

VICTOR D. BOJKOV

**POLITICAL DEVELOPMENT OF BOSNIA  
AND HERZEGOVINA AFTER 1995: THE  
ESTABLISHMENT AND FUNCTIONING OF  
'CONTROLLED' DEMOCRACY<sup>1</sup>**

Victor D. Bojkov is currently studying towards a PhD degree in International Relations at the London School of Economics and Political Science. He holds a Master's degree in International Relations (University of Manchester) and a Master's degree in Human Rights and Democratisation (University of Padua). He has worked for the Open Society Foundation, for the UNDP and for the Ministry of Labour and Social Policy in Bulgaria and currently for the European Regional Master's Degree in Democracy and Human Rights in Southeastern Europe in Bosnia and Herzegovina. He is the author of *The European Union and Democratisation in Small European States* - EMA Thesis written for the University of Padua and published by Marsilio Editori in Venice.

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## **Introduction:**

‘Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections’

Constitution of Bosnia and Herzegovina,

Article 2.1

The subject matter of this paper is the political system of Bosnia and Herzegovina - an ex-Yugoslav republic that was torn among its pro- and anti-independence citizens in the early 1990s, went through a devastating armed conflict that further distanced its mixed population and emerged in 1995 as a reconstructed federal polity with numerous political, social and economic difficulties to be overcome. According to Rogan, Bosnia and Herzegovina faced a triple transition from ethnic warfare to multiethnic peace, from socialism to democratization and from planned economy to market-oriented capitalism (2000: 183). All of his suggestions beg further exploration, especially the last one, bearing in mind the economic system in Yugoslavia during communism was employing the model of self-management, rather than central planning as in other communist states. Inevitably, however, these parallel processes influenced each other, the first logically taking over as the unquestioned priority and primary necessity. A fourth very important parallel process is that of reconstructing coexistence in another territorial dimension. The view is not uncommon that Bosnia and Herzegovina after 1995 is a miniature version of former Yugoslavia in the days of its inception and existence in the sense that it combines multiple levels of governance in a polity composed of different ethnic and religious groups. Indeed in 2002, Bosnia and Herzegovina is a new state, with a very short experience in statehood and political independence. And a unique kind of independence at that. The struggle whether to remain or not under the umbrella of Yugoslavia is now replaced by the intricate and often unreadable struggle for more domestic responsibility and power in policy decision-making. This struggle is intricate and unreadable because of the inconsistency in its following by the different local political actors. Depending on their interest at any given moment they may support, as well as oppose the large and powerful international presence in the country.

The present work makes the case that the current political system of Bosnia and Herzegovina is ‘controlled democracy’ and assesses how it has been functioning so far and whether this has been conducive to consolidating the democratic enterprise throughout the polity. It is structured in three parts starting with a general theoretical discussion on democracy and two interrelated debates on its essence. The theoretical concept of controlled democracy and its elements is consequently placed within this wider framework as belonging simultaneously to one end of two sets of poles. The second part presents the post-1995 political system of Bosnia and Herzegovina. It makes reference to the state of affairs in the early 1990s in order to discern political continuity and rupture and to provide explanatory background for its further political development. This part makes it obvious how and why Bosnia and Herzegovina turns from an internationally monitored to an internationally controlled polity. However, it is also made clear that there exists a rich fabric of national politics that apparently needs to escape narrowly and exclusively defined objectives and programmes, in order to disentangle itself from a steadily confirmed image of its incompatibility with, and perceived antagonism to, democratic political practice. The third part of the paper turns its attention to how the international community has managed the political affairs of the country and whether it has been able, willing and facilitated to relax the grip of control that it has been entrusted with.

The argument the paper advances is that the political system of Bosnia and Herzegovina can reasonably be labeled as controlled democracy. It fits most of the elements

outlined for the concept in the theoretical part. And most importantly, it exhibits the essential feature of hybrid regimes where democratic institutions and mechanisms co-exist with non-democratic ones and where both have important functions in governing the polity and in doing so have to take account of each other. In the case of Bosnia and Herzegovina the non-democratic element of the regime is the more powerful one backed up by a commendable pool of international actors whose primary aim to date appears to be to keep the country together at all costs. Apparently objectives are prioritised, which makes it important to reveal their interplay and assess whether the result is conducive or not to firmly embedding democracy as the only viable option of political organisation.

The result of such assessment is both positive and negative depending on the area we focus at. It is pretty obvious that, as regards elections, there is an apparent withdrawal of the international actors involved combined with sustained efforts in creating conditions for successful handing over the process to national institutions. Multitude of reasons can be identified to explain why in this area control has been relaxed. In any case elections were never contested by any significant national political actor as the only means for selecting the political elite of the country. In other areas, however, control has remained highly concentrated and indeed exercised extensively. Based on the following discussion and analysis, the conclusion of this work is that control over democracy structured and implemented in the conditions of, and in the way it is being done in, Bosnia and Herzegovina is not conducive in the long run for its consolidation.

It is difficult to predict what the future holds for this country, and in any case it is perhaps useless to venture into such enterprise, however a few logical stepping blocks can be drawn from the contents of the paper. Exclusionary nationalistic political postures have to be replaced with competent issue politics, major national political actors have to learn to compromise and bear the burden of unpopular decisions, the citizens of Bosnia and Herzegovina and the elite they put into office have to adopt a culture of reconciliation and cooperation, which should also inform relations with neighbouring countries, and last but not least the international community has to willingly “Bosnianise” itself<sup>2</sup>. These are by no mean exhaustive and in fact not all will be discussed at length in what comes below. Some are simply intuitive remarks prompted by the research supporting the present work.

Before continuing it is important to stress that the functioning of the political system of Bosnia and Herzegovina, to a very large extent due to the direct international involvement in it, exhibits a number of contradictions with regard to democracy. Taking a recent one is exemplary – the attempt on the part of the High Representative of interpretation of the Electoral Law<sup>3</sup>. It highlights a symptomatic conundrum that is inherent in any such international interference in domestic political life and indeed inherent in most of the empirical examples from Bosnia and Herzegovina quoted in this study. It can be reasonably argued that giving parliamentary mandates to smaller parties that did not pass the five percent threshold required for allocating assembly mandates at all levels of legislative authority by the Electoral Law of Bosnia and Herzegovina (see for example articles 9.9 and 13.5) is beneficial to democracy. It would ensure representation beyond the exclusionary nationalistic lines of the three winning parties, each of which appeals exclusively to a single ethnic and religious group. More so when for the first time after 1995 the next regular elections are to be held in four, instead of two years time. However, in the sense that it can be seen as breach of the rule of law, democracy is being afforded a bad service. In this particular case the High Representative refrained from taking a decision violating the Electoral Law of the country, an act much to the liking of the three winning nationalistic parties.

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<sup>2</sup> By Bosnianisation I do not mean replacing international with national staff. I mean the willing process of learning the language of the country, interacting with the local community, getting versed in its history, tradition, customs and hopefully understanding the people better.

<sup>3</sup> See any daily newspaper or weekly journal in the period following the elections in October 2002 for review of related events.

There are numerous examples of such conundrum of interpretations as regards democracy in Bosnia and Herzegovina and the involvement of the international community in its political life. Thus the assessment of the effect of international decisions trumping domestically generated outcomes as positive or negative is always open to debate. The following paper will engage in such assessment but will not strive for definitive answers. Rather it aims at presenting the theoretical background to the concept of controlled democracy and links it to the political development of Bosnia and Herzegovina after 1995. It enquires **What are its parameters of controlled democracy?** and **How does it work in practice in Bosnia and Herzegovina?** The employed methodology is that of a case study at a certain level of detail defined by available space and empirical material.

## **Part I – Controlled Democracy: Theoretical Underpinnings:**

### Democracy: analysis between two sets of poles:

Most authors would agree that ‘the concept of democracy is uncontested’ (Beetham, 1994: 55-7) and as such is based upon several underlying principles that form the fundamentals of any political system we can reasonably label as democratic. However disagreement persists. In a simplified way two sides can be identified. At one end are those who would argue that democracy is a universal political system whose postulates override any particular characteristic contrary to their origin in those parts of the modern world where they were first formulated. Most of this universalisation of the idea of democracy derives from classical liberalism of the nineteenth and twentieth centuries. It has taken on board ideas of the classical Athenian democracy but viewed through its perception of their practical implementation. Based on such perceptions the idea of democracy has evolved over time to engender numerous debates as to what it implies today.

At the other end, or pole, stand those who claim that democracy, in order to be successful, has to originate within a certain sociology and cultural norms and can exhibit variations that are context specific (Schöpflin, 2001: 110). Since a polity has its own history, traditions, values and *character*, it needs to work out its political destiny in its own distinct way (Parekh, 1994: 167, emphasis added). Relativists would argue that liberal democracy is simply one stage of the development of the concept since ancient Ellada and if geographical regions indeed exhibit certain cultural patterns based on common historical, political, linguistic and religious experiences (Inglehart and Carballo, 1997: 35) then it makes sense to talk about Eastern European democracy (Lewis, 1994), Latin American democracy (Whitehead, 1994), Asian democracy (Potter, 1994) and African Democracy (Young, 1999; Bratton and de Walle, 1997).

In a bid to undercut both positions, still others would argue that ‘in a somewhat paradoxical vein, democracy could be defined as a high-flown name for something which does not exist’ because the idealism of the concept cannot readily translate itself in identical terms into its realism in modern societies (see Sartori, 1962: 3, 51-65). In this sense real-life democracy becomes a practically negotiated ideal and what once would require limited knowledge of Greek to define has today become a highly contested and varied in its appearances social phenomenon.

Another related set of poles would range within the minimalist concept of electoral or procedural democracy, where democracy ‘is an institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of competitive struggle for the people’s vote’ (Schumpeter, 1952: 269) and its maximalist version of substantive democracy which is evaluated by the degree to which its outcomes comply with moral intuition and by its promotion of value judgments about justice. The critique of the latter to the former is that procedures trump considerations of substantive results and are rarely measured up to ‘substantive goals, such as promoting the welfare of the least advantaged’ (Simon, 2001: 14). On the contrary, the former argues that attempts to abolish procedural features in the name of *better* democracy would only result in its discredit. The tension between the two is exacerbated by the insistence that substantive policy, and political and administrative action performed under substantive policy, must correspond to the express preferences of a majority of citizens (Saward, 1994) which brings the debate into a vicious circle with no agreed answer. Between the two poles, and in fact attempting to reconcile their conflict, would be authors arguing that ‘democracy describes a *system* of decision-making that guarantees the *equality* of all (mature) members of the community in their influence of the process’ (Beetham, 1999: 91, emphasis added). But here again we arrive at the divergence

between the deontology of democracy and its practice. Table 1 below presents a two-by-two diagramme combining the two sets of poles.

Table 1: Democracy between two sets of poles:

		I set of poles	
I I s e t o f p o l e s		Universal	Relative
	Procedural		
	Substantive		

It seems paradoxical that the universalism of the concept has come to be recognised after a series of context specific developments of democracy throughout the Western world. The development of the political systems of Britain, France, the USA, the Netherlands, Sweden, Canada, Germany, Australia are all relevant examples. A model seems to have emerged that was not universally sought. It was swift in becoming the universal norm of democracy thus limiting the space and potential for any subsequent context specific political development to influence its shaping. This argument of course would imply the existence of firmly established power relations in the world but few would deny this is indeed the case. A phenomenon supporting such an idea is what Mila•i• observes in most countries in Central and Eastern Europe. In his words they are performing *une sorte d'exhibitionisme symbolique de la norme démocratique* (1998: 22-7) partly because of lack of appropriate experience and the pressure of certain stimulants, but also because the space for innovations in the democratic enterprise has in fact shrunk.

It would be unreasonable to argue that the headings of Table 1 are totally separate from each other. There is an obvious fluidity in the diagramme. For example a relativist concept of democracy would include most of what the universalist deems indispensable. Neither of the two would deny that popular sovereignty<sup>4</sup> is a fundamental feature of any polity that purports to be democratic, but they will disagree on the way it is organized. Furthermore, the universalist side would argue for individual rights, separation of powers and the rule of law, representation, separation of public and private sphere while relativists would be careful in adopting all these fully and unquestionably. A recent study on Burkina Faso (Leinonen, 2001) demonstrates that traditional structures of legitimacy (the Mossi Chiefs) have been indispensable to the practice of democracy in that country and are, in its context, quite an important factor<sup>5</sup>. Thus relativists would often argue for collective rights and respect for local traditions and customs in devising any democratic enterprise.

<sup>4</sup> For Linz and Stepan, the existence of a recognised and uncontested state is essential for democracy as it 'clearly delineates individual membership of the demos as well as the territorial reach of its rules and decisions' (1996: 16-7).

<sup>5</sup> The Mossi Chiefs maintain constant contact with the people, they have deep knowledge and understanding of the local issues, many of which relate to customs and traditions, they have strong capacity in mediating disputes (Leinonen, 2001: 73).

Along the other axis of debate, procedural *versus* substantial democracy, an appropriate distinction as to what each implies are the two sets of rights codified within the United Nations Organisation in the 1960s and divided by politics as the first and second generations. The debate centres around two questions: ‘Concerning democracy which comes first – civil and political rights or economic, social and cultural rights?’ and ‘Can we have meaningful civil and political rights without the prior enjoyment of economic, social and cultural rights?’. An immediate relationship between democracy and civil and political rights is easily discernible. The right to vote and stand for elections, the rights to assembly and association, freedom of thought, conscience and religion, freedom of expression and information, the right to fair trial, etc. are all essential for democracy in a way that other human rights, such as the right to food are not seen to be. Thus when we talk of democracy first come the civil and political rights. However, in order to enjoy the freedom of information, one has to have the means to acquire it and the ability to understand and interpret it. In this case the right to education but also the right to a decent standard of living, including housing, food, work, would be primary.

The difference between the proponents of the procedural and the substantive paradigm lies in the different answers they would give to the above questions. The former will argue that precisely because of their negative character (e.g. states undertake not to violate them) only civil and political human rights are what we should associate with democracy. They do not look beyond this, at the results of the functioning of so premised a democracy. Free and fair elections and institutional mechanisms that guarantee the effective exercise of the ‘first generation’ of rights suffice to have a democratic polity. The latter, however, will look further at the results of such a democratic exercise and evaluate the extent to which it reinforces and legitimizes itself by an active role in promoting justice and equal opportunity. Beetham points out that civil and political equality does not require complete economic leveling but that is severely compromised if it results in unequal influence over the political process, as often is the case in the world most praised democracies (1999: 97). The former would argue for the primary importance of civil and political rights because, in a given polity, it is precisely the economically deprived who are likely to be politically active (Sartori, 1962: 79) while the latter would claim that this is increasingly not the case<sup>6</sup>. Some of the related argumentation is borrowed from economics and goes from insistence on the effectiveness of a minimal state and the potential of the liberalism’s ‘trickle-down’ effect to the point of increasing waste of human resource if poverty and lack of education are not actively addressed.

A framework of analysis that silently acknowledges and captures the complexity of the above debates in an interesting methodological combination is the IDEA ‘State of Democracy’ project initiated in the autumn of 1999. The assessment tool is premised on two key democratic principles, popular control and political equality, which it subsequently develops by bringing in mediating values and the institutional means of their realisation (Beetham *et al.*, 2002: 13-5). In the countries where the project operates, it relies on teams of local expert assessors, who work in concert with IDEA staff and a central unit that IDEA has established at the University of Leeds. These teams help answer the question: ‘How democratic is our country and its government?’ and in doing that have been given the important function of choosing benchmarks and defining standards within a wider and necessarily general assessment framework. This framework is based on the belief that democracy is a universal value created in the West over many generations, nevertheless it can as such be enriched by distinctive particular experience and perspectives generated in other parts of the world (Beetham *et al.*, 2002: 17). The universalist position, although extremely informative, is nevertheless cracked open for influence of local reflection. Perhaps this is a reflection of the fact that historically the practice of democracy has evolved enormously since

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<sup>6</sup> I am thankful to David Beetham who pointed this out in a private conversation in Sarajevo, May 2001.

the times when it was first recognized to exist and so has the theory informing and explaining it. Besides direct, representative and liberal democracy it has become possible to talk of consociational democracy (Lijphart, 1977, 1984), deliberative democracy (Miller, 1994), associational democracy (Hirst, 1994), multiethnic democracy (Sambanis, 2000)<sup>7</sup>, etc.

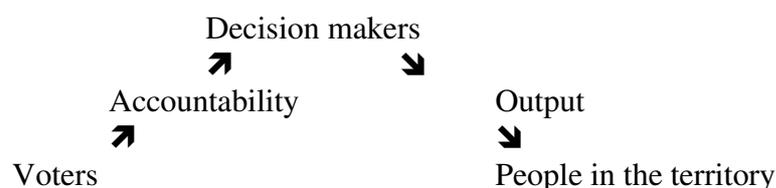
Through the following part, in a somewhat controversial vein because of the unlikely combination of words, the theoretical base for controlled democracy is presented. Although seemingly paradoxical, the phenomenon exists in practice and there is no reason why it should not go by a proper name. In view of the aims of the paper the discussion is supported by practical examples from the current political reality of Bosnia and Herzegovina that are later taken up for further elaboration.

### Controlled Democracy:

Perhaps it is better to talk of controlled democratization rather than of controlled democracy. However, the very idea of democracy implies never ending democratization. Instead of being an end-state, democracy is always a process of development and (hopefully) improvement. In line with many authors, I am thus prepared to equate rather than differentiate between the two. A more relevant distinction is that between transition to democracy and democracy itself (which needs to be qualified), where again we would be put into the dilemma of defining beginning and end and will be thus facing one of the fundamental questions in social science - What is change? For the sake of brevity, in this work I will refer to controlled democracy.

Increasingly, democracy is not an exclusively domestic preoccupation. Because of its political nature, and the involvement of a huge number of people, the process of establishing democracy is, and has been, open to influence of experiences from outside. Historically the upshot of such influence occurs in the era of globalisation. Held argues that globalisation cracks open the following diagramme:

Figure 1: The internal dynamics of democracy:



Source: Adapted from Held (1995: 224).

He claims that unless democracy exists at the international level (the cosmopolitan model) and as such complies with several underlying principles (1995: 271), the concept of domestic democracy should be reconsidered. If we further this argument relating to the juxtaposition of constitutionalism and politics, few democracies in the world exist where the degree to which national politicians are accountable to their domestic constituencies satisfies what procedural democracy requires (see Held, 1994). It is a fact that national politicians are increasingly becoming readily responsive to structures extending far beyond the national citizenry. Processes of integration and regionalism within the wider global context are relevant in this regard. We could argue on the democratic elements involved in adopting fully the *acquis communautaire* by a country wishing to join the European Union. In this case <sup>7</sup> ~~Sambanis challenges the claim~~ that ethnic diversity leads to war. For him 'the political dangers of ethnic diversity are imperfectly understood. Instead of partition, he advocates 'enhancing ethnic diversity, while strengthening political institutions' as most beneficial to democratisation (2000: 479-80).

democracy is presumably fulfilled by the 1993 Copenhagen criteria for membership. But what then are we to make of Mitterand's trade-mark of consistently avoiding national democratic accountability for policy decisions by exogenising them towards EU level institutions. The important question to focus on here is - Who is in control? In conditions of global and regional interdependence national politicians are increasingly becoming accountable to structures of incentives that go beyond their national electoral constituencies? Control can be a domestic phenomenon as well when for example the executive elite of a democratic country strives at concentrating as much power in its hands as to allow it to govern free of public scrutiny. In Italy, the current prime minister owns several media and increasingly imposes control over the judiciary in a way detrimental to the functioning of democracy. In multiethnic polities control can be also exercised with regard to internal ethnic groups, the so-called hegemonic model (Lemarchand, 1995), in order to suppress ethnic challenges to the government of the state or to the state itself. Employing a mixture of rewards and sanctions, or co-optation and coercion (Lustick, 1997) is the key feature of such a model of control. This presupposes a dominant ethnic group controlling the state apparatus in terms of political, economic, military and ideological power to borrow Mann's categories (1993), such as the case is in the Israeli-Palestinian conflict. That, however, is not how the current ethnic, social and political relations are structured in Bosnia and Herzegovina.

For the purposes of the present discussion it is more appropriate to remain on the international plane where control is imposed from outside the boundaries of the polity. Coming back to Europe, the internal political development of aspiring members steadily attracts the interest and influence of a community of states that exclusively tolerates democracy as the only desirable mode of political organisation. So intense have become various networks of interaction, influence, coercion and control that, both politically and economically, domestic and international are no longer domains exclusive to each other. For South-East Europe, and this is not an entirely new feature of its political environment, it is now the rule rather than the exception to witness reactions from outside governments (Western Europeans in this case) to internal political developments in the country (Stan, 2000: 154). Supporting the validity of such arguments while nevertheless maintaining the viability of democracy, or polyarchy as he prefers to call it, Dahl accepts that 'polyarchy can exist in a country whose options are narrowly constrained by the actions of foreigners' (1971: 191). Precisely such is the case of Bosnia and Herzegovina. There is no dominant ethnic group, neither politically, nor economically, nor militarily. The war of the early 1990s served as justification for outside intervention - firstly, for bringing peace; secondly, for preventing recurrence of war through controlling the political development of the country. The professed aim of such outside control is its withdrawal after the establishment and consolidation of peace and democracy.

Hence the importance, in this respect, of the school of thought interested in the international dimension of democratization, which after the end of the Cold War and the resulting political development in Eastern Europe acquired new legitimacy. It advances several main points and ventures to employ its analytical rigour retrospectively to earlier processes of democratization elsewhere in the world thus securing an ample ground for diverse lines of comparative enquiry. Put mildly 'a favourable and supportive geostrategic environment has been essential, even perhaps crucial' (Pridham, 1994: 7), for successful transitions to constitutional democracy in Eastern Europe after the Cold War. This is one of the main assumptions on which the school of the international dimension of democratization rests<sup>8</sup>. For the purposes of this argument, the discussion outlines two of its relevant positions – control and conditionality. By definition they are most effective in terms of cost and result

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<sup>8</sup> I have more fully presented and employed its analytical framework elsewhere (Bojkov, 2001).

when applied in a small country like Bosnia and Herzegovina. It will be pretty difficult and costly to attempt control over democracy in China, Russia, Brazil or Nigeria for example.

When talking of control, which constitutes an external non-defiable influence over the political development of a country, the essential point is that two-thirds of currently existing democracies owe their origins, at least in part, to deliberate acts of imposition or intervention from without that were, moreover, undertaken within living memory (Whitehead, 1996a: 252). Whitehead presupposes the ‘unilateralism’ of control (1996a: 257) and stresses the importance of foreign policy consent in the dominant actor. I accept his insistence that foreign policy consent is essential, but in view of the case at hand propose to broaden the idea of unilateralism<sup>9</sup>. In Bosnia and Herzegovina there exist a multiplicity of actors involved in controlling the polity. This is important to stress because their objectives not always coincide and interaction is often tainted by institutional pride. The mandates of the OSCE and the OHR, for example, create potential lines of conflict. The former must respect Paragraphs 7 and 8 of the 1990 Copenhagen Document regarding the election and the serving of full time of office by elected officials, while the latter has the powers to remove them.

Conditionality, on the other hand, is the ‘deliberate use of coercion – by attaching specific conditions to the distribution of benefits to recipient countries – on the part of the relevant actors’ (Schmitter, 1996: 30) and clearly links economics and politics. In Europe, the European Community started using conditionality as early as 1988 in regard to its trading partners. Through offering economic incentives to Eastern European countries, it looked to engender domestic political outcome within a certain pre-defined framework (Smith, 1999: 43-65). Both, control and conditionality constitute a ‘blatant disregard for traditional notions of national sovereignty’ (Schmitter, 1996: 42). A basic distinction between the two is that the latter leaves the approved democratic regime unconstrained in its policy choices provided agreed criteria for democratic performance are not violated. Both involve a two-way flow of influences and presuppose a dynamic of mutual adjustment. Conditionality’s success depends on the receptiveness of political and social forces in the targeted country. The generation of consent is important in two aspects: a) defining the territorial limits of the polity, and b) the ways in which the national actors of democratization are constituted inside it (Whitehead, 1996a: 264-5). If neither of these is satisfactory to the actors of influence, conditionality increasingly becomes supported by control. Put differently, if the internal drive for democracy is not there and the two above aspects of consent not satisfactory, control takes over. At this point conditionality’s success will necessarily be compromised. Informative concept in this case is Pridham’s expanded ‘hybrid regimes’ where minimal standards of democracy are met but these co-exists with structures of retained authoritarian elements (2000: 13-4). In the case of controlled democracy these elements could well be external. The ‘overlapping and competing internal and external authorities blur the distinction between internal and external and between state and non-state dimensions’ (Pugh, 2000: 1). Bosnia and Herzegovina is exemplary of the above positions. Given the choice, the agents of control within the state would prefer national politicians to follow the line prescribed by the Dayton Peace Agreement without the need of using powers of coercion. In such a hypothetical case, the leading role within the hybrid regime will belong to local politicians. To the extent that this remains a hypothetical case, because for example the responsiveness to the prescribed *modus operandi* of political and social forces in the country is limited, the leading role will have to be taken over by the international actors. Especially, and this is particularly relevant for Bosnia and Herzegovina as we shall see below, when generated consent is conducive neither to democratically a) define the territorial limits of the polity, and b) constitute the national actors of democratization inside it

Controlled democracy is part of the wider framework of democracy promotion which suffers from two related shortcomings: there are no permanent implementing agencies to operate under international conventions and supervision, and hence the inherent danger that this activity, perceived as permissive and altruistic, may increasingly derive from the self-regarding and centralizing logic of power-politics (Whitehead, 1996: 9-10). If the first were addressed, it could convert promotion of democracy from a foreign policy fad into a binding structure of international obligations (Whitehead, 1996a: 270). Perhaps this is a reliable indication of the lack of commitment and willingness on the part of Western liberal democracies to commit themselves to consistency and strategy through establishing rules of democracy promotion, although 'in the late XX and early XXI century they have accorded a high priority to the establishment of democratic political processes and the creation of responsible institutions, especially in war-torn societies' (Pugh, 2000: 1). Referring to states, Whitehead suggests territorial incorporation as a way of reconciling the conflict between power politics and altruism. In any case, these two limits of control as democracy promoting tool are extremely dangerous for the subject's internal drive for democratization. By default control will always be perceived as non-altruistic and self-serving.

Aligning control to the process of establishing democracy (and not only to its beginning), broadening it beyond the presupposed unilateralism and combining it with conditionality, we can observe it in varying degrees in every new democracy in Central and Eastern Europe. These 'fourth wave countries' (see Doorenspleet, 2000), because of geography, undergo transition processes in an immediate proximity to a regional community that, after the end of the Cold War, exclusively tolerates democracy as the only desirable and permissible form of political organization<sup>10</sup>. Because of geography again, these countries are offered the possibility for entry (quasi territorial incorporation) in this community, which makes it even more important that they be consistently democratic. There is foreign policy consent, there is interest in being altruistic, there are relations of power. These make the European Union the most powerful and sustained structure of international incentives favouring democratization in the contemporary period (Whitehead, 1996a: 258). Bosnia and Herzegovina, however, is the 'odd man out' in respect to other Eastern European Countries in the sense that the mechanism of control is inserted in the country and has become an indispensable part of the domestic political system. It is a powerful factor looming large in all other actors' considerations. The mere fact of its existence and prerogatives defines the political behaviour of local politicians.

Based on the above several points can be derived that would constitute the main elements of the theoretical concept of controlled democracy:

1. Imposition of controlled democracy is legitimized through reference to the security and welfare of the citizens of the polity and the inability of local politicians to achieve those;
2. Controlled democracy is most cost-effective in small states – and hence more likely to be attempted within a small state;
3. Control, together with conditionality, is exerted and sanctioned by Western liberal democracies;
4. There are responsible domestic institutions of decision-making that meet fundamental procedural requirements for democracy;
5. International structures of incentives whose accountability rests outside the national constituency are operational within the polity;

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<sup>10</sup> The Europeans have very recent and bitter experiences to remind them of the dangers (and temptations) of failing to protect liberal values (Whitehead, 1996a).

6. There exists a framework of permitted domestic action. If it is respected, control becomes monitoring, and vice versa. Unlike the case of conditionality, Mila•i•’s *exhibitionisme symbolique de la norme démocratique* is not possible;
7. There is no universally agreed international norm or implementing mechanism. Consistency is logically lacking, because power politics and foreign policy considerations often trump altruism;
8. The exerted control is not necessarily unilateral. There is agreement on basic principles of action among the actors involved, however institutional conflict is not precluded;
9. Stability and security is a goal equally important, and at times more, to democracy and a potent guiding principle of action.
10. Paradoxically, the ultimate goal of controlling democracy is to strengthen domestic democratic political mechanisms and institutions and to engender mutual trust on the part of politicians and citizens that the only viable way to adjust differences is through a political process within the rule of law and through respect for human rights.

Because of the internal political structure of the subjects of influence, their experience and perception of political development, their being outsiders to traditions and customs of the controlled polity, their willingness to demonstrate success and avoid failure, and because of the cost involved, controlled democracy will necessarily be following the universalist, procedural model outlined in the previous section:

Table 2: Controlled democracy within the two sets of poles:

		I set of poles	
		Universal	Relative
I I s e t o f p o l e s	Procedural	<i>Controlled democracy</i>	
	Substantive		

The following parts demonstrate that the political system of Bosnia and Herzegovina corresponds to most of the elements of the theoretical concept of controlled democracy by reviewing its political development in the 1990s and beyond. The country shares some common characteristics with the rest of Eastern Europe that engaged in processes of democratic transition after the departure of communism. It is in the immediate proximity of the European Union, for the last 45 years before 1990 its governance was guided by an ideology non-conducive to political pluralism and democracy and non-respectful of civil and political human rights. Traditions of liberalism in politics are lacking. Bosnia and Herzegovina also features uniqueness. War is the first example, but also the resulting antagonism of three roughly equal by size and strength of bound groups distinguished by religion, ethnicity, language (perhaps overstated), traditions, narratives of historic origins, etc. Given these unique features, would democracy be possible in the multi-cultural, multi-ethnic, multi-religious and so on divided society of Bosnia and Herzegovina? The answers, taken from authors referring to divided societies in general, will range from the forbidding and practically stigmatizing 'absolutely no' (Mill, 1955: 486), to the optimistic and allowing 'of course yes' (Lijphart, 1991: 499). Perhaps the true answer lies in-between.

## **Part II - Bosnia and Herzegovina in the 1990s:**

The increasing disagreement among the politicians of several of the Republics of former Yugoslavia, the accompanying nationalistic fervour and resulting war led to the November 1991 opinion of the EC Arbitration Commission that ‘the SFR of Yugoslavia is in the process of dissolution’<sup>11</sup>, designating the Republics as the main sub-federal units. The Parliament of Bosnia and Herzegovina, elected one year earlier, was already severely divided between its Croat and Muslim members on one side and its Serb members on the other. There are numerous explanations why the parties promoting exclusive nationalistic agenda (SDA, SDS, HDZ)<sup>12</sup> won in November 1990, one perhaps combining them all is what Chandler identifies as the ‘prisoner’s dilemma’ in voting (1999: 30). At the end of 1991 Muslims and Croats held a referendum on the independence of Bosnia and Herzegovina<sup>13</sup>, while Serbs held a referendum for remaining in the Federation.

Subsequent events in Bosnia and Herzegovina eventually led to the outbreak of war. It resulted in a relatively large number of refugees and in three, more or less, territorially concentrated ethnic groups. Outside actors, such as Russia, Western European countries and the USA, were actively involved in negotiating its end. In none of the consecutive peace plans, worked out by different teams and known by different names, was there any idea of splitting the Republic. They employed different ways of constructing its administration but were not at the least considering secession of any territorial unit (see Bougarel, 1996: 146-55). Peace came with the General Framework Agreement for Peace (GFAP)<sup>14</sup> signed on December 14, 1995 in Paris and negotiated earlier in Dayton, Ohio. The agreement is best described as one *balancing the competing demands* resulting from the war (see Bieber, 2002: 206-7) and hence as the best *possible* solution under the circumstances. Until now, and foreseeable for some time ahead, this peace treaty defines the polity of Bosnia and Herzegovina and the legal parameters of its political system. The GFAP, and its interpretation and subsequent development, is the reason for labeling the polity of Bosnia and Herzegovina ‘controlled democracy’. Through GFAP it features a unique combination of national sovereignty and international control in a framework of tolerated, encouraged and allowed political action. In a regional context, with no regard to timing of events, Bosnia and Herzegovina can be placed between Macedonia and Kosovo comparing international involvement in domestic political affairs. The former features intensive brokering of the August 2001 Ohrid Agreement between Macedonians and Albanians but preserves political sovereignty, while the latter features limited and provisional ‘self-government’ (see the Constitutional Framework for Provisional Self-Government) defined by the Special Representative of the UN Secretary-General in the summer of 2001 in a way that does not ‘affect or diminish [his] ultimate authority under Security Council Resolution 1244 of 1999’.

The GFAP was signed by three Parties – the Republic of Bosnia and Herzegovina (represented by Alija Izetbegović), the Republic of Croatia (represented by Franjo Tuđman) and the Federal Republic of Yugoslavia (represented by Slobodan Milošević) – and contains 11 Annexes. Of those Annex 3 is the Agreement on Elections, Annex 4 is the Constitution of

<sup>11</sup> See Opinion 1, Art. 3 reproduced in Ramcharan (1997).

<sup>12</sup> The very origins of these parties in 1989-90 prompted irreconcilable platforms in which issue politics gave way to politics of fear, distrust and ethnic exclusion (see Bougarel, 1996: 39-47). SDA is the Muslim organized Party for Democratic Action; SDS is the Serb Democratic Party; HDZ is the Croatian Democratic Union.

<sup>13</sup> In some areas of predominantly Croat populated Herzegovina the idea was discussed to amend the referendum question in a way that would link the approval of independence for Bosnia and Herzegovina with an approval of its cantonisation into three communities (i.e. Croats, Muslims and Serbs) organised on a territorial principle. Confusion still exists as to whether in these areas the referendum question was actually amended to this effect or not. I am thankful to Stefano Bianchini for this remark.

<sup>14</sup> The full text of the Agreement is available at the official Internet Site of the Office of the High Representative - [http://www.ohr.int/dpa/default.asp?content\\_id=379](http://www.ohr.int/dpa/default.asp?content_id=379)

Bosnia and Herzegovina (uniquely a peace agreement ending a war provides the Constitution of a sovereign country)<sup>15</sup>, Annex 6 is the Agreement on Human Rights and Annex 10 – the Agreement on Civilian Implementation.

### The General Framework Agreement for Peace:

According to Annex 3, the Parties (here they are the Republic of Bosnia and Herzegovina and its Entities - the Federation of Bosnia and Herzegovina and Republika Srpska) request the Organisation for Security and Co-operation in Europe (OSCE) to supervise the preparation and conduct of elections at all levels of government (Art. 2.2). The organisation thus becomes an essential element of the practice of procedural democracy in Bosnia and Herzegovina. Elections are said to be fundamental for establishing representative government and for the progressive achievement of democratic goals throughout the country. Annex 3 defined the temporal framework of holding the first post-war general elections and they were scheduled for September 1996. An integral part of Annex 3 are Paragraphs 7 and 8 of the 1990 Copenhagen Document of the Meeting of the Conference on the Human Dimension. Paragraph 7.9 states that the Parties ‘shall ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures’. Bosnia and Herzegovina joined the organisation in 1992<sup>16</sup>. OSCE had before that set up the Office for Free Elections, which was later renamed and institutionalized as the Office for Democratic Institutions and Human Rights (ODIHR). Since its inception ODIHR has been the main institution to monitor, advise on, help organize, assess, etc. elections throughout Eastern Europe.

The Constitution of Bosnia and Herzegovina is included in the GFAP as Annex 4. Its articles represent what has been possible to agree on in terms of state construction at the end of 1995, i.e. the minimal common denominator among the parties involved in conditions of strong international pressure and bargaining. Bosnia and Herzegovina has as citizens three Constituent Peoples and Others and is composed of two Entities that enjoy wide governmental functions and legislative powers, including the regulation of Entity citizenship (Art 1.7a, 3.1 and 3.2a). The institutions of Bosnia and Herzegovina (legislative, executive and judicial) are composed of roughly equal number of representatives of each Constituent People, including in the case of the Constitutional Court three international judges. There is an Annex to the Constitution which makes 15 International Human Rights Documents directly applicable in Bosnia and Herzegovina. On paper, Annex 4 defines a federal polity, which would easily meet the requirements of procedural democracy. There is division of powers between the institutions, these institutions are formed according to international standards<sup>17</sup> of representative democracy and are staffed by national politicians. The quotas employed for the legislative assembly and the institution of the presidency, precisely because they reflect country specificity and have their origins in pre-war Bosnia and Herzegovina, are not unique and in no way incompatible with the principles of democracy.

The GFAP entrusts the protection of human rights in Bosnia and Herzegovina into the hands of the Commission on Human Rights (Annex 6) consisting of the Office of the

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<sup>15</sup> The Peace Treaty of Versailles, for instance, left it to the countries (the Kingdom of Serbs, Croats and Slovenes, Hungary, Austria, etc.) that emerged from the First World War to adopt their own constitutions according to the established procedures at the time. Bosnia and Herzegovina was treated as an exception to this practice and was given a Constitution, which has never been reviewed and formally approved by any domestic body (see Pajić, 2001: 58).

<sup>16</sup> At that time it was still a Conference and not yet an Organization. CSCE became OSCE in 1995.

<sup>17</sup> See international election standards at <http://www.osce.org/odihr/elections/standards/>

Ombudsman and the Human Rights Chamber. Their jurisdiction is limited to the Council of Europe's European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the Protocols thereto and to cases of discrimination on any ground (Art. 2.1 and 2). Both institutions are staffed by a large number of international judges and lawyers and the budgets they command exceed by far the budgets of national courts. The same is true for their professional capacity as regards the ECHR and International Human Rights Law. Finally, the part that has undergone most development is Annex 10, under which the Parties (here they are again Bosnia and Herzegovina, Croatia and FR Yugoslavia) request the designation of a High Representative (HR) for Bosnia and Herzegovina (Art. 1.2). Under Article 2.1, the mandate of the HR includes functions in monitoring, coordinating, facilitating and reporting different activities on implementation of the peace settlement. The HR is also entrusted with the 'final authority in theater regarding interpretation of this Agreement on the civilian implementation of the peace settlement' (Art. 5). A very important institution with regard to the mandate of the HR was established in London in December 1995 following the signature of the Dayton Agreement – the Peace Implementation Council. It comprises 55 countries and agencies that support the peace process. It meets annually at ministerial level to review progress in the implementation of the agreement and to define further goals.

What would the above description tell us about post-1995 Bosnia and Herzegovina? By all means it is a state with a democratic political system that, for understandable reasons, features certain involvement of foreign actors and a certain framework and guidelines for political action. The state does not command its army and police force, but as far as civilian affairs are concerned domestic political actors are given ample space to reconstruct the polity in a way compatible with the framework of the GFAP. A certain incapacitation exists, however, of state level authorities in the face of their entity counterparts. The central government (enjoying only limited and exhaustively enumerated by Art 3.3 of Annex 4 prerogatives) is quite weak, with substantial powers delegated to sub-state levels of authority. Within the Federation itself, the power is further decentralised into 10 cantons with high degree of autonomy, own constitution, parliament and government. Such power distribution would not pose a serious problem, had it not been for the lack of cooperation and coordination between the different levels of power. The adoption of irreconcilable positions exacerbates further the incapacity for decision-making. It does not help also that most revenues are raised at the entity level. For example, in 2001, the budget of the state was 304.3 million KM (\$146 million), while by contrast each entity had a budget of more than twice that size. Practically the state relies on the entities for its budget, beside the decreasing international assistance.

The GFAP borrows heavily from the Council of Europe experience in setting the rule of law, democratic institutions and human rights as the one and only goal of Bosnia and Herzegovina's political development. One important criticism leveled at the GFAP is that it acknowledges and gives legal force to what happened during the war and thus does not create conditions conducive to reconciliation, rather entrenches certain parties in firm and non-negotiable positions. The design of Bosnia and Herzegovina polity is not an entirely national project. It follows a universalist and procedural model of democracy with a very few departures attributable to the fact that it has had to be accepted by all parties involved. It is a reflection of Carothers's *institutional modeling* where a counterpart Western institutional design is sought, in order to devise a workable formula (1997: 116). In this case Belgium, Switzerland and Canada come to mind as obvious model counterparts with two very important distinctions however – firstly, all of them were domestically generated without trying to emulate existing arrangements and, secondly, as far as taming the force of nationalism and securing peace are concerned, they have been, 'by any reasonable criteria, successful' (Kymlicka, 2001: 31).

My argument in the following section of the paper is that, through subsequent interpretation and development of GFAP, perhaps resulting from its malfunctioning or abuse

by local nationalist politicians, Bosnia and Herzegovina has become a polity whose democracy is controlled. The political life of the country has provided new legitimacy for increased foreign involvement in its affairs. Such involvement has on occasions proved not to be conducive to reaching the point of relaxing control. Because of the extensive powers conferred upon, and exercised by, external actors, the domestic political discourse has remained rudimentary thus allowing parties and politicians to avoid taking unpopular decisions and to keep attracting electoral support through employing and propagating nationalistic and exclusionary platforms. This is a fact, despite the professed assessment of the Agreement as ‘the most ambitious peace agreement in modern history [that] sets out to ... create a democratic and free society’ (Bildt, 1996)

### The Politics of Post-Dayton Bosnia and Herzegovina:

It is apparent that the political process in Bosnia and Herzegovina after 1995 picked up from where it was interrupted in the early 1990s with a deteriorating circumstance – the very recent memory of war. The parties that will historically be blamed for not being able to reconcile their positions and thus politically responsible for the war<sup>18</sup> emerged in 1995 with a clear idea how to most effectively and speedily rally supporters and with no scruples in employing fear, ethnic enmity and nationalism in their electoral campaigns. As in the elections in 1990 they were feeding on such appeals, through which they mutually accorded legitimacy to each other. Interestingly enough, at the beginning of their rule in the early 1990s, these three parties formed a kind of coalition government that was seen as unnatural, dysfunctional and incompatible with democratic principles (Lovrenovic, 1998: 185). They might be heading for the same outcome after the elections of 2002, only that now it is more likely that they will be discouraged by the international community to do so. In any case, it was evident after 1995 that for some time to come, the main national political actors of democratization in post-Dayton Bosnia and Herzegovina will be the SDA, HDZ and SDS locked in territorially separated constituencies and posed to prevent their de-homogenization through obstructing return of refugees and displaced persons. Although the social and political conditions in Bosnia and Herzegovina in 1996 were judged to not be conducive to holding free and fair elections<sup>19</sup> the OSCE decided to go ahead with the timetable provided by GFAP. In the words of the then High Representative, ‘the elections now – imperfect as they are – are crucial for paving the way for the setting of common institutions of the country’ (Bildt, 1996a). In comparative perspective, the priority accorded to elections in war-torn societies has been justified conceptually in terms of the democratic peace thesis and the assumed power of the ballot box to negate the attractions of political violence (see Pugh, 2000: 4). In any case, the huge international presence in Bosnia and Herzegovina needed to provide its legitimacy through establishing contacts with officially elected national politicians even if the 1996 elections gave democratic legitimacy to the pre-war nationalist parties. Linking nationalism with democracy, both in its procedural and substantive forms discussed above, opens up a whole new area of debate and discussion for which space is not available in the present work.

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<sup>18</sup> Andjelic claims that the ‘renaissant’ civil society in Bosnia and Herzegovina in 1991 felt strongly in opposition to any armed conflict to which the country was geared by its political elite. Intellectuals, students, media activists and other groups of citizens made it clear that they did not want war. Journalists resisted every attempt by the governing parties to divide the media into exclusively ethnic radio or TV channels. Several women’s organisations opposed army conscription. Children at schools switched from collecting film and football stars photos to collecting signatures for peace. In January 1991 a multi-ethnic group of 92 Bosnian intellectuals signed ‘Charter 92’ which among other things challenged the claims of ethnic leaders for representation, arguing instead for the sovereignty of citizens and not of ethnic groups. When in March 1992 barricades were erected in Sarajevo people took on to the streets in protest (see Andjelic, 1998: 305-11).

<sup>19</sup> See ICG (1996) for an overview of the politics surrounding this issue.

A brief encounter with the relation between the two, however, helps in furthering the argument.

The existence of a nation, based on a civic, ethnic or other principle, is seen as a necessary precondition for the type of political cohesion that democracy requires (Nodia, 1994: 8), because ‘the people cannot decide until someone decides who are the people’ (Jennings, 1956: 56). Through history, the process, and its explanation, of defining the ‘people’ goes beyond academic theoretical debate. It consistently mirrors concrete and steadily changing needs of policy-makers (Bianchini, 1999: 145-6). What is also very important, often the environment prompts the attributes employed in national construction<sup>20</sup>, i.e. they belong to the interaction as much (or even more) as they belong to the group (Horowitz, 2000: 42). Rather than being mutually exclusive and hostile, nationalism and democracy are joined in a sort of complicated marriage, unable to live without each other, but coexisting in an almost permanent state of tension. Two particularly relevant distinctions have to be kept in mind - between *emerging* and *established* democracies and between *homegrown* and *imported* democracies (Nodia, 1994: 4-5). In the 1990s, most post-communist states faced the hard tasks of establishing a nation, often along exclusionary ethnic and religious lines, and democratising their polity, which requires inclusion and equality. The two processes (the former guided by the exclusionary irrationality of constructed belonging, the latter by the rationality of self-governance, accountability, equality, governability, guaranteed political rights and civil liberties, etc.) ran parallel to each other in an environment where to *grow* democracy at *home* is no longer possible. In such circumstances nationalism and democracy can become incompatible. More so when within the borders of a polity exist more than one national claim and when counter-influences are weak, i.e. there is no democratic practice, judicious leadership and new democratic elites (Pridham, 2000: 16). Bosnia and Herzegovina is an excellent example of the above. Its multiculturalism has been a long established practice but lacked the framework of a common cultural, political or civic ideal. Political activity in such institutional vacuum is quick to lean on exclusive and non-democratic nationalism (Shoup, 1998: 282).

After the collapse of Yugoslavia, nationalism became the most consistent political culture alternative to communism. Political actors of nationalist inclination turned their attention to demography playing with the paradoxically democratic principle that ‘strength lies in numbers’ and thus strongly favouring a process of ‘othering’ and instilling fear of ‘otherness’. As a result the process of democratization has faced significant limitations (Bianchini, 2000: 74-5). Clearly the priority of the national democratising actors after the elections of 1996 was to engage in constructing a strong and united constituency through employing historically proven tools of nation building. Both the SDS of Radovan Karadžić and the Bosnia and Herzegovina HDZ of Stjepan Ključić founded in July and August 1990 respectively bore distinctly nationalistic features. The same is true for the SDA founded in March 1990, which also employed religious structures for nationalist mobilisation (Bougarel, 1996: 44). During, and immediately after the war, these three parties remained main points of reference and centres of authority holding political, social and economic monopoly in their respective areas (Pejanović, 2000: 27) and maintaining their exclusionary postures. As late as 2000 their electoral slogans are still exemplary<sup>21</sup>. Such party politics, despite the GFAP, has engendered very little contact between the three ethnic communities. Diamandouros and Larrabee are thus willing to view Bosnia and Herzegovina as ‘not really an integral state’ (2000: 55) or in other words ‘not a fully functioning “Westphalian” state’ (Pugh, 2000: 7). Clearly in the case of former Yugoslavia, and more specifically Bosnia and Herzegovina, the

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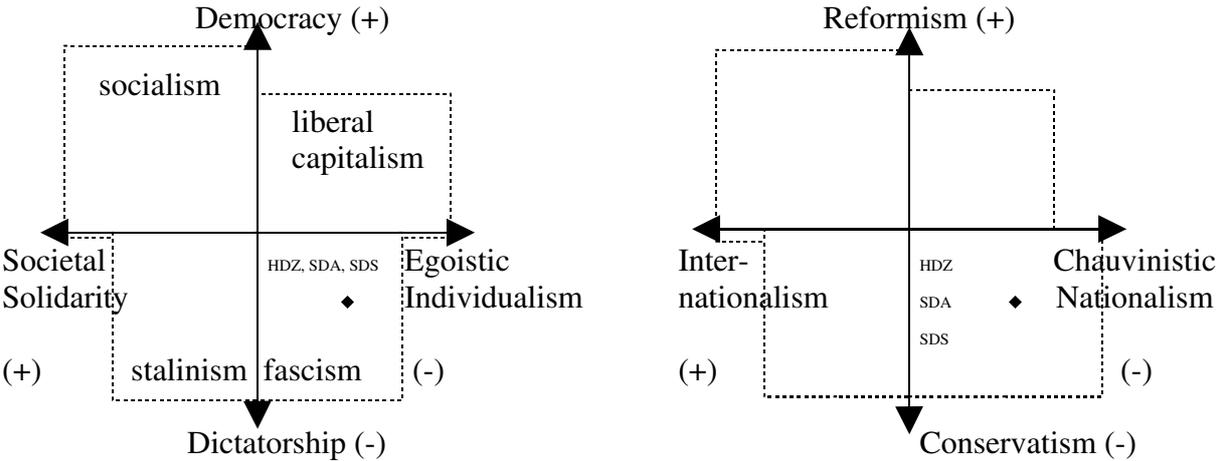
<sup>20</sup> That nations are indeed ‘constructed’ is claimed by the influential work by Anderson (1983).

<sup>21</sup> HDZ featured the slogan ‘Selection or extermination!’; SDA, which at its origin was defined as the ‘political organization of the people from Muslim cultural-historical origin’, invited the electorate to ‘Vote for [their] own people!’; and SDS employing similarly non-conciliatory electoral strategies.

political culture of nationalism and democracy have proven to be irreconcilable (Bianchini, 2000).

Precisely because of these parties' exclusionary postures, numerous hindrances existed in the installation into office of newly elected minority councilors after the 1997 municipal elections. The OSCE Democratisation Department had to devise a special *Introduction Project* in order to facilitate elected councilors returning to municipalities, from which their ethnic group was driven out by the war, in order to assume their responsibilities (see Rogan, 2000: 186-201). Thus the failure of transition from ethnic enmity to multiethnic peace and tolerance severely diminishes the chances of successful functioning of democracy. Pridham argues that the war in some parts of former Yugoslavia resulted in democratisation being effectively shelved (2000: 1). It can be argued that in Bosnia and Herzegovina, because of the way in which the national political actors were constituted inside it, the process of democratisation was kept *shelved* in the period following the war. Borrowing from Branko Horvat's classification (2001: 19-21), the three parties in power would be positioned in the double negative quadrant III of the diagrams of Figure 2. According to it, *Democracy* and *Reformism* can only reach their full potential when combined with *Societal Solidarity* and *Internationalism* respectively, and are handicapped by *Egoistic Individualism* or *Chauvinistic Nationalism*. On the other hand, *Conservatism* and *Chauvinistic Nationalism* co-exist very well in order to promote the full accomplishment of each other. In a pretty strong language the three parties fall within the quadrant defined as *fascism*. In a similar vein, another study claims that the most evident feature of the dominant political parties in Bosnia and Herzegovina is that, in their structure, approach to politics and employed organizational strategies they resemble mass movements; most of them base their programmes on the protection of interests of their respective ethnic groups and that it is very difficult to classify them as parties of the centre, the left or the right (see Herceg and Tomić, 1999: 245-272).

Figure 2: Horvat's coordinate system of Bosnia and Herzegovina political parties:



Source: Adapted from Horvat (2001: 20-1).

The parties whose programmes treat and propose to solve on a state-wide basis economic, social and economic issues are in the minority. The split in both the SDS and SDA, and the split of BiH HDZ from the Croatian HDZ did not result in decreased appeal of party

advocated nationalism. Parties such as SNSD (the Party of Independent Social Democrats) of Milorad Dodik, the Party for Bosnia and Herzegovina of Haris Silajdzic and the Social Democratic Party of Zlatko Lagumdžija that are moderate in their platforms and stand for reconciliation and reconciliatory inclusive nationalism, have only managed to secure short and unsustainable access to political power. In addition, they have been unable to attract mass membership and to establish substantial party infrastructures. Thus in post-Dayton Bosnia and Herzegovina, the exclusive nationalist approach to politics managed to gain the upper hand over the reconciliatory one (see Bianchini, 2000: 79). According to Bieber, decentralized territorial units that are defined primarily in ethnic terms tend to accelerate the homogenization of these units, to delay the ‘re-mixing’ of the population and to result in non-democratic outcomes (2002: 210).

Exemplary is the exclusionary discourse of nationalistic parties ruling these territorial units, especially the way in which they define the peoples. The Constitution of the Bosnia and Herzegovina Federation was adopted in June 1994<sup>22</sup> and declared *only* Bosniacs and Croats as its constituent peoples (Article 1.1). It contained further provisions on language, citizenship, composition of political institutions, etc. exclusionary to the Serb population of Bosnia and Herzegovina. The same was true in Republika Srpska, whose Constitution, adopted in 1992, declared it to be ‘the state of Serb people’ (Article 1) and included similar discriminatory provisions on languages, citizenship, etc. One practical implication of that is revealed by a study of the Early Warning Team of Bosnia and Herzegovina in 2000. It indicates that 47 % Bosniak (Muslim) people have it as paramount interest for Bosnia and Herzegovina to become the state of equal citizens and peoples, while only 6.3 % in Croat majority areas and 10 % in Republika Srpska identify with such an interest. A very high percentage of Bosnian Serbs (45 %) would prefer the secession of RS from the state of Bosnia and Herzegovina. (see Early Warning Quarterly Report, 2000: 31). Undoubtedly the political discourse of nationalism that has held the above three parties in power since 1995 is very much responsible for such attitudes among their electorate. Logically Pejanović sees nationalist authorities with distinct separatist objectives as the main hindrance to the protection of human rights in Bosnia and Herzegovina (2001: 27).

Parallel to the above, and indeed indicative of the lack of possibility to initiate substantive policies in the circumstances of Bosnia and Herzegovina, in the years following the war, there has been quite an unsuccessful economic policy as well as an increasing occurrence of corruption and nepotism at all levels of government. Asked five years after the end of the war, the people in Bosnia and Herzegovina show little trust in their national politicians whom they voted in office twice, in 1996 and 1998. One of the key elements that Verba identifies in a democratic polity - the extent to which members of a political system have trust and confidence in their fellow political actors (1965: 535) – appears to be lacking in Bosnia and Herzegovina during its first attempts at democracy.

Table 3: Confidence in national politicians and political institutions:

<b>Confidence (+)</b>		<b>Bosniak majority areas</b>	<b>Croat majority areas</b>	<b>Serb majority areas</b>
<b>Non-Confidence (-)</b>				
Bosnia and Herzegovina	+	39.8	15.8	20.4
Presidency	-	60.2	84.2	79.6

<sup>22</sup> After the Washington Agreement, which stopped the armed conflict between Croats and Muslims.

Bosnia and Herzegovina Parliament	+	34.6	11.8	18.8
	-	65.4	88.2	81.2
Bosnia and Herzegovina Government	+	34.8	15.8	21.1
	-	65.2	84.2	78.9
Federation of BiH Parliament	+	34.8	19.4	23.7
	-	65.2	80.6	76.3
Federation of BiH Government	+	34.7	20.3	24.3
	-	65.3	79.7	75.7
RS National Assembly	+	11.9	10.2	42.5
	-	88.1	89.8	57.5
RS Government	+	12.9	9.0	37.1
	-	87.1	91.0	62.9

Source: Adapted from the Early Warning Quarterly Report (2000: 12-3).

### The Advent of Controlled Democracy:

The time during which national politicians were given responsibility to effectively bring the country together proved to be short-lived. Neither the way in which the main national actors of democratization were constituted inside the country, nor the way in which they narrowly defined the territorial limits of influence and appeal through precluding common popular sovereignty of all citizens throughout Bosnia and Herzegovina, were satisfactory to the international institutions involved in the political life of the country. One of the High Representatives explicitly states that the international community requires change: 'we did not hide that we were unsatisfied with the ruling parties' (Petritsch, 2002: 159). Because of the obvious inability of the so created political institutions in Bosnia and Herzegovina to work in concert, effective governability of the polity has been acutely lacking (Pejanovi•, 2001: 27).

At its Bonn meeting in 1997 the Peace Implementation Council revised significantly Annex 10 of GFAP to give the HR the mandate to make 'binding decisions, as he judges necessary, on the following issues: (a) timing, location and chairmanship of meetings of the common institutions; (b) *interim measures to take effect when parties are unable to reach agreement, which will remain in force until the Presidency or Council of Ministers have adopted a decision consistent with the Peace Agreement on the issue concerned;* (c) other measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities, as well as the smooth running of the common institutions. Such measures may include *actions against persons holding public office or officials who are absent from meetings without good cause or who are found by the High Representative to be in violation of legal commitments made under the Peace Agreement or the terms for its implementation*' (Article 11.2, italics added)<sup>23</sup>. The so-called Bonn powers of the HR amended his original GFAP mandate to an extent which makes out of Bosnia and Herzegovina what some would label as 'an international protectorate' (Freedom House, 2001: 96), a view we should not be prepared to endorse. It is true that after 1997 the HR concentrated powers that would make any proponent of democracy recoil. A single person, with no formal accountability to the people most influenced by his decisions, concentrates in his office legislative, judicial and executive authority. Moreover, this authority cuts across all levels of government in Bosnia and Herzegovina. Thus we can speak of horizontal and vertical concentration of power and if we only considered the HR it would be correct to

<sup>23</sup> Available at [http://www.ohr.int/pic/default.asp?content\\_id=5182#11](http://www.ohr.int/pic/default.asp?content_id=5182#11)

suggest that Bosnia and Herzegovina is indeed a protectorate. However, beyond the HR there exists a rich fabric of national politics too, which is legally based on, and supposed to function according to, democratic principles. A clear aim is set for this body politics - bringing the country back together and initiating a wide range of reforms. Framework of action is constructed, outside which tolerance on the part of the international actors involved in the political life of the country is close to zero. What we are witnessing is thus a parallel co-existence of democracy and non-democracy, the latter being more powerful. The powers of the HR are indeed extensive, which leads Pugh to write of 'protectorate democracy' (2000). However, he misses the point in the sense that authority is given to an external body *only* in the event of national politicians being unable to reach agreement. Power is in their hands in the first place. Only after they fail to agree on its exercise in a GFAP-consistent manner, does the power of the HR kick in. Precisely because the decisions of the Bonn PIC meeting take legal effect in Bosnia and Herzegovina law can we talk of democracy belittled by external control. Democracy in Bosnia and Herzegovina, however, is offered a space albeit within a narrowly confined framework, mirroring an universalist perceptions of its liberal model, in which reconciliation is possible through interaction within democratic institutions.

The controlled democracy so designed is not free of contradictions in and of itself. In practice, the Bonn decisions cut directly against what the OSCE is supposed to ensure by virtue of incorporating parts of the Copenhagen Document in the GFAP. Inevitably in such conditions, for the national politicians democracy will become an exercise of *petit exhibitionnisme*, but also of consistency and convincing. They have to prove themselves to be trustworthy not to put the country back in the tracks of war in the first place and secondly to be able to lead it through a complex process of reform. Although no deadline for withdrawal has been set, it has been repeated once and again by foreign officials in Bosnia and Herzegovina, including the HR himself that nothing short of consolidated democratic institutions and practice of government will lead the way to relaxation of control. Few would disagree that the interests and objectives of the international community, 'which has taken over the functions of the state in various ways' (Aolain, 2001: 66), are peace, return of refugees and displaced persons, keeping Bosnia and Herzegovina together, engendering issue politics and economic development and integration of Bosnia and Herzegovina into pan-European institutions. Unless consent within the polity exists on these objectives, and one uniting citizens as well as political elites, control will be hard to relax. Since controlled democracy is a hybrid regime where democratic (in terms of elected) structures co-exist with non-democratic ones, a very important focus of attention would be the mode of interaction between the two. In the case of Bosnia and Herzegovina, power is obviously on the side of the non-elected structures in the face of the international actors involved. The mode of interaction would thus range from the unilateral imposition of decisions to the bilateral process of persuasion of what the right action is. Drawing back on the theoretical discussion, the former represents control *par excellence*, the latter instead makes use of conditionality. In the following part, through several examples from the political reality of Bosnia and Herzegovina and the employed mode of interaction between national and international actors, I am assessing the way its controlled democracy has been functioning since 1997.

### **Part III - Controlled Democracy in Bosnia and Herzegovina:**

As indicated above, one of the key elements of controlled democracy is its transitional character. Although seemingly paradoxical, its justification and ultimate goal is to strengthen democratic political institutions in the country in question and to engender mutual trust on the part of politicians and citizens that the only viable way to adjust differences is through a political process within the rule of law and through respect for human rights. Verba would argue that living democracy helps embed it firmly into the political culture of the polity and hence into its political life (Verba, 1965), i.e. the culture of democracy can be cultivated. He does not advise on the necessary number of years that this process takes. It is doubtful any one could as this is society specific. The society of Bosnia and Herzegovina is still psychologically struggling with the past, which is an enormous hindrance to establishing the cohesion and mutual trust and respect necessary for a functioning democratic polity. Linz and Stepan offer three elements that help judge when democracy is consolidated (1996: 6):

*Behaviourally* – a democratic regime in a territory is consolidated when no significant national, social, economic, political or institutional actors spend significant resource attempting to achieve their objectives by creating a non-democratic regime or turning to violence or foreign intervention to secede from the state;

*Attitudinally* - a democratic regime is consolidated when a strong majority of public opinion holds the belief that democratic procedures and institutions are the most appropriate way to govern collective life in a society such as theirs and when the support of anti-system alternatives is quite small or more or less isolated from the democratic forces;

*Constitutionally* - a democratic regime is consolidated when governmental and non-governmental forces alike, throughout the territory of the state, become subjected to, and habituated to, the resolution of conflict within the specific laws, procedures, and institutions sanctioned by the new democratic process.

In the case of Bosnia and Herzegovina, nothing less will pave the way for relaxing control on the part of the international actors involved. In the following part, through several examples of the political life in the country, the functioning of controlled democracy is demonstrated as not conducive to consolidating the polity and transferring ultimate responsibility to national politicians. The examples are the three post-1995 general elections, several acts of the High Representative and the process of constitutional reform.

#### **The functioning of controlled democracy:**

Under Annex 3 of the GFAP, the OSCE is requested to supervise the preparation and conduct of elections at all levels of government. A large number of election experts and monitors have thus been deployed in Sarajevo and throughout the country soon after entry into force of the GFAP. Looking back at 1996 there is no doubt that, because of numerous circumstances, the then general elections were far from free and fair<sup>24</sup>. This has been recognised by OSCE authorities, who were responsible for both the organisation and the monitoring of the elections, however the decision was taken to proceed. The GFAP had already set the time frame for first post-war elections to be held and the already large international presence in Bosnia and Herzegovina needed some legitimacy in the face of local politicians and institutions filled in by a popular vote. Because of the circumstances in Bosnia and Herzegovina, people were allowed to vote in their pre-war municipalities or in their current place of residence (perhaps more correct is to use 'refuge' instead of 'residence'). This

loophole was skillfully used by the three main nationalist parties (SDA, SDS, HDZ) and thus unhindered they won the majority of votes in their respective areas of political campaign, acquiring 'pseudo-democratic legitimacy' (ICG, 1998: 9). The same has been the case during the elections in 1998, although under the changed PEC<sup>25</sup> Rules and Procedures contesting parties were obliged to produce a platform with opinion and proposed solutions to certain issues, such as return, minority rights, economic reform, social services, etc. It has been claimed that assessment of the 1998 elections does not allow the International Community to withdraw from Bosnia and Herzegovina confident that the new democratically elected authorities will be able to govern the country without slipping back into war again (ICG, 1998: 22).

Parallel to running elections in the country, the OSCE has been working towards transferring its implementing responsibilities to a national body while maintaining only supervisory functions. The draft Electoral Law (EL), intended to substitute the PEC Rules and Regulations took long time to pass through Parliament. Practically, the draft EL was prepared by international OSCE staff and legitimised firstly as national project through the involvement of the seven-strong national Independent Experts Commission appointed by the HR and, secondly, as an internationally sanctioned document through the approving comments of the Council of Europe's Venice Commission. The EL clearly favours in the electoral competition non-nationalist parties that have multiethnic leadership and member body, that respect the GFAP provisions, that stand for issue politics and reconciliation and reject separatism and politics of exclusion. Although the Law was not formally adopted before 2001 many of its provisions<sup>26</sup> were incorporated in the Rules and Procedures governing the general elections of 2000, introducing *inter alia* a new method for voting for the Federation House of Peoples, a new system of constituencies in the RS and also a preferential system of electing the President and Vice-President of RS (ICG, 2000: 5). Two of them, the preferential voting and the House of Peoples rule, were dropped from the law after the elections in 2000.

At those elections the Social Democratic Party (SDP) came to the fore and challenged the so far stable electoral positions of SDA, HDZ, and to a lesser degree those of SDS. The SDP, a party organized on a multiethnic basis, has been enjoying enormous support by the involved International Community as a bearer of the most realistic hope for democratic change in Bosnia and Herzegovina. In spite of such support, for its two years in coalition power at the state level, it has managed to dissatisfy a big part of its electorate. Indicative of the 2000 elections is that, as during previous campaigns, the Elections Appeals Sub-Committee has ruled against candidates and campaign features that promote 'ethnic hatred'<sup>27</sup>. Interesting is the debate to ban SDS from participating in elections because Radovan Karadžić (ICTY indicted war criminal) was still believed to be very much in control of the party. OSCE chose not to do it, despite significant pressure, because this would have represented a significant disenfranchisement of many SDS – prone voters in RS (ICG, 2000: 12). Such consideration did not, however, prevent PEC from disallowing SRS (the Serb Radical Party) to register for the April 2000 municipal elections. The general elections of 2000 have not been free of fraud attempts. One of the interesting cases is the OSCE discovering that the Bosniak-controlled consulate in New York had falsified 13,000 voter registration forms for the elections. Since SDA was deemed responsible for the deception, 15 of its candidates were removed from the ballots.

The outcome of the elections in October 2002 is very discouraging in the sense that the three nationalist parties (SDA, SDS and HDZ) are again in the majority in their respective territorial constituent areas and this time mandates are expected to be held for four years. SDP stepped down after its short-lived period of being in the governing majority. The possible

<sup>25</sup> The Provisional Elections Committee is an organ headed by the OSCE governing the electoral process.

<sup>26</sup> <http://www.osceBosniaandHerzegovina.org/elections-implementation/history.asp>

<sup>27</sup> For decisions regarding HDZ see ICG (2000: 9-10).

explanations for its electoral failure confirm the strong grip of nationalism within the country. Regarding electoral behaviour, the SDP is the obvious choice for people wishing not to align with nationalist platforms. If its electoral base diminishes, this is a clear sign for reversal to ethnic nationalism. If, on the other hand, the failure is seen as a result of unsuccessful governance, again a strong argument exists that this is a sign of social and political withdrawal from reconciliatory positions. It is highly likely that when a party based on multi-ethnic foundations, having attracted both the support of the International Community and of educated and capable national politicians is unable to produce quality in governance, it is the result of exclusionary nationalist feelings hindering conciliation and co-operation in economic, social and political terms. However, it is also unreasonable to claim that Bosnia and Herzegovina has been governed effectively after 1995 when nationalist parties were in control. Bieber assesses little progress in economic reforms, in the effectiveness of institutions, in reconstruction, and in joint decision-making by representatives of the different national communities (2002: 210). With such returns from the election polls of the latest elections this is likely to continue, already obvious in the inability to form a government<sup>28</sup>. The current High Representative (who has already demonstrated his readiness to swiftly intervene if necessary) has had to impose a decision enacting the Law of the Council of Ministers in December 2002. It is not difficult to imagine a return to the post-1996 situation, where debates in Parliament have so often been deadlocked that the Electoral Law, for example, took 5 years to adopt.

The elections of October 2002 were the first to be run with an unprecedented national involvement in the face of the newly appointed Election Commission and regulated by an Election Law approved by the Parliament of Bosnia and Herzegovina. The mandate of the newly elected politicians will again for the first time since 1995 be four, instead of two years. This fact represents a significant relaxation of control in an area crucial for democracy – the electoral process. National bodies are given the chance to prove themselves worthy of trust on the part of the International Community when it comes to the important task of regulating, organising, running and monitoring elections throughout the country. As far as elections are concerned the provisional period of control seems to be nearing its end. As regards the role of the High Representative in Bosnia and Herzegovina, however, a number of decisions are indicative of the state of political affairs in the country. They are numerous<sup>29</sup> and since the Bonn meeting of the PIC all of them contain explicit reference to its revision of Annex 10 of GFAP that gives the HR such far-reaching mandate. Because of the apparent inability of state and entity authorities to agree on these issues, perhaps as a result of the GFAP devised consociational system of politics (see Bieber, 1999: 90) but also, highly likely, as result of their adopting and sticking to irreconcilable and non-negotiable positions, the HR has had to impose laws important for creating conditions for reconciliation and for the functioning of a multiethnic state administration. Among the laws imposed by the HR are, in descending order:

1. The Law on Conflict of Interest in Governmental Institutions in Bosnia and Herzegovina (23 May, 2002)
2. The Law on Civil Service in the Institutions of Bosnia and Herzegovina (23 May, 2002)
3. The Law on the Human Rights Ombudsman of Bosnia and Herzegovina (14 December, 2000)
4. The Law on State Border Service (13 January, 2000)
5. The Law on the National Anthem of Bosnia and Herzegovina (25 June, 1999)
6. The Law on the Flag of Bosnia and Herzegovina (3 February, 1998)

<sup>28</sup> The last government of Bosnia and Herzegovina was formed as late as January 2003, almost 4 months after elections were held.

<sup>29</sup> Available by category at <http://www.ohr.int/decisions/archive.asp>

## 7. The Law on Citizenship of Bosnia and Herzegovina (16 December, 1997)

In addition, the HR intervention has been crucial for the timely implementation of the Laws on License Plates and Travel Documents. The HR has also taken numerous decisions on removals and suspensions from office. By October 2002 there are more than 100 such decisions taken. Removals and suspensions have been effected at state-level, entity-level and municipality-level legislative, executive and judicial authorities. Most of these decisions are indicative of the lack of will on the part of the suspended or removed officials to abide by the framework for national political action defined by the GFAP. On March 5<sup>th</sup>, 1999 the HR removed Nikola Poplasen from the Office of President of RS, because he ‘has abused his power; blocked the will of the people of Republika Srpska by hindering the implementation of the elections results, refused to abide by the decisions the National Assembly and consistently acted to impede the formation of a legitimate government with the support of the National Assembly’. He is alleged to have obstructed the implementation of the GFAP through neglecting the will of the people and challenging the people's representation by refusing to sign legislation duly and legally passed by majority vote in the National Assembly<sup>30</sup>. On March 7<sup>th</sup>, 2001 the HR removed Ante Jelavić from his position as the Croat member of Bosnia and Herzegovina Presidency because he ‘has displayed a pattern of behaviour that seeks to cripple the institutions set up under the GFAP in Bosnia and Herzegovina and has thereby seriously obstructed the implementation of the said Agreement’. Such behaviour is said to be ‘unconstitutional’, because Mr. Jelavić’s irresponsible rhetoric<sup>31</sup> ‘has no place in a decent society and betrays the best interests of those who have sadly been misled into putting their trust in him’<sup>32</sup>. In a qualitatively new way, and in practice enlarging the powers of dismissal, the HR removed on June, 14<sup>th</sup>, 2002 Nikola Grabovac from his post as Federation’s Minister of Finance because he ‘as holder of such high office has failed in his duty to maintain the confidence of the public, and the commercial and banking worlds, in the probity of the running of the financial affairs of the Federation’. Mr. Grabovac has ‘failed to act in the public interest in the only manner appropriate to the position that he is now in by resigning from such office’. Interesting in this case is the bold linkage between alleged corruption and GFAP - ‘the principles of proper governance and transparency and active support for the rule of law are essential to the peace implementation process’<sup>33</sup>.

Last but not least in this line of examples from the political life in Bosnia and Herzegovina is the process of constitutional reform. Besides Annex 4 of GFAP (the Constitution of Bosnia and Herzegovina), each Entity’s parliamentary assembly adopts an Entity Constitution. The Constitution of the Federation was adopted in June 1994 after the Washington Agreement which stopped the armed conflict between Croats and Muslims, while The Constitution of Republika Srpska was adopted in 1992. In 1998 Alija Izetbegović, the then chairman of the Presidency, initiated proceedings at the Constitutional Court to determine whether the Entity Constitutions are consistent with Annex 4 of the GFAP. According to the Annex, Bosniacs, Croats, and Serbs are constituent peoples of Bosnia and Herzegovina. Article 1.1 of the Federation Constitution, however, declares only Bosniacs and Croats to be its constituent peoples and alternatively, Art. 1 of RS Constitution declares the Republic to be ‘the state of Serb people’. In 2000, the Court<sup>34</sup> found these and other provisions to be unconstitutional and recommended reforms aimed at equal protection of the rights of all three constituent peoples throughout the territory of Bosnia and Herzegovina<sup>35</sup>. The decision provides several options for action that are thoroughly presented and analysed by

<sup>30</sup> See [http://www.ohr.int/decisions/removalssdec/default.asp?content\\_id=267](http://www.ohr.int/decisions/removalssdec/default.asp?content_id=267)

<sup>31</sup> Ante Jelavić, in his political speeches, was proponent of the creation of a Croat entity.

<sup>32</sup> See [http://www.ohr.int/decisions/removalssdec/default.asp?content\\_id=328](http://www.ohr.int/decisions/removalssdec/default.asp?content_id=328)

<sup>33</sup> See [http://www.ohr.int/decisions/removalssdec/default.asp?content\\_id=8974](http://www.ohr.int/decisions/removalssdec/default.asp?content_id=8974)

<sup>34</sup> Composed of nine judges, of which three are not nationals of Bosnia and Herzegovina.

Perry (2002: 3-10). It was never really taken up for consideration by national politicians in both Entities. Obviously interests other than respecting the constitutional framework of the country are guiding the political elite at entity level. Preservation of exclusive popular sovereignty which guarantees electoral success to nationalist parties is in no way democratic. Thus a basic principle of democracy, that of popular sovereignty throughout the boundaries of the state, is to suffer a defeat in the face of political utility and nationalism.

In a bid to foster internal political dialogue, the HR took the initiative to establish Constitutional Commissions in each Entity to begin the process of reform. In 2002, due to several factors<sup>36</sup>, this process began to attract increasing attention on the part of international actors in Bosnia and Herzegovina. After a number of fruitless meetings among national politicians at the beginning of 2002 agreement still seemed a long way to go. Around March meetings started to take place at the Office of the High Representative in Sarajevo and with his active brokering. The Sarajevo Agreement<sup>37</sup> was reached at the end of March and outlines the main principles of Constitutional Reform in the two Entities. Among these are (a) the definition of vital interests of each constituent peoples; (b) the distribution of key political functions; (c) minimal representation in the government of the Federation of Bosnia and Herzegovina and Republika Srpska; and (d) proportional representation in all public authorities, including Courts. It can be reasonably argued that the Agreement on Constitutional Reform furthers and deepens (i.e. brings them down at the Entity level) the elements of consociationalism in democratic politics in Bosnia and Herzegovina already inherent in the GFAP in the sense outlined by Bieber (1999: 83-8) and based on the theoretical model of Arend Lijphart (1977). Bieber, however, argues that the absence of cleavages, which cut across national lines exacerbates the national division, making a consociational system more difficult to succeed.

The process of negotiations held firmly the public attention<sup>38</sup> and it was obvious how the role of the HR was instrumental in agreeing on the Constitutional Changes. In previous cases where legislation was concerned the HR has not hesitated to use his Bonn powers to impose what was deemed as right, especially after the responsible national institutions elected by the people of Bosnia and Herzegovina failed to adopt such legislation despite its obvious necessity and reconciliatory potential. In the case of the Constitutional reforms the HR did attempt to revive the political process in Bosnia and Herzegovina by engaging all parties involved in brokered negotiations. However, when the entity legislatures failed to adopt fully the changes laid down in the Sarajevo agreement the HR imposed them through his decision of May 23<sup>rd</sup>, 2002 amending the Constitutions of both Entities. A group of Bosnian intellectuals, unsatisfied with the performance of their national politicians, urged the HR to take such decisions. A very important avenue of pressure was also exerted by the Council of Europe, which transferring its pre-accession conditions to post-accession commitments, expects full implementation of the Sarajevo Agreement.

In the following part, the above examples are taken up for assessment through the three-tiered definition of consolidated democracy. In some respects, the international actors involved in the political life of Bosnia and Herzegovina have been able to relax their control. In others, this has not been possible. The overall impression is that behaviourally and constitutionally, as well as attitudinally, democracy in Bosnia and Herzegovina is far from being consolidated.

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<sup>35</sup> The Court decision is available at OHR's official Internet Site. It also presents the proceedings before the court. An interesting argument advanced by a representative of the Federation is that the proposed constitutional reforms will bring the country back to 1991 and 'it is not necessary to repeat how this finished' (see Para 46).

<sup>36</sup> Pending general elections, accession of Bosnia and Herzegovina to the Council of Europe, entry of new High Representative (Perry, 2002: 2).

<sup>37</sup> Available at [http://www.ohr.int/ohr-dept/legal/const/default.asp?content\\_id=7274](http://www.ohr.int/ohr-dept/legal/const/default.asp?content_id=7274)

<sup>38</sup> See the March issues of any national newspaper. *Oslobo•enje* of 28 March 2002, pp 4-5 offers good overview.

### Analysis of Bosnia and Herzegovina's controlled democracy:

An obvious conclusion from the above description is that elections in Bosnia and Herzegovina have been problematic. Conditions in the country after the war have not been conducive to free and fair exercise of the people's right to vote. An external organization has been charged with conducting elections and with defining the timeframe of holding them. Two arguments clash in this respect. On one hand, general free and fair elections are universally considered to be the only way of creating a democratic regime where the political elite is determined by the popular vote. On the other, when choices and platforms, including people standing for elections, are presented in circumstances as those in Bosnia and Herzegovina, democracy is only being paid a lip service. The most widespread justification by the international actors involved, has been that some point should be the starting one and from there, based on past experience, better practices can be built. It is a valid argument and in the case of elections in Bosnia and Herzegovina, has proven to be correct. Conditions for holding free and fair elections have been improving and the national capacity and willingness to get involved in organizing the process in a spirit of true ownership has yielded results. The elections of October 2002 were the first to be run by national authorities. In this campaign OSCE was a helping observer. This is the first field where control over democracy on the part of the international community has been relaxed. If national authorities live up to the responsible functions they are taking into their hands, replacing ethnic enmity and distrust with constructive dialogue and cooperation, this will be an evidence of a job well done on the part of the international actors. A note of caution has to be inserted though. No significant political party in Bosnia and Herzegovina ever contested the necessity of elections. After 1995 they have been accepted by all as the principal mechanism to assume political power. The success of the international community in relaxing control over elections has thus been more or less predetermined. More important is what follows once elections are held. The interventions by the HR in the political life of Bosnia and Herzegovina demonstrate that post-election developments do not yet warrant relaxation of control on his part.

The type of laws that the HR has enacted between 1997 and 2002 are indicative of the state of affairs in Bosnia and Herzegovina politics. Logically, what are we to make out of a country whose politicians are unable to agree on such basic acts as its laws on citizenship, on the flag, on the national anthem, on the state border service, etc.? Apparently they have proven to be incapable of putting into work the democratic institutions they are placed in. Turning to the first of Linz and Stepan's points of consolidation of democracy, it can be reasonably concluded that *constitutionally* and *behaviourally* democracy in Bosnia and Herzegovina is far from being consolidated. This is not to imply that any major political, national, economic or social group is aiming at creating a non-democratic regime. But it is to imply that the political class of Bosnia and Herzegovina, divided and supported by different national, economic and social groups, maintains non-operative the mechanisms for reaching consensus, compromise and agreement on state-important issues. This transpires as well in the first two quoted decisions by the HR regarding removal from office of high-ranking national politicians. The alleged behaviour of Nikola Poplasen and Ante Jelavić demonstrates no allegiance to the constitutional framework of Bosnia and Herzegovina and its Entities. And in the third quoted case, the behaviour of Nikola Grabovac demonstrates the lack of elite political culture, a widespread phenomenon throughout the transitional democracies of Eastern Europe (but not only), of taking responsibility for one's illegal actions. On the other hand, the very fact that such high-ranking politicians can get removed from office by a non-elected authority is a huge structural hindrance to consolidation of democracy. The very presence and powers of the HR is, in the framework of Linz and Stepan's criteria, a non-democratic regime, which a significant number of people look up to.

This has not helped to consolidate democracy *attitudinally* as well. Quick reference to Table 4 indicates the level of confidence the people in Bosnia and Herzegovina have in the international actors involved in the political life of their country. Such analysis could be seen as second best, nevertheless useful, lacking reliable data on the extent to which the people of Bosnia and Herzegovina hold the belief that democratic procedures and institutions are the most appropriate way to govern their collective life as a society. The relatively high level of trust (compared to that in Table 3 and with the notable exception in areas of Croat majority) in non-democratic institutions operative in the country that enjoy wide range of powers to determine the outcome of the political process, demonstrates that the people’s attitude towards democracy would necessarily be negative.

Table 4 – Confidence in the Activity of the International Community:

Confidence	+	Bosniak majority areas	Croat majority areas	Serb majority areas
	No confid.			
OHR	+	76.7	41.1	42.4
	-	23.3	58.9	57.6
OSCE	+	75.8	39.3	45.7
	-	24.2	60.7	54.3

Source: Adapted from Early Warning Quarterly Report (2000: 12-3)

The last example presented above concerns the process of constitutional reform. This process, more than anything else, is a clear indication of the failure of democracy in Bosnia and Herzegovina. Apparently, unlike other occasions, the HR has been willing to curtail the exercise of his powers. His office, and the international community in general, for a long period remained relatively impartial in the constitutional debate taking part in the country. They sided with the idea that popular sovereignty throughout Bosnia and Herzegovina is the desired outcome, but left it to national politicians to agree on the mechanism of achieving it. Apparently, the latter were unable to subject and habituate themselves to the resolution of that particular conflict within the laws, procedures and institutions of the democratic framework. The process of constitutional reform took too long to suit the patience of the international actors involved and in the meantime events were unfolding. With the active lobbying of the HR (Pejanovi•, 2001: 28), Bosnia and Herzegovina was admitted to the Council of Europe in April 2002. New general elections were fast approaching, new HR was to be appointed. All of these, understandably, would have prompted and generated willingness to agree and to reach a solution, but did not. The fact that national politicians could not take the responsibility to fully agree on, without external pressure, and implement constitutional reforms in the only way consistent with the laws of the country demonstrates that as of 2002 democracy in Bosnia and Herzegovina is still not *constitutionally* consolidated. Especially bearing in mind the data of Table 5 indicating that most of the people of Bosnia and Herzegovina support the idea of country-wide popular sovereignty.

Table 5 – Popular Sovereignty in Bosnia and Herzegovina:

Do you agree that Bosniaks, Serbs and Croats should be sovereign people in both entities and in all Bosnia and Herzegovina?

	<b>Bosniak majority areas</b>	<b>Croat majority areas</b>	<b>Serb majority areas</b>
Agree (%)	94.0	84.6	56.2
Do not agree (%)	6.0	15.4	43.8

Source: Adapted from Early Warning Quarterly Report (2000: 10).

The examples analysed above demonstrate clearly cross-cutting shifts in the mode of interaction between national and international politicians in Bosnia and Herzegovina. As far as elections are concerned the imposition of electoral rules and regulations is a fact. The elaboration of electoral law, however, departs from the unilateral form of interaction, in order to involve national contribution and to generate consent within the competent national political bodies that have to adopt it. Finally, with the transfer of responsibilities in holding elections the hybrid regime in this area vanishes. OSCE resorts to observing, while national institutions assume the task of organizing elections in Bosnia and Herzegovina. As regards the role of the HR, the shift in the mode of interaction is not yet so far-reaching and is indeed limited. The HR has been quick to unilaterally impose laws deemed essential for the polity, especially in the face of obvious inability on the part of national politicians to reach agreement. The same holds true for decisions on removals and suspensions from office. The process of Constitutional reform, however, demonstrates a willingness to do away with unilateral decisions. The mode of interaction is following the path of persuasion of what the 'right' action is, rather than that of imposition. Ultimately imposition was used, but only after clear indication that persuasion will not fully work. The importance of implementing the Constitutional reforms as outlined in the Sarajevo Agreement has one further dimension. It is potentially capable of diminishing the segregation effect of the consociational political system set up in GFAP by making sure that minority populations will be represented in Entity level authorities<sup>39</sup>. To conclude this final part, and based on the presented analysis, it is reasonable to claim that democracy in Bosnia and Herzegovina is yet to be consolidated along all three of Linz and Stepan's elements – behaviourally, constitutionally and attitudinally.

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<sup>39</sup> see Bieber (1999: 89-90) on the segregation effect of consociationalism.

## **Conclusions:**

The main argument of this paper has been that instead of seeing the state of Bosnia and Herzegovina as a protectorate, we should be rather defining it as a controlled democracy. To resort to the former label would ignore the existing fabric of national politics and the framework of available options it have been given to reconstruct the polity. The fact that it has failed to do so, thus legitimising increased outside involvement in domestic politics, should not trump the fact of their existence and potential.

Outright control can be seen as a function of the lack of reconciliatory politics. It can, and indeed is, relaxed where conflict is channeled into a constructive dialogue and agreement. On the contrary, it is tightened in the case of failure to produce such result. Essential in this regard is the employed mode of interaction within the hybrid regime of Bosnia and Herzegovina and the accumulated institutional memory of its advantages and disadvantages.

The elections results of October 2002 make it highly likely that the chosen mode of interaction will be that of unilateral imposition of reconciliatory measures, which will once again sidetrack the importance and responsibility of domestic politics. As long as there is no clear indication as to the point of relaxation of control, local politicians will refrain from unpopular decisions, not least for the reasons of preserving electoral support.

As indicated above, however, control has been relaxed, and exactly by way of prior determining, temporally, procedurally and substantially, the parameters of doing so. Perhaps in the conditions of Bosnia and Herzegovina this is the way to promote responsible behaviour on the part of national politicians. A big question mark remains, however, whether they will abide by the framework of the Dayton Peace Agreement. Because of the way it was reached, the Agreement holds little promise of ownership to any national actor and this is an inherent disadvantage.

The main conclusions of the present work could be summed up as follows. Procedural democracy in Bosnia and Herzegovina exists. It is ridden by contradictions that are not, however, non-correctable. Perhaps the biggest of them is that, because of the proven track-record of inability to produce reconciliatory outcomes, national politics is controlled by external actors inserted into the political life of the country. When and how this contradiction will be solved is hard to predict. Clearly though, the fact of its existence, combined with the lack of a uniting political project within the political space of the country, are the most serious hindrance to consolidating democracy in Bosnia and Herzegovina.

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