

What's Wrong With the Dayton Constitution and How to Fix it?

*An Analysis of Bosnia and Herzegovina's
Constitutional Framework and its Implications for the
Country's EU Accession Process*

Bachelor-Thesis for the Double Degree Course "Public Administration with a Special
Emphasis on European Studies"

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Declaration

I declare on oath that I authored the following paper independently and without assistance and that I only used the resources indicated in the paper.

All extracts that have been copied from publications analogously or literally, are marked as such.

A handwritten signature in black ink on a light green rectangular background. The signature reads "Jessica Dedic" in a cursive script.

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For my father.

Content

- List of Abbreviations..... 6**

- List of Tables and Figures 7**

- 1. Introduction 8**
 - 1.1 Background of the Thesis 8
 - 1.2 Research Question and Structure..... 9
 - 1.3 Relevance..... 10
 - 1.4 Methodology 11

- 2. Theoretical Framework: Consociationalism..... 12**
 - 2.1 Background..... 12
 - 2.2 Elements of Consociational Democracies 15
 - 2.3 Conditions Conducive to Consociationalism..... 18
 - 2.4 Criticism of Consociationalism 19
 - 2.5 The Integrative Approach as an Alternative 22
 - 2.6 Conclusion..... 24

- 3. Subject of Analysis: The Dayton Constitution..... 25**
 - 3.1 Background of the Dayton Peace Agreement..... 25
 - 3.1.1 The War in Bosnia 25
 - 3.1.2 Interests of the Parties and Outcome of the Negotiations 28
 - 3.2 Provisions of the Dayton Constitution 29
 - 3.2.1 Consociational Provisions 30
 - 3.2.2 “Consociation Plus” – The Role of the International Community 36
 - 3.2.3 Other Provisions..... 39
 - 3.3 Reform Process 40
 - 3.3.1 “Integrative” Reforms in the Electoral System 40
 - 3.3.2 Constitutional Reform..... 41
 - 3.4 Conclusion..... 42

4. The SWOT-Analysis of the Dayton Constitution	44
4.1 Strengths.....	44
4.1.1 Stability and Security.....	45
4.1.2 Realism and Appropriateness.....	46
4.1.3 Some Degree of Flexibility.....	47
4.2 Weaknesses	48
4.2.1 Non-Inclusiveness and Over-Institutionalization of Ethnicity.....	48
4.2.2 Inefficiency and Immobility.....	49
4.2.3 No Anchor in the Population.....	50
4.3 Opportunities.....	51
4.3.1 EU-Accession of Croatia and Serbia and a Further Reconciliation Process..	51
4.3.2 Bottom-Up Movement of the Peoples.....	53
4.3.3 Coherent EU Strategy for Bosnia	54
4.4 Threats	55
4.4.1 Continuing Destructive Behavior of the Political Elites	55
4.4.2 Deteriorating Economic Conditions.....	56
4.4.3 No Coherent EU Strategy for Bosnia	57
4.5 Conclusion.....	58
5. Recommendations and Conclusion	59
5.1 Recommendations	59
5.1.1 First Set of Recommendations.....	59
5.1.2 Second Set of Recommendations.....	61
5.1.3 Third Set of Recommendations.....	62
5.1.4 Fourth Set of Recommendations	63
5.2 Conclusion.....	64
Bibliography	66
Annex.....	66

List of Abbreviations

BiH	Bosnia and Herzegovina
CoM	Council of Ministers
DPA	Dayton Peace Accords
ECHR	European Convention on Human Rights
FBiH	Federation of Bosnia and Herzegovina
EC	European Community
EU	European Union
EUSR	European Union Special Representative
HR	High Representative
IC	International Community
ICC	International Crisis Group
NATO	North Atlantic Treaty Organization
NDI	National Democratic Institute
NGO	Non-Governmental Organization
OHR	Office of the High Representative
PIC	Peace Implementation Council
PR	Proportional Representation
PV	Preferential Voting
RS	Serbian Republic
SAA	Stabilization and Association Agreement
SFRY	Socialist Federal Republic of Yugoslavia
SWOT	Strengths, Weaknesses, Opportunities, Threats
UN	United Nations
UNDP	United Nations Development Programme
YPA	Yugoslav People's Army

List of Tables and Figures

Table 1: Research Question and Sub-Questions of the Thesis	2510
Table 2: Conditions Conducive for the Functioning of a Consociational Democracy	19
Table 3: Elements of Consociationalism and Problems Associated to Them	21
Table 4: Principles, Practices and Problems of the Integrative Approach.....	23
Table 5: The SWOT-Analysis	58
Table 6: First Set of Recommendations	59
Table 7: Second Set of Recommendations	61
Table 8: Third Set of Recommendations	62
Table 9: Fourth Set of Recommendations	63
Figure 1: Political System of Bosnia and Herzegovina.....	31

1. Introduction

Crisis – A word which like no other has been used to describe the political situation in Bosnia and Herzegovina for the past two decades. Be it the “worst crisis since the war” (Traynor, 2011), the “latest political crisis” (Farrell, 2011) or simply the “Bosnian crisis” (McLoughlin, 2011), this year’s discourse about the country has in particular been coined by this expression and the term has already become a word of the everyday political life in 2011. The frequent usage of it is not unjustified: Sixteen years after the end of the most deadly conflict on European soil since World War II, Bosnia¹ is caught in severe political deadlock and chances for progress are slim. The attention of the International Community (IC) has, however, long ago shifted away from the country to current interventionist hot spots such as Afghanistan, Iraq or Libya. Why Bosnia and Herzegovina should still be paid attention to and what international state-builders can learn from the experiences of this small Balkan country, will be subject of the further course of this Bachelor thesis.

1.1 Background of the Thesis

Bosnia and Herzegovina’s present political climate is indeed dire – to say the least. Since the country’s general elections in October 2010, Bosnia has been stuck in a constitutional crisis which threatens both its economic progress as well as its European Union (EU) accession efforts. Even eight months after the elections, a central government has not yet been formed and the Bosnian condition is perceived as a “political deadlock” (New Europe, 2011) by many.

The current situation is not the first time Bosnia faced problems with its constitutional set-up: The most recent EU progress report stated that the country’s institutional architecture – laid down in 1995 in Annex IV of the Dayton Peace Accords (DPA) – remained “inefficient” and “misused” (Commission Staff Working Document, 2010, p. 8). The Economist (2011) cited one Bosnian Croat politician as saying that the Bosnian constitution² had “hit a wall” and that it needed urgent reforming in order for the country to become functional again. It therefore seems that unless Bosnian politicians make an effort at altering the institutional design of the country, the Balkan state will not be able to comply with the demands of EU accession in the near future and will be stuck in limbo for the next years.

The Bosnian wish to join the EU is, however, as strong as never before: Support for the community ranges at an impressive 90% among the Bosnian population and can be found across all ethnic groups

¹ For brevity’s sake, the country will be referred to as Bosnia or BiH.

² Also referred to as Dayton Constitution.

that Bosnia is composed of (NDI, 2010). In addition, the country's recent visa liberalization (another prerequisite for EU accession) was received very positively among the citizens and it was heralded as the "dawning of a new era" (Arslangic, 2010) in the relations between the EU and the Balkan country.

The dilemma the country therefore faces seems clear: While Bosnia's future lies in Europe, its constitution is anchored in the very complex and unworkable post-war Dayton agreement which was primarily created to "stop a war, not build a nation" (Chivvis, 2010, p. 1).

1.2 Research Question and Structure

This Bachelor thesis aims at investigating the question of how it will be possible for Bosnia and Herzegovina to achieve its objective of EU membership within the current constitutional framework. To answer this question, the thesis is structured as following:

As Bosnia's political system has been described as a "classic example of [a] consociational settlement" (Bose, 2002, p. 216), Chapter 2 will start by presenting the theory of Consociationalism as the theoretical framework that the Dayton Constitution was built upon. This is necessary in order for the reader to understand the thought behind the creation of Bosnia's complex structures of governance which more than once have been an obstacle for reforms.

Chapter 3 will afterwards address the subject of analysis of this thesis, namely the Dayton Constitution. It will describe the constitution's origins, its provisions as well as the reforms that it was subjected to in the last decade. This chapter is important in order for the reader to get a detailed picture of the constitution and to have a solid basis for following the analysis of it.

Chapter 4 will consequently analyze the constitution using the so-called SWOT-methodology: It will assess the constitution's strengths (S) and weaknesses (W) and will evaluate the opportunities (O) and threats (T) that it is exposed to. This is the prerequisite for the creation a set of recommendations of how Bosnia can become an EU member state within its current constitutional framework. The recommendations will accordingly be presented in Chapter 5.

The following table gives an overview over the questions that this thesis will address:

Table 1: Research Question and Sub-Questions of the Thesis

Research Question	How will it be possible for Bosnia to achieve EU membership within its current constitutional framework?
Sub-Question Chapter 2	What is the theoretical framework that the Dayton Constitution was built upon? What is the thought behind the creation of power-sharing arrangements and why are these necessary for divided societies such as the Bosnian one?
Sub-Question Chapter 3	What are the origins and the provisions of the Dayton Constitution and which reforms has it been subjected to in the past years?
Sub-Question Chapter 4	What are the strengths and weaknesses of the constitution and what opportunities and threats is it exposed to?
Sub-Question Chapter 5	What recommendations can be given in order for Bosnia to achieve EU membership within its current constitutional framework?

1.3 Relevance

This Bachelor thesis is of particular scientific relevance for two reasons: Firstly, 2011 could become a crucial year for the relationship between Bosnia and the EU. This is due to the fact that the Office of the High Representative (OHR) – the IC’s presence in Bosnia vested with far-reaching powers to oversee the implementation of the DPA – has announced to hand over parts of its competences to the European Union this year (Freizer, 2011). As a consequence, the EU has pledged to take on a more prominent role in the country and to support Bosnia with a reinforced EU presence. For the union, this means that it will have to deal with some of the problems created by the Dayton Constitution and that it will need to develop a coherent strategic plan so as to be able to deal with these challenges effectively. It will also need to develop incentives for the Bosnian politicians to overcome these problems because, as Florian Bieber and Sören Keil (2009) rightfully point out, “EU [...] integration will remain the main driving force for reform in all of the countries of the Western Balkans” (p. 360). An analysis of the Dayton Constitution will therefore help in determining possible strategies to push Bosnia out of its deadlock and to advance the country’s chances for EU integration. If the EU is, however, neither able nor willing to deal with the country’s structural problems in an active and coherent manner, then the Dayton Constitution might stay the “problem that won’t go away” (The Economist, 2011).

Secondly, since 1996, Bosnia and Herzegovina has been the site of “internationally sponsored political engineering on a remarkable scale” (Bose, 2002, p. 3). The country has been described as a success of the IC in ending a war and as a failure of the community in turning a post-conflict society into a functioning democracy which can survive on its own (ibid.). In the light of the IC’s interventions in Afghanistan, Iraq and Libya, Bosnia is therefore highly relevant to international state-builders, policy

makers and politicians alike: The analysis of the mistakes which were made in Bosnia and which led to some of today's problems can serve as a starting point for revising or creating different strategies for the IC's current and future interventions. Admittedly, every country is different; yet some mistakes can be avoided and the IC should not be negligent of the lessons it can derive from its intervention and state-building efforts in Bosnia. Sixteen years after the end of the war, the country is therefore still worth taking a closer look at.

1.4 Methodology

This Bachelor thesis is based on both a descriptive and an analytical approach: Chapters 2 and 3 are descriptive because they aim at describing the theoretical assumptions behind the creation of the Dayton Constitution as well as the constitution itself by relying on an extensive review of the literature in this field. Chapters 4 and 5 are of a more analytical nature: Chapter 4 uses the so-called SWOT-methodology in order to analyze the constitution and Chapter 5 draws recommendations based on this analysis.

The SWOT-methodology, which the analysis will be based upon, is a tool which is usually applied in business ventures for the creation of strategic management plans; it can, however, be extended to policy decisions as well, including the creation of a constitution. The acronym SWOT stands for strengths, weaknesses, opportunities and threats; the first two aspects refer to features that are internal to the subject of analysis, while the latter two aspects deal with external factors which have an influence on the subject but which it does not have an impact on in return. The SWOT-analysis usually starts by defining a desired objective that the analysis is built upon: In the Bosnian case, it is possible to state that the desired aim of the majority of the state's politicians and citizens is the country's EU membership. Once such an aim has been defined, it is possible to analyze which internal and external factors are conducive or non-conducive to reaching this end. After this separate analysis of the four features, one can then proceed to combining the elements with each other (S-O, S-T, W-O, W-T) in order to create recommendations and strategies for the attainment of the desired objective (Schneider et al., 2007). In the case of this Bachelor thesis, the SWOT-analysis will lead to the elaboration of a set of recommendations for the EU and for the Bosnian political elites on the question of how to overcome Bosnia's current deadlock and how to support its aim of reaching EU integration.

Eventually, the SWOT-analysis is not an approach which can be dismissed as being overly academic and only suitable in the context of a Bachelor thesis – quite to the contrary, the methodology is practically oriented and it is an instrument which the EU could make use of itself in order for the community to develop a coherent and effective Bosnia strategy to prove its intention of becoming a strong and reliable partner for the countries of this region.

2. Theoretical Framework: Consociationalism

The following chapter will present the theory of Consociationalism as developed by the Dutch-American political scientist Arend Lijphart. It will begin by introducing the reader to the background of the theory and by outlining the defining elements of a consociational democracy (Chapters 2.1 and 2.2). The chapter will also elaborate on the factors that are conducive for the success of this particular power-sharing arrangement (Chapter 2.3). The fourth subchapter will then give an account of some of the criticism that Consociationalism was and is confronted with and will present the so-called theory of Centripetalism (also known as the integrative approach) as an alternative way for building a stable democracy in a deeply divided society (Chapters 2.4 and 2.5). Lastly, a conclusion will be drawn (2.6).

The aim of this chapter is to show that it is possible to build democratic structures in fragmented societies such as the Bosnian one by relying on certain power-sharing mechanisms. It therefore intends to illustrate the thought behind the creation of a consociational settlement like the Dayton Constitution which is supposed to give the reader a solid theoretical foundation for being able to follow the SWOT-analysis which will be presented in a later part of the thesis. Finally, this chapter shall also provide the reader with a grasp of the problems associated to the concept of Consociationalism and with an idea of alternative approaches to building democracies in deeply divided societies.

2.1 Background

“Free institutions are next to impossible in a country made up of different nationalities. Among a people without fellow-feeling, especially if they read and speak different languages, the untied public opinion, necessary to the working of representative government, cannot exist.” (Mill, 1861, p. 296)

This quote by John Stuart Mill expresses one attitude commonly found among political scientists: that it is difficult to achieve stability in a plural society, i.e. in a society that is characterized by many, so-called, “segmental cleavages” (Eckstein, 1966, p. 34). A cleavage can be described as a line which divides the members of a society into various groups or segments. The division among these segments can run along the marks of ethnicity, race, religion, ideology, culture, language or region (Lijphart, 1977)³. In contrast to social homogeneity and political consensus which are “regarded as prerequisites

³Although various segmental cleavages exist, this thesis will have a particular focus on ethnicity as this is the cleavage which is of the greatest relevance for the Bosnian society.

for [...] stable democracy” (Lijphart, 1977, p.1) is this kind of societal division therefore generally seen as a hurdle to the creation and maintenance of a stable and functioning political system.

The view is derived from a well-found argument: In a society where there are no sharp divisions, it is possible for individuals to belong to a number of cross-cutting, politically relevant affiliations (Lipset, 1981). In such a society, support for a certain political group is for example not necessarily dependent on ethnic or religious belonging and the ethnic or religious belonging of a person does in return not preclude supporting a certain political group. Consider an example: In today’s German society a Catholic business manager might vote for the Social Democratic Party, just as well as a non-religious lorry driver might identify with the views of the Christian Democratic Party. Their belonging to one particular group (i.e. to a certain religion or societal standing) does not *inherently* mean that they have to belong to another group, too. The cleavages of this society are generally permeable – a trait which allows individuals to share some overlapping memberships and cross-cutting interests (both the business manager and the lorry driver could for example have an immigrational background and be actively engaged in the same migrant organization). The effect of this permeability of cleavages is that the political system becomes more moderate because politicians are under the pressure of adopting middle-of-the-roads positions in order to appeal to the broadest electorate possible (the parties have to appeal to both the business manager and the lorry driver). This moderation leads to a stable political system as Arend Lijphart (1969) summarizes: “Political stability depends on moderation and, therefore, on overlapping memberships” (p. 209). In such a relatively moderate political system, majority rule is generally seen as a legitimate form of governmental representation. Majoritarian systems tend to have clear “winners” (the government and their respective voters) and clear “losers” (the opposition and their respective voters). The “losers” usually tend to accept their defeat because they know that they are not permanently excluded from power. They know that the ruling majority can rotate in the next election and that their current exclusion is not based on a particular group belonging (Sisk, 2003). This way, the “losers” are not tempted to revolt against the government and the stability of the system is safeguarded.

In plural societies, however, the case is more difficult: When a society is divided by sharp cleavages, membership in one particular group automatically entails membership in another group as well (the ethnic background for example predetermines which political group an individual votes for). This way, the pressure on politicians to take moderate attitudes is nearly absent as they do not have an incentive to appeal to individuals outside their particular group (Lijphart, 1969). In order for the system to be stable, however, these deeply divided societies have to integrate the competing and divergent interests of all the different societal groups into the political process. This can usually not be achieved in a majoritarian system. Consider an example: If ethnicity is the main cleavage in a society

and if all other issues are subordinate to it, then the party representing the largest ethnic group would win in every election (because election behavior would be predetermined by ethnic background) and all of the smaller ethnic groups would be permanently excluded from power. The success of the largest ethnic group would be repeated at every election and majority rule would become “akin to majority dictatorship” (McCulloch, 2009, p. 33). Under these circumstances the smaller groups would be likely to question the legitimacy of the system and would possibly revert to conflict in order to have access to the decision-making processes of the country. To avoid such a destabilization of the country, these societies therefore often turn to power-sharing arrangements which ensure the participation of all the segmental groups in a society (Elleboudt, 2007). Power-sharing is accordingly defined as a system of governance in which all major segments are provided with a permanent share of power. The concept of power-sharing is often used by the International Community as a conflict management approach – especially for post-war countries – to ensure each societal group a part in a country’s decision-making processes (Sisk, 2003).

Lijphart’s theory of Consociationalism could be characterized as the “prototype” (Sisk, 2003) of a power-sharing arrangement. It is both a descriptive model (Lijphart described plural societies that were both stable and democratic and analyzed why this was the case) as well as a normative one (Lijphart recommends the usage of consociational elements). He defines consociational democracy as a “government by elite cartel designed to turn a democracy with a fragmented political culture into a stable democracy” (Lijphart, 1969, p. 216). The aim of a consociational democracy is therefore to integrate the competing interests of the different groups into the political process and to introduce stability to a fragmented society. The means by which this is done is the cooperation of the elites of the various societal groups who rise above the segmental cleavages and who cooperate with each other in order to “counteract the immobilizing and unstabilizing effects of cultural fragmentation” (Lijphart, 1969, p. 212). The behavior of the political elites therefore lies at the heart of the consociational concept and stability is the result of a joint effort between them. This cooperation between the elites makes it possible for a country to achieve a high political stability despite the heterogeneous composition of the society. Lijphart drew these conclusions based on his analysis of the Dutch society in the first half of the 20th century. Although the Dutch society was divided into four so-called “zuilen” (pillars) which ran along the lines of religious and class belonging, there was an overarching cooperation at the elite-level which made this fragmented society both stable and functioning. In his analysis of the Dutch system Lijphart (1968) therefore points out that “[o]verarching cooperation at the elite level can be a substitute for cross-cutting affiliations at the mass level” (p. 200).

Consociational democracies are therefore developed with the aim to include all segmental groups into society in order to avoid clashes and to limit tensions among them by making use of mechanisms of compromise which are implemented by the elites of the different segments (Elleboudt, 2007).

2.2 Elements of Consociational Democracies

Elite cooperation in a fragmented society is accomplished through four institutional arrangements which represent the four distinguishing characters of Consociationalism. According to Lijphart these elements of a consociational democracy are: government by a grand coalition, the mutual veto, the use of proportionality as the principle standard of political representation, and autonomy for each major segment of the society to run its own affairs (Lijphart, 1977). As will be shown in Chapter 3, Bosnia's political system includes all of these institutional elements which define a consociational democracy.

Grand Coalition: Lijphart distinguishes the grand-coalition criterion as the most important feature of a consociational democracy. It is the “primary characteristic [...] that the political leaders of all significant segments of the plural society cooperate in a grand coalition to govern the country” (Lijphart, 1977, p. 25). The grand coalition is usually associated with the formation of a multi-party cabinet in the executive, yet there are also other institutional arrangements that fulfill the grand-coalition requirement (such as permanent or ad-hoc grand councils and committees which have a powerful influence on decision-making). It is therefore not necessarily a particular institutional arrangement but rather the joint effort by the elites to ensure universal participation of all societal segments that defines the grand-coalition character of a political system.

Grand-coalition cabinets (as the usual expression of the grand-coalition criterion) are often contrasted with governments formed in the majoritarian tradition: In homogenous societies with a majoritarian system and a clear government-versus-opposition model, it is common to find minimum-winning coalitions which use majority rule as their daily way of deciding political matters. This is only possible because the electorate perceives that the common values underlying their society will not be threatened by any political party which might come to power. Competition for offices is therefore seen as a “good game” (Almond, 1956, p. 398) which creates benign rivalry among the parties without endangering the most important values of the community. This is because “[w]hen the people are fundamentally at one, they can safely afford to bicker.” (Friedrich 1950, p. 422 cited according to Lijphart 1977, p. 28). Only in rare circumstances are the stakes perceived as being very high (such as for example when the constitution is changed or when the country is deciding whether to go to war or not) and then extraordinary majorities are applicable to majoritarian systems as well.

The consociational recommendation of the use of grand-coalition cabinets violates the principle of this simple majoritarian rule: This is because in a fragmented society, everyday political decisions are perceived as involving high stakes. Each segmental group fears that its most important values will be undermined by the other groups when these come to power. And consequently, as Gabriel Almond (1956) points out, “when the stakes are too high, the tone changes from excitement to anxiety” (p. 398) and competition between parties is not seen as a “good game” anymore but rather as an outright “war” (Lijphart, 1977, p. 27). In these situations it is not advisable to have minimum-winning coalitions which decide political matters with simple majority rule because the minorities will feel discriminated against and might revert to conflict if they feel fundamentally disadvantaged by a political decision. Grand-coalition cabinets, in contrast, diminish this chance of conflict since they include representatives from each segment which satisfies the need of every group to be considered politically and to have its fundamental values safeguarded. The formation of a grand coalition cabinet is therefore the “appropriate response to the internal crisis of fragmentation into hostile subcultures” (Lijphart, 1969, p. 215).

Mutual Veto: The grand coalition criterion already entails the inclusion of minorities in decision-making processes and therefore guarantees some level of their protection. However, even when the minority groups participate in the government, they can sometimes still be outvoted by their coalition partners when they do not have the numerical strength to prevent passage of legislation detrimental to their vital interests. This outvoting would consequently undermine the whole concept behind the grand-coalition criterion. When a decision therefore involves the vital interests of a particular minority group and when this group does not have the influence to change that decision, a defeat in this matter would not be accepted by the minority group and might threaten the whole elite cooperation (Lijphart, 1977). The mutual-veto principle therefore complements the grand-coalition feature of a consociational democracy in that it gives each segment “the power of protecting itself, and places the rights and safety of each where only they can be securely placed, under its own guardianship” (Calhoun 1953, p. 28).

A major threat of the mutual veto is that it will turn a government into a minority tyranny, and that deadlock will ensue. However, according to John Calhoun the frequent invoking of the veto is unlikely: The veto gives each group the security that it could invoke it but the actual use of it is improbable because each segmental group “sees and feels that it can best promote its own prosperity by conciliating the good will and promoting the prosperity of others” (Calhoun, 1953, p. 37). The veto which can either be informally given or constitutionally enshrined gives each segment a last resort and for Lijphart (1991) it is therefore the “ultimate weapon that minorities need to protect their vital interests” (p. 495).

Proportionality: For divided societies, Lijphart recommends the usage of proportionality to ensure each segmental group adequate political representation in the legislature, in civil service appointments and in the allocation of financial resources. Concerning the electoral system, Lijphart favors a proportional representation (PR) system for a divided society in order to ensure the election of a broadly representative body. In majoritarian systems there is a winner-takes-it-all mentality in which minorities would not be represented adequately in the legislature and would only be protected by minority rights. A PR system on the other hand ensures the inclusion of these minorities in the legislature or in other governmental and non-governmental bodies. Proportionality as a principle of representation should, however, not only be found in the parliament but should infuse all political bodies such as the judiciary, the civil service and the security forces as well. The principle is therefore intended to counterbalance the marginalization of ethnic and national groups in all spheres of public life. According to Florian Bieber and Sören Keil (2009) proportionality consequently serves two core purposes: Firstly, it allows for the political inclusion of minority interests in parliament and in the political system as a whole and it secondly guarantees the constitution of the state as a “multi-ethnic and multicultural entity” (p. 346).

Segmental Autonomy: The last defining feature of a consociational democracy is the so-called segmental autonomy – an idea which is closely linked to the concept of federalism. According to Yash Ghai (2000) autonomy is a “device to allow an ethnic group or other groups claiming a distinct identity to exercise direct control over important affairs of concern to them while allowing the larger entity to exercise those powers which are the common interest of both sections” (p. 8). For Lijphart this characteristic of a consociational democracy is a logical consequence of the grand-coalition criterion. He states that “for all matters of common interest, decisions should be made by all of the segments together with roughly proportional degrees of influence. On all other matters, however, the decisions and their execution can be left to the separate segments” (Lijphart, 1977, p. 41). Autonomy can be granted either territorially (on a geographic basis) or in a corporate fashion (i.e. the group retains power over certain domains, such as culture or education). Giving a group a certain degree of self-rule is supposed to stabilize the broader institutional framework of a state: It is assumed that a group which is granted sole concern over some issues has an incentive of securing the stability of a country’s overall political framework as well. The concept of giving autonomy to a minority group is therefore intended to securing the stable operation of the political system and to sustaining interethnic peace (McCulloch, 2009).

2.3 Conditions Conducive to Consociationalism

The concept of elite cooperation, which is at the heart of the theory of Consociationalism, implies that the role of leadership is crucial to the success of a consociational democracy. For elite cooperation to work it is necessary for the respective segmental leaders to share a commitment to the unity and stability of the country and to understand that political fragmentation is a danger to this end. There are several conditions which are conducive to a functioning overarching elite cooperation and therefore to the success of a consociational democracy (Lijphart, 1977). These favorable factors include a balance of power among the segments, a multi-party system with segmental parties, a small size of the country, some cross-cutting cleavages, overarching loyalties, a representative party-system, isolation of the segments from each other, and traditions of elite cooperation (ibid.).

For Lijphart, a system with either the hegemony of one group over several others or with a dual balance of power (with two groups of roughly the same size) is an obstacle for the successful working of a consociational democracy. This is because in both cases the incentives for cooperation are low: In a system in which one group is considerably more powerful than the others, the former one will try to dominate the minority groups rather than to focus on cooperation. Similarly, a system with two groups of an equal size would favor a constant competition among the segmental groups because a gain for one group would inherently be perceived as a loss for the other (Lijphart, 1977). Lijphart therefore finds a system with a small number of groups which are of equal power the most conducive to a functioning consociational democracy.

Another factor which Lijphart distinguishes as conducive to Consociationalism is the size of the country in question. In a small country the elites are more likely to know each other personally which in turn makes cooperation easier. In addition, small countries are more vulnerable to external threats. These external threats can unify the elites and can strengthen their internal cohesion. The same is applicable if there are overarching loyalties in the country: If the political leaders and the segmental groups share the same values or ideals or if they are affiliated to the same institutions, the cohesion between the leaders of the groups is greater and elite cooperation is more likely to function. A shared national identity would for example be a very strong and distinct shared common loyalty. In addition to that, a tradition of elite cooperation is also very helpful: Countries with established inter-elite cooperation structures in which the political leaders have worked with each other for a longer time are more likely to succeed as consociational democracies (Lijphart, 1977).

Over the years various suggestions concerning the question what factors support the functioning of a consociational democracy have been put forward: Ulrich Schneckener (2002) built upon the conditions

suggested by Lijphart and refined them in some instances creating a comprehensive and detailed overview of the factors conducive to the functioning of a consociational democracy:

Table 2: Conditions Conducive for the Functioning of a Consociational Democracy (created according to Schneckener, 2002)

Structure-Based Conditions	Actor-Based Conditions
Relative equilibrium in terms of group size	Dominant elites
No major socio-economic discrepancies	Respect for the status quo
Territorial segregation	Tradition of compromise
Overarching loyalty	Comprehensive participation of all groups
Cross-cutting cleavages	Internal compromise
Moderate intra-group pluralism	

Taking a look at Bosnia, it is possible to say that some of the conditions conducive for the functioning of a consociational democracy are present (i.e. small country, relative equilibrium in terms of group size, territorial segregation) while other conditions are nearly completely absent (i.e. overarching loyalty, internal compromise, cross-cutting cleavages). In this context, it is, however, important to remember that – as Lijphart himself points out – these conditions are “helpful but neither indispensable nor sufficient in and of themselves to account for the success of consociational democracy” (Lijphart, 1977, p. 54). This means that sometimes a consociational democracy may work even when many of the conditions are not fulfilled while another consociational system may not work even with many of the conditions accounted for. Lijphart’s theory consequently lacks predictive powers. Whether a consociational democracy will eventually work out is difficult to predict even when taking favorable or unfavorable conditions into account (Lijphart, 1977). The presence of some of these conditions in Bosnia is therefore no guarantee for the country’s successful working, while the absence of some of these conditions does not inherently mean that Bosnia is doomed to remain with a deficient political system forever as the recommendations which will be presented in Chapter 5 will show.

2.4 Criticism of Consociationalism

“[...] some types of power-sharing systems may contain the seeds of their own self-destruction as the search for consensus turns into deadlock by political leaders [...]”
 (Sisk, 2003)

Many of the advantages of a consociational political system seem clear: For severely fragmented societies Consociationalism offers a way to ensure the inclusion of every segmental group in important decision-making processes and aims at achieving the “widest consensus among all factions” (Norris, 2005, p. 2). This precludes any specific group from being neglected or outvoted by a numerically

stronger one which in turn supports the feeling of security among the factions and the feeling of loyalty towards the state. As Issacharoff (2004) points out, Consociationalism consequently enhances the legitimization of a political system in the eyes of the segmental groups, especially after a period of severe conflict when the distrust among the groups is high. Eventually, this legitimacy makes the plural society more stable and less prone to inter-group hostilities.

There are, however, a number of problems associated to consociational democracies. Since Lijphart first introduced the concept of Consociationalism in 1977, much criticism has followed and some of this criticism shall be presented in this chapter in order for the reader to understand the most problematic aspects of the theory. A more detailed analysis of the strengths and weaknesses of a consociational political framework will follow in a later chapter as part of the SWOT-analysis of the Dayton Constitution.

The criticism most commonly expressed (and also the starting point for the Theory of Centripetalism which will be discussed in the next subchapter) is that Consociationalism encourages and reinforces segmental (for example ethnic) identification instead of lessening the salience of the cleavages among the groups. Consociational democracies emphasize inter-group differences and institutionalize ethnicity as a permanent dividing line of the society (Ellebout, 2007). Henry Hale and Rein Taagepera (2002) argue that the institutionalization of ethnicity is especially problematic when federal borders coincide with ethnic lines because leaders then feel encouraged to “play the ethnic part” (p. 1105) when running for elections instead of focusing on cooperating with the leaders of the other groups. When the ethnic groups are furthermore kept divided as suggested by Lijphart and when the interaction between them diminishes to no more than what is absolutely necessary, it is even less likely for a common identity and for an understanding of each other to develop. Inter-segmental solidarity is thus forestalled which makes separatist tendencies more likely to occur (Bellamy, 2000).

Consociational democracies are also criticized for being fundamentally undemocratic and unaccountable because of the factual absence of an opposition. Donald Horowitz (2000) for example argues that as most groups in a consociational democracy are to some degree included in the executive of a country “[...] an all-together too cozy relationship among parties included in government” (p. 256) will be the result. This ‘cozy’ atmosphere is, however, an obstacle to authentic political debate and the voting public is therefore deprived of the possibility of making parties accountable for their actions by voting them out of power (McCulloch, 2009). Horowitz (1985) furthermore argues that the consociational model suffers from an “inadequate specification of consequences” (p. 570): As a consociational system entails desired or undesired, intended or unintended side effects which depend on the single case, it cannot be universally applied to every divided society. Consociationalism is

therefore not a blueprint for the construction of a viable, stable and plural democracy. Neither is it a guarantee for peace in a society: Despite their power-sharing agreements based on consociational ideas conflicts broke out again in places such as Angola, Cyprus, Lebanon, Sierra Leone and Sudan (Sisk, 2003).

Concerning the four features of a consociational democracy it can furthermore be stated that the grand coalition makes decision-making processes very slow and often ineffective. A system with constant representation is furthermore very costly and hard to sustain the whole time. The element of the veto reinforces the threat of political deadlock by giving each group a tool to block political decisions. A group can therefore use its veto to politically blackmail the other groups which leads to further government stagnation. The result can be a “cold peace” (Sisk, 2003): although the parties refrain from violence, they do not effectively cooperate with each other either. The table at the end of the chapter will summarize some of the main problems associated to the four elements of a consociational democracy.

All in all, it can be stated that over the years Lijphart’s concept of Consociationalism has been confronted with much criticism of which the above mentioned only presents a share. Some of this criticism is also applicable to the Bosnian case and will be touched upon in the analysis of the Dayton Constitution in Chapter 4. This chapter was therefore intended to give the reader insight into some of the fundamental problems of the theory which will become important in the further course of this thesis.

Table 3: Elements of Consociationalism and Problems Associated to Them (created according to Sisk, 2003)

Principles	Practices	Problems
Broad-based Coalitions	Grand coalition governments	Elites may initiate conflict to bolster their power at the center
Mutual Veto	Group rights defined in constitutional terms for named ethnic, racial, religious or cultural groups	Can reinforce the ethnic divisions in society rather than promoting cross-cultural understanding
Proportionality	Proportional representation electoral system and the proportional allocation of jobs, spending, representation, and participation by ethnic group leaders	May reflect well the division in society but does not provide incentives for building bridges across community lines
Group autonomy	Federalism, territorial, or “corporate”	May contain disincentives for contending groups to live peacefully together

2.5 The Integrative Approach as an Alternative

As was already stated before, one of the main arguments against consociational democracies is that they emphasize segmental divisions instead of creating incentives for an integration of the different groups. This criticism was most vehemently brought forward by Donald Horowitz in his book “Ethnic Groups in Conflict” (1985) which laid the foundation for the so-called integrative approach to managing differences in a plural society. This integrative approach is also known as the theory of Centripetalism because it aims at “engineer[ing] a center-oriented spin to political dynamics” (Sisk, 2003). Although Bosnia’s political system is built on consociational elements, it is important to understand the integrative approach as well because some of the reforms the Dayton Constitution was subjected to were initiated in the ‘integrative’ spirit and because some of the recommendations presented in Chapter 5 will include elements of this theory.

The integrative approach and Consociationalism share the same foundational assumptions: They are both based on the observation that establishing stability in a fragmented society is difficult to achieve and that segmental belonging is a determining factor for the inclusion and exclusion from government and society. Horowitz (1993) considers as the main problem that “[...] there is a tendency to conflate inclusion in the government with inclusion in the community and exclusion from government with exclusion from the community” (p. 18). While the theories agree on this aspect, they draw different conclusions as to how to overcome the problem. Horowitz does not consider the building of consociational institutions as a solution because “the problems of inclusion and exclusion do not disappear when new institutions are being adopted and put into operation” (p. 23). Rather, the integrative approach relies on the assumption that the only way to overcome the problem of inclusion and exclusion is to promote the integration of the segmental groups along the dividing lines of society. Instead of institutionalizing the differences in power-sharing arrangements, Horowitz’s approach is to foster moderation among the politicians and to create incentives for the segmental groups to overcome their differences. His recommendation is therefore to develop a “coherent package [...] of conflict-reducing techniques” (p. 35). A voting system that creates incentives for politicians to cooperate on an interethnic basis and for citizens to vote across ethnic lines would be the main element of such a package. The electoral rules of a voting system should therefore be designed so as to reward moderation and to encourage politicians to look for voters outside of their ethnic group.

One feature of such an integrative electoral system would be the use of the Alternative Vote (AV) which makes it possible for the population to cast more than just one vote. The AV-system predicts that the first vote will go to the candidate with the same ethnic background as the voter, but believes that under certain circumstances the second vote will cross the ethnic line and go to politicians with more moderate views who might be able to represent ethnic groups which they do not belong to. This

kind of electoral system would reward politicians for middle-of-the-road positions. It does therefore not rely on moderation and conciliatory feelings just being present in a society but rather assumes that the self-interested campaigning politician will moderate his or her views in order to attract votes from outside his or her ethnic electorate (McCulloch, 2009). This way, ethnic cleavages would become less salient because politicians would not be rewarded for “play[ing] the ethnic card” (Hale & Taagepera 2002, p. 1105).

While this approach is often considered superior in theory to Consociationalism because it emphasizes ethnic integration instead of reinforcing the lines of division, there are problems associated to it as well. A main argument against the theory is that in some societies the ethnic disputes have hardened the sides so much (especially during the course of a war) that electoral incentives will not suffice to foster ethnic accommodation (Sisk, 2003). The following table summarizes the principles of the integrative approach, its practices as well as its problems:

Table 4: Principles, Practices and Problems of the Integrative Approach

Principles	Practices	Problems
Incentives for elite and mass moderation	A president who stands for all groups and who emphasizes moderation and reconciliation (such as Nelson Mandela)	Leaders who can rise above the fray of intergroup enmity are hard to find; they can't be simply invented
Intra-group contestation and inter-group moderation in electoral contests	The use of vote-pooling electoral systems, such as the Single Transferable Vote or the Alternative Vote	People may be unwilling to vote for candidates who are not from their community
Minority influence, not just representation	Federalism is a way to give all minority groups access to power in various regions; the regions serve as a training ground for national-level moderation	Political leaders and key public figures may not be willing to respond to the incentives for moderation, preferring that minority representation remain token or symbolic

The main distinction between the two approaches is therefore that consociationalists “see normative appeal in the explicit inclusion and protection of groups, [whereas] centripetalists promote a process of reciprocal dependence among the segments that is intended to foster both integration and moderation” (McCulloch, 2009, pp. 57-58).

All in all, it is possible to say that both approaches have advantages and disadvantages. Despite the differences, though, they share some foundational assumptions and neither model wishes to abolish the notion of ethnicity altogether. Rather than trying to force the segmental groups into accepting one

single national identity, both approaches attempt to include the groups within a broader institutional framework – albeit through different means.

2.6 Conclusion

This chapter was intended to introduce the theory of Consociationalism to the reader in order for him or her to have a theoretical foundation for the analysis of the Dayton Constitution which will follow in a later chapter. Therefore, the background and the elements of the theory as well as the conditions conducive for establishing a consociational democracy were elaborated in depth. The overview over the criticism associated with Consociationalism served to give the reader an insight into the problems of this type of power-sharing and the presentation of the theory of Centripetalism served to show him or her alternatives to the consociational model.

For the following course of the thesis it is important to remember that Consociationalism is a method to integrate the competing interests of segmental groups in a plural society through the use of power-sharing mechanisms. It should also be noted that consociational models run the risk of deadlocking political systems and of reinforcing the salience of ethnicity instead of lessening it. The integrative approach alternatively suggests that a society should not look at ethnicity as its building block but that it should become a socially more inclusive state by creating incentives for cross-ethnic cooperation and moderation. Despite the flaws of the theory of Consociationalism, it is, however, noteworthy that it is still the most commonly used method of rebuilding deeply fragmented societies, especially after a period of war. As Arend Lijphart (1977) therefore puts it: “For many of the plural societies [...] the realistic choice is [...] between consociational democracy and no democracy at all” (p. 238).

3. Subject of Analysis: The Dayton Constitution

The third chapter will elaborate on the subject of analysis of this Bachelor thesis – the Bosnian Constitution as laid down in the Dayton Peace Agreement in 1995. As the SWOT-analysis will evaluate this constitution in depth, it is vital for the reader to understand its origin, its provisions and the processes it has undergone in the last 15 years. Therefore, this chapter will first of all introduce the reader to the rationale for the creation of the Dayton Peace Agreement: Chapter 3.1 will hence summarize the Bosnian war which led to the signing of the DPA and the interests of the conflicting parties involved (Chapters 3.1.1 and 3.1.2).

The second subchapter (Chapter 3.2) will focus on the provisions of the Dayton Constitution. Based on the theoretical framework elaborated in Chapter 2, its first section will deal with the consociational elements of the Dayton Constitution (Chapter 3.2.1) which will be grouped into the categories of ‘power-sharing’ (Chapter 3.2.1.1.) and ‘autonomy’ (Chapter 3.2.1.2.). The subsequent section (Chapter 3.2.2) will elaborate on the role of the International Community (IC) in the Bosnian political framework. As a de facto international protectorate, Bosnia’s politics and the functionality of its political system and its constitution are closely related to the interventions of the IC. This involvement by the IC is therefore what essentially distinguishes the Bosnian from a typical consociational model, making it a so-called “Consociation plus” (Starcevic-Srkalovic, 2009, p. 33). The last part of this subchapter (Chapter 3.2.3) will be dedicated to other provisions relevant for the SWOT-analysis and Bosnia’s EU accession efforts which are not explicitly part of the consociational model (such as for example the provisions on human rights).

The penultimate chapter (Chapter 3.3) will then shortly address the reform initiatives that the Dayton Constitution was subjected to in the past years, some of which were initiated in the integrative spirit. Lastly, a conclusion shall be drawn (Chapter 3.4).

3.1 Background of the Dayton Peace Agreement

“On paper, Dayton was a good agreement; it ended the war and established a single, multi-ethnic country.” (Richard Holbrooke, US negotiator and chief architect of the Dayton Peace Agreement; Holbrooke, 1998, p. 335)

3.1.1 The War in Bosnia

The General Framework Agreement for Peace, more generally known as the Dayton Peace Agreement, initialed at Dayton, Ohio on 21 November 1995, and formally signed in Paris a couple of weeks later, ended the three-and-a-half year long war on parts of the territory of the former Socialist

Federal Republic of Yugoslavia (SFRY)⁴. The war which lasted from April 1992 until December 1995 and cost the lives of over 100.000 people was the most violent and deadly conflict on European ground since the end of the Second World War (Weller & Wolff, 2006). Through the war (especially the war journalism) the image of the Balkans and especially of Bosnia and Herzegovina in the West became inseparably linked to notions such as of ‘ethnic cleansing’ or ‘mass rape’ (Bose, 2002; Holbrooke, 1998).

The war in Bosnia was triggered by the dissolution of the Former Yugoslavia, a socialist and federal state which consisted of six republics (Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia) and two autonomous regions (Vojvodina and Kosovo). Due to growing tensions between Croatia and Slovenia on the one and Serbia on the other hand, the former two declared their independence from the SFRY in 1991 which prompted the Serbian forces to wage war against them⁵. In March 1992, the multi-ethnic Socialist Republic of Bosnia and Herzegovina consisting of roughly 44% Bosnian Muslims, 31% Bosnian Serbs and 17% Bosnian Croats held a referendum on the question of its independence from the SFRY. The referendum was mainly advocated by Bosnia's Muslims while the Bosnian Serbs were vehemently opposed against the secession of Bosnia from the SFRY: They consequently massively boycotted the referendum. Unsurprisingly therefore, the referendum resulted in an overwhelming majority for Bosnian independence which was consequently declared by the Bosnian president Alija Izetbegovic on 5 March 1992 and internationally recognized by the USA and the European Community (EC) the day after.

Following the Bosnian declaration of independence, the Bosnian Serbs proclaimed and established the Serbian Republic of Bosnia and Herzegovina (which was later renamed Republika Srpska) within Bosnia and Herzegovina and attacked the Bosnian Muslim population in order to secure territory as part of the wider plan to establish Greater Serbia. In the first years of the war, the Bosnian Serb forces supported by the Yugoslav People's Army (YPA) were predominant and carried out massive ethnic cleansing throughout the country, mainly directed against the Bosnian Muslim population. The Serbian superiority, however, declined in the later period of the conflict with the Bosnian Muslims and the Croatian forces joining together. After the attack against the market place in Sarajevo and the Massacre of Srebrenica, the International Community stepped in to stop the Serbian forces and NATO carried out strikes against their infrastructure in 1995 as part of the Operation Deliberate Force. Under the pressure of the IC and after much negotiation, the Serbian and Croatian leaders (Slobodan

⁴ Also referred to as SFRY or as Former Yugoslavia during the course of the thesis

⁵ The Yugoslav People's Army (under Serbian command) attacked Slovenia unsuccessfully and quickly withdrew from its offensive. In Croatia, the YPA, however, succeeded in gaining large territories of the country and full-scale war erupted.

Milosevic and Franjo Tudjman) as well as the Bosnian president (Alija Izetbegovic) signed the Dayton Peace Accords which formally ended the war. Although a constitution was included in Annex 4 of the DPA, the agreement was not primarily meant as a state-building exercise but it was first and foremost intended to freeze the violent situation on the ground as Christopher Chivvis (2010) observes: “The Western powers intervened in Bosnia to stop a war, not build a nation.” (p. 1).

There are various explanations offering an answer to the question of why the conflict erupted. This thesis is not intended to assess the factors which led to the outbreak of the violence. It rather seeks to analyze the outcomes of the decisions formalized through the DPA and their consequences for today’s Bosnian society. However, it is nonetheless important to point out a very central issue for this thesis: the existence of ethnic cleavages before and after the war. The literature on Bosnia tends to depict the country in either of two ways: One group supports the belief that Bosnia was a peaceful state in which the various ethnicities lived together in tolerance until the war broke out. The depiction of Sarajevo as a multicultural city – as the ‘European Jerusalem’ – is often linked to this view. For this group, the war in Bosnia was not a product of endogenous forces but it was forced upon the Bosnian people by the external aggressors Serbia and Croatia (Bose, 2002). This view consequently entails that the Bosnian society was not divided along sharp and deep ethnic lines. The opposite regard is based on the theory of the ‘Balkan ghosts’ by Richard Kaplan (Kaplan, 1993). For him, the problems between the ethnicities are based on ancient hatreds beyond any outside control. This view is closely linked to the picture of Bosnia that the media portrayed during the war: that of a ‘wild’ and ‘savage’ country in which everyone fought against everyone (Bose, 2002). From this perspective, the cleavages between the ethnic groups were and are insurmountable and an unalterable reality.

Both views, however, do not reflect Bosnia’s society before the war adequately: Parts of Bosnia (notably Sarajevo and larger towns) were indeed multi-ethnic places with a relatively high level of inter-ethnic marriages. The groups were tolerant of each other and friendships and interests existed across ethnic lines. However, many of the rural communities were still centered on ethnicities and were based on a distinct sense of group belonging. The perception of difference and the concept of ethnic belonging were therefore present in the Bosnian society, far before the war in Bosnia. Sumantra Bose (2002) therefore summarizes that the black-or-white view, i.e. “[t]he tolerance-or-hatred dichotomy” (p. 17) did not adequately reflect the situation in the country. Steven Burg and Paul Shoup (1999) similarly observed the complexity of the relationship between the three ethnic groups in Bosnia: “There were several Bosnia-Herzegovinas, which coexisted and which were in tension with each other.” (p. 60)

3.1.2 Interests of the Parties and Outcome of the Negotiations

The Dayton Peace Agreement was not the first initiative which attempted to solve the question of Bosnian statehood and of ending the war: It merely formalized a process that had its roots in earlier initiatives⁶ and came at a time when all three negotiating parties had lost momentum. Especially the Serbs under the leadership of Milosevic, who was seen by US chief negotiator Richard Holbrooke as the key person to a breakthrough in the peace process, had had to accept sensitive defeats in Western and Northwestern Bosnia. The Croat army had recaptured three of the four enclaves that made up the “Republic of Serbian Krajina” in Croatia, displacing some 200.000 Serbs and starting a campaign of ethnic cleansing against the Serb population from the regained territories (Bose, 2002). This fact – as cynic it may sound – helped broker the peace agreement, as Holbrooke pointed out in a fax to his superiors in Washington, D.C.:

“[The] basic truth is perhaps not something we can say publicly right now [...] In fact, the map negotiation, which always seemed to me to be our most daunting challenge, is taking place right now on the battlefield, and so far, in a manner beneficial [...] In only a few weeks, the famous 70-30 division of the country has gone to around 50-50, obviously making our task easier.” (Holbrooke, 1998, p. 168).

The DPA was therefore essentially founded on “a levelling of the cleansing field” (Bose, 2002, p. 52) between the parties. Although the Serbs had lost some ground and Milosevic perceived that it was high time to end the war, the question of territory was still the most disputed and contested issue during the negotiations (Bose, 2002). The IC had made clear that a partition of Bosnia was not an option, a fact which Milosevic (as both the representative of Serbia and of the Bosnian Serbs) had to come to terms with. However, the Serbian president still succeeded in achieving the international recognition of the Republika Srpska as one of the two main territorial units of Bosnia and Herzegovina, de facto creating a ‘state within a state’. Dayton also granted the Bosnian Serbs 49% of the Bosnian territory in exchange for some concessions, such as the recognition of the principle of the indivisibility of Sarajevo (Eisermann, 2000). Tudjman (who represented both Croatia and the Bosnian Croats) and Izetbegovic (representing the Bosnian Muslims) furthermore agreed on the acceptance of the Bosnian-Croat federation as the second entity in Bosnia (occupying 51% of the territory). While the Bosnian Muslims therefore succeeded in keeping Bosnia undivided, they paid it at the price of a highly federal country, segmented into two main units with a weak central state with almost no centripetal powers.

⁶ For example the Vance-Owen Peace Plan or the Owen-Stoltenburg Plan (Chandler, 1999)

As a consequence, most of the territorial realities created by the war were acknowledged by the DPA and it is therefore possible to say that the agreement froze the situation on the ground. This outcome was, however, unsatisfactory for all parties as no one emerged as a clear winner or loser (Weller & Wolff, 2006). In addition to this, the Bosnian Serbs and Bosnian Croats were not represented directly in the negotiations. Some scholars view the fact that it was the presidents of Serbia and Croatia, rather than the representatives of the Bosnian Serbs and Croats, who signed the agreement a “blatant infringement of BiH’s sovereignty” (Bose, 2002, p. 23). David Chandler (1999) therefore considers the DPA to be “a settlement imposed on the Bosnian Croats, Muslims and Serbs by the international community and guaranteed by the neighbouring republics of Croatia and Serbia” (p. 43). Under these conditions there was little support within Bosnia for the agreement and the Dayton settlement became an example of a conflict that did not end with the conclusion of the peace agreement. If war can be described as a ‘continuation of politics by other means’, then the DPA laid the ground for a ‘continuation of war by other means’ between the conflicting parties – a fact proven by the early post-war, and sometimes even today’s, Bosnian politics (Bose, 2002).

3.2 Provisions of the Dayton Constitution

“Oh, Land of Kulin, through many centuries
Unwishtly we have made without the fear of God.

Cantons there are ten, entities two,
Three members of the presidency, countless functions.

The High Representative is the highest of them all,
He does good things for us, thus deserves a verse.

Bosnia, dear mother, Herzegovina,
Forgive us dear mother for existing,
You, Land, will be everlasting and we are manure.”

(Zoran Catic’s proposal for the lyrics of the national anthem cited according to Bieber, 2006, p. 1)

This ironic proposal for the lyrics of the Bosnian national anthem by radio moderator Zoran Catic summarizes one truth about the Bosnian political system: That it is complex – possibly even “one of the most complicated government structures in modern history” (Evenson, 2009, p. 99). The Constitution, contained in Annex 4 of the DPA, sought to solve the underlying issues of the war in two ways: On the one hand, it tried to satisfy the demands for self-government of the Bosnian Serbs and Croats by creating a highly decentralized political system in which the two federal units⁷ BiH was

⁷ BiH was actually divided into three regional units: the two entities (RS and FBiH) and one district (Brcko). This district will, however, not be addressed in this thesis as it is administered very differently than the two entities.

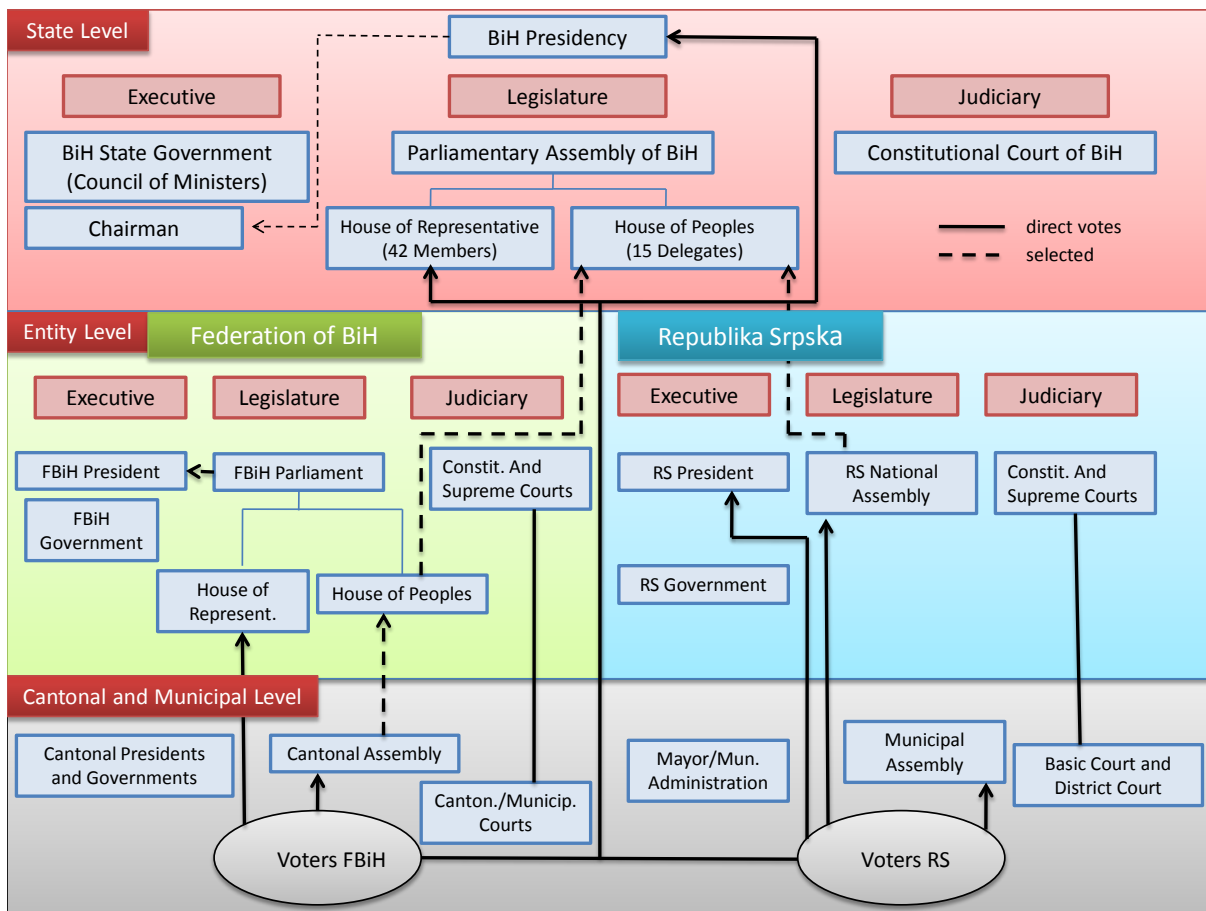
divided into – the entity of the Republika Srpska (RS) and the entity of the Bosnian-Croat Federation of Bosnia and Herzegovina (FBiH) – were made considerably stronger than the central state they belong to (comp. Bieber & Keil, 2009). On the other hand, it tried to solve the problematic relationship between the ethnicities by introducing a multilayered system of cooperation which contained mechanisms of ethnic protection and power-sharing to guarantee Bosnian Serbs, Croats and Muslims a say in virtually every decision taken at the state level (Sebastian, 2007). The Bosnian political system in summary therefore “straddles the fence between partition and power-sharing, including both shared institutions and separate territorial entities [...]” (Sisk, 1996, p. 94). This resulted in the creation of a highly fragmented political system comprising five presidents, 12 prime ministers, three armies, 13 police forces and two customs services (Chivvis, 2010).

3.2.1 Consociational Elements

“[T]he institutional framework of the Dayton state qualifies post-war Bosnia as a classic example of consociational settlement. Consociational rules and norms are built into practically every aspect and every level of the Dayton system.” (Bose, 2002, p. 216).

In this section the Bosnian state institutions will be related to the four defining features of a consociational democracy. For this purpose the elements “grand coalition”, “veto rights” and “proportional representation” will be grouped together into the category of “power-sharing elements” and will be connected to the Bosnian institutions of the executive, legislature and the judiciary. The fourth element of a consociational democracy – “segmental autonomy” – will be discussed separately. The following figure provides an overview for the reader over the Bosnian political system in order for him or her to have a visual support for the analysis in the following chapters:

Figure 1: Political System of Bosnia and Herzegovina (own depiction based on Bose, 2002, p. 61)



3.2.1.1 Power-Sharing

The preamble of the Dayton Constitution clarifies that “Bosniacs, Croats, and Serbs, [...] (along with Others)” (§10) are the constituent peoples of Bosnia and Herzegovina, therefore explicitly including the three main national groups as equal parts of the country. They are consequently all to be represented by the institutions of the executive, legislature and jurisdiction (OHRa, 1995):

The Executive: Bosnia’s highest organ is the so-called Presidency. Article 5 of the Constitution states that “[t]he Presidency of Bosnia and Herzegovina shall consist of three Members: one Bosniac and one Croat, each directly elected from the territory of the Federation, and one Serb directly elected from the territory of the Republika Srpska” (Art. 5). The Presidency is therefore based on the consociational element of decision-making by grand coalition between representatives of the various segments. The members of the Presidency (who serve a four-year term with the chair rotating among them every 8 months) are elected based on both national (one Bosniac, one Croat and one Serb) and territorial belonging (the former two from the FBiH, the latter one from the RS). They are supposed to “adopt all Presidency Decisions [...] by consensus” (Art. 5, 2.b.), although decisions may also be adopted by two

Presidency members when all efforts to reach consensus have failed. As this kind of decision-making would, however, make it possible for one ethnic group to be overruled (undermining the sense of the grand-coalition criterion), each member of the Presidency is also given the right to invoke a veto when issues concern “a vital interest of the Entity from the territory from which [the member] was elected” (Art. 5, 2.d.). This veto ensures that no group is subjected to a ‘tyranny of the majority’ and therefore guarantees a certain level of protection for each ethnicity. Article 5 furthermore elaborates on the tasks of the Presidency which include conducting the foreign policy of BiH and executing decisions of the Parliamentary Assembly. The three members are furthermore supposed to nominate civil service servants based on the principle of proportionality: they for example appoint ambassadors of whom “no more than two-thirds [...] may be selected from the territory of the Federation” (Art. 5, 3.b.) which implies that one-third of the ambassadors must come from the RS ensuring an adequate representation of each territory and segmental group in the country’s Foreign Service. The Presidency thus includes all the power-sharing elements of a consociational democracy: most notably, it is governed by a grand-coalition and each of the groups is represented equally in the executive and in the civil services. The institution also includes a veto right for each of the members as the “ultimate weapon that minorities need to protect their vital interests” (Lijphart, 1991, p. 495).

The Presidency furthermore appoints the Chair of the Council of Ministers (CoM), the second executive state organ (comparable to a government but with distinctly less powers). The Chair in turn nominates ministers for his or her cabinet which take office upon the approval of the House of Representatives. The Constitution stipulates that “[n]o more than two-thirds of all Ministers may be appointed from the territory of the Federation” (Art. 5, 4.b.), implying that one-third of the ministers must come from the RS. In addition, the ministers must have deputies who are not from the same constituent people as they are. These provisions along with the fact that the Chair of the CoM must be nominated by the three-member Presidency and that he or she and his or her government must be approved by the House of Representatives ensures a complex system of checks and balances for the inclusion of all three national groups in the government.

The Legislature: The Bosnian legislature consists of a bicameral Parliamentary Assembly. The first chamber - the House of Peoples – is comprised of 15 delegates as Art. 4 sets out: “The House of Peoples shall comprise 15 Delegates, two-thirds from the Federation (including five Croats and five Bosniacs) and one-third from the Republika Srpska (five Serbs).” (Art. 4, 1.). The House of Peoples therefore contains reserved seats for the three constituent peoples and ensures the equal representation of each group. The five Croat and five Bosniac members are nominated from the Federation’s House of Peoples while the five Serb members are selected from the National Assembly of the RS. The second chamber, the House of Representatives, which is directly elected by the FBiH and RS voters,

consists of 42 members and the constitution stipulates that two-thirds of its members shall be “elected from the territory of the Federation [and] one third of the territory from the Republika Srpska” (Art. 4, 2.). It is noteworthy that while the House of Peoples is therefore based both on a national and a territorial representation (like the Presidency), the House of Representatives does not set out a strict national representation: It is therefore possible that the 28 members elected by the FBiH voters could include people of Serb nationality while the 14 members elected by the RS voters could include people with a Bosniac or Croat background. This is rather exceptional because the key feature of the Bosnian political system and a significant cause for criticism is the combination of territorial and national representation on the state level. Some scholars consider this to be a main weakness of the country’s political system as this factually excludes the minorities of one entity a say in the state’s political decision-making processes (because a Bosniac living in the RS could for example not become a member of the Presidency and vice versa). Despite this flaw – which will be considered more in depth in the SWOT-analysis – the ethnic quota in both houses, however, ensure the representation of all three constituent peoples which is one proof for the consociational foundation on which the constitution was created.

Decisions in both houses are furthermore made by a majority of those present and voting. Similarly to what the provisions concerning the Presidency state, the members of the houses shall “make their best efforts to see that the majority includes at least one-third of the votes of Delegates or Members from the territory of each Entity” (Art. 4, 3.d.). If this is not possible, then a decision can be passed by the majority. To prevent a group from being outvoted on important issues, such a decision can be blocked by a veto which can either be invoked on territorial or on ethnic grounds. While the territorial use of the veto is found in the House of Peoples (representing the entity interests) to block decisions by the House of Representatives, the ethnic veto can be found in the House of Representatives where members can declare a decision destructive to the “vital interest of the Bosniac, Croat, or Serb people” (Art. 4, 3.e.). As the Constitutional Court has, however, the power to overrule this latter ethnic veto, it is usually the territorial veto that is used in order to block a decision (Bieber & Keil, 2009). In addition to the representation of all groups in the legislature, the Bosnian legislative system is consequently also safeguarded by a complex system of vetoes.

The Judiciary: Article 6 of the Bosnian constitution identifies Bosnia’s supreme judicial organ: the Constitutional Court. The court is composed of nine members, four of which are selected by the House of Representatives of the Federation and two of which are selected by the RS. It therefore includes the consociational element of the equal representation of each group in the judicial system. However, the constitution stipulates that three of the nine judges are not to be citizens of Bosnia or of neighboring states. Article 6 sets out that “the remaining three members shall be selected by the President of the

European Court of Human Rights after consultation with the Presidency” (Art. 6, 1b.). Bosnia’s supreme judicial organ thus includes a substantial international element. The Constitutional Court furthermore possesses wide-reaching powers and is the “ultimate guarantor of the BiH state constitution” (Bose, 2002, p. 66): It for example has the “exclusive jurisdiction to decide any dispute that arises under this Constitution between the Entities, or between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina [...]” (Art. 6, 3a.). It is also empowered to rule on the question of “[w]hether any provision of an Entity’s constitution or law is consistent with this Constitution” (ibid.). These significant powers, in cooperation with the fact that decisions are not made by consensus but rather by majority vote, make the court the least consensus-oriented institution of the state and prone to the interference of the International Community. The court can therefore not be considered a typical element of a consociational democracy but rather shows the significance of the IC in keeping Bosnia’s political system running. Interestingly, this least consensus-oriented organ has usually promoted decisions which reinforced the consociational character of the political system: In one of its most important decisions in 2000, the court for example ruled that both entities’ constitutions were not in unison with several provisions of the state constitution by violating the principle of equal inclusion of all three constituent people in each of the entities’ political systems (Deutsche Welle, 2009).

All in all, both the executive and the legislature of Bosnia’s political system rely heavily on consociational concepts and ethnicity is the primary criterion for representation in the state institutions. The Constitutional Court is not built as strongly on these mechanisms as the other political bodies; its decisions have, however, frequently reinforced the consociational character of the Dayton Constitution.

3.2.1.2 Autonomy

“BiH is now the only state in the world composed of both a republic and a federation.” (Bardos, 1999, p. 2 cited according to Bose, 2005, p. 324)

The fourth characteristic of a consociational democracy is the element of segmental autonomy. The DPA divided Bosnia into two parts: as a concession to the Bosnian Serbs it recognized as one of the units the Republika Srpska on 49% of the country’s territory. The second unit, the Bosniac-Croat Federation of Bosnia and Herzegovina, occupying 51% of the country, was established as recognition of the war-alliance between Bosniaks and Croats (Bose, 2002). Article 1 of the Dayton Constitution states that “[...] Bosnia and Herzegovina [...] shall continue its legal existence under international law as a state, with its internal structure modified as provided herein and with its present internationally recognized borders” (Art. 1, 1.) leaving no doubt about the legitimacy of the country’s external

borders. Despite this, however, the DPA endowed the entities with wide ranging powers of self-government which are in fact dominant to the common state's powers. The competencies of the Bosnian state are in fact so limited that the country has sometimes been described as "essentially a customs union with a foreign ministry attached" (Hayden, 1999, p. 126), while the RS is for example often considered a "state within a state" (Bose, 2002, p. 23).

The problematic nature of the relationship between the state and the entities can be seen in various provisions of the constitution: Article 3, 2.a. for example sets out that the entities "have the right to establish special parallel relationships with neighboring states", an area which usually falls under the jurisdiction of the central state. On the basis of this article, both the RS and the FBiH have signed numerous agreements with Serbia or Croatia respectively. This provision and others of a similar content put into doubt the notion that Bosnia is a federation: Some scholars argue that Bosnia resembles a confederation rather than a federal state because of the entities' wide-ranging powers (comp. Bieber, 2002; Bose, 2005). Carl Bildt, Bosnia's first High Representative, might have put it most accurately when describing the country as "probably [...] the most decentralized state in the world" (Bildt, 1996 according to Chandler 1999, p. 67).

As Lijphart observed, it is very common that deeply divided societies grant some form of autonomy to the various segmental groups and Bosnia is evidently no exception to this rule. According to Lijphart, this autonomy strengthens the broader institutional framework of the common state because the segmental groups, who are given freedom to decide over their most important issues, have an incentive of securing the stability of the state as a whole (McCulloch, 2009). The possibility of violent clashes is furthermore diminished as the segments do not interact with each other frequently. This perspective is, however, somewhat disputable in the Bosnian case: The territorial autonomy divided the country into the most homogenous units available, be it the entity (RS), the mostly homogenous cantons in the FBiH, or the municipalities (Bieber & Keil, 2009). It can be argued that there was no alternative to creating the two entities like this in 1995 with the realities of the war having to be taken into account. However, the congruence of territory and ethnicity favored the homogenization of the territorial units even more which resulted in segregation and minimal contact between the groups. This precluded and still precludes the building of trust between the ethnic groups. The existence of territorialized national groups in the form of federal units also facilitates aspirations for secession. The secession rhetoric is consequently often found in the pre-election context, like before the general elections of 2010 where RS officials increasingly called for an independence of their entity (RS politicians' statements ranged from a "peaceful dissolution" over the claim that "no one can deny RS the right to separate itself from BiH" to the declaration that "[a]s soon as we can leave from BiH, we will go" (OHR, 2010, p. 4). The high level of segregation is also problematic in light of the right of

refugee return contained in Annex 7 of the DPA as it does not create incentives for people to return to their homes when these lie in an entity with a predominantly different ethnic majority than oneself belongs to (Bose, 2002). Will Kymlicka (1998) has therefore argued that multinational federations such as the Bosnian one encourage centrifugal tendencies and that they might consequently “be plagued with instability” (p. 141).

All in all, it is evident that the criterion of segmental autonomy is fulfilled in Bosnia. Although the theory would suggest that this contributes to a strengthening of the common state, this could be contested in the Bosnian case: Here it seems to preclude the ethnicities from interacting with each other and from building trust while at the same time fuelling secessionist ideas.

3.2.2 “Consociation Plus” – The Role of the International Community

Bosnian consociationalism differs from conventional consociational models because of the International Community’s involvement in building and administering it: Not only was the DPA brokered under heavy international influence and written mostly by American lawyers; Annex 10 of the accords also established a permanent international presence in the country in the form of the High Representative of Bosnia and Herzegovina (HR) to oversee “the implementation of the civilian aspects of the peace settlement” (Art. 1, 1., OHR, 1995b). According to Annex 10 the tasks of this High Representative were to “[m]onitor the peace settlement”, to “promote [...] cooperation [between the Parties]”, to “[c]oordinate the activities of civilian organizations” and to “[f]acilitate [...] the resolution of any difficulties” (Art. 2, 1a-d.). He or she was thus essentially to be a facilitator or mediator between the warring factions (Parish, 2007). Due to the involvement of this institution in the Bosnian political system, the country was and is therefore considered a special form of the consociational model, i.e. a so-called “consociation plus” or a “complex consociation” (Starcevic-Srkalovic, 2007, p. 33). Although the creation of this international body was not part of the Dayton Constitution itself, it is nonetheless important to understand the role of the HR and consequently of the IC for Bosnia’s political system: the HR has for many years been the central institution in keeping the country running and has decided many matters which the parties could not agree on due to their antagonism. The Office of the High Representative (OHR) has therefore become closely entangled with Bosnian politics and the functionality of the Dayton Constitution and its closure is one of the conditions that Bosnia must fulfill before it can join the EU.

The history of the OHR is an interesting account of the Western attitude towards Bosnia: At first (and as laid down in Annex 10) the OHR was only intended to exercise an advisory and monitoring role (Weller & Wolff, 2006). However, the IC quickly became disappointed with Bosnian post-war politics as the Bosnian parties did for example not cooperate with each other and as nationalist rhetoric,

especially in the media, was at a high. The IC was also concerned about the country's first post-war elections in 1996 where the same nationalist parties who had commenced the war had been reelected (Parish, 2007). The dissatisfaction of the IC about Bosnian politics was translated into an increasingly interventionist role of the OHR, starting under the second HR, Carlos Westendorp. In 1997, the representatives of the Western contact group (in the form of the so-called Peace Implementation Council (PIC)) met in Bonn, Germany, and decided to interpret Annex 10, sanctioning a stronger authority of the HR in Bosnia. They stated that they welcomed the HR's "intention [...] to make binding decisions" and to take "measures to ensure implementation of the Peace Agreement" (Parish, 2007, pp. 13/14) which included the dismissal of nationalist politicians and other officials. These 'Bonn powers' thus turned the HR from a 'mediator' to the highest institution in the country, de facto making the country an "international protectorate" (see among others Chandler, 1999, p. 169).

The subsequent HRs used these powers to make wide-ranging decisions and to dismiss many officials they considered to be destructive to the Bosnian democratization process: Between 1998 and 2005, 757 decisions were issued by the OHR, removing 119 people from office and imposing 286 laws or amendments (Parish, 2007). Some of the most important decisions of the HRs which majorly contributed to the functioning of the country included the creation of uniform license plates, the establishment of a joint value added tax system and of a state court system (Evenson, 2009). It is therefore valid to say that the HRs, especially in the first years, improved the political situation in the country and served as a counterweight to the often nationalist interests of the Bosnian officials. However, from 2005 onwards, the dissatisfaction with the institution of the HR started to grow: Its lack of democratic control and its dismissals which could not be appealed by the people dismissed were for example subject to criticism. The OHR also reduced the feeling of local ownership and responsibility among Bosnian politicians. Politics for the local officials became a zero-sum game: the officials knew that ultimately the OHR would make the necessary, often painful decisions for keeping the country running, allowing the politicians to publicly distance themselves from these (Weller & Wolff, 2006). The dilemma the OHR consequently faced was that it promoted democratization through its decisions while at the same time being an undemocratic institution itself and reducing incentives for endogenous democratization efforts (Evenson, 2009). Wolfgang Petritsch, the country's third HR, recognized this dilemma:

“[State-building in Bosnia] was a watershed experience [...] Aware of the powers of the High Representative to impose laws and remove obstructive officials, both [...] Bosnian intellectuals and international observers [...] demanded that I extensively use such powers [...] ‘You have to impose the right solutions’, I heard over and over again. But to my mind ‘imposing’ democracy and civil society seemed a contradiction in terms. However, during the first-and-a-half years of my mandate I indeed had to act as the most interventionist High Representative ever.” (Petritsch, 2002 cited according to Bose, 2005, p. 322).

Due to the criticism and also to the steady reduction of international troops in the country, the OHR scaled back its interventionist role under the country’s fifth HR, Christian Schwarz-Schilling. He used the ‘Bonn powers’ to a considerably lesser extent and even announced the closure of the OHR for 2007. This, however, became problematic as the local politicians did not have an incentive to stay in line without facing the threat of arbitrary removals and many of the authorities had become dependent on the OHR to support them. Without the intervention of the HR, the IC feared that “the progress that [the] country had apparently achieved would unravel” (Parish, 2007, p. 17). By that time, the position of the HR had become an unthankful job and the IC had problems finding a successor to Schwarz-Schilling. Eventually, Miroslav Lajcak was appointed who came with the agenda of getting Bosnia closer to the EU. His attempt to do so by transferring more powers from the entities to the central state, however, led to one of the worst crisis in post-war Bosnia: The RS felt that the transfer of competences undermined its position in the country and declared the use of the Bonn powers illegal. They felt that the OHR had ‘overplayed its hand’ and a number of resignations from RS officials (and from the Serb member of the presidency) as well as massive demonstrations followed (Parish, 2007). This led the OHR to take the decisions back, making the institution lose parts of its credibility. Today, the OHR is still one of the main players in the Bosnian system, yet calls for it to hand over its powers to the EU are increasingly noticeable (International Crisis Group, 2011).

All in all, it is therefore possible to say that for many years the OHR was both a guarantor of the functionality of the state and its constitution as well as the major constraint for the development of real democratic institutions based on local ownership. The OHR was and still is deeply entangled with the functioning of the Bosnian political system, yet it seems that the time is ripe for it to hand over its responsibilities and leave the field for the EU. The EU therefore needs a coherent strategic plan for dealing with Bosnia’s problems effectively and recommendations which could be included in such a plan will be elaborated in a later part of this thesis.

3.2.3 Other Provisions

Although most of the provisions of the Dayton Constitution show the consociational character of the political system and are dedicated to Bosnia's institutional architecture, the entire Article 2 does not fall under this category and is devoted to the issue of human rights and fundamental freedoms which Bosnia's constituent peoples are guaranteed. The article entails both substantive and procedural rules and explicitly emphasizes the obligation of BiH to "ensure the highest level of internationally recognized human rights and fundamental freedoms" (Art. 2, 1. OHR, 1995a) to its citizens. The rights and freedoms that Bosnia shall ensure are those set out by the European Convention on Human Rights (ECHR) and include – among others – the right to life, the right to liberty and security of person, the right to property, the right to education, the freedom of thought, conscience and religion, the freedom of expression and the freedom of peaceful assembly (Art. 2, 3a-m.).

Moreover, Article 2 explicitly contains a non-discrimination clause which secures the equal treatment of all people no matter which "sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status"(Art. 2, 4.) they have. Although this provision is theoretically sound, its execution is and was, however, highly problematic because Bosnia's entire political system runs in a quite contrary way to this idea (Pajic, 1998): As was elaborated in the chapter on the consociational elements of the constitution, much of the country's political system is based on the equal representation of the three constituent peoples – a feature which in itself corresponds to this provision. However, the House of Peoples as well as the Presidency only include people from these three ethnicities, factually excluding and discriminating against the group of 'Others' (i.e. Jews, Roma) that are defined as constituent peoples of BiH in the preamble as well. The European Court of Human Rights therefore found the state guilty of discriminating against national minorities, an issue which will be addressed in the SWOT-analysis later on (Deutsche Welle, 2009).

All in all, the human rights provisions of the Dayton Constitution are extensive. If taken seriously they provide comprehensive security for the individual – a fact which could "be very useful as a viable counter-balance against disintegrative tendencies" (Pajic, 1998). However, some of the consociational parts of the political system are not in line with these provisions due to their rigorous focus on ethnic quotas: This factually excludes those minorities from the political system that do not belong to one of the three main national groups.

3.3 Reform Process

The following chapter will present two attempts at reform of Bosnia's political framework: The changes of the electoral system in 2000 and the proposal for constitutional change in 2005 (known as the April Package). The first example was chosen to show that the IC tried to incorporate elements of the "integrative" approach in Bosnian politics in order to make them more inclusive. The second example was chosen to show that reforms of the constitution are not a novelty for the country and that it would, in general, be possible for the EU to initiate amendments to the Dayton Constitution in order to make Bosnia's political system more functional and integrative and less rigid.

3.3.1 "Integrative" Reforms in the Electoral System

It has already been pointed out that the elections in 1996 brought ethno-nationalist parties (practically the same that had started the war) to power. The same happened in the 1998 elections and due to this kind of voting based on "ethnic exclusivism" (Belloni, 2004, p. 337), the IC responded in two ways: It strengthened its interventionist powers over the political system by issuing the 'Bonn powers' to the HR (see chapter 3.2.2) and it fostered a more "integrative" approach by initiating three changes for the 2000 elections (Belloni, 2004): Firstly, open lists and multi-member constituencies were introduced; secondly, the preferential voting (PV) system – the key feature of the integrative theory – was established for the election of the president of the RS; and thirdly, new rules for the election of members of the House of Peoples in the Federation were incorporated.

In theory, all three elements aimed at creating incentives for cross-ethnic voting. However, none of them worked out as planned: Especially the PV turned out to be disappointing because the second votes in the election of the RS president did not cross ethnic lines as had been hoped for. Neither did the new procedures for voting in the House of Peoples in the FBiH foster moderation among the parties (*ibid.*). In contrary, the new rules in the FBiH alarmed the Croat leadership who feared to be outvoted by the Bosniacs. They heavily mobilized their ethnic base to vote for them, leading the International Crisis Group to comment that the rule had evoked "genuine concern by Croats that they risked being marginalized in a state where Bosniaks and Serbs enjoy special advantages" (International Crisis Group, 2001, p. 6). Therefore, the 2000 elections proved disappointing for proponents of the "integrative" theory. One of them, Roberto Belloni (2004) does, however, not trace these results back to flaws in the theory but argues that it was rather the consociational elements of the system that were the problem: "[T]he use of these [integrative] policies in a deeply consociational context [...] proved ineffective" (p. 349). He therefore recommends that Bosnia move further away from its current consociational structures and believes that "integrative" elements – if applied in a greater context – will eventually lead the society to become more inclusive.

3.3.2 Constitutional Reform

In March 2005 the Council of Europe European Commission for Democracy Through Law (more generally known as the Venice Commission) criticized the constitutional situation in Bosnia. The commission noted that "[t]here is a powerful wish [among the Bosnian citizens] for the country to participate in European integration with the final aim of becoming a member of the EU" (Venice Commission, 2005, p. 6). The commission criticized that fulfilling this wish was not possible with the present constitutional arrangements and stated that the first step on the EU membership ladder – the signing of a Stabilization and Association Agreement (SAA) – would require the Bosnian institutions to become “far more effective” (ibid.) than those that existed at the time. As a consequence of this criticism and with the initiation of the SAA negotiations looming, both the IC and the national leaders felt an increasing pressure for reform (Hays & Crosby, 2006).

The reform process was consequently initiated by some of the Bosnian politicians who approached the IC to facilitate talks among the parties. These talks were organized by the then Deputy HR, Donald Hays, and took place in three stages: the first stage included talks among the party representatives without public knowledge; the second stage was more formally carried out under the leadership of the US and also made public to the citizens; the last stage consisted of bilateral meetings of the party leadership behind closed doors (Sebastian, 2007). In March 2006 the leaders agreed on a reform package which included a new election procedure for the Presidency along with a reduction of its competences, a strengthening of the Council of Ministers, new competencies granted to the central state, the creation of two new ministries, and an increase in the number of MPs in both parliamentary chambers (ibid.). Although some Bosnian politicians argued that the changes were merely cosmetic, they still represented a major step forward for Bosnia (Hitchner, 2006). It was furthermore very positively viewed that the process had been domestically driven without a substantial intervention of the IC which was also acknowledged by Sulejman Tihic, then Bosniak-member of the Presidency:

“If we tried to say how much came from each side, I would say 70 percent domestic politicians and 30 percent the IC, and that’s because in BiH no negotiation can take place without the involvement of the IC.” (Tihic, 2007 according to Sebastian, 2007, p. 5)

However, due to the approaching elections, one of the main Bosniac parties (who had initially agreed on the amendments) and a Croat party joined forces in parliament and voted against the package with the result that the parliament failed to ratify it. This factually paved the road for the country to stay in deadlock for another four years, even though Bosnia did, eventually, sign the SAA in 2007 (Hitchner, 2006).

The role of the EU in this process was a very ambivalent one: The SAA was a main driver for initiating the constitutional reforms. During the negotiations of the April package, however, the European community played virtually no role, and was severely criticized for not being actively engaged in helping consolidate the future of Bosnia within a European framework (Sebastian, 2007). Although constitutional change is not an explicit precondition for Bosnia's candidate status, the country will still have to make some changes to get closer to the goal of EU membership. The April package showed that the 'carrots' offered by the EU could facilitate such changes and make an impact on Bosnian politics. The EU, however, has so far not very actively promoted these 'carrots' or taken a leading role in the reform processes: The International Crisis Group therefore summarized it correctly when stating that in Bosnia, it is now "Europe's [t]ime to [a]ct" (Freizer, 2011, p. 1).

3.4 Conclusion

The third chapter was very extensive as it introduced the subject of the SWOT-analysis. It started by describing the background of the Dayton Constitution, namely the three-and-a-half year long war in Bosnia, and the interests of the parties which were involved in the creation of the peace agreement of which the constitution is a part. This showed that the IC had faced the challenge of "setting up a state on the basis of little more than the ruins and rivalries of a bitter war" (Bildt, 1998, p. 392 cited according to Bose, 2005, p. 324). The DPA represented consequently at the same time both the end and the outcome of a war and territorially reflected the realities of the fighting on the ground. The Dayton Constitution was furthermore brokered under the heavy influence of the IC and of the leaders of Serbia and Croatia and did not enjoy much support from the Bosnian people. This was and is still problematic because constitutions perceived as being imposed or alien "can constitute a serious drawback in the emergence of political constituencies supporting interethnic accommodation and the accompanying institutional arrangements" (Bieber, 2003, p. 12).

The second chapter elaborated in depth on the provisions of the Dayton constitution, focusing particularly on its consociational features. This revealed that Bosnia's executive and legislature are based heavily on elements of this concept, including both the power-sharing and the segmental autonomy aspect: While power-sharing can be found in Bosnia in form of grand-coalitions, veto rights and representation of all three constituent peoples in the state's main bodies, segmental autonomy is guaranteed through the division of the country into two entities. The role of the IC in the functioning of the political system of Bosnia was also touched upon: The IC was and is very important in maintaining a balance between nationalist politicians of all three sides and has often been the main facilitator for change. However, the IC also made Bosnia dependent on its interventions and did not foster local ownership and the development of local responsibility. This led to the dilemma that the

more the IC intervened to safeguard democratic principles, the more did the Bosnian politicians drift away from these principles because they knew that these would be safeguarded by the interventions of the IC. Lastly, the chapter also focused on the provisions of the constitution which do not fall directly under the consociational framework, such as the human rights provisions. Here it was shown that although the constitution rigorously enforces representation of the three main national groups, the second category of constituent peoples (those of the “Others”) is not granted equal access to the political system, thereby essentially contradicting the notion of the consociational theory to include all groups into the political process.

The last subchapter finally presented two examples of reform initiatives that Bosnia’s political system was subject to: It first of all showed that integrative elements have been tried to be built into the Bosnia’s electoral framework seeking to complement consociational with classical integrative elements. This attempt failed, however, bearing proof that the IC does not have easy solutions to the Bosnian problem either. The failed constitutional reform furthermore showed that Bosnian politicians still view politics as a zero-sum game and that there is little trust among them. Fostering trust and presenting them with initiatives for compromise (with ‘carrots’) is now the responsibility of the EU which so far has been very reluctant to take a major role. The time has therefore come for the EU to act in the Balkans and the following SWOT-analysis will give hints which of the constitutional strengths the EU could use and which weaknesses it should remedy to better the situation in Bosnia.

4. The SWOT-Analysis of the Dayton Constitution

The following chapter will build on the previous two chapters and will apply the so-called SWOT-analysis to the Dayton Constitution. As was already elaborated in the presentation of this particular method in Chapter 1, the SWOT-analysis will first start with specifying an objective that the stakeholders want to achieve. In the Bosnian case, it is possible to state that the overall objective of the IC, of the Bosnian political elites and of the Bosnian population is the integration of the country into the EU.

To achieve EU membership, all major stakeholders involved in the process should create a strategic plan which incorporates strategic goals to be reached in one-year intervals. The first step in creating such an overall strategic plan (before one can proceed to elaborating its various interim steps) is to identify the subject of analysis' internal and external factors that are favorable or unfavorable for the achievement of the objective. In the context of this Bachelor thesis this means that the first part of this chapter will be dedicated to the analysis of the strengths and weakness of the Dayton Constitution which are favorable or unfavorable for the achievement of EU accession (Chapters 4.1 and 4.2). The second part of this chapter will focus on the external elements (opportunities and threats) that support or discourage EU membership (Chapters 4.3 and 4.4). Lastly, a conclusion will be drawn (Chapter 4.5).

This chapter is thus the logical first step in a strategic planning exercise that would eventually lead to the creation of a strategic plan. As the whole exercise cannot be undertaken in one Bachelor thesis, this chapter seeks to lay the groundwork which a strategic plan could be built upon. Chapter 5 will consequently use the findings from the SWOT-analysis in order to give a basic set of recommendations which could be considered in the creation of such a plan. Ultimately, these two chapters seek to show the reader that it is possible to find solutions for Bosnia's current deadlock and that both the IC (in particular the EU) and the Bosnian political elites can develop strategies to advance the country within its current constitutional framework and without having to resort to a complete restructuring of its political system.

4.1 Strengths

The strengths of the Dayton Constitution can be divided into three broad categories: Stability and security; realism and appropriateness; and some degree of flexibility.

4.1.1 Stability and Security

The DPA ended a war and the most important achievement and strength of the Dayton Constitution is that it has maintained relative peace in Bosnia for over 15 years now. Despite the political and interethnic tensions, the prospects of a return to war are furthermore small – a perception shared by a majority of the Bosnian population. In its Early Warning Report from 2009, the UNDP BiH discovered that more than 60% of the citizens did not believe that violence would be resumed even if the IC left the country (UNDP, 2009). Overall, the fear of a resumption of violence diminished by 13% over the last 10 years and the actual incidents of ethnically motivated violence also reduced significantly from immediate postwar levels (Bieber, 2006). Even though this achievement can also be attributed to the presence of the IC, the stability guaranteed by the constitution should not be underestimated: It survived some severe crises in the last years (such as for example the already mentioned proposal by HR Miroslav Lajcak to transfer competences from the entities to the state level) and has become a source of security especially for the Bosnian Serb population (McCulloch, 2009).

By recognizing the RS as one of the two Bosnian entities and by giving the Bosnian Serbs a high degree of self-governance, the constitution appealed to the fears of the Bosnian Serbs of becoming subjected to a ‘Bosniac tyranny of the majority’. A strength of this segmental autonomy is therefore that it served to decrease the support for a secession among the Bosnian Serbs: While in 2000 68% of the Bosnian Serbs favored a reunification with Serbia, this endorsement dropped to 43% by 2006 (Toal, O’Loughlin & Djipa, 2006). A survey by the National Democratic Institute (NDI) in 2010 found out that the support for secession had even further ceased to only 6% among the Bosnian Serb population (National Democratic Institute, 2010). The study also discovered that the majority of this group wanted the political system to remain unchanged. These findings seem to support Lijphart’s thesis about the value of autonomy: The Bosnian Serbs are ready to accept Bosnia as the common political framework as long as they trust to have the possibility to govern themselves in important issues. Their trust in the current political arrangement was also confirmed in a study carried out by Prom research: In it, most of the Bosnian Serb respondents stated that the survival of the RS was the only guarantor for the sustainability of Serbs in BiH; only a small number trusted the EU to guarantee their sustainability within the Bosnian system (Toal, O’Loughlin & Djipa, 2006).

Although the idea of reforming the Bosnian political system fundamentally in order for it to correspond to EU criteria might appeal to many onlookers, the safety that Dayton guaranteed for the Bosnian Serbs should not be underestimated. Initiating a completely new constitutional arrangement would not only be very likely to be met with high resistance but might also possibly destabilize the country. The consociational element of territorial autonomy which was instituted through the Dayton

Constitution therefore ensures the Bosnian Serbs a level of self-governance and security without which they would feel permanently threatened. A reform the Dayton Constitution should therefore take this aspect into account.

Overall, it is possible to say that the relative stability and security, which the Bosnian population was provided with, are strengths of the Dayton Constitution. The DPA and its provisions have allowed the segmental groups to live in relative peace and security. A complete remodeling of the whole Bosnian political system (especially one that would abolish the entire entity system) is unlikely to be supported by major segments of the population and could possibly threaten the achievements which were made until now.

4.1.2 Realism and Appropriateness

The next subchapter (Chapter 4.2) will focus on some of the weaknesses of the Dayton Constitution, especially on the accusation that the consociational elements reinforce the salience of ethnicity in the Bosnian society. Even though the Bosnian political system is indeed composed of power-sharing mechanisms based on national belonging, this system can still be described as the “most feasible and most democratic form of government for Bosnia’s precarious existence as a multi-national state” (Bose, 2005, p. 322). The strength of the current political framework is therefore its appropriate reflection of the realities on the ground: The complex system of multilayered governance originates from the complex relationship between the three segmental groups. The idea of an ethnically neutral and unitary Bosnian state based on a common identity might sound very well, but it is unrealistic and it is not consistent with either the character or the history of the country: Bosnia has never been a unitary state and religious and national cleavages have always been present throughout its existence (Kasapovic, 2005). The salience of ethnicity did consequently not originate from the Dayton Constitution, but the constitution ensured that it was taken into account in the most appropriate way: by including every segmental group in the decision-making process and by guaranteeing them protection from the other groups. Many of Bosnia’s previous political systems included similar elements of power-sharing: There was a national quota-system in former Yugoslavia and the institutional framework in prewar Bosnia also relied on consociational elements (Bieber, 1999). It is therefore highly unlikely that any other constitution would be able to abolish the notion of ethnicity and make the political system much less complex. Former HR Wolfgang Petritsch supports this argument when saying that “[o]ne cannot and should not get rid of the ethnic paradigm” (Petritsch, 2003 cited according to Bose, 2005). Abolishing the mechanisms that ensure an equal representation for each ethnic group would not benefit the country either; it would rather reinforce the antagonism between the groups and fuel their fears of being excluded from decision-making processes. Ethnic mobilization and a further entrenchment between the groups would be likely to arise.

By not trying to get rid of the 'ethnic paradigm', the Dayton Constitution therefore introduced the only possible solution for dealing with the relationship between the groups. Any new constitution would have to take the reality of this relationship into account as well and would have to find an appropriate response to it. The appropriate response would, however, most likely look like today's institutional arrangement. Experiences with other deeply divided societies such as Lebanon and Cyprus show the same: Even though their initial consociational constitutions failed, the ones that were constructed afterwards relied on the same elements (Bose, 2005). The concept behind the Dayton Constitution is consequently adequate and does not need to be fundamentally changed.

Overall, the strength of the Dayton Constitution therefore lies in providing an appropriate framework for the creation of democratic institutions in Bosnia's fragmented society. Lijphart states that consociational elements are "the only feasible solution for deeply divided societies" (Lijphart, 2002, p. 37) and the Dayton Constitution is the realistic answer to the problematic relationship between Bosnia's constituent peoples.

4.1.3 Some Degree of Flexibility

Contrary to the common belief that Bosnia's political system is rigid and does not allow for change, the constitution has shown some degree of flexibility over the last decade. The powers of the Bosnian state have grown significantly and the structure of the entities is less mono- or binational than it once has been (Weller & Wolff, 2006). Several smaller reforms took place such as the establishment of new state ministries or the expansion of the number of ministers in the Council of Ministers. The reform of the police force which led to the signing of the SAA and the recent visa liberalization also show that the Bosnian state institutions are capable of action (Bieber, 2006). Admittedly, much of the change has been driven by the IC and was imposed upon the system by the HR; However, this still shows that a gradual constitutional reform led by the Bosnian elites is possible, especially if the IC applies the right 'sticks and carrots' to local politicians.

The Dayton Constitution also contains two features that could account for further reform: It first of all created the institution of the Constitutional Court which has been a driver for change in the last years and which has monitored the constitutionality of the political decisions very closely, even without hesitating to confront decisions made by the HR (Bose, 2002). Secondly, the constitution did not explicitly prevent the state from gaining new competencies. Taken together, these two elements could for example be used to generate a gradual reform of the current political system within its constitutional framework: State competences could on the one hand be broadened so as to give the central government a minimal base for handling the demands of EU integration efficiently; the Constitutional Court could on the other hand supervise that the transferal of competences would not be

abused and would not go too far. In doubt, the competences could be left with the entities and the state would retain the function of coordinating and streamlining the entity's policies in order to bring them into conformity with EU standards.

Overall, it is therefore possible to say that a partial strength of the constitution lies in allowing a certain space for reforms and that there is a degree of flexibility in the provisions which – if used sensibly – could provide for change.

4.2 Weaknesses

In the following subchapter, the weaknesses of the Dayton Constitution will be presented. Over the years, the constitution has been confronted with much criticism and at its worst the Bosnian state institutions have been described as “complicated, inefficient, expensive and ultimately incompatible with EU standards” (Prleđa, 2007). The following analysis will focus on the three weaknesses that are most important to deal with in order for the country to accede to the EU. These are the constitution's non-inclusiveness, its rigidity which leads to inefficiency and immobility, and its missing anchor in the population.

4.2.1 Non-Inclusiveness and Over-Institutionalization of Ethnicity

As was elaborated before, one of the most common criticisms directed against consociational arrangements is that they institutionalize ethnicity and that they reinforce the salience of cleavages instead of lessening them. Although it was argued in the previous subchapter that any other political arrangement would probably look similar, this criticism can nonetheless be applied to the Dayton Constitution: In fact, as the DPA was concluded at the highest point of the interethnic conflict, it institutionalized ethnicity as the dominant and almost only form of political identification and provided for political representation based nearly exclusively on group membership. It did not leave much space for the emergence of non-ethnic politics and did not create incentives for the development of political debates that would not be translated into ethnic ones. This is often evident in the pre-election campaigns led by national politicians: Instead of focusing on social or economic issues, ethnic questions occupy the largest part of the political discourse (Bieber & Keil, 2009).

In addition, the electoral arrangement favors ethnic voting through the constitution's rigorous requirement of ethnic quota. This arrangement has supported nationalist parties which have a clear ethnic message and has at the same time disadvantaged non-ethnic or civic parties to gain support in the society, leading to a rather curious situation: Moderate politicians and parties that would be most supportive of an interethnic state are the ones most disadvantaged by the current system – a system which was created with the aim of leading to an integrated and moderate society (Belloni, 2004).

Instead, the consociational electoral system facilitated the victory of nationalist parties and the parties have – in turn – taken full advantage of this weakness: For them, playing the ‘ethnic card’ proved most successful and nationalist parades are now the standard repertoire of nearly every political group. As a result, Bosnia has been characterized by constant tensions between the political elites; an atmosphere of trust which would be necessary for the working of the consociational elements has consequently not developed (ibid.).

The constitution has also generated an overlap in ethnic and territorial belonging by its recognition of the RS and the FBiH as Bosnia’s two main entities. This is highly problematic as various scholars point out: According to Issacharoff this feature validates the policy of ethnic cleansing carried out during the war because the minorities from one entity (a Bosnian Serb from the FBiH or a Bosniac/Bosnian Croat from the RS) cannot be elected as representatives for this region (for example in the election of the Presidency). If a minority group therefore wants to return to its home, it must face political subordination to the majority group and cannot be represented in the higher state institutions properly (Issacharoff, 2004). Such provisions perpetuate the already existing divisions and show that the Dayton Constitution was built with a focus on collective instead of individual rights (Bose, 2002). This, however, goes against the idea of a liberal democracy in which rights would be centered on the individual and in which the individual would not be excluded from representation at the highest state levels due to his or her territorial and ethnic belonging.

That this focus on collective rights (especially on those of the three main national groups) is a weakness of the constitution was also recently confirmed by the already mentioned ruling of the European Court of Human Rights. The constitution discriminates against those people who do not fit into one of the three categories of nationality and therefore leaves these “Others” without the possibility of an adequate representation (Belloni, 2004). This creates a paradox comparable to this of the electoral system: Those people who do not identify with an ethnicity in the first place (including more moderate persons) are the most disadvantaged by the Bosnian system. The constitution’s focus on ethnicity and on group membership instead of a focus on individuality is therefore at odds with the respect for individual human rights and bolsters the ethnic character of the state institutions. It is therefore a major weakness of the constitution. Overall, Bosnia can consequently be considered as a good example of how efforts to secure a fair representation in a post-conflict environment have fired backwards and have served to uphold ethnicity instead of lessening it.

4.2.2 Inefficiency and Immobility

In the early postwar years the institutions of the Bosnian state were often likened to “an empty shell” (Bieber, 2006, p. 18). The politicians complained that these institutions set up by the Dayton

Constitution functioned more like international conferences than like normal state organs. The equal representation of all three national groups led to an “ineffective [and] tremendously bloated state apparatus” (Weller & Wolff, 2006, p. 5) which can still be seen today. Between the years 1998 and 2000 an average of five laws per year was passed by the parliament and immobility characterized the whole system (McCulloch, 2009). This situation was partly remedied by the involvement of the OHR although this involvement contained its own problems: Through the presence of the OHR the incentives for politicians to overcome the deadlock were low and they did not support the development of a sense of local ownership among the Bosnian politicians.

Through the institutionalization of various administrative levels of government and the rigid use of ethnic quota in the public administration, the Dayton Constitution also created a high degree of bureaucratization and many redundant state offices. Furthermore, the consociational elements which in theory aimed at ensuring the inclusion of all segmental groups factually opened the door for abuse and for keeping the country in deadlock by undermining the functions of the central state (Evenson, 2009). Even though some reforms were initiated, the overall complexity of the political system still makes an effective governance of the country hard to achieve today: Especially the very rigid veto rights are problematic for the governance of the state and are considered to be a main source for frequent blockages. Although they have not been invoked very frequently, the threat of their usage has prevented a good share of necessary decisions from being taken (Bieber, 2006). The rigid veto-mechanisms in Bosnia are therefore not considered a ‘last resort’ to protect the ‘vital interests’ of each group as foreseen by Lijphart; they are rather used as a form of political blackmail. The wish to give the segmental groups protection through the use of vetoes has therefore fired backwards and the vetoes threaten to prevent any further progress towards EU integration. Similarly, the rigid ethnic quota and the requirement of a grand coalition government have slowed the country’s progress: in addition to the fact that the CoM has only very few competences, it does not work as a cohesive cabinet either. Compromise-finding is tedious and the cooperation between ministers is often tokenistic (ibid.).

Overall, the power-sharing mechanisms therefore fail to encourage elite cooperation as is intended by the establishment of consociational elements. Although it can be argued that a quota-system and formal veto mechanisms created by the Dayton Constitution are the only viable alternative for such a deeply divided society as the Bosnian one, they have contributed to deadlocking and immobilizing the country and can therefore be considered as one of the main weaknesses of the constitution.

4.2.3 No Anchor in the Population

Lastly, one of the major weaknesses of the constitution is that it does not have a solid anchor in the society and that it was never voted upon in parliament and therefore never democratically legitimized

by the Bosnian peoples (Sebastian, 2007). The constitution was imposed on the citizens of Bosnia and considered 'alien' by both the population as well as the political elites who were not present at the negotiation table (Bieber, 2003). Furthermore, it did not originate from a consensus among the negotiating parties but was rather consented to as a necessity to end the war. It was therefore not based on the notion of Bosnia and its borders as being legitimate – quite to the contrary, the Bosnian Serbs and Croats largely rejected the idea that Dayton had created legitimate borders and a legitimate state.

Today, most Bosnian citizens would not question the viability of the state especially because the IC made it clear that a partition of the country would not be tolerated. However, the rhetoric of secession is still frequently applied in pre-election situations and shows that both the elites and parts of the population lack the firm belief that the preservation of the existing constitutional and political system is necessary and desirable (Kasapovic, 2005). The complicated and non-transparent political system, with its frequent blockages and the many problems arising from it, has furthermore not contributed to making the constitution more popular among the population. In contrast, the notion of "Dayton" still invokes images of all that it considered unwell about the Bosnian state (Bieber, 2006).

Overall, the missing anchor of the constitution in the population and its negative connotation can be viewed as a weakness. However, it would also be difficult to base any new constitution on a broad consensus within the population. The prospect of subjecting a new constitution to a referendum would furthermore spark fears of leading to the same situation as with the referendum which led to the independence of Bosnia and which escalated into a war. The issue of the missing allegiance to the constitution should therefore be tackled in different ways and a reform of the Dayton Constitution would have to be grounded in the population's wishes and should not be decided over their heads.

4.3 Opportunities

In the following subchapter, three of the external factors which could favor the EU accession of Bosnia and Herzegovina will be elaborated. These are: the accession of Croatia and Serbia to the EU as well as a better regional reconciliation process; the development of a bottom-up movement by the Bosnian citizens borne out of the wish to join the community; and a coherent strategy of the EU to deal with the Bosnian problems.

4.3.1 EU-Accession of Croatia and Serbia and a Further Reconciliation Process

One of the main opportunities for BiH to integrate into the EU is the accession of its immediate neighbors Serbia and Croatia to the community and a further reconciliation process between the countries. Since the historic and the political developments of these two countries have been closely

intertwined with the political situation in Bosnia, their accession would create positive external effects by generating a peer pressure that would push Bosnia further into the direction of the community (Evenson 2009). The effects of this peer pressure have already been observed: As Bosnia's neighbors began to be taken seriously as viable candidates for the EU, BiH officials began to include 'European language' into their vocabulary and intensified efforts to reach the standards set out by the union. This peer pressure therefore stimulated the creation of a platform of pro-European actors across the region and the accession of Croatia and Serbia would therefore help to bolster the EU aspirations of the Bosnian elites (ibid.)

The issue of reconciliation is closely linked to the EU-accession of all three countries: One of Serbia's preconditions for EU membership is the full cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY), which primarily meant the arrest of war-time Bosnian Serb general Ratko Mladic. The fact that after 16 years Serbia did indeed recently capture Mladic shows that EU-membership is a powerful lever for action in all three countries. The capture of Mladic and other recent developments give hope for a further progress of the reconciliation of this region which will help Bosnia in getting closer to the EU. In its latest progress report on BiH, the community noted positively that relationships among the country and its two main neighbors were unfolding in a favorable manner due to regional initiatives to promote reconciliation. It remarked in an endorsing manner that the president of Serbia, Boris Tadic, had been present at the 15th commemoration of the massacre of Srebrenica and that the Serbian parliament had made an official apology for the massacre and expressed sympathy with the victims (comp. Commission Staff Working Document, 2010). This apology was by no means undisputed in the country or an easy step for Serbia to take. In a joint statement, the European Union High Representative for Foreign Affairs, Catherine Ashton, and the Enlargement and Neighbourhood Policy Commissioner, Stefan Füle, therefore welcomed the apology as a "key for the reconciliation of the whole region" (European Union, 2010). The capture of Mladic was received even more positively among the countries of the EU and German Chancellor Angela Merkel stated that this was "[...] the best basis for the region [to achieve] reconciliation and a future in Europe" (Cendrowicz, 2011).

Even though this process of reconciliation might in some instances be driven by political calculations, it is a fact that the postwar relationship between the three countries has never been as conciliatory as today. This is an opportunity for Bosnia, especially if Serbia focuses on its own EU integration process and if it makes clear (especially to the Bosnian Serbs) that it supports Bosnia in its EU aspirations. The Croatian president, Ivo Josipovic, has already done so stating that his government would support "all efforts by the EU to further assist Bosnia in overcoming its political problems" (EUbusiness, 2011). The common goal of EU membership could therefore be an opportunity of welding the three countries

more closely together and could give a renewed and a stronger impulse for Bosnia's EU accession efforts.

4.3.2 Bottom-Up Movement of the Peoples

Another opportunity leading to EU membership would be a stronger bottom-up movement of the Bosnian peoples. As has already been stated in Chapter 1, an overwhelming 86% of the citizens of Bosnia are in favor of EU accession and the EU membership is supported by nearly 60% of the population even in the EU-skeptic regions (particularly the east of the RS) (NDI, 2010). In addition, Prim research found out that more than 50% of Bosnians would find it generally acceptable to make changes to the constitutional system in accordance with EU requirements (Toan, O'Loughlin & Djipa, 2006). Taking these findings together with the recent visa liberalization, which was heralded as the "dawning of a new era" (Arslagic, 2010) for the relationship between the country and the EU, there can be no doubt that the Bosnians are prepared and willing to become part of the union.

At the same time, the Bosnian population is highly unsatisfied with the current direction of their country and with their politicians' performance. The people seem to be tired of listening to nationalist parables and believe that their politicians are focusing on the wrong policy issues. In its public opinion poll carried out shortly before the elections in 2010, the NDI found out that nearly 90% of the Bosnian citizens felt that the country was going in the wrong direction (NDI, 2010). Most of the respondents also believed that politicians talked too much about ethnicity while they talked too little about issues that were important to the citizens, namely the high unemployment and the missing economic development (*ibid.*). This dissatisfaction with Bosnian politics was also expressed at the voting boxes: only slightly more than 50% of all eligible voters cast their ballots in last year's elections showing a relatively high level of public apathy within the population (The Economist, 2010). Up until now this public apathy and disappointment in public officials has, however, not been high enough to mobilize the ethnically divided population to create significant bottom-up processes. However, with the currently high support for EU accession and the equally high dissatisfaction with the ethnic politics, there is a window of opportunity that this could change and that a stronger civil society movement could emerge. Bolstered by the Arab revolutions, Bosnians might now be able to overcome some of their differences in order to better their future prospects and to accede to the EU. This is an opportunity which the EU could take advantage of by strengthening the civil society elements within the population: Its future Bosnia strategy should therefore embrace this aspect in detail.

4.3.3 Coherent EU Strategy for Bosnia

The last external factor that would contribute positively to achieving the aim of Bosnia's EU accession is the creation of a coherent Bosnia strategy by the EU. Up until now the union has often been criticized for not taking a resolute approach to solving the 'Bosnian issue' and for not being a leading actor in the country's reform process (Sebastian, 2007). One of the EU's chief demands was for Bosnia to learn to speak with one voice – a request which the EU itself was often enough not able to realize with regards to its Balkan policy (International Crisis Group, 2011). As has already been pointed out, 2011 could become a pivotal year for the relationship between the community and BiH: As the OHR has intended to gradually downsize its competences and to hand over some of them to the EU delegation, it is now Europe's time to take a leading role at guiding Bosnia towards reforms and eventually to an inclusion into the European community. Bosnia is therefore more than ever dependent on Brussels' soft power (instead of the 'hard powers' of the OHR) to nudge it into the right direction.

A promising start has already been made: The EU's High Representative for Foreign Affairs, Catherine Ashton, and the Commissioner for Enlargement, Stefan Füle, have drawn up a new strategy for BiH which among other things foresees a stronger presence of the community in the country and specific reforms for making the state capable of acting (Sopinska, 2011). A partial success of this renewed EU focus on Bosnia has already been achieved: Ashton managed to convince Bosnian Serb leader Milorad Dodik to drop his calls for a referendum on the judicial system. This referendum was seen by many as threatening the unity of Bosnia. In return, Aston promised Dodik the EU's support for a reform of the judicial system in order to make it less systematically biased against Bosnian Serbs (EUbusiness, 2011). The EU's new approach comes at both a crucial and an opportune time: crucial because the country is facing one of its most severe crises as has been elaborated in Chapter 1 and the OHR has lost much of the population's trust in dealing with such problems properly; opportune because the pre-election period, which was and is usually characterized by divisive nationalist rhetoric, is over and the country and the EU have three years until the next elections are due. These three years offer a good deal of time for both the EU and the Bosnian political leaders to negotiate strategies to bring the country out of its deadlock and closer to EU integration.

Overall, it can therefore be said that the recent developments within the EU offer room for hope even though the situation in Bosnia is a very critical one. By convincing the Bosnian Serbs to drop their referendum, the EU showed that it is indeed capable of acting and that it can balance the need for security of the Bosnian Serbs with the fact of the indivisibility of the Bosnian state. If the EU continues to act in such a manner on the Balkans, the chances for success are certainly present. Which issues the EU should focus on in particular will be elaborated in the next chapter, which contains recommendations and guidelines for EU action.

4.4 Threats

Similar to the three opportunities that were elaborated in the previous chapter, there are three corresponding threats that could pose an obstacle for Bosnia's EU accession. These are a continuing destructive behavior by the Bosnian political elites, deteriorating economic conditions, and an inconsistent and weak EU strategy vis-à-vis the country.

4.4.1 Continuing Destructive Behavior of the Political Elites

The continuing destructive behavior by the Bosnian politicians and especially their frequent use of nationalist rhetoric are a major threat to a further progress towards the country's EU integration. As long as the elites do not show an inclination to create a basic level of trust among each other, it will be very difficult for the country to fulfill the conditions set out by the EU. In its latest progress report on BiH, the EU criticized that the cooperation between public officials remained rudimentary and insufficient in numerous policy sectors, such as for example in the economic or fiscal, in the health or in the social security sector (Commission Staff Working Document, 2010). As long as this cooperation does not improve it will be very difficult for Bosnia to undertake the reforms that are necessary for an accession to the community.

One of the major obstacles to building trust among the elites is their common usage of divisive nationalist rhetoric, especially in pre-election phases. The EU's progress report noted that this rhetoric was found in the discourse of either national group: Politicians from the RS frequently challenged the territorial integrity of the country likening it to an artificial state or affirming their allegiance to Serbia instead of Bosnia. Meanwhile, some of the political leaders from the FBiH ascribed the establishment of the RS to massacres carried out during the war (ibid). This "war of words" (Latal, 2010) serves to reinforce antagonisms between the segmental groups because it operates along an emotionally charged personal dichotomy: The discourse divides the groups into the categories of "we" and "the others". The frequent invoking of these images creates a feeling of exclusion and does not contribute to a reconciliation of the country (Mikula, 2004). This rhetoric furthermore captures the Bosnian citizens in a prisoners' dilemma: Although the majority of the population is tired of hearing the nationalist parables as the NDI's opinion poll has shown, the three groups still tend to vote for the nationalist parties because of the fear that voting for a more moderate group would bring them into a less favorable position in comparison to the other two groups. The nationalist rhetoric serves to undermine this fear and the groups vote in order not to be subordinated to "the others".

Overall, the continuing internal tensions among the politicians are certainly one of the biggest threats to a progress of the country. The Guardian therefore sees the future of Bosnia depending on the local

leaders showing restraint and more consideration and it calls for a “coolheaded approach” (Latal, 2010) from their side. Indeed, if the leaders continue to sow distrust and fear among the population then even a common European goal will keep the country in deadlock. This threat is therefore one that should be addressed in a future EU-Bosnia strategy.

4.4.2 Deteriorating Economic Conditions

The economic consolidation of Bosnia and Herzegovina is an issue which both the European Union and the Bosnian citizens consider vital for the future well-being of the country. A regress in the economic situation could have a serious impact on Bosnia’s ability to deal with its EU obligations and could increase the tensions among the population. Although Bosnia’s economic prospects are not desperate, they do not give much reason for hope either: The country’s economic growth has been impeded by its complicated structures of governance, its very large and expensive government bureaucracies, and by such problems as organized crime and corruption. In general, the Bosnian economic structures have been described as resembling the economy of the Former Yugoslavia too much and it has been criticized that there was little actual economic reform since 1992 (Woehrel, 2010). In addition, the current political deadlock also threatens Bosnia’s economic development because foreign investors are hesitant to invest in a country that has not been able to be governed for nearly 8 months. Taking all these aspects together, it is not surprising that the EU’s assessment of the Bosnian economic situation was primarily negative and that the community asked for stronger and more coordinated policy-efforts by the Bosnian elites to consolidate the economic sector (Commission Staff Working Document, 2010). A source of special concern for the Bosnian population is their country’s high unemployment: 41% of the Bosnian citizens consider this issue to be the country’s most serious problem. The overall unemployment rate currently ranks at 28% with the portion of unemployed youths (between the ages of 15 and 24) being at an alarming level of 50% (Commission Staff Working Document, 2010). Coupled with the unsatisfactory educational possibilities, these low prospects of finding a job could consequently force more young people to leave Bosnia and could exacerbate the trend of the “youth brain drain” (American University BiH, 2010).

The unemployment and the other economic problems could threaten Bosnia’s EU accession in three ways: Firstly, the different strategies of the RS and the FBiH to tackle the economic challenges could reinforce the divisions between the two entities and could make the required EU streamlining of the economic and fiscal policies more difficult to achieve. Secondly, the brain drain which arose from the economic problems could undermine the support for the EU in future years. This is because, as David Chandler (1998) points out, elite groups, such as lawyers, journalists, teachers and academics, are in general very important for the development of community-building initiatives and are the ones that usually favor EU accession the most. These are, however, also the ones that are most likely to leave

the state to look for better places of employment abroad if their home country does not offer job opportunities. Lastly, considering the problems that the EU currently faces with Greece or Portugal, the community could be reluctant to let Bosnia accede to the union unless it proves its solid economic background. As the country has, however, already been rated among the least economically viable countries in Europe, the chances that the EU will support the accession if the situation deteriorates further are slim (EconomyWatch, 2008).

Overall, a deteriorating economic situation in the country would therefore be a threat to the EU aspirations of the country. An EU strategy should therefore consider how to take the economic aspects into account and how to create incentives for the Bosnian economy to develop in a more positive direction.

4.4.3 No Coherent EU Strategy for Bosnia

Similar to a consistent EU strategy for Bosnia being an opportunity for the country to reach EU membership, an incoherent strategy from the side of the community could be detrimental to this end. Up until now the EU often lacked a clear roadmap for the Balkan region and treated Bosnia like any other accession country although its complicated history and structure would have asked for a more individual and more specifically tailored game plan. The EU has been particularly ambivalent about constitutional reform, supporting (although not whole-heartedly) the US-led efforts that failed in April 2006 and then subsequently stating that constitutional change was not a pre-condition for EU accession, but that it would still be necessary. This ambivalent attitude showed that the EU's strategy for Bosnia was not elaborated in detail and it served to create confusion among the Bosnian politicians (Sebastian, 2007). Although the community has now drawn up the already mentioned new Bosnia strategy and has taken some positive first steps, the possibility for the union to slide back into old habits is not impossible.

This was recently proven when the EU announced that it would limit the visa liberalization which it had granted Bosnia in 2010. The step has become necessary in order to stop the cases of asylum abuse which some countries (notably Germany, Belgium, France and Luxembourg) had complained about (Die Presse, 2011). Although this step is understandable and maybe even necessary, it creates confusion among the Bosnian people and shows an incoherent European approach. While the visa liberalization was successfully used as a 'carrot' by the EU, its current drawback makes the community's proposals seem unreliable, not well-thought through and not credible. With an attitude like this, it would not be surprising if the Bosnians (and for that matter the peoples of any other accession countries as well) would feel unwanted by the community and if support for the EU would consequently drop. The EU should therefore not offer these kinds of 'carrots' if it leaves itself a

back door to drop out from its obligations. If it wants Bosnia to deliver (and this in itself will already be a difficult aim to achieve), then it has to be prepared to deliver itself in order to keep its credibility among the Bosnian population and its influence on Bosnian politics.

4.5 Conclusion

The SWOT-analysis has shown that the Dayton Constitution has both strengths and weaknesses that could support or respectively hinder Bosnia’s EU accession. Likewise, there are several external factors which could create a conducive or a non-conducive atmosphere for the country to reach this aim. The following table summarizes the findings from the SWOT-analysis:

Table 5: SWOT-Analysis

Strengths	Weaknesses	Opportunities	Threats
Stability and Security	Non-Inclusiveness	Good Neighborly Relations	Continuing Internal Tensions
Realism and Appropriateness	Inefficiency	Bottom-Up Movement	Weak Economic Outlook
Some Degree of Flexibility	No Anchor in Population	Coherent EU Strategy	Incoherent EU Strategy

Overall, it can be stated that the Dayton Constitution’s main strengths include its relative stable framework and its appropriate answer to the difficult relationship among the three constituent peoples. However, at the same time, the reproaches that the constitution over-institutionalized ethnicity, that it is inefficient and that it does not have a solid anchor in the population are well-grounded. Reforms of the constitution should therefore reinforce the strong elements while trying to amend as best as possible the weaknesses that the constitution exhibits. Similarly, the Bosnian politicians and the population as well as the EU should make a determined effort to use the favorable conditions to advance the country into the direction of the EU. A hesitant strategy would only increase the possibility of the threats gaining more weight which would make the road to the community an even bumpier ride than it already is.

The next chapter will therefore combine the elements of the SWOT-analysis with each other to give a set of recommendations for the EU, the Bosnian political elites as well as the Bosnian population in order for them to take the necessary measures to support the country’s EU aspirations.

5. Recommendations and Conclusion

Based on the SWOT-analysis of the previous chapter, the last part of this Bachelor thesis will give a set of four recommendations as to how Bosnia’s EU accession process could be supported without having to resort to a complete restructuring of the political framework. The four recommendations are mainly targeted at the EU because the community has envisaged taking over some important responsibilities this year. The union should therefore develop a coherent strategic plan for Bosnia in order to use the strengths that the constitution offers to push the country out of its deadlock and toward EU integration. These recommendations could be included in such a strategic plan and could serve as a starting point for future action. The recommendations are furthermore also targeted at the Bosnian political elites: Although a good EU strategy is necessary for Bosnia and might become the motor for change, the Bosnian leaders eventually have to lay their differences aside – if only to achieve the common goal of EU accession. If they do not show any political will from their side, then Bosnia’s constitutional set-up will most probably stay “the problem that won’t go away” (The Economist, 2011).

5.1 Recommendations

The recommendations which will be presented in the following subchapters are interrelated. Although they will be elaborated separately for simplicity’s sake, they can only have an effect on Bosnian politics if they are taken together as part of a holistic approach to support gradual reform in the country.

5.1.1 First Set of Recommendations

Table 6: First Set of Recommendations

Recommendation One	The EU should reinforce its presence in Bosnia; it should speak with one clear voice and should show its commitment to the country’s aspirations.
Target Group	European Union
Possible Measures	Designing a strong Head of the EU delegation, increasing the delegation’s number of staff and allocating more IPA funds to Bosnia

The first set of recommendations is aimed at the capacities of the EU itself: To increase its standing in Bosnia and in order to be able to carry out the following three sets of recommendations, the EU must first of all strengthen its own capability to act. It is therefore necessary for the EU to throw its “enlargement fatigue” (International Crisis Group, 2011) over board and to commit itself to the next group of countries which are waiting for accession, including Bosnia. As the OHR will slowly scale its influence on the country back, the first important step for the EU is to appoint a strong ambassador to be the Head of the EU delegation to the country. The ambassador should become the central point of

reference for all political leaders in matters which concern EU accession. This would consequently imply the closure of the other EU points of reference (such as the European Union Special Representative (EUSR)) and centralizing the EU competences in the figure of the ambassador. He or she should furthermore be a senior political official with renowned international standing in order to show the Bosnian leaders and the Bosnian population that the country is indeed important for the EU and that the community does not hesitate to put some of its best people to meet the Bosnian challenges. Concerning his or her range of actions, the ambassador should use political conditionality and sanctions mechanisms to deal with instances of non-compliance with the constitution – he or she should not use the ‘hard powers’ of the OHR to do so, but should focus on nudging Bosnia with the ‘soft powers’ that Brussels has to offer (the case of Serbia capturing Ratko Mladic shows that Brussels’ ‘carrots’ can indeed work).

The EU should furthermore provide its delegation to Bosnia with more staff in order for it to be able to support the local authorities in an appropriate way and to deal with their requests efficiently. It should take into account that although Bosnia is not a large country, the complexity of its government structures will need more than the current level of staffing to overcome the political deadlock. This would also give the positive signal to both the Bosnian elite as well as to the population that the EU is stepping up its speed and that it is taking its commitments seriously. Lastly, the EU should increase its funding for the so-called Instruments of Pre-Accession Assistance (IPA). IPA-funded projects serve to advance EU integration; however, Bosnia’s per capita IPA-assistance is the lowest in the region at €23 per head (International Crisis Group, 2011). Macedonia for example – which is comparable in its level of development to Bosnia – receives roughly €44 of IPA-assistance per head (comp. *ibid*). A gradual increase of the funding would therefore be appropriate for responding to Bosnia’s EU aspirations and would again show the commitment of the union to the country.

Taking these measures would have two advantages: They would firstly strengthen the EU in itself because they would bundle its currently wide-spread competences; this would make it easier for the community to develop a coherent and clear strategy for the country and to speak with ‘one voice’. These measures would secondly also send the right signals to the local politicians and population by showing that Bosnia is not just ‘any other EU accession country’ but that it deserves special attention due to its problematic situation and its complicated history.

5.1.2 Second Set of Recommendations

Table 7: Second Set of Recommendations

Recommendation Two	The EU should facilitate and encourage gradual constitutional reform.	The political leaders should use the current window of opportunity to gradually reform the constitution.
Target Group	European Union	Political elites
Possible Measures	Creating negotiation space for the politicians and elaborating a clear list of reform priorities for EU accession.	Changing the institutional set-up and making the constitution more inclusive in order for it to comply with the ECHR standards.

A second important step for bringing Bosnia closer to the EU is to gradually reform the constitution in order for it to be able to handle the demands of EU accession. It has already been pointed out in the SWOT-analysis that the constitution has some degree of flexibility for reform and this degree should be used by the EU and the Bosnian politicians to overcome the country’s current deadlock.

The EU should first of all work together with the local politicians to start a reform process similar to this of the April package. The community should make clear that it would encourage the initiation of a local constitutional debate and that it would help to set up the space and conditions for it: The EU could for example draw up a scheme of meetings and create guidelines of conduct. At the same time, it should come up with a clear list of reform priorities which the Bosnian politicians would need to tackle for EU accession. These priorities should be realistically achievable and should not aim at altering the Bosnian institutional set-up altogether. Lastly, during the negotiations, the EU should make clear that the reform process is a local effort and that successes would be considered as ‘local successes’ and that failures would be considered as ‘local failures’ – the EU should therefore not try to impose any solutions on the politicians; quite to the contrary, it should tell the politicians explicitly that it would not correct their failure to achieve a consensus.

The Bosnian political leaders should on the other hand use the current window of opportunity to make the necessary changes for EU accession: As the constitution needs to be adjusted in order to comply with the ECHR standards, the politicians could use this occasion to think about including some of the amendments which were agreed upon in the April package: they could for example think about strengthening the parliament by increasing the number of delegates to the House of Representatives. They could also envisage reducing the competences of the Presidency while at the same time increasing the powers of the Council of Ministers. In order to comply with the ECHR, the reforms would furthermore need to aim at strengthening the minority rights and the anti-discrimination legislation to include non-dominant groups in the governance of the country. A possible change could therefore look like the following: The Presidency could be reduced to one person which would be elected from the population without any restrictions as to his or her background. This would, however,

favor the Bosniac group and would therefore be likely to be met with resistance from the other groups. A compromise would then lie in weakening the standing of the Presidency and in strengthening the competences of the CoM – the CoM would thus become the strongest and most inclusive body of the state executive.

Although these recommendations can only be a start, it can be said that they prove that there is no need for a fundamental change of the constitution. These amendments would partially remedy the weakness of the inefficiency and the non-inclusiveness of the constitution while at the same time using its strength of providing a realistic framework for the cooperation of the various groups.

5.1.3 Third Set of Recommendations

Table 8: Third Set of Recommendations

Recommendation Three	Both the EU and the political elites should create popular support and strengthen the inclusiveness of the civil society.
Target Group	European Union and political elites
Possible Measures	Communicating every change in the constitution and stating how it is related to EU accession, providing start-up packages for NGOs that focus on making the country more integrated

A third recommendation, aimed at both at the EU and the political leaders of Bosnia, is to create public support for the changes in the institutional arrangement and to support more initiatives for making ethnicity a less salient issue in the civil society.

The SWOT-analysis revealed that the missing anchor in the population is one of the weaknesses of the Dayton Constitution. However, the analysis also showed that creating a fundamentally new constitution would be very likely to be met with high resistance from parts of the population as well. The EU and the political leaders should therefore focus on creating popular support for the reforms which would need to be carried out in order for Bosnia to achieve EU membership. Therefore, any change in the constitution should be communicated to the population: It should be clearly laid out why the change is necessary, how it will support the country and its peoples in their efforts to proceed towards the EU and which advantages and disadvantages it entails. Both the EU and the political elites should work together with opinion poll agencies to gauge how the reforms are perceived among the population. The EU should furthermore think about building on its already high support and starting various campaigns presenting the advantages of EU membership to the Bosnian population. These measures could help to intensify the support for the community and could therefore bolster the bottom-up movement of the people. The bottom-up movement could in turn force local politicians to cooperate better with each other and to assume greater responsibilities for their actions (see next subchapter).

The EU and the local politicians should also try to strengthen the civil society in other ways: The EU could for example reward NGOs that promote cross-cutting interests by providing them with start-up money. More people might then be encouraged to initiate interest groups with cross-ethnic issues. As ethnicity is still the dominant cleavage, creating these cross-cutting memberships would help to lessen the salience of ethnicity and would provide the population with alternative sources for identification. Especially issues such as social security, unemployment or the environment could mobilize people of all groups to come together in order to tackle the problems that the country currently faces in these areas.

Taken together, these measures could strengthen the opportunity of a bottom-up movement of the Bosnian people and they could at the same time remedy the weakness of the over-institutionalization of ethnicity of the Dayton Constitution.

5.1.4 Fourth Set of Recommendations

Table 9: Fourth Set of Recommendations

Recommendation Four	The EU should encourage the formation of trust between the political elites.	The political elites should develop a sense of local ownership.
Target Group	European Union	Political elites
Possible Measures	Bringing the elites together in planned intervals	Establishment of domestic expert bodies for a reviewing and monitoring of the constitution

The last recommendation focuses on the issue of the missing trust among the elites and their lack of local responsibility. The EU and the political elites should therefore try to create an atmosphere which is conducive for the emergence of a stronger feeling of ownership and of a higher level of trust among the politicians, which would be a start for counteracting the threat of continuing internal tensions in the country.

Concerning domestic ownership, the political elites should agree on the establishment of local mechanisms for the review and the monitoring of the constitution and the country’s political institutions. These expert bodies could consist of Bosnian citizens from all relevant groups and parties who would jointly create recommendations for reforms or for improving the performance of the state institutions with regards to EU accession. As the groups would be composed of people with various ethnic backgrounds and from various parties, their suggestions could not be dismissed by local politicians as easily as suggestions coming from an international organization or from one group alone. The politicians would therefore feel more strongly controlled by their own people which could result in a stronger feeling of responsibility.

The EU could also encourage the building of more contacts among the elites by bringing them together in frequent intervals and whenever cross-cutting issues (that do not touch the question of ethnicity) are involved. An initiative which exemplifies this approach is the project “Strengthening Capacities for Strategic Planning and Policy Development” by the United Nations Development Programme (UNDP) in Bosnia (comp. UNDP BiH, 2011). The project brings together public officials from ministries from the state and entity level in order to teach them how to create strategic plans or how to develop new policies. This means that the representatives from (for example) the ministry of agriculture from the state level, from the FBiH and from the RS meet in frequent intervals and learn the strategic planning or policy development methodology (comp. *ibid.*). Apart from providing the civil servants with this knowledge, the meetings also serve to give the officials a chance to socialize, to look at the policy practices of their colleagues and to assess the achievements of the respective ministries from the other levels. Overall, this is very much in Arend Lijphart’s sense as the communication and the cooperation between the elites is facilitated. The EU should therefore take the same approach and bring the representatives of the various groups together whenever possible.

Overall, the EU should make a clear call for a domestic ‘conscience’ to develop and should communicate to the population that it will not take the blame for the missing feeling of responsibility of the Bosnian politicians. To encourage a stronger and more coherent sense of local ownership, the EU should, however, facilitate the establishment of as many contacts among the elites as possible.

5.2 Conclusion

This Bachelor thesis has spanned a long arch: It took the country’s present political deadlock as a reason to elaborate on the question if Bosnia and Herzegovina could reach its aim of becoming an EU member state within its current constitutional framework which has more than once been a hindrance to allowing important reforms. This question was considered of particular relevance due to the fact that the EU has planned to take over a stronger role in the region this year, alleviating the OHR of some of its competences. To analyze the Dayton Constitution’s features in-depth, Chapter 2 introduced the theoretical framework which the constitution was built upon. This served to present the reader to the thought behind the creation of the extensive power-sharing mechanisms that can be found in deeply divided societies such as the Bosnian one. Although power-sharing mechanisms are often a cause for deadlock, they are still necessary to secure the inclusion of all relevant societal groups in a country’s political framework and to safeguard their rights. Chapter 3 then presented the Dayton Constitution in detail and elaborated on its origins, its provisions and the reforms that it was subjected to. This served to give the reader a comprehensive understanding of this thesis’ subject of analysis and also showed that the Dayton Constitution is a very unusual political arrangement: It was written by American lawyers and built on little more than the consensus that a war had to end; it was also never

legitimized by the Bosnian people – not a particularly good basis for the evolution of an undisputed, strong and united state. Chapter 4 then went on to undertake the SWOT-analysis of the Dayton Constitution. This served to show the reader that the constitution contains both positive and negative features which could encourage Bosnia in or respectively prevent the country from joining the EU. Similarly, there are external factors which are conducive or non-conducive to the achievement of this aim. Based on these findings, Chapter 5 finally set out a number of recommendations for both the EU and the Bosnian politicians to support Bosnia's EU aspirations.

Overall, the thesis showed that despite the weaknesses of the Dayton Constitution, it does not need a complete restructuring in order for Bosnia to achieve EU membership. Rather, it is important that the positive aspects of the constitution be preserved and strengthened. The need for a revision of the constitution is certainly existent; a radical break with it would, however, be very likely to be met with high resistance. The biggest opportunity for Bosnia's EU integration is the development of a coherent EU strategy to advance the country into the right direction. A good EU strategy could remedy some of the weaknesses of the constitutional set-up and could give the country a new impetus for stepping up its efforts. Such a strategy would include for the community to take more decisive actions, to reinforce its presence in the country and to learn to use its 'carrots' in an effective and credible way.

Although the four recommendations that were outlined above can only be a start to putting Bosnia on a more solid path towards the EU, they show nonetheless that there is a range of actions which both the EU and the local politicians can take to advance the country. The situation in Bosnia might indeed look dire - there is, however, no reason for the EU, the local politicians or the Bosnian population to throw in the towel and to wait for the future to happen. Admittedly, a wholly 'new' kind of country will probably not emerge from the envisaged reforms and the word 'crisis' might still be used in many instances; however, if the EU and the political leaders decide to act, then there is hope that at least a 'newish' kind of Bosnia and Herzegovina less susceptible to crises will be put on the road to its European future. Action is therefore possible and needed – and it should be initiated now.

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Annex 4
Constitution of Bosnia and Herzegovina

Preamble

Based on respect for human dignity, liberty, and equality,

Dedicated to peace, justice, tolerance, and reconciliation,

Convinced that democratic governmental institutions and fair procedures best produce peaceful relations within a pluralist society,

Desiring to promote the general welfare and economic growth through the protection of private property and the promotion of a market economy,

Guided by the Purposes and Principles of the Charter of the United Nations,

Committed to the sovereignty, territorial integrity, and political independence of Bosnia and Herzegovina in accordance with international law,

Determined to ensure full respect for international humanitarian law,

Inspired by the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, as well as other human rights instruments,

Recalling the Basic Principles agreed in Geneva on September 8, 1995, and in New York on September 26, 1995,

Bosniacs, Croats, and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina hereby determine that the Constitution of Bosnia and Herzegovina is as follows:

Article I: Bosnia and Herzegovina

1. **Continuation.** The Republic of Bosnia and Herzegovina, the official name of which shall henceforth be "Bosnia and Herzegovina," shall continue its legal existence under international law as a state, with its internal structure modified as provided herein and with its present internationally recognized borders. It shall remain a Member State of the United Nations and may as Bosnia and Herzegovina maintain or apply for membership in organizations within the United Nations system and other international organizations.
2. **Democratic Principles.** Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections.
3. **Composition.** Bosnia and Herzegovina shall consist of the two Entities, the Federation of Bosnia and Herzegovina and the Republika Srpska (hereinafter "the Entities").
4. **Movement of Goods, Services, Capital, and Persons.** There shall be freedom of movement throughout Bosnia and Herzegovina. Bosnia and Herzegovina and the Entities shall not impede full freedom of movement of persons, goods, services, and capital throughout Bosnia and Herzegovina. Neither Entity shall establish controls at the boundary between the Entities.
5. **Capital.** The capital of Bosnia and Herzegovina shall be Sarajevo.
6. **Symbols.** Bosnia and Herzegovina shall have such symbols as are decided by its Parliamentary Assembly and approved by the Presidency.
7. **Citizenship.** There shall be a citizenship of Bosnia and Herzegovina, to be regulated by the Parliamentary Assembly, and a citizenship of each Entity, to be regulated by each Entity, provided that:
 - a. All citizens of either Entity are thereby citizens of Bosnia and Herzegovina.
 - b. No person shall be deprived of Bosnia and Herzegovina or Entity citizenship arbitrarily or so as to leave him or her stateless. No person shall be deprived of Bosnia and Herzegovina or Entity citizenship on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
 - c. All persons who were citizens of the Republic of Bosnia and Herzegovina immediately prior to the entry into force of this Constitution are citizens of Bosnia and Herzegovina. The citizenship of persons who were naturalized after April 6, 1992 and before the entry into force of this Constitution will be regulated by the Parliamentary Assembly.
 - d. Citizens of Bosnia and Herzegovina may hold the citizenship of another state, provided that there is a bilateral agreement, approved by the Parliamentary Assembly in accordance with [Article IV\(4\)\(d\)](#), between Bosnia and Herzegovina and that state governing this matter. Persons with dual citizenship may vote in Bosnia and Herzegovina and the Entities only if Bosnia and Herzegovina is their country of residence.
 - e. A citizen of Bosnia and Herzegovina abroad shall enjoy the protection of Bosnia and Herzegovina. Each Entity may issue passports of Bosnia and Herzegovina to its citizens as regulated by the Parliamentary Assembly. Bosnia and Herzegovina may issue passports to citizens not issued a passport by an Entity. There shall be a central register of all passports issued

by the Entities and by Bosnia and Herzegovina.

Article II: Human Rights and Fundamental Freedoms

1. **Human Rights.** Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms. To that end, there shall be a Human Rights Commission for Bosnia and Herzegovina as provided for in [Annex 6](#) to the General Framework Agreement.
2. **International Standards.** The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.
3. **Enumeration of Rights.** All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include:
 - a. The right to life.
 - b. The right not to be subjected to torture or to inhuman or degrading treatment or punishment.
 - c. The right not to be held in slavery or servitude or to perform forced or compulsory labor.
 - d. The rights to liberty and security of person.
 - e. The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings.
 - f. The right to private and family life, home, and correspondence.
 - g. Freedom of thought, conscience, and religion.
 - h. Freedom of expression.
 - i. Freedom of peaceful assembly and freedom of association with others.
 - j. The right to marry and to found a family.
 - k. The right to property.
 - l. The right to education.
 - m. The right to liberty of movement and residence.
4. **Non-Discrimination.** The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in [Annex I](#) to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
5. **Refugees and Displaced Persons.** All refugees and displaced persons have the right freely to return to their homes of origin. They have the right, in accordance with [Annex 7](#) to the General Framework Agreement, to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void.
6. **Implementation.** Bosnia and Herzegovina, and all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities, shall apply and

conform to the human rights and fundamental freedoms referred to in paragraph 2 above.

7. **International Agreements.** Bosnia and Herzegovina shall remain or become party to the international agreements listed in [Annex I](#) to this Constitution.
8. **Cooperation.** All competent authorities in Bosnia and Herzegovina shall cooperate with and provide unrestricted access to: any international human rights monitoring mechanisms established for Bosnia and Herzegovina; the supervisory bodies established by any of the international agreements listed in Annex I to this Constitution; the International Tribunal for the Former Yugoslavia (and in particular shall comply with orders issued pursuant to Article 29 of the Statute of the Tribunal); and any other organization authorized by the United Nations Security Council with a mandate concerning human rights or humanitarian law.

Article III: Responsibilities of and Relations Between the Institutions of Bosnia and Herzegovina and the Entities

1. **Responsibilities of the Institutions of Bosnia and Herzegovina.** The following matters are the responsibility of the institutions of Bosnia and Herzegovina:
 - a. Foreign policy.
 - b. Foreign trade policy.
 - c. Customs policy.
 - d. Monetary policy as provided in [Article VII](#).
 - e. Finances of the institutions and for the international obligations of Bosnia and Herzegovina.
 - f. Immigration, refugee, and asylum policy and regulation.
 - g. International and inter-Entity criminal law enforcement, including relations with Interpol.
 - h. Establishment and operation of common and international communications facilities.
 - i. Regulation of inter-Entity transportation.
 - j. Air traffic control.
2. **Responsibilities of the Entities.**
 - a. The Entities shall have the right to establish special parallel relationships with neighboring states consistent with the sovereignty and territorial integrity of Bosnia and Herzegovina.
 - b. Each Entity shall provide all necessary assistance to the government of Bosnia and Herzegovina in order to enable it to honor the international obligations of Bosnia and Herzegovina, provided that financial obligations incurred by one Entity without the consent of the other prior to the election of the Parliamentary Assembly and Presidency of Bosnia and Herzegovina shall be the responsibility of that Entity, except insofar as the obligation is necessary for continuing the membership of Bosnia and Herzegovina in an international organization.
 - c. The Entities shall provide a safe and secure environment for all persons in their respective jurisdictions, by maintaining civilian law enforcement agencies operating in accordance with internationally recognized standards

and with respect for the internationally recognized human rights and fundamental freedoms referred to in [Article II](#) above, and by taking such other measures as appropriate.

- d. Each Entity may also enter into agreements with states and international organizations with the consent of the Parliamentary Assembly. The Parliamentary Assembly may provide by law that certain types of agreements do not require such consent.
3. **Law and Responsibilities of the Entities and the Institutions.**
 - a. All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.
 - b. The Entities and any subdivisions thereof shall comply fully with this Constitution, which supersedes inconsistent provisions of the law of Bosnia and Herzegovina and of the constitutions and law of the Entities, and with the decisions of the institutions of Bosnia and Herzegovina. The general principles of international law shall be an integral part of the law of Bosnia and Herzegovina and the Entities.
 4. **Coordination.** The Presidency may decide to facilitate inter-Entity coordination on matters not within the responsibilities of Bosnia and Herzegovina as provided in this Constitution, unless an Entity objects in any particular case.
 5. **Additional Responsibilities.**
 - a. Bosnia and Herzegovina shall assume responsibility for such other matters as are agreed by the Entities; are provided for in Annexes 5 through 8 to the General Framework Agreement; or are necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina, in accordance with the division of responsibilities between the institutions of Bosnia and Herzegovina. Additional institutions may be established as necessary to carry out such responsibilities.
 - b. Within six months of the entry into force of this Constitution, the Entities shall begin negotiations with a view to including in the responsibilities of the institutions of Bosnia and Herzegovina other matters, including utilization of energy resources and cooperative economic projects.

Article IV: Parliamentary Assembly

The Parliamentary Assembly shall have two chambers: the House of Peoples and the House of Representatives.

1. **House of Peoples.** The House of Peoples shall comprise 15 Delegates, two-thirds from the Federation (including five Croats and five Bosniacs) and one-third from the Republika Srpska (five Serbs).
 - a. The designated Croat and Bosniac Delegates from the Federation shall be selected, respectively, by the Croat and Bosniac Delegates to the House of Peoples of the Federation. Delegates from the Republika Srpska shall be

selected by the National Assembly of the Republika Srpska.

- b. Nine members of the House of Peoples shall comprise a quorum, provided that at least three Bosniac, three Croat, and three Serb Delegates are present.

2. **House of Representatives.** The House of Representatives shall comprise 42 Members, two-thirds elected from the territory of the Federation, one-third from the territory of the Republika Srpska.

- a. Members of the House of Representatives shall be directly elected from their Entity in accordance with an election law to be adopted by the Parliamentary Assembly. The first election, however, shall take place in accordance with [Annex 3](#) to the General Framework Agreement.
- b. A majority of all members elected to the House of Representatives shall comprise a quorum.

3. **Procedures.**

- a. Each chamber shall be convened in Sarajevo not more than 30 days after its selection or election.
- b. Each chamber shall by majority vote adopt its internal rules and select from its members one Serb, one Bosniac, and one Croat to serve as its Chair and Deputy Chairs, with the position of Chair rotating among the three persons selected.
- c. All legislation shall require the approval of both chambers.
- d. All decisions in both chambers shall be by majority of those present and voting. The Delegates and Members shall make their best efforts to see that the majority includes at least one-third of the votes of Delegates or Members from the territory of each Entity. If a majority vote does not include one-third of the votes of Delegates or Members from the territory of each Entity, the Chair and Deputy Chairs shall meet as a commission and attempt to obtain approval within three days of the vote. If those efforts fail, decisions shall be taken by a majority of those present and voting, provided that the dissenting votes do not include two-thirds or more of the Delegates or Members elected from either Entity.
- e. A proposed decision of the Parliamentary Assembly may be declared to be destructive of a vital interest of the Bosniac, Croat, or Serb people by a majority of, as appropriate, the Bosniac, Croat, or Serb Delegates selected in accordance with paragraph 1(a) above. Such a proposed decision shall require for approval in the House of Peoples a majority of the Bosniac, of the Croat, and of the Serb Delegates present and voting.
- f. When a majority of the Bosniac, of the Croat, or of the Serb Delegates objects to the invocation of paragraph (e), the Chair of the House of Peoples shall immediately convene a Joint Commission comprising three Delegates, one each selected by the Bosniac, by the Croat, and by the Serb Delegates, to resolve the issue. If the Commission fails to do so within five days, the matter will be referred to the Constitutional Court, which shall in an expedited process review it for procedural regularity.
- g. The House of Peoples may be dissolved by the Presidency or by the House itself, provided that the House's decision to dissolve is approved by a majority that includes the majority of Delegates from at least two of the Bosniac, Croat, or Serb peoples. The House of Peoples elected in the first elections after the entry into force of this Constitution may not, however, be

- dissolved.
- h. Decisions of the Parliamentary Assembly shall not take effect before publication.
 - i. Both chambers shall publish a complete record of their deliberations and shall, save in exceptional circumstances in accordance with their rules, deliberate publicly.
 - j. Delegates and Members shall not be held criminally or civilly liable for any acts carried out within the scope of their duties in the Parliamentary Assembly.
4. **Powers.** The Parliamentary Assembly shall have responsibility for:
- a. Enacting legislation as necessary to implement decisions of the Presidency or to carry out the responsibilities of the Assembly under this Constitution.
 - b. Deciding upon the sources and amounts of revenues for the operations of the institutions of Bosnia and Herzegovina and international obligations of Bosnia and Herzegovina.
 - c. Approving a budget for the institutions of Bosnia and Herzegovina.
 - d. Deciding whether to consent to the ratification of treaties.
 - e. Such other matters as are necessary to carry out its duties or as are assigned to it by mutual agreement of the Entities.

Article V: Presidency

The Presidency of Bosnia and Herzegovina shall consist of three Members: one Bosniac and one Croat, each directly elected from the territory of the Federation, and one Serb directly elected from the territory of the Republika Srpska.

1. **Election and Term.**
 - a. Members of the Presidency shall be directly elected in each Entity (with each voter voting to fill one seat on the Presidency) in accordance with an election law adopted by the Parliamentary Assembly. The first election, however, shall take place in accordance with [Annex 3](#) to the General Framework Agreement. Any vacancy in the Presidency shall be filled from the relevant Entity in accordance with a law to be adopted by the Parliamentary Assembly.
 - b. The term of the Members of the Presidency elected in the first election shall be two years; the term of Members subsequently elected shall be four years. Members shall be eligible to succeed themselves once and shall thereafter be ineligible for four years.
2. **Procedures.**
 - a. The Presidency shall determine its own rules of procedure, which shall provide for adequate notice of all meetings of the Presidency.
 - b. The Members of the Presidency shall appoint from their Members a Chair. For the first term of the Presidency, the Chair shall be the Member who received the highest number of votes. Thereafter, the method of selecting the Chair, by rotation or otherwise, shall be determined by the Parliamentary

- Assembly, subject to [Article IV\(3\)](#).
- c. The Presidency shall endeavor to adopt all Presidency Decisions (i.e., those concerning matters arising under [Article III\(1\)\(a\) - \(e\)](#)) by consensus. Such decisions may, subject to paragraph (d) below, nevertheless be adopted by two Members when all efforts to reach consensus have failed.
 - d. A dissenting Member of the Presidency may declare a Presidency Decision to be destructive of a vital interest of the Entity from the territory from which he was elected, provided that he does so within three days of its adoption. Such a Decision shall be referred immediately to the National Assembly of the Republika Srpska, if the declaration was made by the Member from that territory; to the Bosniac Delegates of the House of Peoples of the Federation, if the declaration was made by the Bosniac Member; or to the Croat Delegates of that body, if the declaration was made by the Croat Member. If the declaration is confirmed by a two-thirds vote of those persons within ten days of the referral, the challenged Presidency Decision shall not take effect.
3. **Powers.** The Presidency shall have responsibility for:
- a. Conducting the foreign policy of Bosnia and Herzegovina.
 - b. Appointing ambassadors and other international representatives of Bosnia and Herzegovina, no more than two-thirds of whom may be selected from the territory of the Federation.
 - c. Representing Bosnia and Herzegovina in international and European organizations and institutions and seeking membership in such organizations and institutions of which Bosnia and Herzegovina is not a member.
 - d. Negotiating, denouncing, and, with the consent of the Parliamentary Assembly, ratifying treaties of Bosnia and Herzegovina.
 - e. Executing decisions of the Parliamentary Assembly.
 - f. Proposing, upon the recommendation of the Council of Ministers, an annual budget to the Parliamentary Assembly.
 - g. Reporting as requested, but not less than annually, to the Parliamentary Assembly on expenditures by the Presidency.
 - h. Coordinating as necessary with international and nongovernmental organizations in Bosnia and Herzegovina.
 - i. Performing such other functions as may be necessary to carry out its duties, as may be assigned to it by the Parliamentary Assembly, or as may be agreed by the Entities.
4. **Council of Ministers.** The Presidency shall nominate the Chair of the Council of Ministers, who shall take office upon the approval of the House of Representatives. The Chair shall nominate a Foreign Minister, a Minister for Foreign Trade, and other Ministers as may be appropriate, who shall take office upon the approval of the House of Representatives.
- a. Together the Chair and the Ministers shall constitute the Council of Ministers, with responsibility for carrying out the policies and decisions of Bosnia and Herzegovina in the fields referred to in [Article III\(1\), \(4\)](#), and [\(5\)](#) and reporting to the Parliamentary Assembly (including, at least annually, on expenditures by Bosnia and Herzegovina).
 - b. No more than two-thirds of all Ministers may be appointed from the territory of the Federation. The Chair shall also nominate Deputy Ministers (who

shall not be of the same constituent people as their Ministers), who shall take office upon the approval of the House of Representatives.

- c. The Council of Ministers shall resign if at any time there is a vote of no-confidence by the Parliamentary Assembly.

5. **Standing Committee.**

- a. Each member of the Presidency shall, by virtue of the office, have civilian command authority over armed forces. Neither Entity shall threaten or use force against the other Entity, and under no circumstances shall any armed forces of either Entity enter into or stay within the territory of the other Entity without the consent of the government of the latter and of the Presidency of Bosnia and Herzegovina. All armed forces in Bosnia and Herzegovina shall operate consistently with the sovereignty and territorial integrity of Bosnia and Herzegovina.
- b. The members of the Presidency shall select a Standing Committee on Military Matters to coordinate the activities of armed forces in Bosnia and Herzegovina. The Members of the Presidency shall be members of the Standing Committee.

Article VI: Constitutional Court

1. **Composition.** The Constitutional Court of Bosnia and Herzegovina shall have nine members.
 - a. Four members shall be selected by the House of Representatives of the Federation, and two members by the Assembly of the Republika Srpska. The remaining three members shall be selected by the President of the European Court of Human Rights after consultation with the Presidency.
 - b. Judges shall be distinguished jurists of high moral standing. Any eligible voter so qualified may serve as a judge of the Constitutional Court. The judges selected by the President of the European Court of Human Rights shall not be citizens of Bosnia and Herzegovina or of any neighboring state.
 - c. The term of judges initially appointed shall be five years, unless they resign or are removed for cause by consensus of the other judges. Judges initially appointed shall not be eligible for reappointment. Judges subsequently appointed shall serve until age 70, unless they resign or are removed for cause by consensus of the other judges.
 - d. For appointments made more than five years after the initial appointment of judges, the Parliamentary Assembly may provide by law for a different method of selection of the three judges selected by the President of the European Court of Human Rights.
2. **Procedures.**
 - a. A majority of all members of the Court shall constitute a quorum.
 - b. The Court shall adopt its own rules of court by a majority of all members. It shall hold public proceedings and shall issue reasons for its decisions, which shall be published.
3. **Jurisdiction.** The Constitutional Court shall uphold this Constitution.
 - a. The Constitutional Court shall have exclusive jurisdiction to decide any

dispute that arises under this Constitution between the Entities or between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina, including but not limited to:

- Whether an Entity's decision to establish a special parallel relationship with a neighboring state is consistent with this Constitution, including provisions concerning the sovereignty and territorial integrity of Bosnia and Herzegovina.
- Whether any provision of an Entity's constitution or law is consistent with this Constitution.

Disputes may be referred only by a member of the Presidency, by the Chair of the Council of Ministers, by the Chair or a Deputy Chair of either chamber of the Parliamentary Assembly, by one-fourth of the members of either chamber of the Parliamentary Assembly, or by one-fourth of either chamber of a legislature of an Entity.

- b. The Constitutional Court shall also have appellate jurisdiction over issues under this Constitution arising out of a judgment of any other court in Bosnia and Herzegovina.
 - c. The Constitutional Court shall have jurisdiction over issues referred by any court in Bosnia and Herzegovina concerning whether a law, on whose validity its decision depends, is compatible with this Constitution, with the European Convention for Human Rights and Fundamental Freedoms and its Protocols, or with the laws of Bosnia and Herzegovina; or concerning the existence of or the scope of a general rule of public international law pertinent to the court's decision.
4. **Decisions.** Decisions of the Constitutional Court shall be final and binding.

Article VII: Central Bank

There shall be a Central Bank of Bosnia and Herzegovina, which shall be the sole authority for issuing currency and for monetary policy throughout Bosnia and Herzegovina.

1. The Central Bank's responsibilities will be determined by the Parliamentary Assembly. For the first six years after the entry into force of this Constitution, however, it may not extend credit by creating money, operating in this respect as a currency board; thereafter, the Parliamentary Assembly may give it that authority.
2. The first Governing Board of the Central Bank shall consist of a Governor appointed by the International Monetary Fund, after consultation with the Presidency, and three members appointed by the Presidency, two from the Federation (one Bosniac, one Croat, who shall share one vote) and one from the Republika Srpska, all of whom shall serve a six-year term. The Governor, who shall not be a citizen of Bosnia and Herzegovina or any neighboring state, may cast tie-breaking votes on the Governing Board.

3. Thereafter, the Governing Board of the Central Bank of Bosnia and Herzegovina shall consist of five persons appointed by the Presidency for a term of six years. The Board shall appoint, from among its members, a Governor for a term of six years.

Article VIII: Finances

1. The Parliamentary Assembly shall each year, on the proposal of the Presidency, adopt a budget covering the expenditures required to carry out the responsibilities of institutions of Bosnia and Herzegovina and the international obligations of Bosnia and Herzegovina.
2. If no such budget is adopted in due time, the budget for the previous year shall be used on a provisional basis.
3. The Federation shall provide two-thirds, and the Republika Srpska one-third, of the revenues required by the budget, except insofar as revenues are raised as specified by the Parliamentary Assembly.

Article IX: General Provisions

1. No person who is serving a sentence imposed by the International Tribunal for the Former Yugoslavia, and no person who is under indictment by the Tribunal and who has failed to comply with an order to appear before the Tribunal, may stand as a candidate or hold any appointive, elective, or other public office in the territory of Bosnia and Herzegovina.
2. Compensation for persons holding office in the institutions of Bosnia and Herzegovina may not be diminished during an officeholder's tenure.
3. Officials appointed to positions in the institutions of Bosnia and Herzegovina shall be generally representative of the peoples of Bosnia and Herzegovina.

Article X: Amendment

1. Amendment Procedure. This Constitution may be amended by a decision of the Parliamentary Assembly, including a two-thirds majority of those present and voting in the House of Representatives.
2. Human Rights and Fundamental Freedoms. No amendment to this Constitution may eliminate or diminish any of the rights and freedoms referred to in Article II of this Constitution or alter the present paragraph.

Article XI: Transitional Arrangements

Transitional arrangements concerning public offices, law, and other matters are set forth in Annex II to this Constitution.

Article XII: Entry into Force

1. This Constitution shall enter into force upon signature of the General Framework Agreement as a constitutional act amending and superseding the Constitution of the Republic of Bosnia and Herzegovina.
 2. Within three months from the entry into force of this Constitution, the Entities shall amend their respective constitutions to ensure their conformity with this Constitution in accordance with [Article III\(3\)\(b\)](#).
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Annex I: Additional Human Rights Agreements To Be Applied In Bosnia And Herzegovina

1. 1948 Convention on the Prevention and Punishment of the Crime of Genocide
2. 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto
3. 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto
4. 1957 Convention on the Nationality of Married Women
5. 1961 Convention on the Reduction of Statelessness
6. 1965 International Convention on the Elimination of All Forms of Racial Discrimination
7. 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto
8. 1966 Covenant on Economic, Social and Cultural Rights
9. 1979 Convention on the Elimination of All Forms of Discrimination against Women
10. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
11. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
12. 1989 Convention on the Rights of the Child
13. 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
14. 1992 European Charter for Regional or Minority Languages
15. 1994 Framework Convention for the Protection of National Minorities

Annex II: Transitional Arrangements

1. **Joint Interim Commission.**
 - a. The Parties hereby establish a Joint Interim Commission with a mandate to discuss practical questions related to the implementation of the Constitution of Bosnia and Herzegovina and of the General Framework Agreement and its Annexes, and to make recommendations and proposals.

- b. The Joint Interim Commission shall be composed of four persons from the Federation, three persons from the Republika Srpska, and one representative of Bosnia and Herzegovina.
- c. Meetings of the Commission shall be chaired by the High Representative or his or designee.

2. Continuation of Laws.

All laws, regulations, and judicial rules of procedure in effect within the territory of Bosnia and Herzegovina when the Constitution enters into force shall remain in effect to the extent not inconsistent with the Constitution, until otherwise determined by a competent governmental body of Bosnia and Herzegovina .

3. Judicial and Administrative Proceedings.

All proceedings in courts or administrative agencies functioning within the territory of Bosnia and Herzegovina when the Constitution enters into force shall continue in or be transferred to other courts or agencies in Bosnia and Herzegovina in accordance with any legislation governing the competence of such courts or agencies.

4. Offices.

Until superseded by applicable agreement or law, governmental offices, institutions, and other bodies of Bosnia and Herzegovina will operate in accordance with applicable law.

5. Treaties.

Any treaty ratified by the Republic of Bosnia and Herzegovina between January 1, 1992 and the entry into force of this Constitution shall be disclosed to Members of the Presidency within 15 days of their assuming office; any such treaty not disclosed shall be denounced. Within six months after the Parliamentary Assembly is first convened, at the request of any member of the Presidency, the Parliamentary Assembly shall consider whether to denounce any other such treaty.

Declaration On Behalf Of The Republic Of Bosnia And Herzegovina

The Republic of Bosnia and Herzegovina approves the Constitution of Bosnia and Herzegovina at Annex 4 to the General Framework Agreement.

For the Republic of Bosnia and Herzegovina

Declaration On Behalf Of The Federation Of Bosnia And Herzegovina

The Federation of Bosnia and Herzegovina, on behalf of its constituent peoples and citizens, approves the Constitution of Bosnia and Herzegovina at Annex 4 to the General Framework Agreement.

For the Federation of Bosnia and Herzegovina

Declaration On Behalf Of The Republika Srpska

The Republika Srpska approves the Constitution of Bosnia and Herzegovina at Annex 4 to the General Framework Agreement.

For the Republika Srpska