



Universiteit Leiden

Whereto from here ?
The International Engagement with
Bosnia Herzegovina

An account of past failures and future remedies

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INTRODUCTION

Bosnia Herzegovina, this country which lies in the heart of the Western Balkans, is home to one of the most diverse populations in Europe. For centuries it has been a meeting point between Occident and Orient and thereby developed a unique and diverse cultural history. It has also been most severely affected by the Yugoslav Wars which ravaged the region for almost a decade and brought an end to decades of Communism in the Balkans.

Due to its ethnic diversity, the breakup of the Socialist Federal Republic of Yugoslavia affected Bosnia much more than other countries in the region and the ensuing war saw some of the worst atrocities committed on European Soil since World War II. To this day a set of International Actors is involved in making sense of the situation and trial the people responsible for these crimes.

The years of war have destroyed not just much of the country's infrastructure but also the relations between different ethnic groups, who were turned from neighbours into enemies. In order to make the country work, a diverse set of International Actors engaged in external state building and erected a system that is largely based on ethnic division. Arguably, necessary in the immediate post war situation, the hermetically separation of competences along ethnic lines has seriously impeded the country's development and many of its institutions are profoundly flawed. As a result not much has changed in the past twenty years and while other countries in the region move towards EU membership, Bosnia remains unchanged.

This has led to increasing discontent within civil society which erupted just last year in violent protests, taking over large parts of the country. The incident painfully exhibited just how unstable the country still is.

The present situation is bound to have negative consequences for the European Union with regards to future enlargement in the Western Balkans. The reason that Bosnia matters is foremost due to its geographic position. Owing to its central location, the country will eventually be encircled by the EU, making it a necessity for the latter to ensure the country's stability. An instable country in the heart of one of Europe's future regions, would pose a serious risk to Internal security. Moreover most of its neighbours have an active stake in the country which increases the chance of any future conflict having a spill over effect in the region at large. Hence any credible

enlargement strategy for the Western Balkans must have the stabilisation of Bosnia at its heart.

Given the importance of the topic, a large body of literature has developed and many of the important European think tanks have established separate chapters dealing with the Western Balkan at large and specifically Bosnia. The main weakness of the existing body of literature is the high level of division amongst different authors. Much like the International approach towards Bosnia, recommendations issued by different think tanks differ widely both in their assessment of current policies and in their recommendations for future engagement. Many scholars offer remedies for a specific illness detected in the country but fall short of elaborating an all embracing approach towards the country. While issuing recommendations, often other aspects of Bosnian statehood, which threaten to undermine said proposals are left out.

What I hope to achieve with my thesis, is to engage with wide parts of the literature and thereby offer a concise analysis of the present state of the Bosnian political system and account for the causations that have aided its development. Finally I am aiming at establishing a set of recommendations that can help rectify these shortcomings.

My analysis will be based on a wide variety of both primary and secondary sources. Primary sources consist of official EU documents, OHR¹ documents, documents by third states, international treaties and court judgments.

These documents have facilitated my understanding of the current Bosnian state system and the extent of International engagement within the country.

My secondary sources consist of a diverse set of books and articles that have been published over the past twenty years. Some of these sources were issued just after the cessation of war, whereas the most recent ones are only a few months old.

I increasingly used books when coming to terms with the history of the country. Several authors have written concise accounts of the Balkans turbulent history with special regards to the most recent conflict. Apart from this, I have also used some books, focussing on the effectiveness of state building programmes in Bosnia as well as the political situation in the country. Authors unanimously concluded that the present Bosnian system is largely plagued by flaws and inefficiencies. However they differ in their verdict over external state building. Some hold it exclusively

¹ Office of the High Representative

responsible for the mentioned shortcomings, whereas others assume that externally driven state building per se works and that there were other factors that have led to the current situation.

The rest of my analysis largely relies on various papers published by renowned think tanks that have engaged with the region in the future. Institutions such as the DPC, ESI, FRIDE, ECFR and Carnegie Europe² have frequently issued policy papers on the developments in the region. The ECFR just last year founded a research mission to the Balkans, whose findings were latter published in form of a Policy Paper. The ESI, has also produced a set of documentaries which focus on the Balkan at large. The episode on Bosnia, includes the opinions of a diverse set of actors, ranging from returnees, local politicians and the next generation of Bosnians.

The following work will be divided into four chapters. Initially I will lay the ground for the subsequent analysis by focusing on the most recent history of the region and how this has been responsible for many of the problems we encounter today. Secondly I will focus on the present political system of Bosnia and exhibit why it has fallen short of moving the country away from its post war consensus. Thirdly I will show the role played by International Actors, in establishing the current situation. Thereby I will largely focus on the role played by the European Union and the OHR. Finally I will offer a summary of my findings and conclude with a set of recommendations that could help fostering development within the region.

² Democratization Policy Council, European Stability Initiative, Fundacion Relaciones Internacionales y dialogo exterior, European Council on Foreign Relations.

CHAPTER 1: A HISTORICAL OVERVIEW TO THE CREATION OF THE BOSNIAN FEDERATION

“Bila Jednom Jedna Zemlja.....”³

Any serious analysis of Bosnian politics or indeed the politics of any Western Balkan nation has to include an overview of the history of its predecessor state. Except for Albania each country situated in the region today was prior part of the Kingdom (1918-1943) and later the Socialist Republic of Yugoslavia. (1945 – 1992) Unlike the dissolution of the USSR, which in large parts happened peaceful, the disintegration of Yugoslavia led to major armed conflicts which eventually had impacts for the whole region.

The Socialist Federalist Republic of Yugoslavia (SFRY) was created in the aftermath of the Second World War in an attempt to unite all the South Slavic nations in one country. This underlying idea was far from novel and attempts at a unified states had been made since the 1830s, all of them unsuccessful. [Lampe 2000 pp.39-71] The SFYR consisted of six regions⁴ which on paper were given wide reaching autonomy but in practice ended up being subjected to decisions taken by the central authorities in Belgrade. In the mid-60s, after serious tensions over the allocation of powers arose, the Communist Leadership decided to make worth on its promise and refer some powers to the regions. [Calic 1996 pp.13-30] The federal system that was established was far from being effective and clear but left open the extent to which competencies were being divided between the regional and the national level. Initially Belgrade hoped to appease regional communist leaderships by offering them decision making powers on few and relatively unimportant topics. This plan eventually backfired as the regional governments were able to press for more and more autonomy from the state. This process of federalisation was drawn out for twenty years and by the end of the 1980s regional governments were running quasi-independent administrations, with the Central State having degenerated into a symbolic figure with no real powers attached to it. [Glenny 2000 pp.634-663] At the same time the economic situation of the country was worsening and broad discontent arose over the inability of politicians to address the situation properly. This economic stagnation was not unique to Yugoslavia but widespread across large parts of

³ Once upon a time there was a country.... (Opening lines to Emir Kusturica's Underground)

⁴ Bosnia, Croatia, Macedonia, Montenegro, Serbia, Slovenia

Central and Eastern Europe. Initially the economic system developed under Communism seemed superior to Capitalist economics, as it allowed for rapid growth and a better allocation of resources. However over time, its flaws became more and more apparent as economic growth came to a halt and stagnation set in. The situation in Yugoslavia was worsened by the decentralised system, as regional governments were unable to coordinate their economic policies. [Judah 1997 pp.135-168]

The re-emergence of nationalism in the Balkans can be explicitly linked to the deteriorating economic situation, which triggered deep dissatisfaction with communism. In most communist states, the outgoing leadership, realising that their ideology base was dwindling, created new ways of coping with the changing environment and keep their hold on power. In Yugoslavia, the ruling elite utilised nationalism in an attempt to replace one ideology (Communism), with another (Nationalism) helping them to retain control over the country. In the Socialist Republic of Serbia President Slobodan Milosevic, a communist through and through, reinvented himself as an aggressive nationalist, reviving the idea of a Greater Serbian Nation⁵. [Malcom 1998 pp.213-234] He utilised the latent mistrust of Serbs towards Croats and Muslims by accusing them of trying to undermine the state, usurp power and subject all other ethnicities to their rule. Most Serbs still vividly remembered the short but violent times of the Ustasa⁶ regime during World War II and were therefore easily convinced by the alleged threat. [Glenny 2000 pp.634-663] Milosevic's rhetoric successfully rallied the majority of Serbs around his leadership but at the same time alienated all other ethnic groups in the country. His plan was to remove the regional power structures established since the 1960s and to centralise all of the power in Belgrade. In theory this would have helped the country to escape the years of political stagnation, experienced under an unsuccessful federal system. [Judah 1997 pp.135-168] However, Milosevic planned for a dominating role of Serbians in the new country, which were to subjugate all other ethnicities under their leadership. [Judah 1997 pp.135-168] It was the fear of this political dominance that eventually convinced regional governments to declare their independence from

⁵ Velika Srbija or Greater Serbia, is a nationalistic ideology which emphasises the erection of a Serbia State within the boundaries of the short-lived Serbian Empire. Such a state would include large parts of Croatia, Bosnia, Montenegro, Macedonia, Kosovo, Albania and Greece.

⁶ Fascist Croatian Revolutionary Movement which governed the Independent State of Croatia during World War II. The latter was a puppet state of the Axis Powers to keep control over the Balkan Peninsula.

Yugoslavia. This rings especially true for Bosnia Herzegovina. The region was highly heterogeneous and therefore benefited the most from maintaining a unified country. However once Slovenia and Croatia declared independence, the threat of becoming subject to Serbian rule became simply too big. [Malcom 1996 pp.234-253]

The International Community was largely caught off guard by the developments in the region. At the time International Actors were focused on the developments in Central and Eastern Europe, where the demise of communism had established 7 new small to medium-sized countries. Given this already complex situation, many countries preferred a retention of Yugoslavia as opposed to creating up to 6 new countries in the Balkans. [Finlan 2004 pp.13-19] The European Community proved to be highly divided on the topic. Countries such as the United Kingdom and Spain which at the time struggled with their own ethnic diversity, were naturally hesitant to establish a precedent for their people at home. On the other side countries such as Austria or Germany, which had functioning federal systems in place, proved much more flexible on the issue. Yugoslav politicians were quick to exploit this internal division. [Calic 1996 pp.218-237] Milosevic successfully lobbied for his cause in London, Paris and Madrid, whereas Croat leader Franjo Tudjman was able to convince the Germans and the Austrians of his endeavour. Many scholars criticised the European Community's lack of unity over the issue and insist that the EC underestimated the threats presented by ethnically driven nationalism. By the time the severeness of the situation was understood, it was already too late to obtain a peaceful solution. [Finlan 2004 pp.22-26] Following Slovene Independence, the Yugoslav Army started an initial attempt of regaining control of its territory which failed due to the preparedness and unity of the Slovenian Troops. The ensuing war lasted for 10 days and led to only minor casualties. The brief and rather uneventful war can be explained by its highly homogenous population which unanimously backed the move for Independence. [Glenny 1996 pp.62-98]

The wars which ensued in Croatia and Bosnia were different in both nature and scale. Both Croatia and Bosnia contained large minority groups of other Yugoslav ethnicities. In the latter almost half of the population consisted of Serbs and Croats. As war broke out this minorities aligned themselves with their "ethnic" government and formed illegitimate splinter states within the territory of Bosnia and Croatia. [Lukic 1996 pp. 200–210] The most notorious example is the still existing Republika Srpska

in Bosnia but there was also the Croat backed Hrvatska Republika Herceg-Bosna and the Republika Srpska Krajina in Croatia. Both Croatia and Serbia had interest in parts of Bosnia's territory and therefore utilised their ethnic population to carve up the country among themselves. [Finlan 2004 pp.26-56] At the height of the conflict Bosnian Serb leader Radovan Karadzic and Bosnian Croat leader Mate Boban came to an agreement to partition the whole territory of Bosnia between the two entities. [Lukic 1996 pp. 210–212] These were eventually to be incorporated into Serbia and Croatia proper. The so called Graz Agreement was later presented by Croatian President Franjo Tudjman as a solution to the conflict but was rejected by the International Community as it eradicated the Bosnian nation and left the Bosnian Muslims (Bosniacs) at the will of ethno nationalistic leaders. [Lukic 1996 pp. 210–212] From the outset the Bosniacs found themselves in an unfavourable situation. As the war progressed, they were constantly losing ground with only limited means of defending themselves. Due to the weapons embargo imposed on the whole of Yugoslavia, Bosnian forces were unable to obtain weaponry from abroad. [Malcom 1996 pp.234-253] As most of the former Yugoslav Army was situated in Serbia, it was left with the majority of arms, which they freely distributed to the Bosnian Serbs. The Croats, having expected at least a minor conflict in response to Independence, had secured a much better arsenal prior to the war and were therefore not immediately affected by the embargo. [Malcom 1996 pp.234-256] The Bosnians however were left with only minimal resources and no way of obtaining supplies. In hindsight many scholars have criticised the IC for its decision to keep the embargo intact, seeing that one side to the conflict was profusely disadvantaged. The IC's reasoning was that lifting the ban and providing supplies to the Bosniacs would prolong the conflict and ultimately help no one. [Finlan 2004 pp.26-56] Once the scale of destruction committed by the Bosnian Serbs became apparent, the embargo was lifted but at this point Karadzic had already captured 70 % of Bosnian territory and solidified his defences.

The war in Bosnia was special in many ways. Until this day the actual status of the war remains disputed. Especially Serbians are quick to categorise it as a classic Civil War on the basis that all perpetrators were holding the same citizenship. Opposing this view, some analysts have argued that the proven involvement of both the Serbian and the Croatian Government, allows for the conflict to be classified as a war amongst nations. [Malcom 1996 pp.234-256] However as both governments were

never involved in any fighting and officially only played a logistical and supplying role, this classification does not fit comfortably either. In fact the war in Bosnia most likely constitutes a hybrid of the two classifications mentioned above. [Calic 1996 pp. 98-121]

The International Community attempted to foster a peace process throughout the course of the conflict. There were essentially three attempts at coming to an agreement over the future makeup of a Bosnian state. One prior to the war and two during the war. The key problem, preventing a peaceful resolution of the conflict, were the different interests and aims of the three ethnicities regarding the future of the country. Whereas the Bosniacs aimed at retaining Bosnia as a centralised multi ethnic state, the Serbs and Croats favoured the creation of a federation or even a confederation of three autonomous states with independent local governments. [Finlan 2004 pp.79-83]

Originally the European Community fostered an agreement which foresaw a division of the country based on a cantonal system resembling modern day Switzerland. Each ethnic group would gain its separate Canton with an autonomous administration. A Central Government was to bridge the three cantonal authorities on matters of national importance. [Finlan 2004 pp.83-91] Although all parties approved the proposal, they were unable to agree on internal borders of the new cantons. The EC tried to introduce a compromise in which the Bosniacs would receive 45% of the territory, the Serbs 42.5% and the Croats 12.5%. However the ethnic composition of the territory was so diverse that under the EU proposal more than 50% of Serbs and Croats would have lived outside their respective canton. [Calic 1996] The peace agreement highlighted the fact that due to the population make up a partition of the country along ethnic lines was unviable. Scholars have argued that it was here that the Bosnian leaders realised that in order to achieve their plans, the whole societal structure of the country had to be changed. [Glenny 2000 pp.634-663] It paved the way for the wide spread ethnic cleansing campaigns that were executed during the war. Especially the Bosnian Serbs were driven by the idea of creating a territory as homogenous as possible. [Lampe 2000 pp.365-416] German Historian Marie - Janine Calic therefore openly criticised the EC for sticking to the principle of ethnicity as the basis for a federal system. She acknowledges the Community's desire to prevent an

armed conflict but assess that by insisting on the ethnic principle, they may be partially responsible for to the subsequent ethnic cleansing. [Calic 1996 pp.186-212]

Following the rejection of the plan, large scale war broke out across the country. The Croats initially sided with the Bosnians as the Serbs constituted a common enemy for both groups. In both countries they had proclaimed independent Republics and picked up arms in order to create a uniform territory, which could later be incorporated into Yugoslavia (eg.Serbia) proper. [Lampe 2000 pp.365-416] They were unofficially backed in their endeavour by the Serbian government, which supplied them not only with ammunition but also troops. The alliance between Croats and Bosnians was fragile, especially since the former also laid claim to some of Bosnia's territory. [Glenny 1996 pp. 243-295] Once it became apparent that the Bosnian Serbs proved far too powerful to resist, the Croats swapped allegiance and struck a deal with the Serbs over the partition of Bosnia's territory. This led to the proclamation of a Croatian Republic within Bosnia, which followed the same logic as its Serbian predecessor, namely to occupy territory and integrate it into Croatia. [Lampe 2000 pp.365-416] These unexpected developments in the war led to a second attempt at an agreement on the future of Bosnia. This attempt was drafted by former British Foreign Secretary, Lord David Owen and former US Secretary of State Cyrus Vance. The so called Vance-Owen Plan divided Bosnia-Herzegovina into ten cantons. These cantons would run weakly along ethnic lines but in general allowed for the retention of the multi-ethnic makeup of the state. [Calic 1996 pp.186-212] For that very reason it was heavily criticised in the media, for offering no real solution to the problem as the ethnic question would remain unsettled. Most analysts at the time argued that a Bosnian state, not offering a proper division of power between the ethnic groups, was not workable in the long run. [Calic 1996 pp.186-212] Given the reality, that ethnic segregation did not ease the tensions in the country but rather reinvigorated them and moreover contributed to the political standstill, many adversaries of the plan have subsequently retracted and altered their views on the plan. Vance-Owens proposal would have preserved the ethnic diversity of Bosnia instead of artificially creating ethnic homogenous regions. The Plan was endorsed by the European Community, the Serbian Government, and the Bosnian Croats but rejected by the Americans, the Bosnian Serbs and the Bosniacs. The Americans assumed the proposed state to be unworkable for reasons stated above, the Bosnian Serbs would have had to accept the deconstruction of the Republic Srpska and the

Bosniacs had to forgo the idea of a fully unified state. [Glenny 2000 pp.634-663] Whereas Bosniacs and Americans eventually came round in accepting the deal, the Bosnian Serbs, being in a strong position, refused to back down. Even the increasing pressure by the Serbian Government proved to be ineffective in convincing Karadzic to give into the proposal.

The war continued for another 2 years during which the Bosnian Serb army managed to capture about 70% of Bosnia's territory. The Bosniaks space of influence was reduced to Sarajevo and its surrounding areas. The Serbs began engaging in ethnic cleansing in order to homogenise the population of important cities and thereby solidify their claim to the territory. [Donia 1994 pp.220-282] Ethnic cleansing campaigns were largely conducted by violent means. It saw the civilian population of other ethnic groups being removed from certain areas by means of murder, forceful deportation, intimidation and deliberate destruction of property. The practice cumulated in the genocides of Srebrenica and Zepa, where the majority of its male population was murdered after the city had already been captured. [Malcom 1996 pp.234-253] The inability of UN forces to prevent the atrocities was latter highly debated in Western media and reinforced the International engagement in Bosnia after the war.

As the Serbs were on the verge of capturing the whole of Bosnia, eventually the Bosniacs and Croats hesitantly agreed to cooperate and develop a proposal that would allow for the cessation of war. They initially agreed on the creation of a Federation which would span 51% of Bosnia's territory. In it Bosniacs and Croats would share power based on a Cantonal system. [Glenny 2000 pp.634-663] The rest of the territory would be given to the Bosnian Serbs, allowing them the perpetuation of the Republika Srpska as an autonomous part of the Bosnian state. The compromise was mediated by Russian, American, French, German and British diplomats and positively received by all neighbouring states. It already outlined a system of power sharing which was later adopted in the Dayton accords. [Lukic 1996 pp.250-260] However the Bosnian Serbs, occupying a majority of Bosnia's territory, were unwilling to agree to the proposal. Karadzic was convinced that he could conquer the rest of Bosnia and make the Republika Srpska the legitimate successor of the Bosnian State. Despite all the efforts of neighbouring governments to change his mind, the war continued for another 4 months during which the Bosnian Serbs were under constant bombardment by NATO Troops. This eventually stopped their

advance and forced Karadzic to agree to the deal. [Finlan 2004 pp.79-83] The Dayton Peace Accords represented a massive victory for the Bosnian Serbs which with only 35% of population were practically given half of the territory. They were also awarded with the cities of Srebrenica and Zule, places where Karadzic's army committed the worst atrocities of the war. Retrospectively scholars have argued that the biggest achievement of the Treaty was the ability to force the different groups to live together peacefully in one state and prevent the continuation of conflict. [Lampe 2000 pp.365-416] However it feel short of being a fair and balanced agreement. It created a political system which was unsuitable for creating stable democratic institutions as it was too concerned with ensuring the segregation of the different ethnic groups. This in turn has also rendered the reconciliation of society impossible. [Finlan 2004 pp.83-91]

This ends the short synopsis of the breakup of Yugoslavia and the ensuing conflict that took over the whole region. The conflict did not stop with Dayton as it spread to Kosovo and thereafter Macedonia and Montenegro. The War in Bosnia presented the first major conflict on European soil since the end of World War II. Although its magnitude was concentrated to a very small area, its impacts have not been less devastating. Its development had severe implications not just for the region itself, but also the European Community. The latter had to accept its failure in preserving peace in the region and was henceforth forced to find a solution to the diversity in foreign policy objectives across the Community. In a way the failure experienced in Bosnia contributed to the decision to create a common foreign policy which in turn lead to the creation of the External Action Service. It is important to note that, although representation in the literature and the media often tends to be slightly more biased towards on side, in fact all conflicting parties have engaged in despicable practices vis á vis members of the other ethnic groups. Due to its wider impact, the Serbian atrocities are much more known but Croatian and Bosnian armed forces alike have committed war crimes, albeit on a much smaller scale. For instance Croats shelled parts of the city of Mostar in order to rid themselves of its Bosniac population. Similarly the Bosniac armed forces committed atrocities against Serbian Civilians living in the areas in and around Sarajevo. To say that one group is more responsible than another misses the point and is largely what fuels the continuing resentment of the ethnicities today and effectively prevents a normalisation of relationships.

As I have said on the outset, an understanding of the history of Bosnia is useful to comprehend the current political situation in the country. In it we can identify patterns of behaviour which Bosnian society has developed in response to the country's turbulent history. For centuries the country was the plaything of major regional and global powers which have led to the creation of a culturally and religiously diverse society. It comes as no surprise that Sarajevo often receives the label of Jerusalem of Europe in recognition of its role as a melting pot of Muslim, Christian (Orthodox and Catholics) and Jewish beliefs. The powers that have ruled over the territory of modern day Bosnia have also contributed to the identification of people across religious lines. Both under Ottoman and Habsburg rule the citizens did not possess any form of representation *Vis á Vis* the authorities. [Malcom 1994 pp. 43-51, 136-156] They were however free to choose their religious belief. Hence religious communities became the prime advocate for the interests of their followers. Albeit the relations between religious groups was mostly amicable, a certain degree of mistrust has always existed. This has to do with the fact that throughout history, always one of the ethnic groups occupied a somewhat preferential position in society in relation to the other two. The Bosniacs under the Ottomans, the Croats under the Habsburgs and the Serbs under the Karađorđevićs. [Donia pp.13-35, 93-136] The SFRY, for the first time managed to solve this problem, as under Communism, a secular lifestyle was promoted and ethnic groups were encouraged to identify with their profession or social class rather than their religion. However in the advent of the Yugoslav breakup, religious affiliation started to re-emerge as a mode of delimiting oneself from others and was swiftly utilised by political elites in order to secure their access to power. [Lampe 2000 pp.332-365]

Alongside religious affiliation the other important feature of Bosnian society are the centuries-old community structures, through which people tend to identify themselves more with their village or region than with their country. Albeit this phenomena is not unheard of in other parts of Europe, it becomes strikingly more important in Central Europe and especially the Western Balkans. Bosnia, for most of its history lay at the crossroads of influential Empires (Habsburg, Ottoman, and Serbian) and frequently changed possessor. Due to this volatility in allegiance, society developed around the only constant variable. Communities went on to developed value systems which reached across ethnic or religious lines. [Aybet et al. 2011] This societal focus around community life has led to a certain short sightedness regarding general elections.

[Galijas 2008 pp. 413-454] Often the overall situation in the country is not taken into account and citizens align themselves with the village consensus. This can help us in understanding the reasons of why nationalistic parties, which contribute to the precarious situation in the country, still receive comfortable majorities. Rational thought tells us that voters should punish their representatives for failing to move the country forward, but if we take into account that a large part of Bosnian society will make their decision based on local rather than national considerations , it suddenly becomes easier to understand why certain parties are getting re-elected.

If we regard the history of the country we can see that it has been dominated by the interplay of religious and communal affiliation. Depending on the situation, one affiliation has been more prominent than the other. As a rule of thumb one can say that during times of peace, community dominated over religious affiliation and the other way round in times of conflict. This would lead to the question, why the cessation of war did not bring a normalisation of ethnic relations in Bosnia. As we have established above, the war changed the ethnic makeup of Bosnia and Herzegovina. Prior to the conflict, ethnicities were scattered around the country, which made it difficult to carve up the country in the first place. Due to the exhaustive ethnic cleansing campaigns conducted by all sides, the ethnic makeup has drastically changed. Nowadays a clear division exists between the different ethnicities as villages tend to be mostly inhabited by people from the same ethnic group. Therein lies the answer to the above. I would argue that for the Bosnian population at large, the cessation of war also meant a return to community affiliation. However these new communities are now so precisely segregated that religious affiliation largely equals community affiliation. Therefor reconciliation of society is made exceptionally difficult. As we will see in the following section, the Dayton Agreement has reinforced this segregation of society as a means of keeping the peace. As we will see shortly this has made the Bosnian Political System unworkable and contributed to the political deadlock that we are experiencing today.

CHAPTER 2: THE CONTEMPORARY POLITICAL SYSTEM OF BOSNIA HERZEGOVINA

SACRIFICING THE FUTURE FOR PRESERVING THE STATUS QUO?

„ On paper, Dayton represented a good agreement; it ended the war and established a single multi-ethnic country. However the results of the international effort to implement Dayton will determine its true place in history’’⁷

As we concluded in the past chapter, the Dayton Agreement was successful in enforcing peace while maintaining the territorial integrity of the country. This in itself was an almost impossible achievement which demanded a carefully drafted convention which acknowledged the interest of all parties involved and was able to balance these interests against each other. Thus Dayton provided a framework to establish and maintain peace but was conceivably unsuitable to establish democratic institutions, let alone a functioning political system. Nevertheless almost twenty years after the agreement has been signed, the country is still unable to move on from the consensus reached at Dayton.

The current political system has become a burden on both society and the state. As a staggering 60 % of state money is spent on bureaucracy it is unsurprisingly that the country has improved only marginally in the past twenty years. This is to the detriment of the local population, who have become somewhat indifferent to the development of the country. Although last year’s short lived protests, painfully exhibits the desire for change within Bosnian society, years of ethno nationalistic politics have made this ever more difficult to achieve.

2.1: The contemporary political system of Bosnia

As a result of Dayton, Bosnia today is a largely decentralised State, with a very weak central government. The country is formally divided into two non-sovereign entities: the Serb ruled Republica Srpska and the Bosniak/Croat controlled Federacija Bosne I Hercegovina. It is here at the regional level where the true source of power within Bosnia lies. [Laudes 2009] Although officially subordinated to a central government, any major political change in the country, stands or falls at the will of the regional politicians.

⁷ Richard Holbrooke following the signing of the Dayton Agreement.

The Republic Srpska makes up almost half of the country's territory and includes large parts of Bosnia which traditionally were Bosniac or Croatian territory but whose native population has been removed as a result of ethnic cleansing. [Chandler 2000 pp.66-90] Although the government in Banja Luka has committed itself to facilitate the return of former expellees, its persistent ethno-nationalistic rhetoric has discouraged the majority of people from returning. [<http://www.internal-displacement.org> 2014]

The RS also created and ratified its own constitution which ironically is based on the adherence and protection of human rights in accordance with international standards. Seeing that the foundation of the RS was based on the principle of segregation and inclusion, this appraisal of human dignity appears somewhat out of place. [Bose 2002 pp 41-89] Moreover the constitution entails generous welfare provisions for all its citizens including benefits to children and elderly, free healthcare and functioning public services. Again the reality is somewhat different as an estimated 90% of the Republic's population lives in poverty, while the administration is almost bankrupt and therefore in no state of taking care of these vulnerable parts of society. The Indian politicalologist Sumantra Bose has called this gap between rights proclaimed and rights granted, to be amongst the largest credibility gaps of any written state constitution. [Bose 2002 pp.41-89]

Whereas the RS is under the rule of one ethnic group, which makes administration relatively straightforward, things become more complex in the Federacija where two ethnic groups have to share power. To ensure a just distribution of power, the region has been further divided into 10 cantons, each of which features its own local government. [Tzifakis 2008] This means that each canton has its own independent administration with legislative, executive and judicative rights. All decision-making powers which are not explicitly granted to the entity government are automatically assigned to the Communal Government. [Laudes 2009]

Moreover should a Village's ethnic composition not represent the ethnic composition of its respective canton, it is entitled to have certain rights transferred to it by the cantonal government. [Bose 2002]

Within the regional government all institutions have to be made up in equal parts by both ethnic groups and the President and Vice President of any public office may not come from the same group. [Galijas 2008 pp.413- subseq]

Lastly, the City of Brčko belongs to neither of the two entities but constitutes a Special Administrative Region again featuring its own local administration. It was created in 2000 after it became apparent that both entities were unable to find an agreement on who was to govern the area.[Parish 2009 pp.28-55] The Serbs need Brčko as a gateway, linking the two parts of the RS and the Bosniak/Croats need Brčko in order to have access to the Danube. Officially both entities share the administration in the region but in practice the local government acts relatively independent. .[Parish 2009 pp.118-135]

All these different administrations are bridged by a Central Authority which consists of the Presidency, the Council of Ministers, the Parliament and the Constitutional Court. On paper all regional governments are subordinated to and controlled by the Centre. [Dziewulska 2010] However in practice the national government is unable to effectively challenge regional leaders. This comes from the setup of the central institutions themselves, which provide ways for regional leaders to effectively challenge any decision taken at the national level. [Galijas 2008 pp.413- subsq]

The Presidency is made up by three individuals, one from each ethnic group, which together hold the office for four years. On a rotary basis each individual takes charge of the office for eight months and remains in a consulatory position for the remaining time. [Batt 2007 pp.72-90] According to Article V of the Dayton Constitution, the Presidency is responsible for the Foreign Relations of the country. As such the President appoints Ambassadors, represents the country in International Organisations and negotiates treaties with 3rd parties.⁸

The Parliamentary Assembly consists of two Chambers, the House of Representatives (HoR) and the House of People (HoP) respectively. Both parliamentary chambers have identical legislative powers which unnecessarily duplicates potential for disruption and hence complicates the legislative procedure. [Bieber 2012] The primary function of the HoP is to represent communities and allow for the protection of their interests. In order to do so it features a vital interest clause, which states that any entity may block any piece of legislation if it deems it to be harmful to the interest of its population. [Dayton Article 4.3] However the constitution fails to define the term vital interest, which leaves it to the appreciation of the Constitutional Court to decide whether a decision was justified. Due to the Court's

⁸ <http://www.ccbh.ba/eng/article.php?pid=833&kat=518&pkat=500>

ability to overturn a veto, it is rarely used but more often used as leverage. [Sebastián 2007]

However there is another way for politicians to hinder decision making through the so called entity veto. It states that for a law to pass two thirds of MPs in both chambers of Parliament need to support it. There is no active remedy against an entity veto and as long as no compromise can be found any decision is halted and delayed. Depending on the issue, agreements are often hard to find and the 2/3 ruled has delayed many important decisions for prolonged periods of time. [Bieber 2012] Moreover through the existence of two Chambers with equal competencies, the potential veto points are duplicated making it even more difficult to achieve consensus.

The Council of Ministers or the Cabinet is appointed by its President, who is prior nominated by the Presidency and elected by Parliament. As the executive branch of the central government, it is responsible for a variety of policy areas that have been conferred from the regional to the national level. [Dayton Article 5.4] Today the federal government is exclusively responsible for Foreign, Monetary and Customs Policy and has extensive competencies in the areas of Immigration, Nationality and Transportation policy. [Dayton Article 3] However even when decision making should actually happen at the national level, in practice important decisions are still made at the regional level. For instance in the field of foreign policy, the regions have been given the right to sign agreements with states and International Organisations which are valid under International Law. [Calic 1996 pp.242-263]

The Constitutional Court, the country's supreme judicial organ, represents the only working Central institution in Bosnia. Ironically it is also the only institution in which non Bosnians play a central role as 3 of its 12 judges come from outside the Region and are appointed by the European Court of Human Rights. As the court is operating by majority vote rather than consensus, it has been much less prone to deadlock and therefore useful to settle long standing disputes. [Bose 2002 pp.41-89]

As we can see from the above the emphasis on ethnic segregation found in the Dayton Accords has led to a highly complex political structure which consists of more than fourteen governments, over 100 ministries and 14 parliamentary assemblies with legislative competencies and far reaching Veto rights. The federal level, created to bridge between the various regional governments, is a weakly structured body with

barely any competencies, no property rights and hermetically concerned with the division of power between ethnic groups. In fact the design of the political system in Bosnia is the crucial problem as it promotes rather than ceases conflict. [Dziewulska 2010] Basing the system on the ethnic division of society, rather than mutual cooperation, has engrossed the gap between the groups rather than closed it. The system created under Dayton can therefore be held directly responsible for the ethnically driven politics which dominate modern Bosnian Politics. [Laudes 2009] The political elite has become increasingly obsessed with retaining the Status Quo simply because it offers the easiest way to hang on to power. By retaining the ethnic division of society, the ethnic card can be freely abused in order to gather votes from a disillusioned electorate. [Galijas 2008 pp.413- subsq]

The absence of common social services such as healthcare, education or defence has further weakened societal cohesion within the country. For instance in the absence of a common educational curriculum, the regional administrations are free to implement their own syllabus within their region. [Tanovic 2013] This has negatively affected reconciliation efforts as the history of the country is told differently depending on the institution that is visited. The city of Travnik⁹ offers a vivid example of this. The city's main secondary educational institution has been cut down in the middle with one side being reserved for Bosniak students, whereas the other receives Croatian students. Even the schools playground has been bisected with a wire separating the children from each other. [Tanovic 2013]

The strict insistence on the ethnic principle also has a detrimental effect on minority rights in the country. In 2009, the European Court of Human Rights ruled on the Case *Finic and Sejdic vs. Bosnia*. Mr Finic and Mr Sejdic, who were of Jewish and Romani background respectively, had accused the country of violating their human rights by excluding them from high ranking political offices on the grounds of their ethnicity. Non constitutional people in Bosnia are prevented by law from running for both the Presidency and the House of Peoples. [Bieber 2012] The Court eventually ruled that the Electoral Law of the Country as well as the Constitution of Bosnia Herzegovina was deemed to be in breach of Human Rights and it issued an order to amend this problem.¹⁰ The decision again highlighted the shortcomings of the Dayton

⁹ http://s2.pticica.com/foto/0000800891_l_0_i8yep.jpg

<http://www.michelleparsons.com/wp-content/uploads/2013/05/two-schools-under-one-roof.jpg>

¹⁰ [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{"dmdocnumber":\["860268"\],"itemid":\["001-96491"\]](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{)

Constitution and showed that in a political system where even the constituent people are not at ease with each other, the protection of minority rights becomes increasingly difficult.

2.2: Constitutional Reform

The Dayton Accords were primarily the work of US lawyers and foremost aimed at balancing power between its constitutional ethnic groups. [Bose 2002 pp.204-246]

It carried the spirit of its time but has always been unsuitable as a constitution for a modern nation state. It was never voted upon in Bosnian Parliament and henceforth never officially ratified. [Aybet et al 2011] It was thought that a proper constitution would be drawn up and agreed upon in the immediate post-war environment but this soon turned out to be impossible as the national leaders openly embraced the ethno nationalistic component featured in Dayton and became reluctant to agree upon any real changes to the latter. [Galijas 2008 pp.413- subsq] In the absence of a fleshed out constitution, the agreement still acts as a substitute.

For ten years the priority of outside actors lay in building up the institutional setup created under Dayton and they only marginally concerned themselves with the development of a proper constitution. As the Dayton setup suited the needs of national elites just fine, they themselves saw no need in constitutional change either. [Laudes 2009] A decade later, the shortcomings of Dayton and its institutional setup became apparent with any real change having to be enforced from outside while national institutions proved to be increasingly fragile and unable to control the regional elites. This realisation shifted the emphasis towards constitutional change, which was thought of being able to reform state institutions and thereby break the institutional deadlock.

There has been a wide range of literature on the nature of any constitutional reform and recommendations have been issued by both State actors such as the Venice Commission, as well as independent think tanks such as FRIDE or the ESI. They all identify similar key areas that any credible reform should be addressing.

Firstly there is a need to reduce the provisions that are aimed at safeguarding the interests of all constitutional people. Most of all this means the modification of the Vital Interest Veto, responsible for many blocking decisions in Parliament. The Dayton framework fails to establish a clear definition of what constitutes a vital

interest which leaves it very much open to interpretation. [Venice Commission 2005] This insecurity means that the preventive effect of the veto is much more significant than its actual use in Parliament. In the past the Veto or the threat of thereof has been used by entity delegates in order to hinder and halt political progress. [Sebastian 2007] In the light of EU accession, which requires a large amount of legislation being passed, it becomes even more pressing that the Entity Veto is modified in order to allow for a smooth harmonisation process. The Venice Commission recommended that a feasible definition should only focus on rights of particular importance to an ethnic group such as language and culture. [Venice Commission 2005]

Florian Bieber from the University of Graz takes this assessment one step further and argues that the whole setup of Parliament should be changed in order to allow for a better legislative. This would mean the reduction of powers vested in the 2nd Chamber and a remedy for the Entity Veto in the House of Representative. Moreover he suggests diversifying the make-up of the Houses of People, including minority groups and moving away from the strict ethnic segregation developed under the Dayton accords. Bieber believes that by doing so the Country would not just move towards complying with the Finic – Sedjic ruling but also seriously improve the working of its Parliament per se. [Bieber 2012]

Secondly the role of the Presidency should be revised. At current, the Presidency is split between three people, one from each ethnic group. It works side by side with a Council of Ministers, whose responsibilities and tasks often overlap. In the light of this the triple presidency seems particularly excessive. It was therefore recommended to transfer legitimacy from the presidency to the council, thereby abolishing the presidential system in favour of a parliamentary system. Thereafter the President should be one person which is to be elected by Parliament. Special provisions may be made which regulate a rotary system with each ethnic group holding the position every 12 years. [Venice Commission 2005] However in the light of the ECHR's ruling it may be advised to completely cut the ethnic requirement for the Presidency and make the position eligible to any Bosnian citizen. Given the relatively low numbers of minorities in the country, this would be merely a gesture in this regard but in terms of breaking up the ethnicity driven political system it could be considered an important development.

Thirdly any constitutional reform should also aim at reforming the electoral system as well.¹¹ This means moving away from the present system which distinguishes not just between entities but also between ethnicity of voters. [Belloni 2006] All major institutions are elected based on the principle of ethnicity where Croats vote for Croatian representatives, Serbs for Serbian and Bosniacs for Bosniacs. [Belloni 2006] This emphasis on ethnic affiliation as part of the political system reinforces the separation of society and hinders any reconciliation of the latter. It has also helped in creating a party system which is almost exclusively based on ethnicity and turned the same into the key political cleavage in the country. [Sebastian 2007] Although recently some moderate centrist parties have emerged in the country, still over half the parties identify themselves as nationalistic.¹²

Lastly in order to ease the budgetary constraints, a permanent solution for the current division of power needs to be found. Ideally this would mean abandoning the entities in favour of administrative regions. [Venice Commission 2005] These regions would be based on geographic rather than ethnic composition. This in turn could also aid the resettlement of expellees in their original place of origin. However whereas Bosniacs and Croats have been largely found to be in favour reorganising the administration, the overwhelming majority of Serbs refuses to accept any agreement that would dismantle the Republika Srpska. [Venice Commission 2005] Alternatively efforts could be made to dismantle the Federation while retaining the RS. A majority of the financial constraints hail from the vast amount of Cantonal governments and their separate administrations. Therefore restructuring one of the entities would already help in easing budgetary pressure. If successful the regional restructuring could act as an example to the Serbian population in the country to do the same. However albeit theoretically possible, in reality the idea would be hard to realise. Even though relations between Bosniaks and Croats are better than between Serbians and Bosniaks, they are far from being amicable and deeply rooted suspicion persists on both sides. The Croats fear that by abolishing the cantonal system, their stake in the country would be diminished. The Bosniacs on the other hand fear that abandoning the Federacija while retaining the RS would mean a massive gain in influence for the Serbs, Vis á Vis the other two.

¹¹ http://www.izbori.ba/Documents/documents/English/Laws/Election_Law_of_BiH-eng.pdf

¹² <http://www.parties-and-elections.eu/bosnia.html> - Present Party Spectrum in Bosnia I Herzegovina

Since 2005 there have been three attempts at a constitutional reform, the most recent one in 2009.

The most elaborated amongst those has been the so called April Package of 2006. Although it was heavily assisted from the outside, it was at large a domestically driven process and it was only once initial negotiations seemed promising that International Actors became engaged. [Sebastian 2007] It soon became apparent that differences between the ethnic groups were wide and the persisting distrust amongst the elites involved meant that none of them were particularly eager to make far reaching concessions. The negotiations on the April Package were also set at a rather unsuitable time. With elections being only six months away, most politicians were increasingly concerned to cater to their electoral base. [Sebastian 2007] Therefore the negotiations were far from fruitful and the resulting package was very poor. However it was endorsed by both the EU and the US as it was regarded as a first step into the right direction and would allow Bosnia to ease its way into the EU.

The Package, nevertheless failed to pass in Parliament which can be attributed to two points. Firstly, the package offered only cosmetic solutions but failed to provide an effective solution for the status of the RS as well as the entity voting. Secondly the adoption of the April Package was believed to imply the ratification of the Dayton Constitution and therefore an approval for retaining the status quo. [Hayes et al 2006] Another major point for the failure of the April Package was the role played by outside actors. There was a sincere lack of unity amongst actors involved which contributed to the challenging negotiations. Due to the diverse set of recommendations being issued, local politicians just utilised whatever suited their needs best. [Bieber 2010] Whereas the EU followed a hands off approach, leaving local politicians to find a compromise themselves, the US got heavily engaged, at times enforcing rather than recommending solutions. [Sebastian 2007] However both were interested in a swift solution for the country's problems rather than a drawn out process involving a variety of actors. This obsession with creating a quick fix led to the exclusion of Parliament, Civil Society and the Judiciary, which meant that the April Package was never likely to succeed as it disregarded the opinions of large parts of Bosnian society. [Bieber 2010]

After the rejection of the April Package there have been two more attempts at constitutional reform, which more or less followed the same pattern and were

therefore just as unsuccessful in achieving its objectives. Both reform efforts foremost benefited the regional elite as they exploited the open division between the EU and US and largely used the process to gather electoral points. [Sebastian 2011]

2.3: The need for constitutional overhaul

Ever since the failure of the Burmit Process, five years ago, there has been no real effort at a Constitutional Reform. This means that as of now, the country still does not comply with the ECHR's ruling and Parliament is still in lockdown. Reasons for the failure of constitutional reform are numerous and mostly have to do with the political system created under Dayton. The ethnic division of politics and society has created a behemoth that has only grown stronger of the years and it has become increasingly hard to implement any change. The deadlock the country is in is self-inflicted and has caught society in a loop where various factors reinforce certain behaviours which in itself reinforce the political standstill. By hermetically segregating society according to ethnic affiliation, Dayton has aided the development of a political system that uses ethnicity as its most important political cleavage.

Political elites have responded to this development by utilising nationalism in order to raise support within their electorate. Lack of progress in the country is generally blamed on the various other "ethnicities" in the country which albeit offering electoral success, further divides society.

This tactic is however not unique to Bosnia but widespread across Politics. In the same way many European governments have utilised the EU as a scapegoat for what are inherently domestic problems. As large parts of civil society knows very little about EU decision making or the institutional setup of the Union, it becomes increasingly easy for politicians to blame their own shortcomings on Brussels. Similarly most Bosnians grow up in homogenised communities and therefore have very little knowledge about the other groups living within their country. This is especially true for people living in the RS, which for most parts has very little contact with either Bosniaks or Croatians.

However this practice comes at a cost as it increases the hostility of locals towards the "others" which are perceived to be the culprit of all their problems. Just as the EU population has become increasingly Eurosceptic, the Bosnian society has become

increasingly hostile against each other. This in turn increases the perceived need for a segregated political system, decreasing the potential for institutional change.

In order to break this reinforcing circle, a complete overhaul of the current system is inevitable. This means not just changing the constitution but completely restructuring the administration and existing institutions. In fact scholars such as Bieber have emphasised that institutional reform should be prioritised over constitutional change as only by breaking the current administrative division across ethnic lines can we hope to obtain a more stable political system. [Bieber 2010] Constitutional change by itself would be a step in this direction but would eventually fall short of changing the political division of the country.

In order to ultimately create a workable Bosnian state, the current practice of ethnic segregation must be reduced to a minimum and be replaced by an all embracing political system which encourages interrelation between different ethnic groups. By increasing the exchange across different groups, this will raise awareness in society and ultimately lead to the demise of current practices. [Bieber 2010] [Sebastian 2011] [Dziewulska 2010]

Personally I also think that a unified educational system, that does not separate ethnic groups and allows for intercultural exchange, must be one of the priorities in order to break the reinforcing cycle of ethno nationalism. A unified educational curricula also allows for a uniform history of the Bosnian War to develop. This is needed in order for all ethnic groups to accept their groups' involvement in the conflict and offer an important step towards reconciliation. The current practice of upholding ones ethnicity's innocence while putting the blame on the other two ethnic groups, is outdated and needs to be addressed.

I am well aware that this process is far from simple and it will need the support from all local elites in order to be successful. This will be especially hard to achieve simply because politicians benefit from the present constitution. They will therefore be rather hesitant in reforming the political system. Hence any effort in this regard will have to come from civil society itself. The role of initiating this bottom up process may fall to International Actors, especially the European Union.

CHAPTER 3: INTERNATIONAL ENGAGEMENT IN BOSNIA HERZEGOVINA ENGINE FOR PROGRESS OR INHIBITOR OF CHANGE

After having established the groundwork for our discussion by first analysing the historical background and henceforth discussing the current political system, we can now turn our attention to the engagement of the International Community in Bosnia. Involvement in the country has for most parts come from two sources, the UN and through this the United States and the European Union. Especially the latter, having failed to prevent the atrocities during the war, had a clear incentive of making the country work. The Union has often titillated Bosnia to be an exclusively European matter, rejecting the at times heavy involvement of the United States. As we have seen in the past chapter the US and the EU have not always been seeing eye to eye on Bosnia. Whereas the latter believed in letting locals lead the process at their own speed, the US was mainly interested in a top down process that would shield quick results. International Involvement has increased drastically over the years, which is why scholars have started calling Bosnia a defacto protectorate of the International Community. As we will see, this criticism is not unfounded. Most changes in the country can be attributed to the Office of the High Representative for Bosnia and Herzegovina or to EU led state building efforts. The local elite has long since accustomed to the interference by outside actors and effectively used them in order to further their own goals. Especially the HR has often been used by the elites as both a scapegoat and a conveyor of interests.

EU engagement has often been criticised for being needlessly complicated which has robbed it of the potential of having a sincere impact. Moreover the endless flexibility of the Unions conditionality approach has played its own part in diminishing the EUs influence in the country.

Currently there has been the proclamation of a new approach headed by the British and German governments jointly. Its aim is nothing short of reviving the stalled Accession process and return Bosnia on the path to EU Membership.

3.1: The Office of the High Representative:
The Guardian of Dayton

*Quando uno inconveniente e cresciuto o in uno stato o contro a uno stato, e più salufiero partito temporeggiarlo che urtarlo*¹³

The Office of the High Representative has been the tool through which the implementation of the Dayton Constitution has been ensured. However, so far any of the multiple Office holders has failed to significantly advance the institutional setup past the Consensus reached at Dayton and thereby allow for domestic ownership of all state institutions. This in itself has prolonged the lifespan of the office which was supposed to expire in 2002 but is currently still active. It has frequently been labelled the *Guardian of Dayton*, due to its perceived sole use of ensuring the observance of the Accords. It has been argued that therefore the Office can be incidentally held responsible for the vexing political situation which in itself tends to reaffirm the need for the HR. [Aybet et al 2011]

In the light of the difficult civil implementation of the Peace Accords, the contracting parties requested the designation of a Representative to be the final arbiter in matters regarding the implementation of the Dayton Agreements.¹⁴ [Dayton Annex 10 Article 1] Interestingly the HR does not carry a mandate by the UN Security Council, nor is he an official organ of the United Nations or any other International Organisation. He can therefore be thought of as an instrument of the International Community.

Initially the Office had no real executive powers attached to it, which made it increasingly hard to establish a sense of authority amongst the involved parties. The first officeholder Carl Bildt repeatedly complained about the diffuse situation in the country, given the multiplicity of international actors present on the ground. Those were more often than not holding very different opinions regarding the implementation of Dayton. [Laudes 2009]

¹³ "When either within a State or against a State an inconvenience has been borne, the safer course is to temporise, not to suppress it" Niccolo Machiavelli The Discourses Book 1: 33

¹⁴ http://www.ohr.int/dpa/default.asp?content_id=366 – Dayton Agreement

This made Bildt's assignment all the more difficult as local elites were irresponsive to his authority and in the light of the animosities being played out between International Actors, simply refused to cooperate with one another. Especially the officials from the RS were reluctant to work together with representatives from the other two ethnic groups.

In order to counteract these developments and to attach a sense of authority to the Office, the HR was granted extensive executive powers by the 1997 Bonn Conference¹⁵ on the Implementation of Peace in Bosnia. This enabled the HR to issue legally binding legislation and remove high ranking officials from office. [Bonn Conclusions Article 11] Through the so called Bonn Powers, the Office was transformed from a weak consolidator into the highest authority in the Bosnian state. However it soon became clear that these fundamentally unchecked powers led to some serious drawbacks.

Firstly, the frequent use of the Bonn Powers has directly affected the democratic structures in the country. Given these far reaching powers previous HR's have been tempted to take decisions on behalf of the local elites, without giving them the necessary time to reach agreement amongst themselves. [Tzifakis 2008]

For instance Carlos Westendorp charged the financial institutions of the Entity governments with creating a common currency for the country. Even under normal circumstance this process would take several months to complete. However after only two months Westendorp decided to forcefully introduce the Konvertible Mark on the ground that the local actors would be unable to come to a conclusion. [Laudes 2009] Under the pretence of moving the country forward, much of the state building has been subsequently done by outside actors.

Especially under Paddy Ashdown, large amounts of legislation, were effectively imposed on the country. Ashdown believed that given sufficient exposure to foreign laws and foreign institutions, locals would come to accept them as their own. He insisted that given sufficient time, the actual source of any implemented decision would become unimportant. In his logic, he followed the reasoning previously employed by British Officials in Eastern Asia. This comparison was latter made by Gerald Knaus and Felix Martin in their article *Travails of the European Raj*, in which

¹⁵ http://www.ohr.int/pic/default.asp?content_id=5182#04 - PIC Bonn Conclusion

they critically analysed the work of the OHR and warned that the Office had come to undermine democratic consolidation within the country. [Knaus et al 2003]

Secondly the continuous practice of externally driven state building has had a profound effect on the local elite in the country. They have increasingly adjusted to the idea of a third actor implementing difficult reforms on their behalf as it helped them in maintaining their power base in the country. [Tzifaksi 2008] They have therefore increasingly started to outsource potentially difficult tasks to the OHR. HR Wolfgang Petrisch recalled that during his term he was approached by local elites offering him a deal. They would agree to form a coalition government on the condition that he would agree to implement potentially painful economic reforms. [Knaus et al 2003] This anecdote clearly highlights the perverse interdependency that has developed over the past twenty years. Externally driven state building has created an environment in which national actors have become both unable and unwilling to foster dialogue in order to strike political bargains. In the absence of accountability on the grounds of reforms implemented, national actors were free to continue abusing ethno nationalism to increase their electorate. [Dzihic et al 2011] Moreover the OHR offered an additional target on which to blame the increasing hardship suffered by many Bosnians. In short the OHR has facilitated the retention of an ethnicity dominated political environment.

This finding is reinforced if we see that the OHR has effectively split the population in their opinion about its usefulness. The Venice Commission found that a large majority of Bosniacs and Croats support and even cherish the Office whereas the large majority of Serbs is strongly opposed to it. [Venice Commission 2005] This observation must come as no surprise given that the large majority of officials removed from Office were Bosnian Serbs. Moreover previous officeholders have been thought of trying to undermine the Republika Srpska and worked towards its dissolution. [Alic 2009]

This strong division across ethnic lines with regards to the usefulness of the Office seriously undermines reconciliation efforts and reinforces the present situation.

Lastly, as a direct result of the increased unwillingness of local actors to cooperate, the country's development at large has been left to the adjudication of a single person, which has been given the powers to rule without limits.

ESI director Gerald Knaus, compared the OHR, with the concept of the temporary dictator established by Niccolo Machiavelli in his Discourses. Machiavelli praised the Roman practice of appointing an individual who, in times of need, could rule without limitations in order to save the Republic from destruction. However in his work the tenure of the ruler is restricted and his work is heavily scrutinised by the senate in order to avoid abuse. Knaus subsequently highlights that the OHR possess all the powers attributed to Machiavelli's dictator but without any of the safety mechanisms attached. [Knaus et al 2003]

This lack of accountability has seriously undermined the judgement of the Office and created a sense of arbitrariness. This has been most pronounced under the tenure of Ashdown. Many of his decisions have been incomprehensible for both local and foreign actors alike.

For instance on one occasion Ashdown decided to discharge every single judge in the country from office just so they could subsequently reapply for their position. In doing so he hoped to achieve a judicial system less prone to corruption. However he disregarded the fact that most of the affected individuals already underwent a comprehensive review in the very same year, in which both their background and judicial track record had been scrutinised.

Ashdown refused to include local actors in the process and also failed to substantiate his decision. [Knaus 2013]

The EU has been largely divide over the perceived usefulness of the Office. Initially it was convinced of its importance and has at large facilitated the process of external state building based on the assumption that any progress is good progress. Given this initial success it was decided to merge the OHR with the EU Special Representative in order to emphasise the EU's role in Bosnia Herzegovina. [Dziewulska 2010]

Subsequently I would argue that we can observe a threefold process through which the OHR feel out of favour with Brussels.

Following the merge of the two roles was Ashdown's highly controversial term which sparked a wave of criticism which was not solely addressed to the HR but through its twinning with the EUSR also at the EU. The Unions stake in the state building process was scrutinised and heavily criticised by many outside actors. For instance Jan Zielonka published his work *Europe as Empire* just at the End of Ashdowns term

in which he coined the phrase of Bosnia being the first sovereign nation being effectively ruled by Bureaucrats in Brussels. In his work Zielonka critically assessed the EU enlargement strategy in the past decade and also its advance into State Building. [Zielonka 2006]

His assessment of the HRs role in Bosnia echoed the negative opinions published by the ESI and accused the EU of reaffirming the office's authority by integrating it into the wider EU enlargement strategy.

Thereafter the EU tried to address this criticism by pressuring subsequent Officeholders into assuming a more laissez fair attitude and attempting to promote domestic ownership.

However the ECHR decision on Sejdic and Finic eventually brought the confirmation that external state building had failed and largely confirmed the critics in that the newfound institutions encouraged rather than terminated the Status Quo. This again led to widespread discussion on the EU's involvement in the process.

In an attempt to save face the EU eventually decoupled the two positions and established their separate administration in Bosnia. [Laudes 2009] Ever since then, the large majority of EU member states have favoured to dispose of the OHR and have actively worked at undermining its standing in Bosnian society. Henceforth the offices competencies have been hollowed out and at the time of the 2008/2009 Constitutional Reform, the HR was not even consulted. [Sebastian 2011] There is widespread acceptance nowadays that the OHR is way past its expiry date but due to its legacy dismantling the Office is not so easily done.

As we have discussed above, over half of the Bosnian population strongly believes that the Office is needed to act as a stabilising force between the different ethnic groups and that by removing the Office the weak state structures would be susceptible to the deliberation of ethnic politicians. Given this symbolic societal dependency, the Office cannot be easily dismantled as fear and suspicion embedded in all parts of Bosnian society, could have unsuspected consequence. This means a new role must be found for it.

Initially this could mean relieving the Office of its legislative powers but retaining the dismissal rights. The latter should then be put under heavy scrutiny by local legislators and the Office should have to issue a reasoning should it decide to make use of the powers.

Moreover the OHR could be charged with reigniting the reconciliation process in the country by closely working with local NGOs that aim at fostering inter-ethnic relations. In doing so the dependency of the country on the Office could be reduced gradually up to the point where it can be safely dismantled.

3.2: The EU Engagement in Bosnia Herzegovina

Following the failure of the European Union to avoid the outbreak of War in the Balkans, the organisation was side-lined for much of the conflict as other International Actors moved in to take its place. The EU was also largely excluded from the subsequent peace negotiations and the creation of the Dayton accords. [Chandler 2006] Following the signing of the Dayton Agreements, the EU assumed responsibility for the immediate post conflict reconstruction in the region. [Juncos 2011 pp.83-103] Especially Bosnia, where the failure of the Unions appeasement policy had been felt the hardest, became subject to increasing EU intervention, as the organisation took over responsibility for institution building and economic transformation. Today the EU is present through a variety of regional projects affecting all aspects of statehood. Its engagement ranges from programmes aimed at improving the country's finances to regional groups which target the country's lagging agricultural sector.¹⁶

The Union also established its own military mission in the country and eventually took over responsibilities for maintaining the integrity of the country from the UN. In doing so the mission has had an unmitigated success and violent conflict seems improbable today. The role of EUFOR Althea has subsequently changed into a support mission to the Civilian EU Administration. [Dziewulska 2010], the latter is headed by the EU Special Representative for Bosnia who is responsible for coordinating the different missions established in the country and more generally oversee the peace process in the country. However unfortunately the EUSR was not given the necessary powers to effectively carry out this task. The office has no right to manage any of the EU missions or programmes, nor was it given the ability to influence or challenge any decision taken by the head of the missions. In fact the only requirement to the head of any mission in Bosnia is to consult with the EUSR over the proposed course of action. He is subsequently not bound to adhere to the EUSR judgment and may decide to ignore his opinion. [Dziewulska 2010] Moreover

¹⁶ <http://europa.ba/Default.aspx?id=2&lang=EN> List of all the current EU Projects in BiH

there is no requirement, nor provision that requires the different heads of missions to coordinate their work amongst each other.

In the absence of effective coordination, Head of Missions have primarily concerned themselves with obtaining the goals set by their own programmes without paying attention to the work done by other bodies. This has made EU engagement very resource intensive as many tasks have been duplicated. Also in regards to the Bosnian Elite, the lack of coordination has led to an inconsistent approach towards the latter which has undermined the credibility of the mission at large and made it vulnerable to corruption by local actors. [Sebastian 2013]

The primary vehicle through which the EU has tried to introduce its policy agenda in the region has been membership conditionality. This technique has already been successfully utilised in Central and Eastern Europe in order to approximate those countries to the European standard. Membership conditionality has been introduced through the creation of the so called Copenhagen Criteria. This document outlined certain economic and political reforms that need to be introduced before accession could take place. [Nugent 2004]

This document signified a sharp shift in the EUs policy towards potential new Members. Until the accession of Spain, Portugal and Greece in the 1980s approximation of institutional, economic and social standards could be achieved after Accession had taken place. It was assumed that through the exposure to EU norms and values, the newly accessed countries would be influenced in approximating their own democracies to that of other Member States. The Mediterranean enlargement however proved that it became increasingly hard to influence countries once EU Membership had been granted. [Royo et al 2007] Moreover the impact of taking in countries with fairly underdeveloped economic systems was much larger than originally anticipated. It became clear that with regards to the newly establishing democracies in the East a new approach had to be found. Therefore the Central and Eastern European Countries were the first to become subjected to these very demanding political and economic conditions which were clearly linked to the transition process towards democracy and market economy. These conditions have subsequently been toughened with each additional enlargement.

Uniquely to the Western Balkans, the EU introduced the Stability and Association Process which was to aim at increasing regional cooperation and thereby facilitate

reconciliation. Moreover it was to promote the adherence to democratic and economic reforms as well as the adherence to Human Rights. [Anastasakis et al 2003] Drawing from their experience in Central and Eastern Europe, the EU hoped that through mutual cooperation, levels of development would soon approximate which would offer the potential for another regional enlargement. Previously this had seen countries such as Slovakia and Hungary work together peacefully in order to obtain EU membership.

Albeit the wishful thinking, the process that developed in the Western Balkans bear no resemblance to the CEEs enlargement. Rather than fostering cooperation and increasing reform effort, the EU approach towards the region has led to a visible division between the laggards and the frontrunners and created an increased hostile environment in which any party refuses to take responsibility for the lack of progress with regards to the accession procedure. [Anastasakis et al 2003]

Scholars, such as Tzifakis, Dziewulska and Vasilev, have explained this divergence of the two processes by two means. Firstly the nations in the Western Balkans are typically heterogenic and ethnic relations are usually not harmonious. [Tzifakis 2012] Although animosities did exist in Central Europe as well, they were far less pronounced and were largely established between rather than within countries. Secondly the Western Balkans just came out of a decade long war in which many of these actors were supporting different sides in the conflict. The cessation of war, officially solved existing border disputes but in reality many local actors have not come to terms with the present borders. As a direct result of the war an air of mistrust and contempt prevails between different ethnic groups and countries. [Vasilev 2011] Given the preconditions on the ground, the failure to account for these problems seems almost ludicrous and seriously limited the success of the EU's engagement in the region.

With regards to Bosnia, problems with the EUs approach towards the country have extended far beyond the inability to establish regional cooperation. As with the rest of the region, the EU failed to account for Bosnia's special situation and simply assumed that the incentive of Membership would be strong enough to convince national elites, to put aside their differences and work constructively towards achieving the necessary reforms. [Dziewulska 2010] Doing so, the EU has failed to understand that each ethnic group is currently undertaking its own cost benefit

analysis regarding the merits of EU Membership. Therefore by treating Bosnia like an ordinary transition country, the EU failed to adjust its policies to the needs of a divided society and thereby gave away any chance for early membership success. [Tzifakis 2012] The precarious realisation with Bosnia is that EU Membership is actually contrary to the interests of at least two of the three ethnic groups featured in the country, plainly because it can be associated with a power shift from the minority towards the majority. [Vasilev 2011] In other countries in the region such as Macedonia both ethnic groups equally gain from EU membership, which has encouraged them to work constructively towards reaching this goal. In the case of Bosnia most of the required reforms aim at increasing state functionality and therefore require a transfer of power from regional administrations towards the Central government. As the majority of the Bosnian elite is solely concerned with retaining their access to power, they feel actively threatened by these requirements. [Vasilev 2011] The Bosnian Serbs would have to make the biggest sacrifice as they potentially would stand to lose their cherished entity while gaining only minor regional powers as a result of EU Membership.

As a former director for the Balkans, Eastern Europe and Central Asia at the General Secretariat of the Council of the European Union, has pointed out to me for the Bosnian Serbs, the current status of the country is actually optimal to maximise their influence on a domestic as well as on an international scale.¹⁷ Unsurprisingly they have proven resilient to any previous reform efforts.

Hence in the absence of a broad consensus amongst political, economic and social elites as to the necessity of EU guided democratization and marketization, the EU's accession carrot cannot be expected to work simply because EU membership is not perceived as the most ideal outcome for all groups in the country.

With regards to the unfavourable outcome for a large part of the Bosnian population, compliance with EU conditionality has generally been low. The EU has for the most part failed to address this issue and has instead resorted to weakening their demands in order to allow for compliance. This has established a sense of progress towards the outside but simultaneously seriously undermined the EU's accession strategy in the country. [Lasheras 2014 a]

¹⁷ Personal conversation with a former Director from the General Secretariat of the CoE, December 2014

If we take as an example, the reform of the country's police corps, we can clearly see how this process has been damaging the EU's credibility vis a vis local elites.

After initial unwillingness to reform the entity based police forces and create a common national police corps, the EU decided to include police reform as part of their conditionality approach.[Aybet 2011] In doing so it hoped to foster an agreement over the issue and avoid another political deadlock.

However it soon became apparent that the animosities between the parties was so high that none of them would be willing to compromise. Especially Bosniaks and Serbs vociferously insisted that their original demands had to be met. After several rounds of negotiations failed and talks had effectively halted, the EU decided to soften its demands regarding the reform. This allowed the RS to make some cosmetic concessions regarding state level decision making and thereby comply with the EU's demands. In practice, not much has changed and the entities still largely operate separate police forces, which drain the state budget.[Dzihic 2011]

However the process has been important insofar as it once again proved to the Bosnian elites that EU conditions were endlessly negotiable and eventually quasi non-compliance was being rewarded. This has inspired the different parties to continuously questioning demands made by the Union in an attempt to facilitate compliance. [Dzihic 2011] The main issue is that many of the EU's demands are not sufficiently fleshed out and are therefore hardly understandable. More often than not this has created an air of arbitrariness as the list of conditional ties was extended while the process went on. In the absence of sufficient explanations, to the necessity of these reforms, Bosnian politicians have resorted to ignore many of the EU demands and simply accuse them of deliberately undermining the country's progress. [Lasheras 2014a] Some think tanks have made similarly accusations towards the EU, as some of the demands seem almost hypocritical, given that there presently exists no EU consensus on them. In the light of this sticking to certain demands unnecessarily impedes process. This criticism has been most profoundly voiced over the compliance with the ECHR's decision on Sejdic and Finic .

Making the compliance with the ECHR subject to EU conditionality has been frequently criticised from non-state actors as it was found that more restrictive electoral systems are deployed by two EU member states. This has refuelled the criticism with regards to the existence of a double standard between existing members and aspiring members. [Juncos 2011 pp.83-103]

In Belgium, elections for the Brussels Parliament, are held according to a strict quota which divides seats between French and Dutch delegates. Politicians are asked to identify with anyone community and may subsequently not change their affiliation. Based on their decision, individuals may then be excluded from certain offices such as the PM for the Brussels Region. [ESI 2013]

The electoral system of Cyprus takes this a step further. Were in Belgium nationals are free to associate with any community, regardless of their personal background, in Cyprus a person is assigned to a community based on the background of ones parents. This affiliation can be changed but the electoral law makes it almost possible for anyone to do so. [ESI 2013]

The Bosnian electoral system is similar to the ones found in Belgium and Cyprus. However affiliation to any community can be chosen freely and may also be subsequently changed in the future. In theory it would be possible to have a Jewish Serb, a Roma Croat or an Orthodox Bosnian as religious affiliation is regarded separate from community affiliation. Of course in practice identification with any one community still runs strongly along religious lines but the mere possibility to identify freely puts it above many other electoral systems.

Most think tanks that represent the opinion that the conditionalization of Sejdic/Finic artificially hampers progress, agree that eventually the judgment has to be complied with but deem the importance that has been given to the issue excessive.

On other occasions, scholars have argued that the whole accession process in the Region has been more subject to a political agenda rather than actual progress on the EU Agenda. Ana Juncos has highlighted that the decision about opening association negotiations with Croatia had more to do with a deal among the member states rather than Croatia's actual cooperation with the ICTY, which was significantly lower than in Bosnia. Similarly she points out that the EU signed an Association Agreement with Serbia despite the country's persistent failure to comply with EU conditions. At the same time Bosnia was refused an SAA for the very same reason of not complying with EU demands. [Juncos 2005]

Incidents like this have largely led to the questioning of the country's appeal to the European Union. Some politicians, have argued that just like Turkey, the EU was trying to artificially draw out the accession process by erecting more and more barriers to Membership which are unique to Bosnia. They suspect that due to the country's Muslim majority, the EU is hesitant of allowing Bosnia to join. The recent

enlargement fatigue, only increased this perception. With the prospects of Membership waning, the readiness of elites to accept changes to the status quo has been further reduced. The European Elites have done little to refute these concerns. In fact HR Valentin Inzko recently stated that Bosnia will most probably not be ready to join the European Union before 2020. [Tzifiakis 2012] Likewise Commission President Juncker has stated that there would be no more accession under his Presidency. [New Europe 2014]

Apart from conditionality, political change has been introduced in the country via the means of external institution building. Almost all the institutions present in modern day Bosnia have been created at the hands of the European Union through the deployment of Institution Building programmes. Through these programmes the Union has been able to impose their own conception of good governance on the country and create institutions that mirror institutions found in other Member States. [Juncos 2011pp. 83-103] While using the concept of best practice is in itself not a bad approach, while doing so the EU paid little regard to local traditions and interest. Like so much of the international engagement in Bosnia, institution building has been based on the assumption that the source of development is irrelevant given sufficient exposure. Albeit mentoring on the proper use of these institutions was carried out, it was done at a speed not normal for many Western European countries, let alone a country in democratic transition. [Lasheras 2014a] If the elite and the bureaucracy fail to understand the importance of the laws they are rubberstamping or the institutions that are created by International Actors, there is an increased risk for problems regarding the effective future governance of the country. Much like with the OHR, the country has been continuously reliant on the work of International Actors in order to bring the country forward. [Lasheras 2014a] However by doing so, without incorporating local elites, the International Community has reinforced this dependency. This has created a vicious circle through which dependency leads to more external statebuilding, which in turn leads back to dependency.

Some scholars such as Bodo Weber and Kurt Bassuener from the Democratization Policy Council have therefore accused the EU for actively worsening the situation in the country by willingly ignoring the failure of external institution building and instead continue with business as usual [Bassuener et al 2014] Although I agree with this assessment to the extent that the EU had a large stake in creating the current

situation, I would not go as far as identifying the Union as the main culprit. Local Elites carry at least the same if not more responsibility for the present situation. The presence of the EU has always been widely abused by the local elites and just the same as the OHR, they have instrumentalised the Union, in an attempt to secure their power base. The vital mistake the EU has made in this regard is to ignore this development and resume with business as usual. In doing so they have reasserted the inflexible political system that has dominated Bosnia for the past twenty years.

3.3: The German-British Initiative

Following the Conference of Western Balkan States in August 2014, the British and German governments presented a new joint approach which aimed at putting Bosnia's derailed EU accession process back on track. This came as a surprise to many as previously the two countries were rarely on the same page regarding their approach towards Bosnia. Whereas the UK believed in top down state building, the Germans together with large parts of Continental Europe favoured the domestic ownership of the process. [Gavric et al 2014] The consecutive terms of British HR Paddy Ashdown and German HR Christian Schwarz Schilling, offer a good illustration of these differing approaches. Whereas the former heavily engaged in external state building, the latter aimed at encouraging institutional reform by means of mediation rather than coercion. In the end both approaches failed. Institutions established and Legislation adopted under Ashdown have subsequently been undermined and Schwarz Schilling failed at encouraging local ownership of the reform process. Some see this new initiative as a middle way, whereas others have interpreted it as the British having come to terms with the majority opinion on Bosnia Herzegovina. [Gavric et al 2014] [Weber et al 2014]

The new approach takes some inspiration from a proposal made by Croatia earlier last year, in which the country argued to grant Bosnia the status of a Special EU Candidate Country. It suggested rather than establishing high criteria and waiting for them to be adopted, the EU should take a proactive stance in the relations with the country. Foremost Croatia echoed the call made by some regional Think Tanks to remove the implementation of the Sejdic Finic judgment from the list of prerequisites towards the EU. Instead the issue should be solved as part of a wider Constitutional

Reform, once Candidate Status has been obtained. [vecernji.hr 2014]

The British German initiative indeed increases the flexibility of involved actors regarding the implementation of the ECHR decision and suggests to start reforms in areas where more agreement is likely to be found. However it reinstates that eventually the matter will have to be addressed.¹⁸ [gov.uk 2014]

The Democratization Policy Council, has heavily criticized this decision as it sees in it another softening of the EU's conditionality and therefor assumes that it will not help to increase the credibility of EU engagement in Bosnia. In general amongst experts, the reaction to the Initiative has been rather muted. The main criticism regards the fact that the initiative fails to address the main problem of previous EU approaches. By restraining relations to the Bosnian elite, the EU is again cooperating with the main culprits for the current situation. Again other institutions are left out of the loop and the civil society will only be incorporated via a new EU membership campaign. [Weber et al 2014] It seems unlikely that the newly elected leadership will be any more responsive to the EU's demands than the outgoing administration given that they are largely drawn from the same parties.

Moreover the Democratisation Policy Council has criticised the absence of any form of sticks. The so often demanded financial conditionality has still not being agreed upon, mainly out of fear for potential social unrest. However the DPC assumes that in the absence of credible punitive mechanisms, the local elite will be rather unimpressed by EU demands. [Weber et al 2014] Lastly the think tank highlights that the outline of this new approach puts emphasis on reforms but fails again at clearly defining what will be expected on part of the EU.

The European Council on Foreign Relations was similarly muted and albeit they see the re-engagement with Bosnia in itself as a good thing, they assume that the current plan is based on assumptions that are clearly not a reality. [Lasheras 2014 b] It relies too much on the willingness of the elite to move the country towards the EU and the attraction of enlargement as a catalyst for true reform. They also warn that the progress achieved so far is superficial and easily retractable should the elite so wish. They concluded that at best the new initiative could enhance accountability of local

¹⁸ <https://www.gov.uk/government/speeches/bosnia-herzegovina-a-new-strategic-approach> Speech by Foreign Secretary Phillip Hammond revealing the new approach.

politicians but in the absence of a unified civil society, this is of little use [Lasheras 2014 b]

While reactions to the proposal have been mixed what is the most striking to me is that in no way is the EU reflecting on past approaches and taking account on why those might have failed. At large, this new approach is similarly to previous efforts and it is hard to see from today how this approach is going to be more successful than its predecessors.

That said, the Initiative is still young and it will be subject to future assessments to scrutinise the success of the programme once it has been implemented.

CHAPTER 4: WHERETO FROM HERE ? A NEW APPROACH FOR BOSNIA HERZEGOVINA

If the bread in the oven is a failure you lose a week; if the harvest is a failure you lose a year; if marriage is a failure then you lose a life.¹⁹

Over the course of this paper I have tried to establish the difficult political situation that prevails in Bosnia Herzegovina. The country features an inherently flawed political system which reinforces the ethnic populism that led to the outbreak of the Yugoslav War in the 1990s. As we have seen the development of the current situation was due to a process influenced and encouraged by a variety of actors.

Firstly through the insistence on ethnic segregation, the International Actors in the country have laid the foundation for the present political system. Through external state building, a political system has been created, which does not fit the needs of a young democracy such as Bosnia. The inability of local actors to work with the new system has left it open to corruption by various power groups. By ignoring this development and moving along with business as usual, the international actors have contributed to the aggravating situation.

Secondly, local elites have comfortably accommodated to the present situation in the country and have therefore been unwilling to change it. As we have seen at present these actors enjoy the largest share of power while carrying the lowest amount of responsibility. Moreover the present situation offers multiple ways for politicians to dodge responsibility and avoid accountability for political shortcomings.

¹⁹ Estonian Proverb

Lastly, Civil Society in Bosnia has been highly responsive to ethnic nationalism but rather less to the detrimental situation in the country. This can be contributed to the country's history, which has led to the development of a complicated set of behavioural norms, which still largely shapes societal relations.

In my view, the solution to the Bosnian conundrum lies within creating a system which can increase the pressure on local elites to implement necessary reforms.

However to be effective, pressure must not just come from a single source but a multitude of independent sources.

So far all the engagements with the country have been top down. This means that International Actors have been communicating solely with the political elites, in an effort to pressure them into enacting reforms. Local Elites in turn were expected to engage with civil society and convince them of the necessity for the required reforms. However this approach is inherently flawed as it assumes that externally induced pressure will suffice to win national leaders over. This assumption has been proven wrong on multiple occasion and unsurprisingly communication with civil society has been diluted to fit the needs of local actors. I therefore believe that any new approach must aim at developing a new set of communication channels which focuses on a variety of actors within the country.

In the past civil society and non-state actors have being largely left out of the loop and even vis á vis the political leadership communication has often barely existed. This was especially true during the height of the state building process. As we have seen, notably with regards to the OHR, decisions were often taken without the inclusion of local actors. This has made them appear arbitrary and left them open to be exploited by national elites. As we have seen in the case of police reform, the inability of the European Union to successfully communicate the need for the reform, made it impossible for an agreement to develop. Given that there is no common police structure on a European level, local politicians focused on this point, to discharge the EU's demands as unfounded. Looking outside in it is clear that a reform of the existing policing system is necessary as it is both cost intensive and ineffective. However from the inside, the insistence of the EU to create a unified police corps, at the expense of the entities, appeared highly hypocritical.

Improving the communication with local elites, will offer the opportunity to detect areas for compromise while also making the case for any given reform more effectively. Also if politicians feel that their concerns and interests are being taken

seriously, they may become much more flexible on certain issues. This effect can be increased by simultaneously improving the communication with civil society. By gathering support for needed reforms in the population at large, it is possible to increase upwards pressure on politicians to implement them.

Improved communication must also mean reinforcing Bosnia's claim to membership. Over the years, people in the country have come to believe that the potential for EU membership has been reduced to the distant future. The EU has so far done little to counteract this belief. In fact recent statements made by key officials have rather confirmed this suspicion, leaving a detrimental impact on the willingness to execute reforms.

If we go back to the CEEs enlargement we can see that the readiness on part of the population and the leadership to go through with reforms has been directly linked to the goal of future membership. However with membership perspectives dwindling, the effectiveness of the accession carrot becomes increasingly limited. Hence it seems only logical that any increased communication with the country at large must also aim at refuting the concerns about Membership and signify that the future of the country lies within the European Union. The recent initiative led by Germany and the UK is a step in the right direction but far from being enough to reverse years of active European neglect. Only if the cooperation with the country increases and there is notable progress, will society's opinion shift. This is by no means an easy achievement but necessary to increase the rate at which reforms are implemented.

Once these communication channels are in place, the EU must address the previous shortcomings of its conditionality approach. As we have seen the Union has been rather unsuccessful in establishing and enforcing conditionality in the country. In the past there has been a lot of non-compliance or minimal compliance at best. Much of this comes down to two problems that the EU has so far been unwilling to address. Firstly, the EU's conditionality is inherently broad and lacks clear cut definitions regarding the fulfilment of said conditions. Given the large amount of different actors within the country information issued to local elites differ highly, often depending on the respondents personal assessment. Secondly, in an effort to keep the enlargement momentum alive the EU has repeatedly resorted to weakening its conditionality approach. This has also been abused by local actors as they have

come to question each and every instruction coming from the Union in an attempt to weaken conditionality. This has seriously evaded its success rate in the region.

In order to avoid this from happening in the future, I think any new conditionality approach must be leaner and clearer. The amount of demands should be reduced while offering precise definitions with regards to actual content. Locals need to know at any point what is expected of them and when a condition has been fulfilled. This will help to increase the credibility of future conditionality and reduce the air of arbitrariness presently surrounding many demands. Following this process of streamlining, there must also be no more weakening of the new conditions. This will be increasingly difficult in the beginning as local elites will definitely try to exploit any weakness on the part of the Union. However if the EU remains stern, politicians will eventually come to terms with the changed circumstances and will become much more responsive to change.

Once the ground for future reform has been prepared, our attention must now turn to the institutional setup. As I have shown within this paper, the majority of the existing state institutions are seriously flawed and to move the country away from its current status means complete overhauling the system.

The Union has so far been largely concerned with encouraging constitutional reform and failed to take into account, that constitutional reconstruction represents only one step in a larger process of reforming the whole Bosnian political system. It is widely believed that constitutional change must be the first step, which would offer the possibility of further institutional reform. However true this may be, faced with a largely uninterested political elite, not much progress can be expected on this topic.

The EU should therefor shift its focus towards the institutions themselves and encourage reforms from within the system. At present, most of the institutions found in the country have been created through external state building and were largely found unsuitable for the needs of the local population. Apart from disregarding certain cultural specifications and values, the working of these institutions is largely alien to local actors. This has made them constantly reliant on outside assistances to ensure the creation of legislation. This has repeatedly reinforced the post war status of Bosnia in the past twenty years.

I would assume that it therefor makes sense to give internal actors a bigger stake in the reform process. If the institutions themselves agree on a broad set of reforms and

are willing to carry them out, it will become increasingly harder for local elites to deny them the process. Here again there would be a bottom up process, where lower level bureaucrats are used to apply pressure on high level politicians to implement reforms.

However, when carrying out this approach, the EU must take special care, not to repeat past mistakes, that have previously brought the entire process to a halt.

One of the reasons that constitutional reform has become such a disputed topic was the decision of the EU to make it a precondition for the opening of membership negotiations. To avoid this, the institutional reforms should not be made subject to conditionality but instead be embedded in the wider process of negotiating future membership. The two processes would then be given the chance to reaffirm each other. The political criteria in the Copenhagen statutes make it necessary to ensure these reforms prior to Membership, which will give them increased importance as the process evolves.

Lastly we have to address the most important but equally the most challenging aspect of any future approach towards Bosnia. Any new policy proposal must also aim at improving the reconciliation of society, so as to increase its chance of succeeding. Only if society is on the same page with regards to the future of the country, will it be able to effectively apply pressure on local elites to execute the necessary reforms. In order for this to happen, civil society must come to terms with the role their respective ethnic group played in the course of the war. This is easier said than done, because as we have seen mistrust and suspicion has been a common feature of Bosnian society throughout most of its history. Although society at large was able to work together constructively in times of peace, any conflict would turn into a proxy war, with the population aligning along ethnic/religious lines. The utilisation of specific ethnic groups by former rulers of the Bosnian territory, to control the rest of population, has over time deeply ingrained this behaviour into society. To this day, any act by an ethnic group is assumed to follow a hidden agenda which only aims at aiding their own cause to the detriment of other groups.

In order to ensure peaceful relations in the past, Bosnian society has developed the peculiar maxim of *Let Bygones be Bygones*, according to which all deeds that happened in times of conflicts will be automatically forgiven. Albeit, this has helped to normalise relations quickly after conflicts had ended, it deeply engrained a sense of

mistrust and animosity within the population at large. This was painfully exhibited in the run up to the Bosnia War, where ethnic leaders found it easy to rally their kin behind their cause. Since the cessation of the conflict, the country has never been able to come to rest as ethnic leaders continued to utilise ethno nationalistic rhetoric to incite parts of society against each other. This is most striking in divided cities such as Mostar or Tuzla, where twenty years after the conflict has ended, societal relations have still not normalised. Life in these cities is still largely separated along ethnic lines and intercultural exchange is uncommon. Moreover, no group in the country has so far come to terms with their role in the Bosnian War and largely rejects any liability for the atrocities committed during the conflict. Coming myself from a country which has struggled for decades to accept its role in WWII, I can easily relate to the present situation in Bosnia. I nevertheless see the need for a better handling of history in order for societal relations to normalise which in turn will deny local politicians to exploit societal tensions as a cheap way of harvesting electoral support.

In order to facilitate this development, any future engagement with the country should aim at not just increasing communication between EU officials and local actors but also enhance the inter-ethnic communication in divided towns. Doing so may facilitate future cooperation and the establishment of a unified consensus with regards to the future of the country.

With respect to large parts of the Republika Srpska which, due to actions carried out during the war, have become widely homogenised, more emphasis must be put on increasing the numbers of expellees returning to the region. According to various regional NGOs only a small part of the original population has so far decided to return to their regions of origin. In the absence of active contact with other ethnic groups, societal reconciliation is made quasi impossible and ethnic leaders will be reelected as they appear as defenders of the communal interest. By trying to reinstate some of the diversity lost in the region, through encouraging returnees, reconciliation could be facilitated.

Another way of fostering societal propitiation, would be encouraging the creation of a unified school system for the whole country. In a situation where children are still segregated according to their ethnicity, common values and practices may never develop and society will remain apart. Although special caution must be given to the protection of cultural values, unique to each ethnic group, it must nevertheless be possible to educate pupils according to a common curriculum. There are already

several NGOs present in the country that work towards obtaining this goal. Various experiments in cities such as Mostar have shown positive results, as children struck friendships across ethnic lines and differences started to disappear.

In my mind the supervision of this reconciliation process could be assigned to the OHR in an effort of finding a new use for the office. As we have concluded the office in its present form has definitely run its course and if it was to prevail, a new role for the office has to be found. Given its high standing within large parts of civil society, this would make it suitable for the task at hand and also make it more likely to succeed than any EU led campaign. In a first step, the Office should be relieved of its law making powers, while retaining its dismissal powers. The latter should be subjected to increased scrutiny both by the local judiciary as well as outside actors. Doing so would signify a step away from external state building and also acknowledge and address concerns related to abuse of the office in the past. Once this is achieved the Office could engage in promoting and supervising the return of displaced persons to their original homes, as well as work with local NGOs in an attempt to create a unified educational standard. The remainder of the Bonn powers may be used to discipline local actors, aiming at undermining the process. Once this mandate is seen as being fulfilled a renewed effort towards closing the office could be ignited.

All in all, this set of recommendations issued above may act as a starting point for any future engagement with Bosnia Herzegovina.

Taken together, these strategies could help create a system which effectively applies threefold pressure on local elites. Once from the outside through the European Union and twice from the inside via the local population and institutional actors. If this increased pressure is balanced with a newfound conditionality approach, which makes it easier to understand and comply with EU demands, I am positive that this would eventually lead to increased reform efforts and cooperation on the parts of the local elites. This approach does not offer the solution to all the problems that may arise in the implementation of this process and there is of course no guarantee that the above issued proposals would actually have the desired effect. However it presents a fresh start, which takes into account the past failures of international engagement and tries to offer some remedying qualities with regards to them.

Due to its historic and cultural background, Bosnia is far too diverse a country for any one person to successfully predict the behaviour of local actors to any future EU approach. The country largely still works on the basis of a complex value system, whose understanding is vital for creating a successful policy towards it. As I have shown there is a large body of literature available which exclusively deals with Bosnia and the difficult political situation in the country. For years such experts have deemed the EU's approach towards the country to be unfeasible and have asked the organisation to reconsider its engagement. So far these calls have been largely ignored and business as usual has been presumed. In the future the EU should draw from the readily available literature and maybe consider deploying experts when rewriting its policy towards Bosnia. Most importantly any new approach must accept the failures of the past and redeem itself by finding ways to avoid them in the future. Finally I wish to reaffirm my claims from the onset of this paper. In my mind the successful accommodation of Bosnia must be understood as being integral for the success of the Europeanisation process in the Western Balkans. Many of the problems encountered in Bosnia also exist in neighbouring countries, albeit on a much smaller scale. This means that any future conflict in the country has also the potential to affect the entire region. It must therefore be understood that any process in Bosnia must include local actors such as Serbia or Croatia which presently have a large stake in the country and who would be affected the most from an unstable situation in Bosnia. Finding a way forward with regards to Bosnia, may also facilitate solutions on other pressing issues such as the relations between Serbia and Kosovo or the dispute between Macedonia and Greece. Eventually the whole region would profit from a stabilised Bosnia as it would also increase the potential for enlargement in the entire region.

The bottom line is that if the European Union is truly dedicated to including the Western Balkans in the Community, it will have to start taking the situation in Bosnia seriously and find ways of addressing it properly.

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