STATE BUILDING IN DEEPLY DIVIDED SOCIETIES

BEYOND DAYTON IN BOSNIA

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ABSTRACT

This dissertation focuses on post-conflict Bosnia, one of Europe's most divided post-conflict societies, and where the external leadership of the state building process has been pronounced. The specific goal is to delineate a framework of analysis that accounts for the elite dynamics involved in the state building process in Bosnia in the context of the EU accession process. The main research question is: how and under what circumstances can external actors shape domestic change in deeply divided societies? How may external actors affect the interests, goals, and strategies of domestic actors in post-conflict, divided societies? Can local actors resist external pressure?

In order to explore these issues empirically, this dissertation examines the process of constitutional reform in Bosnia in 2005-2006, and draws from 80 personal interviews with the key players and other actors involved. The thesis brings a large body of evidence into a process that was, heretofore, largely unknown and shrouded in secrecy.

The dissertation is framed within the paradigms of state building and international conditionality; which I argue do not adequately capture the nuances and complexities of post-conflict Bosnia. Drawing from the literature on conflict regulation and other plural society theories, I propose a unique three-tiered framework, and argue that this approach represents a more comprehensive construct for analyzing post-conflict Bosnia. More specifically, this approach dissects the process of constitutional reform from an inter-ethnic, intra-ethnic, and what I term 'supra-national' level (the latter referring to the interactions between domestic and external actors). The study of these interactions is likely to help us define better policies in post-conflict state building processes.

I conclude that the international push in Bosnia, and the transformative power of the EU were blunted by an ethnic power game. While external actors did play a substantive role, the neglect of intra-ethnic dynamics rendered external actors' efforts at shaping the process of constitutional reform in Bosnia ineffective.

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ABBREVIATIONS

BiH	Bosnia and Herzegovina
CARDS	Community Assistance for Reconstruction, Development and Stabilization
CC	Constitutional Court
CEE	Central and Eastern Europe
CEEC	Central and Eastern European Countries
CoE	Council of Europe
DNZ	Demokratska Narodna Zajednica, People's Democratic Union
DPA	Dayton Peace Accords
EC	European Commission
ECC	European Economic Community. The EEC was transformed into the EU in 1993 under the Maastricht Treaty. The EEC became one of the Pillars of the EU as the European Community.
ECHR	European Convention of Human Rights
EU	European Union
EUFOR	EU Force
EUPM	EU Police Mission
EUSR	European Union Special Representative
FBiH	Federation of Bosnia and Herzegovina
FRY	Federal Republic of Yugoslavia
GFAP	General Framework Agreement for Peace
HDZ-BiH	Hrvatska Demokratska Zajednica, Croatian Democratic Union BiH
HDZ 1990	Hrvatska Demokratska Zajednica 1990, Croatian DemocraticUnion 1990
HNZ	Hrvatska Narodna Zajednica (Croatian People's Community)
HR	High Representative in BiH
HR/EUSR	High Representative and EU Special Representative in BiH
ICFY	International Conference on the Former Yugoslavia
ICTY	International Criminal Tribunal for the former Yugslavias
IEBL	Inter-entity Boundary Line
IFOR	Implementation Force (NATO force in 1996)
IMF	International Monetary Fund
IPA	Instrument for Pre-Accession Assistance
IPTF	UN International Police Task Force
NATO	North Atlantic Treaty Organization
NGO	Non-governmental Organization
NHI	Nova Hrvatska Inicijativa, New Croatian Initiative
OHR	Office of the High Representative
OSCE	Organization for Security and Cooperation in Europe
PIC	Peace Implementation Council
PILPG	Public International Law and Policy Group
PRC	Police Restructuring Commission
RS	Republika Srpske
RSNA	Republika Srpske National Assembly
SAA	Stabilization and Association Agreement
SAP	Stabilization and Association Process

SBiH	Stranka za BiH, Party for Bosnia and Herzegovina
SEE	Southeastern Europe
SDA	Stranka Demokratske Akcije, Party for Democratic Action
SDP	Socijaldemokratska Partija, Social Democratic Party
SDS	Sprska Demokratska Stranka, Serb Democratic Party
SFOR	Stabilization Force (NATO force in 1997)
SFRY	Socialist Federal Republic of Yugoslavia
SIPA	State Investigation and Protection Agency
SNSD	Savez Nezavisnih Socijaldemokrata, Union of Independent Social Democrats
SP	Stability Pact
SPRS	Socialisticka Partija of Republike Srpske, Socialist Party of the RS
SRS-RS	Srpska Radikalna Stranka Republike Srpske, Serb Radical Party, RS
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNPROFOR	United Nations Protection Force
US	United States
USIP	US Institute for Peace
VNI	Vital National Interest (Veto)

CHAPTER 1

INTRODUCTION

"I don't want to be the rider on a dead horse"[1]

Miroslav Lajčák, High Representative in Bosnia and Herzegovina (2007-2009)

1 February 2009[2]

1.1. INTRODUCTION

The signing of the General Framework Agreement for Peace (GFPA) in Dayton in November of 1995, which represented the end of the armed conflict in Bosnia and Herzegovina (BiH),[3] set in motion an ambitious peace and state-building mission; including an extensive external involvement and supervision of the military, police and institutional aspects of the agreement. While the military and security components of the GFPA were quickly put into place, the High Representative (HR) – the international envoy created in Dayton to monitor the implementation of the agreement – struggled to build a functional state, in the face of stubborn local obstruction stemming from the three major ethnic groups;[4] Bosniaks,[5] Serbs and

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[1] The High Representative Miroslav Lajčák – the sixth international envoy in Bosnia and Herzegovina – was not referring to Bosnia, but to the international bodies operating in this country, impotent in their mission to create a functional state. Lajčák made this comment two weeks after he announced his departure to take on a new job as Slovak Foreign Minister. This quote is reflective of the frustration felt within the international community, which has been common ever since the end of the war.

[2] Miroslav Lajčák, cited in Srecko Latal, "Western Bodies in Bosnia "Dead Horse."" *Balkan Insight*, 2 February 2009.

[3] I use the terms 'Bosnia' and 'Bosnia and Herzegovina' (BiH) interchangeably throughout this disertation.

[4] The persistence of the mono-ethnic, corruption-riveted structures that had been created during the war and the continued influence of wartime leaders did also contribute to undermining the implementation of the civilian aspects of the peace agreement (the post-war dynamics of local obstruction are further explored in chapter 3, section 3.2). Ongoing institutional obstructions by local politicians coupled with deep inter-ethnic divisions led EU Commissioner for Enlargement Olli Rehn to state in 2007 "The current dysfunctionality of the government of Bosnia and Herzegovina is detrimental to progress. This is hard to understand. Your country benefits nothing from a return to the 1990s mentality" (Rehn 2007).

[5] I use this term to refer to the Bosnian Muslims. Muslims were first recognized as a distinct

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Croats.[6] Although there were some important breakthroughs in the late 1990s with the launch of the 'Bonn Powers,'[7] which included the imposition of a common currency, the introduction of a common vehicle license plate, and the enactment of a common national passport;[8] Annex Four of the GFAP (i.e. the constitution of Bosnia and Herzegovina) remained purely a theoretical framework during the 1990s.[9]

A more comprehensive strategy was conceived and launched in 2000, linking the process of state building in Bosnia with the process of EU accession. The goal was to use the EU as an incentive for parties to fully engage in the state building process, but most of the early reforms were imposed by the HR.[10] Spurred by strong international pressure, some successes were achieved in 2004-05; including the creation of a state-level intelligence agency, the unification of the three armies, and the creation of an integrated tax system; but again the gains were short-lived and they reflected strong external arm-twisting rather than local engagement in the reform process; nationalist rhetoric did not abate and previously accepted reforms faced resistance in the implementation phase.

The complicated institutional structure entailing multiple 'ethnic veto points', coupled with the ongoing ethnic divisions around the form of the state, have been argued to impair the process of state building in Bosnia, and bring the entire system

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ethnic group in former Yugoslavia in the 1961 census (Burg and Shoup 1999). Recognition of Muslims as a nation within Yugoslavia in equal status to the rest of the constituted nations would only come in 1963 with the adoption of new a constitution for the republic (*Ibid*).

[6]   There are no accurate estimates of the population distribution in Bosnia; it is generally accepted that Bosniaks represent more than 50 percent; Serbs around 28 or 30 percent; and Croats around 12 or 13 percent (see for example McGonagle, Noll and Price 2003, 120-121). The last census was completed in 1991. According to this census, Bosniaks represent almost 44 percent of the total population; Serbs 31 percent; and Croats 17 percent (Bieber 2006a, 2).

[7]   The international community launched a revamped international strategy to confront domestic obstruction in late 1997, which included *inter alia* new executive powers vested in the international envoy to dismiss officials and impose legislation. These powers were created at the Peace implementation Council (PIC) meeting in Bonn in 1997 (Peace Implementation Council 1997b).

[8]   Cox 2001.

[9]   Indeed, political parties refused to fully participate in central, state-level institutions and would only do so reluctantly, following strong arm-twisting by the international community. As a result, state-level institutions remained highly dysfunctional and highly dependent upon the HR's powers (see chapter 3, section 3.2).

[10]   Including *inter alia* the Law on the Council of Ministers; the Law on the Civil Service; the Decision on Restructuring the Public Broadcasting System; the Law on the Prosecutor's Office; the Law on the High Judicial Council; and the Law on the State Court. Most of these reforms were later confirmed by the respective parliaments at both the state and entity levels. The HR's powers have also been prominent in the creation of state level agencies such as the State Border Service in 2000 and in the appointment of key positions for newly created institutions. As a case in point, the HR intervened in October 2002 to appoint the Director and Deputy Directors of the State Investigation and Protection Agency (OHR 2002e). In September 2005 he appointed the Director and Deputy Director of the State Border Service (OHR 2005).

into a chronic institutional impasse. As a case in point, the leading Bosniak and Serb parties, namely the SBiH and SNSD, have based their government agendas on mutually incompatible demands reminiscent of wartime politics. SNSD's leader, Milorad Dodik, for example, has fervently defended both Dayton and the Serb dominated entity Republika Srpska (RS), and threatened to hold a referendum on independence, should the status of the latter be questioned. SBiH leader Haris Silajdžić, on the contrary, has demanded the dissolution of Dayton and the creation of a new state with no entities, divided into economic and geographic territorial units as opposed to ethnic ones. These developments have continued to create a deadlock over the reform process. Furthermore, the fact that most key reforms to date have been either directly imposed by the HR, or have been accepted by the parties only after intensive persuasion by the international community, has challenged the role external actors have played in shaping the state building process in this country. In the words of former High Representative (HR) Paddy Ashdown, "Divided, dysfunctional, a black hole, ... a space that we cannot afford to leave because it's too destabilizing if we do, but we cannot push forward toward full statehood, either ... That, I think, is the danger."[11]

My dissertation focuses on the failing record of the state building process in post-conflict Bosnia; one of Europe's most divided post-conflict societies. In particular, it sheds light on the dynamics of the post conflict state building in Bosnia under the EU leadership; with a particular focus on the interactions between domestic and external actors. Some of the key questions under consideration include: can external actors shape domestic change in post-conflict, deeply divided societies? Can external actors provide incentives to affect the interests, goals, and strategies of local actors in deeply divided societies? Can local actors resist external pressure?

My interest thus lies in the study of the external push in post conflict Bosnia and the extent to which external actors can succeed in shaping the process of institution and state building in this country. In order to explore these questions empirically, I examine the process of constitutional reform in Bosnia between 2005 and 2006, and draw from more than 80 personal interviews with internal and external actors that were involved in the process. I provide much new evidence on developments that

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[11] Paddy Ashdown, speech given in Washington D.C. before the US Helsinki Committee on 6 April 2009. Cited in Heather Maher. "Helsinki Commission Urged to Renew US Engagement in Western Balkans." *Radio Free Europe/Radio Liberty*, 6 April 2009.

were, heretofore, largely shrouded in secrecy. The reform process was triggered by domestic and international calls to amend the complex structures created by Dayton and put in place a functional state capable of making progress towards EU accession.[12] Notwithstanding the external pressures reflected in the EU's 'soft power' approach, and direct 'arm-twisting' by the US, this process failed in April of 2006. My thesis attempts to explain why this failure occurred, and to reflect on the broader state building process unfolding in this country.

My dissertation is framed within the paradigms of state building and international conditionality; which I argue do not adequately capture the nuances and complexities of post-conflict, deeply divided societies such as Bosnia. I propose a three-tiered framework, which has not been used systematically before, and argue that this mehodology represents a more comprehensive construct for analyzing post-conflict, deeply divided societies. More specifically, this approach dissects the process of constitutional reform from an inter-ethnic, intra-ethnic, and what I term 'supra-national' level (the latter referring to the interactions between domestic and external actors).

My research reflects two key focal points: (1) a process-driven approach; investigating specific dynamics to reveal how external involvement and incentives factored into local politics; (2) an "actor-centric" approach; focusing on the role of political elites. As Simon Chesterman states in his comparative study of transitional administrations and state building, "two of the most important lessons [about post-conflict state building] are that local politics matter and that the personalities of local and international staff can change the course of an operation."[13]

1.2. BEYOND DAYTON?

The Dayton Constitution, a facet of the peace accord signed in November of 1995, established a political system that drew heavily on Lijphart's consociational recipe for power sharing.[14] This is a system based on the belief that ethnic differences

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[12]   Chapter 4 provides a full account on the rationale for constitutional reform.
[13]   Chesterman 2004, 6.
[14]   Lijphart 1969. Lijphart's consociational model emerged in the late 1960s as a response to the post-decolonization scholarship that questioned the link between democracy and divided societies. In fact, Lijphart's model questioned the link between stability and social structure, drawing from the power-sharing model in place in the Netherlands.

should not be abolished or weakened, but rather should be explicitly recognized.[15] It provides critical guarantees and veto powers to the different ethnic groups[16] so that their interests are not overridden, and is considered important for divided societies emerging from a violent conflict. Bosnia has built upon the key elements featuring Arend Lijphart's consociations,[17] some of which were accentuated to provide ethnic groups with further guarantees. The key elements of Lijphart's consociations include:[18]

> (1) The joint exercise of governmental power, which may take various institutional forms, the most common of which is the 'grand coalition'. Bosnia's government rests upon this broader notion, but the government is formed as a post-election inter-ethnic coalition (following the country's division into three ethnic groups), including the parties gaining most electoral support within each

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[15] Lijphart 1977. Two major power-sharing models have been devised for divided societies, namely the consociational model (Lijphart 1969; see also McGarry and O'Leary 1993 and 2004; O'Leary 2005) and the centripetalist or integrative approach (Horowitz 1985; Sisk 1996; Reilly 2001), both of which rely on inter-ethnic cooperation and moderation. An alternative model has also emerged recently, known as the "power dividing arrangement" (Rothchild and Roader 2005). Though the two basic models aim to achieve similar ends; namely the accommodation of differing groups within a single polity, they differ on how such accommodation is translated into the political system. The consociational model recognizes and enhances the differences. The idea is "to turn the segments into constructive elements of stable democracy" (Lijphart 1977, 42) and provide them with institutional guarantees that prevents the state-level institutions from making any decision that is contrary to their interests. This model is premised on the idea that elites are prone to inter-ethnic cooperation, provided their rights are protected. The centripetalist approach, on the contrary, works under the assumption that elites are not always predisposed to inter-ethnic cooperation, and aims at undermining the salience of the ethnic factor; it advocates building bridges across group boundaries and providing politicians with incentives (mostly electoral) to encourage them to cooperate with members of groups other that their own. The chances to introduce integrative formulas by international mediators are however often constrained by the very nature of post-conflict contexts and the highly distrusted patterns of behavior (Hoddie and Hartzell 2005). Nationalist parties may indeed be more likely to accept a consociational arrangement, as it respects and enhances their power base – namely the ethnic group.

[16] This dissertation takes the notion of ethnic group as "the nominal members" or a type of "cultural collectivity" of ascriptive categories such as common descent, race, language, religion, etc (Smith 1991; Chandra 2007). The term "ethnic group" does not imply "active participation in a common group identity" (Ibid, 2-3). According to Chandra 'nominal membership' is inherited (for a definition on the categories 'ethnicity' and 'ethnic identity' see footnote 103 in this introduction).

[17] Though most of the clauses contained in the Dayton agreement fall into the consociational category, some integrative elements were also included. The Constitutional Court and the Central Bank are based on a parity representation, but decisions are taken on a simple majority basis (see Constitution of Bosnia and Herzegovina 1985. Art. 6 and 7). Other integrative elements have been added overtime, mostly as a result of the HR's intervention; foremost among these is the imposition in 2002 of an amendment to the entities' constitutions whereby all the constituent peoples are to have equal status in both entities. This amendment, Caspersen argues, has limited group territorial autonomy (Caspersen 2004; for a more in-depth review of the consociational and integrative elements contained in Dayton, see Caspersen 2004; see also Bieber 2006b). Bosnia thus represents a typical case of complex power sharing, which combines different power sharing mechanisms to regulate conflict in a divided society, borrowing from both the consociational and integrative models (see p. 65, footnote 213)

[18] See Lijphart 1977; 1990.

ethnic group.[19]

(2) Group autonomy, which can take the form of federalism, where "groups have a clear territorial concentration;" and a non-territorial arrangement, which may involve ample autonomy in areas such as culture and education. Group autonomy may also entail a mix of territorial and non-territorial forms, where groups are intermixed.[20] Bosnia follows the mixed formula.[21] On the one hand, the three major ethnic groups (constitutionally formed as the 'Constituent Peoples') enjoy special group rights and status. On the other, the state is highly decentralized, and is divided into two highly autonomous ethnic-based entities; the Serb-dominated Republika Srpska and the Bosniak-Croat Federation of Bosnia and Herzegovina (FBiH).[22]

(3) Political and allocation proportionality, not only in the civil service and electoral system, but also in all decision making institutions, in which groups have a voice in relation to their relative strength.[23] In the case of Bosnia, ethnic based parity formulas have taken prominence in most state-level institutions.

(4) The granting of a minority veto on vital questions, which represents the ultimate weapon for groups to protect their fundamental interests.[24] Lijphart however warned, "The veto power clearly contains the danger that the entire power-sharing system can be undermined if one or more minorities overuse or abuse their veto power."[25] This note of caution is particularly significant in the context of Bosnia, where multiple vetoes were built into the Constitution at both the government and legislative levels and where inter-ethnic distrust is

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[19]   A different ethnic arrangement was built into the entities. Serbs, Bosniaks and Croats had no 'constituent' status in the entities where they represented a minority. Things changed in 2002 with the imposition of an amendment to the entities' constitutions, whereby the three ethnic groups gained equal status throughout the territory of Bosnia.

[20]   Lijphart 1990, 494-495.

[21]   The entity's constitutional changes of 2002, however, have undermined group autonomy in each entity (Bieber 2004). These constitutional changes are further discussed in chapter 4.

[22]   The Federation is also divided into ten ethnic-based Cantons, which enjoy a great deal of autonomy. Five cantons have a Bosniak majority: Una Sana, Tuzla, Zenica Doboj, Bosna Podrinje and Sarajevo. Three are Croat: Posavina, West Herzegovina and Herceg Bosna. Two are mixed: Herzegovina Neretva (Mostar) and Central Bosnia. Bieber has argued that Bosnia is an asymmetric federation, given that "the subunits are constituted very differently: one is a loose federation consisting of ten cantons and two predominant nations and the other is a (formally) centralized republic of one dominant nation" (Bieber 2002, 327). The District of Brčko, a multiethnic unit that is part of both entities, also provides for further asymmetry (ibid).

[23]   Lijphart 1977, 38.

[24]   Ibid.

[25]   Lijphart 1990, 494.

pervasive.[26] In fact, a double veto exists in the parliament: the ethnically-based veto on the vital national interest (VNI), which is enjoyed by all groups in the upper house (the House of peoples); and the entity based veto (the so-called entity veto), which is enjoyed in the lower house (the House of Representatives). The entity veto provides the Serb community with an advantage over the other two groups, who jointly share this veto power.[27]

Though no violent conflict has taken place since 1995, the complicated institutional structures and the unresolved ethnic questions remaining from the war,[28] have limited the effectiveness and functionality of the Bosnian state.[29] As a matter of fact, the multiple 'ethnic veto points' have resulted often times in a near paralysis of the decision making process, to the point that it has only managed to function owing to heavy external 'arm-twisting', and the direct intervention of the HR. As a case in point, the HR imposed 67 laws from 1997 to 2004, amending *inter alia* the state's and entities' constitutions or imposing the Law on the Composition and Functioning of the Council of Ministers.[30] Furthermore, the HR removed a total of 139 individuals from 1998 to 2004 (including judges, civil servants and elected officials both at entity or state level) for violations to the legal commitments made under the Dayton Peace Accords (DPA).

As previously noted, the international community engaged in a revamped strategy to strengthen the Bosnian state and diminish the room for ethnic blockage by: providing the HR with more extensive powers; and linking the state building

[26] The members of the presidency, which is collectively formed by members of each constituent people, can effectively block any decision that is declared to be in violation of vital national interests. In addition to the formal vetoes contained in the constitution, Bosnian politicians have often resorted to informal boycotts of state level institutions (see chapter 4, p. 157).

[27] The House of Representatives, which is comprised of 28 members from the Federation and 14 from the RS, makes decisions on a majority basis; requiring one-third of the members of each entity to be in agreement (this is referred to as 'entity voting'). This clause permits merely 10 representatives from RS to block any decision at the state level (the constitution is unclear about the number of actual entity votes needed to pass legislation when the assembly is in quorum, namely acting with the majority of its members).

[28] See for example Woodward 1997. Bosnians continue to be haunted by the constitutional debate that led to the violent conflict in 1992 (chapter 3 discusses these dynamics). Generally, Bosniaks remain in favor of a unitary state in which they are the majority group; the Serbs favor a highly decentralized federation in which RS is one federal unit; the Croats are divided between a decentralized state where the local level is enhanced and the creation of a third entity.

[29] This dissertation is however not concerned with how the multiple veto points have affected the functionality of the Bosnian state. The focus is rather on how political elites interact with each other within this constraining institutional framework.

[30] Council of Europe 2004c, 16-17.

agenda to the process of EU accession in 2001 and 2002 (through the formal launch of the Stabilization and Association Process, namely the pre-accession framework for the Western Balkans). This new strategy benefited from the ambiguity of Article 3.5 of the Bosnian constitution; whereby new competences could be assigned to the state in order "to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina."[31] The fundamental goal was to strengthen the Bosnian state and to slowly and deliberately transform Dayton from within; a process that would go hand-in-hand with EU integration.

It was in a context of limited progress within this step-by-step transformation from within that voices in favor of the reform of Dayton rose amongst both locals and international officials in 2004 and 2005.[32] These voices were inspired by the belief that a simpler institutional arrangement (within the power sharing model in place) would provide less room for ethnic blockage and speed the decision making process. The formal rationale for constitutional reform came with the Venice Commission's opinion of the Bosnian constitution in 2005. This opinion revolved around the necessity to create a functional and efficient state with the institutional capacity to fulfill the EU accession criteria.[33] The reform was also intended to redress certain specific violations of the European Convention on Human Rights contained in the Bosnia's constitution.

Two key factors prompted the international community – and particularly the EU – to lend support to the reform of Dayton at this time. First, the near initiation of talks on a Stability and Association Agreement (SAA) – the end goal of the Stabilization and Association Process –, the implementation of which would require a more efficient state. Second, the decision of the Peace Implementation Council (PIC) – the international body created in the London Conference in December 1995 to review the peace implementation process in Bosnia – to begin the last phase of the HR mandate. Despite some divergent opinions and concerns regarding timing (elections were to be held in October of 2006), a consensus was formed around the need for constitutional reform. It was believed that the closure of the OHR would need to come with the enactment of a new constitutional framework, endowed with local support and

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[31] Constitution of Bosnia and Herzegovina 1995.
[32] Chapter 4 discusses the origins of the constitutiional reform.
[33] Venice Commission 2005. The Bosnian institutional set up is also highly costly and cumbersome as a result of the multiple layers of government in place.

democratic legitimacy.[34]

The process of constitutional reform in Bosnia took place between 2005 and 2006. Following the failure of various constitutional initiatives introduced in the House of Representatives, both the Bosniak and Croat leadership turned to international actors for assistance in breaking the deadlock. Initially, the international response was lukewarm, fearing that constitutional negotiations would unravel other reform processes already underway. The Principal Deputy High Representative (DPHR), US Ambassador Donald Hays took on the initiative, and launched the process as a representative of an NGO, with the financial assistance of some European countries such as Norway, Sweden and Switzerland.[35] Donald Hays' efforts were nominally supported by key European institutions such as the European Commission (EC) and the European Parliament (EP), along with the US government.[36] These actors became increasingly involved as the negotiations evolved.[37]

Despite the fact that the process of constitutional reform has often been portrayed as an American initiative, the EU played an important role (especially at some critical points);[38] and was supportive of the negotiations.[39] This support included varying levels of participation by both European institutions and individual member states, along with the use of numerous instruments; ranging from public endorsements to direct lobbying.[40] The most significant European input however, came through the provision of a rationale for reform outlined in public statements and through the Venice Commission's opinion of the constitutional situation in

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[34] The Dayton agreement is a regional peace agreement that was never discussed or approved in the BiH parliament. It was signed by Serbia, Croatia and a Bosnian delegation led by the Muslim leader Alija Izetbegović.

[35] Amb. Donald Hays was PDHR from July 2001 to March 2005. Much of the preparations for the constitutional negotiations were undertaken while he was an OHR official. Prior to his position as PDHR, he was the US Representative to the United Nations for UN Management and Reform (1999-2001). He also held positions as Director of the Office of Management Policy and Planning and Executive Director of the European Affairs Bureau at the US State Department.

[36] See chapter 4 for a full description of the origins and initial steps of the process of constitutional reform.

[37] Chapter 5 through 7 provides an in-depth discussion of the role of external actors in the process of constitutional reform.

[38] Notwithstanding the high stakes involved, the overall role of the EU was rather ambivalent throughout the process; and lacked clarity of purpose (see chapter 5 through 8 for a detailed description of the role of the EU during the process of constitutional reform).

[39] The EU had much to gain from this process. Head of the EC Delegation in BiH Michael Humphreys stated that the process represented a good opportunity for the EU; "What [Donald Hays] was doing was good for the EU, to have a more functional state in BiH" (Author's phone interview with Michael Humphreys, 15 April 2009).

[40] Chapters 5 through 7 provide an in-depth analysis of the role of the EU during this process.

Bosnia in March of 2005.[41] Though the opinion was intended as an outline of the key shortcomings identified in the Bosnian constitution, it became the benchmark and framework for negotiations.

The process started as a rather low-key process. At the outset, it was facilitated by Donald Hays as part of an NGO, and involved preparatory, exploratory talks among party representatives without public knowledge in a working group format. Following this initial preparatory stage, negotiations took place in different formats and evolved in three separate phases. (1) The transition from low-level to high-level negotiations with the involvement of party leaders in November 2005. (2) The US takeover of the process in December 2005, which led to the signing of an initial agreement by party leaders in March 2006. During this time, direct external pressure amounted to a significant degree. (3) The transfer of the agreed package to the parliament for public discussion. It was in the last phase of negotiations, when political infighting became more pervasive. Notwithstanding the heavy international backing and arm-twisting by both the US and the EU, the package was finally rejected in April 2006, falling two votes short of the two-thirds majority needed for it to be passed.

1.3. THE CONTEXT: STATE BUILDING AND EUROPEAN INTEGRATION

This dissertation is framed within the debate on external intervention and international conditionality. It uses the case of Bosnia and the process of constitutional reform as a test to reflect on current issues in relation to post-conflict state building and the process of European conditionality.

The experience of state building with a pronounced external influence is a rather recent development. It is directly related to the transformation of the Westphalian notion of sovereignty (based on the absolute authority of the state over the control of its territory), into a new understanding of sovereignty attenuated with the issue of legitimacy.[42] Two interrelated developments triggered this transformation; the end of

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[41]　See Venice Commission 2005.
[42]　Fukuyama 2004. The so-called Westphalian system was created in 1648, following the Thirty Years' War. European states agreed to abide by the principle of territorial integrity and to pursue their interests without destroying each other (Mastanduno and Lyons 1995). The system was originally centered on Europe. Each country was regarded as " 'juridically equal' and their sovereignty was to be regarded as absolute" (*ibid*, 5).

the Cold war, which lifted much of the pressure on the international community to respond to new and emerging crises; and the explosion of new internal conflicts[43] whose violent intensity called for new and rapid international interventions. "Sovereignty and therefore legitimacy could no longer be automatically conferred on the de facto power holder in a country ... Dictators and human rights abusers ... could no longer hide behind the principle of sovereignty to protect themselves."[44] As a result, numerous peace-building missions emerged in the 1990s on humanitarian grounds in places such as Somalia, Haiti, the Balkans and Rwanda.

The massive destruction of state-like functions in territories ravaged by war brought to light new security threats in the international system.[46] This, in turn, promoted new and more intrusive forms of external involvement such as the so-called 'second generation'[47] external interventions. These interventions take the form of state building similar to the Bosnian example,[48] and involve two major phases. Step one is comprised of post-conflict reconstruction or stabilization; where the goal is to achieve general stability and the provision of basic services. Step two entails state building per se; where the chief objective is to create self-sustaining institutions

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[43]   Kaldor 1999.

[44]   Fukuyama 2004, 97. For a discussion on sovereignty and humanitarian intervention see for example Damrosch 1993; Hoffman 1996; Mastanduno and Lyons 1995; Mayall 1996; Weiss and Collins 1996.

[46]   Failing or weak states are too frail to enforce the rule of law within a given territory and provide/deliver services to the population. Furthermore, failed states "commit human rights abuses, provoke humanitarian disasters, drive massive waves of immigration, and attack their neighbors" (Fukuyama 2004, 93). 9/11 represents the highest point of this new generation of security threats, namely thriving terrorist groups that operate transnationally in states that are either too weak to enforce the rule of law or too corrupt to avoid the intertwinement of unlawful activities with the state apparatus (both Afghanistan and Pakistan are clear examples).

[47]   Peace building scholars differentiate between first- and second-generation peace building missions. During the first generation missions (1989-1997), "Initial mandates tended to be for very limited periods, focusing primarily on holding a successful post-conflict election ... Relatively little attention was paid to the longer-term tasks of constructing or strengthening the institutional structures necessary for democratic governance and market reforms" (Paris and Sisk 2009, 6). The second generation interventions (i.e. Bosnia from 1997 onwards, Kosovo and Timor Leste) were more expansive; they were based on "a recognition that such operations needed to focus less on exit deadlines, and more on achieving the conditions for basic stability in these societies" (ibid, 7).

[48]   Historically, State building has been broadly defined as the process whereby the state deals with the struggle over the monopoly of physical violence within a certain territory (Tilly 1975). But the recent experience of post-conflict state building with heavy international assistance has made Tilly's definition obsolete. This study takes the notion of state building as the efforts undertaken by international and/or national actors "to reconstruct, or in some case to establish for the first time, effective and autonomous structures of governance in a state or territory where no such capacity exists or where it has been seriously eroded" (Caplan 2005a, 3). State building thus involves more than the creation of a state; it involves building an effective form of governance. It is also important to note here that post-conflict state building is not synonymous with post-conflict peace building, namely the efforts taken to create the conditions in which violence will not recur (Paris and Sisk 2009). State building constitutes a particular approach of peace building and other external interventions in which the emphasis is placed on the strengthening and legitimacy of institutions, as well as on its design.

that can survive external withdrawal.[49] These interventions have often been accompanied by the establishment of international administrations such as the HR in Bosnia. The new 'trusteeships'[50] are often endowed with rather intrusive competences and powers[51] in the area of economic policy, security, the rule of law, and institution building.[52] Constitution making has also featured as one of the key activities of such state building missions, and has usually been undertaken with strong external leadership. One of the key issues that differentiate post-conflict peace building from international administration is that the latter is a 'political enterprise' and to succeed, it cannot be indifferent to 'political outcomes.'[53] This is, as Stefan Wolff has noted, a significant feature in Bosnian politics where the HR – and the broader international community – has not only been affected by political outcomes in this country but also become an integral part of them, "in order to establish conditions that are perceived as conducive to the overall success of the international mission in the country."[54]

Although state building operations have increased in recent years in places such as Kosovo, Afghanistan and Iraq, the question of how to export norms and institutions continue to challenge both scholars and practitioners alike. Under what conditions can external actors shape the state building process in post-conflict, divided societies? What are the conditions that make the external push more effective in these contexts? Under what circumstances do local actors resist external pressure

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[49] Fukuyama 2004. The process of state building may also involve the development of a positive identification of the citizen with the state, the very essence of nation building; "It is in this respect that the overlap [of state building] with nation-building often becomes relevant" (Kopecky and Mudde 2000, 529). These two processes may not be synonymous nor parallel developments (see the discussion on nation and state building in Linz 1993; Smith 1986). Most external interventions have focused on the former.

[50] Caplan 2001. The creation of international administration has raised important legitimacy issues, which are not the focus of this research. Some of these questions include: under what circumstances and on what grounds should international administrations be established? Are external administrations' aims to change local societies legitimate? How much power should be granted to external actors and for how long? Should external administrators be accountable, and if so, to whom? (Caplan 2005a; for a discussion of these issues in Bosnia see Chandler 1999; Knaus and Martin 2003).

[51] Including the authority to "enforce local laws, exercise total fiscal management of a territory, appoint and remove public officials, create a central bank, establish and maintain customs services, regulate the local media, adjudicate rival property claims, run schools, regulate local business, and reconstruct and operate all public utilities among many other functions" (Caplan 2005a, 2)

[52] See Brinkerhoff 2007; Paris and Sisk 2009.

[53] Caplan 2005a, 12. It is significant to distinguish between two aspects of state building, namely state capacity and state design (Call 2008). While the former is related to building institutional capacity in a way that "[state] sustainability does not depend on any single individual but on a shared commitment to the principles, procedures, and goals of the institution" (Call 2008, 8); the latter is focused on particular institutional arrangements, which tends to be "profoundly political" (ibid, 10).

[54] Wolff 2008, 557.

and why?

The Bosnian case is also framed within the context of external conditionality; a new form of external influence that emerged in the 1980s with the practice of provisional aid in developing countries.[55] This mode of conditionality, in turn, became tied to the process of EU accession in the CEE in the 1990's. The conditionality framework was based on the provision of financial assistance, unilateral trade preferences and the establishment of contractual relations with the EU; all of which were contingent upon the countries' compliance with a set of prerequisites - the so-called Copenhagen criteria.[56] What set the EU accession framework apart from other forms of aid conditionality was thus the prospect of EU membership to assist these countries in their transition from communism to liberal democracy. The tools of persuasion ranged in scope from the use of 'hard' instruments, such as economic rewards and sanctions, to 'soft power', including diplomatic pressure and political persuasion.

The EU accession framework for the Western Balkans, the Stabilization and Association Process (SAP),[57] was launched in 1999, marking a new phase in post-conflict Bosnia under EU leadership. Two key developments prepared the groundwork for the new EU role in the region. Firstly, the EU had further strengthened the Common Foreign Security Policy (CFSP) in the Treaty of Amsterdam with the development of new crisis management capabilities through the ESDP and the creation of a EU HR; a kind of EU foreign policy minister.[58] The Western Balkans, particularly Bosnia, represented the obvious testing ground for the readiness of these new instruments.[59] Secondly, the relatively successful association toolbox, in use in CEE throughout the 1990s, offered a new framework in which

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[55]   Economic conditionality evolved into the so-called political or second-generation conditionality where issues of human rights and good governance were attached to economic aid.

[56]   The Copenhagen criteria involve conditionality in three major fields: democracy and the rule of law (the political criterion), the existence of a functional market economy (the economic criterion) and the adoption of the *acquis communitaire* (the legal criterion) (Council of the EU 1993). A fourth pillar, the administrative one, has also become part of the conditionality package as of 1995, which relates to the adjustment of relevant administration structures (i.e. strengthening them with a view towards more effective adoption and application of EU legislation).

[57]   It is important to note the 'stabilization' component. This is a distinct element of EU integration from previous enlargement rounds.

[58]   European Union 1997.

[59]   The failure of the EU crisis management in the former Yugoslavia in the early 1990s had, in fact, convinced the EU of the need to strengthen the foreign and defense policy mechanisms created in the Treaty of Maastricht in 1992.

crisis management and stabilization could operate in synergy.[60] The US support for a revamped EU presence in the region, which would free US resources to address emerging crises elsewhere, as well as the Kosovo crisis in 1999, were also critical in triggering a EU's jointly stabilization and association strategy in the region.

The SAP was formally sealed at the Zagreb Summit in November 2000, when countries in the region agreed to abide by the EU's conditionality (as set out by the 1997 Council[61]) and to use the SAP as the instrument to progress towards EU membership.[62] While the pre-accession process in the Western Balkans did not require candidate countries to comply with the Copenhagen Criteria, they were encouraged to start adjusting to EU standards and norms. Three important changes were introduced from the previous EU policy in the region:[63] linking the conditionality framework to eventual EU membership; the prospect of a Stabilization and Association Agreement (similar to the European agreements in CEE); and the

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[60]   See Gordon, Sasse and Sebastián 2008.
[61]   SAP conditionality draws from the 1997 Council, which include: compliance with the Peace Accords and other bilateral agreements, cooperation with the ICTY, willingness to re-establish economic cooperation with one another, good-neighborly relations, the respect for democratic principles and the rule of law, compliance with broadly recognized standards of human and minority rights, the privatization of state-owned property, a commitment to engage in economic reforms, and the respect for additional criteria defined by the Council (Council of the European Union 1997). The conditions for establishing contractual relations with the EU consisted of additional pre-requisites, containing both region-wide, and country-specific pre-requisites. The country-specific conditions for Bosnia included the following: (1) the set up of functional institutions in accordance with the constitution, and the definition of a policy on commerce and customs; (2) the free movement of people, goods and capital; (3) close cooperation with the HR; (4) the creation of a unified municipal Council in Mostar; (5) the dismantling of institutions that are in violation of the spirit and letter of the Dayton agreement; (6) cooperation with the ICTY (*ibid*).
[62]   The prospect of EU membership was offered explicitly for the first time at the Feira Council in June 2000 (Council of the EU 2000a).
[63]   The first European effort at designing a regional strategy towards the Balkans dates back to December 1995. The 'Declaration for stability and good neighborliness for the South East Europe,' better known as the 'Royamount Process,' was launched under the French Presidency with the objective of promoting the normalization of relations between the Western Balkan countries (Council of the EU 1998). Framed to assess the possibility of extending the 1995 European Stability Pact for Central and Eastern Europe to Southeastern Europe (Panebianco and Rossi 2004), the EU stressed the need for the Balkan countries to comply with Dayton as a precondition for the development of cooperation agreements with the EU (Council of the EU 1996). The conclusion of such agreements were also to be dependent "on the willingness of the countries concerned to work towards consolidating peace and to respect human rights, the rights of minorities and democratic principles" (*Ibid*). The next step in the EU's policy towards the Balkans, the so-called EU Regional Approach, was officially launched in April 1997 (Council of the EU 1997). The new EU's policy incorporated the issue of conditionality, with strong links to compliance with the Peace accords. Non-compliance with the criteria could result in either the freezing of the assistance or its granting through other means. This approach was an attempt by the EU to use the same conditionality approach used in the 'pre-accession process' in CEE. Notwithstanding these initial efforts at designing a EU policy, the EU's policy towards the Western Balkans remained subordinated to the broader efforts of the international community during the 1990s, which were primarily focused on security and reconstruction under the still heavy influence of the US.

launch of a new Community Assistance for Reconstruction, Democratization and Stabilization (CARDS). CARDS represented an improved instrument of economic assistance that substituted both Phare (the pre-accession financial instrument used in the previous enlargement round) and the Obnova regulation for the Western Balkans.[64] The SAP was enhanced in June 2003 with the Thessaloniki agenda,[65] which incorporated some of the instruments used in CEE, such as the European Partnerships, to define the short- and mid-term priorities for each country and the commitments that progress would be measured against.

The launch of the SAP in 2000 marked several important developments in the post-conflict stabilization of Bosnia. First, it represented a shift of approach in the region from reactive crisis management to long-term stabilization[66] tied to the prospect of European integration.[67] Second, it marked the transformation of the EU leadership in the region from a subordinate status, under the US leadership, to a position in which the EU was dictating both the pace and substance of the state building and reform process. Indeed, SAP was built around the "recognition that the main motivator for reform ... is a relationship with the EU that is based on a credible prospect of membership;" and the belief that a more flexible approach would "allow each country to move ahead at its own pace."[68] Finally it provided further purpose, legitimacy[69] and impetus to the state building process in Bosnia; given that the EU's reform agenda focused on the consolidation of a functional state capable of meeting the criteria for eventual EU accession.[70]

Though the prospect of EU membership was established early in the process, the

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[64] Council of the EU 2000b. Following a recommendation from the Commission in 2006, CARDS was replaced in 2007 with the Instrument of Pre-Accession (IPA); a new financial devise aimed at streamlining disbursements associated with the process of EU accession.

[65] Council of the EU 2003.

[66] The Stability Pact, which was launched by the EU in Cologne in June of 1999 following the NATO intervention in Kosovo, was the first attempt of the broader international community at shifting the approach in the Western Balkans to stabilization and integration (Gordon, Sasse and Sebastian 2008). Unlike the SAP, a fully European initiative, the Stability Pact became an international instrument designed to replace the previous, reactive crisis intervention policy in South Eastern Europe with a comprehensive, long-term conflict prevention strategy' (See http://www.stabilitypact.org/about/default.asp [accessed on March 25, 2006]).

[67] Gordon, Sasse and Sebastian 2008.

[68] European Commission 2006.

[69] EU membership enjoys broad public support. An opinion poll conducted by the European Commission Delegation to BiH in February 2004 showed that 73.2 percent of Bosnian citizens favored EU accession (Quoted from Noutcheva 2006, 186).

[70] As a result, while the objective of European integration is generally to transfer state functions to a supranational entity (which arguably weakens the scope and autonomy of the state) the process of pre-accession in Bosnia has been intended to have the opposite effect, namely the strengthening and consolidation of Bosnia's central institutions.

allure of the EU has in turn been mitigated as a result of several developments. Firstly, the SAP has emerged as a multi-layered process in which new conditions and benchmarks can be gradually incorporated on an individual basis prior to the signing of a SAA. In fact, the signing of a SAA does not guarantee actual membership.[71] Application for official candidacy can only happen when the SAA has been fully implemented. Furthermore, the green light for candidacy status is based on a decision by the Council of the EU, which sets in motion a whole new process involving supplemental bargaining and the meeting of additional criteria that can last for several years, given the open-ended nature of membership negotiations.[72] This development has provided the EU with important political leeway in order to add new conditions and to decide what constitutes compliance, undermining the overall basis of the alleged merit based approach.[73] Secondly, the conditionality framework has been rather political in the context of Bosnia, and far more intrusive than in CEE.[74] It has, in fact, "touched on the internal sovereignty configuration in Bosnia and Herzegovina through requesting a redistribution of policy competences between the central and entity layers of government in the country."[75] As a result, Gergana Noutcheva argues, "since the issue of the state structure of Bosnia is highly sensitive in nature, the fulfillment of EU conditions have proven very political."[76] Finally, the so-called enlargement fatigue (reflecting the EU's reluctance to further expand), has served to create further uncertainty as to when and whether the Balkans will join the EU.[77] The 2008 enlargement strategy, released in November, failed to provide a

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[71]   Indeed, SAP countries fall into the category of 'potential members', a category that holds out the promise of eventual membership, but that lengthens the ill-defined time frames.

[72]   European Commission 2005.

[73]   As a case in point, accession negotiations with Croatia (which were frozen since March 2005 on ICTY cooperation grounds) were opened in October 2005 thanks to Austria's acceptance of Turkey's candidacy in exchange for the opening of accession talks with Croatia. Serbia's EU aspirations however, continue to be held out on ICTY grounds; especially in reference to the hand over of Bosnian war crimes indectee Ratko Mladić.

[74]   The nature of the conditionality laid out for the Western Balkans thus contrasts with the rather fuzzily worded Copenhagen criteria applied in CEE. Gergana Noutcheva, for example, differentiates between the technical and political conditionality, the latter referred to sovereignty issues (Noutcheva 2006).

[75]   Noutcheva 2006, 240.

[76]   Ibid, 60. As Gergana Noutcheva has argued, "sovereignty-linked demands do not enjoy the same degree of legitimacy as the normative appeal of the EU requirements for democracy, market economy and rule of law" (ibid, 8).

[77]   The Council meeting in Zalzburg in March 2006, for example, brought to light strong disagreements within the Union over how soon Balkan countries should join the EU, or whether they should ever do so (see "UK Says EU Door Must Remain Open for Balkans." Dtt.net.com. London, 21 March 2006). Member states placed additional hurdles in the pathway of EU accession, as the organisation's absorption capacity (a rather ambiguous term) would need to be tested before further

clear timeframe for future accession.[78]

In summary, while the EU has successfully managed to provide a European rationale for reform in Bosnia, the uncertainties and politics involved in the process suggest that the allure of EU membership does not represent a clear form of external influence. Further exploration of the specific dynamics involved and the different interactions between local and European actors is needed in order to shed further light on the ways in which the EU pull, and European incentives, may impact the state building process in post conflict Bosnia. The key questions under consideration are: can the EU shape the interests, goals and strategies of locals in post-conflict Bosnia within the framework of EU accession? Under what conditions can local actors accept or resist the EU pull?

1.4. RESEARCH QUESTIONS

This research has two objectives. Firstly, it aims to provide an analytical framework in order to explain how the interactions between local and external actors impact the state building processes in post-conflict Bosnia. Can external actors shape the process of state building in Bosnia? Under what conditions can external actors promote conflict regulation and inter-ethnic cooperation in post-conflict, deeply divided societies? Why does their influence enjoy different forms and results? Can local actors resist external pressure? Secondly, it tests the impact of the external push and international conditionality in post-conflict Bosnia. In other words, what is the impact of external conditionality on the process of state building in post-conflict

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enlargement could be considered. Growing doubts over the merits of enlargement were confirmed in the end-of-year summit in Brussels in December 2006, where some argued for making further enlargement dependent on the reform of EU institutions (see "EU hardens tone on enlargement." *BBC News*. 15 December 2006). While the commitment to European enlargement has not been turned down (enlargement still features as an integral part of EU's rhetoric towards the region), the EU remains hesitant about how to proceed with the next enlargement round (indeed, there is no date yet on how soon Balkan countries will join the EU). EU divisions over Turkey's accession have compounded Europe's discomfort about further enlargement.

[78] Gergana Noutcheva et al. have, for example, suggested that the long-term European perspective in post-conflict environments may encourage domestic actors to postpone reform until the perspective of European integration and the benefits attached to it draw nearer; given that any compromise "is viewed by the parties are [as] taking a leap into the unknown" (Noutcheva et al. 2004, p 21). The effects of 'gate keeping', i.e. the power of the EU to decide when the criteria and the required stages have been met (Grabbe 2001), and the 'moving target problem', which refers to the consistently changing nature of the stages and conditions involved (Hughes, Sasse and Gordon 2004), may compound this problem.

Bosnia? How may European and international incentives affect the interests, goals, and strategies of domestic actors? Is getting the incentives 'right' the sufficient and necessary requirement for conditionality to be effective, or are there other domestic factors at play?[79]

An in-depth study of constitutional reform in Bosnia over the period of 2005-2006 is used to test the questions reflected above. In this context, the specific questions under consideration are: what are the key variables accounting for the failure of the process of constitutional reform in Bosnia? Did the EU and the US manage the process well? What is the impact of both domestic and external actors upon the final outcome? How did EU incentives and the external push play out in the process of constitutional reform in Bosnia? What can we learn about the differing roles of the EU and the US?

Other related and complimentary questions are also explored in this study; including the factors that determine inter-ethnic conflict regulation and cooperation in deeply divided societies. In this scenario, the important question under consideration is, "How do elites calculate the costs and benefits of accommodation and what, if any, factors may affect their willingness to cooperate with one another?"[80] This dissertation also addresses the relative weight of the different levels analyzed in this study – namely the intra-ethnic, inter-ethnic and supra-national levels (the latter referring to the interactions between domestic and external actors) – in the final policy outcome.

1.5. THEORETICAL FRAMEWORK

This study revolves around two separate debates: post-conflict state building, and international conditionality.

Studies on post conflict Bosnia (and the broader literature on state building) have generally focused on the study of external actors and their impact on the overall state building process. In particular, these studies have tended to center on two major topics. (1) The weaknesses and strengths of state building interventions, with a

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[79]   This question is frequently addressed within the conditionality literature (see for example Checkel 2000)

[80]   Zahar 2002, 6.

predisposed focus on the supply/external side (neglecting the two-way dynamics this study aims to explore). This argument has taken two different directions. One blames the failure of state building in Bosnia on the lack of international resolve and strategy.[81] The other argument blames the intrusive nature of the international intervention in Bosnia, which has created mechanisms of dependence that have undermined the state building process.[82] (2) A second line of research has focused on the impact of externally devised institutions (such as the electoral system, or specific power sharing and constitutional arrangements) on the long-term stability of post-conflict societies.[83] Notwithstanding the well-informed accounts on the unfolding of state building processes, these works have generally been undertaken at the macro level, paying little systematic attention to the specific interactions that occur between local and external actors in the unfolding of these processes.[84] Furthermore, these studies have failed to factor in the issue of international and European incentives.[85]

Conditionality studies have developed more sophisticated analyses of the entanglements and dynamics of both external and domestic actors than are contained in this work. This is especially true in reference to the two salient variables contained in this research: (1) the role of agency-driven factors and (2) the two-way dynamics that feature in externally led processes of state building. These conditionality studies however, rely on Putnam's two-level bargaining model; examining the process of European integration as a bargaining process that develops distinctly in external and

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[81]   See for example Belloni 2008; Caplan 2005a; Cousens and Cater 2001; Donais 2005; Paris 2004.

[82]   See for example Chandler 1999, 2006a and 2006b; Knaus and Martin 2003.

[83]   See for example Kumar 1998; Paris 2004; Sisk 2009; Samuels 2005 and 2009; Bieber 2006a. A third line of research has focused on particular themes within the state building agenda, such as *inter alia* the impact of the economics of war in state building (Cooper 2004; Donais 2005), and the role of civil society (Pouligny 2005).

[84]   Some studies have recently paid further attention to these interactions (see for example Barnett and Zürcher 2009; see also Ottaway 2003). Further systematic research on how these interactions affect the final policy outcome is however needed.

[85]   Studies on post-conflict constitution making have also failed to acknowledge these issues. They have generally focused on: the role that constitutions play in conflict management and conflict transformation; the impact of constitutions for post-conflict divided societies on the long-term democratization process; and the degree to which institutions can be engineered externally (See for example Horowitz 2002 and 2004b; Lijphart 2004; Reynolds 2002). There has not been a serious attempt at studying systematically the politics involved in the process of constitution making. Elster's comparative study of post-communist constitution making (1993) focuses on these issues, but his study is concerned with the experience in Eastern Europe, which differs widely from the process in post-conflict Bosnia. Kirsti Samuels (2009) looks at postwar constitution building and the impact that the nature of the process (inclusive vs. exclusive) has in the final outcome. This study fails however to consider the different elements that this thesis aims to explore, namely the multiple level interactions between domestic and external actors, and the push of external conditionality in the final outcome.

domestic playing arenas.[86] I argue that this "game" framework is too simplistic an approach, as it does not capture the nuances and complexities of the multiple levels of interactions that occur in deeply divided societies. The conditionality literature also generally ignores the study of the patterns of conflict regulation in post-conflict, divided societies. Instead, they use both theoretical and rationality models that feature in fully functioning states and homogenous societies; where the form and nature of the state is not contested by different ethnic groups.[87] These models fail to encapsulate scenarios in which the aforementioned conditions are absent, such as in Bosnia.[88]

I build on the conflict regulation and power sharing literature,[89] which identifies the intra- and inter-ethnic levels of analysis in post-conflict societies, and I incorporate the "external push" as a third tier. I aggregate the three levels in this study of post-conflict Bosnia and offer a framework that has not been used systematically before. My research is thus based on a three-level game framework, where both the patterns of conflict regulation and the impact of external incentives are fully explored.

While conflict regulation and plural society studies have generally focused on the study of political stability in divided societies,[90] this research uses the dimension of conflict regulation as a proxy of accommodation/adaptation in the context of adjustment to external norms and policies.[91] Adaptation to external standards will occur when domestic elites engage in conflict regulation and inter-ethnic

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[86]   See for example Grabbe 2006; Kelley 2004a; Noutcheva 2006.

[87]   Some studies have examined how the EU accession played out in ethnically diverse societies in CEE; such as the Czech Republic, Slovakia and Romania (see for example Sasse 2005), but the minority situation in these countries is different than that in Bosnia. While the issue at stake in CEE was how to protect minorities, the challenge in Bosnia has been making the state functional in the face of deep inter-ethnic intransigence.

[88]   The conflict regulation literature emphasizes the study of conflict societies. It assumes that the patterns of political behavior in post-conflict, deeply divided societies are different than those expected in stable and relatively homogenous democracies where a strong sense of civic bond nourishes inter-group trust. This issue is likely to influence the outcome of the reform proces; as discussed in this dissertation.

[89]   For example Nordlinger 1972; Horowitz 1985.

[90]   See for example Nordlinger 1972; Rabushka and Shepsle 1972.

[91]   Conflict management or conflict regulation is usually defined to cover a wide range of situations, most commonly in relation to the containment, limitation and mitigation of violent conflict (See for example Miall, Rambsbotham and Woodhouse 1999). This dissertation, however, uses a more generic definition, as appropriate for cases where there is no immediate threat of a violent outbreak. Conflict regulation or conflict management is thus defined as the efforts taken by domestic actors to handle and channel conflict within the parameters provided by the institutional framework in place, without resorting to practices of mutual intransigence and/or procedures that result in institutional deadlock between the ethnic groups involved.

cooperation. Entrenchment and intransigence, on the contrary, will result from domestic actors' failure to engage in conciliatory behavior. The dependent variable here is the practice of conflict regulation at the inter-ethnic level. The independent variable is represented by the political interactions that take place at three different tiers: the intra-ethnic, inter-ethnic and supra-national.

1.6. HYPOTHESIS

This research is based on the hypothesis that the three-level framework contained herein offers a better and more comprehensive understanding of the process of state building in Bosnia. This framework is based on the idea that the state building process is determined by patterns of conflict regulation at the inter-ethnic, intra-ethnic and supra-national levels. These dynamics, this research argues, are critical for understanding how external actors may affect the interests, goals, and strategies of local actors in post-conflict, deeply divided societies. The key dynamics involved are summarized as follows:

(1) Conflict regulation at the inter-ethnic level is determined by the psychological and social underpinnings of ethnic relations; including those related to the experience of war, and the status of the different groups vis-à-vis each other and the state.

(2) At the intra-ethnic level, conflict regulation is influenced by the internal competition within each ethnic group (i.e. politics of outbidding). There are two prominent dimensions at this level; namely the party level and the broader party system within each ethnic group.

(3) At the supra-national level, conflict regulation is influenced by the interactions between local and external actors.

This research argues that the intertwinements of these three levels are critical for understanding the policy outcome of constitutional reform in Bosnia.

In addition to the central hypothesis, this research tests the following propositions:

(1) The divisive nature of the Bosnian society is the key factor accounting for the failing state building process. It is the power game played within each of the ethnic communities, as opposed to inter-ethnic divisions, what represents the

major obstacle to reform.

(2) Domestic considerations carry more weight than external factors in accounting for the success or failure of the state building process. In other words, the role of external actors in deeply divided societies is subsidiary, although external actors may serve as a reinforcing mechanism for conflict regulation when conditions at the inter- and intra-ethnic levels are ripe.

(3) The post-conflict, deeply divided nature of Bosnian society distorts pure rationality-based models that are used in conditionality studies.

1.7. WHY BOSNIA? WHY CONSTITUTIONAL REFORM?

Why Bosnia?

Bosnia represents an extraordinary test case for analyzing how external models of political reform play out in post-conflict, divided societies. Three key features come together in the case of Bosnia that are critical to this research. Firstly, Bosnia represents one of the most pervasive forms of external intervention since the end of the Cold War. As noted above, the DPA set in motion an extremely ambitious peace and state-building program in Bosnia. Indeed, for the past 15 years, the international community, through the establishment of a myriad of different external institutions such as the PIC, the Contact Group, and the OHR, has remained at the center stage of the decision making process in Bosnia. The HR, for example, has enjoyed the authority to remove and vet key public officials who fail to cooperate in the implementation of Dayton, to freeze individual bank accounts, and to impose legislation in key areas at both the entity and state levels (including amendments to the constitution). The Council of Europe (CoE) has, in fact, labeled Bosnia, "an international de facto semi-protectorate."[92]

Secondly, the external leadership in Bosnia has evolved and is now framed within the process of EU accession; especially following 2002, when Lord Paddy Ashdown took office as both the new HR and the EU Special Representative (HR/EUSR). This transformation has triggered a new form of state building in

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[92]   Council of Europe 2004c, 13.

Bosnia, whereupon European incentives and domestic ownership have taken prevalence. In other words, the new phase of European incentives has progressively transformed the state building process in Bosnia from one in which direct external control prevailed, to one based upon increasing domestic ownership within a framework of external incentives (which include economic rewards and sanctions, the EU pull, diplomatic pressure and political persuasion).[93] As Ashdown stated in 2005, "the High Representative cannot impose the way to Europe. You can reach Europe only through the actions of [Bosnian] politicians."[94]

Finally, Bosnia is one of Europe's most divided societies,[95] and represents a prototype for post-conflict society. The distinction between a divided society (such as Belgium and the Netherlands) and a deeply divided society is relevant in the context of this research.[96] Two important criteria are prevalent in deeply divided societies, in contrast with divided societies. The first of these is the prominence of deep-rooted psychological perceptions and emotions based upon subjective experiences and often rooted in violence. A deeply divided society exists "when a large number of conflict group members ... hold antagonistic beliefs and emotions toward the opposing segment."[97] Such antagonist views are clearly salient in the realm of politics.[98] The recent experience of violence adds further fuel to these perceptions. John Paul Lederach, for example, suggests that contemporary conflicts, fought by opposing groups "are characterized by deep-rooted and long-standing animosities that are reinforced by high levels of violence and direct experiences of atrocities. As a result, psychological and even cultural features often drive and sustain the conflict more

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[93]   The process of state building in Bosnia is now less a model of control than of external incentives (see Chapter 2 for a discussion on the different forms of external influence).
[94]   Paddy Ashdown. Cited in Sead Numanović. "Interview: Paddy Ashdown: 'There Will Be No New Political Negotiations.'" *Dnevni Avaz*, 15 September 2005. Available at http://www.ohr.int/ohr-dept/presso/pressi/default.asp?content_id=35463 [accessed on May 7, 2009]. As Noutcheva notes, the HR intervened on numerous occasions during the fulfillment of the roadmap (2000-2002), but the "HR's direct interventions have declined, especially on EU-demanded reforms. In the meantime, his role of political mediator pushing for local compromise has strengthened" (Noutcheva 2006, 179).
[95]   Divisions are primarily related to religion, but also to different historical narratives (which may be real or perceived). All groups speak the same language (with slight variations that have been accentuated in the last few years); and share similar traditions and cultural habits (Bieber 2006a). Inter-group differences became aggravated during the war and remain entrenched.
[96]   Nordlinger defines a deeply divided society as one in which "communal divisions obviate social homogeneity, the conflict issues often leave a narrow margin for consensus, emotion-charged beliefs entail a high level of partisanship, crosscutting divisions are rare, and deeply ingrained hostile and invidious attitudes toward members of opposing segments rule out feelings of social trust" (Nordlinger 1972, 2). Definitions of divided vs. deeply divided societies however do not abound in the conflict regulation literature.
[97]   Nordlinger 1972, 9.
[98]   See Horowitz 2004a.

than substantive issues."[99]

The second factor is the degree to which the system has evolved into the "ethnification" of politics; when ethnicity becomes the dominant division, taking precedence over other schisms. The status and relevance of crosscutting, or accumulative cleavages, defines the distance between groups and the moderation of the subgroups. The distance between groups is greater when cleavages do not overlap and are of a cumulative nature (territory, ethnicity, religious, language, etc). On the contrary, moderation is likely to be found in divided societies where ethnicity represents only one among many existing cleavages. Val Lorwin, for example suggested that "The availability of individual alternatives distinguishes the politics of segmented pluralism from those based on the cleavages of caste, communalism, race, or even language;"[100] he notes that "the 'spiritual families' into which these European polities are divided are not as airtight as ascriptive groups are."[101] Similarly, Donald Rothchild argues that, "To the extent that individuals are aware of multiple identities and diffuse obligations, ethnic boundaries can remain relatively soft and amenable to political exchange. In contrast, when political entrepreneurs adopt winner-take-all perceptions and operate out of fear for their group's future security and cultural survival, boundaries can become fixed, which makes bargaining and commitment to an agreement extremely difficult."[102]

This study accepts that Bosnia is deeply divided along ethnic lines,[103] without

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[99]   Lederach 1997, 18. He also states, "Where there is deep, long-term fear and direct experiences of violence that sustain an image of the enemy, people are extremely vulnerable and easily manipulated. The fears in subgroup identities are often created, reinforced, and used by leaders to solidify their position and the internal cohesion of the group behind them. Deep polarization and sharp divisions are, in fact, functional for increasing cohesion, reducing ambiguity, and decreasing internal criticisms of leaders" (*ibid*).
[100]   Lorwin 1977, 143.
[101]   Quoted from Horowitz 1985, 572.
[102]   Rothchild 1997, 4.
[103]   Ethnicity is broadly referred to a set of tangible factors that distinguish one group from another, including attributes such as *inter alia* language, race and religion. What makes the category of ethnicity relevant at the political level is the link between the tangible and intengible aspects of ethnic identity, i.e. "what people believe, or are made to believe" (Wolff 2007a, 36). This link contributes to the emergence of the notion of a group's self identity and uniqueness (Connor 1994, 104); any threat, real or perceived, to the group's tangible attributes will thus be "considered as a threat, or opportunity for, self-identity and uniqueness" (Wolff 2003, 3). Ethnicity or ethnic identity is thus "something that has roots in a group's culture, and historical experiences and traditions, but that is also dependent upon contemporary opportunities that can be a useful instrument for mobilizing people for social, political, or economic purposes that may or may not be related directly to their ehtnic origins" (Wolff 2007a, 36-37; Esman 2004b). The notion of ethnicity is not a permanent condition, but rather a dynamic one, and in a state of constant flux. For a discussion on the transformation of ethnic groups into active political actors see for example Horowitz 1985; Connor 1994; Wolff 2007a.

questioning how such divisions have become the primary point of distinction.[104] As the European Parliament signaled in 2005, "ten years after the signing of the Dayton agreement, crucial political problems remain unresolved, the country is deeply divided and political stability is vulnerable."[105]

Indeed, the political system in Bosnia has evolved towards one that is ethnically based and highly fragmented, featuring an inordinately low level of trust among ethnic groups, foremost at the political level.[106] Major parties in Bosnia can be defined along three main divides:[107] first, the ethnic social base, i.e. Serb (SNSD, SDS and PDP), Bosniak (SDA, SBiH and SDP[108]) and Croat (HDZ BH and HDZ 1990); second, the nationalist divide,[109] which places parties along a continuum between moderate (SBiH in the post-war period[110]; SNSD before 2006; PDP; and some segments within HDZ and SDA) and radical ethnic-nationalism (foremost the Serb Radical Party of RS or SRS, and some factions within the SDS, SDA and HDZ);[111] and finally ideology, which is of either center-right-wing (SDA, SDS, HDZ,

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[104]   This study is not concerned with the transformation of ethnic or social attributes into the politicization of ethnic identity (for a discussion on this issue see Horowitz 1985; Connor 1994; Wolff 2007a). This dissertation is rather concerned with the dynamics involved in inter-group relations when such transformation has already occurred, "for ethnic consciousness arises only in the presence of other groups, and the state is frequently perceived as being under the domination of one or associated ethnic groups" (Ghai 2000, 6).

[105]   European Parliament 2005.

[106]   UNDP's Early Warning Reports – a quarterly publication that surveys Bosnian citizens' attitudes towards various issues including ethnic relations, political stability and trust in public institutions – has reported increasing levels of inter-ethnic stability since 2000 (see UNDP Early Warning System Resports at www.undp.ba). Levels of social trust in Bosnia are, however, very low in comparison to other countries. Only 7 percent of the population in Bosnia agrees that others can be trusted. In Germany is 43 percent, whereas in Croatia and Serbia the levels are 20 percent and 18 percent respectively (see United Nations Development Programme 2007a).

[107]   See Sebastian 2007.

[108]   The SDP claims to be multi-ethnic but its social base is primarily Bosniak.

[109]   Florian Bieber (2006a) defines four categories in the nationalist divide in Bosnia: (1) extreme nationalists (the SRS), who advocate the elimination of the status quo (i.e secession); (2) nationalists (SDS, SDA, HDZ), who operate within the parameters of the status quo, even if they favor the elimination of Dayton; (3) moderates (SBiH and SNSD before 2006), who favor "a stronger commitment to cross-national cooperation" and "a not exclusively identity-based political agenda," even if their political platform is generally commited to only one ethnic group (ibid, 104); and (4) non-nationalists (SDP), whose political agenda is not centered around a specifc ethnic group.

[110]   Placing SBiH in the nationalist continuum is rather challenging. In the post-war period, SBiH's nationalist position was more moderate than SDA's. However, more recently this party has adopted a more radical nationalist profile (more radical than the SDA's leader Sulejman Tihić). The party has increasingly questioned the Dayton system and has strongly advocated for its elimination; which has been perceived by the Serb parties as the advancement of a radical-nationalist platform aimed at eliminating RS.

[111]   The moderate-radical nationalist divide cannot be clearly defined as a result of two phenomena: (1) parties' ideological evolution since the end of the war (i.e. SBiH and SNSD; and (2) the high degree of intra-party fragmentation, with a clear divide between hard liners and moderate forces, mostly within SDS, SDA and HDZ.

and PDP) or center-left-wing orientation (SNSD and SDP).[113] In practice, however, ideology has been superseded by the prominence of the ethno-nationalist divide, turning ethnicity into the key political division within the country.[114] In fact, the political situation in Bosnia has evolved in such a way that center-left-wing parties (such as SNSD) have developed a more radical nationalist agenda than center-right-wing parties.[115]

The Bosnian state also enjoys questionable legitimacy at both the societal and elite levels,[116] given that relations between the three nationalist communities have continued to be based on "mutual security fears"[117] (foremost at the political level), as opposed to mutual cooperation at the state level. None of the communities in Bosnia agree on what the state or the central government's competences should look like,[118] and at least two groups (Croats and Serbs), do not fully accept its existence.[119] This situation has precluded the consolidation of an effective state at the national level. "In

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[113] SBiH is more difficult to place in the ideological continuum; given the lack of a clear left- or right-wing orientation.

[114] See Michael Keating. "The Creature from the Dayton Lagoon: Institutional Design in BiH." *Puls Demokratije*. 4 June 2007. All major parties in Bosnia, except for the SDP, could be defined as ethnic or national parties following Sumantra Bose's conceptualization of cross-national parties. According to Bose, a party is cross-national (in orientation) when it not only has a non-sectarian base of support (cross-national base) but also 'seeks to represent citizens rather than members of one national group' (Bose 2002, 209). Conversely, a nationalist or ethnic party can be referred to as one that seeks to represents citizens not as individuals but rather as members of a particular national or ethnic group. Chandra (2007): "An ethnic party is a party that overtly represents itself as a champion of the cause of one particular ethnic category or set of categories to the exclusion of others, and that makes such as representation central to its strategy of mobilizing voters" (Chandra 2007, 3).

[115] Sebastian 2007, 3.

[116] A survey conducted by UNDP in 2007 revealed that 76 percent of the population in Bosnia say they do not trust the state government in Sarajevo (United Nations Development Programme 2007a). Only half the people who do not trust the state government wished to have political power based in Sarajevo (*ibid*).

[117] Bose 2002. A poll conducted by Prism Research in RS in 2005 showed that 66 percent of the population in this entity thinks that the sustainability of RS is the only guarantee for the sustainability of Serbs in Bosnia. Only 26 percent thought that Bosnia integration into the EU is a guarantee for sustainability and prosperity of Serbs in Bosnia (see Tuathail, O'Loughlin and Djipa 2006, 71).

[118] Both Serb and Croat parties are strongly opposed to moving Bosnia closer to a unitary state, which is the most favored option by the Bosniak parties. The Serbs are particularly sensitive about any movement towards the strengthening of state level institutions to the detriment of the competences of the Serb-dominated RS.

[119] A survey conducted by Prism Research for UNDP in 2003 showed that the three groups hold antagonistic opinions about the state. A majority of Bosniaks was in favor of creating a civic state, whereas the majority of Serbs expressed a preference for independence or for having RS merged with Serbia. As for the Croats, a near majority favored the creation of a third entity (United Nations Development Programme 2003). Some authors have referred to Linz and Stepan's notion of 'stateness' to describe the situation in Bosnia (see Donais 2005; Belloni 2008). The stateness problem refers to a situation in which "there are profound differences about the territorial boundaries of the political community's state and profound differences as to who has the right of citizenship in that state ... [or] about what should actually constitute the polity (or political community) and which demos or demoi (population or populations) should be members of that political community" (Linz and Stepan 1996, 17).

important ways, therefore, Bosnia remains a state without a nation, as almost no progress has been made towards fostering a sense of Bosnian 'nation-ness' among the country's divided ethnic communities."[120]

Why Constitutional Reform?

The process of constitutional reform offers ample room for exploring the dynamics involved in the externally led state building process in Bosnia. It represents one of the key activities of recent state building processes in which external actors have been heavily involved. In fact, the process of constitutional reform in Bosnia coincided with other US' constitutional initiatives in divided societies such as Afghanistan and Iraq; it is part of a wider phenomenon.

The process of constitutional reform also offers ample room for exploring the dynamics involved in the process of EU integration. Although constitutional reform did not feature as an expressed condition for EU accession, the European Commission supported the process publicly.[121] In fact, constitutional reform was turned into a framework of indirect, diffuse conditionality.[122] The EU made it clear through public statements and official documents that constitutional changes would be required for the process of EU accession. They stopped short, however, of providing any specific criteria, except for the need to create an effective and functional state capable of complying with EU accession criteria.[123] This relative ambiguity in terms of external directive provides an opportunity to examine a process in which international actors were heavily involved, and to explore the degree to which they succeeded in shaping the local outcome.

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[120]   Pickel and Donais 2003, 19.

[121]   Although the key priority for the EU at the time was police reform, the European Commission was in favor of constitutional negotiations. Passage of constitutional changes was however never linked to the process of EU integration (see chapter 5, p. 207 for a discussion on this issue). Following the failure of the constitutional negotiations in 2006, the EU included constitutional reform as one of the key priorities to be accomplished in the "next few years" as part of the 2007 European partnership for BIH (Council of the EU 2007a). The inclusion of constitutional reform as a key priority for EU accession was based on the belief that the Bosnian constitution "prevents swift decision-making and therefore hinders reform and the capacity to make progress towards the EU" (European Commission 2007, 7). The EU has been unclear, however, in defining the legal implications associated with setting constitutional reform as a priority in the process of EU integration.

[122]   See chapter 2 for a definition of formal and informal conditionality.

[123]   In October 2005, EU Commissioner for Enlargement Olli Rehn declared that Bosnia would not be able to join the Union with its current structure (see OHR, BiH media round-up, 20 October 2005).

Finally, in contrast with other overlapping EU-led reform process in Bosnia, such as the restructuring of police forces,[124] constitutional reform involved a process of elite bargaining restricted by a specific period of time (from April 2005 to April 2006). Though other initiatives were launched after the failure of the process, they never managed to garner enough domestic support and resulted in failure. Choosing a reform process within the constraints of a timeline is essential to avoiding the 'moving target' problem in post-conflict Bosnia; a process that has been in constant flux.

1.8. METHODOLOGY

My research is qualitative in nature and is based on the analysis of primary and secondary documentation and on 80 open-ended interviews with some of the key players involved in the process of constitutional reform.

A Single-case Study

While this research is based upon a single case study of post-conflict Bosnia, it uses a three level framework, which has not previously been used for analysis. The decision to use Bosnia as a case study stems from several important factors. Bosnia represents an important example of a post-conflict, deeply divided society in which the external leadership is prominent. Important lessons can be drawn from an in-depth study of post-conflict Bosnia, which can, in turn, be applied outwardly. Such an example would be Iraq, where the external leadership has been pronounced, and the division of society along three major ethnic groups holds many similarities with Bosnia. This study represents an attempt to build some theoretical propositions in an area of study where no major theory exists.[125]

The case of Bosnia also stands out for its uniqueness and complexity. This complexity, in part, justifies the undertaking of a single-case study in order to be able

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[124]   Police reform was set up as a condition for European accession in 2003. A final agreement on police restructuring was only possible at the end of 2007 and early 2008. This dissertation explores the dynamics of police reform as they intertwine with constitutional negotiations in chapter 5, 6 and 7.
[125]   My study falls into what Lijphart calls "hypothesis-generating case studies." The ultimate goal is to build propositions that may be tested in subsequent comparative studies (see Lijphart 1971).

to fully explore all of the intricacies. Bosnia's uniqueness is related to a confluence of different factors. These include: the intensity of the conflict,[126] the singularity of the system created in Dayton (with a heavy external leadership), the simultaneity of different transitions,[127] and the overlap of state building with the process of European accession. Notwithstanding the uniqueness of the Bosnian case, this research is comparative in nature; reflecting on existing, established theory, as opposed to providing a mere descriptive account of facts and events as they developed.

This study is process driven, and aims to bring a large body of new and empirical evidence to a heretofore largely undisclosed process. It thus seems sensible to adopt a case-based approach in order to be better informed about the different set of dynamics and factors involved in this process. As Arend Lijphart states, "The great advantage of the case study is that by focusing on a single case, that case can be intensively examined."[128] Furthermore, this research utilizes the aforementioned three-level framework. Small-N comparative studies (or single case studies) are generally better received and more informative when the analytics deployed involve multiple variables. An inductive, process-oriented approach seems most appropriate to explore the specific interactions between internal and external variables in the process of constitutional reform in Bosnia.

The Actor-Centered Approach

My dissertation takes an actor-centered approach. The choices available to political actors are somewhat constrained and structured by the institutional framework in which they operate.[129] Having said this, my research is based on the notion that much depends on how elites interact with each other, given such constraining institutions, and the ample room for maneuvering nonetheless enjoyed by these elites. This study

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[126] Bosnia is believed to have paid the heaviest toll in the disintegration of former Yugoslavia. This represents an important issue as it relates to the question of trust in the aftermath of the war. Estimates show that around 97,200 people were killed in the war out of a population of roughly 4 million people (see the Research and Documentation Center at http://www.idc.org.ba/aboutus.html). 30,000 went missing and a total of 2.2 million were displaced. Bosnia also suffered from "some of the worst massacres committed in Europe since the Second World War" (Council of Europe 2004c, 5) as a result of the genocidal experience. While it is believed that the number of people displaced and missing are roughly accurate, as well as the magnitude of the material destruction (more than a third of the housing was completely destroyed), the number of people killed remains in dispute.
[127] These include an economic and political transition (from socialism and communism to democracy and capitalism) as well as a process of state and nation building.
[128] Lijphart 1971, 691.
[129] March and Olsen 1984; Peters 1999.

is thus not concerned with the impact of power sharing on the pace of reform; but rather with the patterns of behavior of the political elites within the existing constraining institutions in which they operate.

The literature on conflict regulation and power sharing has underscored the critical role of political elites in making these institutional arrangements work. Lijphart, for example, argues that elites play a central role in making consociational democracies effective and stable over time.[130] In fact, according to Lijphart, consociational democracies can only work when the political leaders realize that mutual inter-segmental intransigence can lead to self-destruction and war (the so-called self-negating prediction). This realization, in turn, encourages conciliatory and accommodating behavior.[131] Other power sharing studies, more critical of Lijphart's self-negating prediction in post-conflict societies, have also underscored the prominence of political elites in the success (or failure) of consociational experiments in deeply divided societies.[132] Nordlinger's cross-country study of conflict regulation in deeply divided societies, for example, brings to light the critical role of conflict groups leaders. In the words of Nordlinger, "it was the conflict group leaders who took the initiative in working out the various conflict-regulating practices, who put them into operation, and who did so at least partly with the goal in mind of arriving at a conflict-regulating outcome."[133]

In addition to the critical role of political elites in power sharing arrangements, the process of constitutional reform was an elite driven process. There are three broadly defined types of constitution making, which vary in the level of inclusiveness:[134] first, elite roundtables, which involve a small number of political elites;[135] second, national conferences, which allows broader participation of political

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[130]   Lijphart 1969.
[131]   "The critical role of the leaders is especially clear in those cases, like South Africa, where the background conditions and the degree of pluralism are not very favorable for consociationalism" (Lijphart 1985, 120). Lijphart also refers to flexibility and pragmatism as key attributes of political elites for the successful functioning of consociational arrangements.
[132]   Schneckener's comparative study on the favorable conditions for power sharing (Schneckener 2002), for example, shows that actor-centered approaches are more relevant than the ones that are institutionally based in accounting for success in power sharing agreements. The institutional approaches seem to become more relevant as the operation of the agreement is maintained over time.
[133]   Nordlinger 1972, 40.
[134]   See Samuels 2009.
[135]   Kirsti Samuels argues that most elite-driven constitution making processes have been largely negative, except for the case of Spain (Samuels 2009).

elites and civic activists;[136] finally, the participatory constitution-making process, which develops largely without international involvement in deeply divided societies; these processes usually involve education programs as well as extensive consultations.[137] In the case of Bosnia, there was an early attempt to include the broader civil society in the negotiations, and bring some of the elements of a participatory process of constitutional reform, but as we shall see in the chapters to follow, the US ultimately turned the process into a highly exclusive process of elite bargaining. Political elites were thus the ultimate decision makers in the process.

Political Elites

This dissertation uses the definition of political elites from John Higley and Richard Günther. These authors refer to elites as persons,

> "Who are able, by virtue of their strategic positions in powerful organizations, to affect national political outcomes regularly and substantially.[138] Elites are the principal decision makers in the largest or most resource-rich political, governmental, economic, military, professional, communications, and cultural organizations and movements in a society. This means that they are made up of people who may hold widely varying attitudes towards the existing social, economic, and political order, including the holders of key positions in powerful dissident organizations and movements."[139]

My study focuses on political elites,[140] rather than economic or social elites, for two reasons. First, party leaders represent the key actors in the process of

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[136]	These model has been generally used in transitions from authoritarian rule in Francophone Africa (*ibid*). While the initial experience was positive, the conventions were later on unable to "institute regime change against the wishes of those in power" (*ibid*, 177).

[137]	*Ibid*, 177; see also Samuels 2005. These processes tend to prolong for extensive periods of time, especially in comparison to the other two models. Samuels argues that the participatory model was particularly successful in Uganda and South Africa (Samuels 2009).

[138]	Elites affect political outcomes substantially "in the sense that without their support or opposition, an outcome salient to their interests and locations would be noticeably different" (Higley and Gunther 1992, 9).

[139]	Higley and Günther 1992, 8. See also Burton and Higley 1987; Moyser and Waystaffe 1987; Putnam 1976.

[140]	Drawing from the definition of Higley and Gunther (1992), this study refers to political elites as the principal decision makers and the holders of strategic positions in the "most-resource rich" political and governmental organizations in the society.

constitutional reform. Second, this research is based on the assumption that the ultimate decision making power in Bosnia resides in the political leadership. In fact, international actors have operated under this assumption for the past few years. Since the HR Ashdown took office in 2002, the international strategy has been directed towards working with party leaders as the critical interlocutors of the reform process. The process of constitutional reform perfectly fits this pattern.

While other economic and religious elites have held important pockets of influence over the broader reform process in Bosnia, this study only refers to them in so far as their actions are likely to affect the patterns of conflict regulation during the process of constitutional reform. The role of non-core elites is thus only considered when appropriate.

The role of non-elites is marginally discussed in this study, given the secondary role that civil society played in the process of constitutional reform. Though it would be reasonable to assume that the support of non-elites may have factored into the calculations of political elites as to whether or not to engage in conflict regulation in the area of constitutional reform, this dissertation is based on the assumption that this was secondary to other considerations. Three factors have informed this assumption. The first one is related to the specific condition of Bosnia as a semi protectorate where the international community holds important pockets of power and influence. The institutionalized presence of the international community in Bosnia has given way to an 'upward' accountability chain in the political system, in which domestic politicians are answerable to the international community rather than to society.[141] In other words, party leaders have become accountable to external actors rather than to civil society (supra-national variable). The second one relates to the fact that deeply divided societies are highly vulnerable to the politics of outbidding, where part of the strategy of the political elite focuses on issues of authenticity and group representativeness. In the case of Bosnia, the struggle is over what defines a real Serb, a real Bosniak, etc, and over who has the right to speak for the ethnic group, and who counts with the support of the group.[142] Under these circumstances, the political struggle evolves into a struggle over political positioning based on the issue of ethnic representativeness; where the main audience may be other intra-group members of the elite as opposed to the general public (intra-ethnic variable). The

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[141]   Chandler 2006; Knaus and Martin, 2003.
[142]   Gagnon 1995; Caspersen 2004.

support of the non-elite may be one among many considerations in the calculations of the elite, but certainly not the most important one.[143]

Key Domestic Players

The key political actors[144] involved in the process of constitutional reform include the following:

• The Bosniak Group (comprised of SDA, SBiH and SDP). This group was the most fragmented and divided group during the negotiations, despite of the fact that the two leading parties (the SDA and the SBiH) were coalition partners at the state and entity levels.

- The Party of Democratic Action (SDA), the leading Bosniak party until 2006, was created in May 1990, on a religious-based platform under the leadership of Alija Izetbegović (The party was formed by members of an Islamist movement associated with the pan-Islamist organization 'The Young Muslims'[145]). The SDA has been the traditionally nationalist party within the Bosniak group; although it has evolved into more moderate positions under Sulejman Tihić, who has led the party since 2001. This party has historically governed as part of a coalition with other traditionally nationalist parties; namely SDS and HDZ. The party's leadership has been divided between a radical faction (members of the Islamist movement[146]), under the leadership of Muslim cleric Hasan Čegnić, and a moderate faction led by Tihić. Radical forces have favored the outright elimination of the status quo (as reflected in

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[143]   In short, political elites may be compelled to engage in conflict regulation depending upon the position of other members of the political elite, and the ability to use conflict regulation practices to appeal to the population on issues of authenticity.

[144]   I generally use the term actor to refer to political parties, not individuals, although sometimes the line separating the two is blurred. In this dissertation, I will be explicit when I refer to the party versus the party leader and/or the high-ranking officials of the party. It is significant to note here that the analysis of local elites is undertaken in relation to two different tiers: (1) at the intra-ethnic level, where the units of analysis are the political elites and parties; (2) at the inter-ethnic level, where the units of analysis are the ethnic groups.

[145]   Bougarel 2007. The organization 'Young Muslisms' was created at the end of the 1930s and was dissolved in 1947 (Izetbegović himself was part of it). Its members became active again in the 1960s through formal religious institutions, namely the Islamic Community (Islamska Zajednica), and with new recruiters from the madrassah in Sarajevo (*ibid*).

[146]   *Ibid.*

Dayton);[147] whereas Tihić's position has become more pragmatic over time (seeking to reform Dayton as part of a consensus platform with the other ethnic groups). These divisions were most prominent during constitutional negotiations between 2005 and 2006, as we shall see in the following chapters.

-   The <u>Party for Bosnia and Herzegovina</u> (SBiH), led by Haris Silajdžić, was formed in 1996 as an offshoot of the SDA; favoring more moderate nationalist positions. Though a smaller party since inception, the last presidential elections in October 2006 placed this party at the center of the political stage and awarded its leader the position of Bosniak member of the presidency. This party has also adopted a more radical nationalist position recently. In the past, SBiH has formed coalitions with the SDA (1996-2000; 2002-2006), and with the SDP as a member of the short-lived moderate 'Alliance for Changes' (2001-2002).

-   The <u>Social Democratic Party</u> (SDP), under the leadership of Zlatko Lagumdžija, represents the successor to the League of Communists of Bosnia and Herzegovina. The SDP has remained the only moderate and non-nationalist political organization.[148] The weak structure of the party (which revolves almost exclusively around its leader Zlatko Lagumdžija)[150] and its disappointing performance in government with the "Alliance for Changes" in 2001-2002, have prevented this party from playing a bigger role in Bosnia's politics. The party's Croat candidate for the 2006 presidential elections, Zeljko Komsic, was elected as Croat member of the presidency.

• The three key Serb parties include the SDS, the SNSD, and the SDP.

-   The <u>Serbian Democratic Party</u> (SDS), led by Dragan Čavić at the time of the constitutional negotiations, was founded by war crimes indictee Radovan Karadžić in July of 1990. This party has been mired with internal divisions

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[147]   Especially, the elimination of RS and the entity-based structure.
[148]   Its popular base and support is however mostly Bosniak and Croats and Serbs living in Central Bosnia (Bieber 2006a); Florian Bieber notes that the party's support for the strengthening of the state has made it less appealing to Croats living in Herzegovina and Serbs living in RS (*ibid*).
[150]   It is important to note, however, that the party is strong institutionally. The party has a branch organization in almost every municipality.

between radical and moderate nationalists. One of the most prominents rifts resulted in former radical nationalist, and at the time RS president, Bjljana Plavsić, defecting from the party in early 1997 and setting up a non-SDS minority government under Dodik's leadership in early 1998. Divisions between a radical nationalist wing (associated with the party officialdom in Eastern RS), and a more moderate Banja Luka-based nationalist faction led by Čavić have continued;[151] and were most prominent during the process of constitutional reform. The SDS was the strongest, nationalist party in RS at the time of the negotiations. It has however, lost much of its clout to Dodik's SNSD, which has emerged as the leading Serb party at the entity and state levels since the 2006 elections. Mladen Bosić replaced Dragan Čavić as the head of the party in November 2006, following the resignation of the latter after the 2006 elections.

- The <u>Alliance of Independent Social Democrats</u> (SNSD), which came into existence in 1996 as a moderate social-democratic force under the leadership of Milorad Dodik, has become the primary nationalist force. Dodik held the position of prime minister from 1998 to 2001. He was reappointed prime minister on 28 February 2006 and continues to hold this position. Traditionally, SNSD's power bases have been in the urban centers of Western RS, but it has progressively extended its influence in Eastern RS (especially after the 2004 and 2008 municipal elections).[152] SNSD's nationalist agenda has been mostly moderate (defending the autonomy of RS[153]); but it has evolved into a more radical stance since 2006.[154]

- The <u>Party of Democratic Progress</u> (PDP), created in 1999 under the leadership of Mladen Ivanić, maintains a moderate platform of economic reform and political pragmatism, and remains a smaller party. While the PDP made significant progress in the 2000 local elections, it lost ground in 2004 in a coalition with the SDS (its partner in the government for four years prior to

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[151]   SDS radicals have traditionally favored RS's secession and have advocated for no Serb participation at the state level institutions. They have also opposed fiercely the transfer of powers from RS to the state. SDS's moderates are in favor of preserving RS autonomy, but accept the status quo and are willing to make concessions on the basis of the process of European integration.
[152]   SNSD is the only Serb party that has attempted to extend its activities (and represent Serb minorities) in the Federation.
[153]   Bieber 2006a.
[154]   The progressive 'radicalization' of SNSD is explored in chapter 7.

the contest). PDP's leader Ivanić was appointed RS prime minister in 2001 and foreign affairs minister of BiH after the 2002 elections.

- Within the Croat community, the major actors are:

  - The Croatian Democratic Union of Bosnia and Herzegovina (HDZ BiH) was founded in August 1990 as a branch of the HDZ in Croatia. HDZ has also been mired with divisions since inception between radical nationalists (who favor the creation of a third entity) and moderate nationalists, mostly in favor of providing Croats with further local autonomy. HDZ's current leader, moderate nationalist Dragan Čović, was indicted on corruption charges in March of 2005. Though he was forced to step down from the position as Croat member of the presidency in light of the scandal, he never resigned from his position within the party. He was elected president of HDZ in May 2005. Ongoing divisions flared up during the process of constitutional reform, resulting in the creation of an offshoot party, HDZ 1990.

  - The Croatian People's Community (HNZ) is a smaller party with no representation at the state level. The party is led by Miljenko Brkić, a former president of HDZ BiH. It took part in the process of constitutional reform so that the Croats could have two representatives at the negotiation table. This study deals only marginally with the HNZ.

  - HDZ BiH 1990 emerged as an offshoot of the HDZ at the end of the process of constitutional reform, in April of 2006, under the leadership of Božo Ljubić. Although the party was formed by moderate figures of HDZ BiH, it adopted a more conservative nationalist platform to differentiate itself from HDZ BiH.

The International Community: Key External Players

The terms "international community: and "external actors" are often used in reference to either the broader community of states, or a specific set of actors, contingent upon both the matter and issue at stake. In either respect, the term international community tends to homogenize the features and main characteristics of the different units involved. This study is, however, based on the assumption that

these actors do not espouse similar goals, interests and/or strategies. This note of caution is particularly significant in the context of Bosnia, where the international community is comprised of a myriad of actors. These range from the institutions that were created during and after the war (such as the Contact Group, the OHR and the PIC[155]) to other more conventional actors such as the EU, the US and other states of the broader international community that operate in Bosnia. Various international and regional organizations also enjoy a significant presence in Bosnia, including *inter alia* NATO, the UN, the OSCE, the IMF, the CoE, and the European Court of Human Rights.

This dissertation uses the term external players to refer to two key international actors directly involved in the process of constitutional reform; namely the US and the EU.[156] The EU will be analyzed in two capacities: (1) as a supranational entity. In this function, the EU's role is assessed through the actions and statements of both EU officials and EU institutions[157]; (2) as a collective body comprised of member states, which hold differing interests, goals and strategies. In this capacity, the EU's role is assessed through the actions and statements of European diplomats in Bosnia, acting in their national interest. Other organizations will also be taken into consideration, including the CoE, the Public International Law and Policy Group (PILPG)[158] and the NGO Dayton Project, the latter created in early 2005 to facilitate the negotiations during the first phase of the negotiations.

Two additional notes of caution are in order. First, though European and US elites are believed to hold some degree of autonomy on the ground, this study presupposes that they are the executors of the policies heralded by the countries or organizations they represent. Second, the analysis of the role of external actors is

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[155]   An organization established in the London Conference in December 1995 to help assist with the implementation of the peace plan. The PIC is comprised of 55 countries and agencies that support the peace process. The Steering Board was also created in the London Conference to assist the OHR and provide political guidance (Peace Implementation Council 1996). The members of the Steering board include Canada, France, Germany, Italy, Japan, Russia, United Kingdom, United States, the Presidency of the European Union, the European Commission, and the Organization of the Islamic Conference (OIC), which is represented by Turkey.

[156]   Other non-EU member countries such as Norway and Switzerland provided financial support in the initial stages of the constitutional negotiations. The role of these countries was secondary and ended once the US became formally involved.

[157]   Such as the Council of the EU, the EU Special Representative in BiH, the European Delegation in BiH, and the European Parliament.

[158]   PILPG is a non-profit group with a long history of engagement with Bosnia. It served as a legal advisor to the Bosnian delegation during the negotiations of the Dayton Peace Accords. PILPG Director Prof. Paul Williams was in fact a member and representative of the Bosnian delegation during the Dayton negotiations. PILPG supported Donald Hays during constitutional negotiations.

somewhat compromised by their overlapping activities on the ground. This problem is significant in the case of constitutional reform, given the complimentary, yet sometimes overlapping role of both the EU and the US. This research has overcome this methodological problem by treating and analyzing the role of both actors separately, whenever possible, and indicating when separation is not possible.

This dissertation also takes into consideration the role of kin states (namely Croatia and Serbia), but only in so far as they affect the course of the process. Kin state involvement is thus considered as a secondary variable.

Sources and Data Collection

Two main methods of data collection are employed in this thesis. Firstly, I conducted 80 interviews with key players involved in the process of constitutional reform and/or engaged in the process of state building in Bosnia. I chose personal interviews as the key method because of the rather secretive nature of the process, and the absence of available empirical material. Secondly, I analyzed existing official documents from the EU, the US and Bosnia; including policy papers, party documents, and material provided by the Dayton Project (the NGO in charge of constitutional negotiations prior to the US takeover). Other secondary material such as news articles, policy papers and academic articles were used, along with quantitative sources, although they did not comprise the empirical backbone of this study.

In-depth interviews as the primary empirical source

A total of 80 in-depth interviews were conducted over an extended period of fieldwork in Bosnia in 2007[159] and two study visits in Brussels and Washington DC in the summer of 2006 (a second trip to Washington DC was also taken in 2007). The interviews were conducted with the following actors[160]:

* Key local players, including: some of the party leaders that participated in the negotiations, deputies at the state and entity-level legislatures, and party

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[159] Fieldwork in Bosnia included visits to Sarajevo, Mostar and Banja Luka from May to July 2007. A preliminary one-week fieldwork trip to Sarajevo was conducted in December 2006.
[160] See appendix 1 for a full list of interviews.

officials. Domestic elites were selected according to a representation formula across ethnic lines.

* Key international players, including the UK and Austrian Ambassadors to BiH, US diplomats, the HR Schwarz Schilling, and other Western diplomats.

* European officials from the European Commission, the European Delegation in Bosnia, the Council of the EU, the office of the EUSR in Bosnia; and the European Parliament.

* Other informal actors that participated in the process as assistants to the key players.

* Local and international informants, such as high and low-ranking party officials, academics, analysts, journalists, members of civil society and other Western diplomats who participated indirectly in the process of constitutional reform.

Given the lack of publicly available primary sources of information about the process of constitutional in Bosnia, gathering primary data through in-depth personal interviews with the key participants was deemed critical. The aim was twofold: to gather information about the positions, motives, perceptions, interests and strategies of the elites involved in the process; and to gain further knowledge of the key developments in the process. In light of the fact that political elites are often reluctant to readily disclose their true motives and the political games and strategies in which they engage (which represents a significant methodological problem[161]), I sought to overcome this limitation by using a three-pronged strategy: (1) I compared and contrasted the interviews; (2) I did an extensive critical review of the information generated by the local media during the process of the negotiations; (3) I conducted interviews with key informants who had privileged information about the process, either through their position as close aides, or through direct observation of the process. The aim of this three-pronged strategy was to validate, confirm and cross-check the information garnered, and to correct and dismiss potential gaps and/or contradictions.

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[161]   This problem is aggravated when the object study is a moving target. Though the process of constitutional reform failed in 2006, there were ongoing informal talks on constitutional reform when the author was doing fieldwork in Bosnia.

Additional data

This study relies on the following additional sources of data.

1. Qualitative sources:

- Primary documentary sources:[162]

- Constitutional documents and other political texts (position papers, statements by leading politicians, speeches, party programs, etc) generated during the negotiations.

- EU official documents (available via the Europa website), including reports, policy papers, speeches, statements, action memorandums, etc, from the Commission, the Council, the European Parliament, the EC Delegation in Bosnia and the EU Special Representative. These sources were referenced against the information gathered through the interviews with respect to the viewpoints and strategies of the EU in Bosnia, and more specifically in relation to the process of constitutional reform.

- Official texts (policy papers, speeches, position papers, statements, etc) from other international organizations such as the OHR and the CoE.

- Additional official documentation, including records of constitutional talks as provided for in the summaries produced by the Dayton Project (the non-profit organization involved in the preliminary round of negotiations). These sources were helpful in mapping out the different meetings that took place at the time, and for identifying the major issues at stake, along with the key positions of the actors involved.

- Secondary material:

- The *OHR's media monitoring service*, an online service that provided summaries of the major local media outlets (including newspaper, Radio and TV) translated into English.

- International and local media, as well as specialized online resources such as

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[162] Most of these sources were provided to the author by the interviewers, especially Donald Hays and members of the Dayton Project. Other primary information was available online, as indicated in the references.

Bosnia Daily, *Transitions Online*, and *Balkan insight*.

- *Policy analyses and reports* from international research organizations, including the *Stability Pact Initiative* and the *International Crisis Group*, and local think tanks such as the *Center for Security Studies* and the *Center for Research and Development*.

- Academic resources, including journals, books, dissertations and conference papers.

2. Quantitative Sources:

- *Public opinion Polls* on domestic political attitudes and identities, conducted by local and international poll institutes, as well as *electoral results*. This data provided information about the population's values and attitudes towards the political elites and the overall reform process; demonstrating whether these were in concert with the views and interests of political elites.

- *Additional Quantitative data*, such as aid expenditures, economic and social indicators, and government statistics, were gathered via the web and locally during fieldwork.

1.9. ORGANIZATION OF THE DISSERTATION

This dissertation is divided into four sections. Part one (chapter 2) is concerned with the conceptual theoretical framework. It analyzes the research schools this study addresses (namely the conditionality and state building literatures), and outlines a framework for a better understanding of post-conflict state building in deeply divided societies. Drawing from the literature on conflict regulation and other plural society theories, this framework divides the analysis into three tiers; namely the inter-ethnic, intra-ethnic and supra-national levels.

The second section of this thesis (chapter 3) seeks to analyze the constitutional debate in Bosnia following the break up of former Yugoslavia. It examines the key issues involved in the design and implementation of the DPA signed in 1995. The goal of this chapter is to provide a thorough understanding of the Bosnian

constitutional backbone, and to lay the groundwork for understanding the context in which the process of constitutional reform took place in the period between 2005 and 2006.

Section three of this dissertation (chapter 4 through 7), is concerned with the process of constitutional reform in Bosnia over the period of 2005 and 2006. Chapter 4 is devoted to outlining the rationale, the origins and the initial steps in the process; including the dynamics and rules of engagement. The subsequent three chapters (Chapter 5, 6 and 7) are devoted to the analysis of the process of constitutional reform; examining three critical stages in the development of the negotiations.

Chapter 5 explores the first critical phase (November through December of 2005). This phase featured the transition from a preparatory stage, in which party representatives operated in a low-key manner, to a stage in which party leaders became more actively engaged. The involvement of party leaders yielded an infusion of zero-sum claims and a notable increase in the use of nationalist rhetoric. These dynamics exposed a high level of inter-ethnic distrust, which, in turn, had a significant impact upon how the parties perceived their own interests, the interest of other groups, and how they formulated a political strategy within the bargaining framework. Politics at the intra-ethnic level were also disruptive during this phase; with key leaders facing serious challenges within their respective parties. These dynamics collectively served to enhance the level of radicalization, and negotiations verged on collapse in early December of 2005.

Chapter 6 is devoted to the second stage of the negotiations (from December, 2005 through March of 2006), and following the US appropriation of the process in December of 2005. During this phase, the US provided a framework in which an agreement at the inter-ethnic level was made possible. Developments at the intra-party levels also contributed to a successful outcome, given that party leaders managed to sideline major internal divisions. The role of external actors was critical during this stage, however the exclusion of specific political forces became a challenge in the subsequent phase of the process.

Chapter 7 examines the final phase of the negotiations, from March through April of 2006, when the agreement was transferred to the parliament for public discussion and debate. While pressure from external actors increased dramatically at this point, including direct lobbying activities by the US and European countries,

politics at the intra-ethnic level acquired a new dimension. This development ultimately led to the failure of the constitutional package on April 26th.

Part four (chapter 8) of this dissertation offers concluding remarks drawn from the empirical discussion. I conclude that the international influence in Bosnia, and the transformative power of the EU were blunted by an ethnic power struggle. While external actors did play a substantive role, the neglect of intra-ethnic dynamics ultimately rendered external actors' efforts at shaping the process of constitutional reform in Bosnia ineffective.

This dissertation uses an inductive, process-oriented approach in analyzing this post-conflict deeply divided society. Such an approach is required to be agency-driven, and explore the political interactions that take place in three different dimensions, namely the inter-ethnic, intra-ethnic and supra-national levels. This approach, I argue, is best suited to understanding the specific interactions between internal and external forces, and the significance of these interactions on the overall policy outcome in the state building process in Bosnia.

PART I

CONCEPTUAL FRAMEWORK

Part one of the dissertation (chapter 2) aims to develop a theoretical framework to account for the political dynamics involved in state building processes, where the external leadership is pronounced and where society is deeply divided along ethnic lines.

Chapter 2 is divided into four sections. The first section briefly addresses different forms of external influence. The second section is devoted to the review of the key theoretical approaches that this research speaks to, namely the recent literature on state building and conditionality studies. This review focuses on two overarching themes, namely (1) the analysis of the intertwinements between domestic and external factors, and (2) the role of political elites. This section concludes with a brief account of the key shortcomings associated with these studies when leveled against post-conflict Bosnia.

The third section of the chapter lays out an alternative three level framework to study the dynamics involved in the process of state building in post-conflict Bosnia, drawing from the literature of conflict regulation and other plural society theories. The goal is to create a comprehensive, yet concise, analytical backbone to inform the empirical discussion that follows in the subsequent chapters. Under what conditions can we expect external actors to have an impact on domestic politics in post-conflict, divided societies? What role does the ethnic and post-conflict factor play in such scenarios? How do external and internal actors interact with each other in divided societies?

The final part of the chapter levels this framework against post-conflict Bosnia, accounting for the different set of interactions that take place between domestic and external actors in the reform process under consideration.

CHAPTER 2

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

2.1. FORMS OF EXTERNAL INFLUENCE

Basic Models of External Influence

Lawrence Whitehead's *The International Dimensions of Democratization*[163] was the first major study to analyze the interconnectedness of international influences on processes of political reform[164] and democratization.[165] In his study, he identified three models of external influence whereby one can analyze the role of external forces.[166] The first one, contagion, refers to systemic processes of influence. Particularly, it refers to "the *diffusion* of experience [and ideas] through neutral, i.e. non-coercive and often unintentional, channels from one country to another."[167] According to Whitehead this level of analysis is the simplest one given that it requires no consideration of actors or their motivations, and there is "no attribution of primacy to either internal or external sources of democratization." The problem, Whitehead notes, is that the contagion model "cannot tell us how a sequence begins,

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[163]   Whitehead 1996; see also Whitehead 1986; Pridham 1994 and 1991.

[164]   Studies on tied aid also came out in the 1990s, but there was a lack of engagement between scholars of the developing world and democratization studies. A lack of engagement was also patent within the democratization studies in the early 1990s, between the Latin America specialists and scholars of the Eastern Europe and the former Soviet Union.

[165]   The early studies on democratic transitions and consolidation failed to include the international dimension. Dankwart Rustow's *Transitions to Democracy: Towards a Dynamic Model* (1970), for example, stressed that while international influences are almost always present in democratic transitions through either war, military occupation or the spread of ideas, "the dynamic process of democratization itself is set off by a prolonged and inconclusive [internal] political struggle" (Rustow 1970, 382). Following the steps of Rustow's initial study on the subject, Guillermo O'Donnell, Philip Schmitter and Lawrence Whitehead's seminal work on *Transitions from Authoritarian Rule* stressed that "external factors tended to play an indirect and usually marginal role, with the obvious exception of those instances in which a foreign occupying power was present" (O'Donnell and Schmitter 1986, 5).

[166]   Whitehead uses these models in order to illuminate recent democratization experiences where the role of external forces was pronounced; he includes the analysis of actors, processes and motivations. Whitehead adds a note of caution for there is a significant overlap between the three models (Whitehead 1996, 4).

[167]   Schmitter 1996, 29.

why it ends, what it excludes, or even the order in which it is likely to advance."[168]

The second one is the model of consent, which involves "a complex set of interactions between international processes and domestic groups that generates new democratic norms and expectations from below."[169] The focus is the local drive to pursue democracy from examples or standards defined externally. Indeed, there is an intentional or unintentional drive on the part of the domestic actors (be it at the political, economic or societal level) to adopt democratic procedures or specific norms from external actors or processes. Within this rubric, one can include transnational influences such as those promoted by transnational social organizations, effects of globalization, emulation, or domestic or regional drives to merge with other countries or regional organizations in order to protect or promote democracy.[170] Under the latter, Whitehead includes the broader process of European integration, especially in reference to the decision taken by domestic actors to converge with European standards and norms.[171]

The third model is the control model, which may refer to two phenomena: (1) experiences of outright imposition from above of specific democratic structures, norms and/or processes, or (2) the promotion of democracy through explicit policies. The key characteristic of this form of influence is the expressed intention by outside actors to affect domestic processes through either outright imposition or the implementation of programs and policies that are designed to promote democratic institutions and/or good governance. This form of external influence involves experiences such as the imposition of democratic structures in Germany and Japan after WWII or democratic promotion programs by external agencies as part of a defined strategy that does not include coercive methods.[172] The recent experiences of external state building and international administration may also be included within this rubric.

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[168]   Whitehead 1996, 5.
[169]   Schmitter 1996, 29.
[170]   Schmitter 1996. German unification is a clear case in point.
[171]   It is important to note here that the logic involved in the process of European integration (which refers to the process of adjustment of EU member states) is different from the process of EU accession, where conditionality comes into play. Though there is a factor of consent in both processes, the conditionality framework puts in place a set of sanctions and rewards that do not feature in the process of EU integration.
[172]   The surge in USAID democracy promotion in the early 1990s is closely linked to the fall of communism.

Conditionality has been identified as the fourth model of external influence.[173] Early studies defined conditionality as "a mutual arrangement by which a government takes, or promises to take, certain policy actions, in support of which all international institutions will provide specified amounts of assistance—usually financial or technical."[174] This definition is, however, restricted to internatioanl organizations and fails to account for state's national and ideological interests. Conditionality is best defined as a process where both formal and informal rules apply. James Hughes, Gwendolyn Sasse and Claire Gordon, for example, define conditionality as the *process* characterized by "the interaction between multi-level actors, perceptions, interests, different rewards and sanctions, temporal factors, institutional and policy compliance."[175] In sum, conditionality involves a stated strategy set up by an external actor with a desired outcome attached and acted upon a third country. Rather than a uniform variable, conditionality generally involves an instrument that enjoys different meanings and effects depending on the time frame, the context, the domestic actors and sectors involved, the credibility of the conditionality package and how it is applied.[176] In contrast to models of outright control, conditionality involves some room for domestic forces to adapt, accept or reject the conditions lay out externally;[177] it "allows the recipient to maintain independence, while accepting the pre-negotiated consequences of failing to act in the way the donor expects."[178] As a result, both the study of the supply side (the 'downloader') and the recipient country (the 'uplodader') are deemed critical for understanding how external factors may impact the way in which domestic structures and actors readily accept, reject or adopt external conditions.[179]

Processes of institutional change through conditionality are to a certain degree more amenable to empirical research than other forms of external influence such as contagion. First, there is a stated goal (representing the source of influence) by an

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[173]   Schmitter 1996.

[174]   Checkel 2000, 1.

[175]   Hughes, Sasse and Gordon 2004, 3.

[176]   See for example Lippert, Umbach and Wessels 2001; Grabbe, 2002a; Kelley, 2004a; Hughes, Sasse and Gordon, 2004.

[177]   In the case of outright control, there is no such an option, which does not mean that the implementation of democracy structures and processes will be successful. On the contrary, as the case of the Bonn powers shows, imposition does not mean internalization or successful implementation.

[178]   Dawisha and Turner 1997, 407.

[179]   Conditionality thus allows for analyzing the strategies of external actors; the strategies and calculations of local actors; and the direction and methods of transmission whereby external push is exerted.

external government or an international organization, which many times can be quantified and measured.[180] As a result, both the policy under consideration and the agents involved can be easily identified. Second, there are a number of mechanisms, devices and standardized processes that can be observed and measured. Finally, there is an expected/desired outcome,[181] so that compliance is relatively simple to identify.[182] With respect to the instruments, conditionality may involve the use of negative or positive sanctions. Positive conditionality implies that aid increases when the government improves its 'behavior'. Negative conditionality, on the contrary, implies aid reduction if the democratic structures and norms are not observed.[183] Conditionality may also use other methods of external influence. Joan Nelson and Stephanie Eglinton identified three:[184] (1) persuasion, or policy dialogue, which consists of an effort to convince the target government (or antireform elements within the government) that altered policies are in its own best long-term interests. Channels for persuasion range from formal international conferences through meetings between foreign technical experts and ministry officials to private conversations between foreign ambassadors and political leaders; (2) support through training, technical assistance, and financial aid, in order to help cover the costs of reforms (i.e. strengthening an election commission or demobilizing troops). Diplomatic support or concessions may also apply in certain circumstances; and (3) pressure, which may involve varied forms and be exercised through multiple channels, such as diplomatic relations and trade measures.[185] Nelson and Eglington conclude that in practice, "a vigorous effort to influence a particular government is likely to employ all three approaches, and sometimes the distinctions between them is blur."[186]

Conditionality can be classified according to different criteria.[187] Within the

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[180]   Often times, these goals are vaguely stated in order to give donors great latitude in interpreting when compliance is achieved.

[181]   "Conditionality can be said to have been effectively exercised only if a recipient country undertakes a policy change it would not have undertaken by itself, that is, without the pressure made to bear upon it by the donor" (Uvin 1993, 68).

[182]   This applies to the case of constitutional reform in Bosnia. First, the policy under consideration and the agents involved can be easily identified, namely the different external actors and political parties involved in the process. Although the scope and contents of the reform under consideration were not clearly spelled out (except for a vague notion of making the state efficient), external actors provided important benchmarks and criteria (see chapter 4). Compliance – namely a constitutional agreement – was also easily identifiable.

[183]   Waller 1995.

[184]   Nelson and Eglinton 1992.

[185]   *Ibid*, 8.

[186]   *Ibid*, 8-9.

[187]   It is pertinent to note at this juncture that conditionality should not be confused with the

context of European enlargement,[188] the most common classification is the one made between formal (explicit/direct) and informal (implicit/indirect) conditionality. Hughes, Sasse and Gordon argue that formal conditionality "embodies the publicly stated preconditions as set out in the broad principles of the 'Copenhagen criteria' and the legal framework of the *acquis*;" informal conditionality, on the contrary, includes "the operational pressures and recommendations applied by actors within the Commission to achieve particular outcomes during their interactions with CEEC [Central and Eastern European Countries] counterparts in the course of enlargement."[189] According to the authors, these two types of conditionality do not operate separately but rather in tandem.[190] Milada Vachudova also differentiates between active leverage, which builds on accession membership and refers to the actual, deliberate conditionality used by the EU in the accession process, and passive leverage, which mainly refers to the lure of EU membership and the European perspective.[191]

Conditionality can also be classified in reference to the scope of the demands.[192] Olav Stokke identifies the following:[193] (1) systemic conditionality (the highest degree of political intervention), which involves the system of government and

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concept of Europeanization as the former represents just one mechanism, among many others, through which the process of Europeanization operates in candidate countries. Europeanization is thus related to the of construction, diffusion and institutionalization of "formal and informal rules, procedures, policy paradigms, styles, ways of doing things, and shared beliefs and norms," which are first defined and consolidated at the European level and then "incorporated in the logic of domestic discourses, identities, political structures and public policies" (Radaelli 2000). Vink (2003) offers a more minimalist understanding of the process of Europeanization that considers the effects at both European and national levels and two-way causality mechanisms. According to the author, "Europeanization is always (to a certain extent) a process of domestic political change caused (somehow) by processes of European integration."

[188]   Frank Schimmelfennig and Ulrich Sedelmeier define enlargement as the "process of gradual and formal horizontal institutionalization [the adoption of] of organizational rules and norms" (Schimmelfennig and Sedelmeier 2002, 503). For the authors, the institutionalization of EU rules includes "the transposition of EU legislation into domestic law, the restructuring of domestic institutions according to EU rules, or the change of domestic political practices according to EU standards" (Schimmelfennig and Sedelmeier 2004, 662).

[189]   Hughes, Sasse and Gordon 2004, 26.

[190]   *Ibid.*

[191]   Vachudova 2005. The lure of EU membership builds upon an asymmetric interdependence between the EU and the candidate country in which non-compliances is too costly (*Ibid*).

[192]   Conditionality can also be ex-post or ex-ante. Ex-ante conditionality involves compliance with a set of criteria prior to entering into an aid relationship (Stokke 1995). Ex-post conditionality is found when "expectations of the recipient's progress towards meeting [the criteria] may be expressed beforehand and followed up afterwards" (*ibid, 12*). In words of Stokke, "Ex-post conditionality implies an explicitly understanding by both parties that continued aid ... at some future point in time will be dependent on the recipient government's performance *vis a vis* certain standards in the meantime, as assessed by the donor government" (*ibid*, 12 ft 7).

[193]   Stokke 1995.

governmental institutions;[194] (2) changes in national policies and priorities within, for example, the realm of human rights, democracy and good governance; (3) specific policies within a specific sector; (4) conditionality aimed at the programme/project level; (5) financial conditionality; and (6) administrative conditionality, which involves "procedures for the transfer of resources, accounting, reporting, evaluating."[195]

Forms of External Influence in Post-conflict Bosnia

The Form of external influence that has featured most prominently in Bosnia is one of control; given the ample use of the executive powers by the HR. The external leadership has, however, evolved since 2000 into one framed within the process of EU accession. This transition triggered a new form of state building in which European incentives and domestic ownership take primacy over the practice of control. In other words, the new phase of European incentives has transformed the external influence in Bosnia from one of external control to increasing domestic ownership supported by external incentives. These incentives include: economic rewards and sanctions, the lure of EU membership, diplomatic pressure and political persuasion.

The conditionality framework used in the process of constitutional reform was of an informal nature; although some direct, formal links were established between the need for constitutional changes and European accession. Indeed, while constitutional reform did not feature as an expressed pre-requisite for the signing of the SAA (the key EU-related reward in sight at the time of constitutional negotiations), European officials presented constitutional reform as a key requirement for the broader accession process.[196] In the words of the Venice Commission, "with respect to the EU it is unthinkable that Bosnia can make real progress with the present constitutional arrangements. The EU will not countenance the kind of delay, indecision and uncertainty that a multiplicity of government entails."[197] Similarly, EC President José

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[194]   This may include demands such as "the pressure for democratic reform and the introduction of a multi-party system and free and fair elections, as well as for improved human rights. They also include the good governance agenda in general" (*ibid*, 14-15).
[195]   *ibid*.
[196]   The signing of the SAA is the end goal of the pre-accession process. Once the agreement is implemented and the country is accepted as a candidate, the accession process per se starts.
[197]   Venice Commission 2005, pa. 26.

Manuel Barroso stated during the negotiations, "Constitutional reform is not direct condition for signing a Stabilization and Association Agreement. However, these two processes are linked. As I said earlier, the EC and the EU have to be convinced that Bosnia will be capable of respecting its promises and of implementing the agreement that we are negotiating now."[198]

The process of constitutional reform in Bosnia involved a wide range of different instruments including: financial and technical assistance, persuasion and direct pressure. During the first phase, financial and technical assistance was provided by countries such as Sweden, Switzerland and Norway. The EU also assisted in the process through the sponsoring of a meeting in Brussels; the first one where party leaders were involved. From December onwards however, the US took over the process, and became the major provider of technical assistance during the negotiations. Persuasion was also used throughout the process through public statements in support of the constitutional changes and bilateral meetings with party leaders. Finally, direct pressure was heavily used; especially towards the end of the process, including direct pressure exerted multilaterally and bilaterally with domestic actors.[199]

It is also important to note that constitutional reform featured as a form of political and systemic conditionality, involving highly sensitive statehood issues. As noted in the introduction, the EU accession process in Bosnia has generally involved both technical and political conditionality. The latter has rendered the accession process more controversial than in previous enlargement rounds; for the costs associated with the EU accession have turned out to be closely related to the power balance between the different ethnic groups. This issue is particularly significant in a context mired in deep inter-ethnic distrust.

2.2. LITERATURE REVIEW: STATE BUILDING AND CONDITIONALITY

This literature review critically engages with the growing body of work that focuses on the interdependency of domestic and external factors in processes of political

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[198]   José Manuel Barroso. Edited quote from OHR, BiH Media Monitoring, 18 February 2006.
[199]   Chapter 4 through 7 provides a full analysis of these different forms of influence exerted during the negotiations.

reform. This area of study has tended to be neglected until quite recent times.[200] After

the collapse of communism, which revealed how international factors could prepare

the groundwork for the rise of vigorous democratic forces in specific contexts,

further attention was paid to exploring whether and how international dynamics

could contribute to promoting political change. Furthermore, as a result of various

developments such as the massive, multi-stranded EU enlargement process in CEE,

academic interest in exploring the interactions between domestic and international

actors in processes of institutional change grew rapidly. In particular, scholars

focused on the issue of 'conditionality' and external leverage (if not direct

intervention) on securing domestic change. This area of research was further

stimulated by the various state-building interventions that have taken place in recent

times; including Bosnia, Afghanistan and Iraq. Notwithstanding the sudden increase

of studies devoted to this area of research, many questions remain unanswered.

Under what conditions can we expect external actors to have an impact on domestic

politics? How do external and internal actors interact with each other? Can local

actors resist external influence?

Various strands of literature have grappled with the study of the external push in

the processes of domestic change in recent times; including the literature on post-

conflict state building and conditionality.[201] This section briefly reviews these;

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[200]   The interest in the interconnections between domestic and external variables was developed
earlier within the area of international relations. Indeed, Peter Gourevitch's *The Second Image
Reverse: The International Sources of Domestic Politics* (1978) looked into how domestic politics, as
a dependent variable, could be affected by the international system or by incidents taking place at the
international level (including trade, investment and war). By establishing two-way causal relationships
between both spheres – looking for example at how the international economic system impacted the
regime type and the formation of domestic coalitions – Gourevitch described what some authors
consider one of the most "rigorously formulated ad well-researched treatment of the international-
national relationship" (Almond 1989, 241), providing key theoretical propositions to account for the
impact of external policies in the distribution of interests at the domestic level, and giving domestic
politics an important role in accounting for the final outcome of external pressure. As he asserted,
"Some leeway of response to pressure is always possible," adding, "the choice of response therefore
requires explanation. ... [which] entails an examination of politics: the struggle among competing
responses" (Gourevitch 1978, 911). Notwithstanding the prominent role given to domestic politics, he
left the study of these dynamics for future investigation, and rather focused on the impact of
international dynamics such as war and trade.
[201]   Democratization studies have also focused on the external dimension since the early 1990s;
these studies have tended to focus on the study of global, systemic influences (including the use of
force, the spread of ideas, contagion dynamics and the effects of globalization), none of which relate
to the discussion at hand. Though some studies have showed an interest in exploring agency-driven
factors – foremost among these is Samuel Huntington's *Third Wave* (1991) –, these have been
intertwined with other systemic influences. The increasing number of democracy building
interventions in the late 1990s and early 2000s (through both direct external interventions and
democracy promotion programmes) added a new impetus to the research agenda on the study of the
interconnections between domestic and external factors in the area of democratization. Some of these

focusing on two overarching themes, namely the analysis of the intertwinements between domestic and external factors and the role of political elites.

2.2.1. Post-conflict State Building

The nascent literature on post conflict state building has provided new opportunities to learn about the interconnections between domestic and external actors. Both the failed record of peace building missions in the late 1980s and early 1990s (including Bosnia over the period of 1995 to 1997), and the emergence of complex, 'second generation' external interventions in post-conflict contexts (such as in Bosnia from 1997 onwards, Kosovo, Afghanistan and Iraq), have given rise in the late 1990s and early 2000s to a new research agenda within the peace building literature[202] that focuses on the experiences of externally-led state building processes in post-conflict societies.[203]

These studies have tended to focus on three major areas of research. Firstly, the weaknesses and strengths of external interventions; with a predisposed focus on the supply/external side and neglecting the two-way dynamics this study aims to explore.[204] Some of these studies have presented rather pessimistic accounts on the

studies looked at the impact of specific program-driven democratic interventions based on incentives rather than conditionality. These works, however, encountered enormous methodological problems that precluded them from reaching conclusive evidence about the way in which external influences may be effective in promoting democratic reforms in third countries. As Ethier (2003) and Carothers (1999) suggested, assessing the impact of these programs became very difficult given the lack of large-scale evaluations undertaken by the donors involved. Furthermore, these studies seemed to be driven by an interest to look into the specific record of program implementation and program effectiveness rather than to the exploration of process related dynamics, failing to provide a framework for the understanding of the dynamics involved in processes of domestic change where both external and domestic actors interact (see Knack 2004).

[202] This dissertation is not concerned with the literature on peace building, which has generally focused on both the implementation of peace agreements in the aftermath of conflict and the dilemmas involved in these operations (see for example Del Soto and Del Castillo 1994; Hampson 1996; Kumar 1997; Cousens and Kumar 2001; Cousens, Kumar and Wermester 2001; Stedman, Rothchild and Cousens 2002; Call and Cousens 2008; see also more recent accounts such as Jarstad and Sisk 2008; see also cross-case comparisons such as Doyle and Sambanis 2000 and 2006; Fortna 2004); nor the literature on state failure (see for example Zartman 1995; Rotberg 2004; Chesterman, Ignatieff and Chandra 2005). My research is instead focused on the unfolding of post-conflict state building, the so-called second-generation operations.

[203] Some of the key studies on post-conflict state building include: Caplan 2005a; Chesterman 2004; Fearon and Laitin 2004; Fukuyama 2004; Krasner 2004; Paris 2004. Some recent edited volumes include: Call and Wyeth 2008; Paris and Sisk 2009.

[204] See for example Paris 2004; Fukuyama 2004; Caplan 2005a; Chesterman 2004; Fearon and Laitin 2004; Krasner 2004; Cousens and Cater 2001. Some studies have considered the role of local elites (see for example Ottaway 2003; Barnett and Zürcher 2009). Marina Ottaway argues that the success of state buidling is dependent upon the constellation of local forces on the ground, especially

ability of external actors to create or influence the basis of modern states in post-conflict deeply divided societies;[205] some studies underscore the lack of international resolve and assertiveness,[206] the lack of sufficient resources to undertake such endeavors[207] and problems of multi-targeting and rushed deadlines.[208] As Chesterman states in a comparative study of transitional administrations, the most common mistakes of what he calls "benevolent autocracies" is that "the means are inconsistent with the ends, they are frequently inadequate for those ends, and in many situations the means are irrelevant to the ends."[209] Other studies have pointed to the creation of mechanisms of dependency between international and domestic actors that have turned inimical to building self-sustaining states.[210]

A second line of research has revolved around the long-term impact of institutions upon the conditions for sustainable peace (including studies on constitutional engineering). Particularly, these studies explore the impact of externally engineered institutions (such as the electoral system and constitutional arrangements) on the outcome of the state building process, and how states become consolidated after intra-state conflict.[211] A new research agenda has recently emerged within the conflict regulation and power sharing literature that converges with the state building focus on institutions in post-conflict, deeply divided societies.[212]

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when international engagement is limited. As Ottaway observes, "International attempts to rebuild institutions of collapsed states without a strong international presence is not only futile, but can also lead to dangerous outcomes, unless the donors undersand how power is distributed in the country and act accordingly" (Ottaway 2002, 1019). A systematic analysis of how local politics may impact the unfolding of externally driven state building processes is however still lacking.

[205]   See for example Hayden 1999.
[206]   Caplan 2005a; Chesterman 2004; Cousens and Cater 2001; Donais 2005; Belloni 2008.
[207]   See for example Chesterman 2004; Fearon and Laitin 2004. Some authors have criticized international actors for engaging in overly ambitious democratic reconstruction operations, especially given the limited resources available (Ottaway 2002 and 2003; Paris 2004).
[208]   See Belloni 2008.
[209]   Chesterman 2004, 239.
[210]   See Chesterman 2004; Fukuyama 2004; Ignatieff 2002; Chandler 2006. An alternative explanation is that "peacebuiders have adopted strategies that have reinforced previously existing state-society relations—weak states characterized by patrimonial politics and skewed development" (barnett and Zürcher 2009, 24).
[211]   See for example Kumar 1998; Paris 2004; Sisk 2009; Samuels 2006 and 2009. Kirsti Samuels, in particular, looks at postwar constitution building and the impact of the nature of the process (inclusive vs. exclusive) on the final outcome. The power sharing literature has also explored the impact of institutions on the long-term stability of post-conflict, divided societies (see for example Reilly 2001; Reynolds 2002 and 2008; Lake and Rothchild 2005; Weller and Wolff 2005; Wolff 2005b and 2009). Studies on constitutional engineering in divided societies, for example, focus on the role of institutions and state design, and on the impact of specific constitutional arrangements on the long-term democratization of divided societies (See for example Horowitz 2002 and 2004b; Lijphart 2004; Reynolds 2002; Hart 2001; Ghai and Galli 2006).
[212]   Some recent edited volumes include Roeder and Rothchild 2005; Noel 2005; O'Flynn and

Confronted with the pressing challenges of post-conflict societies, this recent literature has looked at the failing record of post-conflict power sharing arrangements. These studies attempt to provide an initial assessment of the sources of political and institutional instability of the so-called 'complex power-sharing arrangements'.[213] There are two different schools: critics of the consotiational model, who contend that complex power sharing institutions, based on the promotion of ethnic differences, have tended to perpetuate the sources of communal conflict and, in turn, undermined the basis of inter-ethnic cooperation;[214] and advocates of the consotiational model, who argue that not enough efforts have been devoted to adjusting the consociational model to the specific circumstances of post-conflict societies, and to incorporating the role of external actors.[215] Generally, these studies have focused primarily on institutions, although recent studies have explored the role of political elites in the functioning of complex power sharing arrangements. Some of these studies are further explored in the third section of this chapter.[216]

A third line of research within the state building literature focuses on particular themes within the state building experience, such as *inter alia* the role of transitional justice in the outcome of state building processes,[217] the role of civil society[218] and the

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Russell 2005; Weller and Metzger 2008.

[213]   Bosnia is a typical case of a complex power sharing. 'Complex power sharing' is referred to cases where power sharing "go[es] beyond one-dimensional arrangements offering 'just' autonomy, or power sharing, or minority rights bills or improved econmic development, etc. but combine a range of different mechanisms to address the concerns of all relevant parties" (Wolff 2009, ft. 1, drawing from Kettley, Sullivan and Fyfe 2001; see also Wolff 2007b; Weller and Metzger 2008). In other words, complex power sharing is "a practice of conflict settlement that has a form of self-governance at its heart, but whose overall institutional design includes a range of further mechanisms for the accommodation of ethnic diversity in divided societies, including those recommended by advocates of liberal consociationalism, integration and power-dividing" (Wolff 2009, 29). Complex sharing arrangements are often times compounded by external intervention and the presence of external actors who may act as guarantors of the institutional arrangement in place. Brendan O'Leary (2005), for example, labels the Bosnian model as a "complex consociation". This labelling is related to the presence of "international efforts to resolve national self-determination disputes; international involvement in the mediation, negotiation, arbitration, and implementation of peace settlements; and cross-border or confederal relationships ... for national minorities with their kin in other states" (O'Leary 2005, 34; also see McGarry 2008).

[214]   Some of the oft-cited shortcomings include: (1) the tendency of consociational models to institutionalize ethnic differences, hence perpetuating the sources of communal conflict. (2) The risk of immobilism at the institutional level. (3) And the predisposition of such models to encourage extremism and outbidding at the elite level as a result of the above (see for example O'Flynn and Russell 2005; Roeder and Rothchild 2005b; Sisk 1996; Zahar 2002).

[215]   For a discussion on this issue see for example Kettley, Sullivan and Fyfe 2001; O'Leary 2005; McGarry 2008; Wolff 2007b.

[216]   For example Zahar 2002; Zahar 2005a; Morrow 2005. Zahar's work draws from Stedman's study on the role of spoilers in peace processes (Stedman 1997).

[217]   See for example Thoms, Ron and Paris 2008.

[218]   Pouligny 2005; Belloni 2001; Pickering 2007.

impact of the economics of war in state building.[219] Neil Cooper, for example, looks at the impact of the dynamics associated with war economies on post-conflict peace building efforts; Achem Wennmann contends that post-war power structures benefit from the wartime economy; driving peace building resources away and working towards maintaining the post conflict status quo.[220]

Studies on Post-conflict Bosnia have followed similar lines of research. I identify four major overarching themes.[221] The first one focuses on the role of the international community; following similar lines as the broader literature on state building. Some studies have pointed to the lack of strategy and resolve on the part of the international community, and hence, have urged for a revitalized intervention;[222] others have argued against the pervasive, intrusive role of the international community, which has created mechanisms of dependence and opportunities for political irresponsibility, thus undermining state building in this country.[223]

A second overarching theme revolves around the role of Dayton institutions. Here the contention is made that Dayton has created too rigid of an institutional arrangement for inter-ethnic cooperation, and led to the "institutionalization of ethnicity."[224] As Florian Bieber has noted, the invasive fragmentation of power, including multiple ethnic guarantees granted to the three ethnic groups, has posed "long-term difficulties for the success of the political arrangement in Bosnia."[225] A third research line focuses on specific issues such as the economics of war. Timothy

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[219]   See for example Cooper 2004; Wennmann 2005; Pugh Cooper and Goodhand 2004. These studies draw from Collier and Hoeffer 2004.

[220]   Wennmann 2005.

[221]   Most studies on post-conflict Bosnia touch upon one or more of these overarching themes, but I use this classification for simplicity purposes. This review is succint in order to set up the basis of my own research and theoretical framework.

[222]   See for example Belloni 2008; Donais 2005; Cousens and Cater 2001.

[223]   See for example Chandler 1999; Bose 2002; Knaus and Martin 2003. Sumantra Bose has called for the return of full sovereignty to the locals. "The ultimate goal of international involvement in post-Dayton Bosnia is (or at least should be) to assist Bosnians make a transition from being *subjects* of an international mission to build frameworks of democracy, human rights and rule of law to becoming active, engaged *agents* of their own future(s)" (Bose 2002, 274).

[224]   Bieber 2004. As Florian Bieber has noted, "rigid institutional structures run the risk of 'over-institutionalizing' ethnicity, as they tend to be concluded at the high point of interethnic conflict. As such they frequently enshrine political representation and participation on the basis of group membership, which can 'freeze' ethnic confrontation and transpose most political disputes into ethnic ones" (*ibid*, 15).

[225]   Bieber 2002, 333. See also Chandler 1999; International Crisis Group 1999; Zahar 2008. These authors have also noted that some of the key power sharing arrangements may not work in post-conflict societies due to the experience of war and the lack of inter-ethnic cross-party coalitions (Bieber 2005; Zahar 2008). Recently, it has been argued that despite of the initial criticism of the peace agrement's rigidity, Dayton instituions have turned out to be rather flexible, foremost as a result of the pervasive efforts of the international community (Bieber 2006b).

Donais, for example, has focused on the political economy and economic reform of post-conflict Bosnia, with a special focus on the perpetuation of Bosnia's political economy of conflict.[226] He suggests that post-conflict Bosnia's power structures have generally benefited from the status quo, especially in the first few years after the war, and "stand directly opposed to the types of marketization and democratization strategies that the international community has pursued in the post-Dayton period."[227] A final argument is made within the literature on post-conflict Bosnia that focuses on the statehood problem in this country. These studies suggest that inter-ethnic intransigence stems from the fact that Dayton failed to assuage ethnic anxieties and resolve the statehood problem in Bosnia.[228]

Some of these studies have provided specific propositions about how external actors have impacted the practices of conflict regulation in post-conflict Bosnia.[229] I explore these in the third section of this chapter where I lay out my three-tiered framework.

2.2.2. Conditionality Studies

The literature on European conditionality that sprang up in the early 2000 has developed more sophisticated models regarding the intertwinements of both external and domestic dynamics; especially in reference to the two key variables of this research (namely the role of agency-driven factors and the two-way dynamics that feature in externally led processes of political reform).

The study of European conditionality (aka Europeanization literature) did not develop in a research vacuum, however. This literature built upon the literature on economic and political conditionality (i.e. first and second generation conditionality) that developed in the 1990s as a result of the emergence of conditioned aid in the 1980s and 1990s. Studies on first generation conditionality relied overwhelmingly on rationally based approaches. Tony Killick, Ramani Gunatilaka and Ana Marr, for example, used the principals bargaining model, and explored the structure of rewards

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[226]   Donais 2005; See also Pugh 2002; Bojičić-Dželilović and Kaldor 1999.
[227]   Donais 2005, 14.
[228]   Woodward 1997; see also Bose 2002. Donais argues, "the Bosnian conflict arose from competing visions of stateness among the countries' three main ethnic communities, and the Dayton Peace Accords can be viewed as having succeeded – at least to this point – in displacing this conflict from the military to the political realm" (Donais 2005, 4).
[229]   See for example Chandler 1999; Cox 2001; Zahar 2002 and 2005a.

and penalties that make it in the interest of the agent (the recipient) to act in a way that advances the principal's interest, "and which punishes deviance from that course."[230] According to their study, "each party uses all of the resources at its disposal to maximize its interests, and the resulting conditional 'deal' is a reflection of this bargaining process."[231] On the whole, these models focus on one-way power dynamics in which power relations are described as "the interaction of two agents, where one successfully exercises power over the other when the latter is forced to do something that it would not otherwise have done."[232] This type of conditionality is based on a set of contextual conditions that differ from the ones operating in processes of European integration and state building, including the motivation of the actors and the scope of the changes; being rather more sensitive and controversial in the latter.[233]

As for the political conditionality (i.e. aid programmes tied to the respect of human rights and democratic principles such as good governance), little systematic research has been undertaken given its weak formulation. Some observations have been made, but there has been no attempt to explore the interactions between local and external actors systematically. Gordon Crawford's study on political conditionality, for example, suggests that aid sanctions tend to fail in the majority of the cases as a result of their weak formulation and the strength of the states in which such conditionality is employed.[234] James Boyce stresses that the usefulness of aid conditionality in post-conflict environments depends on the distribution of power in the recipient country, but fails to elaborate further. He merely notes, "It is indeed possible to use aid conditionality as a tool for peace building. Its usefulness will vary depending on the [power] circumstances in the recipient country."[235]

Europeanization studies have also built upon the approaches on Europeanization that developed in the 1990s in relation to the process of European integration in member states. As a matter of fact, the analysis on the accession process in CEE

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[230] Killick, Gunatilaka and Marr 1998, 101.
[231] Collingwood 2004, 10. Similarly, Mosely, Harrigan and Toye (1995) use a rationalist approach to describe the dynamics of World Bank conditionality as "a series of bargaining games"; as these authors stated, the donor seeks "to influence economic policy in the manner desired by it, whereas the recipient resists all such attempts at influence which do not harmonize with its own political priorities" (Mosely, Harrigan and Toye 1995, 67).
[232] Collingwood 2004.
[233] Stokke 1995.
[234] Crawford 2001. See also Crawford 1997.
[235] Boyce 2002a, 1031; see also Boyce 2002b.

draws extensively from many of the concepts and questions that had previously puzzled scholars who focused on the impact of European integration on policies, institutions and polities of member states. Some of the key questions this literature addresses include: what are the domestic conditions that are more conducive to the transfer of EU rules, norms and beliefs? How does enlargement and conditionality change the identity, interests and behavior of governmental and societal actors? How does EU integration affect domestic policies, politics and polities and impact the process of institution building, policy-making and the emergence and development of political discourses? Furthermore, in what ways and to what extent does the EU affect domestic politics, policies and polities of accession countries?[236] In sum, the main goal of these studies is to explore the impact of the process of EU accession on reform trajectories, paying special attention to the degree to which the mechanism of conditionality and European incentives interact with (and are affected by) domestic factors, including political actors' preferences and interests, institutional constraints, political discourses, and the like.

The initial studies on EU conditionality and enlargement were based on rather static approaches,[237] but the literature has evolved into rather sophisticated and complex frameworks of analysis. The key assumption is that the process of EU integration and the conditionality framework should not be considered as uniform variables but rather as instruments enjoying different meanings and effects, depending on the time-frame, the context, the domestic actors and sectors involved, the credibility of the conditionality package and how it is applied.[238]

Three major theoretical traditions within the Europeanization literature have

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[236] See Schimmelefennig and Sedelmeier 2002; Borzel and Risse 2000. Other questions the Europeanization literature aims to explore within the enlargement context include the relationship between conditionality and compliance. How does this relationship work? Is there a strong connection between both variables? In other words, is there a causal and direct relationship between the application of conditionality and compliance? What are the conditions that affect this relationship? How do incentives alter 'the calculation of domestic agents' in the proper direction? (Checkel 2000). These issues are secondary to this research given the unclear formulation of constitutional reform within the conditionality framework but the conclusions will offer a few tentative propositions.

[237] See for example Grabbe and Hughes 1998; Grabbe 2002b. Heather Grabbe for example argued initially that the impact of conditionality on CEE is dependent upon two sets of variables: the precision and certitude of EU demands, and the degree of political will and institutional capacity on the part of the domestic actors (i. e. whether the candidate countries are ready to take up on the implications and challenges of EU enlargement). In these initial studies, she contends that conditionality is likely to be largely effective when the political salience of the issue at hand is high, even if there is ample room for uncertainty regarding the policy agenda, the standards involved and the timing. If the political salience is low (as in social policy), on the contrary, then observance of the acquis communitaire is likely to be rather low and its application less strict (Grabbe 2002b, 16).

[238] See Hughes, Sasse and Gordon 2004. See also Jacoby 2004.

addressed the questions above,[239] including the sociological institutionalism, the historical institutionalism and the rationalist approach (the latter being the most relevant approach for the purposes of this research given the focus on actors and veto points).[240] According to the socio-institutionalist approach Europeanization leads to domestic change through socialization and collective learning resulting in norm internationalization and the development of new ideas that are conducive to domestic change.[241] The analysis of these mechanisms are however outside of the scope of this research.

The second approach is represented by the historical institutionalism, which places the emphasis on the role of institutions and structures and its restricting effects upon actor's options and preferences. According to this approach, existing institutions tend to be stable over time, and the changes to be expected are minimal.[242] While this dissertation does not relate to the study of institutions and their effects upon actor's choices, the institutional approach offers good insights on the study of institutional change within the process of EU accession. As a case in point, by looking into the regionalization policy and drawing from historical institutionalism and path dependency approaches, Hughes, Sasse and Gordon contend that there is no causal, clear-cut relationship between EU conditionality and institutional outcomes.[243] Furthermore, they argue that the ambiguity surrounding EU conditionality in enforcing a specific regional model (which turned conditionality

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[239]   This research does not consider the positivist approaches towards Europeanization, in which causal explanatory value is given to the relationship between conditionality and domestic change (See for example whitehead 1996; Schmitter 1996; Dimitrova and Pridham 2004). According to these studies, causality is thus assumed to have a direct impact on reform trajectories and little attention is given to the degree to which the mechanism of conditionality and Europeanization interact with (and are affected by) domestic factors. In addition, positivist approaches have tended to adopt a top-down approach whereby a hierarchical relationship between the EU and candidate countries is presumed. The research agenda within this approach is thus constrained to studying the outcomes of conditionality, without questioning or measuring its relative impact. The study of the interplay of intervening variables affecting conditionality is also neglected. In addition to the positive school, there is a body of literature that has stood on the other side of the spectrum, arguing that the impact of EU conditionality has only shown on discourse rather than on actual rules, structures and processes. This body of research, however, is mostly circumscribed to the study of EU conditionality outside the European accession orbit, primarily in Europe's neighboring region (see for example Holden 2005).
[240]   Some authors have used various approaches conjunctively. Vachudova (2005), for example, uses the historical institutionalism and rationalist actor-driven approaches. Her research is however concerned with a question that is outside the research scope of this dissertation, namely the reasons why EU rewards and benefits were assessed and implemented differently across CEE, with a particular emphasis on the differences between CEE and the so-called Eastern laggards (Romania, Slovakia and Bulgaria).
[241]   Borzel and Risse 2000.
[242]   Heritier 2005, 202.
[243]   Hughes, Sasse and Gordon 2004; see also Brusis 2002.

into a highly politicized and selective instrument) prevented the EU from having a more salient role in shaping institutional structures in this sector area. As a result, it is argued that conditionality ought to be seen as "a process which involves a tool of differentiated and shifting instruments" that need to be studied on a case by case basis.[244] These authors also contend that, "on balance, the evidence suggests that path dependency in the form of domestic political considerations, informed by historical legacies, played a more salient role in regionalization than a clear causative effect of real or perceived EU conditionality."[245] Furthermore, even though Hughes, Sasse and Gordon argue that informal conditionality is generally rather prominent in shaping institutional outcomes as a result of the ambiguity of formal conditionality (giving the commission ample leeway to freely monitor and shape reform trajectories), institutional outcomes were in the end overwhelmingly driven by domestic factors stemmed from the respective transitions from communism.[246] In their own words, "the transition was an active interface with enlargement which generated preferences that often overrode external incentives and pressures."[247] These findings contribute to establishing a new conceptual relationship between transition processes and enlargement, a sector area that has not been fully explored.

Finally, the rationalist tradition, the most relevant for the purposes of this research, adopts an actor-centered approach. This approach investigates domestic actors' preferences and interests while pointing simultaneously to other political variables including: institutional constraints and power asymmetries; broader political processes such as political transitions; and variables associated with the process of enlargement. One of the basic claims of this approach is that actors "will use EU policy requirements as a resource in order to strengthen their position in the national political conflicts."[248] These studies are, however, based on the neglect of informal conditionality and domestic constraints other than the so-called adoption

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[244]   Hughes, Sasse and Gordon 2004, 174. Hughes, Sasse and Gordon also argue, "the unevenness of the *acquis* was reflected in a great deal of variation in the leverage of conditionality, and gave the commission and the CEEC governments a wide degree of flexibility" (*ibid*, 27) Similarly, Martin Brusis asserts, "the impact of the EU on regionalization processes in the accession countries has been diffuse and ambiguous" (Brusis 2002, 554)
[245]   Hughes, Sasse and Gordon 2004.
[246]   *Ibid.*
[247]   *Ibid*, 174. Similarly, the post conflict condition may be regarded as a key transition/contextual variable that affects the process of Europeanization in such way that new conceptual relationships between European accession and institutional change need to be established in these contexts.
[248]   Heritier 2005, 202.

costs and the ability to form coalitions (typical of the rational choice approach).

Judith Kelley's study on ethnic politics, for example, revolves around the issue of domestic receptivity.[249] According to Kelley, domestic openness to external influence is a function of both the receptivity of individual policymakers and their ability to form coalitions.[250] She places greater emphasis on the role of domestic variables, including actor's preferences, domestic power balances and likely veto players. She finds that conditionality theories that solely rely on the role of incentives to account for domestic change to be insufficient, given their disregard of the role of uncertainty that is built in the process of enlargement. As she contends, "the theory of incentive use rests on the proposition that linking membership benefits with specific policies can entice domestic actors to change their behavior. However, ... uncertainty complicates decision-making," forcing domestic actors to think outside purely rational cost-benefiting frameworks and abandon utility maximizing calculations. Uncertainty, as a result, tames pure rationalist accounts; it also influences actor's preferences and views regarding the policy issue at hand,[251] and the actor's ability to form supporting coalitions.[252]

Wade Jacoby's comparative study on the enlargement of the EU and NATO is another rationality-based study. He constructs a theoretical framework, namely the 'embedded rationalism,'[253] to address the following question: how Western policies are taken up by the weak states of CEE? How do elites choose when to comply, when to openly resist EU demands, and when to simply agree on paper while shrinking them in practice?[254] According to Jacoby's model, domestic elites act rationally in the face of two material incentives; one is domestic (i.e. the voters), and the other one is external (i.e. international organizations' resources). The basic premise of rational institutionalism is that elites will pursue emulation when it brings the prospect of

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[249]   Kelley 2004a. While Heather Grabbe (2002b and 2006) adopts a top-down approach, focusing on how and under what circumstances conditionality may be more or less effective, Judith Kelley focuses on the balance of domestic power and how that affects the impact of external leverage.
[250]   Kelley 2004a.
[251]   Kelley differentiates three types of receptivity to external influence: first, policymakers prefer international policies and therefore external pressure is irrelevant or deemed unnecessary. Second, policymakers despite of being not entirely in favor of the policy, have no major reservations. Third, policymakers' preferences differ greatly from external prescriptions and even benefit from the status quo, "even if the country as a whole stand to gain from admission from to the IOs" (Kelley 2004a).
[252]   Kelley 2004b, 431.
[253]   Jacoby's model (2004) draws from Putnam's and Tsebelis' two-level game models (Putnam 1988; Tsebelis 1990).
[254]   Jacoby 2004, 202-203.

voter approval and international resources. In addition to the lure of these dual incentives, elite's actions are institutionally constrained (elites are thus embedded) by two factors: (1) detailed normative models that are imposed upon them, and (2) domestic historical structures and conservative actors that restrict elite's charted reform courses. The interplay of these factors (namely the type of external pressure and the degree of domestic constraints) results in four different types of emulation, ranging from pure copy to approximate emulation.

Frank Schimmelefennig and Ulrich Sedelmeier also argue that rule transfer is best explained according to the rationality based bargaining model. In particular, they argue that compliance with EU transfer depends on the credibility of conditionality and the domestic costs of rule adoption (the lower the costs the greatest the chances of adopting EU rules). However, the impact of these variables depends greatly on one intervening variable, namely the different types of conditionality. In their words, "In the context of democratic conditionality, domestic adoption costs severely limited the effectiveness of EU conditionality—even when it was credible and rewards were sizeable ... By contrast, in the context of *acquis* conditionality, variation in the size of domestic adoption costs only accounted for the speed of rule transfer but did not matter for its effectiveness."[255] These authors recognize the fact that the different models analyzed can have an accumulating impact on domestic politics and conclude that at best "the dominant logic underpinning EU conditionality is a bargaining strategy of reinforcement by reward under which the EU provides external incentives for a target government to comply with its conditions. However, these dominant features of conditionality might be superseded by other mechanisms that can also lead to rule transfer."[256]

2.2.3. A Critical Review: International Push in Post-Conflict, Divided Societies

While the arguments outlined above present well-informed accounts of the interconnections between domestic and external (f)actors; they are somewhat deficient in the context of post-conflict Bosnia.

I identify two major shortcomings in the literature on post-conflict state building. Firstly, these studies have generally failed to acknowledge the impact of external

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[255] Schimmelefennig and Sedelmeier 2004, 663.
[256] *Ibid*, 662.

incentives. There is no attempt to more systematically study the way in which European and international conditionality is working in post-conflict Bosnia. Secondly, there is a somewhat static understanding of the dynamics of state building,[257] paying little attention to the processes and the interactions that occur not only between local and external actors but also at the domestic level within each ethnic group.[258] Some studies have considered the different interactions in place,[259] but these efforts have generally failed to look systematically at the different set of interactions that take place in post-conflict Bosnia; specifically the inter-ethnic, intra-ethnic and supra-national levels.

My research aims to fill these gaps by examining a major process, and breaking down the analysis into the specific political interactions that take place between domestic and external actors; including the role of external incentives in the shaping of local strategies and calculations. The overall goal is to see how the interactions between domestic and external actors affect the overall policy outcome in the state building process.

With respect to the Conditionality and Europeanization literature (especially the actor-centered, rationalist approaches), I identify two major shortcomings. The first set of shortcomings is related to the reliance on rationality-based models and adoption costs that fail to account for situations where the status and form of the state is contested by ethnic groups in post-conflict societies. Jacoby, for example, works under the assumption that domestic actors are benefit maximizers; his rationality model is however based on the assumption that conditionality is applied in a

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[257]   It is a static understanding of post-conflict Bosnia because there is no attempt to study systematically how both external and internal factors interact to promote practices of conflict regulation.

[258]   The power sharing literature focuses on the interactions at the intra- and inter-ethnic levels, but has failed to add the third level. Recent studies have considered the role of external actors (see for example Belloni and Deane 2005; O'Leary 2005; Wolff 2005a; McGarry 2008), but this variable has remained undertheorized. In sum, these studies have generally failed to consider the different elements that this thesis aims to explore, namely the multiple level interactions between domestic and external actors, and the push of external conditionality in the final outcome.

[259]   Michael Barnett and Cristoph Zürcher for example look at the strategic interactions of peacebuilders, state elites and subnational elites in state building (Barnett and Zürcher 2009). According to these authors, the strategic interactions of these actors shape the peace building agenda, leading to four different outcomes, namely cooperative peace building (when local elites accept the peacebuilders' agenda), compromised peace building (when peacebuilding is the result of a negotiated agenda between the local and external elites), captured peacebuilding (when local elites "redirect the distribution of assistance so that it is fully consistent with their interests") and conflictive peace building (which includes the use of coercive tools) (ibid, 25). While the effort of looking at local and external interactions is noteworthy, this study fails to explore the interactions at the intra-ethnic level featuring in deeply divided societies.

functioning state and a relatively homogenous society. Also, though Kelley's study of ethnic politics introduces the level of uncertainty associated with the EU accession process as an element of distortion to pure cost-benefit calculations, she does not look into how the existence of dysfunctional states might also affect pure cost-benefit rationality models. In short, the Europeanization approaches, especially the actor-centered ones, fail to account for how adjustment to European norms takes place in deeply divided societies, and in contexts where the very existence and form of the state is challenged by deeply ethnic divisions.[260]

While some studies on Europeanization have hinted at the status of the state as a possible intervening variable in conditionality compliance in the Western Balkans, this issue has been rather under theorized and referred to in a rather descriptive manner. An exception to this pattern is Gergana Noutcheva's study on EU conditionality and sovereignty.[261] She incorporates the variable of statehood into the analysis of conditionality compliance in the Balkans, looking into the cases of Bosnia, Serbia and Bulgaria. By exploring the impact of the EU in statehood structures in the Balkans, she suggests that EU conditionality may incur higher costs in semi-sovereign countries. As she notes, "The EU's objective of 'state-building' has prompted the formulation of conditions that intervene in the statehood of some EU potential candidates against the promise of EU integration. This has changed not only the nature of the EU's external influence on the semi sovereign cases but has also raised their costs of compliance with EU demands."[262] Notwithstanding the notable effort to explore the impact of conditionality in the Balkans, the language is generally focused on adoption costs, failing to fully account for the rather complex political and social establishments in deeply divided societies such as Bosnia.[263] My research provides a more informed account on how the divisive nature in Bosnia

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[260]   As outlined in Chapter 1, the Bosnian state enjoys questionable legitimacy at both the societal and elite levels.
[261]   Noutcheva 2006.
[262]   *Ibid*, 239-240.
[263]   Some other works have focused on the role of EU conditionality in the Western Balkans, but these are rather descriptive. Maurizio Massari, for example, points to the level of cohesiveness in national institutions as one among various variables that affect how Western Balkan countries progress towards EU integration and respond to EU-generated incentives for reform (Massari 2005). He uses the case of Bosnia to illustrate how "the persistent struggle between forces of integration and separation ... and the weakness of self-sustaining central institutions have impeded BH's efforts to present itself as a normal nation-state capable of promoting a clear and unified pro-European policy" (ibid, 262). Notwithstanding Massari's initial attempt to explore the different reform trajectories in the Western Balkans, he does not theorize about the way in which the different intervening variables impact the resulting outcomes.

plays out in the overall reform process.

The second set of problems associated with the conditionality literature relates to the bargaining dynamics of adjustment to EU standards. Europeanization studies draw on Robert Putnam's two-level bargaining framework of international negotiations in accounting for the process of EU accession.[264] Putnam's framework[265] focuses on a game played out in two levels; specifically the domestic level, with the chief negotiator having to bargain with his constituency and other domestic players that may or may not support the negotiations; and the international one, where the negotiator bargains with other international negotiators who are also constrained by domestic games. Putnam argues that the bargaining power of the negotiator will be affected by the way domestic games are played out and by how much domestic leeway is granted for him. At the same time, the negotiator will use the progress of discussions at the international level to garner further/additional support at the domestic level. All of these games result in a complex set of rationally-based propositions that are built around the notion of 'win sets' at the domestic level (all possible agreements that would give the necessary majority among the constituents). These games account for both the process and final outcome of the international agreement at stake.

Drawing from this model, Europeanization studies look at the process of European accession as a bargaining process that develops in two different playing fields; namely at the domestic one where reform-oriented actors and those who value the status quo squabble, and the European one where domestic and EU elites interact with each other. I argue that this model is too simplistic; as it does not capture the nuances and complexities of the multiple levels of interactions involved in deeply divided societies. Drawing from the conflict regulation literature (which breaks down the local game into two sub-level games) I propose a three-tiered framework to study the state building process in Bosnia in the context of EU integration. This three level framework examines elite interactions at the intra-ethnic, inter-ethnic and supra-national levels. This suggests that a fruitful theoretical venue to explore is an examination of the propositions of the conflict regulation and plural society theories in reference to these interactions.

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[264]   See for example Grabbe 2006; Kelly 2004a; Noutcheva 2006. The major difference between the bargaining model in use in international negotiations and the one in EU accession is the asymmetry of power between the domestic and the international actors.

[265]   Putnam 1988.

2.3. FROM THE TWO-LEVEL TO THE THREE-LEVEL FRAMEWORK: CONFLICT REGULATION IN POST-CONFLICT, DIVIDED SOCIETIES

This section is devoted to laying out a three-level framework to account for the EU-led process of state building in post-conflict, deeply divided societies such as Bosnia, and draws from the literature on conflict regulation and plural society theories.[266] This literature identifies two key levels of analysis in post-conflict societies; namely the intra- and inter-ethnic level. I incorporate a third level, i.e. the external push, and bring the three levels together in the study of post-conflict Bosnia. The framework focuses on the patterns of behavior befitting political elites in war-torn, deeply divided societies, and on the dynamics involved in the process of institutional adjustment to external norms and standards.

While conflict regulation and plural society studies have generally focused on the study of political stability in divided societies;[267] this dissertation uses the dimension of conflict regulation as a proxy for accommodation/adaptation in the context of adjustment to external norms and policies. Adaptation to external standards will occur when domestic elites engage in conflict regulation and inter-ethnic cooperation. On the contrary, entrenchment and status quo will result from domestic actors' failure to engage in conciliatory behavior.[268]

The dimension of conflict regulation is thus used as an alternative framework to rationality-based approaches, and is analyzed at three different levels, including: (1) the inter-ethnic level, which involves the study of political dynamics that take place between ethnic groups. These dynamics bear a direct impact on conflict regulation given that all ethnic groups need to reach a compromise; (2) the intra-ethnic level, which looks at the dynamics of intra-ethnic political competition and its impact upon inter-ethnic cooperation (these two levels are mutually reinforcing); and (3) the

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[266] In particular, my focus is on those studies that focus on the role of political actors.

[267] See for example Nordlinger 1972; Rabushka and Shepsle 1972.

[268] Europeanization authors have usually referred to various possible policy outcomes in the process of Europeanization, two of which are of relevance for the purposes of this research: adjustment (i.e. transformation), which involves adjustment or acceptance of the policy or standard at stake; and entrenchment or status quo, a situation in which domestic actors oppose or fail to implement the EU-induced reform. This research is specifically concerned with the dynamics involved in the inter-elite bargaining process that may lead to either transformation or entrenchment as a result of either accommodating dynamics among ethnic groups or mutual inter-ethnic intransigence.

supra-national level or 'third-level,' where the interactions between domestic and external actors takes place with important reverberations on inter-ethnic and intra-ethnic conflict regulation. The impact of external actors upon conflict regulation is indirect and may only work through the mechanisms of external influence reviewed in section two of this chapter; including positive and negative rewards, assistance, persuasion, and pressure. It is against this multi-level framework (see figure 2.1 for a basic sketch of conflict regulation in deeply divided societies) that the dynamics involved in the process of constitutional reform will be analyzed in the following chapters.

Figure 2.1. External Conflict Regulation in Post-conflict, Deeply Divided Societies
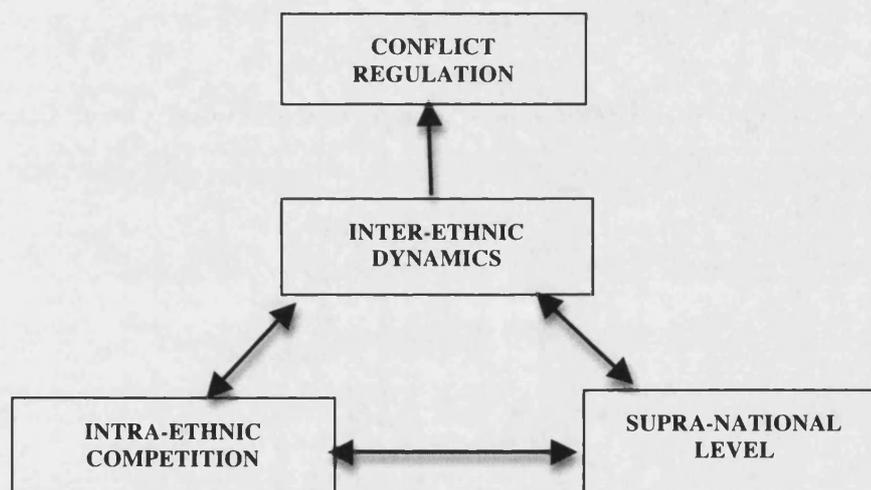
2.3.1. The First-level: Inter-ethnic Relations in Post-conflict, Divided Settings

The analysis of elite interactions at the inter-ethnic level needs to be done in light of two basic considerations. The first is represented by the sources of ethnic conflict,[269] and by extension, the sources of conflict regulation in divided societies, which "cannot be understood without a psychology, an explanation that takes account of the emotional concomitants of group traits and interactions."[270] In order to learn more about how the psychological and social underpinnings of inter-ethnic relations affect conflict regulation practices, it is necessary to first look at the status of the different ethnic communities operating in a given society. This is related to the distinction that Donald Horowitz makes between advanced and backward groups based on the perceptions that groups have of themselves vis-à-vis the state and other groups in the polity.[271] This categorization is pertinent in that groups may develop a sense of uncertainty and subordination that exaggerates the perception of insecurity, "producing extreme reactions to modest threats"[272] and hence undermining inter-ethnic accommodation.[273] Horowitz, for example, suggests, "Backward groups have frequently exhibited severe anxiety about threats emanating from other groups. One form of this anxiety is apprehension about being dominated."[274] Under such contexts, "every issue can then become a survival issue,"[275] especially under conditions of demographic and geographic insecurity.[276] Following similar lines, Eric Nordlinger

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[269]   Ethnic conflict is referred to the competition among ethnic groups for power, resources, opportunities, status, or respect, by peaceful means (Esman 2004a and 2004b). This competition may turn violent under some circumstances but such situation is not discussed in this article. For a discussion on the root causes of ethnic conflict see Horowitz 1985; Posen 1993; Gurr 1995 and 2000; Fearon and Laitin 1996 and 2003; Lake and Rothchild 1998; Walter and Snyder 1999; Rose 2000; Kaufman 20001; Collier and Hoeffler 1998; Collier 2003; Wolff 2007a.
[270]   Horowitz 1985, 181-2.
[271]   This article uses the advanced-backward classification as based on perceptions and not in relation to a socioeconomic or numeric status. Though there seems to be an economic and social status dimension in the backward-advance classification that is not fully present in Bosnia, it is a useful classification when defined along the following lines: "to be backward is, first and foremost, to feel weak vis-à-vis advanced groups" (Horowitz 1985, 167).
[272]   Horowitz 1985, 179.
[273]   Horowitz claims that "the backward-advanced dichotomy is not the only possible dimension along which conflict-producing comparisons can be made, but it is obviously the most powerful and widespread dimension, given the history of group interactions in Asia and Africa and the fact that imputed traits are the currency of intergroup comparison" (Horowitz 1985, 182).
[274]   Horowitz 1985, 175.
[275]   *ibid*, 176.
[276]   In reference to this, Horowitz claims, "To an outside observer, the fear of succumbing to the superior numbers or capacities of another group and disappearing must be regarded as extreme and irrational. Still, these apprehensions persist, coloring group relations in many ways" (Horowitz 1985, 179)

claims that "anxiety [in deeply divided societies] generally inspires a tenacious attachment to the immediate graspable status quo as a means of relieving psychic insecurity; change is rejected because it represents an uncertainty which can only deepen existing anxieties."[277] All of these anxiety-driven concerns are generally not conducive to inter-ethnic conciliatory behavior.

In addition to the 'advanced-backward' dichotomy, there are two additional classifications that are prominent in the context of plural societies as described by Horowitz. The first one is related to the distinction between ranked and unranked systems, based on the coincidence or non-coincidence of ethnic groups with class/status differences respectively. According to Horowitz, this categorization is pertinent given the fact that inter-ethnic relations tend to be more unpredictable in unranked systems such as Bosnia. The second distinction is concerned with the locus of group relations; which regards ethnic politics as a function of the group size in relation to the state, with important consequences for inter-ethnic relations. The basic distinction is formulated against two ideal types, namely dispersed systems, "where group loyalties are parochial, and ethnic conflict is localized"[278] and centralized ones (not in the territorial sense), such as Bosnia, where groups are large and their relations are constantly present at the center of state level politics. According to Horowitz, different tensions and demands beset each of these systems. In cases where groups are large and centralized, the claims of one group tend to be made at the expense of the others, resulting very often in inter-ethnic intransigence or non-cooperation. This element becomes all the more critical when issues of life and death are discussed; running counter to patterns of inter-ethnic conciliatory behavior.

The second key notion relevant at the inter-ethnic level (which is related to the experience of violent conflict), is based on the assumption that patterns of political behavior in post-conflict, divided societies are different to those expected in divided but stable democracies where a strong sense of civic bond nourishes inter-group trust. Indeed, the experience of violent conflict between groups tends to aggravate the aforementioned anxieties and incorporate additional ones. It is thus reasonable to assume that under such circumstances anxiety driven concerns become more prominent (especially as a result of the recent experience of inter-ethnic violence), and that behavioral and rationality models that are built to describe divided societies

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[277]   Nordlinger 1972, 68.
[278]   Horowitz 1985, 37-38.

in stable democracies may not be valid in societies emerging from civil war where inter ethnic distrust is widespread. As Donald Rothchild has argued, though ethnic groups can be assumed to behave as utility maximizers, given the fact that "tangible interests" are at stake when negotiation and bargaining processes are in place,[279] "accommodations are extremely difficult to make in situations where groups fear for their future and thus make nonnegotiable demands that cannot be resolved through a process of mutual adjustment."[280] In this bargaining encounter, Rothchild suggests, "The interactions taking place between group representatives tend to reinforce the boundaries between ethnic-based interests."[281]

The latter postulation is critical for disputing one of the most contentious notions in conflict regulation and power sharing literature; namely Lijphart's idea that political elites in divided societies are prone to conciliatory behavior.[282] While such assumption may hold true in relatively stable, Western European democracies (the original focus of Arend Lijphart's theory on consociationalism), post-conflict, deeply divided societies have shown little evidence of such accommodating behavior.[283] By using rationality logic in post-conflict, consociational arrangements, Marie-Jöelle Zahar, for example, claims that post conflict societies exhibit 'worst-case scenario' characteristics in terms of necessary conditions for elite accommodation.[284] The lack of cooperation is, to some extent, the result of a set of factors: (1) a lack of inter-ethnic trust; (2) the recent memories of violence (as well as the barbaric nature and conduct of the conflict), which turn inter-ethnic

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[279]   Rothchild 1986, 66.
[280]   Rothchild 1997, 4.
[281]   *Ibid.*
[282]   Lijphart's argument follows that in recognizing the dangers associated with engaging in uncooperative behaviour – immobilism and the potential disintegration of the polity –, elites "make *deliberate efforts to counteract the immobilizing and unstabilizing effects of cultural fragmentation*" (emphasis in text, Lijphart 1969, 212). Lijphart later recognizes that accommodation works best when there is a previous tradition of inter-ethnic cooperation (Lijphart 1990).
[283]   In fact, some authors have noted that while elite cooperation is the quintessence of stability in divided societies and consociational democracies, the reverse, namely "the situation in which deep social divisions are not compensated for by elite cooperation," make consociational democracies verge onto a centrifugal type, as opposed to the centripetal democracy where social cleavages do not reinforce each other (Andeweg 2000, 510). John McGarry and Brendan O'Leary (1993) have also suggested that consociationalism may only be practicable in moderately rather than deeply divided societies. Similarly, as Giacomo Sani and Giovanni Sartori (1983) have argued, "political mobilization along ethnic lines militates against moderation as political leaders discover the advantages of developing defensive electoral strategies that seek to maximize support within one segment, a 'catch-self' strategy" (Sani and Sartori 1983, 332. Quoted from Mitchell 1995, 774).
[284]   Zahar 2002.

cooperation into an existential matter;[285] (3) and the difficulties involved in mustering a sense of civic bond (which sometimes remains absent for long); specifically in a context where power sharing institutions promote political mobilization along exclusive ethnic lines, and keep inter-groups interactions to the minimum.

The idea that elites in divided societies are prone to accommodation behavior may be misleading, but this dissertation does not suggest that inter-ethnic accommodation is impossible in all cases. Nordlinger, for example, identifies four circumstances in which conflict regulation motives may develop in deeply divided societies, including:[286] (1) an external threat or danger that submerges internal conflicts (a factor broadly absent in the context of Bosnia). (2). An interest in avoiding bloodshed and suffering within the leader's ethnic group. (3) The desire to acquire or retain political power, a factor intimately dependent upon dynamics at the intra-ethnic level (which the second level of analysis explores). (4) The belief that intense conflict may undermine the economic well being of the leader's ethnic group. While none of these factors relate directly to the political and economic circumstances in Bosnia, they suggest that conflict regulation in deeply divided societies may be dependent upon the dynamics found at the intra-ethnic and supranational levels,[287] as addressed in the following sections.

2.3.2. The Second Level: Intra-ethnic Dynamics and the Politics of Outbidding

The second level of analysis is devoted to the nature of intra-ethnic elite competition and its reverberations on conflict regulation at the inter-ethnic level. One of the key theoretical contributions of the conflict regulation literature in this area is the notion that conflict regulation in divided societies is the result of political dynamics at both the inter- and intra-ethnic levels. Nordlinger's study represents one of the earliest contributions to this area of research, and offers a pioneering framework on how

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[285] Bieber for example argues, "In post-conflict societies ... the parties that will be participating in one government have frequently been at war with each other during the conflict, making cooperation particularly difficult" (Bieber 2005, 93).
[286] Nordlinger 1972.
[287] We could thus argue that two key trigger points may affect the interest, goals and strategies of domestic actors: power struggles within the group members and interactions with external actors. This dissertation argues that the emotional underpinnings do also play a role, especially when heated questions are placed at the negotiation table.

elite's motives and political dynamics at both the intra- and inter-elite levels translate into conflict regulation in post-conflict, divided societies. For Nordlinger, the issue of political security, especially the position of political leaders within their own political party, represents a key variable in accounting for how conflict regulation motives may or may not translate into conciliatory practices at the inter-ethnic level. Though Nordlinger's claims are somewhat tautological at times (especially when he explores the translation of elite's motives into conflict regulation behavior), his basic assumption is that insecure leaders, whose position within the party may be challenged by either second-rank officials or when the chances of potential splits are high, will be far more reluctant than secure leaders to take serious risks and act upon their conflict regulation motives. As he points out, "leaders motivated toward conflict regulation are reluctant to act upon their motivations when they believe that such actions may result in a deep split within their conflict group,"[288] which could further endanger and weaken their positions.[289]

In addition to intra-party dynamics, there are other variables that need to be factored into situations of intra-ethnic pluralism,[290] where important questions of authenticity become prevalent and competition leads to the 'politics of outbidding'.[291] The general assumption in contexts where two or more parties compete against each other for support in the same ethnic pool is that cross-group cooperation and inter-ethnic accommodation is less likely.[292] In other words, the more intra-segmental party competition, the less likely the ability of ethnic-based parties to cooperate inter segmentally,[293] which results in the development of centrifugal dynamics in party

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[288] Nordlinger 1972, 66. This is a hypothesis that should be empirically tested, as the opposite may hold true, namely a situation in which leaders that are inclined to violent conflict behave moderately, fearing further splits within their party.

[289] The elite's structural predominance over non-elites is a determining factor in Nordlinger's account for elite's engagement in conciliatory behavior.

[290] For example, when plural party systems develop within each ethnic group. Horowitz claims that even if most ethnic groups enter democratic politics represented by one party or by one group that has a dominant hold over the group's support, "in many cases, however, sharp party competition later emerges for the adherence of group members. Usually, this is preceded by a split in the dominant party, though it can also take the form of entirely new parties with entirely new leaders" (Horowitz 1985, 349).

[291] *Ibid*, 359.

[292] See Rabushka and Shepsle 1972; Horowitz 1985; Gagnon 1995; Mitchell 1991 and 1995; Wolff 2005a. For Horowitz, the centrifugal character of the competition increases the political distance between groups "as to propel them toward violent outcomes, including secession" (Horowitz 1985, 358).

[293] Mitchell 1995. In reference to the situation of Northern Ireland, Stefan Wolff for example argues that "all political parties compete for a strictly limited pool of votes within their own political space ... With the dominant view being that there are too few chances to attract voters from the other

competition.[294] Paul Mitchell, for example, explains that such dynamics are related to the threats (or reality) of a counter-mobilization following a party's overture to moderate stances, which undermines the political security of political leaders and hence the incentives for inter-segmental cooperation. In Mitchell's words, "any moderate overtures made by one party within the segment are likely to become the basis for the mobilization of a rival party (if one does not already exist) that will vociferously denounce the betrayal of the group's vital interest. The threat (or reality) of such a counter-mobilization constrains the independence of elites and directly promotes a centrifugal direction in party competition."[295] Philip Gagnon offers a somewhat similar explanation of this phenomenon. He argues that in case of potential threats to the group leaders' positions and impending challenges to the status quo from within their own ranks, some elites may respond by provoking external conflict to shift the focus of the political competition to an external threat; "Part of this agenda-setting or discourse-shaping strategy takes the form of the struggle over authenticity, that is, the definition of what makes a real Serb, Croat, Aleut, etc."[296]

Further empirical evidence is needed, however, in order to better understand how intra-ethnic dynamics affect the outcome of inter-ethnic cooperation and vice-versa. Three observations are in order. Firstly, outbidding dynamics may be more prominent in situations where the counter-mobilization threat stems from forces that may have a chance at making substantial inroads in the power base of the dominant parties.[297] Secondly, political outbidding may be caused by factors other than intra-ethnic competition; as recent empirical studies have suggested. By looking into the dynamics of intra-Serb competition prior, during and after the war in former Yugoslavia, Nina Caspersen argues that intra- and inter-ethnic radicalization can, in fact, be caused by other factors such as kin-state involvement.[298] Finally, the risk of political outbidding may not necessarily lead to destabilization, radicalization and

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side, election campaigns become intra-community events and lead to increasing polarization and radicalization, essentially strengthening hardliners at the expense of moderates in each community. The lack of transfer votes thus becomes a self-fulfilling prophecy" (Wolff 2005a, 52-53).

[294]   In other words, intra-segmental party competition may be correlated with inter-ethnic centrifugal dynamics.

[295]   Mitchell 1995, 779.

[296]   Gagnon 1995, 2. See also Gagnon 1994/1995.

[297]   This is the case of previously opposition parties SNSD and SBiH.

[298]   See Caspersen 2006. Caspersen has argued that "the dominance of the ethnic cleavage was not an automatic result of the formation of ethnic parties in Croatia and Bosnia. The ability of the ethnic or nationalist parties to ensure the dominance of this cleavage and hence the marginalization of non-ethnic rivals depended heavily on their control of political and non-political resources as well as on the interplay and even cooperation between the ethnic parties" (Caspersen 2004, 244).

inter-ethnic intransigence.[299] By looking at party dynamics and voting support in Northern Ireland, Paul Mitchell, Geoffrey Evans and Brendan O'Leary argue that certain practices and institutions can provide incentives for formerly 'hard-line' ethnic parties to moderate their platforms and compete centripetally, provided "they can protect themselves from the charge of 'sell-out'."[300] Other authors have contended that certain power sharing arrangements, especially the ones based on the set up of pre-election cross-ethnic coalitions, may mitigate the threat of political outbidding and radicalism.[301]

On the whole, even if the impact of intra-ethnic competition on inter-ethnic conflict regulation practices is unpredictable or may be subject to various influences, it is a factor worth considering in the analysis of inter-ethnic cooperation in divided societies. My research builds upon the more recent studies that suggest that political outbidding may not always lead to political intransigence. Rather than focusing on the role of institutions, however, I incorporate the role of external actors and external incentives in the analysis of outbidding dynamics. I argue that external actors may manage to undermine the impact of outbidding on inter-ethnic cooperation under specific circumstances. This dissertation shows that external actors may do so by providing key guarantees to ethnic groups and by exerting heavy external pressure.[303]

2.3.3. The Supra-National Level: Interactions between External and Domestic Actors

The third and final level of analysis looks at interactions between external and domestic elites, or what this article refers to as the 'supra-national' level. The conflict regulation and consociational literature has been less prolific in exploring this area and there are some research gaps. Furthermore, even though recent works have

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[299] See Sisk 1996; Chandra 2005; Mitchell, Evans and O'Leary 2006.
[300] Mitchell, Evans and O'Leary 2006, 28. They argue that this can be achieved through the development of a party that acts on the basis of an "ethnic tribune appeal," with the ability to be intransigent on the issue of ethnic identity – which precludes other parties from outbidding – while engaging in moderating attitudes towards the distribution of resources at the power-sharing level (*ibid*).
[301] See for example Horowitz 1985; Sisk 1996; Reilly 2001; O'Flynn and Russell 2005. It is however unclear when the conditions for inter-ethnic cooperation may be in place and what specific contextual factors and institutions can make it possible.
[303] These two factors were essential to bringing all parties to the table and to reaching an agreement in March 2006. Section two of Chapter 6 fully discusses this issue.

started to explore this issue,[304] these studies have overlooked how and to what extent external incentives may have an impact on the operation and performance of power sharing arrangements and the success or failure of state building processes in consociational systems. Zahar,[305] for example, suggests that we need to look at the role of international actors in post conflict power sharing arrangements, given that they have their own agendas and their policies may affect domestic elite payoffs. She does not, however, go into further detail over how external actors may influence domestic elites' calculations and payoffs. Similarly, John McGarry notes, "outsiders may have resources that can be used to influence the calculations of internal parties," but he does not explain how such resources may affect the final outcome.[306] In addition to the lack of a detailed account on how the interactions between local and external actors play out, little effort has been undertaken by these studies to analyze how, and under what circumstances, external actors' perceptions and/or misconceptions about the local communities may factor in the definition of their stratategies.

The post conflict state building literature has provided some insights on how the interconnections between domestic and external actors have impacted political dynamics at the local level. Three key claims have a special resonance for the purposes of this research. The first one is related to the role of external actors in undermining conflict regulation practices at the inter-ethnic level when extensive powers are vested upon them. The presence of external actors in post-conflict, divided societies is premised on the need to provide assurances to the parties and encourage them to engage in conciliatory behavior. Having said this, the lack of direct accountability in the hands of domestic actors has, at times, tended to encourage domestic elites to engage in non-conciliatory behavior when such strategy has served specific intra-party or intra-segmental interests, without bearing the

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[304] See Zahar 2002; Belloni and Deane 2005. There is an increasing interest in exploring this issue more thoroughly, although this body of research is still rather embryonic and lacks the basic premises of systematic research. Roberto Belloni and Shelley Deane's study on the successful implementation of power sharing arrangements in Northern Ireland and Bosnia is one of such recent efforts. In this work they identify "third-level games" in the implementation of power sharing arrangements "where internal group dynamics and external third party constraints and preferences shape elite decisions and the final bargain arrived at" (Belloni and Shelley 2005, 220). Although the study is a resourceful attempt at looking at these issues, it fails to do so systematically. The external variable is the least explored variable and there is not an attempt to list how all the different interactions affect the final bargains.

[305] Zahar 2002.

[306] McGarry 2008, 694.

responsibility of non-cooperation.[307] Richard Caplan argues that, "the exercise of executive authority can have serious implications for the development of local political culture and institutions."[308] Indeed, as Susan Woodward argues, the authority of the OHR has often times resulted in an "incentive to irresponsibility." She notes, "Free riding on the High Representative's authority, a politician can choose intransigence ... when a decision would be unpopular with constituents or colleagues;" which further reduces politicians' accountability.[309] Drawing on Woodward's argument, Zahar states that, while international players are supposed to act as "constitutional safeguards against mutual intransigence," their presence has often resulted in unfavorable conditions for domestic elite's willingness to cooperate.[310] By looking into the powers of the HR in Bosnia, she notes, "In the short-term, this policy counters the paralysis of decision-making at the federal level in Bosnia. ... In the long-term, this undermines political capacity building by shifting responsibility for cooperation away from the nationalist leaders."[311] Thus, nationalist leaders in Bosnia will never be forced to face the consequences of intransigence with their constituencies if the HR intervenes every time they refuse to compromise. This suggests that the international community "makes cooperation less likely as there is less urgency and/or fear of the consequences of disagreement."[312]

The second argument suggests that processes of state building have been reported to be undemocratic and mistakenly based on the assumption that "the political process can be externally influenced through the promotion of institutional changes introduced at the state level," without taking into consideration domestic demands.[313] The local involvement in the state building process in Bosnia has certainly been quite limited. This line of argumentation implies that the undemocratic

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[307]   See for example Caplan 2005a; Chandler 1999 and 2006a; Knaus and Martin 2003; Zahar 2005a; Woodward 1999b and 1999c.
[308]   Caplan 2005a, 180.
[309]   Woodward 1999b, 8-9. See also Chandler 1999; Zahar 2005b.
[310]   Zahar 2002, 17.
[311]   *Ibid*. This is related to one of Fukuyama's key arguments about state building. As he states, "the rhetoric of the international community stresses 'capacity building' while the reality has been rather a kind of 'capacity sucking out' to use Ignatieff's (2002) memorable phrase. The international community ... comes so richly endowed and full of capabilities that it tends to crowd out rather than complement the extremely weak state capacities of the targeted countries. This means that while governance functions are performed, indigenous capacity does not increase, and the countries in question are likely to revert to their former situations once the international community loses interest or moves on to the next crisis area" (Fukuyama 2004, 103).
[312]   Zahar 2002, 17-18.
[313]   Chandler 2006a.

and exclusive nature of state building has taken a toll on its effectiveness in terms of legitimacy and capacity building. As former World Bank Vice President Joseph Stiglitz stated, "ownership is essential for successful transformation: policies that are imposed from outside may be grudgingly accepted on a superficial basis, but will rarely be implemented as intended. ... To achieve the desired ownership and transformation, the process that leads to that strategy must be participatory."[314]

Finally, it has also been argued that the presence of external actors has had the unintended consequence of creating a situation of 'winners' or 'losers' on the ground; irrespective of the power distribution between ethnic groups.[315] This is particularly relevant when the external intervention touches upon statehood issues in contexts where the form of the state is highly contested. This situation may lead to the emergence of heightened suspicions amongst 'losers' (as a result of the perceived bias on the part of the external actor), and to the development of growing demands for 'stronger' power-sharing guarantees and, in turn, less cooperative behavior.[316]

The empirical discussion on the process of constitutional reform will shed light on additional issues related to the role of external actors in post-conflict Bosnia, including: the role of the EU incentives in the process of state building; the divisions within the international community (which has an impact on the overall policy outcome); and the specific characteristics of the process (which reflect on the broader process of state building in this country). The discussion will also reflect on the way in which external actors' perceptions about the state building process under way may have an impact on their own strategies.

In sum, this chapter argues that the three-tiered framework outlined above offers a better understanding of post-conflict Bosnia than the approaches reviewed in the second section of this chapter. Rather than pointing to the role of ethnic divisions as a primary cause for the failure of the state building process (an argument that has often been brought to light by both policy makers and scholars), my analysis shows that the external incentives and the EU transformative power in Bosnia have been blunted by

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[314]   Stiglitz 1998, 21. Dayton is a clear case in point. Signed as a regional agreement by the Bosniak delegation, Serbia and Croatia in 1995, it lacked democratic credentials from the start and all groups worked towards undermining it during the first few years after the signing. Though locals have evolved into accepting Dayton as the best worst solution, the broader terms of the agreement have remained highly contested by all the ethnic groups in Bosnia.

[315]   Zahar 2005a.

[316]   *Ibid.*

an ethnic power game played at the intra-ethnic level.

2.4. CONCLUSIONS

I have argued that both the state building and conditionality literatures have failed to capture the nuances and complexities involved in the state building process in post conflict Bosnia. Drawing from the conflict regulation, I propose to use a three level framework, where conflict regulation is analyzed at three different levels, namely the inter-ethnic, intra-ethnic and supra-national levels.

The practice of conflict regulation is used in this study as the dependent variable, as a proxy for accommodation to the norm that is defined externally. This variable is dependent upon the dynamics that take place at the three different levels mentioned above, which represent the independent variables (see figure 2.1). These variables enjoy both direct and indirect effects on conflict regulation.

Given that conflict regulation takes place at the domestic level, both intra- and inter-ethnic dynamics may have a direct impact upon conflict regulation.[317] The role of external actors, however, may only have an indirect effect upon the dependent variable through interactions with domestic actors at the intra- and inter-ethnic levels.[318] Three additional intervening variables with potential for an indirect effect over conflict regulation in Bosnia (through interactions with the inter- and inter-ethnic levels) are included. These intervening variables are the non-core elite (i.e. religious authorities within the Bosniak and Croat communities), kin-states (Serbia and Croatia) and the non-elite (population). The impact of these variables is, however, more diffuse than the other three variables under consideration, as highlighted in the introduction.[319]

It is the purpose of this research to determine the relative weight of each of these variables in order to understand the broader state building process in Bosnia. In the context of constitutional reform, the weight of each level varied according to the

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[317] Intra-ethnic dynamics may have a direct impact on conflict regulation when a two-third majority in the parliament is needed for a decision to be passed (i.e. constitutional reform). A broader consensus within each ethnic group is thus needed in these situations.

[318] In cases of control as the form of influence, external actors would have a direct effect on the outcome, but this research is not concerned with that model.

[319] See Introduction, p. 48.

different dynamics involved in each negotiation phase. Figure 2.2, 2.3 and 2.4 – which are limited to the interactions between the three key variables at hand – show the dynamics involved in each of the three phases of constitutional reform. In the first phase (figure 2.2)[320] inter-ethnic and intra-ethnic variables are accountable for the failure of the negotiations. The role of external actors during this phase was rather secondary. Though the role of external actors increased towards the end of the first phase, dynamics at the inter- and intra-ethnic level overpowered the limited external engagement.

Figure 2.2. Conflict Regulation in Constitutional Reform in Bosnia: Phase I
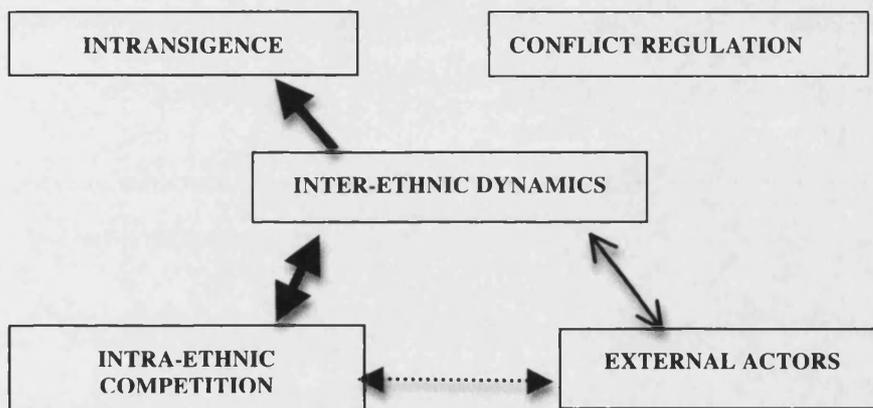
In the second phase (figure 2.3),[322] the role of external actors is more prominent. Strong arm-twisting by external actors paves the way for inter-ethnic accommodation. The role of intra-ethnic dynamics is not relevant at this point as a result of two factors: (1) the negotiations are restricted to a limited number of domestic actors during this phase; (2) party leaders managed to marginalize internal divisions during this phase. In sum, intra-ethnic dynamics are not threatening to the position of party leaders, and a constitutional agreement is reached during this phase.

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[320]   See chapter 5 for a discussion of the first phase of the negotiations.
[322]   Chapter 6 analyzes the dynamics involved in the second phase of constitutional reform.

Figure 2.3. Conflict Regulation in Constitutional Reform in Bosnia:

Phase II
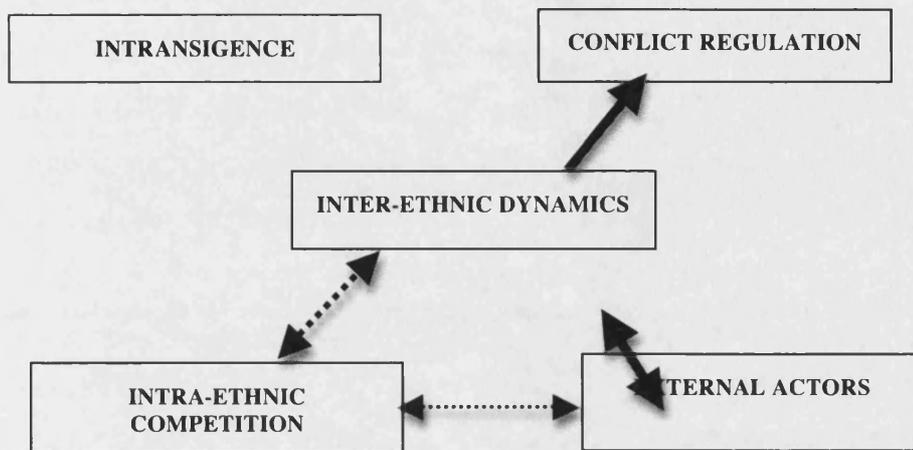
In the final phase (figure 2.4),[324] intra-ethnic dynamics acquire a prominent role. The package is sent to the parliament where a public discussion with all the relevant political actors in BiH develops. Though external actors' engagement continues, their impact on intra-ethnic dynamics is negligible. Both the powerful intra-ethnic dynamics and the neglect of this factor in external actors' calculations lead to the failure of conflict regulation.

Figure 2.4. Conflict Regulation in Constitutional Reform in Bosnia: Phase III

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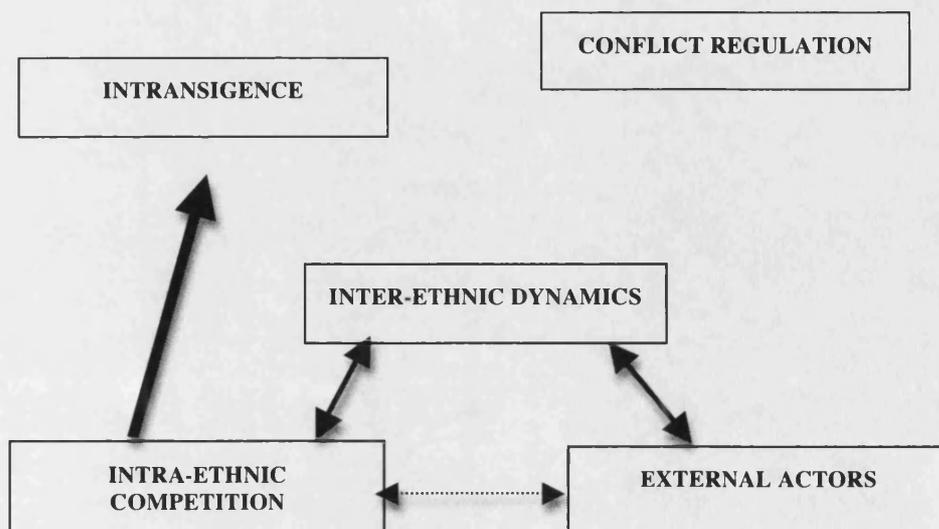
[324]   Chapter 7 analyzes the dynamics involved in the final phase of constitutional reform.

PART II

DAYTON

Part two of the dissertation (chapter 3) is concerned with the analysis of the Dayton Peace Accords. Chapter 3 consists of three sections. Section one explores the constitutional debate in Bosnia since the breakup of Yugoslavia, and is divided into three subsections: the first subsection is devoted to the origins of the constitutional debate in Bosnia following the breakup of Yugoslavia; the second subsection examines the key peace settlement initiatives launched during the conflict in Bosnia; and the last subsection analyzes the Dayton constitution. Section two of this chapter analyzes the implementation of the civil and institutional aspects of Dayton and is also divided into three subsections coinciding with the patterns of external intervention in Bosnia since Dayton: from 1996 to 1997; from 1998 to 2000; and from 2000 to 2005, when external actors engaged in a revamped state-building agenda heavily influenced by the EU. Part three draws conclusions about the effectiveness of Dayton in Bosnia and introduces the rationale for constitutional reform.

CHAPTER 3

THE DAYTON FRAMEWORK

3.1. DAYTON AND THE CONSTITUTIONAL DEBATE IN BOSNIA

3.1.1. The Constitutional Debate Before the War

It is difficult to pinpoint the exact moment in which the state of Yugoslavia collapsed under communist rule.[325] It followed a two-track process, first with the collapse of the federal communist party in January 1990 and later with the progressive disintegration of the single party system in each of the republics throughout 1989 and 1990, which was the main integrative force in the federation. These processes did not take place simultaneously nor did they happen concurrently across the different republics composing the former Yugoslavia.

The disintegration of the federal communist party and central authority came about as the federal party became incapable of governing effectively. The discretionary policy-making powers granted to the republics during Tito's regime had the effect of slowing down the process of decision-making at the federal level. Indeed, the Constitution of 1974 gave Yugoslav republics effective veto powers (decisions needed to be taken by consensus) and 'theoretical statehood'.[326] The state only retained the competences related to foreign, military and key external trade affairs and gave the republics the right to approve their own constitutions.[327] "It effectively created a semi-confederative political structure" with emphasis placed on achieving unanimity despite prolonged and slow procedures.[328] This situation led to ongoing policy deadlock, which became pervasive from 1987 to 1991, taking a dramatic turn over the period of 1989-1990 that resulted in virtual paralysis of the

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[325] For a full account on the demise of Yugoslavia see for example Cohen 1995; Woodward 1995; Denitch 1996; Glenny 1996; Silber and Little 1996; Bennet 1995; Magaš 1993; Lampe 2000; Ramet 2002. Also see the recent edited volume Cohen and Dragović-Soso 2008.
[326] Cohen 1995, 33.
[327] Vejvoda 1996.
[328] Cohen 1995, 33.

state.

At the foundation of the institutional crisis at the federal level lay two mutually reinforcing challenges. The first challenge was the severe social unrest and a disruptive economic crisis that called for unified, strong federal action.[329] The political deadlock over how to best manage and implement the appropriate economic and social reforms to resolve the crisis made matters worse, and led progressively to radical nationalisms. The second problem was related to the ongoing infighting between regional elites, which "skillfully utilized decentralized authority for their respective parochial interests."[330] The infighting took a nationalist turn over the reform of the federal constitution, which revolved around three major proposals: (1) the Serbian strategy, associated with Serbian President Slodoban Milošević, which favored the creation of a renewed federation centered around Serbian prominence; (2) the Slovenian proposal for the creation of a federation formed of equal federation units with the right to secession; (3) the federal proposition, linked to the President of the Federal Executive Council Ante Marković, which advocated for the introduction of amendments to the constitution – mostly economic in nature – to provide the federal government with the powers to constrain the influence of local interests and to facilitate the implementation of the necessary reforms.[331] In the end, the federal option did not garner enough support and the Serbian and Slovene visions became mutually unacceptable for each other.

The federal party system finally collapsed in January 1990 at the Extraordinary Congress of the League of Communists, when the Slovene delegation, having failed to garner support for the creation of an 'asymmetric confederation', walked out of the congress. The Serbian delegation was in favor of proceeding with the congress agenda to agree on the future form of the federal state, and reallocating the votes accordingly, but the Croatian, Macedonian and Bosnian delegations, together with the army,[332] voted for adjournment.[333] The failure of the congress to decide on a new

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[329]   By the end of 1980's, the country's economy was distressed by skyrocketing inflation, high unemployment, a huge foreign debt and food shortages, and living conditions plummeted to the level of the mid-1960's (Cohen 1995, 45; see also Palairet 2008).

[330]   Cohen 1995, 33. As Cohen claims, "This situation resulted in an unusual proliferation of authoritarian leadership networks – sometimes referred to as 'polycentric statism' or a 'pluralism of elites' – that effectively invalidated the regime" (*ibid*; see also Goati 1997).

[331]   Cohen 1995.

[332]   Prior to the collapse of Yugoslavia, the army oscillated between its support to the Yugoslav constitutional framework and Milosevič's project of a Yugoslavia united around Serbia's predominance (see Bieber 2008). As developments progressed, the army became increasingly

constitution reflected the incapacity of the federal government to impose any further reforms upon the republics, and soon after that Slovenia and Croatia prepared themselves for the first multiparty elections, paving the way to the collapse of the federal party system. The disintegration of the Yugoslav state took place effectively in mid-1991, as Slovenia declared independence and the federation descended into open warfare.

The disintegration of the single party system in the different Yugoslav republics occurred throughout 1989 and 1990 (in early 1990 in the case of Bosnia), prior to the holding of multiparty elections across the republics. The transition to a multiparty system was an elite-driven process[334] and somewhat externally induced as it was triggered in part by the events taking place both at the federal level and in Eastern Europe. Only in the case of Croatia, where civil society demanded the legalization of political parties and the holding of elections in a petition to the government of the republic in December 1989, was the transition a by-product of both political elites and civil society's active participation.[335]

Multiparty elections took place in April and May 1990 in Slovenia and Croatia respectively, and at the end of the year in Macedonia, Serbia, Montenegro and Bosnia-Herzegovina. The elections exposed the ethnification of politics. Although polls had shown that the population favored autonomy rather than full independence at the beginning of the year,[336] the 1990 elections resulted in the victory of nationalistic parties. In Slovenia, a coalition of anticommunist and pro-independent opposition groups, DEMOS, attained 55 percent of the vote (although the communist leader Milan Kukan won the presidential election); in Croatia, HDZ's Franjo Tuđman won the elections with 41 percent of votes on an anticommunist,

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subordinated to Serbia and Milošević. Bieber notes, "By the time the first shots were fired, the army had equated protecting Serbs in Croatia with protecting supporters of Yugoslavia. That equation would see to the dissolution of the old JNA [Yugoslav People's Army] and its subordination to Serbia" (*ibid*, 320). Following these events, the army became a key element in the escalation of the conflict (*ibid*).

[333]   Woodward 1995, 115.

[334]   Susan Woodward stated, "The demand for elections did not originate from popular pressure, but with politicians seeking more political power over their territories and opposition intellectuals seeking more political influence over the course of events" (Woodward 1995, 117).

[335]   Cohen 1995.

[336]   Pre-election surveys in Slovenia, for example, showed that only 20 percent of the population advocated independence outright while almost 60 percent favored autonomy within Yugoslavia (Cohen 1995, 90). Bosnia, for its part, had the largest proportion of Yugoslav-oriented and democratic parties; even the parties that were ethnically oriented favored the continuation of Bosnia as a multiethnic entity (Cohen 1995).

nationalistic platform;[337] in Serbia and Montenegro, renamed 'communists' won with simple majorities.

Following the collapse of the federal communist system, Yugoslav Prime Minister Ante Marković organized various rounds of negotiations among the republics in the first half of 1991 in order to resolve the constitutional crisis in Yugoslavia. No settlement was reached, however. Croatia and Slovenia favored the creation of a confederation of sovereign states, in which republics would enjoy the right of self-determination, but Serbia opposed this. President of the Bosnian Presidency Alija Izetbegović also proposed the creation of an asymmetric federation, in which Serbia, Montenegro, Macedonia and Bosnia would be closely linked to a loose confederation with Slovenia and Croatia. This option was also rejected by Milošević,[338] and by the end of June 1991 both Slovenia and Croatia had declared independence. In a final attempt to find a solution to the crisis, the European Economic Community (EEC) launched a peace conference in the Hague in September 1991, under the chairmanship of Lord Peter Carrington, and with the legal assistance of the Badinter Commission (an arbitration body set up by the EEC to assist in legal matters to the Peace Conference).[339] The confederate solution presented by the London Conference in November 1991 was, however, rejected by Milošević[340] and by the end of 1991, Yugoslavia ceased to exist as a state. In January 1992, the EEC recognized Croatia and Slovenia as independent states and invited other Republics to request EEC recognition in the following months.[341]

The legalization of a pluralistic party system came late in Bosnia compared to the rest of the republics;[342] but the dynamics leading to both the derailing of the

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[337]   Woodward 1995.

[338]   Cohen 1995, 201.

[339]   The Commission was presided over by Robert Badinter; it was comprised of five members, all of them holding the presidency of Constitutional Courts within the EEC.

[340]   Despite the failure of the peace conference in putting forward a solution for Yugoslavia, the opinions of the Badinder Commission – especially Opinions No. 2 and No. 4 – had an enormous impact on how events played out later on in Bosnia (Szasz 1995). The Bardinter Commission, for example, recommended the need for a referendum to let citizens decide on the preferred option for the future status of the multiethnic country (Badinter Commission, Opinion No. 4). The commission also suggested that although the Bosnian Serbs had the right to choose their nationality where appropriate, "whatever the circumstances, the right to self-determination must not involve changes to existing frontiers at the time of independence except when the states concerned agree otherwise" (Badinter Commission, Opinion No. 2). In this respect, Opinion 3 suggested that the internal frontiers of the Socialist Federal Republic of Yugoslavia (SFRY) were to be considered as international frontiers according to international law, at the time of dissolution (Badinter Commission, Opinion No. 3).

[341]   Germany recognized Croatia and Slovenia in December 1991.

[342]   Bougarel 1996.

democratic experiment and the outbreak of war mirrored (and were influenced by) the events in the rest of Yugoslavia.[343] Indeed, the elections on 8 November 1990 resulted in the victory of a three-party electoral coalition organized along the ethnic divide,[344] winning 202 out of the 240 total seats.[345] The parties of this coalition gained support "almost proportional to individuals' choices of national identity in the 1981 census:"[346] the Muslim SDA, created in May 1990 on a religious-based platform, gained 33.8 percent of the votes; the Serbian SDS, created in July 1990, won 29.6 percent; and the HDZ BiH, established in August 1990 as a branch of Franjo Tudman's HDZ, gained 18.3 percent.[347] Two prominent cross-ethnic forces competed in the elections, namely the former communists (renamed the Social Democratic Party), and Ante Marković's Alliance of Yugoslav Reform Forces in Bosnia, but they were too weak to pose a serious challenge to the nationalist parties. The former communists were unpopular, given the long-standing record of corruption, repression and ineffective government in the midst of the economic crisis. Marković's Alliance was more popular, but it was formed relatively late and was "a target of much hostility by the emerging republican political forces."[348] Marković received only 5.4 percent of the popular vote while the reformed communists won 8 percent.

The coalition government was formed on 18 November 1990 but the "dividing of power and resources soon provoked multiple conflicts ... [leading to] a progressive paralysis of public institutions and services, a comprehensive dismantling of the state, and ... the growing criminalization of economic and political life."[349] As Robert Hayden stated, the three parties governed with absolute

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[343]   See Andjelić 2003.

[344]   For a discussion on the results of the 1990 elections see Andjelić 2003. It is important to note that nationalist parties were not hostile to each other before the elections. Bieber notes that the party leaderships were invited to the founding congresses of each respective party (Bieber 2006a). Furthermore, according to Woodward, "leaders of the nationalist parties actually collaborated to persuade voters that their security depended on voting their national identity" (Woodward 1999c, 85).

[345]   Opposition parties were first granted legal status on the condition that they were not based on ethnicity. This ban was later declared unconstitutional.

[346]   Woodward 1995, 122. There were 99 Muslims (41 percent), 85 Serbs (35 percent), 49 Croats (20 percent) and 7 'Yugoslavs' in the new elected assembly, which corresponded very closely to the population distribution, namely 44 percent Bosniaks, 31 percent Serbs and 17 percent Croats (Malcolm 1996, 222-223). Voting along ethnic lines, however, was not a new phenomenon. Hayden argued that "every relatively free and fair election in Bosnia in the twentieth century ... [has] produced the same result" (Hayden 2005, 235).

[347]   Bieber 2006a.

[348]   *Ibid*, 20.

[349]   Bougarel 1996, 99. The Serbs were the first to undermine joint government institutions. They

control in the local areas where they were a majority; furthermore, agreement at the republic level became unfeasible and the prospect of enacting a new constitution to replace the 1974 one became increasingly elusive.[350]

The first key constitutional debate in Bosnia occurred on October 14-15, 1991 in a heated parliamentary discussion on Bosnia's sovereignty, following both the secession of Croatia and Slovenia and the outbreak of war in June 1991.[351] The discussion in the assembly revolved around a memorandum of sovereignty presented by SDA and HDZ whereby Bosnian officials, while in favor of remaining part of Yugoslavia, renounced participation in federal institutions should the representatives of the other republics be absent.[352] Two additional, and more sensitive, provisions were included in the memorandum, the first one paving the way for Bosnia to reject any federal decision that had not been approved with the participation of the representatives of all of the other republics; and the second one empowering the Bosnian parliamentary majority to make decisions on the republic's future status.[353] The Serbs, who had offered a competing resolution whereby Bosnian constituent nations could initiate a process of self-determination including secession if Croatia was to secede from FRY,[354] rejected the memorandum and walked out of parliament. An hour after the Serb's walk out, Croats and Bosniaks proclaimed the republic's sovereignty without the consent of the Serb representatives (with 142 votes out of 240), which contravened the spirit and the letter of the amendments to the constitution of the Socialist Republic of Bosnia and Herzegovina introduced on 31 July 1990.[355] Although the Serbs demanded referring the sovereignty memorandum

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first boycotted the functioning of the parliament, refusing to abide by any decision taken by the legislative body. They also boycotted the presidency meetings by September 1991 and formed the so-called Serb Autonomous regions (SAO) throughout the territory of Bosnia (Silber and Little 1996) pledging to secede from Bosnia.

[350] Hayden 1992, 661; see also Burg and Shoup 1999. The 1974 constitution granted equality among the three constituent people.

[351] The debate on sovereignty had been triggered by Izetbegović's declaration of neutrality between Serbia and Croatia in early October. Karadžić had rejected it on the grounds that only a sovereign government could do so (Malcolm 1996, 228).

[352] Hayden 1999.

[353] Ibid.

[354] Hayden 1999. It is important to note that these events were taking place after ethnic radicalization had occurred in other republics and provinces, such as Krajina and Kosovo, where the rise of Serb nationalism and widespread repression had become prevalent. These events made the option of remaining in Yugoslavia without Slovenia and Croatia intolerable for both Muslims and Croats in Bosnia (Burg 1997; Burg and Shoup 1999).

[355] The amendments underscored the sovereignty and equality of the nations and nationalities in Bosnia, eliminating the dual sovereignty placed on both BiH's nations and the working class (Hayden 1999). Amendment 59 defined state sovereignty along the following lines: "The Socialist Republic of

to the Council of the Establishment of Equality,[356] which at the time had not been set up yet, "SDA members of parliament disputed the Serbs' attempt to exercise this constitutional right."[357] The declaration of sovereignty represented the final blow to the Belgrade initiative heralded by Serbia's government in the summer of 1991, according to which Bosnia would remain part of a new Yugoslavia, even if Croatia and Slovenia were to break away.

Following the declaration of sovereignty, events rapidly radicalized. The SDS created a National Assembly with full government competences and held a plebiscite in November as a precursor to the self-proclaimed Serb Republic of Bosnia-Herzegovina (later called Republika Srpska). The SDA and the HDZ, for their part, followed an ambiguous course of action from this point onwards; while favoring the independence of Bosnia with full territorial integrity, they also prepared for potential partition. The SDA, for example, the firmest advocate of a 'civic,' cross-ethnic Bosnia, had proclaimed the Muslim National Council in May 1991.[358] The HDZ, for its part, created two Croat autonomous regions in November 1991, namely Herceg-Bosna and Posavina,[359] and both the SDS and the HDZ started setting up their own armed militias in the following months. By the end of the year, the tripartite coalition had failed to function,[360] and following the EEC's recognition of the independence of Slovenia and Croatia, Izetbegović was left with no other option than to apply for

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Bosnia and Herzegovina is a democratic sovereign state of equal citizens, the nations of Bosnia and Herzegovina – Muslims, Serbs and Croats and members of other nations and nationalities who live within it" (Amemdment 59 to the Constitution of the Republic of Bosnia and Herzegovina, quoted from Hayden 1999, 90). There was also an emphasis in granting proportional representation to all nations and nationalities (including others) in the major state organs and posts (Amendment 61 to the Constitution of the Republic of Bosnia and Herzegovina, cited in Hayden 1999).

[356]   Amendment 70 (Clause 10) of the Amendments to the Constitution of the Republic of BiH strengthened the equality of BiH's nations and nationalities by introducing in the parliament a *Council for Questions of the Establishment of Equality of the Nations and Nationalities of Bosnia and Herzegovina*, with equal numbers of Muslim, Serb and Croat representatives and members of other groups (cited in Hayden 1999, 91). The Council was given power to decide by agreement of all nations and nationalities on any question referred to it by at least twenty members of the parliament. Once approval in the Council had been guaranteed, the specific question was to go back to parliament, where it needed to be approved by a special procedure requiring a two-third majority of the parliament's representatives (Hayden 1999).

[357]   Hayden 1999, 93.

[358]   Bougarel 1996. SDA included a wide range of different personalities and movemets, from moderate to radical nationalists. Izetbegović however maintained a relatively moderate party line, arguing in favor of a multicultural Bosnia (Friedman 1996).

[359]   Although the Croatian Community of Herzeg-Bosna was not officially created until the war was in full gear in July 1992, it was 'unofficially' declared on November 18, 1991 by Mate Boban. Boban had been appointed as the leader of the Bosnian Croats in Bosnia by Tudman in what was considered a coup within the Croat leadership. Stjepan Kljuić, the Croat elected member who had favored Bosnia's integrity, was as a result sidelined (Woodward 1995, 194).

[360]   Burg 1997.

recognition and to hold a referendum of independence in February 1992.[361]

In an attempt to prevent instability from arising as a result of the February 29 referendum on self-determination[362] (which was followed by a declaration of independence on March 3), the European troika – under the leadership of the Portuguese foreign Minister José Cutileiro – chaired various negotiations in Lisbon and Brussels, in order to find a constitutional solution acceptable to all parties. On February 23, the EEC gathered the three key leaders, namely Izetbegović, Karadžić and Boban, in Lisbon, where the Europeans managed to get an initial agreement on a confederation comprised of three ethnic regions with strong power devolved to the local level and power-sharing mechanisms in all government and administrative levels.[363] The launch of negotiations with the three major ethnic-based parties signaled the EEC's acceptance of the internal conflict in Bosnia as being ethnically based.[364] This had a strong impact on Cutileiro's proposed power sharing initiative, namely "a triune state in which the three ethnic parties divided territorial control among them,"[365] a clear precursor to the ethnic-based solution found at Dayton.[366]

The initial agreement was a clear compromise by Izetbegović, who had for long rejected the division of Bosnia along ethnic lines,[367] but the Serbs also made concessions. They agreed for the first time to accept Bosnia's secession from the Yugoslav federation.[368] A final agreement on a three-page 'Statement of Principles

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[361]   Following the recognition of Croatia, the EEC had agreed to extend recognition to all the republics that requested it before 23 December 1991 (Goodby 1996). In January 1992, the EEC pronounced itself in favor of holding referendums in those republics that were seeking independence from the Yugoslav Federation (*Ibid*; for a discussion of the dynamics and implications of the EU recognition of new states in Yugoslavia see Caplan 2005b).

[362]   Sixty-four percent of the population voted, including Serbs in major cities, but the referendum was boycotted by Serb parties. Voters almost unanimously favored independence (99.7 percent) in a "state of equal citizens and nations of Muslims, Serbs, Croats and others who live in it" (Malcolm 1996, 231).

[363]   The initial agreement, 'Basic principles for a New Constitutional Structure for Bosnia and Herzegovina,' involved four key principles to be in force following independence, namely: (1) the maintenance of the Republic of BiH's external borders; (2) the rejection for central or entity governments to seek secession; (3) the division of Bosnia into three territorial units; and (4) the guarantee that the three nations (Muslims, Croats and Serbs) as well as members of other nations would be able to exercise their soverignty rights through the republic of BiH and its constituted units (Hayden 1999, 99).

[364]   Woodward 1995.

[365]   *Ibid*, 281.

[366]   Both the Cutileiro plan and the Dayton constitution are based on an ethnic understanding of the Bosnian conflict, but both prescribed different territorial arrangements. While the Cutileiro plan envisioned the cantonization of Bosnia with different districts for each ethnic group, the Dayton constitution put in place a two-entity based territorial arrangement, namely the Bosniak-Croat Federation and the Serb RS.

[367]   Silber and Little 1996, 219.

[368]   *Ibid*.

for a New Constitutional Arrangement for Bosnia and Herzegovina' with an appended map[369] was reached in the fifth round of negotiations on March 18 in Sarajevo. The so-called Cutileiro plan, following a canton-based formula,[370] proposed the creation of separate districts for each ethnic group[371] and a power-sharing structure at the central level,[372] including "a bicameral central legislature with a directly elected Chamber of Citizens and a Chamber of Constituent Units in which each of the three 'units' would be equally represented."[373] The Cutileiro principles foresaw an ethnic blocking instrument in the Chamber of Constituent Units, provided that a four-fifths majority was required on specific important matters, which "would mean that if the representatives of any unit were united they could block a decision."[374]

"Acceptance of the principles of the plan," Woodward argues, "did not resolve fundamental differences of opinion about the meaning of cantonization, its implications for Bosnian sovereignty, and its specification in maps."[375] As a result, although Muslims were granted roughly the same amount of territory that they were offered a year later through the Vance-Owen plan,[376] the deal reached in Lisbon was in the end rejected by both the Bosniak and Croat leadership only days after its approval. An additional meeting was held on March 30, in which an agreement on human rights was reached,[377] but the Croats eventually rejected the plan while the war was already raging in northern Bosnia. It seems that Croats – and Serbs too – appeared increasingly disinclined to support a Bosnian state when the disintegration of Yugoslavia became a reality.[378] As for the Muslims, it is unclear why Izetbegović backed out of the agreement. Some observers have suggested that the US opposed partition and that Izetbegović rejected the agreement after talking with US

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[369]   A working group was to be formed to further define the territorial units, based on the relative majority of each group (Hayden 1999). Amendments to the map were permitted, "only on the basis of economic, geographic, or other criteria" (*Ibid,* 100).

[370]   According to Malcolm (1996; see also Glenny 1996), this plan was based on an earlier cantonized solution presented by the Serbs in December 1991.

[371]   Hayden 1999.

[372]   Goodby 1996.

[373]   Szasz 1995, 388.

[374]   *Ibid,* 389. In addition, the Cutileiro proposal also envisioned the creation of a special tribunal for at least five years, comprised of one member of each constituent unit and four international officials, "to decide on disputes between central authorities and a constituent unit" (Hayden 1999, 100).

[375]   Woodward 1995, 281.

[376]   *Ibid.*

[377]   Goodby 1996.

[378]   Hayden 1999, 145.

Ambassador to Yugoslavia Warren Zimmerman.[379] The US envoy, however, denied this in an interview in 1994,[380] stating that Izetbegovic could have mistakenly believed that the US was not supportive of the Lisbon agreement and that they would be ready to support Izetbegović in case of a Serb offensive in Bosnia.[381]

Following the failure of the EEC to find a constitutional solution for Bosnia, events moved fast and Bosnia descended into a full-scale war in April. The central government, represented by a coalition of the SDA and the HDZ, no longer held control over 85 percent of the territory. Its authority was openly rejected by the Serb Republic (proclaimed in Pale on 7 April 1992)[382] and was only nominally accepted by the Herceg-Bosna entity declared in the summer of 1992.[383] Ethnic cleansing was pursued by all sides as the war moved forward; key democratic institutions ceased to function and the state would soon crumble under open warfare.[384]

3.1.2. The Constitutional Debate during the War

Following the failure of the Cutileiro plan, three additional constitutional proposals were crafted during the war, although none of them managed to garner the necessary domestic support to stop the bloodshed. As with the Cutileiro plan, all of these initiatives revolved around the two key major issues of contention: (1) the nature and status of the state, namely a constitutional framework based either on a strict proportionality principle – respecting the actual numeric status of each ethnic group – or on a strict three-way division of the country (on a 1:1:1 basis), with positions being allocated on an equal basis for each constituent nation; (2) the demarcation of internal territorial divisions allocated for each ethnic group.

The first initiative, the Vance-Owen plan, was the byproduct of the new EEC-UN sponsored International Peace Conference on the Former Yugoslavia (ICFY), created in the summer of 1992 and co-chaired by UN envoy Cyrus Vance and EEC

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[379]   See David Binder. "US Policymakers on Bosnia Admit Errors in Opposing Partition." *New York Times*, 28 August 1993.

[380]   See liljana Smajlović. "Interview: Warren Zimmerman, my Role in Bosnia." *Vreme News Digest Agency* No. 144, 27 June 1994; see also Cohen 1995, 245.

[381]   See Cohen 1995 quoting Owen's declarations in 1994; see Reuters European Community Report, 11 March 1994, quoted from Cohen 1995, Chapter 8, Footnote 38.

[382]   Two days before, Serb forces initiated the siege of Sarajevo, one of the longest sieges in the history of modern warfare (it was officially lifted on 29 February 1996).

[383]   Bougarel 1996.

[384]   Bosnia is believed to have paid the heaviest toll in the disintegration of former Yugoslavia (see footnote 126 in Chapter 1).

negotiator David Owen.[385] Following intense diplomatic negotiations over the summer, an initial draft was presented to the UN Security Council in late October 1992, the so-called 'Proposed Constitutional Structure for Bosnia and Herzegovina.'[386] The initiative, however, failed to garner domestic support as a result of some critical omissions, namely the specification of the number of the regions into which Bosnia would be divided and the territorial allocation for each ethnic group.[387] A report on the progress of negotiations was also attached to the initial draft (the 'Report of the Co-Chairmen on Progress in Developing a Constitution for Bosnia and Herzegovina'), in which both Vance and Owen reflected on the fundamental divisions that continued to keep parties apart. In the report, both mediators noted that the three ethnic groups tended to present incompatible constitutional solutions, derailing any possible settlements at the time. While Serbs favored the division of Bosnia into three independent states, Bosniaks sought a unitary state organized around different administrative regions and Croats lay somewhere in between, showing wide internal discrepancies over possible solutions for the future status of Bosnia.[388]

Notwithstanding the critical differences among the three ethnic groups, a final settlement was presented in Geneva in January 1993. It involved three key elements: (1) a peace agreement to cease hostilities; (2) a map of boundary lines, which, in contrast to previous constitutional initiatives, offered a regional division of Bosnia based not only on ethnic considerations but also on other geographical, historical and economic factors[389] (which explains why the plan was presented as a 'regionalization'

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[385] The International Commission on Former Yugoslavia was inaugurated at the London Conference on 26-27August 1992 (replacing the former Carrington conference). The conference adopted a statement against the breakup of Bosnia, affirming the "respect for the integrity of the present frontiers" (quoted from Szasz 1995). This statement made both the creation of three independent states and the creation of a Muslim state carved out of the areas with Muslim majority unviable. Martti Ahtisaari chaired the working group on Bosnia.

[386] Hayden suggests that the 'Proposed Constitutional Structure for Bosnia and Herzegovina' showed many similarities to the 'Theses for a Model Constitution of the Republic of Bosnia and Herzegovine', designed by two non-nationalist civil society activists Zdravko Grebo and Branislava Jojić (Hayden 1992, 662, footnote 24).

[387] Szasz 1995.

[388] Goodby 1996. Indeed, Croats remained ambivalent since the Lisbon agreement. Some agreed with the Serb vision of a cantonization of Bosnia into three ethnic units, while "others preferred a more unitary state with several semiautonomous administrative regions" (Cohen 1995, 252).

[389] The Vance-Owen plan rejected the division of Bosnia into three regions along ethnic lines, considering it highly unstable and a potential precursor for the disintegration of the multiethnic country. The other alternative, the creation of a central state, was also rejected in the belief that Croats and Serbs would oppose it (Szasz 1995).

initiative vs. the previous canton-based proposal);[390] and (3) a constitutional framework based on ten principles (later reduced to nine), envisioning a highly decentralized state with minimal responsibilities[391] and divided into ten provinces that would enjoy exclusive competences in most government functions.[392] In addition to strong power-sharing attributes at the central level, including rotation of federal functions,[393] ethnic groups were given constitutional recognition; all issues of 'vital concern' contained in the constitution could only be altered by consensus of the three groups, although the plan did not outline any veto instrument for ordinary legislation and judicial decisions. The plan also provided for the creation of a bicameral legislature, with a lower house elected on a proportional basis at the state level and an upper house appointed by the regional governments, and a collective presidency, with a powerless president and no consensus-based decision-making requirement in order to avoid paralysis.[394] There were strong international guarantees to maintain Bosnia as a multiethnic and multinational country,[395] including the activities of special organs such as the International Commission on Human Rights, four ombudsmen and a human rights court.[396] In addition to these three documents, an agreement on interim measures ('Interim Arrangements for Bosnia and Herzegovina') was later introduced at the end of January.

The Croats were the first to accept the plan, given the favorable territorial terms of the proposed map,[397] but the Serbs repudiated it on the very same grounds.[398] The Bosniaks also opposed the agreement initially – mainly because of the military

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[390]   Woodward 1995. Woodward argues that the map was heavily inspired by the proposals on mixed regions presented by the Bosnian delegation at the London Conference in August 1992.
[391]   Hayden 1999. Hayden argues that the state defined in the Vance Owen Plan was a protectorate with hardly any functioning capacity except for those minimal competences that are necessary for a state to sit in the UN and have an international personality.
[392]   These competences included education, police, provincial communications and airports, energy production, financial institutions and radio and television among others (Art.2.d of the constitutional agreement, cited in Hayden 1999, 103).
[393]   Hayden 1992.
[394]   Szasz 1995.
[395]   Woodward 1999a. The ICFY recognized that "most of the provinces would have significant numerical minorities" (International Conference on the Former Yugoslavia 1992, quoted from Goodby 1996, 512).
[396]   Hayden 1992, 662.
[397]   Szasz 1995. See also Hayden 1999 for a discussion on the Vance-Owen map proposal and the differences with the Cutileiro plan.
[398]   Cohen 1995. According to Cohen, the Serbs opposed to the proposed boundaries mainly because they "required the Serbs to relinquish control over a considerable amount of the territory they ... controlled, and it cut off the land corridor linking much of the existing Serbian zone of control to the Serbian republic" (*ibid*, 255)

clauses it contained[399] – but finally signed the interim agreement and the revised map on March 25, after receiving assurances from the US that the international community would commit enough forces for the ceasefire.[400] All in all, despite heavy external arm-twisting that involved numerous negotiations rounds, the Vance-Owen regionalization initiative came to a dead end in May 1993, when the Bosnian Serb National Assembly refused to accept the delineation of boundaries. Although Radovan Karadžić, president of RS, had initially signed the agreement under strong pressure from Milošević and the FRY, final approval was made contingent upon ratification by the RS National Assembly. From this point on, all initiatives would be based on the territorial division of Bosnia along ethnic lines, moving away from the original Vance-Owen plan.

Following the failure of the Vance-Owen plan,[401] David Owen and Vance's successor, Thorvald Stoltenberg, presented a revamped initiative in August 1993 that went back to the Lisbon notion of a tier-based cantonization of Bosnia, namely a confederation of three republics loosely held together.[402] This initiative was more in accordance with the situation on the ground, with open lines of intense fighting between the Croats and the Muslims. Indeed, the alliance between Croats and Muslims was officially over at the end of October 1993. The Serb leadership gave unconditional support to the plan,[403] given that it reflected the group's territorial gains during the war, but this time the Muslims held out, even after obtaining additional concessions in the so-called 'invincible' plan (named after the British aircraft carrier on which the negotiations took place on September 20).[404] Although the negotiations that resulted in the final plan had revolved almost entirely around the demarcation of inter-entity boundary lines, an appendix on the 'Constitutional Agreement of the Union of Republics of Bosnia and Herzegovina' was added to the plan, envisioning

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[399]   Hayden (1999) argues that the Muslims were also the big losers in terms of the territory allotted to them.

[400]   The Clinton Administration had expressed reservations about specific parts of the plan (Goodby 1996), especially in relation to rewarding the Serbs with their gained territory at the expense of the Muslims (Cohen 1995). After the rejection of the plan in May, the US declined any efforts to revive it (*Ibid*).

[401]   The Vance-Owen Plan was in the end rejected by the RS National Assembly and in referendum in RS.

[402]   Woodward 1995.

[403]   Cohen 1995. The plan, the 'Agreement relating to Bosnia and Herzegovina', was presumably based on a map negotiated by both Tuđman and Milosšević in June 1993 (see Paul Lewis. "Two Leaders Proposed Dividing Bosnia into Three Areas." *New York Times*, 17 June 1993, p. 3).

[404]   Szasz 1995. Indeed, the map allocated merely 30 percent of the territory to Muslims, in contrast to the 36 percent offered at the Vance-Owen negotiations.

the creation of a union of three entities, making the central government even more dysfunctional than previous constitutional initiatives. The constitutional proposal included: a unicameral parliament of 120 representatives (40 deputies from each constituent republic) where laws would be adopted by a simple majority of each constituent group; a collective consensus-based presidency with very restricted competences, whose chairmanship would rotate every four months; and a council of ministers, with the prime minister appointed and, possibly, removed by the office of the presidency, acting by consensus and "with the post rotating on an annual basis among the nominees of the presidents of the three republics."[405] The constitutional arrangements were in the end rejected along with the map.[406]

Drawing on the heels of the Owen-Stoltenberg plan, the EU put forward yet another initiative in November 1993, the so-called EU Action Plan, advanced by the French and German foreign ministers, Klaus Kinkel and Alain Juppé. The initiative offered to lift sanctions against Serbia-Montenegro in exchange for territorial concessions to the Muslims (at least a third of the territory) and Croats. The Serbs eventually agreed to offer 33.3 percent to Muslims and 17.5 percent to Croats but there was no agreement on the specific adjustments to be made to the Owen-Stoltenberg plan and by mid-January 1994 efforts to save the 'invincible plan' were abandoned while other agreements started to unravel.[407] Furthermore, the two major powers, the US and Russia, appeared uncommitted, and fighting ensued.[408]

The third and final failed initiative started off with the setup of the Contact Group following the Serb shelling of a Sarajevo market in February 1994 that killed 68 people. Indeed, the new diplomatic venue, formed in April 1994 by the US, France, Germany, the UK and Russia to replace the ICFY, launched a new round of consultations and presented a new settlement plan by mid-1994. This initiative was preceded by the US-brokered ceasefire between Croats and Bosniaks in February 1994 and the signing of the Washington agreement in March 1994 whereby a

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[405] *Ibid*, 389-390.
[406] Hayden stated that "the constitutional Agreement would have set up a quasi state ... But this constitutional fraud was essential, because the Serbs and Croats would have not accept inclusion in a real state. The Constitutional Agreement, like Vance-Owen, was an exercise in negative sovereignty, trying to deny the reality that there was no Bosnian state by insisting that everyone must pretend that it would exist" (Hayden 1999, 108).
[407] Szasz 1995.
[408] Cohen 1995, 296.

Muslim-Croat Federation was created,[409] including a 'Proposed Constitution of the Federation of Bosnia and Herzegovina'.[410] The contact group initiative, presented in July 2004, involved the division of Bosnia into two entities, on a 51:49 basis (i.e. 51 percent of the Bosnian territory to be assigned to the Muslim-Croat Federation and 49 percent to the Bosnian Serbs, who at the time were in control of the 72 percent of the territory). No specific constitutional details were given,[411] however, except for some provisional principles such as a draft union between the Federation and the Republika Srpska following on the heels of the failed 'invincible plan'. The initial plan counted with the support of both Croats and Muslims, but Serbs claimed that "the map was 'catastrophic' and would prevent Bosnian Serb republic [Republika Srpska] from exercising self-determination, i.e. making it impossible for the Bosnian Serbs to maintain an independently controlled land link to Serbia."[412] In the end, negotiations were undermined by ongoing operations on the battlefield, including a Muslim offensive in November 1994 and divisions within the Contact Group, especially in relation to the Muslim military successes on the ground,[413] which further contributed to derailing the negotiations by November 1994.

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[409] The agreement also supported the new auto-denomination for Muslims, namely Bosniaks (Woodward 1995), in order to symbolize and emphasize a non-religious sense of Bosnian unity.

[410] A 'Preliminary Agreement' was also signed with Croatia, allowing for the creation of a confederation between Croatia and the newly created Federation. The Federation constitution, which somewhat represented a return to the Vance-Owen Plan (only this time between two ethnic groups), envisioned the division of the newly formed Federation into eight cantons with extensive competences in the areas of police, education, housing and other competences not listed under the central government control. The central government had exclusive authority in foreign affairs, defense, citizenship, economic affairs, finance and taxation (Cohen 1995) and shared control with the cantons over other matters such as human rights, health, and social welfare. Extensive power-sharing features were embedded into the federal level, including proportional representation in all executive, legislative and judicial institutions (at least one third of the ministerial positions would be allocated to Bosnian Croats) and a one-year long rotating presidency. The agreement also envisioned a bicameral parliament, with a lower House of Representatives comprised of 140 members elected on a proportional basis, and a upper House of Peoples with thirty members of each ethnic group, where decisions would be taken on a majority basis except for cases of vital interest, in which case decisions would be made on a majority basis of each constituent group (Federation Agreement, from Szasz 1995).

[411] Cohen 1995.

[412] Cohen 1995, 314.

[413] Cohen 1995. One of the key US negotiators at Dayton, James O'Brien, argued that many internationals favored the continuation of the offensive in the belief that Serbs could be defeated decisively, which delayed the international's resolve to end the conflict (O'Brien 2004). O'Brien notes that Richard Holbrooke, however, was convinced that the continuation of the offensive could do more harm than good in the longer run. He feared the emergence of new hundreds of refugees, which would destabilize the region further. He also feared a scenario in which Croatian leaders became further empowered, at the expense of the Bosniaks, given that they were the ones doing most of the fighting. Furthermore, the offensive run the risk of making the agreement between Bosniaks and Croats falter. After all, at the time, "the Croatians and the Bosniaks were starting to fight one another" (O'Brien 2004, 100).

The diplomatic impasse lasted several months, but the escalation of the war in the late spring and early summer of 1995 prompted the US to react and engage more actively.[414] After a brief NATO air strike against Serb positions in late May in retaliation for the shelling of Sarajevo and UN 'Safe Areas,'[415] the Serb offensive intensified.[416] On 10 July Bosnian Serb forces captured Srebrenica, a declared safe area since 1993, and proceeded to kill more than seven thousands of Bosniaks in "the biggest single mass murder in Europe since World War II."[417] Following these events, the threat of the use of NATO strikes became "more real"[418], and the US administration traveled to Europe in early August to discuss a US peace plan;[419] it included seven key points, namely a comprehensive peace settlement, a three-way mutual recognition of sovereignty, the lifting of sanctions against Yugoslavia following an agreement, a peaceful return of Slavonia to Croatia, an initiative to end all battle operations, and a comprehensive program for economic reconstruction.[420]

A sustained US-sponsored NATO bombing against the Bosnian Serbs took place in late August, contributing to reverse further the military situation on the ground.[421] By September that year, US envoy Assistant Secretary Richard Holbrooke managed to reach two partial, initial agreements with Milošević (who became the spokesperson of the Bosnian Serbs),[422] Tuđman (as the representative of the Bosnian Croats)[423] and Izetbegović, paving the way for a new comprehensive peace

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[414]   Holbrooke 1998.
[415]   Safe areas were declared in 1993 to be under the protection of UN peacekeeping forces, including Srebrenica, Žepa, Tuzla, Goražde, Bihać and Sarajevo.
[416]   After the NATO bombing, Serb forces seized more than 300 UN peacekeepers as hostages to negotiate a termination to the NATO bombing. Secret talks between the UN commanders in Bosnia and the Serb commander Ratko Mladić ensued, and the 'human shields' were released under unclear circumstances. The content of the negotiations were never fully disclosed. Serbs declared that they received assurances that there would not be any more NATO air strikes in Bosnia, but UN officials denied it (Holbrooke 1998).
[417]   Holbrooke 1998, 69. The International Court of Justice declared in February 2007, 12 years after the events, that the killings in Srebrenica constituted a genocide. Serb commander Ratko Mladić and RS president Radovan Karadžić were indicted by the International Tribunal of Former Yugoslavia following these events.
[418]   O'Brien 2004, 94.
[419]   Goodby 1996.
[420]   Holbrooke 1995.
[421]   Croatia had managed in May and August of 2005 to expel the Serbs from Western Slavonia and the Krajina. The NATO bombing against the Bosnian Serbs undermined their operational effectiveness, and Bosniaks forces were becoming more effective (Goodby 1996).
[422]   Holbrooke had announced in August that he would not negotiate with Serb indictees. Within days, Milošević announced that he would negotiate a peace agreement on behalf of the Bosnian Serbs (O'Brien 2004) on the condition that UN sanctions were lifted (Serbia's economy was near collapse at the time as a result of these sanctions). Finally, it was decided that sanctions would be suspended upon an agreed peace settlement and lifted when the prescribed tasks "were completed" (*ibid*, 99).
[423]   Tuđman had already adopted this role during the negotiations that led to the Washington

conference on 1 November 1995.

The final negotiations lasted 21 days, from November 1 to 21, at the Wright-Patterson Air Force Base in Dayton, Ohio, and dealt with the territorial division of Bosnia, the renegotiation of a new Federation agreement,[424] the outlining of a new constitutional and electoral framework for Bosnia, issues related to the military implementation of the agreement (including an international police mission), and the return of Slavonia.[425] The constitutional proposal did not represent a radical departure from previous ones (as a matter of fact, it envisioned a united Bosnia divided into two entities in a 51-49 ratio, as formulated by the Contact Group plan)[426] but it included additional constitutional devices in order to make the structure of the central government more functional. Furthermore, the overall peace agreement was by and large the most comprehensive blueprint outlined thus far,[427] including one of the largest, most varied multinational efforts.[428] Most of the dispositions in the peace settlement were constitutional in nature, except for some concerned with security, stability, police, elections and the status of the HR, which "set out transitional arrangements ... giving formal approval to NATO and other forces and authorities to carry out particular functions in the country."[429]

An agreement – the General Framework Agreement for Peace (GFAP) – was finally reached on November 21, 1995,[430] after intense discussions,[431] and the formal

Agreement.
[424]   The Washington agreement had been unsuccessful in implementing a real Muslim-Croat Federation. As Richard Holbrooke stated, "after creating the Federation on paper, the United States had not followed up ... we now sought to create two functioning levels of government: a central government ... and two regional entities, one a functioning Croat-Muslim Federation, the other the existing Bosnian Serb entity, but minus any claims to sovereignty" (Holbrooke 1998, 241).
[425]   Holbrooke 1998, 240.
[426]   The initiative thus supported the 'cantonization' of Bosnia along ethnic lines (this time between two entities) rather than a regionalization of Bosnia as envisioned in the Vance-Owen Plan.
[427]   It involved an agreement on twelve annexes, including on military issues; regional stability (arms control); the demarcation of Inter-Entity Boundary Lines; elections   (providing wide competences to OSCE to organize the first elections in 1996); a constitutional framework; arbitration issues; human rights; refugees and displaced persons; the preservation of national monuments; public corporations; the civilian implementation of the agreement; and the setup of an international Police Task Force (see General Framework Agreement 1995).
[428]   Various international and regional organizations were involved in the implementation and monitoring of the key provisions of the peace plan, including *inter alia* NATO, the UN, the OSCE, the IMF, the CoE, the OHR, the European Court of Human Rights and the international community at large through other institutions created immediately after the signing of the agreement such as the Peace Implementation Council.
[429]   Szasz 1997, 760.
[430]   James Goodby suggests that the Dayton agreement was possible as a result of the synergy of various factors, including: the creation of the Federation of BiH; the agreement to have Milošević as the spokesperson of the Bosnian Serbs in the peace negotiations; an agreement in September whereby both Serbia and Croatia would recognize Bosnia; an agreement on the broad-scale use of NATO

signing ceremony was held in Paris on December 14. The new constitutional framework for Bosnia thus emerged as an international agreement between three neighboring countries, namely the republic of Bosnia, the FRY and the Republic of Croatia, guaranteed by external powers and stripped of democratic legitimacy, given that the GFAP was never voted on in parliament and was never approved by referenda in the ethnic constituencies.

3.1.3. Dayton's Annex Four: Key Provisions in the Bosnian Constitution[432]

The General Framework Agreement provided Bosnia with both a regional solution to end the conflict and a power-sharing constitutional framework (Annex four) to regulate ethnic relations in a highly decentralized state. Indeed, Dayton signatories established a loose federation (according to the 1992 boundaries recognized by international law), comprised of two existing entities, namely Republika Srspka and the Federation of Bosnia and Herzegovina,[433] with a separate binding arbitration process created for the disputed area of Brčko.[434] Dayton also introduced a detailed system of ethnic protections and power-sharing mechanisms to guarantee Serbs, Croats and Bosniaks (who were recognized as constituent peoples, with special group rights) a say in virtually every decision made at the state level. Indeed, all decisions and important positions were to be agreed upon and allocated equally between the three constituent peoples. Although not explicitly stated in the agreement, Dayton

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airpower; and an agreement within the Contact Group on the US peace plan (Goodby 1996).

[431]   Holbrooke 1998.

[432]   This review is concerned with the key institutional arrangements that are the target of the constitutional reform in 2005-2006.

[433]   Given the focus of this dissertation on the Bosnian state and state-level institutions, it will not expand on the structure of the entities. It will only be noted here that both entities enjoy widely different structures. While RS was conceived as a centralized unit, with a unicameral assembly, the Bosniak-Croat Federation – the immediate model after which the Dayton constitution is built upon (Hayden 1999) – is a highly decentralized federal unit, divided into 10 cantons, with strong power-sharing features at the executive, legislative and territorial levels. The Federation's parliament is comprised of two chambers and each canton counts with its own parliament.

[434]   General Framework Agreement, Annex two. The arbitration tribunal set Brčko under international supervision in 1997. A final award in 1999 established the former Brčko municipality as the Brčko District under the exclusive sovereignty of BiH and as multi-ethnic, democratic unit of local self-governance. It was formally inaugurated on 8 March 2000. In March 2009, the Brčko District was added to the Bosnian constitution, completing Dayton's annex two. The Amendment I to the Constitution of Bosnia and Herzegovina confirms Brčko as a self-governing district under the authority of the state – owned jointly by both entities – and with direct access to the Constitutional Court in disputes of competences between the state and the entities. The Amendment ensures that no party changes the status of the district (OHR 2009; Amendment I to the Constitution of Bosnia and Herzegovina 2009).

thus created a multi-ethnic democracy at the state level following the consociational recipe of power sharing.[435] In practice, the Bosnia's constitutional framework emphasized group autonomy over power sharing given the few competences conferred to the state[436] (although the drafters of Dayton introduced several mechanisms in the Bosnian constitution to reverse the group emphasis to the benefit of the state, as we shall see below[437]).

One of the key power-sharing arrangements of Dayton was disposed in Article 5 of Annex Four (hereinafter the Bosnian constitution) in relation to the structure of the presidency, collectively formed by three members of each constituent people,[438] namely a Bosniak and a Croat, directly elected from the Federation, and a Serb from RS.[439] The election system was confirmed in the Election law in 2001 as a simple majority vote. The presidency was provided with competences over issues of foreign affairs and other areas as outlined by the House of Representatives and the entities, including the authority to appoint the chair of the council of ministers, who "shall nominate a Foreign Minister, a Minister for Foreign Trade, and other Ministers as may be appropriate."[440] The constitution also envisioned the creation of a chair of the presidency, but did not provide a framework for its rotation. It was later decided that

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[435]   See Introduction for a discussion on the consociational model.

[436]   See Bieber 2008b; McGarry 2008. Bieber argues that the Bosnian arrangement differs from classical approaches to power sharing, in which group autonomy is a function of the power sharing at the center. In Bosnia, "Decentralization, resulting from the war, was a given, whereas some degree of central coordination and cooperation had to be instituted to maintain at least the resemblance of a country rather than two or three separate statelets" (ibid).

[437]   In fact, the Bosnian state has progressively gained new competences within the framework of the internationally led state building process, including new ministries (i.e. the Ministry of Human Rights and Refugees, the Ministry of Finance and Treasury, the Ministry of Justice, the Ministry of Security and the Directorate for European Integration), and new agencies such as the State Border Service, the first security force under the authority of the state (Bieber 2006a, 58), imposed by the HR in 2000, and the State Investigation and Protection Agency created in May 2004

[438]   As Bieber notes, the creation of a co-presidency was a direct legacy of the communist and pre-war era. The 1974 Constitution of the Socialist Federal Republic of Yugoslavia envisioned an eight-member presidency, representing six republics (Croatia, Serbia, Bosnia, Montenegro, Slovenia and Macedonia) and two autonomous provinces (Kosovo and Vojvodina) (Bieber 2008b). The Republic of BiH had in fact seven presidents, two from each constituent people and one from the group 'others' (Friedman 1996).

[439]   The entity-based election of the presidency has been the target of criticism. The criticism is based on the notion that the presidency should represent Bosnia, and not the entities (Bieber 2006a). Furthermore, given the ethnic specification, in practice, the members of the presidency come to represent their respective nations and "only secondarily their entity" (Bieber 2006a, 51). This creates a problem of representation. Entities are not fully mono-ethnic (especially as a result of the process of refugee return), which deprives a part of the population from representation in the presidency and forces them to rely on the representatives of their own nation from the other entity (ibid).

[440]   Constitution of Bosnia and Herzegovina 1995, Article 5.4. A joint secretariat was created in 1999, which strengthened this institution (Bieber 2006a).

the chair would rotate every 8 months and be elected among its members.[441] The chair has remained a rather symbolic institution, with limited competences including signing acts arising from the activities of the presidency; accepting diplomatic accreditations agreed by the members of the presidency; planning the activities and agenda of the presidency; and representing the presidency when the participation of the three members is not possible.[442] The chair thus cannot represent the country alone, except for cases in which the participation of the collective presidency is not possible.[443]

In addition to the ethnically based structure of the presidency, Dayton also envisioned an ethnic-based decision-making process for this institution, providing each member with veto powers. In effect, presidential decisions have to be taken on a consensus basis, except when a "dissenting member of the presidency may declare a presidency decision to be destructive of a vital interest of the entity from the territory from which he was elected."[444] Under such circumstance, the challenged decision would be referred "to the National Assembly of the Republika Srpska, if the declaration was made by the Member from that territory; to the Bosniak Delegates of the House of Peoples of the Federation, if the declaration was made by the Bosniak Member; or to the Croat Delegates of that body, if the declaration was made by the Croat Member."[445] If the declaration were to be confirmed by two-thirds, the challenged decision would not take effect.

The council of ministers is another institution based on a strict power sharing approach at the state level. The council of ministers emerged as one of the weakest institutions at the state level, as it was regulated as part of the presidency powers.[446] The constitution included only a few clauses to regulate this institution, foremost assuring that at least one third of the ministers came from RS. Under the HR's guidance, the first 'Law on the Council of Ministers' was approved in 1997. This law

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[441]   Election Law of BiH 2001, Article 8.3; Presidency of BiH 2001.
[442]   Presidency of the BiH 2001, Art. 6.
[443]   Art. 9.1 (c) of 'The Rules and Procedures of the BiH Presidency' states that all members of the presidency are comparably responsible for representing jointly and collectively, "and acting on behalf of the Presiency and its positions, before the public and other domestic and international institutions" (Presidency of the BiH 2001, Art. 9.1 (c)).
[444]   Constitution of Bosnia and Herzegovina 1995, Article 5.2 (d).
[445]   *Ibid.*
[446]   As Bieber notes, the council of ministers operated as a coordination mechanism with little cohesion in the first post war years; "only by the late 1990s did the council of ministers emerge as a fully-fledged government," particularly under the governments of Božidar Matić and Zlatko Lagumdžjia in 2001-2002 under the government of the 'Alliance for Changes' (Bieber 2006a, 53-54).

created a council of ministers led by two co-chairmen, one Bosniak and one Serb, rotating every eight months, and a Croat vice-chair.[447] It was also decided that the ministers would have two deputies from the other two peoples who would also rotate and make decisions on a consensus basis.[448] The Constitutional Court ruled in 1999 against the constitutionality of the structure of the chairmanship of the council of ministers[449] and a new law in May 2000 provided for the creation of a chair of the council of ministers that would rotate every eight months (following upon the figure of a prime minister). The law also eliminated the rotation mechanism within the ministerial posts, and created three ministries, namely the Ministry of Human Rights and Refugees, the Ministry of Finance and Treasury and the Ministry of European Integration.[450] Two new ministries were added in 2002 (the Ministry of Justice and the Ministry of Security) in the new 'Law on the Council of Ministers of Bosnia and Herzegovina', imposed by the HR. The ministry of European integration became a directorate under the authority of the chair of the council of ministers.[451] The chair of the council of ministers was confirmed in this law, and its term was envisioned to coincide with the mandate of the parliamentary assembly. The decision-making process continued to be based on a consensus formula with the agreement of two members of each constituent people in case consensus was not reached.[452] The council of ministers was significantly strenghened as a result of these changes, and the decision-making process streamlined.[453]

Additional veto-based, power-sharing instruments were devised at the legislative level. The framework – which is still in use today – divides the parliament into two chambers, namely the House of Peoples and the House of Representatives, whose dual approval is required for all legislation. Additionally, both the House of Peoples and the House of Representatives are to select one Serb, one Bosniak, and one Croat to serve as its chair and deputy chairs on a rotating basis. Although both chambers observe the country's division into constituent groups, the election of deputies in the House of Representatives is made in each entity on a proportional basis, which in practice means that members from the Croat and Bosniak community may be elected

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[447]   Chandler 1999; Bieber 2006b.
[448]   *Ibid.*
[449]   Constitutional Court 1999.
[450]   Council of Europe 2001.
[451]   Office of the High Representative 2002d.
[452]   OHR 2002d, Art. 18.
[453]   Bieber 2006b.

as deputies from the RS and vice versa.[454] No seats are reserved for members of the category 'others.' The upper house, the House of Peoples observes the division of Bosnia into constituent groups; it is indeed comprised of five members of each ethnic community selected by their respective entity parliaments (from the House of Peoples in the Federation in the case of the Croat and Bosniak Members). The House of Peoples is also entitled to declare any decision proposed by parliament to be harmful to a vital interest of either constituent people by a majority of the members of a delegation to the House of Peoples. When the national interest is invoked, the decision needs to be approved by the majority of all three delegations to the House of Peoples, except for when the majority of another delegation objects to this. In this case, a joint commission of three delegates from each delegation is convened to decide on the issue. In the absence of an agreement within five days, the issue is sent to the Constitutional Court.

As for the House of Representatives, it is comprised of 42 deputies directly elected from the Federation and the RS on a proportional basis (28 and 14 deputies respectively).[455] Decisions are made on a majority basis provided that they include one-third of the votes of the members from each entity. If meeting this requirement is not possible, "the chair and deputy chairs shall meet as a commission and attempt to obtain approval within three days of the vote."[456] If these efforts fail, decisions are made by a majority of those present and voting, "provided that the dissenting votes do not include two-thirds or more" of the deputies of either entity, which in reality means that there is no real mechanism to overcame a stalemate.[457] This provision is often referred to as 'entity voting', and represents an additional veto layer in the system, given that in reality it means that merely 10 members of the RS represented in the House of Representatives have the power to block any decision taken at the state level at any given time irrespective of the nature of the legislation.

In addition to the power-sharing mechanisms at the legislative and executive

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[454] Bose 2002.

[455] The system is based on the Sainte-Lague system, which favors parties with smaller support (in contrast to the commonly used d'Hondt framework which favors big parties). The rationale for the use of this electoral system is the weakening of the national parties (Bieber 2006a). It is difficult to ascertain the degree to which this formula has undermined the strength of national parties; the result has been a rather fragmented party system represented in the parliament (*ibid*). Other mechanisms were introduced in the draft law in 2000 and the election law in 2001 to favor political accountability, such as the open lists and the multimember constituencies (see Bieber 2006a for a discussion of these instruments).

[456] Constitution of Bosnia and Herzegovina 1995, Article 4.3 (d).

[457] *ibid.*

levels, Dayton also envisioned a highly decentralized state, providing ethnic groups with ample territorially-based autonomy. In this respect, Article 3 prescribed the relations between the state and the entities, outlining very specific policy competences for the state, including *inter alia* foreign policy, trade, customs, monetary and finance issues, refugee and immigration, and international and inter-entity criminal law enforcement.[458] Some additional competences were granted to the state through the annexes 5 to 8 in the areas of human rights, arbitration, refugees and displaced people and the preservation of national monuments.[459] As for the entities, they were provided with "all governmental functions and powers not expressly assigned ... to the institutions of Bosnia and Herzegovina"[460] and with the ability to establish special relationships with neighboring countries and to enter into agreements with states and international organizations with parliamentary approval. In addition to the limited competences granted to the central government, the state lacked broad enforcement mechanisms and was made highly dependent on the entities for financial sustainability.

In sum, and as a result of all of these ethnic-based provisions, Dayton put in place an extraordinarily centripetal power-sharing system, creating an extremely weak, asymmetrical 'confederation'[461] with no effective central government.[462] The only mechanism Dayton envisaged to counterbalance centripetal dynamics was Article 3.5 (a), which allowed for further competences to be introduced at the state level – as well as the creation of new institutions as needed to carry out such competences. The legal architect of Dayton, James O'Brien, confirmed in a conference in 2005, that specific wording was included in the DPA to allow for the state to gain further competences without the approval of the entities.[463] This option

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[458]   Constitution of Bosnia and Herzegovina 1995, Article 3.
[459]   See General Framework Agreement for Peace in BiH.
[460]   Constitution of Bosnia and Herzegovina 1995, Article 3.3 (a).
[461]   Bieber argues that BiH should be rather considered as a loose multinational federation, given that both the Constitution and the Constitutional Court have favored the supremacy of joint institutions over the entities in 1998 (see Bieber 2002).
[462]   As Woodward argues, in the 1990's Dayton seemed to have legalized the ongoing partition of the country rather than preparing the groundwork for the development of a state that has effective control over the territory (Woodward 1999b and 1999c). Hayden also suggested that "while Dayton constitution was premised on the continuation of Bosnia as a single state, its statehood was purely nominal" (Hayden 2005, 243). Indeed, the initial competences granted to the Bosnian state were very limited, and some scholars even suggested that the Bosnian state enjoyed the typical qualities of a quasi-state (Bose 2002; the term quasi state is coined by Jackson 1990) or a confederation (Bieber 2002).
[463]   Cited in Tuathail, O'Loughlin and Djipa 2006; see also O'Brien 2004. O'Brien recognizes, however, that the process of increasing competences would be slow and uncertain, "resting ultimately

was made possible only on three different scenarios: (1) as agreed by the entities; (2) as related to Annexes Five through Eight to the DPA (arbitration, human rights, refugees and national monuments); and (3) as necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia, in accordance with the division of responsibilities between the institutions of Bosnia. Article 3.5 has become, eventually, a critical mechanism for the international community's efforts to build the foundation of a fully functional state, allowing central institutions to acquire an unrestricted number of competences. This has led some scholars to suggest that Dayton provided "an express grant of authority to central institutions that is so limited as to be meaningless, and an implicit grant of authority that is so broad as to be unlimited."[464]

3.2. THE IMPLEMENTATION OF DAYTON: PATTERNS OF EXTERNAL INTERVENTION

The Dayton agreement set in motion one of the most ambitious peace-building missions to date, including extensive involvement and supervision in relation to the military, police and civil aspects of the agreement. On the military side, the GFAP envisioned the involvement of external forces for approximately a year. Contingent upon a resolution by the UN Security Council, external powers committed 60,000 troops for a multinational military Implementation Force (IFOR)[465] composed of ground, air and maritime units from NATO and non-NATO nations to assist in the implementation of the territorial and other militarily related provisions of the agreement.[466] On the civilian side, the agreement was wrapped around the figure of the HR, an international envoy entrusted with the implementation of the civilian aspects of the agreement,[467] including the humanitarian aid effort; the rehabilitation

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on strong political leadership from the international community and, more often, from Bosnians intent on rescuing their own country from the nationalists who brought it to destruction" (O'Brien 2004).
[464]   Hayden 1999, 27.
[465]   IFOR was thus to replace UNPROFOR. IFOR was subsequently replaced by the Stabilization Force (SFOR) in 1996, with 30,000 troops, and by the European EUFOR in December 2004, with 7000 troops.
[466]   General Framework Agreement 1995, Annex 1a Article 1.1.
[467]   The HR was given "the final authority in theater regarding interpretation of this Agreement on the civilian implementation of the peace settlement" (General Framework Agreement 1995, Annex

of infrastructure and economic reconstruction; the establishment of political and constitutional institutions; the promotion of respect for human rights; the return of displaced persons and refugees; and the holding of free and fair elections.[468] The HR was also entrusted with the coordination of a UN International Police Task Force (IPTF),[469] which was integrated into the GFAP to carry out a program of assistance in the area of law enforcement.

Additional international forums and bodies were created in the early stages of the peace building operation in order to support the externally led implementation and policy-development process and to coordinate the work undertaken by the different international organization on the ground. The PIC, for example, was created at the Peace Implementation Conference in London on 8-9 December 1995, as a forum comprised of 55 countries, international organizations and agencies. It was to replace the ICFY – whose activities were to be finished by January 1996 – and was commissioned to manage and review the peace implementation process on a six-month basis.[470] The London conference also designated the EU mediator for former Yugoslavia Carl Bildt as the HR, and created an eleven-member Steering Board, including the US, the UK, France, Germany, Italy, Canada, Japan, Russia, the Presidency of the EU, the EC and Turkey (as the representative of the Organization of the Islamic Conference). The Steering Board was commissioned to serve as the PIC's executive arm under the chairmanship of the HR (enjoying the authority to create working groups as necessary), and to provide political guidance to the HR on a monthly basis. In addition to these newly created institutions, the Contact Group continued to be heavily engaged in the implementation process, meeting on a monthly basis with the HR, and undertaking the preparatory work for the PIC Steering Board meetings. A Board of Principals was also created later on, in 2002, as the main coordinating body of the international community in Bosnia, under the chairmanship of the HR, to streamline the operations on the ground, increase the effectiveness of activities and avoid overlap by external efforts.[471]

X, Article 5).

[468] General Framework Agreement, Annex 10, Art. I.

[469] The IPTF was replaced by the EUPM in 2003 to "ensure the continuing professional development of the police forces ... through mentoring, monitoring, and inspection of BiH police personnel and structures," under the EC's institution building programs (Peace Implementation Council 2002a).

[470] Peace Implementation Conference 1995.

[471] The Board of Principals is attended by the OHR, the chair, EUFOR, NATO, OSCE,

Three broad phases can be identified in the externally led implementation of Dayton, despite some degree of overlap:[472] (1) the first phase, from the signing of the GFAP to the end of 1997, centered around military implementation of the agreement, with most external efforts being directed towards two main goals, namely containing the threat of a renewed military conflict and the physical infrastructure reconstruction;[473] (2) the second phase involved renewed attention to the civilian aspects of the agreement, including the strengthening of the powers of the HR and more focused interactions with domestic actors; (3) the third phase, which started in early 2000, involved a more systematic approach towards state- and institution-building in Bosnia and a renewed role for the EU in the country.

3.2.1. External Intervention and the 'War by Other Means' (1996-1997)

In the first phase of GFAP implementation, external efforts were overwhelmingly focused on the military provisions of the agreement, with most activities directed towards preventing recurrence of violence (IFOR troops were rapidly deployed along ceasefire lines, separating the three armies and creating a weapons-exclusion zone at the inter-entity boundary line). Indeed, while success was rapidly achieved in this area, little was accomplished in other areas, especially in reference to the civilian aspects of the agreement.[474] As Richard Holbrooke noted, while the military, "met every early deadline, the civilian side ... met almost none, and fell steadily behind schedule;" a good amount of blame was placed on the first international envoy, HR Carl Bildt, but "the fault was more in the structures ... imposed on him, particularly the failure to give him sufficient funding or stronger backing from IFOR."[475] These structures failed to confront the enormous domestic challenges facing post-conflict Bosnia. As Elizabeth Cousens has stated, "the Dayton Agreement ... presented serious, if not insuperable, obstacles to peace-building, notably: an implausibly short

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UNHCR, EUPM and the EC. Other organizations such as the World Bank, the IMF and the UNDP participate on a regular basis.

[472] Cox 2001; Šelo Šabic 2003.

[473] Cox 2001.

[474] *Ibid.*

[475] Holbrooke 1998, 324. Holbrooke explains, "Carl Bildt ... had so little money and support that he was forced to operate without an office or telephones, and used his personal cellular telephone as his primary means of communication. After appeals to the European Union, he received enough funding to open his offices in Sarajevo, where he presided like an elegant squatter over a building filled with wrecked rooms, broken toilets, shattered windows, and almost no staff" (*ibid*; See also Bildt 1998).

timetable for national elections; a postwar constitution that privileged the leading mono-national parties; a settlement overly dependent on the continuing commitment of a narrow set of elites whose interest in either peace or broader political liberalization was, as it remains, debatable; and a framework for international engagement that excessively segregated military from civilian efforts."[476]

Many of the civilian-related implementation problems thus lay both in the persistence of the mono-ethnic, corruption-riveted structures that had been created during the war[477] and the continued influence of wartime leaders who managed to keep the wartime agenda alive in the aftermath of the conflict.[478] Indeed, nationalist parties, which won by a landslide in the first general and municipal elections in 1996 and 1997 (see table 3.1 and 3.2),[479] not only confronted the international community in its efforts to monitor and assist the implementation of the agreement, but also worked to undermine the very domestic institutions that Dayton signatories had agreed to put in place.[480] Cooperation among party leaders came along only "grudgingly and under intense international pressure,"[481] leading frequently to near-paralysis of the state for much of the second half of the 1990's.[482]

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[476]   Cousens and Cater 2001, 114-115.

[477]   In fact, the military objective of physically separating the armies tended to work against the state-building process; as former HR's advisor Marcus Cox noted, "with no progress to date in merging the three armies, the division of territory into separate military zones continue[d] to support illegal parallel structures" (Cox 2001, 11).

[478]   Power in RS, especially in Eastern RS, was in the hands of wartime leaders such as Radovan Karadžić, president of both the SDS and RS until July 1996, Momčilo Krajišnik and Biljana Plavšić (European Stability Initiative 1999). There were also some external missteps such as a weak police mandate that failed to meet the needs of the first months of the implementation process; the HR's lack of enforcement capability; and NATO's rather minimalist interpretation of its mandate and its opposition to assuming policing tasks (Holbrooke 1998, 324-325). As Cox argues, "In the first two years of the peace process, [IFOR] consistently refused to deploy its forces to prevent inter-ethnic violence, apprehend indicted war criminals or support the return of refugees and displaced persons" (Cox 2001, 10).

[479]   The 1996 elections (as well as the 1998 and 2002 elections), held only 9 months after the end of the conflict, resulted in the victory of the very same three nationalist parties that won the elections in 1990.

[480]   European Stability Initiative 1999; Pickel and Donais 2003. Carl Bildt stated in his memoirs that for the political leaders, "peace was much too often just the continuation of war by other means" (Bildt 1998, 3).

[481]   International Crisis Group 1998; see also Woodward 1997. As Cox argued, "so long as the distribution of financial or material assistance was involved, the ethnic power structures were willing to co-operate with the international community. However, when it came to political objectives such as minority return or implementing the new constitutional structures, international efforts met with strong resistance" (Cox 2001, 11).

[482]   Chandler 2005.

Table 3.1. 1996 Presidency Elections

	Party	Results
Bosniak Member[483]	SDA Alija Izetbegović	80% (730,592)
	SBiH Haris Silajdžić	13,6% (124,396)
	Others	6.4% (58,289)
Croat Member	HDZ Krešimir Žubak	88.7% (330,477)
	Others	11.3% (42,089)
Serb Member	SDS Momčilo Krajisnik	67.3% (690,646)
	Democratic Patriotic Block/People's Alliance for Free Peace[484]	30%[485] (307,461)
	Others	2.7% (28,050)

Source: Bosnia and Herzegovina Central Election Commission

Table 3.2. 1996 Legislative Elections

	Party	Results	Seats
Federation Voters	SDA	54.2% (725,417)	16
	HDZ	25.3% (338,440)	8
	Združena Lista (SDP and others)	7.9% (105,918)	2
	SBIH	7% (93,816)	2
RS Voters	SDS	54.5% (578,723)	9
	SDA	17.4% (184,553)	3
	Democratic Patriotic Block/People's Alliance for Free Peace	12.8% (136,077)	2

Source: Bosnia and Herzegovina Central Election Commission

Bosnian Serbs, for example, systematically challenged the authority of central institutions while strengthening their own autonomous entity. As Holbrooke stated, "the Bosnian Serbs began to resist on almost every nonmilitary issue, while

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[483]   SDP decided not to put up a candidate for the elections given the popularity of Izetbegović.

[484]   This is an opposition coalition to the SDS formed by an amalgam of two minor coalitions: the right-wing coalition, the Demokratski patriotski blok (Democratic Patriotic Bloc); and the left-wing coalition People's Alliance for Free Peace (Narodni Savez Za Slobodan Mir), including the SPRS (Socialist Party of RS). Mladen Ivanić was the coalition's candidate (International Crisis Group 1996).

[485]   Ivanić's support was believed to come from absentee votes of Croats and Bosniaks (International Crisis Group 1998).

remaining careful to avoid provoking IFOR."[486] Although a deal was struck with the SDS and Milošević in July 1996, forcing Karadžić to step down from the presidency of the SDS and RS on July 19, politics remained highly confrontational. Internal cracks started to show in 1997, however, between Pale's hard-line leadership and a more moderate, Banja Luka-based officialdom, especially following the loss of external support from the FRY[487] and a more assertive role for SFOR.[488] Divisions were aggravated in the first half of 1997 and resulted in two events: first, the defection of Karadžić's successor, President Biljana Plavšić, from the party in mid-1997; and second, moving the government from Pale to Banja Luka with the support of the international community (which for the first time offered substantive international aid to RS) and placing Plavšić's supporters in key positions along the way. As a result of the internal turmoil, the SDS floundered in 1997, and was defeated in parliamentary elections in November 1997. The 'Sloga' coalition under the leadership of Milorad Dodik formed a government in January 1998 with the votes of both Bosniaks and Croats from RS and the invaluable support of the international community.[489] All in all, although the new government "offered a new rhetorical tone, promising the return of 80,000 minorities[490] in its first year of office and a new relationship with the Bosnian state," it remained weak and failed to deliver on its promises. Moreover, the Dodik government was just as resistant to the development of the state as the SDS,[491] and substantial power was still retained by the SDS's

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[486]   Holbrooke 1998, 338.
[487]   This was the result of the split between Milošević and Pale's leadership, and Serbia's post-war economic decline (European Stability Initiative 1999).
[488]   As the European Stability Initiative reported, the SDS monopoly over both the media and key economic assets was seriously damaged as a result of a joint campaign by SFOR and OHR (European Stability Initiative 2001).
[489]   International Crisis Group 1998a; European Stability Initiative 2001. The international community offered extraordinary budgetary support to the Sloga Government in early 1998. The international community also offered critical support in the 1998 presidential elections, where they "tried to prevent the Bosniaks from Republika Srpska from standing a candidate against the Sloga presidential candidate, Biljana Plavšić" (European Stability Initiative 2001, 10).
[490]   The war displaced 2.2 million people (over a million of refugees and over a million of internally displaced). By 1998, around 200,000 refugees and 220,000 displaced people had returned to their homes. Although returns to majorities went smoothly in the first few years after the war, minority returns (returnees in areas where they are in a minority) encountered strong local resistance by the parties in power (International Crisis Group 2002c). Further progress was achieved in the 2000's. In September 2004, UNHCR and the BiH Ministry of Human Rights and Refugees announced that over a million refugees and displaced persons had returned to Bosnia by the end of July of 2004 (440,147 former refugees and 560,326 internally displaced persons), half of which were minority returns. See the statistics at http://www.unhcr.org/news/pr040921bihstats.pdf [accessed on March 30, 2009].
[491]   European Stability Initiative 2001. Indeed, "The voting record of Sloga candidates in state institutions was no different to the SDS, and the government-controlled national assembly passed a number of unconstitutional resolutions affirming the primacy of Republika Srpska over the state.

hardliners in key RS municipalities, where obstruction to the implementation of Dayton was more pervasive and critical.[492]

The implementation record in the Federation was not much different from that of the RS. As the International Crisis Group stated in 1997, "More than three and a half years after its creation in March 1994, the Federation remains divided into Croat- and Bosniak-controlled areas and all aspects of life are dominated by the two nationalist parties. ... Party bosses generally bypass democratic institutions, such as the parliament, in favor of bilateral deals."[493] Indeed, Bosnian Croats pursued a heavily loaded obstructionist strategy in the first few months after the end of the war by refusing to participate in government institutions and advocating for the creation of a third entity. In fact, the institutions of a separate Croat entity never ceased to function, especially in Mostar and in some parts of western Herzegovina.[494] As for the Bosniaks, despite being less obstructive than the other two communities given their strategic interest in keeping the integrity of Bosnia, they remained split and divided,[495] proving to be of little assistance to international efforts at implementing the main civilian provisions contained in Dayton. As the European Stability Initiative argued, SDA exhibited a greater diversity of opinion including supporters of Dayton as well as xenophobic elements,[496] but "the central SDA leadership [was] not always able to control cantonal and municipal authorities, which may be as obstructive as those found in Croat- and Serb-controlled areas."[497]

As a result – and despite all the money poured into the country (30 percent of GDP in the first few years)[498] -- none of the civilian aspects of the agreement had been implemented by the end of 1997, prompting the PIC, at its meeting in Bonn in

Although minority return improved over that period, this did not correlate with the municipalities controlled by the Sloga parties" (ibid, 11).

[492]   European Stability Initiative 1999.
[493]   International Crisis Group 1997, 5-6.
[494]   International Crisis Group 1997.
[495]   Pickel and Donais 2003. Alija Izetbegović exerted a strong unifying influence over the party, but it was not sufficient to control the most xenophobic elements within the party and to prevent the emergence of divisions within that resulted in the creation of off-shoot parties such as Haris Silajdžić's Party of BiH (SBiH) in 1997.
[496]   European Stability Initiative 1999.
[497]   *Ibid*, 14.
[498]   Bosnia has received more per capita assistance than Europe did under the Marshall Plan (Chesterman 2004, 244). Most of the money went to post-conflict reconstruction and refugee return but many resources were wasted along the way due to the incoherence of funding programs and the inadequacy of both entity and state level institutions to manage these funds (Chesterman 2004; see also International Crisis Group 2001 for an account of the political economy in Bosnia after the conflict).

December 1997 to extend the mandate of the international institutions indefinitively,[499] until compliance with the GFAP and subsequent obligations was achieved by the parties.[500]

3.2.2. Civilian Implementation and the Bonn Powers (1998-2000)

The second phase of implementation started in December 1997 – only a few months after Carlos Westendorp[501] was sworn in as the second HR in Bosnia – with a revamped strategy to overcome the obstruction exerted by domestic parties. In this context, an important development took place in 1997 with the extension and broadening of the HR's powers at the Sintra and Bonn PIC meetings in 1997. Indeed, from this point onwards, the HR was authorized to make binding decisions in relation to two key areas: (1) in the implementation of 'interim measures' when parties were unable to reach an agreement;[502] and (2) in setting up other measures, including "actions against persons holding public office or officials who are absent from meetings without good cause or who are found by the HR to be in violation of legal commitments made under the Peace Agreement or the terms for its implementation."[503] In other words, the so-called Bonn powers authorized the HR both to remove elected representatives, public officials and party officers acting in violation of the DPA and to impose laws when the legislative and executive bodies

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[499]   Peace Implementation Council 1996. The PIC had already extended the mandate in Paris in November 1996 for a 'two-year consolidation period'.
[500]   Peace Implementation Council 1997b. The PIC meeting in Sintra, Porgugal, in May 1997 had, for example, noted that "all the authorities of Bosnia and Herzegovina are failing to live up fully to their obligations under the Peace Agreement, and ... this is unacceptable" (Peace Implementation Peace 1997a, para. 5). The Madrid PIC meeting in December 1998 recognized "the continued need for an international presence in Bosnia and Herzegovina - both civil and military - to help build the peace" (Peace Implementation Council 1998a, para. 5).
[501]   HR Carlos Westendorp, a Spanish diplomat, had no immediate background in the region. He held the position of HR from June 1997 to July 1999. During his tenure, the HR powers were extended substantially. Although he made extensive use of these powers, with an average of four impositions per month (a total of 45 laws) (Knaus and Martin 2003) and the removal of 16 officials, including Dragan Čavić, he was a relatively low-key HR in comparison to subsequent HRs such as Wolfgang Petrisch and Paddy Ashdown; in fact, he was blamed for spending more time in Spain than in Bosnia during his tenure. Čavić was pardoned on July 1999, before the end of Westendorp's mandate.
[502]   These measures were to come into force on a provisional basis, before they were passed formally by parliament, which would not be allowed to introduce any amendments. The HR has tended to become less intrusive over time (see table 4.1. in chapter 4).
[503]   Peace Implementation Council 1997b; As noted in the Introduction (p. 17), the HR removed a total of 139 individuals from 1998 to 2004, including judges, civil servants and elected officials both at entity or state level. He also took the decision to freeze individual bank accounts.

failed to deliver on the legal requirements of the DPA.[504] As Hays asserted, the OHR evolved "from being a lobbying agent for change in a war torn country to being, in effect, a regulatory agency."[505]

Partly thanks to the new powers entrusted to the HR but also to a more assertive role taken by the international community (as proven by the revamped mandate given to SFOR in 1997), some key breakthroughs were accomplished in the area of institution-building, including: the law on media reform aimed at breaking the links between political parties and public broadcasters; a legislative reform on property rights for accelerating refugee returns; the creation of a Ministry for Civil Affairs and Communications; the imposition of a common currency (the Convertible Mark) in early 1998;[506] the introduction of a common vehicle license plate; and the enactment of a common national passport, improving significantly the freedom of movement.[507] In addition to the imposition of legislation, the new strategy of the international community also consisted of placing intense pressure on local authorities to frame laws in line with both Dayton and the international community's views of how institution building should develop and play out.[508] As the International Crisis Group noted,

> "Legislation in the economic sphere, designed to establish the basis for a
> sustainable recovery and a market economy, has been drawn up with
> detailed help from international advisors and consultants, and often with
> pressure on the authorities to take the path desired by the international
> community. At the cantonal and municipal levels too, strong international
> pressure has had to be applied to persuade recalcitrant leaders to fulfill
> their obligations under the DPA on such matters as establishing joint
> administrations and police forces and enabling the return of refugees and

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[504] Council of Europe, 2004c; The Sintra meeting also granted the HR with the powers to take action in relation to the suspension of "any media network or programme whose output is in persistent and blatant contravention of either the spirit or letter of the Peace Agreement" (Peace Implementation Council 1997a).

[505] Hays 2004. Other voices have been more critical of the alleged undemocratic powers of the HR (see Knaus and Martin, 2003; Chandler 2006). The dismissal of public officials in Bosnia, for example, is taken without the person concerned being given a hearing. In addition, the decisions of the HR are final and cannot be appealed before any court (Council of Europe 2004c).

[506] The Convertible Mark was pegged with the German Mark and administered by a Currency Board.

[507] Cox 2001, 13.

[508] As Cox asserted, this phase was "characterized by a growing willingness of international actors to engage directly in local power struggles, spurred on by disillusionment with an electoral process that was consistently returning the wartime leadership to power" (Cox 2001, 12).

DPs; and these efforts to twist the arms of unwilling local leaders have tended to have only limited success."[509]

In terms of the domestic landscape, general elections were held in November 1998 (see table 3.3 and 3.4), and although nationalist parties still sustained a monopoly within their own ethnic segments, political pluralism became more significant than in previous elections. These domestic developments were also encouraged by the international community's more assertive involvement and interference, publicly stressing support to any party committed to the implementation of the GFAP.[510] As the International Crisis Group noted, "during 1998 it became obvious that OSCE was not acting as the impartial international referee envisioned by the DPA. Rather, it was actively involved in the international community's efforts to unseat the SDA, HDZ and the Serb nationalist block, most notably the SDS and SRS."[511] Indeed, international actors started to openly support voting for moderate political forces, although the results of this strategy were mixed.

Table 3.3. 1998 Presidency Elections

	Party	Results
Bosniak Member	SDA Coalition (SDA, SBiH, others) Alija Izetbegović	86.8% (511,541)
	Others[512]	13.2% (77,819)
Croat Member	HDZ Ante Jelavić	52.9% (189,438)
	SDP Gradimir Gojer	31.8% (113,961)
	NHI[513] Krešimir Žubak	11.4% (40,880)
	Others[514]	3.9% (13,727)
Serb Member	SDS-SRS RS Momčilo Krajisnik	44.8% (314,236)
	Sloga Coalition[515] Živko Radišić	51.3% (359,937)
	Others[516]	3.9%(27,388)

Source: Bosnia and Herzegovina Central Election Commission

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[509]   International Crisis Group 1998a, 4-5.
[510]   International Crisis Group 1998a.
[511]   International Crisis Group 1999, 45.
[512]   Others include: DNZ (Demokratska Narodna Zajednica) with 6.2%; BPS (The Patriot Party/Bosanskohercegovacka Patriotska Stranka) with 5.7%; and Boss (Bosanska Stranka) with 1.3%.
[513]   New Croatian Initiative (NHI).
[514]   Others include: Boss and Rebublikanci.
[515]   The Sloga Coalition was formed by the Socialist Party of RS (SPRS), Biljana Plavsić's Serb People's Alliance (SNS) and Milorad Dodik's SNSD.
[516]   Serbian Coalition of RS (Srpska Koalicija Republiku Srpsku)

Table 3.4. 1998 Legislative Elections

	Party	Results	Seats
Federation Voters	SDA Coalition	47.9% (455,668)	14
	HDZ	19.7% (187,707)	6
	SDP	14.5% (138,004)	4
	Socijaldemokrati BiH	3% (28,740)	2
	HNI	3% (28,572)	1
	DNZ	2.6% (21,452)	1
RS Voters	SDS	21% (162,721)	4
	SDA	16.5% (128,277)	3
	Sloga Coalition	27.7% (214,716)	4
	SRS RS	15.3% (118,522)	2
	Radical Party RS	3.9% (27,686)	1

Source: Bosnia and Herzegovina Central Election Commission

One of the most straightforward external interferences involved the RS, following Plavšić's defection from the SDS and the setup of a non-SDS minority government under Dodik's leadership in early 1998. In order to both protect Dodik's unstable government and keep the SDS away from power, the international community campaigned intensely prior to the elections in favor of Dodik's coalition. Notwithstanding the international community's support and the warnings about the withdrawal of US aid, Plavšić was defeated and the elections brought the hardliners back to power. The international community intervened again when the new RS president, Nikola Poplašen from the SRS, refused to reappoint Dodik as prime minister despite of his parliamentary majority. The HR dismissed the elected president, leaving the presidency position vacant for almost two years (until new elections in 2000), and appointed Dodik as the caretaker prime minister,[517] supporting him despite poor economic performance and the breakdown of his government's coalition.[518] Although the overall aim was to preclude hardliners from taking over the government in RS, the legitimacy of these actions were questionable from a democratic standpoint, particularly in the eyes of the population.

Internal fissures also transpired in the Croat community between those in favor of wartime goals and those in support of a peaceful transition to a normalized Bosnia, although ultimately hardliners managed to remain in key party positions.

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[517] European Stability Initiative 1999, 14.

[518] European Stability Initiative 2001. The European Stability Initiative noted that Dodik "made little attempt to address Republika Srpska's pressing economic problems, and by the end of its term public finances were close to collapse, with a deficit of more than DM 200 million, and pensions and public-sector salaries many months in arrears ... International support was not enough, however, to prevent Dodik losing the presidential elections" (ibid, 11).

These divisions, which had been present since the origins of HDZ in 1990[519] and were somehow diluted during the war's effort, flared up at the party's congress in May 1998, leading to the formation of a new party, the New Croat Initiative (HNI), in mid-June 1998. The rift within the HDZ was aggravated after the death of the Croatian minister of defense Gojko Šušak in May 1998, "which left the HDZBiH without a figure with the authority to hold together its different strands."[520] The party's hardliners managed to elect the Bosnian Federation's defense minister Ante Jelavić as party president (against Tuđman's wishes who was receiving intense pressure from the international community), defeating the moderate candidate favored by the Croat leader Krešimir Žubak,[521] Božo Ljubić.[522]

On the whole, despite the increased political pluralism and the extended powers granted to the HR, "significant portions of Dayton remain unimplemented" by the end of 1999,[523] especially Annex Four. As the International Crisis Group noted in 1999, the constitution "is unwieldy, unworkable, and bears no relation to the reality of Bosnian political life. The central government institutions exist largely on paper, and are only as powerful as the entities allow them to be."[524] Bosnia's dependence on international assistance at the decision-making level had also increased. Indeed, although parliament had passed a number of laws since 1996, most of them had been either imposed by the HR or drafted by the international community.[525] In sum, as the European Stability Initiative noted, up until 2000, "state institutions have functioned as theatres of nationalist politics, with the entities and parallel power

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[519] The International Crisis Group argues that there has always been "a geographical distinction between those Croats who lived in mixed communities with Bosniaks and Serbs, such as in central Bosnia and Sarajevo, and in the Posavina region of northern Bosnia, and those who lived in the ethnically compact region of western Herzegovina, where Croats formed a significant majority of the population. The perspective of the former was largely conditioned by the experience and necessity of living side beside with Bosniaks and Serbs, while the latter often had a more narrowly Croat perspective, which revealed itself in a more hard-line approach towards the other peoples of Bosnia" (International Crisis Group 1998b, 2).
[520] International Crisis Group 1998b, I; see also Grandits 2007.
[521] Krešimir Žubak had succeeded Mate Boban as the HDZ Croat leader, following strong pressure by the US to have Boban step down during the negotiations of the Washington agreement. Žubak left the HDZ in the summer of 1998 to form a new party, NHI, which failed to displace the HDZ in the September 1998 elections (see table 3.3).
[522] International Crisis Group 1998b, 3. The name of Dragan Čović, at the time president of the HDZ city committee in Mostar, had also been put forward, but his candidacy had to be removed as a result of allegations of pre-war Serb affiliations.
[523] International Crisis Group 1999, 10.
[524] International Crisis Group 1999, 16. Between 1996-1998, the HR imposed eight key national laws, including the law on citizenship, the law on the flag, the law on the state hymn and the law on telecommunications
[525] International Crisis Group 1999.

structures conspiring to keep the state weak and underdeveloped. The common institutions have been kept hostage to short-term political disputes, and have been unable to establish their own institutional identity."[526] As a matter of fact, no reconciliation had been accomplished, and "at least two of the three factions have yet to achieve their wartime goals."[527]

3.2.3. External Intervention after the 2000 Peace Implementation Council (2000-2005)

The New International Community's Strategy: The May Peace Implementation Council & Transformation from Within

Building upon the Madrid meeting in December 1998,[528] the May 2000 PIC meeting delineated a new comprehensive strategy for the international community in Bosnia, following up on Dayton's ongoing failing record[529] and the acknowledgement of an initial reversal of the power monopoly of nationalist parties at the state and FBiH levels.[530] It is also worth mentioning the parallel developments taking place at the European level, with the launch of the Stabilization and Association Process (SAP) in

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[526]   European Stability Initiative 2000, 3.
[527]   International Crisis Group 1999, 127. As Bieber noted, cooperation among parties at the time amounted largely to a division of power; "each party largely respected the "right" of the other nationalist parties to govern their respective nation, and cooperation, if required by the institutions, was limited to a division of access to state assets and resources" (Bieber 2001, 5).
[528]   A more robust state-building agenda was undertaken at this meeting, under HR Westendorp, including a reinforced approach to strengthening state-level institutions, such as the military and the judiciary and ending parallel institutions. The PIC also envisioned greater emphasis in "building the rule of law, reinforcing the common institutions, creating a self-sustaining market economy and accelerating democratization", including *inter alia* the creation of a professional civil service, the privatization of state-owned companies, the promotion of civil society (Peace Implementation Council 1998a, para. 12).
[529]   The PIC meeting at the political directors level on June 1999 in Brussels expressed concern about the lack of progress and declared to be alarmed "by the inadequate level of functioning of the Common Institutions of Bosnia and Herzegovina (BiH), in particular the BiH parliament." It also declared to be "seriously concerned about the lack of functioning of the institutions in the Federation. Security conditions must be improved without delay, and parallel institutions as well as ethnic chains of command within the Federation institutions must be dismantled" (Peace Implementation Council 1999).
[530]   The European Stability Initiative noted that the ethnic power structures had started to fall apart; "Political changes in Croatia and Serbia have cut external revenues, forcing the political elites in Bosnia to reorient themselves towards the international community and participate in the Bosnian state. Although the nationalist parties continue to enjoy widespread electoral support, the post-war nationalist regimes, built on the ideology of ethnic cleansing and dedicated to the objective of dividing Bosnia, have gone" (European Stability Initiative 2001, 17).

1999 and the March 2000 presentation of the Road Map for Bosnia's European integration process, building upon (and converging with) the PIC's state-building strategy.[531]

The new strategy was based on a functionalist, maximalist interpretation of Article 3.5 of the Bosnian constitution, whereby new competences could be assigned to the state "to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina in accordance with the division of responsibilities between the institutions of Bosnia and Herzegovina."[532] The international community's new approach was clearly aimed at undertaking a gradual transformation of Bosnia's institutional framework from within, using Dayton's mandate to expand the powers of the state at the expense of the entities. The May 2000 PIC meeting thus presented a revamped, comprehensive intervention agenda. It noted the significance of the newly launched SAP,[533] and outlined a set of priorities "for a new accelerated phase of peace implementation"[534] including economic reform, refugee return and the fostering and consolidating of common institutions. In the area of institutional reform, 'building a credible state' became an "explicit international objective."[535] In this context, the most significant areas of reform included: (1) the set up of independent funding for state-level institutions (the precursor of the value-added and integrated tax reforms), including the creation of a state treasury through which the donor community would channel economic

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[531]   The presentation of the Road Map by External Relations Commissioner Chris Patten (which followed a request by BiH for a feasibility study on the Stabilization and Association Agreement negotiations), represented the first major benchmark in Bosnia's European bid. The Road Map outlined 18 concrete policy steps, including the implementation of several institution-oriented laws such as an election law, a civil service law, a law on State Border Service, property laws, new rules for the parliament, laws on judicial and prosecutorial service and legislation for foreign direct investment. It also included the requirement of allocating sufficient funding for the Constitutional Court of BiH and the implementation of the decisions ruled by the Chamber of human rights and cooperation with OHR in public service broadcasting. European officials did not think the list to be too demanding, expecting compliance within eight to nine months (Noutcheva 2006, 60). The road map was however only "substantially completed" in September 2002, two and a half years after.
[532]   European Stability Initiative 2001, 17. As a matter of fact, the European Stability Initiative noted that "With the breakdown of extra-constitutional power structures, debates on the design of the Bosnian state ... entered the political mainstream" (ibid).
[533]   Peace Implementation Council 2000a. The PIC reaffirmed its commitment to Bosnia's integration into the EU. In the annex, the Council reminds Bosnia that the implementation of the EU's road-map is a pre-condition for rapprochement to the EU and demands Bosnian authorities to act promptly on these and on the issues enumerated in the agenda that is included (Peace Implementation Council 2000b).
[534]   Peace Implementation Council 2000a.
[535]   European Stability Initiative 2001, 17.

assistance;[536] (2) the creation of a unified command in the armed forces; (3) the creation of a body for intelligence services under democratic control; (4) the establishment of an effective and merit-based, professional civil service; (5) the setup of a first-instance state court; (6) and the setup of a single economic space through the creation of the appropriate regulatory bodies and structures necessary for a Bosnian common market.[537] The PIC also demanded that the HR outline a plan of action so that the international community could both rationalize implementation efforts and monitor and evaluate compliance and progress by Bosnian authorities.[538] The HR was also asked to streamline the international civil presence in Bosnia in order to improve coordination, efficiency and ownership.

Parallel to the outline of this revamped state-building agenda, the newly appointed HR Wolfgang Petritsch[539] launched a new ownership strategy, the so-called 'partnership approach', aimed at: diminishing Bosnia's dependence on international assistance (paving the way for the diversion of resources towards new pressing commitments in places such as Kosovo);[540] and preparing the transition from partial partnership to complete ownership in fulfillment with Bosnia's integration into Euro-Atlantic structures.[541] Meeting the ambitious goals of

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[536]   Up until that point most of the state's revenues were dependent upon transfers from the entities.
[537]   Peace Implementation Council 2000a; 2000b.
[538]   Peace Implementation Council 2000a. The Bosnian authorities were also required to report to the PIC every six months on the implementation of the program included in the Declaration and Annex (ibid).
[539]   HR Petritsch held the position from August 1999 to May 2002. He had previous experience in the region. In 1997 he was appointed Austrian Ambassador to the Federal Republic of Yugoslavia, a position he held until July 1999. From October 1998 to July 1999 he was appointed the EU's Chief Negotiator in the Kosovo peace talks held at Rambouillet and Paris. HR Petritsch was a rather active HR. Although his stated goal prior to taking office as the HR was to promote domestic ownership and partnership, he made extensive use of the HR powers and was only able to start a program of social ownership in 2001. Petristch's greatest success was refugee return. By the end of his mandate 850,000 had returned to their homes, including 300,000 minority returnees.
[540]   Petritsch also stated in an interview, "When I arrived in Sarajevo, it was clear to me that the international community's engagement required a thorough overhaul. In 1999, the world's focus had shifted from Bosnia and Herzegovina to Kosovo, and there were many other issues -- outside Europe in particular --that occupied the attention of the principal actors of the international community" (Petritsch 2003, 358).
[541]   This approach only took off in 2001 following the formation of the first non-nationalist government in Bosnia at the state level, which encouraged greater confidence and optimism within international circles (this initiative was however abandoned as soon as the nationalist parties were back in power in 2002). The approach materialized through two different forums. The first one, namely the Consultative Partnership Forum, was set up on 19 July 2001 to discuss policy issues related to the peace implementation process with state and entity level officials, especially the council of ministers. The second one, namely the Civic Forum, was created with the goal of enabling citizens to have a greater impact in policy making. In addition, HR Petritsch also organized "regular meetings in which representatives of the State and the Entities try to clarify the competencies of the different

partnership and ownership was challenging in the first weeks of Petritsch's office in mid-1999, and he initiated his mandate with the dismissal of 22 officials and the imposition of a set of refugee-related laws, a pattern that he continued throughout his administration. As Petritsch stated, "During the first 11/2 years of my mandate, I indeed had to act as the most interventionist HR ever. Ownership is a process that requires a framework, and I first had to lay solid foundations to get this process going and create the conditions for ownership to take root. I set three priorities: strengthening the state institutions, which were barely functioning at the time, getting economic reform under way, and finally … ensuring that the refugees and displaced persons could go back home. If we succeeded in these three areas, everything else would fall into place much more easily."[542]

The first major turning point at the domestic level came with the general elections in 2000 (see table 3.5), which represented the first major breakthrough in the dissolution of the nationalist strongholds (although this held important pockets of power locally).[543] This was partly the result of major gains by the only self-declared non-ethnic based party, the SDP; it was also the result of public discontent with nationalist parties as a result of increasing corruption and their inability to deal with rising unemployment and other economic ailments afflicting Bosnian society.[544] The SDP success was, however, not sufficient for constituting a government without a coalition with other parties, and the SDP entered into a non-nationalist ten-party coalition, the so-called 'Alliance for Changes,' including the SBiH and smaller parties such as the PDP, the SNSD and Plavšić's SNS, some of which were in parliamentary coalition with the SDS at the RS level.[545] The coalition was brought together after months of negotiations, under close international scrutiny.[546] Due to the absence of a pre-election program of its own, the Alliance adopted the Brussels

administration'" (UN Security Council 2001).

[542] Petritsch 2003, 361.

[543] Bieber notes that this represented the biggest threat to nationalist parties; "Effective governance, combined with power-sharing rather than resource sharing" represented a threat to the post-Dayton modus vivendi and sustainability of nationalist parties (Bieber 2001, 5). The result of the elections was, however, a disappointment for most international forces who had expected and estimated greater gains by pro-reform parties. As a case in point, radical forces continued to garner the greatest support in RS.

[544] The elections also followed key changes in neighboring Croatia and Serbia, as well as significant external assistance to pro-Western parties in Bosnia.

[545] European Stability Initiative 2001. The HR stated that the new council of ministers included, for the first time since the signing of Dayton, "representatives of parties that fully embrace the State of BiH and are reform-oriented" (Council of Europe 2001).

[546] European Stability Initiative 2001.

PIC objectives.[547] The new coalition, however, entered government in difficult economic and institutional circumstances. The European Stability Initiative describes the situation as follows:

"[The Alliance for Changes] has only a year and a half to tackle Bosnia's pressing economic and social crises before it must face re-election [in 2002].[548] At the State level, administrative structures are underdeveloped, with no professional civil service in place. At Federation level, the Alliance inherits a complex and unwieldy constitutional structure in a state of crisis. Since 1996, Federation institutions have been developed according to the needs of SDA-HDZ power-sharing arrangements, and will need to be restructured. The HDZ continues to control a number of cantons, whose co-operation is needed for any serious policy programme to be implemented. As a result, it is difficult to see how the Alliance will have the capacity in its first term of office to deliver on its larger promises of reversing Bosnia's economic decline. The electoral fortunes of its member parties are likely to depend largely on their ability to deliver results at the cantonal level, where much economic and social policy is made."[549]

Table 3.5. 2000 Legislative Elections

	Party	Seats
Federation Voters	SDP	8
	SDA	7
	HDZ	5
	SBIH	4
	Others[550]	4
RS Voters	SDS	6

[547]   *Ibid*, 16. The Alliance for Changes also governed in the Federation under SDP's Prime Minister Alija Behman. In RS, the only thing that the international community managed to do was to avoid having the SDS take over the government; indeed, the US threatened to withdraw all international aid to RS if SDS entered the new government. The task to form a government was given to PDP, who had 13 percent of electoral support.

[548]   The election law was finally approved in August 2001, setting a four-year term for state-level officials. Up until this point, general elections were held every two years with OSCE assistance and regulations.

[549]   European Stability Initiative 2001, 16.

[550]   Others include: DNZ, BPS, NHI and DSP (Democratic Pensioner's Party/Demokratska Stranka Penzionera).

PDP	2
SNSD/DSP Coalition	1
SDA	1
SBIH	1
SDP	1
Serbian People Alliance RS - Bilijana Plavšic	1
Socialist Party of the Republic of Srpska	1

Source: Bosnia and Herzegovina Central Election Commission

In the end, the 'Alliance for Changes' experiment was short-lived (although some significant improvements were accomplished such as the approval of the belated election law and other important legislation for entrance in the CoE). The combined effects of the difficult economic situation, the relative incompetence of the Alliance, and the ongoing support for nationalist forces together brought the nationalists back to power at both the state and entity levels in the 2002 elections (see table 3.6. and 3.7). Their victory was not the result of a major increase of votes but the "general disillusionment with the political process, ... the lack of economic progress and a bitter pre-election campaign."[551] Furthermore, challenges to the Dayton framework from nationalist parties continued. As a case in point, the HDZ (and other minor Croat parties) created the Croat National Congress as a platform to protect Croat interests in October 2000, presumably in response to the change of the election rules by the OSCE in 2000.[552] Following these elections and as a result of HDZ's exclusion from the government at the entity and state levels, the National Congress declared Croat self-government in March 2001, and launched an inter-cantonal council, The international response was not delayed. On March 7, Ante Jelavić was removed from his position as the Croat member of the presidency and the SFOR took over Hercegovačka Banka, "closely linked to both HDZ and the financing of Croat self-government."[553]

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[551]   Bieber 2006, 101. The disillusionment of the population is reflected in the voter turnout, which was 54 percent in the 2002 elections (as opposed to 78 percent in the 1996 elections). The lower rate of voter turnout might also be the result of the frequency of elections since 1996 (Perry 2006).
[552]   Bieber 2001.
[553]   *Ibid*, 2.

Table 3.6. 2002 Presidency Elections

	Party	Results
Bosniak Member	SDA Sulejman Tihić	37.3% (192,661)
	SBIH Haris Silajdžić	34.8% (179,726)
	SDP Alija Behmen	17.5% (90,434)
Croat Member	HDZ Dragan Čović	61.52% (114,606)
	Economic Bloc HDU Mladen Ivanković- Lijanović	17.4% (32,411)
	NHI Mijo Anić	8.8% (16,345)
Serb Member	SDS Mirko Šarović	35.5% (180,212)
	SNSD Nebojša Radmanović	19.9% (101,119)
	SRS Ognjen Tadić	8.7% (44,262)

Source: Bosnia and Herzegovina Central Election Commission

Table 3.7. 2002 Legislative Elections

	Party	Results	Seats
Federation Voters	SDA	33.9% (232,325)	9
	HDZ[554]	16.6% (114,207)	5
	SBIH	17% (116,114)	5
	SDP	16.3% (112,258)	4
	Others[555]	9.4% (64,737)	5
RS Voters	SDS	38.3% (172,544)	5
	SNSD	25.4% (114,591)	3
	PDP	11.8% (53,177)	2
	SDA	8.2% (37,102)	1
	SBiH	4.4% (19,976)	1
	Others[556]	10.4% (46,685)	2

Source: Bosnia and Herzegovina Central Election Commission

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[554] The HDZ run as part of a coalition.
[555] Others include: BOSS, DNZ, NHI and Ekonomski Blok HDU.
[556] Others include: SRS and SPRS.

The year 2002 marked another significant turning point in Bosnia's political developments, but in a different arena. In May 2002, Lord Paddy Ashdown took office as both the new HR and the EU Special Representative,[557] initiating a new phase in streamlining external efforts under the leadership of the EU.[558] From this point onwards both the HR and the EU Special Representative operated in synergy and the state-building process was more clearly subordinated to the requirements and timeline of the EU accession process. As Ashdown stated in his inaugural speech, "my aim is simply ... to work with the people of Bosnia and Herzegovina to put this country irreversibly onto the road to statehood and membership of Europe."[559] The October 2002 elections represented a major setback to the international community's agenda, however, and the return of nationalist parties to power prompted Ashdown to redesign a new mission implementation plan for Bosnia.[560]

Ashdown's new strategy featured two key dynamics. The first one included a

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[557] The British HR Paddy Ashdown – the fourth HR in Bosnia – has been one of the most controversial international envoys because of his extensive use of executive powers. He held office as HR from May 2002 to January 2006. During his tenure, a rather prominent record of imposed legislation was undertaken, especially in the first few years of his mandate. While Westendorp imposed on average four decisions per month, Ashdown started with an average of fourteen decisions per month (Knaus and Martin 2003). The initiation of the process of police restructuring, which was strongly contested by the Serb parties, was also initiated under his mandate. Prior to his role as international envoy in Bosnia, he was the leader of the Liberal Democrats in the UK.

[558] The appointment of the EU Special Representative in 2002 was made in light of an increased EU presence on the ground, especially the launch of the ESDP police mission (EUPM) in 2003 that took over the UN. The EUSR was entrusted with two key tasks at the outset, namely (1) to "maintain an overview of the whole range of activities in the field of the Rule of Law and in that context provide advice to the Secretary-General/High Representative (SG/HR) and the Commission as necessary"; and (2) "to give direction, as necessary, to the Head of Mission/Police Commissioner of the EU Police Mission" (see Council of the EU 2002). The role of the EUSR has increased significantly overtime in both the provision of advice to EU officials (including the EUFOR Commander) and the coordination of all EU actors on the ground with the goal to ensure EU consistency and coherence. The EUSR is also to be consulted on EU accession priorities. The first amendment to the EUSR mandate was undertaken in 2004, in light of the launch of the EU military operation EUFOR (Council of the EU 2004b). The mandate has been amended four times in subsequent joint actions by the Council of the EU from 2005 to 2009, with a substantial increase of his competences, especially in the area of the rule of law and the fight against organized crime (Council of the EU 2005c). In 2006, for example, the Council entrusted the EUSR with a "reinforced EUSR office in the context of the closure of the Office of the High Representative (OHR), including advice on public information aspects of the transition" (Council of the EU 2006). The 2007 and 2009 EUSR mandate includes the support of human rights; the facilitation of Bosnia's cooperation with the ICTY; and the provision of political advice and facilitation in the process of constitutional reform (Council of the EU 2007b). Notwithstanding the overall aims to strengthen EU capacities and internal coordination, cooperation between EUPM and Commission officials have been poor (Grevi 2007).

[559] Ashdown 2002.

[560] Peace Implementation Council 2002b.

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revamped use of Bonn powers[561] and a more extensive use of Article 3.5 to provide the state with further attributes of functionality. As Ashdown stated in his inaugural speech, "Dayton is the floor, not the ceiling. It is the foundation for the state we are trying to construct. And like all foundations, it must be built on."[562] He also wed the international community's strategy to a step-by-step state-building approach rather than the redrawing of a completely new Dayton. As he argued early in his mandate, there is "only one realistic future – to make Bosnia and Herzegovina work. ... Some argue that the answer lies in a single great event, a second Dayton, or something similar. I disagree. What we are involved in here is not an event but a process. ... My vision of Bosnia and Herzegovina is of a modern country whose state level institutions do only what is necessary, but do it effectively."[563]

The second strategy of the newly appointed HR included a new policy approach towards state building based on strengthening the country's domestic ownership and direct engagement of party leaders.[564] This strategy was translated into the setup of parallel reform processes in different areas, based on the creation of joint commissions entrusted with the enacting of draft legislation. Indeed, over the course of 2003, Ashdown set in motion a number of different reform processes following this formula in the defense, intelligence and police areas. The commissions were chaired by an international expert and composed of national and international experts as well as members of all main political forces at state and entity level.[565] The goal of these commissions was to sit key political forces down at the table to agree on a set of laws regulating new state-level institutions at the state level that would later gain approval of the state-level parliament. In addition to instituting a framework in which party leaders were to sit together under the presence of international actors, this initiative was aimed at infusing the decision-making process with further democratic

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[561] A rather prominent record of imposed legislation was undertaken in the first few years of Ashdown's mandate, including the Law on the Council of Ministers in December 2002 and the Law on the Civil Service in May 2003, whereby the state level administration became fully regulated. A Defense Ministry was also created in December 2003, and the HR imposed a complete restructuring of the court system, "closing and consolidating courts throughout both entities in order to achieve a more efficient and more accountable judicial system. The number of first-instance courts was reduced from 78 to 47" (Council of Europe 2004c, para. 161). The State Prosecutor's office was also imposed in August of 2002, as well as the criminal and the criminal procedure codes.
[562] Ashdown 2002.
[563] *Ibid.*
[564] This strategy built upon Petritsch's approach to the Constituent People case in 2000 and the set up of commissions with external presence (See section one in Chapter 4). This strategy was also in concordance with the EU's emphasis on domestic ownership.
[565] Council of Europe 2004c, para. 108.

credentials. Indeed, it enabled "parliaments at all three levels to participate to some extent in the drafting process, since amendments could (at least theoretically) be tabled to the various laws put before them."[566]

The initiation of these processes coincided with the presentation of the EU's Feasibility Study in 2003 aimed at providing an assessment of Bosnia's progress towards the opening of SAA negotiations, the end goal of the SAP. The EC identified sixteen priority areas in which Bosnia needed to make further progress before the start of SAA negotiations, including forty-eight laws and the establishment of twenty-five new institutions in areas such as the rule of law, competition, customs, and taxation. Additionally, the Feasibility Study (as well as the European partnership released in June of 2004)[567] included for the first time the restructuring of police forces as one of the key prerequisites for a SAA. The EU encouraged Bosnian authorities to "consider further restructuring and rationalizing police services in order to enhance efficiency and improve crime fighting capabilities."[568]

The new reform strategy promoted by Ashdown seemed to generate greater consensus among political leaders in the first few months, but the final results were mixed. In fact, meeting the criteria set up by the EU became unfeasible during the Ashdown period. While the first three reform processes initiated in 2003 and 2004 (namely the tax system, the defense and intelligence reforms) resulted in the adoption of key legislation that put down the basis of new state-level institutions by 2005, they faced major challenges in the area of implementation.[569] Furthermore, the restructuring of the police forces (initiated only a few months before the constitutional negotiations) brought the whole state building and EU accession process to a stalemate.

The problem with police restructuring was tied to the imposition of a set of standards defined by the EU; which met with strong resistance from RS (especially

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[566]   *Ibid.*

[567]   The Council adopted its first European Partnership with Bosnia on 14 June 2004, stating the short and mid-term priorities for Bosnia to move forward in the preparations towards EU integration (Council of the EU 2004a).

[568]   European Commission 2003. The PIC had already called for the establishment of a multiethnic police in Bosnia in 1998 (Peace Implementation Council 1998b).

[569]   Obstruction at the implementation phase has become a recurring problem and the ultimate informal veto mechanism in the hands of ethnic groups. As the Foreign Policy Initiative noted, very often the RS fails to implement state directives or to pass the appropriate legislation for the functioning of state level institutions and agencies (Foreign Policy Initiative 2007). In the case of the Federation obstruction has been frequently the result of "administrative incompetence, oversight or simply bad communication" (ibid, 41).

as it related to the ability of police forces to cross inter-ethnic lines; given that this was considered to undermine the status of RS).[571] The HR created the Police Restructuring Commission (PRC) in July 2004[572] (including the participation of both international and local officials from both entities); and entrusted it with the mandate to propose a single police structure in Bosnia under state authority.[573] The PRC held seven meetings from July through December,with no tangible results (in spite of the various concessions offered to RS officials).[574] The international community reiterated its support for the EU's police standards in Bosnia and in April demanded local authorities reach an agreement by the end of May.[575] A new round of negotiations, organized by the OHR, took place at the end of April 2005 at Mt. Vlasić and in May in Konak; however again, despite further consessions and a final statement expressing the participants' willingness to meet the EU criteria, negotiations ended in stalemate.[576]

The approval of police reform remained an important and unmet pre-requisit necesary to the initialization of talks on the signing of a SAA.[577] Further negotiations on police reform overlapped with the process of constitutional reform in 2005 and 2006 (as we shall see in the next chapters); and established the context in which the

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[571]   The three principles to accomplish police reform were laid out by EU officials in 2004 and early 2005 through various public statements and official communications with Bosnian authorities. These included: (1) securing exclusive state-level competencies over police (which implied eliminating entity control over police forces); (2) eliminating political interference from within the police forces; and (3) ensuring that police regions were determined on the basis of technical and professional criteria (See Patten 2004; Rehn 2005a). In sum, the EU envisioned the reorganization of police forces into 11 inter-ethnic regions and the establishment of a state-level legislative and budgetary authority to manage these forces.

[572]   Office of the High Representative 2004.

[573]   RS was under strong international pressure at the time. It is reasonable to assume that Serb parties decided to participate in the PRC in order to avoid further pressure from the international community (and in spite of their rejection to the EU's principles on police reform). As a case in point, Bosnia's candidacy to NATO's Partnership for Peace (NATO's framework for the establishment of good relations with non-NATO European countries and Russia) was rejected in June 2004 as a result of the RS's failure to arrest war crimes indictees. Serb engagement in the PRC was nonetheless lukewarm (especially among RS officials); and this ultimately undermined the process as negotiations progressed.

[574]   As a case in point, the PRC's final report envisioned ten regions where the multi-ethnic component was diluted to a great extent (International Crisis Group 2005).

[575]   In time for the Consultative Task Force meeting with the European Commission, and ahead of a European Commission assessment regarding the launch of negotiations on a SAA with Bosnia (Peace Implementation Council 2005b).

[576]   See International Crisis Group 2005.

[577]   The other condition remaining was the passage of legislation reforming the public broadcasting system (to make it sustainable from a financial perspective and more independent). This reform process is discussed in chapter 5 (p. 176), as it overlaps with the process of constitutional reform.

constitutional reform process unfolded.[578]

3.3. CONCLUSION

The GFAP, signed in November of 1995 to end the bloody conflict in Bosnia, set in motion one of the most ambitious peace- and state-building missions to date, including an extensive external involvement and supervision in the military, police and institutional aspects of the agreement. While the military and security aspects of the GFAP were rapidly set in place, since then the international community has struggled with building a functional state in the face of sturdy obstruction from the three major ethnic groups in Bosnia. Some key breakthroughs have occurred over the years with the launch of the so-called 'Bonn Powers', and the intertwinement of the state-building process with the EU accession framework, but pervasive divisions continued to threaten the functionality of the Bosnian state. More importantly, despite all the external efforts and resources poured into this country, rampant ethnic divisions have continued to this day; furthermore, the political debate continues to revolve around the same parameters as before the war. While Serbs continued to favor the division of Bosnia into ethic-based territories, with a highly decentralized central government, Bosniaks sought a centralized state organized around different administrative regions. Croats remained divided about the best arrangement for the Croats within Bosnia, with some arguing in favor of a third entity and others in support of a highly decentralized state with strong local autonomy.

The origins of the process of constitutional reform need to be understood in this context, namely the relatively poor record of the EU's attempt to shape the state building process and the mega-conflict among local actors on the future form of the state. The process of constitutional reform thus represented a new strategic approach, one aimed at changing the root causes of the institutional and ethnic deficits inherited from Dayton. The following chapters provide an explanation for the failure of this strategy.

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[578] Police reform developments are discussed in the following chapters, as they overlap with the process of constitutional reform.

PART III

BEYOND DAYTON

Part three of the dissertation is concerned with the analysis of the process of constitutional reform in Bosnia during the course of 2005 to 2006, looking at both the role of domestic and external actors and their mutual interactions in each step of the process.

Chapter 4 is concerned with the origins of constitutional reform and the initial steps. This chapter delineates the rationale behind the process of constitutional reform, the format of the negotiations and the rules for the roadmap. The goal of this chapter is to frame the constitutional negotiations within the ongoing process of state building in Bosnia.

The subsequent three chapters are devoted to the analysis of the process of constitutional reform, looking at three key critical junctures in the development of the negotiations, including the involvement of party leaders from November 2005 onwards (chapter 5); the US takeover of the process in December 2005, paving the way for a final political agreement on constitutional reform in March 2006 (chapter 6); and the transfer of the agreement to the parliament where it was rejected in April 2006 (chapter 7). These chapters analyze the political dynamics involved in each phase, looking at the role of elite interactions at the three levels laid out in the theoretical framework.

CHAPTER 4

THE RATIONALE AND ORIGINS OF CONSTITUTIONAL REFORM

4.1. THE ORIGINS OF CONSTITUTIONAL REFORM

4.1.1. The Constituent Peoples' Case

One of the first attempts at reforming the constitutional framework in Bosnia occurred at the entity level through the Constitutional Court's decision on the 'constituent peoples' case.[579] The case was brought by the then president, and Bosniak leader, Alija Izetbegović on February 12, 1998.[580] President Izetbegović was effectively demanding a review of conformity in relation to certain provisions contained in the entities' constitutions vis-à-vis the Dayton Constitution.[581] The claim involved 19 provisions, and included issues relating to the official languages in Bosnia, the status of the Orthodox Church, the command authority of the entities' presidents with respect to the armed forces, and, most notably, the position of the constituent peoples in the entire territory of Bosnia.[582]

Following numerous public hearings and discussions over a period of more than two years, the Constitutional Court (CC) provided four partial decisions in 2000. Foremost among these was the third decision, released on July 1 2000, which addressed the position of the constituent peoples. According to this decision, all three

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[579] The Constitutional Court (CC) is comprised of nine members: three international judges, appointed by the President of the European Court of Human Rights (following consultation with the Bosnian Presidency); four judges appointed by the House of Representatives of the Federation and two judges by the assembly of RS (Constitution of Bosnia and Herzegovina 1985, Art.6.1.a.). The Court adopts its decisions by a majority of all members (*Ibid*, Art.6.2.b).

[580] The case was first initiated by Prof. Mirko Pejanović; Izetbegović took on his initiative and submitted a legal proposal to the CC (Pejanović 2004).

[581] Annex Four of the Dayton Peace Agreement had given the entities a period of three months to bring their respective constitutions into conformity with the Bosnian Constitution (Constitution of Bosnia and Herzegovina, Art. 12.2).

[582] Constitutional Court 2000. The entities' constitutions failed to recognize the three ethnic groups as constituent peoples within their jurisdiction. Serbs were not recognized as a constituent people in the Federation. Similarly, Bosniaks and Croats were not recognized as constituent peoples in RS.

constituent peoples were required to be given equal status and constitutional rights across the entire territory of Bosnia. The Court went on to declare the provisions related to the position of constituent peoples in each entity to be unconstitutional and demanded the entities proceed with the requisite constitutional amendments. This decision had a special resonance in Bosnian politics, as special focus was given to eliminating the effects of ethnic cleansing. As referenced in the CC decision, "Despite the territorial division of BiH [Bosnia and Herzegovina] by establishment of two entities, this territorial division cannot serve as a constitutional legitimacy for ethnic domination, national homogenization or the right to maintain results of ethnic cleansing."[583]

Implementing the CC ruling was more difficult than expected. The key challenge lay in finding a way to revise the entities' constitutions, with the inclusion and agreement of the Serbs and Croats; both of whom were strongly opposed to the Court's ruling. In fact, the decision has been passed with the votes of the international and Bosniak judges,[584] with the Croat and Serb judges[585] expressing significant reservations. These reservations were mostly nationalistic and technical in nature; and were appended to the final decision. The Croat Judge Mirko Zovko, for example, used the agreement on the implementation of the Federation, signed in Dayton on 10 November 1995, to oppose the Court's ruling. He argued that this agreement did not reference the Serbs as a third constituent people in the Federation, and therefore the CC decision ran counter to the spirit of the Dayton agreements.[586] Similarly, Serb judge Vitomir Popović argued that the decision inherently opposed the nature of Bosnia as a union of two entities; "Serbs, Bosniaks and Croats are constituent peoples according to the Constitution of BiH at the level of the state of

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[583]   Constitutional Court 2000, 36. The decision was, in fact, intended to both re-address the effects of ethnic cleansing and create more favorable conditions for safe returns in each entity.

[584]   These included two Bosniak judges: Prof. Kasim Begić, president of the CC at the time, and Azra Omeragić; and three international judges: Austrian Prof. Joseph Marko, French Prof. Louis Favoreu and Swede Dr. Hans Danelius.

[585]   Namely, Serb judges Prof. Vitomir Popović and Prof. Snežana Savić; and Croat judges: Dr. Zvonko Miljko and Mirko Zovko.

[586]   Mirko Zovko stated, "the decision of the court that I voted against would have not been a problem if the Dayton Agreement had been established as a 'unitary state' ... [but] it is manifest that the Federation was not established by Serbs and that the Republika Srpska was not established by Croats and Bosniaks" (Zovko 2000, 92). According to him, full implementation of the Federation agreement was a precondition for a peaceful Bosnia. Croat member Zvonko Miljko also argued, "My fundamental dissension from the majority opinion is reflected by my belief that this constitutional dispute is primarily a problem of the ... organization of Bosnia and Herzegovina and not a problem within the domain of individual rights and fundamental freedoms guranteed by the Constitution of Bosnia and Herzegovina" (Miljko 2000, 46).

BiH," but not at the entity levels according to the constitutions of the entities. "Any other approach," he stated, "would lead to a negation of the existence of the Republika Srpska and the Federation of BiH and the transformation of BiH from a very specific complex *sui generis* state to a unitarian state which would not reflect what was envisaged by the DPA."[587] Though these opinions reflected a nationalist sentiment, they also reflected concerns relating to a potential loss of power associated with the amendments. Indeed, abiding by the CC decision meant changing the government structures of both entities and securing the representation of all constituent peoples in all public institutions.

As a result of this, significant resistance was encountered in both entities with respect to the implementation of the decision. In light of the obstructions, HR Petritsch formed a constitutional commission attached to each of the Entities' legislative assemblies in order to reach an agreement on how to best resolve the issue.[588] The creation of the commissions – comprised of 16 members on a parity basis, including four members of each constituent people and four members belonging to 'others' – represented a somewhat new approach in terms of resolving matters in Bosnia; one in which domestic actors were expected to reach compromises on their own with the presence and assistance of international actors.[589] The commissions were, in fact, the first of their kind and were moderated by HR Petritsch and the Deputy Principal HR Donald Hays.

A set of proposals were presented to the parliaments in December 2000 and January 2001 in RS and the Federation, respectively, after long rounds of deliberations; but further negotiations appeared necessary to fine tune the most contending issues of the reform, namely the system for the protection of the vital interest and the framework for the representation of constituent peoples and 'others'

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[587] Popović 2000, 79. Other reservations were technical. Serb Snežana Savić, for example, argued that there were several formal deficiencies in the presentation of the case to the CC; such as the use of a non-existing BiH coat of arms (Savić 2000). According to Savić, these formal issues undermined the legal framework of Izetbegović's application as a member of the Presidency (*ibid*).

[588] See OHR 2001. The first step included the formation of a Task Force formed by the CoE, the OSCE and the OHR to define the core elements of the amendments, including inter alia the definition and protection of the vital interest and the representation of constituent peoples and 'others' in public institutions (Neussl 2004)

[589] Bieber (2004b) argues that this approach was the result of Petritsch's focus on 'local ownership' and the relatively positive climate associated with the 'Alliance for Changes' government. But the consent of all key parties, including the nationalists, was needed for legislative approval (see Bieber 2004b).

in public institutions.[590] Ethnic groups presented mutually incompatible demands. The Croats, as former advisor to HR Petritsch, Peter Neussl, argues, "were trying to achieve symmetry in form, with the establishment in the RS of a system that would copy the Federation structures, and, hence, lead to a complete overrepresentation."[591] As for the Serbs, they "insisted on symmetry in substance", aiming to uphold Serbian dominance in the RS to the greatest extent possible. The Bosniak parties were this time torn between the two positions; as Neussl noted, they were interested in both achieving as much as possible in the RS in terms of 'minority people's rights' and keeping the dominant position for the largest constituent people in the Federation.[592]

The Mrkovica-Sarajevo Agreement was signed on March 27, 2002,[593] after a lot of arm-twisting by the HR.[594] Both SDA and HDZ, however, failed to sign the agreement and Serb parties expressed serious reservations.[595] While the agreement did not reflect the best possible interpretation of the CC decision,[596] it did represent an acceptable compromise and had significant reverberations in the overall state building process in Bosnia.[597] For example, the agreement prescribed that all constituent peoples and members of the group 'Others' be proportionally represented in the entities' governments and public institutions.[598] In particular, the agreement envisioned a minimum representation of the constituent peoples in the government of both the Federation and RS, including eight ministries (out of sixteen) from the largest constituent people, five from the second-largest group and three from the smallest one. Most significantly, it stated that such proportionality should follow the 1991 census until such time as Annex 7 [on refugee return] was fully implemented,[599]

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[590]   Neussl 2004.
[591]   Neussl 2004, 68-69.
[592]   *Ibid.*
[593]   Bieber argues that the two meetings held in Mrakovica and Sarajevo in January and February 2002 represented the first meetings in which all of the main parties in Bosnia met "independently of international supervision" (Bieber 2004, 82).
[594]   HR Petritsch admits that the parties found common ground "After long negotiations and admittedly a lot of arm-twisting by me" (Petritsch 2003, 358; see Perry 2002 for a discussion on the different options under consideration).
[595]   Bieber 2004b.
[596]   Serbs, for example, continued to be the dominant group in RS (see International Crisis Group 2002b; Neussl 2004).
[597]   International Crisis Group 2002b. For a discussion of the implications of this constitutional reform see Bieber 2004b.
[598]   Public institutions include the ministries of the entity and cantonal governments, the cantonal and municipal governments, and the cantonal, district and municipal courts (see OHR 2002a and 2002b).
[599]   See Office of the High Representative 2002a and 2002b. Following completion of Annex 7, each constituent people would have a minimum representation of 15 percent; two constituent people

which represented a clear victory for the positions of both Croats and Bosniaks. It was also prescribed that the House of Peoples in the Federation and the newly created Council of Peoples in RS (on Vital National interest issues) would be formed on a parity basis so that all constituent peoples had the same number of representatives. These institutions were to include a number of delegates from the group 'Others.'[600] New provisions were also included in the area of vital national interest in both entities, granting veto powers to all constituent peoples. Veto powers were, however, limited to a set of core domains, including the constitutional amendments, identity related matters, territorial organization, group protections, the public information system and the organization of public authorities, although the amendment permitted the extension of veto rights to other matters through parliamentary procedure.[601]

The Federation however failed to pass the necessary changes[602] and The RS National Assembly chose to pass the agreement with additional technical language that undermined both the letter and spirit of the agreement.[603] This resulted in a scenario in which the HR had to impose the agreement upon both entities on 19 April of 2002, prior to the deadline set up by the Constitution to introduce constitutional changes.[604] Eventually, those opposed to the constitutional changes accepted the decision "while seeking to slow down the implementation, as had been the general approach towards most international reform initiatives."[605] Ultimately, although the

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would have a minimum representation of 35 percent (Neussl 2004).

[600]   See Office of the High Representative 2002c. Some of the provisions contained in the amendments have not had the expected results. As a case in point, the spots reserved for 'others' have often been used for members of the constituent peoples (see Bieber 2006b), and the position of the Bosniak and Croat vice presidency in RS has no enjoyed real competences.

[601]   See OHR 2002b.

[602]   The House of Peoples was able to adopt the changes on 18 April 2002 thanks to the majority held by the members of the 'Alliance for changes' in this chamber. The House of Representatives however failed to reach a two third majority, some argue in response to the RS National Assembly's approval of technical changes that undermined the agreement. SDA abstained and members of HDZ walked out the assembly prior to the vote (Neussl 2004).

[603]   Most of the technical changes introduced by the RS National Assembly on April 4 were aimed at weakening the 'asymmetry' nature of the new institutional arrangement. The Croat and Bosniak vice presidents in RS would not be directly elected, and the governmental representation of Bosniak and Croat would be limited to a 15 percent threshold (Bieber 2004b). The Council of Peoples (CoP) was also greatly weakened. The technical changes introduced by the RSNA, for example, allowed the RS president to dissolve the CoP with the approval of the vice-presidents. If the vice-presidents were not to concur, the president could seek approval of the RS Constitutional Court. The problem with this clause is that the amendments did not secure the organization of the RS CC on a parity basis (International Crisis Group 2002c, 19), which gave the Serbs the final word on the dissolution of the CoP without the consent of the other two constituent peoples (see International Crisis Group 2002c).

[604]   In fact, HR Petritsch had to intervene to change the deadline for the introduction of constitutional changes from 170 to 169 days (see OHR 2002f).

[605]   Bieber 2004b, 83.

reform was welcomed by internationals given the success in achieving equal representation of individuals throughout the territory of Bosnia,[606] Florian Bieber has noted that the proliferation of new power sharing arrangements rendered Bosnia "more, rather than less, complex."[607] In fact, the reform did not resolve one its original goals, namely resolving the tensions between individual and group rights. As a matter of fact, as Bieber has noted, "it actually accentuate[d] the predominance of group representation over individual rights."[608] The process also brought to light the still fundamentally antagonistic views of the different actors, and the shortcomings involved in a locally driven reform process.

4.1.2. Constitutional Debates in 2000-2004

A debate on the future of Dayton ran parallel to the entities' constitutional reform process, but no action was taken at the time. The political developments that took place in 2000 and 2001, including the breakdown of "extra-constitutional power structures" and the formation of the first non-nationalist government at the state level in 2001, triggered a discussion on the future of the Bosnian state within both domestic and international circles.[609] The CoE, for example, became one of the key advocates of the revision of the Dayton constitution; making a clear case for constitutional changes at the time Bosnia was accepted as a member of the CoE in 2001. Indeed, the explanatory memorandum of the CoE's opinion on Bosnia's admission[610] stated: "The Dayton Agreement was intended to set up the conditions for peace. Six years after their adoption one can ask oneself whether the time has not come to revise them in order to adapt them to the situation and in particular to strengthen the common institutions."[611]

This opinion reflected a growing consensus within international circles that a

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[606] Internationals also welcomed the reform because it rendered the entities, especially RS, less effective vis-à-vis the state (Bieber 2004b).
[607] Bieber 2006b, 21. See also Bose 2005.
[608] Bieber 2004b, 84.
[609] European Stability Initiative 2001, 17. See for example Tomić-Malić 2000.
[610] Bosnia had become special observer of the CoE in January 1994. It applied for membership on 10 April 1995, and the CoE committee of ministers invited the CoE parliamentary assembly to prepare an opinion on this request in January 1999. The opinion was presented in 2001 and 2002. Bosnia's admission to the CoE took place in April 2002.
[611] Council of Europe 2001. Rapporteur Jäätteenmäki is referring to the situation of Bosnia at the time. It is important to note that the first non-nationalist government was formed in 2001. This event instilled strong optimism about the situation in Bosnia among internationals.

more liberal arrangement attuned to European standards was needed in Bosnia in order to overcome ethnic divisions and to achieve progress in the process of accession to the Euro-Atlantic institutions (namely NATO and the EU). The emergence of the first non-nationalist government in Bosnia in 2001 provided an incentive and served to empower this agenda at the time. In fact, the strengthening of the state level institutions in Bosnia, including a reform of the constitution (if necessary), became part of the post-admission CoE's conditionality for Bosnia in 2001. The CoE's opinion on Bosnia's admission stressed that "the state institutions should be strengthened at the expense of the institutions at entity level, if need be by a revision of the constitution."[612] The rationale behind this opinion was that if Dayton had created a weak state as the only possible solution to end the conflict, then the absence of violence six years later provided the framework for the creation of new institutional arrangements de-emphasizing ethnic guarantees and allowing for European assimilation.

Though a consensus within the international community began to grow around the idea of revising Dayton; no agreement was reached on the questions of how and when it would be appropriate to do so. The return of the nationalists to power in the fall of 2002 represented a significant stumbling block and served to undermine momentum relating to the issue of constitutional reform. There were no substantial initiatives until 2004. During the intervening time, HR Petritsch was succeeded by HR Ashdown in May 2002 (immediately after the imposition of the 'constituent peoples' decision), and the latter undertook a new state building approach based upon an incremental strategy. In other words, rather than devoting external efforts to engage in an all-encompassing, large-scale reform of Dayton, Ashdown adopted a strategy based on a functional, step-by-step process of institutional strengthening at the state level. As Ashdown put it, "Our strategy has been to follow a functional approach – moving from one key sector to the next – redressing the deficits of the

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[612]   Council of Europe 2002. In another resolution relating to the monitoring of Bosnia's compliance with the admission requirements, the CoE went so far as to call on the Bosnian authorities to engage in a constructive dialogue on constitutional reform (Council of Europe 2004a). The CoE stated, "The Assembly stresses that the functioning of the complex political and institutional system set up by the Dayton agreements requires a higher degree of mutual readiness for dialogue and consensus and, most importantly, a sense of common interest. While it appears that the time is not yet ripe for changing the existing constitutional set up – widely acknowledged as excessively complicated – the Assembly nevertheless calls on the domestic authorities and the political forces in the country to engage in a constructive dialogue on this issue" (*Ibid*).

Dayton structure by streamlining and unifying institutions."[613] This approach was made possible by the discretionary use of Article 3.5 of the Bosnian constitution and the perceived influence of the EU; giving the international community the opportunity to use soft power in order to cajole domestic actors into strengthening the central government[614] as part of the EU-required reforms.[615] A single customs service was implemented, together with an integrated tax system, a state-level intelligence agency and a unified armed force under the exclusive command and control of the state-level government.

The fact that no concrete initiatives were launched at the local level during this period does not mean that political and social actors were not vocal in the constitutional debate. This engagement was foremost one-sided, however, and failed to involve the major political forces in the country constructively. SBiH, for example, run the 2000 elections on a platform on the elimination of the entities.[616] Drazen Budiša, president of the Croatian Social-Liberal Alliance, also proposed in 2001 to transform Bosnia into a federal State of twelve or fourteen cantons, and to extend the institutional arrangement of the Federation to the whole country.[617] Both the international community and officials from RS rejected these proposals.[618]

Various academic debates and civil society discussions on constitutional reform developed at this time too, foremost among Bosniak circles, especially after the return of the nationalists to power in 2002. Some of these debates advanced the idea of a federal republic, implicitly envisioning the elimination of the entities.[619] These initiatives were however unrealistic given the lack of cross-ethnic consensus around

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[613]   Ashdown 2004. Paddy Ashdown is referring to Dayton's failure to create a functioning state. Indeed, according to Ashdown, the Dayton agreement represented a good framework for ending the war, but almost no attention was paid to creating a functioning state (see Ashdown 2007, 99). As he stated, "Dayton had given Bosnia peace, but in the process it had created a monster in Bosnia ... two entities, the Federation ... and Republika Srpska, each with their own police, health structures, education ministries, etc ... We could not change all of this during my mandate. But we could change enough of it, I believe, to create the beginnings of a light-level state structure that could qualify Bosnia for membership of NATO's Partnership for Peace and start Bosnia on the road to Europe" (*ibid*, 321-322).

[614]   Indeed, the process of European integration required for Bosnia to develop as a coherent and functional state (see discussion in section two of this chapter).

[615]   Tuathail, O'Loughlin and Djipa have argued that "This strategy sought to use the desire of most politicians in Bosnia's three predominant ethnic groups to 'join Europe' as a catalyst for change and conflict resolution. If embedded in the twin Brussels-based Euro-Atlantic institutions of NATO and the EU, BiH could overcome, or at least ameliorate, some of the structural geopolitical disadvantages it suffered as a state" (Tuathail, O'Loughlin and Djipa 2006, 64).

[616]   See Vuković 2000; Bieber 2006b.

[617]   Bieber 2002.

[618]   *Ibid*.

[619]   See for example Finci 2004.

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the idea of a civic, multi-ethnic state.

4.1.3. Initial Steps (2004-2005)

Though there were no significant initiatives to reform the constitution between 2002 and 2004, the debate on the revision of Dayton carried on at both the domestic and international levels in 2004 with some momentum towards the end of that year. The CoE, for example, continued to monitor the process of Bosnia's post-accession requirements; which were largely centered on the need for Bosnia to strengthen state level institutions and to provide a better legal framework for the protection of human rights. In that vein, the CoE parliamentary assembly asked the Venice Commission in 2004 to make a comprehensive assessment as to the conformity of the Bosnian constitution with respect to the Convention for the Protection of Human Rights and Fundamental Freedoms and The European Charter of Local Self-Government.[620] The Venice Commission was also asked to report on the efficiency and rationality of the constitutional and legal arrangements in Bosnia and Herzegovina. This opinion was released in March of 2005; only weeks after the beginning of the preliminary constitutional talks.

Parallel to the aforementioned development, various formal domestic initiatives on constitutional reform were put forward in 2004.[621] The SDA was the first party to present an initiative of this nature to the parliament on March 22, 2004. The proposal encompassed six amendments; including issues of human rights, dual citizenship and a redefinition of the election law in relation to the House of Peoples and the presidency (the initiative proposed the President be elected by a single national ballot).[622] On March 31, 2004, the HDZ proposal was presented, circumscribed to the adoption of a public debate on constitutional changes in order to create a more functioning state in line with EU requirements and standards. The last and two most comprehensive proposals – equaling a radical overhaul of Dayton – totaled 18 amendments and were presented by the SDP on March 31 and Sept 9, 2004. These included, *inter alia*, an initiative to create a civic state, the organization of Bosnia as

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[620]   Council of Europe 2004b.
[621]   Prior to these initiatives, the European Stability Initiative launched a federal proposal for Bosnia. This initiative triggered an initial public debate on constitutional changes (see European Stability Initiative 2004a; European Stability Initiative 2004b).
[622]   This information is based on material provided to the author by Donald Hays.

a secular state, the abolishment of the entities, the transformation of Bosnia into a viable state divided into regions, the strengthening of the council of ministers, and the introduction of indirect elections for a single president. None of these initiatives garnered any traction however, with the exception of the Croat initiative. Indeed, a public debate took place on June 15, 2004 to discuss the functionality of the state but was quickly stymied by a Serb boycott. In effect, the parties held several aborted discussions on constitutional matters in 2004, but were never able to obtain the necessary support of the Serb parties, who failed to engage in the constitutional debate.[623] This process was further impaired by a lack of uniformity in the approach taken by the parties of the federation.[624]

Pursuant to the failure of constitutional initiatives in the House of Representatives, the Bosniak and Croat party leaders Sulejman Tihić and Bariša Čolak turned to the international community in Bosnia. The US Ambassador to BiH, the OSCE representative in BiH and a number of European actors in Bosnia were asked for assistance to initiate a process of constitutional reform. Initially, the international response was lukewarm. Western diplomats revealed in personal interviews that the OHR and the broader international community were concerned that this process could interfere with the ongoing restructuring of the police forces.[625] UK Ambassador to BiH Matthew Rycroft recalled, "I remembered that Paddy [Ashdown] did not want to be involved. I asked him why and he said because he did not believe that it would succeed; he was more inclined to strengthen the state through specific reforms in particular areas."[626] Similarly, Hays stated in a personal interview that Ashdown was not inclined to initiate a process of constitutional reform and wanted to handle the process incrementally. "The HR had no authority to undertake the discussions of constitutional changes. His mandate was to support the Dayton constitution, but not to change it."[627] Indeed, as Ashdown stated himself: "It has consistently been the view of the PIC and successive High Representatives, including me, that, provided the Parties observe Dayton ... the Constitution of Bosnia and Herzegovina should be changed only by the prescribed procedures by the

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[623]   Author's personal interviews with party officials. Sarajevo, May-July 2007.
[624]   Author's personal Interview with Donald Hays. Washington, DC, 29 July 2006.
[625]   *ibid*; Author's interviews with Sulejman Tihić and Western diplomats. Sarajevo, May-July 2007.
[626]   Author's personal interview with Matthew Rycroft. Sarajevo, 7 June 2007.
[627]   Author's personal interview with Donald Hays. Washington D.C., 29 July 2006.

BiH parliamentary assembly and not by the international community. In other words, provided Dayton is observed, the powers of the High Representative begin and end with the Dayton texts, and that any alteration to the constitution enshrined therein is a matter for the people of BiH and their elected representatives to consider."[628]

Ultimately, it was only the Principal Deputy High Representative (DPHR), US Ambassador Donald Hays, who, in a private capacity,[629] assisted domestic parties in opening a process of constitutional negotiations; with the financial assistance of certain European countries, such as Sweden, Switzerland and Norway. A review of the state budget revealing dramatic shortfalls and serious potential consequences for fiscal sustainability[630] convinced Donald Hays that "the time for change had arrived."[631] "I saw a niche for us to do something ... The only thing that could save the Bosnians temporarily was the introduction of the VAT in 2006 to cover the shortfall, and that is what actually happened ... but the other thing we realized is that the state was only about 60 percent formed ... and that showed a huge budget shortfall and a huge burden for the future."[632] Two additional factors influenced Hays' willingness to facilitate constitutional negotiations; namely the prospect of open talks on a SAA, (the implementation would eventually require a more efficient state), and the PIC's decision to begin the last phase of the mandate of the OHR.[633] "With that in hand, I got Paddy [Ashdown] to support the idea that I would come back in an NGO capacity. I was assigned to USIP [the US Institute for Peace] and I came back as an expert of the NGO Dayton Peace accord Project. The Norwegians, Swedes and Swiss also embarked upon this project", Hays stated in a personal interview; "[they] agreed to fund the NGO: 'The Dayton Project'[634] to support my

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[628]   Ashdown 2004.

[629]   Donald Hays was no longer the DPHR when he engaged in constitutional negotiations.

[630]   As a result of this review, a fiscal sustainability study was carried out and presented to the PIC in December 2004 (Material provided to the author by Donald Hays).

[631]   Donald Hays. "Letter to Bosnians: Your Leaders initiated Changes." *Balkan Insight*, 17 November 2005. Donald Hays is referring to a change of Dayton.

[632]   Author's personal interview with Donald Hays. Washington DC, 29 July 2006.

[633]   Hays 2005. The termination of the OHR had been fueled by the release of rather critical reports on the role of the HR and on the ongoing engagement of the international community without a clear exit strategy (see for example Knaus and Martin 2003; Council of Europe 2004b).

[634]   The 'Dayton Project: Program for Civil Dialogue in B-H' was established in early 2005 as an NGO platform for the constitutional negotiations, funded primarily by the Norwegian, Swede and Swiss governments. The activities of this project included: (1) preparing a series of constitutional and governmental reform proposals (based on options currently in practice in the EU); (2) developing a strategic plan for establishing an ongoing dialogue between civil society and government officials regarding constitutional changes; (3) raising international awareness through ongoing briefings on

engagement in this purpose."[635] Bruce Hitchner, from the Boston-based NGO, The Dayton Project, along with members of PILPG,[636] Paul Williams and Meghan Stewart, joined Hays in his efforts; collectively comprising the 'secretariat' and responsible for assisting the parties at the negotiation table.[638] Their main task was to provide comparative analyses of other countries' constitutions for background purposes, and to help facilitate discussions at the negotiation table.

The US and the EU were only nominally supportive of the efforts at this juncture, and expressed a preference not to be directly involved until further progress was made.[639] Fears relating to how this process may influence other state building efforts, coupled with a lack of willingness to accept responsibility for another diplomatic failure, precluded the direct involvement of major international actors during this phase.[640] The European Delegation represented the only institutional actor demonstrating some level of support for this initiative, although it was expressed nominally, and in private meetings. As a case in point, following one of the first constitutional meetings on July 5-6, Hays met with the Head of EC delegation in Bosnia, Michael Humphreys, who expressed a willingness to be further involved as the process moved along. "They endorsed the process and indicated that assuming that the SAA [talks] begins in November or December ... they would be prepared to

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reform efforts in Bosnia (Dayton Project BiH, December 2005, final project report. Material in author's file).

[635] Author's personal interview with Donald Hays, Washington D.C., 29 July 2006. Direct and indirect support for the process was ultimately undertaken by various institutions, governments and international organizations, including the German Marshall Fund of the United States, the Carnegie Corporation of New York, Tufts University, the United States Institute of Peace, The European Commission, the EU, and the governments of the US, Sweden, Norway, Denmark and Switzerland (Hitchner 2005).

[636] See p. 47, footnote 158.

[638] Hays met Prof. Bruce Hitchner, the director of the Boston-based NGO, The Dayton Peace Accords Project, at a conference at Tufts University in mid October 2004 (author's personal interview with Donald Hays, Washington DC, 29 July 2006). Paul Williams also attended this conference. It is reasonable to assume that initial talks on the possibility to undertake a process of constitutional reform in Bosnia were conducted among the three members of the secretariat at this conference.

[639] According to various sources, the State Department gave a 'green light' to Donald Hays to initiate a process of constitutional reform in Bosnia in a private capacity. It was agreed that he would take full responsibility in the event that the process resulted in failure, and that the US would be ready to intervene if a certain level of consensus was reached. Donald Hays was thus assigned to the US Institute for Peace (USIP) after the end of his mandate as DPHR in BiH, and came back to Bosnia in early 2005 to facilitate the process through the newly created NGO Dayton Project.

[640] Some domestic actors also showed skepticism. The Director of the Directorate for European Integration in BiH, Osman Topčagić, asserted that Hays talked to him at the end of 2004 "on possible constitutional changes, how to do it, who should participate and so on ... I suggested Hays to wait until the Stabilization and Association Agreement was signed, hoping that its signing would create a better situation for constitutional changes ... but again they proceeded and I think that it went, I can say, surprisingly well" (author's personal interview with Osman Topčagić. Sarajevo, 2 July 2007).

[tie the process of European integration to constitutional changes]. They said that a functioning government was in fact a precondition [for European accession]."[641] Other European institutions were less enthusiastic about the initiative however, including the Council of the EU. Following upon Ashdown's position on constitutional changes, EU Foreign Policy Chief Javier Solana had publicly declared at the end of December 2004, "I do not think it would be a good idea to open Dayton again at this moment. Of course, if there is an agreement between the three sides on some arrangements or solutions [as in the case of police reform], I would not be against it ... [but] I very much hope that as time goes by you will have the discipline and the energy to do this alone, without the need for pressure and impulse from the international community."[642]

4.2. THE RATIONALE FOR CONSTITUTIONAL REFORM

The origins and rationale for constitutional reform in Bosnia need to be understood within the framework outlined in the previous chapter; namely the EU-shaped State building process in Bosnia and its failed record in the face of ongoing inter-ethnic divisions. Until the initiation of the process of constitutional reform, the international community had taken a functional, incremental approach towards state building. The goal was to strengthen state-level institutions on a case-by-case basis in order to make the Bosnian state more functional. This process, however, became bogged down by the complex institutional structure in place, and the failure of domestic actors to overcome ethnic divisions and engage in the reform process. The idea of constitutional reform represented both a response to the failed reform-related dynamics, and a renewed effort at amending the institutional deficiencies inherited from Dayton. More specifically, these deficiencies centered around: (1) a complex and slow decision making process; (2) a dysfunctional state, stripped of key competences to prepare the country for EU integration, and (3) contradictions contained within the constitution vis-à-vis the outline of both group and individual

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[641] Dayton Project, July trip report, 2005 (material in author's file). Michael Humphreys also argued that tying the accession framework to the process of constitutional reform was discussed at some point, but that there was not enough consensus to do so at the time (author's phone interview with Michael Humphreys, 15 April 2009).
[642] Javier Solana, cited in OHR, BiH Media Round-up, 3 December 2004.

rights.

The specific rationale for constitutional reform in Bosnia took the form of public statements by European officials and the CoE via the Venice Commission's opinion of the Bosnian constitution.[643] The justification focused on three broader areas of reform; namely the institutional framework, the ethno socio-political structures and the economy.

The first, and most salient rationale, related to the institutional deficits contained in the constitution. These were argued to have led to a dysfunctional state incapable of responding to both the needs of the Bosnian society[644] and the requirements for EU accession.[645] Two key institutional factors were identified as particularly problematic; the lack of key competences at the state level, and the heavy dependency of the state upon the cooperation of the entities. The introduction of laws with further regulatory functions and the externally induced transfer of competences from the entities to state-level institutions after Dayton provided the state with some credibility, but the result became an intricate institutional collage that lacked a rational and functional structure. Indeed, most of the institutional transfers to the state have been the result of compromises, resulting in "a complex system of overlapping and unclear divisions of responsibility and authority that allows state, entity and other institutions to coexist without clear hierarchy" and without the required mechanisms for cooperation among the different layers of authority.[646]

In addition to the lack of functional capabilities, another set of institutional contradictions and inconsistencies was identified by the Venice Commission. These included an underpowered government, an imprecise description of the vital national

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[643]   As noted above, the Venice Commission Opinion (2005) was issued in response to a CoE request in 2004 to report on the Bosnia's progress in compliance with the CoE's post-accession requirements. Though the opinion was issued after the process of constitutional reform had been initiated, it became the immediate frame of reference for the negotiations.
[644]   A survey conducted in 2007 by UNDP indicated that more than half of the population in Bosnia (50.3%) believed that Dayton had not been effective (see table 1.1).
[645]   A European official argued in a personal interview that harmonizing the Bosnian legal system to European standards would likely require enacting 100 to 150 laws per week. Slovenia, for example, enacted, on average, 1200 laws in 2003 prior to its entry into the EU (see Anes Alic. "Crawling towards Europe." *Transitions Online*, 22 July 2004). The BiH parliament, however, enacted, on average, 60 laws per year in 2002-2005 (see OHR BiH Media Round-up, December 12, 2005). In 2007, 27 laws were merely passed at the state level, out of the 135 laws that had been foreseen for that period (see Topić 2008).
[646]   Foreign Policy Initiative 2007, 19. Keating argues that in comparison to other federal and complex systems, Bosnia is missing "a set of mechanisms for cooperation between the levels and for dealing with new issues. ... Other federations have complex mechanisms at both political and administrative levels to secure joint working and co-operation on common problems" (Keating 2006).

interest veto, a vague allocation of competences between different institutions without the provision of subsidiary mechanisms, and a bicameral system with overlapping competences. In relation to the bicameral system, for example, the Venice Commission recommended the elimination of the House of Peoples. In particular, it advocated "to move the exercise of the vital interest veto to the House of Representatives and abolish the House of Peoples. This would streamline procedures and facilitate the adoption of legislation without endangering the legitimate interests of any people. It would also solve the problem of the discriminatory composition of the House of Peoples."[647] As for the collective presidency, the Venice Commission argued that it was redundant in relation to the executive authorities already in place. In the words of the Venice Commission, "At the top of the executive there is already one collegiate body, the council of ministers, and adding a second collegiate body does not seem conducive to effective decision-making. This creates a risk of duplication of decision-making processes and it becomes difficult to distinguish the powers of the council of ministers and of the presidency."[648] The Venice Commission thus favored the strengthening of the council of ministers, at the expense of the presidency, which would be instituted as a single president. Furthermore, the ethnic- and entity-based election of the members of the presidency was rather contentious. The Venice Commission summarized the institutional problem as follows:

> "With such a weak [central] state Bosnia and Herzegovina will not be
> able to make much progress on the way towards European integration.
> The negotiation of a Stabilization and Association Agreement 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. The EU will want to have a single interlocutor and
> definitely not be willing to negotiate with the two Entities separately.
> BiH will need the necessary legislative powers to create the conditions
> for the conclusion of such an agreement and to implement it. And, not
> least, BiH will be expected to ensure the effective implementation of
> such an agreement within both Entities. At present, the State level is not
> able to effectively ensure compliance with the commitments of the
> country with respect to the Council of Europe and the international

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[647]   *Ibid*, para. 36.
[648]   Venice Commission 2005, para. 38.

community in general. With respect to the EU it is unthinkable that BiH

can make real progress with the present constitutional arrangements. The

EU will not countenance the kind of delay, indecision and uncertainty

that a multiplicity of governments entails."[649]

The second rationale for constitutional reform related to Dayton's emphasis on ethnic guarantees. This issue was inflammatory, given the deep ethnic divisions and the reluctance of ethnic groups to voluntarily renounce their secured formal and informal safeguards.[650] This argument had two major components. On the one hand, it was related to governmental ineffectiveness resulting from the many provisions aimed at protecting ethnic interests.[651] It was argued that the highly fragmented system in Bosnia had not only rendered the figure of the HR essential in holding the system together (which is contrary to the process of EU integration, given the emphasis on domestic ownership and full sovereignty) (see table 4.1), but also slowed down the decision-making process to the point of outright paralysis. Indeed, European officials have argued that harmonization with European standards requires a faster-paced law enactment system than the one in place.[652] As the Venice Commission pointed out, state level institutions "are not efficient and rational but cumbersome and with too many possibilities of blocking the taking of any decision."[653]

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[649] Venice Commission 2005, pa. 26. The commission recommended "a comprehensive and not a piecemeal transfer of responsibilities and a transfer not only of legislative powers but also of executive agencies and financial resources" (*ibid*, pa. 27).

[650] At the core of this issue lay the contradictions contained in the constitution between group and individual rights; a rather nebulous issue to handle in deeply divided societies. In the words of the Venice Commission, the constitution "enshrines too many prerogatives for group rights and not enough for individual rights enshrined in EU Charters." In particular, the CoE identified a clear contradiction in the Bosnian constitution, namely "the antithesis between democracy and what some experts term 'ethnocracy' ... The fundamental principle legitimating state authority is protection of the interests of the 'constituent peoples' ... rather than of common interests. This contradiction is the main reason for political obstruction and, consequently, for the common institutions' ineffectiveness" (Council of Europe 2004d, para. 13).

[651] It should be noted that this agreement was the 'price' for keeping the country united. International officials have always argued that Dayton was the only possible arrangement for keeping Bosnia together and ending the conflict (see for example Holbrooke 1998; see also Ashdown 2007). Neither partition nor a unitary state were ever considered viable options for Bosnia.

[652] Author's personal interviews with EU officials. Brussels, June 2006; Sarajevo, June-July 2007.

[653] The Venice Commission noted, "there are many provisions ensuring the protection of the interests of the constituent peoples, inter alia: the vital interest veto in the parliamentary assembly, the two chamber system and the collective presidency on an ethnic basis. The combined effect of these provisions makes effective government extremely difficult, if not impossible. Hitherto the system has more or less functioned due to the paramount role of the High Representative. This role is however not sustainable" (Venice Commission 2005, para. 29).

Although the different veto mechanisms available to ethnic groups have been used rarely, especially in reference to the Vital National Interest Veto, the Venice Commission argued that they "entail a serious risk of blocking decision-making,"[654] especially as a result of the opportunity they present for the exercise of other informal veto practices. Indeed, as Florian Bieber argues, the rare usage of formal veto mechanisms is not an adequate measure of their effects; "the threat of the use of veto powers and other requirements for decision making (quora, reserved seats in parliament) pre-empt decisions from being taken which might be vetoed"[655] (as a case in point, the government and the House of Peoples can be paralyzed by the non-attendance of ministers from one constituent people[656]). While the use of these informal veto mechanisms have been significantly decreased over the past few years,[657] the use of these practices and/or the threat of the use of veto powers pose a big burden on the functionality of state level institutions, at a time when Bosnia is required "to adopt and implement a heavy legislative agenda" attached to the SAA.[658] One of the most problematic provisions in this area is the entity voting in the House of Representatives, which, in contrast to the national veto in the House of Peoples, fails to provide legislators with a mechanism to overcome a stalemate. This mechanism, in which decisions in the lower chamber required the approval of at least one-third of the members of each entity, provides Serb delegates a powerful tool with which to block decisions at the State level; thus making EU accession unfeasible.

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[654]   *Ibid*, para. 31.
[655]   Bieber 2006b, 21. Bieber argues that in fact "Bosnia and Herzegovina is a key example of the impact of informal veto," given the "asymmetrical" commitment among the different ethnic groups to the state and the functioning of state level institutions (*ibid*). The asymmetrical commitment to the state is especially relevant given the numerous blockage opportunities that ethnic groups enjoy from both informal and formal veto mechanisms.
[656]   RS representatives, for example, refused to attend most state level institutions during 1996 and 1997, and were only persuaded to do so following strong arm-twisting by the international community (Foreign Policy Initiative 2007). The longest boycott happened in 2001 (from March to October) when HDZ representatives failed to attend the parliament to protest against the sanctions imposed by the OHR upon the HDZ as a result of the attempt to hold a referendum on a third entity in 2000 (*ibid*).
[657]   Serb deputies boycotted the parliament for almost a month in the Spring of 2006, "in response to the failure of the council of ministers to establish a commission for investigating crimes allegedly carried out in Sarajevo during the war", and Bosniaks boycotted the council of ministers to prevent the adoption of "amendments to a decision on the quality of liquid petroleum fuels, pushed by the RS government" (Foreign Policy Initiative 2007, 33). The Foreign Policy Initiative argues however that it is difficult to have a precise measurement of informal boycotts, given that governmental decisions are often not taken due to the absence of a quorum (*ibid*).
[658]   *Ibid*.

Table 4.1. Decisions Issued by the High Representative (1996-2009)

Year	Number of Decisions[659]
1996	0
1997	1
1998	29
1999	90
2000	86
2001	54
2002	153
2003	96
2004	154[660]
2005	91
2006	57
2007	37
2008	12
2009*	8
Total	**868**

Source: Author from the Office of the High Representative (www.ohr.int);
*As of 31 July 2009

Notwithstanding the problems associated with these ethnic safeguards, the international rhetoric on constitutional change focused primarily on streamlining the decision-making process in Bosnia, with no specific language referring to either entity voting, or the internal organization of Bosnia. As the Venice Commission stated in 2005 in reference to ethnic safeguards, "A balance has indeed to be struck between the need to protect the interests of all constituent peoples on the one hand and the need for effective government on the other."[661] A different course of action, such as a process revolving around the elimination of Serb safeguards, would likely have encountered strong resistance (especially by the Serbs) and been doomed to failure. In recognition of this political reality, international officials merely noted that entity voting "appears redundant [with] regard to the existence of the vital interest veto."[662] The international community however did not go so far as to expressly and

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[659] The lift of the bans on public officials represent 30 in 2005; 20 in 2006; 2 in 2007; and 2 in 2008;

[660] Arguments for constitutional reform were put forth at the peak of the use of the Bonn Powers with Paddy Ashdown. After his administration, the international community favored domestic ownership in order to infer a sense of political responsibility (and to respond to the criticism targeted against the HR's unchecked powers). Schwarz Schilling's mandate was based on this premise, but the new strategy failed to wield the expected results. The downsizing of the use of the Bonn powers has however continued, as shown in table 4.1.

[661] Venice Commission 2005, para. 29.

[662] Venice Commission 2005, para. 34.

publicly recommend its outright elimination. In terms of the territorial organization in Bosnia, the Venice Commission acknowledged the problematic division of Bosnia into two entities, but stated that "the option of abolishing the entities does not seem to be available for the foreseeable future and structural reform will have to take place within the [Federation]."[663]

Another key deficit lay in the area of human rights, especially with respect to the violation of international legal standards. Though the Bosnian constitution claimed to ensure "the highest level of internationally recognized human rights and fundamental freedoms,"[664] and incorporated a number of international agreements,[665] certain constitutional provisions were purported to contravene the spirit and letter of such domestically recognized standards. These controversial provisions included the fact that members of the group 'others' were not eligible for election to the members of the presidency, contravening the European Charter on Human Rights.[666] Furthermore, as the Venice Commission noted, "the interests of persons not belonging to the three constituent peoples risk being neglected or people are forced to artificially identify with one of the three peoples although they may for example be of mixed origin or belong to a different category."[667] It would appear in hindsight that the human rights issues could have been more easily resolved through minor changes to the constitution, as opposed to major reforms.

The third argument put forward by the international community related to the costs associated with Bosnia's multiple layers of government.[668] The World Bank

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663   *Ibid*, para. 46.
664   Constitution of Bosnia and Herzegovina 1995, Art.2.1.
665   These include the European Convention on Human Rights (ECHR) and its protocols (DPA Annex 4, art. II.2), and other international conventions laid out in an appendix to Annex 4,
666   According to the International Crisis Group (1999, 58), the 'others' (national minorities that do not define themselves as either Bosniak, Serb or Croat) constituted 8 percent of the population before the war. More specifically, 5.5. percent perceived of themselves as Yugoslavs and 2.4 percent as 'others' in the 1991 census. "Although both entity parliaments contain minorities, the Republika Srpska National Assembly is only allowed to elect Serbs to the BiH House of peoples in spite of the fact that only 53% of Republika Srpska's pre-war population was Serb" (*ibid*, 61).
667   Venice Commission 2005, pa. 43. The protection of marginal groups became an important issue on the agenda of the international community, especially among European institutions. This issue, however, could have been easily addressed with minor amendments to the constitution.
668   BiH's institutional and political structures are composed of three constituent peoples, two entities, ten cantons (within the borders of the Federation), one special district (Brčko), fourteen prime ministers, over 180 ministers, 760 members of legislative bodies, 148 municipalities, and three official languages with two alphabets in a country of 4 million people (Council of Europe 2004c). Furthermore, each entity has its own constitution, government, a bi-cameral parliament, an army, a judiciary (including supreme and constitutional courts) system as well as its own education, tax and customs systems. Some of these redundant structures were eliminated, as a result of the reform process induced by the international community. As a case in point, Bosnian politicians signed an agreement

stated that the government structure in Bosnia is "complex and expensive."[669] In its 2006 report, it noted that although "BiH's fiscal position has improved significantly since the end of the war, ... substantial issues remain unresolved with the potential to seriously undermine fiscal sustainability and prospects for improving living standards. These issues include inefficient duplication and fragmentation of government functions, poor quality of government services and an inefficient structure of government spending. Coordination mechanisms among the state and the entities, crucial for setting, executing and monitoring fiscal policy, remain underdeveloped."[670] In fact, government spending in 2004 appeared "high and the composition of expenditures does not appear to be growth-enhancing."[671] These costs represented more than 50 percent of GDP annually at the state level (see table 4.1), and slightly higher at the Federation level.[672]

Table 4.2. Government Spending, 2004 (in % of GDP)

	Spending	Goods & Services	Subsidies & Social Transfers	Capital	Interest
Bosnia	52.6	25.7	19.7	6.0	0.7
SEE Average[673]	42.8	17.1	16.9	5.0	1.7
Estonia	37.1	21.1	12.9	2.9	0.2
Ireland	32.7	14.8	12.2	3.6	1.2
Chile	22.1	-	6.6	2.1.	1.0

Source: World Bank 2006 from IMF and World Bank staff calculations.

A Fiscal study undertaken by the OHR at the end of 2004 revealed an imminent fiscal crisis at both the state and Federation levels, which triggered a debate among both international and local actors at the time. Donald Hays presented the key points

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to unify military forces and create a unified Ministry of Defense in 2005.

[669] See for example the World Bank 2002 and 2006.

[670] World Bank 2006. This report is based on 2004 figures.

[671] *Ibid*, 2.

[672] See World Bank 2002 and 2006. Government spending on wages in 2002 was above 30 percent in BiH and 35 percent in the Federation, much higher than in neighboring countries such as Macedonia (15 percent), Croatia (less than 20 percent) or Slovakia at 5 percent (see World Bank 2002, 35). The situation in the Federation is further complicated by the fact that each canton has its own constitution, government and cantonal assembly and exclusive competences, for example in the fields of education and internal affairs.

[673] Though social transfers in Bosnia were similar to the levels in neighboring countries, the World Bank noted that they were poorly managed; "Untargeted veterans' benefits consume a disproportionate share of public resources, with outlays as a share of GDP six times larger than in neighboring Croatia. Social welfare and child assistance programs, by contrast, appear underfunded" (World Bank 2006, 24).

on 'Fiscal Constraints in Bosnia and Herzegovina' at the PIC Steering Board meeting in December 2004, where Bosnian authorities were urged to address "the nature and severity of the fiscal challenge facing Bosnia and Herzegovina".[674] As Hays stated, "The inefficiency, duplication and sheer waste embodied in the cantonal and entity administrations – with their separate educational systems and police forces, invalid veterans and pensions' funds, health care systems, etc. – simply cost too much to maintain. The overall fixed costs at each level of government are like a dead weight on our state-building enterprise.[675] He continued, "We can be virtually certain ... that the state's share will be insufficient to provide full funding for state institutions much less keep pace with its growing obligations."[676]

The presentation of these data increased the sense of urgency for change.[677] As underscored by former Constitutional Court judge and former advisor to Schwarz-Schilling on constitutional matters Joseph Marko, "Given the state of the private economy which is still aid dependent instead of (foreign) investment driven, BiH cannot afford such an exaggerated institutional system based on the territorial delimitation plus ethnic divide which is, moreover, mostly ineffective to render the necessary public services."[678] Nevertheless, the economic argument (together with the ethnic-based argument) never featured high during the constitutional negotiations. Although both the economic and ethnic arguments seem valid from a financial and liberal standpoint, the maintenance of a system of institutional duplicity and ethnic safeguards seem to represent a necessary cost of peace in deeply divided societies.[679] Streamlining the decision making process to prepare the country for the accession

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[674] Peace implementation Council 2004.

[675] The fiscal study argued that the new revenue flows, including the introduction the Single Account in January 2005 (which would provide the state with combined customs revenues, excise and sales taxes) and the Value Added Tax (VAT) in January 2006, would not satisfy "ever-increasing demands to fund the existing state, let alone its future growth" (Donald Hays. "Fiscal Constraints on State Building in Bosnia and Herzegovina." Talking points at PIC meeting. 2 December 2004. Material in author's file).

[676] *Ibid.* Hays also noted, "If Bosnian officials fail to address these issues in the near term (next eighteen months to two years), first the Federation will run up significant arrears until it can no longer pay its civil servants' salaries, cover its veterans' benefits and feed its soldiers. ... Given their mounting problems, the entities will be unwilling and unable to provide the funds the state needs to meet its financial obligations" (*ibid,* 3-4). This fiscal projection has in fact proven right. In May 2008, Federation Finance Minister Vjekoslav Bevanda announced that the Federation would face bankruptcy in October 2008 (see "Bosnia: The Bankruptcy Vote." *ISA Consulting.* 8 May 2008). As of May 2009, Bosnia has secured a 1.2 billion euro loan with the IMF to help assist the country during the crisis. The IMF loan has been conditioned on the agreement to cut down government expenses, especially in referent to social transfers to veterans.

[677] Author's interview with Donald Hays. Washington D.C. 29 July 2006.

[678] Marko 2005/06.

[679] See Hughes 2009.

process seemed a more aseptic, efficient approach as opposed to stripping ethnic communities of highly valued group rights and positions of influence.

The presentation of this three-tiered rationale reflected a consensus within the international community that Bosnia could only make progress in political, economic and social reform, through a revision of Dayton.[680] This view represented a holistic approach to the situation in Bosnia, in that the institutions, economy and culture were reinforcing one another and collectively serving to perpetuate the inherent problems.[681] Effectively, state building, economic development, and ethnic reconciliation, were component parts of the same problem; a problem closely linked to the institutions and structure established through Dayton.

While the reform of Dayton was conceptually appropriate in light of the inherent institutional problems, there were numerous problems associated with the approach of the international community. First of all, there was a clear discrepancy between the holistic understanding of the political, social and institutional deficits in Bosnia and the proposed constitutional solution. The suggested changes, in fact, neglected to adequately address a largely unresolved issue in Bosnia since the dissolution of Yugoslavia, namely the highly disputed nature of the Bosnian state and the pervasive lack of inter-ethnic cooperation. Could the limited constitutional changes envisioned be sufficient to promote long-term stability in Bosnia in the absence of a broader consensus framework over the future form of the state? Could a simple institutional reshuffle provide the right framework in Bosnia for both assuaging ethnic divisions and distrust and promoting inter-ethnic cooperation?[682] Would constitutional changes be a sufficient step to overcoming the recurring problem of implementation in the context of the reform process?

The second problem related to the liberal connotations associated with the rationale for constitutional change, and in a milieu of deep inter-ethnic mistrust.

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[680] This school of thought gained support as international withdrawal became more likely. Two key factors fueled the debate surrounding the termination of the OHR. First, the developments in Kosovo in 1999 and other international commitments (i.e. Afghanistan and Iraq). Second, heightened criticism of the role of the international community in Bosnia after 2003 from Western observers who questioned the extensive powers of the OHR (see Chandler 1999; Knaus and Martin 2003).
[681] Maršić and Marko 2007.
[682] Bieber for example notes that one of the key challenges in post-conflict divided societies is to promote inter-ethnic cooperation through institutional design. In his words, "the key difficulty arises from the fact that representation is considerably easier to achieve through constitutional design than cooperation. While representation is a prerequisite for participation, it does not necessarily lead to cooperation between the representatives of the different communities. It is here that a tool to change both the political elites and the political choices of the population is necessary in order to alter the patterns of cooperation and conflict in these societies" (Bieber 2005, 100-101).

Although the rationale was far from presenting a radical overhaul of the institutional arrangement in place, the international community's concept of constitutional reform symbolized the transformation of Dayton's ethnic divisions into a new era of EU standards. At the core of this approach was the liberal notion that economic and social stabilization, through European integration, could bring peace dividends and, in turn, serve to undermine group divisions. While this concept might hold true in relatively homogenous societies, deeply divided societies are likely to respond differently to liberal ideas of social and economic integration; especially in light of the recent conflict. The problem with the international approach was thus directly tied to a divergent understanding of the Dayton framework between domestic and external actors. While the international community had grown increasingly frustrated with the complex structures and slow decision making process, believing that the highly ethnicized system established in Dayton was to blame for the stalemate in the country, domestic actors continued to be deeply divided and were not ready to move beyond this arrangement, especially within the most radical sectors. This mismatch had important reverberations in terms of the conduct of the negotiations. Would ethnic groups be willing to forego their rights and safeguards without first redefining the broader framework for ethic balance in Bosnia? Would they be ready to change the rules of the game, now that they have learned to control and exploit them?

Furthermore, Little emphasis was placed on incorporating the views of the society, largely in favor of addressing Bosnia's institutional changes (see tables 4.3 through 4.5). In other words, the international community failed to adequately consider the population, perpetuating the dysfunctional relationship between state and society in Bosnia.

Table 4.3. Opinions on the General Framework Agreement. Has Dayton worked?
(in %)

	Bosniaks	Serbs	Croats	Total
Yes	40.8	68.3	29.7	49.7
No	59.2	31.7	70.3	50.3

Source: United Nations Development Programme 2007b, 30.

Table 4.4. Support to the Constitution of BiH, September 2005
(in %)

Question: "Some people say that the Constitution does not work? Do you agree?"

	Bosniaks	Serbs	Croats	Total
Agree	77.2	71.3	64.0	72.6
Disagree	12.9	22.1	23.7	18.8
Don't know	8.8	3.9	7.5	6.5
Refuse to Answer	1.0	2.7	4.8	2.1

Source: Prism Research, Public Opinion Poll (n=1550). September 2005.
Quoted from Tuathail, O'Loughlin and Djipa 2006.

Table 4.5. Support to the Rationalization of the State, September 2005 (in %)

Question: "Do You Support the Rationalization of the State of Bosnia-Herzegovina with a Less Costly State Administration at All Levels and a Decrease of the Tax Burden on Citizens through Fewer Levels of Government from the Current 13 to Fewer Constitutions, etc."

	Bosniaks	Serbs	Croats
Yes	66.7	57.3	82.7
No	13.3	18.5	8.3
Don't Know	14.7	18.6	6.8
Refuse to Answer	5.3	5.6	2.2

Source: Prism Research, Public Opinion Poll (n=1550). September 2005.
Quoted from Tuathail, O'Loughlin and Djipa 2006.

The final problem related to a lack of cohesion within the international community. Although there was a general consensus around the need to change Dayton, there were strong disagreements over how to accomplish this. Two schools of thought emerged at the time. Most European countries, the EU and the EUSR/OHR (particularly the legal department within the OHR), advocated a more conservative approach.[683] This school of thought favored an incremental approach to institutional change via the use of Article 3.5 of the Bosnian Constitution. The concern was that starting a process of constitutional reform at that time would negatively impact other reform process already in progress. While this group was not opposed to the idea of constitutional reform, they preferred to postpone initiating the process,[684] until other reform process had been implemented. The second school of thought was advocated by the other European actors such as the Commission and the European Parliament,[685] who were more inclined towards to initiating the process

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[683] Marko 2005/06.
[684] *Ibid.*
[685] The US did also advocate for a holistic approach once its involvement increased in 2005.

without delay.[686]

Neglect of ethnic considerations, divisions within the international community, and the democratic deficit collectively, as we shall see, proved fatal to the process of reform.

4.3. THE RULES AND FORMAT OF CONSTITUTIONAL NEGOTIATIONS

The relevant parties agreed to a set of rules and guarantees in the early months of 2005 that were deemed critical to garnering full participation.[687] This was especially salient with respect to Serb parties who, up until that point, had refused to engage in any initiative aimed at altering the Dayton constitutional framework.[688] The rules were agreed upon by both external and domestic actors[690] and included the following:

1. The Format.

All constituents groups agreed to an initial preparatory phase in which representatives of the seven key parties in the parliament, including SDA, SBiH, SDP, SDS, SNSD, PDP, and HDZ, would be involved in a working group format. The working group would be assisted by an international secretariat that would consult with key

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[686] Marko 2005/06. In addition to these two schools, there was a third, less exposed school of thought. Officials from the World Bank and economists from the OHR rejected the idea of constitutional reform and were more inclined to pursue an incremental reform with an emphasis on consolidation into a single market. This school believed in undertaking a series of key reforms to make the state in Bosnia more functional, including the reform of the public administration (to reduce expenses and improve the delivery of social services), the imposition of budget constraints, and other minor constitutional changes (Marko 2005/2006). Given the costly framework created by Dayton, it is somewhat paradoxical that it was the economists arguing against an overhaul of Dayton. On the whole, this approach was likely too reductionist; as it was based on the idea that economic incentives and restraints would provide the basis for a stable political system.

[687] These rules were maintained throughout the process. Some of them were altered when the US took over in December of 2005.

[688] One may wonder however, whether Serb parties decided to engage actively in the process of constitutional reform in order to divert attention from the process of police restructuring; especially given that constitutional reform offered more opportunities to influence the outcome (constitutional negotiations were based on the premise that solutions would not be imposed; whereas the parameters for police reform had already been imposed by the EU). Serb parties might have also considered that constructive engagement in constitutional reform might allow them to adopt a more obstructionist approach with respect to police reform.

[690] Hays, Hitchner, and Williams visited Sarajevo in early 2005 in an effort to muster the necessary support for the process and to agree on the rules of engagement. They held meetings with *inter alia* the prime minister and the ministries, the presidency members, party leaders and officials from both entities, along with the leadership of the parliamentary assembly. They also met with various European ambassadors, the US ambassador, the CoE and OSCE Representatives in BiH, the European Delegation, and the HR.

international actors, such as the Venice Commission, the EC and other European actors[691] in order to facilitate discussion on constitutional solutions that would be compatible with EU standards.[692] The secretariat was to be comprised of Donald Hays, representing the Dayton Project, Prof. Bruce Hitchner of the Boston-based Dayton Project, and Prof. Williams and Meghan Stewart of the PILPG. The main responsibility of the PILPG representatives was to undertake background and comparative analyses of the Dayton constitution and to present them to the negotiators.[693]

In addition to the working group format, it was decided that party leaders would become involved once a certain level of consensus was achieved by the party representatives. In effect, no agreement was feasible until party leaders were in agreement. Once a constitutional agreement was approved by party leaders, it would then be transferred to parliament for public discussion.

2. *Issues at Stake.*

One of the key tenets agreed to by the parties was to limit negotiations to state-level institutional reform, with a focus on procedural and competency matters. This development intentionally excluded entity-related issues, with the exception of the transfer of competences from the entities to the state level. The parties agreed that the rationale for the negotiations would revolve around two basic precepts:[694] (1) The Venice commission's view of the Bosnian constitution which was adopted as the frame of reference for the conduct of the negotiations (particularly in relation to the establishment of a more effective government and the protection of human rights as per the European Convention of Human rights). (2) The requirements for EU

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[691] Following each working group meeting, it was agreed that the secretariat would meet with the political leaders and representatives of the international community in Bosnia to report on the progress (Author's personal interview with Donald Hays. Washington D.C., 29 July 2006).

[692] Hays 2005. In addition to the secretariat, the CoE also took part in the working group. Both Thomas Markert, one of the drafters of the Venice Commission report, and CoE Special Representative in BiH Tim Cartwright became the 'silent partners' (Author's personal interviews with Meghan Stewart and Tim Cartwright); "they looked carefully at everything that was produced by the working group and gave us their thoughts" (Author's personal Interview with Donald Hays. Washington D.C., 29 July 2006).

[693] PILPG was comprised of lawyers and operators from two law firms. "Our role was to interpret the legal word and make it logical for negotiators. ... I then was at the table just simply taking notes of whatever everyone was saying ... to prepare documents for the next day" (author's personal interview with Meghan Stewart. Washington D.C., August 2006).

[694] Personal interviews with Donald Hays and Megan Stewart. Washington D.C., July-August 2006.

accession, especially in terms of the strengthening of state level institutions and the streamlining of the decision making process.

It was agreed that negotiations would revolve around five key articles of the Bosnian Constitution (mostly on election- and competence-related matters), including: human rights (Article 2); the division of competences between the state and the entities (article 3); the parliamentary assembly (Article 4); the presidency (article 5); and the council of ministers. The issues of entity voting in the House of Representatives and the internal organization of Bosnia were not included as part of the official agenda for the negotiations (though the former was informally discussed at various points in the process). This was deemed critical for getting Serb parties involved.

3. Scope.

The negotiations would focus on amending, rather than replacing Dayton; given that there was no political will to undertake a more holistic approach.[695] It was decided that the parties would be the ultimate decision makers, effectively creating a scenario in which pre-approval was required by the political leaders. The issue of limiting the involvement of both public institutions and civil society was intensely debated among international officials, but the precedent set by the Ashdown administration dictated the direction.[696] According to the CoE Representative in Bosnia, Tim Cartwright, there was a belief among the international community that working through the party leaders was the only way to move forward with the reform process in Bosnia. This belief centered on the structure of the political system, including multiple layers of government, along with the strong influence and decision-making power held by party leaders.

4. Timeline.

Party leaders committed themselves to reaching a consensus on a constitutional package by November of 2005; so as to allow sufficient time for public and parliamentary debate, and in the interests of effecting the changes prior to the elections in October of 2006.[697] This timeline stemmed from an election law which

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[695]   Hitchner 2006b.
[696]   Author's personal interviews with Western diplomats. Sarajevo, May-July 2007.
[697]   Hitchner 2006b.

stipulated that any change which might influence the outcome of an election had to be enacted a minimum of 169 days prior to the election date. An amendment to the election law was passed in 2005, which modified the deadline from 169 days to 130 days. This amendment resulted in a May 4th deadline for approving any changes to the Constitution.

5. Guarantees.

The provision of guarantees was deemed critical in the interest of garnering the support of the Croats and Serbs. The guarantees provided by external actors, which assured that solutions would not be imposed and that the status of RS would not be undermined, made Serb engagement feasible.[698] As Hays told the author, Serb parties (surprisingly) agreed to initiate a process of constitutional reform provided that the integrity of the entities was not challenged and that the discussions did not revolve around the status of RS.[699] The SDS, however, failed to attend the first meeting of the working group, as there was some reluctance initially among certain circles within the party to engage in the process. Mladen Bosić stated, "We knew that it was risky for our party, especially in the election year ... We didn't participate at the first meeting, but I guess that Mr. Hays persuaded Mr. Čavić to take part, and gave him some guaranties that solutions would not be imposed from the outside." As for the Croats, the international community decided to include a representative from the HNZ in the negotiations even if this party had no political representation at the state level; "it was believed that the Croats would never be engaged if they felt they were underrepresented."[700]

6. Domestic ownership.

The guiding principle behind this process was complete domestic ownership. In light of this, the international community was limited to the provision of assistance and facilitation. As Hays recalled, "this became a totally new process for the international community. And it was totally new for the Bosnians too; you could see they were initially uncomfortable with the freedom they had, but they got used to it."[701] The

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[698] Author's email interview with Mladen Bosić, 26 June 2007.
[699] See also Hitchner 2006a.
[700] Author's personal interview with Donald Hays. Washington DC, 29 July 2006.
[701] Although the process was based on domestic ownership, the international community applied enormous pressure to make the process work on a domestic level.

process also marked a clear shift in relations between domestic and external actors. It was chaired, and led, for the first time by domestic actors. According to Hays, "What we did was the job of a secretariat, to write information, steer conversation, take notes, clarify issues, redistribute notes, set the agenda for the next meeting and ensure that the right atmosphere was created."[702] Hays' description of the first meeting of party leaders in Brussels gives an indication of how these dynamics played out at the beginning of the process. When party leaders went to Brussels, "Rehn [EU Commissioner for Enlargement] briefed them on the importance of their work and on the key issues ... The American Ambassador to the EU was there too and also spoke. And then they left, and at the living room of the hotel there was a small table with seven seats, and there were back benches for all the advisors and a separate table for the secretariat. And they came in and were shocked. They expected some internationals. But I told them that it was their constitution and they had to decide on the issues. So I sat them down quickly, holding the agenda of the working group. I suggested they take turns for the chair, first President Tihić and then Čavić, Čović ... And we did that, typically starting from scratch."[703]

Even when the US took over the process, domestic actors continued to steer developments; "At no time in the process, either in Brussels or Washington, were any of the political leaders compelled ... to agree to a specific set of constitutional reforms. Every option under discussion [was] worked out and agreed upon by the political leaders."[704] SDA President Sulejman Tihić stated, "If we tried to say how much came from each side, I would say 70 percent domestic politicians and 30 percent the international community, and that's because in Bosnia no negotiation can take place without the involvement of the international community."[705] Similarly, PDP leader Mladen Ivanić stressed, "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."[706]

7. Obligations.

All of the initial discussions with the working group were to be kept outside of the

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[702]   Author's personal interview with Donald Hays. Washington DC, 29 July 2006.
[703]   Author's personal interview with Donald Hays. Washington DC, 29 July 2006.
[704]   Hitchner 2006c.
[705]   Author's personal interview with Sulejman Tihić. Sarajevo, 4 July 2007.
[706]   Author's personal interview with Mladen Ivanić. Sarajevo, 10 July 2007.

public domain. The working group labored the entire time without generating a single press release (except in relation to the last few meetings in October). This internal focus served to create the secure atmosphere requisite for addressing the delicate matters at hand. It was also agreed that "all parties would join in this process without politicizing [it], with the goal of presenting their political parties with the necessary amendments by September 2005."[707] The parties, parting turn, committed themselves "to keep the parliamentary leadership fully informed at every step of the process so that at the appropriate time [they] could sponsor the amendments in parliament."[708]

8. *Working Method of the Working Group.*

Pursuant to each session, the secretariat would prepare a working document reflecting the varying positions of the party representatives, along with the agreed upon principles. This document was then distributed to the delegates for further review and, in turn, approval by the political parties.[709] Based upon feedback provided by the respective political parties after each session, the secretariat would return to Bosnia to initiate the next working meeting.[710] Meghan Stewart's description of the working group's dynamics offers insight into this process:[711]

> "We didn't come with a constitution. But we had different approaches.
> We first had a conversation for example on human rights and we spent
> the day; we would come with prepared working documents on the basis
> of the Venice Commission taking comparative constitutional studies in
> dealing with minority and national issues and trying to see how other
> countries had dealt with them ... Sometimes we would present different
> options, like here's one way that a presidency is organized or here's
> another way the council of ministers is organized, here's another way
> that other countries do it. And then we would say here are two options,
> you don't have to go with either or, but here are some ideas ... We then

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[707]   Dayton Project, April trip report, 2005 (material in author's file).
[708]   *Ibid.*
[709]   The proposed timeline and agenda would also be subject to review by the parties.
[710]   Dayton Project, May Trip Report, 2005 (material in author's file).
[711]   When the US took over the process, external actors continue to steer and facilitate the negotiations but pressure and arm-twisting became more pervasive.

spent the day talking about human right concerns that the parties had and we went back to our hotel rooms and drafted something out of what they had said. ... When there were differences of opinion we bracketed it, just noting that that was a point which was not settled upon. We then gave them the document the next day and asked what they thought about it. We discussed it afterwards and negotiated the document. In sum, we tried to propel the parties to negotiate the substance of the document rather than sitting down and having a theoretical discussion on what the government should be like ... There were a number of issues where the parties representatives said they could not negotiate [because they did not have the authority to do so] so a number of issues just had to stay until the end."[712]

9. Inclusion of other political forces and civil society.

It was collectively decided that certain domestic and external actors, not directly involved in the negotiations, should be kept informed of developments. During the working group phase, the secretariat met, at various times, with members of the international community in Bosnia, party leaders, and select members of civil society; including moderate religious figures.[713] During this phase, the members of the secretariat also met with the leadership of the parliament, including HDZ deputy Martin Raguž, SDS deputy Nikola Spirić, and SDA deputy Šefik Džaferović. These individuals "agreed to take the lead within the parliament once the consensus on the amendments had been reached among the parties."[714] Hays also held several meetings with party leaders in order to ensure that they were fully briefed and in support of the process.[715]

In parallel with the political maneuverings, it was agreed that a process of public education should take place throughout Bosnia.[716] This educational effort failed to materialize in any substantive form however; resulting in an elite-driven process with

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[712]   *Ibid.*

[713]   Such as Franciscan Provencal in Sarajevo, the Vladika from Trebinje and the Imam of Tuzla; all "were very open to this discussion and all agreed that it was time to undertake a common effort" (Dayton Project, July trip report. Material in author's file).

[714]   Dayton Project, April trip report, 2005; author's personal interview with Donald Hays. Washington DC, 29 July 2006.

[715]   Dayton Project, July trip report, 2005.

[716]   Dayton Project, April trip report, 2005 .

few democratic credentials. Ultimately, the general public and civil society were largely excluded from the process for pragmatic reasons,[717] and there were no plans to put the resulting agreement to a referendum for public approval. Though a commitment was made early in the process to conduct an outreach program under the framework of the Dayton Project, these activities were not undertaken in any meaningful way until late October and early November of 2005, when the press was already involved and public debate prevalent. There were vague efforts at involvement by other organizations as part of the societal outreach efforts. The OSCE and the UNDP, for example, expressed an interest in early 2005 in working with civil society to help create an appropriate atmosphere for reform,[718] but these activities were never integrated into the overall process. A media campaign was contemplated, and an effort was made to involve NGO's, the USIP, the Fletcher School, the CoE and the EU as a means to promoting forums for high-level discussions.[719] Time constraints and pressures at the tail end of the process however, ran counter to the planning of such activities. Furthermore, as the US administration became increasingly engaged in the process towards the end of 2005, fewer actors were allowed to be involved, except when the final agreement reached the parliament.

It was within the framework of the aforementioned rules that constitutional negotiations were initiated in April of 2005. This was a rather low-key process that involved party representatives from all of the major political forces in the parliament. This first 'informal' phase lasted from April through October of 2005. Despite the fact that party leaders were not directly involved at this juncture, this development represented a major breakthrough in Bosnian politics. For the first time since the end of the war, all parties across the political spectrum were voluntarily and actively participating in the process of reforming Dayton.

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[717]   Author's personal interview with Tim Cartwright. Sarajevo, 19 June 2007.
[718]   Dayton Project, April trip report, 2005.
[719]   *Ibid.*

CHAPTER 5

CONSTITUTIONAL REFORM I:

INTER-ETHIC DIVISIONS COME TO THE FORE

5.1. PHASE I: THE INVOLVEMENT OF PARTY LEADERS

5.1.1. Preliminary Talks: Proceedings of the Working Group

As outlined in Chapter 4, the process of constitutional reform started in early 2005. Negotiations during the first phase of the process, namely from April to November 2005, were facilitated by Donald Hays in his capacity representing the NGO Dayton Project, and involved preparatory and exploratory talks among party representatives in a working group format.[720] The working group met eight times in Sarajevo from April to October 2005, except for the last meeting, which took place in Washington DC. Discussions under this format went surprisingly well according to both external and domestic actors involved in the negotiations, given the exploratory nature of the talks, the limited range of the issues in the agenda – which had been previously agreed upon, and the relatively undisturbed environment in which negotiations took place. As a first order of business for the first meetings (in April and May), the working group agreed to start with the issue of defining the national interest and the human rights package, aiming to reach consensus on group vs. individual rights and making the Bosnian constitution compatible with the European Convention of Human Rights.[721] After the first two meetings "we were able to come up with a

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[720]   Party representatives who participated in the negotiations included: Bosniak community representatives Mirsad Ćeman (SDA), Beriz Belkić (SBiH) and Jozo Križanović (SDP); Serb community representatives Mladen Bosić (SDS), Zeljko Mirjanić (SNSD) and Slobodan Nagradić (PDP); and Croat community representatives Mile Lasić (HDZ) and Miljenko Brkić (HNZ).

[721]   As Meghan Stewart stated, "We started working with human rights because although it was not the important part it was a pretty easy way to get them talking" (author's personal interview with Meghan Stewart. Washington D.C., August 2006). In the above quotation, Meghan Stewart considers the discussion on human rights to be peripheral for two reasons: (1) A broad political consensus had

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human rights package that would improve things for the average citizen."[722]

The following meetings dealt with the remaining issues, namely the presidency (especially the issue of moving to a single presidency instead of a three-member presidency, as well as election procedures for the president and prime minister), the parliament and the council of ministers, especially in relation to the realignment of competences between the president and prime minister and the creation of new portfolios. "There were some ideas but not concrete agreement on the specifics," Hays claimed in an interview; "We talked about the parliament and there were two or three possible ideas: one house of parliament, an upper house and a lower house, or stay the same; on the presidency, the working group was much more developed, strip the presidency of all the powers except for protocol and give them to the prime minister; but on the election procedure, we were never able to find common ground."[723] Following the second meeting in July, it was decided that the party representatives would present the progress made to party leaders to get feedback and buy-in to continue talks further. While not every issue received full endorsement, Hays remarked in a personal interview, "there was a great deal of consensus at this point."

A more public debate thus opened up in early September 2005, both outside and within the parties, although the degree of publicity varied across parties. As HDZ working group member Mile Lasić recalled in a personal interview, "After four months, in September 2005, we went to our parties. We presented the questions [that were discussed in the meetings] to get a response from our parties. In my party I presented it to the central committee ... and we got the approval to continue our work. I don't know how public the other parties went."[724] News of the negotiations slipped out to the broader public in early September when Richard Holbrooke revealed during a university lecture in Berlin on September 9 that an American NGO led by Donald Hays was "preparing a new Constitution."[725] This announcement

already been achieved in this matter; and (2) changes in the area of human rights could be approved separately at any point in time (in contrast, the approval of institutional changes needed to occur prior to the announcement of the elections in April (see p. 210, footnote 882).

[722]   Author's personal Interview with Donald Hays. Washington DC, 29July 2006.
[723]   *Ibid.*
[724]   Author's personal interview with Mile Lasić. Mostar, 2 July 2007.
[725]   Richard Holbrooke, cited in OHR, BiH Media Round-up, 10 September 2005. Holbrooke's announcement represented the first public statement about the process, although it was hardly a secret at the time. "Many people knew about it already; it was a public secret" (author's personal interview with member of the Dayton Project BiH. Sarajevo, June 2007). It is unclear why Holbrooke made the

prompted the media to misrepresent the process as a US-designed initiative despite repeated statements by members of the secretariat that the initiative, in fact, had originated from and was driven by domestic actors.

It was also around this time that developments elsewhere threatened to disturb the relatively quite atmosphere in which negotiations had taken place under the working group format. One development was related to the process of police reform, which reached a heated stage in mid-September 2005, following the RSNA's rejection of the police package that had been previously agreed upon, and a rather intense public criticism by the international community of the RS for its obstructionist role.[726] In a 'remarkable' press conference on September 22, the HR Paddy Ashdown, Head of EC Delegation Michael Humphreys, UK Ambassador to BiH Matthew Rycroft (at the time chair of the rotating EU presidency) and US Ambassador to BiH Douglas McElhaney warned the RSNA to "think again" about its opposition to police reform or face international isolation.[727] A meeting of the Council of the EU followed these developments on October 3, and Bosnia was the only country to be excluded from the initiation of SAA negotiations.[728] The level of confrontation was greatly diminished in early October when SDS leader Čavić accepted the broader terms of reform, leaving the most sensitive issues for further discussions in a new special commission that would meet at a later date. On October 4, the RSNA thus passed a law committing itself to police reform respecting EU requirements within five years. Although the deal defused the crisis between SDS and external actors, internal divisions and tensions within the SDS mounted. The SDS member of the working group failed to attend the constitutional meetings in September.

announcement at the time, as he was not officially involved in the process.

[726]   The September agreement had been reached in a new round of negotiations called by Ashdown on July 26 – following an impasse caused by the Serb rejection of the OHR-sponsored reform in May 2005.

[727]   "Transcript of the Press Conference on the Consequences of Failing to Agree on Police Reform," OHR, Sarajevo, 22 September 2005, available at http://www.ohr.int/ohr-dept/presso/pressb/default.asp?content_id=35510 [accessed on 1 December 2008].

[728]   At this meeting, both Croatia and Turkey were accepted for Accession talks (Council of the EU 2005). Serbia was also given the green light for starting SAA negotiations, authorizing the Commission to open negotiations "at the earliest opportunity" (Council of the EU 2005b). The Council conclusions on Bosnia read as follows, "The Council expressed its deep disappointment at the decision by the National Assembly of Republika Srpska to reject the latest proposal for police reform which met the EU principles, and regretted that it would not now be possible for Bosnia and Herzegovina (BiH) to start negotiations on a Stabilization and Association Agreement (SAA) with the EU by the 10th Anniversary of the Dayton Peace Agreement" (ibid).

A similar development within the Croat ranks was brewing as a result of a new draft law on broadcasting in May 2005 resulting from EU directives tying media reform to further progress towards European integration.[729] The agreed public broadcasting law kept the previous tripartite structure, namely a central service based in Sarajevo and two broadcasting systems in each entity,[730] much to the discontent of the Croat group, who had demanded the creation of a new service in Croatian for Croats.[731] Dissatisfied with the law, the Croat delegates in the House of Peoples challenged the law on the basis of the Croats' vital national interest. They demanded the dismantling of the FBiH's radio and television (FTV) and the creation of a third Croat state-level channel so that there were three state-level services, one for each of the three official languages. The challenge went to the constitutional court, but on July 23 the constitutional body ruled against the Croats, arguing that the draft did not violate the interests of the Croats. Croats' inability to use the vital national interest veto to protect what they considered as vital to their interests increased the level of frustration within this community, further fuelling their long-standing perception that they were being stripped of their national rights. The law was finally approved in parliament on 5 October 2005 with the support of both Serbs and Bosniaks (outvoting the Croats).[732]

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[729] As of May 2005, the approval of police reform and the passage of legislation reforming the public broadcasting system (to make it financially sustainable and more independent) were the two remaining EU conditions Bosnia needed to approve in order to initiate talks on the SAA agreement.

[730] The three services would now be part of a single corporation with head offices in Sarajevo, Mostar and Banja Luka, which required entity parliaments to pass legislation on the new services (Mirna Skrbić. "Triple Threat." *Transitions Online*, 12 October 2005).

[731] Croats claimed that both BiH's and the federation's systems failed to broadcast enough programs in Croatian. It is worth noting here that the three official languages in BiH, namely Croatian, Bosnian and Serbian are minor derivatives of the standard Serbo-Croatian (the language spoken in the former Yugoslavia), and closely related to each other. In fact, "Which variant individuals speak is often determined more by their region of origin than by their ethnic background" (*ibid*). The dispute over the broadcasting law represents an example of the use of language for nationalist purposes.

[732] The law, however, encountered important obstacles in subsequent phases, especially in the Federation as a result of Croat obstruction. The law was sent to the federation's constitutional court, which also ruled against the Croat claim in June 2008. Passing the corresponding legislation at the federation level occurred in July 2008, almost three years after its adoption at the state level. Progress in this area, together with the agreement on police reform in April 2008, paved the way for the signing of the SAA in June 2008, but a new phase of harmonization and implementation is still ahead. As the 2008 Progress Report noted, "it is now necessary to ensure that all state and entity-level legislation is harmonized, as well as full implementation, including the establishment of the Bosnia and Herzegovina Corporation of the Public Broadcasting Services" (European Commission 2008, 17). As of June 2009, however, the key coordination mechanisms are not in place, and as a former official of the OHR argued, "I doubt they will ever be properly implemented. While the Croat obstruction is pivotal ... Bosniaks and Serbs obstruct or are unwilling to implement other aspects of the reform. The model designed by the international community was too sophisticated" (Authors's e-mail interview with former OHR official. July 2009).

These developments triggered a heated internal debate within the HDZ, with hardliners increasing pressure over moderates[733] and demanding the creation of a third entity. As a case in point, the Croat member of the presidency, Ivo Miro Jović, demanded re-composing Bosnia into three levels of authority in an interview with *Politika* on September 6.[734] The Mostar-based *Vecerni List* also published an interview with Jović on September 22, in which he stated that the "one state, two entities, three peoples" model in Bosnia was outdated.

Notwithstanding mounting tension, these developments did not impede continuation of constitutional talks, and the working group met again on September 18-21. At this meeting a general set of proposals was agreed upon, mainly on human rights (including a clearer definition of individual and group rights and mechanisms for the protection of those rights) and on the definition of the vital national interest. Issues related to the model of government were also discussed, including the role of the president and the parliament, but no specific agreement was reached on these issues.[735] With respect to the government, although the group expressed a preference for the parliamentary model and a presidency that was limited to protocol issues, with major duties transferred to the council of ministers, there was no final consensus.[736] As for the parliament, there was general agreement to have the House of People focus on specific issues such as the vital national interest veto, the budget, social issues, treaties and the formation of government, and having the House of Representatives exclusively responsible for actions related to the SAA and the EU accession process, but no final agreement was reached either in this area. As for the relationship between the state and the entities, although there was recognition that additional authorities needed to be transferred to the state, further negotiations were needed to reach agreement. Finally, as a last order of business, it was decided that the working group would meet the next time at the premises of the US Institute for Peace, in Washington DC,[737] where party representatives were expected to reach final

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[733]   Author's personal interviews with Western diplomats and local actors. Sarajevo, June 2007.
[734]   See OHR, BiH Media Round-up, September 6, 2005.
[735]   Dayton Project, April trip report.
[736]   Both the president and the prime minister would be elected by the parliament and the government would be formed by the prime minister from a list of qualified candidates provided by the parties in parliament. The prime minister would thus become accountable to parliament and not the presidency.
[737]   The holding of this meeting was meant to send a signal of commitment from the international community. It also showed that the US, although not directly involved, was watching the process very closely.

consensus on the rest of the amendments in order to be able to send a draft agreement to party leaders.[738] The meeting location at a US government-funded NGO was chosen to show the parties the support and commitment of the US.

The last meeting of the working group thus took place in Washington DC at the end of October, and included visits by the Deputy Assistant Secretary of State for European Affairs, the EC representative in Washington, and a close-door meeting with members of the US House of Representatives International Relations Committee.[739] At this last meeting, "Mr. Belkić [who chaired the negotiations] presented what he thought was their agreement and told people that he was very pleased with how everything had gone."[740] Although not every issue received full endorsement at the DC meeting (see Table 5.1 and 5.2), Hays noted that a great deal of consensus had been reached within the working group, especially on the issue of human rights, general support for further transfers of power to the state (although not on the specific powers to be transferred), and the idea that the prime minister's powers should be strengthened while those of the presidency weakened to make way for a more efficient and faster-moving government.

Table 5.1: Areas of Consensus on the Revisions to the Bosnian Constitution (Working Group, October 2005)

Article II Human Rights	Article III State/Entity Relations	Article IV Parliament	Article V Presidency	Article VI Council of Ministers
Consensus on a more comprehensive list of human rights, including minority rights.	- Increased competences for the state, as required for the process of Euro-Atlantic integration. - Joint competences for both the state and the entities (i.e. agriculture, culture, and education). - The creation of a mechanism for the transfer of competences	Parliament: - A bicameral parliament, with an increased number of deputies and a new president. - Same election method for the House of Representatives. - Basic procedures for votes of confidence and no confidence. Vital National Interest: - A new definition of vital national interest.[741]	- A four-year mandate. - Transfer of presidential competences to the council of ministers (presidential powers are substantially reduced[742]).	- A four-year mandate. - Indirect election of the prime minister (by proposal of presidency). - New competences (from the presidency). - Delineation of specific powers and duties of the individual ministers.

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[738]   Dayton Project, September trip report, 2005 (material in author's file).
[739]   Donald Hays, Personal notes (material in author's file).
[740]   Author's personal interview with Donald Hays. Washington D.C., 29 July 2006.
[741]   Article 4.11 (c) of the amended constitutional document submitted to the party leaders prior to the Brussels meeting read that "Vital National Interest Veto may be invoked within the House of Peoples regarding: The rights of all three constituent people to be represented in legislative, executive, judicial authorities, and to have equal rights to be involved in decision-making processes; the identity

	between the state and the entities.	- A new review mechanism for the vital national interest veto: direct appeal to a three-member panel at the CC, deciding by consensus. House of Peoples: - Vital national interest veto to be a House of Peoples exclusive competence at the state level. - Streamlining of the procedures and competences of the House of Peoples (no consensus on how). - Participation of both entities in the election of the delegates of the House of Peoples. Minority Representation: Guaranteed representation of minorities in the House of Representatives.		

Source: Author from various materials provided by Donald Hays, including the amended constitutional document submitted to party leaders prior to the Brussels meeting in November 2005.

Table 5.2: Areas of No Consensus on the Revisions to the Bosnian Constitution (Working Group, October 2005)

Article III State/Entity Relations	Article IV Parliament	Article V Presidency	Article VI Council of Ministers
- Delineation of the powers of the state. - Amending the constitution to incorporate the powers transferred to the state since 1995.	House of Peoples: - Specific delineation of its competences. - Election method. Representation of Minorities:	- Composition of the presidency. - Election method. - Competences.	(The working group did not reach any consensus in this area as a result of the disagreements over the presidency and the parliament)

of a constituent people; territorial organization; organization of the bodies of public authority; education of citizens; use of languages and scripts; national symbols and flags; spiritual heritage, particularly the fostering and affirmation of religious and cultural identity and traditions; preservation of the integrity of Bosnia and Herzegovina; public information systems; any issue deemed to be a Vital National Interest by 2/3 of one of the caucuses in the House of Peoples" (amended constitutional document submitted to party leaders prior to the Brussels meeting in November 2005. Material in author's file).

[742]   It is unclear whether a consensus was reached on the competences of the presidency. Some of the agreed competences included: representation of the state; signing and promulgation of laws and treaties; announcement of state-level elections; appointment of ambassadors; dissolution of the parliament in accordance with the constitution; declaration of war and the state of emergency, following the approval by the parliament; and the appointment of state officials.

	- Number of seats reserved for 'others.'		

Source: Author from material provided by Donald Hays.

By the end of the meeting in Washington DC, there was a sense among those involved that negotiations could not move further without the express engagement of party leaders. It was thus decided that party leaders would be involved in the following rounds. In early November, Hays sent a letter to all party leaders (along with a document that included the main areas of consensus achieved until that point) with an invitation for a meeting to take place in Brussels on November 11-14, 2005. As Hays claimed, "The idea was to imbue the process ... with a sense of commitment and unity on the part of the international community,"[743] and to unblock the remaining issues that eluded consensus during the working group period, including the role of the presidency (the first item on the agenda at the meeting in Brussels); the election of the member(s) of the presidency; the role of the House of Peoples and the House of Representatives; and the number and type of the ministerial portfolios to be introduced.

5.1.2. Involvement of Party Leaders

Party leaders met for the first time in Brussels on November 11 with the commitment to undertake the working group's agenda.[744] The involvement of party leaders in the EU-sponsored meeting in Brussels in November 2005, barely a year before the elections, set in motion a new set of dynamics, including both the presentation of zero-sum claims and the use of nationalist rhetoric. These new dynamics thus changed the spirit of the negotiations and took them in a fundamentally different direction than the one agreed to months earlier. As an SDP member of the working group, Jozo Križanović, asserted in a personal interview, "The atmosphere was very good until political parties got involved ... The emphasis started to go to issues that had not been discussed and were not important ... They were only speaking about

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[743]   Author's personal interview with Donald Hays, Washington D.C., 29 July 2009.
[744]   The meeting was attended by Sulejman Tihić (SDA), Zlatko Lagumdžija (SDP), Safet Halilović (SBiH), Dragan Čavić (SDS), Dragan Čović (HDZ), Milenko Brkić (HNZ), Milorad Dodik (SNSD) and Mladen Ivanić (PDP). Party members of the working group were also present at this meeting.

entities." Similarly, Hays noted that all parties started to make mutually exclusive claims: "the Serbs wanted to embed the existence of the entity into every clause, on every amendment, and the Bosniaks and the Croats wanted to eliminate the entities entirely."[745]

These dynamics exposed the relevance of ongoing inter-ethnic distrust that had a deep impact on the way parties perceived their interests and how they formulated their claims within the bargaining framework for constitutional reform. As a matter of fact, all involved parties presented demands that were deeply ingrained in old inter-ethnic, anxiety-laden concerns reminiscent of the constitutional debate before and after the war (see Table 5.3). Bosniak leaders, for example, asked for the establishment of a majority-based government, a parliament with no entity voting and the abolition of the entities, which were based upon the long-pursued goal of creating a citizen-based state. Serb parties, to the contrary, presented a set of demands that were aimed at the creation of a federal state in which Serbs could not be outvoted in a Bosniak-dominated civic state, including a rotating collective presidency, maintenance of entity voting and no change to the status of RS. As for the Croats, although they showed a great deal of ambivalence, there were voices in favor of a third entity or a three-tiered structure for all levels of authority (including a rotating presidency and the replacement of the two-entity structure for a three-level decentralized state), which also arose from ethnic-based anxieties, including a fear of remaining an effective minority at both the state and entity levels.

Table 5.3. Party Positions on Constitutional Reform
(November 2005)

	Presidency & Council of Ministers	Form of State	House of Representatives & House of Peoples	State/Entity Relations
HDZ	- Rotating 3-member presidency, directly elected with Bosnia as single electoral unit (as opposed to current entity-based vote).	- Decentralization of Bosnia into three (or more) entities or provinces. - Current two-entity structure unacceptable.	- House of Peoples elected at the state level (rather than by each entity's House of Peoples). - No entity voting.	All competences transferred to the state.
SDA	- Single president from one group, indirectly elected. - Prime minister and speaker of the House of Representatives	- No entities. - Divide Bosnia into economic-based regions (based on EU standards).	- No entity voting. - Increase competences and deputies in House of Representatives. - House of Peoples only on vital national interest.	All competences transferred to the state

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[745]   Author's personal interview with Donald Hays. Washington, DC. 29 July 2006.

	from other groups. - Council of ministers as Government.		- House of Peoples elected at state level.	
SBIH	Single president, directly elected.	No entities.	No entity voting.	All competences transferred to the state.
SDP	- Single president with less power, indirectly elected. - President and prime minister not from same group. - Council of ministers as government.	- No entities or cantons. - Create regional communities (based on EU standards).	- House of Peoples elected at state level. - House of Peoples only on vital national interest.	All competences transferred to the state.
SDS*	- Intact rotating collective presidency (direct, entity vote).[746] - Willing to discuss mandate. - Council of ministers functional (to meet EU criteria) but not as government.	Unwilling to dismantle RS.	- Maintain entity voting. - House of Representatives & House of Peoples to have same powers, but open to discuss reform of House of Peoples. - Accept increase of deputies. - House of Peoples to remain elected by entities' assemblies.	Open to discuss reform to meet EU requirements.
SNSD	- Rotating collective presidency (direct, entity vote). – Presidency chair to have more powers. - Two new ministries.	Bosnia as a federal state with RS a federal unit	- Same as SDS. - Accepts increased competences of parliament.	Same as SDS.
PDP	- Rotating collective presidency (direct, entity vote). - Accept strengthened Council of ministers but not as government. - Two new ministries.	Unwilling to dismantle RS.	Same as SDS.	Same as SDS.
Internat ionals**	- Single president, with less power, indirectly elected. - Strengthened Council of ministers as government.	No official preference expressed, except for the creation of a functional state.	- Minority representation. - House of Peoples only on vital national interest. - Narrowing of vital national interest. - Entity voting redundant - Strengthened House of Representatives. - More deputies in House of Representatives.	- Codify competences transferred. - Two new ministries. - Grant new powers for EU integration.

* All Serb parties had similar positions on key reform areas.
** As expressed in Venice Commission, 2005.
Source: Author from material provided to the author; personal interviews; and local media (from OHR, BiH Media Round-up, November 2005).

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[746]   Serb parties would accept a president with two vice presidents on a 16-month rotation at the end of this phase.

Notwithstanding the high tension involved in this first meeting, some consensus was achieved in a number of issues (see Table 5.4), including the duties and the selection of a president of the council of ministers and a general sense that the state should be provided with the means to meet EU's pre-accession criteria. Agreement was also reached on the issue of the competences of the presidency, which most parties agreed to reduce significantly, and the focus of the House of Peoples on the ratification of treaties and appointments, as well as on vital national interest (although it was still undecided whether the House of Peoples would be the only authority in the country to deal with this issue). Disagreements were, however, pervasive in a number of issues such as the mandate of the presidency,[747] the election of both the presidency and the House of Peoples. No agreement was reached on some additional issues of the government package either, except for a graded consensus around the creation of two new ministries.[748]

Table 5.4. Overview of Consensus Areas at the Meeting in Brussels (November 12-14)

	Full Consensus	Partial Consensus	No Consensus
Article 2 Human Rights	General agreement on the list of human rights, including a method of individual redress before the Constitutional Court.		
Article 3 State/Entity Relations	Recognition that the state should have the authority to meet the EU's pre-accession and post accession requirements and to ensure compliance by other levels of government		
Article 4 Parliament	The definition of vital national interest	- Quota for minorities. - Increased number of deputies. - The House of Peoples to serve as the sole authority on vital national interest (entity assemblies to defer	Election of the House of Peoples (options: direct from the entities; indirect from entity parliaments; indirect from the House of Representatives).

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[747] Tensions around the form and competences of the presidency were also pervasive. "It was clear that Tihić wanted to stay president so taking powers away from his office and moving it to a minister was not in his interests," (Author's personal interview with Meghan Stewart. Washington, D.C., August 2006; author's personal interviews with Donald Hays and other members of the Dayton Project).

[748] Some party leaders expressed a preference not to touch the government structure and introduce an amendment to Article 3 to execute the transfer from entities to the state. "We pointed out to them in a second day how difficult it would be using that article to build a state competent to meet EU standards; they then agreed to draft an amendment that would empower the state to be the sole authority in relation to ... EU requirements" (author's personal interview with Donald Hays, Washington D.C., 29 July 2006).

		to the House of Peoples on vital national interest)	
Article 5 Presidency		- Reduction of Competences. - Election method.	- Competences. - Composition of the presidency (single; collective; single with two vice-presidents). - Election method (indirect or direct; vote in Bosnia as a single electoral district or entity based voting).
Article 6 Council of Ministers	- The creation of a President of the Council of ministers. - The duties of the PM	- The creation of two new ministries.	

Source: Author from Hays, Hitchner, Stewart and Williams 2005; personal interviews.

Party leaders met again in Washington DC on November 19-20, right before the events that would take place in the US Department of State in commemoration of the tenth anniversary of the Dayton Accords.[749] On November 19, party leaders gathered with members of the secretariat at the Mayflower Hotel in an effort to conciliate the differences. All the leaders were present, except for SDA's President Sulejman Tihić, SDP President and Foreign Minister Mladen Ivanić, and HDZ President Čović, who was replaced by Bariša Čolak at this meeting due to his inability to travel.[750] During the Saturday session, an agreement was reached on the House of Representatives and government packages, "and they were able to narrow the areas of disagreement on the parliament and the presidency." But on Sunday, with Tihić back in the room, divisions and tensions appeared to increase again.[751] As Hays stated in an interview, "On Sunday ... there was more tension in the room. You could see that the President [Tihić] was unhappy that they met without him and that they seemed to be making progress. As a result, while I think the group moved a number of issues on the parliament and the presidency, there was no agreement on both issues when he was back in the room."[752] The meeting in Washington thus reproduced the dynamics involved at the meeting in Brussels, and after long hours of negotiations, the leaders

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[749] The coincidence of Dayton's tenth anniversary with the constitutional reform process was not fortuitous. Some circles within the US government saw the opportunity to use Dayton's tenth anniversary to mark the beginning of a new era in Bosnia – from Dayton to Brussels – symbolizing the end of the US involvement in the region in favor of a more prominent role for the EU (freeing the US to concentrate more on other more pressing scenarios in the region and elsewhere).

[750] Dragan Čović was indicted at the time on corruption charges.

[751] Tensions between Tihić and Hays increased significantly at this meeting and Tihić threatened to withdraw from negotiations (See OHR, BiH Media Round-up, 22 November 2005).

[752] Author's personal interview with Donald Hays, Washington D.C., 29 July 2006.

failed to make any substantial progress on the key issues that had eluded agreement thus far.[753]

A consensus was, however, maintained around the definition of the vital national interest (although there was no full consensus on whether the House of Peoples should be the only institution dealing with it) and the Human Rights package. Substantial progress was also achieved on the government package, particularly on the structure and function of the council of ministers with a decision to have a prime minister who would be elected by parliament and authorized to set the agenda; to select the ministers from a list of candidates provided by the parties in government; and to make decisions on a consensus basis (or by simple majority if consensus was impossible, on the condition that the vote had at least one member of each constituent people). There was also accordance on (1) the creation of two additional ministries, i.e. agriculture and the second one to be decided, and (2) providing Bosnia with the authority to not only draft and enact legislation in accordance with EU accession requirements but also to enforce these decisions throughout the territory with the creation of coordinating mechanisms for compliance at the sub-state level. Finally, further negotiations would be needed in two key remaining areas: the election process for both the House of Representatives and the presidency and the format and mandate of the presidency (see Table 5.5). In addition to these initial, limited compromises, the external actors managed to pressure party leaders into signing a document in which they committed to agree to a set of amendments by March 2006.

Table 5.5. Overview of Consensus Areas at the Meeting in Washington (November 19-20)

	Full Consensus	Partial Consensus	No Consensus
Article 2 Human Rights	Same as Brussels.		
Article 3 State/Entity Relations	New state competences: -To draft legislation and create institutions in accordance with the EU integration process (new Article III. 5c). - To create coordinating mechanisms with sub-state levels of government to ensure compliance with state decisions and EU directives.		
Article 4	Definition of vital national interest	The House of Peoples	Same as Brussels

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[753]   Dayton Project, November trip report, 2005 (material in author's file).

Parliament		with exclusive competence on vital national interest at the state level.[754]	
Article 5 Presidency		The delineation of competences.[755]	Same as Brussels.
Article 6 Council of Ministers	The Government: - Composition (the prime minister forms the government from a list provided by the parties in power) - Government competences. - The decision-making procedure.[756] - Two new ministries (agriculture and one to be determined). Prime Minister: - Election by the parliament. - No portfolio. - Two deputies with portfolio. - Prime minister duties: set the agenda for government; design and implement policies; direct the work of ministers.		

Source: Author's elaboration from Hays, Hitchner, Stewart and Williams 2005.

Notwithstanding the signing of this document, which was achieved through strong pressure by the US, inter-ethnic nationalist rhetoric and unyielding positions continued after both the Brussels and DC meetings. In an attempt both to bridge the remaining differences and reinvigorate the process after the sense of failure in Brussels and Washington DC, the secretariat launched a new round of informal meetings in early December.[757] Key disagreements continued to revolve around the same issues, however, including first and foremost the format, mandate and election of the presidency. While SDA favored a single president, both Croat and Serb parties continued to support a president with two vice presidents on a rotating basis. There was also disagreement about the election of the House of Peoples and the mandate and election of the prime minister, although Serb parties were ready to accept both a

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[754]   Still to be determined whether the House of Peoples is the sole authority on vital national interest issues.

[755]   The duties discussed include the same ones debated by the working group, with the addition of the oversight of defense policy and the appointment of Constitutional Court judges and members of the Central Bank Board.

[756]   By consensus, or by simple majority if no consensus is reached, including the agreement of at least one member of each constituent people. The Law on the Council of Ministers in BiH, enacted by the HR in December 2002 (Office of the High Representative 2002d), required the agreement of at least two members of each constituent people.

[757]   In this first round of negotiations, Hays met separately with HDZ Vice President Niko Lozacić, Zlatko Lagumdžija, Safet Halilović and Milenko Brkić on December 7 to find a common position within the FBiH parties. He then met with RS parties on December 9.

chair of the council of ministers and the creation of two extra ministries.[758] Positions remained unchanged, however, and parties seemed to be driving further from consensus. On December 6, Tihić declared that although he had agreed not to deal with entity voting at the beginning of the negotiations,[759] he refused to stand back from his demands, including the elimination of entity voting.[760] The Croats also appeared disillusioned with the conduct of the negotiations, given the limited scope of the agenda; Serb parties, for their part, threatened to withdraw from the process if discussions continued to revolve around the status of RS. In addition to the immovable stances, the mood became increasingly bitter, with outside extremists such as Haris Silajdžić publicly denouncing the process on a rather nationalist platform. On November 14, for example, Haris Silajdžić stated that Bosnia did not need the reforms under discussion but rather a totally new constitution not built upon genocide and blood.[761] Later, on December 7, in a conference sponsored by the Woodrow Wilson Center in Washington DC in commemoration of the tenth anniversary of the Dayton Accords, he criticized the constitutional initiative as merely an attempt to maintain the status quo and to introduce cosmetic changes.[762] The embittered climate triggered a chain of radical inter-group accusations impregnated with nationalist rhetoric; by mid-December, negotiations seemed to be on the verge of collapse despite promises made in Washington DC.

5.2. ANALYSIS OF PHASE I

The dynamics outlined above illustrate that the process of constitutional reform during the first phase of the negotiations was highly affected (and heavily undermined) by domestic dynamics at both the inter- and intra-ethnic levels. In this context, there were two mutually reinforcing domestic dynamics prevalent during the

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[758]   OHR, BiH Media Round-up, 12 December 2005.

[759]   As a case in point, he stated in early December, "I believe that we have made a mistake at the very beginning, mainly because we have limited topics for discussions to the presidency, council of ministers, parliament and the state authorities. We have not discussed the internal structure of BiH" (Sulejman Tihić, cited in OHR, BiH Media Round-up, 6 December 2005).

[760]   OHR, BiH Media Round-up, 12 December 2005.

[761]   OHR, BiH Media Round-up, 14 November 2005.

[762]   Speech at a conference sponsored by the Woodrow Wilson Center in Washington DC in commemoration of the tenth anniversary of Dayton (see OHR, BiH Media Round-up, 9 December 2005).

first phase of the constitutional negotiations: firstly, a pervasive inter-ethnic mistrust, typical in post-conflict, deeply divided societies, which tended (and has tended for long) to restrict and undermine the terms of the political debate during the constitutional negotiations; and secondly, power struggles at the intra-ethnic level that raised tension and resulted in confrontation between ethnic groups. In other words, inter-ethnic dynamics during the first stage of negotiations were affected by two factors: (1) the prevalence of inter-ethnic anxieties and concerns and the use of these concerns to set parameters for a bargaining strategy within the framework of constitutional reform; and (2) inter-ethnic anxieties as the foundation for intra-ethnic outbidding dynamics within each constituency.[763]

5.2.1. Inter-Ethnic Anxieties: the Limiting Parameters of the Political Debate in Bosnia

As noted in the empirical discussion outlined in the previous section, engagement of party leaders in November 2005 introduced a new set of dynamics that ran counter to the development of practices of conflict regulation at the inter-ethnic level within the framework of constitutional reform, nearly leading to the collapse of negotiations in December. These dynamics, namely the presentation of zero-sum claims and the use of inter-ethnic nationalist rhetoric, indeed exposed the prevalence of ongoing inter-ethnic distrust in Bosnia that had a deep impact on the way parties perceived their interests and how they formulated their claims within the bargaining framework for constitutional reform.[764] As a matter of fact, all involved parties presented mutually

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[763] The author argues that the use of nationalist rhetoric reflects inter-ethnic based anxieties but also a purposeful strategy to increase the party's (or segment's) own bargaining position. Irrespective of the reasons behind the use of inter-ethnic anxiety as a political strategy, this dissertation focuses on the impact of these anxieties on the parameters of the debate and the creation of a climate not conducive to inter-ethnic cooperation.

[764] Although nationalist rhetoric in Bosnia is today generally triggered by this country's own local dynamics, it is important to note that kin-state involvement from Croatia and Serbia fueled this rhetoric for much of the 1990s within the frameworks of the Greater Croatia and Greater Serbia. These dynamics started to change in the late 1990s and foremost in the 2000s, following the death of Croatia's President Franjo Tuđman in 1999 and Slobodan Milošević's resignation as President of FRY in 2000 (Serbia had in fact distanced itself from RS politics much earlier, as a result of Serbia's post-war economic decline and the international community's forceful actions). Notwithstanding the change of rhetoric, Croatia's and Serbia's policies towards Bosnia are still today greatly influenced by the position of both Bosnian Croats and Serbs in this country. Furthermore, both countries have often times used the situation of these communities for advancing their own agendas. The government of Vojislav Koštunica of the Democratic Party of Serbia (2004-2008) is a clear example, especially following the initiation of the Kosovo status process in 2005 (See Chapter 7, p. 264). In the case of

irreconcilable demands that were deeply ingrained in old inter-ethnic, anxiety-laden concerns (see Table 5.3).

Post-Dayton Bosniak Positioning and Inter-Group Relations

Notwithstanding the signing of a settlement in 1995, which provided Bosnia with extensive regional and domestic guarantees, Bosniaks have remained attached to the ideal of a citizen-based state in Bosnia as the ultimate political end goal.[765] Indeed, interviews conducted with Bosniak party officials revealed that Dayton remains an unsatisfactory arrangement for Bosniaks, given their status as the largest ethnic group in a country where all decisions and positions are made and allocated equally between three ethnic groups. As Hays noted in a personal interview, "Bosniaks have a plurality in the country and that's why they want a citizens-based constitution; they want one man, one vote, because that is the only way they can have a large say in how the government functions; they don't want the entities, they don't want the cantons. They want to rule from the center, from Sarajevo."[766]

Dayton is thus viewed as an obstacle to achieving Bosniak national aspirations,[767] and this anxiety has evolved into a rejection of the situation on the ground, especially in relation to the existence of RS and the role of entity voting. Bosniaks have thus sought to change or alter Dayton at all costs by strengthening state-level institutions. In other words, as Sumantra Bose noted in 2002, they have become the most fervent defenders of strengthening central institutions so as to counterbalance their relative lack of power in a state where they represent the numeric majority.[768] As SDA Vice President Šefik Džaferović declared during the constitutional reform process, "We have a state that has been *ethnicized* and *entiticized*. ... Dayton described Bosnia as it was in 1995 and established weak structures to end the war and the killing. Now we need to build Bosnia on a citizen's

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Croatia, the position of the Bosnian Croats has a special meaning in this country's politics. The election system is based on the division of the country into eleven constituencies, including one made of expatriates (mostly Bosnian Croats), which total around five parliamentary seats.

[765] Very similar to the model of state conveyed prior and during the war, which suggest the limiting effect that Dayton has had on resolving the ethnic question left over from the war in BiH.

[766] This represents a typical position of majority groups in divided societies; majority rule maximizes the ethnic power of the largest group.

[767] Bosniaks remain the only national group from former Yugoslavia with no nation-state or motherland they can aspire to join or look to for protection (see Patrick Moore. "Bosnia Herzegovina: can it turn over a new leaf?" *Radio Free Europe/Radio Liberty*, 15 November 2005).

[768] Bose 2002, 258.

basis, having in mind that Bosnia is a multiethnic state, but not endangering the building of the state. ... You cannot build a state on ethnic and entity basis. The future should be citizens first, collective rights second."[769] SBiH founder Haris Silajdžić stated in early 2004, "The only possible solution is to abolish both entities simultaneously, even if that is done gradually ... The state must be organized on the principle of economic regions, because they have developed over hundreds of years."[770]

In addition to the perceived loss of power of Bosniaks in Bosnia, both interviews and public statements of party leaders in the local media exposed the still-professed belief that Dayton was an unjust solution to the conflict based on war dynamics and the genocidal experience in Srebrenica.[771] Bosniak ethnic anxieties have thus been fueled by morally grounded notions derived from the war and Srebrenica. As a case in point, SBiH party official Beriz Belkić stated in a personal interview, "Some people from RS think that Bosnia is the result of the agreement of two entities, that entities are older than the state ... But we think that Bosnia is an internationally recognized state, a state of all nations, older than the entities, which are the result of war and force ... we want to improve the result of war."[772] Similarly, SDA Vice President Šefik Džaferović stated, "Dayton is the reflection of ethnic cleansing; it is not just. We need to have a functioning citizen-state with an internal structure based on economic criteria."[773]

This somehow represents a morally grounded understanding of the political debate, constraining the political parameters to a great extent. As Sociology Professor

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[769]   Cited in OHR, BiH Media Round-up, 24 January 2006. SDA Vice President Šefik Džaferović also declared recently, "For us, it is unacceptable any solution of internal organization of the country except multiethnic regions. European Commission estimated that there are five such regions in Bosnia specified on the basis of economical, geographical and communication criteria. We believe that these five regions should make internal arrangement of the country along with municipal and state level" (cited in "SDA against Support from RS." *Nezavisne Novine*, p. 5, 13 July 2007. In Constitutional Changes Monitor, No. 36, 11-18 July 2007). In relation to the reconfiguration of the middle level, he stressed that SDA is opposed to the reconfiguration of Bosnia in only one part of the state (namely the Federation) ("For SDA and Party of BH Unacceptable, for Two HDZ Real Solution," *Dnevni Avaz*, p. 10, 12 July 2007. In Constitutional Changes Monitor, No. 36, 11-18 July 2007).

[770]   Haris Silajdžić, cited in *Dani*, 16 January 2004. Quoted from ESI 2004b, 7.

[771]   Hence, the belief that Dayton has failed to provide a satisfactory settlement of the ethnic question in Bosnia.

[772]   Author's personal interview with Beriz Belkić, Sarajevo, 19 June 2007.

[773]   Author's personal interview with Šefik Džaferović, Sarajevo, 31 May 2007. The first Owen-Vance plan was the only settlement based on the division of Bosnia according to a mix of economic and ethnic criteria; the plan failed, however, to garner consensus among the three ethnic groups during the war. It was rejected by the Serbs (see chapter 3 section 1).

Ugo Vlaisavljević stated in a personal interview, Bosniaks have tended to present a political platform that is based on "the heritage of bloody legitimization," a sacrosanct legitimization: "it is a sort of a religious legitimization rather than political. It is all about who is the victim"[774] and who is the aggressor, undermining the dynamics of domestic accountability.[775] This political discourse featured prominently during the constitutional reform process. As a case in point, Beriz Belkić asserted in a personal interview in a rather heated tone:

> "The international community was using the nice approach: this is your country, your own constitution, you have to come up with a solution. But it's also their responsibility; they forget that they created this country's state. They didn't stop the war when they could, and there was Srebrenica, they allowed the blockage to Sarajevo for four years and they also forced some solutions. Most importantly, they didn't ask who was who during the war, who attacked, who defended, they said everyone is guilty, everyone was fighting everyone..."[776]

All of these factors resulted in the presentation of demands during the first phase of the constitutional reform process that were based on the principle of a citizen-based state with no entities or ethnic-based structures in place. In sum, Bosnia would have a single president, a government with a majority-based decision-making process, no entity voting and the elimination of entities.[777] This vision was, however, exact opposite of the Croat and Serb visions and failed to provide an appropriate climate for accommodation practices during the initial stages of the process. Indeed, given the ongoing mistrust among ethnic groups, the other two groups saw the Bosniak idea of a citizen-based state as an attempt to impose a unitary solution to the ethnic question inherited from the war, with the domination of one ethnic group over the other two. As a case in point, Čavić stated emphatically that the survival of RS was "a basic condition" that could not be questioned; "Everything can be changed,

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[774] Author's personal interview with Ugo Vlaisavljević. Sarajevo, 22 May 2007.

[775] This mentality continues to be pervasive in today's Bosniak politics. As a case in point, SBiH's president Haris Silajdžić claimed in a speech to the managing board of the PIC in June 2007, "While the Dayton has ended the war and genocide, BiH remains to be a question of principle just like it was 12 years ago" (*Bosnia Daily* 1530, 20 June 2007).

[776] Author's interview with Beriz Belkić. Sarajevo, 19 June 2007.

[777] SDA will evolve into more pragmatic and accommodating positions during the talks, along with the SDP. As an SDP official stated, "we needed to be realistic and find the best solution possible" (Author's interview with Saša Magazinović. Sarajevo, 19 June 2007). SBiH remained radicalized throughout the process, as we shall see in the next chapters.

except for the fact that three constituent peoples live in Bosnia-Herzegovina, and this must be identified in the constitutional order."[778] He also stated, "It seems that ... Bosniak parties are trying to use this as an opportunity for discussion on thorough change of the Dayton Agreement, which is unacceptable for representatives of parties from RS."[779] Similarly, PDP leader Mladen Ivanić declared in the media, "The problem is that one part of FBIH advocates for unitary BiH while the other part, namely HDZ, advocates for the third entity. Each solution is at the expense of RS."[780] In sum, as Hays stated in a personal interview, "The main driving goal of the majority was thus to control, to manage, to supervise and be in charge. That's exactly what the other two were worried about and that's why there won't be reconciliation and there won't be reforms implemented, and they wont get into the EU because they [the three ethnic groups] are the block to their own future."[781]

Post-Dayton Serb Positioning and Inter-group Relations

Despite the extensive autonomous powers provided to the Serb-dominated RS by Dayton, Serb concerns about being outvoted by Bosniaks remain pervasive in political rhetoric, leading the Serb community to persist favoring the status quo or a federal re-arrangement in which RS remains an integral federal unit.[782] As expressed by an SNSD member when asked about the guarantees provided for in Dayton, "We need RS and entity voting for our own political survival. Now for example you have in the parliament twenty-four Bosniak representatives, which constitutes already a majority. So we need to protect our rights. If we don't have entity voting, people will get disappointed and we will not be able to preserve our rights. We do not want somebody else making a decision for us."[783]

Serb political demands thus remain rooted in ethnic-based anxiety-laden concerns and inter-ethnic distrust, which have been aggravated by the perceived

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[778]   OHR, BiH Media Round-up, 13 November 2005.
[779]   *Ibid.*
[780]   Mladen Ivanić, cited in OHR, BiH Media Round-up, 14 November 2005.
[781]   Author's personal interview with Donald Hays. Washington D.C., 29 July 2006.
[782]   Hitchner 2006. It is within this context that Serb leaders have regarded the existence of RS – as well as the instrument of entity voting – as key guarantors for their own political survival (Bose 2002). This idea represented the groundwork for their demands, namely a three-tiered framework to be applied to all the key positions/institutions at the state level and the refusal to dispense with the ethnic-based guarantees provided for Serbs in Dayton.
[783]   Author's interview with Gordan Milošević. Banja Luka, 12 June 2007.

undermining of the status of RS. Indeed, the international community-sponsored state-building agenda in Bosnia – which aims to strengthen state-level institutions to the detriment of the powers of the entities – has been perceived by Serb leaders as a concealed strategy aimed at doing away with the status of RS and putting in place a Bosniak-dominated state under the guise of a 'civic' constitution.[784] As a result, Serb fears of being outnumbered in a Bosniak-dominated state have not only failed to subside since the dissolution of Yugoslavia but on the contrary have been aggravated by the very presence of external actors and the international community-sponsored state-building reform process in Bosnia, which somewhat explain the long-standing obstructionist approach by Serbs to the reform process at the state level.[785] The latter has tended to revive the sense of insecurity, to increase the perceived value of the status quo as defined in Dayton's institutional arrangement, and to give rise to Serb perceptions that the withdrawal of the international community would increase their domestic ownership and achieve a more leveling playing field.[786]

Notwithstanding the overall framework underlying Serb party mindsets, the constitutional reform process represented a slight turning point in their obstructionist attitude towards the broader reform process at the state level. Indeed, the decision by Serb parties to actively engage in the reform of Dayton resulted from a new pragmatic approach towards the international community-sponsored reform process

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[784] The perception that a state-building agenda and the survival of RS are mutually exclusive has been compounded by the international community's often-ambiguous positioning on the status of RS. As a case in point, following NATO's summit in mid-December 2004, where RS was harshly criticized for failing to fully cooperate with the ICTY, Ashdown hinted at possible sanctions that could affect the status of RS. When asked whether such sanctions would include the abolition of RS, the high representative suggested that everything was possible, adding, "I must say, however, if RS would respect the Dayton Agreement, then I would protect its competences" (OHR, BiH Media Round-up, 18 December 2004, *Nezavsine Novine* interview with Paddy Ashdown). Although days later Ashdown denied these statements, the controversy surrounding it – together with the dismissal of SDS officials and the imposition of US sanctions – gave way to Serb outcry and triggered heated confrontations between Serb parties and the international community.

[785] This is not to suggest that the international community is the only factor accounting for the Serbs' obstructionist approach, which for long has benefited the SDS power structures in RS (see European Stability Initiative 1999). This is only to suggest that the international community has contributed to heightening ethnic anxieties as a result of the creation of 'winners' and 'losers' on the ground (see Zahar 2002 and the discussion in chapter 2, p. 88).

[786] SNSD official Gordan Milosević, advisor to SNSD leader Dodik, claimed, "The international community has imposed big solutions and has created a lot of frustration [in RS]; everybody seeks an opportunity to get rid of that solution because of that. If we reach a solution of our own then we'll be able to live with it for a long time" (Author's personal interview with Gordan Milosević. Banja Luka, 12 June 2007). Serb population in RS generally support the reduction of the HR's powers. In fact, the UNDP Early Warning Report in April 2006 showed that 65 percent of the population in Serb majority areas were in favor of reducing the powers of the HR, in contrast to 28 percent in Bosniak majority areas and 48 percent in Croat majority areas (United Nations Development Programme 2006).

based on the idea that RS would be better protected with active Serb engagement.[787] "It was indeed a departure from the previous strategy, but we realized that if we wanted to protect RS we had to take part in the negotiations," said SDS high ranking official Mladen Bosić.[788] As Hitchner stated, since the early stages of the reform process, Serbs showed a clear determination to marry the future of RS with that of Bosnia, and this had an enormous impact in the conduct of the negotiations.[789]

The new strategy resulted in two key developments.[790] First, the Serb contingent became the most prepared, active and unified group in the negotiations.[791] They were also the group putting more initiatives on the table, including some critical ones such as the strengthening of the chairman of the ministers along similar lines to the prime minister's office in RS, "which was a huge improvement."[792] The second development regarded the rhetoric used during the negotiations, which was significantly toned down from previous reform processes. Dodik, for example, declared in an interview to *Reuters* in early December 2005 that Serbs no longer dreamed of joining Serbia and asserted that Kosovo's status would not influence developments in Bosnia unless RS was put in danger;[793] in such case, he asserted, "Serbs could be asking for independence ... using the same argument like Albanians from Kosovo."[794] Similarly, Čavić stated on November 17, "We Serbs should say it

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[787]   Author's personal interviews with Serb officials and Western diplomats. Sarajevo, May-July 2007.

[788]   Author's email interview with Mladen Bosić, 26 June 2007. Mladen Bosić is currently SDS leader.

[789]   Hitchner 2006c. Moderate Serb figures from SDS and SNSD had already showed willingness to engage in a constitutional debate in early 2004, following the European Stability Initiative's federal proposal for BiH. Dragan Čavić stated in January 2004, "It is completely clear that an RS exit from BiH would be a painful and thorny path. It is not a realistic possibility, and on that parth the Serbs would not have the support of the US, the EU or even Russia. Therefore we have had to conclude that the path to Europe for RS is through BiH" (Dragan Čavić, cited in *Jutarnje Novine*, 20 January 2004. Quoted in ESI 2004b, 6). SNSD's official Nebojsa Radmanović stated, "There is no need to talk about the internal organization of BiH and it does not mean that we dont need to find those solutions that are functional for BiH" (Nebojsa Radmanović's declarations on TV, cited in ESI 2004b, 6). These statements fell however short of compromising the status of RS. Indeed, Čavić stated the same day, "There is no chance that BiH will continue to exist, if RS doesn't exist within it as an entity" (Dragan Čavić, cited in *Oslobođenje*, 20 January 2004. Quoted from ESI 2004b, 5).

[790]   This development laid the groundwork – with the assistance of other factors – for conflict regulation in subsequent phases.

[791]   Author's personal interviews with members of the secretariat and the Dayton Project BiH. Sarajevo, May-June 2007.

[792]   Author's personal interview with Donald Hays. Washington, D.C., 29 July 2006.

[793]   See 'Kosovo Status Without Influence on RS,' *Nezavisne Novine*, p. 6, in OHR, Media Round-up, 3 December 2005.

[794]   See Ivan Lovrenović. "Pristina on Vrbas." *Feral Tribune*, p. 22-23. In OHR, Media Round-up, 9 December 2005.

clear: Bosnia is equally my state as it is Tihić's and Čović's."[795] Furthermore, even when nationalist rhetoric ran high on the Bosniak and Croat sides, Serb parties tended to avoid putting wartime goals such as secession on the table (except for rare occasions as a defensive strategy[796]), and merely threatened to withdraw from the process if the existence of RS continued to be put into question. Serb parties, thus, kept the level of nationalist rhetoric to a minimum.[797]

Notwithstanding, this new pragmatic approach by Serb parties was always considered to fall short of the shift required to reach a compromise on the role of entity voting. This helped raise the level of confrontation with the other two groups, and became a hurdle during negotiations.[798]

Post-Dayton Croat Positioning and Inter-Group Relations

Croat concerns has also been marked by fear of being dominated by the Bosniaks ever since Dayton, especially in relation to their situation in the Federation. There are parallels here with Serb anxieties. As Bose stated, the Croats "share with the BiH Serbs a fear of becoming, in practice if not on paper, a [subordinated] national minority. In their view, the Serbs are more or less safe from suffering this fate because of the constitutionally entrenched status of Republika Srpska, but they have no such guarantee. Hence the exaggerated sense of injustice, and the allergic reaction to any move of the international community that can be remotely construed as a step towards a less group-based and more majoritarian federation. The dismantling of the

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[795] Dragan Čavić, cited in OHR, BiH Media Round-up, 17 November 2005. Following the constitutional agreement in March 2006, Čavić maintained this conciliatory tone. In declarations to Nezavisne Novine in April 2006 he stated, "The Serb people, like all other constituent peoples, have equal rights to govern BiH. If we make efforts to improve the functionality of the state of BiH, it does not mean that we destroy RS. I do not think that by weakening the institutions of BiH we are doing something positive for the RS, quite the opposite, this would be counterproductive and would bring into question, especially in international circles, whether the constitutional structure of BiH is hindering regional stability" (Dragan Čavić, cited in Nezavisne Novine, 7 April 2006. Quoted from Foreign Policy Initiative 2007, 25). This declarations represent a radical departure from previous Serb (and SDS) rhetoric.

[796] There were only a few instances in which Serb-related wartime claims were made but those were intertwined with the police reform process and reflected the views of SDS hardliners. RS PM Pero Bukejlović, for example, pronounced himself against constitutional changes after the rejection of police reform and stated, "RS is created in blood, it is a treasure we mustn't disturb" (cited in OHR, Media Round-up, 23 September 2005).

[797] The guarantees provided at the beginning of the negotiations that the status of RS would not be changed may have contributed to toning down Serb rhetoric. Indeed, Serb parties could afford to be moderate so long as their entity and ethnic rights were not in question.

[798] While Serb parties showed readiness to engage in further stages of constitutional reform, they never considered that such process would revolve around the status and nature of RS.

federation and the creation of a Croat entity would represent the optimal solution, from this perspective."[799]

In contrast to the Serb situation, however, there is a widespread belief among Bosnian Croats that they have no real power vested within the constitution at both the state and entity levels. As Hays asserted, "For the Croats, the frustration is the bad position in the Federation. They are usually outvoted. They have no real powers in the constitution and they can never use entity voting because they can never have ten deputies in the parliament."[800] Indeed, as HDZ 1990 official Martin Raguž stated in a personal interview, "In the current constitution, Croats have no real instrument to protect their interests. And the constitutional court cannot really protect our interests, as was the case with the law on public broadcasting. All Croats in the House of Representatives and House of Peoples were against it. All Croat judges were against it, but the law got approved."[801] Similarly, HDZ working group member Mile Lasić stated, "The current procedure in the House of Peoples [which is the main mechanism in the hands of Croats to defend their interests] is not powerful enough ... because the issue will be resolved by somebody else, by the Constitutional Court, where you have two representatives of each people plus three internationals and usually decisions are made by five, a simple majority. So it's hard to protect our interests through the current instruments."[802] HDZ leader Čović also stated in an interview in late December 2004, "The Croats in the FBiH have been completely disempowered."[803] He continued, "The Federation is one of the entities which does not guarantee constitutional-legal equality to the Croats, therefore it is an obstacle to our goal."[804] In sum, Croats have developed a minority syndrome within the Muslim-Croat federation and are fearful of becoming a national minority without a state.[805] As Bose notes, ever since Dayton, they view themselves as the "subordinate partner in an accidental marriage which is blighted by mutual suspicion."[806] They are thus generally interested in reinforcing ethnic-based institutions that embed them with

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[799]   Bose 2002, 258.
[800]   Author's personal interview with Donald Hays. Washington, D.C., 29 July 2006.
[801]   Author's personal interview with Martin Raguž. Sarajevo, 5 July 2007.
[802]   Author's personal interview with Mile Lasić. Mostar, 2 July 2007.
[803]   Dragan Čović, cited in OHR, BiH Media Round-up, 31 December 2004.
[804]   *Ibid.*
[805]   Bose 2002.
[806]   *Ibid*, 258.

more veto powers.[807]

The perceived lack of power among Croats (together with their lower total population, which makes them a real minority in Bosnia) has led to a great deal of ambivalence and misdirection within this group. Indeed, their vision of the state has always oscillated between two points on a continuum from moderate to radical nationalism.[808] The moderates – including HDZ leader Čović and other figures within the party such as Martin Raguz and Božo Ljubić – have tended to favor the creation of a functional state based on two basic premises; a weak central authority that cedes part of its powers to EU supranational institutions and the provision of extensive economic autonomy to the sub-state levels where the different ethnic groups could enjoy ample self-government in specific areas. As Martin Raguž stated, "we want the Europeanization of Dayton."[809] Hays also noted, "The Croats have a strong desire for enforcing, improving the business environment in the country. They are really driven by the economy. They are the businessmen of the country. And EU accession is an absolute. At the same time, they want to be part of the power calculation ... They want the state to be a set of institutions where they can lead government."[810]

It is within this general framework that moderate Croats advocated for the creation of a decentralized state that is divided in different levels based on economic, geographic and historical criteria, although this is likely to be opposed by the Serbs. Bariša Čolak stated in early 2004, "It is clear to us all that this organization of BiH cannot become functional and economically self-sustaining. Because of that, we have

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[807] As a case in point, HDZ official Lasić argued, "What we want is that if we keep entity voting, then let's make it useful for us too and that was one of the problems. Serbs never wanted to give it up" (author's personal interview with Mile Lasić. Mostar, 2 July 2007).

[808] Similar to the situation before the war, with the Kljuić-Boban divide within HDZ in 1991-1992. As the International Crisis Group reported, the HDZBiH was initially dominated by relative moderates, under the leadership of Stjepan Kljuić, pursuing "a policy of participation in Bosnia's institutions and the maintenance of Bosnia's territorial integrity." Shortly before the war, however, "a hard-line faction led by Mate Boban, a Herzegovinian, took control of the HDZBiH" with the backing of Zagreb (International Crisis Group 1998b, 2).

[809] Author's personal interview with Martin Raguž. Sarajevo, 5 July 2007. Raguž is referring to transferring the concept built in Dayton – namely a weak central authority with strong sub-state level authorities – to the EU framework. There are two major problems with this notion, however. Firstly, this idea is closely linked to actual EU membership, yet the EU accession process may take still many years. Secondly, under this framework the entities would be weakened or eliminated (Croats usually refer to the creation of four or five regions instead of entities). In either scenario, it is highly unlikely that the Serbs would renounce to RS, even if the transformation of the two-entity based structure is accomplished under the broader process of EU integration.

[810] Author's personal interview with Donald Hays. Washington, D.C., 29 July 2006.

decided to seek the transfer of responsibilities from the Federation to the state."[811] As Čović asserted, we are for "three levels of government. The middle level is the key to the country's restructuring, [which should be arranged by] regions. Four or five regions should have a clear ethnic majority with its own legislature and executive offices. The regions need to be economically sustainable and balanced."[812] HDZ official Mile Lasić further explained, "historically and nowadays, there are two models that are colliding: one, a unitary state, civil, one man-one vote, a central state and local authorities, only one House of Representatives, etc. [or] two, decentralization, a federal model, and mostly a national model, which already exists. I think we have to find a balance between these two models so the rights of peoples are protected. So we need a balance of collective and individual rights. That's the model."[813] The problem with this approach is the implicit elimination of the entities, which would encounter strong opposition among the Serbs.[814]

The other Croat notion, which is put forth by more radicalized segments within the HDZ and some groups within the broader Croat community,[815] is based on a three-pillar power-sharing structure that infuses all levels of authority to minimize the risk of being outvoted by both Bosniaks and Serbs. As Professor Mujkić argued, the Croat hardliner's ultimate goal "is the elimination of RS, but given that that is impossible, their interest is the creation of three entities. They want to add more consociationalist features to the constitution."[816] This idea was prominent and present during negotiations, especially during the first phase, hindering the creation of a climate conducive to conflict regulation.[817] As HDZ spokesperson Milo Relota stated, "We believe that the mid-level [authorities] should be composed of at least three

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[811]   Bariša Čolak, cited in Nezavisne Novine, 19 January 2004. Quoted from ESI 2004b, 18.
[812]   Dragan Čović, cited in an interview by Zoran Kresic, Vecernj List, 11 June 2005. Avaliable at   http://www.caausa.org/FPO%20Media%20Reports/June2005/FPO%20Media%20Report%20-%20June%2011,%202005.pdf [accessed on April 18, 2009]. HDZ official Mile Lasić also noted, "We're for decentralization, for federalization with three different levels: state, local and federal units at the middle level, with no less than four federal units. But that has to be reached through consensus, with an agreement, with a compromise. The third level of power, the middle one has to reflect the decentralization of power: it needs to have judicial, legislative and executive powers. In that way, we would reduce the level of power we have here" (Author's personal interview with Mile Lasić. Mostar, 2 July 2007).
[813]   Author's personal interview with Mile Lasić. Mostar, 2 July 2007.
[814]   Author's personal interview with European official. Sarajevo, May 2007.
[815]   The Catholic Church, for example, has generally had an ambivalent position towards the creation of a third entity.
[816]   Author's personal interview with Professor Azim Mujkić. Sarajevo, 9 May 2007.
[817]   While Serbs are not opposed to this idea, as long as it does not affect the status of RS, Bosniaks are ardently opposed to it.

federal units, entities or provinces."[818] Similarly, Ivo Miro Jović, the Croat member of the BiH presidency, stated in the annual summit of the Central European Initiative in Zagreb, "I have nothing against Serbs, but if they have Serb Republic, then we should have Croat and Bosniak Republics."[819] Furthermore, internal divisions within the Croat community also raised the level of radicalization and ambiguity, even among moderate figures within the party. Čović, for example, kept an ambiguous position during the first phase of negotiations. In mid-October, Čović stated that if RS survived, HDZ would not give up on a third entity.[820] Only a few days later, he announced that he did not support another entity, but rather the creation of four or five multi-ethnic regions.[821]

The problem with the above approach, as voiced by both external and domestic actors, is the difficulty of satisfying such a demand without undermining the creation of a functional state; as established by the Venice Commission and laid out by the EU.[822] As Hays noted, "The Croat parties are always the most difficult to find a clear position on the issues. Partially, because it is their party that is effectively underrepresented in the House of Representatives, and because they are a minority in terms of the population even if they are in principle coequal constituent people. So they had strong interest in keeping the three, three, three; everything divisible by three: in the government, in the presidency, etc. It is more difficult to find a modality that meet their needs. How can we ensure that the Croat concerns for future domination are addressed without undermining the demands of the Venice Commission?"[823]

Furthermore, Bosniaks are ardently opposed to the idea of a third entity.[824] The

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[818]   Milo Relota, cited in OHR, BiH Media Round-up, 6 December 2005.
[819]   Ivo Miro Jović, cited in OHR, BiH Media Round-up, 14 October 2005. Similarly, he stated in September, "If other two people have it, why don't we as well? ... Federation is dungeon for Croats.... We have no rights" (See, A. Omeragić. "SDS Threatens with New Crisis in Authorities and HDZ with Third Entity." *Oslobodjenje*. In OHR, BiH Media Round-up, 29 September 2005).
[820]   See OHR, BiH Media Round-up, 13 October 2005.
[821]   OHR, BiH Media Round-up, 26 October 2005. Materials provided to the author suggest that Čović was asked by Hays to tone down his nationalist rhetoric (Dayton Project, September Trip Report; author's personal interviews with Western Diplomats, Sarajevo, May-July 2007). The materials indicated that a meeting with Čović made it clear that the HDZ leader was holding the constitutional process hostage to his own leadership crisis within the party and using it to solidify his hold on the party (for an in-depth discussion on party politics see next section in this chapter).
[822] As Bieber has noted, the creation of a third entity stands in contradiction to the institutional evolution of Bosnia since the late 1990s, namely moving "away from the ethno-territorial units and towards joint decision making at the state level" (Bieber 2006b, 27).
[823]   Author's personal interview with Donald Hays. Washington D.C., 29 July 2006.
[824]   As a case in point, SBiH's leader Safet Halilović stated in early 2004, "Changes must be

Serbs do not oppose it in principle (so long as it does not affect the status of RS); but working out the details of an additional entity would inevitably cause a great deal of confrontation between the other two communities and the Croats. As a EUSR officer noted, "if you go into the details [in relation to the creation of new sub-national units] you need to clearly define the competences, and that would be really a fight. Also, if you then go to the territorial divisions, then Serbs and Croats would not be that close in their positions, because the Serbs do not want to give anything from RS. They want Bosniaks and Croats to solve that themselves within the boundaries of the Federation."[825]

In the end, the debate over constitutional reform brought to light widespread vacillation within this community and their sense of misdirection over how to move forward. Additionally, the ongoing fighting between moderate and radical forces within the party – as well as within the moderates – led to a great deal of ambivalence and flip-flopping during the constitutional negotiations, especially during the first phase.

5.2.2. Intra-ethnic Level: Intra-Party Power Struggles

While the presentation of zero-sum claims reflected the still-latent inter-ethnic mistrust in Bosnia, it also illustrated the internal struggles taking place at the intra-party level, which contributed to the radicalization of the debate.[826] As Hays stated in personal interviews, "it was clear that radical forces were pulling the strings at the very beginning of the negotiations," when the party leaders were directly engaged.[827] While these appreciations are based on perceptions, it is worth pointing out that all of the leaders of the three major ethnic-based parties in Bosnia (which happened to be leading the governments at the state and entity levels), namely SDA's Tihić, SDS's Čavić and HDZ's Čović, were confronted with major internal divisions at the

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made, but on the basis of natural economic-functional regionalization, and not through the solidification of the administrative, cantonal and entity boundaries which were part of the erroneous construction at Dayton" (Safet Halilović, cited in *Jutarnje Novine*, 10/11 January 2004. Quoted from ESI 2004b, 6).

[825] Author's personal interview with European official. Sarajevo, May 2007.

[826] See discussion on the political security of party leaders in divided societies in Chapter 2 (p. 82-85).

[827] All members of the Dayton Project reached the same conclusion (Author's personal interviews with local officials of the Dayton project BiH, Sarajevo, May-June 2007). Officials of the NGO Dayton Project assisted the secretariat from the beginning of the process in early 2005 until the US became involved in mid-December.

time of the negotiations. In fact, at least two of these parties, namely the SDA and the SDS, were undergoing a process of internal de-radicalization and reform (including de-secularization in the case of the SDA), which came with major internal upheavals and intense opposition from the most extreme segments within each party.[828] Although previous reform efforts had already brought these divisions into the open, the process of constitutional reform pulled these parties further apart (as negotiations progressed), demonstrating that party leaders were not reflecting the majority within their own ranks (a situation that would become critical later in the constitutional reform process, especially once the package was brought to parliament for approval). Party leaders were thus facing serious challenges to their positions at the time.

SDS, for example, was mired in deep internal disarray resulting from the police reform process, which had widened the gap between the moderate nationalists under the leadership of SDS President Dragan Čavić and a radical nationalist wing prominent in Eastern RS.[829] Members of the party's General Board from Eastern RS remained firmly opposed to the concept of police reform supported by the EU in Bosnia, particularly in relation to the creation of cross-IEBL (Inter-Entity Boundary Line) police districts and the removal of police from entity control,[830] while Čavić had showed a more accommodating approach. The SDS's rejection of the Mount Vlašić talks – where Čavić had agreed in early May 2005 with other domestic actors to move forward with police reform in the presence of EU and OHR officials – showed how deep the divisions within SDS were running.[831] The rejection removed the possibility of opening SAA negotiations and a new round of police reform negotiations was launched in July.

Internal divisions within SDS reached a critical point in October 2005 following the rejection of the police concept at the RS National Assembly with the support of RS Prime Minister Bukejlović (who was in tune with hardliners from Eastern RS). The rejection caused one of the most critical crises in Bosnia, particularly in RS, with the international community threatening to isolate the RS

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[828]   International Crisis Group 2003; Bougarel 2007.
[829]   International Crisis Group 2005.
[830]   International Crisis Group 2005.
[831]   Although the Vlašić talks did not garner consensus on the way in which the country would be divided into policing districts, it was believed that agreement to move forward would be enough for the EU to decide to open SAA negotiations with Bosnia (see Economist Intelligence Unit, July 2005)

government if the rejection was not reversed. Following negotiations between SDS, SNSD and internationals behind close doors, Čavić announced the acceptance of the police concept, with the clear opposition of hardliners, who had been sidelined from these negotiations. The relations between Čavić and SDS hardliners became thus further strained following his decision to support the international community-sponsored police reform concept when only days before Bukejlović and the RS National Assembly had publicly expressed its rejection. All in all, in contrast to the Bosniak and Croat leaders, Čavić eventually managed to both isolate Prime Minister Bukejlović and prevent hardliners from outmaneuvering moderates once the constitutional negotiations were further advanced. This opportunity became possible after the PDP withdrew its support from the Bukejlović government on November 28[832] (over the distribution of government posts and positions at state-owned companies),[833] which opened the way for an alliance between Čavić and SNSD leader Dodik. Indeed, Čavić's decision to appoint Dodik as the new RS prime minister on February 4 (with the support of SDA, SBiH, SDP and PDP) in a surprising turn of events, further precipitated the fall of hardliners within SDS in Banja Luka (such as RS Prime Minister Bukejlović), giving Čavić ample room to engage further in the reform process.[834]

SDA was also undergoing a convoluted process of de-secularization with strong tensions between Tihić's moderate wing and a more radical faction (most notably members of the Islamist movement[835]) that became closer to SBiH's Haris Silajdžić at a later stage. Indeed, as Xavier Bougarel notes, the appointment of Sulejman Tihić – who had no ties with the Islamist movement – as the successor of Alija Izetbegović in 2001 alienated members of the Islamist movement who had occupied a relatively central role within the party until that point. After Tihić's appointment and in light of Tihić's efforts at reform and de-secularization of the party, these forces saw their

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[832]   The PDP was the only party whose support had allowed Prime Minister Bukejlović to govern in RS in minority since February 2005.

[833]   The decision was based on the refusal of the SDS to appoint two PDP officials for positions in two state-owned companies, although electoral motives might have also been behind Ivanić's decision to withdraw PDP's support.

[834]   Rumors about the dismissal of Bukejlović had been in fact prominent in early September when it was clear that Bukejlović and the RSNA would vote against the European concept of police reform (see OHR, BiH Media Round-up, 6 and 7 September 2005).

[835]   SDA was created in 1990 by members (including Alija Izetbegović) of a heretofore marginal 'Islamist movement' associated with the Bosnian islamist organization, the 'Young Muslims' (see chapter 1, p. 43) The members of this group remained relatively key figures within the party for most of the 1990s under the leadership of Alija Izetbegović (Bougarel 2007). I use the term 'Islamist group' or 'members of the Islamist movement' to refer to the members of this faction within SDA.

power and influence greatly diminish.[836] Divisions flared up during the constitutional reform process, starting at the fourth SDA congress in May 2005, when members of the Islamist group and other factions launched a campaign to undermine Tihić's bid to reelection as party president and to elect Bakir Izetbegović, son of Alija Izetbegović, instead. Although the attempt failed,[837] dissenting members in key positions within the party grew increasingly anxious about their loss of influence within the party and Tihić's moderate stance on constitutional reform.[838] In his address to the party congress, Tihić restated his resolve to make the SDA a multiethnic party, stripped of nationalist claims[839] and accepting of European standards and values while respecting the particular tradition, culture and identity of Bosnia.[840] As Tihić stated, "Besides Bosniaks we also wish to see members of other peoples in the party and even more strongly distance ourselves from the nationalist parties."[841]

SBiH also showed some internal upheaval after its former leader Haris Silajdžić became reengaged in party politics in the fall of 2005, driving the party towards more radical stances. As Hays asserted in a personal interview, SBiH representatives started forming their position against constitutional reform around this time. Before Silajdžić reappeared, "they had been the most accommodating group in the negotiations," especially under the leadership of SBiH representative Beriz Belkić, a prominent moderate figure within SBiH. But Silajdžić's return and popularity, Hays argued, had a deep impact on the few moderate forces within the party. Indeed, "Belkić was very affected by the return of Haris. He feared to be ostracized."[842]

Divisions were also rampant within the Croat HDZ, although they were mostly

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[836]   Bougarel 2007, 50.

[837]   In the end, Izetbegović decided against running for the party presidency. He supported Tihić's candidacy (and his Deputy Adnan Terzić) and became one of the five vice presidents of the party (Economist Intelligence Unit, July 2005).

[838]   Bougarel 2007.

[839]   Economist Intelligence Unit, July 2005.

[840]   OHR, BiH Media Round-up, 27 May 2005.

[841]   Sulejman Tihić, cited in OHR, BiH Media Round-up, 27 May 2005.

[842]   Other participants in the negotiations, including a SBiH party official, agreed with these assessments. Meghan Stewart, for example, recalls that during the negotiations with party leaders she noticed that Safet Halilović "was much less independent than Belkić had been... the former engaged more and [Halilović] [appeared to be] checking on a lot with Silajdžić" (author's personal interview with Meghan Stewart, Washington D.C., August 2006). An official of the Dayton Project also recalls, "Halilović was silent all the time. He had a very obstructionist attitude. It was obvious to all of us that he was receiving orders from Silajdžić to keep it that way" (author's personal interview with a local member of the Dayton Project BiH. Sarajevo. June, 2007).

connected to disputes over electoral lists and positions of influence.[843] This was especially true following Dragan Čović's removal from the BiH presidency in May 2005,[844] when hardliner Miro Jović – a relatively minor figure within the party – was elected to replace Čović (with Čović's backing) as the Croat member of the presidency. The obscure nomination process pushed aside the moderate and better suited candidate Martin Raguz.[845] Jović was approved in the House of Representatives with the support of only two Croat members, suggesting major divisions within the party. In-house rifts were aggravated following the party's ninth convention in June 2005, where Čović – at the time still indicted on corruption charges – managed to win the party's presidency against Božo Ljubić[846] in a narrow contest mired in accusations of vote rigging.[848]

Divisions seemed to come to an end when Ljubić and his supporters, namely Martin Raguž and Ivo Andrić, were expelled from the party in November 2005 (following an initiative to remove Čović from the HDZ leadership and elect a new president),[849] but in reality internal divisions were simply transferred from the party level to the public sphere, given that most expelled members kept their public

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[843]   Although internal rifts were not new to the party, divisions became more prominent during the process of constitutional reform. Power struggles were already evident in 2004 between HDZ leader Bariša Čolak and the more moderate figure Dragan Čović, at the time Croat member of the BiH presidency. The struggles were aggravated by the 2004 October local elections, in which HDZ lost some key strongholds in the federation (see Economist Intelligent Unit, January 2005). In addition to the traditional moderate-conservative divide within the HDZ, represented by the Čović-Čolak rift and centered on the control of the HDZ's Mostar city branch (traditionally the stronghold of hardliners and one of the most influential branches within the party), the chairman of the House of Representatives, Martin Raguž, a prominent moderate figure, started to gain power and popularity within the party at the same time, and was "considered a front-runner eventually to replace Mr Čović in the state presidency" (Ibid).
[844]   Dragan Čović had been dismissed as the Croat member of the presidency in March 2005 as a result of corruption charges filed against him while acting as the FBiH Finance Minister. He was, however, not banned from political life, which allowed him to keep the position as HDZ leader and run for re-election in June 2005.
[845]   According to the Economist Intelligent Unit (July 2005), local observers suggested that Čović's support for Jović was part of his strategy to strengthen his position within the party vis-à-vis other significant contenders such as Martin Raguž and outgoing HDZ leader Bariša Čolak.
[846]   Božo Ljubić was former vice president of HDZ; and a key moderate figure within HDZ. He lost the presidency of HDZ at the 1998 May party convention to the more radical figure Ante Jelavić (see chapter 3, p. 127).
[848]   Čović won with 283 votes (258 votes went to Ljubić), which reflects the high degree of dissatisfaction within the HDZ ranks. Following the election of Čović, radical forces and other factions within HDZ became apprehensive about the prospect of Čović – a moderate and a favorite of the internationals – accommodating the agenda of external actors to the detriment of Croat positions at both the entity and state levels at a time when constitutional negotiations were taking place (author's personal interviews with local and Western diplomats, Sarajevo, May-July 2007).
[849]   Čović did also strengthen his grip on the party by replacing non-loyal personnel in key ministerial positions at both the state and entity levels, starting with Federation Health Minister Tomo Lučić in July 2005, a month after the HDZ Convention (Economist Intelligent Unit, October 2005).

positions at the House of Representatives. This proved fatal once the constitutional agreement reached parliament in March 2006.

Two additional factors contributed to the hardening of internal divisions within the HDZ. The first factor was the position of the Catholic Church, which increased the general tone of the nationalist rhetoric against the process of constitutional reform (mostly a reaction to a progressive loss of its power in Bosnia). On September 26, Cardinal Vinko Puljić complained in an interview that the Catholic Church was facing enormous obstacles in Bosnia, in reference to both regaining its lost property and keeping what was already in its possession. He also linked the problems of the Catholic Church in Bosnia with the broader situation of Croats in the multiethnic country, arguing that Croats had no power in Bosnia.[850] Furthermore, in his address to the thirty-fifth session of the bishops' conference in October 2005, which coincided with the first meeting in Washington DC, Cardinal Puljić argued that Croats in Bosnia did not enjoy equal rights as a constituent people and accused the international community of double standards.[851]

The Church became increasingly vocal in its position on constitutional talks as negotiations became public. Indeed, during the October bishops' conference, cardinal Puljić presented a document, 'Proposals of BiH bishops for the organization of BiH,'[852] advocating for the division of Bosnia into four regions, instead of the entities, namely Sarajevo, Banja Luka, Mostar and Tuzla.[853] The Bosnian Catholic bishops also refused to attend the commemoration of the tenth anniversary of Dayton in Washington DC. As negotiations moved forward, the Church became increasingly critical of the process[854] and supportive of Ljubić's opposition.[855] All of these developments had the effect of both raising the level of nationalist rhetoric and

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[850]   OHR, BiH Media Round-up, 26 September 2005.
[851]   See OHR, BiH Media Round-up, 28 October 2005. The Catholic Church has regarded Dayton as discriminatory against the Croats and the Catholic Church in Bosnia, especially in reference to the restitution of property, the construction of Churches, Catholic education, refugee return and employment opportunities (see Wettach 2007). The Catholic Church has also been generally rather critical of the role of the international community (*Ibid*).
[852]   See OHR, BiH Media Round-up, 31 October 2005.
[853]   Although not clearly stated, this document was implicitly advocating the creation of a third entity in Bosnia (three regions, plus Sarajevo as a multi-ethnic district).
[854]   In November, Cardinal Pujlić argued in an interview with the Croatian Ambassador to BiH that the new concept of constitutional reform would not protect the interests of the Croats (See OHR, BiH Media Round-up, 18 November 2005).
[855]   Cardinal Pujlić was supportive of the Ljubić candidacy at the HDZ Convention in June of 2005 (see "Ashdown for Čović, Pack and Martens for Ljubić." *Danas*. In OHR, BiH Media Round-up, 2 June 2005). It is reasonable to assume that the Cardinal viewed Čović's indictment as undermining of his ability to defend the Croat interest in Bosnia.

confrontation, and reinforcing internal divisions within the HDZ. In other words, the Church's critical position provided HDZ dissenters with a platform of legitimacy to challenge Čović's leadership as part of their opposition to the process of constitutional reform.[856]

Kin-state involvement during this phase, particularly from Croatia,[857] also reinforced divisions within the Croat community.[858] While Croatia publicly lobbied strongly for reforming the Dayton provisions,[859] mostly in support of the constitutional reform process and of improving the position of Croats within Bosnia,[860] Croatia's meddling in HDZ BiH's power struggles in favor of Ljubić contributed to aggravating the divisions. Indeed, rather than acting as a mere spectator of these power struggles, Croatia's Prime Minister and HDZ leader, Ivo Sanader, lobbied for Ljubić to take over the HDZ leadership during the June 2005 party convention.[861] Once Čović was elected HDZ leader, Sanader lobbied for Čović's resignation, sending strong messages of support to Ljubić.[862] Sanader even suggested that Čović was unfit for the post as a result of his indictment and invited him to step down.[863] These developments – together with the Catholic Church's support of opposition factions within HDZ BiH – weakened Čović's position and

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[856] These developments are further explored in Chapters 6 and 7.

[857] It is worth noting that Croatia's EU path had reached a critical juncture at this time. Accession negotiations had been on hold since March 2005 over the handing over of General Gotovina to the war crimes tribunal. The EU was, however, set to finally give a green light to Croatia in October of 2005, as a result of Austria's strong lobbying efforts, conditioning the lifting of its opposition to Turkey's candidacy to the opening of accession talks with Croatia. Gotovina was arrested shortly after in Spain in December 2005.

[858] Croatian HDZ still exerts strong influence over HDZ BiH.

[859] A controversy erupted, however, over Croatian President Stjepan Mesić's address to the UN General Assembly in September. In his address, he stated, "BiH entities, which are functioning as medieval feuds, are the greatest source of political and social instability in the Balkans, and BiH should finally be organized as a regular European state." BiH media sources interpreted Mesić's statement as a plea for the elimination of entities; this caused an immediate uproar from Serb officials, who accused Croatia's president of meddling in Bosnian internal affairs. Mesić finally retracted the statements (see OHR, BiH Media Round-up, 18-21 September 2005).

[860] In an address to the Croatian parliament in early November, Ivo Sanader stated that he would support any decision reached by the constituent peoples and advocate for Croats having equal constitutional rights; "Croatian Government wants BiH to be a safe and independent state, in which Croats will be an equal and constituent people. And we see future of BiH in the united Europe" (Ivo Sanader, cited in OHR, BiH Media Round-up, 10 November 2005).

[861] See OHR, BiH Media Round-up, 2 June 2005.

[862] There was official concern that Čović's indictment would undermine Croat's position in the process of constitutional reform. But there were in fact strong personal differences between both Čović and Sanader, which could have influenced Sanader's decision to support Ljubić. Furthermore, Ljubić appeared to Sanader as a more reliable partner than Čović (see OHR, BiH Media Round-up, 10 June 2005), who had made clear his determination to keep Croatia's HDZ out of BiH business. Čović's decision to place Jović as the HDZ BiH's president had not count with HDZ Croatia's knowledge for example.

[863] See OHR, BiH Media Round-up, 11 November 2005.

provided a vital platform of political support for Ljubić and his supporters in the months to come.[864]

5.2.3. Supra-national Dynamics: Limited External Intervention

Limited engagement of external actors at this stage prevented them from offsetting the dynamics described above. Indeed, although both the US and the EU were supportive of Hays' efforts, and endorsed the process publicly, they never became formally involved at this stage. Despite increased engagement towards the end of this phase, such as US involvement in the DC meeting in November 2005, efforts were belated and not sufficient to counterbalance the highly charged dynamics at the inter- and intra-ethnic levels.

The Role of the EU

The role of the EU was in fact more prominent than that of the US during the initial stages of the process (most prominently during the working group period). While the EU was not directly and officially involved at this time, Europeans heavily influenced the process in its early stages.[865] As seen in Chapter 4, input from Europe (in contrast to the US, which was limited to supporting informal talks, without committing officially to the process[866]) came through various channels, including: (1) financial support for Hays' NGO from countries such as Sweden, Norway and Switzerland; (2) a template for the conduct of negotiations stressing local empowerment and domestic ownership;[868] (3) sponsorship of high-ranking talks with

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[864]   Serbia's role during the first phase of negotiations was rather discreet. As a case in point, no comments were sent from Belgrade at the time of the Brussels negotiations. It is reasonable to assume that the initiation of the status process in Kosovo was keeping Serbia busy at the time. Furthermore, no links between the situation of RS and Kosovo were made by Serb parties during this phase; Paradoxically, it would be the Bosniak SBiH that made the connection between both processes towards the end of 2005 and early 2006, with the intent to stir tensions at the inter-ethnic level and undermine the process.
[865]   In addition, Hays was in much closer contact with the Europeans than with the US Ambassador. He believed in the idea of EU integration as the best path for Bosnia (author's personal interview with Donald Hays. Washington, D.C., 29 July 2006) and worked closely with European representatives in Bosnia. As Michael Humphreys stated, "Hays was a rather pro-European US Ambassador" (author's phone interview with Michael Humphreys, 15 April 2009).
[866]   See chapter 4, p. 152.
[868]   As Hays asserted, "the procedure we were using was Euro friendly.' In other words, 'there was an emphasis on local empowerment, domestic ownership, work in a working group format, etc; they were much more willing to accept what I would call a sloppy process, one in which the local solutions are not perfect but are preferable to the ones imposed from outside" (author's personal

party leaders under EU auspices in Brussels in November 2005; (4) and finally, the rationale for reform, which was outlined in the Venice Commission and EU public statements. Although the Venice Commission's opinion was not intended to be prescriptive but rather to outline shortcomings in the Bosnian constitution, it became a reference point and a framework around which negotiations were built.

There was also a common objective among some European actors – more prominently among the European Commission and the European Parliament – to tie, even if loosely, constitutional reform to EU integration in an attempt to use the prospect of EU accession as an inducement to party leaders to reach an agreement during negotiations.[869] EU Commissioner for Enlargement Olli Rehn, for example, encouraged Bosnian authorities in October 2005 to work together "to streamline this expensive and multilayered bureaucracy,"[870] declaring that Bosnia would not be able to join the EU with its current structure. Similarly, the European Parliament's resolution in April 2005 questioned Bosnian constitutional framework as a viable model for a state and urged the commission "to support the country's political forces in finding a consensus to reform the political framework as set out in the Dayton agreement."[871] As Humphreys stated, the EU was trying to convey to Bosnian leaders "that constitutional reform would be necessary, but without specifying specific constitutional reform conditions."[872]

At the PIC's extraordinary session on December 14-15, the steering board also welcomed the recent commitment by political leaders to pursue constitutional reform and, together with the representatives of Bosnia, issued a communiqué on priority reforms for Bosnia, the first of which was "to modernize the Dayton constitution in order to increase the functionality and efficiency of BiH's institutions and of BiH itself so as to create a state that puts citizens first."[873] In addition to these inputs, the EU was also involved in an informal way. As UK Ambassador Rycroft stated, "Hays would brief me every time he would come to Sarajevo. And he would brief the other European ambassadors, those present in the Peace Implementation Council, France, Germany, Italy, etc. So we were involved in a semi-formal way."[874]

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interview with Donald Hays. Washington, D.C., 29 July 2006)
[869]   Author's personal interviews, European officials. Sarajevo, May-July, 2007.
[870]   OHR, BiH Media Round-up, October 20, 2005.
[871]   European Parliament 2005.
[872]   Author's phone interview with Michael Humphreys, 15 April 2009.
[873]   Peace Implementation Council 2005a.
[874]   Author's personal interview with Matthew Rycroft. Sarajevo, 7 June 2007.

Notwithstanding the significance of these contributions, especially the provision of a rationale for reform and the public support, once negotiations entered a more official stage in November 2005 with the involvement of party leaders, partial EU engagement proved insufficient to counterbalance the highly charged dynamics involved in the negotiations with party leaders. As interviews with Western diplomats in Bosnia show, the Europeans' goal was to see how far informal negotiations would go, but they failed to intensify engagement once the stakes increased. Supporting an informal process in which the EU had no salient liability represented an entirely different scenario from engaging fully in a process in which the outcome was uncertain and likely to disrupt other reform processes.[875] As a result, the EU failed to build the internal consensus needed to engage fully once party leaders became involved.[876] As a case in point, at the time of the meeting with party leaders in Brussels, the European Commission decided it would merely sponsor the meeting and restrain itself from affecting the course of negotiations. As Hays stated, "Although there were several guest speakers at the opening session, these officials did not attend the negotiations nor did they attempt to apply any pressure to the party leaders in their deliberations."[877] While the decision not to interfere in the course of the negotiations was portrayed as merely the result of the EU's emphasis on domestic ownership in its policy towards Bosnia, it is reasonable to assume that in-house divisions around the issue of constitutional reform in Bosnia also played a role.

Indeed, divisions within the EU regarding constitutional reform in Bosnia were important at this stage, especially between the Council of the EU and the Commission. Although there was general consensus on the need for Bosnia to reform the Dayton constitution, there were disagreements over timing. Western diplomats stated that the Council, in line with Ashdown's perspective, had strong reservations because of the potential impact of a constitutional reform process over the broader state-building agenda in Bosnia and believed that constitutional reform should be postponed.[878] Commission officials (as well as members of the European Parliament),

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[875]   In which case the EU would have to accept full responsibility.

[876]   Indeed, interviews with European officials revealed that the EU's preference was to have Bosnian politicians approve a new constitution that streamlined the process of EU accession but in their own terms and without heavy involvement on the part of the EU (author's personal interviews with European officials. Sarajevo, May-June 2007).

[877]   Author's personal interview with Donald Hays. Washington, D.C., 29 July 2006.

[878]   *Ibid*; author's personal interviews with Western diplomats and party officials, Sarajevo, May-July 2007.

however, were more optimistic about the chances of success and were willing to see how far the process could go as long as it remained under the direction of Hays and his NGO (in order to minimize the risks of failure).[879] The meeting in Brussels in November made this disagreement patent. While both Olli Rehn and Reinhardt Priebe, the European Commission Director for the Western Balkans, opened the event with a special note on the importance of the work undertaken,[880] EU Foreign Policy Chief Javier Solana neither attended the meeting nor sent a representative. This sent a clear message regarding the European Council's position on the constitutional reform process in Bosnia, which followed Ashdown's concern about its impact on other priorities such as police reform.

The Role of the US

The US initially played a rather weak role based on a 'wait and see' policy. After all, it was Dayton's main author. The US thus limited itself to supporting the process of informal negotiations without further engagement. In fact, when Hays began to facilitate exploratory talks on constitutional issues with party representatives, he was given permission to engage as long as he proceeded solely as a private citizen, remaining the only one accountable for failure.[881]

In contrast to the EU, however, the US became increasingly committed as the stakes increased, especially towards the end of this phase of negotiations.[882] As noted above, during the meeting in Washington DC in November 2005, which coincided with the tenth Dayton anniversary, the US pressured party leaders into signing a document committing them to agree to a set of constitutional changes that would both strengthen state-level institutions and define a more cost-effective state by March 2006.[883] Indeed, on November 22, party leaders met with US Secretary of

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[879] Humphreys stated that he never thought the EU should have taken over the process fully, "I believed the Hays/NGO support and stimulus for a substantially (although certainly not entirely) BiH-motivated process was the best approach" (author's phone interview with Michael Humphreys, 15 April 2009).

[880] The US ambassador to the EU was also present and addressed the party leaders.

[881] Author's personal interview with Donald Hays. Washington, D.C., 29 July 2006. This would be possible while the process was kept secret. Once it became public in September, the stakes became greater and it would be more difficult for the US to separate itself from Hays initiative.

[882] UK Ambassador Rycroft stated, "as we were getting closer to the Dayton anniversary the Americans got increasingly involved, because they wanted to make it work. And they thought they could use the prospect of a visit to the US as a carrot" (author's personal interview with Matthew Rycroft. Sarajevo, 7 June 2007).

[883] The introduction of constitutional changes had to occur prior to the first week of April, in order for the amendments to come into effect after the elections. This deadline was later extended to

State Condoleezza Rice at the State Department, where the political agreement was finally signed, committing its signatories "to pursuing the policies and reforms necessary to become a full member of NATO and the European Union."[884] This document also included the idea, pushed by the US at the time, that the negotiations would represent the first phase of a reform process that would require further changes at a later stage. As the text read, "these are only first steps. We recognize that further reforms will be necessary to meet the European Union's accession criteria."[885] This unspecified commitment to pursuing a second phase of constitutional reform in which other sub-state level rearrangements would be negotiated was deemed necessary to have Croat's signature in the final agreed statement. Furthermore, in order to reassure the Croat representatives and get them on board, the Undersecretary for Political Affairs Nicholas Burns issued a public letter to party leaders, confirming that the current reform effort was only the first phase of a rolling process to reform government in Bosnia in which the US would be fully involved.[886]

5.3. CONCLUSIONS

The first phase of constitutional reform was mired in highly disruptive ethnic-based power politics. These dynamics affected inter-group relations to the point that conflict regulation was impossible. During this phase, two key considerations affected inter-group dynamics. First, the Bosnian state had remained 'fiercely contested'[887] after a decade of external involvement, keeping ethnic divisions and anxieties alive and maintaining "all three of BiH's communities' defensive mentalities."[888] Indeed, while Serbs and Croats had remained fearful of becoming a minority in a state dominated by the Bosniaks, Bosniaks continued to support the idea of becoming the majority ethnic power under the guise of a more functional,

May 4, as a result of amendments introduced to the election law.

[884]   Political agreement of Bosnian leaders, Washington DC, 22 November 2005 (document in author's file).

[885]   *Ibid.*

[886]   The letter read: "Significant progress has been made, but these are only first steps in a long-term and multi-phased process. You have my assurances that the United States will remain fully committed and engaged in these efforts" (Burns 2005). The idea of a second phase was thus triggered initially by the US. The EU would later take over this initiative (author's phone interview with Michael Humphreys, 15 April 2009).

[887]   Bose 2002, 259.

[888]   *Ibid*, 256.

citizen-based state.[889] The experience of war and the perceived bias of external actors further fueled these dynamics and resulted in the presentation of mutually incompatible demands,[890] either by accentuating the minority syndrome or a defensive mentality (although for different reasons) or by providing ethnic groups with morally or wartime-grounded justifications/rhetoric for their zero-sum goals.[891] Bosniaks, for example, appealed to morally grounded, liberal arguments – which have a special resonance among internationals – to defend the righteousness of a citizen-based state; a solution that is ardently opposed by the other two groups. Serbs, for their part, tended to resist any attempt to do away with their hard-won status of RS. The Croats were the most ambivalent, swinging between moderate and radical stances out of concern for their status as a minority at both the Federation and the state level.

The second consideration relates to intra-party dynamics, affecting to some degree the radicalization of the debate. Indeed, as conflict regulation theorists suggests,[892] insecure leaders – namely leaders whose position is challenged at the intra-party level either by second-rank officials or by potential internal splits – will be far more reluctant than secure leaders to take risks and to compromise in a way that would endanger their leadership positions.

In this context, the role of external actors was rather mixed. Although there was initial but uncommitted support for conducting informal negotiations – under the assumption that the process would not generate any substantial progress – the half-hearted support of both the EU and the US proved insufficient to counterbalance the dynamics that led to intra-ethnic divisions and inter-ethnic intransigence. The efforts undertaken by external actors during this phase proved to be too little too late.

In sum, anxiety-laden concerns related to the status of groups vis-à-vis other

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[889]   Similarly, Mostov noted during and immediately following the war, "one of the few things which the opposing forces in ex-Yugoslavia could agree about was that nobody wanted to be a minority in another's national state ... As majorities in their own states, they have proved arrogant in their blindness to the concerns of other ethnic and national groups; as minorities in other states, they have been militant in their indignation about violations or potential violations of their citizenship rights, and political and cultural autonomy" (Mostov 1994, 21, quoted from Bose 2002, 258-9 ft.5).

[890]   The discussion in Chapter 2 indicated that the experience of conflict challenges one of the most contentious notions in conflict regulation and power sharing literatures, namely the idea that political elites in divided societies are prone to conciliatory behavior (Lijphart 1969, 211-212). See Chapter 2 for further discussion.

[891]   It also had a significant impact in shaping the parameters of the debate during constitutional reform, with the use of wartime nationalist rhetoric running counter to the creation of an appropriate climate for conflict regulation and accommodation practices.

[892]   Nordlinger 1972.

groups (and vis-à-vis the international community), which is typical in divided societies, had a deep impact on how parties perceived their interest and other groups' interests as well as how they formulated a political strategy within the bargaining framework for constitutional reform. Intra-party divisions further raised the level of confrontation within the political debate. As for the external actors, although they were engaged in the process, their involvement was half-hearted and failed to counterbalance the dynamics described above. All of these factors resulted in the presentation of mutually incompatible demands that thwarted the development of sound conflict regulation practices during the initial stages of constitutional reform.

CONSTITUTIONAL REFORM II:

INTENSIFIED EXTERNAL SUPPORT

6.1. PHASE II: THE US TAKES OVER

The second critical juncture in the development of constitutional reform took place in mid-December, when the international community stepped up pressure on the parties. Two critical moments are relevant in this phase. The first one involved the decision of the US government to take charge of the negotiations on December 12 (with the official support of the UK as the Chair of the EU rotating presidency), which resulted in the signing of the government package. The second decisive moment took place after the collapse of multilateral negotiations on January 17, after which constitutional negotiations were held behind close doors at the US Ambassador's residence and other venues. It is within this context that a final agreement was reached in March 2006 by six out of the eight party leaders that started the negotiations, specifically the leaders of SDA, SDP, SDS, PDP, SNSD and HDZ.

6.1.1. The US Takes Over Formally

On December 12, US Ambassador Douglas McElhaney, announced that the US would be actively involved in the process of constitutional reform with the official support and participation of the EU.[893] Thinking that Hays and his NGO could only

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[893]   There has been much speculation about why the US decided to take over the process at the end of 2005. A US diplomat stated, "People thought it was worth a chance. The US [saw] the EU integration as the future for Bosnia ... and constitutional reform was a key piece of that. We wanted to see a Bosnia that was able to meet all EU criteria" (author's personal interview with US official. June 2007). The UK Ambassador also suggested that the US government was unsatisfied with the progress thus far. In light of a likely scenario of collapsed negotiations, the US intervened knowing the potential for the negotiations to affect the region, with the Kosovo issue burning. Indeed, most Western diplomats agreed that the US realized that Kosovo could potentially affect its involvement in Bosnia; if Bosnians did not manage to get results, it would be difficult to engage at a later stage (author's personal interviews with Western diplomats, Sarajevo, May-July 2007).

take the process this far, the US considered that a full diplomatic push was needed at this juncture.[894] Timing was also critical. The US could count on the UK – Chair of the EU Presidency at the time – as a close ally that held similar views and positions on Bosnia.[895] With the US takeover, a new phase in the process of constitutional reform started, although the basic format of the process – namely the emphasis on local ownership, the agreed rules for the negotiations and the scope of the agenda – remained unaffected at least formally. Furthermore, the members of the secretariat and the CoE were still involved to a great extent, and the US commenced the negotiations at the place where Hays had left off, rather than starting from scratch.

The first meeting under US sponsorship took place on December 15-16 on the premises of the Central Bank in Sarajevo, where the first deal on the 'Council of Ministers Package' was brokered. The agreement on the council of ministers[896] envisioned the creation of (1) a prime minister or president of the council of ministers with no portfolio (instead of a chairman of the council of ministers) elected by the House of Representatives; (2) two deputy presidents from the other two constituent peoples; and (3) two new ministries, namely the ministry of agriculture and the ministry of science and technology.[897] The agreement also envisaged a decision-making process that was either consensus-based or, in the absence of consensus, ruled by a simple majority, so long as at least one minister of each constituent people voted in favor of the decision. A set of powers and duties entrusted to the president of the council of ministers and the ministries was also provided for in the agreement although the final package did not specifically delineate competences between the

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[894] From this point forward, the US Ambassador facilitated the negotiations, in conjunction with the UK Ambassador in his role as the Chair of the rotating EU presidency. Other European actors such as the Austrian Ambassador (the Chair of the EU rotating Presidency from January 2006 onwards), the Head of the EU Delegation Michael Humphreys and the CoE representative in BiH Tim Cartwright were also present during negotiations, mostly as observers. Indeed, although the negotiations had a joint chair held by the US and UK ambassadors (the UK Ambassador being replaced by the Austrian Ambassador as the co-chair in January 2006), the role of Europe was secondary to the US.

[895] In fact, the UK continued to be heavily involved in 2006. The UK Ambassador told the author that some European countries such as France were critical of his role after stepping down as the EU Chair. He stated, "Once I was not holding the Chair of the EU, I decided to continue to be engaged. I remember that once the French Ambassador asked why I was involved if I was not representing the EU anymore. I told him that I was representing my own country and that he could do the same if this was of his interest" (author's personal interview with Matthew Rycroft. Sarajevo, 7 June 2007).

[896] The Human Rights package was also finalized at this time, although it had already been agreed upon.

[897] Constitutional Agreement on the Council of Ministers, December 2005 (document in author's file).

presidency and the council of ministers. [898]

Although agreement on the council of ministers came relatively swiftly, especially considering the level of confrontation among political leaders at the time, the package did not represent a fundamental change in the positions and dynamics that had led to the near collapse of the process only a few days earlier. In fact, agreement on the council of ministers was possible because it built upon the consensus reached in this area during the previous negotiation rounds (including the working group phase), but party positions remained entrenched on the remaining issues, namely the parliament, the presidency and the division of competences between the state and the entities. Furthermore, in an additional meeting on December 21, party positions remained unyielding after long hours of negotiations and external pressure.[899] Mutual animosity, nationalist rhetoric and wartime demands continued. Čović, for example, insisted on the need to take the negotiations to the discussion of the regional level and to the re-drawing of maps and entity borders for the creation of new regions.[900] Tihić, for his part, proposed the elimination of the House of Peoples and the president from the entities,[901] an initiative that raised tensions with party leaders from the RS.

Two additional rounds of multilateral negotiations took place in January 2006. The first one on January 3-4 achieved similar results to the previous rounds,[902] although some progress was made on the issue of the presidency. Tihić appeared ready to compromise on a president with two vice presidents on the condition that this position would be elected indirectly by the House of Representatives[903] (an initiative also supported by Čović),[904] but there was no final agreement on both the

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[898]   Ibid.
[899]   Doris Pack, for example, met with Čavić and stated that Bosnia could not become a member of the EU with the current constitution. She added that it was up to Bosnian politicians to decide how to reach a satisfactory solution (See OHR, BiH Media Round-up, 20 December 2005).
[900]   See Zoran Kresić, "Next up is drawing of maps." *Vecernji List*, p. 6. In OHR, BiH Media Round-up, 21 December 2005.
[901]   See OHR, BiH Media Round-up, 3 January 2006.
[902]   *Ibid*.
[903]   OHR Media Round-up 5 January 2005.
[904]   Indirect elections for the presidency would provide Tihić with an enormous political advantage over SBiH Silajdžić for two reasons: (1) SDA is the most voted party in the parliament; (2) Tihić has broader inter-ethnic support. Silajdžić, on the contrary, would have enormous difficulty getting approved as president by the parliament. In the case of the Croats, the demand for an indirect election method was intimately associated with the assurance of having a Croat from HDZ elected as president. As a matter of fact, the rejection of the constitutional agreement, which envisioned an indirectly selected presidency, led HDZ to lose the position for president to the SDP. This development was also the result of the Croat split, which will be explore fully in the next chapter.

election and rotation mechanisms; while Serb parties expressed readiness to accept a 16-month rotation, Tihić demanded a non-rotating system in exchange for his compromise on the collective presidency. As for the remaining issues, namely the parliament and the division of competences, no agreement was reached. Although the parties claimed to have formed a consensus around the definition of the powers and competences of the House of Representatives, no agreement was possible on the election and the decision-making process of this institution. Agreement on the increased number of deputies was expected at this time, as well as agreement on restricting the House of People's authority to issues related to VNI, but no progress was achieved on these fronts.

During these negotiation rounds, the EC, the US and some European countries continued to call on the parties to reach a compromise. EU Commissioner for Enlargement Olli Rehn welcomed the continuation of talks on January 3rd and reiterated the significance of implementing changes that would make the country ready for EU integration; "BiH and its leaders must now choose either to preserve the current constitution with its limitations of functioning, or to decide on constitutional changes which are necessary in order to make the country ready for the association with the EU."[905] Similarly, Head of EC Delegation Michael Humphreys restated the need for Bosnia to have a functional authority in preparation for joining the EU in an interview with *Nezavisne Novine* in early January, declaring, "Without progress in the area of reforms the EU would not financially help Bosnia."[906] EC officials also reminded party leaders that the negotiations held at the time represented merely the first stage of a more profound reform process that would start after completion of that first stage and that would include more direct EU involvement. Although this message was intended to reassure the parties and show the EU's seriousness of purpose and commitment, it had the opposite effect as it indicated that more changes were to follow. For both the Croats and Bosniaks, this could mean that the negotiations under way were not that relevant in light of deeper changes to follow. It also triggered a shift to a more guarded approach by the Serb parties, as in later talks

[905]   Olli Rehn, cited in OHR, BiH Media Round-up, 4 January 2006.
[906]   OHR, BiH Media Round-up, 7 January 2006. This particular statement conveys a strong position on the part of the Commission, amounting almost to a threat. Humphreys stated that the EU was trying to send the message that constitutional changes were necessary for the process of EU accession in order to infer a sense of responsibility on the part of domestic parties (author's phone interview with Michael Humphreys, 15 April 2009).

they refused to commit to any further reforms aimed at undermining the status of RS.[907]

Table 6.1. Party Positions on the Presidency
(Early January 2006)

Presidency	HDZ & HNZ	SBiH	SDA & SDP	Serb Parties
Composition	- Three member presidency as preferred option. - Willing to accept a president with two vice presidents that rotate every 16 months.	Single	- Single as preferred option. - Willing to accept a president with two vice presidents but no rotation.	- Three member presidency as preferred option. - Willing to accept a president with two vice presidents that rotate every 16 months.
Election	Indirect (direct if Bosnia is arranged as single electoral unit).	Direct	Indirect (most preferred option for SDA if presidency is collective).	Direct through the entities.

Source: author

The parties remained stuck in their positions during the first day of talks during the second meeting in January, especially on the issue of the presidency. There appeared to be some progress during the second day of the discussions on January 16, but no full consensus was reached on any remaining issues. Further external arm-twisting in the midst of heavy nationalist rhetoric[908] led, however, to significant progress during the second day, and, as result, parties were able to present an initial compromise package in the early morning of January 17. The agreement included *inter alia*: (1) a four-year collective presidency (with a mid-term review by the parliament[909]) elected indirectly by the parliament, by majority vote in each of the ethnic caucuses of the House of Peoples and by simple majority in the House of Representatives; (2) the transfer of most powers from the presidency to the prime

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[907] Indeed, Michael Humphreys argued that the idea of a second phase was problematic for the Serb parties, as they were concerned about the idea of creating a unitary state (*Ibid*).

[908] Both SBiH and SDA continued to demand the elimination of the entities, which led Serb parties to threaten withdrawal from the process. SBiH's offensive against constitutional negotiations intensified at this time, with Silajdžić becoming increasingly involved in Bosnian politics. Although SBiH founder Haris Silajdžić did not hold any official position within the party at the time, he participated actively in the SBiH executive commission in early January (see "Support to Halilović in negotiations." *Dnevni List*, p. 5. In OHR, BiH Media Round-up, 6 January 2006).

[909] If the president were to fail in the mid-term vote, he would not continue as president for the next two years, but rather would become vice president. The senior vice president – the one receiving the greatest number of votes in the election - would take over as the sitting president. It is unclear, however, whether the collective presidency would be based on a rotation principle or whether each constituent people would hold the presidency every 8 years.

minister; and (3) a House of Peoples elected by each constituent caucus in the House of Representatives from candidates sent by both entities. No agreement was possible, however, on amending the constitution to incorporate those powers previously transferred to the state.

A final deal on the whole package, including a Serb agreement to a non-rotating presidency, was within reach in the early morning of January 17, but negotiations collapsed at the last minute. As Hays recalled in an interview, "at about 8 o'clock at night of this last meeting in January, Serb parties demanded, as a *quid pro quo* for all their compromises, that entity voting be explicitly acknowledged in the agreements."[910] While SDA and SDP were willing to accept the status quo, they refused to recognize it explicitly and publicly.[911] As a result, according to Hays, although "All [the Bosniaks] had to do was to say, 'yes, we will not change the constitution and entity voting will remain,' ... There was no consensus and everybody walked out without the agreement to meet in the future. I came back to DC and negotiations collapsed."[912]

6.1.2. The Collapse of Multilateral Negotiations

Following the collapse of the negotiations in mid-January, the US decided to back off of multilateral negotiations and wait until party leaders worked out their differences bilaterally before engaging further. Yet there was some reluctance regarding bilateral negotiations. While both SDA and HDZ insisted on immediately resuming talks,[913] Serb parties expressed no desire to reopen the process until after the elections in October. Some voices within the international community also warned against the continuation of talks at this stage. As Hays explained in a personal interview, the conditions under which the negotiations were taking place had become increasingly risky: the election campaign was getting into full swing; Čović was significantly

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[910]   Author's personal interview with Donald Hays. Washington, D.C., 29 July 2006. See also declarations by SDS's Momčilo Novaković in "Parties from RS ready to continue after elections" *Oslobodjenje* p. 4-5. In OHR, BiH Media Round-up, 18 January 2006. The Serbs believed they had made the greatest compromises (author's personal interviews with international and Serb officials involved in the negotiations. Sarajevo and Banja Luka, May-July 2007).
[911]   For fear of 'sell-out' accusations. This is an interpretation made by Hays in a personal interview.
[912]   Hays and the members of the secretariat/Dayton Project were no longer formally involved in negotiations.
[913]   Tihić even offered a concession: he would refrain from insisting on abolishing entities as proof of goodwill for the resumption of talks (see OHR, BiH Media Round-up, 24 January 2006).

weakened by internal divisions and Silajdžić was weakening the Bosniak side too;[914] "I advised to do a fast passage of what we had in January ... but the US wanted to go for everything and I was sent home."[915]

Although a prevailing silence about the negotiations (as well as rumors pointing to failure) led some to assume that negotiations had collapsed definitively,[916] activity continued behind closed doors. As Hitchner noted in an interview to *Dnevni Avaz* on January 21, the "silence" is "indicative"; it shows that many things are happening "in silence" in order to prepare for a successful outcome.[917] Furthermore, the US and some European countries such as the UK continued to exert pressure both publicly and privately, encouraging party leaders to keep the lines of communication open and meet on a bilateral basis.[918] US Ambassador McElhaney stated on January 17 that the US expected negotiations to continue[919] and Nicholas Burns maintained private talks with the leaders of SDA, SDS and SNSD to bridge gaps before the reopening of official talks.[920]

Following a few informal bilateral meetings between party leaders behind closed doors (supported by external actors), two further rounds of negotiation took place at

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[914] Author's personal interview with Donald Hays. Washington, D.C., 29 July 2006. Hays had envisioned a different timeline. He had planned for a final constitutional deal to be reached by December 2005 in order to leave enough room for discussions in the parliament and to avoid overlap with the electoral campaign.

[915] Indeed, the option to have the constitutional package approved on a chapter–by-chapter basis was discussed within the international community, but, as Tim Cartwright suggested, "it was impossible to do so. You had to see the whole package. You needed to see how dispositions interplay one another. ... The interplay between the parliament and the presidency is especially vital. You need to see both chapters before you decide how they hang together. And the politicos had difficulty understanding that" (author's interview with Tim Cartwright. Sarajevo, 19 June 2007).

[916] Halilović, for example, claimed that negotiations were not likely to continue; Serb parties also continued to declare publicly that they would not go back to the negotiating table given the proximity of the elections (see OHR, BiH Media Round-up, 20 January 2006)

[917] OHR, BiH Media Round-up, 21 January 2006.

[918] It was around this time that an agreement was formed to start the drafting of the packages agreed thus far. The drafting team – which had already drafted the amendments of the Human Rights and Council of Ministers packages – was formed with representatives from the Council of Ministers' Legislative Liaison Committee, the Election Commission, the House of Representatives Committee on Legal and Constitutional issues, and representatives from RS. The drafting took place in the premises of the CoE in BiH, with the assistance of the US legal department, with ongoing communication with the CoE (author's personal interview with Tim Cartwright. Sarajevo, 19 June 2007; OHR, BiH Media Round-up, 18 and 23 January 2006).

[919] OHR, BiH Media Round-up, 18 and 20 January 2006.

[920] OHR, BiH Media Round-up, 20 January 2006. It appears that the US was not willing to be associated with failure. A few days later, US Undersecretary for Political Affairs Nicholas Burns sent a letter to party leaders in which he officially expressed disappointment in them for their failure to deliver on the promise made to the US in November and encouraged them to continue further talks. Burns also noted in this letter that the US would not be further involved in the process if party leaders failed to agree to a set of constitutional changes by April 2006 (OHR, BiH Media Round-up, 10 February 2006).

the US Ambassador's residence. The first round was aimed at bringing the Bosniak and Serb stances closer (except for SBiH, which did not participate in this new process despite being invited), building upon the progress reached in the preceding informal meetings.[921] In particular, the meetings at the US Ambassador's residence built upon a critical meeting held in Doboj under external support between the SDA, the SNSD and the PDP on January 22. While the issues discussed at this encounter have not been fully disclosed,[922] evidence gathered by the author through personal interviews indicate that the process of constitutional reform and the governmental crisis in RS were discussed in-depth, with a potential agreement on constitutional reform in exchange for SDA's support for a SNSD government in RS.[923] Hays, for example, suggested that Tihić and Dodik came up with a solution to entity voting, but it is unclear whether a final agreement was reached.[924] Some media sources also indicated that a possible agreement to form a post-election coalition between SDA, SDP, SNSD and PDP was defined at this time.[925]

Which specific terms that were agreed upon and whether a definitive agreement was indeed achieved during this meeting, however, remain unclear. According to local media, further meetings between Dodik and Tihić were held after Doboj, which suggests that while the meeting in Doboj could have defined the broader terms of a potential agreement between both leaders, additional talks might have been held to define the small print. This conclusion is supported by media reports of further disagreements between both leaders a few days after the Doboj meeting. On February 6, for example, while Tihić declared that a certain consensus had been reached with the Serb side,[926] Serb leader Dodik insisted that agreement on rotation was still a prerequisite to re-launching negotiations.[927]

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[921]   Meetings between the Croat HDZ and Bosniak parties SDA and SBiH also took place during this time, but they focused on rather general matters regarding constitutional reform (OHR, BiH Media Round-up, 26 January 2006). Further informal talks took place in early February.

[922]   Some Western officials who attended the meeting declined to reveal the substance of the issues discussed there (author's personal interviews with Western diplomats, Sarajevo, May-June 2007).

[923]   Hays also suggested in a personal interview that Tihić and Dodik came up with a solution to entity voting, but it is unclear whether this agreement was finally reached. An undisclosed source from RS suggested to the author that the elimination of entity voting could have followed the elections in October 2006, but it is unclear whether his statement was based on an agreement reached in Doboj or on the prospect of further negotiations to follow after the elections.

[924]   Author's personal interview with Donald Hays, Washington, D.C., 2006 and 2007.

[925]   See Zoran Kresić, "Tihić's agreement will not happen on Sunday." *Vecernj List*, p. 2. In OHR, BiH Media Round-up, 26 February 2006.

[926]   See OHR, BiH Media Round-up, 7 February 2006.

[927]   See OHR, BiH Media Round-up, 12 February 2006.

Irrespective of whether a definite agreement was reached in Doboj or not, ongoing talks between Bosniak and Serb parties prepared the groundwork for a final agreement at the US Ambassador's residence on February 19. The meeting resulted in an initial constitutional deal (the precursor of the constitutional agreement), pending further consensus by Croat parties[928] and SBiH.[929] Some of the agreed principles included, *inter alia,* a directly elected three-member presidency, based on a 16-month rotation principle, and deprived of veto powers except for defense-related matters; an increase in the number of deputies to 87 in the House of Representatives and to 21 in the House of Peoples; and a prohibition on reversing transferred competences without the express approval of both the state and the entities.[930] The agreement on direct elections for the presidency was based on the premise that an indirect election could prevent members of other minorities from competing for that post, which contravened the European convention of Human Rights.

Following the February meeting, a second round of bilateral talks began with the goal of bringing the remaining parties, mainly HDZ and SBiH, on board. SBiH, however, proved unwilling to compromise. Tihić requested to hold talks with both HDZ and SBiH after the meeting on February 19, but Safet Halilović refused to engage in further discussions with Tihić.[931] Furthermore, following additional exchanges between SBiH and SDA in the midst of ongoing rhetoric against the package,[932] external actors decided to give up any efforts to bring SBiH to the negotiation table, believing that the package would pass without their support.[933] External efforts thus turned entirely to cajoling HDZ leader Dragan Čović in the

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[928] While the absence of Croat parties was never intended to be exclusionary – it was rather an attempt to bridge the differences between Bosniaks and Serbs –, radical Croats mobilized at the time to criticize harshly the meeting and present it as a denial of Croats' rights (See A. Vrebač. "Knife stabbed at Croats' back." *Dnevni List*, p. 2. In OHR, BiH Media Round-up, 21 February 2006).
[929] SBiH had been invited to all previous bilateral meetings, but declined to attend.
[930] Some of the clauses agreed, such as the rotation principle for the presidency and entity voting, still caused some contention within SDA's ranks. As a case in point, although the SDA main board accepted Tihić's package on February 25, it expressed dissatisfaction with the principle of entity voting, demanding Tihić to ask for its abolition within the current framework of negotiations or on a second phase (OHR Media Round-up, 26 February 2006).
[931] S. Numanović. "Talks on constitutional changes can not be a private deal." *Dnevni Avaz*, p. 4. In OHR, BiH Media Round-up, 21 February 2006.
[932] SBiH rhetoric against constitutional reform continued, with additional criticism directed towards both Tihić and Lagumdžija. On declarations to *Dnevni Avaz*, Halilović stated that constitutional negotiations were aimed at creating the conditions for making entities stronger and leading to the future separation of RS, with the connivance of both Tihić and Lagumdžija (OHR, BiH Media Round-up, 30 January 2006). Similarly, Haris Silajdžić kept making public statements based on wartime rhetoric, stating during a press conference on February 17 that constitutional negotiations were being used to complete ethnic cleansing (OHR, BiH Media Round-up, 18 February 2005).
[933] Author's personal interviews with Donald Hays and Western diplomats.

belief that his support would clear the way for the Croat support needed in the parliament.

Although it was initially thought that a final agreement with HDZ would be reached within a week of the February meeting, a final compromise proved elusive. HDZ refused categorically to accept the maintenance of entity voting and direct elections for the presidency.[934] In the end, although willing to postpone the discussion of entity voting to a second phase of constitutional reform, Čović refused categorically to accept an entity-based, directly elected president, fearing that the SDP would challenge HDZ's chances of ever holding that position. The direct elections for the presidency remained a deal breaker for Čović, who called for a rearrangement of Bosnia into a single electoral unit if the president was to be elected directly. Serbs, however, demanded the revision of the whole package if such an initiative was brought forward and the stalemate on the presidency package continued.[935]

Given the parties' unwillingness to compromise on the issue of the presidency, four rounds of negotiations followed on February 21, March 1, March 11 and March 18 (the last meeting included all party leaders except for those from SBiH). During the first meeting, party leaders gave the green light to two additional packages, namely the parliament and the delineation of competences between the state and the entities, but the presidency remained the only package pending for approval. The impasse continued at the meeting on March 1,[936] when the parties decided to have the Venice Commission pronounce itself on the different proposals for the election of the presidency in BiH. Three different models were presented to the Commission: (1) the election method in place (i.e. a presidency with direct elections in each entity); (2) the election method in place, including a 16-month rotation system, with no

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[934] Cracks within the Croat side became increasingly obvious at this time. Expelled HDZ members Martin Raguž, Božo Ljubić and Josip Merdžo started organizing a new party, namely the HDZ 1990, in early February with the express support of the Catholic Church and – although not officially stated – the Croatian HDZ President Ivo Sanader. Croat members such as the Chairman of the Presidency kept alluding to the creation of a third entity and a three-member presidency in public statements (See "Three Entities and Tri-partite Presidency." *Oslobodjenje*, p.3. In OHR, BiH Media Round-up, 17 February 2006).

[935] SDA was however willing to accept the indirect election (see OHR, BiH Media Round-up, 28 February 2006).

[936] All parties attended except for SBiH. Beriz Belkić confirmed in a personal interview that SBiH was invited but that they declined to attend and gave no notification (See A. Malagić, "will the agreement be signed?" In OHR, BiH Media Round-up, 1 March 2006). This is the last time that SBiH was invited to the negotiation table.

mentioning of any ethnic criteria for the presentation of candidates; and (3) an intricate indirect election through the parliament. On a draft opinion made public on March 8, the Venice Commission rejected the first formula, out of concern for its compatibility with Protocol No. 12 to the European Convention of Human Rights (it indeed "excludes Others as well as Bosniaks and Croats from Republika Srpska and Serbs from the Federation from being elected to the presidency"), and favored the third formula as the preferred option with the inclusion of further modifications mostly on procedural grounds.[937] Thus, although the Venice Commission had expressed a preference to have an indirect single presidency in its opinion in March 2005,[938] it accepted an indirect collective presidency in the form of a single president with two vice presidents as a transitional solution.[939]

Once the Venice Commission's opinion was published, further negotiations and external pressure ensued. The US Congress passed a resolution on March 13 for a "more functional state" in Bosnia. The resolution read that "the United States supports the development of Bosnia and Herzegovina as a unified, fully democratic, and stable state on the path toward Euro-Atlantic integration [i.e. integration into the EU and NATO]" and encouraged domestic actors to "work together and seek compromises so that a first set of revisions to the Constitution can take effect before national elections in October 2006."[940] The PIC also released a communiqué at a meeting in Vienna on March 15 stating that the Political Directors expressed their

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[937]   See Venice Commission 2006a. These procedural changes were mainly related to the role of the House of Peoples in the election of the presidency members. In its words, "the Commission argued in favor of abolishing the House of Peoples. Giving it a strong role in the selection of the presidency cannot therefore be considered a positive step" (Venice Commission 2006a, para. 24). The Venice Commission thus believed that presidency candidates should be nominated by the House of Representatives.

[938]   The Venice Commission had already expressed its preference for an indirect election in the case of a single president; it had stated, "an indirect election of the President by the Parliamentary Assembly with a majority ensuring that the President enjoys wide confidence within all peoples would seem preferable to direct elections" (Venice Commission 2005, pa. 40).

[939]   The Venice Commission's support of an indirect election for the presidency was based on the following assumptions: (1) Given the aim of the process of constitutional reform to reduce the powers of the presidency and concentrate executive powers in the council of ministers, the Venice commission believed that such "change will be more difficult to bring about if the presidency does have the legitimacy of a direct popular vote" (Venice Commission 2006a, para. 17). (2) An indirect election also "offers more possibilities for inter-ethnic co-operation and compromise" and entrusts a state-level institution, such as the parliament with further competences in line with the overall objective of the constitutional reform, namely the strengthening of the status and competences of the state (ibid, pa. 18). (3) Finally, the proposal "ensures that the representatives of the Others in the House of Representatives will take part in the vote and that Serbs from the Federation and Bosniaks and Croats from Republika Srpska are no longer disadvantaged since their representatives in the state parliament will be able to vote for the candidates of their choice" (Ibid, para. 24).

[940]   US Senate 2006.

strong support for the constitutional reform process as "an important step towards the effective state government needed to meet the needs of the citizens of BiH and for BiH's Euro-Atlantic integration. ... They urged the BiH parties to seize this opportunity to uphold their commitment to reach agreement by March by resolving the last remaining issue in the next week. Meeting this urgent timetable is essential."[941]

Following the discussion of the Venice Commission's opinion on March 17-18, the US summoned party leaders (except for SBiH leaders, who for the first time were not invited) to meet at the US Ambassador's residence on March 18 in order to finalize the agreement on the presidency package. The signing of the whole constitutional agreement took place at this meeting, and the next day President Tihić referred the agreement to the Venice Commission, requesting its opinion on the text. The Bosnian presidency referred the whole set of amendments to the Constitutional-Legal Affairs Commission (CLAC) in the House of Representatives on March 25. Party leaders signed on to the final text of the agreement on April 5 at a meeting with the US Ambassador, and added a few technical changes that had been forwarded by the council of ministers.[942]

6.1.3. Amendments to the Bosnian Constitution

The draft constitutional package included a total of four key amendments (in addition to the human rights package[943]): the division of competences between the state and the entities (Amendment I); the parliamentary assembly (Amendment II); the presidency (Amendment III); and the council of ministers (Amendment IV).[944]

*   *Amendment I: Division of Competences Between the State and the Entities.* The

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[941]   Peace Implementation Council 2006a.
[942]   Some of these modifications included, *inter alia*, an emphasis on the legislative capacity of both the BiH parliament and the entities' assemblies; the confirmation that only a maximum of two thirds of ministers in the council of ministers could come from the FBiH; the affirmation that the state's defense and security competences would be regulated by a state law (this amendment was put forward by the PDP); and the endorsement of the parliament's dismissal following a failure to elect a president and vice presidents, in addition to the already foreseen dismissal following a failure to elect a council of ministers after three attempts (See OHR, BiH Media Round-up, 6 April 2006).
[943]   The Human Rights package was, however, not submitted to presidency of the Parliamentary Assembly along with the rest of the amendments out of concern over the wording of the changes. Given the lack of urgency in relation to human right issues, this amendment was not approved on urgent procedure (Venice Commission 2006b; Venice Commission 2006d).
[944]   See Draft Amendments to the Constitution of Bosnia and Herzegovina 2006.

amendments related to article 3 of the Bosnian Constitution included the following: (1) a list of competences that the state was entrusted with, including the codification of previously agreed transferred competences, most notably defense and security; (2) a new clause indicating a set of competences to be shared by the state and the entities, including taxes, the electoral process, the judicial system, agriculture, science and technology, ecology, local self-governance and remaining competences as regulated by law; (3) a clause added to Article 3.5a (which deals with the transfer of competences between the state and the entities) that precluded the return of competences that have been transferred to the state without the consent of the state and both entities; finally, (4) a new clause was also introduced to article 3 (as a new Article3.5c), which was deemed critical for providing the state with the necessary powers to comply with the EU accession requirements. The clause read as follows:

"State institutions are responsible for negotiating, developing, adopting and implementing, and the functioning of laws necessary for the fulfillment of European standards, as well as political and economic conditions linked with European integration. The State shall ensure compliance with the principles, priorities, and demands set forth by the European Union in the phases before and after accession. The State will establish the necessary bodies by law and undertake the necessary measures and determine the necessary procedures for the fulfillment of all criteria for accession and membership in the European Union, which also includes the necessary mechanisms of coordination and cooperation with authorities at lower levels."[945]

Amendment II: The Parliamentary Assembly. The second amendment (related to Article 4 of the Bosnian constitution) included the following changes to the parliament:

- The House of Representatives was provided with a more extensive list of powers, including *inter alia* the participation in the election of the president; the confirmation of the president of the council of ministers and the ministries; the adoption of constitutional amendments; the ratification of international agreements and the oversight of the work of the council of ministers and other

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[945]   Draft Amendments to the Constituiton of Bosnia and Herzegovina 2006. Article3.5c

institutions.

- The House of Peoples was entrusted with only three powers (in line with the idea of eliminating this chamber): (1) to deal with issues related to VNI; (2) to adopt constitutional amendments; and (3) to participate in the election of the president.

- A definition of VNI was introduced, similar to the one adopted by the working group in October 2005.

- A new review mechanism for VNI was also introduced, similar to the one adopted by the working group in October, except for the creation of a special committee within the constitutional court to deal with VNI issues. The existing procedure within the constitutional court thus remained.

- An increase in the number of deputies in both chambers to both strengthen political pluralism and match human resources with the increased competences of the House of Representatives.

- In addition to the increased number of deputies, it was stipulated that three seats would be reserved for "Others".

- The election of the House of Peoples delegates would occur through the House of Representatives and no longer through the ethnic caucuses of the entity parliaments.

Amendment III: The Presidency. This amendment included the following changes to the institution of the presidency:

- The establishment of a four-year presidency comprised of a president and two vice presidents (instead of a three-member presidency). It was prescribed that the President and Vice presidents would not come from the same constituent peoples. In order to avoid the election of two Bosniak members, the amendments stipulated that each people could only have one member. Additionally, the wording in this clause was very specific so as not to preclude, at least in print letter, the right of other minorities to be nominated and appointed as president or vice president.[946]

- The members of the presidency were to be elected indirectly in both the

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[946] Marko notes, however, that "The new wording that the three members must not be from the same constituent people would allow, of course, also 'others' to become members of the presidency even if this is "in reality" not very probable if one looks into the complicated election mechanism which gives the ethnic caucuses in the House of Peoples the decisive role in selecting the three candidates from those proposed before by the two Houses" (Marko 2005/2006, 9).

House of Peoples and the House of Representatives, from members of parliament. The prominent role given to the House of Peoples was thus confirmed (the working group constitutional draft had prevented the House of Peoples from participating in the nomination of the presidency members), despite of the Venice Commission's recommendations to have this chamber's competences reduced, especially in the nomination of the members of the presidency.[947] Indeed, each Caucus of the House of Peoples was entrusted with the duty to approve the nomination of each candidate by simple majority before sending the proposal of three candidates to the House of Representatives for confirmation.[948]

- The election of the president "by rotation or another manner" was, however, not prescribed in the amendments, and "shall be defined by the parliamentary assembly of Bosnia and Herzegovina."[949]

- A complete list of powers and duties for the president was introduced. The powers were very similar to those agreed upon by the members of the working group in October (including the ability to request for reconsideration of legislation, only once per law), except for the provision of additional powers such as the ability to convene and define the agenda for sessions of the council of ministers and the parliament as well as to nominate a candidate for president of the council of ministers upon consultation with the vice presidents and the parliamentary assembly. In addition, the president was also entrusted, with consensus of the three members, to regulate the defense policy and appoint judges to the CC and members of the Board of Directors of the Central Bank.

Amendment IV: The Council of Ministers. Amendment IV built upon the already agreed package of December 2005, with the introduction of minor changes, including some election procedures for the president of the council of ministers and his/her ministries and the designation of the former chair of the council of ministers as either president of the council of ministers or prime minister. The amendment also added

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[947] Venice Commission 2005.

[948] The amendments did not provide a 'dead-lock breaking mechanism' if the House of Representatives refuses to confirm the proposal, a concern of the Venice Commission as expressed in its April opinion of the amendments (Venice Commission 2006b).

[949] Draft Amendments to the Constitution of Bosnia and Herzegovina 2006. Amendment 3.2.f.

the conduct of foreign affairs as one of the key competences of the council of ministers. Finally, "The composition, decision-making, resignation, recall, no-confidence vote and other matters of concern pertinent to the functioning of the council of ministers [as well as the competences of the ministries] shall be regulated by law."[950] One of the most notable changes in relation to this institution was the fact that the council of ministers was made no longer accountable to the president but to the parliamentary assembly. The competence of selecting the ministers was transferred from the presidency to the prime minister.

Table 6.2. Dayton and the Constitutional Amendments of March 2006

	Annex Four - Dayton	Constitutional Agreement (2006)
Presidency	- Entity-based, direct election. - Three-member rotating presidency.	- Indirect election. - One president and two vice presidents (rotation mechanism to be decided). - Overall reduction of powers.
Council of Ministers	Council of ministers extremely weak, responsible to presidency.	Council of ministers strengthened, responsible to parliament.
Parliament	Two chambers with similar competences.	- Increased deputies in both chambers. - House of Representatives strengthened. - House of Peoples responsible for VNI issues.
State/Entity Relations	- Limited competences for the state. - Subsidiary competences for the entities.	- More competences granted to the state (including new powers for EU integration). - Shared competences between the state and the entities. - Devolution of powers to entities with consent of the state.

Source: Author

Controversy over the constitutional agreement revolved around the value and worth of the amendments agreed upon. Representatives of the parties that rejected the agreement claimed that it was purely cosmetic, failing to address some of the key issues preventing the state from being fully functional. The Venice Commission, however, described the reform as "quite comprehensive" and as "an important step forward," with a more efficient decision-making process in place.[951] Similarly, constitutional expert Joseph Marko asserted, "Both the element of 'shared competencies' and the EU-integration clause have a strong 'implied power' of

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[950] *Ibid*, Amendment 4.7.a and 4.7.b.
[951] Venice Commission 2006b, para. 2 and para. 74.

strengthening the necessary integration processes inside Bosnia and vis-à-vis the EU. It is therefore the inherent power of Amendment I to enable a strong dynamic integration process and thereby overcome also the ethnic dividing lines."[952] Furthermore, both members of the international community in Bosnia and domestic actors, including party officials and members of civil society, asserted that even if the agreement was not groundbreaking, it represented a first step in the right direction, as part of an ongoing process that would entail further negotiations. An official from the European delegation in Bosnia stated, "the American package was not a big change, but for the EU it would have been important. It would have shown political will and opened the door to the second phase in which the EU was planning to have a bigger role, the one dealing with the cantons and the entities."[953]

In particular, the Venice Commission pointed out four major improvements over the Dayton constitution,[954] namely (1) the codification of already transferred and new powers to the state (although the Venice Commission regards this as a temporary solution with the need to provide further powers in the future)[955]; (2) the provision of the necessary means for the Bosnian state to address the process of EU integration; (3) the reduction of the powers of the House of Peoples, virtually limited to dealing with VNI issues; and (4) an elected presidency that incorporates the figure of a president with more powers than the vice presidents. The Venice Commission gives a special mention to the provision of new powers to the state in relation to the process of European integration. In particular, the commission noted, "Article 3.5.(c) is of paramount importance. It gives to the state level the responsibility to negotiate with the European Union and to adopt and implement all measures necessary for the implementation of commitments to the European Union. The text is broadly drafted and seems to leave no gaps. It would enable the country to take full part in European integration and thereby rectify a fundamental shortcoming of the present Constitution."[956] In this respect, Bruce Hichner identified three mechanisms contained in the constitutional agreement whereby the power of the entities would be

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[952]   Marko 2005/6.
[953]   Author's personal interview with European official, Sarajevo, May 2007.
[954]   Venice Commission 2006b.
[955]   The Commission welcomed the list of competences granted to the state while indicating that it was not a long-term solution (missing competences include civil law, criminal law and labor law). "The Commission therefore recommends to undertake, as part of a second phase of constitutional reform after the elections, a systematic reflection on a coherent and stable distribution of competencies between both levels" (Venice Commission 2006c, para. 21).
[956]   *Ibid.*

reduced, including the fact that (1) there would no longer be entity-based elections to the presidency; (2) "the entities could not recover powers ceded to the state without the consent of the state;" and (3) "the powers of the state were enhanced at the expense of the entities in matters relating to EU negotiations."[957]

Some key shortcomings were also identified, however, the most significant of which included the definition of the VNI veto envisaged in the amendments.[958] In this respect, the Venice Commission noted that the set of amendments "seems to enhance the status of the vital national interests veto into a kind of natural inalienable human right. This is entirely inconsistent with the aim of reducing the scope of this veto which should be considered as an exceptional institutional arrangement justified by the continued lack of trust among the three constituent peoples and not as a natural right."[959] Furthermore, Marko remarks that given that the scope of the VNI is not reduced but increased, "the restriction of the House of Peoples as a protection mechanism for VNI would not reduce its participation and equal footing in the entire legislative process at all."[960]

In addition to these criticisms, the package was somewhat confusing on the divisions of competences. A high ranking official of OHR asserted the following:

"you had a set of competences for the state, and then an open-ended clause that said that all further competences legislated by law, which pretty much means everything. And then you had a similar clause for the entities. So this could have led to confusion. Also, in the case of shared competences, there were things that were defined as a competence of the state and they were also very open with no specification; there was no principle of primacy in case of conflict between the state and the entities, which you find in many other federal constitutions.[961] Also, there was not

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[957]   Hitchner also recognizes that, "On the other hand, there can be no doubt that the amendments did little to change the powers and complex voting systems of the three constituent peoples' parties in the parliament. But given that the concept of constituent peoples is still a major ideological force in Bosnian politics, it was hard to devise any easy or simple options for voting reform that did not take this reality into account" (Hitchner 2006b).
[958]   The Venice Commission had recommended in March 2005 to define the scope of VNI clearly and narrowly to avoid excessive blocking of decision-making (Venice Commission 2005; Venice Commission 2006b).
[959]   Venice Commission 2006b, para. 39.
[960]   Marko 2005/06, 9.
[961]   In some countries, however, there is no primacy principle, but disputes are resolved through a judicial review in a court with jurisdiction on constitutional matters (usually the Constitutional Court). In the case of the US, for example, the Supreme Court is the institution charged with the resolution of constitutional disputes between the states and the federal government.

a clear specification of the role of the state and the entities. Usually, the state is charged with policy designing and then federal units with the implementation, execution... but there wasn't such distinction."[962]

Indeed, the Venice Commission recognized that the division of competences "does not allow us to have a comprehensive picture of the respective responsibilities of the state and the entities and that a lack of clarity may result in difficulties for its implementation. Nevertheless, under present political circumstances in BiH, this drawback seems a small price to pay for the important progress the provision makes possible."[963] The text contained further minor weaknesses related to some procedural missteps, contradictions, and discrimination dispositions regarding inclusion of the rights of others. All of these issues, the Venice Commission recommended, required minor modifications, including the removal of some clauses, further clarifications in certain passages and some rewording and rephrasing.[964]

On the whole, however, the Venice Commission and Western actors shared the opinion that the amendments should be approved. They thought that these minor errors could be easily addressed by party leaders.[965] As a Western official suggested, from a technical point of view the package was very poor; "it contained many inconsistencies and many issues were not addressed, but it was the right step in the right direction, especially in terms of the process of EU integration. If you had the Venice Commission's recommendations included in it,[966] it would have been very good."[967] Tim Cartwright also argued, "the agreement itself contained a number of mechanisms which would have changed the nature of the political game, change the legislative dynamic, there would be more people there, you have better chance of legislative scrutiny."[968]

In sum, as the Venice Commission concluded:

"The reform addresses the issues identified as priorities for reform by the Venice Commission. It grants additional powers to the state level, a

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[962]   Author's personal interview with OHR official. Sarajevo, June 2007.
[963]   Venice Commission 2006b, para. 19.
[964]   Other shortcomings that could be identified include the persistence of entity voting as a significant drawback, given its potential for blocking decisions on EU related matters, although this issue was not part of the negotiations.
[965]   Also, once the package had been agreed upon and with the introduction of the recommended changes, external actors thought it should be approved (author's personal interviews with Western diplomats. Sarajevo, May-July 2007).
[966]   He is referring to the ones contained in the Venice Commission resolution (2006b).
[967]   Author's personal interview with Western diplomat. Sarajevo, July 2007.
[968]   Author's personal interview with Tim Cartwright. Sarajevo, 19 June 2007.

step which is indispensable if BiH wishes to take part in European integration and which brings the country closer to the situation in other federal Stats. The reform increases the efficiency of the state institutions by strengthening the council of ministers and the House of Representatives and reducing the role of the collective presidency and the House of Peoples. Some of the amendments proposed should be redrafted and not all proposals for reform go as far as the Venice Commission may have wished. In its earlier Opinion it already noted that constitutional reform would have to be a long-term process and that not everything could be done immediately since there is still a lack of trust among the ethnic groups. It will therefore be necessary to follow up this first step and carry out further reforms in the future. One part originally foreseen as part of the reform, the new human rights text, is in any case not ripe for adoption and should be postponed to the next phase of reform after the elections." ... "Having made these qualifications, the importance of the reform, both with respect to its practical consequences and as a signal from BiH to Europe that the country is resolved to take the steps required for European integration, cannot be overestimated."[969]

With respect to domestic actors, there was general support for the amendments,[970] with minor differences in the way each ethnic community assessed the value of the constitutional agreement. Serbs, for example, thought that the agreement was the best possible agreement at the time; Serbs also derived symbolic value from the agreement; the fact that Bosnian politicians had reached an agreement on their own was highly gratifying to them.[971] Dragan Čavić for example stated, "Adopting this package would have represented the beginning of a new practice in post-conflict

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[969]   Venice Commission 2006b, para. 99.
[970]   Except for the members of SBiH and HDZ 1990, who argued that the changes were too superficial (the next chapter fully explores the positions of these actors). Radical and independent forces from RS were also against the package, but with the opposite argument; radical Serbs thought the reform had gone too far. Independent Petar Kunić for example stated that "the amendments tried to centralize BiH; the principle of federalism was jeopardized" (author's personal Interview with Petar Kunić. Banja Luka, 14 June 2007).
[971]   The rejection of the package, however, was the worst signal for the EU officials in their view, one that marked the initiation of one of the worst political climates in Bosnia. Serb member of the presidency Borislav Paravać stated, "To honest friends of BiH and to whole the public that supports us on our way to European integration, we issued a bad message and showed incapability to reach key issues for BiH future by ourselves" ("We issued bad message." *Nezavisne Novine*, p. 3. In OHR, BiH Media Round-up, 29 April 2006).

Bosnia politics. The failure of the amendments put this country back ten years."[972] In declarations to *Nezavisne Novine* in early April 2006, he stated, "The [constitutional] negotiations were very difficult, very delicate and in the end, we arrived at a consensus, not a painful or rotten compromise, but a credible compromise which at the end of the day does not destroy the character of the entities in Bosnia. The functionality of the institutions of the state of Bosnia has been improved and we have enumerated the basis for normal interaction between the state and the entities."[973] Similarly, Ivanić stated, "The best value is that we did this, we did it our own way and the result was a compromise with a little bit of pressure from the US. So the best value was not the essence of the package, but the fact that we reached an agreement … that's why the result was not perfect, not the most ideal solution but we'll never be the best ideal solution to anything."[974]

The Bosniaks regarded the agreement not as the best possible agreement, but as going in the right direction. As Tihić stated, "The result was a very good agreement, especially in terms of state competences, because the list of competences vested in the state was similar to other European countries. The council of ministers also provided for more functional ways of working. It would be able to work as a government, like in other European countries. Also, for the presidency, it was a much better solution to the current situation. Still there was no agreement about the mandate. We agreed on rotation but we envisioned that we could change it in the future … It was not ideal, but it was the best solution possible at the time."[975] Similarly, Šefik Džaferović stated, "The importance of the April package is not its content, even though the content is important. Its importance was that it was the first step on the way forward until we came to a normal constitution … The April package did not eliminate entity voting. I didn't like that but I didn't want to jeopardize this chance to start the process and normalize our way to Europe."[976] Croats shared a similar opinion; although they thought that the agreement was not the best solution, the constitutional changes represented in their view a first step in an ongoing process

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[972]   Author's email interview with Dragan Čavić, January 2008.
[973]   Dragan Čavić, cited in *Nezavisne Novine*, 7 April 2006. Quoted from Foreign Policy Initiative 2007, 25.
[974]   He also stated, "the outcome is a very negative situation. Today we have more difficulty with agreeing to anything than before. There is more lack of trust than before. And I'm very pessimistic about any chance in the short term of something to be agreed upon" (author's personal interview, Mladen Ivanić. Sarajevo, 10 July 2007).
[975]   Author's personal interview with Sulejman Tihić. Sarajevo, 4 July 2007.
[976]   Author's personal interview with Šefik Džaferović. Sarajevo, 31 May 2007.

of constitutional reform in which further changes would be proposed in a second phase.[977]

6.2. ANALYSIS OF PHASE II

6.2.1. The Impact of the US

The success of the negotiations during this phase was largely due to the role of external actors, especially the US, and a facilitating domestic context. The favorable outcome in conflict regulation during this phase was thus the result of two key developments, namely the conjuncture of external pressure with favorable dynamics at the intra-party level.

The first development relates to the critical role the US played during the negotiations and the way negotiations were conducted under its leadership. Indeed, all of the parties involved in the negotiations deemed the participation of the US as a critical guarantor for reaching a compromise on constitutional reform; as with Dayton, the US would again be the ultimate security guarantor. As expressed in personal interviews, domestic actors viewed the US as the only actor capable of forging domestic consensus. As Hays confirmed in a personal interview, all parties involved conditioned their engagement on the participation of the US, "because they could only see the US ensuring the consensus."[978]

In addition, all the domestic actors interviewed specifically pointed to the role played by the US Ambassador Douglas McElhany as a clear example of successful mediation.[979] As SDS leader Čavić stated in a personal interview, "The man who gave the final positive energy to constitutional changes was, and there is no doubt

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[977]   Author's personal interview with Mile Lasić. Mostar, 2 July 2007.
[978]   Author's personal interview with Donald Hays. Washington, D.C., 29 July 2006.
[979]   Douglas McElhaney, who joined the State Department in 1975, was sworn in as US Ambassador to Bosnia on August 6, 2004. He had no background in the region but had some experience in international negotiations in the 1980s. From 1978 to 1982 he worked on the negotiations that prepared Namibia for independence. He also worked on the Middle East Peace Negotiations from 1987 to 1989, as Deputy Political Counselor at the US Embassy in Egypt. McElhaney's more recent assignments included mostly Western Europe. From 1995 to 2000, he was the Political Counselor and the U.S. Deputy Permanent Representative at the U.S. Mission to NATO. He then served as Deputy Chief of Mission at the US Embassy in Paris (2000-2002) and as U.S. Consul General in Milan from 2002 to 2004 (see US Embassy, Ambassador's biography at http://sarajevo.usembassy.gov/ambassador.html. Accessed on July 2007). He retired from the US Foreign Service in September 2007, after his assignment in Bosnia.

about that, the US Ambassador at the time, Mr. Douglas McElhany ... Even though there was no final agreement at the end because of the two missing votes in the parliament, the role of Mr. McElhany was huge. The initiative that Mr. Hays started was also important, but the negotiations would have failed sooner or later if it wasn't for Mr. McElhany."[980] HDZ official Lasić and additional party officials across the board also agreed with this assessment. Similarly, UK Ambassador Rycroft stated that the US Ambassador engaged in an extraordinarily vigorous mediation process (as opposed to the previous phase in which both the US and the EU were half-heartedly involved), which eventually led to the agreement in March 2006; "The US Ambassador was quite involved, very hands on, very pushy. He would say you can't say this, threatening with international embarrassment, isolation, or telling them that if they didn't cooperate they would tell [US Secretary of State] Condoleezza Rice that they were not complying with the agreement they signed, etc... They were threatened with being portrayed as the blocking figure" [and that has important reverberations in Bosnian politics].[981] As UK Ambassador Rycroft stated, "In Bosnia, we need to drive [the reform process] in order to make it work... We need to be more hands on,' and that's why the US efforts were successful."[982]

In addition to McElhany's good offices, the US also provided the framework within which an agreement at the inter-ethnic level was possible, namely the transformation of multilateral negotiations into direct, two-side negotiations behind closed doors. According to domestic actors, this was a key element for success. Tihić, for example, stated in an interview, "There were very useful proposals from the international community when parties were pulling apart in January."[983] Similarly, Ivanić also asserted in an interview that the constitutional compromise was

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[980] Author's e-mail interview with Dragan Čavić, January 2008. Čavić's initial critical stand of US Ambassador McElhaney may have stemmed from his belief that only Donald Hays could drive the process and forge the necessary consensus among the party leaders (*Ibid*). In fact, all party leaders, especially Dragan Čavić, Milorad Dodik and SBiH's Beriz Belkić, shared a high regard for Hays' work. He not only knew all the leaders personally, but he was capable of exerting a strong influence over them (personal interviews with Western diplomats and members of the Dayton Project). In contrast to Hays, US Ambassador McElhaney had little background in the region and was not as acquainted with Bosnian politics as was Hays. This may have led party leaders such as Čavić to believe that the Ambassador was not suited for the process at the beginning. As Čavić stated, "I have to admit that at the beginning I had a wrong assumption about Mr. McElhany because it seemed to me that he didn't have the necessary political experience for this kind of negotiations, but looking at it from this point in time I can say that he was a perfect moderator" (*ibid*).
[981] Author's personal interview with Matthew Rycroft. Sarajevo, 7 June 2007.
[982] *Ibid*.
[983] Author's personal interview with Sulejman Tihić. Sarajevo, 4 July 2007.

reached thanks to the suggestions by the US Ambassador to establish a direct line of communication between party leaders.[984] Indeed, a US official put forth in an interview that the most important value of this process was that it was a new way of doing things in Bosnia; "leaders realized that this was a new way; they had to reach consensus among themselves. They talked to each other and had to reach an agreement. We encouraged them, we cajoled them. We were strong but we didn't impose anything."[985] Other Western diplomats such as UK Ambassador Rycroft also suggested that the role of the US was critical not in the sense of imposing solutions but in exerting the right amount of pressure to get parties to reach an agreement on their own, which was key to forging consensus. As a result, as Hays suggested in an interview, "In January we started seeing major changes in terms of solidifying the agreements. And then of course, once Dodik and Tihić agreed, it was over."[986]

The new format of direct bilateral negotiations therefore helped trigger a compromise among party leaders in two ways: (1) altering the structure of the negotiations served to break the stalemate. It effectively created a two-tiered process that simplified the complex structure of the bargaining framework.[987] Step one was to find consensus amongst the Serbo-Bosniak contingent (which mean a *de facto* marginalization of the Croats); step two involved the presentation of a preliminary agreement to the Croats for final approval. The establishment of a direct line of communication also allowed for party leaders to find mutually satisfactory solutions based on direct trade-offs in a relatively undisturbed environment, which suggests that the set-up of direct contacts at the inter-ethnic level in contexts of mutual distrust is key for engaging in conciliatory behavior. (2) It also gave the US ample room to maneuver with each party willing to find a compromise,[988] protecting the negotiations from external disruptions, especially from the parties that did not want to take part in the process and/or the ones that were radically opposed to it. While this factor was

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[984] Author's personal interview with Mladen Ivanić. Sarajevo, 10 July 2007.

[985] Author's personal interview with Western diplomat. Banja Luka, 12 June 2007.

[986] Author's personal interview with Donald Hays. Washington, D.C., October 2007.

[987] This strategy was reminiscent of the US diplomatic efforts prior to the signing of Dayton. As O'Brien admitted, one of the key US objectives "was to reduce the number of voices at the table. The first step was the conclusion of an arrangement between Bosnia's Croats and the Bosniaks, with full support from Croatia ... In the signing statement, the leaders of the parties agreed to function as a single delegation at all peace negotiations. This simple proposition ... reduced the number of people demanding seats at the table; rather than three contentious voices, only one position would be adopted" (O'Brien 2004, 97).

[988] The Austrian Ambassador, for example, was talking to the Croats, the British to the Serbs, and the US was talking to all of them (author's personal interview with Donald Hays. Washington, D.C., October 2007).

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critical in making negotiations easier at the inter-ethnic level, the neglect of intra-ethnic dynamics at this stage (and the failure to incorporate all forces with an interest in constitutional reform)[989] proved fatal for the overall outcome, as the next chapter will show.

The second key development was related to intra-party dynamics, which also contributed to a successful outcome during this phase. Opposition forces within the Serb camp, for example, were not significant at this point, given Čavić's success in keeping the hardliners at bay after the fall of the Bukejlović government in early February (hardliners, however, kept key positions in the Eastern municipalities of RS). Čavić's decision to appoint Dodik as the new RS PM on February 4, following a vote of confidence on January 25, further aggravated the isolation of hardliners, giving Čavić more room to engage in the reform process. With respect to the SDA, although SBiH was still clearly in opposition, Tihić managed to get the SDA behind the constitutional initiative, including the members of the Islamic Community.[990] While certain clauses caused some contention within SDA's ranks, including the rotating presidency and the entity voting, the main board accepted Tihić's package on February 25 on the condition that entity voting was abolished within the current framework of negotiations or in the announced second phase of constitutional reform.[991] Furthermore, opposition to the SDA at both the entity and state levels was at this point very limited.[992] As for the Croats, although they were the group undergoing major upheavals, Čović managed to place opposition forces outside the party, keeping his authority uncontested inside the HDZ and not facing any real political alternative in the Croat political scene.[993]

In addition to a relatively favorable intra-party situation across the board, the moderate terms of the agreement made it easier for party leaders to sell the

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[989]   External actors gave up on the efforts to incorporate SBiH and simply neglected the significance of Ljubić's opposition to the process.

[990]   Bougarel 2007. It will be Tihić's rapprochement to SDP – and the potential for a possible coalition with this party in the elections – that will cause further radicalization and opposition among the Islamist group and other factions within SDA (author's personal interviews with local informants. Sarajevo, May-July 2007; See also Bougarel 2007).

[991]   OHR, BiH Media Round-up, 26 February 2006.

[992]   SBiH still represented a minor party. As for the SDP, although opinion polls showed increasing support for this party, it was clear that the SDA and SDP were operating in close cooperation; some sources and media reports even indicated that both Tihić and Lagumdžija had the intention to run on the same ticket for the 2006 elections or form a post-election coalition.

[993]   At the time, there was no credible political alternative to HDZ within the Bosnian Croats that could challenge HDZ in the elections.

compromise within their own ranks.[994] As CoE Representative Tim Cartwright stated, "all party leaders got away with something. It was a deal in which most people could find a bit of victory, and was not too threatening to the status quo."[995] Serb parties, for example yielded on the presidency and the House of Peoples, but kept entity voting and an implicit recognition of the status of RS.[996] In addition, they also obtained a stronger council of ministers with a real prime minister, which was a clear victory, given that Serbs would be the next group to hold that position.[997] Tihić, on the contrary, gave up on the entity voting but he obtained part of the presidency deal and further competences granted to the state-level. As for the Croats, Čović got a very important victory with the presidency and a promise to hold a second phase of constitutional reform in which the EU would be more involved. Furthermore, the agreement allowed for additional gains in due course, given the authority entrusted to the state for EU integration, "So in a way it opened doors and made it easier for Croats and Bosniaks to sign up to it."[998] Croats gained least, and although Čović did not face opposition within his party, this situation would cause major problems in the next phase of the negotiations. Indeed, the exclusion of 'opposition' forces from the Croat and Bosniak communities within the bargaining framework of constitutional reform at this stage would eventually unravel the whole process when the package was finally taken to the parliament.

6.2.2. The Role of the EU and its Member States as Minor Players

European actors adopted a secondary role in the second phase of the negotiations,[999] although their role was prominent in at least two respects. First, EU members continued to serve as a foundation of constitutional reform not only through the opinion of the Venice Commission, which operated as the frame of reference for the

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[994]   Which is especially significant in contexts where outbidding dynamics are pronounced, as in the case of Bosnia.
[995]   Author's personal interview with Tim Cartwright. Sarajevo, 19 June 2007.
[996]   Serb parties also got recognition for their efforts by international actors, which was deemed very important, especially for Čavić.
[997]   As Hays stated, the Serbs (especially Dodik) were interested in having "a government that has power and that is able to do something." As a case in point, Dodik stated on various occasions that he would never be the chair of a weak council of ministers as the one in place, but he would be willing to do so as the new prime minister (author's personal interview with Donald Hays. Washington, 29 July 2006).
[998]   Author's personal interview with Tim Cartwright. Sarajevo, 19 June 2007.
[999]   Some individual countries, such as the UK had, however, a rather prominent and significant role.

negotiations, but also through the ongoing public endorsements by European officials. Indeed, the EU supported the process publicly, especially at critical junctures. The European Parliament, for example, passed a resolution on February 16, 2006, confirming the urgent need to make Bosnia a functional state. Additionally, During a trip to Bosnia in February 18, EC President José Manuel Barroso stressed the potential for Bosnia to sign an SAA by the end of the year and reiterated the EU's stand on constitutional reform, with an emphasis on the three key principles for compliance with European integration, namely efficiency, functionality and the protection of human rights.

Second, in addition to the use of 'soft power,' the EU was also present as third-party observers at the different rounds of negotiations during this phase, although with varying degrees of engagement among the different European countries and institutions involved. The UK, for example, was the most actively engaged European actor, first as the Chair of the EU rotating presidency (there was in fact a dual chair of the negotiations until mid-January, namely the US and the EU) and later in a national capacity. As the UK Ambassador stated, when the US decided to take over the work of Donald Hays, "That's when my involvement got much bigger as a representative of the presidency of the EU... I received an invitation of the US to be formally involved in the negotiations."[1000] The Austrian Ambassador also became involved as the new holder of the Presidency of the EU, although his participation was never as active as that of the British Ambassador. Some additional European institutions such as the European Commission and the CoE were involved before the breakup of multilateral negotiations, but their role was secondary. As a US official said, the UK was the most assertive and engaged country within the EU, although "the Commission and the Austrian Presidency were also very supportive of the process."[1001] European actors were also active on a bilateral basis. Indeed, European ambassadors were committed to meeting with party leaders individually. "You had for instance the Germans talking to the Croats, and then talking to me directly about those meetings. The British talking to the Serbs, of course the Americans talking to all of them. Yes, truly there were lots of people talking to lots of actors in order to stimulate the sense of inevitability."[1002]

[1000] Author's personal interview with Matthew Rycroft. Sarajevo, 7 June 2007.
[1001] Author's personal interview with a Western diplomat. Banja Luka, 12 June 2007.
[1002] Author's personal interview with Donald Hays. Washington, D.C., 29 July 2006.

The EU's divisions and ambivalence, however, showed the EU's inability to effect an impact on the negotiations beyond the role of the US. The EU's ambivalence stemmed from two factors. The first factor was related to Bosnia-specific integration-related issues, namely the overlap of constitutional reform with other reform processes.[1003] This overlap was significant in two respects. On the one hand, the excruciating experience with police reform – where the set-up of specific standards and the failure of compliance often threatened to paralyze the process – made Europeans wary about both setting new standards that could lead to a similar outcome and engaging actively in the negotiations. The process of police reform – which was intimately associated with the work of the OHR and the EUSR – thus created a situation in which the application of conditionality, meant to provide incentives for compliance, had the unintended consequence of delaying reforms and blocking the broader integration process. This situation, as the Director of the European integration office in BiH Oman Topčagić suggested, prompted the EU to think in a different way about setting new conditions.[1004] In fact, with European credibility at stake with police reform, the EU became averse to the idea of bearing responsibility for another reform process whose highly divisive nature ran the risk of following the fate of police reform.[1005] On the other, there was a concern that constitutional negotiations would undermine the evolution of other critical reform processes, such as police restructuring and the signing of the SAA.[1006] As SDS party leader Dragan Čavić noted, the EU "thought that the change of the constitution was

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[1003]   There were also some broader integration-related issues at play, namely the lack of a clear legal foundation on how to address constitutional issues in the accession criteria and *acquis communitaire* (the EU has always had a strict policy of domestic ownership in constitutional matters). As a European official stated, the challenge of constitutional reform, as in the case of police reform, was to come up with standards that did not exist in the EU (author's personal interview with European official. Sarajevo, June 2007). Similarly, Michael Humphreys stated, "We just implied that at some state [constitutional reform] would be necessary, that Bosnia needed to be have an efficient state, that it was important for the country ...There were some elements that were very straightforward, those needed for the CoE membership, but there were other issues, the issue of efficiency, for example, that were more difficult to operationalize" (author's phone interview with Michael Humphreys, 15 April 2009). In this respect, the issue of constitutional reform suffered from a similar ailment plaguing political principles contained in the Copenhagen criteria, namely unclear operationalization as a result of unclear legal foundations in EU law and the extensive diversity in EU practices (see Sasse 2005 for a discussion on the issue of minority rights). Two additional criteria made operationalization more challenging, namely the EU's emphasis on principles of domestic ownership and democratic legitimacy in this area; and the overlap of constitutional reform with other reform processes that set a mixed precedent in the use of standards.

[1004]   Author's personal interview with Osman Topčagić. Sarajevo, 2 July 2007.

[1005]   Inferred from author's personal interviews with both domestic and external actors involved in the negotiations.

[1006]   See developments on police reform in the fall of 2005 in Chapter 5, p. 201-202.

not a priority. The commission was focused on the beginning of negotiations [for the signing of a SAA], and looked on the constitutional negotiation as a potential danger that could jeopardize the success of reforms already started."[1007]

The second factor related to divisions between the EU and the US in the way negotiations were being conducted at the time. Although these differences did not affect the outcome of this phase, Europeans felt that the US had taken the wrong approach. They felt more comfortable with a low-key process that minimized risks in case of failure. As Humphreys stated, "I never fully understood why the US took over. It was a mistake; not the best way to proceed. Hays was putting the appropriate pressure. But then the US came in, and Hays was sidelined ... The Americans turned this into a major issue and when it failed it was a major international crisis."[1008]

Europeans were also critical of the forcefulness of the US approach; they feared that the US would impose a solution instead of letting domestic forces reach an agreement on their own.[1009] As Donald Hays noted, "Europeans wanted the Bosnians to actually do this, in their own terms, and the US was much more interested in having an outcome,"[1010] which sometimes came to be seen as the US trying to impose solutions. In this respect, a European diplomat argued that the way the Americans got involved was not right; "It felt like this could be Dayton II but people need to feel this is their constitution, otherwise it would be artificial."[1011] In addition to its forceful approach, the US engaged in a rather exclusive third party role, allowing for little participation among other external actors.[1012] The goal was to avoid any interference that could threaten to unravel the process, but this left some internationals feeling excluded. The HR, for example, was totally excluded until the very end.[1013]

European concerns over the issues described above affected the EU's

[1007]   Author's e-mail interview with Dragan Čavić. January 2008.
[1008]   Author's phone interview with Michael Humphreys, 15 April 2009.
[1009]   EU Commissioner for Enlargement Olli Rehn gives a speech in Sarajevo in which he says, "I welcome the emerging consensus among Bosnian political party leaders on the need to make changes to the Constitution. This is a key reform, and it is you, the people of this country and their representatives, who have and must have the ownership" (Rehn 2005b).
[1010]   Author's personal interview with Donald Hays. Washington, D.C., 29 July 2006.
[1011]   Author's personal interview with Didier Chassot. Sarajevo, 1 June 2007. Other European officials expressed a similar view (author's personal interviews with Western diplomats. Sarajevo, May-July 2007).
[1012]   In fact, some Western diplomats believed the US was trying to pull away major external actors in order to avoid any interference. This worked to achieve a successful outcome during this phase.
[1013]   A Western diplomat suggested that the US did not want to involve the OHR because of this office's links to the failed police reform (author's personal interview with Western diplomat. Sarajevo, June 2007).

performance during this phase. Firstly, it undercut the ability of the EU to frame the process of constitutional reform more clearly within the framework of EU integration in Bosnia, undermining the potential of its carrots and sticks. As a case in point, European officials in Bosnia thought in early 2005 that if negotiations progressed under the leadership of Hays, the EU could be ready to frame the concept of constitutional reform more clearly into the process of EU integration,[1014] but direct links between the processes were never set up clearly. Indeed, although the EU used its soft power to elicit a sense of inevitability among domestic actors, the process of constitutional reform never featured as a direct condition.[1015] Austria's Ambassador, for example, asserted in an interview in January 2006, "The EU has never said that successful implementation of constitutional reforms is a pre-requisite for the negotiations on SAA. Efficiency, functionality, respect for human rights are three items that EU Enlargement Commissioner Olli Rehn has stressed recently."[1016] In sum, as a Western diplomat put it in a personal interview, "at one point [the EU] would say that constitutional reform was important but that police was the condition, which led people to feel that what was mandatory was police reform and that constitutional reform was not that important."[1017]

Secondly, the EU's ambivalence, mostly the result of its aversion to risk, also precluded the EU from playing a more active role as a third party during this phase. As Humphreys explained to the author, although he was not happy with the US approach, he never thought that the EU should have taken over the process; he was against turning the process into a major issue, fearful of the risk of failure. The major problem with this approach was that domestic actors perceived the EU's ambivalence and aversion to risk; some felt that the EU was not fully committed, which undermined the final and more critical phase of the process.[1018] SBiH high-ranking official Beriz Belkić, for example, argued, "Even though the Venice Commission was one of the legal authorities, they [EU] were very shy during the negotiations once the US took over... They were all in the shadow of the American

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[1014]   Author's personal interview with Donald Hays. Washington, D.C., October 2007.
[1015]   Even if the EU had tied the process of constitutional reform to the signing of an SAA, it might have been rejected anyway, given local politics.
[1016]   Cited in E. Medunjanin. "We shall consider liberalization of visas in March." *Vecernji List,* p. 8. In OHR, BiH Media Round-up, 26 January 2006.
[1017]   Author's personal interview with Western diplomat. 12 June 2007.
[1018]   Author's personal interviews with party officials. Sarajevo, May-July 2007.

Ambassador."[1019] SDA leader Sulejman Tihić stated, "We all got the letters of support ... but they failed to be more engaged and do what they were supposed to do. [There was] no decisive position. I felt it was not a sincere support."[1020]

6.6. CONCLUSIONS

This chapter has focused on the prominent role of external actors, particularly the US. It argues that the second phase of constitutional reform was successful thanks to powerful and vigorous mediation by the US, based on a framework of direct trade-offs in a relatively undisturbed environment. These dynamics affected inter-group relations in a way that conflict regulation at the inter-ethnic level was made possible despite the existing divisions between the EU and the US and the secondary role played by the EU during this phase. Intra-ethnic developments did also contribute to making the agreement possible, particularly the lack of serious political threats at the intra-party level.

Three key considerations can thus be drawn from this chapter's discussion. First, the promotion of direct contacts at the inter-ethnic level in contexts of mutual distrust is key for engaging domestic actors in patterns of inter-ethnic cooperation and conflict regulation. Indeed, in Bosnia, the establishment of a direct line of communication between the major party leaders allowed these leaders to find a mutually satisfactory solution based on direct trade-offs.

The second consideration relates to the role of outbidding dynamics. Established works on conflict regulation[1021] have argued that the threat (or reality) of counter-mobilization to a party's moderate overture within a specific segment runs counter to practices of inter-ethnic accommodation. This chapter has shown, however, that party leaders may be willing to engage in conflict regulation practices, irrespective of the dangers posed by the politics of outbidding when a set of factors at the inter-ethnic, intra-ethnic and supra-national levels are in place. In the context of constitutional reform, these factors included guarantees by external actors to the groups involved, favorable intra-party conditions (particularly the absence of serious challenges to the

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[1019]   Author's personal interview with Beriz Belkić. Sarajevo, 19 June 2007.
[1020]   Author's personal interview with Sulejman Tihić. Sarajevo, July 4, 2007.
[1021]   See for example Nordlinger 1972; Horowitz 1985; Gagnon 1995; Mitchell 1995.

leader's position) and the moderate terms of the agreement reached, which made it easier for party leaders to sell the compromise within their own ranks. This suggests that specific dynamics at the inter-ethnic, intra-ethnic and supra-national levels may counterbalance the effects of outbidding and provide incentives for party leaders to engage in conciliatory behavior.

Finally, during this phase, the role of the EU was rather secondary. Indeed, despite the fact that the EU enjoyed far greater sticks and carrots than the US, it proved hesitant to engage actively in the process. The EU also became somewhat critical of the US. Notwithstanding these divisions, the decisive US mediation overpowered the disruptive potential of in-house divisions within the international community.[1022] These minor differences will, however, become more problematic in the next phase of the negotiations, when the package is put in the public domain and is considered by the parliament and more political groups become involved.

[1022]   This suggests that divisions within the international community may be counterbalanced by a vigorous external actor such as the US during constitutional negotiations. The agreement reached was, however, too delicate given its exclusive nature, and unraveled in the phase that followed.

CHAPTER 7

CONSTITUTIONAL REFORM III:

INTRA-ETHNIC DIVISIONS AND
THE FAILURE OF THE CONSTITUTIONAL AGREEMENT

7.1. PHASE III: PUBLIC DISCUSSIONS IN PARLIAMENT

The third phase of constitutional reform began with the referral of the constitutional package to parliament on March 30, when a new set of dynamics developed. While external actors such as the US and EU member states increased pressure significantly through direct lobbying, politics at the intra-ethnic level acquired a new dimension that resulted in the failure of the constitutional process on April 26. Indeed, the package agreed upon by party leaders in March 2006 was strongly contested by various groups in the House of Representatives, including the Croat caucus, SBiH deputies and other independents such as the Serb radicals.[1023] These forces comprised a majority in the Commission of Legal and Constitutional Affairs (CLAC), the House of Representatives body authorized to review the initiative and, based on a majority vote, to deny or approve its advancement to the House of Representatives for a broader public discussion.[1024] The first hurdle the agreement faced upon arriving in parliament was thus a heated debate within the CLAC.

Signs that the agreement would overcome this first hurdle in the House of Representatives were not encouraging, many Western diplomats maintained in personal interviews. Not only was a majority of CLAC members opposed to the agreement, but they had no say in its content. Party leaders had requested that no

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[1023]   The agreement needed 28 affirmative votes to pass in the parliamentary assembly (constitutional reform required a two-thirds majority). At the time of its transfer to parliament, it only counted twenty-four votes, including the votes of ten deputies from the SDA, five from SDS, three from SDP, three from SNSD and one from PDP. Only one of the four HDZ deputies declared to be in favor of the package. Other independents, such as Djedović and Komsić were also in favor. On the opposition, there were four HDZ members, six deputies from SBiH, one from BOSS, and other independents such as Ivo Lozančić, Sead Advić, Timohir Gligorić, Petar Kunić and Mirko Blagojević.
[1024]   Members of the commission may introduce amendments as deemed appropriate.

amendments be made, given the delicate balance that held it together. It was an 'all or nothing' deal and parliamentarians felt, understandably, railroaded.

The tone of discussions at the CLAC was embittered from the start. HDZ and SBiH representatives refused to support the package without substantial modifications to key clauses.[1025] Following intense public debates on April 12 and 18, the package was finally accepted with the support of the radical Serbs[1026] and the opposition of SBiH's Beriz Belkić, SDU's Nijaz Duraković, and former HDZ party members Martin Raguž and Filip Andrić. The final text was approved by a majority at the CLAC on April 19, with four minor amendments (out of fifty-one that were presented) and some technical addenda. The package was forwarded to the House of Representatives, for a final vote before May 4, the official deadline for the October elections to be called.

It was at this time that frenetic lobbying began. Both external and domestic actors (including key European Ambassadors, EU officials such as the EU Foreign Policy Chief Javier Solana, EU Commissioner for Enlargement Olli Rehn and Head of EC Delegation Michael Humphreys, the OSCE and CoE representatives, US officials, and the High Representative) engaged in an intense campaign of inducements and persuasion aimed at cajoling key deputies into supporting the amendments. Head of EC Delegation Michael Humphreys said they used EU inducements and CoE post-accession obligations to persuade parliamentarians to support the agreement: "We told them that they needed to become an efficient country and to be able to meet their financial obligations. We also used the Council of Europe obligations, like the election of the presidency. There was also the argument of getting the country to work, efficient, for European accession, even if the condition was not explicit."[1027] Austrian Ambassador to BiH Werner Almhofer recalled in a personal interview, "There was a lot of calculation by all sides, about

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[1025]   Some of the proposals brought forward included an initiative aimed at eliminating entity voting (supported by both HDZ and SBiH) and another aimed at eliminating the role of the Constitutional Court in the vital national interest process (the latter put forward by the Croat members).
[1026]   See OHR, BiH Media Round-up, 20 April 2006. UK Ambassador Rycroft argued that it was thanks to RS President Čavić that Serb radicals were finally convinced to vote in favor of the amendments; "Despite the fact that these deputies were not from the SDS, Čavić had this leverage as president of RS" (author's personal interview with Matthew Rycroft. Sarajevo, 7 June 2007).
[1027]   Author's phone interview with Michael Humphreys, 15 April 2007. Head of EC Delegation Humphreys stated, "The US then used substantial threats and invested a lot of capital" (*ibid*).

which deputy will be splitting off,[1028] things like that. So there was this kind of targeting approach. European members also participated, as well as the HR, who also lobbied in the parliament until the very last moment."[1029] Schwarz-Schilling confirmed in a personal interview that he held discussions with parliamentary deputies; "I talked to leaders, one to one, Ljubić, Raguž, and others... I made personal contact in the parliament."[1030]

In the midst of this frenetic activity, parliament held a 15-hour public debate on the package on April 25. In addition, new proposals and initiatives were put on the table, further fueling the turbulent discussions. Some of them called for rescheduling the elections;[1031] others aimed to alter the basic terms of the agreement,[1032] including the elimination of entity voting. All these proposed changes were rejected, and opposition parties remained entrenched in their position. As SBiH's Belkić stated:

> "We said, we accept the council of ministers, the parity reform, we also
> accept that the council of ministers cannot make decisions with at least
> one representative of each group. We accept two houses with House of
> Peoples deciding about vital interest. We also accept the article 13 of the
> new vital national interest veto definition, which said that any other
> question could be a vital interest and takes only 1 club to invoke it. And
> we accept a three-member presidency that is rotating and decided by
> consensus. But we thought that in the House of Representatives, they
> should articulate the interests of the citizenship. We thought we had to
> lead this move. We tried to be cooperative and were ready to leave entity
> voting but for those things that were not in the authority of the state. Of
> course, we were very unsatisfied because other questions were not
> open."[1033]

[1028]   Rumors about the creation of a new shoot off HDZ party had been building up since December 2005. Expelled HDZ members Martin Raguž and Božo Ljubić launched the platform for the newly created party HDZ 1990 on March 24 (for further discussion see p. 253 of this chapter).
[1029]   All external actors, namely the Head of EC Delegation Humphreys, the OSCE representative, the OHR, the Council of Europe as well as Ambassadors of 12 countries (including the US, Austria, Canada, Hungary, France, Germany, Japan, The Netherlands, Russia, Turkey, Croatia and the UK) attended parliamentary sessions on April 25th and 26th in order to lobby deputies.
[1030]   Author's personal interview with Christian Schwarz-Schilling. Sarajevo, 10 July 2007.
[1031]   See M. Cubro. "Drama in Parliament." *Nezavisne Novine*. In OHR, BiH Media Round-up, 26 April 2006.
[1032]   One of these initiatives included a compromise to have a law rejected in parliament when all the delegates of one of the caucuses in the House of Peoples voted against it without the need to invoke the national interest, and hence avoiding referral to the Constitutional Court.
[1033]   Author's personal interview with Beriz Belkić. Sarajevo, 19 June 2007.

Similarly, Croat deputy Martin Raguž stated:

"The key reason why the agreement failed is because it was not enough for Bosnia in this phase for making central institutions functional, especially in the parliament and in the council of ministers. The maintenance of entity voting was unacceptable for us and it's not consistent with the functions that the House of Representatives should play in the system. ... Also, entity voting can be used by Serbs and Bosniaks and they don't need the House of People, they can preserve their interests in the House of Representatives. Croats cannot use this instrument. That's the key reason we didn't support the package."[1034]

In the end, all the efforts undertaken to bring all the parties into agreement over the amendments failed. Head of EC Delegation Michael Humphreys stated, "There were strong efforts to get the parliament to vote in favor; we held late night meetings, outside and inside the parliament to persuade them, with individuals and in groups.... And then we also dealt separately with [SBiH's Haris] Silajdžić. But Silajdžić was impossible to move. I spent hours talking to Silajdžić but I could not get his position changed. We just didn't manage to get his position changed."[1035] Similarly, UK Ambassador Rycroft stated in an interview, "We lobbied a lot, and the OHR too, but you could also see members of SBiH doing the job. They worked the parliament quite effectively."[1036] Indeed, despite heavy arm-twisting by external actors, the package was finally rejected at midnight on April 26, falling two votes short of the two-thirds majority needed for passage. Both Croat and SBiH deputies refused to accept what they considered 'cosmetic changes,' arguing that the proposed changes were meant to accommodate RS to the detriment of both Bosniaks and Croats; incidentally, Serb radicals opposed the package on the belief that it would mean the elimination of RS. In addition to the negative votes from SBiH, the Croat caucus in the House of Representatives[1037] and the Serb radicals, other independent deputies

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[1034]   Author's personal interview with Martin Raguž. Sarajevo, 5 July 2007).
[1035]   Author's phone interview with Michael Humphreys, 15 April 2009.
[1036]   Author's personal interview with Matthew Rycroft. Sarajevo, 7 June 2007.
[1037]   SBiH deputies included Beriz Belkić, Nijaz Duraković, Mehmed Suljkanović, Adem Huskić, Azra Hadžiahmetović and Senija Kapetanović. The deputies of the Croat Caucus who voted against included Vinko Zorić, Martin Raguž, Ruža Sopta, Filip Andrić and Ivo Ložančić.

rejected the package. These included independent Sead Avdić, Republican Mladen Potočnik, SRS deputy Mirko Blagojević, BOSS deputy Muhamed Moranjkić and finally a deputy from SDA, Mehmed Žilić[1038], who shocked his party members two days before the vote by declaring he would vote against it. Negotiations thus collapsed and the international community took a step back.

Following the outright failure of the package, attempts were made to revive the process. In a letter sent to HDZ leader Dragan Čović, for example, Head of EC Delegation Humphreys stated, "It is clear to all that the process of constitutional changes must continue, not only because of the BiH's European future, but to ensure that the fundamental democratic rights of citizens are fully respected and that BiH state functions."[1039] It was, however, unclear what direction the process would take after the failure in parliament. Several proposals were brought to the table, but none enjoyed sufficient consensus. Some voices expressed a willingness to further negotiate the agreement to prepare it for parliamentary approval, but Serb parties refused to further debate the previously agreed text.[1040] SNSD instead proposed creating a process of constitutional reform within parliament that would start in March 2007 and be completed by the end of the year. According to this proposal, parliament would form a commission comprised of representatives from all the parties as well as an international representative that would be charged with drafting changes.[1041] Other forces, however, continued demanding that the agreement be put to another vote in parliament without any changes. SDA's Sulejman Tihić, for example, traveled to the US in early May in an attempt to garner US support for such initiative.[1042] The trip resulted in a meeting at the US Ambassador's residence in Sarajevo on May 23 with all of the supporting parties (namely the SDA, SDP, HDZ,

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[1038]   It is unclear why Žilić (a former advisor to SDA leader Sulejman Tihić) voted against the constitutional changes. He used pure nationalist arguments in public statements following the failure of the constitutional changes. As he stated in a personal interview, "It is very important to understand is that if the April package had passed, RS would have been accepted and legalized. And Dayton was an unjust agreement. The Serbs would have fulfilled their war aim, because this was their goal. I would never do this for Bosnia" (authors' personal interview with Mehmed Žilić. Sarajevo, June 2007). Some analysts have suggested that Žilić's nationalist rhetoric was purely instrumental; and that his opposition to the April package was based on a deal with SBiH.

[1039]   "EC Delegation Head Humphreys Sends Letter to HDZ President." *Bosnia Daily* 1244, May 4, 2006, p. 5.

[1040]   "Negotiations on Constitutional Changes Possible after the Elections: Dodik." *Bosnia Daily* 1251, May 15, 2006.

[1041]   "Constitution May be Changed by 2008." *Bosnia Daily* 1256, May 22, 2006, p. 2.

[1042]   "USA Feels Constitutional Changes Should be Adopted." *Bosnia Daily* 1251, 15 May 2006.

SNSD, SDP and SDS) to discuss options and prospects for the agreement.[1043] But no agreement on having the package submitted again to parliament was reached.[1044] Party leaders, however, signed a joint statement reiterating their support for the constitutional agreement and committing to the continuation of the negotiations after the elections.[1045] Both the intractability of opposition parties and the start of the electoral campaign convinced domestic actors that the best option was to resume talks after the October elections.

7.2. ANALYSIS OF PHASE POINT III

7.2.1. Intra-Ethnic Dynamics

It is in the last phase of negotiations that intra-ethnic infighting and outbidding dynamics became more pervasive, leading to a situation in which conflict regulation was made impossible despite heavy external pressure. Intra-ethnic dynamics played differently within each of the three communities, however. As already discussed in Chapter 6, in contrast to the situation of Croats and Bosniaks, where intra-ethnic divisions led to the disruptive politics of outbidding, the reform-oriented SDS leader Dragan Čavić managed not only to isolate hardliners within the party[1046] but also to prevent them from outmaneuvering moderates during the second and third phases of negotiations. This was achieved thanks to a carefully crafted dual strategy. The first part of this strategy included a partnership with the international community, whereby Čavić would be supported in its efforts to reform the party from within,[1047]

[1043]   "Leaders of Six Political Parties Meet in US Residence." *Bosnia Daily* 1258, May 24, 2006.
[1044]   Opposition parties continued to express their rejection to the package and Serb parties were unwilling to further discuss it.
[1045]   OHR, BiH Media Round-up, June 20, 2006. The parties met again on June 19 on the residence of the HR Schwarz Schilling to discuss the direction of constitutional reform. The HR announced that he would take a more prominent in the next phase of negotiations.
[1046]   HDZ's leader Dragan Čović did this too, but the other way around. He did it at the party apparatus but those members kept important positions in parliament.
[1047]   Hays and other Western diplomats confirmed in personal interviews that the international community was ready to assist Čavić in his purge of the party. In fact, Čavić reached an agreement with Ashdown to accept the European concept of police reform while the international community would reverse some of the dismissals of SDS officials, especially those loyal to Čavić. Indeed, HR Ashdown reversed on 4 November more than 20 dismissals of SDS officials prior to the SDS Convention in November 2005. See OHR decisions in November 2005, available online at: http://www.ohr.int/decisions/archive.asp?m=&yr=2005 [accessed on April 20, 2009].

removing hardliners from key positions at both the party and government levels (although hardliners kept important pockets of influence at the municipal level in Eastern RS).[1048] As some local officials and Western diplomats asserted in personal interviews, Čavić knew that SDS could only survive by gaining the confidence of the international community and purging itself of hardliners. The goal for Čavić (and also for Serb parties) was thus to show the international community that RS was doing its homework (taking the old guard out of the picture) in order to avoid isolation, which would damage the party's status in the long run.

The second part of the strategy included an alliance with SNSD's Milorad Dodik.[1049] This alliance, which the PDP joined at a later stage, had a profound impact on the conduct of the negotiations, given the united Serb front presented during the negotiations. Indeed, as expressed by various sources, SDS, SNSD and PDP kept a rock-solid, unified position during the entire constitutional reform negotiation process,[1050] in stark contrast to the other ethnic groups. As Meghan Stewart asserted in a personal interview, "The Serb contingent was always organized as a group; they actually agreed on things [and] presented a united front,[1051] whereas the Bosniak group could not do that."[1052] Similarly, Hays stated, "The biggest problem was, of course, that there was a united Serb position on almost everything and there wasn't even a single position on any issue among the other parties. As a matter of fact, of the five other parties we had six positions. Five people and six positions."[1053]

While Serb parties stayed firmly united over the constitutional changes, a rather visceral squabble developed within the ranks of the Bosniak and Croat

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[1048]   Although Čavić's intent to transform the party into a moderate force with the assistance of the international community may have been genuine, following a different path would have likely resulted in the disappearance of SDS as a political party or its transformation into a pariah party (see Dragan Stanimirović. "Republika Srpska: Shuffling the cards." *Transitions Online*, 20 January 2006).

[1049]   These developments are explained in Chapter 5.

[1050]   This strategy consists of putting group loyalty over intra-party interests and presenting a united front in the face of threats to the groups' interests (Mitchell 1991). Although such a defensive strategy has, according to Mitchell, the risk of "losing votes due to a less competitive and hence less mobilizing election" (*Ibid*, 81) Dodik's position as prime minister since the early 2006 gave him leverage to launch a rhetorical, nationalist campaign after the failure of constitutional reform that counterbalanced the potential demobilizing effects associated with the group strategy adopted throughout the process of constitutional reform and in the run-up to the elections.

[1051]   It might be possible that Serb strategy in presenting a united, constructive platform on constitutional reform, was intertwined with the process of police reform. Serb parties might have considered that engaging constructively in constitutional reform would provide them further room in negotiating the parameters of the police reform debate.

[1052]   Author's personal interview with Meghan Stewart. Washington, D.C., August 2006.

[1053]   Author's personal interview with Donald Hays. Washington, D.C. 29 July 2009.

communities.[1054] This disagreement flared up during the last stage of the process. Indeed, neither the SBiH nor the Croat caucus in the House of Representatives supported the amendments, and built their platform for the October 2006 elections around their opposition to the constitutional package and the vilification of party leaders who supported it. The intra-ethnic fighting was thus aggravated by the proximity of the 2006 elections and a desire to exploit the opportunity to define electoral platforms along basic 'yes' and 'no' lines in relation to the constitutional process under way.

The last phase of the process provides evidence of the political game played by political actors seeking to unseat the parties in power, namely the SBiH and the shoot-off party HDZ 1990. As a case in point, expelled HDZ official Božo Ljubić launched the platform for the newly created party HDZ 1990 on March 24, defined in opposition to the constitutional agreement signed merely five days prior.[1055] Rumors about the creation of a new party had been building up since December 2005. The ultimate decision, however, was made on March 20, two days after the constitutional agreement was signed, at a meeting with HDZ deputies of the Federation and BiH parliaments.[1056] Although HDZ 1990 was formed by some of the most prominent moderate figures within HDZ, such as Martin Raguž, the newly created party adopted a somewhat more nationalist platform. This conservative platform was clearly a strategy for a differentiation from Čović's HDZ; it was also a call to the increasingly dissatisfied conservative sectors of the Croat community whose frustration had mounted as a result of Čović's negotiated constitutional reform. At the same time, the deputies of the Croat caucus in the House of Representatives, namely Vinko Zorić, Martin Raguž, Ruža Sopta, Filip Andrić and Ivo Lozančić, announced the end of the HDZ-Demo Christians Caucus and the creation of a new Croat caucus defined by opposition to the constitutional reform process. Criticism of the HDZ and its role in constitutional reform intensified, and Čović was accused of betraying the interests of

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[1054] The Croat community was divided over electoral lists and positions of influence rather than long-standing ideological fights over the spiritual leadership of the community (as in the case of the Bosniak community).

[1055] The second session of the Initiative Board of HDZ 1990 – comprised of Ljubić, Raguž and Zorić –held the inaugural assembly on April 8, during which Ljubić was elected acting party Chairman and the rejection of the constitutional changes were reiterated (OHR, BiH Media Round-up, 9 April 2006).

[1056] See OHR, BiH Media Round-up, 24 March 2006. Some sources suggest that the creation of the new party had the support of Croatia Prime Minister Ivo Sanader (ibid, 27 March 2006; 9 April 2006), who disagreed on many fronts with Čović.

the Croat people and of bowing to pressure from external forces because of his indictment.[1057]

The Catholic Church also played a critical role, adding fuel to the highly charged climate by criticizing and vilifying the agreed package as well as supporting and legitimizing the newly created party. Cardinal Vinko Puljić stated on March 12 in Citluk, "Nobody can sign something that is against me and my people in the name of the Croats. I expect that all those involved in the signing of the changes be responsible and not sign something that is detrimental to the people ... I guarantee that I will stand up against the changes that are detrimental to the Croats whoever signs them, I will call on people to fight against injustice."[1058]

The Catholic Church thus fueled nationalist rhetoric and confrontation, greatly radicalizing the Croat position. At a Conference of Bishops on March 22, for example, the national Catholic Church not only rejected the package but also denounced it as a confirmation of ethnic cleansing and divisions in Bosnia.[1059] Conference participants denounced the undemocratic nature of the process and the unequal treatment for Croats. Some members of the Catholic Church, such as Puljić, made even more explicit appeals against the process through the use of wartime references (while the HDZ 1990s cultivated a more moderate nationalist platform, pointing to the loss of power by Croats in the new amended constitution). Right before the vote in parliament, Puljić accused both Americans and British of supporting those forces with an interest in 'clean' territories and expulsion.[1060] In addition to its rhetoric, the Church became actively engaged in opposing the reform process. Two weeks before the vote in the parliament, a letter was sent to churches throughout the Federation delineating a very clear position on the so-called April Package, according to sources from the OHR; "It basically said that voting in favor of the amendments would damage the welfare of this country and the welfare of Croats."[1061] The Church's role in undermining the process in its last stages was

[1057]   In the view of Croat opposition parties, Čović's bargaining position was always compromised by his criminal charges, providing external forces with a critical leverage tool to make him accept compromises that otherwise he would have not accepted (See OHR, BiH Media Round-up, 20 March 2006).

[1058]   Quoted in Ljiljana Vidačak. "Cardinal stands up against agreements on constitution." Dnevni List. In OHR, BiH Media Round-up, 13 March 2006.

[1059]   See OHR, BiH Media Round-up, 23 March 2006.

[1060]   Jožo Pavković. "We are chased by Americans and Englishmen." Vecernji List. In OHR, BiH Media Round-up, 15 April 2006.

[1061]   Author's personal interview with Christian Schwarz-Schilling. Sarajevo, 10 July 2007.

prominent, and provided a *raison d'être* for the emergence of the newly created party HDZ 1990.

On the Bosniak side, similar developments took place with the SBiH and some extremist forces within the SDA. Indeed, on February 22, members of SBiH, SDU and BOSS announced the creation of a Patriotic Bloc (under the leadership of Silajdžić) to confront the ongoing constitutional process, and they accused Tihić and SDP's Zlatko Lagumdžjia of deceiving citizens and of joining in a coalition with SDS and SNSD.[1062] The SDA and the SDP were vilified by the Bosniak opposition, while parties of the Patriotic Bloc – as well as other forces such as the Association of Veterans – strongly criticized the agreed package and the leaders that supported it. SBiH's Safet Halilović, for example, stated in March that the changes agreed upon by party leaders "practically ensure special status for RS, as a state within a state."[1063] Furthermore, when the final vote in parliament drew near, SBiH party officials engaged in frenetic lobbying against the package at the House of Representatives.

The role of religious authorities in the Bosniak political scene was more ambivalent than in the case of the Croat community, except towards the end of the process and in the run-up to the elections. On the one hand, the supreme body of the Islamic Community (*Rijaset*) passed a resolution on constitutional changes on March 28 supporting a step-by-step approach, pushing the Patriotic Bloc to soften its criticism.[1064] On the other hand, prominent figures within the Muslim community such as Reis-ul-ulema Mustafa Cerić, the greatest and most influential religious authority among Bosnian Muslims, became increasingly supportive of Silajdžić and his electoral platform as negotiations progressed. In a ceremony marking the anniversary of the Gazy Husrev-Beg Moslem Secondary School, Mustafa Cerić expressed support for Silajdžić as the future head of the state so that a new constitution with no entities could be written.[1065] While his support was rather ambivalent at this juncture, it solidified as negotiations progressed, even more so in the run up to the elections in October 2006. In the end, Tihić, who held the Bosniak presidency at the time, lost the post to Silajdžić in the October elections after a highly

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[1062] A. Maagić. "Tokić: Intensively, We Are Establishing Block of Patriotic Forces." *Dnevni Avaz*. In OHR, BiH Media Round-up, 23 February 2006.
[1063] Safet Halilović, cited in OHR Media Round-up, 20 March 2006.
[1064] See "The Best Cannot Come Out of Bad at Once." *Dnevni Avaz*. In OHR, BiH Media Round-up, 29 March 2006.
[1065] OHR, BiH Media Round-up, 8 January 2006. See also "BiH Will Fall Apart if Silajdžić Became President." *Nezavisne Novine*. In OHR, BiH Media Round-up, 10 January 2006.

polarized campaign that vilified him along with other supporters of the constitutional agreement.

7.2.2. Supra-national Dynamics

Although external actors increased their activity significantly during this phase, they generally failed to counterbalance the dynamics associated with intra-ethnic competition. Two key factors account for the failure of external actors to provide incentives at the intra-ethnic level, including (1) neglect of the ethnic dimension throughout the constitutional reform process; and (2) a set of process-related shortcomings that aggravated the problems associated with intra-ethnic competition, namely the ambivalent role of the EU, divisions between the EU and the US, and process-related deficits such as time pressure and tight deadlines.

<u>Neglect of the ethnic component</u>

The most prominent misstep by external actors during the constitutional reform process was neglect of the intra-ethnic dimension and the failure to engage all of the significant forces with a stake in constitutional reform. As UK Ambassador Rycroft stated, "There is one key thing in BiH politics: you need a two thirds majority to change things in this country, and you need to think about how to get those two thirds."[1066] External actors' efforts, however, neglected this premise and miscalculated the actual votes needed to pass the constitutional agreement. As Hays and others suggested in personal interviews, the international community always thought that the package would pass without SBiH support, provided that Croats voted in favor; but the Croat vote had been severely damaged since late 2005 with the expulsion of key members and the nationalist campaign launched by the Catholic Church. Notwithstanding signs of extreme internal divisions within the Croat and Bosniak communities, external actors made little effort to include forces publicly opposed to the constitutional process (perhaps because they had initially focused on getting the Bosniak-Serb agreement).[1067] This became a serious challenge to the progress of

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[1066]   Author's personal interview with Matthew Rycroft. Sarajevo, 7 June 2007.
[1067]   The internationals gave up on the chances to get SBiH on board, as it became increasingly clear that they had withdrawn from the process. As Hays recollected in a personal interview, "When they [parties] gathered together privately after January, the party of BiH could not be convinced that they should join the process, and they no longer took part of it after January" (Author's personal

negotiations. As Schwarz-Schilling said in a personal interview, "One of the deficits of the process was that they didn't talk to the actors that didn't like the April Package and didn't try to bring them to the table."[1068] Domestic actors agreed. An HDZ official asserted in a personal interview, "The international community only lobbied the presidents, but party leaders didn't have the majority within their own ranks... Only the Serbs had the majority in favor of the constitutional package."[1069] SNSD official Zeljko Mirjanić suggested that the international community erred by not involving key institutions such as the parliament until a very late stage; "Not all representatives of parties in parliament were included... One day all of their questions were going to be brought forward in parliament, so the parliament should have been involved."[1070]

In sum, the international community opted for a secretive elite bargain instead of a public discussion and inclusive approach. As a result of this shortsighted approach, the political agreement reached on March 18, came with insufficient support. Although there were belated attempts by some European countries to bring dissenting voices into the agreement, they came too late and they failed. As Schwarz-Schilling asserted, "I made personal contact [with party representatives] in the parliament. But I had no possibility to influence. It was too late. They had made up their mind."[1071] In the end, the international community's undemocratic approach precipitated the agreement's failure.

International Divisions

While bringing opposition forces into the process might have been difficult at any point during negotiations, additional shortcomings of external actors' efforts aggravated intra-ethnic discord. The first shortcoming was the division between the EU and the US, which undermined the credibility of external efforts in the eyes of domestic actors and proved fatal in the final phase of negotiations. There was doubt over the quality of the resulting legal product, as negotiations were being discussed by politicians who had little knowledge of appropriate legal wording, making

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interview with Donald Hays. Washington, D.C., 29 July 2006). Indeed, following various attempts to bring SBiH back to the negotiation table in February, they were no longer invited in the meetings in March 2006.

[1068] Author's personal interview with Christian Schwarz-Schilling. Sarajevo, 10 July 2007.
[1069] Author's personal interview with Mile Lasić. Mostar, 2 July 2007.
[1070] Author's personal interview with Zeljko Mirjanić. Banja Luka, 11 June 2007.
[1071] Author's personal interview with Christian Schwarz-Schilling. Sarajevo, 10 July 2007.

Europeans hesitant to have the European stamp on it; Indeed, a Western diplomat confirmed that the OHR got a bit nervous when negotiations became more serious because they had no control or say over the whole process.[1072] Although unity seemed within reach once the agreement was on the table, party officials asserted in personal interviews that external actors appeared to be competing against each other throughout the whole process. SDS deputy Mončilo Novaković stated that the international community did not have a unified position on the April Package, "because otherwise it would have been accepted."[1073] Even when the package was already on the table, domestic actors never perceived full unity; "The EU was still ambivalent, and domestic actors used this to play each other off."[1074]

International divisions reinforced the problem of domestic accountability during this phase, handing domestic parties an opportunity to block the reform process (for intra-party purposes) without bearing responsibility for the package's failure. As a SBiH official critical of the party's stand on constitutional reform asserted, domestic actors perceived the fight within the international community "and use[d] it to advance their interests and goals, be it just for the advancement of their goals or simple to buy time and do nothing."[1075] Another SBiH official stated, "There were too many approaches by the international community. You had, for example, the Venice Commission with their opinion on constitutional matters, the European Parliament, the US, different institutions and organizations with different opinions. As a result, each political leader used what they wanted to further their arguments."[1076]

This lack of domestic responsibility – and awareness of the divisions within the international community – was evident in the reactions of domestic actors only days after the agreement's failure in parliament. While some European voices suggested that the EU would apply sanctions for the failure to pass the constitutional changes, actors opposed to the package were skeptical about the feasibility and legitimacy of such actions. SBiH's Belkić, for example, declared on May 1 that the failure of the April Package could not possibly result in sanctions provided that other past failures had never brought major consequences.[1077] Similarly, SBiH's Halilović stated that if

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[1072]   Author's personal interview with Western diplomat. Sarajevo, July 2007.
[1073]   Author's personal interview with Mončilo Novaković. Sarajevo, 5 June 2007.
[1074]   Author's personal interview with SBiH official, Sarajevo, July 2007.
[1075]   Author's personal interview with SBiH official. Sarajevo, 2007.
[1076]   Author's personal interview with SBiH official. Sarajevo. 2007.
[1077]   OHR, BiH Media Round-up, 1 May 2006.

sanctions were applied, "basic principles of parliamentary democracy would be denied ... [including the] right to determine one's own destiny."[1078] (Chairwoman of the European Parliament Delegation for Relations with Southeast Europe Doris Pack confirmed in May that the EU would not change the standards for EU accession in Bosnia.[1079])

The Failure of EU Incentives: The Second Phase as Fairytale

The EU also failed to counterbalance non-reconciliatory dynamics. In fact, although the EU enjoyed far greater sticks and carrots than the US, Europe proved more hesitant than the US in engaging fully in the process.[1080] All in all, EU representatives became more active during the last phase of the process, once a final agreement was on the table. They engaged in direct lobbying and issued statements of public support, including officials such as EU Foreign Policy Chief Javier Solana, who up until that point had expressed strong reservations about constitutional reform in Bosnia.

Notwithstanding the EU's more dynamic role during the final phase, domestic actors continued to view the EU as secondary to the US. The EU's ambivalence seriously affected its credibility when it attempted to sponsor a second phase of constitutional reform, which was deemed decisive for appeasing the concerns of both Bosniak and Croat parties (as a matter of fact, HDZ leader Dragan Čović conditioned Croat support for the ammendments on a commitment to a second, deeper phase of constitutional reform). The attempt failed, however, to entice the opposition. HR Schwarz-Schilling argued that they tried to do everything they could to convince the parties of the seriousness of their proposal. The initiative was, however, undercut by the EU's inability to provide specific details. In response to demands for a clearer definition of what the second phase of constitutional reform would entail, Head of EC Delegation Michael Humphreys refused to give further information, stating that it was not the time to define what would come in the second phase.[1081] The EU's

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[1078]   See H. Orahovać. "Raising Sanctions against BiH Would Deny Principles of Parliamentary Democracy." In OHR, BiH Media Round-up, 29 April 2006. This appreciation related directly to the EU's motto of domestic ownership and no interference in internal affairs, which is intimately associated with the process of EU accession.
[1079]   See Nadja Diklić. "There Would Be No Sanctions for BiH." *Dnevni Avaz*, p. 5. In OHR, BiH Media Round-up, 4 May 2006.
[1080]   See Chapter 6, section 2 on the role of the EU.
[1081]   Michael Humphreys, cited in OHR, BiH Media Round-up, 26 April 2006.

credibility on the sponsorship of a second phase was further undermined when it offered guarantees that were not compatible for each group.[1082] While Bosniak and Croat parties envisioned rearrangement of Bosnia's internal structure as a basic premise for a second phase of constitutional reform, Serb parties made it clear that the status of RS would not be questioned.[1083] This allowed opposition parties to question and discredit the EU's initiative. HDZ 1990 deputy Filip Andrić said in early April that the second phase was a fairytale.[1084]

Process Shortcomings

Several process shortcomings also had (negative) unintended consequences on the overall political outcome, and especially in relation to intra-ethnic dynamics. The first was a failure to engage all significant social forces. The option of conducting constitutional reform negotiations at the highest political level, with hardly any involvement of public institutions and civil society, was in fact intensely discussed but was finally chosen on pragmatic grounds. "The answer to that," PDP high ranking official Branislav Borenović commented, is that "in Bosnia we still have strong leadership, strong leaders that are decision-makers. ... It is also easier to work with fewer politicians in this political structure."[1085] But sidelining non-political actors, however, created more hurdles to a successful negotiation; it not only imbued the process with a patent democratic deficit, but it also led to public misinformation,[1086] which eventually paved the way for opposition parties to play the

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[1082]   This situation contradicts classical mediation literature. For example, Stedman states that offering guarantees is a critical factor in mediation activities, although when the guarantees cannot be delivered – and this is how it is perceived by the parties involved – such guarantees may diminish the mediator's leverage (Stedman 1996, 376).

[1083]   In early March, Dodik asserted, "I have nothing against the idea of having three, five, or ten entities within BiH itself. What is clear is that the RS's existence is unquestionable" (OHR, BiH Media Round-up, 2 March 2006). Similarly, Ivanić stated, "We didn't have any problem with opening the discussion on these issues on a second phase. The question is whether you are talking about the process or the outcome. You can open discussions but how long will it take to reach an agreement on these issue is a different thing" (author's interview with Mladen Ivanić. Sarajevo, 10 July 2007).

[1084]   See F. Mioc. "Croats Are More Important than HDZ: I Shall Vote against Constitutions." *Slobododna Dalmacija*. In OHR, BiH Media Round-up, 7 April 2006.

[1085]   Author's personal interview with Branislav Borenović. Banja Luka, 12 June 2007; see also Chapter 4, p. 171.

[1086]   Only 20 percent of respondents reported to be informed about the efforts on constitutional reform (United Nations Development Programme 2007a). The Early Warning Report in early 2006 showed high levels of undecided. While around 40 percent of the population expressed some support for the changes, 33 percent were undecided and 10 percent were against (United Nations Development Programme 2006). The strongest support came from Bosniak and Croat majority areas (more than 50 percent among Bosniaks and 48 percent in Croat majority areas). The support in Serb majority areas was 27 percent; almost 20 percent were against and 40 percent remained undecided (*ibid*).

nationalistic card, to exploit the lack of democratic accountability and to undermine the legitimacy of the process.[1087] Although external forces had originally envisioned that public education efforts would take place parallel to the negotiations and enable civic participation in the constitutional reform process,[1088] there was a clear disconnect between the two efforts. Civil society activities did not fully take off until late October and early November 2005, when public discussions and the involvement of the press were in full gear.[1089] Furthermore, these discussions became disconnected from the negotiations after the US took over from the EU as lead external facilitator. As CoE Representative Tim Cartwright stated, "The Dayton project and its outreach activities did a lot, but somehow the outreach and the negotiations were never brought together."[1090]

Time pressure and tight deadlines also impeded conflict regulation at the domestic level,[1091] paving the way for negotiations to be misused and distorted for electoral purposes. Mediating efforts of external actors in the last stages of the process were affected by this in three ways. First, time constraints left little room for maneuver once the package was brought to the parliament, a situation that does not bode well in circumstances where trust is in short supply and the issue at stake is of a win-lose (zero-sum) character. As a case in point, party officials argued in personal interviews that there were in fact too many critical compromises to be reached in too short a timeframe. Martin Raguž, a member of the newly created HDZ 1990, argued,

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[1087]   Sead Numanović. "Citizens Do Not Know What Is Negotiated About." *Dnevni Avaz*. In OHR, BiH Media Round-up, 23 December 2005.

[1088]   Hays asserted that the education campaign had been tailored to accommodate for the fact that political parties in Bosnia had little experience in public relations. It was a supporting activity, to prevent vilification of the process in the media. In the end, however, "Domestic media created the idea of betrayal. ... They were condemning the process in advance when they didn't know what it was about. They decided it was bad" (author's personal interview with Sulejman Tihić. Sarajevo, 4 July 2007).

[1089]   The civil society/education campaign on the topic 'constitutional changes and local ownership' was launched in September 2005, although the preliminary phase involved discussions with key Mayors to facilitate cooperation between civil society and local politics (Dayton Project, final report, December 2005). It was only on October 24 when the first roundtable with civil society took place in Tuzla, followed by others in early December in Mostar, Banja Luka, Sarajevo and Bihać on December 20. "The aim of the roundtables were to present to the participants the problems with the current constitution of BiH and inform of possible alternatives. The participants were divided into two working groups. Working group 'A' dealt with problems of exercising of citizen's rights due to a poor legal system. Working group 'B' dealt with amending the constitution of BiH in such as way to make it compatible with the European and international instruments and how to reach an optimal solution for citizenry" (*ibid*).

[1090]   Author's personal interview with Tim Cartwright. Sarajevo, 19 June 2007.

[1091]   The decision to hurry negotiations, however, ran counter to mediation literature analysis, which suggests that agreements driven by deadlines and a sense of urgency are very likely to result in confusion and failure (Crocker, Hampson and Aall 1999, 693).

"We were faced with this take-it-or-leave-it package. The US and the parties that negotiated the package left no room for discussion and there was no political will to discuss important issues such as entity voting."[1092] Second, tight deadlines put the international community in a position of weakness. As a Western official stated in a personal interview, "there is an obsession in the international community with quick solutions and this pushes it into a position of weakness.... They could have had this approved with no time constraints."[1093] Finally, time pressures impaired appropriate planning, as previously outlined, by obstructing efforts of institutions such as the CoE and the EU to establish an appropriate forum for discussions with civil society representatives.

7.3. THE 2006 ELECTIONS

The run-up to the 2006 elections – accompanied by the PIC's announcement that the OHR would be closed on 30 June 2007[1094] – was characterized by a highly radicalized electoral campaign, not surprisingly given the heated discussions during the constitutional negotiations. Indeed, the campaign was held amidst one of the worst political climates since the war, with nationalist rhetoric and ethnic divisions reaching new levels of intensity.[1095] At the inter-ethnic level, the campaign featured highly charged language around the issue of constitutional reform and the future of the state. In contrast to previous electoral contests, however, the SDA and SDS were outflanked by the previously more moderate parties SNSD and SBiH, which exploited the ethnic card and took the leading role in the radicalized nationalist campaign.

Although nationalist rhetoric had been abundant during the constitutional negotiations, especially at the end of the process, it took on a new momentum after the failure of the package. More radical positions were adopted by the Serb and Bosniak parties, particularly the SNSD and SBiH (SNSD's radicalization contrasted heavily with its more moderate stance during the constitutional negotiations). In

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[1092]   Author's personal interview with Martin Raguž. Sarajevo, 5 July 2007.
[1093]   Author's personal interview with Western diplomat. Sarajevo, June 2007.
[1094]   Peace Implementation Council 2006b. OHR closure was made conditional upon a review in early 2007.
[1095]   On 11 August 2006, the PIC called on the parties to "to end the inflammatory rhetoric that has raised tensions in Bosnia and Herzegovina in recent days and weeks" (PIC 2006c).

contrast to previous electoral contests, in which the SDS was the prominent protector of Serb values, SNSD's Dodik emerged as the most radical defender of RS and Serb identity, with both the PDP and SDS following closely behind.[1096] As a case in point, following the Montenegro referendum at the end of May, Dodik started using the idea of a referendum for the case of RS. Domestic and international actors were dismayed by his declarations, which fueled some of the most inflammatory exchanges between party leaders in the run up to the elections in Bosnia. In addition to the rhetoric, there was a shift in the Serb strategy at the state level with a return to the obstructionism that was in evidence prior to the constitutional reform process, especially during police reform efforts. On June 2, for example, Dodik declared that Serb parties would no longer participate in the police reform directorate (the body charged with implementing the reform agreed in October 2005) as full-fledged members but merely as observers;[1097] similarly, on June 7, he declared in Novi Sad (the hardliner stronghold in RS), "We are clearly in favor of the European road, but not for the price of terminating the RS. To the theses about RS as a genocidal creation and the need for terminating it, our people have a response – referendum. There is no political structure in RS that feels differently about this."[1098] The obstructionist strategy of the Serb parties would lead to Bosnia's failure to comply with the EU's deadline on September 30 for the signing of the SAA, which would not be signed until June 2008 due to further complications in the process of police reform.[1099]

[1096]   As a matter of fact, the strategic partnership between PDP, SNSD and SDS formed during the constitutional reform process appeared to continue through the run up-to the elections. In an interview granted in September, Čavić claims that the elections were of a special nature given the international community's announced intention of closing the OHR on July 1, 2007. He stated, "Time after the elections will be divided into at least two periods. In the first period, we will participate in the final processes before the cancellation of the Office of the High Representative. During that time, all political forces in the RS will have to cooperate, in other words, a 'smart coalition' will be needed. Such cooperation can logically determine the executive power. The second period will be marked by a greater degree of freedom and affirmation of democratic values. SDS will be ready for all solutions at that moment, opposition or new elections" ("OHR Should Leave As Soon as Possible" *Bosnia Daily* 1345, 22 September 2006, p. 7).

[1097]   Dodik demanded that two requests be granted, namely: "The preservation of the RS police in the future police structures and its financing by the RS institutions, possibly from the budget which is to be adopted on the BiH level." Dodik also expected to get an extra six months to negotiate the terms of the police reform (see "Agreement with Serbia Will Be Signed." *Bosnia Daily*, 19 September 2006).

[1098]   "Dodik: if Dayton is questioned, referendum is the answer/" *Bosnia Daily*, 8 June 2006.

[1099]   The EU set up four key conditions for the signing of the SAA, namely 1) Implementation of police reform in compliance with the October 2005 agreement on police restructuring; 2) full co-operation with the ICTY; 3) adoption and implementation of all necessary public broadcasting legislation; and 4) development of the legislative framework and administrative capacity to allow for

Two additional developments fueled Serb rhetoric in the run-up to elections. First, on June 29, the CoE passed a resolution on constitutional reform in Bosnia, blaming, unexpectedly, RS parties for the failure of the process.[1100] Second, the resolution also recommended that Bosnian authorities draft a new constitution by 2010, in which entity voting would be finally eliminated. The resolution did not come with the support of the UK government, however; the British ambassador stated publicly that the resolution was more of an advisory character, adding that constitutional reform could only occur through consensus.[1102]

Following repeated references to the right of a referendum, Dodik's stance turned increasingly defiant. On August 16, Dodik stated, "There is no police reform without the RS police, and if that is a condition for breaking off SAA talks, then they can be broken off."[1103] Developments in Kosovo[1104] also provided Serb parties – encouraged by Serbia's most conservative forces[1105] – with an additional card and an excuse to appeal for a referendum in RS. In early September, Dodik stated that although they wished to stay in Bosnia, the independence of Kosovo could "strengthen the views of Serbs that they too have that right ... [and that the] basic condition for the RS to remain within BiH is that it receives assurances that domination and radical Islam will not prevail in it."[1106] By the end of June, opinion polls give SNSD strong electoral support for the upcoming elections.

SBiH's Silajdžić,[1107] who for long had sought to take over SDA's historic role as the speaker of the Bosniak community, also engaged in strong nationalist rhetoric, using ethnic anxieties and the process of constitutional reform to both confront

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proper implementation of the SAA (European Commission 2008, 5. ft. 3). Police reform was the highest priority however. The signing of the SAA was only possible when parties reached an agreement on police restructuring in April 2008, even though such agreement failed to live up to EU standards.

[1100] CoE Special Representative Tim Cartwright suggested that the resolution had been drafted with strong lobbying from SBiH's Haris Silajdžić (author's personal interview with Tim Cartwright. Sarajevo, 19 June 2007).

[1102] "Rycroft's Statement Encouraging RS Separatists: BNP." *Bosnia Daily*, 5 July 2006.

[1103] "Europe Can Wait, but RS Will Have its Police." *Bosnia Daily* 1318, 18 August 2006, p 1.

[1104] The election campaign overlapped with mediated talks on the future status of Kosovo.

[1105] While Serbia acted discreetly during the process of constitutional negotiations, supporting the Serb stance, its involvement became most disruptive in the run-up to the elections as a result of the intertwinements with the Kosovo status process. The future status process had begun officially in Vienna on 20 February 2006. The initial conversations focused on decentralization issues but no progress was made in the summer of 2006 (see UN Security Council 2006). Christophe Solioz argues that the anticipated outcome of some sort of independence "clearly undermined the negotiations" (Solioz 2006, 146) and radicalized the Serbian position.

[1106] "RS Referendum Inevitable." *Bosnia Daily* 1332, 5 September 2006, p. 1.

[1107] Silajdžić was re-elected President of SBiH at the party's convention on 20 May 2006.

SNSD's rhetoric and stand up as the defendant of Bosniak's interests. In mid-June, for example, Silajdžić stated, "I stressed that BiH needs [a] new Constitution, based on principles of modern democracy, not on ethnic principles that cement results of ethnic cleansing, genocide and aggression."[1108] Similarly, he declared in September, "We defeated Milošević and Karadžić, but, apparently, we will have to politically defeat Milorad Dodik, Vuk Drasković and others who still dream of Greater Serbia in order to protect BiH."[1109] In reference to SBiH's stand on constitutional reform, he continued to champion the creation of a civic, unitary state. As he stated a few days before the elections, "I'm just convinced that Bosnia and Herzegovina would be [a] much more comfortable and prosperous 'house' if it was organized differently: without two entrances, two kitchens, two roofs in political terms: [a] unified country without entities."[1110]

Tensions were further aggravated by internal and regional developments involving Serbia and Croatia. On June 2006, Croatia's president Ivo Sanader called on the international community to organize another international conference to change the Bosnian constitution. This statement was received with strong criticism in Bosnia, with both Serbs and Bosniaks denouncing it as an attack to the country's sovereignty. The preparations of a renewed Special Agreement between Serbia and RS also raised the tension levels between Bosniak and Serb parties.[1111] Although the agreement was carried out within the legality of the Bosnian constitutional framework, its signing on September 26, only five days before the elections, aggravated Bosniak parties, who asked the OHR to block its completion. Other internal events further fueled ethnic tensions. Indeed, in mid-August, an explosion damaged the grave of Alija Izetbegović, and Bosniak President Tihić accused Serbs of reigniting ethnic tensions in reaction to developments in Kosovo and the October elections.[1112]

Developments at the intra-ethnic level also compounded problems running up to the elections, especially within the Bosniak community. Indeed, following the failure

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[1108]   E. Sarać. "Silajdžić Demands Support from US Government for New Constitution." *Dnevni Avaz*. In OHR, BiH Media Round-up, 14 June 2006.

[1109]   "Dodik Still Dreams of Greater Serbia." *Bosnia Daily* 1333, 6 September 2006, p. 1.

[1110]   "BiH with No Entities." *Bosnia Daily* 1345, 22 September 2006, p. 8.

[1111]   Tensions were eased by Serbia's President Tadić, however. In a public statement, he said that despite Serbia's interest in strengthening relations with the RS, it had a "strategic interest" in a Bosnia that was united and stable (Economist Intelligent Unit, July 2006).

[1112]   Economist Intelligent Unit, July 2006.

of the constitutional package, divisions within the SDA between Tihić's moderate forces and party hardliners, led by Federation Deputy Defense Minister Hasan Čegnić, started to mount. Indeed, Tihić's cooperation with SDP forces during constitutional negotiations caused consternation among the members of the Islamist movement within SDA, who believed a potential coalition with the vilified SDP old guard, following the October elections (something Tihić had advocated within the party[1113]) would further undermine their power and influence within the party.[1114] Internal rifts within the SDA became evident in June 2006. As a case in point, on June 16, twenty-two SDA officials from the Municipality of Novi Grad Sarajevo left the party unanimously and joined the SBiH, declaring disagreement with SDA's policy on constitutional reform and announcing full allegiance to Silajdžić instead.[1115] Furthermore, the conflict between Tihić and Čegnić in relation both to SDA's coalition with SNSD in RS and to Tihić's rapprochement to SDP became public at the party's main board session in Tuzla on June 17. Čegnić accused SDA of being partially responsible for the failure of the RS Government to cooperate with the ICTY and demanded the withdrawal of SDA's support; Tihić remained unaffected, stating that Dodik remained the "least bad solution."[1116] Tensions mounted in the run-up to the elections, and hardliners launched an effort to undermine Tihić's bid for the elections with the intention of overthrowing him as SDA leader through a highly confrontational media campaign in one of the key Bosniak newspapers, *Dnevni Avaz*, and through a rapprochement with Silajdžić.[1117]

In the end, Silajdžić, who for long had sought to supplant the SDA as the de facto speaker and spiritual leader of the Bosniak Community, partially succeeded in the 2006 elections. But Silajdžić's victory should be understood in the context of

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[1113] See OHR, BiH Media Round-up, June 19, 2006. Both Tihić and Lagumdžjia fell short of confirming any coalition plans during the run-up to the elections. As a case in point, SDP officials stated at the party convention on July 8 that they would no longer be compelled to join coalitions with their natural partners, namely SNSD and SBiH. SDP leader Lagumdžija stated, "No one of the following – SDA, SDS, HDZ, SBiH, SNSD, PDP – would be either our coalition partner or opponent... just on the grounds of their names" (see Faruk Borić. "Goodbye Dodik, Goodbye Silajdžić – We Are Heading Europe!" *Dani* p. 36-38. In OHR, BiH Media Round-up, 14 July 2006).
[1114] Bougarel 2007.
[1115] See E.S. "Former SDA Members Supporting Silajdžić." *Dnevni Avaz*. In OHR, BiH Media Round-up, 17 June 2006.
[1116] E. Huremović. "Collision of Tihić and Čegnić over Dodik and SNSD." *Dnevni Avaz*, in OHR, BiH Media Round-up, 18 June 2006.
[1117] Author's personal interviews with local observers and Western diplomats. Sarajevo, May-June 2007; See also Bougarel, 2007; V. Selimbegović. "To whom would Alija's spirit bring victory." *Dani*, p. 18-20. In OHR, BiH Media Round-up, 19 June 2006.

SDA's fragmentation, particularly in reference to the critical support provided by factions within SDA who, having been alienated by Tihić's rapprochement with SDP and displeased with a decline in their privileges and influence within the party, urged SDA supporters to vote for Silajdžić over Tihić.[1118] Silajdžić also had the support of key members of the Islamic Community such as Reis Effendi Cerić, who raised support for SBiH "among the Federation's rural and refugee populations, which traditionally vote for the SDA."[1119] In the end, despite the fact that SBiH was only given third place among Bosniaks in opinion polls held before the elections,[1120] behind SDP and SDA, Silajdžić managed to receive more than 60 percent of the Bosniak vote in the presidential elections against SDA candidate Sulejman Tihić, who garnered 27 percent (see table 8.1). While SBiH's votes for the presidential post doubled those of the SDA, the electoral results for the parliament differed significantly. SDA's support stood at 25 percent and SBiH's at 23 percent. The 2006 elections thus turned SBiH – which up until that point had only been a minor coalition partner at both entity and state levels – into one of the leading parties at the state level.

The other winner of the 2006 elections was the SNSD, which won around 55 percent of the presidential vote on a highly radicalized nationalist platform (versus 25 percent for the SDS) and more than 45 percent at the legislative level (versus merely 20 percent for the SDS) (see table 7.1). SDS was the big loser, with domestic popularity decreasing as a result of internal divisions and the party's involvement in some irregularities associated with the privatization of public companies. In the end, the SDS, who had traditionally been the strongest nationalist party in RS, lost much of its clout to Dodik's SNSD, which clearly emerged as the leading party at the entity and state levels. At the local level, however, SDS still governed with ample margin (until the 2008 municipal elections). Following the resignation of its leader Dragan Čavić in November 2006, the SDS confirmed Mladen Bosić as President on a right-wing platform.[1121]

As for the Croat community, they continued to be in deep disarray, more so than

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[1118] Bougarel 2008.
[1119] Economist Intelligent Unit, October 2006.
[1120] See IRI survey in OHR, BiH Media Round-up, June 19, 2006.
[1121] SDS new leader Bosić stated, "We have concluded that we have turned towards the left after some time which has not been recognized by our voters and membership" (see "SDS Party Goes Right Center." *Bosnia Daily* 1538, 2 July 2007, p. 2).

ever before as a result of the newly created HDZ 1990 and the loss of the presidential post to the SDP. Indeed, the SDP's decision to place a Croat candidate for the presidency in the October elections put further stress on the Croat community, with both HDZ parties failing to garner enough support to win the Croat presidency post over the SDP. Both the HDZ 1990 and the HDZ BiH split the results and failed to keep the presidency, which fell into the hands of a Croat SDP official, Zeljko Komsić.

Table 7.1. Results of Presidential Elections, October 2006

	Party	Results
Bosniak Member	SBIH Haris Silajdžić	62.8% (350,520)
	SDA Sulejman Tihić	27.5% (153,683)
Croat Member	SDP Željko Komšić	39.5% (116,062)
	HDZ Ivo Miro Jović	26.1% (76,681)
	HDZ 1990 Božo Ljubić	18.2% (53,325)
Serb Member	SNSD Nebojša Radmanović	53.2% (287,675)
	SDS Mirko Šarović	24.2% (130,624)

Source: Bosnia and Herzegovina Central Election Commission

Table 7.2. Results of Legislative Elections, October 2006

	Party	Results	Seats
Federation Voters	SDA	25.5% (217,961)	8
	SBIH	23% (196,230)	7
	SDP	15.4% (131,450)	5
	HDZ	8% (68,188)	3
	HDZ 1990	6.1% (52,095)	2[1122]
RS Voters	SNSD	46.9% (262,203)	7
	SDS	19.4% (108,616)	3
	PDP	5.1% (28,410)	1
	SBIH	4.1% (23,257)	1

[1122] Three additional seats went to three minor parties in the Federation.

	SDA	3.6% (20,514)	1
	DNS	3.5% (19,868)	1

Source: Bosnia and Herzegovina Central Election Commission

7.4. AFTER THE APRIL PACKAGE: ELUSIVE REFORM

Even though the international community's rhetoric on constitutional changes in Bosnia became more unified after the failure of the April Package, divisions over tactics between the US and the EU not only remained but also increased significantly in the aftermath of the constitutional process.[1123] In fact, divisions between the US and the EU on the constitutional approach led to two slightly different and separate courses following the October 2006 elections, one sponsored by the US and the other by the EU. It marked the end of any joint approach to seeking change in Bosnia. The US approach was inclusive in nature, with constitutional reform representing just one facet of a larger process. The US also showed a manifest interest in putting the April Package back on the table either in its originally agreed form or 'adjusted' to the new constellation of forces resulting from the October 2006 elections. This suggested a US preference for limiting constitutional negotiations to issues that prevented approval of the constitutional package, rather than engaging in a broader constitutional debate.

In contrast, the EU's approach to constitutional reform in the aftermath of the April Package continued to be rather hands-off. Indeed, Europe's preference remained to see Bosnian politicians approve a new constitution that streamlined the process of EU accession in their own terms. As a result, little was done to overtly support the process – especially in light of the more hands-on US approach. The EU was unable to moderate domestic politicians' use of nationalist rhetoric and could not get them to engage in talks in a constructive manner. The new Head of EC Delegation, Dimitros Kourkoulas, stressed on 4 April 2007 that the EU supported constitutional discussions, but was "not going to enforce constitutional changes."[1124] The EU's approach to constitutional issues remained step-by-step, out of concern for

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[1123]   These developments are discussed in Sebastin 2007.
[1124]   "We're Near Agreement on Police Reform." *Dnevni Avaz*, p. 5, 4 April 2007. In *Constitutional Changes Monitor* no. 22, 4-11 April 2006.

the intertwinements between constitutional and other reform processes such as police restructuring, which continued to be on hold until a final agreement was reached in April 2008. Indeed, in June 2007, EU Foreign Policy Chief Solana stressed, "it is necessary to separate constitutional reform from police restructuring, as this would most likely allow for swifter overcoming of these problems."[1125] This meant a return to the positions of 2005.

As for the status of the April Package after its failure, the EU was inclined to start a broad, open-ended process from scratch rather than to reduce constitutional talks to the discussion of the April Package. There was the belief within European circles that "the US is taking the wrong approach to Bosnia's constitutional problem, by trying to breathe life into a set of proposals that have no real democratic legitimacy."[1126] Divisions within the EU remained, however. The UK, for example, was more supportive of the April Package and the US approach. In general, Europeans accepted the broader terms of the April Package but wanted to improve it. As a European official stated, "We believe that it would be good to start the whole process of constitutional change from the beginning and in a proper way and that representatives of civil society and others participate in it."[1127]

While different, both approaches were ill designed. In a meeting held with Dodik and Silajdžić in Washington DC at the end of May 2007, the Bush administration failed to reach a comprehensive agreement on a united police, a change in the name of the RS and an amended version of the April Package. Even though Dodik seemed to be willing to accept the reduced formula of entity voting[1128] and agreed to a Bosnian Serb police force coming under joint control in legal and administrative terms,[1129] "once Silajdžić realized there would be no agreement on changing the name of RS, they would not discuss anything else, not even the distribution of competences between the state and the entities."[1130] A RS government official stressed, "the problem with the US initiative a year after the April Package was that the Ambassador's idea of compromise was to reach an agreement somewhere between the April Package and centralization. They are asking us to make a compromise on a

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[1125] "Separate Police and Constitutional Reforms." *Bosnia Daily* 1531, p, 1, 21 June 2007.
[1126] S. Mustajbegović and G. Katana. "Washington Summit and Reviving Bosnia's Reforms." *Balkan Insight* no. 84, 24 May 2007.
[1127] Author's personal interview with European official. Sarajevo, May 2007.
[1128] Author's personal interview with Western diplomat. Sarajevo, June 2007.
[1129] "US Wants Bosnians to End Rift for Reforms." *The Peninsula*, 24 May 2007.
[1130] Author's personal interview with Western diplomat. Sarajevo. July 2007.

compromise. But if we are to find compromise, we go back to our starting position, Dayton, as then we can talk and reach a compromise from there."[1131] Furthermore, bringing negotiations down to the lowest common denominator (as with the process of constitutional reform) – namely the divide between Dodik and Silajdžić – and excluding key players from the political game, again sent the wrong signal to Bosnia. Right after the meeting between Dodik and Silajdžić in Washington DC, HDZ 1990 published a press release criticizing the US approach towards constitutional reform as politically unacceptable and "not productive."[1132]

Europe's approach to untangling the deadlock over constitutional reform met similar fortunes. Constitutional talks initiated by Schwarz-Schilling prior to his departure failed to garner enough support among domestic forces. EU proposals included a political agreement by which domestic actors would commit themselves to achieving initial results by the end of 2007 and final results by the end of 2009. The agreement included a willingness to commit to the following: (1) to build upon the negotiations started in 2005 on the basis that Bosnia remains indivisible; (2) to launch an open, transparent process on constitutional reform aimed at both enabling Bosnia's institutions to fulfill EU integration requirements and increasing the functionality of the state; and (3) to establish a commission within parliament to manage such negotiations, which would be fully funded by the European Commission[1133] and assisted by a series of international experts.

Despite the vagueness of Schwarz-Schilling's proposal, political divisions along the 'April Package divide' remained. SDA and HDZ leaders did not attend the meeting that was called by Schwarz-Schilling,[1134] while the leaders of SBiH and HDZ 1990 greeted and welcomed the proposal. As for RS parties, they remained united in their acceptance of both alternatives, although they expressed a preference for approving the April Package as a first step. SDS MP Momčilo Novaković stressed, "The parliamentary commission that is to be formed to reach amendments to the BiH constitution is doomed to failure from the start ... Solutions ... should be reached at the level of political leaders."[1135] Similarly, SDA's President Tihić suggested in a

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[1131]   Author's personal interview with Gordan Milosević. Banja Luka, 12 June 2007.
[1132]   HDZ 1990 press release: "Against Federalization of BiH," cited in *Oslobođenje*, May 30, 2007. In *Constitutional Changes Monitoring*, no. 30, 30 May-6 June 2007.
[1133]   Germany committed funds to set up the commission for the first year.
[1134]   SDP's President Lagumdžja left the meeting before it was called to an end.
[1135]   "Constitutional Changes Can Result Only Through Agreement of Political Parties." *Oslobođenje*, 25 June 2007. In *Constitutional Changes Monitor*, no. 33, 20-27 June 2007.

personal interview that with such an open-ended process with no specific goals laid out, the project would be doomed to fail. "Schilling had the wrong approach. If you go directly to parliament it is going to be a waste of time. You need a political agreement between the political leaders prior to that in which the status of the April Package is included."[1136] Following the same line of thought, an SDP party official stated, "the OHR agreement is very vague. It says we'll engage in negotiations but what is the idea behind it? For parties this is great, they are buying time. They can say yes now, but it gives them three years and then we will see."[1137] Furthermore, the EU's initiative started off on the wrong foot, as it was presented only a few days after US talks collapsed and only a few days before the end of the HR's term in June 2007. With such unfavorable timing, the process lacked credibility and was doomed to failure from the start. Moreover, even though the process envisaged the opening of a forum for discussion, the proposal did not take on board useful lessons from the April Package. Presenting final results right before the elections in 2010 could well keep negotiations hostage to electoral politics once again.

Recurring divisions and vacillation on the part of the international community reflected a lack of understanding of the political dynamics that led to the failure of constitutional reform during 2005 and 2006, including intra-party and intra-ethnic dynamics, international divisions,[1138] time pressures, tight deadlines, electoral cycles, and exclusion of key stakeholders. As a result, since the April Package's failure, neither the US nor the EU have succeeded in gathering all parties around a basic framework for pushing the reform process forward. They have not offered sufficient assurances to parties or laid out a set of guidelines to steer and lead negotiations. Furthermore, by providing domestic actors with alternate courses of action to select according to their interests, the international community missed the chance to offer a credible, legitimate process, and instead gave domestic politicians a golden opportunity to buy time.

Since Miroslav Lajčák took over as HR in Bosnia in July 2007, there has been little progress on the constitutional front, except for a reinforced rhetoric in favor of

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[1136]   Author's personal interview with Sulejman Tihić. Sarajevo, 4 July 2007.
[1137]   Author's personal interview with Šefik Džaferović. Sarajevo, 31 May 2007.
[1138]   As a case in point, an American official suggested that the US enter into negotiations about constitutional reform with Dodik and Silajdžić "with absolutely no effective or important carrots or sticks with which to persuade them to reach any sort of compromise. Moreover, they did so with no real coordination with the European Union" (William Montgomery. "Gravitas." *B92*, 7 June 2007).

constitutional changes. Indeed, criticism over the EU's conduct on constitutional reform in Bosnia compelled the organization to include this issue as one of the key SAP priorities for the next few years.[1139] Bosnian authorities are simply encouraged to "take measures to achieve more functional and sustainable institutional structures and better respect for human rights and fundamental freedoms, including by agreeing and adopting changes to the Constitution of Bosnia and Herzegovina, as necessary."[1140] Even if a few general guidelines are provided, along the lines of increasing parliament's technical resources and personnel and ensuring state/entity coordination, no reference is made to previous work carried out by Bosnian and international authorities, or to key constitutional deficiencies already identified by international institutions such as the Venice Commission. Furthermore, it is not clear what the status of constitutional reform will be within the process of EU integration, or whether constitutional reform will become an express condition for accession or simply a task that Bosnia will need to address in the following years with no specific timeframes.[1141]

In terms of the actual efforts, the HR Lajčák declared in July 2007 that constitutional reform would be the number one priority in the reform agenda after reaching an agreement on police reform that fall, but no results were achieved on constitutional issues by the end of his mandate in January 2009. Most of his resources were ultimately devoted to reaching an agreement on police reform, as a result of the failure to meet the deadline set by the EU in October 2007. The failure to meet this deadline led to another heated political crises in Bosnia, with outright confrontation running high not only between ethnic communities but also between Serb parties and the international community. Following the resignation of Prime

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[1139] The inclusion of constitutional reform as one of the key priority areas is based on the belief that the Bosnian constitution "prevents swift decision-making and therefore hinders reform and the capacity to make progress towards the EU" (See European Commission 2007, 7). The process of constitutional reform has also featured in the latest EU Joint Report in November 2008, clarifying the EU's position towards constitutional reform in Bosnia. It stated, "Constitutional reform is neither a requirement for OHR closure nor for BiH's further journey towards the EU. Nevertheless, the constitutional framework must evolve to ensure effective state structures capable of delivering on EU integration, including the requirement to speak with one voice. The EU can support constitutional reform with expertise and funds, but the process must be led by BiH itself" (See Javier Solana and Olli Rehn, 'EU's Policy in Bosnia and Herzegovina: The Way Ahead,' Summary Note on the Joint Report, S367/08, Brussels, 10 November 2008, Available at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/reports/103923.pdf [accessed January 2009].
[1140] Council of the EU 2007a, 6.
[1141] The priorities are based on the expectation that "Bosnia and Herzegovina can complete them or take them substantially forward over the next few years" (Council of the EU 2007a, 5).

Minister Nikola Spirić – which brought the country to a halt – over the set of measures enacted by the new HR/EUSR Miroslav Lajčák[1142] to speed up the decision-making process,[1143] Bosnian parties reached an agreement on an action plan for police reform in November 2007, putting Bosnia back on the EU track.[1144] Bosnia initialed a draft SAA on December 4 and signed the final SAA (and intensified dialogue with NATO) in June 2008, following a much delayed, watered-down agreement on police reform in April 2008[1145] that the SDA refused to support.

The SAA signing sent an important message to the international community, but nationalist rhetoric continued, especially during the run up to the municipal elections in the fall of 2008. During this period, Serb parties remained uncommitted to initiating a new process of constitutional reform. RSNA Speaker Igor Radojicić declared, for example, in mid-June 2008 that the Bosnian Constitution was not an obstacle for EU integration and that centralization of the state was inadvisable.[1146] Following similar lines, Dodik stated that no more transfer of competences from the entities to the state would take place in the future.[1147] Divisions within both the Croat and Bosniak groups have also been prevalent, and run counter to building a political climate conducive to such critical negotiations less than a year and a half before the next general elections in 2010.

The slow implementation of the police agreement since the signing of the SAA in June,[1148] and the lack of progress on the constitutional front have put a question mark on the future of the overall reform process and the sustainability of the Bosnian state. Although the PIC announced in July 2008 that the OHR would be terminated

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[1142]   HR Lajčák succeeded Schwarz Shilling in July 2007. He was in office until January 2009, when he announced his resignation. Upon taking the office, Lajčák stated that he would be more assertive in the use of his powers than his predecessor (given the failure of the latter in making headway in the reform process). Notwithstanding Lajčák's more assertive manners, he resigned expressing great frustration and disappointment in the pace of progress.

[1143]   The measures included changes and amendments to the Law on the Council of Ministers, including some procedural and quorum related matters (see OHR 2007). The crisis was attenuated in December 2007 when the HR enacted the "Authentic Interpretation of the Law on Changes and Amendments to the Law on the Council of Ministers" in close negotiations with Serb parties (OHR 2007b).

[1144]   I refer to these developments in Sebastian 2008.

[1145]   Following the signing of the SAA, an interim agreement was put in force on July 1 allowing for free access to EU markets for Bosnian goods. Bosnia will also open its market to the EU gradually following the approval of certain legislation that falls in line with EU standards.

[1146]   "EU Deal Triggers First Bosnian Disputes." *Balkan Insight*, 17 June 2008.

[1147]   He has also announced that the 50 transfers already in place will be revised.

[1148]   The implementation of the police agreement has indeed encountered many obstacles due to the lack of political will. As a case in point, the coordination mechanisms are not in place as of June 2009 (author's interview with a Western diplomat. Sarajevo, July 2009).

once a set of conditions were met by Bosnian authorities,[1149] little progress has been made; and divisive politics are again on the rise. The PIC stated in November 2008, "After signing the Stabilization and Association Agreement on 16 June there has, over the last four months, been little progress in addressing reform, with ethnic and sub-State agendas prevailing over the European agenda. Divisive rhetoric challenging the sovereignty and constitutional order of Bosnia and Herzegovina, as well as the authority of the HR and the PIC Steering Board has been frequent, further undermining inter-ethnic trust and the foundations of the state."[1150]

An important step was taken in November 2008 with the signing of a statement by Milorad Dodik, Dragan Čović and Sulejman Tihić committing to rapidly addressing the objectives and conditions for the transition from the OHR to the EU Special Representative office (the so-called Prud agreement), but the process was convened outside public institutions and excluded most of the key stakeholders.[1151] In early 2009 progress on constitutional changes seemed within reach. In a meeting in Banja Luka in January, the three leaders issued a joint statement agreeing to divide Bosnia into four administrative units; however political tensions mounted after the meeting, partly as a result of the ambiguity inherent in the agreement but also as a result of intra-ethnic accussations of 'selling out'. SBiH's Silajdžić accused Tihić of instating a third Croat entity in the country and leaving RS untouched,[1152] and SDS accused Dodik of making too many concessions. Mutual accusations between the three leaders also developed; specifically between Dodik and the SDA and HDZ's

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[1149]   The PIC announced in a meeting in June 2008 that the phasing out of the OHR would only occur when Bosnia complies with a set of objectives and conditions, including: (1) acceptable and sustainable resolution of the issue of apportionment of property between state and other levels of government (this is an issue of great contention among the parties); (2) acceptable and sustainable resolution of defense property; (3) completion of the Brčko final award (completed in March 2009); (4) fiscal sustainability; and (5) entrenchment of the rule of law. In addition to the objectives, there are two conditions, namely the signing of the SAA, which has been fulfilled, and "a positive assessment of the situation in BiH by the PIC SB based on full compliance with the Dayton Peace Agreement," which requires that BiH political leaders avoid any inflammatory rhetoric (Peace Implementation Council 2008b).
[1150]   Peace Implementation Council 2008a
[1151]   The prud process covers issues such as negotiations on state property, the census, constitutional changes, and the legal status of the Brčko district (the Brčko District was finally added to the Bosnian constitution in March 2009, completing Dayton's annex two). Constitutional negotiations revolved around the harmonization of the Bosnian constitution with the European Convention for the Protection of Human Rights; the creation of new state level competences; the establishment of functional institutions; and a territorial reorganization of BiH.
[1152]   Silajdžić stated, "This agreement is about the division of the Federation ... That means that there will be an entity with a Croatian majority ... and we will have a Sarajevo district and the Bosniaks crammed into the Tuzla, Ženica and Bihać ghettoes."Haris Silajdžić, quoted from "BiH Main Parties Announce a New Decentralization Agreement." SETimes.com, 27 January 2009.

leaders, which in turn raised the political temperature.

Ultimately, the Prud negotiations stalled after Dodik walked out of a meeting in February, and indicated that the resumption of talks would only be possible when recognition of the right of secession for RS was made explicit.[1153] Confrontation with the international community also mounted significantly during this period when Dodik announced his decision to review the transfers made to the state.[1154] The crisis was finally defused by the newly appointed HR Valentin Inzko, and a meeting of the Prud process was again convened in late June at the OHR premises; however Tihić, understandably, refused to attend. Following a brief meeting in Dubrovnik in July, HR Inzko suggested that the Prud Process was dead, and that a new process of political dialogue with more parties would develop in the coming months.[1155] This announcement could be related to a new US initiative on constitutional reform led by former US Ambassador to Bosnia Clifford Bond (building upon the failed 2005-2006 experience), which has been defined in the past few weeks with the intention of producing a new agreement by the end of 2009.[1156] It is uncertain at this point how the process will unfold and whether it will succeed (and most importantly whether it will be connected to the European initiatives); however, Serb parties seem at this point uncommitted. Furthermore, there is significant risk of constitutional negotiations once again being entangled in the election campaign.

As a result of these divisive and unstable dynamics in Bosnia, a new EU strategy to deal with the sluggishness of Bosnia's reform process seemed to be in the making in the late 2008. A letter sent by EU Commissioner for Enlargement, Olli Rehn, and EU Foreign Policy Chief Javier Solana to all foreign ministers of the EU on 31 October 2008 read, "In the light of recent political developments in Bosnia and Herzegovina, it is time to take a fresh look at our relations ... We are convinced that

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[1153]   Economist Intelligence Unit, March 2009. Seemingly, the January agreement was based on Tihić's concession to leave RS largely intact in exchange for recognition of the sovereignty and territorial integrity of Bosnia (ibid).

[1154]   The emergence of new threats to Dodik's political position in RS are likely to account for Dodik's mounting nationalist rhetoric and confrontation with the international community. As a case in point, the State Investigation and Protection Agency filed a report early this year with criminal charges against him. Dodik is also facing new challenges within the RS with a strengthened political opposition. In February, Dodik's coalition partner, the PDP, joined the opposition at the state and entity levels. SDS' leadership has also raised its criticisms of SNSD; specifically following the January Prud meeting. Finally, Former SDS leader Dragan Čavić has returned to politics and founded a new party, the Democratic Party (DP), which will compete against SNSD in the upcoming elections in October 2010 (see Economist Intelligence Unit March 2009).

[1155]   "Inzko Says BiH's Prud Process Basically Dead." SETimes.com, 20 July 2009

[1156]   Author's interview with OHR officials. Sarajevo, July 2009.

we need a strengthened strategy for Bosnia and Herzegovina as a potential candidate for EU membership ... We need to look again at the transition to a reinforced EU presence on the ground."[1157] The joint report attached to the letter noted that the signing of the SAA had not prevented "a deterioration of the political situation in BiH in recent months," and demanded a tailor-made strategy, along with a stronger international engagement to further promote the reform process in Bosnia within the process of EU accession.[1158]

As of this writing, the EU has given no signs of having agreed to a new detailed strategy in Bosnia; except for closing the OHR at the earliest opportunity. In the meantime, as noted above, local tensions reached a new high in May and June of 2009 when Dodik managed to pass a resolution in the RS National Assembly pledging for a review of the competences already transferred to the sate and instructing RS officials to oppose any further transfers. The HR Insko, backed by the US and the UK, responded forcefully with the Bonn powers, much to the dismay of EU Foreign Policy Chief Javier Solana and some European countries, who had advocated strongly against their use. This new crisis has exposed once again the deep international divisions over the management of post conflict Bosnia and the future of the international mission. The PIC meeting in November will decide the future of the OHR, but both local and international conditions seem unprepared for such decision to be made; especially in an election year and in the midst of a severe econmic downturn.

7.5. CONCLUSIONS

This chapter illustrates that the existence of multiple veto players in Bosnia, especially within each of the three major ethnic communities, undermined the process of constitutional reform in Bosnia. The problem of power fragmentation was thus not only prominent at the inter-ethnic level but also and most notably within each of the ethnic groups involved. In particular, it was the rampant divisions within both the Croat and Bosniak communities that eventually led to the agreement's failure in parliament.

[1157]   Solana and Rehn 2008.
[1158]   *Ibid.*

While the assistance provided by external actors proved critical in the previous phase by promoting a framework for inter-ethnic cooperation – based on direct trade-offs between an inclusive groups of parties – external actors remained however ill-equipped to address other ethnic-based considerations that were most prominent in the third phase of negotiations. There were, in particular, three shortcomings that aggravated intra-ethnic infighting. The first was the democratic deficit inherent in the process. Indeed, the US opted for a non-transparent elite bargain framework mediated by political leaders that failed when the discussion was brought to parliament and the general public. The discussion was kept at the political-elite level because this was how the reform process had proceeded thus far under the Ashdown mandate.[1159] There was a belief that the personality-driven political system in Bosnia – where party leaders held final decision-making power – called for a process in which party leaders would be the primary actors. The US built upon this approach, and made it even more exclusive at both the internal and external levels. The failure to engage all social and political stakeholders in the state building and reform process thus became a significant challenge when more political groups joined in the public discussions. The lack of democratic transparency also led to public disinformation and the manipulation by those political forces that opposed it.

The second shortcoming was lack of unity among external parties as well as EU ambivalence, which did little to diminish the detrimental effects of intra-ethnic outbidding in the final phase. Divisions between the US and the EU (and also within the EU) – which were more prominent in the second phase of negotiations – had two significant consequences in this phase. On the one hand, they reinforced the problem of domestic accountability. Indeed, domestic actors used the divisions within the international community to underpin their own arguments without fear of bearing responsibility for the failure to the reform. On the other, they undermined the stakes in the process; the EU's ambivalence reduced its ability to use incentives, making domestic actors believe that what was important was not constitutional reform but police reform. Moreover, given the ambiguity of constitutional reform within the framework of European accession, party leaders believed failure to commit to the process would not bear major consequences.

The third shortcoming that prevented the parties from reaching a compromise

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[1159]   See chapter 4, p. 167.

was neglect of the electoral cycle and the urge for quick fixes. Negotiations were misused and distorted for electoral purposes. Furthermore, tight deadlines left no room for a proper public discussion at both the parliamentary and public levels, a significant problem when the issue at stake is existential in nature and the context is defined by deep inter-ethnic distrust. This left the international community in a position of weakness, with no time to engage the parties in a proper information campaign about the real stakes involved in the agreement.

The result was, indeed, a return to the status quo, with no major impact on the SAP. SAA negotiations continued on the same basis, held hostage to the process of police reform. Following a highly heated electoral contest, which rewarded the forces that had opposed the April package, constitutional negotiations were brought to a stalemate with the new constellation of political forces.

PART IV

CONCLUSIONS

CHAPTER 8

CONCLUSIONS

8.1. A Three-Level Game in Post-Conflict Bosnia: The Failure of Constitutional Reform

This dissertation analyzed the process of constitutional reform in Bosnia over the course of 2005-2006. A significant amount of new empirical evidence has been accumulated and analyzed in the thesis on the basis of a rereading of key political texts and the information provided by the more than eighty elite interviews conducted by the author with the key actors involved in the process. My thesis has offered a new framework of analysis of post-conflict Bosnia, based on a three-level game played at the inter-ethnic level, between the three major ethnic groups; the intra-ethnic level, between the parties that compete within the same ethnic group; and the supra-national level, between domestic and external actors. The analysis has indicated that the interactions of these three levels are critical for understanding the policy outcome of constitutional reform in Bosnia.

The process of constitutional reform was initiated in early 2005. It was in a context of limited progress within a step-by-step transformation from within that voices in favor of the reform of Dayton rose amongst both locals and international officials. Since the signing of the DPA in 1995, which put an end to the civil war in Bosnia, both the implementation of the peace agreement and the building of a functional state encountered strong local obstruction. In 2000, state building was formally linked to the process of EU accession in the belief that the EU's pull would encourage local actors to cooperate with each other in strengthening and consolidating the state. It was believed that the prospect of EU membership would provide enough incentives for ethnic leaders to set aside their differences and work together towards the common European project. Although progress was achieved in certain areas, this was the result of heavy external arm-twisting, and, often times,

outright imposition by the HR. As suggested by the scholarly research, both the complicated institutional structure in place and the ongoing ethnic divisions around the form of the state impaired state building.

Pressure from the international community for the reform of Dayton increased in 2004 and 2005, in the belief that a simpler institutional arrangement would (1) provide less room for ethnic and institutional blockage; and (2) give the state institutional capacity to comply with the EU accession process. While the idea to reform Dayton was not ill-conceived – given the record of institutional deadlock in this country – it was, however, plagued by a series of misconceptions and shortcomings that aggravated the dynamics that eventually led to its failure. Firstly, the focus on minor constitutional changes as a means to resolve the political deadlock in Bosnia overlooked the very nature of the problem, namely the ongoing and deeply ethnic divisions around the form and status of the state. Could a new institutional framework assuage ethnic distrust and eradicate ethnic power games? Could these changes be addressed without reconciling first the mutually incompatible positions of ethnic groups in Bosnia on the future form of the Bosnian state? Furthermore, could a new institutional framework help overcome the politics of intransigence and the recurring problems encountered in the implementation phase of the reform process? Secondly, the reform advocated for altering the national equilibrium reached and agreed upon in Dayton, changing, even if minimally, the balance of power between the three ethnic groups. This had important reverberations on the conduct of negotiations. Why would ethnic groups be willing to forego their rights and safeguards without a redefinition of the broader terms of the ethnic balance in Bosnia? Why would ethnic groups be ready to change the rules of the game with no short-term gains? The final shortcoming was related to the lack of international unity about this process and the absence of a wider local ownership or stake in the process. Although there was general consensus on the idea of making constitutional changes in Bosnia, there were disagreements over how and when to do it most effectively. Neglect of these issues proved fatal as negotiations moved forward.

The constitutional reform process unfolded in three phases. During the first phase of negotiations, when party leaders became involved in November 2005, two mutually reinforcing dynamics became prevalent in the absence of major external involvement. Firstly, inter-ethnic divisions became rather prominent, taking the form

of nationalist rhetoric and the presentation of mutually incompatible demands. These dynamics exposed the high level of inter-ethnic confrontation, which had a deep impact in how parties perceived their interests, other groups' interests and how they formulated a political strategy within the bargaining framework. Secondly, in addition to pervasive inter-ethnic divisions typical in deeply divided post-conflict societies, intra-ethnic power struggles also raised tensions, in line with conflict regulation theory.[1160] As a matter of fact, all major party leaders – namely SDA's Sulejman Tihić, SDS's Dragan Čavić and HDZ's Dragan Čović – were confronted with serious intra-party divisions at the time of the negotiations early in the process. These dynamics helped radicalize positions, and negotiations were verging on collapse by mid-December. During the first phase, both inter- and inter-ethnic dynamics were thus mutually reinforcing each other, precluding conflict regulation.[1161]

The second phase started in December 2005, when direct involvement by external actors, especially the US, began paving the way for an agreement on constitutional changes among six of the eight initial parties, namely the Serb parties SDS, SNSD and PDP, the Bosniak parties SDA and SDP, and the Croat HDZ.[1162] Developments at the three levels – external, inter-ethnic and intra-ethnic – contributed to making an agreement possible during this phase. Firstly, the external push and arm-twisting was significant. The US provided a framework in which an agreement at the inter-ethnic level was possible, namely the transformation of multilateral negotiations into direct, two-side negotiations behind closed doors. The role of the EU was secondary and somewhat ambivalent, but decisive US mediation mitigated the disruptive potential of such ambivalence. Secondly, dynamics at the inter-ethnic level were also constructive in at least two respects: the establishment of a direct line of communication allowed for party leaders to find mutually satisfactory solutions based on direct trade-offs in a relatively undisturbed environment and the

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[1160]   See Chapter 2, p. 82-85 for a discussion on the politics of intra-ethnic competition.
[1161]   The level of consensus reached by party representatives during the preparatory phase begs the question of whether keeping party leaders outside of the negotiations would have resulted in a different outcome. That option was not available however; as party leaders made it clear from the outset that they would be the ultimate decision makers in the process of constitutional reform. Involving party leaders at a later stage would have likely resulted in a similar outcome, given the rushed deadlines and the entanglement of the process with the electoral campaign.
[1162]   The Bosniak SBiH withdrew from the process in early 2006, and the US did little to reengage it. The Croat HNZ failed to sign the final agreement but this party had no representatives in the BiH parliament.

moderate terms of the agreement made it easier for party leaders to sell the compromise within their own ranks. Finally, politics at the intra-ethnic level were far less disruptive than in the previous phase. All the leaders who faced internal divisions during the first phase of the negotiations managed to either sideline them or place them outside the party, keeping their authority uncontested inside their respective parties. This provided party leaders with further leeway to reach a compromise.

The third phase of constitutional reform began with the referral of the constitutional package to parliament in March 2006. During this phase external actors increased pressure significantly through direct lobbying, but politics at the intra-ethnic level acquired a new dimension that resulted in the failure of the constitutional process on April 26. Furthermore, while the constitutional agreement reached during the second phase was a significant breakthrough in Bosnian politics, given the record of institutional deadlock in this country, there were critical mistakes that proved fatal in the final phase of the negotiations when the package was rejected in parliament as a result of an intra-ethnic power game. The first and most prominent mistake was the exclusivity of negotiations, which aggravated the problems of intra-ethnic infighting and outbidding dynamics, leading to a situation in which conflict regulation was made impossible despite heavy external pressure. While Serb parties stayed firmly united over the constitutional changes, a rather more visceral squabble developed within the ranks of the Bosniak and Croat communities. Indeed, neither the SBiH nor the Croat caucus in the House of Representatives – formally united under a party created in March 2006, the HDZ 1990 – were supportive of the amendments. The second problem was the decision to hold negotiations during the election cycle, which also aggravated the problem of intra-ethnic competition. General elections were to be held in October 2006, and both SBiH and the HDZ 1990 built their electoral platform around opposition to the constitutional package and vilification of party leaders who supported it. The third shortcoming was the EU's ambivalence and international divisions, which also ran counter to the reaching a final agreement among all political forces. On the one hand, international division reinforced the problem of domestic accountability during this phase; it provided political parties with the opportunity to play external actors off, and use their divisions to block the reform process (for intra-party purposes) without bearing direct responsibility for its

failure. On the other, the EU's ambivalence had a negative impact on the credibility of EU incentives during the final stage of negotiations, failing to garner enough support for the package. The exclusion of civil society from the process was another harmful mistake; it not only imbued the process with a patent democratic deficit, but also led to public misinformation, which eventually paved the way for opposition parties to play the nationalistic card and undermine the legitimacy of the process. Finally, time pressure and hurried deadlines[1163] ran counter to conflict regulation at the domestic level, paving the way for negotiations to be misused and distorted for electoral purposes. Time constraints left little room for maneuver once the package was brought to parliament, a situation that does not bode well in circumstances where trust is in short supply and the issue at stake is of a win-lose (zero-sum) character. As a result of all these factors, although external involvement increased significantly during the last phase, it generally failed to counterbalance the internal dynamics associated with intra-ethnic competition.

On the whole, the analysis shows that although major obstacles were prevalent at the inter-ethnic level, especially given incompatible agendas and pervasive inter-ethnic anxieties, party leaders managed to reach a preliminary agreement thanks to the substantial external assistance and a negotiation format based on direct communications between party leaders. It was the rampant divisions within the Croat and Bosniak communities, however, which rendered the external efforts ineffective. In other words, while efforts of external actors proved critical in helping party leaders reach a constitutional agreement at the inter-ethnic level, two factors undermined their ability to offset other non-cooperative dynamics that eventually led to the agreement's failure. The first factor was neglect of the dynamics associated with intra-ethnic competition and failure to provide incentives at this level. The second factor was the unintended consequences of various dynamics associated with the broader conduct of constitutional negotiations, including divisions between the major external actors (especially between the US and the EU), bad timing, hurried deadlines, and the election cycle, which eventually aggravated the problem of intra-ethnic outbidding.

[1163] The package had to be approved prior to May 2006 for it to be in force after the October 2006 elections.

8.2. Contributions to Theory

In addition to bringing new information about a process that was shrouded in secrecy, this analysis brings a new perspective to the debates on post-conflict Bosnia, conflict regulation, post-conflict state building, and conditionality.

Post-Conflict Bosnia and the Three-Level Framework

My dissertation argues that the three-tiered framework provides a better understanding of post-conflict Bosnia than the existing approaches of conditionality and state building. These approaches do not adequately capture the nuance and complexities of post-conflict Bosnia.

Conditionality studies, for example, look at European accession as a bargaining process that develops in two different playing fields; namely the domestic one, where reform-oriented actors versus conservatives squabble, and the European one where domestic and EU elites interact with one another. I argue that this model is too simplistic. Gergana Noutcheva's study on European conditionality in the Balkans[1164] is a clear example of how the use of conditionality approaches may lead to mistaken assumptions about the state building process in Bosnia. She looks at developments associated with the police reform in October 2005 when the RS National Assembly accepted the EU-sponsored reform (the RSNA had rejected it only a few days earlier), following an EU meeting on October 3 where Bosnia was the only Balkan country to be excluded from the initiation of SAA talks.[1165] In explaining these developments Noutcheva argues that it was the EU sanctioning mechanism of exclusion which resulted in the alteration of the position of the political parties in RS.[1166] While I do not argue that EU incentives and the use of sanctioning mechanisms were not at play in local actors' calculations, the three-tiered framework I use provides a more informed understanding of these developments, and brings the

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[1164]   Noutcheva 2006.

[1165]   At this meeting, both Croatia and Turkey were accepted for Accession talks and Serbia was given the green light for starting SAA negotiations (see p. 175, footnote 728).

[1166]   Noutcheva 2006. Drawing from this, Noutcheva further concludes, "Indeed, the EU had to apply the sanctioning mechanism of its conditionality machine in order to get a local agreement on reform but it is significant that the most obstinate political camp in Bosnia is the one who made the difficult decision to compromise against their political beliefs and is increasingly adapting to the new possibilities of exercising sovereignty provided by the EU framework. With strict EU conditionality during the successive pre-accession stages, the compliance trend can be expected to be sustained in the future" (Noutcheva 2006, 189).

power games played at the intra-ethnic level to the fore. Indeed, this dissertation demonstrates that the SDS position towards police restructuring in October 2005 was intimately related to power struggles within the SDS, which reached a high in the fall of 2005.[1167] In short, the contradictory decisions of the RS National Assembly in September-October reflected rampant SDS internal power struggles rather than a sudden readjustment of hardliner calculations, interests or costs.

Studies on state building and post-conflict Bosnia have also failed to incorporate systematically the three levels that I argue feature in deeply divided societies such as Bosnia. These studies have generally pointed to three key factors when accounting for the failing record of the state building process in Bosnia. The first one focuses on the role of the international community with the argument going in two opposing directions. Some studies point to the lack of strategy and resolve on the part of the international community, urging for a more revitalized intervention.[1168] Other studies argue that the rather intrusive role of the international community in Bosnia has created mechanisms of dependence that have undermined the state building process.[1169] The second argument within the literature on post-conflict Bosnia revolves around the statehood problem in Bosnia. These studies suggest that inter-ethnic intransigence stems from the fact that Dayton failed to assuage ethnic anxieties and resolve the statehood problem in Bosnia.[1170] The final argument underscores the role of institutions. These studies suggest that complex power sharing arrangement in Bosnia, which are based on the promotion of ethnic differences, tend to perpetuate the sources of communal conflict, undermining the basis of inter-ethnic cooperation.[1171]

While these factors feature prominently in post-conflict Bosnia, my three-tiered framework underscores the prominence of intra-ethnic competition and the politics of outbidding in the state building process in this country. The issue of intra-ethnic competition in post-conflict Bosnia had been previously acknowledged in previous

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[1167]   See chapter 5, p. 201-202.
[1168]   See for example Belloni 2008; Donais 2005; Cousens and Cater 2001.
[1169]   See for example Chandler 1999.
[1170]   Woodward 1997; see also Bose 2002.
[1171]   See for example Bieber 2005. Other comparative studies include Roeder and Rothchild 2005; Noel 2005; O'Flynn and Russell 2005. Other studies on post-conflict Bosnia focus on particular issues such as the role of civil society (Belloni 2001) or the political economy of war (Donais 2005; Pugh 2002).

studies,[1172] but it has never been explored systematically in post-conflict Bosnia. Furthermore, I also incorporate the role of external incentives in this analysis; which has also been neglected in the analysis of the state building in post-conflict Bosnia. Indeed, there has not been an attempt in the state building and conflict regulation literature to study more systematically the way in which European incentives are working in post-conflict Bosnia and interacting with the other variables at play.

The innovative three level framework used in this research demonstrates that the failure of the state building and EU accession process in Bosnia is intimately related to the power struggles and ethnic games played within each ethnic community. It also shows that while international actors may prove to be prepared to promote a framework for inter-ethnic cooperation (as the reaching of a constitutional agreement illustrated) they remained generally ill-equipped to provide incentives at the intra-ethnic level and engage all of the social and political actors involved in a state building reform process. Exploring how these three levels interact in other state building processes in post-conflict divided societies seems a fruitful avenue of research, especially in cases such as Iraq, Afghanistan, and Kosovo, to name a few.[1173]

Conflict Regulation and Inter-Ethnic Cooperation

The second contribution of this research relates to the dynamics of conflict regulation and inter-ethnic cooperation in deeply divided societies; especially in relation to the dynamics of outbidding. Classic theories on outbidding suggest that the threat (or reality) of a counter-mobilization to a party's moderate overture within a specific segment defies practices of inter-ethnic accommodation.[1174] More recent accounts on these dynamics have suggested, however, that political outbidding may also be caused by factors other than intra-ethnic competition,[1175] and, most importantly, that the risk of political outbidding may not necessarily lead to destabilization, radicalization and inter-ethnic intransigence[1176] (especially when certain institutional

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[1172]   See for example Zahar 2002. Nina Caspersen explores the issue of intra-ethnic competition in Bosnia, but during the war (Caspersen 2006).

[1173]   The case of Iraq is particularly significant in this respect given the contextual similarities – Iraq is also deeply divided ethnically along three major groups – and the experience of a process of constitutional reform in 2005 with strong US leadership.

[1174]   Nordlinger 1972; Horowitz 1985.

[1175]   Caspersen 2006.

[1176]   See Sisk 1996; Chandra 2005; Mitchell, Evans and O'Leary 2005.

arrangements of an integrative nature are in place).[1177]

The analysis provided in this research builds upon the recent studies that suggest that political outbidding may not always lead to political intransigence. Rather than focusing on the role of institutions, however, I incorporate the role of external actors and external incentives in the analysis of outbidding dynamics. I argue that external actors may provide key incentives and guarantees for parties to engage in inter-ethnic cooperation in spite of the imminent dangers associated with the politics of outbidding. The process of constitutional reform is a clear example in this respect. Both the guarantees provided to the ethnic groups and the heavy external pressure levied during constitutional negotiations was essential to bringing all parties to the table and to reaching an agreement in March 2006. The establishment of a direct line of communications between the leaders, under strong external pressure, was also a key development. It allowed for party leaders to find mutually satisfactory solutions based on direct trade-offs in a relatively undisturbed environment. This suggests that the set up of direct contacts at the inter-ethnic level in contexts of mutual distrust is critical for engaging in conciliatory behavior. Two conditions need to be in place however. Firstly, inter-ethnic cooperation needs to be based on a framework of mutual, yet moderate, gains and costs. In other words, negotiations need to be conducted in a framework that is moderate enough so that party leaders can sell it to their constituencies without accusations of 'selling-out'. Secondly, negotiations need to be held in a relatively undisturbed environment at the intra-party level. The analysis showed that intra-party divisions had the effect of creating a highly confrontational climate that ran counter to reaching a compromise during the first phase of the negotiations. It was only when these divisions were either sidelined or placed outside the party that a constitutional agreement was made possible during the second phase of the negotiations.

Post-Conflict State Building

The third contribution is related to the process of state building. I identify five key mistakes in the way external actors managed the process of constitutional reform in Bosnia, which reflect on the broader debate on state building and external intervention in post-conflict societies. The first mistake was related to the democratic

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[1177]   See for example Horowitz 1985; Sisk 1996; Reilly 2001.

deficit inherent to the process, based upon a direct engagement with party leaders as the key decision makers in the reform process. My research suggests that when state building is not democratically grounded, external incentives do not work, especially when the stakes are high as is the case with constitutional reform.[1178] In other words, state building needs to be fully transparent and inclusive, and work either towards making all of the actors with a stake in the process participants or towards raising social awareness so that accountability channels between the societal and political levels are not broken. The fact that the international community's strategy is based on the belief that progress can only be achieved through the existing power structures indicates the international community's inability to reshape local conditions and existing systems of governance, even when they are highly dysfunctional.

The second shortcoming is related to the propensity of external actors to interfere when conditions verge towards stalemate, which has long undermined conflict regulation practices in Bosnia. There was an initial attempt to imbue this process with domestic ownership, as illustrated by Donald Hays' initial preliminary negotiations and the idea that local actors had to find a solution by themselves. The emphasis on domestic ownership was however tarnished by the readiness of the US to take over when the stakes became high and the risks of failure too significant. This factor ultimately led to a situation in which external actors became the major drivers of the process, further aggravating the tendency of local actors to avoid taking responsibility for the reform process. As Donald Hays suggested, parties were passive not "in the sense that they did not have strong opinions. They were passive in the decision making process," waiting to be obliged to accept a package so as not to take political responsibility.[1179] Many were indeed waiting for the internationals to take the lead, which was the case within Bosniak ranks (after all, the international community has often voiced their claims).[1180] This situation has yielded a vicious circle of perpetual lack of local political will and inter-ethnic intransigence on the

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[1178]   This begs the question of whether a more inclusive, democratic process could have resulted in a successful outcome. Keeping the lines of communication open with civil society (and keeping the citizens fully informed) does not necessarily translate to a positive result in a process of constitutional reform; but it certainly could have helped to preclude party leaders from manipulating the population and using constitutional change as a means of furthering intra-party agendas. Studies on constitution building (see Samuels 2005 and 2009) have also suggested that participatory processes tend to be more successful than elite-based processes; as was the case with South Africa and Uganda.

[1179]   Author's personal interview with Donald Hays. Washington DC. October 2007.

[1180]   Ibid. All external actors that had a direct involvement in the negotiations agreed with this statement in personal interviews.

one hand, and recurrent external interference on the other. As Fukuyama has noted, while the ultimate goal of external interventions is to build capacity, the international community "comes so richly endowed and full of capabilities that it tends to crowd out rather than complement the extremely weak state capacities."[1181]

The third shortcoming relates to a failure to properly account for the ethnic component. External interventions have a tendency to place more emphasis on the provision of incentives for inter-ethnic cooperation as opposed to addressing the dangers of intra-ethnic competition (Dayton being a case in point). The process of constitutional reform was no exception. The US opted for a secretive bargaining process in lieu of a public discussion and, by extension, a more inclusive approach. This tactic, predictably, unraveled towards the end of the negotiating process. The choice of excluding key political forces from the bargaining table appears particularly striking considering the high stakes involved (after all, the goal of the reform process was to alter the ethnic balance agreed upon in Dayton) and also given the potential for outbidding as a result of the proximity of the elections. It is reasonable to assume that there was a clear miscalculation of the actual votes required for the passage of the constitutional agreement; but I argue below that other factors were also at play including the international community's tendency to rush to a poorly planned exit strategy and a disregard for local conditions.

The predisposition for 'quick fixes' and the rushed deadlines (another common problem in external interventions),[1182] was closely linked to the decision to proceed with the constitutional negotiations in the middle of the electoral cycle, and in spite of the imminent signs of intra-ethnic outbidding. The US saw constitutional negotiations as an opportunity to achieve two mutually reinforcing goals. Firstly, to obtain a timely objective in the Balkans; which was greatly needed given the rather unsuccessful record of the Bush administration in Iraq and the Middle East. After all, the Balkans was (and still is) considered one of the success stories in the record of US interventions in the 1990s, which could have given US officials a sense of overconfidence in approaching constitutional negotiations.[1183] Secondly, to reach a long-term settlement in Bosnia, in order to both avoid any intertwinements with the Kosovo status negotiations (in full gear at the time), and to begin phasing out of the

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[1181]   Fukuyama 2004, 103.
[1182]   See for example Chesterman 2004.
[1183]   Some in fact viewed this process as Dayton II.

external intervention in Bosnia so that US resources could be deployed elsewhere. The US strategy was thus driven by its own domestic political and strategic interests, rather than the process itself.[1184] This suggests a policy based on preventing conflict and instability within Bosnia as opposed to one based upon the long-term sustainability of the post-conflict state building process in this country.

The final shortcoming of the process is related to the divisions within the international community. Though efforts at harmonizing policies in Bosnia have been frequent over the years, divisions over specific policies and overlapping activities on the ground have not only tended to undermine the leverage of the international community, but have also allowed domestic actors to effectively ignore external players at their discretion. The process of constitutional reform was no exception. Indeed, the lack of unity between the US and the EU contributed to making constitutional negotiations more challenging. In-house divisions reinforced the problem of domestic accountability, providing domestic actors with further opportunities to focus on intra-party politics, without bearing responsibility for the failure to deliver any substantive political outcomes. As the mediation literature has also suggested, though the presence of manifold actors can multiply the sources of leverage, there is the risk of causing further confusion as well as 'buck passing' and blame avoidance, not only amongst domestic actors, but also amongst international ones.[1185] This suggests that state building does not work when there is no unity and when external divisions can be exploited to the advantage of domestic, partisan interests.

European Conditionality

Important conclusions can also be drawn on the broader debate on external and European conditionality, the final contribution of this research.

Firstly, the analysis provided in this thesis shows the real weakness of international conditionality when the local actors are not on board. This research also provides evidence about how the conditionality framework can be effectively undermined when the process becomes highly politicized, and local obstruction is

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[1184]   The decision to hold post-conflict elections within six to nine months after the signing of Dayton was also driven by US domestic interests. It responded to the US desire to limit the commitment of US forces at the time (see Chesterman 2004). This decision proved to be ill conceived; the timing of the elections reified ethnic divisions in Bosnia (*ibid*).
[1185]   Crocker, Hampson and Aall 1999.

met with no consequences. While strong incentives were used within the process of constitutional reform in Bosnia, the locals rejected the process for intra-party purposes with hardly any consequences. This sends the wrong signals in a country where the political elite is prone to 'buck-passing' as noted above. EU efforts to revive the process of constitutional reform in Bosnia have thus far failed to garner enough support, and there has not been enough political will to use EU incentives more forcefully.[1186]

Secondly, the analysis shows that the proposition that elites' behavior may be explained according to pure rational calculations is misleading in deeply divided societies, where the state is strongly contested and deep inter-ethnic mistrust is pervasive. Drawing on conventional conditionality approaches, Heather Grabbe, for example, claims that conditionality is more likely to be effective when the political salience of the issue at hand is high;[1187] even when there is ample room for uncertainty regarding the policy agenda, the standards involved, and the timing.[1188] The analysis provided in this thesis illustrates that the reverse appears to hold true in post-conflict, divided societies. Patterns of non-cooperation are found to be pervasive when the norm to be exported is salient and amenable to be associated with political questions of survival. Under these circumstances, conflict regulation and accommodation is more likely to be undermined; even when compliance with external norms is attached to a framework of positive and negative incentives. This suggests that deep inter-ethnic distrust and the contested nature of the state in Bosnia are likely to affect the interests, perceptions and strategies of the domestic actors involved in the state building process, as well as the dynamics associated with the process of adjustment to European norms. In this context, the question of survival (which is an existential issue) is a variable that needs to be integrated into the analysis of the impact of conditionality; especially when the matter at hand deals

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[1186] The process of police reform has showed similar dynamics of politicization, and a weakening EU pull. Strong arm-twisting led to an agreement, which opened Bosnia's door to the signing of the SAA in June 2008, but the terms of the agreement were significantly watered down from the initial EU's criteria, and left further details to be defined at a later stage.

[1187] Grabbe 2002b. Europeanization literature suggests that high salience is a function of the norm's significance in the domestic political agenda (asylum capacity will be high salience in those countries with many asylum seekers). In deeply divided societies, high salience can be defined as a function of how it affects the distribution of power and whether is perceived or not as a legitimate and desirable instrument.

[1188] See for example Grabbe 2002b and 2006. Conversely, if the political salience is low (as in social policy), on the contrary, then observance of the *acquis communitaire* is likely to be rather low and its application less strict (Grabbe 2002b).

with statehood issues.[1189]

Finally, the process of constitutional reform also brings to light the EU's inability to reconcile two mutually reinforcing agendas that are present in Bosnia:[1190] firstly, to assist Bosnia with its conflict management within the framework of the state building process under way; secondly, to facilitate Bosnia's progress towards EU accession through the use of European incentives.[1191] In short, the failure of constitutional reform in Bosnia provides evidence for a strong claim that the EU has failed to use the incentives attached to the process of European accession to affect the domestic patterns of conflict management. On the one hand, the role of the EU as a third party during the process of reform was plagued by its internal divisions (as well as its differences with the US), which downplayed the high stakes involved in the process. Indeed, despite the forceful US mediation effort from late 2005, European ambivalence ultimately imbued the process with the perception of an impaired, half-hearted multiparty mediation, which proved to be insufficient to counterbalance the powerful ethnic political dynamics involved in the failure of the package. On the other hand, the EU failed to use its 'carrots' more effectively in the promotion of domestic patterns of conflict management. Despite the fact that the EU had a greater range of 'carrots and sticks' than the US to potentially shape political behavior in Bosnia, the EU proved to be divided and hesitant in directly linking constitutional reform to the broader process of European integration.[1192] Indeed, the process of constitutional reform never featured as a clearly defined benchmark or condition for EU accession at the time; which undermined the incentive potential attached to the process.

On the whole, while most of the EU-related issues described above are process-related and/or technical in nature (and hence amenable to being fixed by the implementation of better policies and greater coordination efforts on the ground), I

[1189] This dissertation does not suggest that political actors in Bosnia are irrational. Rather, it suggests that the issue of survival distorts the pure rationality-based models that are used to explain compliance with EU conditionality in relatively homogenous societies.

[1190] For a full discussion of this issues see Sebastian 2009.

[1191] This challenge relates to a recent scholarly debate that revolves around the impact of the EU acting in a dual capacity, namely as a third party in conflict management and as an agent of European integration (See for example Diez, Stetter and Albert 2006; Noutcheva et al. 2004; Tocci 2007).

[1192] Recent studies on the process of EU accession have focused prominently on the impact of the uncertainty built into the process of EU accession, including, *inter alia*, the unclear definition of the political criteria, the imprecise operationalization of key benchmarks and the moving-target problem (see for example, Grabbe 2002a; Hughes, Sasse and Gordon 2004; Kelley 2004a; Jacoby 2004).

argue that the ethnic issue represents a much more complex issue within the EU integration and state building process in Bosnia. Intertwinements with statehood issues have tended to bring the EU accession process to a halt, and make the EU transformative power fail in the face of an ethnic power game. I argue that this problem has to do with a disregard for the local conditions, and the tendency of the EU project in Bosnia to create winners and losers on the ground, irrespective of the local balance of power in this country.[1193] Serb parties, for example, have perceived the externally-led reform agenda in Bosnia as a direct threat to the RS's survival;[1194] not only as a result of the intended goal of transferring competences from the entities to the state, but also as a result of the often ambiguous positioning of the international community and the EU in relation to the status of RS.[1195] Though the EU has gradually come to the realization that undermining the status of RS is counterproductive to the reform process and suggested that the existence of the Serb entity is not incompatible with the process of EU accession, EU members have at one time or another continued to undermine the image of neutrality; raising inter-ethnic tensions and anxieties.[1196] How the EU manages to resolve the contradiction between the provision of guarantees to the Serbs and the state building process in Bosnia will prove critical for both the success of conflict management efforts on the ground and Bosnia's further progress towards the EU.

In sum, this research offers to a new perspective on the process of political reform in

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[1193]   Zahar 2002; see also chapter 2. Indeed, the EU's accession process has revolved around the strengthening and consolidation of the Bosnian state, which is a highly sensitive issue in Bosnia, where inter-ethnic mistrust is pervasive and ethnic groups hold mutually incompatible ideas about the form and status of the state.

[1194]   Following the failure of the constitutional agreement and in the midst of international efforts to revamp the process in 2007, Dodik stated "the mistake of the international community is that it is stubbornly trying to make Bosnia a country with strong central government and in that light I view the constant demands for the abolition of RS" (See, "Ambassadors Summon Leaders in Attempt to Restart Talks," *Bosnia Daily* 1515, 31 May 2007).

[1195]   Following NATO's summit in mid-December, where hard criticism was pinned in RS for failing to fully cooperate with the ICTY, the then HR Paddy Ashdown hinted at possible sanctions that could affect the status of RS. When asked whether such sanctions would include the abolition of RS, the High Representative suggested that everything was possible, adding, "I must say, however, if RS would respect the Dayton Agreement, then I would protect its competences" (cited in OHR, BiH Media Round-up, 18 December 2004). Tuathail, O'Loughlin and Djipa (2006) argue that the abolition of RS was possible at the time as part of a greatly grey legal area. "While nominally the High Representative could not alter Dayton, his Bonn Powers gave him the right to impose sanctions in response to non-compliance. Abolition of a non-cooperative entity was, therefore, legally possible" (*ibid*, ft. 37). The existence of this legal grey area may account for Serb anxieties in relation to the presence of external actors in BiH.

[1196]   German ambassador to BiH Michael Schmunk, for example, caused an outcry within the Serb community in August 2007 when he declared the country should be organized as a unitary state.

post conflict Bosnia by suggesting that the international role in state building in this country has been blunted by an ethnic power game played at the intra-ethnic level. Domestic variables, particularly intra-ethnic politics, are fundamental in accounting for the success or failure of state building policies in deeply divided societies. The role of external actors in this context should be considered merely a subsidiary variable; serving as a reinforcing mechanism for inter-ethnic cooperation in deeply divided societies when domestic conditions are ripe and as a failing one when external efforts are faced with intra-ethnic infighting. A more modest approach to the capacity of the international community to effect domestic change is thus required.

From a strategic perspective, it is possible to mitigate the influence of ethnic power games by supporting a process that is not constrained by rigid timelines and rushed deadlines, focusing on the conditions on the ground and involving a broad range of local actors in order to achieve sufficient dialogue and consensus building. The civil society at large must also be enrolled in this participatory process, so as to avoid political manipulation. While constitutional reform can play an important role in the future of Bosnia, it can only be built upon a well-balanced compromise by all key stakeholders; quick fixes and secretive bargaining deals will only serve to perpetuate the dynamics of inter-ethnic distrust and intransigence; further delaying the state building process and the progress towards harmonization with EU standards.

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"Dodik Still Dreams of Greater Serbia," *Bosnia Daily* 1333, 6 September 2006.

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[1197]   Material in author's file. Additional materials include: timeline sheets of constitutional reform, power point presentations, Hays' personal notes and other documents.

APPENDICES

Appendix 1. Interview List

Key Local Players/Party Officials

NAME	PARTY	POSITION[1198]	DATE
Safet Halilović	SBiH	**Member of the negotiating team for constitutional reform (CR).** Party Leader.	Three rescheduled appts. No interview granted
Beriz Belkić	SBiH	**Member of the working group (CR).** Member of Parliament. Member of SBiH Presidency.	Sarajevo, 19 June 2007
Azra Hadžiahmetović	SBiH	Member of Parliament. Member of SBiH Presidency	Sarajevo, 5 July 2007
Damir Arnaut	SBiH	Legal Advisor to Haris Silajdžić	Sarajevo, 19 June 2007
Zlatko Hadžidedić	SBiH	Advisor to Safet Halilović	Sarajevo, 20 May 2007
Sven Alkalaj	SBiH	Current Minister of Foreign Affairs	Madrid, 25 June 2008
Sulejman Tihić	SDA	**Member of the negotiating team for CR.** Party leader and Bosniak member of BiH Presidency.	Sarajevo, 4 July 2007
Mirsad Ćemin	SDA	**Member of working group (CR).** Member of parliament. Member of SDS Presidency.	Sarajevo, 30 May 2007
Šefik Džaferović	SDA	Member of parliament. Member of SDA Presidency.	Sarajevo, 31 May 2007
Senad Sepić	SDA	Current SDA Vice President SDA. Deputy Minister, Ministry of Civil Affairs	Sarajevo, 14 July 2009
Jožo Križanović	SDP	**Member of working group (CR).** Member of Parliament.	Sarajevo, 5 July 2007
Saša Magazinović	SDP	Member of the SDP Presidency	Sarajevo, 19 June 2007
Davor Vuletić	SDP	SDP Board Member.	Sarajevo, 26 June 2007
Mile Lasić	HDZ	**Member of working group (CR)**	Mostar, 2 July 2007
Martin Raguž	HDZ1990	Member of parliament.	Sarajevo, 5 July 2007
Josip Brkić	HNZ	BiH Amassador to Spain	Madrid, 30 June 2008
Fra Ivo Marković		Franciscan	Sarajevo, 31 May 2007
Željko Mirjanić	SNSD	**Member of working group.** Member of the RS National Assembly.	Banja Luka, 11 June 2007
Željka cvijanović	SNSD	Advisor to RS PM. Dodik	[Interviewed Cancelled]
Gordan Milosević	SNSD	Advisor to RS PM Dodik	Banja Luka, 12 June 2007
Dragan Čavić	SDS	**Member of the negotiating**	Email interview,

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[1198] Position held at the time of the constitutional negotiations.

		team for CR. SDS President and RS President.	January 2008.
Mladen Bosić	SDS	**Member of Working Group (CR).** SDS Vice President.	Phone and email interview, 26 June 2007
Momčilo Novaković	SDS	**Member of parliament.**	Sarajevo, 5 June 2007
Mladen Ivanić	PDP	**Member of the negotiating team for CR.** Party leader.	Sarajevo, 10 July 2007
Branislav Borenović	PDP	Member of the RS National Assembly RS. Member of PDP Presidency.	Banja Luka, 12 June 2007
Mehmed Žilić	SDA/SBiH	Member of parliament.	Sarajevo, June 2007
Petar Kunić	Indep.	Member of parliament.	Banja Luka, 14 June 2007
Sead Avić	Indep.	Member of parliament.	Sarajevo, June 2007

Members of the NGO 'The Dayton Project'

NAME	POSITION	DATE INTERVIEW
Amb. Donald Hays	Leading member of the secretariat. Founder Dayton Project and Ex-Principal Deputy HR.	Washington DC, 29 July 2006 Washington DC, October 2007
Meghan Stewart	Member of the secretariat (senior Officer, PILPG).	Washington DC, 31 July 2006
Prof. Bruce Hitchner	Member of the secretariat (Director, Dayton Project, Tuft University, Boston).	[No interview granted]
Prof. Paul Williams	Member of the secretariat (Director PILPG)	[Meeting cancelled]
Zoran-Matija Kulundžić	Project manager, Dayton Project	Sarajevo, 26 June 2007
Emir Kaknjašević	Personal Assist. Donald Hays	Sarajevo, 22 May 2007
Anonymous source	Dayton Project BiH	Sarajevo, 6 June 2007
Maja Marjanović	Dayton Project, Outreach Actitvities.	Sarajevo, 16 May 2007
Ahmed Žilić	Attorney & Founder Dayton Project BiH	Sarajevo, 30 May 2007
Anonymous source	Dayton project BiH.	Sarajevo, 25 June 2007

Key International Players

NAME	POSITION[1199]	DATE
Amb. Douglas McElhaney	US Ambassador to BiH	No interview granted
Anonymous source	US diplomat	Banja Luka, 12 June 2007
Amb. Matthew Rycroft	UK Ambassador to BiH	Sarajevo, 7 June 2007
Michael Humphreys	Head of the European Delegation in BiH	Phone interview, 15 April 2009
Tim Cartwright	Special Representative of the Secretary Geneneral, Council of Europe, Sarajevo office.	Sarajevo, 19 June 2007
Dr. Christian Schwarz-Schilling	High Representative in BiH (2006-2007)	Sarajevo, 10 July 2007
Lord Paddy Ashdown	HR in BiH (2002-2006)	[Declined interview]
Amb. Dr. Werner Almhofer	Ambassador, Embassy of Austria to BiH.	Sarajevo, 15 June 2007
Anonymous source	European official in Bosnia.	Sarajevo, 16 May 2007
José Luis Sanchez Alegre	Deputy Director, Bosnia Desk, European Commission.	Brussels, 23 June 2006
Stefan Simosas	Current Head of the Political Department at OHR/EUSR.	Sarajevo, 14 July 2009
Anders Hedlund	Counsellor, Embassy of Sweden, BIH.	Sarajevo, May 2007
Didier Chassot	Deputy Head of Mission, Embassy of Switzerland, BiH.	Sarajevo, 1 June 2007
Thomas Ruegg	Country Director, Swiss Cooperation Office BiH, Embassy of Switzerland, BiH.	Sarajevo, 29 May 2007

[1199] Position held during the process of constitutional reform.

- Other Actors and Informants-

International Actors/Informants

NAME	POSITION	DATE
Anonymous Source	Western diplomat	Sarajevo, 2 July 2007
Richard Jones	Second Secretary, UK Embassy, BiH.	Sarajevo, 12 December 2006
Enver Ferhatović	Senior Political Advisor, Strategy and Planning Section, Political Department at OHR	Sarajevo, 15 May 2007
Prof. Joseph Marko	Advisor to Schwarz-Schilling on constitutional reform. Former Judge to the BiH Constitutional Court	Sarajevo, 26 June 2007
Anonymous Source	Western diplomat	Sarajevo, 1 July 2007
Michael Haner	Advisor, Rule of Law Implementation Unit, OHR	Sarajevo, 24 May 2007
Mladen Golac	Political Officer, OHR Banja Luka	Banja Luka, 11 June 2007
Anonymous Source	European diplomat in Bosnia	Sarajevo, 17 May 2007 Sarajevo, 28 June 2007
Jasna Jelisić	Political Advisor & Member of the Constitutional Reform Task Force (2007), Political Department, EUSR	Sarajevo, 17 May 2007
OHR Official	Legal department, OHR	Sarajevo, July 2009.
Konstantin Woebking	Head of Economic and Political Sector, EU Delegation in BiH	Sarajevo, 8 December 2006
Branka Bujak	National Political Officer, EUPM Banja Luka.	Banja Luka, 13 June 2007
Juan carlos antunez	Advisor, EUFOR.	Sarajevo, 2 July 1007
Sergio Valcarcel	Advisor, EUFOR.	Sarajevo, 2 July 2007
Kurt Bassuener	Consultant & former political advisor, Political Department, OHR	Sarajevo, 14 December 2006 Sarajevo, 8 June 2007
Willem Van Rossen	Political Officer, Embassy of Netherlands, BiH.	Sarajevo, 15 June 2007
Nicholas Walton	BBC correspondent in Sarajevo	Sarajevo, 26 May 2007
Steve Lee	Consultant, Legislative Strengthening Program, OSCE.	Sarajevo, June 2007

Brussels-based Officials

| NAME	POSITION	DATE
Axel Wallden	Officer, Enlargement Directorate, European Commission	Brussels, 23 June 2006
Michael Aldaya	Officer for BiH, Assistance Desk (CARDS), Enlargement Directorate, European Commission	Brussels, 22 June 2006
Jorge Espina	Seconded Officer, Rule of law unit, Enlargement Directorate, European Commission	Brussels, 23 June 2006
Ricardo Alonso Criado	Administrator, DG E I Enlargement General Secretariat, Council of the EU	Brussels, 23 June 2006
Ignasi Guardans i Cambó	Member of the European Parliament, Permanent member of Delegation for Southeastern Europe, European Parliament.	Brussels, 20 June 2006
Francesco Bruzzese Del Pozzo	Principal Administrator, Police Unit General Secretariat, Council of the EU.	Brussels, 23 June 2006

Domestic Actors

NAME	POSITION	DATE
Osman Topčagić	Director, BiH's Directorate for European Integration, BiH.	Sarajevo, 2 July, 2007
Srđan Ljubojević	Head, Coordination unit, BiH's Directorate for European Integration.	Sarajevo, 13 Decmeber, 2006
Amer Obradović	Advisor to Senad Pecin, Deputy Minister of Civil Affairs	Sarajevo, 14 July 2009
Azim Mujkić	Prof. Political Science, University of Sarajevo	Sarajevo, 9 May 2007
Dino Abazović	Prof. Sociology, University of Sarajevo	Sarajevo, 10 May 2007
Ugo Vlaisavljević	Prof. Philosophy, University of Sarajevo	Sarajevo, 22 May 2007
Jasna Belkić	Law Professor, University of Sarajevo	Sarajevo, 10 May 2007
Ivan Barbalić	President of ACIPS (Ass. Alumni of the Centre for Interdisciplinary Postgradute Studies).	Sarajevo, 16 May 2007
Hasel Huskić	Research Associate, ACIPS	Sarajevo, 16 May 2007
Miroslav Živanović	Head of Library, Center for Human Rights	Sarajevo, May 2007
Srecko Latal	Press officer, World Bank	Sarajevo, 17 May 2007
Tanja Topić	Program officer, Friedrich-Ebert Stiftung Foundation, Banja Luka office.	Banja Luka, 13 June 2007
Tarik Zoimović	Portfolio Manager, UNDP BiH	Sarajevo, 15 May 2007
Tarik Cerik	Advisor, Aid Coordination Division, Directorate of European Integration, BiH	Sarajevo, December 2006 Sarajevo, May 2007
Ermin Sarajlija	East-West Management Institute, USAID Contractor (Justice Sector)	Sarajevo, 29 May 2007
Dženana Krehić	Program Officer, Olof Palme Center BiH	Sarajevo, December 2006

Appendix 2: Map of Bosnia after Dayton

Source: Office of the High Representative

Federation of BiH

8 Number of the Canton

IEBL

1 - Una Sana (Bosniak)
2 - Posavina (Croat)
3 - Tuzla Podrinje (Bosniak
4 - Zenica Doboj (Bosniak)
5 - Bosna Podrinje (Bosniak)
6 - Central Bosnia (Mixed)
7 - Herzegovina Neretva (Mixed)
8 - West Herzegovina (Croat)
9 - Sarajevo (Bosniak)
10 - Herceg Bosna (Croat)

Bosniak Canton
Croat Canton   } Federation
Bosniak-Croat Canton
Republika Srpska
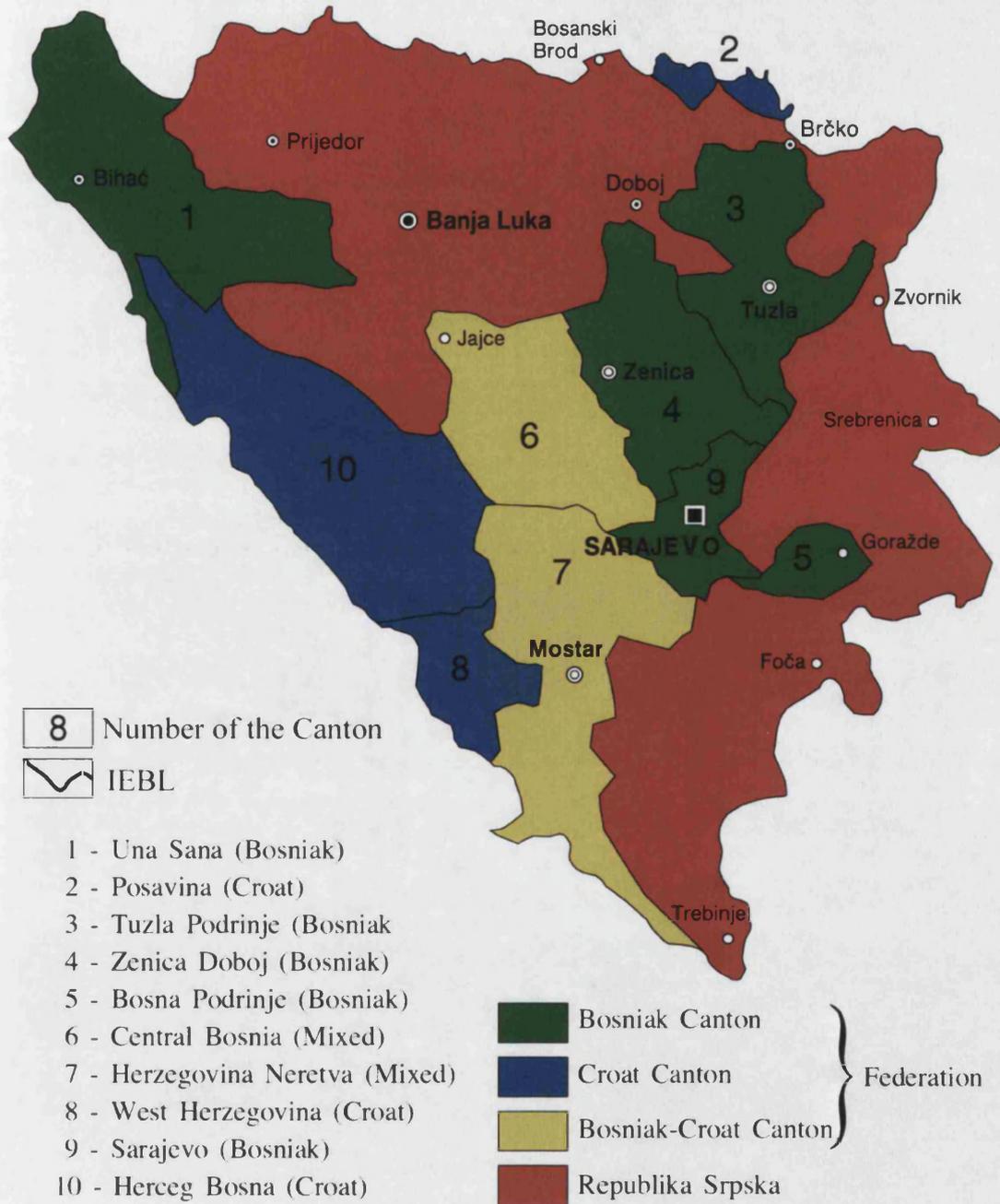
Appendix 3: Map of Ethnic Distribution in Bosnia (1991 Census)

Source: Office of the High Representative

Ethnic composition before the war in BiH (1991)

1991

- Croats - more than 66%
- Croats - 50-65%
- Croats - up to 50 %

- Bosniacs - more than 66%
- Bosniacs - 50-65%
- Bosniacs - up to 50%

- Serbs - more than 66%
- Serbs - 50 - 65%
- Serbs - up to 50 %