Federalism in the Balkans – Doomed to fail?

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Three explanatory elements

The Dayton Peace Accords, mediated by the international community, established a federation of de facto three entities with strong decentralisation in Bosnia and Herzegovina. Until this day, it constitutes a rather dysfunctional state with the European integration process almost being derailed due to an outstanding police reform. In Macedonia, the EU, spearheaded by High Representative Solana, assisted the government to cease the ethnic confrontations between Albanians and Slavs, resulting in the Ohrid Framework Agreement that established power-sharing institutions. Recently, the government announced new parliamentary elections as no consensus could be found on the recognition of Kosovo's independence. Third, the EU brokered a state-union between Serbia and Montenegro in 2003 that lasted for three years, but was eventually dissolved as the result of a referendum held in Montenegro. Now the new challenge is Kosovo. After the completion of talks between Pristina and Belgrade ended in a dead-end, the provisional Kosovo-Albanian government declared its independence unilaterally while referring to the status report of UN Special Envoy Ahtisaari. In sum, one federation ceased to exist while the other two are facing on-going challenges. We are left with the question of Kosovo. Is there a federal future for Kosovo, and if so, what can be learnt from the other federal experiments in the region?

What is currently occurring can be termed a federalist revival in comparative politics. Notably in the field of conflict prevention and resolution, federalism is back at the forefront of academic debate and often depicted as a panacea.[1] An increasing number of articles has stressed the significance of federalist arrangements for easing tensions in multi-ethnic states.[2] Yet, there seems to be little empirical evidence that formal federal arrangements were able to secure inter-ethnic peace and promote socioeconomic performance in post-crisis societies. The former Yugoslav republics all bear witness of this. The question then is: which factors have prevented federalism from becoming a solution to the Balkanisation of former Yugoslavia since the 1990s? In other words, has federalism been "part of the solution or part of the problem"?[3] With the hindsight of the past years, three factors seem to be most appropriate to explain the problematic course federalism has taken in the Balkans.[4]

The first factor is the emphasis on formal structural aspects and the neglect of process and informal aspects. While most federal arrangements were strong and relatively clear concerning the structure of the state and the formal multi-level decision-making, the vital processes that lubricate institutions were largely absent. The crucial mechanisms that maintain a balance between federal and sub-federal layers of government was not in place in most of these federal arrangements. Neither was there a court that could mediate between the different interests and clarify the division of competences,[5] nor were there regular interactions between the different layers that could have established a culture of cooperation.

Secondly, all federal arrangements were rather imposed or promoted by an external actor and not home-grown in the sense that there was no direct participation of the public in the decision to adopt the new constitutional order. This lack of ownership can have detrimental effects on the acceptance by the local population and thus on the functioning of the state institutions.

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1. Camille A. Monteux, "Decentralisation: The New Delusion of Ethnic Conflict Regulation?", in: Matthias Koenig (ed.), Democracy and Power-Sharing in Multi-National States, *International Journal on Multicultural Societies* 8 (2), 2006, pp. 162–182.

2. Graham Smith (ed.), Federalism: The Multiethnic Challenge, Essex: Longman, 1995; Matthias Koenig (ed.), Democracy and Power-Sharing in Multi-National States, *International Journal on Multicultural Societies* 8 (2), 2006; Lidija R. Basta Fleiner and Sean Müller, Conflict Dynamics Indicators and Decentralisation Processes, Institute of Federalism Fact Sheet, 2007.

3. Robert H. Dorff, "Federalism in Eastern Europe: Part of the Solution or Part of the Problem?", *Publius* 24, 1994, pp. 99–114.

4. In order to keep the terminology clear, I will use the term federal arrangement in a broad sense meaning any form of institutionalised arrangement in which multiple levels of government share authority. For the purpose of this article, this also includes the decentralisation in Macedonia and the Ahtisaari Plan.

5. The absence of judicial review was already a characteristic of the Socialist Yugoslav Federation, see Matej Accetto, "On Law and Politics in the Federal Balance: Lessons from Yugoslavia", *Review of Central and Eastern European Law* 32, 2007, pp. 191–231.

Thirdly, the extent to which nation-state building has proceeded is crucial. The "paradigm shift" from statism to federalism has not yet taken entirely place in the Balkans.[6] In a time where nation-states are still in the process of being built, there has been little willingness of dominant ethnic groups to concede power to or share power with other ethnic groups. In most cases the socio-political authority had been preserved within the dominant group which went along with the reluctance to accept any further layer of authority after only such a relatively short period of (mono-) national self-rule. In Western Europe, the nation-state concept has had already a long history before federal arrangements could be formed in several states. There, a critical amount of established history and identity has made it easier to concede authority to other groups. In the Balkans, however, the past two centuries were marked by the struggle for national independence, fuzzy borders and polities that thrived for homogeneity. These processes are only now slowly coming to an end. Thus, the paradigm shift away from statism has been delayed significantly.[7]

Are these variables all disconnected aspects that defy any common root cause? I will argue that the *fil conducteur* is the inherent absence of overarching political communities that would allow for the endogenous creation of federal arrangements. For a federation to be functional, the different constituent communities should share a joint purpose, thus being willing to shift parts of their loyalties to the federal level. If there is not even a sub-national identity to begin with, there will be little willingness to share sovereignty with another level of government. In the following, I will analyse the extent to which these variables played a role in the cases under consideration.

Bosnia-Herzegovina

In its current form, the federal arrangements in Bosnia-Herzegovina can be coined nothing else but a "historical accident" based on two peace agreements and an international arbitration.[8] Since its creation, the evolution of viable structures and procedures was undermined by the interventions of the High Representative whose so-called Bonn Powers gave him the discretion to steer lawmaking and dismiss politicians and civil servants with little independent oversight over the legitimacy of such acts. These deficiencies have aggravated the procedural aspects of the federation to work on a cooperative basis. Moreover, and more impor-

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6. Daniel J. Elazar, "From Statism to Federalism: A Paradigm Shift", *Publius* 25 (2), 1995, pp. 5–18.

7. A second point to be made is the paradox of federalism being both the most suited solution to ethnic tensions and at the same time the most difficult one. In the words of Elazar, "ethnic demands are among the most exclusivist in the world, and the same ethnic consciousness that makes federalism in some form necessary, makes it all the more difficult and less likely to succeed" (Elazar, *op. cit.*, p. 7).

8. European Stability Initiative, *Making Federalism Work – A Radical Proposal for Practical Reform*, 2004, p. 4.

tantly, they have undermined the trust of the citizens in the federal institutions and thus prevented the partial shift of loyalties from the ethnic-based entities to the federal structure.[9] In other words, the form of the state established in 1995 has by far dominated the political process ever since, giving the involved parties a scape-goat for failed initiatives, i.e. the international presence, and leaving them without an imperative to cooperate fully.

Secondly, the Dayton Agreement was in the first place a peace accord. The urgency of the situation made it difficult to design a complex and promising federal structure. Institutional design and functionality were not at the forefront of debate, but rather ending the war and reaching a political compromise that was acceptable for all involved parties. The outcome, i.e. a dysfunctional polity to be supervised by the international community, was in this sense imposed by the severe situation in which the deal was struck. Despite on-going debates about constitutional reforms,[10] there has been little change since. Most recently, the High Representative almost had to intervene in order to push through a police reform that had been disputed both on political grounds and in terms of necessity.[11] Under the strong pressure from the European Union (EU), the politicians in the end agreed to adopt the reform as not to further delay the Stabilisation and Association Process.[12]

Against the background of an ethnically based political culture and the persisting international presence, the process of nation-state building is not finished yet. Bosnia-Herzegovina in its current form is a lamentable result of *faits accomplis* resulting from the war in the 1990s. Thus, citizens and politicians try to see their future within the EU, yet paradoxically still fail to take the first step and see their future within a common functioning federal state. In addition, the absence of a healthy political culture mentioned above leaves little space for the creation of a stable overarching Bosnian identity.[13]

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9. Joseph Marko, "Post-Conflict Reconstruction through State- and Nation-Building: The Case of Bosnia-Herzegovina", *European Diversity and Autonomy Papers* 4, 2005, p. 16.

10. See e.g. Edward P. Joseph and R. Bruce Hitchner, "Making Bosnia Work: Why EU Accession Is not Enough.", *USIPeace Briefing*, 2008.

11. European Stability Initiative, *The Worst in Class. How the International Protectorate Hurts the European Future of Bosnia and Herzegovina*, 2007.

12. *International Herald Tribune*, "Bosnia's political rivals agree on police reform 2 days before EU deadline set to expire", 28 September 2007.

13. For a more detailed account see Sumantra Bose, *Bosnia after Dayton: Nationalist Partition and International Intervention*, New York: Oxford University Press, 2002. Bose uses Brendan O'Leary's distinction between 'national' and 'multi-ethnic' federalist philosophies. The distinctive feature is the congruence of polity and one national culture in the former, and the co-existence of two or more national or ethnic cultures in one polity in the latter (pp. 91–92).

Macedonia

What the magic formula for forming a representative executive government is to the Swiss, the Badinter mechanism is to Macedonians.[14] The latter allows for an equitable representation of ethnic minorities in Macedonia and formed part of the Ohrid Framework Agreement from 2001. Again, the EU acted as a broker between the government in Skopje and the Albanian minority to end the armed conflict. The EU succeeded in promoting the inclusion of a central provision that protects minority rights. All laws concerning identity or minority issues both on national and local level can only be passed if the majority of those who currently constitute a minority in the country also votes in favour (double majority requirement). In theory, this provision necessitates intensive political debates and exchange for passing laws, thus inspiriting the formal arrangements for power-sharing with a sense for cooperation and deliberation. Yet, in practice the application of the Badinter principle proves to be difficult. For instance, in 2007 the largest Albanian opposition party left all parliamentary activities, officially in protest against the insufficient implementation of the double majority.[15] Another reason why they resorted to aggressive demand-making was them being left out of the government coalition despite the fact that they had obtained the majority of Albanian votes. In addition, recent debates on the recognition of an independent Kosovo have led to incidents of violence and threats from radical Albanians. In sum, the federal arrangement in Macedonia differs from those discussed above. Here, the focus was rather on processes than merely on structures and institutions. These processes are difficult at times, nevertheless they have been able to prevent any further armed inter-ethnic confrontations.

There is a wide-spread perception, especially in Western Europe, that Ohrid "belongs to the biggest foreign policy successes of the European Union".[16] Yet, there are still many problematic issues that may only emerge in the future. Already before signing the Agreement, many Slavs were concerned with a scenario in which they might one day belong to the minority in Macedonia due to lower birth rates. [17] Moreover, many people and politicians feel there has been an overly ethnic-based political debate that has neglected the equally important issues of socioeconomic development, anti-corruption efforts and the fight against organ-

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14. The mechanism is named after French lawyer and current Senator Robert Badinter who also chaired the Arbitration Commission of the Peace Conference on the former Yugoslavia in 1991.

15. This has also led to concerns in the European Parliament about the Macedonia's readiness to join the EU. See European Parliament, *Resolution of 12 July 2007 on the 2006 Progress Report on the Former Yugoslav Republic of Macedonia*, 2006/2289 (INI).

16. European Stability Initiative, *Moment of Truth – Macedonia, the EU Budget and the Destabilisation of the Balkans*, 2005.

17. *New York Times*, "Albanians' Many Children Unnerve Macedonia's Slavs", 11 August 2001.

ised crime.[18] These issues might backfire and put in question the provisions of the Ohrid Agreement. However, until now the externally promoted Agreement has stood the test of time.

A final and reoccurring topic is the question of identity. The on-going name dispute with Greece manifests the difficult nature of the Macedonian nation-state building. Towards its external neighbours, it has an ambiguous relation encompassing a common historical and cultural legacy and at the same time a quarrel over which part of this history belongs to whom. Internally, the dynamic process of power-sharing and the challenging of the Slav majority by the Albanian minority have the potential to deepen this identity crisis. Taken together, these issues can slow down the nation-state building process. At the same time, there is a growing consensus among Slavs that the power sharing arrangement is the only viable guarantee for peace. Once this is accepted wholeheartedly, the fact that the state is ethnically heterogeneous will also become part of the common identity.

Serbia-Montenegro

Parts of the Montenegrin political elites and the governing party wished to dissolve the then Federal Republic of Yugoslavia and become independent, thus accelerating the EU integration process. In order to de-escalate the tensions, the EU spearheaded by Javier Solana mediated an agreement between Belgrade and Podgorica. This agreement laid down the foundations of the new state union of 'Serbia and Montenegro', while allowing both states to hold a referendum on independence after three years. While this at first sight stabilised the relations between both federal entities through a rather loose confederation, it actually delayed the EU integration process for almost one year and gave little incentive for both entities to cooperate as many saw the agreement only as a temporary freezing of the Montenegrin independence claims. Although the federal level was to have only exclusive competences in a very limited area (i.e. trade, foreign relations and defence), even this turned out to be dysfunctional on the federal level, a fact that is also mirrored in the EU Commission's reaction after one year of difficult negotiations on the Stabilisation and Association Agreement. As negotiations proved to be too complex with this rather impaired state union, the technical aspects of the talks were split. This twin-track approach meant that the agreement would be negotiated separately, but upon completion signed jointly. Given the short time horizon of only two years until an eventual dissolution, in both countries, albeit stronger in Montenegro, there was insufficient willingness to fully engage in the federal structures and make them work properly. Rather,

18. Nadège Ragaru, "The Former Yugoslav Republic of Macedonia: Between Ohrid and Brussels", in: Judy Batt (ed.) *Is there an Albanian Question?* ISS Challiot Paper 107, pp. 41–60.

the structures of the state union remained shallow and were not filled with appropriate processes. Diplomats from both republics had begun conducting their own external relations and the internal market was not functioning properly.[19] That is, the state union was only formally a federal arrangement. *De facto*, both republics had separate political landscapes and policy-making procedures.

It is debatable whether the EU's role was successful or detrimental to the further development in both republics. With hindsight it is clear that the agreement on the state union only meant delaying the inevitable. However, it did prevent any escalation of the political conflict. Having said this, it does not mean that the new state union was accepted by the citizens. The artificial construct of a union in which both entities were reluctant to contribute to the functioning of the common institutions could not create a new post-Yugoslav identity encompassing both states. It was rather perceived as yet another solution imposed by the international community.

When talking about the Balkans, there have been many questions asked about the statehood of the former Yugoslav republics and provinces. The Bosnian question and the Kosovo questions were the most prominent ones. Yet, in this debate the largest state in the Western Balkans, Serbia, has often been neglected. It is also Serbia that faces a deep identity crisis after the break up of Yugoslavia and the state union with Montenegro.[20] After its pariah status during the Milosevic regime, the new democratic Serbia is still uncertain about its own status and identity. What kind of nation-state does it want to be? Is it prepared to share sovereignty with ethnic minorities such as the Kosovo Albanians? All these questions remain open and only once they are found will the final status of Kosovo be agreed upon in a compromise solution that is acceptable to Serbs and Kosovo-Albanians alike.

Kosovo's polity under a European umbrella

Where do all these observations leave us when it comes to Kosovo's status question? Even more so than in Bosnia-Herzegovina, policy-making in Kosovo is still to a large extent dominated by the UN interim administration. The Serb minority continues to boycott most of the institutions of the Provisional Institutions of Self-Government. There is virtually no significant cooperation and interaction between Kosovo-Albanians and Serbs. The Ahtisaari Plan has been rejected by the Serbian government because it foresees a monitored independence of a strongly decentralised Kosovo. Although Kosovo has been a province in the Socialist Yugoslav Federation, it has no history as a nation-state. Given the

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19. Mladen Dragasevic, "The Newest Old State in Europe. Montenegro Regaining Independence", ZEI Discussion Paper C174, 2007, p. 12.

20. See also Judy Batt, *The Question of Serbia*, ISS Chaillot Paper 81, 2005.

criteria established at the beginning of this article, this leaves a bleak picture concerning the prospects for a functioning federal arrangement following the lines of the Ahtisaari Plan. In that scenario, it would take years to have functioning state structures and procedural cooperation, local ownership of the plan is questionable and Kosovo would be only at a very early state of nation-state building. What prospects are there for a federalised Kosovo after its unilateral declaration of independence?[21]

At this point, it is important to include one common theme into the analysis, namely the aspect of political community. In order to form a functioning modern federal arrangement, there must be one overarching political community that shares a common identity. In broader terms, the logic of appropriateness is crucial for understanding why some federal arrangements are able to function whereas the others had or will have difficulties function properly.

> Actors seek to fulfil the obligations and duties encapsulated in a role, an identity, and a membership in a political community. Rules are followed because they are perceived to be adequate for the task at hand and to have normative validity. […] politics involves a search for collective purpose, direction, meaning, and belonging.[22]

This insight from the new institutionalism helps us to understand why political communities matter. In the absence of one collective purpose, federal arrangements struggle to function and thrive because they are torn apart by different interests. In these cases, there is little that serves as a cohesive force. This collective purpose can only be internalised if the federal structures are lubricated by the appropriate processes, if people and citizens have the feeling of ownership over the adoption of rules and if the membership to a political community has been sustained over certain time period. This does not exclude multiple layers of identity. However, in the context of this article, it is a question of sequencing. Once the first identity has been cemented and is stable, it is easier to add another one to it. In other words, this article has argued that most federal arrangements since the end of the bloodshed in the 1990s have failed because of the absence of stable political communities. Often, there has been a co-existence between different albeit shaky political communities: Bosniaks/Croats/Serbs, Montenegrins/Serbs, Slav Macedonians/Albanians or Serbs/Kosovo-Albanians. Even the distinct communities are still in the process of building their own identities: Bosnian, Serbian and Kosovar identities. In addition to that, the mere co-existence of these separate communities does not allow for the internalisation of shared norms. Nor does it

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21. For a critical assessment of the prospects federalism holds for Kosovo see Camille A. Monteux, *Federal Solutions and the Question of Kosovo – Reality or Illusion?* Working Paper made available by the author.

22. Johan P. Olsen, *Understanding Institutions and Logics of Appropriateness: Introductory Essay*, ARENA Working Paper 13, 2007.

allow for efficient decision-making on multiple layers of government (that can overlap with the different affiliations to political communities). The lessons learnt for Kosovo are difficult to translate directly into policy prescriptions. Rather, it is important to bear in my mind that segregated political communities like those of most Serbs and Kosovo-Albanians will only coact, while interaction would be the precondition for forming a functioning common federalised state.

While the previous analysis confirms that "the old state paradigm was a recipe for war more often than not, the new federal paradigm is equally a recipe for peace, if it works",[23] the federalisation and sustained pacification of the Balkans seems possible only within the framework of the European Union. The attempts of promoting federal solutions have at best stabilised the respective states and the region only temporarily and did so in a patch-work fashion, whereas the medium-term goal of EU membership could contribute to the consolidation of the young democracies and open the door to post-national politics and policies in the Balkans. In that time frame, political communities could finally form. With stable political communities that overarch all other group affiliations, federal arrangements can be made functional. Thus, federalism is not doomed to fail in the Balkans. It is rather a question of time and willingness form the part of the political communities make it work. Federalism is not a panacea in itself, it can only provide a basic framework for uniting different political communities.

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23. Elazar, *op. cit.*, p. 18.