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**THE POLITICAL SYSTEM OF
BOSNIA AND HERZEGOVINA
INSTITUTIONS – ACTORS – PROCESSES**

SARAJEVO, 2013

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Institutions – Actors – Processes

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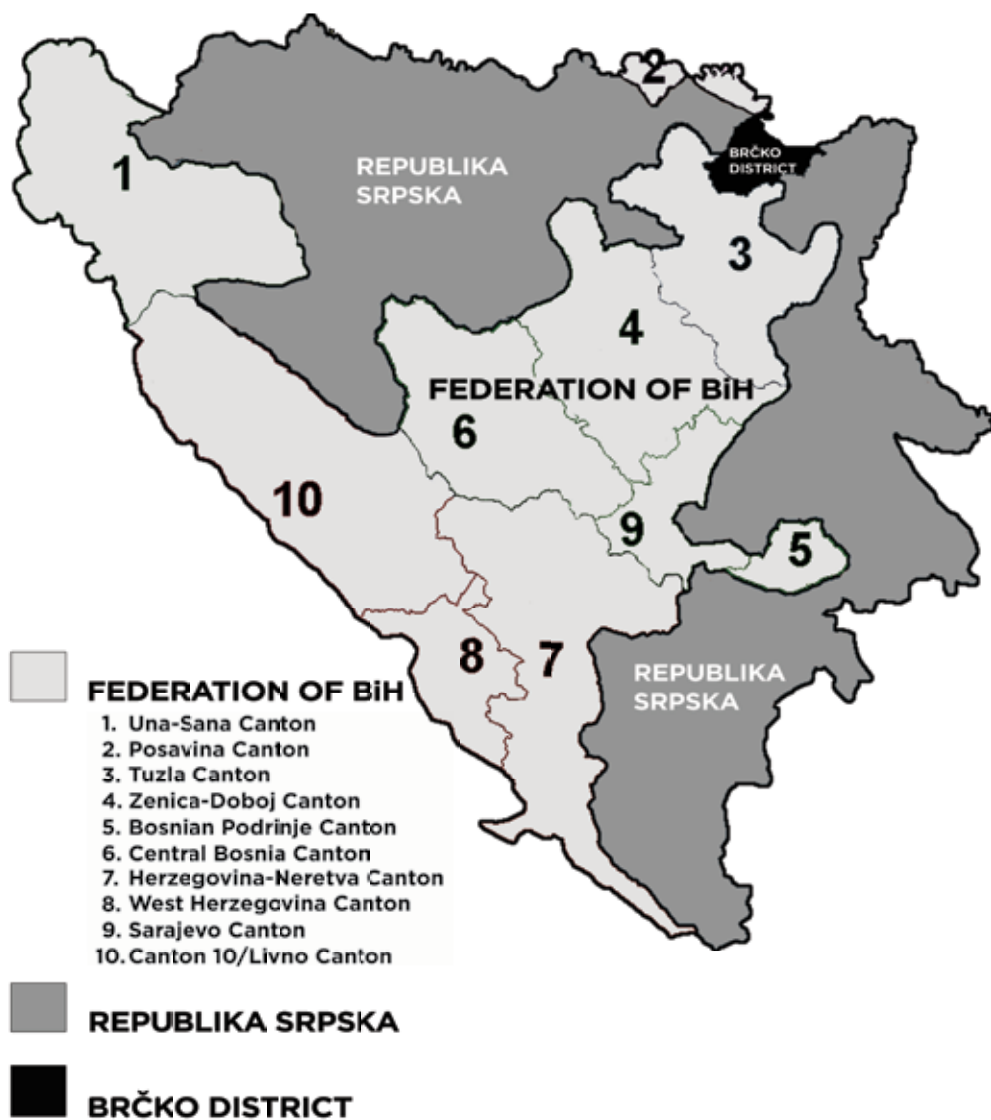
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Glossary of Acronyms

BHRT	BH Radio Television
BiH	Bosnia and Herzegovina
CoE	Council of Europe
CSO	Civil Society Organisation
DNS	Democratic People Union
DNZ	Democratic People Community
DPA	Dayton Peace Agreement
DSP	Demokratske Pensioner Party
EPP	European People's Party
EU	European Union
EUPM	European Union Police Mission
FBiH	Federation of Bosnia and Herzegovina
GDP	Gross Domestic Product
HDU	Croatian Democratic Union
HDZ	Croatian Democratic Community
HDZ 1990	Croatian Democratic Community 1990
HR	High Representative
ICTY	International Criminal Tribunal for the Former Yugoslavia
IEBL	Inter-Entity Boundary Line
IPA	Instrument for Pre-Accession Assistance
IPTF	International Police Task Force
KCD BiH	Coalition for a United and Democratic Bosnia and Herzegovina
LOT	Liaison and Observation Teams
MAP	Membership Action Plan
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organisation
NHI	New Croatian Initiative
NSRzB	People's Party for Work and Betterment
OHR	Office of the High Representative
OIC	Organisation of the Islamic Conference
OSCE	Organisation for Security and Cooperation in Europe
PBS BiH	Public Broadcasting System in Bosnia and Herzegovina
PDP	Party of Democratic Progress
PIC	Peace Implementation Council
RDC	Research and Documentation Centre
RS	Republika Srpska

RS RS	Radical Party of Republic Srpska
RTRS	Radio Television of Republika Srpska
PIC SB	Peace Implementation Council Steering Board
SAA	Stabilisation and Association Agreement
SAP	Stabilisation and Association Process
SBiH	Party for Bosnia and Herzegovina
SDA	Party for Democratic Action
SDJ	Structured Dialogue in Justice
SDP	Social Democratic Party
SDS	Serbian Democratic Party
SFRY	Socialist Federal Republic of Yugoslavia
SNSD	Party of Independent Social Democrats
SIPA	State Investigation and Protection Agency
SP RS	Socialist Party of Republika Srpska
SPU	Pensioner's Party
SRS	Serbian Radical Party
UN	United Nations
UNDP	United Nations Development Programme



FOREWORDS



Foreword

As a result of the biggest war in Europe after World War II, the international community imposed a complicated federal structure on Bosnia and Herzegovina in order to create a balance in the inter-ethnic conflict in the country. It was possible to end the war, however the political system that had been established did not unify or solidify the country as a nation, nor did it lay the foundations for real peace and cooperation within the ethnic groups. On the contrary, the present political structure in Bosnia and Herzegovina is one of the most complicated systems in the world (and maybe also in history), presenting a multilayer political system that can be governed only if there is a clear will and a decision by the political elites to work together. This will is lacking on all sides, resulting in permanent political blockade even for relatively small matters. It is no secret that this situation and the ensuing lack of progress is obstructing the country's goal of ultimately joining the European Union. Furthermore, the status quo also exacerbates the risk that Bosnia and Herzegovina will stay behind other countries in their quest to participate in the great peace project called European Union. Additionally, there is no doubt that this situation is hindering the improvement of the living standard for the population as a whole. The prevailing political and economic conditions in Bosnia and Herzegovina prove that there is a need for political reforms.

This book gives an overview of the different aspects of the political systems in Bosnia and Herzegovina. It presents a contemporary history of the country and its constitutional principles. It also describes in detail the institutions at the state and federal levels, as well as units and analyses of the international relations of BiH. The three young authors from Bosnia and Herzegovina and Spain have written an interesting study, presenting the bases of one of the most complicated political systems in Europe.

We hope that this book will be a valuable resource for academics and experts in their quest to understand the crucial political issues of Bosnia and Herzegovina.

Dr. Christian Prosl, Amb. (ret.)
President of the Austrian Cultural Association

Foreword

Bosnia and Herzegovina has arguably one of the most complicated and interesting political systems in the world. The Dayton Peace Agreement managed to end the war in the country after the fall of Yugoslavia (1992-1995), yet the political process still maintains various levels and divisions between political entities. The resulting political system created a complex federal structure, with 13 federal units and 14 governments and parliaments. Check-and-balance and veto mechanisms have been introduced, hoping that consensus-based political cultures will develop. The international community attempted to use new instruments of conflict resolution; however, not all of these have succeeded.

The political system of Bosnia and Herzegovina has been the subject of multiple national and international research projects. These research projects tend to focus on specific aspects, like the decision-making process, the peace-building process, the influence of the international community, the interethnic relations, the federalism, etc. Authors rarely try to present an introduction to the political system. Our intension is to present an introduction to students and all those interested in learning the basics about the Bosnian political structure, its institutions and its processes.

This book builds upon the text *Das politische System Bosnien und Herzegovinas* by Saša Gavrić and Solveig Richter, which was published in the book *Die politischen Systeme Osteuropas* (editor Wolfgang Ismayr, 2010, VS Verlag für Sozialwissenschaften, Wiesbaden, Germany). Following the same format as *Das politische System Bosnien und Herzegovinas*, Saša Gavrić wrote chapter II (Institutions) and chapters III.1, III.2, IV.2, V.1 and V.3. Damir Banović wrote the introduction (I) and the chapters III.3, IV.1 and V.4. Mariña Barreiro wrote IV.3, V.2, V.4 and VI.1 and the Epilogue. All authors are solely responsible for their chapters.

We want to thank to Allison Olender and Alison Sluiter, for the great proofreading and inputs. We also want to express our gratitude to Dina Vilić for the very professional and creative book cover and layout. And at the end, a big thank to the Regional Austrian Cooperation Office in Science and Culture Sarajevo that supported us with the printing of this book.

We hope that you will enjoy and learn from this publication!

Saša Gavrić, Damir Banović, Mariña Barreiro

I INTRODUCTION



1. Contemporary Bosnian-Herzegovinian History

Bosnia and Herzegovina is a very young sovereign state and has little to look back on in its young *Statehood* experience. Even though it had been formally recognized as a Republic within Yugoslavia, it functioned as an administrative unit of the larger state. (Calic 1996: 45). Walking through the streets of Sarajevo, one will find evidence of a thousand years of foreign rule on every corner. In 1914, the capital of Bosnia and Herzegovina, Sarajevo, was the scene of the assassination of Franz Ferdinand, heir to the Austro-Hungarian throne, starting the First World War. In 1918, it joined the Kingdom of Serbs, Croats and Slovenes which, in 1929, became the Kingdom of Yugoslavia. After the Second World War, when its current state borders were established, Bosnia was part of the Federal National Republic of Yugoslavia (1946 Constitution), and from 1963, part of the Socialist Federal Republic of Yugoslavia. According to the principle of self-government, the 1974 Constitution guaranteed the republics and autonomous provinces further competencies, which was ultimately one factor that led to the dissolution of Yugoslavia (Calic 1996: 17). Discussions between Serbs and Croats regarding state reform and contradictions within the governing system proved unsuccessful in preserving the federal state. On October 15, 1991, following declarations of independence by Slovenia and Croatia, the parliament in Sarajevo also decided to part with Yugoslavia. At the demand of the European Union, a referendum was held on February 29 – March 1, 1992. The majority of citizens voted for independence (99.4%), but this percentage does not accurately represent the entire population, as a great number of Bosnian Serbs boycotted the referendum. The European Union and the United States recognized Bosnia and Herzegovina as an independent state on April 17, 1992. On May 22, Bosnia and Herzegovina became a member of the United Nations (Calic 1996: 44). By that time, conflict between Croats and the Yugoslav Peoples Army had already erupted. Bosnia and Herzegovina, as a multi-ethnic state centrally located in a geostrategic position, was dragged into and broken up by the conflict. The war between Croats and Serbs acted as “the accelerant to further segregation and disintegration processes” (Calic 1996: 70) and drove people to participate in great atrocities: mass killings, forced displacements and massacres. All three ethnic groups wanted the same territory, each to protect their own interests. Croats and Serbs had never seen Bosnia and Herzegovina as their homeland, but wanted to annex the territories where they had lived to the *Motherlands*. *Franjo Tuđman* and *Slobodan Milošević* had

already agreed on how to divide the land. The Republika Srpska (RS), the Serb paramilitary state, declared its independence on January 9, 1992, but the international community did not recognize it, as Bosniaks had fought for the unity of "their" land (Gromes 2007: 143). From 1993 to 1994, war raged between Bosniaks and Croats in Bosnia and Herzegovina. Under pressure from the international community, Bosniaks and Croats signed the Washington Peace Agreement that led to the foundation of the Federation of Bosnia and Herzegovina and partly resolved the conflict in the region. However, the massacre in Srebrenica in July 1995, defined as genocide in one decision of *The International Criminal Tribunal for the Former Yugoslavia* (ICTY), reminded the world's public of their helplessness and inability to act, leading to forceful United Nation (UN) and North Atlantic Treaty Organisation (NATO) military action. With NATO support, Croatian and Bosniak troops defeated the Serbian military forcing them to come to the negotiating table. The *General Framework Agreement for Peace* was completed on November 21, 1995 in Dayton (Ohio, U.S.), and signed on December 14, 1995 in Paris, France. Through its provisions and annexes, the Dayton Peace Agreement (DPA) ended the war and created the state of Bosnia and Herzegovina, but divided the country along ethnic lines, creating two entities (federal units): the Republika Srpska with a Serb majority (49% of territory), and the Federation of Bosnia and Herzegovina (FBiH) with a Bosniak and Croat majority (51% of territory) (Burg 1997: 141). Until the decision regarding Brčko District was delivered, the Brčko corridor remained under international supervision, administrated by the RS.

The Dayton Peace Agreement attempted, under the motto "One State, two Entities and three Nations" to create a balance between opposing interests, and to restrain disintegrative political forces. A complex political system was created, with four administrative levels and veto mechanisms for the three ethnic groups. Consociationalism was introduced to the political system. The Peace Agreement foresaw the foundation of *The Office of the High Representative* (OHR), an observing governing body with the ability to coordinate and supervise the implementation of the civil aspects of the Agreement. Since 1997, the competencies of the OHR have expanded significantly, to include law enforcement and the power to remove public officials from office (so-called *Bonn Powers*). As a way to secure peace, the Dayton Peace Agreement also foresaw the allocation of NATO troops within the country. In 2004, this task was transferred to EU troops. Many were amazed by the peace achieved in Dayton (Riegler 1999: 9). Bosnia and Herzegovina is an example of how democratization

can be used as a strategy for peace when implemented by external actors. However, it has also shown defects in the democratization process and its ability to inhibit reconciliation (Richter 2009).

The Dayton constitution confirmed the new state of Bosnia and Herzegovina as the legal successor to the Socialist Republic of Bosnia and Herzegovina (Council of Europe 2005: 3). There has not been a census in the country since 1991, but according to some estimates, there are approximately 3.78 million citizens living in the country (CIA 2000). The first post-war census will be organized in October 2013.

The constitution defines *demos* solely along the lines of ethnicity and only recognizes the three dominant ethnic groups: *Bosniaks, Croats and Serbs as constituent peoples (along with Others) and citizens of Bosnia and Herzegovina hereby determine that the Constitution of Bosnia and Herzegovina is as follows (...)* (Constitution BiH, Preamble, line 10). *The Others*, belong to national minorities (for example Roma or Turkish), or those with mixed backgrounds, or who are simply without ethnic or national identification. Others are also Bosnian citizens according to the constitutional provision, but have limited political rights. The Constitutional Court of Bosnia and Herzegovina delivered a *Decision on Constituent Peoples* in the summer of 2000, in which some parts of the state outlawed provisions discriminating against constituent peoples. The following changes were made: Serbs became constituent peoples in the Federation of Bosnia and Herzegovina, and Bosniaks and Croats became constituent peoples in the Republika Srpska. These changes also affected *the Others*, expanding their political rights at entity and cantonal levels (in FBiH). The constitutional system was not created on the basis of the equality of individuals, but on the equality of ethnic groups. To be more precise, the constitutional system has provided collective rights to dominant groups, while individual rights and individual identities are secondary. Although Bosnia and Herzegovina is a secular state, the dominant ethnic groups also define themselves through religion: Bosniaks through Islam, Croats through Catholicism and Serbs through Eastern Orthodoxy. Representatives of the religious communities are usually part of pre-election campaigns to secure national interests. The combination of religion, ethnicity, and the associated political rights has had a constant impact on the social sphere.

Ethnic Structure in Bosnia and Herzegovina 1991 and 2000

	Census 1991	Approximation 2000
Total (Million)	4.35	3.78
Bosniaks (Muslims) (in %)	43.47	48
Croats (in %)	17.38	14.3
Serbs (in %)	31.21	37.1
Other (in %)	7.94	0.6

Source: CIA World Factbook (2000)

Since 1995, Bosnia and Herzegovina has been dealing with many parallel transformation processes: from a war-torn to a peace-building society, reconstruction of the state, democratization, and transition from a communist planned economy to a capitalist liberal free market (BTI 2007: 3).

“The war came to an end in 1995, but politically the wounds are still deep.” This is how Wolf Oschlies described the situation in Bosnia in 2004, almost ten years after the war (Oschlies 2004: 739). Unfortunately, the situation has not changed substantially in the past nine years. The peace and reconciliation process will take years, leaving future generations to deal with remaining unsolved social issues. There are still families trying to find the graves of relatives killed during *ethnic cleansing*. The land has yet to find peace after the war, but still, nationalistic political parties were quick to transpose the battle to parliament and the rest of the government, acting as veto players and prescribing to antidemocratic methods. The Office of the High Representative initially had a somewhat negative impact by exercising its authority. With the *Bonn Powers* granting substantially more authority to the OHR, the Office dismissed public officials (including judges, ministers, members of the Presidency, civil servants, etc.) who obstructed peace implementation processes. Security issues have improved recently due to the fact that the monopoly of physical power held by state organ/s shifted following *top to bottom* military reform in 2006, which established *The Armed Forces of Bosnia and*

Herzegovina and the state Ministry of Defence (BTI 2006: 5). However, there are still unsolved issues with national security. The distribution of ethnic groups throughout the state has changed dramatically and we can no longer refer to the colourful patchwork that Bosnia was prior to 1991.

According to numbers provided by *The Research and Documentation Centre* (RDC) in Sarajevo after twenty years of research, there were a total of 96,000 war victims (killed or missing), 440 prisons or concentration camps and 320 mass graves.¹ More than half of Bosnia's citizens lived in another country or another place within BiH during the war. Despite the fact that the entirety of expropriated or occupied private property has been returned to its owners (93.34% in March 2006) (BTI 2007: 10) only half of the refugees returned. The return of refugees to their homes in areas of which they were part of the minority was very often connected to discrimination. This is the reason many of them found new homes in parts of the country where their ethnicity formed the majority. The percentage of Bosniaks in the population of the Federation of Bosnia and Herzegovina has increased since 1991 from 52% to 73%, while the number of Serbs decreased from 18% to 2%. This number increased in favour of Serbs in the Republika Srpska from 54% to 97%. The total number of Croats in BiH has decreased from 17% before the war, to 14% after the war (4.8% in RS, 16.5% in Federation) (Bieber 2008: 40f.). Dealing with the past, especially war crimes and their perpetrators, within and among the ethnic groups has been extremely difficult (BTI 2007: 25). For many years following the end of the war, the justice system was unwilling to work on the issue of war crimes, and cooperation with the ICTY was insufficient. The Department for War Crimes at the Court of Bosnia and Herzegovina began its work in March 2005. In the meantime, criminal procedures began in domestic courts and were supplemented by the war crimes work of the independent Centre for Research and Documentation in Sarajevo, which focused on collecting data on recent history, though they have not gained major political influence (BTI 2007: 25). Most of the efforts made to collect and process data regarding recent history have perpetuated deeper antagonism between the ethnic groups, as each has its own version of what happened during the war, and each claim to have been victimized. Injustices that took place during the war have often been used as propaganda to deepen rifts within the political arena.

The transformation of the state began with the decomposition of Yugoslavia, continued with the declaration of independence, and ended

1 Source: www.idc.org.ba/aboutus.html (accessed on January, 20 2013.).

in 1995 with the constitution of the new state of Bosnia and Herzegovina. The goal of creating peace led to the creation of strong veto mechanisms and a system of blockades within the Constitution. The Dayton Peace Agreement created an extremely decentralized state with two entities, one of which - the Federation of Bosnia and Herzegovina - was further decentralised by the formation of ten cantons. Neither the solutions offered in the Peace Agreement nor the strong presence of the international community was enough to create a successful, integrated post-war state (Richter 2009). From the beginning, Bosnia and Herzegovina has faced instability and a lack of legitimacy. Bosniaks were eager to identify themselves with their "own state," while Croats and Serbs hesitated to acknowledge the Dayton construction and pushed for areas in which they formed a majority to become independent or be annexed to neighbouring countries, e.g. Croatia and The Federal Republic of Yugoslavia. Democratic changes in Croatia and Yugoslavia in 2000 influenced their decision to withdraw their support of the secession attempts of Croats and Serbs. Democratization also affected the discourse of negotiations related to the formation of the political system. The conflict regarding the mere existence of the state shifted to a discussion on the specific powers of the state and its entities. This also empowered centrifugal politics that worked to weaken efforts focused on creating a stronger state. The possibility of comprehensive reform at the state-level arose in 2006 when representatives of the three major ethnic groups reached an agreement on constitutional reform, but the changes were rejected in the state-level parliament, just one vote short of reaching a two-thirds majority. This failure threw the state into political crisis, the effects of which are still being felt. The state of Bosnia and Herzegovina has very limited sovereignty as the Office of the High Representative has the authority to impose decisions, though this power has not been exercised since 2006 when the international community decided it was time for domestic politicians to take responsibility for internal issues.

The political transformation began with the decline of the authoritarian regime and a free democratic election in 1990 that followed a strong nationalistic campaign. Three nationalistic parties consisting of Bosniaks, Serbs, and Croats won in the first multi-party elections and formed a fragile coalition, though they failed to create a lasting compromise regarding the future status of the country (Woodward 1995: 233). Following the post-war legal transformation, social conditions in 1995 were rather unfavourable (Richter 2009). The new state constitution formed in Dayton called for post-war elections (1996), and aimed to create a democratic federation with democratic institutions and the capacity to impose and implement

decisions. Elections brought clear victory to the nationalistic parties, which perpetuated the conflict. Nationalistic parties preserved their illegal networks and opposed the constitutional structures at the state-level. Dualism of formal institutions and powers created obstacles within the democratizing and restructuring processes. The year 2000 brought with it a progressive period with non-nationalistic parties winning in general elections. But internal differences within the grand coalition still blocked substantial reforms. As a result of polarization and nationalistic rhetoric during the campaign, nationalistic parties once again won the general elections in 2002 and 2006. Fortunately, free and fair elections had become part of the political system and influenced the periodic change of government. Huntington's criteria of the "two-time-change" for a government to achieve the status of a stable democracy (Huntington 1991: 266) seems to have failed in the case of Bosnia and Herzegovina, which does not belong to the circle of stable democracies (Gromes 2006b: 18), but is more of a hybrid regime between traditional authoritarian and democratic political systems. Normative solutions formed in Dayton, which highly ethnicized *demos*, are strongly affecting democratic processes. Remnants of the authoritarian political culture can still be found and cannot be ignored when it comes to the implementation of democratic practices. Moreover, an unclear division of power has prevented transparent decision-making processes and effective control of the administration (Richter 2009). The apparent inability to compromise on the functionality of the state reached a climax in 2006, when constitutional reform failed in parliament, and continued in subsequent years during which political elites blocked any possibility for substantial reform. The stagnant nature of Bosnia and Herzegovina's democracy has resulted in it representing nothing more than a quasi-protectorate of the international community, with a complex state structure, long decision-making processes, and underdeveloped political culture.

2. Constitutional System, Principles and Reform

2.1 Constitutional Development

The Bosnian Constitution is part of the General Framework Agreement for Peace in Bosnia and Herzegovina (Annex 4 of the Agreement) signed by the Republic of Croatia, the Republic of Bosnia and Herzegovina and the Federal Republic of Yugoslavia in Paris on the 14 December 1995. It is also known as the Paris Agreement or the Dayton Agreement, named after the cities where it was signed. The Dayton Peace Agreement is a *de facto* series of agreements consisting of one framework agreement and twelve special agreements referred to as Annexes of the General Framework Peace Agreement for Bosnia and Herzegovina. The special agreements, which were signed by different parties, relate to civilian (Annexes 2 through 11) and military components (Annexes 1-A and 1-B). Annex 4 contains the Constitution of Bosnia and Herzegovina, which, unlike other annexes, was not made in the form of an agreement. The Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska all approved the Constitution of Bosnia and Herzegovina. Although the last sentence of Article XI states that the Agreement shall be signed in the three official languages of Bosnia and Herzegovina (i.e. Bosnian, Serbian, and Croatian) and English languages, the Constitutional Charter of Bosnia and Herzegovina was officially signed only in English. There are no official versions made in the official languages of Bosnia and Herzegovina, nor have the relevant authorities translated this document, including the Constitution of Bosnia and Herzegovina, only un-official translations have been used. The Dayton Peace Agreement, including the Constitution, has never been published in the Official Gazettes of the State and/or Entities.

The Constitution of the Republika Srpska was adopted on 28 February 1992 and published in the Official Gazette of the Republika Srpska. Since 1992, there have been more than 120 amendments to the Constitution. Article 1 of the Constitution states that the Republika Srpska is territorially unified, indivisible, and an inalienable constitutional and legal entity that shall independently perform its constitutional, legislative, executive, and judicial functions. The Constitution created a centralized federal unit within the asymmetrical federal system in Bosnia and Herzegovina.

The Washington Agreement created the Federation of Bosnia and

Herzegovina (FBiH, Federation) in March 1994. On 30 March 1994, the Constitutional Assembly of the Federation of Bosnia and Herzegovina adopted its constitution, establishing the second of the two entities in Bosnia and Herzegovina. Unlike the Republika Srpska, the Federation of Bosnia and Herzegovina is extremely decentralized, made up of ten cantons with broad constitutional powers and discrepancies in the areas of education, culture, health care, etc. The cantonal system was selected to prevent dominance by one ethnic group over the other. Since 1994, this constitution has been amended at least one hundred times.

Brčko District of Bosnia and Herzegovina was established in 2000 after an arbitration process undertaken by the High Representative, and is a neutral, self-governing administrative unit under the sovereignty of Bosnia and Herzegovina. The Constitution of Bosnia and Herzegovina, as well as all relevant decisions and laws regarding the institutions of Bosnia and Herzegovina, are directly applicable throughout the territory of the District. Brčko also has its own Statute regulating the functions and powers of the District, its cooperation with the entities, human rights and freedoms, organization of the District, and division of powers, competencies and institutions, etc. The status of the District was secured with the adoption of the first Amendment to the Constitution of Bosnia and Herzegovina in 2009.

2.2 Constitutional Principles

2.2.1. Constitutional Principles of the Constituency of Peoples and the Complex Federalism of the Bosnian Constitution

According to the Dayton Constitution of Bosnia and Herzegovina, a new notion of *constituent peoples* (Bosniaks, Serbs and Croats) and *Others* was introduced. While the constituent peoples are clearly defined in the constitution, *the Others* are not explicitly defined. When systematically interpreted, it can be concluded that the term includes, on one hand, national minorities and, on the other, people who are neither a member of the constituent groups nor the national minorities, e.g. persons with ethnically mixed backgrounds and those who refuse to identify themselves according to their ethnicity. Constituent peoples make up the building blocks of the state, and in this sense a distinction is made between them and *the Others*. Only constituent peoples are entitled to special collective rights, such as representation in institutions and veto power in decision-making processes.

The principle of constituency was interpreted and implemented in a such way that until 2000 members of ethnic groups were constituent in only certain parts of the territory of Bosnia and Herzegovina: Serbs were the only constituent people in the Republic Srpska, and Bosniaks and Croats were the only constituent peoples in the Federation of Bosnia and Herzegovina.

Furthermore, the constitutional principle of constituency includes: defining some parts of Bosnia and Herzegovina exclusively through the prism of a particular ethnic group; giving primacy to the language and script of a particular group; organizing the legislative, executive, and judicial authority according to the criteria of one ethnicity; and financing at the entity-level for the maintenance of certain elements of cultural identity for one specific ethnic group, though this principle was not applied at the state level, where members of all ethnic groups are equally represented. The primary consequence of implementation of the principle of constituency was the identification of ethnicity with territory. The Constitution of Bosnia and Herzegovina primarily regulates state-level institutions. State authority is divided among the executive, legislative, and judicial authorities, though only the executive and legislative bodies are explicitly regulated by the Constitution.

Besides the constitutional principle of the equality of constituent peoples, a second principle is that of *complex federalism*. Bosnia and Herzegovina has several layers of political structures, most clearly illustrated by the division of the country into two entities: the Republika Srpska and the Federation of Bosnia and Herzegovina. The third level of Bosnia and Herzegovina's political subdivision is manifested in cantons. The ten cantons are unique to the Federation of Bosnia and Herzegovina entity. Each has their own cantonal government and parliament, subject to the laws of the Federation. Some cantons are ethnically mixed and have special laws implemented to ensure the equality of all constituent peoples.

2.2.2 Redefining the Principle of the Constituency of Peoples by the Constitutional Court of Bosnia and Herzegovina: the Decision on the Constituency of Peoples

The consequence of the decision on the constituency of peoples² was the redefinition of the principle of constituency of peoples: according to the decision, there are three constituent ethnic groups in the entire territory

2 Decision of the Constitutional Court on the Constituency of Peoples, No. U 5/98 – III.

of Bosnia and Herzegovina. This decision is formally and technically divided into four partial decisions and it was published in the *Official Gazette*. It should be noted that the third partial decision of July 1, 2000 is generally known as the "decision on the constituent status of peoples". Applicant *Alija Izetbegović*, former Bosniak member of the Presidency, held that a number of provisions in the constitutions of the entities were inconsistent with the Constitution of Bosnia and Herzegovina. As a pre-condition necessary for linguistic clarification of the standardized content regarding the notion of constituent peoples, the Constitutional Court had to answer affirmatively whether the preamble of the constitution, as such, can generally have a normative character. The Court accepted the opinion that some lines of the preamble have normative content, which is of legal relevance. In order to analyse the content of the notion "status of the constituent" the majority of members of the Constitutional Court decided to attempt to determine the meaning of this concept through systematic interpretation.

Based on such methods of interpretation, the Constitutional Court derived from the constitution three general normative principles:

- a) *The principle of multi-ethnicity*: the overall state structure of BiH corresponds to a model of multi-ethnic statehood, where territorial delimitation does not have to lead to institutional segregation and national homogenization within state institutions.
- b) *The principle of collective equality of constituent peoples*: effective political participation in decision-making processes not only through individual equality in respect to electoral rights, but also through collective ethnic representation of the three constituent peoples. Entities have an obligation to comply with this principle prohibiting discrimination against any member of the three constituent peoples, in particular against these constituent peoples, which are, *de facto*, in the position of being an ethnic minority in the respective entity. Secondly, the principle of collective equality prohibits any special privilege for any of the three ethnic constituent peoples by granting them any distinct or additional rights. The Constitutional Court faced an issue related to the tension between individual and collective rights and concluded that the total exclusion of persons from the representative system gave rise to a violation of their individual political rights. Therefore the category of *the*

Others was introduced into the representative system in order to prevent the total exclusion of individual rights.

- c) The rule regarding the *prohibition of discrimination* includes the prohibition of *de iure* discrimination, the prohibition of *de facto* discrimination, and the prohibition of past *de iure* discrimination.

The implementation of this decision led to the following results: the inclusion of Serbs as constituent peoples in the Federation of Bosnia and Herzegovina, and the inclusion of Bosniaks and Croats as constituent peoples in the Republika Srpska. *The Others* were also recognized as having a right to representation in parliaments and administrative bodies.

Bearing in mind the political situation in Bosnia and Herzegovina just after the adoption of the decision, it was impossible to expect the Parliament of the Federation of Bosnia and Herzegovina and the National Assembly of the Republika Srpska to revise their respective constitutions. Even though there was general agreement on how the decision should be implemented, in the end it was necessary for the *Office of the High Representative* to intervene in order to enforce the amendments to the entities' constitutions.

This decision caused the reorganization of all entity institutions and the introduction of mandatory quotas of representation in all parts of government for all three constituent ethnic groups and *the Others* in both entities. Furthermore, the latter meant the addition of the languages and scripts of the other constituent ethnic groups as official languages, and the elimination of ethnic exclusivity in all parts of the territory of Bosnia and Herzegovina.

The decision of the Constitutional Court of Bosnia and Herzegovina ended the discrimination of ethnic groups. This demonstrates the importance of the court as an institution that not only protects, but also establishes constitutional principles. By introducing systematic interpretations, the Constitutional Court created new perspectives for the political system to consolidate a stable post-conflict democracy.

The largest change in the political system was caused by the decision of the Constitutional Court and the way the constitutional principles were interpreted. Paradoxically, the constitutional system of Bosnia and

Herzegovina combines two models: a radical multicultural model that was implemented and introduced with the Dayton Peace Agreement, and a universal and liberal model introduced through international conventions (which also have constitutional power).

2.3 Decision of the European Court of Human Rights in the Case Sejdić & Finci vs. Bosnia and Herzegovina

The applicants in this case, Dervo Sejdić and Jakob Finci, are citizens of Bosnia and Herzegovina. They were born in 1956 and 1943 respectively, and are both prominent public figures in their city of residence, Sarajevo. The first is of Roma origin and the latter is a Jew. As mentioned above, the Bosnian constitution distinguishes between two categories of citizens: the constituent peoples (Bosniaks, Croats and Serbs) and the *Others*. The House of Peoples of the Parliamentary Assembly (the second chamber) and the Presidency are composed only of persons belonging to the three constituent peoples. Mr. Jakob Finci wrote to the Central Election Commission about his intention to stand for election to the Presidency and the House of Peoples of the Parliamentary Assembly. On January 3, 2007 he received a written confirmation from the Central Election Commission that he was ineligible to stand for such elections because of his Jewish origin.

The applicants argued in the European Court of Human Rights that, despite possessing experience comparable to that of the highest elected officials, the Constitution of Bosnia and Herzegovina and the corresponding provisions of the Election Act of 2001 prevented them from campaigning for the Presidency and the House of Peoples solely on the ground of their ethnic origin. They relied on Articles 3 (the prohibition of inhuman and degrading treatment), 13 (the right to an effective remedy) and 14 (the prohibition of discrimination) of the European Convention on Human Rights, Article 3 of Protocol No. 1 (right to free elections) and Article 1 of Protocol No. 12 (general prohibition of discrimination) to the Convention. Their complaints were lodged with the European Court of Human Rights on July 3 and August 18, 2006 respectively.

The court acknowledged that this system – established at a time when all parties involved in a far-reaching inter-ethnic conflict had accepted a fragile ceasefire – pursued the legitimate aim of restoring peace. It noted, however, that the situation in Bosnia and Herzegovina had improved considerably since the Dayton Peace Agreement and the adoption of the constitution, as shown by the fact that international administration in

BiH was coming to a close.

The court recognised recent progress, noting that Bosnia and Herzegovina amended its constitution for the first time in 2009, and that it had recently been elected a member of the United Nations Security Council for a two-year term. Nonetheless, the court agreed with the government that the time was perhaps still not ripe for a political system that abandoned the power-sharing mechanism in place and would be a simple reflection of majority rule. As the Venice Commission had clearly demonstrated in its opinion of March 11 2005 (Venice Commission 2005), however, there existed mechanisms for power sharing that did not automatically lead to the total exclusion of representatives of the communities that were not among the constituent peoples. Furthermore, when it joined the Council of Europe in 2002, Bosnia and Herzegovina undertook to review the electoral legislation within one year, and it ratified the convention and the protocols thereto without reservations. By ratifying a Stabilization and Association Agreement (SAA) with the European Union in 2008, it had committed to amending electoral legislation regarding members of the Bosnian and Herzegovinian Presidency and the delegates of the House of Peoples to ensure full compliance with the European Convention on Human Rights and the Council of Europe's post-accession commitments within one to two years.

In consequence, the court concluded (ECHR 2009) by fourteen votes to three that the applicants' continued ineligibility to stand for election to the House of Peoples of Bosnia and Herzegovina lacked an objective and reasonable justification and had therefore breached Article 14 in conjunction with Article 3 of Protocol No. 1.

The international community, civil society organisations and political parties have made different proposals for the implementation of the Sejdic-Finci-case. None of these proposals found support in the Parliamentary Assembly, and elections in October 2010 took place with the discriminatory rules still in place. It will be interesting to see the reaction of the international community if BiH does not implement the Sejdic-Finci-case before the next General Elections in Fall 2014. Further, the abolishment of ethnic discrimination within the political system cannot stop with only the implementation of this case and changing the electoral rules for the Presidency and House of Peoples. BiH needs systematic reforms that will abolish the discrimination found in other institutions on the state, entity, cantonal and local level.

II INSTITUTIONS



1. Collective Head of the State: State Presidency

The Presidency (*Predsjedništvo*) of Bosnia and Herzegovina represents the collective head of the complex state. The current Presidency continues a Yugoslavian tradition, given that fact that collective presidencies were introduced at the federal level in Yugoslavia in 1971, and in Bosnia and Herzegovina in 1974. (Bieber 2008: 62; Pejanović 2005: 67). In Yugoslavia, the Bosnian-Herzegovinian presidency rotated between nine members that were elected by parliament. Direct elections were not introduced until 1990, when the Presidency was reduced to seven members: two representatives each of Serbs, Croats, and Muslims (the name given to Bosniaks until 1993) and one representative of the other ethnic groups (*naroda*). Today's collective Presidency, outlined in the Dayton constitution, is therefore not an innovation of the peace negotiation under US mediation, but an institution rooted in tradition.

Since 1995, the Presidency has been an executive body consisting of one Bosniak, one Croat and one Serb. In addition to the usual parity of the ethnic groups, which is evident in the House of Peoples of the state parliament as well, the election of the Presidency also has a territorial component outlined in the election rules. The eligible voters (citizens over the age of 18) in the Federation of Bosnia and Herzegovina directly elect one Bosniak and one Croat, while voters in the Republika Srpska vote for the Serbian member (Art V, Constitution of BiH). An overview of Presidency members can be found in the table below.

Serbs from the Federation of Bosnia and Herzegovina, and Croats and Bosniaks from the Republika Srpska, as well as all other citizens that do not belong to one of the three largest ethnic groups, do not have a passive electoral right and are excluded from the highest state body (Bieber 2008: 62).

Members of the Presidency since 1996

Period	Bosniak member	Serbian member	Croat member
1996-1998	Alija Izetbegović, SDA	Momčilo Krajišnik, SDS	Krešimir Zubak, HDZ
1998-2002	Alija Izetbegović, SDA (until 10/2000); Halid Genjac, SDA (10/2000-03/2001), Beriz Belkić, SBiH (since 03/2001)	Živko Radišić, SPRS	Ante Jelavić, HDZ (until 03/2001); Jozo Križanović, SDP (since 03/2001)
2002-2006	Sulejman Tihić, SDA	Mirko Šarović, SDS (until 04/2003); Borislav Paravac, SDS (since 4/2003)	Dragan Čović, HDZ (until 03/2005); Ivo Miro Jović, HDZ (since 03/2005)
2006-2010	Haris Silajdžić, SBiH	Nebojša Radmanović, SNSD	Željko Komšić, SDP
2010-present	Bakir Izetbegović, SDA	Nebojša Radmanović, SNSD	Željko Komšić, SDP

The election procedure consists of a number of specific characteristics. For example, the Serbian Presidency member is not elected only by the Serbian majority in the Republika Srpska. Bosniaks and Croats that are registered in that entity also have a say. In the case of narrow election results, Bosniak and Croat votes can be very important. As in the Republika Srpska, the citizens of the Federation have only one vote each, so they can decide to vote for a Bosniak or Croat candidate, independent of their own ethnic identity. The implications for the election of the Bosniak candidate are not very high. However, because Bosniaks are the majority, they can easily "outvote" ethnic Croats by nominating and voting for their own Croat candidate. It was in this manner, on the back of moderate Bosniak voters, that the Croat candidate of the Social Democratic Party (SDP), *Željko Komšić*, won the 2006 and 2010 presidential elections. This shows that the interests of Croats are not represented as well as those of

the other two groups (Gromes 2007: 161).

These types of electoral and representative proceedings have been criticized in many different studies. The previously mentioned 2005 Council of Europe report also noted the need for reform (Council of Europe 2005). One solution is the abrogation of the collective Presidency and the introduction of an indirectly elected president, with limited authority. One comparable structure was presented as part of the constitutional reform package from April 2006, according to which the new Presidency, with representative powers, would consist of one President and two Deputies (Parlamentarna skupština 2006: 8).

The members of the Presidency are elected for a period of four years (the first post-war election in 1996 limited the term to two years) and can be re-elected for a second term in office. After that they are unable to take over a new mandate for the next four years (article V, Constitution of BiH). The Electoral Law (2001) explains that the three Presidency members will elect the first member to stand as Chairman, a title that will rotate between the three members every eight months throughout the duration of their mandate. This strengthens the collective character of the body. Once a member of the Presidency is elected, there is no democratic way to remove him from office before his four-year term expires. However, the High Representative has removed several members of the Presidency by using his *Bonn Powers*, the most recent being Croat member and HDZ leader *Dragan Čović* in 2005.

The powers of the Presidency speak to a combination of the elements of a parliamentary and presidential democracy. In addition to the usual representative responsibilities, the office also comes with important political duties. The most important are (article V par. 3, article V par. 4 Constitution BiH; Rules of Procedure of the Presidency of BiH 2002):

- Conducting the foreign policy of Bosnia and Herzegovina (et. al. appointing ambassadors and other international representatives; representing the country in international and European organisations and institutions; arranging international agreements, denouncing, and, with the consent of the Parliamentary Assembly, ratifying treaties etc.);
- Nominating the Chair of the Council of Ministers (who shall take office upon the approval of the House of Representatives);
- Proposing (upon the recommendation of the Council of Ministers) an annual budget to the Parliamentary Assembly;

- Civilian commanding of the armed forces (until the unification of the armed forces the Presidency had authority over the two separate entity armed forces); and
- Appointing five members to the Governing Board of the Central Bank of Bosnia and Herzegovina.

All members of the Presidency have, *ex officio*, the right to submit petitions to the Constitutional Court. The court has been a strong political mechanism, especially regarding important decisions such as the decision on constituent peoples. Presidency member Alija Izetbegović initiated this petition. The Presidency may also dismiss the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, in the case of a change in parliamentary majorities. So far, this strong political instrument has not been used.

In principle, the Presidency should make decisions based on consensus (Savić 2003: 23). However, if one of the members is overruled he may declare the decision destructive for the vital interest of the entity from which he was elected, and it will be given to an authorized entity body for final revision. If the declaration was made the by the member from the Republika Srpska, the Presidency decision will be given to the National Assembly of the Republika Srpska for confirmation. If a Bosniak or Croat member made the declaration, the respective Bosniak or Croat delegates of the House of Peoples of the Federation of Bosnia and Herzegovina will make the decision. If a veto about vital interests is confirmed by a two-thirds majority of the entity body within ten days of the referral, the decision shall not take effect (article V par. 2 Constitution of Bosnia and Herzegovina).

The different veto elements have made the daily work of the Presidency, particularly in the post-war-period, especially difficult. The limited institutional infrastructure, the fact that the Serbian member had his office built in Pale (the war-time capital of the Republika Srpska) rather than in Sarajevo (Gligorić 2002), and the incompatibility of the politics of the three main nationalistic parties (SDA, HDZ and SDS), from which the first Presidency members were elected, have resulted in constant obstructions. The election of more moderate members helped to initiate productive work aimed at improving the Presidency as an institution. Today, each member of the Presidency has an advisory team of seven to eight members. The Secretariat of the Presidency of Bosnia and Herzegovina was established through the New York Declaration, adopted in December 1999, following indications that the infrastructure and

logistics of the Presidency needed to be improved. The Secretariat was, at first, to have fifteen officials, but the number gradually increased in accordance with the institution's needs. At the head of the Secretariat is the General Secretary of the BiH Presidency. The Secretaries for Normative Tasks and Organizational-Financial Tasks are the deputies of the General Secretary. The Secretariat of the BiH Presidency also consists of the Public Relations Office and four Departments: Department of Protocol, Department of Finance, Department of Archives and Documentation, and Department of Logistics (Article 14, Rules of Procedure of the Presidency of BiH). Together, they support the work of the Presidency by providing content, administrative, and technical assistance.

Like all other institutions at the state-level, the functionality of the Presidency depends greatly on the general political climate and the relations between the main political parties of the three ethnic groups. Blockades are part of the daily routine. As mentioned previously, the constitutional reform package from April 2006 planned to limit the powers of the head of state, shifting towards a more parliamentary political system. This is a very important step considering that the system in place at present is ridden with blockade and veto mechanisms, and that a strong head of state is unusual in a consensus democracy³.

One of the most important moments in the development of Bosnia and Herzegovina's political system was the previously mentioned Sejdic and Finci vs. Bosnia and Herzegovina case. Once the decision of the European Court for Human Rights is implemented, every citizen, from every part of BiH, not only Serbs from the Republika Srpska and Croats and Bosniaks from the Federation of BiH, will have passive voting rights.

2. Parliament: Parliamentary Assembly

Bosnia and Herzegovina does not have a long parliamentary tradition. The first predecessor of a parliamentary structure was embodied in the Bosnian parliament (*Sabor*) in 1900 under Austro-Hungarian rule. According to the former state statute of Bosnia and Herzegovina, the committee of 92 members could consult and draft laws, but was not

³ Consensus democracy is the application of consensus decision-making to the process of legislation in a democracy. It is characterized by a decision-making structure which involves and takes into account as broad a range of opinions as possible, as opposed to systems where minority opinions can potentially be ignored by vote-winning majorities.

allowed to adopt legislation. This right was reserved for the central administration in Vienna. Due to the fixed quota system, it was guaranteed that official representatives of the four religious communities (of Catholic, Orthodox, Islamic and Jewish affiliation) and associates were included in the parliament (Kasapović 2005: 97; Vrankić 1998: 44f.). During the period of the Kingdom of Serbs, Croats and Slovenes, which later became the Kingdom of Yugoslavia, Bosnia and Herzegovina did not form a uniform administration unit and hence, did not have its own parliament. A continuous parliamentary tradition was not introduced until the foundation of Socialist Yugoslavia. In 1990, a two-chamber parliament was established, consisting of a citizen council (130 delegates) and a municipal council (110 delegates) (Bieber 2008: 30). Following the start of the war in the region and the foundation of the Assembly of the Serbian people in Bosnia and Herzegovina in 1991, the majority of Serbian delegates abandoned the parliament so that regular parliamentary work was not possible until 1996. After the war, the two-chamber structure was changed. The Constitution of the Dayton Peace Agreement entailed neither a municipal, nor a citizen council for the parliament, the so-called Parliamentary Assembly (*Parlamentarna skupština*). Instead, the House of Representatives (*Predstavnički/Zastupnički dom*) and the House of Peoples (*Dom naroda*) were established.

The 42 delegates of the House of Representatives are directly elected, two-thirds by the Federation, and one-third by the Republika Srpska (Art. IV Paragraph 1 of the Constitution). The number of mandates is not defined by ethnic criteria, but is divided between the two entities on a territorial basis. The House of Peoples consists of fifteen members: five Bosniak, five Croat and five Serb delegates. While the five Serbian delegates are elected by the National Assembly of the Republika Srpska, the Bosniak and Croat members are elected by the Bosniak and Croat members' delegates of the House of the Peoples of the Federation (Art. IV, Paragraph 1 of the Constitution). Thus, the formation and election of the two chambers is based on the principle of parity, namely the parity of the entities (both chambers) and peoples (House of Peoples). Similar to the Presidency elections, the election for the House of Peoples excludes Serbs in the Federation, and Croats and Bosniaks in the Republika Srpska, as well as all Others in both entities. Moreover, Croat and Bosniak delegates are exclusively elected to the House of Peoples by Croats or Bosniaks, which prohibits Serbian and any other delegates in the Federation from actively participating in their election (Council of Europe 2005). However, in the Republika Srpska all members of the National Assembly appoint the five Serbian members of the state-level House of Peoples. The exact

competencies of the Parliamentary Assembly of Bosnia and Herzegovina are defined in the Constitution and in the standing orders of the two chambers. Their main functions comprise the following: constitutional amendments, legislation, ratification of international treaties, approval and execution of the state budget, and the approval and control of the Council of Ministers.

The House of Representatives is required to meet, at the latest, thirty days after the official announcement of the election results. The most senior delegate leads the first session. The delegates elect a Chairman from among their members, who must not belong to the same ethnic group of the Chairman of the Presidency or the Councils of Ministers. The Chairman of the House of Representatives and the two Deputies (who rotate the chairmanship every eight months) form the "Collegium" of the House, which is in charge of the following tasks (according to Art. 4 of the Rules of Procedure of the House of Representatives): the call for, preparation, and heading of the chamber's sessions; coordination with other state institutions; and cooperation with political parties, associations, and non-governmental organisations. The members of the Collegium mentioned above work alongside the heads of the parliamentary groups, mainly consisting of political party members and a group of independent candidates, as an "Extended Collegium." The "Extended Collegium" consults regarding the preparation and implementation of the parliament's one-year operational plan. The collegiums of the two chambers form the "Common College" of the two Houses. The Common College consults on questions of inter-parliamentarian cooperation and prepares general issues that concern the two chambers. Moreover, it prepares drafts of laws for adoption.

There are standing and ad-hoc committees (*komisije*) in the House of Representatives. The former consist of nine members, while the ad-hoc committees may have fewer than nine members. The seven permanent committees are: Constitutional-Legal; Foreign Affairs; Foreign Trade and Customs; Finance and Budget; Transport and Communication; Gender Equality and Preparation of Election of the Council of Ministers of Bosnia and Herzegovina. The committees represent the approximate structure of the groups of delegates. One third of all committee delegates are from the Republika Srpska, and two-thirds are from the Federation (Art. 30 Rules of Procedure, House of Representatives). In practical terms, both ethnic and territorial proportionality are guaranteed.

Unlike the House of Representatives, the House of Peoples is represented by three fixed caucus: Bosniak, Croat, and Serb delegates. They

elect a Chairman of the chamber and two Deputies who lead the work of the House of Peoples in accordance with the principle of rotation. The following permanent committees in the House of Peoples are formed by six members, reflecting ethnic and territorial proportionality: Constitutional-Legal Committee; Committee on Foreign Trade Policy, Customs, Transport and Communication; and Finance and Budget Committee.

While each chamber has their own groups focused on the issues mentioned above, there are also joint committees that deal with broader matters. The joint committees are: Joint Committee on Defence and Security of Bosnia and Herzegovina; Joint Committee on Supervision of the work of Intelligence and Security Agency in Bosnia and Herzegovina; Joint Committee on Economic Reforms and Development; Joint Committee on European Integration; Joint Committee on Administrative Affairs and Joint Committee on Human Rights, Rights of Children, Youth, Immigration, Refugees, Asylum, and Ethics. These committees each consist of nine members, six of whom come from the House of Representatives and three from the House of Peoples. Like the other committees, they are characterized by territorial and ethnic proportionality. All committees generally meet in public, but can also decide to exclude the public from their sessions. The law on the Protection of the Rights of National Minorities (adopted in 2003) outlines the institution of the Council of National Minorities (*Vijeće nacionalnih manjina*) as an advisory body on issues such as language, culture, education, media etc., and as representation of the seventeen recognized minorities (Fond otvoreno društvo 2006: 32). The Parliamentary Assembly founded the Council in April 2008 after considerable delay. It is comprised of representatives from only ten of the seventeen officially recognized minorities, although the explicit and guaranteed representation of at least some minorities is an improvement. However, on a critical note, the representation of minorities in the House of Peoples has consistently been denied.

*Male and Female Delegates in the
House of Representatives from 1996 to 2010*

Elections	Overall	Female delegates		Male Delegates	
		Count	Percentage	Count	Percentage
1996	42	1	2.4%	41	97.6%
1998	42	13	31%	29	69.0%
2000	42	2	7.1%	39	92.9%
2002	42	6	14.3%	36	85.7%
2006	42	5	11.9%	37	88.1%
2010	42	9	21.4%	33	78.6%

Source: *Fond otvoreno društvo 2006, www.parlament.ba*

Considering the social structure of the House of Representatives in the current election period, it is striking that women are highly under-represented with only nine seats (21.4%) in contrast to the 33 male delegates. Precise numbers of male and female delegates in the House of Representatives may be found above. All of the delegates are over thirty years of age. The majority of the delegates are between forty and sixty years old. Prior to becoming involved in government, the majority of delegates worked in the fields of economy, medicine, law, and mechanical/electrical engineering.

There are several instruments in place to guarantee parliamentary control over the Council of Ministers. One group of delegates, or at least three delegates, can initiate a vote of "no confidence" (*nepovjerenje*) against the Council of Ministers (Art. 143 Rules of Procedures, House of Representatives). The government then has the right to issue a written statement to the delegates before the House of Representatives deals with the request. After a successful vote of no confidence and the resignation of the Council of Ministers, the information must be forwarded to the Presidency so that the procedure for new governmental elections can commence. A less radical control mechanism is the so-called "delegate question" (*poslaničko pitanje*) in the House of Representatives. The government or an individual ministry is required to react to the question within 30 days in either written or oral form, regardless of the request (Art. 151-155 Rules of Procedure, House of Representatives). Additionally, a joint session on the topic "The delegates pose a question – the Council of Ministers answers" is organized twice annually with both chambers and the Council of Ministers. This session is of an informative nature and concerns working areas that may fall under the Council of Ministers' jurisdiction. The members of the Council of Ministers may be invited to the sessions of individual committees for informative purposes. In practise, this mechanism is not actually functional.

Whereas the House of Peoples can be dissolved by the Presidency, the House of Representatives can only be dissolved by itself. This has never occurred, although there have been months of blockades, creating a situation that met the conditions for new elections to be organized.

The work of the Parliamentary Assembly has proven challenging since the signing of the Dayton Peace Agreement. The House of Representatives held its first session on 5 October 1996, yet the majority of the delegates from the Republika Srpska did not participate. After that, only one more meeting took place by April 1997. The number of adopted laws is the best

evidence that parliament remained largely stagnant in its early years. The number of amended and adopted laws has increased since the 2000 and 2002 elections. Five times as many laws were adopted in the election periods between 2002 and 2006 than in the election periods of 1996 through 1998 and 1998 through 2000, respectively. With regard to a regional comparison and the adjustment of the legislation to the *acquis communautaire* of the European Union, satisfactory results have not been achieved. Legislative stagnation will continue to be an enormous challenge for the Parliamentary Assembly for years to come. Institutional reform of the two legislative chambers is imperative in order to avoid overburdening the current 57 members of parliament, as this may make productive and efficient work possible.

3. Government: Council of Ministers

The Council of Ministers (*Vijeće/Savjet ministara*) of Bosnia and Herzegovina - the official title for the state-level government - is characterized by an institutionalized distribution of power. The first law on the Council of Ministers from 1997 required rigid parity of the three ethnic groups. All decisions had to be adopted by consensus of the entire cabinet (Art. 17, Law on the Council of Ministers 1997). Additionally, the minister of the concerned ministry and his two deputies, who belonged to the other two ethnic groups, had to agree on all decisions. The Council of Ministers was led by two co-chairmen who rotated the chairmanship every eight months. This complicated and complex system led to governmental weakness.

The Constitutional Court ruled in 1999 that this particular, institutionalized form of co-chairmanship was in breach of the Constitution. This decision made it possible, for the first time, to question the previous system of various blockades and veto mechanisms, as it reached far beyond the common proportionality structure. In 2002, the High Representative drafted a new law on the Council of Ministers, a task that the Parliamentary Assembly was unable to complete due to an impasse caused by internal disagreements. The system of co-chairmen was abolished and replaced by one Chairman and two Deputies. They still represented the three ethnic groups but no longer rotated. Only the Minister of Defence has two deputies due to the three-fold structure of the military. Moreover, one minister or the General Secretary of the Council of Ministers has to be a member of one of the "other" ethnic groups. This took direct effect when

then Minister of Justice, *Slobodan Kovač* (Bieber 2008: 65) was followed by the former Minister of Foreign Policy, *Sven Alkalaj*, who is a member of the Jewish population, and the current Minister of Transport and Communications, *Damir Hadžić*.

The number of ministries has been continuously increasing since 1997. In 1997, there were only three ministries within the Council of Ministers, namely the Ministry of Civil Affairs and Communication, Foreign Trade and Economic Relations, and Foreign Policy. The last two ministries were laid down in the Constitution as obligatory institutions (Art. V.IV). In 2001 and 2003 three new ministries were established so that after the elections 2002 and the formation of the government, the Council of Ministers consisted of the Chairman and nine ministries:

Ministry for Foreign Affairs,
Ministry for Foreign Trade and Economic Relations,
Ministry for Finances and Treasury,
Ministry for Communication and Traffic,
Ministry for Civil Affairs,
Ministry for Human Rights and Refugees,
Ministry for Justice,
Ministry for Security, and
Ministry for Defence

The failed constitutional reform package from April 2006 included the establishment of two other ministries: a Ministry for Science, Technology and Protection of the Environment, and a Ministry for Agriculture (Nezavisne novine, 19.3.2006). Another proposal, which has been discussed since the summer of 2008, entails the replacement of the Ministry of Human Rights and Refugees with a new Ministry for European Integration. It is highly questionable whether this law will ever be passed since Bosniak parties oppose the idea of dissolving the Human Rights Ministry until the successful return of all refugees has been guaranteed. However, there is a need for a Ministry for EU Integration. This need arises from the fact that the current Directorate for European Integration, an administrative body of the Council of Ministers, cannot fulfil all tasks related to the EU integration process. Further extension of the competencies of the central state government and an increase in the responsibilities of the Council of Ministers is only viable in the framework of broad institutional and constitutional reform.

The Chairman of the Council of Ministers is designated by the Presidency after consultation with the parliamentary parties. He needs to be confirmed in the office of the same chamber twenty-two days after the first session of the House of Representatives. If the House of Representatives does not confirm the Chairman, the Presidency must designate a new candidate within eight days. The Head of the Council of Ministers must put his cabinet up against a vote of no confidence at the latest 70 days after the constituent session of the House of Representatives. This provides an opportunity for the chamber of delegates to object to individual ministers and ask for new candidates from the Chairman. In practice, there is a totally different reality. The current Council of Ministers was confirmed 15 months after the last election. All legal deadlines were broken.

All members of the Council of Ministers must undergo a thorough investigation before their appointment and confirmation. During this investigation, the Central Election Commission, Secret Service, and State Agency assess their activities in the war, their previous professional career, and their criminal record for the State Investigation and Protection Agency (SIPA) (Law on Council of Ministers 2002; Law on the Amendments of the Law on Council of Ministers 2006). In the immediate post-war period the OHR assumed this task, yet it has now been entirely transferred to state institutions.

The Chairman of the Council of Ministers and his two deputies represent the three constituent peoples. The assignment of each portfolio minister and his/her deputy is also based on the principle of proportionality so that the same number of ministers and deputies from all three ethnic groups are represented in the government. For instance, in the current government there are three Bosniak, two Croat and three Serb Ministers in addition to the Croat Chairman of the Council of Ministers. As previously mentioned, the Minister for Communications and Traffic, *Damir Hadžić*, identifies as a Bosnian and therefore belongs to the group of Others. The Chairman of the Council of Ministers can resign without any explanation, thus delegitimizing the entire government. The House of Representatives can dissolve the entire Council of Ministers by a vote of no confidence, and force the election of a new cabinet. The election procedure is the same as that of the Council of Ministers after regular elections. In comparison with other parliamentary democracies, the function of the Council of Ministers' Chairman corresponds only slightly to the function of a Prime Minister. In addition to his tasks of coordinating work among the government and other central state institutions, the entities, and Brčko District, as well as

the call for, preparation, and monitoring of governmental sessions, he has to coordinate political duties with his deputies. Thus, the competency of guiding the Council of Ministers does not rest solely with the Chairman.

The Council of Ministers is comprised of the following standing committees and offices: the Directorate for European Integration, the General Secretariat, the Office for Legislation, the Office for the Coordinator of Brčko District, the Internal Policy Committee, the Economic Committee, and the Directorate for Economic Planning. These bodies consult the Council of Ministers on sector issues and work towards specific goals.

Due to the specific composition of the Bosnian and Herzegovinian political system all governments, with the exception of the governmental majority under *Matić-Lagumdžija-Mikerević*, were oversized because too many political parties (representing entities and ethnicities) had to be involved (cf. Table 4.). Single party cabinets have not existed in Bosnia and Herzegovina thus far (Gavrić 2007: 25).

Governments in Bosnia and Herzegovina (1996 – Present)

Head of Government	Political Parties	Period
Bosić-Silajdžić	SDS-HDZ-SDA-SBiH	3.1.1997 - 4.2.1999
Silajdžić Mihajlović	KCD-Sloga-HDZ	4.2.1999 - 22.6.2000
Tusevljak Raguž	KCD-Sloga-HDZ	22.6.2000 - 18.10.2000 18.10.2000 - 22.2.2001
Matić Lagumdžija Mikerević	SDP-SBiH-NHI-BPS- Democratic Pensioner's Party -SNS-PDP-SNSD-SPRS	22.2.2001 - 18.7.2001 18.7.2001 - 15.2.2002 22.2.2002 - 13.1.2003
Terzić	SDA-SBiH-SDS-PDP-HDZ	13.1.2003 - 9.2.2007
Špirić	SNSD-PDP-SBiH-SDA-HDZ- HDZ1990	9.2.2007 – 15.12.2011
Bevanda	HDZ-HDZ 1990- SNSD-SDS- DNS-SDP-SBB	15.12.2011 – till today

Reference: Author

Even though the SDA, SDS, and HDZ have dominated the political landscape for years as representatives of their corresponding peoples, it becomes obvious in the Table that there are no fixed coalition partners. Hence, various coalition combinations were possible, and the easiest way to create these was via territorial and ethnic quotas. As the strongest party in Bosnia and Herzegovina, the Bosniak SDA has always been part of the central state government with the exception of the years 2000-2002 and 2011-present.

The Dayton Peace Agreement introduced the Council of Ministers, which was intended to act as a central state government and exercise the executive power along with the Presidency. However, in the post-war years it assumed the role of a coordination office. The Ministers enjoyed a high degree of autonomy, which caused a lack of cohesion in the Council (Bieber 2008: 65). This increased the power of the three nationalist parties so that the SDS and HDZ, in particular, could maintain their secessionist intentions, impeding the development of a stronger central state and central state organ. The Bosniak SDA dominated institutions of the central state, in particular the diplomatic service. By the end of the 1990s, during the government period of the Alliance for Change (a left-wing party coalition, lead by the SDP) and the resulting exclusion of the national parties from the government, progress was made and the government began to be strengthened (Bieber 2008: 65). This became evident, for example, in the establishment of new ministries. However, the Council of Ministers remains fragmented in its politics. Individual ministers still often represent party, instead of state interests, which is reflected in the poor results of governmental work.

4. Justice System

The Bosnian-Herzegovinian judicial system is based on the former Yugoslavian judicial system. However, the Dayton Constitution introduced several changes (Pajić 2001: 53). The constitution delegates the organization and responsibilities for the judicial system to the entities and Brčko District (Art. II 3(a) Constitution of BiH).

The law regarding the judicial system in the Federation of Bosnia and Herzegovina (2005) lays down a separation of powers and hence the independence of legislative and executive power (Art. 3). This is realized through mechanisms such as the choice of judges, finances, the length of

mandates, and the prohibition of formal interaction channels on interference. The judicial system is structured in twenty-eight municipal, ten cantonal, and one Supreme Court. While the 31 municipal courts (*Općinski sud*) may exercise jurisdiction over one or several municipalities, the competency of the cantonal courts (*Kantonalni sud*) correspond to the cantonal borders. The Supreme Court (*Vrhovni Sud*) of the Federation is the highest authority. The Constitutional Court (*Ustavni sud*) of the Federation is not, strictly speaking, counted as a judicial power, but it must be mentioned as an organ of abstract normative control regarding laws and other judicial matters.

The Republika Srpska has a law about the judicial system, which is similar to that of the Federation (2004) and specifies the organisation, competencies, and functions of courts in RS. The independence of courts in the Republika Srpska is additionally guaranteed in its Constitution (Art. 121). The judicial power is exercised by the General Courts (*Osnovni sud*), the District Courts (*Okružni sud*) and the Supreme Court (*Vrhovni sud*), the highest authority. The General Courts (20 in total) are responsible for one or more municipalities. Several General Courts come under the authority of the five District Courts (Banja Luka, Bijeljina, Doboje, Trebinje, and Istočno Sarajevo). There is also a Constitutional Court that deals with abstract normative control, just as in the Federation (Art. 115 Constitution of the Republika Srpska). In Brčko District, a separate judicial structure was introduced in the Statute (Art. 66) and in the Law on the judicial system. The structure comprises a General Court (*Osnovni sud*) and a Court of Appeal (*Apelacioni sud*).

The establishment of the Court of Bosnia and Herzegovina (*Sud BiH*) in 2007, which has state-level jurisdiction, was of particular importance to the Bosnian-Herzegovinian judicial system. Its tasks are comprised of the protection of effective implementation of the central state's competencies, and the protection of human rights and rule of law (Art. 1 Law on the Court B&H). The Court consists of departments for administrative law, civil law, criminal law, and appeal. Thus, it is mainly in charge of dealing with criminal acts directed against the sovereignty, territorial integrity, and central state economy. The department of criminal law consists of sections on war crimes, corruption, organized crime, and general crime. The department of appeal is in charge of lawsuits against decisions made by the other departments. However, this court system has not yet fulfilled the prerequisites for a uniform central state judicial system. To do so would require the establishment of a Supreme Court of Bosnia and Herzegovina as the highest appeal board. This idea has been included

in current reform discussion, but there is no political majority for this initiative.

In 2005, the High Judicial and Prosecutorial Council (*Visoko sudsko i tužilačko vijeće/savjet*) was installed as a result of judicial reform in order to practically ensure the principle of the independence of the courts (Gromes 2007: 275ff.). This council is composed of an independent and autonomous body that is designed to ensure the independence, neutrality, and professionalism of the judicial powers. The Council is responsible for the election of judges and prosecutors at all levels; it rules on questions of judges' non-compliance with other functions, and ensures continuous and adequate funding of the courts and the prosecution. As an additional guarantee of their independence, the judges of the Court of Bosnia and Herzegovina and of the Courts in the Federation and Republika Srpska are assigned lifelong appointments. The third element to guarantee the separation of powers is significant financial independence. The High Judicial and Prosecutorial Council applies to the state-level Ministry of Justice for its annual budget, which must then be adopted by the Parliamentary Assembly. The High Council is authorized to justify its budget proposal to the parliament, constituting an institutional exception. Thus it can be concluded that Bosnia and Herzegovina possesses an excellent system of judicial independence with regard to its institutional and structural organisation, in comparison to other countries in the region.

The Constitution of Bosnia and Herzegovina provides the basis for the state-level Constitutional Court (*Ustavni sud BiH*), which strongly resembles Austrian and German legal tradition. The Constitutional Court is comprised of nine members, four of which are appointed by the House of Representatives of the Federation (2 Bosniaks, 2 Croats), two by the National Assembly of Republika Srpska (2 Serbs), and three by the President of the European Court of Human Rights in correspondence with the Bosnian and Herzegovinian Presidency. The latter cannot be citizens of Bosnia and Herzegovina or neighbouring states (Art. IV Constitution BiH). After their second appointment, the judges' mandates continue until they choose to take another position, or until they turn 70, the age of retirement. The Constitutional Court rules on controversies between the entities, the central state and the entities, and central state institutions. Issues concerning entities' parallel relations with neighbouring states and on the compliance of entity constitutions and laws with the Bosnian constitution also fall under the jurisdiction of the Constitutional Court.

All of the following are eligible to pose a request to the Constitutional Court: every member of the Presidency, the Chairman of the Council of Ministers, the Chairmen and deputies of the two chambers of the Parliamentary Assembly, as well as a quarter of the delegates in the chambers of the state-level and entity parliaments. The Court's decisions are final and binding (Art. IV Const.) The Constitutional Court's independence is ensured by the fact that no other body can adopt laws and legal acts that determine the court's work. Additionally, the court is financially autonomous.

In the post-war period the Constitutional Court initiated the most important institutional reform of the political system through its groundbreaking decision on the constituent peoples in 2000 (Winkelmann 2003: 65; Fondacija Heinrich Böll 2004: 73). The initiative came from the NGO "Serbian Citizen Council" (*Srpsko građansko vijeće*). It called attention to the discrimination of Serbs in the Federation and of Bosniaks and Croats in the Republika Srpska since they were not listed as constituent peoples in the constitution of the respective entity. Former member of the Presidency, *Alija Izetbegović*, filed a lawsuit on this matter. The Court passed four individual judgements in January, February, July and August 2000. Those judgements declared that several articles of the entity constitutions were in breach of the state-level constitution (Bieber 2008: 136). The decisions were passed by a simple majority, namely the votes of the three international and two Bosniak Constitutional Court judges. The Croat and Serb judges voted against the decisions. Thus, the judgement was only possible due to the fact that the Constitutional Court is one of the few institutions that does not make decisions by consensus, nor does it have veto mechanisms in place (Mijović 2001: 225). These regulations and several other significant decisions – such as the above mentioned on the constituent peoples - have made the Constitutional Court the only functioning central state institution: "The sum of decisions forms a valuable contribution of the Constitutional Court to the protection and enhancement of rule of law in Bosnia and Herzegovina." (Trnka/Tadić/Dmičić 2005: 11).

One other very important institution that was established on the basis of Annex 6 of the Dayton Peace Agreement was the Chamber for Human Rights (*Dom za ljudska prava*), which existed until 2003. This is one of the rare examples in Europe of a country having a separate human rights judiciary institution in addition to the main judicial system. The Chamber of Human Rights (also called the Court for Human Rights) was modelled, in structure, after the Court of Human Rights in Strasbourg. It consisted of

fourteen members, six Bosnian-Herzegovinian judges and eight foreign judges, who were appointed by the Council of Ministers of the European Council. The Chamber was the direct recipient of complaints from citizens on breaches of human rights that had failed to pass other inner state courts at the cantonal or entity level. Furthermore, the Chamber was only responsible for those violations of rights that took place after the end of the war. The lack of implementation of the Court's rulings has been often criticized. The mandate of the Chamber ended in 2003 according to Article 14 of Annex 6 and the proposal of the Venice Commission of the European Council (Sali-Terzić 2001: 161). The 9,000 unsolved cases of the Chamber were left to a Commission within the Constitutional Court. Since then, the Constitutional Court or the European Court for Human Rights in Strasbourg has dealt with violations of human rights, as Bosnia and Herzegovina became a member of the European Council in April 2002 (Plessing 2007: 55).

Other important authorities for the protection of human rights in Bosnia and Herzegovina are the ombudsman institutions (*Ombudsman za ljudska prava BiH*). There were three independent institutions totaling nine commissioners (three for each entity and three for the central state). In 2004, the three international ombudsmen at the state-level were replaced by representatives of each of the constituent peoples (Krause/Batarilo 2008; Trnka/Tadić/Dmičić 2005: 13), whose mandate had since expired. It is very problematic that the election of the new ombudsmen/women has been pending for months. As a result – and paradoxically, also fortunately – the (most) controversial ombudsman resigned (Oslobodenje, 15.8.2008). *Vitimir Popović*, who was awarded the Order of Merit from *Radovan Karadžić* (for his work during the war), has been charged with several violations of human rights (Oslobodenje, 24.8.2008). Considering these occurrences, one can argue that the system of protection of human rights is in crisis.

Today, the National Ombudsmen Institution has taken over the entity Ombudsmen Offices. Today, the Bosnian and Herzegovinian Ombudsmen Institution still consists of three Ombudspersons, one Bosniak, one Croat, and one Serb. In the future, this institution will have to be reformed so that every legal expert, regardless of his or her ethnic background, can be elected as an Ombudsman.

III

FEDERALISM



1. Federal Units: Entities

The political system in Bosnia and Herzegovina is very decentralized. As mentioned in the introduction, some authors argue that the state structure is confederal rather than federal (e.g. Savić 2003). Yet the entities are not explicitly entitled to secede from the central state. As a result of the historic developments during and after the war in the region, two separate quasi-state bodies emerged, each with their own constitution (Republika Srpska, 1992; and the Federation of Bosnia and Herzegovina, 1994). The Dayton Peace Agreement joined these quasi-states under the central state of Bosnia and Herzegovina. The two state systems were conceptualized very differently. While the Republika Srpska resembles a unitary autonomous republic dominated by the Serbian ethnic group, the Federation was established as a highly decentralized autonomous republic with ten cantons (Markert 2003: 88). The border between the two entities, the infamous *Inter-Entity Boundary Line* (IEBL) resembled an actual state line for years after the war, including checkpoints, identification examination, etc. Eventually the High Representative interfered and introduced uniform, unidentifiable license plates, and freedom of movement for all ethnic groups was ensured. This allowed refugees to return to their pre-war homes. As a result of the High Representative's drastic measures, the para-state structures established during the war were dismantled. This was very important as the function of all institutions in the Federation had been undermined by the fact that the Croat dominated areas were governed by the illegal Republic Herceg-Bosna until 2001 (Markert 2003: 89).

According to the Constitution, the entities have relative constitutional autonomy and therefore, extensive rights when it comes to delegating responsibilities. The real power of the state of Bosnia and Herzegovina rests with the entities. The decision of the Constitutional Court (2000) regarding the equality of all three constituent peoples in all parts of the country means that the territorial design of the state Bosnia and Herzegovina should not lead to ethnic separation. Instead, all three ethnic groups should have the same (representation and veto) rights in each entity (Winkelmann 2003: 67). The work in the constitutional committees resulted in an agreement on the basic design of the draft, the so-called Markovica-Sarajevo Agreement. On the basis of that agreement, then-High Representative, *Wolfgang Petritsch* (2002), initiated amendments to the entity constitutions and undertook the necessary institutional

re-structuring (Winkelmann 2003: 86). The constitutional changes transferred all veto and representation rights of the entities to executive and legislative bodies. This meant that relatively small population groups, like Serbs in the Federation or Croats in Republika Srpska could obtain a strong power and blocking position.

The Federation's Constitution dates back to June 26, 1994. It was mediated by the Americans in the context of the Washington Peace Agreement between the Republic of BiH and the Republic of Croatia (Markert 2003: 88). Similar to the central state constitution, the Federation's constitution is of a consociational nature and is territorially decentralized into ten cantons, each having extensive powers, mirroring the federal states (Gromes 2007: 164). Five cantons have a majority Bosniak population (Una-Sana, Tuzla, Zenica-Doboj, Bosnian Podrinje and Sarajevo); three cantons are mostly Croatian (Posavina, West-Herzegovina and Livno/Canton 10); and two cantons have an ethnically mixed population (Central Bosnia and Hercegovina-Neretva).⁴ The capital of the Federation is Sarajevo. As in the governmental system at the state-level, the government of the Federation contains consociational elements and several components concerning separation of power. This was designed to ensure that the small Croat population and the even smaller Serb population cannot be overruled. The constitutional changes in the Federation did not bring about new institutions like in the Republika Srpska. Instead, already existing rights were extended to the Serb population (e.g. additional deputy position for the President), a quota established for the composition of the government, and fixed mandates created in the first and second chambers. In the Federation aside from the House of Representatives, there is an indirectly elected second chamber with the same amount (17 each) of Bosniak, Croat and Serbian representatives who represent the cantons based on population proportionality. Members of the cantonal assemblies are sent as delegates to the second chamber. These delegates have the ability to make use of their veto rights in the parliament in case of a violation of vital national interest. The Constitution of the Federation specifies the thematic range for such a veto, in contrast to the state constitution where that range is very broad (representation rights, structure of institutions,

4 Original names: Unsko-sanski kanton, Tuzlanski kanton, Zeničko-dobojski kanton, Bosansko-podrinjski kanton, Kanton Sarajevo, Županija/kanton Posavski, Županija/kanton Zapadnohercegovačka, Kanton 10, Srednjobosanski kanton, Hercegovačko-neretvanski kanton/Županija. "Županija" is the term that Bosnian Croatian use for "canton." The term is still often used today by Bosnian Croats even though the Constitutional Court declared its use in breach of the constitution since the actual "Županije" are located in Croatia and have a completely different rank within the political system. See map at the beginning of the book.

constitutional amendments, territorial structure, culture, and ethnic identity). Moreover, each topic can be vetoed with a two-thirds majority of the delegates so that the thematic restraints are de facto obsolete. The House of Representatives consists of 98 members who are elected for four years terms. Each ethnic group receives at least 4 mandates (Art. 71, Constitution of the Republika Srpska). The President of the Federation and both of his/her deputies are indirectly elected by the two chambers of the parliament, and they must all be members of different ethnic groups. Currently a Croat, *Živko Budimir*, holds this office while his deputies are the Bosniak *Mirsad Kebo* and the Serb *Svetozar Pudarević*. According to constitutional changes, apart from the Premier, the government of the Federation must be comprised of eight Bosniak, five Croat, and three Serb ministers. One representative from the ethnic group of *the Others* may replace a Bosniak minister. (Constitution Federation BiH, Part B, Art. 4). The cabinet of the Prime Minister is submitted to the House of Representatives, the President, and his deputies, and is confirmed by the Parliament of the Federation. The House of Peoples can first convene when the delegates have been sent from the newly constituent cantonal assemblies, which play a central role in the political system of the Federation (Gromes 2006a: 535). In addition to the ethnic quota, there is extremely strong vertical interweaving, which delays and complicates the process of re-staffing central posts. Furthermore, the formation of coalitions entails common, complicated negotiations between the different parties (Gavrić/Banović 2007: 62). After the last elections the new government under *Nermin Nikšić* (SDP) was formed at the end of March 2011, six months after the October 2010 elections. Only one female minister is part of the FBiH government.

The cantons retain all competencies that the Constitution does not explicitly reserve for the Federation government, including traditionally centralized policy fields like police, education, culture, and media. The cantons have their own legislative, executive and judicial branches. Hence, they also have their own parliaments (21-35 members), whose representatives are elected for four-year terms (3% - election threshold). At the cantonal level, there are several further regulations concerning the separation of power (e.g. distribution of chairmanship and deputy function between the ethnicities in mixed cantons) (Gromes 2007: 166). Since the 2006 elections, no party has had a single majority in any of the cantons. Due to its split in 2006, HDZ lost its absolute majority in the cantons of West-Herzegovina and Livno, while the SDA was dependent on a coalition partner in the Zenica-Doboj Canton (distribution of seats, Gromes 2006a: 530). Since 2010, the cantonal parliaments have become even

more fragmented. For example, since the 2010 elections, Tuzla Canton has had four different governments.

In political practice, constitutional regulations have led to immense bureaucratization as parallel structures have been established at the state, federal and cantonal levels (Markert 2003: 89). Legislative and executive responsibilities are fulfilled by several institutions within one entity of approximately 2.5 million inhabitants. For example, education and justice policy is implemented by one federation ministry, as well as ten cantonal ministries. This is highly questionable in terms of functionality since four cantons do not have more than 60,000 inhabitants and are economically stagnant (the cantons of Bosnian Podrinje and Posavina have ca. 30,000 inhabitants each and only three municipalities per canton). A reduction of administrative levels or a merging of cantons seems reasonable, but touches upon highly sensitive political issues.

The Constitution of the Republika Srpska dates back to 1992 and established a unitary republic (Savić 2003: 17). Following the constitutional text, the capital is still Sarajevo, but all institutions are in the informal capital of Banja Luka. The Republika Srpska government is more centralized than the Federation since there are no vertical politics between the entity and its municipalities. In the framework of the constitutional decision in 2000 and subsequent constitutional changes, the ethnic principle became important for re-staffing the central legislative, executive, and judicial bodies. A second chamber was introduced where the delegates have the right to veto based on concerns of vital national interest, just as in the Federation. Further changes such as the addition of a second deputy president, and an ethnic quota for the government, the first chamber and the National Assembly (*Narodna skupština*) were also introduced. The underlying context for this decision was the desire for equality of all citizens, as non-Serb residents were discriminated against under the previous ethnically neutral system (Council of Europe 2005: 15f.). The constitutional changes of 2002 also led to a fundamental increase in the complexity of the Republika Srpska's political structure. The President is elected for four years, as are his deputies. The three deputies must come from each of the three ethnic groups. Due to the Serb-dominated population, the President has always been a Serb. The current President (since November 2012) is Milorad Dodik from this SNSD; his deputies are the Bosniak, *Enes Suljkanović* (SDP), and the Croat, *Emil Vlajki* (NDS). The 81 delegates are elected to the National Assembly for four years by majority vote. Each ethnic group receives at least four mandates, like in the Federation. The delegates of each ethnic group then elect the delegates of

the second chamber, the Council of Peoples (*Vijeće naroda*), which puts the independence of this council in question. This is untypical for a two-chamber parliament.⁵ The competency of the Council of Peoples is limited to the question of the protection of vital national interests. In comparison to the House of Peoples, this is a more narrow definition. Thus, the Council of Peoples is not a proper parliamentary chamber but rather an examination board of laws already adopted in the National Assembly. In case a law violates vital interests, the second chamber can influence the legislation. The National Assembly can deliver a vote of no confidence, which is why the government is dependent on parliament (Art. 84 Constitution Republika Srpska).

Apart from the Prime minister, who is appointed by the President of the Republika Srpska, the government is comprised of eight Serb, five Bosniak and three Croat ministers. A Serb seat in the cabinet may be occupied by a representative of the Others (Art. 92, Constitution Republika Srpska). The formation of the governmental following the 2006 elections was more effective and efficient than in the Federation. The election victory of SNSD confirmed *Milorad Dodik* as the head of government. In 2010, Dodik became the President of the Republika Srpska. Since 2013, the Republika Srpska has had a female Prime Minister and five female ministers in the government.

The constitutional structure involving larger power resources and instruments at the entity level was a vehicle for the systematic obstruction of the peace process by the nationalist parties from the beginning. Under the leadership of the SDS, the Republika Srpska was especially opposed to the Dayton Peace Agreement. It did not trust the international community and their initiatives for the implementation of the peace agreement and the strengthening of democratic, state-level institutions. Several warnings and sanctions from the OHR were the only means of restricting nationalist politics. Croat and Bosniak parties did not act in such an open, confrontative manner since the Dayton regulations were mostly in their favour. Instead they delayed reforms in a more subtle way, by constitutional means, e.g. through a lack of legal activities at the cantonal

5 In total, eight delegates must be elected from each ethnic group. If fewer than that number of delegates of each ethnic group are elected to the National Assembly, the quota cannot be fulfilled. This was the case in 2006 for the Croats. According to the Constitution of the Republika Srpska (Art. 72) in this case an advisory board appoints the other delegates. Apart from the eight delegates of each of the three ethnic groups, four more delegates have to have a seat in the Council of Peoples who represents the Others. Since 2010, there have been members of the Jewish, Hungarian, Slovenian, and Montenegrin minorities.

level. After several reforms designed to strengthen the central state, the Republika Srpska recognized that the Dayton Peace Agreement was the guarantee for the protection of the federal structure of the country. *Dodik* is a strong advocate of that framework today and insists on compliance with all authorities and competencies of the entities, leaving him with a wide scope of action in "his" entity. At regular intervals, he threatens to hold a referendum regarding the independence of the Republika Srpska, in order to assert his claims, cement his power and slowly take back the central state's competencies (Richter 2008: 5).

The Constitution of Bosnia and Herzegovina allows the entities to sign specific agreements with neighbouring states as long as they are in compliance with the sovereignty and territorial integrity of the central state (Art. III.2). Croatia and the Federal State of Yugoslavia, or the Republic of Serbia, severely interfered as patronage states in Bosnia and Herzegovina's internal political development during the first years following Dayton. Just as with the democratic changes in 2000 and the related withdrawal of support of the secessionist intentions of the Bosnian Croats and Serbs by new politicians supporting reform, state institutions have seen considerably stronger politicians recently as well (Gromes 2006b: 10). Yet today, both ethnic groups are oriented towards Zagreb and Belgrade respectively. Even obtaining citizenship of the respective country is not in breach of the Constitution according to the Constitutional Court's judgment (Winkelmann 2003: 78). The media landscape and the economy are also heavily shaped by these particular external influences.

2. Brčko District

Brčko District has a special status in the complex territorial structure of Bosnia and Herzegovina, as it is not allocated to either entity, and functions as a demilitarized, independent district subject only to state control. However, the district is not a federal unit on its own. The international community anticipates that the hybrid status of the district will soon be resolved so that Brčko can be incorporated into the constitutional structure. This means that the municipality would be upgraded and become a federal unit of Bosnia and Herzegovina, alongside the entities.

The special status of Brčko is a result of the geostrategic importance of this former mainly Bosniak and Croat municipality. It forms a corridor between the two sections of the territory of the Republika Srpska.

The Dayton Peace Agreement (Annex 2, Art. V) left the status of the municipality to a binding arbitration of a Commission. The Commission consisted of an international representative and a representative from each of the entities. The final arbitration from 1999, which led to a new municipal statute in the spring of 2008, assigned Brčko the status of a uniform autonomous district, with its pre-war boundaries. The statute lays down fewer power distribution arrangements than on the state-level and in the entities and cantons. Moreover, it does not allow veto rights on national interest for the ethnic groups. Instead, most decisions must be made by a three-fifths majority in the District Assembly. Until 2004, an international supervisor governed the district by direct intervention and was responsible for appointing the mayor and assembly members. In 2004, direct local elections took place for the first time since the war. Hence, the municipality now has its own legislative, executive, and judicial competencies (Bieber 2005: 421).

Although the municipality was initially in a fragile situation, it has benefited from its special status within the country. In 2004, Brčko surpassed the rest of the country in regards to salaries and general economic indicators. Since people were chosen for central offices and assembly seats by an international supervisor on the basis of an application and qualifications, it was possible to develop an environment shaped less by ideology and more by merit. Since there were no direct elections between 1999 and 2004, the municipality was detached from the struggle for power between the entities and parties. The decision-making processes today offer more opportunity for compromise and the administrative structures are less ethnically oriented. (Bieber 2005: 427.).

3. Local Self-Government

In the immediate post-war period, new laws on self-governing were adopted in both entities. In the Federation of Bosnia and Herzegovina, the Law on the Principles of Local Self-Government was adopted in 1995. In the Republika Srpska, corresponding legislation was not passed until 1998. The European Charter of Local Self-Government (1985) is also part of the Bosnian constitutional system and sets standards for local self-governing units within the Council of Europe.

The Federation of Bosnia and Herzegovina is subdivided into ten

cantons, which have been granted substantial powers in a number of key areas (education, health, culture, regional planning, etc.). This federal structure has created more opportunity to develop units of local self-government with financial autonomy. In the Republika Srpska, there is little room for the municipalities to achieve full autonomy within a system of local self-government due to the high degree of centralization.

Until 1992, Bosnia and Herzegovina had 109 municipalities and one city - Sarajevo. There are now a total of 142 municipalities: 62 in the Republika Srpska, 80 in Federation of Bosnia and Herzegovina and Brčko District as a *sui generis* self-governing unit. There are currently also two cities in the Federation of Bosnia and Herzegovina - Sarajevo and Mostar - and 6 cities in the Republika Srpska - Banja Luka, East Sarajevo, Doboj, Trebinje, Prijedor, and Bijeljina.

Legislation in the Federation of BiH defines local self-government as the right and capability of local units to regulate and manage certain public activities in accordance with their inherent responsibilities and in the interest of the local population (Art. 2, Law on Principles of Local Self-Government FBiH). Local self-government is organized and achieved in municipalities and towns and is exercised by local governmental bodies and citizens in both entities.

Aside from a few minor discrepancies, laws in both entities set out identical criteria for the granting of town status. According to federal law, a town is a local unit of self-government defined as an urban and infrastructure-based system of elements, which are interconnected by the everyday needs of the population (Art. 5). An additional criterion that needs to be fulfilled is that the municipality must have a minimum of 30,000 residents, or at least 10,000 people living in its urban centre as an integral urban area. Unlike the FBiH law, the legislation for the Republika Srpska states that any urban area forming a coherent geographical, social, economic and historical unit is eligible for city status. The Law on Self-Governance in the Republika Srpska (2004) makes a distinction between municipalities and cities but allocates the same responsibilities. All local government responsibilities can be divided into two categories: regulatory and service provision duties.

An additional feature common to both entities' legislation is the definition of local self-government duties. Some of them are:

- Adoption of the budget of the local unit of self-government;
- Adoption of programs and plans for the development of the

local unit of self-government, providing conditions for its economic growth and job creation;

- Establishment and implementation of spatial plans and environmental protection policies;
- Adoption of regional and local spatial plans;
- Establishment and implementation of a housing policy, and adoption of programs for housing development and other types of property development;
- Establishment and implementation of a policy for control, management and use of construction land;
- Establishment of a policy to manage the natural resources of the local unit of self-government as well as distribution of revenue collected as compensation for the use of those resources;
- Management, financing and improvement of the operations and facilities of the local public infrastructure such as: water supply, wastewater disposal and treatment, solid waste collection and disposal, public sanitation, city cemeteries, local roads and bridges, street lights, public parking lots and parks
- Organisation and improvement of local public transport;
- Establishment of a preschool education policy, improvement of the preschool institutional network and management and funding of public institutions for preschool education;
- Establishment, management, funding and improvement of institutions for primary education;
- Establishment, management, funding and improvement of institutions and building facilities to satisfy the needs of citizens in the areas of culture and sport;
- Assessment of the work of institutions and quality of services in the areas of health care, social welfare, education, culture and sport, as well as ensuring the funds required for the improvement of the work and quality of services in accordance with the needs of citizens and capabilities of the local unit of self-government;
- Analyses of public order, peace and level of safety of people and property, and making recommendations to relevant authorities;
- Organisation and implementation of protection measures and the rescue of people and material goods from natural disasters;
- Establishment and operation of compliance inspections with regard to the regulations of the local unit of self-governance;
- Supervision of activities related to land surveys, cadastre, and property records;
- Animal protection, etc.

Both laws assign local authorities the power to conduct all public affairs not explicitly granted to another authority. Higher tiers of government may not deprive the local authorities of these rights and powers.

Both entities' legislation also grants greater autonomy to local bodies in relation to budgetary policy and the management of municipal property. The units of local self-government are largely financed through taxes, charges, payments received for building ground, and income from assets.

Both laws introduce various forms of direct citizen participation in local decision-making: the law for the FBiH offers the options of referenda, local citizens' assemblies, and citizens' or NGO initiatives, while the law for the Republika Srpska also provides for citizens' hearings and consultations with local citizens in the municipal assembly. An important innovation for the democratic development of Bosnia-Herzegovina was the introduction of directly elected mayors in both entities. The first elections organized in line with this principle were held in December 2004. This has created fresh opportunities for democratization and marks a break with some of the political practices carried out by the nationalist parties.

In Bosnia and Herzegovina, the number of municipalities as units of self-government has steadily decreased over the last 150 years, from around 3,000 during the Austro-Hungarian period, to around 400 after the Second World War and, finally, to 109 in 1992. This figure has now risen to 142 as a result of the war, although this increase was the outcome of political endeavours to establish "ethnically homogeneous" communities and was not part of a reform program aimed at modernizing the administration and improving efficiency. At present, there are enormous differences between the municipalities in terms of their population, physical size, access to natural resources, and economic performance. No citizen wants to live in a municipality with a struggling economy and coffers so empty that it cannot adequately perform its statutory tasks of developing and maintaining local infrastructure that is essential to satisfy the community's needs. Therefore, territorial reorganization of the municipalities must occur taking into account all political, demographic, sociological, economic, and legal factors.

IV PROCESSES



1. Elections and Electoral Law

The Dayton Peace Agreement and the Electoral Law laid the legal ground for elections and the electoral system in Bosnia and Herzegovina. Many compromises influencing the electoral system have been made. These compromises are based on the combination of two principles: constituent people and national sovereignty. International democratic standards related to electoral systems such as universal suffrage, equal voting rights, direct ballot, secret ballot, and limited right to stand for elections were incorporated into the constitutional system. The Dayton Peace Agreement addresses elections and the electoral system in several instances.

Annex III of the Dayton Peace Agreement (Elections in Bosnia and Herzegovina) is directly related to the electoral system and elections in Bosnia and Herzegovina. It explicitly assesses requirements to promote free, fair, and democratic elections, to lay the foundations for a representative government, and to ensure the progressive achievement of democratic goals in Bosnia and Herzegovina. This was also a premise for the establishment of an effective electoral system. But the electoral system that was created by this Annex was merely temporary. It was intended to last for only a short time after the war in Bosnia and Herzegovina with the support of Organization for Security and Cooperation in Europe (OSCE), but was extended until 2002. The Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska also agreed to establish elections in accordance with relevant OSCE documents.

The Constitution of Bosnia and Herzegovina also dedicated ample attention to elections and the electoral system. Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections. Article II (1) relates to human rights and fundamental freedoms stating that Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms. Article II (2) relates to international standards, stating that the rights and freedoms set forth in the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other laws. Article II (3) addressed separate points regarding rights directly or indirectly

related to elections. Additionally, Annex I includes a large number of international documents on human rights and fundamental freedoms, representative of Bosnia and Herzegovina's acceptance of international standards related to electoral legislation.

The temporary electoral system of Bosnia and Herzegovina was based on Annex III of the Dayton Peace Agreement (Elections in Bosnia and Herzegovina). In compliance with this Annex, Article II (1) defines the role of the OSCE in elections. This role requested the parties of the agreement to adopt and implement an election programme for Bosnia and Herzegovina and to supervise the preparation and conduction of elections for legislative and executive government bodies (state, entity, cantonal and municipal level). Article V of the Dayton Peace Agreement defined the agreement of parties to create a permanent Election Commission with the responsibility of conducting future elections in Bosnia and Herzegovina. According to Article II (3), the OSCE was to establish a Provisional Election Commission in Bosnia and Herzegovina, which adopted the Electoral Rules and Regulations for Elections on Local and Higher Level in Bosnia and Herzegovina in 1996, the Electoral Rules and Regulations for Municipal Elections in Bosnia and Herzegovina in 1997, and the Electoral Rules and Regulations that were used to hold elections in 2000 until the Electoral Law was introduced. The first post-war presidential and parliamentary elections at the state and entity levels were held on September 14, 1996. The first local elections were postponed a year and took place in 1997. The last elections organized by the Provisional Electoral Commission took place in 2000.

In 2001, the Parliamentary Assembly of Bosnia and Herzegovina adopted the Electoral Law of Bosnia and Herzegovina. This Law made no significant changes to the temporary electoral system set up through the Dayton Peace Agreement. The basic characteristics of the permanent electoral system are (Trnka 2006: 201):

- Election of the Parliamentary Assembly of Bosnia and Herzegovina and members of the Presidency of Bosnia and Herzegovina have been regulated;
- Two-thirds of the members of the House of Representatives of the Parliamentary Assembly and the Presidency of Bosnia and Herzegovina are to be Bosniak and Croat, elected within the Federation of Bosnia and Herzegovina. One-third of the members of this house of the parliament and the Presidency of Bosnia and Herzegovina are to be Serb, elected within the Republika Srpska;

- Conditions for acquiring the right to vote have been also regulated;
- Voters have the right to vote in person or in absence in the municipality where they had residence according to 1991 population census;
- A citizen of Bosnia and Herzegovina who has dual citizenship has the right to vote only if Bosnia and Herzegovina is his or her permanent residence;
- Persons accused or sentenced by the International Tribunal for Former Yugoslavia for serious violations of humanitarian law cannot be elected for any function in the territory of Bosnia and Herzegovina;
- The Principle of Incompatibility is regulated;
- Mandates belong to the candidate, not to the party or coalition of which the candidate is a member;
- Permanent terms for the conduction of elections were stipulated.

The authorities responsible for the conduct of elections in the permanent electoral system of Bosnia and Herzegovina, according to the Electoral Law of Bosnia and Herzegovina, are the Central Election Commission, Municipal Election Commissions, and the Polling Station Committees. The composition of these authorities should be multi-ethnic, reflecting the population of the constituent peoples and the Others in accordance with the most recent population census.

Bosnia's constitutional structure has segmented the electoral marketplace along ethnic lines. At the same time, it creates a patchwork quilt of political arenas, each with varying degrees of ethnic integration and each with different rules for promoting ethnic integration. In all of Bosnia's elections, however, parties tend to compete for the votes of a single ethnic community. Politicians do not require the support of other ethnic groups in order to be elected. There are certain offices for which the system is structured to ensure that members of a given ethnic group vote only for their own representatives (Sahadžić 2009: 75).

2. Legislative Decision-Making

The distribution of responsibilities between the central state and various local authorities in Bosnia and Herzegovina is of utmost importance

to the legislative decision-making process. The Constitution grants the central state with a minimum of competencies, which is even unusual for a federal state structure (Savić 2003: 17). Few explicit powers were extended from the entity level to the state level under pressure from the international community leading to de facto modification of the Constitution. This is also reflected in the legislation, shown in table below. The ratification of the Stabilisation and Association Agreement with the European Union and the related adoption to the *acquis communautaire* of the European Union requires the transfer of additional legislative powers to the state-level. This aspect is being discussed in the context of the current constitutional reform debate.

Number of Laws Adopted in the Parliamentary Assembly since 1996

Mandate period	Number of adopted laws
1996-1998	18
1998-2000	25
2000-2002	63
2002-2006	229
2006-2010	170

In the context of the distribution of competencies in the Constitution, the Parliamentary Assembly of Bosnia and Herzegovina exercises legislation. According to the valid rules of procedure of the two chambers, the legislative decision-making process proceeds as follows: Draft laws can be handed in to the chairman of one of the chambers by any representative or committee of the House of Representatives, any delegate or committee of the House of Peoples, joint committees of both chambers, the Presidency, and the Council of Ministers (Art. 99 Rules of Procedure, House of Representatives; Art. 92 Rules of Procedure, House of Peoples). Draft laws should first be submitted to the House of Representatives, though the House of Peoples reserves the right, as the first chamber, to consult on laws and other legal acts (Art. 94 Rules of Procedure, House of Peoples). On a practical note, this has no relevance as laws must first be passed in the House of Representatives then, when adopted, are discussed in the House of Peoples.

The chairman of the chamber passes a draft law to the Collegium of the chamber who then forwards the draft to the corresponding constitutional and portfolio committees.

Both Committees must deliver their statement to the Chairman of the chamber within fifteen days. The Chairman then puts the draft law on the agenda of the plenary session of the chamber. If a member of parliament or a committee of one of the chambers initiates the legislative decision-making process, the Joint Collegium of both Chambers has to assess whether the draft needs to be presented to one of the Common Committees (Art. 102-105 Rules of Procedure, House of Representatives). The drafts of any law are also submitted to the Presidency and the Council of Ministers if the legislation did not originate from those institutions.

After the committees have delivered their statements to the Collegium, the draft is discussed for the first time in the plenary session of the House of Representatives. The opinions of the Committees are presented and form the basis for voting. In the case that the proposed law does not comply with the Constitution or the judicial system, the committees may suggest a vote to reject the proposed law. The Chamber may support this opinion or require a revised statement (Art. 106-107, Rules of Procedure, the House of Representatives).

If the law is accepted in the first reading, processing by the parliament commences (Art. 106, Rules of Procedure of the House of Representatives). A member of parliament, party caucuses, the Committee in charge, or the Council of Ministers may submit changes and amendment proposals on which the responsible Committee can consult and vote. The Committee hands the law, including its statement, to the Collegium of the chamber, which sets the law on the agenda for a second reading.

During this session, one of the members of the Committee is appointed to defend the Committee's opinion in front of the plenary session. Prior to the session, the portfolio committee may publish the law publicly in order to receive consultation and incite discussion (Art. 108-116 Rules of Procedure of the House of Representatives).

The second reading consists of discussion and voting on the amendment proposals. The law is accepted when the two chambers adopt it with identical text. If the adopted legal text is different, a joint committee of the two chambers (six members, three from each chamber) is established to modify the text and resubmit it to the chambers for confirmation. The chambers' Secretaries take care of the subsequent procedure (Publication in Law Gazette, etc.). Generally, laws enter into force eight days after publication in the Law Gazette.

Apart from regular legislative decision-making process, laws can also be adopted in a summary procedure (*Skraćeni postupak*), or so-called emergency proceedings (*Hitni postupak*). While the summary procedure reduces all deadlines by half for the Committees' and chambers' work (Art. 126, Rules of Procedure of the House of Representatives), emergency proceedings require voting to take place on the first version of the draft law. Amendment proposals are not possible. (Art. 127, Rules of Procedure, House of Representatives).

Art. IV, Paragraph 3(d) of the Constitution sets the decision quorum for the adoption of a law by the Parliamentary Assembly. The Constitution regulates that the representatives must attempt a legislative majority with a minimum of one third of the representatives from the territory of each entity approving ("entity veto"). If this is not successful, the Chairman and the Deputy Chairman deliberate with the goal of achieving a second vote within three days of the first vote. Art. IV, Paragraph 3(e) states that a majority of the Bosniak, Croat and Serb delegates in the House of Peoples can announce a draft resolution of the Parliamentary Assembly as harmful for the vital interest of its people. The entity veto instrument proved to have a very strong effect on the Parliamentary Assembly. 269 laws of the 529 discussed between 1997 and 2007 did not receive a parliamentary majority. 136 of them failed due to a veto by the Republika Srpska representatives; only 20 received a veto from the Federation. The often-criticized veto due to vital interest played a rather subdued role since it was used in the same period only four times (twice by Bosniaks and twice by Croats). This may be due to different procedural consequences. After a veto on vital interest, the legislative process continues with a mediation commission and possibly even involvement from the Bosnian and Herzegovinian Constitutional Court. Conversely, the legislative process stops immediately after the use of an entity veto. Evidently, the Serbs used the entity veto as a substitute for the veto on vital interest, while the Croats could not make use of it due to the composition of the House of Representatives and the small number of Croat members of parliament (Trnka et.al. 2009).

The state budget is submitted by the Presidency to the House of Representatives, subsequent to the Council of Minister's proposal. Here, the same procedure used for regular laws is followed, but short deadlines are implemented to enable timely adoption.

3. Political Culture and Political Participation

The golden years of economic growth and diplomatic relevance of the Socialist Federal Republic of Yugoslavia (SFRY) have profoundly impacted the mentality of Bosnian and Herzegovinian citizens. The legacy of this former country – based on multiculturalism, brotherhood, and high quality of life – developed into so-called *yugo-nostalgia*, which continues to occupy the minds of those who remember such times.

Nevertheless, another consequence of the socialist period, as is also the case in other former socialist republics as the Czech Republic or Hungary (Vujčić1999), is the lack of civil structures due to the fact that the state and a unique political party were in charge of providing all services to the citizens, thus strongly discouraging civil initiatives. In addition, the top-down organization of the state subordinated individuals to the collective, ensuring individuals always followed a leading figure.

The shift in the characteristics of political culture from the previous system to a new post-socialist period following independence in 1992 resulted in a society that began to form stronger individual identities, departing from the typical values of socialist culture. For a post-socialist country such as Bosnia and Herzegovina, the transitional period is a rather complicated process of overcoming its political past, solving its identity crisis, and adopting the elements of a democratic political system.

The war that occurred in Bosnia and Herzegovina from 1992 to 1995 has profoundly affected the current state of affairs and the political culture of Bosnia and Herzegovina. Personal perceptions of what happened during this conflict continue to be an issue of debate among the groups involved; Bosniaks and Croats perceive the war as a war of aggression, while Serbs define the conflict as a civil war (UNDP 2009).

The division of society along ethnic lines revived the need for local “chiefs,” who in order to mobilize their own “tribe” allowed religion to re-enter the public sphere. Concurrently, the “chiefs” built parallel government structures in the Republic of Bosnia and Herzegovina, the Republika Srpska and the Herceg-Bosna Croatian community.

These issues have defined the development of the democratic political culture of Bosnia and Herzegovina and are the main reasons why

the newly established democracy has failed to cope with such diverse interests.

The Constitution that the Dayton Peace Agreement brought to BiH was not born out of a unanimous agreement between the local actors, affecting the model of decision-making and provoking continuous political blockades and stalemates from the very beginning.

It is evident that all three constituent peoples have a low level of approval of not only state institutions, but also other levels of government. In the most recent UNDP Early Warning System report in 2010, only 30-50% of BiH citizens approved of government institutions at all levels (UNDP 2009).

The introduction of democracy *de iure* does not necessarily guarantee democratic practice. The very complicated state structure designed in Dayton ensures a model of government with collective rights and collective representation, making the existence of influential political opposition almost impossible. This is due to the need for large coalitions, the inclusion of veto mechanisms, perpetual conflict among the political elite, and the fact that the state itself was founded on the premise of three constituent peoples (in addition to the Others) and two separate entities with different sets of rights. These elements have made democracy in BiH very weak.

Today, inter-ethnic relations have improved slightly. Political violence and the potential for ethnic conflict have decreased. Only 34.5% of Bosniaks, 26.2% of Croats, and 13.6% of Serbs fear that a withdrawal of international troops will cause war to recur (UNDP 2009: 58). Nevertheless, political elites continue to confront each other, thus affecting political and social life (especially when arguing about issues of reconciliation or dealing with the past).

According to the UNDP polls for their Early Warning 2009 report, the most important identity for more than the 70% of the population is their ethnic group (UNDP 2009: 55). However, the role religious communities play in these ethnic groups cannot be overlooked. It would be misleading to assume that the division along ethnic lines persists only due to the action of the main ethnic political parties (i.e., SDS/SNSD, HDZ and SDA), as the religious communities (i.e. the Islamic community, the Serb Orthodox Church and the Catholic Church) are powerful players in the supply of ethno-nationalism (Gromes 2006b). In BiH religion often

plays an ambivalent role as some churches and mosques repeatedly call for reconciliation and tolerance; but religion is also a source of segregation within social and political spheres, as many religious leaders engage in political debates and direct the electorate towards nationalist parties (ODIHR 2007).

It must also be noted however, that the sense of belonging and pride of being a BiH citizen differs greatly depending on the group. While 80% of Bosniaks are "very proud" of being a citizen of BiH, just 30% of Croats and 21% of Serbs feel the same way (UNDP 2009: 52 Table VII). The main conclusion from this data is that divisions along ethnic lines are still very present in BiH society and political decision making, as is the lack of trust in BiH as a country and the absence of a common vision and common goals for the future of the state.

For this analysis one must also take into account citizens' political participation, of which one of the most relevant indicators is participation in elections. The number of voters has decreased continuously since the first multi-party elections (IDEA 2011). The main reasons for this are:

- An excessive number of political parties (close to 100 in general elections) most of which are ethnically, not ideologically defined, along with a large number of civil society organizations (CSOs) (more than 12000) (UNDP 2009: 13) which are inactive and lack knowledge of political processes;
- Lack of trust in institutions/political systems, and political parties;
- Continuous political blockades making voters very sceptical of the possibility for change;
- The existence of a clannish system of dividing power, where local leaders are very powerful and influence the electoral process;
- The fact that BiH is working as an international protectorate provokes the disaffection of voters due to the fact that even after democratic elections, the High Representative can reject elected representatives, change laws, etc.

Another interesting factor is the population's perception of the evolution of BiH politics. More than 50% of the population of each of the three constituent groups perceives the situation to be worsening over time, citing political disaffection and the increase of incidents of abstention (UNDP 2009: 15).

The repercussions of such a political culture and related developments on the stability and legitimacy of the political system are not to be underestimated. Although support for democratic values in the country is quite strong, it is continuously undermined by the contrasting political and territorial aspirations of the individual ethnic groups. To make matters worse, disillusionment and lack of confidence in political actors, as a result of endemic corruption, is increasing political disaffection and lack of trust in the democratic system. Therefore, the obvious impact of this rudimentary democratic political culture is especially high dissatisfaction, disenchantment and apathy, which was clearly manifested in the low turnout for the 2006 elections with only 55% participation, and only 56% participation in the last parliamentary and presidential elections in 2010 (IDEA 2011).

V
ACTORS



1. Political Parties

The Constitution of Bosnia and Herzegovina does not address the question of political parties, nor does a specific law exist regarding this matter. Therefore, political parties do not have particular authority in the constitutional system. The only legal basis so far is the state-level Law on Party Financing from 2000 and the Electoral Law of 2001.

Political parties must have fifty founding members before registering as an association with the relevant municipal court. All political parties undergo a strict and complicated registration and investigation process to be able to stand for election for any political office (Art. 4.1-4.25 Election Law of Bosnia and Herzegovina). A political party needs 3000 signatures to enrol in elections for the Presidency or state-level House of Representatives.

According to the Law on Party Financing, political parties can receive funding from the following sources: membership fees, donations, personal enterprises, and rental of property. Moreover, parties receive financial support from the state budget that is, for the most part (70%), distributed in accordance with their election success (Art. 10, Law on the Financing of Political Parties). All items of revenue and expenditure must be outlined in a report submitted to annually to the Central Election Commission. This regulation has proven successful since the Election Commission can impose sanctions in the case that a party misuses the funding they are awarded.

After the decline of the one-party Communist state in the early 1990s, several new parties were founded. They were formed on the basis of ethnicity following traditions practiced under Austrian-Hungarian rule during the early 20th century (Kasapović 2005: 77ff). The first parties were the Muslim Party of Democratic Action (*Stranka demokratske akcije*, SDA), founded in May 1990; the Serbian Democratic Party (*Srpska demokratska stranka*, SDS) founded in July 1990; and the Croat Democratic Union (*Hrvatska demokratska zajednica*, HDZ) founded in August of the same year. These three parties stood in the election campaign for the first multi-party elections and together obtained a total of 84% of the votes. The other parties, mostly moderate and/ or multi-ethnic parties, received only 16% of the votes. These parties were the Social Democratic Party (*Socijaldemokratska partija*, SDP), the Union of Reform Forces

(*Savez reformskih snaga*), the Democrat Socialistic Union (*Demokratski socijalistički savez*), the Liberal Party (*Liberalna stranka*), and the Muslim-Bosniak Organisation (*Muslimansko bošnjačka organizacija*). A new nationalistic one replaced the old communist regime. The three nationalist parties formed the new parliamentary majority, characterized strongly by ethnicity. This led to almost immediate conflict when the status of the constitution of Bosnia and Herzegovina was listed on the agenda of the parliament (Anđelić 2005: 261pp; Pejanović 2005: 97). During the conflict, the three nationalist parties governed their own territories as quasi states and were able to expand their power in the economy, army, police, and media. Due to the highly complex situation, it was not possible to further develop political parties during wartime.

In 1990, there were only three dominant nationalistic parties, yet today there is greater variety within the party system. As a result of intra- and inter-party conflicts, a number of new political parties came into being ending representation limited to the three main ethnic groups. Several different parties now have seats in parliament, which is evidence that BiH is on its way to creating a dynamic multi-party system. The exact number of active political parties varies from election to election. For example, there were 39 political parties and 11 alliances of parties registered for the most recent general parliamentary and presidential elections in 2010. In 2012, 84 parties and 59 alliances were registered for local elections (CIK 2012).

The Party of Democratic Action (SDA), founded by *Alija Izetbegović*, is the first and largest Bosniak Party of Bosnia and Herzegovina. Since the beginning of the war, SDA has always been a member of the central state government, with the exception of the period of the Alliance for Change (2000-2002) and since 2012. In December 2004, the party was granted observation status in the European Peoples Party (EPP). During his time as Chairman, *Alija Izetbegović* achieved equal treatment for the three constituent peoples in the entirety of Bosnia and Herzegovina through a constitutional complaint. One of the long-term objectives of the party, as propagated, is the centralisation of the country and the abolishment of the Republika Srpska, which according to the party, is a result of genocide and expulsion. The party advocates constitutional changes and hence, strengthening central state institutions. Former Presidency member, *Sulejman Tihić*, leads the party today. He has undertaken several reforms and has proven to be a moderate politician, especially in the context of constitutional reform (Topić 2007: 39). Despite the fact that the SDA

remains the most important Bosniak political party, it forfeited exclusive representational claim in the post-war years in areas where Bosniaks are the majority due, in particular, to the strengthening of the Party for Bosnia and Herzegovina (SBiH) and the Social Democratic Party (SDP). (Website SDA, 18.6.2008).

The Party for Bosnia and Herzegovina (*Stranka za BiH*) was founded in 1996 and developed into a secular alternative of the SDA. Yet it still cannot claim to be a credible multi-ethnic party in its own right, even though some of its representatives, such as former Minister for Foreign Affairs, *Sven Alkalaj*, are not Bosniaks. SBiH is also "pro-Bosnian," advocating for a stronger central state, and is an even more radical proponent of the abolishment of the entities than the SDA. The SBiH members of parliament voted against constitutional reform in April 2006, claiming that they did not want to support "cosmetic" changes and demanded greater modifications. The Former Chair of the party, *Haris Silajdžić*, primarily promoted the abolishment of the Republika Srpska, leading the party to victory during the parliamentary elections in the Federation in 2006. (Marić/Krause 2006). However, during the local elections in 2008 the party was unable to maintain its dominant position (Oslobođenje 7.10.2008), and lost the majority of its influence after the elections in 2010.

The Social Democratic Party of Bosnia and Herzegovina (SDP BiH) is the only party that claims to be multi-ethnic. It is the successor of the Communist Party. Its chair, *Zlatko Lagumdžija*, propounded the Alliance for Change (2001-2002), a group of several small parties intending to work together to reform the country, though the Alliance did not lead to the new beginning they desired. SDP BiH tries to promote a democratic, multi-ethnic, and multi-religious country and gives highest priority to programmes relating to economic and social policy (Topić 2007: 40). These ideas are not yet widely supported, and national issues still dominate every-day politics. Therefore, the SDP was the largest body of opposition, until they managed to win the parliamentary elections in 2010. Nevertheless, they were not able to fulfil the hopes of the citizens as they made significant compromises with nationalistic parties, causing *Željko Komšić*, the Croat member of the Presidency, to leave the party.

*Distribution of Seats in the House of Representatives
Parliamentary Assembly 1996 – 2010*

Party/Coalition	1996	1998	2000	2002	2006	2010
DNS					1	1
DNZ BiH			1	1	1	1
HDZ 1990 ^a					2	1
HDZ BiH ^a	8	6	5	5	3	3
HSP						1
KCD BiH ^b		17				
NS RzB				1	1	1
PDP			2	2	1	1
SBiH	2		5	6	8	2
SBB BiH						4
Savez za mir i progres ^c	2					
SDA	19		8	10	9	7
SDP		4	9	4	5	8
SDS	9	4	6	5	2	4
Sloga ^d		4				
SNSD			1	3	7	8
Social Democrats BiH		2				
SRS		2		2		
Združena lista ^e	2					
Other	0	3	5	3	2	0

a - In Coalition with several smaller parties

b - KCD BiH – Coalition between SDA, SBiH, Liberal Party BiH and Civil-Democratic Party

c - Coalition of SP RS; SNSD, Social Liberal Party of Republika Srpska (SLS RS) and the Unified Left

d - Coalition of SNS, SP RS and SNSD

e - Coalition between SDP, Croatian Peasant Party (HSS), Republican Party, Muslim-Bosniak Organisation (MBO) and Union Bosnian-Herzegovinian Social Democrats (UBSD)

Reference: www.parlament.ba

Formerly, the Croat party of the Croat Democratic Union (HDZ BiH) claimed the exclusive right to protect Croat interests in BiH. At the

beginning of 2006 however, HDZ BiH had to give up that title as new actors entered the Bosnian-Croat political landscape. Due to issues within the party, the exclusion and resignation of several high-level members, and the indictment of Chairman *Dragan Čović* on charges of abuse of power, the party lost the support of religious representatives (Bishops Conference of the Catholic Church in BiH) and its sister party in Croatia (*HDZ Hrvatske*). Consequently, the party's membership dwindled. Local elections in 2008 and general elections 2010, however, once again confirmed HDZ as the strongest Croat party. Similar to the SDA, the HDZ has observer's status in the European People Party (EPP).

The second strongest political group of Bosnian-Herzegovinian Croats is the Croatian Democratic Union 1990 (HDZ 1990). This party split from HDZ BiH in 2006, and due to widespread discontent, nearly every HDZ BiH delegate to the state parliament switched their allegiance to HDZ 1990. Their missing votes contributed to the failure of constitutional reform. HDZ 1990 believes that BiH is not viable with its current structure of two entities and proposes federal re-structuring. HDZ 1990 gained a majority in two cantons during the 2006 elections and was ranked fifth in the elections for the House of Representatives of the Federation and the central state of BiH. A slow convergence process between the two HDZ parties was initiated under pressure from the former sister party, HDZ Croatia (Marić/Krause 2006). Today, HDZ 1990 is the second most important Croat party in BiH. Since July 2013 Martin Raguž is the new party president.

*Orientation of the Political Parties and
their most important Voter Base*

	Bosniaks	Serbs	Croats
extremely nationalistic		SRS	HSP
nationalist	SDA, SBiH	SDS, SNSD	HDZ, HDZ 1990
moderately nationalist	SBB	PDP	NS RzB
non-nationalist	SDP		
multinational	-		

The Serbian Democratic Party (SDS), founded by *Radovan Karadžić*, has been the dominant Serb political party since 1990-2006. After the decline of the common parliamentary majority SDS-HDZ-SDA in 1992, the SDS left the central state parliament and began constructing a separatist Serbian state. At that point, the party was an all-encompassing movement with the support of the majority of the Serbian population, a trend that continued in post-war years. Yet internal conflicts eventually led the party to fragment. Ever since the re-election of *Milorad Dodik* (SNSD) as the Prime Minister of the Republika Srpska in 2006, the SDS relinquished the exclusive right to protect Serbian national interests. The attempt of former Chair *Dragan Čavić* to reinvent the party as a modern people's party by cleansing it of its wartime cadre did not prove successful. Today the SDS is the key opposition party in Republika Srpska, a status confirmed in the 2008 municipal elections and the 2010 general election. On the state-level they do collaborate with SNSD, putting the interests of Republika Srpska first.

Currently the strongest party in the Republika Srpska is the SNSD, the Union of Independent Social Democrats. The party was founded in 1996 by a group of opposition politicians in the National Assembly of the Republika Srpska. It evolved as one of the few political parties unburdened by the war. Its Chairman, Milorad Dodik, assumed the responsibilities of the government for a second time from 2006-2010, following his initial term as Prime Minister from 1998-2001. Since 2010, Dodik has been President of the Republika Srpska. It is assumed, in contrast to the SDS, that no members of the SNSD participated in war crimes. The SNSD strongly advocates the preservation of the entity, its central institutions, and competencies. On the platform of planning to hold a referendum on independence, the party mobilized Serbian voters leading to a landslide victory in the 2006 and 2010 elections. The party governs in cooperation with several smaller parties. Additionally, party members include Bosniak, Croat, and "Other" representatives in the entity body. As a result of his incontestable position, Dodik has been confrontative towards the EU and OHR.

In addition to the large parties mentioned above, there are several smaller parties including: the Croatian Party of Rights (HSP), the Croatian New Initiative (NHI), the People's Party for Work and Betterment (NSRzB), the Bosnian Party (BOSS), the Democratic People's Union (DNS), the Party of Democratic Progress (PDP), the Socialist Party of Republika Srpska (SP RS), the Democratic People's Community (DNZ),

and the Radical Party of Republika Srpska (SRS). These parties receive some votes in each election, but have not been able to make a name for themselves. In 2008 Bosnian Oscar winner and movie director Danis Tanovic, and other intellectuals, founded the multinational party "Our Party" (*Naša stranka*) in an attempt to provide another alternative. It did not achieve any considerable success in municipal and general elections, proving once again that the role of smaller parties remains very limited.

Most political parties, the larger ones in particular, can be described as "charismatic leader organisations" (Jovanović 2002: 130). Orientation towards a leading figure is a legacy from Communist times, and is especially evident when a new party is in the process of being formed. Today, the parties are more characteristic of patronage associations. Considerable structural changes took place following the resignation of *Karadžić* in 1996 and *Izetbegović* in 2000. The current chairmen of the SDS and SDA do not have the same charisma as their predecessors. The resulting change in party leadership can be described as a positive shift towards more moderate perspectives. On the other hand, a strong cult has taken shape around the Chairman of the SNSD, *Milorad Dodik*, who has been designated as the new *vožd* of the Republika Srpska (Russian: leader, *вождь*) (BH Dani, 25.4.2008).

The large parties are able to maintain their membership due to the fact that economic resources, industry, energy, and party media are under their control.

There is no institutionalized process for intra-party programmatic discussion; decisions are made on behalf of the party exclusively by the party leader. The absence of a culture of discussion has caused most of the rifts. In the case of diverging opinions there is no attempt to achieve a compromise. Instead, new small parties form with new leading figures. However, these splinter parties rarely evolve into a successful opposition, and usually fail to have significant political influence.

2. Civil Society and Citizens' interests

In order to provide an overview of the current civil society situation, the term must first be explained. Civil society groups and organizations, and non-governmental organizations are often used synonymously, making the distinction between them unclear. Moreover, according to the BiH

legal framework,⁶ NGOs do not exist as a category, further complicating analysis of the civil sector. In BiH, an NGO can be registered either as a citizen association or as a foundation. Among citizens' associations we can find professional associations, trade unions and sports clubs, as well as humanitarian, social, and educational groups.

One of the main characteristics of BiH civil society is its overall weakness and inability to hold the state accountable. The main reason for this is the constant fragmentation along ethno-religious lines, avoiding the development of a civic identity instead of, or in addition to, an ethno-religious identity (Papić 2011).

The main development of civil society initiatives began with the economic and political crisis of the 1980s, coalescing demonstrations of popular dissent with the regime, which by then had begun to show some symptoms of fragility, allowing for the first manifestations of civil society. Nevertheless, when the result of the first free multi-party elections gave the vast majority of votes to the three ethnically-based parties, it spelled the defeat of the BiH civic experience. The cause of this is that "the lack of proper education, backwardness, the long lasting effects of communist ideology and terminology which influenced some kind of conscience stagnation did not prepare the ordinary Bosnian for the ideas of dialogue, tolerance, cosmopolitanism and peace resolution [...] It is also true that scholars could not find an appropriate language to reach the ordinary man" (Anđelić 1998). This dynamic was reproduced during the war of 1992-1995 and as Mary Kaldor stated, this war could be described as "a war against civil society" (Kaldor 1998) since the three national groups won something in the end, but the most harm was done to civic identity and civil society.

The largest emergence of NGOs took place in the immediate post-war period with the primary aim of distributing international aid. NGOs were the only segment of civil society whose numbers increased during this period, as other civil society organizations such as trade unions and professional associations all but disappeared.

Another very important characteristic of civil society in BiH is the influence of the international community. In general, financial aid and

6 There are several laws that regulate non-governmental/non-profit organizations, like the Federation Law on the Associations of Citizens (1995), the Law on Associations and Foundations in Republika Srpska (2001), the Law on Humanitarian Activities and Organizations of Bosnia and Herzegovina (1998), and the BiH Law on Associations of Citizens and Foundations (1998/2011).

other international efforts had a very positive effect. However, as with any type of interference, there were also some negative consequences. The undesirable outcomes included the fact that the priorities of international donors (which favour NGOs over other civic organizations) had more influence on the NGOs themselves than on the "actual needs of citizens expected to benefit from these organizations" (Dimitrijević 2004); local NGOs became dependent on international funding; competition instead of cooperation arose between local NGOs; the overall neglect of citizen's associations with broader membership and tradition in the country.

We can define the two types of civil society organizations in modern BiH as follows:

- a) *Post-Dayton new professional NGOs.* This group is professionally managed with a high level of organizational, strong technical and communication capacities, access to international funds and professional training, but has a weak membership base and lack widespread public support. It is estimated that there are more than 4500 (IBIH 2005) active NGOs in BiH (although the numbers differ considerably among studies), which produce almost five per cent of GDP (IBIH 2005). The economic significance of the NGO sector is enormous. The number of full time employees is more than 25,000 persons; the number jumps to more than 60,000 when volunteers are included in estimates. This represents more than five per cent of the workforce. The growth of the NGO sector "should be seen as a positive trend, since it indicates a higher level of social awareness and interest of citizens to get involved in community dialogue and decision-making through NGOs" (Papić 2011). The majority of NGOs are registered in Sarajevo or in towns with approximately 100,000 residents, while the smallest number are registered in rural areas with populations of less than 1000 citizens. Additionally, the vast majority (85%) of NGOs are small in size (with a maximum of 10 employees or 100 active members) (Zeravić 2009). The most common areas of interest are education, local community actions, counselling, lobbying, and advocacy work (Zeravić 2009). Even though competition is more common than cooperation, there are still opportunities for NGO networking. The NGO Council is the oldest network in BiH, founded in 1996, and gathers more than 100 NGOs with the main goal of representing the interests of the NGO sector and strengthening its development.

- b) *Traditional civil society organizations*. This group has no organizational, management or communications training, does not have access to international funding or training, is very dependent and greatly influenced by government structures and officials, but has a large number of members (Papić 2011). Within this group the following subcategories may be found:
- Special interest organizations and associations are independent from the domestic institutions of government and international donors, including trade unions. These associations rely on membership to finance the work of the association. They are exclusively focused on the interests of their own membership, while general well-being is neglected (Papić 2011: 98). They lose independence when local governments finance their work;
 - Religious charities, in particular Catholic and Islamic charities such as *Caritas* and *Merhamet*;
 - Radical ethnic-nationalist movements are found in the margins of society and are not organized. They have some characteristics of special interest organizations, though some are also well-organized nationalist movements closely connected with ruling nationalist parties (Dimitrijević 2004: 38).

Cooperation between civil society and state authorities is highly dissatisfying according to NGOs (Zeravić 2009). To improve and allow both parties to benefit, the state needs to perceive civil society associations as equal partners for accomplishing common goals, increase financial allocations for the NGO sector, and encourage transparency.

BiH civil society remains weak and is in the first stages of development as a result of historical consequences that have never allowed for the proper development of civil society culture and the international community's approach in the post-Dayton period when civil society was being developed, etc. Consequently, civil society in BiH is also divided along ethnic lines and into two very different groups: the new professional NGOs with developed capacities and access to funds, and the traditional civil society organizations with broad membership but lacking organizational skills and financial sustainability.

In the post-Dayton period, positive developments have been made in BiH concerning the establishment of state institutions and basic elements

of the political system and legal framework. The European Union integration process and EU conditionality principles have supported a positive change in the post-conflict situation. Individual human rights have improved, including issues regarding refugees, property rights, inter-ethnic conflicts, etc. There is a legal and institutional framework for monitoring human rights in place. However BiH has made little progress in improving the enforcement of international human rights legislation. The best example is the verdict of the European Court of Human Rights issued in 2009 in the case of *Sejdic-Finci vs. BiH*, which obliges BiH to eliminate the discriminatory elements in its Constitution and Electoral law. However, this decision has yet to be implemented.

Discrimination and human rights violations are especially severe towards minorities, such as the Roma population, whose living conditions are still less than ideal, as well as Lesbian, Gay, Bisexual, and Trans persons who continue to be subjected to threats and harassment, including hate speech and intolerance by the media and politicians (European Union 2012).

3. Media

The media landscape in Bosnia and Herzegovina suffered severely during the war. Under the iron fist of nationalists, it seemed impossible to provide pluralistic and independent reporting in 1995. The few objective, multi-ethnic print media sources such as *Oslobodjenje* and *Nezavisne novine* complained about financial restrictions. Even journalists spread inter-ethnic hatred through the use of intolerant language, provocations, and consciously distorted accounts. Thus, it was the international community that introduced essential improvements and reforms. OSCE was the first to use its influence as a legitimate organization to initiate the restructuring of the media in order to ensure free and fair access for candidates and to guarantee adequate reporting. It was in the face of open obstruction by nationalist parties and the marginal success of OSCE that the Peace Implementation Council (PIC) in Sintra in 1997 decided that a more hard-line approach for free media was necessary. It transferred this task to the High Representative and implemented the Independent Media Commission as the highest authority over frequencies and licenses in 1998 (Topić 2005: 7p.). The international community attempted to install inter-entity and multi-ethnic radio stations – Radio FERN (*Free Election Radio Network*), the TV channel OBN (*Open Broadcast*

Network) and TV-network Mreža Plus – in order to foster pluralism and professional journalism (Topić 2005: 10), although the population received them poorly. Hence, the media landscape is split along ethnic and territorial lines in the print sector as well as electronic media (BTI 2007: 8). The international community was more successful in reforming media-related legislation, so that the country offers extensive protection for free media and press.

Generally, responsibility for media issues lies with the entities. The Federation has further decentralized this authority, delegating it to the cantons. Thus, there are fourteen different regulators and rules within the territory of BiH. Freedom of the press and media is guaranteed by the Constitution and is, essentially, respected (European Commission 2007). In 1999, the High Representative reformed criminal law in so far as that he rendered extensive regulations against defamation – which had until then led to several fines and jail sentences for journalists – inoperative. Thus, restrictions mainly result from political pressure. Throughout the years, this has led to dangerous restraints on free media work in the Republika Srpska, as political parties still regularly interfere in the media. Journalists cannot always avoid depending on political parties and economic influences and often practice self-censorship (BTI 2007: 8; ODIHR 2008: 8).

A great variety of print media exists: There are five large daily newspapers (*Oslobodenje* – close to SDA; *Dnevni Avaz* – paper of SBB BiH; *Glas Srpske* – close to SNSD; *Nezavisne novine* – close to SNSD; and *Dnevni List* – Croatian liberal) and approximately forty weekly or monthly magazines (*BH Dani*, *Slobodna Bosna*, *Start*, *Reporter* etc.). Yet, a considerable amount of press comes from neighbouring countries. Publishing companies from Serbia and Croatia issue volumes partially dedicated to Bosnia and Herzegovina and the Republika Srpska respectively: these include *Večernji list* and *Slobodna Dalmacija* from Croatia, as well as *Blic* and *Večernje novosti* from Serbia. Since 2001, the Press Council (*Vijeće/Savjet za štampu*) has been working as a self-regulating body of print and online media in order to monitor the press code. However, in the form of a discussion forum it does not possess any legal rights to implement its decisions, so its effectiveness remains very limited (European Commission 2007).

Although there have been several consensus-building processes in past years, the electronic media sector remains fragmented. An

explanation for this can be found in the fact that international intervention flooded the country after the war without any goal or strategy, leading to an inflationary increase of small radio stations (1996: ca. 400 stations – one station/17,000 inhabitants; in 1998 there were still 281 stations; Topić 2005: 9). Today, 186 electronic media have licenses, among them are 47 TV stations. Two-thirds of this media is in private hands (ODIHR 2008: 8). The international community established a common public broadcasting system (PBSBiH) consisting of three radio and three TV channels at the state and entity levels. It is financed by fees, the public budget, and advertising revenue (Topić 2005: 11). None of the three broadcasting agencies can provide complete coverage, but all three stations and some private channels like *OBN*, *Pink BiH*, *Hayat*, *BN*, and *ATV*, reach over 70% of the population (ODIHR 2007: 12). The international broadcaster *Aljazeera* established a Balkans Programme in 2011, establishing its regional headquarters in Sarajevo. Croats feel underrepresented by the public broadcasting system and have demanded in the FBiH parliament as well as at the state-level that a TV channel be established in the Croatian language. This is a politically and legally contested issue. The state level Regulatory Agency for Communication (*Regulatorna agencija za komunikacije*) has monitored the regulation (among others things, the placement of frequencies) and supervision of electronic media since 2004. In cases of breaches and complaints, it can issue warnings and sanctions ranging from fines to the closure of stations. This agency works independently and professionally, even though it does not have the human resources or financial capacities to do so.

Despite all efforts, Bosnia and Herzegovina still does not offer an environment for high-quality journalistic work that would meet democratic needs. The media is perceived by the public as a means of political influence, instead of a control authority and medium for politics. The large amount of money that came into the country after the war fostered a so-called borrower mentality and undermined the development of a media market. Expertise concerning media management and marketing is lacking, as are professional journalists with degrees, despite the fact that there are several journalism programs available (Topić 2005: 13). The development of a distinguished, functional media landscape is aggravated by the influence of the neighbouring countries' media, namely that of Serbia and Croatia. International broadcasting is often of better quality, and has higher print runs and audience share than the local press.

4. International Community

Bosnia and Herzegovina is one of the few states in the world in which the international community continues to play a political-legislative role of great importance. International actors are not external actors influencing the political system itself, but instead are integrated into the political structure of the state. The Dayton Peace Agreement was responsible for envisaging international actors as taking over important positions in BiH institutions and playing an active role in the political system.

The main problem deriving from this situation is the lack of local ownership of political developments and the political agenda of BiH, which is still working as a semi-international protectorate.

The following section of this text presents the manner and framework of action of the international actors whose work was, or still is, important to political developments in BiH.

4.1 Office of the High Representative (OHR)

The OHR is an *ad hoc* international institution responsible for monitoring the implementation of the civilian aspects of the DPA. The mandate of this institution arose from Annex 10 of the DPA, which states its competencies as follows⁷:

- Monitor the implementation of the peace settlement;
- Maintain close contact with the parties to the Agreement, to promote their full compliance with all civilian aspects of the Agreement;
- Co-ordinate the activities of civilian organisations and agencies in Bosnia and Herzegovina to ensure the efficient implementation of the civilian aspects of the peace settlement. The High Representative shall respect their autonomy within their spheres of cooperation while, as necessary, providing general guidance about the impact of their activities on the implementation of the peace settlement;
- Facilitate, as the High Representative judges deem necessary, the resolution of any difficulties arising in connection with civilian implementation;

7 http://www.ohr.int/ohr-info/gen-info/default.asp?content_id=38612, Accessed on 26 June 2012.

- Participate in meetings of donor organisations;
- Report periodically on progress to the United Nations, European Union, United States, Russian Federation, and other interested governments, parties and organisations;
- Provide guidance to the United Nations International Police Task Force (IPTF).

The DPA declares the High Representative (HR) as the final authority responsible for interpreting the agreement on the civilian implementation of the peace settlement.

Nevertheless, since the adoption of this document, the tasks of the OHR have changed according to the developments of political life in BiH, as well as according to the decisions of the Peace Implementation Council (PIC). The PIC's structure and purpose will be discussed further below. One of the most remarkable and innovative resolutions affecting the work of the OHR was the adoption of the so-called Bonn powers, which stemmed from the PIC Conference in Bonn, Germany in December 1997. These powers were built upon the previously mentioned Annex 10 of the DPA and were thought to empower the OHR to be able to remove from office those public officials who violate legal commitments and/or the DPA, as well as to impose laws as he/she understands are needed in order to further the development of BiH when BiH institutions fail to do so. In the context of this research, it must be emphasized that the High Representative imposed 112 laws within the legislative competencies of the BiH Parliamentary Assembly during the period from 1996 to 2007.⁸ These interventions pertained mostly to the field of judiciary reform, followed by the fields of citizenship, personal and travel documents, public property, privatization, the electoral system, and telecommunications, with the HR acting as a legislator.

The use of the so-called Bonn powers by different High Representatives has solved some political blockades through the imposition of a series of laws relating to varying fundamental areas, such as a single currency, the anthem, the flag, and the election law. However, this has had a second implication: all of these decisions were made by a body that was not elected by Bosnian-Herzegovinian citizens, without consultations with the public. This undermines the democratic legitimacy of the OHR.

⁸ An interesting fact is that from 1997 until August 2012, the High Representative dismissed over 200 officials using the Bonn Powers in approximately 900 cases. Details are available online at: <http://www.ohr.int/decisions/archive.asp>, Accessed on May 10, 2013.

The PIC was established at a conference held in December 1995, after the signing of the DPA, and its main purpose was to mobilise international support for the Agreement. The PIC was founded by 55 member states and agencies and has a fluctuating number of observers supporting the stabilisation and development of BiH through different means: financially, politically, providing troops for the international military forces, and as consultants on various subjects.⁹

During this conference, a Steering Board for the PIC was established, which works under the leadership of the High Representative. The members of the Steering Board are: Canada, France, Germany, Italy, Japan, Russia, United Kingdom, the United States, the Presidency of the European Union, the European Commission, and the Organisation of the Islamic Conference (OIC), represented by Turkey. The aim of the Steering Board is to provide the High Representative with political guidance. This Steering Board meets weekly in Sarajevo with Ambassadors, and three times a year with Political Directors.

Taking into account the importance and use of the Bonn powers, as well as the role of the PIC and the international community, the question must be raised as to whether Bosnia and Herzegovina is adequately functioning as a semi-international protectorate and how the international actors plan to transfer its competencies to the elected local authorities.

The year 2006 saw the adoption of a strategic decision to withdraw the High Representative from the BiH political system (International Crisis Group 2009). Although the closure of the OHR was expected soon after, this has not yet occurred.

Bosnia and Herzegovina as a peaceful, viable state irreversibly on for the path towards European integration has been the longstanding objective of the PIC Steering Board, and achieving this objective has been the focus of OHR's work.

At their meeting in Brussels on the 26th and 27th of February 2008, the Political Directors of the Peace Implementation Council Steering Board set out the requirements that need to be met by BiH authorities prior to the closure of the OHR, known as the "5 plus 2" plan. The objectives that need to be met by the BiH authorities prior to OHR closure are¹⁰:

9 http://www.ohr.int/pic/default.asp?content_id=38563, Accessed on May 10, 2013.

10 http://www.ohr.int/ohr-info/gen-info/default.asp?content_id=46773, Accessed on May 10, 2013.

- Acceptable and sustainable resolution of the issue of apportionment of property between the state and other levels of government;
- Acceptable and sustainable resolution of defence property;
- Completion of the Brčko Final Award;
- Fiscal sustainability (promoted through an Agreement on a Permanent ITA Co-efficient methodology and establishment of a National Fiscal Council); and
- Entrenchment of the rule of law (demonstrated through the adoption of a National War Crimes Strategy, passage of the Law on Aliens and Asylum, and adoption of a National Justice Sector Reform Strategy).

In addition to these objectives, the PIC Steering Board (PIC SB) agreed that an additional two conditions need to be fulfilled prior to OHR closure:

- Signing of the SAA; and
- A positive assessment of the situation in BiH by the PIC SB based on full compliance with the Dayton Peace Agreement.

4.2 The European Union

The Delegation of the European Commission to Bosnia and Herzegovina was established in July 1996. After the entry into force of the Treaty of Lisbon in December 2009, its name changed to the Delegation of the European Union.

The competencies of this delegation are¹¹:

- To present, explain and implement EU policy;
- To analyse and report on the policies and developments in the countries/institutions to which they are accredited; and
- To conduct negotiations in accordance with a given mandate.

The EU Delegation exercises functions conferred to it by the establishing treaties, promoting the Union's interests that are embodied in the EU's common policies, such as Common Foreign and Security Policy, common commercial, agriculture, fishery, environment, transport, and health and safety policies. This delegation works under the authority of

11 <http://www.delbih.ec.europa.eu/Default.aspx?id=7&lang=EN>, Accessed on May 10, 2013.

the High Representative of the Union for Foreign Affairs and Security Policy, a position that is currently held by Ambassador Peter Sorensen.¹²

The European Union Special Representative is the central axis of the European Union's presence in Bosnia and Herzegovina, which ensures a coordinated and coherent EU approach to assist the country to move towards European integration. The EU has reinforced its role in Bosnia and Herzegovina through its first single representative taking up office. This role was exercised by the double-hatted High Representative until 2010, but the arrival of Ambassador Sorensen relieved the HR of this task.

However, EU accession requires multiple reforms, most notably the reform of the present Constitution so that it is compatible with the Union and their *acquis communautaire*. These reforms are meant to fulfil political and economic requirements, i.e. to integrate into the common market, to have institutional stability, a democratic system and a system of protection of human rights and the rights of minorities.

Within the presence of the European Union in Bosnia and Herzegovina we must stress the importance of the military mission in this country, known as EUFOR (European Union Force).

The military operation of the European Union in Bosnia and Herzegovina is called EUFOR Althea and was launched in December 2004. The decision to launch Operation EUFOR Althea followed the decision by NATO to conclude its SFOR operation and the adoption of resolution 1575 by the United Nations Security Council.

Today, EUFOR Althea relies on 600 troops in Bosnia and Herzegovina, backed by reserves in different countries. A multinational *manoeuvre* battalion is based in Sarajevo and EUFOR Althea also retains its presence throughout the country through the Liaison and Observation Teams (LOT). The multinational *manoeuvre* battalion, based in Camp Butmir, is comprised of troops from Austria, Turkey, and Hungary. EUFOR Althea retains its capacity to react throughout the country to any possible security challenges.

One must also take into account the European Union Police Mission (EUPM) in Bosnia and Herzegovina, the first mission of which was

12 <http://www.delbih.ec.europa.eu/Default.aspx?id=1&lang=EN%29>, Accessed on May the 10, 2013.

launched on January 1, 2003 for an initial period of three years. Upon the invitation of BiH authorities, EUPM continued its mission until June 30, 2012. Their main goal in BiH was to create, under BiH ownership, a modern, sustainable, professional multi-ethnic police force that was trained, equipped, and able to assume full responsibility and to independently uphold international law enforcement standards.¹³

4.3 Organization of Security and Cooperation for Europe

In December 1995, the OSCE established a mission to BiH in accordance with the mandate of Annex VI of the DPA which "invites the OSCE to monitor the human rights situation in BiH." The OSCE Mission to Bosnia and Herzegovina is assisting BiH in meeting its OSCE commitments and in progressing towards its stated goal of Euro-Atlantic integration.¹⁴

To accomplish their mission, the OSCE has fourteen field offices throughout the country in addition to the Head Office based in Sarajevo. The OSCE Mission has developed over its eighteen years of existence from mainly monitoring the first democratic elections after the war, to promoting civil society, financial transparency, municipal reform, etc. The OSCE was assigned the task, for example, of establishing a Provisional Election Commission and conducting elections (Annex 3 of the General Agreement for Peace, Article II). Bosnian-Herzegovinian institutions took over full responsibility for elections only recently, in 2002, through the Central Election Commission (Gavrić 2012).

Therefore the "Mission" continues to play a vital role in strengthening the country's ability to establish a sustainable and stable security and defence environment. Nowadays, apart from its security role, the OSCE is one of the main promoters of civil society development working, among other issues, to support the educational reform process and to promote and protect the human rights of all citizens of BiH.

4.4 Council of Europe

Also based on Annex VI of the DPA, the Council of Europe established an office of the Secretariat in Bosnia and Herzegovina. The office was established in Sarajevo in April 1996 with the initial tasks of:¹⁵

13 <http://www.eupm.org/Overview.aspx>, Accessed on May 3, 2013.

14 <http://www.oscebih.org/Default.aspx?id=156&lang=EN>, Accessed on October 26, 2012.

15 http://www.coe.ba/web/index.php?option=com_content&task=view&id=21&Item

- Establishing the Human Rights Commission,
- Assisting the Ombudsperson for human rights of BiH,
- Appointing judges under annex IV and VI of the DPA,
- In general, assisting BiH in meeting the criteria for accession to the Council of Europe, following BiH's first application in April 1995.

Bosnia and Herzegovina joined the Council of Europe in April 2002. By doing so, the country accepted many obligations required of all member states, specifically the need to comply with the principles of a pluralist democracy, the rule of law, and respect for human rights and fundamental freedoms. Bosnia and Herzegovina ratified the European Convention on Human Rights and Fundamental Freedoms in July 2002. At the same time, it entered into a number of other specific commitments which it agreed to honour by set deadlines and which are listed in Opinion No. 234 (2002) on Bosnia and Herzegovina's application for membership to the CoE.

Bosnia and Herzegovina has five representatives in the Parliamentary Assembly, five representatives in the Congress of Local and Regional Authorities, a judge, and a Permanent Representative at the European Court of Human Rights.

Periodic reports on the human rights situation in BiH are conducted by the CoE Human Rights Commissioner, who establishes what progress has been made in the field of human rights and what matters remain of concern.

The greatest concern, not just for the CoE, but also for BiH's Euro-Atlantic path, has been the decision of the European Court of Human Rights in December 2009 regarding the case of *Sejdic-Finci vs. BiH*, which urged BiH to amend its Constitution in order to overcome ethnic discrimination in the institutional representation of the country for persons not belonging to one of the three constituent peoples.

4.5 North Atlantic Treaty Organization

The initial involvement of the international community, especially that of NATO, in the Bosnian war was very feeble. After UN Security Council Resolution 816 authorized states to use measures to ensure compliance with the no-fly zone over Bosnia in April 1993, NATO initiated Operation

id=39, Accessed on May 2, 2013.

Deny Flight, and in 1994 the scope of NATO involvement in Bosnia increased dramatically. NATO undertook several missions, in coordination with the UN commanders in place, to bomb Serb targets. But it was the genocide in Srebrenica in 1995 that elicited a more substantial reaction from the international community. Following the London Conference in July, UN Secretary General Boutros-Ghali requested extensive use of NATO aircraft, therefore officially launching NATO's operation Deliberate Force in August 1995, with the large-scale bombing of Serb targets.

As a result of Operation Deliberate Force, the leaders of the various belligerent groups decided to meet in Dayton and sign the aforementioned Peace Agreements.

Since then, NATO has led the Implementation Force, Stabilization Force, and other peacekeeping efforts in the country. Bosnia and Herzegovina joined the Partnership for Peace in 2006, and signed an agreement on security cooperation in March 2007. The nation began further cooperation with NATO within their Individual Partnership Action Plan in January 2008. (Settimes 2008) Bosnia then began the process of Intensified Dialogue at the 2008 Bucharest summit, and was invited to join the Adriatic Charter of NATO aspirants on September 25, 2008.

At the NATO Summit in January 2009, the Defence Minister confirmed Bosnia's interest in seeking a Membership Action Plan (MAP), with membership by 2012. The goal was for the country to receive an MAP at the April 2009 summit in Strasbourg-Kehl, but that fell through. During a September 2009 visit to Bosnia and Herzegovina, Stuart Jones, an official of the US State Department, said that NATO was looking into the possibility for BiH to receive their MAP at a December 2009 summit, repeating strong US support for this initiative. On April 22, 2010 NATO agreed to launch the Membership Action Plan for Bosnia and Herzegovina, but with certain conditions attached (BBC 2010). Turkey is thought to be the largest supporter of Bosnian membership, and heavily influenced the decision (Radio Slobodna Evropa 2010).

This description of the international community is not exhaustive, as one must also take into account the role of UN agencies and some foreign embassies. However, from the previous analysis, we can conclude that BiH is one of the few states in the world with such a dense concentration of international actors. Of course, this situation derives from the very structure of the political system. The international actors are not external actors influencing the political system itself, but are integrated into the

political structure of the state. There is a clear need to transfer power and permit local ownership of the authorities over all spheres of life, particularly regarding politics and legislation.

VI
INTERNATIONAL
POLITICS



1. Foreign Policy and Relations with the European Union

The Foreign Policy of BiH is a state responsibility conducted by the Presidency in accordance with Article 5 of the BiH Constitution, where it is established the responsibility to “conduct the foreign policy of Bosnia and Herzegovina (et.al. appointing ambassadors and other international representatives; representing the country in international and European organisations and institutions; arranging international agreements, denouncing, and, with the consent of the Parliamentary Assembly, ratifying treaties etc.)”. Also, the Presidency has defined the principles and priorities of BiH Foreign Policy as follows:

Among the *Principles*,¹⁶ the most relevant are the promotion and representation of BiH interests, based on the Constitution and the position of BiH institutions at the international level; acting in bilateral, regional and global frameworks, based on the principle of mutual respect for sovereignty, territorial integrity, and peaceful cooperation, as well as peaceful settlement of interstate misunderstandings.

Relations with BiH's neighbours, Croatia, Montenegro and Serbia, have been fairly stable since the signing of the Dayton Agreement in 1995, although there have been small disputes. BiH still disagrees with Croatia on some sections of the border allowing maritime access to the Adriatic Sea, and with Serbia regarding sections along the Drina River.

Bosnian and Herzegovinian foreign policy has been aimed at promoting and preserving lasting peace, security, and a stable democracy. The country is focused on political, economic, and security development in order to work towards contemporary European integration.

Among the *Priorities* of the Foreign Policy of BiH are the protection of sovereignty and territorial integrity of the country, the full implementation of the General Peace Agreement, the participation in multilateral activities and promotion of cooperation with neighbouring countries, with a special focus on economic relations, and BiH's entry into the European Union.

In order to put this multilateral external policy into practice, as well as

16 http://www.mfa.ba/vanjska_politika_bih/osnovni_pravci_vanjske_politike_bih/?id=2, Accessed on June 13, 2013.

to protect the interest of BiH citizens living abroad, BiH has a network of embassies, consulates and cultural centres, with a presence in 46 countries around world, and at six inter-governmental organisations.¹⁷

According to the Law on the Council of Ministers of BiH, the Ministry of Foreign affairs is responsible for the implementation of foreign policy and the development of international relations in accordance with the positions and directions of the Presidency of Bosnia and Herzegovina; proposing the adoption of positions concerning issues of interest for foreign policy activities and the international position of BiH; representing BiH in diplomatic relations with other countries, international organisations, international conferences, and in direct communication with foreign diplomatic and representative offices and missions of international organisations in BiH; proposing to the Presidency of BiH the establishment or termination of diplomatic or consular relations with other countries; co-operation with international organisations and proposing to the Presidency of BiH membership or participation in the work of international organisations; organisation, direction and coordination of the work of diplomatic and consular representatives of BiH abroad; preparation and organisation of international visits and meetings; preparation of bilateral and multilateral agreements; carrying out duties concerning the stay and protection of the rights and interests of BiH citizens permanently and temporarily staying abroad, and of domestic legal entities abroad; monitoring, in cooperation with competent ministries and institutions, international economic trends and relations and informing the competent authorities thereof, as well as of international economic relations of BiH with individual states or regions; and preparing documents, analyses, information and other materials serving the needs of the Presidency of BiH, the Council of Ministers and other bodies responsible for foreign policy implementation.

The most important foreign policy objective of BiH is integration into the European Union, a goal shared by the majority of the population, regardless of their ethnic or political identity.

Regular opinion polls usually show that 80-85% of citizens support accession to the EU (Gromes 2006b). The European perspective represents the most important, if not the only, unifying political endeavour in this country and therefore is also likely idealised, putting less emphasis on the actual duties and responsibilities the process brings with it.

17 http://mfa.ba/ambasade_konzulati_misije/ambasade_konzulati_i_stalne_misije_bih/Default.aspx?template_id=16&s1=749&id=6950, Accessed on June 13, 2013.

The European Union's policy towards the countries of the Western Balkans is defined within the Stabilization and Association Process (SAP), which was launched in May 1999 by the European Commission. At the Zagreb Summit in November 2000, a meeting of leaders from the EU and the countries of the Western Balkans, the region confirmed its full commitment to the Stabilization and Association Process. In response to the EU offering the prospect of accession - and assistance to achieve it - BiH is committed to fulfilling certain political and economic requirements. The requirements, widely known as the Copenhagen Criteria, were agreed upon by the European Council in Copenhagen in 1993 and include:¹⁸

- Political criteria: stable institutions guaranteeing democracy, the rule of law, human rights and respect for/protection of minorities;
- Economic criteria: a functioning market economy able to cope with competition and market forces in the EU;
- The capacity to take on the obligations of membership, including adherence to the objectives of political, economic and monetary union.

The SAA, signed in June 2008, is considered the most important step on BiH's path towards EU integration. It is focused on the regulation of the internal market, trade, and introducing a regulatory framework for free movement of workers, services, and capital. However the SAA has not yet entered into force, and its full entry into force depends on how BiH addresses the necessary conditions without breaching the agreement. The EU required BiH to adopt the State Aid Law, a matter already addressed in 2012 when the parliament passed the law, and to address the ruling of the European Court of Human Rights in the Sejdić-Finci case, as stipulated in the EU Foreign Affairs Council Conclusions of March 21, 2011 (EU Consilium Press 2011). Nevertheless, this area is covered by an Interim Agreement which came into force in July 2008. The Interim Agreement is comprised of provisions on trade liberalisation, transport liberalisation, and the most important aspects of the internal market (competition, state aid, intellectual and industrial property rights, and public procurement).

Another EU tool developed in BiH is the well-known Structured Dialogue on Justice (SDJ), directly established by European Commissioner Fuele and High Representative of Foreign Affairs and Security Policy Ashton as a mechanism to advance structured relations on the rule of law

18 http://europa.eu/legislation_summaries/glossary/accession_criteria_copenhagen_en.htm, Accessed on June 13, 2013.

with potential candidate countries. The SDJ predates the entry into force of the SAA and aims to consolidate an independent, effective, efficient, and professional judiciary.¹⁹

In terms of accomplishments, the most visible effect of the European integration process for the citizens of BiH was the introduction of a visa-free regime on December 15, 2010.

However, BiH must still enact numerous reforms in order to meet the political and economic criteria and continue on the path to EU integration.

To meet the political criteria the EU accession process requires several reforms, most importantly reform of the present Constitution, in order to be compatible with the Union and their *acquis communautaire*. These reforms are meant to fulfil political and economic requirements, i.e. to integrate into the common market, to have institutional stability, a democratic political system and a method of protection of human rights and the rights of minorities. Along with other international actors, the EU has pointed out that the main obstacle lies in the lack of political will of Bosnian-Herzegovinian authorities, who are unable to reach consensus to ensure the functionality of Bosnia and Herzegovina's institutions. The EU has repeatedly emphasized the necessity of having functional institutions at all levels, as well as an effective coordination mechanism that allows BiH to "speak with one voice" (European Commission 2012a). In summary, the political requirements can be simplified as: the need for institutional stability, which implies constitutional reform.

In terms of economics, since 2007, Bosnia and Herzegovina has received more than € 295 million from the Instrument for Pre-Accession Assistance (IPA) (European Commission 2012b) which aims to provide targeted assistance to countries that are candidates or potential candidates for EU membership. In particular, the IPA helps to strengthen democratic institutions and rule of law, reform public administration, carry out economic reforms, promote respect for human and minority rights and gender equality, support the development of civil society, advance regional co-operation, and contribute to sustainable development and poverty reduction. In the period from 2007-2013, Bosnia and Herzegovina received more than €660 million in EU assistance.²⁰

19 <http://www.delbih.ec.europa.eu/Default.aspx?id=87&lang=EN>, Accessed on June 13, 2013

20 <http://www.delbih.ec.europa.eu/Default.aspx?id=10&lang=EN>. Accessed on February 1, 2013.

The EU is BiH's main trading partner. BiH has benefited from EU market access through the introduction of so-called Autonomous Trade measures since 2000. Following the adoption of the Interim Agreement, products from Bosnia and Herzegovina became more widely available in the EU, and EU exports to the country were granted trade preferences.

However, there are still some economic requirements to be met, the most important of which is to ready BiH's economic system for integration into the common market. Introducing EU requirements at all levels will improve the ease of doing business and make the flow of capital, goods, and labour more secure (Cenić 2008).

There is also a need to reduce the level of corruption and correct dysfunctional institutions and a divided economic sphere. The low level of productivity of the BiH economy is another consequence of the political situation. The lack of political will to create a functioning state with working institutions is affecting the business sector.

Furthermore, regular channels of political communication between EU representatives and BiH state representatives need to be established within the integration process. This must be based on institutionalizing political negotiations and decision-making, and prohibiting authorities assigned to this task from engaging in "informal" negotiations with the leaders of the main ethnic parties instead of the leaders of the institutions.

And finally, the public - understood as BiH citizens - could play a very significant role in the country's accession to the EU, as they are the ones that can influence their leaders and their decisions. In a public survey (Hadžikadunić 2007) the results confirm the *Europhilia* of BiH citizens, where two-thirds of citizens support policies aimed at EU integration. However, the power of this support is relative, as the Croat and Serb sections of the population show negative attitudes toward the state of BiH as well and its goal of becoming a member state of the EU.

In conclusion, all reforms required to meet the political and economic criteria for BiH to become a member state of the European Union are in essence also necessary for the progress of democracy and economic prosperity of the country itself. The European path may serve as an effective catalyst, but it cannot be the only reason for reforming the Constitution or adapting a market economy. Both of these relevant issues remain the responsibility of BiH to address as its "national interests," and thus, the responsibility of BiH citizens and their elected leaders.

**EPILOGUE:
FROM DAYTON
TO BRUSSELS?**



The stagnant nature of Bosnia and Herzegovina's democracy is the result of a quasi-protectorate established by the international community. This government has a complex structure, with long decision-making processes, high levels of political corruption, institutionalized discrimination and an underdeveloped political culture.

BiH is one of the few states in the world in which the international community continues to play a significant political role in. These international actors are not external elements influencing the political system itself, but are instead integrated into the political structure of the state. The main problem in this situation is the lack of local ownership of political developments and agendas in BiH. The political, economic and social agendas are still marked by several different international actors who have very different views of what BiH should become. Thus, there is a clear need to transfer power and permit local ownership of the authority over all spheres of life, especially politics and legislation.

This political system derived from the Dayton Agreement represents an extremely complex structure, which in many occasions has led to blockage and political stagnation, this is due to the lack of basic consensus about the BiH state.

And yet one of the biggest issues that BiH has to solve in the near future is the institutional discrimination that gives certain constituent peoples disproportionately better representation, all the while hindering the rights of minorities to many positions at every level of government, not just the Presidency and BiH House of Peoples. In spite of the European Court of Human Rights decision in the case *Sejdić-Finci vs. BiH*, the government has failed to implement this decision and eliminate discrimination from the Constitution. Still nowadays three primary populations make up the building blocks of the state, and a distinction is made between them and the others, or those that are not categorized based on one of the three main ethno-religious groups.

As for integration, following the steps of BiH's neighbour Croatia might help with the process of adopting new non discriminatory and more functional constitution clauses. Among the international community, the EU must take the lead to guide BiH along the path to political and economic reforms. However, in order for this to happen successfully, the full commitment of the BiH authorities will have to agree upon a basic consensus about the internal structure of a BiH state, a state that respects and ensures regional autonomy, and would also be able to speak

with one voice at an international level. There is also a need to establish regular channels of political communication between EU representatives and BiH state representatives within the integration process. This must be based on institutionalizing political negotiations and decision-making, as well as prohibiting authorities assigned to this task from engaging in "informal" negotiations with the leaders of the ethnic parties instead of the leaders of the institutions.

The European path may serve as an effective catalyst, but it cannot be the only reason for reforming the Constitution or adapting the economic market. Both of these relevant issues remain the responsibility of BiH to address in its "national interests", and thus, this responsibility of BiH citizens and their elected leaders.

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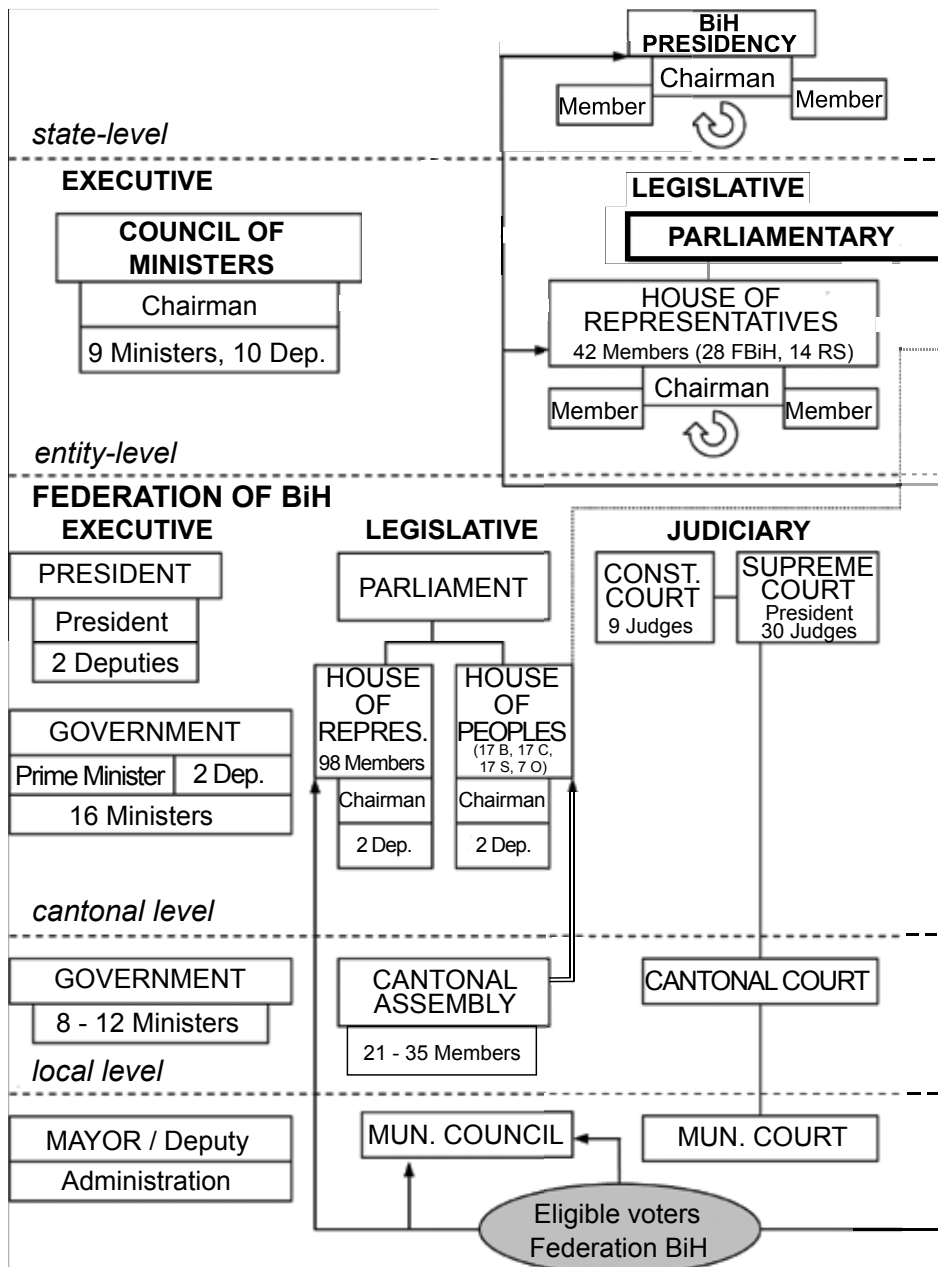
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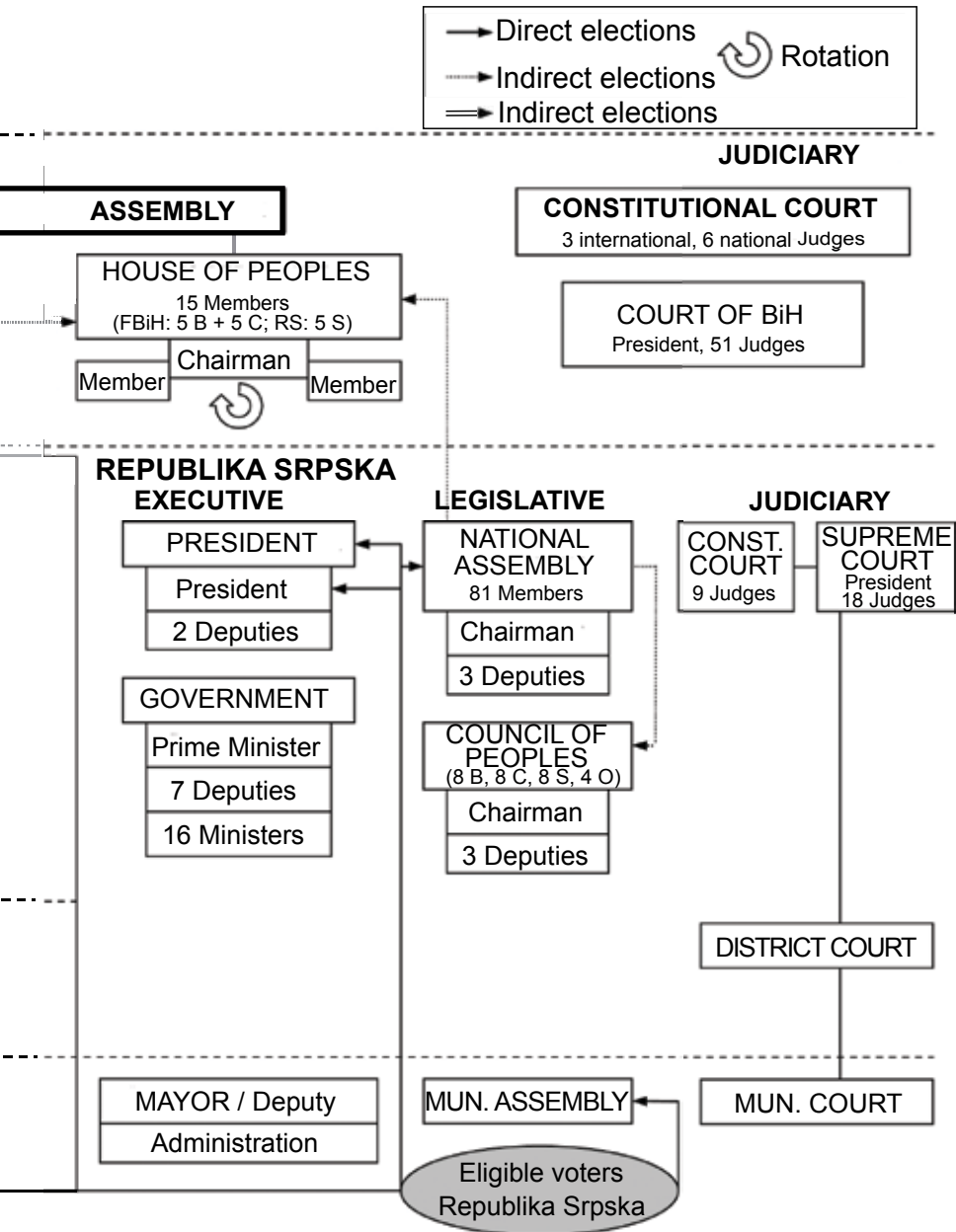
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The political system of Bosnia and Herzegovina
(without Brčko District)





Based on Richter/Gavrić 2010.

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