Improving Territorial Governance and Speeding up the Integration Process into the European Union: Good Ways of Consolidating Democracy in Bosnia and Herzegovina?

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Abstract

Considering the eight territorial entities that made up the former Socialist Federalist Republic of Yugoslavia, Bosnia and Herzegovina is the one characterized by the most complex internal situation.

What concerns the people is that this Country is composed by three different nations, believing in three religions, using two alphabets and speaking three similar but not identical languages; what concerns the organization of the State, is that it is constituted by two entities - one of which is a Federation - and a District which enjoys special conditions of administration. The multilevel composition of the Country reflects in the structure of the State constitutional Bodies which aims to grant an equal representation to all the nations living within its borders. These Bodies do not exercise their powers in a completely autonomous way but they still have to share them with an international Authority, the High Representative for Bosnia and Herzegovina. The Constitution itself does not derive from an autonomous constituent process. Although it has been declared a potential candidate for membership following the Thessaloniki European Council (2003) with the other Western Balkan Countries, Bosnia Herzegovina shares with Kosovo the last position in the development of its relations with the EU. The stalemate in the relations with Brussels is partially due to the lack of progress in both political and economic criteria. In light of the above, this paper would try to answer two questions. Among the sincere cooperation and territorial governance instruments, which ones could be better used to boost the stability of Institutions and to strengthen the democracy in the Country? Could the speeding up of the integration process into the EU lead to the same result? From a methodological point of view, the work will start analyzing the main sincere cooperation and governance instruments (such as the establishment of collective bodies or the adoption of special decision making processes) already applied in national or supranational systems sharing similar problems as Bosnia and Herzegovina, in order to value their suitability to the Country. The work will then analyze the approach adopted by the EU during the fifth and the sixth enlargement for what concern political conditionality and the instruments used to help the Candidate Countries in

gaining the accession criteria. The expected results are on one side to suggest the instruments, inspired by the principle of sincere cooperation, that could better improve the governance and ensure a smoother functioning of the State Institutions. On the other side the paper aims to suggest a kind of approach and support that the EU could adopt through the Country in order to foster the ongoing democratic stabilization process.

Keywords: European integration, Western Balkans, Bosnia and Herzegovina.

1. The peculiarities of Bosnia and Herzegovina and the challenge of European integration.

Considering the eight territorial entities that made up the former Socialist Federalist Republic of Yugoslavia, Bosnia and Herzegovina (hereinafter, BiH) is the one characterized by the most complex internal situation.

As regards its population, the Country is composed of three different national groups (Bosnians, Croats, Serbs), belonging to three religions (Catholic, Islamic, Orthodox), using two alphabets (Cyrillic and Latin) and speaking three similar but not identical languages (Bosnian, Croatian, Serbian)[v]. As regards the organization of the State, it is constituted by two entities - one of which is a Federation - and a District which enjoys special conditions of administration. All these elements make BiH the only Balkan State from former Yugoslavia that can be considered a sort of "small Yugoslavia" (*inter alia*, Palermo, 2000).

From the point of view of the Constitutional Law, the situation is quite unusual because of various peculiar elements. These include the fact that the Constitution itself does not issue from an autonomous constituent process and the State Institutions do not exercise their powers in a completely autonomous way, which they share with an international Authority, the High Representative for Bosnia and Herzegovina.

In addition to being rather peculiar in its nature, the functioning of this system is also quite unsatisfactory: the State Institutions cannot work effectively and the economic situation is gradually but steadily worsening.

Looking outside the national borders, BiH belongs to the so called Western Balkan Countries. Although it has been declared a potential candidate for membership following the Thessaloniki European Council (2003) with the other Western Balkan Countries, BiH is improving very slowly in the development of its relations with the EU.

The stalemate concerning the Country's relations with the EU is partially due to the lack of progress regarding both political and economic criteria, although the EU itself is engaged in

different ways in helping the Country. A step in the right direction was the recent entry into force of the Stabilization and Association Agreement[vi].

In light of the above, this paper will reflect on the internal situation of BiH and on its European prospects with the aim of understanding if the introduction of some relevant changes in the State organization, on one side, and a new approach to the European integration process, on the other, could improve the situation.

Concerning the State organization, the main focus will be on which of the sincere cooperation and territorial governance instruments could be used to boost the stability of the national Institutions and to strengthen democracy in the Country and which of those identified as suitable would be most effective in this sense.

As regards the involvement in the European Union enlargement process, the question will concern the opportunity of adopting a strategy for the Country, to foster the ongoing democratic stabilization process.

2. The Bosnian constitutional framework.

As it is well known, the Constitution of Bosnia and Herzegovina has not been adopted by a democratically elected national Assembly. It constitutes the Annex IV of the Dayton Agreement, which formally put an end to the war that had ravaged the Country following its declaration of independence from the former Socialist Federative Republic of Yugoslavia[vii].

The constitutional text reflects very clearly its international origin and the need to tackle a very complex situation. Quite short, rather basic and concise, it guarantees the direct application of the European Convention on Human Rights and related Protocols and their priority over all other normative acts (art. II, par. 2) as well as the application of a list of additional Human Rights Agreements (Annex I to the Constitution)[viii].

As regards the State organization, BiH is constituted by two different Entities, the Federation of Bosnia and Herzegovina (hereinafter, "the Federation") and the Republika Srpska (hereinafter, "the RS"), which autonomously exercise the majority of State powers, including the right of establishing "special parallel relationships with neighboring States". BiH is the responsible of foreign relations, air traffic, monetary policy, financing of State Institutions, inter-Entities transportation, communication and the complex issue of immigrants, refugee and asylum seekers (art. III, par. 1), to whom the Constitution explicitly grants the right to return to their homes and to be restored or compensated for the properties lost during the war (art. II, par. 5 and Annex VII to the Dayton Agreement). Additional powers can be exercised by BiH if so agreed by the Entities, or stated in Annexes 5 through 8 of the Dayton Agreement[ix], or

necessary to preserve its "sovereignty, territorial integrity, political independence and international personality" (art. III, par. 5).

The composition of the State Institutions reflects not only the multiethnic nature of the Country, but also the need to prevent new conflicts between the different groups.

The Parliamentary Assembly is constituted by a House of Representatives, whose 42 members are directly elected from the citizens of the two Entities according to the BiH electoral law, and a House of Peoples, whose 15 members shall be appointed by the Parliamentary Assemblies of the Entities (10, of which 5 Croats and 5 Bosniacs[x], by the House of Peoples of the Federation and 5 by the National Assembly of the RS).

In the same way, the Presidency is made up of three members, one directly elected in the territory of the RS and the others (one Bosniac and one Croat) in the territory of the Federation. One of the members shall be appointed as the Chair. The Presidency names the Chair of the Council of Ministers who chooses the Ministers, respecting the proportionality principle between the Entities; after being appointed, they must obtain the approval of the first Chamber. During its term of office, the Council of Ministers can be subjected to a no-confidence vote by the Parliamentary Assembly.

Besides the composition of the Institutions, other instruments contribute to protecting the interests of ethnic groups: in both Chambers of the Assembly decisions should be taken preferably with the votes of almost one third of the Members from the territory of each Entity or, at least, without the dissenting vote of two thirds of the Members of one Entity. Secondly, a majority of the Members of one ethnic group can declare a proposed decision of the Assembly to be "destructive of a vital interest" of their group; this declaration is followed by a specific process that can bring the matter before the Constitutional Court (art. IV, par. 3, *e*, *f*). The possibility to invoke the vital interest of one Entity is recognized also to the members of the Presidency. In this case, the issue is submitted to the National Assembly of the RS (if concerning the violation of the interest of the RS) or to the Bosniac or Croat Delegates of the House of Peoples of the Federation (if the declaration is issued by the Bosniac or Croat members). If two thirds of those delegates confirm the declaration of the Presidency member, the decision shall not take effect (art. V, par. 2, *d*).

The BiH Constitution does not mention the Judiciary but provides for a Constitutional Court with a mixed composition: among its nine members, four must be selected by the House of Representatives of the Federation, two by the National Assembly of the RS, three by the President of the European Court of Human Rights (after consultation with the Presidency of

BiH). The judges from this last group shall not be citizens of BiH or of any neighboring State (art. VI).

The way these latter judges are chosen, the fact that they must not be Bosnian and the rules provided for the functioning of the Court are all intended to prevent a stalemate in its activity and also to grant the International Community a partial influence on it.

In many occasions, the Constitutional Court of BiH played an important role in defining the constitutional framework of the Country.

One of the most significant steps was the Decision U-5/98[xi] which declared the unconstitutionality of some dispositions of the Constitutions of the RS and the Federation, thus confirming the exclusive *domain* of BiH in the exercise of a few State powers that the two Entities (or one of them) established as their own. This was, for instance, the case of border control, asylum and extradition, foreign relations and trade, ambassadors appointment and monetary policy (Bakšić Muftić, 2005). The Decision U-5/98 played an even greater role because it broke the bond between ethnicity and territorial representation, stating that the two Entities shall represent all the constituent groups (Palermo, 2000).

Another important milestone was the Decision n. U-2/04. Providing a definition of the notion of "vital interest", the Court established its own power in verifying not only the procedural aspects of that Declaration but also its contents, thus limiting the full discretion allowed by the Constitution to the Entities (Milano, 2006) and their faculty of blocking the activity of the State Bodies.

However, the limited number of powers recognized to the State (which initially lacked its own defense and security bodies) and the will of the three ethnic groups to make their interests prevail over the State ones make BiH very weak and inefficient. This situation allowed the High Representative, instituted by Annex X with the main purpose of interpreting the Dayton Agreement, to assume a fundamental role in defining the constitutional system (Milano, 2006). In 1997 the sphere of competence of the High Representative was extended through the attribution, from the Peace Implementation Council, of the so called Bonn powers, which allowed him to counter anti-Dayton activities by removing obstructive politicians from office (Rhotert, 2005); in 2002 he also assumed the role of EU Special Representative.

Through a wide interpretation of its powers, this Body adopted a considerable number of laws, administrative acts and decisions with the aim to pursue the integration in the Country and to ensure its proper functioning. He thus intervened in many areas, including the State's national symbols, citizenship (Cooley and Mujanović, 2015), the economy, the judiciary system, security forces, and on the internal division of the State, with the creation of the Brčko Distrikt,

a self-governing territory directly submitted to the sovereignty of BiH (2000). The institution of Brčko was transposed by the Parliament into the BiH Constitution, thus representing the only amendment to the same. The High Representative has also intervened on the texts of the Constitutions of the Entities, whose Parliaments have then approved some of his changes as amendments to the Charters (Banović and Gavrić, 2010).

While the role of the High Representative has been of fundamental importance to allow the functioning of the Country, especially in the first decade after the Dayton Agreement, it has been criticized for having transformed BiH into a sort of international protectorate (Woelk, 2010).

3. The BiH main constitutional dilemmas and the need to introduce more sincere cooperation mechanisms in the framework of a constitutional reform.

The constitutional framework briefly described above proved to be quite inefficient: the difficulty of achieving decisions at national level, partly supplied by the intense activity of the High Representative, is due to the fact that the politicians of the two Entities are not really engaged in building a common future but prefer instead to safeguard their own interests (Mujkić and Husley, 2010).

Some representatives of the Croat and Serb national groups have maintained close ties with the political elites in Zagreb and Belgrade (Valvo, 2012; about Croatia, Petričušić, 2012; Banovac, 2014).

The need to grant the interests of all the groups at the highest levels of government is at the origin of another element which contributes to the inefficiency of the system, namely the duplication of governing Institutions (Assembly, Presidency, Government). It has been noted that for a Country with a population of about 4500000 (smaller than that of several Italian Regions) the number of Presidents, Ministers and Parliamentarians is rather high, without considering that one of the Entities is itself a Federation, made up by 14 Cantons, each with its own Institutions[xii].

As mentioned earlier, in BiH the main difficulties derive not only from the territorial division into different entities but also from the ethnic division, which is the hardest issue to be addressed.

However, Bosnia is not the only Country where territorial and ethnic separations have to share the same “institutional ground”, as is the case, for instance, of Belgium. Founded on a delicate institutional balance, this Country shows a multilevel organization with different entities of either territorial or ethnic nature, each provided with a political identity and a specific area of

responsibility. Territorial and ethnic Entities may operate through the joint exercise of some of their powers. In that case, they can assign more powers either to the ethnic unit (as is the case with the Flemish Community and the Flanders Region), or to the territorial one (as is the case with the Walloon Region, which however maintains a lower level of integration with the French Community; Mastromarino, 2013) as needed.

The Belgian solution, though set against a very different background from the Bosnian one from a historical, political and cultural point of view[xiii], could however offer some interesting suggestions to the State of Sarajevo concerning the opportunity of eventually splitting the territorial from the ethnic level in the framework of a broader constitutional reform.

A useful instrument to overcome the obstacles that a multilevel system of government may encounter, could be found in the sincere cooperation principle, whose application may help the achievement of shared solutions among all the Entities and the Institutions acting in the Country.

The sincere cooperation principle is usually implemented either through the establishment of special bodies, in which all the parts involved are represented, and/or through decision-making processes which require them to reach an agreement or, at least, a compromise.

An example of such a special body - while not always successful! – is the Italian *Conferenza Stato-Regioni,* where the State and the Regions are represented through members of their executive organs (*inter alia*, Bertolino, 2007). Envisaged only by the law (but not contemplated in the Constitution), this Body has to submit its opinion (sometimes merely in consultative form, at other times of a binding nature) on matters of common interest, mainly during the legislative process. However, lacking a constitutional basis (which is recognized only to the sincere cooperation principle itself), it does not manage to counterbalance the prevailing role of the State.

In the Constitution of BiH the principle of sincere cooperation seems to be recalled by some provisions. It is the case of art. III, par. 2, *b*, which requires each Entity to "provide all necessary assistance to the Government of BiH in order to enable it to honor the international obligations of BiH…"; of art. III, par. 4, which allows the Presidency to "facilitate inter-Entity coordination" on the matters for which they are competent, "unless an Entity objects in any particular case"; of art. III, par. 5, *a*, with the possibility, as noted, for the Entities to agree to assign to BiH some of their responsibilities[xiv]; of art. IV, par. 3, *d*, about the decision-making process of the Parliamentary Assembly[xv]. While preserving the interests of ethnic groups - the aim pursued in the whole Constitution and prevailing also here - this last norm introduces a form of intra-institutional sincere cooperation, stating that all Members or Delegates "shall

make their best efforts" to ensure the participation of at least a minority of all groups, then demanding that the three-members Presidency of that Chamber (art. IV, par. 3, *b*) find a solution in case of disagreement and, lastly, allowing the decision-making process to go on, except in case of opposition by two-thirds of the representatives of one Entity.

The BiH Constitution already provides some weak forms of sincere cooperation but they need to be strengthened. To this end, it is not useful to imagine the establishment of new bodies, since the Bosnian constitutional system is already burdened by too many governing Institutions, but rather the introduction of decision-making processes that, while reserving to the State level more responsibilities than the ones it exercises now, recognize a specific role for the Entities.

The two options mentioned above for a possible evolution of the Bosnian constitutional system (i.e. to separate the territorial from the ethnic level of government and to strengthen the application of the sincere cooperation principle) both imply a deep reform of the Constitution, a solution that has been suggested for a long time outside the Country's borders.

In 2005, concluding its "Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative"[xvi], the Venice Commission stated that "Constitutional reform is indispensable since present arrangements are neither efficient nor rational and lack democratic consent". The opinion identified as a central element of that constitutional reform is the splitting of responsibilities between BiH and the Entities, with a transfer from the former to the latter, underlining that "this is an indispensable step if any progress is to be achieved in the process of European integration of BiH". An other "pressing issue" was the territorial organization, even if, in this regard, any solution not implying the existence of the two Entities was considered "unrealistic". A third change should be introduced, even if only in the medium and long term, to replace the principle of "equality of three constituent people" with that of "equality of citizens".

In 2009 this issue was also examined by the European Court of Human Rights. Asked about the respect of equality among all citizens regarding the right to accede to State Institutions, the European Judge stated that this principle was not granted in the Country[xvii]. Pursuant to the Constitution and electoral laws of BiH, only Serb citizens shall be elected or designated as members of the Presidency and of the House of Peoples for the RS and only Bosniac or Croat citizens for the Federation. This implies that a Croat or Bosniac citizen living in the RS, or a Serb living in the Federation and all citizens with nationalities different from the Bosniac, the Croat and the Serb ones do not basically enjoy the right to be admitted to those State Institutions (Dicosola, 2010).

Despite frequent exhortations from the European Union (see *infra*), this issue has not yet been addressed, bearing witness to the difficulties of the decision-making process at the State level. All the attempts to modify the Constitution undertaken repeatedly in the past have always been unsuccessful.

Known as the "April package" (2006), the "Pruda Agreement" (2008) and the "Butmir process" (2009), the main constitutional reform bids formulated up to now have all been produced with the fundamental contribution of the international Community but have never achieved the goal of changing the Constitution because of the lack of agreement among Bosnian politicians.

Their *fil rouge* was redefining the sharing of powers between the State and the Entities in order to strengthen the position of the former and reduce that of the latter.

This would be an advisable aim to be pursued and would provide the starting point for any other constitutional change. All Bosnian citizens should thus continue to be protected not through the weakness of their State but through the role of a "true" State, which would assume upon itself the task of reconciling conflicts through dialogue, safeguarding the interests of the different groups but preventing any of them from being disruptive towards the general ones.

In the end, if BiH intends to play a role on the international scene and to follow in earnest the path towards European integration, it needs to speak in a single voice.

4. The approximation process of the Balkan Countries to the EU.

The (slow) European integration process of BiH started in the second half of the Nineties, when the European Union laid the groundwork for a new expansion of its borders towards the South-Eastern regions of the Old Continent.

At the beginning, relations with the EU evolved according to the same timetable for each of the Western Balkans Countries. As is well known, all of them have been declared by the EU to have an European future and included in the programs and instruments that the Union set for that purpose subject to the respect of the conditionality principle (Blockmans, 2006; Zuokui, 2010).

With the definition of the conditions that would allow those States to advance in their integration process, the EU set up a common ground that would apply to all of them, made up by the Copenhagen criteria and by some other criteria, but adding for each Country several "special requests" based on its own peculiarities.

The Copenhagen criteria were enunciated by the Copenhagen European Council in 1993 - in view of the EU enlargement towards the Countries of Central and Eastern Europe – and were traditionally divided into political, economic and legal. Political criteria were identified with "*stability of institutions guaranteeing democracy, the rule of law, human rights and respect for*

and protection of minorities"; economic criteria with "*the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union*"; legal criteria with "*the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union*". A fourth criterion did not refer to the candidate Countries but to the EU, stating that "*the Union's capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration in the general interest of both the Union and the candidate countries*" (Smith, 2003; Hillion, 2004; Pinelli, 2004; Cerruti, 2010; De Ridder and Kochenov, 2011)[xviii].

The additional criteria established for the Balkans included: the Country's commitment towards the return of refugees and displaced persons; compliance with the Peace Agreements; the commitment to engage in democratic reforms; the commitment to safeguard human and minority rights and to hold free and fair elections; the absence of discrimination against minorities and independent media; the implementation of economic reform measures; good neighbourly relations.

As regards the criteria for each Balkan Country, the Council underlined the need to comply with obligations under Peace Agreements, "*including those relating to cooperation with the International Tribunal in bringing war criminals to justice. Compliance includes an undertaking to make the Federation/Croatia as well as the RS/FRY agreements compatible with the General Framework Agreement for Peace (GFAP), under the guidance of Office of High Representative (OHR). It would also require respect for human and minority rights and the offer of real opportunities to displaced persons (including so called "internal migrants") and refugees to return to their place of origin*".

The Council specifically asked BiH also to "*establish functioning institutions as provided for in the constitution; to formulate a foreign trade and customs policy for Bosnia and Herzegovina; to begin a credible process towards free movement of persons, goods and capital within Bosnia and Herzegovina; to cooperate with the High Representative including on Brčko; the evidence of the implementation of a truly unified City Council in Mostar and of effective functioning of the United Police Force of Mostar (UPFM); to cooperate in the establishment and functioning of the Federation; to dismantle all structures which the OHR judges contrary to the spirit and letter of the GFAP; an evidence of cooperation with the International Tribunal, notably in bringing Bosnian war criminals to justice before the Tribunal*"[xix].

The first group of criteria was established to provide the Countries with the assistance of the Phare Programme, the second was intended to lead to the opening of contractual relations.

The comparison between the criteria provided for all the Balkan Countries and those specific to BiH clearly shows that while the respect of the Peace Agreements, especially for what concerns the return of refugees and cooperation with the International Tribunal (Mäki, 2008) was imposed to all the Countries involved in the 1992-1995 Yugoslav war, the requirements about the need of State policies and a smoother functioning of the Institutions at State and Entities level represented a peculiarity of BiH. These issues can be considered the main causes of concern in its accession process even now.

Regional cooperation is another criterion that has always been considered very important for the EU integration process of the Western Balkans (Vukadinović, 2000; Petričušić, 2005; Beširević, 2012)[xx].

The declarations of intent were soon followed by the set up of institutionalized relations between the EU and the Western Balkans, which always relied on the conditionality principle. BiH took part in that process, whose milestones were the definition of the Stabilization and Association Process (SAP, 1999), its launch by the Zagreb Summit (2000), the adoption, on the occasion of the Thessaloniki European Summit (2003), of a Declaration and an Agenda for the Western Balkans. Anticipated by several European Councils since the Cologne meeting of 1999, the Thessaloniki summit conclusively sanctioned the perspective of the EU integration of those Countries (Cerruti, 2014).

The Stabilization and Association Process, which had to lead this "journey" from the operational point of view (in synergy with other initiatives that were already in place in the region), provided (and still provides) several instruments that would be required to gradually build closer links between the EU and the Western Balkan Countries (Grabar-Kitarović, 2007; Azizi, 2013; Beširević and Cujzek, 2012). These are mostly inspired to the experience of the previous enlargement.

One of the main tools of the SAP is the signing of agreements, called Stabilization and Association Agreements, about which the text of the Program clarifies: "*The conditions for the start of negotiations on such Agreements would remain those set out in the Council Conclusions of 29 April 1997 on the opening of negotiations for contractual relations. Obviously, to conclude such an enhanced relationship with the EU, a country would also have to have attained the high level of political and economic development required to meet the increased reciprocal and mutual obligations of the relevant acquis. In addition, taking into account the context of the Stabilization and Association process, the Stability Pact and the future EU Common Strategy, there would be increased emphasis on progress in developing regional cooperation*"[xxi].

Another important instrument (provided by the Thessaloniki meeting in 2003) is the European Partnership. Adopted by the Council on the basis of a Commission proposal and periodically reviewed, this document sets the priorities that the potential candidate State should reach and defines the financial assistance as well as the principles and conditions governing the implementation of the priorities[xxii]. To this end, the Government of the Country involved usually endorses a National Plan for the Adoption of the Acquis (NPAA). When a Country obtains the candidate status, the European Partnership evolves into an Accession Partnership. During the fifth enlargement the Partnerships were concluded only with Countries that had already acquired candidate status, thus these included only Accession Partnerships. The European Partnerships are therefore applicable only to the enlargement to the Western Balkans. Ultimately, the EU assists the South-Eastern European States with financial instruments aimed to support reforms. Their use relies on their compliance with certain requirements, including political ones[xxiii]. In 2007 almost all financial instruments were unified into one, known as IPA (Instrument for Pre-Accession Assistance), that was initially envisaged to span from 2007 to 2013 but later extended for seven more years. The IPA is based on five lines of action, the first two (Institution and Transition Building and Cross-Border Cooperation) concerning all the Countries involved, while the remaining three (Regional Development; Human Resources Development; Rural Development) pertain only to the candidate countries.

The European Commission monitors the whole process, issuing annual reports for each Country which assesses the progress achieved in meeting the accession criteria and underlines any critical points. The practice of drafting progress reports on candidate Countries started during the preparation of the fifth enlargement. For the Western Balkans it is provided in the framework of the SAP even before the acquisition of the candidate status.

5. The BiH's "journey" towards the EU.

As regards the preparation of new entries into the Union, the enlargement to the Western Balkans seems quite similar to the previous one. The European Union provided a comprehensive set of instruments in order to help the journey towards the membership of all potential candidate States of the region.

From the point of view of timing, the current enlargement is very different from the previous one. While the twelve new Member States from Central and Eastern Europe, with Malta and Cyprus, entered the EU in only two phases (2004 and 2007), the Western Balkan Countries are not advancing all at the same pace but each one is following its own path.

Furthermore, their approximation process seems quite longer and harder than that experienced by the Countries of the fifth enlargement. The reason is to be found not only in the peculiarities of the Countries involved, but also in the EU itself.

As is well known, in 2006 Brussels started to change its attitude towards enlargement, stressing the need to respect the fourth Copenhagen criterion, the so-called "absorption" or "integration capacity" of the Union. In substance this criterion implies a greater caution in engaging in new enlargements (Phinnemore, 2006), that was further encouraged by the difficulties encountered in subsequent years in the adoption of the Lisbon Treaty and in light of the economic crisis.

Another element that makes future EU entries more difficult than the previous ones is that while the twelve Countries of the fifth enlargement were judged together by fifteen Member States, the candidates from the Western Balkans are judged individually by twenty-seven, then twenty-eight, Members.

In this very slow process, BiH is nearly the last one, followed only by Kosovo. It has not yet formally applied for EU membership, thus it is still considered as a potential candidate Country.

The Stabilization and Association Agreement (SAA) was signed in 2008 and ratified in 2011. For its entry into force, the European Commission required the implementation of the Sejdić-Finci ruling (see above) but the Bosnian government did not manage to reach an agreement. Although no progress had been achieved on that issue, in 2014, following a proposal of the German and British Ministers, the Foreign Affairs Council decided to reconsider the entry into force of the Agreement if the Bosnian politicians and Institutions would commit to engage in socio-economic and administrative reforms. On February 2015 the Bosnian Parliament unanimously adopted a declaration that sanctioned the Country's commitment to meeting EU requests and in June the SAA finally entered into force[xxiv]. In July the Country adopted a *Reform Agenda* in order to address the socio-economic situation and to encourage the judicial and public administration reforms.

Since this progress is rather limited, BiH's prospects to enter the EU remain distant.

What issues are affecting its approximation process?

The information contained in the most recent progress reports offers a clear overview of the situation.

Limiting the analysis to the political criteria, one of the first obstacles is the above-mentioned electoral issue, which entails the violation of the non-discrimination principle.

Another critical point can be identified in the lack of coordination and cooperation between the various levels of government that hampers the regular functioning of the Country as well as its relations with the EU. In this regard, it is enough to consider that Bosnian politicians could not

reach an agreement on the establishment of the structure necessary for the indirect management of EU funds, thus losing the opportunity to fully benefit from them. Similarly, during the period covered by the second to last EU Commission Report (October 2013 - September 2014) some of the sub-committee meetings of the joint bodies established by the Interim Agreement could not take place because of internal disagreement among the Bosnian members[xxv].

For what concerns "democracy and the rule of law" the Commission underlined considerable deficiencies but, especially during the last year (October 2014 - September 2015), also some little progress.

The first "black point" is the Constitution itself, which remains inefficient and subject to different interpretations.

A second cause of concern is the above-mentioned need for closer cooperation, which affects all the levels of government, as well as their relations with civil society. The lack of a shared vision and weak cooperation between the various levels of government makes the decision-making process quite complicated, thus delaying structural reforms.

In 2014 the Commission stated that the agreement on the definition of an effective coordination mechanism between those levels for alignment with the *acquis* was not been reached yet, to the detriment of the path to integration.

In June 2014 both Chambers of the State Parliament adopted new rules of procedures with a fast-track mechanism for EU related legislation. However these were not applied regularly because of political and inter-ethnic divergences. The general elections held in the Country in October were judged by OSCE as "efficiently administered and held in an orderly manner and competitive environment".

The inter-ethnic cohabitation of the different groups is more difficult in the Federation than in the RS, where most of the citizens are Serbian. In the former, the Legislative Assembly is not functioning smoothly and the City of Mostar has been governed only by the Mayor since 2012, when the Council ceased to function. In the latter the Institutions are more homogeneous and can work more actively.

At the executive level, the previous State Council of Ministers could not reach the necessary "agreements to prepare countrywide strategies for key sectors of the economy" (2014). The disagreement among Ministers on the EU coordination mechanism led to a stall in the preparation of the NPAA and weakened the role of the Directorate for European Integration, which will now have to "cope with the challenges stemming from the entry into force of the Stabilization and Association Agreement"[xxvi]. On its side, the new Council of Ministers planned the adoption of 65 laws related to the EU integration agenda.

At the Entity level, while the RS was engaged in the approximation of draft legislation with the *acquis*, in the Federation the overall political turmoil at both federal and canton level inhibited the possibility to address urgent socio-economic issues.

Analyzing the public administration reform, the Commission registered limited progress in terms of improving its capacity to fulfill the requirements of EU integration. In 2014, the budgetary process lacked democratic legitimacy because the documents were usually adopted through urgent procedures; in 2015 it still needs more transparency.

Although benefitting from a structured dialogue with the EU, the issues about the judiciary still need to be addressed. One of the peculiarities of the Bosnian system is that the judicial power belongs almost entirely to the Entities, while the State level does not have at its disposal a Supreme Court (Dauster, 2010; Meškić, 2011; Pobrić, 2015). This split of powers, combined with the use of different criminal codes, is responsible for the lack of harmonization of case-law.

However, the recent adoption of a reform strategy for the 2014-2018 period has been considered by the European Commission as a good starting point.

More progress must be made in fighting corruption, "which continues to affect the entire public sector and remains most acute in the areas of service delivery and access to employment" (2014); the legal framework is in place but its implementation remains weak and inconsistent though in 2015 the situation improved a bit.

For what concerns human rights, while the "legal and institutional framework for their observance" is in place (and incorporates the main elements of human rights law), its implementation needs to be improved especially in some aspects. These are the need to abolish the provision of the death penalty from the RS Constitution; the need to decrease political and financial pressure on the media and intimidation and threats against journalists and editors, as well as to address the issue of media ownership. The school system must become more inclusive, especially in the Federation, where there are often "two schools under one roof" (2014). The anti-discrimination law needs to be amended in order to include additional categories against which there should be no discrimination. The reports mention some cases of discrimination against LGBTI and on religious grounds.

As regards minorities, the situation is quite similar. The legal framework for their protection is in place but its implementation still needs to improve. However, the Commission registered very good progress as regards the Roma minority, especially their housing needs and civil registration (thus decreasing the number of stateless citizens). More progress needs to be made with regard to refugees although the competent State Commission has been in place since 2012.

Another crucial issue the reintegration of returnees. A strategy is in place but its implementation remains a challenge[xxvii].

Better results have been achieved in the field of regional cooperation, where the Country participated actively, developing bilateral relations with other enlargement Countries and neighboring EU Member States.

The doctrine has noted that the European Union should be more precise in the requests that it addresses to the Candidate Country, defining in greater detail the objectives that the Country is expected to achieve with regard to the various parameters required (Vlašić Feketija and Mujanović, 2014; Venneri, 2008)[xxviii].

6. A glimmer of light for the Bosnian future?

The key issue afflicting the constitutional system of BiH lies in the difficulties that hinder its proper functioning. The presence of different levels of government and the fact that they are not homogeneous (one of the two Entities has a centralized organization and an ethnic make-up that is fairly uniform, while the other is federal and populated mainly by two different groups) as well as a growing concern to guarantee to each of the three major constituent population groups both an equal and contextual representation in all political organisms and the power to significantly influence their activity, leads to an excessive proliferation of offices and figures and a consequent difficulty in assigning to each its specific functions and, in more general terms, to repeated stalemates. It is the division of competences between different levels of government, while leaving very few to the central authority, that prevents the State from exercising all those prerogatives that are generally associated with Entities that hold sovereignty. As a result its role is rather weak both inside and outside the national borders, generating in turn the overall inefficiency of the system and the consequent slowing down of the pace of the Country's journey towards European integration.

The constitutional reform is therefore an urgent necessity, while it is less clear which terms should dictate its structure. The ethnic composition of BiH and the delicate balances on which the coexistence of its peoples is hinged make it unthinkable, for the time being, to consider a unitary State option. It would be advisable to consider a solution that assigns greater powers to the State, while continuing to provide a representation to territorial and ethnic groups, possibly through a separation of the two levels based on the nature of the competences involved, as is the case in Belgium. The objective to be pursued would be the simplification of the structures of government, whose reduction and "streamlining" could be offset by the introduction of those instruments of sincere cooperation that, if binding, would easily contribute to safeguarding all the various interests involved. In this instance, it would also be essential to settle the question

of the electoral rights of those citizens who do not belong to any of the three constituent groups or residing in a part of the Country where their group is not the majority.

The greater efficiency of the overall system would probably allow BiH to undertake the required reforms more readily and thus to progress on its path to European integration. At the same time, however, it may be useful for the European Union to step up the pace of this process, regardless of the rigorous compliance with the criteria imposed in that sense (as was the case, on various occasions, with the fifth enlargement). More concrete prospects of EU membership would certainly provide a powerful incentive for the Country to "become a single interlocutor" for both the other Member States and for the EU itself.

An attitude to adopt unitary policies, possibly supported by a different State organization, would result in further progress on the path to European integration, but it would also entail the possibility of a more significant impact on the internal front on all those sectors, like the economy, in which the situation is particularly challenging.

In the twenty years that have passed since the Dayton Agreements the situation has not registered any significant improvement. However, the recent entry into force of the Stabilization and Association Agreement, preceded by a commitment to engage in reforms on the part of the Bosnian Institutions and political forces, provide reasons to hope that there is now a willingness to undertake the required constitutional reforms and to achieve European integration in a speedier and more determined way. It would be encouraging if the events of the past few months represented a milestone on a path that will lead one of the Countries located in the "heart" of Europe as rapidly as possible to identify itself with a constitutional system of its own making - and, more significantly, one that is functional - and that will lead the Country to become a fully-fledged member of the European Union.

References

Azizi, A. (2013) EU enlargement: current EU candidates and prospects for future enlargement. In Social, economic and political transition in the Balkans, 4th International Conference on European Studies, Tirana: 63-71.

Bakšić-Muftić, J. (2005) Razumijevanje Dejtonskog Ustava 10 godina kasnije. Zbornik Radova Pravnog Fakulteta u Splitu 42(1-2): 67-92.

Banovac, B., Katunarić, V. and Mrakovčić, M. (2014) From war to tolerance? Bottom-up and top-down approaches to (re)bulding interethnic ties in the areas of the former Yugoslavia. Zbornik Pravnog fakulteta Sveučilišta u Rijeci 35(2): 455-483.

Banović, D. and Gavrić, S. (2010) Ustavna reforma u Bosni i Hercegovini. Politička Misao 47(2): 159-180.

Basta, K. (2015) Bosna (ni)je poput Jugoslavije: struktura frustracija i dinamika samoodređenja u multinacionalnim državama. Politička Misao 52(1): 164-190.

Bertolino, C. (2007) Il principio di leale collaborazione nel policentrismo del sistema costituzionale italiano, Torino: Giappichelli.

Beširević, N. and Cujzek, I. (2013) Politička Misao 50(1): 155-179.

Blockmans, S. (2006) Western Balkans (Albania, Bosnia-Herzegovina, Croatia, Macedonia and Serbia and Montenegro, including Kosovo). S. Blockmans and A. Lazowski (eds), The European Union and its Neighbours, Den Haag: TMC Asser Press: 357-389.

Braniff, M. (2009) Transforming the Balkans? Lesson Learning and Institutional Reflexivity in the EU Enlargement Approach. European Foreign Affairs Review 14(4): 547-563.

Caligiuri, A. (2010) La situazione in Bosnia-Erzegovina e il bilanciamento tra pace e diritti umani nella giurisprudenza della Corte di Strasburgo. Diritti umani e diritto internazionale 4(2): 429-434.

Cerruti, T. (2010) L'Unione Europea alla ricerca dei propri confini. I criteri politici di adesione e il ruolo dei nuovi Stati Membri. Torino: Giappichelli.

Cerruti, T. (2014) The Political Criteria for the Accession to the EU in the Experience of Croatia. European Public Law 20(4): 771-798.

Cooley, L. and Mujanović, J. (2015) Changing the Rules of the Game: Comparing FIFA/UEFA and EU attempts to Promote Reform of Power-Sharing Institutions in Bosnia-Herzegovina. Global society 29(1): 42-63.

Dauster, M. (2010) Ustav Bosne i Hecegovine: Nesavršena Država – diskurs. Sveske za javno pravo, 1(1-2): 1-17.

De Ridder, E. and Kochenov, D. (2011) Democratic Conditionality in the Eastern Enlargement: Ambitious Windows Dressing. European Foreign Affairs Review 16(5): 589-605.

Dicosola, M. (2010) La rappresentanza dei popoli in Bosnia ed Erzegovina tra identità nazionali e standard europei. Rassegna parlamentare (3): 727-745.

Fabijanić Gagro, S. and Vukas, B. (2008) Pravna priroda i politička pozadina oružanih sukoba u Hrvatskoj I Bosni I Hercegovini. Zbornik Pravnog Fakulteta u Zagrebu 58(5): 1159-2000.

Fakiolas, E.T. and Tzifakis, N. (2008) Transformation or Accession? Reflecting on the EU's Strategy Towards the Western Balkans. European Foreign Affairs Review 13(3): 377-398.

Grabar Kitarović, K. (2007) The Stabilization and Association Process: the EU's Soft Power at Its Best. European Foreign Affairs Review 12(2): 121-125.

Hillion, C. (2004) The Copenhagen criteria and their Progeny. In C. Hillion (ed) EU Enlargement: a Legal Approach. Oxford-Portland: Hart Publishing, pp. 1-23.

Jahja, V. (2006) L'Ombudsman nei Balcani: Albania, Bosnia-Erzegovina, Croazia. Rivista di Diritto pubblico comparato ed europeo (4): 1803-1807.

Kazazić, V. (2005) Ostvarivanje i zaštita ljudskih prava u Bosni i Hercegovini kroz praksu prava ombudsmena i doma za ljudska prava. Zbornik Radova Pravnog Fakulteta u Splitu 42 (1-2): 43-53.

Keil, S. (2008) Federalism and conditionality in Bosnia and Herzegovina. Rivista di Diritto pubblico comparato ed europeo (4): 1770-1779.

Mäki, J.M. (2008) EU Enlargement Politics: Explaining the Development of Political Conditionality of 'Full Cooperation with the ICTY' towards Western Balkans, Politička Misao 45(5): 47-75.

Mastromarino, A. (2013) Belgio. Bologna: Il Mulino.

Meškić, Z. (2011) Osnivanje Vrhovnog Suda Bosne i Hercegovine kao uslov za članstvo u Evropskoj uniji. Sveske za javno pravo 4(2): 53-65

Milano, E. (2006) La Bosnia Erzegovina a dieci anni dagli Accordi di Dayton. La Comunità internazionale LXI(1): 347-375.

Mujkić, A. and Husley, J. (2010) Explaining the Success of Nationalist Parties in Bosnia and Herzegovina. Politička Misao 47(2): 143-158.

Palermo, F. (2000) Bosnia Erzegovina: la Corte costituzionale fissa i confini della (nuova) società multietnica. Rivista di Diritto pubblico comparato ed europeo: 1479-1489.

Petričušić, A. (2012) Preporuke iz Bolzana/Bozena o nacionalnim manjinama u međudržavnim odnosima: značenje i implikacije za Hrvatsku i regiju. Politička Misao 49(2): 166-185.

Petričušić, A. (2005) Regional Cooperation in the Western Balkans – a Key to Integration into the European Union. Croatian Yearbook of European Law and Policy 1: 216-221.

Phinnemore, D. (2006) Beyond 25 – the Changing Face of EU Enlargement: Commitment, Conditionality and the Constitutional Treaty. Journal of Southern Europe and the Balkans 8(1): 7-26.

Pinelli, C. (2004) Conditionality and Enlargement in Light of EU Constitutional Developments. European Law Journal 10(3): 354-362.

Pippan, C. (2004) The Rocky Road to Europe: The EU'S Stabilization and Association Process for the Western Balkans and the Principle of Conditionality. European Foreign Affairs Review 9(2): 219-245.

Piqani, D. (2008) Constitutional Issues of Pre-accession: from CEE to SEE. Rivista di Diritto Pubblico Comparato ed Europeo (4): 1677-1696.

Pobrić, N. (2015) Reformska agenda za BiH 2015-2018: nekoliko primjedaba I prijedloga. Sveske za javno pravo 21(6): 3-6.

Rhotert, A. (2005) The work of the office of the High Representative in Bosnia and Herzegovina with a focus on the reunification of the City of Mostar. Zbornik Radova Pravnog Fakulteta u Splitu 42(1-2): 21-26.

Smith, K.E. (2003) The Evolution and Application of EU Membership Conditionality. In: M. Cremona (ed) The Enlargement of the European Union. Oxford-New York: Oxford University Press, pp. 105-140.

Šarčević, E. (2012) U susret popisu stanovništva BiH: disckriminacija popisnim obrascem?. Sveske za javno pravo 9(3): 122-125.

Valvo, A. L. (2012) Bosnia Erzegovina: un'integrazione possibile. Rivista della Cooperazione giuridica internazionale 42: 132-141.

Vehabović, F. (2010) Zašto neće doći do sistematskih ustavnih promjena. Sveske za javno pravo 1(1-2): 36-54.

Venneri, G. (2008) Integrazione europea e riforma costituzionale in Bosnia-Erzegovina: oltre il "Paradosso della sovranità". Rivista di Diritto pubblico comparato ed europeo (4): 1756-1769.

Vlašić Feketija, M. and Łazowski, A. (2014) The seventh EU enlargement and beyond: Pre-Accession Policy vis-à-vis the Western Balkan revisited. Croatian Yearbook of European Law and Policy 10: 1-37.

Vukadinović, R. (2000) Regionalna Suradnja na Jugoistoku Europe. Politička Misao 37(2): 69-78.

Woelk, J. (2010) La lunga transizione della Bosnia ed Erzegovina "da Dayton a Bruxelles". Studi sull'integrazione europea (2): 508-528.

Woelk, J. (2008) La transazione costituzionale della Bosnia ed Erzegovina. Dall'ordinamento imposto allo Stato multinazionale sostenibile. Padova: CEDAM.

Zuokui, L. (2010) EU's Conditionality and the Western Balkans' Accession Roads. European Perspectives 2(1): 79-98.