

Bosnia-Herzegovina:  
Toward a Less Imperfect Union

by

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*For the Man on the plane  
and all of the others who lost everything*

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## *Table of Contents*

Table of Abbreviations .....	v
Table of Images and Charts .....	vi
Introduction .....	1
Chapter One	
The Balancing Act: Democracy in Multinational States .....	8
Chapter Two	
Governmental Reform Since the Dayton Peace Agreement .....	33
Chapter Three	
Case Studies: Reform of the Military and Police .....	51
Conclusion .....	90

## *Table of Abbreviations*

BiH- Bosnia-Herzegovina  
DPA- Dayton Peace Accords  
DRC- Defense Reform Commission  
EU- European Union  
EUPM- European Union Police Mission  
GFAP- The General Framework Agreement for Peace in Bosnia-Herzegovina  
HR- High Representative of Bosnia-Herzegovina  
HDZ- Croatian Democratic Union (Hrvatska Demokratska Zajednica)  
HDZ1990-Croatian Democratic Union 1990 (Hrvatska Demokratska Zajednica 1990)  
ICTY- International Criminal Tribunal for the Former Yugoslavia  
IEBL- Inter-Entity Boundary Lines  
IFOR- Implementation Force  
IPTF- International Police Task Force  
JMC- Joint Military Commission  
NA- National Assembly of Bosnia-Herzegovina  
NATO- North Atlantic Treaty Organization  
OHR- Office of the High Representative of Bosnia-Herzegovina  
OSCE- Organization for Security and Cooperation in Europe  
PfP- The Partnership for Peace  
PIC- Peace Implementation Council  
PDP- Party of Democratic Progress (Partija Demokratskog Progresa)  
PRC- Police Reform Commission  
PRD- Police Reform Directorate  
RS- Republika Srpska  
RSNA- National Assembly of the Republika Srpska  
SAA- Stabilization and Association Agreement  
SBiH- Party for Bosnia-Herzegovina (Stranka da BiH)  
SBS- State Border Security  
SCMM- Standing Committee on Military Matters  
SDA- Party of Democratic Action (Stranka Demokratske Akcije)  
SDP- Social Democratic Party (Socialdemokratska Partija)  
SDS- Serb Democratic Party (Srpska Demokratska Stranka)  
SIPA- State Investigation and Protection Agency  
SNS- Serb People's Assembly (Srpski Narodni Partija)  
SNSD- Alliance of Independent Social Democrats (Savez Nezavisnih Socialdemokrata)  
SPRS- Socialist Party of the Republika Srpska (Socijalistička Partija)  
SRS- Serbian Radical Party (Srpska Radikalna Stranka)  
UN- United Nations  
UNMBIH- United Nations Mission in Bosnia-Herzegovina  
VF-B- The Bosniak Army of the Federation of Bosnia-Herzegovina  
VF-H- The Croat Army of the Federation of Bosnia-Herzegovina  
VRS- Army of the Republika Srpska

*Table of Images and Charts*

Map of Bosnia-Herzegovina According to the Dayton Agreement ..... 9

Organization of the Political Structure of Bosnia- Herzegovina ..... 35

Defense Chain of Command under the Dayton Peace Accords ..... 56

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## *Introduction*

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In November 1995 the leaders of Bosnia, Croatia and Serbia met with United States diplomats in Dayton Ohio to negotiate the peace settlement that would bring an end to almost four years of violent conflict in the former Yugoslav Republic of Bosnia-Herzegovina. Among its many provisions, The General Framework Agreement for Peace in Bosnia-Herzegovina (GFAP) established internal boundary lines, conditions for maintaining the ceasefire, and a new Constitution for Bosnia-Herzegovina (BiH).<sup>1</sup> In an attempt to appease nationalist desires for autonomy and create a stable post-war environment, the Agreement introduced a complex federal system of governance which included a number of consociational components.<sup>2</sup> The outcome has been an experimental solution to the problem of democratic governance in a country divided by the existence of multiple dominant ethnic groups.

Unfortunately, in the last decade BiH has experienced a number of the common troubles associated with federalism in multinational territories. Based on indicators of stability, economic viability, and protection of constitutionally granted rights, it is apparent that the governance structure created at Dayton is not optimal.

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<sup>1</sup> The General Framework Agreement for Peace in Bosnia-Herzegovina (GFAP) Office of the High Representative and the EU Special Representative 14 December 1995  
>[http://www.ohr.int/dpa/default.asp?content\\_id=380](http://www.ohr.int/dpa/default.asp?content_id=380).

The agreement is also referred to as the Dayton Peace Accords (DPA) or the Dayton Agreement.

<sup>2</sup> Consociation is a term that was introduced by Arend Lijphart with the aim of explaining the specific character of democracy in plural societies. Lijphart provides four necessary criteria for qualifying a democracy as consociational. The most important characteristics of consociation are that the government is formed by “grand coalition” where the political leaders represent all the significant segments of society, and decisions are consensus based. A further discussion of consociation will be included in Chapter One.

Arend Lijphart, Democracies in Plural Societies, A Comparative Exploration (New Haven: Yale UP, 1977) 25.

But the necessary reforms of the Dayton Constitution have been restricted by political interactions in BiH, which remain strictly dictated by the interests of the country's three ethnic constituencies. What remains to be seen is whether the Constitution can be reformed in a way that will generate a multi-ethnic state with a sustainable future.

In this analysis I will treat stability as a complex measure that is a question of degree. In this sense, a country is not stable or unstable, but instead relative stability can be assessed through an examination of the process of policy making and political dialogue. The ultimate goal is a demonstration of the ability of institutions to ensure that democratic rights are protected over time, and that changes can be made under the currently established system of rules. At the opposite end of the stability spectrum is the imminent dissolution of the state. In this way, a level of stability can be assigned by evaluating prospects for cooperation or conflict within an established political system. This model of evaluating stability will be used to assess the behavior of political actors, and the implications of their actions for the future of governance in Bosnia. Ultimately the question I aim to answer is; can BiH survive as a federal state?

In recent years it has become apparent that although the Dayton Peace Accords (DPA) have been successful in securing peace in Bosnia, the constitutional framework that was introduced has a number of shortcomings. The weaknesses of the Dayton structure largely emanate from limitations placed on the negotiations by the preferences of the three ethnic groups involved in the process. The authors of the DPA were forced to appease the many national demands of the Bosnian Serbs, Bosnian Croats and Bosniaks (the name for the Muslim group). In addition, negotiators at Dayton had to satisfy the demands of the leadership from the



neighboring nations who were integral in the escalation of the conflict. At the talks the Bosnian Serbs were represented by the leader of Serbia, Slobodan Milošević, rather than the leadership of the Bosnian Serb groups who had already been indicted by the Hague. The Bosnian Croats were represented by the leader of Croatia, Franjo Tuđman. Only the Bosniaks were represented by a Bosnian, the Bosniak President Alija Izetbegović.

The negotiations focused on settling territorial disputes, and were dominated by disagreement over how internal boundaries would be drawn in the new Bosnia. While the DPA also aimed to lay the foundation for a Bosnian government, structuring the state was restricted by a desire for autonomy by both the Bosnian Serb and Bosnian Croat groups, and a demand by the Bosniaks to create a more unitary BiH. The outcome was a significant redrawing of Bosnia's internal boundaries compared to their pre-war status, and the formation of a relatively decentralized federal state with a number of provisions for preserving ethnically based control through mechanisms of collective representation.

The task that remains in BiH is to generate a structure that will preserve the three ethnic groups' rights to protect their heritage and historic distinctions without condoning political discrimination.<sup>3</sup> This is not true of the current system, and is the standard by which reform attempts should be assessed. The Dayton agreement established a government that requires a high degree of consensus based decision making. In addition to being a mechanism for appeasing the different ethnic leaders,

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<sup>3</sup> It is also important to note that the population of BiH is not only comprised of the three dominant ethnic groups. Substantial minorities include Roma, Hungarian and Albanian peoples. The protection of the rights of these groups and all other immigrants is also a concern, but for the purpose of simplicity this analysis will focus on the interplay between the three largest groups.

the requirements for consensus were injected into the system with the intention of ensuring the protection of collective rights. Unfortunately the level of consensus has proved pragmatically difficult and has obstructed the formation of a unitary Bosnian state. Representation through collective rights inherently entails the discrimination of minorities (and functional minorities) generating an illiberal governance structure.

While Bosnia illustrates that a degree of collective rights may be necessary for protecting the individual and preserving peace, the country's experience also suggests that there are problems posed by structuring the government this way. The key to generating a stable government is finding a balance between collective protections and ensuring the existence of a functional government where all citizens are equal under the laws. While Dayton fulfilled the criterion of protecting the ethnic distinctions, the structure has also de facto condoned patterns of ethnic discrimination. What has become clear is that ensuring stability and democratic freedoms requires a redistribution of competences in a way that strengthens the central government and dampens the ability of the ethnic groups to self-govern.

There has been some evidence in the years since Dayton of a trend towards strengthening the federal government and reducing the requirements for consensus. A further redistribution of faculties to the center is necessary, but this can only happen at the expense of the autonomy of ethnic groups granted by the DPA. Proposed changes have therefore generally been met with resistance by both the Serb and Croat constituencies. To date, successful alterations have largely been pushed forward as a result of the continued influence of international officials in BiH's domestic governance, and have been structured around a desire among some Bosnian

constituencies for membership in international organizations including NATO and the EU. These external incentive structures, however, have not proved a sufficient impetus for encouraging cooperation in implementing all the reforms that have been identified as essential.

This paper will argue that changes to the Dayton structure are imperative because the arrangement was primarily a peace agreement and does not provide a durable framework for governance in Bosnia-Herzegovina. Discerning whether BiH holds potential as a stable political unit will be achieved through an analysis of the prospects for successful reform of this structure. To accomplish this requires an understanding of the preferences of the different actors and the institutional structures that determine their perceived payoffs when making decisions on proposed policy changes. This analysis will focus on the preferences of elected officials and the conditions that allow them to make the choices that they do. Through this examination of policy making I aim to generate a model for assessing the political dynamic in BiH and identifying the problems endemic in this form of political association. Understanding political reform in BiH in this way will illuminate the remaining obstacles to creating a sustainable system of governance.

In Chapter One I will introduce the theoretical basis underlining why federalism is often viewed as a solution to competing demands for autonomy in multinational democracies. This will provide a foundation for understanding how BiH emerged from Dayton with the governance structure that it has. I will then deconstruct this argument, presenting a contention that federalism is a structure that inherently promotes non-cooperation. This discussion will illustrate that when a state

is comprised of many ethnic groups, federal structures that distribute autonomy through the provision of collective rights may generate a slippery slope towards secession and the eventual disintegration of the state. Using this framework will provide a context for detailing the specific preference structures of the ethnic constituencies in Bosnia-Herzegovina.

It will become apparent through this theoretical analysis why it is critical that the political leaders in BiH not be viewed as irrationally guided by nationalist doctrine. The conflict ridden past of the Balkans has been too frequently attributed to “ancient ethnic hatreds”. The history of the region is one of empire and conquest, and the distribution of different ethnic and religious groups has created a territory that is difficult to govern. The invasion of the Nazis during the Second World War certainly worsened the existing politics of difference. But to categorize the history as one of ancient ethnic hatreds grants too much agency to ethnicity in determining the way that actors behave. It is not as simple as a hatred of the “other”, and should not be reduced to just that. This distinction is in no way intended to forgive those who orchestrated the atrocities committed in Bosnia in the 1990s, but instead aims to provide a more complete way of understanding the reasons for fear and persecution of difference in the Balkans. The behavior of political actors in BiH in the years prior to and following Dayton must be understood as rational within the context of the given structure. The goal of Chapter One is to challenge the idea of irreconcilable hatreds and demonstrate how structural conditions have generated the uncooperative behavior.

With this lens, Chapter Two will outline the Dayton government, a number of alterations that have been made to it in the last decade, and the political dialogue surrounding these changes. It will become clear through this explication that Bosnia's government has evolved and adapted to some of the most complex structural dilemmas a state could face. Obstacles remain, however, to establishing a stable and unitary government for Bosnia. Chapter Three will introduce two specific case studies of areas that have been targeted for reform since Dayton; the military and the police. These case studies will aim to highlight the problematic degree of autonomy granted to the national groups by Dayton and the need for a more centralized federalism. Both cases illustrate that the primary remaining obstacles to making these reforms happen is the clinging of certain groups to their current level of national autonomy.

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## *Chapter One*

### *The Balancing Act: Democracy in Multinational States*

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The Bosnian war in the early 1990's was a contest of territory grabbing resulting from the dissolution of a weak state. Yugoslavia ceased to exist after the secessions of Slovenia and Croatia in 1991, and Bosnia was subsequently recognized as an independent country by the international community in April 1992. A brutal war ensued over the control of the territory of Bosnia, which three different ethnic groups claimed a right to; the Serbs, Croats and Bosniaks. When this war came to a close at the end of 1995, the process of negotiating the peace in Dayton, Ohio produced a new government that's structure was largely influenced by the interests of these three constituencies.

The priority of the Dayton Peace Accords was to create a governance structure in Bosnia-Herzegovina that would maintain peace. A number of failed peace agreements preceded Dayton, consisting of proposals to partition Bosnia or to create a loose confederation of territories belonging to the three ethnic constituencies. At Dayton, however, the United States diplomats responsible for facilitating the negotiations focused on efforts to hold Bosnia together in some form. This position was deemed to be the best way to avoid awarding territory to groups that had been gained through acts of ethnic cleansing. The result was that Dayton divided the territory of BiH into two entities; The Republika Srpska (RS) and the Federation of

Bosnia-Herzegovina (the Federation). The region that comprises the RS is primarily populated by ethnic Serbs, while the Federation is populated by a mixture of Croats and Bosniaks living in ten cantons. Five of the cantons are predominantly Bosniak, three are predominantly Croat, and the remaining two contain mixed populations. These two entities and the Federation's cantons were each granted a significant degree of authority over internal governance, creating a very decentralized federalism.

*Map of Bosnia-Herzegovina according to the Dayton Agreement<sup>4</sup>*



While this federal set-up has sustained peace in Bosnia for over a decade, it has also allowed the three ethnic groups to continue to function with a high degree of autonomy. This has created a political culture in Bosnia that is endemically fragmented along ethnic lines. As a framework for subsequent discussion of the

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<sup>4</sup> Country Maps; Bosnia-Herzegovina Small Map 2007. February 2008, University of Texas at Austin Library, 7 April 2008, [http://www.lib.utexas.edu/maps/cia07/bosnia\\_herzegovina\\_sm\\_2007.gif](http://www.lib.utexas.edu/maps/cia07/bosnia_herzegovina_sm_2007.gif)

changes which the Dayton Constitution requires, this chapter aims to outline the effect that a federal structure has on the way that political interaction in Bosnia has taken shape since the end of the war. First, I will outline the components of federalism and consociation, providing a foundation for understanding Bosnia's current governance structure. Second, I will suggest that any federal structure is inherently characterized by a prisoner's dilemma in which constituents have little incentive to cooperate because they cannot ensure the collaboration of the other players. This dilemma is aggravated in a multi-national federation like BiH, particularly when a high degree of territorial autonomy is given to national groups. It will follow from this discussion that BiH suffers from intrinsic structural problems, and that political leaders should consequently be analyzed as actors that are behaving rationally and according to a preference structure tied intimately to their ethnicity.

### **Multinational Federalism**

When analyzing the institutional structures in BiH, it is important to understand the implications of the fact that the government of BiH is both federal and consociational. It is federal because there is a division of power between the central government and the administrations of the two entities established by Dayton. It is a consociation because the institutions on both levels utilize a specific system of proportional representation that includes a number of factors which Arend Ljiphart has classified as a distinct form of governance called consociational democracy.<sup>5</sup> In the case of BiH, both federalism and consociation are forms of non-majoritarian democratic governance that were selected at Dayton with the aim of mediating conflicts inherent to some degree in any pluralistic country.

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<sup>5</sup> The elements of consociation will be enumerated later in this chapter. Ljiphart 25



Federalism is an arrangement where there are two levels of government for a given territory. In its simplest form, a federal state merely requires that there is a layered system of governance, and that the constitution protects this division. There are both democratic and non-democratic forms of federalism, but this analysis is specifically concerned with federalism as a specific type of democratic governance. Ljiphart provides five characteristics of a democratic federal state; 1) a constitution that specifies the layers of governance, 2) a bicameral legislature, 3) overrepresentation of the smaller units, 4) the right of all units to be involved in constitutional revisions, and 5) decentralized governments.<sup>6</sup> All of these factors, specifically the third, may not be necessary to qualify a state as federal. But they are traits commonly employed and therefore are useful for consideration of how each affects the system of governance. Ljiphart's first condition of constitutionally recognized layers of governance is the minimum requirement for a state to be considered federal, but the array of other factors are seen across a variety of federal states.

Generally, a federal government assigns both the central government and the state's entities autonomy over particular policy areas. In the case of BiH, the national government is responsible for areas including foreign policy, trade policy, customs, monetary policy, immigration, refugee and asylum policy, international and inter-entity law enforcement, operation of international communications, the regulation of inter-entity transport, and air traffic control.<sup>7</sup> An unusually high number of

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<sup>6</sup> Arend Ljiphart, "Non-Majoritarian Democracy: A Comparison of Federal and Consociational Theories," *Publius*. Vol. 15, No. 2, Spring 1985: 4-5.

<sup>7</sup> Sumantra Bose, *Bosnia After Dayton: Nationalist Partition and International Intervention* (New York: Oxford UP, 2002) 62.

government functions were granted to the entities under Dayton, including control of defense, education policy and entity level law enforcement. This extreme decentralization of power to the entities has proved problematic in a number of ways. The difficulties are largely due to the fact that the distribution of powers was designed with the purpose of appeasing the demands of the ethnic groups for self-rule rather than for efficiency or maximizing transparency. As a result, the current distribution of faculties to the entities has resulted in bureaucratic inefficiencies and unsustainable public spending. The necessity for a redistribution of power between the entities and the federal government and the process of doing this will be the subject of both the second and third chapters.

There are a variety of reasons that federalism might be selected as a model of governance for a particular country. First, there is an efficiency and social choice related argument. The contention is that there is an intrinsic advantage to decentralizing some types of policy making in a way that encourages competitive design among the federal units. When successful, this type of decentralization will encourage citizens to actively monitor their representatives and generate the most preferred policy outcomes. Second, there is a self-determination and stability related argument. It holds that federalism recognizes national minorities and protects the rights of these minorities from the tyranny of the majority. This second argument, however, applies differentially to specific types of federalism, depending on the country's form of cultural pluralism.<sup>8</sup>

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<sup>8</sup> Mikail Flippov, Peter Ordeshook and Olga Shvestsova, Designing Federalism: A Theory of Self-Sustainable Institutions (Cambridge, Cambridge UP, 2004) 1-4.

It is important at this juncture to distinguish two fundamentally distinct categories of federal states, which differ based on the type of pluralism they are designed to mediate. There are two types of pluralism which Will Kymlicka labels polyethnic and multinational. A polyethnic state is comprised of a variety of different ethnic groups that are loosely organized and not tied to a specific territory. The type of federal state that emerges in a polyethnic nation is called a territorial federation, and is exemplified by the United States. The state is characterized by federal units that represent no specific ethnic group, but instead is comprised of entities that are a blend of the country's different populations. This type of federalism has the goal of increasing representative efficiency, and the type of pluralism that it aims to mediate is associated with the formation of factions inherent in a democratic political system. Specific status is not assigned based on nationality, and territorial divisions do not correlate to national groups.<sup>9</sup>

The second type of cultural pluralism that Kymlicka identifies is multinational, which describes a state in which there is more than one substantially sized and territorially organized national group. A multinational federal state is distinct from a polyethnic federal state because in a multinational state the explicit purpose of federalism is the protection of national groups. In these instances, federal design accommodates minority groups by granting them a degree of autonomy. The protection of individual rights prized in democracy is thus achieved by acknowledging that the only way to secure them may be through allowing certain forms of collective representation. Multinational federalism consequently emerges in

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<sup>9</sup> William Kymlicka, "Is Federalism a Desirable Alternative to Secession?" Theories of Secession. Ed. Percy Lehning (New York: Routledge, 1998) 113-119.

different circumstances than the polyethnic version, and is often adopted as a means of mediating of conflict between ethnically delineated factions.<sup>10</sup>

BiH is an example of such a multinational federation. To understand the implications of this categorization it is useful to view multinational federalism in the context of federalisms in general, because it highlights the reasons for the specific structures that multinational federations adopt. Alfred Stepan offers two relevant categories by which federations can be assessed for stability and appropriateness for the existing structural conditions.<sup>11</sup> These will be invoked to assess the specific character of a multinational federation like BiH. The first element is the way that the territory of federation arises. The second category is the symmetry or asymmetry of the federal units.

First, Stepan outlines three ways that a federal state may form. The first contention is that federalism should be viewed as a “coming-together”, where previously sovereign units agree to join in hopes of increasing their security or economic efficiency. An example of this “coming-together” federalism is the formation of the United States out of the original thirteen colonies. Stepan suggests two other ways that federations can be formed, both of which are relevant to the case of Bosnia. Multinational federations are either models of “holding-together” or “putting-together”. “Holding-together” federalism refers to cases where the decentralization of power from a previously unitary authority is a response to threats of secession. This is generally used to describe states like BiH where internal conflict is mediated by granting autonomy to the conflicting groups. The final path is a

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<sup>10</sup> Kymlicka 113-119.

<sup>11</sup> Alfred Stepan, “Federalism and Democracy: Beyond the US Model”. *Journal of Democracy* 10.4, 1999 19-34.

“putting-together” federalism, which is the union of previously independent nations by force. “Putting-together” federalism is the result of a heavily coercive effort by what Stepan distinguishes to be a distinctly non-democratic regime. The creation of the USSR is an example of this final type of federalism.<sup>12</sup>

Bosnia has also historically been an example of “putting-together” federalism. The region that now comprises BiH was part of the Ottoman Empire for nearly four centuries, followed by an occupation by the Austro-Hungarians from 1878-1918. Following WWI the Bosnian territory was incorporated into the Kingdom of Serbs, Croats and Slovenes (later renamed Yugoslavia), but was not granted independent statehood. In 1939 the borders within Yugoslavia were redrawn to purposefully counter regionalism that was delineated by ethnicity, and the territory that had been Bosnia was divided arbitrarily into municipalities within the Kingdom. Through the end of the Second World War governance within the territory of Bosnia was largely determined by competing Serb and Croat interests.<sup>13</sup>

World War II led to the Nazi occupation of Croatia and the territory of Bosnia, which had been conquered by Nazi controlled Croatia. After a significant period of persecution during which all non-Catholics were purged from the region that included Bosnia, a multi-ethnic group led by Josip Broz Tito overthrew the Nazi regime in 1946. Under Tito’s leadership the Socialist Federal Republic of Yugoslavia was formed, granting Bosnia statehood as one of the six constituent republics that comprised Yugoslavia. This unification would last until 1991 when the Croat and

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<sup>12</sup> Stepan, 21-22

<sup>13</sup> Noel Malcolm. Bosnia, A Short History. (New York: NYU Press, 1996) 158-172.

Slovene delegates walked out of the Federal Republic's Party Conference in protest of the behavior of the Serb leadership.

As part of the Ottoman and Austro-Hungarian Empires, and later as a part of the Kingdom of the Serbs, Croats and Slovenes, Bosnia's status as a federal entity serves as an example of "putting together". These instances of "putting together" were largely a result of empire and conquest. Like the former Soviet Union, Yugoslavia was also an instance of putting-together in the sense that Tito established a federation of previously independent (although historically associated) polities with the use of military force. The Tito period was characterized by the mediation of competing demands for autonomy by the different nations of Yugoslavia. But while Bosnia became a unit of governance comparable to neighboring Croatia and Serbia under Tito's Yugoslavia, the region's previous standing had been that of a dependent state within a variety of different empires. So while Bosnia's history dates back to the Ottoman and Austro-Hungarian periods, its standing as independent from its immediate neighbors had only been sporadic.<sup>14</sup> Thus in many ways, Bosnia had been part of a putting-together federalism for as long as it has been a relevant unit.

This putting-together became increasingly problematic as conceptions of nationalism began to solidify, a process that gradually occurred over the course of the nineteenth and twentieth century. Under both Ottoman and Austro-Hungarian rule identity in the Balkans remained localized and malleable, with religious conversions constantly shifting population demographics. The religiously based persecutions during the Second World War probably helped to solidify the conceptions of ethnicity

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<sup>14</sup> The first mention of Bosnia as an independent state is c. 958, but after this time the region experienced periods during which it was subsumed by the neighboring states and relevant empires. Malcolm, 10

based on religious affiliation that prevail today.<sup>15</sup> A fortunate coincidence of the “putting together” arrangement of Yugoslavia was that the cultural distinctiveness of the three national groups that had emerged in the Balkans was diluted by membership in a federation imposed from above. Under Tito, national groups were allowed to maintain a degree of cultural autonomy, as long as their primary allegiance was to Communism and Yugoslavia.

With the breakdown of the federation of Yugoslavia in 1991, the differences between the three ethnic constituencies could no longer be contained. In hindsight, it is this moment in history when the complexity of the fate of Bosnia becomes readily apparent. With no authority strong enough to oversee the maintenance of a federal structure, Bosnia evaporated in a battle for national autonomy and territorial control by the three relevant ethnic groups. By the time the DPA was negotiated in 1995 a new type of “holding-together” federalism became necessary for the preservation of a Bosnian state. Dayton established a “holding-together” federalism with the hopes of maintaining a unitary state by decentralizing power. It is important to understand the agreement made at Dayton as an instance of “holding-together” because this highlights that the federalism in BiH is not a voluntary agreement based on recognition by the three of ethnic groups of a mutual advantage.

The second category that Stepan introduces for measuring the efficacy of federal states is the symmetry or asymmetry of the entities. Symmetrical federalism is characterized by assigning the same constitutional capabilities to each of the federal entities. Most federal states that are symmetrically organized are territorial

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<sup>15</sup> The Bosniaks are Muslims, the Serbs practice their own form of Orthodoxy, and the Croats are Catholic.

federations, like the United States. Asymmetrical federalism, on the other hand, assigns entities specific group rights. This type of federalism stems from the principle that under certain circumstances, there are individual rights that cannot be assured without recognition of some collective rights. Multinational federations are often asymmetrical, because ethnic groups demand a high degree of autonomy in exchange for continued association with the state. BiH serves as an example of an asymmetric federation, designed to appease the demands of the multinational population.<sup>16</sup>

### **The Consociational Approach**

The specific type of asymmetrical federalism in BiH is based on the principles of consociational democracy. Arend Ljiphart developed his theory of consociational democracy as an alternative model to majoritarian democracy. Consociation emphasizes the value of consensus based policy making as a foundation for creating stable democracy in plural societies<sup>17</sup> Ljiphart defines consociation by outlining eight identifiable structures that are all aimed at providing a more substantial form of proportional representation than typically found in a democracy. A consociation must include 1) a grand coalition, 2) a separation of powers, 3) balanced bicameralism and minority representation, 4) a multiparty system, 5) a multidimensional party system, 6) proportional representation, 7) territorial and non-territorial federalism and decentralization and 8) a written constitution and minority veto.<sup>18</sup>

The most important elements of consociation that distinguish it from other forms of democratic and federalist governance structures are the power-sharing agreement, the minority veto, and the organization of segmented autonomy on a

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<sup>16</sup> Stepan, 29-31

<sup>17</sup> Ljiphart "Non-Majoritarian Democracy: A Comparison of Federal and Consociational Theories" 3.

<sup>18</sup> Ljiphart, "Non-Majoritarian Democracy: A Comparison of Federal and Consociational Theories" 3



territorial basis. Consociation is distinct from federalism because the system implicitly recognizes factions within a federation and attempts to represent them as such and reach agreements through brokering consensus. A federal state is a consociation if it is democratic, multinational, all the consociation requirements are met, and the federal entities are highly autonomous.<sup>19</sup> The consociation distinction is useful because it is a specific designation of multinational federations that go further in recognizing collective rights as a means for potentially achieving stability.

The government of Bosnia-Herzegovina is often invoked as a model of how consociation can be a solution for preserving multinational states when all else fails. Most recently, the consociation approach used in Bosnia was referenced as a model for maintaining a unified but decentralized Iraq in the Biden-Gelb plan presented in May 2006.<sup>20</sup> The plan noted ten years of peace in Bosnia as indicative of the benefits of a consociational design and the applicability of the system to the situation in Iraq. Unfortunately this assessment does not assess the realities of political interactions in BiH with sufficient depth. While a consociational federation addresses some of the dilemmas that plague multinational countries, the structure in itself is not a sufficient condition for political stability. Consequently, a danger of asymmetric organization in multinational federations is that the correlation of territorial and political autonomy can become a stepping stone to secession. Generally the case is that the more territorially segregated an ethnic population is, the more powerful their demands for autonomy will be. This leads to a difficult balancing act between distributing

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<sup>19</sup> Ljiphart “Non-Majoritarian Democracy: A Comparison of Federal and Consociational Theories” 5

<sup>20</sup> Joseph Biden and Leslie Gelb, “Unity Through Autonomy in Iraq” The New York Times 1 May 2006, Op-ED

asymmetric faculties to the entities of a multinational federal state, and complete dissolution of the state into its nationally homogenous units.

The federal structure in BiH is an example of a precarious asymmetrical federalism, with its division into two entities and further into cantons and municipalities. BiH was composed this way out of recognition of the need for collective rights to effectively ensure individual rights, and the structure should not be criticized based solely on this criteria. It is appropriate, however, to question the degree to which the assurance may enhance demands for complete autonomy by national groups through secession. While the distribution of governance competencies based on ethnic criteria was the only viable option at Dayton, it is now apparent that the asymmetrical structure makes Bosnia susceptible to inefficiencies caused by internally divisive politicking. This dilemma caused by the asymmetric organization illuminates the difficulty of structuring a “holding-together” federalism that appeases national demands and is viable in the long run.

### **Federalism: The Dilemma**

The problems that plague the BiH government are indicative of an implicit tension in any federal structure, and are further aggravated by the country’s multinational character. Regardless of form, the stability of federalism is ultimately restricted by creating a balance between the power at the center and in the federal units. A central government that is too strong does not satisfy the original reasons for which a federal structure was introduced. Entities with too much autonomy threaten to make the existence of the federal state obsolete. In “holding-together” states the strength of entity governments creates an additional challenge because there is a

preexisting desire of some national units to gain more autonomy. The tensions between entities and the center can threaten the stability and survival of the state, and creating a durable federalism is generally a difficult task. This challenge of distributing of power is in many ways the source of current problems in BiH.

In any federal state the relationship between the central government and the entities can potentially result in a prisoner's dilemma, where there is no incentive to cooperate because payments made to the center are perceived to outweigh the benefits of membership.<sup>21</sup> This can be demonstrated through a basic two person game where the players are any two entities in the federation, represented by their elected officials. These actors make policy decisions by weighing the costs of cooperating against the benefits of defection. In this basic federalism game the costs of membership are primarily comprised of taxes paid to the central government, and the benefits include protection from external enemies and advantageous economic relationships. For example, a federal government may offer public funding benefits to entities that obey legislation dictated at the federal level and then might revoke these benefits if entities introduce contradictory legislation.

One instance of this dynamic is the continual controversy over the legal drinking age in the United States. While the 1984 federal law stipulates that the national drinking age is twenty-one, proposals to introduce legislation to change the legal age to eighteen has been repeatedly raised at the state level. But these plans are continuously rejected by state legislatures because of a lack of willingness to lose

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<sup>21</sup> Filippov, Ordeshook and Shvetsova 28-29

highway funding as a consequence of violating the federal legislation.<sup>22</sup> This instance illustrates how entities may weigh the benefits offered by the federal government against the costs of obeying federal legislation in each decision made at the entity level. It is this cost-benefit analysis that determines the decisions that entities make to cooperate with or defect against the goals of the federal government. Ultimately it is the repetition of many games with regarding all types of policy that will determine whether or not a federal state will endure. Unfortunately, entities are not always offered the necessary incentives to cooperate with the federal government. This is why elected representatives often view federalism as the prisoner's dilemma depicted below.

	Cooperate (C)	Don't cooperate (D)
Cooperate (C)	(5) (5)	(1) (7)
Don't Cooperate (D)	(7) (1)	(2) (2)

This payoff structure represents a lack of incentive to cooperate due to the cost of cooperating when the other party defects. The central problem in the game is that the payoffs are known, but there is no communication between the players. Players consequently make their decisions based purely on self-interest and are not able to coordinate their choices. So though the CC payoff of five is greater than the

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<sup>22</sup> John Curran. "Vermont Latest to Eye Lowering the Drinking Age," USA Today 29 February 2008. [http://www.usatoday.com/news/topstories/2008-02-29-3771114171\\_x.htm](http://www.usatoday.com/news/topstories/2008-02-29-3771114171_x.htm)

DD payoff of two, with no mechanism for ensuring cooperation the playing of the game will typically result in DD. Both groups will lack the necessary trust that their opponent will play the game cooperatively, and consequently each player will defect to ensure that they don't end up with the lowest payoff of one while their opponent walk's away with the seven.

This dynamic can be changed in two ways. The first way is by introducing punishments for defection. This fundamentally changes the payoff structure so that the game is no longer a prisoner's dilemma. Punishments, however, must strike a careful balance between creating an incentive to cooperate and generating a desire to secede from the federal organization. The danger of secession can result from consequences that are too harsh and thereby undermine the benefits of membership in the association. The execution of punishments for defection can therefore be very difficult, and is made even harder in multinational federalism like the one in BiH. Because of the territorial organization of minorities and the "holding-together" nature of the association, introducing penalties for non cooperation is accompanied by an implicit danger that certain ethnic populations will attempt to secede. Consequently, there are few ways that the ethnic groups can be held accountable by the federal government. This has been compounded by the control of tax collection and public funding at the entity level. Without the funding to revoke and with the danger of secession, changing the game through punishments is not the most viable option for BiH.

The second way that cooperation can be achieved is through repetition. Although the payoffs do not change, as the game is repeated the players should begin

to weigh the future in their decision and behave more cooperatively over time. It is through repetition that federalism typically becomes more stable. But it is important to note that cooperation can only become possible in an iterated prisoner's dilemma if the cost of selecting C when the other player chooses D is deemed to be relatively low. The problematic condition in BiH is that the constituent groups seem to perceive that they have a lot to lose from cooperating. This is largely because the experience of conflict in the region has caused mistrust, but is also aggravated by the high degree of ethnic autonomy that has been enjoyed since the signing of the DPA.

As a result, policy debates in recent years have illustrated repeated instances of defection defeating cooperative decisions that have apparent pragmatic benefits. High perceived costs of choosing C are often rooted in a fear that cooperation today will yield weakness and domination by the other ethnic groups in the future. Consequently, the iteration of the game does not seem to hold much promise for increasing the prospects for cooperation in BiH. The subsequent chapters will illustrate specific instances where the game is repeated, and provide specific examples that explain why groups continue to defect even when others signal their willingness to compromise. These accounts will reiterate the point that unwillingness to cooperate emanates from a fear that cooperation today will result in the complete loss of power in the future.

What is evident from this model is that federalism in itself is not a solution to the competing demands of nations in multinational states. In attempt to protect minorities from the tyranny of the majority, federalism also acknowledges them as a relevant unit of governance. When the recognized entities correlate to homogenous

nationalist groups, their desire for autonomy will be liable to outweigh the possible benefits of association. Because federalism is plagued by the free rider problem, a functional federalism that adequately accommodates the demands of national groups also increases the likelihood that groups will seek greater autonomy.

There are a number of factors that influence the degree to which this federalism dilemma indicates the imminent secession of national groups. First, a relative equilibrium in group size may reduce the degree to which minorities populations feel threatened or dissatisfied with their ability to represent themselves in the federal body. Significant socio-economic differences between groups may aggravate tensions, causing groups in wealthier territories to desire autonomy. Influential political parties that can draw allegiances across groups may be one of the most significant factors that can deter secession. One problem for BiH is that in a consensus system where political affiliation is determined by ethnicity, cross group allegiances are very difficult to generate. It is also possible that inner-group class heterogeneity may produce shared interests that can be utilized to generate solidarity across national groups. Unfortunately what has been illustrated in BiH is that even with the external incentives offered by EU membership, the creation of multi-ethnic coalitions has been rare. This suggests that in Bosnia the legacy of the war still significantly outweighs factors that might be otherwise conducive to creating a stable federal structure. This does not mean, however, that with time a federal system can not be maintained.

Ultimately, stability requires a dramatic shift in political attitudes from the defensive to the cooperative. Through the DPA Bosnia acquired a framework

intended to promote cooperative governance. But the Dayton Constitution has in practice provided a structure that promotes repeated defection and self-rule of ethnic groups despite continued efforts to integrate. Policy stalemate and the risk of secession represent points along the broad scale by which instabilities can be measured. The optimal way to ensure cooperative politics and faith in the central government is through shifting incentive structures so that political leaders have a reason to cooperate; their desires are congruent. In the absence of this alignment, structural measures that compel cooperation are likely to fall short.

### **External Influences**

To evaluate the prospects of BiH it is also important to understand the external forces that influence the payoff structures of the players in Bosnia. Largely due to relationships with Croatia and Serbia, there are different opportunity sets for the three ethnic groups. The Dayton Constitution outlined the right of each entity to maintain “special parallel relationships” with their neighboring countries.<sup>23</sup> The language of the provision was sufficiently vague, allowing these relationships to continue to a degree that has obstructed the sovereign administration of the government of BiH over their territory.

The allegiance of Bosniaks living in BiH is only to Bosnia. Their nation resides entirely within Bosnia-Herzegovina and the secession of any of its units would result in estranged Bosniak minorities. Bosniaks therefore have a vested interest in the preservation of a united Bosnian state. Bosnian Croats and Bosnian Serbs, on the other hand, are both neighbored by countries where their national group is the dominant majority. Croatian and Serbian political interests have continued to

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<sup>23</sup> GFAP Annex 4, Article 2a.



appear to varying degrees in the years since Dayton was signed. The influence of regional politics has thus proved one of the key factors that affect the way that the national constituencies assess their preference orderings.

These political arrangements manifest differently for each group because of their different demographic distributions. For the Bosnian Croats secession is not a likely option. Croat populations are distributed throughout the Federation, and there is no cohesive territorial unit that could feasibly secede. But there is a degree to which Croat political interests remain incredibly nationalistic and continue to be aggravated by their neighbor Croatia. For example, in November 2007, the Croatian government set up 124 polling sites in the Federation for the Croatian national elections.<sup>24</sup> The polling stations were the result of an initiative by the Croatian Prime Minister to attract the votes of Bosnian Croats who tend to poll in strong support of his party, the right-wing HDZ (Croatian Democratic Union). Although most countries allow absentee voting, this organization of polling sites was clearly a violation of Bosnia's sovereignty. This instance illustrates that Bosnian Croat identity remains strongly linked with Croatian national identity, and continues to be aggravated by the actions of the Croatian government. But despite this tendency of Bosnian Croats to continue to express their nationalist identification with Croatia; structurally the Bosnian Croats remain unable to secede.

The Bosnian Serbs similarly have a relationship with neighboring Serbia that exacerbates the already divisive internal politics of BiH. The RS is divided into two territories on either side of the Federation, with the capital city of Banja Luka

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<sup>24</sup> Nicholas Wood, "Croatia's Prime Minister Looks for Votes From Croats Living in Bosnia". The New York Times. 24 November 2007.

governing both regions.<sup>25</sup> Because the RS is organized in two cohesive units and was granted significant autonomy under Dayton, the threat of secession lingers. Serbian politicians continually invoked the threat of the RS seceding in response to the UN negotiations regarding the independence of Kosovo. In this way, the Serbs have expressed that they view the RS as their pawn in international bargaining. It remains to be seen whether a significant number of Bosnian Serbs actually believe it is in their best interest to secede, but it is certainly more structurally feasible for the Serbs than for the Croats. This disparity in feasibility of secession is critical to explaining the difference in behavior of the Serb and Croat politicians.

While all three of these analyses of external influences oversimplify the nature of ethnic interests, they are certainly valuable for assessing the behavior of the different political actors. It would be deceptive to say for example that all Bosnian Serbs want to secede, but what is relevant is that the possibility exists. Domestic politics are dramatically affected by the existence of this option, as the threat of secession arises in dialogue over policy that threatens to weaken the semi-autonomous nature of the RS. The influence of peripheral countries thus plays a key role in the way the domestic politics in BiH unfold.

In addition to the three domestic actors, the international community plays a significant part in the policy making process in BiH through the Office of the High Representative (OHR). The DPA initially created the office to monitor implementation of the agreement and promote cooperation.<sup>26</sup> It consists of a body of internationals led by an official nominated to their post by the international

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<sup>25</sup> See map of Bosnia-Herzegovina, 8.

<sup>26</sup> GFAP, Annex 10.

community. Originally intended as a facilitator, the High Representative (HR) was then granted the Bonn Powers by the Peace Implementation Council (PIC) in 1997 which dramatically changed the mandate of the office. The decision was made in an attempt to redefine the position in a way that would make it most effective and resulted in a granting the HR the authority to arbitrate and dictate legislation that could not be achieved through consensus.<sup>27</sup>

The HR has played a significant and very controversial role over the last decade. While there are notable areas where progress has been achieved due to the existence of the OHR, there is also significant evidence that the office has undermined the citizens' ownership of their government. In addition there are many ways in which the existence of the HR may allow nationalist politicians to behave more radically. Consequently, the behavior and interventions of the HR are vital to understanding the policy making dynamic in BiH.

### **Analyzing the Game in BiH**

Returning to the model of federalism previously introduced, it is now possible to analyze how policy making generally reflects the way that politicians evaluate their payoffs based on the position of their ethnic constituency. The benefit of the model is that it goes beyond the claims that policy makers behave based on irrational historical ethnic hatred and illuminates why policy makers in BiH have a structurally induced preference for defection. Rather than attributing the obstructions to behavior of irrational actors, this model aims to demonstrate that all three ethnic constituencies are acting rationally given their existing opportunity set.

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<sup>27</sup> PIC Bonn Conclusion. Office of the High Representative and EU Special Representative. 10 December 1997. > [http://www.ohr.int/pic/default.asp?content\\_id=5182#11](http://www.ohr.int/pic/default.asp?content_id=5182#11)

Inherent in the federalism prisoner's dilemma is that it is not in anyone's best interest to cooperate unless there is assurance that the other players will cooperate both today and in the future. The solution in a stable federal state is that there are significant advantages offered by cooperation, and that states are punished for defection. One problem in BiH, is that the central government doesn't have sufficient authority over the entities or cantons to inflict punishment for stalemates. The lack of punishment combined with the backing of Serbia allows politicians in the RS to maintain constituent support for their belligerence. Although the Bosnian Croats don't have the option of secession, they share this preference for defecting and the ability to do so without penalty. With strong ethnic affiliations dictating constituent preferences in both cases, there is a low threat that elected officials will be punished.

The difference between the Croat and Serb preference orderings is determined by the limitations on the form that defection may take place as the game is repeated. Due to the extensive veto powers and structural elements in the Parliament, the Bosnian Serb and Bosnian Croat representatives to the central government are often able to defect and hinder any progressive policy. But while the Bosnian Croats may defect on every policy issue they perceive as inhibiting their autonomy, if the game is repeated indefinitely it is likely that constituents will eventually tire of the stalemate and support more cooperative policy. This has been demonstrated in recent years as the Croat political groups in Bosnia have abandoned their previously tight relations with political parties in neighboring Croatia. For the Bosnian Serbs, this same exhaustion with stalemate could result in the ultimate form of abstaining, which would be secession from BiH.

In the context of the game theoretic model of federalism, the most imminent threat to the endurance of the Bosnian state is the degree of autonomy granted to the RS. At its conception, the government of the RS was designed to appease the interests of the Serbs and to bring an end to the violent conflict that had ravaged the region. The current structure allows officials in the RS to exercise high levels of authority over activities within their entity, and to resist measures by the central government that they perceive as infringing upon their rights as defined by Dayton. Unfortunately what has been illustrated by reforms of since the signing of the DPA is a difficulty to implement recommended changes that would strengthen the authority of the central government over the two entities. This resistance also undermines initiatives necessary for membership in the European Union.

It seems that the stability of Bosnia-Herzegovina depends upon coordinating currently divergent preference orderings to overcome the prisoner's dilemma inherent in federalism. This prisoner's dilemma model may be restrictive in its application to specific policy areas, and in subsequent chapters a variety of other factors that complicate the ordering of preferences will be introduced. But it is a useful place to begin because it provides a foundation for understanding the context that provokes the constituents groups to behave the way that they do.

The threat of violence or the dissolution of BiH does not seem imminent. But Bosnia is far from being a functional democracy that ensures that democratic rights are protected over time, and that changes can be made under the currently established system of rules. To establish this level of stability will require completion of reforms in a number of policy areas, and most importantly the development of an investment

of all of the ethnic constituencies in the preservation of BiH. It is not likely that this will come about through the emergence of an appreciation of cooperation in itself.

It is impossible to discern if the peace in Bosnia is truly permanent, or whether Dayton has merely provided a mechanism for the temporary coexistence of the three groups while they remain under substantial international monitoring. The Dayton Constitution must consequently be taken only as what it was intended to be; a compromise that satisfied the demands of all three ethnic groups and was sufficient for instituting the peace. Reform of this constitution must be a priority if Bosnia is expected to survive as a federal state. The task that remains is to understand the specific changes that must be made to Bosnia's current constitutional structure to minimize the effects of the federalism prisoner's dilemma in Bosnia's multinational context.

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## *Chapter Two*

### *Governmental Reform Since the Dayton Peace Agreement*

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The most notable reforms of the Dayton government have aimed to alleviate the demographic effects of war and facilitate more cooperative relations between Bosnia's three dominant ethnic groups. The process of reform, however, has been significantly limited by the resistance of both the Serb and Croat constituencies to alterations that undermine their current degree of autonomy. The various policy making processes can thus be understood as a game between the three ethnic groups, where the interests described in Chapter One hinder cooperative behavior. With the introduction of three actors and complex political motives the specific game structure now becomes less important, and strict application of the game would not do justice to the intricacies of each situation. But the concept of federalism as a prisoner's dilemma and the particular problems of multinational federalism that have been enumerated remain incredibly applicable to explaining how the reform process has unfolded.

This chapter will focus on an important series of reforms were spurred by The Constituent Peoples Decision which was passed by the Constitutional Court of BiH in 2000. The decision identified elements of the two entities' constitutions which were inconsistent with the federal constitution, and subsequently prohibited government structures from being systems that implicitly condone ethnic homogenization. The

result of the Constituent Peoples Decision has been the introduction of a series of legislation that aims to reform governance at the entity level, in addition to some changes which have shifted strength from the entities to the state. This decision fundamentally altered the consociation approach in BiH by introducing systems of power-sharing at the entity level.<sup>28</sup>

Although implementation of the resulting legislation has been incomplete, the successes that have been made as a result of the Constituent Peoples Decision represent some of the most significant steps towards increasing stability since the signing of Dayton. Notable changes since 2000 include reform of the electoral system, a redefinition of power-sharing at the entity level, and a restructuring of the minority veto powers. This chapter will begin with an examination of the original Dayton structure. It will then outline the effects of legislative changes since Dayton, particularly the effect that the Constituent People's Decision has had on restructuring governance in BiH. This should provide a foundation for identifying the obstacles that remain.

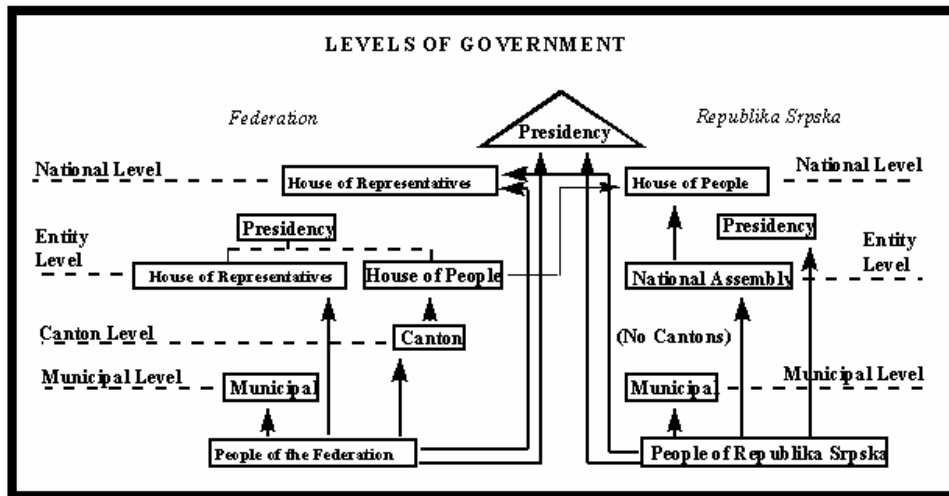
### **From Dayton to Today**

Governance of the complex entity structure in BiH is characterized by a combination of federalism and consociation, with a significant distribution of power to the two entities, the cantons and even the smaller municipalities within the entities and cantons.

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<sup>28</sup> Florian Bieber, Post-War Bosnia (New York: Palgrave Macmillan, 2006) 43





There is a central government led by three presidents. Dayton mandates the ethnicity of the three presidents; one representing each of the dominant ethnic groups. In addition, under Dayton the presidents are only elected by constituents living in their respective entity; the Serb from the RS and the Bosniak and Croat from the Federation. The power-sharing operates through the rotation of the presidents every eight months. The co-presidents each serve a four year term, and by official mandate are supposed to adopt all decisions by consensus. Each president has the right of minority veto if a decision is considered harmful to the entity that he has been elected from. This is a power that has not been clearly defined, and has consistently resulted in policy stalemates and the frequent intervention of the High Representative.

Because each President is elected solely by members of their ethnic constituency, the system emphasizes that each president is only obliged to represent the interests of their group. Arend Ljijphart contends that in a system of power-sharing

<sup>29</sup> [Global Security.Org](http://www.globalsecurity.org/military/library/report/call/call_98-18_figure1.gif) Bosnia-Herzegovina Government Structure 2000  
[http://www.globalsecurity.org/military/library/report/call/call\\_98-18\\_figure1.gif](http://www.globalsecurity.org/military/library/report/call/call_98-18_figure1.gif)

like the one in Bosnia, officials should be pure representations of their constituents so that they accurately represent and effectively negotiate for their ethnicity at the national level.<sup>30</sup> While this objective of strict representation is certainly not at risk in BiH, governance in this form proves problematic due to demographic distributions. In practice, the system excludes functional minorities from determining their representative. This means that the representation of Serbs living in the Federation and Bosniaks and Croats living in the RS is dependent on the preferences of their co-ethnics who are dominant in their respective entity. The effect is that portions of the population are denied their vote. Another problem is that the system discourages refugee return because people are not inclined to move back to areas where they will be a minority without an effectual vote. This set up reinforces the degree of territorial segregation of the ethnic groups, and furthers the problem of high ethnic correlation with federal units. This dynamic was partially addressed in the electoral reforms before the 2000 elections, which will be enumerated later.

Dayton created a second executive body, the Council of Ministers, who would be comprised using a system of proportional representation. In the Council two thirds of the delegates come from the Federation and one third comes from the RS. According to the Dayton design, the ministers had to be equally distributed between the three ethnic groups. Like the Presidency, this set-up in the Council is problematic because it assigns representation based on the assumption that each ethnicity is limited to certain territory. The Chair of the Council of Ministers is nominated to his post by the Presidency. He must be approved, along with his government, by the House of Representative in Parliament. In addition, each ministerial post was required

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<sup>30</sup> Bieber 51.

to have two deputy ministers representing the other two ethnic constituencies. All Ministry decisions must be consensus based, meaning that the presence of at least two members from each nation are required at every session. It was also originally mandated that the Council of Ministers was to be presided over by the Chair and two Vice-Chairs that would rotate every eight months. While the deputy structure and rotation system were introduced to provide the ethnic groups with a sense of security that their interests would be protected, both have generated inefficiency and contributed to the slowness of implementation of initiatives.<sup>31</sup>

In 1999 the Constitutional Court of BiH declared this power-sharing agreement unconstitutional on the grounds that it permanently weakened the Bosnian central government. The National Assembly was unable to reach an agreement and pass legislation in accordance with the Court's decision, and the system remained this way until the HR passed a new law on the Council of Ministers in 2002. At this juncture the system of co-chairs was abolished and replaced with a system of one Chair and two Vice-Chairs who do not rotate and exchange power roles. In addition, deputy ministers no longer rotate with the ministers in the different ministries. Decisions remain consensus based.<sup>32</sup>

The original ministries established were limited to the Ministry of Civil Affairs and Communications, the Ministry of Foreign Trade and Economic Relations and the Ministry of Foreign Affairs. Legislation in 2000 also added a new ministry charged with the management of human rights and issues of refugee return, the Ministry of the Treasury, and the Ministry of European Integration. In 2002 the

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<sup>31</sup> Bieber, 52

<sup>32</sup> Bieber, 52

European Integration Ministry was reduced to a department within the prime minister's office, and the Ministry of Justice and the Ministry of Security were established and the Ministry for Civilian Affairs and Communications was divided into two. Currently there are nine ministers (including the Chair), and it is mandated that no more than three ministers can come from any one of the three ethnic groups.

The legislative branch of the federal government is the National Assembly (NA), which devolves power to two bodies; The House of Peoples and The House of Representatives. The House of Peoples includes fifteen delegates, five elected by each dominant ethnic group. Like with the Presidency and Council of Ministers, this selection is done based on the territorial divisions. The five Serbs are elected by the RS entity level National Assembly, and the five Croats and Bosniaks are selected by House of Peoples in the Federation legislature. The House of Representatives is comprised of 42 directly elected members, with twenty-eight from the Federation and fourteen from the RS. Membership in this house is unique in that it is not restricted by a principle of equal representation of the national groups. In theory the voting structure allows for some crossing over and voting for political parties based on criteria other than strict ethnic lines. For example, in the 2000 election Bosniak based groups were able to obtain twenty-four seats, while the Croat HDZ secured only five.<sup>33</sup> But while the structure allows for an appeal to cross national interests in the Federation electorate, in practice the NA has been obstructed by the election of nationalists by their ethnic constituencies. In addition the NA has a veto power like

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<sup>33</sup> Bose 62

the one outlined for the Presidency which results in frequent stalemates of legislation.<sup>34</sup>

The Constitutional Court of BiH resolves matters that cannot be agreed upon in the NA, and is composed of three international judges and six national judges. The international presence in the Constitutional Court is one of the strongest influences after that of the Office of the High Representative. When a veto is invoked in the NA and no agreement can be met, the matter is passed to the discretion of the Constitutional Court. Like the OHR, the Constitutional Court often acts to alleviate policy stalemates and expedite the introduction of reforms. Interpretations of the Constitution that was written at Dayton are thus influenced by this internationally comprised body, reinforcing the sense that BiH is in many ways a pseudo protectorate.

Within each entity there is also an executive, legislature and judiciary. The government structure in the RS provides significant power to the parliament, whereas the Federation government is relatively decentralized and assigns more power to the cantonal level. The legislature in the RS, also called the National Assembly, includes eighty-three representatives directly elected by citizens living in all the municipalities of the entity. The majority party in the National Assembly elects a President, and the body is officially unicameral. The executive power in the RS resides in a prime minister who is nominated by the National Assembly. The RS also has its own constitutional court that has jurisdiction over conflicts between the branches of government, and between the RS and its municipalities.<sup>35</sup>

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<sup>34</sup> Bieber 54

<sup>35</sup> Bieber ?

The government of the Federation represents a second federal set-up within BiH. Competences in the Federation are divided between a central government structure and the governments of the ten cantons. The Federation government is responsible for dictating economic policy at the federal level, regulating finances and fiscal policy, making energy policy, cross-cantonal law enforcement, and the financing of all of these activities through taxation.<sup>36</sup> The cantons have jurisdiction over the implementation of most policy; education, policing, public housing, information and broadcasting, land use, regulation of business and “culture”.<sup>37</sup> The legislature of the Federation is comprised of two houses. The 140 members in the House of Representatives are directly elected by the citizens, and the eighty members of the House of Peoples are selected by the Cantonal Assembly, whose members are elected by the citizens. Within the house of people thirty seats are reserved for Bosniaks, thirty for Croats, and twenty for others. The House of Representatives therefore constitutes a direct reflection of the interests of individuals in the specific municipalities, and the House of Peoples allows for representation based to some degree on collective interests.<sup>38</sup>

This distribution of powers to the entities has proved problematic in a number of ways. The largest problem is that citizens identify their entity or cantonal government as the most relevant unit of their representation. Aside from this, the cost of maintaining such a large structure has placed an incredible burden on Bosnia’s public financing system. The last decade has been characterized by a struggle to redefine structures amidst an environment of tense resistance. Since 2000 some

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<sup>36</sup> Bose 77

<sup>37</sup> Bose 79

<sup>38</sup> Bieber

measures have been introduced which have strengthened the central government at the expense of the entities. This transfer has been met with opposition as both the Serb and Croat constituencies remain hesitant to relinquish the degree of autonomy granted to them under Dayton. Significant changes have been made, however, in areas including electoral reforms, harmonization of the entity constitutions with the Dayton constitution, an introduction of power-sharing at the entity level, and a redefinition of the veto power granted to each ethnic group.

Many scholars of governance in multiethnic countries emphasize the importance of cautiously designing electoral systems to accommodate for the specific demographics of the country. Donald Horowitz recommends designing electoral systems in a way that generates politicians' dependence on voters outside of their constituency.<sup>39</sup> The hope is that by doing this, political leaders will be forced to be more moderate in their campaigns, and more cooperative in their service. A similar approach was advocated by the International Crisis Group (ICG) in 1999, where they suggest that sometimes nationalist voting is rooted in fear rather than a real desire to keep Bosnia divided.<sup>40</sup> The ICG recommends that increasing the dependence of candidates on the vote of other groups would alleviate this fear by ensuring that politicians are held responsible by the citizens of Bosnia as a whole.

The electoral reforms in Bosnia to date have fallen short of these goals. While in 2000 Bosnia introduced a number of electoral reforms that aimed to increase candidate accountability, it is not clear that they have had an impact in mitigating the effects of consociational governance. There were two items from the reform agenda

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<sup>39</sup> Bose 218

<sup>40</sup> "Breaking the Mould" International Crisis Group 4 March 1999.  
><http://www.crisisgroup.org/home/index.cfm?id=1502&l=1>

which have held; the introduction of open lists, and multi-member constituencies.<sup>41</sup> Prior to the 2000 elections, citizens were restricted to voting for a party which would then determine the list of electoral candidates. With the introduction of open lists voters were able to select individual candidates and increase direct accountability. This change unfortunately did not significantly alter the ethnic dynamic of elections because the system did not weaken the ability of politicians to be elected solely by their ethnic constituency. The second noteworthy change was the creation of multi-member constituencies, which involved the breaking down of entities into smaller electoral districts. The law resulted in the creation of five units in the Federation and three in the RS.<sup>42</sup> This initiative also aimed to increase the accountability of politicians to their constituents.

Unfortunately neither of these changes has achieved the goal of increasing inter-ethnic responsibility recommended by Horowitz and the ICG, although they certainly represent a step towards increasing accountability. An additional measure of introducing a system of preferential voting was introduced in the 2000 presidential election in the RS. The preferential voting system, recommended by Horowitz as a mechanism for increasing accountability, was also suggested for use at the national level, but was dropped completely in the 2001 election law. Resistance to this legislation was largely a reflection of the nationalist politicians with power opposing measures they perceived as a threat.<sup>43</sup>

Since the electoral reforms, other notable changes to governance in BiH have largely emerged in response to the Constituent Peoples Decision in 2000. According

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<sup>41</sup> Bieber 94

<sup>42</sup> Bieber 95

<sup>43</sup> Bieber 96



to the decision, the governance structure established after Dayton was inconsistent with the mandates of the Dayton Constitution in a number of ways. In response to proceedings brought forward by then Chairman of the Presidency Alija Izetbegovic, the Court ruled that there were a number of provisions in both entity constitutions that were inconsistent with the mandates of the federal constitution. The incompatible portions were generally content pertaining to the composition of the entities as strictly defined by ethnic constituency. The decision included instances in the RS Constitution, for example “The Preamble insofar as it refers to the right of the Serb people to self-determination, the respect for their struggle for freedom and State independence and the will and determination to link their State with other States of the Serb people”.<sup>44</sup> Contradictions in the Federation similarly noted the exclusion of Serbs when listing constituent peoples. The decision specifically attacked the exclusive nature of national language definitions and the status of dual citizenship granted to members of the entities with respect to their neighbors Serbia and Croatia.

The result of the Constituents Peoples Decision was to abolish the notion of exclusive rights within the entities. The decision emphasized the importance of representing all three constituencies and populations of Others<sup>45</sup> across entity lines, regardless of unequal population distribution. Definitions of entities as comprised by specific ethnic identities were removed. In 2002 all cantons and the RS introduced the

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<sup>44</sup> Agreement on the Implementation of Constituent Peoples’ Decision of the Constitutional Court of Bosnia and Herzegovina Office of the High Representative and EU Special Representative 27 March 2002

< [http://www.ohr.int/ohr-dept/legal/const/default.asp?content\\_id=7274](http://www.ohr.int/ohr-dept/legal/const/default.asp?content_id=7274)

<sup>45</sup> The use of the term Others here is meant to denote ethnic minorities other than the three constituent peoples. Significantly sized groups of Others include people who identify as Roma, Albanian, and Hungarian.

languages of all three ethnic constituencies as national languages.<sup>46</sup> Systems of power-sharing were subsequently introduced at the entity level, requiring representation of functional minorities within the governance structure. These amendments came in the form of a series of legislation introduced in 2002 that redesigned the distribution of power both between the central government and the entities, and within the entity structures.

The Federation Parliament was altered to include the representation of Serbs and the RS Council of Peoples was required to represent Bosniaks, Croats and Others.<sup>47</sup> The House of Peoples in the Federation went from a body comprised of thirty Croats and Bosniaks elected in the cantons by their constituents in the cantonal assembly to representatives elected by all members of the cantonal assembly.<sup>48</sup> The hope was that this change would allow for the election of more moderate candidates. The House of Peoples must now include equal numbers of each national group (seventeen from each), and a smaller number of Others.<sup>49</sup> Implementation of this law has been difficult due to insufficient number of Serb candidates for the positions. As a result many of the Serb seats have remained empty. The House of Representatives has a requirement of four members from each group, a goal which has been met. The new legislation also introduced requirements for representation of all ethnic constituencies in the ministerial posts; eight Bosniaks, five Croats and three Serbs. Implementation of this law has proved complex, particularly in attempts to maintain a distribution of representatives across the three branches of government (executive,

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<sup>46</sup> Bieber, 72

<sup>47</sup> Bieber, 42

<sup>48</sup> Bieber 67

<sup>49</sup> Bieber 69

legislative and judicial). The cantons of the Federation were also required to adjust their constitutions in accordance with the new law and introduce a system of power-sharing that includes all three nations.<sup>50</sup> At this juncture the degree to which these changes have had an effect remains unclear.

Similar changes were made to the constitution of the RS, but because of the history of the entity the manifestations of the amendments may be more pronounced. Because the Republika Srpska was designed in 1992 as an entity of ethnic Serbs, the legacy of the entity is that of a pseudo nation-state. This was reaffirmed to a degree by the compromises brokered at Dayton, but since has been gradually undermined by attempts to encourage refugee return and counter the effects of ethnic cleansing. The 2002 amendments to the RS constitution represent a large step forward on this front. The law established a Council of Peoples, who are nominated by the National Assembly to ensure the protection of all three constituencies in legislative matters.<sup>51</sup> In the Council all three nations are equally represented by eight delegates, with additional four representing all Others. The RS National Assembly must now include at least four members from each nation. This has effectively increased the number of Croats, but has had little impact on representation of the Bosniaks who have held at least eight seats in every year since Dayton was signed.<sup>52</sup> The government of the Serb Republic is also required to include eight Serbs, five Bosniaks and three Croats. These changes are an important first step toward addressing the fundamental problem of the overrepresentation of Serbs in the RS since the signing of Dayton.

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<sup>50</sup> Bieber 72

<sup>51</sup> Bieber 80

<sup>52</sup> Bieber 81

Unfortunately the implementation in the RS has been much slower than in the Federation.

The 2002 amendments also redefined the scope of veto rights in an attempt to lessen the impact of the high requirements for consensus required by the consociational system. At both the central and entity level, Dayton granted the representatives of each constituency the power to veto any legislation that threatened their interests. The “vital interests” clause was very loosely defined and, as previously mentioned, has resulted in stagnation of reform at all levels of governance. In the 2002 amendments the HR attempted to more clearly define these veto powers in hopes of creating a better balance between protection and efficacy. The redefined list specifies that veto powers are only applicable to the following areas; 1) the right of constituent peoples to be sufficiently represented in all branches of government, 2) the identity of one constituent people, 3) constitutional amendments, 4) organization of public authorities, 5) equal rights in decision making, 6) education, religion, language and promotion of cultural heritage, 7) territorial organization and 8) public information systems.<sup>53</sup> Unfortunately, there was also a provision that other issues can be claimed as vital interests if two-thirds of one of the constituent peoples’ representatives in the House of Peoples declares it to be so. This final clause resulted in the veto amendment serving more as a list of recommendations than a system for deterring belligerent and uncooperative behavior.

Many of the aforementioned changes were met with significant resistance, particularly by the Serbs who were concerned that the new agreement significantly reduced their relative autonomy within their entity. Although an agreement was made

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<sup>53</sup> Bieber 69

in March 2002 to introduce a number of changes, ultimately the initiatives were introduced through amendments to the constitutions unilaterally introduced by the OHR Paddy Ashdown in April. In 2002 the HR also imposed a new law on civil service which outlined principles by which the civil service was to be recruited.<sup>54</sup> It dictated that recruitment should reflect the ethnic structure of the population of BiH. Implementation of this law has been difficult, but the civil service is certainly becoming more professional as a result of the new provisions. The final notable change introduced in 2002 was a redefinition of the distribution of ethnic representatives among the leading positions in the central government. The new legislation dictates that offices of the Prime Minister, President of Parliament, President of the House of Peoples, President of the Constitutional Court, President of the Supreme Court and Republican Public Prosecutor must be distributed so that at least two of the officials must be representatives of each ethnic constituency.<sup>55</sup>

The changes to the BiH governance structure since 2000 highlight the difficulty of creating a more accurate and efficient system of representation for Bosnia. There is certainly recognition by the international community and the Bosniak constituency that the DPA is in many ways an evolving text, and must be adapted to peacetime conditions and long term goals. But there have also been many instances where the Serb and Croat constituencies have set limitations to this process, demonstrating their commitment to preserving the autonomy that they were granted by the original agreement. It is clear from the process that some mechanisms of collective representation must remain in place for the ethnic constituencies to be

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<sup>54</sup> Bieber 58

<sup>55</sup> Bieber 81

satisfied with their status. But further centralization of certain competencies and alterations to the system of representation must also be made if Bosnia is expected to function as a unitary state. Designing institutions which will strike this delicate balance will be Bosnia's primary challenge in the years to come.

Beyond the impetus of realigning policies with the Constituent Peoples Decision, further reforms in BiH have largely been initiatives introduced by the OHR or motivated by the goal of EU membership. In 2006 the Hays proposal, a second serious attempt at constitutional reform, was made with goal of preparing BiH for the dissolution of the OHR.<sup>56</sup> The amendments would have further strengthened the central government and aimed to eliminate the rotating Presidency and create an executive with one President and two Vice Presidents. Both Bosniak and Croat political parties insisted that the amendments should include the removal of entity voting privileges, which require that any law in the state parliament must have a majority of votes from each entity in order to pass.<sup>57</sup> The representatives of the RS would not sanction this suggestion, and as a result the package of changes came to vote without the clause on voting privileges and failed to pass. The failure of the reforms was not due to a lack of votes from RS representatives, but instead to a lack of votes from the Federation representatives who desired a more comprehensive package.

So while the tendency since the 2000 Constituent Peoples Decision reflects a strengthening of the central government and weakening of the entities, the failure of the 2006 reforms and politics since have illustrated the limitations to such initiatives.

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<sup>56</sup> Jasna Jelasić *Bosnia-Herzegovina*. 2007. Nations in Transit 2007, Freedom House. 7 April 2008. [http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2007final/nit-bosnia-herzegovina-web.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2007final/nit-bosnia-herzegovina-web.pdf)

<sup>57</sup> Jelasić

This series of actions and reactions illustrates the fragile relationship between progressive policy making and defensive nationalist concerns in BiH. It seems that a desire for change exists among some members of all three national groups, but that policy outcomes are often limited by the structural conditions that reinforce nationalist politicking. This dynamic is reinforced by relations with neighboring countries, and tensions often mount with regard to decisions that would alter the existing power dynamic. Unfortunately, there are a number of identifiable changes to the current structure that must be made to ensure a stable and prosperous future for BiH. Instituting these changes will involve maneuvering amongst the interests of the three constituent groups, their neighboring countries, and the international community.

To many the behavior of Bosnia's politicians reflects a seemingly illogical resistance to progressive measures that will be rewarded with EU membership and freedom from the authority of the OHR. But instead of placing the blame on irrational policy making due to nationalism, the behavior of politicians can be better understood through recognizing why there is little incentive to act cooperatively. This predicament of non-cooperative policy making should thus be understood by returning to the prisoner's dilemma presented in Chapter One. Reform proposals that seem to be vital to increasing the stability of the Bosnian government are continuously being thwarted by a clear preference for defection. This DD outcome results from a lack of incentive to cooperate emanating from the aforementioned conditions of federalism that cause it to be a prisoner's dilemma. Due to the lack of effective mechanisms to inflict punishment and an inability to generate security

through iteration, this dilemma remains difficult to resolve. The Serb and Croat constituencies maintain little reason to cooperate with the central government as long as they feel that maintaining a degree of ethnic autonomy is vital to the protection of their interests in the future.

This situation is aggravated by the specific type of federal structure set up at Dayton, due to both the heavy requirements for consensus based decision making and the lack of cross-ethnic accountability of politicians. Because of the asymmetrical institutions which grant group rights to the entities and the degree of territorially organized ethnic homogeneity, politicians are only being held responsible to the interests of their ethnic constituency. As a result it is relatively easy to garner support for issues that can be framed as vital to preserving the interest of a given ethnic constituency. But it is very difficult to broker agreements on matters that are in the long-term interest of the entirety of BiH, and it becomes nearly impossible when the proposed changes require the compromise of the degree of ethnic autonomy that was established by Dayton.

There are no mechanisms in place for the central government (which is comprised of these same ethnically delineated actors) and the international community to combat this effectively. Punishments are obstructed by the potential ability of the RS to secede. With this looming threat it is very hard for the OHR to introduce measures unilaterally or punish those who obstruct the policy making process. As long as political representation is delineated along clear ethnic lines repeating the game will not have a significant impact.



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### ***Chapter Three***

#### ***Case Studies: Reform of the Military and Police***

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The resistance to alterations of the existing government has been further demonstrated in the reforms of the military and police. In these sectors the success of reforms has been largely dependent upon proposals that are not perceived to undermine ethnic autonomy. On the other hand, failure to reach agreements on reforms can be clearly attributed to the perceived insecurities of the ethnic constituencies. While the military reforms and the degree of progress that has been made in the police certainly suggests a capacity for cooperation, the structural conditions in BiH provide enduring obstructions to reaching political consensus on measures that strengthen the central government.

The primary obstruction that remains is the level autonomy that was established with the creation of the RS and by granting authority to the cantonal level governments in the Federation. With these systems of self-governance in place, it is unlikely that the Serbs or Croats will consent to reforms that they perceive as undermining their current level of power. The international presence consequently remains the primary force capable of encouraging cooperation, but because of the structural conditions the process of reform will continue to be an arduous one. Realistically, it can be expected that with the leadership of the international community small concessions can be extracted, but that reforms that threaten the current level of ethnic autonomy will remain highly contentious.

The centralization of the military was completed with the introduction of legislation in 2005, and is often cited as the paramount policy success story in BiH. But although the military reforms seem to suggest that Bosnia's ethnic groups are willing to compromise, the success is not indicative of a general eagerness to behave cooperatively. The military reforms occurred in multiple stages, and each step along the path was ridden with domestic opposition. At each juncture the international community was intimately involved with both reform design and orchestrating negotiations. The military reforms exemplify the complex dynamic behind policy making in post-Dayton Bosnia, and how success in achieving consensus requires significant international oversight. The process largely owes its triumph to the intense international efforts to help Bosnia meet Partnership for Peace (PfP) and NATO requirements. The defense reforms also illustrate the amount of enduring opposition to measures that strengthen the state at the expense of the entities. Most importantly, the eventual success of the military reforms ultimately reflects a perception by the ethnic groups that the changes would have little impact on their ability to maintain their current level of self governance. It is important to distinguish this from an act of cooperation that requires the sacrifice of national autonomy for the improvement of state functioning.

The persistently controversial police reforms, on the other hand, are often cited as the largest remaining obstacle to improving standards of democratic governance. In addition, corruption and lack of oversight of the police are often noted as key problems blocking refugee return, the process of truth and reconciliation, and desires for EU membership. Although the amount of international pressure and

incentive behind the police reforms equals if not surpasses that offered to the military reforms, the police reforms have met a much larger resistance. This is because unlike the military reforms, the proposed changes to the police continue to be perceived by the national groups as a sharp shift away from the entity autonomy embedded at Dayton. The police reforms therefore demonstrate the enduring level of concern with national autonomy, and the persisting degree of fragmentation of the Bosnian government.

The adoption of the military reforms and stagnation of the police illustrate the value of the game theoretic approach presented in Chapter One, and reinforce the shortcomings of assessing Bosnia as situation plagued by irreconcilable hatreds. The hatreds theory would predict that the constituencies lack any cooperative potential, and therefore fails to offer an explanation of the disparity in these two reform experiences. But the success of the military indicates a change in payoff structures and a capacity for cooperation on certain measures. The experience of the police reforms suggests there are still vital areas where the payoffs remain unfavorable for cooperation. Analyzing these two experiences illuminates that the perceived effects that proposed reform measures will have for the protection of group autonomy are critical to understanding how the process of policy making functions in BiH.

### **Defense Reforms**

#### **Defense After Dayton**

Parallel to other efforts made in the Dayton Peace Accords, the mandate for defense under the agreement aimed to establish a functional body that would also satisfy the security demands made by the three constituencies. Bosnia thus emerged out of the war with two armies, one in each entity. The RS maintained the Army of

the RS (VRS). In the Federation, the Croat Army (VF-H) and the Bosniak Army (VF-B) had been united in 1994 as a part of the Washington Agreement that ended hostilities between the Bosniaks and Croats.<sup>58</sup> Movement to actually integrate the two armies did not really begin until 1996. But even then efforts were minimal, and the two armies remained functionally separate until 2005. This left Bosnia with three distinct armies in practice. In addition, both the RS and Croat forces maintained significant levels of contact with their neighboring countries' armed forces, and continued to build as though they might go to war again.<sup>59</sup> Working under these tense circumstances, the defense legislation introduced at Dayton proved to be a temporary solution that mediated the war-time tensions of the three constituencies. But the Dayton defense structure failed to generate a sustainable and effective military, requiring significant reform from 2003 to 2005.

Control of the armed forces was distributed to a number of different political bodies under Dayton. While the original intention of the DPA was for the armed forces to work together, this goal was not achieved in the subsequent years. Because the DPA did not specify whether the military was under entity or state control, it left large ambiguities that allowed the entities to assume significant power. According to the Dayton Constitution, the members of the Presidency were the commanders and chiefs of the military.<sup>60</sup> But jurisdiction over defense matters outlined by Dayton proved confusing in practice due to the lack of a Ministry of Defense at the state level. On the other hand, each entity was given its own Ministry of Defense and

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<sup>58</sup> Dimitris Keridis and Charles Perry Ed. Defense Reform, Modernization, and Military Cooperation in Southeastern Europe. Vol. 3. (Massachusetts: Merrill/Daniels Press, 2004) 262-263

<sup>59</sup> Frederike van de Poll, "The Effect of the International Community's Presence in the Defence Sector of Bosnia and Herzegovina" Unpublished Work (The Netherlands: University of Groningen, 2004) 8

<sup>60</sup>GFAP, Annex 4, Article V.

Ministry of the Interior. The existence of the entity Ministries and the continuation of three separate armies at the entity levels made it unclear how this mandate for Presidential control should be practiced.

Dayton also established the Joint Military Commission (JMC), whose directive was to monitor compliance to military components of the Dayton agreement, such as ceasefire violations.<sup>61</sup> The commission was chaired by the IFOR (Implementation Force) commander or another delegate, and consists of senior military commanders from all three constituencies. The JMC unfortunately proved to be a weak attempt at generating unity and a degree of civilian control.

The other relevant military agency established by Dayton was the Standing Committee on Military Matters (SCMM).<sup>62</sup> The purpose of the SCMM was to coordinate the RS and Federation armies at the state level. Membership in the committee included all three members of the Presidency, the Chairman of the Council of Ministers, the BiH Minister of Foreign Affairs and the Presidents and Vice Presidents of both the RS and the Federation.<sup>63</sup> Non-voting members of committee consist of the Chairman of the Parliamentary Defense and Security Commissions at both the state and entity levels and the military advisors to the Presidency.<sup>64</sup> The body did not become functional until 1999, but its actual competencies remained limited. So while Dayton clearly outlined Presidential oversight and created these two executive bodies, the actual structure of the armed forces resulted in weak faculties for exercising control at the executive level.

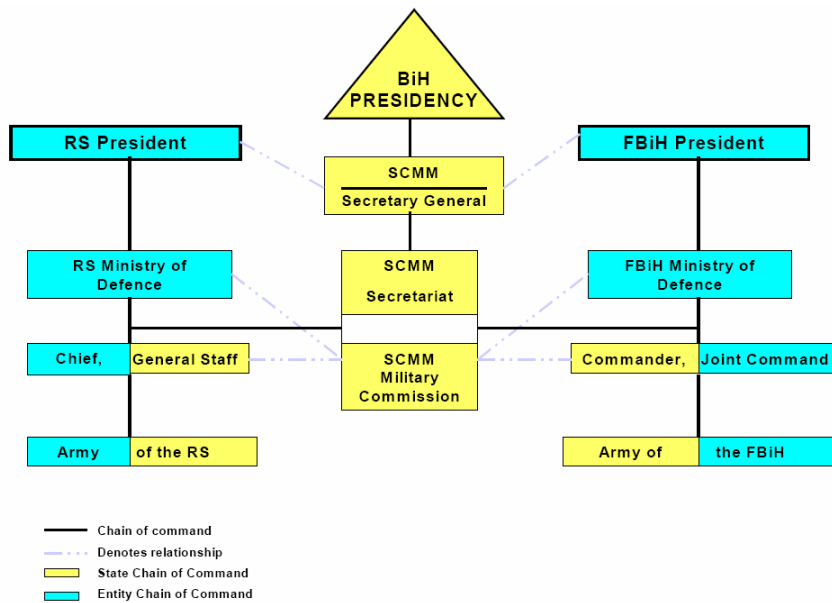
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<sup>61</sup> GFAP, Annex 1a, Article VIII, 2.

<sup>62</sup> GFAP, Annex 4, Article V, 5.

<sup>63</sup> Keridis 259

<sup>64</sup> Keridis 259



The ambiguities of this institutional hierarchy were compounded by the existence of contradictory legislation at the entity levels. The RS Constitution and Law on Defense granted control of the military to the president of the entity.<sup>66</sup> Similarly, the Federation Constitution granted authority of the Bosniak forces to the Bosniak member of the state Presidency and command of the Croat forces to the entity President or Vice President, whichever one happens to be a Croat.<sup>67</sup> So although the Constitution granted command of the military to the Presidency, the combination of separate armies and the institutional Ministry control at the entity level meant that actual command of the military was decentralized.

<sup>65</sup> Defense Reform Commission, “Path to the Partnership for Peace” (Bosnia-Herzegovina, 2003) 54

<sup>66</sup> Keridis 259-260

<sup>67</sup> Keridis 259-260

## **Impetus for Change**

The ambiguities left by Dayton resulted in a diffused military establishment and the lack of a distinct chain of command. Constitutional design at Dayton was limited by the need to appease the groups in conflict and establish a peaceful regime, and once the peace was ensured the structures that had been originally set up proved problematic. The existing arrangement failed to ensure security, and significant problems remained in the form of corruption, smuggling and trafficking. In 2002 a World Bank analysis ranked Bosnia in the nineteenth percentile in the category of Rule of Law, indicating a national perception that there were high crime rates and a weak judiciary.<sup>68</sup> While this low ranking was largely a reflection of high perceived corruption in the police and the judiciary, the situation was worsened by a series of military scandals from 2001 to 2003.

The first incident occurred after the elections in 2000 resulted in a victory in the Federation and central government for the non-national reformist coalition, the Alliance for Change. Ante Jelavic, the Croat representative to the Presidency, was dissatisfied with the change in election legislation that had allowed for this outcome. In response he orchestrated an illegal referendum for the creation of a Croat entity in March 2001.<sup>69</sup> In accordance with this campaign for autonomy, over seven thousand Bosnian Croat troops temporarily deserted the Federation army. Two months later the troops were allowed to return and a number of high level generals who organized the desertion were fired. This incident clearly signaled the level to which the design

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<sup>68</sup> Ranking based on a 100 point assessment scale. Keridis 240

<sup>69</sup> Keridis 242

of the military structures in the Federation remained preoccupied with preserving the interests of their constituencies.

Two other scandals related to the military occurred in the early stages of the reform process. In 2002 it was discovered that the ORAO weapons factory located in the RS had violated the UN embargo on the export of military equipment to Iraq.<sup>70</sup> It was this episode that brought substantial international attention to the disorder of the Bosnian military, and led the PIC to remark that there were “serious deficiencies” in the command structure of the Bosnian military.<sup>71</sup> During the investigation of this incident it was also uncovered that the RS intelligence services were spying on RS and Federation officials.<sup>72</sup> In the aftermath of the ORAO scandal the Serb member of the Presidency, Mirko Saravic, resigned in the beginning of 2003. These experiences highlighted the problems of corruption and lack of transparency that characterized the Bosnian defense system, and both incidents contributed to a sense of urgency surrounding the introduction and implementation of reforms.

The defense system set up by Dayton was also proving to be financially unstable, contributing to the unsustainable nature of state expenditures generated by the existence of so many parallel governance structures. From 1996 until 2004 Bosnia was spending over 5% of GDP on defense; a figure which the OHR judged was bankrupting the Bosnian state.<sup>73</sup> Bosnia remained heavily dependent on foreign

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<sup>70</sup> Poll 10

<sup>71</sup> “Ensuring Bosnia’s Future: A New International Engagement Strategy” International Crisis Group 15 February 2007 < <http://www.crisisgroup.org/home/index.cfm?id=1242&l=1> (20)

<sup>72</sup> “Ensuring Bosnia’s Future” 21

<sup>73</sup> Marina Caparini. “Ch. 7: Security Sector Reform and Post-Conflict Stabilisation: The Case of the Western Balkans.” SIPRI Yearbook 2004. ><http://se2.dcaf.ch/serviceengine/FileContent?serviceID=DCAF&fileid=30C0EA9C-6E62-7175-10C8-EF241F118129&lng=en> (10)



assistance for funding of the military, and the high levels of spending were largely due to a failure to reduce troop numbers to the recommended levels. It was apparent to all that this amount of military expenditures was too high for peacetime. In addition, mechanisms for civilian and parliamentary oversight of military spending did not exist. This lack of checks on military finances was largely the product of a diffusion of responsibility across the different levels of the state and entity level governments.

Bosnia's military also failed to meet the requirements necessary for membership in the relevant international bodies. In 2001 Bosnia's Presidency announced a desire to join the Partnership for Peace (PfP), a subsidiary of NATO created with aim of preparing countries of the former Soviet Bloc and other European countries for full NATO membership. NATO responded by identifying areas in the Bosnian defense establishment that needed reform before membership in the PfP would be possible. Included in the list was the need for new legislation, the establishment of a clear authority at the state level, increased transparency in the process of defense planning and budgeting, introduction of a common military doctrine and standards, and the development of democratic control and parliamentary oversight of the armed forces.<sup>74</sup> From these problem areas which NATO identified, it was evident that Bosnia was going to need a significant restructuring of the defense system if ambitions for NATO membership were to become a reality. Initially the Bosnian leadership held hopes that the PfP membership process would be quick, but passing and implementing the required changes proved more difficult than expected.

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<sup>74</sup> Jos Boonstra Ed. "Defense Reform Initiative for Bosnia/Herzegovina/ Serbia and Montenegro, The DRINA Project." The Centre for European Security Studies. 28 October 2005 46

The initial Bosnian application to the PfP was rejected at the NATO Summit in Istanbul in 2004 based on an assessment that reform was occurring too slowly. Bosnia was not accepted by the PfP until 2006.

The initial failure to gain membership in the PfP was the result of incomplete reforms which began with the creation of the Defense Reform Commission (DRC) by the OHR in 2003. The reforms of the Bosnian military took their shape as the result of a combination of international pressure and interests of domestic groups. The primary changes that have taken place in the Bosnian military since Dayton have been aimed at transforming three organizations designed to ensure the protection of their constituencies from the others to a unitary body aimed at preserving the sovereign status of the new nation. This goal found its largest opposition with the members of the Serb and Croat constituencies who viewed this set of reforms as undermining their autonomy as it was granted under Dayton. The reform process thus highlights the fundamental tension of governance in Bosnia since Dayton; how can the Dayton institutions which were designed to appease be reformed to generate a unitary and stable democratic government?

There was an apparent need to strengthen the federal government's control over the military, but this process was limited by the power that Dayton gave the three ethnicities to protect their autonomy. Examining the series of military reforms provides three useful lessons. First, it becomes apparent how arduous the process of reforming and actually implementing reforms of the Bosnian constitution is. The slowness of reform was largely a product of resistance and unwillingness to compromise from all three of the constituent groups. Second, the experience

highlights how instrumental international pressure was in the reform process which is touted as Bosnia's largest policy success to date. This involvement of the international community provokes the question of whether there will be Bosnian ownership of a system that has been structured with the heavy hand of outsiders. Most importantly, it highlights that whether proposed changes are perceived as a threat to the overall autonomy of the national groups remains the limiting factor in building political consensus regarding reforms of the Dayton constitution.

### **2003 Defense Reforms**

Following the NATO recommendations offered in 2001, the OHR and the SCMM began to introduce initiatives to commence the process of reforming Bosnia's military. In January 2003 the SCMM presented a proposal to the Peace Implementation Council (PIC) that outlined an agenda intended to prepare Bosnia for PfP and NATO membership. In April the HR Paddy Ashdown unilaterally abolished the RS's Supreme Defense Council in accordance with a Dayton directive that prohibited the existence of separate military command structures.<sup>75</sup> In May Ashdown established the Defense Reform Commission (DRC), a committee mandated to identify obstacles to creating adequate civilian oversight, unify state level control and ultimately to design the route to PfP membership. The DRC recommended legislative changes in the form of a draft of a new Defense Law.

The new law foresaw the creation of a single defense system through the introduction of unified civilian control of command, and the creation of a state level Ministry of Defense.<sup>76</sup> The law also more clearly assigned control of the armed forces

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<sup>75</sup> Caparini 10

<sup>76</sup> Keridis 243

to the Presidency. But under the law the entities would maintain their Ministries of Defense, which would then fall in the chain of command under the new Ministry at the state level. So in effect the new law would centralize command of the army, but the entities would maintain administrative control of their respective forces.

The proposed law was met with intense debates at both the entity and state levels. Many politicians in the RS were opposed to the law based on concerns that the changes would undermine the status of the RS army, and erode the degree of autonomy granted to the RS by Dayton.<sup>77</sup> On the other hand the SDA, a Bosniak national party, opposed the law based on complaints that it was not comprehensive enough. The SDA expressed concerns that the proposed legislation would fail to produce an integrated multi-ethnic army, and that the law would leave too much power at the entity level to achieve its purported goals.<sup>78</sup> The Croat HDZ took the public stance that the bill was incomplete and did not sufficiently define parliamentary control.<sup>79</sup> But it is also possible that their opposition was really based on concerns that the bill would place limitations on their independent influence over the Croat military forces in the Federation.<sup>80</sup> Despite the initially firm opposition, after months of tense debates and a significant amount of pressure placed on the parties by the international community, the Defense Law was passed by the NA in December 2003.<sup>81</sup>

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<sup>77</sup> Keridis 243

<sup>78</sup> Keridis 244

<sup>79</sup> "Main Bosnian Croat Party Slams Draft Reform of Intelligence Sector" [BBC Monitoring Europe](#) 14 October 2003

>[http://www.lexisnexis.com/us/lnacademic/results/docview/docview.do?risb=21\\_T3271376912&format=GNBFI&sort=RELEVANCE&startDocNo=1&resultsUrlKey=29\\_T3271376921&cisb=22\\_T3271376920&treeMax=true&treeWidth=0&csi=10962&docNo=1](http://www.lexisnexis.com/us/lnacademic/results/docview/docview.do?risb=21_T3271376912&format=GNBFI&sort=RELEVANCE&startDocNo=1&resultsUrlKey=29_T3271376921&cisb=22_T3271376920&treeMax=true&treeWidth=0&csi=10962&docNo=1)

<sup>80</sup> "Main Bosnian Croat Party Slams Draft Reform of Intelligence Sector

<sup>81</sup> Keridis 243

Implementation of the reforms quickly proved difficult. While integration at the highest levels moved forward, the new legislation allowed the different army corps to remain functionally segregated. The reality of conditions within the service was illustrated as Bosnian Serb recruits continued to boo the national anthem and pledge allegiance to the RS rather than Bosnia.<sup>82</sup> As previously noted, NATO deemed the reforms insufficient for PfP membership at the Istanbul Conference in June 2004.<sup>83</sup> In response to this failure to attain membership, the OHR issued a new set of mandates for the DRC. The first project was to establish a Security Committee in the National Assembly. This body was tasked with being the primary body at the state level responsible for oversight of the Ministry of Defense and Ministry of Security of BiH, creating a mechanism in the NA for checking the relatively new executive bodies.<sup>84</sup> The Joint Committee on Defense and Security Policy was thus created. Membership consists of six representatives from each house of the BiH Parliamentary Assembly.<sup>85</sup> The HR also requested that the DRC create a Book of Rules for the new state level Ministry of Defense and initiate a plan for restructuring the entities' Ministries of Defense.<sup>86</sup> These attempts at reform reflected the critiques from NATO that the BiH military remained too decentralized. But the immediate changes introduced by the HR were indicative of a much larger problem that needed to be solved. A more comprehensive package of reforms to address these insufficiencies

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<sup>82</sup> "Fury as Serbs boo Bosnian anthem" BBC News 18 April 2005

><http://news.bbc.co.uk/1/hi/world/europe/4457631.stm>

<sup>83</sup> At the conference NATO also made the decision to terminate their peacekeeping mission and transfer authority over to a new body led by the EU. The SFOR mission officially ended and was replaced by an EU initiative in December. Keridis 261.

<sup>84</sup> Christian Haupt. "Experiences of the OSCE Mission to Bosnia and Herzegovina (BiH) in Developing Parliamentary Oversight of the BiH Security Sector." ASI, Assembly Support Initiative Newsletter. No. 23, July 2006.

<sup>85</sup> Haupt

<sup>86</sup> Caparini 11

was introduced in 2005, in what would constitute the final phase of the defense reforms.

### **2005 Defense Reforms**

The second package of military reforms which were introduced in 2005 was finally able to create a single chain of command in the Bosnian military. Based on the failure to attain PfP membership and evidence that the 2003 reforms were incomplete, the HR had the DRC draft a new proposal. The 2005 DRC Report cited two purposes for their suggested package of reforms. The first aim was to create a single defense establishment and control of the military forces. Following closely from the first, the second objective was reform the military in a way that it would be better endowed to meet the defense and security needs of the Bosnian state. Included in the report was the sentiment that the proposed changes reflected a logical extension of the reforms introduced in 2003. The Serbs, however, did not view the new package this way.<sup>87</sup>

The proposal made in 2005 truly designed a single defense system commanded at the federal level. Most notably, while the 2003 law and subsequent changes made by HR had introduced new mechanisms for oversight at the federal level, the 2005 law took the next step by abolishing the parallel mechanisms of entity level control. The law also removed elements of collective representation that had been ensured in the 2003 law. While the previous legislation had mandated an equal distribution of high level positions across the constituent peoples, the 2005 reform proposed to end this practice.<sup>88</sup> The recommendation cited difficulties with the politicization of appointments, and aimed to isolate military leadership from state

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<sup>87</sup> Defense Reform Commission, “Defense Reform Commission 2005 Report: A Single Military Force for the 21<sup>st</sup> Century” (Bosnia and Herzegovina, September 2005)

<sup>88</sup> Defense Reform Commission, “2005 Report”

level politics. The first notable change was a series of provisions that would provide for the integration of infantry structures and the transformation of the Armed Forces into a single military. This amendment was accompanied by a provision that each ethnic constituency would maintain one brigade responsible for preservation of military heritage and identity. The second important revision in the 2003 law was the elimination of the entity Ministries of Defense. The previous legislation had provided the state with command control of the army, but had rested continued administrative control in the hands of the entity level government. This changed in the 2005 legislation, which would eliminate the existence of entity level structures and rest complete control at the state level.<sup>89</sup>

While the DRC presented these new changes as a logical continuation of efforts made in 2003, the Serbs responded that these changes to were an affront to their rights as granted by Dayton. The 2005 reforms faced opposition similar to those raised against the 2003 law. The President of the RS agreed that there was a consensus that the armed forces need to be professionalized, but dismissed the abolition of the RS Defense Ministry as “senseless”.<sup>90</sup> The NATO commander in Sarajevo, Stephen Schook, cited the Serb politicians as challenging the constitutionally dictated role of the Presidency to act as commanders of the Armed Forces.<sup>91</sup> This initial resistance was followed by visits by members of the DRC to the RSNA, and a series of discussions regarding the details of the legislation. The

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<sup>89</sup> Defense Reform Commission, “2005 Report” Defense Law, Article 2, 2

<sup>90</sup> “Weekly Roundup for Bosnia-Herzegovina 18-24- Mar 05.” BBC Monitoring Europe. 25 March 2005.

[http://www.lexisnexis.com/us/lnacademic/results/docview/docview.do?risb=21\\_T3271410445&format=GNBFI&sort=RELEVANCE&startDocNo=1&resultsUrlKey=29\\_T3271410449&cisb=22\\_T3271410448&treeMax=true&treeWidth=0&csi=10962&docNo=3](http://www.lexisnexis.com/us/lnacademic/results/docview/docview.do?risb=21_T3271410445&format=GNBFI&sort=RELEVANCE&startDocNo=1&resultsUrlKey=29_T3271410449&cisb=22_T3271410448&treeMax=true&treeWidth=0&csi=10962&docNo=3)

<sup>91</sup> “Weekly Roundup”

Defense Law was submitted to the National Assembly of BiH in September 2005, and after some minor changes it was passed in October. Approval of the law was nearly unanimous, with only one vote in each House opposing it.

The ability to reach this degree of consensus on a matter that involved such a significant redistribution of power to the central government appears to be a substantial achievement for the Bosnian government, and in one important way it was. The military reforms suggest that the ethnic constituencies in Bosnia no longer value military force as vital to preserving their national interests. The adoption of the military reforms can largely be attributed to the fact that the changes would not represent a substantial challenge to the level of national self-governance being practiced in the entities. The BiH military was effectively disarmed by the DPA, with the UN Peacekeeping Mission possessing ultimate control over the mandates of the military to act domestically. With the guidance of the UN Mission, the military establishment in Bosnia had been primarily structured towards building a force that could fulfill its role as a UN member since peace was reached in 1996. Since the desertion of the Croat forces in 2001, few moves had been made by the factions in the military to act as independent forces within BiH. The attention of international officials to the importance of the defense reforms was therefore a sufficient force for change because the military did not represent a significant tool of preserving the level of autonomy granted by Dayton.

Returning to the payoff structure introduced in Chapter One, the military reforms are an example of how cooperation can be reached in certain mini-games, but still be resisted at the macro level. The important lesson from the military reforms is



that cooperation can be achieved on issues that aren't perceived as a direct threat to protecting ethnic autonomy. This suggests that the actors in BiH are not behaving purely out of malice, and there is a foundation upon which compromises can be achieved. Another lesson from the military reforms is that international influence was necessary to move the process forward. The defense reforms therefore exemplify the obstacles posed by institutionally recognizing collective identities at Dayton, but also suggest potential for reforming certain necessary elements of the DPA. Success in the case of the military, however, should not be taken as sign that international urgings are sufficient stimuli for cooperative policy making in all sectors. This point will be reinforced by looking at less expedient reform processes like the case of the police. What the success of the defense reforms ultimately represents is that the ethnic constituencies in BiH did not assess the proposed reforms as an unacceptable threat to national autonomy.

### **Police Reforms**

Since the beginning of the international community's involvement in Bosnia, the police have been recognized as a target structural area requiring reorganization. Civil conflicts often entail a substantial amount of police participation in orchestrating the violence. As a result the international community has come to consider police reform as a necessary pre-requisite for establishing a stable environment after conflict. In addition, a transparent and accountable police force is viewed as a critical component of ensuring the protection of democratic freedoms and the rule of law. A neutral police force with allegiance to the state--rather than to a particular ethnic group--has particularly been cited as vital to encouraging the return

of refugees to cleansed areas. It is clear that while there is certainly space for the protection of collective rights in many of Bosnia's institutions, the police force is not one of them. Reform of the police in Bosnia has consequently been focused on purging war time offenders and ethnic reintegration. This agenda has been treated as a critical part of reform efforts since the early stages of the intervention.

The initiatives to reform Bosnia's policing institutions have proved far more controversial than the reforms of the military. Unlike the case of the military, the police forces continue to be viewed by the ethnic constituencies as a key mechanism for protecting the level of regional autonomy granted under Dayton. While both Dayton and the UN forces have mandated since 1996 that Bosnia needs an integrated police with command resting in a state level authority, over a decade later the reform process remains incomplete. Integration of the police force has been through many stages from the initial strategies devised by the UN and the International Police Task Force (IPTF) to a more aggressive approach taken by OHR, beginning with the efforts of Paddy Ashdown in 2004.

International persistence, however, has yet to provide the necessary momentum required to produce the necessary changes in the police forces. The recent appointment of the current HR Miroslav Lajcak has resulted in a renewed effort at reforming the police, but these attempts have been met with sustained political opposition. At present the police reforms are commonly cited as the single most important policy obstacle to EU integration. But Lajcak's attempt to advance the reforms in the end of 2007 provoked what the media labeled as one of the "worst

political crises Bosnia has faced since the end of the war in 1995”.<sup>92</sup> Tensions over the 2007 reforms climaxed when the Bosnian Serb Prime Minister Nikola Spiric tendered his resignation in November, citing the control of Bosnia by foreigners as the reason for his departure.<sup>93</sup> The political environment intensified as a number of high-level Bosnian Serb politicians dangled the threat of secession, and made it clear that the preservation of the RS ranked as a higher priority to them than EU membership.

The highly politicized nature of the police reforms is largely a product of the influence the police has and will continue to have with regard to the protection of collective identity. The international community has made it clear that the duty of the police forces is to provide a non-discriminatory mechanism for enforcing the law. This ambition remains hindered by structural obstacles, and achieving an acceptable degree of security provision in BiH requires further reform of the police. Further examination of the process of reforms of the police structure will serve to illuminate the precise nature of the conflict between preserving the protection of collective rights and ensuring the protection of all of the populations in BiH.

### **Police After Dayton**

Among the distribution of local competencies to the entity government, the Dayton Peace Accords designated the control of the police forces to the entity level.<sup>94</sup>

Although police forces are typically a regionalized function, the particular

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<sup>92</sup> “Bosnia Faces Turmoil” Balkan Investigative Reporting Network 5 November 2007  
>[http://www.birn.eu.com/en/110/10/5478/http://news.bbc.co.uk/1/hi/world/europe/country\\_profiles/1066886.stm](http://www.birn.eu.com/en/110/10/5478/http://news.bbc.co.uk/1/hi/world/europe/country_profiles/1066886.stm)

<sup>93</sup> “Bosnia PM Resigns” Balkan Investigative Reporting Network 1 November 2007  
><http://www.birn.eu.com/en/110/15/5471/>

<sup>94</sup> GFAP, Annex 4, Article III, 2

organization of the police in BiH has proved problematic due to demographic distributions and the legacy of war. While the RS has one centralized body with regional subdivisions, the Federation maintained eleven independent police forces all organized according to different regulations.<sup>95</sup> Further division exists at the municipal level within some of the multi-ethnic cantons in the Federation. Mostar-- a unique example because of its highly politicized past and ethnically mixed composition--continued to have six separate police forces until 2002. The boundaries of the police districts in both the Federation and the RS were delineated according to the front lines during the war, resulting in a fragmentation and lack of cooperation between the different forces. The structure caused two identifiable problems. The set up protected the existing criminal networks, shielding war criminals and profiteers and making organized crime one of the biggest threats to the future of peace. Second, the arrangement discouraged refugee return to areas which continued to be perceived as unsafe for those who had been forced out. Compounding these two problems, the police forces were also significantly overstaffed largely due to the existence of so many parallel command structures.

Because the police represented an instrumental part of the criminal networks that had been established in Bosnia during the war, the Dayton Agreement also established the IPTF, which was a component of the UN Mission to Bosnia (UNMBIH) responsible for purging members of the force involved in war crimes and oversight of the reduction of force size.<sup>96</sup> In December of 1996, the UN Security

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<sup>95</sup> Thomas Muehlmann "Police Restructuring in Bosnia-Herzegovina: Problems of Internationally-Led Security Sector Reform," in *Inside the Bosnian Crisis: Documents and Analysis*, Journal of Intervention and Statebuilding Volume 1, Special Supplement, 1 December 2007 38.

<sup>96</sup> GFAP, Annex 11

Council passed Resolution 1088, which granted the IPTF the power to investigate human rights abuses and regulate the cooperation of BiH officials with the UNMBIH.<sup>97</sup> The leaders of the Federation also signed the Petersburg Agreement in April 1996, in which they agreed to increase the share of minority police officers.<sup>98</sup> It is this agreement that first introduced expectations that the police must not only be purged of corruption, but that the state must also take action to actively recreate multi-ethnic forces. The UN subsequently established a system of quotas for police officers representing functional minorities, with a target of at least 28% representation of each group in the Federation by 2002.<sup>99</sup> The RS ratified a parallel agreement in 1998 and a similar quota system was set up.<sup>100</sup> The IPTF and UNMBIH set up a number of programs aimed at creating inter-ethnic cooperation. These included putting members of different ethnic constituencies through training courses together.

The Dayton Agreement and Petersburg Agreement thus established distinct entity control of the police forces, but with the condition that certain problem areas be eradicated. Initial phases of police reform consisted of attempts to remove corrupt officials, reduce force size, and counter the impact of ethnic cleansing through reintegration using ethnic quotas. Only minor successes were made in the first six years. Although the 2004 EC Functional Review suggested that levels of crime were lower in BiH than in many EU member countries, there was evidence that in many areas subtle levels of violence against returnees remained widespread.<sup>101</sup> In addition,

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<sup>97</sup> Gemma Collantes Celador, "The European Union Police Mission: The Beginning of a New Future in Bosnia-Herzegovina?" Working Paper (Barcelona: Institute Barcelona d'Estudis Internacionals, 2007) 64.

<sup>98</sup> Bieber 75

<sup>99</sup> Bieber 75

<sup>100</sup> Bieber 75

<sup>101</sup> Celador 60

the system of quotas had proved incredibly problematic. At the end of the IPTF program Brcko, the SBS, and the court police were satisfactorily integrated, but the majority of entity and cantonal forces failed to meet their quotas. By 2002 the quotas had only been met at about a fifty percent rate, in many cases leaving vacancies.<sup>102</sup> The basic premise of the quota system had also become an issue of debate based on questions of whether it undermined the professionalism of the force and generated more tensions than actual cooperation.

### **Impetus for Change**

Like with the military, momentum for continued efforts at police reform came primarily from the international officials responsible for monitoring the implementation of Dayton. While it remained unclear that the international agenda was a viable solution for Bosnia, domestic indicators pointed to the continued need for changes in police organization. There were hopes from the international community that a reform of the police that further centralized control would protect the status of the Bosnian state by making it more difficult for the RS to secede. This, however, would require a constitutional amendment changing jurisdiction over the police forces from the entity to the federal level. Further reform of the police also hoped to reduce the high costs of sustaining so many parallel structures and make the institutions sustainable in the long run.<sup>103</sup>

As was previously mentioned, refugee return remained slow in the years after Dayton was signed. Although the United Nations High Commissioner reported that by 2004 approximately one million of the two million people displaced during the

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<sup>102</sup> Bieber 75

<sup>103</sup> Muehlmann 39

war had returned to their homes, nearly half of these returnees now inhabit regions where they constitute an ethnic minority.<sup>104</sup> Rates of return slowed from 2002 to 2003, as a result of both the economic impoverishment of the former conflict zones and a perception that cleansed areas remained unsafe. This perception of insecurity was aggravated by a sense that the purging of war criminals was incomplete and that the police forces still represented homogenous tools of an ethnically based political agenda. A NATO survey conducted in early 2003 cited that only 19% of those surveyed had high levels of confidence in the BiH police.<sup>105</sup> Presumably the majority of these respondents were members of functional majorities, and therefore shared an ethnic identity with the police responsible for their immediate security. Considering how low rates of return were in 2003, however, a 19% rate suggests that even many living as functional majorities maintained a low sense of security. It consequently became apparent that ensuring the security of all Bosnian citizens across the regions would require further reform of the police.

The magnitude of the obstruction to refugee return had been illustrated in a number of incidents in the years since Dayton. In September 2002 the Serb Police Chief of Sarajevo was shot to death outside of his home, representing a significant breakdown in the rule of law.<sup>106</sup> Another example, in May 2003 the Bosniak SDA reported incidents of abuse of Muslim returnees in the municipality of Zvornik located in the RS.<sup>107</sup> The report included allegations that an organized group of Serb

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<sup>104</sup>“Human Rights Overview, Bosnia Herzegovina: Essential Background,” Human Rights Watch 2005 ><http://hrw.org/english/docs/2005/01/13/bosher9856.htm>

<sup>105</sup> Celador 65

<sup>106</sup> “Bosnian Serb Police Chief Gunned Down,” BBC News 24 September 2002, <http://news.bbc.co.uk/2/hi/europe/2278532.stm>

<sup>107</sup> “Bosnian Muslim Party Calls for more Muslims in Serb Republic Police.” BBC Monitoring Europe, 14 May 2003,

extremists had been taunting the returnees, swearing at them and singing Chetnik songs.<sup>108</sup> In response the SDA made demands for professionalism of the police forces and the appointment of more Muslims to high level positions in the police. In addition to these obstructions to refugee safety, Bosnia's black market has continued to flourish in the years since the end of the war. Incidents of arms dealing and human trafficking have persistently posed problems to ensuring the rule of law. And while these problems are certainly present in other post-conflict environments, the lack of oversight in Bosnia's policing structure has made them particularly difficult to combat.

There was also a sense of urgency surrounding the police reforms because of the obstacle that corruption in the police force placed on cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY). Originally full cooperation with the ICTY, including the apprehension of war criminals Ratko Mladic and Radovan Karadzic, was a rigid criterion for beginning negotiations for EU membership.<sup>109</sup> Obstruction of the investigation by the local police was identified as one of the key obstacles to arresting the two individuals, and this provoked a sustained focus on reform of the police by the international community. These difficulties with apprehending those indicted by the ICTY aggravated the perception

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>[http://www.lexisnexis.com/us/lnacademic/results/docview/docview.do?risb=21\\_T3462416134&format=GNBFI&sort=RELEVANCE&startDocNo=1&resultsUrlKey=29\\_T3462416143&cisb=22\\_T3462416142&treeMax=true&treeWidth=0&csi=10962&docNo=4](http://www.lexisnexis.com/us/lnacademic/results/docview/docview.do?risb=21_T3462416134&format=GNBFI&sort=RELEVANCE&startDocNo=1&resultsUrlKey=29_T3462416143&cisb=22_T3462416142&treeMax=true&treeWidth=0&csi=10962&docNo=4)

<sup>108</sup> The Chetniks were a Serb paramilitary that first emerged during the two World Wars. The Chetniks were famous for their long beards. The movement experienced a revival during the war in the 1990's as many of the Serb combatants fashioned their long beards after the style of the Chetniks and sang traditional Chetnik songs.

<sup>109</sup> This standard has since been dropped by the EU due to the recognition that it was not just to punish BiH for the persistence of the criminal networks that were protecting the war criminals. This shift in the EU's expectations has come from clear political efforts in both Bosnia and Serbia to aid in the capture of the two indicted individuals. But this change has been a recent one, and evidence suggests that despite the political efforts a dense network of protection remains around the two men.



that high levels of corruption in the police of BiH remained a key problem for building a stable and democratic system of governance. Sentiments were that the police needed further purging of corrupt officials, introduction of structures for oversight, and a uniformity of regulations and centralization of command.

In early 2003 the EU Police Mission (EUPM) took over for the IPTF, and initiated a process of evaluation and assessment of the police. Previous efforts with the police had primarily consisted of professional and technical training aimed at improving policing skills and physical reconstruction of police facilities. The original system of ethnic quotas failed, and the forces remained functionally segregated. After the initial assessment the EC announced the need for further reform of the police in BiH. The November 2003 EC Feasibility Study identified weaknesses in the policing system, but provided little foundation for designing the reforms. Ashdown proposed a very ambitious model which would involve a complete restructuring of the police and require amendments to both the state level and entity level constitutions.<sup>110</sup> The PIC supported his proposal, and in the first half of 2004 the EC funded a six month review of policing in Bosnia to better identify the specific problems. The EC report was published in June 2004 and outlined a strategy for bringing Bosnian policing up to European standards.<sup>111</sup>

These proposed reforms have generated what is perhaps the most intense political disagreement in Bosnia to date. The recommended police reforms have been a source of continued tension because their design challenges the distribution of

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<sup>110</sup> Muelmann 39-40

<sup>111</sup> Gerald Knaus and Kristof Bender, "The Worst in Class: How the International Protectorate Hurts the European Future of Bosnia-Herzegovina," in Inside the Bosnian Crisis: Documents and Analysis, Journal of Intervention and Statebuilding, Volume 1, 1 December 2007 27.

power created by Dayton. The position that has been advocated by the international community and particularly the HR is that Bosnia needs centralized control of the police resting at the state level. While the Bosniaks have generally supported this tendency towards strengthening the state, both the Serbs and the Croats have expressed opposition to these measures. What follows is an outline of the proposed reforms and the political responses to them. The political dialogue surrounding the reform of the police in Bosnia represents a poignant counter-factual to the noted successes of achieving consensus regarding the military reforms. The experience of the police reforms illustrate that there remain substantial limitations on the willingness of the ethnic constituencies to compromise their autonomy to a federal government.

### **Police Reforms**

The 2004 EC report outlined a number of options for reorganization of the Bosnian police forces.<sup>112</sup> The study stated that the existence of fifteen different law enforcement agencies<sup>113</sup> was not an inherent weakness, as most country's police forces involve a degree of regional management. But the report also recommended three different models for BiH, all of which required a larger degree of central control. The first option entailed the creation of a national police, with the highest level of command resting at the state level. The second choice recommended the maintenance of the two entity forces, a force in the Brcko district, the State Investigation and Protection Agency (SIPA) and State Border Service (SBS), but elimination of the separate cantonal forces. The third and final approach suggested

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<sup>112</sup> Knaus and Bender 27.

<sup>113</sup> This number includes the 12 original forces as well as the State Investigation and Protection Agency, the State Border Service and the force of the Brcko district.

organization of the police based at the cantonal level in the Federation and maintaining the existing police regions in the RS. The report did not support any of the models as superior to the others, but instead outlined ways that all three could potentially fulfill EU standards for policing.

Shortly after the report was published Paddy Ashdown used his powers as HR to establish the Police Restructuring Commission (PRC).<sup>114</sup> The PRC was tasked with the creation of a structure consistent with the ethnic composition of BiH, the reduction of numbers in those serving in the police force, and the protection of police officers from political influence. The PRC was predominantly led by foreigners, but membership was extended to representatives of all of the relevant political bodies. The chair of the Commission was Wilfried Martens, former Prime Minister of Belgium, and other members included the head of the EUPM and a retired senior police officer from the UK.<sup>115</sup> The Committee consisted of twelve members from the state and entity levels of BiH's political sphere, including both entities' ministers of security and the interior, two cantonal ministers of the interior, a representative of the mayoral level and a representative from the office of the Chairman of the Council of Ministers.<sup>116</sup> There were also members representing the Bosnian chief prosecutor, SIPA, SBS, Interpol, the entities' directors of the police and a cantonal police commissioner. The PRC did not operate by voting, but instead required the chairmen to lead discussion with the aim of reaching decisions based on consensus.<sup>117</sup> This

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<sup>114</sup> Knaus and Bender 28

<sup>115</sup> Muelmann 38

<sup>116</sup> Muelmann 42

<sup>117</sup> "Final Report on the Work of the Police Restructuring Committee of Bosnia and Herzegovina," Police Restructuring Committee (Bosnia-Herzegovina, 2004)

><http://www.ohr.int/ohr-dept/presso/pressr/doc/final-prc-report-7feb05.pdf> 3.

composition of the committee aimed to generate domestic ownership of a process led by members of the international community.

The PRC held a series of meetings from July to December of 2004, but struggled to come to an agreement on how to proceed with the police reforms. In their discussions the Committee identified three criteria that must be met in order to fulfill EC standards of sustainable progress.<sup>118</sup> The first principle required the transfer of exclusive constitutional command of the police to the federal level. The second dictated that organization of local police forces should be designed around functional criteria. This would require the redrawing of police districts with some crossing the Inter-Entity Boundary Line (IEBL). The final criterion was the elimination of political influence on police work. With these goals in mind the EUPM presented a proposal for restructuring the police into five regions, all of which crossed the IEBL.<sup>119</sup>

The discussions that ensued highlighted the substantial tensions that remain between nationalisms and ambitions for EU membership. The five region recommendation was deemed unacceptable by the Serb representatives to the committee, and to a lesser degree by the Croat representatives. The outcome was a heated eighteen month debate. The Serbs firmly opposed the proposed changes. The plan recommended the termination of the RS Ministry of the Interior, a measure that all of Serb political parties side universally rejected.<sup>120</sup> RS Minister of the Interior Darko Matijasevic led a walk-out and temporary boycott of the sessions at one

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<sup>118</sup> “Final Report” 43

<sup>119</sup> Muehlmann 43

<sup>120</sup> Muehlmann 43

point.<sup>121</sup> The Serbs continued to insist that the mandate of the PRC was not to go beyond the constitutional framework provided by Dayton, although this did not seem to be the intention of the Committee's creator Paddy Ashdown.

The Croats on the committee generally hid behind the more vocal Serb opposition in hopes that their resistance would prevent the final agreement from undermining their autonomy within the Federation. The Bosniaks were the only domestic constituency that supported the proposed reforms, viewing them as advantageous because they would ensure their protection throughout the territory of BiH. As the discussions progressed, nationalistic political agendas outweighed arguments for institutional pragmatism. The dialogue made it clear that both the Serbs and Croats were not in favor of movement away from Dayton and toward the further centralization of Bosnia's government.

Before the PRC's final meeting on December 12<sup>th</sup> the OHR persuaded a number of Serb police experts to announce their support of the proposal based on its pragmatic merits. This attempt by the international community to split the Serb vote failed, and the Serbs on the committee refused to sanction any of the proposed measures. With this inability to reach a consensus, the PRC published an inconclusive Final Report in December 2004. In the opening statement of the report, Chairman Martens notes the difficulty of reaching a compromise due to the political obstructions of politicians from the RS.<sup>122</sup> Due to the inability to broker an agreement the Report proposed three different models, none of which had gained sufficient support among the members of the Committee. This conclusion to the six month

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<sup>121</sup> Muehlmann 43

<sup>122</sup> Muehlmann 46

attempt to achieve consensus seemed to indicate that the original ambitions outlined by the international community overestimated the willingness of the constituent groups to compromise the level of autonomy granted by the federal system established by Dayton.

In response to the failure of the Committee to reach an agreement, Paddy Ashdown reviewed the report and unilaterally chose a path forward. Ashdown selected the 9 + 1 regions model outlined by the PRC Report with the hope that this program would have the best chance of being accepted by all of the groups. The selected model recommended the creation of nine police regions, most of which crossed the IEBL, and an additional district in the Sarajevo Metropolitan Area. The Serbs rejected the proposal, alleging that only the Croat and Bosniak positions were represented in the PRC Final Report. The Bosniaks were disappointed that the five region model had not been selected. Initially the Croats expressed some support of the recommendation, but the political leadership soon came under pressure from their constituents because of the likelihood that the proposed model would weaken their control of predominantly Croat cantons.<sup>123</sup>

Ashdown began the next phase of negotiations in April 2005, but met the same resistance found in the talks of the PRC. The International Community granted the RS assurance that some level of entity influence over the police would be maintained. In May 2005, however, the vote on the proposed legislation in the RSNA demonstrated that the Serbs would only be willing to support a policy that worked within the structure established by the Dayton Constitution, and that did not require districts that cross the IEBL. Discussion of the reforms resumed in September, but

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<sup>123</sup> Muehlmann 46

the Serbs refused to weaken their stance. Ashdown then decided to punish the Serbs for their unwillingness to compromise. He began by targeting funds of the Serb SDS, and ordered that all of the party's financial transactions must be run through the central bank. In an attempt to tarnish the name of the party he also requested that they repay money received illegally, and provide monthly reports on their financial transactions.<sup>124</sup>

Unfortunately, these punishments did not have the intended effect of forcing cooperation on the police reforms. Instead, the acts of the HR contributed to a revival of political support for the SDS prior to the elections and contributed to an increase in Serb support for the nationalist party. This episode illustrates the difficulties for the international community in influencing incentives to cooperate by introducing punishments. Although the HR publicized the illicit financial behavior of the party, the police issues surrounding national identity ultimately trumped the exposure of corruption in domestic politics. Another byproduct of the HR's action was that the surge of support for the SDS also forced more moderate parties like the SNSD to express more nationalist positions in fear of losing their base of support. The ultimate outcome of Ashdown's attempt at punishment was that the Serb political position became more radical across the party spectrum.

In October 2005 the SDS presented a new proposal, which was a diluted version of the one presented by Ashdown after the conclusion of the PRC.<sup>125</sup> The SDS recommended that the redesigning of police regions be postponed, and the crossing of the IEBL should be considered tolerable only when it was unavoidable.

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<sup>124</sup> Muehlmann 47

<sup>125</sup> Muehlmann 48

They also built in provisions that prevented this agreement over the police from being invoked as a precedent for any other reforms that might undermine the autonomy of the RS. The details regarding what the police reforms would actually consist of were left vague in the proposal. In an attempt to make even small steps forward in what had become a rather arduous process, an agreement to proceed was reached in the Council of Ministers in October 2005. This agreement was then adopted by the two entity legislatures and the NA.<sup>126</sup>

As a result of the October decision the EU finally recommended beginning negotiations regarding the Stabilization and Association Agreement (SAA) for Bosnia's EU membership, perhaps in an attempt to encourage further compromise. Reform of the police was included in the conditions for EU membership. In January 2006 the Police Reform Directorate (PRD) was formed with a mandate to outline a reform agenda and oversee its implementation. The RS refused to recognize the legitimacy of this body. The PRD presented a final report to the Council of Ministers at the end of 2006, but it was never adopted. Because the RS had boycotted the Directorate, they viewed any proposal made by the body illegitimate. In addition, the plan that was presented had been significantly weakened from its original form due to the political resistance of the RS. So while Bosnia began negotiations in regarding the SAA in 2006, an agreement was never reached largely due to the inability to move forward on the issue of police reform.<sup>127</sup> After this failure the EU also issued a directive that all steps towards membership must be voluntary, thereby prohibiting the

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<sup>126</sup> International Crisis Group "Ensuring Bosnia's Future"

<sup>127</sup> Zdravko Ljubas, "Lajcak Promises New Start in Bosnia," Balkan Investigative Reporting, 27 June 2007 ><http://www.birn.eu.com/en/89/10/3433/>



OHR from imposing the reforms.<sup>128</sup> The plan was not passed by the March 2007 deadline, leaving the process of police reform at an impasse. This also stalemated the course of negotiating EU membership.

### **Proposed Police Reforms**

This failure to come to an agreement over police reform largely contributed to the decision to extend the office of the OHR, whose mandate was supposed to expire at the end of 2006. The new HR Miroslav Lajcak has inherited the challenges of police reform since his appointment in July 2007. The 2007 Freedom House *Nations in Transit Report* cited the failed police reform and lack of harmonization of the legislation across the federal and entity structures as key obstructions to reducing sustained levels of corruption in BiH.<sup>129</sup> The International Crisis Group similarly reported that, although the situation has certainly improved, the high politicization of the police is still impeding refugee return.<sup>130</sup> Police reform also remains the largest obstacle blocking Bosnia's EU membership. The police reforms have therefore been the target issue of Lajcak's term.

The recent attempts to move forward with the police reforms have paralleled the experiences of 2004 through 2006. Minor steps forward have been made, but political discussions regarding the police have remained tense with the Serb politicians providing the main resistance. The OHR established a deadline of September 30, 2007 for a new agreement on the police that would meet the criteria

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<sup>128</sup> Matthew Parish, "The Demise of the Dayton Protectorate," in Inside the Bosnian Crisis: Documents and Analysis, Journal of Intervention and Statebuilding, Volume 1, 1 December 2007 27 19

<sup>129</sup> Jelasic

<sup>130</sup> International Crisis Group, "Ensuring Bosnia's Future"

necessary for EU membership.<sup>131</sup> He also presented a proposal for reform in line with the three criteria outlined by the PRC as necessary for achieving EU membership. Dodik (Prime Minister of the RS and member of the SNSD) and Silajdzic (the Bosniak member of the Presidency and member of the SBiH) both opposed the HR's proposal.<sup>132</sup> The two main Croat parties (HDZ and HDZ1990) as well as the SDA announced their support of the HR's recommendations. Dodik and Silajdzic then announced their own proposal at the twenty-third hour. Although this act signified a large step forward for the two politicians who had previously disagreed on the topic of the police, their agreement fell short of the expectations introduced by the OHR. The content of the proposal was reviewed and deemed insufficient by senior EU officials and the OHR.<sup>133</sup>

The proposal presented by Dodik and Silajdzic unleashed political wrath from all sides. The SDA, HDZ and HDZ1990 all rejected the Dodik-Silajdzic agreement based on their previous support of the HR's proposal.<sup>134</sup> Among the Serb parties, both the SDS and the SRS rejected the agreement based on their opposition to any moves towards abolishing the RS police. Although the agreement certainly did not suggest this measure explicitly, the two Serb parties imposed their perception that this was the intent of the proposal. The leader of the Bosniak SDA, on the other hand, critiqued the proposal's intent to leave elements of budgetary and managerial control

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<sup>131</sup> Parish 20

<sup>132</sup> Srecko Latal, "Sparks Fly over Bosnian Police Reform Negotiations," Balkan Investigative Reporting Network, 4 October 2007 < <http://www.birn.eu.com/en/106/10/5152/>

<sup>133</sup> Nicholas Wood "Plan to Overhaul Bosnian Police Force is Put on Hold" Herald Tribune 1 October 2007

<sup>134</sup> Latal, "Sparks Fly"

at the entity level. In the context of all this opposition from all sides, an agreement was not reached by the extended September deadline.

In response to the failure to move forward on the police, in October the HR presented a plan to alter regulations in the Bosnian legislature with the purported goal of reducing the ability of politicians to slow the policy making process. Lajcak's proposal would allow the Council to hold meetings with only the majority of its members present and pass decisions on certain matters based on the vote of only those in attendance.<sup>135</sup> The proposal also recommended changing regulations in the National Assembly so that legislation could be passed as long it received a majority vote and at least one third of this majority represented each of the two entities.<sup>136</sup> The ultimate goal of these two measures was to expedite the process of policy making in BiH by making it more difficult for ethnic constituencies to simply boycott the state level government structures. The proposal would not remove the capacity of each group to exercise their veto privileges, but would require that representatives at least be in attendance. Lajcak announced that if these measures could not be agreed upon that he would be forced to impose them using the powers of the OHR.

The Bosnian Serbs immediately responded to this decision with allegations that their power in state-level institutions was being undermined. Tensions escalated as the RS politicians expressed that they viewed the October decision as an illegal use of the HR's powers, and many demonstrators took to the streets in the RS.<sup>137</sup> The political situation culminated in the resignation of the state level Prime Minister

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<sup>135</sup> Peter Lippman "Crisis and Reform: A Turnaround in Bosnia?" OpenDemocracy.net 18 December, 2007. >[http://www.opendemocracy.net/article/crisis\\_and\\_reform\\_a\\_turnaround\\_in\\_bosnia](http://www.opendemocracy.net/article/crisis_and_reform_a_turnaround_in_bosnia)

<sup>136</sup> Lipmann

<sup>137</sup> Parish 21

Nikola Spiric, a Bosnian Serb who stated that he felt the level of foreign intervention that persisted in Bosnia was not good for the country.<sup>138</sup> Shortly after Spiric tendered his resignation, the Prime Minister of Serbia requested that Miroslav Lajcak resign on the grounds that he had violated the Dayton Peace Accords and generated a political crisis in BiH.<sup>139</sup> This statement of support from Serbia contributed to an already growing fear that the Serbs in the RS would begin to make moves to isolate themselves from the government of BiH.

By the end of November this political crisis seemed to have eclipsed, and leaders of Bosnia's largest parties were able to come to an agreement regarding the Parliamentary reform measures. Serb legal experts negotiated an agreement that offered concessions on the part of the Serbs, but also required compromise by the OHR.<sup>140</sup> The Serbs finally accepted the proposed arrangements, but with a provision to prevent ethnic outvoting.<sup>141</sup> The OHR was not forced to implement the decision unilaterally, and Nikola Spiric eventually reclaimed his post as Prime Minister.

In the midst of these tense debates regarding the voting measures discussions of the police reforms came to a halt, but after the resolution in November the different party leaders came to a tentative agreement regarding the police reforms. Rushed negotiations to sign the SAA commenced, and the agreement was initialed but not signed on December 4<sup>th</sup>.<sup>142</sup> Bosnian officials were requested to adopt new approach to reforming the police by February 15<sup>th</sup> in order to facilitate the signing of the

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<sup>138</sup> Balkan Investigative Reporting Network, "Bosnia PM Resigns".

<sup>139</sup> "Serbia PM Tells Lajcak to Resign," Balkan Investigative Reporting Network, 2 November 2007 <<http://www.birn.eu.com/en/110/15/5482/>

<sup>140</sup> Lippman

<sup>141</sup> Lippman

<sup>142</sup> Srecko Latal, "Bosnia Constitutional Reform, A New Deadlock," BalkanInsight.Com 6 February 2008 ><http://www.balkaninsight.com/en/main/analysis/7746/>

agreement.<sup>143</sup> But when the discussions of the reforms resumed in early February a repeat of October's disagreements ensued. The new date for signing the SAA agreement was set for April 28<sup>th</sup> 2008, but only if an agreement on the police can be negotiated by then.<sup>144</sup>

In early April the Parliament of BiH remained deadlocked over the proposed police reforms.<sup>145</sup> The Bosniak SDA and the Serb SDS are both maintaining their absolute opposition to the proposal. Technically the Bosniak SBiH and the Serb SNSD hold a majority and can pass the legislation, but the two parties also remain locked in debates over details regarding specific amendments.<sup>146</sup> It is unclear whether the legislation will be passed by the April deadline, and even if it is the signing of the agreement will remain largely symbolic. The implementation of the police reforms promises to be as daunting a task as the negotiations that have shaped them.

This process of attempting to reform the police in Bosnia provides a detailed illustration of the nature of political interaction and policy making. While the Serbs and Croats possess clear vested interests in maintaining the status quo, the Bosniaks are generally in support of measures that will grant more power to the state. There are clear problems with the framework that was established at Dayton, largely rooted in the fact that the agreement was intended to be a way of maintaining the peace rather than a permanent governance structure. Changes to the Dayton constitution must be made if BiH is to become unitary state rather than a loose framework holding together

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<sup>143</sup>Latal, "Bosnia Constitutional Reform, A New Deadlock"

<sup>144</sup> "Bosnia Could Sign EU deal in April" BalkanInsight.Com 28 February 2008

><http://www.balkaninsight.com/en/main/news/8235/>

<sup>145</sup> "Bosnia Parliament in Police Reform Deadlock," BalkanInsight.Com 3 April 3 2008

><http://www.balkaninsight.com/en/main/news/9103/>

<sup>146</sup> "Bosnia Postpones Police Reform Vote," BalkanInsight.Com 4 April 2008 >

<http://www.balkaninsight.com/en/main/news/9135/>

antagonistic national groups. A program for change has been outlined by the international community, and one of the largest remaining obstacles is reform of the policing structure. These reforms are crucial to the functioning of BiH as one state, and for this reason they will also inherently undermine the degree of autonomy that was granted to the different ethnic groups by Dayton. It can only be expected that concessions by the Serbs and Croats will be made piecemeal, and that the process of reform will continue to be arduous.

The experience of the police reforms contrasts those of the military, illustrating the continued prevalence of national interests as an obstacle to amendments that would aim to strengthen the central government. It consequently appears that although Bosnia has achieved a level of peaceful coexistence that allowed the ethnic groups to surrender their control of the military, there is still significant opposition to measures like the police reforms which are perceived as a threat to national autonomy. The difference between the two reform processes is best explained by understanding resistance to change as a product of fear that cooperation will result in loss of group protections. Ultimately, PfP and NATO membership offered a sufficient impetus for pushing forward coordination on the military measures, because the risks associated with the necessary cooperation were perceived to be relatively low. The incentive of EU membership, on the other hand, has not been an able to compel cooperation regarding the police. This suggests that sacrificing control over the police is still perceived to be too large of a risk due to an enduring fear that individuals cannot be protected without the preservation of certain collective rights.

It remains to be seen how further reform of the Dayton Constitution will unfold. But it is certain that interest in preserving collective representation and autonomy of national groups will continue to be the largest obstacle to creating a unitary state and that meeting external criteria for membership in trans-national organizations is on its own an insufficient impetus for these types of change. For consensus to be reached in Bosnia the ethnic constituencies must either share a value of the changes in themselves, or at least view changes as benign with respect to their national interests.

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## *Conclusion*

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The process of reconstruction and reform in Bosnia-Herzegovina provides a number of useful lessons about the intricacies of governance in a multinational state. Through this analysis I have aimed to provide a framework for understanding post-conflict Bosnia as state comprised of rational actors who make their decisions based on their perception of payoffs. The current structure limits actors to representing themselves based on their ethnicity, and political bargaining is therefore always a product of how the three ethnic groups seek to preserve themselves. The obstructions and difficulties that Bosnia has experienced in the process of reforming Dayton should consequently be understood as a result of the institutions introduced at Dayton with the goal of maintaining peace. This institutional foundation remains inherently limited by the desire for autonomy held by two of the three dominant ethnic groups of BiH.

There have been notable strides forward since Dayton, including the People's Constituent Decision and the legislation which was subsequently introduced. The defense reforms also represent an important stability marker for BiH, suggesting that a divided military force is no longer perceived to be vital to protecting ethnic identity and that peace has been accepted by the three groups. But obstructions to necessary reforms based on dialogue of ethnic difference persist. It is apparent through the tense debates surrounding the policing system that although remilitarization no longer



seems imminent, significant concerns regarding the protection of ethnic groups remain relevant. Unfortunately fear of “others” is being perpetuated by the current system, which in many ways emphasizes ethnic distinctions. Creating long term stability in Bosnia will depend on altering this dynamic, and reforming the policy areas that are perpetuating politics of difference.

Along with adoption and implementation of the police reforms, the education system is an area that should be targeted for reforms in the near future. The current educational structures in BiH exemplify the maintenance of politics of difference, and are particularly important because they are shaping the attitudes of future generations. Jurisdiction over education was an area that was not defined at all by Dayton, and as a result the control of curriculum and organization of the system has been delineated along ethnic lines. The Republika Srpska maintains a relatively centralized system, whereas in the Federation education is broken down by canton and even by municipality where cantons are ethnically heterogeneous. BiH maintains at least twelve different Ministries of Education, each of which operates relatively independently of the others.<sup>147</sup>

Until 2002 the cantonal ministries were mandated to have a parallel system of representation for Bosniaks and Croats, where the Minister represented one ethnic community and the Deputy Minister represented the other. In practice this system generated two parallel education administrations in each canton, with the members of each ethnic group often operating from different office locations.<sup>148</sup> This structure was abolished in 2002, but in many cases the secondary school systems maintain

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<sup>147</sup> Naomi Levy, “Learning National Identity: Identity Politics in the Schools of Bosnia-Herzegovina and Croatia,” Working Paper presented at Western Political Science Association (Oregon, 2005) 6.

<sup>148</sup> Levy 7

separate curriculum for students from the different ethnic groups. So despite these changes, students across Bosnia are generally learning from a curriculum specifically dictated by the ethnic majority of whichever region of the country they live in. For example, while the Federal Ministry of Education develops the curriculum used in Bosniak schools, the Croat Institute of Education borrows their curriculum directly from schools in Croatia.<sup>149</sup> So while the Bosniak curriculum aims to foster an identity based on a unified BiH, the other two curriculums maintain more nationalist stances. In the RS this means that refugees returning are forced to send their children to schools where they are generally an ethnic minority, and are being educated according to material determined strictly by Serbs. In the Federation the same is true of many cantons where either Croats or Bosniaks have a majority.

The system becomes far more complicated, however, in municipalities of the Federation where there are relatively equal numbers of students from the two groups. In many of these areas the school systems remain divided, with one ethnic constituency attending school for a half day in the morning, and the other group using the facility in the afternoon. Since all three ethnic groups speak dialects of the same language, there is no functional reason they shouldn't be able to be educated in the same classroom. But the system reflects fear of the other and anxiety regarding the preservation of ethnic heritage. The Organization for Security and Cooperation in Europe (OSCE) has labeled this the "two schools under one roof" system, and identified it as the most "exaggerated form of divisions in the BiH education

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<sup>149</sup> Levy 8

system”.<sup>150</sup> This segregated form of schooling has been targeted by the OSCE since it assumed responsibility for coordinating international involvement in Bosnia in 2002. A law outlining a reform of the secondary school system and the end of this segregation was signed in 2003, but implementation of the reforms have been resisted.<sup>151</sup>

Higher education in Bosnia was also administratively decentralized after Dayton, but this has begun to change with the introduction of new legislation in 2007. The discussion of introducing state-level control of higher education was presented in 2004, and swiftly rejected by the HDZ.<sup>152</sup> Resistance from Croat politicians came from a desire to maintain control over the funding and politics of hiring faculty in their respective universities. In June, 2006 a new law was presented to the Council of Ministers, the primary aim of which was to bring Bosnia’s education system in line with the requirements of the Bologna Declaration and the standards for beginning the SAA agreement. After over a year of heated debate the law was finally passed in July 2007, but it remains unclear if the changes will have real consequences for the diffused education structure. While the law calls for the creation of a state level agency to generate a universal system of standards, the entities and cantons will remain in charge of licensing the individual universities. Although a degree of local control is probably appropriate when it comes to education, the ethnic homogeneity of those exercising control will continue to perpetuate segregation in the education system.

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<sup>150</sup> “Two-Schools-Under-One-Roof,” OSCE Mission to Bosnia Herzegovina, ><http://www.oscebih.org/education/2schoolsunder1roof.asp>

<sup>151</sup> International Crisis Group, “Ensuring Bosnia’s Future” 18.

<sup>152</sup> Saida Mustajbegovic, “Bosnian Croats in Last-Ditch Fight Against Education Reform” BalkanInsight.Com 9 September 2007 > <http://www.balkaninsight.com/en/main/analysis/5675/>

Like the defense reforms, the reorganization of both the secondary and higher education structures will go through many phases in an attempt to meet international standards. In the process politicians will strive to sacrifice as little ethnic autonomy as possible. It is therefore also likely that the education reforms will be slow like those of the police, due to the strong perception that ethnic control of education is critical to maintaining distinct identities. It is precisely because control over education is valued as so important to protecting ethnic difference that abolishing school segregation and the use of ethnic curriculums is crucial. Maintenance of the current system will lead to the propagation of fear of the “other” into the future generations.

There are appropriate ways to protect collective identity and cultural heritage, but the education system exemplifies the problem of perpetuating animosities based on ethnic differences. I believe that it is this legacy of fear of difference that scholars of the Balkans are referring to when they discuss “ancient ethnic hatreds”. There is certainly a fear of the other that has been generated by historic circumstances, and systems like segregated education contribute to the persistence of this dynamic. The Balkan history of immigration, empire, and religious conversion has generated a population that may seem problematically intermixed. But difference does not inherently yield hatred, and to view the past in this way ignores the circumstances that have generated the violent periods in Balkan history. In the case of the Balkans, and specifically Bosnia, it seems more appropriate to speak of ethnic fear derived from historical memory and perpetuated by structures like the ones in place in Bosnia today.

There are an abundance of experiences in Bosnia's history that can be drawn upon to provide a foundation for fear to future generations. This was demonstrated with the escalation of the conflict in the 1990's, a series of events of which have produced another experience to draw upon and generate fear. The permanent affliction of a unified BiH is that the past will never cease to exist. But the years since the signing of the DPA have attempted to generate a governance structure that allows three ethnic groups to coexist in spite of this difficult history. It remains to be seen if this goal is attainable, but it is clear that the continuation of this project will require further reform of the original Dayton structures.

The encouraging lesson which can be drawn from this analysis is that successful adjustments of the police and education systems both hold significant promise for generating a more stable BiH. Adoption and implementation of the proposed alterations to the policing system will increase the prospects for refugee return and reintegration of the regions segregated through the acts of cleansing during the war. The creation of police districts that cross the IEBL have the potential to weaken the effects of the asymmetric distribution of power granted to the three ethnic groups by Dayton, thus creating a safer BiH for all of the different communities. Integration of the education system and universalizing of curriculum is clearly necessary to put a halt to the propagation of politics of difference to the next generation. These types of large scale changes are required to change the nature of the game. The challenge that remains is overcoming the structural obstacles that prevent cooperative behavior.

If the risk associated with cooperating can be reduced by building trust, Bosnia has potential to survive as a unitary and stable country. The primary challenge is that the sacrifice of ethnic control that will be required to introduce these reforms is simultaneously what makes the reforms of the education and police sectors so dangerous for the ethnic groups. Reaching a cooperation equilibrium will require the sacrifice of protections that are perceived as necessary according to the current system of norms. Building trust after conflict is incontestably challenging, and expectations should be adjusted so that they are realistic assessments of what types of coordination are possible among the ethnic constituencies of BiH.

It is important to remember that creating a stable government in Bosnia is a process that is still in its early phases. The current system was limited by the conditions of brokering a peace settlement, and to produce a durable government for Bosnia it must be adapted to accommodate long term needs. It remains to be seen whether the different ethnic constituencies of BiH will unite over concrete social issues like provision of social services, reduction of crime and the general condition of the economy. But it is certainly possible. The potential survival of BiH should not be dismissed because of the past. Instead BiH today should be understood in the context of the past, and expectations for the reform process should be developed accordingly.

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## *Interview*

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