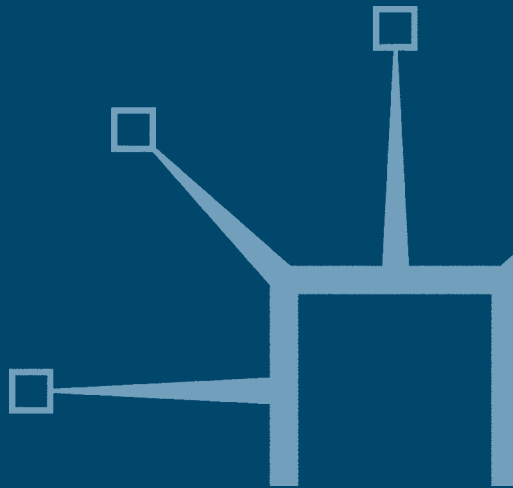


Post-War Bosnia

Ethnicity, Inequality and Public Sector
Governance

Florian Bieber



Ethnic Inequalities and Public Sector Governance Series

Series Editor: **Yusuf Bangura**

The series on Ethnic Inequalities and Public Sector Governance is the first major comparative study on ethnic inequalities in the public sector. It examines the complex ways ethnic diversity affects the constitution and management of the public sectors of multiethnic societies under formal democratic rule. Contributors have analyzed the structure of ethnic cleavages, including variations within each group; collected detailed empirical data on four public institutions: civil service, cabinet, parliament and party system; examined the rules that determine selection to these institutions; analyzed whether the distribution of offices is ethnically balanced or uneven, and studied voter preferences in constituting these institutions. They have also examined the potential of ethnic inequalities to generate conflict and the effectiveness of institutions and policy reforms for managing diversity and inequality. The research on which the series is based employs a typology that classifies countries according to their levels of ethnic polarization: those in which one ethnicity is overwhelmingly dominant; those with two or three main groups; and those in which the ethnic structure is fragmented. 15 countries were studied in the project: Belgium, Bosnia-Herzegovina, Botswana, Ghana, Fiji, India, Kenya, Latvia, Lithuania, Malaysia, Nigeria, Papua New Guinea, Switzerland, Tanzania, and Trinidad and Tobago. The research was funded by the Ford Foundation and the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), in addition to UNRISD core funds. Michele Tan, Anna Hemmingson, Carl-Johan Hedberg and Toshihiro Nakamura provided research assistance at various stages of the project. Gabriele Kohler, formerly UNDP Resident Representative in Latvia, and Nils Muiznieks, Minister for Integration in Latvia supported the international conference held in Riga, Latvia, in which the research findings of the project and their policy implications were discussed.

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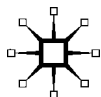
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Ethnicity, Inequality and Public Sector Governance

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Contents

<i>List of Tables</i>	viii
<i>List of Graphs</i>	x
<i>List of Maps</i>	xi
<i>Preface</i>	xii
<i>Acknowledgements</i>	xiv
<i>Note on the Terminology</i>	xv
1. Introduction	1
2. Historical Legacies	5
a) Empires and Bosnia	5
Ottoman Bosnia	5
Bosnia under Austro-Hungarian rule	6
b) The Yugoslav experience	8
Bosnia in the first Yugoslavia	8
The Communist era	10
c) After the fall of Communism	19
The first multiparty elections in Bosnia	19
Failed power-sharing	23
The war	26
3. Cleavages and Inequalities in Post-War Bosnia	29
a) Ethnic cleavages in post-war Bosnia	29
b) Socio-economic inequalities	33
4. Politics and Governance in Post-War Bosnia	40
a) Political parties in post-war Bosnia	41
b) Power-sharing in Bosnia	43
c) The state-level institutions	46
Presidency	48
Council of Ministers	52
Parliament	54
The state level administration	56
d) Decentralization and the entities	60
e) Federation of Bosnia-Herzegovina	62

The institutional set-up	67
Public administration	73
f) The Serb Republic	76
The institutional set-up	79
Public administration	81
g) The Office of the High Representative	83
5. The Record of the Post-Dayton Elections	86
a) The electoral system	88
b) The results of the first post-war elections	90
c) Electoral reforms	93
Open lists	94
Multi-member constituencies	95
Preferential voting: RS presidency 2000	96
d) The elections in 2000 and 2002	99
e) Elections and nationalism in Bosnia	103
6. Addressing Inequality & Reforming Governance in Post-War Bosnia	108
a) Refugee return, human and minority rights	108
Refugee return	108
Human and minority rights	114
b) The change of the entity constitutions and its impact on governance	121
Challenge to the ethnic entities	122
The court decision	123
The aftermath – constitutional commissions	127
The constitutional amendments	128
Does the reform matter?	131
c) The District of Brčko. A laboratory of multiethnic governance?	133
Institutions	135
Refugee return	138
Multiethnic police	140
Education	141
Is Brčko a model?	142
7. Conclusion	144

8. Appendices	152
a) Major Political Parties and Coalitions in Bosnia	152
b) Abbreviations	153
c) Structure of the System of Governance in Bosnia since the Reforms in 2002	154
<i>Notes</i>	155
<i>Bibliography</i>	166
<i>Index</i>	177

List of Tables

Table 1.1	Census Results in Bosnia, 1971–1991	2
Table 2.1	Census Results in 1870, 1879 and 1910	7
Table 2.2	Votes Cast for Political Parties in 1920 and Census Results 1921 (according to religious affiliation) for Bosnia	9
Table 2.3	Representation of Different Nations in the Administration in 1991	12
Table 2.4	Share of Serbs, Croats and Muslims as Part of the Officer Corps in the Yugoslav People's Army and as Part of the Yugoslav Population	12
Table 2.5	Distribution of the Bosnian Population in Rural and Urban Districts, Census 1981	14
Table 2.6	Results of the Bosnian Census (1961–1991)	15
Table 2.7	Electoral Results 1990 and Census 1991 in Comparison	22
Table 2.8	Results of the Elections for Presidency (elected candidates bold)	23
Table 3.1	Estimated Population Changes as a Result of the War	29
Table 3.2	The Population Distribution in Bosnia, 2002 (est.)	32
Table 3.3	Average Gross Wages, 1998–2002 in KM	37
Table 3.4	Employment, Unemployment Figures and Average Wages FBiH, September 2003	37
Table 4.1	Group Representation in the State-Institution since 1997	48
Table 4.2	Members of the Bosnian Presidency since 1996	49
Table 4.3	The Bosnian Council of Ministers, 2002	54
Table 4.4	Cantons of the Federation	63
Table 4.5	Population Distribution in the Federation	64
Table 4.6	Members of the Federation House of People by Canton and Nation	69
Table 4.7	Power-sharing in the Federation	70
Table 4.8	Population Distribution in the Federation among Judges, Public Prosecutors and the Police, 1999	73
Table 4.9	Minority Police Officers in the Federation, in percent	75

Table 4.10	Population Distribution in the Serb Republic	77
Table 4.11	Number of Serb, Bosniak and Croat Deputies in the RS National Assembly (est.)	80
Table 4.12	Population Distribution in the RS among Judges, Public Prosecutors and the Police, 1999	81
Table 4.13	Minority Police Officers in the RS, in Percent	83
Table 5.1	Elections in Bosnia since 1996	87
Table 5.2	Electoral Results for the House of Representatives, 1996, 1998	93
Table 5.3	Results of the Elections for the President of the RS in 2000	97
Table 5.4	Votes and Seats in the RS Parliament, November 2000	100
Table 5.5	Votes and Seats in the House of Representative of the Federation, 2000 and 2002	100
Table 5.6	Voting Results for Bosnian Presidency, October 2002	101
Table 5.7	Bosnian House of Representatives Election Results, November 2000 & October 2002	102
Table 5.8	The Orientation of the Main Political Parties in Bosnia and their Main Electoral Base	105
Table 6.1	Refugees and IDPs as Part of the Pre-War Population	110
Table 6.2	Return of Refugees and IDPs (1/1996–12/2004)	111
Table 6.3	Minority Returns in Bosnia (1996–2004)	112
Table 6.4	Population Distribution (1991, 1999 est.)	134
Table 6.5	Election Results in Brčko, October 2004	136

List of Graphs

Graph 3.1	Household Income (1/2003 in KM)	36
Graph 5.1	Electoral Results for the Three Dominant National Parties 1990–2002 and the Census Result 1991	105
Graph 5.2	Support for the Presidency Candidates of the Three National Parties	106

List of Maps

Map 2.1	Ethnic Majorities according to the 1991 census	13
Map 3.1	Ethnic Majorities Census, 1999, est.	30
Map 6.1	Minority Returns to BiH since DPA to May 2005	109

Preface

Bosnia-Herzegovina's post-war experience offers interesting insights on ethnic identities, public sector inequalities and institutional reforms. Bosniaks, Serbs and Croats – the three main ethnic groups – share a common language and overlapping traditions and cultures. Differences exist largely in the realm of religion, with Serbs adhering to the Serbian Orthodox Church, Croats the Catholic Church and Bosniaks the Muslim faith. The three communities also use different scripts for their shared language. And yet, Bosnia witnessed one of the bloodiest civil wars that followed the disintegration of Yugoslavia and the collapse of communism in Europe. This left at least 200,000 dead and more than two million refugees and internally displaced persons as warring parties zealously tried to create ethnically homogeneous regions.

This study highlights the problems of governing societies in tripolar ethnic settings where cleavages have been politicized. What may appear as small cultural differences may constitute a basis for ethnic mobilization by political elites in such societies. At the centre of Bosnia's conflict are issues of identities, contrasting visions of the state, the way public institutions are constituted and managed, and pursuit of public policies that advance group interests. Although socio-economic inequalities among the three groups were not sharp before the outbreak of war, Serbs dominated the communist party, the administration and the military because of the different roles played by the three groups in the formation of the party and in the resistance movement, the conflict between the party and the Catholic Church, and land reforms that largely affected non-Serbs. By the time the Yugoslav republic started to disintegrate, nationalist parties had undermined the grip of the communist party by controlling an overwhelming majority of the seats in parliament. Much of the discourse that drives the conflict is about fears of exclusion in the public sector.

Florian Bieber's study shows the potential and limits of institutional reforms for managing deeply divided societies, especially when such societies have been plunged into war. The Dayton peace accords that ended the war produced a very complex governance regime. The country became, in a sense, a semi-protectorate because of the very extensive presence of the international community in the fields of security and administration. In addition, stringent and wide-ranging

rules for balanced group representation produced seven different types and levels of government, 13 constitutions, more than one hundred ministries, and veto rights at most levels of government.

These reforms have been effective in ending the war and promoting high levels of proportionality in group representation in the public sector. However, the ethnic territorialization of governance has excluded minorities, including Serbs in the Bosniak-Croat federation and Bosniaks and Croats in the Serb entity. It has also been difficult for cross-ethnic identities to flourish as in the communist period, and stability has been achieved at the expense of accountable and effective government. Despite efforts to promote cross-ethnic parties through several electoral devices, the grip of the nationalist parties on the electorate remains very strong. The presence of international actors has also created a dependency syndrome with implications for the sustainability of the reforms.

The tenth anniversary of the Dayton peace accord should provide an opportunity for policy makers and scholars to reflect on the experience of post-war Bosnia in the fields of conflict management, socio-economic inequalities, representation in public institutions, minority rights, and the role of international actors in stabilizing conflict-ridden societies. Bieber's book provides analytical insights and systematic data that should help guide this reflection.

Thandika Mkandawire
UNRISD Director

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This book has been a tremendous **opportunity** to explore the intricacies of post-war Bosnia-Herzegovina, a state so complex that a regular article can hardly do it justice. The contribution of many people, directly and indirectly, has been instrumental to the success of this project. First, I would like to thank the anonymous reviewers for their helpful comments on the draft manuscript. Additionally, comments and suggestions on the draft or parts have been made by Neven **Andelić**, Roberto **Belloni**, Tobias **Vogel** and Milena **Marić**. Many others have been helpful over the years during my research on Bosnia and on power-sharing. They include friends, colleagues, policy-makers, NGO activists, officials from international organizations and former students. Without being able to discuss Bosnian society and politics with them, receiving help in finding materials and contacts, this book would not have been possible. I am particularly grateful to the **Regional Masters for Democracy and Human Rights in Sarajevo**, which has given me an opportunity since 2001 to regularly spend time in Sarajevo and to discuss with students and colleagues. The usual disclaimer applies: I am solely responsible for all arguments and mistakes.

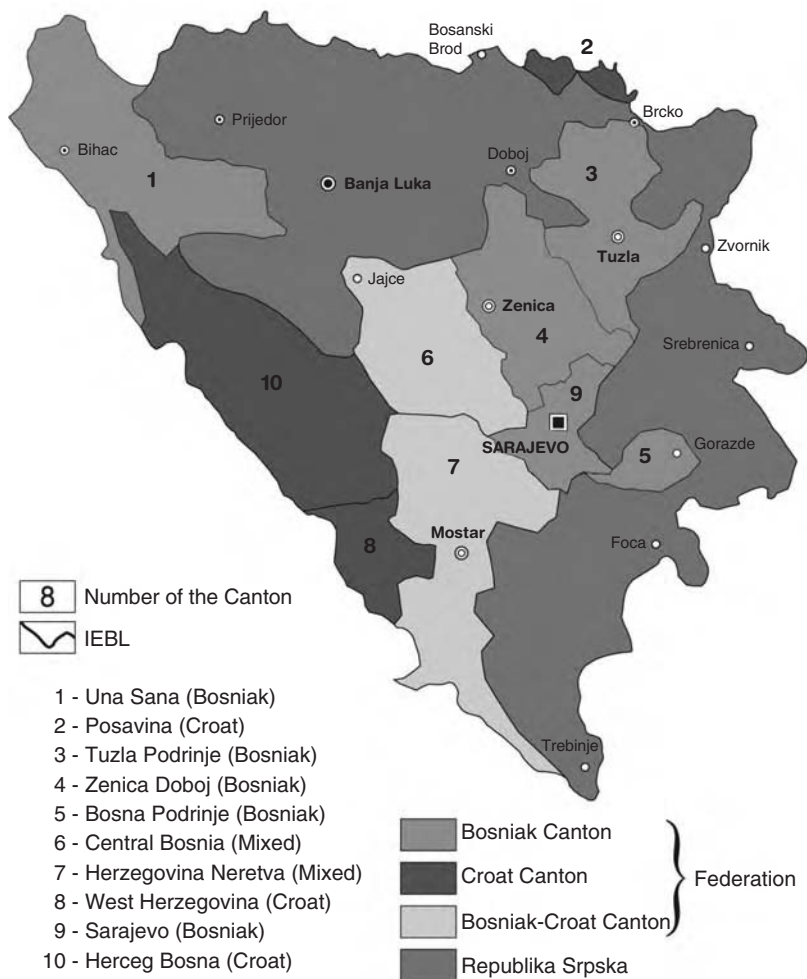
Some of the research for this project was funded by the International Policy Fellowship of the Open Society Institute. I am grateful for this support. I would also like to express my thanks to the European Centre for Minority Issues and its director, **Marc Weller**, who has allowed me over the past years to work in, on and with the countries of former Yugoslavia and supported my research endeavours. Finally, particular thanks go to Yusuf Bangura and UNRISD for the consistent support and initiative for the research project "Ethnic Structure, Inequality and Governance of the Public Sector" out of which this book grew.

Belgrade, October 2004

Note on the Terminology

The use of the term Bosnia in this study denotes Bosnia and Herzegovina, the country's full and official name. In no way should the reduction to Bosnia omit the importance of Herzegovina as one of the two historical regions, which constitute the contemporary state. The main nations living in Bosnia are Croats, Bosniaks and Serbs. The adjectives **Croat** and **Serb** denote **affiliation with the nation**, while the terms **Croatian** and **Serbian** relate to the **two countries**, Croatia and Serbia. While still much literature calls Bosniaks "Muslims", this study adopts the name chosen by **a congress of Muslim intellectuals in 1993 and later used in legal documents. When referring to the group before 1993, the term Muslims is used.** In the case of Bosnia, Muslims does not describe a religious group, but **a nation distinguished mainly**, but not solely, by the different religion from Catholic Croats and Orthodox Serbs. Most Muslims, as most inhabitants of socialist Yugoslavia, however, have not been religious. The contemporary term **Bosniak** needs to be distinguished from the term **Bosnian**, the latter denoting all inhabitants of Bosnia, irrespective of national background.

The two entities of Bosnia are the Federation of Bosnia-Herzegovina (*Federacije Bosne i Hercegovine*, FBiH) and the Serb Republic (*Republika Srpska*, RS). The first should not be confused with the Bosnian state, while the second should not be confused with the neighbouring Republic of Serbia, which has been part of the **Federal Republic of Yugoslavia (1992–2002)** and is now in a state union with Montenegro.



Map 1: Bosnia-Herzegovina after 1996
 Source: OHR

1

Introduction

Bosnia-Herzegovina is a deeply divided society. After a three and a half year war (1992–1995), which left over 200,000 Bosnians dead or missing, the country is territorially, politically, and socially segregated. While a distinct Bosnian identity existed before the war and continues to some degree in the contemporary political and social life of Bosnia, the mobilization of nationalism prior to the war led to an unprecedented degree of polarization and the near disintegration of the country. Having been part of Yugoslavia and without a modern history of independence before 1992, Bosnia remains closely linked through history as well as political, economic and social reality to neighbouring Croatia and Serbia.

Bosniaks, Serbs and Croats constitute the main groups in Bosnia. In addition to these three groups, a number of smaller communities (Roma, Montenegrins, Slovenes, Jews) exist. At the last census in 1991, 92.4 percent belonged to either of the three groups, with an additional four percent having declared themselves as Yugoslavs, most of whom are from mixed marriages among the three groups or belong to either of the three communities, but rather identified with Yugoslavia than with their respective nation (see Table 1.1). Smaller communities, none of which have constituted more than one percent of the population in the past decades, have thus played only an insignificant role. The two most relevant groups are Jews, who have well integrated into the urban life of Sarajevo, whereas the other group, Roma, has been mostly living on the margins of Bosnian society.

Historically, Muslims and Serbs have been the dominant communities in Bosnia, both in terms of the share of the population and in regard to political, social and economic influence. While Croats historically constituted a smaller share of the population – a fifth or less – Bosnia has

Table 1.1 Census Results in Bosnia, 1971–1991

	Muslims		Serbs		Croats		Total
	in percent	in number	in percent	in number	in percent	in number	
1971	39.6	1,482,430	37.2	1,393,148	20.6	772,491	3,746,111
1981	39.5	1,629,924	32.0	1,320,644	18.4	758,136	4,102,783
1991	43.7	1,905,829	31.4	1,369,258	17.3	755,892	4,364,574

been for over hundred years considered a region defined by the presence of these three groups. Thus, the contemporary term “constituent people” designating Croats, Bosniaks and Serbs, has an established historical precedent and defines Bosnia as a tri-national state.

Despite the depth of divisions between communities in post-war Bosnia, the nature of the cleavages is considerably less than in other divided societies. Some have even argued that the smallness of the differences has been a cause of conflict, referring to the Freudian “narcissism of minor differences” (Ignatieff 1997: 34–71). While attributing the conflict of the 1990s to the similarities between the three nations of Bosnia might not be a fully satisfactory explanation, the differences are indeed small: Bosniaks, Serbs and Croats of Bosnia speak the same language¹ and have largely similar traditions and cultural habits. The main “objective” distinguishing criterion between Croats, Serbs and Bosniaks is religion, with Serbs adhering to the Serbian Orthodox Church, Croats following the Catholic Church and Bosniaks being Muslims. While religion has been historically important as an identifier with the three groups and religious communities played an often-detrimental role during the conflict, the majority of the population before the war was either atheist or possessed only little attachment to their respective religious community. Even among more religious members of the three groups, religion has not been a self-standing political identity, but rather informing national identity.

In addition to antagonistic interpretations of the war and its causes among the different national communities (Naučiostraživački institut 2002), the state and its powers has been the major source of contention. A majority of Serbs and a strong minority of Croats prefer secession from Bosnia, whereas an overwhelming majority of Bosniaks supports the continued existence of Bosnia (UNDP 2003: 27). These different preferences also translate into different political positions vis-à-vis the joint state institutions and the degree of autonomy of the two entities, the predominantly Bosniak-Croat Federation of Bosnia and

Herzegovina, which covers 51 percent of the country and the Serb Republic, which constitutes the remaining 49 percent.

In pre-war Bosnia the settlement patterns of the three groups were mixed in large parts of the country, even though there were some areas where individual ethnic groups were predominant. One of the main results of the war, in addition to the deaths of approximately 200,000 citizens and the displacement of roughly half the population, has been the territorialization of ethnicity. Most of the Serb population today lives in the Serb Republic in Northwestern and Eastern Bosnia. Bosniaks mostly live in seven of the ten cantons of the Federation, primarily in central and in Northwestern Bosnia. Croats live mostly in Herzegovina (the south of the country) and along the Sava River in the north.

The territorial concentration of the three nations was a result of two secessionist movements, which sought to dissolve Bosnia and join neighbouring states. While the Serb secession triggered the conflict in 1992, the Croat project of secession soon followed and contributed to the conflict particularly during the period 1993–1994, symbolically culminating in the destruction of the famous Ottoman bridge in Mostar. This self-determination dispute, which is at the core of the Bosnian conflict and its post-war inertia, has not been resolved, but pacified. Post-war Bosnia has been a semi-protectorate with a substantial civilian and security presence. Governance structures recognized the territorialization of ethnicity by devolving much of the power to homogeneous regions, be they municipalities, cantons or entities. At the same time, tenuous power-sharing arrangements were established to promote minimalist joint institutions. This weak common state has, however, grown in strength in the mean time. It is within this framework of multiple layers of governance, some ethnically exclusive, others inclusive, that this book seeks to evaluate the development of post-war governance in Bosnia.

The Bosnian state and society has been much in flux since the end of the war. This means that a study of post-war Bosnia has to emphasize the dynamics of change rather than offer a snap-shot that can only reveal a partial picture of interethnic relations. For this purpose, this study is organized in five main chapters. The first chapter will trace the historical legacies since the late Ottoman period in the 19th century, when the development of a modern national identity set in. The focus of this chapter is on the nature of governance in Bosnia as regards interethnic relations. Particular emphasis will be placed on the Communist period, as well as the two years before the 1992–1995

war. The second chapter examines the main sources of division and inequality in post-war Bosnia, including ethnicity and socio-economic status. The third chapter focuses on post-war governance in Bosnia, exploring the development of political parties, the institutional structures of Bosnia at the state level and in its two entities. Here governments, legislatures and administrations will be studied to identify mechanisms of inclusion and discrimination. The fourth chapter addresses the **dynamics of post-war elections in Bosnia**. Here both the dominance of national parties, a key source of division and inequality, and **the experiments with inclusive and moderating electoral rules merit particular attention**. The final chapter traces three key initiatives to overcome the post-war division of the country and the inequalities resulting from the wartime "ethnic cleansing." The first, a most ambitious project, has been the **return of refugees to their pre-war place of residence**. The second concerns the **reforms of the two entities**, which in 2002 eliminated legal discrimination against the non-dominant nations of the entities. Finally, the case study of **Brčko, a multinational district** in Northern Bosnia under direct international administration, provides an example to examine the success and limitations of policies that seek to recreate diversity and eliminate discrimination.

What emerges from the study is that Bosnia is a **unique case** of multinational governance. The substantial involvement of the international community, making Bosnia a semi-protectorate, and the extensive and firm rules determining group representation and governance have made Bosnia a highly complex country. With some seven different types and levels of governance in Bosnia, 13 constitutions, well over one hundred ministries (and ministers) and **six hundred deputies,² veto rights at most levels of government**, Bosnia's complexity is hard to grasp. Despite these challenges Bosnia has moved significantly towards integration since the end of the war and many inequalities have been eliminated. At the same time, the country remains deeply divided and most change continues to be driven by international actors. **There is little indication that Bosnia has become self-sustainable and no longer needs international intervention**. At the same time, the international civilian and military presence has fostered a **climate of dependency** and reinforced the reliance on external actors. Significantly, the elaborate mechanisms of power-sharing have increased group inclusion at the price of governability and cross-national identity. Nationalism and the self-determination disputes, which have been at the core of the war, and difficulties of post-war governance remain potent.

2

Historical Legacies

Bosnia-Herzegovina has no experience of independence in its modern history prior to 1992. Nevertheless, Bosnia has existed as a historical unit for centuries. Protagonists have interpreted both the war in the 1990s and the viability of the state in often diametrically opposed ways (Malcolm 1996; Hayden 1999). The pre-Ottoman medieval Bosnian kingdom existed, like its counterparts in the Balkans, only briefly and lacked features of a modern state. Thus, the construction of historical continuities to pre-Ottoman Bosnia mostly serves myths of origin and seeks to establish constructed statehood traditions, which do not facilitate the understanding of modern Bosnia. Instead, Bosnia is very much shaped by its Ottoman legacy, as are most other Balkan countries.

a) Empires and Bosnia

Ottoman Bosnia

The territory of contemporary Bosnia came under Ottoman rule in the mid-15th century. A part of the Christian population converted to Islam during Ottoman rule. The conversion process and the emergence of a strong Islamic population in Bosnia have been fiercely contested in the nationalist historiography of the region. While both Croat and Serb historiography emphasized either the Croat or Serb origin of most Muslims, Bosniak historiography on the other hand sought to establish a link between the medieval heterodox Bosnian Church and the conversion to Islam (Bieber 2000: 21–24). The retroactive attribution of national characteristics to the three religious groups is, to say the least, highly problematic. In the Ottoman Empire, in particular, the society was structured primarily along religious lines, where non-Islamic communities were organized as *millet*s. These communities enjoyed some

limited self-governance in religious, educational and cultural matters during the Ottoman reign, but simultaneously lacked social or political equality with Muslims. While inequality in Ottoman Bosnia often coincided with religion, it would be false to assume a hierarchy in terms of economic status along religious lines. The elite, both in terms of administrators in the centers of the empire and the land holding class were largely Muslims, and farmers were made up of all three religious communities.

National identity in Bosnia emerged later than national movements in neighbouring Croatia and Serbia during the 19th century. The boundaries between the new nations were hardly well defined, especially in Bosnia. Due to the similarities in language and the absence of territorial delimitations of Croats and Serbs, as well as Muslims, early Croat and Serb national movements claimed to include all three groups. Only in the course of the late 19th century did the religious delimitation of the nation emerge as the predominant criterion for group membership. While both Croat and Serb nationalism claimed Muslims to belong to their respective community on the basis of the pre-Ottoman origin of the Muslims, the latter developed a distinct identity of their own, which prevented absorption into the Croat or Serb nation.

Bosnia under Austro-Hungarian rule

Whereas Bosnia existed under Ottoman rule as a distinct unit, Austro-Hungarian rule between 1878 and 1918 proved decisive for the emergence of national identity. Bosnia was placed under the administration of the Habsburg monarchy in the Berlin Congress, which was convened in 1878 to accommodate competing claims to the Balkans by the Great Powers. It followed Russia's successful war against the Ottoman Empire and the aborted San Stefano Peace agreement of 1878, which had created a large Bulgarian state under Russian influence. While Bosnia, together with the Sandžak region, remained *de jure* under Ottoman rule, the administration was carried out by Austria-Hungary, which also exerted military control over the region. Bosnia was administered by the joint Austro-Hungarian ministry of finance and served the Empire in economic terms as a colony, with no elections or internal self-rule before 1908. The occupation by the Habsburg Monarchy was only welcomed by the Croat population in the hope of unification with the rest of the Croat lands in the monarchy, while both Muslims and Serbs feared marginalization in the largely Catholic monarchy. However, Austro-Hungarian rule actively courted the Muslim elite in an effort to secure control of Bosnia

through co-operation with the most powerful population group. As a result land reform was delayed under Austro-Hungarian rule.

In late Ottoman rule the largest group had been Muslims. However, a large number of the group left Bosnia for other parts of the Ottoman Empire after the transfer to Austria–Hungary either for having been affiliated with the Ottoman administration or fearing disadvantage. Subsequently, Serbs became the largest population group in Bosnia, as can be seen in Table 2.1.

In the first decade of the 20th century, political parties and cultural organizations emerged in Bosnia, which were nearly exclusively organized along national lines. The annexation of Bosnia by Austria–Hungary in 1908 seemed to merely confirm the status quo, but triggered a severe international crisis and accelerated the establishment of indigenous political institutions. Following the promulgation of a constitution for Bosnia in 1910, in the first election in Bosnia to the newly constituted *sabor* (assembly), 31 seats were reserved for the Serbian Orthodox group, 24 for Muslims, 16 for Catholics and one for Jews (Wahlordnung 1910: Art. 5).⁴ The constitution furthermore gave the three main communities collective rights and self-government and introduced the system of rotation of high offices. Thus an Austrian legal scholar and member of the Bosnian constitutional court between 1996 and 2002 observed that “the Dayton system is not an American invention” (Marko 2000).

After the first elections, the Muslim and Croat parties cooperated closely, whereas prior to the annexation more co-operation had taken place between emerging Muslim and Serb political elites. While Muslim and Croat parties mostly supported the Habsburg rule, the Serb political elites increasingly opposed the Habsburg Monarchy and aligned themselves with Serbia in an effort to incorporate Bosnia into a larger Serbia. With the outbreak of World War One, triggered by the assassination of Archduke Ferdinand in Sarajevo by a radical

Table 2.1 Census Results in 1870, 1879 and 1910³

	1870		1879		1910	
Orthodox	534,000	37.2%	496,485	43.0%	825,418	43.5%
Muslim	694,000	48.3%	449,000	38.9%	612,137	32.2%
Catholic	208,000	14.5%	209,000	18.1%	434,061	22.9%
Others	n/a	–	n/a	–	26,428	1.4%
Total	1,436,000	100%	1,154,485	100%	1,898,044	100%

Bosnian Serb student, Gavrilo Princip, on 28 June 1914, the autonomy of Bosnia was revoked and Serbs were repressed during the war between Austria–Hungary and Serbia.

b) The Yugoslav experience

Bosnia in the first Yugoslavia

In the last days of World War One, the Austro-Hungarian administrator of Bosnia handed power to a national council composed of pro-Yugoslav representatives of all three communities. Subsequently, Bosnia became part of the newly created Kingdom of Serbs, Croats and Slovenes. The Vidovdan constitution of 1921 enshrined a centralist structure of the state, much against the will of most Croats in the country, who favoured a federal arrangement. Muslims did not receive official recognition in the first Yugoslavia and were largely considered to be either Croats or Serbs. The main Muslim Party, the Yugoslav Muslim Organization (*Jugoslavenska muslimanska organizacija*, JMO), however, offered the crucial support for the new constitution in return for the maintenance of Bosnia's administrative boundaries, albeit without any formal autonomy. The new state secured the support of the Muslim political elite by delaying land reform, which would have mostly benefited Serb peasants and disadvantaged Muslim landowners.

The primary line of confrontation in the first Yugoslavia emerged between Croats and Serbs over the nature of the state. The new state, named kingdom of Yugoslavia in 1929, was de facto an extension of the pre-war Serbian kingdom and the Karađorđević dynasty. The administration and the army were largely dominated by Serbs and the centralist policies were largely viewed as favouring Serbs over other nations in the first Yugoslavia. As with the short experiment with elections in the late Austro-Hungarian period, politics were highly segmented in Bosnia, with a high correlation between the electoral results and the population census (see Table 2.2). While some Yugoslav parties existed, their support was limited and mostly appealed to Serbs and a small group of pro-centralist Yugoslav voters from other communities. Only the Communist Party, which was banned shortly after the first Yugoslav elections, had some cross-community appeal.

After the leader of the strongest Croat party, Stjepan Radić, was shot in parliament (he later died from his wounds) by a Serb deputy and the ensuing parliamentary crisis, King Aleksandar declared a Royal dictatorship in 1929 and reorganized the kingdom, eliminating the administrative borders of Bosnia and establishing four *banovine* (districts) in

Table 2.2 Votes Cast for Political Parties in 1920 and Census Results 1921 (according to religious affiliation) for Bosnia⁵

Self-identification/party platform	Census 1921	Election Results 1920
<i>Muslim</i>	31.1%	33.5%
<i>Serb (Orthodox)</i>	43.7%	40.2%
<i>Croat (Catholic)</i>	21.3%	17.88%
<i>Yugoslav</i>	–	5.46%

which Serbs were generally predominant. As a result, a major condition for Muslim elites supporting the Yugoslav state after World War One disappeared. The new kingdom of Yugoslavia under the rule of King Aleksandar promoted a “Yugoslav” nationalism, which sought to incorporate the different south Slav “tribes”, i.e. Serbs, Croats and Slovenes.⁶ While this unitary concept departed conceptually from the Serb dominance of the first years of Yugoslavia, it effectively continued the predominance of Serbs in the state and Yugoslavism did not differ substantially from Serb nationalism in the form promoted by the new kingdom. The authoritarian bent of the royal dictatorship was reduced in the face of opposition from the political establishment and elections followed in 1935 and 1938. The confrontation between Serbs and Croats over the nature of the state could not be eliminated, resulting in the “compromise” of 1939 that established a Croat *banovina*, including parts of Bosnia, which would enjoy widespread autonomy. The beginning of World War Two, however, prevented the full implementation of the arrangement. Following a coup in March 1941 in Belgrade, which overthrew the government that signed Yugoslavia’s participation in the tripartite pact, Nazi Germany declared war. Yugoslavia quickly collapsed in the face of the invasion by Germany and its allies in April 1941. Within a few weeks, the country was occupied and divided. Bosnia was annexed to the “Independent State of Croatia” (*Nezavisna Država Hrvatska*, NDH) under German and Italian military control and governed by the local fascist movement, the *Ustaše*. While some Croats and Muslims welcomed the end of Yugoslavia, support for the fascist *Ustaše* of Croatia quickly dissipated. The regime incorporated Muslims as Croats of Islamic Faith, while openly repressing the Serb population. The open discrimination against Serbs and Jews by the new regime, as well as the suppression of any political opposition, resulted in widespread resistance to the Croat state. Both partisans, with the Communist Party at their core, and the Serb *Četnici*,

who oscillated between the re-creation of a Serb-dominated Yugoslavia and “Greater Serbia”, engaged in armed **opposition to Ustaša rule**. The NDH never effectively controlled the whole territory. While the *Četnici* only appealed to the **Serb population and shifted between resistance and collaboration**, engaging in atrocities against Muslims and Croats, the **partisans attracted all nations, emerging as the dominant resistance movement in Yugoslavia**. **Originally Serbs dominated the partisan movement, if not the leadership**. This was partly due to the particular **repression against Serbs by the Ustaša state** and a consequence of the regional focus of the partisan activities in areas with a strong Serb population.⁷

The Communist era

The war-time assemblies of the “Anti-Fascist Council for the National Liberation of Yugoslavia (AVNOJ)” in Bosnia at Bihać (1942) and Jajce (1943) gave rise to the post-war Yugoslav state and Bosnia. The principles in the AVNOJ broke with pre-war Yugoslavia, **allowing for self-determination of the nations of Yugoslavia and enshrining the dominant role of the Communist Party**. Whereas the status of Bosnia was contested also among leading party politicians from different backgrounds – some of which advocated its merger with or partition between neighbouring Serbia and Croatia – **it was established as an equal republic in post-war Yugoslavia**. **Bosnia was established with borders largely following the Austro-Hungarian border**. Unlike the other republics, which had one recognized dominant nation, **Bosnia had no majority nation and thus remained multinational**. **Muslims in Bosnia were recognized as being a distinct group, but were not considered as a separate nation during the first post-War decades**.

Despite the dominance of the Communist Party in post-war Bosnia, the main religious communities were allowed to operate in an attempt to secure broader support for the new authorities. While the dominant **agricultural sector was never collectivized**, as in other Communist countries, the agrarian reform of August 1945 redistributed the land of larger landholders to landless peasants and former partisans. Thus, the contentious agricultural question, which had been important both under Austro-Hungarian rule and during the first Yugoslavia, was resolved (Donia and Fine, Jr. 1994: 162–167). **Formally, the new Yugoslav leadership under Josip Broz Tito sought to break with the pre-war dominance of one nation over others**. The recognition of the different nations and their equality were foremost principles of the Yugoslav Communist Party, which **believed that the transformation of**

the society into a socialist one would help overcome earlier conflicts between the nations of Yugoslavia (Shoup 1968).

At the same time, there was a strong Serb dominance in the Communist Party and in the administration, particularly in the first decades of post-war Yugoslavia. This was less a result of discrimination against non-Serbs in the party, but a consequence of the strong war-time support for the party among Serbs and a range of policies which had particularly affected non-Serbs, such as land reform and the conflict between the party and the Catholic Church. After the break with Stalin in 1948, deliberate efforts were made to make the party leadership more representative of the population. While Aleksandar Ranković was in office as Yugoslav minister of interior and later Vice-President (until 1966), the centralist course of the party consolidated Serb pre-dominance. While a separate Communist Party of Bosnia (after 1952 League of Communists) was established in 1949, the largest number of members by far were Serbs. Still in 1968, 55.57 percent of party members were Serbs, 26.49 percent were Muslims and 11.43 percent were Croats. Whereas Muslims increased their share, Serbs remained dominant in the party with 44.3 percent of the party members in 1981, followed by 35.74 percent Muslims and 12.35 percent Croats (Džaja 2002: 247–249). Only by the mid-1980s did the share of Muslims in the party approximately equal their share in the population (Friedman 1996: 182).

Recognition of Muslims in 1968 yielded concrete advantages for the Muslim population in the representation in the party and republican institutions. As the “ethnic key” allocated key offices in party and administration according to the distribution of the nations of Bosnia, recognition translated into better representation (Friedman 1996: 160–161). As with party membership, however, Serbs continued to be over-represented in the administration. Especially in the sensitive ministry of interior, where Serbs had been particularly strongly represented in the first post-war decades, Muslims continued to be underrepresented, while it employed only relatively few Croats. Even at the eve of the war in 1991, Serbs in the administration were over-represented relative to their share of the population (see Table 2.3).

The Muslims of Bosnia were not recognized as a nation equal to Croats or Serbs immediately following World War Two, although they were not denied recognition as had been the case in the first Yugoslavia. The Communist Party recognized a distinct identity of the Muslims in Bosnia, but only in the late 1960s were the first steps taken to recognize their equal status. Earlier, Muslims in Yugoslav censuses

Table 2.3 Representation of Different Nations in the Administration in 1991⁸

	Muslims	Serbs	Croats
<i>Census 1991</i>	43.5%	31.2%	17.4%
<i>Republican Administration</i>	34.5%	39%	13.70%
<i>Municipal Bodies</i>	35%	39.7%	17.4%
<i>Ministry of Interior</i>	35.97%	37.12%	13.75%

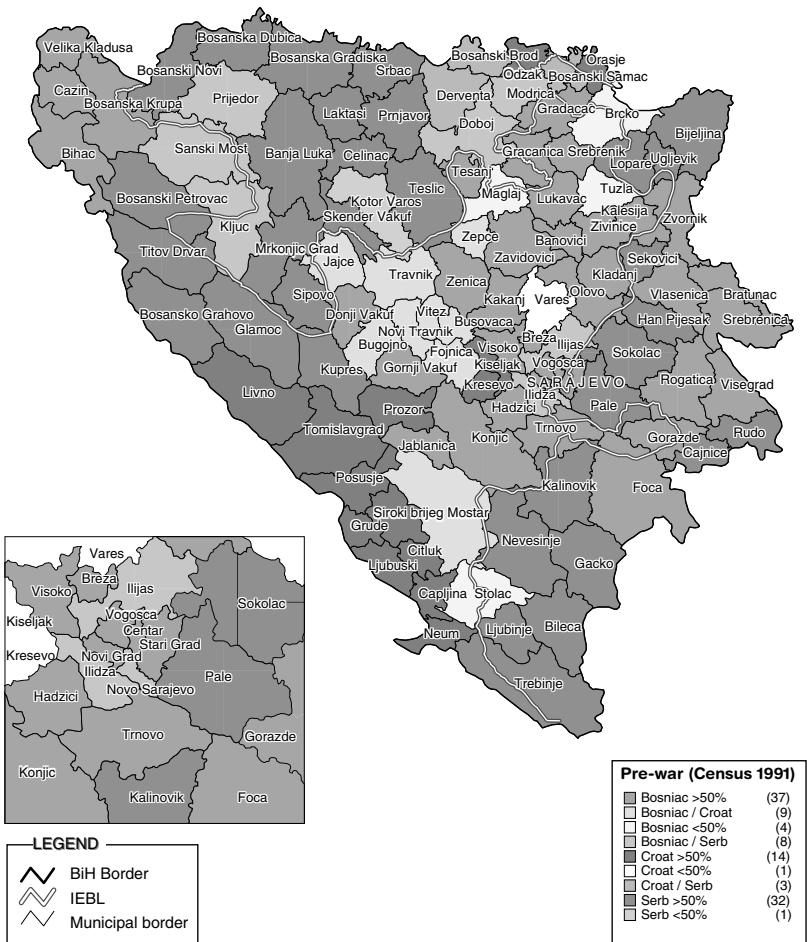
were considered Muslims, undecided (1948), Yugoslavs, undecided (1953), or Muslims in the ethnic sense (1961).⁹ Especially during the Ranković era, Muslims were viewed as the possible core of an all-Yugoslav identity, which would eventually incorporate also the other nations of Yugoslavia. Only after centralist policies were dropped with the fall of Ranković in 1966, were Muslims recognized as equal to the other nations of Bosnia and Yugoslavia. The recognition of Muslims as a nation in 1968 coincided with party and republican functionaries of Muslim background increasing their share. As Yugoslavia took a leading role in the international non-aligned movement and kept close ties with a number of predominantly Muslim countries, the enhanced domestic role for Muslims in Bosnia had foreign policy implications (Cudic 2002: 204–206). Nevertheless, Muslims continued to be under-represented in the federal institutions of Yugoslavia, both at the political level and in the administration. Especially in the army and the security forces, Serbs remained dominant, while the number of Muslims and Croats remained well below their share of the Yugoslav population (see Table 2.4) (Friedman 1996: 183–185). The reason for this lies in the fact that unlike in other Federal institutions, the ethnic key was only applied to the upper ranks of the officer corps and even here some nations remained overrepresented. The reason for this was the partisan origins of the army and structure of the core group of partisans during World War Two. In addition, the choice of an army career was shaped by different historical traditions in different parts of

Table 2.4 Share of Serbs, Croats and Muslims as Part of the Officer Corps in the Yugoslav People’s Army and as Part of the Yugoslav Population¹⁰

	Serbs	Croats	Muslims	Yugoslavs
<i>Officers (1990)</i>	60%	12.6%	2.4%	5.4%
<i>Total Population (1991)</i>	36.2%	19.7%	10%	3.0%

Yugoslavia and the image of the army, as well as differences in economic development (Denitch 1976: 113–120).

It is, however, noteworthy that a significant share of the Yugoslavs from Bosnia in the censuses and in official positions were in fact of Muslim origin, who preferred to declare themselves as Yugoslavs. The **recognition of Muslims resulted in a social revival**, which increased the importance of Muslims in Bosnia. With increasing self-affirmation as Muslims, the share of Muslims increased in Bosnia



Map 2.1 **Ethnic Majorities according to the 1991 census**

Source: UNHCR

from 25.7 percent of the population in 1961 to 43.5 percent in 1991. While this increase was largely ascribed to higher birth rates among Muslims by Serb nationalist writings, the key reason has been the recognition of Muslims as a separate nation, which can be seen when considering that the biggest jump between 1961 and 1971, from 25.7 percent to 39.6 percent, coincided with the official recognition and a considerable decline of self-declared Yugoslavs (see Table 2.5). Most noticeable was the significant decline of the Serb population in Bosnia from being the largest group in 1961 with 42.9 percent to 31.2 percent in 1991. Serbs thus dropped from being the dominant group in the first post-war decades in terms of demographic strength and political influence to being subordinate to Muslims.¹¹

Bosnia's demographic map has often been likened to a leopard's skin in terms of its high degree of diversity. While before the war in the 1990s only few large pieces of land in Bosnia were populated by exclusively one group, ethnic patterns existed, especially in rural areas. In 75 of 100 municipalities, one of the three nations constituted an absolute majority of the inhabitants (31 Serb and Muslim, 13 Croat) (Golubovic, Campbell, Golubovic 1993: 209–232). With very few exceptions (notably Drvar), the municipalities were not mono-national, but had at least two of the three communities living in close proximity.

There were considerable discrepancies between the three nations in terms of their residence in rural and urban parts of the republic (see Table 2.5). Some 34 percent of the population or 1.41 million inhabitants lived in cities, with the remainder living predominantly in rural districts. According to the 1991 census, only Muslims lived nearly in the same proportion in rural and urban areas. Both Croats and Serbs constituted a larger share of the rural population. In the urban setting, the share of Yugoslavs increases dramatically to account for nearly a fifth of the urban population in Bosnia.

Table 2.5 Distribution of the Bosnian Population in Rural and Urban Districts, Census 1981¹²

	Muslims	Serbs	Croats	Yugoslavs
Rural	40.2%	34.2%	21.4%	8.4%
Urban	38.3%	27.8%	12.5%	18.6%
Total	39.5%	32.2%	18.4%	3.2%

Table 2.6 Results of the Bosnian Census (1961–1991)¹³

	1961		1971		1981		1991	
	In Numbers	In Percent	In Numbers	In Percent	In Numbers	In Percent	In Numbers	In Percent
Muslims ¹⁴	842,248	25.7	1,482,430	39.6	1,630,033	39.5	1,902,956	43.5
Serbs	1,406,057	42.9	1,393,148	37.2	1,320,738	32.0	1,366,104	31.2
Croats	711,665	21.7	772,491	20.6	758,140	18.4	760,852	17.4
Yugoslavs	275,883	8.4	43,796	1.2	326,316	7.9	242,682	5.6
Montenegrins	12,828	0.4	13,021	0.4	14,114	0.4	10,071	0.2
Gypsies/Roma ¹⁵	588	0.0	1,456	0.0	7,251	0.2	8,864	0.2
Albanians	3,642	0.1	3,764	0.1	4,396	0.1	4,925	0.1
Ukrainians ¹⁶	–	–	5,333	0.2	4,502	0.1	3,929	0.1
Slovenes	5,939	0.2	4,053	0.1	2,755	0.1	2,190	0.1
Macedonians	2,391	0.1	1,773	0.1	1,892	0.1	1,596	0.1
Hungarians	1,415	0.1	1,262	0.0	945	0.0	893	0.0
Italians	717	0.0	673	0.0	616	0.0	732	0.0
Czechs	1,083	0.0	871	0.0	690	0.0	590	0.0
Poles	801	0.0	757	0.0	609	0.0	526	0.0
Germans	347	0.0	300	0.0	460	0.0	470	0.0
Jews	381	0.0	708	0.0	343	0.0	426	0.0
Russians	934	0.0	507	0.0	295	0.0	297	0.0
Slovaks	272	0.0	279	0.0	350	0.0	297	0.0
Turks	1,812	0.1	477	0.0	277	0.0	267	0.0
Romanians	113	0.0	189	0.0	302	0.0	162	0.0
Ruthenians ²	6,136	0.2	141	0.0	111	0.0	133	0.0
Other	811	0.0	602	0.0	946	0.0	17,592	0.4
Ethnically undeclared	–	–	8,482	0.2	17,950	0.4	14,585	0.3
Regional affiliation	–	–	–	–	3,649	0.1	224	0.0
Unknown	1,885	0.1	9,598	0.1	26,576	0.7	35,670	0.8
Total	3,277,948	100.0	3,746,111	100.0	4124256	100.0	4377033	100.0

The overrepresentation of Serbs in the administration and party are not indicators of discrimination, at least not from the late 1960s onwards, but rather a legacy of pre-existing traditions. Furthermore, neither group constituted a homogeneous whole during the Communist period. In addition to ethnic origin, the social background and networks of patronage mattered significantly for promotion and holding positions in the state administration and party. Furthermore, the functionaries in party and state were not “representing” their group, despite being allocated offices according to a complicated “ethnic key”. The primary loyalty with most party officials lay with the League of Communists and national identity was of secondary importance. In fact, it was common practice in Bosnia for party officials to only criticize the nationalism of their own community. In this sense, it would be misleading to consider the system of government in Bosnia under Communism as being a group-based power-sharing system, as officials represented the same interests, rather than negotiating the interests of the three largest nations in Bosnia (Andjelić 2003: 39–40). Power-sharing is generally understood to be a political system based on the co-operation of separate political elites representing different communities. In the case of Bosnia, the national affiliation of the governing League of Communist cannot be understood as dividing the party into separate community-based elites. Instead, the party and the republic were very much governed on the understanding that while national identity continued to matter, it was not the primary organizing principle of political life. While by the 1980s and in some earlier instances the League of Communists of the different republics represented different communities and cooperated on the basis of a (non-democratic) power-sharing system, this was not the case in Bosnia.

Within Bosnian society, ethnic distance was generally low and rates of intermarriage had been increasing since the 1960s. Most mixed marriages, however, took place between Serbs and Croats and were concentrated in the urban centers of Bosnia (Burg 1997: 124–5).

The other groups in Bosnia (see Table 2.6), including the historical, yet small, Jewish community or the substantial yet consistently underestimated Roma received official recognition in the Communist system and enjoyed some minority rights, but did not enjoy the same rights as the dominant three nations in Bosnia. During Communist rule, all communities were divided into three ranks: nations, nationalities and (sometimes) ethnic groups. Nations were the six dominant nations which “constituted” Yugoslavia and were concentrated on Yugoslav territory, including Serbs, Croats, Slovenes, Macedonians,

Montenegrins and from the 1960s also Muslims. Nationalities on the other hand were communities, which already had an established nation state outside of Yugoslavia. This category included Albanians and Hungarians. Finally, the term ethnic group was at times applied to those groups which lacked a kin state, Roma in particular. Due to their overall small number, minority issues never figured prominently in Bosnian political life.

As discussed earlier, the agrarian question in Bosnia was not addressed until the ascent to power of the Communist Party. Generally, the new leadership sought to address the pre-war inequalities in Yugoslavia and Bosnia. As a result of the Communist character of the regime, all the main industries and companies were nationalized. Some attempts were made immediately following Tito's break with Stalin to collectivize farms, but this project was quickly abandoned. During the Communist period, the agricultural sector was generally neglected in favour of the development of industries. During the post-war decades employment in agriculture dropped sharply, with the agricultural population in Yugoslavia dropping by more than ten percent in a decade (Allcock 1999: 125–144).

Despite the commitment to a greater degree of equality in the population, critics noted the ascendancy of a "new class", as described by the dissident Milovan Dilas (Djilas 1957).¹⁷ While the privileges of the Communist elite were a common feature throughout the existence of Yugoslavia, they only emerged as salient in the 1980s when the press became more liberal and the economic crisis led to a decrease in the quality of life for many citizens. In particular, the League of Communists in Bosnia was shaken by a number of scandals, the best known being over the collapse of the Agrokomerc company, which had issued false promissory notes with the protection of the party leadership, and a scandal over the construction of holiday houses for leading party functionaries with materials and resources aimed at the construction of a hotel in Neum, the only Hercegovinian town on the Adriatic (Andjelić 2003: 56–75). Despite some inequalities in the distribution of offices in Bosnia and in Yugoslavia, as detailed above, these inequalities based on the dominance of one party did not translate into ethnic tensions or coincide with inequalities along national lines. While there were attempts in Bosnia to suggest a national dimension to such privileges and abuse of office, they did not resonate in Bosnia before the 1990s. In a well-known case, Vojislav Šešelj, later to become the leader of the extreme nationalist Serb Radical Party, revealed a case of plagiarism in the University of

Sarajevo by a student under the wing of a leading Muslim party leader, which in part triggered his arrest. Šešelj subsequently accused the Bosnian leadership, Muslims in particular, of abuse of office and cronyism. After a prison sentence in Bosnia, Šešelj moved to Serbia where he later began a political career as president of the Serb Radical Party (Bieber 2005). Despite later attempts to explain the dispute in ethnic terms, it was only in 1989 that conflicts began to take explicit ethnic overtones in Bosnia.

The death of Tito in 1980 was a watershed for Yugoslavia and Bosnia. The personality of Tito had dominated post-war Yugoslavia. In the first decades, all key decisions depended on Tito, while in later years, his role could be best described as the ultimate arbiter between the republics. After his death, a Yugoslav presidency, in which Bosnia was equally represented with other republics and provinces, took over. As Yugoslavia had been substantially decentralized in the 1974 constitution, the presidency and other federal institutions were relatively weak. Instead, the republics became the main locus of power. The influence of the republics, however, differed greatly on the basis of their economic power in the federation. Bosnia, together with Montenegro, Kosovo and Macedonia belonged to the lesser developed republics and provinces and was a net recipient of the Federal Fund for Underdeveloped Regions (FADURK) (Ramet 1992: 166–174).

The dysfunctional structure of the state and the inability to tackle the economic crisis related to considerable foreign debts brought Yugoslavia into an increasing crisis during the 1980s (Woodward 1995: 47–81). This crisis was accentuated by a rise of nationalism in Kosovo among Serbs and Albanians over the status of this province. The nationalist mobilization in Serbia was triggered by both the apparent mistreatment of Serbs in Kosovo and the perception that the influence and strength of Serbia was deliberately curtailed to the advantage of other republics. The League of Communists in Serbia under the leadership of Slobodan Milošević instrumentalized this nationalist movement. Originally, the rising nationalism in Serbia had only limited impact on Bosnia, as it was predominantly preoccupied with ending the Serb emigration from Kosovo and reducing the autonomy of the two provinces, Vojvodina and Kosovo. By 1988 organized mass rallies took place across Yugoslavia, in particular in Serbia and Montenegro with the aim of shoring up support for Milošević's regime in Serbia and toppling the leadership in other provinces and republics. While such a policy was not successful in Bosnia, it resulted in pro-Milošević forces taking control of Montenegro, Vojvodina and Kosovo by 1989

(Bieber 2005). Nevertheless, nationalism gained ground also in Bosnia during the late 1980s. While previously, nationalist discourse had belonged to the political margins, it entered mainstream political discourse. Within the League of Communists, especially at the local level, national identity began commanding greater loyalty than Communist ideology. Beyond the party, incidents indicate that the nationalist mobilization in Serbia had a profound impact on nationalism in Bosnia (Andjelić 2003: 100–122).

c) After the fall of Communism

The first multiparty elections in Bosnia

The collapse of Communist regimes around Yugoslavia at first had only a limited impact on the dominant role of the League of Communists in the country. The differing visions over the future of the state between the different branches in the republics and provinces provided for the dynamic, which led to the first multi-party elections in the republics of Yugoslavia since before World War Two. The last congress of the League of Communists of Yugoslavia in early 1990 experienced a split, with the Slovene and Croat delegates walking out. Subsequently, these two republics scheduled the first genuine multi-party elections in Yugoslavia since the 1920s.¹⁸ Elections in the Western republics, as well as the wave of democratization in Eastern Europe, put pressure on the League of Communists in Bosnia to follow suit and organize elections. These multi-party elections in Bosnia took place in November and December 1990. At first, the electoral law of 1990 banned political parties organized on ethnic lines, a decision that was widely supported in opinion polls at the time. Only a decision by the constitutional court overturned the rule and allowed for the registration of national parties (Arnautović 1996: 11).

Five parties dominated the nascent political scene in Bosnia. The League of Communists hastily added Socialist Democratic Party to its name. The party had lost considerable support due to the aforementioned scandals that had rocked Bosnia in the late 1980s. After repressive policies in the early 1980s, it had become a weak force that was unable to effectively govern Bosnia during the last year before the elections. The second explicitly multiethnic party was the Alliance of Yugoslav Reform Forces in Bosnia (*Savez reformiskih snaga Jugoslavije za BiH*, SRSJ), which was founded by the last Yugoslav Prime Minister, Ante Marković, who was of Bosnian Croat origin. Marković initiated far-reaching economic reforms after taking office in 1988 and brought

down inflation and increased living standards in Yugoslavia. These policies made him widely popular across the country and a target of much hostility by the emerging republican political forces. His decision to form a political party came relatively late and thus he could not participate in the elections in Slovenia and Croatia. The remaining three key parties were explicitly mono-ethnic in their profile: the first one to emerge was the Party of Democratic Action (*Stranka demokratske akcije*, SDA), catering to the Muslim population. It was followed by the Serb Democratic Party (*Srpska demokratska stranka*, SDS) and the Croat Democratic Community (*Hrvatska demokratska zajednica*, HDZ). The Bosnian HDZ was originally nothing more than a branch of the HDZ under the leadership of Franjo Tuđman. The SDS had also already been established in Croatia with the support of leading Serb intellectuals and the Milošević regime in Serbia. The SDA has Bosnian origins; later it also established branches in Sandžak, Kosovo and Macedonia. While all three parties catered to only one of the three nations, they originally represented some degree of intra-group pluralism, usually marked by a tension between moderate and more radical nationalists. In fact, they could be considered to be national movements, rather than parties advocating a particular policy. Also the leadership of the three contained a group of very heterogeneous individuals. In the case of the SDA this included the former dissident and devout Muslim, Alija Izetbegović, who was to dominate the party until his death in 2003, the former Communist “entrepreneur” at the center of the Agrokomerc scandal Fikret Abdić, and the secular émigré Adil Zulfikarpašić.

First, the Party of Democratic Action split prior to the election with the creation of the more moderate, yet marginal, Muslim Bosniak Organization (*Muslimanska Bošnjačka organizacija*, MBO). The moderate wings of both HDZ and SDS were marginalized shortly before or during the early stages of the conflict. The three parties were originally not hostile towards each other – the party leaderships were guests at their respective founding congresses – but jointly attacked the multiethnic parties, in particular the League of Communists. Although the original political platforms of the three parties were diametrically opposed to each other – the SDS advocated a centralized Yugoslavia, the HDZ promoted independence, and the SDA oscillated in-between – the possibility of an armed conflict between the parties only emerged after their electoral victory.

The system chosen for the first election drew on the Communist-era tradition of the “ethnic key”, according to which all three nations would be equitably represented in government and party posts.

Nationalist polarization occurred in the run-up to the elections. The presidency, in existence since the 1970s, was now directly elected with seven members: two Muslims, Croats and Serbs each and one seat reserved for others, which would include both minorities and Yugoslavs. Unlike in the post-war electoral system (see Chapter 5), all members of the electorate had the opportunity to vote for two members of each constituent people and one for the category of Yugoslavs and others, i.e. each voter had effectively seven votes for the presidency. The two members with the most votes from each nation would then be elected. The parliament had a mixed electoral system with a proportional voting system for the 130 members of the Chamber of Citizens in seven multi-member districts and a two round run-off system in the 110-member Chamber of Municipalities. The electoral districts followed the municipal boundaries. For the parliament, a rule was introduced which required it to be representative of the ethnic distribution of the population according to the 1981 census, by a 15 percent margin (Association of Election Officials BiH 2003: 9; Arnautović 1996: 20–22).

During the pre-election campaign, the opinion polls indicated a victory for the multiethnic parties. Only the SDA occasionally ranked ahead of one of the two major multiethnic parties. Through the relatively short period given for the establishment of parties – only a few months – the popularity of the national parties increased steadily, yet there was no indication of a resounding victory (Arnautović 1996: 47–66). To the surprise of many observers the three national parties won the elections at all levels, i.e. in the parliamentary, presidential and local elections taking place simultaneously. Of the seven-member presidency,¹⁹ the three national parties gained each of the two seats for the three nations. In addition, the SDA won the seat reserved for “others” in the presidency. This seat, which was intended to offer representation for minorities or others who would not identify with the three dominant nations, was thus taken by a hard-line Muslim party activist, demonstrating the failure of this feature of the presidency. Not only were other communities excluded from the presidency, the parity of the three nations intended in the presidency was circumvented by the national parties. In the parliamentary elections, the three national parties gained 71.1 percent of the vote (SDA: 30.4%, SDS: 25.2%, HDZ: 15.5%) and an even larger share of the seats in parliament, controlling an average of 84.2 percent (SDA: 35.85%, SDS: 30%, HDZ: 18.35%) of the seats in both chambers of parliament.²⁰

Table 2.7 Electoral Results 1990 and Census 1991 in Comparison²¹

	Muslim	Serbs	Croats	Yugoslavs and Others
<i>Election Results</i> ²²	32.6	26.1	16.0	21.2
<i>Deputies</i>	41.25	35.41	20.41	2.93
<i>Census</i>	43.7	31.4	17.3	4.0

The elections of 1990 resulted in a composition of parliament that closely mirrored the population distribution both in terms of the ethnicity of the deputies and their party affiliation (see Table 2.7). The surprising victory of the national parties has to be explained in the Yugoslav and the domestic Bosnian context. First, the electoral system generally favoured the national parties by giving rural communes greater representation in parliament than the urban centers where support for multiethnic parties was greater (Burg and Shoup 1999: 49–51). During the duration of the electoral campaign, the national parties mutually supported each other, which facilitated their success.²³ Furthermore, the short time available for the establishment of a multi-party system made popular support for political parties prior to elections very dynamic and unpredictable. While the electorate did not vote for extremist national programmes, the electoral dynamics favored national parties over groupings with a multiethnic reformist or communist platform (Arnautović 1996: 113). short prep-time; little time to activate new linkages

As the reformist SRSJ was not able to formulate an anti-Communist platform, nearly the entire anti-Communist vote went to the three national parties. The victory of the nationalist HDZ in the Croatian election, as well as the increase in tensions between the republics furthered a climate from which national parties benefited most. Finally, and possibly most importantly, the existence of the three national parties running for elections resulted in its own particular dynamics, which has been replayed in the post-War elections. For fear of not being adequately represented as members of a group, while other groups would have adequate representation, it has been suggested that a large number of citizens voted for national parties. Cross-cutting parties were seen as being preferable in the pre-election period, but not viewed as offering sufficient protection in case the national party of another community wins (Arnautović 1996: 13; Burg and Shoup 1999: 57).

In analysing the election results for the presidency, there is evidence that cross-ethnic voting took place without benefiting the moderate candidates. As voters were able to vote for candidates from all four

Table 2.8 Results of the Elections for Presidency (elected candidates bold)²⁴

Muslim Candidate			Serb Candidate		
	No. of votes	%		No. of votes	%
Fikret Abdić (SDA)	1,045,539	33.25	Biljana Plavšić (SDS)	573,812	18.24
Alija Izetbegović (SDA)	879,266	27.96	Nikola Koljević (SDS)	556,218	17.68
Nijaz Duraković (SK-SDP)	558,263	17.75	Nenad Kecmanović (SRSJ)	500,783	15.92
Croat Candidate			Candidate for Others		
	No. of votes	%		No. of votes	%
Stjepan Kljuić (HDZ)	473,002	15.04	Ejup Ganić (SDA)	709,691	22.57
Franjo Boras (HDZ)	416,629	13.25	Ivan Čerešnjev (SDS)	362,681	11.53
Ivo Komšić (SK-SDP)	353,707	11.24	Josip Pejaković (SRSJ)	317,978	10.11

lists, moderation could have been an outcome considering the ability, for example, of Serb voters to determine the Muslim members of the presidency.

As Table 2.8 shows, the candidates from national parties gained more votes than the share of the population of the groups,²⁵ suggesting **cross-ethnic support for the nationalist candidates**. This has been due to the **pre-election co-operation** of the national parties and calls for mutual support. The cross-community support among the national parties was crucial in **securing the victory over the candidates of the League of Communists and the Reformists of Marković**. While the three national parties did form coalitions after the war, it has become unthinkable since the war that their electorates would vote for other national parties.

Failed power-sharing

The victorious national parties continued their pre-election coalition by establishing a power-sharing arrangement to supplement the already

existing ethnic key in the presidency. Mirroring the Lebanese system of power-sharing,²⁶ one of the SDA members of the presidency, Alija Izetbegović, became president of the presidency, the HDZ candidate Jure Pelivan was elected prime minister and Momčilo Krajišnik of the SDS was named president of parliament. The coalition between the three national parties, however, proved to be inherently unstable due to the diametrically opposed visions of Bosnia and its place in Yugoslavia. Additionally, the Serb Democratic Party was preoccupied with strengthening its rule over municipalities, which it considered to be “Serb”, seeking to establish self-rule and eventually secession (Burg and Shoup 1999: 53–56). The coalition was unable to agree on minimal legal, political or economic reforms in Bosnia. Discussions took place in Bosnia on restructuring the political system to account for the nations and to establish a territorial solution through decentralization, which threw up the difficulty of Bosnia having only few homogeneous territories. An alternative was enhanced power-sharing at the center, through the establishment of a chamber of nations in the parliament and other institutions. None of the discussions, however, advanced to the level of a constitutional debate (Burg and Shoup 1999: 59). The new coalition was thus unable to either draft a new constitution, as had been the case in most other Yugoslavia republics, or substantially amend the existing one. Merely the word “socialist” was struck from the name “Socialist Republic of Bosnia-Herzegovina.” Already before the election, in a new preamble, Bosnia was defined as “a democratic sovereign state of equal citizens, the nations of Bosnia and Herzegovina – Muslims, Serbs, Croats, and the members of other nations and nationalities living within it” (Quoted from Hayden 1996: 27).

While it is doubtful that a power-sharing system could have been successfully established in Bosnia, considering the policies of the three national parties, there is little doubt that the simultaneous dissolution of Yugoslavia furthered the failure of the pre-war power-sharing experiment. The Serb Democratic Party argued that Serbs as a nation would have the right to determine whether to remain in Yugoslavia, the SDA and HDZ on the other hand maintained that it was for the republics to decide.

Meanwhile, the conflict between the republics had escalated, threatening to result in war. A series of meetings of the presidents of the Yugoslav republics in the spring of 1991 did not yield a compromise to salvage Yugoslavia. While Slovenia and Croatia increasingly demanded nothing less than full independence with some weak links to the rest of Yugoslavia, Serbia and Montenegro argued for a strength-

ened federation. After a joint Bosnian-Macedonian proposal to salvage a loosely organized Yugoslavia failed to gather the support of others, Slovenia and Croatia declared their independence in June 1991. What followed was first the brief war in Slovenia, which ended with a cease-fire and the de facto recognition of Slovenia's independence. The war in Croatia, close to Bosnia, however escalated in the second half of 1991 until Serb forces and the increasingly allied Yugoslav People's Army controlled a third of Croatia. The severity of the war in Croatia and the conflictual allegiances among the government national parties in Bosnia effectively ended the status quo (Shoup 1994: 160–163).

The coalition eventually broke down during a crucial debate on the future status of Bosnia in Yugoslavia in October 1991 in the Bosnian parliament. While both HDZ and SDA pushed for independence, SDS vehemently opposed any move, which would separate Bosnia from Serbia. The SDS walked out of the session with the remaining deputies subsequently voting for the proposal to declare Bosnian sovereignty, a step below full independence (Skupština RBiH 1996: 101–106).²⁷ Already in September 1991, the SDS began forming so-called Serb Autonomous Areas in regions with a high Serb population concentration. This move followed a similar pattern as earlier in Croatia where the SDS had proclaimed autonomous regions, which were expanded and consolidated in the war between July 1991 and January 1992 as part of the self-declared Republic of Serb Krajina (*Republika Srpska Krajina*, RSK). In areas controlled by the HDZ, the central government equally yielded only little influence. Thus, well before the beginning of the war, the Bosnian state had effectively ceased to exist. In HDZ and SDS controlled areas, two mono-ethnic regions emerged, which formed the core of the wartime statelets. By March 1992, the Serb Republic of Bosnia and Herzegovina²⁸ was formally declared.

In a parliamentary debate in January 1992, a referendum on independence was discussed. While the SDS insisted on the transformation of Bosnia into a state of Muslims, Serbs and Croats with substantial territorial autonomy, the SDA and most of the HDZ favoured first a referendum, to be followed by discussions on the structure of Bosnia. Despite attempts at finding a compromise, the dispute remained unresolved (Skupština RBiH 1996: 110–111; Burg and Shoup 1999: 105–107). The referendum on independence on 29 February–1 March 1992 fulfilled the key European Community (EC) criteria for international recognition and followed the first EC sponsored negotiations on the future of Bosnia. The internationalization of the conflict had thus begun even before the international recognition of Bosnia.

According to the data provided by the Republic Election Commission (Službeni List 1992), out of a total of 3,253,847 registered voters, 2,073,568 citizens, i.e. 64.31 percent voted in the referendum. Out of the total number of valid votes, 2,069,932 voters, i.e. 99.44 percent, voted "in favour" and 6,037, i.e. 0.29 percent, voted "against" independence. The HDZ and the SDA called for citizens to vote for independence, although the HDZ had some reservations about the question posted in the ballot. As the SDS had called for a boycott and prevented Serbs in areas under their control from participating, the turnout and support reflected the 61 percent of the population that declared themselves as Croats and Bosniaks in the 1991 census. While some Bosniaks and Croats also did not participate and a number of Serbs did, the polarization of the population along national lines is clearly reflected in the outcome of the referendum. The first barricades of SDS followers went up across Sarajevo on the day after the referendum. Following the international recognition of Bosnia on 6 April 1992, the war in Bosnia began to its full extent.

The war

In this book, it is not possible to discuss the three and a half year war in any detail. Here, we shall just highlight the main developments. The war in Bosnia is the sum of a number of overlapping and inter-linked conflicts. Even before the beginning of the war in Sarajevo, parts of Bosnia, especially in Southeastern Herzegovina, bordering on Dubrovnik and Montenegro and in Northern Bosnia, bordering on the Slavonian plains in Croatia, had been affected by the war in Croatia. Small scale fighting took place there between Serb forces and the Yugoslav army on one side and Croat forces on the other. The war escalated in early April 1992, coinciding with Bosnia's declaration of independence. Sarajevo was subsequently besieged with brief respites until late 1995 by Bosnian Serb forces, which had been largely constituted by army officials and equipment of the JNA. At the same time, the Bosnian Serb forces engaged in a war of conquest in Eastern Bosnia and Northwestern Bosnia, bringing a large part of Bosnian territory under their control and engaging in "ethnic cleansing" of these territories during and after the conquest through mass murder, expulsion and destruction of property of Muslims and Croats.

The alliance between Bosnian Muslims and Croats proved fragile, as the Muslim SDA sought to maintain a centralized republic and the Croat HDZ, with the support of the Croatian government, supported the secession of predominantly Croat-inhabited Western Herzegovina. As

early as May 1992 Croat and Serb political leaders engaged in discussions over the partition of Bosnia. By early 1993, a new conflict erupted between Croat and Muslim forces in Herzegovina especially in and around Mostar, and in parts of central Bosnia where Croat enclaves existed. Under intense American pressure, this war came to an end in early 1994 through the Washington agreement, which saw the creation of a Federation in Bosniak-Croat territories and a joint strategy against the Bosnian Serb army.

The overall conflict came to an end in 1995 after Croat forces reconquered most Serb-held territories in Croatia and subsequently, together with the Bosnian army, captured large areas held by the Bosnian Serb army. At the same time, NATO had engaged in bombing of Bosnian Serb army positions in response to a massacre in Sarajevo and under the impression of the mass murder of Muslim men in the eastern Bosnian town of Srebrenica after the town's conquest in July 1995.

This reversal of fortunes of the war facilitated a cease-fire and the subsequent peace negotiations in the US air force base in Dayton (Ohio) in November 1995, leading to the General Framework Agreement for Peace, also known as "Dayton Peace Agreement". The agreement, negotiated between Slobodan Milošević, the president of Serbia, Franjo Tuđman, the president of Croatia, and Alija Izetbegović, president of the presidency of Bosnia, was signed in Paris on 14 December 1995. According to the Dayton Peace Agreement, an international peacekeeping force (IFOR) and international civilian mission would supervise the implementation of the agreement. Already before the beginning of the conflict in March 1992, international organizations – first EC and UN, later the contact group composed of the major international actors – had attempted to find a negotiated settlement to the conflict. The various peace plans put forth during the conflict failed to gather the support of all parties, especially the Bosnian Serb side, which was reluctant to surrender either territories or power accumulated during the conflict.²⁹

Since the beginning of the conflict, a wealth of scholarly literature has been published seeking to explain the reasons for the conflict, both in terms of the dynamics of the war and regarding the responsibility for the conflict. The interpretation advanced mostly in literature supporting the Bosnian government and originating from Bosniaks, explained the conflict as an aggression by neighbouring countries (Yugoslavia and later Croatia) against Bosnia. In spite of the participation of Bosnian Serbs and Croats, the logistical support and

the formulation of the nationalist concepts underlying the war have been attributed to the political (and intellectual) elites in Croatia and Serbia. Among Croat and Serb nationalist writings on the war, the predominant explanation has been that the conflict was a civil war. This is both founded in the larger contextualization of the conflict in former Yugoslavia, rather than Bosnia alone, and frequently seeks to suggest equality in responsibility.

As Sumantra Bose details, there are a number of aspects, which would point to conceptualizing the conflict as a civil war, while rejecting the apologist explanation outlined above. The war in Bosnia was closely linked with the conflict in Croatia and with the political motives of the elite in Serbia, making it hardly a conflict that could be localized to Bosnia alone. Whereas the beginning of the conflict was considerably orchestrated by Yugoslav and Serbian force – with the help of the Bosnian Serb political elite – the course of the war led to a considerable degree of communal violence perpetrated by Bosnian citizens against other Bosnian citizens (Bose 2002: 18–22).

3

Cleavages and Inequalities in Post-War Bosnia

a) Ethnic cleavages in post-war Bosnia

By the end of the war, the population of Bosnia was largely concentrated in three ethnically homogeneous territories. While some areas of diversity remained, especially in the government controlled cities of Sarajevo and Tuzla, the country had been transformed from being highly intermixed in 1991 to nearly full segregation of the three nations. Furthermore, some 1.2 million Bosnians were refugees in neighbouring countries and around the world and 1.1 million Bosnians were displaced within Bosnia. Thus more than half of the population had left their pre-war home in the course of the conflict. Although the number of dead is contested and no firm statistics exist, the total is believed to be between 100,000 and 300,000 (see Table 3.1). Despite these dramatic population shifts, the overall distribution between Bosniaks, Serbs and Croats has remained approximately the same, bearing in mind the absence of reliable statistics on the number of inhabitants of post-war Bosnia or the demographic balance.

Table 3.1 Estimated Population Changes as a Result of the War³⁰

	1991		1995 (estimated)		Dead or Missing ³¹		Refugees ³²	
<i>Muslims</i>	1,903,000	43.5%	1,275,000	44%	140,800	50.5%	460,000	37%
<i>Serbs</i>	1,366,000	31.2%	987,000	34%	97,300	34.9%	330,000	26%
<i>Croats</i>	761,000	17.4%	468,000	16%	28,400	10.2%	290,000	23%
<i>Yugoslavs</i>	243,000	5.6%	116,000	4%	N/A	N/A	129,000	10%
<i>Others</i>	104,000	2.3%	52,000	2%	12,300	4.4%	50,000	4%
<i>Total</i>	4,377,000		2,898,000		278,800		1,259,000	



Map 3.1 Ethnic Majorities Census, 1999, est.
Source: UNHCR

While the Dayton Peace Accords stipulated freedom of movement (DPA 1995: **Annex 3**, Art. 1 (1)) within Bosnia and the return of refugees (DPA 1995: **Annex 7**), the first year after the end of the conflict was marked by minimal return of refugees to areas where they now constituted a minority, and movement across the Inter-Entity Boundary Line (IEBL) was obstructed by checkpoints and other obstacles. In fact, the homogenization of the population continued even after the end of the war. **In March 1996, some Serb-held parts of Sarajevo were returned to the Federation, in what constituted the only major readjustment of the boundary between the entities after the end**

of the conflict. The newly established Office of the High Representative (OHR) sought to negotiate an orderly transfer of the districts to the control of the city of Sarajevo in the Federation. The Serb leadership in Pale and in the districts first sought to prevent the transfer and once it became inevitable exerted pressure on the Serb inhabitants to leave the area. A number of ambivalent statements by the Bosnian government did not reassure the inhabitants either. During the handover, some 90 percent of the 100,000 Serbs living in the areas left or were forced to leave (Sell 2000: 179–202). As a result, “the flight of Serbs was also a logical consequence of Dayton’s separation of Bosnia into distinct ethnic territories” (Sell 2000: 180). Similarly, small readjustments occurred along the IEBL to ensure that villages and settlements would be “on the right side” of the boundary. The first period in the aftermath of the war can actually be considered the consolidation of the wartime homogenization.

Communication between groups across the formal and informal borders within Bosnia was difficult in the first post-war years. The media for Bosniaks, Croats and Serbs had been entirely separated, with no all-Bosnian media existing at the end of the war.

As victims of “ethnic cleansing”, refugees remained stranded around the world or in different parts of the country after the conclusion of the peace accords. The recognition of the monoethnic areas of control in the form of entities and cantons appears to consolidate the divisions and render the return of refugees difficult, despite the commitment to refugee return at Dayton. Return was difficult for all refugees in the absence of employment prospects and being confronted with frequent resentment by citizens who stayed behind. Additionally, a large number of the refugees and displaced were now a minority in their pre-war place of residence. As such, they did not enjoy equal rights as majorities and were subject to discrimination and physical attacks. In the first post-war years, either the destruction of property or attacks against returnees was a common feature throughout Bosnia. Often, nationalist leaders discouraged and at times actively prevented the return of displaced people from their own group to consolidate the ethnic homogenization of the territories. With the partial refugee return, which will be discussed in Chapter 4 in greater detail, some areas regained some degree of diversity, but most of Bosnia remains ethnically homogeneous with only small minorities from the other two nations.

In the absence of a population census since 1991, the current number of inhabitants and their distribution according to ethnic

Table 3.2 The Population Distribution in Bosnia, 2002 (est.)³³

	Federation		RS	
	<i>in percent</i>	<i>in numbers</i>	<i>in percent</i>	<i>in numbers</i>
<i>Bosniaks</i>	73	1,900,000	9.5	100,000
<i>Serbs</i>	7.6	200,000	80.9	850,000
<i>Croats</i>	16.5	430,000	4.8	50,000
<i>Others</i>	2.7	70,000	4.8	50,000
<i>Total</i>		2,600,000		1,050,000

groups remain estimates, with limited reliability. The population estimate in Table 3.2 indicates that both entities have strong majorities and, despite some returns (see Chapter 6a), only smaller numbers of other groups. In the case of the Serb Republic, Serbs constitute more than 80 percent of the population, and in the Federation, Bosniaks alone make up more than 70 percent of the total number of inhabitants. These numbers constitute an increase in diversity to the immediate post-war figures, when in the Serb Republic more than 90 percent were Serbs. In comparison to the pre-war figures, the degree of diversity remains substantially lower. In 1991, the two dominant nations (Bosniaks and Croats) constituted 74.22 percent of the population of the territory of the post-war Federation, whereas today, they constitute around 90 percent. Similarly in the Serb Republic, Serbs only made up 54.3 percent of its territory in 1991, more than 35 percent less than today.

At the end of the war, there was no municipality in either entity where a non-dominant group (Serbs in the Federation, Bosniaks in Croat-dominated cantons and the Serb Republic, Croats in Bosniak-dominated cantons and the Serb Republic) constituted a majority. This has changed only in a few cases since the end of the war, most notably in the municipalities of Drvar and Bosansko Grahovo in the Croat dominated West Bosnia canton, where most Serbs have returned and again constitute the majority they held before the war.³⁴ Ten years after the end of the war, parts of Bosnia have become again more diverse than they were in 1996, but the overall ethnic distribution as a result of the war remains largely unchanged.

Freedom of movement across the territory of Bosnia has been re-established, although reprisals against refugees returning to their pre-war place of residence continues sporadically even eight years after the end of the war. Since the late 1990s, the degree of hostility towards

returnees has decreased. With the resulting increase in refugee returns, especially “minority returns”, i.e. refugees and internally displaced people (IDPs) returning to areas where they constitute a minority, the absolute numerical dominance by one nation in the immediate post-war era has been reduced. As the right to return has been recognized in the Dayton Peace Accords, the return process has been a key aspect of post-war Bosnia. The population distribution after the war was thus conceived as being temporary, pending returns. As will be discussed later, the numbers of returnees have only partly eroded the immediate post-war ethnic dominance.³⁵

Smaller communities, other than the dominant three nations, have been much neglected both in the peace agreement and in Bosnian post-war politics. While small in size and often assimilated into the respective majority, citizens belonging to these groups have been often excluded from the political system, which has been most concerned with establishing a balance between the larger nations. The peace agreement for Bosnia, signed by the Bosnian, Croatian and Serbian governments under international auspices in 1995, has sought to provide for broad human rights guarantees through specific human rights instruments (DPA 1995: Annex 6) and the accession of the country to all major international human rights conventions. At the same time, the implementation of human rights has been lagging behind. Although Bosnia is party to the few existing international minority rights instruments, such as the Framework Convention for the Protection of National Minorities of the Council of Europe, minority rights have little space in the Bosnian constitution(s). In fact, most group rights have been enshrined through the empowerment of the three nations on different territories within the state. Minorities (Roma, etc.) within these territories, members of the three nations where they constitute a minority and citizens who do not seek to identify themselves along national lines are de facto deprived of minority rights, such as educational rights and significant aspects of political participation.

b) Socio-economic inequalities

During the communist period, Bosnia was a relatively egalitarian society without a high degree of inequalities. Within Yugoslavia, however, republics had very different degrees of development. While Slovenia, Croatia and Vojvodina belonged to the more developed parts of the country, Bosnia, together with Kosovo, Montenegro and Macedonia

belonged to the periphery. Wages in Bosnia were 16.3 percent lower than the Yugoslav average, promoting migration to neighbouring republics throughout the communist era (Burg 1997: 123). In the 1980s, these migratory trends were interpreted through the lens of rising nationalism in former Yugoslavia, particularly in Serbia, but the prime motivator was the economy. The economic decline in Yugoslavia in the 1980s affected Bosnia particularly, but was insignificant if compared to the effects the war had on the country. The war resulted in the overall impoverishment of the society, through the destruction of homes, by the large number of refugees and the destruction of most of the country's industries and economic base. By late 2002, the per-capita GDP of Bosnia still stood at only half its pre-war levels, despite seven years of massive international aid (Tomaš 2004: 102). At the same time, the war led to the enrichment of a small segment of war-profiteers, often closely linked with paramilitary formations and authorities actively involved in the war. The new political elite, which had replaced the Communist elite after the first elections, largely emulated the control over state resources of the previous regime and incorporated parts of the old nomenclature into the new system. The consequence has been a substantial increase in economic and social inequalities in post-war Bosnia.

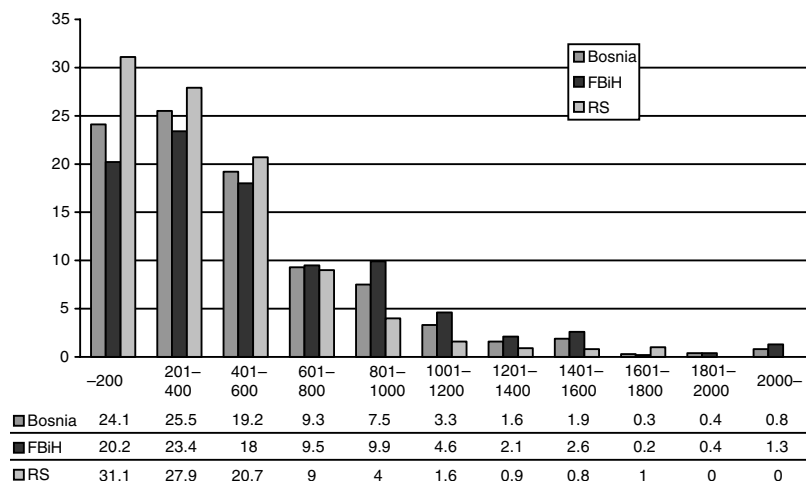
While the causes of the war in Bosnia remain contested, economic grievances played an insignificant role. Some have highlighted the importance of greed and enrichment as a key motivator in modern wars in general (Collier et al. 2003: 63–64) and in Bosnia in particular (Kaldor 1999: 31–68). In other regions issues over exploitation and relative deprivation had greater resonance, but even here they could not suffice as the primary explanation of the conflicts. With the beginning of the wars in former Yugoslavia, opportunities arose for the rapid emergence of a new economic elite, which mostly relied on criminal activities or the grey economy for large profit margins. The primary sources of the new war economy in Bosnia and elsewhere in the region were: a) trade with goods plundered during the campaign of ethnic cleansing; b) smuggling on the basis of war-time isolation of parts of Bosnia and the sanction related isolation of Yugoslavia; c) weapon trading; and d) the control of public services and companies (Bougarel 1996: 121–138; Ehrke 2003: 11). The end of the conflict also put an end to a number of these activities. Neither was there a continued demand for weapons in the region, nor were there high profit margins in the sale of gas in Serbia or cigarettes in Sarajevo under siege. The existing wartime networks, often in conjunction with formal and

informal sub-state ethnonationalist groups, continued to operate. The weakness and fragmentation of state authority and the massive international presence in Bosnia provided for numerous opportunities in Bosnia and other countries of the region for the continued profits of criminal networks, in particular the smuggling of drugs and people (Mappes-Niediek 2003). Businessmen with close ties to the national parties in Bosnia have furthermore taken control of large parts of pre-war companies that had survived the war or held monopolies on emerging business opportunities (ICG 2001b: 26).

In the post-war period, substantial resources for the reconstruction of the country were made available by the international donor community. At the first donor conferences \$5.1 billion were pledged for reconstruction. On average, \$1,200 were made available per capita, with more than twice the sum spent in areas particularly affected by the war, such as Mostar. This resulted in significant progress in the reconstruction of the country, in particular in regard to infrastructure and housing (McMahon 2002: 20). This massive investment could not ameliorate the dire economic situation caused by the triple transition: transition from war to peace, the transition from the self-management system to a market economy and from Yugoslavia to independence (See Bojičić-Dželilović et al. 2003: 13–17).

The lack of foreign investment and the massive destruction of the economy through the war has resulted in persistently low wages and high unemployment. In 2003, 62.2 percent of the population earn less than 500 KM (225 Euros, 1 Euro = 1.95 KM) per month. The inequality in the distribution of household incomes can be seen in Graph 3.1. While nearly 40 percent of the households have less than 300 KM at their disposal, only 0.8 percent have more than 2000 KM available. The weakness of the middle class stands in stark contrast to the pre-war period, when wealth was distributed more evenly. The impoverishment of the pre-war middle class in Bosnia has thus dramatically changed the social structure of society and caused the emergence of a stark social differentiation.

The inequality in income in Bosnia is higher than in most other countries in the region, possibly a particular feature of both the war and the substantial, yet uneven, distribution of international aid afterwards (Bisognia and Chong 2002: 320–322). Particularly noticeable is not only the high degree of inequality in the income distribution, but also the differences between the Serb Republic and the Federation. While in the RS 12.8 percent have to survive on less than 100 KM per month, this share is less than half in the Federation (5.8%). Generally speaking, average gross wages in both entities have been differing,



Graph 3.1 Household Income (1/2003 in KM)³⁶

albeit at a smaller margin. In 1997, the average gross wage in the RS stood at slightly more than half (51.7%) of that in the Federation. By 2002 this difference had decreased to nearly three quarters (71.9%) (Tomaš 2004: 102).

Mirroring this trend, the percentage of the households with an average income of over 1000 KM in the Federation is also substantially higher than in the RS. This discrepancy can also be traced through other indicators. In the Federation, the average salary exceeded the “consumer basket” or basic needs (511 KM: 460 KM), in the Serb Republic the opposite is the case (372 KM: 464 KM). This means that the average salary is insufficient to cover basic needs in the RS, indicating not only an absolute, but also a relative discrepancy between living standards in the entities (UNDP 2003: 20). As the geographic division in the entities translates into ethnic divisions, there can be little surprise at the fact that income and wealth is distributed differently among the three main nations in Bosnia. The data available suggest that Serb households are worse off, followed by Bosniak and finally Croat households (see Table 3.3). While 72.2 percent of Serb and 64.6 percent of Bosniak households have less than 500 KM available, only 19.8 percent of Croat households have to survive on such a low income (UNDP 2003: 20).

Another prominent feature of Bosnia is the high number of unemployed. In the absence of reliable data, estimates of the percentage of

Table 3.3 Average Gross Wages, 1998–2002 in KM³⁷

In KM	1998	1999	2000	2001	2002
<i>Federation</i>	507	551	626	652	700
<i>Serb Republic</i>	256	314	387	444	525
<i>Total</i>	454	503	541	652	655

unemployed varies greatly. According to the strictest definition, some 16 percent of the population were unemployed in 2001, while some estimates indicated a share exceeding 30 percent.³⁸ The ratio of those unemployed to those employed varies greatly across the Federation. The **most affected areas** are cities such as **Zenica and Tuzla**, which used to have a **strong industrial base. In Tuzla, for example, the number of those unemployed exceeds those employed;** in most parts of the Federation, the number of those employed only slightly exceeds those who are out of work. Only in Sarajevo and in the Herzegovinian cantons, has the number of employed substantially exceeded the unemployed (see Table 3.4).

Table 3.4 Employment, Unemployment Figures and Average Wages FBiH, September 2003³⁹

	No. of Employed	No. of Unemployed	Average Wage in KM
Una-Sana Canton	31,495	30,112	505.69
Posavina Canton	5,776	5,295	510.94
Tuzla Canton	69,034	75,461	473.17
Zenica-Doboj Canton	67,635	59,763	414.22
Bosnian Podrinja Canton	4,069	3,950	471.12
Centralbosnian Canton	35,078	31,373	433.67
Herzegovina-Neretva Canton	41,624	23,650	618.58
Western Herzegovina Canton	13,453	6,380	471.69
Sarajevo Canton	86,357	59,331	652.77
West Bosnia Canton	10,021	6,954	484.64

The differences in development can also be seen in varying levels of wages, **reaching a high of 690 KM in Brčko,** narrowly followed by **Sarajevo Canton (652.77 KM)** and the **Herzegovina-Neretva** Canton (618.58); they reach lows of 414.22 KM in the Zenica-Doboj Canton for the Federation and 376 KM in the Serb Republic.⁴⁰

The difference in wealth and income among the three nations of Bosnia is not the result of discrimination or even ethnic affiliation as such, but rather related to differences in economic prosperity based on geography, the pre-war economic base and the political context. As ethnic distribution has been geographically concentrated due to the war and “ethnic cleansing”, these disparities translate into de facto inequalities between communities. Primarily Sarajevo, Herzegovina and northern Bosnia, around Brčko and the Posavina region have been areas that have had substantial economic activity. Sarajevo has benefited from its status as capital, as well as from the substantial international presence in the city as a major source of employment and spending. Herzegovina used to be economically underdeveloped, but through trade links with Croatia and other sources, such as religious tourism in Međugorje, it has overtaken most of the rest of the country in economic terms. Brčko has developed into a major trading place in the post-war period, based largely on trade between the entities and with neighbouring Croatia and Serbia.

These inequalities have roots in the pre-war period, where some areas of Bosnia have been notoriously underdeveloped, in particular Eastern Bosnia – along the Serbian and Montenegrin border – and Northwestern Bosnia, around the region of Bihać. The underdevelopment of these mostly rural regions was accentuated by significant urbanization as a consequence of the war and the ethnic cleansing of large areas in Eastern Bosnia in particular. In other regions, the economic downturn has been a consequence of the war and the economic transition process, which has destroyed many industries in Bosnia or rendered them obsolete, in particular in the central Bosnian industrial heartland (Zenica, Tuzla). The international intervention has further accentuated some of the development gaps in Bosnia, in particular between Sarajevo and the remainder of the country. Similarly, Brčko is economically better off than the rest of the country largely due to the strong international role in that district (see Chapter 6c). On the other hand, the Serb Republic has been disadvantaged due to a political leadership that has frequently been hostile towards the role of international actors in Bosnia. Thus, most of the aid to Bosnia went to the Federation until the nationalist government of the Serb Republic lost power in 1997 and was replaced by a more moderate coalition. By 2000, only 18 percent of the total USD 3.5 billion in reconstruction aid went to the RS (Bisognia and Chong 2002: 322). This distortion, compared to the RS accounting for 49 percent of the Bosnian territory and approximately a third of the population, is not solely a result of the

exclusion of the RS in the first post war years from most of international aid. The damage caused by the war was not equally distributed throughout Bosnia, but particularly affected some areas, in particular Sarajevo and Mostar.

The distortion resulting from reconstruction has been largely overcome. Several studies have made the argument that the nature of international intervention, as well as the privatization process and other aspects of the economic transition, exacerbated interethnic tensions and entrenched economic interests associated with the dominant nationalist elites (Donais 2002: 3–19; Vučetić 2002: 65–80). The inequalities in economic development and income have not yet been substantially instrumentalized in the ethnonationalist discourse. This is in part a result of the overall grim economic situation, where the relative advantages of one region do not translate into economic sustainability or wealth. Furthermore, the differences are regional, not ethnic by nature. In addition, the most vulnerable groups in Bosnian society, such as pensioners and refugees, are the least likely groups to mobilize, while the ethnic entrepreneurs of all communities have little interest in highlighting the inequalities of Bosnian society, not least as many members of the political elites are on the side of the winners.

4

Politics and Governance in Post-War Bosnia

Bosnia's current political system is the product of a peace agreement that the international community concluded in Dayton, Ohio, in November 1995. The significant role of the international community has made Bosnia de facto a protectorate that is characterized by a loose federation with a weak central government. With 14⁴¹ constitutions and governments with legislative powers, the political system of Bosnia is both inherently complex and asymmetrical. Ultimately, this unusually convoluted structure of governance has rendered the country unstable and dysfunctional. The nature of governance in Bosnia is often described as static, but owing to the tension between international intervention and national parties the system established in the Dayton Peace Accords has evolved and changed over the post-war decade. Originally, the state was largely an empty shell with the Serb Republic governing itself autonomously as a quasi-state and the Croat cantons in the Federation having a comparable degree of self-governance. The Bosniak dominated areas continued to function under (wartime) Bosnian government control. Only gradually did the wartime "governments" transfer their powers to the newly established institutions, often maintaining parallel power structures. A feature of the Bosnian political development has thus been the continuous strengthening of the state level institutions (which still remain weak in relation to other, even federal, countries). Originally, this process was part of implementing the peace agreement; later the gradual increase of state powers occurred in spite of the Dayton Peace Accords. Altogether, Bosnian post-war politics have been characterized by a dynamic institutional development carried forth largely by the international community and the consistent pre-eminence of the national parties that had dominated Bosnian politics and institutions since 1990.

a) Political parties in post-war Bosnia

The institutions established in post-war Bosnia drew on war and pre-war legacies, but were essentially new. The political actors on the other hand remained largely the same. At the end of the war, the three national parties had carved out areas where they had a near monopolistic hold on power. Effectively, the parties emulated their foremost role model, the League of Communists. The close ties to wartime armed forces and economic interests intensified the dominance of the three national parties among their communities. The strict control of the media, both (para)state-run and private, limited alternative political views, which lacked the means to reach citizens. This applied particularly to the HDZ, which controlled most of Western Herzegovina, the area stretching along the border with Croatia, west of the city of Mostar. The SDS similarly established a de facto one-party rule in the Serb Republic (Kesić 1996: 56–58). Political alternatives had more space in the areas administered by the Bosnian government, but the SDA also effectively controlled all state institutions.

During the war the Bosnian government included moderate political parties active in the area under government control. Of those, some also held power at the local level, most notably in Tuzla. The parliament of the Serb Republic also included some independent members. However only after the war could opposition parties operate more freely in Bosnia. The division of Bosnia into entities meant that few parties became active in the whole country and if they did, they mostly appealed exclusively to one of the three constituent nations. Shortly after the war, the former Bosnian Prime Minister, Haris Silajdžić, established the Party for Bosnia and Herzegovina (*Stranka za BiH*, SBiH), which appealed to Bosniak voters and pursued a more moderate agenda than the SDA. Throughout the post-war period, it formed coalitions with both the SDA (1996–2000, 2002–) and moderate political parties in the short-lived Alliance for Change (2001–2002). The main moderate political party has been the Socialdemocratic Party (*Socijaldemokratska partija*, SDP), which is essentially the successor party of the League of Communists. Its leadership remains multiethnic, but its voter base has been largely limited to Bosniaks, Croats and Serbs living in the cities of central Bosnia. The party has advocated strengthening the state level and reducing the dominance of ethnicity in Bosnian institutions, making it less appealing to either Croats in Herzegovina or Serbs in the RS.

In the Serb Republic, the main moderate party has been the Alliance of Independent Socialdemocrats (*Savez nezavisnih socialdemokrata*,

SNSD) of Milorad Dodik, who was prime minister of the Serb Republic between 1997 and 1999. Like all main Serb parties, it supported the autonomy of the Serb Republic, but pursued a less nationalist line towards other nations and the international community. In opposition, however, the SNSD has often criticized the SDS-dominated government for not sufficiently considering national interests. The other party that has been able to maintain support throughout the post-war period is the Socialist Party (*Socijalistička partija RS*, SPRS), which was affiliated with Milošević's Socialist Party of Serbia. Most other moderate parties in the post-war period have seen only temporary successes, such as the Serb People's Assembly (*Srpski narodni savez*, SNS) of the former president of the Serb Republic, Biljana Plavšić, who broke with the SDS over co-operation with the international community in 1997. After Plavšić was indicted by the ICTY for war crimes and voluntarily surrendered to the tribunal, the party lost most of its support. Since 2000, the Party of Democratic Progress (*Partija demokratskog progresa*, PDP) has been a fixture in the politics of the RS. The party, founded by economist Mladen Ivanić, has been seeking to combine a programme of economic reform with political pragmatism. In the governing coalition with the SDS since the 2000 elections, the party has been influential since its founding in 1999. A number of parties have been seeking to outflank the dominant SDS in terms of nationalism. The most successful one has been the extreme nationalist Serb Radical Party (*Srpska radikalna stranka*, SRS), which has been a partner of the SDS. The party is the RS branch of the party with the same name in Serbia, which was run by the indicted war criminal Vojislav Šešelj. Nikola Poplašen, the president of the Bosnian branch of the SRS, won in the race for the RS presidency in 1998 on a joint ticket with the SDS only to be dismissed by the High Representative a few months later for violating the Dayton Peace Accords. The party was also banned temporarily for its radicalism and later split.

Among the Croat parties, few viable parties emerged after the war. Most have been splinter parties from the dominant HDZ, advocating a stronger support for the Bosnian state and seeking votes among Bosnian Croats, who had been marginalized in the HDZ by the dominant Herzegovinian stream. These parties include the New Croat Initiative (*Nova Hrvatska iniciativa*, NHI) of former presidency member Krešimir Zubak and the Party Working Toward Progress (*Radom za Boljitak*), funded by the wealthy Croat businessman Mladen Ivanković. A number of other small Croat parties have remained affiliated with the HDZ and pursue similar policies.

The Croat and Serb parties have their prime locus of power in their entity and in the case of the HDZ in the cantons. Only Bosniak parties have sought to strengthen the central government. Most Serb parties have not run in Federation elections, despite a significant number of Serbs living in this entity. Similarly, the HDZ has not participated in most elections in the Serb Republic. Only Bosniak parties have continuously campaigned in both entities, largely owing to the commitment to a stronger state and substantial numbers of Bosniaks in both entities – in the RS mostly as refugees who lived in the Federation in post-war Bosnia.

The three national parties – SDA, HDZ and SDS – have been in power at the state level between 1996 and 2000, as well as since the 2002 elections. The SDA and HDZ have jointly ruled the Federation since 1994, with the exception of the period 2001–2002. In the Serb Republic, the SDS governed until 1997 and with the Party of Democratic Progress (PDP) since 2000. For barely two years, from 2001 and 2002, the Alliance of Change, a coalition of ten parties with the SDP and SBiH at its core, governed with moderate parties (SNSD, PDP) at the state level and alone in the Federation.

In addition to these parties, a large number of smaller political groupings have been represented in the parliaments of Bosnia since 1996. The fragmentation and polarization of the party system in Bosnia has been largely a consequence of the fragmentation of the country's institutional set-up and the diverging political platforms of the three main communities in Bosnia, as will be discussed in greater detail later.

b) Power-sharing in Bosnia

The territory of Bosnia is divided into two entities, the Serb Republic and the Croat-Bosniak Federation of Bosnia-Herzegovina. In addition to these two entities, the disputed city of Brčko was transformed into a separate multinational district in 1999 and placed under international administration until 2004, which will be discussed in greater detail in Chapter 6. Bosnia today possesses multiple power-sharing arrangements. Between 1995 and 2002, power-sharing existed at the state level between all three constituent nations – i.e. Serbs, Bosniaks and Croats, who are the predominant nations of Bosnia in equal measure – and in the Federation between Croats and Bosniaks. This system was fundamentally changed in 2002 when the High Representative, the international civilian supervisor of the peace process, imposed far-reaching

constitutional amendments in both entities. These constitutional changes were necessary after the state level Constitutional Court determined in 2000 that the entity constitutions discriminated against one or two of the constituent people (see Chapter 6b). Although a compromise between the main political parties was nearly reached in March 2002, the ultimate changes came in the form of constitutional amendments imposed by the High Representative in April 2002.⁴² The changes not only altered the symbolic expression of the mono- or bi-national nature of the entities, but also changed their institutional set-up. Now, the Federation parliament, the government and the presidency also include Serbs, while in the Serb Republic a new Council of Peoples was established to ensure the rights of Croats, Bosniaks and Others⁴³ in the legislature. Similarly, Croats and Bosniaks are now also included in the government and the presidency of the Serb Republic (OHR 2002b; OHR 2002c).

Bosnia can, therefore, be described as a triple power-sharing system, with power-sharing in the entities and cantons, as well as at the state level. If one takes the consociational definition of power-sharing proposed by Arend Lijphart, one can identify a power-sharing system on the basis of four features:

- grand coalitions
- mutual veto rights
- proportionality
- segmental autonomy (Lijphart 1977: 25–44).

Both entities and the state level governments require the creation of over-arching *grand coalitions*, which include members from all three dominant nations. In the Federation, there have to be eight Bosniak ministers, five Croat ministers and three Serb ministers. Additionally, each minister has at least two deputies from the other two communities. Similarly in the Serb Republic, five ministers have to be Bosniak and three Croat. At the state level, the formal quota is based on entities rather than ethnicity, prescribing that two thirds of the ministers have to be from the Federation and one third from the *Republika Srpska*.

In Bosnia, at the state level, in entities and most cantons, each community has the right to veto decisions by parliament that may negatively affect the community. In both entities a two-thirds majority of the respective community's deputies is required in the House of Peoples (Federation) and the Council of Peoples (RS) to block legislation. At the state level, only one third from each entity can block a law

in either of the two chambers of parliament. Additionally, a majority of one of the three peoples can also veto legislation. Although the veto rights are limited to "vital interests" (defined as adequate representation in legislative, executive and judicial authorities; constitutional amendments; the organization of public authorities; issues of identity; equal rights; education; religion; language; the promotion of culture; tradition and cultural heritage; territorial organization; and public information system) these veto rights can be expanded by each of the three constituent peoples to any issue (OHR 2002b: Amendment XXXVII).

Proportional representation is also a cornerstone of the institutional arrangement at the state level where all three groups should be represented proportionally. In the two entities, the principle of proportional representation for all three communities was not established until recently. In the Serb Republic, virtually all positions were held exclusively by Serbs. In the Federation, Bosniaks and Croats have enjoyed proportional representation, at the expense of Serbs and others. With the amendments in 2002 to the entity constitutions introducing proportional representation as a general principle for the public administration, implementation has been lagging behind. In most cases, the pre-war distribution of population is taken as a basis of proportional representation to facilitate refugee return in the process of employment in the public administration.

Similarly, *segmental autonomy* is only granted at the state level (to entities) and in the Federation (to cantons). For the state level, the entities constitute the locus of autonomy of the groups. The 2002 constitutional amendments diminished the ethnic autonomy embodied by the entities, i.e. the ability of the three nations to govern themselves at the level of cantons or entities. While the entities and cantons might have institutionally ceased to be an obvious form of ethnic self-government, their primary function remains to secure the autonomy of the different groups, a consequence of the population distribution. In the Federation, the ten cantons, which are mostly mono-ethnic (eight out of ten are largely homogenous), constitute the segmental autonomy of the Federation's power-sharing arrangement. In the Serb Republic, no such territorial or non-territorial autonomy exists for Bosniaks and Croats. This has been prevented by the strong mono-national and centralist conception of the Serb Republic and consolidated by the long delays in refugee returns, with the result that many non-Serbs in the government and parliament actually represent refugees and displaced persons who no longer live in the Serb Republic.

The state level most adequately fulfils the institutional requirements of power-sharing, but at the same time it is also the most limited in terms of the power located within it. Most powers are formally constitutionally delegated to the entities and informally much of the remaining power is exercised by the High Representative. There has been, however, an overall strengthening of the central institutions and, equally, weakening of the entities. The extension of power-sharing mechanisms to the two entities, especially to the Serb Republic, effectively strengthened the state level. Similarly, the increase of the state administration and the creation of additional ministries have resulted in a more effective state level. The weakness of the nationalist government, in power since early 2003, suggests that the performance of the central level will remain below its potential.

c) The state level institutions

The structure of institutionalized power-sharing, as mentioned above, draws on different tools to distribute power among different national groups. The two predominant features of the state are: (a) a consociational arrangement at the level of the joint state institutions; mixed with (b) an asymmetric multinational federation. The federal nature of the state, as will be discussed later, can be considered a supplement or even an aspect of the consociational structure of Bosnia at the center. Arguably, the high degree of decentralization has weakened the power-sharing at the center, as the joint decisions are few (and were even fewer in the first post-war years). In addition, the commitment to the state is asymmetric. While most Bosniak political parties support a strong central government, Serb and Croat political parties largely see the interest of their community best represented through a high degree of decentralization. The uneven support for the central state has had an impact on the consociational system. As power-sharing allows for any group to block decision-making, the stability of the system relies on a similar degree of support of all groups in the state. If in a multinational federation, the areas of autonomy are able to function even if (or even more so if) the joint institutions fail, the power-sharing arrangements system is subject to blockages. These Bosnian state institutions governed with difficulty by power-sharing are exceptionally weak, even for a federation. The competences listed in the Constitution include only:

- Foreign policy;
- Foreign trade policy;

- Customs policy;
- Monetary policy;
- Finances of the institutions and for the international obligations of Bosnia;
- Immigration, refugee, and asylum policy and regulation;
- International and inter-entity criminal law enforcement, including relations with Interpol;
- Establishment and operation of common and international communications facilities;
- Regulation of inter-entity transportation; and
- Air traffic control.

All other competences are delegated to the two entities. Since the end of the conflict, there has been a push by key international agencies in Bosnia to strengthen the powers of the state institutions to overcome some of the exceptional weaknesses of the state, especially in regard to the security sector and the financial means of the state. In 1996, for example, Bosnia had only three ministries (foreign affairs, foreign trade and civil affairs), by 2004, the number has increased to nine. This has resulted in a de facto modification of the state constitution. In 2003, the entities agreed to establish a joint command of the separate armies at the state level and abolished the entity armies and ministries of defence by 2005. Similarly, a state security agency has replaced the entity intelligence agencies and the State Border Service is charged with the control of the international borders of Bosnia.

The joint institutions of Bosnia are established exclusively by the DPA, despite some similarities with pre-war institutions. The main institutions at the state level are:

- The Presidency
- The Council of Ministers
- The Parliamentary Assembly (House of Peoples & House of Representatives)
- The Constitutional Court
- The Central Bank of Bosnia

In addition to the aforementioned institutions, some additional institutions and agencies have emerged, documenting a general trend towards strengthening the weak state level. These include most importantly the State Border Service, which was established in 2000 with the help of the UN Mission in Bosnia. In addition, a number of temporary and permanent agencies were created by the High Representative at the

Table 4.1 Group Representation in the State-Institution since 1997

	1997–2000	2000–2002	2002–
Presidency	Parity of Constituent People, 2 Federation, 1 RS (8 month rotation)		
Council of Ministers	2 Co-Chairs, 1 Vice-Chair, Parity, 2/3 Fed, 1/3 RS	1 Chair, 2/3 Fed, 1/3 RS, Chair also minister	1 Chair, 2 Deputies, 2/3 Fed, 1/3 RS
Ministers	Parity (3)	Parity (6)	Parity (9)
Deputy Ministers	Parity, 2 per ministry	Parity, 2 per minister, other nation than minister	Parity, 1 per minister, other nation than minister
Assistant Ministers & Administration	Representativeness of Three nations and Others	Reflecting Population, 2/3 Fed, 1/3 RS	Generally Reflecting Population on basis of 1991 census

state level, charged with issues such as overseeing judicial reform or supervising the electronic media.

The executive bodies of Bosnia require the participation of all three national groups (see Table 4.1). The institutional system attempts to ensure the representation of Bosniaks, Croats, and Serbs, as well as a veto right for all groups on questions of “vital interest”. While a number of consociational arrangements in multinational states (e.g. Switzerland, Lebanon) are at least in part informal and not an aspect of the constitutional setup, power-sharing in Bosnia is laid down by the Dayton constitution and subsequent legislation to the last detail.

Presidency

The highest state organ – the Presidency, which combines representative functions with the coordination of Bosnia’s foreign policy – is characterized by equal representation and veto power for each group. Not only is the ethnicity of the members of the presidency prescribed – one Croat, one Serb and one Bosniak – but the members are also elected by the two entities separately. The Presidency is thus based on territorial and national representation, a frequent target of criticism since the first post-war years. The chairmanship of the presidency rotates every eight months. The key competences of the presidency include nominating the candidate for the council of ministers to parliament, proposing bills to parliament and overseeing the overall foreign policy. The members of the presidency were also the civilian commanders of the two entity armies until their abolition in 2005, a

competence with unclear implications. With first the establishment of a joint command over the entity, **the presidency members now command the unified armed forces.**

The presidency, as other institutions, have been **strengthened since the first post-war years.** During the first presidency (1996–1998), Alija Izetbegović, the presidency member who had gained the highest number of votes, held the chair for the entire two-year term (Constitution BiH 1995: Art. V 2b), reducing the support the institution enjoined among the other two communities.⁴⁴ During this term of the presidency, all three members hailed from the three national parties, as is the case again since 2002 (see Table 4.2), and the work of the presidency was minimal. The presidency itself lacked an institutional infrastructure and the office of the Serb member was not based in Sarajevo, but rather in Pale, the capital of the Serb Republic at the time (Gligorić 2002: 56–57).⁴⁵

Between 1998 and 2002, the candidate who received the most votes first held the chairmanship, followed by the second and third in terms of votes received. The office subsequently continued to rotate in this order (PEC 1998: Art. 5.25).⁴⁶ After the 1998 elections the presidency included Živko Radišić, a moderate Serb member from the Sloga coalition, which had run against the SDS. This facilitated the work of this body, while institutionally a breakthrough was achieved **in 1999 with the establishment of a joint secretariat, which solidified the presidency as a proper institution.** With the retirement of Alija Izetbegović in late 2000 and the **dismissal of the Croat member, Ante Jelavić, in 2001 by the High Representative,** the question of filling the positions arose. The announcement of Izetbegović's resignation led to a controversy over

Table 4.2 Members of the Bosnian Presidency since 1996

	1996–1998	1998–2002	2002–
<i>Bosniak member</i>	Alija Izetbegović, SDA	Alija Izetbegović, SDA (–2000) Halid Genjac, SDA (2000–2001), Beriz Belkić, SBiH	Sulejman Tihić, SDA
<i>Serb member</i>	Momčilo Krajišnik, SDS	Živko Radišić, SPRS	Mirko Šarović, SDS (–2002), Borislav Paravac, SDS (2002–)
<i>Croat member</i>	Krešimir Zubak, HDZ	Ante Jelavić, HDZ (–2001), Joze Križanović, SDP	Dragan Čović, HDZ (–2005), Ivo Miro Jović, HDZ (2005–)

the nomination of a successor to the presidency. The original law, passed by parliament, foresaw the election of a replacement by the members from the same nation in both houses and allowed for nominating a permanent member even shortly before the 2000 parliamentary elections. The law was subsequently amended by the High Representative, requiring only the consent of the House of Peoples deputies for the candidate nominated by the House of Representatives for the first two rounds of voting and, if this fails to result in the election of a candidate, by the House of Representatives alone (OHR 2000).⁴⁷ In practice, this allowed the moderate coalition in the parliament to elect members of its coalition to the presidency, replacing their nationalist predecessors. As they were not popularly elected, the presidency arguably lost some of its earlier legitimacy in the period 2001–2002 (Gligorić 2002: 61–62).

The permanent election law of 2001 confirms the eight-month rotation of the presidency members, but does not specify the order of rotation (Izborni Zakon 2001: Art. 8.3), as, since 2002, the members of the presidency themselves elect their chairman (Predsjedništva BiH 2001: Art. 5). The chair of the presidency has only limited competences and cannot represent Bosnia alone. Only in cases where the participation of the presidency as a collective organ is not possible, as during some international summits or other events, can the chair represent the presidency. The chair of the presidency is thus largely of symbolic significance, including such competences as signing documents agreed upon by the presidency, accepting diplomatic accreditations and developing the work plan of the presidency (Predsjedništva BiH 2001: Art. 6).

The restrictions on the presidency members in terms of their ethnicity⁴⁸ and their entity of origin, have effectively excluded large parts of the population of Bosnia. As will be discussed later, although refugee returns have not been as substantial as had been hoped for by international agencies, they nevertheless have eroded the ethnic homogeneity in the immediate post-war period and thus increased the number of those who are not eligible for the presidency and some other state level offices (e.g. House of Peoples, Governing Board of the Central Bank). In reality, this double delimitation has been circumvented. The current Bosniak member of the presidency, Sulejman Tihić, was a member and for a while even vice-president of the RS assembly, but later changed residence to be elected to the presidency. Nevertheless, this double delimitation raises a number of questions. As the main cleavage cutting across Bosnia is doubtlessly ethnicity, as opposed to regional identity, the Presidency members are arguably elected to represent primarily

their respective nation and only secondarily their entity. While the war created largely homogeneous entities, some level of diversity has remained both in the Federation and in the *Republika Srpska*, which was enhanced by refugee returns.⁴⁹ The electorate of the Presidency members is thus not inherently mono-ethnic. Scholars have argued over the utility of other groups participating in the vote for representatives of the other group. Some, including Lijphart, have argued that in a power-sharing arrangement the representative should represent their respective community and any dilution of this principle might undermine their legitimacy and ability to negotiate with other groups' representatives on behalf of their group (Lijphart 1991: 497–8). Others have countered this argument with the observation that with the participation of other groups, the elected leaders might be more moderate than representatives who are selected on a purely mono-ethnic basis (Horowitz 1985: 646–651). The development of the Bosnian Presidency since 1996 suggests that neither of the two interpretations applies in this case: the Presidency members have been generally regarded as legitimate leaders of their respective nation, mostly because they did not moderate their platform to garner minority support. This can be attributed, in part, to the relatively low number of other nations living in the two entities. Instead, the past elections to the Presidency have *de facto* deprived a segment of the population from representation in the Presidency.⁵⁰ Serbs from the Federation and Bosniaks and Croats in the *Republika Srpska* have thus had no representation of their own in the Presidency. Rather, they have had to rely on the – frequently inadequate – representation by the representatives of their nation from the other entity. This not only raises questions about the inclusiveness of democratic representation, but it also stands in conflict with the principle of refugee return.

Whereas full presidential systems can limit the effectiveness of power-sharing systems (Lijphart 1991: 497–8), the modified system of a presidency addresses the difficulty of having one person representing a deeply divided country. Arguably, the presidency is also based on pre-existing traditions in Bosnia, as it was established in 1974 in Bosnia and in 1971 at the Yugoslav level.⁵¹ The record of this particular type of collective executive has, however, not been very encouraging. In the case of the Bosnia presidency since 1996, as well as in previous presidencies, its members have largely represented their particular communities or regions, rather than the entire state. While this could be considered inevitable in light of the deep divisions in society, it is noteworthy that the particular system of presidency emphasizes the

fact that its members primarily represent their respective constituency, rather than the country at large.

Council of Ministers

The degree of institutionalization of power-sharing is equally strong in the joint government. The Council of Ministers is formed by up to two-thirds from the Federation and one third from the *Republika Srpska*. As the Chair of the Council of Ministers, the *de facto* prime minister must be nominated by the Presidency, and he/she and his/her government must be approved by the House of Representatives; there are additional in-built mechanisms ensuring the inclusion of the different national groups in government (Constitution BiH 1995: Art. V (4)). The first law on the Council of Ministers of 1997 included a very rigid form of parity representation between the three groups. All decisions have to be taken by consensus (Zakon o Vijeću ministara 1997: Art. 17). Furthermore a minister with her/his two deputy ministers, who have to be from different constituent people, had to agree on all decisions. If an agreement is impossible, the Council of Ministers have to decide jointly (Zakon o Vijeću ministara 1997: Art. 48). The ministerial positions are divided on a parity basis between Croats, Serbs and Bosniaks. Finally, the Council of Ministers is not presided over by one Chair who could emerge as a prime minister, but by two Co-Chairs of the Council of Ministers and a Vice-Chair. The co-chairs rotate every eight months. In addition, for decisions to be taken by the Council of Ministers, four members of the government (of six) and at least one representative from each nation have to be present. This system of co-chairs cements the weakness of the government and contravenes the Bosnian constitution, as a result of which the Constitutional Court declared the Co-Chairs unconstitutional, the first major decision challenging a system of government in Bosnia which had gone beyond an already highly ethnified institutional structure (Ustavni sud 1999: U1/99). As the parliament was unable to pass a law in line with the courts' decision, the court first declared the relevant articles void (Ustavni sud 2000a: U1/99), while the High Representative in 2002 passed a new law on the council of ministers (OHR 2002d). In the mean time, the co-chairs were abolished and replaced by one chair of the Council of Ministers. The new law on the Council of Ministers establishes the office of the Chair of the Council of Ministers, usually referred to as the prime minister, and two Vice-Chairs, who have to be from different constituent nations. The Chair does not also simultaneously handle a portfolio, as had been the case previously. This measure

structured the position of the Chair more like that of a prime minister in other countries. The ministerial positions were also strengthened by abolishing the rotation between the minister and his/her two deputies who were members of the other two constituent people. The new law foresees merely one deputy minister, who had to be from a different constituent nation than the minister. Finally, in a significant move, the new law stipulates that at least one minister or the Secretary General cannot be from any of the constituent people (Zakon o Vijeću ministara 2002: Art. 6.7). The decision-making process continues to be consensus-based, requiring the presence of two members from each constituent nation and half its members for being able to hold sessions (Zakon o Vijeću ministara 2002: Art. 16). Except for decisions that are finally taken by parliament, the council of ministers has to decide by consensus (Zakon o Vijeću ministara 2002: Art. 18).⁵² The law maintains the principle of parity of representation between the three constituent people: "The overall composition of the Council of Ministers shall, throughout its mandate, be and remain fully respectful of the Constitution of Bosnia and Herzegovina and in particular of Articles V(4)(b) and IX(3) thereof and, subject thereto, shall ensure equal representation of the constituent peoples of Bosnia and Herzegovina" (Zakon o Vijeću ministara 2002: Art. 6).⁵³ As mentioned earlier, the number of ministries was originally limited to Civil Affairs and Communications; Foreign Trade and Economic Relations; and Foreign Affairs. The law in 2000 added three ministries charged with human rights and refugees, the treasury and European integration (Gligorić 2002: 102–104). In 2002, finally, the European Integration ministry was reduced to a department within the prime minister's office, while the Ministry of Justice and Security was established and the Ministry for Civilian Affairs and Communication divided into two ministries, increasing the number of ministries to nine from the original three. Between 1997 and 2000, the government included one Bosniak, Croat and Serb each, as well as two deputy ministers for each of the three ministries. Between 2000 and 2002 there were two Bosniaks, Croats and Serbs in government, while in the government established in 2003, each nation held three seats in government (see Table 4.3).⁵⁴

Originally the Council of Ministers was clearly intended in the Dayton Peace Accords to be a government for the country. In the first post-war years, it operated only as a coordinating organ with little cohesion and much autonomy for each minister. This status quo served the interest of the different national parties, SDS and HDZ secured their wartime ethnic autonomies and prevented the emergence

Table 4.3 The Bosnian Council of Ministers, 2002

Minister	Party/National Background of Minister	Party/National Background of Deputy Minister
<i>Prime Minister</i>	SDA/Bosniak	n/a
<i>Ministry of Finance and Treasury</i>	HDZ/Croat	SBiH/Bosniak
<i>Ministry of Transport and Communication</i>	PDP/Serb	SDA/Bosniak
<i>Ministry of Civil Affairs</i>	SBiH/Bosniak	PDP/Serb
<i>Ministry of Foreign Affairs</i>	PDP/Serb	–/Croat
<i>Ministry of Foreign Trade and Economic Relations</i>	HDZ/Croat	SDS/Serb
<i>Ministry of Human Rights and Refugees</i>	SDA/Bosniak	HDZ/Croat
<i>Ministry of Security</i>	HDZ/Croat	SDS/Serb
<i>Ministry of Justice</i>	–/Others	HDZ/Croat

of a strong state, while the SDA was able to continue to dominate the little there was of the joint state, such as the Foreign service. Only by the late 1990s did the Council of Ministers emerge as a fully fledged government. In particular, only under the government of Božidar Matić and later Zlatko Lagumdžija during the two-year interlude of the moderate Alliance for Change (2001–2002), did the Council of Ministers develop a more cohesive profile.

Parliament

The composition of the legislature is similarly determined by territory and national group adherence. The parliament consists of two chambers, the House of Representatives and the House of Peoples. The 42 members of the House of Representatives are directly elected by the voters of the entities, with two thirds of the seats elected in the federation and one third in the *Republika Srpska*. In the legislative period 2002–2006, for example, there are 12 Serbs and two Bosniaks in parliament from the RS and 20 Bosniaks and eight Croats from the Federation in the House of Representatives. In the House of Representatives, no seats are reserved for the three nations; seats are only allocated according to the relative weights of the entities. The House of

Peoples, consisting of 15 members chosen by the parliaments of the entities, is constituted by five members from each nation, with the Serbs elected in the RS, and the Bosniaks and Croats in the Federation House of Peoples. Both houses of parliament are presided over by a chair and two deputies, each from a different nation, with the chairmanship rotating every eight months. In the House of Peoples, the caucuses of the three nations have the right to propose "their" candidate for the chair of the House (Gligorić 2002: 75–77; 88–90). While the caucuses in the House of Representatives are based on parties, there are three caucuses in the House of People, one for each nation. The House of People is thus primarily tasked with preserving the interests of the nations, while the lower house is more determined by political parties. Due to the smaller size of the House of People, the large national parties have tended to dominate this chamber, as moderate parties have been less represented due to their fragmentation and weak support.⁵⁵

This system of representation bears some of the same problems outlined earlier with the presidency. A veto right granted to the representatives of the three nations protects any group from being outvoted in case a decision is "destructive of a vital interest of the Bosniac, Croat, or Serb people."⁵⁶ The veto right has been either used or its use has been threatened frequently during parliamentary proceedings. Such a veto can be invoked by three of the five members of one group in the House of Peoples. Once invoked, the discussion on the issue under discussion ends and instead the veto is discussed. If this leads to a compromise, all communities have a 24-hour time limit to invoke a veto. If this is not done, the law or decision is voted on with a majority present from all three groups. In case a veto is invoked, a three-member mediating group is formed. If this group again is unable to work out a compromise, the issue is referred to the Constitutional Court (Gligorić 2002: 92).

Especially in the period between 1996–2000 and again since 2003, the work of parliament has been blocked (Gligorić 2002: 66–70). Between 1997 and 1999, for example, the parliament only passed 30 laws, one less than passed in 2001 alone. The High Representative in fact imposed most important laws and has thus become the *de facto* arbiter of the legitimacy of such a veto. Blocked decision-making in post-war Bosnia is, however, less a result of the veto powers, but rather the result of the electoral successes of uncompromising national parties, creating a *de facto* stalemate in the chambers of parliament and preventing any substantial decision-making, not only on issues directly

pertaining to the sensitivities of the national groups, but also in areas where necessary decisions run the risk of reducing the popularity of the governing parties.

The overall emphasis of ethnic belonging in the executive and legislature of Bosnia ensures a permanent grand coalition of the three national groups. At the same time, over-institutionalization provides little flexibility in the executive policy making process. While some elements of rigidity have been reduced, especially in the Council of Ministers, the system remains exceptionally rigid. Among a number of additional difficulties associated with the particular institutional set-up in Bosnia is the near total exclusion of "others" or "citizens" from the power-sharing arrangement. While in the entities, and in the administrations, the basis for power-sharing has been the representation of all constituent nations and other communities on the basis of the census, the guiding principle in the institutions of the state, as detailed above, is parity. Only the House of Representatives is elected on the basis of proportional representation.

The state level administration

Reflecting the limited powers of the state administration, the institutions at the state level have been relatively small. Part of the Bosnian state administration prior to the Dayton Accords was integrated into the new, post-war administration. As the first post-war institutions only encompassed three ministries (Foreign Affairs, Civil Affairs & Communication, Foreign Trade and Economic Relations), there were very limited possibilities to absorb the administration of the Republic of Bosnia-Herzegovina. Furthermore, through the creation of the Federation in 1994, part of the competences and staff of the Republic had become integrated with the Bosniak-Croat entity. Altogether in 2003 there were less than 2,000 employees in the state-institutions, in addition to the State Border Service, which employed roughly 1,600.

The dominance of the hard-line wing of the Serb Democratic Party in the first post-war years meant that the state level institution not only lacked support from the Serb Republic, but also included few Serbs. During these years, the diplomatic service, one of the largest parts of the state level administration, essentially continued to reflect its wartime character when it included mostly Bosniaks affiliated with the SDA. This dominance reflected the implicit unwillingness of the Serb Republic to entirely recognize the Bosnian state. It essentially precluded the representation of Serbs in the diplomatic corps (Gligorić 2002: 57).

The state level administration was only fully regulated after the imposition of the Civil Service Law in May 2002 by the High Representative (Oslobođenje 2002c). Earlier, the main principle guiding recruitment was requirement in the Constitution that “Officials appointed to positions in the institutions of Bosnia and Herzegovina shall be generally representative of the peoples of Bosnia and Herzegovina”.⁵⁷ Similarly the aforementioned Law on the Council of Ministers (1997) establishes the principle of fair representation of the three nations and the group of Others (Zakon o Vijeću ministara 1997: Art. 49, para. 3). Generally the state institutions are viewed as adequately representing all three constituent people. However, often in the process of appointment, in the period before 2002 a non-voluntary declaration of the potential civil servants was used to determine ethnicity and positions were often determined to belong to a particular nation. Due to the small size of the civil service, equitable representation has often been more difficult to achieve, or if so at a higher price, than elsewhere, as representativeness at all levels can easily result in the unnecessary duplication of positions. Additionally, the representation of nations has been in reality merely the representation of the dominant political parties.

Despite the passing of the new Civil Service Law, all civil servants continued their employment. The law also stipulates a review process, which ensures that the employed civil servant fulfills the professional criteria set out in the law (Zakon o državnoj službi 2002: Ch. X, Art. 64). The law set the principles according to which the civil service is to be recruited and sets up an Agency for Civil Service, which oversees the reform of the civil service. The three basic principles of the recruitment of the civil service have since been also incorporated in similar civil service laws in both entities:

1. The recruitment and the professional career advancement of a civil servant shall be based upon open competition and professional merit.
2. The structure of civil servants within the civil service shall generally reflect the ethnic structure of the population of Bosnia and Herzegovina in accordance with the last census.
3. National representativeness of civil servants shall be based upon voluntary declaration in accordance with this Law.⁵⁸

Clearly, these principles are difficult to realize simultaneously. In order to achieve representativeness of the civil service, a purely merit-based

system of civil service cannot be upheld.⁵⁹ As the law emphasizes that the civil service is to “generally reflect the ethnic structure”, there is some degree of flexibility built in, as opposed to the commitment to proportional representation in the civil administrations of the entities, which will be discussed later. The recruitment process furthermore does not detail any particular mechanism for achieving equitable representation, such as granting preferential treatment to candidates from under-represented groups (Zakon o državnoj službi 2002: Art. 28). Instead, the law explicitly prohibits discrimination on the basis of ethnicity and religion (Zakon o državnoj službi 2002: Art. 23). Altogether, the state administration has moved from being highly fragmented and unregulated in the first post-war years to a more developed civil service, which struggles to satisfy the requirement for equitable representation of the three nations and at the same time professionalization.

In addition to the general civil service, a key body at the state level is the State Border Service (*Državna granična služba*, SBS/DGS), which was set up in 2000 to control the international state borders. The tasks include the customs, immigration, refugee and asylum policy and furthermore encompass inter-entity law enforcement. The SBS thus constituted the first security force under the control of the state. The service was created to replace the entity forces guarding borders, which had been implicated in serious abuses, such as smuggling, corruption and allowing the movement of indicted war criminals. In addition, illegal border-crossings had become a serious problem, with Bosnia becoming a major stop on the route of illegal immigrants to the EU. Thus, unsurprisingly, the EU and other international organizations supported the creation of an effective border control for not entirely unselfish reasons.

The creation of the State Border Service fulfilled two functions in addition to a professionalization of the border controls. First, it was intended to strengthen the state in its relations to the entities. Second, its multiethnic make up was to counter the largely homogeneous police and security forces of the entities. The agreement between the members of the presidency, which guided the establishment of the SBS, and the subsequent law determined that the field offices reflect the population distribution in the region or canton and that no group might be represented by more than two-thirds or less than ten percent at any office level. Additionally, the agreement stipulates that service will be integrated, i.e. there are no mono-ethnic units and that members of all three nations can serve at all points of the border (Zakon o državnoj graničnoj službi 2000; New York Declaration 1999). As such, the approximately 1,600 members of the SBS roughly reflect

the population distribution.⁶⁰ In 2002 the service employed some 37 percent Bosniaks, 34 percent Serbs, 24 percent Croats and four percent from other communities (ICG 2002: 16). As the service countered the vested interests of the entities and the national parties, the SBS was only established after the legal framework was imposed by the High Representative,⁶¹ and with the assistance of the UN Mission in Bosnia.⁶² At the leadership level of the organization, the three nations are represented on a parity basis. The organization is led by a director and two deputy directors from different nations, rotating in eight-month intervals. As with other internationally created organizations, a challenge has been the transition to complete domestic control. Frequently, staff linked to parties or economic interests have taken control of the organizations, which were the reasons for creating the organization in the first place. Some media, for example, criticized the decision of the Bosnia presidency to nominate a director of the border service who has been connected to the wartime police force in the RS (Dani 2004). Other institutions at the state level, such as the Constitutional Court and the Central Bank, also seek to reflect the population distribution in their staff, but lack explicit commitments to proportional representation in their laws or rules of procedure.

A specific feature of a number of institutions at the state level (and some in the entities) is the participation of international actors. Some institutions created by Dayton (Constitutional Court, Ombudsman, the Human Rights Chamber and the Central Bank) and some later creations (Communication Regulation Agency, Human Rights Commission) have foreign nationals in key positions. Although their participation was originally foreseen for a transitional period, in most cases international officials continue to hold office. The international judges of the constitutional court, the governor of the central bank and most other international officials are not representatives of international organizations, but merely appointed by them (the European Court of Human Rights, the Council of Europe and the IMF respectively). As such, they become "Bosnian" actors, with the primary advantage of not being members of the three national groups and thus resembling neutral arbiters and mediators within these institutions.⁶³ The inclusion of international members into domestic institutions brings the advantage of not having to bypass domestic institutions to take decisions. In addition, inter-ethnic negotiations are only slightly impaired. Generally, international officials are either in the majority or can effectively tip the balance in any key decisions.

Since 1996, the state level administration has been seriously strengthened, often at the cost of the entities. This has been the case,

for example, with the State Border Service or the State Investigation and Protection Agency, SIPA. By **linking the strengthening of the state level administration with professionalization**, international organizations in Bosnia and donors have increased the effectiveness of the state level. At the same time, the state institutions have not been immune to abuse and party control. Frequently, the dominant national parties have been ready to divide control of state level institutions, making them susceptible to the types of abuses associated with entity level institutions, especially in the security and intelligence sector.

d) Decentralization and the entities

In Bosnia, **power-sharing at the centre accounts for only a small segment of the actual power exercised by elected officials**. The high degree of decentralization towards the entities has transformed Bosnia into a **very loose union**, even if this union has been continuously reinforced since the end of the war. The constitution of Bosnia and the **Dayton Peace Accords conspicuously avoid any formal ascription of the nature of the state**. In fact, the previous attribution “Republic” was dropped, resulting in the country’s official name being only “Bosnia and Herzegovina”. The extent of power vested in the two entities would suggest that the country is **at least a federation**. The term “federation,” however, is already reserved for the “Federation of Bosnia and Herzegovina” that encompasses 51 percent of the country, which is predominantly Bosniak and Croat. Thus, the question arises: what is Bosnia? The Constitutional Court has, for example, compared Bosnia with federal states, suggesting that Bosnia itself is a federation (Ustavni sud 2000b: Para 32). Most studies of federal systems distinguish between **“federalizing states”** (e.g. Belgium) and **federations** deriving from an agreement between different units (e.g. USA, Switzerland). This distinction not only bears historical importance, but also determines the original (and frequently still primary) **level of authority** (Herpreger 1991). Bosnia constitutes a curious mixture of both systems. On the one hand, the current state possesses some elements of continuity with the pre-war state and **is the legal successor to the Republic of Bosnia and Herzegovina, suggesting a “federalizing state”** (Constitution 1995: Art. I/1). On the other hand, few of the pre-war institutions have been incorporated in the new state, weakening the connection to pre-war and wartime Bosnia (Cox 2001: 6).

While the degree of decentralization suggests that Bosnia is *at least a federation*, it is more difficult to determine whether Bosnia might be a **confederation**.⁶⁴ Two factors in particular would suggest that Bosnia is

in fact a confederation. First, the fact that one of its constituent units calls itself, and by its structure is, a federation, could be viewed as an indicator of the confederal nature of Bosnia. More importantly, the lack of competences of the joint state in the sphere of defence until 2003⁶⁵ and the existence of two separate armies of the entities seem to point to a confederation. A confederation would, however, suggest that the constituting units are in fact dominant and have supremacy over the central authorities. The structure of Bosnia does nevertheless establish the supremacy of the joint institutions over the entities.⁶⁶ As a result, Bosnia could be considered a loose multinational federation.⁶⁷ If one is to consider the development of post-war Bosnia, one can observe a gradual strengthening of the center. Even if this process is mostly driven by external actors, i.e. the High Representative, the enhanced competences of the state and the clear direction towards greater empowerment of state level institutions suggest a movement from a confederation to a federation.

In addition to being a highly decentralized state, Bosnia is also an asymmetric federation from at least two points of view. First, the sub-units are constituted very differently: one is a loose federation consisting of ten cantons and two predominant nations and the other is a (formally) centralized republic of one dominant nation. Second, the existence of a third unit, the district of Brčko provides for asymmetry. Since March 1999, Brčko is officially a third separate unit ("district") with the same competences as the two other entities, but *de jure* subordinated to them. As the district formally belongs to both entities simultaneously, it also lacks individual representation in joint institutions (Brčko Arbitration Tribunal 1999: Para. 10–11).⁶⁸ This asymmetry of Bosnia has meant that in reality, the types of governance in the country vary greatly not only in terms of power-sharing, but also in other aspects. The effect is that the layers of governance often lack clear attributions of competences. Furthermore, the asymmetric nature of the state has meant that members of the three constituent nations enjoy different degrees of political representation and rights: while Serbs have been dominant in the Serb Republic and could be said to enjoy territorial autonomy on the basis of ethnicity, territorial autonomy for Croats and Bosniaks is limited to cantons, which are bestowed with fewer powers. As there are ten cantons, neither a majority of all Bosnian Croats nor Bosniaks live in one canton alone. Thus, no single canton can represent the interests of either of the two nations, unlike in the case of the Serb Republic. This has been to a good part a reflection of the different aspirations of the three nations, as articulated by the national parties. The Bosniak parties generally support a

strong state over territorialized self-government, while the Serb parties largely seek Serb self-rule with a maximum degree of autonomy from a multinational state level government. As the HDZ dominant Croat party has similar aspirations, like most Serb parties, to self-government, it has repeatedly criticized the asymmetry of the current system of decentralization, demanding the establishment of a Croat entity to mirror the Serb Republic (ICG 2001a: 7).

In addition, some general questions arise with regard to multinational federations in general. A number of factors seem to put into question the adequacy of a federal system for a multinational setting. The existence of territorialized national groups in the form of federal units frequently creates a **fear of secession**. In the regional context the demand for a republican status, i.e. being a federal unit, by some Albanians in **Kosovo** within Yugoslavia in the 1980s was widely perceived as a demand for gradual secession from the state. Similarly, the demands of some Albanian politicians in Macedonia for territorial autonomy and/or federalization of **Macedonia** have caused such fears among the majority (Friedman 2003). This fear can be found equally in other interethnic disputes around the world, especially when the demand for federalization is raised at times of high tensions. Even if the potential danger of separation in Bosnia has been reduced by **excluding any reference to self-determination of either the nations or the entities in the Constitution**, and politically by the international presence, the concept of a multinational federation does not fully address this fear.

Decentralized territorial units that are defined primarily in ethnic terms tend to accelerate the homogenization of these units or, in the case of Bosnia, delay the “re-mixing” of the population. The territorialization of ethnic identity follows the (flawed) assumption that “good fences make good neighbours”.⁶⁹ The resulting segregation and minimal contact between the nations, however, rather reduces the political and emotional investment of the nations constituting the state and precludes a reconstruction of trust through interaction on an every-day basis.

e) Federation of Bosnia-Herzegovina

The Federation of Bosnia-Herzegovina was established by the Washington agreement between Croatia and the Bosnian government in 1994, bringing the year-long Croat-Bosniak conflict to an end. The agreement establishes a superstructure for the Bosnian government-controlled territories and the areas under the administration of the self-proclaimed Croat Community of Herceg-Bosna, which had emerged during the early stage

of the war and pursued an openly secessionist line from early 1993 onwards (Hoare 1997: 121–138). The Washington agreement, largely forced on the conflict parties by the United States in early 1994, put an end to the openly secessionist agenda of the HDZ and coincided with a change of the party leadership. The new Bosniak-Croat Federation would, however, be able to enter in a confederation with Croatia (Burg and Shoup 1999: 292–298). The Federation defined itself to extend to the territory of Bosnia inhabited by a majority of Croats and Bosniaks, whereas the status of territories with a Serb majority are left to be decided at the peace conference (Ustav 1994: Art. 1). The map annexed to the constitution covers areas substantially larger than the area under control of either the Croat forces or the Bosnian government in 1994. The cantons of the Federation were thus largely based on the pre-war areas with a Croat and Bosniak majority (Kriteriji za određivanje teritorija Federacije Bosne i Hercegovine 1994). The Federation was constituted as a unit for “Bosniaks and Croats as constituent people, (along with Others)...” (Ustav FBiH 1994: Art. 1) and composed out of Federal units known as cantons. As the Federation had been a wartime construct seeking to bring former opponents together in one structure, it was drastically decentralized. Of the ten cantons, only two were significantly multiethnic at the time of the conclusion of the agreement, namely the Herzegovina-Neretva and the Central Bosnian canton, both of which had seen considerable fighting between Croats and Muslims in 1993/4. In both cantons, a special regime was established (abolished in October 2002), which further decentralized some competences to the (monoethnic) municipalities. Of the remaining eight cantons, three are predominantly Croat and five are Bosniak (see Table 4.4).

Table 4.4 Cantons of the Federation

Name	Predominant Nation
1 Una-Sana Canton	Bosniaks
2 Posavina Canton	Croats
3 Tuzla Canton	Bosniaks
4 Zenica-Doboj Canton	Bosniaks
5 Bosnian Podrinja Canton Goražde	Bosniaks
6 Central Bosnian Canton	Bosniaks/Croats
7 Herzegovina-Neretva Canton	Bosniaks/Croats
8 Western Herzegovina Canton	Croats
9 Sarajevo Canton	Bosniaks
10 West Bosnia Canton (Canton 10)	Croats

The origins of the Federation, in conjunction with a decentralized structure and reinforced through power-sharing between Croats and Bosniaks, made for a very weak entity. During the war, before the signing of the Dayton Peace Accords and the formal establishment of the cantons, the Federation was in fact inexistent. Thus, in parallel to the Dayton Accords, a separate agreement was signed between Croatia and the Bosnian government for the implementation of the Federation in which the parties noted that “[t]wenty months after the adaptation of the Federation Constitution, the process of strengthening the Federation and building trust between its constituent peoples has still not produced satisfactory results” (Dayton Agreement 1995: Para. 1). Arguably, the Croat government under Franjo Tuđman did not fully abandon the separatist agenda for the Croat areas of control in Western Herzegovina, nor did their HDZ counterpart until 2001. The symbols of Herceg-Bosna remained widely in use across Croat-controlled areas of the Federation after the end of the conflict. The West Bosnia canton used the symbol as official cantonal flag and the name Herceg Bosna, but was prohibited from further using it in a ruling by the Federation Constitutional Court (Ustavni sud FBiH 1998).

As a Bosniak-Croat project, the Federation excluded Serbs from governance, which is closely related to the sharply reduced number of Serbs in the Federation. While before the war, slightly less than 18 percent of the population living in the territory of the Federation were Serbs, this share decreased to just above two percent in 1997. It has increased slightly with the return of refugees in the following years (see Table 4.5).

This shift is particularly noticeable in the city of Sarajevo, which was diverse before the war and maintained some of that diversity even throughout the war, unlike most other cities in Bosnia, with the possible exception of Tuzla. Before the war, 49.3 percent of the inhabitants of Sarajevo were Muslims, followed by 29.8 percent Serbs and

Table 4.5 Population Distribution in the Federation⁷⁰

	1991	1997 (est.)	2003 (est.)
Bosniaks	52.09%	72.61%	72.9%
Croats	22.13%	22.27%	21.8%
Serbs	17.62%	2.32%	4.4%
Others	8.16%	2.38%	1%

6.6 percent Croats. By 1998 the number of inhabitants had decreased by some 150,000 and Bosniaks constituted 85.16 percent of Sarajevo, followed by 6.75 percent Serbs and 4.38 percent Croats. As a result, post-war Sarajevo ceased to be a diverse city, as it had been before the war and became an overwhelmingly Bosniak city. The development was triggered by the **departure of more than 130,000 Serbs** and around 2,300 Croats, while nearly 60,000 Bosniaks had moved to the city during and after the war from areas where they had been expelled (Helsinki Committee 1999b).

In addition to the exclusionary nature of the institutional set-up, the Federation remains deeply divided between the Croat and the Bosniak controlled areas, which coincide largely with the regions under control of the Bosnian army and the Croat armed forces (*Hrvatsko vijeće odbrane*, HVO) at the end of the war. The areas in Herzegovina controlled by the HDZ as a result of the war were never effectively integrated into the structures of the Federation. The Croat cantons and army units maintained separate structures with each other and with Croatia until the end of HDZ-rule in January 2000. The situation was the same during the period between the official dissolution of Herceg-Bosna with the establishment of the Federation in 1994 and the establishment of the Croat self-government in March 2001 (Bieber 2001).

In 1997, the OSCE observed in an internal study that the area **"in every aspect from military and security matters to business ties, is part of Croatia."** (Quoted from Burg and Shoup 1999: 377). Although the change of government in Croatia eventually led to a cessation of funding of these **separate institutions**, formal and informal institutions remained separate from the Federation, mostly due to the continuing dominance of the HDZ in the Croat dominated areas of Herzegovina. There was a visible decline in the institutions of Herceg-Bosna in 2000, based both on the weakening of the HDZ and the more assertive role of the international implementing agencies. Croat institutions not sanctioned in the framework of the cantons or the Federation remained in place (ESI 2001). After the HDZ, under the leadership of the then-Croat member of the Bosnian Presidency,⁷¹ **Ante Jelavić, declared a withdrawal from the joint Federation institutions in March 2001,** both international and domestic observers noted an obvious **continuity between the Croat self-government and pre-existing structures dating back to the wartime Croat Republic of Herceg-Bosna** (Dnevni Avaz 2001; ICG 2001a). The Croat self-government failed, however, in the face of opposition by the OHR and the Federation government, which was under the control of the

Alliance for Change between early 2001 and late 2002. By late 2001, the HDZ conceded defeat and ended the project of self-government. This has resulted in the marked decline of parallel Croat power structures in Herzegovina since 2001 and reinvigorated the Federation and cantonal structures.

The main focal point of confrontation between Croats and Bosniaks in the Federation is the city of Mostar. Before the war, the city was populated by nearly equal numbers of Muslims and Croats (34%) and just below 19 percent Serbs, as well as a significant number of Yugoslavs (11%). During the war, the city saw severe fighting, first facing an attack by Serbian forces in 1992, and in 1993 and 1994 fierce battles between Muslim forces in Eastern Mostar and Croat forces in Western Mostar. As a result of the war, most Serbs were expelled or left and Croats and Bosniaks lived divided in Western and Eastern Mostar. The fighting left much of the city destroyed, among others the famous Ottoman bridge (reopened in 2004) as a result of Croat shelling, and deeply divided. While before the war, Mostar included substantial numbers of all three communities, as well as a large number of Yugoslavs, after the war Croats and Bosniaks lived segregated lives in different parts of town, while most Serbs had left during the war. After the end of Bosniak-Croat fighting, the city was placed under EU administration between July 1994 and January 1997 (Bose 2002: 95–148). The aim of the international administration was to reconstruct the wartime damage and reintegrate the city, whose facilities, including the university, had been entirely divided between the Croat and Bosniak-controlled parts of the town.

As part of the 1994 Croat-Muslim peace agreement that created the joint Federation, Mostar was established as a joint Muslim/Bosniak-Croat city with six municipalities, three Bosniak and Croat municipalities each, with a central zone to be administered jointly. In reality, the central zone never operated and the mayor and his/her deputy (each from different communities) acted largely independently of each other. Reflecting its nature as a cease-fire agreement, the new municipal boundaries were drawn on the basis of the distribution of forces, not on economic, social or historical criteria. The result has been the existence of completely parallel institutions in most cases and a double budget. Thus, there was one public employee for 189 citizens, instead of a ratio of 1:500 suggested by experts. The cost of the bureaucracy amounted to 288 KM per capita annually (or 5% of the annual income).⁷² After the inability of the dominant Bosniak and Croat parties to reform the post-war system of government, the High

Representative established a Commission for Mostar, an independent body composed of experts and representatives from political parties. The Commission, established in 2003, was charged to propose a reform of the governance system of Mostar with the goal to unify the city and simplify the administration. The proposed reforms included the creation of a single municipality while preserving the six municipalities in the form of electoral units to prevent outvoting by the more numerous Croat community. In addition, the commission proposed a system of protecting the community interests, as is the case at the entity and cantonal level. After the failure of the local political parties to adopt the proposals, Paddy Ashdown, the High Representative, imposed the recommended reorganization of Mostar in early 2004, ending the formal division of the city since 1994.

The institutional set-up

The institutional structure of the Federation, created under international (especially by the USA) mediation in the 1994 Washington Agreement, in many ways appears to be the blueprint for the state institutions established one and a half years later at Dayton. Prior to the far-reaching constitutional changes in 2002, which will be discussed in detail later, the institutions formally ensured a power-sharing regime between Croats and Bosniaks, whereas Serbs were subsumed with minorities as "Others" and enjoyed only limited rights. The bi-cameral parliament encompasses the House of Representatives and the House of Peoples. The House of Representatives is elected on the basis of Federation-wide proportional votes and had 140 members until 2002, and since has 98 members. Before 2002, the House of Peoples included 30 Croats and Bosniaks elected in the cantons. The cantonal assemblies elect the members of the House of People. While in the first elections of 1996 and 1998 the election rules required that they were elected by the members of their group in the assembly, the 2000 rules changed the election to allow all cantonal assembly members to elect the delegates to the House of Representatives. This led to vehement protest particularly by the HDZ. The election rule theoretically allowed dominant Bosniak deputies to determine the Croat (and Serb) representatives. While in the Croat-dominated cantons, the same process could happen in reverse, the numerical dominance of Bosniaks in the Federation gave the claims of the HDZ greater weight. The obvious concern of small groups is the danger of the election of only deputies acceptable to the dominant group. On the other hand, the rule was introduced by the OSCE to encourage the election of more moderate

candidates to the House of Peoples (PEC 1997; 2000b). In the post-war period also, the share of non-dominant groups represented increased steadily. The number of Serb and minority deputies was 14 for the elections in 1996 and 1998 and 20 in the 2000 elections. The distribution of seats among the three nations in the House of Peoples had to follow representation in the cantons, as outlined in Table 4.6, making the allocation of seats highly complicated. The election rules foresaw that in the case that there are not enough Croats or Bosniaks elected by one canton, the canton with the highest number of the respective group elects the missing deputies. In case of Serbs and others, the seats remain empty, effectively discriminating against these communities (PEC 1997).

Furthermore, only Croats and Bosniaks enjoyed veto rights, which allowed a majority of both communities to block any law in the House of People, if the decision affected the vital interests of either community. As is the case with the state level constitution, this vital interest was nowhere defined. This lack of definition allows for any issue debated in parliament to be deemed damaging to the interest of one of the three constituent people. Similarly the government is rigidly established as a grand coalition with a prime minister and a vice-prime minister, as well as ministers and a deputy always from the other community (Zakon o ministarstvima 1994: Art. 25). All decisions of "vital interest" require consensual decision making in cabinet. Finally, the president and vice-president of the Federation, elected by parliament, equally represent each of the two communities alternatively on an annual basis (Ustav FBiH: Art. 2).

The constitutional amendments, imposed by the High Representative in 2002 brought far-reaching changes to the power-sharing arrangements in the Federation. First, it defined the scope of the veto rights, which had been unconditional. The list of veto powers includes the following fields:

- "Exercise of the rights of constituent peoples to be adequately represented in legislative, executive and judicial authorities;
- Identity of one constituent people;
- Constitutional amendments;
- Organization of public authorities;
- Equal rights of constituent peoples in the process of decision-making;
- Education, religion, language, promotion of culture, tradition and cultural heritage;

- Territorial organization; and
- Public information system" (OHR 2002c: Amendment XXXVII).

As "other issues [can be] treated as of vital national interest if so claimed by two-third of one of the caucuses of the constituent peoples in the House of Peoples," (OHR 2002c: Amendment XXXVII) this list is effectively merely a recommendation, whereas a two-thirds majority within each community can veto any decision. Despite the list of policy areas where a veto can be invoked, the deputies representing the three nations thus have the means to extend the veto right to virtually all policy areas.

The power-sharing arrangement in the Federation before 2002 had only included Bosniaks and Croats, detailed above. With the constitutional amendments now, it also included Serbs in the arrangement. The House of Peoples, elected by the cantons, was reconstituted by the High Representative's decision to include equal numbers of Serbs, Croats and Bosniaks (17 each) and a smaller number of "Others" (seven) (OHR 2002c: Amendment XXXIII). In order to ensure that these reflect the diversity that obtained throughout the Federation before the outbreak of the war in 1991, an amendment to the 2001 election law stipulates the representation of the different groups to be elected in each canton. This resulted in a major rebalancing of the House of people, as can be seen from the Table 4.6 below.

This regulation has been very difficult to implement in practice, as the number of seats reserved for Serbs exceeded the number of Serb elected to the cantonal assemblies, which had no such reserved seats

Table 4.6 Members of the Federation House of People by Canton and Nation⁷³

	1996				2000				2002				
Canton	B	C	O	Total	B	C	O	Total	B	C	S	O	Total
1	3	1	1	5	4	3	2	9	2	1	2	0	5
2	1	3	1	5	0	2	1	3	1	1	1	0	3
3	5	2	3	10	7	4	3	14	3	1	2	2	8
4	4	4	1	9	5	5	3	13	3	2	2	1	8
5	1	0	1	2	1	1	1	3	1	1	1	0	3
6	5	5	1	11	4	4	2	10	1	3	1	1	6
7	5	5	1	11	4	4	1	9	1	3	1	1	6
8	0	4	0	4	0	3	0	3	1	2	1	0	4
9	5	2	3	10	5	2	6	13	3	1	5	2	11
10	1	4	2	7	0	2	1	3	1	2	1	0	4
Total	30	30	14	74	30	30	20	80	17	17	17	7	58

clauses. As a consequence, the House of People only had nine, later ten, instead of 17 Serb members. The impasse was overcome by the House of People doing its work with a reduced number of deputies. However, this clearly contravened the constitution and jeopardized the ability of the Federation to legislate. The fact that for more than a year no constitutional amendments have been proposed to address the lack of Serb representatives highlights the vulnerability and weakness of the 2002 constitutional amendments. The constitutional amendments to the House of Representatives have been less problematic, where they introduced a minimum requirement of four MPs for all three nations (OHR 2002a: Amendment XXXII).

While again there had been a requirement in the Federation for government to include equal numbers of Croats and Bosniaks in government, there was no requirement to include Serbs. The constitutional amendments clearly prescribe the number of ministers from each community: eight Bosniaks, five Croats and three Serbs. An additional safeguard to the adequate distribution of high offices was established, which limits the seven high offices in the federation to two per constituent people or the "Others". These offices include executive (prime minister, president of the entity, public prosecutor), legislative (speaker of the two chambers of parliament) and judicial (presidents of the supreme and constitutional courts) positions (OHR 2002b: Amendment XLIV). While going to great lengths to prevent the dominance of one nation in any of the three branches, the outcome has been very complex (see Table 4.7). Subsequently, the implementation of this article led to complications, as in February 2003 when a Bosniak was

Table 4.7 Power-sharing in the Federation

	1994–2002	2002–
Presidency	Parity of Croats and Bosniaks, 1 Pres, 1 Vice-Pres, annual rotation	Parity of Serbs, Croats, Bosniaks, 1 Pre., 2 Vice-Pres.
Council of Ministers	2 Co-Chairs, 1 Vice-Chair, Parity, 2/3 Fed, 1/3 RS	1 Chair, 2 Deputies, 2/3 Fed, 1/3 RS, Chair also minister
Ministers	Parity (3)	Parity (8)
Deputy Ministers	Parity, 2 per ministry	Parity, 1 per minister, other nation than minister
Assistant Ministers & Administration	Representativeness of the three nations and others	Generally Reflecting Population on basis of 1991 census

appointed to preside over the Supreme Court by the High Judicial and Prosecutorial Council, a semi-international organization in Bosnia, resulting in two Bosniaks taking high offices and preventing a Bosniak from becoming prime minister. Only after the president of the House of Representatives, the second Bosniak, resigned, could the Bosniak Prime Minister, Ahmet Hadžipasić, be appointed (Oslobođenje 2003a, Dnevni Avaz 2003). In addition to the challenge that the positions are filled by different bodies, thus not making them subject to inter-group bargaining, the rules allow for appointments to “less” important positions to prevent one group from attaining a more important office. Most serious is probably the “ethnification” of judicial positions. While the Constitutional Court in its decision criticized the excessive designation of the positions in terms of ethnicity and the court found itself amid allegations of “ethnic” not merit-based decision making, the inclusion of the judiciary in the overall balance of positions means that court members are likely to be perceived as representing groups, rather than holding positions (and taking decisions) on the basis of merit.

In addition, the cantons also contain varying types of arrangements to include the constituent nations. Until 2002, the “mixed” Central Bosnian Canton and the Herzegovina-Neretva Canton had a “special regime” that included a power-sharing system between Croats and Bosniaks and decentralization to the (monoethnic) municipalities. This system mirrored Federation and state level power-sharing. For instance, in both cantons, the speaker of parliament and the president of the canton have a deputy from a different constituent nation. The governments have equal numbers of Croats and Bosniaks and have to include members from the group of “Others”. Finally, both constituent people in the Federation have veto rights.⁷⁴ Most cantons made a general commitment to “preserve the national composition of the canton and ensure the representation of the constituent people” (Ustav Unsko-sanski kanton 1995: Art. 8). Some cantons go a step further and require the assembly to be representative of the national make-up of the canton.⁷⁵ The Sarajevo canton, for example, requires that the parliament has to proportionally represent the population, while the government has to be generally representative of Croats and Bosniaks (Ustav Kanton Sarajevo 1996: Art. 17, 27).⁷⁶ After a round of amendments in 2000, the assembly needs to have at least 20 percent Croats and Bosniaks and others (Ustav Kanton Sarajevo 1996: Art. 4b). In general, the Bosniak and mixed cantons have more specific mechanisms of representation, while the three Croat cantons lack specific commitments

to the inclusion of Bosniaks.⁷⁷ Nevertheless, Bosniaks and Croats are formally constituent people in all cantons. Overall, the cantons before 2002 contained general commitments to all nations, but possessed only specific requirements for representation for Croats and Bosniaks, with a few exceptions. Thus Serbs remained excluded from governance in the cantons and Bosniaks in the Croat cantons. As the decision by the High Representative also applies to the cantons, these are required to harmonize their constitutions to protect the vital interest of all three constituent people and have a minimum representation of all three nations in the governments of the cantons (OHR 2002c: Art. 11b). The amendments to the entity constitutions by the High Representative in 2002 were emulated through constitutional reform in the cantons. Thus, all cantons introduced the language of all three nations in the constitutions, as well as both Latin and Cyrillic alphabets. Representatives of most other cantons, the Goražde canton for instance, introduced national clubs of the three constituent people in the cantonal assembly. These clubs propose candidates for the three-member assembly presidency (if one nation is not represented, the respective position remains empty) (Ustav Bosansko podrinski kanton Goražde 1997 (2003), Art. 24). As an additional feature of power-sharing, the constituent nations have the right to invoke a veto on the basis that a decision of the assembly breaks the vital national interests of one constituent people in areas defined in the Federation constitution (such as education, national symbols). If one member of the parliament presidency invokes a veto, it has to be confirmed by a two-thirds majority of the deputies from his/her national club to uphold the veto. If two presidency members invoke a violation of national interest, a majority of all national clubs is required to pass the decision or law. In case a veto is successfully invoked, the Constitutional Court of the Federation is responsible for resolving the dispute (Ustav Bosansko podrinski kanton Goražde 1997 (2003), Art. 28 a, b). In addition, the government has to be representative of the population structure on the basis of the 1991 census (Ustav Bosansko podrinski kanton Goražde 1997 (2003), Art. 33). As a result, the cantons of the Federation have instituted a system of power-sharing which can be found at the entity level. While some cantons resemble municipalities in terms of size, the decision-making structure is more reminiscent of power-sharing structures at the state level or the level of autonomy, in particular due to the fact that cantons have the capacity to pass laws, which municipalities lack. Altogether, the system has made cantonal decision-making cumbersome and often the representation of all three nations has been

difficult to accomplish due to insufficient refugee return. Nevertheless, it has also resulted in the inclusion of citizens from nations that were previously excluded from cantonal governance.

Public administration

The administration in the Federation emerged through the combination of the institutions of the self-declared statelet of Herceg-Bosna and the institutions under control of the Bosnian government during the war. As such, the administration has been strongly segmented. As a substantial degree of powers is delegated to the cantons, the cantonal administration constitutes an additional layer of bureaucracy. As most cantons were considered to be under the dominance of either Croats or Bosniaks, with the exception of two cantons, the administration in the cantons has been more homogenous than in the Federation administration. The representation of Serbs and others in the administration was largely ignored, whereas only the division of offices in the mixed cantons and at the Federation level between Croats and Bosniaks was a source of contention (see Table 4.8).

Only the constitutional amendments of 2002 imposed by the High Representative committed the Federation to establish a civil service reflecting the population according to the 1991 census. Details were established in the Civil Service Law, passed in June 2003, following similar laws at the state level and in the Serb Republic. The earlier law from 1998 did not specify the representation of the different communities in the Federation and merely prohibited discrimination on the basis of nationality, among others (Zakon o radnim odnosima FBiH 1998: Art. 6). The new law stipulates that the three constituent people have to be proportionally represented at levels of government in the Federation, including cantons and municipalities. The basis of the proportional employment is the 1991 census until the completion of the refugee return process (Zakon o državnoj službi u FBiH 2003: Art. 2). This law laid the groundwork for increasing the number of Serbs employed in the Federation, as they had earlier been largely

Table 4.8 Population Distribution in the Federation among Judges, Public Prosecutors and the Police, 1999⁷⁸

	Bosniaks	Croats	Serbs	Others
<i>Judges and Public Prosecutors</i>	71.72%	23.26%	5.00%	N/A
<i>Police</i>	68.81%	29.89%	1.22%	0.08%

underrepresented. However, also Croats and Bosniaks benefited from the proportionality requirement, as it applied not only to the Federation level, but also in cantons and municipalities where one of the two groups might have been excluded due to the dominance of one nation. The main challenge of the law is the fact that the 1991 census does not represent the current population distribution in the Federation, as is the case in the Serb Republic. While this clause has been established to avoid rewarding wartime ethnic cleansing and to offer incentives for refugee return, its implementation has been difficult in parts of the Federation where proportionality is simply unachievable.

One of the most sensitive areas of the administration is the police force, which had often been responsible during the war for “ethnic cleansing”. As a result, police reform constituted a higher priority in the Dayton Peace Accords than the reform of the overall administration. Unlike other aspects of the peace agreement, however, the international oversight of the police was limited to monitoring through the International Police Task Force (IPTF) established in Annex 11 of the DPA. The IPTF was a component of the UN Mission. It enforced a certification process, which forced all police officers to be vetted before being able to continue to carry out their duties. This included the particular problem of double occupancy with 40 percent of police officers in both entities living in houses illegally occupied from refugees or IDPs (UN 2001). Another task of the IPTF has been overseeing the reduction of the police force. While the projected total of 11,500 policemen for the Federation still reflected nearly twice the European average, it represented a reduction of two-thirds of the police force at the end of the war (Dziedzic and Bair 1998).⁷⁹

In the Federation, the police, as did other parts of the administration, faced two difficulties. First, there was no substantial integration between the Croat and Bosniak police forces. Until 2002, for example, Mostar had six separate police forces – one for each of the largely homogeneous municipalities – and both Croats and Bosniaks maintained separate special units of the Federation police until 2000. The complete separation of forces, even in ethnically mixed cantons, was a particularity of the Federation. The second challenge, similar to the RS, arose from the small number of minorities in the police forces. In addition to Serbs and minorities in the Federation, this also included Croats in Bosniak dominated areas and vice versa. In the Petersberg agreement, signed in April 1996, the Federation obliged itself to increase the share of minority police officers, reflecting the 1991 census (Agreement on Restructuring

Table 4.9 Minority Police Officers in the Federation, in percent⁸⁰

June 2000	5.2%
June 2001	5.7%
November 2001	11.3%
June 2002	15.5%

the Police in the FBiH 1996). In addition, the UN set a number of intermediary targets for the number of minority police officers, i.e. 28 percent by the end of the IPFT in late 2002. The targets are not set entity-wide, but are instead specified per municipality, meaning that the police force is to reflect the local composition of the pre-war population. The inclusion of minority police officers was not only deemed crucial to remove some clear discrimination within the police force, but more importantly to create a climate which would be more conducive to the return of refugees. As mentioned earlier in the context of the new Civil Service law, also here, candidates for the positions have not always been available where returns have been slow.

Generally, the IPFT recruited new minority police officers from among pre-war police officers who had left or were forced to leave the service, by recruiting officers from other regions where these were not members of the local minority and by training new officers. Thus, between April 1999 and May 2002, in six courses at the Police Academy for the Federation, some 700 police officers received training, including 461 (66%) Serbs and 35 (5%) other minority officers.⁸¹ Despite the 1996 agreement, the number of minority police officers only began to rise significantly in 1999/2000, coinciding with the beginning of the first substantial minority returns. By 2002, the rate was still only approximately half of the target rate (see Table 4.9).

The composition of the administration at large, particularly the police force, indicates the high degree of inequality in regard to the representation of non-dominant communities. The use of the 1991 census as a benchmark highlights that efforts to diversify the administration are not based on the post-war reality, but on the assumption that most refugees and IDPs will eventually return. Thus, the current regulation has to be seen as temporary, pending the "completion" of the return process. The end of this process is unlikely to coincide with the completion of returns as such, but rather with a sharp downturn in numbers of returning refugees. Afterwards, proportionality is to be based on the existing population distribution, which is likely to be at lower levels than currently.

The Federation has always struggled with the lack of support by its key constituencies. A rather awkward framework to end the Bosniak-Croat conflict, the entity has not developed a strong institutional identity of its own and mirrors (and to some degree pre-dates) the flaws of the state level. A recent policy paper by the **European Stability Initiative** thus suggested abolishing the Federation and changing the status of the **Serb Republic to that of a Canton**, arguing that the Federation has contributed little to the governability of Bosnia (ESI 2004). On the other hand, cantons are often considered the weakest link in the Bosnian institutional set-up, **encroaching on municipal government and lacking financial resources to fulfill their constitutional tasks**. The similarity between the systems of governance at the state and the Federation level, especially since the 2002 constitutional amendments, certainly raises questions about the viability of this entity.

f) The Serb Republic

The creation of the Serb Republic has been a direct cause of the war in 1992 and, as detailed in the historical overview, **the statelet was created with the intention of separating it from Bosnia and eventually joining Serbia or Yugoslavia**. While the **SDS** sought support from other Serb parties and deputies, as well as from intellectuals, to legitimize the creation of the Serb republic, the party originally dominated the Serb Republic. The constitution of the Serb Republic, proclaimed in February 1992, establishes a formally democratic and republican Serb nation state with a strong symbolic commitment to Serb dominance.⁸² During the war, the political reality of the Serb Republic was, however, considerably grimmer than the formal institutional framework would suggest. Campaigns of mass-murder and “ethnic cleansing” were an integral element of the wartime politics of the Serb republic, targeted against Muslims and Croats. These campaigns mostly took place during the conquest of new territories – the Serb Republic occupied **some 70 percent of Bosnian territory** for most of the war until August 1995, when a major Croat-Bosniak campaign reduced the territory to approximately half of Bosnia, in line with the proposed division in the peace plans – but also behind the battle lines. For example in Banja Luka, the largest city in the Serb Republic, which never saw any significant fighting, most Muslims and Croats were expelled during the course of the war. As a result, the slight Serb majority in the territory of the Serb Republic in **1991 of 54 percent** increased to nearly **97 percent by 1997**. The pre-war Bosniak and Croat population was

Table 4.10 Population Distribution in the Serb Republic⁸³

	1991	1997 est.
Serbs	54.30%	96.79%
Bosniaks	28.77%	2.19%
Croats	9.39%	1.02%
Others	7.53%	0.00%

thus minimal at the end of the conflict (see Table 4.10). At the same time, the absolute number of Serbs in the Serb Republic sank significantly due to emigration to Serbia or other countries.

The Serb Republic was internationally isolated at the end of the war, as the leadership of the Serb Republic around the president, Radovan Karadžić, and the head of the RS armed forces, Ratko Mladić, had been indicted by the Hague Tribunal as war criminals and were widely viewed as the chief culprits for the war in Bosnia, considering that the overwhelming number of crimes committed had been carried out by the Serb forces. Relations with Serbia were also tense, as Milošević, the original patron of the Serb Republic, had broken with its leaders in 1993/4. He had sought a peaceful settlement, while preserving most of the territorial gains made during the war, in an attempt to end sanctions and the isolation of Yugoslavia.

Against this backdrop, the Serb Republic nevertheless received international recognition as one of the two constitutive entities of Bosnia during the Dayton Peace Accords. The recognition of the Serb Republic was the key demand of the Serb political representatives before and throughout the war. Bosniak and to a lesser degree Croat political elites, as well as international policy makers, criticized the decision to recognize the Serb Republic.⁸⁴ Originally, the Serb Republic and the dominant SDS strongly opposed the Dayton Peace Agreement and the ensuing international intervention. It feared that the international presence would undermine its monopolistic control over the RS and international hostility towards the party would disadvantage it in post-war Bosnia. However, in the course of the post-conflict period, the Serb Republic emerged as a strong supporter of the Dayton Peace Accords, as these enshrine the far-reaching autonomy of the entity, providing for safeguards against propositions of abolishing the entity outright or curtailing its autonomy. In particular the Bosniak-dominated parties have since 1996 called for the abolition of the Serb Republic, as they perceived it as a product of genocide.

The territory defined as *Republika Srpska* consists of two regions, linked only by the city of Brčko in Northern Bosnia, which was governed by the *Republika Srpska* (RS) pending international arbitration. With the decision of the international arbiters in March 1999, the city and the surrounding county has been transformed into a separate district, thus removing the only link between the two separate parts of the RS (see below). The arbitration, which occurred at the same time as the removal from office of the president of the RS, Nikola Poplašen, and shortly before the NATO bombardment of Kosovo began, created considerable opposition on the side of the political elite of the RS (ICG 1999). Nevertheless, for a number of years before the decision on Brčko, the *Republika Srpska* had already been divided politically, and *de facto* geographically. The split emerged in the course of the dispute between Biljana Plavšić and Momčilo Krajišnik over the degree of co-operation with the international agencies in Bosnia in 1996/7. Even after the departure of both Krajišnik and Plavšić from the political scene in the aftermath of the 1998 elections, the government had only limited influence over all of the *Republika Srpska*; in many respects, geography played into the hands of political divisions. In addition, neither the nationalist government, nor the more moderate one of Milorad Dodik, could claim significant economic, social or political progress in the entity. Two key factors contributing to the dysfunctionality of the *Republika Srpska* have been the detrimental role of Slobodan Milošević and the continued economic and social decline of Serbia in the second half of the 1990s. In addition, the division of the political elite of the *Republika Srpska* over co-operation with the international community rendered governance more difficult. The *Republika Srpska* itself did not provide for power-sharing and emphasized its “Serb” nature⁸⁵ prior to the 2002 constitutional amendments, which will be discussed later. Nevertheless, a number of governments, starting from the government of Milorad Dodik (1997–2000), have relied on the support of Bosniak parties. This form of multiethnic governance has been largely informal and has allowed for only limited direct participation of non-Serb parties in governance. As the alternative to the more moderate Dodik government would have been a government including the SDS, the Bosniak and Croat parties were unable to translate their support for the government into substantial benefits for any of the parties in terms of formal participation in government or for the return of refugees. As support for the Dodik government remained weak among the Serb electorate and Bosniak and Croat deputies mostly did not live in the Serb Republic and were thus not fully integrated in its political life, this episode of

informal power-sharing offered few benefits for Bosniaks and Croats in or wanting to return to the RS (ICG 1999).

While the fragmentation of the political spectrum among Serbs in the Serb Republic thus opened the door for interethnic co-operation, the results have been disappointing. There have been three key reasons for this development. First, the moderate coalition in the Serb Republic included a substantial number of smaller parties with unsure basis of support, similar to the Alliance for Changes in the Federation and at the state level in 2001–2002. This fragile coalition, which has been unable to gain credibility with the Serb majority, in fact reinvigorated the SDS, which could present itself as the legitimate representative of national interests. In light of these dynamics, the moderate Serb parties have been reluctant to break with the SDS policy, partly out of conviction and partly out of fear of losing credibility among their constituency. Second, as mentioned above, the alternative of a nationalist government minimized the bargaining power of the Bosniak and Croat parties in relationship with the moderate Serb parties. Finally, the strongest Bosniak party in the Serb Republic has been the SDA, which has been ready to enter coalitions with the other national parties. When moderate parties gained ground among Bosniak voters in 2000, the SDS enjoyed resurgence and put an end to the Dodik government in the Serb Republic. The first Bosniak minister was only nominated in 2001. Ironically, the minister was part of a government that had no support from Bosniak and Croat parties, but was established with the support of SDS, the PDP and some other smaller Serb parties. The inclusion of a Bosniak minister was mostly directed at gathering international support for a government otherwise supported by the SDS. More substantial inclusion of Croats and Bosniaks in the government of the Serb Republic was only accomplished as a result of the amendments to the entity constitutions in 2002.

The institutional set-up

The institutional set-up of the Serb Republic prior to May 2002 makes no reference to ethnicity. The formally civic nature of the institutional arrangement was firmly based on the nation “state” conception of the entity and the absolute dominance of Serbs in the RS. There was thus no need to constitutionally state the predominance of Serbs in the institutions. A strong president and vice-president are directly elected in the Serb Republic, while the 83-member parliament had no guaranteed inclusion of non-Serbs. As pre-war residents were allowed to vote in the original place of residence in Bosnia, the share of Bosniak

deputies far exceeded the share of Bosniaks in the RS's post-war population. The number of Croats in the RS parliament was lower, as the HDZ discouraged Croats from voting in their pre-war residency (see Table 4.11).⁸⁶ Controversies over the inclusion of Bosniaks and Croats in the parliament of the RS had been commonplace, as members of parliament had to take an oath including references to the Serb Orthodox Church and allegiance to the Serb Republic (Narodna Skupština 1997: 5, 48–58).

The Constitutional Amendments, imposed by the HR in 2002, had a more profound impact on the institutional set-up of the Serb Republic than the Federation. While the two-way power-sharing arrangement in the Federation was essentially complemented to also include Serbs, the changes in the Serb Republic transformed a formally ethnically neutral, de facto mono-national system of governance into a power-sharing system. Previous attempts by Bosniak deputies to secure some degree of greater inclusion were largely rejected, such as the call for a reserved seat as deputy president in parliament (Narodna Skupština 1997: 46–47). The 2002 amendments established a Council of Peoples, which is elected by the National Assembly and is charged with ensuring that no decision or law negatively affects any of the three constituent nations or the community of others. In the chamber, all three nations are equally represented by eight members, whereas the “Others” furnish four representatives (OHR 2002b: Amendman LXXVIII). Due to far reaching veto-powers, identical to the ones instituted in the Federation, each group can effectively veto any law (OHR 2002b: Amendman LXXVII). The National Assembly also has to include at least four members from each nation. This minimum requirement increased the number of Croats in parliament, who previously had less than four MPs. On the other hand, there was little impact on Bosniak representation in parliament as Bosniak deputies were more than twice

Table 4.11 Number of Serb, Bosniak and Croat Deputies in the RS National Assembly (est.)⁸⁷

	1996		1998		2000	
	Numbers	Percent	Numbers	Percent	Numbers	Percent
<i>Serbs</i>	63	75.9	64	77.1	67	80.7
<i>Bosniaks</i>	19	22.9	16	19.3	13	15.7
<i>Croats</i>	1	1.2	2	2.4	1	1.2
<i>Other/Unknown</i>	0	0	1	1.2	2	1.2
<i>Total</i>	83	100	83	100	83	100

as numerous in all legislative periods since 1996 than the four member ceiling. Overall, the assembly continues to be dominated by Serb parties (Herceg and Tomić 2002b: 118–199). Again mirroring the constitutional amendments in the Federation, the government of the Serb Republic has since 2002 been required to include a number of members from all constituent people: eight Serbs, five Bosniaks and three Croats. As a final part of the reforms, following the symmetry of the constitutional amendment between the two entities, of six leading positions in the country (prime minister, president of parliament, president of the House of Peoples, president of the Constitutional Court, president of the Supreme Court and Republican Public Prosecutor), representatives from each constituent people can hold a maximum of two posts (OHR 2002b: Amandman LXXVI).

In the course of 2002, the Serb Republic has undergone a transformation from a quasi nation “state”, which lacked formal provisions for Serb advantages in governance and specific requirements for the representation of Croats and Bosniaks, cementing the exclusion of the two communities. The amendments have rendered the system of governance in the Serb Republic considerably more complex, introducing power-sharing and making it more reminiscent of the Federation and state levels.

Public administration

The administration of the Serb Republic reflected the mono-ethnic nature of the entity. Before the international efforts to increase the diversity in the administration of the Serb Republic, in particular in the police force in the late 1990s, the entity employed virtually no non-Serbs. Despite efforts to increase the share of Bosniaks and Croats among the public administration in the Serb Republic, their share remained low. Thus by 1999 the share of Serbs in the police force and among judges and prosecutors remained above 90 percent (see Table 4.12). Furthermore, the low number of non-Serbs has been closely tied to the relatively limited minority returns to the Serb Republic.

Table 4.12 Population Distribution in the RS among Judges, Public Prosecutors and the Police, 1999⁸⁸

	Serbs	Bosniaks	Croats
<i>Judges and Public Prosecutors</i>	97.6%	1.6%	0.8%
<i>Police Force</i>	93.7%	5.3%	1.0%

In the aforementioned constitutional amendments of 2002, which will be discussed in the chapter on reform efforts, the High Representative imposed a constitutional commitment of the Serb Republic to establish proportional representation of the three constituent people and others according to the last census in the administration (OHR 2000b: Amendment LXXXV). As part of the subsequent overhaul of the administration in all of Bosnia, the Serb Republic passed a new law on the Civil Service roughly at the same time as the state level and earlier than the Federation. Unlike at the state level, the law in the Serb republic does not establish proportional representation as a general principle, but charges the agency with “promoting and securing the national equality in the choice of civil servants” (Zakon o administrativnoj službi RS 2002: Art. 5). The rule book of the agency imposes on it the need to advance the implementation of the above-mentioned constitutional amendment and to report on progress in its implementation (Agencija za državnu upravu 2002: Art. 43–46).

In the police force, both the symbolically most significant institution of the public administration and the target of substantial international intervention through the International Police Task Force, the proportion of minorities remained low due to stronger resistance to increasing the diversity in the police force of the RS. An agreement, similar to the Petersberg Agreement in the Federation, was only concluded in 1998 between the RS and the IPTF, with a set of principles agreed on in 1997. Unlike the agreement in the Federation, the RS committed itself only to achieve a share of minority police officers in accordance with the turnout of non-Serb voters in the 1997 local elections (Framework Agreement on Police Restructuring RS 1998: Art. 8), instead of the population census used as a basis for constituting the force in the Federation. The benchmark for the number of minority police officers was thus lower than in the Federation. However, the non-Serb share of 20 percent is considerable, considering that in the first post-war years the Serb Republic practically employed no minority police officers. The first minority police officers entered the force only in 1999, after the police academy in the RS trained the first 46 minority cadets. Earlier, only in Brčko did some minority police officers who had been recruited under the international supervision of the district serve.

Altogether, the share of minority police officers continued to remain well below the target of 20 percent (see Table 4.13), not to mention the fact that if the same principles as in the Federation were applied, around 45 percent of police officers would have to be Croats, Bosniaks or others. As in the HDZ controlled areas of the Federation, minority

Table 4.13 Minority Police Officers in the RS, in Percent⁸⁹

September 1999	2.1% ⁹⁰
June 2000	0.6%
June 2001	2.2%
November 2001	3.2%
June 2002	4.9%

police officers have often been threatened and remain often marginalized in the police force (ICG 2002: 41). In addition, hardly any minority officers could be recruited in areas where ethnic cleansing has been carried out particularly brutally during the war. A particular challenge in the RS has been also the discrepancies in the salary levels with the Federation. As the average Federation police officer earns 530 KM as opposed to 455 KM of the average police officer in the Serb Republic in 2001, the incentive for Bosniak or Croat police officers to return to their pre-war places of residence to work as a police officer has been small (ICG 2002: 45).

Altogether, the Serb Republic has undergone a radical (formal) transformation from a de facto nation state of Serbs, established at the expense of Bosniaks and Croats and exclusive in practice, if not in its formal institutional attributes. Through the constitutional amendments in 2002 and a gradual process of institutional change induced by intense international pressure, the entity is no longer a Serb national entity, possessing power-sharing attributes and requiring the inclusion of Bosniaks and Croats. Nevertheless, the practices have often been less inclusive and in the absence of a degree of refugee return, which would make the current institutional set-up sustainable, the system appears incapable of overcoming the dominance of one of the three constituent nations.

g) The Office of the High Representative

A particular feature of Bosnia's post-war governance has been the deep involvement of a number of international organizations. The role of international organizations was originally intended to facilitate the domestic decision making process by ensuring adequate security for citizens (SFOR, IPTF), creating the economic framework for successful governance (EU, UN) and by promoting democratic and tolerant institutions (OSCE). The primary international agency tasked with civilian matters in Bosnia is the Office of the High Representative, established

in the DPA as “the final authority in theatre” regarding interpretation of this agreement on the civilian implementation of the peace settlement.” (Art. V, Annex 10). The original powers of the High Representative were limited to “facilitate”, “co-ordinate”, and “report” (Art. II, Annex 10), resulting in the parties to the conflict mostly ignoring the work of the High Representative (Petritsch 2000: 300). In recognition that these powers did not suffice to successfully implement the peace accords, after 1997 the High Representative was equipped with additional powers, which transformed him from a facilitator to an integral institution of the current system of government in Bosnia.⁹¹ Equipped with both legislative and executive powers, the High Representative (HR) has emerged as the most influential institution in Bosnia – and the only one not governed by power-sharing or democratic principles.

This powerful office has been held by European diplomats and politicians since 1996, first by Carl Bildt (1996–1997), then Carlos Westendorp (1997–1999) and Wolfgang Petritsch (1999–2002), and currently Paddy Ashdown (2002–). The Office of the High Representative is a specific international organization, which is constituted of staff seconded by foreign governments and recruited by the OHR. Originally, staff from Bosnia itself only filled lower ranks. In recent years, Bosnian staff has increasingly taken on high-ranking positions. Key decision-making positions, however, remain with the international staff.⁹² The High Representative is proposed by the steering board of the Peace Implementation Council (PIC), which supervises the work of the OHR, and approved by the United Nations Security Council. It is a rather large body, comprising some 55 members, including individual countries and multilateral organizations. The High Representative reports to the PIC and the council convenes regularly to determine the overall direction of the peace process. Due to its large size, the HR has had considerable room to manoeuvre and the body does not have the structures to effectively control the work of the OHR. At the same time, the OHR is highly dependent on the political support of key countries with which the organization has been coordinating key decisions through the embassies in Bosnia. The co-operation with embassies and other international organizations, such as the OSCE, has not always been free of conflict.

Since the High Representative gained the so-called Bonn powers in 1997, he has enacted around 100 laws and passed several hundred decisions – ranging from the state symbols and licence plates to pension funds – and dismissed more than 180 public officials from office, including a president of the *Republika Srpska* and the Croat rep-

representative of the Bosnian Presidency.⁹³ As recently as in June/July 2004, the HR dismissed some 70 officials in the Serb Republic within a few days, including the president of the RS parliament. The High Representative, especially since Paddy Ashdown has held the office in 2002, has also fined political parties and banned individuals from any official party functions.

Resulting from this development, Bosnia has gained some attributes of a protectorate since 1997. The tangible success of the High Representative's increased role has been the passing of significant legislation that would have either been postponed indefinitely or been watered down.⁹⁴ The dismissal of public officials could also be interpreted as a success. The case has been made, however, that the successful outcomes notwithstanding, the process in fact hurt the development of power-sharing structures. As Marcus Cox details, the High Representative's decisions relieve the participants in the power-sharing structures from negotiations and compromises, effectively relieving them from their responsibilities, and allowing nationalist politicians to advocate uncompromising positions without the fear of being blamed if no compromise is found (Cox 2001: 12–15). As a result, "nationalist politicians have often welcomed the High Representative's interventions, which relieve them of the responsibility for difficult political positions" (Cox 2001: 14). The power-sharing institutions in Bosnia, in addition to their original weaknesses, have been further undermined by the heavy-handed international intervention. It is nevertheless important to note that the representatives of the three national parties demonstrated little willingness to engage in serious coalition-building and bargaining even before the enhancement of the HR's role.

5

The Record of the Post-Dayton Elections

Before 1996, Bosnia has had only little experience with competitive multiparty elections. Fewer multiparty elections were held in Bosnian history before 1996 than since. In the Communist period, elections did take place, but in the absence of opposition candidates were a foregone conclusion. Despite the interruption of the democratic process by the war, the political scene is very much shaped by the same political parties as the first post-Communist elections in 1990. Elections have been a key aspect of the international post-war reconstruction exercise in Bosnia. However, their function has varied greatly over time. The first election in September 1996 had a three-fold objective: (a) to provided for elected institutions to allow for a withdrawal of the international peacekeeping force; (b) to replace wartime elites with (new) legitimate office holders, and to (c) build a “democratic” Bosnia, viewed as being the diametric opposite of the state during and prior to the war (Shoup 1997: 3–4).⁹⁵ The rapid holding of elections effectively facilitated the transformation of the armed conflict into a political dispute. As Guerrero and Bermudez have suggested, only elections would bestow legitimacy on the different ethnic elites to engage in a process of co-operation and eventually reconciliation (Guerrero and Bermudez 2000: 133). From this point of view, the first elections clearly failed to achieve their goals. The complete victory of the dominant national parties consolidated the outcome of the war and relegitimized the national parties and made them a fixture with which the international community had to work in the post-conflict period (see more later in this chapter). Bosnia is a textbook example of the warnings against premature post-conflict elections noted in the literature (Reilly 2002: 119–124). Indeed, these failures have been widely acknowledged as “lesson learned” from the Bosnia experience: elections in other

post-conflict settings (Kosovo, East Timor, Afghanistan) have been organized at least one year, if not longer, after the end of the conflict.

With the failure of these objectives, the attention shifted to bringing particular parties or candidates to power and to running the exercise of elections repeatedly for citizens to “learn” democracy (Guerrero and Bermudez 2000: 129). Between 1996 and 2002 the cycle of parliaments and presidents – except for the state presidency after 1998 – was two years instead of the common four-year period. As a consequence, elections have been held in post-war Bosnia on a nearly annual basis (see Table 5.1). The frequency has also been partly the consequence of the complexity of the system of governance.

The peace agreement charges the OSCE with the organization and supervision of Bosnian elections – a function the OSCE carried out for nearly seven years until the elections in October 2002. The main body charged with the election organization was the Provisional Election Commission (PEC), which included OSCE and OHR representatives, representatives of the signatories and others nominated by the Head of the OSCE mission (DPA 1995: Annex 3, Art III/3). The PIC set the electoral rules for all the post-war elections until 2000. Following the passing of an electoral law in the Bosnian parliamentary assembly in August 2001, a Bosnian electoral commission was established, which assumed the tasks previously carried out by the PEC. The composition of the election commission follows the logic of the ethnic key with an equal number of Bosniaks, Serbs and Croats (2) and one member from the community of others and has a rotating chairmanship, which has to alternate between the communities (Izborni Zakon 2001: Art. 2.5; 2.6).

Table 5.1 Elections in Bosnia since 1996

Date	Type of Election
30 June 1996	Local Elections in Mostar
14 September 1996	General Elections (Presidency, Parliamentary Assembly, Cantons, Federation Parliament, RS President and Parliament)
13 September 1997	Local Elections
23 November 1997	Extraordinary Elections of the RS Parliament
12–13 September 1998	General Elections
8 April 2000	Local Elections (Federation & RS)
11 November 2000	General Elections, Local Elections in Srebrenica
5 October 2002	General Elections, Local Elections in Žepče
2 October 2004	Local Elections, Elections in the District of Brčko

a) The electoral system

As mentioned earlier, the choice of the electoral system was dictated by the short-time frame between the end of the conflict and the time when the first elections were to take place. The electoral system employed in the first elections was thus proportional representation with closed party lists for the legislative bodies (House of Representatives at the state and Federation level, as well as the National Assembly of the RS and the ten cantonal assemblies) and the First Past The Post System (FPTP) for the presidency at the state level and the RS presidency, the only positions filled through direct elections. For the RS presidency and the entity presidency, the candidate with the highest number of votes won the race, whereas in the Federation the Bosniak candidate with the highest number of votes and the Croat candidate with the highest number of votes won the election for the state presidency. The choice of a simple proportional electoral system for the Bosnian parliaments also appeared appropriate in the light of the power-sharing system established in the Federation and at the state level, as the PR most precisely reflects the communities in the institutions and minimizes the risk of one nation receiving a share of seats grossly disproportional to its real share.

The location of voting in Bosnia has been a crucial aspect of post-conflict social and institutional engineering. The international mediators of the Dayton Peace Accords and the subsequent authors of the election rules and the election law were determined not to allow the electoral process to contribute to a consolidation of the involuntary shifts of the population through ethnic cleansing. As a result, the election rules, contained in the third Annex to the Dayton Peace Accord, foresee

that a citizen who no longer lives in the municipality in which he or she resided in 1991 shall, as a general rule, be expected to vote, in person or by absentee ballot, in that municipality... Such a citizen may, however, apply to the Commission to cast his or her ballot elsewhere (DPA 1995: Annex 3, Art. IV/1).

According to this regulation, voters were left with a choice to register in the pre-war place of residence or the place of residence after the war. The preference of the crafters and implementing agencies for voting in pre-war places of residence was undeniable. The return of refugees was conceived to be the primary tool to undermine the power of the new

wartime elites and to counter-balance the recognition of the two (de facto three) ethnically homogeneous statelets in Bosnia. However, unlike the optimistic assertion in Annex 3 that “[b]y Election Day, the return of refugees should already be underway, thus allowing many to participate in person in elections in Bosnia and Herzegovina,” (DPA 1995: Annex 3, Art. IV/1) only a marginally small number of Bosnian citizens had returned by the first elections in September 1996, especially not to areas where they would now constitute a minority (so-called minority returns).⁹⁶ Arguably, the voting in the place of origin could also be seen as an incentive or stimulus for the return of refugees (Guerrer and Bermudez 2000: 135). There is little evidence, however, that the elections and the associated crossing into the other entity (or within the Federation to the other area of control) had a significant effect on the return of refugees. By September 2004, one million or less than half of all refugees and internally displaced people had returned to their original place of residence with the number for minority returns – Bosnians returning to areas where they now constitute a minority – being lower, despite an acceleration in the return process between 1999 and 2002. The failure of refugees and Internally Displaced People (IDPs) to return necessitated the bussing of voters to their pre-war place of residence on elections, a practice carried out during all post-war elections. In the permanent election law, a provisional article continues to allow for displaced citizens to vote either in their new place of residence or in the pre-war residence (at the time of the last population census in 1991). Either the High Representative or the parliament of Bosnia can abolish this “temporary” provision once the return process is considered to be largely completed (Izborni Zakon 2001: Art. 19.8).

These attempts by the international community to prevent a solidification of the territorialization of ethnicity, which took place during the war, were countered by attempts of all three national parties to encourage citizens to vote in their new place of residence in Bosnia. This particular policy was pursued by the respective Croat, Serb and, to a lesser extent, Bosniak national parties for two reasons. Firstly, preserving the post-war ethnic distribution would consolidate ethnically homogeneous territories, as advocated to varying degrees by all three parties, particularly by the SDS and the HDZ, and secure respective electoral predominance in the case that the other communities would decide to vote in the pre-war place of residence. Secondly, the parties advocated voting in the post-war municipalities to extend their own control over their respective electorate and the elected institutions. In

order to achieve this goal, refugees, especially in the Serb Republic, were coerced to vote either in the new place of residence or in a place of strategic importance to prevent Bosniak refugee or IDP votes electing Bosniak representatives and thus “taking control” of the respective town or region. Both fear of registering in the pre-war place of residence and threats to withhold aid to refugee families were used. As humanitarian aid and reconstruction assistance in the first post-war period were significantly channeled through local institutions, the national parties in control of these could effectively blackmail refugees and other citizens. The attempt of the national parties to prevent voting in pre-war communes was largely successful, with “only a limited number of voters cross[ing] the IEBL that day.” (ODHIR/OSCE 1996: 3). Of the approximately 157,000 voters who could have possibly crossed the IEBL that day, only 13,500 from the Federation and 1,200 from the Serb Republic did so (ICG 1996a: 47–48).

Even the SDA encouraged voters to vote in the Federation to ensure that Izetbegović would receive a higher share of the vote in the presidency than the main Serb contender Momčilo Krajšnik. Although the two candidates were not competing at the elections, the stipulation that the candidate with the most votes would chair the presidency in the first term (1996–1998) gave the number of votes received a particular significance (Shoup 1997: 11). In later elections, the party encouraged their supporters to vote in other communities “territories”, especially in the Serb Republic. This policy, however, primarily attempted to undermine the other groups’ claims to the area and not to support the return process *per se*.

As will be discussed later in the context of election results, the above-mentioned provisions did ensure a considerable degree of representation of IDPs and refugees in the pre-war places of residences, but this did not translate into participation in institutions nor did it substantially accelerate the process of refugee return.

b) The results of the first post-war elections

While the electoral system allowed for the elections to take place merely nine months after the end of the conflict and were required to begin with the establishment of the state level institutions, the electoral results did not change, but instead confirmed and thus re-legitimized, the wartime political parties. As mentioned earlier, this legitimacy reinvigorated parties that had a near monopolistic stranglehold on their respective national constituency. The three national

parties won the electoral race for the presidency, with each of the three candidates winning over two-thirds of the vote over other candidates of the same community. In the House of Representatives, the SDA, HDZ and SDS gained 85.6 percent of the seats. Similarly, in the parliaments of both entities, the national parties succeeded in securing their dominance. In the RS, the SDS gained some 54.2 percent of the seats and in the Federation, the SDA obtained 55.7 percent of the seats and the HDZ 25.7 percent.⁹⁷ Similarly in the cantonal elections, which took place simultaneously, SDA and HDZ together gained between 65 and 93 percent of the vote (ICG 1996a: 52). As a result, the three national parties could control all key positions in both entities and at the state level. While the SDA could nominally have ruled without the HDZ in the Federation or the SDA and HDZ without the SDS at the state level, the required power-sharing established coalition governments between the national parties in the Federation and at the state level, while the SDS could rule by itself in the Serb Republic. The key opposition force in the Bosniak areas was the United List (*Združena lista*, ZL), which was a coalition encompassing the Socialdemocratic Parties and other moderate forces. It remained marginal and could only gather 7.9 percent of the votes for the Federation House of Representatives. The only other significant opposition force in the Federation was the Party for Bosnia and Herzegovina of the wartime Prime Minister, Haris Silajdžić. The party gathered approximately the same support as the ZL. In the Serb Republic, opposition emerged from Union for Peace and Progress (*Savez za mir i progres*, SMIP) of more moderate parties supported by Serbia, gaining 12.2 percent in the RS parliament, and the extreme nationalist Serb Radical Party, which received some 7.3 percent of the vote in the RS (Shoup 1997: 8–11).

The weakness of the opposition was largely due to the absence of a free media and the party control of the entity institutions. Furthermore, the brief time available after the end of the conflict prevented nationalist demobilization. The electoral campaign was very much marked by a continuation of the wartime rhetoric by all main parties, notably mobilizing against other nations and instilling fear of the “other” among their own electorate – all this while the three parties were collaborating among themselves.

The main challenge to the national parties emerged from within the parties. The Serb Democratic Party split between a more radical wing under the control of the Serb member of the Bosnian presidency, Momčilo Krajišnik, and the president of the Serb Republic, Biljana Plavšić,⁹⁸ who had increasingly favoured co-operation with

the international community. Plavšić founded the moderately successful **Serbian People's Assembly (*Srpski narodni savez*, SNS)**. The dispute led to early elections in the Serb Republic in November 1997. The results of the **elections broke the dominance of the SDS, which gained only 24 of the 83 seats**. The SDS could, however, count on the support of the extreme nationalist Serb Radical Party (*Srpska radikalna stranka*, SRS), which gained 15 seats. The SRS pursued a more openly anti-Dayton political line than the SDS and was in fact part of the SRS in Serbia under the leadership of the extreme nationalist and paramilitary leader, Vojislav Šešelj. **A coalition between moderate Serb parties and Bosniak and Croat parties in the Serb Republic led to the creation of the first non-nationalist government in Bosnia since 1990 under the prime minister, Milorad Dodik, of the Alliance of Independent Socialdemocrats (*Savez nezavesnih socijaldemokrata*, SNSD)**. Similarly Krešimir Zubak, the Croat member of the Bosnian presidency, left the HDZ and founded the more moderate New Croat Initiative (*Nova Hrvatska inicijativa*, NHI), which failed to gather significant support among Croat voters during subsequent elections.

The result of the 1998 elections, which took place largely under the same electoral rules as in 1996, did not depart significantly from the earlier election outcome (see Table 5.2). While the dominance of the national parties was eroded by the emergence of splits within these parties, giving rise to the SNS and to a lesser degree the NHI, the SBiH joined in a pre-election coalition of the SDA in the Coalition for the Unified and Democratic Bosnia (*Koalicija za cjelovitu i demokratsku BiH*, KCDBiH). In the 1998 elections, the moderate parties, which had their origins among the pre-war non-national parties, had also gathered strength by (re)building their infrastructure. While the three national parties continued to dominate the second post-war parliaments, a stronger opposition had emerged. In particular, various Social Democratic parties, the SDP and the Socialdemocrats (*Socijaldemokrati*)¹⁰¹ in the Federation, and the Alliance of Independent Socialdemocrats and the Socialist Party¹⁰² in the Serb Republic as part of the moderate *Sloga* (Unity) coalition made significant gains. A coalition of moderate and Bosniak parties was able to secure sufficient votes in the parliament of the Serb Republic to keep the Dodik government in power. Additionally, it was able to secure the Serb seat in the presidency with the election of Živko Radišić, a member of the SP RS. Another trend of the election was, however, the consolidation of the Serb Radical Party as a major party in the Serb Republic. Under a pre-election coalition, the SRS president, Nikola Poplašen, won the election for the presidency of the RS against

Table 5.2 Electoral Results for the House of Representatives, 1996, 1998

	1996 Percent	No. Seats	1998 Percent	No. Seats
Federation				
SDA	57.1	16	–	–
KCDB (SDA, SBiH, others)	–	–	47.9	14
HDZ	28.6	8	19.7	6
ZL	7.1	2	–	–
SDP	–	–	14.5	4
Socijaldemokrati	–	–	3	2
SBiH	7.1	2	–	–
DNZ ⁹⁹	–	–	2.3	1
NHI	–	–	3	1
RS				
SDS	64.3	9	21	4
SDA	21.4	3	–	–
KCDB (SDA, SBiH, others)	–	–	16.6	3
SMiP	14.3	2	–	–
Sloga (SNS, SPRS, others)	–	–	27.7	–
SRS	–	–	15.3	2
RS ¹⁰⁰	–	–	3.6	1

Biljana Plavšić with 43.9 to 39 percent of the vote. In the elections for the Croat seat of the presidency, Ante Jelavić, the new president of the HDZ, defeated the candidate of the Socialdemocratic Party and Krešimir Zubak.

Despite some successes of moderate parties in the 1997 and 1998 elections, the popularity of the national parties was not broken and the first election bestowed the national parties' additional legitimacy. **The rules regulating the first post-war election in Bosnia were thus not particularly conducive to empowering new political elites who might solicit electoral support across the ethnic divide.** As the entities constitute the electoral districts, the division between the two (near) halves of the countries was confirmed by the elections.¹⁰³

c) Electoral reforms

The experience of the first post-war elections indicated that democratization alone would in itself not marginalize the national parties closely identified with the war. In addition to other tools of political intervention by the international community, such as removal of officials and the passing of laws and decisions by the High Representative, the

electoral system was reconsidered to advocate moderation and inter-ethnic co-operation. This effort was framed by the need to pass a permanent election law for Bosnia, which would eventually allow for the transfer of the organization of elections from the OSCE to a domestic body. In four crucial areas, the elections of 2000 differed from the earlier elections: (a) the introduction of open lists; (b) multi-member constituencies; (c) preferential voting in the RS presidential election; and (d) changed rules for the election of the members of the House of Peoples in the Federation. The introduction of these new rules was generally assessed by the OSCE itself as a success, as Robert Barry, the Head of the Mission, stated shortly after the November elections: "Using the open list system and the preferential voting system for the RS presidency and vice presidency, voters indicated their desire for a government that is more responsive, more transparent, and more accountable to the people. This is a significant step forward in the evolution of democracy in Bosnia and Herzegovina" (OSCE 2000a; OSCE 2000b). While such optimism was misplaced in light of the 2000 election results, the reforms in large parts marked a clear improvement to the rules governing the first post-war elections.

Open lists

Prior to the 2000 election, citizens could only vote for parties, who determined their electoral list of candidates. The voter was thus not able to choose a candidate of their preference (PEC 1998: Art. 6.10; PEC 1997: Art. 90).¹⁰⁴ In both the municipal and the general elections in 2000, the voter had the option to vote for individual candidates rather than only party and coalition lists (PEC 2000a: Art 6.10; PEC 2000b: Chapter 1100–1400). The motivation of the Provisional Election Commission to introduce the open-list system was to place "more decision-making power in the hands of the voters, and ... [to] ensure that elected officials are more accountable to those who elect them" (OSCE 2000b). This reform was further justified as being supported by the population of Bosnia on the basis of opinion polls (OSCE 1999b).¹⁰⁵ Whereas this change to earlier electoral rules was not *per se* grounded in a philosophy of promoting moderation among political parties in Bosnia, it sought to reduce the control of parties over the voting process. As in the previous elections for the state and entity parliaments, each entity constituted one electoral district, the distance between voter and candidate lists had been particularly pronounced. Especially for local elections, this process allows for the voter to "override" the preferences of the party leadership at the center. The open list

system thus mitigates one of the key disadvantages of proportional representation, i.e. the lack of direct accountability and limited influence of voters to choose a candidate of their liking (Bose 2002: 223). The open lists do not, however, address some of the other critiques voiced against the PR system, most importantly the problem arising from the “ease with which ethnic leaders can be elected exclusively by members of their own group, thus replicating (rather than breaking down) social divisions in the legislature” (Reilly and Reynolds 1999: 30).

Multi-member constituencies

The second major innovation of the draft election law and the 2000 election was the introduction of multi-member constituencies (MMC) for the elections of the three directly elected state and entity parliamentary chambers. While earlier entities were the only electoral units, the new rules broke the two electoral districts into smaller units. Here the motivation was similar to the creation of open lists, namely increasing “accountability making it easier for citizens to know who is responsible for representing them and their interests, thereby increasing the incentive for elected representatives to be responsive to the needs of voters” (OSCE 2000b). For this purpose, five MMCs were created in the Federation and three in the RS (OSCE 2000b: Art. 1102).¹⁰⁶ The system of compensatory mandates is important to ensure that the system does not result in distortions that majoritarian electoral systems can lead to. The system of compensation has, however, been excessively complicated, as also parties who had gained less than the three percent threshold were eligible for seats (Association of Election Officials in BiH 2001).

This system of MMC with the same electoral districts for the election of the HOR on the state level was transferred into the election law. While the MMC system with compensatory mandates was kept for the entity parliament elections, the specifications for the election of seats differ. The permanent elections law only states that in the Federation there have to be at least ten MMCs with 3–15 members elected in each. Of the 98 members (instead of 140) 23–27 percent are to be compensatory mandates. In the RS, the same share of the 83 seats was determined to be compensatory mandates. Among the temporary provisions (Izborni zakon 2001: Art. 19.13), the same districts were established in case the entities did not establish new multi-member constituencies in time for the elections.

The combination of multiple-member constituencies and proportional presentation draws on electoral systems in countries such as

Germany and New Zealand, allowing for an overall proportional representation in the parliament, while seeking to build a direct link with the electorate through specific constituencies. Unlike in the case of Germany and New Zealand, however, the constituencies in question are not single-member constituencies and the share of compensatory mandates through proportional representation is smaller, approximately a quarter of the seats rather than half, approximating rather the electoral system employed in Mexico. A key disadvantage of the MMC system in Bosnia is, in conjunction with the other elements of the Bosnian electoral system, the high degree of complexity of the electoral process (Taagepera and Shugart 1989: 230–232).

Preferential voting: RS presidency 2000

The election for the president and vice-president of the Serb Republic in November 2000 was the first time in post-war Bosnia that voters were able to vote according to the preferential voting system. Earlier drafts of the election law foresaw the preferential system also for the state level presidency. Finally, the preferential voting system was only included in the election law for the election of mayors and was first used in October 2004.

In the elections, voters rank their votes to elect the president and vice-president. The voter was thus able to add numbers of preference next to the different candidates. In doing so, the voter was able to rank, if he wanted, all candidates running – in this case six. While the voters were given the option to rank the candidates, the expression of a range of preferences was not required and voters could just support one of the choices. In case none of the candidates wins 50 percent after counting the first preferences, the candidate with the least number of votes is eliminated from the count and the candidate's ballots are re-counted according to the second preference. This process can be repeated after the elimination of the next candidate with the lowest number of votes until a candidate reaches 50 percent of the vote (PEC 2000b: Art. 902). Some scholars on the institutional design of power-sharing systems, especially proponents of integrative power-sharing as outlined by Donald Horowitz, have suggested preferential voting as a key aspect of inducing moderation in a divided political system (Reilly 2001).

In his analysis of the Bosnian electoral system, Sumantra Bose attributes the introduction of the preferential voting system to the international community's attempt at supporting Milorad Dodik in his bid for the presidency. It was thought that Bosniak voters might support the

moderate candidate against the SDS in their second preferences (Bose 2002: 230–231). The results were not very encouraging. Although there was a second round of counting, based on the second preferences of the lowest ranking candidate, the voting system had no impact on the outcome of the vote. The highest-ranking candidates of the SDS gained nearly an outright majority in the first round with 49.8 percent of the vote. The least successful candidates' votes from the Bosnian Party (*Bosanska stranka*, BOSS) were eliminated and their votes redistributed. While the votes benefited other predominantly Bosniak parties running the Serb Republic, the number did not change the ranking of the candidates and the candidates from the SDS won the election due to the reduced number of votes counted after the first transfer of votes.¹⁰⁷ In fact, most Bosniak voters who supported BOSS transferred their votes to other (predominantly) Bosniak parties, rather than to moderate Serb candidates, such as Dodik or the PDP of Mladen Ivančić (see Table 5.3).

Table 5.3 Results of the Elections for the President of the RS in 2000¹⁰⁸

	Candidate	1 st Pref.	Percentages	2 nd Pref. Transf.	Votes after Transfer	Percentages
1	Mirko Šarović, Dragan Čović (SDS)	313,572	49.8	35	313,607	50.1
2	Milorad Dodik, Dobrosław Ćuk (SNSD)	161,942	25.7	212	162,154	25.9
3	Momčilo Tepić, Perica Bundalo (PDP)	54,392	8.6	41	54,433	8.7
4	Slobodan Popović, Mirsad Đapo (SDP)	48,992	7.8	3,419	52,411	8.4
5	Zijad Mujkić, Ante Milinović (GDS)	37,614	6.0	5,220	42,834	6.8
6	Aljia Dugonjić, Jovanka Beca Šarac (BOSS)	12,851	2.0	–12,851	0	0
	Total	629,363	100	–3924	625,439	100
	Votes required (50%)	3,146,815			3,127,195	

As Benjamin Reilly points out, "as the environment in which the elections took place was almost mono-ethnic, it not surprisingly had no impact on ethnic accommodation" (Reilly 2001: 144, note 3). Indeed, of the valid votes less than 20 percent were likely to have been cast by Bosniaks and Croats.¹⁰⁹ As such, the voting took place in a mono-ethnic environment with a strong minority, rather than a more ethnically mixed area, limiting the possible mitigating effects of preferential voting. Furthermore, the fact that most Bosniaks and Croats participating in the elections did not actually live in the Serb Republic rendered any cross-ethnic appeal for preferences more difficult than in an area where the voters can be directly targeted by the moderate parties. In the 2002 elections, the winning candidate of the Serb Democratic Party gained only 35.89 percent of the vote. According to the new electoral system, the Bosniak and Croat candidates gaining most votes are elected as vice-presidents, thus distorting the results and making it difficult to ascertain the impact of alternative voting.¹¹⁰

Of the different experiments tried out in the 2000 elections and discussed in the framework of the Elections Law, multimember constituencies and open lists were included in the law, whereas preferential voting was dropped for the RS presidency election. Votes for the parliamentary seats continued to be allocated according to the Sainte-Lague system where seats are allocated in decreasing order of the numbers obtained by dividing the number of votes by 1, 3, 5, etc. Unlike the more commonly used d'Hondt system, the Sainte-Lague system favours smaller parties. In combination with the aforementioned compensatory seats including parties which had not reached the threshold, the electoral law has assured representation for smaller parties. In the 2002 election, for example, 14 parties gained seats in the 42-member state House of Representatives. The purpose of this system has been to weaken the national parties in favour of the more fragmented and smaller moderate parties. While the law and the 2000 rules sought to strengthen the parliamentary representation of moderates, the law favoured strong national parties for the presidential elections in Bosnia. According to the 2001 Election law, the members of the presidency and the president and vice-president of the RS are elected by the First Past the Post System. This has allowed the national parties to gain all presidencies, often without the support of more than 50 percent of the electorate.

d) The elections in 2000 and 2002

While the results of the 2000 elections mark a significant advance for moderate and non-national parties, the reform attempts outlined above had only a limited impact on the results. In fact, the success of the moderate parties was less significant than pre-election opinion polls had suggested and international organizations had hoped for. In the pre-election period, which also included the second municipal elections in April 2000, key international organizations, especially the OSCE, had openly encouraged voting for opposition, i.e. non-nationalist or moderate parties (De la Haye 2000: 1). The nationalist HDZ and SDS were, in fact, strengthened in comparison to the municipal elections. The SDS profited from both the ban on the SRS and a call by some international policy institutes (ICG) and individuals (Richard Holbrooke) for banning the party. The HDZ mobilized support in opposition to a change of the electoral rules by the OSCE, which allowed Bosniak members of the cantons to vote for Croat members in the House of Peoples (and vice versa) (Jurcic 2002: 565–574). The HDZ warned of the danger of Croat representation in the House of People being reduced to “loyal Croats” elected by the dominant Bosniak parties. In response, the HDZ organized a parallel referendum during the elections on the rights of Croats in Bosnia, asking Croat voters whether they favoured “their own political, educational, scientific, cultural and other institutions on the entire territory of Bosnia and Herzegovina”. The referendum was declared illegal by the OSCE, which organized the elections. According to the HDZ, 71 percent of registered Bosnian Croats voted in the referendum, with 98.96 percent voting in favour (AFP 2000).

In the RS, the SDS re-emerged as the strongest political party by a large margin, effectively ending the government of Milorad Dodik (see Table 5.4). Another winner of the elections was the PDP, headed by the economist, Mladen Ivanić, who later formed the new government of the RS. The government eventually did not contain any SDS members, but relied on the party’s support. In return, the SDS received posts and influence at lower levels of the administration. The exclusion of the SDS was a condition imposed by the OHR and other international organizations, as the nationalist line of the party was deemed unacceptable.

In the Federation, the SDP, led by Zlatko Lagumdžija, gained support nearly equal to that of the SDA (see Table 5.5). The HDZ was, however, not

Table 5.4 Votes and Seats in the RS Parliament, November 2000¹¹¹

Party	Dominant Ethnic Affiliation	2000		2002	
		Percentage	Seats	Percentage	Seats
SDS	S	36.1	31	31.2	26
SNSD	S	13.0	11	21.79	19
PDP	S	12.3	11	10.73	9
SDA	B	7.6	6	7.1	6
SBiH	B	5.2	4	3.65	4
SDP	B (C, S)	5.0	4	3.4	3
SPRS	S	4.9	4	4.2	3
DPS	S	4.1	4	0.93	1
DNS	S	3.5	3	4	3
SNS	S	2.3	2	0.98	1
SRS	S	–	–	4.39	4
Others			3		4

Table 5.5 Votes and Seats in the House of Representative of the Federation, 2000 and 2002¹¹²

Party	Dominant Ethnic Affiliation	Percentage	Seats (140)	Percentage	Seats (98)
SDA	B	26.8	38	32.7	32
SDP	B (C, S)	26.1	37	15.6	15
HDZ	C	17.5	25	15.8	16
SBiH	B	14.9	21	15.3	15
BOSS	B	1.1	2	2.8	3
BPS	B	1.7	2	1.3	1
DNZ	B	2.1	3	2.3	2
NHI	C	1.6	2	2	2
Others			10		7

seriously challenged by its more moderate split-offs, such as the **New Croat Initiative** of former presidency member Krešimir Zubak. The Party for Bosnia and Herzegovina under the leadership of Haris Silajdžić made also significant gains. Until 2000, the party formed coalitions mostly with the SDA, its running mate in the 1998 elections. In the follow-up to the elections, a **broad coalition “Alliance for Change”** was created by SDP and SBiH with the participation of smaller Croat, Bosniak and other moderate

parties. This **ten-member coalition** could muster sufficient support in the parliament of the Federation and at the state level, together with the SNSD and the PDP from the Serb Republic, to form governments replacing the previous coalition of national parties.

If the 2000 elections brought a small victory to moderate and non-national parties, **the 2002 election, the first administered by the Bosnian Election Commission according to the 2001 election law, saw a near complete return of national parties.** First, the return to power of the national parties was not so much the result of an overwhelming electoral victory; in fact only the SDA gained in comparison to the 2000 elections, while both SDS and HDZ lost some votes. **The small gains tipped the scales in favour of the national parties.** Second, the national parties could benefit from **general disillusionment** with the political process, as a result of multiple elections since 1996, the lack of economic progress and a bitter pre-election campaign. This dissatisfaction was also evidenced by the low turnout of only 54 percent (Gromes 2003: 47–54).

The new state presidency includes members from all the three national parties, Dragan **Čović** from the HDZ (the previous party president Ante Jelavić had to resign from all party offices to prevent a ban of HDZ by the HR), Sulejman **Tihic** from the SDA and Mirko **Šarović** from the SDS. The previous state presidency had not included one member from the national parties.¹¹³

Table 5.6 Voting Results for Bosnian Presidency, October 2002¹¹⁴

	Votes	Percent
Serb Members		
Mirko Šarović (SDS)	(elected) 180,212	35.52
Nebojsa Radmanović (SNSD)	101,119	19.93
Ognjen Tadić (SRS)	44,262	8.72
Bosniak Members		
Sulejman Tihic (SDA)	(elected) 192,661	37.29
Haris Silajdžić (SBiH)	179,726	34.79
Alija Behmen (SDP)	90,434	17.51
Croat Members		
Dragan Čović (HDZ)	(elected) 114,606	61.52
Mladen Ivanković-Lijanović (HDU)	32,411	17.40
Mijo Anić (NHI)	16,345	8.77

While the election of Šarović and Čović had been widely expected, the victory of Sulejman Tihić over Haris Silajdžić came as a surprise and was widely attributed to the confrontational electoral campaign between the SDP and Silajdžić's SBiH (see Table 5.6). The results of the vote for the state presidency also highlight the limitations of the national parties' dominance in Bosnia. Only among Croat candidates was nobody able to mount a serious challenge to the dominance of the HDZ. Both the Bosniak and the Serb candidates were elected with less than 40 percent of the total vote.

The results for the state level House of Representatives point (Table 5.7) to a similar trend. The three national parties gained 20 of 42 seats, just short of a majority. The biggest single loser was the SDP, which lost nearly half of its votes and mandates and declined from strongest to only fourth party in parliament.

The House of Representatives is considerably fragmented, as a system of compensatory mandates benefited small parties, which were not

Table 5.7 Bosnian House of Representatives Election Results, November 2000 & October 2002¹¹⁵

	October 2002		November 2000		Change in %
Party	in %	# Seats	in %	# Seats	
Federation of Bosnia-Herzegovina					
SDA	32.4	9	27.0	7	+5.4
HDZ BiH	15.9	5	19.3	5	+3.4
SBiH	16.2	5	15.6	4	-0.6
SDP	15.7	4	27.3	8	-11.6
BOSS	2.6	1	-	-	+2.6
SPU	2.5	1	-	-	+2.5
DNZ BiH	2.3	1	2.2	1	-0.1
H DU	2.2	1	-	-	+2.2
NHI	1.9	1	2.0	1	-0.1
Serb Republic					
SDS	33.7	5	39.7	6	-6
PDP	10.4	2	15.2	2	-4.8
SNSD	22.4	3	10.6	1	+11.8
SDA	7.3	1	7.4	1	-0.1
SRS	4.8	1	-	-	+4.8
SP RS	4.3	1	5.7	1	-1.4
SBiH	3.9	1	5.4	1	-1.5

able to muster a three percent threshold. As a result, 10 parties are represented in parliament, with only the SDA receiving more than a tenth of the seats. The results of the elections in the two entities mirrored the results at the state level. In the presidential elections of the Serb Republic, the former vice-president and member of the SDS, Dragan Ćavić, won the elections with 35.9 percent of the vote. As a consequence of the aforementioned constitutional changes, one Croat and Bosnian vice-president were elected – the Croat Ivan Tomljenović from the SDP and Adil Osmanović from the SDA. In the assembly of the RS, the SDS remained the dominant party (26 seats), whereas the SNSD made some gains (19 seats); the other moderate party, the PDP, declined slightly in popularity, gaining only nine seats.

The election results in the Federation pay tribute to the re-established dominance of the national parties and the fragmentation of more moderate parties. The HDZ and SDA took 48 of the 98 seats of the House of Representatives, while a total of 18 parties received seats in parliament (14 of which have each received less than 3 percent of the votes). The extreme fragmentation of parliament – a result of the compensatory seats – generally benefited more moderate parties, but accomplished little in facilitating a stable party system. Due to protracted post-election bargaining, governments were not established before January 2003. At the state level, they included the three national parties, PDP and SBiH. In the Serb Republic, the new government includes the SDS, PDP and SDA, while in the Federation the HDZ and the SDA form the core of the governing coalition.

e) Elections and nationalism in Bosnia

As discussed earlier, the party system in Bosnia is extremely fragmented, with few parties having a base in both entities or in more than one community. As the classic left-right approach to understanding Bosnian political parties fails to adequately grasp the reality, a number of different ways have been chosen to categorize the different parties. The categories generally establish some distinction between moderate, non-nationalist and national parties (Guerrero and Bermudez 2000: 159–161; Gromes 2003; Pugh and Cobble 2001: 45–46). Generally, one can distinguish **four groups of parties, which are divided into three communities.** On the one end are **extreme nationalist parties.** These parties advocate a change of the status quo, usually secession, threaten other nations and endorse the use of force. Unlike the SRS, the most successful of the extreme national

parties, the "established" national parties have engaged in a higher degree of co-operation with each other and largely operate within the status quo, even if they might favour fundamental changes to the existing system. While these three parties dominate the category of national parties, some other parties with similar orientation have emerged, especially in the Serb Republic. The next category groups together moderate parties, possibly the most problematic category. It includes parties that have a stronger commitment to cross-national co-operation and emphasize a not exclusively identity-based political agenda. At the same time, these parties have a well-defined commitment to only one community with at best token inclusion of others. The most successful of these parties has been the SBiH among Bosniaks and the SNSD in the Serb Republic. The former is committed to a strong Bosnian state and the latter ostensibly considers itself to be social democratic. As they operate largely as mono-ethnic parties in terms of the electorate, both have been oscillating between programmatic and ethnic policies. The final category includes non-national parties, which do not have a group-specific programme and potentially appeal to more than one group. Here one would place the SDP. It is, however, important to note that despite the fact that the SDP is a non-national party in terms of programme and diversity in the leadership, the party has its base primarily among Bosniak voters. For example, in 2000, when the party had its largest electoral success, the party gained 27 percent of the vote in the Federation and only five percent in the Serb Republic. Of those five percent, most votes were cast by refugees in the Federation. Thus, the party only received 6,300 votes from voters residing in the Serb Republic, or 1.2 percent. Also within the Federation, the support was limited to the mixed or Bosniak cantons. In Canton 10, the SDP received only four percent of the votes in the cantonal elections of 2000, and no votes in the elections for Western Herzegovina canton.¹¹⁶ Due to the dominance of the SDP in Bosniak areas, the party cannot be fully considered to be cross-national. Just for the sake of completeness, the category of cross-national parties is included in Table 5.8, while no such party has yet emerged. Similarly, there are no significant counterparts to the SDP with a Croat or Serb background. This is, however, not surprising as the platform of the SDP with its advocacy of a strengthened central state and the aim of a more civic-oriented state coincides with the interests of Bosniaks, if for no other reason than the demographic dominance of Bosniaks in Bosnia. As a result, the civic orientation of the SDP appeals to one community more than

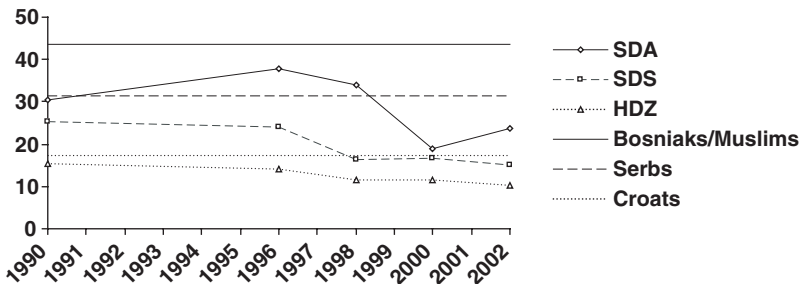
Table 5.8 The Orientation of the Main Political Parties in Bosnia and their Main Electoral Base

	Bosniak	Serb	Croat
Extreme Nationalist		SRS	HSP
Nationalist	SDA	SDS	HDZ
Moderate Nationalist	SBiH	SNSD, PDP	NHI
Non-nationalist	SDP		
Crossnational			

others, while the equivalent among other groups is more likely to position itself with less support for the strong Bosnian state and a more particularistic interest, which places them in the category of moderate national parties, such as the SNSD.

As discussed earlier, the three national parties mostly have had a dominant share of the votes among their group since 1990. Even in 2000, when support for the Socialdemocratic Party approached the Party for Democratic Action, it received fewer votes than the dominant Bosniak party. As Graph 5.1 demonstrates, the national parties were able to capture more than half of their respective community's votes. The proximity between census result and election result of the national party has been the greatest among Croats, whereas there has been considerable fluctuation among Bosniak voters, reaching a high point in 1998.

The dominance of the national parties during the post-conflict period has been primarily explained by three phenomena. First, territorial homogenization effectively segmented the electorates of the different communities. Second, with the exception of the SDP, no

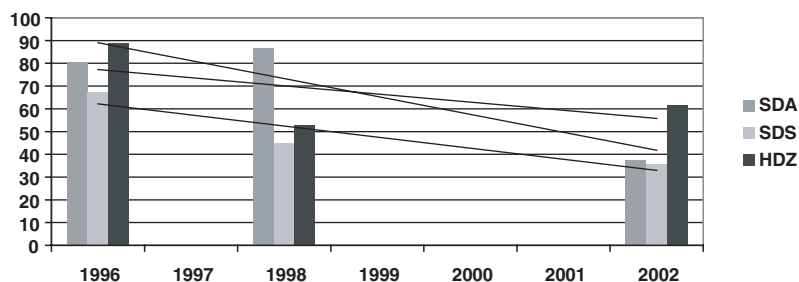


Graph 5.1 Electoral Results for the Three Dominant National Parties 1990–2002 and the Census Result 1991¹¹⁷

significant cross-ethnic campaigning has taken place in the post-war electoral races. Finally, the media has been segmented and often controlled by the national parties (Guerrero and Bermudez 2000: 146). When examining local voting patterns, results suggest that support for national parties is stronger in ethnically more heterogeneous regions. This support is not the result of cross-community contacts, but of the fear of domination, which has strengthened national parties (Caspersen 2004: 577–578).

Before examining the reasons for the dominance of the national parties, it is worthwhile to note that despite the continuing influence of the parties, their monopolistic hold on the electorate has declined. This is especially visible in the vote for the presidency, where the support for the national party candidate has declined since 1996 (see Graph 5.2). During the first elections, each of the three candidates had more than two-thirds majority within the electorate. By 2002, only the HDZ candidate was able to secure just above two-thirds of the electorate. Due to the relatively small number of Croats in Bosnia, in proportion to Serbs and Bosniaks, the mobilization dynamics among this community have been different, with the HDZ being able to secure a much higher degree of support than either the SDS or the SDA were able to gain.¹¹⁸

While each electoral result has its own dynamics, such as voter turnout and the particularities of the campaign, the dominance of the national parties requires a comprehensive explanation. First of all, the national parties have changed their policy and leadership since their founding in 1990. None of the 1990 leaders is still in office and some parties have undergone substantial personnel changes, as well as programmatic fluctuations during this period. As the parties have to some degree successfully sought to represent their respective nation, they have displayed some degree of diversity.



Graph 5.2 Support for the Presidency Candidates of the Three National Parties

In addition to the internal factors contributing to the success of the national parties, the political system in Bosnia has been conducive to the success of the national parties. At the time of the first elections in 1990 only the presidency was required to represent all three nations equally.¹¹⁹ In the post-war institutions, the representation of Bosniaks, Serbs and Croats had permeated parliament, government and the presidency, be it a constitutional requirement or a practice. As the representation of all three nations is crucial in the political system, the need for “representative” political parties is key. While the “Alliance for Change” was able to fill all key offices during its tenure following the ethnic key, it was often accused of not filling offices with “representative” members of the respective nation. As the “Alliance” only contained weak Croat parties due to the dominance of the HDZ, such accusations were not entirely unfounded. This challenge is, however, not the exclusive problem of moderate parties. Both the Croat Vice-President of the RS, elected in 2002, and the Serb Vice-President in the Federation elected by the Federation parliament suffered from similar challenges, the former having been elected by a mere 4,029 votes, the latter having been Mayor of Srebrenica with the SDS and later switching to the SDA without a constituency in the Federation. Despite the fact that the issue of representation remains complex for both non-nationalists, as well as for national parties, the non-national parties are challenged in a system that primarily allocates elected offices on the basis of group membership. For this reason, the most effective challenge has arisen from moderate national parties, i.e. parties that are mono-national in their programme and their membership, but advocate a co-operative policy. These parties have been more able to adapt to the political system and address the issue of “representation” of the respective group.

6

Addressing Inequality & Reforming Governance in Post-War Bosnia

As noted earlier, post-war Bosnia has been marked by sharp divisions along ethnic lines and the territorialization of ethnic identity. The Dayton Peace Accords instituted mechanisms to overcome these divisions, such as Annex 7 charged with the return of refugees. At the same time, it recognized some of the wartime divisions, such as political dominance of Bosniaks and Croats in the Federation and Serbs in the Serb Republic. Finally, it excluded some areas, such as the status of the city of Brčko, from ethnic dominance. In this chapter, we will examine these three aspects to trace efforts to overcome some of the inequalities in post-conflict Bosnia. The return of refugees has arguably been the most important aspect of reversing the inequalities established during the war. The changes to the entity constitutions constituted the first major reform of governance in Bosnia and thus merit particular attention not only to the outcome, but also to the process. Finally, the case study of Brčko is instructive in regard to the possibilities and constraints of a full-fledged multiethnic unit. Examining a cross-section of key areas of reform can point to both the potential and limitations of international intervention in post-war Bosnia.

a) Refugee return, and human and minority rights

Refugee Return

The war in Bosnia saw the displacement of over half of the population. 1.1 million people were internally displaced, while 1.2 million sought refuge outside of Bosnia in Croatia, Yugoslavia and other third countries. The peace agreement sought to re-address this massive human

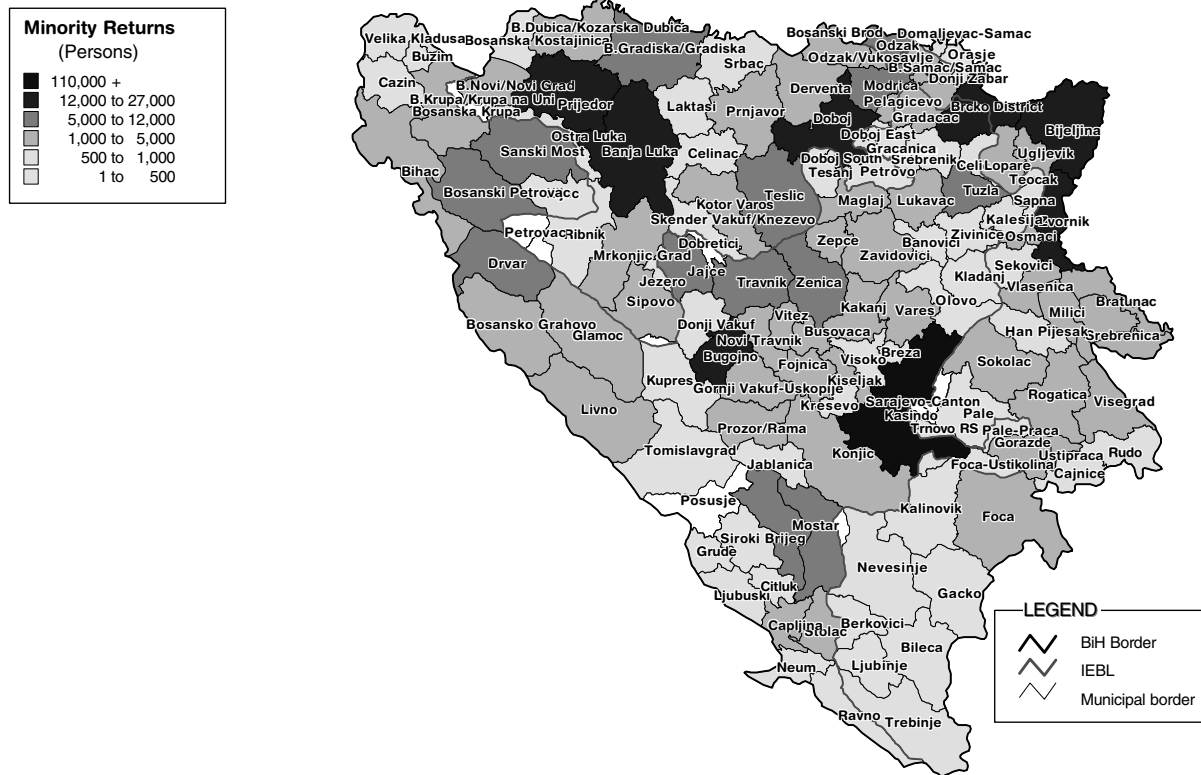


Table 6.1 Refugees and IDPs as Part of the Pre-War Population¹²⁰

	Population 1991	Total number of refugees and IDPs	Percentage of refugees and IDPs of 1991 population
Bosniaks	1,902,956	1,240,000	65.2%
Serbs	1,366,104	730,000	53.4%
Croats	760,852	375,000	49.3%

displacement for both moral and practical reasons. Accepting the permanent displacement of over 50 percent of the population (see Table 6.1) would have been interpreted as rewarding the political forces that engaged in “ethnic cleansing” in order to establish mono-ethnic territories. In case of Bosniaks, close to two thirds of the pre-war population had to flee their homes either abroad or to other parts of Bosnia.

From a practical perspective, the significant number of refugees placed a significant burden on many Western countries, not to mention the two neighbouring countries, and embodied the danger of a permanent source of insecurity, as has been the case with Palestinian refugees in countries neighbouring Israel.

Annex 7 thus stipulated that

all refugees and displaced persons have the right freely to return to their homes of origin...[and] have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them (DPA 1995: Annex 7, Art. I(1)).

The focus of the return process has been on so-called minority returns, i.e. the return of displaced people to their original place of residence in which they now constitute a minority, be it at the level of the entity for *Republika Srpska*, or at the level of cantons for the Federation.¹²¹ While the return to majority areas has also been frequently problematic, the minority returns have been the most challenging to accomplish and were often obstructed by local authorities. Most of the returns in the first phase after the war were returns to areas of the majority population of the refugees and displaced people, while the later and slower returns were minority returns. By mid-2000, the UNHCR concluded, “return movements to ‘majority’ areas have largely been completed” (UNHCR 2000b). The key focus thus shifted to the

Table 6.2 Return of Refugees and IDPs (1/1996–12/2004)¹²²

	Refugees					Displaced Persons				
	Bosniaks	Croats	Serbs	Other	Total	Bosniaks	Croats	Serbs	Other	Total
1996	76,385	3,144	8,477	33	88,039	101,402	505	62,792	42	164,741
1997	74,756	33,568	11,136	820	120,280	39,447	10,191	8,452	205	58,295
1998	78,589	23,187	6,765	1,459	110,000	15,806	4,325	9,139	300	29,570
1999	18,440	6,299	6,332	579	31,650	24,907	6,760	11,315	403	43,385
2000	7,633	4,834	5,303	837	18,607	36,944	7,779	14,175	449	59,347
2001	4,642	4,244	9,155	652	18,693	48,042	5,960	25,734	436	80,172
2002	12,592	5,933	18,220	389	37,134	41,511	5,319	23,215	730	70,775
2003	5,257	2,852	5,482	421	14,012	21,861	2,267	16,023	152	40,303
2004	976	450	942	74	2,442	12,976	1,028	3,888	56	17,948
Total	279,270	84,511	71,812	5,264	440,857	342,896	44,134	174,733	2,773	564,536

minority returns, which also had the potential of having a more lasting impact on undoing the “ethnic cleansing”.

By September 2004, one million Bosnians had returned out of a total of more than one million IDPs and 1.3 million refugees (see Table 6.2). The return of refugees to minority areas is connected with a number of factors and can be seen as a litmus test for the overall progress in stabilizing Bosnia. First, in the narrowest sense, the return of refugees is dependent on the **immediate security** for those who wish to return. In particular in the first post-war years, the lack of security was often a key obstacle to the return process.

Second, the return process is largely conditional on a clarification of **ownership of property** and the restitution of real estate to pre-war owners. The Dayton Peace Accords introduced the principle that all refugees had unconditional rights to their pre-war properties. The subsequent implementation rested on this central premise, which allowed for the return of property and the annulment of all property occupation that had taken place during or after the war.

On a broader scale, **the return of refugees is closely interconnected with political representation** and inclusion of the non-dominant returnees into the political system. The **lack of economic prospects for returnees**, which are the result of both discrimination and the absence of overall economic development in Bosnia, has also been pertinent in preventing or delaying refugee return. In many cases, **scarce jobs were withheld from returnees** in what constitute clear cases of discrimination. Elsewhere, the overall job situation prevented returnees from securing their livelihood in their pre-war home (UNHCR 2000a). In addition, municipalities to which refugees seek to return have to be

able to provide certain services to the returnees, such as schooling, and social and health care. The absence of these basic conditions for return, often not based on discrimination, but on the overall poor state of many communes, has been an important obstacle to refugee return. Especially in regard to **schooling**, children of returnees have been subject to discrimination throughout Bosnia. As the educational system, at least until the reforms in recent years, reflected the respective dominant community, the use of the other alphabet (Latin in the RS, Cyrillic in the Federation) or one-sided histories disadvantaged returnees (see Kukić 2001: 43–48).

In spite of these obstacles, the refugees' return to minority areas began accelerating in 1999 (see Table 6.3) and reached its peak in 2001 and 2002. The return flow included even areas where returnees were prevented for a long time by nationalist forces, especially in Eastern Bosnia and in Herzegovina by local Serb and Croat authorities respectively (ICG 2000; Fischel de Andrade and Delaney 2001: 315–330). By 2003, the number of minority returns had again decreased, this time not reflecting a renewed increase in discrimination, but the near-completion of the property return process. The decline (see Table 6.3) thus indicates that the return flow is nearing completion, i.e. the phase when most of those who wanted and could return have moved back to their pre-war home. **More than a million Bosnians, living either abroad (mostly in Croatia and Serbia) or within Bosnia but at a new location, are unlikely to return to where they lived before 1992.**

Overall, the return of refugees has been only partially successful. By the end of 2002 some 400,000 refugees and IDPs had returned to areas where they now lived as a minority. While originally these returns

Table 6.3 Minority Returns in Bosnia (1996–2004)¹²³

	Federation	Serb Republic	Brčko	Total	Increase from Previous Year
1996–1997	44,398	1,125		45,523	
1998	32,605	8,586		41,191	–9.5%
1999	27,987	13,020		41,007	–0.4%
2000	34,377	27,558	5,510	67,445	+64.5%
2001	46,848	40,253	4,960	92,061	+36.5%
2002	51,814	41,345	8,952	102,111	+10.9%
2003	25,130	18,051	1,687	44,868	–56.1%
2004	5,881	8,045	273	14,199	–68.3%
Total	269,040	157,983	21,382	448,405	

nearly exclusively went to the Federation, they reached nearly equal numbers in both entities by 2000. At the same time, the fact that an equally large number of IDPs continue to live in their new (and not so temporary) homes ten years after the end of the war renders the assessment of the implementation of the peace accord less optimistic in this aspect. Furthermore, the return statistics are often misleading, as many of the registered returnees do not actually stay, but rather sell their property and eventually settle in their respective majority areas. In addition, the age structure of the returnees is often uneven. As elsewhere in former Yugoslavia, returning refugees often tended to be older and without children. Thus, while the return data indicates an increase in minority returns, this does not necessarily result in the recreation of multiethnic areas, as many of the returnees are elderly, whereas younger refugees or IDPs have stayed back in the new majority areas or in third countries.

With the passing of time the eventual return of many refugees and IDPs will become less likely, as families establish new homes with professional and personal ties and might be reluctant to give up their new homes. The reason for the lack of success in the implementation of the refugee return can be attributed to the obstruction to the return process mostly at the local level. Especially the *Republika Srpska*, even under its more moderate governments after 1998, returnees have been obstructed from returning to a considerable degree, with the clear intent of preventing a reversal of the population structure to a more diverse society where Serbs could lose their political, social and economic dominance.

In addition to political obstruction, the lack of economic opportunities and the problem of refugees living in occupied properties have further hindered return. As Bosnia in 2001 hosted 25,000 Serb refugees from Croatia and both Croatia and Yugoslavia had over 220,000 refugees from Bosnia, the return process has a regional dynamic and is closely linked with the policy towards return in the neighbouring states (UNHCR 2001: 1).

The process of returning refugees in Bosnia was also never independent of political developments in the country. After all, the expulsion of population groups during the war was part of a deliberate policy. The return of refugees thus constitutes a direct challenge to the creation of ethnically homogeneous territories. More substantially, it undermines the very principle of ethnic territorial autonomy, which was the result of the Dayton Peace Accords that recognized the two entities. The process of returning refugees was

often, as some have argued, not seen as part of a larger political process, but a goal *per se* (Papić 2001: 25; Ito 2001: 98–122). Only the reform of the entity constitutions in 2002 altered the political environment at the entity and local level in which returns can occur. The changes have, however, only slowly trickled down to the local level where they would impact returnees.

Human and minority rights

The constitution set forth in the Dayton Peace Accords commits Bosnia to a comprehensive list of international human rights instruments.¹²⁴ In addition, the peace agreement established a host of institutions responsible for the implementation of these standards, such as the Human Rights Chamber, the Constitutional Court, an Ombudsman Office and other bodies. The human rights situation on the ground, however, has remained problematic in large parts of Bosnia. Human rights violations against Bosniaks, Croats and Serbs living in areas where they are not dominant and against national minorities are frequent. Often, human rights violations are closely linked with the refugee return process. In addition, the dominant national parties use their predominance against political opponents and the free media. Cases of politically motivated violence by authorities and individuals declined in the past years, but remain a problem, especially in association with minority return. Further serious human rights violations are connected with the rights of minorities, ranging from political to religious rights. Furthermore, war crimes committed between 1992 and 1995 are addressed only slowly and many key suspects remain at large, especially in the *Republika Srpska* (Helsinki Committee 1999d). Difficulties in implementing the Human Rights protection foreseen in the Dayton Accord are largely caused by local authorities and the three national parties (in varying degrees). The Human Rights Ombudsman and the Human Rights Chamber are charged with investigating human rights violations, as outlined in Annex 6 (ch. 2) and have seen their work expand in the past years. The Human Rights Chamber, with 14 members (eight nominated by Council of Ministers of the Council of Europe, four by the Federation and two by *Republika Srpska*), hears cases of human rights violations brought forth by individuals or organizations. Similarly, the Ombudsman, who is a foreign national, takes on individual complaints and tries to investigate them.

While these institutions have worked and addressed human rights concerns for a number of years, they have been frequently overbur-

dened with large numbers of cases.¹²⁵ In addition, the key human rights problem of refugee return easily escapes these institutions, as the insecurity at the original place of residence is only in part state-sponsored and very difficult to tackle. As the Chamber and the Ombudsmen **have little enforcement capacity**, their rulings have often been disregarded by the entities, as well as by international agencies.

In addition to the aforementioned problems regarding the implementation of human rights, **the DPA is surprisingly weak in regard to minority rights**. While the constitution obliges Bosnia to adhere to the **European Charter for Regional or Minority Languages** and the **Framework Convention for the Protection of National Minorities**, the international standards are highly inadequate in protecting minorities in the **mono-ethnic autonomies of the entities**. **The entities were not obliged to grant minority or group rights to members of the three constituent people in areas where they were not dominant or to citizens from non-dominant groups (e.g. Roma)**. Thus, while the right to return and other human rights were (inadequately) protected, **key group rights to offset the ethnic autonomy are lacking**, which would, for example, provide for education of minorities in the non-dominant history and culture. **Post-war Bosnia is, in fact, suffering from an inherent link between strong political representation of groups and weak protection of group rights**.

Before entering into this debate, we have to distinguish between two types of groups' rights. The first category encompasses the rights accorded to **minority communities, which do not belong to the three constituent peoples**. In 1991, these groups amounted to approximately two percent of the Bosnian population, of which the largest group are Roma. The second group of possible beneficiaries of minority or, rather, **group rights are constituent people in the areas where they form a numerical minority**. The first group has been largely neglected in the constitutional arrangements of Dayton and are mentioned only in passing as "others". The constitution itself does not offer any guaranteed representation to these "others" and excludes them from the country's presidency, the House of Peoples and a number of other high offices. **The entity parliaments, as a result of the constitutional changes imposed in 2002 by the High Representative, have a number of seats reserved for "others": four of the 28 seats in the Chamber of Peoples in the Serb Republic and seven of the 58 seats in the Federation House of Peoples**.

At the minority rights level, Bosnia has displayed a large discrepancy between the commitment to all major international human rights,

including minority rights, and instruments, and the implementation of these standards through laws (Helsinki Committee RS 1999; Helsinki Committee 1999c). It was **only in June 2003 that the Bosnian Parliament passed a law on national minorities**.¹²⁶ The law has been vetted by the Council of Europe's **Venice Commission** and is explicitly modeled on the Framework Convention for the Protection of National Minorities. In 2004, the Serb Republic passed an entity level law. The state level law has been ambitious and hard to implement in an environment where minority rights are sidelined by concern for the constituent people and the financial obligations are hard to shoulder. In addition, the law provides considerably less protection than the constituent people enjoy since the 2002 constitutional amendments. A further challenge to minority rights legislation is the fact that the largest group of citizens who do not belong to any of the three constituent people according to the last census are Yugoslavs (5.5%). In light of the dissolution of Yugoslavia, Yugoslavs are likely to have disappeared as a discreet category. The disappearance of Yugoslavs, however, does not address those citizens of Bosnia who cannot or refuse to identify with one of the three nations (Schwarz and Hergès 2003: 562–563). Protecting the rights of this group is probably impossible and impractical at the collective level, and in fact, absurd as the very understanding of this category is based on individualist principles.¹²⁷ Safeguards at the individual level are also often absent in the administrative practices of the country (Pajić 1998: 135). Thus, being a Bosnian has distinct disadvantages in the post-war Bosnian political system and the political space for this group has become narrower than that of Yugoslavs in pre-war Bosnia.

The second “minority” group similarly does not fall into the conventional category of national minorities. Returnees who now live in regions where they constitute a functional minority have become the largest group of citizens who do not fit into the matrix of the congruence of territory and belonging in post-war Bosnia. With the acceleration of minority returns, both the Federation and the RS have become considerably more heterogeneous than they were immediately after the war. **Between 1996 and the end of 2002 some 389,338 refugees and displaced people have moved to places where they constitute a minority**.¹²⁸ When combining those who remained throughout the war and the post-war period in a location where they are now a minority and those who have returned, **more than ten percent of Bosnia's population find themselves in the position of a functional minority**. This group was either marginalized (Federation) or de facto

excluded from political representation at the entity level until April 2002. In the aforementioned landmark decision of the High Representative, existing institutions were amended and new ones created to ensure the political representation of Croats and Bosniaks in the Serb Republic and of Serbs in the Federation. In practical terms, exclusion and discrimination often continued.

These changes to the entity constitutions also eliminated any discriminatory language from the constitutions. This enhancement of political representation **did not, however, tackle the combination of national and territorial representation at the state level**, such as in the presidency, and, probably more importantly the protection of the group rights of these non-dominant constituent people. While the Dayton Accord details human rights in general, it does not address group rights *per se*. As these groups are not incorporated into the law on national minorities, there is no specific legal instrument to safeguard their group rights.

A crucial question, however, arises here: What group rights do Serbs, Croats and Bosniaks need in Bosnia? This question is answered in fundamentally different ways by international agencies and national parties, which claim to represent the interests of some of these groups. Whereas **most Serb parties showed only little interest, if not outright suspicion towards their compatriots in the Federation**, the SDA and, to a lesser extent the HDZ, have lobbied not only for the return of refugees from their own community to their pre-war place of residence, but also for educational and linguistic rights. In an indicative incident, **Petar Milić**, the vice-president of the Croat National Congress, the organization which was created by Croat national parties to force the creation of a third Croat entity, refused to give a statement in a court hearing in 2001, with the explanation that he did not understand the Bosnian language, and demanded an official interpreter (Neusius 2002: 14). The issue of language usage has not only been abused in such **comic situations**, but is also included in the larger legal framework of Bosnia. Bosnian, Croatian and Serbian are official languages at the state level and, since the constitutional changes in 2002, also in the entities (OHR 2002c: Amendment XXIX; OHR 2000b: Amendment LXXI). Arguably, the **equal treatment** of the Cyrillic and Latin scripts can be considered an effective improvement of human rights for non-dominant communities in Bosnia. The introduction of all three languages as official languages, on the other hand, is of little practical consequence for most citizens. In fact, language rights in Bosnia are not an issue of human rights, but of national

affirmation. Not only are the three languages mutually intelligible, but also the Serbian spoken in the Serb Republic is not the same language spoken in the mother country but is in fact closer to the other variants of the language spoken in Bosnia (Ford 2001). As the legal recognition of the different languages is not a concern for communication or rights, but the result of the lack of consensus on a name for the language and an attempt to reinforce national differences, the inclusion of three languages in the constitutions of Bosnia is primarily of symbolic value and inherently problematic: "In the course of the emotional development of these 'national languages' the symbolic and identity forming functions achieved absolute priority over its communicative functions" (Neusius 2002: 22). Not only does the use of three languages lead to increased cost, as all official publications need to be "translated",¹²⁹ but they are also conducive to segregation in other spheres of public life, such as education.

Educational rights constitute the second key area of minority rights of concern in Bosnia. The Dayton Peace Accord did not address education and left it to the entities to regulate. This has meant that in the case of the Federation, education is delegated to cantons and even communes, in the case of mixed cantons. This segregation resulted in separate classes even when both communities used the same school, and the consolidation of separate universities, in particular in Mostar. In the RS, the educational system made no (positive) reference to non-Serbs and discrimination was common. Thus, the peace agreement did not seek to integrate the educational sector in Bosnia. The effects of the segmentation extended beyond the mere disadvantages for non-dominant groups, but cemented the decline in the quality of education in Bosnia. As the Council of Europe noted in a report: "As a result of Dayton's legal mandate, the educational sector is dominated by politics" (CoE 1999: 9).

In addition to the segregation of the educational system, the content of the curricula and textbooks has been a major problem. Textbooks made little or no reference to the history or culture of the other nations in Bosnia and interpreted recent events, such as the war in Bosnia, according to the political interpretation of the respective community. In the *Republika Srpska* and in Croat-controlled areas of the Federation, most textbooks originated from Croatia and Yugoslavia respectively (Donia 2000: 38–55; Low-Beer 2001: 215–216).

Attempts at some degree of co-ordination in the educational sector were only undertaken in 2000 by the OHR in the light of the extension of the international mandate for Bosnia, more than four years after the end of the war. In an agreement brokered by the OHR in May 2000,

the education ministers of the entities committed themselves to co-ordinate educational policy: "Education must no longer be used to divide and fragment the communities of Bosnia and Herzegovina; on the contrary, it should be used to bring them together and live in tolerance with one another. Any existing forms of segregation must be removed from the parallel education systems in the Federation and *Republika Srpska*, and co-ordination assured in order to facilitate the return of refugee families throughout the whole of Bosnia and Herzegovina" (Meeting 2000a). The agreement made at the meeting committed the ministers of education to remove offensive materials from curricula and textbooks and to emphasize the common cultural heritage in future textbooks, including the usage of both Latin and Cyrillic scripts (Meeting 2000b). Nevertheless, the existence of parallel schools in mixed areas and the limited accommodation of minority returnees in the school system has meant that segregation and exclusion are a more significant problem for human rights than minority specific programmes in the schooling system. Only starting with the school year 2003/4, new textbooks came into use throughout Bosnia, which have been revised by a textbook review commission to reduce the nationalist bias of earlier books. Additionally, the OHR has pressed for the integration of segregated schools in mixed Bosniak-Croat cantons of the Federation. The integration was faced with substantial resistance by parents, teachers and political elites in both cantons where segregated schools had existed (Perry 2003).

In fact, minority, or rather group rights, regarding the three dominant nations of Bosnia should result in less segregation and the transformation of the exclusivist content and language/alphabet usage to a more open and flexible system. Thus, the need for the group rights of the big communities differs substantially from the rights required for the smaller communities or the instruments necessary for the safeguard of group rights in other countries in the region. More importantly, the largest obstacle to the adequate protection of the members of the three constituent peoples across Bosnia is discrimination, which remains a problem of practice and increasingly less of law in large parts of Bosnia (Helsinki Committee 2002).

The case of Bosnia highlights the point that political representation of the three constituent peoples, a cornerstone of the post-war arrangements, has not been sufficient in safeguarding the rights of those "represented". In addition to the fact that before 2002 political representation of the non-dominant groups in the entities has been inadequate, we can identify a number of reasons which suggest that

enhanced political representation is not *the* solution to facilitating the protection of the rights of non-dominant groups.

Firstly, political representation is largely unconcerned with co-operation between the different communities' representatives in the different political institutions and also less inclined to decree a share in the decision making process. The reason for this is obvious: while it is easy to find legal instruments to ensure representation, neither co-operation nor co-decision making is easily legislated. In a number of cases, representation, even at the governmental level, does not translate into participation in the decision-making process. In fact, representation can lead to pluralistic window-dressing with the dominant nation controlling the political process.

Secondly, in a system without firm legal safeguards for minority rights, political representation has to permanently negotiate these rights. Negotiating rights implies that certain minimum standards of protection are not guaranteed but have to be permanently fought for by the representatives of the respective community. Additionally, the representatives of the group might broaden excessively the agenda of issues that are part of the rights or protective measures required for the group, leading to an ethnification of broad areas of the political process, that extend well beyond the narrow interests of the community. As "ethnic issues" have an additional mobilizing function within the electorate and might have additional institutional safeguards (veto rights), parties have an interest in extending the sphere of "ethnic issues."

Thirdly, protecting the communities through political representation is likely to benefit larger communities with adequate representation and disadvantage smaller groups, who are less able to pursue their demands either due to their size or their lesser political mobilization. Thus, minorities other than the three constituent nations in Bosnia have been largely excluded from negotiations of the protection of the rights of the different communities.

Fourthly, representation of the non-dominant groups does not necessarily mean complete representation of the whole group. Just as within majorities, minority communities often support very different political options. For instance, the rights for the Croat minority in the Serb Republic will be significantly different depending on whether the deputy is a Croat from the Social Democratic Party or the Croat Democratic Community. As minority representation will be inherently less numerous than that of the majority, the whole diversity of the non-dominant community will not be represented. It

could be argued that minority rights' protection could also protect the community from some of its own political leaders.

b) The change of the entity constitutions and its impact on governance¹³⁰

The most substantial reform effort relating to post-war institutional arrangement in Bosnia grew out of an initiative of a Serb NGO in the Federation. The Dayton Constitution had recognized "Bosniacs, Croats, and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina" (Constitution BiH 1995: Preamble). At the same time, the entity constitutions, both of which had been passed before the GFAP, remained largely unchanged by the peace agreement. As most powers are exercised by the entities, this omission is to be viewed in the light of the compromise that allowed for the acceptance of the peace agreement by all sides, but hardly as a viable formula for the creation of a joint multiethnic state. The constitution of the Federation and of the RS defined their respective entities as the entities of one or two communities, effectively excluding the non-dominant groups – Bosniaks and Croats in the RS and Serbs in the Federation. In addition, other minorities lacked substantial protection in both entities. This discrimination applied to the symbolic as well as institutional level. The preamble of the constitution of the RS thus refers to "the natural, inalienable and untransferable right of the Serb people to self-determination on the basis of which that people, as any other free and sovereign people, independently decides on its political and State status and secures its economic, social and cultural development" and "the centuries-long struggle of the Serb people for freedom and State independence", as well as to "the natural and democratic right, will and determination of the Serb people from Republika Srpska to link its State completely and tightly with other States of the Serb people." (Ustav RS 1992: Preamble).

In the Federation constitution, such a declaratory commitment to one nation is absent, as it resulted from a compromise between Bosniaks and Croats under international auspices in 1994. Nevertheless, it defines in the first article that "Bosniacs and Croats as constituent peoples, along with Others, and citizens of Bosnia from the territories of the Federation of Bosnia and Herzegovina, in the exercise of their sovereign rights, transform the internal structure of the Federation territories, which has been defined by Annex II to the

General Framework Agreement, so the Federation of Bosnia and Herzegovina is now composed of federal units with equal rights and responsibilities" (Ustav FBiH 1994: Art. 1) Similarly, the Serb Republic defined itself as the "State of Serb people and of all its citizens" (Ustav 1992: Art. 1). As has been outlined earlier, the institutional set-up of the two entities followed this conception. In fact, the exclusion had different expressions: in the Federation, it was based on the consociational arrangement between Bosniaks and Croats, which only left limited representation to Serbs within the marginal category of "Others". In the RS, there was little explicit discrimination in the allocation of offices. Neither the members of the National Assembly nor the president of the entity were constitutionally required to be Serbs. The definition of the RS as a national entity and the political framework in which it operated meant that discrimination was common in practice. In fact, it was not until 2001 that a Bosniak entered government as a minister.

Challenge to the ethnic entities

The quasi-ethnic autonomy of the entities was implicitly recognized in the Dayton constitution by stipulating that the three-member presidency is pre-determined by ethnicity and elected only in the respective entity, i.e., Serb in the RS and Croat and Bosniak in the Federation. This, however, stood in sharp contradiction to both the commitment to refugee return and the existence of minorities that had not left their place of residence. While the wartime Bosnian government included Serbs and Croats, the post-war political structure led to the marginalization of the Serbs who had remained in the newly created Federation.¹³¹ It thus came as no surprise that the Serb Civic Council, which had remained committed to the Bosnian state during the war and represented Serbs in the Federation, raised this source of discrimination. In 1997, the Council demanded that the two entities, in particular the Federation, change their constitutions to declare all three nations to be constituent people. While the proposed constitutional amendments were not passed by the Federation parliament, the Council raised public awareness of this deficiency of the set-up of Bosnia (SGV 2001: 53–58).¹³² The issue was taken up in February 1998 by Alija Izetbegović, president of the Bosnian presidency¹³³ at the time, and brought to the Constitutional Court. In March 1998, Izetbegović submitted a list of concrete articles in both entity constitutions, which he considered to be unconstitutional in respect of the state level constitution, to the Constitutional Court. A number of public hearings

followed, which included representatives from both entities.¹³⁴ In four partial decisions, taken in January, February, July and August 2000, the court essentially followed the arguments of Izetbegović and declared substantial parts of the entity constitutions unconstitutional.

The court decision

The decision of the court, however, was tight, with only the three international and the two Bosniak judges supporting the case. The two Croat and two Serb judges opposed the case in all key aspects and offered dissenting opinions. With the Constitutional Court being one of the few institutions that have no group-based veto rights or special voting procedures, the simple majority of international and Bosniak judges sufficed. Despite the validity of the judgement of the court, the clear ethnic division in this legal case demonstrated the permeation of national identity at all institutional levels.

In a further discussion of the reasons for dissenting with the court's decision, one of the Serb judges, Snežana Savić, asserted that the decision altered the governing structure of the country, setting a dangerous precedent for circumventing the consensus-based decision-making processes of the elected offices (Savić 2000: 259–261). Similarly Zvonko Miljko, a Croat judge, challenged the decision in regard to the Federation. He asserted that the Federation was – in distinction to unitary states – made up of units, which in this case would be the two people, Croats and Bosniaks. As a result, the decision of the Court challenged the nature of the Federation, according to Miljko, largely following the same arguments Savić made for the RS (Ustavni sud 2000c: Aneks, Izdvojeno mišljenje sudije Zvonka Miljke). In the first partial decision, however, the majority of the judges declared the court to be competent in the matter and the entity constitutions to be clearly subordinate to the review by the Constitutional Court: “It is true that the Constitutional Court cannot create new constitutional norms. However, the Court's task in this case is not to create new constitutional norms, but to declare those norms void which are not in conformity with the BiH Constitution. Furthermore, ... the Entities are obliged to amend their constitutions to ensure their conformity with this Constitution” (Ustavni sud 2000b: Para. 10).

The dissenting judges mostly challenged the decision on the basis of the fact that the three nations are enumerated as constituent people only in the preamble of the Bosnian constitution rather than its main body. The judges thus argued that the preamble is not legally binding, subsequently not standing in conflict with the entity constitutions.

(Savić 2000: 55–67).¹³⁵ The significance and controversy surrounding the case was evident in the strong opposition to the decision and statements by the dissenting judges about having been exposed to threats and pressure.¹³⁶ While there is little doubt that the observation of the dissenting judges was correct in that the decision did indeed have a fundamental impact on the structure of governance in Bosnia, the case confronted one of the most substantial sources of inequality and discrimination in both entities. Whereas the constitutional structures in the entities diverged, with differences in the nature of discrimination, **there is little doubt that the wartime convergence of nations and territories, furthered by ethnic cleaning, was legitimized in both entity constitutions.**

Substantial parts of the rulings declared elements of the two constitutions to stand in conflict with the state constitution, namely those aspects that emphasize the **sovereignty of the entities**, e.g., terms such as “borders,” “National Bank,” or regulations on the appointment of diplomats. More importantly, the July and August 2000 decisions addressed the **symbolic and institutional bias** towards one or two of the three Bosnian nations. Importantly, the court not only examined the text of the two constitutions, but also considered the reality in the entities regarding the rights of the non-dominant groups.

The discussions of the Court on the case quickly **extended well beyond the narrow question at stake and to the larger principles of organizing multiethnic societies.** Basing its decision on international instruments for the protection of human and minority rights, the court asserted that:

segregation is, in principle, not a legitimate aim in a democratic society. It is no question therefore that ethnic separation through territorial delimitation does not meet the standards of a democratic state and pluralist society[...]. Territorial delimitation thus must not serve as an instrument of ethnic segregation, but – quite contrary – must provide for ethnic accommodation through preserving linguistic pluralism and peace in order to contribute to the integration of state and society as such (Ustavni sud 2000c: Para. 57).

Herewith the Court not only contradicted the argument of the RS, which held that the State is constituted by the two entities and their respective nations, rather than being borne from multiethnic Bosnia (Ustavni sud 2000c: Para. 40). More importantly, the decision effectively stated that **the concept of ethnic autonomies enshrined in the**

post-war Bosnian entities is not in conformity with democratic principles and human rights. It thus asserted that despite the numerical dominance of one or two groups in one entity, this group should not dominate the entity (Ustavni sud 2000c: Para. 59). Arguably, with this decision, the court resolved (in theory) one of the fundamental contradictions in the GFAP, which combined the recognition of ethnically defined units with a commitment to the return of refugees. At the same time, challenging the idea of ethnic autonomies, it apparently rejected, in principle, a form of managing diversity that is common in many democratic societies. The rejection of the entity-based discrimination is to be located in the origins of these ethnic autonomies during the war, a key difference to the absence of minority group-based protections in Belgium or in many cantons of Switzerland.

The Constitutional Court was not in a position to propose alternatives for those elements of the entity constitution that were deemed unconstitutional. However, by the fact that: (a) the RS constitution was challenged despite its minimal group-specific rights¹³⁷ and (b) the Federation constitution's elaborate group-specific rights, which excluded Serbs, the resolution appears to be the establishment of group-based political representation for all main groups while simultaneously precluding discrimination. The Court thus pointed out that the "equality of groups is not the same as equality of individuals through non-discrimination. Equality of the three constituent peoples requires equality of the groups as such whereas the mix of the ethnic principle with the non-ethnic principle of *citoyenneté* in the compromise formula should avoid that special collective rights violate individual rights by definition. It thus follows that individual non-discrimination does not substitute equality of groups" (Ustavni sud 2000c: Para. 71). Considering the record of discrimination and the evolving human rights standards in the field, the Court thus suggested that legal neutrality or mere commitment to non-discrimination are insufficient in securing the equality of all the three constituent peoples (Ustavni sud 2000c: Para. 82). Furthermore, the Court considered the state of human rights to determine whether the RS had discriminated against non-dominant groups. This argument is meant to refute the assertion that state neutrality is possible – which the court already challenges on the basis of the first article that gives clear preference to Serbs over other citizens. The absence of substantial refugee return (at the time of the court's decision) and the near total homogeneity of the state administration and judiciary are thus offered as further evidence of the constitutional bias of the entity in favour of one nation (Ustavni sud 2000c: Para. 86–95).

Interestingly, the Constitutional Court scrutinized the Federation constitution for apparently the opposite reasons. It did not merely challenge the inadequate inclusion of Serbs in the institutional arrangement, but noted “whether the ‘special rights’ provided in the Federation constitution for the two constituent peoples, the Bosniacs and Croats, violate the enjoyment of individual political rights insofar as they seem to provide for a ‘preference based on national or ethnic origin’ in the sense of Article 5 of the Convention [on the Elimination of all Forms of Racial Discrimination]” (Ustavni sud 2000c: Para. 106). The Court thus addressed the probably biggest challenge to power-sharing and “affirmative action” for groups. The limitations in the Federation to ensure only power-sharing between Croats and Bosniaks, while ensuring less representation for “Others,” most notably Serbs, the Federation was deemed to be discriminating against these groups: “Such a combined system of ethnic representation and veto-power for one ethnic group – which is defined as a constituent people, but constitutes a parliamentary minority – does not only infringe the collective equality of constituent peoples, but also the individual right to vote and to stand as a candidate for all other citizens to such an extent that the very essence and effectiveness of ‘the free expression of the opinion of the people in the choice of the legislature’ is seriously impaired” (Ustavni sud 2000c: Para. 124). The Court thus not only limited its deliberation to include Serbs in the arrangement, but challenged it for its lack of respect for the civic orientation of some citizens.

This decision is thus not only a challenge to the Federation as such, but also to the Bosnian model of power-sharing. It implicitly criticizes the Dayton constitution in aspects where it prescribes the ethnicity of the office holder, namely the presidency and the House of Peoples, the upper chamber of the Bosnian parliament. Both are constituted on a similar basis as the provision that the Constitutional Court challenged in the case of the Federation. Obviously, the Court could hardly have openly challenged the State constitution – the basis for its own deliberation – but it is striking that in the arguments the Court mostly based its decision on either international human rights instruments (which are directly applicable in Bosnia, as the constitution spells out) or precedents in other divided societies, namely Belgium and Canada. As will be discussed below, the amendments to the entity constitutions actually reaffirmed the rigidity the Constitutional Court criticized in its judgement.

Beyond the ruling on the institutional set-up of the entities, the Court also challenged the constitutionally defined dominance of the

Serbian **Orthodox Church** in the Serb Republic. The court maintained that having a state church or some kind of privileged relationship to one church is not necessarily contravening international standards. It did, however, note that in the absence of any positive steps by the entity authorities to support other established religions, the court considered Article 28, Para. 4 unconstitutional (Ustavni sud 2000d: Para. 38–49).¹³⁸

Finally, the establishment of **official languages** was considered by the court. While Bosnian, Croatian and Serbian are official languages at the state level, both entities limited the official languages to the ones of their respective dominant groups. Whereas the three official languages are in fact the same language, as discussed earlier, the use of both alphabets is indeed crucial. Furthermore, not knowing one alphabet or being unfamiliar with some of the specific words and grammatical variations of each language has been a source of discrimination, especially in schools. As a result, the importance of official languages extended beyond the symbolic sphere. The court subsequently found that “legislation of BiH has to take into account the effective possibility of the equal use of the Bosnian, Croatian and Serbian languages not only before the institutions of Bosnia and Herzegovina, but also on the level of the Entities and any subdivisions thereof with regard to the legislative, executive and judicial powers as well as in public life” (Ustavni sud 2000d: Para. 34). This effectively ends the exclusive use of one of the three languages at the entity, cantonal or municipal level (Ustavni sud 2000d: Para. 25–34; 62–65).

Overall, the decision of the Constitutional Court challenged the main source of institutionalized inequality in post-war Bosnia. In addition to the institutional set-up of the entities, the Court ended the symbolic monopoly of one or two nations in the entities and questioned some of the sources of discrimination, such as the dominance of one or two of the three official languages and the under-representation of functional minorities in the public administration. By addressing the sources of inequality in Bosnia, it also criticized the existing mechanism for managing diversity in the country. As outlined above, this critique, although formally limited to the entities, has implications for the state level as well as for the local levels of governance, be they cantons or municipalities.

The aftermath – constitutional commissions

Despite the decision of the Constitutional Court, the parliaments and governments of **both entities did not respond by amending their**

Constitutions. In the decisions, the court invoked Art. 59 of its rules of procedure, which means that the contested articles can cease to be valid following a decision of the Constitutional Court (Ustavni sud 1997: Art. 59). This option, however, would have meant that the entities would cease to work effectively, as large parts of the institutional set-up of the Federation and the Serb Republic were effectively challenged. As a result, a constructive resolution to the impasse was required. In January 2001, the High Representative finally created two constitutional commissions, one for each entity, which were charged with safeguarding the rights of the three constituent peoples and others and at the same time developing recommendations for constitutional amendments to implement the Court's decision. Each commission had 16 members, four from each constituent nation and four members belonging to other communities. The members were proposed by the parliaments of the entities and nominated by the OHR and thus included most political parties, as well as some experts.¹³⁹ Only the HDZ was not included in the commissions, which was the result of its boycott of all institutions in early 2001.¹⁴⁰

The constitutional amendments

By early 2002, these constitutional commissions proposed separate packages of constitutional amendments for adoption. In an attempt to promote "local ownership," Wolfgang Petritsch, the High Representative at the time, initiated a local process of changing the entity constitutions to follow the decision of the Constitutional Court. This would have broken with the post-war situation where virtually all institutional reforms were driven by international actors. The political environment was similarly beneficial for such a process. As moderate parties had taken office at the State level and in the Federation following the 2000 elections, the international community for the first time could communicate with political stakeholders who pursued a compatible agenda. While the conclusions of the constitutional commissions prepared the ground for the constitutional amendments, the consent of the key parties in Bosnia was required to ensure passage of the amendments in the entity parliaments. Furthermore, some key points, such as the establishment of a House of Peoples in the RS, remained in dispute.

The heads of the largest parties held two meetings in Mrakovica (RS) and Sarajevo in January and February 2002 to negotiate a compromise on the amendments. This was the first time since the end of the war that all main parties, national, moderate, and multiethnic,¹⁴¹ met independently of international supervision (Perry 2002: 3).

Key sources of controversy during these discussions were the introduction of “symmetry” between the two entities, where both would establish similar institutional mechanisms to ensure the inclusion of all communities. As this would have transformed the RS into a full-blown consociational system, without significant difference from either the Federation or the state level, this demand by the Federation, particularly Bosniak politicians, was rejected. Similarly controversial was the basis of establishing equitable representation. Whereas Serb parties sought to base representation on the status quo, Croat and Bosniak parties insisted on the 1991 census as the basis for establishing quotas, essentially demanding that the representation of Croats and Bosniaks would have to increase substantially in parliament, government and the public administration (Perry 2002: 3; *Nezavisne novine* 2002). A compromise was eventually found on 27 March 2002 and signed by the major parties, with the exception of the HDZ and the SDA. The parties from the RS, however, expressed their reservations over the compromise (Oslobođenje 2002b). These reservations were subsequently discussed in the RS National Assembly and led to the adoption of new constitutional amendments, which departed in key aspects from the agreement. Thus, the vice-presidents of the RS, who would represent Croats and Bosniaks, would not be directly elected and government would not have a specific numerical requirement for the representation of Bosniaks and Croats, but merely a 15 percent minimum threshold for each group. Finally, the Council of Peoples could be dismissed by the president of the RS in consultation with the two vice-presidents. While the amendments largely accommodated the Constitutional Court decision, they fell short of the agreement and did not create a symmetric institutional arrangement as demanded by the High Representative (Glas Srpske 2002). In the light of the decision of the RS, the government of the Federation failed to secure the support from the opposition HDZ and SDA for passing the amendments in the Federation House of Peoples. In order to resolve this deadlock, Wolfgang Petritsch imposed the constitutional amendments in both entities on 19 April 2002. As this decision was based on the earlier agreement of the key political parties, the High Representative was able to assert that “[t]his is an imposition, but it does not look like the previous impositions. This time, the largest part of the job was done by the domestic authorities and I congratulate them for that” (Sito-Sucic 2002). All key international actors welcomed the decision, as did most political parties with the notable exception of the HDZ and the SDS. Despite criticism from both parties, no major opposition to the decision emerged. Instead, opponents of the decision

eventually accepted the imposition while seeking to slow down implementation, as had been the general approach towards most international reform initiatives.

The decision, following the 27 March agreement, in fact establishes a power-sharing regime in the RS and adds Serb representation to the existing power-sharing arrangement in the Federation (Herceg and Tomić 2002a: 54–66). While it does include “Others” now in both entities, the arrangement did not fully resolve the aforementioned tension between group representation and individual rights, as the Constitutional Court pointed out in regard to the Federation. Indeed, it actually accentuated the predominance of group representation over individual rights.

As described in detail earlier, the amendments put Serbs on a par with Croats and Bosniaks in the Federation and establish a greater degree of inclusion of Bosniaks and Croats in the RS. While not fully symmetrical, many mechanisms, such as the definition of the veto rights, the minimum number of members from all three nations in the lower house of parliament and the competences of the upper house, are identical in both entities. On the level of public administration, both entities are obliged to ensure the proportional representation of the three nations and other communities on the basis of the 1991 census, as has been discussed earlier. The 1991 census is considered to be the basis of implementing proportional representation until Annex 7 of the Dayton Peace Agreement, i.e. the return of refugees, is completed (OHR 2002c: Amendment LII; OHR 2002b: Amendment LXXXV). What constitutes the completion of the return process is hard to ascertain, considering the likelihood of a large number of refugees never returning. As a result, the determination of the completion of this process is likely to rest with international actors.

Beyond the institutional set-up of the two entities, the decisions also address the symbolic self-definition of the entities and establish full equality between the three nations regarding the use of languages.¹⁴² Whereas in the Federation, the decision effectively ended any particular reference to Croats or Bosniaks in the preamble or elsewhere, the amendments to the Constitution of the RS have been more dramatic in the complete departure also from the symbolic references to the Serb nation in the preamble. Thus the new preamble reads:

“Respecting the will of its constituent peoples and citizens to establish and preserve the Republika Srpska and to base the constitutional establishment of the Republic upon the respect for human

dignity, freedom and equality, national equality, democratic institutions, rule of law, social justice, pluralistic society, guarantees for and protection of human freedoms and rights, as well as the rights of minority groups, in line with the international standards, ban on discrimination and respect for the rules of market economy; Wishing to provide peace, tolerance and general welfare; Intending to contribute to the development of friendly relations among the peoples and states; Expressing determination of the Republika Srpska to fully respect and consistently implement the General Framework Agreement for Peace in Bosnia and Herzegovina, which unambiguously accepts, confirms and guarantees the constitutional and legal position of the Republika Srpska, as one of two entities within Bosnia and Herzegovina..." (Ustav RS 1992: Preamble/Amendment LXVI).

In effect, the institutional structure in both entities is a rigid power-sharing arrangement, with a constitutionally required grand coalition, veto rights and proportional representation. The only thing lacking in the entities is autonomy for the communities. While Bosniaks and Croats continue to enjoy a degree of autonomy by virtue of the relative homogeneity of most cantons, neither Croats and Bosniaks in the RS nor Serbs in the Federation enjoy any cultural or territorial autonomy. The Federation had already been a power-sharing arrangement prior to the amendments, and the changes were thus mostly additive, through the inclusion of Serbs as an equal group; the RS, however, underwent a more fundamental change. Although the overall degree of power-sharing instituted by the amendments is lower than in the Federation (e.g., the Council of Peoples is not elected directly but chosen by the National Assembly, and there is no complex requirement on the allocation of high state offices, as detailed above in the case of the Federation), the elimination of any references to a Serb nation state and the requirement to include Bosniaks and Croats in parliament and government mark a significant departure from the pre-2002 institutional set-up of the RS.

Does the reform matter?

A journalist likened the relevance of debates on constitutional reforms to medieval discussions on the number of angels able to dance on the head of a pin (Ivanova 2002). Although this comparison was made before the High Representative imposed the far-reaching constitutional changes analyzed above, the question of the relevance of the

reforms matters nevertheless. With its complex structure of governments, unclear divisions of competences, and a history of incomplete implementation of laws, the significance of the amendments in Bosnia should not be taken for granted. The constitutional amendments rendered the already complicated constitutional arrangement of Bosnia even more complicated. As some key officials at the OHR indicated at the time, a greater degree of complexity was deemed acceptable to render the entities less effective and thus allowed for greater empowerment of the State level. The amendments particularly targeted the RS, which had not been plagued by the sort of complex decision-making processes that could be found at the State and Federation level. The obstructionist policies of the dominant Serb parties at the State level had thus allowed the RS to conduct its affairs independently. The constitutional amendments, however, established a balance that allowed Croat and particularly Bosniak parties in the RS to engage in a similar degree of obstruction as some Serb parties had done at the state level.

With the establishment of the veto right for Bosniaks and Croats in the Serb Republic, a “balance of vetoes” is established, where the Serb Republic would be similarly subject to blocked decision making, which would increase political bargaining between the state and the entities (Ivanova 2002). A key criticism of the constitutional amendments has focused on the fact that inclusion in the entities is often little more than window dressing. The Croat vice-president of the Serb Republic, for example, has only limited competences and has been entirely excluded from decision-making processes (Martens 2003a). Considering that there has been little joint governance in post-war Bosnia, it is unlikely that the legislation of multi-ethnic executives empower non-dominant groups to the degree that constitutional amendments might suggest. As the mechanisms were only effectively established in early 2003, after the October 2002 elections, it is perhaps too early to assess whether these dynamics are actually emerging.

The impact of the changes on the symbolic nature of the constitutions, especially in the Serb Republic, is probably the most difficult to ascertain. In the short and medium term, the changes are unlikely to transform interethnic relations or end discrimination in the country.¹⁴³ Political parties have viewed the bargaining over the constitutional amendments, the work of the constitutional commissions themselves and the imposed decisions as a zero-sum game. The amendments have thus been often described as a loss for Croats and Serbs and a gain for Bosniaks – notwithstanding the fact that a Serb civic association initi-

ated the process. Although the ethnonational nature of the two entities, except for the name of the Serb Republic, has been eliminated due to the amendments, this is unlikely to alter the perception of the entities. Already prior to the amendments, the Serb constitution had only few concrete privileges enshrined for Serbs in that entity, but by virtue of public opinion and institutional behaviour, the dominance of one nation was in no doubt. Thus, despite the inclusive preamble replacing the earlier mono-ethnic one, the transformation of the perception of the Serb Republic and the Federation into tri-national units remains in doubt.

In fact, there is a contradiction between the Constitutional Court's decision and the constitutional amendments in regard to the nature of the entities. As both entities were created to establish the predominance of one or two of the three nations in Bosnia, they were thus constructed as "ethnic autonomies", which were recognized in the Dayton constitution. While there is little doubt that the claim to ethnic dominance in these autonomies was not only based on the expulsion of non-dominant groups, but also the limitation of return, the existence of the entities was thrown into doubt with the court decision. While the court was not in a position to question the existence of the entities *per se* (nor was there a legal need to do so), the decision of **the court and constitutional amendments challenged the *raison d'être* of the entities. Without the entities being "ethnic autonomies" little remains to justify their existence.** As all three constituent peoples are roughly equally protected in both entities and at the state level – at least *pro forma* – there appears to be little reason for the entities to persist, considering that there are hardly any economic or social reasons for the entities. If, however, the entities actually continue to exist, despite the constitutional amendments, this is due to the implied dominance of one or two groups. While this dominance is likely to decrease due to the absence of its legal/constitutional protection, there is little reason to justify the existence of the entities in the long run.

c) The District of Brčko. A laboratory of multiethnic governance?

The **establishment of the District of Brčko in 1999** has added to the overall complexity of governance in Bosnia. At the same time, the separate district, established in and around the Northern Bosnian city of Brčko in 1999, constitutes a key experiment of **"entity-free" governance** in Bosnia. Brčko advanced to the status of a Bosnian laboratory rather

Table 6.4 Population Distribution (1991, 1999 est.)¹⁴⁴

	Brčko Municipality (1991)	Brčko Grad (town) (1991)	Brčko (District) 1999 (est.)
Bosniak	44%	56%	35%
Croat	25%	7%	15%
Serb	21%	20%	49%
Others	10%	17.5%	

coincidentally. Like many other cities in Bosnia, the city had a Bosniak majority, but a strong share of Serbs, Yugoslavs and Croats, the latter particularly in the rural regions of the municipality (see Table 6.4) The city is located on the strategically important **Posavina corridor**, connecting the Serb-held territories in the West around Banja Luka with Serbia and the eastern half of the Serb Republic. At the same time, it was the link of government-controlled territory with **Croatia to the North** and with some **Croat-held territories along the Sava River**. Consequently, the city was a **prime target of the Bosnian Serb army during the war**. As the creation of contiguous territories formed a crucial aspect of the Bosnian Serb war plan, control over the narrow corridor was highly contested. At the end of the conflict, the district was split with the Serb Republic controlling the town itself and the Federation holding most of the rural regions of the pre-war municipality. Together with the government controlled enclave of Goražde and other strategic territories, the status of Brčko remained highly controversial during the peace negotiations.

While all other territorial disputes were eventually resolved during the negotiations in Dayton, Ohio, the question of Brčko was left open (Burg and Shoup 1999: 366). Instead, the dispute was to be resolved through international arbitration, as regulated in **Annex II** of the peace accords. In two preliminary decisions in 1997 and 1998 the arbitration tribunal decided to place Brčko under international supervision (Brčko Arbitral Tribunal 1997; 1998). In the first preliminary decision, the Serb Republic was required to fulfill certain conditions, such as facilitating the return of refugees and the creation of a multiethnic administration. As the Serb Republic failed to live up to these demands and the Tribunal reprimanded the Federation simultaneously for its lack of progress in refugee return, the Tribunal justified continued international supervision and prepared the ground for the **final decision in March 1999**, which transformed the entire pre-war municipality into a distinct district **under international administration** (Brčko Arbitral Tribunal 1999). The final award left the relationship between the

district and the two entities ambivalent. While it emphasized that “the entire territory, within its boundaries (i.e., the pre-war Brčko opština) will thereafter **be held in ‘condominium’ by both entities** simultaneously; the territory of the RS will encompass the entire Opština, and so also will the **territory** of the Federation”. It emphasized that at the same time “[n]either entity, however, will exercise *any* [emphasis added] **authority** within the boundaries of the District, which will administer the area as one unitary government” (Brčko Arbitral Tribunal 1999: I.11). To complicate matters further, the power of the Supervisor, an office that had been established in 1997, was increased to act essentially as an administrator of the district (Brčko Arbitral Tribunal 1999: IV). The **final decision followed closely a proposal by the International Crisis Group**, a think tank advocating strong international intervention in Bosnia (ICG 1998; 1997). Unlike the rest of Bosnia, Brčko was thus constituted as **a direct protectorate without a clear ethnic predominance of one group, although Serbs constituted the largest group in the district** (see Table 6.4). As such, the district of Brčko did not only differ from the way Bosnia was governed elsewhere, but was envisaged as a model by some. The relevance of Brčko for Bosnia at large was clearly identified in the International Crisis Group report advocating the creation of a district separate from the two entities: “It is hoped that such an outcome may serve as an example for the rest of Bosnia and beyond. **The message from Brčko should be loud and clear – co-operation and reintegration pay off.** In Brčko, the Arbitral Tribunal has the opportunity to create what Bosnia could be in terms of multi-ethnic coexistence and reconciliation” (ICG 1998). Similarly, the president of the assembly of the district, Mirsad Đapo, declared on the second anniversary of the creation of the district that “[w]e are **building a model for the future of BiH. We call on those who are looking at this model with a suspicion to join us**” (Oslobođenje 2002a).

Institutions

While legally, both entities retained sovereignty over the district, Brčko took many features of a “third entity” as it is **only governed by state and district laws**. The district is formally governed by a **mayor** and has a **29-member district assembly**. Until 2004, the members of the assembly have been named by the supervisor (Fondacija Global-Kontakt 2001: 22–25). The **first district elections** have only taken place in October 2004, marking the transition to self-governance. Until then, the members of the assembly have been chosen by the supervisor on the basis of “quality of the application, professional background and potential constituencies” (OHR 2001b). Of the 13 Serb, nine Bosniak

and seven Croat members of the assembly, all but one independent member per nation are representatives of the main political parties in Bosnia (Herceg and Tomić 2001: 70). While the assembly can pass laws and function otherwise like a parliament and the mayor and department heads act as a government of the district (Statute 1999: Sec. B&C), the real power rested with the international supervisor. By appointing the assembly members and the mayor and the ability to impose laws in case they are not passed in parliament, the supervisor was the key power holder in the district until October 2004. While there are a number of similarities to the powers held by the High Representative Bosnia-wide, the power of appointment prior to elections allows the supervisor to shape the composition of institutions to a degree that exceeds the ability of the High Representative to dismiss elected or appointed officials.

While elections for the district assembly only took place in 2004, the inhabitants of Brčko have been voting at the entity and state level. According to the 2004 district elections, the support for political parties does not differ from the entities. As the district is the only region with all three nations living on its territory in substantial numbers, all major parties from both entities are active and the composition of the assembly has been more reminiscent of the state level legislature than either municipal, cantonal or entity parliaments. Among all three constituencies, especially in the case of Bosniaks and Serbs, the vote in the October 2004 were split between the national parties and their more moderate counterparts (see Table 6.5).

As the citizens of the district do not hold a separate citizenship, but rather that of one of the two entities and of the state, they are eligible to vote for the respective elections in the entities and the state. This rather curious construction means that Brčko residents can vote for

Table 6.5 Election Results in Brčko, October 2004¹⁴⁵

Party	Votes	Percentages
SDS	5,301	17.82%
SDP	5,294	17.79%
SDA	2,995	10.07%
SBiH	2,467	8.29%
HDZ	2,257	7.59%
SPRS	1,984	6.67%
SNSD	1,396	4.69%

governments and parliaments in the entities, which have effectively no authority over them.

A marked difference between Brčko and the rest of Bosnia is the absence of a formal power-sharing arrangement. In fact, there is no reference to ethnicity in the structure of the assembly or the administration except for the regulation which states that the choice of heads of department "shall reflect the composition of the population" (Statute 1999: Art. 48). Whereas both the entities and the state government, as well as the cantons, possess elaborate mechanisms ensuring the inclusion of all groups in decision making processes, as outlined earlier, the statute of the district contains no such rules. The assembly of the district was elected according to the Bosnia-wide law on municipal and cantonal elections, which foresees a simple proportional system (Izborni Zakon 2001: Ch. 13). Unlike municipal councils, the assembly of Brčko has three seats reserved for each of the three constituent nations. This, in fact, was against the original plan of the supervisor who had hoped to have no reference to ethnicity (OHR 2003). Nevertheless, the limited reference to ethnicity in the statutes and election law of the district was a deliberate attempt to prevent special political privileges for the different communities, which would render governance more difficult (ICG 2003: 12–13).

To prevent the domination by one of the three constituent nations, the election of the mayor by the assembly requires a three-fifths majority in the first round. If nobody is elected, a simply majority is sufficient in the second round and if, again, elections fail to result in the election of a candidate, a run-off between the two most popular candidates is held (Statute 1999: Art. 55). Similarly, laws, budget changes to the rules of procedure, the dismissal of officials and the appointment of the chief and deputy chiefs of police require a three-fifths majority (Statute 1999: 60). As such, at least the two larger communities, Serbs and Bosniaks, are unlikely to be outvoted. The fact that a number of laws failed in the assembly to achieve the 60 percent support required has meant that even here the supervisor has had to intervene repeatedly, most notably in the case of the educational law. Thus, formal de-ethnification has not automatically facilitated decision-making, as the supermajority might not constitute a group veto, but has similar consequences on the decision making process. Finally, opinion polls and voting patterns for the general Bosnian elections indicate that despite the attempt at de-ethnification, the strongest votes still go to national parties, in particular the SDS, which has been more popular on average in Brčko than in the RS (ICG 2003: 24). This

points to the limitations of creating a multiethnic environment in a generally deeply divided country, especially if the territory remains literally between entities.

While there is a general commitment to the representation of the different communities ("Public employment... shall reflect the composition of the district") (Statute 1999: Art. 21), the statute emphasizes "professional merit" for civil servants and the "welfare of the District and Bosnia and Herzegovina" as the overriding concerns for council members over group membership (Statute 1999: Art. 21, 26). This trajectory of managing diversity through institutions in Brčko is a significant exception to the rest of the country. While this legal limitation of ethnicity in the allocation of public offices is in place, there have been concerted efforts in the district assembly and the administration to reflect the composition of the population not only in terms of proportionality, but also in regard to the power of the respective office-holders. As a result, during the restructuring of the district administration, 47 percent of all positions were filled by Serbs, 38 percent by Bosniaks and 14 percent by Croats, largely following the population distribution at the time (Sommers 2002). Furthermore, it has to be borne in mind that in the light of the powers of the supervisor of the district, the power of the institutions is limited. As such, the ability of the institutional arrangement in Brčko to operate without explicitly safeguarding the interests of the main groups has not yet been fully tested. Emulating this type of institutional setting is improbable in other parts of Bosnia, especially in regard to higher levels of governance, where the dominance of one group would easily result in permanent exclusion, especially for Croats, the smallest of the three constituent people.

Refugee return

Due to its strategic importance, Brčko was badly affected by the war. After Serb forces conquered the town and most of the municipality in May 1992, most non-Serbs fled the area. During and after the war, around 28,000 Serb refugees from other parts of the country and Croatia settled in the town, while approximately 39,000 Bosniaks from the town were displaced, but lived mostly within the government-held rural parts of the municipality. At the same time, the number of Croats had fallen by half, living in the Croat-held part of the municipality (ICG 1998). Altogether, nearly two-thirds of the 87,000 pre-war inhabitants had become refugees or displaced during the war.

In the first post-war years, virtually no non-Serb refugees or displaced persons returned to live in Serb-controlled Brčko. When the first substantial minority returns started to take place in 1998, the numbers in Brčko exceeded those in other areas of the Serb Republic, as the first arbitration decision from 1997 had resulted in the creation of a Return Commission, which included the main international organizations as well as three mayors from each of the mono-ethnic regions of Brčko. Before the establishment of the district, however, returns remained a slow trickle. The Serb mayor and police particularly sought to prevent the return of mostly Bosniak refugees to the town. Strategies preventing the return of refugees included the deliberate relocation of Serb refugees in houses owned by Bosniaks, police inactivity and attacks against returnees and their property. Additionally, the Serb administration ensured to symbolically “secure” the town by erecting a monument to Draža Mihailović, the leader of the Serb nationalist Četnik Movement during World War Two (ICG 1998).¹⁴⁶

The conditions for return changed drastically with the creation of a multiethnic police force in late 1997 and early 1998, the dissolution of pre-existing administrative structures and finally in 1999–2000 with the establishment of the district. Thus, while by early 1998 only around 2,500 families had received the approval to return and only 710 did actually return, and in 1999 some 1,200 people returned, the numbers increased to 16,611 refugees and internally displaced persons between 2000 and 2002 (OHR 2001a; ICG 1998; UNHCR 2004a). This development has made Brčko one of the more successful areas of minority returns in Bosnia, but even here, a large number of refugees and displaced people remain in “temporary” homes.

A similar trend can be observed in regard to the share of resolved property claims over the years in Brčko, which has not been higher than elsewhere in Bosnia, but increased substantially after being constituted as a district. In fact, before becoming a district, it belonged to the areas of Bosnia where little progress had been made in the light of obstructionist policies in the Serb Republic. Between 1999 and 2002, the share of resolved property disputes in Brčko rose from 14 to 81 percent, a more significant increase than in either of the two entities.

The return of refugees in Brčko was constrained by the overall Bosnian environment. As many houses were occupied by predominantly Serb refugees from other parts of Bosnia and Croatia, the return process remains linked to returns elsewhere in the country and in neighbouring Croatia. This was recognized by the administration of the district, which paid repeated visits to the areas from which

most refugees have fled to secure their ability to return. Furthermore, in recognition that not all refugees who have settled in Brčko would return, new plots of land were allocated to families in the district to free up houses for the return of refugees to Brčko (Doyle 2002: 217–219). While this policy was criticized by Bosniak parties for endorsing ethnic cleansing, it recognized that after ten years in the new place of residence, a significant share of the refugee population is not willing to return. Despite the criticism, by offering Serb refugees occupying apartments and houses of Bosniak refugees plots of land, the tensions between the communities were reduced significantly.

Multiethnic police

As detailed earlier, the reform of the police forces of Bosnia constituted an integral part of the Dayton Peace Accords. Due to the significant involvement of police forces in war crimes, this was an enormous task, impossible to accomplish by the largely supervisory role of the International Police Task Force (IPTF) established in the Dayton Peace Accords (DPA 1995: Annex 11). Thus, throughout the second half of the 1990s, the police remained largely mono-ethnic throughout Bosnia and had not shifted substantially to modern policing methods. In the absence of substantial so-called minority returns before 1999, diversity in the police was difficult to accomplish, as it was difficult to recruit citizens from non-dominant communities for the police force. As a result, concerted efforts to include non-dominant groups in the police force were only undertaken in the two mixed cantons of the Federation and in Brčko after the creation of the supervisor. As a result, in 1998 the only 42 non-Serb policemen in the whole Serb Republic worked in Brčko (Helsinki Committee 1998).

Under the final award, the supervisor was charged with appointing the chief of police and the staff (Brčko Arbitral Tribunal 1999: Annex 6). As such, the police force in Brčko, established in January 2000, began anew, rather than reforming the wartime police force elsewhere in the country (Supervisor of Brčko 2002). During the process of creating a new multi-ethnic police force, police officers were required to vacate apartments, which belonged to refugees or displaced persons. This happened peacefully in October 2000, increasing the credibility of the police, especially to returnees (Helsinki Committee 2000). The role of international organizations remained crucial in the reform process, with the IPTF (since 2003 EU Police Mission) closely monitoring the work of the police force and the supervisor appointing the chief and

deputy chiefs of police. Despite the considerable power of both the supervisor and the IPTF, the district government administered the police, thus avoiding the creation of a separate internationally run police force, which would later have to be integrated with the existing district administration. In addition to creating a new police force, the success of the multiethnic police was significantly facilitated by paying members salaries that are nearly twice those earned by police forces in the two entities (ICG 2002: 46). The reform of the police force, pursued more forcefully than elsewhere in Bosnia, has been largely successful. Nevertheless, it required both greater resources and more international supervision than elsewhere in the country.

Education

One of the key priorities of the international supervisor in Brčko has been the integration of the school systems, which had been ethnically segregated during the war. Whereas in the rest of Bosnia, educational reform came late and was at first not pursued through imposition, but rather by international mediation, the integration of the divided educational systems of Brčko formed an integral part of the international strategy for the district. Until 2001, the laws and curricula from both the Federation and the Serb Republic were used in educational institutions in Brčko and students were segregated by ethnicity on separate school premises. After the assembly of the district failed to pass a law on primary and secondary education due to opposition of Serb deputies, the international supervisor imposed the laws, which ended separate schools and curricula for the three communities (Supervisor 2001a). Beginning with the school year 2001, only one curriculum was in use and in the following year the eight separate schools (four Bosniak, three Serb, one Croat) were consolidated in four schools. While old classes were kept apart, new generations started receiving education in mixed classes with the goal of fully integrating the school system by 2005 (Perry 2003: 79). Despite the integration of the schools, pupils still attend separate classes for language and “national” subjects, such as history and culture.

The contested nature of educational integration was highlighted during riots in 2000 when the first joint classes were established. Some 1,000 Bosnian Serb pupils demanded to attend classes separate from Bosniaks and besieged the town administration (AFP 2000). In another effort to prevent the desegregation of the school system, a Serb organization in co-operation with the Serb Orthodox Church sought to establish an exclusively Serb school (Helsinki Committee 2001b).

In education, as in other spheres, Brčko has been presented as a successful experiment for the rest of Bosnia. For example, the Principle Deputy High Representative, Donald Hays, in 2002 identified Brčko as a model for Bosnia.¹⁴⁷ As Valery Perry points out, the experience of Brčko can not be fully transferred to Bosnia as whole, as both the financial resources invested in education and the degree of intervention would be difficult to replicate country-wide. For example, the district fired all teachers and teachers were hired on the basis of new contracts and offered higher salaries than elsewhere in the country (Perry 2003: 80–81). Even in Brčko, however, the challenge remains that some subjects are taught separately, which arguably cannot be seen as an aspect of human or minority rights protection, but rather as an attempt to not outrightly challenge the nationalist atmosphere in the country.

Is Brčko a model?

The international community tried to pursue policies in Brčko that were not pursued elsewhere in Bosnia. As outlined above, some of these approaches, especially in the educational sector, have been largely successful. Despite these achievements, incidents have been commonplace in Brčko. Repeatedly, returnees and international agencies in the district have come under attack (Helsinki Committee 2001a). Extreme nationalism remains a potent force, as is evidenced in protests against attempts to integrate the schools. The fact that on the same day the president of the Brčko assembly praised the district as a model for Bosnia, a clash between Serb and Bosniak youths occurred in the city highlights the fragile nature of the experiment (Oslobođenje 2002a). A World Bank commissioned study on social capital in Bosnia commented that the district still remains very much ethnically divided and trust and communication between members of the different communities remains low (World Bank 2002: 41). Considering that more than half of the district's population was displaced as a result of the war and the Bosnian Serb conquest of the town in 1992, and in light of the obstructionist policies in the post-war period, this is hardly surprising.

In a speech to teachers, Henry L. Clarke, the supervisor of Brčko, in fact denied that Brčko is a laboratory: "Some people talk about Brcko as a laboratory. I do NOT consider Brcko a laboratory. We are NOT testing anything, or anybody's theory. We are making the minimum changes that are essential to reconstruct Brčko after a destructive war, and to give our children the chance for a better life" (Supervisor 2001b). At the same time, the very fact that these conditions and changes have

been undertaken in Brčko and not in most of the rest of the country, suggests that Brčko has a model character in the eyes of a number of international actors.

As Brčko has been run as a full-fledged protectorate since 1999, it is difficult to apply the model elsewhere in Bosnia. International organizations in Bosnia have been unwilling to transform Bosnia into a *de jure* protectorate despite more intervention policies since 1997. Similarly, it is unlikely that such assertiveness would be accepted in Bosnia in the light of numerous elections since 1996. In fact, the OHR has indicated the desire to intervene less in the political process in an attempt to further the country's ability to govern itself. In addition, there are serious questions about the benefits of an out-right protectorate, which will be discussed later. The success of the district of Brčko has furthermore been closely linked to substantial international investments in terms of attention, personnel and resources, which are difficult to emulate country-wide.

At the same time, the policy of de-segregating society, especially in the educational sector, has been a tentative success in Brčko, from which lessons can be drawn for the rest of Bosnia. The case of Brčko demonstrates that the re-integration of the educational system is possible. While protests particularly by Serb and also by Croat citizens challenged the process, it eventually succeeded and created points of contact that are absent in segregated settings. The reform of the civil service, based on transparent hiring procedures and a service-oriented structure, preceded substantial reform efforts of the entities and the state level by years (Sommers 2002). Despite these successes, the absence of locally elected officials and the protectorate-structure of the district begs the question whether the accomplishments of the past years will be maintained once international engagement in the district wanes and elected officials with potentially opposite political agendas take over.

7

Conclusion

Ten years after the end of the war, Bosnia remains deeply divided, with only part of its pre-war population having been able to return. Because of territorial segmentation, national belonging is the dominant identity in political life. The post-war political institutions have been constrained by the contested nature of the Bosnian state by the parties to the conflict. As a result, the institutions were structured to accommodate the demands of the polarized political leadership of the three communities. The country is thus governed by a weak power-sharing structure at the state level and an equally disempowered Federation as one of the two entities. The Serb Republic, on the other hand, was largely based on exclusion and the dominance of one nation. During the post-war period, especially in the first years, exclusion was nearly complete. Only the state institutions and the Federation built some tentatively integrated institutions. As power is largely vested with the cantons and the Serb Republic, most relevant decisions were taken in segregated polities in post-war Bosnia. Reforms of the governance system began in earnest only in 1999/2000. New election regulations were introduced in 2000, the first substantial number of minority police officers began serving their duties in 1999, and minority returns to both entities reached substantial levels the same year.

The constitutional amendments of 2002, part of a process beginning in 1997, have expanded the power-sharing regime in both entities and in the cantons. Bosnia is probably the only country in the world governed by such a complex system with multiple power-sharing regimes and different systems of group representation at varying levels of governance. While the reforms of the system abolished outright institutional discrimination, they added a degree of complexity that can render Bosnia ungovernable, especially

once international actors, in particular the OHR, withdraw. Additionally, the power-sharing system between the three constituent nations contains the inherent danger of **exclusion of either minorities or those citizens who do not identify with any of the three nations.**

The degree of international intervention in Bosnia has made the country's development since the end of the war special, although by no means unique, considering the number of full or semi-protectorates in recent years (Kosovo, East Timor, Afghanistan, Iraq). Most of the reform efforts, especially those seeking to foster some degree of integration and secure human rights, were initiated and carried out by international actors. The reason for this has been both the weakness of political and social actors other than the national parties after the end of the conflict and the strength of the international agencies, especially the High Representative after 1997. While there have doubtlessly been successes associated with the external intervention, as explored in the case of Brčko, **the very nature of the intervention remains problematic.** Not only has no domestic social and political infrastructure developed to sustain and support the institutional framework of Bosnia after the departure of international actors, there is still no sufficiently strong local constituency that would ensure that key reforms are carried out in the post-conflict period.

The degree of international intervention has also been the source of substantial debate in the academic and policy community. During the first post-war years, a number of organizations, first and foremost the International Crisis Group, have argued for extended international intervention (ICG 1996b). The key arguments for more forceful intervention were the undemocratic practices of the national parties and their implication in war crimes.¹⁴⁸ Finally, obstruction by national parties, in particular in the Serb Republic, had prevented the implementation of the Dayton Peace Accords in the first post-war years. This extended from preventing refugee return to blocking the establishment of the state level institutions. Thus, the extension of the High Representatives' powers in 1997 should be seen in this light. Subsequently, some think tanks, such as the **European Stability Initiative (ESI 1999) and some scholars (Chandler 1999) suggested that the heavy-handed intervention by the High Representative delayed democratization and effectively empowered the national parties. This debate has continued in recent years (Knaus and Martin 2003: 60–74).**¹⁴⁹

A key problem of international intervention has been its negative impact on democratization in the country. As the OHR and other

international actors in Bosnia operate as most international organizations without transparency and accountability towards the country's population (or political elite), the decisions of the High Representative have been tainted. While many Bosnian intellectuals have argued for a full-fledged protectorate in the immediate post-war period and Bosnians appear to support the intervention of the High Representative, the long duration of the intervention has distorted the democratic process in the country (Alic 2003). In particular, power-sharing arrangements have been affected by the intervention of the High Representative. The decisions taken by the High Representative have had two affects: First, the dismissal of elected officials has disempowered the voters and reduced the importance of votes, possibly benefiting more nationalist forces. Closely linked to this issue is the heavy-handed international intervention in support of "moderate" political forces.¹⁵⁰ Second, the passing of laws and decisions allows elected officials not to take decisions and engage in negotiations, and arrive at – possibly painful – compromises, as this process is "short-circuited" by the High Representative.

There is neither a consensus on what Bosnia should look like as a state in the future, except for vague commitments to European integration, nor is there a clear political strategy on what constitutes a long-term sustainable country from the perspective of the international actors. European integration has emerged as the *only* tentative Bosnia-wide political consensus and cross-party and cross-ethnic commitment. Ironically, the use of this single unified political project is commonly neglected for the divisive use of ethnic politics. The internationally designed and imposed institutional structure has furthermore become an obstacle to effectively engage in the integration process. The state level is not strong enough to push the integration process along, which has resulted in repeated delays in the Stabilization and Association Process as other countries of the region (with the exception of Serbia and Montenegro) have progressed with greater ease. The problems of the current institutional framework, however, are not limited to the difficulties in integrating into European structures. It is not only too unwieldy to be manageable; it is also too costly for a relatively impoverished country without significant economic prospects. Nor is the Dayton structure likely to be the framework for an effective state with which citizens can identify.¹⁵¹

One extreme of this debate has been repeated suggestions by some international observers and national parties in the region to partition Bosnia along ethnic lines. Advocated during the war, it continues to

receive occasional support internationally (Friedman 2001). Most Croat and Serb parties in Bosnia no longer openly claim secession of either the Serb Republic or the predominantly Croat cantons. This rhetorical shift is in part motivated by the possible consequences, such as a ban and financial penalties, for a party advocating such a platform.¹⁵² On the other hand, the salience of the status of borders has dropped in recent years. Poverty and unemployment have dominated the political discourse rather than secession. In part, this has also been the result of the changed regional context, where neither Croatian nor Serbian authorities have openly encouraged a secession of parts of Bosnia.¹⁵³ The EU perspective for Croatia, following the political turn-around of the HDZ under Prime Minister Sanader, has given further impetus to the practice of no longer challenging the independence of Bosnia. Still, neither Serbia nor Croatia have yet found established patterns of relations to Bosnia. In Croatia and Serbia, the process of reevaluating the responsibility of the Serbian and Croatian wartime leadership for war crimes in Bosnia has barely begun and the passivity in regard to their kin in Bosnia has not yet made way for a clear and unconditional commitment to secure a viable state, especially in Serbia.

Despite this development, **the interethnic conflict in Bosnia remains essentially a self-determination dispute**, as a majority of Serbs and a smaller share of Croats have continuously supported secession from Bosnia. As this book shows, despite some refugee return, **the country remains fundamentally segmented**. Most decisions have taken place and continue to do so at the level of governance, that provides for the least degree of power-sharing. **With weak support among parts of the population for a joint state, the weakness of joint governance is neither surprising nor necessarily undesirable.**¹⁵⁴

At the other end of the debate on the long-term development of Bosnia lies **the idea of transforming Bosnia into state of citizens**. Such a plan might be desirable at the conceptual level, but **is hardly feasible** and likely to be destabilizing. A number of Bosnian intellectuals before the war have been advocating a civic state without reference to ethnicity. Recently, a proposal for a “third republic”, which would exclude ethnic belonging from political life, has reiterated the support for such a transformation among some intellectuals (Woker 2003). **Such a reform in Bosnia only enjoys support from Bosniaks** not only because the support for the joint state is more tenuous among Croats and Serbs.¹⁵⁵ Furthermore, considering the dynamics of interethnic relations, there is **a real possibility of domination by the largest nation**. Without safeguards that avert fear (or instrumentalized fear) of discrimination and

“becoming a minority” (Jović 2001: 21–36), a civic state is unlikely to be successful in a state where national identity remains the primary political identifier.¹⁵⁶

Between the extremes of partition or establishing a unified state without national qualifiers lies a wide array of options. The current arrangement, as explored in this study, largely follows the consociational model of power-sharing. Only recently, the consociational arrangement at the state level has been complimented with consociational institutions in both entities. The main conceptual alternative to consociational power-sharing is the integrative approach, which recognizes diversity (unlike a civic state), but promotes other policies to encourage co-operation. While intellectually intriguing, there have been few examples around the world where such a system has been implemented. Integrative power-sharing lays greater emphasis on encouraging co-operation between groups through the alternative voting system and the dispersion of power. Whereas consociationalism essentially entrusts political elites of the groups to arrive at compromise, the integrative approach seeks to promote a moderate and cooperative elite (Sisk 1996: 34–45). Despite the prevalence of the consociational system in Bosnia, some elements of more integrative power-sharing have been tried. Donald Horowitz, the key proponent of integrative power-sharing, as been consulted for the permanent election law, even if few of his suggestions have been incorporated.¹⁵⁷ The two key examples of integrative mechanisms are the elections of the Bosnian presidency in 1990 and in the Serb Republic in 2000.¹⁵⁸ The elections for the first Bosnian presidency in 1990 allowed all citizens to vote for candidates from all nations. One might expect that this would have led to the election of more moderate candidates, which are acceptable to all citizens and thus gather most votes. In theory, voters of two groups alone could have voted the presidency member of the third group into office. Nevertheless, the elections resulted in an overwhelming victory for the national parties. The failure of this electoral system to result in a moderate outcome can be explained by the voters’ lack of experience with the policies of the national parties. As relations between the national parties were relatively harmonious in the pre-elections period, the main line of division appeared to lie between the non-national parties (affiliated or linked to the Communist legacy) and the national parties. It has become nearly unimaginable in the post-war period that Bosniaks, for example, would vote for the SDS or even a more moderate Serb party. In fact, this is one of the reasons why the second attempt at cross-community voting failed. The Serb Republic

presidential elections instituted a preferential voting system, as described in the study, which allowed voters to rank candidates. While the dominance of the SDS accounts for its winning of the elections, it is indicative that less than only 0.2 percent of the voters for the Bosniak party, which was eliminated in the first count, gave their second vote to a moderate Serb party. The rest chose either to opt for another Bosniak party or not to give a second preference at all.

This is not to suggest that integrative electoral systems cannot succeed. However, the continued geographical segmentation and the divided party system have rendered cross-ethnic politics difficult. Most political competition has taken place within, and not between, the nations. Parties that appeal to communities other than their core constituency risk losing core support as they might be viewed as not “representing” the core nation. Such a dynamic can be seen in the post-war elections in Bosniak-Serb relations. While in 1997 and 1998 more moderate parties prevailed among Serbs, nationalist Bosniak parties continued to dominate. In response, the nationalist SDS regained ground in 2000, while the SDA lost in the same elections to the SDP. In 2002 again, Bosniaks voted for the SDA. This dynamic suggests that moderate and cross-ethnic parties are likely to succeed only if there is a simultaneous decline in support for national parties among the two large communities. The support for national parties among Croats has been grounded in the “minority situation” in which the Croat community finds itself, both within the Federation and at the state level, allowing the HDZ to mobilize on fears of marginalization and “extinction”. These dynamics suggest that integrative models of power-sharing can only be applied at some points, such as for the election of the state presidency.

Altogether, the weakness of the current institutions does not suggest that consociational institutions are unworkable as such, but rather that the current institutional set-up is excessively inflexible.¹⁵⁹ Fearing contestation of the Bosnian state as such, international organizations have discouraged constitutional debates in the past. The lack of substantial political dialogue in Bosnia further rendered substantial constitutional debates difficult (hCa 2000). As a consequence, the first discussions on constitutional reform – which is within the remit of the Bosnian parliament – began only recently.¹⁶⁰ Some aspects of the recent constitutional reforms have made existing institutional arrangements less flexible. At the same time, other mechanisms have become more manageable. The rigid numerical requirements for government inclusion of three nations in the two entities and the distribution of high entity offices according to an ethnic key are examples of a less flexible

arrangement. The – largely symbolic – delimitation of the areas, which are covered by veto rights in the entities, on the other side, introduces greater flexibility by limiting the breadth of vetoes.

The two key principles for representation in government, parliament and public administration have in recent years been parity or the population distribution according to the 1991 census.¹⁶¹ While parity seeks to treat all constituent nations equally, the 1991 census rule constitutes a massive affirmative action project, which is aimed at reversing the war-related population changes. The principle of parity is likely to remain a permanent feature of some Bosnian institutions, whereas the 1991 census is explicitly of a temporary nature.¹⁶² Thus, once international organizations determine that the refugee return process is complete, a new census will be conducted. As a result, the representation of non-dominant groups in the public administration and in some elected bodies will be adjusted to this new level, which is going to be lower than the currently used 1991 census. In fact, the commitment to the 1991 census has often been unrealistic and far removed from the post-war realities.

The second trajectory of governance in Bosnia has been the strengthening of the state level to the disadvantage of the entities. While the conjunction between territory and identity continues to shape political life, the mono-ethnic and exclusive system of governance in the first post-war years at the entity and cantonal level has been weakened. International intervention over the years has strengthened the state level institutions. Originally, this intervention was concerned with the implementation of the peace accords and reducing the entities' powers from that of quasi states to their role foreseen in the constitution. Since 2000, however, the state level has been strengthened beyond the narrow frame of implementing the Dayton Peace Agreement, with new ministries and agencies added and more state level competences. In addition, the entities have grown weaker.

While the Federation was weak from its foundation, the Serb Republic has seen a steep decline of its earlier autonomy. Not only has the entity lost competences to the state level, the introduction of power-sharing mechanisms in the entity in 2002 reduced its ability to govern unhampered by concern for non-Serbs and established a – problematic – balance between the complex state institutions and complex entity institutions. A large number of policies and laws are now furthermore harmonized between both entities, further reducing the difference between them. Nevertheless, large differences and the lack of coordination has been a key source in Bosnia's post-war inertia in the

economic sphere, as trade between entities has often been more complicated than trade with Bosnia's neighbours.

This reason and the inherent ethnic self-understanding – irrespective of the constitutional revisions – of the entities have been identified by a variety of observers as a key obstacle to render the Bosnian system of governance more manageable and less antagonistic. Changing this aspect of the Bosnian system appears unlikely, however, as the entities are a building block of the post-war order in the country. Both the constitution and international organizations do not allow for another "Dayton", a new international treaty reconfiguring the Bosnian constitutional set-up. Every domestically generated change to the system requires the consent of the representatives of all three communities, making radical changes unlikely. As a consequence, the entities are likely to further weaken and mostly fulfill the symbolic demands of the communities. In the Federation, there has been a similar weakening of the cantons in the light of their fiscal weakness. At the same time, key economic and geographic regions remain divided by arbitrary entity or cantonal borders, which constrain co-operation. For example, Sarajevo remains largely cut off from its surroundings, which are part of the Serb Republic. Similarly, the canton of Goražde lies isolated in Eastern Bosnia as nearly an island in the RS.

Despite demands by some political parties and intellectuals to engage in a fundamental revision of the Dayton system of governance, change has been incremental and based on reforming existing institutions and layers of governance. More fundamental change remains unlikely in the face of both international reservation about large-scale revisions and the difficulties of building consensus among the three constituent people for such change. As a result, governance in Bosnia will remain for the foreseeable future highly complex, as ethnicity will continue to dictate the political agenda throughout the country.

Appendices

a) Major Political Parties and Coalitions in Bosnia

Name in English	Name in Bosnian/ Serbian/Croatian	Abbreviation
Alliance of Independent Socialdemocrats	Savez nezavisnih socijaldemokrata	SNSD
Alliance of Yugoslav Reform Forces for BH	Savez reformiskih snaga Jugoslavije za BiH	SRSJ
Bosnian Party	Bosanska stranka	BOSS
Coalition for the Unified and Democratic Bosnia	Koalicija za cjelovitu i demokratsku BiH	KCDBiH (SDA, SBiH)
Croat Democratic Community	Hrvatska demokratska zajednica	HDZ
New Croat Initiative	Nova Hrvatska inicijativa	NHI
Party for Bosnia and Herzegovina	Stranka za Bosnu i Hercegovinu	SBiH
Party for Democratic Action	Stranka demokratske akcije	SDA
Party of Democratic Progress	Partija demokratskog progresa	PDP
Serb Democratic Party	Srpska demokratska stranka	SDS
Serb People's Assembly	Srpski narodni savez Republike Srpske	SNS
Serb Radical Party	Srpska radikalna stranka	SRS
Socialdemocratic Party of Bosnia and Herzegovina	Socijaldemokratska partija Bosne i Hercegovine	SDP
Socialist Party of the Serb Republic	Socijalistička partija Republike Srpske	SP RS
Unified List	Združena lista	ZL
Union for Peace and Progress	Savez za mir i progress	SMIP
Working Toward Progress	<i>Radom za Boljitak</i>	RzB

b) Abbreviations

Abbreviation	Name in Bosnian/ Serbian/Croatian	Name in English
ARBiH	Armija Republike Bosne i Hercegovine	Army of Bosnia and Herzegovina, War-time army of the Bosnian government
DPA		Dayton Peace Accords
FBiH	Federacije Bosne i Hercegovine	Federation of Bosnia and Herzegovina
HR		High Representative
HVO	Hrvatko Vijeće Odbrane	Croat Defence Council
IDP		Internally Displaced Person
IEBL		Inter-Entity Boundary Line
IPTF		International Police Task Force
KM	Konvertibilna Marka	Convertible Mark
OHR		Office of the High Representative
PEC		Provisional Election Commission
PIC		Peace Implementation Council
RS	Republika Srpska	Serb Republic
SBS	Državna granična služba	State Border Service
VRS	Vojska Republike Srpske	Army of the Serb Republic

c) Structure of the System of Governance in Bosnia since the Reforms in 2002

	Parliamentary Representation	Grand Coalition	Veto Rights	Administration	Autonomy/Decentralization
Bosnia-Herzegovina (1996)	PR, Bi-cameralism House of People (15): reserved seats (5 B, C, S)	Yes. Quota 2/3 from Federation, 1/3 from RS, 1 deputy min. of other ethnicity to each min.	Yes. "Vital National Interest of Constituent People", (1/3 from each entity, $\frac{1}{2}$ in HoP) mediation procedure, constitutional court	"Officials appointed to positions in the institutions of Bosnia and Herzegovina shall be generally representative of the peoples of Bosnia and Herzegovina."	Two entities, one district
Federation of Bosnia-Herzegovina (2002)	PR, Bi-cameralism House of Representatives (98): reserved seats (min. 4 C, B, S) House of Peoples (58): 17 C, B, S, 7 O	Yes. Presidency: 1 pres, 2 vice-pres of other group Government: deputy min of other ethnicity to each min., 8 B, 5 C, 3 S.	Yes. "Vital National Interest of Constituent People" (2/3 HoP MPs from each group), mediation procedure, constitutional court	"Constituent peoples and members of the group of the Others shall be proportionately represented in public institutions in the Federation of Bosnia and Herzegovina."	Ten cantons
Republika Srpska (2002)	PR, National Assembly (83): reserved seats (min. 4 C, B, S) Council of Peoples (28): reserved seats (8 C, B, S, 4 O)	Yes. Presidency: 2 vice-pres of other group Government: Reserved seats (5 for B, 3 for C)	Yes. "Vital National Interest of Constituent People", mediations procedure, constitutional court	"Constituent peoples and members of the group of Others shall be proportionally represented in public institutions in Republika Srpska."	No
Brčko (1999)	PR, Assembly (29): reserved seats (min. 3 C, B, S)	No. Mayor, "The Heads of Department shall reflect the composition of the population."	No. 3/5 majority of laws, appointments 3/4 majority for changes to the statute	"Public employment ... shall reflect the composition of the district"	No

Notes

Chapter 1 Introduction

1. Officially Croatian, Serbian, and Bosnian are now three official languages in Bosnia, but differences are minor and the population of Bosnia uses mostly the same variant of the language. The main difference is that among Serbs, the Cyrillic alphabet is also in use.
2. State parliament: 67; Federation: 156; Serb Republic: 93; 10 cantons: 289; Brčko: 29 members

Chapter 2 Historical Legacies

3. The Ottoman and Austro-Hungarian Censuses did not allow for any identification by nationality, but only by religion. McCarthy 1993: 81; Bataković 1996: 97.
4. Further seats were reserved for representatives of the four religious communities (5 Muslims, Serbs and Croats, 1 Jew) the president of the supreme court, the president of the lawyers association in Sarajevo, the mayor of Sarajevo, and the president of the chamber of commerce. Art. 22. Landesstatut für Bosnien und die Hercegovina 1910.
5. Source: Banac 1984: 389; Bataković 1996: 97.
6. Muslims were not recognized as a separate nation in inter-war Yugoslavia, neither were Macedonians or Montenegrins.
7. On the wartime history see Roberts 1987; Djilas 1991; Tomasevich 1975.
8. Source: Abazović 2000: 81–81, 86.
9. The term “undecided” suggests that Muslims were either Croats or Serbs. Cudic 2002: 202–203.
10. Source: Gow 1992: 142.
11. For an analysis of the demographic development see Friedman 1996: 155–156.
12. Source: Savezni zavod za statistiku 1998.
13. Source: Statistical Office of the Federation of Bosnia and Herzegovina, <www.fzs.ba>.
14. In 1961, only the category “Muslims as ethnic affiliation” existed. In the 1971 Census, the category “Muslims in the national sense” was introduced.
15. The number of Roma in Bosnia, as elsewhere in Southeastern Europe, is consistently lower in census than in reality due to undercounting in Roma settlements and the self-declaration of many Roma as part of the respective majority nation.
16. Until 1971, Ruthenians and Ukrainians were counted in the same category.
17. Đilas had been a member of the inner circle around Tito, but by the mid-1950s advocated a liberalization of the political system, which resulted in his expulsion from the party followed by a number of prison sentences.

18. There were controlled elections in 1930s under the royal dictatorship and immediately after the end of World War Two in Yugoslavia.
19. Each of the three nations held two seats in the presidency, while "Others" had one seat reserved. Originally the distribution was to be 3 Muslims, 2 Serbs and 1 Croat. Pejanović 2002: 20.
20. The total percentages do not fully reflect the outcome of the election, due to the electoral system. The system was majoritarian with deputies elected from seven electoral units for the council of citizens and one deputy elected in each of the 109 municipalities (and 1 for Sarajevo) Arnautović 1996: 21–22, 108.
21. Source: Arnautović 1996: 124.
22. Here the pro-Yugoslav and social democratic parties are listed as Yugoslav.
23. The national parties encouraged voting for each other in the presidency elections, where all citizens could vote for candidates from all nations. This included Serbs voting HDZ candidates and Croats and Bosniaks voting for SDS candidates etc. Pejanović 2002: 36–42.
24. Source: Arnautović 1996: 104.
25. The SDA candidates secured 61.21 percent, the SDS candidates 35.92 percent, the HDZ candidates 28.29 percent and the SDA candidates for the others 22.57 percent.
26. Lebanon has a similar system of power-sharing. Here the national pact established during the French mandate requires the president to be a Maronite Christian, the prime minister to be a Sunni Muslim and the president of parliament to be a Shiite Muslim.
27. Robert Hayden attributes the failure of the power-sharing arrangement to the Muslim and Croat vote and questions the legitimacy of the subsequent referendum on independence of Bosnia, neglecting moves of the SDS to establish Serb Autonomous Areas preceding the vote. Hayden 1999: 92–94.
28. Later in 1992, the reference to Bosnia and Herzegovina was dropped.
29. A comprehensive discussion of the International intervention can be found in Burg and Shoup 1999: 189–316.

Chapter 3 Cleavages and Inequalities in Post-War Bosnia

30. Data (except number of dead or missing), Praso 1996: 5.
31. Bureau of Health Protection, quoted from ICG 1996a: 3; Helsinki Committee 1999a.
32. Does not include IDPs, approx. 1 million in late 1995.
33. Estimates vary, as there is little reliable statistical material available on the number of victims in the war, Bosnians living outside of the country and other demographic changes since the 1991 census. Source: McGonagle, et al. 2003: 120–121.
34. Before the war, Grahovo and Drvar had a pre-war Serb majority of 97 percent.
35. The prominence of the return process has also prevented the carrying out of a new population census, which – as is feared by the international community – would help justify existing ethnic dominance.

36. The household income includes salaries of all family members, pensions, child allowances and other incomes. The data are based on public opinion polls. UNDP 2003: 18.
37. For 2002, only Jan.–Oct., Agencija za Statistiku Bosne i Hercegovine, *Statistički Buletin* 3/2002, p. 21.
38. The employment rate of 16 percent is based on ILO statistics, while the IMF suggest that 31 percent are unemployed, if refugees and workers are included who are discouraged from appearing at work. IMF 2003: 8. The average number of unemployed (1–3/2003) in the Federation has been 292.691 and 145.523 in the RS (Agencija za statistiku 2003: 22, 24).
39. Table: FZS 2003.
40. Data for Brčko (2/2003) ICG 2003; for the Federation (9/2003) FZS and for the RS (9/2003) RZS RS 2003.

Chapter 4 Politics and Governance in Post-War Bosnia

41. Ten cantons of the Federation, two entities, one central administration and one district.
42. This will be discussed further in Chapter 6 b.
43. “Others” is the term used in the Bosnia constitution and in laws to describe all those not included in the three nations. These might be classical minorities, and children of mixed marriages or citizens who do not wish to identify with one nation.
44. This system essentially ensured the election of the previous president of the presidency and Bosniak candidate for the presidency, Alija Izetbegović, to the chairmanship.
45. Pale is a former mountain resort some 20 kilometers from Sarajevo.
46. The election rules also stipulated that the first chairman cannot be from the nation as the previous chairman, in which case the candidate with the second highest number of votes would chair the presidency for the first eight months.
47. This law continued to be relevant as the Serb presidency member Šarović was forced to resign in 2003 over a scandal involving the RS army spying on SFOR and state-owned arms factories supplying weapons systems to Iraq during a period when Šarović was acting president of the Serb Republic. Borislav Paravac, his replacement, however, is also a high-ranking SDS member with a suspicious wartime past, thus lacked the profound political impact the earlier replacements had. Similarly, Dragan Čović, the Croat member was dismissed by the OHR in 2005 over financial abuse charges and replaced by HDZ party colleague, Ivo Miro Jović.
48. The Constitutions of Bosnia-Herzegovina or the DPA at large do not attempt to define the membership in the different national communities, allowing – hypothetically – for a Croat, Bosniak or a candidate of mixed descent to run as a self-declared Serb in the elections for representation of the RS in the Presidency.
49. In the absence of a post-war population census only rough estimates exist of the population distribution in both entities. According to some estimates, over 110,000 non-Serbs lived in the Republika Srpska in 1998, which constitutes approx. 12 percent of the population. In the Federation, some 450,000

Serbs and “others” lived in 1998, i.e., approx. 17 percent. These numbers increased substantially after 1999, see International Forum Bosnia 1999.

50. This also applies to other minorities, which do not belong to any of the three nations.
51. The Bosnian presidency had seven members, elected by parliament. The chairmanship of the presidency rotated on an annual basis. The direct election of the presidency was introduced in 1990 in preparation of the first multiparty elections, Ibrahimagić and Kurtćehajić 2002: 140. The Yugoslav presidency, consisting of members from all republics and provinces was setup in 1971, but only took over following the death of life-time president Tito in 1980, see Beckmann–Petey 1990: 148–150.
52. In case a decision is blocked, a session is held to find a compromise between the dissenting ministers and if this fails, the government can decide by majority vote, but requires the consent of two members of each constituent people. This means that effectively a veto can only be overridden if only one member from a constituent people or a minister from the group of “Others” objects to a decision.
53. Quoted from the English version of the law of the OHR.
54. Assistant ministers and senior executive manager of the ministries are not formally part of the parity-based distribution of offices, but are governed by the Civil Service law. *Zakon o državnoj službi u institucijama Bosne i Hercegovine* 2002: Art. 7, 8, 9. Previously, the laws on the Council of Ministers stipulated that it should be representative of the three constituent nations (*Zakon o Vijeću ministara* 1997: Art. 49) or (*Zakon o Vijeć u ministara i ministarstvima* 2000: Art. 48) should reflect the ethnic structure according to the last census and include two thirds from the Federation, and one third from the RS.
55. The HoP 2002–2006 includes the following deputies: 4 SDA, 1 SBiH for Bosniaks, 4 HDZ, 1 SDP for Croats, 3 SDS, 1 PDP for Serbs.
56. In addition, every vote should include at least one-third of the votes from the territory of each entity. If this is not achieved, a commission of the Chairs (from different national groups) is tasked with finding a resolution. If this yields no result, the decision can be passed if those opposed are less than two thirds. *Constitution of Bosnia and Herzegovina* 1995: Art. IV.
57. While there has been some doubt on the precise meaning of this formulation, it can be assumed to suggest an approximate proportional representation of all people of Bosnia.
58. Art. 2, *Law on Civil Service in the Institutions of Bosnia and Herzegovina*, 23.5.2002.
59. This tension is also noted by the Venice Commission in its opinion on the draft law. Venice Commission 2002: Para. 3.
60. In the first half of 2002, the SBS employed 1,670 personnel. UN 2002.
61. The parliament only passed the law in 2001.
62. The tasks of the UN Mission were taken over by the EU Police Mission in 2003. ICG 2002: 16–18.
63. None of the international members of these bodies can be from Croatia or Serbia and Montenegro in a further attempt to ensure their neutrality. *Constitution* 1995: Art. VI, Art. VII; *DPA* 1995: Annex 6.

64. Bosnia has also been compared with the European Union, referring to the German Constitutional Court describing the EU as a "Staatenverbund" (Association of States). Schneider 1996: 4.
65. Although defence is not listed as one of the competencies of the state (Constitution BiH 1995: Art. III/1), "each member of the Presidency shall, by virtue of the office, have civilian command authority over armed forces." Constitution 1995: Art V/5(a).
66. This is enshrined in the Constitution and has been reiterated by the Constitutional Court. Ustavni sud 2000b: para. 10. See also Ibrahimagić 1999. This interpretation is not undisputed, especially from politicians and legal scholars from the RS. On this see Kunić 1997: 17–21.
67. This position is, for example, also taken by Cvetan Cvetkovski in his analysis of the Dayton Accords. Cvetkovski 1996: 115–116.
68. The status of Brčko resembles the role of the District of Columbia within the USA.
69. As argued more radically by the American political scientists John Mearsheimer and Chaim Kaufman, see for example Kaufman 1998: 120–156.
70. Data for 1997 and 2003 are estimates. Source: For 1991 and 1997 Ustavni sud BiH 2000c: para. 130; for 2003 Dnevni List 2003.
71. He was dismissed by the High Representative in March 2001 after declaring Croat self-government.
72. Data: Commission for Reforming the City of Mostar. Recommendations of the Commission, Report of the Chairman, 15.12.2003, Report is available at: <[www.ohr.int/archive/report-mostar/pdf/Reforming%20Mostar-Report%20\(EN\).pdf](http://www.ohr.int/archive/report-mostar/pdf/Reforming%20Mostar-Report%20(EN).pdf)>.
73. Source: PEC 1997; PEC 2000b; Izborni zakon 2001: 19.13.
74. All ministries have a deputy minister from a different nation than the minister, as does the prime minister who has a deputy from the other nation. Finally, the prime minister has to hail from a different nation than the president (governor). Ustav Hercegovačko-neretvanski kanton 1996: Art. 30, 37, 41, 48; Ustav Srednjobosanski kanton 1996: Art. 32, 38, 39, 43, 49, 52.
75. Some more generally require that "the national structure of members of the assembly maintains the national structure of the inhabitants of the canton." Ustav Zenica dobojski kanton 1996: Art. 26. Others specify that "[a]t the occasion of the election of the members [of the assembly] the appropriate representation of the representatives of Bosniaks, Croats and other nations in regard to the proportional national structure of the population of the territory of the canton will be ensured." Ustav Bosansko podrinski kanton Goražde 1997: Art. 21).
76. The Una-Sana canton similarly specifies that the deputy prime minister has to be Croat. Ustav Unsko-sanski kanton 1995: Art. 83), Amended version 1997.
77. It is a curiosity that in the Croat-majority cantons (before 2002), the official languages were "Bosniak" and Croat, while in Bosniak-dominated cantons, and at the Federation and state level the official languages are Bosnian, Croat (and Serb at the state). On this see Grubišić 2003.
78. Source: Ustavni sud BiH 2000c: para. 136.

79. The total post-war number of the police forces was around 40,000, a strength which was reduced to around 18,000 by early 2002. Source <www.unmibh.org>.
80. United Nations 2002.
81. Source: Minority Recruitment Programme, UNMiBH, <www.unmibh.org>.
82. Nationalist symbols feature stronger in the RS constitution than incidentally in the constitutions of Serbia (1990) or of the Federal Republic of Yugoslavia (1992).
83. Source: Ustavni sud 2000c: para. 86.
84. Richard Holbrooke later considered it to have been a mistake, see Holbrooke 1999: 368.
85. For example, the RS constitution in its preamble referred to the struggle for freedom and independence of the Serb people and Art. 1 declared the state to be of the "Serb people and of all its citizens" Ustav RS 1992. Furthermore, there were references to God in oath for members of parliament and Serbian Orthodox clergy was present at the constituent session of the first RS parliament. See Narodna Skupština RS 1997.
86. In 1996 the HDZ did not even run in the RS.
87. Numbers are based not on self-declaration, but on party affiliation and name.
88. Source: Ustavni sud 2000c: para. 92.
89. Source: UN 2002. As there are no accurate numbers of the total number of police forces in the RS, these numbers might vary.
90. The number was relatively high due to the recruitment of a multiethnic police in Brčko which was formally still part of the RS police.
91. At the Conference of the supervisory Peace Implementation Council (PIC) in Bonn in December 1997, the HR was given the permission to remove officials from office who violate the DPA and, if the legislative bodies of Bosnia are not able, to impose laws. PIC 1997.
92. As of November 2003, staff of the OHR included 141 internationals (65 seconded staff and 76 contractors) and 490 national staff. Source <www.ohr.int>.
93. The decisions are listed at the website of the Office of the High Representative: <www.ohr.int/decisions.htm>.
94. The successes are very tangible when joint Bosnian licence plates proved instrumental in reestablishing cross-entity travel. The property laws enacted by the High Representative also facilitate minority returns.

Chapter 5 The Record of the Post-Dayton Elections

95. The DPA states that the goal of the elections is "to lay the foundation for representative government and ensure the progressive achievement of democratic goals," DPA 1995: Annex 3.
96. In 1996 and 1997, only 45,523 minority returns had taken place. UNHCR 2004a.
97. For detailed election results see Schmeets and Exel 1997.
98. Both have since been indicted by the International War Crimes Tribunal in The Hague. Plavšić surrendered to the tribunal, while Krajišnik was arrested by SFOR.

99. The Democratic People's Union (*Demkratska narodna zajednica*, DNZ) is the party of Fikret Abdić, former presidency member for the SDA and since sentenced to prison in Croatia for war crimes. His Bosniak party is exclusively supported by his loyal constituency in the area around the town of Velika Kladuša in Northwestern Bosnia.
100. The Radical Party of the RS (*Radikalna stranka*, RS), not to be confused with the SRS, is a radical nationalist Serb party without lasting impact on the political scene.
101. The SDP was the successor of the League of Communists, while the Socialdemocrats emerged from Ante Marković's reformist movement.
102. The social democratic orientation of this party is somewhat doubtful considering its close ties to the Socialist Party of Serbia of Slobodan Milošević.
103. Even the electoral statistics of the OSCE do not offer the share of each parties' vote for Bosnia in general.
104. The 1998 rules allowed only exception: in case a party did not allocate a sufficient number of slots to women, PEC 1998: Art. 7.50 f, g, h and Art. 7.80, g, h, i.
105. An OSCE commission opinion poll released the same day did not ask specifically for open-list voting, but found that the overwhelming number of citizens support the direct election of the commune presidents (82%) and assessed that the officials elected in 1998 were highly or generally 'irresponsible' (60%), OSCE 1999a; OSCE 1999b.
106. For the elections of the members of the House of Representatives of the State parliament 21 of the members from the Federation were elected in MMC, whereas the remaining 7 seats were compensatory mandates to insure proportional representation. In the RS, some 9 members were elected in MMC, with 5 being compensatory mandates (OSCE 2000b: Art. 1101). In the elections for the Federation House of Representatives, 105 of the seats were elected in 12 MMC with the reminder 35 being compensatory seats (OSCE 2000b: Art. 1201, 1202). In the RS, 63 of 82 seats were elected in the 6 MMC (OSCE 2000b: 1301, 1302).
107. As some of the votes cast for BOSS had only one preference (3924 votes or 30.5%), these votes were eliminated, thus reducing the total number of votes counted.
108. Source: <www.oscebih.org>
109. The overwhelming majority of the 17.23 percent absentee and out-of-country votes are cast by non-Serbs. In addition, some 50,000 Bosniak, Croat and other non-Serb refugees had returned to the RS by late 2000. (UNHCR 2004b). Assuming that most votes for LDS, SDP and BOSS were cast by Bosniaks and Croats and some votes for the PDP and the SNSD were also cast by Bosniaks and Croats, the number of non-Serbs participating would be between 15 and 20 percent.
110. For example, the Social Democratic Party fielded two candidates, one Bosniak and one Croat.
111. Source: <www.oscebih.org>
112. Source: <www.oscebih.org>
113. In the 1998 elections for the presidency, two of the three members were from the nationalist parties, but after the resignation of Alija Izetbegović

- (in 2000) and the dismissal of Ante Jelavić (in 2001), both positions were filled by moderate politicians in a parliamentary vote.
114. Only the main candidates are included. Source: <www.izbori.ba>.
 115. Source: <www.izbori.ba>
 116. As the electoral districts combine several cantons, the results from the cantonal elections are more indicative of the concentration of SDP's electoral base.
 117. Results from OSCE, except 1990. ESI 2001. In 1998, the SDA formed a coalition with the SBiH, LDS and GDS. In 1998, the SDS formed a coalition for the RS presidency with the SRS, but competed separately with the SRS in parliamentary elections. Here the results of both parties are combined. In 2002 the HDZ participated in coalition with the Christian Democrats, the HNZ and the HKDU. As the respective coalition parties in all cases, with the partial exception of the SRS, were relatively minor, the results do not distort the overall showing of the national parties.
 118. See also Pugh and Cobble 2001: 27–47.
 119. As noted earlier, parliament was required not to grossly misrepresent the real strength of the three nations, but had no positive requirements for the representation of the three communities.

Chapter 6 Addressing Inequality & Reforming Governance in Post-War Bosnia

120. Kukić 2001: 15.
121. For the two “mixed” cantons in the Federation, the minority status is determined at the level of the municipality.
122. Source: UNHCR 2004a.
123. Source: UNHCR 2004b.
124. Constitution lists:
 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
125. By the end of 2002, the Human Rights Chamber had resolved 1878 cases, while a total of 12,659 had been registered with the body. See Human Rights Chamber 2003: 69.
126. The law explicitly addresses the following minorities: Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenes, Turks, and Ukrainians.
127. The attempt to guarantee "others" political representation in the first Bosnian elections in 1990 failed after the reserved seat in the Bosnian presidency was won by a Muslim, the hard-line SDA politician Ejup Ganić. (Burg and Shoup 1999: 52)
128. These official numbers probably exceed reality, as a number of refugees and IDPs return only to sell their property and return to reside permanently in their more recent place of residence where they live as a majority. UNHCR 2004a.
129. For example, the annual report of the Constitutional Court of Bosnia-Herzegovina for 2000 has some 562 pages, with each language taking well below 200 pages.
130. This chapter was published in a slightly amended form in Christophe Solioz and Tobias K. Vogel (eds), *Dayton and Beyond. Perspectives on the Future of Bosnia and Herzegovina*. Nomos, Baden-Baden 2004.
131. The only Serb general in the Bosnian army, Jovan Divjak, for example, was retired from active service in 1996. Interview with Jovan Divjak, Sarajevo, 2000; Ivanova 1997.
132. On the discussion in the parliament of the Serb Republic and the Federation on this matter, see Trnka 2000: 81–83.
133. Disputes can only be referred to the court 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. As a result, the Serb Civic Council and other NGOs challenging the constitutions were not able to take the case to the courts. The interest of Alija Izetbegović was primarily with undermining the autonomy of the Serb Republic. Constitution BiH 1995: Art. VI 2 b.
134. See Constitutional Court, Decision U98/5 I, Sarajevo, 29–30.1.2000. The arguments of the case are presented by the representative of Izetbegović to the court in Trnka 2000: 84–102.
135. This argument is actually reminiscent of discussions over the legality of the claim to self-determination in the Yugoslav constitution of 1974, which was also only contained in the preamble. See Beckmann-Petey 1990: 128–131.
136. See Hrvatska Rijec 2000. A similar case was made by the constitutional lawyer representing the RS, Petar Kunić in Reporter 2002. The Croat judge, Zvonko Miljko, later complained that the international judges

- would vote with Bosniaks and against Serbs and Croats and that being a judge at the court was a “punishment”. *Večerni list* 2001.
137. The Constitution of the RS, however, gave a privileged status to the Serbian Orthodox Church.
 138. The article states: “The State shall materially support the Orthodox Church and shall co-operate with it in all fields and, in particular, in preserving, cherishing and developing cultural, traditional and other spiritual values.” *Ustav RS* 1992: Art. 28, para. 4.
 139. OHR, Decision establishing interim procedures to protect vital interests of Constituent Peoples and Others, including freedom from Discrimination, 11.1.2001.
 140. OHR, High Representatives names Members of the Constitutional Commissions of the Entity Parliaments, Press Release, 7.2.2001.
 141. In the meetings, eight parties were represented: SDP by its president Zlatko Lagumdžija, the Party for BiH by presidency chairman Safet Halilović, SDA by its president Sulejman Tihić, NHI by president Krešimir Zubak, HDZ by presidency member Niko Lozančić, the head of the PDP Mladen Ivanić, SDS president Dragan Kalinić, and SNSD leader Milorad Dodik.
 142. In both entities, all three languages and both alphabets now enjoy equal official status. See OHR 2002c: Amendment XXIX; OHR 2002b: Amendment LXXI.
 143. The UNDP’s Early Warning System indicates no significant changes in ethnic relations during 2002. See UNDP 2002: 27–30.
 144. Source: <www.ohr.int>; Sommers 2002.
 145. Source: <www.izbori.ba>
 146. The statute was moved to a private location in October 2003 upon the district passing a law on symbols and monuments. *Glas Srpske* 2003.
 147. He delivered his statements at a workshop aimed at identifying the applicability of the Brčko model for the rest of Bosnia. (OHR 2002a). Brčko was furthermore named as a model in developing a joint core curriculum in the human rights priorities of the Human Rights Co-ordination Center, which incorporates all major international organizations in Bosnia (OHR, OSCE, UNMBiH, UNHCR, OHCHR, IJC and CoE), Human Rights Co-ordination Centre 2001.

Chapter 7 Conclusion

148. These demands were linked to the success of the national parties in elections, which shattered the (unrealistic) hope of a democratic transition to moderate forces in the immediate post-war environment.
149. See the debate which followed the publication of the article at <www.esiweb.org>. The debate has, however, not included many Bosnian participants. This in fact further highlighted the gap between international policy-making for Bosnia and the political reality in the country itself.
150. There are other problems associated with the dismissals (and vetting), as they do not follow transparent rules and fail to satisfy basic requirements of due process. See Martens 2003b.

151. In fact, according to the UNDP EWS suggests that currently only some Serbs (7.2%) see the Status Quo as being satisfactory for the national interest, while neither Croats nor Bosniaks express any support for the current situation as being satisfactory for the national interest. UNDP 2003: 27.
152. The election law, as pointed out earlier, prohibits this position and the HR has banned parties on these grounds.
153. In the case of Serbia, however, some leading politicians, including late Prime Minister Zoran Đinđić, have suggested an “exchange” of the Serb Republic against independence for Kosovo. Others, such as former Yugoslav President and Serbian Prime Minister Koštunica have repeatedly advocated a “unification” between the RS and Serbia, albeit by peaceful means.
154. For a comprehensive and clear-headed discussion of the partition debate see Bose 2002: 144–203.
155. Only Bosniaks strongly support a state of citizens (2003: 52%), while the support among Serbs and Croats for this option is relatively small (2003: Croats: 16.9%, Serbs: 9.1%), UNDP 2003: 27.
156. The Serb Republic, for example, had only few mechanisms of constitutional/institutional discrimination against Croats and Bosniaks, possessing mostly ethnically neutral institutions, which did not prevent it from discriminating against the other two nations in practice.
157. Personal communication with Donald Horowitz, 22 October 2002.
158. In the 2004 local elections, the preferential system was used for the election of mayors in the Federation.
159. This has also been criticized by Arend Lijphart in the case of Bosnia (personal communication 2003) and in regard to Lebanon: “Its main weakness was the inflexible institutionalization of consociational principles.” Lijphart 1977: 149.
160. There have been some emerging discussions on revising the Dayton Constitution. However, these have been led mostly *within* one of the three groups, rather than between the three nations. Oslobodjenje 2003b; Nacrt Deklaracije o nužnosti izmjena Ustava Bosne i Hercegovine i o ustrojstvu “Federalne Republike Bosne i Hercegovine”, 2003, <www.bihmipr.org>
161. The other principle applied is the distribution of one third to the RS and two thirds to the FBiH, which reflects approximately the population distribution, but also allows for a parity representation of the three nations.
162. In most cases, the reference to the 1991 census is linked to the latest census, i.e. with a new census taking place, it would replace the 1991 data. In other cases, the reference is more explicitly linked to the return of refugees.

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Index

Page numbers in *italics* refer to illustrations, maps

- Abdić, Fikret, 20, 23, 161n99
- Agrokomerc company, 17, 20
- Albanians, 15, 17–18, 62, 163n126
- Alliance of Independent
 - Socialdemocrats (SNSD), 41–3, 92, 97, 100, 101–5, 136, 161n109, 164n141
- Anić, Mijo, 101
- Anti-Fascist Council for the National Liberation of Yugoslavia (AVNOJ), 10
- Ashdown, Paddy, 67, 84–5
- Austro-Hungarian rule, Bosnia under, 6–8, 10
- banovina*, 9
- Barry, Robert, 94
- Behmen, Alija, 101
- Belgium, 60, 125, 126
- Berlin Congress, 6
- Bihać, 10, 13, 30, 38, 109
- Bildt, Carl, 84
- Bonn powers, 84
- Boras, Franjo, 23
- Bosanska stranka (BOSS), 97, 100, 102, 161nn107, 109
- Bosansko Grahovo, 13, 30, 32, 109
 - see census results
- Bosniak-Croat territory, 2, 27, 56, 63–4, 66, 76, 119
- Bosnian Podrinja Canton, 37, 63
- Bosnian Presidency, 49, 51, 65, 85, 91–2, 101, 122, 148, 158n51, 163n127
- Bosnian Serb army, 27, 134
- Bosnian-Macedonian proposal, 25
- Brčko district, 4, 37–8, 43, 78, 82, 87, 133–43, 140–2, 160n90
 - election results in, 136
 - property claims in, 139
 - governance in, 154
 - as a model, 142–3, 164n147
- Bundalo, Perica, 97
- Canada, 126
- Cantons of the Federation, 3, 63, 72, 119, 140, 157n41, *see also individual entries*
- Carlos Westendorp, 84
- Čavić, Dragan, 103
- census results, 2, 7, 14, 15
- Central Bosnian Canton, 63, 71
- Čerešnješ, Ivan, 23
- citoyenneté, 125
- Clarke, Henry L., 142
- Communism, 16, 19–28
- The Communist era, 10–19, 34
- ‘constituent people’, term, 2
- constitutional amendments, 44–5, 68–70, 73, 76, 78, 80–3, 116, 122, 128, 128–34
- constitutional commissions, 127–8, 132, 164n140
- Constitutional court decision, 2000, 123–9, 133, 163n134
- Čović, Dragan, 49, 97, 101
- Croat Democratic Community (HDZ), 20–6, 42–3, 53, 62–7, 82, 90–3, 117, 128–9, 147–9
 - in 1990–2002 elections, 105
 - in October 2004 elections, 136
 - and 2000 and 2002 elections, 99–103
 - and Croats voting, 80, 89
 - as Bosnian Presidency member, 49, 54
 - support for, 106–7
 - Western Herzegovina controlled by, 41

- Croatia, 33, 134, 155n1, 158n63, 161n99
 and Bosnia, 33, 64, 108, 113, 117, 127, 139
 and Bosniak-Croat federation, 63
 and the communist era, 10
 and Herzegovina, 38, 41, 62
 HDZ in, 22, 65
 national movements in, 1, 6
 refugees from, 138
 SDS in, 20
 and Serbia, 147
 and Yugoslavia, 9, 24–8, 118
 Ćuk, Dobroslav, 97
 Cyrillic script, 119
 Czechs, 15, 163n126
- Đapo, Mirsad, 97, 135
 Dayton peace agreement, 27, 30, 33, 40, 42, 64, 111, 113–14
 and council of ministers, 53
 and decentralization, 60
 and the electoral system, 88
 and post-war Bosnia, 108, 118, 130, 140, 145, 150
 and public administration, 74
 and Serbia, 77
 decentralization, 18, 24, 46, 63–4, 71, 154
 and the entities, 60–2
 de-ethnification, 137
 d'Hondt system, 98
 Đilas, Milovan, 17, 155n17
 Dindić, Zoran, 165n153
 Divjak, Jovan, 163n131
 Djilas, Aleksa, 155n7
 Dodik, Milorad, 42, 78–9, 92, 96–7, 99, 164n141
 Drvar, 32, 156n34
 Dubrovnik, 26
 Dugonjić, Aljia, 97
 Duraković, Nijaz, 23
- elections for Presidency, 23
 election, 4, 22, 87, 89, 90–4, 149
 electoral reforms, 93–8
 electoral results
 of 1910, 7
 of 1990, 19–23
 of 1996, 90–1
 of 1998, 92–3
 of 2000, 97, 99–101
 of 2002, 101–3
 of 2004, Brčko, 136
 for national parties, 105–7
 and population census, 8–9, 21–22, 105–6
 electoral system, 50, 67, 69, 88, 94, 98
 Empires and Bosnia, 5–8
 entity constitutions, 44–5, 72, 79
 change of the, 108, 114, 117, 121–33
 'ethnic autonomies', 53, 115, 124, 125, 133
 'ethnic cleansing', 4, 26, 31, 34, 38, 74, 76, 83, 88, 110, 111, 140
 'ethnic issues', 120
 European Community (EC), 25, 27
- Federal Fund for Underdeveloped Regions (FADURK), 18
 Federation House of People, 55, 69, 115, 129
 Federation of Bosnia and Herzegovina, 60, 121–2, 154, 155n13
 First Past The Post System (FPTP), 88, 98
- Ganić, Ejup, 23, 163n127
 Goražde, 13, 30, 63, 72, 109, 134, 151, 159n75
- Habsburg monarchy, 6–7
 Hadžipašić, Ahmet, 71
 Hague tribunal, 77, 160n98
 Halilović, Safet, 164n141
 Herceg Bosna, 62, 73
 Herzegovina-Neretva Canton, 37, 63, 63, 71
 Horowitz, Donald I., 96, 148, 165n157
 Hungary/Hungarians, 15, 17, 163n126
- inequalities
 and cleavages, in post-war Bosnia, 29–39
 in post-war Bosnia, 108–43
 socio-economic inequalities, 33–9

- institutional set-up, 67–73, 79–80
 Inter-Entity Boundary Line (IEBL), 13, 30, 31, 90, 109
 Internally Displaced People (IDPs), 33, 74–5, 89–90, 110–13, 156n32, 163n128
 International Police Task Force (IPTF), 74, 82, 140–1
 Italy/Italians, 9, 15, 163n126
 Ivanić, Mladen, 42, 97, 99, 164n141
 Ivanković-Lijanović, Mladen, 42, 101
 Izetbegović, Alija, 20, 23, 24, 27, 49, 49, 90, 122–3, 157n44, 161n113, 163nn133, 134
 Jajce, 10, 13, 30, 109
 Jelavić, Ante, 49, 65, 93, 101, 162n113
 Jews, 1, 7, 9, 15, 163n126
 Kalinić, Dragan, 164n141
 Karadordević dynasty, 8
 King Aleksandar, 8–9, 11
 Karadžić, Radovan, 77
 Kecmanović, Nenad, 23
 Kljuić, Stjepan, 23
 Koljević, Nikola, 23
 Komšić, Ivo, 23
 Kosovo, 18, 20, 33, 62, 78, 87, 145, 165n153
 Koštunica, Vojislav, 165n153
 Krajišnik, Momčilo, 24, 49, 78, 91, 160n98
 Lagumdžija, Zlatko, 54, 109, 164n141
 Lebanon, 24, 156n26, 165n158
 Lijphart, Arend, 44, 51, 165n158
 Lozančić, Niko, 164n141
 Macedonia/Macedonians, 15, 17–18, 20, 25, 33, 62, 155n6, 163n126
 Marković, Ante, 19, 23, 161n101
 Matić, Božidar, 54
 Mihailović, Draža, 139
 Milić, Petar, 117
 Milinović, Ante, 97
 Miljko, Zvonko, 123, 163n136
millets, 5
 Milošević, Slobodan, 18, 20, 27, 42, 77, 78, 161n102
 minority returns, 33, 75, 81, 89, 109, 110–16, 119, 139, 144, 160nn94, 96
 and multiethnic police, 140
 minority rights, 33, 124, 142
 and refugee return, 108–21
 Mladić, Ratko, 77
 Montenegrins, 15, 17, 155n6, 163n126
 Mostar, 3, 13, 27, 30, 35, 39, 41, 66–7, 74, 87, 109, 118, 159n72
 Mrakovica, 128
 Mujkić, Zijad, 97
 multiethnic governance, 133–43
 multiethnic police, 140–1, 160n90
 multi-member constituencies (MMC), 95–6
 Muslim Bosniak Organization (MBO), 20
 National Bank, 124
 Neum, 13, 17, 30, 109
 New Croat Initiative (NHI), 42, 92–3, 100–2, 105, 164n141
 Office of the High Representative (OHR), 46–50, 57, 59, 61, 67–9, 87, 89, 119, 132, 136, 143, 145–6, 158n53, 159n71, 160nn92–4, 164nn139, 140, 142, 147
 constitutional amendments by, 43–4, 72–3, 82, 115, 117, 128–31
 and constitutional commissions, 128
 on the council of ministers, 52, 55
 and democratization, 145
 duties of, 84, 118
 and electoral reforms, 93
 office of the, 31, 83–5
 and RS presidency elections, 42
 and SDS, 99
 and transfer of districts, 31
 versus Croatia, 65
 Ombudsman, 114
 open lists, 94–5
 Osmanović, Adil, 103
 Ottoman Empire 3, 5–6

- Pale, 13, 30, 31, 49, 109, 110, 157n45
- Party of Democratic Action (SDA),
20–6, 54, 56, 91–3, 101–7, 117,
129, 156n25, 158n55, 161n99,
162n117, 163n127, 164n141
and elections of 2000 and 2002,
100
and elections of 2004, 136
and the federation, 90, 99
and post-war period, 41
at the state level, 43
- Party of Democratic Progress (PDP),
42–3, 54, 79, 97, 99–103, 105,
158n55, 161n109, 164n141
- Peace Implementation Council (PIC),
84, 87, 160n91
- Pejaković, Josip, 23
- Petersberg agreement, 74, 82
- Petritsch, Wolfgang, 128, 129
- Plavšić, Biljana, 23, 42, 78, 91–2,
160n98
- Poplašen, Nikola, 42, 78, 92
- Posavina Canton, 37, 38, 63, 134
- power-sharing, 67–72, 78–85, 91, 96,
130–1, 144–50, 156nn26, 27
in Bosnia, 43–6
and communism, 16
and decentralization, 60–1
and elections in Bosnia, 23–6
in the federation, 70, 88, 126
and governability, 4
in joint government, 52
and Presidential systems, 51
- preferential voting, 94, 96–8
- pre-war population, 75, 110, 144
- Princip, Gavriilo, 8
- proportional representation, 45, 56,
58–9, 82, 88, 95–6, 130–1,
158n57, 161n106
- Provisional Election Commission
(PEC), 87, 94, 161n104
- public administration, 45, 73–6, 81–3,
127, 129–30, 150
- Radić, Stjepan, 8
- Radišić, Živko, 49, 92
- Radmanović, Nebojsa, 101
- Ranković, Aleksandar, 11–12
- Referendum, 1992, 26–7
- refugee return, 31, 33, 45, 50–1, 73–4,
83, 90, 108–21, 125, 138–40, 145,
147, 150
- Republic of Serbian Krajina (RSK), 25
- Republika Srpska* (RS), 3, 25, 32, 35–8,
40–6, 51–4, 75–83, 90–2, 103–4,
110, 113–14, 115–21, 132–4,
139–41
autonomy of, 163n133
Croat minority in, 120, 165n156
declaration of, 25
definition of, 122
and election results (2000 and
2002), 102
and the federation, 163n132
and general framework agreement,
130–1
and Kosovo, 165n153
non-Serbs in, 157n49
population distribution in, 77
presidential elections 2000, 96–8
- Roma, 1, 16–17, 115, 155n15,
163n126
- Romanians, 15, 163n126
- royal dictatorship, 8–9, 156n18
- Russia/Russians, 6, 15, 163n126
- Ruthenians, 15, 155n16, 163n126
- San Stefano peace agreement, 6
- Šandžak, 20, 6
- Šarac, Jovanka Beca, 97
- Sarajevo, 1, 13, 29–31, 34, 64–5,
155n4, 156n20, 157n45,
163nn131, 134
as capital, 38–9
and constitutional amendments,
128
and World War One, 7, 26–7
- Sarajevo Canton, 37, 63, 71, 109
- Šarović, Mirko, 49, 97, 101, 101–2,
157n47
- segmental autonomy, 44–5
- Serb Democratic party (SDS), 20–6,
41–3, 49, 53–4, 76–9, 89–93,
97–107, 129, 136–7, 148–9,
156nn23, 25, 27, 157n47,
158n55, 162n117
- Serb People's Assembly (SNS), 42, 92,
100

- Serb Radical Party (SRS), 42, 92, 93, 99, 100–2, 104, 105, 161n100, 162n117
- Serb Republic
see Republika Srpska
- Serbia, 76–8, 91–2, 134, 158n63, 160n82, 161n102, 165n153
 and Austria–Hungary, 8
 and Croatia, 1, 6, 10, 28, 38, 112, 147
 and Habsburg monarchy, 7
 nationalism in, 34
 nationalist mobilization in, 18–20
 and SDS, 25
- Serbian autonomous areas, 25
- Šešelji, Vojislav, 17–18, 42, 92
- Silajdžić, Haris, 41, 91, 100, 101, 102
- Slovaks, 15, 163n126
- Slovenes, 8–9, 15, 17
- Social democratic Party (SDP), 41, 43, 92, 99–105, 149, 158n55, 161nn101, 109, 162n116, 164n141
 and election results of 1996, 1998, 93
 and election results of 2004, 136
- State Border Service, 47, 56, 58, 60
- state level administration, 56–60
- state level institutions, 40, 46–60, 90, 145, 150
- Switzerland, 125
- Tadić, Ognjen, 101
- Tepić, Momčilo, 97
- ‘third entity’, 135
- ‘third republic’, 147
- Tihić, Sulejman, 49, 50, 101–2, 164n141
- Tito, Josip Broz, 10, 18, 155n17, 158n51
- Tomljenović, Ivan, 103
- Tuđman, Franjo, 20, 64
- Turks, 15, 163n126
- Tuzla, 13, 29, 30, 37–8, 41, 64, 109
- Tuzla Canton, 37, 63
- Ukrainians, 15, 155n16, 163n126
- Una-Sana Canton, 37, 63, 159n76
- Union for Peace and Progress (SMIP), 91
- United List (ZL), 91, 93
- Ustaše* movement, 9–10
- Velika Kladuša, 161n99
- Venice Commission, 116, 158n59
- Vidovdan constitution, 8
- Vojvodina, 18, 33
- Washington agreement, 27, 62–3, 67
- West Bosnia Canton, 32, 37, 63, 64
- Western Herzegovina Canton, 37, 63, 104
- Zenica, 13, 30, 37–8, 109
- Zenica-Doboj Canton, 37, 37, 63
- Zubak, Krešimir, 42, 49, 92–3, 100, 164n141