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# The Serbs in Bosnia and Herzegovina, Croatia, and Kosovo<sup>1</sup>

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## Abstract

When Yugoslavia dissolved in the 1990s, many Serbs found themselves in new states in which they were not the majority population. They often rejected their inclusion in these states, first through political boycotts and then through violence and secession. This paper will look at the integration of the Serb community in the new states of Bosnia and Herzegovina, Croatia, and Kosovo. The aim is to achieve a clearer picture of the different strategies of state-building and group integration in the post-Yugoslav states. The integration of Serbs in these states took place in a number of ways: in Bosnia and Herzegovina they were recognized as one of three constituent peoples (in 1995), while Croatia awarded Serbs the status of a national minority. In Kosovo (after 2008), Serbs have also been recognized as a constituent element of the state and protected by legal equality. Applying the framework of the “quadratic nexus”, this paper will look at the interplay of new states, the Serb community, Serbia, and international actors in order to assess the current state of Serb integration in these states.

## Introduction

Serbs were the largest ethnic group in socialist Yugoslavia.<sup>3</sup> Yet they lived not just in the Republic of Serbia; large numbers of Serbs also lived in Croatia (about 12 per cent of the Croatian population was Serb in 1991), in Bosnia and Herzegovina (more than one-third of the population of Bosnia was Serb) and in Kosovo, a Serbian province with a dominant Albanian population.<sup>4</sup> When Yugoslavia fell apart in the early 1990s, fundamental questions were asked about the future of the Serbs in Bosnia (some 1.3 million), in Croatia (around 580,000) and later also about the Serbs in Kosovo (some 195,000).<sup>5</sup> The main concern was over the role of Serbs in these new states and over their relationship with Serbia. These questions had a substantial impact on the political development of Yugoslavia and its successor states after 1991, and remain key challenges for the future stability of the whole Western Balkans region. Through analysing them, two important dimensions of post-war politics in Bosnia, Croatia, and Kosovo

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<sup>3</sup> According to the 1991 census in Yugoslavia more than 36 per cent of the overall population of the country was Serb. The second largest ethnic group, Croats, comprised fewer than 20 per cent of the population. More information on the census and the actual data is available at: <http://www.lib.utexas.edu/maps/europe/yugoslav.jpg>, 24.08.2012.

<sup>4</sup> Following the general use, I will shorten Bosnia and Herzegovina to Bosnia.

<sup>5</sup> These numbers are taken from the 1991 census in the Yugoslav Republics and are available via the national Statistical Bureaus.

will be highlighted. First, the paper discusses how different mechanisms of minority integration have been used and how successful they have been. This will provide further explanations for the state-building and democratization processes that have evolved in the post-Yugoslav states, and have affected Serb communities, particularly outside of Serbia. Second, the role of international actors is addressed. This cannot be overestimated in questions related to minority rights and Serb community integration in Bosnia, Croatia, and Kosovo. The impact of international actors on the different mechanisms used and their insistence on certain forms of Serb integration in these countries has substantially impacted upon the post-war development in the three case studies.<sup>6</sup>

These questions also reflect some of the wider discussions during the break-up of Yugoslavia, particularly between those that assumed that the Republics of Yugoslavia had a right to independence (such as the Badinter Commission) and those that referred to the 1974 Constitution of Yugoslavia, in which the right for self-determination is given to the peoples of the state. Hence, the fact that the republics were not homogenous and that some of the titular nations were spread across different regions became a major source of conflict in the aftermath of the declarations of independence of Slovenia and Croatia in 1991. Furthermore, as will be shown throughout this paper, the role international actors played in the creation – and further development – of these states also heavily impacted upon the role and rights of the Serb community in these countries. In short, in countries where international actors were heavily involved in state-building and were present “on the ground”, Serbs usually enjoyed a higher degree of autonomy and protection.

This paper looks at the different integration mechanisms used by international actors and local elites to re-integrate and reconcile the Serbs in Bosnia, Croatia, and Kosovo after these states became (de facto) independent.<sup>7</sup> The majority of Serbs in all three countries opposed the independence of these states and indeed fought against it violently.<sup>8</sup> Strategies of self-exclusion and secession were used and ethnic cleansing was applied to create homogenous Serb statelets that would be able to join Serbia.<sup>9</sup>

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<sup>6</sup> Different international actors played a key role in all three countries. While NATO mainly focused on the military aspects of de-escalation and de-militarization, the UN supported refugee return and in Kosovo also the political transition. In Macedonia, the EU played a particularly important role after the Ohrid Agreement, while in Bosnia the Peace Implementation Council (PIC), which includes a number of countries involved in the peace process, became an important actor, as they oversee the work of the Office of the High Representative.

<sup>7</sup> I use the term de facto independence because I look at Kosovo after 1999, when it was still part of Serbia but under the administration of the UN Mission in Kosovo (UNMIK). Kosovo will be treated in this paper as an independent country after the declaration of independence by the Kosovo Parliamentary Assembly in February 2008.

<sup>8</sup> Montenegro will not be considered in this paper, because identities remain fluid in the country and there are no special institutional provisions for the integration of the Serb community in Montenegro. For more information see Jelena DZANKIC, *Lineages of Citizenship in Montenegro. CITSEE Working Papers 2010/14*, available at: [http://www.law.ed.ac.uk/file\\_download/series/371\\_lineagesofcitizenshipinmontenegro.pdf](http://www.law.ed.ac.uk/file_download/series/371_lineagesofcitizenshipinmontenegro.pdf), 12.09.2012.

<sup>9</sup> Neither the Serb statelet Republika Krajina, nor the RS in Bosnia ever joined Serbia or were recognized by Serbia. Yet, it is widely established that they were created as part of a strategy for the creation of a Greater Serbia, see for example: James GOW *The Serbian Project and Its Adversaries. A Strategy of War Crimes*. London 2003.

These strategies were unsuccessful in the case of Bosnia and Croatia. However, the future of Northern Kosovo, an area that belongs to the Republic of Kosovo but in which the majority Serbs refuse to integrate and remain in control, remains unclear. Leaving the difficult situation in Northern Kosovo aside, Serbs have been integrated into the new states via different forms of institutional accommodation, as will be made evident throughout the paper. While the dream of a “Greater Serbia” might be over, there nevertheless remain a number of open questions about the role of Serbs in these new states, their relationship to the kin-state Serbia and the consequences of these complex relationships for peace and stability in the Western Balkans. To assess the integration of Serbs in the post-Yugoslav states of Bosnia, Croatia and Kosovo, this paper will focus a) on the legal status of Serbs in these three countries; b) the existence of reserved seats in parliament; c) the right to use a veto in order to block legislation; d) territorial autonomy for the Serb community; and e) cultural autonomy. These five elements can be seen as key cornerstones of a wider strategy of minority/group integration in divided societies, and will be developed out of a discussion on different forms of minority and group integration in the third part of this paper. It is important to highlight that this paper deals only with the legal provisions; it does not aim to assess the situation of Serbs “on the ground”; instead, it aims to provide a comparison between the different strategies used to integrate the Serb community in the three countries and demonstrate important similarities and differences.

This paper will progress in three key steps. First, I will look at the Serbs in Bosnia, Croatia, and Kosovo and discuss why a comparison of their integration is academically fruitful and might help to understand and address other forms of minority integration. In the second part I will examine the importance of the political accommodation of “new minorities” and the different institutional models that allow for Serb integration in the three countries. Third, I will analyze institutional mechanisms to integrate the Serb community in the three states. It will be shown that for the successful integration of the Serb community in Bosnia, Croatia, and Kosovo three actors become important, namely the new state and its government (Bosnia, Croatia, and Kosovo), the Serb community in these three countries, and finally Serbia as the kin-state of Serbs and a neighboring country to all states under consideration in this paper. By doing so, this analysis goes back to the work of Rogers Brubaker, who has emphasized the “triadic relational nexus linking national minorities, nationalizing states, and external national homelands.”<sup>10</sup> The concept, however, needs to be extended, to include the role of external actors; therefore the model of the “quadratic nexus” will be applied.<sup>11</sup>

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<sup>10</sup> Rogers BRUBAKER, National Minorities, Nationalizing States and External National Homelands in the New Europe, *Daedalus* 124 (1995), n. 2, 107-132, p. 107

<sup>11</sup> The Quadratic Nexus assesses the role of national minorities, nationalizing states, external homelands and international actors in the process of state-building and democratization. See for example David SMITH, Framing the National Question in Central and Eastern Europe: A Quadratic Nexus? *The Global Review of Ethnopolitics* 2 (2002) n.1, 3-16 as well as Gezim KRASNIQI, “Quadratic nexus” and the process of democratization and state-building in Albania and Kosovo: a comparison, *Nationalities Papers* 41 (2013), n.3, 395-411.

## Comparing the Serbs in Bosnia, Croatia and Kosovo

When comparing the integration of the Serbs in the new states of Bosnia, Croatia, and Kosovo it is important to look at some of the common developments in these states. Serbs have lived in all three territories for centuries, long before the wars in the 1990s would result in the creation of new states and new borders. They have been victimized in the Ottoman Empire, used by the Austrians to protect their border with the Ottomans and have always played an important role in the historical development of Southeastern Europe. Indeed, the “Serbian Question” was at the forefront of the Balkan Wars at the beginning of the twentieth century and at the centre of the Yugoslav Successor Wars at its end.<sup>12</sup> Serbs, as the largest group in Yugoslavia, were the titular nation in the Republic of Serbia, one of the six Yugoslav Republics, but they also had equal rights with Croats in Croatia and were a constituent group in Bosnia, along with Bosnian Muslims and Bosnian Croats. Serbs controlled Kosovo after 1989 when Slobodan Milošević ended Kosovo’s autonomy, until the United Nations Interim Administration Mission in Kosovo (UNMIK) took over in 1999.<sup>13</sup> Serbs, consequently, were privileged in the former Yugoslavia, not only because they had their own Republic, but also because they enjoyed a privileged position in a number of other Republics and parts of the country, namely Bosnia, Croatia, and Kosovo.<sup>14</sup> Consequently, it was also the Serbs that had the most to lose once Yugoslavia started to disintegrate. The Serbs in Bosnia and Croatia were unwilling to live in these states, because they insisted on their right to join a Greater Serbia (i.e. a Serb state that would unite all Serbs in Yugoslavia, including territories in Bosnia and Croatia where Serbs were living) once the Yugoslav dissolution had been confirmed (after the end of the violence in Slovenia). At the same time, Serbs in Kosovo faced the opposite dilemma, they had to argue that Kosovo should remain a part of Serbia, despite the fact that the overwhelming majority of Kosovo citizens was not Serb and was not willing to live in a Serbian nation-state. As the psychologist Toni Petković has described this dilemma for the Serbs is as follows: “If they wished to remain united in a single state, they had to fight simultaneously for the self – determination of Serbs in other Yugoslav republics, Croatia and Bosnia and Herzegovina, and against the self – determination of minorities within Serbia itself.”<sup>15</sup> The Serbs in Bosnia and Croatia excluded themselves from these new states by establishing local autonomy and starting violent revolts, followed

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<sup>12</sup> Ivo BANAC, *The National Question in Yugoslavia. Origins, History, Politics*. Ithaca 1984; James GOW *The Serbian Project and Its Adversaries. A Strategy of War Crimes*. London 2003; V.P. GAGNON Jr., *Ethnic Nationalism and International Conflict: The Case of Serbia*, *International Security* 19 (1994/5), n. 3, 130-166.

<sup>13</sup> Kosovo was an autonomous province according to the 1974 Yugoslav constitution. While formally belonging to the Socialist Serb Republic, it had its own institutions and representation in the Yugoslav executive. This autonomy, which put Kosovo de facto (but not de jure) on par with the Republics of Yugoslavia, was abolished by the Serb leadership in 1989,

<sup>14</sup> Additionally it has to be noted that Serbs were also equal in Serbia’s second autonomous province Vojvodina. See: Tim JUDAH, *The Serbs (History, Myths and the Destruction of Yugoslavia)*. New Haven, London 2000 (2nd edition).

<sup>15</sup> Toni PETKOVIĆ, *Fight for Great Serbia: Myth and Reality*, *Center for Southeast Europe Working Paper Series* 3 (2009), 1-28, 3, available at: [http://www.uni-graz.at/ofre2www\\_csee\\_3.pdf](http://www.uni-graz.at/ofre2www_csee_3.pdf), 24.08.2012.

by declaring their independence from the new states. In both countries ethnic cleansing was used as a key strategy to create ethnically homogenous territories, a legacy that remains important in the political discourse today. In Kosovo, it was a different story, because the independence of the former Serbian province was the result of an attempt at ethnic cleansing by Serbian security forces in 1998 and 1999, which resulted in NATO intervention and the establishment of UN control over Kosovo.<sup>16</sup> Earlier attempts to integrate the Serbs via power-sharing in Bosnia and through minority rights in Croatia failed, mainly due to the radicalization of the local Serb leadership and the influence of Slobodan Milošević, who believed that the secession of Serb territories from Croatia and Bosnia was an acceptable solution in the process of the dissolution of Yugoslavia.<sup>17</sup> Many Serbs also voiced reasonable concerns once Croatia and Bosnia became independent, in particular pointing out that they would be reduced to minority status and dominated by other ethnic groups.<sup>18</sup> The leaders of Croatia and Bosnia did little to encourage Serbs living in their territory that they had a place in the new states and would be protected and recognized.<sup>19</sup> Serbs, and particularly their leadership, likewise did little to find compromises and seek political solutions with the Croatian and Bosnian elites.

Serbs in Croatia suffered a decisive military defeat in the summer of 1995, when the secessionist regions were overrun by the Croatian army and the majority of Serbs left or were forced to leave. While the Serbs in Bosnia suffered military defeats, too, these were not so decisive and a cease-fire was negotiated before Croatian and Bosnian troops could conquer the majority of Serb-held territory in Bosnia. In Kosovo, many Serbs fled as a result of violence, NATO's bombing, and the establishment of UN authority in 1999; and many more followed in the coming years after continued violence against Serbs, despite the active promotion of peace and cooperation by the UN and the work of the Kosovo Force (KFOR) military units on the ground. Serbs consequently had to accept that their aims of secession from Bosnia and Croatia failed and that these states would become independent in their original Republican borders. Furthermore, Serbia lost control over Kosovo as a result of NATO airstrikes, and when Kosovo declared its independence in 2008, it further complicated relations with the Serb community in Kosovo and with Serbia.<sup>20</sup> In the three countries Serbs not only saw themselves as the losers of the break-up of Yugoslavia and the establishment of the new states, but indeed emphasized their role as victims of nationalist policies and violence in the post-Yugoslav states. This fits into a wider

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<sup>16</sup> Florian BIEBER / Zidas DASKALOVSKI, (eds.), *Understanding the War in Kosovo*. London, Portland 2001

<sup>17</sup> Nina CASPERSEN, Belgrade, Pale, Knin: Kin-State Control over Rebellious Puppets? *Europe-Asia Studies* 59 (2007), n. 4, 621-641.

<sup>18</sup> For a discussion on different Serb perspectives during the break-up of Yugoslavia, see the personal memoir of Mirko Pejanović, a Bosnian Serb academic, who joined the Bosnian government during the war. Mirko PEJONOVIĆ, *Through Bosnian Eyes. The Political Memoir of a Bosnian Serb*. West Lafayette 2004.

<sup>19</sup> Croatia's President Tuđman made it very clear in his speeches that he saw Croatia as a nation-state of Croats in which Serbs would be reduced to a minority with limited rights. While their legal status was more protected in Bosnia after 1990, the push for independence of Bosnia by Bosniak and Croat elites alienated the Serb leadership and many Serbs, and gave a clear indication that they would be dominated by a Bosniak-Croat alliance in an independent Bosnia.

<sup>20</sup> Serbia has not recognized Kosovo and continues to treat it as part of its own territory. Serbian authorities consider Kosovo's unilateral declaration of independence as illegal.

pattern of Serb engagement with other ethnic groups in the Western Balkans, namely the emphasis on Serb victimhood and suffering.<sup>21</sup> In this discourse it was the Serb nation that had become displaced throughout the post-Yugoslav states and now had to live as a minority in Bosnia, Croatia, and Kosovo. This discourse of Serb suffering and victimhood stands in stark contrast to the discourse among Croats in Croatia, Bosniaks in Bosnia, and Albanians in Kosovo. They saw Serbs as the main perpetrators, as war criminals, and indeed saw Serbia as the pariah of the new states.

The 'triadic nexus' that Brubaker describes as a key element of group integration is very important for the analysis of the Serb integration into Bosnia, Croatia and Kosovo. Furthermore, the role of the international community cannot be overestimated, particularly in the cases of Bosnia and Kosovo, but also in the case of Croatia. Thus the discussion on Serb integration in these new states needs to look at the Serb community, the politics of these new states, the role of Serbia, and the actions and involvement of different international actors.

While many Serbs chose to leave or were forced to leave their homes during the conflicts, many stayed and had to integrate into the new states. Over the years many returned to their homes, in particular to Bosnia and Croatia.<sup>22</sup> The experiences of Serbs in Bosnia, Croatia, and Kosovo are therefore similar in a number of ways. Serbs in all three countries lost or feared to lose their privileged position once these states declared their desire to become independent and consequently attempted to secede. These secession attempts, the Republic of Srpska Krajina in Croatia and the Republika Srpska in Bosnia were, however, defeated militarily and many Serbs became victims of the very nationalist discourses that their leaders had instigated. The Serbs in Kosovo also opposed the former province's independence. Those Serbs that remained in Kosovo after NATO's bombing campaign used similar strategies to the Serbs in Bosnia and Croatia. The Serbs in Northern Kosovo excluded themselves from the new Kosovan state, while Serbs in other parts of Kosovo had to make arrangements with the new state authorities. This gave rise to legends about Serb oppression in the new states similar to those used earlier to legitimize the secession attempts of nationalist Serbs in Bosnia and Croatia and to those used today by the Serbs in Northern Kosovo to underline their desire to join Serbia.<sup>23</sup> At the same time, the re-integration of Serbs into Bosnia, Croatia, and Kosovo was difficult because Serbs were seen as the main aggressors by members of the other ethnic groups in the three countries. They were stigmatized and in some cases openly discriminated against. Serbia's role in the integration of the Serb communities into the three countries has also not been without its problems. Until today Serbia remains a strong protector of the Serbs in Bosnia and Kosovo. Furthermore, attempts at Serb integration were also hindered by the

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<sup>21</sup> Florian BIEBER, Nationalist Mobilization and Stories of Serb Suffering: The Kosovo myth from 600th anniversary to the present, *Rethinking History: The Journal of Theory and Practice* 6 (2002), n. 1, 95-110; Stef JANSEN, 'Why Do They Hate Us?' Everyday Serbian Nationalist Knowledge of Muslim Hatred, *Journal of Mediterranean Studies* 13 (2010), n. 2, 215-237; JUDAH, The Serbs (History, Myths and the Destruction of Yugoslavia).

<sup>22</sup> The Serb exodus from Kosovo continues.

<sup>23</sup> ICG, Setting Kosovo Free: Remaining Challenges. *Europe Report No. 218* (2012c), available at: <http://www.crisisgroup.org/en/publication-type/media-releases/2012/europe/setting-kosovo-free-remaining-challenges.aspx>, 13.09.2012.

political elites in the new countries. As will be shown below, Croatia's government until 2000 had no interest in integrating and engaging with the Serb community, and even after 2000 Serb integration occurred mainly as a result of pressure from the European Union (EU) and other international bodies (such as the OSCE and the Council of Europe). The continued tensions between Kosovo Albanians and Serbs, most visibly the 2004 violent prosecution, also demonstrate how Serb integration there was neither smooth nor without conflict after 1999. In Bosnia, tensions remained high after 1995, and the state did not start to function properly until 1998, when international actors stepped in to implement many important reforms.

### **Different concepts of minority integration in new states**

The forms of minority protection to be found in the three countries are the result of actions taken by the Serb communities in Bosnia, Croatia, and Kosovo, as well as actions taken by the respective governments of these countries. Additionally, one should not underestimate the role of Belgrade, particularly during the conflicts in the countries, but also through to the present day as the kin-state and “protector” of the Serb minority in the three new states. Brubaker's concept of nationalizing state vs. minority nation vs. kin-state therefore finds confirmation and helps us in explaining the current state of minority protection in all three states.<sup>24</sup> He argues that there is a

“dynamic interplay between a set of new or newly reconfigured *nationalizing states*, ethnically heterogeneous yet conceived as nation states, whose dominant elites promote (to varying degrees) the language, culture, demographic position, economic flourishing, and political hegemony of the nominally state-bearing nation; the substantial, self-conscious, and (to varying degrees) organized and politically alienated *national minorities* in those states, whose leaders demand cultural or territorial autonomy and resist actual or perceived policies or processes of assimilation or discrimination, and the *external national “homelands”* of these minorities, whose elites (again to varying degrees) closely monitor the situation of their co-ethnics in the new states, vigorously protest alleged violations of their rights, and assert, even the obligation, to defend their interests.”<sup>25</sup>

Additionally, as it will become clearer through what follows that international actors played a key role in the development and implementation of Serb rights in these three countries, Brubaker's concept will be extended by a fourth dimension into a “quadratic nexus”, incorporating the international actors.

When Croatia and Bosnia declared their independence in 1991 and 1992 respectively, neither country could consider itself an homogenous nation-state. About 12 per cent of the Croat population and

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<sup>24</sup> BRUBAKER, National Minorities, Nationalizing States and External National Homelands in the New Europe. Rogers BRUBAKER, Nationalism reframed: Nationhood and the National Question in the New Europe. Cambridge et al. 1996.

<sup>25</sup> BRUBAKER, National Minorities, Nationalizing States and External National Homelands in the New Europe, 109-110 (emphasis in original).



one-third of the Bosnian population declared themselves as ethnic Serbs in the last Yugoslav census of 1991.<sup>26</sup> In Kosovo, the census showed that ten per cent declared themselves as ethnic Serbs in the same year. All three countries were therefore multinational rather than mono-national and the new state structures needed to take this into account.<sup>27</sup> This was a key requirement, which the Badinter Commission outlined in November 1991, when it stated "that the Serbian population in Bosnia and Herzegovina and Croatia is entitled to all the rights concerned to minorities and ethnic groups [...]" and "that the Republics must afford the members of those minorities and ethnic groups all the human rights and fundamental freedoms recognized in international law, including, where appropriate, the right to choose their nationality."<sup>28</sup> The protection of the Serb community via minority and group rights was therefore a key precondition for the international recognition of Bosnia and Croatia. In the case of Kosovo it was also an international framework that provided for the need of Serb minority protection and integration. The Comprehensive Proposal for the Kosovo Status Settlement, outlined by former Finnish President Martti Ahtisaari stated that "Kosovo shall be a multi-ethnic society..." and that "Inhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally present on the territory of Kosovo [...] shall have specific rights [...], in addition to the human rights and fundamental freedoms provided for in [...] this Settlement."<sup>29</sup>

While the Serbian government fiercely rejected the Ahtisaari Plan, it is nevertheless important to recognize that the respect and protection of minority nations, and particularly the Serb community, was of key importance for international actors in the process of the dissolution of Yugoslavia and the recognition of new states. However, many Serbs in Bosnia, Croatia, and Kosovo opposed their integration into the new states and fought against it violently. As a result of these conflicts many Serbs had to leave the countries and their pre-war homes and the numbers of Serbs in Croatia and Kosovo have been reduced drastically.<sup>30</sup> The drastic reduction of the Serb population in Croatia and Kosovo, but also the outbreak of inter-group violence in all three countries in the process of them becoming independent can be seen as a failure of effective Serb integration by these new states, as well as a sign of the unwillingness of the Serb communities to accept them. While states have many options to

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<sup>26</sup> In addition, 17 per cent of the Bosnian population declared themselves as ethnic Croat.

<sup>27</sup> It is also important that there are a number of other minorities living on the territories of these three states, including Jews, Roma, Balkan Egyptians, and Montenegrins. People from mixed marriages would often label themselves as "Yugoslavs" before the war rather than choosing one side of identification.

<sup>28</sup> The European Community Arbitration Committee for the former Yugoslavia (also referred to as Badinter Commission) was a legal organisation composed of a number of high-profile judges from numerous European countries, which examined the legal nature of the Yugoslav dissolution and concluded that "the Socialist Federative Republic of Yugoslavia is in the process of dissolution." (All quotes from the conclusions of the Commission are taken from Alain PELLET, *The Opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples*, *European Journal of International Law* 3 (1992), n. 1, 178-185.). The Committee would recommend that the European Community (EC) should recognize the Republics, if their declaration of independence was preceded by a referendum and if they demonstrate a commitment to the protection of minority rights.

<sup>29</sup> Comprehensive Proposal for the Kosovo Status Settlement, Art. 1.1 and 3.1, (2007), available at: <http://www.assembly-kosova.org/common/docs/Comprehensive%20Proposal%20.pdf>, 26.08.2012.

<sup>30</sup> In the census of 2001, 4.5 per cent of the population of Croatia considered themselves as ethnic Serbs. It is estimated that about 4-5 per cent of the current population of Kosovo are Serbs.

integrate minority nations, the most relevant ones for our paper are integration through the protection of minority rights, protection through autonomy (either territorial or cultural), and protection through power-sharing.<sup>31</sup>

It has become internationally recognized that minority nations should have a right to cultural, linguistic, and religious protection and that states have the obligation to protect these rights. In Europe, the Framework Convention for the Protection of National Minorities has become one of the most detailed legal provisions about the obligations of states towards minority nations on their territory.<sup>32</sup> The Convention states in Article 5.1 that “The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.” The basic framework provided by the Convention and other international protection frameworks, such as the Organization for Co-operation and Security in Europe’s (OSCE) High Commissioner on National Minorities focuses on fundamental human rights for minorities *as well as* additional cultural rights connected to their national customs and history. According to these international frameworks, states have the obligation to treat minority nations equally and provide them with additional rights so that they practise their own language, religion, and culture. One way to ensure this is by granting minority nations cultural autonomy. This means that all members identifying with one group enjoy the same cultural rights to enable them to practise and protect their own national identity, customs, and tradition.<sup>33</sup>

Another form of minority integration is territorial autonomy. This is often granted through specific decentralization or federalization processes in which territories that are inhabited by a minority nation receive more decision-making autonomy. Processes of decentralization and federalization in Spain, Belgium, and the United Kingdom have addressed the demands of minority nations for territorial autonomy and self-governance. However, Belgium and Canada are also good examples, illustrating also some of the limits of territorial autonomy. Questions about the degree of autonomy and inter-group relations often play a key role in countries that choose to implement forms of territorial autonomy. Furthermore, asymmetrical forms of decentralization, as practised in Spain and the UK, have resulted in political conflicts and discussions about the unequal treatment of groups and citizens in states.<sup>34</sup>

Finally, power-sharing has been a key strategy for the promotion of peace and democracy in divided societies. There are different forms of power-sharing, which often include elements of cultural

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<sup>31</sup> For different strategies of minority integration, see: Alexis HERACLIDES, Ethnicity, Secessionist Conflict and the International Society: Towards Normative Paradigm Shift, *Nations and Nationalism* 3 (1997), n. 4, 493-520. There are ongoing debates in the academic literature about the use of population transfers as effective mechanisms of minority protection. See for example Chaim D. KAUFMANN, When All Else Fails: Ethnic Population Transfers and Partition in the Twentieth Century, *International Security* 23 (1998), n. 2, 120-156.

<sup>32</sup> Council of Europe, Framework Convention for the Protection of National Minorities (1995), available at: [http://www.coe.int/t/dghl/monitoring/minorities/1\\_AtGlance/PDF\\_H\(1995\)010\\_FCNM\\_ExplanReport\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/1_AtGlance/PDF_H(1995)010_FCNM_ExplanReport_en.pdf), 26.08.2012.

<sup>33</sup> Ephraim NIMNI, National Cultural Autonomy as an Alternative to Minority Nationalism, *Ethnopolitics* 3 (2007), n. 3, 345-364;

<sup>34</sup> Will KYMLICKA, Federalism and Secession: At Home and Abroad, *Canadian Journal of Law and Jurisprudence* 13 (2000), n. 2, 207-224.

and/or territorial autonomy. In practice, the most common form of power-sharing as an instrument of minority protection is consociationalism.<sup>35</sup> Consociationalism, according to Arend Lijphart, is defined by four core elements, namely elite cooperation through grand coalitions, proportional representation, (minority) veto rights, and autonomy for minority nations.<sup>36</sup>

Which of these integration strategies is being used depends on a number of factors. As will be shown, Bosnia and Herzegovina had a tradition of ethnic power-sharing between Bosniaks, Bosnian Croats, and Bosnian Serbs. This form of power-sharing existed during the Communist period as well as after the first free elections in 1991. Hence, once the war had ended, power-sharing was re-introduced and formalized in the Bosnian Constitution, which is part of the General Framework Agreement for Peace in Bosnia and Herzegovina. Consequently, it can be argued that historical experiences, but also the continued existence of a large number of Serbs in Bosnia, were the main reasons for the formal introduction of institutionalized power-sharing and territorial autonomy. This is different to Croatia, where Croats and Serbs were treated equally and where both had the status of a constituent nation under Communist rule. However, once the HDZ (Hrvatska demokratska zajednica, Croatian Democratic Union) won the free elections and Franjo Tuđman became President, the country underwent a strong “nationalizing” policy, which was characterized by the departure of Serbs from the public administration, the use of Croat national symbols and the reduction of the Serb population to the status of a national minority. As the academic Nenad Zakošek describes, “The new regime was [...] characterized by a strong anti-Serb sentiment. In particular, it rejected all power-sharing mechanisms and the privileged veto powers previously given to the Serb minority in Croatia. The inclination was towards [...] defining Croatia as a nation-state of Croats.”<sup>37</sup> After the end of violence, which resulted in victory for the Croat forces and the departure of a large segment of the Serb community, the Serbs were offered cultural autonomy. They had to accept, despite having refused the same rights in 1991 and having attempted to secede from Croatia. The provision of cultural autonomy for Serbs in Croatia is therefore the result of the nationalizing policies of the first Croat government and the military victory of the Croat government forces over the Serb separatists in 1995.

Kosovo is a unique case and differs in many respects from Bosnia and Croatia. The institutionalization of minority rights for Serbs in Kosovo was preceded by the Serbian attempt to ethnically cleanse the province and by NATO’s subsequent intervention in 1999. As a result, Serbia lost de facto sovereignty over the area in 1999 when UNMIK was established as the holder of sovereignty and political power. Many Serbs left Kosovo after 1999, despite the UN Mission’s strong focus on the multi-cultural nature of Kosovo and its insistence on representation of Serbs and other minorities in the

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<sup>35</sup> Arend LIJPHART, Constitutional Design for Divided Societies, *Journal of Democracy* 15 (2004), n. 2, 96-109; Arend LIJPHART, Non-Majoritarian Democracy: A Comparison of Federal and Consociational Theories, *Publius: The Journal of Federalism* 15 (1985), n. 2, 3-15;

Arend LIJPHART, *Democracy in Plural Societies. A Comparative Exploration*. New Haven 1977.

<sup>36</sup> Arend LIJPHART, Consociational Democracy, *World Politics* 22 (1969), n. 2, 207-225.

<sup>37</sup> Nenad ŽAKOŠEK, Democratization, State-building and War: The Cases of Serbia and Croatia, *Democratization* 15 (2008), n. 3, 588-610, 598.

first self-governing institutions. Nevertheless, a lack of economic development, new inter-ethnic violence, and the continued insecurity in Kosovo have result in an ongoing exodus of Serbs from the statelet. Having said this, in terms of institutional protection the already mentioned Ahtisaari Plan had foreseen a high level of protection for Serbs and other minorities and most of these provisions have been institutionalized in the independent Kosovo. The Serbs in Kosovo remain, however, divided over their role in the new state. While some Serbs in the South of Kosovo, who mainly live in enclaves, have started to cooperate with the government in Pristina, those in the North show no willingness to integrate into Kosovo and consider the state illegal.<sup>38</sup> The current minority protection regime in Kosovo is therefore the result of Serbia's actions in the former province, NATO's intervention, and UNMIK's attempt to build a multiethnic society. Furthermore, a high degree of autonomy for the Serbs in Kosovo was the price the Albanian majority had to pay for its demand of independence from Belgrade.

The next section compares and contrasts the institutionalized forms of Serb integration in Bosnia, Croatia, and Kosovo in more detail. In doing so it analyzes some of the key features of the "triadic nexus" and the role of the international community.

### **Institutionalizing Serb minority protection in Croatia, Bosnia, and Kosovo**

#### *Legal Status and Institutional Representation*

As a brief summary we can say that Croatia grants Serbs protection through the status of a national minority, while Bosnia and Kosovo have institutionalized the protection of the Serb community further. In Kosovo, Serbs are a constituent nation and Serbian is an official language. There are also reserved seats in parliament and government for Serb representatives and Serb municipalities enjoy a high degree of self-government. In Bosnia, Serbs have "their own" territorial unit, namely the Republika Srpska (RS), which covers 49 per cent of the Bosnian territory.<sup>39</sup> Furthermore, Serbs are one of three constituent peoples (along with Bosniaks and Croats) and enjoy representation in parliament, government, and the Constitutional Court. They also enjoy a number of veto rights and have to be represented proportionally in the administration.<sup>40</sup> While the discussion above helped in explaining the different levels and

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<sup>38</sup> ICG, *Setting Kosovo Free: Remaining Challenges*.

Stefan LEHNE, *Kosovo and Serbia: Toward a Normal Relationship*, *Carnegie Endowment for International Peace Policy Outlook* (2012), available at: [http://carnegieendowment.org/files/Kosovo\\_and\\_Serbia.pdf](http://carnegieendowment.org/files/Kosovo_and_Serbia.pdf), 13.09.2013.

<sup>39</sup> The other unit, the Federation of Bosnia and Herzegovina (FBiH) covers 51 per cent of the territory and is made up of 10 cantons. Furthermore, the District of Brčko enjoys self-government and is a multinational unit. For more on Bosnia's complex federal system see Soeren KEIL, *Multinational Federalism in Bosnia and Herzegovina*, Farnham and Burlington 2013; Soeren KEIL, *Federalism as a Tool of Conflict Resolution: The Case of Bosnia and Herzegovina*, *Le Europe En Formation* 363 (2012), 205-218 and Soeren KEIL, *Mythos und Realität eines Ethnischen Föderalismus in Bosnien und Herzegowina*, *Südosteuropa Mitteilungen* 50 (2010), n. 1, 76-86.

<sup>40</sup> This privileged position of Serbs in Bosnia has been criticized by a number of Bosniak politicians, who argue that the RS is the result of genocide and should be abolished. See for example Marc LOWEN, *Ethnic Rifts Overshadow Bosnia Elections*, *BBC News Bosnia-Herzegovina* (2010), available at: <http://www.bbc.co.uk/news/mobile/world-europe-11451644>, 17.09.2012.

institutional mechanisms to integrate the Serb community in the three countries, this integration nevertheless needs some further consideration. As mentioned, Croatia differs from Bosnia and Kosovo in its categorization of Serbs as a national minority. In Bosnia, Serbs are a constituent people and in Kosovo they enjoy equal rights to the Albanian majority population. This has far-reaching institutional consequences. The use of Serbian and the Cyrillic alphabet, for example, is only allowed in Serb designated schools in Croatia and laws of the central government are published in the Latin script only, while in Bosnia and Kosovo Serbian enjoys the status of an official language and all laws of the central government are also published in Serbian. While the major Serb party in Croatia, the Independent Democratic Serb Party (SDSS, short for: Samostalna demokratska srpska stranka) has been involved in a number of coalition governments in Croatia since 2000, there is no legal requirement for the participation of Serbs in the government of Croatia. This is different to Bosnia and Kosovo.

In Kosovo, the Constitution outlines in Article 96 (3 and 4) that at least one minister must come from the Serb community and that two deputy ministers must also be Serbs. In Bosnia, while there is no direct rule on the ethnic composition of the government, Article V.4.b states that “No more than two-thirds of all Ministers may be appointed from the territory of the Federation. The Chair shall also nominate Deputy Ministers (who shall not be of the same constituent people as their Ministers), who shall take office upon the approval of the House of Representatives.”<sup>41</sup> While this is a requirement for territorial, rather than ethnic representation in the Council of Ministers, in practice it has always been the case that at least one Bosnian Serb party has been represented in the governing coalition.<sup>42</sup> This means that while there is de jure the possibility of excluding Serbs from government coalitions, de facto this is not possible because of the electoral dominance of Serbs in the Republika Srpska. Bosnia has seen numerous changes to its institutional architecture since 1995, which mainly strengthened the state and weakened the ethno-national and exclusive identity of the entities, but nationalist parties remain of key importance in Bosnia’s political system.<sup>43</sup> Furthermore, while refugee return has been high on the agenda, Serbs remain the absolute majority in the RS.<sup>44</sup> This means that Serb parties always dominate the elections in the RS and therefore ensure Serb representation in those institutions, which are characterized by territorial rather than ethnic keys. It highlights the fact that in Bosnia, all territorial issues are also ethnic issues, because of the ethnic homogeneity of the RS and the cantons in the Federation of Bosnia and Herzegovina (FBiH).<sup>45</sup>

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<sup>41</sup> The Bosnian Constitution is available at: [http://www.ohr.int/dpa/default.asp?content\\_id=372](http://www.ohr.int/dpa/default.asp?content_id=372), 26.08.2012. Kosovo’s Constitution is available at:

<http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>, 26.08.2012.

<sup>42</sup> Soeren KEIL, Mythos und Realität eines Ethnischen Föderalismus in Bosnien und Herzegowina, *Südosteuropa Mitteilungen* 50 (2010), n. 1, 76-86.

<sup>43</sup> Florian BIEBER, After Dayton, Dayton? The Evolution of an Unpopular Peace, *Ethnopolitics* 5 (2006a), n. 1, 15-31.

<sup>44</sup> It is estimated that about 90-95 per cent of the RS population are ethnic Serbs. See for example Florian BIEBER, *Post-War Bosnia: Ethnicity, Inequality and Public Sector Governance*. Basingstoke 2006b

<sup>45</sup> BIEBER, *Post-War Bosnia*

### *Reserved Seats*

All three countries reserve seats for members of the Serbian community in their parliaments. In Croatia, there has been a more incremental change over time towards the Serbian minority. They have three seats guaranteed in parliament and have been able to join a number of coalition governments. In Kosovo, there are ten seats reserved in parliament. Yet because a large number of Serbs does not recognize the independence of Kosovo, these seats are often filled by Serbs that run on the list of the major (Albanian) parties and are therefore not directly representing the interests of the Serb community. In Bosnia, there is no direct regulation about the representation of Serbs in the lower chamber, the House of Representatives, but the Constitution states that one third of the Members of the House of Representatives has to be elected in the RS, which means that these seats are usually filled by Serbs. Bosnia's upper chamber, the House of Peoples, consists of 15 members of which five have to be Serbs, appointed by the National Assembly of the RS.

When comparing the parliamentary representation of Serbs in the three countries one key conclusion sticks out, namely that size matters. While there is no guarantee for Serbs in the Bosnian lower house (in practice they always count for one third of the total number of MPs), in the upper house Serbs have five reserved seats. Not only is this an indication of the mixed nature of territorial and ethnic representation in Bosnia, but empirical evidence from the last 17 years demonstrates that there is no single political decision that can be taken in Bosnia without agreement from the dominant Serb parties.<sup>46</sup> This is very different to Croatia and Kosovo. In Croatia there is no rule stating that Serbs have to be involved in government or enjoy any form of veto over governmental legislation. While Serbs in Kosovo have reserved seats in the government, their influence is marginal mainly due to self-exclusion. The Serbs that participate in Kosovo's government are usually members of the large parties in Kosovo, which are dominated by Kosovo Albanians. The majority of the Kosovo Serbs does not recognize the country and does not participate in elections.<sup>47</sup> The Serbs that are elected into parliament and government therefore do not truly represent the interests of the Serb community. It is therefore clear that addressing

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<sup>46</sup> Florian BIEBER / Soeren KEIL, Power-Sharing Revisited: Lessons Learnt in the Balkans? *Review on Central and East European Law* 34 (2009), n. 4, 337-360.

Joseph MARKO, Post-conflict Reconstruction through State- and Nation-building: The Case of Bosnia and Herzegovina, *European Diversity and Autonomy Papers* 4 (2005), available at: [http://www.uni-graz.at/en/print/opv1www\\_2005\\_edap04.pdf](http://www.uni-graz.at/en/print/opv1www_2005_edap04.pdf), 13.09.2012.

<sup>47</sup> Oisín TANSEY, Democratization Without a State: Democratic Regime-Building in Kosovo, *Democratization* 14 (2007), n. 1, 129-150.

ICG, Kosovo and Serbia: A Little Goodwill Could Go a Long Way, *Europe Report No. 215* (2012b), available at: <http://www.crisisgroup.org/en/regions/europe/balkans/kosovo/215-kosovo-and-serbia-a-little-goodwill-could-go-a-long-way.aspx>, 24.08.2012.

the issue of Serb integration in Kosovo is a key element of Kosovo's state-building and democratization agenda.<sup>48</sup>

### *Veto Rights*

While Serbs enjoy representation in all three parliaments, they do not have guaranteed veto rights in all three cases. There is no special mechanism in Croatia that foresees any form of veto rights for the Serb community or any other minorities in the country. This can be explained by the relatively small size of the Serb community in Croatia and means in practice that Serbs are able to influence policy in Croatia only when the SDSS joins majority coalitions. In Kosovo, there are no direct veto rights for the Serb community. However, they have indirect veto rights in the case of defined vital interests (Article 81) and constitutional changes (Article 144 (2)). This means that changes to the constitution and to the laws on municipalities, rights of the Communities, language rights, local elections, cultural heritage, religion, education, and symbols require special majorities. In the case of constitutional changes, this is a two thirds majority of the Assembly including a two thirds majority of the representatives of the different Communities. In the case of the laws on vital interests a majority of both the Assembly and of the representatives of the different Communities is required. The use of special majorities has become a more prominent feature in power-sharing systems and this can be seen as a form of institutional learning from the complex case of institutionalized veto rights in Bosnia.<sup>49</sup> There are three forms of veto rights in Bosnia, namely territorial veto rights, ethnic veto rights, and special majorities. Article 4 of Bosnia's Constitution outlines the composition of the two parliamentary chambers and details veto rights for the ethnic groups in the House of Peoples and the House of Representatives in Paragraph 3. Additionally, Article 5, Paragraph 2 outlines the right of a national interest veto for a member of the Presidency, which would then be referred to the entity parliaments for consideration. Special majorities are required in the case of constitutional changes (a two thirds majority in each House) while all legislation needs the approval of both Houses of the Parliamentary Assembly. Legislation can only be approved if certain quorums are met and representatives of all three constituent peoples are present and agree on the legislation. This is an indirect form of veto rights, which has been used extensively, namely veto by absence.<sup>50</sup> It is also often used as a threat to paralyze Bosnia's institutions; in particular the Bosnian Serbs have frequently threatened to boycott central institutions over recent years.<sup>51</sup>

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<sup>48</sup> Gezim KRASNIQI, *Citizenship as a Tool of State-Building in Kosovo: Status, Rights, and Identity in the New State*, CITSEE Working Paper 2010/10, available at: [http://www.law.ed.ac.uk/file\\_download/series/216\\_citizenshipasatoolofstatebuildinginkosovostatusrightsandidentityinthestate.pdf](http://www.law.ed.ac.uk/file_download/series/216_citizenshipasatoolofstatebuildinginkosovostatusrightsandidentityinthestate.pdf), 26.08.2012.

<sup>49</sup> BIEBER / KEIL, *Power-Sharing Revisited: Lessons Learnt in the Balkans?*

<sup>50</sup> Birgit BAHTIĆ-KUNRATH, *Of Veto Players and Entity Voting: Institutional Gridlock in the Bosnian Reform Process*, *Nationalities Papers*, 39 (2011), n.6, 899-923.

<sup>51</sup> ICG, *Bosnia: What does Republika Srpska Want?* *Europe Report No. 214* (2011a), available at: <http://www.crisisgroup.org/en/regions/europe/balkans/bosnia-herzegovina/214-bosnia-what-does-republika-srpska-want.aspx>, 15.11.2011.

### *Territorial Autonomy*

A further distinction between Serb integration in Bosnia, Croatia, and Kosovo can be made when looking at the degree of territorial autonomy granted to the Serb community in these countries. In Croatia, there are no formal territorial rights for the Serb community; all rights granted to them via the Constitutional Law on National Minority Rights are cultural. While municipalities with a Serb majority have the right to closer cooperation with each other to protect these cultural rights, there is an absence of any form of territorial autonomy for the Serb community. In fact, Article 1 of the Croatian Constitution states that “The Republic of Croatia is a unitary and indivisible democratic welfare state.”<sup>52</sup> In particular the government of President Franjo Tuđman had no interest in decentralization, because it feared regional opposition - and indeed attempts at secession - by those regions that were predominantly Serb. The fact that this came true in the Croatian Wars of 1991 and 1995 is a key reason for Croatia’s relative centralization even today.<sup>53</sup>

In contrast to the situation in Croatia, Bosnia and Kosovo grant different forms of territorial autonomy to the Serb community. As already mentioned, the RS is one of two entities in Bosnia. It is mainly inhabited by Serbs and has a high degree of autonomy, which includes responsibilities for economic development, its own financial resources, decision-making powers in the areas of education, police, media, culture, environmental protection, and even limited competences in foreign policy. In fact, until 2005, the RS had its own military and border police and its own Value-Added-Tax regime. When Bosnia re-integrated as a unified country after the war in 1995 the entities were the main holders of decision-making competences and centralization was only a gradual process, starting in 1997, when the powers of the Office of the High Representative (OHR) (the international observer over the implementation of the peace agreement) were extended.<sup>54</sup> Since then the RS has lost some of its competences (such as its own military and control over the border service) but has remained a key holder of competences in Bosnia’s highly decentralized federal system. Since 2006 there have also been new attempts by the Bosnian Serb leadership to resist more centralization and indeed claim powers back from the central institutions in Sarajevo.<sup>55</sup> Furthermore, Serbs also enjoy representation in Bosnia’s other entity, the

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<sup>52</sup> The Croatian Constitution is available at: [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=246241](http://www.wipo.int/wipolex/en/text.jsp?file_id=246241), 27.08.2012.

<sup>53</sup> Dejan STJEPANOVIC, *Territoriality and Citizenship: Membership and Sub-State Politics in Post-Yugoslav State*, *CITSEE Working Paper 2012/22*, available at: [http://www.law.ed.ac.uk/file\\_download/series/375\\_territorialityandcitizenshipmembershipandsubstatepolitiesinpustyugoslavspace.pdf](http://www.law.ed.ac.uk/file_download/series/375_territorialityandcitizenshipmembershipandsubstatepolitiesinpustyugoslavspace.pdf), 24.08.2012.

<sup>54</sup> Florian BIEBER, *Power-Sharing and International Intervention: Overcoming the Post-conflict Legacy in Bosnia and Herzegovina* in: Marc WELLER / Barbara METZGER (eds.) *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice*. Leiden, Boston 2008, 193-241.

<sup>55</sup> ICG, *Bosnia: What does Republika Srpska Want?*



FBiH, where they have reserved seats at entity and cantonal level (since 2006). Yet they enjoy no territorial or cultural autonomy as such within the FBiH. In Kosovo, decentralization was a key element of the Ahtisaari Plan to ensure a high level of self-rule for Serb municipalities. While it took a long time for decentralization to be implemented once Kosovo became independent, it is generally considered as one of the more successful elements of democratization and state-building in Kosovo.<sup>56</sup> When looking more in detail at decentralization in Kosovo it becomes obvious that there is a clear division between the relatively successful integration of Serb enclaves in the South of Kosovo, that have profited from decentralization and enjoy some limited forms of decision-making particularly in health care and education, and the problematic situation in the Serb municipalities in Northern Kosovo, which do not recognize Kosovo as an independent state and continue to boycott all attempts of re-integration into Kosovo. While some progress has been made on Serb-Albanian relations in Kosovo in the light of the 2013 Brussels Agreement between Serbia and Kosovo, its implementation remains problematic. The Kosovo Serbs in the North of the country have so far resisted different attempts at re-integration and it remains to be seen to what extent pressure from Belgrade can push them towards cooperation with Prishtina.<sup>57</sup> Like Bosnia, Kosovo remains dependent on international support, and the vision of a multi-ethnic society in both cases is not fully compatible with the reality of ethnic separation and inter-group insecurity.<sup>58</sup>

### *Cultural Autonomy*

When comparing the institutional integration of Serbs in Bosnia, Croatia, and Kosovo a further point of comparison would be the provision of cultural autonomy for the Serb community. As discussed above, Croatia grants Serbs cultural autonomy, which focuses on the use of the Serbian language, cultural and religious autonomy, and some rights in education. In particular the participation of minority parties in the 2003 coalition government has resulted in better access for Serbs to jobs in the public service and a better implementation of the new Constitutional Law on National Minorities.<sup>59</sup> Igor Štiks argued in this context that although the Serbs have become more included, Croatia still retains its ethnocentric conception of the state, at the same time allowing for some inclusion of ethnic minorities – so long as

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<sup>56</sup> KRASNIQI, Citizenship as a tool of state-building in Kosovo.

Carl T. DAHLMAN/ Trent WILLIAMS, Ethnic Enclavisation and State Formation in Kosovo, *Geopolitics* 15 (2010), n. 2, 406-430.

STJEPANOVIC, Territoriality and Citizenship: Membership and Sub-State Polities in Post-Yugoslav State.

<sup>57</sup> Kurt BASSUENER and Bodo WEBER, Not Yet a Done Deal: Kosovo and the Pristina-Belgrade Agreement, *DPC Policy Paper*, Sarajevo and Berlin, November 2013.

<sup>58</sup> Sven SIMONSEN, Nationbuilding as Peacebuilding: Racing to Define the Kosovar, *International Peacekeeping* 11 (2004), n. 2, 289-311.

Gezim KRASNIQI, The International Community's Modus Operandi in Postwar Bosnia and Herzegovina and in Kosovo: A Critical Assessment, *Südosteuropa* 58 (2010b), 520-541.

<sup>59</sup> Viktor KOSKA, The Evolution of the Croatian Citizenship Regime: From Independence to EU Integration, *CITSEE Working Papers* 2011/15, 29 available at: [http://www.law.ed.ac.uk/file\\_download/series/325\\_theevolutionofthecroatiancitizenshipregimefromindependencetoEUintegration.pdf](http://www.law.ed.ac.uk/file_download/series/325_theevolutionofthecroatiancitizenshipregimefromindependencetoEUintegration.pdf), 24.08.2012.

they do not challenge the majority.<sup>60</sup> This also explains why rights were limited to some form of cultural autonomy. Yet, more recent discussions on the use of the Cyrillic alphabet in Vukovar and other parts of Croatia demonstrate that while the legal framework provides some basic rights for Serbs in the country, in practice these remain contested, while the picture of Serbs as the aggressor and enemy often prevails in the dominant Croat discourse. In Bosnia, there is no cultural autonomy for groups as such. All rights are connected to territories and Serbs living in the Federation of Bosnia and Herzegovina do not enjoy special forms of cultural autonomy. In Kosovo, all minorities enjoy special rights in the field of culture, education, and language rights. This has been a key element of the Ahtisaari Plan and has particularly favoured the Serbs as the largest minority group in Kosovo, as they can use their own language, have their own education system, and protect their own culture.

#### *Institutional Provisions and the Triadic Nexus*

When comparing the integration of the Serb community in Bosnia, Croatia, and Kosovo a number of important issues have emerged. First, these new states use different instruments to integrate the Serb community. These can be minority rights, reserved seats in parliament and/or in the government, and territorial and cultural autonomy. The specific set of rights and institutional participation granted to the Serb community depends on a number of factors: first, the size of the Serbian community in the country; second, the development of minority-majority relations in the process of the break-up of Yugoslavia; and finally, the pressure of international actors on majorities to implement certain protections and institutional participation mechanisms for the integration of the Serb community. Furthermore, Serbia itself has also had an impact on the protection regime in these countries, particularly in Kosovo, where it has been the main negotiator on behalf of the Kosovo Serbs.

Second, integration strategies and inter-ethnic relations have changed over time and this has had an influence on the role of the Serbs in these new states. The best example of this development is Croatia. The government of Franjo Tuđman purposely undermined the integration and return of many Serbs in Croatia, so that important reforms and administrative changes took place only after the democratization of Croatia in 2000. To this day relations remain constrained by questions over property return and the glorification of Croat and Serb war criminals as national heroes. The situation in Bosnia has also changed over time and the Serbs have become more integrated into the state and actively participate in its joint institutions. However, they enjoy a high degree of autonomy and since 2006 there has been a stronger discussion about the autonomy of the RS and the future of Serbs in Bosnia. Discussions of Serb independence from Bosnia have reemerged in the light of a permanent political crisis in Bosnia since 2006.<sup>61</sup> In Kosovo the situation remains fragile, as Serbs in the South of the country have chosen to

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<sup>60</sup> Igor ŠTIKS, The Citizenship Conundrum in Post-Communist Europe: The Instructive Case of Croatia, *Europe-Asia Studies* 62 (2010), n. 10, 1621-1638, 1632.

<sup>61</sup> On the permanent crisis see: Soeren KEIL and Valery PERRY, Introduction: State-Building and Democratization in Bosnia and Herzegovina, IN: Soeren KEIL and Valery PERRY (eds.) *State-Building and Democratization in Bosnia and Herzegovina*, Farnham 2015 (forthcoming).

cooperate with the Kosovar institutions, while Serbs North of the Ibar river continue to uphold their self-governance and reject any attempt at integration. It remains to be seen if the Brussels Agreement of April 2013 between Serbia and Kosovo will enable the integration of Serbs in Northern Kosovo into the Kosovan state.

Third, it has to be pointed out that Serbia plays a key role in the integration of the Serb community in Bosnia, Croatia, and Kosovo. Serbia's impact on the integration of Serbs in the neighboring countries can be both positive and negative. In the case of Croatia, there has been a gradual change over time. While Serbia under Milošević used the Croatian Serb refugees as political hostages to promote its policy and blame Croatian nationalism for the war and ethnic cleansing, there has been a genuine change in Serbia-Croatia relations since 2000. Both countries transitioned to democracy and that affected the integration of the Serbs in Croatia, for example when the visa for travels to Serbia was abolished for Croatian citizens. While there remain general disputes about the interpretation of the events between 1991 and 1995, the situation in both countries has nevertheless massively improved as they have both aimed for integration into the EU. Frameworks such as the Stability Pact for Southeastern Europe and its successor the Regional Cooperation Council have helped in establishing important relations on political, economic, and societal levels. This has helped Croatian Serbs to re-integrate into Croatia and still keep close links with their kin-state Serbia. However, some important issues remain, in particular in terms of the property claims of Serbs who fled from Croatia in 1995 and are now returning, and in questions concerning dual citizenship. In Bosnia, Serbia continued to undermine the re-integration of the state after 1995 by supporting the economic and political integration of the RS into Serbia. However, once the international community stepped up its game in Bosnia and extended the powers of the High Representative, Serbia demonstrated its willingness to support the international state-building agenda.

Nonetheless, all Serbian governments (including those after the democratic changes of 2000) have acted as the protectors of the interests of the RS and the Serbs in Bosnia. According to Article 2a of the Bosnian Constitution, "The Entities shall have the right to establish special parallel relationships with neighboring states consistent with the sovereignty and territorial integrity of Bosnia and Herzegovina." The RS is therefore allowed to have special "parallel" relations with Serbia in a number of policy areas, including education and culture. However, these special relations should not be used to undermine the authority of the Bosnian state institutions and so far Bosniaks and Croats have continued to be critical of the relationship between the RS and Serbia. The Serbs in Kosovo too are allowed to have special relationships with Serbia in the areas of education, health care, and culture. However, because a part of the Kosovo Serbs refuses to integrate into Kosovo, there is an ongoing debate about the links between Kosovo, Serbia, and the Kosovo Serbs.<sup>62</sup> Article 13 of the 2006 Serbian Constitution

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<sup>62</sup> ICG, *Serb Integration in Kosovo: Taking the Plunge*, *Europe Report No. 200* (2009), available at: <http://www.crisisgroup.org/en/regions/europe/balkans/kosovo/200-serb-integration-in-kosovo-taking-the-plunge.aspx>, 24.08.2012.

states that “The Republic of Serbia shall protect the rights and interests of its citizens in abroad. The Republic of Serbia shall develop and promote relations of Serbs living abroad with the kin state.”<sup>63</sup> While Serbia is by no means the only state that promotes and protects its citizens abroad, the problematic relationship of Serbia and its neighbours makes this situation more complicated. As demonstrated in the case of Croatia, when Serbia and the neighbouring state come to joint agreements it will also benefit the Serb community in the latter. When looking at Kosovo it can also be argued that Serbia’s denial of Kosovo’s independence affects many Serbs negatively. It impedes Kosovo Serb refugees in Serbia from returning to their homes, because of the problematic security situation in Kosovo resulting from the province’s unclear status. It also disadvantages Kosovo Serbs in Kosovo, who are still seen as traitors by the majority Albanians. Many Serbs in the South of Kosovo have started to cooperate with the Kosovar institutions and have gained some autonomy from the decentralization process. Furthermore, Serbia’s engagement with the Serbs in Kosovo also disadvantages the ordinary citizens in Northern Kosovo, since this is more and more becoming a lawless zone where organized crime, criminal gangs, and corruption are ever more prominent.<sup>64</sup> As the key to regional stability in the Western Balkans remains in Serbia’s hands, engagement with the Serbs in the near neighborhood will be of key importance for the promotion of peace, cooperation, and reconciliation across the region.<sup>65</sup>

In addition to the role of Serbia, it is important to highlight the role of international actors in the integration of the Serb community in Bosnia, Croatia, and Kosovo. As was discussed above, Bosnia’s and Kosovo’s institutional provisions were de facto developed directly by international actors, meaning they had a massive influence on the institutional elements that ensure Serb integration. In both countries Serbs enjoy a high quality of autonomy, including territorial autonomy, reserved seats, veto rights, and inclusion in government. In the case of Croatia, international actors played a less direct role, although the Badinter Commission and later the EU pushed for an improvement of Serb rights in Croatia. Hence, the quadratic nexus, as discussed above, remains a useful framework for the discussion on Serb integration in the three countries under consideration.

Finally, it is important to highlight that the integration of the Serb community in Bosnia, Croatia, and Kosovo also allows us to draw some important conclusions about the democratization of these three countries. Most notably the case of Croatia demonstrates that the focus on a stronger political and institutional participation for the Serb community was the result of political change at elite level. Of course their smaller number and their status as a national minority made it much easier to integrate them in the new state after the end of the Tudjman regime. In Bosnia, there has been a gradual change towards

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<sup>63</sup> The Serbian Constitution is available at: [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=191258](http://www.wipo.int/wipolex/en/text.jsp?file_id=191258), 26.08.2012.

<sup>64</sup> ICG, North Kosovo: Dual Sovereignty in Practice, *Europe Report No. 211* (2011), available at: <http://www.crisisgroup.org/en/regions/europe/balkans/kosovo/211-north-kosovo-dual-sovereignty-in-practice.aspx>, 24.08.2012.

<sup>65</sup> Mladen MLADENOV, An Orpheus Syndrome? Serbian Foreign Policy after the Dissolution of Yugoslavia, IN: Soeren KEIL and Bernhard STAHL (eds) *The Foreign Policies of the Post-Yugoslav States – From Yugoslavia to Europe*, Basingstoke 2014 (forthcoming).

more centralization and fewer ethno-national policy spaces in the political system. While this was seen foremost against Serb and Croat nationalists it is a wider phenomenon in the democratization process of the country. Bosnia's democratization has focused on more intra-group competition and a stronger need for elite cooperation at the central level. The Bosnian Serbs have seen political change from the Serb Democratic Party (SDS) towards the currently dominating Independent Social Democrats (SNSD) of Milorad Dodik. The two parties differ only marginally in their rhetoric and focus on the protection of the rights of Serbs and of the RS. Dodik's demand for more autonomy for the RS and his continued focus on overall reform of the state demonstrates that neither democracy, nor the Bosnian state is fully consolidated. Similar conclusions can be reached for Kosovo, where the unwillingness of Serbs in the North to accept the Kosovar state demonstrates that Kosovo remains contested, both internally among Albanians and Serbs, and externally among those that recognize Kosovo as an independent state and those that see Kosovo as part of Serbia.

The case of Croatia demonstrates that a number of conditions must be met before Serb integration promises to be successful. First, the acceptance of the Serb community as an integral part of the country's population is a key precondition. While Kosovo and Bosnia recognize the Serbs formally, many Albanians still see Serbs as oppressors and murderers and are suspicious of their long-term motives. In Bosnia, Serbs are protected as a constituent people but their territorial unit, the RS, remains challenged from numerous sites that claim it is the result of genocide during the war in Bosnia. While a long-term territorial reform might be useful in Bosnia, the current acceptance of the RS and its role as the protector of Serbian interests in Bosnia would be a first step to recognize the needs and fears of the Serbian community in Bosnia. Yet, more recent challenges to the use of the Serbian language and the Cyrillic alphabet in Croatia demonstrate that even in this country, which became an EU Member State in July 2013, Serb integration remains contested and not without its problems. Second, the relationship between the new state and Serbia is of key importance. The democratization of Croatia and Serbia resulted in improved relations between the two states, which also benefited the Serbs in Croatia. A key problem in the 'triadic nexus', that is between the new states (Bosnia, Croatia, and Kosovo), the Serb community in these countries, and Serbia, is the lack of a coordinated dialogue. While some attempts have been made to coordinate policy between Croatia and Serbia, and also between Bosnia and Serbia, overall there remains a lack of trust and willingness to work together. The situation between Kosovo and Serbia is even more problematic, since direct dialogue is undermined by the fundamentally different approaches to Kosovo's status.

## **Conclusion**

While the situation in the Western Balkans is specific and certainly the situation in each of the three countries is somewhat unique, there are nevertheless some important lessons that can be learnt from the integration of the Serbs into the new states of Bosnia, Croatia, and Kosovo.

First, the improvement of inter-ethnic relations, including reconciliation and transitional justice, remains of key importance for the integration of Serbs in the new states. Fundamental questions, such as those relating to accusations of “guilt”, are connected to these processes, but there are also some more basic elements, such as property return, support for inter-ethnic initiatives, and the celebration of ethnic diversity as a value in itself. Second, the integration of the Serb community is also linked to the processes of democratization and state-building. Minority rights are a relatively new concept for a geographical area that was ruled by one party for a long time and in which a complex system of ethnic power-sharing and communist ideology attempted to forestall ethnic conflict. For Bosnian, Croatian, and Kosovar elites minority rights are nothing more than a key demand made by the international community. There is not yet an understanding of minority rights as an essential element of democracy. This has to develop over time and requires fundamental changes in inter-ethnic relations and indeed in the political culture.

Thirdly, while institutional mechanisms, such as reserved seats in parliament or participation in government, do help, they are not by themselves enough to ensure minority integration. Kosovo is a good example of this, since the Serbs that are represented in Kosovo’s institutions do not necessarily represent the majority of Serbs in Kosovo. This raises more fundamental questions about legitimacy and democracy. In particular, it highlights the wider debate about how to ensure the representation of certain groups (quotas, reserved seats, etc.), which puts into question fundamental principles of liberal democracy. Moreover, it raises the issue of group representation – if groups are represented in certain institutions, how can it be ensured that the representatives from that group truly represent the majority view of the group? And in what respects should group rights be privileged over individual human rights?

Finally, the international community still has much to do in the promotion of minority rights and state-building in the post-conflict societies of the Western Balkans. While the leverage of the EU and other international actors has resulted in a substantial improvement of the situation of Serbs in Croatia and to some extent also in Kosovo, there is nevertheless a lack of full engagement by governments in the question of minority integration and participation. The limited impact of the EU on the constitutional reform process in Bosnia, in particular in relation to the Sejdić-Finci decision of the European Court of Human Rights, demonstrates a lack of involvement in fundamental questions about minority rights.<sup>66</sup> As this paper has revealed, in order to understand the situation of a certain ethnic group in “new” states after violent state dissolution, the “quadratic nexus” proves a useful tool in order to analyse complex relationships. In particular, the different institutional mechanisms used in Bosnia, Croatia, and Kosovo for the integration of the Serb community cannot be fully understood without taking

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<sup>66</sup> The European Human Rights Court ruled in December 2009 that the composition of the Bosnian State Presidency and the House of Peoples is discriminatory since it excludes certain groups. Finci, a Jew and Sejdić, a member of the Bosnian Roma community argued that they are politically discriminated because they cannot stand for office in these two institutions. The Court agreed with them and demanded that Bosnia changes its Constitution.

the role of international actors into account. They played a key role during constitutional engineering (in Bosnia and Kosovo) and in the post-war state-building phase in all three countries. In particular, they had a substantial impact on the rules and regulations that frame Serb community integration in the three countries.

To achieve a long-term change in the perception of minorities more generally, and in the process of Serb integration in the three states specifically, is the EU's goal. It has a strategic commitment to initiate reform processes that will be of fundamental importance for progressing the democratization and Europeanization of the region. Certainly, regional cooperation will be important, in addition to the support for reconciliation and other mechanisms that improve inter-ethnic relations. Long-term changes need time and determination from all sides. The case of the Serb communities in Bosnia, Croatia, and Kosovo demonstrates this very clearly.