Case study: Western Balkans and Bosnia and Herzegovina

Jens Woelk

Master “Peace Building” (SSI)
Seminar “Minority Rights”
SEE: History and Transition

- SFRY: “ethnic“ federalism
- 7 Republiccs + 2 autonomous Provinces, 3 Constitutions and economic crisis
- Secession and international recognition
- Wars and “ethnic cleansing“
- Intervention by International Community (NATO, UN - EU)
- Democratisation
- Reconstruction and stabilization
Typology of minorities in SEE

• “New“ national minorities (narodi)
  after losing status as constituent “nations“ of SFRY
  (Croats in Serbia, Serbs in Croatia)

• Old national minorities (narodnosti)
  “nationalities“ under SFRY-Constitution, external national homeland
  (Hungarians, Bulgarians, Slovaks, Romanians, ...)

• Ethnic minorities
  regionally concentrated ethnic groups without a kin-State
  (in particular Muslims in Sandzak)

• Dispersed minorities
  like above, but not concentrated anywhere (Roma)

• Special cases: Kosovo/a and BiH
  “Constituent peoples“ and “minority returns“; direct international rule
Transition SEE

Constituent Factors:
- Constitutional “choice”: external actors, imposition (BiH)
- Violence (catalyst for new institutional and legal systems)
  - internal: secession YU and civil wars
  - external: “humanitarian” intervention by IC
- Rapid changes
- Nor prior experience of liberal Constitutions
- traumatic and dramatic change
- Lack of institutional culture - what is the “public good’’?

Analysis of legislation: HANDLE WITH CARE
- Hyper-guarantistic legislation
- problem: implementation
- Unstable democracies and minority-protection
The European Constitutional Space

- **European Union**
  integration, supranational legal system, voluntarily accepted/respected

- **Council of Europe**
  democratisation, intergovernmental coop., international agreements

- **OSCE**
  security, international treaties, politically binding declarations
Copenhagen criteria (1993)

The political and economic conditions to be fulfilled by potential members are:

- being a stable democracy, which respects human rights, the Rule of Law principle and the rights of minorities;
- adopts functioning market-economy;
- adopts the acquis communautaire (the rules, norms and policies of which the body of EU legislation consists.)
Regional Cooperation:

- created in 1999
- complementary to EU
- multilateral financial resources (largest share: EU)
- strong regional dimension
- working tables
- Local ownership – civil society

Transformation in 2008: Regional Cooperation Council
http://www.stabilitypact.org/
Stabilisation and Association Process

- Proposed by the Commission on 26 May 1999.
- Western Balkans
- Comprehensive policy framework, building on 1997 Regional Approach, bundling earlier EC instruments and inspired by enlargement.
- Geopolitical rationale: Stabilization of the region and gradual rapprochement with the EU.
- Goal of full integration into EU structures: Status of “potential candidates” (Feira European Council, reiterated in Thessaloniki 2003)
- **The SAP is differentiated, progressive and benchmarked.**
- Covers: Albania, Bosnia and Herzegovina, Kosovo, Montenegro and Serbia, as well as candidate countries: Croatia, FYROM.
Bosnia and Herzegovina (BiH)

Surface: 51.129 Kmq
Population: 3.964.388
Capital: Sarajevo (444.800 inh.)
Ethnic groups:
Muslims/Bosniaks (48%); Serbs (37,1%); Croats (14,3%); Jews, Others (0,6%)
Religions:
Islam (40%); Orthodox(31%); Catholic (15%); Protestant (4%); Jewish, other (10%)
Official languages:
Bosniak, Croat and Serbian ("B-C-S")
Administrative division:
two Entities,
Republika Srpska (RS) e Federation of Bosnia-Herzegovina (FBiH):
10 Cantons
plus autonomous district of Brèko
Currency:
Konvertibla Marka - KM (1,96 KM = 1 €)
Ethnic composition before the war in BiH (1991)
The Dayton Peace Agreement (DPA)

- **Compromise between Peace Treaty and constitutional base for reconstruction**
- The Constitution (annex IV) as institutional framework for guaranteeing a “negative” peace
- The model of consociational democracy between equal standing and “divide et impera”
- “Ethnic federalism” in BiH: Federal “twin” State
- The consequences: reciprocal blockade of decision-making as negative elite-consensus
Constitutional “Corrections” (1997-2005)

- **Constitutional Court of BiH**

- **The High Representative (IC)**
  - Extrordinary powers of substitution (Bonn Powers):
    legislation and removal from office
  - Criticism: “international protectorate”; control and responsibility of IC
Consequences of the “Corrections”

- **political:**
  continuing negative elite-consensus;
  no interethnic cooperation

- **economic:**
  bloated, costly and inefficient public sector;
  no sustainible economic development

- **cultural:**
  consolidation of ethno-nationalistic attitudes; lack of
  an overarching, composite Bosnian identity

“Local Ownership”:
opening of a third phase?
The problems inherent in the DPA are still there:
- Ethnic identification of the territory
- Functional institutions vs ethnic quotas
- Legitimacy of constitutional order by internal approval
- Creation of multiple identities (loyalty towards State)

Paradox: State without Nation

Still no common vision of the State

Constitutional reforms: “imposed” or domestic?
- How to achieve? Procedures?
- Which sectors?
- “Civic” counterweights to “ethnic democracy“? (ECHR)

Perspective EU membership: sufficient as catalyst?
- tailor-made, coordinated and uniform approach necessary
- “Local ownership“ and functioning State institutions required