

T.C.
DOKUZ EYLÜL ÜNİVERSİTESİ
SOSYAL BİLİMLER ENSTİTÜSÜ
ULUSLARARASI İLİŞKİLER ANABİLİM DALI
İNGİLİZCE ULUSLARARASI İLİŞKİLER PROGRAMI
YÜKSEK LİSANS TEZİ

**POST DAYTON POLITICAL STRUCTURE AND
DEBATE ON CONSTITUTION IN BOSNIA AND
HERZEGOVINA**

İbrahim GALİP

Danışman
Doç. Dr. Nazif MANDACI

2008

T.C.
DOKUZ EYLÜL ÜNİVERSİTESİ
SOSYAL BİLİMLER ENSTİTÜSÜ
ULUSLARARASI İLİŞKİLER ANABİLİM DALI
İNGİLİZCE ULUSLARARASI İLİŞKİLER PROGRAMI
YÜKSEK LİSANS TEZİ

**POST DAYTON POLITICAL STRUCTURE AND
DEBATE ON CONSTITUTION IN BOSNIA AND
HERZEGOVINA**

İbrahim GALİP

Danışman
Doç. Dr. Nazif MANDACI

2008

Yemin Metni

Yüksek Lisans Tezi olarak sunduđum “**Post Dayton Political Structure and Debate on Constitution in Bosnia and Herzegovina**” adlı alıřmanın, tarafımdan, bilimsel ahlak ve geleneklere aykırı dűşecek bir yardıma bařvurmaksızın yazıldıđını ve yararlandıđım eserlerin kaynakada gűsterilenlerden oluřtuđunu, bunlara atıf yapılarak yararlanılmıř olduđunu belirtir ve bunu onurumla dođrularım.

08/10/2008

İbrahim GALİP

YÜKSEK LİSANS TEZ SINAV TUTANAĞI

Öğrencinin

Adı ve Soyadı :İbrahim GALİP
Anabilim Dalı :Uluslar Arası İlişkiler
Programı :İngilizce Uluslar Arası İlişkiler
Tez Konusu : Post Dayton Political Structure and Debate on
Constitution in Bosnia and Herzegovina
Sınav Tarihi ve Saati :..../..../....

Yukarıda kimlik bilgileri belirtilen öğrenci Sosyal Bilimler Enstitüsü'nün tarih ve sayılı toplantısında oluşturulan jürimiz tarafından Lisansüstü Yönetmeliği'nin 18. maddesi gereğince yüksek lisans tez sınavına alınmıştır.

Adayın kişisel çalışmaya dayanan tezini dakikalık süre içinde savunmasından sonra jüri üyelerince gerek tez konusu gerekse tezin dayanağı olan Anabilim dallarından sorulan sorulara verdiği cevaplar değerlendirilerek tezin,

BAŞARILI OLDUĞUNA O OY BİRLİĞİ O
DÜZELTİLMESİNE O* OY ÇOKLUĞU O
REDDİNE O**

ile karar verilmiştir.

Jüri teşkil edilmediği için sınav yapılamamıştır. O***
Öğrenci sınava gelmemiştir. O**

* Bu halde adaya 3 ay süre verilir.
** Bu halde adayın kaydı silinir.
*** Bu halde sınav için yeni bir tarih belirlenir.

Tez burs, ödül veya teşvik programlarına (Tüba, Fulbright vb.) aday olabilir. Evet
Tez mevcut hali ile basılabilir. O
Tez gözden geçirildikten sonra basılabilir. O
Tezin basımı gerekliliği yoktur. O

JÜRİ ÜYELERİ

İMZA

..... Başarılı Düzeltme Red

..... Başarılı Düzeltme Red

..... Başarılı Düzeltme Red

ABSTRACT
Post Graduate Thesis
Post Dayton Political Structure and Debate on
Constitution in Bosnia and Herzegovina
İbrahim GALİP

Dokuz Eylül University
Institute of Social Sciences
Department of International Relations
International Relations Post Graduate Program

Twentieth century witnessed the unexpected events in the last quarter in the world, such as perestroika policy of Gorbachev, unification of Germany and dissemination of Russian Soviet Federated Socialist Republic (RSFSR). All these events contributed and facilitated the dissolution of Socialist Federal Republic of Yugoslavia (SFRY). Although some of the unification and separations were peacefully, the dissemination of SFRY was bloody and brutal. In particular, Bosnia and Herzegovina's (BiH) was the battlefield of this bloody disintegration process in SFRY. The war among the three ethnic groups lasted three and half year, General framework Agreement for Peace (GFAP) in BiH, commonly known as the Dayton Peace Agreement (DPA), ended this brutal war in 1995.

The long war devastated the BiH' social, economic, politics, religious virtues in addition to damaged infrastructures of towns and cities. In other words, BiH was deeply divided in ethnic and religious term. DPA brought a peace, but not stable and long lasting state structure and rule of law to BiH. One of the goals of the DPA was to create a unitary and multiethnic BiH with the constitution as part of DPA. Although it has passed thirteen years after signing of DPA, it has not been observed conspicuous developments every aspects of the state structure of BiH due to numerous reasons such as the structural deficiencies of the DPA, lack of willingness of BiH's citizens to participate in the political process and insufficient elite cooperation, the nationalists parties'

unchanging national political agendas, International Community's (IC) interventions to the political life of BiH etc.

The above mentioned reasons have played very crucial role on BiH that the combination effects of these reasons caused the delay of reaching the required level of reforms, stabilization and consolidation of the state structure and joint institutions in BiH. In this study, it is primarily aimed at unfolding the fundamentals of the Post Dayton Political Structure and defects of the BiH Constitution that it created. . Secondly, the study tries to shed light over the international efforts to reform the state structures which have so far remained highly dysfunctional due to the ongoing ethnic divergences in the country and selects as its locus point the drafts of constitutional amendments that are thought to be a panacea to the problems of the prevailed consociational regime.

Key Words: General Framework Agreement For Peace (GFAP) in BiH, Dayton Peace Agreement (DPA), Bosnia and Herzegovina (BiH), Consociationalism, Power Sharing

ÖZET

Yüksek Lisans Tezi

Dayton Barış Antlaşması Sonrası Bosna Hersek Politik Yapısı ve Anayasası Üzerindeki Tartışmalar

İbrahim GALİP

Dokuz Eylül Üniversitesi
Sosyal Bilimler Enstitüsü
Uluslararası İlişkiler Anabilim Dalı
İngilizce Uluslararası İlişkiler Programı

Yirminci yüzyıl Gorbaçov'un Presterokası, Almanya'nın birleşmesi ve Sovyet Sosyalist Cumhuriyetler Birliğinin dağılması gibi beklenmeyen olaylara tanıklık etmiştir. Bütün bu olaylar Yugoslavyanın dağılmasını kolaylaştırmış ve katkıda bulunmuştur. Devletlerin bazılarının dağılma ve birleşmeleri barış içinde olmasına karşın, Yugoslavya'nın dağılma süreci kanlı ve vahşet dolu olmuştur. Özellikle Bosna Hersek Yugoslavya'nın dağılma sürecinde kanlı bir savaş alanı olmuştur. Bosna Hersek'te üç etnik grup arasınıda üç buçuk yıl süren savaş, Bosna Hersek Barışı için Çerçeve Antlaşması veya yaygın ismi ile Dayton Barış Antlaşmasının imzalanması ile sona ermiştir.

Bu uzun savaş Bosna Hersek altyapısına büyük zararlar vermesinin yanında, ülkenin sosyal, ekonomik, politik ve dinsel değerlerini darmadağan etmiştir. Diğer bir ifade ile, Bosna Hersek etnik ve dinsel anlamda derin bir şekilde bölünmüştür. Dayton Barış antlaşması ülkeye barış getirmiş ancak istikrarlı ve uzun sürecek devlet yapısı ve kurallar bütününe hayata geçirememiştir. Dayton Barış antlaşmasının amaçlarından bir tanesi de antlaşmanın bir eki olan Bosna Hersek Anayasası ile üniter ve birçok etnik kökene sahip bir devlet yaratmaktır. Dayton Barış Antlaşmasının imzalanmasının üstünden onüç yıl geçmiş olmasına karşın, Dayton Barış Antlaşmasının yapısından kaynaklanan eksiklikler, Bosna Hersek vatandaşlarının politik sürece katılma isteklerinin yeterli düzeyde olmaması ve

etnik liderler arasında yeterli işbirliğinin sağlanamaması, milliyetçi partilerin değişmeyen milli politik gündemleri ve Uluslararası Toplumun Bosna Hersek politik yapısına artan müdahalesi gibi sebeplerle kayda değer gelişmeler yaşanmamıştır.

Yukarıda bahsedilen sebepler Bosna Hersek Devleti üzerinde çok önemli rol oynamakta ve bunların toplam etkisi arzu edilen reform seviyesine ulaşamamasına ve Bosna Hersek politik yapısının ve müşterek kurumlarının kurumlaşmasına ve istikrar kazanmasına negatif etki yapmaktadır. Bu çalışmada öncelikle Dayton sonrası siyasal yapının temelleri ve yaratmış olduğu Bosna Hersek anayasasının arızaları ortaya konmak istenmektedir. İkinci olarak, çalışma ülkedeki etnik ayrılıklar nedeniyle önemli ölçüde işlevsiz kalan devlet yapısını aydınlatmaya çalışmakta, ve odak noktası olarak buradaki yetki paylaşımı (konsosyonal) rejiminin sorunlarına çare olacağı düşünülen anayasal değişikliklere dair tasarıları almaktadır.

Anahtar Kelimeler: Bosna Hersek Barışı için Çerçeve Antlaşması, Dayton Barış Antlaşması, Bosna Hersek, Konsosyonalizm, Yetki Paylaşımı

POST DAYTON POLITICAL STRUCTURE AND DEBATE ON
CONSTITUTION IN BOSNIA AND HERZEGOVINA

YEMİN METNİ	ii
TUTANAK	iii
ABSTRACT	iv
ÖZET	vi
CONTENTS	viii
ABBREVIATIONS	xi
LIST OF FIGURES AND TABLES	xii
INTRODUCTION	1

CHAPTER I

HISTORY OF BiH

1. 1. HISTORICAL BACKGROUND

1.1.1. The First Yugoslavia	6
1.1.2. The Socialist Federal Republic of Yugoslavia (SFRY)	8
1.1.3. Bosnia-Herzegovina in the Socialist Yugoslavia	12
1.1.4. The BiH after dissemination of SFRY	13

CHAPTER II

POST DAYTON POLITICAL STRUCTURE IN BiH

2.1. CONCEPT AND ELEMENT OF POWER SHARING	21
2.2. POLITICAL STRUCTURE IN BiH	25
2.2.1. State level Political Structure of BiH	29
2.2.1.1. Executive Branch of State of BiH	30
2.2.1.1.1. The Presidency	30
2.2.1.1.2. The Cabinet	35
2.2.1.2. Legislative Branch of State of BiH	38
2.2.1.3 Judicial Branch of State of BiH	41

2.2.2. Political Structure of Entities of BiH	42
2.2.2.1. Political Structure of Federation of Bosnia and Herzegovina (FBiH)	42
2.2.2.1.1. The Legislative of FBiH	43
2.2.2.1.2. The executive of FBiH	45
2.2.2.1.3. The Judiciary of FBiH	47
2.2.2.1.4 Cantonal Level Governments in the FBiH	49
2.2.2.1.5 Municipal Level Local Administration in FBiH	52
2.2.2.2. Political Structure of Republic of Srpska (RS)	54
2.2.2.2.1. The President of the RS	55
2.2.2.2.2. The Assembly of the RS	56
2.2.2.2.3. The Executive of the RS	57
2.2.2.2.4. The Judiciary of the RS	59
2.2.2.2.5. Municipal Level Administration in RS	60
2.2.2.3 District Brčko	61
2.3 International Actors in BiH Political Structure	64
2.3.1. Peace Implementation Council (PIC)	64
2.3.2. The Office of High Representative (OHR)	65
2.3.3. European Union Special Representative (EUSR) in BiH	70
2.3.4. Organization for Security and Cooperation for Europe (OSCE)	71

CHAPTER III

CONSOCIATIONAL SYSTEM AND THE REFORMS IN POST DAYTON BOSNIA AND HERZEGOVINA

3.1. Implementation of Consociational System in BiH and the Reasons of Failure	75
3.1.1. The Lack of Consensus Among the three Ethnic Constituents on the State of BiH	77
3.1.2. The Lack of Consensus on the Political Structure of State of BiH	83
3.1.3. The Lack of Consistent Strategy of International Actors establishing the Democratic BiH	88

3.2. The Constitutional Reforms in BiH	94
3.2.1. The April Package for Constitutional Reforms in BiH	98
3.2.2. US Contributions to the BiH's Constitutional Reforms	101
3.2.3. EU Contributions to the BiH's Constitutional Reforms	102
3.2.3.1. The Venice Commission	104
3.2.3.2. The Stabilization and Association Agreement (SAA)	108

CHAPTER IV

CRITIQUE OF POST DAYTON POLITICAL STRUCTURE AND DEBATE ON CONSTITUTION

4.1. The Dayton Political Structures	114
4.1.1. State Level political Structure	117
4.1.2. Entity Level Political Structure	119
4.2. The Debate on the Dayton Constitution	131
 CONCLUSION	 133
BIBLIOGRAPHY	140

ABBREVIATIONS

AVNOJ	Anti-Fascist Council of National Liberation of Yugoslavia
BiH	Bosnia and Herzegovina
CPY	Communist Party of Yugoslavia
DPA	Dayton Peace Agreement
EC	European Community
EU	European Union
EUSR	European Union Special Representative
FBiH	Federation of Bosnia and Herzegovina
FRY	Former Republic of Yugoslavia
GFA	General Framework Agreement
HDZ	Hrvatska Demokratska Zajednica (Croat Democratic Union)
HR	High Representative
IC	International Community
IEBL	Inter Entity Boundary Line
SDA	Stranka Demokratske Akcije (Party of Democratic Action)
SDS	Srpska Demokratska Stranka (Serbian Democratic Party)
SFRY	Socialist Federative Republic of Yugoslavia
OHR	Office of the High representative
OSCE	Organization for Security and Cooperation in Europe
PIC	Peace Implementation Council
RS	Republika Srpska
RSFSR	Russian Soviet Federative Socialist Republic
SNSD	Alliance of Independent Social Democrats
SBiH	Party for Bosnia and Herzegovina
SFOR	Stabilization Force
UN	United Nations
US	United States

LIST OF FIGURE

Figure 1: Political Structure of BiH

27

INTRODUCTION

In this study “the Post Dayton Political Structure of Bosnia and Herzegovina and Debate on the Constitution” is analyzed. The Dayton peace constitutes a corner stone of the current state structures of this state, because the General Framework Agreement for Peace (GFAP) of November 1995, commonly known as the Dayton Peace Agreement (hereafter DPA), was the masterpiece of the International Community that managed to halt the ever bloodiest of all conflicts in the territory of Socialist Federal Republic of Yugoslavia (SFRY). The state political structure that was organized in accordance with the Annex IV of the DPA, at the same time the Constitution of BiH, was based on the “power-sharing,” a political regime which had been previously tried in some countries plagued by ethnic divergences.. Although BiH bears the all-necessary features for the implementation of elements of the power-sharing concept, thirteen years after the DPA it has not reached the expected level of democracy and an effective state whose political institution run healthily . The study focuses on the current political structure of BiH based on consociational system or power sharing and the flaws of the Constitution of BiH which is not appropriate for integrating this ethnic war-torn or deeply divided society to create the unitary and democratic states as desired by International Community.

The aim of the study:

With the end of the Cold War, new problems emerged and the states were not well prepared how to react against these problems regarding security, economic and political matters. The states consist of different origins of citizens in terms of different ethnic and religious based, were affected from the conditions where the Cold War area left behind. Balkans has been the center of one of the instable areas in the world and even the small conflict can cause the huge and irreversible results. Accordingly, several unified multinational states broke up following the peaceful or bloody disintegration processes. Socialist Federal Republic of Yugoslavia (SFRY) was one of the states had multiethnic and religiously different population and potential area for the crises with ethnic and religious basis. The disintegration in

SFRY was bloody and cruel and Bosnia and Herzegovina (BiH) emerged as independent states in the wake of SFRY dissemination.

Furthermore, BiH independence process was bloodier and more brutal in compared with the other SFRY's republics i.e. Croatia and Slovenia. The war in BiH continued more than three years and ended with intervention of International Forces and the signing of the General Framework Agreement for Peace (GFAP) in BiH in 1995. The constitution of BiH is one of the Annexes of the GFAP, Annex IV, and the state structure of BiH was built in accordance with this Annex. Initially, GFAP was the successes of the International Community for ending the long and brutal war in BiH, on the other hand, it cannot be mentioned the same success for the establishing the new BiH according to this agreement together with the consociational system or power sharing arrangement. Although it passed thirteen years after the establishment of BiH, it has not been observed required level of development reaching the democratically consolidated, unitary and multiethnic state due to numerous reasons resulted from the deficiencies from the GFAP in BiH.

This study brought to the fore some questions on this issue such as why the GFAP did not bring the required level of peace, integration among the three (3) ethnic constituents, smoothly working joint state institutions, etc., why the International Community (IC) has intervened the BiH politics increasingly, why the IC has not transferred the governance of the BiH to the BiH, accordingly why the BiH authorities have not reached the elite cooperation that consociational system approached envisioned. This study aims to analyze these issues. The main argument of this study is the GFAP and the embedded consociational system into the BiH state structure have not been so successful in terms of creating an unitary, multiethnic and democratic BiH in the short period. On the other hand, although there have been some positive developments consolidation of the political structure of BiH and the transfer of the full control of administration of the state to BiH officials, the unexpected developments in the Balkans and Caucasus region in terms of secessionist activities towards the independence may cause negative effects on BiH's

inherent fragile state structure. It could be envisioned that the future of BiH, as the political scientist John Mearsheimer summarized with the below sentences:

"History records no instance where ethnic groups have agreed to share power in a democracy after a large-scale civil war. . . . The democratic power sharing that Dayton envisions has no precedent."¹

The limits of the study:

GFAP in BiH ended the war and created the conditions for the three (3) ethno-national groups to cooperate each other for establishing the long lasting peace and state under the BiH state identity. There are many facet of delaying the required level of integration among the three (3) constituent people of BiH for reaching the aims of the GFAP in BiH. This study mainly focuses on the political structure of the BiH based on consociational system and the Annex IV of the GFAP, Constitution of the BiH, accordingly the reasons why it has not worked so well with the support or the intervention of the International Community via Office of the High Representative.

The method and plan of the study:

In this thesis, primary and secondary resources are used for literature survey. In the first chapter, the general history of SFRY and BiH and some nation building initiatives in Balkans history are provided for the understanding of the root of the instability in Balkans States to make a connection with the current situation in Balkans area.

In the second chapter, the political structures of BiH are elaborated taking into consideration state, entity, canton, and municipality levels governments with legislative and executive bodies. The judiciary related information is provided in

¹ Gary Dempsey, Rethinking the Dayton Agreement, **Policy Analysis**, No.327, 14 December 1998, p: 3.

short due to its interaction with the executive and legislative bodies of the BiH government. Additionally, since the International Communities' role incorporated in the GFAP in BiH to implement civilian aspect of the agreement in BiH, the information concerning the role of the Office of the High Representative (OHR) and the Organization for Security and Cooperation in Europe (OSCE) is provided as well.

In chapter three, the first section will elaborate the implementation of consociational system in BiH and the reasons of failure. In the second section, constitutional reforms process in BiH will be elaborated by taking into consideration of the contribution of the US and EU efforts. In this context, the April Package in 2006, the Venice Commission proposals for the constitutional reform package, and the Stabilization and Association Agreement process of BiH will be elaborated in detail.

Chapter IV elaborates the reasons behind the failure of the GFAP in BiH or delay of the reforms that should have been done to reach the required level of peace and efficient political structure for the unitary and democratic state of BiH for integration of the deeply divided society. The reasons behind failure of the implementation of the GFAP are taken into consideration in the following order: The structural deficiencies of the GFAP in BiH, the ethnically based political parties' exploitations of these deficiencies and using the credits gained during the war in order to maintain their nationalists policies at the expense of the unitary BiH state and the role of IC's intervention through the OHR in order to control the implementation of the GFAP.

In conclusion, it is argued that the GFAP in BiH ended the war successfully, but for the creation of the democratic and unitary state with embedding the top down style of political structure model and constitution is not appropriate in every country as desired level. The dynamics of the every country is different from the others and at this point as mentioned in the historical background information in Chapter I, the Balkans area has been the center for the conflicts and instabilities resulted from nationalist and religious reasons etc, and affecting the other part of the world

increasingly. The Constitution and political system of BiH after the war, aimed at integrating the three conflicted ethnic group under the BiH state structure in the short term, but it had showed that the process was not so easy and with increasing intervention of the IC to the every aspects of the BiH state neglecting the inherent dynamics of the BiH, the desired level of success has not been observed so far. It does not seem that the professed aim of the GFAP would be realized in the near future, taking into consideration in the instabilities and secessionist activities in Balkans and Caucasus's states.

CHAPTER I: THE HISTORY OF BOSNIA AND HERZEGOVINA

1. 1. Historical Background

*“Twentieth century witnessed the unexpected events including the rise and fall of one of the most complicated and troubled states in modern history”*¹ and the wheel of history visited in some parts of Europe, as a number of previously integrated multinational states collapsed, following the peaceful or bloody dissolution processes.² Socialist Federal Republic of Yugoslavia (hereafter SFRY) was one of the battlefields of this dissolution and Bosnia and Herzegovina (hereafter BiH) took her place as an independent state in the wake of SFRY’s dissemination. The Republic of Bosnia and Herzegovina, having been one of the six republics of the former SFRY, was a Yugoslavia “en miniature” with three ethnic groups, the Muslims, Serbs, and Croats and fifteen (15) national minorities living intermingled on the complete territory till 1991.³ The BiH political structure and the existing dysfunctional state institutions cannot be understood without some background information to the conflict in BiH and, in general in SFRY, i.e. Yugoslavia.⁴

In general, the Balkans has long been a center of instability in Europe. The roots of this instability go back to the establishment of nation states in the region. In the nineteenth century, the general trend towards nationalism was a turning point for the Balkans. Uprising against the Ottoman domination combined with the rise of nationalist ideologies and turned into a national liberation movement. One of the distinguishable historical processes shows that although there was a rise of nationalism, none of the Balkan nation had achieved the statehood after a war of independence. In each case, there were open direct involvement of great powers such as Russia and Britain. Berlin Conference of 1878 was the clear example of outside patronage for the region. Despite officially dependent to Ottoman Empire, BiH’s

¹ Luke Andrews, “Yugoslavia & The Perpetuation of Violent Nationalism”, 19 November 1998, p. 1.

² Bruno Dallago, Milica Uvalic, “The Distributive Consequences of Nationalism: The Case of Former Yugoslavia”, **Europe-Asia Studies**, Vol. 50, No. 1, January 1998, p. 71.

³ Joseph Marko, “Post-conflict Reconstruction through State- and Nation-building: The Case of Bosnia and Herzegovina”, **European Diversity and Autonomy Papers**, EDAP 4/2005, p. 5.

⁴ Gerrit Dijkstra, “Bosnia and Herzegovina after the Crises”, **Journal of Contingencies and Crises Management**, Volume 7, Number 4, December 1999, p. 225.

administrative authority had been given to Austria-Hungary.⁵ Yet, Austria-Hungary had reluctantly taken over Bosnia owing to the two different ideas.⁶ Although commentators and military men wanted to take over Bosnia due to its rich resources (agriculture, minerals and forestry) and strategic hinterland for vulnerable Dalmatian coastline, the two leading policy-makers, Gyula Andrassy, the Foreign Minister, and Benjamin Kallay, the expert on South Slav history who was then Austrian Council in Belgrade, opposed this idea for Austria-Hungary to be weighed down with another million or so Slavs.⁷ The ruling problem of Bosnia was solved by establishing joint commission under the Common (i.e. Austrian and Hungarian) Ministry of Finance; in theory, the chief Authority in Bosnia would be the military governor, responsible directly to Crown, but it was the Common Ministry of Finance who would take the policy decisions.⁸ Yet, Austria-Hungary had been deeply concerned with the Serbian dream of Greater Serbia that covered the territory of Croatia, Serbia, Montenegro and Bosnia and Herzegovina, and annexed Bosnia and Herzegovina to her territory in 1908.⁹ The revolution of Young Turks in Ottoman Empire prompted Austria-Hungary Empire to change the Bosnia's status from occupied territory to a land fully annexed to her territory.¹⁰ In the wake of annexation of Bosnia, Austria-Hungary Empire gave some large concessions particularly in political life within Bosnia, for instance, in 1909, the Muslims were granted the system of vakif administration for which they had persistently campaigned. In the following year a Bosnian Parliament was elected but it did not have direct legislative power. Yet, it enabled the local communities to set up political parties like The Muslim National Organizations (1906), The Serbian National Organizations (1907), and The Croatian National Society (1908).¹¹ BiH remained in Austria-Hungary Empire until the end of First World War.

Twentieth century did not bring peace to the Balkans, instabilities and conflicts again prevailed. The Ottoman-Italian War (1911) and the two Balkan Wars (1912-13) were the major conflicts that were decisive for the determination of political borders

⁵ Editorial comment, "The Balkan Situation", **The American Journal of International Law**, Vol. 3, No. 3, July 1909, p. 688.

⁶ Noel Malcolm, **Bosnia A Short History**, Cambridge, 1994, p. 136.

⁷ Malcolm, p. 136.

⁸ Malcolm, pp. 137-138.

⁹ Halil Akman, **Paylaşılamayan Balkanlar**, IQ Kültür Yayıncılık, İstanbul, 2006, p. 168.

¹⁰ Malcolm, p. 150.

¹¹ Malcolm, pp. 150-151.

the new Balkan states. Moreover, the Balkans was the place where World War I began and spread out the whole World. At the end of the war, Paris Peace Conference was held and the map of the region defined once again in line with the interests of the major powers which ignored the complex geographical distribution of ethnic groups in the region.

1.1.1. The First Yugoslavia

A Yugoslav idea had already emerged before the First World War by challenging with ethnically exclusive ideas for a series of separate states.¹² “The first - which was officially called the Kingdom of the Serbs, Croats, and Slovenes until 1929 then it became Yugoslavia”¹³ - involved the formal amalgamation of highly distinct and historically divided territories and peoples.¹⁴ In other words, from the very beginning, Yugoslavia was neither a homogeneous state nor a truly multinational country, but the political union of several South Slav ethnic groups.¹⁵ In addition to that, the formation of first Yugoslavia was however not a simple process as representatives of the Slovenes and Croats¹⁶ were suspicious of the Serbian King intentions. In the beginning Slovene and Croatian parties tended to bargain with the now disintegrating Austria-Hungary particularly to avoid the looming Serbian political hegemony. Yet, after the collapse of the latter, their survival became subject to the Serbs, the only Slav brethren in the region who had a considerable military power.¹⁷ Generally, although the main aim or idea of Yugoslavia, as different from an enlarged Serbia, was accepted during expanded negotiations on Corfu in 1917, the political system of an integrated Yugoslavia was left to the future talks and determination.¹⁸ “The Geneva Declaration of November 6, 1918 completed unclear unification of Yugoslavia and eventually Slovene and Croat parties had to accept Serbian hegemony

¹² John R. Lampe, “Yugoslavia as History: Twice there was a country”, **Cambridge University Press**, Cambridge, 2000, p. 1.

¹³ Tim Judah, “Yugoslavia: 1918 to 2003”, p. 2, available online: <http://www.bbc.co.uk/history/state/nations/yugoslavia>. 12.10.2007.

¹⁴ Lenard J. Cohen, **Broken Bonds: Yugoslavia's Disintegration and Balkan Politics in Transition**, **Westview Press**, Boulder-San Francisco- Oxford, 1995, p. 13.

¹⁵ Emel G. Osmançavuşoğlu, **The Wars of Yugoslav Dissolution and Britain's role in Shaping Western Policy**, Ankara, January 2000, p. 9.

¹⁶ Croats and the Slovenes living under Hapsburg rule represented Yugoslav Council.

¹⁷ Jukka Nylund, “Yugoslavia: From Space to Utopia”, p. 1, available online: <http://www.ep.liu.se/>, 14.05.2008.

¹⁸ Joseph Frankel, “Federalism in Yugoslavia”, **The American Political Science Review**, Vol. 49, No. 2, June 1955, p. 417.

under the Belgrade Proclamation in December 1918”¹⁹. The first Yugoslavia’s territory incorporated the formerly independent Kingdom of Serbia and Montenegro (whose full sovereignty was recognized by the Ottoman Empire in 1878); Macedonia, which had been ruled by Turkey up to 1912 and afterward by Serbia; the Austria-ruled territories of Slovenia and Dalmatia; the Hungarian-governed Vojvodina and Croat-Slovenia; and BiH, which had formerly been under the occupation and then administration (since 1908) of dual Monarchy since 1878.²⁰ When the first Yugoslavia came into existence, the state was multiconfessional, including three large and historically divided religious communities (Eastern Orthodox, 46,7 percent; Roman Catholics, 39,3 percent; and Moslems, 11,2 percent) and was comprised of several different nationalities (e.g., Serbs together with Montenegrins, approximately 42 percent; Croats, 23 percent; Slovenes, 8 percent; Macedonians, 5 percent; the Moslems of Bosnia-Herzegovina and the Sandzak, 5 percent; and Albanians, 4 percent).²¹

Yet, “the unification of the South Slavs was not only imperfect but also incomplete”.²² There were three main different political movements in the new state: The Serb radicals who would like to establish the Greater Serbia; Serb Democrats who were more moderate than radicals and Croat Farmer Party which had previously been a staunch supporter of the idea of federation, yet then in the face of changing conditions tended to independent Croatian state.²³ Naturally, considerable difficulties stemmed from this blurred unification²⁴ and constituents’ displeasants with the union grew due to different reasons. Dissatisfaction with Serbian political and cultural domination took the lead, particularly among the Croats who started to think that nothing, only the over lordship from Austria-Hungary to Serbia, changed. Kosovo’s Albanian population was impatient too. Albanians were not Slavs and complained the great power diplomacy that turned a blind eye to the presence of important portion of the Albanian population remaining outside the newly independent Albanian state.

¹⁹ Nylund, p. 1.

²⁰ Cohen, p. 13.

²¹ Cohen, p. 13.

²² Frankel, p. 418.

²³ Akman, p. 169.

²⁴ Frankel, p. 418.

Some Slav nationalists were also concerned with the overt Serbification policies in the Macedonian region.²⁵

The Serbian government showed their real intentions at last. As it turned out, the Serbian government came to feel no obligation to realize the Corfu declaration which promulgated the formation of a confederation where every nation had an equivalent voice in the new state. The Serbian ideals were put into force when Serbian Prince Aleksandr Karadjorević declared himself as dictator-king of “Yugoslavia” in 1921.²⁶ In the new state, Serbian nationalism controlled every aspects of governance, ranging from the top positions including the ministries and offices, to the military and the police. The only opposition came from the Croatian party, yet, over time it lost its effectiveness due to several political misplanning.²⁷

In reality, from the beginning the centralist Constitution had not been successful in meeting the requirements of the multinational society, but the King assumed the decisive role by not complying with the demands of the non-Serbian nationalities.²⁸ The outside political pressures did not change the behavior of the King and he increased the cruelty of the police-regime. At the end, on January 1929, he brought the Constitution to the book and built an authoritarian regime.²⁹ To prevent the dissemination of the kingdom or his dictatorship, the King Aleksandr declared a royal dictatorship, forced down the Croats and changed the name of the nation to Yugoslavia in 1929, allegedly to erase cognitively the known legacy of Serbian political superiority.³⁰

Meanwhile, during the interregnum between the two great wars, the already fragile status-quo of the world was challenged by the two potentially conflicting groups of revisionist and anti-revisionist states. Additionally, the tension between these two groups was further agitated by fascist and communist competition, economic depression, military coups and royal dictatorships. Outburst of the WW II made the Balkans one of the major battlefields of the great powers. The troubled

²⁵ Judah, p. 2.

²⁶ Nylund, p. 1.

²⁷ Nylund, p. 7.

²⁸ Frankel, p. 419.

²⁹ Frankel, p. 419.

³⁰ Nylund, p. 7.

history of the first Yugoslavia ended with German and Italian invasions on 6 April 1941³¹ due to Yugoslav government's rejection of an alliance with Germany.³² This facilitated and accelerated the disintegration of the Yugoslavia. In this way, the attempt to unify the South Slavs was unsuccessful. During the WW II, Serbs, Croats, and Muslims fought each other due to different expectations and perception. The country fell into a serious mayhem. Accordingly, three main groups had been emerged successively in response to one another. The Croatian side established the tiny extreme fascist clique, known as Ustashas in the Croatian capital Zagreb. This group attacked and did terror activities against the Serbs of Croatia and Bosnia. As a result of these attacks, in Serbia, known as Chetnik forces loyal to the old Serbian dominated Yugoslav order emerged began to fight. In addition, Josip Broz Tito, half-Slovene half-Croat, led the communist dominated resistance.³³

In the meantime, the Communist Party of Yugoslavia (CPY) was numerically small but consolidated under the leadership of Tito at the beginning of the war and they spent all their effort to Yugoslavia, the South Slav³⁴ political union, came into existence on 1 December 1918 fighting for their survival rather than for restoration of the former constitutional order.³⁵ Yet, during the war, National Liberation bodies were established in many different parts of Yugoslavia and were coordinated by the Council of National Liberation (AVNOJ). Their goal was to establish the conditions for the "full freedom and equality in the liberated brotherly union" and federal principles were declared by AVNOJ in September 1943 during the war.³⁶ According to these principles declared by AVNOJ, a federation was to be established based on the principle of nationality, the Serbs, Croats, Slovenes, Macedonians, and Montenegrins were all to have their distinct Republics and in order to end the potential conflict between the Serbs and the Croats a republic of BiH was to be founded as the sixth Republic.³⁷ Yet, the other two historical units, Vojvodina and Kosovo were to be

³¹ Osmançavuşoğlu, p. 12.

³² Akman, p. 170.

³³ Judah, p. 2.

³⁴ The great experiment in this Slavic nation was based on a noble idea. Its proponents thought that south Slavs, that is to say people with much in common, especially their languages, who lived in a great arc of territory from the borders of Austria almost to the gates of Istanbul, should unite and form one great strong South Slav state.

³⁵ Frankel, p. 420.

³⁶ Frankel, p. 420.

³⁷ Frankel, p. 420.

formed as multinational Autonomous Provinces rather than as republics. In the same line, “the local assemblies throughout Yugoslavia voted for unification on the basis of the AVNOJ resolution and none used the right of separation and they constituted themselves as the governmental organs of the new Republics.”³⁸

1.1.2. The Socialist Federal Republic of Yugoslavia (SFRY)

Partisans, leading by Tito, gained political and military supremacy during the war.³⁹ The King was dethroned and The Federal People's Republic of Yugoslavia was declared in January 1946.⁴⁰ Yet, Tito wanted to keep the state distant with the Soviet leadership and the relations between Soviet and Yugoslavia got worsen during the reign of Stalin. Tito, a strong leader, reunified Yugoslavia under the slogan of "Brotherhood and Unity," by bringing together six republics and two self-governing provinces. He managed to keep together the Yugoslavia and exploited bipolar world order to the favor of his country until his death in 1980. Yugoslavia caught very rapid economic development with the reforms in 1960s and executed a semi-market economy. The name of the state changed to Socialists Federative Republic of Yugoslavia (SFRY) in 1963 with constitutional amendments in 1974 yet, the state maintained its federal form composed of six republics.⁴¹ Yet, Yugoslavia underwent economic hardships distinguished themselves with the high ratio of unemployment and inflation in the 1970s. In the wake of Tito's death, the situation deteriorated further thereby raising national movements raised in republics.⁴² Although the “Serbs supported a highly centralized state system, the Croats had intention to view Yugoslavia as a decentralized federation.”⁴³

Only during the Cold War was endemic instability constrained. An authoritarian and communist regime enforced peace inside, and ongoing superpower rivalry maintained the fifty-year peace outside.

³⁸ Frankel, p. 420.

³⁹ Özer Sükan, **21nci Yüzyıl Başlarında Balkanlar ve Türkiye**, Harp Akademileri Basımevi, İstanbul, 2001, p. 5.

⁴⁰ Hugh Poulton, **Balkanlar: Çatışan Azınlıklar, Çatışan Devletler**, Sarma Yayınevi, İstanbul, 1993, p. 16.

⁴¹ Poulton, p. 16.

⁴² J. Andrew Slack and Roy R. Doyon, “The Population Dynamics and Susceptibility for Ethnic Conflict: The Case of Bosnia and Herzegovina”, **Journal of Peace Research**, Vol. 38, No. 2, March 2001, p. 142.

⁴³ Slack and Doyon, p. 144.

The new period that started with the end of Cold War and disintegration of the Soviet Union affected the world order and brought to the fore political uncertainties in the global scale. People all over the world re-discovered their identities. The rapid infiltration of liberal ideas, and non-anticipated superpower retreat from the region essentially left Balkan states to face with their own destinies. The ethnic conflicts in the Balkans, especially in SFRY was much more violent and caused to the death of about a quarter million of people. The Yugoslav dissolution led to many questions about statehood, sovereignty, self-determination, territorial integrity and particularly about the morality of international intervention for the sake of preserving human life against state aggression, along with the ways of maintaining peace between former antagonists who are forced to live within the boundaries of the same state.⁴⁴

1.1.3. Bosnia-Herzegovina in the Socialist Yugoslavia

BiH was part of the SFRY, officially created in 1946. (Map 1) In the overall Yugoslav federal structure, Yugoslavia's peoples were divided into nations (peoples) and national minorities (nationalities). One should remind that the socialist ideology considered the idea of nation as a deliberative design of bourgeoisie to dilute the power of proletariat class. Hence, in Yugoslavia, in line with the socialist premises, it was accepted that there was no national group, or ethnic minority, but peoples, groups who had their own kin states, like Albanians, Turks and Hungarians –less than people more than minority- and lastly simple minorities, like Vlachs, Torbeshis, Goranis, Egyptians, Roma etc. Accordingly, the nations (officially peoples) corresponded to those peoples who had a home republic in Yugoslavia, that is, the Slovenes, Croats, Serbs, Macedonians and Montenegrins. In 1971, the status of Muslim Slavs was elevated to that of a constituent nation (people). Each republican and provincial constitution listed the national and simple minorities living inside and accepted there was no any serious distinction between the rights and duties of the all group of peoples.⁴⁵

For Serbia and the Former Republic of Yugoslavia (FRY or “rump” Yugoslavia, as the combination of Serbia and Montenegro), the most important

⁴⁴ Osmançavuşoğlu, p. 11.

⁴⁵ Osmançavuşoğlu, p. 13.

consequence of the dissolution of SFRY was that an important part (25%) of the Serbian nation remained in Croatia and in BiH, now without the official linkage with the Serbia proper that had prevailed since 1918. Under the 1974 constitution of the Socialist Republic of Croatia, Serbs in Croatia had the status of a titular nationality that required equal rights with the majority Croats, but this was changed by constitutional amendments following the victory of the Croatian Democratic Community in the general elections of May 1990 and the Serbs' status was downgraded to a simple minority. As for the BiH, Bosnian Muslims, Serbs and Croats all had the status of titular nationalities. After the victory of three national parties in the 1990 elections, only a chamber of nationalities that was formed on a parity basis in the parliament of BiH could prevent national outvoting.⁴⁶

In the period following the death of Tito in 1988, developments in SFRY undermined the established arrangements. For instance, the decentralization of the League of Communists and the transfer of their competences to the respective capitals made the local party headquarters and some scientific institutions the very strongholds of the ardent Serbian and Croatian nationalisms. Control over universities and intellectuals was lost and the League could not pursue its previous iron fist policies over media. It could be said that the situation called "a dead man's grip on the political system", i.e the fragility of the SFRY emerged. In reality, the SFRY was in all other ways the most open society in Eastern Europe, yet Yugoslav communists insisted on maintaining their political monopoly in the state. As late as 1988, liberal reformers within the League in Croatia and Slovenia were at most willing to concede that there could be a "non-Party" system in which League membership was no longer necessary for candidacies to the legislatures. Accordingly, non-party groups, single-interest groups, or groups of citizens, would even be allowed to propose candidates but they would not accept that the organization of rival political parties with alternative programs. However, it was very absurd situation that there was initiative to move democratic process in the absence of alternate parties and programs.⁴⁷ In general, it could be inferred and as summarized by Bogdon Denitch that the situation caused or initiated the beginning of the end of SFRY was as follows:

⁴⁶ Laslo Sekelj, "Parties and Elections: The Federal Republic of Yugoslavia-Change without Transformation", **Europe-Asia Studies**, Vol. 52, No. 1, 2000, p. 57.

⁴⁷ Bogdon Denitch, "Learning from the Death of Yugoslavia: Nationalism and Democracy", **Social Text**, No. 34, 1993, pp. 7-8.

*“The primitive nationalism and political bungling of the provincial mediocrities who gained political leadership of the two largest republics, Serbia and Croatia, blocked democratization in Yugoslavia, leading to constant confrontations between the ruling “natio-cracies,” a bloody war on Croatian soil in the summer of 1991, and far bloodier carnage in BiH.”*⁴⁸

1.1.4. The BiH after dissemination of SFRY

The first multiparty-elections were held in SFRY in 1990 and major nationalist parties won the republic-level elections in every republic. Later, in terms of secessionist initiatives, the referendums on self-determination were held in Slovenia and Croatia and these republics were withdrawn from the SFRY by declaring their independence. BiH followed its neighbors.⁴⁹

At the time, the proportion of ethnic groups in Bosnia was as follows: Muslims %44, Serbs %31, Croats %17, and others were % 8. In BiH also the politics became nationalist-oriented. Sister parties to Hrvatska Demokratska Zajednica (HDZ) in Croatia and Srpska Demokratska Stranka (Serbian Democratic Party) SDS in Serbia were formed in BiH, along with Sdranka Demokratske Akcije (SDA), a Muslim-dominated party led by Alija Izetbegovic. As mentioned before, Nationalists won the election in BiH in 1990 multiparty election. The coalition government was established representing all ethnic groups; i.e., Serbs, Croats, and Muslims.⁵⁰ The Memorandum on Sovereignty was adopted by the Muslim dominated parliament on 15 October 1991, but the Serbian members of the Parliament did not support this step and walked out to protest the act. The referendums on independence were held in BiH on 29 February and 1 March 1992,⁵¹ and although Bosnian Serbs boycotted the referendum, the other two ethnic groups i.e. the Bosnian Croats and Muslim voted positively. *“In the referendum, the turnout was approximately the same as the total Muslim and Croatian share of the population (%63). Almost all of them (%99.4) voted for independence. The Bosnian Serbs on the other hand, proclaimed on 27 March the*

⁴⁸ Denitch, p. 3.

⁴⁹ Carrie Manning, “Election and Political Change in Post-War Bosnia and Herzegovina”, **Democratization**, April 2004 (Election), 11:2, p. 60.

⁵⁰ Osmançavuşoğlu, pp. 14-15

⁵¹ Ana E. Junkos, “The EU’s post-Conflict Intervention in Bosnia and Herzegovina: (re) Integrating the Balkans and/or (re) Inventing the EU”, **South East European Politics**, November 2005, p. 8.

Serbian Republic of Bosnia-Herzegovina.”⁵² As result of this difficult process, the European Community (EC) and the United States recognized independence of BiH on 6 April 1992 and 7 April 1992 respectively.

The recognition of the state ignited a new, violent stage of the conflict among Serbs, Muslims and Croats about the future of BiH.⁵³ Along more than three years (1992-1995), three main conflict parties fought each other for different causes in shifting alliances. While the Bosnian Serbs were supported by Serbia, Bosnian Croats by Croatia and the Bosnian Muslims had no supporters from any neighboring or kin state. Each entity had some concern or way of thinking and followed different course of action in the beginning and during war. For example, the Bosnian Serbs sought secession and unification with Serbia with the alleged concern of Muslim political domination or Muslim-Croat demographic superiority. Croats had the same concerns and ran after the goal of secession and unification with Croatia. To the contrary, the Muslims only fought to prevent the disintegration of what they perceived as their ancestral homeland.⁵⁴ The international community attempted in several phases to stop the war by convening peace conferences, declaring and implementing sanctions, conducting aerial and marital blockages, deploying peacekeeping forces to establish the prewar conditions in BiH. One of the important international community’s initiatives was the permanent conference on Yugoslavia opened in Geneva on 3 September 1992 co-chaired by Lord Owen for the European Union and Cyrus Vance for the United Nations. The aim of this conference was to legitimize and put in effect the agreement that was signed by the three ethnic group leaders on 18 March 1992. With this plan⁵⁵, the BiH was divided into three ethnic-confessionally republics. The three leaders rejected the plan.⁵⁶ However, the international community did not stop its efforts to find a solution ending this brutal war. Accordingly, the new proposal was presented to the conflicted sides and all parts accepted the outlines of the proposals on 02 January 1993. The new proposal in addition to the previous one, envisioned the reorganization of BiH into ten provinces, with the establishment of five major

⁵² C. Papahristodoulou, “The Dayton division of Bosnia and other core allocations”, **Applied Economics Letters**, 2000, 7:5, pp. 326-327.

⁵³ Junkos, p. 9.

⁵⁴ Stefan Wolff, “Peace by Design? Self-determination and Power-sharing in Divided Societies”, p. 14, available online: <http://www.stefanwolff.com/publications-articles.htm>, 15.12.2007.

⁵⁵ The Plan is commonly known as “**Vance Owen Plan**”

⁵⁶ Papahristodoulou, p. 327.

corridors inside. But, the Bosnian Serb Assembly rejected the plan. In the meantime, the Bosnian Serb leader Karadzic signed the Vance-Owen plan with the pressure of the international community, again the Bosnian Serbs rejected the plan with referendum %96 majority votes. A new plan proposed in August by Owen and Soltenberg, giving %52 of territory to Serbs, %30 to the Muslims and %18 to the Croats, was accepted unconditionally by the Serbs, while the Bosnian Parliament rejected it on 29 September.⁵⁷ The initiatives were all in vain, accordingly all negotiations and ceasefires failed and did not reach a successful solution, and the war continued in violent form in front of the international community.⁵⁸

Due to violence of the war the United Nations (UN) declared the six safe areas for Muslims and deployed a peacekeeping force for their protection. But, in the wake of the breakdown of a four-month ceasefire between Muslims and Serbs, the Serbs launched intensive attacks against Muslim safe areas protected by UN forces between May and August 1994. Consequently, thousands of civilians were deliberately targeted and killed.⁵⁹ At the end, as a response these brutal attacks to the UN protected safe areas, with initiative of US, the Muslim Croat Federation was created and supported by international community in order to counter-balance the self-proclaimed Bosnian-Serb state –Republica Srpska. NATO intensified its air strikes against the armed forces of the Bosnian Serbs supported by Belgrade. In the meantime, the new proposal with the US foreign policy initiative started in 1995, lasting several months’ strong negotiations ended up with the signing of Dayton Peace Agreement. The place for the negotiation, US Air Force Base in Dayton, Ohio, was planned “*as a make-or-break event: bring them all here; keep them there until it’s done; and if there is no deal, well, then we’d have to figure out what to do from there.*”⁶⁰ The agreement was drafted during heavy negotiation lasted 21 days, in Dayton, Ohio, in November 1995 and formally signed in Paris on 14 December 1995.⁶¹ The war lasted between 1992

⁵⁷ Papahristodoulou, p. 327.

⁵⁸ Ulrich Schneckener, “Making Power-Sharing Work: Lessons from Successes and Failures in Ethnic Conflict”, **Journal of Peace Research**, Vol. 39, No. 2, (March 2002), pp. 203-228.

⁵⁹ Wolff, p. 14.

⁶⁰ Wesley K. Clark, **Waging modern war: Bosnia, Kosovo, and the future of combat**, United States by Public Affairs, New York, 2001, pp. 60-61.

⁶¹ Gary Dempsey, Rethinking the Dayton Agreement, **Policy Analysis**, No.327, 14 December 1998, p. 2.

and 1995 and ended with General Framework Agreement for Peace in BiH commonly known as Dayton Peace Agreement (DPA) in November 1995.⁶²

With the DPA, the state of BiH was recognized as a sovereign state in its existing international borders, but it was divided into two Entities with an extremely high degree of autonomy. Although this issue will be elaborated in the following chapters of this study, the new BiH state's element are as follows in short definition: The Federation of Bosnia and Herzegovina (hereafter FBiH), mainly populated by Bosnian Muslims and Croats, makes up 51% of the territory of BiH; the Republika Srpska (hereafter RS), mainly populated by Serbs, occupies 49% of the territory. The FBiH with its 10 cantons is highly decentralized contrary to RS.⁶³ In the meantime, postwar tensions between RS and the FBiH regarding the control of the Brcko District could not be reconciled at the peace negotiations at Dayton, Ohio, in 1995, and almost threatened the entire peace process.⁶⁴ But, with the DPA in BiH the parties agreed to binding arbitration of the disputed portion of the Inter-Entity Boundary Line (IEBL) in the Brcko Area. After the long and difficult arbitration process for finalization of the Statue of Brcko, it was accepted that from that time onward, Brcko shall be recognized as an autonomous district both from the Bosniac-Croat federation and Republica Srpska and be put under the condominium of international community.⁶⁵

DPA opened a new area for BiH and established a very complex state structure since it incorporated a number of different ethnic groups in its borders. Due to its importance for the future of BiH, the next chapter will give far reaching information about political structure based on consociational system elements.

⁶² Wolff, p. 5.

⁶³ Marcel Stoessel, "The Role of the OSCE in Bosnia and Herzegovina", p. 2, available online: http://www.stoessel.ch/bosnia/osce_bosnia_herzegovina.pdf, 11.10.2007.

⁶⁴ Michael G. Karnavas, "Creating the Legal Framework of the Br#ko District of Bosnia and Herzegovina: A Model for the Region and Other Post conflict Countries", **The American Journal of International Law**, Vol. 97, No. 1, January 2003, p: 111.

⁶⁵ Karnavas, p. 111.

CHAPTER II: POST-DAYTON POLITICAL STRUCTURE IN BiH

BiH's political structures are based on the provisions of Annex 4 (Constitution of Bosnia and Herzegovina) to the Dayton Peace Agreement of 1995. Additionally, the goal of the DPA is the creation of a unitary, multiethnic Bosnian state. As the Secretary of State Warren Christopher summarized, "there should be a single Bosnian state, with a single international personality, and a commitment to its internationally recognized borders; a federal government representing all the people of Bosnia with foreign policy powers and other national government powers."⁶⁶ These constitutional regulations set up a new arena for the groups to run their mutual relations in such a way that the dialogue between fighting parties shifts from a battle field into political arena i.e parliament and government.⁶⁷

However, because the Bosnian Serbs and Croats supported the fragmentation of Bosnia, they only agreed to a weak state structure after the GFAP in BiH.⁶⁸ In addition, there were power structures and political parties inherited from the Yugoslav communism that had long been pervasive among three ethnic groups. In other words, some older problems still needed to be sorted out after the war because the long and cruel conflict in the country could not solve the problem regarding distribution of political power between the parties so as to flatten ethnic groups' concerns about ethnic, cultural, military and economic domination and so forth.⁶⁹ Yet, at least, the forced ending of the war in BiH resulted in the following landscape for the three conflicted ethnic groups: Serbs were deprived of the hope of independence, Croats were rejected their demand of joining Croatia, and Muslims did not take over the government of the new BiH.⁷⁰ In order to establish peace and develop the positive interactions among these three war-torn ethnic constituents some institutions had to be set up. Therefore, in the wake of the DPA, many initiatives were driven by International Community to establish and maintain the peace process in BiH in terms of military, diplomatic, economics, and politics.

⁶⁶ Dempsey, p. 2.

⁶⁷ Dziewulska, p. 2.

⁶⁸ Dijkstra, p. 226.

⁶⁹ Dziewulska, p. 2.

⁷⁰ Dziewulska, p. 2.

Those initiatives included the deployment of the 60.000 IFOR troops to keep the security situation under tight control; \$5.1 billion package pledged by foreign donors for the reconstruction of Bosnia, as the largest aid programme per head of population anywhere in the world, dominating the tiny Bosnian economy; elections closely regulated by the OSCE; the firm High Representative (HR) scrutiny over the legislative process; close supervision of the Peace Implementation Council (PIC) over the fulfillment of the Dayton Agreement, and so forth.⁷¹ In the political arena, as mentioned before, the fighting parties shifted their methods from battlefield to political arrangements in order to maintain and even increase what they had gained during the war and to legalize through the DPA. Accordingly, BiH's state constitution was intentionally designed to create powerful entities to the expense of the federal state to provide ethnic self-rule as much as possible. In other words, a weak centralized state structure was adopted in state level structure. On the other hand, entities level and below, local administrations were strong enough to balance various ethnic interests in every council. Needless to say, this way of state structure is potential forum for the secessionist intentions when the appropriate conditions emerge.

In this context, this chapter focuses on the post DPA political structure of BiH, and will not touch the other areas of peace implementation and peacekeeping process. There are some factors that have led to the development of local power structures in BiH including more than three (3) years of ethnic conflict and the institutional remnants of the communist system. The political structure of BiH in the wake of ethnic war was established in accordance with the provisions of Annex 4 to GFA for peace in BiH based on the concept and elements of power sharing structure. Before starting the post DPA political structure of BiH, it would be better to identify and elaborate concepts and elements of power-sharing.

⁷¹ ESI (European Stability Initiative), "Reshaping International Priorities in Bosnia and Herzegovina: Part Two, International Power in Bosnia", Berlin, 30 March 2000 Part Two, p. 10.

2.1. Concepts and Elements of Power Sharing

In general, the central question of post-conflict societies like the BiH remains political; i.e., how to construct a stable form of domestic power sharing and governance⁷² due to rebuilding an institutional framework after a brutal ethnic war is a daunting task. Because conflicting parties mutually exhausted by conflict and accordingly conflict unavoidably hardens the identities of adversaries.⁷³ Where adversarial identities have become all encompassing or the conflict is acutely rooted, available solutions may be more radical so as to require autonomy or partition. However, due to the forced ending of the war by international community in the BiH there has been pervasive desire among the three ethnic groups to set a sufficient degree of influence and voice in future political arrangements as the price of terminating the conflict.⁷⁴

Under the light of the democratic transitions in countries like the Czech Republic, Hungary and Poland, it follows that the formation and consolidation of states be in democratic or non-democratic way is not painless. The process is even more difficult in the societies which are divided along ethnic lines like BiH and it vitally requires power-sharing mechanisms to ensure equal representation in state institution or decision-making bodies.⁷⁵

Power sharing is the most elaborated model of governance in post-conflict states that contain more than two ethnic constituents in their borders. Power-sharing solutions can be regarded as, at minimum, a realistic initial settlement achieving the widest consensus among all factions engaged in post-conflict negotiations. Proponents suggest that such arrangements are the most effective institutions for

⁷² Samuel H. Barnes, "The Contribution of Democracy to Rebuilding Post Conflict Societies", **The American Journal of International Law**, Vol. 95, No. 1, January, 2001, pp. 86-101.

⁷³ Roberto Belloni, "Peacebuilding and Consociational Electoral Engineering in Bosnia and Herzegovina", **International Peacekeeping**, Vol. 11, No. 2, Summer 2004, p. 335.

⁷⁴ Barnes, pp. 86-101.

⁷⁵ Valery Perry, "Shepherding Sovereignty Slow Democratization in Bosnia and Herzegovina", **Bologna Center Journal of International Affairs**, Volume 10, Spring 2007, p. 2.

good governance.⁷⁶ BiH bore all necessary specifications for power-sharing arrangements after a long brutal war. Additionally, power sharing is designed to produce a stable political system through elite cooperation despite social segmentation. The key idea of any power-sharing structure is that two or more ethno-national groups have to jointly rule the common polity and take decisions in consensus and no single group can decide important matters without the consent of the other. On the basis of informal or formal rules, all groups have access to political power and other resources equally.⁷⁷ In other words, power sharing is a theory that encourages group cooperation and avoids outright ethnic rebellion, in plural societies divided into distinct linguistic, religious, nationalistic, and cultural communities.⁷⁸

The theory of consociationalism was originally developed in the late-1960s and early-1970s to explain stability in a few deeply divided European democracies, including Austria, Belgium and the Netherlands, and the scope of this idea was subsequently widened considerably to cover several transitional and consolidating democracies, including the Lebanon, Cyprus, South Africa, and Malaysia.⁷⁹ In general, Consociational, or consensus democracy is a form of government envisaging sometimes disproportional representation of different groups which are in constant hostilities due to the cleavages resulted in linguistic, religious, nationalistic or cultural differences. The theory was produced through some lessons extracting from a cluster of actual examples like inter-war Austria (political confrontation between Socialists-Christian Democrats), the Netherlands until the 1970s (divided along conflicting faiths) and Belgium (conflict between Francophone Valoons and Flamans). Of course, national differences tend to be more stable and cannot be altered easily, so if preventing division is a must because of international or domestic reasons, they require special solutions beyond classical democratic structures. In this context, consociational democracies are based on cooperation between ethnic elite and their inclusive grand coalitions ignoring numerical criteria. In other words, at the

⁷⁶ Pippa Norris, "Stable Democracy and Good Governance in Divided Societies: Do power-sharing institutions work?", **Faculty Research Working Papers Series**, February 2005, p. 2.

⁷⁷ Schneckener, p. 203.

⁷⁸ Norris, p. 3.

⁷⁹ Norris, p. 3.

centre of his concept stands co-operation between the elites representing their respective constituencies.⁸⁰

Consociational system is characterized by four following institutional tools or devices: Power sharing government or grand coalition with representatives from all primary groups; mutual veto; proportionality in the electoral system and the civil service; segmental autonomy which are either formalized and legally binding or based on informal agreement or rules.⁸¹ *Power sharing government or grand coalition* is the most important part of the consociational approach. The government includes representatives from all relevant groups in society in the form either a great coalition among the main parties, of all-party governments or of temporary round tables. It is ensured that the all groups would be in the decision making body and so it would be inclusive. This can take several different forms, such as a grand coalition cabinet in a parliamentary system, a “grand” council or committee with important advisory functions, or a grand coalition of a president and other top officeholders in a presidential system. *Veto rights* provide the each group has the opportunity to block political decisions in order to protect vital national or minority interest. The aim of veto right is to foster consensus building and the search for compromises. The right to veto could apply unrestrictedly to all decisions (absolute veto), it could be conditional and just refer to some basic laws, or it could just have a delaying effect in order to renegotiate disputed issues. *Proportional representation* requires adequately representation of the all groups within the executive, the parliament, the legal system and the public service, including the army or state-owned companies (i.e. railways, postal services). This can be assured through a quota system according to the size of the groups, the number of voters, or a fixed ratio. Often, smaller groups are significantly over-represented in this kind of key position. **Segmented autonomy provides** each group has some degree of self-government. Each group maintains its own elected bodies, institutions and competencies. Only few issues have therefore to be coordinated with other segments of society. This can be organized on the basis of territorial or non-territorial arrangements. The territorial one implies that

⁸⁰ Florian Bieber, “Consociationalism—Prerequisite or Hurdle for Democratization in Bosnia? The Case of Belgium as a Possible Example”, *South-East Europe Review*, Volume 2, Number 3, October 1999 (consociationalism), p. 84.

⁸¹ Schneckener, p. 204.

consociationalism will coincide with a federal-type structure (Belgium, Switzerland or Bosnia); the latter implies that the various groups are organized on the basis of the personality principle, irrespective of their territorial basis.⁸²

The two most prominent models of power sharing are Arend Lijphart's consociational model and Donald Horowitz's integrative model. Consociationalism has been largely developed by Arend Lijphart, a Dutch political scientist, in an attempt to analyze plural societies, which are divided by religion, language, ethnicity or even political ideologies.⁸³ Lijphart's consociational power sharing relies on elite cooperation across ethnic divisions as the method to manage conflicts. Ethnic fears of cultural domination are reduced by extending autonomy as far as possible to each ethnic community, allocating share of resources proportionally, and, when common decisions must be made, decreasing the minority fears by giving them veto power. Lijphart outlines four basic principles of this model as follows: a grand coalition executive; minority veto; proportionality in the allocation of civil service positions and public funds; and group autonomy.⁸⁴

According to Donald Horowitz's integrative model, he relies too much on elite cooperation and reinforces ethnic identities. Horowitz's integrative power-sharing, in contrast, uses territorial and electoral reforms to promote inter-ethnic cooperation and intra-ethnic competition, thus creating crosscutting cleavages. He offers five reforms designed to increase intra-ethnic competition and inter-ethnic cooperation: The dispersions of power to reduce concentration on one focal point; reservation of some local posts on an ethnic basis to promote intra-ethnic competition for these posts; electoral laws (especially vote-pooling) promoting inter-ethnic electoral coalitions; policies encouraging social identities other than ethnicity, strengthening cross-cutting cleavages; and the distribution of resources based on need rather than ethnicity.⁸⁵

⁸² Schneekener, pp. 204-205.

⁸³ Bieber, consociationalism, p. 80.

⁸⁴ L. Kendall Palmer, "The Power-Sharing Process: Media Reforms in Bosnia-Herzegovina", Paper to be presented at the Kokkalis Graduate Student Workshop, Harvard University, Cambridge, Massachusetts, February 9-10, 2001. p. 4.

⁸⁵ Kendall, p. 4.

In sum, consociational power-sharing tries to decrease ethnic tensions and scares by minimizing the need for relation between ethnic groups, except at the elite level, while integrative power-sharing seeks to minimize conflict by creating cross-cutting cleavages with bases of identity other than ethnicity. Power sharing has focused on governance as systems of representation in elections, legislative decision rules, and cultural policy.⁸⁶

2.2. Political Structure in BiH

Country as fragmented as BiH - socially, geographically and constitutionally and the most importantly by ethnically that was legitimated by Dayton Peace Agreement in 1995 – politics is the only glue available to hold the state together.⁸⁷

“Since 1990, International Community has actively promoted electoral democracy as a panacea for everything from ethnic conflict to territorial disputes”.⁸⁸ Probably, BiH sets the best precedent to how such kind of democracy can be implemented. Accordingly, the most important substantive elements of the state-building programme for BiH were set out at the meeting of governments and international institutions in London in December 1995, even before the Dayton Agreement was formally signed. The London Conference defined the peace process as the creation of a state which would bring the peoples of BiH together within a social and political framework which would enable the country to take its rightful place in Europe”.⁸⁹

The political structure of BiH in the wake of ethnic war was established in accordance with the provisions of Annex 4 to GFA for peace in BiH due to the arrangements of political structure based on the concept and elements of power sharing structure elaborated in previous paragraphs of this chapter. The current detailed political structure of BiH is shown in figure 1. Of the well a known power

⁸⁶ Kendall, p. 5.

⁸⁷ ESI(European Stability Initiative) Discussion Paper, “In search of politics: the evolving international role in Bosnia and Herzegovina”, 1 November 2001, p. 2.

⁸⁸ Manning, Election, p. 60.

⁸⁹ ESI (European Stability Initiative) Discussion Paper for the ESI-SIIA Stockholm Seminar on Bosnia and Herzegovina, 24 February 2000, p. 3.

sharing model as which was elaborated above, that of Arend Lijphart's was chosen and introduced to BiH. As mentioned before, consociational theory suggests that power-sharing institutions have many important consequences, in other words, for that they are most likely to facilitate accommodation and cooperation among leadership elites, that they are the most suitable form of governments for states struggling to achieve stable democracy and good governance in divided societies.⁹⁰

In reality, the situation after the brutal and long war among three ethnic constituents of the state set a complex and uncertain environment for politics. Because, following the collapse of the former Yugoslavia, three nationalist parties in Bosnia, the Serb Democratic Party (Srpska Demokratska Stranka or SDS), the Bosnian Muslim (Bosniac) Party of Democratic Action (Stranka Demokratske Akcije or SDA) and the Croat Democratic Union (Hrvatska Demokratska Zajednica or

⁹⁰ Norris, p. 1.

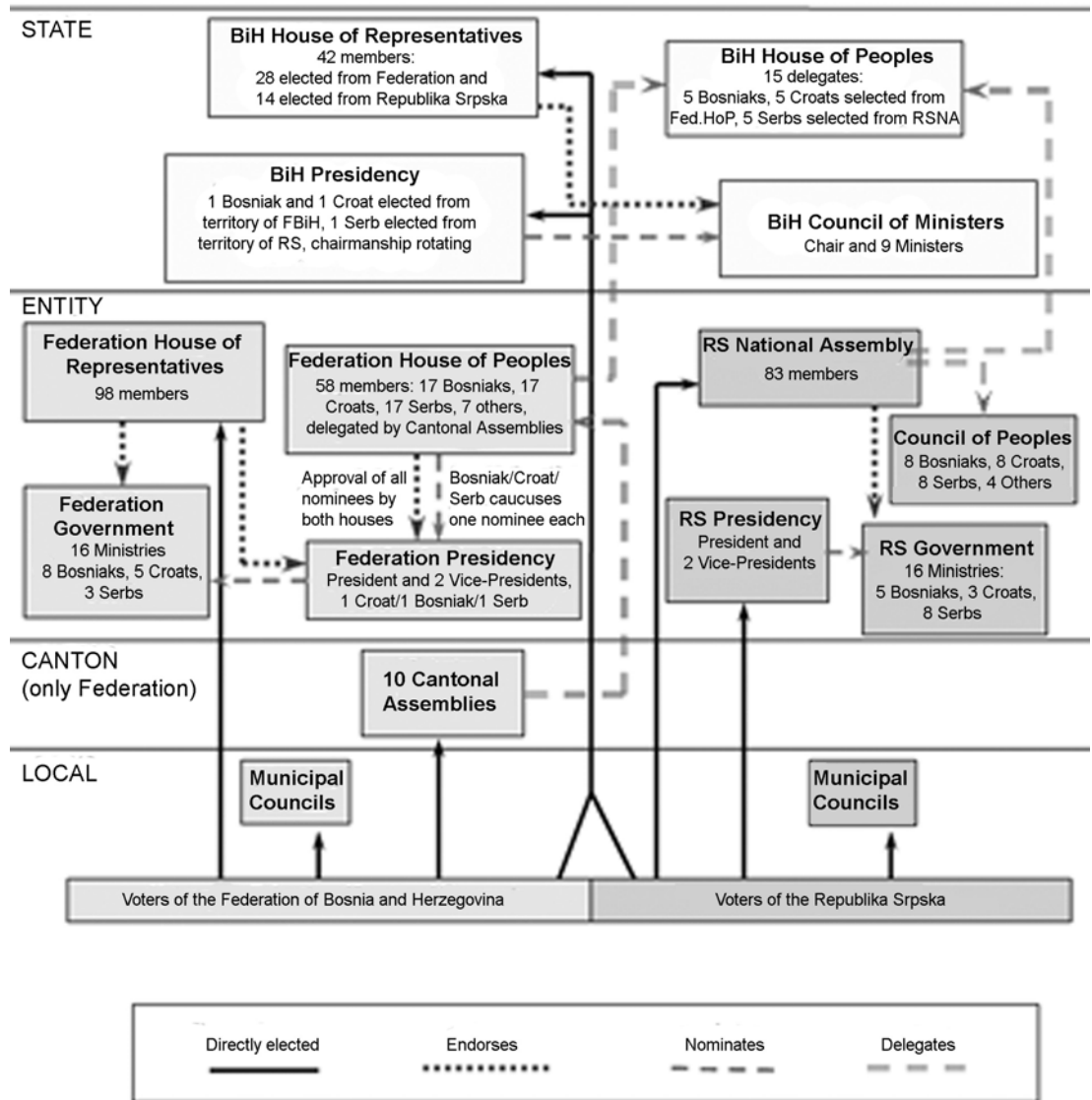


Figure 1. Political Structure of BiH

HDZ) came to fill the power vacuum left by the fall of the Communist Party.⁹¹ In other words they became the local successors to the communist party, taking over its tools of social and economic control.⁹² Additionally, they had used wartime conditions that gave them access to still more authoritarian power, through their monopoly on violence and their control of informal economic activity. Nationalist leaders have a strategic interest in maintaining the wartime conditions of “pervasive separation; fear and insecurity among the general populace; a lack of

⁹¹ ESI (European Stability Initiative) Report: Bosnian Political Structure, “Reshaping International Priorities in Bosnia and Herzegovina”, Part One, Berlin, 14 October 1999 (Part One), p. 9.

⁹² ESI, Part One, p. 3.

democratic accountability; breakdown in the rule of law; personalized control over the organs of public order; and the absence of institutions capable of controlling illegal economic activity”. As long as these illegal power structures or conditions remain intact, the new institutions created under the Dayton Agreement would not acquire real authority and it was evident that there would no development in any level of state organs and institutions in the way of being a stable democratic state.⁹³

Under these conditions, power sharing arrangements with some features like grand coalitions at the centre, minority veto rights, proportional distribution of legislative seats, government posts, and public funds among different ethnic groups and federalism when needed, was implemented in BiH. The general depiction of political structure of BiH is attached to this paper as Annex 1⁹⁴. It can be easily understood that the political structure of BiH subsumed in two levels in general, which will be elaborated below paragraphs: State and entity levels. Accordingly, the responsibilities and relations between BiH State and two entities are arranged based on Article III of BiH Constitution. In addition to a federal level government, executive and legislative branches, the Federation contain ten sub-national units called cantons, consisting of mixed (Bosniac⁹⁵ and Croatian, with very small Serbian minorities in some locations) as well as predominantly Bosniac or Croatian cantons. These cantons have their own legislatures, their own basic laws (constitutions), their own governors as well as ministries headed by ministers. In both entities settlements are organized into municipalities that could consist of several distinct physical locations.⁹⁶

In this chapter, the political structure of the BiH is considered in terms of governance of the state, entity, canton (only in FBiH) and municipality level by elaborating the establishment and working procedures of executive and legislative

⁹³ ESI, Part One, p. 3.

⁹⁴ Nela Porobic, “(Re) Constructing a Deeply Divided Society: Peacebuilding Lessons from Bosnia and Herzegovina”, **Lund University**, Fall 2005, p. 41.

⁹⁵ The generally accepted term for citizens of Bosnia and Herzegovina who are not Serbian or Croatian in ethnicity, but are not necessarily Muslim in religion, is “Bosniac” as distinguished from “Bosnian” which tends to be a political, citizenship based designation.

⁹⁶ Charles Jokay, “Local Government in Bosnia and Herzegovina”, **Local Governments in Central and Eastern Europe**, Chapter 3, April 2003, pp. 94-95.

authorities in BiH. However the judiciary authority of each level of BiH is not considered in the political structure, general information on judicial establishment and function of BiH are also given due to interaction with executive and legislative authority. In addition to the domestic political actors in BiH political structure, international actors have played very important roles since the settlement of conflict and signature of the DPA in 1995 to establish the current political structure. Accordingly, international actors have continued to interfere in each level of political structure of BiH and to force the political leaders of each constituents of BiH for changing their old style of nationalist approach or to support the moderate political leaders for the creation of democratic institutions for facilitating the transformation of BiH into a European style of democratic state. In this regard, the two most important international actors in BiH, the Office of the High Representative (OHR) and Organization for Security and Cooperation in Europe's (OSCE) roles are going to be elaborated as well.

2.2.1. State level Political Structure of BiH

In the light of above mentioned power sharing components, the new Bosnian Constitution, written into the DPA as its Annex 4, establishes consociationalism through legal arrangements and is the primary mechanism to manage the tension among the three hostile ethnicities oscillating between unity and partition ideals. In other words, the DPA serves as a source document for the state constitution and for the F BiH and RS constitutions as well. The state has few exclusive responsibilities covering foreign policy; foreign trade policy; customs policy; monetary policy as detailed in Article VII of DPA; finances of the institutions and for the international obligations of BiH; immigration, refugee, and asylum policy and regulation; international and inter-entity criminal law enforcement, including relations with Interpol; establishment and operation of common and international communications facilities; regulation of inter-Entity transportation; air traffic control.

In order to manage these areas of responsibilities, in the state level, decision-making is shared between the presidency and the Council of Ministers, and there is

an in-built division of power among the three constituent peoples of BiH; Bosniacs, Croats and Serbs. DPA also sets the framework regarding how power to be shared among the three ethnic groups through joint political institutions,⁹⁷ i.e.; Parliamentary Assembly, which is divided into a House of Representatives and House of People, a rotating tripartite presidency, (with one member from each of the constituent peoples – Bosniac, Croat and Serb), and a Council of Ministers with nine ministries.⁹⁸ “The constitution enshrines a host of complicated ethno political arrangements at the State level, aimed at preserving ethnic identity and ensuring that no single ethnic group has the power to dominate national legal or political structures.”⁹⁹

2.2.1.1. Executive Branch of State of BiH

The state level executive branch consists of tri-partite Presidency, whom members - one Bosniac, one Bosnian-Croat and one Bosnian-Serb - rotate every eight months and Council of Ministers whose Chair is nominated by the Presidency. The government of BiH is both federal and consociational. It is federal because there is a division of power between the central government and the administrations of the two entities. It is a consociation because the institutions on both levels utilize a specific system of proportional representation.

2.2.1.1.1. The Presidency

Based on the Article V of the BiH Constitution, the Presidency of BiH consists of three Members: one Bosniac and one Croat, each directly elected by plurality to a four-year term from the territory of the Federation, and one Serb directly elected by plurality to a four-year term from the territory of the RS.¹⁰⁰ This is done via separate lists, with each voter in FBiH choosing either a Bosniac or Croat

⁹⁷ Porobic, p. 18.

⁹⁸ Report on Bosnia and Herzegovina Observation Mission submitted to IFES by Commissioner Mastora Stanikzai, Zikria Barakzai and Mohammad Hashim, Kabul-Afghanistan, December 2006, p. 2.

⁹⁹ Anna Morawiec Mansfield, “Ethnic but Equal: The quest for a new Democratic Order in Bosnia and Herzegovina”, *Colombia Law Review*, Vol. 103, No. 8, December 2003, pp. 2055-2057.

¹⁰⁰ Maja Marjanovic, “Post-Conflict Democratization and Depoliticizing of Conflicted Identities: Constitutional Transformation in Bosnia and Herzegovina”, *MALD Thesis*, 2005, p. 32.

candidate and those in the RS electing a Serb candidate. The candidate with the highest number of votes from each list is considered elected.¹⁰¹

The Presidency of BiH defined as the top common and highest state institution is the tri-partite Presidency in the framework of its authority operates and carries out the function according to the Constitution of BiH, GFA for peace in BiH and its annexes, the laws of BiH and the Rules of Procedures of BiH Presidency. The Presidency represents and symbolizes the sovereignty of BiH, and has the duty to coordinate the activity of its institutions and defend the interests of the entities, relating to the constitutive peoples and all citizens.¹⁰² The members of the Presidency are elected via direct election in accordance with the election law of BiH. At the end of direct elections for Members of the Presidency and until the newly elected Members of the Presidency take office, outgoing Members of the Presidency perform duties in the Presidency within the framework of the technical mandate which are limited to the necessary activities stipulated in the Constitution, law, and Rules of Procedures of BiH Presidency.¹⁰³ The outgoing Chair of the Presidency of BiH convenes a constitutive meeting of the newly elected Presidency within no later than fifteen (15) days, calculated from the date the election results were confirmed by the authoritative body. The constitutive meeting takes place in the seat of the Presidency in Sarajevo and is open to the public.¹⁰⁴ The Members of the Presidency appoint a Chair of the Presidency of BiH from their Members in accordance with the Election Law of BiH or another law adopted by the Parliamentary Assembly of BiH. The Chair of the Presidency of BiH is replaced after eight (8) months, according to the principle of rotating Members of the Presidency, in accordance with the Election Law of BiH.

The Chair of the Presidency has responsibility in general for planning the activities of the Presidency, by submitting an activity plan during his/her tenure, and

¹⁰¹ Vadim Zhdanovich, Beata Martin-Rozumiłowicz, OSCE Office for Democratic Institution and Human Rights (ODIHR) Needs Assessment Mission Report (3-7 July 2006), Bosnia and Herzegovina General Elections, 1 October 2006, pp. 2-3.

¹⁰² Rules of procedures of Presidency of BiH, Article I (General Provisions), available online: <http://www.predsjednistvobih.ba/nadl/1/?cid=5,1,1>, 12.04.2008.

¹⁰³ Rules of procedures of Presidency of BiH, Article 2.

¹⁰⁴ Rules of procedures of Presidency of BiH, Article 3.

for working out meeting agendas; signing and proclaiming acts arising from activity of the Presidency; representing and acting on behalf of the Presidency in general, and representing positions of the Presidency regarding important questions before the public and before other institutions in BiH and abroad, especially when the three Members of the Presidency cannot jointly attend; accepting credentials from diplomatic-consular representatives, after the Presidency adopts an agreement.¹⁰⁵ Upon accepting his position, the Chair determines in a written act that one of the Members of the Presidency to be a substitute in the case of temporary absence. In the event of the Chair is prevented from attending meetings, one of the Members of the Presidency performs all of his duties and powers, until the Chair is able to continue with activities.¹⁰⁶

The collective presidency adopts its decisions by consensus but a majority decision is possible if all efforts to reach a consensus have failed. A member of the Presidency may then declare a decision taken by majority vote to be destructive of vital interests of the Entity from which he/she was elected. If confirmed, the decision cannot take effect.¹⁰⁷

The Presidency has the structures like the Secretariat and the Cabinet of a Member of the Presidency to support the Presidency activities based on Rules of Procedures for BiH Presidency. The Secretariat was established in order to secure expert, administrative and technical support to Members of the Presidency during the discharging of their collective and individual duties. The Secretariat consists of the General Secretary and Secretariat Employees.

As for the Cabinet of a Member of the Presidency, it politically and technically supports the Member of the Presidency in executing his collective and individual powers. The Cabinet Organization consists of the Chief of Cabinet and Cabinet Employees. All Members of the Presidency, according to their needs, organize cabinets by their own act, on the basis of suggestions from the Chief of

¹⁰⁵ Rules of procedures of Presidency of BiH, Article 6.

¹⁰⁶ Rules of procedures of Presidency of BiH, Article 7.

¹⁰⁷ Porobic, p. 20.

Cabinet. The general Secretary submits that document to the other Members of the Presidency and their cabinets for insight. All Members of the Presidency, for the organization of their Cabinets, can rely on the same amount from the budget, which the Presidency determines at the beginning of each fiscal year. The Secretariat distributes the funds from the joint account on the basis of instructions received from Members of the Presidency.

As a rule, the Presidency holds a regular meeting weekly. The Presidency can also meet, depending on the need, at an extraordinary meeting. Regular and extraordinary meetings of the Presidency take place in the Sarajevo offices of the Presidency, if there is not a decision to hold the meeting elsewhere. The Chair in a written notice, which is sent through the General Secretary to other Members of the Presidency, and in a period of no more than seven days before it is held, convenes a regular meeting of the Presidency. The written notice contains the proposed agenda and also determines when and where the meeting will be held. Preparation of the agenda for regular meetings begins when the Chair, through the General Secretary, submits written notice of the proposed agenda to other Members of the Presidency.

All Members of the Presidency have the right to add new items to the proposed agenda. Upon receipt of all submitted items, the Chair compose the regular meeting agenda, adding items to the first proposal and informing other Members of the Presidency. The Chair convenes an extraordinary meeting by submitting the appropriate notice to other Members of the Presidency through the General Secretary, at least twenty-four (24) hours ahead of time. The notice contains the agenda and the time and place of the meeting.¹⁰⁸ It is not possible to hold a meeting, if at least two Members of the Presidency are not physically present. Meetings of the Presidency are not open to the public, unless the Presidency decides otherwise. In the wake of the meeting, the Secretariat - Public Relations Department organizes a press conference, unless the Presidency decides otherwise.¹⁰⁹ On the other side, activities of the Presidency toward Institutions, i.e. the Parliamentary Assembly, Council of Ministers, Standing Committee on Military Matters, Constitutional Court, and to the

¹⁰⁸ Rules of procedures of Presidency of BiH, Articles of 23, 24, 25, 26,27, 28.

¹⁰⁹ Rules of procedures of Presidency of BiH, Articles of 31 and 33.

Entities are arranged in accordance with Rules of Procedures of Presidency of BiH and Constitution of BiH.

The first convening of the Presidency of BiH was elected in September 1996 during the first postwar elections. It was directly elected from the FBiH and the RS. Alija Izetbegovic was elected as the Bosniac Member of the Presidency, Momcilo Krajsnik as the Serb Member of the Presidency, and Kresimir Zubak as the Croat Member of the Presidency.¹¹⁰ Since 1998, in accordance with the Constitution and Rules of Procedure, every eight months the Chair of the Presidency of Bosnia and Herzegovina rotates. The chronology of the Chairs of the Presidency of BiH so far is listed as follows:

- **Alija Izetbegovic** (October 1996. - October 1998.)
- **Zivko Radisic** (October 1998. - June 1999.)
- **Ante Jelavic** (June 1999. - February 2000.)
- **Alija Izetbegovic** (February 2000. - October 2000.)
- **Zivko Radisic** (October 2000. - June 2001.)
- **Jozo Krizanovic** (June 2001. - February 2002.)
- **Beriz Belkic** (February 2002. - October 2002.)
- **Mirko Sarovic** (October 2002. - April 2003.)
- **Borislav Paravac** (April 2003. - June 2003.)
- **Dragan Covic** (June 2003. - February 2004.)
- **Sulejman Tihic** (March 2004. - October 2004.)
- **Borislav Paravac** (October 2004. - June 2005.)
- **Ivo Miro Jovic** (June 2005. - February 2006.)
- **Sulejman Tihic** (February 2006. - October 2006.)
- **Nebojsa Radmanovic** (October 2006. - July 2007.)
- **Zeljko Komsic** (July 2007. - March 2008.)
- **Haris Silajdzic** (March 2008. -)¹¹¹

¹¹⁰ Chronology of Presidency of BiH, available online:
<http://www.predsjednistvobih.ba/hron/?cid=74,1,1>, 12.04.2008.

¹¹¹ Chronology of Presidency of BiH, available online: available online:
<http://www.predsjednistvobih.ba/hron/Template.aspx?cid=74,1,1>, 12.07.2008.

2.2.1.1.2. The Cabinet

The executive branch consists also of the Council of Ministers, whose Chair is nominated by the Presidency at each new mandate of the Parliamentary Assembly of BiH and approved by the House of Representatives. The Chair of the Council of Ministers take office after the House of Representatives approves his/her nomination. The approval of a Chair of the Council of Ministers should be completed within thirty (30) days following the date of nomination. Members of the Council of Ministers should be from the three constituent peoples, and include three Bosniac, three Serbs and three Croats. The Council of Ministers, in accordance with the GFAP and in particular with Article III of Annex 4, consists of the Chair and Ministers as follows:

- Minister of Foreign Affairs
- Minister of Foreign Trade and Economic Relations
- Minister of Finance and Treasury
- Minister of Communications and Transport
- Minister of Civil Affairs
- Minister of Human Rights and Refugees
- Minister of Justice
- Minister of Security

For the better and more efficient execution of governmental functions, the Chair of the Council of Ministers is empowered to nominate two of the Ministers concerned as Deputy Chairs from different constituent people. In other words, if the Chair of the Council of Ministers is Croat, the two Deputy Chairs should be from the Serbs and the Bosnian Muslims. On the other hand, provision in the Law of the Council of Ministers requires that if none of ministers or deputies is from the group of others, then the Secretary General of the Council of Ministers should be from the group of others. That is to say, group of others should be represented in the Council of Ministers in order to be enough for meeting the proportional representative need of the consociational system. The term of office of the Council of Ministers coincides

with the mandate of the Parliamentary Assembly of BiH.¹¹² Each Minister shall have one Deputy Minister. Deputy Ministers will not be from the same constituent people like their respective Ministers. Deputy Ministers act on behalf of Ministers if the Ministers are absent or otherwise prevented from performing their duties. Deputy Ministers participating in a session of the Council of Ministers on behalf of an absent Minister have the right to make decisions on his/her behalf on all or certain issues, in accordance with the competencies delegated to him/her by the absent Minister. The said Minister informs the Chair of the Council of Ministers of such delegation in writing. The Chair of the Council of Ministers nominates Ministers and Deputy Ministers immediately upon taking office and forthwith requests the House of Representatives to approve such nomination. Each Minister or Deputy can resign without explanation.¹¹³ However, if the Chair of the Council of Ministers resigns or is permanently unable to perform his/her duty, the Council of Ministers resign as a whole, and continue to perform its duties pending the approval of a new Chair and members of the Council of Ministers. The Presidency of Bosnia and Herzegovina may propose the dismissal of the Chair of the Council of Ministers. If the Parliamentary Assembly of BiH records a vote of no confidence in the Chair, the Council of Ministers resign as a whole, but continue to perform its duties pending the approval of a new Chair and members of the Council of Ministers. The Parliamentary Assembly may also, on its own initiative, record a vote of no confidence in the Council of Ministers.¹¹⁴

The members of the Council of Ministers are be obliged to participate in the work of the Council of Ministers and take decisions in sessions. They may hold a session and adopt decisions if a session is attended by more than one half of the members of the Council of Ministers, provided that there are at least two members from each constituent people. They adopts acts from within its competencies by a majority vote of its whole number with regard to all issues and topics on which, in further procedure, the final decision is to be taken by the Parliamentary Assembly of BiH. They generally adopt decisions, conclusions and resolutions, draft and proposed

¹¹² Rights and Duties of Council of Ministers, Articles 1, 5, 6, 9, http://www.ohr.int/decisions/statemattersdec/default.asp?content_id=28609, 15.04.2008.

¹¹³ Rights and Duties of Council of Ministers, Articles 7 and 10.

¹¹⁴ Rights and Duties of Council of Ministers, Articles 12 and 13.

laws, analyses, information materials, strategic documents, programs, agreements, protocols and other acts. The Council of Ministers decides as a rule by consensus on all other issues and, in particular, on regulations, nominations and appointments from within the competencies of the Council of Ministers, as well as on the Rules of Procedure and their interpretation. If consensus is not reached, the Chair of the Council of Ministers holds a meeting with the dissenting member(s) of the Council of Ministers in order to reach a solution. If a consensus is not reached in seven days by this means, a majority decision will be taken which must include the votes of at least two members of each constituent people.¹¹⁵ The Council of Ministers establish permanent or temporary offices, directorates, services, committees and other bodies for the sake of ensuring the full, efficient, quality and harmonized conduct of its activities. The permanent bodies are: The Directorate for EU Integration, General Secretariat, Legislative Office, Internal Policy Committee and Economy Committee.

The Council is responsible for carrying out the policies and decisions in the fields of foreign policy; foreign trade policy; customs policy; monetary policy; finances of the institutions and for the international obligations of Bosnia and Herzegovina; immigration, refugee, and asylum policy and regulation; international and inter-Entity criminal law enforcement, including relations with Interpol; establishment and operation of common and international communications facilities; regulation of inter-Entity transportation; air traffic control; facilitation of inter-Entity coordination; and other matters as agreed by the Entities. Apart from rights and duties related to direct management of the work of the Ministries and responsibility for the situation in the respective fields from the Ministry's scope of work, the members of the Council of Ministers may also launch initiatives and discuss issues and decide on positions regarding respective issues which do not fall within the scope of work of the Ministries under their management provided the same falls within the constitutional competence of the Council of Ministers.¹¹⁶

The Council of Ministers regularly informs the Presidency of BiH about decisions and other activities of the Council of Ministers. The Council of Ministers

¹¹⁵ Rights and Duties of Council of Ministers, Articles 16, 17, 18.

¹¹⁶ Rights and Duties of Council of Ministers, Article 33.

shall be held responsible to the Parliamentary Assembly and they also, at least annually, submit annual reports to the Parliamentary Assembly regarding its work, including reports related to the budget. Yet, the Parliamentary Assembly may request that the Council of Ministers submit special reports on certain issues. Within its competencies, the Council of Ministers shall cooperate with the executive and legislative bodies of the FBiH, the RS and the District of Brcko.¹¹⁷

2.2.1.2. Legislative Branch of State of BiH

BiH has a bicameral State-level parliament. It consists of two Houses: the House of Representatives, comprising 42 members directly elected from their own Entity, and the House of Peoples, comprising 15 members selected by the Parliamentary Assemblies of their own Entities. All legislative decisions require approval in both Houses of the Parliamentary Assembly of BiH. The Parliamentary Assembly is the highest legislative body of BiH..

The Parliamentary Assembly adopts laws, approves the budget, and makes decisions on the sources and the total income required for financing the institutions of BiH and its international obligations. The Parliamentary Assembly confirms the appointment of the Chair and Members of the BiH Council of Ministers gives consent for the ratification of international treaties and decides on other issues that are necessary for it to exercise its own responsibilities or those assigned to it by an agreement between the entities. The Houses of the Parliamentary Assembly performs legislative, informative and oversight activities and regulates internal organization and their own operating methods.¹¹⁸

According to Article IV of the Constitution of BiH, the House of Peoples, one of the two components of the Parliamentary Assembly of BiH, comprises 15 delegates, two-thirds whom are from the Federation (including five Croats and five Bosniacs) and one-third from the Republika Srpska (five Serbs). The designated

¹¹⁷ Rights and Duties of Council of Ministers, Articles 34, 39, and 42.

¹¹⁸ The Parliamentary Assembly of BiH, available online: <http://www.oscebih.org/documents/11559-eng.pdf> , 03.07.2008.

Croat and Bosniac delegates from the Federation are selected respectively, by the Croat and Bosniac delegates from the House of Peoples of the Federation, i.e. delegates who are elected to FBiH Cantonal Assembly via direct votes of FBiH people first and then selected to the House of Peoples of BiH. Delegates from the Republika Srpska are selected by the National Assembly of the Republika Srpska as well, in other words these delegates are elected to the National Assembly of the RS through direct votes of RS peoples and selected to the Council of Peoples that is the other wing of RS parliamentary and then selected to House of Peoples of BiH as shown in the Figure 1. The House of Peoples elects one Bosniac, one Croat and one Serb among its delegates to serve as the speaker and first and second deputy to the speaker. Once every eight months, the position of the speaker rotates among those three speakers respectively. Nine members of the House of Peoples comprise a quorum, provided that at least three Bosniac, three Croat, and three Serb Delegates are present based on proportional representation principal.

The House of Representatives comprises of 42 Members, two-thirds (including 14 Croats and 14 Bosniacs) elected from the territory of the Federation and one-third (14 Serbs) from the territory of the Republika Srpska. It could be easily recognized that this is execution of proportional representation, one of the elements of power- sharing concept. Members of the House of Representatives are directly elected from their entity in accordance with an election law to be adopted by the Parliamentary Assembly. A majority of all members elected to the House of Representatives comprise a quorum. The House of Representatives (House) also elects one Bosniac, one Croat and one Serb from among its members to serve as the Speaker as well as the First and Second Deputy to the Speaker. Once in every eight months, the Speaker's position rotates among the three, who together form the “Collegiums” of the House. Members of the House form “caucuses” with others from their respective political parties, but can also form caucuses with Representatives from different political parties.¹¹⁹

¹¹⁹ Parliamentary Assembly of Bosnia and Herzegovina, Open Parliament Brochure, slide 5, available online: <http://www.oscebih.org/documents/11559-eng.pdf>, 07.07.2008.

The working procedures of the parliamentary assembly of the both chambers were set up and delineated in the article IV of the BiH constitution. Accordingly, each chamber convenes in Sarajevo not more than 30 days after its selection or election. Then, each chamber by majority vote adopts its internal rules and selects from its members one Serb, one Bosniac, and one Croat to serve as its Chair and Deputy Chairs, with the position of Chair rotating among the three persons selected. All legislation requires the approval of both chambers and all decisions in both chambers are accepted by majority of those present and voting. The Delegates and Members do their best efforts to see that the majority includes at least one-third of the votes of Delegates or Members from the territory of each Entity. If a majority vote does not include one-third of the votes of Delegates or Members from the territory of each Entity, the Chair and Deputy Chairs meet as a commission and attempt to obtain approval within three days of the vote. If those efforts fail, decisions are taken by a majority of those present and voting, provided that the dissenting votes do not include two thirds or more of the Delegates or Members elected from either Entity. A proposed decision of the Parliamentary Assembly may be declared to be destructive of a vital interest of the Bosniac, Croat, or Serb people by a majority of the Bosniac, Croat, or Serb selected Delegates as explained in the veto rights, one of the important elements of power-sharing arrangements. Such a proposed decision requires for approval in the House of Peoples a majority of the Bosniac, of the Croat, and of the Serb Delegates to present and vote.

When a majority of the Bosniac, of the Croat, or of the Serb Delegates objects to the “invocation”, in other words a proposed decision of the Parliamentary Assembly, may be declared to be destructive of a vital interest of the Bosniac, Croat, or Serb people by a majority of the Bosniac, Croat, or Serb Delegates selected, the Chair of the House of Peoples immediately convene a Joint Commission comprising three delegates, one each selected by the Bosniac, by the Croat, and by the Serb Delegates, to resolve the issue. If the Commission fails to do so within five days, the matter is referred to the Constitutional Court, which is in an expedited process review it for procedural regularity.¹²⁰

¹²⁰ Constitution of BiH, Article 4, 4(d).

The House of Peoples may be dissolved by the Presidency or by the House itself, provided that the House's decision to dissolve is approved by a majority that includes the majority of Delegates from at least two of the Bosniac, Croat, or Serb peoples. Decisions of the Parliamentary Assembly are not take effect before publication. The House of Peoples and the House of Representatives publish a complete record of their deliberations and save in exceptional circumstances in accordance with their rules, deliberate publicly. Delegates and Members are not being held criminally or civilly liable for any acts carried out within the scope of their duties in the Parliamentary Assembly.¹²¹

2.2.1.3 Judicial Branch of State of BiH

Power-sharing in the judicial branch is slightly more complex as the Constitutional Court consists of nine members, six of which follow the 2/3 and 1/3 proportionality rule and the remaining three are selected by the President of the European Court of Human Rights, Citizens of BiH or of any neighboring state are explicitly barred from being selected to these three special judicial seats an interesting example of BiH's power-sharing with external entities.¹²²

The Constitutional Court of BiH is the supreme, final arbiter of legal matters. It is composed of nine members: four are selected by the House of Representatives of the FBiH, two by the Assembly of the RS, and three by the President of the European Court of Human Rights after consultation with the Presidency. The Constitutional Court's original jurisdiction lies in deciding any constitutional dispute that arises between the Entities or between BiH and an Entity or Entities. The Court also has "appellate" jurisdiction within the territory of BiH. Both the FBiH and the RS Government have established lower court systems for their "territories".

¹²¹ Constitution of BiH, Article 4, 4(g, h, i, j).

¹²² Porobic, p. 19-20

2.2.2. Political Structure of Entities of BiH

BiH is country in a state of recovery after a three and a half year war from 1992 to 1995. The country consists of two entities: the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS). In addition, there is one separate district (Brcko).¹²³ The DPA assigned many governmental functions to the two entities, which have their own capital, government, flag and coat of arms, president, parliament, army/police/customs departments and postal system. The territorial organization of each Entity is regulated by its own Constitution. Local government in the FBiH is divided into 10 cantons that are further subdivided into 81 municipalities. The RS is subdivided into 63 administrative municipalities and does not have a cantonal system.¹²⁴

2.2.2.1 Political Structure of Federation of Bosnia and Herzegovina (FBiH)

According to ESI report “FBiH is largely a historical accident. Under the Washington Agreement of 1994, it was intended to be the state. Through the various twists and turns of the peace process, it ended up as an Entity of BiH a federation inside another federation.”¹²⁵ FBiH is one of the two entities composing the State of BiH, and has all powers, competence and responsibilities that do not fall within the exclusive competence of the institutions of BiH. Constituents are Bosniacs, Croats and Serbs peoples, along with others, and citizens of the FBiH equally organize the Federation of Bosnia and Herzegovina. The FBiH has a flag, an anthem, a coat of arms, and a seal. The official languages of the Federation of Bosnia and Herzegovina are Bosnian language, Croat language and Serb language. The official scripts are Latin and Cyrillic. Other languages may be used as a means of communication and

¹²³ OSCE Office for Democratic Institution and Human Rights (ODIHR) Needs Assessment Mission Report, p. 2.

¹²⁴ Nenad Šebek, Corinna Noack-Aetopoulos and Dževdet Tuzlić, “Effecting the Change and Good Governance in Local Administration in Bosnia and Herzegovina: Final Survey of the Project “Our Town, Our Future”, **Center for Democracy and Reconciliation in Southeast Europe (CDRSEE)**, April 2006, p. 11.

¹²⁵ ESI (European Stability Initiative), “Making Federalism Work - A Radical Proposal for Practical Reform”, Berlin, 08 January 2004, p. 3.

instruction.¹²⁶ The FBiH consists of “Federal Units”, or “Cantons”. The number of Cantons and their boundaries were agreed in February 1994 in the context of the Washington Agreement. The FBiH Constitution, reflecting the Washington Agreement, divides responsibilities between the Federation and the Cantons leaving most responsibilities to Cantons. The exclusive competence of the Federation is very limited: namely defense, energy policy, but also planning, reconstruction and land use at the federal level. Some matters are a common responsibility, in particular health, social welfare policy and the use of natural resources.¹²⁷ The structure of FBiH Government consists of legislative, executive and judicial authorities.

2.2.2.1.1. The Legislative of FBiH

The legislative authority in FBiH is exercised by the House of Representative and House of Peoples like the same parliamentary assembly structure in state level in BiH. The House of Representatives consists of ninety-eight (98), seventy-three (73) from twelve (12) multi-member constituencies and twenty-five (25) from political party compensatory open lists¹²⁸, delegates and a minimum number of four (4) representatives of one constituent people are represented in the House of Representatives. The term of Members of the House of Representatives is four years, unless the House of Representative is dissolved in accordance with the Constitution.

Members of the House of Representatives are elected democratically by eligible voters through direct Federation-wide election. Each voter should be eligible to cast a single, secret ballot for any registered party. Each party receiving at least five percent (5%) of the total valid votes are allocated a number of seats proportional to its percentage of the vote received. Before each election, each registered party should publish a list of candidates. The Members of the House of Representatives from each party are the persons highest on that party's list; replacements for members

¹²⁶ Constitution of the Federation of Bosnia and Herzegovina, Part I-Establishment of Federation, Articles 1, 2, 6.

¹²⁷ Constitution of the Federation of Bosnia and Herzegovina, Part III-Division of Responsibilities between the Federation Government and the Cantons, Article 3.

¹²⁸ OSCE Office for Democratic Institution and Human Rights (ODIHR), Needs Assessment Mission Report, p: 3.

are the persons highest of the remainder on that list. There is no strict restriction for people who are candidate for election and accordingly, any eligible voter may serve as a Member of the House of Representatives. The House of Representatives first convenes not later than twenty days after the results of the election have been promulgated.¹²⁹

The House of Peoples, the other wing of the FBiH's Parliamentary Assembly is composed of the each entity's equal number of representatives. There are 58 delegates in House of Peoples, 17 delegates from each constituent people of FBiH and 7 from among others have also the right to participate equally in the majority voting procedure. The terms of representatives to the House of Peoples are four years, unless the House of People is dissolved in accordance with the Constitution. The members of the House of peoples are elected by the Cantonal Assemblies from among their representatives in proportion to the ethnic structure of the population. The number of delegates to the House of Peoples to be elected in each Canton should be proportional to the population of the Canton, given that the number, structure and manner of election of delegates are regulated by law. Additionally, in the House of Peoples there should be at least one Bosniac, one Croat, and one Serb from each Canton that has at least one such delegate in its legislative body. Bosniac, Croat and Serb delegates from each Canton are elected by their respective representatives, in accordance with the election results in the legislative body of the Canton, and the election of delegates from among the others are regulated by law.

The House of Peoples is first be convened no later than twenty days after the Cantonal Legislatures are elected.¹³⁰ In general, each House adopts by a majority vote its Rules of Procedure and elects, from among its members, a Speaker (Chairman) and two Deputy Speakers (Deputy Chairmen) of the Chamber, who may not come from among the same constituent people or from among the Others. Members and Delegates of the Federation Legislature are not held criminally or civilly liable for any acts carried out within the scope of their duties in the

¹²⁹ Constitution of the Federation of Bosnia and Herzegovina, The Legislature in Part IV- Structure of the Federation Government, Articles 1 and 4.

¹³⁰ Constitution of the Federation of Bosnia and Herzegovina, The Legislature in Part IV-Structure of the Federation Government, Articles 6, 7, 8, 10.

Legislature of the Federation. Each House is expected to reject or approve necessary legislation within a reasonable time of its approval in the other House. When the Prime Minister decides that one House is delaying its disposition of such legislation unduly, he may convene a joint conference, comprising up to ten members from each House of the Legislature, to develop within ten days a position acceptable to both Houses. When the President decides that the Legislature is unable to enact necessary legislation, he may with the concurrence of the Vice-President dissolve either or each House of the Legislature, provided that a House may not be dissolved within one year of being first convened. The President has the authority to dissolve the Legislature when it fails to adopt the budget of the Federation before the start of the budgetary period.¹³¹

The Legislature have also some important responsibilities as follows: Electing the Federation President and two Vice-President; requesting the Constitutional Court decide whether to remove the President or one of the Vice-President, approving by a majority vote the Cabinet; enacting laws to exercise responsibilities allocated to the Federation Government; authorizing Cantons to conclude agreements with states and international organizations, if approved by the Parliamentary Assembly of Bosnia and Herzegovina, except to the extent that the Parliamentary Assembly of Bosnia and Herzegovina provides by law that certain types of agreements do not require such approval; approving agreements with states and international organizations, by a majority vote, with the previous consent of the Parliamentary Assembly of BiH, except to the extent that the Parliamentary Assembly of Bosnia and Herzegovina provides by law that certain types of agreements do not require such approval.¹³²

2.2.2.1.2. The executive of FBiH

The executive of FBiH consists of the President and two-vice President of FBiH and the Cabinet or the Government of FBiH (including Prime Minister and two vice-Prime Ministers and sixteen (16) Ministers).

¹³¹ Constitution of the Federation of Bosnia and Herzegovina, The Legislature in Part IV-Structure of the Federation Government, Articles 11, 13, 14, 15, 16.

¹³² Constitution of the Federation of Bosnia and Herzegovina, The Legislative in Part IV-Structure of the Federation Government, Article 20.

The President and two Vice-presidents of the Federation are elected for a four-year term of office. For electing the President and two Vice-presidents of the Federation, at least one third of the delegates of the respective Bosniac, Croat or Serb caucuses in the House of Peoples may nominate the President and two Vice-presidents of the Federation. The election for the President and two Vice-presidents of the Federation require the joint approval of the list of three nominees, by a majority vote in the House of Representatives, and then by a majority vote in the House of Peoples, including the majority of each constituent people's caucus. If no list of the nominees receives the required majority in both Houses the procedure is repeated. In case one of the Houses rejects the joint nominees' list in the repeated procedure as well, it will be considered that the nominated persons have been elected by approval of the list in only one house. The President or a Vice-President may be removed by a decision of the Constitutional Court, acting pursuant to a Decision of the Legislature, adopted by a two-thirds majority vote of each House, which the official has violated the oath of office or is otherwise unworthy to serve.¹³³

The other element of the Executive of FBiH is Cabinet. The Cabinet consists of Prime Minister and two Vice-Prime Ministers from different constituent peoples selected from among the Ministers and sixteen (16) Ministers consist of eight (8) Bosniac, five (5) Croat and three (3) Serb Ministers.

For the election of the Federation Government, President of the Federation in agreement with both Vice-Presidents of the Federation appoints the Government of the Federation – upon consultation with the Prime Minister or a nominee for that office. The Government is elected after its appointment has been confirmed by a majority vote of the House of Representatives of the Federation. If the House of Representatives do not confirm the appointment of the Government, the above-mentioned procedure is repeated. The Cabinet may be removed either by the President with the concurrence of the Vice-Presidents, or by a vote of no confidence adopted by a majority in each House of the Legislature. The President removes

¹³³ Constitution of the Federation of Bosnia and Herzegovina, The Federation Executive in Part IV- Structure of the Federation Government, Articles 2 and 3.

Ministers upon the proposal of the Prime Minister.¹³⁴ The Executive competencies is distributed among the officials of FBiH, i.e. the president and two Vice-Presidents, Prime Ministers and two Deputy Prime Ministers, and Ministers and elaborated in the Constitution of the FBiH, the Federation Executive in Part IV Structure of the Federation Government, Article VII.

2.2.2.1.3. The Judiciary of FBiH

The judicial function in FBiH is exercised by the courts of the Federation: The Constitutional Court, and the Supreme Court. The Judiciary is autonomous and independent from the executive and legislative powers of the Federation. All judicial power in the Federation is exercised independently and autonomously and treated equally to all parties to legal proceedings. Courts ensure that all parties to legal proceedings are treated equally. Judges of the Federation cannot be held criminally or civilly liable for any acts carried out within the scope of their respective authority.¹³⁵

The Judges of the Supreme Court, including the Court President, are selected, appointed, disciplined and removed by the High Judicial and Prosecutorial Council in accordance with law. The Supreme Court shall have a number of Judges determined from time to time by Federation legislation but no fewer than nine. The Supreme Court is the highest court of appeals of the Federation, including appeals from Cantonal courts, in respect of matters involving questions concerning the Constitution, laws or regulations of the Federation and others as provided for in Federation legislation, except those within the jurisdiction of the Constitutional Court. The Supreme Court have also such original jurisdiction as is provided by Federation legislation. Judgments of the Supreme Court shall be final and binding. The mandatory retirement age for Judges of the Supreme Court is defined by Law.¹³⁶

¹³⁴ Constitution of the Federation of Bosnia and Herzegovina, The Federation Executive in Part IV- Structure of the Federation Government, Articles 4 and 5.

¹³⁵ Constitution of the Federation of Bosnia and Herzegovina, The Judiciary in Part IV- Structure of the Federation Government, Articles 1, 4, 5, 6.

¹³⁶ Constitution of the Federation of Bosnia and Herzegovina, The Judiciary in Part IV- Structure of the Federation Government, Articles 14, 15, 16.

The President of the Federation nominates the Judges of the Constitutional Court with the concurrence of the Vice-Presidents. The appointment of judges to the position needs approval of a majority of the present and voting members of the House of Peoples. The Constitutional Court consist of nine judges of whom at least two come from all three constituent people each and one from the group of the others. The primary function of the Constitutional Court is to resolve disputes: between any Cantons; between any Canton and the Federation Government; between any city, its Canton or the Federation Government; between any municipality and any city; between any Municipality and its Canton or the Federation Government; and between or within any of the institutions of the Federation Government. The Constitutional Court determines whether any proposed law that has been adopted by either House of the Legislature, or any law or proposed law that has been adopted by each House of the Legislature, is in accord with this Constitution upon the request of the President, of the Vice-President, of the Prime Minister, of the Deputy Prime Minister, or of one-third of the members of either House of the Legislature.

The Constitutional Court, upon the request of the Prime Minister, of the canton concerned, or of one-third of the members of the Legislature of a Canton, determine whether any law or proposed law that has been adopted by that Legislature, is in accord with this Constitution as well. Upon the request of the President, of the Vice-President, of the Prime Minister, of the Deputy Prime Minister, the Constitutional Court also determine whether any regulation enacted or proposed regulation to be enacted by any organ of the Federation Government is in accord with this Constitution. Additionally, at the request of the Prime Minister, of the canton concerned, determine whether any proposed law that has been adopted by a body of the Canton, city or municipality authority, is in accord with this Constitution. In addition to the above-mentioned issues, the Constitutional Court also decides constitutional questions presented by the Supreme Court or a Cantonal court that arise in the course of a proceeding currently pending before that Court. The

Judges of the Constitutional Court serve until 70 years of age, unless they resign or they are removed for cause by consensus of the Judges of the same Court.¹³⁷

2.2.2.1.4 Cantonal Level Governments in the FBiH

The FBiH has different local administration structure from the RS. The FBiH is composed of ten (10) federal units (cantons), i.e. composed of ten (10) mini-states, because the cantons enjoy sovereignty when it comes to decision-making with regards to the policies of local communities.¹³⁸

Five of the cantons (Una-Sana, Tuzla, Zenica-Doboj, Bosnian Podrinje, and Sarajevo) have a Bosniac majority, three (Posavina, West Herzegovina, and West Bosnia) have Bosnian Croat majority, and two (Central Bosnia and Herzegovina-Neretva) are ethnically mixed, meaning there are special legislative procedures for protection of the constituent ethnic groups.

Each canton has its own constitution based on the Constitution of the FBiH, Part IV-The Cantonal Governments' Articles IV, which is used as a basis for cantonal legislation. Within its own competencies, the FBiH makes its own constitution, laws, and other regulations that must be in accordance with the BiH Constitution. This Constitution determines exclusive competencies of the FBiH, common competencies of the federation and cantons, which can be realized together or separately.¹³⁹

Cantonal Local Governments were established in FBiH's ten (10) cantons in accordance with the Constitution of the FBiH. The Cantonal Governments consist of Legislation, Executive, and Judicial authorities like in FBiH Government. Each Canton has a Legislature for four years term consisting of one House comprising a number of Legislators determined in proportion to its population. They are elected

¹³⁷ Constitution of the Federation of Bosnia and Herzegovina, The Judiciary in Part IV- Structure of the Federation Government, Articles 9 and 10.

¹³⁸ Brankica Lenic, "Bosnia and Herzegovina on the Path to Fiscal Equalization", **The Fiscal Decentralization Initiative for Central and Eastern Europe**, p. 5, available online: http://lgi.osi.hu/publications/2006/346/FE_Bosnia_4.pdf, 12.07.2008.

¹³⁹ Lenic, p. 5.

democratically by the eligible voters in direct, Canton-wide elections. Each voter is eligible to cast a single, secret ballot for any registered party. In general, before each election, each registered party publishes a list of candidates. Each party's Cantonal Legislators are selected from the persons highest on that party's list; replacements for Legislators are come from the highest of the remainder on that list.

The primary responsibilities of the Cantonal Legislatures are to: prepare and by a two-thirds majority vote approve the Cantonal Constitution; enact other legislation necessary to carry out the Canton's responsibilities; and approve the Canton's budget and enact legislation to levy taxes and otherwise secure the necessary financing. The establishment and working procedures of the Cantonal legislatures are as follows: Each Cantonal Legislature, by a majority vote, adopts rules of procedure; a caucus of a constituent people is established, provided there is at least one delegate of such constituent people in the Cantonal Legislature. Additionally, each caucus nominates one candidate from among its members for the post of Chairman or Vice-Chairman who must be confirmed by the Cantonal Legislature. Accordingly, the Cantonal Legislature confirms the candidates in accordance with its Rules of Procedure. Yet, in the event that a constituent people are not represented in the Legislature, one of the positions of Vice-Chairman shall remain vacant. In the end, the three candidates confirmed by the Cantonal Assembly decide among themselves who will occupy the post of Chairman. Cantonal Legislatures deliberate publicly, other than in exceptional circumstances as provided in their rules, and publish a record of their deliberations and decisions. Legislators in the Cantonal Legislatures cannot be held criminally or civilly liable for any acts carried out within the scope of their duties in the Cantonal Legislatures. In the meantime, Cantonal Legislatures may conduct investigations and for this purpose may compel the production of testimony and documents.¹⁴⁰

Competencies that are not exclusively assigned to the federal government are given to the cantons, and they are defined as the cantons' special competencies. Common competencies of the federal government and cantons can be realized

¹⁴⁰ Constitution of the Federation of Bosnia and Herzegovina, The Cantonal Legislatures in Part V- The Cantonal Government, Articles 5, 6, 7.

together or separately, or by the canton, in the case of which the federal government coordinates it. Common competencies include human rights, the healthcare system, environmental protection, infrastructure, social policy, law implementation, tourism, and use of natural resources. Cantonal competencies include police, education, culture, housing policy, public services, regulating the use of local land, regulations for the improvement of the local business environment, humanitarian activities, conducting social policy and the establishment of social protection services, financing of activities of the cantonal government and its agencies through taxation, debt incurring or through other resources, and other functions in accordance with legal regulations.¹⁴¹

The Cantonal Executive is composed of a Prime Minister and Ministers. Ministers, together with the Prime Minister, constitute the Cantonal Government and Constituent peoples and members of the group of Others are proportionately represented in the Government. A Cantonal Prime Minister candidate is nominated by the Chairman of the Cantonal Legislature in consultation with the Vice-Chairmen. The Prime Minister-candidate proposes Ministers. Approval of the Cantonal Government by the Cantonal Legislature is done by majority vote. However, in cantons where two or more constituent peoples each constitute greater than 30 percent of the cantonal population according to the last census, the Government is approved by the Cantonal Legislature by a two-thirds majority.

The Government takes office after approval by the Cantonal Legislature. Ministers are responsible to the Prime Minister and to the Cantonal Legislature and they have ultimate responsibility for the work of their respective Ministries. The Prime Minister is also responsible to the Cantonal Legislature. The Government resign if, at any time, a vote of no confidence is passed by the Cantonal Legislature. The Cantonal Government is mainly responsible for: executing and enforcing Cantonal policies and laws, pertinent decisions of any Cantonal or federal court, and any responsibilities assigned to the Canton by the Federation Government; preparing budgetary proposals for the approval of the Cantonal Legislature; performing other

¹⁴¹ Lenic, p. 7.

duties as may be assigned in relevant legislation or the Cantonal Constitution. All decisions taken by the Government shall be by simple majority of those present and voting.¹⁴²

Cantons have courts which will have appellate jurisdiction over the courts of their Municipalities and original jurisdiction over matters not within the competence of those courts and as provided in legislation. Judges of Cantonal Courts, including the Court Presidents, are selected, appointed, disciplined and removed by the High Judicial and Prosecutorial Council in accordance with the law. Judges of Cantonal Courts, apart from reserve judges, are appointed for life subject to resignation, retirement or removal for cause by the High Judicial and Prosecutorial Council in accordance with the law of the Federation. Judges of Cantonal Courts may likewise exceptionally cease to hold office pursuant to a selection process following restructuring of cantonal courts during the transitional period to be defined in the law establishing the High Judicial and Prosecutorial Council. The mandatory retirement age for Judges of Cantonal Courts shall be defined by Law of the Federation. Constituent peoples and Others are proportionately represented in cantonal and municipal courts.¹⁴³

2.2.2.1.5 Municipal Level Local Administration in FBiH

The Federation has also municipal level of local administration structure. Each Municipality has a statute that is consistent with the constitution of its Canton, and conform to any relevant Cantonal legislation. Municipalities of the FBiH are autonomous communities with local self-governments. Every municipality, when implementing its competencies, takes all necessary measures for the purpose of ensuring the protection of rights and freedoms determined by the Constitution. The competencies include finances and tax policy, in accordance with federal and cantonal laws, common infrastructure, urban planning, public transport, and other

¹⁴² Constitution of the Federation of Bosnia and Herzegovina, The Cantonal Executive in Part V-The Cantonal Government, Articles 8, 9, 10.

¹⁴³ Constitution of the Federation of Bosnia and Herzegovina, The Cantonal Judiciary in Part V-The Cantonal Government, Article 11.

competencies of the city entrusted by the canton or transferred from the municipalities.¹⁴⁴

In the municipality of the FBiH, there are a Mayor and Municipal Council for the governance of the Municipality. Members' mandate in the Municipal Council and that of a Municipal Mayor is of four (4) years. Constituent peoples and Others are proportionately represented in municipal authorities. The Municipal Councilors are elected in through the democratic process, where voters vote through direct and secret elections in the entire region of municipality in a manner reinforced with the law. Every voter, according to law, can be voted a municipal councilor. The municipal mayor and the chairman of the municipal council in municipalities or municipal council multinational structure cannot be from the same constituent people, that is, from others, with exception in those municipalities where one constituent people consists of more than 80% residents, according to the last census in BiH.¹⁴⁵

The Municipal Governing Council is responsible for: prepare and by a two-thirds majority vote approving the Municipal Statute Charter; electing the Municipal Executive; approving the Municipality's budget; and enacting other regulations and ordinances necessary to carry out the Municipality's responsibilities.¹⁴⁶

The Municipal Executive is responsible for: appointing and removing Municipal officials; executing and enforcing Municipal policies, ordinances and regulations, as well as any responsibilities assigned to the Municipality by the Cantonal and Federation Governments; and reporting on the implementation of Municipal policies and activities to the Governing Council and the public.¹⁴⁷

¹⁴⁴ Constitution of the Federation of Bosnia and Herzegovina, Part VI-The Municipality Government, Article 1.

¹⁴⁵ Constitution of the Federation of Bosnia and Herzegovina, Part VI-The Municipality Government, Articles 2 and 3.

¹⁴⁶ Constitution of the Federation of Bosnia and Herzegovina, Part VI-The Municipality Government, Articles 4 and 5.

¹⁴⁷ Constitution of the Federation of Bosnia and Herzegovina, Part VI-The Municipality Government, Article 6.

The Municipal courts, which may be established for the territory of one or more municipalities, has jurisdiction over all civil and criminal matters, except to the extent that the original jurisdiction is assigned to another court by this or the Cantonal Constitution or by a law of the Federation or of the Canton. Municipal Courts is established by the Cantonal legislation and be funded by the Cantons. Judges of Municipal Courts, including Presidents of the Courts, are selected, appointed, disciplined and removed by the High Judicial and Prosecutorial Council of the Federation in accordance with the law. Judges of Municipal Courts, apart from reserve judges, shall be appointed for life subject to resignation, retirement or removal for cause by the High Judicial and Prosecutorial Council in accordance with the law.¹⁴⁸

2.2.2.2 Political Structure of Republic of Srpska (RS)

Republic of Srpska (RS) is one of the two constituent elements of the state of BiH. It can be assumed that RS is the legitimization of the Serbian prewar main aims that create the pure Serb population in the territory of Republic of Bosnia and Herzegovina. DPA made legal the Serbs' gaining during 1992-95 brutal war. RS consists of the 49% of total territory of the BiH and emerged as state in the state in the wake of DPA. The State government in the Republic is organised according to semi-presidential arrangement¹⁴⁹ and the principle of the separation of powers. Accordingly, the National Assembly and the National Council exercise the Legislative power. The Executive power is vested in the Government which is consists of Prime Minister, Deputy Prime ministers and Ministers. The judicial power is vested in the courts. The Constitutional Court provides constitutionality and legality of the issues with the constitution of BiH.¹⁵⁰ In general, Government is more centralized in the RS than in the FBiH because the RS has Entity and municipal governments, but no Cantons. The RS Entity government exercises a high degree of control over the activities of municipalities. However, decentralization in RS has

¹⁴⁸ Constitution of the Federation of Bosnia and Herzegovina, Part VI-The Municipality Government, Article 7.

¹⁴⁹ East European Constitutional Review, **New York University School of Law**, Volume 8, Number 4, Fall 1999.

¹⁵⁰ Constitution of Republika Srpska, Part V-Organization of the Republic, Article 92.

served to take power away from the State of BiH, centralize it at entity level, without bringing it any closer to citizens.¹⁵¹ Constituent peoples and members of the other groups are proportionally represented in public institutions in RS. Public institutions are the ministries of the RS Government, Municipal Governments, and District Courts and municipal courts in RS.¹⁵²

2.2.2.2.1. The President of the RS

The political structure of RS consists of the President of RS, Government of RS, National Assembly, and Council of Peoples. The Republic is represented and its national unity symbolised by the President of the Republic. The President of Republic is elected by direct votes of RS' electorates and has two Vice-presidents from among different constituent peoples who assist the President of the Republic in performing tasks entrusted to them. The President and Vice-presidents of the Republic are directly elected from the list of the candidates for the President of the Republika Srpska so that a candidate who wins the highest number of votes is elected President while the Vice-presidents are also elected candidates from the other two constituent peoples who win the highest number of votes after the elected President of the Republic. The same person may be elected President or Vice-President of the Republic no more than twice in a row.¹⁵³

2.2.2.2.2. The Assembly of the RS

National Assembly, one of the legislative authorities together with Council of Peoples in RS, is composed of eighty - three (83) representatives elected by direct votes of RS electorates. At least, four (4) members of one constituent people are represented in the National Assembly. The National Assembly has the President and two Vice-Presidents elected for a four-year term. The National Assembly regulates its work and organisation and the manner of exercising the rights and duties of

¹⁵¹ Denisa Sarajlic Maglic, "Paper presented at the Conference on Decentralization Between Regionalism and Federalism in the Stability Pact in the Western Balkans", 9-10 June 2006, Tirana, Albania, p. 3.

¹⁵² Constitution of Republika Srpska, Part V-Organization of the Republic, Article 97.

¹⁵³ Constitution of Republika Srpska, Part V-Organization of the Republic, Article 83.

deputies. Additionally, the National Assembly exercises the constitutional power of RS. In general, National Assembly decides on altering the Constitution, enact laws, other regulations and general enactments; adopt a development plan, urban plan, budget and annual balance sheet; determine the territorial organisation of the Republic; call for the republic referendum; call for the elections for Assembly Deputies and the President of the Republic; elect, appoint and dismiss the officials, in accordance with the Constitution and the laws; exert control over the work of the Government and other bodies responsible to it, in accordance with the Constitution and law; grant amnesty; carry out other activities in accordance with the Constitution and Law.

One of the most important responsibility of National Assembly is to elect delegates from the Republic to the House of Peoples of the Parliamentary Assembly of BiH. The laws and other regulations approved by the National Assembly concerning the vital national interest issues of any of the constituent peoples shall come into force only after their adoption in the Council of Peoples. The National Assembly decides by a majority vote of all Assembly deputies, unless the Constitution provides a special majority. Upon the request of one third of the total number of deputies, or on the demand by the President of the Republic or the Government, The President is obliged to convene a session for National Assembly. The President of the Republic, the Government, every Assembly deputy or a minimum of 3,000 voters has the right to propose laws, other regulations and general enactments.¹⁵⁴

Council of Peoples is based on parity so that each constituent people have the same number of the representatives. Accordingly, the Council of Peoples has eight (8) members from each of the constituent peoples and four (4) members from the ranks of Others. Others have the right to equal participation in the procedure of majority vote. Accordingly, the composition of twenty-eight (28) delegates is broken down into eight (8) Bosniaks, eight (8) Croats, eight (8) Serbs and four (4) from others. The respective caucus in the National Assembly elects the members of the

¹⁵⁴ Constitution of Republika Srpska, Part V-Organization of the Republic, Articles 70, 71, 74, 75, 76, 78, 79.

Council of Peoples. The mandate of members of the Council of Peoples normally lasts four (4) years. The laws and other regulations approved by the National Assembly concerning the vital national interest issues of any of the constituent peoples come into force only after their adoption in the Council of Peoples.¹⁵⁵ “Deputies of the National Assembly and members of the Council of Peoples cannot be held criminally or civilly liable for any acts carried out within the range of their duties in the National Assembly or Council of Peoples.”¹⁵⁶

2.2.2.2.3. The Executive of the RS

The executive consists of the President and the Government. The Government consists of the Prime Minister, Deputy Prime Ministers and Ministers. The President acts as the commander of the entity's army and exercises important prerogatives in the field of defense and security. The president holds a pocket veto on legislation passed by the National Assembly. The President nominates the Prime Minister who also selects the Minister and they took the office after the approval of the National Assembly.¹⁵⁷ The Prime Minister and Deputy Prime Ministers do not come from the same constituent people. A new Government is elected each time a new National Assembly is elected. After the full implementation of Annex 7 of BiH Constitution, at least 15% of the members of the Government must be from one constituent people. At least 35% of the members of the Government must be from two constituent peoples. One member of the Government must be from the ranks of *Others*. The candidate for the Prime Minister presents his program to the National Assembly and proposes a list of ministers of the Government. The Government is elected, if the majority of the total number of deputies of the National Assembly votes for it.¹⁵⁸ This is a typical execution of one of the element of consociational system, i.e. the proportional representation of the constituent people in the decision-making institutions. Accordingly, Government of the Republika Srpska (Prime Minister and

¹⁵⁵ Constitution of Republika Srpska, Part V-Organization of the Republic, Article 71.

¹⁵⁶ Constitution of Republika Srpska, Part V-Organization of the Republic, Articles 73.

¹⁵⁷ East European Constitutional Review, **New York University School of Law**, Volume 8, Number 4, Fall 1999.

¹⁵⁸ Constitution of Republika Srpska, Part V-Organization of the Republic, Articles 91, 92, 93.

16 ministers) comprises of eight (8) ministers from the ranks of the Serb, 5 from the ranks of the Bosniac and 3 from the ranks of the Croat people. The followings are the names of the ministries of the RS:

- Ministry for Economy, Energy and Development
- Ministry of Finance
- Ministry of Education and Culture
- Ministry of Justice
- Ministry of Internal Affairs
- Ministry of Administration and Local Self-Governance
- Ministry of Health and Social Protection
- Ministry of Agriculture, Forestry and Water Resources
- Ministry of Transport and Communications
- Ministry of Trade and Tourism
- Ministry of Urban Planning, Civil Engineering and Ecology
- Ministry of Labor and Soldiers and Invalid Protection
- Ministry for Economic Relations and Coordination
- Ministry for Refugees and Displaced Persons
- Ministry of Science and Technology
- Ministry without Portfolio

The Prime Minister from the quote of the largest constituent people may appoint one Minister from the ranks of others. The Government and its members are responsible to the National Assembly. The National Assembly may vote no confidence to the Government. The proposal for a no confidence vote to the Government may be submitted by at least 20 representatives. The Government itself may ask for a vote of confidence at the National Assembly. The Prime Minister may propose to the National Assembly a dismissal of individual members of the Government. The Government and each of its members may submit their resignations to the National Assembly. The resignation or dismissal of the Prime Minister entails the resignation of the entire Government. However, Government which has been voted no confidence, which has resigned or whose mandate has been

revoked because of dissolution of the National Assembly, remain in office until a new Government is elected.¹⁵⁹

2.2.2.2.4. The Judiciary of the RS

Courts in RS exercise judicial power. The Judiciary is autonomous and independent from the executive and legislative powers of RS. The courts are autonomous and independent and adjudicate on the basis of the Constitution and laws. The High Judicial and Prosecutorial Council of RS ensure the autonomy, independence, impartiality, competence and efficiency of the RS judiciary and of the prosecutorial service. The responsibilities of the High Judicial Council include, but not limited to, the appointment, discipline and removal of judges, apart from the Judges of the Constitutional Court of the RS, and also include public prosecutors and deputy public prosecutors. Law defines the composition and additional responsibilities of the High Judicial and Prosecutorial Council¹⁶⁰. There are two levels of courts in RS: The Supreme Court and Constitutional Court.

The Supreme Court of the Republic, as the highest court in the Republic, ensures a unified enforcement of law. Judges, are appointed for life subject to resignation, retirement or removal for cause by the High Judicial and Prosecutorial Council in accordance with the law. Judges may likewise exceptionally cease to hold office pursuant to a selection process following court restructuring during the transitional period to be defined in the Law establishing the High Judicial and Prosecutorial Council. The mandatory age for judges is determined by Law. Terms of service, including immunity of judges is determined by law as well.¹⁶¹

Constitutional Court in RS has seven (7) judges and may have maximum nine (9) judges in the wake of the amendments to article 116. The members of the Constitutional Court judges are elected for the period of eight years by the National Assembly and the Council of Peoples of RS. The main functions of the

¹⁵⁹ Constitution of Republika Srpska, Part V-Organization of the Republic, Articles 92, 93, 94.

¹⁶⁰ Constitution of Republika Srpska, Part X-Courts and Public Prosecutorial Office's, Articles 121, 122, 123, 124.

¹⁶¹ Constitution of Republika Srpska, Part X-Courts and Public Prosecutors Office, Articles 127.

Constitutional Court are to monitor events of interest for the achievement of constitutionality and legality, and inform the highest constitutional bodies of the Republic on the status and problems in that area, offering them opinions and proposals for adopting laws and undertaking other measures for the purpose of ensuring constitutionality and legality, as well as the protection of freedoms and rights of citizens, organisations and communities. Additionally, the Constitutional Court may assess the constitutionality of laws and both the constitutionality and legality of regulations and general enactments, which have ceased to be effective, provided that not more than one year has elapsed from the date of the cessation of validity to the date of initiating the proceedings. The decisions of the Constitutional Court are universally binding and enforceable in the territory of the Republic. The President and judges of the Constitutional Court has the same immunity as the Assembly deputies. The Constitutional Court decides on immunity.¹⁶²

2.2.2.2.5. Municipal Level Administration in RS

The Constitution of RS is based on local self-governance, where municipalities and cities are defined as local self-governance units. Unlike the Federation, the RS has a single-level local self-government system. Each municipality has its own competencies and delegated competencies. Municipal competencies include the creation of a development program; managing development; town planning; urban implementation plans; budget design and reporting on the final state of accounts; planning the use of municipal land and business premises; organization of communal police; communal activities planning; construction and maintenance of local roads, streets, and other sites important for the municipality; and taking care of citizens' needs in terms of education, culture, health, social protection, and information. Implementing laws, other regulations, and general enactments of the RS and city, whose implementation is entrusted to the municipality, ensures regulations and general enactments of the municipality, establishing bodies, organizations, and services for the needs of the municipality, and performing other duties determined by the Constitution, law, and municipal statute.

¹⁶² Constitution of Republika Srpska, Part IX- The Constitutional Court, Articles 115, 116, 119.

The political, administrative, and fiscal structures in the two entities are not harmonized.¹⁶³

2.2.2.3 District Brčko

The Brcko district is created on the territory of the RS and the FBiH following an arbitration process set up by the Dayton Peace Accords.¹⁶⁴ The Brcko District is a single administrative unit of local self-government existing under the sovereignty of BiH. The name of the District is: "The Brcko District of Bosnia and Herzegovina".¹⁶⁵ The Constitution of BiH, as well as relevant laws and decisions of the institutions of BiH, are directly applicable throughout the territory of the Brcko District. The laws and decisions of all District authorities must be in conformity with the relevant laws and decisions of the institutions of BiH. As opposed to the two entities, FBiH and RS, there are no Coat of Arms and flag for the district other than BiH's.¹⁶⁶ Functions and authorizations of the District include: economy, finance, customs administration, public property, public services/infrastructure, culture, education, and health protection, protection of the environment, social protection, and administration of justice, legal service, police, housing issues, urbanism planning, and other functions necessary for the functioning of the district as an independent administrative unit of local self-governance.¹⁶⁷ The District is based on the division of powers. The District Assembly exercises the legislative power. The District Government exercises the executive power. The judicial power is exercised by the District Courts.¹⁶⁸

The Brcko District Assembly is the legislative body of authority in the District and determines the general policy for the District in accordance with Article

¹⁶³ Lenic, p:8.

¹⁶⁴ Country Fact Sheet: Bosnia and Herzegovina, available on line: www.oecd.org/dataoecd/27/32/36454643.pdf, 14.07.2008.

¹⁶⁵ Karnavas, p: 111.

¹⁶⁶ Statue of the Brcko District of Bosnia and Herzegovina, **Brcko Arbitration**, Chapter I- General Provisions, Articles 1, 2, 3, 12, December 1999, available online: http://www.ohr.int/ohr-offices/brcko/default.asp?content_id=5367, 14.07.2008.

¹⁶⁷ Lenic, p: 7.

¹⁶⁸ Statue of the Brcko District of Bosnia and Herzegovina, Chapter III- Organization and Functions of the Brcko District, Article 20.

9 of Brcko Arbitration. The Assembly consists of twenty-nine (29) Councilors. The Councilors are elected in general, free, fair, and direct elections by secret ballot in accordance with the laws of BiH and the District. The members of Assembly's mandate are four (4) years term. The members of the Assembly elect the President and a Vice-President of Assembly among the Councilors during the first session of each new electoral term. The Assembly meets within two (2) weeks from the date of certification of the election results and upon being sworn in under oath or affirmation, the Assembly convenes at least twice a month at a regularly scheduled time and location. The President of the Assembly may call the assembly to convene upon his initiative or at the written request of at least five (5) Councilors as often as necessary in order to perform its functions.

The Assembly adopts a decision in case a session is attended by more than half of the total number of Councilors. Councilors cannot be held criminally or civilly liable for any act carried out and opinion expressed or vote cast in performance of their duties. The Assembly is mainly responsible for: adopting the Brcko District Statute and the Rules of Procedure of the Assembly; adopting the District Budget and Laws; electing and dismissing the President and Vice-President of the Assembly, the Mayor of the District, and other officials in accordance with this Statute, the Rules of Procedure and the law; monitoring the District Government and the entire administration of the District, particularly regarding the management of the District revenues and expenditures. For this purpose the Assembly can, upon the request of at least five (5) Councilors, form a special Committee from its members to examine the work of any administrative body of the District; evaluating formally the performance of the Mayor, Head of the District Revenue Agency and Chief of Police at least once a year during a regularly scheduled session.¹⁶⁹

The Executive power is exercised by The District Government which is composed of the Mayor and the Heads of Departments. The Mayor is elected by the Assembly and has a chance to be re-elected. The Mayor serves together with Assembly which elected him during the term of the Assembly till a new Mayor is

¹⁶⁹ Statue of the Brcko District of Bosnia and Herzegovina, Chapter III- Organization and Functions of the Brcko District, Articles 23, 24, 25, 28, 29, 33.

elected. Mayor represents the District. The Mayor organizes the District Government as economically and efficiently as the District revenues permit. The Mayor is mainly responsible for implementing the laws of BiH and the District. He is responsible to the Assembly for the orderly management and administration of the District. The Mayor has authority to appoint, promote and dismiss all public employees of the District in accordance with the law, and insures that they are subject to a comprehensive set of personnel regulations including standards for recruitment, rules of conduct and routine performance evaluations. The Head of the Administrative Support Department holds the position of Vice Mayor to assist the Mayor in exercising his duties and represent the Mayor in his absence. The other component of the district government is the Heads of Departments. They are selected or dismissed by the Mayor based on professional criteria. The Heads of Departments reflects the composition of the population. The Heads of Departments manage their Departments within the framework of the Mayor's policy-making powers. The Assembly has a right to veto the Mayor's selection or dismissal of a Head of Department by a three-fifths majority vote.¹⁷⁰

The relationship between the Government as Executive and Assembly as Legislative are as follow in general: The District Government informs the Assembly on all current issues regarding the governance of the District. The District Government may also participate in the sessions of the Assembly, but not allowed to vote. The Mayor has the right to speak at any time on any point of the Agenda. The Mayor provides any information requested by Assembly without delay.¹⁷¹

The judiciary is exercised by independent courts that consist of the Basic Court and the Appellate Court. The Courts have general jurisdiction. The establishment, organization and jurisdiction of the Courts are provided by law. They adjudicate impartially based on the Constitution and laws of BiH, and District laws.

¹⁷⁰ Statue of the Brcko District of Bosnia and Herzegovina, Chapter III- Organization and Functions of the Brcko District, Articles 6, 46, 47, 48, 50, 51.

¹⁷¹ Statue of the Brcko District of Bosnia and Herzegovina, Chapter III- Organization and Functions of the Brcko District, Article 53.

The District Government should to assist the courts in their functions and to execute without delay all decisions and orders issued by the courts.¹⁷²

2.3 International Actors in BiH Political Structure

International actors have played very important roles ending the war and establishment of the state's institutions and democracy in BiH. Although there are many international organizations and institutions in BiH, here only the OHR and OSCE will be elaborated on political development of due to effects on the political development of every level of governance. The OHR and OSCE have had the given legitimate authority by DPA to involve actively political life of the BiH to decrease the power of the political parties who had the responsibility for the war via successive elections. The OHR and OSCE have also tried to encourage the emergence of the moderate political parties as alternative¹⁷³ for establishing a democratic political system by using electoral democracy as a tool for long-lasting peace and stable states.

2.3.1. Peace Implementation Council (PIC)

A Peace Implementation Conference was held in London on December 8-9, 1995, just after the DPA, to mobilize international support for the Agreement. The meeting resulted in the establishment of the Peace Implementation Council (hereafter PIC). Since the London Conference, the PIC has come together at the ministerial level another five times to review progress and define the goals of peace implementation for the coming period: in June 1996 in Florence; in December 1996 for a second time in London; in December 1997 in Bonn; in December 1998 in Madrid, and in May 2000 in Brussels.¹⁷⁴

PIC consists of a group of 55 countries and international organizations that sponsors, directs, supports the peace implementation process in many different ways

¹⁷² Statue of the Breko District of Bosnia and Herzegovina, Chapter V-Courts and Prosecutor's Office, Article 62.

¹⁷³ Carrie, Elections, p. 62.

¹⁷⁴ Peace Implementation Council, <http://www.ohr.int/pic>, 10.07.2008.

by assisting it financially, providing troops for NATO-led Stabilization Force (SFOR)¹⁷⁵, or directly running operations in BiH. The London Peace Implementation Conference also established the Steering Board¹⁷⁶ (PICSB) of the PIC to work under the chairmanship of the HR as the executive arm of the PIC. PICSB meets every four to six weeks at the level of political directors to give political guidance to the HR and to coordinate OHR policies with the interests and policies of the PICSB members. Furthermore the steering Board meets weekly at the ambassadorial level in Sarajevo, to discuss day to day issues with the HR to coordinate policies and to give him political guidance on the discussed issues.¹⁷⁷

2.3.2. The Office of High Representative (OHR)

Office of the High Representative (OHR) is an ad hoc international institution or the chief civilian peace implementation agency in BiH and responsible for overseeing implementation of civilian aspects of Peace Agreement on behalf of the international community. The position of OHR was created under the GFAP in BiH. The HR, who is also EU Special Representative (EUSR) in BiH, is working with the people and institutions of BiH and the international community to ensure that BiH evolves into a peaceful and viable democracy on course for integration into Euro-Atlantic institutions.¹⁷⁸ The mandate and methods on coordination and liaison function of the HR is set out in Annex 10, Agreement on Civilian Implementation, of the GFAP. Annex 10 of GFAP declares the HR the final authority in theatre to interpret the agreement on the civilian implementation of the peace settlement.

¹⁷⁵ In the wake of DPA, A NATO-led multinational force or called Implementation Force (IFOR) was established on 20 December 1995 for implementation of Annex 1A (Military Aspects) of the Peace Agreement. After the peaceful conduct of the September 1996 elections, IFOR successfully completed its mission of implementing the military annexes of the GFAP. Under UN Security Council Resolution 1088 of 12 December 1996, SFOR was authorized to implement the military aspects of the Peace Agreement as the legal successor to IFOR on 20 December 1996, the date the IFOR mandate expired. The role of SFOR was to stabilize the peace in BiH. SFOR had conducted its mission from 20 December 1996 to 2 December 2005 and replaced by EUFOR (<http://www.nato.int/>).

¹⁷⁶ The Steering Board members are Canada, France, Germany, Italy, Japan, Russia, United Kingdom, United States, the Presidency of the European Union, the European Commission, and the Organisation of the Islamic Conference (OIC), which is represented by Turkey.

¹⁷⁷ Dominik Zaum, "The Paradox of Sovereignty: International Involvement in Civil Service Reform in Bosnia and Herzegovina", **International Peacekeeping**, Vol. 10, No. 3, Autumn 2003, p. 106.

¹⁷⁸ Office of the High Representative and EU Special Representative, available online: <http://www.ohr.int>, 10.07.2008.

OHR has the status of a diplomatic mission to BiH. It is made up of diplomats seconded by the governments of the Peace Implementation Council (PIC)¹⁷⁹ countries, international experts hired directly, and national staff from BiH. The Steering Board of the PIC nominates and The United Nations Security Council endorses the nomination of the HR. The Steering Board provides the HR with political guidance. In Sarajevo, the HR chairs weekly meetings of the Ambassadors to BiH of the Steering Board members. In addition, the Steering Board meets at the level of political directors every three months.¹⁸⁰

The OHR's headquarters, his Principal Deputy and their cabinets are located in Sarajevo. In addition, the Sarajevo Office accommodates the Political, Economic, Legal, Rule of Law, Resources Departments/Units and the Press Office. Additionally, the OHR has two (2) Regional offices, in Banja Luka and Mostar, Brcko Final Award Office and one (1) field office in Bratunac. A representation office in Brussels has responsibility for liaising with international organizations outside of BiH.¹⁸¹

During the first phase of the peace process, the function of the HR was limited to mediation and facilitator between both international and local actors, similar to the role played by successive peace negotiators during the war. Dissatisfied with the first two years of DPA implementation, the international community changed its attitude of relative non-interference in Bosnian affairs. At the PIC meeting International organizations and the PIC increasingly turned to the HR to serve as a focal point for political interventions. The HR has become the principal voice of the international community in dealing with national authorities and bears

¹⁷⁹ A Peace Implementation Conference was held in London on December 8-9, 1995, just after the DPA, to mobilize international support for the Agreement. The meeting resulted in the establishment of the PIC. Since the London Conference, the PIC has come together at the ministerial level another five times to review progress and define the goals of peace implementation for the coming period: in June 1996 in Florence; in December 1996 for a second time in London; in December 1997 in Bonn; in December 1998 in Madrid, and in May 2000 in Brussels.

¹⁸⁰ Peace Implementation Council, available online: <http://www.ohr.int/pic>, 10.07.2008.

¹⁸¹ Peace Implementation Council, available online: <http://www.ohr.int/pic>, 10.07.2008.

the main responsibility for developing a common score for the international community in BiH.¹⁸²

The powers of the OHR have gradually become extensive. Including the rights to directly impose legislation, enact interim measures when Bosnian parties are unable to reach agreement, decide on the timing, location and chairmanship of meetings of the central institutions, veto candidates for ministerial positions, enact measures to ensure that Bosnian institutions and elected representatives cooperate and implement the DPA, and take measures in case of non-compliance with deadlines set by the international community. The authority is so extensive that punitive measures against obstructionist politicians cannot be reviewed or challenged by courts in BiH. Every successive HR has executed to the HR's special powers more often than his predecessor. The OHR can dismiss officials or veto candidates for political posts without having to present firm evidence and justification for its decisions; and an independent body does not review such decisions.

In general, the main functions of the HR are set out in article 2 of Annex 10 of DPA as follows: Monitor the implementation of the peace settlement; maintain close contact with the parties to the Agreement, to promote their full compliance with all civilian aspects of the Agreement; co-ordinate the activities of the civilian organisations and agencies in BiH to ensure the efficient implementation of the civilian aspects of the peace settlement. The HR shall respect their autonomy within their spheres of operation while as necessary giving general guidance to them about the impact of their activities on the implementation of the peace settlement; facilitate, as the HR judges necessary, the resolution of any difficulties arising in connection with civilian implementation; participate in meetings of donor organisations; report periodically on progress to the United Nations, European Union, United States, Russian Federation and other interested governments, parties and organizations.

The HR has played a significant and very controversial role over the last thirteen years. While there are notable areas where progress has been achieved due to the existence of the OHR, there is also significant evidence that the office has

¹⁸² ESI (European Stability Initiative), "Reshaping the International Priorities in Bosnia and Herzegovina: Part II, International Power in Bosnia", 30 March 2000 (Reshaping), p. 24.

undermined the citizens' ownership of their government. In addition there are many ways in which the existence of the HR may allow nationalist politicians to behave more radically. Consequently, the behavior and interventions of the HR are vital to understanding the policy making dynamic in BiH.¹⁸³ In this context, the Bonn Power of the OHR prepared the ground for this increasing intervention.

Among the most important milestones in the peace implementation process for the HR's power increase was the PIC Meeting in Bonn. Originally intended as a facilitator, the High Representative (HR) was then granted the Bonn Powers by the Peace Implementation Council (PIC) in 1997 which dramatically changed the mandate of the office. The decision was made in an attempt to redefine the position in a way that would make it most effective and resulted in a granting the HR the authority to arbitrate and dictate legislation that could not be achieved through consensus.¹⁸⁴ In other words, PIC meeting in Bonn in December 1997 broadened the HR's powers over a potentially unlimited range of subject matters. Although the PIC was careful to avoid the impression that it was conferring additional functions on the HR, the HR himself has always referred to this authority as the Bonn powers. The HR has had the power to impose laws and the power to dismiss any public official from office. Accordingly, The HR has used these powers in many occasions.¹⁸⁵ The extension was a response to the continuing instability in BiH and the perception that the OHR had spent two years locked in sterile negotiation with many of the people who had caused the war in BiH in the first place, while the people of BiH continued to suffer.¹⁸⁶

However, the OHR's engagement has been highly commended by some analysts and exaggerated as follows: "*It is probably easier for BiH citizens to imagine their country without a Presidency, Council of Ministers or state parliament than without OHR.*"¹⁸⁷

¹⁸³ Anna Rose Lipton Galbraith, "Bosnia-Herzegovina: Toward a Less Imperfect Union", A thesis submitted to the faculty of Wesleyan University, April 2008, p. 29.

¹⁸⁴ Galbraith, p. 29.

¹⁸⁵ ESI (European Stability Initiative), Reshaping, pp. 25-26.

¹⁸⁶ Gergana Cisarova Dimitrova, "Democracy and International in Bosnia and Herzegovina", **Central European Political Studies Review**, Vol. VI, Number 1, P: 46, available online: <http://www.cepsr.com/dwnld/cisarova.pdf>, 14.06.2008.

¹⁸⁷ Dimitrova, pp. 46-47.

The Steering Board of the PIC, in its meeting on 2007 February, concurred that the OHR should plan to disband itself till 30 June 2008, although they had initially planned to close it down this on June 2007. This means that the extraordinary powers of the High Representative, who is also the EU's Special Envoy, to impose legislation and to dismiss public officials have been extended as well.¹⁸⁸ The OHR has involved the civilian implementation of DPA in BiH and intervened the all facet of the establishment of the democratic institution and integration of the war-torn ethnic groups under the new state. However, with the involvement and replacing the NATO mission in terms of military aspects of the peace implementation mission in BiH, European Union has increased its presence with the establishment of the European Union Special Representative (hereafter EUSR) on 1 January 2003. The HR was designated with an additional function as special representative of the EU in BiH giving him even more leverage on the EUPM and the EU funding for the police reform.¹⁸⁹ The EUSR has a mandate to promote overall EU political coordination among other things, currently co-located with the OHR. The EUSR will remain in BiH after the closure of the OHR.¹⁹⁰

The current HR is Miroslav Lajčák, he is the sixth HR of the International Community in BiH. The terms of previous HR of the International Community in BiH are as follow:

- Carl Bildt (December 1995 - June 1997).
- Carlos Westendorp (June 1997 - July 1999).
- Wolfgang Petritsch (August 1999 - May 2002).
- Paddy Ashdown (27 May 2002 - 31 January 2006).
- Christian Schwarz-Schilling (01 February 2006 - 31 June 2007).
- Miroslav Lajcak (31 June 2007-)

¹⁸⁸ Gerald Knaus and Marcus Cox, "Legal Dynamite: How a Bosnian court may bring closer the end of the Bosnian protectorate", **European Stability Initiatives**, 12 March 2007, (Legal Dynamite), p. 1.

¹⁸⁹ Dominique Wisler, Police Reform in Bosnia and Hercegovina, p. 42, available online: www.bmlv.gv.at/pdf_pool/publikationen/10_wg12_psm_60.pdf, 14.07.2008

¹⁹⁰ Office of the High Representative and EU Special Representative, available online: <http://www.ohr.int>, 10.07.2008.

2.3.3. European Union Special Representative (EUSR) in BiH

The European Union currently has nine Special Representatives (EUSRs) in different regions of the world. The EUSRs promote European Union (EU) policies and interests in troubled regions and countries and play an active role in efforts to consolidate peace, stability and the rule of law. EUSRs support the work of Javier SOLANA, EU High Representative for the Common Foreign and Security Policy (CFSP), in the regions concerned. They play an important role in the development of a stronger and more effective EU Common Foreign and Security Policy (CFSP) and in the EU's efforts to become a more active, more coherent and more capable actor on the world stage. They provide the EU with an active political presence in key countries and regions, acting as a voice and face for the EU and its policies. An EUSR is appointed by the EU Council, on the recommendation of the High Representative, through the legal act of a Joint Action, under Article 18 of the EU Treaty. Some EUSRs are "double-hatted", for example the EUSR in Bosnia and Herzegovina (BiH), who is also the High Representative for BiH under the Paris/Dayton agreements with a mandate to oversee the implementation of the DPA. EUSR represents the European Union's presence in BiH ensuring a coordinated and coherent EU approach to building self-sustaining peace and stability by assisting the country move beyond peace implementation towards EU integration.¹⁹¹

The principle aim of EUSR in BiH is to help BiH evolve into a stable, viable, peaceful and multiethnic country, cooperating peacefully with its neighbours and irreversibly on track towards EU membership. The main function of EUSR in BiH is enumerated as follows: The EUSR;

- offers the European Union's advice and facilitation to support political processes, including, in particular, the constitutional-reform process;
- promotes overall EU political coordination, reinforces internal EU coordination and coherence and ensures consistency and coherence of EU action;
- gives local political guidance to both EUFOR and the EU Police Mission;

¹⁹¹ Available online: <http://www.eusrbih.eu/>, 12.09.2008.

- monitors rule-of-law activities and provides EU institutions with advise on this issue;
- supports the preparation and implementation of police restructuring and provides support for a reinforced and more effective criminal justice system;
- engages with relevant local authorities to achieve their full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY); and
- contributes to the development and consolidation of respect for human rights and fundamental freedoms.¹⁹²

2.3.4. Organization for Security and Cooperation for Europe (OSCE)

Election have been at the centre of almost every negotiated settlement to end a civil war since the end of the Cold War and they form an integral part of the de-facto formula for internationally supported post conflict state-building.¹⁹³ Although the Dayton Constitution called for a multiparty system of government, BiH did not have a Law on Elections until August 2001 and during this transition period the OSCE established the election rules in BiH.¹⁹⁴ Accordingly, in accordance with Annex 3 of DPA, OSCE was given authority to organize elections and played a major and important role in order to promote free, fair, and democratic elections and to lay the foundation for representative government and ensure the progressive achievement of democratic goals throughout BiH. OSCE mission began operations in BiH under its GFAP mandate on 18 December 1995.¹⁹⁵

In order to conduct its role, OSCE Mission established programs to promote the development of democratic political institutions at all levels of BiH, from the local to the State level The OSCE Mission to BiH is composed of a head office in Sarajevo and fourteen (14) field offices, covering the entire country. Furthermore, the Mission has helped to establish six political resource centers, which provide political parties, independent candidates and citizens groups with the necessary

¹⁹² EUSR Mandate, available online: <http://www.eusrbih.eu/gen-info/?cid=2000.1.1>, 12/09/2008.

¹⁹³ Manning, pp. 60.

¹⁹⁴ Florian Bieber, "Croat Self-Government in Bosnia- A Challenge for Dayton?", **European Centre for Minority Issues (ECMI)**, 2001 (ECMI), p. 3.

¹⁹⁵ Organization for Security and Cooperation in Europe, Mission to BiH (OSCE BiH), available online: <http://www.ohr.int>, 12.07.2008.

resources to participate in the creation of a pluralistic and multi-ethnic political environment. The Mission's work is divided into the categories of Education, Democratization, Human Rights, and Security Co-operation. One of the Mission's key strengths is its widespread field presence, which enables it to work very closely with local politicians, officials and citizens. In general, OSCE's key areas of focus are promoting free, fair and democratic elections; development of democratic, participatory and self-sustaining institutions at all levels of government; monitoring human rights and fundamental freedoms and supporting the development of sustainable human rights institutions; assisting BiH to comply with its OSCE political-military commitments.¹⁹⁶

¹⁹⁶ OSCE and its mission in BiH, available online: <http://www.oscebih.org>, 14.07.2008.

CHAPTER III: CONSOCIATIONAL SYSTEM AND THE REFORMS IN POST DAYTON BOSNIA AND HERZEGOVINA

The DPA brought a peace and a special-type consociational state to the BiH. Constitutionally, it is not defined either as a federation or a confederation, but an analysis of the fundamental legal documents shows that it is a sort of an “asymmetrical confederation¹⁹⁷” of highly autonomous ethnically based entities coupled with weak central institutions: the unitary RS and the multiethnic FBiH. Accordingly, this situation has generated fragmentation and exclusion of minorities rather than reconciliation, triggering the worrying rise of a divisive national rhetoric.¹⁹⁸

Although the consociational system seemed to be introduced to BiH with the DPA, as stressed by Bieber, the elements of consociationalism in pre-war Bosnia could be seen at the informal level as well as in the institutions which came into existence with the elections in November and December 1990. In that time, in the wake of the first free elections, the three national parties i.e. SDA, HDZ, and SDS, winning an overwhelming majority, formed a grand coalition. The President of the presidency was given to the Muslim SDA, while the Prime Minister was a Croat and a Serb became the President of Parliament. The division of power was institutionally set by the presidency consisting of two Muslims, two Serbs and two Croats, as well as a member of other nations. In terms of other nations, a member of the SDA, Ejup Ganić, was elected as a “Yugoslav.” At last, all three ethnic groups had the representative in the cabinet.¹⁹⁹ This informal consociational implementation in state institution had worked very short period of time until the SDS withdrawal from the coalition and declaring the RS. On the other hand, soon after, HDZ followed the

¹⁹⁷ Mirjana Kasapović, “Bosnia and Herzegovina: Consociational or Liberal Democracy?”, **Politička Misao**, Vol. 42, No. 5, 2005, pp. 3-4.

¹⁹⁸ Constantine Arvanitopoulos and Nikolaos Tzifakis, “Implementing Reforms in Bosnia and Herzegovina: the challenge of the constitutional process”, **Centre for European Studies**, 6 June 2008, p. 15.

¹⁹⁹ Bieber, consociationalism, p. 82.

same procedure and establishment Herceg-Bosna in Herzegovina. Accordingly, the informal consociational implementation in BiH state institution collapsed.²⁰⁰

However, together with the DPA after the three years brutal war, consociational system was officially introduced and implemented in BiH with the justification of three reasons as Kasapovic stressed: Firstly, BiH is a divided society even the most divided European state and the political history of this country has been characterized by the coexistence and the conflict of three major religious and ethnic segments: Catholic-Croatian, Muslim-Bosniac, and Orthodox-Serbian. Yet, this division dates back to the 11th century and started with collapsing of the integral Christian community into the Western and the Eastern Church, and continued increasingly during the Islamization of a part of the Bosnian Christian population under the rule of the Ottoman Empire. Secondly, this division of the society in terms of religious and ethnic division was recognized and institutionalized in different ways and forms similar to consociational mechanisms: millet system in the Ottoman Empire, the principles of proportionality and parity during the Austro-Hungarian Monarchy and the national key quota system also based on the principles of proportionality or parity in the representation of Muslims, Serbs and Croats in party, government and even social institutions and organizations in the communist Yugoslavia respectively. Thirdly, starting with the disintegration of the SFRY, during three and half year's war deepened the ethnic and religious cleavages among three communities. Accordingly, the DPA for the first time in the country's history territorialized and politically institutionalized these segments.²⁰¹

In sum, several inherent favorable factors BiH bears made the international community to establish the consociational democracy: There were three diverse religious and national conspicuous cleavages among the three ethnic communities coming from the past. This was the ideal for consociational democracy, because if there were two groups, there would be competition between two diverse communities for domination and gaining the mastery over the other. Yet, in BiH, beginning and during the war there were three communities geographically separated and concentrated in distinct regions. There was strong internal coherence of each

²⁰⁰ Bieber, consociationalism, p. 83.

²⁰¹ Kasapović, pp. 7-8.

segment as well. In addition, DPA also legalized this division by recognizing the two entities and establishing the decentralized administration. Moreover, it was assumed that the country is small and the size of the population was appropriate for consociationalism, because according to Lijphart, consociational systems tend to be more successful in small countries, since they are easier to govern and possess less complex decision-making structures.²⁰² But, since the DPA signed, the overall assessments for the consociational system implementation in BiH has been inefficient and almost failure. The elements of consociational system have led to a special type of power sharing among the three ethnic groups and accordingly it has made the political structure instable.

On the other hand, although certain developments and accomplishments have been observed, the reforms vitally important for the future of the country and moving forward towards fully functional state and government structure have been failed to pass by parliaments. Since the constituent ethnic groups' leaders do not have consensus for the unitary state on contrary to the aim of the DPA, they have exploited the consociational system elements, for instance using the veto right given each ethnic group, for blocking the vitally important reforms initiated by international community or any of the ethnic groups politically represented in the parliament. In this chapter, the first section will touch on the why the consociational system does not work in the light of below three main reasons. In the second section, the constitutional reforms initiated by international community for the establishment and consolidation of democracy and the diverse approaches of the three ethnic communities against the reforms and the outcome of the reforms will be elaborated.

3.1. Implementation of Consociational System in BiH and the Reasons of Failure

Although thirteen years have passed and international community has spent huge amount of money and efforts since the DPA signed, the implementation of consociational system in the BiH has been inefficient due to numerous reasons. First of all, it is better to stress as Nikola Kovic highlighted that BiH is now facing a world

²⁰² Bieber, consociationalism, p. 84.

of consequences i.e. everything already been decided by DPA and intervention almost impossible. The facts have already been established and are undergoing legitimation. The partition of the State into two entities, which once seemed a temporary solution, has become a permanent situation involving 'statelets' and parallel institutions. Although the war ended, but the antagonisms are not, or in other words, the fighting has continued in the political arena. The Dayton entity borders have legitimated the idea of separation and ethnic territories. Dayton legitimated an accomplished fact, having first declared the end of the war without declaring who won or who lost, and established the percentage of territory belonging to each of the two demarcated entities. A democratic state cannot be built on such grounds and premises, but it happened. In general, it could be inferred that the DPA has now become an obstacle to both the political and the economic development of BiH and as well as to stabilization of the region indirectly.²⁰³

This failure of the consociational system could be subsumed under the three main reasons in general: There have been no consensus on the state, no consensus on the political system among the all three constituent ethnic groups and no consistent strategy of international actors in establishing a democratic state, and the unfavorable two-segmental structure of the Federation with one segment outnumbering the other.²⁰⁴ In addition, the DPA and its constitution enable the legitimate rights to each ethnic group to exploit the consociational systems elements for their nationalists' interests to block the reforms instead of collaboration and cooperation among them. So, in the light of these three general reasons, why the consociational system has not worked or inefficient in BiH will be elaborated taking into consideration of the consociational system elements, i.e. grand governing coalition or power sharing executives, segmental autonomy, proportional representation, and mutual right to veto. In other words, the establishment of the consociational system with the DPA gave the conflicted ethnic groups legal leverages for maintaining their secessionist activities in the political arena without arbitration of each other for unitary and strong central state of BiH.

²⁰³ Nikola Kovac, "Political Reflection: Bosnia and Hercegovina in The Light of European Integration", **Spirit of Bosnia (Duh Bosne)**, Vol. 2, No. 2, 2007, p. 3.

²⁰⁴ Kasapović, p. 9.

3.1.1. The Lack of Consensus Among the three Ethnic Constituents on the State of BiH

The increasing disagreement among the politicians of several of the SFRY, the accompanying nationalist fervor and resulting war led to the November 1991 opinion of the EC Arbitration Commission that the SFRY is in the process of dissolution.²⁰⁵ So, in this context, one of the primary causes of the inefficiency of consociational democracy in BiH is the lack of a minimal consensus of the members of all three constitutive national groups on the BiH since the commencing of the disintegration of SFRY.²⁰⁶ During the dissolution of the SFRY, contrary to Slovenia and Croatia, there was no consensus on the unitary state of the BiH among three ethnic groups due to having different secessionist aims, in particular in the parts of the Bosnian Serbs and the Bosnian Croats. Yet, the Parliament of the BiH, elected one year earlier, had already been severely divided between its Croat and Muslim members on one side and its Serb members on the other.

At the end of 1991, the Muslims and Croats held a referendum for the independence of the BiH, while Serbs held a referendum for remaining in the existing Federation. According to the results of the referendum for independence which the Bosnian Muslims and Croats voted for and the overall majority of the Bosnian Serbs did not show up for voting, the BiH was established by the consent of the majority of the citizens but not the formal consent of the majorities of all three major national segments of the society. Because, the Bosnian Serbs boycotted the referendum and even before the referendum, they had chosen to live in the politically and militarily separated de-facto region in the BiH. Then, the SDS declared the RS in BiH. In the meantime, the Bosnian Croats gave their consent for the independence of the BiH and acted together with the Bosnian Muslims contingently conditioned choice. Because, they found themselves to choose one of the two options emerged at

²⁰⁵ Bojkov, p. 49.

²⁰⁶ Kasapović, p. 10.

that time of the conditions resulted from the dissolution of SFRY: Either to live in Serbia and Montenegro or Bosnia. They opted for living in Bosnia.

However, it should be stressed that there was also diverse approaches between the Bosnian Muslims and the Bosnian Croats for the definition of the state through the referendum question formulations. The Bosnian Muslims wanted the referendum question to run in the following way: “*Are you in favor of a sovereign and independent BiH, a state of equal citizens and nations of Bosnia and Herzegovina i.e. Muslims, Serbs and Croats and others who live in it?*” The Croats wanted the question to be formulated as follows: “*Are you in favor of a sovereign and independent Bosnia, a state union of its constitutive and sovereign nations i.e. Croats, Muslims and Serbs in their national regions?*”²⁰⁷ It could be easily discerned that although the Bosnian Muslims wanted to have as a unitary civil state, the Bosnian Croats wanted to have as a federation or a confederation of its national units like the current state of BiH, but with establishment of the separate Croat entity. However, the consent of the Bosnian Croats for the unitary state of BiH and acting together with the Bosnian Muslims became disappeared with the processes of the territorialization and political institutionalization in the Croatia and in particular following the conflicts between the Muslims and the Croats in 1993 and 1994.²⁰⁸ Accordingly, the Bosnian Croats declared Herceg-Bosna and withdrew themselves from the coalition. Yet, after the DPA, the power of the nationalists’ parties and their lack of consensus on the unitary state of BiH were reaffirmed just after the 1996 elections. For example, after the election of 1996, the BiH parliament was scheduled to hold its first meeting in October, but it did not actually convene until January 1997 due to SDS representatives’ refusal to swear allegiance to a united BiH.²⁰⁹

On the other hand, these two ethnic groups i.e. the Bosnian Serbs and the Bosnian Croats, had the close relations with the Serbia and Croatia respectively in terms of desiring to be the part of these countries. Yet, these two countries had given the supports to their ethnic affiliated community in BiH to realize the coordinated

²⁰⁷ Kasapović, pp. 10-11.

²⁰⁸ Kasapović, p. 11.

²⁰⁹ Sanjin Sunny Petrujkic, “The Nature and Dynamics of Contemporary Nationalism: Reshaping a Modern and Multinational BiH State”, A Thesis submitted to the Faculty of Graduate Studies of The University of Manitoba, February 2006, p. 61.

secessionist aims. Moreover, the DPA was negotiated with, and signed by the presidents of BiH, Croatia and Serbia political leaders who have the highest responsibility for the policies that paved for the wars.²¹⁰ DPA strongly promoted these leaders as factors of stability and peace in the region. On the other hand, the latter two, the Croatian Leader Tudjman and the Serbian Leader Milosevic were the signatories of DPA instead of the Bosnian Croats and Serbs leaders of BiH. Thus, they legalized their supports and irredentist aims that caused the war in BiH, in other words their complicities by being part of the signatories of the DPA.

Instead of signing separate agreements to settle the inter-state conflicts of Serbia, Croatia, and BiH, the DPA involved the two neighboring countries as signatories of the agreement to settle BiH's intra-state conflicts. That is to say, signatories on behalf of Bosnia's Serbs and Croats were not their respective political representatives but the presidents of Serbia and Croatia. This vested Serbia's and Croatia's state leadership the status of guarantors for the settlement of the intra-Bosnian conflict. Both have seriously misused their positions for years and interfered in Bosnian affairs by maintaining their support and affiliation with extension of nationalist political parties in the BiH, in particular the SDS and the HDZ were offspring of the ruling parties in the neighboring states and represented their nationalist aims, even territorial claims.²¹¹ The BiH constitution also justified intervention by outlining the right of each entity to maintain special parallel relationships with their neighboring countries. For the Bosnian Muslims, it could not be envisioned any special relationship with the neighboring states due to the allegiance of Bosnian Muslims living in BiH is only to Bosnia. So, the secession of any of its units would result in separated Bosnian Muslim minorities. Therefore, the Bosnian Muslims have a vested interest in the preservation of a united Bosnian state. On the other hand, for the Bosnian Croats and Bosnian Serbs, the situation is different due to both neighbored by countries where their national group is the

²¹⁰ Nena Skopljanac, "Dealing with the Past in Post-Conflict Societies: Ten Years after the Peace Accords in Guatemala and Bosnia-Herzegovina", **Swisspeace Annual Conference**, 2006, p. 60.

²¹¹ Johannes Heiler, "Institutions, Civil Society and Nationalism in the Context of Democratic Consolidation-Prospects for Democracy in Bosnia and Herzegovina", **Peace, Conflict and Development Studies Journal**, 2002, p. 9.

dominant majority. Croatian and Serbian political interests have continued to appear to varying degrees in the years since Dayton was signed. The influence of regional politics has thus proved one of the key factors that affect the way that the national constituencies assess their preference orderings. Accordingly, allowing these relationships with the neighboring countries have threatened the unitary state of BiH and obstructed the sovereign administration of the government of BiH over their territory as well. The following example is important to show this intervention of neighboring countries to BiH undermining the efforts for unitary states of BiH.

In November 2007, the Croatian government set up 124 polling sites in the FBiH for the Croatian national elections. The polling stations were the result of an initiative by the Croatian Prime Minister to attract the votes of Bosnian Croats who tend to poll in strong support of his party, the right-wing HDZ. Although most countries allow absentee voting, this organization of polling sites was clearly a violation of Bosnia's sovereignty. This instance illustrates that Bosnian Croat identity remains strongly linked with Croatian national identity, and continues to be aggravated by the actions of the Croatian government.²¹² In the same token, the relationship between the Bosnian Serbs and the Serbia is stronger and has been exploited by the Serbia. This exacerbates the divisive internal politics of BiH. Accordingly, the Serbian politicians continually invoked the threat of the RS seceding in response to the UN negotiations concerning the independence of Kosovo. In this way, the secessionist aim of the Bosnian Serbs has lingered at the expense of the unitary state of BiH.²¹³

In the meantime, the question on the future form of the countries was discussed with a number of failed peace agreements preceded Dayton, consisting of proposals to partition Bosnia or to create a loose confederation of territories belonging to the three ethnic constituencies. At Dayton, however, the United States diplomats responsible for facilitating the negotiations focused on efforts to hold Bosnia intact. It could be asserted that the termination of explicit political aggression after 1995 could be interpreted as the consent of the majorities of all three national

²¹² Galbraith, pp. 26-27.

²¹³ Galbraith, p. 28.

communities to peace, but not as the consent to living in a single unitary state. On the other hand, the legalization of RS as unitary and homogeneous entity compared to FBiH inside the state of BiH was negative effect on consensus on state. A state based on a two entity structure cannot perform as a state since it represents an ethnic-based community created by war, resulted from war and provisioned by its outcome, having no aim for founding act of a state community.²¹⁴ The lack of consent of national segments on the future or the unitary state of BiH is very important, because the theory of consociational democracy is based on the assumption that successful political accommodation of ethnic differences is only possible through inter-ethnic elite co-operation. But, it has not been observed the real changes in the behaviors of the political leaders who authored the policies that led to the wars and who have largely been responsible for the atrocities and human rights abuses, and they are basically still in power. On the other hand, the new elite that in some cases came to power have pursued the same nationalistic ideology in recent past. For example the Alliance of Independent Social Democrats won the October 2006 elections in RS playing on a strong nationalist card.²¹⁵

The fundamental question today is the same one since the early 1990s, involving why the war broke out, why it continued, how it was settled, why we have a continuing dispute, and why war might erupt again. The Muslims, who represented a near majority, wanted a unitary state. The Serbs, about 30% of population, have insisted that they want Serb political control over Serb territory, where Serbs are majority or large plurality.²¹⁶ Furthermore, in particular the Bosnian Serbs does not have any will over the unitary state of BiH. They have always used their centralized unitary state like establishment for the declaration or hinting of secessionist intent when the appropriate conditions appear. For example, after the Kosovo independence, the Bosnian Serb Parliament by an overwhelming majority said that

²¹⁴ Sead Turcalo, "Deconstruction of state institution: The international Community and the political elites in Bosnia and Herzegovina", available online: www.boell.be/download_en/Deconstruction_of_state_institutions_Turcalo.pdf, 09.09.2008.

²¹⁵ Skopljanac, p. 61.

²¹⁶ Alan J. Kuperman, "Power Sharing or Partition? History's Lessons for Keeping the Peace in Bosnia", **Security Studies Program Seminar**, University of Texas, Austin, 12 April 2006, p. 1.

their entity had the right to secede from Bosnia if a significant number of the UN and the most European Union Countries recognize Kosovo's independence.

Moreover, in that case the RS assembly believes it has the right to launch a referendum to reconsider its (Bosnian Serb entity's) statehood status. So, the Kosovo's independence proclamation has raised concerns about the future of Bosnia. Many Bosnian Serbs feel their entity should follow Kosovo's lead and be allowed to secede from Bosnia and eventually attach itself to Serbia, which they see as their "motherland". In addition, the Bosnian Serb Prime Minister Milorad Dodik voiced a similar view over this issue. He stressed that "recognition of Kosovo by a significant number of UN members is the confirmation of new rights and principles." He also hinted their secessionists intend that "then we can also understand the unilateral proclamation of independence as a sign that the RS in the future can also count on such a right. In such a situation the RS will not hesitate to check the opinion of its people regarding its status in a referendum." Additionally, the RS assembly, in their extraordinary session over Kosovo, did not recognize Kosovo's independence and condemned the countries who made the move.²¹⁷

On the other hand, although thirteen years passed after the DPA, there is no confidence among the BiH people to the others, in other words, the lack of trust or confidence among the BiH people to the other ethnic community is very high. According to a UNDP survey conducted in 2007, the seven percent of the population expresses readiness to trust others in BiH. This is the lowest rates of social trust worldwide, including countries such as Iraq.²¹⁸ So, under these circumstances, i.e. the lack of consensus among the unitary state of BiH and the lack of trust among the BiH people to each other, to expect positive development towards the unitary and democratic state in BiH will be the optimistic idea. If there is no consensus on the existing state among the constituent people, whatever the system you implement it, the degree of success will be very low. The proposals for the constitutional changes

²¹⁷ Serbs hint future secession move from Bosnia, <http://www.eubusiness.com/news-eu/1203636721.42/>, 10.09.2008.

²¹⁸ Sofia Sebastian, "Leaving Dayton Behind: Constitutional Reforms in Bosnia and Herzegovina", **Fride**, November 2007, p. 3.

envisioned to strengthen the state level institutions instead of the entities and in the long term period abolishing the entities, especially the RS.

This idea is pervasive in the Federation side, but within the RS the picture was quite different. Some political forces there (SDS, PDP) considered the present constitutional provisions at the State level perfectly adequate, while others (SNSD) were open to strengthening State powers to enable the country to efficiently adhere in the European Union. However, there was absolute unanimity that there could be no question of the RS being abolished. Abandoning the RS would be regarded by all Serbs as equivalent to defeat in the war and mean that all sacrifices had been in vain. By contrast, according to Serb interlocutors, within the RS the vital interest veto was being abused and should be reformed.²¹⁹ Consequently, it could be enumerated lots of reasons for the inefficiency of the consociational system, but the starting point should be to provide the consensus and settlement between the constituent people on the planned or existing state. If not, all the efforts for implementation of the planned or envisioned system will be in vane.

3.1.2. The Lack of Consensus on the Political Structure of State of BiH

One of the reasons of failure and inefficiency of the consociational system in the BiH is the lack of consensus of the political elites of three constitutive peoples on the political system or a lack of a firm belief of the elites of all ethnic segments that the preservation of the existing constitutional and political system is necessary and desirable.²²⁰ Because the peoples of BiH have never asked for such a model of society and the Constitution of BiH was not adopted by the Parliamentary Assembly of BiH, but imposed in Dayton. It does not reflect the spirit and political will of all the peoples in BiH, nor is it tailored to their needs. The task of implementing this Constitution was given to UNPROFOR, IFOR later SFOR and at the end EUFOR

²¹⁹ J. Helgesen, J. Jowell, G. Malinverni, J.C. Scholsem, K. Tuori, "Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Power of the High Representative", **European Commission for Democracy through Law (Venice Commission)**, Venice, 11 March 2005, (Constitutional Situation), p. 5.

²²⁰ Kasapović, p. 12.

and their civilian counterpart for the observation and later intervention to legislative and executive authority to OHR and OSCE by international community.²²¹

The aim of policies of the three ethnic groups from starting of dissolution of the SFRY to now has been different. Therefore, the cooperation among them has been limited and to some extent temporary for preserving their national interest instead of the favor of state of BiH. Accordingly, the main problem in BiH has been that consociationalism has had limited effectiveness in promoting long-term cooperation and inter-ethnic compromise. Ethnic quotas reinforced the salience of ethnic identity and cleavages, entrenched many of the ethnic divisions that international intervention was supposed to soften and eventually overcome and risked perpetuating instability. Without incentives for cooperation, it has been easy for politicians to win popularity by defending their national group and by portraying others as enemies.²²² In general, two elements are inconsistent with the tenets of consociationalism in BiH: First, the main prerequisite for a functional consociational democracy is missing in BiH, i.e elite co-operation. Secondly, the consociationalism that was implemented in the post-Dayton period was not spontaneous or voluntary in terms of elite co-operation. It was something imposed on BiH, mediated and overseen by the international community.²²³

It should be keeping in mind that the theory of consociational democracy is based on the assumption that successful political accommodation of ethnic differences is only possible through inter-ethnic elite co-operation in institutions. These institutions clearly recognize the ethnic divisions and make them the basis of the rules for decision-making, territorial division of power, and public policies. So, consociationalism allows generation of public policy on the basis of communal

²²¹ Kovac, p. 2.

²²² Roberto Belloni, "Peacebuilding and Consociational Electoral Engineering in Bosnia and Herzegovina", *International Peacekeeping*, Vol. 11, No. 2, 2003, pp. 336-337.

²²³ Maja Nenadović, "The Impact of Semi-sovereignty on Bosnia and Herzegovina's Democratization Process", Changing Europe Summer School II "Crises and Conflicts in Eastern European States and Societies: Stumbling Blocks or Stepping Stones for Democratization?" Warsaw, 2 – 8 September 2007, p. 4.

interests rather than individual ones.²²⁴ On the other hand, it is a model that guarantees the protection of minority rights and group rights and recognizes the legitimacy of claims to national self-determination within the existing state. In this way, these guarantees allow the groups not to fear each other and genuine trust can develop over time. It also envisages that the ethnic leaders can catch the severe dangers resulted from the ethnic differences and therefore choose to transcend mass hostility through co-operation.²²⁵ Taking into consideration the current BiH situation with this lens, it could be summarized that the most formidable enemies of the existing constitutional model of the state and democracy are the Bosnian political and social elites, which have never willingly accepted it and have been arguing that it is an expression of the pressures of the international community. Although the BiH elites have control over respective communities, political platform on which inter-elite or essentially inter-communal bargain, they have not shown the notion, desire and cooperative efforts to overcome the centrifugal tendencies of ethnic, cultural and religious fragmentation. On the contrary, they have blocked the initiatives and reform proposals. So, if the elites are not convinced that the existing political system is desirable, they will not try to create overarching loyalties among the social groups they represent.²²⁶

Historically in BiH, the struggle whether to remain or not under the umbrella of Yugoslavia during disintegration is now replaced by the intricate and often unreadable struggle for more domestic responsibility and power in policy decision-making. This struggle is intricate and unreadable because of the inconsistency in it's following by the different local political actors.²²⁷ In the meantime, it is better to recall that the existing constitutional political system is conditionally accepted only by the Serbian political elite, but not by the Bosniac and the Croatian elites. While the Bosniac elite strive for a reform of the constitutional consociational state into a

²²⁴ Nazif Mandaci, "The Rump Yugoslavia Conundrum of the West: The Chances of Consociational Democracy in the Post-Conflict Societies", **The Turkish Yearbook of International Relations/ Milletlerarası Münasebetler Türk Yılığı**, Vol. 35, 2005, p. 65.

²²⁵ Nina Fallentin Caspersen, "A comparison of consociational and integrative conflict regulation strategies in Post-Dayton Bosnia", Paper prepared for the conference "Europe as a Peaceful Power?" Stadtschlaining, **The European Peace Research Association (EuPRA)**, Austria, 13-17 July 2002, p. 7.

²²⁶ Kasapović, p. 12.

²²⁷ Bojkov, p. 42.

pure liberal civic state, the Croatian elite want a federal state or a state alliance of the three national units. In such a constellation of political goals, interests and views, there is not enough space for the accommodation among the elites.²²⁸

In addition, the established political structure by DPA and consociational system gave the three ethnic community considerable level of autonomy and rights to exploit for their national advantage at the expense of the democratic state of the BiH. One of the consociational elements that the political elites have often resorted is minority veto right. In the state level, there is a central government led by three presidents and one representing each of the dominant ethnic groups. Each president has the right of minority veto if a decision is considered harmful to the entity that he has been elected from. This is a power that has not been clearly defined, and has consistently resulted in policy stalemates. Since each President is elected solely by members of their ethnic constituency, the system emphasizes that each president is only obliged to represent the interests of their group.

In the meantime, this objective of strict representation is certainly not at risk in BiH, governance in this form proves problematic due to demographic distributions of the BiH people. In practice, the system excludes functional minorities from determining their representative. This means that the representation of Serbs living in the Federation and Bosniacs and Croats living in the RS is dependent on the preferences of dominant ethnic group choices. The effect is that portions of the population are denied their vote. Another problem is that the system discourages refugee return because people are not inclined to move back to areas where they will be a minority without an effectual vote. On the other hand, BiH central government does not have sufficient authority over the entities or cantons to inflict punishment for stalemates. The lack of punishment for the Bosnian Serbs and support by Belgrade allows politicians in the RS to maintain constituent support for their belligerence.

²²⁸ Kasapović, p. 15.

One of the other reason, and arguably the stronger one, has been the apparent lack of local politicians who are willing to put the past behind, assume leadership and steer the reforms towards the country's eventual European integration. A large majority of BiH's elected officials are still old school, heavily vested in nationalist rhetoric as a means of rallying support. The sentiment of nationalism is a powerful tool a convenient one in the wake of a bloody conflict in any kind of political system. What these politicians are failing to recognize, or perhaps choosing to ignore, is that a country that fell apart in a civil war needs positive politics based on unifying, rather than divisive, principles. Though the international community has tried to steer the hardcore nationalists away from public offices and electoral spotlights, the ugly truth is that scores of new nationalists are ready to take their places with the current political arrangements.²²⁹

Additionally, European diplomats have said that BiH can move closer to the Union without getting rid of its two post-war entities RS and the Muslim-Croat Federation of BiH. The problem, they say, lies in the dizzying array of governmental structures and responsibilities. BiH's state-level authorities deal with things like foreign affairs and external trade. Provided all goes smoothly with military reform, they will also be in charge of defence. One state-level court deals with inter-entity crime, but has no jurisdiction over the entities' top courts. There is a state-level border service, but no central authority over the police. BiH has two houses of parliament, but the Federation also has two, the RS has its assembly, and the tiny Brcko District in the northeast has its own as well. BiH doesn't have one president; it has three presidency members, who take turns being the presidency chairman.²³⁰

This complex political structure enables the three ethnic groups appropriate platform for exploiting the current political arrangements for their nationalist interests even they do not have the consensus on the consociational system. For example, during the preparation of the constitutional reform process i.e. the 2006 April Package, one of the hot and important agenda items was the abolishing the

²²⁹ Nenadović, pp. 5-6.

²³⁰ ESI in the press, Constitutional Changes in Bosnia and Herzegovina: What's on the Table, **Southeast European Times**, 14.03.2005, p. 1.

entities. The RS side did not accept this amendment and on contrary the Bosnian Muslims would like to abolish the entities. One of the reasons that SBiH leader Sladzić's opposition and withdrawal his support for the April Package was that the package was not envisioned the abolishment of the BiH entities. He stressed that supporting this package would be the confirmation of the current entity level set up in BiH.

3.1.3. The Lack of Consistent Strategy of International Actors establishing the Democratic BiH

The extensive international political involvement in BiH since the outbreak of the war was institutionalized by the DPA. Accordingly, it established the institutional infrastructure for the ongoing international intervention.²³¹ Although this involvement enabled BiH to have peace and appropriate conditions for the arbitration among the conflicted parties, on the other hand international aggressive interventions through the OHR's decisions have violated the constitution of BiH and even the European Convention on Human Rights. Accordingly, the other more important reason of the failure and inefficiency of consociational system in the BiH is the lack of strategy and consistency in the international administration and its dealings with local political elites that has created a fertile ground for excuses, finger pointing and shifting of responsibility. As stressed by Nenadović based on the former high-ranking IC official statement, the biggest problem with the international administration of the area was that no exit strategy plans were made until it was too late to shake up and dismantle the Dayton-set system.²³² This is important because in BiH, the strategy of cooperative internationalization was employed in which the international community played the role of the promoter of the establishment and the preservation of peace and the instigator of the negotiations among the conflicting parties and the control over them.²³³ The expected results have not been realized so far.

In order to see the lack of strategy and inconsistency of the international administration, it would be helpful to look at the HRs' approaches and decisions as a

²³¹ Zaum, p. 104.

²³² Nenadović, p. 5.

²³³ Kasapović, p. 15.

runner of the international efforts in BiH. Although they have various professional backgrounds and personalities for the job, they all seemed to harbour unique ideas as to what the role of the OHR was and how best to go about implementing it. However, it is hardly to discern a unified strategy among them. However, the two HRs' different approaches to the police reforms that is the most important reform, and that is required for the Stabilization and Association Agreement (SAA) for EU set a good precedent how and why it can not work out.

In May 2005, HR Paddy Ashdown explained his approach by saying that the police reform can not be imposed. Additionally, he continued his interview with his following statements.

“I cannot impose this reform due to two reasons: one of them being legal and the other one political. Legal because it is beyond the powers vested in me and political because if I impose this reform we cannot go to Europe since Europe specifically requested that this reform be implemented by the politicians of this country.”²³⁴

On the other hand, the HR Miroslaw Lajcak approached the reform in different way and paved for the following discussions or reciprocal statements between the HR and the Bosnian Serbs politicians. HR Lajcak presented Bosnian party leaders a proposal for how to reform the police on 29 August 2007. In response to his proposal on 18 October 2007, the prime minister of Republika Srpska, Milorad Dodik, anticipating some punitive measures, warned that Serbian officials would resign from their positions in the state institutions, if Lajcak were to use his right to dismiss officials. Then HR Lajcak gave a press conference on 19 October 2007 stating that “we are all aware that BiH does not function as it should” and then imposed amendments to the Law on the Council of Ministers of BiH. Additionally, he instructed the Joint Collegium of the BiH Parliamentary assembly to amend their rules of procedures. He warned that if the Collegium would fail to adopt these

²³⁴ ESI (European Stability Initiative), “The worst in class: How the international protectorate hurts the European future of Bosnia and Herzegovina”, Berlin, 8 November 2007, p. 8.

changes, he would impose them by 1 December 2007 and that there would be more impositions to follow. Upon the HR's hinting for the use of his Bonn Powers, Milorad Dodik told Bosnian reporters that the measures are unconstitutional and will not be accepted in the RS. Then the PIC endorsed Lacjak's decisions on 31 October 2007. These reciprocal quarrels ended up with the resignation of the RS Prime Minister, Nikola Spiric on 1 November 2007. After his resignation, he told television: "Bosnia-Herzegovina is absurd. If the international community always supports the high representative and not the institutions of Bosnia-Herzegovina, then it doesn't matter if I am the head of that state, or Bart Simpson."²³⁵

Accordingly, the lack of a consistent approach and the relatively high turnover of HRs left the local politicians in a peculiar position in the following way. As the outgoing HR handed over the mission to new one, these domestic political elites tested their boundaries by creating some kinds of disagreement in any topic, while the new head of the international administration took his time adjusting to the situation. In the meantime, local politicians effectively learned to co-operate with each other smoothly, but only when it came to teaming up against the international community. While the HRs all tried to mediate agreements between the different ethnic parties, the ethnic parties took turns acting as spoilers to these agreements. In response to these kinds of activities, more than a hundred officials have been removed from public office by successive HRs over the course of the past years.²³⁶

On the other hand, the local politicians have exploited this inconsistency by not having to take ownership and responsibility for the delay of the countries progress, democratization process, and any of the developments in all fields. In addition, they also justified their innocent positions in the eyes of the electorate and the international community stayed as scapegoat. Accordingly, when the HR removed these local politicians from their position, they have managed to receive support from the electorate and showed up in different official positions. For example, HR Paddy Ashdown removed the Croat member of the State Presidency

²³⁵ ESI, *The worst in class*, pp. 7-8.

²³⁶ Nenadović, p. 5.

Dragan Covic from his position, but he got himself elected as a President of the HDZ.

As stated, the political system of BiH imposed by international community. The international community has not had tolerance or patience the BiH institutions' initiatives or the challenges against its mandates. So, when BiH officials or institutions show any deviation from international community's established or planned activities, they always have been intimidated or punished via the OHR. In other words, international community gave the extraordinary power to the OHR in Bonn Meeting and would like him to use that power aggressively. For example, the PIC on its 20 February 2007 meeting extended the OHR mandate until 30 June 2008 but did not renew the mandate of the High Representative, German politician Christian Schwarz-Schilling, whom influential PIC members accuse of not using his powers aggressively enough. Accordingly, this time PIC directly warned the BiH institutions and also HR to take the necessary actions with below statements:

*“The PIC Steering Board noted with concern that domestic actors in BiH have challenged actions undertaken on the basis of Dayton and UN Security Council Resolutions under Chapter VII. The Steering Board reminds all institutions that Bosnia and Herzegovina’s international obligations under the GFAP and the United Nations Charter must be respected. It calls upon the High Representative, in close coordination with the Steering Board Ambassadors, to take appropriate actions to ensure that Bosnia and Herzegovina fulfils these international obligations”.*²³⁷

The point that should be underlined here is that the international community is squaring up for a major battle with Bosnia's constitutional organs. This potential clash as a result of this meeting could seriously damage international political authority and moral credibility, as well as future European peace-building missions elsewhere.

²³⁷ Knaus and Cox, (Legal Dynamite), p. 1.

On the other hand, the other leg of the inconsistencies of the international community is the OHR decisions on dismissing the BiH officials due to their non-compliance with implementation of the DPA. Over the past years, hundreds of BiH officials were removed by the OHRs decisions resulted from the so-called Bonn Powers. But the authority of the OHR is so extensive that punitive measures against obstructionist politicians cannot be reviewed or challenged by courts in BiH. Additionally, there is no appeal process against the HR's decisions, or request the withdrawal of the High Representative's powers. For example, the dismissal of Dragan Kalinic as president of the SDS and speaker of the RS parliament in June 2004 alongside the dismissal of 34 other SDS officials could account for this issue and its results on BiH. For these dismissals, very brief explanation was announced by the OHR. The OHR cited a report of an international Special Auditor describing the SDS's party finances as "a catalogue of abuse, corruption and tax evasion." However, it concluded that the HR cannot be confident that the SDS was not continuing to provide financial support to its former leader, indicted war criminal Radovan Karadzic. In other words, the HR did not directly accuse Dragan Kalinic of any illegal act. He and the other fired SDS officials were held collectively responsible for conduct for which they may or may not have been individually responsible.

Additionally, there was no evidence handed over to any independent authority. There was no right to appeal as well. Although the judgment passed in July 2006, it was published in February 2007. BiH's Constitutional Court ruled that the absence of a right of appeal for individuals removed by the HR and deprived of their civic rights by him (including the right to stand in elections, to receive unemployment benefits, and to work for public companies) is a violation of the European Convention on Human Rights, which under the Bosnian Constitution is the highest law of the land. The court acknowledged Bosnia's obligation to respect the High Representative's decisions, which have been endorsed by the UN Security Council. However, it also found that the primary obligation of Bosnian officials and institutions was to obey the constitution. Accordingly, the Constitutional Court has ordered the Bosnian state to ensure the protection of its citizens' constitutional rights

within three months.²³⁸ In other words, this is the challenge against the OHR mandates or indirectly to international authority in BiH.

However some of the PIC members planned to propose to use the HR extensive powers to overrule the judgment of the constitutional court. But this kind of proposals, as happened, would undermine the international community's efforts for the post-conflict societies state-building and democracy consolidation process and give damage to the its credibility. Because, for the BiH, 1995 DPA was drafted, negotiated and implemented by international community's leadership. On the other hand, the discussion over the power of the OHR was interrogated by EU and the Resolution 1384 of the Parliamentary Assembly of the Council of Europe asked the Venice Commission to examine the compatibility of the powers of the HR with democratic principles, as well as the compatibility of the Constitution of BiH with the European Convention of Human Rights and the European Charter of Local Self-Government and the efficiency and rationality of the constitutional arrangements in the country in general. In it opinion, although the Commission stressed the important and positive role played hitherto by the HR, it highlighted that this role cannot last forever and gradual change seems to be required. According to the opinion of the Commission, the HR's power to impose legislation does contradict the right of the people to freely elect their legislature and risks creating a culture of dependency. His power to dismiss civil servants and elected officials is particularly problematic as well. As an immediate measure, the commission's opinion recommends the setting up of a panel of independent legal advisers which would have to be consulted on such decisions.²³⁹

Consequently, as Nikola Kovac stressed that the slow process of the international institutions reacted too late to prevent conflict or protect the civilian population in 1992, just as they are late today, now that BiH has in practice been partitioned. The international community still believes that certain cosmetic changes to the Constitution can turn BiH into Switzerland. Instead of radical measures, the

²³⁸ Knaus and Cox, (Legal Dynamite), pp. 2-4.

²³⁹ Ugo Mifsud Bonnici, European Commission for Democracy through Law (Venice Commission) Annual Report of Activities in 2005, September 2006, available online: [http://www.venice.coe.int/docs/2005/CDL-RA\(2005\)001-e.asp#_Toc144026969](http://www.venice.coe.int/docs/2005/CDL-RA(2005)001-e.asp#_Toc144026969).

international community is searching for moderating solutions like it did in 1992. International community developed a plan for delivering humanitarian aid instead of a military intervention to prevent brutal war.²⁴⁰

3.2. The Constitutional Reforms in BiH

The Constitution of BiH is the part or an annex of the 1995 DPA. The DPA aimed at ending the war in BiH than establishing the basis for a viable and sustainable state. Accordingly, the reforms in BiH were commenced just after the war and signing the DPA. So, it could be seen that democratic reforms are the part of the implementation of a far-reaching post-conflict reconstruction program. That is to say that the post-conflict reconstruction program is overarching and multidimensional process including efforts to improve security i.e. restoration of law and order, and political governance, economic rehabilitation and development and social conditions concurrently.²⁴¹ It is evident that DPA constitution was the starting point or foundation for the future of the BiH. It was envisioned by international community that constitutional changes and reforms should have been done in BiH with the consensus among the three ethnic community or the political elites of each community.

This idea was put into words in different platforms by some of the HRs in BiH and international community officials who participated in the DPA negotiations. For example, as one of the ex-HR of the BiH, Paddy Ashdown made it clear that any constitutional changes will have to come from a consensus among the BiH politicians. Because the political system was established by international community or foreigners who helped negotiate an end to the fighting had this aim at that time. In the same token, one of the ex-US negotiators Richard Holbrooke, on a visit to BiH in October 2003, mentioned that;

²⁴⁰ Kovac, p. 1.

²⁴¹ Arvanitopoulos and Tzifakis, p. 15.

*"Dayton was a framework, and anyone who wants to improve, it should go ahead and try. And anything that all three groups agree to is fine with us."*²⁴²

At this point, there are two pervasive different approaches among the observers on the BiH constitution and political structure resulted from the DPA. Most observers agree that Dayton was a great achievement in that it ended the war and laid the foundation for consolidating peace. On the other hand, many observers also believe that the Dayton agreement, as a document derived from compromises and reflecting wartime circumstances, cannot by itself insure Bosnia's future as a functioning democratic state. In particular, Bosnia's multi-layered and ethnically-defined governing structures based on its constitution have presented significant challenges to its efforts to have a viable and consolidated state, integration into the EU and NATO and the necessary reforms that would enable to facilitate these process. Political differences among Bosnia's leaders and vested interests in the status quo continue to hinder efforts to strengthen Bosnia's central governing institutions and administrative capacity. The pull of Euro-Atlantic integration has fostered a degree of cooperation on this front, but political consensus across ethnic lines on key governing arrangements is still elusive.²⁴³

Furthermore, the three ethnic constituents have had different ideas and approaches to the constitutional changes and the reforms. As mentioned, DPA is imposed agreement and forced the three ethnic constituents accept and implement it. Although three ethnic constituents did not have the consents of the DPA constitution and political structure, it gave more advantageous to one of the entity, the RS, by legalization of the war time gaining and unitary entity like a semi-sovereign state, contrary to the Croats and the Muslims, i.e. FBiH. Accordingly, RS currently supporter or custodian of the existing constitution and opposes to the any kind of changes. So, contrary to HR Paddy Ashdown and Richard Holbroke statements, Petar Kunic, one of the Banja Luka law professor who was on the state parliament's nine-member constitutional law commission in 2005, mentioned that;

²⁴² ESI in the press, Constitutional Changes in Bosnia and Herzegovina: What's on the Table, **Southeast European Times**, 14.03.2005, p. 1-3.

²⁴³ Julie Kim, "Bosnia: Overview of Current Issues", **CRS report for Congress**, January 2008, p. 2.

"there's no constitution in the world that doesn't have flaws," and he added "right now's not the time to change the constitution. There's no need now to use up energy on things that don't benefit anyone."

Additionally, he stressed that anyone who brings this up has the hidden agenda. This idea is pervasive among the RS politicians in SDS as well. For example, supporting this idea, SDS party vice president in 2005, Bosko Siljegovic said that *"there are still parties and individuals in the Federation that are trying to realize some of the goals they didn't achieve during the war,"* in an article published by the Banja Luka daily Nezavisne Novine as part of a series on constitutional change. He also added that "these forcible initiatives only close the ranks of all political parties from the RS in the common resistance to changing the constitution."²⁴⁴

In general, it could be inferred that the two important factors that makes the Dayton political-administrative design of the BiH an obstacle to any serious reform process. The first relates to the territorial-administrative division of the country, and the second to the functional relationship between the international and local authorities. The formula of one state with two asymmetric entities, plus one district (Brčko), and then three constitutive peoples is a product labeled only for a single, one-time, pragmatic purpose. It is a mixture of disparate elements and compromises whose only aim was to stop a war, but in such a way that it forced all sides to PIC countries voice regret over BiH Parliament's failure to pass constitutional changes.²⁴⁵

However, the international community fearful that renegotiation of the accords would reignite conflict, acquiesced to this interpretation and focused its energies on keeping the peace, directly confronting nationalist obstruction to implementing the accords, and merely tinkered with reform around the edges of Dayton. On the other hand, although the citizens of BiH are united in wanting the EU accession and its benefits, the current constitution of BiH and the ethnically based

²⁴⁴ ESI in the press, Constitutional Changes in Bosnia and Herzegovina: What's on the Table, p. 1-3.

²⁴⁵ Ivan Lovrenović, Bosnia and Herzegovina: Facing the Challenge of Independence", **Spirit of Bosnia (Duh Bosne)**, Vol. 3, No.1, 2008, p. 1.

political parties make up or inhibit to this aim. Despite many state-building reforms, there is a question mark in minds whether the current state structure and the capacity can implement the broad range of measures to consolidate the democracy and the EU required reforms for accession. As mentioned before, only the BiH politicians can undertake or take on the fundamental change for the future of BiH.

The constitutional development in BiH after the DPA had been slow and very limited until BiH's accession to the Council of Europe in April 2002, except the "constituent peoples" case in 2000. The constitutional court of BiH examined some constitutional provisions of the RS which granted a privileged position to Serbs within the RS. The Court ruled that such provisions were incompatible with the Constitution of the State and that members of all three constituent peoples had to have equal rights throughout BiH. Although, the RS Constitution did have fewer obvious contradictions with the decision since its text was based on an approach giving equal rights to all citizens, practice in the RS was however quite different, and the Constitutional Court found a pervasive pattern of discrimination of non-Serbs within the RS. At the end, as results of two years efforts, major political parties' agreement and the HR imposed amendments, the basic approach chosen was based on the equality of constituent peoples throughout the territory.²⁴⁶

After the accession to the Council of Europe, slow but steady progress has been achieved in building a stable, functional and efficient state. The examples are the state-level Presidency assumed central command over the armed forces, a central BiH Defense Ministry was established in 2004, and a unified chain of command for the three previously separate armies was introduced.²⁴⁷ However, the first comprehensive and multi participatory attempt for the constitutional reform proposals, called the April Package, was the most important one in recent past. Nevertheless, it was rejected by BiH Parliament. It seems that there will be no longer multi participatory and the far reaching consensus for the constitutional reforms preparation in the BiH. Because after the 2006 election in the BiH, the political party

²⁴⁶ Helgesen, Jowell, Malinverni, Scholsem, Tuori, Constitutional Situation, p. 4.

²⁴⁷ Constitutional Reform, **ESI**, available online:
http://www.esiweb.org/index.php?lang=en&id=311&film_ID=5&slide_ID=32, 09.09.2008.

leaders began to follow the nationalist agenda and rhetoric. For example, on 9 September 2008, RS Prime Minister Milorad Dodik stressed that successful constitutional reform in BiH cannot be imposed from outside. He told journalists that “He objected to any kind of outside participation in procedures linked to constitutional changes” and underlined that he did not expect US representatives to have involvement in the process.²⁴⁸

In this section of the chapter, the April Package will be elaborated due to its importance in the BiH political life. It was important that for the first time the BiH’s six political parties agreed on the constitutional changes and participated in the preparation phases. The constitutional amendments process was facilitated by US and with the constant advice of the Venice Commission. Additionally, although there are many international players, NGOs, and institutions that have made contributions to the developments of the BiH constitutional reforms by their critics, recommendations or proposals, and comments, here the US and EU’s initiatives for contributions to the BiH reform process which are aimed at seeking BiH’s further development as a unified, democratic, and stable state on the path toward Euro-Atlantic integration will be elaborated. In the EU efforts, the Venice Commission and the Stabilization and Association Agreement’s effects will be emphasized respectively.

3.2.1. The April Package for Constitutional Reforms in BiH

The first comprehensive attempt at reforming Dayton came about in 2005 under the private initiative of former HR Deputy Principal Donald Hays. Then, representatives of the six leading parties then began work under the guidance of the US Institute for Peace (USIP), and Donald Hayes, former deputy High Representative in the country.²⁴⁹ With his initiative, negotiations took place in three separate formats. The first phase lasted from April to November 2005 and was

²⁴⁸ RS's Dodik says constitutional reform in BiH cannot be imposed from outside, Southeast Europe Times, 10.09.2008, available online:

http://www.setimes.com/cocoon/setimes/xhtml/en_GB/newsbriefs/setimes/newsbriefs/2008/09/10/nb-04.

²⁴⁹ Saida Mustajbegovic, “Bosnia: Constitution Reform Setback”, **Balkan Investigative Reporting Network (BIRN)**, 25.01.2007, available online: <http://www.birn.eu.com/en/67/10/2141/>. 14.09.2008.

facilitated by Hays and had the financial support of European countries such as Sweden, Switzerland and Norway. It included preparatory, exploratory talks among party representatives without public knowledge. The second phase lasted from November 2005 to January 2006 and was more formal and public. Party leaders were directly involved and the US embassy led the process with the backing of the US Department of State. At last, the third phase got underway in February 2006. At this point, bilateral meetings took place behind closed doors until a set of constitutional amendments was agreed upon by party leaders in March 2006.

After these three phases discussion and talks, the amendments incorporated the following issues: The new format for the election of the Presidency, i.e. it foresaw the indirect election of a state level President and two vice-President along with a reduction of its powers, with a rotation of three members every sixteen (16) months instead of eight (8) months at present; new competences granted to the state; the creation of two additional new ministries, namely agriculture and technology and reinforcement of competences of Council of Ministers in state level; and an increase in the number of Members of Parliament (MP) in both parliamentary chambers in the state level, i.e. the House of Representatives would have 87 instead of 42 with 3 seats reserved for the first time to members of non-constituent peoples, the so-called Others, the Upper House, the House Peoples would have 21 instead of 15 members and only competence decide on the vital interests' veto that can be invoked by any of the three constituent peoples.²⁵⁰

The April package was the US initiative like the DPA, but this time EU had the partial or limited support this process. Nevertheless, EU and the Venice Commission had stressed the required reforms or constitutional changes. But, EU showed the low profile engagement to the April Package due to some concerns such as the US sometimes imposing solutions rather than letting the BiH politicians lead the process, the negotiations discussed with the politicians instead of the legal expert, and the reforms may damage to the other ongoing reforms like police reforms. Although, this package was also described as an external imposition, in reality this

²⁵⁰ Sofia Sebastian, "Leaving Dayton Behind: Constitutional Reforms in Bosnia and Herzegovina", **Fride**, November 2007, p. 4.

was the domestic-driven process. The two ethnic group leaders of the Bosnian Muslim and Croat community, Sulejman Tihic and Dragan Covic respectively, were the ones to first approach the international community separately in order to put the issue on the agenda. The good thing was the BiH politicians displayed an ownership roles and the Serb member of the April Package negotiation team and PDP President Mladen Ivanic stressed that “the best value of this process is that we did this, we did it our own way and the result was a compromise with a little bit of pressure and some suggestions from the US”. However, the politicians who opposed this package thought that this was only the make up or cosmetic for the existing constitution and did not abolish some of the issues preventing the state from being fully functional.²⁵¹

Despite the long preparations and negotiations on the April Package, it was not approved in the House of Representative on 26 April 2006 due to short of two-thirds majority needed for it to be passed. While the major Bosnian Serbs, Muslims and the Croats parties, i.e SDA, SDP and HDZ-BH supported the Package, on the other hand, SBiH, the only party that withdrew from negotiations in the last stage, HDZ 1990 and the other independent Members of the Parliaments rejected April Package.²⁵² SBiH argued that the changes endorsed the country’s current Entity system, the HDZ 1990 claimed that they put the Croats in an unequal position.²⁵³ Thus, the agreement turned into an empty letter. The US and other international officials publicly decried the outcome as a major setback to the state consolidation process.²⁵⁴

However, the parties decided to wait until after elections in October 2006 to resubmit the package to parliament.²⁵⁵ But, the results of the October 2006 election results were a blow to the seven parties’ coalition for the constitutional amendments. In other words, the results of 2006 October's election, however, have placed an extra question mark over the April package, as some parties have changed their stance in the meantime, while others remain unclear about what they seek from constitutional

²⁵¹ Sebastian, p. 5.

²⁵² Sebastian, p. 6.

²⁵³ Tzifakis, p. 97.

²⁵⁴ Kim, p. 3.

²⁵⁵ Hays and Crosby, p. 1.

changes.²⁵⁶ Accordingly, as expected, the new SDS leadership declared its opposition to the agreement and SNSD moved to a more nationalistic position.

Despite the April Package failed to have the support of 2/3 of delegates of the House of Representatives of BiH's parliament, on the other hand, majority of the BiH citizens are in favor of constitution reform package. The latest research conducted in April by International Republican Institute (IRI) on the sample of 1550 citizens of BiH shows that 53.5% support the proposed changes of the constitution, while 26% are against. Among those who participated in the survey, 60.6% of the Bosnian Muslims support constitutional changes, while 50.3% of Croats are in favor and 44.9% of Serbs as well. It could be inferred that when the political leaders of the BiH have consensus on the future of the BiH, because, the Package backed by EU and US aimed to creating more efficient institutions of the country and at the same time allow easier negotiations for better ties with EU and NATO, where BiH aims to be a full member.²⁵⁷

3.2.2. US Contributions to the BiH's Constitutional Reforms

As mentioned, DPA was the initiative of US and it brought peace to BiH not the functional democratic state structure. Ten years after the DPA, since early 2005, the Bush Administration has given renewed emphasis to addressing "unfinished business" in the western Balkan region in conjunction with EU efforts. The US seeks to bolster Bosnia's further development as a unified, democratic, and stable state on the path toward Euro-Atlantic integration. The Administration supports Bosnia's Euro-Atlantic aspirations but believes that Bosnia must first consolidate its state structures and erase the ethnic and political divisions that Dayton accommodated. As elaborated in the 2006 April package, US were the leading nation or the facilitator for initiating the constitutional reform amendments.

In particular, U.S. Administration officials have identified priority changes to Bosnia's state-level governing institutions to include: creating a single Presidency

²⁵⁶ Mustajbegovic, <http://www.bim.eu.com/en/67/10/2141/>, 14.09.2008.

²⁵⁷ Bosnia Citizens Support Constitutional Reform, DTT-NET.COM May 16th, 2006, available online <http://www.daytonproject.org/about/article.php?id=146>.

instead of the current tri-partite Presidency; strengthening the Prime Minister's office; and strengthening the Bosnian Parliament. In 2005, ten years after the US helped broker a compact ending the war in BiH, the Bush administration was pressing the countries sectarian factions to seek a revised constitution. US officials claim that such reforms will represent a logical evolution of the Dayton agreement.²⁵⁸ The US increased her involvement in BiH in 2005. For example, in an interview with the Mr Burns said Secretary of State Condoleezza Rice sought in the spring to re-energize American involvement in the Bosnia and Kosovo situations. The final objective is to allow all the pieces of the former Yugoslavia to establish themselves as legitimate countries that could join the EU or NATO. He also stressed the narrow objective in the current Bosnian talks is to try to get the Bosnians to agree to the principle of constitutional change, particularly dismantling the three-person presidency, with one president from each sectarian group, and replacing it with one president and one unified government.²⁵⁹

Then the first comprehensive attempt at reforming Dayton came about in 2005 under the private initiative of former HR Deputy Principal Donald Hays. Additionally, The US involvement in BiH constitutional reforms process via the United States Institute of Peace.(hereafter USIP). USIP is an independent, nonpartisan institution established and funded by Congress. Its goals are to help prevent and resolve violent conflicts, promote post-conflict peacebuilding, and increase conflict-management tools, capacity, and intellectual capital worldwide. The Institute does this by empowering others with knowledge, skills, and resources, as well as by its direct involvement in conflict zones around the globe.²⁶⁰ USIP is very active in BiH and during the preparation of the 2006 April Package for the constitutional amendments to the BiH Constitution took the leading position.

3.2.3. EU Contributions to the BiH's Constitutional Reforms

²⁵⁸ Kim, p. 2.

²⁵⁹ US Urges Bosnian to Revise Constitution, The New York Times, 10.09.2008, available online: <http://www.nytimes.com/2005/11/21/international/europe/21dayton.html>, 16.09.2008.

²⁶⁰ Don Hays and Jason Crosby, "From Dayton to Brussels: Constitutional Preparations for Bosnia's EU Accession", **United States Institute of Peace Special Report**, October 2006, p. 2.

Although EU could not show successful reaction to arbitrate and solve the ethnic conflict and then the war among the three ethnic groups in BiH during the dissemination of SFRY, EU's later interventions in the Balkans, particularly in BiH, may have served as a scenario to foster the emergence of an EU whose international identity is that of a regional normative power.²⁶¹ After the DPA, EU commenced and increased its efforts for the establishment of the unitary and democratic state. Additionally, the huge tasks of building a stable social and political structure as well as functioning economy had to be undertaken by international community actors including EU. In this context, the EU's contribution to the BiH included from the civilian power to an increasingly committed normative power, promoting democracy, rule of law and human rights. The EU has said BiH cannot realize its EU membership hopes until it has overhauled the cumbersome constitution defined in an annex to the 1995 DPA. In addition the EU says the arrangement is not a functioning state and it wants to see the central structure strengthened at the expense of the entities, which currently operate virtually as separate countries.²⁶²

In the context of the EU contribution to the BiH state building and consolidation of democracy, the EU has deployed in the BiH the full spectrum of instruments at its disposal, including military instruments, to promote its external objectives and to pave the way for BiH to attain EU membership. Indeed, the membership carrot has become one of the main instruments of the EU to support its normative power.²⁶³ The membership carrot should promote the required internal changes that would bring BiH into line with the EU standards, both political and economic. The prospect of future membership for the countries of the Western Balkans, including BiH, was endorsed by the European Council in Feira in June 2000 and reconfirmed by the European Council in Thessaloniki in June 2003.

The EU affirmed this commitment to BiH in Thessalonica in June 2003 by offering the country a clear perspective of EU membership. The main road for BiH

²⁶¹ ANA E. Juncos, "The EU's Post-Conflict Intervention in Bosnia and Herzegovina: (re) Integrating the Balkans and/or (re)Inventing the EU?", *Southeast European Politics*, Vol. II, No. 6, November 2005, p. 88.

²⁶² Mustajbegovic, <http://www.bim.eu.com/en/67/10/2141/>. 14.09.2008.

²⁶³ Juncos, p. 93.

joining the EU is the Stabilization and Association Process supported by the European Council delegation and more than 2.5 billion euro in assistance programmes. The appointment of EUSR, the deployment of EUPM and replacing the SFOR with EUFOR in 2004 shows the increasing commitment by EU.²⁶⁴ In general, the European input came through three channels to the BiH: The supply of financial resources in the first phase of negotiations; the provision of a benchmark for constitutional negotiations through the opinion of the Venice Commission on the status of the Constitution in BiH; and the provision of declaratory support through public and private statements to infer a sense of inevitability. As a case in point, the European Parliament's resolution in April 2005 questioned Bosnia's constitutional framework as a viable model for the Bosnian state and urged the Venice Commission to support the country's political forces in finding a consensus to reform the political framework as set out in the Dayton agreement. The EU contribution to the BiH in terms of constitutional amendments or changes will be explained through the Venice Commission advices on constitutional changes in and Stabilization and Association Agreement negotiations with the EU for BiH's membership for EU.

3.2.3.1. The Venice Commission

The European Commission for Democracy through Law, also known as the Venice Commission (hereafter the Venice Commission), is an internationally recognized, consultative body of independent experts and advisory body on constitutional matters created by the Council of Europe. The commission was established in 1990 as a tool for emergency constitutional engineering and has come to play a unique role in disseminating the European constitutional heritage, managing crises, and preventing conflict through constitution building.²⁶⁵

The Venice Commission has involved in the constitutional change process in BiH upon request of the successive HRs of BiH, the Chairman of the Presidency of BiH and EU. One of the important Venice Commission's contribution to the BiH was its opinion on the constitutional situation in BiH and the powers of the HR

²⁶⁴ European Union in BiH, available online <http://www.eubih.org>. 12.09.2008.

²⁶⁵ Hays, Crosby, pp. 4-6.

(CDL-AD(2005)004) providing a very critical assessment of the constitutional situation in the country and outlining necessary reforms, in March 2005. In its assessment, the Venice Commission concluded that Bosnia's current constitutional arrangements were neither efficient nor rational, and that state-level institutions needed to become far more effective for Bosnia to move closer to EU integration.²⁶⁶

As regards the first stage of constitutional reform, the Venice Commission notes:

“A central element of the first stage of constitutional reform has to be a transfer of responsibilities from the Entities to BiH by means of amendments to the BiH Constitution. This is an indispensable step if any progress is to be achieved in the process of European integration of BiH. This step will be difficult since, as with other constitutional amendments in BiH, it will have to be based on consensus among the representatives of the three constituent peoples. Constitutional reform cannot be imposed. Another element of the first stage should be a streamlining of decision-making procedures within BiH, especially with respect to the vital interest veto, and a reform of the provisions on the composition and election of the Presidency and the House of Peoples which seem either now or following the entry into force of Protocol No. 12 on 1 April 2005 incompatible with the ECHR. The reform of the vital interest veto at the State level could best be carried out in parallel with similar reforms in both Entities.”²⁶⁷

Additionally, the Venice Commission also gave its opinion in March 2006 on “Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative” The commission raised four major issues regarding the current constitution and the prospect of EU membership for BiH. The Commission stressed that the weakness of the state government in comparison with the entities was of particular concern to the commission. Currently, the state of BiH does not have the capacity to ensure compliance with the conditions of accession, since most areas covered in the *acquis* are outside its competency. In addition, the vital nationalist interest veto, the two-chamber parliamentary system, and the collective

²⁶⁶ Kim, p. 3.

²⁶⁷ J. Helgesen, J. Jowell, G. Malinverni, J.C. Scholsem, K. Tuori, “Preliminary Opinion on the Draft Amendments to the Constitution of Bosnia and Herzegovina”, **European Commission for Democracy through Law (Venice Commission)**, Strasbourg, 07 April 2006.

presidency make effective government extremely difficult.²⁶⁸ The commission suggested several reforms enumerated below to make the government more efficient and effective.

As mentioned, the vital nationalist interest does not have clear definition and has been used by each ethnic group so far for blocking all kinds of reforms. Firstly, the Commission suggested that defining and restricting the circumstances for usage of the vital nationalist interest veto right would remove one of the greatest obstacles to efficient and effective governance in BiH. Secondly, the commission recommended streamlining the legislative process by abolishing the House of Peoples and moving the vital nationalist interest veto right to the House of Representatives. Thirdly, it also recommended replacing the collective presidency with a single, indirectly elected president with limited powers as head of state and concentrating executive power in the council of ministers. The Venice Commission expressed concern that ethnically linked entity structures prevented the formation of a national identity. Realizing that any effort to abolish the entities would be unrealistic at that time, the commission recommended that BiH take steps toward greater centralization of sub-state levels of government.

Lastly, it also expressed serious concern about the composition and method of election of the presidency and the House of Peoples. The commission stated that the current system is incompatible with the International Convention on Civil and Political Rights and the European Convention on Human Rights and has the effect of reinforcing and reproducing ethnic divisions. This is a serious impediment to future membership in the EU. To address this problem, the commission recommended either abolishing the collective presidency or creating an electoral system ensuring proper representation of the citizens of both entities, as well as all three peoples. In addition, it recommended either abolishing the House of Peoples altogether or, at the very least, fixing a maximum number of seats to be occupied by representatives from

²⁶⁸ J. Helgesen, G. Malinverni, J.C. Scholsem, K. Tuori, "Opinion on Different Proposals for the Election of the Presidency of Bosnia and Herzegovina", **European Commission for Democracy through Law (Venice Commission)**, Strasbourg, 20 March 2006, (Opinion on Different Proposal).

each constituent people as a less discriminatory means of ensuring an ethnic balance in parliament in the interest of peace and stability.²⁶⁹

As mentioned, the Venice Commission has involved in the constitutional change process in the BiH upon request of the Chairman of the Presidency of BiH. For example, before the October 2006 general election, the Chairman of the Presidency of the BiH, Mr Sulejman Tihić, asked the Venice Commission to provide an opinion on three different proposals for the election of the Presidency of the BiH. The declared intention is to adopt a comprehensive constitutional reform early enough to allow the upcoming elections in October 2006 to take place on the basis of a revised Constitution which would no longer contain the discriminatory provisions pointed out in the Commission's Opinion on the Constitutional Situation in BiH and the Powers of the High Representative in 2005. The Venice Commission concluded that none of the three proposals submitted to the Commission envisages a single President. All three proposals stick to a collective Presidency of three members. None of the proposals is therefore ideal from the Commission's point of view.

However, the Venice Commission specified its opinion on the three proposals as follows: One of the proposal, proposal 1 would consist of maintaining the present rules on the election and composition of the Presidency and excludes Others as well as the Bosnian Muslims and Croats from RS and Serbs from the Federation from being elected to the Presidency. The second proposal, despite having a clear improvement with respect to the present constitutional situation, it has a number of drawbacks, including the risk that candidates with less votes than others are elected and it does not contribute to the overall aims of the constitutional reform of moving power to the Council of Ministers and strengthening the State level institutions. The last proposal at least ensures that the representatives of the Others in the House of Representatives will take part in the vote and that the Serbs from the Federation and the Bosnian Muslims and Croats from RS are no longer disadvantaged since their representatives in the State parliament will be able to vote for the candidates of their choice. According to the Commission opinion, although the last two proposals

²⁶⁹ Hays and Crosby, p. 4.

deserve, subject to some additions and amendments, to be considered at the present stage as important steps forward, they are not as ideal solutions.²⁷⁰

In 2006, the Venice Commission continued to be involved in constitutional reform in Bosnia and Herzegovina. The Opinion on the need for comprehensive reform, adopted by the Commission in 2005, was the point of departure for the reform process and the Commission commented reform proposals made in 2006. While reform efforts did not bear fruit in 2006 due to failing to pass the April Package in BiH Parliament, possibly new reform proposals will have to be resumed in upcoming years and the Venice Commission remains available to provide assistance.²⁷¹

3.2.3.2. The Stabilization and Association Agreement (SAA)

The Stabilization and Association Agreement (hereafter SAA) is the Balkan path towards EU membership which was explained in detailed in 2000 at the Zagreb Summit and confirmed at the June 2003 Thessalonica Summit. At that time, BiH had completed a Feasibility Study which aimed to assess its state of preparation for the European integration process, whose main element was the Stabilization and Association Process (SAP).²⁷² With this process, BiH has been obliged to make numerous laws and built many new institutions to comply with EU standards, because the SAA is a binding treaty acting as a catalyst for change. Full implementation of the provisions of the SAA for BiH represents an essential step towards integration into the EU. In this context, under guidance from Brussels, the pace and depth of reforms were strengthened, driven by the prospect of EU accession. At the end, 46 new laws have been adopted and 27 new institutions created in line with European standards and requirements so far. In other words, it could be said that this process was one of the driving force for the BiH's reform

²⁷⁰ Helgesen, Malinverni, Scholsem, Tuori, Opinion on Different Proposal, pp. 5-6.

²⁷¹ Ugo Mifsud Bonnici, European Commission for Democracy through Law (Venice Commission) Annual Report of Activities in 2006, September 2007, available online: [www.venice.coe.int/docs/2006/CDL-RA\(2006\)001-e.pdf](http://www.venice.coe.int/docs/2006/CDL-RA(2006)001-e.pdf), 14.09.2008.

²⁷² Lidija Topic, "Making Bosnia and Herzegovina's Transformation Irreversible", *European Policy Centre Policy Brief*, June 2008, p. 2.

process. Because, with opening of "Community Programmes", BiH institutions to get EU funding in areas of health, education, sport, culture, social policy, employment and environment.

The SAA is the first step in the EU integration process for BiH. On the DPA's tenth anniversary, EU Enlargement Commissioner Olli Rehn launched the official SAA negotiations in Sarajevo. Although the technical talks were successfully completed in 2006, political issues blocked progress on the four remaining conditions until this year: Police reform in accordance with the EU's principles, full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), reform of public broadcasting and reform of public administration at large.²⁷³

The centerpiece of the SAP is the conclusion of a Stabilization and Association Agreement (SAA) that represents a far-reaching contractual relationship between the EU and each Western Balkan country, entailing mutual rights and obligations. The SAA is the first step in the EU integration process. It confirms that the prospect of EU membership is open for BiH. It is the first political and economic agreement with the EU further strengthening of BiH as a state in establishing partnership relations with the EU. The SAA is a binding treaty acting as a catalyst for change as well. Full implementation of the provisions of the SAA for BiH represents an essential step towards integration into the EU.²⁷⁴ It confirms that the prospect of EU membership is open for BiH.

Regarding European Integration, negotiations on a Stabilization and Association Agreement (SAA) were officially launched in November 2005. The technical talks for the SAA were finalized in December 2006 and the initialing of the SAA took place in Sarajevo on 4 December 2007. However, the signing of the agreement will depend on progress made by BiH in addressing a number of key

²⁷³ Topic, p. 2.

²⁷⁴ TV Interview with Ambassador Dimitris Kourkoulas, Head of Delegation of the European Commission to Bosnia and Herzegovina "Importance of the Stabilization and Association Agreement for BiH and its Citizens", available online <http://www.europa.ba/?akcija=vijesti&akcija2=pregled&jezik=2&ID=160>, 02.09.2008.

political conditions such as police reform and ICTY co-operation.²⁷⁵ For the police reform in the BiH, referring to the 21 February 2005 letter of the European Commission member Olli Rehn who emphasized that, if BiH to fulfill all requirements from the Feasibility Study on the structural police reform, all legislative and budgetary powers over police matters must be vested at the state level and applied at functional areas, as to get a technically efficient police, and there must not be political interference in the operational work of the police.²⁷⁶ The EU is interested in having BiH as a capable partner in the fight against crime. In this context, as Avaz argued;

“EU wants BiH to find solutions that will provide BiH with a police service that is efficient, professional and free of political interference so as to be effective in the fight against major and organized crime, and able to ensure an efficient level of public security for all citizens.”²⁷⁷

The BiH House of Peoples adapted the police reform legislation on 11 April 2008 and the High Representative and EU Special Representative, Miroslav Lajčák congratulate all those who have worked hard to reach a compromise for the sake of a better future for Bosnia and Herzegovina and all its citizens.²⁷⁸ Only two weeks after adoption of the police reform legislation, the EU decided BiH has made adequate progress to sign the SAA as soon as possible.²⁷⁹

After a long wait, BiH signed the SAA with the EU on 16 June 2008. BiH Prime Minister Nikola Spiric, EU Enlargement Commissioner Olli Rehn and Slovenian Foreign Minister Dimitrij Rupel, whose country currently holds the

²⁷⁵ Bosnia Herzegovina Country Profile, 03.01.2008, available online: <http://www.eubusiness.com/Bosnia/bosnia-country-profile/?searchterm=BiH%20reforms%20in%202006>, 14.09.2008.

²⁷⁶ Agreement on Restructuring of Police Structures in BiH, available on line http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-key-doc/default.asp?content_id=36200, 18.09.2008.

²⁷⁷ Interview on Police reform in BiH for Dnevni Avaz, available online: http://consilium.europa.eu/uedocs/cmsUpload/B_H_28_09.pdf, 14.09.2008.

²⁷⁸ Statement by the HR/EUSR Miroslav Lajčák following the adoption of police reform legislation in the BiH House of Representatives, available online http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-pr/default.asp?content_id=41573, 15.09.2008.

²⁷⁹ OHR/EUSR Comment On EU Conclusions on Bosnia and Herzegovina, available online http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-pr/default.asp?content_id=41667, 15.09.2008.

rotating EU presidency, signed the document in Luxembourg. Before signing the SAA, the HR Lajcak said that “recent studies by the OHR suggest that 85% of BiH citizens want the European perspective, which is huge support for the European process and a very strong message for any political leader in BiH”.²⁸⁰ This is very important message for the political leaders of the BiH for the cooperation and political agreement each other for the constitutional changes required for the EU membership. By signing the SAA, BiH takes on the responsibility to harmonize its legislation with the EU. This will mean better protection for consumers, equal opportunities for all people regardless of religion, nationality etc. safer food and other products, more efficient public services, more transparent spending of taxpayers' money.²⁸¹

In general, since the DPA political structure established in the BiH, the most notable reforms of the Dayton government have aimed to alleviate the demographic effects of war and facilitate more cooperative relations between Bosnia’s three dominant ethnic groups. The process of reform, however, has been significantly limited by the resistance of both the Serb and Croat constituencies to alterations that undermine their current degree of autonomy.²⁸²

²⁸⁰ Jusuf Ramadanovic, “BiH, EU sign SAA” Southeast European Times in Sarajevo, 17.06.2008, http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2008/06/17/feature-01, 15.09.2008.

²⁸¹ TV Interview with Ambassador Dimitris Kourkoulas, <http://www.europa.ba/?akcija=vijesti&akcija2=pregled&jezik=2&ID=160>, 02.09.2008.

²⁸² Galbraith, p. 33.

CHAPTER IV: CRITIQUE OF POST DAYTON POLITICAL STRUCTURE AND DEBATE ON CONSTITUTION

The bloody war in BiH after the dissolution of SFRY provided international community with legitimate reasons to interfere, firstly for ending the war and bringing the peace, secondly for preventing recurrence of war through establishing the viable democratic institution and controlling the political development of the country. It is supposed that the international tutelage will end when the required level of peace and integration between the former antagonists is reached via healthily operating political structure and a consolidated democratic regime.²⁸³ In the case of BiH, since the signature of the DPA in 1995 and accordingly establishment of the consociational system through the Constitution of BiH, the prospect for normalization is not promising. After thirteen years the developments in political and democratic context in BiH confirms this perception. To contrary to the initial enthusiasm of international community, the lack of will on the part of the local political elite in BiH, Croatia, and Serbia to implement the DPA shadowed all good expectations.²⁸⁴

In general, DPA can be considered as a success in terms of ending the bloody war. On the other hand, BiH is formed as one of the most complex political systems in Europe. This decentralized government was established to promote political stability and democratic participation in decision-making processes. But the complexity of the organizational structure in BiH complicates reforms in all fields and requires additional efforts in the introduction of new practices and procedures at all levels of government.²⁸⁵ This is because “the political system of BiH has been predicated on the existence of consensus and the spirit of cooperation among the three ethnic constituents without offering any electoral or political incentives to their leaderships to cooperate.”²⁸⁶ In addition, the incorporation of many articles to the Annex IV of DPA or the Constitution of BiH that weakens furthermore the federal centre encourages the

²⁸³ Victor D. Bojkov, “Democracy in Bosnia and Herzegovina: Post-1995 Political System and its Functioning”, *Southeast European Politics*, Vol IV, No. 1, May 2003, pp. 45-46.

²⁸⁴ Nena Skopljanac, “Dealing with the Past in Bosnia – Herzegovina: Challenges for the Future and the Role of External Actors”, 2005, p. 60.

²⁸⁵ Lenic, p. 7.

²⁸⁶ Nikolaos Tzifakis, “The Bosnian Peace Process: The Power-Sharing Approach Revisited”, *Perspectives*, 28/2007, p. 85.

ethnic leaderships to preserve their nationalistic programs and their efforts to exploit the established power-sharing arrangements.²⁸⁷

The political system in BiH has not worked well so far due to numerous reasons set forth by many authors. Each has different approaches, but the overall result supports the idea that the prevailed political system based on the very principles of a classical power-sharing model is neither functional nor operable for this war-torn community. “There is a consensus about Dayton designed to end a war, not to build a state.”²⁸⁸ The idea in theory and execution is always different than anticipated. So, to have a very good constitution and political system do not mean that it would be successful in every state. In other words, it is difficult to apply the model that was successful in one situation that bears almost same features with another situation.

BiH is a very typical example to the contradiction between theory and practice. Indeed, “several cases - such as Belgium, Northern Ireland and Czechoslovakia - demonstrate that power-sharing arrangements are not a "one-size-fits-all" model. In these cases, the function of every institution differs to a greater or smaller extent.”²⁸⁹ There are numerous reasons undermining political structure in BiH. Because, the forces at play within Bosnian society are more complex than they first appear and accordingly the perception of the problem and the solutions imposed by international community in BiH are different as well. Since the ongoing interethnic conflict is the primary reason of the stalling peace process, ethnic reconciliation represents only one of its axes.²⁹⁰ Because in the past Yugoslavia had experienced subsequent periods of ethnic tension and peaceful coexistence.²⁹¹ “The other axis could be the transition from a communist to a free society, building an infrastructure of democratic and free-market institutions, laws and traditions from a limited base.”²⁹²

In this chapter, the Constitution of BiH as well as the political system that were set up by the DPA are going to be criticized in the light of the developments that have

²⁸⁷ Tzifakis, p. 85.

²⁸⁸ David Chandler, “From Dayton to Europe”, **International Peacekeeping**, Vol. 12, No. 3, Autumn 2005, p. 336.

²⁸⁹ Tzifakis, p. 86.

²⁹⁰ ESI, Part One, p. i.

²⁹¹ Dijkstra, p. 225.

²⁹² ESI, Part One, p. i.

been observed so far by taking into consideration the following aspects: the structural deficiencies of the DPA, ethnically based political parties' exploitations of these deficiencies and the credits they gained during the war in order to maintain their nationalists policies at the expense of the unitary BiH state, and lastly the role of international community's intervention through the OHR in order to control the implementation of the DPA.

4.1. The Dayton Political Structures

The political structure of BiH was established according to Constitution of BiH and the Constitution of BiH is also the part of DPA. Accordingly, the state of BiH based on a two-entity structure cannot perform as a state because it represents a community created by and derived from war and conditioned by its outcome, having no testimony of a founding act of a state community. Generally, democratic designs necessarily differ from one country to another and they necessarily aim at addressing to the most acute problems a given society encounters. Of course, the main problems of BiH are relevant to the lack of security, political will and sense of responsibility which ethnic reconciliation and the normalization requires. In addition to these domestic reasons, international authorities in BiH established a set of parallel political and administrative institutions to ensure the implementation of the peace agreement by giving the primacy to bringing the right elites or the leaders to power whose talents would highly contribute into the common efforts to establish an effective democratic polity.²⁹³

However, ironically, international authorities so far have intervened in political life in the BiH in undemocratic ways and disenfranchised the voters. Indeed, interference of the international authority in political affairs gradually grew over time. Firstly, they anticipated that voters would expel the nationalist parties that had caused to the war. But, successive elections have shown that BiH does not have both sufficiently strong political institutions as well as the power to guarantee civil liberties, along with physical and economic security. Then, international authorities tried to

²⁹³ Carrie Manning, "Political Elites and Democratic-State Building Efforts in Bosnia and Iraq", *Democratization*, Vol. 13, No. 5, December 2006, (Political Elites), p. 724.

refine the electoral rules extensively to help moderate candidates and restrict the power of the nationalists. But conspicuous changes could not be observed. At the end, they started to use the power leverages they endowed themselves against who would hold political power, to sack uncooperative candidates, elected officials, and party officials from office, and even to ban them from political life altogether.²⁹⁴

Although there have been unexpected changes on civilization formations, state and ideological systems in the historical content, the desire to dominate the others in the same community or state changed its forms, but not its content. Throughout the past until now, a persisting desire in different forms has been present in BiH toward the social, political, religious and cultural domination of one of these ethnic groups or constituent people over the others.²⁹⁵ It could be considered that the war in BiH was the one of the form of domination of the ethnic groups over the others. After the war, the conflicted parties have followed this aim in the parliament with the expectation to hold what they acquired during the war and even increase their gaining by using the political system elements in democratic platform. The situation pervasive and undergoing today in BiH as well as many part of the world should be seen in this light. DPA has structural deficiencies versus its aim.

The aim of DPA is to create of a unitary, multiethnic Bosnian State. As summarized by the US Secretary of state Warren Christopher, “there should be a single Bosnian state, with a single international personality, and a commitment to its internationally recognized borders; a federal government representing all the people of Bosnia with foreign policy powers and other national government powers.”²⁹⁶ But, BiH constitution, part of the DPA, legalized the partition of the BiH citizens along ethno political lines and set up a government on the basis of segmented autonomy so as to ensure “reconciliation of Serbian and Croatian demands for Bosnia's partition along ethnic lines, with the Bosnian Muslim demand for the preservation of Bosnia's integrity and the restoration of its ethnic balance”²⁹⁷. It was expected that “political autonomy to territorially defined ethnic groups would lead to constructive dialogue

²⁹⁴ Manning, *Political Elites*, p. 725.

²⁹⁵ Lovrenovic, p. 3.

²⁹⁶ Dempsey, p. 2.

²⁹⁷ Tzifakis, p. 87.

and peaceful management of the conflict”.²⁹⁸ Lijphart argues that keeping the different segments apart limits their mutual contact and subsequently lessens the probability of antagonism and open hostility. But in BiH, the situation is different than anticipated. It follows from Nela Probic’s interview with the political parties in BiH, the situation was different. A member of the Alliance of Independent Social Democrats (SNSD), party told her the actual standing with following sentences:

*“In the past there has not been any constructive dialogue between the three segments, on the contrary it was very bad. Some cooperation is although being established now, but my personal opinion is that the cooperation between the major ethnic parties is based on personal gains - the parties back each other up to keep the status quo.”*²⁹⁹

In addition, one of her interview with SBiH member had confirmed the above-mentioned situation and added, *“There is no cooperation at the state level.”*³⁰⁰ One of the major important factors that makes the Dayton constitution and accordingly the political-administrative design of BiH as an obstacle to any serious reform process and consolidation of state in European Union standards is the territorial-administrative division of the country based on the Constitution of BiH.³⁰¹ As mentioned in the previous chapter, firstly the DPA was an agreement to end the three-year fighting and the principal aim of DPA was to “accommodate the competing interests of the three main ethnic groups by investing them with adequate political and legal representation in the country's governing structures while maintaining a balance of power conducive to the functional operation of a single state”.³⁰² But this was not so easy as anticipated due to this political arrangements. So, BiH cannot achieve the required degree of legal and political stability as long as there are two states within the State. Nor is this contradictory and absurd situation logically viable. Furthermore, it is insulting at a human level, as the entity borders follow the wartime demarcation line. Borders should be fixed on the basis of historical, natural, economic and other features. Not even under foreign rule was Bosnia and Herzegovina ever divided on ethnic grounds.

²⁹⁸ Probic, pp. 21-22.

²⁹⁹ Probic, p. 22.

³⁰⁰ Probic, p. 22.

³⁰¹ Lovrenovic, pp. 1-2.

³⁰² Mansfield, pp. 2055-2056.

Today, after the ethnicization of territories and mass persecution of the population, a sort of parallel state, the RS, exists, representing the aggressor's spoils of war and the realization of the hegemonic aspirations that led to conflict in 1992.

Above all, the DPA political system in BiH is cumbersome and financially unsustainable. The population of the country is approximately 3.9 million, it does not seem feasible to preserve fourteen governments and corresponding legislatures, i.e. one at the state level, two at the level of the entities, one for the district of Brcko and 10 at the cantonal level within the FiH and each of them maintaining its respective bureaucratic structure. In the meantime, BiH's governmental expenses amount to 50% of the country's GDP. On the other hand, the operation of such a large government also duplicates functions and inefficiencies.³⁰³

4.1.1. State Level political Structure

BiH is a complex State community, having an extremely complicated organizational and functional structure in which its two Entities have a high degree of independence in exercising the authority functions of the state. In state level, there is a very weak central government "since the Bosnian Serbs and the Croatian advocated a fragmentation of Bosnia and they only agreed to a weak state structure"³⁰⁴ along with exclusive responsibility. The country's central institutions comprised a tripartite presidency, a council of ministers and a bicameral legislature. Not only did the Dayton Accords stipulate the existence of ethnic proportionality within these institutions, but they also determined the entity of origin of ethnic representatives in the presidency and the House of Peoples with the entity level citizenship regulation. In this way, the peace agreement unintentionally privileged the formation of ethnically orientated parties. Moreover, it has excluded members of minority communities or the others as well as the Serbs of the Federation and the Croats and Bosnian Muslims of the RS from representation in the country's most important institutions. Indeed, the provisions concerning the composition of the presidency and the House of Peoples are in sharp violation with Protocol 12 of the European Convention on Human Rights, and three

³⁰³ Arvanitopoulos and Tzifakis, p. 17.

³⁰⁴ Dijkstra, p. 226.

cases have already been taken to the European Court of Human Rights.³⁰⁵ So, this issue is one of the important constitutional reform agenda items proposed by the Venice Commission and the 2006 April Package. Besides, Bosnia's fragmentation into ethnic zones was accentuated by the fact that the three ethnic communities were awarded the right to veto any decision or law, at both executive and legislative levels, that would conflict with their perceived national interests. Accordingly, although this veto right has the preventive aim for the each ethnic communities' interest in the state level, due to the lack of clear definition, it has blocked or delayed the necessary constitutional reforms for the BiH integration process to EU. The definition of the vital interest and the veto rights are the important agenda items of the constitutional reform packages.

As mentioned, the central state of BiH is weak and with such a weak state, BiH will not be able to make much progress on the way towards European integration. The negotiation of a SAA with the EU requires institutions at the State level with the necessary capacity and expertise to deal with the wide range of issues covered by such agreements. In this context, for example the police reform that was required or desired by EU caused a couple of years delay for the signing of the SAA with EU, because the Parliament of BiH failed to pass the police reform legislation more than three years. However, the EU wants to have a single interlocutor and definitely not be willing to negotiate with the two Entities separately. BiH should have the necessary legislative powers to create the conditions for the conclusion of such an agreement and to implement it. Additionally, it has to ensure the effective implementation of such an agreement within both Entities. With the current structure and the capacity, the BiH state level government is not able to effectively ensure compliance with the commitments of the country with respect to the Council of Europe and the international community in general. Concerning the EU, it is unthinkable that BiH can make real progress with the present constitutional arrangements.

³⁰⁵ Arvanitopoulos and Tzifakis, p. 17.

4.1.2. Entity Level Political Structure

The DPA legalized the partition of the BiH into the two entities as FBiH³⁰⁶ and RS.³⁰⁷ Accordingly, RS is constituted as the Serbs national administrative political unit; this criterion is systematically applied to all aspects of public and social life with the discrimination against non-Serb and non-Orthodox collectives.³⁰⁸ The model legalized in RS gave an inappropriate example for the Croats in FBiH who are unpleasant of their minority status here, encouraged them to demand for being the third entity in BiH. Due to this feeling pervasive in all three ethnic communities, the DPA established the complex political structure all level governance, i.e. from state level to municipality level, in BiH. Hence, majority of government functions and powers were internally relegated to the two Entities as elaborated in the Chapter III. As an example, both Entities were authorized with extensive powers to maintain their respective separate armed forces (there is no army in state level) and the right to develop special parallel relationships with neighboring states.

At the entity level, while the RS was designed as a centralized State, the Federation was organized along the same lines as the State, in which it was established, blending together high levels of federalism with consociationalism. Most government functions in the Federation were relegated downwards to ten cantons that were vested with their own constitutions, governments and assemblies. What is more, the operation of the central federal institutions, within the few domains of their competencies, was complicated by substantial power-sharing provisions (i.e., assured ethnic representation and the veto right of both communities). Hence, the Federation was as dysfunctional and vulnerable to paralysis as the State in which it was established.³⁰⁹

³⁰⁶ In 1994, the United States brokered an agreement ending the conflict between Bosnian Croats and Bosnian Muslims ("Bosniacs"), which led to the creation of the Bosniac-Croat Federation of Bosnia and Herzegovina (FBiH).

³⁰⁷ In 1991 each Republic of Yugoslavia, (except for Montenegro) held a referendum and subsequently declared independence from Yugoslavia. In Bosnia and Herzegovina's referendum, in which over 99% of the voters chose to secede from Yugoslavia, Bosnian Serb nationalists not only boycotted the vote but declared their own autonomous Serb state within BiH.

³⁰⁸ Lovrenovic, p. 2.

³⁰⁹ Arvanitopoulos and Tzifakis, p. 17

Accordingly the Entities secured considerable sovereignty rights and substantial independence against the Bosnian state. In other words, the entities were allowed to function as states within a state.³¹⁰ As a result of this arrangement, for instance there is no Ministry of Defense at the state level; instead it is the task of both entities.³¹¹ So, the Constitution of BiH provides one of the world's unique federal systems, based entirely on ethnicity. In spite of the professed aim of the DPA, the constitution envisaged the division of BiH into ethnic political administration structures. This is the paradox of the constitution of BiH.³¹² Although the state infrastructure has reached the entire territory of the country in recent years, the two entities and the Brcko District have remained highly autonomous, an overlap of competencies still persists, and the state capacity to ensure the even application of legislation and other decisions are uneven.³¹³

“The critics of consociationalism point at the probability that segmental autonomy might lead to reification of ethnic identity and outright secession. This extended autonomy to entities helped secessionism hang on as well. In addition, the war also created extensively homogenous entities in BiH, particularly in RS due to small number of refugee return to their original places and DPA legitimated this homogeneity. The possibility of emerging ethno territorial spaces within entities still holds its sway and feeds the fear of secession. Ironically, the segmental autonomy has remained the very reason for a plausible partition of BiH in the future, of course if the appropriate conditions that resemble to those of Kosovo emerge. Due to DPA’s creation and its legalization of mini ethno-states in BiH and its endowment them with actual and complete autonomous status and decision making authority, its permission to each entity to have their own constitutions optimistically in conformity with to the BiH Constitution and the right to make their own laws and regulations affecting daily life of the average citizens. The future is not promising indeed.

The basic feature of the constitutional set-up in BiH is that the entire state arrangement and the organization of its authority have been based upon an explicit and

³¹⁰ Tzifakis, p. 87.

³¹¹ Dijkstra, p. 226.

³¹² Mansfield, p. 2058.

³¹³ Florian Bieber, “Bosnia and Herzegovina Slow Progress”, **Southeast European and Black Sea Studies**, Vol. 6, No. 1, March 2006 (Slow), p. 46.

one-sided domination by the ethnic factor. Such domination has attracted an especially unfavorable expression in a divided (territorialized) constituency of its three groups, where Bosnian Muslim and Croats, but not Serbs, have been acknowledged as constituent nations of the FBiH, whereas Serbs, but not Bosnian Muslim and Croats, have been acknowledged as the constituent of RS.³¹⁴ This causes another problem that is related to the division of entity and state citizenship respectively due to the deficiency of the BiH Constitution. Entity level citizenship regulations creates discrimination among the inhabitants of the respective entity in contrary to BiH Constitution, as explained in the following paragraph.

“The constitution enshrines a dual citizenship regime where the Entities are vested with the power to determine and regulate their own citizenship, while the State Parliamentary Assembly regulates the citizenship of BiH. The constitution also provides that all citizens of either Entity are automatically citizens of BiH, but it does not provide for the reverse: A citizen of BiH is not automatically a citizen of either of the Entities. Because political representation in the State Parliamentary Assembly-which, one will recall, is based primarily on ethnicity-is allocated by Entity, and only citizens of each Entity can take part in the elections in their Entity, the citizenship provisions in the constitution effectively make citizenship, if not a function of, then certainly synonymous with, ethnicity. In effect, then, these provisions are therefore quite likely to result in the discrimination that the State constitution prohibits.”³¹⁵

Accordingly, this discrimination in the entity level paves the way for depriving the use of democratic rights of the people who do not have the citizenship of the entity where they live. In this context, it is better to explain a little bit in detail of this issue due to its importance for electing the representatives for the state level representation in the Parliamentary Assembly of the BiH. Below explanation and example are helpful for understanding the issue in practice.

“To further explain the conspicuous ethnicity-citizenship nexus, it is helpful to illustrate how the two interact in practice. Because the Serb delegates to the national House of Peoples are elected from the RS, for example, only citizens of the RS may vote for the Serb

³¹⁴ Nedo Milićević, “The state and problems of local self government in Bosnia and Herzegovina”, *Southeast Europe Review*, 2001, p. 56.

³¹⁵ Mansfield, p. 2062.

delegates. This means that a Bosniak who lives in the RS will have no ethnic representation in the House of Peoples, since his or her only choice is to vote for a Serb. It also means that a Serb who lives in the Federation Entity is unable to vote for his or her fellow ethnic delegate because he or she does not reside in the Entity from which the Serb delegate will be selected. Moreover, a Bosniak or Croat in the RS, and a Serb in the Federation, could never be elected to represent his or her Entity since the ethnicity of delegates correlates with the ethnicity of the Entity from which the delegate is elected.”³¹⁶

As seen in the above explanation, this is one of the very important results of the DPA deficiencies and caused to unintentional results in building block style contrary to the envisioned aim of the DPA. Due to proportional representation of the each ethnic group in the joint institutions, the formation of ethnic based political parties was encouraged and vested privileges inadvertently at the expense of the moderate or mixed parties.³¹⁷ In other words, by slicing the electorate into ethnic factions prone to being manipulated by self-serving demagogues into fearing one another, the Dayton system deters alliances among citizens who consistently profess similar priorities and concerns. It also prevents the establishment of a true marketplace of ideas and a political center, since politicians need not win the votes of anyone but only their voters. These deficiencies were delineated in the March 2004 Venice Commission report and stressed that some of which are under current challenge at the European Court of Human Rights.³¹⁸

As David Chandler stressed that “commentators regularly argue that Dayton was negotiated by the nationalist parties, whose leaders caused the war in the first place, and that it therefore secured the power of these ethnically based political parties.”³¹⁹ So, the determination of citizenship based on entity origin for the ethnic representatives for the joint institutions i.e. the Presidency and the House of Peoples, in other words, the state officials could be selected in each Entity only from the main ethnic groups. Accordingly, as long as the Serb member of the collective Presidency was elected in RS and the Croat and Bosniac members are elected in the FBiH, candidates for these posts have little motivation to look for the support of voters from

³¹⁶ Mansfield, p. 2063.

³¹⁷ Tzifakis, p. 88.

³¹⁸ Helgesen, Jowell, Malinverni, Scholsem, Tuori, (Constitutional Situation), p. 3.

³¹⁹ Chandler, p. 336.

other ethnic groups. This arrangement meant that the Bosnian Serbs of the FBiH and the Croats and Muslims of RS were excluded from representation.³²⁰ Thus, there is no cooperation or interaction between the different ethnic groups and cleavage gets deepen.

The aforementioned inconformity between entity and state level citizenship have weakening results in that “by heightening the importance of ethnicity, it actually fosters continued segregation because individual citizens have an incentive to move from their present Entity to the one controlled by their ethnic group for greater political cohesion, influence, and power.”³²¹ Simultaneously, since the power sharing in BiH was perceived as imported and forced rather than as a result of general will of the citizens of the BiH,³²² the linkage and interaction among the external actors and nationalist parties for the transformation process is very important. These nationalists’ parties officially support the reforms, however, their narrow ethno-nationalist agenda conflicts with a true drive to get transformation advanced. Moderate parties of the opposition are weak and similarly divided among the each entity.³²³ It follows that the delay of reform process and parsimonious level of democratization is resulted from the lack of inherent domestic political support and the strong moderate political parties.

As mentioned before, the DPA envisaged a Presidential Council rather than a BiH President some political competences are embodied in the personality of a single person, which consists of three members from the each of the three constituent ethnic groups and in which the post rotates every eight (8) months among them. In addition to ethnicity based territorial division of the country, the most extensive formal veto rights are granted to all three ethnic constituents at the state level and in the FBiH, and since 2002 in the RS as well. Needless to say, this right impeded the effectiveness of government³²⁴ due to lack of convergence of expectation among the three ethnic groups in the BiH. Accordingly, the three-member Presidential Council works on the basis of consensus which has been so far absent in most of the cases once the members

³²⁰ Tzifakis, p. 88.

³²¹ Mansfield, p. 2063.

³²² Florian Bieber, “Bosnia-Herzegovina: Developments Towards a More Integrated State”, **Journal of Muslim Affairs**, 01 April 2002 (Developments), pp. 206-207.

³²³ Bieber, Slow, p. 43-44.

³²⁴ Bieber, Slow, p. 5.

of the Council take priority to the interests of their own entities rather than the Bosnians as a whole. The member's declaration is immediately referred to the members' respective Entity's parliament, and with this form, the system is in reality based on delegate representation by all means. A legislative which allegedly violates "the vital interests" of the Bosnian and entity peoples does not come into force without approval of the dissenting member's home parliament by a two-thirds vote within ten days of its referral. However, there is a no clear consensus on what the vital interests are in both perceptual and constitutional sense and this setting always leads to political impasses,³²⁵ this ethnic veto mechanism completely blocked the decision making at the state level.³²⁶

Similar to the procedure in the Presidency, Members of the House of Peoples from any one ethnic group may declare a proposed legislative decision to be destructive for a vital interest and use its veto power. In case of a majority of members from the remaining two ethnic groups rejects the declaration, the subject is passed to an ad hoc joint commission which are composed of three delegates drawn from the three ethnic groups. In most cases, it is unlikely for the joint commission to resolve the issue, because one of the ethnic group objected to matter, accordingly the selected members of the same ethnic group for the Joint Commission will inherently object it. When the matter is not resolved via commission, the matter is passed to the Constitutional Court.³²⁷ Thus, the veto rights regarding the vital interest of the given entity are very important obstacles delaying the legislative process and reforms in both entity and state levels. Obviously as Probić truly argues,

"The primary objectives of the SDS³²⁸ are to block any further transfer of power from the entity to state level the Serb members of the House of Peoples have blocked laws such as

³²⁵ Mansfield, pp. 2058-259.

³²⁶ Tzifakis, pp. 88.

³²⁷ Mansfield, p. 2058.

³²⁸ The SDS is one of the major parties in BiH and was formed on 12 July 1990 under the leadership of Radovan Karadžić. Karadžić stood for the preservation of Socialist Yugoslavia as a single state. When that proved impossible, he supported the efforts of Slobodan Milošević to unite all Serbs into "Greater Serbia". While Bosnia moved towards independence, the SDS prepared for the secession of Bosnian Serbs and their integration into Serbia.

the Law on the BiH Foreign Trade Chamber, the Law on Sports and so on, using the excuse that these laws were a threat to vital interest of the Serb people.”³²⁹

In the same vein, Bayrasli unfolds how easily one of the ethnic groups can block the important law for BiH by using the vital interest clause;

“The earlier this month (May 2004) the parliament of Bosnia and Herzegovina failed to pass a key education law that would have brought Bosnia millions of dollars in World bank funding. Bosnian Croat deputies prevented the Framework Law on Higher Education from going to a vote, invoking a “vital national interest” clause. They viewed the law as a threat to their community's interests because it did not make adequate provision for the predominately Croat University in Mostar.”³³⁰

As a result, it could be said that on the state level, power-sharing in the ethnically representative institutions did not work due to negative consensus among the political elites in BiH contrary to of a positive consensus envisioned by consociational system elements. Accordingly the Presidency and the Parliament have been blocked along the ethnic lines and not able to adopt required level of necessary decisions and laws for the reconstruction of the state and the war-torn economy.³³¹ In other words, the structural deficiencies of the DPA have paved for the nationalists to continue implementing their ethnic agendas that accounted for the slow progress towards the implementation of the Bosnian peace process.³³²

BiH is the state that the international community has been involved increasingly to the politic life due to latter's distinctive conditions. The existence of international community in BiH has continued in different forms since the end of war and the establishment of a federal state. In addition, even now, the general idea pervasive among most of the citizens of BiH and academic sphere is that with the departure of the international actors (military and civilian), the conflict will flare up and the parties will fight again. It could be said that the constituent peoples of BiH do

³²⁹ Porobic, p. 27.

³³⁰ Elmira Bayrasli, “Bosnia's Education Law Fiasco”, Sarajevo (BCR No 498, 20-May-04), available online: http://www.iwpr.net/index.pl?archive/bcr3/bcr3_200405_498_5_eng.txt, 14.07.2008.

³³¹ Marko, p. 7.

³³² Tzifakis, p. 85.

not have enough confidence and belief to other entities. Although the situation was worse in BiH after the war, international community did not plan to stay long and envisioned that the transition of the administration to local government within one year. “The stated objective of international involvement in Bosnia was to establish and guarantee the irreversibility of democracy and to thus prepare the country for self-government.”³³³ Because international community considered that the DPA ended the war, introduced the political system and began to nation-building process in the war-torn divided society.

As mentioned before the idea in theory or plan on paper and execution of this plan is very different. To the contrary, international community remained and as it turned out, its tutelage over BiH politics became rigid. As elaborated in Chapter III, the OHR is responsible for overseeing the implementation of DPA in BiH on behalf of the international community. International community via the OHR was very effective during peace implementation and promoting regulations regarding the establishment of effective and legitimate domestic administration that would avoid the resurface of conflict once again. In the early stages of its commitment to BiH, the OHR did not have the executive power and could not unilaterally impose laws and decisions.³³⁴ However, as Rorry Domm stressed, the role of the International Community focused on the legitimacy of the intervention through the OHR’s power, in particular in the wake of the 1997 Bonn Meeting of the PIC.³³⁵ With this meeting, international community extended its mandate in BiH and gave extensive power³³⁶, commonly known as Bonn powers, to HR including “to pass laws and decisions at any constitutional level and the authority to dismiss any non-cooperative elected representative, party officer or public official.”³³⁷

The power was so extensive that he could dismiss even presidents and prime ministers and would not be accountable to any national institution in BiH. The

³³³ Dimitrova, p. 44.

³³⁴ Dimitrova, p. 45.

³³⁵ Rorry Domm, “Europeanization without Democratization: A Critique of International Community Peacebuilding Strategy in Bosnia and Herzegovina”, **Southeast European and Black Sea Studies**, Vol. 7, No. 1, March 2007, p. 159.

³³⁶ Extended powers of OHR are known as the ‘Bonn powers’ in the wake of 1997 Bonn Meeting of PIC.

³³⁷ Tzifakis, p. 96.

considerable level of power sharing in BiH along with supreme position of the OHR produced a number of frictions between the elected and appointed authorities. The imbalance of power between international institutions and Bosnian institutions grew, as mandates were regularly extended and the roles of OHR increased with successive High Representatives.³³⁸ The unplanned result of giving external bodies such large powers over government institutions is dysfunctionality of the BiH's institutions and their growing dependency to the international actors.

The increasingly interventionist role of international community in local political life also perpetuates the postwar stalemate by contributing to the political irresponsibility of local leaders.³³⁹ In the meantime, the government of BiH has the power to govern in principle, but its ability to govern is constrained by the continued intervention of the OHR to some extent, the fragmentation of public authority in the entities and regions, as well as the extensive veto rights at state and entity level. The OHR has the power to veto legislation and decree laws, decisions. It has used less this power in recent years, nevertheless as an example the Higher Representatives dismissed more than 60 officials, including ministers and the president of parliament of the RS in 2004 over the lack of cooperation with the International War Crimes Tribunal for former Yugoslavia (ICTY).³⁴⁰ The OHR functions and actions in BiH to some extent were criticized even by the international environment (a 2004 resolution of the Council of Europe Parliamentary Assembly). As Bieber stressed, "the ability of the OHR to act as unchecked executive, legislature and judiciary without legal recourse to its decisions, even if the decisions are taken in the best interest of the country, constitutes a serious impairment of the separation of powers."³⁴¹

After the Bonn Powers, the following years witnessed the more direct involvement of international community through the OHR almost every facet of policy-making process in BiH in contrary to initial policy of international community that gradually hand over the administration to elected BiH authorities.³⁴² So the

³³⁸ ESI, Part Two, p. 4.

³³⁹ Roberto Belloni, "Civil Society and Peace building in Bosnia and Herzegovina", **Journal of Peace Research**, Vol. 38, No. 2, March 2001, p. 166.

³⁴⁰ Bieber, Slow, p. 47.

³⁴¹ Bieber, Slow, p. 48.

³⁴² Gergana, p. 46.

criticism generally focuses on the Bonn Power of the OHR and its legitimacy. First of all, “Bonn powers are inherently anti-democratic and disenfranchise voters.”³⁴³ BiH is an independent state and the citizens of the BiH elect their representatives or state officials via the election law³⁴⁴ imposed by IC, but the HR uses his power in undemocratic way and dismisses the state officials including the President, ministers etc thereby creating some mini-crises. For instance, “the dismissal of the director of the Federation Intelligence Service in 2002 turned controversial due to the OHR’s failure to provide a sufficiently credible explanation of its decision”³⁴⁵ Besides, “a series of dismissals of politicians from RS in mid-2004 led to serious clashes between the OHR and the main parties in RS and threatened a major political and constitutional crisis.”³⁴⁶

In addition, using this power to defeat the ethnocentric obstructionism to the reforms, create and fortify the state level institutions versus entity level institutions decrease the motivation among the ethnic groups for negotiations and compromises on the important reforms. Occasionally, the usage of this power in radical way in the deeply divided societies may be necessary, but it should be fortified by the logical reasons, or with the support of the rule of law that should have been established in the beginning of peace building process.³⁴⁷ It should not be ended with like a police reform process. Yet, “the result has been the entrenchment of nationalist political parties at the entity level with OHR interventions typically being sold to local populations as assaults against their respective national group.”³⁴⁸

On the other hand, the powers are used clumsily by the OHR without detailed evaluation and assessment. Furthermore, there is no a supreme authority over the OHR to redress any mistaken decision. The last but not the least, according to the some commentators, power of the OR extended deliberatively with a view to delay the BiH authorities to take over the rule.³⁴⁹ It follows that the mandate of the OHR spurred a

³⁴³ Domm, p. 161.

³⁴⁴ BiH did not have the Election Law till 2001. OSCE was responsible for organizing the elections in BiH. BiH authorities held the first election in 2002.

³⁴⁵ Dimitrova, p. 48.

³⁴⁶ Dimitrova, p. 48.

³⁴⁷ Domm, p. 161.

³⁴⁸ Domm, p. 161.

³⁴⁹ Domm, p: 161.

deep debate among many experts. For instance, Dimitrova points out that the role and perception of the OHR mission in BiH is exaggerated by some analysts;

“The High Representative continues to work as Bosnia’s chief reformer, modernizer, defender and promoter. It is he who sounds the alarm when insolvency looms, plots the defense, wages war on slackers and recidivists, and offers inspiring glimpses of the sunlit uplands ahead. [...] It is probably easier for Bosnia citizens to imagine their country without a Presidency, CoM [Council of Ministers] or state parliament than without OHR. The High Representative is the unwritten but functional part of the constitution.”³⁵⁰

The international community intervened in varied ways the electoral system through “financial support, intervention to prevent rivals from running the elections or coming to power, conditioning international economic support on the election of the ‘right’ candidates, and uncharacteristically lenient attitude towards cases of failures, mismanagement and corruption involving political favorites”.³⁵¹ In 2002 elections, international community changed its methodology, in its stead “the OHR attempted to prop up the moderate Alliance for Change by writing a pre-election program for them and working hard to mobilize voters in favor of reform-minded candidates.”³⁵²

Due to the international community unilateral modifications over the election law favoring moderate or non-nationalist parties caused to some political crises in BiH. One of them occurred during the November 2000 elections in FBiH. Before the 2000 election, IC altered the previous rules on election law for the selection of the representatives for the state level House of Peoples at the expense of the Bosnian Croats of FBiH. Based on the election law that was used in previous elections Croats and Bosniacs had elected their representative for the entity level House of Representatives by voting separately in the cantonal level parliament. After changes, at the cantonal level parliament obtained the rights to vote for all nominees for the selection of the representative for the state level House of Peoples. Accordingly, the Croats in the FBiH deprived of the right electing their all their representative or they had to accept the Bosnian Muslims selected representatives.³⁵³ From the Croat point of view, the dominant nationalist party would have problems with the representative’s

³⁵⁰ Dimitrova, p. 47.

³⁵¹ Dimitrova, p. 48.

³⁵² Dimitrova, p. 49.

³⁵³ Bieber, ECMI, p. 3.

loyalty selected by Bosnian Muslims in terms of using the veto rights for the protecting the national interests of Bosnian Croats.

The main nationalist party, HDZ, reviewed protested the new regulations, rejected to participate in the meetings of the FBiH's Government and Parliament and appealed to the Bosnian Constitutional Court to put an end to this disadvantageous situation. Yet the Constitutional Court's response was negative on the grounds that it had no jurisdictions on international communities' unilateral decisions.³⁵⁴ This incident shows that international community can easily violate the BiH Constitution that is the part of the DPA mandated by international community. In other words, this incident can be explained only if one accepts that the international community obviously reviewed its mandate in the BiH. So, it infers that citizens of the BiH may lose their belief on international community sincerity to transfer administration to the Bosnian officials. On the other hand, some of international officials also voiced their criticism of the election rules changes before the 2000 November vote."³⁵⁵

However, it is undeniable that through the initiatives of the OHR, the international community has achieved considerable successes on the following issues for the efficient political structure and administrative process for the governance of BiH. The transfer of substantial competencies from the Entity to the State level with the establishment of seven additional state ministries; the reunification of Mostar; the abolishment of all references to statehood from the constitution of RS, and the revision of both Entities' constitutions following the ruling of the Constitutional Court regarding the equality of all three ethnic groups throughout the entire country"³⁵⁶.

Consequently, since the signing of the DPA in 1995, the progress in constitutional and political realms has been very slow in the BiH. Contrary to the professed aim of the DPA, there has not been observed conspicuous decline in the cleavages among the three ethnic constituents. As mentioned, the conflict transferred from the battle field to political arena and by exploiting the structural deficiencies of

³⁵⁴ Dimitrova, p. 50.

³⁵⁵ Bieber, ECMI, p. 3.

³⁵⁶ Tzifakis, p. 96.

the DPA, the major nationalist political parties have endeavored to dominate the joint political institutions of BiH.

4.2. The Debate on the Dayton Constitution

The Constitution of the State of BiH was agreed at Dayton as Annex IV of the GFAP in BiH. Due to its being part of a peace treaty, the Constitution was drafted and adopted without involving the citizens of BiH and without applying procedures which could have provided democratic legitimacy. This constitutes the unique case of a constitution never officially published in the official languages of the country concerned but agreed and published in a foreign language, English. In other words, it was imposed as the basis for the future constitutional order of a country just emerging from war.

Although the Constitution confirmed the legal continuity of the Republic of Bosnia and Herzegovina, which had become independent from the former Yugoslavia, under the name of Bosnia and Herzegovina with a modified legal structure, the two already existing units, the RS and the FBiH, were legalized as Entities of BiH. This is one of the important implications of the partition of BiH against the intended unitary state of BiH. The Constitution granted only extremely weak powers to the state of BiH, leaving most powers to the two Entities. At the state level, power-sharing arrangements were introduced, making it impossible to reach decisions against the will of the representatives of any constituent people. A House of Peoples as a second chamber was established, a vital interest veto for all three constituent peoples in both chambers was introduced as well as a collective Presidency of three members with a Bosnian Serb from the RS and a Bosnian Muslims and a Bosnian Croat from the Federation.³⁵⁷ The two Entities of BiH were obliged by the DPA Constitution to bring their own Constitutions into conformity with the State Constitution. However, the fact remained that both Entity Constitutions were conceptually very different, the RS being conceived as a unitary Entity dominated by Serbs, the FBiH being a decentralized Federation with power shared at the Federal level between the Bosnian Muslims and

³⁵⁷ Helgesen, Jowell, Malinverni, Scholsem, Tuori, Constitutional Situation, p. 3.

Croats. In this way, the appropriate ground for the separatist tendencies leading to a territorial, political, economic and cultural partition of Bosnia and Herzegovina had been prepared.

As stressed in the Venice Commission “Opinion on the Constitutional Situation in BiH and the Power of the HR”, the existing constitutional arrangements in the FBiH are neither efficient nor rational. Power is dispersed between too many levels and usually exercised by a unit too small to fulfill its functions effectively. There are too many bureaucracies and too many posts for politicians: for example, within the FBiH, an Entity with about two and a half million inhabitants, there are 11 ministers of justice in addition to the minister of justice at State level who also exercises powers within the territory of the FBiH.

CONCLUSION

Towards the end of the twentieth century, there were many important events causing the instability and drastic changes in the world. The main source of today's instabilities and problems pervasive all in the world could be the legacies of the events happened in last quarter of the twentieth century. In general, relations to the dissemination of SFRY, the events are the death of Tito in 1980, the perestroika policy of Gorbachev in 1986, and the unification of Germany in 1989. The disintegration started with the unilateral declarations of Slovenia and Croatia on 21 June 1991. Then the referendums about self-determination also were held in BiH on 29 February and 1 March 1992, and although Bosnian Serbs boycotted the referendum, the other two ethnic groups i.e. the Bosnian Croats and Muslim voted for self-determination referendum. The Bosnian Serbs on the other hand, proclaimed on 27 March the Serbian Republic of Bosnia-Herzegovina. Then, European Community and the United States recognized independence of BiH on 6 April 1992 and 7 April 1992 respectively similar to Croatia and Slovenia. This recognition started the violent war for shaping the future of BiH. After three and half years of brutal war among the three ethnic groups, the war was ended by ICs with the results of their initiatives. The forced ending war resulted in the GFAP in BiH or DPA.

GFAP in BiH or DPA brought a peace to BiH by ending the violent war among the three ethnic groups in BiH with initiative of IC lead by USA. The war lasted more than three and half year in BiH territory during the dissemination of SFRY. It devastated the BiH and accordingly paved for killing of hundreds of thousands of people, causing two millions of refugees and displaced persons³⁵⁸, destroying the towns and cities and infrastructure of country, stopping the economic activity in territory of BiH.³⁵⁹ In this point of view, DPA is success due to bringing peace and stopping the more damages to the life of BiH inhabitants.

³⁵⁸ Nenad Šebek, Corinna Noack-Aetopoulos and Dževdet Tuzlić, **Effecting the Change and Good Governance in Local Administration in Bosnia and Herzegovina: Final Survey of the Project "Our Town, Our Future"**, Center for Democracy and Reconciliation in Southeast Europe (CDRSEE), April 2006, p. 17.

³⁵⁹ Vlademir Gligorov, "Bosnia and Herzegovina", **Balkan Reconstruction**, Frank Cass Publisher, London, 2001, p. 132.

On the other hand, DPA aimed at building a unitary and multiethnic state. This goal of DPA was very good initiative, but deprived of the real situation in BiH. Because the war lasted more than three years and during this time frame the three ethnic groups caused the irreversible and unforgettable damages to each other. The three ethnic groups lost their belief to each other for living together as well. In other words, the BiH society was deeply divided. Under this condition, the IC enforced a political system successfully implemented in the past in some countries, as part of the DPA to BiH.

In supporting this idea, according to the baseline survey done by BBC World Service Trust and CDRSEE in BiH with 1200 face to face interview with the citizens of BiH, the %47 of interviewees stressed the DPA's role for the problems in BiH: "So problems of devastation and political failure are considered the most significant followed by the fact that the Dayton Agreement stopped the war but imposed a political structure without consensus."³⁶⁰ The political system, power sharing enforced the BiH as part of DPA has not been so successful during the past thirteen (13) years in BiH due to numerous reasons. It also did not meet the requirements of the BiH people. It could be set forth that there is not much conformity between the BiH community and the power sharing system. The power sharing system is asserted that "as a deeply divided society, has no other option than to accept consociationalism as its organizing principle."³⁶¹

There are many structural deficiencies and paradox in the DPA and the Constitution of BiH (Annex IV of DPA) that have paved for the instability in political life and indirectly to the other areas of BiH state in addition to other very crucial factors such as the lack of willingness of BiH peoples' participation to the political process, maintaining of the nationalists parties' their own national agendas, and the increasing and disturbing interference of the IC via the OHR to BiH. The constitution and political structure were vested by IC to BiH with the DPA as if there is no other way to follow for uniting this ethnically divide society. However, the imposed system

³⁶⁰ Šebek, Aetopulos, Tuzlić, p. 15.

³⁶¹ Probić, p. 32.

has not worked so far, as asserted by the University of Chicago political scientist John Mearsheimer,

*"History records no instance where ethnic groups have agreed to share power in a democracy after a large-scale civil war. . . . The democratic power sharing that Dayton envisions has no precedent." What actually exists in Bosnia today is not a nation rebuilding and healing itself but a Potemkin state, a monumental façade erected and maintained by the international community.*³⁶²

Although, the professed aim after the war in BiH was to integrate deeply divided society and create a unitary state with concept of power sharing arrangement in consensus and cooperation through the leaders of the each ethnic group, the DPA and the constitution of BiH incorporates the articles that have a partition approach and even encouraging the ethnic leaderships to preserve their nationalistic programs and their efforts to exploit the power-sharing arrangements. First of all, the BiH state structure consists of two far reaching autonomous entity. This causes instability and creates the ground for further division of society. Because each entity has its own constitution, parliament, and political structure and exploits the prerogative that DPA provided.

However, there is asymmetry between the FBiH and RS in terms of decentralization structures of the entity level. Although FBiH is very decentralized and there are cantons and municipalities in local level administration, the RS is centralized and there are only municipality level local administration. It also creates paradox that there are autonomous entities that have different local structures like states in the state. Additionally, there are two kinds of citizenships, entity and BiH, affecting the political representation of the BiH citizens in the state level institutions as elaborated in Chapter III. This enables each ethnic group to support their nationalist parties for occupying the state level institutions to protect their rights and vital interests. Because each ethnic group has the veto right to protect their vital national interest vested with DPA and included in the constitution. Thus, the nationalist's parties maintain their domination on the BiH political arena with their nationalist agenda. The BiH

³⁶² Dempsey, p. 3.

constitution also gives the right to entities to build or have cooperation or relation with the neighboring states in the sphere of the constitution permits.

The increasing interventions of the IC via the OHR to BiH for controlling the implementation of DPA cause the delay of the reforms envisioned by IC. The OHR has far reaching authority given by IC with the Bonn Power in BiH. Furthermore, successive OHR has increased their power and even acting the Governor of Colony. The role of OHR could be depicted as follows: “Although Bosnia and Herzegovina is not a colony the relationship between the state, her people and the Office of the High Representative (OHR) is not all that different.”³⁶³ The power of OHR is so strong that he can dismiss even the President, Ministers etc. and he has utilized his power for dismissing the state officials including Ministers and Prime Ministers, legislation the law regarding the all functions of state of BiH under umbrella of implementation of DPA and however he is not accountable to any national institution in BiH.

Consequently, DPA is a success due to finishing the three and half years of violent war in BiH territory among the three ethnic groups- the Bosnian Serbs, the Bosnian Croats, and the Bosnian Muslims- in front of the all states in the world. This war caused among the three ethnic group people unforgettable and irreversible cleavages and DPA aimed at abolishing these cleavages and integrate the deeply divide society with the imposed constitution and the political structure in power sharing concept. At the same time DPA legalized the partition of the country in ethnic base and vested this ethnic groups some prerogatives to maintain their nationalist agenda with the power sharing elements. They have exploited the power sharing elements- proportional representation, veto right, segmental autonomy, power sharing executives, and arbitration- for the favor of their nationalist interest and blocked reforms. It is not possible for DPA and power sharing concept to abolish the anger, hatred, fear, and hostility among three conflicted groups in a short time or overnight, but thirteen (13) years are very long time and IC should review the situation and show the BiH peoples the other options.

³⁶³ Šebek, Aetopulos, Tuzlić, p. 17.

It is clear that the system in paper and the de facto situation is completely different in BiH. So, the IC should take into consideration the root of the conflict and focus on how to resolve these key problematic issues. Sometimes the partition could be accepted as the best solution for the favor of the citizens of the country. As elaborated, de facto situation supports this idea, because on contrary to power sharing envisions, there is no mutual aims for the future of BiH and no elite cooperation and consensus between the ethnic group leaders as well. Taking into consideration of the current developments in Kosova and Caucasus, instead of spending time and money in vain for putting together the conflicted parties or adversaries in the same place and enforce them to live together should not be thought as a solution. The similar process was followed by IC during the signing of the DPA and depicts the current situation very well: “Bring them all here; keep them there until it’s done; and if there is no deal, well, then we’d have to figure out what to do from there.”³⁶⁴

Bosnia is far from being a functional democracy that ensures that democratic rights are protected over time, and that changes can be made under the currently established system of rules. To establish this level of stability will require completion of reforms in a number of policy areas, and most importantly the development of an investment of all of the ethnic constituencies in the preservation of BiH.³⁶⁵ Reform of this constitution must be a priority if Bosnia is expected to survive as a federal state. In retrospect, various analysts as well as policy and major decision-makers present at the negotiations and signing of the Dayton Accords now agree on one thing: the peace agreement was good – at the time – for ending the bloodiest war on European soil since World War II. However, its benefits only went so far: Dayton’s provisions served to entrench the complex bureaucratic administrative structure and territorial divisions, and thus did little to encourage the country’s transition to a functioning democratic state.³⁶⁶

³⁶⁴ Clark, pp. 60-61.

³⁶⁵ Galbraith, pp. 31-32.

³⁶⁶ Maja Nenadović, *The Impact of Semi-sovereignty on Bosnia and Herzegovina’s Democratization Process*, Changing Europe Summer School II “Crises and Conflicts in Eastern European States and Societies: Stumbling Blocks or Stepping Stones for Democratization?” Warsaw, 2 – 8 September 2007, p. 3.

With such pressure from the international factor and procrustean solutions reached without its people and contrary to its historical experience, Bosnia and Herzegovina is now facing a world of consequences, post festum, with everything already been decided upon and intervention almost impossible. The facts have already been established and are undergoing legitimation. The partition of the State, which once seemed a temporary solution, has become a permanent situation involving 'statelets' and parallel institutions. The war has passed but the antagonisms are not: the Dayton entity borders have legitimated the idea of separation and ethnic territories. Dayton legitimated an accomplished fact, having first declared the end of the war without declaring who won or who lost, and established the percentage of territory belonging to each of the two demarcated entities. A democratic state cannot be built on such grounds and premises; Bosnia and Herzegovina is denied the opportunity to develop the idea of the State and restore the spirit of its democratic institutions. In a word, the Dayton Agreement has now become an obstacle to both the political and the economic development of Bosnia and Herzegovina, as well as to stabilisation of the region.³⁶⁷

In reality, the BiH political elites or officials should realize that DPA was never envisioned as a long term instrument, but as an interim minimalist solution until stability could be reestablished.³⁶⁸ Based on this assumption, they should leave their national agendas and secessionist aims aside for the favor of the community they represent. Accordingly, they should start to enact the reforms for bringing the country integration to the EU. Before signing the SAA agreement with the EU on 16 July 2008, HR Lajcak stressed that "recent studies by the OHR suggest that 85% of BiH citizens want the European perspective, which is huge support for the European process and a very strong message for any political leader in BiH."³⁶⁹ This is very important message for the political leaders of the BiH for the cooperation and political agreement each other for the constitutional changes required for the EU membership.

³⁶⁷ Kovac, p. 3.

³⁶⁸ R. Bruce Hitchner, "The Process and Prospect of the Constitutional Reform Process in Bosnia and Herzegovina", **Report to the Peace Implementation Council**, Paris, France, December 14, 2005, p. 2.

³⁶⁹ Jusuf Ramadanovic, "BiH, EU sign SAA" Southeast European Times in Sarajevo, 17.06.2008, http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2008/06/17/feature-01, 15.09.2008.

The last but not the least, BiH cannot achieve the required degree of legal and political stability as long as there are two states within the State. The most notable reforms of the Dayton government have aimed to alleviate the demographic effects of war and facilitate more cooperative relations between Bosnia's three dominant ethnic groups. The process of reform, however, has been significantly limited by the resistance of both the Serb and Croat constituencies to alterations that undermine their current degree of autonomy.³⁷⁰

³⁷⁰ Galbraith, p. 33.

BIBLIOGRAPHY

1. Books:

- AKMAN, Halil, **Paylaşılamayan Balkanlar**, IQ Kültür Sanat Yayıncılık, İstanbul, 2006.
- COHEN Lenard J., **Broken Bonds: Yugoslavia's Disintegration and Balkan Politics in Transition**, Westview Press, Boulder-San Francisco- Oxford, 1995.
- CLARK, Wesley, **Modern War: Bosnia, Kosova, and the future of combat**, United States by Public Affairs, New York, 2001.
- Kemali Saybaşlı-Gencer Özcan, **Yeni Balkanlar, Eski Sorunlar**, Bağlam Yayıncılık, İstanbul, 1997.
- LÜTEM, Ömer E. – CEYHUN, Birgül Demirtaş, **Balkan Diplomasisi**, Avrasya Stratejik Araştırmalar Merkezi (ASAM) Yayınları, Ankara, 2001
- MALCOLM, Noel, **Bosnia A Short History, Cambridge**, 1994.
- NATO's Balkans Overview, 2004.
- Osmançavuşoğlu, Emel G., **The Wars of Yugoslav Dissolution and Britian's role in Shaping Western Policy**, Ankara, January 2000.
- POULTON, Hugh, **Balkanlar: Çatışan Azınlıklar, Çatışan Devletler**, Sarmal Yayınevi, 1993.
- SÜKAN, Özer, **21nci yüzyıl Başlarında Balkanlar ve Türkiye**, Harp Akademileri Basımevi, İstanbul, 2001.
- WOODWARD, Susan L., **Balkan Tragedy: Chaos and Dissolution After The Cold War**, Washington, 1995.

2. Journal Articles:

- Andrews, Luke, “Yugoslavia & The Perpetuation of Violent Nationalism”, 19 November 1998.
- Arvanitopoulos, Constantine and Tzifakis, Nikolaos, “Implementing Reforms in Bosnia and Herzegovina: the challenge of the constitutional process”, **Centre for European Studies**, 6 June 2008.
- Barnes, Samuel H., “The Contribution of Democracy to Rebuilding Post Conflict Societies”, **The American Journal of International Law**, Vol. 95, No. 1, 2001.
- Belloni, Roberto, “Peacebuilding and Consociational Electoral Engineering in Bosnia and Herzegovina”, **International Peacekeeping**, Vol. 11, No. 2, 2003.
- Belloni, Roberto, “Civil Society and Peace building in Bosnia and Herzegovina”, **Journal of Peace Research**, Vol. 38, No. 2, March 2001.
- Bieber, Florian “Consociationalism—Prerequisite or Hurdle for Democratisation in Bosnia? The Case of Belgium as a Possible Example”, **South-East Europe Review**, Volume 2, Number 3, 1999.
- Bieber, Florian “Croat Self-Government in Bosnia- A Challenge for Dayton?”, ECMI Brief#5, **European Centre for Minority Issues (ECMI)**, 2001.
- Bieber, Florian, “Bosnia-Herzegovina: Developments Towards a More Integrated State”, **Journal of Muslim Affairs**, 01 April 2002.
- Bieber, Florian “Bosnia and Herzegovina Slow Progress”, **Southeast European and Black Sea Studies**, Vol. 6, No. 1, March 2006.
- Bojkov, Victor D., “Democracy in Bosnia and Herzegovina: Post-1995 Political System and its Functioning”, **Southeast European Politics**, Vol IV, No. 1, May 2003.
- Caspersen, Nina Fallentin, “A comparison of consociational and integrative conflict regulation strategies in Post-Dayton Bosnia”, Paper prepared for the conference Europe as a Peaceful Power?, **The European Peace Research Association (EuPRA)**, Stadtschlaining, Austria., 13-17 July 2002.
- Chandler, David, “From Dayton to Europe”, **International Peacekeeping**, Vol. 12, No. 3, Autumn 2005.

- Charles Jokay, “Local Government in Bosnia and Herzegovina”, **Local Governments in Central and Eastern Europe**, Chapter 3, April 2003.
- Constantine Arvanitopoulos and Nikolaos Tzifakis, “Implementing Reforms in Bosnia and Herzegovina: the challenge of the constitutional process”, **Centre for European Studies**, 6 June 2008.
- Dallago, Bruno; Uvalic, Milica, “The Distributive Consequences of Nationalism: The Case of Former Yugoslavia”, **Europe-Asia Studies**, Vol. 50, No. 1, January 1998.
- Dempsey, Gary, Rethinking the Dayton Agreement, **Policy Analysis**, No.327, 14 December 1998.
- Denitch, Bogdon, “Learning from the Death of Yugoslavia: Nationalism and Democracy”, **Social Text**, No. 34, 1993.
- Dijkstra, Gerrit, “Bosnia and Herzegovina after the Crises”, **Journal of Contingencies and Crises Management**, Volume 7, Number 4, December 1999.
- Domm, Rory “Europeanization without Democratization: A Critique of International Community Peacebuilding Strategy in Bosnia and Herzegovina”, **Southeast European and Black Sea Studies**, Vol. 7, No. 1, March 2007.
- East European Constitutional Review, New York University School of Law, Volume 8, Number 4, Fall 1999.
- Editorial Comment, “The Balkan Situation”, **the American Journal of International Law**, Vol.3, No. 3, Jul 1999.
- ESI (European Stability Initiative), “The worst in class: How the international protectorate hurts the European future of Bosnia and Herzegovina”, Berlin, 8 November 2007.
- ESI in the press, Constitutional Changes in Bosnia and Herzegovina: What’s on the Table, **Southeast European Times**, 14.03.2005.
- ESI (European Stability Initiative), “Making Federalism Work - A Radical Proposal for Practical Reform”, Berlin, 08 January 2004.
- ESI (European Stability Initiative), “Reshaping International Priorities in Bosnia and Herzegovina: Part Two, International Power in Bosnia”, 30 March 2000.

- ESI (European Stability Initiative) Discussion Paper, “In search of politics: the evolving international role in Bosnia and Herzegovina”, 1 November 2001
- ESI (European Stability Initiative), Reshaping International Priorities in Bosnia and Herzegovina, Part One, Bosnian Power Structures, 14 October 1999.
- ESI (European Stability Initiative), Making Federalism Work, “A Radical Proposal for Practical Reform”, 08 January 2004.
- ESI (European Stability Initiative) Discussion Paper for the ESI-SIIA Stockholm Seminar on Bosnia and Herzegovina, 24 February 2000.
- Frankel, Joseph, Federalism in Yugoslavia, *The American Political Science Review*, Vol. 49, No. 2. (Jun 1955)
- Galbraith, Anna Rose Lipton, “Bosnia-Herzegovina: Toward a Less Imperfect Union”, A thesis submitted to the faculty of Wesleyan University, 2008.
- Gligorov, Vlademir, “Bosnia and Herzegovina”, **Balkan Reconstruction**, Frank Cass Publisher, London, 2001.
- Hays, Don; Crosby, Jason “From Dayton to Brussels: Constitutional Preparations for Bosnia’s EU Accession”, **United States Institute of Peace Special Report**, October 2006.
- Heiler, Johannes, “Institutions, Civil Society and Nationalism in the Context of Democratic Consolidation-Prospects for Democracy in Bosnia and Herzegovina”, **Peace, Conflict and Development Studies Journal**, 2002.
- Helgesen, J., Jowell, J., Malinverni, G., Scholsem, J.C., Tuori, K., “Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Power of the High Representative”, **European Commission for Democracy through Law (Venice Commission)**, Venice, 11 March 2005.
- Helgesen, J., Malinverni, G., Scholsem, J.C., Tuori, K., “Opinion on Different Proposals for the Election of the Presidency of Bosnia and Herzegovina”, **European Commission for Democracy through Law (Venice Commission)**, Strasbourg, 20 March 2006, (Opinion on Different Proposal).
- Helgesen, J., Jowell, J., Malinverni, G., Scholsem, J.C., Tuori, K., “Preliminary Opinion on the Draft Amendments to the Constitution of Bosnia and Herzegovina”, **European Commission for Democracy through Law (Venice Commission)**, Strasbourg, 07 April 2006.

- Hitchner, R. Bruce, “The Process and Prospect of the Constitutional Reform Process in Bosnia and Herzegovina”, Report to the Peace Implementation Council, Paris, France, December 14, 2005.
- Jokay, Charles, “Local Government in Bosnia and Herzegovina”, **Local Governments in Central and Eastern Europe**, Chapter 3, April 2003.
- Junkos, Ana E., “The EU’s post-Conflict Intervention in Bosnia and Herzegovina: (re) Integrating the Balkans and/or (re)Inventing the EU”, *South East European Politics*, November 2005.
- Karnavas, Michael G., “Creating the Legal Framework of the Brcko District of Bosnia and Herzegovina: A Model for the Region and Other Postconflict Countries”, **The American Journal of International Law**, Vol. 97, No. 1, January 2003.
- Kasapović, Mirjana, “Bosnia and Herzegovina: Consociational or Liberal Democracy?”, *Politička Misao*, Vol. 42, No. 5, 2005
- Knaus, Gerald and Cox, Marcus, “Legal Dynamite: How a Bosnian court may bring closer the end of the Bosnian protectorate”, **European Stability Initiatives**, 12 March 2007.
- Kovac, Nikola, “Political Reflection: Bosnia and Hercegovina in The Light of European Integration”, **Spirit of Bosnia (Duh Bosne)**, Vol. 2, No. 2 , 2007
- Kuperman, Alan J., “Power Sharing or Partition? History's Lessons for Keeping the Peace in Bosnia”, **Security Studies Program Seminar**, University of Texas, Austin, 12 April 2006
- Lampe, John R., “Yugoslavia as History: Twice there was a country”, **Cambridge University Press**, 2000
- Lenic, Brankica, “Bosnia and Herzegovina on the Path to Fiscal Equalization”, *The Fiscal Decentralization Initiative for Central and Eastern Europe*
- Lovrenović, Ivan, “Bosnia and Herzegovina: Facing the Challenge of Independence”, **Spirit of Bosnia (Duh Bosne)**, Vol. 3, No.1, 2008.
- Kim, Julie, “Bosnia: Overview of Current Issues”, **CRS report for Congress**, January 2008.
- Maglic, Denisa Sarajlic, “Paper presented at the Conference on Decentralization Between Regionalism and Federalism in the Stability Pact in the Western Balkans”, 9-10 June 2006, Tirana, Albania,

- Mandacı, Nazif, “The Rump Yugoslavia Conundrum of the West: The Chances of Consociational Democracy in the Post-Conflict Societies”, **The Turkish Yearbook of International Relations/ Milletlerarası Münasebetler Türk Yıllığı**, Vol. 35, 2005.
- Manning, Carrie, “Election and Political Change in Post-War Bosnia and Herzegovina”, **Democratization**, April 2004.
- Manning, Carrie, “Political Elites and Democratic-State Building Efforts in Bosnia and Iraq”, **Democratization**, Vol. 13, No. 5, December 2006.
- Mansfield, Anna Morawiec, “Ethnic but Equal: The quest for a new Democratic Order in Bosnia and Herzegovina”, **Colombia Law Review**, Vol. 103, No. 8, 2003.
- Marjanovic, Maja “Post-Conflict Democratization and Depoliticizing of Conflicted Identities: Constitutional Transformation in Bosnia and Herzegovina”, **MALD Thesis**, 2005.
- Marko, Joseph, “Post-conflict Reconstruction through State- and Nation-building: The Case of Bosnia and Herzegovina”, **European Diversity and Autonomy Papers**, EDAP 4/2005.
- Milićević, Neđo “The state and problems of local self government in Bosnia and Herzegovina”, **Southeast Europe Review**, 2001.
- Nenadović, Maja, “The Impact of Semi-sovereignty on Bosnia and Herzegovina’s Democratization Process”, Changing Europe Summer School II “Crises and Conflicts in Eastern European States and Societies: Stumbling Blocks or Stepping Stones for Democratization?” Warsaw, 2 – 8 September 2007.
- Norris, Pippa “Stable Democracy and Good Governance in Divided Societies: Do power-sharing institutions work?”, **Faculty Research Working Papers Series**, February 2005.
- OSCE Office for Democratic Institution and Human Rights (ODIHR) Needs Assessment Mission Report (3-7 July 2006), Bosnia and Herzegovina General Elections(1 October 2006). Warsaw, 20 July 2006.

- Palmer, L. Kendall, “The Power-Sharing Process: Media Reforms in Bosnia-Herzegovina”, Paper to be presented at the Kokkalis Graduate Student Workshop, Harvard University, Cambridge, Massachusetts, 9-10 February 2001.
- Papahristodoulou, C., “The Dayton division of Bosnia and other core allocations”, **Applied Economics Letters**, 2000.
- Perry, Valery, “Shepherding Sovereignty Slow Democratization in Bosnia and Herzegovina”, **Bologna Center Journal of International Affairs**, Volume 10, Spring 2007.
- Petrujkic, Sanjin Sunny, “The Nature and Dynamics of Contemporary Nationalism: Reshaping a Modern and Multinational BiH State”, A Thesis submitted to the Faculty of Graduate Studies of The University of Manitoba, February 2006.
- Porobic, Nela “(Re) Constructing a Deeply Divided Society: Peacebuilding Lessons from Bosnia and Herzegovina”, **Lund University**, Fall 2005.
- Report on Bosnia and Herzegovina Observation Mission submitted to IFES by Commissioner Mastora Stanikzai, Zikria Barakzai and Mohammad Hashim, Kabul-Afghanistan, December 2006.
- Schneckener, Ulrich, “Making Power-Sharing Work: Lessons from Successes and Failures in Ethnic Conflict”, **Journal of Peace Research**, Vol. 39, No. 2, 2002.
- Sebastian, Sofia, “Leaving Dayton Behind: Constitutional Reforms in Bosnia and Herzegovina”, **Fride**, November 2007.
- Šebek, Nenad; Noack-Aetopoulos, Corinna; Tuzlić, Dževdet, “Effecting the Change and Good Governance in Local Administration in Bosnia and Herzegovina: Final Survey of the Project “Our Town, Our Future”, **Center for Democracy and Reconciliation in Southeast Europe (CDRSEE)**, April 2006.
- Sekelj, Laslo, “Parties and Elections: The Federal Republic of Yugoslavia-Change Without Transformation”, **Europe-Asia Studies**, Vol. 52, No.1, 2000.
- Skopljanac, Nena “Dealing with the Past in Bosnia – Herzegovina: Challenges for the Future and the Role of External Actors”, 2005.

- Skopljanac, Nena, “Dealing with the Past in Post-Conflict Societies: Ten Years after the Peace Accords in Guatemala and Bosnia-Herzegovina”, **Swisspeace Annual Conference**, 2006.
- Slack, J. Andrew and Doyon, Roy R., “The Population Dynamics and Susceptibility for Ethnic Conflict: The Case of Bosnia and Herzegovina”, **Journal of Peace Research**, Vol. 38, No. 2, March 2001.
- Statue of the Brcko District of Bosnia and Herzegovina in Brcko Arbitration, Chapter I- General Provisions, Articles 1, 2, 3, 12 December 1999.
- Topic, Lidija, “Making Bosnia and Herzegovina’s Transformation Irreversible”, **European Policy Centre Policy Brief**, June 2008.
- Tzifakis, Nikolaos, “The Bosnian Peace Process: The Power-Sharing Approach Revisited”, *Perspectives*, 28/2007.
- Zaum, Dominik, “The Paradox of Sovereignty: International Involvement in Civil Service Reform in Bosnia and Herzegovina”, **International Peacekeeping**, Vol. 10, No. 3, 2003.
- Zhdanovich, Vadim; Martin-Rozumilowicz, Beata, OSCE Office for Democratic Institution and Human Rights (ODIHR) Needs Assessment Mission Report (3-7 July 2006), Bosnia and Herzegovina General Elections, 1 October 2006.

3. **Internet Resources:**

- Agreement on Restructuring of Police Structures in BiH, available on line http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-key-doc/default.asp?content_id=36200, 18.09.2008.
- Bayrasli, Elmira “Bosnia’s Education Law Fiasco”, Sarajevo (BCR No 498, 20-May-04), available online: http://www.iwpr.net/index.pl?archive/bcr3/bcr3_200405_498_5_eng.txt, 14.07.2008.
- Bonnici, Ugo Mifsud, European Commission for Democracy through Law (Venice Commission) Annual Report of Activities in 2005, September 2006, available online: [http://www.venice.coe.int/docs/2005/CDL-RA\(2005\)001-e.asp#_Toc144026969](http://www.venice.coe.int/docs/2005/CDL-RA(2005)001-e.asp#_Toc144026969), 14.09.2008.

- Bonnici, Ugo Mifsud, European Commission for Democracy through Law (Venice Commission) Annual Report of Activities in 2006, September 2007, available online: [www.venice.coe.int/docs/2006/CDL-RA\(2006\)001-e.pdf](http://www.venice.coe.int/docs/2006/CDL-RA(2006)001-e.pdf), 14.09.2008.
- Bosnia Citizens Support Constitutional Reform, DTT-NET.COM May 16th, 2006, available online: <http://www.daytonproject.org/about/article.php?id=146>. 14.09.2008.
- Bosnia Herzegovina Country Profile, 03.01.2008, available online: <http://www.eubusiness.com/Bosnia/bosnia-country-profile/?searchterm=BiH%20reforms%20in%202006>, 14.09.2008.
- Chronology of the Presidency of BiH, available online: <http://www.predsjednistvobih.ba/hron/?cid=74,1,1>, 14.4.2008.
- Constitution of the Federation of Bosnia and Herzegovina, available online: <http://www.ohr.int/ohr-dept/legal/const/>, 15.01.2008.
- Constitution of Republika Srpska (RS), available online: <http://www.ohr.int/ohr-dept/legal/const/>, 15.01.2008.
- Constitutional Reform, **ESI**, available online: http://www.esiweb.org/index.php?lang=en&id=311&film_ID=5&slide_ID=32, 09.09.2008.
- Country Fact Sheet: Bosnia and Herzegovina, available on line: www.oecd.org/dataoecd/27/32/36454643.pdf, 14.07.2008.
- Dimitrova, Gergana Cisarova “Democracy and International in Bosnia and Herzegovina”, **Central European Political Studies Review**, Vol VI, Number 1, available online: <http://www.cepsr.com/dwnld/cisarova.pdf>, 14.06.2008.
- EUSR Mandate, available online: <http://www.eusrbih.eu/gen-info/?cid=2000,1,1>, 12/09/2008.
- European Union in BiH, available online <http://www.eubih.org>. 12.09.2008.
- Interview on Police reform in BiH for Dnevni Avaz, available online: http://consilium.europa.eu/uedocs/cmsUpload/B_H_28_09.pdf, 14.09.2008.

- Judah, Tim, “Yugoslavia: 1918 to 2003”, available online: <http://www.bbc.co.uk/history/state/nations/yugoslavia>, 12.10.2007.
- Lenic, Brankica, “Bosnia and Herzegovina on the Path to Fiscal Equalization”, **The Fiscal Decentralization Initiative for Central and Eastern Europe**, p. 5, available online: http://lgi.osi.hu/publications/2006/346/FE_Bosnia_4.pdf, 12.07.2008.
- Mustajbegovic, Saida, “Bosnia: Constitution Reform Setback”, **Balkan Investigative Reporting Network (BIRN)**, 25.01.2007, available online: <http://www.birn.eu.com/en/67/10/2141/>. 14.09.2008.
- Office of the High Representative and EU Special Representative, available online: <http://www.ohr.int>, 10.07.2008.
- OHR/EUSR Comment On EU Conclusions on Bosnia and Herzegovina, available online: http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-pr/default.asp?content_id=41667, 15.09.2008.
- Organization for Security and Cooperation in Europe, Mission to BiH (OSCE BiH), available online: <http://www.ohr.int>, 12.07.2008.
- OSCE and its mission in BiH, available online: <http://www.oscebih.org>, 14.07.2008.
- Parliamentary Assembly of Bosnia and Herzegovina, Open Parliament Brochure, slide 5. available online: <http://www.oscebih.org/documents/11559-eng.pdf>, 07.07.2008.
- Peace Implementation Council, available online: <http://www.ohr.int/pic>, 10.07.2008.
- Ramadanovic, Jusuf, “BiH, EU sign SAA” Southeast European Times in Sarajevo, 17.06.2008, http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2008/06/17/feature-01, 15.09.2008.
- Rights and Duties of Council of Ministers, available online: http://www.ohr.int/decisions/statemattersdec/default.asp?content_id=28609, accessed 15.04.2008.

- RS's Dodik says constitutional reform in BiH cannot be imposed from outside, Southeast Europe Times, 10.09.2008, available online:
http://www.setimes.com/cocoon/setimes/xhtml/en_GB/newsbriefs/setimes/newsbriefs/2008/09/10/nb-04, 14.09.2008.
- Rules of procedures of Presidency of BiH, Article I (General Provisions), available online: <http://www.predsjednistvobih.ba/nadl/1/?cid=5,1,1>, 12.04.2008.
- Serbs hint future secession move from Bosnia, available online:
<http://www.eubusiness.com/news-eu/1203636721.42/>, 10.09.2008.
- Statement by the HR/EUSR Miroslav Lajčák following the adoption of police reform legislation in the BiH House of Representatives, available online:
http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-pr/default.asp?content_id=41573, 15.09.2008.
- Statue of the Brcko District of Bosnia and Herzegovina, **Brcko Arbitration**, Chapter I- General Provisions, Articles 1, 2, 3, 12, December 1999, available online: http://www.ohr.int/ohr-offices/brcko/default.asp?content_id=5367, 14.07.2008.
- Stoessel, Marcel, “The Role of the OSCE in Bosnia and Herzegovina”, available online: http://www.stoessel.ch/bosnia/osce_bosnia_herzegovina.pdf, 11.10.2007.
- The Parliamentary Assembly of BiH, available online:
<http://www.oscebih.org/documents/11559-eng.pdf> , 03.07.2008.
- Turcalo, Sead, “Deconstruction of state institution: The international Community and the political elites in Bosnia and Herzegovina”, available online:
www.boell.be/download_en/Deconstruction_of_state_institutions_Turcalo.pdf, 09.09.2008.
- TV Interview with Ambassador Dimitris Kourkoulas, Head of Delegation of the European Commission to Bosnia and Herzegovina “Importance of the Stabilization and Association Agreement for BiH and its Citizens”, available online:
<http://www.europa.ba/?akcija=vijesti&akcija2=pregled&jezik=2&ID=160>, 02.09.2008.

- US Urges Bosnian to Revise Constitution, The New York Times, 10.09.2008, available online:
<http://www.nytimes.com/2005/11/21/international/europe/21dayton.html>,
16.09.2008.
- Wisler, Dominique, Police Reform in Bosnia and Hercegovina, p. 42, available online: www.bmlv.gv.at/pdf_pool/publikationen/10_wg12_psm_60.pdf,
14.07.2008.
- Wolff, Stefan, “Peace by Design? Self –determination and Power-sharing in Divided Societies”, available online: <http://www.stefanwolff.com/publications-articles.htm>, 15.12.2007.