

Behavior of Domestic Political Elites in Imposed Consociational Arrangements: Failures of
External Conditionality in Bosnia and Herzegovina

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Abstract

This thesis tackles a question of negative aspects of imposed consociationalism in a post-conflict society. A two-unit case study of Bosnia and Herzegovina examined how domestic political elites perceived and responded to externally initiated reforms. The two cases, the implementation of the Sejdić-Finci judgement and the Mostar process, illustrate the implications of international involvement for the process of democratization. The elite-based approach allowed for examining the elite behavior in the two cases over time and identifying the dominant patterns of behavior employed by the domestic political elites.

Using a framework developed by Sonja Grimm, the empirical part identified three dominant patterns of elite's behavior – slowdown, modification, and resistance as dominant modes of reform-resistive behavior. The research found that the resistive behavior tends to occur when the elites perceive the initiated reforms threatening their position and when the cost of cooperation is higher than the cost of resistance. This research contributes to the existing literature by outlining which instruments domestic political elites have at their disposal within a consociational arrangement maintained by a robust international presence.

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List of abbreviations

BiH	Bosnia and Herzegovina
CEC	Central Election Commission
DPA	Dayton Peace Agreement
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights in Strasbourg
EU	European Union
FBiH	Federation of Bosnia and Herzegovina
HDZ	<i>Hrvatska Demokratska Zajednica Bosne i Hercegovine</i> , Croat Democratic Union of Bosnia and Herzegovina
HDZ1990	<i>Hrvatska Demokratska Zajednica Bosne i Hercegovine 1990</i> , Croat Democratic Union of Bosnia and Herzegovina 1990
IFOR	NATO Implementation Force
NSRS	<i>Narodna skupština Republike Srpske</i> , National Assembly of the Republic of Srpska
OECD	Organization of Economic Cooperation and Development
OHR	Office of the High Representative of the International Community in Bosnia and Herzegovina
PIC	Peace Implementation Council
RS	<i>Republika Srpska</i> , Republic of Srpska
SAA	Stabilization and Association Agreement
SDA	<i>Stranka Demokratske Akcije</i> , Party for Democratic Action
SDP	<i>Socijaldemokratska Stranka Bosne i Hercegovine</i> , Social Democratic Party of Bosnia and Herzegovina
SDS	<i>Srpska Demokratska Stranka</i> , Serb Democratic Party
SNSD	<i>Savez Nezavisnih Socijaldemokrata</i> , Alliance of Independent Social Democrats
UNSC	United Nations Security Council

“To have failed once makes things more difficult the next time.

To have failed twice makes the next time problematic altogether.”

Donald L Horowitz, “Democracy in Divided Societies”¹

1. Introduction

More than two and a half decades after the Bosnian war, Bosnia and Herzegovina (BiH) can still be described as a state of ‘complete political stagnation.’² The General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement, or DPA) that put an end to the armed conflict between Bosniaks, Serbs, and Croats in 1995, also established a consociational power-sharing model that made the country, to say the least, difficult to govern. The power-sharing institutional arrangement characterized by asymmetry within the state and the high degrees of decentralization and autonomy, also included the active involvement of external actors, most notably the Office of the High Representative (OHR),³ mandated with implementing the civilian aspects of the Dayton Agreement. Due to the so-called Bonn powers vested in the OHR, including the authority to impose laws or remove public officials deemed to obstruct the Dayton Agreement, BiH became ‘independent without full sovereignty’ – an informal trusteeship.⁴

¹ Donald L Horowitz, “Democracy in Divided Societies,” *Journal of Democracy* 4, no. 4 (1993): 37, <https://doi.org/10.1353/jod.1993.0054>.

² International Crisis Group, “Bosnia’s Incomplete Transition: Between Dayton and Europe,” 2009, <http://www.crisisgroup.org/en/regions/europe/balkans/bosnia-herzegovina/198-bosnias-incomplete-transition-between-dayton-and-europe.aspx>.

³ The terms ‘Office of the High Representative’ (OHR) and ‘High Representative’ (HR) are used synonymously.

⁴ David Chandler, “State-Building in Bosnia: The Limits of ‘Informal Trusteeship,’” *International Journal of Peace Studies* 11, no. 1 (2006): 17–38.

This is not unusual since, more often than not, post-conflict power-sharing arrangements come with some degree of external involvement that temporarily suspends a state's sovereignty.⁵ Shared sovereignty or informal trusteeship is one of the main features of international territorial administrations in poorly governed or collapsed states, since it allows individuals or organizations chosen by powerful states or *ad hoc* entities to set up or rebuild democratic institutions.⁶ Nonetheless, while the consociational structure and power-sharing arrangements tend to encourage compromise, they do not guarantee it. On the contrary, as will be demonstrated, bringing together communities separated by war and fostering ethnic cooperation has proved the most crucial and challenging task of peace implementation and interim governments.

Since the consociational model through history rarely proved self-sufficient for maintaining peace and regulating societies affected by deep divisions, the OHR was tasked with maintaining the power-sharing system. Given the situation on the ground, the OHR's mandate was broad, evolved through time, and reflected the unique practical approach of each High Representative. In the post-war years, the "local ownership" strategy introduced by High Representative Wolfgang Petritsch in 1999, which argued that the locals should implement the required legislation on their own, was replaced by a more coercive approach by his successor, Paddy Ashdown, who simply imposed the respective reforms.⁷ Despite the fact that Christian

⁵ Brendan O'Leary and John McGarry, "Power Shared after the Death of Thousands," in *Consociational Theory: McGarry and O'Leary and the Northern Ireland Conflict*, ed. Rupert Taylor (London: Routledge, 2009).

⁶ See: Krasner, Stephen D. "Sharing Sovereignty: New Institutions for Collapsed and Failing States." *International Security* 29, no. 2 (2004): 85–120; Chandler, David. "State-Building in Bosnia."

⁷ Adis Merdžanović, *Democracy by Decree: Prospects and Limits of Imposed Consociational Democracy in Bosnia and Herzegovina* (Stuttgart: ibidem-Verlag, 2015): 228; The other variations of the term 'imposed consociationalism' are 'coercive consociationalism' or 'imposed consociational democracy'. For the consistency, the term 'imposed consociationalism' will be used in research.

Schwarz-Schilling, Ashdown's successor, announced a shift towards a more moderate approach, Ashdown's legacy remained the target of strong criticism by domestic elites, particularly Bosnian Serb parties.⁸ It is often stated that enforcing solutions on behalf of domestic actors led to a 'dependency culture,' or the expectations that the OHR should 'do something.'⁹ From 2006, the EU and the international community have been trying to replace the OHR with a reinforced European Union Special Representative, but the OHR is still in operation.¹⁰ At the same time, if perceived as unfavorable to a certain domestic actor, the decisions initiated or enforced by external actors were often deemed by the domestic parties to lack democratic legitimacy. Ultimately, a complex interplay between international intervention and domestic actors contributed to the challenges the country faces today.

There are more articles being published on consociationalism and post-conflict democratization than ever before, yet there has been little discussion about the inputs of domestic actors. Matthijs Bogaards, Ludger Helms and Arend Lijphart recently wrote that there is "one curious understudied aspect of consociational governance that deserves more systematic attention in future consociationalism-related research: domestic leadership."¹¹ Building on the aforementioned literature, this research argues that neither post-conflict democratization, nor consociationalism can be fully grasped without accounting for domestic political elites.

⁸ Merdzanovic, *Democracy by Decree*.

⁹ Aleksandra Zdeb, "Facing Institutional Change in Mostar: A Litmus Test for Bosnia and Herzegovina," *Nationalities Papers* 45, no. 1 (2017): 96–113, <https://doi.org/10.1080/00905992.2016.1235142>.

¹⁰ Susanne Fraczek, Beáta Huszka, and Zsolt Körtvélyesi, "The Role of Human Rights in the EU's External Action in the Western Balkans and Turkey," 2016: 26, <http://www.fp7-frame.eu/wp-content/uploads/2016/09/Deliverable-6.2.pdf>.

¹¹ Matthijs Bogaards, Ludger Helms, and Arend Lijphart, "The Importance of Consociationalism for Twenty-First Century Politics and Political Science," *Swiss Political Science Review* 25, no. 4 (2019): 341–56, <https://doi.org/10.1111/spsr.12384>.

While Helms argues that ‘cooperative’ or ‘collective’ elite behavior has been identified as a norm of ‘good leadership,’ it has also been demonstrated that in settings with strong international presence political elites might have good reasons to restrain or facilitate cooperation depending on how they believe such choices will influence their chances of wielding political power.¹² On this account, it has been argued that international presence in some cases becomes a justification for the lack of action and responsibility by the local political elites.¹³ Thus, this study provides an in-depth analysis of the role of agency in externally induced democratic transitions. Furthermore, it aims to complement the literature on post-conflict state-building and democracy promotion.

A central reason to study how elites behave in what is perceived as externally initiated reform processes, is that these behaviors strongly influence the success of the reforms and the process of democratic transition. Understanding elites' strategies and patterns of interaction can contribute to understanding the unintended effects of international involvement. In this regard, there is some consensus that Bosnia and Herzegovina represents a paradigmatic case of a dysfunctional political system stuck in transition.¹⁴ Accordingly, the research question can be phrased as following - *how domestic elites respond to and resist externally initiated reforms*. More precisely, what patterns of behavior are used by the domestic political elites to resist reforms that they deemed to be threatening their positions within the consociational arrangement. This study aims to explore the interactions between domestic actors and clarify how this interplay influences the outcome of democratic reforms. Particular emphasis is devoted to how domestic elites exploit the long-term involvement of external actors for their

¹² Jakob Tolstrup, “When Can External Actors Influence Democratization? Leverage, Linkages, and Gatekeeper Elites,” *Democratization* 20, no. 4 (2013): 726.

¹³ Daniel Bochsler, Adis Merdžanović, and Davor Petrić, “Turning International Intervention into Domestic Cooperation in Post-War Societies,” *International Peacekeeping* 27, no. 1 (2020): 124–51, <https://doi.org/10.1080/13533312.2019.1680291>.

¹⁴ Bogaards, Helms, and Lijphart, 347.

political ends. It is a complex but crucial task in exploring the difficulties in institutional change and long-term democracy promotion.

A two-unit case study is conducted to verify the argument put forward. The analysis investigates the strategies and patterns of interaction that politically relevant domestic elites opted for in the two processes - implementing the *Sejdić-Finci* judgement from 2009,¹⁵ and seeking an agreement to implement the Constitutional court rulings from 2010 and 2011 allowing the local elections to take place in Mostar.¹⁶ Of significant importance is that both cases are from the latest phase of the OHR's mandate, characterized by the doctrine of non-intervention and minimal use of the Bonn powers. Moreover, the analyzed period is generally regarded as the period of 'incentivization' rather than 'coercion' by external actors. As the coercive element was significantly reduced, domestic political elites started increasingly to question the existence of the OHR, constructing arguments against their involvement in domestic affairs, while at the same time blaming the external intervention for their own reluctance and failure to implement changes.¹⁷ Ultimately, the two cases became a synonym for failed institutions and political stagnation.

Sejdić and Finci addresses discrimination against the applicants on account of their ineligibility to stand for elections to the Presidency of Bosnia and Herzegovina and the State Parliament due to their lack of affiliation with a constituent people (Bosniaks, Bosnian Croats, or Bosnian Serbs). In 2009, the European Court of Human Rights ordered Bosnia and Herzegovina to adopt amendments to the Constitution and electoral legislation that would be in line with the

¹⁵ *Sejdić and Finci v. Bosnia and Herzegovina*, App. Nos. 27996/06 & 34836/06, Judgment of the Grand Chamber, 22 Dec. 2009, reported at: 28 BHRC (2009).

¹⁶ See Zdeb, Aleksandra. "Facing Institutional Change in Mostar: A Litmus Test for Bosnia and Herzegovina." *Nationalities Papers* 45, no. 1 (2017): 96–113. <https://doi.org/10.1080/00905992.2016.1235142>.

¹⁷ Merdžanović, *Democracy by Decree*, 152.

European Convention on Human Rights.¹⁸ Twelve years after the judgement, the political leaders of Bosnia and Herzegovina did not reach a consensus on the content of the constitutional and legislative amendments.

In June 2011 and January 2012, the Constitutional Court of Bosnia and Herzegovina ruled that the election of three delegates from each of the six city areas, to the Mostar City Council, while disregarding the principle of proportionality, was unconstitutional because it failed to provide voters from the central zone with equal voting rights.¹⁹ Despite the OHR facilitating multi-party talks on several occasions, different views on how the city should be organized resulted in political deadlock and a collapse of municipal institutions, leaving Mostar without elections for 12 years. The analysis of the stalemate, finally resolved in June 2020, reflects the difficulty of changing the dysfunctional institutions and reveals different patterns of resisting change.²⁰

1.1. Methodology

The comparative case study method allows for cross-examination of the different behaviors and strategies between different domestic elites and international actors, as well as power struggles among the domestic elites. Documents and reports are collected from the Office of the High Representative, International Crisis Group Balkan, OSCE, the European Stability Initiative, all of which are available online. Additional documents include reform strategies, policy reports and evaluations, legislation proposals, governmental documents, and various media articles.

¹⁸ European Court of Human Rights, "Sejdić and Finci v. Bosnia and Herzegovina, Application Nos. 27996/06 and 34836/06," 2009.

¹⁹ Zdeb, "Facing Institutional Change in Mostar."

²⁰ See: Dženeta Omerdić and Harun Halilović, "The Case of Baralija v. Bosnia and Herzegovina: A New Challenge for the State Authorities of Bosnia and Herzegovina," *Journal of the Faculty of the Humanities and Social Sciences University of Tuzla*, no. 13 (2020).

To ensure that the reforms are assessed in a systematic manner, 23 reports of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations have been coded, out of which 18 contained information on the elites' behavior. The OHR reports outline all the major events that took place within the context of the two processes, such as establishing working groups, joint committees, or vetoing the amendments.

This study utilizes elements of causal process observation to extricate details of the empirical cases and understand causal paths of the two processes. Yet, rather than tracing the causal sequences in a detail, a general explanation of elite responses is provided, keeping in mind the difference in national and subnational context of the cases.

1.2. Analytic Frame

Based on literature and the explorative study, three factors that characterize domestic actor's behavior were identified - *slowdown*, *modification*, and *resistance*. The instruments are derived from Grimm's theory of reform-supportive and reform-critical behavior that will be explained in more detail in the analysis section.²¹ While some reform-supportive patterns have been observed in the two cases, they do not make up for a substantive unit of analysis of the study.

This research stands in contrast to the overwhelming majority of post-conflict studies focusing on external actors supporting peacebuilding and democratic transition. It is taken into account that there is a broad consensus that external involvement in post-conflict societies supports democratization by monitoring implementation agreements, providing security guarantees and

²¹ Lisa Groß and Sonja Grimm, "The External-Domestic Interplay in Democracy Promotion: A Case Study on Public Administration Reform in Croatia," *Democratization* 21, no. 5 (2014): 919, <https://doi.org/10.1080/13510347.2013.771257>.

default mechanisms to arbitrate disputes.²² Nonetheless, to examine the instruments that domestic elites use to pursue different agendas and react to external interference in democracy-building, the elite-centered approach is necessary.

The paper proceeds in four sections: The following section gives an overview of the merits of the theoretical framework and relevant literature. Then a brief analysis of the political situation in Bosnia and Herzegovina since 2009 and the background of the two cases are presented. The subsequent chapter analyzes the domestic elites' responses to external interference through three models of behavior. The concluding section summarizes the results of the analysis.

■ Theoretical Framework

Bosnia and Herzegovina has been the subject of many studies, many of which focused on power-sharing,²³ and state building.²⁴ Three directions of research offer general insights for conceptualizing the interplay between domestic elites and international actors in Bosnia and Herzegovina: consociationalism, external and domestic actors.

²² Brendan O'Leary, "Debating Consociational Politics: Normative and Explanatory Arguments," in *From Power-Sharing to Democracy: Post-Conflict Institutions in Ethnically Divided Societies*, ed. Sid Noel (McGill-Queen's University Press, 2005), 35.

²³ See, for instance, Florian Bieber and Sören Keil, "Power-Sharing Revisited: Lessons Learned in the Balkans?," *Review of Central and East European Law* 34, no. 4 (2009): 337–60; Adis Merdžanović, *Democracy by Decree: Prospects and Limits of Imposed Consociational Democracy in Bosnia and Herzegovina* (Stuttgart: ibidem-Verlag, 2015); Mirjana Kasapović, "Lijphart and Horowitz in Bosnia and Herzegovina: Institutional Design for Conflict Resolution or Conflict Reproduction?," *Croatian Political Science Review* 53, no. 4 (2016): 174–90.

²⁴ See Ružica Jakešević, "Conflict Resolution and Peacebuilding in the Western Balkans - The Role of External Actors," *Teorija in Praksa* 55, no. 1 (2018): 99–122; Roberto Belloni, "Peacebuilding and Consociational Electoral Engineering in Bosnia and Herzegovina," *International Peacekeeping* 11, no. 2 (2004): 334–53.

Adrian Guelke writes that power-sharing and consociationalism are often treated as overlapping concepts which often results in considerable confusion.²⁵ While consociational power-sharing and power-sharing in general can overlap, appreciating the different origins of the two concepts contributes to the conceptual clarity of the research. The following section first addresses the history of power-sharing, then introduces the theory of consociationalism with its normative and practical merits. Finally, it outlines the most common points of critique and corresponding responses within the contemporary literature.

2.1.1. History of Power-Sharing

Over the past forty years, power-sharing has become the preferred method of conflict regulation and peace-building used by the international community. As Brendan O’Leary observes, this can be witnessed in internationally implemented power-sharing agreements in Bosnia and Herzegovina, North Macedonia and Northern Ireland, as well as in Afghanistan and Iraq in the early 2000s.²⁶ However, Florian Bieber states that this does not imply the flawless nature of power-sharing arrangements, but rather the lack of feasible alternatives.²⁷ Aside from the conventional majoritarian democracy, the other alternative is secession or partition which has been dismissed by the international community on various grounds, such as a fear of the proliferation of secessionist movements and mini- and micro-states.²⁸ While there are varying approaches to ethnic conflict management, it is generally agreed that the most

²⁵ Adrian Guelke, “Institutionalised Power-Sharing: The International Dimension,” *Ethnopolitics*, 2019: 1, <https://doi.org/https://doi.org/10.1080/17449057.2019.1569860>.

²⁶ O’Leary, “Debating Consociational Politics,” 3.

²⁷ Bieber and Keil, 338.

²⁸ Bernard Grofman and Robert Stockwell, “Institutional Design in Plural Societies: Mitigating Ethnic Conflict and Fostering Stable Democracy,” *Center for the Study of Democracy*, 2001.

feasible option is policies that accommodate minority groups within the political system of the existing state.²⁹

The fundamental assumption is that some form of joint decision-making is necessary to achieve political stability in divided societies. The question that arises is what regulatory measures and institutions ensure long-term political stability? The two main approaches to power-sharing based on institutional design in fragmented societies emerged out of the debate – the consociational democracy theory advanced by Arend Lijphart and the integrative model developed by Donald Horowitz.³⁰ Nina Caspersen briefly introduces an idea of a hybrid model of power-sharing where centripetal elements of the integrative approach would add flexibility to a consociational agreement.³¹ However, attempts to introduce integrative elements into consociational settings in practice proved challenging, while some scholars view the two dominant approaches as less than complementary altogether.³²

Horowitz develops integrationism as a response to consociational arrangements, placing great confidence in changing actors' behavior by electoral incentives.³³ He argues that “the key is to secure the adoption of electoral and governmental structures that give politicians incentives to behave in one way rather than another.”³⁴ This is to be achieved by making politicians mutually dependent on the votes of members of groups other than their own, so that the office-seekers recognize the need to seek votes outside their core group.³⁵ Although this approach was deemed more promising for democratizing states, it has found very little consideration in general,

²⁹ Carmen Ketteley, “Power-Sharing and Ethnic Conflict: The Consociational-Integrative Dichotomy and Beyond,” *European Yearbook of Minority Issues Online* 1, no. 2 (2001): 250.

³⁰ *Ibid.*, 247.

³¹ Nina Caspersen, *Peace Agreements: Finding Solutions to Intra-State Conflicts* (Cambridge: Polity Press, 2017): 81.

³² *Ibid.*

³³ Horowitz, “Democracy in Divided Societies.”

³⁴ *Ibid.*, 35.

³⁵ *Ibid.*

leaving Lijphart's consociational theory as the dominant approach to divided societies, and consequently to the case of Bosnia and Herzegovina.

2.1.2. Consociationalism

The following section will address three major questions of consociationalism: how it comes into being, how it functions, and how it ends. This provides necessary context for explaining different outcomes of consociational arrangements and further prospects of democratic transition.

Consociational thinking became the influential theory of comparative politics in the second half of the 20th century. Before becoming associated with the method of conflict regulation engineered by political scientists, consociational arrangements were previously negotiated by politicians when majoritarian democracy proved inadequate. The consociational approach was initially developed in order to explain cases of segmented, but stable, societies in Western Europe - Switzerland, Austria (especially from 1945 until 1966), Belgium, and the Netherlands – the so-called deviant cases.³⁶ Analyzing his native country, Lijphart observes that Dutch politics is a politics of accommodation, where the term 'accommodation' is used "in the sense of settlement of divisive issues and conflicts where only a minimal consensus exist."³⁷ In these cases the decision to share power was adopted proactively by domestic elites, without external interference, to avert declining inter-group relations.

Sören Keil and Allison McCulloch identify two more categories of cases depending on the degree of external involvement. The second category comprises the cases of Northern Ireland, South Tyrol, and North Macedonia, where external actors were more prominent and power-

³⁶ Lehmbruch, "Consociational Democracy in the International System," 378.

³⁷ Arend Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands* (Los Angeles: University of California Press, 1968).

sharing became a matter of peace-making rather than peace-keeping.³⁸ The final category are the power sharing arrangements ‘imposed’ as a part of a peace settlement negotiated by external actors, as was the case with Bosnia and Herzegovina and Kosovo*.³⁹ Not only the functionality of consociational arrangement varies across these three categories, but each of the cases requires a substantially different approach.

The complex theoretical construction of consociationalism originates in Lijphart’s early argument that “consociational democracy means government by elite cartel designed to turn a democracy with a fragmented political culture into a stable democracy.”⁴⁰ This overly simplistic and often misunderstood argument was expanded over time to comprise four consociational elements of power-sharing: grand executive coalitions, proportionality, autonomy, and veto rights.⁴¹ A brief explanation of the four functional principles contributes to the conceptual clarity. First, grand coalitions propose that political representatives from each ethnic group are guaranteed to take part in the decision making process, which Cvete Koneska labeled a ‘catch-all-party’ government.⁴² Second, proportionality aims at allowing fair representation of all ethnic groups in the state through electoral engineering, such as reserving seats in parliament.⁴³ Third, group autonomy tends to imply territorial autonomy, but it is essentially intended to provide some form of self-government for minorities over essential

³⁸ Sören Keil and Allison McCulloch, eds., *Power-Sharing in Europe: Past Practice, Present Cases, and Future Directions* (Cham: Palgrave Macmillan, 2021): 258.

* This designation is without prejudice to status, and is in line with UNSC 1244 Resolution and the ICJ Opinion on the Kosovo Declaration of Independence.

³⁹ Ibid.

⁴⁰ Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands*, 79.

⁴¹ O’Leary, “Debating Consociational Politics,” 6.

⁴² Cvete Koneska, *After Ethnic Conflict: Policy-Making in Post-Conflict Bosnia and Herzegovina and Macedonia* (Farnham: Ashgate, 2016): 30, <https://doi.org/10.4324/9781315566122>.

⁴³ Ibid.

matters for the group identity.⁴⁴ Finally, group veto rights in decision-making give rights to groups to block the adoption and implementation of specific legislation and reforms deemed harmful for the interests of the group.⁴⁵ The list is not exhaustive, but nevertheless comprises the core of power-sharing mechanisms employed in post-conflict states.

It should be stressed that there is an ever-growing criticism of consociationalism to which this research concurs. Socialist, liberal, and feminist arguments point to the primordial understanding of ethnic identities embedded in the consociational theory. In other words, the consociational theory tends to assume that ethnicity is a primordial category and needs to be reflected in institutions as such.⁴⁶ The assumption of the unchallengeable identity is based on the groupism theory that Rogers Brubaker defines as “the tendency to take bounded groups as fundamental units of analysis, despite widespread acknowledgment that nations and ethnic groups are not bounded wholes.”⁴⁷ Paul Brass contributes to the critique, stating that consociationalism freezes collective identities and institutionally privileges the elites which caused problems in the first place.⁴⁸ In other words, taken that identities might evolve and the surrounding circumstances change, some flexibility in consociational arrangement is required.

The ‘pre-determined’ versus ‘self-determined’ group identity corresponds with the two models of consociationalism that O’Leary labels corporate and liberal consociationalism, respectively.⁴⁹ In corporate consociationalism, voters are obliged to vote only within their own group for their own ethnic parties, while in liberal consociational arrangements voters may vote

⁴⁴ Ibid.

⁴⁵ Ibid., 31.

⁴⁶ Lise Morjé Howard, “The Ethnocracy Trap,” *Journal of Democracy* 23, no. 4 (2012): 159, <https://doi.org/10.1353/jod.2012.0068>.

⁴⁷ Rogers Brubaker, *Ethnicity Without Groups* (Cambridge: Harvard University Press, 2004): 3.

⁴⁸ Paul Brass, *Ethnic Conflict in Multiethnic Societies: The Consociational Solution and Its Critics* (New Delhi: Sage, 1991): 338.

⁴⁹ O’Leary, “Debating Consociational Politics,” 15.

for their own ethnic parties but they are not obliged to.⁵⁰ In other words, corporate consociationalism pre-determines along consociational lines who shares power and formalizes or constitutionalizes it. While some corporate consociational arrangements allow for more flexibility, such as Switzerland, in Bosnia and Herzegovina and Kosovo where ethnic power-sharing provisions have been incorporated in the constitutions, the substantial reforms are generally more difficult.⁵¹

Rudy Andeweg states that “consociationalism is typically seen as a ‘transitional phase’ – a set of institutions meant to facilitate the transition from a non-democratic and/or conflict-prone divided society into a liberal democracy; the very success of consociationalism renders it unnecessary.”⁵² That consociationalism is a ‘transforming phase’ had been noted more than 40 years ago by Lijphart; yet it is beneficial to explore the ‘transformation’ of consociations. Just as there are different circumstances that lead to consociational arrangements, so the arrangement has different outcomes. On this account, Nenad Stojanović argues that consociational societies transform either into a liberal democracy or ethnocracy – or more precisely a ‘poli-ethnocratic’ regime.⁵³ In poli-ethnocratic regimes, states Stojanović, “citizens who do not identify with one of the ethnic segments – the ‘Others’ – are de jure and/or de facto marginalized and discriminated against in the exercise of their political rights and beyond.”⁵⁴ As will be shown later in the *Sejdić-Finci*, the main challenge of democratic transition is to

⁵⁰ Ibid.

⁵¹ Keil and McCulloch, 268.

⁵² Rudy Andeweg, “Consociationalism,” in *International Encyclopedia of the Social and Behavioral Sciences*, ed. James Wright, 2nd ed. (Oxford: Elsevier Ltd, 2015), 693.

⁵³ Nenad Stojanović, “Democracy, Ethnoicracy and Consociational Demoicracy,”

International Political Science Review 41, no. 1 (2020): 3,

<https://doi.org/10.1177/0192512119881730>.

⁵⁴ Ibid.

design incentives that enable participation in political life without subscribing to a single ethnic group.⁵⁵

■ Actors in Post-Conflict Democratization

Bogaards, Helms, and Lijphart argue that while the role of the institutions in maintaining consociational agreements in the long run cannot be neglected, these institutions are still conditioned by the behavior of individual actors.⁵⁶ Despite the fact that in post-conflict countries external actors are present on the ground and have a direct influence on agenda-setting, the drafting of reform proposals and their implementation, it is domestic elites that are enacting or vetoing those processes.⁵⁷ This way domestic actors exercise their agency and react to these influences by resisting or modifying the imposed institutions and reforms.

2.2.1. External Actors

While any in-depth discussion of international interventionism and transitional administration would take this research off the path, a brief conceptual contextualization is, nonetheless, necessary. The concept of transitional governance is a result of the Western interventionism in the post-Cold War period characterized by a far more expansive approach to threats to global peace and security.⁵⁸ Namely, since the end of the Cold War, under the leadership of the United Nations, international actors became increasingly active in democratic capacity-building in

⁵⁵ Howard, “The Ethnocracy Trap,” 166.

⁵⁶ Matthijs Bogaards, Ludger Helms, and Arend Lijphart, “The Importance of Consociationalism for Twenty-First Century Politics and Political Science,” *Swiss Political Science Review* 25, no. 4 (2019): 348, <https://doi.org/10.1111/spsr.12384>.

⁵⁷ Sonja Grimm and Brigitte Weiffen, “Domestic Elites and External Actors in Post-Conflict Democratisation: Mapping Interactions and Their Impact,” *Conflict, Security and Development* 18, no. 4 (2018): 257–82, <https://doi.org/10.1080/14678802.2018.1483556>.

⁵⁸ Emmanuel De Groof and Micha Wiebusch, *International Law and Transitional Governance* (New York: Routledge, 2020): 20, <https://doi.org/10.4324/9780429057786>.

post-conflict societies.⁵⁹ In other words, once a country fails to provide security and administration to its daily affairs, the international authority may step in to restore security, complete the transition, and provisionally manage the country. The so-called ‘post-Cold War new activism’ is characterized by the international community initiating interim processes and institutions designed to bring peace to conflict and post-conflict states.⁶⁰ In such cases, executive and legislative authority is temporarily vested in a coalition of states or an international organization tasked with steering a ‘failed’ state to meet certain ‘standards of civilization.’⁶¹ Moreover, Bieber provides two criteria of international intervention – first, it has to be multilateral and not aimed at dominating the country in question, and second, it aims to fundamentally transform the institutional system of the country.⁶²

Over the last three decades, UN missions with state-building mandates have been sent to a number of post-conflict states, such as Croatia, the Democratic Republic of Congo, East Timor, Ethiopia, Iraq, Haiti, Kosovo, Liberia, North Macedonia, Sudan/South Sudan, while several *ad hoc* coalitions of states and regional organizations such as the North Atlantic Treaty Organization and the Organization for Security and Co-operation have participated in BiH, Afghanistan, and Iraq.⁶³ These missions differ in the degree of external involvement and types of the ‘peacekeeping tools’ used. They are usually divided between highly intrusive ‘heavy footprint’ missions (BiH) and less intrusive ‘light footprint’ monitoring missions (Afghanistan).⁶⁴ Furthermore, it is estimated that between 2000 and 2010, the members of the

⁵⁹ See: Burnell Peter, *Promoting Democracy Abroad: Policy and Performance* (London: Transaction Books, 2011).

⁶⁰ De Groof and Wiebusch, 20.

⁶¹ *Ibid.*, 22.

⁶² Florian Bieber, “Institutionalizing Ethnicity in Former Yugoslavia: Domestic vs. Internationally Driven Processes of Institutional (Re-)Design,” *Global Review of Ethnopolitics* 2, no. 2 (2003): 4, <https://doi.org/10.1080/14718800308405130>.

⁶³ For a more extensive list, see: David Chandler, *International Statebuilding: The Rise of Post-Liberal Governance* (London: Routledge, 2010).

⁶⁴ De Groof and Wiebusch, 22.

Organization of Economic Co-Operation and Development (OECD) donated over 390 billion dollars as official development assistance to post-conflict societies.⁶⁵ While the number of missions and the amount of money involved can illustrate the extent of international efforts, post-conflict state-building is far from a simple task.

The type of external involvement can also be divided into international mandate or the mechanism of international administration possessing executive and legislative control over the state, such as the OHR in BiH, and the close involvement of the EU with ‘special responsibilities’ to the state, such as negotiating and supervising the implementation of agreements made between BiH and the EU.⁶⁶ While the first type generally includes arbitrary powers used to impose legislative measures against the wishes of elected bodies and to dismiss non-compliant officials, the second type avoids a ‘hard’ exercise of coercive power and focuses on freely-negotiated agreements between the state institutions and external actors.⁶⁷ Nonetheless, in the case of BiH, both types of external involvement yield only limited success in state-building.

Accordingly, one of the major questions political scientists have been asking themselves is why does Western involvement in democratization sometimes lead to substantial changes in some countries but not in the others.⁶⁸ The explanations are often grouped between *structural* or *actors* approach, where the former builds on the degree of interdependence, power-asymmetries between the domestic and external actors, cultural linkages, and the latter focuses on the micro-explanations.⁶⁹ Nonetheless, proponents of either of the approaches are generally

⁶⁵ OECD, “Fragile States 2013: Resource Flows and Trends in a Shifting World” (Brussels, 2012), <https://www.oecd.org/dac/conflict-fragility-resilience/docs/FragileStates2013.pdf>.

⁶⁶ Chandler, “State-Building in Bosnia,” 29.

⁶⁷ Ibid., 30.

⁶⁸ Tolstrup, 716.

⁶⁹ Ibid.

aware that the picture is not black and white and that both explanations have a valuable contribution to the solution. Thus, although this research focuses on main values and behaviors of domestic elites, it does not ignore the structural framework, and positive and negative impulses from ‘outside.’

International actors tasked with democracy promotion have a variety of instruments to bring democratic transition. Frank Schimmelfennig and Ulrich Sedelmeier note that outside states use financial assistance, provide technical expertise, and potential membership in international or supranational organizations as a reward for progress and compliance.⁷⁰ In the case of European integrations, the EU uses policy and membership perspective, normative pressure, and persuasion as instruments of democratic promotion.⁷¹ EU policy has been generally described as predominantly a policy of conditionality, under which the EU provides incentives for a government to comply with its conditions.⁷² The underlying logic of conditionality is that EU requests would not be fulfilled unless there is a reward, and the size of rewards enhances the likelihood of the rule adoption. Therefore, Schimmelfennig and Sedelmeier note that “a state adopts EU rules if the benefits of EU rewards exceed the domestic adoption costs.”⁷³ The same postulate can be equally sound for any external involvement that is based on governance by conditionality. While the cost-benefit balance depends on multiple factors, such as the size of the reward and the credibility of threats and promises, the size of adoption costs condition calls for additional consideration and will be addressed further in the following section.

⁷⁰ Frank Schimmelfennig and Ulrich Sedelmeier, “Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe,” *Journal of European Public Policy* 11, no. 4 (2004): 669, <https://doi.org/10.1080/1350176042000248089>.

⁷¹ Ibid.

⁷² Groß and Grimm, 914.

⁷³ Schimmelfennig and Sedelmeier, 672.

2.2.2. Domestic Elites

As stated, the broad literature on democratization identifies two dominant approaches to studying the role of domestic political elites in post-conflict state-building – agency-centered and structural.⁷⁴ This section addresses the agency-centered approach, emphasizing elites' preferences and motivations. It is argued that domestic elites are not simple objects of transitional administrations, but actors with the capacity to condition and influence external actors' behavior.

Following a functionalist definition, elites are described as individuals who are able, through their positions in powerful organizations, to affect political decision-making processes in a country.⁷⁵ They are also individuals or organizations which promote the interests of social groups they represent. It follows that elites can be members of the executive, legislative, and judicial branch of government, religious leaders, leaders of political parties and unions, or civil-society organizations. Political elites, however, imply political leadership or politicians capable to decide upon institutions, carry out reforms, and implement decisions.⁷⁶ Yet, not only do domestic elites change over time, but their behavior and relation between each other change. Since the boundaries between various elites quickly blur in post-conflict situations, this research borrows from Linz and Stephan's work and defines political elites as "the core groups that are in day-by-day control of the state apparatus."⁷⁷

⁷⁴ See: Matthijs Bogaards, "The Favourable Factors for Consociational Democracy;" Grofman and Stockwell, "Institutional Design in Plural Societies;" Tolstrup, "When Can External Actors Influence Democratization."

⁷⁵ Michael G. Burton and John Higley, "Elite Settlements," *American Sociological Review* 52, no. 3 (1987): 298, <https://doi.org/10.2307/2095351>.

⁷⁶ Grimm and Weiffen, 264.

⁷⁷ Juan Linz and Alfred Stephan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (Baltimore: John Hopkins University Press, 1996).

Scholars of democratic transition identified three basic types of national elites, the ‘consensually unified’ type present in most Western societies today, ‘totalitarian’ type present in nation-states organized along communist, fascist, or theocratic lines, and finally the ‘disunified’ elites present in many divided or post-conflict societies.⁷⁸ The focus here is on *disunified* national elites, because understanding the properties of their political conduct clarifies the analysis of democratic transition. Regarding the origin of national elite disunity, it was noted that it often lies in the process of state formation, which in the case of post-conflict societies, is characterized by the repression of some elite groups by others.⁷⁹ What is more, according to John Higley and Michael Burton, a national elite is *disunified* when its members engage in only limited interactions across factional boundaries and share little or no understanding about the properties of political conduct.⁸⁰ The underlying condition of disunified national elites is deep insecurity and mistrust. Higley and Burton write:

Members of a disunified elite routinely take *extreme* measures to protect themselves and their interests. [...] Recent experiences of having punitive measures taken against them, and the strong belief that such measures will be implemented in the future, solidify the fears and insecurities of disunified national elite members [...] Members seldom cooperate because they fear it will be used against them.⁸¹

This argument reflects the underlying logic of consociationalism and power-sharing in general that has already been addressed. Yet, it is necessary to cast some light on the role of the elites in post-conflict development in order to fully understand challenges of finding a common solution among the *disunified* elites.

⁷⁸ John Higley and Michael G. Burton, “The Elite Variable in Democratic Transitions and Breakdowns,” *American Sociological Review* 54, no. 1 (1989): 17–32, <https://doi.org/10.2307/2095659>.

⁷⁹ *Ibid.*, 20.

⁸⁰ *Ibid.*, 19.

⁸¹ *Ibid.*

Domestic elites play a central role in post-conflict state-building because of their decisive influence on political decision-making. Moreover, they play a crucial role in the consolidation of new political regimes and the legitimization of new institutions.⁸² However, Sonja Grimm and Brigitte Weiffen observe that it is likely that those elites that obtain early access to power or remain in power are more likely to shape the post-conflict ‘rules of the game.’⁸³ It means that although the system has changed substantially, domestic actors can persist and thrive in the new democratic setting. The extent to which political elites are committed to new democratic institutions determines the pace of consolidation of the new institutional design.⁸⁴ Almost half a century ago, Eric Nordlinger noted that “political elites play a crucial role in regulating the intense conflicts in divided societies, because only they can directly and positively influence post-conflict political outcomes by lending political institutions legitimacy and respecting the rules and values these new institutions are set up to promote.”⁸⁵ In other words, while external actors set up new institutions, it is up to the domestic elites to make them work.

Considering the crucial role of political elites in post-conflict state-building, it comes as no surprise that internationally-led interim administrations have interests in determining which groups acquire access to political power. According to Stephan Hensell and Felix Gerdes, the process of elite formation has a specific opportunity structure, where the interim government sets the limits of acceptable behavior within the political system and further determines strategies and tactics which elites use to gain or keep power.⁸⁶ Therefore, while there is a

⁸² Koneska, *After Ethnic Conflict*.

⁸³ Grimm and Weiffen, 264.

⁸⁴ Ibid.

⁸⁵ Eric Nordlinger, “Conflict Regulation in Divided Societies,” *Occasional Papers in International Affairs* 29 (1972).

⁸⁶ Stephan Hensell and Felix Gerdes, “Elites and International Actors in Post-War Societies: The Limits of Intervention,” *International Peacekeeping* 19, no. 2 (2012): 156–7, <https://doi.org/10.1080/13533312.2012.665683>.

possibility for old elites to remain in power, their access to resources and power is conditioned by their adherence to the new rules and norms. The degree to which external actors influence democratization, has been widely acknowledged and discussed in the conflict and development literature among proponents of structural approach, but nonetheless, deserves brief consideration.

One of the most prominent studies of Western influence on democratization has been made by Steven Levitsky and Lucan Way, who theorized two dimensions along which international influence can be exercised – leverage and linkage.⁸⁷ Leverage is the degree to which governments are exposed to external democratizing pressure, while linkage stands for the density of economic, social, political, cultural, or diplomatic ties between a particular country and the ‘West.’⁸⁸ While the theory was developed in order to rationalize the prospects of change from authoritarian regimes to democracy, its explanatory capacity can be extended to the post-conflict setting with various degrees of external influence. According to the theory, external actors should be able to influence a target state if they enjoy high credibility and project strength, while simultaneously maintaining dense social, political or cultural cross-border ties.

While the linkage-leverage theory provides a fairly credible framework for explaining regime change, it warrants criticism on two grounds. First, it is insufficient to account for competing and different perceptions of linkages and leverages, or different affinities of the political leaders and elites altogether. In other words, the linkage-leverage model neglects the elites’ agency and disregards the fact that different domestic elites have different incentives to maintain or resist linkages. Second, it fails to identify negative influences of the external presence and

⁸⁷ Steven Levitsky and Lucan A. Way, “Linkage versus Leverage: Rethinking the International Dimension of Regime Change,” *Comparative Politics* 38, no. 4 (2006): 379–400, <https://doi.org/10.2307/20434008>.

⁸⁸ Ibid.

linkages. Adis Merdžanović demonstrated that the existence of external actors with far-reaching powers can increase the cost of democracy promotion and endanger democratization outcomes.⁸⁹ Contrary to ‘ordinary consociations,’ ‘imposed consociationalism’ reduces the willingness of the group leaders to cooperate, since, not only legislation can be imposed by external actors but the blame for non-adoption of legislature can be transferred to external actors.⁹⁰

Schimmelfennig and Sedelmeier state that adoption of external demands is always costly – otherwise it would have taken place without external conditionality and incentives.⁹¹ It follows that the democratization process is likely to halt when external presence is viewed as threatening to one or more political elites and the elites calculate that the ‘cost of adoption’ exceeds the ‘cost of resistance.’ Adoption cost can take the form of weakening ethno-nationalist credentials, or opportunity cost of forgoing alternative reward offered by adopting rules other than EU.⁹² This theory builds on the early transitioning literature and echoes Putnam’s two-level game logic, underscoring that cooperation at the international level tends to have electoral consequences at the national level.⁹³

Yet, domestic elite’s preferences, motivations, and ideologies become particularly important in consociational arrangements where the elites can veto decisions or reforms they deem harmful to their political and economic interests. If political elites are ideologically opposed, it is more likely that the cost of adoption is lower for some and higher for the others. George Tsebelis notes that “the difficulty for a significant change of the status quo [...] increases in

⁸⁹ Merdžanović, *Democracy by Decree*.

⁹⁰ Ibid., 153.

⁹¹ Schimmelfennig and Sedelmeier, 675

⁹² Ibid., 674.

⁹³ Robert D Putnam, “Diplomacy and Domestic Politics: The Logic of Two Level Games,” *The MIT Press* 42, no. 3 (1988): 427–60.

general with the number of veto players and with their distances.”⁹⁴ The costs of adoption or accommodation are low for those elites that are ideologically closer to the external actors, whereas the elites that generally oppose the reforms have high costs of adoption.⁹⁵ Among the domestic actors, the actor who has the highest domestic audience cost is most likely to reduce cooperation or play the veto card.⁹⁶ In sum, the effectiveness of democratic conditionality depends crucially on the initial conditions in the transitioning countries.

Peacebuilding and Consociationalism in Bosnia and Herzegovina

The challenges in the process of implementation of the *Sejdić-Finci* ruling and ‘unblocking’ the elections in Mostar cannot be fully comprehended without a deeper understanding of international involvement in Bosnia and Herzegovina. Much has been written about peacebuilding in the Balkans and this section will provide only a brief overview of the post-war development in Bosnia.⁹⁷ In order to set up a context for the analysis, the following section first briefly addresses the framework of the Dayton Agreement, followed by the discussion of the notion of the ‘constituent peoples’ and the ‘Others’ in BiH. It is followed by an overview of the international involvement in BiH, and finally the summary of *Sejdić-Finci* and the case of Mostar – which would contribute to understanding the elite’s behavior.

⁹⁴ George Tsebelis, *Veto Players: How Political Institutions Work* (Princeton: Princeton University Press, 2002): 37.

⁹⁵ Bochsler, Merdžanović, and Petrić, 133

⁹⁶ See Bochsler, Merdžanović, and Petrić, for a more detailed discussion on the domestic political elites’ behavior in different modes of international peacebuilding in post war polities.

⁹⁷ See: Roberto Belloni, *The Rise and Fall of Peacebuilding in the Balkans, The Rise and Fall of Peacebuilding in the Balkans*, 2020, <https://doi.org/10.1007/978-3-030-14424-1>; Jelena Džankić, Sören Keil, and Marko Kmezić, eds., *The Europeanisation of the Western Balkans: A Failure of EU Conditionality?*, *East European Politics*, vol. 35 (Palgrave Macmillan, 2019), <https://doi.org/10.1080/21599165.2019.1677227>; Koneska, *After Ethnic Conflict*.

The current political system in Bosnia and Herzegovina originates in Annex IV of the Dayton Peace Agreement which serves as the departure point for further discussion in this research. BiH, often referred to as an ‘asymmetric confederation,’ is composed of the state government, responsible for foreign trade policy, customs policy, monetary policy, finances of its institutions and international obligations; immigration, refugee and asylum policy and regulation, international and inter-entity criminal law enforcement; and of two federal units called ‘entities’ – Republic of Srpska and the Federation of Bosnia and Herzegovina – responsible for all policies outside the competences of the central government.⁹⁸ In addition, the FBiH is divided into 10 cantons, each with its own government. Finally, there is the Brčko district with its government independent from the entities. At the state level, executive power is divided between two bodies – the tripartite Presidency and the Council of Ministers, while the legislative body consists of two chambers - the House of Representatives with two-thirds of the members elected in the FBiH and one third in the RS, and House of Peoples with the same ratio of members from the FBiH and the RS (see Figure 1).⁹⁹ While the BiH political system can rightfully be considered as one of the most complex in the world, it is not the structure that makes BiH dysfunctional, but the ethnic and territorial principle of representation that corresponds with the corporate consociational theory which takes group boundaries as predetermined.¹⁰⁰ The predetermined groups of people – the ‘constituent peoples’ in BiH are Bosniaks, Bosnian Croats and Bosnian Serbs, and only they, by the Dayton Agreement, can hold seats in the Presidency or the House of Peoples, which leaves minorities in an unfavorable position.

⁹⁸ Merdžanović, *Democracy by Decree*, 164.

⁹⁹ Constitution of Bosnia-Herzegovina.

¹⁰⁰ Merdžanović, *Democracy by Decree*, 173.

On the one hand, there is a broad agreement that the concept of constituent peoples and power-sharing among them was a key factor for the Dayton Peace Agreement and post-war transition.¹⁰¹ David Chandler ironically notes that the expression “the Dayton Agreement was a treaty designed to end a war, not to build a state,” has been repeated so often that it became a mantra of international officials.¹⁰² On the other hand, Gro Nystuen argues that such arbitrary constitutional differentiation on the basis of ethnicity was not in accordance with international law even under circumstances in which the Dayton Agreement was signed.¹⁰³ In 2009, in *Sejdić-Finci*, the ECtHR found that such differentiation between the constituent peoples and ‘Others’ might have been justified as an interim measure at the time, but it had lost its reasonable justification.¹⁰⁴ However, the notion of ‘constituent people’ got the definite meaning only in 2002, after the BiH Constitutional Court ruled that the three constituent peoples must enjoy equal collective status throughout the territory of the state, and not only in their corresponding federal entities.¹⁰⁵ More precisely, mechanisms of grand coalition and a minority veto were transferred to the cantonal and entity levels. In regards to the decision of the Constitutional Court, a report drafted by the Venice Commission reads: “effective decision making is one, then there is the danger, in trying to protect the vital interests of the constituent peoples, of endorsing a sort of mutually paralyzing hegemony of these different groups.”¹⁰⁶

¹⁰¹ Edin Hodžić and Nenad Stojanović, *New/Old Constitutional Engineering? Challenges and Implications of the European Court of Human Rights Decision in the Case of Sejdić and Finci v. BiH* (Sarajevo: Analitika Center for Social Research, 2011): 16.

¹⁰² Chandler, “State-Building in Bosnia: The Limits of ‘Informal Trusteeship.’,” 17.

¹⁰³ Gro Nystuen, *Achieving Peace or Protecting Human Rights? Conflicts between Norms Regarding Ethnic Discrimination in the Dayton Peace Agreement* (Boston: Martinus Nijhoff Publishers, 2005).

¹⁰⁴ The Sejdić-Finci judgment, *supra* note 1, paras. 45–50.

¹⁰⁵ European Commission For Democracy Through Law (Venice Commission), “Comments On The Implementation Of Decision U5/98 (‘Constituent Peoples’),” 2002, 1–8.

¹⁰⁶ *Ibid.*

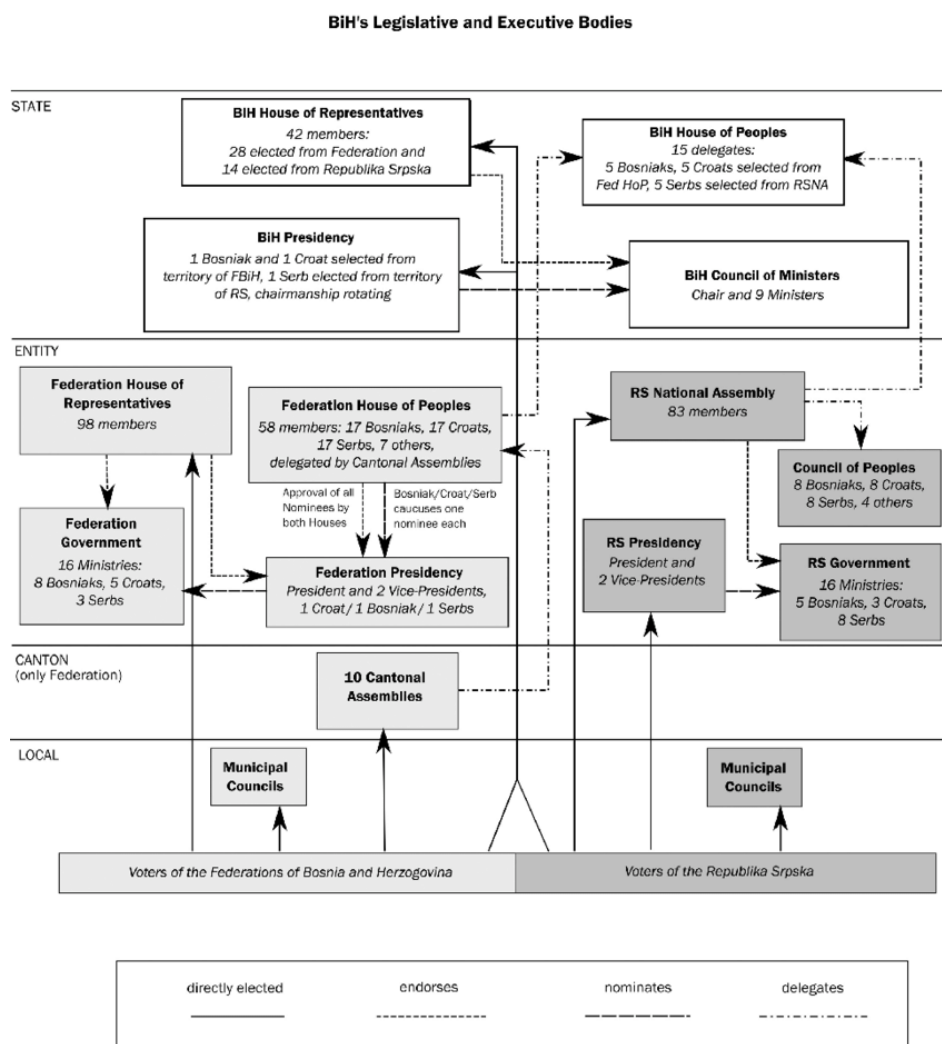


Figure 1. BiH Executive and Legislative Bodies¹⁰⁷

Bieber notes that the DPA addressed the two issues of the war in a complex manner – by introducing a decentralized federal system, it addressed the demand for self-governance of the different nations, and organized the relationship between the dominant nations in a consociational manner.¹⁰⁸ While the discussion will not go into details of consociationalism in BiH, it is still beneficial for further argument to look at the power-sharing arrangement in the country.

¹⁰⁷ Website Office of the High Representative.

¹⁰⁸ Bieber and Keil, 345.

First, a significant degree of group autonomy is reflected in the federal structure of the state, and jurisdiction of the entities and cantons over a number of policies. Second, veto powers can be divided into so-called territorial veto, ethnic veto, and minority veto.¹⁰⁹ Territorial veto gives representatives of the entities the power to block decisions in the House of Representatives, since at least one third of the representatives from each entity must vote in favor of a decision.¹¹⁰ An ethnic veto relies on the protection of a ‘vital national interest’ and gives a majority from Bosniak, Croat, or Serb delegates in the House of Peoples the power to veto a decision, but the invocation of the ‘vital national interest’ can be objected by a majority of delegates from the other two groups, after a joint commission is formed, or the matter is ultimately referred to the Constitutional Court.¹¹¹ A minority veto introduces special majorities and gives them power to veto certain policy areas.¹¹² As will be demonstrated, different forms of veto are often used as the main tool of reform-resistive behavior.

Third, on the state level, proportional representation includes equality rather than proportionality among the three constituent peoples (e.g. out of fifteen members of the House of Peoples, each group has five, the House of Representatives has one third members from the RS and two thirds from the FBiH), while on the entity level and administrative posts at lower levels are filled in according to a proportionality principle.¹¹³ In addition to the reserved seats for national groups, some bodies, such as the Federation House of Peoples reserve seats for the ‘Others.’ The aim of proportional representation is to allow for the political inclusion of minority interests in the political system and ensure that the state apparatus remains multi-ethnic.¹¹⁴ Finally, participation in government or grand coalitions provides that, for instance, a

¹⁰⁹ See Bieber and Keil; Merdžanović, *Democracy by Decree*.

¹¹⁰ Constitution of Bosnia-Herzegovina, Art. 4, paragraph 3.d.

¹¹¹ Bieber and Keil, 353.

¹¹² Ibid.

¹¹³ Merdžanović, *Democracy by Decree*, 178.

¹¹⁴ Bieber and Keil, 346.

number of ministries must be run by members of the nondominant groups, and that deputy ministers must represent a different group than the appointed minister.¹¹⁵ While there is no doubt the DPA constituted a consociational democracy, the power-sharing arrangement was heavily influenced by international involvement.

■ External Actors in BiH

The international involvement in Bosnia can roughly be divided into three phases – the peace building after the conflict, the EU taking over the peacebuilding agenda, and the decline of peacebuilding. The first phase is characterized by strong military presence (*inter alia*, the so-called Implementation Force) and the establishment and evolution of the Office of the High Representative. In 1997, the Peace Implementation Council, a body consisting of 55 states and agencies tasked with implementation of the DPA granted the High Representative the ‘Bonn powers’ to make binding decisions, enact legislation, or take actions against officials who are found by the High Representative to be in violation the DPA implementation.¹¹⁶ On the one hand, the OHR’s Bonn powers would later become one of the most criticized and contested aspects of the international presence in BiH by the political elites. On the other hand, rather than temporary measures, the Bonn powers became a ‘means of governing’ and made the HR an integral part of the political system.¹¹⁷

The second phase can be characterized as the EU taking on the role of key international peacebuilder. Since 2002 the HR and EU Special Representative in BiH was a single international official with closely related mandates, and the plan was to use the Stabilization

¹¹⁵ Florian Bieber, “Power Sharing as Ethnic Representation in Postconflict Societies: The Cases of Bosnia, Macedonia, and Kosovo,” in *Nationalism after Communism. Lessons Learned.*, ed. Alina Mungiu-Pippidi and Ivan Krastev (Budapest: CEU Press, 2004), 237.

¹¹⁶ Peace Implementation Council, “PIC Bonn Conclusions” (Bonn, 1997), <http://www.ohr.int/pic-bonn-conclusions>.

¹¹⁷ Merdžanović, *Democracy by Decree*, 183.

and Association process with the EU as a positive reforming influence.¹¹⁸ Yet, this is not to say that the Bonn powers were not used – on the contrary, the coming of Lord Paddy Ashdown as the HR turned out to be the peak of the Bonn powers usage. Nonetheless, Ashdown set out a transitioning agenda for BiH – ‘from Dayton to Brussels’ as it was put, and the Stability Pact and accession to the Council of Europe were the first steps.¹¹⁹ In such context, Euro-Atlantic integration was a carrot, while the Bonn powers could be seen as a stick. However, this phase was marked by failed constitutional reforms and reforms of police, and Belloni concludes that during this period, the EU approach proved inadequate to provide domestic leaders with effective incentives to support democratization processes and failed to involve citizens in the process of transition.¹²⁰

In regard to the third phase, Bochsler, Merdžanović, and Petrić observe that after 2010 the willingness for straightforward policy impositions had been narrowed down significantly and the OHR became very passive.¹²¹ Merdžanović adds that the Bonn powers proved useful when aimed at state building but utterly useless with the European agenda.¹²² Thus, in 2011, the EU decided to separate the HR from EU Special Representative who was merged the head of the EU Delegation. Simultaneously, as will be demonstrated, with the decline of active international involvement came the rise of various forms of Euroscepticism and separatist rhetoric and populist claims by some political parties in BiH. Yet, the major political issue of the third term was the *Sejdić-Finci* verdict that ended up being misused by the political elites and proved more difficult to implement than anyone believed in 2009. While the opinion and attitudes of the political elites on the relevance of the OHR in the contemporary BiH are

¹¹⁸ Belloni, *The Rise and of Fall of Peacebuilding*, 15.

¹¹⁹ Merdžanović, *Democracy by Decree*, 300.

¹²⁰ Belloni, *The Rise and of Fall of Peacebuilding*, 15.

¹²¹ Bochsler, Merdžanović, and Petrić, 146.

¹²² Merdžanović, *Democracy by Decree*, 346.

divided, the following section is concerned with the consequence of the international presence for the process of democratization and the political elite's behavior.

In the context of this study, political elites correspond with the major parties and their leaders, mainly divided along the ethnic lines – Bosniaks- SDA (Party for Democratic Action), SDP (Social Democratic Party of Bosnia and Herzegovina);¹²³ Serbs– SDS (Serb Democratic Party), SNSD (Alliance of Independent Social Democrats), PDP (Party of Democratic Progress); Croats– HDZ (Croat Democratic Union of Bosnia and Herzegovina).¹²⁴ The list is not complete, but represents the major parties that took part in the two processes addressed in this research.

■ Case Backgrounds

The following section not only provides the context of the two cases and highlights the substantive issues at hand. In addition, this research provides a systematic overview of the two processes that is based on analysis of the reports, evaluations by BiH institutions, external actors, and international monitoring organizations, as well as newspaper articles and press statements. The timeline not only illustrates the amount of time and efforts spent on the talks, but also provides a useful framework for further research on the topic.

3.3.1. The Sejdić-Finci Judgement

The necessity to amend the BiH Constitution and its electoral legislation was recognized in multiple rulings by the European Court of Human Rights. In 2006, two prominent members of the Jewish and Roma communities, Jakob Finci and Dervo Sejdić filed complaints before the

¹²³ SDP is sometimes considered as multinational, but predominantly enjoys Bosniak support.

¹²⁴ See: European Parliament, “Bosnia and Herzegovina: Political Parties” (Brussels, 2015), https://www.europarl.europa.eu/RegData/etudes/ATAG/2015/568324/EPRS_ATA%282015%29568324_EN.pdf.

European Court of Human Rights regarding discriminatory provision in the BiH constitution. In 2009 the ECtHR found Bosnia and Herzegovina in violation of Protocol Number 12 and Article 14 of the European Convention on Human Rights for not allowing Jakob Finci to run for the presidency and Dervo Sejdić for the House of Peoples due to their ethnic backgrounds.¹²⁵ In both state bodies, all seats are reserved for the three constituent people, Bosniaks (predominantly Bosnian Muslims), Bosnian Serbs, and Bosnian Croats, which leaves around 400,000 citizens of BiH, or roughly 12% of the population unable to run for president or parliament.¹²⁶ Moreover, in *Pilav v. BiH*¹²⁷ and *Pudarić v. BiH*¹²⁸, the ECtHR found BiH in violation of the ECHR for not allowing a Bosniak living in the RS and a Serb living in the FBiH to run for the Presidency of BiH. In cases *Šlaku v. BiH*¹²⁹ and *Zornić v. BiH*¹³⁰, where applicants were of Albanian and undeclared origin, respectively, the ECtHR found that the violation of the ECHR is a direct consequence of the failure of BiH to comply with the ruling in *Sejdić -Finci*.¹³¹ Yet, as it will be demonstrated, the implementation of the ruling transcends the question of Others and deeply concerns the constituent peoples.

While plenty has been written on the *Sejdić-Finci* judgement,¹³² the importance of the case for both the theory and practice of constitutional engineering in divided societies can hardly be

¹²⁵ European Court of Human Rights, “Sejdić and Finci v. Bosnia and Herzegovina, Application No. 27996/06 and 34836/06.”

¹²⁶ Human Rights Watch, “Bosnia and Herzegovina: Ethnic Discrimination a Key Barrier” (London, 2019).

¹²⁷ European Court of Human Rights, “Pilav v. Bosnia and Herzegovina, Application No. 41939/07,” 2016.

¹²⁸ European Court of Human Rights, “Pudarić v. Bosnia and Herzegovina, Application No. 55799/18,” 2020.

¹²⁹ European Court of Human Rights, “Šlaku v. Bosnia and Herzegovina, Application No. 56666/12,” 2016.

¹³⁰ European Court of Human Rights, “Zornić v. Bosnia and Herzegovina, Application No. 3681/06,” 2014.

¹³¹ Human Rights Watch, Bosnia and Herzegovina: Ethnic Discrimination a Key Barrier.

¹³² For previous scholarly discussion, see Hodžić, Emir and Nenad Stojanović, New/Old Constitutional Engineering? Challenges and Implications of the European Court of Human Rights Decision in the Case of Sejdić and Finci v BiH (2011); McCrudden, Christopher, and

overstated. Emir Hodžić and Nenad Stojanović observe that *Sejdić-Finci* is the first ECtHR judgement in history to challenge the constitutional order of a signatory state to the ECHR.¹³³ When the court ruled that Bosnia's current constitutional order is in violation of the ECHR, it demanded from BiH to substantially change its entire structure at all levels.¹³⁴ In 2009, the verdict sparked hopes that constitutional reform would be implemented soon, but twelve years later, it is clear that it only provided domestic elites with another point of disagreement. Yet, Merdžanović argues that the point of disagreement is not the discrimination and representation of the Others, but much wider problem of the state structure and notably, the so-called 'Croat question.'¹³⁵ As was seen in 2006, 2010, 2018 due to lower percentage of Bosnian Croat population in BiH, the presidency position was taken by SDP Croat Candidate Željko Komšić, who was not considered a legitimate Croat representative by the Croat parties due to perceived affiliation with Bosniak politics.¹³⁶ Thus, Croats in BiH consider themselves as, not only deprived of their own entity but a subject to overvoting.¹³⁷ It follows that it would take more than a minor constitutional change to address the issue of the existing structure raised in *Sejdić-Finci*.

Since 2009, there were four attempts to carry out court decisions and amend the constitution. The first attempt occurred in February 2010, shortly after the ECtHR ruling, when the Council of Ministers and the BiH Parliamentary Assembly established a working group mandated with

Brendan O'Leary. "Courts and Consociations, or How Human Rights Courts May de-Stabilize Power-Sharing Settlements." *European Journal of International Law* 24, no. 2 (2013): 477–501. <https://doi.org/10.1093/ejil/cht020>.

¹³³ Hodžić and Stojanović, 23.

¹³⁴ Merdžanović, *Democracy by Decree*, 221.

¹³⁵ *Ibid.*, 222.

¹³⁶ Aleksandra Zdeb, "The Need to Have Something 'Of Their Own': Croat Parallel Institutions in Bosnia and Herzegovina," *Swiss Political Science Review* 22, no. 4 (2016): 552, <https://doi.org/10.1111/spsr.12231>.

¹³⁷ *Ibid.*

proposing solutions to implement the ruling.¹³⁸ After failing to produce any results during the initial term, the mandate of the working group was extended but due to lack of a quorum or opposing views on the nature and scope of constitutional reform, no concrete progress was made until the end of 2010.¹³⁹ The second attempt occurred on October 10, 2011, when the Bosnia and Herzegovina Parliamentary Assembly established an Interim Joint Committee to agree amendments to implement the Court's ruling.¹⁴⁰ The Committee was tasked to produce amendments to the BiH Constitution and the Election Law, but despite regular meetings and several extensions, it failed to produce concrete results by August 31, 2012. Since the Committee failed to create a harmonized single proposal, in August 2012, several parties formally submitted separate proposals to the BiH Parliamentary Assembly. Although the Council of Ministers called the Committee to continue its activities and come up with amendments, the frequent absence and disagreements among parliamentarians resulted in the eventual failure of the Committee.¹⁴¹

The third and fourth attempts were deemed failed by 2017. In January 2015, shortly after *Zornić v. BiH* ruling, the Council of Ministers tasked the BiH Ministry of Justice to draft an action plan for implementation of *Zornić* and *Sejdić-Finci* decisions and the plan was adopted in September.¹⁴² The Ministry of Justice was also tasked with forming the working group, but the two caucuses refused to delegate its members. In June 2016, the Council of Ministers requested the Ministry of Justice to renew the efforts to establish a working group and draft a revised

¹³⁸ The Office of the High Representative, "37th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations" (Sarajevo, 2010).

¹³⁹ Ibid.

¹⁴⁰ Harun Iseric, "Presude Evropskog Suda Za Ljudska Prava u Predmetima Sejdić i Finci, Zornić, Pilav i Šlaku – Nudum Ius u Bosni i Hercegovini [Judgement of the European Court of Human Rights in *Sejdic-Finci*, *Zornić*, *Pilav* and *Šlaku* - Nudum Ius in BiH] ," 2019: 19.

¹⁴¹ Ibid., 21

¹⁴² Ibid.

action plan, but both efforts eventually failed.¹⁴³ The fourth attempt was initiated in December 2016, when parliamentarian Denis Bećirević, forwarded an initiative to the Council of Ministers requesting a draft of constitutional amendments that would implement *Sejdić-Finci* decisions, but the initiative never moved forward.¹⁴⁴ In sum, all four attempts eventually failed due to the lack of political will to reach consensus, which manifested in a continuous lack of a quorum and frequent disagreements between the members of the working groups and committees tasked with finding a solution to the case.

It should be noted that negotiations between the leaders of the major parties facilitated by external actors took place simultaneously with the formal attempts to implement the *Sejdić-Finci* decision.¹⁴⁵ On June 27, 2012, the High-Level Dialogue on Accession Process was initiated by the Commissioner for Enlargement and European Neighborhood Policy, Štefan Füle.¹⁴⁶ The EU Road Map signed in Brussels anticipated a draft for constitutional amendments by August 30, 2012, but parties failed to submit a joint proposal.¹⁴⁷ Two more failed attempts followed but Füle remained optimistic. In May 2013, Füle told the European Parliament:

We have a responsibility and commitment to Bosnia: 1995, Dayton. We imposed this agreement on them. We have a commitment, and that Dayton Agreement was the best framework for them, to impose peace on Bosnia. The time has come to think about another framework, one for actually transforming Bosnia. Enlargement is the most powerful transformation instrument we have.¹⁴⁸

¹⁴³ Ibid., 22.

¹⁴⁴ Ibid.

¹⁴⁵ See: European Stability Initiative (ESI), “Chronology of Efforts to Solve the Sejdic-Finci Conundrum” (Berlin, 2013).

¹⁴⁶ European Commission, “Launching the High Level Dialogue on the Accession Process of Bosnia and Herzegovina,” June 26, 2012.

¹⁴⁷ EU Delegation to BiH, “Joint Statement by Commissioner for Enlargement and Secretary General of the CoE,” September 4, 2012.

¹⁴⁸ European Parliament, “2012 Progress Report on Bosnia and Herzegovina (Debate)” (Brussels, 2013),

<http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20130522&secondRef=ITEM-014&language=EN&ring=B7-2013-0161>.

Nonetheless, the dialogue soon reached a deadlock and on February 17, 2014, Füle cancelled the third meeting of the High-Level Dialogue and ended the facilitation efforts “due to a lack of a political agreement on addressing the implementation of the judgement.”¹⁴⁹ He stated that,

[...] since 2010, three formal initiatives had been tried, via the Bosnia and Herzegovina institutions, to resolve this matter. They had not met with success. It was right that we tried to resolve it, working with the political leaders, because we could leave no possible method aside. Throughout the process [...] I saw some participants making their best efforts and I saw some others talking but still not making a sincere effort. I have therefore concluded my efforts on this issue.¹⁵⁰

Shortly after, a new British-German initiative for BiH took off and was later adopted by the EU as its new BiH initiative.¹⁵¹ Contrary to the previous attempts of constitutional reforms, the new EU BiH Initiative avoided ‘politically sensitive issues,’ and focused on structural socio-economic reforms as the cornerstone of EU conditionality.¹⁵² Thus, after six years of pressure on BiH to harmonize the constitution with the *Sejdić-Finci* judgement, the EU postponed this condition for later stages. Considering that the *Sejdić-Finci* ruling addresses the fundamental power-sharing structure, it comes as no surprise that the domestic political elites responded in an unreceptive manner.

3.3.2. Mostar Impasse

It was noted that the two major challenges of postwar reconstruction of Mostar occurred in 2008 and 2012. While the first challenge has been resolved by the OHR, the second turned out more lasting. Namely, in a case initiated by the Croat Caucus in the BiH House of Peoples, on 26 November 2010 the BiH Constitutional Court ruled that certain provisions of the Bosnia

¹⁴⁹ European Commission, “Bosnia-Herzegovina - EU: Deep Disappointment on Sejdić-Finci Implementation,” February 18, 2014, https://ec.europa.eu/commission/presscorner/detail/en/MEMO_14_117.

¹⁵⁰ Ibid.

¹⁵¹ Susanne Fraczek, Beáta Huszka, and Zsolt Körtvélyesi, “The Role of Human Rights in the EU’s External Action in the Western Balkans and Turkey,” 2016: 71, <http://www.fp7-frame.eu/wp-content/uploads/2016/09/Deliverable-6.2.pdf>.

¹⁵² Ibid.

and Herzegovina Election Law pertaining to the Mostar electoral system were unconstitutional.¹⁵³ The Court determined that the disparity in the weight of votes in city areas with electoral rolls ranging from 8,000 to 30,000 voters could not be justified. Furthermore, the Constitutional Court found it unconstitutional that voters in the central zone did not have the same right to vote for their own councilors as citizens of the city areas. The Bosnia and Herzegovina Parliamentary Assembly was ordered by the Constitutional Court to amend the discriminatory provisions of the Bosnia and Herzegovina Election Law to resolve these issues within six months of the Court's decision being published in the Bosnia and Herzegovina Official Gazette on June 16, 2011.¹⁵⁴ Yet, to fully understand the court decision, it is necessary first to address the background of the Mostar case.

The administration of Mostar posed a challenge from the earliest phase of the post-war reconstruction and multiple attempts of reforms failed to provide unified city administration. In 1996, the European Union Administration of Mostar (EUAM), tasked with postwar transition and reconstructing the city, created the Interim Statute that divided Mostar into the Central Zone to be administered by the joint government and six city municipalities, following the principle of power-sharing on territorial division.¹⁵⁵ The Central Zone was never properly established and the city remained divided in two separate blocks, made up of three municipalities each, between Bosniaks and Croats, with parallel institutions and double budgeting.¹⁵⁶ With the Constitutional Court decision and Federal constitutional amendments of April 2002, requiring equal status of Serbs and 'Others' a new process for reforming the

¹⁵³ The Office of the High Representative, "41st Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations" (Sarajevo, 2012).

¹⁵⁴ Ibid.

¹⁵⁵ Zdeb, "Facing Institutional Change in Mostar," 6.

¹⁵⁶ Florian Bieber, "Local Institutional Engineering: A Tale of Two Cities, Mostar and Brčko," *International Journal of Phytoremediation* 12, no. 3 (2005): 422, <https://doi.org/10.1080/13533310500074523>.

Interim Statute started.¹⁵⁷ Bieber notes that the HDZ resisted power-sharing mechanisms fearing that they would challenge the absolute Croat dominance by the SDA, or tried to capture the seats reserved for ‘Others’ by placing Serb candidates on their electoral lists.¹⁵⁸ Since 2003, several drafting commissions were established to come up with a solution for a unified city administration, but it was not until Ashdown imposed the recommendation in early 2004 that the formal ethnic division of the city was ended.¹⁵⁹ The new statute abolished the six municipalities leaving only one, and provided each of the constituent people with a minimum of four places and a maximum of fifteen out of the 35 council members, with one reserved for ‘Others in the city council.’¹⁶⁰ Despite the formally equal status of Serbs, Croats and Bosniaks, in later years the statute came to be considered as illegitimate.

In 2008, after a yearlong elections deadlock, the HR had to step in and change the provision of the statute to allow the mayor’s election by a simple majority in the third round, which allowed the HDZ’s candidate to be re-elected.¹⁶¹ The second deadlock came when the HR’s involvement was on a steady decline. In a case brought by the Croat Caucus in the BiH House of Peoples, the Constitutional Court ruled that the election of three delegates from each of the six city areas was unconstitutional, since an area with 30,000 citizens was electing the same number of delegates to the council as an area of 8,000.¹⁶² The Court also found the treatment of voters in Mostar’s central zone discriminatory since they could vote only for councilors from a citywide list but not from a geographical voting district.¹⁶³ The Constitutional Court repealed the provisions of the Election Law related to the electoral system for the City Council and

¹⁵⁷ Zdeb, “Facing Institutional Change in Mostar,” 7.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid., 8.

¹⁶⁰ Bieber, “Local Institutional Engineering,” 425.

¹⁶¹ Zdeb, “Facing Institutional Change in Mostar,” 11.

¹⁶² Kesić Obrad, Vlastelić-Rajić Drina, and Steven Meyer, “The Battle for Mostar,” *Trans Conflict*, 2012.

¹⁶³ Ibid.

ordered the BiH Parliamentary Assembly to provide a response. Considering that such an election system was a result of Ashdown's actions, Obrad Kesić, Steven Meyer and Drina Vlastelić-Rajić argue that it was a logical consequence of the fact that the imposed statute was an example of the irresponsibility of the international community.¹⁶⁴ The city councilors failed to agree on changes to the electoral system as required by the two rulings and instead extended its members' terms until "new council members and a new mayor were elected "or unless a higher competent authority establishes a different situation and position of local authorities in the City of Mostar."¹⁶⁵

To deal with the situation, the City Council established the Expert Group, which after the failed initial attempt had to be managed by the HR through a multiparty facilitation process. A 'one man, one vote' type of solution was strongly opposed by Bosniaks who had 12,000 voters less than Croats in the city and who feared they would be 'dominated,' while Croat parties believed that Mostar is the last line of defense for Croat rights and losing Mostar would make life 'untenable for Croats in Bosnia.'¹⁶⁶ Moreover, it can be noted that the Croat concerns align with their dissatisfaction about the Croat member of the Presidency being elected by mostly Bosniak voters. The OHR prepared a draft of reform that proposed the division of the city into three electoral districts that would cross the river, but the SDA and the HDZ rejected it after more than 100 separate meetings and two plenary sessions with the parties.¹⁶⁷ The Mayor, in an acting capacity, continued to oversee the day-to-day functioning of Mostar for the next 8 years.

¹⁶⁴ Ibid.

¹⁶⁵ Zdeb, "Facing institutional change in Mostar," 11.

¹⁶⁶ Obrad, Drina, Meyer.

¹⁶⁷ Zdeb, "Facing institutional change in Mostar," 11.

Two important cases marked the second half of the previous decade. First, on December 1, 2016, in the case initiated by Božo Ljubić, the Chairman of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina at the time of submission of the request, the BiH Constitutional Court ruled that the FBiH Constitutional provision that obliges the 10 cantons to put at least one delegate from each of the three constituent peoples to the House of Peoples of the FBiH is inconsistent with the principle of quality from the DPA.¹⁶⁸ Namely, the Constitution obliged cantons to put at least one delegate to the House of Peoples even if the group living in the canton was almost non-existent. Ljubić argued that this undermined Croat influence as “it effectively allowed one of BiH’s three communities—Bosniaks—to elect the representatives of another group, in this case, Croats.”¹⁶⁹ Second, on October 29, 2019, the ECtHR announced its judgement in the case *Irma Baralija v. Bosnia and Herzegovina*, ruling that BiH has to amend its Election Law and allow the applicant to stand in local elections.¹⁷⁰

Finally, on June 17, 2020, the leaders of the SDA and the HDZ reached an agreement to enable elections in Mostar, but also to amend the city statute and the Election Law of BiH.¹⁷¹ Nonetheless, this agreement has been described as a ‘plan from hell,’ providing no substantial change in terms of uniting the city and cutting across ethno-national boundaries.¹⁷² While the process of reform is addressed in the following section, it should be mentioned that the

¹⁶⁸ Balkan Insight, “Bosnian Court Ruling Lends Weight to Croat Agitation,” December 15, 2016, <https://balkaninsight.com/2016/12/15/bosnian-court-ruling-spells-constitutional-trouble-say-experts-12-14-2016/>.

¹⁶⁹ Ibid.

¹⁷⁰ European Court of Human Rights, “Baralija v. Bosnia and Herzegovina, Application No. 30100/18,” 2019.

¹⁷¹ The Office of the High Representative, 58th Report.

¹⁷² Adin Šabić, “Irma Baralija: The HDZ-SDA Agreement on the Mostar Election Is a Two-Stage ‘Plan from Hell,’” *Heinrich-Böll-Stiftung*, August 6, 2020, <https://ba.boell.org/en/2020/08/06/irma-baralija-hdz-sda-agreement-mostar-election-two-staged-plan-hell>.

agreement was problematic from the beginning due to the two parties' competing visions of BiH and 'legitimate representation.'

■ Analysis of the Patterns of Domestic Elite's Interactions

For the purpose of this research, the behavior and attitudes of domestic elites towards external demands for reforms can be classified in two categories, reform-supportive and reform-critical. In practice, however, there is often no clear distinction between the two. Grimm states that even when the behavior is considered critical the domestic political elites do not necessarily oppose the fundamental ideas behind the reforms.¹⁷³ What domestic elites might disagree upon is the scope of the reforms, the degree of external-actors participation in policy making, or the process of implementation.¹⁷⁴ Yet, this is not to say that complete rejection of reform initiatives cannot occur if the content of the reforms is seen as inconsistent, coercive, or threatening to one of the groups. Many elements of the two reforms here faced strong resistance because they are perceived to amend or remove protections ensured to one of the parties by the DPA.

The three models of behavior used as the analytic framework are derived from the broad literature on democratization (see Figure 2). In line with the theory, *slowdown* is defined as a practice of deceleration of initiated reforms such as withdrawal of resources from the policy, lack of a quorum, and postponing the decision-making in parliament. *Modification* refers to actions of domestic actors that result in selectively changing external proposals in a way that is considered more beneficial to the given group. Important to note is that, while *modification* is an integral part of political decision-making processes and finding consensus, in this context it is used in a more specific context – a modification of the proposal aiming to avoid addressing the substantial part of the proposed reforms or resorting to a hard-liner's stance – inflexible and

¹⁷³ Groß and Grimm, 920.

¹⁷⁴ Ibid.

not subject to compromise. In other words, proposing non-accommodating amendments or changes. Lastly, *resistance* is rejection of external and/or internal proposals and demands.¹⁷⁵ It includes withdrawing from negotiations or refusing to negotiate. The following chapters are structured chronologically

Pattern of Behavior	Means	Description
Slowdown	Finding no agreement	Finding no agreement between political elites in drafting the reform
	Delaying adoption /implementation	Delaying necessary steps to adopt and implement the reforms
	Re-organizing working groups	Reorganizing task groups tasked with formulating and evaluating reforms
Modification	Changing drafts	Changing parts of proposed reforms without substantially changing the content
	Re-writing drafts	Substantially changing the content of the proposed reform
Resistance	Resisting external demands	Resisting particular external actor's demands with regard to reform
	Rejecting assistance	Attempting to exclude external actors
	Rejecting proposed legislation	Decision-makers rejecting drafts of the suggested reforms

Figure 2. Patterns of domestic change-critical behavior¹⁷⁶

Slowdown

In both cases *slowdown* was the dominant pattern of elite behavior. In *Sejdic-Finci*, the first working group established in March 2010, by the Council of Ministers and the BiH Parliamentary Assembly and tasked with proposing solutions to implement the *Sejdić-Finci*

¹⁷⁵ Ibid.

¹⁷⁶ Groß and Grimm.

ruling failed to provide any results due to short deadlines and lack of a quorum. The working group was formed on March 9, 2010, and was given until March 29, 2010 to draft the constitutional amendments and until April 15, 2010 to come up with a draft for legislative amendments.¹⁷⁷ The Council of Ministers was then supposed to discuss the proposed amendments and submit them for parliamentary procedure.¹⁷⁸ On March 29, 2010 it was concluded that the deadlines cannot be met and that a new body needs to be formed, but the working group could not reach a consensus on the form of its mandate.¹⁷⁹ On May 16, 2010, the Committee of Ministers of the Council of Europe adopted a declaration on BiH (Resolution 1725), that enlisted five expectations of Bosnia and Herzegovina, and announced that it offers international assistance in order to guarantee “a coherent and effective common international approach to the constitutional reform in Bosnia and Herzegovina as required by the judgment of the European Court of Human Rights.”¹⁸⁰ Nonetheless, the sixth meeting that was supposed to be held on May 19 was cancelled because a quorum had not been reached.¹⁸¹ Also, three working group sessions, (July 12, 19, and 21, 2010) were cancelled because the SNSD and SDS members did not show up, while the working group session scheduled by the Ministry of Justice for October 14, 2010, failed due to a general lack of quorum.¹⁸²

¹⁷⁷ Išerić, 18.

¹⁷⁸ See “Provođenje presude u ‘slučaju Sejdić i Finci’ do oktobra [Implementation of *Sejdić-Finci* by October],” available at: <https://www.klix.ba/vijesti/bih/provodjenje-presude-u-slucaju-sejdic-i-finci-do-oktobra/100304083>

¹⁷⁹ The Office of the High Representative, “37th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations.”

¹⁸⁰ Parliamentary Assembly of the Council of Europe, “Urgent Need for Constitutional Reform in Bosnia and Herzegovina,” 2010, [https://pace.coe.int/pdf/4ef681cfd154d1f53fede9c4fd9896668466d98dee67d5ade4e278e5903e45fb/resolution 1725.pdf](https://pace.coe.int/pdf/4ef681cfd154d1f53fede9c4fd9896668466d98dee67d5ade4e278e5903e45fb/resolution%201725.pdf).

¹⁸¹ Ibid.

¹⁸² Ibid.

Reorganizing work-groups turned out to be not only time-consuming but also inefficient. On October 10, 2011, a BiH Parliamentary Assembly established a Joint Committee for Implementation of the Judgement in the Case of *Sejdić and Finci v. BiH*, that consisted of eleven members of the House of Representatives and two members of the House of Peoples.¹⁸³ The Joint Committee was tasked with drafting constitutional amendments by November 30, 2011, and the BiH Election Law amendments by December 31, 2011, but even by August 31, 2012, no consensus was reached.¹⁸⁴ Instead, the HDZ BiH/HDZ 1990, SNSD/SDS and SDA formally submitted separate proposals to the BiH Parliamentary Assembly, which differed over the method of selecting the BiH Presidency members and the composition of the House of Peoples.¹⁸⁵ The Committee continued operating until 2014, but due to *slowdown* by domestic actors – frequent absence of the members and lack of cooperation – no consensus on the constitutional or the Election Law amendments was reached.

Beside lack of a quorum, another form of *slowdown* was failing to form the work-groups in the first place. On September 9, 2015, the Council of Ministers adopted the Action Plan for Implementation of the Judgement in the Cases of *Sejdić-Finci* and *Zornić*, which tasked the Ministry of Justice with establishing a working group that would come up with the constitutional and the BiH Election Law amendments.¹⁸⁶ Two caucuses from the House of Peoples refused to nominate their members and a working group was never formed.¹⁸⁷ The

¹⁸³ Parliamentary Assembly of BiH, “Okončana Sjednica Predstavničkog Doma [The Parliamentary Session Ended],” October 10, 2011, <https://www.parlament.ba/Publication/Read/3194?title=okoncana-sjednica-predstavnickog-doma-&pageId=0>.

¹⁸⁴ The Office of the High Representative, “42nd Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations” (Sarajevo, 2012).

¹⁸⁵ Ibid.

¹⁸⁶ Ministry of Justice of BiH, “Usvojen Akcioni Plan Za Izvršenje Presuda Evropskog Suda [Action Plan for the Implementation of the ECtHR Judgement Adopted],” September 9, 2015, <http://www.mpr.gov.ba/aktuelnosti/vijesti/default.aspx?id=4674&langTag=bs-BA>.

¹⁸⁷ Išerić, 21.

parallel negotiations within the High-Level Dialogue facilitated by the EU were characterized by the lack of political will and agreement among the domestic political elites. As previously stated, no significant attempts by the external actors to implement the *Sejdić-Finci* ruling were undertaken in the recent years.

The Mostar case was characterized by *slowdown* from the very beginning. However, it is important to highlight that much of HDZ-SDA discussions went on behind closed doors, thus more details on the process and content of the talks is unavailable. Nonetheless, failure to reach agreement was the most common incidence and eventually led to *modification* or resistance. The active facilitation of the negotiations by the OHR in 2012 failed due to the “the lack of serious engagement by HDZ and SDA to find a solution in line with the Court’s ruling,” as the HR Valentin Inzko put it.¹⁸⁸ In 2014, in order to push the process further, the OHR drafted a proposal that would have provided a basis for one-time local elections in Mostar, but the proposal was never considered by the BiH Parliamentary Assembly.¹⁸⁹ In 2016, the BiH Parliamentary Assembly adopted amendments to the BiH Election Law and the BiH Central Election Commission was able to apply adopted changes for the elections for October 2, but SDA President Izetbegovic and HDZ President Čović failed to reach an agreement for a joint proposal for Mostar, so the Central Election Commission announced local elections without the City of Mostar.¹⁹⁰ General disagreement remained throughout informal talks in 2017 and 2018. The OHR reported that “although the Mostar City board of nine parliamentarians met

¹⁸⁸ The Office of the High Representative, “45th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations” (Sarajevo, 2014).

¹⁸⁹ The Office of the High Representative, “46th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations” (Sarajevo, 2014).

¹⁹⁰ The Office of the High Representative, “50th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations” (Sarajevo, 2016).

nine times from February to June on this issue and found agreement on some areas, they failed to reach a final agreement and held no further talks.”¹⁹¹ For almost a decade no agreement related to the Election Law was reached and the period was marked by overall lack of compromise. This changed in 2019 with the ECtHR delivering a judgment in the case *Irma Baralija v. BiH* that gave BiH six months of the judgement date to amend the Election Law.

■ Modification

While the first years after the *Sejdić-Finci* had been marked by a lack of political will and general *slowdown*, the end of 2012 saw the first divergence of political parties. After failing to create a harmonized single proposal implementing the ruling in the *Sejdić-Finci*, five major parties submitted three separate proposals to the BiH Parliamentary Assembly in August 2012.¹⁹² More specifically, on August 29, 2012, four representatives at the House of Representatives, members of the HDZ and HDZ 1990, submitted constitutional amendments into the regular parliamentary procedure, followed by three delegates at the House of Peoples from the same parties submitting identical amendments. The next day, a representative of the SNSD at the House of Representatives and a delegate of SDS at the House of Peoples submitted identical constitutional amendments. Finally, on August 31, an SDA representative at the House of Representatives submitted constitutional amendments into the regular parliamentary procedure with the aim of implementing the judgement.¹⁹³ However, the House of Representatives Constitutional Commission rejected the constitutional amendments proposed

¹⁹¹ The Office of the High Representative, “54th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations” (Sarajevo, 2018).

¹⁹² The Office of the High Representative, “42nd Report.”

¹⁹³ Ibid.

by the HDZ and the HDZ1990, while other proposals failed to ensure sufficient support.¹⁹⁴ By 2017, the HDZ proposed a new Election Law that was not only criticized by the Bosniak parties, but by Croat parties as well, arguing that it is contrary to *Sejdić-Finci*, *Pilav*, or *Zornić* rulings. Namely, the proposed Election Law would have further entrenched divisions by providing that, for instance, Bosniaks from predominantly Croat cantons and Bosnian Croats from predominantly Bosniak cantons cannot be elected to the House of Peoples. As a response, the Bosniak Caucus evoked the protection of the vital national interest, which will be addressed in more detail in the next section.

In the second case, in 2012 the Mostar City Council adopted a decision to extend councilors' mandates "until such time as new councilors of the City Council and the Mayor of the City of Mostar are elected or unless a higher competent authority establishes a different situation and position of local authorities in the city."¹⁹⁵ This can be seen as *modifying* behavior that addresses the issue only superficially without offering any substantive proposition. Another example of *modifying* behavior occurred on December 16, 2013 when the HDZ proposed amendments to the BiH Election Law that reflected their proposed solution which had already been rejected by other parties.¹⁹⁶ In 2015 and 2016 the SDA and the HDZ were had several discussions behind closed doors, but while the public expected a consensus to be reached, the SDA's proposal leaked and was perceived as a model for ethnic partition of Mostar, resulting in strong backlash and the HDZ submitting its own proposal into BiH parliamentary procedure.¹⁹⁷ In 2020, when the agreement was almost reached, both Izetbegović and Čović introduced new 'ultimatums' – Izetbegović stated that there will be no changes to the Election

¹⁹⁴ BN, "Pandurević: Odbačeni Amandmani Dva HDZ-a [Pandurević: The Two HDZ's Amendment Proposals Rejected]," November 29, 2012, <https://www.rtvbn.com/3830/pandurevic-odbaceni-amandmani-dva-hdz-a>.

¹⁹⁵ The Office of the High Representative, "43rd Report."

¹⁹⁶ The Office of the High Representative, "45th Report."

¹⁹⁷ The Office of the High Representative, "49th Report."

Law if judges are not appointed in the Federation Constitutional Court and a new Federation Government is appointed, whereas Čović countered that a new Federation Government will be appointed only after the Election Law has been changed.¹⁹⁸ Although a sort of agreement was eventually reached, the practice of deliberation or *modification* can be seen as an instrument of coercion rather than a genuine democratic practice.

■ Resistance

In the *Sejdić-Finci* the open resistance is evident in the more recent periods, while in the Mostar case it follows the oscillating dynamics of the negotiations between the SDA and the HDZ. In *Sejdić-Finci*, the foremost resistance came only recently by the leader of the SNSD who openly repeated that the Sejdić-Finci ruling should not be carried out and that he no longer supports the reforms (see Table 2).¹⁹⁹ It was first mentioned during Dodik's inaugural speech on November 20, 2018 and repeated before the NSRS on February 28, 2020, when Dodik concluded with: "let this European Court resolve the Sejdić-Finci case."²⁰⁰ This comes as a part of continuing rhetoric against the International Community and the OHR. Less than half a year after, Dodik stated that all changes are to be made exclusively within BiH and without interference of the International Community: "Do not change it [the Constitution] by the decisions of the High Representative and the decisions of the Constitutional Court of BiH,

¹⁹⁸ N1 BiH, "Izetbegović: Linija Ispod Koje SDA Neće Ići u Izmjenama Izbornog Zakona [Izetbegović: Bottom Line For the SDA In The Election Law Amendments]," October 28, 2019, <https://ba.n1info.com/vijesti/a387127-izetbegovic-linija-ispod-koje-sda-nece-ici-u-izmjenama-izbornog-zakona/>; The Office of the High Representative, "58th Report."

¹⁹⁹ Human Rights Watch, "Bosnia and Herzegovina: Ethnic Discrimination a Key Barrier."

²⁰⁰ The Office of the High Representative, "57th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations" (Sarajevo, 2020).

which created a new completely illegitimate constitutional practice. The High Representative had no right to do so. It is an international manipulation regarding the Bonn powers.”²⁰¹

Unlike *Sejdić-Finci*, the case of Mostar faced resistance from the early stages (See Table 3). As previously noted, on October 16, 2012, the OHR launched a multi-party facilitation process that included more than 100 meetings with all the parties represented in the BiH Parliamentary Assembly, and while most of the parties demonstrated the desire to compromise, the HDZ and the SDA refused to retreat from their mutually exclusive positions.²⁰² The draft of reform prepared by the OHR proposed establishing three cross-ethnic electoral districts in Mostar, but the SDA demanded a higher number of electoral districts to protect Bosniaks from the Croat majority, while the Croat parties demanded Mostar to be one electoral district.²⁰³ While the refusal to retreat from their irreconcilable positions in negotiations can be interpreted both as slowdown and modification, neither the HDZ nor SDA had shown any desire to compromise at this stage.

Despite the lack of support for a solution, on December 16, 2013, the HDZ put forward amendments to the Election law. The Bosniak caucus of the BiH House of Peoples tried to veto the amendments on vital national interest grounds but the Constitutional Court ruled against

²⁰¹ SRNA, “Dodik: Ustavne Promjene Prihvatljive Bez Uplitanja Stranaca [Dodik: Constitutional Reforms Acceptable Without External Actors],” August 20, 2020, <http://www.srna.rs/novosti/818320/ustavne-promjene-prihvatljive-bez-uplitanja-stranaca.htm>.

²⁰² The Office of the High Representative, “43rd Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations” (Sarajevo, 2013).

²⁰³ Zdeb, “Facing Institutional Change in Mostar: A Litmus Test for Bosnia and Herzegovina,” 12.

it.²⁰⁴ Nonetheless, despite the Constitutional Court rejecting the national vital national interest mechanism, the amendments failed to gain enough support for adoption.

In April 2016, three coalitions of parties proposed amendments to the BiH election law to enable elections in Mostar, but all three failed as coalitions voted against each other. On May 4, 2016, the CEC announced local elections in BiH for October 2 without the City of Mostar, leaving residents of Mostar for the second time without the right to vote.²⁰⁵

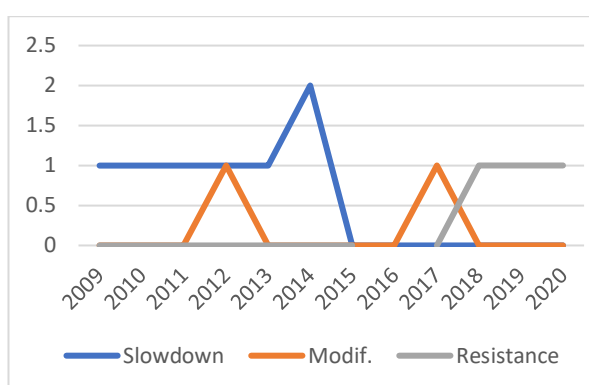


Figure 3. The patterns of elites' behavior in the Sejdić-Finci

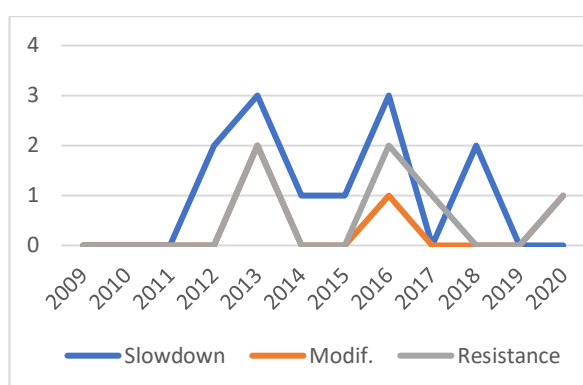


Figure 4. Elites' behavior in the case of Mostar elections

The power of veto as one of the major features of consociation arrangement turned out to be the main instrument of open *resistance*. The Bosniak caucus tried to veto the amendments proposed by the HDZ once more in May 2017, triggering the constitutional protection of the vital national interest but the Constitutional Court found no threat to the Bosniak national interest.²⁰⁶ This form of veto, what Bieber calls an ‘ethnic veto’ is not absolute as the final

²⁰⁴ The Constitutional Court of Bosnia and Herzegovina, Decision U-32/13, Official Gazette of Bosnia and Herzegovina (2013).

²⁰⁵ N1 BiH, “Lokalni Izbori u BiH Će Biti Raspisani Bez Mostara [Local Elections in BiH Will Take Place Without Mostar],” April 29, 2016, <https://ba.n1info.com/vijesti/a93336-lokalni-izbori-u-bih-ce-biti-raspisani-bez-mostara/>.

²⁰⁶ The Constitutional Court of Bosnia and Herzegovina, Decision U 3/17, Official Gazette of Bosnia and Herzegovina (2017).

decision rests with the Constitutional Court, but in the context of this research represents a pattern of resisting behavior of the elites.²⁰⁷

Despite being faced with growing pressure from the US and EU after the ECtHR ruling in *Baraliija v. Bosnia and Herzegovina*, and possible loss of control over the process, Izetbegović and Čović still continued introducing new ultimatums – Izetbegović threatened that if there was no appointment of a new Federation Government and the appointment of the Federation Constitutional Court judges, there will be no changes to the Election Law, whereas Čović demanded changes to the Election Law as a condition for the elections in Mostar to happen.²⁰⁸ Although the agreement was ultimately reached, the subsequent elections revealed deep cleavages and lack of mutual trust between the parties.

■ Understanding Resistance

In *Sejdić-Finci*, the presented chronology can be interpreted as the absence of political will among the key parties to address the issue. Not only does it depict the ‘procedural labyrinth’ in which most of the opportunities to execute the judgement got lost, but it also shows that the execution of the judgement has not been a top priority for political actors in BiH.²⁰⁹ The *slowdown* behavior, such as the cancellation of meetings and sessions due to lack of quorum contributed to the failure to meet the deadlines, which resulted in the restructuring of working groups and postponing any relevant decisions. Also, the political parties were too often unable to agree on the procedural matters, such as the form of working groups.

²⁰⁷ Bieber and Keil, “Power-Sharing Revisited: Lessons Learned in the Balkans?,” 352.

²⁰⁸ The Office of the High Representative, “58th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations.”

²⁰⁹ Hodžić and Stojanović, 33.

Modification was identified in the case when, instead of coming up with a single proposal, several parties modified the proposals according to their own visions and formally submitted separate proposals to the BiH Parliamentary Assembly. While the parties were aware that none of the separate proposals had a chance of adoption, and some proposals were criticized by the other parties from the same ethnic group, it is clear that the political elites were putting party interests before those of the country and its citizens.

When it comes to *resistance*, after almost a decade of failed talks, the SNSD decided to strengthen its rhetoric against the reforms, implying that the external actors should resolve the *Sejdić-Finci* issue, since they created it in the first place. While Dodik's rhetoric does not always contradict his course of action, the recent statements illustrate that the populist claims aimed at his own electorate are still functioning and often condition external actors to respond.

In the case of Mostar, the talks were less institutionalized and occurred predominantly between the HDZ and SDA. Due to many talks taking place behind closed doors, the process of the negotiations remains less known, but the overall efforts were marked by a lack of consensus. Instead of addressing the substantive issue, the Mostar City Council made several legally challenged *modifications* to keep the city running. In addition, the lack of serious engagement by the HDZ and the SDA was also illustrated in December 2013 when HDZ submitted amendments to the BiH Election Law that were already rejected by other parties prior. Also, the SDA attempted to come up with a modified proposal that would further partition the city along ethnic lines to allow them to maintain as much control over the city as possible. This once again illustrates that the negotiations were revolving around control over Mostar rather than reaching a compromise that would enable the citizens to enjoy their democratic right to elect their local leaders and be elected.

Finally, *resistance* came twice in a form of vital national interest mechanism –one of the main consociational features in BiH. Despite the fact that the BiH Constitutional Court both time rejected the claim for protection of vital national interest, it is safe to assume that the party that initiated the mechanism will be less likely to support the proposal it deems harmful and would resort to other means of resisting reforms. While this section summarized the behavior of political elites in the two cases in the previous decade, the next section will address the reasons for such behavior and incentives followed by each of the political elites.

■ The Roots of Disagreement

After several failed attempts of constitutional change in BiH in the 2000s, the *Sejdić-Finci* ruling should be observed as another external driver for substantive constitutional reform. However, although the ruling initially addressed the rights of the ‘Others’ in BiH, the whole process was focused on changes that would promote each of the parties’ interests. Bosnian Croats consistently advocated for a mechanism that would ensure ‘legitimate’ representation of Croats. Bosnian Serbs supported the Bosnian Croats’ efforts under the condition the RS is not affected in any way, and in general resisted any change that would strengthen the central state. The Bosniak parties relied on the external support, but as the analysis illustrates, the domestic political elites were far from unified and pushed for the party interests rather than for the overreaching reforms. Moreover, it is important to highlight that there was never a fully cohesive group structure present in BiH and the process should not be observed as negotiations between the three constituent peoples, but between the political party leaders. The following section discusses the potential rationales behind the political elite’s behavior.

5.1.1. The Croat Elites

Croats are included in all power-sharing mechanisms on equal terms as Bosniaks and Serbs – one member of presidency, a minority veto in the Presidency and House of Peoples, and proportional and equal representation.²¹⁰ However, as it was previously stated, Bosnian Croats are the smallest constituent peoples without an encompassing, contiguous area in BiH. Instead, there are some regions with strong Bosnian Croat presence, such as western Herzegovina, Posavina (northeast of BiH), and central Bosnia, out of which western Herzegovina tends to be most inclined to solutions such as a third entity or even as radical as incorporation into their kin state, Croatia.²¹¹ Unlike Bosnian Serbs who enjoy territorial autonomy in the RS, for Croats territorial autonomy is relatively ensured only in three beforementioned regions. As Aleksandra Zdeb notes, the HDZ believes that Croats are “victims of peace” and that they had signed the Washington Agreement because it included a clause forecasting a confederation of BiH with Croatia and a Federation BiH with the RS inside it, as Serbs were supposed to join the entity so that a Federal Republic would have been created – something that has never happened.”²¹²

Accordingly, the widespread belief among Bosnian Croats is that they have been deprived of their own entity and subjected to outvoting. Thus, one of the prevailing goals of the HDZ in both analyzed cases was to ensure increased autonomy and strengthen the constitutional and legal position of Croats.²¹³ This included their ‘own’ representation in the Presidency, referring to the situation of 2006, 2010, and 2018 when the SDP Croat candidate Željko Komšić won the presidency with a significant amount of non-Croat votes.²¹⁴ Željko Komšić, traditionally

²¹⁰ Zdeb, “The Need to Have Something ‘Of Their Own,’” 552.

²¹¹ Ibid.

²¹² Ibid., 553.

²¹³ In 2007, the HDZ tried to re-establish the wartime Croat political community of Herzeg Bosna, but it was disbanded by international actors after being declared unconstitutional.

²¹⁴ Zdeb, “The Need to Have Something ‘Of Their Own,’” 552.

deemed as a Bosnian politician with little understanding for Croat matters, had often been declared by the HDZ as an illegitimate representative in the Presidency.²¹⁵ Consequently, in 2016, the ruling in the Ljubić case was seen as a push for a solution to the ‘Croat question’ that would ensure greater Croat representation. In other words, the HDZ’s primary goal through both cases was to establish a Croat electoral unit in order to protect Croats from ‘overvoting.’ In sum, considering that the Croat self-government has been a topic of discussion since the beginning of the state building process in BiH,²¹⁶ it comes as no surprise that in times of weakened international pressure, the HDZ had seized the opportunity to strengthen the ‘third entity’ rhetoric, according to which the further federalization of BiH is the only way to ensure equal rights for Croats.²¹⁷ Accordingly, the obstructive behavior of the Bosnian Croat political elites in the process of implementing *Sejdic-Finci* had been directed at the establishment of a form of Croat self-government, while the Mostar talks were aimed at establishing dominance by weakening power-sharing arrangements.

5.1.2. The Serbian Elites

The Republic of Srpska is a result of strong territorial segregation along ethnic lines during the Bosnian War and, unlike FBiH, is characterized by a high level of centralization. Nonetheless, Serbs and Croats generally agree that BiH is too centralized and more responsibilities of the central state should be transferred to entities. Since the opposite scenario already occurred and some of the entity responsibilities have been transferred to the central state, one of the main

²¹⁵ For an in-depth discussion, see: Kasapović, “Lijphart and Horowitz in Bosnia and Herzegovina.”

²¹⁶ Florian Bieber, “Croat Self-Government in Bosnia - A Challenge for Dayton,” *European Centre for Minority Issues*, 2001.

²¹⁷ Nezavisne Novine, “Čović: Treći Entitet će Činiti Hercegovina, Posavina, Srednja Bosna i Žepče [Čović: Third entity will comprise Herzegovina, Posavina, Central Bosnia and Žepče],” January 7, 2017, <https://www.nezavisne.com/novosti/bih/Covic-Treci-entitet-ce-ciniti-Hercegovina-Posavina-srednja-Bosna-i-Zepce/406779>.

lines of argument by the Serbian elites was that BiH should return to the ‘original Dayton.’ In other words, BiH without far-reaching powers of the OHR and before reforms of the early 2000s. It follows that the Serb position could be understood as ‘anti-centralism,’ or transfer of the state competences to the entities.

During the reform process, Serbs in principle supported further federalization of BiH in the form of a third entity, but not if the entity would include the RS territory. A former president of the RS, Dragan Čavić stated on one occasion that “the RS is a result of a four-year fight of the Serb people and not a gift of the international community.”²¹⁸ This adds to the argument that any attempt to strengthen the central state by reducing competences of the entities was strongly resisted. However, it should be noted that besides the central state, Serb’s *resistance* was directed against external actors. One of the cornerstones of the Serb’s politics was based on the active *resistance* to external presence and demands that were presented as patriotism and protecting the nation from external interference.

5.1.3. The Bosniak Elites

It is generally believed that the Bosniak side endorses ‘centralism’ in BiH. However, it should not be confused with the traditional division of state structures of ‘federalism’ and ‘centralism.’ A centralist arrangement, such as France, is even theoretically impossible in BiH; instead, the debate is about the degree of federalism.²¹⁹ Therefore, rather than centralism, the Bosniak elites aim to prevent further federalization of the state. In this context, it can be achieved by non-territorial means, such as the liberal principle ‘one person, one vote’ from which Bosniaks would benefit most since they are the largest constituent peoples in BiH. During the talks,

²¹⁸ Joanne McEvoy, “The Role of External Actors in Incentivizing Post-Conflict Power-Sharing,” *Government and Opposition* 49, no. 1 (2014): 47–69, <https://doi.org/10.1017/gov.2013.19>.

²¹⁹ Merdžanović, *Democracy by Decree*, 207.

Croats and Serbs had opposed any such attempts fearing that Bosniaks would constitute an overall majority in BiH. Not only there is no clear evidence that it would be the case, but it is problematic to assume that all Bosniaks would act as a homogenous and unified electoral body. On the other hand, the same principle was resisted by Bosnian elites in the Mostar case where Bosnians were in minority compared to Croats. There is little novelty in an argument that the obstruction of the reforms in the case of Mostar and implementation of *Sejdić-Finci* judgement clearly followed the ethnic groups' agenda. The two cases are different in that the Mostar case in its essence revolves about power struggle for the number of the seats and the Mayor office, while *Sejdić-Finci* reflects a much more complex question of the nature of political structure in BiH. While the Bosniak parties do see external actors as beneficial to their interests of preserving a strong central state, there was very little cooperation observed in the two cases. Yet, rather than the prospects of these reforms, this research focused on the setting in which the state-building was taking place, i.e. imposed consociationalism. This said, the next section will conclude the discussion on the behavior of domestic political elites in the imposed consociationalism in BiH.

Conclusions

More than 20 years after the Dayton Peace Agreement, there is an ever growing body of evidence suggesting that state-building in Bosnia was far from successful. Despite a wide range of both coercive and enticing tools at their disposal, international actors not only failed to establish strong democratic rule in BiH but allowed domestic political elites to avoid reaching compromise without risking their voting body. This research aimed to explore how domestic elites respond and resist processes of democratic transition initiated from the 'outside.' To do so, this research introduced the analytical framework of 'change-resistive behavior' which helped outline the patterns of behavior occurring among domestic elites. Moreover, the study

aimed to investigate the behavior of domestic political elites between themselves, and domestic elites with external actors. It therefore considered domestic resistance from the local and international perspective.

Two particular aspects of the research deserve consideration – first, the type of power-sharing arrangement in BiH, and second, the phase of peacebuilding. Unlike some consociational arrangements that are a result of the genuine political will of the domestic actors, or a preferred way of governing moderately divided societies, the consociationalism in BiH is a result of strong international involvement. The so-called ‘imposed consociationalism,’ used to regulate deeply divided societies such as BiH, was expected to foster cooperation among ethnic groups with the assistance of external actors with far-reaching powers. However, as was demonstrated, the involvement of external actors led domestic elites to portray the necessary reforms as ‘externally initiated’ and transfer the blame for their failure onto external actors. This leads to the second aspect of the research – the phase of peacebuilding – which refers to the different stages of post-war democratization. The timeframe of the research coincides with the latest or the third stage of peacebuilding in BiH, characterized by a shift from coercion to incentivization by the external actors. In other words, instead of having reforms imposed upon them, the domestic elites are provided with incentives to push forward the required reforms ‘on their own.’ This came as a part of broader discussion on whether consociationalism itself is enough to foster compromise once external coercion has stopped. In both analyzed cases, the cost of adoption remained higher than the cost of maintaining the status quo.

Considering that the two cases analyzed in this research carry a high degree of local ownership by political elites, this research utilized an elite-based approach. The empirical focus on the cases of the Mostar elections and the implementation of the *Sejdic-Finci* judgement provided an opportunity to trace both formal decision making processes, such as working groups and

parliamentary commissions, and informal processes, such as party leadership talks behind closed doors. While the Mostar case illustrates the deep lack of trust between the SDA and the HDZ and the ensuing struggle for control of the city, *Sejdic-Finci* reflects a much more substantial issue. What at the first glance looks like an issue of the minority rights in BiH, it essentially points to the issue of political representation of the three constituent peoples – Bosniaks, Serbs and Croats – at the state level. As was demonstrated, the reforms proved particularly challenging because they entailed the removal of one or more protection mechanisms granted to the parties by the Dayton Peace Agreements. Additionally, it was demonstrated that the patterns of political behavior can be reproduced at the state and the sub-state level – in other words, where the elites believe that democratic reforms endanger some of their substantial interests and threaten their political power.

As outlined, the political elites resisted any proposals that would threaten their position within the power-sharing arrangement. Three categories of behavior were identified: *slowdown*, *modification*, and *resistance*. *Slowdown* included the lack of a quorum, failing to form a working group, and failing to vote, which resulted in failing to meet deadlines and eventually abandoning negotiations. Unsurprisingly, *slowdown* was used more often by the parties that benefited from the *status quo* regarding a specific reform. *Modification* occurred on several occasions in both cases when the political parties sent modified versions of amendments to parliamentary procedure, despite the proposals already having been rejected by the other parties or having no reasonable chance of being adopted. Moreover, parties tended to propose amendments that were deemed unacceptable even by their own voting audience. In other words, instead of reaching a consensus through negotiations, *modification* reflected a radical reform agenda that could not be further from compromise. Finally, *resistance* most often came either in the form of a veto, or by completely withdrawing from the negotiations when the cost of adoption clearly outweighed the cost of non-compliance. Important to note is that these

patterns of behavior are possible due to the very nature of consociationalism and are, more often than not, inapplicable to majoritarian democracy.

These findings suggest that consociational devices, such as strong veto powers and ethnic quotas, not only entrench and institutionalize the divisions between ethnic groups but provide them with tools to resist democratization. As a result, instead of a stable liberal democracy, consociationalism tends to evolve into an ethnocracy, as is the case in BiH. In addition, if external actors are deemed an existential threat to some, but not all political elites, their presence will result in increased resistance against overall international interference and externally initiated reforms. In light of these challenges, this paper inevitably has theoretical and practical limitations. While it contributes to understanding the unintended effects of international involvement in post-conflict transition, there are other variables that could be included, such as the role of neighboring states and competing foreign actors, such as Russia or Turkey, in order to gain deeper insight into the elements that affect the domestic elite's behavior. Nonetheless, the present research demonstrated the analytical value of an elite-based approach to the study of democracy promotion and as such, presents a valuable contribution to the literature on international peacekeeping and the consolidation of democratic institutions.

Bibliography

- Andeweg, Rudy. "Consociationalism." In *International Encyclopedia of the Social and Behavioral Sciences*, edited by James Wright, 2nd ed., 692–94. Oxford: Elsevier Ltd, 2015.
- Balkan Insight. "Bosnian Court Ruling Lends Weight to Croat Agitation." December 15, 2016. <https://balkaninsight.com/2016/12/15/bosnian-court-ruling-spells-constitutional-trouble-say-experts-12-14-2016/>.
- Belloni, Roberto. "Peacebuilding and Consociational Electoral Engineering in Bosnia and Herzegovina." *International Peacekeeping* 11, no. 2 (2004): 334–53. <https://doi.org/10.1080/1353331042000237300>.
- . *The Rise and Fall of Peacebuilding in the Balkans. The Rise and Fall of Peacebuilding in the Balkans*, 2020. <https://doi.org/10.1007/978-3-030-14424-1>.
- Bieber, Florian. "Croat Self-Government i Bosnia - A Challenge for Dayton." *European Centre for Minority Issues*, 2001.
- . "Institutionalizing Ethnicity in Former Yugoslavia: Domestic vs. Internationally Driven Processes of Institutional (Re-)Design." *Global Review of Ethnopolitics* 2, no. 2 (2003): 3–16. <https://doi.org/10.1080/14718800308405130>.
- . "Local Institutional Engineering: A Tale of Two Cities, Mostar and Brčko." *International Journal of Phytoremediation* 12, no. 3 (2005): 420–33. <https://doi.org/10.1080/13533310500074523>.
- . "Power Sharing as Ethnic Representation in Postconflict Societies: The Cases of Bosnia, Macedonia, and Kosovo." In *Nationalism after Communism. Lessons Learned.*, edited by Alina Mungiu-Pippidi and Ivan Krastev, 229–46. Budapest: CEU Press, 2004.
- Bieber, Florian, and Sören Keil. "Power-Sharing Revisited: Lessons Learned in the Balkans?" *Review of Central and East European Law* 34, no. 4 (2009): 337–60. <https://doi.org/10.1163/092598809X12474728805778>.
- BiH, Ministry of Justice of. "Usvojen Akcioni Plan Za Izvršenje Presuda Evropskog Suda. [Action Plan for the Implementation of the ECtHR Judgement Adopted]" September 9, 2015. <http://www.mpr.gov.ba/aktuelnosti/vijesti/default.aspx?id=4674&langTag=bs-BA>.
- BN. "Pandurević: Odbačeni Amandmani Dva HDZ-A [Pandurević: The Two HDZ's Amendment Proposals Rejected]." November 29, 2012. <https://www.rtvbn.com/3830/pandurevic-odbaceni-amandmani-dva-hdz-a>.
- Bochsler, Daniel, Adis Merdžanović, and Davor Petrić. "Turning International Intervention into Domestic Cooperation in Post-War Societies." *International Peacekeeping* 27, no. 1 (2020): 124–51. <https://doi.org/10.1080/13533312.2019.1680291>.
- Bogaards, Matthijs. "The Favourable Factors for Consociational Democracy: A Review." *European Journal of Political Research* 33, no. 4 (1998): 475–96. <https://doi.org/10.1111/1475-6765.00392>.
- Bogaards, Matthijs, Ludger Helms, and Arend Lijphart. "The Importance of Consociationalism for Twenty-First Century Politics and Political Science." *Swiss Political Science Review* 25, no. 4 (2019): 341–56. <https://doi.org/10.1111/spsr.12384>.
- Brass, Paul. *Ethnic Conflict in Multiethnic Societies: The Consociational Solution and Its Critics*. New Delhi: Sage, 1991.
- Brubaker, Rogers. *Ethnicity Without Groups*. Cambridge: Harvard University Press, 2004.
- Burton, Michael G., and John Higley. "Elite Settlements." *American Sociological Review* 52, no. 3 (1987): 295–307. <https://doi.org/10.2307/2095351>.
- Caspersen, Nina. *Peace Agreements: Finding Solutions to Intra-State Conflicts*. Cambridge:

- Polity Press, 2017.
- Chandler, David. *International Statebuilding: The Rise of Post-Liberal Governance*. London: Routledge, 2010.
- . “State-Building in Bosnia: The Limits of ‘Informal Trusteeship.’” *International Journal of Peace Studies* 11, no. 1 (2006): 17–38.
- Džankić, Jelena, Sören Keil, and Marko Kmezić, eds. *The Europeanisation of the Western Balkans: A Failure of EU Conditionality? East European Politics*. Vol. 35. Palgrave Macmillan, 2019. <https://doi.org/10.1080/21599165.2019.1677227>.
- EU Delegation to BiH. “Joint Statement by Commissioner for Enlargement and Secretary General of the CoE,” September 4, 2012.
- European Commission. “Bosnia-Herzegovina - EU: Deep Disappointment on Sejdić-Finci Implementation,” February 18, 2014. https://ec.europa.eu/commission/presscorner/detail/en/MEMO_14_117.
- . “Launching the High Level Dialogue on the Accession Process of Bosnia and Herzegovina,” June 26, 2012.
- European Commission For Democracy Through Law (Venice Commission). “Comments On The Implementation Of Decision U5/98 (‘Constituent Peoples’),” 2002, 1–8.
- European Court of Human Rights. “Baraliija v. Bosnia and Herzegovina, Application No. 30100/18,” 2019.
- . “Pilav v. Bosnia and Herzegovina, Application No. 41939/07,” 2016.
- . “Pudaric v. Bosnia and Herzegovina, Application No. 55799/18,” 2020.
- . “Sejdic and Finci v. Bosnia and Herzegovina, Application No. 27996/06 and 34836/06,” 2009.
- . “Slaku v. Bosnia and Herzegovina, Application No. 56666/12,” 2016.
- . “Zornic v. Bosnia and Herzegovina, Application No. 3681/06,” 2014.
- European Parliament. “2012 Progress Report on Bosnia and Herzegovina (Debate).” Brussels, 2013. <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20130522&secondRef=ITEM-014&language=EN&ring=B7-2013-0161>.
- . “Bosnia and Herzegovina: Political Parties.” Brussels, 2015. https://www.europarl.europa.eu/RegData/etudes/ATAG/2015/568324/EPRS_ATA%282015%29568324_EN.pdf.
- European Stability Initiative (ESI). “Chronology of Efforts to Solve the Sejdic-Finci Conundrum.” Berlin, 2013.
- Fraczek, Susanne, Beáta Huszka, and Zsolt Körtvélyesi. “The Role of Human Rights in the EU’s External Action in the Western Balkans and Turkey,” 2016. <http://www.fp7-frame.eu/wp-content/uploads/2016/09/Deliverable-6.2.pdf>.
- Grimm, Sonja, and Brigitte Weiffen. “Domestic Elites and External Actors in Post-Conflict Democratisation: Mapping Interactions and Their Impact.” *Conflict, Security and Development* 18, no. 4 (2018): 257–82. <https://doi.org/10.1080/14678802.2018.1483556>.
- Grofman, Bernard, and Robert Stockwell. “Institutional Design in Plural Societies: Mitigating Ethnic Conflict and Fostering Stable Democracy.” *Center for the Study of Democracy*, 2001.
- Groof, Emmanuel De, and Micha Wiebusch. *International Law and Transitional Governance*. New York: Routledge, 2020. <https://doi.org/10.4324/9780429057786>.
- Groß, Lisa, and Sonja Grimm. “The External-Domestic Interplay in Democracy Promotion: A Case Study on Public Administration Reform in Croatia.” *Democratization* 21, no. 5 (2014): 912–36. <https://doi.org/10.1080/13510347.2013.771257>.
- Guelke, Adrian. “Institutionalised Power-Sharing: The International Dimension.”

- Ethnopolitics*, 2019. <https://doi.org/10.1080/17449057.2019.1569860>.
- Hensell, Stephan, and Felix Gerdes. "Elites and International Actors in Post-War Societies: The Limits of Intervention." *International Peacekeeping* 19, no. 2 (2012): 154–69. <https://doi.org/10.1080/13533312.2012.665683>.
- Higley, John, and Michael G. Burton. "The Elite Variable in Democratic Transitions and Breakdowns." *American Sociological Review* 54, no. 1 (1989): 17–32. <https://doi.org/10.2307/2095659>.
- Hodžić, Edin, and Nenad Stojanović. *New/Old Constitutional Engineering? Challenges and Implications of the European Court of Human Rights Decision in the Case of Sejdic and Finci v. BiH*. Sarajevo: Analitika Center for Social Research, 2011.
- Horowitz, Donald. "Democracy in Divided Societies." *Journal of Democracy* 4, no. 4 (1993): 18–38. <https://doi.org/10.1353/jod.1993.0054>.
- Howard, Lise Morjé. "The Ethnocracy Trap." *Journal of Democracy* 23, no. 4 (2012): 155–69. <https://doi.org/10.1353/jod.2012.0068>.
- Human Rights Watch. "Bosnia and Herzegovina: Ethnic Discrimination a Key Barrier." London, 2019.
- International Crisis Group. "Bosnia's Incomplete Transition: Between Dayton and Europe," 2009. <http://www.crisisgroup.org/en/regions/europe/balkans/bosnia-herzegovina/198-bosnias-incomplete-transition-between-dayton-and-europe.aspx>.
- Iseric, Harun. "Presude Evropskog Suda Za Ljudska Prava u Predmetima Sejdić i Finci, Zornić, Pilav i Šlaku – Nudum Ius u Bosni i Hercegovini Harun Iseric, "Presude Evropskog Suda Za Ljudska Prava u Predmetima Sejdić i Finci, Zornić, Pilav i Šlaku – Nudum Ius u Bosni i Hercegovini [Judgement of the European Court of Human Rights in *Sejdic-Finci*, Zornić, Pilav and Šlaku - Nudum Ius in BiH], 2019.
- Jakešević, Ružica. "Conflict Resolution and Peacebuilding in the Western Balkans - The Role of External Actors." *Teorija in Praksa* 55, no. 1 (2018): 99–122.
- Kasapović, Mirjana. "Lijphart and Horowitz in Bosnia and Herzegovina: Institutional Design for Conflict Resolution or Conflict Reproduction?" *Croatian Political Science Review* 53, no. 4 (2016): 174–90.
- Keil, Sören, and Allison McCulloch, eds. *Power-Sharing in Europe: Past Practice, Present Cases, and Future Directions*. Cham: Palgrave Macmillan, 2021.
- Ketteley, Carmen. "Power-Sharing and Ethnic Conflict: The Consociational-Integrative Dichotomy and Beyond." *European Yearbook of Minority Issues Online* 1, no. 2 (2001): 247–67.
- Koneska, Cvete. *After Ethnic Conflict: Policy-Making in Post-Conflict Bosnia and Herzegovina and Macedonia*. Farnham: Ashgate, 2016. <https://doi.org/10.4324/9781315566122>.
- Lehmbruch, Gerhard. "Consociational Democracy in the International System." *European Journal of Political Research* 3, no. 4 (1975): 377–91. <https://doi.org/10.1111/j.1475-6765.1975.tb01252.x>.
- Levitsky, Steven, and Lucan A. Way. "Linkage versus Leverage: Rethinking the International Dimension of Regime Change." *Comparative Politics* 38, no. 4 (2006): 379–400. <https://doi.org/10.2307/20434008>.
- Lijphart, Arend. *The Politics of Accommodation: Pluralism and Democracy in the Netherlands*. Los Angeles: University of California Press, 1968.
- Linz, Juan, and Alfred Stephan. *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*. Baltimore: John Hopkins University Press, 1996.
- McEvoy, Joanne. "The Role of External Actors in Incentivizing Post-Conflict Power-Sharing." *Government and Opposition* 49, no. 1 (2014): 47–69.

- <https://doi.org/10.1017/gov.2013.19>.
- Merdžanović, Adis. *Democracy by Decree: Prospects and Limits of Imposed Consociational Democracy in Bosnia and Herzegovina*. Stuttgart: ibidem-Verlag, 2015.
- N1 BiH. "Izetbegović: Linija Ispod Koje SDA Neće Ići u Izmenama Izbornog Zakona [Izetbegović: Bottom Line For the SDA In The Election Law Amendments]." October 28, 2019. <https://ba.n1info.com/vijesti/a387127-izetbegovic-linija-ispod-koje-sda-nece-ici-u-izmenama-izbornog-zakona/>.
- . "Lokalni Izbori u BiH Će Biti Raspisani Bez Mostara N1 BiH, "Lokalni Izbori u BiH Će Biti Raspisani Bez Mostara [Local Elections in BiH Will Take Place Without Mostar]." April 29, 2016. <https://ba.n1info.com/vijesti/a93336-lokalni-izbori-u-bih-ce-biti-raspisani-bez-mostara/>.
- Nezavisne Novine. "Čović: Treći Entitet Će Činiti Hercegovina, Posavina, Srednja Bosna i Žepče [Čović: Third entity will comprise Herzegovina, Posavina, Central Bosnia and Žepče]." January 7, 2017. <https://www.nezavisne.com/novosti/bih/Covic-Treci-entitet-ce-ciniti-Hercegovina-Posavina-srednja-Bosna-i-Zepce/406779>.
- Nordlinger, Eric. "Conflict Regulation in Divided Societies." *Occasional Papers in International Affairs* 29 (1972).
- Nystuen, Gro. *Achieving Peace or Protecting Human Rights? Conflicts between Norms Regarding Ethnic Discrimination in the Dayton Peace Agreement*. Boston: Martinus Nijhoff Publishers, 2005.
- O'Leary, Brendan. "Debating Consociational Politics: Normative and Explanatory Arguments." In *From Power Sharing to Democracy: Post-Conflict Institutions in Ethnically Divided Societies*, edited by Sid Noel, 3–43. McGill-Queen's University Press, 2005.
- O'Leary, Brendan, and John McGarry. "Power Shared after the Death of Thousands." In *Consociational Theory: McGarry and O'Leary and the Northern Ireland Conflict*, edited by Rupert Taylor. London: Routledge, 2009.
- Obrad, Kesić, Vlastelić-Rajić Drina, and Steven Meyer. "The Battle for Mostar." *Trans Conflict*, 2012.
- OECD. "Fragile States 2013: Resource Flows and Trends in a Shifting World." Brussels, 2012. <https://www.oecd.org/dac/conflict-fragility-resilience/docs/FragileStates2013.pdf>.
- Omerdić, Dženeta, and Harun Halilović. "The Case of Baralija v. Bosnia and Herzegovina: A New Challenge for the State Authorities of Bosnia and Herzegovina." *Journal of the Faculty of the Humanities and Social Sciences University of Tuzla*, no. 13 (2020).
- Parliamentary Assembly of BiH. "Okončana Sjednica Predstavničkog Doma [The Parliamentary Session Ended]." October 10, 2011. <https://www.parlament.ba/Publication/Read/3194?title=okoncana-sjednica-predstavnickog-doma-&pageId=0>.
- Parliamentary Assembly of the Council of Europe. "Urgent Need for Constitutional Reform in Bosnia and Herzegovina," 2010. [https://pace.coe.int/pdf/4ef681cfd154d1f53fede9c4fd9896668466d98dee67d5ade4e278e5903e45fb/resolution 1725.pdf](https://pace.coe.int/pdf/4ef681cfd154d1f53fede9c4fd9896668466d98dee67d5ade4e278e5903e45fb/resolution%201725.pdf).
- Peace Implementation Council. "PIC Bonn Conclusions." Bonn, 1997. <http://www.ohr.int/pic-bonn-conclusions/?print=pdf>.
- Peter, Burnell. *Promoting Democracy Abroad: Policy and Performance*. London: Transaction Books, 2011.
- Putnam, Robert D. "Diplomacy and Domestic Politics: The Logic of Two Level Games." *The MIT Press* 42, no. 3 (1988): 427–60.
- Šabić, Adin. "Irma Baralija: The HDZ-SDA Agreement on the Mostar Election Is a Two- Staged 'Plan from Hell.'" *Heinrich-Böll-Stiftung*. August 6, 2020.

- <https://ba.boell.org/en/2020/08/06/irma-baralija-hdz-sda-agreement-mostar-election-two-staged-plan-hell>.
- Schimmelfennig, Frank, and Ulrich Sedelmeier. "Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe." *Journal of European Public Policy* 11, no. 4 (2004): 661–79. <https://doi.org/10.1080/1350176042000248089>.
- SRNA. "Dodik: Ustavne Promjene Prihvatljive Bez Uplitanja Stranaca [Dodik: Constitutional Reforms Acceptable Without External Actors]." August 20, 2020. <http://www.srna.rs/novosti/818320/ustavne-promjene-prihvatljive-bez-uplitanja-stranaca.htm>.
- Stojanović, Nenad. "Democracy, Ethnoicracy and Consociational Demoicracy." *International Political Science Review* 41, no. 1 (2020): 1–14. <https://doi.org/10.1177/0192512119881730>.
- The Constitutional Court of Bosnia and Herzegovina. Decision U-32/13, Official Gazette of Bosnia and Herzegovina (2013).
- . Decision U 3/17, Official Gazette of Bosnia and Herzegovina (2017).
- The Office of the High Representative. "37th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations." Sarajevo, 2010. <http://www.ohr.int/37th-report-of-the-high-representative-for-implementation-of-the-peace-agreement-on-bosnia-and-herzegovina-to-the-secretary-general-of-the-united-nations/>.
- . "41st Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations." Sarajevo, 2012. <http://www.ohr.int/41st-report-of-the-high-representative-for-implementation-of-the-peace-agreement-on-bosnia-and-herzegovina-to-the-secretary-general-of-the-united-nations>.
- . "42nd Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations." Sarajevo, 2012. <http://www.ohr.int/42nd-report-of-the-high-representative-for-implementation-of-the-peace-agreement-on-bosnia-and-herzegovina-to-the-secretary-general-of-the-united-nations/>.
- . "43rd Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations." Sarajevo, 2013. http://www.ohr.int/43rd-report-of-the-high-representative-for-implementation-of-the-peace-agreement-on-bosnia-and-herzegovina-to-the-secretary-general-of-the-united-nations/#_ftn29.
- . "45th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations." Sarajevo, 2014. <http://www.ohr.int/45th-report-of-the-high-representative-for-implementation-of-the-peace-agreement-on-bosnia-and-herzegovina-to-the-secretary-general-of-the-united-nations/>.
- . "46th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations." Sarajevo, 2014. <http://www.ohr.int/46th-report-of-the-high-representative-for-implementation-of-the-peace-agreement-on-bosnia-and-herzegovina-to-the-secretary-general-of-the-united-nations/>.
- . "50th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations." Sarajevo, 2016. <http://www.ohr.int/50th-report-of-the-high-representative-for-implementation-of-the-peace-agreement-on-bosnia-and-herzegovina-to-the-secretary-general-of-the-united-nations/>.

nations/.

- . “54th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations.” Sarajevo, 2018. <http://www.ohr.int/54th-report-of-the-high-representative-for-implementation-of-the-peace-agreement-on-bih-to-the-secretary-general-of-the-united-nations/>.
- . “57th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations.” Sarajevo, 2020. <http://www.ohr.int/fifty-seventh-report-of-the-high-representative-for-implementation-of-the-peace-agreement-on-bosnia-and-herzegovina/>.
- . “58th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations.” Sarajevo, 2020.
- Tolstrup, Jakob. “When Can External Actors Influence Democratization? Leverage, Linkages, and Gatekeeper Elites.” *Democratization* 20, no. 4 (2013): 716–42. <https://doi.org/10.1080/13510347.2012.666066>.
- Tsebelis, George. *Veto Players: How Political Institutions Work*. Princeton: Princeton University Press, 2002.
- Zdeb, Aleksandra. “Facing Institutional Change in Mostar: A Litmus Test for Bosnia and Herzegovina.” *Nationalities Papers* 45, no. 1 (2017): 96–113. <https://doi.org/10.1080/00905992.2016.1235142>.
- . “The Need to Have Something ‘Of Their Own’: Croat Parallel Institutions in Bosnia and Herzegovina.” *Swiss Political Science Review* 22, no. 4 (2016): 545–64. <https://doi.org/10.1111/spsr.12231>.