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## Consociational settlements and reconstruction: Bosnia in comparative perspective, 1995 - present

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WIDER Working Paper No. 2013/089

## **Consociational settlements and reconstruction**

Bosnia in comparative perspective, 1995-present

Sherrill Stroschein\*

September 2013

### **Abstract**

This paper examines Bosnia with some comparative insights from Northern Ireland. Both places were extremely fragile in the immediate aftermath of their brokered peace negotiations and consociational institutions, in Bosnia in 1995 and Northern Ireland in 1998. Bosnia in particular was the recipient of a large amount of international aid. While this aid was crucial to the initial state-building effort, the problems Bosnia now faces are due to its consociational governance structure. Some of the group-based aspects of consociationalism are at odds with individual rights, a problem which cannot be addressed by aid alone.

**Keywords:** Bosnia, Northern Ireland, consociationalism, consociational, Dayton Agreement, international aid, peace agreements

**JEL classification:** F50, F51

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## 1 Introduction

The small country of Bosnia-Herzegovina, with a population of less than four million, has received a substantial amount of aid from the international community since the war in 1991-95. This aid can be considered in two categories: (i) direct intervention by internationals in brokering and then supporting the Dayton Peace Agreement of 1995, and (ii) funding for a variety of projects to aid Bosnia's democracy, infrastructure, and economy. Both types of aid were crucial to making peace possible, and the need for some support remains. However, aid cannot reconcile all of the difficult logical problems that can emerge in the governance of mixed states. The Dayton Agreement was intended to end a fierce and bloody war, but it also became the default setting for consociational governance institutions. Consociationalism is intended to institutionalize voice for each group and relies heavily on cooperation between elites. Many critics argue that the agreement is not suited to long-term governance structures, but changes to these institutions that could be accepted by all parties have been elusive (Chivvis 2010: 66-7).

A similar set of circumstances can be found in Northern Ireland, where the Good Friday Agreement of 1998 set the foundation for its own consociational structures. A 'country' within the United Kingdom's complex devolved power structure, Northern Ireland also received direct intervention to calm its conflict, from both international sectors and from the UK government.<sup>1</sup> Northern Ireland also received funding in a variety of forms from the UK government, as well as international, UK-based, and Irish NGOs. These interventions were crucial in setting the foundations for peace. As in Bosnia, the long-term logical problems of its consociational structures remain and cannot be addressed by aid alone. But at the same time, the institutional tensions in Northern Ireland appear to be less debilitating to the workings of governance than they have in Bosnia.

This contribution focuses on Bosnia with some comparative insights from Northern Ireland. Both places were extremely fragile in the immediate aftermath of their brokered peace negotiations, in Bosnia in 1995 and Northern Ireland in 1998. Both have moved to a far more robust status over the past two decades. While all-out war in each is now unlikely, both share traits of high segregation between groups, low-level conflict, frequent government crises, and divisive rhetoric from both sides. In this paper, I give an overview of some of the extensive aid that was distributed in Bosnia, highlighting how it contributed to the foundation and persistence of the Dayton peace. I then examine how aid was related to the state-building and transition effort, outlining the logical connection between the two. I follow with an outline of the premises of consociational democracy, with an in-depth examination of how these structures have created a paradoxical situation for Bosnia. In addition, I sketch some of the aspects of consociationalism in Northern Ireland, noting the points on which its structures differ from those in Bosnia. I then evaluate whether some of these differences might account for a more stable and workable means of governance in Northern Ireland, and whether some of these considerations might be applicable to Bosnia.

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<sup>1</sup> A caveat: the Irish/Catholic side of the conflict was generally opposed to UK government involvement, as opposition to UK rule was and is one of their key grievances.

## 2 Aid and influence

### 2.1 Actors in the aid trajectory

Bosnia-Herzegovina has received the most aid of any country, especially when direct intervention is counted with funding. The intervention that began during the war involved a NATO-backed force that included 36 countries, with strong involvement by the US. The long troop presence in Bosnia involved 60,000 troops (McMahon and Western 2009: 71). As noted by McMahon and Western (*ibid.*: 71-2), ‘from 1996 to 2007, US\$14 billion in foreign assistance flooded into Bosnia, amounting to a long-term average of approximately US\$300 per person per year in a country of less than four million people’. In the five first years after the end of the war (1996-2000), this amount was close to US\$1400 per person, making Bosnia the recipient of the most aid per capita since the Marshall Plan (Sebastian 2010: 2; Pasic 2011).

The timing and duration of this aid has taken an interesting trajectory. The first stage of international involvement was the Dayton Peace Agreement, brokered by the international community in November 1995. The consociational structures that emerged within the Dayton framework were the end result, after several alternative institutions proposed by internationals failed to reach an agreement of all parties. While much criticized for its complexity, Dayton offered the only balance of concessions to each side that produced a lasting agreement.

After this direct intervention, the second stage of international intervention took the form of aid packages for the reconstruction effort. Not all groups in the conflict were included in these discussions. Because the Serbs were widely perceived by many potential donors as having had a stronger role in the conflict onset, they were largely excluded from a US\$1.23 billion international aid package that was offered in the spring of 1996.<sup>2</sup> Conditions for future Serb inclusion in aid included assistance in the capture of war criminals who were believed to be in the Bosnian Serb entity (*Los Angeles Times* 1996). The United States military budget for Bosnia peaked in 1996 with US\$2.23 billion and was US\$2.09 billion in 1997. By 1998 it had dropped to US\$1.79 billion and continued to decrease in subsequent years (Bowman 2003: 5). The central role that the US played in the military presence indicates that the post-conflict international military presence reached its height in 1996 and 1997.

After that stage, international aid began to focus increasingly on governance, infrastructure, and the economy, although security still remains part of budgets. United States involvement has decreased incrementally, particularly since 2000. By 2011, US State Department assistance was US\$42 billion, budgeted as 40 per cent for peace and security, 39 per cent for ‘governing justly and democratically’, and 21 per cent for economic growth (US State Department 2012; Woehrel 2013: 9). Between 1993 and 2010, the US government’s allocation of aid amounted to just under US\$2 billion (Woehrel 2013: 9). USAID, the EU, and the UN also focused efforts on minority returns (USAID n.d.; Sebastian 2010: 5-7), the resettlement of individuals who had been displaced from their homes by the war, but who returned as ethnic/religious minorities.

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<sup>2</sup> Because the Dayton Agreement established territories that generally represented each ethnic group, such provisions would have implied far less aid for the Serb entity, the Republika Srpska.

While the US involvement has been significant, the largest donor to Bosnia overall has been the European Union (EU). Between 1991 and 2010, the European Union donated 6.8 billion Euro, or US\$8.85 billion. Its programmes since 2000 have been focused especially on reconstruction, governance, economic and social development, regional cooperation, and harmonization with EU norms (Dimireva 2010). Some of the more recent aid has taken the form of loans rather than grants (EC 2013). The EU role in Bosnia continues to increase. By 2003 the EU took control of the police mission there (previously run by the UN), and in 2004 NATO transferred its Bosnia mission to the European Union (Chivvis 2010: 57–8). US troops have not been stationed in Bosnia since the transfer (Woehrel 2013: 9). The EU has been working with Bosnia on fulfilling the criteria for EU membership, although these discussions have hit a recent impasse over constitutional matters (ICG 2011a) that cannot be addressed by aid (discussed more in section 4 below).

In addition to the US (USAID) and the EU, other significant donors have included the World Bank (WB-OED 2004), Sweden, the Netherlands, and Norway (Sebastian 2010: 2). The UNDP has also had a significant presence (UNDP 2009). Aid began to decrease significantly in the wake of the crisis in Kosovo. A calculation of the overall amount of funding received by Bosnia is a difficult one, due to an absence of comprehensive and coherent data from a variety of sources (Sebastian 2010: 2-3)—ranging from governments to international organizations to NGOs and religious groups. As one example, the influx of Islamic groups from Saudi Arabia and other countries contributed aid in building mosques and contributing to social services. But not all of these groups had the same goals, and some represented more extremist elements that contributed to the creation and support of local groups. This international Islamic presence is a well-known fact on the ground. However, it is quite difficult to document the extent and exact nature of this kind of involvement. Moreover, because contributions from religious groups overall can contribute to increased group divisiveness, a question remains how to categorize international involvement in a similar way when different actors supported different goals (ICG 2013). In spite of these problems, some Bosnian government efforts have been made to document the overall structure of aid projects for Bosnia, conducted in particular with support by the UNDP and the British DFID (MoFT 2008).

## **2.2 Aid strategies**

There has been a great deal of discussion regarding the strategies that have worked and not worked in Bosnia in terms of the logistics of distributing aid. Some of the more common modalities of aid distribution have historically been partnership agreements, in which an international donor agrees to fund a project that is headed by several local actors. This strategy has been used by several international NGOs in Bosnia, and some detailed discussions have emerged from some of the experiences of USAID, which operates according to these practices. They also engage in partnerships with other donors (USAID 2013). Another strategy is to offer loans, a step that has more visible recently in the EU's provision of €50 million in the form of loans to Bosnia (EC 2012). While perhaps understandable in light of the EU's financial difficulties, it remains questionable how effective this strategy might be in the long run. Bosnia's economy is in terrible shape (McMahon and Western 2009: 74), and unemployment is currently around 25 per cent (Rohde 2012). The means by which the state might be able to pay back these loans remains unknown, and could do some damage to hopes for Bosnia's economic recovery in the future.

Aid distribution has appeared to work best when donors take a view that they are committed to their programmes for a long period, rather than searching for a 'quick fix'. Choosing a few

programmes and sticking with them is usually better than an approach to fund several different initiatives and hope that some might bear fruit. Programmes should also be designed according to needs as determined on the ground and with the input of locals, rather than being designed exclusively in office boardrooms far away. In addition, the project approach itself may create problems, as it encourages short-term thinking. A longer-term funding of organizations to conduct work is likely to be a more effective strategy (Rohde 2012; Sebastian 2010: 9-10, 14). It is crucial to first observe the local context and listen to what those with local knowledge think must be done—as well as paying attention to potential pitfalls as they outline them. While some projects are aimed to reform some of the blockages to potential projects, it is important to know the obstacles as they are understood by local partners and to design an incremental strategy that adapts to the connected nature of different problems (Huddleston 1999: 149-50). Adaptability and flexibility are crucial. For example, an adherence to a western-based management style can be a disadvantage, as it may prove a hindrance within the local culture. In addition, sometimes organizations must adapt to the skills-sets of the personnel who are actually available to take on roles in the project, because many otherwise skilled individuals cannot afford to leave their full-time work for a short-term project commitment (Huddleston 1999: 154-55; Sebastian 2010: 9, 11-12).

### **2.3 Perceptions of aid**

Interviews and surveys of Bosnians demonstrate mixed results in opinions on aid. For example, in the area of democracy assistance, it is understood that many civil society organizations would not exist without international aid. However, with regard to actual progress on democracy itself, respondents tend to reflect more pessimism due to perceived difficulties of achieving actual change (Sebastian 2010: 7-8). According to 2010 poll results from the Gallup Balkan Monitor, 41 per cent of respondents in Bosnia said they were unsure if the role of international community over 15-20 years has been harmful or helpful. Those that thought it had been helpful were at 32 per cent and those who thought it had been harmful at 21 per cent (GBM 2010: 6). Bosniaks and Croats more likely to favour an international role (59 per cent for Bosniaks and 50 per cent for Croats), while Serbs do not tend to favour international oversight (77 per cent in 2010) (*ibid.*: 7).

Some of these survey results regarding aid may reflect an overall pessimism by Bosnian citizens regarding the state of their country overall. A 2010 National Democratic Institute poll of Bosnians indicated that a staggering 87 per cent thought their country was moving in the ‘wrong direction’ (NDI 2010). A total of 84 per cent said that their economic situation had either ‘stagnated’ or ‘deteriorated’, and 41 per cent cited unemployment as the top problem for the country, with corruption as the second trailing distantly at 13 per cent (*ibid.*: 6, 9). It is clear that while aid can help to move the economy forward, it cannot solve deep structural problems in the economy, including high levels of long-term unemployment. Aid has provided some direct employment for individuals who work directly with internationals, but this provision is also one aspect of dependency on aid that may be problematic in the long term. Individuals who might have otherwise become civil society actors of their own accord became part of the international aid machine, potentially depriving the country of some grassroots innovations (Bieber 2002: 27-8).

These problems demonstrate that large amounts of aid and international commitment are not enough to build long-term stability. At the same time, conflict has not resumed, in spite of dire economic circumstances. There could be some non-aid reasons for Bosnia’s relative quiescence. One might be the fact of war fatigue among the population and a desire to simply lead ‘a normal life’ (Pickering 2007: 1). Alternatively, it could plausibly be the case that the

carrot of EU and NATO membership has provided an incentive to avoid a resumption of inter-group conflict. In June 2008 a stabilization agreement was signed with the EU (Chivvis 2010: 61), which formalized increased cooperation. The proportion of those considering EU membership as a good thing was 69 per cent in 2010, although support for this idea had fallen between 2006 and 2008 (GBM 2010: 3).

The notion that the EU has been the driver of Bosnian stability faces several logical challenges in other events that began to unfold in that same year. First, Kosovo also declared independence in February 2008, an act that prompted the Bosnian Serb leader Milorad Dodik to declare that the Republika Srpska should also be able to gain independence from Bosnia. Over the next few years Dodik continued to push this line, contributing to increasingly fragmentary politics in Bosnia in spite of EU efforts to keep the system together (ICG 2009; ICG 2011b). In addition, a constitutional crisis that was sparked by the European Court of Human Rights is currently preventing Bosnia from moving further in the accession process, a situation considered more fully in section 4 below. In addition to these problems, the EU's economic crises over the past few years have rendered it not only less powerful but also less of a shining light of guidance to Bosnians. One of the main reasons for wishing to join the EU is its potential role in improving the Bosnian economy (GBM 2010: 3)—and the EU's credibility in this role has suffered some setbacks over the past few years.

This overview of the aspects of aid in Bosnia presents a case of high levels of international involvement and aid since 1991. The country has certainly benefitted from these interventions, both direct assistance and a variety of forms of funding for economic, political, and social development, as well as minority refugee returns. These contributions have contributed to the ongoing relative stability of the Dayton Peace Agreement, and these mechanisms for fostering stability are outlined in section 3 below. At the same time, a logical paradox in its governance structures presents serious problems that aid alone cannot overcome (in addition to its serious economic problems). These matters will be discussed in section 4, which will also consider how similar structures work in Northern Ireland.

### **3 Aiding states by building consociations**

The Dayton Peace Agreement was reached after years of devastating conflict (1991-95). In addition to the staggering numbers of dead and injured it produced, the conflict displaced 'more than half of Bosnia's population—2.5 million people'.<sup>3</sup> Peacekeeping forces also came under attack, which led to NATO airstrikes against Serb forces in 1994 (Randal 1994). During the conflict years, various failed attempts at agreements had been made. From the vantage point of several years later, the Bosnian state structures that resulted from the Dayton Agreement are easy targets of criticism, as they encourage frequent stalemates by giving voice to each of the three constituent groups (McMahon and Western 2009; Hayden 1993). But it is important to keep in mind that the agreement was intended to end the fighting (Chivvis 2010: 48-9), and it has succeeded in preserving peace for 18 years.

Only with international intervention could an agreement like Dayton have been brokered. When a country with severe identity conflicts reaches a point where leaders of each group have stopped talking to each other, only with third-party brokerage can progress be made on

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<sup>3</sup> Bosnia's population is around four million (Pickering 2007: 29).



moving away from a conflict. The logic of this dynamic is as follows. In divided societies, a crucial mechanism for preserving peace requires that elites of each group maintain lines of communication with each other to negotiate means out of potential political conflicts (Fearon and Laitin 1996). In countries where this cross-group elite communication has broken down, a lack of communication between elites will inevitably increase conflict further. Without communication between group elites to broker solutions to group grievances, populations have no choice but to mobilize to express those grievances (Stroschein 2012: 21-3). It is at this point that internationals and international aid can intervene most effectively, to restart elite communication and to establish institutions to preserve the machinery of group communication via elites with legitimate support of group populations.

The support of group populations is crucial to a successful elite dialogue. Elites in the negotiation must have a relationship of resonance with ‘their’ masses, in which the aims of these elites resonate among their publics. Self-styled elites without this resonance with or legitimacy from their populations will be meaningless, as they will not address the actual grievances that drive popular mobilizations. The requirement of both elite negotiation and popular resonance provides a caveat to the international community to exercise care when choosing elites. In some cases, extremist elites may be those that have the most popular resonance, with implications that internationals may need to bring even these more extremist elites into negotiations (*ibid.*: 22).

If a peace agreement is to hold, all parties must feel that it will provide them with some concessions. Peace agreements easily become the foundation for new political institutions, especially in democracies, as conflicting groups must have a common starting point for the creation of rules for governance. The process of negotiations for a successful or lasting peace agreement often identifies the one equilibrium point on which the different groups can agree. Minorities will want protection against majority tyranny, and majorities will tend to wish to exercise democracy as the will of majorities. Balancing out these stances is not easy, but consociational institutions provide a means to give some concessions to different sides.

Consociational institutions operate on the principle that in order to give each group voice in politics, they must be separated into segments of representation. In addition, elites of each group are given strong responsibilities to negotiate with elites of the other group(s) to resolve the most controversial political matters. Rather than decisionmaking on a majoritarian principle, elites of the different groups must agree on political decisions (Andeweg 2000: 509). There are four primary aspects of consociational governance structures, as outlined by Arend Lijphart (1977) in his seminal outline of consociations as an institutional category. First, government must include a powerful ‘grand coalition’ of political leaders of the different segments of society, placing a strong focus on these elites to resolve potential group disputes. Second, there is a ‘minority veto’ mechanism, by which minorities can block decisions that they find harmful to their identity—without needing power in numbers to do so.

Third, there should be proportionality between groups in representation across several areas. For elections, the recommended electoral system is proportional representation (PR), so that groups are represented in proportion to their demographic percentages in the population. Divided societies that are just exiting violent conflict tend to exhibit party cleavages that automatically divide along group lines. For these identity-based parties, voting in proportion guarantees voice for each group in a way that majoritarian electoral systems (as in the US and the UK) cannot. In addition, appointments to government posts, the civil service, and the police should use a proportional principle. In this way, members of each group can see

individuals who are ‘like’ them in posts across the state apparatus. In addition, there should be proportionality in the distribution of financial resources, for example with schools of each group funded proportionally, rather than only those of the majority receiving support.

Fourth, there should be segmental autonomy, in which a form of federalism or decentralization preserves minority control over some local government structures in the country. This decentralization should include some financial autonomy for the segments even if this requires central subsidies, reflecting the logic that there should be some proportionality in the distribution of financial resources (Lijphart 1977: chapters 1-4).

These insights were useful to internationals in brokering the agreements in Bosnia and Northern Ireland, partly because the strong emphasis on representation provided a clear means to grant concessions to each side and move towards durable final settlements. This set of institutions provides a means for group elites to negotiate their differences and for each group to have some representation in the structures of the state. It can thus be very effective in preserving minority aims and identities. However, majorities may chafe at the fact that some provisions can lead to stalemates, such as the minority veto. In addition, over time as the memory of conflict wanes, publics can begin to lose some satisfaction with this model of governance due to the primary role given to elites and the strong potential for stalemates. In addition, their group-based premises may begin to be viewed as reinforcing group identities and extremist elements, as well as hampering the expression of individualism and non-group concerns (Andeweg 2000).

Many critiques of Dayton relate to some of its consociational features. Indeed, as noted in the discussion in the next section, there is some room for considering where some of these aspects might be modified. A primary example is the prioritization of ethnicity and territory with respect to how rights are allocated throughout the state in terms of three constituent nations of Bosniaks, Serbs, and Croats. This trait does two negative things: (i) it omits those who are not part of these three groups, such as the Roma, Jews, and other groups, and (ii) it requires an ongoing identification with the groups that fought against each other in the war, which does not facilitate building inter-ethnic ties that can promote peace in the long term. At the same time, serious attempts to change these institutions have been ongoing since 2006, and have run aground on the same problems of pre-Dayton attempts at negotiations. Up to this point, sides cannot agree on a workable solution outside of the Dayton parameters.

A similar case to Bosnia is that of Northern Ireland, where the consociational institutions of the Good Friday Agreement of 1999 have preserved relative peace for 14 years. However, its codification of groups as political forces has led to some of the similar problems as in Bosnia, with an inability for the country to establish widespread inter-religious ties between Catholics and Protestants. But Northern Ireland is not constrained by the same territorial considerations as Bosnia—group membership is based on a personal principle, and does not have an official territorial basis in the way that Dayton has demarcated for Bosnia’s map. The next section outlines a paired comparison of Bosnia and Northern Ireland, to examine how the consociational aspects of both agreements have both provided a help and a hindrance to these societies. This comparison will also note some of the differences between the particular incarnations of consociationalism in each state, to explore which specific institutions might present a potential obstacle to long-term stability. This inductive examination is a first step to producing hypotheses about the effects of these institutions that can be tested or examined with regard to a variety of divided states.

## **4 Consociational democracy in practice**

Bosnia did not have a history of its own statehood. It was historically a province of the Ottoman Empire that was then occupied by the Austro-Hungarian Empire in 1878 with the weakening of the Ottomans (Magocsi 1993: 360; Jelavich 1983a). Serbia had never been fully satisfied with this transfer, as it wanted more of its own influence over the province (Jelavich 1983b: 59). The assassination of Austro-Hungary's Archduke Franz Ferdinand by a Serbian conspirator in Bosnia in 1914 was the spark that ignited the First World War (Magocsi 1993: 121). After the war, Bosnia-Herzegovina became part of the Serbian-dominated Kingdom of Serbs, Croats and Slovenes, or Yugoslavia (*ibid.*: 128). During the Second World War, Bosnia experienced high levels of bloodshed due to guerrilla fighting (*ibid.*: 140), and after the war remained part of Yugoslavia until its referendum on independence in 1992—boycotted by the Serbs (Glenny 1992). Bosnia's democratic constitution that was established by the Dayton Agreement was thus built on a foundation that did not have a historical experience with independent statehood, and very little experience with democracy as part of Yugoslavia during the interwar period. Northern Ireland provides an interesting contrast as also being a province of a larger entity, the United Kingdom—but having a longer history of experience with democracy. Northern Ireland's conflict with the United Kingdom could be framed as a perpetual tension that received heightened clarity with the independence of 'the rest of' Ireland from the United Kingdom that took place between 1919 and 1922.

The consociational structures created for Bosnia and for Northern Ireland have general structural similarities, but some specific institutional differences, as outlined below. Both reflect some of the general problems that emerge from the fact that the consociational elements were intended first as a stable peace agreement to end conflict, rather than being designed with decades of governance over the long term in mind. It is important to highlight these contradictions. Bosnia's current challenges and governance crises emerge not from a lack of aid, but from competing imperatives with regard to its institutional structure. Some of the specific elements of the Northern Ireland's institutions circumvent similar problems, such that it is constructive to examine both examples together.

### **4.1 Bosnia's consociational structures and their implications**

One of the main obstacles to previous peace agreements had been disputes over territory. The Dayton Agreement established separate entities for groups, with the Serbs receiving 49 per cent of the territory and the Muslims and Croats sharing a federated unit with 51 per cent of the territory (Erlanger 1996). According to figures from 2000, Bosniaks represent 48 per cent of the population, with Serbs at 37 per cent and Croats at 14 per cent (CIA n.d.). In spite of the asymmetry of population groups and territory, it is not the territorial designations that have been challenged with the governmental crises, but rather aspects of the governance structure.

The Republika Srpska (RS) and the Muslim-Croat Federation (Federation) have very different internal governing structures. The RS remains quite centralized, while the Federation is divided into two further units, one with a Croat majority and one with a Bosniak majority. Reflecting the Serb desire to be as independent from overall Bosnian structures as possible, the RS and the Federation retain many governing powers and the central government has historically had a quite weak centre. Each of the two territorial entities has their own parliament and executive, but with an asymmetric design. The RS has a president and a unicameral parliament, and the Federation has a bicameral parliament as well as a

president and vice-president. The president and vice-president must be from the two different groups—if one is a Croat, the other must be a Muslim. The central level of governance involves a bicameral parliament, and the leadership of the parliament must represent each ethnic group. The executive is a three-member rotating presidency, one of the most unique features of Bosnia. Each of the three members must be selected from among the three ethnic groups, such that each group has voice in the presidency. Presidency members are elected for four-year terms, during which they rotate through the main presidential office twice in eight-month stints. While in the main presidential seat, the member in office is expected to actively consult with the other two members on governmental matters (Bose 2002: 60-89).

Stalemates within the government have occurred, as would be expected in this type of consociational structure. However, the main sticking point of the constitutional design lies in the notion that in order to give voice to each group, the population must remain separated into different groups for political activities. One practice included in these institutions has been the selection of each group's member of the presidency from within 'its' territorial unit. However, this has meant that minority returns, for example a Bosniak who might have returned to his/her former home in the Republika Srpska, is not able to vote for the presidency. In 2000, the Bosnian Constitutional Court issued a decision that such restrictions that tied ethnicity were a violation of rights for individuals. The decision also implied more recognition for those who might be ethnic 'others' such as Roma, not considered one of the three constituent ethnic groups (ICG 2002: 2-3).

In the main this issue remained unresolved, due to an inability to negotiate a compromise between the groups that might address it. The institutional foundation from which the groups can operate is a consociational structure with an 'emphasis on state-building rather than human rights' (ICG 2012). The United States engaged in an effort to try to reform the constitution by proposing a weak and indirectly elected president, a move which failed in 2006. The US has decreased its involvement in Bosnian political structures since that time (Woehrel 2013: 9; ICG 2012: 2). Objections had been raised to this proposal by Serbs and Croats, both of which saw the collective presidency as preserving their interests. Serbs prefer the ability to remain as independent from central institutions as possible. For Croats, the guarantees of voice that are part of the consociational structures are important because they are the smallest demographic group (ICG 2012: 4, 7, 13).

An in-depth analysis reveals that changing the presidency is a highly complex matter. Not only do groups have their own reasons for objecting, but also, the collective presidency remains one of the most successful political institutions of the Dayton structure. As outlined by the International Crisis Group, 'It is the only directly elected, high-level institution that Bosnian voters can identify with. It is not a broken institution and has not been the cause of any of Bosnia's recent crises' (ICG 2012: 4). It is notable that Bosnia's inability to form a governing coalition for over a year after the 2010 elections was not a feature of the collective presidency, but rather due to the dynamics of its central parliament (ibid.: 10). In addition, a restructure of the presidency would require a renovation of all of the Dayton institutions (ibid.: 1), due to the fact that it would be an attack on the consociational premises that are its bedrock.

The stakes were raised in 2009, when the European Court of Human Rights issued a ruling that the structure of the presidency discriminates against ethnic 'others', or those who are not Bosniaks, Serbs, or Croats. The ruling was based on a case brought by Sejdic, of Roma ethnicity, and Finci, of Jewish ethnicity. The court ruling on the Sejdic-Finci case was that the constitutional provisions regarding the choice of the presidency from among the three

constituent groups discriminates against ethnic ‘others’ (Remikovic 2012; *SETimes.com* 2012; ICG 2012: 6). Given the difficulties in resolving this issue, several attempts have failed.

The European Union has raised the stakes even further by making the resolution of this issue a condition for Bosnia’s consideration for EU membership: that a ‘credible effort’ must be made before a ‘credible application’ is made (ICG 2012: 8). The EU has made attempts to set deadlines for resolving the issue, but these have been missed repeatedly (Remikovic 2012; Alic 2012). It continues to express disappointment over the lack of progress in regard to the Sejdic-Finci ruling (EC 2012: 8-9, 16, 19). Some analysts have proposed that the EU should abandon these criteria, given the serious difficulties of making adjustments to the Dayton institutions. A new challenge lies on the horizon with a case being brought to the European Court by Pilav, a Bosniak in the Republika Srpska who was banned from running for the presidency (ICG 2012: 9, 15).

Even without these human rights obstacles, Bosnia would face a difficult road to EU accession due to its internal political struggles. One of the most visible sources of difficulty is Milorad Dodik, president of the Republika Srpska. Since Kosovo’s declaration of independence in 2008, Dodik has been making the case that the RS should also be considered for independence from Bosnian structures. A few years later he is continuing with the threat to secede (*SETimes.com* 2008).<sup>4</sup> Moreover, government crises and stalemates over the past few years have produced a population that is very frustrated with the ability of their representatives to conduct business. By June of 2013, large and ongoing protests began to take place against the inability of politicians to make decisions. The spark was the fact that a baby in need of stem-cell treatment in Germany was denied a passport document due to a stalemate over a law on issuing travel documents. The baby subsequently died, and protestors mobilized to prevent representatives from leaving the parliament building until they had addressed the issue (Štikš 2013).

These problems for Bosnia do not appear to bode well for the future of the consociational model of governance. First, the intervention on the part of courts interested in human rights may signal a serious problem for its requirement of the representation of constituent groups. Second, the stalemates inherent in the model can bring on public frustration with their government. A consideration of Northern Ireland as another example of consociationalism is in order, to examine the degree to which some of these problems might be mitigated.

## **4.2 Consociationalism in Northern Ireland**

The Good Friday Agreement signed in Belfast between Protestant and Catholic leaders in 1998 established a solid constitutional framework that was intended to give each group a voice in politics. The brokerage of this agreement required not only the involvement of local actors, but also agreements between the British and Irish governments. In addition, the United States as an external actor played a role in bringing parties to negotiations, with President Bill Clinton’s visit in 1995 viewed as a step towards dialogue between the parties. The discussions included some of the institutional insights of consociational scholars, and as in Bosnia the representative aspects of the consociational institutions provided a means to grant

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<sup>4</sup> *SETimes.com* (2011). Polling data show that 87 per cent of those in the Republika Srpska would support it becoming an independent entity (GBM 2010: 4).

concessions to each side, fostering a movement to agreement. Interestingly, while the mechanisms of the agreement in Northern Ireland strongly favour politics by group, it does not involve a strict formal requirement that a voting individual adhere to a group (MacGinty 2003: 7-8). The Northern Irish agreement thus differs in this regard from the group-based requirements in Bosnia's Dayton Agreement for voting for the collective presidency. But it remains the case that representatives in the Northern Irish Assembly must make a declaration regarding whether they are 'nationalist, unionist, or other', thus preserving consociational group-based decisionmaking (Horowitz 2002: 194).

With regard to leadership by grand coalition, there is a dual premiership of the Deputy and First Minister, who must represent each group (MacGinty 2003: 8; Horowitz 2002: 194). There is also a provision that both groups can veto provisions that they find to threaten their identity. However, it takes the form that both groups must give their 'parallel consent', with at least 60 per cent of all Assembly members participating in a vote and 40 per cent of each of the identity-based group representatives also voting (nationalist and unionist) (Horowitz 2002: 194). Because of the bifurcated nature of the group veto, it can be difficult for those who are part of the 'other' category to easily gain leverage in the Assembly (*ibid.*: 195).

In addition, there are frequent stalemates due to the structure that requires some consensus between groups. This problem is made less obvious by the fact that Northern Ireland is a unit within the United Kingdom structure, but it remains clear to locals. The Northern Irish parliament at Stormont, a unicameral body and one of the features provided by the 1998 agreement, has been 'shut down' by the Westminster government for much of its existence, due to an inability for parliamentarians to work together (Taylor 2006). During such periods of shutdown, legislation on Northern Ireland comes out of the British government in Westminster.

There are also some inconsistencies in the structure. The Good Friday Agreement provides that a referendum can be held in the future on the status of Northern Ireland. The results of this referendum will depend heavily on group demographics. According to 2011 census figures, Northern Ireland is 48 per cent Protestant and 45 per cent Catholic. The figures for the 2001 census had registered 53 per cent for Protestants, demonstrating a trend for Protestants to decline over time (Devenport 2012). This shift is likely to mean that there could be a Catholic challenge to Northern Ireland's presence within the United Kingdom once Catholics gain a majority. However, as noted by Roger MacGinty (2003), the provision of a referendum—a majoritarian device—is in tension with the otherwise strongly consociational and representative features of the agreement's institutions. Even before the agreement, Protestants registered declining support for a potential agreement in relation to Catholics (Hughes and Donnelley 2003). The referendum provision is unlikely to improve Protestant views.

A problem that the Good Friday Agreement shares with the Dayton Agreement is that it prioritizes groups over individuals. While the focus on Bosnia has been greater than the focus on Northern Ireland in this regard, observers of Northern Ireland have commented that the consociational structures of government run counter to the premises of liberal democracy for this reason (Taylor 2006: 220). One of the practical manifestations of this issue has been the matter of a Bill of Rights for Northern Ireland (Taylor 2006: 220-1; McCrudden 2001). As in Bosnia, the raising of questions of human rights for individuals appears to be in tension with the collective or group premises of the consociational structures. At the same time, the group-based provisions for Northern Ireland can be understood to be less stringent than for Bosnia, as it is only in the Assembly that representatives must declare an alignment—and then may

also make use of the ‘others’ category. Voting can take place for ordinary citizens without such a declaration.

## **5 Conclusions: some general patterns**

A comparison of the Bosnian and Northern Irish consociations illustrates a few common tensions between the consociational structure and liberal democracy. Defining liberalism as the endorsement of individual agency means that the group-based tenets of consociational institutions are in some tension with the ability of individuals to manoeuvre in politics. At the same time, there are some specific institutional differences between Bosnia and Northern Ireland that appear to demonstrate a mitigation of these effects in Northern Ireland. As one example, the fact that the grand coalition of executives is elected on the basis of the separate geographic entities in Bosnia can hinder the participation of voters in this selection process, if they live as minorities in the ‘wrong’ entity. Some attempts have been made to mitigate these effects, but it can remain difficult for minorities in the different entities to be fully engaged in this part of the political process. The Northern Irish executives are not selected on this type of identity-based geography.

Bosnia’s structures also contain more stringent provisions that prioritize the constituent peoples at the expense of ethnic ‘others’, which has resulted in the Sejdic-Finci ruling. A candidate for presidency must come from the constituent groups. Northern Ireland shares this provision to the degree that the Deputy and First Minister must come from the different groups. It is interesting that this provision has not been challenged on human rights grounds, though it can be noted that the Northern Irish institutions maintain an uneasy relationship with a Bill of Rights. When human rights are defined as individual rights, they will be in tension with the group-based structures of consociational arrangements. Within the legislative bodies in both Bosnia and Northern Ireland, it has been the case that non-aligned individuals tend to be marginalized in politics. In Bosnia, this marginalization of others is a product of both the consociational structures and the Proportional Representation electoral system. In Northern Ireland, the preference ranking Single Transferrable Vote system can mitigate some of these effects, but within the parliament the structure of parallel consent has a polarizing effect, in spite of the fact that Assembly members can declare themselves to be ‘others’.

One potential consideration could be that Bosnia and Northern Ireland might be at tension with liberalism due to the nature of their collectivities. Ethnicity and religion are identity categories that are difficult to alter, though in theory, one could change religion more plausibly than one could change ethnicity. What about language? In theory, an individual could switch languages more easily than ethnicity or perhaps religion, depending on the degree to which their personal identity is a strong component of their language of choice. These considerations make Belgium an interesting example to note. Belgium has consociational institutions that are language-based. It also has a highly decentralized federal structure that allows these linguistic communities ample control over matters relating to language. These communities are not based on territory—education in Brussels is legislated by the language of the schools used by the parent, not by a Brussels authority (Jacobs and Swyngedouw 2001). Is it this non-territorial aspect or the linguistic aspect that renders the Belgian consociational institutions relatively free from criticism, in light of the Bosnian and Northern Irish examples? These types of considerations can aid in what could perhaps become an inevitable need for a redesign of the Bosnian state structures in light of the EU’s reluctance to take it on as a member until the human rights issue is resolved through constitutional reforms.

Some scholars and policymakers have focused on non-territorial structures as a way out of these territorial dilemmas (Coakley 1994; Nimni 2005; Bowring 2002). Provisions for Kosovo's state structures incorporate some of these non-territorial ideas, with provisions for a loose association of Serbian settlements and cross-border arrangements with Serbia for Kosovo's Serbs (Stroschein 2008). Non-territorial structures provide a means to preserve group-based premises for decisionmaking. However, they are de-linked from territory, which does not require identities but allows room for more individual choice regarding the group in which an individual prefers to take part. In this way, a French and a Flemish speaker might be neighbours in Brussels, but would each vote and participate in different language communities that make decisions regarding the schools that their children attend. Some constraints remain: the French, Flemish, and German communities in Belgium limit language provisions to these groups. Thus group-based systems will always have the problem that individuals who do not identify with one of the available represented groups will find themselves outside of the decisionmaking structures of the state. Such is the problem with the Sejdic-Finci case in Bosnia. Faced with these dilemmas, it may be the case that consociationalism might provide an initial set of arrangements for such societies, but that more long-term solutions might lie in governance structures that mix group-based decisionmaking with mechanisms to provide for individual participation. One area of promise might lie in preferential voting systems, such as that used in Australia. Such systems allow for group-based parties, but also require that parties must try to collect votes from individuals from other groups, fostering moderation. Indeed, Northern Ireland's elections demonstrate some of the advantages of such a ranked system. A full consideration of how preferential voting might work in Bosnia is a fruitful area for future research and discussion (Reilly 2001).

In this contribution, I have argued that Bosnia provides an interesting example of direct and funded aid, because it has been one of the most-funded interventions per capita in history. This aid was indeed crucial to setting the country on a firm foundation and to establish its consociational state structures. The fact that the state has not collapsed again into violence nearly 20 years after the settlement is a sign of this success, especially in light of the number of negotiation attempts required to get to the 1995 Dayton Agreement. In the short term, international aid has been crucial to this success. However, in the long term, some of the governance tensions inherent in the consociational structures of the Dayton Agreement have emerged, but these cannot be addressed by aid alone. They constitute logical problems that must be resolved by means of negotiation and organic involvement of the population. The fact that the Northern Ireland Good Friday Agreement has some similar (though not as many) tensions illustrates that the consociational contradictions are not simply Bosnian problems, but rather reflect some of the fundamental institutional tensions between group-based decisionmaking structures and individual human rights.



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