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## **Ethnicity Based Democratic Constitutional Structures: the Cases of Bosnia and Herzegovina, North Macedonia and Kosovo**

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### **Abstract:**

Though always ethnic in nature, the Western Balkans has never been so divided into ethnic cleavages as it is today. The three post Yugoslav countries: Bosnia and Herzegovina, North Macedonia, and Kosovo have opted for a sort of consociational and centripetal constitutional systems, pertaining to provide enough say and representation to ethnicities, as primarily driven by a democratization process and post-conflict ethnic reconciliation motives. The experience so far has led to stalemate in central government capacities, no progress in inter-ethnic reconciliation, and has necessitated post-democratic practices, as short term solutions. This paper will address the issue of inter-ethnic post-conflict structural settlements and their reflections into democratic politics, governability, and inter-ethnic reconciliation. It compares the three cases by addressing the research question of what are their current constitutional and structural settings based on ethnicity, and their influence on governability, interethnic reconciliation and on *democraticness*.

**Key words:** Ethnic constitutional settings, Bosnia and Herzegovina, North Macedonia, Kosovo

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## Introduction

Governing multi-ethnic societies is one of the most complex and sensitive issues in constitutional settings and politics. This is further complicated in post-conflict cases, where ethnicities that fought each other along ethnic identity lines have to live side by side and share the same political system. The difficulties in finding a constitutional formula in multi-ethnic settings has been a continuous concern among scholars and policy makers as well. Among many others, Horowitz has pointed out the obscurity in managing ethnic relations in post-conflict societies, especially in a complex, small and tiny region such as Balkans, where one of the global wars started.<sup>1</sup> Geographic position explains to a large degree ethnic and cultural diversity of the western Balkans, ethnically structured along and within the small states mapping out the colorful region. History of inter-ethnic relations in the western Balkans is rich, marking phases when multi-ethnic relations flourished in positive sense as an asset of social capital, but there were also periods on which ethnic cleavages were deeply entrenched turned into bloodbaths, among others the last one in 90s. In this regard, from the constructivist perspective such ups and downs of inter-ethnic relations in the western Balkans along different times often reflect global geopolitical calculations. It explains the transformations from a sort of brotherhood inter-ethnic relations in one extreme to inter-ethnic bloodbaths on the other. Yet, history of inter-ethnic relations in the western Balkans is not the concern of this paper, but rather the constitutional and political settlements along ethnic divisions in the three multi-ethnic cases in the western Balkans: Bosnia and Herzegovina, North Macedonia, and Kosovo. Three of the cases have much in common. Aside from being multi-ethnic societies, they share a common past, experienced inter-ethnic conflict, and settled their conflict and achieved post-conflict arrangements assisted and monitored by the international community. Their constitutional settings are considered fundamentally consociationalist and have also centripetal elements to some extent. Furthermore, what is important here is that in three of the cases such constitutional settings are considerably challenged internally, but they rely on the basis of the guarantee by the international community, to a certain extent in contrary to the political will of the internal political forces and actors.

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<sup>1</sup> Donald L. Horowitz, *Ethnic Groups in Conflict* (Berkeley - Los Angeles - London: University of California Press, 1985).

This paper aims to address the main questions related to constitutional settings and their outputs on the prospects of inter-ethnic relations in those three countries. After elaborating the constitutional arrangements of the three cases, it will look at how those consociationalist and centripetalist arrangements are affecting their governability, inter-ethnic reconciliation prospects, and democratisation process through post-democratic practices. The first part of the paper explains the constitutional settings of the three cases, followed by a deeper comparative exploration on the outcome of those constitutional structures and politics.

### **Consociationalism and Centripetalism**

In discussing multi-ethnic political systems, consociationalism becomes a prioritised reference point, as it was created explicitly to address the issue of governing mixed societies. In a number of cases it has proven successful. The concept of consociationalism was developed by Lijphart.<sup>2</sup> Its meaning is derived from the word *consociation* which implies the coexistence of different entities within the same political setting. Consociationalism as a political and constitutional model has developed out of the experiences of various western European countries such as the Netherlands, Belgium and, Switzerland. Initially it was meant to provide a governing formula for solutions in the political contexts based on which it was developed, where it actually functioned considerably well. However, taking into account its usefulness, it was later observed that such models have been found in various similar contexts around the world, though with differing output results compared to western European countries. Such constitutional settings are also attractive to post-conflict multi-ethnic societies struggling with simultaneous demands for multi-ethnic governing principles and inter-ethnic reconciliation. This model has been implemented to various degrees in the cases of the three countries under consideration in this paper. It was considered very attractive based on the internal circumstances, but also by the international community, whose role in such decisions was decisive. Hence, an overall evaluation of the experience of those countries up to the present day demonstrates diverse results, from the very promising to the dysfunctional. It is likely that the model might be functional in multi-ethnic societies, keeping together ethnicities that did not slaughter each other, at least in the recent past. Post-conflict multi-ethnic contexts, like the western Balkans,

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<sup>2</sup> Arend Lijphart, *Democracy in Plural Societies: A Comparative Exploration* (Yale University Press, 1977).

are facing difficulties in accommodating consociational settings, due to the experience of inter-ethnic conflict due to which wounds remain open. This is manifested in a number of ways, including a high number of missing persons, and the low number of war crimes and crimes against humanity cases handled by local and international courts. Nonetheless, it is clear that in three of the cases considered here, consociationalism is not delivering as expected.

In principle, consociationalism is considered an elite consensual arrangement, expected to gradually be reflected at a general level of society through the socialisation process. However, in different contexts it has continually proven to have the opposite effect as it could not deliver as a workable and sustainable tool to encourage and keep different entities together. This experience shows that in some cases it was even hardly acceptable, or it was aborted while underdeveloped, or it otherwise needed additional enforcement by the international community. In the case of the western Balkans, the role of the international community to ensure consociational settings is indispensable, though this places the international community in a very uncomfortable position. As the international community is itself the main sponsor of the democratisation process in the region, it often had to go even against various fundamental principles of democracy through internal involvement in decision-making. Here lies an inconsistency, which is going to be addressed here: a discrepancy between democratic and post-democratic principles.

In addition to consociationalism, elements of centripetalism are conceptualised as a helpful tool to facilitate and encourage reconciliation among entities, in this case, ethnicities.<sup>3</sup> They serve as a supplementary route for post-conflict societies, and as such they are expected to be present among the political and institutional settings of the three cases considered here. According to Reilly, centripetalism has three dimensions: the existence of initiative among politicians in an electoral campaign to attract voters of other ethnic groups, which encourages candidates to maintain a more moderate rhetoric; the enabling of the negotiating arena in which political actors of different groups have incentives to achieve agreements on electoral support and certain important issues; and the development of politically central

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<sup>3</sup> Donald L. Horowitz. 2014. "Ethnic Power Sharing: Three Big Problems," *Journal of Democracy* 25(2014): 5-20.

parties, and multi-ethnic political parties and coalitions.<sup>4</sup> Often these two models complement each other, with centripetalist principles manifested in inter-ethnic coalitions as frequently required by constitutional settings, or as occasionally imposed externally by the international community based on the principle of good will. Each of the three cases considered here has elements of the two models to various degrees as explained in the followings.

### **The multi-ethnic constitutional settings in Bosnia and Herzegovina**

Bosnia presents the most tragic experience in the process of Yugoslavia's breakup. Historically it has always been a mixed and heterogeneous society. During the time of Yugoslavia and even prior to that, it had high levels of multi-ethnic and multi-cultural values.<sup>5</sup> Based on this, and referring to the recent war experience, it can be assumed that the deeper the interlinkage among entities during peace, more tragic the experience among entities was likely to be during the war. This is one of the lessons drawn from the recent war in Bosnia and Herzegovina. The impact on the post-conflict settings and reconciliation process remains to be seen, since it is still happening, and is in a state of fluidity. However, observations up to now suggest that it is hardly promising. Just to illustrate the high level of multi-ethnic interlinkages, it is important to mention that prior to the war, in Bosnia there were a hundred thousand intermarriages across ethnic lines in Mostar alone, one of main cities, the rate of intermarriage was around 42%. Throughout its history, Bosnia was very rich in terms of multi-ethnicity and multiculturalism, and this essential fact has not been taken into account in drawing up post-conflict constitutional settings. Therefore, one of the capital mistakes of the international community<sup>6</sup>, having as it does a decisive role in post-conflict settlements, has been to ignore the past realities of inter-ethnic relations and divide ethnicities into territories. Such ethnic territorial division resulted in a form of post-conflict ethnic cleansing on a territorial basis, cementing deeply-entrenched ethnic cleavages which developed primarily during the war. Meanwhile, it created an obstacle to any current or future inter-ethnic reconciliation which could have otherwise potentially resulted had

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<sup>4</sup> Benjamin Reilly, "Electoral Systems for Divided Societies," *Journal of Democracy* 13 (2002):156-170.

<sup>5</sup> Dusko Sekulic, Garth Massey and Randy Hodson, Ethnic Intolerance and Ethnic Conflict in the Dissolution of Yugoslavia. *Ethnic and Racial Studies*, Vol. 29, No. 5, 2006.

<sup>6</sup> Ruzica Jaksevic, "Conflict Resolution and Peacebuilding in the Western Balkans - The Role of International Actors". *Teorija in Praksa*, vol. 55 (2018).

structural arrangements been made in a way which necessitated inter-ethnic connection and ethnic interdependence.<sup>7</sup>

None of the historical empires that ruled Bosnian territory or people – the Romans, Byzantines, Ottomans, Austro-Hungarians, and Yugoslavs, created this type of territorially ethnic division, as the current international community did.<sup>8</sup> This structural arrangement on ethnic territorial division is considered a major source fuelling ethnically motivated hate, inter-ethnic non-reconciliation, and non-governability in Bosnia and Herzegovina. It is important to explain that constitutional structures in Bosnia reflect the attempts of the international community to bring the war to an end, and which seem not to have taken into account their suitability for post-conflict concerns. Based on that, the war was brought to an end, and inter-ethnic bloodbaths were stopped. However, the post-conflict developments seem to have different demands compared to those of wartime, and current constitutional structures do not appear to be able to address them properly.

The constitutional structure of Bosnia and Herzegovina is also known as the Dayton constitution, based on the Dayton agreement sponsored and enforced by the international community. The constitution of Bosnia and Herzegovina forms part of the Dayton Agreement as one of the eleven annexes of the agreement. Based on the provisions of the Dayton agreement, Bosnia and Herzegovina is structured and divided into three constituent nations, two entities, ten cantons, and the Brčko District.

To all parties in Dayton Peace Process Brčko represented the most vital point. It is a geopolitical and geostrategic location to the Federation and *Republika Srpska* as well. Before the war Brčko was one of the wealthiest municipalities (*Opština*). It is located close to the Zagreb-Belgrade highway, the main trade route between Central Europe and Southern Balkans. Its port in Sava River linked trade and industry between the central Bosnia and Tuzla to Croatia and beyond. Furthermore, it connects strategically, military, and economically eastern and western parts of *Republika Srpska*, a 3 miles wide *Posavina* corridor linking Serbs of western Bosnia with Serbia itself.

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<sup>7</sup> Cermak Petr, "Reintegration of Local Communities Divided by Ethnic Conflict: Ethnically Mixed Municipalities in the Western Balkans". *Croatian Political Science Review*, vol. 53 (2016): 191-229.

<sup>8</sup> Wolfgang Ismayr, *Die Politischen Systeme Osteuropas* (Opladen: Leske+Budrich, 2004).

Therefore, issue of the Brčko District represented the hottest point in the Dayton Peace Process, as it was about to fail if parties did not agree on the proposal of the US secretary of state Warren Christopher, suggested by the president of Serbia Milosevic, to bring the issue of Brčko to the arbitral tribunal for its final status settlement<sup>9</sup>. The two entities agreed for an interim solution to divide Brčko district between them establishing Inter-Entity Boundary Line of Brčko area, until the arbitrary tribunal sets the final award. The interim decision of the tribunal issued on 14th of February 1997 maintained the status quo of Inter-Entity Boundary Line and provided for the establishment of the Office of High Representative-North, known as District Supervisor, run by the deputy High Representative for Brčko. The supervisor was vested with interim legislative and executive power, and authority to overrule any rules and regulations against the Dayton Peace Agreement and mandate of the supervisor<sup>10</sup>. The final award of the arbitral tribunal of date 5th of March 1999 established the Brčko District of Bosnia and Herzegovina, as autonomous district and a condominium between two entities, the Federation of Bosnia and Herzegovina and Republika Srpska. This was adopted on the first constitutional amendment of Bosnia and Herzegovina ten years later by Parliamentary Assembly of Bosnia and Herzegovina on 26th of March 2009<sup>11</sup>. Brčko district is not an entity, it has its self-government and is jointly owned by two entities. It lacks the power of the entities, its people are directly citizens of Bosnia and Herzegovina<sup>12</sup>. It uses the Bosnia and Herzegovina's flag and coat of arms<sup>13</sup>.

The final award represents the last phase of implementation of the Dayton Peace Agreement. It empowered the Supervisor with duties of its implementation, to establish the Brčko district, and declare the demise of Inter-Entity Border Line. The Brčko Law Revision Commission, composed of the chairman and one representative of the Republika Srpska and two members from the Federation, was set to create the legal and institutional foundations of Brčko district. This structure is based on Statute of the Brčko District as the supreme law. It defines the legal and institutional structure of the district. The functions

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<sup>9</sup> Michael G. Karnavas, "Creating the Legal Framework of the Brčko District of the Bosnia and Herzegovina: A Model for the Region and Other Post-conflict Countries. " *The American Journal of International Law* Vol. 97, No.1 (2003): 111-131.

<sup>10</sup> Karnavas, op.cit.

<sup>11</sup> *The Constitution of Bosnia and Herzegovina*, Article VI, 4.

<sup>12</sup> Statute of the Brčko District of Bosnia and Herzegovina – 7 December 1999, Article 12.

<sup>13</sup> Statute op.cit., Article 3.



and powers of the district include: economy, finances, customs administration, public property, public services/infrastructure, culture, education, health care, environment, social welfare, judicial and legal services, police services, housing, urban development and zoning, and other functions necessary for the functioning of the district as a single administrative unit of local self-government<sup>14</sup>.

The district Assembly is the highest legislative body of the district, elected by general direct vote<sup>15</sup>. The Executive branch is composed of the Mayor and heads of departments elected by the Assembly and is accountable to the assembly<sup>16</sup>. It has an independent judiciary system<sup>17</sup>. The district is demilitarised<sup>18</sup>, but it has unified police force independent of the police structure of both entities<sup>19</sup>. The responsibility for the management of the district affairs is vested in local institutions.

The two entities constitute the Federation of Bosnia and Herzegovina with ten cantons, and *Republika Srpska* has a unitary character without cantons. The Federation includes two ethnicities Bosniaks and Croats, while *Republika Srpska* Serb ethnicity. The Federation has fourteen constitutions, including one state constitution, two entity constitutions, ten cantonal constitutions and one district constitution. It comprises fourteen legislative bodies and fourteen governments. As such, it presents an over-structured constitutional order implying uneasiness in its functioning, often manifested in political stalemate being routine in Bosnian politics. Bosnia and Herzegovina has a political system of multi-level government and multi-level policy and decision-making power centres, from the level of state, to entity, canton, district and municipal (around hundred forty seven municipalities – varying from time to time).<sup>20</sup> All horizontal and vertical divisions of power are driven by ethnic considerations that produce and promote values of ethnic partition, serving as inter-ethnic broken bridges. Aside from its functionality and its implications on governability, such sharp, legal and institutionalised ethnic divisions decrease the interdependence and interaction among entities which is necessary for post-conflict reconciliation.

<sup>14</sup> Statute, *op.cit.*, – 7 December 1999, Article 9.

<sup>15</sup> Statute, *op.cit.*, Article 23-41.

<sup>16</sup> Statute, *op.cit.*, Article 46-57.

<sup>17</sup> Statute, *op.cit.*, Article 62-69.

<sup>18</sup> Statute, *op.cit.*, Article 8.

<sup>19</sup> Statute, *op.cit.*, Article 58-61.

<sup>20</sup> Mirjana Kasapović, *Bosna i Hercegovina Podijeljeno Društvo i Nestabilna Država* (Zagreb: Politička Kultura, 2005).

According to democratic principles, and as is the case in advanced democracies, it is usual to have a single person at the top of the political hierarchy, in order to achieve clarity in exercising legitimate authority. Yet in the case of Bosnia and Herzegovina the institution of Presidency, as the highest body of the political hierarchy, has three members, since each of the three ethnicities, Bosniaks, Croats, and Serbs elect their respective members.<sup>21</sup> The position is held by each of the three members in rotation for eight months. The Presidency has territorial responsibility for the state as a whole, although its members are not legitimised by votes from all citizens, since they are elected separately by each respective ethnicity. Moreover, what ensures political stalemate is the veto power belonging to each nation of the three recognised nations in Bosnia and Herzegovina over the laws that violate the national interest. In addition, an important and powerful institution in Bosnia and Herzegovina, acting as the final and ultimate authority in terms of interpretation and implementation of the Dayton agreement, is the Office of High Representative (OHR).<sup>22</sup> It is nominated by the Steering Board of the Peace Implementation Council, confirmed by the UN Security Council. This position and power can also be framed within the context of post-democratic practices present in the case of Bosnia.

Furthermore, each entity has a type of self-government comprised of their own parliaments, governments and courts. In practical terms, Bosnia and Herzegovina has fourteen governments and fourteen parliaments. The governmental division on ethnic lines has enabled each entity to pass laws on their own, principally independently from other entities. In addition, they maintain separate administrative structures, overburdening the public sector and compromising the efficiency of the administrations. In other words, Bosnia and Herzegovina can be regarded as a governing model of internal non-coordination and contradiction.

In terms of democracy, Bosnia and Herzegovina is considered a democratic system, yet with stipulated deficiencies, among which are institutionalised deficiencies with the power of OHR categorised within the post-democratic settings. It seems a contradiction in itself, promoting and enforcing democracy through post-democratic practices, but this will be addressed later in this paper. Bosnia and Herzegovina has a separation of legislative, executive and judicial powers.

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<sup>21</sup> *The Constitution of Bosnia, op.cit.*, Article III.

<sup>22</sup> *The General Framework Agreement for Peace in Bosnia and Herzegovina* (Initialed in Dayton on 21 November 1995 and signed in Paris on 14 December 1995), Annex 10.

Fragmentation of the structure of the system has led to an over-division of power centres, compromising the very governability of the system. This ethnic governing structure is institutionalising further inter-ethnic divisions.

Having such an ethnically divided governing structure is also reflected in local politics and political participation. Political pluralism is also mainly ethnicity-based. Parties recruit based on ethnic identities, with the ethnic governing structure and ethnic party politics reinforcing each other. The judicial system is considered to be independent, having a catalogue of human rights organised mainly on an entity basis.

In relation to the horizontal division of power, Bosnia and Herzegovina is strongly decentralised within the Federation, and strongly centralised in the case of *Republika Srpska*. The division of power is further regulated by the constitution, highlighting the power of the state in the areas of foreign policy, foreign trade, customs, monetary policy, the finances of the institutions, the international obligations of Bosnia and Herzegovina, immigration, refugee and asylum policy and regulation, international and inter-entity criminal law enforcement. The latter includes relations with Interpol, the establishment and operation of common and international communications facilities, regulation of inter-entity transportation, and air traffic control.<sup>23</sup> Meanwhile the competencies within the remaining areas are distributed to entities, with the expectation that the necessary support is provided to conduct policies at state level, which often is not the reality. Entities have certain features of member states such as territory, population, constitution, parliament, government, judiciary, army, police, official languages, flag, and coat of arms. Furthermore, within institutional settings, the constitutional court plays a considerable role, and its decisions are normatively binding on both entities. Thus, Bosnia and Herzegovina appears to be a *sui generis* political system, set up through arrangements meant to end the war, but with no prospects to build sustainable peace and development. The over-complexity of the governing structure is compromising governability, inter-ethnic reconciliation, and to some extent democratic principles

### **The multi-ethnic constitutional settings in North Macedonia**

Another case of multi-ethnic society in the western Balkans is North Macedonia. Unlike Bosnia and Herzegovina, it broke away from

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<sup>23</sup> *The Constitution of Bosnia, op.cit.*, Article III.

Yugoslavia and attained independence peacefully, through a referendum conducted to secede from Yugoslavia. The process took place under the supervision of the international community, whose commitment was decisive in smoothing the process of independence. This is the main reason why Macedonia (North Macedonia) was not initially exposed to a need to be provided with deterministic system settings by the international community, in order to integrate various ethnicities comprising society in Macedonia (North Macedonia), as was the case in Bosnia and Herzegovina. On the other hand, it appears that this was the main reason for a new war to erupt a decade later, to readjust constitutional settings for better integration of other ethnic entities, aside from ethnic Macedonians. Therefore, a stronger international influence was needed to achieve such arrangements, resulting in multi-ethnic constitutional setting principles stipulated by the Ohrid Framework Agreement.

Initially, ethnic Macedonians in Macedonia (North Macedonia) had a free hand in constitutional design, including issues of inter-ethnic empowerment and relations, as they constituted the majority. At the beginning of this process, the ethnic Albanians were quite indifferent, though they comprised around 25% of the population (this is an estimate, as no census has been undertaken after 2002). The majority ethnic Macedonians, using their privileged position, relegated the status of other ethnicities compared to their own status as entities during the Yugoslavian time.<sup>24</sup> In the Yugoslavian constitution of 1974, the Republic of Macedonia was composed of the Macedonian nation, with Albanian and Turkish minorities explicitly mentioned, making them constituent entities. Yet in the new constitution after independence, Macedonia (North Macedonia) was defined as a nation state of Macedonians, with other ethnicities also identified as Macedonians.<sup>25</sup> This was not welcomed by other ethnicities. The ethnic Albanians perceived it as discriminatory, marking the beginning of new era of unhealthy inter-ethnic relations that later erupted into a civil war. Such damage to inter-ethnic relations, furthered during the civil war, are largely present even today.

Macedonia (North Macedonia)'s constitutional arrangements at the outset after independence challenged consociational values which were highly promoted and valued in Yugoslavia. Thus Macedonia (North

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<sup>24</sup> State Statistical Office, Republic of North Macedonia (stat.gov.mk).

<sup>25</sup> Wolfgang Ismayr, *Die Politischen Systeme Osteuropas* (Opladen: Leske+Budrich, 2004), 773.

Macedonia) set its own way of managing inter-ethnic relations by legally subduing other ethnicities to Macedonian ethnicity. However, in practical terms, ethnic Albanian parties always participated in the governing coalitions with the parties of majority Macedonians. Although this was not a legal requirement by the constitution, due to the high percentage of ethnic Albanians and for practical reasons, this was always the reality.

Despite its deficiencies, this constitutional structure survived for almost a decade. It was also sustained due to regional geopolitical considerations, and the inability of ethnic Albanians to mobilise and advance their political position within the system through political means. However, some elements of the consociational system were introduced in practical terms immediately after independence, including proportionality, grand coalitions, and minority veto power. In other words, legislative activities were based on consociational logic. This enabled ethnic Albanian political parties to maintain a presence in any coalition. Yet such ethnic rights were not explicitly stated in the constitution, as is the case in Bosnia and Herzegovina and in Kosovo. Those rights were advanced into legally-binding terms with the mobilisation of ethnic Albanians using civil war as a tool to achieve their political aims. The war came to an end with an agreement that established and institutionalised consociational settings, advancing them from being partially practiced into becoming legally codified and binding principles.

However, the level of institutional, legal and practical consociationalism is still limited, due to the inherent lack of trust in inter-ethnic relations. This has fuelled reciprocal distrust among two ethnicities which is not easily alleviated. It needs to be addressed either through full consociational settings that could better integrate other ethnicities and preserve North Macedonia as a state, or a break-up of the country along ethnic divisions that could bring into question the very existence of the state. The initial limited consociational setting was due to the lack of readiness of ethnic Macedonians to recognise Albanian and other ethnicities as constitutionally constitutive entities, considered as a fundamental requirement for a consociational system. This requirement was later advanced by the Ohrid Framework Agreement, but is still not fully implemented. Therefore North Macedonia is a case of managing ethnic relations through quasi consociational settings, initially in practical terms, but later advanced through civil war mobilisation and the Ohrid Framework Agreement principles which

partially codified them, but which did not prove feasible, especially at the implementation stage.

Furthermore, the Ohrid Framework Agreement ended the civil war and inter-ethnic armed conflict, but not inter-ethnic mistrust and rivalry, while it transformed Macedonia (North Macedonia), at least partly constitutionally, from the very definition of Macedonia as a national Macedonian state, as 1991 Constitution stated, into a mixture with elements of nation, civic and bi-national state.<sup>26</sup> Yet, the inter-ethnic mistrust still continues at various degrees and levels of intensity, with no positive prospects in the near future.<sup>27</sup> The bi-national state was ensured through guaranteeing a number of rights to communities comprising more than 20% of the population, which qualifies only ethnic Albanians as a community, since they constitute more than 20% of the population of the state.<sup>28</sup> The Ohrid Framework Agreement transformed Macedonia (North Macedonia) into a quasi consociational democracy, legally accepting the Albanian ethnicity as a constituent part, recognising their language in public and official use, allowing them to have higher education institutions organised in the Albanian language, forming new municipalities with Albanian ethnic majorities, and increasing the composition of ethnic Albanians in public service. However, those rights have not yet been fully implemented. The agreement ended the armed conflict since ethnic Macedonians accepted the Ohrid Framework Agreement, but its provisions have been compromised at the implementation stage.

### **The multi-ethnic constitutional settings in Kosovo**

The Kosovo case is one of the tragedies following the process of the breakup of Yugoslavia. This tragic end laid complex foundations of complexity for post-conflict settlement, since the war was fought purely along ethnic lines. According to the Humanitarian Law Center, the number of victims and missing persons in Kosovo during the war stands at 13,535.<sup>29</sup> Meanwhile, the number of war crimes handled remains low. As such, the wounds of war remain open, and significantly affect inter-ethnic reconciliation and governability.

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<sup>26</sup> Florian Bieber, *Power-Sharing and Implementation of Ohrid Framework Agreement* (Skopje: Friedrich Ebert Stiftung, 2008).

<sup>27</sup> Agon Demjaha, "The State of Inter-Ethnic Relations in Macedonia After 16 Years of The Ohrid Agreement." *SEEU Review*, vol.2, Issue 2 (2016): 8-31.

<sup>28</sup> Dejan Jovic. "Bitka za Etnicki Status u Postjugoslovenskim Drzavama," *Politicke Analize*, no.5, (2011): 36-45.

<sup>29</sup> Humanitarian Law Center (<http://www.hlc-rdc.org/?cat=218&lang=de>).

Kosovo's constitutional structure is heavily dependent on, and shaped by, the recent conflict in Kosovo. The NATO intervention in 1999 brought conflict to an end and opened the way for new constitutional settlements on a merely ethnic basis, reflecting the ethnic dimensions during, and even prior to the conflict itself. The constitutional order was initially set by UNSC Resolution 1244 and the constitutional framework. After declaring independence in 2008, Kosovo adopted its constitution based on the Comprehensive Proposal for Kosovo Status Settlement. In terms of the role of the international community in the constitutional settings process, Kosovo closely resembles the case of Bosnia and Herzegovina. Yet, in terms of final output it differs from it, as Kosovo did not attain a form of federalisation or confederalisation. Even here a degree of uncertainty still exists pending the northern issue, where the central government has difficulties in exercising state authority in four northern municipalities, mostly populated by ethnic Serbs and bordered with Serbia. As the negotiation process between Kosovo and Serbia is still ongoing, the fate of this part of the territory is not yet clear.

What is peculiar in the Kosovo ethnic constitutional structure is that the decentralisation process was accompanied by a form of peaceful ethnic cleansing, creating pure ethnic municipalities. The main aim of the Comprehensive Proposal for Kosovo Status Settlement provided by Ahtisaari was to find a workable solution relating to the final status, taking into account the issue of accommodating Serb minorities within the constitutional settings, and finding a way of integrating them into the system. The document laid the foundations for a consociational model of governing reflected, inter alia, into legislative, executive and judicial branches. It provides a minimum number of reserved seats for minorities in the national assembly (10 to Serbs and 10 to other minorities),<sup>30</sup> and a number of ministries allocated to minorities at the executive level.<sup>31</sup> The judicial system also requires multi-ethnic composition, as two of the nine members of the constitutional courts also require the consent of minorities.<sup>32</sup> In order to ensure the political satisfaction of ethnic minorities and encourage them to integrate and socialise within the system, the proposal equips minorities with a veto power by which two-thirds of the votes of minorities is required for all laws related to the rights of minorities.<sup>33</sup> In addition to guaranteed

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<sup>30</sup> *Comprehensive Proposal for Kosovo Status Settlement* (2 February 2007), Annex 1, Art. 3.

<sup>31</sup> *Comprehensive Proposal for Kosovo*, *op.cit.*, Annex 1, Art. 5.

<sup>32</sup> *Comprehensive Proposal for Kosovo*, *op.cit.*, Annex 1, Art. 6.

<sup>33</sup> *Comprehensive Proposal for Kosovo*, *op.cit.*, Annex 1, Art. 3.7.

representation and participation in governing structures at the central government level, the proposal laid the foundation for territorial administrative division along ethnicities through a decentralisation process, which has so far proven to have undermined inter-ethnic relations and compromised integration incentives set at central legislative and executive branches. Decentralisation in broad terms is specified by the proposal in Annex 1 Article 8, while specifications are explicitly stated by law on decentralisation and local government. The main principles of decentralisation have structured local government along ethnic lines, producing purely ethnic municipalities.

The municipalities in Kosovo with Serb minorities, excluding the northern part, have to some extent recognised the statehood of Kosovo, but they remain divided along ethnic lines, proving unsuitable especially in terms of inter-ethnic reconciliation. Yet, in the problematic northern part the Serbs are less integrated, and in general they do not recognise the statehood of Kosovo and they also lack loyalty, which serves as a source of frozen inter-ethnic conflict.

Compared to the two other cases considered here, the Kosovo settlement promotes positive discrimination, favouring minorities, especially privileging the Serb minority, although they comprise no more than 5% of total population, against 90% of ethnic Albanians, and 5% of other minorities. Regardless of the privileges provided to the Serb minority, they still contest Kosovo statehood consistently, and support Serbia's territorial claims in Kosovo, which complicates the issue further.<sup>34</sup> In other words, the consociational setting in Kosovo is not delivering in terms of minority integration and ethnic reconciliation. The consociational settings in Kosovo which are hardly delivering, they also compromise centripetalist tendencies, as no political recruitment across ethnic lines is encouraged. Meanwhile, on the side of the majority, this setting has created a feeling of discrimination, fuelling inter-ethnic suspicion and mistrust, and reducing the likelihood of inter-ethnic reconciliation.

### **Comparing Bosnia and Herzegovina, North Macedonia, and Kosovo**

The three cases considered here are comparable in terms of multi-ethnic constitutional settings on one hand, and their output in post-conflict developments on the other. A mismatch between the legal and

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<sup>34</sup> Agon Demjaha, "Inter-Ethnic Relations in Kosovo", *SEEU Review*, vol. 12. Issue 1 (2017), 181-196.



practical settings is perceived in each case. They have shown progress in terms of formal institutional and constitutional settings, although these have largely been supported and imposed by the international community. Bosnia and Herzegovina and Kosovo have already experienced marked progress in establishing formal institutions and constitutional guarantees, providing space to ensure the empowerment of ethnicities through participation at central and local levels of the governing structure and process.<sup>35</sup> Nominally they have established formal consociational systems. However, in practical terms the end product of a consociational system remains far from being a reality. North Macedonia, meanwhile, lags behind the two other cases even in terms of formal constitutional and institutional settings. The Ohrid Framework Agreement, which was expected to further the consociationalist principles, is not yet fully constitutionalised and implemented.

The three cases share common deep divisions along ethnic lines, obstructing their democratic developments and inter-ethnic reconciliation as necessary conditions to ensure regional stability, peace and prosperity. Such deeply-entrenched ethnic divisions also reflect incompatibility between the political will of ethnicities and the constitutional structures imposed by the international community. Contrary to expectations, they result in greater inter-ethnic divisions, rather than inter-ethnic integration and mobilisation. Placing ethnicities into purely ethnic territorial and administrative units has minimised the interdependence, communication and contact among ethnicities, which are essential to initiate and develop inter-ethnic relations.

Bosnia and Herzegovina is highly fragmented with three nations and two entities into a form of loose confederation or an asymmetric confederation, with a high level of institutionalised decentralisation of the Federation unit.<sup>36</sup> Kosovo and North Macedonia remain unitary systems, the former with deep ethnic decentralisation, and the latter with a moderated but not yet fully implemented decentralisation, as had been expected.<sup>37</sup> In this regard, the Ohrid Framework Agreement has clearly stipulated that no territorial solutions would be provided for

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<sup>35</sup> Florian Bieber, "Power Sharing as Ethnic Representation in Postconflict Societies: The Case of Bosnia, Macedonia, and Kosovo." In *Nationalism After Communism. Lessons Learned*. eds. Alina Mungiu-Pippidi and Ivan Krastev (Budapest: CEU Press, 2004).

<sup>36</sup> Mirjana Kasapović, *Bosna i Hercegovina Podijeljeno Drustvo i Nestabilna Drzava* (Zagreb: Politicka Kultura, 2005).

<sup>37</sup> Bieber, op.cit. (2008).

ethnic issues.<sup>38</sup> This principle was intended to satisfy ethnic Macedonians trying to prevent a potential ethnic Albanian secession, and also to encourage ethnic Albanians to participate and integrate into North Macedonian system. Such experiences as Bosnia and Herzegovina and North Macedonia are examples of the complexity and difficulty of building democratic societies from deeply divided multi-ethnic societies.<sup>39</sup> In the case of Kosovo, the Comprehensive Proposal of Ahtisaari is considered as a compromise between the claims of the majority Albanians in control of most of the territory and Serbian historical territorial claims in Kosovo.

In the three cases, the creation of political will remains engineered and structured along ethnic lines. Rarely one finds successful cases of an organised political party that bridges ethnic cleavages. Such cases are isolated and short-lived, since parties are backed by a majority support, single ethnicity, required to maintain their political power. Moreover, identity politics is still an attractive and useful tool for political parties in the vote engineering process, and which spills over ethnic divisions. Recently, social democrats in North Macedonia have angled for Albanian votes, but this remains a marginal endeavour, since a significant number of Albanian votes is provided to ethnic Albanian parties. Voting behaviour in the three countries is purely ethnic. This political attitude is deeply rooted at society level. Any attempt to act differently is liable to be condemned as socially non-conformist behaviour, which is not easy to uphold in traditional societies. Ethnic parties utilise ethnic rhetoric in campaigns, serving as a mechanism which creates ethnic hatred, alleviating any possibility for inter-ethnic reconciliation. Politics is based on these ethnic political attitudes and behaviours, leading to ethnic communities becoming more silently and smoothly entrenched into their own ethnic ditches.

In North Macedonia, grand coalition-building is a less formal practice, and different in manner from Bosnia and Herzegovina and Kosovo. No strict formal quotas have been introduced for representation of ethnicities in parliament and government. However, in practice coalitions are generally ethnic and post-electoral. In the case of Kosovo, representation quotas on ethnic lines in parliament and government composition are set by formal arrangements. In practical terms, this often leads to deadlock in the decision-making and

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<sup>38</sup> *The Ohrid Framework Agreement* (13.08.2001), Article 1.2.

<sup>39</sup> Mirjana Maleska. "Multiethnic Democracy in Macedonia: Political Analysis and Emerging Scenarios," *New Balkan Politics* 13 (2013): 1-27.

governing process, particularly in cases where laws need the majority of the minority vote as well, that is a two-thirds majority of minorities.

The electoral systems of the three cases are also largely shaped on ethnic considerations. North Macedonia changed its electoral system to proportional representation with six constituencies.<sup>40</sup> In Kosovo, the proportional system with a single electoral zone has been used since the beginning, with few changes to the rules of the system of opening electoral lists. The need to give opportunities for representation to minorities was the main reason for adopting this system. In the case of Bosnia and Herzegovina the issue is much more complicated, as proportionality and parity are the principles which regulate the main political institutions. These political attitudes and electoral arrangements are weakening and compromising centripetalist tendencies through the inability of consociationalist settings to deliver.

### **The impact of these arrangements into governability**

The main reason for consociational constitutional arrangements in post-conflict multi-ethnic societies is to avoid the tyranny of the majority that would seriously challenge the prospects of national cohesion and democracy. Lijphart highlighted his concern that a majority might obstruct democracy through discriminating against a minority, making coexistence not worthwhile.<sup>41</sup> However, this might also lead to the other extreme, the tyranny of the minority. Minorities empowered with veto power might regularly use it to mire governability in bureaucracy, and even deadlock, producing political stalemate and immobility. This might also be the case in multi-ethnic societies where ethnicities do not necessarily constitute minorities. The experiences of difficulties in governability, due to the use, or even occasional misuse, of veto power by ethnicities are present at various degrees in the three cases considered here, the worst being Bosnia and Herzegovina.

In addition to decision-making obstacles, in these three cases a clear responsibility structure is absent, producing irresponsible and unaccountable political attitudes and behaviour, since politics is primarily structured along ethnic lines, not civic principles.

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<sup>40</sup> Bieber, op.cit., (2008).

<sup>41</sup> Arend Lijphart, "The Wave of Power-Sharing Democracy," in: *The Architecture of Democracy. Constitutional Design, Conflict Management, and Democracy.* eds. Andrew Reynolds (Oxford: Oxford University Press, 2002), 37-54.

Responsibility and accountability is based on ethnic structures from central to constitutive level, compromising the very governability of the system. The political stalemate and discomfort of ethnicities with actual consociational principles might lead to unpredictable scenarios. The arbitrary withdrawal of minority veto powers by the majority will break the very institutional democratic principles. Alternatively, if real possibilities exist and circumstances allow, countries might move towards breaking up, or as an option to eliminate the stalemate, external intervention by the international community will continue to be encouraged, as is actually the case.

The three cases under consideration in this paper have suffered political stalemate and difficulties in governance due to the veto power of ethnic entities. The relationship between the empowerment of ethnic entities and governability in the three cases can be best described as a *ceteris paribus* issue. Bosnia and Herzegovina<sup>42</sup> has experienced more political stalemate than the other two cases, since ethnicities there are comparably more empowered. The decision-making rules in Bosnia and Herzegovina are set to satisfy the expectations of ethnicities, politically factoring them in with the rules of consensus, qualified majorities and veto power. Important decisions are made by consensus and qualified majorities are used in both houses of the state parliament.<sup>43</sup>

In Kosovo, minorities are empowered with qualified majority voting requirements and veto power on issues related to constitutional changes and laws considered important, which include changing municipal boundaries, establishing or abolishing municipalities, defining the scope of powers of municipalities and their participation in inter-municipal and cross-border relations; laws implementing the rights of communities and their members, other than those set forth in the Constitution; laws on the use of language; laws on local elections; laws on the protection of cultural heritage; laws on religious freedom or on agreements with religious communities; laws on education; laws on the use of symbols (including Community symbols) and on public holidays.<sup>44</sup> The Kosovo constitution is also known as Ahtisaari's Constitution since it is subdued to the Comprehensive proposal of

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<sup>42</sup> Slavisa Orlovic, "Consociational experiments in Western Balkans: Bosnia and Herzegovina and Macedonia", *New Balkan Politics*, Issue 17, 2015.

<sup>43</sup> Mirjana Kasapović, *Bosna i Hercegovina Podijeljeno Društvo i Nestabilna Država* (Zagreb: Politicka Kultura, 2005).

<sup>44</sup> *The Comprehensive Proposal for Kosovo*, op.cit., Article 3.7.

Ahtisaari.<sup>45</sup> In the constitution, minorities are a part of the executive government, but the level on which they exercise the veto is mostly parliamentary. The most challenging aspect of governability in Kosovo remains the Northern region which the central authorities find it practically impossible to exercise state authority.

In North Macedonia, the Ohrid Framework Agreement<sup>46</sup> specifies equitable representation of communities, guaranteed through the principle of double majority in the legislative process on laws important to minorities. It requires the majority of all members of parliament and the majority of votes of the minority representatives.<sup>47</sup> In practical terms this is a veto power on laws considered important to the identity of the minority communities, like culture, use of language, education, personal documents, use of symbols and local self-government. On the other issues no majority of minority is required, making governing easier, though at times costly to minority interests. The North Macedonian constitution does not foresee any reservation or guarantee parliament seats to minorities. Governments after, and even before, the Ohrid Framework Agreement have all been grand coalitions including ethnic Albanians in the government, based on the practical principle of power sharing.

The three cases are examples of measures generally undertaken to avoid the tyranny of the majority. Among the three cases, North Macedonia has performed less well in terms of formal guarantees, while Kosovo and Bosnia can be considered extreme cases. However, none of them is proving feasible in preventing the tyranny of the minority that has made political stalemate part of the governing culture in those countries. The use of veto power has become the norm in the case of Bosnia and Herzegovina and to large extent in Kosovo, whenever issues are considered important to minorities. In addition, governance is complicated further due to these minorities or ethnicities in the three cases rarely defining by themselves their political objectives, but acting in a way to please their motherlands at the neighbourhood level.

Those entities or minorities have motherlands or states with vested interests as neighbours: Serbs in Bosnia and Herzegovina and Kosovo are bordered with Serbia, Croats with Croatia, and Albanians in North

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<sup>45</sup> *The Constitution of Kosovo*, Article 143.

<sup>46</sup> *The Ohrid Framework Agreement* (13.08.2001), Annex B, Article 5.

<sup>47</sup> *The Constitution of North Macedonia, Amendment X to the Constitution of FYR of Macedonia* 2001.

Macedonia with Albania and Kosovo. This range of multi-ethnicity across boundary compositions in the region multiplies the number of actors in domestic and regional politics, making governing process even more complex. As such, empowerment with veto powers does not mean only empowering minorities or ethnicities, but also empowering neighbouring countries in their relational power relationship, particularly in cases when a neighbouring country has alleged territorial claims to another, like Serbia's constitutional dispositions towards Kosovo. Those arrangements bring into question the very idea of consociational settings, opening the dilemma whether they are meant to prevent tyranny of the majority, or to create a favourable stance towards certain neighbouring countries over others. The Serb entity in Bosnia and Herzegovina is more loyal towards Serbia than to the state level of Bosnia and Herzegovina. The same can be said about Serbs in Kosovo, manifesting their full loyalty to Serbia, and participating selectively in Kosovo institutions, only when they consider it necessary to them. Ethnic Albanians in North Macedonia still consider themselves marginalised by the North Macedonian state, and show a high degree of loyalty towards Albania and Kosovo. In this sense, minorities and entities in those three countries are perceived as instrumental to neighbouring countries, and as an extended hand and opportunity to interfere in the internal affairs of another country and breach the very principle of sovereignty. This is an opportunity for neighbouring countries to achieve their ambitions in another country. Moreover, this damages the foundations of regional peace, putting countries into a spiral of mutual inter-ethnic mistrust, and making identity politics the mainstream of regional and domestic politics, while undermining other issues of governing that are vital to the lives of citizens.

Thus, governability is one of the main concerns of the legitimacy of the consociational and centripetal settings of the three countries. The political stalemate might be understandable and justified as an exception, but not as the norm it has largely become, in particular if instrumentalised and used as a rivalry tool by neighbouring countries. The only remaining incentive to maintain those constitutional settings is the pressure of the international community which cannot be taken for granted for a limitless time.

### **The impact of those arrangements into inter-ethnic reconciliation**

Apart from the issue of governability, inter-ethnic reconciliation as a fundamental challenge in post-conflict multi-ethnic societies is another pending concern, and one which is not progressing as expected in the

three cases. As Lijphart said, it is not difficult to write constitutions of a consociational nature; the most difficult part is to implement them.<sup>48</sup>In the three cases, it was expected that implementation would be further facilitated by the involvement of the international community as the main driver of constitutional settings, as it enjoys widespread legitimacy. However, the experience so far shows that implementation has proven to be the most difficult aspect.

The bloodshed during the wars in Bosnia and Kosovo, and the civil war in North Macedonia, can be deemed core and substantial challenges to current inter-ethnic reconciliation. A certain level of mistrust is partially rooted in historical relations among the ethnicities from previous time periods, excluding the period of Tito in which inter-ethnic coexistence was strongly promoted. Aiming to achieve inter-ethnic reconciliation, the international community sponsored constitutional settings based on consociational and to some extent centripetal principles. Yet the perception exists that those settings are not domestically home-grown, but rather foreign and imposed, producing political stalemate and non-governability, as well as being instrumental to the political ambitions of neighbouring countries, and dividing ethnicities territorially and administratively. Such a state of affairs could hardly be expected to deliver and contribute to inter-ethnic reconciliation. On the contrary, they fuel hatred and mistrust among ethnicities, undermining even the possibility to mobilise former channels and sources of inter-ethnic good relations which existed prior to the wars. Ethnicity-based territorial and administrative divisions, either through recognising the status of three nations as in Bosnia and Herzegovina, or ethnic decentralisation as in Kosovo, or de facto territorial ethnic division as in North Macedonia, limit and drastically minimise the inter-ethnic contact necessary to facilitate reconciliation prospects. On the other hand, the political stalemate produced is used in the political rhetoric of ethnic parties, feeding inter-ethnic hatred at society level. In their scramble for ethnic votes, they portray veto-empowered ethnicities as obstacles to the well-being of the country, or as black sheep. From the side of minorities or ethnic entities this is a message to react with further ethnic isolation as a form of self-protection. This minimises the prospects of inter-ethnic reconciliation, creating a vicious cycle.

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<sup>48</sup> Arend Lijphart, *Patterns of Democracy* (New Heaven and London: Yale University Press, 1999).

Furthermore, these constitutional arrangements are laying grounds for inter-ethnic mistrust. They initially succeeded in bringing conflicts to an end, but it seems they are not producing a durable and sustainable peace, which primarily requires inter-ethnic reconciliation. The historical, cultural, and social contexts, where ethnicities lived side by side for long periods of history, were not taken into account. In Kosovo, a region in the eastern part, largely untouched by the war, manifested better inter-ethnic relations immediately after the war than it does now. This is due to the establishment of ethnic municipalities in this part of Kosovo within the decentralisation process. The street market where ethnic Albanians and Serbs interacted considerably in the municipality of Kamenica in eastern Kosovo does not exist in the same form any longer, as the market is now organised within the municipalities created on ethnic lines. The municipality of Ranillug, with 94% of Serb inhabitants, has been established through decentralisation, constituting around 15% of the territory of Kamenica municipality to which it previously belonged.<sup>49</sup> In addition, such territorial divisions further develop the ambitions of ethnicities for either independence or secession, making coexistence and interdependence less necessary and less evident among ethnicities, and inter-ethnic reconciliation less likely.

An important driving force at elite level to increase cooperation and trigger the integration of ethnicities would be clientelist politics as a form of political behaviour and attitude.<sup>50</sup> The use of public offices for narrow ends is a common feature of political elites in the three countries considered here. However, the reason this is not serving to support reconciliation at the society level is that those narrow benefits do not reach the society level. It has proven to work merely at elite level, while the dominant clientelist vote engineering behaviour is conditioned by identity and ethnicity. Thus, clientelist politics also seems to be within ethnic frames, and unable to promote inter-ethnic reconciliation.

Bosnia and Herzegovina, North Macedonia and Kosovo are finding hitches in building up a consensual culture that is needed for a consociational system to function. The current political situation demonstrates heavily-loaded ethnic identity politics fed by ethnic

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<sup>49</sup> Map of municipalities website of the Republic of Kosovo (<https://kk.rks-gov.net/ranillug/>; (<https://www.arcgis.com/apps/View/index.html?appid=f918393918f64194b42123a738d77320>)).

*Komuna e Ranillikut: problemet kryesore dhe trendet buxhetore*. GAP Report, 2005. [https://www.institutigap.org/documents/74829\\_RANILLUGU2013.pdf](https://www.institutigap.org/documents/74829_RANILLUGU2013.pdf)).

<sup>50</sup> Leonard Wantchekon. "Clientelism and Voting Behaviour: Evidence from a Field Experiment in Benin," *World Politics* 55 (2003): 399-422.



divisions, unlikely to give way to other concerns in common to all citizens beyond ethnic divisions. Ethnic identity politics rests on stances which divide ethnicities. As long as ethnicities consider each other a burden and are linked into zero-sum game relationships, no prospects of reconciliation are foreseen.

### **The impact of those arrangements into democratisation and post-democratic politics**

In discussing the democratisation process in the western Balkans, pointing out the crucial role of the international community in this process is unavoidable. In specific countries within the region, international community needed to surpass even the role of general sponsors of democratisation, such as by setting constitutional arrangements and even aiding their enforcement. From the theoretical perspective of democratisation, this is not easily justifiable. However, there is a theoretical approach which encompasses such a role of the international community, under the premise of bridging certain gaps resulting from the absence of internal socio-economic conditions needed in the democratisation process<sup>51</sup>. This was further elaborated on the grounds that in time this would facilitate the development of internal drivers of democracy, such as civil society. However, in the three cases considered here, so far this does not seem to be the case, as civil society continues to be very weak and international community involvement a necessity.

Democratisation of the three cases is accompanied by inter-ethnic struggle and post-conflict settings, which does not readily allow it to be regarded as successful. Democratisation of post-conflict societies, in particular where the conflict was based on ethnic division, is not a simple straight forward issue.<sup>52</sup> It necessitated the involvement of the international community in both the creation and implementation of rules, especially in avoiding governing stalemates and stasis in political attitudes and behaviours. However, this led to a discrepancy between democratic principles and post-democratic political practices, as a result of their domestic involvement, and here lies the discrepancy and a form of contradiction, since democracy itself is not delivering as expected in terms of values and political responsibility. Whereas the expectation was the development of civil society and social capital healthy to

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<sup>51</sup> David Chandler, *Bosnia: Faking Democracy After Dayton* (Virginia: Pluto Press, 2000).

<sup>52</sup> Karin Dyrstad, "After Ethnic Civil War: Ethno-Nationalism in the Western Balkans". *Journal of Peace Research*, vol. 49(2012): 817–831.

democracy, in the three cases one perceives a social capital promoting corruption and other socio-political vices. This can partly be explained by the heavy involvement of the international community as counter-productive to the prospects of real democracy.

The three main documents, the Dayton Agreement, the Ohrid Framework Agreement, and the Comprehensive Proposal of Ahtisaari, were provided and supported under the stringent supervision of the international community. The three models were designed and enforced internally under international supervision. The success of those constitutional systems is heavily dependent on the international community, whose role is necessary for the acceptance and implementation of those arrangements by entities within the countries. In Bosnia and Herzegovina, the institution of the High Representative could pass laws and create new institutions without taking into consideration the will of people. It imposed a number of laws, including laws of a constitutional nature. For example, it redefined Article 3 of the Constitution, which had defined the division of competencies between the entities that according to the Constitution was possible only by inter-entity agreement. Additionally, the high representative appropriated the electoral function and used its power to replace presidents, prime ministers, judges, mayors and other elected officials. In the case of Bosnia and Herzegovina, the international community continues to have the heaviest presence.

In North Macedonia, the Ohrid Framework Agreement would hardly be accepted without the representatives of the international community, in particular the EU and the USA, as facilitators and co-signatories of the agreement. NATO troops were engaged in Operation Essential Harvest on August 26<sup>th</sup>, which disarmed fighters following the conflict between armed ethnic Albanians under the name of the National Liberation Army, and North Macedonian military-police forces in 2001, when the Ohrid Framework Agreement was signed. The role of the international community as initiator and in part as guarantor of the agreement is indispensable in the implementation stage as well as in maintaining the state cohesion and unity.

In the case of Kosovo, the international community also maintains a heavy presence. After the war, UNSC Resolution 1244 mandated KFOR troops to deal with security while UNMIK was mandated to deal with civilian governing issues. As the country declared its independence, the comprehensive proposal foresaw the institution of

the International Civilian Office as an interim institution to oversee the implementation of the comprehensive proposal, at whose heart lay consociational arrangements. Its role was important and was mainly intended to last until the consociational norms were legally codified, as it would cease to exist after such legislative acts were voted. However, the old tradition in the region of ambassadors or consuls of great powers exercising their influence is returning and becoming more significant. Most international influence in the three countries exists through ambassadors of the main players of the international community. This is an informal but decisive informal institution. Usually interference takes place when developments are considered to take opposite directions to the consociational spirit promoted through a form of controlled democracy, or in case of political stalemates.<sup>53</sup> The level of influence exercised varies from country to country and from case to case.

Aside from its success in setting and enforcing the agreements, the post-Yugoslav experience is also an example of how international community commitment is insufficient and unsustainable without the firm consensus and will of domestic actors, at least at elite level. Such practices are conceptualised within the concept of post-democracy, considered costly and contradictory to democracy itself.<sup>54</sup> The will of the people is hindered and surpassed, which contradicts a fundamental principle of democracy. A more contradictory, complex and sensitive factor is that the international community itself simultaneously promotes democracy. This puts the international community into an uneasy position. The more they interfere, the more they compromise democratic and liberal values which are expected to be generated within societies and which are generally promoted by the international community itself. Trying to retain adversarial ethnicities and entities within a state, fuels further hatred which one day might erupt, with devastating consequences. While trying to reach a number of objectives simultaneously, the international community seems to be in a precarious position. On one side are the arrangements they propose, and on the other side is internal resistance to their implementation, by which certain groups consider them infeasible or unacceptable solutions. Furthermore, since the three cases represent new and unconsolidated democracies, this provides them with models of

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<sup>53</sup> Boykov D. Victor. "Democracy in Bosnia and Herzegovina: Post-1995 Political System and its Functioning". *Southeast European Politics*, vol. 4, No.1 (2003), 41-67.

<sup>54</sup> Colin Crouch, *Post-Democracy* (Cambridge: Polity Press, 2004).

democracy perceived to be alien and compromising towards the very values of democracy itself.

### **Conclusion**

Bosnia and Herzegovina, North Macedonia, and Kosovo present very interesting cases in which the very principles of consociational politics are formally and constitutionally institutionalized, but each country has experienced difficulties in implementing these principles. Meanwhile the centripetalist political practices considered useful in multi-ethnic post-conflict settings are rarely found. In these three cases, issues exist in fulfilling consociational system objectives, governability, inter-ethnic reconciliation, and democratisation. On the contrary, they seem to be compromised by the very system structures themselves, formalising ethnic divisions that discourage interconnection and interdependence among ethnicities. The agreements on which system settings were built served to bring conflicts to an end, but not to engender consociationalist values among society.

The gap between the formal consociationalist structures, their implementation, and their capacity to deliver can be explained, *inter alia*, by the way they evolved and the route they took. Since they have been introduced and enforced mainly by the international community, and lack wholesale internal support, at least at elite level, it can be theorised that such systems are hardly domesticated if solely imposed from outside. The three formal consociational democracies lack the main necessary socio-political conditions for their systems to function. The provisions are very much perceived as an unbearable burden to the majority, or to other ethnicities, and also as useful tools for minority groups to blackmail the central government. The international community as the sole source of support and legitimiser of consociationalism seems insufficient and unsustainable.

The experience of these three countries enriches the theory on consociationalism, providing empirical data and introducing an important dimension to the output of formal consociational setting and enforcement, if it is performed mainly by the international community. The three cases involve fragile systems, or fragile consociationalism, only able to survive as long as the international community is able and willing to provide support.

So far, the experience of the three cases is manifested in various degrees of political stalemate, mostly in Bosnia and Herzegovina, but

also in Kosovo where minority groups have a veto power, and in North Macedonia whenever de facto politics is considered as discriminatory towards other non-Macedonian ethnicities. Inter-ethnic reconciliation is not progressing as expected, with no positive prospects on the ground in the near future. Ethnic identity politics continues to be at the heart of socio-political structuring in these three cases, not healing ethnic divisions, but rather entrenching them further.

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