Institutions, Civil Society and Nationalism in the Context of Democratic Consolidation – Prospects for Democracy in Bosnia-Herzegovina

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Biographical note

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Abstract

The High Representative of the international community in Bosnia-Herzegovina labelled the latest general elections in the country a "genuine watershed". On the occasion of the first elections completely run by the national administration itself this article intends to give a brief overview of the most striking features of democratic transition in Bosnia. Within an analytical framework of democratic consolidation the article highlights the interconnection of institutional basics and civil society, also taking into consideration the role of nationalism in transition. On this conceptual basis the article indicates major problems and challenges of democratic consolidation in post-Dayton Bosnia. Although considerable progress could be made, the Bosnian federal state still does not appear to be sovereign. This becomes particularly apparent in light of the limited powers located at the state level when compared to the competencies of the federal entities as well as the pre-eminent role of the international community in policy-making and legislation. The constitutional arrangement of the state prescribed by Dayton impedes progress on the representational and behavioural levels of democratic consolidation as well as the emergence of a Bosnian civil society that transcends ethnic barriers. At the same time achievements of consolidation with respect to elite behaviour and civil society are required in order to overcome the institutional predicaments. This dilemma points to the continuing importance of a determined engagement of the international community in the country, though growing endogenisation of the political proceedings and local ownership of the state and its institutions have to be a priority.

Introduction

Paddy Ashdown, the High Representative of the international community in Bosnia-Herzegovina (BiH), expected the last general elections in the country to be a "genuine watershed".[1] These were the first elections that were entirely run by local authorities; and it was the first time that members of the various Parliamentary bodies and the Bosnian Presidency were elected for a regular four year term. The electorate had to decide whether reforms were to be pushed ahead or whether old forces should continue to keep the political strength to block the advancement of a real Bosnian state. Obstructionist attitudes of political leaders as well as considerable ethno-nationalist instigation remain to be a serious problem in the country. After the elections the leading role seems to have been reassigned to the old nationalist parties representing the former belligerents.[2] So, is there any hope for a multicultural Bosnia-Herzegovina? Can democracy emerge in an environment of ongoing threat of ethnocentric enmity? Notwithstanding the continuing significance of ethno-nationalist politicians, there are some positive signs as well. There has been progress in the stabilisation and institutionalisation of federal state structures in the last months and years. It is argued in this paper that although even small steps towards building democracy in BiH are extremely difficult, it is possible to advance a civil society that can at least in the long run act as an effective shield against potential regression to a violent past.

This article shall give an overview of some principle features of Bosnian statehood after Dayton and its implications for the process of state-building; it shall examine some major problems and challenges of democratic transition in the country. In the following section, drawing on the works of transition theorists, the concept of democratic consolidation will be presented as a framework of analysis. On this basis the paper will deal particularly with the role of institutions, civil society and the impact of nationalism.

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[1] *Balkan Times*, "Ashdown Calls on BiH to Vote for the Future", 25 September 2002, www.balkantimes.com/html2/english/020910-BETH-001.htm.

[2] For more details on the outcome of the elections see e.g. Anes Alic/Dragan Stanimirovic, "Child's Play?", in *Balkan Reconstruction Report*, 11 October 2002, http://balkanreport.tol.cz/look/BRR/article.tpl?IdLanguage=1&IdPublication=9&NrIssue=1&NrSection=2&NrArticle=7547; or *Balkan Reconstruction Report*, "A Victory, Not a Triumph", 7 October 2002, http://balkanreport.tol.cz/look/BRR/article.tpl?IdLanguage=1&IdPublication=9&NrIssue=1&NrSection=6&NrArticle=7527.

These general conceptual considerations shall be applied to the specific case of Bosnia in the second part.

Institutions and civil society in Democratic consolidation

Soon after the epochal changes of the late 1980s and early 1990s it became apparent that democratic transition goes far beyond merely removing an undemocratic political regime and replacing it with a formally democratic one. Building on early works of transition theorists such as O'Donnell and Schmitter, a variety of authors soon began examining problems and challenges of democratic consolidation in more detail.[3] Wolfgang Merkel proposed a concept of democratic consolidation that clearly accentuates the multifaceted character of transition. He understands democratic consolidation as a multidimensional process that takes place on different levels simultaneously.[4]

On the *institutional* level of consolidation the institutional basics necessary for a functioning democracy need to be established, tested in political practice and further developed. How the basic institutions - government, separation of power, electoral laws etc. - are designed and applied, affects to a large extent structures and stability on the *representational* level: the party-system, the variety of associations and their ability for effective intermediate interest brokerage. Institutions and representational factors shape the *behaviour* of political and social actors: do they behave in a way compatible with democracy or do significant actors operate permanently outside the democratic system? A consolidated democracy has to be open to a plurality of opinions, i.e. dissent and conflict on specific policies is a core element of every democratic system. On the other

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[3] O'Donnell and Schmitter were the first ones to put forward a typological distinction between *liberalisation* and *democratisation*, see Guillermo O'Donnell/Philippe C. Schmitter, "Tentative Conclusions about Uncertain Democracies", in G. O'Donnell/P.C. Schmitter/L. Whitehead (eds.), *Transitions from Authoritarian Rule – Prospects for Democracy* (Baltimore and London: John Hopkins University Press, 1986), pp. 3-78. The subsequent phase of *democratic consolidation* is nowadays commonly added. In this article I will only focus on the consolidation phase to provide a conceptual basis for further considerations.

[4] Wolfgang Merkel, "Theorien der Transformation: Die demokratische Konsolidierung postautoritärer Gesellschaften", in K. von Beyme/C. Offe (eds.), "Politische Theorie in der Ära der Transformation", *Politische Vierteljahresschrift*, Sonderheft 26 (1995), pp. 38-40. Linz and Stepan identify *behavioural, attitudinal and constitutional* dimensions of consolidation; see Juan J. Linz/Alfred Stepan, *Problems of democratic transition and consolidation. South Europe, South America, and Post-Communist Europe*

hand, to consolidate a democracy successfully there has to be at least a minimum of shared consent on fundamental principles and binding procedures. Elites and society have to adhere to basic norms and rules prescribed by democratic institutions. These have to be seen as both legitimate and binding. The *civic culture* dimension of democratic consolidation, hence, comprises the following issues: Are democratic values internalised in society? Are they generally respected? On this basis, is there a minimum of participation, and sufficient pluralism in society that substantiates democracy?[5]

Civil Society, Institutions and the State

The change from one political regime to another entails a specific dynamic of de- and re-institutionalisation. Taking into account the genuine characteristics of political institutions, high uncertainty is clearly intrinsic to any transition process. Democratic institutions provide indispensable procedures for effective problem-solving, the accommodation and reconciliation of diverging interests. Institutions structure political and social action. By providing binding rules and procedures to regulate conflicts, strategic options of political and social actors are reduced. Democratic institutions establish foreseeable procedures and bodies for decision-making; procedural and behavioural certainty replaces unlimited contingency.[6] According to Krygier, institutions and the rule of law are important elements of building trust among acquaintances and strangers in large societies. *Social or impersonal trust* provides an

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(Baltimore, London: John Hopkins University Press: 1996), p. 6. As Merkel's concept is somehow more pronounced I will use his terminology.
[5] Merkel ties the existence of democracy ultimately with civil society. With the emphasis of *democratic values* and *civic culture* normative components enter the understanding of civil society. For an explicitly normative definition of civil society see also Wolfgang Merkel/Hans-Joachim Lauth, "Systemwechsel und Zivilgesellschaft: Welche Zivilgesellschaft braucht die Demokratie?", in *Aus Politik und Zeitgeschichte* B6-7/98, pp. 7-8. Merkel and Lauth base their understanding of civil society on four important functions that they identify in political philosophy: protection against arbitrary use of state power (Locke), balancing between state authority and civic society (Montesquieu), civil society as the school of democracy (Tocqueville), publicity and criticism (Habermas), ibid., pp. 4-6. In this article we shall follow such a normative conception. This notion of civil society does not include actors within society that follow undemocratic aims and values. For an overview of different civil society conceptions see Colin Sparks, *Communism, Capitalism and the Mass Media* (London, et al.: Sage Publications, 1998), pp. 110-117.
[6] Wolfgang Merkel/Eberhard Sandschneider/Dieter Segert, "Einleitung: Die Institutionalisierung der Demokratie, in W. Merkel/E. Sandschneider/D. Segert (eds), *Systemwechsel 2. Die Institutionalisierung der Demokratie* (Opladen: Leske + Budrich, 1996), pp. 11-13.

essential basis for *civility* in interpersonal relations, and thus also for civil society.[7] States that do not abide by the rule of law, states that do not set a framework that specifies the extent and limits of jurisdiction and allocate power between different institutions, cannot provide the fundamental infrastructure for social activity.[8] Effective functioning democratic institutions provide the basis for further consolidation of the *civic culture*. To function effectively, however, democratic institutions require legitimacy and popular participation; they need input by its citizens. Society's *civic culture* is thus a precondition for and result of effective and legitimate democratic institutions.[9]

Hence, democratic institutions shape civil society just as civil society shapes institutional arrangements and their abilities to provide a stable framework for democracy. Civil society and political institutions are closely interconnected. Whether this interplay between society and institutions in transition favours the establishment and consolidation of democracy or not, of course, depends on a variety of factors.

Nationalism and Democratic Consolidation

Exclusive and aggressive nationalism has proven to be one major factor impeding the introduction and consolidation of democracy in many post-communist countries in transition. The threat of abusive nationalist rhetoric as a substitute for social and political reform often became apparent when the state and its institutions fell into deep crisis or even entered the process of dissolution. Incentives characteristic of transition periods have led self-interested political actors all too often to play the national card: to distract from the own entanglement into the old regime without giving up claims for

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[7] Martin Krygier, "Virtuous Circles: Antipodean Reflections on Power, Institutions and Civil Society", in *East European Politics and Societies*, no. 1 (1997), pp. 66-72.

[8] Ibid., p. 48.

[9] In transition theory it is often referred to the, although simple, input-output-model of David Easton: citizens' demands and support (diffuse and specific) provide input to the political system. The political system transforms input into output (policy-making, problem-solving etc.). But output is also connected to input by a feedback loop, i.e. output generates support and thus input, see e.g. Merkel, "Theorien der Transformation", pp. 52-53.

power or for material resources in the post-communist political system, to mobilise for their own purposes.[10]

Proponents of liberal nationalism argue, however, that there is one kind of nationalism compatible with liberal values such as liberty, equality, non-discrimination, rule of law and democratic procedures.[11] It is argued that it is a basic psychological need of human beings to seek group membership as a basis for individual identity. As a source of solidarity between members of society national sentiment can gain significant importance. Moreover, if it is connected to national liberation movements and directed against oppressive regimes, it can finally be conducive to the emergence of a liberal democracy. Nationalist sentiment – it is argued - can strengthen democratic governance.[12]

However, under conditions of considerable heterogeneity within the population, strong emphasis on *nationalising rhetoric*[13] can interfere severely with the aim of establishing a consolidated and effective democratic regime. While nationalism is used for social integration and mobilisation it rests on the principle of the exclusion of the 'others' or even antagonism towards them. Nationalism suggests supposedly clear-cut definitions of group boundaries. It can be used to instruct people who they belong to, who they compete with and, in the worst cases, who their enemy is. Linz and Stepan formulate the overall problem precisely: "A modern democratic state is based on the participation of the demos (the population), and nationalism provides one possible definition of the demos, which may or may not coincide with the state."[14] Political systems in transition to democracy in which the foundational questions about the

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[10] On the "rationality of ethnic politics" and the attractiveness of nationalism for self-interested transition elites, see Claus Offe, *Varieties of Transition. The East European and East German Experience* (Cambridge: Polity Press, 1996), p. 60-73.

[11] Iris Marion Young, "Self-Determination and Global Democracy: A Critique of Liberal Nationalism", in I. Shapiro/S. Macedo (eds.), *Designing Democratic Institutions*, (New York, London: Nomos), p. 149.

[12] See for these and more arguments on the issue e.g. Stefan Auer, "Nationalism in Central Europe - A Chance or a Threat for the Emerging Liberal Democratic Order?", in *East European Politics and Societies*, no. 2 (2000), pp. 213-245.

[13] Focusing on the dynamic of nation building Rogers Brubaker describes states that largely rely on ethnonationalist rhetoric as the predominant tool for social integration as *nationalising states*. The main goal of nationalising elites is to secure the dominant position of a sharply defined community within the state and finally establish a state by and for one nation. They are aiming at homogeneity, see Rogers Brubaker, *National Minorities, Nationalizing States, and External National Homelands in the New Europe*: notes toward a rational analysis (Wien: Institut für Höhere Studien, 1993), p. 7.

[14] Linz/Stepan, Problems of democratic transition, p. 16.

delimitation of the demos and the state territory are not resolved, have in the words of Linz and Stepan a "stateness problem"[15]. As the existence of a sovereign state is a prerequisite for democracy, the prospects for consolidation of democracy under such circumstances remain precarious.

So what can be done if more than one ethnic group within a state aspires to gain self-determined statehood? The argument that human beings seek to satisfy their necessities for identity through group membership seems valuable. But from this does not immediately follow that these groups have to be bound together by nationalist or patriotic sentiments, nor that they have to be defined by quasi-primordial characteristics or even ethnic stereotypes. By contrasting the terms *nation-state* and *state-nation,* Linz offers a conception which can serve as an alternative to an over-emphasis on ethnicity as a basis for social integration. State-nations are multicultural or multinational states that "manage to engender strong identification and loyalty from their citizens, an identification and loyalty that proponents of homogenous nation-states perceive that only nation-states can engender."[16] Membership in state-nations does not require certain primordial ethnic characteristics but a civic and voluntaristic affirmation of the state and its institutions.[17]

A voluntaristic affirmation of the fundamental state institutions requires inclusive and effective political institutions. Again the dilemma facing transitional countries becomes apparent. State-national loyalty within a multinational or multi–cultural state is part of what was earlier termed *civic culture*. The emergence and strengthening of state-national loyalties requires to a large extent achievements of consolidation on the institutional, representational and behavioural level. On the other hand, in heterogeneous societies with considerable virulence of ethnopolitical conflicts a minimum of state-national conviction, tolerance and inter-ethnic dialogue becomes a

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[15] Ibid.

[16] Ibid., p. 34.

[17] This is very close to the conception of constitutional patriotism (Verfassungspatriotismus) put forward by Jürgen Habermas. The notion of patriotism however is also somehow misleading. The Oxford Advanced Learners Dictionary describes patriotism as "love for your country and willingness to defend it". In a post-nationalist context the emphasis should lie more on the constitutional aspect than on some kind of patriotism: on the fundamental values enshrined in democratic institutions, that are perceived to can claim universal recognition and to enhance the "common good".

precondition for very basic steps of consolidation on the institutional, representational and behavioural levels.

So far we see that establishing a functioning and consolidated democracy is a very complicated task. It is a long-term project confronted with a multitude of predicaments. Rather than understanding democratic consolidation as a sequence that starts with building institutions and ends with a participating, open and tolerant civil society[18], we should interpret the overall process as consisting of various and multi-level dilemmas – or even vicious circles - that have to be overcome. By no means can it be expected that elections and government formally legitimised by the electorate suffices to trigger a self-supporting dynamic of continuing democratic consolidation. In light of the complexity of the problems, it becomes perfectly clear that processes of democratic consolidation processes are not irreversible. Deadlock or regress is likely – and in the worst case even civil war is possible.[19]

Bosnia-Herzegovina: Failed Democratisation and the Winding Paths of Consolidation after Dayton

As the Yugoslav communist regime was much less pervasive than communist systems in other countries the prospects for a successful democratic transition should have been better than elsewhere. Why then did democratisation fail in most of the Yugoslav republics during the early 1990s?[20] Retrospectively, it is often exposed in popular

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[18] Merkel sees his concept as a sequence, albeit merely an analytical one. He stresses that processes on all levels begin simultaneously, however differing in duration. Furthermore, he does explicitly not presuppose a specific hierarchy between the different levels. Processes on all levels affect each other mutually, see Merkel, "Theorien der Transformation", pp. 38-40.

[19] Transition theory has often been criticised for its determinist conception, see e.g. Thomas Carothers, "The End of the Transition Paradigm", in *Journal of Democracy*, no. 1 (2002), pp. 5-21. However, it is not beyond the horizon of transition theory that regime changes do not necessarily lead to democracy or more specific liberal democracy. This already has been stressed by early transition theorists. Moreover, there are a number of concepts that deal exactly with failed, halted or uncompleted transitions, see e.g. the notions of *delegative democracies* or *defective democracies,* Guillermo O'Donnell, "Delegative Democracy?", Helen Kellogg Foundation for International Studies, University of Notre Dame, working papers 172 (1992), *www.nd.edu/~kellogg/WPS/172.pdf ;* Wolfgang Merkel, "Defective Democracies", Centro de Estudios Avanzados en Ciencias Sociales (CEACS), estudios/working Paper 132 (1999), www.march.es/NUEVO/IJM/CEACS/PUBLICACIONES/WORKING%20PAPERS/1999_132.pdf"/WORKING%20PAPERS/1999_132.pdf.

[20] As of limited space this question can not be addressed in detail here. However, we shall recall some of the most striking features of this first failed democratisation.

discussion that the communist ideology of 'brotherhood and unity' was doomed to fail, as it merely dictated artificial bonds, putting a veil over social reality and neglecting profound differences between ethnic groups. Following a simplistic view of *ancient hatreds* in *uncivil* Balkan societies, it may seem that the Former Yugoslavia was somehow predestined for extreme nationalism and terrible ethnocentric atrocities.[21] Such a perspective ignores that ethnic diversity and ethnopolitical conflict are not just two sides of a simple equation.[22]

The 1990 elections in Bosnia created a situation where the radical nationalist parties – the Muslim SDA, the Croat HDZ and the Serb SDS[23] – were struggling for influence in the republican power-sharing institutions. "But conditions critical for the success of such a system were absent. The most obvious of these was elite cooperation."[24] Mobilised by extreme nationalist parties *civil society* gradually split into *ethnic societies.*[25] Nationalist ideologies exerting resource claims provoked ethnopolitical conflict and augmenting violence.[26] "[C]ivilization-shields against open animosities"[27]

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[21] According to Richard Holbrooke such views influenced policy-makers in the west and were to some extent causal for their reluctance to intervene at an early stage of the conflicts, Richard Holbrooke, *To End a War*, revised edition (New York: The Modern Library 1999), p. 22.

[22] Agneza Bozic, "Democratisation and ethnopolitical conflict: the Yugoslav case", in K. Gordell (ed.), *Ethnicity and Democratisation in the New Europe* (London, New York: Routledge, 1999), p. 118.

[23] These explicitly ethnic parties dominated the campaign and won most of the seats in Parliament and also the Presidency. However, there were also moderate forces and multi-ethnic organisations, most importantly the reformed communists. But they could not acquire significant influence. Notably, the major ethnonationalist parties – in opposition to reformers, socialists and communists – have worked together on an anti-communist platform, each of them finally securing control over its own constituencies. The electoral system contributed to the overwhelming victory of the three ethnic parties, see Steven L. Burg, "Bosnia Herzegovina: a case of failed democratization", in K. Dawisha/B. Parrot (eds.), *Democratization and Authoritarianism in Postcommunist Societies: 2. Politics, power, and the struggle for democracy in South-East Europe* (Cambridge: Cambridge University Press, 1997), pp. 127-135.

[24] Ibid., p. 135. As another factor making democratisation fail Burg of course highlights external influences. Particularly, the SDS and the HDZ were offsprings of the ruling parties in the neighbouring states and represented their nationalist aims, even territorial claims, see also Friedbert W. Rüb, "Von der zivilen zur unzivilen Gesellschaft: Das Beispiel des ehemaligen Jugoslawien", in W. Merkel (ed.), *Systemwechsel 5. Zivilgesellschaft und Transformation*, (Opladen: Leske + Budrich, 2000), p. 183.

[25] Especially in multi-ethnic Sarajevo anti-nationalist and pro-Yugoslav social forces existed and expressed their views in a number of public demonstrations. In a political and social environment increasingly poisoned with nationalist hatred and threatened by physical violence these parts of society were silenced in the spring of 1992. Anti-war and pro-democracy forces in politics and society seemed to remain in shock, unable to take action to prevent the imminent outbreak of war. They seemed to misperceive the danger of the situation on the brink of war, see Mark Thompson, *Forging War. The Media in Serbia, Croatia and Bosnia-Hercegovina* (London: Article 19, 1994), pp. 230-231.

[26] Bozic, "Democratisation and ethnopolitical conflict", p. 122.

[27] Tibor Varady cited in Rüb, "Von der zivilen zur unzivilen Gesellschaft", p. 185.

were removed. Without limiting constraints given by a functioning reconciliatory legal framework and giving up all self-restriction, society lost its *civility*. De-humanising the declared enemies, nationalist leaders called for outright violence. The disintegration of republican institutions and the dissolution of central authority – especially the 'lebanonisation' of police forces and the arming of civilians[28] - had become at the same time cause and effect of ethnopolitical violence from below. Just as ethnic hatred had become at the same time cause and effect of the de-civilisation of society.

Re-Creating Bosnia?

Apart from military issues the Dayton Peace Agreement (DPA) aimed at a re-institutionalisation of the political system in Bosnia.[29] The main objective of Dayton has also been described as creating a fictitious state, aiming at the re-civilisation of politics and society through constitutional, institutional and material means by external authority.[30]

Post-Dayton Bosnia consists of two, to great extent autonomous Entities - the Croat-Muslim Federation and the Republika Srpska (RS). The constitutional design, especially the relation between the central state and the Entities, is ambiguous. The DPA established a complex and fragmented system of multi-level governing by several bodies: on the level of the central state the bicameral Parliamentary Assembly and the Presidency, in each Entity again a Presidency, National Assemblies, House of Representatives, House of Peoples, etc. The overarching institutions are very weak in comparison to their counterparts on the Entity-level; and they follow the logic of ethnic power-sharing. The state-Presidency, for instance, consists of one Croat, one Muslim and one Serb. A strict ethnic calculus is also applied to both chambers of the Parliamentary Assembly as well as to any other executive and legislative authority. Significant competencies are still mainly located on the level of the Entities, most strikingly law enforcement and defence issues.[31] The degree to which the international

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[28] Ibid., p. 184.
[29] The DPA is available at www.ohr.int/dpa/default.asp?content_id=380.
[30] Ibid., p. 192.
[31] The Entities maintain separate police and even military forces. Recently a Standing Committee for Military Matters on the level of the central state has been established that shall integrate the Bosnian defence policy. Enhanced co-operation in such sensitive fields, however, still meets resistance from

community can and actually does intervene in legislative and administrative matters has been considerably extended in the last years. Since 1997 the High Representative of the international community has taken binding decisions himself when parties were unable to agree. He also used his authority to remove or suspend obstructionist officials.[32]

The construction of citizenship in Bosnia demonstrates *the stateness problem* of the overarching federal state. In addition to Bosnian (state) citizenship, people also have membership of one of the two entities; and according to bilateral agreements they can also acquire the citizenship of other countries, e.g. the influential neighbouring countries. Considering the ethnic fragmentation as well as the institutional division, the Bosnian state does not appear to be a sovereign state and thus lacks the very basic precondition of a democracy.[33]

Political institutions in post-Dayton Bosnia impede consolidation on the *representational* level, upholding a highly polarised party system along ethnic lines. The tripartite construction of the governing bodies fails to encourage politicians to promote cross-ethnic political viewpoints. Not only popular support but also the chance to hold office in executive or legislative authorities is maximised by maintaining a

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political leaders, see *Balkan Times*, "BiH Presidency Adopts Decision on Co-ordination of Armed Forces", Daily News Summary 27 August 2002, www.balkantimes.com. Apart from the military and internal security the Entities also control the major executive and administrative functions, including economic policy, finances and taxation, justice, education, science, communication, transportation, housing, etc.; see Richard Caplan, "Assessing the Dayton Accord: The Structural Weaknesses of the General Framework Agreement for Peace in Bosnia and Herzegovina", in *Diplomacy & Statecraft*, no. 2 (2000), p. 219.

[32] Considering the lack of progress in implementation the Peace Implementation Council (PIC) convened in 1997 in Bonn and assigned more authoritative competencies to the High Representative and encouraged him to use the according to Annex 10 of the DPA already existing ones more rigourously. For examples of the use of the High Representatives so-called 'Bonn-Powers' see e.g. Robert L. Barry, "Bosnia and Herzegovina: Status Report", in V.Y. Ghebali/D. Warner (eds.), *The Operational Role of the OSCE in South-Eastern Europe* (Aldershot et al.: Ashgate, 2001), pp. 20-23.; Susan L. Woodward, "Milosevic Who? Origins of the New Balkans", Hellenic Observatory, European Institute, London Scholl of economics & Political Science, discussion paper no. 5 (2001), www.lse.ac.uk/Depts/European/hellenic/, pp. 12-14.

[33] The political struggle succeeding the July 2000 decision of the Constitutional Court shows how fragile the Bosnian statehood still is. The Court ruled that provisions in the entities' constitutions defining the entities exclusively as states for the dominant ethnic group or groups were in violation with the constitution of the central state, which names Croats, Muslims and Serbs as the constituent people of the state. Opponents of an effective Bosnian statehood fiercely obstructed the implementation of this decision and some other constitutional amendments connected to it, see International Crisis Group, "Implementing Equality: The 'Constituent Peoples' Decision in Bosnia & Herzegovina", *Balkan Report no. 128*, Sarajevo/Brussels 16 April 2002, www.crisisweb.org.

pronounced ethnic personal and political image.[34] The DPA heavily relied on elections to trigger further processes of democratic consolidation. But where the societal preconditions for democratic elections are not given, the effect on the representational level is necessarily ambiguous. The first post-war elections, only eleven months after the end of the hostilities, were carried out in an environment of ethnic hatred. These elections were premature as ultimately they merely legitimised the extreme nationalist war parties.[35]

Post-Dayton institutions impede the consolidation on the *behavioural* level because the high degree of elite continuity as well as the institutional structure does not stimulate compromise between the parties. The need to come to a peace negotiated with the belligerents resulted in power-sharing institutions reflecting and perpetuating the wartime division of the country. Elites that are obviously working towards the division of the country are still able to use extensive political powers to obstruct the implementation process. As mentioned before, the international community began taking a much firmer stand against such forces from 1997 onwards. Rigorous interventions aiming at the representational dimension as well as putting constraints on elite behaviour remain necessary for now and the near future.[36] However, the effects of the engagement of the international community are twofold. 'Carrot-and-stick' approaches may coerce politicians to adopt democratic programmes. But if they do not believe in it, nothing really changes.[37] Furthermore, it is often cheaper for the political parties not to agree on contentious issues but in the end leave it to the High

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[34] Furthermore the ethnic calculus excludes citizens that do not belong to the three constituent people – e.g. the Roma - a priori from certain public offices, e.g. the state-Presidency.

[35] The international community obviously failed to learn the lessons from the pre-war 1990 elections. The DPA provided for elections to take place within 6 months after the entry into force of the agreement (Annex 3, Art. III). After an initial postponement the OSCE finally certified that the elections could be carried out in September 1996. On problems of the elections-centred approach see e.g. David Chandler, "The Limits of Peacebuilding: International Regulation and Civil Society Development in Bosnia", in *International Peacekeeping*, no. 1 (1999), p. 111**;** Marianne Ducasse-Rogier, "The Operational Role of the OSCE in the Field of Peace-Building: The Case of Bosnia and Herzegovina", in V.Y. Ghebali/D. Warner (eds.), *The Operational Role of the OSCE in South-Eastern Europe* (Aldershot et al.: Ashgate, 2001), p. 26.

[36] Apart from removing local and state officials the international community also played an important role e.g. in the internal split of the radical SDS by supporting the RS-President Biljana Plavsic against the 'Pale Serbs' loyal to Radovan Karadzics, see Peter Schlotter, "Dayton oder das Prinzip Hoffnung", in R. Mutz/B. Schoch/F. Solms (eds.), *Friedensgutachten 1998*, (Münster: Lit Verlag, 1998), p. 199.

[37] See the statement of a Senior Co-ordinator for Democratisation/NGO Development of the OSCE cited in Chandler, "The Limits of Peacebuilding", p. 119.

Representative to take the decision and the responsibility. Criticising the often pervasive interference of the international community into policy-making, Susan L. Woodward concludes that the "process of endogenisation has not only not begun in Bosnia; state building moves in the opposite direction."[38] This has changed to a certain extent. International agencies working in Bosnia seem to have realised that they need to include constructive local players more effectively into their programmes and policies.[39] The general problem, however, still persists. While elites only hesitatingly subordinate themselves to democratic procedures, major political and social actors operate continuously outside the democratic order. Widespread corruption and collaboration of the nationalist *nomenklatura* with organised crime are a systemic feature. Political parties still have extraordinary influence on the judiciary; the appointment of judges commonly follows the logic of loyalty, ensuring the parties' discretionary powers in the distribution of justice.[40]

As a stable legal order is far from established, the infrastructure to transform a 'destroyed' or 'non-society'[41] into a vital *civil society* is not in place. A report of the International Crisis Group on the rule of law in Bosnia reveals a disenchanting picture. "Bosnians are unequal before the law, and they know it. Exercise of the legal rights to repossess property or to reclaim a job too often depends on an individual's national

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[38] Woodward, "Milosevic Who?", p. 12.

[39] E.g. local experts are now being more extensively involved in international projects of civil society promotion than they used to be some years ago. The Democratic Alliance for Change is an example for growing endogenisation of reform politics within the representational sphere. The Alliance has been established in January 2001, facilitated by the intervention of the international community. It was meant to circumvent the three main ethnonationalist parties and empower constructive political forces that are willing to co-operate with the international agencies. Indeed, it played a significant role in the Parliamentary Assembly and the Council of Ministers during the last months. A recent report of the International Crisis Group acknowledges the Alliance's contribution to "the relative normalisation of politics in BiH" and to a certain progress of important reforms. However, the fragility of the Alliance as well as the absence of an agreed reform agenda - particularly on the issues of rule of law and state-building – restricted its potential to push for further improvements. Because of the Alliance's limited capacities the international community, namely the Office of the High Representative, remained to be the authority with the ultimate say and the leading driving force for possible reforms, see International Crisis Group, "Bosnia's Alliance for (Smallish) Change", *Balkan Report No. 132*, 2 August 2002, www.crisisweb.org/projects/balkans/bosnia/reports/A400725_02082002.pdf, pp. 1-10, cit. p. 7.

[40] International Crisis Group, "Courting Disaster: The Misrule of Law in Bosnia & Herzegovina", *Balkan Report No. 127*, Sarajevo/Brussels: 25 March 2002, www.crisisweb.org/projects/showreport.cfm?reportid=592, p. ii.

[41] Rüb, "Von der zivilen zur unzivilen Gesellschaft", p. 195.

identity – or that of the judge before whom she or he appears."[42] Post-Dayton institutions as well as the realities on the representational and behavioural level impede the consolidation of a *civic culture* or a *civil society*. People are alienated from democracy in a double sense: Firstly, in light of the defects of the present system. Citizens' awareness of the importance of democratic procedures, the rule of law etc. can not be expected to develop out of oblivion. Visible achievements are required.[43] Secondly, alienation comes as a result of the international community's perceived arrogance. International organisations preach democracy; but at the same time they are despite their significant governing competencies not accountable to the Bosnians. This 'credibility gap'[44] contributes to the 'legitimacy gap' of the political system if not to one of democracy itself. Although there is a considerable variety of NGOs engaging in public life, sufficient local participation is still lacking. Many groups and associations consist basically of the same few activists and are mainly run by intellectuals that have very restricted influence.[45] As long as participation of society is limited to a formal procedure during election times and voting decisions to a large extent continue to follow ethnicity the condition of Bosnian democracy remains precarious.

Considering the role of the international community not only in Bosnia but all of the former Yugoslavia, Woodward suggests that the tendency to condemn anything that the West dislikes as "nationalist" does not give any room to construct a national identity within the current borders and according to international norms[46], i.e. some kind of liberal nationalism. Applying this argument to Bosnia seems to be problematic. In a post-war society, particularly one where terrible atrocities have been committed in the name of nationalism, recourse to nationalist rhetoric may heighten perceptions that are detrimental to reconciliation, and thus also to consolidation. To transform destructive

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[42] International Crisis Group, "Courting Disaster", p. i.
[43] Tremendous socio-economic hardship and lacking prospects for an amelioration of the situation as well as rampant corruption among the political class are most important causes of the population's disillusionment. In the latest elections this disillusionment manifested in the lowest turnout since BiH gained independence (55 per cent, about 10 per cent less than in the 2000 elections). This low turnout caused by disillusionment and the perceived lack of political alternatives contributed to the relative strength of the nationalist parties, see *Balkan Reconstruction Report*, "A Victory, Not a Triumph"; *Balkan Times*, "Official Results of Bosnian Vote Leave Hope for Moderates", Latest News 20 October 2002, www.balkantimes.com/html2/english/default.htm.
[44] Chandler, "The Limits of Peacebuilding", p. 116.
[45] Ibid.

ethnocentric nationalism into some kind of constructive liberal nationalism - one that, in line with the arguments of the proponents of liberal nationalism, could serve as a basis for integration in a democratic polity - does not seem to be a viable option for the near and not so near future in Bosnia. The only alternative seems to be strengthening civic forms of integration, consolidating a *civic culture* and moving towards *state-national* identities. If anything can substitute the precarious notion of *national solidarity* in Bosnia, this can only be a *civic solidarity*. What Bosnia needs is the possibility to build interpersonal relations based on institutionalised trust, paving the ground for the emergence of a *civil society* instead of merely *ethnic societies*. This could provide means to integrate and identify with the democratic polity, which go beyond purely ethno-nationalist ones. But of course this is a long-term project.

Conclusion

Dayton has been criticised for cementing ethnic separation and thus going against the long-term goal of developing a cross-ethnic civil society that could provide the basis for a future democratic state. Bosnian statehood sufficiently close to the ideal of a *state-nation* cannot be stabilised under the conditions of ethnic separation. Interpersonal and interethnic ties have to be more extensively institutionalised on the level of the Bosnian federal state, institutional ties that crowd out the predominant structuring of politics along ethnic lines on the Entity-level and in effect transcend the precedence of the different nationalist ideologies in public life. As Caplan puts it: "It is difficult to see how indifference to difference – the hallmark of a liberal society – and a culture of tolerance can develop in a society predicated on an array of constitutionally enshrined ethnic barriers and markers."[47]

The necessary institutions able to transcend the lines of ethnic fragmentation still have to be created. Institutional improvements depend, however, on co-operative behaviour among political elites and society. But consolidation deficits in representational and behavioural dimensions as well as in the civic culture *caused* by institutional factors are also significant obstacles to overcoming the initial Dayton

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[46] Woodward, "Milosevic Who?", p. 26.
[47] Caplan, "Assessing the Dayton Accord", p. 225.

arrangements and establishing legitimate and effective democratic institutions. Where the conditions for progress from within are not yet in place the international community has to press for solutions that keep the process going. We have to be careful, however, not to rely too heavily on international agencies, especially when having in mind that – as shown above – these have become somehow part of the various dilemmas themselves.

During the latest elections some space for moderate forces initially seemed to open up, despite the relative victory of the three nationalist parties – the Serb SDS, the Croat HDZ and the Muslim SDA. Especially in Republika Srpska a pro-reformist party performed quite successfully: the social democratic SNSD, the party of former RS-Prime Minister Milorad Dodik, made significant gains at the expense of the leading SDS, and experts even expected the party to form a pro-western and reform-oriented governing coalition in the Entity.[48] However, at the first session of the RS-Parliament in the end of November, the moderates were overruled when the head of the SDS was elected Parliamentary President with the votes from a smaller coalition partner and, surprisingly, also those from some members of the Muslim SDA. In turn a Bosniak candidate has been elected Vice President. In the Federation, the SDA formed a coalition with the HDZ and thus also violated its promise not to cooperate with the Croat and Serb nationalist parties.[49]

The fact that nationalists can work together might appear to be an improvement. That they seem able to do so primarily to secure their own share of power, on the other hand, is reminiscent of the anti-communist platform from the early 1990s which did not prevent the ethno-nationalists fighting each other as soon as they thought they could afford it. But today is not 1992 and there has been progress since the end of the war.

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[48] In the Federation, however, the social democratic SDP lost votes to the SDA. This loss was particularly disappointing as the SDP, which led a moderate governing coalition since the 2000 elections, has often been described as the only significant multi-ethnic party in the country, see *Balkan Reconstruction Report*, "A Victory, Not a Triumph"; *Balkan Times*, "Official Results of Bosnian Vote Leave Hope for Moderates"; Anes Alic/Dragan Stanimirovic, "Nationalists Come Out on Top", in *Balkan Reconstruction Report*, 7 October 2002,
http://balkanreport.tol.cz/look/BRR/article.tpl?IdLanguage=1&IdPublication=9&NrIssue=1&NrSection=1&NrArticle=7526.
[49] Dragan Stanimirovic/Anes Alic, "Three Enemies, One Coalition", in *Balkan Reconstruction Report*, 2 December 2002,

The nationalist parties seem to have realised the importance of giving their programmes a more reform-oriented tone, even if it is only to please the international community. International observers validated the way the latest elections were carried out as an important step forward. They were well-organised and free from violence; it was the first elections that were completely run by a national administration itself and as such a sign of normalisation and internalisation of the democratic process.[50]

"But for all the real and rhetorical improvements registered since January 2001" , as the International Crisis Group stated in August 2002, "BiH still is not a competent state, let alone one that inspires or enjoys the loyalty of all its citizens."[51] After the October elections Bosnia-Herzegovina still does not seem to be a competent state when compared to the Entities it consists of; and the country does not seem to be a competent state when considering the pre-eminent role the international community still has to play in policy making and legislation.[52] Hopefully, the engagement of the international organisations in the country can provide stimulus to overcome the dilemmas sketched above. To find the right balance between interfering and stepping back is the real challenge for the 'internationals'. How and if this can be achieved has major impact on the prospects for future democratic consolidation in Bosnia. The people living in Bosnia can neither afford a second failure of democratisation nor a second failure of the international community.

http://knowledgenet.tol.cz/look/BRR/article.tpl?IdLanguage=1&IdPublication=9&NrIssue=1&NrSection=1&NrArticle=7943.

[50] *Balkan Reconstruction Report*, "A Victory, Not a Triumph"; Beth Kampschror, "BiH Elections Violence-Free, but Turnout Low", in *Balkan Times*, 7 October 2002, www.balkantimes.com/html2/english/020710-BETH-001.htm.

[51] International Crisis Group, "Bosnia's Alliance for (Smallish) Change", *Balkan Report No. 132*, 2 August 2002, www.crisisweb.org/projects/balkans/bosnia/reports/A400725_02082002.pdf, p. 15.

[52] Shortly after the elections the High Representative Paddy Ashdown called for continuing reform efforts. He presented a plan consisting of six measures aimed at strengthening the federal state and reducing the importance of the entities in key policy areas such as the restructuring of the central institutions or the creation of a state-wide customs and tax system, see *Deutsche Welle Monitor Ost-/Südosteuropa*, "'Reformen müssen weitergehen' – Nach dem Wahlsieg der Nationalisten in Bosnien-Herzegowina erwarten Experten große Probleme", No. 195, 11 October 2002; *Deutsche Welle Monitor Ost-/Südosteuropa*, "Bosnien-Beauftragter Ashdown: 'Reformen haben Priorität' – Wahlsieger sollen sechs Forderungen binnen sechs Monaten erfüllen", No. 194, 10 October 2002.