

PROCEEDINGS OF THE CONFERENCE
TWENTY YEARS
AFTER DAYTON.
THE CONSTITUTIONAL
TRANSITION OF BOSNIA
AND HERZEGOVINA

EDITED BY
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CENTRO DI STUDI SUL PARLAMENTO

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Twenty years after Dayton.
The Constitutional Transition
of Bosnia and Herzegovina

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THE ETHNIC KEY OF POLITY
AND THE STATE-BUILDING FAILURE IN BOSNIA-HERZEGOVINA⁴²⁰

STEFANO BIANCHINI

Twenty years after the signing of the GFAP, the «primary ambiguity» of this Agreement does not seem to have been overcome.

The ambiguity we are speaking about, lays mainly on the ambivalence of the Agreement's *political* content. Shortly speaking, its entering into force has legitimised the existence of an independent State of Bosnia-Herzegovina, while establishing two Entities (called *Republika Srpska* and *Federation of Bosnia-Herzegovina*) with a so wide autonomy to appear the key components of a loose confederation.⁴²¹

420. The research which has generated this article was realized in the framework of the TAMOP 4.2.4.A/2-11-1-2012-0001 “National Excellence Programme – Elaborating and operating an inland student and researcher personal support system convergence programme”. The project was subsidized by the European Union and co-financed by the European Social Fund. I am grateful to Zdravko Grebo, Zoran Paji and Francesco Privitera for their useful comments and remarks. Thanks also to Nidžara Ahmetaševi and the team coordinator of Media Center in Sarajevo, Dragan Golubovi, for their help in identifying and providing me some relevant sources from the local press.

421. This is one of the most relevant reasons why international agencies have suggested radical constitutional amendments. The Venice Commission has outlined a set of issues that require a change in the relations between the State and the entities to the detriment of the latter. The ESI has proposed to transform the Republika Srpska in the 10th canton of the State. Other proposals were suggested to be put on the agenda of policymakers since the Dayton Constitution is included in an international peace treaty and requires changes that should be agreed by the parties that signed that agreement. The USA administration and the EU made repeated efforts to convince Bosnian-Herzegovinian political parties to sign up to constitutional reforms and establish a reform agenda but all these attempts have miserably failed. See J. Marko, *Ethnopolitics and Constitutional Reform in Bosnia-Herzegovina*, in O. Listhaug, S.P. Ramet (eds.), *Bosnia-Herzegovina since Dayton: Civic and Uncivic Values* (Longo, Ravenna, 2013), 49-80 or from the same author *Defective Democracy in a Failed State? Bridging Constitutional Design, Politics and Ethnic Division in Bosnia-Herzegovina*, in Y. Ghai, S. Woodman (eds.), *Practising Self-Government. A Comparative Study of Autonomous Regions* (Cambridge University Press, Cambridge, 2013); F. Bieber, *Constitutional reform in Bosnia and Herzegovina: preparing for EU accession*, in *European Policy Center, Policy Brief*, April 2010, at http://www.epc.eu/documents/uploads/1087_constitutional_reform_in_bosnia_and_herzegovina.pdf; J. Woelk, *La transizione costituzionale della Bosnia ed Erzegovina. Dall'ordinamento imposto allo Stato multinazionale sostenibile?* (Cedam, Padua, 2008), Z. Dizdarevic, *Ka novom Ustavu, Oslobodjenje*, 15 March 2005, 9; European Stability Initiative, *Making Federalism Work – A Radical Proposal for Practical Reform*, 8 January 2004, www.esiweb.org/pdf/esi_document_id_48.pdf or the proposal of the ACIPS Alumni, *Ustav Savezne republike BiH*, 3 *Novi Pogledi* (2004), 6-11.

Since then, the reached accommodation has remained ambivalent in defining the character of the State.

On the one hand, in fact, Bosnia-Herzegovina can be identified as a “*nation*” (similarly to the USA, Germany, China or Switzerland, and basically the States belonging to the “United Nations”...), if we look at the category of “*nation*” with a civic content. The Dayton Constitution, however, classifies «Bosniacs, Croats, Serbs as *constituent peoples* (along with Others), and citizens of Bosnia-Herzegovina». ⁴²² Should these single peoples be considered part of a (civic) nation, or should each of them be identified with one (ethnic) nation remains contested. On the other, as a result, Bosnia-Herzegovina is *not* a nation, if nation is primordially conceived, as nationalists basically do. Rather, nations should be – in this case – identified with the constituent ethnic groups within the Entities. Still, the Constitutions of the Entities (established before the GFAP) declared that *Republika Srpska* was the State of the Serb people, while Croats and Bosniaks only were constituent peoples of the *Federation*. ⁴²³

Accordingly, this rationale has given arguments to make the arrangement of the *Federation* contested. A widespread belief amongst nationalists actually retains that the *Federation of Bosnia-Herzegovina* is set up by two ethnic nations. In compliance with their vision, if the *Republika Srpska* is regarded as an ethnic nation, an unbalanced situation was established in the other Entity. As a result, a Croat nationalist mainstream – with the support of the local Catholic Church – asserted (and still asserts) that its people have been treated unequally, and persists to claim the creation of a third Entity. ⁴²⁴

Furthermore, the European Court of Human Rights dealing with the *Sejdić-Finci* case recognized in 2009 that citizens not belonging to the constituent peoples (the so called “Others”) were suffering from an evident form of discrimination in terms of eligibility to the House of Peoples and the Presidency. The Court decision had to be implemented through a Constitutional amendment, which have never been passed in the Parliament, despite the EU demands and the most recent Anglo-German initiative in support of institutional reforms of November 2014. ⁴²⁵

422. See GFAP Annex 4, Constitution of Bosnia-Herzegovina, Preamble (emphasis added).

423. Compare: Ustav Republike Srpske, clan 1 and Okvirni sporazum o federaciji, I, in *Novi ustavi na tlu bivse Jugoslavije*, (Medjunarodna Politika, Beograd, 1995). The Constitution of the Federation is also available – along with all the basic legal documents of BiH – on the OHR web site www.ohr.int.

424. This is the position expressed by hardliners of the HDZ either in Bosnia-Herzegovina or in Croatia, as well as of the Catholic Church in Mostar and Sarajevo, whose authorities take advantage of any occasion in order to victimize the role of the Croats in Herzegovina and Posavina, as well as to criticize Croatian authorities for lacking support to their co-nationals in the neighbouring State. See, amongst the countless comments on this regards, D. Cizmic Marovic, *Biskupima BiH nema tko da pise, Slobodna Dalmacija*, 20 August 2005, 9 and I. Lovrenovic, *Cobanovina, Feral Tribune*, 19 August 2005, 22-23. A cultural description of the Bosnian Croats is in I. Lovrenovic, *Bosanski Hrvati* (Durieux, Zagreb, 2002).

425. See European Court of Human Rights, *Sejdić and Finci v. Bosnia and Herzegovina*, case n. 27996/06 and 34836/06, Decision of December 22, 2009 and European Commission,

Crucially, this intricate and contradictory situation is *the background* that explains the foundations of a controversial, but predominant and exclusive, ethnic key of polity in Bosnia-Herzegovina, which has influenced either the protection of collective rights or the governance in the State building process since the beginning of the 90s at least.

Such an outcome was, anyhow, the consequence of the political and military balance of powers established on the ground between 1992 and 1995: although the peace treaty dealt with Bosnia-Herzegovina, it was not signed by the representatives of the «ethnic groups» involved in a local (or civil) war, but by the representatives of Bosnia-Herzegovina, Croatia and Federal Republic of Yugoslavia, namely three Yugoslav successor States,⁴²⁶ the latter two of them directly involved in the hostilities, via military supports to local armies, because politically interested in partitioning the former one.⁴²⁷

The main *ideological* assumption of the fighters was that an ethnic homogeneous State would offer a more consistent basis to power legitimacy, protection of the rights of their own ethnic group, and modernization policies rather than a multiethnic State, as Yugoslavia was. In other words, by re-drawing maps and loyalties nationalist leaders strongly believed that the long Yugoslav crisis of the 80s, whose reasons were expanded – in their arguments – from economics to the cultural and political legacies

Bosnia-Herzegovina – EU: Deep disappointment on Sejdić-Finci implementation, Press release database, http://europa.eu/rapid/press-release_MEMO-14-117_en.htm, 18 February 2014. See also: Inicijativa Philipa Hammonda i Frank-Waltera Steinmeiera, Institut za društvenopolitika istraživanja, Studeni 06, 2014, <http://www.idpi.ba/britansko-njemacka-inicijativa>.

426. It is not wordplay. The term “Yugoslavia” has different meanings: the Federal Republic of Yugoslavia (FRY, or «ramp Yugoslavia») was a federation between Serbia and Montenegro, established by Milosevic in 1992 in order to pretend the legacy of Socialist Federal Republic of Yugoslavia (SFRY) in terms of properties and international recognition. This approach was harshly contested by the other 4 Yugoslav republics, which declared independence and were internationally recognized, namely Slovenia, Croatia, Bosnia-Herzegovina and Macedonia. As a result, the word “Yugoslavia” is here referred to the Yugoslav State, which existed from 1918 to 1991, not to the rump Milosevic’s State, which is here mentioned under the abbreviation FRY.
427. In fact, nationalist leaders neither from Bosnian HDZ nor from SDS were a direct party in the Dayton negotiations. Serbs were represented by Milosevic, while Croats were partially represented by Tudjman and partially included in the Bosnian delegation led by Izetbegovic. The latter enjoyed an ambivalent position, since encompassed Muslim and Croat members: as a result, it dealt ambiguously sometimes as a delegation of Bosnia-Herzegovina and sometimes as a representative of the Federation only (the Federation was in fact established in 1994 with the “Washington Agreement”). As for the Serbia and Croatia’s involvement in the war, see particularly the wide number of documents presented at the ICTY trials and the decisions made by the Appeals Chambers on the Tadic and Aleksovski judgements. A confirmation of the Croatian military involvement is extensively reported in the Bobetko’s memoirs: J. Bobetko, *Sve moje bitke* (Vlastita Naklada, Zagreb, 1996). See additionally Predrag Lucic (ed.), *Stenogrami o podjeli Bosne* (Kultura & Rasvjeta-Civitas, Split-Sarajevo, 2005); the witnesses collected by M. Minic, *Dogovori u Karadjordjevu o podjeli Bosne I Hercegovine* (Rabic, Sarajevo, 1998) and the documents included in S. Cekic, *The Aggression on Bosnia and Genocide against Bosniacs* (Institut za istrazivanja zlocina, Sarajevo, 1995).

of the Austro-Hungarian and communist rules, would be eventually overcome. This emphasis on ethno-national homogenisation led quickly to group polarisation. In addition, the process enjoyed the support of those religious authorities (catholics, orthodox and muslims) that identified religion and nationalism as a way for imposing their own prescriptions, rules and ethic vision of the humankind to the State legislation and the conduct of the society. As a result, and in spite of the reluctance of single ministers of worship, religions contributed to the dismemberment of the Yugoslav (and Bosnian-Herzegovinian) social structure.⁴²⁸

All in all, then, these claims of homogenisation – actively endorsed by different subjects – clashed not only with the ethnic and religious distribution of the population, but also with the territorial interests of nationalists, who contended the control over the access to the main natural resources regardless any local demographic configuration.

The merge of these beliefs have forged the “rationale” of the war, giving grounds for ethnic cleansing and genocide.

Meanwhile, and in spite of a general miscalculation, these beliefs have generated all over Yugoslavia a resistance of groups and individuals that wanted either to protect their *intercultural* and *interethnic* relations within their family and their friends, or to support the development of a democratic intercultural society within the Yugoslav successor States. Truly, the trend suffered from a low level of visibility, a weak coordination and organization, as well as from a powerful intimidation, being marked as an expression of national betrayal by nationalists. Still, its courageous advocates, with their own behaviours and statements, were invalidating the reasons of the partition, even when – realistically – they accepted the *fait accompli* of the Yugoslav collapse. Lacking weapons and the access to media, they created transnational networks of relations, denounced war crimes and illegal treatments in their own countries, and met the liberal Western approach that basically contests an ethnic vision of the nation and of polity.⁴²⁹

Nevertheless, liberalism as ideology was powerless (and still is powerless) in dealing with collective rights, when they imply an ethno-cultural dimension that aims at informing the State governance. Not incidentally during the 90s theoretical efforts in elaborating a theory in this direction were registered by scholars: the works of Buchanan and Kymlicka are the best examples of these attempts of reconciling the collective and the individual dimension of rights in the liberal thought.⁴³⁰

428. See *Konfesije i rat* a special issue of *Nase Teme*, no. 2-3, 1994; the book edited by D. Janjic, *Religion and War*, (European Movement of Serbia, Beograd, 1994), the yearbook *Religija, rat, mir* (Junir, Nis, 1994). More recently: A. Babuna, *The Bosnian Muslims and Albanians: Islam and Nationalism*, 2 (32) *Nationalities Papers* (June 2004), 287-322.

429. On State partitions, its motivations, and consequences in a comparative approach, see S. Bianchini, S. Chaturvedi, R. Ivekovic, R. Samaddar, *Partitions, Reshaping States and Minds* (Frank Cass, London, 2005).

430. See A. Buchanan, *Secession* (Westview Press, Boulder, 1991) and W. Kymlicka, *Multicultural Citizenship. A Liberal Theory of Minority Rights* (Clarendon Press, Oxford, 1995).

Meanwhile, the international diplomacy was increasingly involved in mediation between the parties, legitimising the forces of partition. Basically conservative in political culture, this diplomatic body addressed its efforts towards the fighting forces and the leaders of the Yugoslav republics who, however, shared – although dissimilarly – critical war responsibilities. In doing so, the international diplomacy followed the rooted praxis of negotiating with official representatives of States and warlords, without drawing attention to the claims of a wide part of the local civil societies, articulated in groups and associations that opposed war and the ethnic vision of nation.

In spite of that, however, international diplomats and policy makers could not ignore the views expressed by the public opinion in their own States, particularly when awareness of the war crimes raised and anti-nationalist approaches in the post-Yugoslav space became internationally appreciated, thanks to the support coming from transnational networks. In addition, Western diplomats particularly were culturally committed to support the main features of liberalism and democracy, as for the protection of human rights, individual liberties, freedom of press, mobility, security, and basically the access to the fundamental rights.⁴³¹

The contradictory interactions of all these mainstreams in wartimes generated different views on the post-war potential arrangements, determining a variety of proposals – during the negotiations – that mirrored different visions of nation, according to nationalist, conservative or liberal formulations.

In the end, the GFAP (as well as the following accords that contribute to stop warfare in the territory of former Yugoslav federation) was the aftermath of a compromise reached, in a specific historical moment, by the International community and the involved *nationalist* parties, which nonetheless did not share a common view of the nation, while the local no-nationalist civil society was excluded from the negotiations.

Therefore, the treaty mirrors a situation where *nationalist* parties never perceived themselves as defeated either militarily, or in their own war aims and expectations. In turn, the mediators of the International Community remained ambiguous in their support to the integrity of Bosnia-Herzegovina. As a result of this situation, the political interpretation of the treaty (and its substantial implementation) has remained a contested story, summarized by a key dilemma, namely: should the treaty have been considered as a compromise preparing, in a further step, a Bosnia-Herzegovian partition along ethnic lines; or should have it been considered as the first step in stopping this scenario and starting a gradual reintegration of the country?

This is exactly the issue that condensed the «primary ambiguity» mentioned above, where the ambiguity is strictly connected to the controversy over the idea of nation. As a result, the protection of collective rights in ethno-cultural terms and the func-

431. Broadly and for the background see F. Privitera, *The Relationship between the Dismemberment of Yugoslavia and European Integration*, in J. Morton, P. Forage, C. Nation, S. Bianchini (eds.), *Reflections on the Balkan Wars* (Palgrave Macmillan, New York, 2004), 35-54.

tioning of the institutions in Bosnia-Herzegovina are undermined by the contested visions of the parties in the country.

To make the issue more complicated, the treaty has assigned a specific role to the United Nations, by establishing the figure of the High Representative, that is expected to fulfill a wide range of commitments whose implementation relies on a specific administrative body. As a supervisor of the governance in Bosnia-Herzegovina, the High Representative acts as a *de facto* governor of an international protectorate.⁴³²

By all means this decision marked the beginning of a systematic international involvement into the territory of the former Yugoslav federation: a set of different agreements was, in fact, signed since then, with the other subjects of the area. An intricate international architecture of peace accords, treaties, and protocols *reintegrated* the territory of Croatia, *detached de facto* Kosovo from Serbia, *saved the integrity* of Macedonia, redefined the rules within the Serbian-Montenegro Union...

Without writing a history of this system of accords – which exceeds the limits of this chapter –, the reader will however note that the aforementioned agreements have paved the way either to the *reintegration* or the *separation* in ethno-cultural terms, as well as in State building. Regardless to their normative details, it is evident that the Ohrid and Belgrade agreements (respectively signed in 2001 and 2002) outlined a process of integration via decentralization for Macedonia and the newly established Union of Serbia and Montenegro, while the 1244 UN resolution and the Kumanovo agreement on Kosovo (1999) clearly separated the administration of Kosovo from Belgrade, despite the formal recognition that Kosovo was still part of the rump Yugoslavia.⁴³³

The GFAP is, thus, inscribed in this regional context, where the content of nation remains unsettled. Still, the «primary ambiguity» based on the dichotomy *reintegration/separation* has not yet been overcome.

There is no doubt, in fact, that Bosnia-Herzegovina has been constitutionally constructed on the “separation” of Serbs from Croats and Bosniaks, although this fact, as seen, has encouraged a Croat nationalist mainstream (with the support of the local catholic Church) to claim systematically the invalidation of the Washington agreement (reluctantly reached by Tudjman and Izetbegovic in 1994 under the auspices of Clinton presidency⁴³⁴) and the creation of a “Third Entity”.⁴³⁵

432. M. Zucconi, ‘Protectorates’ in the Balkans: Defining the Present Status and Looking at the Future of Bosnia-Herzegovina and Kosovo, in S. Bianchini (ed.), *From the Adriatic to the Caucasus. The Dynamics of (De)stabilization* (Longo, Ravenna, 2001), 169-178 and C. Sadikovic, *Protectorat ili supsidijarna uloga: o ulozi medjunarodne zajednice u ustavnom sistemu BiH*, 3-4 *Ljudska Prava* (2001), 68-71.

433. About conflicting approaches of the peace treaties among Yugoslav successor states see S. Bianchini, J. Marko, C. Nation, M. Uvalic (eds.), *Regional Cooperation, Peace Enforcement, and the Role of the Treaties in the Balkans* (Longo, Ravenna, 2007).

434. See K. Begic, *Bosna i Hercegovina od Vanseove misije do Daytonskog sporazuma* (Bosanska Knjiga, Sarajevo, 1997) and P. Shoup, S. Burg, *The War in Bosnia-Herzegovina* (Sharpe, Armonk, 1999).

435. In fact, since the status of Brcko could not be agreed in Dayton, its future was bound to an

Meanwhile, the inconsistency between the Dayton and the Entities Constitutions became evident. In their own ethno-national rights, citizens were not treated equally in principle: in fact, if Serbs, Croats and Bosniaks – according to GFAP – were “constituent peoples” in Bosnia-Herzegovina as a whole, Entities provisions could not treat Serbs as a minority in the *Federation*, as well as Croats and Bosniaks in the *Republika Srpska*. Nonetheless, the harmonization of the Entities Constitutions to the Dayton’s provisions required a long time for the implementation, since resistances deferred the decisions of the Constitutional Court of July 2000, and nationalist media campaigns opposed the changes. Later, cantons and municipalities had to adapt their own statutes: still, at the end of 2004 the municipality of Sarajevo was discussing consistent amendments in order to recognize the Serbs as a constituent people of the city, alongside with Croats and Bosniaks.⁴³⁶

Eventually, although formal changes were introduced in the Entities’ Constitutions equalizing peoples, ethnicity strongly institutionalised norms and regulations: consequently, it affected either the governance or the democratic praxis of the country.

Ethnicity, actually, has been institutionalised in a strict connection with *territory* (identified with the *Entities*). Definitely, during the negotiations that led to Dayton, this was a requirement stemming from the nationalist mainstreams of the parties, which identified the access to the rights of their own group *with* the protection of their territory. The principle was basically accepted and determined the rules that defined the inclusion of the three main ethnic subjects into the new institutional system of Bosnia-Herzegovina.

As a result, the political representation at the level of the government and the Assemblies has been bounded strictly to the ethnic belonging in one specific territory (namely, the Entity). In order to guarantee an equal treatment for Bosniaks and Croatian in the *Federation*, this Entity has been articulated in 9 cantons, where devolution was mainly connected to ethnicity and territory than to geoeconomic resources or historical links and interests. On the opposite, *Republika Srpska* remained a strong centralized Entity.

The participation into the government was regulated on the basis of a balanced representation of the 3 main groups. Initially, even the premiership was based on ethnic rotation, but later, in 2002 a four-year mandate has stabilized the office. Nonetheless, ethnic ratio and rotation have informed the presidential body of the country (the system being still in force): the collective presidency, in fact, was set

international arbitration. As a result, it should be noted that a third entity has been established de facto in August 1999 when the Brcko International Tribunal issued its Final Award, rejecting the claims of both Entities and establishing an autonomous District of Brcko. Accordingly, the demand of a Croatian Entity, if put into practice, would create a fourth Entity.

436. See the *Partial Decision of the Constitutional Court of Bosnia-Herzegovina*, 1 July 2000; the *Agreement on the Implementation of the Constituent Peoples’ Decision of the Constitutional Court of Bosnia-Herzegovina*, both in www.ohr.int/ohr-dept/legal/const and V. Popovic, *U Statutu samo Bosniaci i Hrvati, Nezavisne Novine*, 30 November 2004, 4.

up by 3 members, each of them representing an ethnic group. All of them rotated in the office of the president of the presidency. They were selected among the candidates from the two Entities, so that a Serb from the Federation could not be a candidate to the presidency because Serbs were supposed to be represented by the Republika Srpska and, vice versa, Bosniaks or Croats were supposed to be represented by members of the Federation.

Additionally, the 3 main ethnic groups enjoyed an enhanced veto mechanism, as a “guarantee of their own collective rights” (which nationalist mainstreams understood as “protection of national interests”, in compliance with their vision of what “national” means).⁴³⁷

In the *Federation* the equality of representation has been restructured, after the harmonization of the State/Entities Constitutions, by assigning to each of the three main ethnic groups two positions amongst the six most prominent positions (namely, that of the president of the Federation, the prime minister, the presidents of the two chambers of the Parliament, the president of the Appeal Court and the president of the Constitutional Court). In the event that this distribution of these positions is not respected, the legitimacy of the decisions is immediately questioned.⁴³⁸

In few words, legitimisation has a double basis, since it requires not only the citizens’ vote, but also an ethno-national equal distribution of the positions, once the polls are over. At the same time, the right to vote (active and passive) is not always equally guaranteed to the members of the 3 main ethnic groups, because – under certain circumstances – its access depends on the residence of the citizens. As a result, the protection of “collective” (or, ethno-group), instead of individual interests, became the priority of a “territorialized” ethnic polity based on the exclusiveness. This priority, however, was embodied into the constitutional requirements, which were defined under the mediation and the help of the international community.⁴³⁹

Paradoxically, this ethnic construction of the governance in Bosnia-Herzegovina emulated, under many respects, the provisions adopted in Tito’s Yugoslavia: strong identification of ethnicity and territory; veto mechanism; collective presidency; rotations; ethnic ratio in representation... Under many respects, the liberal approach to ethnic rights access and representations showed to be powerless in offering – during the negotiations in Ohio – convincing alternatives to the rigidity of ethnic rights mechanisms experienced under communism.

Definitively, however, the establishment of a democratic system with competing parties, plurality of media, a room for developing NGO’s and civil societies, the in-

437. See Z. Pajic, *A Critical Appraisal of Human Rights Provisions of the Dayton Constitution of Bosnia-Herzegovina*, 1 (20) *Human Rights Quarterly* (1998), 125-138, particularly 135-137.

438. See for instance R. Cengic, *Po znakom pitanja odluke parlamenta*, *Nezavisne Novine*, 30 November 2004, 4.

439. Compare: F. Bieber, C. Wieland (eds.), *Facing the Past, Facing the Future: Confronting Ethnicity and Conflict in Bosnia and Former Yugoslavia* (Longo, Ravenna, 2005) and Z. Papic (ed.), *International Support Policies to South-East European Countries. Lessons (not) learned in B-H* (Müller, Sarajevo, 2001).

roduction of the ombudsman, and different autonomous authorities, embodied the most radical news injected into the political arena of Bosnia-Herzegovina and represented an effective potential alternative at least to the ideological homogenisation, requested either by communists or nationalists.

In other words, the ethnic key of polity in a formally (however young) democratic society, such as the post-Dayton Bosnia-Herzegovina, allowed a free criticisms that stressed the contradictions between, on the one hand, the need of institutional inclusion and protection of ethnic groups (whose reasons laid mainly on mutual resentments and fears that required a process of appeasement) and, on the other, two main distortions generated by the prevailing of an ethnonationalist form of governance.⁴⁴⁰

The first distortion was connected to the “selective” protection of ethnic rights. In fact, the Dayton Constitution provided protection and political representation, although territorially based, to the three main ethnic groups of Bosnia-Herzegovina. The others, instead, suffered from wider exclusion. Minorities such as Jews, Yugoslavs (more than 5% of people declared themselves as Yugoslav in the 1990 census), Roma, people from mixed marriages, did not enjoyed similar rights as the Serbs, Croats and Muslims/Bosniaks did. The mentioned *Sejdić-Finci* case has blatantly confirmed and emphasized this distortion at the international level.

The educational system, furthermore, was highly ethnicised: pupils were invited to attend courses and schools according to their own ethnic belonging, but such schools were provided for the three main groups only, and the teaching – particularly in the field of humanities – was deeply determined by the opposite nationalist *primordialist* visions of culture and civilization. Scholars at the international level tried to contribute the writing of new textbooks, unbiased and with a civic orientation: nevertheless, they were never accepted into the school system, since the selection of the textbooks were made by a commission appointed by the government and whose task was precisely that of checking the ideological orientation of the textbooks.⁴⁴¹

Similarly to education, the access to other rights (property, for example) was affected by ethnic priorities while, basically, all institutes, including the judiciary and the police, were ethnically biased.

As a result, people were forced to take side with one of the three main ethnic groups, in order to take advantage of their access to the rights. At the beginning, this behaviour was also constrained by the ethnic majority in the territory (an Entity, a canton, a municipality...), so that the rights of individuals were mainly depending on the ethnic group’s majority in a specific district of the country. Later, when the

440. F. Bieber, *The Challenge of Institutionalizing Ethnicity in the Western Balkans: Managing Change in Deeply Divided Societies*, 3 *European Yearbook of Minority Issues* (2003/2004), 89-107.

441. See for instance T. Emmert, C. Ingrao (eds.), *Resolving the Yugoslav Controversies: A Scholars’ Initiative*, Special Issue, 4 (32) *Nationalities Papers* (2004); S.M. Waine, *When History is a Nightmare* (Rutgers University Press, New Brunswick, 1999); In Italy a comparative analysis of textbooks has been made by S. Bahto, G. Bonduri, A. Konomi, *Piccoli balcanici crescono*, 3 *Limes* (1998), 181-215.

harmonization of the Entities Constitutions took place and a certain number of refugees came back home under the encouragement of international agencies, the strict connection “ethnicity-territory-access to the rights” softened, but never released outsiders from the 3 main groups to express freely their identity and enjoy same rights.

In conclusion, the life – for those who resisted the homogenisation with one of the 3 privileged ethnic groups – became difficult.

Actually, individuals were deprived of their rights of defining their identities freely; by contrast, they were requested to belong to a group, while the selection of groups was restricted to three. As a result, any attempt at *secularising* the sense of belonging was discouraged, while cultural homogenisation continued to be stimulated by other means. Instead of violence, the access to the rights became the key that, in peaceful times, regulated the ethnic balance within the State.

The second distortion, partly embodied in the previous one, was connected to the forms of governance that were exacerbated by a prevalence of ethnonationalist confrontation, mutual blackmail, and bargaining.

Actually, the applied mechanism of a *triple* ethnic representation created the best conditions for strengthening the supremacy of three oligarchies as the expression of the *three* ethnic groups. In other words, *three* new elites emerged in the Entities during the war. Later, when a peace status was restored in the country, they took advantage from the new system of triple representation extended to all sectors of social life, and particularly from privatisation policies, when the bargaining concerned resources and their distribution. Meanwhile extremely high costs were imposed to the public administration, in order to multiply bodies and offices at all institutional levels, from the State to the municipalities, and accommodate the requests of the parties and their clients.

Still, put under constrain by international agencies, the political life within Entities and cantons gradually had to accept an active participation of parties representing other ethnic groups than those considered “constituent one(s)” before Dayton. Mainly, these delegates were elected by former refugees (that decided to went back to their home), or – from the distance – by those who still were living in another Entity. In most cases they were involved in the local governments (inclusive of the Entity level). Under certain respect, this change culturally overthrew the war aims, since those excluded (and persecuted) in wartimes where again encompassed in the institutional life. Nonetheless, the “methodology of inclusion” was determined by a strict ethnic ratio. As a result, this new situation offered rooms for mutual influence, interdependence, and blackmails, as a political crisis originated by the request of excluding parties of another ethnic group from a coalition in one Entity (or canton) was followed by similar demands, although opposite in terms of “ethno-political colours”, in other public offices.⁴⁴² Similarly, any request of reform or change in

442. An example is that of the request that came from SDS and PDP (two relevant parties in the Republika Srpska) in June 2005 in order to exclude SDA (the Bosniak party) from the government of the Entity: immediately, the presidency of this party in Sarajevo claimed, in return, the exclusion of SDS and PDP from the government of the State. See *Mikerevic: narednih dana smjena ministara iz SDA*, *Nezavisne Novine*, 21 July 2004, 2.

the status of Bosnia-Herzegovina or Entities trigger emotional and over-dramatized reactions within nationalist parties, revealing how fragile is still the institutional balance and mutual trust in the country.⁴⁴³

Basically, an obsessive ethno-territorial representation created a double problem: on the one hand, confrontation and bargaining that determined the negotiations amongst the three main ethnic groups led to an ineffective decision-making process, by postponing for long time any relevant and even marginal settlement; on the other, any efforts made in implementing and deepening the praxis of ethnic ratio in the everyday life provoked unexpected and unpleasant consequences. Applied in sectors as the public administration, police, employment strategies, public assistance, the ethnic ratio weakened, under many respects, the quality of services, frustrated competencies, opened grounds to corruption and facilitated in the population a sense of resignation, which evolved in a form of disappointment towards democracy, while becoming at the same time, a source for reproducing, although in a restricted arena, the ethno-national political consensus. Even when, for a short period, between 2000 and 2002, the opposition parties (with pro-European and civic orientations) had the opportunity to experiment the governing, the ethnic ratio showed its predominance in the decision making process. Under this respect, a substantial distinction between the new coalition and the previous remained at the distance. Accordingly, the ethnic ratio showed to be so deeply embodied in the political life of the country that the “classic” liberal differentiation between majorities and minorities, left and right, softened (sometimes even vanished) in terms of ideological contrasts and political programs, while shifting to the ethnic balance of the parties, their proportional consistence, and their distribution on the territory.

In conclusion, this framework – in spite of the fact that it was designed in order to protect identities and ethnic groups – did not nurtured the flourishing of people’s satisfaction, a functioning institutional system and an effective decision-making process enjoying a wide support. The EU was expected to offer convincing, efficient and transparent institutions, able to make decisions and not to postpone them because the mechanism is in its turn fragile and undefined. So far however, EU failed to achieve these goals to a large extent because the local political leaderships are interested to maintain the status quo which appears to be convenient for them. As a result, twenty year after the peace treaty was signed the Balkan weakness is meeting the European ir-resolution on the implementation of its political project, stemming from the political crisis that dates from the failure of the constitutional treaty in 2005 and the persistence of the economic and financial crisis since 2008. Increasingly, we can expect that the enduring hesitancy and outlet of the latter will deeply determine the evolutions of the former.

443. See for instance 3 articles published in the same day and in the same page by *Dnevni Avaz*, the first one entitled *Covic: ako ostane RS trazit cemo treci entitet* (reporting a HDZ reaction on some requests of changes of the GFAP), the second: *SDS ce saradjivati ili ce biti unisten* (reporting OHR reactions to the SDS resistance to reforms) and the third one *Najavljena tuzba protiv Asdauna* (reporting an SDS reaction to a OHR decision). See *Dnevni Avaz*, 27 September 2005, 2.