

## **The EU and Bosnia and Herzegovina: Democracy promotion within the limits of the ‘ethnic conflict’ paradigm**

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*Panel 2I: ‘Does one size fit all? The substance of EU democracy promotion’*

### **Abstract**

Seeking to contribute to the emerging debate about the substance of EU democracy promotion policies, this paper takes as its focus Bosnia and Herzegovina, where the EU’s current democracy promotion efforts are primarily focused on reform of the country’s constitution. Bosnia’s current constitution, established by the 1995 Dayton Agreement, provides for consociational power-sharing and extensive territorial decentralisation. While EU officials have stressed the inadequacies of the present constitutional arrangements, over time the reforms demanded have become more limited in scope. As such, I suggest that the outcome of any successful constitutional reform negotiations will be technical fixes to the present constitution, allowing the country to meet the obligations of future EU membership, rather than its wholesale redesign. Rather than promoting liberal democracy as it has elsewhere, then, in Bosnia the EU supports the perpetuation of consociational structures, which EU officials regard as the most realistic option given the country’s post-conflict political context. Faced with the lack of a constitutional norm within the Union, let alone a consociational one, EU policy-makers have instead chosen to refer to a particular reading of the history of the European integration project itself in order to lend support to their approach in Bosnia, which continues to privilege group over individual rights. I highlight how notions of a ‘union of diversity’ or a ‘union of minorities’ are used to legitimise an approach to democracy promotion that is predicated on a view of Bosnia as composed of a patchwork of ethnic groups with discrete and discernable interests and identities.

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## **Introduction**

The aim of this paper is to contribute to the emerging debate about the substance of the European Union's democracy promotion policies. It does so through an examination of the case of the EU's engagement with the issue of constitutional reform in Bosnia and Herzegovina (hereafter, simply Bosnia). Consistent with the other papers that form this panel, I seek to explain the substance of the EU's democracy promotion policies in this particular case.

The paper starts with a brief overview of the key Bosnian political institutions, focusing on the constitutional arrangements established by the Dayton Agreement that ended the Bosnian conflict of the 1990s. Here, I outline the consociational nature of these institutions and consider a number of criticisms that have been made of their functioning and appropriateness. As a result of such criticisms and of the need to revise Bosnia's political institutions in order for the country to be able to join the EU, calls for reform of the Dayton constitution have grown in recent years. The next section of the paper outlines the constitutional reform process and the EU's role in it. Here, I argue that while EU officials initially seemed to favour relatively radical reform in Bosnia, over time and faced with resistance from domestic elites, they have scaled these expectations back significantly.

The final section of the paper then seeks to explain the EU's approach in Bosnia. Here, I suggest that EU policy is informed by what might be termed an 'ethnic conflict' paradigm, in which EU officials accept as given that Bosnia's three ethnic groups have their own, distinct constitutional preferences, and that EU policy has increasingly been to accommodate these perceived preferences rather than seeking to problematise them, thus leaving in place a procedural form of democracy in which power is shared between nationalist elites. In this vein, the paper provides tentative support for a form of Wetzel and Orbie's (2011) 'paradigm

hypothesis’, namely the idea that the form of democracy promoted in third countries varies according to the policy paradigm within which policy-makers operate. Finally, the paper turns to consider how such an approach has been legitimised by EU actors given the lack of a constitutional norm within the Union. Here, I suggest that EU officials have engaged in a process of ‘framing’, whereby Bosnia is presented as a version of Europe in microcosm, and consociational arrangements to share power between the representatives of Bosnia’s three main ethnic groups are portrayed as similar to the historical experience of the EU itself, where conflict is managed through the institutional accommodation of nation-state interests.

### **Dayton and Bosnia’s current constitutional arrangements**

The Dayton Agreement,<sup>1</sup> which was agreed in Dayton, Ohio in November 1995 and signed in Paris the following month, brought an end to the war in Bosnia and Herzegovina that started in 1992. Signed by the Serbian president Slobodan Milošević, Croatian president Franjo Tuđman and Bosnian president Alija Izetbegović, the Agreement was negotiated by the American Richard Holbrooke, assisted by EU Special Representative Carl Bildt and the Russian deputy foreign minister, Igor Ivanov. The Agreement was wide-ranging, covering issues from the cessation of violence to the preservation of national monuments. Most importantly in the present context, Annex 4 of the Agreement established a new constitution for post-war Bosnia.

The Dayton constitution established a confederal state composed of two entities: the Republika Srpska (RS) and the Federation of Bosnia and Herzegovina. The latter is further divided into ten cantons. At the state level, there is a rotating three-member presidency and a bicameral parliament. Both of the entities have a president, an entity government and a bicameral parliament. Furthermore, each the ten cantons in the Federation also has its own

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<sup>1</sup> Formally, the General Framework Agreement for Peace in Bosnia and Herzegovina. Available at [http://www.ohr.int/dpa/default.asp?content\\_id=380](http://www.ohr.int/dpa/default.asp?content_id=380).

parliament. Ethnic representation is guaranteed by quotas at all levels of government and in the civil service. In addition, a minority interest veto exists whereby decisions of the parliamentary assembly can be vetoed by a majority of any of the Bosniak, Croat or Serb delegates. The Agreement has been described as establishing a “classic example of consociational settlement” (Bose, 2002, p. 216), in which “institutions correspond to an ideal-typical consociational democracy” (Belloni, 2004, p. 336). As such, and given the prominence of the Bosnian case in the international spotlight, Dayton has proved to be somewhat of a lightning rod for criticism of consociational peace agreements (see, for instance, International Crisis Group, 1999; Belloni, 2004; Recknagel, 2005; Simonsen, 2005; Traynor, 2005; Pond, 2006, p. 142; Aitken, 2007; Bilefsky, 2008; McMahon and Western, 2009).

Criticisms of Dayton often start with a critique of the suppositions that are held to underpin the agreement. The bulk of the scholarly research on Western thinking on Bosnia during the 1992-95 conflict suggests that that thinking was strongly influenced by a primordialist view of ethnicity, which found expression through the lens of an ‘ancient hatreds’ discourse. The view that the Bosnian conflict was driven by ancient hatreds is said to have contributed to the reluctance of Western states to intervene militarily in the conflict but, more importantly in the present context, it has also been argued that this discourse influenced the nature of the conflict management institutions established in Bosnia at the end of the war in 1995. Kaldor, for example, claims that the Dayton Agreement “was primarily an agreement born of the *realpolitik* approach of high-level negotiators who perceived the world as divided into primordial nations” (2006, p. 69). Similarly, David Campbell (1998, pp. 161-62) argues that while Dayton superficially envisages a ‘multi-cultural’ Bosnia, this vision of multiculturalism is predicated on a view of cultural identities as fixed, naturalised and inherently conflictual. Such a view of ethnicity has been described as ‘mosaic multiculturalism’, which one of its

critics describes as “the view that human groups and cultures are clearly delineated and identifiable entities that coexist, while maintaining firm boundaries, as would pieces of a mosaic” (Benhabib, 2002, p. 8). In the Bosnian case, for authors such as Campbell, this view has resulted in a set of institutions that have contributed to the continued organisation of politics along ethnic lines. Campbell argues that “things could have been different if the political anthropology of Bosnia – in which the conceptual landscape had been populated only by fixed ethnicity, three constituent peoples, and others – had been differently thought” (1998, p. 162).

The effect of such essentialist thinking, argue critics of Dayton, has been the establishment of institutions that, in seeking to accommodate conflictual ethnic identities, have further reified them such that the essentialist account has become self-fulfilling. Belloni, for instance, argues that:

Ethnic quotas reinforced the salience of ethnic identity and cleavages, entrenched many of the ethnic divisions that international intervention was supposed to soften and eventually overcome, and risked perpetuating instability. (2004, pp. 336-37)

Dayton, Belloni argues, reinforced the dominance of the wartime ethno-nationalist parties, who, with no incentives to appeal beyond their own ethnic constituencies, have presented themselves as the defenders of their own groups, with the result that elections simply became ethnic censuses (2004, p. 337). In the words of the first High Representative to Bosnia, the Agreement has institutionalised Bosnia’s ethnic divisions such that “peace has just been the continuation of war by other means” (Bildt, 2001, p. 152). At the root of the problem is the fact that “the entire institutional system is based on ethnicity, which is precisely what divides the Bosnian peoples” and, as a result, “[i]nstead of creating conditions for softening ethnic identities, the agreement entrenches them by making ethnicity integral to constitutional design” (2009, p. 360). Even academic supporters of consociationalism concede that Dayton

has reified Bosnia's ethnic divisions, although they often argue that this has been the result of the employment of 'corporate', as opposed to liberal, consociationalism (McGarry and Moore, 2005, p. 87; McGarry *et al.*, 2008, pp. 61-62).

A related criticism of Dayton is that, in building political structures around the accommodation of Bosnia's three constituent peoples, the agreement inherently discriminates against those citizens of the country who either belong to smaller ethnic groups, who choose not to identify as Bosniak, Serb or Croat, or who are members of one of the three constituent peoples but who live in the 'wrong' entity (Guzina, 2007, pp. 226-27; Arvanitopoulos and Tzifakis, 2008, p. 17; Belloni, 2009, p. 360). A key example of this is provided by the rotating three-member presidency, which consists of a Bosniak and a Croat elected from the Federation and a Serb elected from the Republika Srpska. Bosniaks and Croats from the RS or Serbs from the Federation, along with members of any other ethnic group, are therefore prevented from running for election to this highest office (Alic, 2010). The same is true of elections to the state-level House of Peoples. Mujkić (2007, p. 127 n. 34) goes as far as to call this constitutional provision anti-Semitic, and indeed it has been judged to contravene the European Convention on Human Rights.

To summarise briefly then, Dayton – according to its plethora of critics – established a post-war constitutional order in Bosnia that eschewed liberal democracy in favour of a complex system designed to balance the perceived collective interests of the country's three main ethnic groups, with the result that ethnicity has been deeply entrenched in the country's political institutions. Rather than establishing liberal democracy, the Dayton constitution "encourages procedural democracy only among the political representatives – or better, the ruling oligarchies – of the various ethnic groups" (Mujkić, 2007, p. 112). The aim of the next section of this paper is to examine more recent attempts to reform the Dayton constitution, in

order to ask whether the approach of the international community (and the EU more specifically) suggests a move away from Dayton and towards a constitution that would introduce a more liberal form of democracy.

### **The EU and constitutional reform**

External actors, including the EU, are now involved in ongoing attempts to promote reform of the Dayton constitution, in order to improve the functionality and efficiency of the Bosnian state and make it possible for Bosnia to meet the responsibilities of membership of the Union. Having been marginalised during the negotiation of Dayton, the EU has come to assume a more important role in the Balkans. This is partly due to the attentions of United States foreign policy being drawn away elsewhere – most notably to Afghanistan and Iraq – but also reflects the development of EU foreign policy mechanisms since the 1990s and the ability of the Union to exercise conditionality in the region following the declaration of the 2003 Thessaloniki EU-Western Balkans Summit that “[t]he future of the Balkans is within the European Union” (European Council, 2003).

As a result of these developments, the EU is now (in principle) able to use both foreign policy and membership conditionality to promote reform in Bosnia (Diez and Cooley, 2011). In regards to foreign policy, perhaps the EU’s biggest role is through its EU Special Representative (EUSR) to Bosnia. The EUSR was established in March 2002 and is a double-hatted role along with the position of the international community’s High Representative (HR) (see Gervi, 2007, p. 79-90). This latter role was established in 1995 and the HR is charged with ensuring the implementation of the civilian elements of Dayton. The HR has significant power, including the ability to remove elected officials from office should they fail to act in accordance with the principles of Dayton. In addition to the role of the

HR/EUSR, individual EU member states have also been involved in convening talks with local political leaders aimed at reaching agreement on constitutional reform.

In terms of conditionality, the EU has also attempted to make use of the prospect of Bosnia's future membership prospects to promote constitutional reform. In addition to the Copenhagen and Madrid criteria that all states have to meet before acceding to the Union, EU conditionality towards the Western Balkan states has included conditions related to the implementation of peace agreements such as Dayton (Anastasakis and Bechev, 2003, p. 8). Increasingly, European policy-makers have demanded not only the implementation of Dayton but its reform, arguing that Bosnia's present constitutional arrangements are not compatible with EU membership (see, for example, Rehn, 2009). Reform of the Dayton constitution has therefore assumed a central position in the EU's conditionality demands in Bosnia. As Noutcheva notes:

In essence, the reforms demanded by the EU as conditions for establishing contractual relations with BiH link its membership prospects to changes in the internal state structure of BiH. (2009, pp. 1070-71)

The need for reform was articulated as early as 2002 when Paddy Ashdown took up his post as High Representative and the first EUSR for Bosnia and used his inaugural speech to argue in favour of constitutional reform (Ashdown, 2002). Efforts at bringing about reform did not start in earnest for several more years, however (Sebastián, 2009, p. 342). In June 2004, the Parliamentary Assembly of the Council of Europe (CoE) requested an opinion from the CoE's European Commission for Democracy through Law (otherwise known as the Venice Commission) on Bosnia's constitutional situation and the powers held by the High Representative. In March 2005, the Venice Commission issued its opinion, which highlighted the need for the Bosnian constitution to be reformed in order for the country to meet the requirements of the EU accession process, to make decision-making more efficient, to reduce



the cost of governing the Bosnian state, and to address problems relating to the political representation of Bosnian citizens not belonging to one of the country's three 'constituent peoples' (see Council of Europe, 2005). The following month, the European Parliament adopted a resolution on regional integration in the Western Balkans, which characterised Bosnia's institutional architecture as undermining the viability of the state (European Parliament, 2005). In October of 2005, the EU Enlargement Commissioner Olli Rehn echoed this call for reform (Rehn, 2005) and in February 2006 the European Parliament adopted a further resolution stressing the need for constitutional amendments (European Parliament, 2006).

EU policy-makers have consistently made reference to Bosnia's accession prospects when outlining the need for reform of the Dayton constitution.<sup>2</sup> Despite this, Bosnian EU membership is not formally conditional on constitutional reform. Rather, it has been made clear that Bosnia will be unable to fulfil its obligations as a member of the Union under its current constitutional arrangements. The clearest statement of this requirement was made by the EU's then Enlargement Commissioner, Olli Rehn, in July 2009:

Constitutional reform is not a precondition for OHR closure. Nor is it required to apply for EU membership. But constitutional reform is a necessary part of the EU accession process. Bosnia and Herzegovina will not be able to join the EU with its present constitution. It is that simple. (Rehn, 2009)

While representative of the international community have, therefore, clearly articulated the need for reform to Bosnia's constitution, it is notable that none of suggestions for constitutional reform envisage a challenge to the basic consociational and territorial tenets of Dayton, despite its widespread criticism. As Belloni notes:

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<sup>2</sup> It is not only EU policy-makers who have attempted to use the carrot of accession to encourage constitutional reform. US policy-makers have also tied the issue to Bosnia's EU accession prospects (see, for example, English, 2008; Biden, 2009).

Throughout the post-Dayton period, various international agencies, analysts, and donors have put forward their own proposals for reform and/or assessed existing ones. Interestingly, all of these proposals endorse some variation of Dayton's basic compromise: a common state, constitutional protection for the three constituent groups, and extensive individual human rights provisions to ensure that no one living in an area controlled by a different ethnic group would be discriminated against. With no apparent irony, some of these proposals are even presented as 'Dayton II'. (2009, pp. 367-68)

Perhaps the most radical approach to reform can be found in the Council of Europe Parliamentary Assembly's resolution on constitutional reform in Bosnia. The resolution text urges the Bosnian authorities to reform the constitution such as to "replace the mechanisms of ethnic representation by representation based on the civic principle, notably by ending the constitutional discrimination against 'Others'"; to "find efficient and rational decision-making procedures that are not sacrificed to the principle of involving representatives of each constituent people in any decision"; and to "review the territorial organisation of the State and its division into entities, cantons and municipalities and the repartition of competences between the state and the lower levels with a view to increasing efficiency and sustainability" (Council of Europe, 2006).<sup>3</sup> Echoing the language of the Venice Commission's report, the resolution makes the case for what is presented as evolutionary reform towards political representation based on civic rather than ethnic criteria:

Although it would probably not be realistic to expect that Bosnia and Herzegovina move quickly from a system based on ethnic representation to a system based on representation of citizens, drafting a completely new Constitution would certainly in the long run be preferable to trying to improve the Dayton one. (Council of Europe, 2006)

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<sup>3</sup> The reason why the Council of Europe called for more wholesale reforms than other actors was explained in the author's interview with a senior official, Council of Europe Field Office, Sarajevo, 4 June 2010. The official stated that "there is simply no way we can accept a state which is based on divisions, I mean there are x number of mechanisms whereby you can ensure political representation of minorities, but to have a constitution which *de jure* prevents Jews and Roma – the two peoples which were completely exterminated by the Nazis – which prevents Roma and Jews from standing for election, Jews and Roma and all the other minorities, and the others, are just second-rate citizens. It's intolerable. So the Venice Commission as an advisory body could not do anything else than to recommend to move over to a civic state".

Initially, EU policy-makers seemed to share the Council of Europe's desire for radical, if evolutionary, change to Bosnia's constitutional arrangements. For example, speaking on the tenth anniversary of Dayton in November 2005, Paddy Ashdown seemed to echo the concerns expressed in the Venice Commission's report of March that year regarding ethnic representation, as well as highlighting the Dayton constitution's inefficiencies:

But whatever the advantages of Dayton – and there have been many – there are two downsides which it is now necessary also to begin to recognize and correct.

The first is reliance on group, rather than individual rights. And the second is the burden of a highly dysfunctional structure of governance. (Ashdown, 2005)

Over time, however, EU officials have become more conservative in their demands for reform. Already by the end of Ashdown's mandate in January 2006 he identified efficiency and functionality as the primary goals of constitutional reform, rather than changing the basis of political representation:

The aim is a simple one. To make BiH a functional, cost-effective state, in line with EU requirements and so ready to join Europe. You have to cut the cost of Government, which impoverishes citizens and stifles the economy. Constitutional change, now much talked about is not an end in itself. It is the means to create a State that puts service to its citizens before salaries for its politicians. No country can prosper which spends up to 70% of its citizens [*sic*] taxes on government, and only 30% on its citizens. (Ashdown, 2006)

In February 2006, then Enlargement Commissioner Olli Rehn also stressed that while constitutional reform was necessary, "I do not expect a constitutional [*sic*] *revolution* to take place, rather an *evolution*" (Rehn, 2006b, emphasis in original). Ashdown and Rehn's comments followed extensive negotiations involving the leaders of the major Bosnian political parties that had taken place over the course of 2005 (Sebastián, 2009). The talks were initially convened by former Deputy Principal High Representative Donald Hays, with the US government becoming increasingly intensively involved towards the end of 2005, and the EU taking somewhat of a back seat until the final phase, when agreement had been

reached between the leaders in private. At this stage, Ashdown's replacement as High Representative and EUSR, Christian Schwarz-Schilling, "engaged in an intense and frantic lobbying activity to secure the approval of parliament" (Sebastián, 2009, p. 346). As a result of these negotiations, the parties had agreed on a package of reforms, which became known as the 'April Package', that were put to the Bosnian parliament in April 2006. These reform proposals would have strengthened the role of the Council of Ministers and given it the power to negotiate, adopt and implement policies required for Bosnia to accede to the EU, and created two new state-level ministries. The April Package, however, was rejected by the parliament, falling short of the two-thirds majority required by a margin of only two votes (Sebastián, 2009, p. 346). Opposition came from the largely Bosniak Party for Bosnia and Herzegovina, for whom the reforms did not go far enough, and from a Croat splinter party, HDZ 1990, who wanted reform resulting in the establishment of a third, Croat entity (Sebastián, 2007, p. 6; Belloni, 2009, p. 361).

The second major constitutional reform talks took place in the northern Bosnian village of Prud in November 2008. These involved the leaders of the country's three main political parties and concluded with the Prud Agreement, which proposed the establishment of four territorial units between the state and the municipal levels of government, thus eliminating the cantons of the Federation. Whereas the April Package had been an internationally sponsored effort, the Prud Agreement was a domestic initiative, and "took almost everyone by surprise" (International Crisis Group, 2009, p. 4). However, while agreement had been reached between the parties on the basic tenets of reform, the details still needed to be worked out and by early 2009 any consensus between the parties broke down, following extensive debate about the precise details of the four territorial units (Belloni, 2009, p. 366). Whereas the Alliance of Independent Social Democrats (SNSD) leader Milorad Dodik maintained that the Republika Srpska should be one of the four units, Dragan Čović of BiH

HDZ and Sulejman Tihić of the SDA wanted the units to cut across entity lines. Dodik eventually walked out of the talks, stating that he would only return on the condition of the Republika Srpska being granted the right to secede from Bosnia and Herzegovina following a waiting period of three years (International Crisis Group, 2009, p. 5).

As time has passed and no agreement has been forthcoming, EU policy-makers have scaled back their expectations in terms of what might be achieved in terms of substantive constitutional reform. In November 2008, for instance, EUSR Miroslav Lajčák argued that “[t]he radicalisation we have witnessed since spring 2006 means that any reforms that could now be agreed would be far less ambitious even than those offered by the April package” (Lajčák, 2008d). This view has clearly informed EU policy in subsequent negotiations. Following the failure of the April Package and the Prud Agreement, further negotiations were convened by the Swedish EU Presidency and US diplomats at the EUFOR base at Butmir in October 2009. The third set of major talks, these negotiations aimed to revive the constitutional reform process and involved EU and US officials proposing reforms to Bosnian party leaders. While the items for discussion were derived from the April Package, the facilitators were clear that any agreement would be more limited in its scope than that achieved previously. The talks focused on four main areas: establishing changes to the constitution required to ensure compliance with the European Convention on Human Rights (ECHR); an ‘EU clause’ specifying which level of government is responsible for implementing legislation required for EU accession; a number of measures designed to improve the efficiency of decision-making in the presidency and Council of Ministers; and enshrining in the constitution powers that have already been transferred to the state level since the signing of Dayton.<sup>4</sup>

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<sup>4</sup> Author’s interview with EU member state diplomat involved in Butmir talks, Sarajevo, 15 June 2010. See also Council of Europe (2010, pp. 8-10).

Following the failure of this third set of talks, EU hopes for reform have been scaled back further, to the extent that constitutional reform “has come to mean minor tweaks rather than wholesale reform of the governing system’s incentives” (Bassuener and Weber, 2010, p. 15). As such, the whole process of constitutional reform is now, in the words of one analyst, “an empty vessel”.<sup>5</sup> EU efforts are now focused on ensuring Bosnia’s compliance with the ECHR, following a decision in December 2009 by the European Court of Human Rights regarding the exclusion of Bosnians not belonging to one of the three constituent peoples from election to the presidency and House of Peoples. Even here, however, reforms seem unlikely to result in large-scale changes to the system of representation based on ethnicity. An EU member state diplomat who participated in the Butmir talks, for instance, described Serb proposals to remove the ethnicity criteria from the presidency elections and have three territorial representatives instead as “quite neat”, since they would have involved changing the nature of the presidency on paper, but had no impact in practical terms.<sup>6</sup> EU officials now regard reforms of the scale envisaged by the April Package as impossible to achieve, certainly in the short term.<sup>7</sup> Even in the longer term, there appears to be little desire to demand the significant alteration of the basic premises of Dayton as a condition of EU membership. For example, the existence of the entities in their present form is not judged as inimical to Bosnian accession.<sup>8</sup>

Consistent with the consociational model (see Lustick, 1979, p. 334), constitutional reform efforts in Bosnia have remained focused on securing agreement amongst elites rather than seeking broad-based civil society input. This is not to say that EU officials do not pay lip service to the importance of civil society, however. Speaking about the failure of political

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<sup>5</sup> Author’s interview with Kurt Bassuener, Democratization Policy Council, Sarajevo, 17 June 2010.

<sup>6</sup> Author’s interview with EU member state diplomat involved in Butmir talks, Sarajevo, 15 June 2010.

<sup>7</sup> Author’s interview with political advisor, Delegation of the European Union to Bosnia and Herzegovina, Sarajevo, 8 June 2010.

<sup>8</sup> Author’s interview with senior official, Delegation of the European Union to Bosnia and Herzegovina, Banja Luka, 10 June 2010.

elites to agree on constitutional reform, current HR/EUSR Valentin Inzko, for instance, stated in April 2010 that “this roadblock will continue to prevent Bosnia and Herzegovina’s progress to Europe unless BiH citizens *make* their representatives move it out of the way” (Inzko, 2010, emphasis in original). Addressing an audience of civil society activists, Inzko described the aims of those activists as being “to develop a democratic, intercultural and citizens-based society in Bosnia and Herzegovina”, which, he argued, “dovetail exactly with the Euro-Atlantic integration agenda”. Furthermore, he contrasted the characteristics of Bosnian politics with those of its civil society, arguing that his audience were those who “reject the dominance of ethno-national criteria in politics” and going on to state:

The odds, of course, may be stacked against you; politics in this country are premised on ethno-nationalist criteria rather than on civil society.

The only way this will change, however – and the only way the roadblock to European integration will be moved to one side – is if citizens take charge. (Inzko, 2010)

This was not the first time that an EU official had praised Bosnian civil society for its civic rather than ethnic character. Previously, in September 2006, then HR/EUSR Christian Schwarz-Schilling argued that “it’s the non-governmental sector that can and should be the driving force behind many of the reforms that this country requires in order to progress in the coming years” and also highlighted the potential of civil society groups to transcend ethnic division:

I remember very well the conditions in which NGOs in this country had to work in the years immediately after the war. Civil society had been intimidated and distorted by the conflict; in places it had been absolutely crushed.

Yet even during the worst of the fighting there were those who stood up for reason, for common sense and decency, for inclusiveness, diversity and civic values. (Schwarz-Schilling, 2006)

In practice, however, it is unclear how the perceived importance of civil society has informed European policy in Bosnia. Talks on constitutional reform have excluded civil society participants and instead only involved party leaders, with initial talks actually taking place in secret (Sebastián, 2007, 2009). Rather than representing a departure from an approach that focuses on elite-level bargaining, the reform process has remained true to the principles of consociational democracy, in which government takes place by elite-level cartel.

Moreover, in terms of funding, EU support for civil society organisations in Bosnia has been small in comparison with more top-down projects. As Bechev and Andreev (2005, p. 18) note, EU funding under the Community Assistance for Reconstruction, Development and Stabilisation (CARDS) programme was heavily focused on top-down institution-building projects, with less than a third of funds over the period 2002 to 2004 going to bottom-up initiatives. According to the European Commission, a total of €522.55 million was allocated to Bosnia under CARDS and its replacement, the Instrument for Pre-Accession Assistance (IPA), over the period 2001 to 2008. €16.8 million of this was accounted for by the civil society and media category of funding – a figure dwarfed by spending on issues such as the rule of law (European Commission, 2009, p. 25).

### **Explaining the EU's approach in Bosnia**

Recapping what I have argued so far, we have seen that the EU's approach in Bosnia, while initially seeming to favour relatively major reform of Dayton's consociational institutions, has increasingly been to focus on more minor reform of the constitution in order to improve its efficiency and enable Bosnia to assume the obligations of membership of the Union. The EU's approach to constitutional reform has, consistent with the principles of consociational democracy, remained elite-focused and has largely excluded civil society actors. The aim of the remainder of the paper is now to explain why this approach has come to be favoured. I do



so by considering what Hall terms ‘policy paradigms’. According to Hall (1993, p. 279), “policymakers customarily work within a framework of ideas and standards that specifies not only the goals of policy and the kind of instruments that can be used to attain them, but also the very nature of the problems they are meant to be addressing”. Accordingly, I examine the ideas that underpin the EU’s approach in Bosnia through a discourse analysis of key EU policy documents and speeches, supplemented by material from interviews with EU policy-makers. Having attempted to explain EU policy by reference to these underlying paradigms, I then turn to consider how that policy has been legitimised.

### *The importance of the ‘ethnic conflict’ paradigm*

For some, the approach of the international community, including the EU, in Bosnia remains informed by ethnic essentialism. Mujkić, for example, argues that “the three main ethnic communities (constituent peoples) have come to be viewed in essential and absolutist terms” and that “[o]ne of the key errors of the international community’s approach to the Bosnian problem is that it accepts such an essentialist view” (2007, p. 117) The EU’s approach to constitutional reform, which has increasingly focused on relatively small changes to the Dayton constitution in order to improve the efficiency of the Bosnian political system, might then be said to be the result of viewing Bosnia through an essentialist lens. If it is true that EU policy-makers view Bosnia’s three constituent peoples as homogenous groups with incompatible interests, it is not surprising that they do not seek wholesale reform of a constitution that is premised on such a view of ethnic identities. Mujkić argues that this approach continues to inform European and international policy in Bosnia, over a decade after Dayton:

This essentialism is clearly visible in the Dayton Agreement as well as in the everyday practices of international institutions such as the OSCE, the European Commission, and the Office of the High Representative. All their efforts have been focused on establishing a stable society by achieving some sort of

equilibrium between three self-enclosed, homogenous particularities whose existence was presupposed from the outset. (2007, pp. 117-18)

It is certainly the case that EU policy documents and speeches frequently display an understanding of Bosnia as characterised by an ongoing identity conflict between the three constituent peoples. References to the interests and preferences of the constituent peoples, as groups, are frequently made both in speeches and policy documents. In this regard, the EU's discourse on Bosnia is strongly reminiscent of what Brubaker terms 'groupism', namely "the tendency to take discrete, bounded groups as basic constituents of social life, chief protagonists of social conflicts, and fundamental analysis" and "to treat ethnic groups, nations and races as substantial entities to which interests and agency can be attributed" (Brubaker, 2004, p. 8). For example, in a television address to mark the end of 2004, Paddy Ashdown sought to speak to each of the three constituent peoples. Addressing what he saw as the concerns of Serbs, he reassured them that "[i]t is no-one's policy to abolish Republika Srpska". To Croats, he stated that he understood that, as the smallest of the three groups, they "fear the annihilation of their culture and their identity". He then went on to argue that Bosniaks "will have to be prepared to make the greatest compromises" in order to achieve their aim of a Bosnian state without the entities (Ashdown, 2004). Similarly, in 2007, then HR/EUSR Miroslav Lajčák stated in a speech given to the Permanent Council of the OSCE that:

Although majorities of each of BiH's constituent peoples now accept the country as their common homeland, there is as yet no consensus on how this common state should be organised. Serbs' loyalty, as Republika Srpska Prime Minister Dodik never tires of telling us, is conditional upon the others' acceptance of the RS as a legitimate and permanent part of the constitutional architecture. Croats remain fundamentally dissatisfied with a two-entity setup that they feel consigns them to the status of a minority in all but a few Federation cantons. Meanwhile, most Bosniaks want a constitutional order that will do away with the entities and provide for an effective central government, even if it also devolves many powers to multinational regions. (Lajčák, 2007)

Lajčák returned to this theme in his speech to the OSCE the following year:

The fundamental problem is that each of the country's constituent peoples still have widely different visions of the country's history, current status and future constitutional structure. I spoke about this when I addressed you last October. Unfortunately, nothing has changed: each constituent people still has a different vision of the past, the present and the future of Bosnia and Herzegovina. (Lajčák, 2008c)

Such a view was also reflected in the author's interviews with EU officials in Bosnia. For example, one EUSR official argued that constitutional reform would always be a difficult issue on which to achieve consensus since "the political views of the constituent peoples are diametrically opposed".<sup>9</sup> As a result of this understanding, EU officials view any move beyond consociational democracy in Bosnia as unrealistic and see constitutional arrangements as having to satisfy the interests of the country's ethnic groups, which are perceived to be distinct and mutually exclusive, as articulated by their nationalist representatives. This is clear in Valentin Inzko's invocation of the Northern Ireland experience of conflict management as offering lessons for Bosnia, made in a speech in May 2009:

The political settlement that was achieved in Northern Ireland a decade ago was based on *accepting that the two communities had different aspirations* but that they could arrive at a *modus vivendi*. (Inzko, 2009, emphasis added)

Nevertheless, it is important to note that, contrary to what we might expect if we accept the view that EU actors view Bosnia through an essentialist lens, the public pronouncements of EU officials often attribute ethnic tensions not to 'ancient hatreds' between the country's three main ethnic groups, but rather to the actions of nationalist politicians. Indeed, EU officials have come to place the blame for Bosnia's lack of progress, with increasing certainty, on domestic political actors. The Commission's 2008 progress report, for instance,

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<sup>9</sup> Author's interview with senior official, Office of the High Representative/EU Special Representative, Sarajevo, 16 June 2010.

states: “Nationalist rhetoric from political leaders from all the constituent peoples, challenging the Dayton/Paris Peace Agreement and, thus, the constitutional order, remained commonplace” (European Commission, 2008, p. 7). This echoes the tone of the OHR/EUSR’s regular reports to the European Parliament, which, since the failure the April Package in 2006, have frequently noted nationalist political rhetoric. The February-June 2006 report, for instance, notes that the optimism that accompanied the reform talks was replaced by “a subsequent period of political antagonism increasingly underscored by nationalistic rhetoric following the narrow defeat of the constitutional reform package”, which then “coincided with and set the tone for the unofficial start of the general election campaign” of that year (Office of the High Representative and EU Special Representative, 2006).

EU figures have frequently taken the opportunity to criticise Bosnian politicians for their nationalist stances. For example, addressing the tendency of those elites to argue that their ability to agree on constitutional reform is constrained by public opinion, then HR/EUSR Miroslav Lajčák stated at a press conference in March 2008:

So it is time for the political leadership to stop looking for excuses, stop blaming public opinion – the opinion they themselves have created – or the international community – and start doing their job. (Lajčák, 2008e)

Here, Lajčák clearly attributes public opinion to the actions of politicians, rather than suggesting that the latter are simply articulating the former in their resistance to reform. Similarly, in interviews conducted by the author, several EU officials argued that nationalist politicians’ resistance to reform was a part of their attempts to maintain their popularity through instilling fear in the electorate, rather than being a reflection of wider nationalist feeling.<sup>10</sup> This link between nationalist mobilisation and electoral success is frequently made in the EU’s discourse on nationalism in Bosnia. Speaking again in April 2008, Lajčák made

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<sup>10</sup> Author’s interviews with desk officer, European Commission, Brussels, 30 April 2010 and political advisor, Office of the EU Special Representative, Sarajevo, 22 June 2010.

this link when arguing that nationalism was responsible for Bosnia’s lack of progress in terms of constitutional reform, and hence with European integration:

What has blocked delivery up to now is *nationalism*, and delivery on the European agenda will remain vulnerable to nationalism. This is not to say that all politicians – or citizens – in Bosnia are purely *ideologically* nationalistic, that political or inter-communal relations are defined only by nationalism.

For me, though, it is more about a *practical* brand of ethnic identity and nationalism. There is a mutual recognition amongst politicians of how powerful an instrument it is in Bosnian politics. The simple arithmetic is: nationalism means votes. (Lajčák, 2008b, emphasis in original)

According to Lajčák, Bosnian politicians and citizens are not all, then, inherently nationalistic. This view appears to have been reinforced by a series of ‘town hall’ style meetings organised by the OHR/EUSR, in which the HR/EUSR meets with ordinary citizens in order to hear their concerns. Lajčák made reference to these events in a June 2008 speech:

I have seen this phenomenon at first hand in recent months in meetings with citizens all across BiH. I have taken part in open debates in 16 towns and cities across BiH, speaking directly with more than 3000 people and I can tell you the nationalist politics don’t come anywhere near the top of the list of popular concerns. People are interested in their future and not the past. (Lajčák, 2008a)

This view sits uneasily, however, with Lajčák’s previous assertion that “nationalism means votes” (Lajčák, 2008b). There appears to be an inherent contradiction between the view that Bosnian citizens’ main concerns are not related to nationalism, and the observation that nationalism remains a powerful electoral force. One explanation of the continuing strength of nationalist politicians seems to be a retreat into a form of essentialism on the part of EU officials, who suggest that Bosnia’s status as a multi-ethnic state makes it inherently characterised by nationalism. The combination of blaming political elites for nationalist mobilisation and taking such mobilisation as a given in Bosnia was demonstrated by Lajčák in a speech given at the London School of Economics in November 2008:

...every two years, citizens continue to give their votes to parties and politicians whose basic strategy is to mobilise their separate electorates on the basis of fear of the ‘others’ and solidarity with one’s own.

As a multinational state, Bosnia and Herzegovina is *naturally prone* both towards nationalistic politics and periodic re-negotiation of the terms on which its peoples live together. These are ‘*givens*’. The trouble, however, is that the current constitutional disorder promotes extremism, zero-sum games, and stalemate. Advances towards European integration could and should change that dynamic. (Lajčák, 2008d, emphasis added)

This view, that Bosnia is inherently prone towards nationalism due to the multi-ethnic composition of its population is, I suggest, characteristics of the ‘ethnic conflict’ paradigm that underpins the approach of the EU and other international actors in Bosnia. While upbraiding politicians for their nationalist rhetoric, which they hold responsible for the state of inter-ethnic relations in the country, EU officials ultimately see this nationalism as reflecting deeper divisions and as being an inevitable consequence of Bosnia’s multi-ethnicity. Representatives of the international community, including the EU, have come to view a politician such as Republika Srpska Prime Minister, Milorad Dodik, for example, “as a popular tribune whose nationalism rationally reflects that of his entity”, rather than someone whose power stems from the design of the Bosnian state, which fails to reward moderation (Bassuener and Weber, 2010, pp. 11, 15). As a result, constitutional reform efforts remain focused on attempting to secure agreement amongst those same elites that EU officials publically blame for nationalist mobilisation. As Cillian McGrattan notes in the Northern Irish context, the prioritisation of ethnicity *per se* as an explanatory variable serves to “uphold and institutionalise the arguments of the powerful actors who benefited from the conflict and effectively silence the voices of those individuals and groups who suffered during the conflict or who refused to subscribe to the prevailing (ethnic) arguments” (McGrattan, 2010, p. 182).

In this vein, the ‘ethnic conflict’ paradigm through which Bosnia continues to be viewed also helps to explain the disparity between public pronouncements about the importance of civil society and the lack of any actual involvement of civil society actors in the constitutional reform process, as described in the previous section. Whereas figures such as the EUSR have suggested that Bosnian civil society is organised on civic rather than ethnic lines and hence hold it up as a potential source of non-nationalist politics, in private policy-makers are sceptical of such a view and see much of civil society as characterised by the same divisions that are evident in Bosnian politics. For example, in an interview, one EUSR official told the author that Bosnian civil society was highly politicised and “divided along entity and ethnic lines” and that if civil society representatives were to be included in talks on constitutional reform, they would be seen by the other participants simply as extra party representatives.<sup>11</sup>

### *Legitimising EU policy*

As we have seen above, the EU’s approach to constitutional reform in Bosnia has thus far failed to challenge the idea that rights should be enjoyed by citizens as individuals rather than as members of their respective ethnic groups. The consociational approach, which, as I have outlined in this paper, continues to inform EU policy in Bosnia, has little normative basis within the Union itself. Constitutional models vary considerable between EU member states and there is no discernable norm in terms of the balance between individual and minority rights. If anything, the preference within the Union is for individual rights consistent with liberal democracy rather than the group rights approach of consociationalism. As Paddy Ashdown noted in 2005:

The basic European principle lies in the fact that an individual’s rights are protected individually. BiH’s systems, government and even its citizens [*sic*] ways of thought are based on the idea that an individual’s rights are best, perhaps even only, protected within the group; within the collective. (Ashdown, 2005)

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<sup>11</sup> Author’s interview with senior official, Office of the High Representative/EU Special Representative, Sarajevo, 16 June 2010.

As such, by continuing to pursue a consociational path, the EU's approach is one of "do as I say, not as I do", a phrase that Johns (2003) has previously employed to describe the EU's approach to minority rights in Central and Eastern Europe (see also Wilkinson, 2005). Faced with the lack of a norm within the EU, how have European policy-makers sought to legitimise their approach in Bosnia?

Here, I want to suggest that one way in which the EU's continuing commitment to consociational democracy has been legitimised has been through rhetorical appeals not to norms that apply in EU member states, but rather to the nature of the Union itself. As part of a discourse that constructs a positive self-image of the EU (see Pace, 2008), policy-makers have presented the Union as providing the framework for managing antagonistic relations between European nations in much the same way that consociational structures in Bosnia are intended to accommodate intra-state diversity.

This framing of EU policy in Bosnia as 'European' through comparison between the Bosnian experience and the history of European integration is perhaps most obvious in statements by Romani Prodi, the European Commission President from 1999 to 2004. In April 2002, speaking at a ceremony to mark the tenth anniversary of the start of the siege of Sarajevo, for instance, Prodi argued:

The European Union is founded on dialogue, cooperation and mutual respect. Dialogue, cooperation and mutual respect are also vital for the future of Bosnia and Herzegovina. There is no reason why the communities that make up this country cannot cooperate in their common interest – for the sake of a better future for all. Just as many other former enemies are doing so successfully within the Union. (Prodi, 2002)

Interestingly in the present context, Prodi can be seen here as narrating a particular version of the story of European integration, which specifies a course of action in terms of conflict management in Bosnia. On numerous occasions during his time as European Commission



President, Prodi referred to this vision of the EU variously as an “alliance of minorities”, a “union of diversity” or a “union of minorities” (see Prodi, 2001, 2002, 2004b, 2004a).<sup>12</sup> For Prodi, “a united Europe is...the best safeguard for national, regional and cultural diversity...the European Union is founded on diversity, not on uniformity” (Prodi, 2002). Therefore, according to Prodi’s conceptualisation, European integration has succeeded in bringing peace to a continent once ravaged by war not by attempting to transcend difference between the national identities of the EU member states, but rather by providing a framework in which they can be expressed peacefully. Such a reading of the history of European integration allows the internal politics of Bosnia, and the relations between its ethnic groups, to be represented as analogous to the inter-state dynamics of the EU. Indeed, Prodi himself makes this very argument: “The history of Bosnia and Herzegovina is like a potted version of Europe’s own. You have squeezed 100 years of history into one decade” (Prodi, 2002).

While this narrative was particularly popular with Prodi during his time as Commission President, it is not specific to him and has been used by other EU officials. More recently, in 2007, then Enlargement Commissioner Olli Rehn made a similar argument to Prodi’s, also in relation to Bosnia:

The history of European integration has shown that it is possible to achieve unity in diversity. The EU is first and foremost a community of values of democracy, human rights and the rule of law – but it is not about one religion or ethnicity. In a similar vein, diversity is at the heart of Bosnia and Herzegovina. (Rehn, 2007)

As well as presenting Bosnia as analogous to the EU itself, Rehn’s statement points to a similar understanding of the Union to Prodi’s notion of a ‘union of diversity’. Previously, speaking in 2006, Rehn had expanded on this notion further:

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<sup>12</sup> This concept is expanded upon in a European Commission booklet entitled ‘Europe in 12 lessons’, which states: “the process of European integration has not smothered the different ways of life, traditions and cultures of its peoples. Indeed, the EU makes its diversity one of its key values” (Fontaine, 2006, p. 7).

Let me be clear: in terms of culture and ethnicity, the EU has certainly never been about homogeneity and members have to acknowledge particularity in order to join. In this specific context, joining the EU has meant that European citizens were allowed to go beyond the homogeneity imposed by previous regimes to enjoy life under the Union's motto "Unified in Diversity".<sup>13</sup> (Rehn, 2006a)

Statements such as these, which seek to portray Bosnia as Europe in microcosm, can be seen as instances of policy 'framing'. Frames are described by John Campbell (2002, p. 26) as "normative and sometimes cognitive ideas that are located in the foreground of policy debates". Such ideas "provide actors with symbols and concepts with which to frame solutions to policy problems in normatively acceptable terms through transposition and bricolage" (J.L. Campbell, 1998, p. 394). In this instance, the EU's policy of conflict management in Bosnia through acceptance and accommodation of distinct group identities is legitimised through reference to the relatively widely accepted notion that the EU has helped to bring peace to Western Europe, and that this peace has been achieved through embracing rather than transforming the distinct national identities of member states.

## **Conclusions**

This paper has sought to demonstrate that the EU's approach to democracy promotion in Bosnia, illustrated by the case study of constitutional reform, has increasingly come to rely on supporting the perpetuation of a consociational form of governance. The consociational approach, which has been the subject of widespread criticism, nonetheless continues to be favoured by EU policy-makers because they see it as the most realistic option for a country that they view as deeply ethnically divided. Rather than problematising ethnic division and attempting to undermine the basis of nationalist mobilisation, EU officials largely view this nationalism as reflective of group interests and accept it as a 'fact of life' in Bosnia. The EU's approach has therefore been to seek reform of Bosnia's constitutional arrangements to the

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<sup>13</sup> The EU's official motto is "United in diversity", which, according to the Union's website, means that "via the EU, Europeans are united in working together for peace and prosperity, and that the many different cultures, traditions and languages in Europe are a positive asset for the continent" (European Union, no date).

extent that it is required to improve the efficiency of the state and to enable Bosnia to eventually assume the obligations of EU membership, but not to demand substantive reform of the Dayton constitution's core principles of elite-driven consociational power-sharing or to widen the constitutional debate to include civil society voices. In this sense, the EU supports the ongoing application of consociational mechanisms in Bosnia, despite the lack of a consociational norm amongst its existing member states. EU policy has instead been legitimised, I have suggested, through framing it in relation to the historical experience of the Union itself, which is presented in EU actors' discourses as managing national interests through a policy of 'unity in diversity'.

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