DISSERTATION / DOCTORAL THESIS

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„The Challenges of Bosnian-Herzegovinian Statehood in Post-Dayton Constitutional Order"

verfasst von / submitted by

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Chapter 1: Introduction

Introductory Words

Multiethnic socialist states, like the Soviet Union and Yugoslavia, faced serious challenges of nationalism, which prevented certain republics from peaceful dissolution and successful state-building (e.g. Croatia, Bosnia-Herzegovina, Azerbaijan, Ukraine, Georgia, etc.). This resulted in a number of violent ethnic conflicts, among which the Bosnian-Herzegovinian was the most intense one. Its constitutional order, which came as a result of the Dayton Peace Process, is an experiment of the International Community[1] but, at the same time, the only realistic and legitimate solution, despite all of its deficiencies.

Among other objectives, this doctoral research represents an attempt to plausibly demonstrate why the current constitutional order in Bosnia and Herzegovina hinders its European integration and successful completion of the state-building process. The demise of communism resulted in a turbulent transformation process in Eastern Europe, thereby enabling a healthy democratization process with effective left-right polarization. This was not the case in some multiethnic states. The political elites of Bosnia and Herzegovina are primarily nationalist, ethnic and have opposing views on Bosnian-Herzegovinian history, language(s) and statehood. The question which one may ask is whether, in absence of these prerequisites, it is possible to further pursue state-building in Bosnia-Herzegovina? Former Croatian Prime Minister, Ivo Sanader (2003-2009), once used the term constitutional patriotism[2] while discussing the challenges of its immediate neighbor. If three main ethnic groups fail in defining a common view on Bosnian-Herzegovinian statehood, how can the International Community keep encouraging state-building? Is it just a utopian project or can it end up being a success story which enshrines European values of compromise-finding and consensus-building? Bosnia and Herzegovina has a complex, multi-level political system and it is an absolute necessity to provide a detailed analysis of its constitutional order to be able to comment on the challenges of its statehood. If you try to simplify things and argue that all

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[1] The capitalized expression International Community, used throughout the text, refers to the bulk of sovereign states that, primarily through the framework of the United Nations and its Security Council, exercise influence on the international order and have been heavily involved in both the attempts to solve the Yugoslav Crisis, the Yugoslav Wars and the problems arising from post-conflict state-building in Bosnia and Herzegovina.

2 This is a term (*Verfassungspartriotismus*) that he borrowed from German political tradition after the Second World War.

ethnic groups are politically represented and its people vote for political parties, you can already optimistically argue that they identify with the state.

Although the political parties they elect have different political programs, different mid and long-term aspirations, the supremacy of the ethnic factor is what prevents the country from functioning. Bosnia and Herzegovina does not have a state government but the Council of Ministers. All posts are rotated among ethnic groups and there is absolutely no possibility for the Chairman (Prime Minister) to set clear goals and long term economic and political strategy because he/she knows that someone else will take up these duties after four years. Any change favoring centralization and transfer of powers from strong entities is vehemently opposed by Serbs, who, at the very beginning of the Yugoslav crisis, boycotted the Referendum on Independence.[3] On the contrary, the Bosniak side is eager to strengthen the state by transferring powers from entities and establishing new government departments and agencies on the state level. Croats, as the third main ethnic group, pursue their own interests by demanding their own entity which they had until 1994[4] and the founding of the Federation of Bosnia and Herzegovina, one of two present-day entities, the second being the Republic of Srpska.

Because of opposing views on statehood, there is no cross-ethnic programmatic cooperation between political parties. Post-Dayton Bosnia and Herzegovina represents a product of a diplomatic stalemate, which has since the end of the four-year civil war been in the state of negative peace (Kaldor, 2003). It is a challenge to determine which political system would be simultaneously the most functional, legitimate and realistic one, given the complex decision-making process at the state level. This doctoral research is also an attempt to elaborate on the pros and cons of federal, confederal and other relevant models which come into question when discussing a long-term constitutional solution for this country. Several attempts to significantly amend the constitution under the auspices of the International Community failed. However, present-day Bosnia and Herzegovina has acquired a number of powers since Dayton.

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[3] The Referendum on Bosnian-Herzegovinian Independence was held between 29 February and 1 March 1992. With an overall turnout of 63.4% and a majority of 99.7% in favor of independence, it still represents one of the dividing points between Serbs, who boycotted the Referendum, favoring staying in Yugoslavia, and Bosniaks (Bosnian Muslims), who wanted to follow the examples of Slovenia and Croatia. 1 March still represents a day which is celebrated as Independence Day by Bosniaks in one part of the country and is completely ignored in areas with predominantly Serb and Croat populations.

[4] The Washington Agreement was signed on 18 March 1994 between the Republic of Bosnia and Herzegovina (pre-dominantly Bosniak entity) and Herzeg-Bosnia (Croat entity), which represent two of three conflict sides in Bosnian war. The agreement enabled a merger of the two territories and their administrative division into ten cantons according to the Swiss model.

Our case studies will examine powers the country has acquired since Dayton and this will help us to realize "how much Bosnia and Herzegovina is a state" and what it lacks to be considered a modern democratic state.

This multidisciplinary doctoral research examines the statehood of Bosnia and Herzegovina through three case studies: defense, judicial and economic reform. It starts with the Bosnian-Herzegovinian Civil War which must be analyzed so that present-day divisions can be understood. The questions of identities, war trauma and ideologically inconceivable ethnic concepts are still present and shape party politics. Thanks to numerous actions of the International Community, both direct and indirect, the constitutional amendments strengthened the state as such but could not change Bosnian-Herzegovinian ethnic concepts in their essence. Political discourse displays those who still fiercely oppose state-building, claiming that Bosnia and Herzegovina functions on exclusively ethnical parity and those who lure their voters with the concept of civic society with the "one man – one vote" principle. One side sees the whole country as one electoral constituency (Bosniaks), while the others view it as a weak confederation which is dependent on entities (Serbs), or favor three federal units with equal powers and a stronger state (Croats).

Problem Statement

Transparency International organized a conference panel with leading academic and policy specialists with the aim to determine whether Bosnia and Herzegovina can fulfil requirements for capacity and state-building required from it by the European Union or it only proves to be a fruitless experiment of the Western-led International Community and, in the long run, a failed state (Divjak, 2007). This was still at a time when the interventions of the High Representatives were frequent and the involvement of the international factor was much more common than after the departure of Paddy Ashdown. What followed thereafter was a stalemate and an absence of the reform process, which resulted in the country being the worst of all in the Western Balkans in terms of European integration. In his article *Ethnonationalismus und Ethno-Politik als bosnisches Schicksaal*, Džihić summarizes the problem of the supremacy of ethnic affiliation (Džihić, 2008). He goes on saying that this firm division stems from the Ottoman times. And this is absolutely true. Probably no other writer better described Ottoman Bosnia than the Nobel Prize winner Ivo Andrić in his two books *The*

Bridge on Drina[5] and *The Chronicle of Travnik*.[6] What primarily differentiated people from one another was religion.

When discussing the Bosnian-Herzegovinian problem, one has to start with religion and the Ottoman era. Just like the social exclusion of Jews in Medieval European cities like Venice represents the root cause of Anti-Semitism, the religious separation of Muslims, Orthodox Christians and Catholics is the starting point of a division. This division only transformed into an ethnic one by means of different types of nationalisms. Despite the fact that they were all subject to the same social order, the religion is what attributed the "We" and "They" identities and disabled any common identity-finding. National identities of every ethnic group is therefore linked to the religious component. This doctoral research also aims at presenting the significance of religious identities in all three ethnic groups. In the perceptions of ordinary people, it is primarily the religious aspect that differentiates "us" from "them". As said, it stems from Ottoman times and has not changed significantly. In pre-war Yugoslavia, religion did not play as significant a role as it would play later. In a brilliant paper at Georgetown University (Religion and Conflict Case Study Series, 2013, p. 6), the authors mark a bitter truth: "A 1988 survey of national groups asked Yugoslavs whether they consider themselves to be religious. At the time, Croats responded in the affirmative 56 percent of the time compared to 37 percent for Bosniaks and 19 percent for Serbs. While Serbian nationalists, including religious leaders, used religious imagery and claims in the 1990s to justify their violence, only a fifth of the Serb population claimed to be religious."

In the newly-emerged chaos after the demise of communism, it was symptomatic how religions shaped new national identities. Nowhere like in Bosnia and Herzegovina is there such a presence of religious elements in political life. Ethnic political parties and religions have an interdependent relationship. It has become normal that religious leaders discuss political issues, suggest whom the people should vote for and how the state should be run. In the empirical chapter, when we, among other things, discuss political parties, we will see how

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[5] The plot of this book is situated in the small town of Višegrad in Eastern Bosnia. It covers a period of transition from Ottoman to Austro-Hungarian rule which occurred after the Berlin Congress of 1878, which gave Austria-Hungary the right to occupy Bosnia and Herzegovina.

[6] Today, Travnik is a small town in central Bosnia, which, together with Banja Luka, used to be the capital of Bosnia under Ottoman Rule (prior to 1878). The plot of this novel depicts life prior and after the Napoleonic Wars. The divisions to which we nowadays refer as ethnic stem from this era. Those who converted to Islam were privileged and could bypass the severity of Ottoman laws. Social disconnectedness between Christians and Muslims, owing to the social order of these times, is reflected in contemporary Bosnia and Herzegovina and did not even vanish in Tito's Yugoslavia. One can experience these divisions through this novel and realize how much they resemble present-day divisions.

important the role of priests and imams is during election campaigns and how the religious component in entrenched in programs of political parties. Bosnia and Herzegovina is a secular state in terms of liberal democracy. However, a country with such a low degree of statehood and a lack of common identity collides with such a zealous religious mainstream. It is up to us to determine how the religious factor contributes to the path dependency phenomenon in Bosnia and Herzegovina.

The language is another element which separates ethnic groups in post-war Bosnia and Herzegovina. The official language in Tito's Yugoslavia was Serbo-Croatian.[7] In the aftermath of the war, there are, in accordance with the Constitution, three official languages, the language(s) of the Bosniak, Croat and Serb people. At schools, Bosnian, Croatian and Serbian languages are taught depending on the ethnic domination in given areas. From the linguistic point of view, there is not enough rationale to claim that these idioms are three different languages. In the heterogeneity of identities, the Bosnian dialect is very specific and dialectical boundaries are not coherent with ethnic ones. This implies that members of two or three ethnic communities speak in practice the same language, however, they call it differently. Now, this statement may be subject to dispute among linguists. One of the starting points discussing the identity is the author's claim of one common language different ethnic groups speak in Bosnia and Herzegovina. Whereas this may be debatable and contested, the difference among languages is not sufficient enough for them to be considered separate languages.

One identity that Bosnia and Herzegovina respectively possesses and which would not be disputed by ethnic groups is the regional identity. Regardless of ethnic belonging, the dialect and mentality are very specific for both, Bosnians and Herzegovinians. Despite parallel religious societies that co-existed over centuries of Ottoman rule, all three ethnic groups have very much in common. Everyone would agree that there are certain characteristics of political setting which are, at least, of a regional character. Bosniak nationalism sees this as an imposing element of Bosnian-Herzegovinian statehood, whereas Serb nationalism bluntly ignores any connection whatsoever. Croat nationalism is not so exclusive versus Bosnia but has its own version of importance of Bosnia and Herzegovina as an integral part of Croat history.

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[7] On 10 December 1954, Serb, Croat and partially Montenegrin and Bosnian-Herzegovinian linguists agreed on a common norm of the Serbo-Croatian language. The treaty was signed in Novi Sad, Serbia, thus officially establishing the Serbo-Croatian language.

Another emotional identity factor which must be taken into account is the factor of subordination during Ottoman, but also Austro-Hungarian rule. When European nations underwent nationalist awakening and experienced their first form of modern statehood, Bosnia was an Ottoman dominion. There was no common force in Bosnia which would unify all three main religious groups to fight together against the occupation. Therefore, no respective pan-Bosnian movement can be identified which would be equivalent to other national freedom moments Balkan-wide.

In order for them to achieve a successful identity building, there had to exist a common interest, a common foe against which all interests would be directed. If we take a closer look at the establishment of Socialist Yugoslavia, we will witness a success of common identity formation processes. When Croats realized that Ante Pavelić and his Ustasha regime betrayed their national interests and handed over much of Dalmatia to Italians,[8] they started joining Tito's partisans *en masse* and identifying with communist ideology. What all Yugoslav ethnic groups and nationalities had in common was the Nazi occupation and all Quisling regimes in power became unacceptable for the vast majority of them. The world has become a different place after the demise of communism. There is no common foe and it is hard to establish a common denominator, a value, a force or interest which may bring all the ethnic groups in Bosnia and Herzegovina together. Mainstream media have started promoting European integration as this alternative which could be a common value and interest. However, this remains abstract and debatable, especially given the current fatigue of European integration. What could be appealing to Bosnians-Herzegovinians under such conditions? How can they identify with a new, abstract European identity if they fail to adhere to their Bosnian-Herzegovinian one? The total failure of two nationalist ideologies of Greater Serbia and Greater Croatia,[9] both of which included Bosnia and Herzegovina in their territorial

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[8] Treaties of Rome were signed on 18 May 1941 by the representatives of Fascist Italy and the Quisling Independent State of Croatia. They enabled the establishment of an Italian governorate in Dalmatia and handed over much of the Croatian coast to Italy.

[9] The controversial meeting between Slobodan Milošević of Serbia and Franjo Tuđman of Croatia, took place on 25 March 1991. Even though the content of the meeting was at the time subject to speculation, it was obvious, in the upcoming months, that the main subject of the meeting of the two leaders was partition of Bosnia and Herzegovina between Serbia and Croatia. In due course of the Yugoslav conflict, this idea proved to be unacceptable for the International Community, which, at all costs, wanted to preserve the existence of an independent Bosnia and Herzegovina, recognized in its AVNOJ borders. *Antifašističko vijeće narodnog oslobođenja Jugoslavije* (AVNOJ, Anti-Fascist Council of the People's Liberation of Yugoslavia) was the communist institution during the Second World War which, with its two decisions, framed the future Socialist (often referred to as the Second) Yugoslavia. The AVNOJ borders are the borders of socialist republics which correspond to present-day borders of independent states. The International Community remained in the end committed to this principle when denying Croatia and Serbia to claim territory of Bosnia and Herzegovina.

aspirations, did not, however, resolve the problem of national identification of Serbs and Croats with Bosnia and Herzegovina. The remnants of this defeated ideology did not evaporate but remain present and visible in different social aspects of every-day life.

The constitutional framework of Bosnia and Herzegovina, showcases the greatest possible extent of complexity for a state-building case study. External affairs are run by the State Presidency which consists of three ethnic members. The Federation of Bosnia and Herzegovina is one electoral constituency which elects the Bosniak and Croat members, while the Republic of Srpska is the one from where the Serb member is chosen. Bosniaks, traditionally, have good ties with Turkey and the Islamic world. The perception of Ottoman times in the Bosniak ethnic community is predominantly positive. This is why, when the Bosniak member of the State Presidency meets Turkish leaders, this automatically results in a furious reaction from the Serb political elites. The same goes for Russia and Israel, both with which the Republic of Srpska has had a very good relationship. A common Bosnian-Herzegovinian foreign policy is a utopian idea, existing exclusively on basic principles. The only undisputed foreign policy aim not contested by all three ethnic groups is EU membership. The European affiliation of the country has been emphasized by all sides. NATO membership, on the contrary, remains a disputed issue. Whereas Bosniak and Croat leaders wholeheartedly promote joining NATO, Serbs, even though not explicitly rejecting the idea, manifested their reservations. Both Republic of Srpska, as well as in Serbia were subject to NATO military campaigns and there is a natural resentment versus NATO membership. Bosnian-Herzegovinian constitution enables Serbs to block any political decision of such gravity both, in the Presidency, as well as in the Parliament.

The harshest discourse during election campaigns among Serb ethnic community is transfer of powers. Any politician that would agree to a transfer of powers from entity to state level would be labelled as a betrayer. What is meant by this is a change of constitution which would empower the state of Bosnia and Herzegovina with new responsibilities not stemming from the present constitution. The Dayton Constitution (Annex 4: Constitution of Bosnia and Herzegovina, 1995) provided the state with the following powers: (a) Foreign policy; (b) Foreign trade policy; (c) Customs policy; (d) Monetary policy as provided in Article VII; (e) Finances of the institutions and for the international obligations of Bosnia and Herzegovina; (f) Immigration, refugee, and asylum policy and regulation; (g) International and inter-Entity criminal law enforcement, including relations with Interpol; (h) Establishment and operation

of common and international communications facilities; (i) Regulation of inter-Entity transportation; and (j) Air traffic control.

The change of this constitution or its implementation is subject to ethnic veto powers. The only other way to *de facto* change the constitution were the so called Bonn Powers. [10]

Present-day Bosnian-Herzegovinian constitution represents an evolution from the Dayton era, much favored by the Bosniaks and fiercely opposed by the Serbs. The core of this doctoral research consists of case studies on three reforms: military, judiciary and economic. With the help of these three reforms, we will introduce the concept of imposed statehood, which this doctoral research aims to attach to the Bosnian-Herzegovinian case. For this purpose, the following research hypotheses have been formulated:

1) Bosnian-Herzegovinian statehood can be characterized as *imposed* since not only the Dayton Constitution, but also the subsequent state-building reforms were initiated and, to the great extent, imposed from exogenous factors.

2) Bosnian-Herzegovinian political elites are primarily ethnic, without having a common denominator, especially regarding the state-building process. Even the legal solutions introduced following Dayton comprise the strongest possible influence of ethnic supremacy in the form of parity and rotation on all executive posts. The implication is that ethnic principle must be demoted to a lower level but in such a way that each group remains institutionally safeguarded.

3) Several political solutions imposed by the International Community, despite comprising the ethnic principle at its core, proved to be meaningful and resulted in efficient institutional solutions which resolved a number of outstanding issues from the immediate post-war period. (e. g. defense and economic reforms).

4) Bosnia and Herzegovina is the only European country where political ideological pluralism cannot take place due to the supremacy of the ethnic principle. Therefore, this polarization

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[10] The Peace Implementation Council (PIC) is an international body comprising 55 countries and mandated with the implementation of the Dayton Peace Agreement. In December 1997, during its meeting in Bonn, the Office of the High Representative (OHR) was granted additional powers: a) adopting binding decisions when local politicians fail to agree on a substance; and b) sanction politicians when they violate legal instruments. The critical word "decision" means, *de facto*, that it may overrule the constitution itself by imposing laws. Severely contested by Serbs primarily, these powers have been significantly refrained from following departure of Paddy Ashdown.

must first take place at ethnic levels. Thereafter, the composition of these political units may at some stage result in a civic nation, which has not been the case not so far. This is needed for the emerging of a classical European party system, which is a pre-condition for modern democracy.

Once the theoretical background on historical institutionalism, state-building and nation-building has been provided with a particular reflection on Bosnia and Herzegovina, the research hypotheses listed above will be tested on three case studies. At the core of this doctoral research is the concept of imposed statehood, the main tool of which is interventionism.

The results of this interventionism have both positive and negative impacts. Certain institutions, like the Court and Office of the Prosecutor of Bosnia and Herzegovina, created at the state level, lack legitimacy because these decisions were imposed and are subject to constant dispute between Serbs and Bosniaks.[11] The rhetoric of Serb political leaders result in serious animosity towards institutions of Bosnia and Herzegovina. The level of patriotism within the Serb ethnic community is measured on criticism of any decision-making body with a Bosnian-Herzegovinian prefix. We will focus on analyzing whether these and other critiques are factual and whether the newly-founded, post-Dayton institutions really serve their purpose and could legitimize their own existence. All in all, the Bosnian-Herzegovinian case is a special challenge, a *sui generis* mode of state-building not matched by any other. Experts on constitutional law in different ethnic groups even fail to agree on the type of political system Bosnia and Herzegovina could be characterized as. Serbs prefer calling it a weak confederal union of two entities just for the sake of diminishing its statehood. For Bosniaks, it is a united, strong federation which enjoys supremacy over its entities. The Bosnian-Herzegovinian crisis is, beyond any doubt, an example of supremacy of politics over law and the ethnic over the civic principle. This absurdity is manifested in the decisions of the Constitutional Court of Bosnia and Herzegovina, where judges from different ethnic groups stay loyal to political lines of their ethnic leaders. This being the case, one may rightfully contest the legal fundaments, which should not be subject to different ethnic interpretations.

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[11] The President of the Republic of Srpska Milorad Dodik continuously criticizes the work of Court and Office of the Prosecutor of Bosnia and Herzegovina. He opposes their approach to prosecutions of war crimes and considers them biased (pro-Bosniak), failing to process war crimes against Serbs (Pašalić, 2014).

Research Methods

This doctoral research represents a combination of qualitative and quantitative methods. A significant part of this doctoral thesis relates to theories, especially in the second and third chapter, which aim at explaining the background of the Yugoslav and Bosnian conflict. The Bosnian-Herzegovinian war is a complex subject, the character of which is still disputed. For the Bosniak side it represents a Serb-Croat aggression, the aim of which was, in accordance with the conclusions of the Karađorđevo meeting, a partition of the country between Serbia and Croatia. Serbs fiercely oppose this theory. They characterize the conflict as a civil war and ethnic conflict among three constitutive peoples of Bosnia and Herzegovina. This asymmetry is visible today, when one entity celebrates certain holidays, the other at the same time ignores them and celebrates their own. Along with other identity issues, the war has categorically divided the country and this is where certain theories come into in order to explain the conflict.

As already mentioned, the character of the war is still and will forever remain disputed. For this reason, the author of this doctoral thesis shall not comment on it, knowing that no scientific argument can fully und indisputably support any of the multiple claims. It will forever remain a subject of dispute, opposing views and asymmetric interpretation. The Bosnian-Herzegovinian War was, however, an asymmetric conflict. What was precisely asymmetric about Bosnian-Herzegovinian warfare? First of all, the fact that Serbian forces predominantly controlled the remnants of the Yugoslav People's Army (JNA) on the territory of Bosnia and Herzegovina. This provided them with initial supremacy on the battlefield, which was later attempted to be brought to an equilibrium by the International Community. Kaldor describes the Bosnian conflict as "the archetypal example, the paradigm of the new type of warfare in the 1990s" (Kaldor, 2003, p. 33). Furthermore, whereas the Government of Alija Izetbegović enjoyed full international legitimacy and legality, took over the new seat in the United Nations as an independent state, most of the territory was controlled by forces of the newly-founded Serb Republic of Bosnia and Herzegovina. Its military force was, *de facto*, the successor of the Yugoslav People's Army. The political elite of Serbs fiercely opposed the dissolution of Yugoslavia. The rationale of this policy was simple. Given the fact that Serbs were the most populous ethnic group in former Yugoslavia, it was in their national interest to preserve, at all costs, the existence of Yugoslavia so that all Serbs would live in one state (Motyl, 2001). Influenced by Garibaldi's Unification of Italy in 1861 and Bismarck's success story in securing Prussian dominance in the process of German Unification, Serb political

elites of the second half of the 19th century merged the ideas of Serbian nationalism and those of unification of South Slavs into one country. This being fruitful and the case in the First and Second Yugoslavia, it also became a leading motto of the post-communist, newly-emerged Serbian nationalism. The Chapter on Theory discusses this grey zone between state-building and nation-building on the Bosnian-Herzegovinian soil. Theoretically, we will tend to answer how it is possible to succeed in state-building in the absence of nation-building. The question of identity, state-building, nation-building and its plausible analysis in the Bosnian-Herzegovinian scenario offers a complementary explanation to what is referred to as the problem of nationalism. Whereas all these terms indicate a pre-war prelude to the contemporary problems of the country, the post-war situation will be discussed using the approach of historical institutionalism. There are still people living in Bosnia and Herzegovina who were born in one, lived in another and retired in the third state. How can this new Bosnian-Herzegovinian identity reflect their emotional perception of the country they live in? Political parties they elect represent an evaluated nationalist attempt to change from ethnic/national/nationalist to people's parties. We will identify three path dependencies which refuse to work together and agree on basic political questions.

Regarding qualitative methods, the author of this doctoral research interviews an ex-member of the Bosnian-Herzegovinian Presidency, who participated directly in the state-building process. Those who reformed the military, judiciary and economy at the state level have paved the way for diverse attempts to strengthen the state and it is up to this doctoral thesis to determine its quality, rationale and impact on contemporary politics. A number of reforms, laws, and institutions established in the post-war period and the European integration process in general will serve as indicators on the quality of state-building process. The work of Transparency International in Bosnia and Herzegovina is also a source which demonstrates the effectiveness or failure of certain legal and political changes. In addition, what the author considers very relevant, the ideologies of main political parties in different ethnic groups will be examined briefly at the end to provide answers to questions of their perceptions of Bosnian-Herzegovinian statehood. If we argue that a political party represents the most important cell of political organization, then it is of utmost importance to compare and contrast their programs, long-term aims and ideological perceptions of different segments of society.

Regarding quantitative data, in the fifth chapter we will briefly refer to the electoral results different political parties have achieved in the post-war period (Central Electoral Commission,

2014). The idea is to provide a complementary understanding of Bosnian-Herzegovinian party politics, once the theoretical and qualitative analysis has already been provided.

The Policy Chapter, using results obtained from this research, aims at demonstrating the absence of inner compromise and inefficiency of the institutional framework. It takes into account all ethnic interests, legal and political constraints, and the spirit of European integration, which sets its own priorities and prerequisites for a successful adaptation and full membership. Why is it important? Historically, it is a country over which two strong empires of the 19th century disputed. It is a place where the First World War was triggered and, as Peter Mass once stated: "Bosnia is known as the powder keg of Yugoslavia, which itself is known as the powder keg of the Balkans, which in turn is reputed to be the powder keg of Europe" (Mass, 1997, p. 199).

Political parties which are discussed in this chapter are only a reflection of inconsistent ethnic policies of ethnic groups. They are a plausible demonstration of the absence of a civic nation. This is why the integration in the European Union is the only common denominator among the three ethnic groups in Bosnia and Herzegovina.

The European integration process is a peace project, an attempt to ensure that another kind of *Pax Romanorum* prevails. The failure to prevent the Yugoslav Wars in the 1990s is a defeat not only for those living there but for the European project as a whole. It is also a failure of the International Community as the comprehensive United Nations mechanism and chaos which emerged following the end of the bipolar international order failed to justify their purpose. Post-war Bosnia and Herzegovina is, however, a European challenge. A poor, ethnically divided and permanently unstable country must be safeguarded even when the EU starts to face an unprecedented wave of fatigue and nationalist aspirations, as well as calls for more independence and autonomy of member states.

Research Framework

The time frame for this doctoral research comprises the period from the introduction of multi-party elections up until present time. What differentiated Yugoslavia and the Soviet Union from other communist countries is the awakening of different nationalisms. So, in order for the new states to pursue a transition to liberal democracy and free market economy, they had to undergo complex nation-building and state-building processes. Identities in general are a

very sensitive issue in the Bosnian-Herzegovinian political mainstream. Out of all transformation societies, I would argue it is the most complex one and there are so many different interpretations regarding these two interchangeable processes.[12] The problem of Bosnia and Herzegovina as a state is the lack of a nation that would correspond to it. The present-day constitution recognizes three ethnic groups, i.e. three constitutive peoples. This implies that if a citizen of Bosnia and Herzegovina who declares himself/herself as Bosnian-Herzegovinian will belong to a minority and will not be entitled to occupy the most important posts like the Presidency. One of the most challenging tasks for the newly elected Parliament will be to find a mechanism to amend the constitution in line with the ruling of the European Court of Human Rights in the Sejdić-Finci case.[13] This requires a constitutional reform and there has been little or no consent among ethnic groups on the way the Constitution should be amended. It disables Bosnia and Herzegovina to function as a modern democratic state. In the absence of political readiness to reform it, any attempt to impose a change from the outside (e.g. by a decision of the High Representative or a strong political pressure on decision-makers) would result in an illegitimate, inefficient and unstable status quo with one side being frustrated and offering political resistance. As this doctoral thesis will demonstrate, these actions had different results, some of which were positive due to its pragmatism, while some were negative since a significant burden was put on the state budget.

Bearing in mind, on the one hand, that the present constitution is not in conformity with standards of modern democracies, as will be demonstrated in detail, this doctoral research will also focus on positive and functioning elements of Bosnian-Herzegovinian statehood. Just like the European Union, which Madeleine Albright once labelled an "economic giant and political dwarf", the inner integration of Bosnia and Herzegovina in economic respect is a success story. The introduction of Value Added Tax (VAT) on the state level, the establishment of the State Control Service, the issuing of common documents, etc. reflect elements of Bosnian statehood. These powers attributed to the state do not stem from the Dayton Constitution, i.e. its Annex 4. How these bills were passed, who and why opposed them and how did its implementation

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[12] One might rightfully argue that a state is a prerequisite for nation-building (Mylonas, 2012). State is a power which possesses mediums to impose a national identity by military, educational, cultural and other means.

[13] Given the fact they were not eligible to stand for the election for either the Presidency or the House of Peoples (the lower chamber of the Bosnian-Herzegovinian Parliament, as they do not belong to any of the three constitutive peoples, Dervo Sejdić (Bosnian-Herzegovinian Roma) and Jakob Finci (Bosnian-Herzegovinian Jew) sued the state before the European Court of Human Rights. In its ruling of 22 December 2009 (CASE OF SEJDIĆ AND FINCI v. BOSNIA AND HERZEGOVINA, 2009), the Court found that provisions disabling two applicants to stand for elections for two levels of executive power were discriminatory and violated the European Convention on Human Rights. The Court requested Bosnia and Herzegovina to provide legal in order to allow its citizens belonging to other ethnic groups to stand for the same public offices as Serbs, Croats and Bosniaks.

reflect state-building are case studies which, when analyzed and commented, display the complexity and heterogeneity of the Bosnian-Herzegovinian political system.

It is primarily ethnic and not healthy political polarization that takes place in ethnically homogenous electoral units. There is no political party enjoying legitimacy and support in both entities and among all three ethnical groups. Despite the fact that it is contradictory to European values, only ethnically homogenous political entities in former Yugoslavia appear to be politically stable. If a catch-all political party is considered to be the core element of a political community, it should have followers in all parts of that society. People living in different areas should be able to identify with its programmatic goals. As stated above, the main problem that remains in Bosnia and Herzegovina is a lack of a common national identity. All other, primarily social, identities, remain inferior to ethnic identity. It is for this reason that Bosnia-Herzegovina is not a nation-state because "eine Nation die, politisch motiviert von der Idee der individuellen und kollektiven Selbstbestimmung, im Staat das Medium ihrer Selbstverwirklichung findet, sei Staatsnation" (Kunze, 2005, p. 28).

It is not a sole *sui generis* political entity which possesses an undisputed statehood in terms of international law. However, unlike a number of states which lost control of their breakaway regions, like Georgia, Azerbaijan and Moldova, the institutions of state in Bosnia and Herzegovina exercise full powers legally attributed to them on the whole territory. This implies that there is absolutely no legal dilemma as to whether Bosnia and Herzegovina is a state or not. What remains a challenge for this doctoral research is to determine: a) to which extent is Bosnia and Herzegovina a state in line with parameters of modern state-building by conducting a thorough empirical research on selected areas confirming or questioning statehood like military, economic, judicial, etc. and b) the lack of conformity of present constitutional order with those of modern Western liberal democracies. The latter statement is in conformity with research questions, the multidisciplinary interpretation of which is this doctoral research's main priority.

Where is this lack of conformity reflected? The next chapter on the civil war in Bosnia and Herzegovina discusses identity problems. The present-day country comprises of three opposing truths, each of which incorporates different ethnic, religious and social values. When there is an attempt to canonize one of these truths, the other two find themselves endangered. Bosnia and Herzegovina represents a crossroad where three opposing nationalisms collide. Each of them consists of a number of conflicting points with the other two, be it religious, territorial, cultural or historical. What characterizes Bosniak, Croatian and Serbian

nationalisms? Which inconceivable elements do they comprise when it comes to Bosnia and Herzegovina? Which role does religion, language, history and identity in general play in the early 90s? Which unresolved issues appeased during the Tito Yugoslavia galvanized the dissolution of the country? These are all question which must be answered so that present day positions of ethnic groups could be understood. One will notice that political thoughts did evaluate to certain extent yet not enough to stabilize the country.

Where does this doctoral thesis fit theoretically? Once the conflict history and heterogeneity of identities is provided in the next chapter, Bosnian-Herzegovinian problems will be interpreted by using historical institutionalism and its main concept of path dependence. There is absolutely no other theoretical approach that better explains political behavior of ethnic leaders in the country. Fearing a change in behavior and staying stacked to their truths, no political leader has ever succeeded in leaving the ideological nationalist shell and proposing something "unusual" or contrary to, what has previously been defined as, Bosniak, Croat or Serb national interest. Even though there were possibilities to take a different path and pragmatically enshrine the state with powers needed, the actors have ventured current path long enough not to reconsider the path not taken (Pierson & Skocpol, 2002) and unlock the European integration process they all opted for. Path dependence provides a possibility to determine which conflict fields disable the well-functioning of the state. Whereas it primarily remains a subjective perception of a researcher to select relevant case studies, this project aims at justifying pragmatically which areas need to be paid special attention to. The case studies will allow us to a) focus on historical evolution of Bosnian constitutional and institutional setup from Dayton onwards and b) provide case studies on elements of modern statehood. Whereas constitutional evolution provides an explanation, case studies tend to answer the research question on the extent of statehood.

Why does Bosnian-Herzegovinian constitution hinder democratic development? There has been a number of fruitless attempts to agree on a common basis for constitutional change. What were diverse interests in this regard and how did different ethnic groups react to the solutions offered under auspices of the United States. The intention of late Richard Holbrooke to find a settlement which would produce no winners or losers created a basis for a perpetual political stalemate, which is why Bosnia and Herzegovina is lagging behind its neighbors in terms of advancement of European integration. On the other hand, it was the only realistic solution excluding maxims from all ethnic demands. Serbs got the autonomy in the form a state-alike Republic of Srpska, the sovereignty of which rests in the Bosnian-Herzegovinian

frame. The initial aspirations for independence were not realized but what Serbs got is a strong electoral unit and autonomy in the post-Dayton order. Bosniak side, on the other hand, could not carry into effect the civil principle "one man – one vote" (Roudometof, 2001, pp. 218-219) and have the whole country as one electoral unit, however, Bosnia and Herzegovina remained an internationally recognized independent state. This is why Bosniak political elites continue proposing legal solutions favoring strengthening and centralization of powers so that entities become more inferior. The essence of understanding present-day Bosnia and Herzegovina is to understand its decision-making processes. Local, cantonal, district, entity and state levels as well as distribution of powers among them will be examined.

With the theory provided and applied on the Bosnian-Herzegovinian case, we may select certain areas as case studies to help us answer the question on the extent of statehood. Legal framework and reforms in military, police, administration, monetary, and tax system form plausible case studies enabling us to formulate our conclusions. The fact for instance that Bosnia and Herzegovina has a common VAT, currency and reformed and centralized Ministry of Defense speaks in favor of its statehood. On the other hand, the lack of Ministry of Interior, Education and Agriculture reveals superiority of entities in these areas. The reforms taken from Dayton onward had different efficiency results, depending on the subject. We will analyze both, those more and less successful, in order to gain understanding on policy approaches used and those needed for further reforms. Given divisive visions of centralization, federalization or confederalization among ethnic groups, this doctoral research tends to prove that it is not the extent of centralization that determines the quality of the undertaken reform but the efficiency and rationale of it. Once political elites leave their firm positions and start thinking pragmatically, Bosnia and Herzegovina will start having more factual and less political debates as to how to reform its constitutional design. This step in evolution of political behavior doesn't still appear to be realistic but, if this is achieved, it will not automatically imply that Bosniaks favor centralization by default or Serbs strongly oppose creation of new institutions on the state level just because it is their national interest. Unlike the European Union, which also is a *sui generis* system, present day Bosnia and Herzegovina doesn't reflect political will of its people. As such it lacks natural legitimacy, however, by participating in elections its citizens identify with it and those who run it on their behalf.

The main objective of the Chapter on Case Studies is to discuss different attempts to reforms the constitution and to ensure a more efficient state. Whereas the two High Representatives who were known for imposing solutions which were *de facto* changing constitutional order,

Wolfgang Petritsch of Austria and Paddy Ashdown of the United Kingdom, the others started encouraging dialogue among local decision-makers. As of entry on duty of Christian Schwartz-Schilling in January 2006, over Miroslav Lajčák to Valentin Inzko, there has been a number of processes, dialogues, meetings and initiatives to reform the constitution. The first and the most concrete one was in April 2006, which went into history as the "April Package". This was the most comprehensive proposal which, beyond any doubt, would strengthen the institutions of the state, the Parliament and the Council of Ministers. The proposal was overturned in the Parliament by the votes of primarily Bosniak Party for Bosnia and Herzegovina of Haris Silajdžić, as they strongly opposed any entity veto power, which would remain in force. In the upcoming "Butmir" (named after the American military base near Sarajevo) and "Prud" (a small village in northern Bosnia where political leaders met) negotiations, there was no success in overcoming major differences. However, it was not primarily the fault of nationalist leaders, but also that of the EU and US for offering a "quick-fix" solution (Bieber, 2010). The constitutional reform was used as a medium and prerequisite in order to lure Bosnian-Herzegovinian politicians with the advancement of European integration. The author of this doctoral research considers this utterly wrong. There can be no common EU approach as to whether countries with EU perspective should be federal, confederal or centralized given a variety of structural models EU-wide. The main interest of the European Union must be a stable and functional Bosnia and Herzegovina. This can came only as a result of inner consensus-finding and a constitution agreed upon main ethnic decision-makers. This doctoral thesis does tend to develop its own model of constitutional reform, however, it takes into account all red lines and prerogatives of ethnic groups, entities and decision-makers. On the other hand, learning from past failed attempts, it plausibly explains why certain models cannot be discussed any further and which of its components are acceptable and realistic.

The last two chapters offer a summary of the doctoral thesis and discusses future perspectives in the light of the fact that the new President of the European Commission Jean-Claude Juncker stressed that the European Union would not accept any new members in this legislative period. This is a period where countries with an EU perspective bring their legislation in line with *acquis communautaire* but for Bosnia and Herzegovina this represents a period when it has to determine the fundaments of its statehood.

Chapter 2: War in Bosnia and Herzegovina

Introduction

The war in Bosnia and Herzegovina was an ethnic conflict between three armed forces of Bosniaks, Serbs and Croats taking place between early 1992 and 14 December 1995, the date on which the final version of Dayton Peace Agreement was officially signed in Paris. The starting date of the war is impossible to determine, given opposing views of different sides. According to the Survey of Research and Documentation Center (*Istraživačko-dokumentacioni centar*), the total number of human casualties amounts to 97 214 (Research and Documentation Center, 2009), out of which slightly less than 40% are civilian and the rest are military loses. Looking at the ethnical side, Bosniaks suffered the highest loses with 66. 2%, followed by Serbs with 25.4% and Croats with 7.8%. Whereas in the Croatian War, the conflicting parties were Croats and Serbs, hostilities of these two ethnic groups were of much smaller intensity in the Bosnian War. Both Serbs and Croats proclaimed their states within Bosnia and Herzegovina with the aim to, either fight for joining their motherlands Serbia and Croatia, or for independence from Bosnia and Herzegovina. The Bosnian-Herzegovinian War is a story of opposing nationalisms, opposing ideologies, religions and perceptions of the state.

This chapter aims to provide an understanding of the background which led to this conflict. The animosities between the three ethnic groups stem from the time of the Kingdom of Yugoslavia (also referred to as the First Yugoslavia). The second, Socialist Yugoslavia, only appears to have managed to appease diverse ethnic differences. However, it could not provide a stable union among South Slavs, which would survive such a tectonic change of world order like the end of communism. The statehood granted to Bosnia and Herzegovina by AVNOJ proved not to be a sufficient value and a common denominator. The Bosnian-Herzegovinian war created path dependencies which are still present and which fail to advance on the state-building agenda. How these dependencies emerged and to which extent are their positions irreconcilable is to be understood once we identify the mutual ethnic animosities, which stem primarily from the last civil war, but have their roots further in the past.

Historical Background

Political and Economic Crisis of Federal Yugoslavia during the 1980s

Josip Broz Tito, the architect of the Second, Socialist Federative Republic of Yugoslavia, died on 4 May 1980 in Ljubljana. His death already represents the end of an era when Yugoslavia played a much more important role than it in fact was. In terms of delegations from different countries which were present on 8 May 1980, his funeral was the largest in history (Bobot, et al., 1981). Tito founded the Non-Aligned Movement, shrewdly played the balance of power game between the two blocs and managed to secure Yugoslavia's place in the international arena of the Cold War era. Beyond any doubt, the importance of Yugoslavia was much higher than it really was. Just like Bismarck's balance of power system and parallel alliances managed to preserve peace in the post-Berlin Congress era in Europe while he was in power, the Cold War era was the time when Tito brilliantly secured inner stability and foreign profiling of his country. The national uprisings of Croats and Albanians in 1960s and 1970s resulted in a significant political pressure (Constitutional Amendments of 1974).[14] In addition, with these amendments, Tito foresaw that the country, following his death, would be run by a Collective Presidency, including a member from each federal unit, i.e. six federal republics and two autonomous provinces. They would rotate on annual basis. This is what happened in reality. However, it proved inefficient and devastating to Yugoslav statehood. Different economic, political, social and cultural characteristics of each federal unit were so obvious that Yugoslav statehood seriously weakened with Tito's death. Whereas no socialist state in Europe "survived" the demise of communism, it was obvious that Yugoslavia would also undergo a transitional change to democracy. In Soviet Union and Yugoslavia, socialism successfully managed to subordinate national differences and interests. The utopian ideal of a socialist state was an imposing element, a value to which nationalism was inferior and successfully marginalized during the Cold War. Now, out of a sudden, nationalism would emerge and contradict liberal democracy, the set of values which could be accepted only if did not overlap with nationalist awakening. The Yugoslav crisis is, however, a multicausal

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[14] The constitutional amendments of 1974 brought a number of changes which would have an impact on the subsequent crisis and dissolution of Yugoslavia. First, Tito was proclaimed a president for life. The Socialist Republic of Serbia was separated into its inner core and two additional provinces, Kosovo and Vojvodina. The most disputed part of these amendments was the right to secession. However, it remained disputed as to whether republics or peoples are entitled to session. The full text of these amendments can be seen on the website of the Archive of Yugoslavia. Many lawyers and political scientists perceived this as the start of the end of the Yugoslav Federation.

one. As demonstrated above, it started much earlier and the important Constitutional Amendments of 1974, with all their ambiguity, represent a starting point which will be manifested in 1980s. Yugoslav economy was a role model socialist economy which concluded a free trade agreement with the European Community in the 1970s. Though, in the 1980s, the political model based on the 1974 constitutional amendments proved to be inefficient.

Figure 1: Political Map of Socialist Yugoslavia

Source: www.lib.utexas.edu-

The Yugoslav positioning in the international arena as a neutral, bloc-independent state commenced in 1948, when Tito decided to distance himself from Stalin. The Comminform (Communist Information Bureau, founded in 1947) expelled the Yugoslav Communist Party in June 1948 since Tito refused to obey Stalin's domination. In Yugoslavia, those communists who showed any sympathy for Stalin or the Resolution of the Comminform were sent to Goli otok[15] and Sveti Grgur. The détente of Yugo-Soviet relations was achieved only after Stalin's death in 1953 and the process of destalinization, for which two most important declarations

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[15] Goli otok (literally Barren Island) is a small uninhabited 4 square-kilometer island near the Croatian town of Senj and close to the much bigger island of Rab. It became a synonym for political imprisonment of those communists who either a) failed to show loyalty to Tito during his 1948 conflict with Stalin or b) were simply sent as an example without evidence of any kind of anti-state activity. Another small island, adjacent to Goli Otok, is Sveti Grgur and is much less known to the public but was used for the same purpose, albeit for female prisoners.

related to Yugoslavia were adopted in Belgrade in 1955 and in Moscow 1956. In that year, the Comminform was disbanded.

Soviet leader Nikita Khrushchev distanced himself from Stalin's legacy in many respects and the relationship with Yugoslavia was fully normalized. This was the beginning of the Yugoslav third way, which would result in the economy flourishing in decades to come. Apart from Czechoslovakia, Yugoslavia was the only country in the Eastern Bloc which participated in the Marshall Aid plan for reconstruction of Europe. In exchange for this policy towards the USSR, Yugoslavia could count on cheap loans from the West, primarily from the World Bank (WB). In addition, this included free trade agreements with EFTA, as well as membership in the International Monetary Fund (IMF) (Woodward, 2003, p. 75). Generations of Yugoslavs from 1945 to 1990 grew up with ideals of a powerful *red passport* granting visa-free access to both East and West. Despite economic and foreign policy success, waves of Yugoslav immigrants flocked into Western Europe in the 1950s, 1960s and 1970s. Whereas the profiling of Yugoslav foreign non-aligned policy was a complete success story, its planned economy was totally lagging behind the West. This is particularly important for the period preceding the demise of communism in the1980s as the non-ability of the Yugoslav economy to integrate into the emerging liberal wave of transformation, which will significantly contribute to the breakup of the country. The aim of this subchapter is to present political and economic instability of Yugoslavia during the 1980s. Post-Titoist Yugoslavia of 1980s was an unstable, weak federal state with a Presidency rotating on annual basis:[16]

Table 1. Members of the Rotating Presidency of Yugoslavia, 1980-1991

Name	Presiding period	Republic or province
Lazar Koliševski	4 May 1980 – 15 May 1980	Macedonia
Cvijetin Mijatović	15 May 1980 – 15 May 1981	Bosnia and Herzegovina
Sergej Kraigher	15 May 1981 – 15 May 1982	Slovenia
Petar Stambolić	15 May 1982 – 15 May 1983	Serbia
Mika Špiljak	15 May 1983 – 15 May 1984	Croatia
Veselin Đuranović	15 May 1984 – 15 May 1985	Montenegro
Radovan Vlajković	15 May 1985 – 15 May 1986	Vojvodina
Sinan Hasani	15 May 1986 – 15 May 1987	Kosovo
Lazar Mojsov	15 May 1987 – 15 May 1988	Macedonia
Raif Dizdarević	15 May 1988 – 15 May 1989	Bosnia and Herzegovina
Janez Drnovšek	15 May 1989 – 15 May 1990	Slovenia
Borisav Jović	15 May 1990 – 15 May 1991	Serbia
Stjepan Mesić[17]	1 July 1991 – 3 October 1991	Croatia

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[16] The present-day Bosnian-Herzegovinian Presidency also functions on a rotational basis, each of the three ethnic members presiding once in four years over a period of 18 months.

[17] After Drnovšek, Stipe Šuvar was appointed the Presiding Member but was subsequently recalled by the Croatian parliament.

In the turbulent period of the 1980s this inner political constellation proved to be devastating. First, with the death of Tito, the Union lost its imposing element, the cult of personality which managed to hold the federation together. Tito was not only a leader, a personality, he was the ideology itself, the only value this ideology of "Brotherhood and Unity" could be identified with. Following his death, the republics and autonomous provinces started following their own particularistic national interests. The second half of the 1980s also represents a rebirth of different nationalisms, no single republic being an exception. The Winter Olympic Games in Sarajevo of 1984 were the last trace of Yugoslav power which would soon evaporate in the economic crisis of the 1980s. In his article for the *New Serbian Political Thought* journal, Pavle Ćosić describes the 1980s as a period through which you could "smell the spirit of the West" (Ćosić, 2008, p. 1). He goes on saying that everyone lived happily, but the restrictions and strong state-control could be felt everywhere. The political indoctrination was very strong and a lot of citizens were imprisoned for counter-revolutionary activities. Power outages during winter were usual and the economy was on its knees. Trieste in Italy was a favorite shopping destination, despite the fact that the income of Yugoslav workers was five times lower than that of their Italian counterparts (Ćosić, 2008, p. 2). So, what were the main reasons of the Yugoslav economic crisis in the 1980s and how did it contribute to the escalation of conflicts in the 1990s? First of all, it was essential for the Government to rationalize the use of labor (Woodward, 2003, pp. 77-78). This was the greatest challenge of transformation for all communist economies. Given the fact that the already economic order in Yugoslavia was decentralized, economic fragmentation led to further divisions between federal units. By being a politically decentralized union, having foreign policy circumstances which weakened its role in the global arena and experiencing additional nationalist demands and awakening, the Yugoslav political system already started crumbling in the 1980s. The rationalization of the use of labor was a challenge the Government could not overcome, given the diversified labor markets in different federal units, as well as different labor productivity levels across the federation. This trend did not start in the 1980s but much earlier. However, the strong state-controlled planned economy during Tito's time could compensate for shortcomings in terms of performance of certain federal units. With the onslaught of the wave of neo-liberalism, the Government had no powers to fight the crisis. In 1979, the foreign debt of Yugoslavia amounted to $19.3 billion and the inflation was at 27% (OECD, 1990, p. 34).

Table 2. Unemployment Rate in Yugoslavia and its Federal Units, 1980-1990

Unemployment rates, 1980-1990 (%)[18]											
	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
YUG	**13.8**	**13.8**	**14.4**	**14.9**	**15.7**	**16.3**	**16.6**	**16.1**	**16.8**	**14.9**	**15.9**
BIH	16.6	16.7	17.9	20.3	23.0	24.4	24.3	23.1	24.1	20.3	20.6
MAC	27.9	29.0	28.1	26.4	26.7	27.6	27.7	27.3	27.1	21.9	22.9
MNE	17.5	18.1	19.3	21.6	23.5	24.6	24.6	23.6	26.3	21.6	21.6
KOS	39.0	39.1	41.0	44.5	49.9	54.2	57.1	57.0	57.8	36.3	38.4
SLO	1.4	1.6	1.7	2.0	1.9	1.8	1.7	1.8	2.5	3.2	4.8
CRO	5.7	6.1	6.9	7.4	7.7	7.9	7.9	7.8	8.5	8.0	8.6
SER	18.9	17.7	17.9	17.3	17.0	17.4	17.9	17.8	18.1	15.6	16.4
VOJ	14.4	14.6	15.1	15.6	15.7	15.7	15.6	13.9	14.3	13.6	16.6

The challenge to the central government was to introduce new policies in line with the IMF so that commercial debt with private banks would be serviced and stability ensured. The trade had to be adjusted to the free market (to the West) and main instruments of this policy included a reintegration of the internal Yugoslav market and a recentralization of monetary, trade, foreign exchange, and incomes policies (Woodward, 2003, p. 79).

Whereas much of these powers were already transferred to the federal units, it was obvious that a potential wave of recentralization would face fierce opposition. All in all, the economy of the 1980s experienced a significant crisis, which does sound like a good prelude to the breakup. Yet, there was one individual who managed to briefly get the country out of crisis. Probably no other person was so close to saving Yugoslavia from the coming breakup like Ante Marković, a Bosnian-Herzegovinian-born Croat, the Chair of the Presidency of the Communist Party of Croatia and the last President of the Executive Council of Yugoslavia (the last Yugoslav Prime Minister).

In the second half of 1980s the inflation peaked from 100% to over 2500%. In the absence of any clear plan, the country was leaning towards insolvency. Upon invitation of US President George H. Bush, Marković went to the United States where he presented his plan of recovery of the Yugoslav economy, which was also one of the prerequisites for obtaining an IMF loan.

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[18] This table represents an extract from a wider table covering a longer period (Woodward, 1995, p. 384) and aims to demonstrate the extent of economic fragmentation of Yugoslavia during the 1980s using unemployment parameters.

His main two points of economic recovery were monetary policy and structural reforms. Monetary policy included the curbing of inflation while structural reforms included effective privatization to set a path for transformation to market economy. By issuing a new, convertible *dinar*, pegged to the German Mark, he succeeded in stabilizing the monetary system. Whereas his privatization plan had good initial results in managing to transform certain industries, the long-term results of this privatization process were not that successful. Politically, he had serious misunderstandings with Slobodan Milošević, who strongly opposed his monetary policy. Given the fact that economic powers were significantly decentralized and in view of the introduction of multi-party political system including competitive elections, Milošević was interested in controlling the monetary system to fund his electoral campaign. The austerity campaign Marković negotiated with the IMF to ensure long-term currency stability was in question because of a loan taken by Milošević (Rogel, 1998, pp. 91-93). This is one element and explanation for the failure of his policies, the other being constant political turmoil in Slovenia and Croatia. There is no better example than Yugoslavia that political stability is the main prerequisite for economic progress. The stagnation of the present-day Bosnian-Herzegovinian economy is due to political inability of ethnic groups to agree on fiscal and trade policies. Thus, we will be able to draw certain parallels between Yugoslavia on the eve of its breakup and contemporary Bosnia and Herzegovina. With the introduction of a multi-party system in 1990, Marković formed a new political party, the Union of Reform Forces (*Savez reformskih snaga*). This party was anti-nationalist, liberal and pro-Yugoslav. For this doctoral research, the Union of Reform Forces plays a multifold role. First, it was the last ideological attempt to save Yugoslavia and ensure its transformation from socialism to democracy, thereby ensuring that the federal autonomy of republics remained respected. Secondly, this party emerged as a modern successor of the Union of Communists of Yugoslavia. This statement may, of course, be disputed, given the clear domination of nationalist parties at 1990 elections in individual federal units. However, if there may be some ideological symmetry in respect of Yugoslav statehood between any political party with that of the Union of Communists, the Union of Reform Forces is that force. The third reason for the relevance of Marković's party is its ideology, which served as the basis for two ethnic Social-Democratic parties in present-day Bosnia and Herzegovina. The President of Republic of Srpska and leader of the Serb Party of Independent Social Democrats (SNSD) Milorad Dodik was a member of the Union of Reform Forces. At the first democratic elections he was elected on their list to the Parliament of Bosnia and Herzegovina. The mainly Bosniak Social Democratic Party (SDP) of Bosnia and Herzegovina is also a direct successor of this party. Its

prominent member and mayor of Tuzla, Selim Bešlagić, was its member. In the other Yugoslav republics, like in Montenegro for instance, this political party was a predecessor of present-day leading left-wing parties. Although his party had no significant electoral achievement, it paved the way to healthy evolution of left-wing polarization in all Yugoslav republics. What was the underlying reasons of its failure against nationalist parties? At the beginning of the 1990s, nationalism lured masses, the bipolar world order was approaching its end and any economic long-term reform lacked political, pan-Yugoslav support to be implemented. Federal elections never took place. The federation of Yugoslavia was not anymore a subject of political discourse. On a more operational level, Marković failed to secure the support of the Yugoslav People's Army.[19] Despite being the Prime Minister, he could not count on its control to restore order in case of need. Torn apart between Slovenian and Croatian requests for confederalization, which was just a step towards full independence and international recognition, an inefficient and disloyal state apparatus and growing nationalist tensions, Marković believed he could save Yugoslavia. Even when the League of Communists of Yugoslavia was completely dismantled and stopped to exist, he said: "It doesn't matter if the League of Communists doesn't exist anymore, what matters is that Yugoslavia exists."[20]

The first democratic parliamentary elections in Yugoslavia took place at a time at which it was obvious that the League of Communist would cease to exist.

Just one month following Tito's death in 1980, a group of Slovenian intellectuals gathered to sign a petition for free intellectual debate. The unrest of Kosovo of April 1981 resulted in 9 deaths and 250 wounded (Dragović-Soso, 2002). Slovenia would also be the first republic to display support to the Polish Solidarity (*Solidarność*) trade union and to organize the first pro-democratic magazine called *Nova revija*. The 1980s are also a period when the future President of Bosnia and Herzegovina, Alija Izetbegović would be jailed for his book "Islamic Declaration" (*Islamska deklaracija*) in which he discussed necessary political and social changes from a theological perspective. In 1986, the Serbian Academy of Arts and Sciences published the first draft of it prominent and influential memorandum, which would provoke unprecedented negative reactions from other republics. In the same year, the League of Communists of Serbia appointed Slobodan Milošević president. A Serbian nationalist,

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[19] The last Chief Commander of the Yugoslav People's Army was Veljko Kadijević. Wanted by the Hague Tribunal for Former Yugoslavia, he obtained Russian asylum and died in Moscow on 2 November 2014.
[20] Obituary in the Croatian daily *Večernji list* (Ivanković, Gatarić, & Knežević, 2014).

Vojislav Šešelj, spoke of Drina as "not the western border of Serbia but as a river flowing directly through the middle of Serbia", thereby implying territorial claims over Bosnia and Herzegovina and Croatia. In the late 1980s, an ex-general of Yugoslav People's Army, Franjo Tuđman, presented the program of the Croatian Democratic Union, a nationalist Croat political party which would, at a later point in time, lead Croatia to independence.

The elections of 1990 indeed represent a political prelude to the breakup of Yugoslavia. In Slovenia, they took place in April 1990. As was the case in the other republics, they are not to be confused with the independence process. They were elections for the Slovenian tricameral parliament. The parties that emerged from the Slovenian Spring movement,[21] united in DEMOS (Democratic Union of Slovenia), clearly won this election. Whereas Slovenia would proclaim its independence in 1991, following a ten-day war, and hold new elections in 1992, the elections of 1990 represent a point of no return regarding its breakaway from Yugoslavia.

The situation in Croatia was very similar in terms of final outcomes. The elections held in April/May 1990, also to elect representatives in a tricameral parliament (*Sabor*), resulted in a clear victory for the Croatian Democratic Union of Franjo Tuđman. Unlike Slovenia, Croatia also had an ethnic cleavage, represented through a large Serb community (12.2%) which would oppose fiercely Croatian independence and the subsequent dissolution of Yugoslavia.

With these developments in mind, Bosnia and Herzegovina entered a turbulent period of the early 1990s with a challenge of setting its own course and position in the situations arising around it. There was an absolute myriad of inconceivable ideologies which would collide and result in a bloodshed.

Ethnic and Religious Cleavages in Bosnia and Herzegovina

The term "Bosnia" is differently perceived among the three ethnic groups. The fact which cannot be denied is that Bosnia owes its name to the river of Bosnia, which springs in Sarajevo's suburb Ilidža and flows into Sava near the town of Bosanski Šamac.[22]

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[21] Under the term Slovenian Spring, we understand a movement for liberal and civil awakening which opposed the Communist Party. This group was particularly active as of 1987.

[22] It is interesting to note that both the late presidents of the primarily Bosniak Party of Democratic Action Alija Izetbegović and Sulejman Tihić, as well as the assassinated Prime Minister of Serbia Zoran Đinđić were all born in this small town in northern Bosnia.

Terminology-wise, "Herzegovina", the southern part of the country, was added to "Bosnia" after Austro-Hungarian occupation, which came as a result of Berlin Congress of 1878. Bosnian and Herzegovinian are regional identities and a citizen of the country is a Bosnian-Herzegovinian. The three main ethnic groups which are legally recognized as constitutional peoples are Bosniaks, Serbs and Croats.[23]

Historically, Medieval Bosnia was a Christian kingdom which opposed Papal supremacy and was on several occasions labelled as heretic. It is worth noting that Bosnia (fell in 1463) shoved the strongest resistance to Ottoman occupation, managing to hold out longer than Constantinople, which was captured in 1453.

Whereas Serbs and Croats see this period as irrelevant for present Bosnian-Herzegovinian statehood, Bosniak historians draw parallels with other European states and claim and insist on a revival of such Bosnian identity. The flag of the primarily Bosniak-run independent Republic of Bosnia and Herzegovina during the 1992-1995 war contained the coat of arms of the House of Kotromanić, which ruled Bosnia prior to Ottoman takeover in 1463.

Figure 2: Flag of the Republic of Bosnia and Herzegovina

Source: www.crwflags.com

Already here there is the first divisive element in Bosnia and Herzegovina. Serbs consider this dynasty to be of Serbian roots, Croats claim closer ties to Croat noble houses and both ethnic groups refuse to accept the legacy of Medieval Bosnian rulers as an academic argument in favor of present-day Bosnian-Herzegovinian statehood. Be as it may, that flag, with the coat

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[23] According to the 1991 population census, Bosniaks were called Muslims and there were the overall ethnic makeup was as following: Muslims 43.47%, Serbs 31.21%; Croats 17.38% and Yugoslavs 5.54% (Zavod za statistiku BiH, 1991).

of arms of Tvrtko I Kotromanić, is nowadays perceived as a Bosniak, Muslim flag and as one of the symbols of one of the three ethnic groups. In the Serbian perception, Bosnia was never a proper state, but rather a province which had such strong ties to Serbian noble and royal houses that no basis for statehood could be established. Croats, on the opposite, link the Medieval Bosnia to Croatian noble houses of that time, as well as to a strong presence of the Catholic Church (especially the Franciscan Order) on the ground. As we have already noted, religion is a non-separable element of ethnic identities in Bosnia and Herzegovina. This is why scholars describe the war in Bosnia and Herzegovina as ethnoreligious. With minor exceptions, the impact of which may be neglected, Bosniaks are Sunni Muslims, Serbs are Orthodox Christians and Croats are Roman Catholics. All South Slavic nationalisms contain this religious component and the only nationalism in the Balkans that differs from this pattern is Albanian nationalism. The demise of communism brought a new wave of religious reawakening. Therefore, the phenomenon of three nationalisms in Bosnia and Herzegovina is not explainable without religion.

As mentioned in the first chapter, religion is what separated ones from the others during the Ottoman rule. Those who converted to Islam received a number of privileges and the severity of the Ottoman Sharia Law Order of that time was very cruel.[24] This is how the segregation and physical division between Muslims and non-Muslims emerged. Despite the fact that they were all same people, spoke the same language and had the same culture, mentality and even traditions, they were split into Muslims and non-Muslims. The animosity between religious groups grew heavily over the centuries and set fundaments for a permanent separation. With the Ottoman withdrawal from Bosnia after the Berlin Congress, the Austro-Hungarian Monarchy occupied the region. The challenges it had to face were multifold. First of all, following two Serbian Uprisings of the early 19th century, Serbia and Montenegro gained independence at the Berlin Congress. The wave of Serbian nationalism crossed the borders of the tiny, emerging Serbian state. Most of the population of Bosnia and Herzegovina in the late 19th century was Serbian Orthodox. The nationalist ideologies from Serbia thus found fertile ground on Bosnian-Herzegovinian soil. The idea of liberating all Serbian lands was revived. There was very little difference in nationalist ideologies of the early 1990s among Serbs. Yugoslavia was an idea acceptable to Serbs whose nationalists, at the beginning, were

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[24] The most cruel provisions of Ottoman Sharia Order to non-Muslims included the so called blood tax (Turkish *devşirme,* collecting). This was a tradition to send Ottoman soldiers to collect Christian children, convert them to Islam and prepare them for service to the Sultan. It slowly disappeared at the end of the 17th century. The other cruel provision was *Droit du seigneur*, allowing local Ottoman rulers to spend the first wedding night with their Christian subordinate's wife.

influenced by ideas of pan-Slavism and the unity of all South Slavs. In the Kingdom of Yugoslavia,[25] the maxim of all Serbs living in one state was fulfilled and the provisions of authentic Serbian nationalism[26] were not in collision with such an order. Yet, non-Serbs perceived such a kingdom led by a Serbian house as Serbian hegemony and domination. This would be the apple of discord during the period of negative peace between two World Wars. The same ethnic cleavages of the interwar period during the First Yugoslavia came to light in the early 1990s. Bosnia and Herzegovina was the playground on which all these diversities manifested themselves in their full extent. Serbian nationalism was enshrined in the program of the Serb Democratic Party, which was first formed in Croatia but then also in Bosnia and Herzegovina. Depending on the circumstances, the aims and ideology were adjusted according to historical developments. The Serb Democratic Party in Bosnia and Herzegovina was led by Radovan Karadžić, the war-time leader and President of Republic of Srpska. Although born in Montenegro, Karadžić moved to Bosnia and Herzegovina and received his degree in Psychology from the University of Sarajevo. Karadžić, together with Alija Izetbegović and Stjepan Kljujić of the Croatian Democratic Union branch in Bosnia and Herzegovina, belonged to the most prominent members of the Bosnian-Herzegovinian political scene in the early 1990s that are directly connected with the Bosnian-Herzegovinian crisis.

Serb nationalism in Bosnia and Herzegovina was heavily influenced by the memorandum of the Serbian Academy of Arts and Sciences as well as its other interpretations from Serbia.[27] Apart from the memorandum, the political platform of the Serb Democratic Party, initially founded in Croatia, initially contained no clear goals regarding the statehood issue. Serbian identity, reinvented in the spirit of the Serb Orthodox Church, was not fully institutionalized in line with nationalism. This doctoral research primarily focuses on the version of Serb nationalism in Bosnia and Herzegovina, its program and policies, the result of which, together with other nationalist ideologies, gave rise to the contemporary constitutional order.

Bosniak nationalism is also of ethnoreligious character.[28] Despite its claim of multiethnic and multireligious character, war-time Republic of Bosnia and Herzegovina did not manage to

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[25] It must be emphasized that the term Yugoslavia was first used in 1929. From 1918 to 1929, the official name of the state was the Kingdom of Serbs, Croats and Slovenes.

[26] Ilija Garašanin was an important Serbian statesman and Minister of Interior in the 19th century. His famous policy program, called *Načertanije*, represents the founding document of Serbian nationalism. It represents his vision of the state, nation and guidelines for Serbian inner and foreign policy.

[27] Comp. ideologies of Vojislav Šešelj and Vuk Drašković, etc.

[28] Comp. Alija Izetbegović and his *Islamic Declaration.*

attract the other two ethnic groups in a substantial manner. We will demonstrate its unquestionable attachment to a Muslim identity. Bosniaks have always insisted on Bosnia and Herzegovina remaining a republic for a simple reason: they wanted to introduce a one man – one vote principle on the whole territory. This would include an at-large electoral system, with the whole country as one electoral constituency. Consequently, this would disable ethnic groups to block the decision-making process. This concept failed and despite the international recognition of the "republic", it seized to exist in Dayton with the notion of a "republic" removed from the official name of the country. Whereas Bosnia and Herzegovina is the legal successor of "the republic", the "republic" basically disappeared.

Croat nationalism in Bosnia and Herzegovina was heavily influenced by Croatia. It sided with both parties in Bosnia and Herzegovina. The Croat-dominated breakaway region of Herzeg-Bosnia seized to exist with the Washington Agreement of 1994. Whereas Croats remain a constitutional people, unlike Serbs, they do not possess an autonomous unit.

The Road to War

The November 1990 Elections

Out of all republics in the Yugoslav federation, Bosnia and Herzegovina was the most ethnically heterogeneous one. No ethnic group, as mentioned when the population census was discussed, had an absolute majority. Even nowadays, after the war and many instanced of forced migration, no ethnic group possesses a majority. Out of 107 municipalities in Bosnia and Herzegovina, Bosniaks had a majority in 37, Serbs in 32 and Croats in 13 municipalities.[29] When we look more closely at the 1991 ethnic map of Bosnia, we can see that there was absolutely no way to divide the country along ethnic lines and ensure territorial continuity of any of the newly-formed territorial unit without ethnic cleansing and civil war. Be as it may, the two-round elections of 1990 reflected ethnic diversity of the republic in terms of those who voted for nationalist parties. They reflected the population census almost 1/1, as ethnic groups exclusively saw security in their national parties. The Parliament of the Socialist Republic of Bosnia and Herzegovina comprised two chambers, the Council of Citizens (*Vijeće građana*) consisting of 130 and the Council of Municipalities (*Vijeće opština*) comprising 110

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[29] Comp. Report of ICG No. 16 (International Crisis Group, 1996).

members. Out of 240 seats in the Bosnian-Herzegovinian parliament, the nationalist parties, the Bosniak Party of Democratic Action (*Stranka demokratske akcije*, SDA) won 86, the Serb Democratic Party (*Srpska demokratska stranka*, SDS) received 72 and the Croat Democratic Union (*Hrvatska demokratska zajednica*, HDZ) obtained 44 seats (Arnautović, 1996, p. 11). The disintegration of communism was reflected in the defeat of the League of Communist (19/240 seats) and Marković's Union of Reform Forces (13/240 members). The first President of the Parliament of SR Bosnia and Herzegovina was Momčilo Krajišnik[30] of SDS and the first Prime Minister was Jure Pelivan of HDZ.

Parallel to parliamentary elections, presidential elections were held on 18 November 1990. The Presidency of SR Bosnia and Herzegovina consisted of two members from each constitutive people (Serbs, Croats, Muslims (Bosniaks)) and one member belonging to the so called others (including Yugoslavs, etc.). In practice, this meant that every voter had four votes to cast, thereby selecting two names from each ethnic list and one name on the last, fourth list for others. All in all, following the countdown, the following seven members were elected to the Presidency of the SR Bosnia and Herzegovina: two Serb members (Biljana Plavšić and Nikola Koljević, both from SDS), two Croat members (Stjepan Kljujić and Franjo Boras, both from HDZ initially), [31] two Bosniak members (Fikret Abdić and Alija Izetbegović)[32] and one member belonging to Others (Ejup Ganić from SDA). These people would have prominent roles in the future of the country and the parties they came from would account for the establishment of ethnic, instead of ideological left-right political polarization.

The turnout at the parliamentary elections was 77.5% for the Council of Citizens and 81.6% for the Council of Municipalities, giving them a strong legitimation, but also serving as a confirmation of successful nationalist campaigning in all three ethnic groups.

The year of 1990 was turbulent in many respects. In January, the League of Communists practically ceased to exist, since the Slovenian and Croatian delegations withdrew from it. As mentioned earlier, elections in these two republics led to absolute victories of anti-communist alliances. Bosnia and Herzegovina was deeply polarized. There was a Muslim aspiration to follow in the footsteps of Slovenia and Croatia. Even though there was no clear indication of

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[30] Momčilo Krajišnik would later became the President of the National Assembly of the Republic of Srpska. His political role will further be discussed as he belonged to the inner circle of Radovan Karadžić.

[31] Political views of certain Croat politicians initially belonging to HDZ changed in due course as will be shown throughout this doctoral research. This change relates primarily to the views on Croat autonomy and Bosnian-Herzegovinian statehood.

[32] Fikret Abdić was initially a SDA member, but later founded his own party called Democratic People's Union (*Demokratska narodna zajednica*, DNZ).

the independence to come, it was obvious that the political defeat of the pro-communist bloc and the coming into power of nationalists would unquestionably lead to secession and ideological confrontations with those forces favoring centralism and the survival of Yugoslavia. The Serb Democratic Party, the source of what could be perceived as Serb[33] nationalism, was torn between two strong and opposing positions: one that favored Yugoslavia and the other siding with the ideology of "Greater Serbia". The difference between these two was clear. Greater Serbia, the concept we will discuss in detail in Chapter 3, includes complete Serb domination and hegemony, not giving any ethnic autonomy to other peoples. The perception of pro-Yugoslav Serbian nationalism is a misconception. It meant above all securing the existence of the Yugoslav federation. This is the prevailing reason why the Serb Democratic Party, as the main and legitimate representative power of Serb people in Bosnia and Herzegovina, would fiercely oppose Bosnian-Herzegovinian independence. The Bosniak position was also not clear from the very beginning. One member of the Bosnian Presidency, Fikret Avdić, played a controversial role opposing Yugoslav dissolution and his dismissal from SDA had a serious impact on the future.

Therefore, the 1990 elections represented political and ethnic divisions among peoples. However, given the aforementioned ethnic composition and the lack of any administrative autonomy which would be based on ethnic hegemony, further escalation of crisis could not have been prevented.

Government Formation

Prior to the elections, the Parliament of the Socialist Republic of Bosnia and Herzegovina amended the Constitution on 31 July 1990, making Bosniaks, Serbs and Croats three constitutive peoples of Bosnia and Herzegovina, a situation which remains true until this very day. The new Presidency expressed the ethnic fragmentation of the country. This is also the moment as of which Bosnian Muslims were renamed Bosniaks. In former Yugoslavia, the religious term Muslims used to be used synonymously with the ethnic one. Three national political parties were constituted as follows: The Party of Democratic Action (SDA) on 26 May, the Serb Democratic Party on 12 July and the Croat Democratic Union on 18 August 1990. The tripartite coalition government comprising all three ethnic parties was formed. Alija

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[33] I intentionally use the term Serb as it relates to ethnic and not national identity (e.g. a Bosnian Serb is not automatically a Serbian (citizen)).

Izetbegović was elected Chairman of the Presidency. It is once again worth emphasizing that all citizens could vote for all four ethnic categories of the Presidency and that nationalist parties supported each other.[34]

The Government formed did not reflect national unity and thus the crisis spilling over from other republics had to eventually reach Bosnia and Herzegovina. The Serb Democratic Party strongly opposed the fragmentation of Yugoslavia, whereas the Party of Democratic Action was keen on following the impulses from Slovenia and Croatia and subsequently proclaiming independence. At that time, what was happening in the background was an attempt to reach a consensus between the positions of the two strongest nationalisms of Yugoslavia and thus enable a partition of Bosnia and Herzegovina between Croatia and Serbia. Torn between two nationalisms opposing Bosnian-Herzegovinian statehood and pro-Bosnian Bosniak independence aspirations, the country had no viable chance of a peaceful settlement between the three ethnic groups. Not even a year following the first democratic elections in Bosnia and Herzegovina, the ethnic fragmentation reached a point of no return. At Pale (15 km away from Sarajevo), on 24 October 1991, the Assembly of Serbian People in Bosnia and Herzegovina was formed. This, in fact, was the nucleus of the present-day Parliament of the Republic of Srpska. Conversely, the Croats formed the Croat Community of Herzeg-Bosnia in Grude on 18 November 1991. Regarding the beginning of the war in Bosnia and Herzegovina, the warring sides have opposite views: In the village of Ravno in Herzegovina, the first armed conflict between the Yugoslav People's Army and Croat military units occurred in September/early October 1991. This is what Bosniaks and Croats consider as a starting point of the Bosnian-Herzegovinian civil war. The village of Ravno was important for JNA in its operations in Dubrovnik area against Croatian forces. Serbian sources tend to ignore this and point out the death of a Serbian priest, Nikola Gardović on 1 March 1992, during his son's wedding. Be as it may, the conflicts in Slovenia and in Croatia had a major spillover effect for the war in Bosnia and Herzegovina.

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[34] Comp. (Parliamentary Assembly of Bosnia and Herzegovina. Monography, 2010).

The War in Croatia and its Spillover to Bosnia and Herzegovina

A "ten-day" war in Slovenia[35] was an armed conflict of very low intensity, with casualties of slightly over 60. Its termination ended the short chapter of the Yugoslav crisis on the Slovenian soil. The chain of command in YPA showed serious shortcomings in respect of control and clarity. One of the major facts regarding Yugoslavia reads: Only ethnically homogenous units are politically stable. This will prove to be the case in Croatia. The animosity between Serbs and Croats stems from the Second World War. The Quisling Independent State of Croatia, supported by Nazi Germany and Fascist Italy, committed genocide against the Serb population in parts of present-day Croatia and Bosnia and Herzegovina during the Second World War. Many mass concentration camps, including Jasenovac, witness of a terror to which ethnic Serbs were subjected by this collaborationist regime.

Regarding Croatia in its present-day, AVNOJ, borders, Serbs primarily inhabited areas of what once used to be known as the Military Frontier (*Vojna krajina*). This area was a buffer zone against the Ottoman Empire until late 19th century, when it was integrated in the Kingdom Croatia-Slavonia. Given their importance for the Habsburg Empire, Serbs in the areas of Lika, Banija, Kordun and Slavonia, were given a number of privileges and freedoms that were not enjoyed by other inhabitants of Croatia-Slavonia that were still largely feudally-bound peasants. To a great extent, this lured Serbs from other occupied areas to inhabit the Military Frontier. Whereas the area was included in the First Kingdom of Serbs, Croats and Slovenes (as of 1929 the Kingdom of Yugoslavia), the rise of Croat nationalism which opposed Serbian domination would result in a massive slaughter and genocide in the Second World War. The Second Yugoslavia managed to appease old animosities but the rise of nationalism in the 1990s will again bring old hostilities to the light. On 22 December 1990,[36] Croatian Parliament (*Sabor*) ratified a new constitution which caused anger and frustration

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[35] Armed conflict between Territorial Defence Forces of Slovenia and the Yugoslav People's Army (JNA) (27 June 1991 – 7 July 1991) resulted in the signing of the Brijuni Accords which ended the conflict, allowing Slovenia, which declared independence on 25 June 1991, to postpone its proclamation for another three months. It had no real impact on the outcome. JNA had to withdraw its forces from Slovenia and it was obvious that Slovenian independence was a one-way street.

[36] There have been numerous debates whether Serbs were a constitutional people in the Croatian Constitution. The fact is that Serbs were deleted from the Constitution as a privileged people and the Croatian state would became a „state of Croatian people and other minorities". Serbs were not a minority until this change. However, Croats opposed them being constitutive as well. Whereas the old constitution declared Croatia a state of the Croatian people and of the Serb people living in Croatia, the new text spoke of a national state of the Croatian people, while Serbs were listed, among many other ethnic groups, as national minorities.

among Serbs. In areas controlled by ethnic Serbs, local authorities showed civil disobedience and formed a Serbian National Council in July 1990 to oppose the secessionist movement and later Croatian independence. It all led to the self-proclamation of the Serb Autonomous Region of Krajina on 21 December 1990 and to the beginning of hostilities between Serb breakaway authorities and the Government in Zagreb.

The February/March 1992 Independence Referendum

Even today, 1 March represents one of the most disputed dates in Bosnian-Herzegovinian history. This is the day when Bosniaks primarily celebrate Independence Day, referring to 29 February and 1 March 1992, when the Bosnian-Herzegovinian population voted in favor of the independence in a referendum which was boycotted by the Serb Democratic Party and the whole Serb population. The total turnout of the vote was 63.4%, out of which 99.7% voted in favor of independence. Two days following the referendum, Alija Izetbegović declared independence, which was subsequently recognized by the United States and the European Community (Caplan, 2005, p. 133). The referendum question read as follows: "Are you in favor of a sovereign and independent Bosnia-Herzegovina, a state of equal citizens and nations of Muslims, Serbs, Croats and others who live in it?" (Oslobođenje, 2013).

The Serb Democratic Party feared Bosniak domination which would, as was the case in Croatia, lead to Serbs becoming a minority, instead of a constitutive people. Prior to the Bosnian-Herzegovinian independence referendum, the Assembly of the Serb People of Bosnia and Herzegovina proclaimed the Republic of the Serb People of Bosnia and Herzegovina as part of Yugoslavia. On 28 February the same year, the Assembly passed a Constitution of the Serb Republic of Bosnia and Herzegovina and later removed Bosnia and Herzegovina from its name. In practice, this meant that all municipalities in which Serbs constituted an ethnic majority joined the Serb Republic and recognized its authority. Furthermore, this implied that these municipalities disobeyed orders from Bosnian-Herzegovinian authorities from which Serb representatives had already withdrawn. In parallel, the Assembly of the Serb Republic passed its six goals, the most important of which was the territorial separation of ethnic groups and direct access of the Serb Republic to the Adriatic Sea. Bosnia and Herzegovina, represented by the Government of Alija Izetbegović was admitted to the United Nations as a sovereign state. This was the first diplomatic victory of the Bosniak leadership. Whereas the situation abroad was favorable to the newly emerging Bosnian-Herzegovinian state, this state

had very limited internal control of affairs on its territory. What occurred in practice was a direct dispute of three nationalisms the ideologies of which were at loggerheads. Nationalists, which gained control in 1990, were now in a position to pursue their programs. The period between 25 June 1991[37] and 27 April 1992[38] is also known as the period of Rump Yugoslavia (*Krnja Jugoslavija*), comprising all Yugoslav republics apart from Slovenia and Croatia. Slobodan Milošević wanted to keep Bosniaks within the Federation and offered Alija Izetbegović the post of president of such union. Izetbegović would later describe this offer as the most immoral offer he had ever received, given the fact that Serbs would keep all key positions (Sandžak press, 2013). Later on, Alija Izetbegović was heavily criticized by many Bosniak intellectuals, including Adil Zulfikarpašić. In addition, another prominent Bosniak political leader who opposed the politics of the Bosnian-Herzegovinian Government was Fikret Abdić. Despite the fact that he was primarily elected as the Bosniak member of the Bosnian-Herzegovinian Presidency, gaining more votes than Alija Izetbegović on the list of SDA, he was expelled from the party and established an autonomous region called Western Bosnia, an autonomous state allied with the Serbs during the war that ceased to exist at the end of the war.

The Serb Democratic Party, in its attempt to discredit the independence referendum, used military and paramilitary units to destabilize and delegitimize the outcome of the Bosnian-Herzegovinian referendum. In his best known speech before the Parliament, the President of the Serb Democratic Party addressed the plenum on the night of 14-15 October 1991 regarding the discussion on Bosnian-Herzegovinian sovereignty with the following words: "What you are doing is not good. The road that you want to take Bosnia and Herzegovina down is the same highway to hell and suffering that Slovenia and Croatia have taken. Do not think that you will not take Bosnia and Herzegovina to hell and the Muslim people perhaps to annihilation, because the Muslim people cannot defend themselves if the war breaks out here" (Sense Agency, 2004, p. 2). It was obvious from this and other political developments in Bosnia and Herzegovina that political fragmentation would inevitably lead to an armed conflict. The last attempt to prevent independence from taking place occurred in January 1992, when Momčilo Krajišnik, the SDS President of the Parliament, wanted to hinder the passing of the respective referendum bill with Croat support. He failed and was replaced by an SDA

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[37] The date on which Croatia and Slovenia declared their independence from Yugoslavia.
[38] The date on which the new Federal Republic of Yugoslavia (Serbia and Montenegro) was declared.

member so the bill was adopted without members of the Serb Democratic Party, all of whom withdrew.

The independence referendum was the starting point of no return, which on the one hand frustrated Serbs due to the fact that they were outnumbered and on the other hand provided a legal prerequisite to seek independence in terms of international law. Croats, despite the fact that they supported the referendum, would seek their own autonomy within Bosnia and Herzegovina, torn between being part of the Bosnian-Herzegovinian state and political concepts of Croat nationalism. Nowadays, this public holiday is celebrated in the Federation of Bosnia and Herzegovina, but completely ignored in the Republic of Srpska. It only implies that the independence Bosnia and Herzegovina obtained in Dayton does not bear the same value as it did in 1992. The establishment of three separate ethnic units both the result and the core element of the Bosnian-Herzegovinian conflict.

War Breaks Out

The Establishment of the Republic of Srpska

The population census of March 1991 in Bosnia and Herzegovina, which was part of the population census in Yugoslavia, revealed that this republic was an ethnic melting pot and that none of the ethnic groups could form any kind of entity with territorial continuity without having to clash with the other two ethnic groups.

Figure 3: Ethnic Map of Bosnia and Herzegovina, 1991

Source: www.michaeltotten.com

N.B. the white line is the present-day entity line

As discussed before, the nationalist parties that won the election had free rein to implement their own programs and ideologies in the municipalities they controlled. The Serb Democratic Party was the leading political force of the Serb people in Bosnia and Herzegovina which possessed legitimacy to pursue its aims. Serb nationalist aims were, as already mentioned, torn between staying in Yugoslavia and revisiting the 19th century idea of Greater Serbia. With the formation of the Assembly of the Serb People in Bosnia and Herzegovina, the tripartite ethnic coalition disintegrated and Serbs, following their withdrawal from the Bosnian-Herzegovinian parliament,[39] formed their own unit. The Assembly of the Serb People is the predecessor of the present-day People's Assembly of the Republic of Srpska, a very powerful legislative body of the Serb entity in Bosnia and Herzegovina.

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[39] Apart from the Serb Democratic Party, two other parties joined the boycott of the Parliament – the Serbian Renewal Movement and, initially, Ante Marković's Union of Reform Forces which opposed the idea of Yugoslav disintegration.

The Republic of Srpska celebrates its national day on 9 January as it was on this day in 1992 that the Assembly declared the Republic of the Serb People in Bosnia and Herzegovina. One day ahead of the Bosniak/Croat-led referendum on the statehood of Bosnia and Herzegovina, on 28 February 1992, the Assembly passed the Constitution of the Serb Republic of Bosnia and Herzegovina (*Srpska Republika Bosna i Hercegovina*). This constitution was revised in order accommodate to the Dayton Constitution of Bosnia and Herzegovina, but many of the state prerogatives the Republic of Srpska still possesses remain in force.

The Serb plebiscite of November 1991 (Glas Srpske, 2012), held in areas where Serbs ethnically dominated, spoke in favor of remaining in Yugoslavia. This was organized in response to the announced independence referendum and already implied a conflicting outcome regarding opposing political views on Bosnian-Herzegovinian independence. An important element for the establishment of the Republic of Srpska, which beyond any doubt represents an element of statehood, is the establishment of the Serb armed forces in Bosnia and Herzegovina. The Army of the Republic of Srpska (*Vojska Republike Srpske*) was formed on 12 May 1992 by a law passed by the Assembly of the Serb Republic of Bosnia and Herzegovina (Pandurević, 2012). It consisted primarily of ethnic Serbs from Bosnia and Herzegovina and inherited most of the weaponry remaining from the Yugoslav People's Army. This is the reason why the public debate on the character of the War in Bosnia and Herzegovina varies among ethnic groups. Bosniaks primarily perceive the war as an aggression of Serbia and Croatia against Bosnia and Herzegovina. Serbs, on the other hand, tend to emphasize the defensive nature of their conduct and the civil war character of the Bosnian-Herzegovinian military conflict.

The Army of the Republic Srpska (VRS) gained a quick advantage over the other two military forces and *de facto* controlled almost 70% of Bosnian-Herzegovinian soil until 1995. The most important military operation Corridor 92 was between 24 June and 6 October 1992 and was fought against Croat and Bosniak military forces. The objective of the operation was to secure the territorial continuity of the Republic of Srpska and connect its eastern and western part. This corridor also secured a connection of the western part, as well as of the breakaway Serb region in Croatia, with the Federal Republic of Yugoslavia, which was the only contact to the external world for Serbs of Croatia and Bosnia and Herzegovina. It must be noted that, as elsewhere in Bosnia and Herzegovina, the newly established ethnic autonomous units were ethnically cleansed.

For most of the war, the Army of Republika Srpska fought primarily against the Army of Bosnia and Herzegovina, which was an overwhelmingly Bosniak military force. There was more direct confrontation with Croatian forces from Croatia (HV, *Hrvatska vojska*), as in the case of Corridor 2 and operations Storm and Mistral at the end of the war, than there was hostility with the Croat military force from Bosnia and Herzegovina (HVO, *Hrvatsko vijeće obrane*, Croatian Council of Defense). The proof of this statement is the Graz Agreement from May 1992 between Radovan Karadžić (Republic of Srpska) and Mate Boban (Bosnian Croat leader), agreeing on the partition of Bosnia and Herzegovina between Serbs and Croats (Lukic & Lynch, 1996). The Republic of Srpska was deprived of much of its territory as the end of the war was approaching. Its international legitimacy, but not independence, was recognized at Dayton. When it was integrated into the new Bosnian-Herzegovinian state, it retained many of its powers, a part of which remain until present.

The Establishment of the Croat Community of Herzeg-Bosnia

Another ethnic breakaway region in Bosnia and Herzegovina, the Croatian Community of Herceg-Bosna (also referred to as Herzeg-Bosnia in English), was founded on 18 November 1991 in Grude and was transformed into a republic in 1993 as a result of the Owen-Stoltenberg peace proposal. In his letter to the Croatian President Franjo Tuđman dated the same day, Mate Boban noted that due to the fact that "the last communist army supported by Chetniks[40] threatens the existence of the Croatian state and Croat people",[41] the Croat Assembly in Bosnia and Herzegovina, supported by the members of the Croat Democratic Union (HDZ), proclaimed self-government in a number of communities with Croat majority listed under Article 2 of the Proclamation. Whereas, initially, the rationale for its establishment was the Serb threat, as could be seen from the Graz agreement, Bosnian Croats were not pleased with the fact that they would live outside of Croatian state. Just like Milošević and Tuđman discussed the partition of Bosnia and Herzegovina at Karađorđevo, the same intentions of Karadžić and Boban foresaw the dissolution of Bosnia and Herzegovina. Although not so

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[40] Chetniks were members of the forces loyal to the Yugoslav Monarchy during the Second World War. Some of Chetnik forces collaborated with Nazi Germany (primarily in Serbia), while others worked together with Fascist Italy (mostly in Croatia and Montenegro). Given the fact that the House of Karađorđević was Serbian, they were primarily perceived as exclusively Serb and Bosniak and Croat media massively referred to Serb forces as such during the Yugoslav wars. The outcome of the Second World War was negative for monarchists and thus Chetniks were, considered defeated.

[41] Comp. The letter from Mate Boban to Franjo Tuđman, viewed on 1 December 2014 (Boban, 1991).

openly favorable to this dissolution like the Serbs, the political elites of Herzeg-Bosnia, as well as Serb political elites, would be subject to post-war prosecution and isolation for their separatist politics.

In terms of conflict intensity, there is a major difference which must be taken into account that differentiates the Bosnian-Herzegovinian War from the one in Croatia: The hostilities between Serbs and Croats were of a much lesser extent. The underlying reason for this was simple. Serbs and Croats in Bosnia and Herzegovina opposed Bosnian-Herzegovinian statehood but were much more dependent on their respective mother countries. As there was no divisive factor among them but rather a common foe in the form of mainly Bosniak and pro-Bosnian political forces. Bosniak political elites fiercely opposed any autonomy based on ethnic lines as the ethnic principle heavily contradicted their political ideology of a united Bosnia and Herzegovina. Given this insurmountable difference between Croats and Bosniaks, one important chapter of Bosnian-Herzegovinian war relates to the Croat-Bosniak conflict. It lasted from 19 June 1992 until 23 February 1994, when the ceasefire was signed.

The outcome of the Bosnian-Herzegovinian War as well as its future constitutional setup was heavily influenced by the Washington Agreement.[42] This tripartite agreement, signed by the Croatian Foreign Minister Mate Granić, Bosnian-Herzegovinian (Republic) Prime Minister Haris Silajdžić and the President of Herzeg-Bosnia Krešimir Zubak ended all hostilities between Croats and Bosniaks and created conditions for future joint military actions against Serbs in Bosnia and Herzegovina (Betlehem & Weller, 1997, p. 54). One has to admit that the treaty and its provisions worked well in practice during the war. The total defeat of the Serb Republic of Krajina, as well as significant territory losses in Bosnia and Herzegovina displayed unity, primarily of the Croatian Army (Croat forces from Croatia) and the Bosniak Army of Bosnia and Herzegovina[43] as long as the war lasted. The reason, as can be simply concluded, was the common foe, a common denominator in the form of Serb forces in Croatia and Bosnia and Herzegovina. For military purposes, this agreement was beneficial for both sides. However, it also enabled an administrative post-conflict institutional frame under which

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[42] One of the two present-day entities of Bosnia and Herzegovina, the Bosniak-Croat Federation of Bosnia and Herzegovina which makes up around 51% of the state territory was founded as a result of the Washington Agreement signed on 18 March 1994. This treaty ended hostilities of the Bosniak-Croat conflict and established the Federation through a merger of areas controlled by two armed forces, the Bosniak Army of Bosnia and Herzegovina and the Croat Council of Defence. This territory was, according to the Swiss model, divided into cantons, in order to prevent ethnic domination.
[43] Atif Dudaković, the Commander of the 5th Corps of the Bosniak Army of Bosnia and Herzegovina, was the most prominent Bosniak military leader who collaborated with Croatians in operations against Serb forces.

Bosniaks and Croats had to live in the same entity. If we come back to the cruel, already cited conclusion that only ethnically homogenous units are politically stable, most of contemporary constitutional issues will be understood. This doctoral research will demonstrate the ineffectiveness of the Federation of Bosnia and Herzegovina through the example of election of the Croat member of the Bosnian-Herzegovinian Presidency,[44] the political stalemate in the City of Mostar and costly administration as a direct result of the Washington Agreement.

The Croat Republic of Herzeg-Bosnia ceased to exist with the Washington Agreement. Whereas Croats in Bosnia and Herzegovina fully participate in political life, the debate over the Croat question in Bosnia and Herzegovina still remains. It remains one of the most important political questions as to whether Croats should regain their autonomy in form of an entity with an undisputed ethnic majority like the other two ethnic groups or should other solutions be sought. The reference to Herzeg-Bosnia remains a part of Croat political discourse, but represents no realistic outcome of any future constitutional reform due to heavy Bosniak opposition.

The Army of the Republic of Bosnia and Herzegovina and Alija Izetbegović

Despite coming second after Fikret Abdić in the first elections for Bosnian-Herzegovinian Presidency of 1990, Alija Izetbegović managed to take over the Chairmanship of the Presidency from himself and become an undisputed Bosniak leader. His dubious past[45] made it very difficult for him to earn any credibility among Serbs or Croats as someone who could be a unifying factor in Bosnia and Herzegovina. However, he enjoyed full credibility in the International Community as the undisputed Bosniak leader and a devoted fighter for an independent Bosnia and Herzegovina. Izetbegović was one of the most prominent Muslim intellectuals in former Yugoslavia and a member of the Young Muslims Organization. In his most known book, called the *Islamic Declaration*, he presented his radical views on how to reform the state by incorporating Islamic principles into state-building and reforms of the Yugoslav Federation. It is beyond any doubt true that he rejected any form of secularism,

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[44] Željko Komšić, the Croat member of the Bosnian-Herzegovinian Presidency (2006-2014) and a pro-Bosnian politician of the Social Democratic Party was primarily elected by votes from Bosniak ethnic communities and galvanized a wide-range political debate as to whether Croats are equal to the other two ethnic groups.

[45] Alija Izetbegović was convicted to fourteen years in prison for his Islamic nationalism and anti-state activity (Judgment against Alija Izetbegović and other members of the Young Muslim Community, 1983) in 1983 but was released in 1988, after almost five years because of pressure from the West, as well as internal opposition to political persecution.

including that of Kemal Atatürk in Turkey and saw a Muslim majority as a prerequisite for any form of state-building in Bosnia and Herzegovina. His ideology was absolutely irreconcilable with the communist order of Yugoslavia or even any form of liberal democracy, to which all communist countries were to transform. Some Bosniak sources present him as an all-Bosnian-Herzegovinian leader, a leader of all three ethnic groups, as some kind of father of the nation, but both he and his Party of Democratic Action never managed to gain any substantial support among the Serb or Croat population. On 15 April 1992, different paramilitary formations opposing the Yugoslav People's Army forces in Bosnia and Herzegovina, mainly consisting of Bosniak recruits, merged to a single military force, the Army of the Republic of Bosnia and Herzegovina (ABiH). Following the escalations of tensions with Serbs at the beginning of war, the ABiH could hardly control over 20% of the Bosnian-Herzegovinian territory. The ratio between territory over which they had control and Bosniak population was disproportionate. This is the primarily reason why the principle of one man – one vote would suit Bosniaks more than to Croats or Serbs who would in such a situation face the danger of being outnumbered. On the other hand, the ethnic principle, currently in force in Bosnia and Herzegovina, fully prevents the country from functioning, since its Council of Ministers (federal government) has very limited powers.

Before the Army of the Republic of Bosnia and Herzegovina was formed, several paramilitary forces operated the Yugoslav People's Army in Bosnia and Herzegovina against and in accordance with independence aspirations. These were the Green Berets (*Zelene beretke*), the Black Swans (*Crni labudovi*) and the Patriotic League (*Patriotska liga*). Once merged into the Army of the Republic of Bosnia and Herzegovina, they were, through the international recognition of Bosnia and Herzegovina, considered the only legally operating military force. This was a paradox, given the fact that the internationally recognized state was not in a position to effectively control more than a fifth of its territory. In the first year of direct military confrontations, in 1992, the ABiH exclusively confronted the remains of the Yugoslav People's Army, which, *de facto*, became the Army of the Republic of Srpska. The bitter reality of the capital city of Sarajevo under siege during the whole war was the picture most often broadcast from Bosnia and Herzegovina. The greatest deficiency the ABiH faced during the war was its inferiority against Serb forces in terms of weaponry. The course of the war was marked by several decisive phases which shaped present-day political and administrative order of the country. In a nutshell, the ABiH started fighting Serbs in 1992 and Croats in 1993. In 1994, the Washington Agreement brought an end to hostilities with Croats and joined their forces for further battles against Serbs. The bloodiest of all war years, 1995, brought a united

Croatian-Bosniak offensive during which most of Western Bosnia was taken from the Serbs. It also marked the end of war in Croatia, with the defeat of Republic of Serb Krajina followed by ethnic cleansing and the establishment of the complete political control of the Croatian Government over its internationally recognized territory.

From a purely political point of view, the ABiH managed to gain a level of international recognition the other two military forces failed to obtain. Thanks to the fact that Alija Izetbegović secured recognition of its independence, the Republic of Bosnia and Herzegovina was an international factor, a government which enjoyed sovereignty abroad. This maxim of Bosnian-Herzegovinian independence was respected and the new state of Bosnia and Herzegovina, which was created through the Dayton Agreement, became its legal successor. The success of the Bosniak side in this conflict is reflected in the sole existence of Bosnia and Herzegovina in international arena today. With a more thorough presentation of the military confrontations with Croats and Serbs, we will try to explain the essence of the Bosnian-Herzegovinian conflict among different sides.

Croat-Bosniak War

The term Croat-Bosniak War relates to the military confrontation between Croats and Bosniaks in Bosnia and Herzegovina, which began in 1992, but escalated in 1993 and was ended in 1994. Prior to offering a more thorough analysis of this, we have to reiterate several facts. Firstly, the Croat Democratic Union of Bosnia and Herzegovina was favorable of Bosnia-Herzegovinian independence due to analogous developments in Croatia and Slovenia. This position was directly opposed to the Serb position that wanted Bosnia and Herzegovina to stay in Yugoslavia and was thus expressed in the referendum boycott. Secondly, the outcome of the Karađorđevo meeting led to a revision of the Croat position in Bosnia and Herzegovina. Firmly believing that the republic would be divided between Serbia and Croatia, Croats sided with the Serbs and concluded the aforementioned Graz Agreement of May 1992. The Croat-Bosniak War is often referred to as a "war within the war", in the context of the larger Bosnian-Herzegovinian military conflict. As for its character, the ICTY[46] found a direct

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[46] International Criminal Tribunal for the former Yugoslavia (full name: The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991) is an *ad hoc* tribunal established by the UN Security Council Resolution 827. It was established to prosecute serious war crimes. Its rulings were and still are subject to a wide political debate among post-Yugoslavian states.

link between the Croatian Government and the Croat Community (later Republic) of Herzeg-Bosnia and defined it as an aggression of one country on another (Prosecutor against Dario Kordić and Mario Čerkez, 2001). One of the key persons that enabled such an outcome and supported Croats in Bosnia and Herzegovina in their opposition to an alliance with the Bosniaks was Croatian President Franjo Tuđman. He instructed Stjepan Kljujić, the elected Croat member of Bosnian-Herzegovinian Presidency, to favor his nationalist position of annexing areas dominantly inhabited by Croats to Croatia, instead of remaining loyal to the newly-formed united Republic of Bosnia and Herzegovina. When he objected to this, he was replaced by Mate Boban (Ramet, 2006, p. 86), who was and still is viewed by a vast majority of Croats in Bosnia and Herzegovina the "father of the Croat Republic of Herzeg-Bosnia".

On the international level, Herzeg-Bosnia, just like the Republic of Srpska, failed to obtain any form of international recognition. The ICTY would later label it as a breakaway region, punishing most of its founders with long-term sentences. It was obvious that Mate Boban, had he not died in 1997, would have been brought before the ICTY for a "joint criminal enterprise against non-Croat population", for which a number of renowned Croat politicians were sentenced in The Hague. Ethnically and geographically speaking, the dispersed Croat population of Bosnia and Herzegovina was in a difficult position to territorially link all administrative units under effective control of the self-proclaimed Croat authorities. During the first year of the war, the Croat population was ethnically cleansed from northern Bosnia,[47] especially during the Operation Corridor, which ensured territorial continuity of the Republic of Srpska, as well as connection of its western part to Serbia. This relates primarily to the region of Posavina, which once had a sizeable Croat community. The problem of Croats in Bosnia and Herzegovina could be summarized as follows: Whereas Herzegovina in the south was directly connected to Croatia and enjoyed considerable support from there, Croats living in Central Bosnia were surrounded by predominantly Bosniak municipalities. Given the nationalist attempts to establish territorial unity of the breakaway Croat territory, the Operation Lašva was launched in May 1992, in order to secure a Croat majority in the municipalities of Busovača, Novi Travnik, Kiseljak and Vitez. This led to a number of violations of international law and crimes against humanity for which Dario Kordić was sentenced. The most severe crime of the Croat-Bosniak War occurred in the village of Ahmići in April 1993. In an organized attack on 15 April, Croat forces entered the village from several

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[47] In this remark, the term Bosnia is used in a geographical manner, so that it relates to northern part of the state of Bosnia and Herzegovina.

directions and killed around 120 civilians (Prosecutor against Dario Kordić and Mario Čerkez, 2001). Other crimes against Bosniaks in Central Bosnia were committed in Busovača, Vitez, Travnik and Kiseljak. All of these municipalities had a heterogeneous ethnic makeup before the war, without a clear majority for either side.

Another important phase of the Bosniak-Croat conflict took place in Herzegovina. There is probably no other city in Bosnia and Herzegovina which symbolizes ethnic division more than Mostar,[48] the biggest city of Herzegovina. The person directly held responsible for the shelling of the bridge was Slobodan Praljak (Case information sheet. Prlić et al.). ABiH was also responsible for a number of killings of Croats in Grabovica and Uzdol. Three Bosniak commanders were sentenced to 39 years of prison for taking part in these crimes.

The Croat-Bosniak war, as an important chapter of Bosnian-Herzegovinian conflict, ended in February/March 1994. Under the auspices of the United States, Bosniaks and Croats, represented by the Government of Croatia, signed a ceasefire in Zagreb. The ceasefire was additionally strengthened through the Agreements of Vienna and Washington. The final outcome was the Washington Agreement, which established the present-day Federation of Bosnia and Herzegovina, one of the two Bosnian-Herzegovinian entities.

Enclaves and Sieges

The war in Bosnia and Herzegovina had a number of different phases during which different sides enjoyed relative military advantage. Whereas the first phase of the war enabled Serb forces to take over most of the territory thanks to a favorable strategic position and Yugoslav People's Army weaponry which mostly ended up in their hands, the second phase symbolizes their weakening and bringing of forces into equilibrium. What characterized the whole war, however, was a number of sieges and war crimes, due to which the International Community imposed a number of sanctions against Serb military and political leadership. The most important and known siege was the Siege of Sarajevo. Claimed to be the longest siege in the history of the modern warfare, Sarajevo, or precisely speaking the inner parts of the city

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[48] The Old Bridge of Mostar (after which the city was named, *most* = bridge, *star* =old) was destroyed on 9 November 1993 by Croat forces. The city of Mostar, divided (roughly) by the river Neretva in an Eastern (Bosniak) and Western (Croat) part, symbolizes ethnic division among Bosnian-Herzegovinian ethnic groups. First built in 1557 during the time of Suleiman the Magnificent, the bridge is one of the most important cultural heritage of the former Yugoslavia. Its destruction carries a deeper symbolic value: the cross-ethnic unity which existed in Socialist Yugoslavia under the slogan of Brotherhood and Unity (*Bratstvo i jedinstvo*) was destroyed.

controlled by the Army of the Republic of Bosnia and Herzegovina, were under a blockade of the Army of the Republic of Srpska for almost four years. A number of Serb military commanders[49] were sentenced for war crimes in and around Sarajevo and the remaining ones, including Radovan Karadžić and Ratko Mladić, are currently being processed for these crimes. The most notable violations of international humanitarian law included the shelling of the marketplace Markale twice and massive civilian killings on 5 February 1994 and 28 August 1995. The second shelling also galvanized NATO air strikes against Serb forces. As in every other aspect of political discourse of present-day Bosnian-Herzegovinian society, there are opposing views on the start of the armed conflict in Sarajevo. It is a fact that military hostilities began in March/April 1992.[50] Shortly thereafter Serb forces completely closed all connections with other territories under ABiH control and with the outside world. This situation lasted until the signing of the Dayton Peace Agreement and its full implementation which foresaw the takeover of most of Sarajevo urban area by the ABiH and the Federation of Bosnia and Herzegovina, leading to a displacement of some 70 000 Serbs from city parts controlled by Serb forces during the war (Burg & Shoup, 1999, pp. 165-167). This occurred in February 1996.

One of the bloodiest war crimes, referred by some to as the greatest war crime against humanity in Europe after the Second World War,[51] occurred in the town of Srebrenica in Eastern Bosnia. This town was a Bosniak enclave, established together with Sarajevo, Žepa, Goražde, Tuzla and Bihać by UN Security Council Resolution 824, aimed at creating safe havens for civilians. UNPROFOR, the UN peacekeeping force in Croatia and Bosnia and Herzegovina, was mandated to use force to protect civilians in these areas in case of danger. What occurred in Srebrenica in July 1995 would attract the attention of the International Community like no other tragedy of the Bosnian-Herzegovinian war. Whereas Srebrenica was a protected zone, a dubious Bosniak military commander, Naser Orić, was held responsible

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[49] Stanislav Galić and Dragomir Milošević were two commanders of the Sarajevo-Romanija Corps, the military unit of the Army of the Republic of Srpska controlling positions in and around Sarajevo. They were both sentenced to life imprisonment before the ICTY for their role in the Siege of Sarajevo.

[50] For Serbs the death of the priest Nikola Gardović represents the starting point of the Bosnian-Herzegovinian War on 1 March 1992, which coincides with the Bosnian-Herzegovinian referendum on independence.

[51] In its resolution of 15 January 2009, the European Parliament condemned the Srebrenica Massacre, *inter alia* summarizing that "during several days of carnage after the fall of Srebrenica, more than 8 000 Muslim men and boys, who had sought safety in this area under the protection of the United Nations Protection Force (UNPROFOR), were summarily executed by Bosnian Serb forces commanded by General Mladić and by paramilitary units, including Serbian irregular police units which had entered Bosnian territory from Serbia; whereas nearly 25 000 women, children and elderly people were forcibly deported, making this event the biggest war crime to take place in Europe since the end of the Second World War" (European Parliament resolution of 15 January 2009 on Srebrenica, 2009).

by Serbs for crimes in Kravica, a small village in the Srebrenica County, on 7 January (Christmas Day according to the Orthodox calendar) 1993. He was charged and later acquitted for these crimes before the ICTY (Case information sheet. Naser Orić). His actions in and around Srebrenica served as justification for Serb forces under Ratko Mladić to occupy the town (despite the fact that it was a UN protected zone) and commit mass murder of some eight thousand men and boys. In its ruling against Radoslav Krstić, the ICTY made the following conclusion: "(…) Bosnian Serb forces carried out genocide against the Bosnian Muslims (…). Those who devise and implement genocide seek to deprive humanity of the manifold richness its nationalities, races, ethnicities and religions provide. This is a crime against all humankind, its harm being felt not only by the group targeted for destruction, but by all of humanity."[52] Krstić was sentenced to 35 years in prison, becoming the first post-World War II European individual sentenced for genocide. This judgment, especially the content on genocide, had a wider political implication. Whereas present-day Serb politicians fiercely oppose the idea that a genocide was committed,[53] Bosniak politicians tend to precisely emphasize that fact. In political reality, the debate on genocide heavily polarizes Bosnian-Herzegovinian society and fosters new divisions. Because of the Srebrenica Massacre, as well as other massacres committed by Serb forces during the war, the Republic of Srpska was under severe international pressure during the war. In daily political discourse, Bosniak political elites used to label it as a polity built upon genocide. This resulted in serious opposition from Serbs and provoked Serb threats of secession, i.e. dissolution of the country.

The last siege which must be mentioned in this context is the Siege of Bihać. The complexity of the Bosnian-Herzegovinian issue is also reflected in this town in western Bosnia, which was for three years surrounded by forces of two Serb military forces, the Army of the Republic of Srpska and the Army of the Republic of Serb Krajina (Serb breakaway region in Croatia), as well as the Region of Western Bosnia, a small Bosniak territory unit under the command of Fikret Abdić and allied to Serbs. While Serb forces entered Srebrenica and Žepa, joint Croatian (Croatian Army forces that were deployed during Operation Storm) and Bosniak forces under Atif Dudaković succeeded in freeing access from the Bihać municipality to other allied territories.

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[52] Comp. full text of the judgment against Radoslav Krstić (Prosecutor against Krstić, 2004).
[53] One of the best known deniers of genocide is the President of the Republic of Srpska, Milorad Dodik. In a number of media interventions, he denied that genocide took place in Srebrenica and elsewhere in Bosnia and Herzegovina.

Washington Agreement

Until 1994, every ethnic group fought the other two ethnic groups somewhere in the country. What can, however, be concluded, as stated before, is that hostilities between Serbs and Croats were negligible thanks to the Graz Agreement. The turning point of war occurred in 1994 and this will not only militarily but also administratively leave a great impact on Bosnian-Herzegovinian reality until present.

A prelude to this agreement was a bloody Croat-Bosniak conflict in Herzegovina and Central Bosnia, leaving numerous casualties and thousands displaced. However, the motives to enter such negotiations were quite different for the two conflicting sides. Bosniaks needed to be on good terms with Croats given the favorable position of Western-led International Community towards the Croatian question. They knew that only if they managed to establish peace with Croats in Bosnia and Herzegovina could they count on a joint action against the Serbs. On the contrary, Croats in Bosnia and Herzegovina were ready to sacrifice their autonomy within the country under condition of a confederation with Croatia, where, together with Bosniaks, they would live in one state.[54] It must be noted that a joint, sustainable position of the International Community regarding the post-war order in Bosnia and Herzegovina was still not defined at this stage. The questions of two Serb breakaway regions in Croatia and Bosnia and Herzegovina was still not addressed and it was, therefore, not clear as to how these areas would be integrated in a common state.

What preceded this institutional solution was a ceasefire between the Army of Bosnia and Herzegovina and the Croat Council of Defense. Under the auspices of the State Department in February 1994 (Galbraith and Redman), the Prime Minister of the Republic of Bosnia and Herzegovina and later Bosniak member of the Bosnian-Herzegovinian Presidency Haris Silajdžić, and Croatian Foreign Minister Mate Granić, agreed on establishing the a) Federation of areas under Croat and Bosniak control in Bosnia and Herzegovina; and b) a preliminary agreement for a confederation of the newly established Federation with Croatia. However, this confederation never came into being. The AVNOJ borders had the upper hand over any national aspirations and it was clear that no cross-republican institutional confederation between Croatia and Bosniak-Croat Federation of Bosnia and Herzegovina would be permitted. As already said, this is what initially attracted Bosnian-Herzegovinian Croats to

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[54] Comp. United States Institute of Peace digital collection, Washington Agreement (USIP, 1997)

enter these peace talks. The High-Level Transitional Committee was tasked with taking immediate steps to achieve the following goals, i.e. to work on the following issues (USIP, 1997):

1) The Constitution of the Federation;
2) The Preliminary Agreement of the Confederation between the Republic of Croatia and the proposed Federation;
3) An agreement concerning military arrangements in the territory of the proposed Federation;
4) Transitional measures to expedite the establishment of the Confederation and Federation, including where possible the creation of governmental structures as outlined in the Framework; and
5) Any other measures determined to be necessary.

The agreement was signed at a White House ceremony on 18 March 1994 by Haris Silajdžić and Krešimir Zubak, the leader of Croats in Bosnia and Herzegovina. This moment sealed the creation of the Federation (of Bosnia and Herzegovina), one of the two present-day entities of the Bosnian-Herzegovinian state. As stated before, this alliance had a common denominator, a common foe, against which the two sides now joined forces, namely the Republic of Srpska. This, indeed, marked a turning point regarding the final outcome of the war. Being fully isolated and under international sanctions, Serbs lost a lot of battleground that they used to control during the war. On the other hand, in terms of *Realpolitik*, the Washington Agreement would lead to a post-war institutional stalemate between Croats and Bosniaks in the Federation. Any of the solutions which might come as outcomes of the war, be it the Confederation with Croatia or, what actually remained in force, the Bosniak-Croat Federation, would lead to one ethnic group being outnumbered. Bearing in mind the supremacy of the ethnic principle in Bosnia and Herzegovina, we can see how this would inevitably lead to a political crisis.

Taking everything into account, we must state that the Washington Agreement is relevant for this doctoral research for two reasons. First, it represents a turning point of the war due to the establishment of a new alliance. Second, it created the contemporary institutional arrangement that is examined throughout this doctoral thesis. This agreement was also a prelude to the final stage of the conflict, when Bosniak-Croatian forces effected Serb territory losses of 1995 and lead to the signing of a peace treaty.

From Stalemate over Ceasefire to Peace

Operation Storm, NATO, Operation Mistral

The failure of the peace plan envisaged by David Owen and Cyrus Vance[55] through its rejection by the Serbs was a sign that no diplomatic solution could lead to peace in Bosnia and Herzegovina before a major military and territorial reshuffle. Two important facts preceded the Operation Mistral, which was the beginning of the end regarding the course of the Bosnian-Herzegovinian War. First, the military operation Storm (*Oluja*),[56] led to a total defeat of the Republic of Serb Krajina in Croatia and subsequent displacement of over 200 000 Krajina Serbs. Operation Storm lasted only three days (4-7 August 1995), during which the stronghold of the Croatian Serb resistance, a small medieval town of Knin fell. The only region of Croatia not covered in this operation and under Serb control, Eastern Slavonia, was later peacefully integrated in the Croatian state.[57] This operation enabled the restoration of the Croatian state control over its whole territory, but also supported plans for further advancement in Bosnia and Herzegovina, which was, at that point, still around 70% under control of the Army of the Republic of Srpska. (Ramet, 1999, p. 408) The 5th Corpus of the Bosniak Army of the Republic of Bosnia and Herzegovina assisted the Croatian forces. The autonomous region of Western Bosnia also fell as a result of this military offensive. In support of the decisive Croatian advancement, NATO operation Deliberate Force[58] seriously weakened Bosnian Serbs (Ripley, 1999). Given the fact that previous peace plans envisaged serious concessions which the Serbs would have to make, it was obvious that a decisive military campaign was needed to force the Serbs to return to peace talks. As a result, a joint military campaign of three forces, the Croatian Army, the Croat Council of Defense

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[55] The Vance-Owen plan stems from 1993. It was a joint effort of Cyrus Vance, US diplomat and Secretary of State in Jimmy Carter's administration, and David Owen, ex-British Foreign Secretary, to bring peace. The plan foresaw the creation of a decentralized state with 10 cantons of a high degree of autonomy for these cantons. Being the last peace plan envisaging a unitary Bosnia and Herzegovina, it was accepted by Croats and Bosniaks, but refused by the Serbs.

[56] The Operation Storm (4-7 August 1995) represents a decisive Croatian victory over the forces of the Republic of Serb Krajina. As a result, Croatia gained control over the remaining 18.4% of its territory. More than 200 000 Serbs, who lived in this area for centuries, were displaced. Three Croatian generals tried before ICTY for crimes during operation Storm were eventually acquitted.

[57] The peaceful reintegration of Eastern Slavonia into Croatia was carried out from 1996 to 1998, under the auspices of the United Nations Eastern Slavonia Mission (UNTAES).

[58] Carried out between 30 August and 20 September 1995, this air strike campaign aimed at forces of the Army of the Republic of Srpska was launched to protect UN safe areas. It was officially triggered by the Markale 2 massacre and resulted in 400 NATO planes dropping over 1000 bombs on over 300 Bosnian Serb targets (Ripley, 1999).

and the Army of the Republic of Bosnia and Herzegovina came into effect. Three operations against Bosnian Serbs were launched simultaneously in the region of Bosnian Krajina, in western Bosnia. The first one, Operation Maestral, was a joint operation of Croatian forces from Croatia and Bosnia, HV and HVO, under the command of Croatian general Ante Gotovina, who was tried and acquitted before the ICTY for crimes committed against civilians during and immediately after the Operation Storm. Carried out in the period 8-15 September 1995, this operation aimed to create a long-term threat to the stronghold of Bosnian-Herzegovinian Serbs and the second largest city of Bosnia and Herzegovina, Banja Luka. Encountering no strong resistance of Serb forces which were seriously weakened by the NATO air strike campaign, Croat forces captured the towns of Šipovo, Jajce and Drvar. Outside of this operation, joint Croat forces made advancements on the southern front and managed to threaten the town of Trebinje, which was the largest town in the Serb-controlled Eastern Herzegovina. After the fall of three small towns in Bosnian Krajina, the only place remaining between Croat forces and Banja Luka was the town of Mrkonjić Grad.[59] The Bosniak ABiH played a role in this military campaign through the Operation Sana. The Headquarters of the 5th Corpus of ABiH was located in Bihać, a small Bosniak enclave in western Bosnia, surrounded by three enemies, the autonomous Bosniak region of Western Bosnia of Fikret Abdić, the Republic of Serb Krajina in Croatia and the Republic of Srpska. For most of the war, this enclave had to face severe attacks from Serb forces and was therefore desperate to open a corridor to other Bosniak territories. During the Operation Sana, which started on 13 September and lasted in total until October 1995, the ABiH managed to make serious advancements towards Sanski Most, Bosanska Krupa and Bosanski Petrovac, all three rather small, but strategically very important towns in Bosnian Krajina. Just like the Croat forces against Serbs in Herzegovina, ABiH also captured Vozuća, a strategic point in Central Bosnia, which put in danger another Bosnian Serb stronghold in northern Bosnia, Doboj. Despite the initial advances and territorial gains, the forces of Bosnian Serbs managed to recapture most of the territory loses, at which point ABiH requested Croatian assistance.

As a result, joint Croat forces from Croatia and Bosnia and Herzegovina launched the Operation Southern Move (*Južni potez*), the aim of which was to assist the ABiH in its defense of the town of Ključ, as well as to capture the strategically important town of Mrkonjić Grad, the last Serb stronghold before Banja Luka. The fall of Banja Luka would probably mean the

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[59] Named after King Peter I of Serbia, who fought under *nom de guerre* Petar Mrkonjić against the Ottomans in the 1875-1878 uprising in Bosnia and Herzegovina.

defeat of the Republic of Srpska or would at least significantly change the course and intensity of the conflict. Croats did manage to enter Mrkonjić Grad and capture the strategically important hydro power plant of Bočac, from which electricity was delivered to Banja Luka. At the peak of this operation and the military campaign in general, Croat forces were only 25 kilometers away from Banja Luka (CIA, 2002).

This was the stage at which Serb forces were in panic, forced with a multifold threat. First, the vital line of connection with Serbia, liberated during the Operation Corridor 92,[60] was under threat as the line at some places was not more than a few kilometers broad. Second, a possible fall of Banja Luka would certainly jeopardize the survival of the Republic of Srpska and would lead to an exodus of the Serb people from western Bosnia. The International Community, which previously seriously punished Serbs in Bosnia and Herzegovina, was now on the move. One exodus of Serb population from Croatia of around 200 000 was not prevented and led to a serious migration wave towards Serb territories in Bosnia and Serbia, as well as to a massive emigration of Serbs abroad. The city of Banja Luka alone had a population of 200 000 and the operations of joint Bosniak-Croat forces, supported by NATO air strikes, had already led to a displacement of some 125 000 people in Bosnia and Herzegovina. The International Community could not allow another exodus of Serbs taking place and an unambiguous ultimatum was sent to Croatian and Bosniak leaders. In addition, a disregard for the warnings coming from the International Community and further advancements deeper into Serb territory would have provoked forces of the Federal Republic of Yugoslavia (Serbia and Montenegro) to enter the war, which would have had unquestionably intensified the crisis. In the aftermath of this military campaign, the American administration, led by Richard Holbrooke, initiated a new peace process, which would finally lead to the end of the war.

Dayton Agreement

As discussed before, peace talks and initiatives were undertaken since the outbreak of the Bosnian-Herzegovinian war in order to end hostilities and bring peace. The first of them, the

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[60] The Serb Corridor in Bosnia and Herzegovina is the route Banja Luka – Doboj – Brčko – Bijeljina, which connected the eastern and western part of the Republic of Srpska but also the western, most populated part, with Serbia and, thus, its only ally and link to the outer world. In 1992, joint Serb forces from Bosnia and Herzegovina captured and secured this corridor in a military action codenamed Corridor 92 or Corridor of life.

Carrington-Cutileiro Plan,[61] was turned down by the Bosniak leader Alija Izetbegović. Another serious attempt already mentioned, the Vance-Owen plan, was rejected by Bosnian Serbs. The stalemate position under which Serbs controlled 70% of the country could not possible bring a sustainable solution, knowing that Serbs would have to give up much of their territory. Following the operations Storm in Croatia and Maestral, Sana and Southern Move in Bosnia and Herzegovina and given the serious determination of the International Community to resolve the crisis, Serbs in Bosnia and Herzegovina were forced to come back to the negotiating table. They were also pushed to do so by Serbia, which was no longer in a position to sustain further international isolation. The ceasefire of 5 October 1995 would later evolve in peace and no further hostilities would occur in the country.

Under the auspices of US Secretary of State, Warren Christopher, the conflicting parties gathered at the airbase Wright-Patterson near Dayton, Ohio. The conflicting parties were the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia. This implied that Bosnian Croats and Serbs were represented through Croatia and Serbia. After 20 days, on 21 November 1995, the parties approved an agreement which would bring an end to the Bosnian-Herzegovinian conflict. The Dayton Agreement was officially signed in Paris on 14 December 1995 and comprised the following parts (State Department, 1995):

General Framework Agreement for Peace in Bosnia and Herzegovina

Annex 1A: Military Aspects of the Peace Settlement

Annex 1B: Regional Stabilization

Annex 2: Inter-Entity Boundary

Annex 3: Elections

Annex 4: Constitution

Annex 5: Arbitration

Annex 6: Human Rights

Annex 7: Refugees and Displaced Persons

Annex 8: Commission to Preserve National Monuments

Annex 9: Bosnia and Herzegovina Public Corporations

Annex 10: Civilian Implementation

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[61] Named after Lord Carrington and Ambassador José Cutileiro of Portugal.

Annex 11: International Police Task Force

Agreement on Initialing the General Framework Agreement

Side-Letters

Concluding Statement

These accords provided not only for a military end of the conflict but also for the future institutional setup of the country. Whereas the Republic of Bosnia and Herzegovina continued its existence as a subject of international law, its new constitutional framework comprised aspects of the Washington Agreement and recognized and legitimized the existence of the Republic of Srpska. The main principle of Holbrooke's shuttle diplomacy of a 51-49% territorial split between the two entities was enforced. Territorially speaking, Serbs regained some of the uninhabited areas lost during the last joint military campaign of Bosniaks and Croats. The hardest concession Serbs had to make was the surrender of Sarajevo, i.e. of its urban area they controlled during the whole war. This led to a displacement of tens of thousands of Sarajevan Serbs following Dayton to other areas controlled by Serbs. The problem with territories Croats and Bosniaks gained in their last offensive was that they were mostly inhabited by Serbs before the war.[62] Croats surrendered back some of the territories to the Republic of Srpska. From the remaining part, the new Canton 10[63] of the Federation was created, merging Serb municipalities with some Croat municipalities. Apart from the greatest concession given to Bosniaks, the control over the whole capital, the Bosniak leaders had to accept the ethnic principle they so fiercely opposed. On the one hand, Bosnia and Herzegovina kept its statehood and independence, but on the other hand a complex state mechanism enabling ethnic groups to block decision-making was introduced.

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[62] Glamoč, Grahovo, Drvar, Mrkonjić Grad, Šipovo, Ključ and Bosanski Petrovac are all places that had a Serb majority of 90% Serb majority before the war.

[63] It was initially called Herzeg-Bosnia Canton, but due to objections from the Bosniak side it is now referred to as Canton 10 or Canton Livno, because the seat of the cantonal government is in the town of Livno.

Figure 4: Political Map of Bosnia and Herzegovina

Source: www.freeworldmaps.net

The focus of this doctoral research will be on different mandates of international organizations and their attempts of state-building, but it will also seek to provide an answer to the question whether this *sui generis* system is compatible with fundaments of a modern state and whether it was and is in line with prerequisites of European integration. Dayton's main objective was to bring peace, which it unquestionably succeeded in doing. The constitution, however, provided in its Annex 4, shall be subject to a thorough further analysis. For instance, 14 December, the day on which Dayton Peace Agreement was signed in Paris, is a public holiday in the Republic of Srpska, while it is just an ordinary working day in the Federation of Bosnia and Herzegovina.

War in a Nutshell: An Outlook

Whereas Serbs perceive it as a defensive war and Bosniaks as an aggression, the fact is that the Bosnian-Herzegovinian War resulted in a divided Bosnian-Herzegovinian society in many respects, the most important of which, the ethnic one, trumps over all others.

Estimates of casualties speak of an overall death toll of 104 732,[64] out of which 65% were Muslims, 21.7% Serbs and 8.5% Croats. Moreover, due to ethnic clashes, around 1 million people of different ethnic origins left the country. Due to ethnic cleansing on all sides, even bigger urban settlements became ethnically homogenous. On the contrary, villages in Bosnia and Herzegovina used to be ethnically homogenous even before the war. There is a logical historical explanation to such a demographic situation. During the wave of industrialization (1955-1975), people flocked to towns and cities and made them ethnically heterogeneous in the spirit of communist "Brotherhood and Unity". This urban ethnic heterogeneity almost completely collapsed during and after the war. Even if a certain town happens to be nominally heterogeneous, there are numerous elements of ethnic segregation that run "from cradle to grave".[65] This left an unprecedented war trauma with three ethnic truths constantly being canonized. Apart from the institutional common denominator in the form of the Dayton Constitution, their views are opposed and there is little similarity and readiness for consensus-finding.

Those people who wish to return to their pre-war homes find it difficult to integrate into new monoethnic societies. Given the grim economic outlook for everybody, irrespective of their ethnic or any other identity, young people see no future in the country and look for a way to emigrate.[66] This hopelessness is a direct impact of war, division and a haphazard transformation from a communist to a capitalist economic system Bosnia and Herzegovina went through. The example of this country helps us notice how political stability is important for good functioning of a society. Bosnia and Herzegovina will remain a unique example in Europe where the ethnic principle is institutionalized and where such a political system prevails, while the process of European integration deepens and renders national and ethnic divisions ever less important. However, present-day ethnic political elites, whose ideological roots stem from the war, remain decision-makers that must adjust the society they are leading to (European) values that they oppose at their core.

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[64] There are different estimates on numbers of victims of the Bosnian-Herzegovinian War. These figures were taken from a Conference Paper for the International Research Workshop (Zwierzchowsky & Tabeau, 2010, pp. 17-18).

[65] The best example of ethnic segregation is the principle of "two schools under one roof" in areas of Federation of Bosnia and Herzegovina with mixed Croat-Bosniak population. Children attend the same school, however, based on their ethnicity, they follow a Croat or Bosniak curriculum respectively. The "national" group of school subjects, including the native language and history, is what separates one group of school children from another.

[66] According to a study of IOM, 81% of young people wish to leave Bosnia and Herzegovina forever. Source: Radio Sarajevo, http://www.radiosarajevo.ba/novost/99078/oia-81-posto-mladih-zeli-napustiti-bih. Retrieved on 24 December 2014.

Chapter 3: Theory

Introduction

As stated in the introductory part, the theoretical approach that best explains the troublesome political framework of Bosnia and Herzegovina is historical institutionalism. The reason we use this approach lies in the fact that its characteristics best reflect the constitutional deadlock currently in place. In this respect, what matters the most in the Bosnian-Herzegovinian scenario is the fact that the initial Annex 4 to the Dayton Peace Agreement, the constitution, created an institutional deadlock, allowing all three ethnic groups to block and prevent any decision being made, should it oppose their national interest or at least what the respective political elites perceive and proclaim as national interest. In the Bosnian-Herzegovinian context, both the formal rules (legal/constitutional framework), as well as informal procedures that structure political behavior, influence the decision-making process. This is what historical institutionalists take into account (Thelen & Steinmo, 1992) when analyzing political behavior.

The second theoretical term, crucial for this doctoral research, which needs to be covered, is state-building. The so called "identity thesis" (Bernstorff, 2010, p. 240) of Hans Kelsen and his identification of the state with its legal system plays an important role for this doctoral research, given the fact that the constitutional framework in Bosnia and Herzegovina is differently perceived by the respective ethnic groups. Just like religious fundamentalism has its roots in different interpretations of holy books and their application to real situations, following a similar logic, Bosnian-Herzegovinian political elites attempt to interpret constitutional provisions in favor of their political ideologies. Neither political scientists nor lawyers stemming from different ethnic groups could agree on a common characterization of the Bosnian-Herzegovinian constitutional order. The exogenous factor, the International Community, played a crucial role in the state-building process in Bosnia and Herzegovina. The very roots of this state-building process lie in the Dayton Accords and represent a political experiment and an initiative, first of the US and later of the EU.[67] These external actors of Bosnian-Herzegovinian state-building are in a constant fight to prevent it from failing and

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[67] Given the fact that Dayton represents a success of the US shuttle diplomacy under Holbrooke, it is primarily up to the European Union to ensure successful state-building in Bosnia and Herzegovina.

leading to dissolution or some other form of political instability which could lead to a new armed conflict in a country that is understood to be the powder keg of Europe.

Under the pretext of state-building preceding the nation-building, i.e. being a prerequisite for its legitimate implementation, this chapter covers a complex plethora of various theories of nation which reflect the heterogeneity of identities in contemporary Bosnian-Herzegovinian society. The simple notion of a definition of a nation in the sense of Anderson, Brubaker or Gellner does not necessarily include all the components and specific traits of different nationalisms in Bosnia and Herzegovina, but affords for its theoretical understanding.

The Bosnian-Herzegovinian example provides for a number of "imagined communities" (Anderson, 1983) and a lack of common, unquestionable feeling of belonging to one nation. Conversely, there are so many common elements, like language, which despite its likeness, serve as divisive elements.

These three complex units are a theoretical reflection on the contemporary Bosnian-Herzegovinian political stalemate. This theory will help us determine whether Bosnia and Herzegovina can, with the assistance of an exogenous factor, reflected in its European integration, successfully complete its state-building process. From the institutional perspective, it possesses a number of powers and prerogatives of a modern state. However, it also lacks a strong central government. Unlike the "old institutionalism", which looked exclusively at the legal framework of a given system, the "new institutionalism" pays special attention to the historical rationale of the newly emerged order. Starting from and with Dayton, every single shift of power or constitutional amendment in Bosnia and Herzegovina had its historical and logical explanation which has to be viewed in the context of the respective constellation of political power at a particular point in time when this change was introduced. The mediums and methods, as well as the exogenous interests driving these changes are what makes Bosnia and Herzegovina a unique example.

Historical Institutionalism

History Sets a Framework for Political Actors

Neither a pure theory nor a method, historical institutionalism is differentiated from other approaches in its relationship and reference to the "real", empirical world. While the physical

sciences gained their momentum in the first half of 20th century, there was an initiative within social and political sciences to provide more "constituent" variables, thereby "earning" the status of a proper scientific discipline. The problem of incorporating history into these constituent variables was the fact that it was not a "hard" science. As a matter of fact, the sociologists of the 1950s and the 1960s understood the real world in historical terms as well. This diversification of studying the real world led to a separation of politics from history but did not, however, result in changing the respective approach. (Steinmo, 2008, pp. 118-122). This theoretical approach succeeded in incorporating the history into politics and to complement it accordingly, which is why it appears to be particularly valuable for research on ethnoreligious conflicts.

The three main forms of new institutionalism are rational choice institutionalism, sociological institutionalism and historical institutionalism. Whereas there are clearly opposed views whether the human factor affects political behavior or whether political behavior is a result of human beings being just decision-takers, historical institutionalism takes into account both views. It views the institutional framework as given, but also acknowledges the fact that humans are guided by sociological standards which were already pre-defined. Thus, we are both law-abiding citizens, as well as thinkers and rational beings capable of shaping our system (Steinmo, 2008, p. 126). The rational behavior we assume to demonstrate in a politically functional society, therefore, can be perceived as a fruit of our own capabilities. However, any action outside of this normative framework set by legal and sociological canons would be in collision with legitimacy, which is an important factor when analyzing the credibility and fundaments of a political system. We are therefore allowed and even encouraged to maximize our own interest should these be in conformity with the societal order.

Historical institutionalism takes into account three important factors (Pierson & Skocpol, 2002, pp. 693-721). The first factor is the temporal factor or the time frame in which a political action took place. It is important to fully explicate the contemporary order and power relations within a society to be able to interpret certain policies. We look at a political event and its characteristics taking into account the specific traits of that time. This can be demonstrated by a simple example considering personal savings. During the current period, when the European Central Bank (ECB) has basically abolished interest rates, the consumers are encouraged to spend. Now, it makes a big difference if we spend our income now on luxuries or we do it afterwards, when the banks again raise interest rates on savings. Money is cheaper now and,

within this particular time constellation, we should spend more now while these conditions are still in force.

Furthermore, history matters, as it provides explanations of certain political behaviors. Political actors learn from the past and they are inclined to form their views on the basis of lessons learned. We use history as a source from which we learn, but this is also done by the policy-shaping actors analyzed in this doctoral thesis. A great example of this second factor that characterizes historical institutionalism can be demonstrated with the Serb nationalist ideology. The ideology of the Serb Radical Party in Serbia favors the project of Greater Serbia, which, to a great extent, includes territories of all South-Slavic neighboring states. The roots of this ideology lay in late 19th century and were defined in a different time frame, at the peak of the balance-of-power game on the European continent. Whereas this ideology could, to a great extent, be justified in the context of the respective constellation of powers of the late 19th century or even at the end of the First World War when Serbia was an absolute winner together with the other Allies, its inapplicability in the post-communist order is, beyond any doubt, one of the contributing factors of the definite defeat of Serb nationalism. As is/was the case with other ideological movements, the adjustment of ideology, as opposed to the example above, is a prerequisite for fruitful and rational political behavior, through which interests might be maximized. The case of the failure of Serb nationalism during the last conflict in Yugoslavia is an excellent example that policies cannot be formed and actions taken irrespective of a certain historical context.

The third factor of historical institutionalism deals with the fact that contemporary political behaviors are framed on the basis of lessons learned in the past. A good example of the examination of this argument is the American post-9/11 intervention in Iraq (Steinmo, 2008, p. 126). We may on the one hand argue as realists that the American intervention was a war for oil, but a historical institutionalist might tend to justify it with a different interpretation of American behavior. In the Second World War, US interests were threatened by Japan and Germany. When they were defeated, it was the US that promoted democracy in these countries, following the idea that democracies do not go to war with other democracies. [68] Since Afghanistan and Iran served as shelters for US foes, the installment of democratic governments would prevent any future conflicts. What, however, those who argued in such a

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[68] This idea dates back to Kant and his *Perpetual Peace* (1795), where he argued that all countries should be constitutional republics in order to avoid conflict. Nowadays, these fundaments are reflected in democratic peace theories.

manner failed to take into account is the inapplicability of American values and perceptions of democracy in these cultures, which might be comparable to the non-applicability of initial Serbian nationalist ideology to the contemporary order. What differentiates the two concepts, however, is the fact that the American concept of promoting democracy turned out to be fruitful on two occasions, whereas Serb nationalism was never fully implemented.

Historical institutionalism sees history not as a chain of independent events (Steinmo, 2008, p. 126), but seeks a rationale for contemporary political behavior in the past and in the given context. So, when we analyze divisions between ethnic groups in Bosnia and Herzegovina, we refer to Ottoman times and the political order of that era. When we analyze political behavior of the three ethnic groups, we look at respective norms (the constitution, laws and policies) and at their evolution. So, it is thanks to history that we may attempt to understand Serb opposition to Bosniak-favored centralization. On the contrary, this same centralization is for Bosniaks a sign of statehood and dominance of a Bosnian-Herzegovinian identity over ethnic identities. Yet, what about institutions (Thelen & Steinmo, 1992), i.e. which institutions are relevant for historical institutionalism and for our doctoral research? The complexity of the constitutional setup in Bosnia and Herzegovina is what reflects the complexity of its society. In the Bosnian-Herzegovinian example, history really matters. Its institutions and present-day institutional arrangements are a pure product of exogenous factors (US-led International Community and shuttle diplomacy of Richard Holbrooke). However, as we explain throughout this doctoral research, history is what led to such an outcome. Whereas institutions remain at the core of research in historical institutionalism, "they are themselves also the outcome (conscious or unintended) of deliberate political strategies of political conflict and of choice" (Thelen & Steinmo, 1992, p. 10).[69] So, as Skopcol rightly remarks, "politics create polities, policies also remake politics" (Skopcol, 1992, p. 52). The institutional framework of Bosnia and Herzegovina within Yugoslavia served as the basis for the present-day constitution. The contemporary political behavior of ethnic political parties is determined by the lessons they learned in the 1990s and in the post-Dayton order. The division stemming from the war period is present nowadays and shapes present-day policies of political parties. The institutions which emerged as a direct result of pressure of exogenous factors were in fact lessons for Serbs to oppose any further transfer of power to the state level. Ever since 1995, state-building in Bosnia and Herzegovina was primarily understood as centralization of power. Serbs would argue that, from the lessons they learned from history, this has not necessarily

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[69] Quoted in: (Hay & Wincott, 1998, p. 955).

led to successful state-building. The post-Dayton "history" really matters for our understanding of Bosnian-Herzegovinian politics.

Past Choice of Institutions Determines the Present Political Maneuvering Space

As already mentioned, historical institutionalism examines political developments within a certain temporal (historical) frame. The decisions to select and create a certain form of institutions and not the other determine the dynamics of political behavior in the future, i.e. they determine the maneuvering space of contemporary political agents.

We have already identified a dual, interdependent relationship between institutions and political behavior. When it comes to the typology of institutions, they "may be more or less formal but invariably serve to regularize the behavior of the individuals who operate within them".[70]

The first, basic category of institutions are those Peter Hall identified with the highest, constitutional powers. They have overarching competencies and are responsible for the democratic functioning of the state. In our analysis this can be applied to the highest instances of executive, judicial and legislative power, both at the state and entity levels.

One level below, we can place the institutions which have no *a priori* direct impact on policy-making but do, as secondary agents, shape it. Whereas, in reference to the economic policy, the author gives trade unions as an example of such institutions, we can also include them, as well as all other lower-level governmental decision-makers involved in the process. It would be hard to determine whether entity-level institutions would fit into either of these categories. This is due to the fact that Bosnia and Herzegovina has witnessed a "multi-speed" inner integration, whereby certain aspects were fully integrated and decided upon from the state level, while others, like the police force, remained under entity jurisdiction.

Without providing a strict differentiation between governmental and non-governmental actors while classifying third-level institutions, the author rather focuses on the formality of their policies and decisions. The most relevant characteristic of this typology, which beyond any

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[70] When discussing the typology of institutions, the analysis of British economic policy and distribution of power within the respective institutional framework might serve as a starting point for further discussion (Hall, 1992, pp. 96-97).

doubt can be applied to the Bosnian-Herzegovinian political scene, is the intensity of change within a certain group. This is easily explainable in any political system if we take an example of coalition-building at local and state levels. Most of the catch-all parties present their post-election principles regarding possible coalitions and in advance define which options are acceptable for them and which are not. On the contrary, they always leave their local branch organizations to freely decide on coalition-building following local elections. The same applies to our typology. The more the institutions are centralized, the harder it is to reach a consensus and the more it is history that defines the behavior of our agents.

History is not only used to trace back events from the past or to locate them in an era, it is there to explain them and their evolution until a certain point in time. The relevance and superiority of historical institutionalism over rational choice theory for example can be very well demonstrated in the Sejdić-Finci case. A rational choice institutionalist would focus primarily on the legal outcome of the judgment, without taking into consideration the historical background of the case. The normative and legal implication of analysis of the Yugoslav crisis cannot be sufficiently explained using rational choice theory. The issue is never only about the legal arrangements, the content of a judgment of an international court or the gravity of the decision of the High Representative. It is much more about the historical background. Why is that so? Because it will have an impact on the future and, in cases when it had been ignored, a solution is highly likely not to be sustainable and politically productive. Unlike rational choice institutionalists who focus on rules of the game (Pierson & Skocpol, 2002, pp. 11-13), the historical institutionalists see the political outcome as a struggle of unequal actors. The institutional frames, being a result of a historical chain of events, consist of different fragments. If we even want to be more radical, we can argue that it is even the absence of common rules of the game that shapes and effects an order. This applies especially to the world order following the end of the unipolar movement.[71] It is in this neo-realist spirit that historical institutionalism gains its momentum given the absence of clear rules. On the micro, national level, as is the Bosnian-Herzegovinian political scene, the significance of these rules of the game is much higher than on the global level. The Dayton Constitution was the normative framework, the institutions of which influenced radical shifts in all ethnically dominated policies. As stated before, having no maxim winning in the end, ethnic political elites all had to accept certain provisions which violated the very fundaments of their initial ideologies. In addition, it is easily demonstrable that the institutional setup of Dayton and

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[71] Comp. Charles Krauthammer's *Unipolar Moment* (Krauthammer, 1991).

beyond is what shaped political behavior in Bosnia and Herzegovina. For instance, Serbs, who used to champion independence and secession from the Bosnian-Herzegovinian state are nowadays the greatest defenders of Dayton order, having realized that it is Dayton which secured them a strong autonomy with inner and outer legitimacy. Bosniaks, on the other hand, use state-building and European integration as a pretext for stronger centralization, quoting success story reforms like the introduction of the VAT, in order to implement their own agenda. So, the "choice" of institutions really does determine the maneuvering space. The only thing is that this choice was exogenous and that the Bosnian state-building experiment does not initially stem from its own political elites. For this reason, we label Bosnian-Herzegovinian statehood as imposed statehood.

Path Dependency

There is a deeply embedded belief in political science that political systems are conservative and reluctant to change of established patterns (Peters, Pierre, & King, 2005, p. 1276). Historical institutionalism puts an emphasis on discretion and stability of the decision-making process. Periods during which the political processes evolve are stable time frames referred to as "path dependencies" by scholars of historical institutionalism. If we look back at history, different eras, like *Pax Romana, Pax Ottomana*, etc., mark excellent examples of centuries of rule of a world power ensuring peace and stability to its subjects. When these periods of stability are interrupted, we talk of instable, formative moments when new policies are defined, whose purpose is to establish new path dependencies (Thelen & Steinmo, 1992). The fact that there is a line of division between formative periods and path dependencies may represent a serious shortcoming for historical institutionalism as the inconceivability of these two may result in none being properly understood. Whereas one might inevitably link political confrontations and oppositions to the formative periods, they also occur during the stability periods. Even in stable systems of representative democracies, when interest groups voice their legitimate concerns to a non-responsive government, a peaceful articulation of interests may result in a violent uprising, thus breaking the bold line between the two periods (Morrill, Zald, & Rao, 2003).

This implies that stability cannot be a credible determining factor that enables analysis of a political phenomenon. Policy analysis must incorporate, in addition, temporal interdependence among chains of events, thereby linking its contents irrespective of factors

differentiating them one from another. Despite the fact that historical intuitionalism incorporates change in its analysis, it gives priority to "structures over action, on fixity over change" (Peters, Pierre, & King, 2005, p. 1278). The fact that institutions, being at the core of the political system, shaping and defining it, incorporate values, norms and practices (Thelen, 1999, pp. 369-404) is not sufficient to provide a plausible cross-temporal substantial analysis of a certain political behavior. Historical institutionalism offers a comprehensive multidisciplinary approach when analyzing a political system. However, the criticism demands for an even more thorough approach to ensure higher empirical quality of research.

Apart from not taking into account the full effect of change or, better said, seeing it as a logical flow of historical events, historical institutionalism is tempted to exclusively portray the prevailing option, the one which is canonized, despite it being influenced by smaller units and changes, whose effects were neglected. This "critical juncture" (Collier & Collier, 1991) came as a result of the prevailing concept from the past but this concept was not unopposed and without alternatives. So, what again is the problem with this first version of path dependency? Whereas it undoubtedly provides an empirical explanation of the moment, it follows the motto *historia magistra vitae est*. The problem lies in the following: Path dependency attempts to theoretically, historically and empirically comment on a myriad of policies ranging from formation of government over law and languages to choice of technologies to pest control. No mechanism can exclusively use history to provide a comprehensive analysis. History is not a medium that can plausibly evaluate the results in all these disciplines (Page, 2006, pp. 87-89). This first type of path dependency is also in economy called the concept of "increasing returns".[72] Economic systems that developed at some stage in the past function well and bring significant gains. As a result, the agents are not keen on experimenting with even more efficient alternatives due to their reluctance to change.

Now, whereas there have been numerous attempts to determine other types of path dependencies, one could perhaps say that they can be classified in relation to their link to history. By saying this, we mean how radically they rely on the historical chain of events and how strict they are when it comes to explaining change. Another type of path dependency is the study of reactive sequence (Mahoney, 2000, p. 509). It is reactive to preceding events, all of which together form a non-breakable chain. What matters for this approach is the final outcome, explained as a product of "inherent sequentiality", as Mahoney calls it.

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[72] This term was coined by Paul Pierson (Pierson, 2000).

Political scientists and sociologists use path dependency to explain complex units like the emergence of the welfare state, whereas their starting point may be the Industrial Revolution, for instance. It is therefore easy to understand why and how history helps us understand them. It involves not only history, but almost all other disciplines and, therefore, undermines the efficiency potential of historical institutionalism as a theory. On the contrary, for the purpose of this doctoral research, path dependency has multiple applicability. Whether we want to discuss the constitutional pattern, the behavior of political parties or the European integration, we almost exclusively rely on past practices, the chain of events preceding the current state of affairs. In addition, the disciplines which need to be linked to/assist history in our analysis are more closely related, e.g. religious science, political science, linguistic science etc. They are all rather interdependent that it makes, in the end, the path dependency approach and historical institutionalism, in general, the most appropriate theoretical approach for our doctoral research.

Creation of Institutions and Institutional Change

Not only do institutions explain political conduct of our actors, but by being focused "at certain formative moments in history, these institutions are created with the object of giving the agent (or the interests the agent wants to further) an advantage in the future game of power" (Rothstein, 1992, p. 35). The question arising within historical institutionalism that remains imminent is how institutions evolve. As mentioned in previous typologies, we can differentiate them, *inter alia*, based on their propensity to change. Two major ways of formation of institutions (Thelen, 1999, p. 387) differently attribute importance to formative capacities at certain times. Analyzed on a global level, the gravity of certain formative moments results in the creation of new institutions.

This first type[73] of institutional creation results in gaps between nations, inconsistencies among groups in a society or in wage gaps in the economy. It is less receptive to the outcome of these effects. However, it provides for a more stable and defined order. An example of such an institution are the United Nations (UN). The Second World War and atrocities committed during the Holocaust, as well as the lessons learned from the failure of the League of Nations order, resulted in a post-war international community establishing an order based on the

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[73] Ikenberry's initial typology on institutional creation is widely accepted among historical institutionalists and is also used here to differentiate and explain these two approaches (Ikenberry, 1994)

fundaments of collective security and non-aggression.[74] Whereas the intention of Allied powers was to prevent conflicts from escalating, they could not provide a stable political climate due to diametrically opposed ideologies. Whereby we do not want to further elaborate on the evolution of the UN, which, however, is an excellent food for thought for historical institutionalists, we must conclude that this order resulted in a bipolar division reflected at all , economic, cultural, military and other levels.

The second type explains institutional creation as a result of change of circumstances, developments not being constrained by the events from the past. A good example of this kind of institution is the European Union (EU). Despite a centuries-long animosity between Germany and France and their opposition during the two world wars, German and French politicians initiated one of the greatest institutional projects in history of humankind. The past did not hinder them from undertaking this joint adventure which would even significantly restrict their national sovereignty. Post-war politicians of the two countries decided to break the chain of history and redefine their national interests and policies. By giving up their national control over coal and steel production to a supranational body, they formed a *sui generis* system, founded completely on new policies.

The points applicable to both approaches and to all institutional levels (regional, national and international) are reflected in the fact that new institutions represent a new starting point of analysis that is at the core of this doctoral research:

> "The institutions, in other words, established a strategic context for the actions of these political actors that changed the outcome of specific policy conflicts. This view of institutions breaks with a tradition in institutional analysis. Some of the most compelling arguments about institutions have viewed institutions as an independent variable" (Immergut, 1992, p. 83).[75]

The interdependent relationship between institutions and politics can be considered as widely accepted and is perhaps best interpreted in the model of "punctuated equilibrium".[76] It uses the same logic as is done in an evaluation of the *Pax Romana*. Long-term periods of stability

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[74] The principle of *ius cogens*, a norm from which no derogation is permitted. The significance of the new order is in the fact that no state should invade or commit an act of aggression against another sovereign state. As a result, in institutional terms, ministries of war were replaced by ministries of defense.

[75] Despite focusing on health policy-making, Immergut draws an important conclusion as how to position the role of institutions which are widely applicable.

[76] See also Stephen Krasner's *Approaches to the State: Alternative concepts and Historical Dynamics* (1984), quoted in: (Thelen & Steinmo, 1992, p. 15).

are interrupted by instabilities, conflicts or other forms of force, bringing the system into disequilibrium which is punctuated. The decisions made during the period of stability contribute to a change of political climate, which, as a result, slowly leads to further discontent that is deepening. When a stage is reached where we can already talk of a disequilibrium, the instability starts. The conduct of our agents during these periods violates/might contradict the "rules of the game". It inevitably changes the order and, in the long run, the institutional setup. Krasner accredits forces triggering change to an exogenous factor, which might not necessarily be the initial subject because of which the institutions were created in the first place. The weakness of institutionalists is that they ignore these exogenous, as well as other factors which have an impact on this interchangeable relationship. The underlining point he makes is that institutions remain independent variables during the times of stability. As long as forces opposing their policies endanger their stability, they become dependent upon the outcome of a punctuated power struggle and reshuffling. In a nutshell, while acknowledging an interdependent relationship between institutions and politics, which is analyzed using history as a medium, he ascertains primacy of institutions or their inferiority, depending on stability at a given point in time.

The formation of institutions is what we looked at firstly, but what also matters and has to be taken into account is the institutional dynamism (Thelen & Steinmo, 1992)[77] at which these institutions gain and lose their importance. It comes as a result of policy change, triggered by other geopolitical changes in the world. As an example, Thelen and Steinmo discuss the European Court of Justice (ECJ), initially just an institution with symbolic powers. As a result of the deepening of the European integration process through new treaties (Amsterdam, Nice and Lisbon), the new powers attributed to the ECJ transformed it into one of the most important EU institutions.

Furthermore, institutional dynamism is manifested through socioeconomic changes. It comes as a result of interest-shifting when certain mandates of certain institutions are strengthened as a result of this socioeconomic development. European integration has led to a number of such developments, empowering regions, social groups and other entities in the society, which, out of a sudden, may articulate their interest in Brussels and therefore gain additional political powers. Scandinavian trade unions, known for their strength and place in the society, could shape European job policies and therefore made a greater pan-European impact through the

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[77] The broader definition of this term is discussed in the book, thereby providing numerous examples of different policies shaping and redefining institutions in all areas.

European decision-making mechanism. Transitional societies like Bosnia and Herzegovina are also a perfect example of how European integration as a cross-disciplinary project results in trade unions coming together and state institutions gaining additional powers. Why is that so? Simply because Brussels wants to talk to one stakeholder in each country. Strong entities therefore face some kind of rivalry with the state, as the state is the political actor strengthened through the European integration.

This Bosnian-Herzegovinian example can be perceived as a buffer zone between the socioeconomic and the other, exogenous factor, the authors identified as being influential for institutional dynamism. This factor produces "shift in the goals or strategies being pursued with existing institutions – that is, changes in outcomes as old factors adopt new goals within the old institutions" (Thelen & Steinmo, 1992, pp. 16-17). The best example on global level for this kind of institutional change is NATO. The demise of communism and the end of the bipolar order made NATO face the very question of its notion of existence. Former US senator Richard Lugar said that NATO should either "go out of area or out of business". This means that the "collective defense" rationale for its existence is not a rational explanation for its operating, as there was no common foe anymore. So, by revisiting its mandate, forming new policies and redefining its priorities, NATO used the old mechanism, namely the old, existing institutions, to develop new policies. The ideological defeat of the Eastern Bloc, an exogenous variable, therefore, provided an institutional reshuffle of the old system.

To wrap up, what shapes and reforms an institution is a change comprising a myriad of historical, temporal, socioeconomic and other aspects. Institutions therefore remain a constant variable prone to inner and outer influence and they might as such be reformed; empowered or disempowered, but they remain at the core of research, an arena in which the political game is played.

Institutional Design

In the sense of modern democracy, institutional design "refers to a process aimed at producing prescriptions, organization charts and plans, usually with some adaptive rules for coping with unforeseen circumstances" (Olsen, 1997, p. 205). The existing institutional structures with their patterns are playgrounds where these designs are developed without reference to past patterns, i.e. circumstances under which they had been created. On further reflection, democracy encompasses a set of values, ideologies and identities that provides certain

standards and criteria of institutional design. The institutional design in this sense displays an asymmetric evolution of political modernization, or at least what the Western civilization perceives as progress and advancement in terms of political thought.

The beginning of the 20th century marks a period when political scientists and sociologists attempted to design an ideal institutional framework (Steinmo, 2008, p. 119). This approach encompassed constitutional design on the one hand, a more normative segment, as well as political behavior that sought to design a constitution which would serve as a role model. The most famous among these examples, in practice, was the Weimar Republic. Believed to be a role model, it failed completely for not being adjusted to temporal circumstances. This and other attempts resulted in societies falling under authoritarian regimes and dictatorships. Following the same fashion, despite having enough empirical proofs that democracy is the best functioning governance model,[78] it is highly unlikely that, what in the West is perceived as liberal democracy, can be implemented in regions with different perceptions, values and habits. With a complete failure of Weimar Germany, the study of institutions completely lost its credibility and was ignored. What they failed to realize back then and what political science would later learn from the past is that "design is more likely when political actors take into account how the working of institutions depends on properties of the citizens, not only rules and incentives; and when they take into account how institutions fashion, not only regulate, citizens (…) Design usually suggests a type of explanation that focusses on changes in the purposes, reasoning and power of identifiable political agents" (Olsen, 1997, pp. 203-204). This being a prerequisite, a myriad of factors must additionally be taken into account, both external and internal ones. In any case, a structure arising from a design is a result of human will, be it either a fruit of coercion, of an imposed solution promoted by a conqueror, or a result of compromise among independent agents. An institution is designed to serve a purpose, the character of which is analyzed by institutionalists. Both poles are in line with the popular sovereignty ideology. However, the purpose and decision-making mechanisms are different.

The design includes at least three levels: policies, mechanisms and whole systems.[79] It may rightfully be argued that policies include both political ideologies and codes of conduct, as

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[78] This is a rather general statement referring to parameters like GDP *per capita*, HDI, life expectancy and economic competitiveness whereby liberal democracies, in general, outdo countries with other forms of government.

[79] Goodin's typology of design levels is interesting due to its applicability to analysis of political systems of transitional societies. Given this level distinction, one may conclude that a certain complexity of political order is pre-defined and that these three levels reflect relevant aspects of decision-making and institution setting needed to understand this complexity (Goodin, 1996).

well as legal norms at agents' disposal. Mechanisms are primarily behaviors, habits and characteristics these agents manifest (politics). Mechanisms equal customs and practices to be followed. The whole systems are the "old" institutions at disposal through which the "new" institutions emerge. What Goodin accounts for the determining cross-level factor in a successful design procedure is feasibility. By feasibility we understand the capacity of social agents to implement policies resulting in a design of new institutions or redesign of the existing ones. On further notice, feasibility equals the level of applicability of the proposed policy solution given different constraints and opposing interests.

Now, what is a prerequisite for a good design? "A well-designed institution, in particular, would be one that is both internally consistent and externally in harmony with the rest of the social order in which it is set" (Goodin, 1996, p. 37). What does this internal compatibility imply? To which extent can a moral parameter be taken into account? When discussing internal consistency, the individual as the smallest cell or unit in the process of institutional design is taken into account. Individuals form groups which share values and convictions and formulate common policies with which they can identify. As such, prior to articulating its requests, groups make reference to the external system, i.e. its values and check to which extent their interests are in harmony with the pan-societal values. In addition, the need for this feasibility is equally applied to both state and non-state actors, as they both have their own role in institutional design. For instance, far-right political groups in Austria and Germany are obliged to face very restrictive laws strictly prohibiting any allegiance to Nazi heritage. This harmony is, therefore, a result of societal evolution, being both anchored in its legislation and culture. By the same token, one may rightfully argue that, what used to be considered a good design, can become disputed. A perfect example of this is the European Union. All this post-Maastricht euphoria and blossoming of institutional strengthening appears now to have faced an unprecedented wave of fatigue, proving that the perception of harmony in this respect has changed to a less affirmative stance.

Political and social sciences, as mentioned, aspire to moral factors and values that should be complementary to the pragmatic rationale of institutional design. Again, the problem with this intention is the lack of a universal canon and its applicability. Now, whereas historical institutionalists studying welfare states faced a number of factors which over time altered their focus of research, it is almost impossible to canonize any of the values on the global level. The heterogeneity of identities, ideologies and values in international relations is a more divisive factor, preventing any global set of values not disputed by agents and not commonly

agreed upon from being defined. In circumstances under which a democracy prevails, there are four different concepts which address institutional design in different capacities: democratic decentralization, civil society, market society and European integration concept.[80] Olsen referred to a welfare state as authoritative, oppressive, restrictive, bureaucratic and offensive, since these factors were decisive for him in his critique of the contemporary modern democracy, above all for being too distant to its citizens. These four parts of institutional design of Olsen are exactly the myriad which has shaped the post-Dayton institutional development in Bosnia and Herzegovina. Despite being a *sui generis* constitutional creation, Bosnia and Herzegovina shares the same dilemmas as other European states when discussing its functionality and it institutional design. What makes it different from others though, is again the superiority of the ethnic principle. Unlike other cleavages common in modern democracies, the post-nationalist ethnic elites simply prevent discussions symmetric to those in other European states. For instance, instead of adjusting its higher education to EU standards, political elites will first debate whether this power should remain at entity level or should be transferred to the state level. The superiority of the ethnic principle on the one and the absence of clear separation of powers on the other hand remain the greatest hurdles for the Bosnian-Herzegovinian institutional design. The welfare state, being the main subject of institutional design, therefore remains overshadowed by factors that are not social and economic in their nature.

Institutional design, as historical institutionalism in general, see change as a disruptive element. Reform proposals are not improvements and signify no progress but disruptive, resource-demanding, painful and threatening elements opposing stability (Olsen, 1997, p. 211).

The design is, therefore, perceived as a problem as it tends to disrupt the order in place. One may be wrong linking it exclusively to an establishment of an institution and its development from scratch. Institutional design has a broader spectrum of analysis and we cannot thus observe an institution as an end-product but as a wide range of interconnected events:

> "(...) When I speak of institutional design, I do not envisage the shaping and reshaping of just formal structures: say, of constitutional structures bearing on the organization

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[80] The typology used by Olsen relates to contemporary democratic developments (Olsen, 1997).

of parliament or courts. I use to phrase to cover interventions in any of the arrangements that coordinate the behavior of individuals in the society (…)"[81]

In addition to facing the issue of ethnic dominance, Bosnia and Herzegovina also faces a challenge of transition. So, the already disputed constitutional framework vaguely imposed by the exogenous factor is complemented by transition. This is because "we conceive transitions to democracy as critical junctures where existing institutional arrangements become malleable and subject to fundamental reconsideration. Our conception is particularly useful in understanding the relationship between democratization and constitutional choices" (Jung, 2015, p. 62).

The underlying problem of the Bosnian-Herzegovinian society is that the choices on institutional design made on its behalf lack legitimacy and cannot be considered as choices. When its institutional design or what is considered as such at its initial stage, was imposed and disputed by all contemporary agents, one may rightfully ask whether its founding is in fact in conformity with the institutional design of a democratic society. Could the transition in Bosnia and Herzegovina enable democratization and can we draw a conclusion that the Bosnian-Herzegovinian institutions are democratic products of its society at all? So, what if we conclude that the society is running on democratic principles in a non-democratic framework?

It is very hard to answer this question. Non-democratically established institutions are run in accordance with democratic standards. For instance, the Court and the Prosecutor's Office of Bosnia and Herzegovina are two institutions established by the High Representative in Bosnia and Herzegovina and their legitimacy is disputed. Whereas respective laws may be adopted under coercion in similar situations, Serbs (and other actors opposing the centralization of power) vehemently question their legitimacy. The institutional design, in this particular case, involves an exogenous factor, a force lacking democratic legitimation. Be as it may, the present-day order, despite being non-democratic at its core, is the frame in which a democratic country integrates into European democratic structures. Even at a time when Europe faces a lack of democratic legitimation as the supranational segment fails to digest newly attributed powers (Hix, 1997), the double-edged sword of European integration has inevitably led to

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[81] Institutional design is the term spanning policy, polity and politics aspects and therefore providing for a plausible analysis of certain political processes (Goodin, 1996, p. 55).

difficult discussions in the Bosnian-Herzegovinian society about the compatibility of the institutional design.

Historical institutionalism, through its thorough analysis of behavior, history and customs, helps us to understand: (i) how the institutions of the Bosnian-Herzegovinian state emerged; (ii) why they emerged in such a shape which seems to be incompatible with the values of democratic societies; (iii) what is the dynamism of the constitutional and institutional change, i.e. why has the reform process progressed at such a slow pace; and (iv) finally, which lessons from history can we apply to our future discussions. Firstly, as we have demonstrated and will still demonstrate throughout this doctoral research, the institutional setup is a result of a stalemate, post-war zero-sum outcome. Having three ideologies at loggerheads, with opposing concepts on major constitutional questions, how can a common denominator be found? This leads us to the answer to our second question. There can be no centralized system in conformity with democracy in which the ethnic principle enjoys superiority. One may argue that this ethnic principle should either be fully institutionalized,[82] so that when the democracy principle is satisfied at the ethnic level, a form of democracy can be transferred to the state level. Even though the constitution already provides for this, guaranteeing equal rights to all citizens, the institutional framework fails to follow it. Now we reach the problem of dynamism. Before an institution is designed, one must agree on its purpose. Instead of assessing it from a qualitative point and using it to promote one's own ethnic preference, one should be more pragmatic and discuss the rationale of the design. Very often, European officials request of Bosnian-Herzegovinian political elites to change something without even providing credible case studies on the feasibility of the requested changes. In addition, one has to learn this credibility lesson from the past, from history. The future institutional design must enjoy full credibility in all ethnic groups. Only through credibility will it be stable and sustainable. And this is where historical institutionalism convinces us of its necessity and full applicability.

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[82] By this, we mean that all three ethnic groups should have their strong autonomies and "state-alike" administrative units in order to fully exercise democratic legitimacy at this entity level, i.e. establish some form of confederation.

State-Building

Theories of State

The term "state" originates from the Latin word *status* (Krüger, 1966, pp. 9-11) and signifies a state, an order or a constitution. The initial meaning of the word cannot be said to have matched its later significance. It was not until Machiavelli introduced the term *lo stato* that the term gained its present meaning. The reason for adopting and profiling this term is the complex political scene of Medieval Italy and the notion of a term which would be vague enough and signify constituents. The other terms, like *terra* and *civitas*, were used for political groups controlling vast territories and city-states respectively. So, the term *lo stato* was widely accepted as a neutral solution which was equivalently introduced in other languages (Jellinek, 1919, pp. 129-132). By the same token, the term has remained open to interpretation until present and, due to its inclusiveness, incorporates a myriad of perceptions and approaches.

Regarding the typology and categorization of definitions of the state, Kriele (1994, pp. 73-74) differentiates between teleological, phenomenological and legal definitions. Teleological and phenomenological definitions are too abstract for our analysis. Whereas the first primarily focuses on the moral fundaments, the latter is simply fond of defining the state without evaluating the processes in it. Lawyers inquire when an entity can be considered a state and what in fact it is. Even the legal definition can create ambiguity. However, these two starting points referring to the very rationale of the existence of a state are an excellent point of departure for our analysis. This positivist aspect is generally needed to enable an understanding of the state. The comprehension of state is complete when supported with complementary interdisciplinary empirical knowledge which rounds it up.

The studies of state, its rationale and notion of public law and order, date back to the time of the Holy Roman Empire, when German public law emerged as a new discipline known as *Reichspublizistik*. In order to fully articulate individuals' identity and their interest, the state identity was created. In legal terms, this was the only identity common to all members of that community (Portmann, 2010, p. 52). Therefore, a prerequisite of reconciling individual identity manifested in one's freedom and new, state identity was possible, since the state was a product of a high moral evolution.[83] The state was not an outcome of a social contract but a

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[83] Hegel saw the state as a triumph of a moral idea and implementation of certain moral values (Hegel, 2014 [1820]).

result of an evolution starting with family and tribal societies and culminating with the functionally differentiated modern state. What is a state and what criteria are needed to consider an entity a state? Widely accepted definition in international law quotes the *Drei-Elementen-Lehre* of Georg Jellinek as the leading fundament of the state definition.[84] A state must possess people, territory and sovereignty.

People, in the sense of Jellinek's teaching, are citizens, over which this state can exercise its inner sovereignty. As free citizens, they have certain political rights and may pledge their allegiance to an ethnos or even to a nation. Citizenship remains an inclusive element thanks to which a certain group of people may exercise its rights, in which respect these people are equal with their rights and obligations towards that state. Ethnic identity in this sense remains totally excluded from any determination. Citizens, however, are just one group of people settled on the soil of a state. They must be differentiated from non-citizens because of suffrage. Suffrage provides citizens with rights to determine politics and to actively participate in state affairs. Those who reside in a territory without passive and active suffrage are obliged to adjust to the order pre-defined by citizens. Whereas we can apply suffrage as the main criterion to distinguish between citizens and non-citizens, what about those societies that are not democracies? The factor of citizenship plays an even more important role in authoritarian or, what Western world perceives as societies with restricted freedoms. Why is that so? In such societies the gap between citizens and foreign residents is much bigger. Let us look at the example of the Gulf states and their foreign work force. An oil-driven economy has provided their citizens with a strong welfare state and lavish social programs. On the contrary, people who come there are almost unable to integrate into the society and thus remain living in a parallel world with very little chances and possibilities. If we, however, apply the sense of the Jellinek's definition to the people, we must conclude that Pakistanis in Qatar, as well as Serbs in Germany fall under the definition of respective German and Qatari peoples, i.e. they are members of respective communities and they obey certain laws. However, the gap between citizens (*Staatsbürgervolkes* in the sense of German election law) and non-citizens differentiates from state to state. In any case, citizenship is the requirement based on which we can partially define the people and, in addition to that, differentiate it from others who belong to the state but have limited rights.

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[84] Jellinek sees the state as "die mit ursprünglicher Herrschermacht ausgerüstete Körperschaft eines sesshaften Volkes" (Jellinek, 1919, p. 183). The borders within this *Körperschaft* remain, however, disputed as we shall discuss further. These definitions may be argued to be too abstract to be aligned with positivist teaching.

A defined territory, as the second of three interrelated terms, is the soil on which the state can exercise its inner sovereignty, its legal order and laws. The Oxford Dictionary defines territory as "an area of land under the jurisdiction of a ruler or state". Sovereign is an entity which can demonstrate its domination over its subject. What does territory encompass?

> "Das Staatsgebiet ist der räumliche Bereich, über den der Souverän Gebiets- oder Territorialhoheit besitzt und allein rechtmäßig Staatsgewalt ausüben kann (…) Zum Staatsgebiet zählen das Landgebiet, eventuelle Exklaven, die inneren Gewässer, die Eigengewässer und das Küstenmeer (…) Das Staatsgebiet bezieht außerdem den Luftraum senkrecht über dem und den Raum unter der Erdoberfläche ein. Das Staatsgebiet wird von Staatsgrenzen umgeben, die völkerrechtlich zwischen den angrenzenden Staaten in Form eines Grenzvertrages oder durch multilaterale Verträge festgesetzt werden." [85]

Here, state monopoly is a neutral term signifying the sovereign's ability to implement its power. In this respect, all states have monopolies and sovereigns. What differentiates one from another is the exercising of this power, i.e. the mediums and patterns used to enforce the sovereigns' normative values over its subjects. As to the aforementioned normative definition of territory, it encompasses land, water and aerial space on which the state monopoly is exercised. It is of utmost importance to include elements other than land. International disputes over land borders are less common than those over sea, air or other aspects. The term territory needs simply to be perceived as a playground on which power is exercised. The quality of statehood is measured on the dominance of sovereigns over that territory. One of the standard essay questions for EU law exams reads: Is EU a state? If we look at territory as one of the three criteria in Jellinek's sense, we can agree that EU has its territory. Now, this territory is partially governed from the EU supranational level, thereby implying that EU exercises certain sovereign powers, i.e. sovereignty.

Now we come to the crucial question of *Staatsgewalt*. Interdependence between sovereignty and the prior two terms of people and territory is a *causa sine qua non*. Sovereignty (the inner) can only be exercised upon people on a defined territory (Fleiner-Gerster, 1995). The principle of sovereignty is therefore as old as mankind and refers to the ability to centralize power in a sovereign and have him or her rule. The most primitive sovereignty which must be achieved is domestic sovereignty (Krasner, 2001). It signifies the sovereign's ability to exercise its

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[85] Comp. (Andersen & Woyke, 2003) in: *Bundeszentrale für politische Bildung. Definition*.

powers without reference to any external agents. The question of legitimacy arises and, symmetrically to the very question of sovereignty, is the value prone to evolution, together with the evolution of modern state in general. Now, once this inner sovereignty is ascertained to exist, there has to be an association with the outer world, other states and entities, its immediate neighbors. This interdependence sovereignty is the ability of a state to control the flow of people and capital across its borders (Krasner, 2001). These two forms of sovereignty, domestic and interdependence, may best be demonstrated on numerous breakaway territorial units which proclaimed independence. Two Georgian breakaway regions, Abkhazia and South Ossetia, for instance, display beyond any doubt these two types of sovereignty. Their sovereigns exercise powers over defined territory and people. They freely control the flow of people and capital towards Russia and they have no problem in internal affairs, thereby demonstrating, *de facto*, a full scale of inner sovereignty. Looking at the matter from the opposite side, Georgia, which unlike its two breakaway regions possesses international legal sovereignty and is a subject of international law,[86] fails to demonstrate the first two types of sovereignty over the territory and the people of its two breakaway regions. The Georgian example is probably the best example of the complexity of this term. The fourth aspect of sovereignty Krasner refers to is Westphalian sovereignty. The importance of the Peace of Westphalia is multifold. Apart from ending a thirty-year religious war, it also established the principle of mutual recognition of sovereign states.[87] For the first time in history, states accepted territorial integrity of other entities and recognized to some extent its inviolability. By respecting territorial integrity of another state and not challenging its credibility, states agreed on a common, Westphalian norm, which would be canonized and eventually lead to codification of certain principles, on the basis of which the international system emerged. International law, as we know it today, is still weak in the positivist sense. It relies to a great extent on customs. Yet, the fact that states managed to agree on common rules enabled universalization of certain values and principles. The evolution of the international law saw its peak after the Second World War. The UN Charter as the greatest achievement of mankind in terms of codification of universal values and principles, yet it represents nothing but a logical evolution of the Westphalian order. The perception and normative value of the term sovereignty has weakened over the past decades. The sovereignty shifted at the expense of nation states for the benefit of regional, inter-state entities and systems, which appear to better

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[86] States are considered initial, original and classical subjects of international law.

[87] Henry Kissinger in his *Diplomacy*, as well as other books, as many others, emphasizes the Westphalian Peace (1648) as the starting point of international law, the moment as of which we talk about the world order, an international system and international relations.

articulate mutual interests. It is therefore crucial to discuss the modern state by taking into account the evolution of the Westphalian order on the one hand and analyzing the quality of its statehood in positivist sense on the other. Despite being minimalist, the definition of the state by Jellinek as well as that of Kelsen, is a good starting point, a common denominator in the legal sense, which we needed for an analysis of the state.

For Kelsen,[88] the definition and perception of the state derives from the legal system. In addition to Jellinek, he is even more radical, completely linking the two and emphasizing their interchangeability: "Wenn die herrschende Staatslehre den Staat als 'Zwangsapparat', die traditionelle Rechtslehre das Recht als Zwangsordnung charakterisiert, so zeigt sich darin, dass beide im Grunde genommen, denselben Gegenstand begreifen wollen, denn der Zwangsapparat' ist ja nur ein Bild der Zwangsordnung'" (Kelsen, 1993 [1925], p. 17).

The denominator between the state and the legal system is compulsion (*Zwang*). The legal system as such is an order (*Ordnung*) and the state is an apparatus. Both of them have influence on the state and the apparatus is a derivative of this order. Therefore, being at the same time a result of a defined legal norm, the state remains inferior *vis-à-vis* a pre-defined normative value. Kelsen's definition of state is a very primitive one and is primarily based on codified, legal order, thereby excluding all non-legal features. In chapters six and seven of his *Pure Theory of Law* (Kelsen, 1993 [1925]), he discussed the state in domestic and international law terms. When focusing on the state, he completely equates it with the legal order. In order for a state to function, a legal order must be put in place. Socio-economic and other elements, as said, are inferior or, even if we want to be more radical, completely neglected. This is absolutely contrary to historical intuitionalism. However, the importance of a positivist approach in the Bosnian-Herzegovinian example is of great value. The distribution of powers, as one of the components mostly reflecting the positivist spirit, is a subject of everyday political debate in Bosnia and Herzegovina. The more European integration process deepens, the more it becomes imminent to redesign the constitution in order to anchor and completely distributing powers between entities and the state. The problem in the Bosnian-Herzegovinian example is that the given legal framework does not suffice to provide a well-functioning state and political system. Elections are held in line with the constitution and the respective election law. However, the positivist criterion does not suffice to ensure stability.

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[88] See also Kelsen's arguments on and perception of state with personal remarks (Kelsen, 1993 [1925]).

When it comes to international law, Kelsen sees mediums other than law determining the order. In the constellation where law enjoys lesser or no superiority over war, diplomacy and geostrategic interests, it is hard to argue that, like on the state level, one may compare intra-state and inter-state orders. Kelsen acknowledges the international law's inferiority and accepts the primacy of other determinants regulating international order to a much greater significance.

All things considered, the term state-building is strongly linked to the emergence of the modern state in Western Europe. At the core of state-building is the state's ability of power enforcement (Tilly, 1975). State-building provides, above all, institutions and personnel needed to enforce this power over a certain population on a defined territory. The term as such witnessed an evolution over time and is today primarily linked to cases lacking sovereignty, i.e. assisting those subjects having serious challenges to develop in line with Western standards: "State-building – the development of international mechanisms aimed at addressing cases of state collapse or at shoring up failing states – is increasingly becoming the dominant framework for the international regulation of non-Western states" (Chandler, 2006, p. 26).

This is the aspect of state-building which is relevant for our doctoral research. State-building in the Bosnian-Herzegovinian case signifies activities of the International Community that have led to the creation of the post-war order. If historical institutionalism provides historical and behavioral background for this analysis, state-building comprises its "legal" component.

State-building in Bosnia and Herzegovina, unlike in other transitional states, comprises the Office of the High Representative. In line with the 1997 Bonn Powers, "the High Representative was equipped with additional powers, which transformed him from a facilitator to an integral institution of the current system of government in Bosnia. Equipped with both legislative and executive powers, the High Representative (HR) has emerged as the most influential institution in Bosnia – and the only one not governed by power-sharing or democratic principles" (Bieber, 2006, p. 84). The fact that High Representative possesses such powers speaks in favor of those challenging Bosnian-Herzegovinian inner sovereignty. It is a feature of colonies and other dependent entities to have an exogenous decision-making authority which lacks legitimacy in terms of modern Western democracy. This leads us to a conclusion that the institution of the High Representative represents the main obstacle when arguing in favor of Bosnian-Herzegovinian statehood in a positivist sense. Whereas its outer sovereignty can hardly be disputed, as the country is a subject of international law and a member of the United Nations and other international organizations, the quality of Bosnian-

Herzegovinian statehood in the positivist sense is primarily viewed on the inner level, thereby providing analysis of its constitutional design.

Constitutional Design

The constitution can be defined as "the basic, fundamental law of a state which sets out how that state will be organized and the powers and authorities of government between different political units and citizens".[89] In this subchapter, we will discuss constitutions as structure patterns of legitimate authority within nation-states. The importance of constitutional structure in democracies is multifold: (i) it determines electoral rules, the number of parties in the parliament and how the government is to be formed; (ii) it defines the relationship between legislative and executive pillars in order to ensure effective governance, and (iii) it determines power distribution and vertical power-sharing. Constitutions embody national aspirations and show aspirations. In certain cases, constitutions represent a result of a negotiated peace-building and reconciliation process (e.g. Bosnia and Herzegovina, Nepal, South Africa, Afghanistan, etc.).

One of the ways to differentiate democracies is to classify them by their form of government. In this respect, there are three basic systems – the presidential, the semi-presidential and the parliamentary system (Cheibub, Gandhi, & Vreeland, 2010, pp. 79-80). This distinction primarily comes from the relationship between the executive and the elected legislative, i.e. governments and parliaments. In this respect, we need to answers two underlining questions in order to classify a government. The first one relates to the responsibility of government towards the parliament and the second inquires whether the head of state is directly elected for a fixed term period in office. If the government does not have responsibility towards parliament, i.e. is not elected through a legislative process, the system is considered as presidential.[90]

The underlining criteria linking a system to presidentialism is a "direct or a direct-like popular election of the head of state for a fixed term span" (Sartori, 1994, p. 83). It is, however, not enough to have this criterion fulfilled, since in many countries, despite being directly elected, presidents have very symbolic powers. In countries like Austria, Croatia and Serbia, despite

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[89] Legal definition of constitution taken from Duhaime:
http://www.duhaime.org/LegalDictionary/C/Constitution.aspx
[90] For example, the United States.

having important constitutional roles like war declaration, etc., presidents remain inferior to prime ministers who hold real powers in the executive office. In Bosnia and Herzegovina, it is very difficult to discuss the type of political system currently in place. Also, one has to look at the entity levels as well, since entities possess, as we will discuss in the case studies, very strong autonomy which, in some respects like internal affairs, shows elements of statehood. The collective head of state, the tripartite Presidency, is directly elected, but has very limited powers. Even the Council of Ministers, a government-like executive body at the state level, despite reflecting the people's will by being directly approved by the majority of the State Parliament, is hindered to perform executive powers typical for a parliamentary democracy. In this respect, the Bosnian-Herzegovinian system is more parliamentary than presidential. However, certain typical state domains, like foreign policy, are exclusively reserved for the Presidency, which, for instance, appoints the Bosnian-Herzegovinian diplomatic service staff. The entities are so powerful that, in addition to discussing the government system at the state level, we can discuss the entity level forms of government. Despite being a republic, the Serb entity is in peace times ruled primarily by the government. Now, what happened in the Republic of Srpska reflected the same issue Serbia faced during the presidency of Boris Tadić. Namely, the present President of the Republic of Srpska, Milorad Dodik, who used to be the Prime Minister (2006-2010), switched positions in 2010 by running for the President's office. The problem is, he is still president of the strongest political party, the Alliance of Independent Social Democrats, which makes him the strongest political figure in the Republic of Srpska. Now, under the conditions where the Constitution (of the Republic of Srpska) provides the Prime Minister with executive powers, the political power is concentrated in the person of the President. There is an obvious discrepancy and misrepresentation of power distribution, differently addressed in the constitution and the respective laws.

Semi-presidentialism is to some extent a form of presidentialism,[91] by default due to a popularly elected president. However, "beyond this common foundation the two forms radically depart from one another, for semi-presidentialism is 'semi' precisely in that it halves presidentialism by substituting a dual authority structure to a monocentric authority structure" (Sartori, 1994, p. 121). In presidentialism, the president is to a great extent exempted from parliamentary influence and the government appointed by him cannot be questioned and

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[91] As already mentioned, it is very hard to determine the exact form of government in Bosnia and Herzegovina and its entities. Whereas the state level, as well as the entity of the Republic of Srpska have a directly elected Presidency and President, the other entity, Federation of Bosnia and Herzegovina, elects its President in the entity parliament.

reshuffled by the parliament. This feature, applicable to the presidential system like the one in the United States, is different from that of France, where the president can be in cohabitation with the prime minister, i.e. coming from a different political party. This feature can have a corrective character but, in other cases, can also lead to political instability. Semi-presidential systems also vary among themselves. Whereas in some, like in France, the president has more powers than the prime minister and is involved in the executive to a great extent, in some cases, like in Austria, the president has a very symbolic role. In short, what matters the most and distinguishes one system from the other is the role of the parliament, i.e. its importance primarily relates to the question whether it has power to remove the government from office or not (Cheibub, Gandhi, & Vreeland, 2010).

Parliamentary systems are called parliamentary due to the fact that power is concentrated within a parliament, which is sovereign (Sartori, 1994, p. 101). It is executive-legislative relationship that determines the role of parliaments and enables further classification of parliamentary systems. Regarding power-sharing, Sartori further distinguishes the relationship between the head of government and other ministers. This is a very important parameter, as we must locate the power first before discussing further respective polities. In this respect, the prime minister may relate to other members of his cabinet as :"(i) a first above unequals; (ii) a first among unequals; and (iii) a first among equals" (Sartori, 1994, p. 102).

The first type involves the head of government's full autonomy in selecting members of his cabinet. Once nominated by the political party, it is the prime minister who privately runs his cabinet and can change his cabinet members on his own will, without a pre-condition of first obtaining a party approval for his decisions. In political systems like the British one,[92] real power is concentrated in the leaders of political parties who, by default, run for the position of the prime minister. We must note that this characteristic is common in political systems with fewer parliamentary parties and especially in two-party systems. These political systems are stable and much more consolidated in terms of certainty. In order to articulate interests, power must be generated and centralized. This leads on the one hand to a constructive and well-defined political interaction, but on the other hand undermines interest of smaller social groups which are unable to identify with the programs of catch-all parties and are not powerful enough to implement their own programs and goals.

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[92] The British coalition government of the Conservative Party and the Liberal Democrats (2010-2015) definitely broke British bipartisan traditions in which either the Labour or the Conservative Party win the elections in a pure majoritarian spirit where the winner takes all.

Why is Sartori's argument to list Germany as an example of the second type of parliamentary type not sufficient, i.e. should be expanded? Whereas in the example of the United Kingdom, the prime minister picks his ministers on his own and has unquestioned authority, the German chancellor enjoys superiority over other cabinet members. However, because of the manner by which political parties are organized in Germany, the chancellor cannot simply fire a minister. The Bavarian CSU, despite being a sister party of the CDU, has its own agenda and can limit the chancellor's maneuvering space. In this respect, political parties and the constellation of power are symmetrical to the German federal structure. This is to a great extent consistent with the German federal order and its distribution of power. Party discipline, as well as the number of parliamentary political parties are what, in addition, determines this model. As already mentioned in the case of Bavaria, regional political identity is strongly mirrored as a constitutive part of the federal political scene. Political fragmentation and emergence of new parties in Germany, but also in Austria and the United Kingdom in reference to the time at which he wrote this book (1994), led to a different kind of explanation we tried to provide herewith. Therefore, the concentration of power with the institution of the president of a political party is what makes him superior over his cabinet members.

The third political system of the prime minister being first among equals reflects just a formal dominance of one member of the government over other members of the cabinet. The political power he/she possesses is slightly or not at all superior over others and his/her remaining in power depends on the fate of the cabinet as a collective. In such cases, the responsibility is centralized in a government as an institution and not in its individual members. This whole classification leads us to the following conclusion: it is highly unlikely to set normative standards within a constitution or respective laws which would automatically provide a system which would be considered as any of the three. It is more up to the politically active members of the society, i.e. their way of organizing and centralizing power through political parties. This is especially the case at present times of increasing fragmentation. The fact that democracies enable evolution and that other priorities gradually emerge in public debate, like renewable energy, gender equality, etc., is reflected in new political identities which find their place outside the old system.

The last differentiation among systems we need to define relates to majoritarian and proportional electoral systems.[93] Whereas the definition of a majoritarian electoral system

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[93] Here, we are again using Sartori's approach and typology as a starting point (Sartori, 1994).

may simply be equated with the "winner takes it all" principle, the proportional electoral system, as is the case of Bosnia and Herzegovina, tends to secure representation of relevant political groups. "True, we always issue the warning that proportional representation may turn out to be highly unrepresentative. Even so, whenever a system proportional we assume that there must be a somewhat even ratio between votes and seats" (Sartori, 1994, p. 4).

The next differentiation which must be taken into account is that of legislative powers, i.e. between unicameral and bicameral parliaments (National Democratic Institute, 1998). Unicameral parliaments are characteristic for smaller countries where this level of representation would suffice regarding legitimacy. In bigger countries, population-wise, as well as more complex countries in terms of political constellation of power, bicameral parliaments serve for a more proportional representation. The lower house of the parliament is directly elected and the core of the legislative powers is concentrated there. The second chamber, the upper house, can either be directly elected by the people or may be subject to indirect appointment by others. It serves to provide additional legitimation and is usually seen as a complementary mechanism in ensuring parliamentary legitimacy. Only eleven democracies have unicameral parliaments (Sartori, 1994, p. 183). Others have bicameral legislatives with different recruitment principles. In this respect, the Bosnian-Herzegovinian example is a very unique one. It has a bicameral parliament, the upper house of which is called the House of Peoples (*Dom naroda*), the purpose of which is to protect the constitutive right of the three ethnic groups, while safeguarding national interests. It is exactly this term of national interests that serves as an apple of discord between ethnic groups and ethnic political elites. Members of the House of Peoples on the state level are elected in the entity and cantonal parliaments respectively, whereas the Republic of Srpska elects five Serb members and the Federation of Bosnia and Herzegovina elects ten Bosniak and Croat members. This institution is only one of the places where the primacy of the ethnic principle is embodied and it explains, on further reflection, the rationale of the Sejdić-Finci case outcome before the European Court of Human Rights.

By using the classifications we presented herewith, we will now take a closer look at the Bosnian-Herzegovinian political system in order to provide a basis for a legal analysis in the case studies. Bosnia and Herzegovina is a unique example of an ethnically-centered and confederative constitutional design. On the one hand, we have to distinguish between entity and state levels and, on the other hand, the asymmetry existing among entities, as an example of a non-consolidated constitutional structure. All this came as a result of the Dayton Peace

Agreement, which, in turn, was a result of the structure created through the Washington Agreement, as well as the already established structure of the Republic of Srpska. As already mentioned, we have to look closely at the power-sharing system, so that we can define its form of government. Bosnia and Herzegovina has a triple power-sharing system, which may be defined on the basis of the following features (Lijphart, 1977): 1) grand coalitions; 2) mutual veto rights; 3) proportionality; and 4) segmental autonomy. On a number of occasions, the President of the Republic of Srpska said that coalitions are not formed on the state level but are generated there. With this statement, he implied the inconceivability of their programs and aims, but the necessity to work together and form a government so that all parties were needed to enable a normal running of state affairs. This is what we refer to as grand, inter-ethnic coalitions, the programs of which, despite being at loggerheads, must find some common denominator to function. The systems established in the Houses of Peoples on entity and state levels, as well as the Presidency as the collective tripartite Head of State, provide ethnic groups with veto rights, i.e. rights to block every decision which would be considered detrimental to the constitutional people they represent. Some rational explanations in practice for the veto being imposed do not have anything in common with Bosnia and Herzegovina. For instance, when Bosnia and Herzegovina was a non-permanent member of the Security Council, the Republic of Srpska opposed any vote against the interests of Israel in the context of the Jewish-Palestinian conflict. The tripartite Presidency voted 2 to 1 on a pro-Palestinian proposal, i.e. to instruct the Bosnian-Herzegovinian ambassador before United Nations to support the adoption of a pro-Palestinian resolution and this attempt was blocked by the Serb member of Presidency, who invoked national interest and sent the matter to the entity parliament of the Republic of Srpska. The parliament in turn confirmed his veto with a two-third majority. As a result of the decision not being made in the Presidency, Bosnia and Herzegovina had to abstain from voting since the Presidency had no common position on the matter.

Proportional representation[94] is also a core element of the post-war Bosnian-Herzegovinian political system. Proportionality is firstly expressed on entity levels. The Government of the Republic of Srpska comprises eight Serb, five Bosniak and three Croat ministers. The same logic is applied in the Federation of Bosnia and Herzegovina, thereby giving primacy to Bosniaks and Croats over Serbs respectively. It is thanks to the constitutional amendments of 2002, imposed by the High Representative, that this proportionality was imposed (Bieber,

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[94] See also Bieber's comment on Bosnian-Herzegovinian political landscape (Bieber, 2006, p. 45).

2006). Looking from a perspective of a realist, it really did not serve its purpose. Why not? This solution simply forces ethnic political parties to select proper members of other ethnic communities loyal to their programs to fill in these positions. While not providing authentic ethnic representation, it simply causes additional headache to political elites to select a person from other ethnic groups, without having that individual representing the positions for the purpose of which he/she should be sitting in that institution.

The last type, the segmental autonomy is symmetrical to the ethnic principle and is granted to entities from the state level and to cantons in the Federation (Bieber, 2006, pp. 45-46). Most of these units are monoethnic, with the exception of two cantons (out of ten) in the Federation of Bosnia and Herzegovina.

To sum up, Bosnia and Herzegovina possesses a proportional electoral system, weak central government with three ethnic groups possessing veto capacities. Its parliament is bicameral and reflects proportionally of an ethnically segregated society. Lower units with strong autonomous powers are ethnically homogenous, thereby providing support to one of the statements of this research: Bosnia and Herzegovina is an ethnically segregated society the fundaments of which contradict principles of a modern democratic society. The constitutional design[95] can therefore go into three different directions: a) either the country remains strongly decentralized in a form of confederation under the pretext of which Bosnia and Herzegovina is a state union of two or more ethnically dominated entities which could opt for even more autonomy if not even independence (Serb position); b) it rejects the domination of the ethnic principle and implements the one man – one vote civic standard on the whole territory, thereby fully rejecting ethnic superiority and applying the principle of equal civic representation on its whole territory (Bosniak position) or c) keeping this *status quo* with more precise power distribution among the constitutive elements of the society.

One of the remaining issues is the so called Croat question in Bosnia and Herzegovina. We saw in the second chapter that until 1994 Croats had their own entity within Bosnia and Herzegovina called Herzeg-Bosnia. Croat politicians in the country were at times reluctant to once again articulate their interest for the third entity. The reasons for this are multifold. During the presidency of Stjepan Mesić in Croatia (2000-2010), they could not count on institutional support from Croatia for their aspirations. He strongly opposed any further

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[95] The chapters on constitution and policies provide arguments for these two claims, i.e. three different scenarios of an eventual constitutional reform in Bosnia and Herzegovina.

fragmentation of the country and even pledged for an institutional disempowerment of the Republic of Srpska for the benefit of the state. The center-right Croat Democratic Union in Croatia and its branch in Bosnia and Herzegovina, which is an exclusive and almost the only legitimate representative of the Croat political will in the country, work closely and are much more prone to voice this idea than center-left governments and presidents in Croatia. With the election of Kolinda Grabar-Kitarović for the first Croat center-right president after fifteen years, the situation is likely to change in favor of demands for the (re)establishment of the third entity, which will inevitably represent one of the main subjects in the context of constitutional reform.

Building of Public Administration

> "Kernstruktur eines jeden Staates ist die zivile Verwaltung (...) Sie repräsentiert in hohem Maße die wissensbasierte Infrastruktur des Staates, ohne welche die staatliche Form der politischen Organisation schlechterdings nicht möglich wäre" (Wimmer, 2000, p. 357).

Being one of crucial elements of modern statehood, public administration represents one of the main mechanisms of state monopoly and its capability of exercising the power monopoly over the claimed territory. In this part, we will examine the historical evolution of public administration, which symmetrically follows the evolution of the modern state. As Wimmer notes, the beginnings of a modern state are inevitably linked to the start of use of writing. The first and foremost advantage of writing was that it could codify our opinions and therefore prevent them from being forgotten. The Code of Hammurabi represents one of the first canons which provided codification of rules according to which a community must act and behave. With the invention of paper and later printing, paper could more easily and in a more transparent way convey these rules, thereby enabling establishment of authority in a more coherent and effective way. What makes writing advantageous in comparison to oral forms of opinion exchange is the fact that it provides an interaction-free communication (Luhmann, 1984). This is seen as a prerequisite for a formalization of administration, which, in the end, led to the establishment of first institutions and more complex units of public administration.

We link the beginnings of bureaucracy to absolutism, above all to the strongly power-centered French absolutist monarchy, which regulated affairs of its subjects. The heavily centralized French state developed the concept of Mercantilism (Keynes, 1936). Mercantilism involved a

strong interference of state into economic affairs in order to protect the national economy with high tariffs and by imposing import restrictions. Mercantilism is linked to Jean-Baptiste Colbert, a 17th century French statesman who defined some principles which will serve as basis for further development of the *Staatswissenschaft*: "The Mercantile System, then, or Colbertism, was the first attempt to put the fundamental principles of the theory of management [Wirthschaftslehre] on a scientific and orderly basis. The central point of the same was the attribution of exclusive value to the precious metals" (Small, 2001, p. 27). This attribution of powers to sovereigns and centralization of guiding rules of state interaction into one power center on the one, and defining founding principles of policy making within a single economy on the other led to fragmentation of economic powers to different European absolutist rulers, which were then able to develop their own separate mechanisms serving as starting points of the research on the beginnings of bureaucracy. The German equivalent of Mercantilism was Cameralism. Its teaching sees not exclusively the focusing on the maintaining of current law and order for a common good but aggregation of interests for common good. It was Friedrich Wilhelm I who academically institutionalized *Ökonomie, Polizei und Kammersachen* at the University of Halle in 1727 (Tribe, 1995, pp. 8-31). Such action of the emperor was triggered by previous attempts of Protestant rulers to define the relationship between sovereigns and their subjects, thereby providing an academic basis for a discipline of state affairs:

> "These seventeenth-century advisory tracts set up a relationship between the interests of a ruler and the welfare of his subjects, arguing that if a ruler wished to secure his power, then he should first attend to the welfare of his subjects. In the early eighteenth century this idea was transferred to the lecture room, and made the basis of the new cameralistic sciences" (Tribe, 1995, p. 8).

Between the 16th and 18th century, European states experienced their peaks of Mercantilism. It is thanks to these evolutionary processes that civil servants were at once piled up with papers which they sorted in a certain way thereby establishing a practice, a custom of a bureaucratic procedure. They had the experience of how to run state affairs and it was not easy to replace them without proper substitutes. Like in other disciplines, it required bureaucracy to become a scientific discipline so that new people could be educated to continue running state affairs. This academic institutionalization led to professionalization of civil servants.

Whereas we link the foundations of bureaucracy and administration to the time of absolutism, where divine rulers through centralization of powers managed established an apparatus of

control mechanism, the decisive point of linkage of public administration and bureaucracy and administration with modern state comes with its legitimation through democratically elected sovereigns. In his *Economy and Society*, Weber (2006 [1922]) sees bureaucratization as the main prerequisite for the development of a modern Western society. Despite having a restrained opinion on the perception of bureaucracy as a complex mechanism which complicates affairs, the growing society and increasing population followed by more complex policies show a necessity for a more efficient and better organized society. The importance of Weber's view on bureaucracy lies within its notion of professionalization and independence from individual interference. Advancement of civil servants should come as a result of qualifications and one's experience, which is evaluated by institutions in line with predefined set of codified practices and rules. The other conditions Weber defines for a well-functioning bureaucracy are a strict hierarchical order and distribution of powers and authority. The set of rules inevitably needed for a modern state to exist also comprises its limits to individual freedoms. Citizens are simply trapped in this "iron cage" and are forced to interact with this system witnessing at the same time its further evolution and complexation.

One of the crucial moments in history regarding the development of the public administration was its professionalization in the US under Woodrow Wilson.[96] He laid down arguments favoring complete separation of public administration from democratically elected legislative and executive. Public administration must be impartial and rely fully upon expertise and trained personnel. He was the first one to argue that public administration in its wisdom should be superior to and in a position to overrule the elected representatives should it deem necessary. Knowledge and expertise of bureaucrats represent foundation of public administration. Trained bureaucrats should teach people and argumentatively justify their work irrespective of democratic evolutions. This represented a turning point. "Administration is the most obvious part of government; it is government in action; it is the executive, the operative, the most visible side of government, and is of course as old as government itself" (Wilson, 1887, p. 3). By saying this, Wilson had put on equal footing government and administration. The administration, being government in action, must possess certain independence, values and quality which cannot be influenced, which represents a constant. These bureaucratic elites must be recruited on a basis of pre-defined rules thereby providing for their superiority over politics which seek their legitimation in elections. By concluding

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[96] In 1887, Woodrow Wilson wrote an essay on standards of public administration. These principles represent a modern attempt to define professional standards for effective business administration (Wilson, 1887).

that bureaucracy is as old as mankind, he acknowledged basically every regulation, order, principle or other policy measure which created institution and enabled interaction between rulers, sovereigns with their subjects. The need to create public administration as a discipline represents a reflection to professionalize it and make it more independent and effective. Thus, this is where Wilson's role was crucial for public administration.

In this subchapter we discussed public administration as one of the main prerequisites for successful state-building. The question we will ask primarily is how we recruit elites for public administration. The French Revolution represents, for instance, a turning point demonstrating how these principles changed and evolved. Instead of granting access to French civil service exclusively to aristocratic elites, Napoleon founded the *grandes écoles*, which would produce new French elites. What he changed, fundamentally, was the recruitment method, making it fairer, just and aligned to the ideas of the French Revolution. Elitism remains one of the most remarkable feature of the French society. In present-day Bosnian-Herzegovinian context, recruitment of these elites is heavily influenced by political parties. In addition, corruption represents yet another challenge. Therefore, being fully aware of its importance for successful state-building, the International Community had put a strong emphasis on training and development of professional, impartial and apolitical public administration.[97]

Building of Judiciary

"By 'judicial institution building,' I mean the creation, consolidation, expansion, or reduction of the structural and institutional capacities needed to respond to and intervene in the political environment" (Crowe, 2012, p. 8).[98] Crowe's tripartite, interdependent relationship of functions, individuals and resources, serves as a basic fundament for analysis of judiciary-building, irrespective of the legal system one examines. Whereas the American system strongly differs from that of West European states and even more so from that of post-communist transitional democracies, we must take into account the specific traits of transitional societies when attempting to provide a respective theoretical basis of judicial reform. Judicial reforms represent a cornerstone, a *causa sine qua non* when it comes to democratization of a society and, in a longer term, to successful state-building. In a paper

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[97] A consultancy agency called Human Dynamics offers an excellent overview of internationally funded public administration projects in Bosnia and Herzegovina, as well as in other transitional countries: http://www.humandynamics.org/country/bosnia-and-herzegovina

[98] This definition by Justin Crowe was influenced by Stephen Skowronek.

written for the World Bank, Gerald Thacker[99] identified the following stages as relevant for a successful judicial reform, i.e. building of a judicial system in accordance with Western standards: (i) Accommodating automation; (ii) Efficient Court Operations and Easy Public Access; (iii) Judicial Independence; (iv) Security; (v) Demonstration and Pilot Sites; and (vi) New Locations.

We note that the first condition relates exclusively to adequate infrastructure. Necessary equipment, supporting technological equipment as well as appropriate technological hardware and software must be provided in order to ensure safe and secure information storage and use. Regarding the second condition, the existing courts must be reorganized so as to provide more efficiency and distribution of work. Citizens must be acquainted with this organizational structure, which must be transparent and easier to consult in case of need. Judicial independence is a fundament of a democratic society. Judiciary should report to the legislative and, to some extent, the executive, as well but must be governed by its own rules and principles. This proves to be the greatest challenge of transitional societies. The principle of separation of powers provides a strict and non-negotiable judiciary independence.

In post-communist transitional societies, security plays an important role for successful judicial reform. It relates to judges, witnesses and other judicial staff. Their private security is more in jeopardy, as the old structures refuse to accept the new order. Infrastructural basis thereby must be built in a planned and organized way, providing spacious demonstration and pilot sites. By new locations, the author refers to the expansion of the judicial network to areas with little or no access to institutions. This proves that a reform in the context of a transitional society does not only refer to transformation of the existing framework but also on its expansion.

As already mentioned, judiciary independence plays a pivotal role in democratic transition. However, this independence has its limits: "Judiciaries in many countries in transition are struggling to break free from their historic domination by elites, the military, political parties, or the executive. However, no judiciary is completely free to act according to its own lights; nor should it be. Ultimately, the judiciary, like any other institution of democratic governance, has to be accountable to the public for both its decisions and its operations."[100]

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[99] The author takes into account the Philippine circumstances; however, his view on features of transitional democracies can be applied to Eastern Europe in the context of post-communist transformation (Thacker, 2005).
[100] USAID report on judicial independence speaks of challenges judiciary is facing not only in Western, but also in transitional societies (USAID, 2002, p. 3).

When ensuring this independence of judiciary in transitional democracy, we must apply the lesson learned from historical institutionalism. Despite the fact that communist societies nominally had an independent judiciary, the core of the system was rotten. Communist systems, due to their non-competitive nature, could not provide a proper separation of powers. The elites to which lower levels reported were non-competitively recruited. Therefore, it was hard to expect they could provide fairness and transparency. It was hard to expect that ethical standards of those implementing judicial authority would be so easily aligned with Western standards. The newly emerged elites represent, in fact, the old elites with old customs in a new set of rules. Historically viewed, they apply new, democratic rules by behaving themselves in an old manner. The temporal factor of transition plays a crucial role for newly defined state-building. This is why the European Union puts emphasis on public administration, judiciary, executive procedures and policing as the main reform objectives (Chandler, 2006, p. 103). These reforms provide a strong institutional reshuffle in order to change habits and customs. In this context, judicial independence is crucial.

Judicial independence, as the main feature of this pillar of power, comprises internal (normative) and external (institutional) aspects (Ferejohn, 1998, pp. 1-4).

The first aspect is entirely linked to the human factor. The laws and rules are written by humans and implemented by humans. Therefore, it is up to the judge's character to determine the normative value, gravity or credibility of a legal claim. Judges are in a given situation interpreters of different codified provisions. Their decisions are influenced by people and, at the same time, they influence people. In order for them to be independent, they must be institutionally protected. It is up to the institutional framework to ensure that moral, normative values are followed. The institutions are shields, they represent our common achievement in anchoring values. With these two factors satisfied, we further use judicial independence as a starting point for more advanced institutional creation:

> "(…) Judicial independence is also complex in that it really can't be seen as something of value in itself but is instrumental to the pursuit of other values such as rule of law or constitutional values" (Ferejohn, 1998, p. 1).

When judicial independence is satisfied, we can talk of rule of law or constitutional development in the sense of modern democracy. Just like Wilson argued for a professionalization of public administration, the full independence of judiciary is one of the main prerequisites for sustainable statehood. What does this independence of judges imply?

By the same token as the public administration, judges develop a normative system of values which trumps any political pressure or personal convictions. It enshrines the very basic principles, values and convictions of a society and is fully immune to political debate. One of the best examples where contemporary political developments appear to collide with the core fundaments of statehood is Turkey. In 1923, the Turkish Republic was proclaimed. It involved not only a regime change but an ideological swap of values. The new country was founded on the principles of laicism, secularism and newly emerged nationalism. The Sultan used to be at the same time a clerical (caliph) and a temporal ruler (emperor). Heavily influenced by the ideals of the French Revolution, Mustafa Kemal used the French model to introduce a strictly secular political order in Turkey. Restrictions imposed by the system on religion are evidently contrary to the principles of liberal democracy. The question arising now refers to the sustainability of such a model in times when Turkey might aspire towards European integration. The judiciary in Kemalist Turkey has not been independent in the sense of modern democracy. Secularism is an ideology restricting certain freedoms as well. In the Turkish example, it was used a number of times to influence decision-making at the expense of freedom understood in the modern, democratic sense.

Being at the same time independent, in democratic societies, judiciary reports to legislative and, to a lesser extent, to executive pillars. Bosnia and Herzegovina, however, has a sui generis, appointing authority called the High Judicial and Prosecutorial Council of Bosnia and Herzegovina. Its mission is to provide justice and equality "(…) by ensuring an independent, impartial and professional judiciary in Bosnia and Herzegovina (…)"[101] What makes it different from other transitional democracies is the fact that it absolutely independently appoints its members without any exogenous interference. This is indeed a unique case in the world, developed and introduced by the International Community. The attribute independent is what makes it troublesome in the Bosnian-Herzegovinian case. Independent does not refer to the Wilsonian example of professional, depoliticized system but being fully independent from any other control other than that of itself. It reports to no parliament at any level and is therefore not obliged to undergo any form of control other than that of self-control. Bosnian-Herzegovinian judiciary at the highest level is an experiment of the International Community, another factor on the list of exogenous measures introduced in order to safeguard its statehood.

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[101] Compare the website of HJPC: http://vstv.pravosudje.ba/

Building of the Security Sector

Already the pre-modern state had some form of army, organized in order to pursue its own interests. The greatest challenge of these armies was of a logistical nature.[102] This is why it was of crucial importance to institutionalize warfare at the state level since it was one of the main instruments of safeguarding the statehood in Jellinek's sense. In order to maintain the military force, the medieval state had to introduce a tax. Furthermore, an adherence to the military was symmetrical to the social status. In the absence of a welfare state with equal access to justice and other benefits, military was one of the rare mediums to achieve goals and climb the social ladder. And the bureaucracy was needed to safeguard this whole new emerging structure: "An effective bureaucracy promotes military professionalism, seamlessly implements complicated logistics, and procures the best weapons for the job. Bureaucracies get things done but their red tape is a source of endless frustration" (Callaghan & Kernic, 2003, p. 181). One of the very first people to deal with military in bureaucratic sense was Max Weber. For him, an ideal type of an organized bureaucratic structure was professionalized and strictly hierarchical (Weber, 2006 [1922]). The problem of this bureaucratic perception was that, as the criticism works for the old institutionalists' approach, it has vehemently been reluctant to change. The professionalization of military comes as a result of the Military Revolution (1560-1660).[103] The time preceding the Thirty Years' War was known as the time of mercenary soldiers. Given their non-permanent status, unpredictability and plundering which endangered many sovereigns of that time, a reform favoring an institutionalized army was in need. For the reasons of their low morale, an exogenous-factor rationale and lack of attachment to a state and due to their high expenses, a need for a well-organized state army was imminent. The Military Revolution brought a number of reforms which were divided into four categories: technology, tactics, organization and size (Wimmer, 2000, pp. 242-252). Technology-wise, this was the time of the evolution of canonry. More precise and powerful canonry led to an evolution in warfare construction given the danger it represented to fortifications. On further reflection, one must observe the relationship between cavalry and infantry. At first, prior to the Military Revolution, infantry enjoyed superiority over cavalry (Carey, Alfree, & Cairns, 2006). Carey refers to this period as the return of "heavy infantry". The issue at stake here is that the evolution of armor plate resulted in the technological military

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[102] The historical view on the development of military by Johann Wimmer serves as a starting point of our discussion on the evolution of security forces starting with pre-modern times and ending with the development of security structure of post-conflict societies (Wimmer, 2000, pp. 237-307).

[103] The term Military Revolution is credited to Michael Roberts (1956).

advancement for both, soldier and a horse, which, in turn, resulted in cavalry gaining superiority over infantry.

Regarding the tactics, the military revolution contributed to fragmentation of units, which enabled better movement coordination as the smaller units move faster (Wimmer, 2000, p. 249). In addition, the fragmentation of units inevitably led to a change in territorial placement, i.e. the battle would not anymore take place on a specific ground. This all in general led to superficial evolution of tactics, which became more complex and profound. The organization and size of the armies changed respectively in a symmetrical way. Namely, as said, the mercenary soldiers were more and more replaced by regular army forces under direct command of sovereigns. As Wimmer further notes, the army becomes the first and the most important institution of the modern state. As such, it inevitably shaped the international system in which modern states, as authentic subjects of international law, contributed through the geopolitical dynamics to the creation of the international order. Until the prohibition of aggression against other sovereign states[104] and the creation of the United Nations systems, the military aspect of statehood institutionalized in ministries of war, changed to, for the reason stated above, the ministries of defense.

Apart from military, the other security institution inevitably discussed in the context of a sustainable statehood is the police.[105] In ancient times, there were attempts to secure order. The first policing dates back to the ancient Greece, where public slaves were mandated to maintain order during public gatherings and make sure that the crowds are controlled (Hunter, 1994, pp. 2-4). They were authorized to arrest criminals, take care of prisoners and conduct investigations in case it proves to be needed. The turbulent history of Europe resulted in a need to provide a permanent force which would secure respective law and order. The first state which introduced the police was France under Louis XIV in 1667 (Bayley, 1975 in: Wimmer, 2000, p. 286). The post of *lieutenant général de police* for Paris was introduced. With 44 commissaries under the auspices of this newly founded institution, who were further assisted with inspectors, the main objective of the force was to protect integrity of individuals and prevent any disturbances from occurring. At that time, Paris was with 500 thousand people one of the greatest cities. Divided into 16 districts, the police was commanded by

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[104] Comp *ius cogens* as norm from which no derogation is permitted.

[105] The word police stems from French and indicates policy, state, public order. The Oxford Dictionary defines the police as "the civil force of a state, responsible for the prevention and detection of crime and the maintenance of public order" (Oxford Dictionary, 2015).

commissaries. All of this resulted in an enormous bureaucracy growing. The royal edict of 1699 introduced the founding of the police structures in all French cities.

The police remains therefore one of the main security aspects that guarantees statehood in a modern sense. Most present-day states are members of Interpol, an intergovernmental organization headquartered in Lyon. It promotes cooperation between national police structures by sharing information, knowledge and criminal intelligence on diverse fraudulent transnational activities being at the same time impartial and neutral (Interpol, 2015).

Whereas it primarily relates to inner sovereignty, the term underwent its internationalization in the 1990s (Nadelmann, 1990). The international policing gained its momentum in parallel with the change of perception of a modern nation state. Furthermore, given the aforementioned state-building character of the police, the failing states are in need of basic security assistance. In Bosnia and Herzegovina, the International Police Task Force (IPTF) had the following mandates [106]: (a) monitoring, observing, and inspecting law enforcement activities and facilities, including associated judicial organizations, structures, and proceedings; (b) advising law enforcement personnel and forces; (c) training law enforcement personnel; (d) facilitating, within the IPTF's mission of assistance, the Parties' law enforcement activities; (e) assessing threats to public order and advising on the capability of law enforcement agencies to deal with such threats. (f) advising governmental authorities in Bosnia and Herzegovina on the organization of effective civilian law enforcement agencies; and (g) assisting by accompanying the Parties' law enforcement personnel as they carry out their responsibilities, as the IPTF deems appropriate.

The Police reform in Bosnia and Herzegovina is a dead-end street. The International Community did not manage to centralize internal affairs to the state level, which is a direct minus for the Bosnian-Herzegovinian statehood. The inner stalemate is reflected in political confrontation among Serbs and Bosniaks. As per well-established custom, Serbs vehemently oppose any centralization. The internal affairs remain the strongest "statehood" element Republic of Srpska possesses nowadays. If we set police aside, the International Community did a lot to promote peacebuilding. This process is on equal footing with the state-building. It involved[107] promotion of civil and political rights, free elections, training and retraining judicial and police personnel and making possible for an independent civil society to emerge.

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[106] Article III, paragraph 1 (Annex 11, Dayton Peace Agreement)
[107] Comp. a number of peacebuilding activities undertaken by the International Community listed by Roland Paris (2004, p. 19).

The other, economic prerequisites Paris quotes refer to liberal market and strengthening of private sector.

Our objective in this subchapter was to provide a theoretical background on state-building by defining crucial terms which we will empirically evaluate. Short reflections made to the Bosnian-Herzegovinian reality were made so that a symmetry between respective terms and contemporary political developments is established. We first discussed the perception of statehood in positivist sense of Kelsen and Jellinek. Theoretically, we have provided a definition of statehood in the sense of international law. Furthermore, we discussed the constitutional design options with a specific reference to the complexity of the Bosnian-Herzegovinian political system. With a theoretical background provided, we briefly discussed the possible constitutional design options thereby announcing its further evaluation in the coming chapters on constitution and policies. Why is this important? This is the most important political question to which the International Community fails to find an answer, namely, which design fits all specific traits of Bosnian-Herzegovinian society being at the same time legitimate and accepted by all ethnic groups. In addition, we looked at the emergence and development of public administration, judiciary and security apparatus since they reflect the quality of statehood. They all play important roles since the empirical evaluation of their development answers the research questions.

Nation-Building

Theories of Nation

There can be no precise definition of a nation. Nation is an abstract term and there can be no common set of normative values which can be undisputedly attributed to it. It may refer to "eine politische Ideologie, die auf Kongruenz zwischen einer Nation und einem Staatsgebilde abzielt" (Gellner, 1983, p. 199), or a simple modern idea that groups of people come together thereby demonstrating that they can obey an authority and confer their powers to a central body (Kreis, 1998). The emergence of nations must be analyzed separately on case-by-case basis taking into account diverse factors like ideology and given conditions. National movements had different aspirations. On some occasions like for instance in Serbia in the beginning of the 19th century, their objective was national liberation. In many other cases they objective was democratization and achieving personal freedoms. The foes, or the common

denominator unifying groups of people to fight for a common good in two cases is of internal and external nature, respectively. In principle, in both cases, what matters the most are people who identify with these values. As long as the people are those carrying responsibility and uniting themselves, we talk of a modern nation-state. The significance of the French Revolution and the evolution of political thought is reflected in the fact that there was a partial disempowerment from absolutist monarch to the people. "We, the people" in the preamble of the American Constitution of 1776 represents in essence an evolution of political thought. The power is not anymore exclusively conferred to monarchs, absolutist rulers from the God. The power was not anymore a divine privilege and you did not need to be born noble to have exclusive and unquestioned right to rule.

The first among sovereignties which needs to be stressed is the absolutist sovereignty. Before it became accepted, a concept of sovereignty had to be agreed upon. For Bodin (1976 [1583]), the concept of sovereignty is linked to a monarch. A monarch is an authority which can exercise its powers over a territory and people. The essence of his theory is in the fact that it separates, for the first time, church from power, removing it as the inseparable link between the God and monarchs. Whereas pope used to have an unquestioned authority to appoint rulers, it was now up to monarchs to define how the power can be transferred or delegated to lower levels. The religious identification remains, however, a crucial element in the legitimation of power. The main feature of absolutism is that it defines monarch as a form of God's emissary, the institution to which and the person to whom this power is granted directly from God. Monarchs were only and exclusively reporting directly to God (Fleiner-Gerster, 1995). Bodin's perception and interpretation of sovereignty was accepted throughout the continent. Together with renowned French jurists Charles Lovseau and Cardin Le Bret, he is widely considered as the most important protagonist of absolutism. Bodin's *Les Six Livres de la République* define sovereignty as comprising absolute and perpetual prerogatives. It is absolute in the sense that the ruler is the main decision-making institution with rights and obligation, however, not subject to his rules by definition. Perpetual it is in a way that it cannot temporarily be limited by another authority or a medium (e.g. elections) as it would, in such case, collide with the monarch's absolutist qualities (Salmon, 1996, pp. 500-522).

The importance of absolutist view on sovereignty is multifold. It lays down a good foundation that power must be centralized, exercised by an institution over people on the territory. This fundamental idea is even reflected today. What changed and has ever since been subject to evolution is the access to this power and privilege to be conferred with it. The idea, which will

fully be materialized with the aforementioned American constitution, to morally justify access to powers over sovereignty essentially started in the Age of Enlightenment. The mechanism with the assistance of which this was to be achieved is the social contract.

For Thomas Hobbes (1970 [1651]) there was, just as was the case for Bodin, a need for absolute sovereignty, however, based on different fundaments. Bodin's principle of sovereignty, anchored in the Peace of Westphalia (1648), was upgraded in the sense that it did not see people as political animals who would accept to give up all their rights to a sovereign because their hostilities produced instability and disorder. Human beings with all their fears, needs, and desires were permanently in conflict with each other. So in order to establish peace, there was a need for social contract. And the social contract was, in fact, the authority above the absolutist monarch. Every single human being had to obey the Leviathan. The question of legitimacy arises. The sovereign, by accepting the authority of the Leviathan, accepts in the same time a set of obligations. In return, he becomes indivisibility of his authority, which is needed to have the order restored. The "state of nature" explains the rationality of human beings. Thereby, the theorists of social contract argue why it is of one's interest to surrender powers to a supreme sovereign and what he/she gets in return. When this social contract has been reached among all subjects, commonwealths are created. The commonwealths provide sovereigns with their principal rights, in addition to obligations, and these rights make it actually appealing to monarchs to act in accordance to these social contracts.

Another philosopher who contributed significantly to the development of social contract was John Locke (Stanford University, 2012). He argued that all people were naturally born free with rights and obligations and that they are not subjected to monarch by default, i.e. by the fact that powers were conferred to him by God. As a part of social contract, the people, just like it was in the case of Hobbes, surrender their powers willingly and voluntarily to monarch in exchange of a system which would provide them with security and order. On the one hand, while Locke accepts to surrender powers to a sovereign, he states that this sovereign could be replaced in case he fails to provide the order to the governed. It is thanks to them that the concept of natural law gains a momentum. The most important feature of natural law was its universality. It is by reason that the natural law accepts certain norms. The essence of Locke's ideas is that it provides for co-existence of the principle of obeisance to the government as well as the right of governed to influence it. Through the principle of "self-preservation", the government derives its legitimacy from the people and it is the consent of the governed which is needed to ensure the government's existence to rule. The sovereignty was therefore

indivisible but not unlimited when it comes to the government as a sole bearer of absolute power (Locke, 1992 [1690]).

Jean-Jacques Rousseau even goes one step further and introduces his *volonté générale*. It provides not only for the consent of governed but, in addition, as Jellinek noted it, for a direct democracy. In his most famous book, *The Social Contract* (Rousseau, 1964 [1762]), he puts on equal footing the general will with the legitimacy of the elected government. The social contract is a binding agreement individuals join. It is a common denominator among our three thinkers. The natural predispositions of humans can be more aggressive and prone to violence like Hobbes argued or good, reasonable coexistence like Rousseau claimed. However, the more relevant provision we are interested in is the existence of common maneuver playground in the form of social contract. Our objective was to demonstrate the evolution of political thought over the centuries. Once we had the power centralized in sovereign monarchs (Bodin), we finally established a principle of legitimate government. Hobbes and Locke contributed to the sovereigns being "out-divined" and resulted in the formation of the government for the people, but still in conformity with privileged prerogatives for the rulers. Jean-Jacques Rousseau went even further and completely equalized the legitimacy of a government with the consent of the people. It was, in the sense of evolution of political thought, the highest achievement in which the government is elected by the people and meant to work for the people. This is why the preamble of the US constitution marks an important moment.

These thinkers provided a basis for a further evolution of sovereignty, the culmination of which is reflected in self-determination being anchored in the UN Charter.[108] One of the six principle organs of the United Nations, the Trusteeship Council was envisaged in order to ensure decolonization following the Second World War. This organ today remains an empty shell in the UN system as it is difficult to change the constituent treaty of the UN in accordance with the Law on Treaties. With self-determination being anchored in the UN Charter and other international legal documents,[109] we have to define, in line with the problematic of our research, two underlying questions: "1) what makes the people?; and 2) who is the bearer of this right to self-determination?". As said, the initial rationale of anchoring self-determination in the UN-charter was to enable sustainable and stable decolonization. The problematic of the World Order following the demise of communism was/is of a completely different nature.

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[108] Comp. Article 1, Paragraph 2 of UN Charter: "2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace".

[109] E.g. International Covenant on Civil and Political Rights.

The fact that we have United Nations reflects the absence of non-distinguishing between a nation and a state.

Nowadays when the sovereignty of a state is discussed in legal terms, one means above all its independence of another state. There is a huge difference in perception of sovereignty between developed and developing countries (Malanczuk, 2002, pp. 17-18). Due to economic interdependence, the developed world entered the era of supranational integration, the best example of which is the European Union. As the Viennese professor Otmar Höll rightly pointed out during his lecture on international politics, the European Union was a product of globalization at the very beginning.[110] Nowadays, in view of the contemporary development in word order, the EU has become an answer to this globalization, the American attribute of which has vanished. The European Union is the best example of the changed perception of the concept of sovereignty. This argument also provides for explanation of the EU fatigue new EU member states in the east have been facing, especially those with a history of Soviet occupation. The others, which were also part of the Eastern bloc but underwent the transition as well, despite having a higher level of sovereignty than the republics of the Soviet Union, experienced difficulty while surrendering supranational prerogatives to the European Union so soon upon (re)gaining full independence. Now, despite having these powers surrendered to a common union which enshrines a mutually shared set of values, the basic fact that a state surrenders certain powers leads to a fierce political debate and questioning the rationale of the European Union.

A distinction must be made between transitional states which possess an internal consensus on the two questions we asked beforehand and those that don't. Let's start with a common tautological claim that the population is entitled to decide on its form of government (Preuss, 1994, p. 150). Now, which population on which specific territory possesses decision-making capacity and is the bearer of sovereignty? The United Nations is open to membership to all peace-loving states[111]. The language of the UN Charter could not have been vaguer while interchangeably using terms nation-people-state thereby making no clear distinction among them. When addressing the people, the Charter does not differentiate between ethnic groups and demos. This proves to be very challenging in above-referred Baltic States, which struggle to balance ethnic pluralism, nation-building, and democracy (Duvold & Berglund, 2014, pp.

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[110] If we look more closely at the American role in the European integration process, we will note that the globalization and EU-integration was galvanized by the US post-war foreign policy, above all in the form of Marshall Plan aid, etc.

[111] Comp. Articles 3 & 4 of the UN Charter

341-365). In the myriad of definitions of an ethnic group, we find some common denominators which permit a group of people to be able to define themselves as belonging together. Whereas the Oxford Dictionary[112] sees this group as having common national and cultural tradition, we need more precise and tangible features to be able to distinguish among groups. According to Duden, the *Ethnie* is a group of people sharing the same culture, which is even vaguer. Whichever criteria we try to canonize with respect to defining ethnicity, we are likely to fail. If we bind it to a language, we have the Swiss counter-example. If we link it to religion, we will have Albanians of (mainly) three different confessions contradicting us. Territory would even be less referent due to, for instance, a post-colonial chaos.[113] So, when we want to speak of an ethnicity, we must take a closer look into specific traits of the group in question. What is evident is the fact that ethnicity is inferior to nation or a state. Ethnicity should be regarded as the least complex unit in the above-mentioned triangle. It is important for the post-conflict societies because it is the ethnicity that differentiates conflict parties. Now, to which extent and how successful an ethnic group can be in achieving higher aims to govern a territorial unit or even to form a nation is another question. International scholars agree pre-dominantly on the ethnic character of the Bosnian-Herzegovinian war and it will be up to us to empirically demonstrate what the ethnicity means in the Bosnian-Herzegovinian context. It will be interesting to observe a unique co-relation between Serbian and Croat ethnicity in Bosnia and Herzegovina where they are constitutive peoples and their respective nation-states.

If we want to be able to discuss Bosnian-Herzegovinian scenario more thoroughly, we must examine the relationship between nation and state, i.e. when a nation is a state nation:

> "Eine Nation die, politisch motiviert von der Idee der individuellen und kollektiven Selbstbestimmung, im Staat das Medium ihrer Selbstverwirklichung findet, sei Staatsnation" (Kunze, 2005, p. 28).

So, when we look at the Jellinek's three elements, we see that the people, the nation must identify with this state so that this state is a nation state. The state is actually a prerequisite for a nation. It serves as a mechanism to implement these aims which stand at the core of national interests. The reality of the Dayton Peace Process provided an imposed state, which matched none of national ideologies. The question we may want to ask is whether there can be a state without nation in Europe. The fact that Bosnian-Herzegovinian constitution knows no

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[112] Definition of ethnicity: http://www.oxforddictionaries.com/definition/english/ethnicity?q=ethnicity

[113] E. g. Kurds as an ethnic group are dispersed through many countries, without a state or a link to a particular territory.

constitutional people either than Serb, Bosniak or Croat is a direct proof that Bosnia and Herzegovina does not have a nation state.

Kunze (2005, p. 38) defines three types of nationalism: political, economic and cultural. Political nationalism sees the rationale of its battle the foundation of a state. For the above mentioned medium character of the state, the state is a political prerequisite of the foundation of a nation. For this purpose, Kunze foresees an institutional setup (polity-wise) which would exercise the power (*Gewaltmonopol*) over the ruled people. These human beings inhabiting the territory are only people until the obeying authority is founded and legitimate power exercised. And the legitimacy matters very much in this case. In Weber's interpretation, in order for a system to be legitimate it has to possess the legitimacy belief of its subject (Weber, 1964 [1918], p. 382). The question of popular consent manifested though suffrage is not a causa sine qua non needed to claim legitimacy in the sense of a modern state. The trinity of legitimacy is reflected in charisma, tradition and rationality. The first, charisma criteria, is the identification of people with a ruler. This postulate of legitimacy is as old as humanity. From tribal societies and first forms of political organization, the cult of personality played an important role. The main reason for the importance of a charisma is the centralization of power within a leader, a ruler, which will, over the course of political evolution, become an institution. This very primitive putting of a leader on equal footing with an institution is needed to understand the roots of legitimacy in Weber's sense. If these rulers prove to establish an order acceptable to their subjects, if they create a stable society, the people are more prone to identify with the established order. By means of tradition, irrespective of democracy-like attributes, we obey to a stable government in which we feel ourselves protected. When a form of government proves to be stable and ensure a continuity, it becomes a custom and gains therewith legitimacy. In cases when people trust legality of a government, they enshrine it with the third aspect of legitimacy. Whichever the form of government is, irrespective of the state of the evolution of its social contract, the government needs to exercise its power in conformity and harmony with the given legal order (Weber, 1991 [1918], p. 1964). The main reason why legitimacy plays for Weber such an important role is reflected in the fact that this legitimacy belief, this faith of people in the government, results in a social stability and regularity as opposed to the system which may be result of a self-interest articulation and promotion (Weber, 1964 [1918], p. 124).

Regarding the second type of nationalism, the economic nationalism, Kunze sees the creation of an internal market possible through emancipation of economic policies. In practice, it

means an establishment of a harmonious symmetric institutional and policy frame in which the state economy can be developed. In the contemporary world order, an economic nationalist would be an individual opposing free trade and advocating interventionism and regulative character of the state. Economic nationalism has significantly lost its importance in the course of history. The more world integrates, the less important economic nationalism becomes. Ricardian[114] model of comparative advantage served as a basis for further advancement of free trade and we live in a world where tariffs have been permanently lowered or abolished. Economic interventionism remains a populist method used by politicians in times of crisis.

The most disputed and complex form of nationalism is the cultural nationalism. It primarily relates to cultural origin and language but undermines race and ethnicity (Nielsen, 1999). The reason for labeling this type of nationalism as disputed is the fact that a culture is a term differently perceived among scholars of different disciplines. It is vague in a sense that language does not appear to be the factor of exclusivity. So many nations nowadays share same languages. When discussing different nationalisms of Yugoslavia, the language is what brings opposing groups together (in Bosnian-Herzegovinian case) but, at the same time, what separates them, as we claimed in the beginning artificially. Culture, customs, religions and characteristics are hard to be credited to a nation in Yugoslavia but rather to a region and this is the reason why cultural nationalism is permanently subject to manipulation among ethnic groups, needed to strengthen national feelings and attribution to an imagined group. Now what is to be understood as nation-building? It is "ein Prozess sozio-politischer Entwicklung, der aus locker verbundenen Gemeinschaften eine gemeinsame Gesellschaft mit einem ihr entsprechenden Staat werden lässt" (Anderson, 2005, p. 7). This definition of Benedict Anderson could be successfully applied to Yugoslavian nation-building following the Second World War. These communities, despite being of different ethnic origin, came together by means of their cultural similarities and common past. Politically, they were similar in a sense that they all were under foreign rule over centuries. Despite the existence of Serb and Croat nationalist ideologies prior to gaining full or partial independence, the absence of modern statehood experience resulted in them rather unifying than going separate ways. This is our main argument why the ideology of Yugoslav unity outdid separate nationalist ideologies and why Serb King Aleksandar decided to liberate his Croat and Slovene brothers from Austro-Hungarian occupation.

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[114] Named after British economist David Ricardo.

The problems multiethnic societies faced and may, in the long run, hinder their nation-building processes is reflected in ethnocentrism. In this context it can be understood as a state "(…) in which one's own group is the center of everything, and all others are scaled and rated in reference to it" (Sumner, 1906, p. 13). It is by the same token that Croats and other non-Serbian political elites felt during the First and Second Yugoslavia when it comes to the alleged Serb hegemony. Probably a unique example of a successfully implemented nation-building process is the American case. The reasons for American success story are multifold. First of all, there was no superiority of one ethnic group over another. In addition, the genuine link between mother lands and people in the thirteen colonies did not anymore play a decisive role due to the fact that the colonial power was a foe. The animosity of all settlers vis-à-vis British rule was in fact a common denominator, a value all settlers could identify with and define their ideology respectively. Nation-building process, i.e. its feasibility and long term success depend heavily on the given circumstances. One of the crucial statements which have been proved throughout this research of the symmetric relationship between administrative units being ethnically homogenous and politically stable reveals us the underlying characteristic of the nation-building processes in post-communist, multiethnic transitional democracies. There is always a fear of being dominated by another ethic group. Post-communist states which successfully underwent nation-building were exclusively monocentric or one ethnic group was so superior (present-day Russia) that any type of resistance to the nation-building would inevitably lead into defeat.

Furthermore, we can differentiate between ethnic and civic nationalism (Nikolas, 1999). Ethnic nationalism is the ideology which puts on equal footing ethnic group with a nation. In the present day world, ethnic nationalism is reflected in the policies of countries applying the concept of *ius sanguinis*, granting citizenships to the members of their ethnic/national communities outside the borders of the mother states, [115] are perfect examples of the dominance of ethnic nationalism. For these states, it is not the civic identity but the ethnic one that prevails while assessing one's affiliation to a state. The problem and the inconceivability of a number of ethnic nationalisms with a nation state results in multiethnic conflicts: "Out of the reality of the multi-ethnic state and the principle of self-determination [of peoples] for legitimate state formation came the politics of ethnonationalism" (Rotchild, 1981, p. 14). Multiethnic states are simply permanently in danger of ethnic nationalism. Let's try to establish a parallel between the European Union and Yugoslavia. They both form a

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[115] For example Croatia, Hungary, Israel, etc.

multiethnic political community. What is different, what is the rationale behind coming together? In the Yugoslav case, the before-mentioned absence of statehood and complete nation-building resulted in the pan-South Slavic union ideology prevailing over Serb nationalist ideology. Whereas Serbs engraved statehood into the First Yugoslavia, they were themselves lacking a direct experience of modern statehood. Under these circumstances, there was a danger of Serbian nationalist uprising. On the other hand, Croat and Slovenian lack of any modern independent statehood meant that, sooner or later, it would come to revisiting of respective nationalisms. The European Union, on the other hand, represents a voluntarily galvanized peace and economic project, where states with a distinct advantage of experiencing modern statehood attempt to revisit their perception of sovereignty. It must be noted that the European Union lacks deeper political integration so that it could be discussed in terms of statehood. Our two examples do have one thing in common. Ethnic nationalism represents a danger for both projects: for Yugoslavia due to ethnic dominance and hegemony of one ethnic group; and for the European Union as the deepening of European integration, in the eyes of nationalists, threats sovereignty of nation-states. In the first case, the quality of the sovereignty surrendered to the Serbian king by other ethnic groups is not comparable to that of democratic modern European states.

Going back to the problem of dissolution of Yugoslavia, we must tackle the issue of "self-determination" of peoples. It has been one of the most quoted terms in the media. Whereas it goes beyond any doubt that "self-determination" represents a standard after the World-War II order, the de-colonization rationale of it cannot be applied to breakups of multiethnic states. Even the UN Charter provides no strict differentiation between key terms like people, state and nation. The point of ethnic nationalism is that the widely accepted pattern that nation creates a state. The problem arises when an ethnic minority attempts to upgrade itself to a nation and found a state, i.e. when it decides to apply the self-determination principle in favor of state-building (Offe, 1994, pp. 180-182). The Yugoslav constitution provided no clear definition on who was entitled to claim this right, republics or peoples (Jovanović & Henrard, 2008, pp. 137-139). The absence of positivist definition on self-determination is a proof of supremacy of politics over law. Be as it may, it was by means of ethnic nationalism that Slovenia and Croatia (re)claimed their statehood. There are different attributes which characterize ethnic nationalisms. Religion, language and common culture is what brings groups of people together and differentiates from others. With few minor exceptions not worth mentioning, the tautology in force regarding three ethnic nationalisms in Bosnia and Herzegovina inevitably puts religion on equal footing with ethnic, and in addition, national

identity. The Bosnian-Herzegovinian paradox could read as follows: Despite attempts to form state(s) by means of ethnic nationalisms, all three groups failed to create a state corresponding to their maximalist ideologies. Instead, through decisive exogenous influence, the present-day Bosnian-Herzegovinian state was imposed. Contemporary Bosnia and Herzegovina must be perceived as a civic society which possesses no common ethnic identity. Bosnia and Herzegovina is not an ethnic nation but a civic nation comprising three ethnic groups. Its greatest challenge remains to appease three conflicting nationalist ideologies. The nationalist ideologies of all three ethnic groups have strong foundations in religion. Regarding religion, there can normally be two types of conflicts emerging, the first being inter-religious between two or more religious/ethnic groups, and the other one between the secular state and religion. During the Second Yugoslavia, the communist government was in permanent silent conflict with religious communities, with two Christian churches as well as with the Islamic communities. This resulted in religious freedom being oppressed. It is a general belief in Yugoslavia that the religion was not forbidden, it could be practiced, however, any open sympathy to any religion was not in conformity with any public function. The post-communist awakening of nationalist ideologies is to be perceived in parallel with the strong assertion from religious leaders for superiority. In line with the ethnic conflict lines, in Yugoslavian and Soviet cases (Oberschall, 2007, p. 4), the conflict history can be best explained by demonstrating that different religious groups did not aspire to forbid the others but to canonize its ruling order and ensure their own supremacy over others.

Building National Symbols

We aim in this part to discuss the emergence of national symbols and their use. Why is it relevant to discuss symbols? After the general elections in October 2014, Serb and Bosniak political elites hurried to sign a joint statement on the common European perspective and aspirations. This one-page generic document politically symbolizes the commitment of both parties to come together and discuss a common European future for all Bosnian-Herzegovinian citizens. For us who analyze politics in Bosnia and Herzegovina, it is a rather symbolic gesture, one in the myriad of domestically and internationally initiated attempts to demonstrate some sort of unity. Even though it changes nothing in practice and in spite of being purely a political statement without any direct significance, the EU officials welcomed it enthusiastically claiming the new era has started. In post-conflict societies, it is a lot about

symbolism. People feel strongly attached to their ethnic, national and religious identities. It is for this reason that we focus on ethnic and religious symbols, their emergence throughout history and their significance for modern statehood. We previously concluded that all three nationalisms in Bosnia and Herzegovina comprise ethnic and religious attributes, which are put on the same footing and to be discussed inseparably and simultaneously.

What is so essential about religion? The principle of sacred is what brings the community together (Durkheim, 1976 [1912]). A set of beliefs and practices is what a group of people identifies with and what differentiates it from others. As Durkheim plausibly demonstrates, people used to attribute superhuman characteristics to objects, natural formations or other human beings, which led to the development of totemism. Durkheim speaks of cults and faiths (Durkheim, 1976 [1912], pp. 426-430). Cults thereby signify a unity of all customs and rites common for a group and faith is the interpretation of the belief of this group about their surroundings and the world. The evolution of thought required some sort of centralization of convictions and emergence of totems so that a group of people can legitimately recognize the sacred superiority of a subject or principle. By the same token, as Durkheim further notes, we have changed our perception with regard to civilizational values. There is a widely accepted belief that the International Community is obliged to intervene even militarily should a single state be incapable of preventing genocide and other atrocities committed on its territory (Bellamy, 2008, pp. 135-156).[116] By the same token our ancestors identified themselves with their totems, we consider the Responsibility to Protect as a civilizational sacred provision. There are diverse efforts to enhance a list of values which are of civilizational, sacred importance and, like ius cogens, from which no derogation is permitted. And the religion, as one of the first forms of collective identity, is inevitably to be discussed with the emergence of states, and, in the end, nations. Just like in the previous subchapter we stressed the evolution of a modern state from absolutist over social contract to modern democracy, the emergence of monotheistic religions is what represents an evolution, a centralization of diverse customs and beliefs. Religion is thus so important since it inspired millions to create, go to wars, develop institutions and states, etc. A religion is inseparable factor in the evolution of modern statehood, and, as is the case in the Balkans, emerging of nations. Durkheim's thought is of the utmost importance since he puts religious and secular ceremonies on equal footing regarding their content and function. Both of them serve to demonstrate a belonging to a group and, irrespective of religious attributes, the state aims at doing the same. Former French

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[116] This is usually referred to as R2P or the Responsibility to Protect.

President Nicolas Sarkozy coined the term *laïcité* in a positive sense in order to recognize the contribution of the Catholic Church to the French culture. The negative laicism, which was a direct result of the French Revolution and its maxims, sought to demote religious influence from the public to the extreme not matched before. Whichever antipodes we analyze in the context of religion-state relationship, be it French and American, Turkish and Austrian, we cannot exclude the impact of religion and its direct influence on respective modern statehoods. Now, Durkheim stated that beliefs and practices as well cults and myths are the pairs which form an identity. But what if these values are differently perceived among the group itself? We have an excellent example of a myriad of interpretations of holy books. So, a Muslim in Turkey and a Muslim in the Islamic State both claim they belong to one, Muslim community. How they perceive its values and practice its customs is another issue:

> "Community is just such a boundary-expressing symbol. As a symbol, it is held in common by its members; but its meaning varies with its members' unique orientations to it. In the face of variability of meaning, the consciousness of community has to be kept alive through manipulation of its symbols. The reality and efficacy of the community's boundary – and, therefore, of community itself – depends upon its symbolic construction and embellishment." (Cohen, 1995, p. 15).

From the example above we see that the religion is much more than a belief or an abstract, personal perception of the surrounding universe shared by a group of people. It is:

> "(1) a system of symbols which acts to (2) establish powerful, pervasive, and long-lasting moods and motivations in men by (3) formulating conceptions of a general order of existence and (4) clothing these conceptions with such an aura of factuality that (5) the moods and motivations seem uniquely realistic" (Geertz, 1993, p. 90).

So, it attempts to regulate life and establish conceptions and interpretations of societal order. Thus, the conception of society and state in the modern statehood draws a clear boundary between religion and state, in more (secular) or less radical terms. And what about these symbols Geertz refers to? Whereas they physically may be the same, they are exclusively a subjective perception of their bearers, they reflect what the person identifies himself with. They represent by no means a normative denominator of all persons carrying them. When we see a flag, we all experience different form of attachment and expound on a particular value we are proud of or identify our country with. Bosnia and Herzegovina is a crossroad of civilizations and religions. This is why in the Balkans like no other region in Europe national

symbols play such a prominent role. The leftovers of religious conflict between Christianity and Islam, which for centuries represented the major conflicting line on the European continent, is still deeply rooted in the Bosnian-Herzegovinian society. The sixteenth century brought two historical paradoxes with itself in the context of this conflict. The Fall of Constantinople in 1453 and the Castilian expulsion of Moors from the Iberian Peninsula in 1492 are two events invaluably contributing to a permanent clash of these two civilizations. And Bosnia was the territory on the European soil which for centuries represented the stronghold of Muslim presence. The climate of conflict galvanizes symbolism. It is religious symbolism, as we concluded from Ivo Andrić, which firstly separated the same people, set boundaries and paved the way for further divisions. And where is the religious division reflected within present-day Bosnia and Herzegovina? Almost everywhere, on all three sides. Let us take for instance the absence of the Law on National Holidays at the state level. The Republic of Srpska celebrates 9 January as its national day, in memory of 9 January 1992 when it was proclaimed. In the Serb Christian Orthodox calendar, this is St. Stephen's Day. When Serb politicians in Bosnia and Herzegovina express their wishes for that day, they, at the same time, congratulate *krsna slava*[117] of St. Stephen to the people. It would not be a problem were this territory not multiethnic and multireligious. There are other European nations like English and Scottish who have their respective protector saints but the environment of two countries cannot be compared. The late Bosniak leader Izetbegović used to address his army forces with religious greetings. Religion is therefore an inseparable element in forming of diverse ethnic identities. The underlying problem of Bosnia and Herzegovina is that separate nationalisms seek to form respective nations in a traditional manner, in the meaning of ethnic nationalism, where ethnic and national aspects are complementary.

> "In fact, nations, like states, are a contingency, and not a universal necessity. Neither nations nor states exist at all times and in all circumstances. Moreover, nations and states are not the same contingency" (Gellner, 1983, p. 6).

Gellner revealed a truth Yugoslav national elites failed to understand. It is senseless to claim any purity of your own nation in the globalized world. Even at times when we have a "regular" formation of nation states in Europe, it is impossible to put a nation and a state on equal footing due to demographic and social evolutions. When the French, on the occasion of 14 July

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[117] Serbs are the only Orthodox people celebrating *krsna slava* (lit. celebration). Each family has a saint, a patron, who is believed to protect them and is celebrated once a year.

celebrations, started portraying a dark-skinned Marianne, it was clear that the concept of the French nation has reached another civilizational step thereby displaying its capacity to incorporate symbols, values and norms they did not have anchored at the time of their formation. There is a general belief in science that there is no normative criteria which can define as of when a group can be considered as a nation. The modern use of derivatives "nationality", "national" and the term of nation itself may be misleading as it puts nation and state on equal footing. And the interpretation of nationalism is what makes it confusing:

> "Nationalism holds that they were destined for each other; that either without the other is incomplete, and constitutes a tragedy. But before they could become intended for each other, each of them had to emerge, and their emergence was independent and contingent. The state has certainly emerged without the help of the nation. Some nations have certainly emerged without the blessings of their own state. It is more debatable whether the normative idea of the nation, in its modern sense, did not presuppose the prior existence of the state" (Gellner, 1983, pp. 6-7).

Whereas we concluded that Bosnia and Herzegovina is not and cannot be an ethnic nation, how is it possible to create symbols which would result in it becoming a civic nation? We concluded that all three nationalisms failed in their attempts to maximize their efforts. We attempt to define the new statehood as imposed statehood and the new Bosnian-Herzegovinian nation as an imposed civic nation. All major national symbols emerged after Dayton are imposed by the International Community. It was an exogenous, foreign factor that had to, after the imposing character of Holbrooke's shuttle diplomacy, also impose new national symbols. Bosnia and Herzegovina was, in all its complexity, a playground and a challenge for international community to create a post-conflict nation. Knowing the path dependency was present and that it was not possible to rely on a compromise finding, the International Community empowered in December 1997 the UN High Representative with Bonn Powers. So, it was up to him to event and proclaim a set of national symbols:

> "By the end of 1997 this external pressure was no longer necessary as the UN High Representative could unilaterally impose disputed legislation on the design of the new currency, uniform vehicle license plates, citizenship laws, and even decide on the new Bosnian flag" (Chandler, 2000, p. 64).

All these legislative solutions were adopted either with the consent of ethnic political elites opposing them (Serbs primarily) or by a decree of the High Representative himself. In most

cases, Serbs gave in and voted in favor of a number of laws resulting in formation of national symbols. Even the flag of Bosnia and Herzegovina, as the most important national symbol, is imposed. Three sides of the triangle represent three ethnic groups, three peoples, and the stars, blue and yellow color stand for Europe. Just like in the case of Kosovo, it represents an exogenous attempt to create a national symbol, contrary to and without reference to ethnic symbols. Whereas there are absolutely no links or similarity to ethnic symbols of three peoples, it is almost a tautology when we claim that this new symbol was exclusively accepted as national only by the Bosniaks. Serb and Croat national flags have been and will continue to be displayed at respective weddings, gatherings and social events. From an emotional perspective, it is primarily the Bosniak ethnic group which accepted the new Bosnian-Herzegovinian flag despite it having nothing to do with the history of Bosnia and Herzegovina. And this is exactly the point. When introducing new symbols, we cannot rely on history, we only learn from history that no joint identification can be matched. Present-day national anthem of Bosnia and Herzegovina is a neutral melody without lyrics since ethnic groups cannot agree on the text. It is worth noting that Serbs oppose any lyrics as, by the same token, they oppose any symbols being attributed to the state of Bosnia and Herzegovina.

To conclude on national symbols, by the same token as the peace of Dayton was dictated, the International Community dictated the adoption of national symbols. Bosnia and Herzegovina is a civic nation experiment. Its present-day symbols are invented without historical and religious foundations. Bosnia and Herzegovina is an imposed civic nation with three different ethnic groups, two of which feels themselves attached to their respective mother-nations and being an inseparable part of them. In order for national symbols to be identifiable, they must carry a weight, a weight of democracy, fairness and welfare state. The same way the EU faces self-recognition among many citizens, Bosnia and Herzegovina must seek its self-confirmation among its people in another set of values, distant from religious, ethnic and political cleavages. Dayton is a punctuated equilibrium in every sense, the point at which history is being revisited and the chain of events completely changed.

Shaping National Civic Culture

We concluded and proved that Bosnia and Herzegovina is not an ethnic nation. By examining its statehood throughout this research we also must take into account its civic culture, depending on which state-building success will be measured in the end. In such a society, its

citizens are expected to behave as "rationality activists" (Almond & Verba, 1989, p. 29). Democratic citizens, according to Almond and Verba, are expected to act in accordance with interests, being at the same time active and agile in politics. This is a great challenge for both, post-conflict as well as transitional societies. Civic culture therefore includes an engagement on input side. It does not suffice if we just cast our vote since we are inclined to accept a pre-defined set of interests to be articulated on our behalf. In practice, the International Community also attempted to change post-war civic culture among ethnic groups. By openly favoring non-nationalist core ethnic political parties,[118] the coalition Sloga managed to dethrone SDS in the Republic of Srpska in 1998.[119] The new Prime Minister and present President of Republic of Srpska, Milorad Dodik, was seen as a hope, a new type of non-nationalist leader, who should change the nationalist Serb pattern. Why is this important to be mentioned in the context of civic culture? New political elites were needed to fit into the International Community's vision, totally opposite to the nationalist politics in force. It was an attempt to break continuous path dependency. It was widely believed that civic culture cannot be developed with nationalist actors. And this was absolutely wrong. Even Social Democrats from Serb and Bosniak ethnic corpuses have their own path dependencies. Even for them, the ethnic principle enjoys an unquestionable superiority over civic principle. A voter in the Bosnian-Herzegovinian society is primarily rational within his own ethnic group. The civic culture is built exclusively once the rationality of ethnic leaders has been established. The International Community is, in the Bosnian-Herzegovinian case, aware of the historical paradox: Ethnic groups as exponents of three ethnic nationalisms are forced to create a civic nation. And what kind of a nation? In a lecture held at the University of Sorbonne in 1882, Ernest Renan (1882, pp. 3-32) defined a nation as a "daily referendum" comprising both, aspects we remember and forget at the same time. It is not to be confused with race, language or religion since it consists of remembrance and forgetfulness. He refuses language as the binding element given many English speaking nations. The religion, in his perception, is a private matter and he accredits a lot to the 18th century and the French Revolution for redefining societal values. As he notes, all European nations emerged after some of the bloodiest conflicts, there is absolutely no foundation to accredit the success of nation-building to race, religion and language but to the willingness of a group to forget the past and digest history in order to articulate a mutuality of interests. A nation is not a constant, it is being revisited, redefined and revaluated on daily basis: "A nation is therefore a large-scale

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[118] HDZ, SDA and SDS
[119] Republika, Number 196, http://www.yurope.com/zines/republika/arhiva/98/196/196_4.HTM

solidarity, constituted by the feeling of the sacrifices that one has made in the past and of those that one is prepared to make in the future. It presupposes a past; it is summarized, however, in the present by a tangible fact, namely, consent, the clearly expressed desire to continue a common life. A nation's existence is, if you will pardon the metaphor, a daily plebiscite, just as an individual's existence is a perpetual affirmation of life." (Renan, 1882, p. 19)[120] We can understand from today's perspective a revolutionary impact of Renan's discourse. It is thanks to these values that the humanity managed to incorporate human rights, social justice, equality and all sorts of freedoms into a concept of a modern nation. This "general will" emanates from "social contract" theories and expresses the culmination of attempts to canonize certain civilizational values. If there is a concept any close to what the International Community is attempting to create in Bosnia and Herzegovina, than it must include self-acceptance and the capacity of self-legitimation. Given the fact it was imposed, this historical period serves as the period of its affirmation among ethnic groups. It is primarily up to this self-recognition it must gain on which the state-building in Bosnia and Herzegovina depends. Unlike most other nations, the process of civic nation-building in Bosnia and Herzegovina starts from upper level. It attempts to attract primarily ethnic Serbs and Croats with its set of civic values thereby guaranteeing no dominance of Bosniaks in the future. This is a theoretical concept behind an eventual Bosnian-Herzegovinian civic nation. Eventual it is in a sense that this historical period has still been too short to determine and evaluate results. Furthermore, in the context of current discussion as to whether Bosnia and Herzegovina is a failing, failed or collapsed state, it heavily depends on the quality of post-conflict, internationally-led state-building as to whether a civic nation-building can be pursued. The problem with the term civic is that Serb political elites automatically tend to associate it with Bosniak domination. Bosniak perception of civic implies a one man – one vote principle for the whole territory thereby giving civic identity superiority over ethnic principle. Even within the strongest Bosniak political party SDA, the Muslim nationalism prevailed over the civic principle (Burg & Shoup, 1999). This led to a split within SDA whereby Haris Silajdžić, the wartime Foreign Prime Minister and Post-War Member of the Bosnian-Herzegovinian Presidency, left SDA and found his own Party for Bosnia and Herzegovina. This might sound appealing and morally right in the first moment when you ignore *Realpolitik*. The fact that he (and like-minded people) were pushing for the civic principle, was perceived among Serbs and Croats as an act of Bosniak nationalism.

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[120], English translation, Chapter III, view on:
http://web.archive.org/web/20110827065548/http://www.cooper.edu/humanities/core/hss3/e_renan.html

In countless interviews and public speeches, Milorad Dodik, the unquestionable post-SDS[121] leader of Bosnian-Herzegovinian Serbs and present President of Republic of Srpska, refused the superiority of civic concept[122] in the state of Bosnia and Herzegovina as a single electoral unit. Why are we giving these examples? Because they help us understand why civic culture doesn't function between ethnic groups. If you ignore the existence of three ethnic nations on the Bosnian-Herzegovinian soil, you are likely to face a stalemate in the decision-making process. This is a bitter truth. The perception of the Bosnian-Herzegovinian civic nation is different to the extent that lawyers, political scientists and sociologists will primarily look to it from either ethnic (Serbs and Croats) or pan-Bosnian (Bosniak nationalist position) prism. If this narrow shell is left for a moment and if we leave emotional factor aside, what are the results of civic nation-building culture in Bosnia and Herzegovina from Dayton onwards? We argue that the success of civic nation-building exclusively depends on the success of reforms, functional state-building, fighting corruption and promoting values of welfare state. Unfortunately, when we look at the political behavior, due to the fact that it cannot break the historical chain and change the well-established path, there is not much progress being made in consensus-finding and promotion of dialogue. And what was the approach of International Community and why did it fail to understand Bosnia and Herzegovina? The exogenous peace-building operations worldwide did not primarily take into account *Realpolitik* and they underestimated the impact of ethnic conflict, its deep wounds and psychological impact on societies. "Underlying the design and practice of these operations was the hope and expectation that democratization would shift societal conflicts away from the battlefield and into the peaceful arena of electoral politics, thereby replacing the breaking of heads with the counting of heads (…)" (Paris, 2004, p. 5). This civic society which emerged out of the order has not yet been defined despite its strong ideological identification with western liberal democracies. The fact that democratic west won the Cold War primarily ideologically does not imply that: (i) there is a clear common denominator among democratic nations regarding the set of values to be canonized; (ii) that this set of values can easily be transposed to post-communist nations; and (iii) that the democracy enjoys an unquestionable superiority over other parameters. What do we mean by this last remark? Transitional nations with little or no experience in statehood at all like Bosnia and Herzegovina cannot simply embrace democracy

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[121] Unlike during the period 1998-2001, when the International Community heavily contributed to installing him as the Prime Minister, after 2006 General Elections, Milorad Dodik wins by a landslide and becomes the most prominent leader of Republic of Srpska.

[122] An interview to Belgrade *Novosti* paper from 21 March 2011 is just one example:
http://www.novosti.rs/vesti/naslovna/aktuelno.69.html:323770-Dodik-Izolacija-Srpske-nece-proci

giving it priority over ethnic identities for example. It is not implementable simply to promote a civic society without self-legitimizing it with their citizens. There is, however, an encouraging sentiment among all citizens of Bosnia and Herzegovina irrespective of their ethnic identity. They all sympathize with the democratic order and civic society. The question remains only how we achieve and promote civic system in Bosnia and Herzegovina. For the sake of stability and political effectiveness, ethnic shells must serve as guardians of civic society. The division among ethnic groups is there, history taught us it will always prevail and exist. Therefore, Dayton ensured the ethnic superiority is institutionalized since, by doing so, it could only stop the bloodbath and prevent another mass exodus. The contest for the Bosnian-Herzegovinian civic nation project success is an ongoing struggle with hindrances from the past.

Civic vs. National Identity in Bosnia and Herzegovina

Let us briefly sum the whole discussion on civic and national identities in Bosnia and Herzegovina in an attempt to theoretically diagnose the underlying problematic of the Bosnian-Herzegovinian society. The "peculiar" (Smith, 1991, pp. 9-11) civic western understanding of "nation", in addition to Jellinek's three criteria, involves a common civic culture and ideology. Putting ethnic and national on the same footing contradicts contemporary understanding of nation, which, by default, is civic, irrespective of the fact if it is/was a nation-state or not. Anthony Smith notes that very few states are true nation-states in essence. The problem of Bosnia and Herzegovina is that it is surrounded by two stronger nation-states, the statehood of which heavily relies on the Socialist Yugoslavia Order and is strongly influenced by their respective nationalisms. In a brilliant paper, the missionary Mark Vanderwerf (2009), explains in detail the "identity problem" in Bosnia and Herzegovina in general. He makes a good comparison on "ethnic/civic" identity in the US, Croatia and Serbia and Bosnia and Herzegovina. The US nation comprises a number of ethnic groups. It plays no role for the core nation from which ethnic group one stems. Croatia and Serbia, on the contrary, are nation-states, with one dominant ethnic group forming respective nations. As Vanderwerf states, the ethnic identity is fused with the civic one. By merging these two together, we have a Serbian civic nation comprising Bosniaks from Sandžak or Croats from Vojvodina. They are Serbian nationals of their respective ethnic origins. The same goes for Croatia and its respective national minorities. But what about Bosnia and Herzegovina? In Bosnia and

Herzegovina, three ethnic identities form together one civic, Bosnian-Herzegovinian identity. Common civic denominators bringing them together like passport, license plates and other national symbols, link them inevitably to the Bosnian-Herzegovinian state. However, the Constitution of that same country knows no Bosnian-Herzegovinian ethnic identity. As said beforehand, Bosnia and Herzegovina is not and will never be a nation state but a multiethnic, and, in addition, multinational society. The main division between Serbs and Croats on the one, and Bosniaks on the other hand, is between ethnic and national. Bosniaks would have no problem labeling Bosnia and Herzegovina as multiethnic, on the contrary, they embraced this attribute. However, they fiercely oppose a multinational characterization primarily for the sake of putting nation and state on equal footing. And why do we draw a conclusion that it is still multinational? For the reason of having two neighboring nation states with the nationality of which Serbs and Croats can identify with. Bosnian-Herzegovinian is therefore not an ethnic but civic identity. The national remains a denominator but at the same time a separator between the two since you may attach different values and criteria to it, be it primarily pro-ethnic or pro-civic.

All in all, from the theoretical perspective, we demonstrated that Bosnia and Herzegovina is a *sui generis* experiment. It is an attempt to create a civic nation which comprises three ethnic groups by means of the imposed statehood presupposing it.

Chapter 4: Case Studies

Introduction

Once we have provided a theoretical background for our research, the very essence of this doctoral project, namely the empirical case studies, will be presented. The case studies for our research include three elements of modern statehood, the military, tax and judicial systems. The analysis of the success Bosnian-Herzegovinian political elites achieved with or without international pressure in terms of building its military, tax and judicial institutions will serve as a variable when determining the quality of the statehood achieved. Whereas the focus of this research remains the state and the statehood, political parties, as a non-state actor will also be analyzed. This is primarily due to a fact that any further attempt to integrate the state will heavily depend on ethnic political elites and less on the international community. Since Christian Schwarz-Schilling, High Representatives stopped imposing new laws, punishing domestic politicians and running state affairs. As the forthcoming interview[123] with the ex-member of the Bosnian-Herzegovinian Presidency will reveal, the agenda of the Presidency used to be adjusted by the High Representative. This is the reason why he, over the course of this interview, puts on equal footing the statehood with the role, personality and the institution of the High Representative. The very imposing character of the Bosnian-Herzegovinian statehood is to be reflected in the actions of the shuttle diplomacy preceding Dayton, the agility of the High Representative during the state-building processes (i.e. our three case studies) and the European integration perspective. The character of the international engagement in Bosnia and Herzegovina was exclusively directed toward state-building. Its tendency has shifted from interventionist to advisory and our case studies will, to a great extent, aim at presenting the joint character of decision-making process while creating Armed Forces, introducing the state-level VAT tax, etc. By assessing the progress achieved we will tend to define certain tangible outputs. These tangible outputs will primarily depend on the rationale of respective reforms and functions. For instance, the coming case study on defense reform must assess its achievements against fundamental functional requirements of modern armed forces. By assessing these achievements in case studies we are evaluating Bosnian-Herzegovinian statehood and answering the research questions. This is why case studies

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[123] See Annex to the thesis: Interview with Interview with Borislav Paravac (Member of Bosnian-Herzegovinian Presidency 2003-2006)

represent the core of this research, the fertile playground where the theory is applied and the results and hypotheses of this research evaluated. This empirical part will demonstrate different interests and priorities of both, the national elites as well as International Community when it comes to the country's inner integration.

Similarly to the EU integration process, we will inevitably identify a sort of multi-speed integration reflecting economic over political superiority. The Bosnian-Herzegovinian state-building process is an elastic variable, being at times quite efficient and successful when political path dependencies are neglected or set aside. On the other hand, some of the basic functions are hindered by a lack of political agreement. The political stalemate was evaded only when political leaders were about to face a serious isolation. The exogenous factor was the driving force of Bosnian-Herzegovinian state-building in its post-conflict phase.

The first case study, the defense reform, will shed a light on particularities of a classical state-building process. Beyond any doubt that was a success story, a role-model for all other integration processes. Its implementation represents the peak of international community post-war state-building assistance process. The research will also reveal that ethnic elites were not a priori forced to succumb to pressures but the final solution came from them. Also, we will look at the failure of the police reform, which was also foreseen.

The reform of judiciary is probably the most divisive and complex topic in the country. This case study will provide an overview of the Bosnian-Herzegovinian complex legal framework and its respective institutions. Along with the two preceding case studies, we will have provided not only an overview of the progress in terms of state-building, but also a comparison of the different political approaches while addressing these diverse elements of modern statehood among ethnic political elites.

The introduction of VAT (value-added tax) in Bosnia and Herzegovina is another important moment in the state-building process. The respective law on introduction of the system of indirect taxation was passed on 29 December 2003 and incorporates a number of important provisions including the founding of Indirect Taxation Authority. As can be seen, this reform preceded the defense reform and secured funding of state institution and is seen as an important state-building factor.

Defense Reform in Bosnia and Herzegovina

The Challenges of Demilitarization and Future Defense Reform

In order to discuss the defense reform in Bosnia and Herzegovina, we will adopt a dual approach comprising two aspects of state-building, namely the administrative and political (Barakat & Zyck, 2009, p. 549). The question of administrative aspect is not primarily related to the alleged benefits of centralization, which was favored by the International Community and the Bosniak side. The greatest challenge of administrative part was bringing ethnic armies under one chain of command. Whereas this aim seemed to have been unrealistic (Vetschera & Damian, 2005) following the end of the war in 1995, the ethnic interests changed subsequently as a result of international politics. The political aspect, as Barakat and Zyck further note, involves the question of legitimacy and reflection of ethnic dominance in the new structure.

It is important at this point to precisely describe the formation of all three armed. This demonstrates how the conflicting parties, our different path dependencies, were integrated into one unit and, on further reflection, how well it functioned. As a result of the Washington Agreement,[124] the end of the Bosnian-Herzegovinian Civil War left two confronted armed forces which needed to be integrated into one.

The Army of the Republic of Srpska was the armed force under control of an effective Serb government on a territory of an internationally recognized independent state "Republic of Bosnia and Herzegovina". Formed on 12 May 1992, it was composed of some 80 000 Serbian troops coming from the recently discharged Yugoslav People's Army. The fact that the most of the equipment of Yugoslav People's Army came into Serbian hands gave the beginning superiority resulting in Serbs securing control of almost 70 % of the territory of Bosnia and Herzegovina. No one questions this superiority and the fact that the institutional mechanism of the Yugoslav People's Army to a great extent obeyed the orders of the self-proclaimed government of Republic of Srpska resulted in Bosnia and Herzegovina, such as accepted in the United Nations, being a failing state right after its declaration of independence. Whereas inner elements of statehood were by default attributed to Serbs, the breakaway Republic of

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[124] The Army of Federation of Bosnia and Herzegovina was formed following the adoption of the Washington Agreement 1994 by merging two ethnic military forces of Bosniaks (The Army of Bosnia and Herzegovina) and Croats (The Croat Council of Defense).

Srpska failed to gain any international recognition. Serb armed forces were almost exclusively composed of Serb Orthodox population. The legal background for the Army of Republic of Srpska was provided in the Constitution of Republic of Srpska[125] in Chapter VII, Articles 104-107. The pre-Dayton version speaks of sovereignty and independence clearly indicating that Republic of Srpska considered itself being/becoming an independent state. In addition, the supporting laws regulating the creation and running of the Republic of Srpska's armed forces were passed by the General Assembly. What the operational aspect of the Army creation concerns, the founding of the Army of Republic of Srpska is, as indicated, to be discussed in the context of the independence declaration of Bosnia and Herzegovina and its subsequent international recognition and admission to the United Nations. As a result, the present of the Yugoslav People's Army on the territory of a newly recognized independent state became obsolete. Knowing that Serbs in both cases, in Slovenia and Bosnia and Herzegovina, fiercely opposed the dissolution of Yugoslavia and proclamation of these independent states, an armed resistance came as a possible option. As a result, in order to form a military wing, Serb generals and personnel from the Yugoslav People's Army organized itself in a response to the emerging situation: "Not only did the Army supply arms to nascent separatist Bosnian Serb police and military structures but it also directly assumed the role of Serb protector throughout Bosnia" (Central Inteligence Agency, 2002, p. 127). As this CIA report further notes, the Yugoslav People's Army was first ethnically homogenized in order to ensure loyalty to the newly establishing Serb political structures. In a nutshell, the backbone of the Army of Republic of Srpska are 80 000 discharged Yugoslav People's Army Soldiers who were allowed to keep their weapons. The Declaration of Independence of Bosnia and Herzegovina by Alija Izetbegović was seen by Serbs as *casus belli* and served as the supporting argument for the creation of the Army of Republic of Srpska. As to the numbers and undoubted superiority over the two other ethnic militaries, in April 1994, the Army of the Republic of Srpska comprised some 100 000 men out of which 33 000 professionals, 63 000 recruits and 4000 volunteers (Calic, 1996, p. 99). Regarding these volunteers, most of them stem from Serbia and were part of paramilitary units like those of Serb Radical Party. The presence of ideological mercenaries from Russia, Ukraine and Greece was also noted. At this stage we exclusively intend to look at the legal structure and composition of the respective ethnic armed forces. This is relevant as we need to know what units had to be demilitarized and integrated into new defense structures. In the end, the Army of Republic of Srpska was *de iure* an armed

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[125] For a reference, please see the version of the Constitution of Republic of Srpska preceding the Defense Reform. Comp. OHR, www.ohr.int/ohr-dept/legal/oth.../rs-constitution.doc

force of the Serb self-proclaimed government and de facto a transformation of the YPA leftovers on the territory of Bosnia and Herzegovina into a new military structure.

The Army of the Republic of Bosnia and Herzegovina (ABiH) was founded by merging of different paramilitary formations which recognized the Government of Alija Izetbegović as legitimate. It must be noted that it was the only internationally legally recognized military force given the fact that, in the eyes of International Community, it obeyed the only legitimate government in the country. The same way Serb forces were drawn under auspices of the Serb Democratic Party (SDS), Bosniak Party of Democratic Action (SDA) played a prominent role in the formation of first Bosniak military formations. On 10 June 1991, a "Council for the National Defense of the Muslim Nation" was established (Central Inteligence Agency, 2002, p. 130). It was a body formed to overview the operations of the first Muslim military formation, the Patriotic League. Despite having a minor number of Croats and even lesser Serbs in its formation, the Patriotic League, as the CIA notes, was predominantly Muslim. Its objective was to defend Bosnian-Herzegovinian independence and execute the political power of the Izetbegović Government. Despite later attempts to promote its multiethnic character, it is widely believed that ABiH was ethnically homogenous military formation just like the other two. The same CIA source, as well as the Bosniak government, will later confirm that the strength of the Patriotic League was between 30 000 – 40 000 personnel. Officially, the ABiH was constituted on 15 April 1992, which is celebrated as the "Army Day" in pre-dominantly Bosniak areas. Apart from the Patriotic League, Green Berets and territorial defense forces which merged into it, ABiH also comprised (Pietz, 2006, p. 157) some 3 000 Mujahedeen fighters came to Bosnia and Herzegovina and formed the unit *El Mudžahid*, which was an integral part of ABiH through the 7th Muslim Brigade. As Pietz further notes relying on the sources of the International Crisis Group, out of 12 000 naturalized citizens, 70% were foreign mujahedin fighters. Many of these fighters stayed in Bosnia and Herzegovina, married Bosniak women and founded families. Given the fact that radical Islamic elements were undoubtedly part of the ABiH, it was an additional challenge for the International Community to reform the Bosniak armed forces thereby eliminating radical factor. In addition to the radical Islamic factor, just like the other two armed forces, ABiH faced the problem of warlords and criminals, which became its integral part (Pietz, 2006, p. 156). As the post-war period will demonstrate, a number of warlords will be involved in organized crime especially in Sarajevo area, claiming responsibility for a number of organized killings.

Following the establishment of Croat Community of Herzeg-Bosnia in 1991, under auspices of the Bosnian-Herzegovinian branch of the Croatian Democratic Union (HDZ), the armed forces of Bosnian Croats, the Croat Council of Defense (HVO), were founded on 8 April 1992 in Grude. As of 1994 onwards, HVO counted some 40 000 regular soldiers, supplemented by 4 000 – 5 000 of volunteers and additional 15 000 professionals from Croatia. The paramilitary forces which will be subsequently included in the official armed forces included "Zebras", "Black Legion" and Croat Defense Union (HOS) (Pietz, 2006, p. 157). It must be noted that many of these units pledged allegiance to the legacy of the Second-World War Ustasha Movement and that their ideology in the beginning coincided with the idea of reestablishment of the Second-World War puppet Independent State of Croatia. These radical elements, however, evaporated in the course of integration of all military forces as will be evidenced. Firstly, Croat and Bosniak armed forces integrated under unified auspices of the newly founded Ministry of Defense of Federation of Bosnia and Herzegovina[126] Chapter VI (Military Arrangements) of the Washington Agreement starts as follows:

> "Both sides agree to the establishment of a unified military command of the military of the Federation. The sides will develop comprehensive transitional arrangements to that end in the context of a military agreement (…)."

The Armed forces of the Federation of Bosnia and Herzegovina represent the very first step of the military integration in the country. Founded on 18 March 1994 by merging two ethnic armies, AFBiH served a significantly different purpose and the rationale of this integration must be differentiated from the 2006 military reform. In 1994, it was still not clear what kind of state will emerge after the Civil War, namely will it be an independent Bosnia and Herzegovina or a confederation of Bosnia and Herzegovina and Croatia. The very rationale of 1994 Washington military integration was a common foe, namely Serbs. This decision, however, simplified the future defense reform as there were now only two armed forces to integrate into one. The table below shows the strengths of different ethnic armies throughout the war and following Dayton Peace Agreement (Pietz, 2006, p. 157).

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[126] The result of Washington Agreement (1994)

Table 3. Strength of Ethnic Armies in Bosnia and Herzegovina, 1992-2004

Year	Bosniak	Croat	Serb	Total
During the conflict				
1992	30 000–50 000	50 000	67 000	147 000-167 000
1993	60 000	50 000	80 000	190 000
1994	110 000	50 000	80 000	240 000
1995	92 000	50 000	75 000	217 000
Year	Bosniak	Croat	Serb	Total
After Dayton				
1996	92 000	50 000	85 000	227 000
1997	40 000	16 000	30 000+	86 000+
1998	40 000	16 000	30 000+	86 000+
1999	40 000	16 000	30 000+	86 000+
2000	30 000	10 000	30 000	70 000
2001	16 800	7 200	14 000	38 000
2002	9 200	4 000	6 600	19 800
2003	9 200	4 000	6 600	19 800
2004	5 576	2 424	4 000	12 000

There is a wide dispute as to correct numbers of armed troops. Different national and international sources expound on variety of data and lack of reliable statistical reference in this regard. However, as can be seen from the table, at the end of the war there were over 200 000 heavily troops which had to be discharged to a great extent. On the one hand poor economic conditions in a war-devastated country and, on the other, animosity and ongoing anxiety among ethnic groups made it hard for politicians to start this daunting process. Whereas we gave detailed account of the war in the second chapter, we will take a closer and more thorough look at the event past the cessation of hostilities of 5 October 1995. Annex 1A to the Dayton Agreement[127] legalized the existing entity level institutional framework. This proved to be devastating for the economy. During 1996-2000, entities spent approximately 40% of their cumulative budgets to defense and the spending for military in 2000 was three times higher than EU average (Barakat & Zyck, 2009, p. 552).

However, the very first challenge for the International Community was to implement Dayton Agreement. For this purpose, the triangle IFOR-OSCE-High Representative was put in place

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[127] Text of Annex 1A: http://www.nato.int/ifor/gfa/gfa-an1a.htm

whereby IFOR[128] took over the mandate of securing the peace from UNPROFOR. Unlike UNPROFOR, IFOR was a perfect example of peace-enforcement troops. They were larger and with a more powerful mandate than the peacekeeping UNPROFOR. The basic difference is that IFOR, as peace-enforcement troops, could use force in case of danger or need. The rationale for this is the lesson learned from Rwanda, where Belgian soldiers in 1994, as a part of peace- keeping mission, were killed after powerlessly witnessing the Hutu massacres over Tutsi. IFOR secured the definite cessation of hostilities and was replaced by SFOR (Stabilization Force) which was a peacekeeping force.

Balancing Strengths of Armed Forces

NATO enabled a successful implementation of the military aspect of Dayton Agreement. IFOR and later SFOR contributed to the prevention of hostilities among ethnic groups. This very important security aspect resulted in non-necessity of armies, or to put it more mildly for the need of armed force to protect any ethnic group from another two. As plausibly demonstrated in the chapter on war, the end operations which resulted in Bosniaks and Croats gaining additional territories were both, galvanized by NATO and stopped by the United States (Kuperman, 2006, p. 24). Despite losing significant territories especially in Bosnian Krajina region, the supremacy of Serbian armed forces was unquestioned even at the end of the war. Serbs had better weaponry and still better organized army, directly stemming from Yugoslav People's Army structures. Let us know discuss the basic principles of the military reform after Dayton, i.e. the reasons why and how the armed forces were reshuffled. The first rationale for the changes include the famous military ratio of 2:1 in favor of Federation of Bosnia and Herzegovina (Paravac, 2015). There is a two-fold reason for establishing this ratio. In order to bring the military power in an equilibrium, as Paravac notes, NATO had to arm Federation and disarm Republic of Srpska. Paravac revealed one very interesting detail during this interview which sheds a new light on the constellation of military power in the post-war period. According to him, International Community under American leadership wanted this 2:1 ratio as they believed that the strengths of the joint Croatian and Federation forces on the one and Republic of Srpska and FR Yugoslavia on another would be put on equal footing (Paravac, 2015). We must take into account that this was a time of high uncertainty among

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[128] Implementation Force was a NATO-led multinational peace-enforcement force with a one-year mandate (20 December 1995 – 20 December 1996).

international policy-makers. Bosnia and Herzegovina was far away from the present integration stage. Once a supremacy of either side is excluded, there is less probability for another armed conflict to break out.

Whereas NATO by organizing the program "Train and Equip" strengthened the Army of Federation of Bosnia and Herzegovina, the Army of Republic of Srpska was disarmed and heavily weakened. James Pardew, US ambassador and Clinton's representative to the conference on the implementation of program said: "We do not seek an offensive force [through the "Train and Equip" Program], but in the future if someone wants a fight it will be more than fair. This war had an aggressor, and it had a victim. The program (…) to ensure that there will be no future victims and no easy prey for partisans of war" (Woodard, 1996, pp. 1-2).

The US had one additional motive to foster this program. Being fully aware of the presence of radical Islamist elements in the ABiH, they knew that this program would contribute to neutralization of Bosniak military component as well as to its integration with the West (Lamb, Arkin, & Scudder, 2014).

On the other hand, as Paravac stated in the interview (Paravac, 2015), it caused anxiety among Serbs that, in case of an eventual conflict, they would be inferior to the enemy. Srebrenica massacre was regarded as a failure of the International Community and US had a clear pro-active role in bringing the post-war constellation of power into an equilibrium. As Richard Holbrooke will point out later (Holbrooke, 1999), the US had two options how to pursue on military arrangements following the conflict, namely to disarm both sides or to arm the Federation. What we can see from today's point of view is just another Bosnian-Herzegovinian paradox. Namely, the US spent some USD 100 million[129] in order to arm Bosniak-Croat forces. As we will see, the coming reform of defense will results in Serbs shifting from their initial hardline positions, the result of which will be a total demilitarization of the country. So, in plain English, this money was spent for no practical reason but to convince Serbs to integrate further. Paravac said: "We were scared". He referred to the Serb political elites of post-war period which felt isolated and endangered. In addition, the International Community and even the US officials were not unanimous when it comes to supporting this program. The counter argument for the equilibrium was an eventual arm-race

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[129] Report of the Croatian National Television on the Conference on "Train and Equip" Program" held in Zagreb on 27 April 1998. James Pardew's contribution to the panel discussion: http://www.hrt.hr/arhiv/98/04/28/h4_hrv.html

between entities. Charles Boyd, USAF General, clearly labeled the program as the most destabilizing move of the United States after the war (Lamb, Arkin, & Scudder, 2014, p. 11). Among European opponents Carl Bildt voiced his serious concerns about this biased approach of the United States. And they were right for the following reason: NATO was mandated with peace enforcement in case of need which included also a use of force. Whereas a permanent presence of foreign military troops on Bosnian-Herzegovinian ground was imminent, one may really wonder if equipping and training one side would serve the purpose of peace sustainability. Politically, Serb Democratic Party was isolated in the post-war period. Its leader who sits in The Hague today and the political elite around him was not an acceptable negotiator for the International Community. The political situation in Serbia, who was the only ally and contact with foreign world for Bosnian-Herzegovinian Serbs, was also not stable giving the outbreak of hostilities in Kosovo. This period of uncertainty among Serbs led to revisiting of their approach to military reform and strategic thinking. Political elites started to debate among themselves as to what path needs to be taken in this respect.

Downsizing Armed Forces

The downsizing of armed forces in Bosnia and Herzegovina was a long and daunting task. It was logical to witness a major downsizing right after the end of the war, as can be seen from Table 3. The period which preceded downsizing was the period of demobilization and integration of former soldiers in civilian life. However, in the wake of "Train and Equip" Program and lack of coordination among entities, it was not until 1998 that both sides decided to reach an agreement on further coordinated downsizing of armed forces (Pietz, 2006, p. 162). The reason for this outcome were multifold. First of all, James Pardew started losing political support for the continuation of delivering American financial support to the Federation of Bosnia and Herzegovina (Lamb, Arkin, & Scudder, 2014, p. 50). Apart from the United States, the countries which financially contributed to the program were exclusively Muslim countries. The last shipment of American weaponry was delivered in October 1997. Given the fact that most of the Serb heavy artillery was destroyed by that time, the State Department saw no rationale in further strengthening the Federation as AFBiH was considered to be fully operational and at least on equal footing with Serbs. Another important reason for shifting of US interests was Kosovo crisis. The shift of American politics came as a result of an outbreak of conflicts between Serbian security forces and Albanian separatists. It was until this time

that Americans considered the Kosovo Liberation Army as a terrorist group; however, during 1998 the situation began to change. This will become one of the underlying reasons why State Department, instead of siding with the Federation of Bosnia and Herzegovina, started encouraging dialogue and integration of Bosnian Serbs in NATO integration processes. Serbs also became an acceptable partner for the United States and the fierce opposition of them participating in talks led under NATO auspices started to evaporate.

In terms of reducing troops, we had two phases in the period 1996-2000. The first phase was the immediate post-war demobilization. The second came as a result of Peace Implementation Council's meeting, which in its declaration of 16 December 1998[130] calls for disarmament and reduction of military forces. This initiative was a groundbreaking event in the process of defense reform as the Federation and Republic of Srpska agreed to a two-phase 15% downsizing of their troops in 1999 and 2000. Politically speaking, there was also an event not to be ignored among Serbs. The Prime Minister from 1998 was Milorad Dodik, the first alternative to SDS, and an avid protagonist of demilitarization. Madeleine Albright once described him as a fresh wind referring to his non-nationalist past and wartime opposition to the nationalist SDS.

Although it is very difficult to assess correct numbers of active troops due to lack of exact statistical references, the major chunk of demilitarization was achieved in the five year period 1996-2001. Already at this initial stage, the professionalization of Bosnian-Herzegovinian ethnic armed forces began. First of all, by getting Hasan Čengić, a radical Muslim Minister of Defense, fired, the State Department secured the upcoming neutralization of radical Islamic factor from the AFBiH. He was considered as one of the main protagonists of jihadist involvement of foreign mercenaries in Bosnian-Herzegovinian war. As King further rightfully notes, several other anomalies included the lack of joint civil control over armed forces, i.e. sending troops to war in Kosovo, Africa, Chechnya, export of weaponry to other weak states facing the same extent of conflict, etc. (King, 2002, p. 11). This is what triggered the international community to react in a more interventionist way and put additional pressure on politicians to succumb to the NATO criteria.

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[130] Article 13 of the declaration: "The outer ring – a more secure Bosnia and Herzegovina: We also intend to strengthen the 'outer ring' of the country by (…) working with the parties to reinforce the progress made in CSBM and arms control and to conclude, as quickly as possible, a further agreement enhancing regional security and reduction of military resources, in line with Annex 1B of the Peace Agreement."

All in all, the period preceding 2003 and the adoption of law on defense witnessed the major chunk of demilitarization. This was a technical prerequisite for the coming step-by-step integration and professionalization of armed forces in the country. With the arrival of Paddy Ashdown to the post of High Representative in May 2002, a new era in Bosnia and Herzegovina has started. Being not reluctant to using the Bonn Powers, Lord Ashdown started to foster reform process thereby not hesitating to use interventionist methods. We will examine in the next two subchapters how the DDR program was implemented, its success and failure as well as the decision making process leading to adoption of two crucial defense laws , seen by many as the most successful aspect of internationally galvanized state-building mechanism in Bosnia and Herzegovina.

Disarmament, Demobilization and Reintegration in Bosnia and Herzegovina

It is widely agreed that the main purpose of Dayton Peace Agreement was to end hostilities. It did not, however, provide a thorough framework on how the disarmament, demobilization and reintegration (DDR) process in Bosnia and Herzegovina should occur. In 1996, some ¾ of the active military personnel left voluntarily armed forces in order to integrate into the society. The disintegration of armies was fast and chaotic. The World Bank demobilization (Heinemann-Grüder, Pietz, & Shay, 2003) believes that some 150 000 Serbs, 100 000 Bosniak and 45 000 Croats left the respective armed forces following the cessation of hostilities.[131] The incompleteness of this data hindered the very first aspect of DDR, namely the registration of people under arms. Institutionally, due to the absence of central registry at the state level, there was no reliable domestic institutional framework to oversee the departure of former combatants. IFOR was mandated to oversee the military aspect of Dayton Peace Agreement (DPA) implementation. However, this was not possible in respect of demilitarization and demobilization (Heinemann-Grüder, Pietz, & Shay, 2003, p. 9). Much of the weaponry, as a result of lack of the controlling mechanism, stayed in private possession of discharged combatants. IFOR and later SFOR organized a number of actions for collection of illegally possessed weapons. The operation "Harvest"[132] represents a series of events under NATO auspices which starter in March 1998. The main objective of the operation was to collect

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[131] It must be noted that there is a wide discrepancy in numbers between NATO, World Bank and other sources.
[132] Operation Harvest – facts: http://www.nato.int/sfor/factsheet/harvest/t040202a.htm

illegal unregistered weapons and ordnance hidden in private houses and caches. SFOR triggered this important initiative with the aim of the transformation of responsibility to local policy structures. An extensive media campaign was run in parallel. TV commercials, billboards and jingles invited citizens of Bosnia and Herzegovina to surrender their weapons which is not registered. In return, the confidentiality and no legal action were guaranteed. Furthermore, those who had some information on illegally possessed weapons were invited to report this to SFOR. The special attention was paid to whistleblowing safety measures guaranteeing full anonymity and security to whistleblowers. The action was a real success and lasted officially until 2004 and the end of SFOR mandate. As of 1998, media coverages included a number of *ad hoc* actions jointly conducted by SFOR and local police structures against individuals who were in violation of these rules. And it was obvious that an exogenous impetus was once again needed to assist Bosnian-Herzegovinian authorities. Only in 2003, SFOR reports that over 11 000 handguns and rifles as well as 45 000 hand grenades were collected.[133] The report further notes that 80% of the weapons collected was the result of SFOR and not local police. Since then and even until present, there have been series of meltdowns and other forms of destruction of weapons organized by different security structures. Another devastative effect of war were landmines. In the period 1996-2012, 1732 people were victims of landmines stemming from the war, out of which 603 persons lost their lives.[134] A considerable chunk of international aid was allocated to demining projects. According to the Bosnian-Herzegovinian Center for Mine Removal, 2.3% of the country's territory is still contaminated with mines. The Mine Action Strategy 2009-2019 foresees a total decontamination of the county by 2019, however, this is in question given the lack of resources. Over 500 000 people still live in areas considered to be dangerous and heavily contaminated.

At present, disarmament is considered to be completed in Bosnia and Herzegovina as the demilitarization has been completed. In absence of paramilitary local units and any other form of organization disloyal to the state, there is no danger of remaining undeclared weapons being used for military confrontations. Just as it has been the case with mines, the remaining illegal weaponry caused a number of tragic incidents above all among children. It is widely believed that there are still over 750 000 pieces of weapons illegally possessed.[135] Whereas

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[133] Operation Harvest – facts: http://www.nato.int/sfor/factsheet/harvest/t040202a.htm
[134] Bosnian-Herzegovinian Center for Mine Removal: http://www.bhmac.org/
[135] Srećko Bošnjak: http://dnevni-list.ba/web1/u-bih-se-nalazi-vise-od-750-tisuca-komada-zaostalog-oruzja/

institutionally the disarmament can be accessed to be carried out effectively in the sense it results in absence of war-alike confrontations, the security of citizens is affected in other ways.

Regarding demobilization, all levels of governments were affected. The result of having out of a sudden so many people without job and perspective, the country faced a number of short and long term challenges. Short-term challenges include high unemployment and rise in criminality rates. Since in a post-war devastated country there were little or no opportunities for former soldiers to reemploy and reintegrate into society, the criminality rates succeeding DPA were endemic. Bosnia and Herzegovina was also a transit point for drugs. Until 1998 there was no joint institutional action in respect of demobilization (Heinemann-Grüder, Pietz, & Shay, Turning Soldiers into a Work Force. Demobilization and Reintegration in POst-Dayton Bosnia and Herzegovina, 2003, p. 10). There were two underlying reasons which triggered both, local and international authorities to engage in the process. First, "Equip and Train" Program which established a balance among armed forces resulted in the end of further military aspirations of both sides. As they considered each other equal or comparable, both sides refrained from inflammatory rhetoric. Simply a new era in inter-ethnic relations has started which still lacked some mutual trust. The other, more important and pragmatic reason, was of budgetary nature. As we demonstrated throughout this chapter, even those who stayed in the army following initial post-Dayton wave of voluntary departures, could not be catered for on a long term. Jeremy King (2002, p. 11), a former UN official in Bosnia and Herzegovina, sees a direct correlation between high crime rates, weapons' smuggling and other illegal undertakings on the one, and the absence of strongly centralized demobilization database and coordinated approach on the other side. He suggests there have been three major waves of demobilization, namely the emergency demobilization after Dayton (1995/1996), intermediate professionalization of services and deepening of professionalization (1999/2000). As for the legal background, DPA did not address the question of DDR almost at all. Vague provisions[136] on redeployment of forces cannot be considered to have served as any basis for further operational work of either NATO or UN.

Regarding the assistance of international community in DDR activities in Bosnia and Herzegovina, three main programs must be emphasized (Pietz, 2004): Emergency Demobilization and Reintegration Project (EDRP), Pilot Emergency Labor Redeployment Project (PELRP), and IOM Transitional Assistance to Former Soldiers in BiH (TAFS).

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[136] Comp. Annex 1A to DPA, Article 4.

EDRP is a project funded and implemented by International Development Association (IDA) of the World Bank with the aim "to assist in the reintegration of demobilized soldiers and displaced workers into the civilian workforce and to increase economic productivity by financing the implementation of active labor programs."[137] To this aim, the project addressed the following components: Labor Market Information Data Base, Education and Retraining Services, Counseling and Job-Finding Services and Management Assistance. The total expenditure of program amounted to USD 7,747,100. The biggest chunk of this amount was allocated for education and retraining. The project was implemented in the period 1996-1999 with the assistance of US Department of Labor, whose trainers actively participated in a number of training activities. As a result of this project, 17 208 demobilized soldiers were reemployed (Benus, Rude, & Patrabansh, 2001). The challenges and shortcomings include political post-war tension and failure to include women into this project.

PELRP is another project funded by the World Bank's IDA in the period 2000-2004. The purpose of that project was to "provide ex-soldiers with the means for self-reliant existence, with a focus on supporting the ex-soldiers in their ability to find employment and to create sustainable jobs and businesses, redeploying ex-soldiers within the economically active population."[138] There were two component of this project, the "capacity building" and project implementation component. The first one included know-how transfer to demobilized soldiers thereby providing them with skills, education and access to financial services to start their own businesses. Another part involves provision of necessary equipment and financing of technical assistance while carrying out diverse staff development programs. Whereas the pledge amount was USD 15 million, the total costs reached USD 17.51 million. The project implementation depended heavily on institutional knowledge of the problematic, which was transferred to PERLP staff by EDRP staff. The target group mostly affected were soldiers officially discharged in 1999 and 2000, the number of which amounted to 12 038 in both entities (Pietz, 2004, p. 45). On the project implementation side, PERLP offered four pillars: 1) on-the-job training and employment; 2) self-employment in agriculture; 3) self-employment in small-scale business; and 4) institutional education and training (Pietz, 2004, p. 48). A perfect example of the impact of the project is a small entrepreneur who is subsidized to employ discharged soldiers and provide them with training. Through Project Implementation Units (PIU), the financial assistance is allocated and respective control

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[137] EDRP Project Overview: http://www.youth-employment-inventory.org/inventory/view/33/
[138] World Bank Project Overview: http://www.worldbank.org/projects/P070146/pilot-emergency-labor-redeployment-project?lang=en

mechanism put in place in order to prevent any misuse of resources. Again, PERLP as EDRP failed to include women in its objectives.

TAFS project was donated by governments of Italy, Netherlands, Norway, Poland, Sweden, United Kingdom and the United States. International Organization for Migration (IOM) was the executing authority during the implementation period (2002-2006). Its main objective was similar to the preceding ones. The overall objective was "to provide assistance to former soldiers to facilitate their financial independence and assist them in their transition to civilian life with as little economic and social disruption as possible."[139] The first priority of this project was to establish a reliable database of discharged soldiers. Thereafter, individual counseling on post-war possibilities was conducted. The main purpose of this project did not differ much from the other two, namely, the main idea was to equip individuals with necessary skills to be able to integrate in the market. Above all, it relates to agricultural and trade competency framework skills. The main problem of the program was funding. Only 20 % of the total programmatic costs was initially pledged and Bosnian-Herzegovinian institutions, which actively participated in project implementation, were financially limited. It must be noted that all three projects were fruitful to a great extent. However, an important lesson has been learned by the international community: By leaving DDR aspect out of Dayton framework, a great mistake has been made. This proved to be fatal as governments appear too weak to digest a wave of discharged combatants into the society. On the other hand, NATO was unwilling to participate in the project from the very beginning (Pietz, 2004, pp. 65-67). The reasons for this were multifold. Just like it was the case in Somalia, where Americans refused to pursue DDR activities, DDR does not only represent a security challenge for the implementing authority. Moreover, the costs of it are the main obstacle. Despite three projects we mentioned, the main burden of DDR remained on shoulders of national authorities. For the sake of comparison, the total expenditures of the Federation of Bosnia and Herzegovina in 2011 for war combatants and those who were disabled as a result of war amounted to BAM[140] 321.562.967. If we add additional BAM 24.265.258 which was spent for civil victims of the war in 2011, we come to a very considerable amount of BAM 345.828.225 which the Federation of Bosnia and Herzegovina has to allocate annually (Maastrichty University, 2013, p. 52). This represents over 20% of the budget and proves to be almost double the size of FBiH deficit for 2011. Another challenge for the authorities both in FBiH and RS proved to

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[139] IOM Project overview: http://www.iom.ba/TADS1.html
[140] BAM/EUR = 1, 95583. Bosnian-Herzegovinian convertible mark is pegged to EUR (prior to EUR it was pegged to German D-Mark.

be the credibility of a considerable number of social aid receivers. For this purpose a number of corrective revisions has been carried out. In the period 2010-2014, the number of receivers of this aid in FBiH decreased from 102.849 to 94.575.[141] It resulted in saving of BAM 53 million during this period in FBiH. Unfortunately, it is overall perception that this has proved to be more than symbolic. Namely, a wide spread corruption in the country is also reflected in this area. Doctors, ministry officials and other civil servants massively participate in fraudulent activities by assessing individuals as disabled on account of their participation in the war.[142] As a result of just one extensive investigation, 50 doctors in FBiH were examined in connection with issuing of false medical documentation, the purpose of which was receipt of social aid as a victim of war, either civil or military. The associations of former war combatants are also strong interest groups and they put additional pressure on politicians. It is very hard to carry out an independent and referential investigation due to widespread corruption and involvement of different interest groups in decision-making. In addition, the legitimacy of these interest groups simply cannot be questioned given their strong political power over politicians. Many of these former combatants are actively involved in politics and end up occupying lucrative posts in the executive power following elections.

Major Reform Activities and Establishment of the Ministry of Defense and the Armed Forces: A Brief Overview

Austrian High Representative in Bosnia and Herzegovina, Wolfgang Petritsch started to promote reform in the form of centralization and deepening of integration in diverse areas. In his report to the Secretary General of the United Nations dated 14 May 2002,[143] he sums up the developments in this area as follows: "17. Security and defence institutions are key elements of the State, and there have been several significant developments in this regard during my tenure. On 11 May 2001, the BiH Presidency approved a ground-breaking State Defence Policy Document, which incorporates a military doctrine based on defending the integrity of the State of BiH as a whole (…)". This is a direct evidence of importance of defense and security reform for the statehood of Bosnia and Herzegovina in General.

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[141]Comp. Zurnal.ba: http://zurnal.ba/novost/17957/ukidanje-laznih-invalidnina-usteda-od-53-miliona-km
[142]Comp. Federal TV: http://www.federalna.ba/bhs/vijest/86713/video-u-mrezi-osumnjicena-mostarska-doktorica-mulija-dzudza
[143] See 22nd Report by the High Representative for Implementation of the Peace Agreement to the Secretary-General of the United Nations, 2002: http://www.ohr.int/other-doc/hr-reports/default.asp?content_id=8069

In addition, it further supports our argument of exogenous triggering factor initiating the start of such a reform. As a result of the adoption of State Defense Policy Document, the General Secretariat of the Standing Committee for Military Affairs was established in October 2002 (Ministry of Defense, 2011). This commission has a two-fold objective, namely unifying the command of two separate armed forces and fulfilling NATO conditions for accession of the country into Partnership for Peace Program. It can furthermore be concluded that NATO conditions were in conformity with those of the rest of the International community and involved the following four aspects which all had to be established at the state-level (Pietz, 2006, p. 163): democratic control over the armed forces, development of security and defense policy, command structure and full transparency in budget-related matters. A very important incident which triggered a more assertive action of the International Community occurred in October 2002. While inspecting the aircraft company "Orao" in Bijeljina, SFOR (Stabilization Force) investigators found documents confirming imports of aircraft parts via Yugoimport Company to Iraq in violation of the international arms embargo imposed by the Security Council in its Resolution 661 (Turković, 2005, p. 84). In spite of unsuccessful attempts of Serb politicians to minimize the impact of this scandal, the major problem of the defense structure, namely military-civil relationship came to light. This is politically a ground-breaking moment as it represents a shift of priorities from previously favored demilitarization to the full state-level institutionalization of defense sector, fully in line with NATO requirements. The Standing Committee served as antecedent of the state-level Ministry of Defense which was to be founded. The First Law on Defense was adopted in December 2003. This is represents a ground-breaking moment. The First Bosnian-Herzegovinian Minister of Defense, Nikola Radovanović, was appointed in March 2004. Historically important for the reconciliation and trust-building, the first joint exercise comprising both armed forces took place in May 2004 (BH Ministry of Defense , 2011, p. 3). The control over armed forces remained though at entity levels. The full integration of joint command was still to take place. The year 2014 will also be remembered as the year in which NATO, during its summit in Istanbul, invited Bosnia and Herzegovina and Serbia and Montenegro, both of which had their representatives present at the summit, to keep on progress on their way to Partnership for Peace Membership.[144] This summit was also important for Bosnia and Herzegovina as it

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[144] "33. We look forward to welcoming Bosnia and Herzegovina and Serbia and Montenegro into the Partnership for Peace once they have met the established NATO conditions (...) 34. We welcome Bosnia and Herzegovina's significant progress in defence reform, a key condition for PfP membership. We urge continued progress towards achieving a single military force. (..)."
(Istanbul Summit Communiqué. Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council): http://www.nato.int/docu/pr/2004/p04-096e.htm

ended SFOR mandate in the country effective 31 December 2004. NATO passed on responsibility of security to the European Union, which would set a mission under Chapter VII and a clear UN mandate. The quoted communique further criticizes Republic of Srpska for the lack of cooperation with the International Criminal Tribunal for Former Yugoslavia (ICTY), i.e. its failure to capture two most wanted Serb military and political leaders. In addition, the negative tone on the alleged "obstructionist" elements regarding ICTY obligations was seen as a fundamental requirement for the Partnership for Peace Membership. Paddy Ashdown, the High Representative at the time, punished 59 Serb politicians for the alleged support of Radovan Karadžić and Ratko Mladić. This time can be described as the peak of HR interventionism in Bosnia and Herzegovina. The highest ranking Serb politician which had to step down was Mirko Šarović, Serb Member of the Bosnian-Herzegovinian Presidency. Whereas he initially voluntarily stepped down from this post in early April 2003, HR Ashdown decided to remove him from the position in the Serb Democratic Party (SDS) thereby removing him from public office completely.[145] This significantly influenced hardline Serb politicians to give in and agree on a single chain of command without entity level ministries of defense. Borislav Paravac, who was interviewed for the purposes of this research, took over the duties of the Serb member of Presidency in April 2003. Together with the President of the Republic of Srpska, Dragan Čavić, he significantly shifted Serb policy and reduced resistance to integrative processes.

The year 2005 was the most fruitful the reform process was fully accomplished. During the 70th session of the Presidency, under Chairmanship of Borislav Paravac, an important political decision was made: "(…) The Presidency has adopted a statement, having in mind goals of Bosnian-Herzegovinian foreign policy, which confirms its determination for Bosnia-Herzegovina to join the NATO program Partnership for Peace and have full-rights membership in the NATO alliance (…)" (Presidency of Bosnia and Herzegovina, 2004).

This politically remarkable shift of positions among Serbs toward NATO integration was crucial for the success of defense reform in general. The defense reform cannot be separated from the NATO integration since these two processes are fully interdependent. By setting its criteria for the country to join the Partnership for Peace Program (apart from capturing ICTY indictees), NATO galvanized a capacity building institutional reform fully in line with the provisions of modern (post-conflict) state-building. It is to large extent that NATO and High

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[145] (OHR, 2004): http://www.ohr.int/decisions/removalssdec/default.asp?content_id=31798

Representative can be most credited for the undoubted success story many quote as role-model. Borislav Paravac emphasized the following aspects while discussing the decision-making particularities of the defense reform process in the period 2002-2006 (Paravac, 2015): 1) a political pressure on the National Assembly of Republic of Srpska to accept the reform; 2) a financial burden the cost of the present military system; 3) an emotional factor the Army of Republic of Srpska played in the public and 4) the abolishment of circumscription. Serbs were, however, in his words, not forced to abolish their own Ministry of Defense. There was a recommendation that joint command must be established, however, no foreign official had ever persuaded him in the absolute necessity of the abolishment of the Army of Republic of Srpska. An important prologue to the very essence of the reform process was a new work style of the new High Representative, Paddy Ashdown. He engaged over 600 staff to draft legislation and start a comprehensive legal work on the defense reform. The significance of his authority can be seen in the following words of Borislav Paravac: "When I think of those times when Lord Ashdown was the High Representative, I put Bosnian-Herzegovinian statehood on equal footing with his personality and the institution he led. He was the supreme authority we all had to obey. Even before we would start the session of the Presidency we would make sure his Cabinet approved the agenda. There was simply no decision which could be made without his knowledge and consent. The administrative machinery he created was the motor and primary lawgiver in Bosnia and Herzegovina and our (members of the Presidency) and the role of other politicians and decision-makers at all levels in the country was inferior to that of the Office of High Representative" (Paravac, 2015).

Borislav Paravac, as the Serb member of the Presidency, and Dragan Čavić, who was elected the elected President of Republic of Srpska, faced an unprecedented pressure from the Serb public not to agree to a military reform which would neutralize defensive capacities of Serbs. They, however, as Paravac stated, faced the same problem others in Bosnia and Herzegovina faced, namely, the non-sustainability of the present military apparatus. Additionally, due to high costs of conscription (Defense Reform Commission, 2005, p. 35) amounting to thirteen percent (at least 8.9 million USD) of Republic of Srpska defense budget, Serbs set a prerequisite of the abolishment of conscription in order to receive their consent. This idea originates from Milorad Dodik (Popović V. , 2003), the present-day President of the Serb Republic, and was initially not welcomed by Bosniak politicians. It will be proved to be a very wise approach not only because of the financial aspect but to avoid any inter-ethnic tensions when young recruits from different ethnic groups must serve together. Younger generations are especially prone to nationalism and it would be a powder keg to have them serve the army

together. In support of this, the incident which took place on 16 April 2005 when a group of 528 young Serb recruits while taking oath refused to pledge allegiance to Bosnia and Herzegovina but Republic of Srpska instead. This was a proof of the necessity of the professionalization of armed forces and the implementation of the military reform in a way such incident would be prevented from occurring in the future (Sekulić, 2005). Raffi Gregorian, an important American diplomat who served in different capacities in Bosnia and Herzegovina and Co-Chair of the Defense Reform Commission at that time, expressed anger over the outcome and requested subsequent disciplinary measures to be taken as a consequence. Whereas several officers were punished in the aftermath of the incident, the necessity of the abolishment of conscription was obvious and essential. Milorad Dodik even today favors full abolishment of the Armed Forces, which would make Bosnia and Herzegovina, next to Costa Rica, the only country in the world without army. This, however, is not likely to occur as the country is a part of NATO integration processes and, despite a debate as to whether current political elites are united about potential NATO membership among Serbs primarily, the modernization and further professionalization of the armed forces is likely to occur. The most important of all documents, the report of the Defense Reform Commission of September 2005, outlined the two top priorities being creation of a single military establishment and a single military force. In addition, it outlines Euro-Atlantic aspiration of the country speaking of both, EU on the one and PfP and NATO membership (Defense Reform Commission, 2005, p. 1).

The Defense Reform Commission comprised people from various institutions, including the most important PIC countries, entity ministries, Presidency advisors on military, international organizations. Jointly co-chaired between the First Minister of Defense and Deputy High Representative, the commission, in its 193 page report outlined principles, guidelines and conclusions which are even now, many years after the most of its content was institutionalized and implemented, serves as guideline for further integration. The following aspects were addressed in the document which will have a far-reaching formative impact (Defense Reform Commission, 2005, pp. 7-10): 1) Command and control; 2) Conscription, reserves and professionalization; 3) AFBiH[146] as a single military force in line with NATO standards; 4) The active duty armed forces of Bosnia and Herzegovina; 5) Ethnic representation in the

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[146] Armed Forces of Bosnia and Herzegovina (AFBiH); not to be confused with the Federation's armed forces.

AFBiH; 6) Transfer of functions performed by the Entity Ministries of Defense and Commands; 7) Defense budget; and 8) Timelines.

These eight bullet points represent probably the most comprehensive, plausible and precise reform proposal in the post-Dayton Bosnia and Herzegovina. Borislav Paravac, whose military advisor Dragan Kapetina was a member of the Commission, praised their work and thoroughness (Paravac, 2015). When we now one by one analyze these bullet points, we will see that the reform was fully in line with the military sector of a modern state.

Command and control: The new reform proposal foresaw the single chain of command. The highest (civilian) control of the military was transferred to the tripartite Presidency, which is the country's Head of State. The other major posts to which the power of the state (Presidency) is exercised include the Minister of Defense (the post already established in 2003), Chief of the Joint Staff, Commander of the Operational Command and, finally, to the Commander of Support Command. As the report states, the further delegation of authority is a matter of organizational arrangement within the ministry and joint staff, both of which have a policy-formulating role. In order to secure transparency in its work, the Parliamentary Assembly of Bosnia and Herzegovina, which was already empowered in 2003, continued to oversee the work of defense institutions like in all modern democracies. This proposal made the entity defense ministries obsolete and unnecessary. This transfer of power, we can now conclude, represents a two-stage process from top to the bottom. First, the Law on Defense created the Ministry and state-level structures. They afterwards swallowed entity structures.

Conscription, reserves and professionalization: Even stable Western democracies like Austria[147] faced serious debates as to whether their respective armed forces should be fully professionalized and the conscription abolished. The aforementioned scandal of oath taking of young Serb recruits which occurred in this transitional period (2003-2006) proved how tension still were high. The idea of abolishment of conscription was Serb causa sine qua non for their green light on the reform (Paravac, 2015). In this respect, the Report suggested the removal of compulsory military service effective 1 January 2006. Also, the active reserves of 60 000 were proposed to be abolished and new active reserves to be formed. The most notable problem of recruits who would complete their service was that, in accordance with NATO analysts, were neither well trained nor well equipped for any military operations in the future.

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[147] BBC: Austrians have voted overwhelmingly in favour of retaining compulsory military service. http://www.bbc.com/news/world-europe-21110431

3) AFBiH as a single military force: This aspect represents the essence of the military reform, the point of the greatest importance and the part in which context one can understand Bosnian-Herzegovinian statehood. The report foresaw that AFBiH would comprise three infantry regiments, each one of which would fostering military heritage and identity of ethnic armies they descended from. And this was implemented. Now, what is so interesting from this provision that is of relevance for our research? The ethnic principle was once again institutionalized. Three regiments, Bosniak, Serb and Croat were united into one armed force in line with modern NATO criteria; however, the model of armed forces which emerged represents an unparalleled approach to state-building. This is a continuation of Dayton logic, according to which ethnic representation must be secured at the state level. By abolishing entity ministries and their military commands, the state was strengthened beyond any doubt. It is the quality of this strengthening we are currently looking at. Institutionally, we have satisfied the state-building criteria. By looking at the Law on Defense coming into force on 1 January 2006, the Ministry of Defense reflects a modern institution reformed policy-wise fully according to NATO standards. The chain of command and professionalization are also significant achievements. However, only given the fact that the Presidency of Bosnia and Herzegovina is on the top of the chain of command, we have once again the ethnic principle anchored. And the non-Bosnian-Herzegovinian members of the Commission were fully aware of this. The bottom line no one wanted to speak out was that the country doesn't need military but will have to have one. So, the respective path dependencies remain in power in the new structure as well since ethnic groups still have veto power in respect of any major decisions. The fact that International Community accepted and encouraged this speaks in favor of our conclusion: State-building in Bosnia and Herzegovina is reflected in the advancement of its civic structures which comprise ethnic prerogatives. The exogenous component in it is the motor and driving force behind.

4) The active duty armed forces of Bosnia and Herzegovina. This proposal foresaw a reduction of active armed forces to some 10000 which would be divided in three maneuver brigades headquartered in Mostar, Banja Luka and Tuzla respectively. Each of these would be further divided into three respective battalions and then, additionally, into three further infantry regiments.

5) Ethnic representation. The military reform beyond any doubt also reflects the supremacy of ethnic principle in Bosnia and Herzegovina. Each of the four aforementioned most

important posts in the new structures [148] will have respective deputies coming from the constituent peoples different than that of the holder of the post. As the report states, it reflects the decision-making principle in Bosnia and Herzegovina.

6) Transfer of functions from ethnic ministries of defense to the state level. This for Serbs the most delicate matter involved the full abolishment of entity structures. Effective 1 January 2006, the entity ministries of defense would cease to exist and their respective regional and local branches would also be annulled. The whole legislation was transferred to the state level thereby empowering respective executive and legislative bodies of the state with exclusive powers over defense questions.

7) Defense Budget. In the period 2002-2005 when the comprehensive process of defense reform gained its full momentum, the spending on defense significantly plummeted by 55 %. The Report also foresaw further cuts in line of the needs of a small and strictly professional armed forces in line with NATO standards. In the interview with Borislav Paravac, he undoubtedly emphasized the importance of downsizing the armed forces as well as bringing their costs into realistic frames. He revealed the fact that the opinions of the other two members of the Presidency did not defer significantly: "Whereas the underlying discussion in the media reflected ethnic confrontation, i.e. the need to transfer the powers to the state level or not, we all wanted to reduce costs. The emotional sentiment among people was strongly attached to respective armed forces and it was a bitter truth that the state did not need them anymore. Anyone who would say this in public would be considered a traitor and that is why we all were reluctant to use such terms as 'downsizing', 'abolishment' or 'transfer of powers' with regard to the military as we knew this would unquestionably antagonize our citizens. What was going on in fact was all of that. We had to create an army which was all but an army but somehow corresponded to NATO standards" (Paravac, 2015).

The sizeable chunk of resources spent for conscription would be reinvested to fund those who would stay in service or recruited under new law as professionals. Stable funding was also a subject of the Report as it was crucial for the implementation of the reform. On several occasions during the interview, Borislav Paravac spoke of the affordability of new armed forces which needed to be achieved in the long run.

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[148] The posts of Minister of Defense, Chief of Joint Staff and Commanders of Operational and Support Command.

8) Timelines. The most important date in the defense reform altogether is 1 January 2006, when the new law would come into force. The Report, furthermore, stresses operational solutions for the period succeeding that day.

The Defense Reform Commission (DRC) completed most of the policy work for the implementation of the defense reform. Paddy Ashdown had ambitions to do the same with police, which we will look more closely at in a separate subpart. Whereas three maneuver brigades were ethnically mixed, the ethnic supremacy remained at the regimental level (BSIS, 2008).

The remaining challenge not addressed in the report is the decision of transferring immovable military assets from entity to the state level. The issue at stake is to legally transfer the ownership of perspective military locations to the AFBiH. Following departure of Paddy Ashdown, Serb politicians showed reluctance to do this as the value of immovable assets exceeds significant amount and might be an important source of income. Politically, it represents the only remaining hurdle for full NATO membership of the country. It must be noted and recognized that, in view of the lack of interventionism following Ashdown's departure, Serb politicians have used military property, i.e. veto right over its transfer to the state level as an instrument of blackmail against those favoring the finalization of the defense reform. The military reform is not completed fully if this condition is not fulfilled. We see now that the state-building action in the domain of defense actually will have been fully completed with the country becoming a full NATO member. The DRC has been the most successful policy-making body on this path. In the coming subchapter we will examine the organizational structure of the ministry as well as the perspectives of NATO membership of the country. Through its participation in peacekeeping missions under NATO auspices, AFBiH complement country's foreign policy aims and its Euro-Atlantic aspirations.

Organizational structure of AFBiH and MoD after 1 January 2006

Defense Reform Commission's (DRC) reports conclusions and proposals from July 2005 were immediately supported by the State Department. Further deepening integrative part of the defense reform in comparison to 2003 included three main elements: the abolishment of circumscription, the establishment of single budget and the revoking of entity ministries (Adam Ereli, Deputy Spokesman, 2005).

Present day structure of the Bosnian-Herzegovinian military is legally anchored in the Law on Defense of December 2005 (BH Council of Ministers). The supreme commander of AFBiH is the tripartite Presidency of Bosnia and Herzegovina. This law addresses budget and financing, institutional framework, composition of AFBiH, natural disasters, as well as symbols to be used in AFBiH. Three regiments, without any operational authority, are incorporated in the AFBiH in order to safeguard heritage and identity of three ethnic armed forces which existed.[149] The regiments possess, in addition to the state symbols, ethnic symbols and compose each three active battalions. The Law on Service, which was jointly passed in December 2005, provides these regiments with rather symbolic powers like running respective museums, research history, assist in ceremonial matters,[150] publish newsletters and other materials in relation of the armed force its tradition is safeguarded, administrative running of the regiment, etc.

As we stated in previous chapter, the symbolic plays such an important role in Bosnia and Herzegovina. For Republic of Srpska, which always displays separationist aspirations, its respective regiment is the bearer of the tradition. This aspect of the reform represents its ethnic component, which for many Western thinkers proves to be inconceivable with modern civic statehood. Other than this strong symbolic role, the regiments play no real military role.

According to Article 4, the missions of the AFBiH are as follows: "a) Participation in collective security operations, peace support and self-defense operations, including combatting terrorism; b) Providing military defense of Bosnia and Herzegovina and its citizens in the event of an attack; c) Assisting civil authorities in responding to natural and other disasters and accidents; d) Countermine action in Bosnia and Herzegovina; and e) Fulfilling the international obligations of Bosnia and Herzegovina."

Whereas the normative prerequisite for the implementation of defense reform has been fulfilled, i.e. the main mission of AFBiH is to provide military defense of Bosnia and Herzegovina, Borislav Paravac rightly disputes this: "In case of an attack of neighboring countries, in this case Serbia and Croatia, what would happen? AFBiH would simply demise. Neither Serbs nor Croats serving in present-day AFBiH would pledge loyalty to Bosnia and Herzegovina in such a hypothetical situation. We don't need even to go this far, we may wonder what would happen in the Presidency of Bosnia and Herzegovina. Therefore, we did

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[149] Article 2, paragraph 2 of Law on Defense
[150] For instance, during certain festivities in Republic of Srpska, the respective regiment cherishes tradition of the abolished Army of Republic of Srpska (VRS).

adopt a law in conformity with standards of modern statehood. The state has an army and this army, under conditions of peace, can complete tasks outlined in the law, like protection of people in case of a natural disaster. The rest, let's don't even think of it" (Paravac, 2015).

Apart from regiments, which are more of a symbolic importance, the AFBiH comprise two major commands, the Operational Command and Support Command.
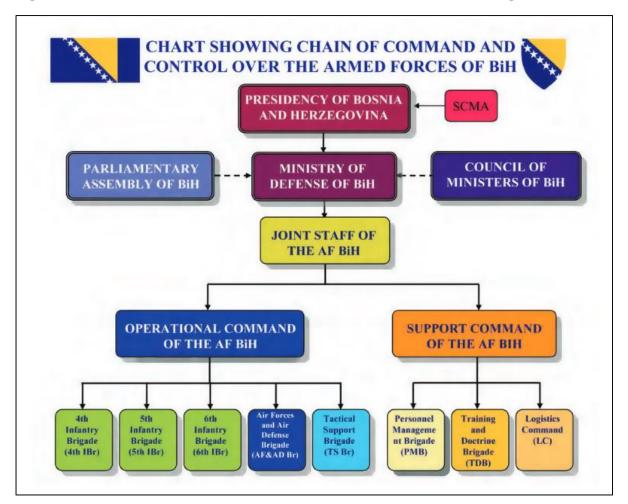
Figure 5. Command Structure of the Armed Forces of Bosnia and Herzegovina

Source: Ministry of Defense: www.mod.gov.ba

The Armed forces are the actual protector of Bosnian-Herzegovinian sovereignty and its legal personality. The headquarters of the Operational Command of AFBiH is in Sarajevo. The 4th, 5th and 6th infantry brigades are multinational and are headquartered in Čapljina, Banja Luka and Tuzla respectively. However, the brigades comprise each three ethnically homogenous infantry battalions. Each of the brigade is commanded by a person of different ethnicity. In addition to three brigades, there are two additional brigades under auspices of the

Operational Command, namely the Tactical Support Brigade and Air Force and Anti-Air Defense Brigade. The Head of Joint Staff has two deputies as well as heads of Operational and Support Command. Again, each head is accompanied by two deputies coming from other ethnic groups. The branches of AFBiH include infantry, artillery and rocket units if the air defense, armored mechanized units, aviation, engineering, communications, atomic, biological and chemical defense, electronic surveillance and defense, air surveillance and alarming and military intelligence. The Support Command of the AFBiH is its administrative hand and manage personnel, training and logistical questions. AFBiH members are recruited in conformity with the following ethnic ratio (%): 45.9 Bosniaks, 33.6 Serbs, 19.8. Croats and 0.7 Others.[151]

When we look at all these particularities, we see that the modern state-building encompasses ethnic superiority even in the new structures. It is therefore an illusion, utopia or even a total misperception claiming that the state-building modernization in Bosnia and Herzegovina would annul the results of ethnic division. This was not only the result of war but also of the pre-war institutional setup which foresaw ethnic parity.
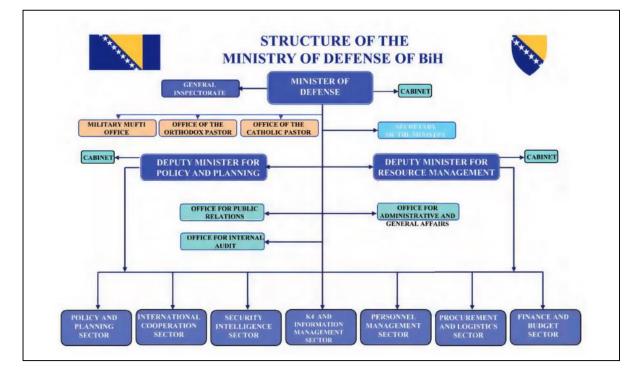
Figure 6. Structure of the Ministry of Defense of Bosnia and Herzegovina

Source: Ministry of Defense: www.mod.gov.ba

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[151] Data stemming from the website of Ministry of Defense: www.mod.gov.ba

AFBiH are governed by the Ministry of Defense, which is organized similarly to other NATO ministries with the aspect reflecting ethnic representation. In line with Article 13 of the Law on Defense, the most important missions include creation and maintenance of defense capacity in order to ensure protection of independence of Bosnia and Herzegovina, supervision of armed forces, representation of Bosnia and Herzegovina in defense affairs, drafting of new defense policies, etc.

An interesting detail from the organizational chart (BH Ministry of Defense , 2011, p. 13) of the Ministry of Defense above is the existence of religious offices provided to cater religious needs of three main ethnic groups.

Just like it is the case with other ministries in the Council of Ministers, there is no continuity of one minister coming from one ethnic group over one legislative period. The post of minister is subject to rotation, as well as those of his/her deputies.

The institutional solution deliberately incorporated the ethnic supremacy and fulfilled the requirements of modern NATO defense structure. Now, let's wrap up once again the results of the most comprehensive and, as Borislav Paravac stated, the most successful reform in the Bosnian-Herzegovinian postwar history.

Defense Reform: A Summary

The integration of the defense structures in Bosnia and Herzegovina brought neutralization of the radical factors in all three sides. It is a very important aspect given the fragile peace state permanently present in Bosnia and Herzegovina. Furthermore, the step-by-stem disarmament and demilitarization which occurred following closure of the "Equip and Train" program resulted in trust-building among ethnic groups. The comprehensive disarmament campaign was an aspect outside of NATO direct responsibility, which was a result of mandate absence in the Dayton Agreement. Therefore, this first aspect of DDR was not a complete success story as we demonstrated that a number of people lost their lives as a result of illegally possessed weapons and remaining mines. Demilitarization came gradually and only after "Equip and Train" program provided some sort of equilibrium as a result of which Serbs reconsidered their policy. The end of the second millennium brings first coordinated downsizings and trust building. The arrival of Paddy Ashdown in 2002 and military affair *Orao* as well as a number of other interventionist political pressures resulted in revisiting of

one of the strongest Serb path dependencies. Whereas the media provided above all for populist arguments and stipulated ethnic attachments to three armed forces, the financial burden threatened a bankruptcy should the soaring military expenditures not be cut.

Serbs fearing the isolation gave up on their own armed forces and accepted to gradually fully integrate the defense to the state level. The top-down effect of external state-building in the Ashdown era (Aybet, 2010, p. 21) was furthermore a success story as it provided a sustainable and affordable solution to the defense reform. In addition, the economizing aspect was strengthened through abolition of costly conscription. The establishment of the Commission for Defense Reform in May 2003 and the adoption of the first Law on Defense in December 2003 resulted in the creation of the state-level defense ministry. In parallel, the country expresses its aspiration to join NATO in the long run. NATO sets conditions which are complementary to the activities carried out by the OHR. The years 2004 and 2005 brought many events including joint military exercises as well as the adoption of the second Law on Defense in December 2005. Being the last prerequisite for the country to join NATO's PfP, Bosnia and Herzegovina finally got the unified defense institutional structure effective 1 January 2006 with the entity structures being abolished. The departure of Paddy Ashdown in 2006 brought an end to a style in policy making in Bosnia and Herzegovina. His successors were reluctant to use his methods and left the responsibility primarily to domestic politicians. As a result, the last item on the NATO list, namely the transfer of immovable military assets from entity to state level has not been accomplished. Furthermore, there is no clear indication from Serbs as to whether their politicians will support an eventual NATO membership. Many people argue that the defense reform will only have been completed when the country becomes a full NATO member. This is a reasonable argument given the dependence of the reform itself with the NATO integration process. A major issue emerged as an obstacle to the NATO membership. Just like was the case with PfP, Bosnian-Herzegovinian Serb politicians would wait for the decision of Serbia regarding full NATO membership (Paravac, 2015). Bosnian-Herzegovinian participation in peace operation under NATO and UN auspices in Iraq and Afghanistan, despite being of a rather symbolic nature, provides for an effective contribution of the AFBiH to the international politics.

The greatest success politically is that ethnic political elites were deprived of armies. Their armies were brought under the famous Bosnian-Herzegovinian path dependency framework and the ethnic political elites were disabled of their control. Most importantly, the burden

which fell from the state budget enabled a shift of focus to other more economy-related areas which needed to be revitalized.

The Incomplete Security Reform: The Collapse of the Police Reform

The police reform in Bosnia and Herzegovina began almost in parallel to the military reform but was, unlike the military reform, a failure in the end. Given the importance of police as the only legitimate exerciser of violence in a state (Weber, 2006 [1922]), we do not need to further elaborate on its importance for modern state-building in Bosnia and Herzegovina. Only a partial success of the police reform process was the creation of the State Investigation and Protection Agency (SIPA), a powerful police institution under auspices of the Ministry of Security of Bosnia and Herzegovina. This subchapter aims at answering the question why the police reform was not implemented resulting in the creation of Ministry of Interior at the state level.

At the end of its mandate, the United Nations Mission in Bosnia and Herzegovina (UNMBiH) concluded that the country has the police force fit for Europe thereby considering its mandate being fulfilled. The first "core program" of the UN mandate in Bosnia and Herzegovina comprised professionalization of its police structures. It was needed "to ensure that individual police officers met international standards of professional and personal integrity to gain the respect and confidence of the general public" (UN Secretary General, 2002, p. 3). The most important aspect of professionalization involved checking credentials of its personnel. Namely, it was very important that police officers had clean war and criminal records, underwent compulsory trainings and possessed educational credentials needed to carry out their duties. As can be seen, this initial phase of police reform process started by the United Nations involved capacity building and did not focus very much on integration and thorough institutional solutions. The part two of the core process involved restructuring, the aim of which was to depoliticize administering structures. Therefore, the directors of different police units were introduced at cantonal and entity levels to counterbalance the politically selected ministers of interior. To this effect, the local police forces started recruiting returned refugees into their structures in order to regain the trust.

UNMBiH installed, in accordance with the Dayton Agreement, the International Police Task Force (IPTF). Its broad mandate concluded in Annex 11 to DPA ranged from monitoring to training local polices. It was, however, very limited in terms of law enforcement. Richard

Holbrooke initially insisted on giving IPTF a stronger mandate, which, in turn, was fiercely opposed by Pentagon since it may diminish a strong NATO mandate and the role of IFOR and later SFOR. It is for this reason that IPTF was considered as the weakest link in Bosnian-Herzegovinian peace-building chain (Donais, 2006, p. 175). Due to this mess which occurred primarily in the immediate post-war period, neither IPTF, due to its capacity limits, nor IFOR and SFOR, due to their military mandate, were able to assist local authorities in an outbreak of criminal activities we already highlighted. Neither of them, however, was able either to influence the pre-set organizational setup of police organization. Again, like in the case of military, the police structure is a mixed result of Washington and Dayton Peace Agreements. Whereas the Republic of Srpska had very centralized and clear distribution of powers, the Federation of Bosnia and Herzegovina, following the Swiss model, had 10 cantons all of which have had their own ministries of interior. This asymmetry and complete independence of ethnic decision-making authorities made it hard to enforce a non-discriminating measures in forms of recruiting people from other ethnic groups and protecting those who are in a minority.

As said, Dayton foresaw no state police. As a result of this, and due to the newly founded District of Brčko, Bosnia and Herzegovina ended up having 13 law enforcement agencies. Under enormous pressure from the International Community, what can be considered as the start of the police reform was the founding of State Border Service in 2000. The law on Border Service was imposed by Wolfgang Petritsch, the third High Representative on 13 January 2000.[152] This represented the starting point of transferring the border control from entity and cantonal levels to the state level. The Border Police started its operational work on 6 June 2000 and the process was duly finalized on 30 September 2002. In addition to the Border Control Agency, SIPA and the newly founded INTERPOL office were integrated into the newly founded Ministry of Security at the state level in 2004 (Wisler, 2005, p. 141).The Law on State Border Service was adopted on 21 October 2004.[153] Apart from attaching the Border Police to the Ministry of Security, its mandate incorporates state border surveillance and border crossing control. At present, the Direction for Coordination of Police Bodies and the Immigration Service are in addition under auspices of the same ministry. From the very beginning, the following international organizations participated in what is from this stance considered to be the police reform process: the UN through the IPTF which needed to

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[152]See State Border Service: http://www.granpol.gov.ba/o-nama/Template.aspx?cid=15,1,1
[153]See State Border Service: http://www.granpol.gov.ba/propisi/zakoni/?cid=29,1,1

implement aforementioned Annex 11 CIVPOL tasks; NATO through IFOR and later SFOR; and the High Representative who had to give political impetus to the process. The transitional period 2002/2003 brings a shift of responsibility from the UN to the EU resulting in two important both symbolical but also technical changes. On 1 January 2003, the High Representative received an additional function of the High Representative of the European Union. In addition, IPTF was replaced by the European Union Police Mission (EUPM). This represents also an important shift within American foreign policy. Among scholars, the peace implementation in Bosnia and Herzegovina is primarily credited to the United States.

Due to a variety of tasks to be addressed with this police reform, it may be divided into three levels. As Wisler calls them micro, meso and macro (2005, p. 142), they address the individual, the local police unit and the state level respectively. Unlike the defense reform during which the international community had an asynchrony while supporting one entity over another, the police reform, in its essence, was a bottom-up process which started primarily from police personnel. The explanation for this is very simple. There was no time for a comprehensive change knowing that the refugees had to return and their security needed to be guaranteed. That is why the international community had to ensure a professional, unbiased and reliable police which would prevent any major conflicts from reoccurring. Later on, once the conditions for a stable law enforcement have been established by professionalizing of the existing structures, the focus shifted onto organizational units, local, cantonal and entity levels being the last instances. IPTF mandate was very weak, therefore there was no time to politically trigger a more comprehensive police reform in terms of state-building process.

The determining point in transfer to macro level of the reform is again 1 January 2003 and the departure of UNMBiH. On a number of occasions, the US diplomats emphasized that it is of the utmost importance for the EU to address state-building reforms. This shift of responsibilities for the EU proved to be a real challenge. An additional parallel that needs to be drawn between these two periods was the question of legality. UNMBiH saw Dayton as the frame in which it had to move and foster reforms exclusively. Only with the defeat of nationalist Serb option in 1998 and coming into power of Milorad Dodik did the police reform became a subject. Whereas the High Representative was empowered additionally with Bonn Powers which override the Constitution in principle, the International Community needed a more agile personality which would be prone to interventionism. Austrian Wolfgang Petritsch was beyond any doubt of that caliber. By already institutionalizing State Border Service at the state level, he paved the way for Paddy Ashdown, who in parallel with EU taking up the

leading state-building role, started his comprehensive reform also in this domain. With the EU taking its role, combined with Bonn Powers of the HR as well as this unprecedented wave of interventionism, Bosnia and Herzegovina entered a Brussels-dominated phase (Wisler, 2005, p. 153). Whereas all High Representatives have always spoken of a common EU approach regarding reforms, it must be noted that their approaches differ significantly.

State Investigation and Protection Agency (SIPA) was founded in 2002 following adoption of the Law on the Agency for Information and Protection. It was an autonomous institution, which, following the adoption of another Law on the SIPA, was anchored as the first state police institution, the competencies of which include prevention, detection, and investigation of criminal offences falling within jurisdiction of the Court of Bosnia and Herzegovina, particularly organized crime, terrorism, war crimes, human trafficking and other criminal offences against humanity.[154] In addition, the SIPA processes a number of tasks in line with the jurisdiction of the Court of Bosnia and Herzegovina. It protects persons and witnesses in different trials held before state-level courts, assists with financial crimes provides support to the state in view of its international obligations. As Wisler notes, SIPA is a powerful counterweigh to the territorial police structures. It contradicts Dayton in its purest essence and provides for a state-level mechanism of police control. The Prosecutor's Office and the Court of Bosnia and Herzegovina, two institutions the existence of which will be discussed in the next chapter, could simply not carry out its mandate without the assistance of SIPA. With its headquarters in Eastern Sarajevo,[155] SIPA has regional centers in Sarajevo, Banja Luka, Mostar and Tuzla. SIPA has over 1500 well trained officers and is considered to be as one of the most reliable institutions. Today, any major campaign against organized crime, money laundering and other non-war related actions, cannot be imagined without its assistance. The implementation of a set of laws adopted in 2004 relating, inter alia, to all aforementioned matters is dependent upon SIPA. As the security priorities in Bosnia and Herzegovina shift from war-related over transitional challenges, the scope of work of SIPA will complement other similar agencies in the region. For instance, human trafficking, drug smuggling and fight against terrorism are expected to be the main objectives of the Agency in the future. It must be noted that, in the perception of Bosnian-Herzegovinian people, SIPA represents a reliable, professional and unbiased institution. Its main challenges remain its political control. In the

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[154] See SIPA mandate: http://www.sipa.gov.ba/en/about-us/general-info

[155] Eastern Sarajevo is a city in Republic of Srpska and still, *de iure*, its legal capital, created out of the suburbs under Serb control during the war. Following the implementation of Dayton Peace Agreement, the town borders seized and it was later renamed from Serb to Eastern Sarajevo since the former name was ruled out to be unconstitutional by the Constitutional Court of Bosnia and Herzegovina.

aftermath of every general elections in Bosnia and Herzegovina, politicians from all ethnic groups fight over dominance over SIPA. By doing so, they have an unprecedented access to intelligence. On further reflection, like all the institutions which emerged in the process of Post-Dayton state-building, SIPA reflects ethnic composition of Bosnia and Herzegovina. Therefore, all major posts within the Agency are subject to ethnic rotation. In summation, SIPA is to a great extent a success story which must remain unpolitical and professional. It is another product of post-conflict state-building experiment encompassing the ethnic principle and reflecting ethnic representation, which is a prerequisite for the success of state-building.

The European Union emphasized almost on every occasion that it requires one voice when talking to Bosnia and Herzegovina in the context of integration. Following this logic and undertaking a comprehensive police reform, the Directorate for Coordination of Police Bodies of Bosnia and Herzegovina was established. Its main objective is "to serve the police and other relevant bodies in Bosnia and Herzegovina in the efficient execution of their responsibilities with constant communication, coordination and cooperation with all partners in Bosnia and Herzegovina and abroad."[156] Founded together with other two agencies created to support police structures, namely the Agency for Forensic Examination and Expertise, Agency for Education and Advanced Training of Personnel and Agency for Police Support, [157] the Directorate represents one of the most concrete steps in the police reform process. Thanks to the Directorate, the cooperation between entity and cantonal level ministries of interior significantly improved. Politically speaking, this represents a triumph of Serb political elites which fiercely opposed a total centralization of powers and a creation of the state-level ministry of interior. This being a prerequisite for the conclusion of SSA agreement with the EU, the adoption of the set of laws on police in the first half of 2008[158] represents a turning point in the EU integration process. The EU, by accepting the content of these laws and not seeing it contradicting EU principles, acknowledged the acceptance of Bosnian-Herzegovinian state-building and institutional design which would not, a priori, mean a centralization of powers to the state level. As can be seen from the article quoted above, this development of situation did not please Bosniak politicians. As the case is in all reforms, Serbs

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[156] Comp. Directorate for Coordination of Police Bodies of Bosnia and Herzegovina: http://www.dkpt.ba/onama/default.aspx?id=58&pageIndex=1&langTag=en-US

[157]Comp. Draft of Law on Directorate for Coordination of Police Bodies and on Agencies for Support to Police Structure of Bosnia and Herzegovina (OHR): http://www.ohr.int/ohr-dept/legal/laws-of-bih/pdf/016%20-%20Police%20Legislation/Reform%20of%20Police/BH%20Law%20on%20Directorate%20for%20Coordination%20of%20Police%20Bodies%2036-08.pdf

[158] BiH poslala dobar signal EU (BiH sends a good signal to the EU, Nezavisne Novine): http://www.nezavisne.com/novosti/bih/BiH-poslala-dobar-signal-EU/20119

and Bosniaks march their path dependencies, the first opposing and the latter imposing the centralization as the best constitutional design. This also once again demonstrates an inconsistent EU norm-setting. Paddy Ashdown envisaged a police reform which foresaw, just like the outcome of the military reform was, the abolishment of the entity structures and creation of police administrative units which would transcend entity borders. This not being the case, we can conclude that the Serb-favored approached of integration which encompasses a bulk of responsibilities in the entity structures prevailed. The fact that the police reform is seen as incomplete reflects a view still prevailing in the west: the Bosnian-Herzegovinian state-building process should imply superior state institutions the powers of which override entity ones. This can only be anchored legally with a support of a strong international exogenous factor.

Security Reform: Lessons Learned

The crucial question one should ask following the failure of police reform reads: Can state-building process in Bosnia and Herzegovina also be successful with strong entities which hold most of the powers? The fact that police remains overwhelmingly under entity control is a shift in the post-conflict state-building. It contributes to a certain asynchrony in terms of integration. Just like one can argue a multi-speed Europe, there is, by the same token, a discrepancy in the Bosnian-Herzegovinian state-building efforts. The level of frustration among Serbs and Bosniaks when it comes to their path dependencies should not be regarded as a reference when assessing the success of this state-building. We can draw several conclusions relevant for our research from the security reform:

1) Even within one sector, namely the security, there can be a multi-speed asynchrony resulting in the respective asymmetric constitutional design. Whether this development matches more one path dependency or another is in this case irrelevant. What matters the most is that it was, to the greatest extent possible, influenced by an exogenous factor, the High Representative, the European Union or other global players. Why do we care about this? Because it supports the main concept of this research, the imposed statehood. The following tautology which can be read out of a plethora of empiric arguments we have presented here reads: Neither the military nor the police reform could have been initiated from domestic political elites. Three ethnic path dependencies could have never found a common denominator as to what the content of respective laws and institutional solutions should look

like. It goes without saying that there is an underlying difference if a law was completely imposed by the High Representative (e. g. State Border Service) or indirectly through different means of pressure on local politicians, the imposing character of the Bosnian-Herzegovinian post-conflict state-building cannot be denied. The completeness of the police reform,[159] therefore, is measured again through ethnic prisms. For comparably decentralized states like Switzerland, the success criteria would be measured though effectiveness and other more tangible outputs and not through the centralization level. The logic behind rejecting a set of laws in 2007 by Bosniak politicians was the unacceptability of the existence of entity police prerogatives in any form. This approach proved to be fatal for them given the absence of a level of interventionism which would force Serbs to give in. To put it mildly, any reform which strengthens Bosnian-Herzegovinian states contradicts the Serb path dependency. This is why, from the Serb perspective, any state-building reform in post-war Bosnia and Herzegovina, possessed an imposing character.

2) The defense reform is considered a success for reasons other than one would expect. The DDR process in Bosnia and Herzegovina which preceded the process of establishing the present day structures served a priori to disempower ethnic politicians so that they do not have armies anymore at their disposals. On further reflection, the financial burden that post-war defense structures represented for entity budget could not have been coped with. Unlike other modern states where a debate may be logical as to the need of professional army, Bosnia and Herzegovina desperately lacked military reductions. The good thing about the military reform is that it has been fully in line with NATO membership criteria. Therefore, the reduction in size, weaponry and restructuring of the institutional design proved to match essential programmatic criteria of a small but functional armed force which would restrict its spectrum of activities: "The present day armed forces of Bosnia and Herzegovina can serve exclusively in a state of peace. They can help in natural catastrophes and situations alike. Any further deployment in case of a war conflict would inevitably lead to their dissolution and this is what we all are aware of" (Paravac, 2015). Despite yet not been fully completed and a quiet shift of Serb politics towards NATO membership, the multifold success of the defense reform overshadows any misgivings occurring in the course of it. Even though a NATO membership was projected as the end of the defense reform and integration process, the success of defense reform lies in the fact that a small, depoliticized armed force was founded. By

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[159]Comp. Neuspjeh policijke reforme u BiH (The failure of police reform in BiH, Deutsche Welle): http://www.dw.com/hr/neuspjeh-policijske-reforme-u-bih/a-2822711

institutionalizing it on the state level where the ethnic veto principle is an option during decision-making, the army is not anymore at anyone's disposal in case of instability. Those who want to pursue a military career can go through a tough selection process and become professional soldiers. Later, they may serve in a peace operation under NATO or UN auspices, in line with foreign policy aims of the country. The defense reform, at the same time, incorporates modern state-building elements in the form of sustainable and small armed force; however, it also reflects the supremacy of ethnic principle in its homogenous battalions and parity in the major posts within the Ministry and Armed Forces.

3) The reform in the security sector, being one of the first to be conducted, reflects the essence of Bosnian-Herzegovinian post conflict state-building. To claim that the civic principle may prevail is a utopian vision which misrepresents all reforms undertaken following the end of conflict. Whereas the newly created institutions fully serve their purpose and are legally anchored in the respective laws, their reveal the very nature of Bosnian-Herzegovinian statehood. State-level institutions are just more sophisticated labyrinths of ethnic path dependencies. The question of their functionality is proportionally dependent on the level of political stability and quality of dialogue among ethnic groups. When we take into consideration from the beginning of our research that only ethnically homogenous administrative units are politically stable, we can realize what a challenge decision-making in Bosnia and Herzegovina at the state level represents.

To sum up, the defense reform we analyzed displayed a multifold character of Bosnian-Herzegovinian state-building. The respective solution possesses a number of attributes: it is hybrid, imposed, ethnical, modern, efficient, democratic, sustainable and above all realistic. It is one of the rare examples of a success of Western diplomatic efforts to strengthen a post-conflict state. This is true for all institutions that have emerged or are to emerge in the future.

The "unfinished business"[160] of the police reform relates to the lack of state-level ministry of interior. This would have been completed had the Bosniak politicians accepted the police reform proposal in 2007 which included the aforementioned condition; however, foresaw no abolition of entity ministries. As demonstrated, the police reform cannot be considered to have been a complete failure given the creation of state level police institutions. It is incomplete in a sense that there is no state-level authority superior to the ethnic ones on all policy matters as
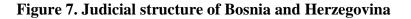
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[160]Comp. The "Unfinished Business" of Bosnian Police Reform (SSR Resource Centre):
http://www.ssrresourcecentre.org/2014/06/11/the-unfinished-business-of-bosnian-police-reform/
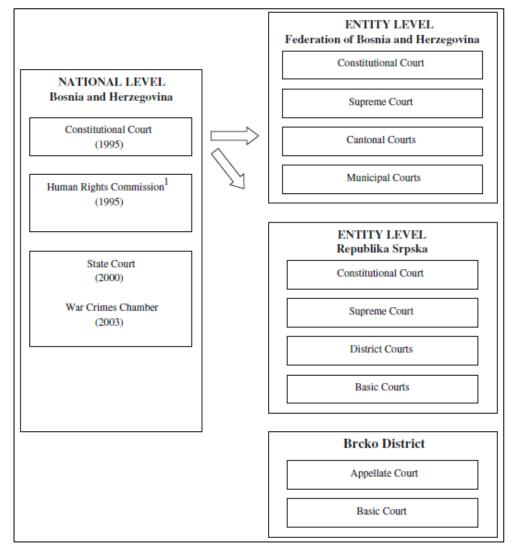
is the case with the defense. The reasons for Serb reluctance to give up police include the necessity of police at times of peace. Military is just a heavy financial burden which costs a lot and is not sustainable. Police, on the contrary, can play a more significant role and signifies for politicians an element of statehood, which continues to play an important role in the unfinished state of Bosnia and Herzegovina. To conclude, the reform in the security sector in Bosnia and Herzegovina, unlike other comparable post-conflict state-building efforts worldwide, is a success story for the fact it is legally implemented and legitimate given the level of acceptance among ethnic groups.

Judiciary reform

Introduction

The most complex reform in terms of content carried out in Bosnia and Herzegovina is the reform of judiciary. In order to understand the essence of the reform, we must look at the immediate Post-Dayton legal framework of Bosnia and Herzegovina. In understanding it, we take into account that the present-day state is an actual merger of two entity structures with their own ministries of justice and interior. It comprises a very limited pre-given state powers in this area limited to the constitutional court and human rights (Barria & Roper, 2008, p. 321):

Figure 7. Judicial structure of Bosnia and Herzegovina

Source: Barria & Roper, 2008, p. 320

The Federation of Bosnia and Herzegovina comprises 28 municipal courts, 10 cantonal courts, the Supreme Court and the Constitutional Court. (Barria & Roper, 2008, p. 320). The municipal courts deal with cases of lesser importance, whereas cantonal courts may proceed war crimes. The existence of entity level supreme and constitutional courts mirrors the statehood prerogatives brought into the state by entities during the Dayton peace process. The structure of the judicial system of Republic of Srpska is not much different. Nineteen basic, municipality courts and five district (regional) courts represent judicial symmetry to the Federation. Therefore, confronted with a very limited judicial infrastructure at the state level, OHR was confronted with a great challenge of judicial reform, i.e. into which direction it should go and which institutions on the state level are needed in line with state-building.

"(…) Local officials must be made aware that the High Representative will not be reluctant to use his authority to remove obstructionist officials or impose necessary law" (Office of the High Representative, 1999, p. 2). This sentence pretty much depicts the essence of the imposing character of judicial reform. At no time did the initiative to reform Bosnian-Herzegovinian judicial system come from ethnic political elites. The aforementioned document divides the strategy into four aspects: structural reform, institution buildings, improving access to justice and law enforcement and corrections. Regarding the first point, OHR states a necessity of a multi-ethnic, independent and professional judiciary as well as strengthening of entity prosecutors. Whereas the issue of independence would normally never be questioned, the issue of its control is the bone of the division today. The most important judicial body at present is the High Judicial and prosecutorial Council of Bosnia and Herzegovina.[161] This body appoints judges and prosecutors in Bosnia and Herzegovina and undergoes no parliamentary control, which is a sui generis case in the modern judicial practice. This institution will be a separate subject of our research; however, it was outlined to illustrate why the future of the state is heavily dependent on the judicial reform. The logic for empowering the judiciary with appointing powers is simple: the International Community wanted to disempower politicians from influencing the justice in all areas. It has, however, been the judicial reforms that has triggered another political crisis in Bosnia and Herzegovina. Whereas Serb politicians heavily criticized the state-level institutions established in the meantime for non-processing of war crimes against Serbs, Bosniak political elites insist on further institutionalization of judiciary at the state level.[162] Therefore, to sum up, the debate

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[161]Comp. High Judicial and Prosecutorial Council: http://vsts.pravosudje.ba/
[162]Kritike na rad VSTS i pravosuđa u BiH (Critics on work of HJPC and Judiciary in BiH, Nezavisne Novine): http://www.nezavisne.com/novosti/bih/Kritike-na-rad-VSTS-i-pravosudja-BiH/296840

about the structural reform of judicial system will pretty much relate to its control, i.e. whether the sui generis self-control is sustainable and whether the state is capable of absorbing new institutions. The absorbing of new institutions is closely linked to the question of legitimacy and the imposing factor, i.e. whether these reforms may stem from local politicians or these will be forced to adopt them.

As far as the institutional framework is concerned, OHR initially saw capacity building as a priority for the institutions to carry out their mandates. It laid importance on training the existing staff and providing them with necessary technological equipment. The strategy also foresaw the education of people so that they could request legal help. Finally, the codification of respective laws was requested in order to align different entity provisions with international standards. The most important aspect of this OHR strategy is the announcement of state-level institutional setting to be implemented.

With the Constitutional Court as the only judicial instance in place at the state level, the state-building process needed a number of new institutions at the state level. One of the main challenges which needed to be faced on the state level were war crimes. The Court of Bosnia and Herzegovina was founded, *inter alia*, to take over war crime cases from the UN *ad hoc* International Criminal Tribunal on Former Yugoslavia (ICTY). It came as a big surprise that the Dayton Peace Agreement created no special judiciary requirement, which made it more difficult for the International Community to foster the process. Annex 6 addressed the Human Rights establishing the respective institution of Ombudsman. With powers attributed to IPTF to intervene in cases where local police needs assistance, there was no emphasis otherwise on judiciary as such. It was clear that it was no immediate post-conflict priority of the International Community. (Hrle, 2015, pp. 62-63)

Court of Bosnia and Herzegovina

The very start of the judicial reform in Bosnia and Herzegovina represents the creation under auspices of OHR of the Judicial Reform Working Group, consisting of a number of international organizations.[163] The Peace Implementation Council (PIC) encouraged the High Representative in 1998 in its meetings in Luxembourg and Madrid to take lead in the process.

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[163] ASSESSMENT OF THE CURRENT MANDATE OF THE INDEPENDENT JUDICIAL COMMISSION AND A REVIEW OF THE JUDICIAL REFORM FOLLOW-ON MISSION FOR BOSNIA AND HERZEGOVINA by Charles Erdman: http://www.esiweb.org/pdf/bridges/bosnia/Erdmann_IJC.pdf

In its Resolution 1184, the UN Security Council request UN Mission in Bosnia and Herzegovina to approve a "programme to monitor and assess the court system in Bosnia and Herzegovina, as part of an overall programme of legal reform as outlined by the Office of the High Representative (...)" (UN Security Council, 1998). It was this document which, in the end strengthened by a wave of international engagement, resulted in a concretization of the international initiative reflected in the PIC Brussels' Summit Declaration of 23-24 May 2000:[164] "…We call for a truly independent and impartial judiciary that will ensure the Rule of Law in all criminal, civil and commercial matters. In this context the Council considers the strengthening of the Constitutional Court and the establishment of a State court to be major priorities…."Among other things, PIC unquestionably supports and gives unlimited political support to the High Representative thereby encouraging him to do whatever it takes to implement these policies. Knowing that Bosnian-Herzegovinian path dependencies will prevent any major domestic agreement to be made and taking into account the inconceivable political differences among ethnic political elites, the High Representative imposed the Law on the Court of Bosnia and Herzegovina on 12 November 2000. (Hrle, 2015, p. 64)
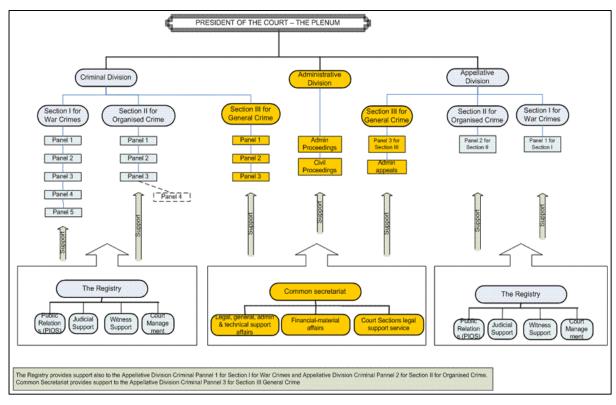
Figure 8. Organizational Chart of the Court of Bosnia and Herzegovina

Source: http://www.sudbih.gov.ba/

He did it by means of a decision, the annex of which represents the law in fact. Even in the preamble of his decision, the High Representative stresses:[165]

> "(…) Regretting that notwithstanding the matters aforesaid, which should have enabled the Council of Ministers of Bosnia and Herzegovina and the Parliamentary Assembly of Bosnia and Herzegovina to have passed the said Law on a Court of Bosnia and Herzegovina through the regular procedure before the elections on 11 November 2000, the said Law has not been adopted (…)"

Articles 13-15 of the respective law define the jurisdiction of the court. It was empowered with jurisdiction over matters which fall under the laws of Bosnia and Herzegovina, inter-entity criminal law enforcement, human rights, conflict of jurisdiction between two entities as well as other issues emerging from the need of state well-functioning. The Court has three divisions, namely, criminal, administrative and appellate.

Section 1 of Criminal Division (War Crimes) represents the ratio and the underlying reason for formation of the Court of Bosnia and Herzegovina. The International Community saw the processing of the war crimes of the utmost importance for Bosnian-Herzegovinian state-building. ICTY simply couldn't process all the cases and, in addition, due to the renewing character of its mandate, had to have a respective domestic institution which will serve the purpose of its founding. The first law foresaw a direct election of judges by the Parliamentary Assembly of Bosnia and Herzegovina (ref. Article 4). However, in the course of the judicial reform, this power was transferred to HJPC. The question of processing of war crimes is one of the most important also for present-day political stability of Bosnia and Herzegovina. The Court of Bosnia and Herzegovina is, together with the Prosecutor's Office, the source of Serb frustration resulting in open referendum threatening made on many occasions by Milorad Dodik. Namely, he claims that these two institutions are politically run and lack credibility and legitimacy. The Government of Republic of Srpska came up with records of the Court of Bosnia and Herzegovina.[166] Namely, during the first ten years of the Court's existence, 95 Serbs were convicted to the total of 1504 years in prison. During the same time, 28 Bosniaks and 14 Croats were sentenced to 412 years in prison. The statistics further shows that 38 Serbs were convicted of the crime of genocide, out of whom 12 were sentenced. Out of all sentences, 151, 5 years were on the account for war crimes against Serbs, which makes up for 7, 9 % of

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[165] Law on the Court of BiH: http://www.sudbih.gov.ba/files/docs/zakoni/en/Zakon_o_sudu_-_eng.pdf
[166] Comp. B92:
http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=07&dd=02&nav_category=64&nav_id=1010881

the whole sentence duration in front of the court. Regarding Serb political elites, there is an absolute consensus as for the discrepancy and lack of impartiality in the work of the Court of Bosnia and Herzegovina. First time, this referendum issue came to light in 2011, when Milorad Dodik first threatened to sign off on an entity law calling for referendum on the work of Court and Prosecutor's Office of Bosnia and Herzegovina. EU High Representative Catherine Ashton arrived in May 2011 and ensured him that a dialogue would be initiated as to ensure that the judiciary in Bosnia and Herzegovina is more efficient.[167] The word referendum has much stronger connotation than just the work of the two courts. Bosniaks associate it with Serb separatist attempts to dissolve from the country and see any form of referendum organized by Republic of Srpska as a general rehearsal for the independence referendum. One thing that President Dodik ignores in his speeches is that Serb politicians gave a green light on passing the respective Law on the Court of Bosnia and Herzegovina in the state parliament in July 2002. (Hrle, 2015, p. 64) This mean in fact the legalization of the HR's decision to impose the law, however, Serb politicians nowadays speak of an enormous pressure and isolation danger in case of the non-adoption. Unlike war crimes, there has been some serious achievement in processing organized crime. Some of the most brutal murders and crimes committed in the post-war period were processed resulting in the most severe punishments.[168] There is a widespread criticism in the country due to an enormous political pressure which hinders processing of a number of present-day and former decision-makers in the country. Despite the International Community's initial intention to create completely independent state-level institutions, it is more than obvious that politicians manage to exercise their power over courts.

Prosecutor's Office of Bosnia and Herzegovina

Paddy Ashdown, who arrived in Bosnia and Herzegovina in May 2002, was the greatest interventionist among HRs, together with his predecessor, Wolfgang Petritsch. Above all this conclusion is made in terms of number of times when they used Bonn Powers, which enabled them to enact legislation irrespective of the decision-making process in place. One of these decisions is the Law on Prosecutor's Office of Bosnia and Herzegovina, which was enacted

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[167] See: Bosnia tension eases as Serbs cancel referendum, BBC: http://www.bbc.com/news/world-europe-13389051
[168] For example, the case Zijad Turković & others: a multiethnic criminal group sentenced to over 100 years of prison: http://balkans.aljazeera.net/vijesti/zijad-turkovic-osuden-na-40-godina-zatvora

by the decision of 6 August 2002.[169] Noting that "Prosecutor's Office of Bosnia and Herzegovina providing for the investigation and prosecution of crimes which lie within the competence of the State of Bosnia and Herzegovina under the Constitution of Bosnia and Herzegovina is a pre-condition for the establishment of the rule of law in the State of Bosnia and Herzegovina", he founded another important state-level institution which will have further impact on the state-building in Bosnia and Herzegovina. Again, just like in the case of the Court of Bosnia and Herzegovina, the underlining reasons for it was the processing of war crimes. Following its foundation and in the light of transitional justice, ICTY transferred a number of cases to Bosnia and Herzegovina. (Tolbert & Kontić, 2009) There was a logical explanation for this as well since, it had been believed, the institutionalization of war crime proceedings should lead to prevention of political manipulations. However, as is the case with the Court, the results of the Prosecutor's Office on the war crime proceedings are a major source of Serb discontent. Prosecutor's Office comprises today three departments, which is a direct result of new laws being adopted in the meantime.

The present-day Department I (War Crimes) was formed with a set of laws issued by the Bosnian-Herzegovinian Parliament in December 2004.[170] The mandate of this department relates to war crimes committed on the territory of Bosnia and Herzegovina between 1992-1995 conflicts. This set of laws enabled a direct transfer of war-crime cases from ICTY to Bosnia and Herzegovina. This department has had a significant importance in the Bosnian-Herzegovinian state-building. Transitional justice is one of the key issues the International Community identified for the state-building. By taking over ICTY's "Rules of the Road" mandate, the Prosecutor's Office started investigations on 13 000 individuals involved in war crimes. (Sabic-El-Rayess & Moratti, 2009, p. 10) In addition, the Prosecutor's Office received additional 20 000 names in connection with crimes committed in Srebrenica. Despite being well equipped and relatively well staffed, the Prosecutor's Office could not technically process all cases stemming from the "Rules of the Road". As a result, the Office defined internally a procedure on how to determine the gravity of a particular case and either process it or delegate further to district and cantonal levels. In this connection, there are four types of investigations which can be undertaken by the Prosecutor's Office:

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[169] The text of the Decision: http://www.ohr.int/decisions/judicialrdec/default.asp?content_id=27652
[170] Special Department I: http://www.tuzilastvobih.gov.ba/?opcija=sadrzaj&kat=2&id=4&jezik=e

- The cases rendered by the ICTY whereby there is a respective indictment made by the ICTY. ICTY Trail Chamber, however, decided to transfer the case to Bosnia and Herzegovina;
- The cases where the Bosnian-Herzegovinian institutions carried out an investigation and asked ICTY Rules of the Road Unit for their opinion as to issue a warrant and put the suspect in custody or not;
- The cases in which the investigation was carried out by ICTY without a respective indictment but, given the suspicion of the existence of evidence of committed crimes, the cases were not put ad acta; and
- All other cases following October 2004, the date on which the Rules of the Road's Unit of ICTY mandate expired.

Regarding the organization of work, the Office is divided into six teams, each of which covers a different region in Bosnia and Herzegovina. Srebrenica is covered by the Special Team 6.

Special Department II (Organized Crime, Economic Crime and Corruption) was initially established by the High Representative in 2003 with exclusively international prosecutors. Its mandate related to employees of Bosnian-Herzegovinian institutions and covered economic and financial crimes including tax evasion, smuggling, customs fraud and money laundering, as well as organized crime including, but not limited to, international trafficking in drugs and people and similar offences under the Criminal Code of Bosnia and Herzegovina.[171]

In line with its mandate, the Prosecutor's Office can process allegations of organized crime, terrorism, human trafficking, customary and copyright abuse amounting to BAM 1 million and higher, corruption of senior officials and severe economic crimes.

In a post-conflict country with endemic corruption, it was of the utmost importance to ensure that an independent institution processes above-referred crimes. Organized crime, inter alia, can be defined as any group having some manner of a formalized structure and whose primary objective is to obtain money through illegal activities.[172] What counts the most in the case of organized crime is that criminal structures have their own connection within the state apparatus and that it is hard to clearly separate between these groups and the state itself. However, the problem of organized crime should not be viewed through the prism of ethnic

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[171] Special Department II : http://www.tuzilastvobih.gov.ba/?opcija=sadrzaj&kat=2&id=5&jezik=e
[172] Comp. FBI definition of the term "Organized Crime": https://www.fbi.gov/about-us/investigate/organizedcrime/glossary

division in Bosnia and Herzegovina: Sadly everything in BiH appears to be viewed in the back drop of the war, OC is no different. One thing that this report found was that OC is not a product of the war; it just fed, like a cancer on the opportunities the war presented. (Brady, 2012, p. 10). This primarily relates to the weak state syndrome, whereby irrespective of the instance in the country, the elements of the statehood which should reflect law and order failed to carry out their duties. The International Community was aware of the ethnic constraint preventing the establishment of law order since politicians could always claim that they have been prosecuted for political reasons. This was one of the main reasons why HJPC was established. By disempowering the state level parliament with such an important power to appoint prosecutors and judges, the International Community thought it would lead to professionalization of judiciary in the country.

Department III in fact is a unit which supports the second department and exists for the reasons of overwhelmingly heavy workload. It is of particular importance for the country's European path, especially at times when country faces some pan-European challenges like migratory waves from the Middle East when human trafficking tends to flourish. The Administration of the Prosecutor's Office runs daily work and comprises all necessary administrative units.

High Judicial and Prosecutorial Council

The judiciary, as an independent pillar of *trias politica*, should be independent from executive and legislative branch. This broad constellation within separation of powers is differently interpreted depending on various interpretations of democracy and respective perceptions. The International Community faced a challenge of trust-building among ethnic groups. Being fully aware of the lack of compromise for state-building, they knew that an imposing character and an enormous pressure is needed to persuade politicians to give in and accept common norms, one of which is the founding of the High Judicial and Prosecutorial Council.

In March 2004, two entities agreed to transfer a set of important powers to the state,[173] which resulted the passing of the Law on High Judicial and Prosecutorial Council on 21 May 2004.[174]

The rationale for its introduction was multifold in the eyes of all those who wanted to see Bosnia and Herzegovina strengthened: firstly, all courts and prosecutor's offices for the first time were under one roof which appoints their personnel; secondly, the creation of this institution was in line with EU requirements and one of the prerequisites for the conclusion of Stabilization and Association Agreement (SAA). Initially, the work of the HJPC was financed though the funds provided by the International Community. Being fully anchored in its institutional framework, Bosnia and Herzegovina included it in its budget effective January 2005. The HJPC is not a constitutional category and was not foreseen with the initial Annex 4 of DPA. Venice Commission, an advisory body of the Council of Europe, issued a number of reports on the work of HJPC. While welcoming its role in strengthening the judicial independence rule of law, the Commission expressed a number of reservations. As seen in all post-conflict institutions of Bosnia and Herzegovina, the ethnic principle also prevails in the HJPC and overrides the professional credibility of the candidate to be appointed. In addition, judges and prosecutors were not subject to any testing or other forms of examination, which adds up to the problem of professionalization. Secondly, judges and prosecutors are sitting in one body, this is a sui generis situation which questions very much the logic behind. Lastly, the procedure of appointing members leads to inter-institutional and inter-personal rivalries, which is an additional challenge given individual interests and positions of members who are inclined to misuse their powers and appoint other affiliated members and not the professional ones (European Commission for Democracy through Law. Venice Comission, 2014, p. 4).

Hence the overwhelming majority of EU officials welcomed the existence of HJPC. The EU intention regarding HJPC has been reflected on numerous occasions: "(…) This is a crucial

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[173] The Transfer Agreement, inter alia, states in its Preamble: "The parties desire to consolidate the authority over the Entities' judiciaries in order to strengthen the independence of the judiciary through the establishment of a single High Judicial and Prosecutorial Council of Bosnia and Herzegovina. (…) The council shall bear primary responsibility, as defined by the agreement, for the judiciary at all levels throughout Bosnia and Herzegovina and shall oversee judges and prosecutors in a manner that instils public confidence and trust in the judiciary." In Venice Commission Report:
http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)008-e
[174] Annual Report on HJPC for 2004, http://vstv.pravosudje.ba/

step to consolidate State authority over the Entity judiciaries and to strengthen the independence of the judiciary throughout Bosnia and Herzegovina (…)"[175]

This among other efforts reflects once again the character of the interventionism of the US-EU led state-building efforts in Bosnia and Herzegovina. Strengthening the state was put on equal footing with state-building. The strategy has not been revisited so far as to which model suits best the country. Any other model but centralization has never been seriously considered.

In accordance with Article 5 of the Law on HJPC, the Council currently has 15 members, the structure of which reflects 1991 census. Therefore, the Council has 6 Bosniak, five Serb, three Croat and one member belonging to "other" ethnic group. For several of them this is a complementary function as they are members (judges and prosecutors) of a lower-instance judicial institution. The others belong to one of the bar associations.[176] Upon expiration of one's mandate, the successor is elected by the sending body. (e. g. if a mandate of a judge of Supreme Court of Republic of Srpska expires, that court may renew it or appoint another judge). Apart from aforementioned capacity to appoint judges and prosecutors, the HJPC is setting ethical judicial standards, possesses disciplinary responsibility and coordinates reform activities in Bosnia and Herzegovina. The Commission is headed by the President, who is supported by two Vice Presidents, all of whom come from different ethnic groups. They are all elected by simple majority of the members present. Two members of the HJPC are not members of judiciary and are elected by the Council of Ministers and the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina respectively. The members of the Council may serve up to maximum of two terms. The decisions of the Council are made by a single body, consensus. For the facilitation purposes, the Council may form working groups, to which however no decision-making authority may be delegated. The HJPC is different from other institutions in terms of lacking state-appointing attributes. When one argues EU lacking statehood, the lack of competence-competence is the strongest argument. By the same token, the HJPC members are appointed by lower level instances, which to a great extent are not the institutions of the state. Out of 15 members, four of them are appointed by the institutions belonging to the state. This leads us to the conclusion that even the created institutions which are presented as a success story of post-conflict state-building are fully

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[175] COMMUNICATION FROM THE COMMISSION TO THE COUNCIL on the progress achieved by Bosnia and Herzegovina in implementing the priorities identified in the "Feasibility Study on the preparedness of Bosnia and Herzegovina to negotiate a Stabilization and Association Agreement with the European Union: http://ec.europa.eu/enlargement/pdf/bosnia_and_herzegovina/com_en.pdf

[176] FAQ about HJPC, ref. Law on HJPC: http://pravosudje.ba/vstv/faces/vijesti.jsp?id=51991

dependent on entity structures. However, the noble idea of a judiciary free of political influence and fully independent was highly regarded in the early days of judiciary reform, i.e. post 2004 when three institutions we presented here were already in place. In its report for 2006, the American Bar Association views HJPC as the most successful aspect of the reform. (ABA, 2006, p. 8). The uniformity of salary scales, new state-level policies and professionalization is what ABA identifies as the rationale for founding HJPC in addition to those of political nature. However, they emphasize a serious backlog as well as the lack of administrative support which can ensure further straitening and more efficient integration. The financial aspect is also an issue given a constant political uncertainty at the state level which may block the budgets. Ethnic political elites, especially Serb ones, may always use their hands in Sarajevo to blackmail the adoption of respective legislation should it not suite their interests. However, this occurs rarely in practice and, apart from populist discussions, there are hardly ever blockades in the Parliament. On the contrary, HJPC is subject to fierce critics.

HJPC is the most relevant institutions which carries the greatest responsibility in Bosnian-Herzegovinian judiciary. By appointing judges and prosecutors, it directly shapes justice and this is why it leads to a serious discontent among many.[177] This is primarily reflected in the Bosnian-Herzegovinian Parliament, the members of which blame total independence of HJPC for a grim situation in the judiciary. The Parliament, however, as lawgiver, carries also its responsibility for this development. Even though the intention had initially been to depoliticize the judiciary, it goes without saying that Bosnian-Herzegovinian politicians of all ethnic groups have influence over judiciary. According to the research of Justice Network,[178] an NGO comprising 64 different civil organizations, the citizens regard judiciary as highly corrupted and without willingness to process corruption. HJPC, as the leading institution in appointing judges and prosecutors, must be, directly or indirectly held responsible for the situation in judiciary. And misgivings in the work of HJPC are visible everywhere. The Balkan Investigative Reporting Network (BIRN) revealed some terrifying facts.[179] According to their report, there were instances where candidates appointed to serve as judges to the Court of Bosnia and Herzegovina had no work experience. They came up to the conclusion that, out of

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[177] Kritike na rad VSTS i pravosuđa BiH (Critics at work of HJPC and judiciary, Nezavisne Novine): http://www.nezavisne.com/novosti/bih/Kritike-na-rad-VSTS-i-pravosudja-BiH/296840
[178] Justice Network: Građani smatraju da na oblast pravosuđa postoji znatan politički utjecaj: http://www.vijesti.ba/vijesti/bih/236333-Gradjani-smatraju-oblast-pravosudja-postoji-znatan-politicki-utjecaj.html
[179] Problematic Hiring Procedures at HJPC Worry Bosnian Legal Community: http://www.justice-report.com/en/articles/problematic-hiring-procedures-at-hjpc-worry-bosnia-s-legal-community

49 judges, 21 of them either had no experience or stemmed from the municipal court without prior courtroom experience. Former HJPC President and current Judge of the Court of Bosnia and Herzegovina furthermore notes:

> "People without judicial experience were appointed to the highest judicial institutions. Former expert associates were appointed to the Prosecutor's Office and the Court of Bosnia and Herzegovina. People with no experience working on war crimes were coming to the Department of War Crimes".[180]

As judges and prosecutors who were quoted in this report further note, there is a problem of jumping over certain steps in career advancement. Certain lobbying groups within HJPC pave ways for unexperienced individuals. As Perić lastly concludes:

> "The problem comes down to the question of whether to choose the best and most morally sound candidate, or those who managed to pressure groups and come close to individual members of the council?"

Furthermore, it is said that former and present members of HJPC conclude and admit that the council has always been subject to the manipulation and lobbying influence. This is above all to blame the transition for. Other transitional countries which had no complex political scene like Bosnia and Herzegovina also faced similar challenges. There is a similar practice in other key institutions. For instance, the Presidency of Bosnia and Herzegovina appoints country's diplomatic service. There is no selection mechanism which could filter candidates with minimum required qualifications. As a result, doctors, engineers and other non-diplomacy affiliated individuals are appointed as ambassadors and other high ranking representatives abroad. This is an endemic feature of Bosnian-Herzegovinian state apparatus.

Now, as we presented three most important judicial institutions which emerged as a result of the reform process, we will tackle upon two major challenges upon which the future of the country heavily depends. Firstly, we will discuss corruption and its development in post-war period as well as the mechanism and policies introduced to fight it. Additionally, other inter-linked symptoms severely endangering well-being of state like organized crime will be discussed in the same context. Secondly, the question of war crimes is probably the most important issue in terms of political stability. As said, it is due to the lack of proceeding of

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[180] Quoted from Problematic Hiring Procedures at HJPC Worry Bosnian Legal Community: http://www.justice-report.com/en/articles/problematic-hiring-procedures-at-hjpc-worry-bosnia-s-legal-community

war crimes that Serb politicians triggered a political crisis, which was appeased by the introduction of the Structured Dialogue with the European Union.

Corruption in Bosnia and Herzegovina

Corruption represents one of the most challenging problems the post-conflict Bosnian-Herzegovinian society faces. It goes without saying that it is not exclusively an issue affecting Bosnia and Herzegovina but a transitional problem that is attached to other sources than those of ethnical and ethnical and political nature primarily causing instability. In a UNODC report dated 2011, the citizens perceive corruption as the forth greatest problem in the country. (UNODC, 2011, p. 3) According to the survey conducted by UNODC, over 20% of citizens were involved in a form of a bribery. It is more or less a custom to bribe doctors, teachers and other civil servants to obtain a service which they should otherwise provide by default.

According to the Transparency International,[181] the country ranked 80 in 2014 on the list of 177 countries, the lowest being the cleanest. This is a very weak result in European context, especially for a country with such strong and unquestioned EU perspective. Furthermore, the challenges the country faces in fight against corruption are multifold. We have briefly outlined the complexity of legal framework of the country. In addition to its large size, it is divided along ethnic lines leaving up to the ethnic political elites to control their territories. For this reason, it is an allusion to pursue with centralization of powers in harmony with ethnic principle as each ethnic group will always control its chunk of posts. Even at times when ethnic and political conditions are not prerequisites, the lack of transparency disables fairness from taking place. Closely related to the institutional complexity is the problem of public procurement. Being financially lucrative, the procurement is particularly weak to corruption not only due to the legal framework in place but also the lack of law enforcement capacities. The state level anti-corruption agency (APIK) had been introduced by law in 2009 but its management was appointed in 2011.[182] Among many other institutions formed at the state level, the lack of political coordination has resulted in APIK not carrying out its duties in line with the anti-corruption strategy. The pace at which the international community insisted in capacity building undermined the rationale of its functioning. Despite APIK reporting directly

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[181] Bosnia and Herzegovina, overview:
http://www.transparency.org/whatwedo/answer/bosnia_and_herzegovina_overview_of_political_corruption
[182] Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, facts:
http://www.apik.ba/o-nama/default.aspx?id=35&langTag=en-US

to the Bosnian-Herzegovinian Parliamentary Assembly, the political interference disables in fully from operating.[183] The politicizing of the corruption is omnipresent and cannot be separated from daily nationalist discourse. As the Transparency International Bosnia and Herzegovina further notes, either are the institutions which should fight corruption dependent on the executive or the problem of law enforcement prevails. Civil sector, the Ombudsman and Audit Service reports are bluntly ignored by the institutions despite media freedom and exposure of unquestioned evidences to the public. Furthermore, regarding the criminal prosecution, very few cases are being processed and 70% of investigations are being dismissed.[184] Little or nothing is done for the whistleblowers protection, which remains one of the key elements of fight against corruption. Corruption is a both-way conduct and what strikes the most in Bosnia and Herzegovina is that it is more often initiated by the citizens than explicitly requested by individuals representing authorities. In approximately 37% of cases, the citizens made an offer to public official. (UNODC, 2011, p. 19) Additionally, in over 30 % of cases, the official will implicitly make an offer and at striking rate of almost 20% they will explicitly request a bribe. A vast majority of bribes in Bosnia and Herzegovina is made in cash (80 %) (UNODC, 2011, p. 17) with the rest stemming from food and drinks as well as other counter-services. In the long run we can conclude that bribery stems from the inefficiency of the state:

> "A quarter of citizens of Bosnia and Herzegovina who get involved in a bribery act do so to avoid the payment of a fine and another quarter do so to speed up the procedure. Together with the third most common purpose – receive better treatment (19%) – these data indicate that bribery is often used to overcome deficiencies and weaknesses in public service delivery." (UNODC, 2011, p. 21)

We had to empathize corruption as the problem of Bosnian-Herzegovinian society which is not exogenous to other neighboring countries as well. It could be used as a perfect indicator of the success rate of state-building. In certain sectors like higher education for instance, the bones of division among people appear to be minor. After millions invested in institutional setup for the fight against corruption, the International Community has provided the local authorities with tools. What is lacked the most is the courage and willingness. This is the bottom line of the message USAID Head in Bosnia and Herzegovina delivered to prosecutors

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[183] Monitoring provodjenja antikorupcionih reformi u BiH: http://ti-bih.org/wp-content/uploads/2011/03/PUBLIKACIJA-MONITORING-revised1.pdf
[184] Monitoring provodjenja antikorupcionih reformi u BiH: http://ti-bih.org/wp-content/uploads/2011/03/PUBLIKACIJA-MONITORING-revised1.pdf

in October 2014.[185] In this respect, Bosnia and Herzegovina is not different from other countries in the Western Balkans. What should help the most in raising awareness against corruption are *acquis communautaire,* the legal and political legacy a country needs to fulfill before joining the EU, which particularly emphasizes fight against corruption as one of the priorities. Corruption implies the necessity to change the aspect which is the most reluctant to a change, the peoples' mentality.

War Crimes in Bosnia and Herzegovina

The war in Bosnia and Herzegovina is, in terms of gravity, the greatest armed conflict Europe faced since the end of World War II.[186] The processing of war crimes can be divided into two time frames, the ICTY era which covers the period until 2005 and the period past that year when the Court and the Prosecutor's Office of Bosnia and Herzegovina became fully operational. ICTY, as an *ad hoc* tribunal of the United Nations founded in 1993, possesses primacy over genocide, crimes against humanity and war crimes. [187] It has since then processed a number of leaders, at local and higher level, responsible for these crimes.

There were in total 161 individuals indicted before ICTY, the last of them being Goran Hadžić, who was arrested in July 2011.[188] In many respects, ICTY had its historical role, which is very differently perceived not only in the Balkans but also worldwide. Serbian President, Slobodan Milošević, was the first president indicted before an international court for war crimes. He died in custody while waiting for verdict. The other heads of self-governing autonomous Serb territorial units in Croatia and Bosnia and Herzegovina were indicted as well. At present, there are only four ongoing cases before ICTY, which should have been closed by now. Two highest level indictees are the former President of Republic of Srpska, Radovan Karadžić, as well as the Commander of VRS Ratko Mladić. Also, the trial of aforementioned Goran Hadžić is still pending. The last indicted, Vojislav Šešelj, who is considered to be the father of Serbian

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[185] Fighting Corruption in Bosnia and Herzegovina: Searching for Leadership: https://www.usaid.gov/news-information/speeches/fighting-corruption-bosnia-and-herzegovina-searching-leadership

[186] Crimes of War. Bosnia: http://www.crimesofwar.org/a-z-guide/bosnia/

[187] OSCE. Delivering Justice to Bosnia and Herzegovina, May 2011:
http://wcjp.unicri.it/proceedings/docs/OSCEBiH_War%20crimes%20prosecutions%20in%20BiH_2011_eng.pdf

[188] Al Jazeera. Serbia's last war crimes fugitive arrested:
http://www.aljazeera.com/news/europe/2011/07/201172074249705610.html

nationalism of 1990s has been released to wait his verdict in freedom. Whereas he fully reactivated himself in the political life of Serbia, his political party is non-parliamentary and has very limited impact on Serbian politics. The greatest fine which can be ruled out before ICTY is life imprisonment. Now, whereas no one can question the idea of processing war crimes on this level, the role, impact, impartiality and purpose of ICTY have been questioned on a number of occasions. Envisaged as the mechanism of reconciliation among Yugoslav peoples, ICTY mainly achieved to polarize even deeper ethnic groups, primarily Serbs with others. It goes without saying that Serb perception of the role of ICTY is not positive. Serbs primarily see the tribunal as political and biased, failing to deliver justice for crimes committed against Serbs in Croatia, Bosnia and Herzegovina and Kosovo. The particular source of frustration is failing to sentence Croatian leadership for the military operation "Storm", which resulted in over 200 000 people being displaced.[189] For this sole reason, in a situation where one side remains frustrated, it is very debatable to argue in favor of justice being served. ICTY will inevitably stay an institution which played an important role in Post-Dayton Bosnia and Herzegovina as well, for the reasons of issuing verdicts which shape the post-conflict environment and dictate contents of history books.

Bosnia and Herzegovina has a multifold challenge of delivering justice on war crimes. Much of the workload transferred to it since 2005 has not yet been addressed. Whereas the initial phase was marked by the important role of international judges and prosecutors appointed by the High Representative, their national counterparts started taking responsibility and processing war crimes. For instance, as of June 2008, 13 prosecutors who were processing war crimes were local and 5 international. This mix of national and international judges and prosecutors is called hybrid. In these early years of their functioning, these two institutions received a lot of positive critics from the International Community, which even wanted to use it as a role model for other post-conflict transitional countries. What in general was heavily criticized among lawyers is the inapplicability to complement national practice with Bosnian-Herzegovinian reality. (Ivanišević, 2008, p. 40) The tenure at either the Court or the Prosecutor's Office of Bosnia and Herzegovina is perceived as a reward. In support of this statement made in this quoted study one may quote statistics.[190] During the period 2003-2012, 37 international judges, 25 prosecutors worked on 180 cases of war crimes. This resulted in

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[189] Haški tribunal je užasno razočarao žrtve „Oluje": http://www.politika.rs/rubrike/Politika/Haski-tribunal-je-uzasno-razocarao-zrtve-Oluje.lt.html

[190] Međunarodni tužioci u BiH dvije godine bez ijedne optužnice:
http://www.nezavisne.com/novosti/bih/Medjunarodni-tuzioci-u-BiH-dvije-godine-bez-ijedne-optuznice/233732

total of 10 verdicts. In addition to war crimes, they were engaged in 211 cases of organized crimes, criminal and corruption, which resulted in 10 verdicts as well. Contrary to them, local judges face an enormous political pressure, as discussed before.

In summation, the reform of judiciary in Bosnia and Herzegovina is a very dubious, divisive and polarizing aspect which is primarily politically assessed. No matter how justice is delivered, it will always a priori be perceived as ethnically and politically motivated. An attempt to serve justice in one particular way will never be a canon among all ethnic groups. There will always be a divisive line which sees judiciary as the other side's mechanism to rewrite history.

Economic Reforms

Introduction

Bosnia and Herzegovina is economically much more integrated than politically although the interdependence between the two is obvious. The aim of this chapter is to demonstrate economic characteristics of the country, as well as to reflect upon the major institutional post-conflict efforts of state-building undertaken in order to boost the country's welfare. With the intention of presenting the core of the country's monetary and fiscal policies, we will also examine the role of the initial Dayton institution of the Central Bank of Bosnia and Herzegovina, as well as the Indirect Taxation Authority, the biggest state-level institution.

Bosnia and Herzegovina was, together with Macedonia, the poorest republic in the former Yugoslav Federation. During this period, a large part of Yugoslav metal industry was posted in Bosnia and Herzegovina. Above all, Zenica was the center of Yugoslav steel industry with the greatest forge which employed around 20 000 people. A number of mines throughout Bosnia and Herzegovina helped the metal industry to evolve. Despite this, due to limited infrastructure and unfavorable geographical position,[191] Bosnia and Herzegovina failed to exploit the full economic growth potential prior to 1990. What arrived after the introduction of political pluralism and liberalization of economy left the economy in a transitional chaos, which was just a prelude to the war and complete standstill. Much of the economy was

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[191] Bosnia and Herzegovina was the only republic in the former Yugoslavia which shares no border with a foreign country.

completely destroyed in the 1992-1995 period. In addition, the challenge of post-war privatization and shift to capitalist neoliberal economy was painful. The GDP of the post-war period was far below the 1990 level. Black and grey markets made it impossible to provide credible results. In a complete post-war chaos, the efforts of the international community to assist in this aspect of state-building referred primarily to the institutional framework which had to be established. As a result, the Central Bank of Bosnia and Herzegovina was established in late 1997, thereby pegging the new currency to German Mark in order to avoid any potential political disagreements around monetary policy. When a country decides to peg its currency to another one, it refrains from monetary policy, but, as this was/is the case, provides for a stable inflation rate. The privatization run parallel and encountered a number of difficult challenges. The complex framework of inter-organizational relationships between international and local donors, contractors was a red type very difficult to overcome. There was a genuine lack of coordination and understanding. (Martin, 2004) Firstly, the international actors lacked knowledge and experience of a particular Yugoslav socialist framework of enterprises, which differentiated it significantly from other socialist states. On the other hand, the absence of knowledge-sharing made it difficult for old communist practitioners to adjust the economy to the new order. The privatization was a mass process, based on voucher privatization. All citizens were given vouchers with a possibility either to invest them in a company that is to be privatized and the sent to stock exchange or to put them in private funds, which would strategically invest them on their behalf. The respective law on privatization was imposed by the High Representative in 1998 ordering privatization of state-owned capital.

Large and strategic enterprises underwent daunting privatization processes due to a lack of strategic ownership. The results of this process were rather devastating for the Bosnian-Herzegovinian economy. First of all, there was a lack of state-level coordination. In the territory of the Federation of Bosnia and Herzegovina, the privatization emerged on the entity and cantonal level whereas the Republic of Srpska carried out this process centrally. For instance, according to the staff unions of RS, 67 % of the 716 privatized companies doesn't work.[192] The situation in the Federation of Bosnia and Herzegovina is not much different. Bosnian-Herzegovinian media cover even today on daily basis cases of privatization where terms of the agreement were not respected by the investor. As a result, they call bankruptcy leaving armies of workers on the streets. In the perception of ordinary people, this is the main

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[192] VELIKO ISTRAŽIVANJE: 10 najvećih privatizacijskih pljački u Bosni i Hercegovini: http://zurnal.ba/novost/17036/veliko-istrazivanje-10-najvecih-privatizacijskih-pljacki-u-bosni-i-hercegovini-

cause of waves of so called *jugonostalgija,* remembering times of industrialization and safe and stable economic development under Tito's rule. Typical examples of misuse of privatization include investors buying companies for purposes other than those of their scope of work. They buy them since they enable lucrative properties and spaces. Upon expiration of the time provided in respective contracts, they change the purpose of the business of such companies resulting in workers been released and left unemployed. Prior to every elections, politicians give promises of revisions of privatizations but these do not hold the water in practice. Additional cause of economic pain caused to the country is lack of competitiveness. Comparing subsidy levels to the EU, it is almost impossible to compete economically in a free market. Bosnia and Herzegovina, therefore, faces a multifold challenge of European integration, which particularly appears difficult in a country that had been torn up by a war and the industry of which was at standstill. As for the purposes of state-building, we will now have a closer look at two crucial state-building institutions, one of which was of Dayton origin and the other being to a great extent imposed by an exogenous factor.

Central Bank of Bosnia and Herzegovina[193]

It was a daunting task to reinstate order to monetary policy of a post-war country. The fluctuation of different currencies during the war,[194] including those of Serbia, Croatia and the war-time Republic of Bosnia and Herzegovina as well as the Republic of Srpska, created a chaos which prevented any development. It is for this reason that the International Community knew that if they wanted to pave the way for future development of the country, they had to provide a stable currency. The lines of the DPA Constitution reflect once again the imposing

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[193] Initially foreseen in DPA, under Annex 4 (Constitution), Article VII, which reads as follows:
There shall be a Central Bank of Bosnia and Herzegovina, which shall be the sole authority for issuing currency and for monetary policy throughout Bosnia and Herzegovina.
"1. The Central Bank's responsibilities will be determined by the Parliamentary Assembly. For the first six years after the entry into force of this Constitution, however, it may not extend credit by creating money, operating in this respect as a currency board; thereafter, the Parliamentary Assembly may give it that authority.
2. The first Governing Board of the Central Bank shall consist of a Governor appointed by the International Monetary Fund, after consultation with the Presidency, and three members appointed by the Presidency, two from the Federation (one Bosniak, one Croat, who shall share one vote) and one from the Republika Srpska, all of whom shall serve a six-year term. The Governor, who shall not be a citizen of Bosnia and Herzegovina or any neighboring state, may cast tie-breaking votes on the Governing Board.
3. Thereafter, the Governing Board of the Central Bank of Bosnia and Herzegovina shall consist of five persons appointed by the Presidency for a term of six years. The Board shall appoint, from among its members, a Governor for a term of six years."
[194] Novac u ratnoj Bosni i Hercegovini: http://www.radiosarajevo.ba/novost/72668/Novac-u-ratnoj-Bosni-i-Hercegovini

and ethnically prevailing character of this aspect of state-building. Knowing that path dependencies may hinder monetary policy and jeopardize future development, the International Community introduced the so called currency board. The logic behind is simply to peg the respective currency to a stable global currency thereby making it fully dependent on that currency. Taking into account the supremacy of the German Mark, it is this value new Bosnian Convertible Mark (BAM) was pegged to. The respective Law on Central Bank was passed in the Bosnian-Herzegovinian Parliament on 20 June 1997[195] and the Central Bank became fully operational in August 1997. The first governor was Peter Nicholl, a New Zealander economist appointed by the International Monetary Fund (IMF). Upon his departure and following subsequent amendments to the Law on Central Bank, Kemal Kozarić, a local finance expert, took over duties of the Governor effective 1 January 2005.

At present, the main goal and task of the institution is to ensure the monetary stability by issuing BAM at the rate 1KM: 0.51129.[196] Otherwise, the goals and task of the Central Bank do not differ from other central banks and include the mechanism control of the implementation of monetary policy, support and maintenance of payment and settlement systems, etc. In addition, which is very important for the money supply, the Central Bank has been coordinating Bosnian-Herzegovinian entity banking agencies, which license and supervise work of commercial banks. Regarding commercial banks which flourished following the introduction of the Central Bank system, Austrian banks had an absolute lead. (Magel, 2005)

Weak and limited role of a central bank, as well as a lack of domestic capital, led to soaring interest rates at which local population and entrepreneurs could take loans. Whereas this trend and, in general, *Drang nach Osten*, resulted in Austrian banks gaining significant profits at the beginning of their campaign, the latest crisis almost caused bankruptcy. However, all in all, Austrian expansion to the east and, in particular, to Bosnia and Herzegovina, was a profitable adventure.[197] This, rather unfavorable, position made it extremely difficult for local economy to develop as there were no cheap loans.

The most important organ which runs the Central Bank of Bosnia and Herzegovina is the Governing Board comprising at present five persons appointed by the Bosnian-Herzegovinian

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[195] Central Bank of Bosnia and Herzegovina: Regulations: http://www.cbbh.ba/index.php?id=14&lang=en
[196] General Information about the Bank: http://www.cbbh.ba/index.php?id=13&lang=en
[197] Expansion der österreichischen Banken. Umstrittene Osteuropa-Abenteuer:
http://www.nzz.ch/wirtschaft/umstrittene-osteuropa-abenteuer-1.18493937

Presidency for six-year mandates. In accordance with the Law on Central Bank and its subsequent amendments, the Governing Boards establishes monetary policy and defines strategies of the Central Bank. These five members appoint one member to serve as a Governor. Current Governor, who took his duties in August 2015, is Senad Softić. Three further Vice Governors are appointed by the Governor with the approval of the Governing Board. Every Vice Governor is in charge of one sector. Given the fact that the Presidency of Bosnia and Herzegovina is responsible for the appointment of Governing Board members, the political independence of the Central Bank may rightfully be questioned.

The Central Bank is organizationally quite a decentralized institution comprising the Headquarters in Sarajevo, three main units and two branches. Three main units are located in Sarajevo, Banja Luka and Mostar due to their economic significance for all three main ethnic groups, i.e. these towns are economic hubs of significant importance. Other two branch offices are located in Pale (a war-time administrative seat of Republic of Srpska) and Brčko District, which enjoys a high level of independence from both entity and state level institutions.
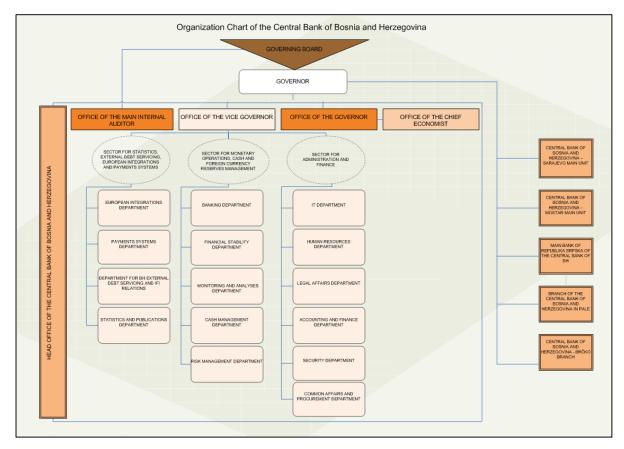
Figure 9. Organizational Chart of the Central Bank of Bosnia and Herzegovina

Source: www.cbbh.ba

With its national currency in force since June 1998, Bosnia and Herzegovina has managed to clear the mess of war and immediate post-war period. However, given the political complexity and currency board regime in place, the country is an example of small open economy with only fiscal macroeconomic policy at its disposal. (Causevic, 2012, p. 2)

The Central Bank of Bosnia and Herzegovina is considered as a competent and widely respected referential institution and its reports are quoted often in the media. In a country politically and economically instable, a stable currency is, as the Serb member of the current Presidency pointed out, what matters the most.[198] Many politicians requested publicly on several occasions a money supply increase. In support of their claims they quote the coverage of the reserves. However, it is widely agreed that current central bank model in place must be kept in order to ensure a desperately needed trust for economic development.

Indirect Taxation Authority of Bosnia and Herzegovina

When asked to put present Bosnian-Herzegovinian statehood on equal footing with a single achievement, Borislav Paravac answered VAT. This is one of the tasks belonging to a great mandate of this Post-Dayton institution and making it the largest at the state level. As a result of the Bosnian-Herzegovinian war and subsequent Arbitrage of Brčko,[199] there were three customs in place, under control of two entities and the District of Brčko. It was one of the major obstacles for any further economic development. The year of 2003 was a groundbreaking one. Under enormous pressure from the most agile High Representative, Paddy Ashdown, the Parliamentary Assembly passes the Law on Indirect Taxation thereby ensuring the establishment of Indirect Taxation Authority.[200]

What preceded the adoption of this law was a respective Commission on Indirect Taxation, founded on the same day like the one on defense. As we saw in the case study on defense, the success of this initiative proved to be fruitful and Paddy Ashdown is the one who can

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[198] Centralna banka BiH i eksperti odbacili ideju o štampanju dvije milijarde KM:
http://www.tv1.ba/vijesti/ekonomija/20573-centralna-banka-bih-i-eksperti-odbacili-ideju-o-stampanju-dvije-milijarde-km.html

[199] Brčko is a city in northern Bosnia and Herzegovina, strategically important for both entities as it connects two parts of Republic of Srpska as well as the Federation of Bosnia and Herzegovina with neighboring Croatia. The final arbitration decision of 5 March 1999 established a new territorial unit, the District of Brčko, comprising former territories of both entities. The District of Brčko has since 2000 been under sovereignty of Bosnia and Herzegovina and forms the third administrative unit in addition to two entities.

[200] Indirect Taxation Authority: http://www.new.uino.gov.ba/en/ABOUT-US

inevitably take credit for the economic integration of the country as it represents "an indispensable component of peace building". (Belloni, 2007, p. 102)

The succeeding year 2004 marked the merge of three customs which resulted in ITA overtaking customs on 1 January 2005. During 2005 a comprehensive registration of VAT subjects was carried out. The preparations for the introduction of the state-level VAT were at its peak and it was introduced effective 1 January 2006. The International Community considered an establishment of single economic space the aim of which was abolishment of grey economy, encouragement of foreign investments and reduction of trade deficit.[201]

The introduction of VAT was one of the most important Post-Dayton events followed by a comprehensive campaign of raising awareness of its importance. Unlike defense, police and other traditional aspects of the statehood, there was very little resistance from ethnic politicians during this campaign. The period from 2000 until the introduction of the VAT on 1 January 2006 is considered as a huge success since the GDP was back to 80 % of the pre-war value, the inflation was under control and the reconstruction programs initiated beforehand and supported by international donors gave their results. For the reason of a comprehensive tax introduction and elimination of the grey economy, as well as due to the new VAT rate being introduced for all, the VAT introduction of 1 January 2006 led to a short-term rise in prices. (Belloni, 2007, p. 100)

The revenues of the state, however, increased significantly and outweighed the cost of substantial inflation (6%) in that year.[202] The negative impact and criticism is directed to the poorer categories, which were not protected by any significant policies. (Belloni, 2007, p. 48)

ITA's mandate is defined in the following set of laws adopted and renewed in due course:[203]

- Law on Indirect Taxation System of Bosnia and Herzegovina
- Law on Indirect Taxation Authority
- Law on Indirect Taxation Procedure
- Law on Forced Collection Procedure
- Law on Customs Policy of Bosnia and Herzegovina

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[201] Indirect Taxation Authority: http://www.uino.gov.ba/h/Porezi/
[202] World Bank. Inflation, consumer prices (annual %):
http://data.worldbank.org/indicator/FP.CPI.TOTL.ZG/countries/BA?display=graph
[203] Indirect Taxation Authority: http://www.new.uino.gov.ba/en/ABOUT-US

- Law on Customs Offences

- Law on Customs Tariff of Bosnia and Herzegovina

- Law on Value Added Tax

- Law on Excise Duties

- Law on Payments on the Single Account and Revenue Allocation

In order to please Serb interests, ITA's headquarters were set in Banja Luka. Though centralized institution in essence which surpasses entity borders, the territorial organization of ITA is much decentralized. Four main centers in Banja Luka, Sarajevo, Mostar and Tuzla control a framework of custom points, passage border crossings, airports, railway border crossings, overseas mail offices and free zones. Thus, the finance sector remains much decentralized. This is best seen when the state is negotiating a new tranche of IMF loan. In such occasions, the presence of entity ministers of finance is crucial since no commitments can be made on behalf of state without prior coordination among entities. Additionally, two other centers were planned to be opened in Doboj and Bugojno but this has so far not yet been implemented. The image below shows the organizational structure which has proved so far efficient in carrying out the mandate of ITA. With a know-how and resources provided by numerous internationally funded projects, the structure in place faces nowadays similar challenges comparable to those in other transitional countries. Among Bosnian-Herzegovinian youth, a job at ITA is a dream due to their lucrative packages as well as career prospects.
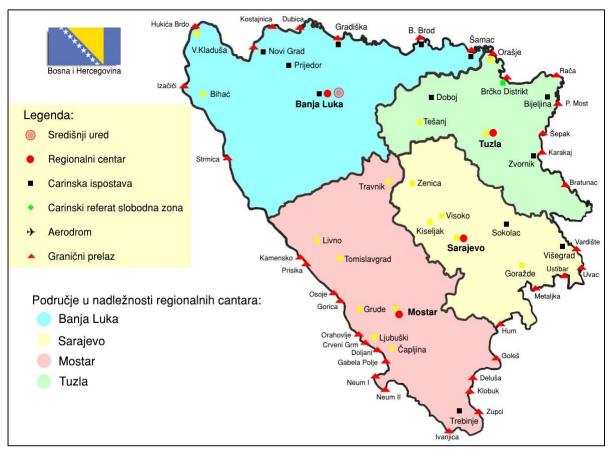
Figure 10. Customs Offices in Bosnia and Herzegovina

Source: www.uino.gov.ba

ITA is run by the Governing Board, which reports to the Council of Ministers of Bosnia and Herzegovina. Out of six members, three of them are members by virtue and are finance ministers of two entities and of the state as a whole. Three other members are financial experts and are appointed by the Council of Ministers, the Government of the Federation of Bosnia and Herzegovina and by the Government of Republic of Srpska, respectively. The Board is presided by the Minister of Finance of Bosnia and Herzegovina, the position currently held by Vjekoslav Bevanda, former President of the Council of Ministers. Although it was envisaged to be a transparent and process in which the members appointed would be technically competent, the affair with former Director of ITA, Kemal Čaušević, displayed significant drawbacks of the appointing process. In practice, ethnic political parties exclusively appoint trusted members and these manipulate the competencies and powers of their office. A number of affairs included ITA top management people. The culmination was the arrest of aforementioned director together with 53 other people, out of whom 30 were ITA

staff.[204] The list of illegal activities for which they were charged included tax evasion, money laundering, corruption and organized crime and abuse of office during import of textile. SIPA, the state-level police agency we presented beforehand, unquestionably provided evidence for serious shortcomings in ITA. One may rightfully ask as to how this could have occurred without knowledge of the Governing Board. It is almost impossible to exclude that members of the Governing Board knew what had been going on in the ITA. Media coverage these days wanted the whole story unveiled, however, none of the politicians was indicted up to present. Therefore, we may conclude that the independence of ITA must be questioned and that it, unlike the Central Bank, is much more prone to corruption and illegal affairs not only due to its mandate but also due to its control mechanism. In accordance with law, the ITA revenues are collected to one single account opened at the Central Bank. ITA is thereby assisted by commercial banks. Once the money is collected, it is allocated from that account to two entities and the District at the ratio determined by the Board and revised on an ongoing basis. For instance, current ratios for amounts collected in the period July-September 2015 (3rd quarter) are allocated as follows: Federation of Bosnia and Herzegovina gets 64.50%, Republic of Srpska 31.95% and Brčko District 3.55%.[205]

Internally, ITA comprises five sectors: Customs, Business Services, IT, Law Enforcement and Tax. It is organized in four departments. ITA enforces legal provisions on VAT tax as well as customs duties, excise duties and road taxes. (Ubiparip, 2011) Despite the aforementioned misgivings, the importance and success of ITA, reflected in constant increase of revenues, is of crucial importance for the future of the country. At times when demographic statistics are frightening, unemployment high and a negative immigration trend present, the budget of the country as well as of the entities is heavily dependent on international loans. It goes without saying that without stable ITA, IMF is highly unlikely to consider Bosnia and Herzegovina as a reliable partner. Otherwise, the finance is a sector with least political confrontations and, despite being only partially integrated, functions well.

Now that we briefly looked at two state-level institutions in charge of monetary and fiscal policy, we will check on how these state-building measures influenced the post-war economy of Bosnia and Herzegovina. It is almost impossible to establish a direct link between ITA and direct economic growth, however, one may plausibly argue that these efforts led to economic

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[204] Operation Pandora: Kemal Čaušević arrested: http://www.akta.ba/en/Vijest/news/operation--pandora--kemal-causevic-arrested/40569
[205] ITA Statistics: http://www.new.uino.gov.ba/en/STATISTICS

stabilization, especially at times preceding financial and economic crisis. The last parameter we want to look at is the debt, which could significantly hamper the country especially if we keep in mind the Maastricht Criteria.

Economic indicators of Bosnia and Herzegovina

With the stabilization of monetary policy, the way for economic development was paved. The table below from the World Bank reveals us a trend of rise of GDP in post-war Bosnia and Herzegovina.
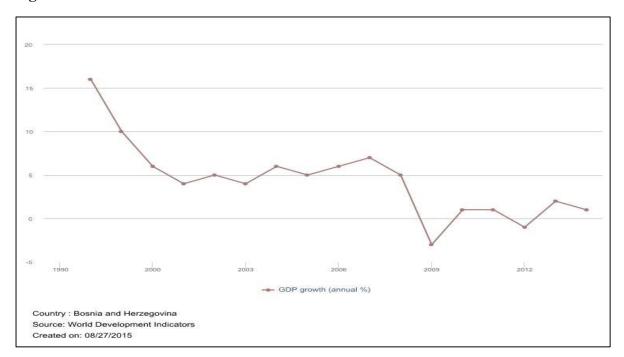
Figure 11. Annual GDP Growth

Source: World Bank: www.worldbank.org/

The immediate post-war reconstruction resulted in soaring GDP which is easy to understand due to the economy left in ruins. The most striking impact on the fall of GDP was of demographic nature. The population fell from 4.37 according to 1991 census to 3.35 million in 1995. From 1995 until 2006, the population was assumed to have risen to some 3.86 million (Čaušević, 2015, pp. 136-137). Out of this one million people missing as a result of war, some 100 000 were victims of war as we quoted previously. The rise of GDP in post-war period is to be merited to the international aid, as well. According to the World Bank, some USD 5.3 billion were invested in reconstruction of educational, healthcare and other infrastructure

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facilities, which, as a result, soared the GDP. It is for this reason that only as of the new millennium Bosnian-Herzegovinian parameters may be looked at for referential purposes, especially in the process of EU Integration.

This significant rise lasted until 2000, when the situation stabilized and a new chapter was open. Significant efforts of the International Community to assist in the state-building resulted in fixation of a solid GDP growth rate between 4 and 7%. As of 2001, the economy of Bosnia and Herzegovina switched from being dependent on foreign aid to greater capacity building in business and industry. Privatization and foreign investment attraction were also an important part of development strategy. Finance sector was strengthened as we presented and a major shift was evident.

The period 2000-2006 is furthermore featured by the growth of service industries, inter alia, trade, transport and communications, tourism and finance mediation. (Čaušević, 2015, p. 138)

This is also the period when salaries in public sector rose, which resulted in decreasing comparative output of private over public sector. The revival of manufacturing and mining sector was also significant though inferior to the pre-war period. With the passing of respective laws on foreign investments, the economy started to flourish. The political situation was more stable than that of today for the reasons of the International Community having a more pro-active role. Up until 2009, Bosnian-Herzegovinian GDP was constantly on rise. Despite this, country's trade deficit as well as other disturbance creating budget deficit make Bosnia and Herzegovina still dependent on IMF stand-by arrangements.[206]

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[206] A stand-by arrangement is a mechanism approved by the Executive Board of IMF to countries facing disturbances in the balance of payments. In return, IMF requests countries to undertake obligatory reforms so that the loan can be paid back. The money is paid in tranches which are also called phases, each of which is repaid in eight equal quarterly installments. Before a trance is approved, IMF assesses countries' reforms and decides on the tranche release. This leads to many unpopular laws being adopted causing civil disorder worldwide. In an attempt to repay the loan, a country undertakes painful cuts and downsizing which primarily affects population dependent on public spending.

Table 4. Stand-by Arrangements with the IMF

Arrangement	Date of Arrangement	Expiration Date	Amount Approved	Amount Drawn	Amount Repaid	Amount Outstanding
I Stand-By Arrangement 1998-01	May 29, 1998	May 29, 2001	94.420.000	94.420.000	94.420.000	0
II Stand-By Arrangement 2002-04	August 2, 2002	February 29, 2004	67.600.000	67.600.000	67.600.000	0
III Stand-By Arrangement 2009-12*	July 8, 2009	July 7, 2012	1.014.600.000	338.200.000	333.972.500	4.227.500
IV Stand-By Arrangement 2012-14**	September 26, 2012	June 30, 2015	558.030.000	422.750.000	0	422.750.000
		Total:	1.734.650.000	922.970.000	495.992.500	426.977.500

Source: IMF: https://www.imf.org/external/country/BIH/

In its projections for the future, IMF foresees an increase in loans which implies that Bosnian-Herzegovinian balance of payments is unlikely to recover due to rather uncertain economic future. The Global Financial Crisis of 2008 and subsequent recession also impacted severely Bosnia and Herzegovina. The recession of 2009 and a steep decrease in public demand led to interchangeability of poor GDP growth or a new recession (2012). This period also coincides with a new wave of political instability. Separatist Serb aspirations which grew after 2006 contribute to a grim picture of Bosnia and Herzegovina which discourages local and foreign investors. The legislative period 2006-2010 is considered as lost by the International Community. The Council of Ministers performed poorly due to political confrontations between Croats and Bosniaks in the Federation. Following the elections of 2014, a new wave of hope seemed to have come. The economy, however, was additionally hit by severe flood of May 2014, which caused an additional burden. This overall stalemate in reforms is also visible from the European Commission Progress Report for 2014: "Overall, despite some slight improvement, the consensus on economic and fiscal policy essentials remained weak and significant efforts are needed to pursue reforms already envisaged"(p. 26). [207]

In accordance with the same report, GDP (PPP) amounted to 29% of EU 28 average in 2013. Despite the country emerging from recession, the economic recovery has been rather very slow and hindered by floods and political instability. The unemployment remains high due to unadjusted laws and very high emigration: "Overall, labour market conditions have remained difficult and structural rigidities continued to hamper job creation, including for youth, calling

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[207] http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-bosnia-and-herzegovina-progress-report_en.pdf

for urgent measures to reduce disincentives to hiring, enhance flexibility of the labour market, and increase participation rates." (p. 27)

There was very little civil activism until February 2014, when a number of serious protests occurred on the streets of towns in the Federation of Bosnia and Herzegovina.[208] With over hundred people wounded and buildings of public institutions demolished, including the main building of the Presidency of Bosnia and Herzegovina, people displayed their frustration with the state in which the country is. With several politicians resigned, no major impact was achieved. An attempt to reunite this civil activism and make it a pan-Bosnian-Herzegovinian movement failed since Serb politicians declared it "an internal affair of the Federation of Bosnia and Herzegovina". With the unemployment over 25 % for the past five years, skilled labor workforce emigrating (especially youth), the only way to secure the finance is from additional loans. According to the same report, the general government debt reached 46% of GDP which still is below the ceiling, however, the growing dependency is a source of worry. Another problem Bosnian-Herzegovinian economy is facing is deflation.[209] Deflation came as a result of high unemployment and decrease in demand. The process of privatization mentioned before is in need of a restart.

Generally speaking, Bosnia and Herzegovina is a perfect example of interdependent relationship between economy and politics. Economic development is not possible if not coinciding with political stability. It is for this reason that we will now, in the last chapter, briefly examine political parties and their politics prior to drawing final conclusions.

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[208] Stotine ozlijeđenih, zapaljene zgrade, izgorio arhiv BiH: http://www.vecernji.hr/svijet/policija-kamenovala-prosvjednike-u-tuzli-919700
[209] Barth: BiH uzlazi u deflaciju, prijeti dodatno pogoršanje stanja: http://www.seebiz.eu/barth-bih-uzlazi-u-deflaciju-prijeti-dodatno-pogorsanje-stanja/ar-98453/

Chapter 5: Policies

Introduction

Despite interventionist role of the International Community in Bosnia and Herzegovina, Bosnian-Herzegovinian legislators confirmed both imposed decisions as well as those they were forced to accept. Prior to drawing our final conclusions and assessing results of our research, we want to take a closer look at political parties which are at the core of the decision-making process in Bosnia and Herzegovina. If someone really wants to understand Bosnia and Herzegovina, the conduct of political parties is what reflects the reality and, in the end, their perception of Bosnian-Herzegovinian state. Before we go on with analysis of selected political parties, we need to describe some general characteristics of Bosnian-Herzegovinian political scene.

The primary line of division among political parties is of ethnic origin. More important than any other identity is the ethnic one, which prevents any form of civic development. Politicians *a priori* first identify with their ethnic groups and then later on enable a polarization with the competing party. However, this party must belong to the same ethnic group for this polarization to take place. These are the three opposing ethnic positions we presented in the war chapter as well as through the case studies thereby depicting characteristics of each logic behind every path dependency.

Secondly, the decision making process is too cumbersome and complex for a modern state to function. In absence of a possibility for a political party to continue to govern at the state level due to parity and rotation, no continuity in politics can be secured. The state level has no Prime Minister in a sense of modern democracy who would be able to present a long-term program and ask voters for reelection in case of successful tenure. Therefore, the government at the state level is not formed on a majority principle but composed. While composing it, one must not only take into account who won under each ethnic group but also keep in mind the so called entity voting. In order to secure a majority of 22/42 members of the parliament, two out of three members of the Presidency have to support a cabinet and at least one third of members coming from each entity must be a part of this majority. At present, following the elections of 2014, there is an asymmetry among Serbs on the entity and state level. The President comes from one bloc and the Serb member of Presidency from another. This resulted in a formation of the Council of Ministers without the members of the political parties which are in power

on the entity level. This form of cohabitation would be normal had Bosnia and Herzegovina not had a number of other political instabilities. Namely, in such a position providing for an asymmetry within one ethnic group at the entity and state level, a compromise is hard to be found on issues relating primarily to the powers of entities. The political force in power on the entity level blames those at the state levels for succumbing to Bosniak interests of centralization galvanizing another wave of nationalism and populism.[210] This example only demonstrates how complex it is to compose a stable majority at the state level comprising at the same time authentic ethnic representatives from all three ethnic groups.

Two opposing ethnic concept, Bosniak and Serb, differently relate to the statehood of Bosnia and Herzegovina. Whereas Bosniaks prefer to find roots of Bosnian-Herzegovinian statehood in the Medieval Kingdom of Bosnia, Serbs see Bosnia and Herzegovina existing since the Dayton Agreement. (Nešković, 2013) It is right to claim, however, that modern statehood stems from 19th century. In the case of Balkans this was a time of national awakening. The Serbian Revolution comprising two Uprisings of 1804 and 1815 resulted in a greater autonomy which culminated in 1878, when Serbia gained international recognition at Berlin Congress. In Croatia, there was the Illyrian Movement,[211] leading attempts of national liberation. Whereas the period of Ottoman rule was devastating for Serbs in many respects, it inevitably enlarged Serb ethnic borders by settling Serbs throughout the empire. Bosnia and Herzegovina is the territory which, by all means, represents a melting pot. At this time, no national identity could have prevailed in Bosnia and Herzegovina since religion played a determining role. The 19th century is definitely a period when Orthodox population, which was in majority in Bosnia and Herzegovina, starts to identify with the emerging Serbian state. Serbian Church plays an important role in this process since churches in the Orthodox world are nationally organized and lack strong universal leader. Bosnian Muslims, on the other hand, start to distance themselves from Ottomans in many respects. Husein Captain Gradaščević (a.k.a. *Zmaj od Bosne*, Bosnian Dragon) led the uprising against agrarian reforms of Turkish sultan. Despite being defeated in 1832, Bosniaks nowadays consider him as the father of the nation. Whereas Berlin Congress brings Serbian and Montenegrin independence, Bosnia just changes its ruler. Austria-Hungary, which receives the right to occupy Bosnia, will rule the territory all the way until the First Yugoslavia. This is the time when Serb nationalism

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[210] Dodik ponovo optužio SDS za izdaju (Blic): http://www.blic.rs/Vesti/Republika-Srpska/560142/Dodik-ponovo-optuzio-SDS-za-izdaju
[211] The Illyrian Movement was an attempt of leading Croatian intellectuals to unite all South Slavs in their fight for national liberation.

flourishes in Bosnia. Its culmination comes with the foundation of Young Bosnia (*Mlada Bosna*), a nationalist Serb movement the main objective of which was joining the interdependent Kingdom of Serbia. A member of Young Bosnia, Gavrilo Princip, kills Archduke Franz Ferdinand of Austria on 28 June 1918.[212] A parallel can be drawn between different perception of his role in Bosnian-Herzegovinian history and present-day ethnic division in the country.[213] Serbs glorify him and take pride in his legacy. The communist regime of Tito also did the same. There is a twofold reason why this is the case. Firstly, it was an attempt to free from an occupation. It fits perfectly in the communist ideology of national, South Slavic liberation after centuries in chains. For present day Serbs in Bosnia and Herzegovina, it represents an attempt to unite with Serbia and a strong counterargument against Bosnian-Herzegovinian statehood. Bosniaks see him today as a terrorist. The main reason for that is the Serbian nationalism, which was a driving fuel of Young Bosnia. Serb nationalism encompasses Bosnia and Herzegovina as a territory of Greater Serbia. Croats, on the other hand, experienced their internationally recognized statehood only in 1990s. There were opposing views as to whether the Croatian state should remain in AVNOJ, the present-day, borders or should a nationalist ideology of Greater Croatia prevail. During the Second World War, the puppet Independent State of Croatia, which only emerged and existed under the auspices of the Third Reich, also comprised present-day Bosnia and Herzegovina. For the reasons of absence of Bosnian-Herzegovinian state-building in the past, it has been hard to derive its fundaments from history. In the Bosnian-Herzegovinian case, we firstly need to differentiate between those who oppose its statehood and those who don't. Those who favor it and belong to the left wing of mainly Bosniak political corpus seek the identification of Bosnian-Herzegovinian statehood in the legacy of communist Yugoslavia.[214] The establishment of ZAVNOBIH of 25 November 1943 is celebrated as Statehood Day, however, only in the Federation of Bosnia and Herzegovina and primarily among Bosniaks. Serbs predominantly, and Croats in a vast majority, refuse to put on equal footing communist legacy with present-day statehood. The underlining reasons for Serbs refusing to accept the Statehood Day is the general rejection of Bosnian-Herzegovinian statehood. It is also a paradox given the fact that a majority of Tito's partisans were of Serb ethnic origin. As we will later see while analyzing the political parties, the rejection of Bosnia and Herzegovina among Serb

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[212] 28 June is the anniversary of Battle of Kosovo and has a deep historical importance for Serbs.

[213] Gavrilo – terorista ili heroj? (Al Jazeera): http://balkans.aljazeera.net/video/kontekst-gavrilo-terorista-ili-heroj-0

[214] The State Anti-Fascist Council of Bosnia and Herzegovina (*Zemaljsko antifašističko vijeće narodnog oslobođenja Bosne i Hercegovine*, ZAVNOBIH) was the highest communist organ of fight against occupation during the Second World War.

political elites is derived from 1990s. An agile, aggressive and nationalist policies fiercely opposed any association with Bosnia and Herzegovina. This policy is still present nowadays among Serb political elites. Bosnia and Herzegovina is therefore a country where political polarization only emerges upon the ethnic separation has taken place. To come back to Nešković's point, there is no civic Bosnia and Herzegovina. The question he asked: "What did first take place, nation-building or state-building?" Well, the problem was/is that Serbs already identified them with Serbian state, took over Serbian identity and refuse any association with a state not comprising their mother state of Serbia. Croatia, despite not been internationally independent alone all the way until 1990s, plays a very significant role in the state-building of the First and Second Yugoslavia. This is the reason why Bosnian Croats feel themselves much more attached to Croatia, the citizenship of which was given to them in 1990s under *ius sanguinis* principle. The diagnosis would inevitably lead us to a conclusion that Bosnia and Herzegovina is, therefore, a multiethnic state. And this would not be a problem hadn't two of its three main ethnic groups have their respective mother countries. For the lack of common identity denominator regarding the nation, the state is in a constant political stalemate. Why did we present these ethnic positions? Because they represent a prelude to the explanation of political parties which follow. Several common conclusions can be drawn to help us understand political conduct of each ethnic group. Bosniaks are the only ethnic group which unquestionably identifies with the Bosnian-Herzegovinian state. Bosnian-Herzegovinian identity is at the same time their national identity, which they aim to canonize as civic identity. According to their understanding, Bosnia and Herzegovina is a multi-ethnic state comprising three ethnic groups, all of which belong to different religions. However, Bosnian-Herzegovinian identity is superior to the ethic one and Bosnian Serbs and Croats are primarily Bosnians for them. Within their ethnic corpus, a political polarization has taken place thereby producing major political parties of the conservative and left spectrum. The strongest conservative Party of Democratic Action is a political party with strong influence of political Islam. It keeps ties with AKP of Erdoğan in Turkey and the religious factor plays a very important role among their voters. They emphasize the Bosniak identity as a part of the Bosnian-Herzegovinian state. This political party is completely mono-ethnic and Bosniak and Islamic identity are superior over the civic concept. Unlike the SDA, the Social Democratic Party attempts to identify with the civic Bosnian-Herzegovinian identity and is multiethnic to some extent. What it fails, together with other left-wing parties in the part of the Federation of Bosnia and Herzegovina with Bosniak majority, is to appeals to voters living in the areas mostly populated with Serbs and Croats. They gain votes primarily in the cities with

overwhelmingly Bosniak majority. This proves that it is a priori Bosniak ethnic group that can be seen as the guardian of Bosnian-Herzegovinian statehood.

Serb political parties are primarily skeptical *vis-á-vis* Bosnian-Herzegovinian statehood. The political mainstream of the Serb political corpus is primarily to be identified with the nationalist politics of the Serb Democratic Party. All other political parties gaining votes among Serbs derive their political ideologies in conformity with the SDS political program. Dayton has made it milder incorporating Republic of Srpska into Bosnian-Herzegovinian political structures, however, the level of acceptance of Bosnian-Herzegovinian state remains very low. The political polarization among Serbs is given, remains however overshadowed by nationalist politics and the status question within the union with other two peoples. Serbs primarily see Republic of Srpska as their frame, they even perceive it as a state, and refuse to the highest extent possible to associate themselves with Bosnia and Herzegovina. Serb nationalism, which is still present in daily politics, is to be differentiated between those who at the beginning of the war wanted to save Yugoslavia and those who were protagonists of Greater Serbia, a nationalist 19th century project which was defeated in the 1990s. Due to, even for them, imposed Dayton solution, they participate in state-level politics but openly call for Bosnian-Herzegovinian dissolution and their independence.[215]

Croat politicians from Croatian Democratic Union (HDZ), which is a branch unit of its mother party in Croatia, organized Croat political corpus under auspices of Croatian National Council. For the reasons of the outcome of Washington Agreement, Croats do not have their own entity and are ethnically outnumbered by Bosniaks. Despite voicing their requests on numerous occasions, it is still not clear what Croat national position is, i.e. if they seek their entity again or they want to further centralize the state with some additional rights they would obtain through this centralization.

In order to explain politics and ideologies at loggerheads in Bosnia and Herzegovina, the following five political parties from three ethnic groups will briefly be presented so that one gets an overview of why the country has been facing hindrance on its EU path: SDA (Bosniak, center-right party), SDP (allegedly Social Democrat, allegedly multiethnic but primarily Bosniak party), SDS (Serb, center-right party), SNSD (Serb, allegedly Social Democratic, actually center-right) and HDZ (Croat, center-right party). Primarily we will focus to their

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[215] President of Republic of Srpska, Milorad Dodik, is the main opponent of the Bosnian-Herzegovinian statehood challenging almost on a daily basis the International Community to allow Republic of Srpska to secede.

importance and role they play in the decision making process as well as their ideological background. When the EU officials say that Bosnian-Herzegovinian politicians must agree among themselves, they forget to dig deeper into their divisions, which at times seem inconceivable. In order to Europeanize Bosnia and Herzegovina, its political parties must be Europeanized. This brief overview will show how far these political parties still are from Europe and why the perspective looks so grim for the future.

Party of Democratic Action (SDA)

Alija Izetbegović was an unquestioned leader of Bosnian Muslims, the people which, as of 1993, are referred to as Bosniaks. For his pan-Islamist Islamic Declaration, he was sentenced to 13 years in prison in 1983. Regarding his political view, two eras must be differentiated, that prior to and after the war. Before the war, his views were much more radical, exclusively pan-Islamist and there was no conformity between Islam on one and socialism and democracy on the other side.[216] During and after the war, thanks to a significant understanding and support of the International Community and the Islamic world, Izetbegović profiled himself as the Bosnian-Herzegovinian leader, as someone who fights a justified, defensive war. His rhetoric changed over the time and he started profiling himself as a leader of all three ethnic groups. In practice, he failed to impose his authority over other two ethnic groups. It is thanks to him and his political party that the Islamic Community of Bosnia and Herzegovina paved its way to the political mainstream. At present, this party is led by his son, Bakir Izetbegović, who made no major shifts toward denationalizing and freeing from radical influences SDA. A close ally of Erdoğan, Bakir Izetbegović greets public with religious greetings, attempts to canonize Islamic values in the society and does not even attempt to look for political support in other two ethnic groups. SDA is the strongest Bosniak political party winning the elections of 2014 by a landslide against other political parties in the Bosniak political corps. For the sake of comparison, SDA gained 10 seats in the state parliament, the Bosniak member of the Presidency (Central Electoral Commission). In the coalition formation thereafter they occupy the posts of the Prime Minister of Federation of Bosnia and Herzegovina, the post which always belongs to a Bosniak and the post of Chairman of the Council of Ministers of Bosnia and Herzegovina, a state-level government which is subject to ethnic rotation and belongs to

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[216] Two quotes from the Islamic Declaration: "The Islamic order can be realized only in the nations in which Muslims represent the majority of the population. Without this social premise, the Islamic order fall to be mere power (for the lack of the second element, the Islamic society) and can revert to tyranny (…) There's no peace or coexistence between the Islamic faith and non-Islamic social and political institutions."

Bosniaks in this legislative period. Despite being a parliamentary force in Republic of Srpska, SDA is in opposition there given fragile relationship with the President of Republic of Srpska, the political party of whom forms the majority at the entity level.

Overall, SDA, despite its aspirations to join the EPP, can be perceived as ethnocentrist political party with strong Pan-Islamist ideological roots. The party has not undergone a reform which would Europeanize its program and bring its values in conformity with the EPP.

Social Democratic Party (SDP)

SDP emerged directly as a successor of the Alliance of Communists of Bosnia and Herzegovina. It is probably the only political party which can claim to be multinational to some extent. The ideas of social democracy in Bosnia and Herzegovina date back to the times of Austro-Hungarian occupation in 19th century (Anđelić, 2009). It is with the first industrialization and the emergence of working class that socialist ideas came to Bosnia and Herzegovina. With the triumph of Tito, the socialism was the ruling ideology. During these times, the industrialization was at its peak. Symmetrically, the emergence of the working class, syndicates and respective political organs followed. Present day SDP takes pride in its communist origins for several reasons. Firstly, it is the only political party in Bosnia and Herzegovina which is emphasizing ethnic and religious pluralism. Its lists of candidates contain the most diverse ethnic structure. However, one must note the following: they fail to secure any major support other than in areas with Bosniak majority. In support of this statement goes the fact that they fail to play any major role in Republic of Srpska or in cantons of the Federation of Bosnia and Herzegovina with Croat majority. This is again a proof of ethnic division and supremacy over civic principle. The idea of a multiethnic political party representing all peoples, which appears to be noble in its essence, simply cannot appeal Serbs and Croats. And what is more, this is in a more radical sense a direct rejection of the state they live in as political parties with headquarters in Sarajevo fail to win Serb and Croat votes in areas other than those with Bosniak ethnic majority. Regarding the national question, SDP is a pro Bosnian-Herzegovinian political party. Within the Bosniak political corpus they distance themselves from SDA taking pride in their multiethnic political elite. At the state level they oppose Serb and Croat parties which seek more autonomy and fight centralization.

Following the last elections of 2014, SDP had to acknowledge a total defeat (Central Electoral Commission). Its former President and Minister Zlatko Lagumdžija did not even make it into

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the Parliament. Most of the votes of the left went to the newly founded Democratic Front of former SDP Croat member of the Bosnian-Herzegovinian Presidency, Željko Komšić. Despite suffering a significant defeat, SDP has played an important role in Post-War Bosnian-Herzegovinian politics. Unfortunately, as discussed above, the failure of its civic values is a strong argument against Bosnian-Herzegovinian statehood, i.e. the willingness to accept common values which would override ethnic identities. The reason for that from Serb and Croat angle is the fact that the program of SDP is primarily in line with Bosniak national interests in Bosnia and Herzegovina.

Serb Democratic Party (SDS)

Following the foundation of the Serb Democratic Party in Croatia, the respective branch of the same party was formed in Bosnia and Herzegovina in 1990. The first leader of the party was Radovan Karadžić, a former President of Republic of Srpska, who is one of the three remaining individuals facing trial before ICTY for alleged war crimes and genocide. SDS was the main Serb political force. In the first free elections of Bosnia and Herzegovina, three ethnic parties outdid the competition and shaped pretty much for the future. Whereas SDS was primarily seen as nationalist, ethnocentrist and radical, present day program identifies the party with conservative and EPP values positioning thereby the party into family of people's parties. [217] Unlike HDZ in Croatia under Ivo Sanader which underwent the so called detuđmanization, the three ethnic parties in Bosnia and Herzegovina never went through a similar transformation. All three parties are mono-ethnic and practice civic politics only in areas where they enjoy ethnic supremacy. The first programs of Serb Democratic Parties in Croatia and Bosnia and Herzegovina saw the safeguarding of Yugoslavia as their main goal. As it became obvious that Yugoslavia will cease to exist, SDS focused primarily on the wellbeing of Republic of Srpska. This has not changed until present and is unlike to change. Another important factor in the politics of SDS is of religious nature. Serb Orthodox Church gained a lot of influence during the war and SDS, as well as HDZ and SDA on other sides, reestablished the order thereby rejecting former secular principles. For instance, the Day of Republic of Srpska is 9 January, which is also its religious holiday, celebrating Saint Stephen's Day. Almost all Serb municipalities and towns have a patron saint, who is cherished in line

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[217] SDS Program: http://www.sdsrs.com/dokumenti/Program_SDS.pdf

with the tradition of Serb Orthodox Church. Names of the streets, hospitals and other public institutions have also been named after individuals from the Serb Orthodox Church.

Serb Democratic Party, following the elections of 2014, is in power at the state-level, whereas SNSD remained in power in the Republic of Srpska, causing a Serb cohabitation between entity and state levels. SDS has a long-term aspiration to become a full member of EPP like HDZ and SDA. Irrespective of the level of Europeanization the party achieves, it will remain the strongest, conservative right-wing party among Serbs. The coordination and cooperation among right-wing parties is insufficient. The relationship between party leaders of different ethnic groups depends pretty much on the personal relationship than on ideological preferences. SDS in this respect is not different from other main parties, in all of which the ethnic identity enjoys full superiority against any ideology.

Alliance of Independent Social Democrats (SNSD)

The first appearance of SNSD on the political scene occurred in 1998, when the present President of Republic of Srpska managed to form a parliamentarian majority with only two deputies in the Parliament of 83. He was perceived as an alternative to nationalist SDS and the US-led International Community wanted to encourage him by all means. Along with the SDP in the Federation, SNSD was seen as a strong opposition to the nationalist right-wing parties, as a force which would bring the country out of the deadlock. What the International Community failed to realize back then is that all parties in Bosnia and Herzegovina are primarily ethnic, it was obvious that no compromise may be reached over the most important state-building processes we discussed in the case studies.

SNSD has been the strongest Serb political party since 2006. It is a party of left political orientation, which used to be a member of the Socialist International before it was expelled after intervention of SDP. However, after a closer look at their politics, one may not differentiate it today from SDS. Firstly, its President has established a very close relationship with the Serb Orthodox Church thereby funding the construction of new monasteries and churches. Prior to the elections of 2014, he managed to secure the support of the Serb Patriarch.[218] This infuriated opposition, mainly SDS, which used to play on religious element

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[218]Partijarh Irinej poželeo da Milorad Dodik i dalje vodi Republiku Srpsku (Telegraf): http://www.telegraf.rs/vesti/1260970-patrijarh-irinej-pozeleo-da-predsednik-milorad-dodik-i-dalje-vodi-republiku-srpsku

beforehand. Even though there are differences in Europe among socialists regarding the religion, it is hard to imagine that social democracy goes together with religious communities in the election campaign. Milorad Dodik threatens constantly with referendum on independence of Republic of Srpska, which is the main cause of international community's concerns. He openly disregards Bosnia and Herzegovina and heavily criticizes the involvement of international factor in internal politics. This has led to a targeted isolation of himself by the West. In Bosnia and Herzegovina, he has developed a solid relationship with the main Croat political party, HDZ, and openly called for the reestablishment of the Croat entity in Bosnia and Herzegovina, which resulted in a wave of approval among Bosnian-Herzegovinian Croats. Despite the dubious social democracy he preaches, Milorad Dodik and his SNSD have enabled a healthy political polarization, yet only among Serbs. A chance socialist parties in Serb and Bosniak ethnic groups had to integrate more deeply in the European politics has until now not been used, primarily due to insurmountable inner ethnic divisions.

Croat Democratic Union (HDZ)

HDZ Bosnia and Herzegovina is a branch party of the original HDZ in Croatia. The founders of this party are also the founding fathers of the Croat entity which ceased to exist in the aftermath of Washington Agreement. For the secessionist politics and actions taken by the HDZ leader Ante Jelavić to reestablish the Croat entity, High Representative Wolfgang Petritsch dismissed him in 2001. 13 years upon his ban from office, another Austrian HR, Valentin Inzko, suspended this decision. At that time, there was an alternative in Croat ethnic group in the name of Krešimir Zubak, a former HDZ politician who founded NHI, the New Croatian Initiative. Together with SNSD and SDP, NHI was seen as a strong alternative to the nationalist ethnic trio HDZ-SDA-SDS.

Dragan Čović, current President of HDZ and Croat member of the Bosnian-Herzegovinian Presidency, was also dismissed by HR Paddy Ashdown in 2005. The legislative periods 2006-2014 proved to be particularly unstable. The elected Croat member of the Presidency, Željko Komšić from SDP was elected primarily by Bosniak votes receiving low or no support at all in the municipalities with Croat majority either in Herzegovina or in the middle Bosnia. This caused for a political frustration among Croats, especially given the fact that Komšić used populist methods like his war legacy in the ABiH. This resulted in Croats voicing their

requests for the third entity, an option neither acceptable for Bosniaks nor for the International Community. HDZ preaches the solution of Croat question in the course of next constitutional reform. As for the present situation, no solution is likely to be agreed upon.

Following the elections of 2014, HDZ won the election among Croats by a landslide. No majority can be formed without HDZ either on cantonal, entity or the state level as they control a vast majority of Croat seats. Like it mother party in Croatia, HDZ of Bosnia and Herzegovina has aspirations to become a full member of EPP. HDZ managed to profile itself as the only political party reflecting Croat national interest by gaining a plebiscitary support during the last elections. As a result, no political polarization within the Croat ethnic corpus has taken place. There is no constructive opposition in the absence of this competition. HDZ has not yet clearly voiced its requests in the case of another constitutional reform. Their interest varies between stronger centralization with additional rights for Croats (Bosniak position) or decentralization of the country and reestablishment of the third entity, the position which has been welcomed by SNSD of Milorad Dodik. Under present circumstances, it is highly unlikely that any other party among Croats will manage to jeopardize the supremacy of HDZ in the cantons with Croat majority and at the entity and state level.

Present Political Stalemate: Path Dependencies in Practice

Taking into account rotation and ethnic parity, the results below will demonstrate how difficult it is to compose parliamentarian majority at the state level.
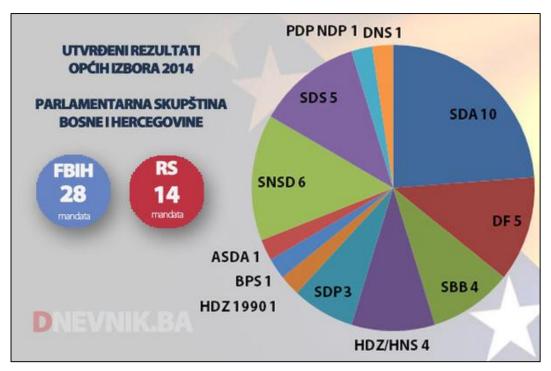
Figure 12. Parliamentary Elections in Bosnia and Herzegovina, 2014

Source: www.dnevnik.ba

The current state majority at the state level comprises five political parties, two Bosniak, two Serb and one Croat. The main reason for excluding SNSD from the political calculations is that their candidate lost elections for the State Presidency to the joint candidate of Alliance for Changes (SDS, PDP, and NDP) and the President of Party of Democratic Progress (PDP), Mladen Ivanić. This resulted in two political blocks among Serbs, one on the entity and the other on the state level. Through the total defeat of SDP, DF overtook the left political spectrum in the areas with Bosniak majority. Due to a lack of political understanding between SDA and DF, the new crisis emerged resulting in a need of reshuffle. SDA, the strongest party in the Parliament, has gone through internal crisis for the reason of Bakir Izetbegović, the son of the founder of the party, installing his people to the key position in pursuit of the congress of May 2015. Allegedly, he does not control 4 out of 10 members of the State Parliament. Therefore, the fragmentation in Bosnian-Herzegovinian politics is multifold. First, it is ethnic

with three concepts diametrically opposite to each other. Secondly, Serb and Croat political elites are also further divided on ideological basis. This would be welcomed under normal democratic circumstances but not under such complex prerequisites of decision making.

Now, the logical question needs to be asked, namely, as to whether or not the state-building under present divisions and under present path dependencies can be pursued at all. As we mentioned in the beginning, all talks about constitutional reforms were enforced from outside and never have political ethnic elites come together on their own initiative. Under such circumstances, what kind of political system suits Bosnia and Herzegovina the most? Whereas Serbs presently preach the initial Dayton,[219] Bosniaks fiercely oppose it and wish to pursue on further centralization and state-strengthening. As this research has proved, domestic political elites are simply incapable of galvanizing a comprehensive process which would result in new constitutional amendments making the country more efficient. In order to encourage inter-ethnic cooperation among political parties, the process of political transformation and Europeanization must first take place at the ethnic level. The state-building wave which has been imposed, dictated or encouraged by the International Community encompasses heavily ethnic character, therefore, those ethnic political elites must be Europeanized and ready for the inner integration. What does this mean in practice? In simple English, Bosnia and Herzegovina must remain a decentralized state, with strong entities and clear distribution of power. Which form exactly should it correspond to is still early to say, however, ethnic political elites must remain in power at the institutional level so that their primary interests have been served. And those primary interest include representation of Serbs, Croats and Bosniaks in an institutional framework which discourages any form of outvoting. So, Bosnia and Herzegovina can only then become a civic nation once its ethnic groups have become civic. This is a paradoxical conclusion, however, the theoretical difference between civic and ethnic cannot be applied to the Bosnian-Herzegovinian example. In a country with a nation without inner consensus, it is up to political elites to build a consensus, a basic common denominator, which would enable the country to function properly. The International Community will sooner or later acknowledge the supremacy of ethnic principle, its institutionalization but also its co-existence with the fictive nation of Bosnia and Herzegovina, which is a result of its politics. And the success of this sui generis project can be significantly sped up by the European Integration for the simple reason of demise of nationalisms, which

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[219] See Interview with Borislav Paravac. In addition, the rhetoric of Milorad Dodik is articulating the need to come back to the initial Dayton.

would become more obsolete. For that, probably more than any other country with European aspiration is Bosnia and Herzegovina in need of an EU membership.

Chapter 6: Evaluation of Results and Conclusion

Summary of Research Hypotheses Confirmation

At the end of our research, we will reflect once again on our research hypotheses and offer a brief summary of the outcome of the testing of their validity.

1) Bosnian-Herzegovinian statehood can be characterized as imposed since not only the Dayton Constitution, but also subsequent state-building reforms were initiated and, to a great extent, imposed by exogenous actors.

Our case studies demonstrated that all state-building reforms worth mentioning were encouraged from or imposed by the High Representative. Numerous attempts from the United States and the European Union always aimed at providing for legal solutions which would be accepted by all three ethnic groups. The following main institutions emerged as a result of interventionism: State Border Service, Indirect Taxation Authority, Court and Prosecutor's Office of Bosnia and Herzegovina, Armed Forces, Ministry of Defense, etc. It goes without saying that domestic politicians would have never agree on the establishment of these institutions.

2) Bosnian-Herzegovinian political elites are primarily ethnic, without having a common denominator, especially regarding the state-building process. Even the legal solutions introduced following Dayton comprise the strongest possible influence of ethnic supremacy in the form of parity and rotation of all executive posts. This implies that the ethnic principle must be demoted to a lower level, but in a way that each group is institutionally secured.

There is no indication of a civic nation concept looming on the horizon, especially following 2006 and the departure of Paddy Ashdown, who strongly pursued state-building. Even those

state-building components which were introduced through numerous reforms comprise, as we have plausibly demonstrated, the ethnic principle at its core. The ethnic principle must be, therefore, institutionalized if a realistic state-building concept is to be pursued. In plain language, it implies that Bosnia and Herzegovina must seek an institutional arrangement which might represent a grey zone between federalism and confederalism.

3) Several political solutions imposed by the International Community, despite comprising the ethnic principle at its core, proved to be meaningful and resulted in efficient institutional solutions which resolved a number of outstanding issue from the immediate post-war period. (e. g. defense and economic reforms).

Defense reform has been praised as efficient, above all for reducing costs and abolishing circumscriptions. The latter reasons prevented any ethnic tension with new Armed Forces, the modernization of which was accomplished fully in line with NATO standards. Regarding the economy, the introduction of VAT enabled constant inflow into entity budget and neutralized significantly black market, which is usually one of the main challenges of post-conflict societies.

4) Bosnia and Herzegovina is the only European country where political ideological pluralism cannot take place due to the supremacy of the ethnic principle. Therefore, this polarization must first take place at ethnic levels. Thereafter, the composition of these political units may at some stage result in a civic nation, which has not been the case so far. This is needed for the establishment of a classical European party system, which is a pre-condition for modern democracy.

One of the main lessons learned from this doctoral research provides for the necessity of ethnic groups being institutionally first represented at the entity level. The civic Bosnian-Herzegovinian identity, should it ever emerge, must reflect the composition of ethnic ones. This bottom-up approach would in practice mean that each ethnic group must have certain powers to control on the entity level, irrespective of the constitutional category it may belong two. Whereas Serbs already possess their own entity, the challenge to resolve the Croat question remains the biggest hurdle of the Federation of Bosnia and Herzegovina. Therefore, should there be any a revision of Dayton or a Dayton II, it is absolutely clear that better and long-term distribution of powers among ethnic groups must be insisted on.

Conclusion

Despite being imposed, the Dayton solution was the only legitimate one and in essence represented a compromise between the conflicting parties. The only reason why it may be perceived as unfinished or incomplete is due to the unclear distribution of powers and subsequent legal and political consequences. Its imposing character is what characterized Bosnia and Herzegovina until 2006 and the departure of Paddy Ashdown. With the Bonn Powers and political pressures, the International Community, led primarily by the United States and the United Kingdom, attempted to enable a sustainable, modern and civic state of equal citizens which would share values of Western democracy. The results of the solutions already in place are mixed: if they are positive it is due to organizational and financial pragmatism and if they are negative it is again primarily because of their purpose and need. At present, the situation looks rather grim, since the European Union, which took over the leading role in Bosnia and Herzegovina, refrains from actively pursuing further state-building reforms without inner consensus. Bosnia and Herzegovina therefore remains an experiment, the success of which cannot be achieved before the path dependencies have been altered. A constitutional solution which would enable the three ethnic groups to have their autonomous units, but also obligations towards the central state, is what may ensure long-term stability. Later on, should the European integration deepen and the European project as a whole succeed, the three ethnic groups may wish to revisit their positions and start to participate more actively in the state-building process, while refraining from their ethnonationalist maxims.

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Annex: Interview with Borislav Paravac

1) As someone who actively participated in negotiations regarding military reform, can you describe the initial political situation preceding the decision-making process? To which extent and how did ethnic positions differ?

Following the end of the war, ethnic tensions were high and there was a biased approach of the International Community seen through the program 'Equip and Train'. There was a genuine 2:1 formula, which had a dual significance: First, when the Washington Agreement was concluded, the International Community foresaw an option of a future confederation between the Federation of Bosnia and Herzegovina and Croatia. The post-war NATO 'Equip and Train' program was launched in order to bring military strengths into an equilibrium. Namely, the logic behind that was that joint Serb forces from Serbia and Bosnia and Herzegovina would somewhat equal the size and strength of the Federation of Bosnia and Herzegovina and Croatia together. Therefore, the strength of the joint Bosniak-Croat Federation against Serbs in Bosnia and Herzegovina would correspond to a 2:1 ratio. Until 2000, there was a separate development in the defense sector, not resulting in any consensus and trust-building. Wolfgang Petritsch initiated the process of a comprehensive defense reform, displaying high level of interventionism not only in this area. Given the support provided to the Federation, Serbs were afraid of a possible isolation and shifted their policies regarding the military. As a result of NATO involvement, Serbs wanted a military integration. We were scared our army might be outnumbered and inferior to Bosniaks and Croats. Therefore, to answer your question, Serbs were against an integrative military reform at the beginning. This position shifted as a result of two factors. First, the NATO 'Equip and Train' Program; the second was the budget burden und unaffordability of such a large expenditure.

2) Did the sanctions imposed upon Bosnian-Herzegovinian Serb politicians have an impact on the results of the defense reform?

Yes. Like in other reforms, the International Community exercised a lot of pressure in the wake of interventionism which ceased in 2006 with the departure of Paddy Ashdown. Defense reform was not an exception at all.

3) When you became a member of the Bosnian-Herzegovinian Presidency in April 2003, at which stage was the process of defense reform? Have you encountered political pressures after assuming your office?

No. The reason for this is that the political pressure was exercised beforehand on the National Assembly of Republic of Srpska. When I took over the office of the Serb Presidency member, the greatest political chunk of the defense reform had already been agreed.

4) Can you briefly reflect upon the defense reform final phase in 2006? Do you consider the laws adopted beforehand as good solutions and to which extent could they contribute to the emergence of effective armed forces?

Whereas the underlying discussion in the media reflected ethnic confrontation, i.e. the need to transfer the powers to the state level or not, we all wanted to reduce costs. The emotional sentiment among people was strongly attached to the respective armed forces and it was a bitter truth that the state did not need them anymore. Anyone who would say this in public would be considered a traitor and that is why we were all reluctant to use such terms as 'downsizing', 'abolishment' or 'transfer of powers' regarding the military, as we knew this would unquestionably antagonize our citizens. What was going on in fact was all of that. We had to create an army which was all but an army but somehow corresponded to NATO standards. The laws adopted were good as they resulted in a creation of an affordable armed force free of ethnic control. When politicians lack control of an army, they lack a serious power at their disposal and are more prone to dialogue since their maneuvering space is considerably limited.

5) The aim of this research is the assessment of the level of statehood of Bosnia and Herzegovina. How do you personally perceive the defense reform in the context of Bosnian-Herzegovinian statehood?

The Armed Forces of Bosnia and Herzegovina do appear to be a modern army. However, its role and mandate in practice is very narrow. In case of an attack of neighboring countries, in this case Serbia and Croatia, what would happen? AFBiH would simply collapse. Neither Serbs nor Croats serving in the present-day AFBiH would pledge their loyalty to Bosnia and Herzegovina in such a hypothetical situation. We don't even need to go that far, we may

wonder what would happen in the Presidency of Bosnia and Herzegovina. Therefore, we did adopt a law in conformity with the standards of modern statehood, as prescribed by NATO. The state has an army and this army, in peace time, can complete tasks outlined in the law, like protection of people in case of a natural disaster. The rest, let's not even think about it.

6) By keeping the ethnic principle in new legal solutions, did the essence change? Do you consider it right that, by keeping units at battalion level ethnically homogenous, the reform has been conducted in a positive way?

It would be too quick and risky to immediately ethnically mix all units. If this should emerge, time is needed to overcome certain hostilities that are still present at the moment.

7) Do you consider the abolishment of conscription to have been a good solution in the context of military reform?

Yes. It was a good solution for two reasons, the costs and the impossibility to ethnically mix young recruits, which might have led to higher tensions. Otherwise, a professional army is what the state needs and, under Bosnian-Herzegovinian circumstances, it proved to be sustainable and affordable. The affordability is the main prerequisite which is much easier to achieve once the conscription was abolished.

8) Bosnia and Herzegovina is a member of the NATO Partnership for Peace Program. Are you in favor of Bosnia and Herzegovina joining NATO and how do you think a full NATO membership would affect the Armed Forces of Bosnia and Herzegovina?

The very essence of the defense reform in Bosnia and Herzegovina reflects NATO membership criteria which have to be fulfilled prior to joining the organization. I strongly believe that Bosnia and Herzegovina can only enter the European Union in parallel to NATO. I had a tough time delivering a Serb position on NATO membership. This was and still is dependent on the Serbian position. Should Serbia decide to join NATO, Bosnian Serbs would immediately embrace the membership idea. When Serbia started its NATO path, we welcomed the idea and, as can be seen from the Presidency statements, we defined it even as our foreign policy goal. However, given the neutrality path Serbia has taken, the Republic of Srpska will reconsider its support for a NATO membership of Bosnia and Herzegovina.

9) The last two questions are not related to defense reform. Speaking of Bosnian-Herzegovinian statehood, to which extent do you think it has been strengthened until present? What is the first association you have when we speak of statehood?

When I think of those times when Lord Ashdown was High Representative, I put Bosnian-Herzegovinian statehood on equal footing with his personality and the institution he led. He was the supreme authority we all had to obey. Even before we would start the session of the Presidency we would make sure his Cabinet approved the agenda. There was simply no decision which could be made without his knowledge and consent. The administrative machinery he created was the motor and primary lawgiver in Bosnia and Herzegovina and our (members of the Presidency) and the role of other politicians and decision-makers at all levels in the country was inferior to that of the Office of the High Representative. Regarding the inner elements of statehood, state-level VAT is my first association with the Bosnian-Herzegovinian statehood.

10) From the point of view of the Republic of Srpska, the transfer of powers has been *de facto* stopped from 2006 onwards. How do you see the present-day political situation? Which political model do you find to be the most suitable for Bosnia and Herzegovina?

The initial Dayton and a weak confederal model is what Serb interest is. Due to a change of constellation in international politics, a lack of interventionism resulted in a stop of transfer of powers from entity to state level. It will be a real challenge to define criteria as to which state-building process should be pursued. I don't see a contradiction between a confederal model with strong entities and a functional state. Many of the institutions founded at the state level have had dubious results and their sense can be questioned. The political situation is, however, not stable, given the absence of a common ground consensus. To answer your question and underline once again, I see the initial Dayton as an ideal constitutional framework, which, in addition to the needed functionality, could enable advancement of Bosnia and Herzegovina.

On 16 May 2015 in Doboj

Abstract in deutscher Sprache

Diese Forschung ist ein Versuch, das dargestellte Konzept der „imposed statehood" am Beispiel Bosnien-Herzegowinas wissenschaftlich zu belegen. Sie kann dem Gebiet „Post-Conflict State Building" zugeordnet werden. Um die Einzigartigkeit des bosnisch-herzegowinischen Systems verstehen zu können, wird die ethnische Spaltung anhand einer chronologischen Darstellung der Kriegszeit erklärt. Im Krieg entstandene Pfaddependenzen hindern einen möglichen Fortschritt des Landes. Im Grunde genommen ist die Daytoner Verfassung von der US-amerikanischen *Shuttle Diplomacy* diktiert und entspricht keiner ethnischen Vorstellung von Staatlichkeit. Jeder Versuch Staatenbildung voranzutreiben, ist von außen entweder ermutigt oder diktiert. Dementsprechend war die theoretische Grundlage für diese Forschung im Historischen Institutionalismus zu lokalisieren.

In Bezug auf die Staatenbildung fokussiert sich diese Arbeit empirisch auf drei Fallstudien: die Verteidigungs-, Justiz- und Wirtschaftsreform. Dort erkennt man bestimmte Merkmale, die die westlichen Werte der modernen Staatlichkeit widersprechen. In jeder Staatenbildungsreform ist das ethnische Prinzip am tiefsten verankert. Es herrscht ethnische Parität, die gleichzeitig unbegrenzte Superiorität einem bürgerlichen Prinzip gegenüber steht. Es ist auch bemerkenswert, dass jede Staatenbildungsreform von außen gesteuert war, da sich die lokalen Politiker über deren Inhalt nicht einigen konnten. Anhand dieser Reformen wird auch das Konzept der *imposed statehood* bewiesen. Der Staat hat keinen inneren Konsens was die Vertiefung der Integration hindert. Es ist jedoch wichtig zu betonen, dass einige, seitens der Internationalen Gemeinschaft, aufgezwungenen Lösungen sich als zielführend und sinnvoll ergeben haben.

Bosnien-Herzegowina ist dadurch ein Paradox der Internationalen Gemeinschaft, das einerseits angeblich die bürgerlichen Werte ausübt und auf der anderen Seite im weiteren Laufe seines Staatenbildungsprozesses die ethnische Superiorität weiter vorantreibt und verankert.

Abstract in English

This research represents an attempt to scientifically prove the presented the concept of imposed statehood through the example of Bosnia and Herzegovina. It belongs to the field post-conflict state-building. In order to understand the particularity of the Bosnian-Herzegovinian system, the ethnic division is explained with the help of chronological presentation of the war period. Path dependencies which stem from the war hinder an advancement of the country. In fact, the Dayton Constitution was dictated by US shuttle diplomacy and corresponds to no ethnic vision of statehood. Any attempt to progress on state-building is either encouraged or dictated from abroad. It is for this reason that historical institutionalism emerged as an appropriate theoretical background.

Regarding state-building, this research focuses empirically on three case studies: the defense, judiciary and economic reform. On the example of these reforms there are certain characteristics which contradict Western values of modern statehood. In every reform the ethnic principle is deeply anchored. Ethnic parity is the leading principle enjoying full superiority over civic principle. It must be noted that every state-building reform was steered from abroad as local politicians failed to find a compromise about respective contents. Thanks to these reforms, the concept of imposed statehood is proven. There is no inner consensus and this hinders the deepening of the integration. However, it must be noted that some, from the International Community enforced, reforms proved to be meaningful and productive.

Bosnia and Herzegovina is therefore a paradox of the International Community, which on the one hand enshrines civic values and, on the other, in the course of its state-building process, further encourages and implements the ethnic superiority.

L E B E N S L A U F

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SPRACHKENNTNISSE

Deutsch, Englisch, Französisch (C2 Zertifikate)
Russisch (C1)
Spanisch (A1/A2)
Serbisch/Kroatisch/Bosnisch - Muttersprache

PC KENNTNISSE

MS Office	sehr gute Anwenderkenntnisse
MS Visio	gute Anwenderkenntnisse

Sonstiges

Führerschein B