

⁵⁵² 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.

⁵⁵³ 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.

⁵⁵⁴ Serbia and the Republika Srpska signed a Treaty on September 26, 2006 on Special and Parallel Relations. This form of cooperation 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.

⁵⁵⁵ Dervisebegovic, Nedin: 'For Bosnia's Dodik, Referendum Law Means It's Make-Or-Break Time' in: *Radio free Europe*, 11th 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 (seen 29th March 2010)

⁵⁵⁶ Hoare, Marko Attila: 'Croatia must defend Bosnia. So should Serbia' in: *The Bosnian Institute- News and Analysis*, 30th January 2010, See: http://www.bosnia.org.uk/news/news_body.cfm?newsid=2676 (seen 29th March 2010)

likelihood that even Serbia has no interest in an independent RS are all good reasons for the RS to integrate into the Bosnia state. Continued claims to the right of external self-determination and threats of a referendum will not contribute to a stabilisation of the situation in Bosnia. If the Bosnian Serbs and particularly the currently dominant party SNSD would recognise the potential it could have as a positive force in Bosnia and Herzegovina, it could also contribute to a faster integration of the country into European structures. To overcome the continued demands of radicals both in Serbia and Bosnia, who demand the unity of all Serbs in one state, the EU has to play a key role because through the integration of the countries of former Yugoslavia, it will provide this unity of all Serbs within the EU, but through peaceful and voluntary integration, based on the consent of all parties involved.

While 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. Firstly, while Serbs argue more from a territorial point of view, namely that the territory of Bosnia and Herzegovina really is part of Serbia, Croats tend to argue from an anthropological point of view, namely that all Muslims are Croats, which makes Muslims and Croats the majority in Bosnia and therefore the unification of Bosnia and Croatia would unite two countries with large Croat majorities.⁵⁵⁷ Croatia did include Bosnia and Herzegovina in a Greater Croatia, between 1941 and 1945 in the fascist Independent State of Croatia. The relationship of Croatia proper to Bosnia and Herzegovina is underlined by several important paradigms. The first paradigm is obviously 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.⁵⁵⁸ Furthermore, an important part of "Croatianness" is Croatia's self-definition as a European country in contrast to *The Balkan area*, 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.⁵⁵⁹ However, with the joint inclusion of Bosnia and Croatia in the Austrian Empire as a result of the Congress of Berlin 1878, Croatian ideas about 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. However, the ultimate rule of Croats over Bosnia and Herzegovina also resulted in the most horrendous crimes committed against the Jewish and Serb population of BiH, but also against Muslims and Croats who opposed the fascist rule. We have already mentioned that a key reason for the construction of BiH as the sixth Republic of Socialist Yugoslavia after World War Two was to

⁵⁵⁷ Serbs also used the anthropological argument that all Bosnian Muslims are Islamised Serbs.

⁵⁵⁸ At least if we consider the developments from the late Middle Ages onwards. At some points in the early Middle Ages Catholicism was indeed the religion of the majority of the Bosnian population.

⁵⁵⁹ Ceh, Nick and Harder, Jeff: 'Imagining the Croatian Nation' in: *East European Quarterly*, Vol. 18, No.4, January 2005, pp. 409-417, here pp. 410-411.

avoid new conflicts between Serbia and Croatia over Bosnia and Herzegovina. These conflicts, however, escalated again in the early 1990s, when Croatian President Tudjman and Serbian President Milošević both denied Bosnia and Herzegovina the right to statehood and independence 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.⁵⁶⁰ As we will see later, the 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. Up until the HDZ was in power in Croatia,⁵⁶¹ the 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.⁵⁶² 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,⁵⁶³ particularly because holders of a Croat passport can travel into the EU without a visa, while Bosnian passport holders need to apply for a visa, even for short stays, a policy that is clearly discriminatory. The EU should take a stand against the Croatian policy in Bosnia and Herzegovina on the one side, but it should also lift its visa regime for Bosnia and other Western Balkans countries on the other side.⁵⁶⁴ As has been argued above, the relationship of Bosnian Serbs and Serbia and Bosnian Croats and Croatia will always include close cooperation in the areas of education and culture. But Croatian politicians, as the current Croatian President has done several times, should also demand the full integration of Bosnian Croats into the Bosnian state.⁵⁶⁵ Additionally, it is very important that the Bosnian politicians in cooperation with their Croatian colleagues and European leaders strengthen the Croats in Bosnia to avoid further emigration of Bosnian Croats to Western Europe and Croatia proper. The EU needs to define the relationship between Croatia and Bosnian Croats after Croatia will join the EU in the next years to come. Furthermore, the EU could have a positive impact on the relations of Bosnia, Croatia and Serbia by focusing much more on good neighbourly relations in its conditionality package for the countries of the Western Balkans.

With the end of the HDZ monopoly in Croatia in 2000 and the resulting actions of the OHR against Bosnian Croats, the lasting structures of the Croat Republic of Herzeg Bosna were destroyed.

⁵⁶⁰ Uzelak, Gordana: 'Franjo Tudjman's Nationalist Ideology', 1998, pp. 466-467.

⁵⁶¹ Tudjman died in 1999 and his successor, Stipe Mesić was much more moderate. Also in 2000 the HDZ lost the parliamentary elections in Croatia and became for the first time an opposition party. The end of HDZ rule is connected with the beginning of Croatia's post independence democratisation and integration into European structures.

⁵⁶² 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.

⁵⁶³ High Commissioner on National Minorities: *The Bolzano /Bozen Recommendations*, 2001.

⁵⁶⁴ A process of visa liberalisation is currently underway and Serbia, Montenegro and Macedonia have already seen the strict EU visa regime lifted. Bosnia, Albania and Kosovo are likely to follow soon.

⁵⁶⁵ See for example:

'A third entity would harm Bosnia- 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

Bosnian Croats today focus on their position in Bosnia and not anymore on ways to undermine the state and keep up parallel structures. However, the Bosnian Croats are in a very complicated situation as the smallest of the three constituent peoples. Demands for a third entity are frequent among Bosnian Croats, although it is unlikely that this will solve the current problems of Bosnia and Herzegovina. However, lately it has been the Bosnian Croats that have pushed for reforms and a speeding up of the EU integration process, because they will be most affected when the border between Bosnia and Croatia becomes an external border of the EU.

4.3 Challenges in Bosnia's history

We have discussed above some of the continuities in Bosnia's history and their importance for federalism in the country. We shall focus in the last part of this chapter on some of the challenges for Bosnia and Herzegovina. Focusing on the challenges of statehood, democracy, federalism and European Integration, we shall see 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 us understand the complexities, continuities and developments of post-Dayton Bosnia's federal system and federal ideology, which will be discussed in the following chapters.

4.3.1 The challenge of statehood and independence

When discussing Bosnia's territorial integrity and the historical development of economic regions in Bosnia and Herzegovina, we concluded that BiH has never been an independent state in the modern understanding before 1992. This is of key importance for Bosnia's political system today. Bosnia and Herzegovina is a state which is not yet 20 years old. Critics of Bosnia's political system and progress often forget this.⁵⁶⁶

Why is the acknowledgement of Bosnia's young statehood so important for our purposes? There are several reasons for this. First, most countries that became independent did not immediately introduce modern democratic governments. Indeed, even the United States needed until the middle of the 20th century to extend civil liberties to all of their citizens, independent of race and skin colour. Bosnia and Herzegovina has literally just started the process of becoming a consolidated state. While countries such as the USA, France and Germany needed centuries to establish fully 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

⁵⁶⁶ 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, see: www.aei.edu/6168/01/2005_edap04.pdf (seen 15. 07. 2006)

democratic system than has been the case in other historical situations. 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 and statehood 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.⁵⁶⁷ State-building finally also means the building of “state” politicians, who accept their responsibility for the whole state and all of its citizens.

State-building is secondly important, because it is linked to democratisation. When the creation of efficient administrative bodies is discussed, we have to measure this efficiency and the working of the whole political body by their performance in terms of democracy. This does not necessarily mean that because Bosnia and Herzegovina has not already transformed into a *liberal* democracy the country is a failure. Instead, because Bosnia and Herzegovina is a post-conflict deeply divided society we 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, and as we shall see later, it has transformed rather drastically into a system that is, at least to some extent capable of handling the key problems Bosnia is facing today, including post-war transformation, economic development and integration into European and Atlantic structures.

Third, state-building in Bosnia and Herzegovina is logically connected to post-war reconstruction in all its different aspects. This includes not only the aspects of administrative and political system stabilisation mentioned above, but also such aspects as economic recovery and if necessary economic reform and, especially in the case of Bosnia and Herzegovina reconciliation between the former enemies. 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 very much 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 and Herzegovina.⁵⁶⁸ While 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,⁵⁶⁹ other organisations such as the Office of the High Representative have actively promoted inter-ethnic

⁵⁶⁷ 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 Nr. 2, Spring 2005, pp. 226- 259.

⁵⁶⁸ 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.

⁵⁶⁹ 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.

dialogue and reconciliation. As we shall see in the following Chapter, many international organisations used a rather "pushy" way of assistance, including imposition of decisions and the exclusion of Bosnian politicians, who undermined the Dayton Peace Accords. This has not always been an advantage for Bosnia and Herzegovina, as a certain culture of "dependency" not only from the decisions of the High Representative, but also from general international involvement has developed. Having said this, in particular the period from 2002-2006 has proven that it is EU conditionality that has the most prospects for long term reform in Bosnia and Herzegovina. In this way, we can also see the connection of state-building and Europeanization in Bosnia and Herzegovina.⁵⁷⁰

Fourth and finally we need to keep in mind that state-building in Bosnia and Herzegovina aims of creating a special kind of state, namely a *federal* state. As we have seen above, both the Republika Srpska and the Federation of Bosnia and Herzegovina, which form Bosnia and Herzegovina today, existed before the creation of federal Bosnia in 1995. Therefore, debates about competencies, harmonisation, centralisation and decentralisation but also such issues as cooperation with the neighbouring states and the impact of administrative professionalism and Europeanization will necessarily impact on the federal construct of Bosnia and Herzegovina. While 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 between the entity and the cantons in the case of the Federation of BiH and also the relationship between the entities. A steady centralization process has consequently been the result that will need to continue if Bosnia wants to come closer to the EU.

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 experiences of the war that followed the declaration of independence, the complicated political structure that is a result of the war and the multinational character of Bosnia and finally the fact that Bosnia has had no previous historical experiences of independence and statehood.

Statehood therefore is connected to the creation of a state in Bosnia and Herzegovina that has never been independent before 1992. This state at the same time deals with its legacy of being born out of a war between its different peoples and its neighbouring states and wants to establish itself as a democratic state and an eventual member-state of the EU. Finally, it is also a federal state and state-building consequently impacts on the federal political system. When critics argue that state-building is failing or has failed in Bosnia and Herzegovina we need to be very careful. For such a young state and its inexperienced politicians, there have been some recognisable successes, such as the moves towards more centralisation through military and tax reforms and the final agreement with the EU on a

⁵⁷⁰ 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.

Stabilisation and Association Agreement (SAA). The most important success of Bosnia and Herzegovina so far is of course that it still exists and that since 1995 no large- scale violence has occurred.

4.3.2 The challenge of democracy

We have already mentioned above that one of the aspects of Bosnian state-building is the transition to democracy. As we have stated earlier about Bosnian statehood, we can also say that Bosnia itself has never been organised along democratic principles before 1990. There are several authors, who argue that Bosnia and Herzegovina is also not organised along democratic principle since 1995. Among 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."⁵⁷¹ In a later article Chandler criticises in particular the role of the High Representative, the international body that is the final interpreter of the Dayton Agreement and also has the power to impose law and dismiss politicians, 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.'*⁵⁷²

Chandler is known for his very critical stand on the international involvement in Bosnia and Herzegovina. Other authors have been more careful with the assessment of Bosnian democratisation. Most famously Victor Bojkov argued that Bosnia and Herzegovina can be described as a "controlled democracy," whereby international administrators take decisions after the Bosnian politicians failed to agree on the necessary reforms.⁵⁷³

When assessing the progress of democratisation in Bosnia and Herzegovina we need to make a very important 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. If we go back to our definition of democracy at the beginning of this thesis, we can characterise these interferences as a state in which democratically

⁵⁷¹ Chandler, David: *Bosnia: Faking Democracy after Dayton*, 2nd Edition, Pluto Press: London 2000.

⁵⁷² Chandler, David, 'What about Democracy for Bosnia?' in: *Spiked Online*, 6th November 2007, see: www.spiked-online.com/index.php?/site/article/4046 (seen 15. April 2009, printout in possession of the author).

⁵⁷³ 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.

elected Bosnian representatives do not have the full monopoly over 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 and if the Republika Srpska for example voted for independence, the High Representative would have the power to reject the decision. This defect in the democratic system of Bosnia and Herzegovina 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, who showed 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 cooperation and consensus. It was exactly the lack of progress in the key areas of human rights improvements, constitutional implementation, and consensual decision-making that was given as the main reason for the extension of the High Representative's Powers.⁵⁷⁴

If we, however have a second look at the Bosnian political system and exclude for a moment the problematic powers of international decision-makers, we find that the Bosnian system itself is not (yet) a fully democratic system. While, as we have argued above, Bosnia and Herzegovina will not become a liberal democracy, even its consociational system is flawed. Florian Bieber has particularly highlighted the weak protection of minority rights⁵⁷⁵ in the consociational system,⁵⁷⁶ while Sabrina Ramet argues that the whole institutional system of Dayton Bosnia is 'completely dysfunctional.'⁵⁷⁷

However when assessing the problematic state of democratisation in Bosnia and Herzegovina, we should also not forget that the implementation of a democratic form of governance in Bosnia and Herzegovina is not only influenced by its consociational character, but even more so if we remind ourselves that Bosnia is purposively a *federal* democracy. While its Constitution does not specify this point, the territorial organisation of the country and the distribution of powers between different levels of government and their constitutional rights allow for us to reach this conclusion. However, while constitutionally Bosnia should function as a federal state, the theoretical implications of federalism in Bosnia remain contested and unclear since the national groups are unable to find a consensus on the definition of their state.⁵⁷⁸ Democratic decision-making in a country that has no historical tradition of democratic or federal government is even more complex and consequently the transformation will take longer.

⁵⁷⁴ Peace Implementation Council: *PIC Bonn Conclusions: Bosnia and Herzegovina 1998- Self Sustaining Structures*, 12th December 1997, available under http://www.ohr.int/pic/default.asp?content_id=5182 (seen 7. May 2009).

⁵⁷⁵ Minorities are all these groups that do not identify with any of the three constituent nations.

⁵⁷⁶ 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.

⁵⁷⁷ Ramet, Sabrina: *The Three Yugoslavias*, 2006, p. 475.

⁵⁷⁸ See in more detail Chapter Six.

We will assess the state of democracy in Bosnia and Herzegovina in more detail in the next chapter, but for now we need to keep in mind that democratisation, in line with Europeanization and state-building, is a complex and long process. Bosnia has not existed for very long as an independent state and has absolutely no tradition of democratic government and decision-making. The very basic consensus of all Bosnian parties to accept the major rules of the game and participate in the democratic process is therefore one of the biggest successes of post-Dayton Bosnia and Herzegovina.

4.3.3 The challenge of federalism

As is the case with independent statehood and democratic government, we also have seen that Bosnia and Herzegovina itself 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.⁵⁷⁹ We have already discussed that this argument is not fully valid, as Bosnian society has always been divided along religious and later ethno-national lines. However, what is true about this argument is, that this national division of society as practised for example in the Ottoman millet system has never been part of a *territorial* division of Bosnia and Herzegovina. 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 therefore a challenge for Bosnia and Herzegovina. In particular the creation of these more or less homogeneous regions in Bosnia through ethnic cleansing is a sad and unfortunate historical legacy that can be considered a critical historical weight on the shoulders of the young Bosnian state.

Federalism as we see it 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 in ten cantons is the result of the recent war in the country 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, we need 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 precise result of the war of 1992-1995. As we have argued above, it was only this territorial concentration of the three main peoples as a consequence of the ethnic cleansing and

⁵⁷⁹ Among 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.

homogenisation campaigns, which created the basis for the introduction of a multinational federal arrangement in Bosnia. Spain, Canada and Belgium as bi- and 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 sad legacy of a state that is built on the results of ethnic cleansing by creating the highest standards for human rights' protection worldwide and additionally focusing on the return of refugees to counterbalance the territorial division along national lines.⁵⁸⁰ As we shall see later in this thesis,⁵⁸¹ the connection between the territorial division along homogenous national lines and the focus on human rights and refugee return make Bosnia and Herzegovina a mixed system, with elements of a pure ethnic federation but also with elements we find mainly in territorial federations such as Germany and the United States of America.

The challenge of federalism influences Bosnia consequently in many ways. We have already discussed the connection of state-building, the process of democratisation and the influence of the federal political system on these processes. Additionally, as we shall see later, Bosnia's process of integrating into European structures with the final aim of full membership in the EU is also connected to its federal system. The implementation of EU law requires coordinated and consensual measures by different levels of government. In other federal countries it has been observed that membership in the EU has led to further centralisation.⁵⁸² 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 in BiH. 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 and limited decision-making and financial authority of the sub-units, but BiH is a heavily decentralised federation, in which the central level was until very recently completely financially dependent on the contributions of the sub-units.

The challenge of federalism in Bosnia and Herzegovina is therefore the creation of a modern multinational federation that fulfils the criteria to join the EU while at the same time preserving the distinct autonomy and self-rule of its units and protecting its different national identities without discriminating against non-members of the three constituent peoples. That is why federalism in Bosnia

⁵⁸⁰ 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 a massive 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 Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.'

⁵⁸¹ See Chapters "The Bosnian Federation" and "Federalism in post-war Bosnia"

⁵⁸² Compare for example for Germany the very good discussion in:

Bierwirth Katrin: *Much Ado About Nothing? The German attempt to reform Article 23 Basic Law and the procedure in federal decision-making in European Union matters*, unpublished Master thesis, University of Kent in Canterbury, August 2006.

and Herzegovina must be considered more as a process than as a fixed constitutional arrangement.⁵⁸³ 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 democratic form of government that allows national identities to express themselves while at the same time avoids national exclusive and discriminating political actions. These developments need time, political will and external support.

4.3.4. The challenge of European Integration

We have already seen above that state-building, democratisation and federalisation are impacted by Bosnia's simultaneous integration into European structures. Indeed, it is one of the many paradoxes of the Bosnian state, that while Bosnia and Herzegovina attempts to build a functional state after the recent conflict, it also prepares for a huge transfer of decision-making powers of this state to the European level.⁵⁸⁴ The challenge for the EU in Bosnia and Herzegovina, but also in other parts of the Western Balkans, such as Kosovo, is the connection of European integration, state-building and democratisation.⁵⁸⁵ Hoda Dedić argues in this context, that Bosnia and Herzegovina has to go beyond the Dayton Constitution and overcome the national domination within its political structures.⁵⁸⁶ There are several obstacles to Bosnia's eventual membership in the EU, some of the discriminating parts of the Dayton Constitution are certainly important. However, what is important to recognise is that Bosnia and Herzegovina is a young state, a young democracy, a young federation and a young potential candidate⁵⁸⁷ for EU membership. There is no doubt about necessary reforms in the political and economic system of Bosnia before it can join the EU, but the country already has seen some important improvements and over time will certainly overcome other obstacles.

The integration of Bosnia and Herzegovina into European structures marks the voluntary integration of Bosnia and Herzegovina into a larger multinational polity for the first time. It will also

⁵⁸³ 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.

We shall come back to his work in the chapter "Federalism in post-war Bosnia" and see how we can apply it to Bosnia and Herzegovina.

⁵⁸⁴ Jens Woelk presented several contradictions within the Bosnian state at the conference "Federal and State constitutions in Comparative Perspective". I thank him very much for pointing the different problems in Bosnia and Herzegovina out to me.

Woelk, Jens: 'Bosnia and Herzegovina- a state built on paradoxes', paper given at the Conference "Federal and State Constitutions in Comparative Perspective", organised by the Centre for Federal Studies of the University of Kent, Kent, April 2008.

⁵⁸⁵ 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.

⁵⁸⁶ 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.

⁵⁸⁷ 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/t_hessaloniki_summit_en.htm (accessed 7th May 2009).

serve as a mechanism to consolidate and reconcile with its neighbouring states and will radically change the relationships between Bosnian Serbs and Serbia and Bosnian Croats and Croatia since they will all be united in the EU. While Bosnia does need to undergo important reforms in order to eventually join the Union, it is also in the interest of the EU to integrate BiH and all the other countries of the Western Balkans. Stability, peace, economic growth and continued regional cooperation are only possible within the region through the EU's insistence on reform, cooperation and Europeanization. This applies in particular to Bosnia and Herzegovina, as the International Commission on the Balkans argues:

*'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.'*⁵⁸⁸

Reform of Bosnia's complex political system and the preparation of EU membership go hand in hand. Europeanization has already influenced Bosnia's federal system by leading to a constant centralisation of decision-making powers in such important areas as defence policy, certain areas of taxation, border control and in the long-term also police and internal security. The EU needs to assist Bosnia and Herzegovina in its long process of several simultaneous transformations: from a war-torn to a peaceful society, from socialist self-management to free market economy, from a one party dictatorship to a democratic system, from membership in Yugoslavia to full independent statehood and from unitary government to federal power-sharing. The EU, itself a federal polity, can provide Bosnia and Herzegovina with important guidance and financial and political support. 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.⁵⁸⁹ Therefore, the processes of state-building, democratisation and federalisation are interlinked and part of Bosnia's integration into the EU. Both, Bosnian politicians and European leaders need to recognise these challenges and work together to prepare the country for its final arrival in Brussels, which is unlikely to be in 2015,⁵⁹⁰ but certainly not many decades away. It is also the only way to overcome the negative legacies of Bosnia's history, such as the results of ethnic cleansing and the problematic relationship with its neighbours. It offers the focus on good practices in the EU, Bosnia's neighbourhood and BiH's history to "build" a country that is home to its citizens and nations, who are willing to work together for the better good of all of them.

⁵⁸⁸ International Commission on the Balkans: *The Balkans in Europe's Future*, April 2005, p.25.

⁵⁸⁹ See for example:

Bieber, Florian: *Post- War Bosnia (Ethnicity, Inequality and Public Sector Governance)*, Palgrave McMillan: Basingstoke 2006 and

Woelk, Jens: *LA Transizione Costituzionale Della Bosnia Ed Erzegovina*, CEDAM: Milan 2008, especially chapter 9.

⁵⁹⁰ Vucheva, Elitsa: 'Bosnia believes in EU membership by 2015, in: *Euobserver*, 24th April 2009, see: <http://euobserver.com/9/27996?print=1> (seen 28. April 2009, printout in possession of the author).

Let us now turn our attention to the analysis of the political system of post-war Bosnia and Herzegovina. We will focus in the following Chapter in particular on the federal features of this system.

5. 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.⁵⁹¹ Indeed, to understand the workings of the Bosnian federation it is important to analyse these two factors. Therefore the analysis of power-sharing mechanisms at central, entity, cantonal and local levels will be 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 then analyse “self-rule” by discussing the powers of the different levels of the Bosnian federation. As will be shown in this Chapter, 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 loosening up of the strict power-sharing mechanisms at central level. On the other side, power-sharing was enforced by a decision of the Constitutional Court in 2000, after which the entity Constitutions changed and introduced also ethnic power-sharing mechanisms. Therefore, we can witness processes of centralization and a loosening of the power-sharing at the central level, while 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 the federal state.⁵⁹² Our main focus in this Chapter will be the nature of the Bosnian state. There is a clear tendency in the literature to argue that Dayton introduced an ethnic federal system.⁵⁹³ 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 ethnic⁵⁹⁴ and territorial power-sharing, with a stronger focus on territorial elements. Therefore, Bosnia cannot be considered 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.

⁵⁹¹ Bieber, Florian: ‘Governing Post-War Bosnia-Herzegovina’ in: Gál, Kinga (Ed.): *Minority Governance in Europe*, Open Society Institute: Budapest 2002, pp. 319-337, here p. 330

⁵⁹² Riker, William: *Federalism: Origins, Operation, Significance*, 1964, p. 129.

⁵⁹³ 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. 116-145.

Bieber, Florian: *Post- War Bosnia*, 2006.

Woelk, Jens: ‘Federalism and Consociationalism’ 2004 pp. 179-198.

⁵⁹⁴ 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 Bosnia (mainly the constituent peoples) and ethnic federalism can be understood as what was previously discussed as multinational federalism.

5.1 Multinational power-sharing among Bosnian elites

As we have mentioned above, power-sharing among the different Bosnian nations 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 organizations.⁵⁹⁵ To understand the arrangements of power-sharing in Bosnia and Herzegovina, we first have to find a suitable definition of the term 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.’*⁵⁹⁶

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 already pointed out in Chapter Three.⁵⁹⁷ The major issue in Lijphart’s power-sharing arrangement is the recognition of different groups within the system, both through giving them autonomy in the areas of culture and education and by including them in central decision-making through grand coalitions.⁵⁹⁸ 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 and “force” people to vote for a representative of the other national group through single seat but multinational constituencies. This in return suggests that any candidate who will need the votes of a different national group will automatically be more moderate and willing to compromise.⁵⁹⁹ Interestingly, as we have discussed in Chapter Three, both political scientists agree on the use of

⁵⁹⁵ 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: Strasbourg 11-12 March 2005.

⁵⁹⁶ Lijphart, Arend: ‘Constitutional Design for Divided Societies’ in: *Journal of Democracy*, Vol. 15, No.2, April 2004, pp. 96-109, here p. 97.

⁵⁹⁷ Ibid. pp. 100-105.

⁵⁹⁸ See for the detailed analysis of Lijphart’s consociationalism theory:

Lijphart, Arend: *Democracy in Plural Societies*, 1977.

⁵⁹⁹ See for example:

Horowitz, Donald: ‘Democracy in Divided Societies’ in: *Journal of Democracy*, Vol. 4, No.4, October 1993, pp. 18-38, here pp. 34-35.

federalism as a useful tool in divided societies; however, Lijphart favours homogenous “national” regions within the federation, while Horowitz argues that multinational regions will enhance cooperation, mutual understanding and eventually will lead to cooperation without a sole focus on nationality.

Timothy Sisk has pointed out that we should not consider power-sharing as a choice between Lijphart and Horowitz, but rather we should take the appropriate elements of both approaches and apply them to different conflicts, depending on the nature of the conflict, the role of the parties involved and the historical background.⁶⁰⁰ According to Sisk, power-sharing includes both approaches, Lijphart’s consociationalism and Horowitz’ inclusive approach. A similar argumentation is given 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.’⁶⁰¹

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. Federalism alone, although a key feature of the Bosnian state, cannot tell us everything we need to understand, before we are able to assess the workings of the Bosnian federal political system. Therefore, we also need to remind ourselves of two very important issues: First, Socialist Yugoslavia was based on power-sharing mechanisms, although these were controlled by the one party rule. However, after 1980 the Presidency of Yugoslavia rotated regularly⁶⁰² and the representatives of the Republics and the autonomous provinces had several veto rights at the central level. Furthermore we have pointed 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 for the different nations 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 common state, but Macedonia practices executive power-sharing and Kosovo also allows some territorial autonomy and at least guarantees the representation of minorities at the

⁶⁰⁰ 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.

⁶⁰¹ 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.

⁶⁰² Although the Yugoslav Constitution of 1974 foresaw annual rotation of the Presidency, Tito remained President until 1980 and rotation began only thereafter.

executive level.⁶⁰³ After the dissolution of Yugoslavia and the first free elections in Bosnia in 1991 the three nationalist parties exercised a form of executive power-sharing in a grand coalition without any reference to territorial autonomy. Second, it is very important to highlight once again the nature of the Dayton Peace Agreement. The Agreement was negotiated in the United States by representatives of Bosnia-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 logically modeled 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 exercise them in the Bosnian political system.

5.1.1 Power-sharing at central level

Bosnia and Herzegovina's central institutions are characterized by their weakness in terms of decision-making competences, which will be discussed later in this chapter, and by their organization 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 our framework, we follow the argument that Bosnia and Herzegovina can be understood as a consociational democracy.⁶⁰⁴ In this context, Sumantra Bose argues that the constitutional framework of Bosnia-Herzegovina after 1995 is based on the 'confederal, consociational system of the last two decades of Titoist Yugoslavia.'⁶⁰⁵ Indeed, analysing Bosnia's post-war structures includes first the recognition that Bosnia and Herzegovina is a semi-presidential political system. The executive is divided between a three-member directly elected Bosnian 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, 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 modeled 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

⁶⁰³ For the latest debate on power-sharing in the Western Balkans see:

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. 337-360.

⁶⁰⁴ 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. 179-198.

⁶⁰⁵ Bose, Sumantra: *Bosnia after Dayton (Nationalist Partition and International Intervention)*, Hurst & Company: London 2002, p. 68.

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.’⁶⁰⁶

The Bosnian Presidency represents all 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, while the equal representation of the constituent peoples and the strict decision-making and veto rights in the Presidency might be welcomed by advocates of strict power-sharing, they have in the past been criticised for being inflexible and maintaining a blockage of the 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 neither can they stand for office. This double discrimination based on nationality and location has also been criticised by the Venice Commission of the Council of Europe.⁶⁰⁷ In December 2009, the European Court of Human Rights also 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.⁶⁰⁸

In the second branch of the Bosnian executive we can see 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,

⁶⁰⁶ 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

⁶⁰⁷ Venice Commission: *Opinion on the Constitutional Situation in Bosnia and Herzegovina*, 2005.

⁶⁰⁸ See: European Court of Human Rights: *Decision in case: Sejdic and Finci v. Bosnia and Herzegovina*, application nos. 27996/06 and 34836/06, 22nd December 2009.

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. Lately, however, there have been important shifts in the political system, as outlined in part three of this Chapter. The Council of Ministers is headed by a Chair, which was a rotating office until the High Representative abolished the rotation and made it a permanent position.⁶⁰⁹ The number of Bosnian ministries has risen from three in 1996 to nine today and further ministries are planned in areas such as environment and agriculture.⁶¹⁰ 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.⁶¹¹ While these strict power-sharing mechanisms have been abolished mainly through international intervention, there continues to be a high demand of 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. While 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 Council 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 them elected in the FBiH and one third elected in the RS.⁶¹² Decisions are taken with a simple majority; however there exists the provision of 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-third majority in the House of Representatives. All decisions in Bosnia and Herzegovina have to be passed by Houses, making Bosnia and Herzegovina one of the few countries with a perfect bicameralism. 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, while the five Serb Representatives are selected by the 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-third/ one-third representation formula according to territorial representation (this is also applied in the CoM, the House of Representative, the Presidency and the Constitutional Court) and the equal

⁶⁰⁹ The rotation of the Chair of the Council of Ministers was first declared unconstitutional by the Constitutional Court in August 1999. Decision U 1/99 clearly points out the extensive power-sharing practised by the nationalist parties was not in line with the Dayton Constitution and that the House of Representatives had three months to change the Laws regarding the Council of Ministers. However, because the House of Representatives failed to act, the High Representative introduced a completely new Law on the Council of Ministers in December 2002. This law abolished the rotation of the Chair and also introduced one instead of two deputy ministers for each Minister.

⁶¹⁰ Bieber, Florian: *Post- War Bosnia*, 2006, p. 47.

⁶¹¹ *Ibid.* p. 52.

⁶¹² Bosnian constitution, Article IV.2.

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 the 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.⁶¹³ 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.⁶¹⁴ Furthermore, a majority of representatives of each of the three groups in the House of Peoples can object a decision, which leads to an 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.

The Constitutional Court is the final important central institution to look at in our analysis. It consists of nine members, four members are selected by the House of Representatives of the Federation, two by the Assembly of the RS and three are appointed by the President of the European Court of Human Rights. There is no provision for 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 two 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 quorum. 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.⁶¹⁵ In the process of this paper we will refer to the Constituent Peoples Decision of the Constitutional Court in which the three international judges teamed up with the two Bosniak judges and declared parts of the entity Constitutions unconstitutional. This symbolizes the influence of international actors *within* the Bosnian institutions.

Altogether we can say 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, while provisions for grand coalitions, proportionality, veto rights and as will be discussed below also

⁶¹³ 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.

⁶¹⁴ 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 21 September 2009)

⁶¹⁵ Marko, Joseph: ‘Five Years of Constitutional Jurisprudence in Bosnia and Herzegovina: A First Balance’, in: *European Diversity and Autonomy Papers*, 7, 2004.

federalism are built into the institutional structure; these provisions lack efficient minority protection provisions 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.⁶¹⁶ Finally, we have seen 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, continues to “administrate” this country and make it more efficient. It is therefore not too much to speak of post-Dayton Bosnia as an “internationally administrated federation” that is based on “imposed federalism.”

5.1.2 Power-sharing at entity and local levels

Power-Sharing at entity and municipality level in Bosnia and Herzegovina are a new phenomenon.⁶¹⁷ They are the result of the constitutional changes of the entity 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.⁶¹⁸ The nature of this judgment 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 picked up on this issue and 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 grounds for continued discrimination of Bosniaks and Croats in the RS and Serbs in the FBiH.⁶¹⁹ The Constitutional Court, in a very tight decision,⁶²⁰ followed the arguments of the former Bosniak member of the Presidency 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

⁶¹⁶ Bieber, Florian: ‘Power-Sharing and International Intervention’, 2007.

⁶¹⁷ 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.

⁶¹⁸ The judgement 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.

⁶¹⁹ Pejanović, Mirko: *The Political Development of Bosnia and Herzegovina in the Post-Dayton Period*, Šahinpašić: Sarajevo 2007, pp. 177-214.

⁶²⁰ 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 consequently formulated dissenting opinions. Therefore, the decision was taken by a “coalition” of the three international judges and the two Bosniak judges.

argues clearly 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.'*⁶²¹

As a result the entities underwent massive 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 required grand coalition, veto rights and proportional representation. The only thing lacking in the Entities is autonomy for the communities.'⁶²² As we shall see later, the FBiH through its further federalisation in cantons applies a high degree of autonomy for Bosniaks and Croats in the entity.

As a result of the constitutional changes of 2002, Peter Neussl⁶²³ distinguishes three categories along which changes in the entity Constitutions took place:

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, while 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 touches "vital interests." Additionally, the three constituent peoples developed complex mechanisms for the equal representation of the groups in the 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.

⁶²¹ Constitutional Court of Bosnia and Herzegovina: Judgment no. U89/5 III, 1 July 2000, paragraph 71.

⁶²² Bieber, 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.

⁶²³ Neussl, Peter: 'The Constituent Peoples Decision', 2004, pp. 68-70.

2. Minimum Representation in Government

The constituent peoples 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, while the FBiH government includes eight Bosniaks, five Croats and three Serbs. This representation will only change after the implementation of Annex VII of the DPA (Refugee Return) has been declared completed by the Office of the High Representative. While 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 institution

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 personal on a proportional basis. This was relatively easy to achieve for entity institutions and also in some larger cities, but as Mirko Pejanović points out, most municipalities in government and in administration continue to be mono-national.⁶²⁴

In fact, the only area in Bosnia and Herzegovina in which the decision has been fully implemented in government, administration, judiciary and police is The District of Brčko.⁶²⁵ The Brčko District was created after a decision of an Arbitration Tribunal from territory of both entities.⁶²⁶ 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, while Brčko can be considered one of the success stories of post-Dayton Bosnia, its improper status within the constitutional framework and the inability of RS and FBiH to agree on the recognition of the District in the Dayton framework continue to obstruct the development of the District.⁶²⁷ Nevertheless, the recognition of Brčko within the constitutional and institutional framework might have the chance to change the dynamics of the Bosnian federation, as it will change from a dyadic to a triadic federal system.

Finally, it is worth mentioning that as a consequence of the changes of the entity Constitutions, the cantons of the FBiH as well as municipalities adopted also 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

⁶²⁴ Pejanović, Mirko: *The Political Development of Bosnia and Herzegovina*, 2007, pp. 204-205.

⁶²⁵ Ibid. p. 206.

⁶²⁶ Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brcko Area, Final Award, 5th March 1999, available at: http://www.ohr.int/ohr-offices/brcko/arbitration/default.asp?content_id=42738

⁶²⁷ 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. 61-68.

Bosnia.⁶²⁸ One of the core elements of power-sharing in all shades of the approach is the focus on moderate elites, who are willing to cooperate and compromise.⁶²⁹ But because power-sharing in Bosnia is reduced to cooperation between representatives of the three constituent groups who have been bitter enemies in a conflict not even 20 years ago, there continues to be the application of politics as zero-sum-games. Certainly, multinational power-sharing will also be in the future a key element of the Bosnian political system. But a less rigid system with less veto players and more room for informal arrangements would allow the different parties and peoples to find easier solutions and compromises. 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 federalism, meaning cultural rights are not part of the Dayton Constitution or the entity Constitutions.

Finally, what is important to note is, that while 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 character. 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 NATO and EU. Additionally, it is important that many power-sharing theorists point out 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.⁶³⁰ As we know by now this has not been the case in Bosnia and Herzegovina. 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."

5.1.3 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 organizations, the international community became

⁶²⁸ International Crisis Group (ICG): Bosnia: A Test for Political Maturity in Mostar, *Europe Briefing No. 54*, 27 July 2009.

⁶²⁹ Sisk, Timothy: *Power-Sharing and International Mediation*, 1996, p. 117.

⁶³⁰ Ibid. p. 177.

part of the implementation of Dayton.⁶³¹ In this role, we can also see how the international community affected power-sharing in Bosnia. Firstly, international representatives took part in important decisions and became an actor in the power-sharing negotiations. This is most clearly symbolised by the international judges in the Constitutional Court. However, also the involvement of the High Representative and of EU and USA representative in core discussions in Bosnia and Herzegovina and their direct influence on the negotiations demonstrates how these internationals influence decision-making.⁶³² This form of external participation in power-sharing must be distinguished from impositions by the High Representatives. While in the former case the internationals themselves become an actor in the power-sharing arrangement, impositions ignore the power-sharing arrangement 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.'⁶³³ This does not mean that the impositions were not necessary as the obstructing parties in Bosnia and Herzegovina 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 mutual consensus and compromise. The development of a "dependency culture" is a core danger of international involvement in post-conflict settlements.⁶³⁴ It is also in this context, that authors such as David Chandler have criticised the international intervention in Bosnia and Herzegovina.⁶³⁵ 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 a core weakness, if not mistake, of the internationals that had a major influence on Dayton Agreement.

Finally, it is important to underline that the international community in particular the Office of the High Representative can only leave Bosnia and Herzegovina when the country has overcome these

⁶³¹ Dizdarević, Srdan: '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.

⁶³² 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.

⁶³³ Bieber, Florian: 'Governing Post-War Bosnia-Herzegovina' 2002, p. 330.

⁶³⁴ Keil, Sören: 'Das Crux mit der Intervention' in: Forschungsstelle Osteuropa Bremen (Ed.): *Das Ende des postsozialistischen Raums? (Ent-)Regionalisierung in Osteuropa (Beiträge für die 17. Tagung junger Osteuropa-Experten)*, Bremen 2009 pp. 132-135.

⁶³⁵ Chandler, David: *Bosnia (Faking Democracy After Dayton 2000*
Chandler, David, 'What about Democracy for Bosnia?' 6th November 2007.

strict power-sharing arrangements. Therefore, the closure of the Office of the High Representatives needs to be connected with a constitutional reform. Otherwise the Bosnian elites of today will be held accountable for the mistakes of their predecessors and former internationals that negotiated the Dayton Agreement.

5.2 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.⁶³⁶ While 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 while the entities have some state-like features such as the 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 citizenship and furthermore that the Dayton Constitution as a legal document has precedence over the entity Constitutions.⁶³⁷ Additionally, one can add that Bosnia and Herzegovina is the only internationally recognized state that continues the legal existence of the previous "Republic of Bosnia and Herzegovina" as outlined in Article I.1 of the Constitution.⁶³⁸ The Dayton Constitution therefore, while giving a lot of competences to the entities, does not in any way 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 tear the country apart. 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 did the Serbian leadership recognise that it will not be able to hold Yugoslavia as a country together- therefore their aim shifted from keeping Yugoslavia together to keeping all those in Yugoslavia that did not want to secede, which meant the

⁶³⁶ Bose, Sumantra: *Bosnia after Dayton*, 2002, p. 88.

Woelk, Jens: 'Federalism and Consociationalism', 2004, p.180.

⁶³⁷ 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.

⁶³⁸ Compare also the debate in: Yee, Sienho: 'The New Constitution of Bosnia and Herzegovina' in: *European Journal of International Law*, Vol. 7, 1996, pp. 176-192.

creation of a Greater Serbia through the adoption of the Croatian and Bosnian Serb territories to Serbia proper.⁶³⁹ The mothers and fathers of the Dayton Constitution therefore recognised the potential dangers in the terms federalism, which could easily be identified as a gateway to secession and self-determination, which would also motivate the Bosnian Serbs and Croats to continue their pursuit for eventual secession from Bosnia and Herzegovina. In fact, the only reference to federalism in the Constitution of Bosnia and Herzegovina is the name of one of the entities, namely the *Federation* of Bosnia and Herzegovina. This is, however not completely uncommon. India is clearly 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 even 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. Therefore, although terms in constitutions matter, their existence or non-existence should not be overestimated.⁶⁴⁰ What is clear is, that in reality Bosnia and Herzegovina has all 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 to Bosnia, in fact Bose has pointed out that Bosnia applies a system of 'layered sovereignty.'⁶⁴¹ Additionally, Bieber argues that 'Bosnia could be considered a loose multi-national federation.'⁶⁴² As the following discussion of the competences of the central state and 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, as we will also demonstrate, this federation had 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 in Bosnia.

5.2.1 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 about military control of the central state, border control, control over media or any responsibilities for taxation for the central institutions. This underlines the weakness and decentralisation of post-Dayton Bosnia. In fact, Article III.2(b) states about the finances of the central institutions:

⁶³⁹ Malcolm, Noel: *Bosnia: A Short History*, 1996, p. 246.

⁶⁴⁰ It might be important here to remind the reader that the former socialist countries in Eastern Europe referred to themselves as 'People's Republics' and their constitutions included a long catalogue of fundamental human and social rights.

⁶⁴¹ Bose, Sumantra: *Bosnia after Dayton*, 2002, p. 52.

⁶⁴² Bieber, Florian: *Post- War Bosnia*, 2006, p. 61.

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 reminds much more on 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 has given the central institution an independent form of revenue in 2006.⁶⁴³

Having pointed out the weakness of the Bosnian state it is very important to recognise that there has been a gradual process of centralisation in Bosnia and Herzegovina. As already mentioned above the number of Bosnian ministries rose from three in 1996 to currently nine and the establishment of more ministries is discussed among the political elites. New ministries include for example a Defence Ministry, which controls all military forces in Bosnia after a centralisation in 2006. Furthermore, several important agencies were created at central level, such as a state border agency and a media control agency, which has further strengthened the central level.⁶⁴⁴ However, it is important to highlight that most of these changes were based on international intervention and impositions by the High Representatives.⁶⁴⁵ The multinational power-sharing arrangements in Bosnia and Herzegovina and the implementation of a highly decentralised federal system made it very unlikely that any change would occur through an indigenous process. Additionally, reconciliation is still not happening in Bosnia and the rhetoric of the war continues to be used by political elites who use the spread of fear and hate as a medium to secure their power. 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 could be achieved and as long as this consensus is non-existent there will be no major change in Bosnia.

⁶⁴³ The debates around the introduction of the VAT and its consequences for fiscal federalism are discussed in the next Chapter.

⁶⁴⁴ 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.

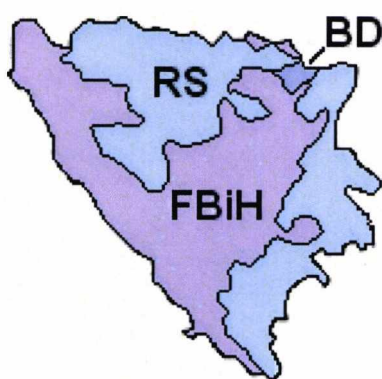
See also Chapter "Federalism in post-Dayton Bosnia" for the processes surrounding these centralisation policies.

⁶⁴⁵ 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.

While there has not been a long-term strategy of the international community for Bosnia and Herzegovina per se, all reforms implemented by the High Representative and other international bodies have enabled further centralisation of decision-making and have focused on overcoming the dominance of the nationalist parties. However, these reforms have been implemented without a long-term vision of what kind of state BiH should be eventually by international actors.

Therefore, it was the imposition of the High Representative that filled the absence and “administrated” the state in the post-war years by correcting and changing some of Dayton’s major flaws and allowing a true process of state-building and democratisation to take place. Florian Bieber has argued that the strengthening of the state-level can be seen as a shift from a confederal to a federal arrangement in Bosnia.⁶⁴⁶ While we have already discussed that Bosnia was a federal state back in 1996, it is important to highlight the quality of the changes that occurred. Therefore 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 a more appropriate description.

5.2.2 The entities



Map 7: The three federal parts of Bosnia and Herzegovina:
FBiH= Federation of Bosnia and Herzegovina, RS= Republika Srpska, BD= District of Brčko⁶⁴⁷

With a weak central level as described above, we would expect the entities to be the main level of decision- making. Indeed, 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, as we shall see, the entities in Bosnia and Herzegovina are asymmetrical, both in their internal structure and in their decision-making authority.⁶⁴⁸ While 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 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 Bosnia and Herzegovina.

⁶⁴⁶ Bieber, Florian: *Post- War Bosnia*, 2006, p. 61.

⁶⁴⁷ Map taken from: http://www.taurillon.org/local/cache-vignettes/L163xH157/png_Bosniadivisions1-dafe2.png

⁶⁴⁸ Bieber, Florian: *Post- War Bosnia*, 2006, p. 61.

5.2.1.1 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 finally 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.⁶⁴⁹ As mentioned above, the Washington Accord created a power-sharing system between Bosniaks and Croats at the level of the Federation, while in the cantons the dominant majority would rule mainly independently. Consequently, as was done in the Dayton Peace Agreement, decision-making was decentralised to the smallest homogenous unit, namely the cantons. While 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,⁶⁵⁰ Part III Article 4 outlines a long list with decision-making competences of 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 own 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 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 devolution of 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.⁶⁵¹ However, some of this decentralisation in the 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 rather artificial application of the Vance-Owen Plan to only a part of Bosnia.

⁶⁴⁹ Although as mentioned above, it had to give territory to the District of Brčko after the final decision on the District in 2000.

⁶⁵⁰ Constitution of the Federation of Bosnia and Herzegovina, available at: www.ohr.int/ohr-dept/legal/oth-legist/doc/fbih-constitution.doc (accessed 23 September 2009).

⁶⁵¹ Florian Bieber: *Post- War Bosnia*, 2006, p. 118.



Map 8: List of the cantons of the Federation of Bosnia and Herzegovina⁶⁵²

The names of the cantons are taken from names of rivers and cities in the Federation and follow therefore 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."

5.2.2.2 The Republika Srpska

The RS is a unitary entity, modelled after 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.*⁶⁵³

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 66-68 of the Constitution. According to Part VI Article 102 of the

⁶⁵² Map taken from: <http://www.ohr.int/ohr-info/maps/>

⁶⁵³ Constitution of the Republika Srpska Part 1, Article 3 available at: <http://www.ohr.int/ohr-dept/legal/const/>

Constitution, the role of municipalities in the RS is only to “enact”, “regulate”, “execute”, and “attend”. Consequently, the municipalities in the RS have only an administrative role and no direct input in the decision-making process. It is the entity that takes the 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 in particular during the royal dictatorship.

5.2.2.3 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 placed under the administration of the Republika Srpska, while the suburbs of the city became part of the Federation. Indeed, during the conflict in Bosnia some of the most intensive fighting happened in Brčko, which is of key importance for the RS, because it links the Eastern and the Western parts of the entity with each other. However, in a last minute demand, the Bosnian President Izetbegović demanded in Dayton the 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.⁶⁵⁴ 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 to take over the full administration of the city.⁶⁵⁵ Consequently, the Supervisor introduced a joint city administration, a multinational police force and supported arrangements for refugee return that turned out to be very successful.⁶⁵⁶ In 1999, the Arbitration Tribunal decided on the final status of the city by deciding that:

'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

⁶⁵⁴ 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).

⁶⁵⁵ Brcko Arbitral Tribunal for Dispute Over the Inter-Entity Boundary in Brcko Area Award, Decision of the 14th 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 25 September 2009)

⁶⁵⁶ Bieber, Florian: ‘Local institutional engineering: A tale of two cities, Mostar and Brčko’ in: *International Peacekeeping*, Vol. 12, No. 3, 2005, pp. 420-433., here pp. 426-431.

*permanently to suspend all of the legal authority of both entities within the Opština and to recreate it as a single administrative unit.*⁶⁵⁷

This decision is remarkable in several instances. Firstly, as mentioned above, it changes the dynamics of the Bosnian federal system, away from a dyadic to a triadic federal system. Secondly, the decision 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.⁶⁵⁸ Thirdly, 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 Prime Minister Dodik⁶⁵⁹ is not possible. The secession of the RS has to include the integration of Brčko into the entity and would therefore constitute a breach of the Dayton Peace Agreement and a decision of an international arbitration tribunal. 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.⁶⁶⁰

Due to massive international intervention and the creation of more inclusive power-sharing mechanisms in Bosnia, Brčko today has a higher 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.⁶⁶¹ 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 characterised as an example for Bosnia and Herzegovina.⁶⁶² If the institutions implemented will function properly and if the District will be able to change the bipolar nature of the Bosnian state remains to be seen. In some respects, however, we need to be careful not to be overenthusiastic, because the District is very small and the international community implemented a unique programme in Brčko.

⁶⁵⁷ Brcko Arbitral Tribunal for Dispute Over the Inter-Entity Boundary in Brcko Area Final Award, Decision of 5th March 1999, Article 9, available at:

http://www.ohr.int/ohr-offices/brcko/arbitration/default.asp?content_id=42738 (seen 25 September 2009)

⁶⁵⁸ Bieber, Florian: 'Local institutional engineering', 2005, pp. 426-428.

⁶⁵⁹ Mustajbegović, Saida: 'Dodik's SNSD demands federal units' right to secession' in: *SEEBiz*, 28th January 2008, see: <http://www.seebiz.eu/en/politics/dodik%E2%80%99s-snsd-demands-federal-units%E2%80%99-right-to-secession.7361.html> (seen 25 September 2009, printout in possession of the author).

⁶⁶⁰ OHR Brčko: Brcko District Added To The BiH Constitution, *OHR Press Release 26th March 2009*, available at: http://www.ohr.int/ohr-dept/pressr/pressr/default.asp?content_id=43268 (accessed 25 September 2009).

⁶⁶¹ Bieber, Florian: 'Local institutional engineering', 2005, pp. 426-431.

⁶⁶² International Crisis Group: 'Brcko: What Bosnia Could Be', *Europe Report No. 31*, 10th February 1998.

5.2.2.4 Municipalities

Municipalities as the third layer in a federal political system fulfill a number of very important functions. They are the closest layer of decision-making and administration authority to the citizens. Additionally, local politicians impact on central politics through the recruitment of political personal as well as through common party membership. Finally, very often in federal countries local government is important, because municipalities have decision-making competences in areas of local issues as well as important administrative tasks. This might include the right of municipalities to raise their own taxes.

As we have already discussed above, 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.⁶⁶³ There exist different legislative frameworks for municipalities. While 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.⁶⁶⁴ Additionally, most municipalities include nowadays 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 because of a lack of representatives or seats are filled by the majority party that supports minorities on its list.⁶⁶⁵ While there have been some important local government 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 the representatives of 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 prewar homes.⁶⁶⁶ 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.⁶⁶⁷ International state-builders have focused intensively on the strengthening of the central level in BiH and consequently the weakening of

⁶⁶³ Pejanović, Mirko: *The Political Development of Bosnia*, 2008, p.163.

⁶⁶⁴ Ibid. p. 163.

⁶⁶⁵ See for the example of Mostar: Bieber, Florian: 'Local institutional engineering', 2005, pp. 422-426.

⁶⁶⁶ 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.

⁶⁶⁷ 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. This also signifies the need for a reform of fiscal federalism in Bosnia and Herzegovina. On this issue see also the following chapter "Federalism in post-war Bosnia" in which we discuss fiscal federalism.

the entities through centralisation. Strengthening of local levels of government would also weaken the predominant position of the entities and would help Bosnia and Herzegovina to find the balance of a decentralised multinational federal system.

5.3. Elections and party system

5.3.1. 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.'⁶⁶⁸ Coles argues throughout her study, that democratisation including electoral design followed the ideology of neoliberalism. To understand all dimensions of this argument, it is important to discuss the role of elections in post-conflict and divided societies.

Elections in divided societies are always problematic. The electoral system can easily be used to exclude minority nations from ever coming into power and reduce them to a constant marginalised minority.⁶⁶⁹ 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 therefore led to an exchange of a Communist one-party system with an nationalist multiparty system.⁶⁷⁰ 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. Of course, as demonstrated at the end of the previous Chapter, the interests between the three parties were completely different and consequently the country slid into war. What, however, is a particularly interesting and important feature of Bosnian politics is that 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,

⁶⁶⁸ Coles, Kimberley: *Democratic Designs (International Intervention and Electoral Practices in Postwar Bosnia-Herzegovina)*, University of Michigan Press: Ann Arbor 2007, p. 27.

⁶⁶⁹ 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.

⁶⁷⁰ Snyder, Jack: *From Voting to Violence: Democratization and Nationalist Conflict*, W.W. Norton & Company: New York and London 2000, pp. 189-219.

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 of Change" in 2001-2002. Certainly, the constant national tensions and different nation-building processes in the Bosniak, Serb and Croat communities in Bosnia played a key role in the parties continued success, as well as their control over financial and economic resources and their control over 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.⁶⁷¹ The International Crisis Group has pointed out, that the aims of these intervention and engineering were the 'hopes that moderate, co-operative Bosnian partners will come to power through elections.'⁶⁷² Similarly, Manning argues:

*'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.'*⁶⁷³

It is important to summarise here that elections in Bosnia and Herzegovina have been seen by the international community as a tool in the democratisation process of the country. Consequently, the international state- and democracy- builders used this tool to encourage the elections of moderate, non-nationalist parties. However, although the OSCE and the OHR (representing the international community) have several times intervened 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. While the international engineering and influence on elections in Bosnia and Herzegovina underlines again that Bosnia and Herzegovina after 1995 has to be considered an "internationally administrated federation", we also have to discuss in the progress of this Chapter the direct consequences of the electoral quagmire in Bosnia on its federal nature. 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.

⁶⁷¹ 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.

⁶⁷² International Crisis Group (ICG): 'Bosnia's November Elections, Dayton Stumbles' *ICG Balkans Report No. 104*, Sarajevo and Brussels 2000.

⁶⁷³ Manning, Carrie: 'Elections and Political Change', 2004, p. 62.

5.3.2. 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.⁶⁷⁴ He argues that because the local branches of the two American parties have such an important impact on the recruitment of the political elites that go to Washington, they ensure that the federation will not become over-centralized. It is therefore the local (with local Riker refers to “state”) branches of the parties that have a massive influence on the central level. This demonstrates a very important balance in the federation, as this ensures non-centralisation and continued interest representation and guarantees for the states at the central level.⁶⁷⁵ Hence we can conclude that the development of the party system is of key importance for the sustainability of a federal system. This applies as much to the number of established parties as to their organization. Whether a party is highly centralised organised most likely around a leading figure, or if the party is based on strong municipality and sub-unit party organisations will also influence the political process in a state. Further it is important to focus on the development of intra-party democracy and the selection of party elites. Finally, the cleavage structures within a society that are mirrored in the political parties will tell us important information about the main political concept of the state.⁶⁷⁶

The main cleavage that underlines the Bosnian party system is the cleavage between the three national groups.⁶⁷⁷ As discussed above, in the early 1990s Bosnian citizens voted along national lines for parties that stayed in power until 2006⁶⁷⁸ and were created before the first free elections in Bosnia and Herzegovina, and while 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 and Herzegovina. There is even some evidence for cooperation between the two parties.⁶⁷⁹ The Dayton Peace Agreement put elections in the centre of democratisation and state-building in Bosnia. Annex III of the DPA is solely focused on

⁶⁷⁴ Riker, William.: *Federalism: Origins, Operation, Significance*, p.51.

⁶⁷⁵ Ibid. p. 50 and p. 129.

⁶⁷⁶ On the concept of cleavages and their influence on party systems see the still classic discussions in: Lipset, Seymour and Rokkan, Stein (Eds.): *Party Systems and Voter Alignments*, Free Press: New York 1967.

⁶⁷⁷ See for example: Bose, Sumantra: *Bosnia after Dayton*, 2002, p. 206.

⁶⁷⁸ SDA and HDZ are still part of the central government coalition, while the SDS is since 2006 an opposition party. However, the 2006 election shifted the system in Bosnia towards other parties, in particular the Party for Bosnia and Herzegovina SBiH and the Serb Independent Social Democrats (SNSD).

⁶⁷⁹ Apparently, Karadžić and Mate Boban, the wartime leader of the HDZ met in May 1992 to discuss the partition of Bosnia between Bosnian Serbs and Bosnian Croats. Boban, supported by Croatian President Tudjman supported the recreation of the Croatian banovina, which was the short-lived Croatian autonomous area in the First Yugoslavia, which came to an end with the invasion of Yugoslavia by the Axis. The Croatian banovina of 1939 included all of Bosnia and Herzegovina and consequently Karadžić and Boban were not able to agree on a territorial division of Bosnia. It is important to note that no representative of the Bosniaks was present at the meeting and following meetings parts of the discussion were later realized by massive ethnic cleansing through Croatian and Serbian forces in Bosnia and Herzegovina.

elections and the role of the OSCE in the process. About the timing of the 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 into force.'⁶⁸⁰ 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" the 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.⁶⁸¹ 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, while 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 become its centralist tendencies in which the whole party is centred on the party leader Zlatko Lagumdžija.⁶⁸² 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 while the three nationalist parties continued to stay in power until 2006, there have been important developments nevertheless. In particular we need to highlight the development of intra-group party competition, 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 and the abolition of the entity system in Bosnia.⁶⁸³ The SBiH was also part of the "Alliance for Change" government. However, since the negotiations for constitutional reform in Bosnia took shape in late 2005 and 2006, the SBiH has become more and more radicalised. It supports now a new international conference as a forum for a new Constitution in Bosnia (so called

⁶⁸⁰ General Framework Agreement for Peace in Bosnia and Herzegovina, Annex III (Agreement on Elections), Article II.4.

⁶⁸¹ 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. 724-738.

⁶⁸² Sebastián, Sofia: 'Elections in Bosnia and Herzegovina' in: *FRIDE Democracy Backgrounders* Nr. 17, September 2008, p. 4.

⁶⁸³ Bieber, Florian: *Post- War Bosnia*, 2006, p. 41.

“Dayton II”). Since 2006 the SBiH has emerged as a leading party in Bosnia and Herzegovina and Silajdžić was able to win the Bosniak seat in the Presidency. With its constant attacks on the legality and the origins of the RS, the SBiH has become one of the major reasons for political turmoil in Bosnia since 2006.

Having said this, the SDS has also been faced with party competition within the Bosnian Serb electorate. Already in 1997 Biljana Plavsić, a former ally of Karadžić, broke away from the party and managed to bring into power a non-nationalist government between 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, while the richer West including the capital Banja Luka supported the pro-Western forces. This is also the beginning of the rise of Milorad Dodik, the leader of the SNSD,⁶⁸⁴ the Alliance of Independent Democrats. He was seen the moderate politician, whom the Internationals wanted in power in the RS and consequently he was installed as Prime Minister of the RS. While Plavsić 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 (only the SDA was stronger seen in absolute terms). Since the defeat of the SDS in 2006, the party is in disarray and continues to search for a new political identity,⁶⁸⁵ while the SNSD has managed to take over complete power in the RS, also in most municipalities. As in the case of Haris Silajdžić, Dodik did not turn out to be the moderate and cooperative politician the internationals hoped for. Instead, in particular since he has become Prime Minister of the RS again after 2006, he has continued to undermine the legitimacy of the Bosnian state, blocked decisions at central level and threatened with a referendum on independence in the RS and the removal of all Serb representatives from central institutions. He has, however, become the strongest politician in Bosnia and Herzegovina and the SNSD is the only party with a clear political direction, namely renewing the legitimacy and autonomy of the RS that has been lost over the centralisation processes since 2002. While the SNSD is also a party based on a strong party leader, the recent successes in municipality elections have helped the party to establish itself at grassroots level. The party has developed a number of regional party strongholds that influence entity and central decision-making. 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 is different. Over the negotiations of constitutional reforms in Bosnia and Herzegovina a wing of the HDZ broke away and formed a new

⁶⁸⁴ If symbolism is of core importance in nationalism, then it might be worth mentioning that even so the SNSD has two times the letter “S” in its name, none of them refers to “Srpska” or Serbia/Serb.

⁶⁸⁵ Sebastián, Sofía: ‘Elections in Bosnia and Herzegovina’, 2008, pp. 5-6.

party, called HDZ 1990. In the 2006 general and entity elections the vote of the Croat community was split between 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. This has resulted in demands for Croat unity in Bosnia, in particular by the Catholic Church.⁶⁸⁶

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. While other cleavages such as class and the relations between the party and the international community became also important and led to the intra-group democratisation, even the changes of the 2006 elections have not led to fundamental change in the discussions between the representatives of the major Bosnian parties. Finally, the “new” parties in power, 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.’⁶⁸⁷ As we will discuss in the following chapter, another key feature of the Bosnian political system is the fact, that on key political issues the dividing lines run not necessary between the political parties or the different national groups but between the Bosnian parties and the representatives of the international community.

5.4 The Bosnian federation as an “internationally administrated” power-sharing system

The discussion above demonstrated 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. While 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

⁶⁸⁶ Ibid. p. 8.

⁶⁸⁷ 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 (seen 26 September 2009).

been based on impositions by the High 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 administrated federation.” Bosnia is not a protectorate in the original understanding of the term, because the High Representative does always leave space for the Bosnian parties to reach an agreement before he imposes a decision.⁶⁸⁸ 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 units and central level such as the second chamber of the Bosnian parliament. Therefore, Bosnia can be characterized 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 nationally divided party system that all political issues in Bosnia and Herzegovina have been interpreted in terms of “bargaining of national leaders” instead of bargaining between federal units and the central level. It seems also clear that there is no alternative to power-sharing in Bosnia, although many promote the introduction of a civic, nationally blind state.⁶⁸⁹ 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 on them. The most important development therefore must be towards a countrywide consensus on the nature of the Bosnian state and consequently its institutional design. This is also a development that should be encouraged and supported by internationals in Bosnia, because it seems to be the main precondition for the departure of international decision-makers. It is also important to note in this context, that the Bosnian political system attempts

⁶⁸⁸ Bojkov, Victor: ‘Democracy in Bosnia and Herzegovina’, pp. 41- 67.

⁶⁸⁹ See for example the arguments in: Pejanović, Mirko: *The Political Development of Bosnia and Herzegovina*, 2007 pp. 55-60 and pp.215-230.

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.

unsuccessfully to combine two political-historical traditions. 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 hand 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 the Western, in particular US-American influence on the Bosnian Constitution. They underline the liberal tradition in which parts of the Constitution also have to be situated. In fact, Bosnia has probably one of the best human rights regimes in the world. This also includes the direct inclusion of the European Convention on Human Rights and Fundamental Freedoms into 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. Furthermore, the development of post-war Bosnia and Herzegovina demonstrates that strong human rights provisions even in an environment with heavy international intervention are not enough to secure the workability and sustainability of a post-conflict society. Bosnia and Herzegovina might therefore be seen as an example that casts doubt over the theory of “power-dividing” by Rothchild and Roeder.⁶⁹⁰

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, only focused on their own national group and are willing to challenge the international community in Bosnia. It is therefore of key importance that the international community focuses on the requirements for eventual political change, which are economic development and closer links with the EU. In particular the perspective membership of Bosnia in the EU is not only the main reason why Bosnia is still a united country and compromises have been reached in the past, but the EU has also become the main provider of stability and security in Bosnia. Therefore, it is as much in the interest of Bosnia as it is in the EU, that both rethink their approach towards Bosnia’s integration, because integration in the EU means also internal integration of Bosnia and Herzegovina.

We shall now focus on the internal debates in Bosnia that are discussed under the headline “Federalism in post-war Bosnia and Herzegovina.”

⁶⁹⁰ They argue that strong human and fundamental rights and a rigid separation of powers can be more successful in post-ethnic conflict situations than power-sharing arrangements. They bring empirical evidence for the problems connected to power-sharing arguing that it often leads to political stalemates and can also lead to renewed conflict. Also if power-sharing is implemented with ethnic federalism, Roeder and Rothchild argue that it is likely to lead to secession.

See: Rothchild, Donald and Roeder, Philip, “Dilemma 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.

6. Federalism in post- war Bosnia- Herzegovina

Having debated the federal experience of Bosnia and Herzegovina and highlighted the Bosnian political system and its core federal features, it is important now to progress the analysis to the debates surrounding federalism among the Bosnian elites.

If we remind ourselves of the definition of federalism by Preston King, we must understand the term 'philosophically or ideologically [...] most frequently [referring to] a marked degree of regional independence and autonomy.'⁶⁹¹ 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 the different levels of government constitutes the foundation of Bosnian federalism. However, we have to keep in mind that these debates take place in a multinational environment. Therefore Bosnian federalism will tell us as much about the debates concerning constitutionalism in Bosnia as about the relationship of the constituent peoples to each other and to the common state.

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 if we are to fully comprehend Bosnian federalism:

1. Debates about federalism among the 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 if we consider the findings in the previous Chapter regarding the Bosnian 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 complicated and complex nature of Bosnian federalism. To examine all the points raised above, we have to apply the introduced concepts of federalism to Bosnia's political system. Having done this, we will contribute to a new understanding of federalism in the theoretical debate by introducing Carl Friedrich's ideas of federalism as a process. This will help us to get a first theoretical understanding 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

⁶⁹¹ King, Preston: *Federalism*, 1982 p. 74.

between different national groups on the one side and the heavy involvement of international actors and their understanding of federalism on the other. Secondly, the chapter will discuss these underlying issues and the nature of the Bosnian state by examining selected policy areas. By focusing on the areas of constitutional reform, identity politics, security sector policies and fiscal federalism, we will see how the impacts of national differences and international involvement dominate the debates about Bosnian federalism. Finally, we will return to the theoretical framework of the Chapters One and Two and attempt to locate Bosnia in a concept of federalism. It is argued in the third part of the chapter, that Bosnia- 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.

6.1 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 which have been introduced in the first chapters. 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. Second, there are scholars like Kenneth Wheare who also 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, we will have to add another theorist to the debate. Carl Friedrich described federalism as a process and attempted to conceptualise federalism by examining the process of constitutional amendments to the US Constitution.⁶⁹²

Finally, we will give a first overview of the Bosnian federalism by conceptualising it in the existing literature.

6.1.1 Positioning Bosnia- Herzegovina in the federalist 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).⁶⁹³ As we have already noted, the Dayton Peace Accords are 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.⁶⁹⁴

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. If we

⁶⁹² Friedrich, Carl: *Trends of Federalism in Theory and Practice*, Praeger: New York 1968.

⁶⁹³ This is the official name of the document, which was signed in Paris on the 14th 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 Tudjman), Bosnia- Herzegovina (Alija Izetbegović) and Serbia (Slobodan Milošević).

⁶⁹⁴ Marko, Joseph: ‘Post- Conflict Reconstruction’ 2005.

quickly remind ourselves of Riker's theory of a federal bargaining, we can summarise that 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 group of participants, the nature of the outcome will be either a more centralised federation or more decentralised. 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 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, while a federal state might be created, it will not be sustainable.⁶⁹⁵

How does the Dayton Agreement fit in Riker's theory? First, by looking at the preconditions for the federal bargaining, we immediately observe that Bosnia does not fit into this pattern. 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.⁶⁹⁶ The war in Bosnia- Herzegovina can be characterised as a hybrid form of war,⁶⁹⁷ based on the violence and conflicts between the three national groups in Bosnia (Serbs, Croats and Bosniaks); therefore it can be seen as a civil war. However, the involvement of troops from Yugoslavia and from Croatia can by no means be ignored.⁶⁹⁸ Therefore, the introduction of a federal political system became the answer to the conflict between the three national groups in Bosnia as a way to address the aggression of the two neighbouring countries and their plans to partition Bosnia.⁶⁹⁹ 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 of federalism in Bosnia and Herzegovina was "peace- keeping."⁷⁰⁰ 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.⁷⁰¹

⁶⁹⁵ Riker, William: *Federalism*, 1964, chapter 1.

⁶⁹⁶ 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".

⁶⁹⁷ Kaldor, Mary: *New and Old Wars (Organized Violence in a Globalized Era)*, Stanford University Press: Stanford 1999, especially chapter 3.

⁶⁹⁸ This argument is also outlined in: Silber, Laura and Little, Alan: *The Death of Yugoslavia*, 1996 and Glenny, Misha: *The Fall of Yugoslavia*, 3rd edition, Penguin Books: London 1996.

⁶⁹⁹ Tudjman and Milošević met already in March 1991 in Karadordevo (Vojvodina/Serbia) to discuss the partition of Bosnia- Herzegovina. No leader of the Bosniaks was invited to this meeting.

See: Glenny, Misha: *The Fall*, 1996, p. 149.

⁷⁰⁰ Stahn, Carsten: 'Föderalismus im Dienste der Friedenssicherung' 2002, p. 397.

⁷⁰¹ Calic, Marie- Janine: *Krieg und Frieden in Bosnien-Herzegowina*, 2nd edition, Suhrkamp: Frankfurt am Main 1996, pp.70-97.

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. Firstly, he argues that the federal bargaining is a negotiation between local and national (from the central level) elites. However, as we have seen already, the Presidents of Croatia, Bosnia and Serbia signed the Accord. Richard Holbrooke, the American mediator during the Dayton negotiations, has demonstrated in his memoirs that it were the three presidents that discussed the major issues of the future Bosnian state, starting with the borders between the entities, the future of the Bosnian institutions and the main distribution of powers between the different levels of government.⁷⁰² Although there have been representatives of the Bosnian Serbs, and the Bosnian Croats present in Dayton, they were marginalised by the dominance of the three 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.⁷⁰³ Although there have been some negotiations between representatives of the central level and the local level, the key debates were between the Presidents of the three countries. These debates also symbolise something that would become a remarkable feature of the Bosnian federation. The federal bargaining in Dayton was a bargaining between national groups- a representative of the Croats (the Croatian President and his delegation which had some Bosnian Croats in it), a representative of the Serbs (The Serbian President and his delegation that had some Bosnian Serbs in it)⁷⁰⁴ and a Bosniak (The Bosnian President and his delegation that included mostly Bosniaks). 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, while the Croat delegation focused on the situation in Croatia and the Bosnian Croats, and Milošević was most interested in obtaining a lift in the sanctions on Serbia and Montenegro in order to liberate his country from international isolation.⁷⁰⁵ The situation of the Bosnian Croats and Bosnian Serbs was therefore only secondary to their key representatives, as their interest in Bosnia-Herzegovina was generally very limited. Additionally, we have to keep in mind that 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

⁷⁰² 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 view of the lawyers in the state department.

⁷⁰³ Ibid. p.314.

⁷⁰⁴ 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. 170-171.

⁷⁰⁵ Ibid., p. 364.

treaty under the title Annex 4.⁷⁰⁶ He continues his argument by claiming that ‘as many times before the country’s fate was once again decided by foreign powers.’⁷⁰⁷ We find here a link to the previously discussed Bosnian federal 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 further when looking at the final key point of Riker’s theory of a federal bargaining.

Riker finally 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”’.*⁷⁰⁸

This point is of key importance as it underlines the essence of the federal ideology. Federalism, seen as “an end in itself” rather than a tool, describes therefore the willingness of key 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. Kenneth Wheare goes even one step further and distinguishes between the *desire to federate* and the *capacity* to do so.⁷⁰⁹ While other authors focus on additional criteria for the success of the federal union,⁷¹⁰ for our study it is important to focus on the nature of federalism as a voluntary contract between the different elites of the sub-unit and the central level. In this context, the Dayton Agreement as the result of Bosnia’s federal bargaining does not characterise as a voluntary contract. We have already discussed the nature of the participants and key actors in Dayton. However, if we look behind the conceptual framework of the Agreement, we find that a major reason for its finalisation was the international pressure on all three parties but particularly on Yugoslavia in the form of continued sanctions by the United Nations and the changing situation on the

⁷⁰⁶ Bebler, Anton: ‘South-East European Federalism’, 2008, p. 14.

⁷⁰⁷ Ibid. p. 14.

⁷⁰⁸ 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. 173-174.

⁷⁰⁹ Wheare, Kenneth: *Federal Government*, 1964 pp.34-35.

⁷¹⁰ See for example: Hicks, Ursula: *Federalism: Failure and Success A Comparative Study*, The MacMillian Press Ltd.: London and Basingstoke 1978 and Filippov, Mikhail et.al: *Designing Federalism: A Theory of Self- Sustainable Federal Institutions*, Cambridge University Press: Cambridge 2004.

battlefield in Bosnia- Herzegovina with the Bosniak and Croat forces regaining large amounts of territory back from the Bosnian Serb forces.⁷¹¹

We can stretch this argument even further by claiming that none of the Bosnian parties was interested and willing to unite in a common federal state. The Bosniaks needed to be pressured to even agree on the Dayton Accords. Their leader Izetbegović believed during the whole war in the multinational character of Bosnia, and particularly after the successes of the Croat and Bosniak forces in the summer of 1995 he wanted to continue to fight and reverse ethnic cleansing. Furthermore, he did not trust the Croats, with whom the Bosniaks fought from 1992-1994. The war between the two old / new allies ended in February 1994 under US- American pressure and the signature of the Washington Agreement, which established the Federation of Bosnia and Herzegovina, and foresaw a future confederation of the Federation and Croatia proper.⁷¹² Indeed, Lara Silber and Alan Little have even gone so far as to argue that the main success of the Washington Agreement was that it ended the war between the two groups, but cooperation as envisaged by the Agreement did not take place.⁷¹³ Croats and Bosniaks did not even negotiate the Agreement directly; instead it was mediated and negotiated by US representatives.⁷¹⁴ Lenard Cohen has also raised this point by arguing that the Washington Agreement was ‘substantially designed by American lawyers, not the major actors from Bosnia.’⁷¹⁵ 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 Accords. 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 the Bosniaks or the Bosnian Serbs either. They were forced into the Washington Agreement because the US threatened to stop all military aid for Croatia and the Yugoslavia Conference threatened sanctions on Croatia. In fact, the Croats were as afraid of Bosniak domination in a future unitary state as the Serbs were. However, for them the Washington Agreement, as well as the Dayton Accords, was a success since 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.⁷¹⁶ Even until today some Croat parties voice the need of a third “Croat” entity in Bosnia to be fully represented at all

⁷¹¹ See for these circumstances surrounding the Dayton negotiations: Holbrooke, Richard: *Meine Mission*, 1999, pp. 240-272.

⁷¹² For the details of the Washington Agreement see the Chapter: “The Bosnian Federation” Also see: Silber, Laura and Little, Alan: *The Death of Yugoslavia*, 1996 chapter 25.

⁷¹³ Ibid. p.323.

⁷¹⁴ Ibid. p. 322.

⁷¹⁵ Cohen, Lenard: ‘Fabricating Federalism’ 2002, p. 121.

⁷¹⁶ Bieber, Florian: ‘Croat Self-Government in Bosnia- A Challenge for Dayton?’ in: *ECMI Brief*, No.5, May 2001, pp. 7-8.

levels of government. Finally, the Bosnian Serbs had the fewest reasons to agree on the Dayton Accords. The war aim of the Bosnian Serbs was the creation of a homogenous Republika Srpska (RS) and its union with Serbia. The continued union of the RS and the Federation was therefore the defeat of the main Bosnian Serb war aim. They felt threatened by the dominance of Bosniaks in Bosnia and had no intention to join a state with their former enemies. It was the political pressure on Milošević through the isolation of Yugoslavia and the internal pressure of opposition parties that blamed him for the economic crisis, 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 cooperate with Bosniaks and Croats in central institutions, and the label of the main aggressors in the Bosnian war. As we shall see later, the Bosnian Serbs, who opposed Dayton the most, are nowadays the main defenders of the Dayton Agreement.

To go back to the earlier debate we can therefore state that there was no will to unite in a federal union at all. If we were to summarise the main features of the Dayton Accord in terms of William Riker’s theory of the federal bargaining we could say that:

1. The DPA did not evolve because of the need of an economic union or to extent territory and because of an external threat→it was the answer to the internal fighting in Bosnia and Herzegovina
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

If we accept that Riker’s federal bargaining theory does not help us to conceptualise BiH’s federal bargaining, we have to find another framework to analyse the DPA.

To place the DPA into the theory of federalism, we must utilise the concept of “imposed federalism.”⁷¹⁷ This concept, although not fully developed yet, is based on the assumption that federalism as an ideology, and federation as a federal state structure are imposed on warring parties mainly to pacify a country and to keep it together. The international community⁷¹⁸ plays a key role in the creation of the 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.”⁷¹⁹ 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 either through the fight for

⁷¹⁷ 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.

⁷¹⁸ Respectively, this can mean the UN, the USA, the EU and other countries and international organisations.

⁷¹⁹ 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 Pernthaler)*, Springer: Vienna and New York 2005, pp. 467-493.

independence or for far- reaching autonomy. 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 to guarantee the continued territorial integrity of a state 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 a high involvement of the international community not only through the creation of the federal agreement but also through the “trusteeship” over the state⁷²⁰

If we compare 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, then we easily see the contradiction of both theories. Indeed, if we understand federalism in terms of the American, Swiss and German experience, we might argue that imposed federations violate the core elements of the federal agreement. However, we also have to mention another line of argument. In the American, Swiss and German experience federalism was seen as part of a state- building process and by no means was the creation of a federal union the end of the process.⁷²¹ Therefore, imposing federalism can also be conceptualised as part of a longer external state- building strategy in BiH. However, it is important to distinguish here again between federalism and federation. While 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 those two very important concepts.⁷²² As one of few authors, Cohen has clearly demonstrated how the two concepts clash by

⁷²⁰ ‘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.

⁷²¹ It is only worth remembering that 13 US states formed the American Federation while today there are 50 US states. The same can be said about the Swiss experience where as late as 1979 the Jura canton was officially recognised. In the case of Germany it is a little bit different, but even here federalism was part of the state- building process and the inclusion of the Saarland and the five new Länder from the former German Democratic Republic can also be seen as this ongoing state- building process. Of course it seems for now that the state- building process in the USA, Switzerland and Germany is finished.

⁷²² 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.

arguing that international imposition might be able to create state institutions, but '[t]he fabric of statehood, leave alone democracy, cannot be easily tailored.'⁷²³

In this debate about imposed federalism, what is the position of Bosnia and Herzegovina? As we have demonstrated above, the Dayton Peace Accords 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 Accord which created a state based on 'bientity and triethnic segregation.'⁷²⁴ In the Bosnia and Herzegovina of 1995, there was 'no commitment to countrywide federal practices'⁷²⁵ and the different national groups interpreted the Agreement in different ways. Bosniaks saw the Dayton Accords as the foundation of a strong united state which has devolved some powers to the entities and cantons. Bosnian Croats and Bosnian Serbs on the other side saw in the Accords the final approval of their "sovereign" territory within Bosnia and Herzegovina.⁷²⁶ It is indeed in the nature of the Dayton Accords to allow these different interpretations however, what Dayton did create was a 'strongly decentralised federation with weak central institutions.'⁷²⁷ The willingness to compromise and to agree did not exist at the time of the signing of the Accords. As we have already seen, Basta- Fleiner argued that trust and tolerance are core prerequisites for a federal union,⁷²⁸ she is therefore very critical of imposed federations as they do not fulfil these criteria. Similar arguments come from authors such as Alfred Stepan and Nancy Bermeo. In fact, 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.⁷²⁹ However, the issue of imposing federalism as an ideology and federal structures cannot be fully discussed only by focusing on the nature of the Dayton Accords. Instead, we will have to look at the development of the Bosnian state and its ongoing debates about federalism. It has been argued before in the federalist literature 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 the sub-units.⁷³⁰ 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

⁷²³ Cohen, Lenard: 'Fabricating Federalism', 2002, p. 132.

⁷²⁴ Ibid. p. 135.

⁷²⁵ Ibid. p. 124.

⁷²⁶ Ibid. p. 125.

⁷²⁷ 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.

⁷²⁸ Basta- Fleiner, Lidija: *Trust and Tolerance*, 2004, p.2.

⁷²⁹ Bermeo, Nancy: 'The Import of Institutions', 2002, pp. 105-110.

⁷³⁰ Friedrich, Carl: *Trends of Federalism*, 1968.

*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.*⁷³¹

It is our task to examine the federal development in Bosnia- Herzegovina after the Dayton Accords in order to prove Friedrich's thesis of federalism as a process correct 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. As we have seen in the previous Chapter, this federal system has over the last decade been administrated internationally through the involvement of external actors in core decisions. Federalism, as the ideology of shared-rule and self-rule was also 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. However, it will have to be examined in the progress of this chapter, whether a discussion among the Bosnian elites developed, that focused on the aspects of federalism, decentralisation and regionalisation. If so, we might discover that the imposed federal system of Dayton led to the development of an independent federal culture in Bosnia and Herzegovina.

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 Three, where we discussed and developed a theory of multinational federalism. This examination will help us to formulate further predictions about certain aspects of Bosnian federalism and it will help us to understand the main underlying issues of the Bosnian federal system.

6.1.2 Multinational federalism and Bosnia- Herzegovina

Going back to our results of the Third Chapter, we will have to focus on five points by looking at the nature of the multinational arrangement⁷³² in Bosnia and Herzegovina. 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"⁷³³

Furthermore, we 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.

⁷³¹ Ibid. p. 7.

⁷³² It has already been proven that Bosnia fulfils all criteria of a multinational state. Please see Chapter Two, What is a multinational state?

⁷³³ See Chapter Three, Multinational Federalism revised.

We have seen that the federal state in Bosnia was not established because the peoples of Bosnia believed in 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 while simultaneously addressing some of the demands of the 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, among 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.⁷³⁴ Nevertheless, we must question how the constitutionally integrated values of equality, justice and diversity of the three national groups have developed within the Bosnian political culture. 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, however, developments which indicate that a will to cooperate and the development of inter- ethnic trust have taken place. The lack of these values is mainly associated with the nature of the political system as being imposed on the Bosnian people and politicians and the continued actions from outsiders within the system, that lacks not only accountability but prevents the development of a political culture in Bosnia, which is based on compromise, respect and cooperation.

By looking at the second point we 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.'⁷³⁵ Having said this, it is important to examine further, if there has developed a "Bosnian debate" about federalism in which different actors of the political system discuss their vision of the common state, and also demonstrate that they have a common vision of what their state is today.

We have already highlighted the problematic combination of federalism and democracy in Bosnia by arguing that an over-federalised system created spaces for nationalist parties to dominate the system. Furthermore, several authors have acknowledged that the contra-dictionary 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.⁷³⁶ Although Bosnia clearly lacks major elements of a democratic state,⁷³⁷ we will see that there has been substantial progress

⁷³⁴ Woelk, Jens: 'Föderalismus als Mittel permanenter Konfliktregelung' 2005, here pp. 475-478.

For a detailed analysis of the power- sharing mechanisms in the constitution see Chapter Five: The Bosnian Federation.

⁷³⁵ Ibid. p. 479.

⁷³⁶ For example: Woelk, Jens: 'Federalism and Consociationalism' 2004, p. 186.

⁷³⁷ See for this argument: Chandler, David: *Bosnia (Faking Democracy After Dayton)*, 2000.

within the political system to strengthen democratic elements. 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. In addition, we have already highlighted, that the high degree of decentralisation and autonomy for certain segments of a society might lead to elements of “positive” discrimination, for example when it comes to language policy. Autonomy has been abused to legitimise the results of ethnic cleansing and to further strengthen the self- governing bodies. The involvement of the international community as well as a slow, but consistent, refugee return prevented the full homogenisation of the Serb and Croat settlements in Bosnia. Florian Bieber has argued that Dayton created an “ethnic federalism” in which the autonomy and the self- rule of the national groups is the dominant feature.⁷³⁸ The dominance of autonomy however, has lead to policies which discriminated against other national groups as well as minority groups throughout both entities and the cantons in the Federation of BiH. In the context of Bosnia and Herzegovina and its character as an imposed federal system, we must keep in mind that the heavy involvement of international actors does create a further constraint on democracy. It has been argued that the influence of the international community result in Bosnia being a “controlled democracy.”⁷³⁹ 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. It is in this context that Woelk argues that the international community has to step in:

‘[I]n any federal system, autonomy of the entities is only one element; the other is the integration of the parts into the whole. This, the main challenges for the country’s future remain the strengthening of the State of Bosnia and Herzegovina, creating the conditions for a sustainable return [of refugees S.K] reinforcing the administration, achieving self- sustained economic development, and establishing an effective and accountable legal system. Until these conditions have been created, implementation cannot be left to the parties alone. Therefore, direct involvement of external actors will be required.’⁷⁴⁰

Democracy and federalism are therefore affected from 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 side federalism and democracy are seriously impacted 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.

⁷³⁸ Bieber, Florian: ‘Governing Post-War Bosnia-Herzegovina’ 2002, p. 323.

⁷³⁹ Bojkov, Victor: ‘Democracy in Bosnia and Herzegovina’, 2003, pp.41- 67.

⁷⁴⁰ Woelk, Jens: ‘Federalism and Consociationalism’, 2004 p. 191.

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, along others as the citizens of Bosnia and Herzegovina; however, only Croats, Serbs and Bosniaks are directly recognised as the constituent peoples.⁷⁴¹ Furthermore, until 2002 Serbs in the FBiH and Bosniaks and Croats in the RS were seen as de- facto national minorities rather than constituent people. 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.⁷⁴² However, it has been pointed out by several authors 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.⁷⁴³ As we have already seen, the constituent peoples in Bosnia enjoy a great amount of autonomy: Croats in the three Croat cantons in the FBiH and the Serbs in the RS have guaranteed cultural and political autonomy. 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. As we have already seen, the key feature of the central Bosnian institutions is its *power-sharing* qualities.⁷⁴⁴ 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.⁷⁴⁵ 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 Peoples seem incompatible with Art. 14 ECHR, the rules on

⁷⁴¹ 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'

⁷⁴² See Constitutional Court of Bosnia and Herzegovina: Judgment U 5/98-III

See additionally: Woelk, Jens: 'Federalism and Consociationalism', 2004 pp.188-191

⁷⁴³ 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. 100-118.

⁷⁴⁴ Bieber, Florian: 'Governing Post-War Bosnia-Herzegovina', 2002, p. 323.

⁷⁴⁵ 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.

*the composition and election of the Presidency seem incompatible with Protocol No. 12, which enters into force for BiH on 1 April 2005.*⁷⁴⁶

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 in the near future to comply with its international obligations.⁷⁴⁷ Finally, we should recognise that the federal system itself lacks “inclusive mechanisms.” Christophe Solioz, among others, argues that the rule of law and the strengthening of the common institutions are the key elements to enable a better internal integration of the state.⁷⁴⁸

Federalism has cemented more “diversity in unity” than the other way around. Dayton did not create these divisions which are today 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 1995.⁷⁴⁹ There is no such thing as a constitutional patriotism in Bosnia, the dominant identification pattern is through the national group and the kin-state in the cases of Croats and Serbs. Only the Bosniaks identify fully with the Bosnian state. The element, which might help to create some form of constitutional patriotism, is the will of all national groups to join the EU. Indeed, it seems as though Bosnians identify more as Europeans than they do as Bosnians.

If we go back to our starting point of multinational federalism, we will recognise key problems of discussing Bosnia in terms of this theory. The Bosnian federation is not based on a voluntary character; its institutions practice extensive power-sharing by excluding other segments of the society completely from the direct, and indirect political participation and the international community played, and continues to play, a key role in the political development of the country. Furthermore, ‘there are neither national majorities nor national minorities’ in Bosnia,⁷⁵⁰ which makes the application of multinational federalism even more complicated, since the authors who worked on the theory focused on countries where clear majorities and minorities can be identified.⁷⁵¹ Bosnia-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 our short analysis of the Bosnian federalism through the lenses of multinational federalist theory has demonstrated is that there are two dominant features which

⁷⁴⁶ Ibid. p. 20.

⁷⁴⁷ European Court of Human Rights: *Decision in case: Sejdic and Finci v. Bosnia and Herzegovina, application nos. 27996/06 and 34836/06*, 22nd December 2009.

⁷⁴⁸ Solioz, Christophe: ‘Bosnien und Herzogowina zwischen Abhängigkeit und Selbstverantwortung’ in: *Südosteuropa Mitteilungen*, No.4, 2002, pp. 36-44 here p. 38.

⁷⁴⁹ 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.

⁷⁵⁰ Woelk, Jens: ‘Federalism and Consociationalism,’ 2004 p. 179.

⁷⁵¹ The best example is the “Canadian School” which we have discussed in Chapter Three.

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 vision of federalism and state- building to important internal debates. The second dominant feature of the Bosnian federalism is its focus on ethnic power-sharing in which all major political provisions attempt to accommodate different national groups and all political debates focus on the self- determination attempts of these different national groups. Bosnia therefore, represents a perfect example of Burgess' argument that nationalism is the federalism in multinational states.⁷⁵²

The hypotheses for the following parts of the Chapter shall therefore be as follow: 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 also the involvement of these actors in the debates about federalism. Although Bosnia is characterised as an "ethnic federalism," it is challenged and contested from different sides, some being internally and some being 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 federalist 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.

6.2 Debating Bosnian federalism

The following part will look at the debates about federalism in certain policy areas where changes have occurred over the last 15 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 us to understand the dynamics and contests between (and within) the Bosnian parties and the international community, especially the Office of the High Representative.

6.2.1 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 the political institutions; they affect political decision-

⁷⁵² Burgess, Michael: *Comparative Federalism*, 2006, p.102.

As shall be seen later, 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.

making and its outcome by outlining a ‘basic system of rules.’⁷⁵³ However, a constitution does not only describe the basic features of political institutions, their origin and their relations, but it also ‘regulates the 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.’⁷⁵⁴ James Buchanan has especially emphasised the importance of rules and limited choices as two fundamental principles of a constitution. He argues that ‘[c]onstitutional constraints are [...] aimed at limiting the range and scope of actions that may be taken by others without the consent of the person in question but actions to which the person is locked in by the fact of collective unity.’⁷⁵⁵ Furthermore, Aleksander Peczenik points out, that constitutions also outline the limits on majority rule by focusing on human and political rights protection and special requirements for constitutional change.⁷⁵⁶

The constitution is especially important in a federal state since it consists of the ‘laws that divide the power between the levels, and there is also [...] a court for settling conflicts between the levels.’⁷⁵⁷ The protection of the rights of sub-units as well as the procedures for joint decision-making and conflict-resolution mechanism are all important parts of the federal constitution. By following this short debate of constitutionalism, we can summarise that constitutions are of key importance to all states, but particularly for those which are organised federally. As a consequence, constitutional change is of key importance in federal states, since the change of the constitution might very likely affect the relationship between central (federal) and sub-unit level.

The Bosnian Constitution clearly states the process of constitutional change in Article X of the constitution states:

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.*⁷⁵⁸

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

⁷⁵³ Berggren, Nikolas et. al: ‘Introduction’ in: Berggren, Nikolas et. al (Eds.): *Why Constitutions Matter*, Transaction Publishers, London and New Brunswick 2001 pp. VII-XVII, here p. XII.

⁷⁵⁴ Ibid. p. XII.

⁷⁵⁵ Buchanan, James: ‘Why do Constitutions matter?’ in: Berggren, Nikolas et. al (Eds.): *Why Constitutions Matter*, Transaction Publishers, London and New Brunswick 2001, pp. 1-16, here pp. 2-3.

⁷⁵⁶ Peczenik, Aleksander: ‘Why Constitution? What Constitution? Constraints on Majority Rule’ in: Berggren, Nikolas et. al (Eds.): *Why Constitutions Matter*, Transaction Publishers, London and New Brunswick 2001, pp. 17-59.

⁷⁵⁷ Moberg, Erik: ‘Competition in Government by Federalism: a Discussion of the Idea’ in: Berggren, Nikolas et. al (Eds.): *Why Constitutions Matter*, Transaction Publishers, London and New Brunswick 2001, pp. 233-288, here p. 241.

⁷⁵⁸ Bosnian Constitution, Article X.

*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.*⁷⁵⁹

We have already highlighted, that the Bosnian federation is extremely decentralised with most of the decision- making competencies lying with the entities. However, the 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.⁷⁶⁰ A central element in the constitutional development of Bosnia and Herzegovina is therefore the strengthening of the centre and the reduction of decision- and administrative powers of the entities. However, as shall be seen in the progress of this Chapter, 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;⁷⁶¹ change towards more local ownership occurred in particular since 2002. While the political development in the first years after the Peace Agreement has been described as a phase of “implementing Dayton,” we shall focus here on the period discussed as “going beyond Dayton.”⁷⁶² Even if we doubt this clear distinction by arguing that further impositions took place in the period of “going beyond Dayton;”⁷⁶³ when focusing on the point of constitutional change, this framework is useful. Although until the year 2002/ 3 major reforms were imposed through the HR, we can argue that since then a development towards local ownership has begun.⁷⁶⁴ It

⁷⁵⁹ Ibid. Article III, 5a.

⁷⁶⁰ Bieber, Florian: ‘After Dayton, Dayton?’, 2006, p. 20.

⁷⁶¹ According to Annex 10 of the DPA it is the High Representative, who has the final authority to interpret the DPA.

⁷⁶² 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.

⁷⁶³ It is difficult to argue when the period of “implementing Dayton” ended and “going beyond Dayton” and “overcoming Dayton” started. It is possible to agree with the distinction, however, it might be useful to argue that both periods overlapped and continue to do so. A real process of “going beyond Dayton” can only start, when the Office of the High Representative is closed and the international community will have no direct powers anymore to intervene in the Bosnian political process. Furthermore, a period that deserves the name of “going beyond Dayton” must include either a revision of the Dayton Constitution or a completely new Constitution based on an Agreement of the Bosnian peoples.

⁷⁶⁴ 2002 is a good year to characterise the “going beyond Dayton” phase because it was the year when the Office of the High Representative and the European Union Special Representative for BiH were merged with the HR becoming also the EU Special Representative. It has been argued that this marked the change from *international trusteeship* towards the preparation of Bosnia’s eventual EU membership. See: Reccia, Stefano: *Beyond International Trusteeship: EU peacebuilding in Bosnia and Herzegovina*, Occasional Paper No.66, European Union Institute for Security Studies (EUISS), Paris, February 2007.

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 the local elites to take more decisions on their own.⁷⁶⁵ However, since 2006 nationalist rhetoric coupled with weak international actions has once again slowed down the reform process in Bosnia. New elites have come to power after the election in 2006 and turned out to be even more radical than their predecessors while the international community is discussing the closure of the OHR since 2006 and cannot come to any agreement about its future involvement in Bosnia. Even worse, the EU missed the opportunity to take control of the Bosnian transformation and post-war development and to guide the country into European structures.

The focus on the constitutional reform debate in this part of the chapter has three advantages. Firstly, we will see 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. Secondly, we can highlight the development of a “federal political culture” in Bosnia, which is not only influenced by the proposals of the parties, but also by at least two other actors, namely the international community and the Constitutional Court of Bosnia and Herzegovina. Finally, a debate about constitutional reform will shed light into those areas of the political system which will need to be reformed desperately to confirm with international human rights standards.

However, constitutional reform is not new to Bosnia and Herzegovina. In fact, the Constitutions of the entities have been changed several times, already in 1996 for the first time, when they were made to be in line with the Dayton Constitution. Furthermore a key change of entity constitutions took place in 2002 after the “Constituent Peoples Decision” of the Constitutional Court of Bosnia and Herzegovina.⁷⁶⁶ However, all 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 in a full- scale constitutional debate,⁷⁶⁷ 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 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 thereby on the abolition of the Federation of Bosnia and Herzegovina and argued for the cantonisation of the country in 11 cantons, ten cantons which form the FBiH, plus the RS as one canton.⁷⁶⁸ 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

⁷⁶⁵ Ibid. p. 1.

⁷⁶⁶ 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 Constitution.”

⁷⁶⁷ Bieber, Florian: ‘After Dayton, Dayton?’, 2006, p. 24.

⁷⁶⁸ European Stability Initiative (ESI): *Making Federalism Work- A radical proposal for practical reform*, 8 January 2004, see: www.esiweb.org

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 all constitutional reforms in Bosnia would be a “miracle.”⁷⁶⁹ A lasting impact on the constitutional reform debate and the real initiative for the Bosnian political leaders to start thinking about it, was the opinion of the Venice Commission of the Council of Europe on the constitutional situation in Bosnia and Herzegovina.⁷⁷⁰ The Venice Commission’s report supported the idea 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,”⁷⁷¹ which suggest three major reform proposals: Amendment I focused on the strengthening of Bosnian central institutions by updating the Constitution concerning those reforms that took already place (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 when it comes to the election of the President and the two

⁷⁶⁹ ESI: *Waiting for Miracle? The Politics of Constitutional Reform in Bosnia and Herzegovina*, 3 February 2004, see: www.esiweb.org

⁷⁷⁰ European Commission For Democracy Through Law (Venice Commission): *Opinion on the Constitutional Situation in Bosnia and Herzegovina*, March 2005.

⁷⁷¹ Bieber, Florian: ‘After Dayton, Dayton?’, 2006, p. 29.

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, who has 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.⁷⁷² The “April Package” failed on 26th 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 created again the picture of Bosnia as a failed state that only exists because of the will of the international community.⁷⁷³ One expert on Bosnia even argued that “a weak state becomes even weaker.”⁷⁷⁴ However, to understand the reasons for the failure of the reform, it is important to keep two things in mind. First, the negotiations for the reform package were based on elite discussions under the moderation of the American ambassador without any consultation of the civil society or parliamentary groups. Second, although the April Package was much more “Bosnian” than the Dayton Constitution,⁷⁷⁵ 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 as 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 about the state and contested ideas about 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 concepts about 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 among Bosnian elites but also among 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

⁷⁷² Changes to the Constitution “April Package“ see: for example: The Dayton Peace Accords Project: ‘Amendments to the Constitution of Bosnia and Herzegovina’ *The Constitutional Working Group*, 26th April 2006, see: www.daytonproject.org/publications/tp_publication.php?id=140 (seen 11th July 2008).

⁷⁷³ For example: Kaps, Carola: ‘Gespalten (Länderbericht Bosnien und Herzegowina)’ in: *Frankfurter Allgemeine Zeitung*, 4th 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.

⁷⁷⁴ Marko, Joseph: ‘Bosnien- ein schwacher Staat wird noch schwächer’, in: *Süddeutsche Zeitung*, 28. April 2006.

⁷⁷⁵ Bebler, Anton: ‘South- East European Federalism’, 2008, p. 19.

Europe, the OSCE, NATO, the USA and other state and non- state actors such as international non-governmental organisations, and the important international finance 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 we can see continued pressure on the Bosnian elites from international organisations and actors to reform the Dayton Constitution. Additionally, these international actors have also developed programmes for the 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 practise of “national segregation” in primary and secondary schools. It furthermore argues for the strengthening of democracy in Bosnia and Herzegovina by condemning all attacks from the politicians and others on the freedom of speech and the independent media as well as arguing for a continued judicial reform and a local government reform to strengthen municipalities.⁷⁷⁶ On the other side the major Bosnian parties have themselves put out proposals for constitutional reform. These proposals are particularly interesting for our discussion as they all engage in some form or another in the debate about federalism in Bosnia and Herzegovina. Thereby we can identify three main directions in the constitutional reform debate among the Bosnian parties. These directions are largely influenced by the main contradiction of the Dayton Constitution, namely the contrast between an ethnic federalism on the one side and features of a civic state and a territorial federal system on the other side.⁷⁷⁷ 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 the final solution of the “ethnic federalism” vs. “civic state” conflict

Discussion leaders of the first stream argue that Dayton clearly based the main institutions and the federal structure on the basis of nationality. Dayton created a multinational state, which consisted of three more or less mono- national areas.⁷⁷⁸ 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

⁷⁷⁶ 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> (seen 1. October 2008, printout in possession of the author).

⁷⁷⁷ For an in depth discussion of this point, please refer to the Chapter “The Bosnian Federation”.

⁷⁷⁸ Marko, Joseph: ‘Bosnia and Herzegovina- Multi-Ethnic or Multinational?’, 2000, pp. 110-115.

seen as a key factor in the stability 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 the Federation by Bosniaks. In my interview with Minister Dragan Vrankić from the HDZ BiH,⁷⁷⁹ he highlighted the fact that the Serbs and the Bosniaks have their entity, while the Croats suffer under the dominance of the Bosniaks in the Federation.⁷⁸⁰ Vrankić 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.⁷⁸¹ I argued in the interview that the creation of a third entity would lead to a further risk of secession movements in Bosnia, not only coming from the RS but possibly as well from the Croat entity and he replied that the creation of a Croat entity should go in line with the amendment of the constitution so 'Bosnia and Herzegovina [would be] a non-dividable state with no option to secede [for the federal units or the national groups S.K.]'.⁷⁸² 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.⁷⁸³ 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 Minister Vrankić described the creation of a third (Croat) entity as a form of "federalisation" of Bosnia and Herzegovina.⁷⁸⁴ Indeed, from the perspective of federalist 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 Prime Minister of the Republika Srpska, Milorad Dodik has several times shown his sympathy for the idea of a third Croat entity.⁷⁸⁵ After all, it would support the Serbian 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.⁷⁸⁶ However, although the

⁷⁷⁹ He was Bosnian Finance Minister at the time. However, as became perfectly clear during the interview, he spoke from the perspective of a HDZ politician about his political views on Bosnia and not as a representative of the state institutions.

⁷⁸⁰ Interview with the Bosnian Finance Minister Dragan Vrankić, Sarajevo 11. September 2008.

⁷⁸¹ Ibid.

⁷⁸² Ibid.

⁷⁸³ Ibid.

⁷⁸⁴ Ibid.

⁷⁸⁵ 'SNSD insists constitutional reform should be based on federal principle' in: *Balkantimes*, 11th May 2007, see: www.balkantimes.com/cocoon/setimes/xhtml/en_GB/newsbrief/setimes/newsbriefs/2005/05/11/nb-04 (seen 11th May 2007, printout in possession of the author).

⁷⁸⁶ Bebler, Anton: 'South-East European Federalism', 2008, p. 21.

idea of a third entity seems to be justified in the light of the ethnic federation which Dayton created and the argument for total equality among the three constituent peoples, it needs to be highlighted that the further separation of Bosnia and Herzegovina could have far-reaching consequences. First, no concept has been developed about the distribution of powers between central state and the entities. Especially in 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 conflicts. Second, none of the three entities would be homogenous.⁷⁸⁷ This would not only bring up moral questions about the legitimatisation of ethnic cleansing during the war⁷⁸⁸ 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.⁷⁸⁹ 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 society has no support of Croatian politicians⁷⁹⁰ and especially not from the international community. The attempt of the HDZ BiH to create independent structures outside the FBiH and declare Croatian self-government in 2000 / 2001 ended with the intervention of the High Representative and the removal of the HDZ leader Ante Jelavić from the State Presidency.⁷⁹¹

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 is also supported by the main multi-national party, the Social Democratic Party in Bosnia and Herzegovina (SDP BiH). These proposals also found support among academics and representatives of the Bosnian civil society,⁷⁹² as well as among some of the foreign scholars working on Bosnia.⁷⁹³ The main arguments

⁷⁸⁷ 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.

⁷⁸⁸ These are already discussed by those who question the existence of the Republika Srpska and see it as the legitimatisation of genocide and ethnic cleansing.

⁷⁸⁹ 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.

⁷⁹⁰ ‘A third entity would harm Bosnia- 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

⁷⁹¹ Office of the High Representative (OHR): *Decision removing Ante Jelavic from his position as the Croat member of the BiH Presidency*, 7th March 2001, see: www.ohr.int/print/?content_id=328 (seen 4th October 2008).

⁷⁹² 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.

⁷⁹³ Bebler, Anton: ‘South- East European Federalism’, 2008, p. 21.

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 reflected in this light, considering the need to create a modern “European” state in Bosnia. Furthermore, they argue that the negative development of the economy, as well as the slow political progress, is a result of the political 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 the Bosnian society among national lines.⁷⁹⁴ 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.⁷⁹⁵ 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.⁷⁹⁶

The parties of the SDA, SBiH and SDP agree on the proposal of how to overcome the main obstacles in Bosnia- 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 economical criteria. Indeed, if we remind ourselves of the Chapter about “Bosnia’s federal tradition,” we have seen that since the rule of the Ottoman Empire over Bosnia, there has been a clear tradition of dividing the countries in core regions in order to govern it. It is also important to note that these regions are supposed to have only very 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.”⁷⁹⁷ Only this civic Bosnian state will be

⁷⁹⁴ 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 (seen 5th September 2008).

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 (seen 5th September 2008).

⁷⁹⁵ See for the historical argument: Malcom, Noel: *Bosnia, a short history*, 2002, especially the Introduction.

⁷⁹⁶ ‘Silajdzic accuses RS of trying to secede from BiH’ in: *Balkanimes*, 16th September 2008.

Huseinovic, Samir: ‘Bosnien- Herzegovina: Serbenrepublik auf der Anklagebank’ in: Deutsche Welle: Fokus Ost- Südost, 18th September 2008, see: www.dw-world.de/popups/popup_printcontent/0,,3655421,00.html (seen 22nd September 2008, printout in possession of the author).

⁷⁹⁷ 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 (seen: 15th September 2008, printout in possession of the author).

able to join the EU eventually. Finally, all three parties have a negative opinion of federalism,⁷⁹⁸ as they understand it in terms of secession and weak central power. Federalism and the federalisation of Bosnia and Herzegovina is seen by the parties as a further division among national lines and the continued fight over territory and people that already characterised the war. We can clearly see the impact of the Socialist Tradition of Federalism in this debate. All three parties talk about “regionalisation” and “decentralisation” and point out the historical evidence of grown economic regions in Bosnia.

Having argued that the SDA, SBiH and SDP share currently the same view on Bosnia, and have similar ideas for its improvement, the way they suggest for the improvement differs drastically. While 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.⁷⁹⁹ The proposal of the SBiH has often been characterised as a “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 has been 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 the 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.’⁸⁰⁰ The overcoming of the identification of territory and nationality was highlighted by Damir Arnaut 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. Damir Masić, the spokesperson of the SDP said in the interview that he believes that the re-creation of one Bosnian society must be the key in the long term political development. Masić pointed out that the current system is inefficient and expensive and negatively impacts on 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 the five historically grown regions (Mostar, Sarajevo, Banja Luka, Zenica and

⁷⁹⁸ In the interview with Damir Masić, Press Officer of the SDP and MP in the FBiH House of Representatives, he opened our talk by arguing that his party does not support any form of federalism in Bosnia and Herzegovina.

⁷⁹⁹ Interview with Damir Masić, SDP Press Officer and MP in the House of Representatives of the FBiH, Sarajevo, 19th August 2008 and Interview with Damir Arnaut (SBiH), Adviser in Constitutional Affairs to the Bosniak Member of the State Presidency, Sarajevo 31st July 2008.

⁸⁰⁰ Interview with Damir Arnaut (SBiH), Adviser in Constitutional Affairs to the Bosniak Member of the State Presidency, Sarajevo 31st July 2008.

Tuzla).⁸⁰¹ Masić highlighted that the April Package was a first step in the right direction. It is furthermore important that Masić focused on the point, that any future change of the Bosnian Constitution must be based on the will of the Bosnian political elites.⁸⁰² 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.⁸⁰³

It should be added that several international actors have demonstrated their support for proposals that want to overcome the dominance of nationality and the massive power of the entities in the system. Lenard Cohen has pointed out, that while 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.’⁸⁰⁴ The impositions of a common flag, a common currency, a national anthem and a code 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 and its understanding of the Bosnian federation as a federation of territorial units and not of national groups. As shall be seen in the progress of this Chapter, this view has heavily impacted on 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 is already completed, and that all further reforms should only make adjustments to the Dayton Constitution.⁸⁰⁵ When asked why both representatives of the Bosnian Serbs insisted so much on the autonomy, they highlighted the “fear” of the Serb population as the major

⁸⁰¹ Interview with Damir Masić, SDP Press Officer and MP in the House of Representatives of the FBiH, Sarajevo, 19th August 2008.

⁸⁰² Ibid.

⁸⁰³ Unfortunately it was not possible to get an interview partner from the SDA despite intensive attempts by the author. 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*, 20th August 2008, see: http://www.setimes.com/cocoon/setimes/xhtml/en_GB/newsbriefs/setimes/newsbriefs/2008/08/20/nb-03 (seen 20th August 2008, printout in possession of the author).

⁸⁰⁴ Cohen, Lenard: ‘Fabricating Federalism’, 2002, p. 137.

⁸⁰⁵ Interview with Milko Novaković, MP in the State House of Representatives for the Serb Democratic Party (SDS), Sarajevo, 9th August 2008 and Interview with Boris Buha (SNSD), Adviser for Constitutional Affairs to the Serb Member of the State Presidency, Sarajevo, 12th September 2008.

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 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 here, that this is today 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. Coming back to the discussion about constitutional reform it can be argued that those who want to adjust the existing system see Dayton as the legitimacy for national autonomy 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.’⁸⁰⁶ The proposals of the Bosnian Serbs therefore focus on two core elements: firstly the guaranteed existence of the Republika Srpska and its far- reaching autonomy in decision- making as well as financially, and secondly, the absolute equality of the three national groups at the 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, while the adviser to the Serb member of the state Presidency also pointed out the need for reforms to develop the economy in Bosnia.⁸⁰⁷ Milko Novaković from the SDS furthermore argued that he sees the equality of the three constituent peoples as the core element of the Dayton Constitution and therefore he sympathises with the demand for a third (Croat) entity in Bosnia.⁸⁰⁸ 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.”⁸⁰⁹ Finally, the latest proposal of Milorad Dodik, the 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.⁸¹⁰ This again underlines the understanding of the Bosnian Serbs of Bosnia as a union and their understanding of a federal Bosnia based on a contract of three constituent peoples, which can also be cancelled at any time. Again, we can link Dodik’s understanding of federalism to the Socialist Tradition of Federalism and the way it was exercised in Yugoslavia. Dodik said about his view of Bosnia: ‘[i]f Sarajevo politicians show the political will and clearly and unambiguously state that the

⁸⁰⁶ 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 5th September 2008).

⁸⁰⁷ Interview with Milko Novaković, MP in the State House of Representatives for the Serb Democratic Party (SDS), Sarajevo, 9th August 2008 and Interview with Boris Buha (SNSD), Adviser for Constitutional Affairs to the Serb Member of the State Presidency, Sarajevo, 12th September 2008.

⁸⁰⁸ Interview with Milko Novaković, MP in the State House of Representatives for the Serb Democratic Party (SDS). Sarajevo, 9th August 2008.

⁸⁰⁹ ‘SNSD insists constitutional reform should be based on federal principle’ in: *Balkantimes*, 11th May 2007.

⁸¹⁰ ‘Dodik insists RS has right to self- determination’ in: *B92 News*, 9th March 2008, see: http://www.b92.net/eng/news/region-article.php?yyyy=2008&mm=03&dd=09&nav_id=48307 (seen 15th March 2008, printout in possession of the author).

RS and the Serb people are wanted in a decentralised, democratic, and most importantly, economically prosperous BiH, then such a union is acceptable to us.⁸¹¹ Constitutional reform therefore, should focus on economic reforms, a new order for the FBiH and to 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 ethnic federation, 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 among 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. Boris Buha, the adviser to the Serb member of the Presidency pointed out that if politicians of the FBiH, and especially from Bosniak parties would not continuously question the existence and autonomy of the Republika Srpska, then there would be no discussion about self- determination and secession. This discussion only arises, because the Bosnian Serb people and their representative feel threatened in their autonomy.⁸¹²

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 will to cooperate 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

As has been demonstrated above, the three constituent peoples and their representatives share no common understanding of the state. While Bosniak parties see Bosnia as a “civic state” that focuses on its citizens rather than its national groups, Croats and especially Serbs see Bosnia as a union of three equal constituent peoples.⁸¹³ As a consequence of these different views the proposals of the different groups for the future constitutional development of the country greatly differ. It is therefore necessary to discuss the current situation in Bosnia and Herzegovina, before any long-term decisions about the constitutional development should be taken. Only a common understanding of their joint state will

⁸¹¹ ‘Dodik downplays RS secession intentions’ in: Balkantimes, 29th August 2008, see: http://balkantimes.com/cocoon/setimes/xhtml/en_GB/newsummary/#setimes/newsbriefs/2008/08/29/nb-03 (seen: 29th August 2008, printout in possession of the author).

⁸¹² Interview with Boris Buha (SNSD), Adviser for Constitutional Affairs to the Serb Member of the State Presidency, Sarajevo, 12th September 2008.

⁸¹³ Cohen, Lenard: ‘Fabricating Federalism’, 2002, p. 125.

enable the Bosnian elites of all nations to focus on the overcoming of the obvious faults of the Dayton Constitution and a long-term development of their state towards membership in the EU.

As has been shown above core reasons for the war in Bosnia and Herzegovina in the early 1990s have not been fully addressed. Furthermore, a key feature of Bosnia's post-war system is the 'absence of a comprehensive reconciliation process.'⁸¹⁴ 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 cooperation and consensus has not yet developed. Continued 'war 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 cooperate, consociationalism seems not to be working in BiH, although there might be no better option. Ownership is of key importance here, 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 and the Butmir negotiations. Both attempts failed because the leaders of the main Bosnian parties could not find agreement on minimal reforms and international actors once again lacked coordination and consultation among themselves.⁸¹⁵ These attempts however, also demonstrate the latest features of the international presence in Bosnia, namely the desperate desire to close the OHR, while 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. The constitutional reform process in Bosnia must be embedded in the process of European integration⁸¹⁶ and the state-building process must become an EU-member state-building process.

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 a federal system at all currently, because the Constitution does not give any reference to federalism (only concerning the FBiH). Of course the example of India proved over 50 years ago, that a state Constitution does NOT have to refer to federalism when creating a federal state. But what is even more alarming than the dispute about labelling Bosnia's system is the abuse of the concept of federalism by the Bosnian elites. The Bosnian Serbs misinterpret federalism to underline their demand for more autonomy and eventually even secession. The Bosnian Croats see federalism as a tool to argue for a third entity for the Bosnian Croats. Bosniaks discuss the scenario of

⁸¹⁴ El- Mufti, Karim: 'Power- Sharing Imposed- The Case of Bosnia and Herzegovina', 2008, p. 56.

⁸¹⁵ Rolofs, Oliver Joachim: 'Bosnien-Herzegowina: Kein Licht am Ende des Tunnels' in: *Südosteuropa Mitteilungen*, Vol. 50, No. 1, 2010, pp. 42-59.

⁸¹⁶ 'Bieber, Florian: Constitutional Reform in Bosnia and Herzegovina: preparing for EU accession' in: *EPC Policy Brief*, April 2010.

regionalisation and have not yet distinguished between regionalisation and federalisation.⁸¹⁷ However, even so Liberal Nationalists have argued that federalism will be interpreted differently in multinational states,⁸¹⁸ in Bosnia federalism is not argued 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 sake of “answering the summons of history”*’⁸¹⁹ to use Thomas Franck’s analogy. Before we shall attempt to summarise and theorise the Bosnian federalism in its own means, we will look at other policy areas.

6.2.2 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.⁸²⁰ 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, while 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.’⁸²¹ Of course it becomes even more important to accommodate the needs of the “dissident area” if this area is also home to one national group (or at least seen as the home of one national group as is the case with the Bosnian Serbs in Post- Dayton Bosnia). Taking into account that the war in Bosnia- Herzegovina was massively impacted by questions of sovereignty, self-determination and secession with the Bosnian Croats and the Bosniaks deciding to leave what Yugoslavia after the Slovene and Croat departure and the Bosnian Serbs objecting this and arguing for the stay of Bosnia and Herzegovina in the Yugoslav federation; we have to keep in mind that 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. Only by focusing on Dayton’s main achievement, namely the preservation of peace in Bosnia and Herzegovina for the last 15 years, can we understand the extent of identity politics in Bosnia and Herzegovina.

⁸¹⁷ It is worth mentioning here that in a regional state, the regions can have much more power than the sub-units in a federal state. We can only compare South Tyrol in Italy, a region with a lot of competences and autonomy and the Austrian Länder, who have much less autonomy. Federalism differs from regionalisation in two major ways. Firstly, federal units are usually also represented in central institutions and take part in the decision making at the centre. Secondly, federal units enjoy constitutional guarantees for their autonomy, while regionalisation is usually not based on constitutional guarantees. Compare: Swenden, Wilfried: *Federalism and Regionalism in Western Europe*, Palgrave: Basingstoke 2005.

⁸¹⁸ Kymlicka, Will: ‘Multinational Federalism in Canada,’ 1998, p.5 and p. 8

⁸¹⁹ Franck, Thomas: ‘Why Federations Fail’, 1968, pp. 174.

⁸²⁰ Bauböck, Rainer: *United in Misunderstanding?*, 2002, p. 39.

⁸²¹ Dent, Martin: *Identity Politics (Filling the Gap between Federalism and Independence)*, Ashgate: Aldershot 2004, p.1.

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.'⁸²² As a consequence of a three and a half year long war in which Bosnia's multinational and multicultural society was destroyed through ethnic cleansing, forced migration and the creation of three more or less homogeneous regions in Bosnia and Herzegovina,⁸²³ the writers of the Dayton Constitution decided to give these 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.⁸²⁴ Furthermore, the Republika Srpska was allowed to keep its name as the Serb Republic⁸²⁵ implying technically both, a homogenous territory ("Serb") and a form of sovereignty ("Republic").⁸²⁶ It is important to note, that Richard Holbrooke, the main architect of the Dayton Agreement, later regretted that the name "Republika Srpska" was accepted,⁸²⁷ because it legitimised the demand of autonomy and eventually secession of the RS even more.⁸²⁸ The key feature of Bosnian identity politics is therefore the high degree of autonomy of the Republika Srpska and the Croatian cantons (and Bosniak cantons) in the FBiH. 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. As has been identified above, Bosnia-Herzegovina is a prime example of consociational democracy, which guarantees all its major segments autonomy, proportional representation and inclusion in grand coalitions.⁸²⁹ What is interesting to examine is the development of identity politics in the post-war period. While Dayton allowed a massive 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 nationally neutral. As it is the core of every federal system to develop two levels of loyalty, one to the region/state/Land/entity/national group and one to the country, it is especially

⁸²² 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.

⁸²³ Guy Robinson and Alma Pabrić demonstrate the homogenisation of territory by analysing the landscape of Sarajevo and other Bosnian cities and argue that '[t]he context within which identity is being redefined is dominated by increased spatial separation of the three principal ethnic groups, while politicians on all sides have promoted their interest largely in terms of ethno-nationalist division.'

See: Robinson, Guy and Pabrić, Alma: 'Nationalism and Identity in Post-Dayton Accords: Bosnia-Herzegovina' in: *Tijdschrift voor Economische en Sociale Geografie*, Vol. 97, No. 3, 2006, pp. 237-252, here p. 248.

⁸²⁴ 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.36-37.

⁸²⁵ Holbrooke, Richard: *Meine Mission*, 1999, p. 208.

⁸²⁶ This is also in line with the Yugoslav federal experiences, where most the federal sub-units were called Republics.

⁸²⁷ Ibid. p. 554.

⁸²⁸ 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 among supporters of the Croatian self-government movement.

⁸²⁹ We will not go into depth about the consociational nature of the system in Bosnia and Herzegovina, as this has been done in the Chapter "The Bosnian Federation".

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, we have suggested that every multinational federation needs inclusive mechanisms, which allow for the development of identification with the main country in which the different national groups live. 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 the Bosnian Serbs, Croat cantons for the Bosnian Croats and Bosniak cantons for the Bosniaks)
3. Identification with the kin- state in the case of the Bosnian Serbs and the Bosnian Croats
4. Identification with Bosnia and Herzegovina
5. Identification as Europeans

As can be easily understood, Bosnian Croats and Bosnian Serbs identify mainly with their own national group and the respective territory under the control of the national group, while Bosniaks, the only nation that has no kin- state, identifies mainly as Bosnian and Herzegovinan.

The Dayton Constitution as our first focus point 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 representation of the three constituent peoples in all state institutions.⁸³⁰ Very important to mention is the “vital national interest veto” which the 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.⁸³¹ 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.⁸³² 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.⁸³³ These provisions clearly addressed the protection of all Bosnians as citizens and supported therefore the overarching identity as a Bosnian citizen in opposition to the exclusive policy of national belonging. The post- Dayton period

⁸³⁰ Since 2002 this is also the case for entity and cantonal institutions. These changes resulted from the Decision of the Constitutional Court of Constituent Peoples.

⁸³¹ Marko, Joseph: ‘Bosnia and Herzegovina- Multi-Ethnic or Multinational?’ 2000.

⁸³² As of 31st December 2007, 446.611 refugees returned and 578.400 internally displaced persons returned.

See: UNHCR in BiH: *Statistics Package (as of 31st December 2007)* see:

http://www.unhcr.ba/updatejan08/SP_12_2007.pdf, p.3.

⁸³³ The contradiction in the Constitution is explained in: Woelk, Jens: ‘Federalism and Consociationalism’, 2004, p. 186.

saw a competition between both layers of identity through different proposals and policy decisions. On the one side the national groups attempted in their respective territory (but also with their members in other areas of BiH) to manifest the national identity and avoid by all means the development of a civic form of identification. On the other side several organisations, international and national, attempted to counter- balance these attempts by undermining the dominance of national groups in parts of Bosnia and Herzegovina. We can therefore identify two main positions in the process of identity politics in post- Dayton Bosnia. On the one side 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. On the other side we have the international community, especially the Office of the High Representative, the UNHCR and 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 “battles” about identity in Bosnia, we have to look into the measures the two opposing sides took, to support their strategic aims. 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 majority’⁸³⁴ 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 DPAD and hindered the integration of Bosnia
- All nationalist parties attempted to prevent refugees of the other national group to return to the area, which 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 group⁸³⁵
- 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

⁸³⁴ Domljan, Vjekoslav: ‘A Bosnian diplomat reflects on a federation on the flaut lines of three civilizations’ in: *Federations*, Vol. 4, No.4, 2005, pp. 17-18, here p. 18.

⁸³⁵ 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.

- Dual Citizenship for the Bosnian Croats and not as frequent also for the Bosnian Serbs and their kin- state

Bieber has argued that the three constituent peoples have an 'asymmetric commitment to the state,' with the Bosnian Croat and Bosnian Serbs focusing much more on their territory within the state while the Bosniaks identify completely with the whole state of Bosnia and Herzegovina.⁸³⁶ When discussing the policies of exclusion, discrimination and national homogenisation,⁸³⁷ we see again how important the regional level is 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 by the Social Democratic Party. Until today the HDZ (Croatia) supports its Bosnian counterpart and as the last elections in Croatia have demonstrated, Bosnian Croats have a key impact on the political process in Croatia.⁸³⁸ Since the first post- war years saw a further destruction of Bosnia and the integration of the Croatian and Serbian settlements into their kin- state,⁸³⁹ 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.'⁸⁴⁰ Instead, he acted as a 'toothless tiger', lacking financial resources, personal and especially imposition rights.⁸⁴¹ Indeed, Carl Bildt, the first High Representative was rather 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.⁸⁴² 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

⁸³⁶ Bieber, Florian: 'After Dayton, Dayton?', 2006, p. 21.

⁸³⁷ 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.

⁸³⁸ One of the main reasons why the HDZ won the elections in Croatia in 2007 was that it got massive support from the Bosnian Croats (who are also allowed to vote in Croatian elections). The Social Democratic Party in Croatia did not stand for election in the Bosnian Croat territories because it refused to see the Bosnian Croats as "Diaspora" and argued instead for their recognition as "Bosnians."

⁸³⁹ Richard Holbrooke identified the following points as the main obstacles to a re- integration of Bosnia and further progress towards the development of a multinational democracy: a) Institutionalised military division between the former enemy armies; b) The continued attempt of the RS to undermine Dayton; c) The early end of NATO attacks on Bosnian Serb positions that left the war "undecided"; c) Weak mandate of the International Police Task Force especially the lacking policing powers; d) The strong focus on the military aspects of Dayton while neglecting the civilian implementation; and e) The time limitation in the mandate of the NATO led IFOR troops. He clearly points out that the Dayton critics were right to some extent, because the Peace Treaty did legitimise ethnic cleansing and especially until 1997 it strengthened the politics of those that wanted to divide Bosnia. See: Holbrooke, Richard: *Meine Mission*, 1999, pp. 554-558.

⁸⁴⁰ Dayton Peace Agreement, Annex 10, Article V.

⁸⁴¹ Marko, Joseph: 'Post- conflict Reconstruction', 2005, p. 10.

⁸⁴² Bildt, Carl: *Peace Journey (The Struggle for Peace in Bosnia)*, Weidenfeld and Nicolson: London 1998.

much easier for the Bosnian parties to counteract the Dayton Agreement. Although they had to fear dismissal, Bosnian politicians were taken from all responsibility and could easily continue with a policy that undermined the Dayton Agreement. 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 are of key importance for the development of post- Dayton Bosnia. For the moment, let us focus on the development of identity politics in Bosnia after the mandate of the High Representative was extended and he had imposition and dismissal powers.

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,⁸⁴³ a common currency,⁸⁴⁴ a national anthem⁸⁴⁵, a new code of arms⁸⁴⁶ and a new law on citizenship.⁸⁴⁷ All these important decisions regarding identity policy aimed at counterbalancing the national identity and create a Bosnian civic identity. Therefore, neither the Bosnian flag, nor the currency and the code 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 to be printed on the bank notes. However, two important points have to be mentioned in the context of imposing identity-constructing policies. Firstly, as Bieber has observed, the imposed flag and currency have become accepted in Bosnia.⁸⁴⁸ Secondly, as Bojkov argues, the impositions were not based on a colonial style of government, but 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.⁸⁴⁹ In fact, the OHR used a tactic of conditionality, which gave the Bosnian actors deadlines to implement a decision and otherwise would result in an 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 nationally-neutral licence plates for cars.⁸⁵⁰ The policies of the High Representative therefore counterbalanced the attempts of the nationalist parties to undermine the Dayton Agreement and further strengthen the national identity. The understanding of Bosnia- Herzegovina, which is represented in the decisions of the High Representative, is one of a multinational democratic state, in which the citizens of Bosnia and Herzegovina are the holder 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

⁸⁴³ OHR: *Decision imposing the Law on the Flag of BiH*, 3rd February 1998.

⁸⁴⁴ OHR: *Decision imposing the design of bank notes*, 27th March 1998.

⁸⁴⁵ OHR: *Decision imposing the Law on the National Anthem of BiH*, 25th June 1999.

⁸⁴⁶ OHR: *Decision on the shape and design of the coat- of- arms of BiH*, 18th May 1998.

⁸⁴⁷ OHR: *Decision imposing the Law on Citizenship of BiH*, 16th December 1997.

⁸⁴⁸ Bieber, Florian: 'After Dayton, Dayton?', 2006, p. 16.

⁸⁴⁹ Bojkov, Victor: 'Democracy in Bosnia and Herzegovina', 2003 p. 56.

⁸⁵⁰ OHR: *Uniform Licence plates in BiH*, Press Release, Sarajevo 31st January 1998.

territorial rather than an ethnic federal system.⁸⁵¹ We can therefore conclude 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 especially by connecting it to the kin state through economic and political integration especially by the HDZ and the SDS 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 exclusion 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 key 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 time. Already in 1999 the Constitutional Court took a major decision regarding the position of the Chair of the Council of Ministers. According to the common practice of the nationalist coalition, the position would rotate every several month among 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.⁸⁵² However, the major parties needed a long time to implement this decision and as a consequence BiH was without a government for some time.⁸⁵³ The Court attempted to counterbalance the weakening of the central institutions through the nationalist parties by clearly defining the mandate of the institutions and therefore de- legitimising the nationalist policies of rotation. The most important decision of the Constitutional Court so far is without any doubt its contribution in the case of the “Constituent Peoples of Bosnia and Herzegovina.”⁸⁵⁴ The Court declared it for unconstitutional that the Constitution of the RS refers to “the state of Serbs” while the Constitution of the FBiH referred to Croats and Bosniaks as constituent peoples. In the opinion of the state the Preamble of the Dayton Constitution clearly outlined that “Bosniaks, Croats and Serbs, among 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 our thesis from above, that Bosnia and Herzegovina is a new form of a federal system. What the Court effectively decided on 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

⁸⁵¹ Cohen, Lenard: ‘Fabricating Federalism’, 2002, p. 137.

⁸⁵² Constitutional Court of Bosnia and Herzegovina, Judgement in the case U-1/99.

⁸⁵³ Woelk, Jens: ‘Federalism and Consociationalism’, 2004, p. 188.

⁸⁵⁴ Constitutional Court of Bosnia and Herzegovina, Judgement in the case U-5/98 especially part III.

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 Constitution 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.⁸⁵⁵ It is worth mentioning that these constitutional changes did not go back to the consensus of the parties involved, but were imposed by HR Petritsch in 2002 despite intensive negotiations and pressure from the OHR. 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 not in line with the Dayton Constitution as they represent para- states and discriminate against other national groups.⁸⁵⁶ We can therefore conclude that the third important development in identity politics in post- Dayton Bosnia is the strengthening of a civic concept of identity by the 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.⁸⁵⁷

Let us now move on in our examination of policy areas and look at security policy in post-Dayton Bosnia.

6.2.3 Bosnian federalism and security sector policy

Security sector policy is of special importance and sensitivity. As a consequence of the war in Bosnia and Herzegovina, the country had more than 419.000 military, police and paramilitary forces, divided in three national contingents and without any cooperative links between them.⁸⁵⁸ Furthermore, these

⁸⁵⁵ For an in- depth analysis of the Court’s decision see: Bieber, Florian: *Post- War Bosnia (Ethnicity, Inequality and Public Sector Governance)*, Palgrave MacMillan: Basingstoke 2006, pp. 121-132 and International Crisis Group (ICG): *Implementing Equality: The “Constituent Peoples” Decision in Bosnia and Herzegovina*, ICG Balkans Report No. 128, Sarajevo and Brussels 16th April 2002.

⁸⁵⁶ Constitutional Court of Bosnia and Herzegovina, Case No. U 4/04.

See also: Lovrenovic, Ivan: ‘Bosnia and its symbols’ in: Bosnia Report, No.55-56, January-July 2006, see: http://www.bosnia.org.uk/bosrep/report_format.cfm?articleid=3167&reportid=173 (seen 15th August 2008).

⁸⁵⁷ Bajramovic, Jasmina: ‘Die Anderen in der Verfassungsordnung Bosnien- Herzegowinas’ in: *Schweizerische Zeitschrift für Internationales und Europäisches Recht*, Vol. 16, No. 2, 2006, pp. 217- 236.

⁸⁵⁸ 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.

security forces hosted 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 was therefore a key task assigned mainly to the international Stabilisation Force (SFOR) and the International Police Task Force (IPTF). It is therefore not surprising that the first two Annexes of the DPA dealt with military issues, while 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 respect for the internationally recognized human rights and fundamental freedoms [...]'*⁸⁵⁹

In fact, the DPA accepted the national division of the security forces and transferred the rights over military and police to the entities.⁸⁶⁰ Bosnia therefore 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 military policy is used as an example for the construction of Bosnia and Herzegovina as a confederation, rather than a federal state by several authors.⁸⁶¹ 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 on the one side, while 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 the "empire- light"⁸⁶² is therefore the underlying argument we will attempt to prove. We shall focus our analysis on the reform of the police and the military in Bosnia.

Police reform has been the dominant feature of Bosnian politics from 2003 until an agreement on police reform was finally reached in 2008. While impositions of the High Representative strengthened the central institutions through the establishment of several policing agencies, such as the State Border

See: ESI: *The worst in class (How the international protectorate hurts the European future of Bosnia and Herzegovina*, 8th November 2007, p. 2, footnote 4.

⁸⁵⁹ Bosnian Constitution, Article III, 2c.

⁸⁶⁰ In the FBiH the policing rights were further transferred to the cantons, while the implementation of a joint Croat- Bosniak military in the FBiH took place only after several interventions of the international community, especially the USA.

⁸⁶¹ 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.

⁸⁶² Ignatieff, Michael: *Empire Light (Nation- Building in Bosnia, Kosovo and Afghanistan)*, Vintage: London 2003.

Service⁸⁶³ and a State Investigation and Protection Agency,⁸⁶⁴ the main problems of Bosnia's ordinary police remained. As an important think tank put it,

*[d]uring 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 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 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.*⁸⁶⁵

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), widely seen as the first major step towards eventual EU membership.⁸⁶⁶ The need for a reform of the police organisation and structure was generally accepted, even among 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 Commission⁸⁶⁷ 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 of ministries in the Council of Ministers.'⁸⁶⁸ 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

⁸⁶³ OHR: *Decision imposing the Law on State Border Service*, 13th January 2000.

⁸⁶⁴ 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 representative 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*, 23rd December 2004.

⁸⁶⁵ ICG: *Bosnia's stalled police reform: No progress, no EU*, Europe Report No. 164, 6th September 2005, p.2.

⁸⁶⁶ *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, 18th November 2003.

⁸⁶⁷ 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).

⁸⁶⁸ OHR: *Decision Establishing the Police Restructuring Commission*, 5th July 2004, Article I.1.

3. Local police areas designed on the basis of technical, policing considerations, rather than politics⁸⁶⁹

The outline of the reform was therefore set by the EU, rather than by Bosnian elites from the central institutions and entities. As the police reform became part of EU and NATO conditionality,⁸⁷⁰ the pressure on local elites increased. After the presentation of the Report of the Police Restructuring Commission in December 2004, known as the Martens Report and the general agreement on police reform of the Bosnian elites in 2005, the EU started negotiations on a SAA with Bosnia and Herzegovina. However, while there was a basic agreement on police reform among 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 over the major conflict between the Bosnian elites, with Bosniak and Croat representatives supporting major parts of the reform, while 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.'⁸⁷¹ 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, coming from all three sides of the Bosnian representatives. While the Bosniaks were not willing to support a "watered down police reform", the RS representatives objected with all strength 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 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.⁸⁷² The hands of the OHR to put further pressure on the parties were tied since imposition was not an option. While police reform in Bosnia does not require any constitutional reforms, the international community and in particular the High Representative were unable to impose the reform, because it had become part of the EU conditionality package for Bosnia. 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, while in reality several European states have police units that are organised on the sub- unit level. Furthermore,

⁸⁶⁹ 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.

⁸⁷⁰ Resulting for example in the rejection of candidate status for BiH for the NATO Partnership for Peace Program.

See: Ibid. p. 5.

⁸⁷¹ Conclusions of the National Assembly of the RS, 30th May 2005.

⁸⁷² OHR: *Interview: Raffi Gregorian, Principal Deputy High Representative: „Silajdzic and Ivanic have blocked police negotiations“*, Press Release, 18th March 2007.

the OHR and the EU attempted to argue that police reform would be more cost efficient, while other studies demonstrated an actual increase in spending in case of a police reform.⁸⁷³ Police reform threatened Bosnia's EU perspective and resulted in a serious showdown, when the High Representative Lajčák changed the decision-making procedure in the Council of Ministers in October 2007.⁸⁷⁴ The Bosnian Serb representatives saw these changes as a punishment for their opposition to police reform.⁸⁷⁵ As a consequence the RS Prime Minister Dodik threatened the boycott of all state institutions. Even discussions about a referendum started again in the RS. 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.'*⁸⁷⁶

After several weeks of further tensions and a standstill in negotiations, the High Representative had to give in. Bosnia went through weeks of tensions, with some people even fearing the outbreak of violence again.⁸⁷⁷ Instead, the leaders of the six major Bosnian parties (representing all three national groups) agreed 2007 on the "Mostar Declaration", a core commitment to the police reform and the will of Bosnian politicians to move their country closer to the EU. Finally in April 2008 the police reform passed both Houses of Parliament and two laws are now in the implementation phase. Bosnian politicians connected, however, the final solution of the police reform with the debate about constitutional reform,⁸⁷⁸ a connection which would have made sense from the beginning. 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.⁸⁷⁹ The results of the police reform, which indeed is no reform at all because it delays the whole process again, can be characterised as "failed conditionality."⁸⁸⁰ The limits of external state-building through the use of conditionality were clearly visible during the process of police reform negotiations. What is important for our analysis is that the external attempt to further strengthen the central institutions by centralising the police has de facto failed. The conflict lines between the OHR,

⁸⁷³ ESI: *The worst in class*, 2007, pp. 4-7.

⁸⁷⁴ OHR: *Decision Enacting the Law on Changes and Amendments to the Law on the Council of Ministers of Bosnia and Herzegovina*, 19th October 2007.

⁸⁷⁵ ESI: *The worst in class*, 2007, p. 8.

⁸⁷⁶ Nikola Spirić, cited in: MacDonald, Neil: 'Bosnian prime minister resigns amid tensions' in: *Financial Times*, 2nd November 2007.

⁸⁷⁷ ESI: *The worst in class*, 2007, pp. 1-2.

⁸⁷⁸ Topic, Lidija: 'Making Bosnia and Herzegovina's transformation irreversible' in: *EPC Policy Brief*, June 2008, p. 1.

⁸⁷⁹ Richter, Solveig: 'Ende einer Odyssee in Bosnien-Herzegowina', *SWP Aktuell* 41, May 2008, p. 3.

⁸⁸⁰ Keil, Soeren: 'Wenn Konditionalität versagt: Bosnien-Herzegowina und die EU' in: *Eurosduvillage*, July 2008.

Bosniaks and Croats on the one side and the Bosnian Serbs from the RS on the other side have eventually strengthened those that are against further centralisation and insist on the power 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.⁸⁸¹ The threat of a total boycott of all Bosnian institutions is too strong. An EU official in Sarajevo confirmed that the EU itself is not very proud about its role during the negotiations about a police reform. In his opinion this could only happen because there is no clear EU standard on policing and this "anarchy" was literally abused. However, he argued that in the future the EU should focus on the Copenhagen Criteria and the implementation of the aquis communautaire when discussing Bosnia's accession.⁸⁸² It seems as if the Office of the High Representative has realised that its position in Bosnia is not only permanently damaged but permanently weakened and in the end not justified any more. Shortly after the final passing of the laws on police reform in the Bosnian parliament, the High Representative announced the final conditions which need to be fulfilled for the closure of the OHR.⁸⁸³

While the police reform is discussed as an example of "failed conditionality" and "failed external state- building," the military reform, which took place several years before the police reform is often acknowledged as one of the major successes of conditionality and external state- building. Indeed, the NATO Headquarters Sarajevo Commander Major General Richard Wightman has recently announced that:

*'BiH has so far made good initial progress in developing co-ordination and co-operation among government ministries and agencies. [...] The achievement of credible candidacy for NATO membership will be a challenging process, requiring co-operation, co-ordination, communication, and synergy between all BiH actors. BiH is not alone in this task and NATO will continue to support BiH in its efforts to progress within the Alliance.'*⁸⁸⁴

As has been mentioned above, 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).⁸⁸⁵ As the EU did in its feasibility study, NATO identified key areas that needed reform before Bosnia could be considered a candidate country for PfP

⁸⁸¹ Interview with an OHR official, Sarajevo, 26th August 2008.

⁸⁸² Interview with an EU official, Sarajevo, 1st August 2008.

⁸⁸³ OHR: *Address of the High Representative to the UN Security Council*, OHR Press Release, 19th May 2008.

⁸⁸⁴ 'General Wightman: BiH defence reform is a success' in: *Balkantimes*, 18th August 2008, see: www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/articles/2008/08/18/reportag-01 (seen: 18th August 2008, printout in possession of the author).

⁸⁸⁵ Bosnia and Herzegovina applied for membership in NATO's PfP in July 2001.

and eventually joins the Partnership programme.⁸⁸⁶ 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 [...]'.⁸⁸⁷ 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 all these demands the High Representative Lord Paddy Ashdown established the 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.'⁸⁸⁸ In a much better argued case for centralisation, 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 the power over defence to the state- level. The creation of a Ministry of Defence at state level should therefore finally be the greatest success of centralisation in Bosnia and Herzegovina. 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 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. While 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.⁸⁸⁹ It was the second package about the final transfer of all authority to the state level, which provoked more opposition especially from the 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 expenditures 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 off this burden. As Dragan Cavić, the President of the RS and Head of the SDS at the time put it: 'the RS would win more than it would lose.'⁸⁹⁰ 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 while at the same time limiting Bosnia's forces to 9-10.000 and establishing national keys for the new ministry and the officer's corps. Furthermore, the known 1:2

⁸⁸⁶ 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.

⁸⁸⁷ Bosnian Constitution, Article III, 5a.

⁸⁸⁸ OHR: *Decision Establishing the Defense Reform Commission*, 9th May 2003, Article 2/4.

⁸⁸⁹ Prljic, Dijana and Krause, Christina Catherine: 'Verteidigungsreform in Bosnien und Herzogowina beschlossen' in: *Konrad- Adenauer- Stiftung in BiH- Länderberichte*, 10th October 2005 p. 1.

⁸⁹⁰ Dragan Cavić, cited in: *Ibid.* p. 2.

formula of the Dayton Constitution was applied to the distribution of the troops, with 2/3 being stationed in the FBiH and 1/3 in the RS.⁸⁹¹ The reform became law on the 1st 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. It has been acknowledged that although the central state does have the full competences, the entities have not abolished their ministries of defence completely. This results in double- structures and more expenses for the administration. Furthermore, the new Ministry for Defence was in its early stages understaffed and the entities continued to have a key impact on the implementation of the reform.⁸⁹² 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. Indeed, when NATO invited BiH to join PfP in late 2006, Bosnia did not fulfil all the conditions set out by NATO. Especially the police reform and the cooperation with the ICTY were seen as weak points. The High Representative at the time, Christian Schwarz- Schilling summarised it as follow:

*'NATO's decision [...] to invite Bosnia and Herzegovina into the Alliance's Partnership for Peace programme and Euro- Atlantic Partnership Council should not be interpreted as backtracking on ICTY cooperation. Rather, it should be seen as an important step towards Euro- Atlantic integration that brings with it additional responsibilities, including renewed ICTY cooperation. The decision surprised many [...]. It must be viewed, therefore, as an unexpected but immensely valuable boost to Bosnia and Herzegovina's efforts to open a new chapter in constructive international relations.'*⁸⁹³

While the EU insisted on Bosnia reforming its policing structures before it could initiate and sign the SAA, NATO offered BiH a clear perspective for integration and praised the reforms by the Bosnian elites. Indeed, when Bosnia finally joined PfP it had created a central army, the prospect of police reform was very promising and the reform of the state border service and the introduction of a unified intelligence service demonstrated major steps forward.⁸⁹⁴ To honour these achievements while demanding further progress through the integration of Bosnia and Herzegovina in Euro- Atlantic structures has proven more successful than the strategy of putting Bosnia off because of stalled reforms.

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 were started by international actors and picked up by the OHR to become domesticated. This process has been very successful concerning the Military/ Defence Reform, which established a unified army under central state control

⁸⁹¹ Ibid. pp. 2-4.

⁸⁹² Bieber, Florian: 'After Dayton, Dayton?', 2006, p. 19.

⁸⁹³ OHR: *Weekly column by Christian Schwarz- Schilling, High Representative for BiH: „The Meaning of PfP Membership“*, OHR Press Release, 1st December 2006.

⁸⁹⁴ Bieber, Florian: 'After Dayton, Dayton?', 2006, p. 19.

and with nationally- mixed brigades. 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 the security in BiH. The police reform on the other side saw the EU and the OHR entering a critical stage of state- building in which external actors should not have any say anymore. It must be up to the Bosnian elites to agree on the police structures and the organisation of the police along sub- unit lines is a very common feature in many federations from Belgium to Germany and in the United States. All reforms of the security forces attempted to overcome national segregation and in fact isolation and install multinational security forces that would cooperate independently of the IEBL. Even so the Ministry for Defence and all state agencies are based on national keys; the centralisation of such important security areas as border control, military and fight against organised crime has proven to overcome national divisions and create an atmosphere of cooperation, consensus and has indeed contributed to the creation of trust between the members of the different national groups in the ministries and agencies.

6.2.4 Fiscal Federalism in Bosnia- Herzegovina

The analysis of fiscal federalism is a key element in the study of federal political systems. As federalism is all about “shared sovereignty” and consequently also about “shared responsibility”, the distribution of fiscal resources between the different levels of government is of key importance. The state level, sub- unit governments and municipalities will only be able to actively 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 massively on the actual functioning of the state. Since it is of key importance that sub- unit governments and municipalities can fulfil their task and strengthen their connection to the citizens, fiscal federalism also impacts on identity formation. Nevertheless, often political scientists and constitutional lawyers avoid the analysis of fiscal relations in a federal system, as it is seen to be the task of economists. We cannot avoid the analysis of fiscal relations in BiH and although it is not our aim to analyse each and every relation in fiscal affairs in detail, we will see that the import features of continued centralisation and the impact of international actors also characterise Bosnia’s fiscal system.

The Dayton Constitution is very simple and very clear concerning fiscal relations. 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.’*⁸⁹⁵

Article VIII, which deals with the Finances of the state level furthermore states:

⁸⁹⁵ Bosnian Constitution, Article III, 2b.

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.*⁸⁹⁶

To put it into simple words: 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 administrative fees.'⁸⁹⁷ The central level of government is completely dependent on the entity governments and their "will" to provide for the state. There is no other federal state in the world, where the centre is that weak in financial terms. However, we might mention the EU here, whose federal or quasi- federal qualities cannot be ignored and whose budget is also massively based on the contributions of the member-states. Having said this, analysts of the EU always argue that the financial dependence of the Union is a symbol of confederalism, a symbol of the continued dominance of the member- states. Some European Federalists have therefore demanded the introduction of an EU tax to give the Union independent financial resources.⁸⁹⁸ The comparison with the EU therefore 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.⁸⁹⁹ Once again we have to remind ourselves that the Dayton Constitution merely constituted what already existed. During and after the war in BiH '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.'⁹⁰⁰ Dayton therefore ratified a system, which operated already on the ground, although the state Constitution and the FBiH Constitution made provisions for the merger of the 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 and especially discussing fiscal federalism in this context it has to be highlighted that the financial autonomy followed the logic of the DPA. Decentralisation and far- reaching competences for the entities and cantons was one underlying

⁸⁹⁶ Ibid. Article VIII, 1 and 3.

⁸⁹⁷ Spahn, Paul Bernd: 'A federal Bosnia and Herzegovina: can a weak centre lead the way?' in: *Federations*, Special Tripple Issue: Themes of the International Conference on Federalism, 2002, pp. 19-20, here p. 20.

⁸⁹⁸ Leinen, Jo and Kreutz, Jan: 'The Lisbon Treaty- What Next?' in: *The Federalist Debate*, Vol. 21, No. 2, July 2008, pp. 33-37.

⁸⁹⁹ Stahn, Carsten: 'Föderalismus im Dienste der Friedenssicherung', 2002, p. 394.

⁹⁰⁰ 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.

principle, which legitimised the existence of officially two, de- facto three armies and consequently also legitimised the fiscal decentralisation towards the entities. 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 very weak central institutions. A World Bank report in 1997 concluded therefore that '[t]he State's sustainability is a concern in this environment, where a strong degree of distrust exists.'⁹⁰¹

Since taxation was decentralised and part of the competences of the entities (and in the FBiH further decentralised to the cantons), coordination, cooperation and fiscal harmonisation were of key importance to prevent fiscal crimes, corruption and implement the money of the international community effectively. However, since the original competence for taxation was with the entities, all cooperation had to be voluntary.⁹⁰² It is therefore no surprise that the lack of cooperation and harmonisation but also the financial queries between the central level and the entity level resulted in the intervention of the international community.⁹⁰³ In the first post- war years it were especially international donors who demanded further reforms in the fiscal policy, leading to more cooperation and coordination between the entities, while after 1997 the OHR took over and indeed imposed several pieces of legislation that impacted on the fiscal relations between the entities and between the entities and the central level.⁹⁰⁴ The direction of international policy was clear: Bosnia and Herzegovina needs to create a single economic area across its territory; therefore the tax systems between the different sub- units need to be harmonised and finally the effective functioning of the central government must be in position to have independent revenues.⁹⁰⁵ 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 state is responsible for customs policy,

⁹⁰¹ Ibid. p. 11.

⁹⁰² 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.

⁹⁰³ Ibid. p. 297.

⁹⁰⁴ 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 /revenue autonomy towards the central state.

Examples of these policies include:

OHR: *Decision on the Law on the State Border Service*, 13th January 2000.

OHR: *Decision on Law Amending the Law on Customs Policy*, 20th December 2000;

OHR: *Decision Establishing the Indirect Tax Policy Commission to Establish the Indirect Tax Authority*, 12th February 2003;

OHR: *Decision Enacting the Law on Amendments to the Law on the Indirect Taxation System in BiH*, 25th October 2004;

OHR: *Decision on Enacting the Amendments to the Law on the Sales Tax on Products and Services in BiH*, 14th July 2005;

OHR: *Decision on Enacting Amendments to the Law on Excise Duties in BiH*, 14th July 2005.

⁹⁰⁵ 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.

but the entities are responsible for customs administration.⁹⁰⁶ 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.⁹⁰⁷ As a consequence of the centralisation of customs revenues, the parties at the state- and entity level were pressured by the OHR and major international donors, such as the EU⁹⁰⁸ 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 in 2004 / 2005 was connected with the introduction of a single Value Added Tax (VAT) throughout the country under the authority of ITA.⁹⁰⁹ The introduction of a VAT was adopted by the two chambers of the state parliament in early 2005 and since January 2006, there is a single VAT rate of 17 per cent in use throughout BiH. The revenues of the VAT are distributed among the different levels of government, with the 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.⁹¹⁰ 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, who 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 completely 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 and leave little room for new investment and the support of education and the transportation system.⁹¹¹ Where does this analysis leave us in terms of our main thesis of this chapter? We have seen that fiscal policy in post- Dayton BiH contributed to the strengthening of the central institutions and the stronger independence of these from the entities. We have also seen that the High Representative and other international actors, especially the EU, played a key roles in this centralisation process. Finally, we have seen that 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 /entities have incentives to agree on reforms; especially when those reforms support their position in the political system, then there is a chance for cooperation and consensus among the Bosnian politicians.

⁹⁰⁶ Fox, William and Wallich, Christine: 'Fiscal Federalism in Bosnia and Herzegovina', 1997 p. 10.

⁹⁰⁷ 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.

⁹⁰⁸ 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, 18th November 2003.

⁹⁰⁹ Werner, Jan et al.: 'Fiscal Federalism in Bosnia and Herzegovina', 2006, pp. 12-13.

⁹¹⁰ Ibid. p. 13.

⁹¹¹ World Bank: *Bosnia and Herzegovina*, 2005, pp. VI-X.

6.3 Summarising Bosnian federalism

After the attempt to prove our original hypothesis, namely that Bosnia and Herzegovina represents a new model of federalism and consequently also federation, we have to go back to the theoretical debate about federalism in BiH. It seems at this point useful to understand Bosnian federalism by focusing on six key characteristics of the federal idea in BiH.

I.: Contested visions of federalism among the Bosnian elites and institutions

As has been demonstrated above, 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 more as a Union of peoples and entities, than a federal country based on the contract among equal peoples. These contested ideas about federalism are the most important element of the Bosnian federal political culture. Generally, there tends to be a different interpretation of federalism and federation in multinational federation. The majority nation tends to identify more with the common state and see federalism as a contract between equal sub- units while minority nations tend to see the federal agreement as a contract between equal peoples. Since territory and national group overlap in the Bosnian case, the assessment of federalism is even more complicated. While there is no clear minority and majority nation in Bosnia, there is however different levels of identification and interpretation of the state. The Bosniaks as the potential majority nation 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 2001.⁹¹² In Bosnia this becomes 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 of Bosnia and Herzegovina. Both institutions have attempted 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. This has only been partially successful, although we can clearly recognise a much lower risk of secession, violence and national hatred than in 1995. The creation of a common understanding of Bosnia and Herzegovina and the role of federalism as a discourse and federation in the political system is therefore a major challenge for the Bosnian elites as well as for the international community. Only a partnership (High Representative Wolfgang Petritsch) between the local actors and the international community can start a discussion on the basic principles and understanding of their state. This is the precondition for any form of constitutional revision. There is a lot of literature arguing Bosnia needs to go the way from "Dayton to Brussels" but there is nearly nobody arguing for the pit-

⁹¹² McRoberts, Kenneth: 'Canada and the Multinational State', 2001 p. 684.

stop in Sarajevo. Before Bosnians do not understand their own state and the role federalism can and will play in it, there will be no accession of BiH to the EU.

II.: International actors as key factors in Bosnia's political system

Federalism in BiH is therefore not only contested between the Bosnian parties and institutions, but international actors have provided additional input into these discussions. The origin of Bosnian federalism goes back to the imposition of the federal value 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, discussions and understanding of the state in BiH. The impact of "external state- building" is remarkable, due to the pressure of international actors, especially the HR, Bosnia has today a common army, the state has independent financial resources and the power of the central institutions has massively 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.⁹¹³ If we want to shed light into the role of the High Representative in the federal system of Bosnia and Herzegovina, we have to go back to the early writings on federalism. Daniel Elazar argued that federalism in short means "shared- rule and self- rule"⁹¹⁴ between central and sub- unit levels of government. If we accept this definition as the essence of federalism, then we can argue that High Representative has become a new, a third actor in the realisation of shared rule and self rule. The High Representative contributed to a new definition of these terms, since his "self- rule" meant imposition without democratic legitimacy and his "shared- rule" meant usually to pressure Bosnian actors to agree on reforms. Furthermore, the High Representative contributed to the debates about the understanding of federalism in BiH by interpreting the DPA in his own terms. These interpretations usually saw a strengthening of the central institutions and a weakening of the entities as its core element. The policy input of the HR furthermore saw an undermining of the identification of one national group with a territory in Bosnia and Herzegovina, such as for example the imposition of a neutral flag, currency and anthem on the one side and the support and imposition of the decision of the Constitutional Court in the Constituent Peoples Case on the other side. The HRs have therefore supported a strategy of de- nationalisation of Bosnian federalism and the understanding of federalism more in territorial terms 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" among the Bosnian elites. It was easier to blame the HR for policies than to agree on them. The conflicts between the HR and several Bosnian parties and party representatives resulted in the removal of several officials from their position and the support of the OHR and the international

⁹¹³ For an assessment of the High Representative in BiH see:

Caplan, Richard: 'International Authority and State Building: The case of Bosnia and Herzegovina' in: *Global Governance*, Vol. 10, 2004, pp. 53-65, here pp. 57-62.

⁹¹⁴ Elazar, Daniel: *Exploring Federalism*, 1987, p. 12.

community for certain “cooperative” parties and persons. These removals and support strategies had a lasting impact on BiH with the SNSD being today the most important and dominant party in the WHOLE country (thanks to the initial support of the SNSD by the OHR and other international organisations).⁹¹⁵ It would however, be too short 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 cooperate. If this would be the case, we would have a hard time explaining 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. These negotiations are more often than not successful, although the account of international pressure on the success is hard to assess. The High Representative and other international actors such as the OSCE support local decision- making nowadays and motivate and facilitate when necessary. We can argue that these developments have contributed to the creation of some form of federal political culture.

The ambiguous role of the High Representative (and the EU) during the discussions about a police reform resulted in the final realisation of the international community that it is time to leave the political process and progress in BiH to the Bosnian elites. What is therefore necessary today in Bosnia is that all major segments of Bosnia and Herzegovina’s political spectrum have the *capacity* and the *will* to unite, to use the terms of Kenneth Wheare. The process of constitutional reform in Bosnia and Herzegovina can therefore be seen as the first step towards an independent federal bargaining among Bosnian elites.

Having said this, since 2006 the OHR is unclear about its own role in Bosnia and so are all major representatives of the international community including the EU. This has resulted in insecurity among Bosnians as well as in the rise of nationalist rhetoric among the dominant Bosnian elites. While there are signs of a federal political culture, Bosnia remains an unstable and weak country and only the integration into the EU will manage to stabilise the situation and hold the country together.

III. Bosnia and Herzegovina goes through a process of democratisation AND federalisation at the same time

Indeed, these are no two separate processes of democratisation and the installation of a functional federal system in BiH, but both processes merged into one. The centralisation of defence for example contributed the strengthening of the 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.⁹¹⁶ What does this tell us? First, it tells us

⁹¹⁵ Although the SNSD is only running in the RS in elections.

⁹¹⁶ 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.

that Carl Friedrich was right in his argumentation, that federalism should be seen as a process rather than a static framework. Second, it tells us that democratisation and federalisation have a lot of things in common and future research has to prove the connection of the two processes. For BiH we can conclude that the one results in the other and they therefore merge. But again, this is also due to the special nature of the federal system in BiH. Third, we can see how democratic institutions and values together with the appropriate instruments of federalism can contribute to peace and stability in a multinational environment. After all, there is nobody who would deny that Bosnia- Herzegovina is a stable and peaceful country today, with the risk for new violence being extremely low. Finally, we can argue that the connection of federalism and consensus democracy has proven successful in Bosnia. There is a policy output and although the system is slow, the Bosnian elites have been able to agree on core reforms and Bosnia is slowly moving closer towards European integration. After the analysis of the policy areas above, there can be hardly any doubt that Bosnian politicians will be able to move their country closer to the EU in the years to come, without the pressure and the threat of the Office of the High Representative in the background. Much needs to be done to establish a lively consociational and federal model in BiH, but the country surely is on the right path.

IV.: Compromise and Cooperation as the main values of Bosnia's federal system

We have to keep in mind, that the imposed character of the Dayton Agreement did not institutionalise any core values of federalism. What was institutionalised was a system of strict power- sharing between the three constituent peoples. The institutionalised power- sharing mechanisms have been criticised in the past, and it has been argued that 'informal means of power-sharing'⁹¹⁷ are missing and might help to reach consensus easier. Since grand coalitions are of immense importance in a consociational democracy, the possibility for decision- making outside the actual restrictive institutions must be given. Consensus democracy and federalism are based on the values of cooperation 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 cooperation, will to compromise and trust. There have certainly been some developments towards the creation of cooperation 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. The best example for the success of such informal decision- making institutions is the meeting of the party leaders who form the state government in late 2007 that resulted in the "Mostar Declaration" which marked the agreement on police reform after more than four years of negotiations. These mechanisms need to be strengthened, so do cooperative instruments in the political system. There is hardly any

⁹¹⁷ Bieber, Florian: 'Consociationalism', 1999, p. 85. Bieber refers here to Lijphart.

cooperation 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.'⁹¹⁸ In Bosnia the demand for continued dialogue between the different national groups often finds opposition from those who argue that dialogue was never the problem of the Bosnian politicians. They even talked on a constant basis while 100.000 people were killed in Bosnia during the 1992-1995 conflict. These arguments ignore the developments of the last 15 years, which resulted in the creation of a federal political culture that does accept difference and opposite opinions. There are signs in the decision- making process and in the day- to- day political development in Bosnia among all political parties, that the focus should not so much be on the difference any more, but the focus should be on the common things and especially on the common political aim to join the EU. If the EU would use the "moral" power it has in BiH, it would further strengthen the forums for party dialogue and informal decision- making, without of course delegitimising the whole political system. 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 cooperative institutions can contribute to these renegotiations as the experiences of Belgium demonstrate.

V.: Bosnia and Herzegovina moved from a "confederal- like" system in 1995 to a multinational federation

In our analysis we have several times pointed to the "confederal- like" character of the Bosnian system in 1995. It is confederal- like, because BiH was actually no confederation, the final authority rested with the state, which was the only recognised international body. However, 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 full- fledged multinational federation, in which central government and entity governments have exclusive competences and share tasks. The central government has been increasingly strengthened and oversees today a joint army and is responsible for indirect taxation. This centralisation has reduced the influence of the entities but they continue to be major players in the Bosnian political system. The centralisation has also helped to overcome the identification of BiH as a model of "ethnic federalism" and move towards a "territorial interpretation of federalism." However, recent events around the police reform as well as my interviews with representatives of the Bosnian Serbs confirmed that the process of centralisation is more or less complete. It can easily be argued that BiH continues to be a weak state, however if we compare the powers of the European Commission, which in most areas has much less competences than the Bosnian central government, we can see that even potentially weak central institutions can develop into major players in a federal or quasi- federal (the EU) system. It is therefore

⁹¹⁸ Tully, James: *Strange Multiplicity*, 1995, p. 24.

important for the Bosnian political leaders to focus on the coming debates, which will especially evolve around the implementation of the EU's *aquis communautaire* and the fulfilment of the Copenhagen Criteria. 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.⁹¹⁹ What does that mean for the international community and the Bosnian elites? For the international community it means that 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 the Bosnian elites it means it is time to take responsibility and develop a common understanding of the state. Is BiH moving towards an ethnic model of federalism? It seems unlikely today, but if political leaders should decide consensually that this is the right direction, then the introduction of a third Croat entity would only be a matter of time. The ongoing constitutional reform debate offers the possibility for the Bosnian elites to discuss these issues and answer them in a far- reaching agreement, which would define the nature of BiH as a federal and democratic state and its relation to sub- unit nationalisms.

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 about federalism in BiH. These outsiders have originally imposed their vision of federalism on the Bosnian elites and people, but became since 2002 more aware of the development of local ownership and democratic decision- making among the Bosnian elites. What started as “external state- building” has become domesticated nowadays and has contributed to the creation of democratic and functional institutions and a culture of compromise between the Bosnian parties (at least to some extent).

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 world- wide 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. People who argue that BiH is an ethnic federation ignore that the likeliness and support for secession among the Bosnian Serbs and the Bosnian Croats has been reduced drastically.⁹²⁰ Bosnia's democratic institutions

⁹¹⁹ The exception is the Brussels Capital Region.

⁹²⁰ While the figures were at an all-time low between 2003/2004, in particular the Bosnian Serbs have supported secession again after 2006.

are based on national keys, rotations and other elements of an ethnic democracy. But its federal system has overcome some of these elements such as the financial dependence of the central state level.

Bosnia indeed is a federal country, based on consociational democracy and important decision- making powers in the hand of a representative of the international community. Nevertheless, its pure existence for 15 years alone seems to be a miracle. The transfer of power to local elites and the developing will to cooperate and the returning trust of the national groups indicate the development of something rather unique in this country in Southeastern Europe. With all the debates mentioned above, there can be no doubt that Bosnia- Herzegovina represents a new model of federalism and federation and only the future will show, which way the Bosnian system will develop. It is however the very nature of federalism, consociationalism and all other forms of human cooperation that they hardly ever follow a certain pattern. This is why the case study of Bosnian federalism is so important.

Bosnian Croats in contrast do not support secession as such anymore, which has mainly to do with the developments in Croatia and the actions of the OHR against the autonomous Croat structures in Bosnia. See for the figures the UNDP Early Warning Reports, available at: <http://www.undp.ba/>

7. Conclusion

Before discussing and summarising the main arguments of this thesis and applying the framework developed in this thesis to a short comparative analysis, it is important to highlight some general remarks about the results and conclusions of this thesis. In the introduction we have stated three main aims, which this thesis was supposed to address, 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 of BiH. This thesis has achieved these three aims in two ways. First, Chapter Five examined the federal political system of Bosnia and Herzegovina as it has been implemented by the Dayton Constitution while 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 Six have explained the origins and development of federalism as a normative theory in Bosnia and Chapter Six clearly pointed out 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 for us to conceptualise Bosnia within the standard literature on federalism and federation. Furthermore, it is the lack of a coherent conceptualisation of multinational federalism⁹²¹ which also contributes to this gap. We have attempted to fill this gap by discussing Bosnia as a model of imposed federalism and internationally administrated federation. The second part of this Conclusion will explain in depth the theoretical and conceptual dimensions of these two terms and their relevance in Bosnia.

Finally, where does this leave us? We have demonstrated that Bosnia is an internationally administrated federation, which consequently 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 Five and Six, it would be too easy to argue that Bosnia is "only" administrated 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. Having said this, we might argue that Bosnia is a federation without federalism, since Chapter Three pointed out that Bosnia has never been organised federally before 1995 and Chapter Six argued that federalism is contested, as is the whole Bosnian state. Nevertheless, 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

⁹²¹ Chapter Two of this thesis examined some of the theories of multinational federalism. However, no coherent theory exists and the term is used mostly descriptive in the literature. Much more research on the normative dimension of multinational federalism and the relationship of democracy, nationalism and federalism is needed if we ever want to arrive at a satisfying conceptualisation of multinational federalism.

multinational nature of the state and the different visions of the nations in Bosnia on their shared state. 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. The Socialist Tradition does so on the one side through the argument of the Bosnian Serb elites that the RS should have the right to secede and the Bosnian Serbs should have the right to external self-determination (which is close to Lenin's arguments) and on the other side by demands of international organisations and scholars to implement non-territorial autonomy in Bosnia, namely for all minorities and for Bosniaks and Croats in the RS and Serbs in the FBiH. This is implemented in Belgium in the Brussels Capital Region and in a number of federal units throughout the Russian Federation. In Bosnia, this is completely missing, although the decision of the European Court of Human Rights to declare parts of the Bosnian Constitution not in line with the European Charter of Human Rights might lead to changes in this area.⁹²²

7.1 Bridging the gap: Studying Bosnia-Herzegovina in the light of federalism, conflict and democratisation studies

One of the major contributions of this PhD thesis is the bridging of a dividing gap in the academic literature. 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. While 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 dried up ever since.⁹²³ 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 while at the same time offering autonomy to minority nations. To understand the full extent to which Bosnia and Herzegovina indeed 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 such as the future role of Bosnia in a dissolving Yugoslavia. However, Dayton introduced a radically decentralised federation, which applies rigid power-sharing in

⁹²² European Court of Human Rights: *Decision in case: Sejdic and Finci v. Bosnia and Herzegovina, application nos. 27996/06 and 34836/06*, 22nd December 2009.

⁹²³ See the contributions of Lijphart, Elazar and Duchacek in: *Publius: The Journal of Federalism*, Vol. 15, No. 2, Spring 1985.

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 us to conclude that Bosnia and Herzegovina can be considered an “internationally administrated 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 have different interests. 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 future integration into Euro-Atlantic structures. This is why some authors speak of the state-building process in Bosnia as an “EU-member state” building process.⁹²⁴ This highlights the connection of different processes in Bosnia, namely

- a) A process of peace-building that has been mainly concluded
- 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 and the population 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. As will be discussed below, there seems to be a trend towards new models of federalism that have very much in common with the developments in Bosnia and Herzegovina. 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. After all, the preconditions for federalism and consociationalism are very similar such as a shared identity, moderate politicians and respect of diversity.⁹²⁵ None of

⁹²⁴ Reccia, Stefano: *Beyond International Trusteeship*: Paris 2007.

Anastasakis, Othon: ‘The Europeanization of the Balkans’ in: *Brown Journal of World Affairs*, Vol. 7, No. 1, 2005, pp. 77-88.

Sofia Sebastian calls it an “EU-led state-building process.” Compare:

Sebastian, Sofia: ‘The Role of the EU in the Reform of Dayton in Bosnia and Herzegovina’ in: *Ethnopolitics*, Vol. 8, No.3, 2009, pp. 341-354.

⁹²⁵ For federalism compare:

Watts, Ronald: *Comparing Federal Systems*, 3rd edition, McGill Queen’s University Press: Montreal and Kingston, 2008, p. 135.

Burgess, Michael: *Comparative Federalism*, 2006, pp. 107-113.

For Consociationalism see:

Lijphart, Arend: *Democracy in Plural Societies*, 1977, pp.53-103.

For the preconditions for power-sharing in general see:

these preconditions existed in Bosnia and Herzegovina; nevertheless a federal country was formed in 1995. The same can also be argued for Iraq in 2005. Therefore, the connection between federalism and power-sharing can also help us 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 to identify the nature of Bosnian federalism and the Bosnian federation.

7.2 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.’⁹²⁶ 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.’⁹²⁷ 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.’⁹²⁸

If we apply Putnam’s argument to Bosnia and Herzegovina we could easily argue that Bosnia had a low or even no social capital in 1995. There was no trust between the three different national groups, they have fought each other in the bloodiest war in Europe since World War II and terms such as “ethnic cleansing” and “mass rape” 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 among 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 until today that the Republika Srpska is a product of genocide, committed on the Bosniak people during the war between 1992 and 1995. 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 insist on strong power-sharing instruments at the central level, in particular veto rights, to

Sisk, Timothy: *Power-Sharing*, 2002, p. 117.

⁹²⁶ Putnam, Robert: *Making Democracy Work (Civic Traditions in Modern Italy)*, Princeton University Press: Princeton 1993, p. 167.

⁹²⁷ Ibid. p. 171.

⁹²⁸ Ibid. p. 185.

ensure that the Serbian voice is heard and no decisions can be taken (again!) against the will of the Bosnian Serb people. 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 and they feel that only the three cantons with a Croat majority in the FBiH ensure their autonomy and political survival. Additionally, it is particularly the young Croats living in Bosnia that are leaving the country to study, work and live abroad. Because most Croats also have Croatian passports, they can work and study in Croatia and secure easier access to the member-states of the EU. In recent years we can witness a slow reduction of the Croat population, which is now possibly fewer than 10 per cent of the Bosnian population.⁹²⁹

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.⁹³⁰ 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.’⁹³¹ If we compare the norms and values that Burgess points out as the foundation of a federation with what Putnam called “social capital,” we can see that Burgess and Putnam basically focus on the same virtues. While 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 we find a high number of associations, sport clubs, citizen assemblies and similar elements of civil society in Bosnia. The core problem in Bosnia 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 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

⁹²⁹ Compare these data with the 1991 census, in which over 17 per cent of the Bosnian population identified themselves as “Croat.” See: <http://www.oscebih.org/overview/?d=7> (seen 15 July 2008).

I have mentioned the problem of Croats leaving Bosnia and Herzegovina also to several of my interview partners including representatives of the international community and they all confirmed to me that this is a real problem, both for Bosnia and Herzegovina as a whole and in particular for the Croatian parties in Bosnia.

⁹³⁰ 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.

⁹³¹ Burgess, Michael: *Comparative Federalism*, 2006, p. 113.

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 the Europeans and Americans, federalism ensured the continued existence of Bosnia and Herzegovina as a country on the one side, while providing the Republika Sprska with substantial autonomy on the other. Therefore, federalism was seen as a fair compromise on all sides. If we remind ourselves of the language used by Daniel Elazar to describe federalism, namely a combination of self-rule and shared- rule, we can see how the European and US negotiators applied this principle one to one to Bosnia and Herzegovina.⁹³² 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 country in which two of them did not consider it their home country and fought against their integration into this country. 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 could be imposition. This is why we can speak of Bosnia and Herzegovina as 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

⁹³² 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.

inherent in federal unions since the creation of the United States.⁹³³ The Bosnia that was created in 1995 was forced-together. However, since then, while still being held together by an international presence in the country and the political system, we can detect the development of a rudimentary federal political culture. However, the developments since 2006 demonstrate that the country remains weak and that only the carrot of EU membership can stimulate reforms and progress in the country.

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 influence zones 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 country 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 truly 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. While the state institutions in Bosnia continue to suffer under their limited decision-making competences and the 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 60000 troops in Bosnia, at the end of 2009 the EU Force in Bosnia is no more than 2500 troops. 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 with the EU. The country is on the way towards European integration, although this is a slow and often rocky road.

All 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, all 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 arrangement

⁹³³ Bermeo, Nancy: 'The Import of Institutions' 2002, pp. 96- 110

within the federal system are not (only) based on compromises of representatives of Bosnia's peoples and the two entities but also and more often on the imposition by the High Representative. This is why we have labelled Bosnia and Herzegovina an "internationally-administrated 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.'⁹³⁴ Bose points out that Bosnia is of international design and therefore fits our 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 our analysis of Bosnia as an "internationally administrated federation."

What we witness 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.'⁹³⁵ Fifteen years have at least given us some empirical evidence to categorise and assess Bosnia and Herzegovina as a new federal model. As we have discussed in Chapter Six, 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 policy. Having said this, we need to point out that Bosnia is now contractually integrated into the European enlargement process due to the signature of the SAA as well as the development of 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].'⁹³⁶ Similarly, Sofia Sebastian points out that there is a direct connection between Bosnia's EU integration and the state-building process in the country.⁹³⁷ It is the insistence of the EU that Bosnia can only join as a united country that has counterbalanced further secession movements in the country and it is the key stick of EU membership that the EU needs to use to prepare Bosnia to become part of the European family and help the country to integrate internally as well. The EU needs to be aware of what is at stake in Bosnia and that it holds the key to success in Bosnia in its own hands. Bosnia and Herzegovina as a new model of federalism and federation can be successful, if the EU is willing to assist it on the rocky road to membership in the EU. 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 not anymore

⁹³⁴ Bose, Sumantra: *Bosnia After Dayton*, 2002, p. 60.

⁹³⁵ Putnam, Robert: *Making Democracy Work*, 1993, p. 60.

⁹³⁶ Pejanović, Mirko: *The Political Development*, 2007, p. 21.

⁹³⁷ Sebastian, Sofia: 'The Role of the EU in the Reform of Dayton in Bosnia-Herzegovina' in: *Ethnopolitics*, Vol. 8, No. 3, 2009, pp. 341-354, here p. 351.

the international community that takes major decisions.⁹³⁸ Bosnia and Herzegovina is therefore currently at the crossroads of its future development in which it has to be demonstrated that nearly 15 years of international state-building have been successful and that what was once an imposed federal system can become self-sustaining and be based on a compromise of all Bosnian peoples. 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.⁹³⁹ Once Bosnia and Herzegovina is a member-state of the EU, we can say it was a successful international state-building project. Additionally, it would be a success as a new model of federalism and federation.

7.3 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 as we know it today. 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 we 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 trend of internationalisation can be explained by the rising number of interventions by the international community, both through the UN and without a 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 2004.⁹⁴⁰ While Cyprus remains currently divided, there is renewed hope about a future re-unification of the island along federal lines due the changes in the Greek Cypriot leadership and the start of a new negotiation process in 2008.⁹⁴¹ The internationalisation of "the federal bargaining" can furthermore be witnessed in Iraq, where the current Constitution is based on the Interim- Constitution that was imposed by the US-American administration shortly after

⁹³⁸ International Crisis Group: *Bosnia's Dual Crisis*, Europe Briefing No 57, Sarajevo and Brussels, 12th November 2009, in particular p. 1.

⁹³⁹ Bieber Florian: 'Dayton Bosnia might be over- But what next?' in: *BalkanInsight*, 10th December 2009, available at: <http://www.balkaninsight.com/en/main/comment/24315/> (seen 12 December 2009).

⁹⁴⁰ 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- 149.

⁹⁴¹ See for example: Morgan, Tabitha: 'Cyprus Peace back on Agenda' in: *BBC News*, 21 March 2008, available at: <http://news.bbc.co.uk/1/hi/world/europe/7308912.stm> (seen 12 December 2009).

the removal of Saddam Hussein.⁹⁴² Current debates about a federal solution to the slow state-building process in Afghanistan⁹⁴³ 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.

However, it does not always need international actors to see new kinds of federal bargaining and the evolution of a new model of federalism. 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. While 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.'⁹⁴⁴ 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.'⁹⁴⁵ We can see that federalism as an instrument to protect the unity of the state while simultaneously allowing self-governance for local minority nations has become a key feature of federations established after 1990.⁹⁴⁶ What however distinguishes federalism in Ethiopia and Russia as well as Bosnia-Herzegovina from older established 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.'⁹⁴⁷ Similarly, a recent study of the

⁹⁴² 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. 116-142.

⁹⁴³ See for example: Smith, James: 'Debate over Federalism in Afghanistan Continues' in: *The Central Asia-Caucasus Analyst*, 23rd October 2002, available at: <http://www.cacianalyst.org/newsite/?q=node/109> (seen 12 December 2009).

⁹⁴⁴ 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. 146-166, here p. 164.

⁹⁴⁵ 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. 313-335, here p. 313.

⁹⁴⁶ Certainly this is no new feature as the federal system in Canada was also established to ensure Québécois self-government. Also India introduced federalism to address the needs of the many language communities and even changed the set-up of the federation and established new federal units. Belgium federalized in 1993 for similar reasons.

⁹⁴⁷ 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.

International Crisis Group (ICG) has pointed out for Ethiopia that the main principle of the leading Ethiopian party is democratic centralism, based on Leninist ideology.⁹⁴⁸ We have already pointed out in Chapter Three 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.⁹⁴⁹ This legacy is also important to emphasise at this point in time of the thesis, because it helps us 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.’⁹⁵⁰ 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.’⁹⁵¹

Because federalism is used as a conflict-management 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 a 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. However, the federal political system in Iraq is much more flexible than the Bosnian one, and the Iraqi Constitution even leaves space for redrawing the borders between the federal units and creating new regions. In this way, while federalism might be imposed in Iraq as well by the US administration, it has become much faster than in Bosnia part of the standard political discourse and there are constant developments going on in the country to shape its future federal order.⁹⁵² 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.⁹⁵³ In Ethiopia violent eruptions in a number of regions connected with secessionist claims and

⁹⁴⁸ International Crisis Group: *Ethiopia: Ethnic Federalism and its Discontents*, Africa Report No. 153, 4th September 2009, p. 6.

⁹⁴⁹ See chapter 3 “Bosnia and Herzegovina’s federal tradition: Continuity, Change and Foreign Powers.”

⁹⁵⁰ Ross, Cameron: ‘Federalism and democratization in Russia’ in: *Communist and Post-Communist Studies*, Vol. 33, 2000, pp. 403-420, here p. 418.

⁹⁵¹ International Crisis Group: *Ethiopia: Ethnic Federalism*, 2009, p. 1.

⁹⁵² For some of the ongoing debates in Iraq see:

Visser, Reidar and Stansfield, Gareth (Eds.): *An Iraq of its Regions*, Hurst&Company: London 2007.

⁹⁵³ 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. 108-126, here p. 112.

territorial claims of the neighbouring states underline the weaknesses of its system. 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 a 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.

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. However, as mentioned above, the design of the Iraqi federal state is based on the Interim Constitution that was imposed by the American civil administration shortly after the end of the conflict. There is also some evidence to believe that US representatives continue to play a major role within the federal system and the decision-making process, although this is not institutionalised as it was in Bosnia through the Office of the High Representative.⁹⁵⁴ 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 interference in what would normally be considered the internal affairs of a country.⁹⁵⁵

Having said this, we can nevertheless witness some important developments in other new federations that are very similar to those discussed in Bosnia and Herzegovina. 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.⁹⁵⁶ 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.⁹⁵⁷ However, since the Presidency of Vladimir Putin we can witness the Russian Federation developing in the opposite direction namely towards symmetry and centralisation. While Cameron Ross argued that Putin developed Russia into 'a fully fledged authoritarian and

⁹⁵⁴ In fact, the US influence focuses on the one side on the military presence of US troops and the fight against the insurgency and secondly on political pressure on key Iraqi actors. See for example: International Crisis Group: *Iraq after the Surge II: The Need for a New Political Strategy*, Middle East Report No. 75, 30th April 2008.

⁹⁵⁵ See for example: Hehir, Aidan (Ed.): *Kosovo, Intervention and State-Building*, Routledge: London 2010.

⁹⁵⁶ Ross, Cameron: *Russia's multinational federation*, 2007, p. 111.

⁹⁵⁷ Ibid. p. 115.

unitary state,⁹⁵⁸ we need to be more careful with this assessment. The federal system under Yeltsin was dominated by clientelism, extreme asymmetry and already existing undemocratic practices in the federal units. Consequently, Richard Sakwa is right to point out that Putin's reforms of the federal system made it 'more structured, impartial, coherent and efficient.'⁹⁵⁹ 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. For the moment it seems to be able to develop along its own path, based on its own individual experiences. The same can be said about Ethiopia, where the multinational coalition of the Ethiopian Peoples' Revolutionary Democratic Front, that took over power in 1991 and introduced a federal system has developed the state into a more and more authoritarian system, in which democratisation only takes place 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.'*⁹⁶⁰

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 democracy and remains centralised under the rule of a small minority that controls military and security forces.⁹⁶¹ While 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.⁹⁶²

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 continues⁹⁶³ and Iraq is far from peaceful. While all these conflicts have other reasons as well, we should not forget that federalism and federation opens the

⁹⁵⁸ Ross, Cameron: *Local Politics and Democratization in Russia*, Routledge: London and New York 2007, p. 26.

⁹⁵⁹ Sakwa, Richard: *Putin: Russia's Choice*, Routledge: London 2004, p. 235.

⁹⁶⁰ Constitution of The Federal Democratic Republic of Ethiopia (1994), Preamble

See: <http://www.erta.gov.et/pdf/Constitution.pdf>

⁹⁶¹ International Crisis Group: *Ethiopia: Ethnic Federalism*, 2009.

⁹⁶² 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.

⁹⁶³ International Crisis Group: *Ethiopia: Ethnic Federalism*, 2009, pp. 24-25.

door to secession in multinational states. Except for the use of excessive violence, there is nothing a state can do if a region that is nearly ethnically homogenous does not want to stay in the state. Federalism might offer an answer to the quest of minority nations for autonomy and participation, if however minority nations are not willing to stay, secession might be the only answer. This then is not the failure of federalism, but usually it is because decades if not centuries of violence against minority nations and oppression led to mistrust and a quest for statehood.

In this brief discussion of Bosnian federalism and federation in comparative perspective we have been able to demonstrate that Bosnia and Herzegovina is certainly not the only country that can be characterised as a new model of federalism and federation. Indeed, this comparative section has highlighted the need for a new categorisation and the requirement that we rethink our established theories on federalism and federation. It seems that the study of multinational federalism in Bosnia and Herzegovina has opened the door to many more studies about the rise and establishment of new models of federalism and federation all over the world.

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