



Institutionalizing Ethnicity in Former Yugoslavia: Domestic vs. Internationally Driven Processes of Institutional (Re-)Design¹

Florian Bieber, European Centre for Minority Issues

Introduction

The past decade has seen a degree of international intervention into Southeastern Europe exceeding any outside intervention by major powers and international organizations in Europe since the end of World War II. The degree of involvement has mobilized its critics, both within former Yugoslavia, as well as internationally. Some critics emphasize the belated, uncoordinated and insufficient action of the international community, while others condemn the degree of interventionism by 'great powers'. Some analysts in fact see international intervention as the reason for explain not only the disintegration of Yugoslavia, but also for most of the subsequent conflicts in the region, as well as for the region's political and economic position on the European periphery.

Rather than providing a normative assessment of international intervention or establishing lines of historical continuity, the starting point of this article is the observation that international intervention in the wars of former Yugoslavia has not only been quantitatively, but also qualitatively different from most earlier types of intervention in Europe and elsewhere. Instead of discussing international intervention in its various forms (military intervention; economic sanctions; mediation; negotiation), the focus is on agreements which either seek to end conflict or (less commonly) prevent violent conflict in former Yugoslavia. Before turning to such agreements, I shall trace the nature of international intervention and the development of externally driven agreements in recent decades.

Historically most internationally mediated agreements have focused on achieving either a cessation of hostilities (e.g., ceasefire) or a long-term strategy for the prevention of the re-occurrence of conflict (e.g., demarcation of internationally recognized borders between the conflict parties). Depending on the balance of power between the object of intervention and those intervening, as well as the principles which have guided the intervention—oscillating between self-interest and the promotion of universal values—the agreements either recognized the military/political status quo or they sought to establish a new reality, for example by rewarding countries with new territories at the expense of their neighbors (or colonial rivals).

With some exceptions, such as the Minority Treaties and the peace treaties signed with the losers after World War I (Claude 1955: 16-30), internationally mediated or imposed peace agreements have rarely been concerned with establishing rules for internal governance in the countries in question. This has been even more the case in regard to ethnicity (Owen 2002: 375-410). In recent years, however, most peace treaties have dealt with the post-war governance of the respective countries (Drews 2001). This change has been the result of three different, but related trends in recent decades:

1. The nature of conflict has changed over the past decades. With the revival of regional nationalism in Western Europe in the 1960s and the subsequent rise of nationalism in the developing world, and in the 1980s (Gurr 1993: 89-122)² also in Eastern Europe, the prime threat to international stability have been ethnic and internal conflicts rather than inter-state wars.

¹ Funding for research for this article was provided by the International Policy Fellowship of the Open Society Institute, Budapest.

² Most would argue that the nationalist wave started in Eastern Europe in 1989. In Yugoslavia, as well as elsewhere, one can identify an increase of nationalism already earlier in the 1980s.

2. The international community has moved away from viewing human rights as the sole guarantee to prevent internal instability, but has recognized the need for group-based minority rights, as well as political representation of non-dominant groups (Pejic 1997: 666-685).
3. The 'international community' has been less reluctant in recent years to intervene in 'internal conflicts', which were previously largely shielded from outside involvement by the primacy of sovereignty. While there has been no out-right dismissal of the concept of national sovereignty, it has been seriously challenged and did not prevent NATO intervention in Kosovo (Thornberry 2001: 43-58).

The intervention in the conflict in former Yugoslavia particularly saw the advent of long-term, often reluctant, international intervention. The peace settlements included, in addition to the aforementioned classical components of a cease-fire and the establishment (or confirmation) of borders, (a) provisions for constitutional reform to accommodate the groups in questions, at times including a whole new constitution; (b) mechanisms for the return of refugees; (c) institutions for the protection of human and minority rights. The agreements proposed by the international community in former Yugoslavia stand out particularly for their insistence on establishing group rights and/or group autonomy. Remarkable is also the fact that international organizations and groups of (mostly) Western countries have less focused on the re-drawing of borders, but rather on the re-design of institutional systems within the countries, including whole new constitutions (de Varennes 2002: 53-59).

In order to determine effect and possible success of this type of intervention, I examine two aspects. First, I categorize different types of international intervention, as witnessed in former Yugoslavia between 1991 and 2001. Second, I turn to difficulties associated with the successful functioning of these institutions. In conclusion, I briefly explore the need for re-designing or 'domesticating' internationally designed institutions in the countries of the former Yugoslavia. The aim of this article is to offer some thoughts on both forming a critical approach to future internationally driven institutional design in post-conflict areas, as well as arriving at some tentative conclusions for changes in the institutional set-up of the countries and areas in question, namely Bosnia, Kosovo, Macedonia.

Types of International Intervention

International intervention into ethnic conflicts has been a topic of increasing academic interest in recent years, especially in light of the wars in Bosnia, Rwanda and Kosovo (Crocker 1999). A first distinction made in the resulting body of literature is between *unilateral intervention* by one country or a group of countries into a conflict, primarily for deriving benefits for themselves, and *multi-lateral intervention* by international organizations or a group of countries (Walker 1993: 165-180; Cooper and Berdal 1993: 181-206). While the latter might also bring some benefits for the countries participating in the intervention,³ the action is primarily motivated by two principles: stability and preventing the abuse of human rights. While these principles are complimentary, it is important to recognize that the abuse of human rights has been tolerated at times in order to achieve stability (and possibly vice versa). Despite alternative interpretations of international intervention into the wars in former Yugoslavia, this article contends that intervention was primarily motivated by these principles rather than by self-interest. While especially the United States has led intervention at different times, there has been a consistently high degree of involvement of a number of other countries and organizations in the former Yugoslavia. During the early stages of the disintegration of Yugoslavia, the European Union had been the key player in advancing proposals for a

³ Such as preventing the flow of refugees into the intervening countries or economic opportunities in the target countries.



reconstruction of, first, Yugoslavia and later Croatia and Bosnia. During this process, the United Nations also had a role in the negotiations. Later on, the so-called 'Contact-Group', comprising France, Italy, Germany, Russia, the United Kingdom and the United States, became the primary broker. It was this group of countries which, under the leadership of the United States, was instrumental in securing the Dayton Peace Accords and making the Rambouillet negotiations possible. In terms of institutional design, the United Nations regained a role in Kosovo through the Special Representative of the Secretary General, while the European Union was the key negotiator in Macedonia in 2001 and with regard to the future of the Federal Republic of Yugoslavia in 2001 and 2002.

For the purposes of this article, the cases under consideration can be defined by two criteria:

1. International intervention has to be multilateral and not primarily motivated by the wish to dominate the country in question politically, militarily or economically. For example, the support provided by the Federal Republic of Yugoslavia to the Bosnian Serb leadership would not qualify, nor would the support given by some Islamic countries to the Bosnian government.
2. The intervention proposes and/or negotiates a fundamental transformation of the institutional system of the country in question. This might occur through a new constitution or a package of constitutional and legal reform. A number of the proposed plans did not formulate a specific constitution or reform package, but were abandoned at the stage of formulating general principles for institutional change.

Altogether, one can list 14 proposals and agreements (see Appendix), some of which remained general and without great detail (e.g., the Cutilheiro Plan), while others were imposed by the international community without negotiations (e.g., the Constitutional Framework for Kosovo). While most institutional changes were part of the peace agreements themselves, others, most notably the Constitutional Framework for Kosovo and the amendments to the entity constitutions in Bosnia were imposed in the post-conflict phase.⁴

In addition to international intervention in the process of institutional change, it is worth noting that in a large number of cases international organizations were also accorded a role in the implementation process of the agreement. The massive presence of international organizations in Bosnia, Kosovo and Macedonia, as well as to a lesser degree in Croatia, Serbia and Montenegro provides ample evidence for this. The focus here is less on the military and humanitarian presence which is not concerned with institutional reform or the supervision thereof,⁵ but rather on international organizations which supervise newly created institutions or organizations and individuals who form an integral part of these structures. Here one can distinguish between three different types of involvement of the international organizations in question in terms of intensity:

1. The least formal role international organization have held when charged with supervising the implementation of the respective accords and reporting on its progress, rather than intervening themselves directly in the implementation. Usually their role was tied to (prospective) membership of the countries in

⁴ Most Agreements are reprinted in Trifunovska 1994; Trifunovska 1999. The Dayton Agreement is available at www.ohr.int, the Ohrid Agreement at: www.president.gov.mk/eng/info/dogovor.htm, the Serbia-Montenegro Agreement can be found at: www.ssinf.sv.gov.yu/.

⁵ The military presence has been, however, preoccupied with military reform in Bosnia, which has had some impact on the institutional set-up of the country and its entities.

question in these organizations, such as the Council of Europe or the OSCE. An enhanced role has been played by some international organizations when they were assigned a specific monitoring role by the peace agreements and were granted limited power to influence the implementation process directly. One such example is the OSCE Democratization and Human Rights Departments in Bosnia and Kosovo.

2. A higher degree of involvement expresses itself in the possibility of the organizations to engage actively in the implementation process. This prerogative manifests itself in two ways. Some organizations, such as the Office of the High Representative (OHR) in Bosnia, have been able to act as an executive and a legislative organ by being granted the power to pass laws, take decisions and dismiss elected and appointed officials. Here the organizations become active if existing domestic institutions are unable (e.g., due to vetoes) or unwilling (e.g., due to obstructionist politicians) to take decisions or take decisions which are in violation of the agreement. This particular type of involvement means that international agencies take part in the country's or entity's governance in the absence of domestic institutions. Before the parliamentary elections in November 2001 and the subsequent establishment of a government in Kosovo in March 2002, the Special Representative of the Secretary General of the United Nations (SRSG) exercised this function, as did the election department of the OSCE in Bosnia with regard to the organization of the elections prior to the passing of the election law in August 2001.
3. Finally, international intervention has expressed itself by International Organizations being given a role in nominating positions in domestic (and constitutionally defined) institutions. Here, the distinction between international and domestic agencies has been particularly blurred. Especially in Bosnia, a number of domestic institutions—such as the Constitutional Court, the Central Bank, or the Human Rights Ombudsman—are staffed by international officials, nominated by key international organizations, including the Council of Europe, the World Bank and the OSCE. It could be argued that through these appointments international intervention is less profound than by exercising power through international organizations with far-reaching powers, such as the OHR, as the international appointees are part of the domestic institutional infrastructure and usually can only take decisions in cooperation with some of the local members of these institutions. At the same time, these offices form an integral part of the institutional set-up and do not constitute the super-structure of international organizations which is much more vulnerable to considerations of an 'exit strategy'.

The issue of the 'exit strategy' extends the discussion to the dimension of time. All international involvement and intervention is considered to be temporary, either explicitly, by giving concrete deadlines—which are more often than not broken—or by setting a particular agenda including an eventual 'hand-over' to local actors and institutions, or implicitly by creating a parallel domestic institutional infrastructure which is intended to take over from the international agencies. The transitory nature of international intervention placed limitations on the effectiveness of international organizations. For the organizations themselves the temporary nature of their presence delayed the creation of firm local structures and subjected strategic planning to 'exit strategy'. For some of the local political elites the limited timeframe for intervention encouraged the hope that it would be possible to 'wait out' the international presence to return to pre-intervention ethnic mobilization.

It is important to note here that one International Organization might not only fulfill a different function in the different countries under consideration here, but also within one country they might be tasked with a number of responsibilities which vary with regard to



intervention. The OSCE in Kosovo and Bosnia has, for example, been both a monitoring organization, as well as an implementing agency, especially with regard to elections.

Before examining the origins of the agreements, it is necessary to distinguish between different degrees of intervention in the institutional set-up. The weakest case of international intervention in the case of former Yugoslavia has been international agencies acting as mediators, attempting to bridge conflictual positions. However, even with this relatively limited degree of intervention, punishments and rewards were offered to participants for either participation in the process or for the willingness to find a compromise (Touval and Zartman 2001: 427-444). More frequently in the case of the 14 cases of intervention in former Yugoslavia, international organizations proposed a particular solution to the conflict, albeit based on the proposals and demands of the parties, and sought to secure support from the different parties for that solution. Although the suggested outcome might have been located somewhere between the different opposing positions, it rarely constituted a *compromise* borne out of the genuine will of the parties to seek a peaceful settlement of the conflict. The fact that over half of the major international initiatives under discussion here failed is evidence for the difficulties with ending ethnic conflict (Sisk 2001: 9-19). The fact that reaching an agreement even with international mediation and pressure was often evasive highlights the fact that a domestically negotiated settlement was beyond the reach of the parties to the conflict.

The Origins of Institutions

The ongoing intervention of international organizations requires drawing a more pronounced distinction with respect to the origins of former Yugoslavia's post-conflict institutions. As mentioned earlier, the presence of international actors in the countries and their formal and informal intervention into different institutional set-ups necessitated additional adjustments of the original internationally mediated or imposed institutional arrangements. In the case of Bosnia, the intervention, especially the constitutional amendments passed by the OHR in April 2002, were primarily concerned with the institutional arrangements in the entities, whereas in Kosovo the entire constitutional framework was imposed nearly two years after the beginning of international intervention in May 2001. In general, one can thus distinguish between institutions, which have been designed as part of the peace agreement, most notably in Dayton for Bosnia, and institutions, which are created or reformed during the implementation process, such as the two just mentioned. It would be a mistake, however, to establish a rigid dichotomy between these two types of origins of institutions. Rather, they mark the end points of a wider spectrum of interventions into institutional reform. Both the Ohrid Accords and the Belgrade Agreement on the future relationship of Serbia and Montenegro, for example, seek to end a conflict (one military, one political) through more or less detailed principles of constitutional and institutional reform. The reforms themselves, however, took place in the post-conflict phase—at least in the case of Macedonia⁶—and the institutions resulting from these changes are both an aspect of ending the conflict itself and a component of post-conflict institutional development. Thus, based on the cases under consideration here, it is more useful to draw a distinction between institutions that were brought about as part of an *intervention to end conflict* or as an aspect of *peace building* after the end of the conflict itself. An intermediary model, outlined above, features general framework for institutional arrangements as an aspect of conflict resolution (or transformation), while the details of these institutions are negotiated during the peace building phase.

⁶ The nature of the political conflict between Serbia and Montenegro was not transformed through the Belgrade agreement, but rather reframed. In fact, as political conflict, it is unlikely to be 'resolved' due to the firmness of the different positions, but it can be 'managed' and prevented from affecting other areas of policymaking.

It is not possible to dismiss any of the three approaches—institutional design as part of a peace-agreement, institutional development in post-conflict phase and the intermediary model—outright, as all have their merits, and, more importantly, lack alternatives. All three carry certain limitations, which need be considered. The design of a complete package of institutional reform including a constitution, as in the Dayton Accords, has the distinct advantage that once accepted, the institutional set-up of the country is no longer contentious, allowing, at least theoretically a shift to more issue-oriented politics. The Bosnian peace agreement does, however, provide evidence for a critique of this hypothetical outcome. The consent of the parties to the conflict at the end of the war cannot be translated into automatic support during the post-conflict phase. In fact, the post-war period in Bosnia has seen various groups, from nationalists of all three major groups to moderate politicians, criticizing the arrangement (Bieber 2002: 205-218). It could be argued that the insistence of the international community at not altering the Dayton Accords removed potentially divisive constitutional and institutional debates from public discussion. On the other hand, complete institution-building packages, such as the Dayton Accords or the failed Rambouillet Agreement, contain a number of inherent problems:

1. The need to secure support from the parties to the conflict, rather than the political parties in a post-conflict settings which might require considerably more limitations to the quality of the arrangement than at some later stage. As the president of the Jewish community in Bosnia, Jakob Finci, has pointed out, the three-member presidency—limited by ethnicity and geographical origins (Serb member from the Serb Republic and Croat and Bosniak member from the Federation)—was one of the first constitutional provisions which was agreed upon by the representatives at the peace talks in Dayton (Finci 2001).
2. Institutional arrangements negotiated to end a war are probably more difficult to adjust and change than subsequent institutional reforms, as they are closely tied to the end of the war itself and have been arrived at in a non-constitutional process.
3. The point in time at which new constitutional/institutional arrangements are concluded often lies before the actual post-war dynamics of ethnic relations emerge, and as such they can prove inadequate for managing ethnic relations under these new circumstances.

Institutions that are set-up during the peace-building phase address these three points of critique. They are able to be more process-oriented and can reflect the needs of the society more adequately. However, the record of former Yugoslavia suggests that they are more difficult to achieve than other forms of constitutional re-arrangements. Both the amendments to the entity constitutions and the Constitutional Framework for Kosovo were imposed, rather than negotiated. While this derives in part from the extraordinary powers of the international organizations tasked with overseeing the civilian aspects of the reconstruction process, there is evidence in both cases that consensual institution-building or reforms negotiated between the different communities in question would not have been possible. In the case of Bosnia, Wolfgang Petritsch, the High Representative at the time insisted that the reform ‘... is not an outright imposition as used to be the case previously. This is clearly a new approach, I would say, this is a partnership’ (Reuters 2002). While this assertion is correct insofar as there was a multi-party agreement, which only narrowly failed (Agreement 2002), the process of arriving at these constitutional changes necessitated by a constitutional court decision nearly two years prior to the amendments suggests heavy-handed international intervention (Perry 2002). In the case of the Constitutional Framework for Kosovo, local actors were merely consulted and the general response by both Serb and Albanian political representatives suggested a high degree of scepticism (Bieber 2003). While imposed institutional change



might thus be possible, the need for *imposition* implies the failure or impossibility *negotiating* institutional reforms in a post-conflict setting.

The challenges arising from both types of achieving institutional change would suggest an intermediary model as a possible means of addressing the above-mentioned difficulties. The mixed-type of drafting constitutional reform principles to end the conflict and allowing for negotiations on the details later has the inherent advantage of addressing the need for institutional change to end conflict, while encouraging a process leading to reform that might include more groups than peace negotiations typically would. As the protracted negotiations in Macedonia (Brunnbauer 2002) and between Serbia and Montenegro (ICG 2002) after the conclusion of the respective agreements show, some of the most contentious issues, which lead to the conflict, are not, or only insufficiently, addressed in more general principles of reform. Furthermore, the generally wide margin of interpretations might result in a drawn-out period of institutional uncertainty in which ethnic entrepreneurs can easily mobilize communities against the process or against other groups. As such, this intermediary path might be more viable in conflicts where violence is either entirely absent, as in the case of Montenegro, or rather limited, as was the case with Macedonia.

As a brief survey of the different origins of institutional reforms and transformations suggests, there is no single path which would be inherently more effective in achieving functional and legitimate institutions. The three models outlined above draw attention to the fact that the timing of institutional reform is of critical importance and that the quality, longevity and effectiveness of these reforms depends to a considerable degree upon the exact point in time at which they are decided.

Success and Failure of Institutions

When assessing the performance of the institutions established or transformed by the aforementioned agreements one is confronted with a difficulty deriving from their very nature. Ulrich Schneckener has pointed out in a comparative study of power-sharing arrangements that a key factor for their success is that they are perceived as domestic agreements rather than as externally imposed agreements (Schneckener 2000: 16). There are a number of reasons why agreements, which are driven by international rather than domestic actors, are less likely to succeed.

The first group of factors is linked to the political elites charged with the implementation process. Secondly, one has to examine the acceptance of the agreement with the larger population and members of the antagonistic communities.

The international community has faced numerous difficulties in negotiating agreements in former Yugoslavia. Some of the 'leaders' of the respective communities were discredited and indicted for war crimes by the International War Crimes Tribunal for the Former Yugoslavia (ICTY) at the time of the negotiations (Radovan Karadžić and Ratko Mladic in 1994/5, and Slobodan Milošević in 1999), which limited the ability of international negotiators to engage them in the negotiation process. In addition, in a number of cases in the former Yugoslavia, as well as in other civil wars, there was an absence of a unified and legitimate leadership, which represents both the respective population and the centers of political and military power. As a result, there was often no single partner who could negotiate on behalf of one group, as exemplified by the difficulties surrounding the Albanian delegation for the Rambouillet Peace talks in 1999 (Weller 1999: 227). As a result, some peace agreements did not include some key leaders: the Dayton Peace Accords were not negotiated with either Bosnian Croat or Bosnian Serb political leaders; the Ohrid Agreement for Macedonia did not include the leadership of the UÇK. Whereas

indirect control mechanisms⁷ were in place to assure support for, or more frequently toleration of, the agreement, direct channels of communication were limited, allowing for obstruction of these agreements by those excluded.

Even if the elites involved in the negotiations are the main stakeholders in the implementation process, there has been little assurance of their commitment to it. The support by these elites was in most cases primarily motivated by their attempt to avoid penalization by international organizations rather than by support for the actual agreement. This points to a particular problem associated with the nature of the agreements. All but two of the agreements or impositions under consideration—Serbia-Montenegro and the Constitutional Framework for Kosovo—were tools to end armed conflict. As mentioned earlier, these agreements differ from conventional accords seeking to end wars, such as an armistice or a cease-fire. Generally, all the agreements in former Yugoslavia also contained a cease-fire component, which was generally met with much less resistance, either during the negotiations (when the agreements failed) or during the implementation (if they were agreed upon). Military disengagement has been generally more easily achieved due to the parties on the ground⁸ and the means at the disposal to Western policy makers. The main difficulties arose from the non-military, institutional components of the agreements. International organizations generally lacked the tools or experience to adequately enforce institutional reforms/designs stipulated by the agreements. Without venturing into an exploration of the reasons for the conflicts in former Yugoslavia, it is important to note that the political and intellectual elites played a pivotal role in mobilizing ethnic identities, which had not been of primary significance in large parts of former Yugoslavia for most of the decades before 1991. The same elites continued to govern the territories now administered by internationally devised institutional arrangements. While there is a general question regarding the ability of wartime elites to govern ethnically divided societies in the post-conflict era, this applies particularly when these elites mobilized the identities to trigger war and derived their legitimacy from it. Here only the conflict in Macedonia might be a possible exception where political elites were more reluctantly drawn into the conflict as elsewhere.

In addition to the general difficulties associated with empowering new generations of leaders who can re-build some degree of inter-communal trust, the political arrangements stipulated by the agreement largely amplified this difficulty. As all agreements foresee varying degrees of ethnicity-based autonomy, they do not only reward the ethnic entrepreneurs during the conflict, but they also provide these elites with fiefdoms, i.e., autonomies, where in the name of ethnicity, elites are provided with considerable powers and resources. The policy of international organizations towards this dilemma has been two-fold: Recognizing the need for institutions that do not only safeguard minority rights, but also promote group-based representation, while on the other hand attempting to marginalize elites which derived their legitimacy from representing exclusivist ethnic interest. Various strategies were pursued to weaken these groups, including:

1. openly or indirectly endorsing 'moderate' political parties;
2. holding frequent elections;
3. excluding parties and individuals from political offices on the basis of their program or performance;

⁷ In the case of Bosnia, both the Croatian President Franjo Tudjman and Serbian President Slobodan Milošević were signatories to the agreement and exercised some control over the Croats and Serbs in Bosnia, respectively. In Macedonia, some communication between Albanian parties and the UÇK is likely to exist, as well as some informal communication between the organization and some international actors.

⁸ Parties often complied because they either managed to continue their hold on territory (as in Bosnia), or because the disarmament process was mostly symbolic and allowed the parties to continue to play an important military and/or political role (as in Kosovo and Macedonia).



4. setting conditions for political and economic support related to the policies pursued by, and the composition of, governments;
5. setting electoral rules which would favor moderate parties.

The problems of such policies for democratic governance have been discussed elsewhere (Chandler 1999; Pula 2003). Additionally, these policies have largely not been very successful (ESI 2001). While some individuals have been politically marginalized, ethnicity has not only remained the prime divider in the political spectrum, major political parties continue to endorse extremist goals and do not seek co-existence with other ethnic groups (Papic 2001: 33). The only—rather weak—achievements have been a tuning down of nationalist rhetoric through the threat of sanctions against parties and politicians by international organizations and the ability to engineer a moderate coalition in Bosnia, which succeeded in taking power by a narrow margin in early 2001, lasting for barely two years until the elections in October 2002.

In addition to the limits of internationally driven institutional (re-) arrangements at the elite level, one has to note difficulties with regard to their acceptance by the population at large. Whether agreements are signed in post- or pre-conflict settings, their conclusion is based on the need for institutional change. Previous institutions did not properly manage ethnic relations and lacked legitimacy with one or more of the key groups in the society in question. Without these two factors, and the inability to carry out successful 'domestic' reforms of failing or failed institutions, internationally driven processes of institutional design would not have been required. As such, the new institutions should not only end the conflict, but also address its causes, i.e., the lack of functionality and legitimacy, which led to the breakdown of the previous system.

Functionality can be examined from two angles. The first one pertains to the ability to take and implement decisions. Thus this aspect is largely related to state strength and weakness. Functionality is limited by the absence of sufficient control of the central authorities over the country's territory. Currently, neither governments of Macedonia, Kosovo, Serbia, and Bosnia⁹ exerted control over all its territory. This absence of control is only partly the result of the post-conflict setting; it is equally the result of the weakness of many institutions and the conflictual nature between state and local authorities—under control of different ethnic groups. The functionality of institutions is furthermore constrained at the centre, where complex and cumbersome decision-making process—a result of elaborate veto rights and broad ethnic representation—further reduce the limited powers central governments have.

The second dimension of functionality is specific to Eastern Europe. As European Integration provides for the only viable long-term development path for all countries (and regions) under consideration here, functionality has to be viewed in the context of integration into the EU. Past agreements, including the Dayton Peace Agreement and the Belgrade Agreement on Serbia and Montenegro construct fractured sovereignty with insufficient power either at the level of the sub-state units (republics or entities) or at the central level for the countries to engage in Euroatlantic integration processes, including approximation to the EU and NATO.¹⁰ The institutional arrangements are thus not functional in their capacity to secure approach mainstream European integration.

⁹ Government control in Bosnia recently increased with the establishment of the state-level State Border Service which took control of the country's international borders. Nevertheless, the state institutions have only limited means available to influence municipalities, cantons or entities.

¹⁰ Bosnia has been required to establish a joint army command to join Partnership for Peace, whereas Serbia and Montenegro were required to establish an internal market and customs union to participate in the Stabilization and Association process, two aspects not part of the Belgrade Agreement (Dnevni Avaz 2002, Patten 2002).

Turning to the issue of legitimacy of these institutions. Even if legitimacy of the institutions has been secured in the eyes of the political elites, this does not translate into popular legitimacy. Some proponents of the 'elite-manipulation' approach would argue that the conflict in the former Yugoslavia originated with elites and their consent is more crucial than that of wider populations. They would furthermore point out the ability of elites to engineer support. One piece of evidence to support this interpretation has been the construction of support for the Vance-Owen peace plan in Serbia. Originally, Slobodan Milošević opposed this plan for Bosnia. Once Milošević endorsed the plan under international pressure and instructed RTS, the state television, to change its tone of reporting on the plan from negative to positive, opposition among the population turned to support. On 9 April 1993, before the change in strategy, 70% of Serbs in Yugoslavia opposed the plan. By early May 1993, 61.7% signaled their support for the same plan in opinion polls (Economist 1993: 35).¹¹ While the control over the media and state apparatus in former Yugoslavia allowed authoritarian nationalist political elites to mobilize support for agreements, governments that are more democratic do not have the same means at their disposal for mobilizing support. Support for recent agreements has been luke-warm at best, partly as a result of less-than enthusiastic support from political elites, partly due to the complexity of these agreements and in part also due to the prevalence of uncompromising nationalism. Especially the members of the dominant communities have been more reluctant to endorse the agreements and the junior partners.

There are two recent examples for this trend. The Ohrid Agreement was only supported by 43.7% of Macedonians in its immediate aftermath, while 50.7% opposed it. Only among Albanians, the support reached 78% (INET 2001; Finn 2001: A26). In the first post-agreement period, the opposition by Macedonians actually increased to 56% in October 2002 and 63% in May 2002 (Judah 2002). The fact that the moderate and pro-agreement Socialdemocratic Alliance won the September 2002 elections can be partly attributed to other political issues, namely corruption, and the fact that the nationalist VMRO, despite criticizing the Ohrid Accords, failed to offer an alternative (NDI 2002). The agreement of Serb-Montenegrin relations received similarly little support among the dominant community. In a survey in Serbia two weeks after the signing of the agreement 46.6% opposed it, while only approximately 35% supported it (Blic 2002). In Montenegro on the other hand, nearly 62% supported the Belgrade Agreement shortly after it was signed (CEDEM 2002).

In addition to the short-term acceptance of agreements, one has to consider the long-term legitimacy they seek to provide. Even short-term support engineered through media campaigns does not necessarily translate into the long-term legitimacy of institutions. In Bosnia five years after the signing of the peace accords, a majority of 60.8% among those surveyed in *Republika Srpska* supported either the entity as an independent state or its accession to the Federal Republic Yugoslavia. In majority Croat areas of the Federation, the support for joining Croatia stood at 4.4%, while 37.6% favored the creation of a separate territorial unit within or outside Bosnia (UNDP 2001b: 33). Confidence in the state institutions is even lower, with approximately 65% of Serbs and more than 80% of Croats having no confidence in state institutions (parliament, presidency, and council of ministers) (UNDP 2001b: 12). A considerable majority of its Bosnia's citizens have little confidence in its institutions, do not seek to preserve the state and lack any attachment to the state (Vukovic 2001).

¹¹ While such surveys tend to have high margins of error due to the volatile climate in which they are carried out, they point to a trend. The effects of such media engineering are probably generally limited. As the first post-war elections in Bosnia indicate, even though the widely-viewed Serbian television (RTS) promoted the National Alliance for Freedom and Peace, the Serb Democratic Party still won with a margin of more than 5:1.



The reasons for the lack of legitimacy of a significant share of the agreements for former Yugoslavia derives from four factors:

1. While *nationalist sentiment* has been clearly mobilized by political elites, it has proven to be difficult to demobilize it and to undermine the primacy of national identity over other political identities in multinational settings.
2. As international actors authored most agreements and play a significant role in the implementation of these agreements, there is a sense of a *lack of ownership* over the agreements and their implementation. This is in part deliberately mobilized by nationalist elites to undermine the agreements, especially in anticipation of the period following the departure of international implementation agencies (Solioz and Dizdarevic 2001).
3. The agreements are generally *complex* in their institutional substance, the layering of sovereignty and the implementation process. The location of competences has often lacked any degree of transparency, even to political analysts.
4. Finally their *performance* has not been as successful as hoped for by a large part of the population, especially in terms of economic improvements and re-Europeanization of the countries in question.

Conclusion: The Need for Institutional (Re-) Design

The performance and legitimacy of institutions are key to drawing lessons from the current institutional arrangements and defining an agenda for change. Debates about re-design in recent years were less informed by performance than by moral rights and wrongs underlying the original agreements.¹² A comprehensive assessment of the performance of these institutions, extending beyond the consideration offered here, will have to take into account an evaluation of the capacity of the institutions to take decisions. As such, it has to consider the use of veto rights and other mechanisms to delay or prevent decision-making. In addition to the decision-making capacity of institutions, the implementation capacity has to be examined, as the different layers of autonomies and governance established in all countries and territories under consideration here often do not share ethnic dominance with the rule-making bodies and/or have different interests. Extending beyond the functional performance, the quality of the institutions has to be scrutinized. As critics of power-sharing arrangements have pointed out in other cases, power-sharing institutions run the risk of diminishing the quality of democracy, resulting from their complexity and primacy of ethnicity over the equal representation of all citizens (Bieber 1999: 79-94; Sisk 1996: 38-40). This qualitative consideration can be transferred to most other types of institutionalized ethnicity and is exacerbated in the former Yugoslavia by the substantial role played by non-domestic actors in the implementation and the governance of these institutions.

As has been highlighted in this article, there is a need to assess the performance and structure of institutions, which have emerged in former Yugoslavia as an integral part of peace agreements. The non-domestic origins of many of the institutional reforms in the former Yugoslavia have created a series of particular problems and need to be assessed in a differentiated manner. The attempt to manage diversity and to reject both disintegration and parallel trends of homogenization, as well as denying states full sovereignty when it comes to suppressing non-dominant ethnic groups, has to be welcomed. As such internationally driven institutional reform has been a constructive development of conflict management. Despite the flaws of these agreements, one has to

¹² The debates about constitutional change in Bosnia following the constitutional court decision give only little room to actual functionality of deeply entrenched power-sharing combined with ethnic federalism, but focused more on undoing some of the injustices incorporated in the institutional set-up of the two entities, especially in the Republika Srpska (Perry 2002).

note the frequent lack of alternatives, especially of 'homegrown' ones. However, it would be misleading to establish a dichotomy between exclusivist domestic institutional change and inclusive internationally driven processes of institutional reform. Institutional change in former Yugoslavia, both domestically and internationally generated, has been moving towards the primacy of ethnicity. Some systems have been mono-national, other agreements established bi- or tri-national states. Only in Macedonia, some aspects of the Ohrid Agreement constitute a move away from institutionalized ethnicity. Even here this move away is at the symbolic level (in the preamble of the constitution), while the institutions of the state are given strong ethnic qualifiers.

In order to overcome two problems associated with a number of these institutional arrangements—lack of legitimacy and functionality—a process of institutional re-design and/or change needs to be initiated. This process can only be successful, if these institutions become more domestic in both their origins and their identification and if they manage to perform better. Both will be a source of legitimacy, which is a prerequisite for these mechanisms of conflict management to become sustainable beyond the end of an international presence in the region.

References

- Agreement on the Implementation of the Constituent Peoples' Decision of the Constitutional Court of Bosnia and Herzegovina, Sarajevo, 27 March 2002.
- Bieber, Florian, 1999, 'Consociationalism—Prerequisite or Hurdle for Democratization in Bosnia?', *South-East Europe Review*, vol. 2, no. 3, 79-94.
- Bieber, Florian, 2002, 'Bosnia-Herzegovina: Developments Towards a More Integrated State?', *Journal of Muslim Minority Affairs*, vol. 22, no. 1, 205-218.
- Blic, 2002, 'Vecina gradana za nezavisnost Srbije', 2 April 2002.
- Brunnbauer, Ulf, 2002, 'The Implementation of the Ohrid Accords: Ethnic Macedonian Resentments', *Journal on Ethnopolitics and Minority Issues in Europe*, no. 1.
- Center for Democracy and Human Rights (CEDEM), 2002, 'Public Opinion in Montenegro 2002'.
- Chandler, David, 1999, *Bosnia. Faking Democracy after Dayton*, London and Sterling, VA., Pluto Press.
- Claude, Inis L., 1955, *National Minorities: An International Problem*, Cambridge, MA., Harvard University Press.
- Cooper, Robert, and Berdal, Mats, 1993, 'Outside Intervention in Ethnic Conflicts', in Brown, M. E., ed., *Ethnic Conflict and International Security*, Princeton, Princeton University Press, 181-206.
- Crocker, Chester A., ed., 1999, *Herding Cats. Multiparty Mediation in a Complex World*, Washington, D.C., United States Institute of Peace.
- De Varennes, Fernand, 2002, 'Lessons in Conflict Prevention: A Comparative Examination of the Content of Peace Accords', *The Global Review of Ethnopolitics*, vol. 1, no. 3, 53-59. *Dnevni Avaz*, 22 November 2002.
- Draws, Christian, 2001, *Post-Conflict Peace-Building*, Baden-Baden, Nomos.
- The Economist*, 'Slobo's slide', 15 May 1993, 35.
- European Stability Initiative (ESI), 2001, 'In search of politics: the evolving international role in Bosnia and Herzegovina', Sarajevo and Berlin, ESI.
- Finci, Jakob, 2001, Personal Communication, Sarajevo, 14 July 2001.
- Finn, Peter, 2001, 'Worried Macedonians Weigh Public Vote on Peace Accord. Officials Fear Legislative Rejection of Pact, Seek Alternative', *Washington Post*, 30 August 2001, A26.
- Gurr, Ted Robert, 1993, *Minorities at Risk. A Global View of Ethnopolitical Conflict*, Washington, D.C., United States Institute of Peace Press.
- INET*, 4 September 2001.
- International Crisis Group (ICG), 2002, 'Still Buying Time: Montenegro, Serbia and the European Union', Podgorica, Belgrade and Brussels, ICG.



- Judah, Tim, 2002, 'Macedonia: "Greater Albania" Gathers Support', *Balkan Crisis Report*, 7 June 2002.
- National Democracy Institute (NDI), 2002, 'Macedonian Parliamentary Elections', *Election Watch Report*, 15 August 2002.
- Owen, IV, John M., 2002, 'The Foreign Imposition of Domestic Institutions', *International Organization*, vol. 56, no. 2, 375-410.
- Papic, Žarko, 2001, 'The Role of Institutions in Peace Building', in Papic, Ž., ed., *International Support Policies to SEE Countries—Lessons (not) Learned in Bosnia-Herzegovina*, Sarajevo, Open Society Foundation, 30-43.
- Patten, Chris, 2002, 'Press Conference: Internal Market and Common Customs Systems', *Media Centre Report*, 3 July 2002.
- Pejic, Jelena, 1997, 'Minority Rights in International Law', *Human Rights Quarterly*, vol. 19, 666-685.
- Perry, Valery, 2002, 'Constitutional Reform and the 'Sprit' of Bosnia and Herzegovina', *ECMI Brief*, no. 7, Flensburg, European Centre for Minority Issues.
- Pula, Besnik, 2003, 'The UN in Kosova: Administering Democratization?', in Bieber, F. & Daskalovski, D., eds. *Understanding the War in Kosovo*, London, Frank Cass, 2003. *Reuters*, 19 April 2002.
- Schneckener, Ulrich, 2000, 'Making Power-sharing Work: Lessons from Successes and Failures in Ethnic Conflict Regulation', *InIIS-Arbeitspapier*, no. 19, Bremen: Institute for International and Intercultural Studies.
- Sisk, Timothy D., 1996, *Power Sharing and International Mediation in Ethnic Conflicts*, Washington, D.C., United States Institute of Peace Press.
- Sisk, Timothy D., 2001, 'Peacemaking in Civil Wars. Obstacles, Options, and Opportunities', *Kroc Institute Occasional Paper* 20.
- Solioz, Christoph, and Svebor Dizdarevic, eds., *Ownership Process in Bosnia and Herzegovina*, Sarajevo.
- Thornberry, Patrick, 2001, "'Come, friendly bombs...": International Law in Kosovo', in Waller, M., ed., *Kosovo. The Politics of Delusion*, London, Frank Cass, 43-58.
- Touval, Saadia, and Zartman, I. William, 2001, 'International Mediation in the Post-Cold War Era', in Crocker, C. A., ed., *Turbulent Peace. The Challenges of Managing International Conflict*, Washington, D.C., United Institute of Peace Press, 427-444.
- Trifunovska, Snežana, ed., 1999, *Former Yugoslavia Through Documents. From its Dissolution to the Peace Settlement*, Dordrecht: Martinus Nijhoff Publishers.
- Trifunovska, Snežana, ed., 1999, *Yugoslavia Through Documents. From its Creation to its Dissolution*, Dordrecht, Martinus Nijhoff Publishers.
- UNDP, 2001a, 'Early Warning Report', July-September.
- UNDP, 2001b, 'Early Warning Report', October-December.
- Vukovic, Danilo, 2001, 'Democratic Consolidation and Social Consensus: The Cleavage between Unitarists and Separatists in Bosnia and Herzegovina', *New Balkan Politics*, no. 2, <http://www.newbalkanpolitics.org.mk/issue2.asp>
- Walker, Jenonne, 1993, 'International Mediation in Ethnic Conflicts', in Brown, M. E., ed., *Ethnic Conflict and International Security*, Princeton, Princeton University Press, 165-180.
- Weller, Marc, 1999, 'The Rambouillet Conference on Kosovo', *International Affairs*, vol. 75, no. 2, 211-251.

Appendix : International Intervention in the Institutional Set-up of the Former Yugoslavia (1991-2002)¹³

Country	Proposals/ Agreement	Year	Status	International Organization	Degree of Intervention	Type of Arrangement							
						Territorial					Non-territorial		
						Local Self- government	Regional Autonomy	Cantonization	Federation	Confederation	Cultural Autonomy	Power- sharing without Veto	Power- Sharing
Yugoslavia	Haag Conference/ Carrington Plan	1991	R	EU	International Treaty					X			
Bosnia	Cutilheiro Plan	1992	R	EU	Constitution			X					
Bosnia	Vance-Owen Plan	1993	R	EU/UN	Constitution			X	X				
Bosnia	Owen-Stoltenberg Plan	1993/4	R	EU/UN	Constitution				X				
Bosnia	Contact Group Plan	1994	R	Contact Group	Constitution					X			
Bosnia/ Federation	Washington Agreement	1994	I	USA	Constitution			X	X				X
Croatia	Z 4 Plan	1995	R	Contact Group	Constitutional Reform	X	X					X	
Bosnia	Dayton Peace Accord	1995	PI	Contact Group/USA	Constitution				X	X			X
Yugoslavia/ Kosovo	Rambouillet	1999	R	Contact Group/USA	Constitution		X						X
Yugoslavia/ Kosovo	UN Sec. Council Res. 1244	1999	PI	UN	International Status		X						
Kosovo	Constitutional Framework	2001	I	UN (SRSG)	Constitution						X	X	
Macedonia	Ohrid Accord	2001	PI	EU	Constitutional reform	X						X	
Montenegro & Serbia	Belgrade Agreement	2002	n/a	EU	Constitution framework				X	X			X
Bosnia (Federation & RS)	Constitutional Amendments	2002	I	OHR	Amendments to Entity Constitutions								X

¹³ In some cases, the agreements are to be located between different types of arrangements (i.e., between confederation and federation). Some reforms that were instituted under international pressure are not included here, such as the Croat law on cultural autonomy for Serbs in 1991. Furthermore, some international processes have been excluded (such as the Hill process for Kosovo) and other more tentative initiatives. The Erdut agreement for the reintegration of Eastern Slavonia into Croatia, concluded in 1995, is also not included here as it did translate into a permanent autonomy or change of the Croatian constitutional arrangement. R= Rejected, I=Implemented, PI=Partly Implemented.