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The Potential of EU Normative Power to Diffuse Values to Post-Conflict States with Divisive Governance Structures - Case Study of Bosnia And Herzegovina

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**The Potential of EU Normative Power to Diffuse Values to Post-Conflict States
with Divisive Governance Structures - Case Study of Bosnia And Herzegovina**

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A thesis submitted for the degree of Doctor of Philosophy
University of Bath
Department of Politics, Languages & International Studies
July 2015

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Abstract

The role of the European Union (EU) in Bosnia and Herzegovina (BiH) was strengthened in 2011, when the mandate of the EU Special Representative was transferred from the High Representative of the International Community, to the Head of the EU Delegation in BiH. The EU thus assumed a leading role within the international community in Bosnia and Herzegovina, as a state-builder and as democratiser. The EU's growing prominence puts on it even more responsibility for the future of democratisation in BiH, but it continues to suffer from inconsistencies between its principles and actions, weak legitimacy, and a lack of credibility. Although I subscribe to Ian Manners' concept of the EU normative power, I argue that the EU does not act as normative power in Bosnia and Herzegovina. This thesis argues that the EU is a normative power in principle, but not in practice, and provides a critique of the EU's role in promoting and strengthening democracy in BiH.

I attribute the exceptionalism of BiH to a restrictive context that is saturated with ethnic nationalism, which permeates all aspects of political life, including constitutional structures, institutions, decision-making, political parties, their policies and rhetoric. I argue that in this post-conflict society in which democracy has not consolidated, the promotion of EU norms is hampered by elite agency, an unfavourable context, and the existing norms and values that are incompatible with EU norms. Based on my findings about the quality of democracy in BiH, I label it an eclectically unconsolidated democracy, which contains many features of different types of unsuccessful democracies.

I argue that the legitimacy, identity, and effectiveness of the EU normative power have been compromised and weakened in the context of an unconsolidated democracy. The case of BiH is exceptional, which the EU fails to recognise, and it falsely applies a 'cookie-cutter approach' that treats it as any other aspiring democracy and potential member state. Rather than having a distinct international identity (Manners & Whitman, 1998), the EU suffers from a 'confused international identity', which is a consequence of many discrepancies in the way in which various EU actors see their own role in BiH, and how they see the role of the EU. My intention is not to dismiss some aspects of EU normative power, but rather to enrich a debate by providing an alternative perspective. For that purpose, I apply a tailor-made framework of analysis which assesses the level of normative transformation under EU democratisation in the case of two dimensions of democratic quality: equality and trust.

List of Abbreviations

Acronym	Definition
BH	Bosnia-Herzegovina
BiH	Bosnia and Herzegovina
CoE	Council of Europe
CoM	Council of Ministers
DPA	Dayton Peace Agreement
EBRD	European Bank for Reconstruction and Development
EC	European Commission
ECHR	European Court of Human Rights
EEAS	European External Action Service
EU	European Union
EUFOR	European Union Force
EUPM	European Union Police Mission
EUSR	European Union Special Representative
FBiH	Federation of Bosnia and Herzegovina
FPI	Foreign Policy Initiative
HDZ	Hrvatska Demokratska Zajednica
HDZ1990	Hrvatska Demokratska Zajednica 1990
HoP	House of Peoples
HoR	House of Representatives
HQs	Headquarters
HRC	Human Rights Council

Acronym	Definition
HRep	High Representative
ICJ	International Court of Justice
ICTY	International Criminal Tribunal for Yugoslavia
IMF	International Monetary Fund
IPA	Instrument for Pre-accession Assistance
MIA	Media Intelligence Agency
MPs	Members of Parliament
NATO	North Atlantic Treaty Organisation
NDI	National Democratic Institute
NGO	Non-Governmental Organisation
OHR	Office of the High representative
OSCE	Organisation for Security and Cooperation in Europe
PACE	Parliamentary Assembly of Council of Europe
PDP	Party of Democratic Progress
PhD	Doctor of Philosophy
PIC	Peace Implementation Council
RS	Republika Srpska
SAA	Stabilisation and Association
SBiH	Stranka za Bosnu i Hercegovinu
SDA	Stranka Demokratske Akcije
SDP	Socijaldemokratska Stranka
SDS	Srpska Demokratska Stranka
SFOR	Stabilisation Force

Acronym	Definition
SFRY	Socialist Federal Republic Yugoslavia
SNSD	Stranka Nezavisnih Socijaldemokrata
TAIEX	Technical Assistance and Information Exchange
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programmes
US	United States
USA	United States of America
USAID	United States Agency for International Development
VRS	Vojska Republike Srpske
WB	World Bank
WPI	World Policy Institute
WWII	World War II

Chapter I – Introduction

The year 2015 marks the 20th anniversary of the signing of the Dayton Peace Agreement (DPA) for Bosnia and Herzegovina. The Peace Agreement not only stopped a very brutal conflict, but it also designed a rigid constitutional structure that has not been altered since. As the processes of peace-implementation and institution-building have progressed in Bosnia and Herzegovina (BiH) over time, the role of international actors on the ground evolved as well. The EU has since assumed the role of the most prominent international actor in BiH, taking on the role of the main state-builder and democratiser, while issues of peace implementation have been gradually subdued to the processes of European integration. This evolution of the EU's role in BiH has run in parallel with the processes of evolution of its own institutions, which have led to the Lisbon Treaty. That process has changed the nature and capacities of the EU as an actor, which has intensified debates about its effectiveness.

Based on the EU's experience as the chief democratiser in BiH over the past decade, this thesis provides a critique of the EU normative power. I argue that the legitimacy, identity, and effectiveness of the EU normative power have been compromised and weakened in the context of an unconsolidated democracy. The EU does have a record of leading successful democratisations in other countries in Europe and elsewhere. However, the case of BiH has been exceptional all along, which the EU failed to recognise, and falsely applied a 'cookie-cutter approach' that treats it as any other aspiring democracy and potential member state. I attribute the exceptionalism of BiH to a restrictive context that is saturated with ethnic nationalism, which permeates all aspects of political life, including constitutional structures, institutions, decision-making, political parties, their policies and rhetoric.

Nationalism in BiH is not just a distraction to peace-building and democratisation; it has become a way of life, a way of doing politics. The nationalist elites have spent decades engaging in extensive social construction that seeks to impose the nationalist worldview in order to suppress the tradition of pluralism and peaceful coexistence that was a defining feature of BiH society for centuries. To some degree, they have been successful in undermining the trust within the society, but they have not entirely eradicated the evident craving among people for more tolerance and some normalcy among ethnic groups. The nationalists' endeavour is ideational, it targets the values and norms in a society, and the EU's inadequate approach to BiH fails to address a clash of values between the two normative systems. In order to be able to assess the

EU's ideational influences on the nationalist ideas and values, I choose the concept of EU normative power, which was originally introduced by Ian Manners (2002, p. 242).¹

Manners (2002) builds upon the concept of the EU as a unique actor and examines how the EU's unique nature and identity determine the promotion of its core values internationally. His argument is that the EU is 'pre-disposed' to act in a normative way because it is different to pre-existing political norms in terms of its "...historical context, hybrid polity and political-legal constitution" (Manners, 2002, p. 240). Even though I adopt the understanding of the EU as a normative power, I argue that the EU does not act as a normative power in BiH, neither is it 'predisposed' to act normatively. In my view, the EU is a normative power in principle, but not in practice. This I attribute to a disconnection between the EU's principles on one hand, and its policies and actions on the other. I see this disconnection as stemming from a lack of self-perception on the part of EU actors that they represent a normative power.

Rather than having a distinct international identity (Manners & Whitman, 1998), the EU suffers from a 'confused international identity', which is a consequence of many discrepancies in the way in which various EU actors see their own role in BiH, and how they see the role of the EU. Also, the EU fails to understand that the challenges it faces in BiH are ideational, and that they cannot be neutralised or their effects reversed through rationalist policies alone. The two case studies which I present in the empirical Chapters show that the EU normative power is challenged by ideational as well as structural/institutional divisions in Bosnia and Herzegovina. The substantive challenges to the EU normative power which hinder democratic consolidation in this country show that the EU values may not be appealing enough if they jeopardise the status-quo that is closely protected by nationalist actors.

Research Objective

My objective in this thesis is not to evaluate the EU's track record in BiH, neither is this thesis about Bosnia and Herzegovina's own record in meeting the EU's accession requirements. My objective is to present a critique of the role of the EU in democratising BiH, and to expose the inadequacies of the EU normative power in promoting democratic values to an

¹ According to this concept, the EU normative basis stems from the 1973 Copenhagen declaration on European identity, which establishes democracy, rule of law, social justice and respect for human rights as 'the fundamental elements of the European identity' or the 'core norms'.

unconsolidated democracy. BiH is an atypical example of a failing democracy, which the EU treats wrongly as an emerging democracy through a misplaced ‘cookie-cutter approach’.

Research Problem

My research explores democratisation as a particular aspect of the EU’s pursuit of its international identity. More specifically, I gauge the concept of EU normative power against the backdrop of its efforts to diffuse democratic norms and values to a divided, unconsolidated democracy. I account for the processes of norm diffusion, interest and identity formation in order to fully apprehend those aspects of transformation through EU democratisation (Christiansen, 2001, p. 529). Although I create a framework of analysis for evaluating the transformative power of the EU, the examples I assess show that norm transformation under EU influence rarely takes place in BiH.

I apply a social-constructivist approach, which looks at the mutually constitutive relationship between identity and EU international role (Tonra, 2007). I take the position of ‘thick’ or ‘critical’ (or ‘radical’) constructivists (Tonra, 2007), claiming that in a socially constructed reality an objective, external reality cannot be assumed, which helps me expose the inadequacies of the EU’s rationalist approach. With that in mind, I put forward several research questions:

What is the ideational impact of the EU’s democratisation efforts on internal divisions in a post-conflict society? How the processes which confront the EU normative power, or work against it, impact diffusion of EU norms? How do constitutive and transformative aspects of promotion and internalisation of EU norms impact domestic norms? Can substantive transformation happen when EU norm promotion takes place outside the formal EU structures and in more challenging scope conditions? How, if at all, does the EU normative power construct the identities and interests of external actors?

I put an emphasis on the substantive aspects of an external democratisation process. I borrow a definition of substantive democracy from Kaldor and Vejevoda (1999) who see it as a “genuine deepening of democracy, a move beyond promulgation of new rules and toward sustained, meaningful democratic practice” (1999, p. 21). The focus on democratic substance, or quality of democracy, inevitably bears the risk of being value-laden, with potentially evasive

and elusive criteria for measurement and analysis. For that purpose, I relate the ideational aspects of EU's democratisation to the underlying social, historical and cultural context, which is described in the next Chapter. That context embodies a number of fault-lines in democracy, which include the mismanagement of ethnic relations, the rise and endurance of nationalism and ethnic divisions, the myths of ethnic hatred, the ethnic predicament in the Dayton Peace Agreement, inconsistent peace implementation, unequal electoral rights, a lack of democratic legitimacy, nationalistic political culture, and low levels of trust. I account for both procedural and structural fault-lines in democracy in order to show the interaction and 'constitution' with dimensions which condition democratic consolidation. The focus on EU norms, interests, and identity formation, raises questions about the nature of the democratisation process in BiH, which I argue is failing. Democracy in BiH has not consolidated, and moreover, it contains features of several models of unsuccessful democracies, which is why it can be labelled 'defective', procedural, illiberal, pseudo-democracy, etc. Because of the multitude of different defects in democracy in BiH, I decide to label it an 'eclectically unconsolidated democracy' and ask several questions to that end:

What conditions the quality of democracy and its sustainability in post-conflict, divided societies? How can the quality of democracy be sustained, and how can it be measured? How this process can be reinforced at an ideational level by the EU in order to embrace a move beyond the 'formal/procedural' democratisation? Is the EU's procedural approach potent enough to instigate and promote changes in values in BiH? To which degree will the governance structures hinder EU democratisation? Can normative power instigate changes in structures as well as values? What is the nature of obstacles to the EU normative power? What kind of influences those obstacles have on EU norms and the process of democratisation? What instruments does the EU have at its disposal when it faces domestic norms working against its own norms?

Research Approach

My research approach relies on two distinct academic fields – theories of the EU as an actor and democratisation theories. Given the nature of the research problem, I consider social constructivism as an analytical approach best suited to bring together two academic fields through a single framework of analysis. A social constructivist approach enables me to look at interactions between agents and structures, and the ideational aspects of the EU's

democratisation efforts abroad. Coupled with the concept of EU normative power, a constructivist framework of analysis provides opportunities to move beyond rationalist, individualist and structuralist accounts of agent-structure interactions during democratisation. However, the main value-added of using constructivism to analyse EU normative influences is the ability to capture immaterial social phenomena, and to look into the EU's identity and self-perception.

The study of identity formation gives a more central role to the analysis of language and discourse (Christiansen, 2001, p. 541). Thomas Diez (1999) points to an evident neglect of the role of language in studies of European integration and provides theoretical groundwork to remedy this gap through discourse analysis. I subscribe to the notion that the power of discourse becomes crucial to studies which reject the understandings of power as being absolutely or relatively material, and which doubt that 'real' interests exist independent from the discursive context in which interests emerge (Diez, 1999). I support the view that meaning and language are central to the research of constitution of identity and interests, and I integrate them in the proposed framework of analysis. The objective is to illustrate how identity, discourse and narratives are mutually shaped with and by the declared EU democratic norms and values.

Methodology

Different sub-types of 'unconsolidated' democracies discussed in the third Chapter demonstrate that the 'standard' indicators of democracy miss out on important aspects and reasons why those countries have not been able to follow the usual route of democratic consolidation. That is why it would be misleading for my research to apply the same criteria of assessment of quality of democracy on a 'non-consolidated' democracy as it would on those which are 'consolidated'. Such model of assessment of quality of democracy does not exist as an integrated concept, and I need to rely on several existing approaches. For that purpose, I design an original and detailed framework of analysis, building on a concept developed by David Beetham (2003), and that proposed by Diamond and Morlino (2005).

Beetham (2003) shows how procedural progress can be subverted for ideological reasons by domestic opponents to democracy. He argues that procedural and substantive dimensions can be assessed simultaneously, with a clear conception of democratic norms or values, and an understanding of arrangements that enable realisation of those norms. However,

Beetham points out that non-consolidated democracies can alert us to features that are taken for granted in ‘consolidated’ democracies. He thus suggests assessing what can go wrong with them, i.e. identifying ‘democratic flaws’ or ‘subversions’. Even though Beetham himself uses the term ‘subversion’, he nonetheless sees it as too restrictive, implying intentionality, whereas democracy can also be undermined by unintended inadequacies in institutions, procedures or elites. Beetham deliberately excludes from his potential research cases of countries which have been “debilitated by a civil war” (2003). Considering that my research case is a post-conflict society, I see the use of the term ‘subversion’ as appropriate and desirable, because I want to shed some light on the intentional undermining of democratic consolidation in BiH.

The second aspect of my assessment model will be adapted based on a model proposed by Larry Diamond and Leonardo Morlino (2005, p. xxvii). They show how attempts to improve procedural democracy can damage substantive democracy. This approach recognises that the quality of democracy is value-laden and that there is no universal framework for measuring the quality of democracy. As a result, it allows sufficient flexibility to customise its framework to the demands and challenges of a specific research case, and its context. This approach links the procedural dimensions to democratic substance by measuring eight dimensions (five procedural, two substantive, and one result dimension). The procedural dimensions are: the rule of law, participation, competition, vertical accountability, and horizontal accountability. Substantive dimensions are freedom and equality, and the result dimension is responsiveness (2005, p. xxix). This approach accounts for interactions among the proposed measurement dimensions, and shows how those interactions can produce further ‘decays’ of the quality of democracy.

Main Hypotheses

1. In terms of the EU’s internal constraints that are attributed to the nature of the EU as an actor, two are under-researched. First, the EU-sponsored democratisation suffers from a lack of self-perception that the EU is a normative power, which should strive to exert normative influence internationally. Because of that, the EU is not ‘pre-disposed’ to act normatively. Secondly, the EU undermines ideational and immaterial aspects of democratisation in BiH, limiting its efforts to procedural aspects. The EU’s focus on procedural democratisation hampers substantive democratisation, which precludes the transformation and internalisation of EU democratic norms in BiH.

2. BiH is an unconsolidated democracy, which is a result of a restrictive normative, social and political context, the domestic agent-structure interaction, and deliberate elite agency, which generate two sets of external impediments to democratisation. The first set of external impediments are domestic values and norms which are contradictory and incompatible with the normative basis of the EU, creating a normative gap between the EU and BiH. The second set of external impediments to the spread of EU norms can be described as 'subversions' of democracy, i.e. features evident in unconsolidated democracies, which are taken for granted in 'consolidated' democracies. The first set of variables are contextually predetermined, while the second set are products of deliberate elite agency.

3. Internal constraints that are related to the EU's approach to democratisation in BiH are grounded in the EU's failure to recognise the exceptionalism of BiH. Due to that spuriousness, the EU applies a 'cookie-cutter approach' that treats BiH as any other transitional society. However, BiH defies democratic transition and is a post-conflict society in which democracy is struggling to consolidate. The EU tools and instruments which may have worked in early democratisations elsewhere have not produced democratic quality in BiH. The EU's 'cookie-cutter approach' underestimates the salience of ethnic nationalism in BiH, which presents an ideational obstacle to its democratisation and demands a tailor-made approach to the unconsolidated democracy in BiH.

Case Study – Democratisation in Bosnia and Herzegovina

This research case has been selected because it is a revealing example of the limitations and shortcomings of the EU's normative role in democratising post-conflict, divided societies. The political and governance system in Bosnia and Herzegovina is the product of a minimum of political agreement that was only possible between then still fighting parties, which signed the Dayton Peace Agreement in 1995. The Peace Agreement created a complex and ineffective governance structure, which is mutually constituted with political and social divisions along ethnic lines. This power-sharing mechanism was maintained for a decade after Dayton was signed by the strong influence of the international community, but as soon as their influence decreased, the weakness of the system and depth of those divisions began to be exposed. This coincided with the EU assuming the role of the main state-builder and democratiser in BiH,

which in my view was premature, as the deterioration of the political situation subsequently showed.

I argue that Bosnia and Herzegovina is not a consolidated democracy, and moreover that it is a “defective” democracy (Merkel, 2004). Merkel argues that “an emergence of (ethnically) exclusive and illiberal democracies is more probable if social capital is accumulated along ethnic and religious lines” (2004, p. 53). The more society is organised “along ethnic cleavages”, the more it contributes to “political polarisation” and ultimately, to ‘defective’ democratisation (Merkel, 2004, p. 53). As a democracy with weak institutions, BiH is particularly vulnerable to influences of informal political structures, which dislocate most of political life outside its formal institutions and play an important role in the construction of identities and interests.

Democracy in BiH is deeply divided along many fault-lines, which I describe in detail in the next Chapter. This is why the case of Bosnia and Herzegovina is useful for illustrating how nationalist discontents construct divisive and exclusivist policies by hindering formation of a unified state identity and interests. Those divisions and the support for ethnic nationalism directly confront and contest the EU’s efforts to build a democratic state to which citizens are comfortable to entrust their support and are able to identify with. Because of that, BiH is particularly useful for observing the process of identity and interest formation, and the role of rhetoric and discourse in that process. By over-utilising and sustaining the nationalist rhetoric, the nationalist parties have continued to polarise different communities along deep ethnic cleavages and have revived strong feelings of past injustices in order to manipulate the public support for nourishing the already entrenched divisions.

Using the framework of analysis introduced in the previous section, I focus on assessing the quality of democracy in BiH by looking at ‘subversions’ of democratic consolidation such as prevalence of nationalist rhetoric and inflammatory discourse. I argue that nationalism is one of the biggest challenges to the EU normative power in this context. The current procedural approach employed by the EU in its democratisation efforts in BiH has been hampered by ethnic nationalism. This puts tangible limits on the EU’s procedural democratisation and constrains it substantively. Moreover, I argue that the EU’s and international attempts to improve procedural democracy undermine substantive democracy in BiH, which I explain in Chapters III and IV, and substantiate with evidence in Chapters VI and VII.

I also see Bosnia and Herzegovina as a useful case study for a social constructivist approach to interactions and mutual constitution between divisive structures created in Dayton on one hand, and formal and informal agents on the other hand, particularly through discourse and language. I present a case that the normative incompatibility between the EU and BiH is primarily rooted in the exclusivist and divisive nature of the Dayton structure and predominance of nationalist rhetoric. The predominance of nationalist rhetoric indicates that agents and elites ignore and undermine the present state. This lack of legitimacy and general lack of identification with the state impose a variety of obstacles to the EU diffusion of norms.

The limits of the procedural approach thus show a need for the EU to consider investing more efforts into changing perceptions and into promotion of its own values. So far, the EU policy in BiH has not addressed this evident gap. I therefore suggest that the salience and resonance of EU norms and values need to be supported by their constant public promotion in order to make the vision of BiH inside the EU more tangible, realistic and within the reach of BiH society. This can be done through policies of socialisation, and be substantiated by internalisation efforts through policies of persuasion, dialogue, and exposure to new ideas. The EU's insistence on the policy of conditionality and its procedural approach to democratisation in BiH have compromised its legitimacy and credibility. I also suggest that in order for those efforts to have more buying power, the EU itself needs to stop compromising its own values for the sake of short-term political wins and gains, if it wishes to maintain its integrity, credibility and influence on local political actors.

Summary of Chapters

I do not have strict division of Chapters into theoretical and empirical. I integrate theory and empirical evidence in all my Chapters, but in Chapters VI and VII I analyse two case studies, which shifts the balance in favour of empirical evidence. In the next Chapter I describe the background to democratisation in BiH, explaining how major fault-lines in democracy have emerged. Given the fact that my approach relies on two academic fields, I discuss each of those fields in Chapters III and IV, while referring to specific examples from my main case-study. In the fifth Chapter I discuss a social constructivist approach to building a framework of analysis, and explain in more detail methodologies applied to each empirical Chapter. The last two Chapters are each based on one dimension of democratic quality and one case study.

Chapter II. The second Chapter looks at how fault-lines in democracy in BiH have been created, and how they affect the spread of democratic norms by external actors. I look at those fault-lines chronologically, going as far back as the final days of the former Yugoslavia, which left strong legacies of nationalism and dominance of nationalist parties. The purpose of that Chapter is to contextualise democracy and democratisation in BiH, and to provide background for the examples used in the empirical Chapters. I relate the fault-lines in democracy to my main arguments about the exceptionalism of democracy in BiH, the EU's shortcomings as an external democratiser, the dominance of nationalism, and the structural pitfalls created by the Dayton Peace Agreement.

Chapter III. In the third chapter I look at the nature of democracy and democratisation, and introduce the role of the EU in that process. I argue that the restrictive domestic context imposes structural constraints on the promotion and diffusion of EU norms. I explain the concept of substantive democracy, and show how the EU undermines substantive democracy by a focus on procedural democratisation. My second argument is that values and norms entrenched in BiH society are incompatible with the normative basis of the EU. And my third argument is that the process of democratic consolidation in BiH has not been successful, which is why I describe BiH as an eclectically unconsolidated democracy.

Chapter IV. In this Chapter I look at the EU as an actor through the framework of its conditionality, and I discuss the main factors that hinder compliance. I argue that the EU's conditionality falsely assumes that domestic actors in BiH desire faster integration into the EU. That false assumption dissuades the EU's approach and misinforms its choice of instruments and rewards. I make three core arguments in relation to the EU normative power: that it suffers from a 'confused international identity', that EU actors fail to identify with the EU normative power and lack that self-perception in their policies and actions, and that the EU relies on a misplaced 'cookie-cutter approach' that underestimates the role of 'gatekeepers' to democracy.

Chapter V. The fifth Chapter presents the methodology and framework of analysis. Based on a review of literature in this Chapter, I substantiate why I give preference to social constructivism as a conceptual approach to assessing norm compliance, internalisation and transformation. Among different variants of constructivism, I opt to use a 'thick' constructivist approach (Tonra, 2007), which takes into account the role of narratives, discourses, and social

and political constructions. I develop an analytical strategy, which also includes a framework of analysis. Based on the discussion of non-consolidated democracies presented in Chapter III, I include the idea of ‘subversions’ of democracy into my framework of analysis. My argument is that ‘subversions’ of democracy can reveal some aspects of unsuccessful democratisation, which cannot be identified following a standard route of assessment of democracy. Such a reversed assessment procedure is at the core of my analysis of the two dimensions of democratic quality in Chapters VI and VII. Access to information as well as specific research methodologies are elaborated in the final section of this Chapter.

Chapter VI. In this Chapter I discuss the first dimension of democratic quality, which is trust, and explain how democracy and trust are related. The case study presented in this Chapter is the election campaign rhetoric of a politician from Republika Srpska, Milorad Dodik, leader of the Party of Independent Social-Democrats. Based on the evidence presented through my framework of analysis, I show ways in which trust is being deliberately destroyed in BiH by dominance of counter-norms, i.e. norms which are constructed to counter the spread of EU norms.

Chapter VII. In Chapter VII, I discuss the second dimension of democratic quality, which is equality/participation. Following the same Chapter structure as in the previous case, I look at how the EU promotes equality as part of its normative basis. I am interested in EU mechanisms of norm diffusion, the role of underlying scope conditions, and particularly the role of domestic actors. I have done so through the case study of the implementation of the judgement by the European Court of Human Rights (ECHR) in the "Sejdić/Finci" case, which formally established that certain provisions of BiH Constitution are discriminatory.

Chapter II – The Fault-Lines in BiH Democracy

Introduction

This Chapter shows the way in which the fault-lines in BiH democracy have been created and how they continue to shape democracy in BiH. The break-up of former Yugoslavia, the rise of nationalism, the war in BiH, and the political processes emerging from the Dayton Peace Agreement have produced a number of divisions and cleavages along, ethnic, territorial, political, social, and economic lines. Given my focus on the nature of democracy and democratisation in BiH, in this Chapter I discuss only the major fault-lines which appeared along the process of democratisation, which include the mismanagement of ethnic relations, the rise and endurance of nationalism and ethnic divisions, the myths of ethnic hatred, the ethnic predicament in the Dayton Peace Agreement, inconsistent peace implementation, unequal electoral rights, a lack of democratic legitimacy, nationalistic political culture, and low levels of trust.

The purpose of this Chapter is to contextualise the nature of democracy and democratisation, and the role of the EU as an external democratiser, which are discussed in the following Chapters. It also provides a background for the examples used in the two empirical Chapters. In the next Chapter, I argue that due to the severity and intensity of violence during the war in BiH, the cultural, ideological, social and other historical legacies have been torn to the extent that it is hard to claim continuity or linearity of the process of democratisation. Although I reject structuralists' claims about the centrality of historical legacies in the process of democratisation, I nonetheless account for them because they help understand the context that is marred with fault-lines in democracy. I therefore relate each of the fault-lines to the main arguments in the following chapters – the exceptionalism of democracy in BiH, the EU's failure to act as external democratiser, the power of nationalist rhetoric, and the discriminatory Constitution. In a couple of sections in this Chapter I need look as far back as former Yugoslavia in order to explain the roots of nationalism, and the elevation of the ethnic predicament into a constitutional category.

Management of Ethnic Relations

Although it may seem odd to look as far back in history, the examples from former Yugoslavia provided in this section serve to set the historical context to which I return in Chapter VI. As I show in that Chapter, the contemporary nationalism depends on constructs that are created using past experiences, or denial of some past experiences. When analysing distrust in BiH in Chapter VI, I show how nationalist elites deny multi-ethnic coexistence and pluralism that was a strength in BiH society before the war. They fabricate myths that presume eternal distrust among ethnic groups in BiH, which they use to suppose the inevitability of divisions in the society. That is why understanding ethnic relations in former Yugoslavia can cast some light on the fault-lines in the management of ethnic relations in BiH today. Although principally different, the two systems share the notion of discontents and tensions around ethnic representation. In Chapter VI, I show how using a technique of ‘un-bridging’ the past legacies of trust nationalist elites construct new realities in the present, through the denial of some historical facts. Whereas the system of management of ethnic relations in former Yugoslavia was designed to neutralise or diminish such nationalistic tendencies, the system of ethnic relations in BiH reinforces them. It is a product as well as a cause of the strong dominance of nationalism in BiH democracy, to which I keep returning throughout this thesis. I explain in Chapter III that the rigid system of ethnic representation designed during peace negotiations in Dayton has entrenched ethnic divisions, rather than ameliorating their effects, which has resulted in a dysfunctional power-sharing system, and a ‘defected’ democracy.

Being itself a mix of ethnicities, which never truly corresponded to the internal borders of federal republics, the former Socialist Federal Republic of Yugoslavia (SFRY) was faced with numerous dilemmas in managing interethnic relations. Whatever power sharing arrangement had been put in place, as long as quotas reflected the proportions of ethnic groups, they ran the risk of creating domination in some parts of the country. In order to moderate those effects, Yugoslavhood was created as a supranational identity that was being constructed based on similarities between all nations of the new state. The supranational identity did not preclude the existence of national identities, but it was rather meant to be the ‘channel of synthesis’ for national identities (Godina, 1998). The focus of identification was Yugoslavia as a state, rather as a national community, so it was a state identity, which paralleled the national identity.

The government also put in place the concept of multi-ethnic coexistence, which was then translated into power-sharing mechanisms (McGoldrick, 1999, p. 8). It served as a strategy for preventing massive revenge among different nations who had found themselves previously on different sides of history during World War II (WWII), and straddled between opposing great powers. In principle, this worked in practice. Sekulić, Garth and Randy (1994) state that there is “no evidence of urban violence between ethnic groups, ethnic ghettoization, or interethnic village confrontations during Tito’s years” (p. 800). Generations who had some memory of World War II remained still fairly conscious of ethnic identity, while younger generations, particularly in urban areas had a much weaker sense of national identification. Social mobility, which was a deliberate state policy, made communities less ethnically homogenous and hence less conscious of national identification. Culture, arts, education, media, and social relations more generally were made devoid of any national or ethnic symbols, while rich in symbols of state identification. A number of ideological concepts were also introduced in order to suppress ethnic grievances, such as the concept of 'brotherhood and unity', which was meant to build the social fabric of Yugoslavia, and was also enshrined in the constitution of SFRY as a social and ideological value. Destroying brotherhood and unity was described as “one of the two greatest dangers to socialist Yugoslavia” (Godina, 1998, p. 416).

The Federal Constitution included principles of non-discrimination, and also guarantees of the right to choose a nation or nationality, language, alphabet and culture (Várady, 1997, p. 17). Curbing violent nationalism was also enshrined in the Constitution, and any discrimination based on national, racial, or religious hatred and intolerance was unconstitutional and punishable. When it comes to the power-sharing mechanisms, non-discrimination was translated into the ethnic quotas that were built into the Constitution. However, these arrangements were disputed from the very beginning, and the state handled those demands through institutional innovations and constitutional changes that were meant to breathe in some federalist substance into these discussions (Banac, 2001, p. 463). This resulted in a series of constitutional reforms that addressed domination or underrepresentation of different ethnic communities (McGoldrick, 1999, p. 8).² Ivo Banac (2001) goes as far to say that national grievances were taboo under Tito.³ This was despite pressure from Party leaderships of Slovenia, Kosovo, and Croatia, which called for more decentralisation of public life and for the

² Constitutional reforms followed the constitutional crises in 1946, 1963 and 1974.

³ Josip Broz Tito was the life-time President of the Socialist Federal Republic of Yugoslavia, the Marshall/Supreme Commander of the Yugoslav People’s Army, and the General Secretary of the League of Communists of Yugoslavia.

decriminalisation of signs and symbols of national identities. Tito's death in 1980 was one of the enabling conditions for the federal rules to start collapsing.

In terms of social relations in Bosnia and Herzegovina itself, the wider population appeared far more relaxed about interethnic relations than the authorities. There were a large number of inter-ethnic marriages, and the brotherhood and unity agenda helped depoliticise the issue in the eyes of the population. There was also large mobility of population between republics, and from rural to urban areas, as a part of the efforts to industrialise the country. This resulted in even more mixing of nations. Urban areas in BiH in particular were very mixed even before Yugoslavia, which made inter-ethnic relations easier to manage than at the level of the Federation. By the 1970s and 1980s, interethnic relations did not appear to be an issue among the wider population in BiH. This is important to emphasise because the contemporary nationalist discourse is based on a premise of eternal ethnic hatreds in BiH, constructed through a series of myths, to which I return in another section in this Chapter. Those constructions serve the purpose of feeding the nationalist discourse and providing it with some substance through a series of social-construction techniques which I explain in Chapter VI.

Nationalism Masked as Democratisation

In the next Chapter I return to the peculiar relationship between nationalism and democratisation in BiH, which in my view is one of the major fault-lines that is in the way of democratic consolidation. This is especially true for the period after the Dayton Peace Agreement, which shows patterns that were visible already in the late 1980s. It is important to emphasise here that elites in the former Yugoslavia led a political struggle which was not liberalisation from an 'oppressive' regime in strive for democracy. It was rather national homogenisation for the purpose of gaining more power and control for individual Republics and ethnic groups. As such, national homogenisation remains an enduring fault-line that haunts external democratisation in BiH today, which I discuss again in Chapter IV.

The nationalist parties were gaining strength in late 1980s, and became organised very quickly. The very tight relationship between nationalism and democracy was evident in their slogans, which centred on claims about a need to break away from the Communist past, from a 'repressive' regime, but also stressing differences between nationalities and resurrecting the myths of ancient divisions. The ethnic nationalism that consolidated on the eve of the first multi-

party elections in BiH held in November 1990, remains a dominant force in BiH today, and I return to it in Chapters III and IV. Domination of nationalism in political life became evident even during the process of party formation in 1990, when moderate parties appeared weak against the rising popularity of nationalist parties.⁴ Nationalist parties spread their influences throughout Bosnia and Herzegovina, within their respective ethnic groups, working in every municipality, village and local community. In particular, they targeted rural areas, which were more ethnically homogenous, and where individual ethnic traditions were stronger and communities more condensed (Pejanović, 2004). The relationship between democracy and nationalism thus established has withstood all the turmoil that ensued after the 1990 elections, and was re-installed into the new power-sharing system in the BiH General Elections in 1996. I return to the relationship between democracy and nationalism in BiH in Chapter III in order to show how this violent form of nationalism has crippled consolidation of democracy in BiH since.

In the same fashion as in politics in BiH today, the media campaigns of nationalist parties in early 1990s left little or no room to discuss wider democratic or economic reforms, so the public space in general became saturated with nationalist rhetoric. Another parallel is the creation of fear against other ethnic groups, which was, and still is, the most effective way to argue for the support of one nationalist party. This created a sense amongst the wider population that the 1990 elections were about the protection of ethnic groups, rather than a first step in democratisation of the country. All election campaigns since have centred around the issues of protection of ethnic groups, whereas the perceived threats and causes for new fears changed over time.

From the point of view of my explanations of the exceptional and peculiar relationship between nationalism and democracy in BiH, it is important to stress again that democratisation was never nationalists' goal, even though they used the rhetoric of democratisation to explain the political changes which were taking place rapidly in the early 1990s. Their primary objective was, and still is today, to gain as much dominance for themselves and their own ethnic group. The rhetoric of some nationalist party leaders from the 1990 elections indicated the

⁴ One left wing party was a successor to the former Communist Party, it named itself the Social-Democratic Party. The other major party, the so-called Reformist Party was formed by the last Yugoslav Prime Minister Ante Marković. 'Reformists' were composed of the ex-communist cadre which still wanted to remain in political structures, but wanted to distance themselves from the previous party and regime. The two left-wing parties opposed each other openly in the run-up to the first multi-party elections, which immediately shattered any chances of formation of a more democratic block (Pejanović, 2004, p. 19).

extent to which they were prepared to achieve that, even at the expense of starting a war (*Speech by Radovan Karadzic, Assembly of the Socialist Republic of Bosnia and Herzegovina, 1990*).

It should not have come as a surprise then that the first party elections were followed by bloody wars within a year after the nationalist parties had won. With the wars in Slovenia and Croatia raging in 1991, and following their respective declarations of independence, BiH was briefly left within a rump Yugoslavia, whose army at that point was controlled by the Serbian leadership. The BiH national assembly voted to organise a referendum on independence, which was held on 29 February, 1992. The referendum was mainly boycotted by the Serb population in BiH, but the result was 98% in favour of independence based on a 64% turnout (“Parliamentarism in Bosnia and Herzegovina in conditions of political pluralism (1990–1995),” n.d.). Atrocities against the non-Serb population followed soon after the referendum. Open warfare followed Bosnia’s international recognition on 6 April, 1992, when Serb forces opened fire on peace protesters in Sarajevo, subsequently putting the city under siege for the next three and a half years.

The Myths of Ethnic Hatred

The myths of 'ancient hatreds' are a major fault-line that has hindered democratic consolidation for the past twenty-five years. I return to this argument in Chapters VI and VII by showing that the myths of ethnic hatreds feed the nationalist appetites throughout BiH. Each ethnic group in BiH generates its own ancient and modern myths of ethnic supremacy or distinctiveness in order to justify and amplify the inter-ethnic cleavages. Nationalists resort to those myths in order to deny the legacies of pluralism and multi-ethnic coexistence in BiH, which justifies their defence of ethnic divisions in the present. Those myths have also been at the core of academic discussions about the break-up of Yugoslavia, and the barbarity of ensuing conflicts, as well as to justify the foreign governments’ policies of non-intervention during the war in BiH. As I show in Chapters IV, VI, and VII, the EU actors today still resort to those explanations in the absence of a strategy to confront nationalism in BiH.

Authors who adopt primordialist arguments in explaining the nature and origins of conflicts in former Yugoslavia include Jovan Cvijić (1922, (1931) (cited in Ramet, 2004a)), and Dinko Tomašić (1948) (cited in Ramet, 2004b), who states that the Balkans have been 'uniquely plagued by war and strife'. More recent contributors to this theory is Branislav

Anzulović (1999, cited in Ramet, 2004b), who attributes to the Serbs an inclination towards violence and a “tendency to view their nation as a collective victim” (p. 736), and presumes a ‘particular predisposition to violence’ by the people of former Yugoslavia (Cited in Ramet, 2004b, p. 738). Lucarelli (2000) sided with a view that the war in BiH “took place in an area (the Balkans) that has always been regarded as a possible powder-keg” (p. 1).

Authors who reject primordialist explanations dismiss them on the grounds that the people of former Yugoslavia had peaceful relations for decades. Ramet (2004a) asserts that “the chief debility of this theory is that it leads its believers away from any understanding of what makes states collapse or former neighbours go to war with each other”. She rejects the notion “that the remote past should have some special priority over the more proximate past” (2004a, p. 739). Sekulić, Massey, and Garth (1994, p. 800) point out that the war in BiH preceded the ethnic hatred, which in their view, had to be mobilised. The problem they have with 'ancient hatred' explanations is that it 'lacks empirical support', as no evidence could be presented of a repressive state apparatus being systematically employed against the ethnic groups in former Yugoslavia. This elite-centric view is supported by other authors, who show how collective memories were “activated and directed to ethno-political goals” by extremist leaders or chauvinist elites, who then mobilised the masses (Hodson et al., 1994, p. 801).

Malcolm (1996, p. xxi) believes that the mere misinformation and ignorance about BiH history and tradition is what informed theories of 'ancient hatreds'. According to Malcolm, “for most of the period after 1878, the different religious or ethnic communities in Bosnia lived peacefully together” (p. xxi). In spite of this, the myths of ancient hatreds were widely utilised by Radovan Karadžić while trying to discourage international intervention.⁵ The effect of primordialist explanations was therefore most detrimental in the case of Bosnia and Herzegovina, in which the absence of foreign intervention opened the way for the most notorious atrocities and war crimes that were committed between 1992 and 1995. The most infamous examples of foreign politicians who grounded their policies on the basis of theories of ancient hatreds are the former US President Bill Clinton and former UK Prime Minister John Major (Hodson et al., 1994, p. 800). President Clinton was admittedly prejudiced by Robert Kaplan’s *Balkan Ghosts* (1993). Kaplan saw Tuđman and Milošević as 'victims of history', thereby relieving them of their personal responsibility for what had happened (Cited in Ramet,

⁵ War-time President of Republic of Srpska, indicted for war crimes and acts of genocide.

2004b, p. 741). John Major used eternal ethnic hatreds as an explanation during a debate in House of Commons in June 1993 while presenting it as an obstacle against any kind of intervention to stop the conflict in BiH (Ramet, 2004b, p. 740). Admittedly, the history of Bosnia and Herzegovina provides many instances of divisions and violence. However, it needs to be born in mind that “the political history of late twentieth century Bosnia has not been determined by what happened in the thirteenth or eighteenth century” (Malcolm, 1996, p. xxii). Neither should violent incidents from the past designate the whole society or individual ethnic groups as prone to wars, conflicts and divisions.

It needs to be emphasised that this discussion is particularly relevant for explaining the rise and endurance of Serb nationalism, which I use as a case study in Chapter VI. Historical myths were used particularly for mobilising Serb nationalism prior to the wars in the former Yugoslavia, but their contemporary relevance is in their continued mobilisation for the purpose of sustaining the nationalist narratives employed by the elites in Republika Srpska today. The myths deployed by today’s elites in the RS are mirror images of the myths deployed in the 1980s and 1990s. As I show in Chapter VI, the elements of ethnic myths which were constructed and mustered in the late 1980s by the Serbian political leadership at the time, survived the weak international attempts to democratise BiH, and they are engrained in the narratives of today’s elites in Republika Srpska.

As just one illustration of those parallels, I refer to Milošević’s control over the Serbian media through which he was able to generate and spread those myths using nationalist propaganda. The media led a campaign in which other ethnic groups were demonised, Serbs victimised, foreigners portrayed as conspirators against Serbia, and fear of other religions was also spread. Milošević and his associates delivered inflammatory speeches, used a range of symbols and carefully crafted public campaigns which gave rise to nationalism and expanded it in a very short time. In a very similar fashion, Milorad Dodik the current president of Republika Srpska, has taken control of the public, and to some degree also private media in order to shape the nationalistic public opinion. I return to those and Dodik’s other illiberal practices in Chapter III. As I show in Chapter VI, he has used exactly the same narratives as Milošević to mobilise Serb nationalism, utilising very similar propaganda techniques.

The myths of ‘predisposition to war’ and ‘ancient hatreds’ also informed the views about the future of BiH. Campbell (1998) warns of a perception that “more often than not, influential

figures have expounded the view that the only realistic outcome in a situation such as Bosnia is - in a move that conflates 'ethnic' with 'national' - partition along ethnic lines so as to create separate national spaces" (p. 406). He refers to the neorealist approach of John Mearsheimer (1993, 1997), who repeatedly declared that "the best and most realistic option for Bosnia is the partition of the country into ethnically homogenous states" (cited in Campbell, 1998, p. 397). Mearsheimer argued that "through the redrawing of boundaries and the forced transfer of populations, the construction of a Bosnian state for Muslims, a Croatian state for Croats and a Serbian state for Serbs is the answer to "intractable ethnic hatreds" (cited in Campbell, 1998, p. 397). Campbell argues that such views were translated into subsequent efforts to negotiate peace, which preceded the actual Peace Agreement in Dayton. This was partly due to a view developed by international actors that the peace solution could only be found on the basis of ethnicity, because they saw the war itself as inter-ethnic. In Chapter III, I look into the structural obstacles to the promotion of EU norms, which were created through the constitutional constraints designed in Dayton.

The Ethnic Predicament in the Dayton Peace Agreement

The conflict in BiH lasted until late 1995 when the Peace Agreement was negotiated and eventually signed. The ethnic predicament was carved into the essence of the Dayton Peace Agreement, thus paving the way for the dominance of ethnicity in power-sharing, design of the institutions, the style of politics, and reinforcing the dominance of nationalism. Such a strong emphasis put on ethnicity in the Peace Agreement has produced shallow and inefficient institutions, which are not able to lead or guarantee the consolidation of democracy. While returning to this issue in Chapter III, I show ways in which the ethnic predicament has created a style of democracy of exceptional nature, which the EU to some degree condemns, but fails to influence or change in the process of democratising BiH.

The EU's shortcomings in challenging the ethnic paradigm are the subject of Chapter IV, which discusses the weakness of the EU's instruments in an over-ethnicised society. For a short while, the thinking behind the international community's peace negotiating efforts was that under their guidance unstable post-conflict BiH would be transformed into "a multi-ethnic, pluralist and liberal democracy – a single liberal, pluralist state" (Richmond & Franks, 2009, p. 21). Although they emphasised a declarative intention to support a unitary state of BiH, ethnicity remained at the core of solutions that were proposed in early peace proposals, such as

the Cutileiro Statement of Principles.⁶ The Statement broadly supported the independence and integrity of BiH. However, its proposal for constituent units of a supposedly unitary state was based on exclusivity of ethnicities, a separatist logic that ruled out any notion of ‘overarching authority’ (Campbell, 1998, p. 417). Campbell describes how the effects of the understandings of ethnic identity as “pre-given and socially salient” and existing as “the community fault lines around which politics will revolve” helped establish firmly the principle of “territorialised politics of ethnic/national self-determination” (1998, p. 406). This relationship between ethnicity and territory pervaded all subsequent efforts to find peace. His research shows that the ethnographic maps of the 1991 census were the foundation for many of the international community’s peace negotiating efforts, while the alternatives were war-time front-line maps which implied that the basis for political agreements was acquisition of territory “driven by ethnic cleansing” (1998, p. 406).

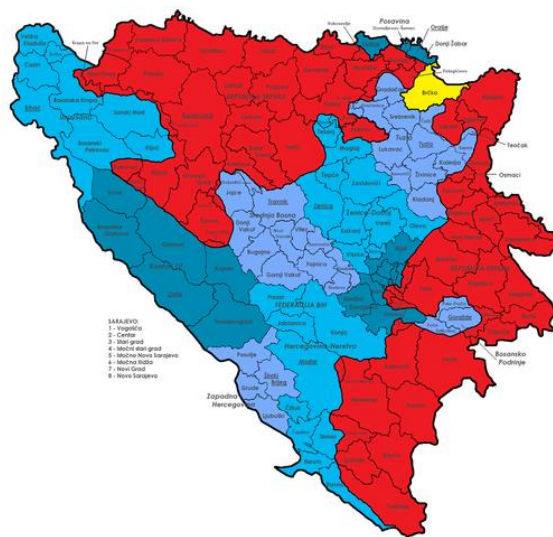


Figure 1 - Political map of Bosnia and Herzegovina

This approach was also reflected in the composition of the negotiating teams brought to the peace talks in Dayton in 1995. The sides that were invited by the international community to negotiate the Peace Agreement were each brought to the table in the role of representatives of their own ethnic group, and hence demanded concessions for ethnicities (Šarčević, 2009).⁷ This gave ‘ethnic groups’ the status of ‘pre-constitutional categories’, and they were moreover treated as inherited ‘constants’ which had to be built into the new constitution. In order to provide for the interests of three ethnic groups, the Dayton Peace Agreement (DPA) was thus designed to give preference to the protection of rights of each ethnic collectivity, rather than protecting individual rights. Šarčević (2009, p. 50) describes this outcome as ‘ethnicisation’ of the BiH constitutional system, which in his view was not a cause, but a consequence of the

⁶ The original Carrington–Cutileiro peace plan, named after Lord Carrington and Portuguese ambassador José Cutileiro, who drafted a proposal for a peace agreement after the EC Peace Conference held in February 1992.

⁷ Even though the delegation representing the internationally recognised Republic of Bosnia and Herzegovina was formally not representing any ethnic groups, and was in fact itself of multi-ethnic composition, the negotiations were carried out in a way that treated them as a side primarily representing Bosniacs. Šarčević also provides arguments based on the assessment of the political role of then President of Republic of BiH, the late Alija Izetbegović, his positions during negotiations, and an overwhelming amount of literature, that he represented the side of the Bosniac people, even though he was a legitimate representative of all citizens.

international peace-building strategy. The result of that process was the Peace Agreement signed in December 1995, which in Annex IV includes the BiH Constitution. The Constitution defines a very complex structure which comprises four levels of government: the state, two entities (the Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS)), ten cantons, one district, and 142 municipalities.

The entities are designed asymmetrically, so that the Republika Srpska is more centralised with a clearer allocation of functions between the entity and local level. On the other hand, FBiH is much decentralised, with a local level consisting of sixty-two municipalities as well as ten cantons, each having its almost unique system of governance and allocation of responsibilities. In its 2005 Opinion on the Constitutional Situation in BiH, the Venice Commission found that “the combined effect of these provisions... makes effective government extremely difficult, if not impossible” (“Draft Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative,” 2005, para. 29). The Venice Commission was referring to the decision-making system, which was designed to accommodate maximum protections for each ethnicity.

The power-sharing mechanism gives preference to the protection of collective ethnic rights, while not fully protecting the rights of minorities or individuals. Mechanisms of protection of ‘national interests’ are designed to provide protection to individual ethnic groups against majorisation by the others, and are numerous to the point of obscuring the decision-making process. This includes possession of veto powers by each of the three members of Presidency, in regards to which the Venice Commission declared that “it cannot be maintained that only Serbs are able and willing to defend the interests of RS and only Croats and Bosniacs the interests of the Federation” (“Draft Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative,” 2005). Also, every decision of the House of Representatives of State Parliament has to be voted on twice – first, for the constitutionally required majority to pass a decision, and secondly, to also receive the required majority of votes from members of parliament from each entity (the so called entity-voting). On top of which, in the House of Peoples,⁸ legislation has to be approved by the majority inside each people’s caucus. In practice this is also manifested through the behaviour of elected representatives of nationalist political parties as representatives of their ethnic communities,

⁸ Composed of five representatives of each constituent peoples, fifteen in total.

rather than as representatives of citizens or constituencies. Finally, there are also mechanisms for protection of vital national interests, which are deferred to the Constitutional Court. On that point, the Venice Commission says that “granting precisely to those people who are already dominant such a veto and not to small groups requiring protection is a questionable practice” (“Draft Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative,” 2005, para. 21).

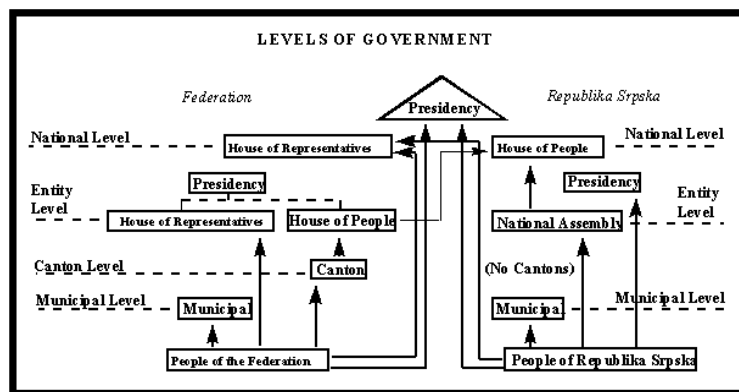


Figure 2 - Levels of government in BiH (Global Security, 2010)

Due to the demographic consequences of the conflict in BiH, primarily caused by the concept of ‘ethnic cleansing’, the ethnic composition of territorial units in BiH is highly homogenous.⁹ Because the post-Dayton electoral constituencies were designed on the basis of newly created territorial units, they create a mirror image of ethnic/territorial divisions at the level of the state, in Presidency, Parliament, as well as in all executive and judicial institutions. Through that mechanism entire groups of population are excluded on the basis of their ethnic or territorial belonging, which is one of the main normative clashes with EU norms, as I explain in the next Chapter. The most prominent constitutional mechanism of exclusion, and a distinctive discrepancy with EU norms, exists in the election of members of BiH Presidency. The Serb member of Presidency can only be elected by voters registered in Republika Srpska. This means that Croats and Bosniacs living in Republika Srpska can only elect a Serb member of Presidency and cannot themselves be elected, while Serbs living in

⁹ The population of Republika Srpska is predominantly Serb, with a very low level of return of previously displaced persons and refugees. Inside Federation of BiH, seven out of ten cantons which were created as a part of the Washington Peace Agreement between Croats and Bosniacs, are predominantly ethnically homogeneous, while only three have some mixed population. Apart from a very few exceptions, municipalities also have predominantly one ethnic majority. However, due to a lack of census data, this is hard to express in terms of the actual numbers of population. The BiH Constitutional Court also states: “Due to massive ethnic cleansing in the course of the war prior to the conclusion of the Dayton Agreement, the population figures of 1997 show that the RS is now an ethnically almost homogeneous entity”.

Federation of BiH cannot elect a Serb or be themselves elected for Presidency, but need to choose between a Croat and Bosniac. Minorities are not allowed to run for the Presidency at all, neither are they represented in the House of Peoples. The Venice Commission states that this rule assumes “that only members of a particular ethnicity can be regarded as fully loyal citizens of the Entity capable of defending its interests” (“Draft Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative,” 2005). This is the most significant fault-line in democracy in BiH that is the cause of many structural constraints which impede the promotion of EU norms.

Although aware that these arrangements would be in conflict with human rights, the international negotiators considered them to be temporary and that they would gradually be phased out (“Case of Sejdić and Finci v. Bosnia and Herzegovina,” 2009, para. 20). According to the ECHR judgement, the international negotiators reluctantly accepted these arrangements under pressure from some of the parties to the conflict. Another assumption was that the power-sharing institutions of the state would proliferate under international supervision and sponsorship through the state-building agenda. Susan Woodward (1999) emphasises detrimental consequences of the internal division, which were cemented in Dayton. She also claims that the division of Bosnia and Herzegovina on ethnic lines was the basis of Dayton, while ethnicity was the basis of political participation. As such the Peace Agreement legalised the war-time partition of the country, instead of helping the erosion of the social and political divisions. In that sense, the DPA was designed to “depluralise the nation” and not to “denationalise pluralism” (Campbell, 1998, p. 423).

Fault-Lines in Peace Implementation

The EU’s lack of understanding of the exceptionalism of democracy in BiH has roots in the perceptions and intentions of the international peacemakers in Dayton. When designing the Peace Agreement, they created a power-sharing arrangement which was meant to serve as a trust-building mechanism. The ensuing state-building agenda of the international community during its peace implementation years was intended not only to strengthen the capacity of institutions, but also served as a post-conflict management strategy, and as an exercise in political reconciliation.¹⁰ The equitable ethnic representation in the legislative, executive, and

¹⁰ The international community in BiH still remains quite robust, with the UN and OSCE representatives, the Council of Europe, a large US Embassy mission, as well as numerous other organisations. Their mandates have changed over time, but their

judicial branches, the ethnic veto powers, the voting system that is again based on ethnic representations, were all designed in order to create assurances that no single constituent people could be outvoted or underrepresented. However, as I explain in Chapters III, IV and VI, this theory was based on a false premise that national elites simply wanted ethnic guarantees, which they would abide by in making democracy work without international intervention. This misinformed understanding of the elites' motivations subsequently thwarted many EU efforts that used conditionality and cost-benefit analysis to instil EU norms, resulting in a series of failures.

The international community misleadingly assumed that ethnicity-based power sharing would alleviate ethnic tensions and create more room for dialogue. The main requirement for this system to work was domestic political will, which was always lacking. This system worked only while there was heavy international presence, as well as a threat of sanctions, particularly a threat of removal of officials by the High Representative.¹¹ The High Representative was given executive powers to implement peace at the Conference of the Peace Implementation Council held in Bonn in 1997. In practice the executive powers were used mainly to enforce laws which ensured implementation of the Peace Agreement. However, the 'Bonn powers' also enabled the High Representative to dismiss officials who obstructed peace implementation, and they were extensively used before 2006.¹² Those measures, and very modest political will, ensured compliance and the functioning of this power-sharing arrangement in the first ten years after the DPA. However, as soon as the OHR moderated the use of sanctions and imposition of laws, the system started to crumble, and obstructions intensified. In Chapter IV, I show that the abandonment of the state-building agenda and a decade of political stalemate coincided with the EU's appointment as the chief state-builder, and the main external democratiser in BiH.

Although the process of internationally-sponsored state-building was not very smooth and involved heavy conditionality in case of specific reforms (e.g. by the IMF, WB, EU, EBRD,

involvement was significant, particularly during the post-war reconstruction, introducing rule of law, establishing a human rights regime and instruments, state-building and capacity building of public institutions, judiciary, elections organisation and monitoring, strengthening of civil society and media, etc.

¹¹ The mandate of the Office of the High Representative of the International Community in BiH (OHR) is defined in Annex X of the DPA, and it is entrusted with monitoring the implementation of the peace settlement, and especially to promote full compliance with all civilian aspects of the Agreement. The High Representative is appointed by the UN General Assembly, to which he reports twice a year. The international community also operates through the Peace Implementation Council, whose Steering Board composed of resident ambassadors of countries members of the PIC still meet every week in Sarajevo.

¹² By 2014, all officials formerly removed by the High Representative have been rehabilitated and no longer have a ban on occupying a public office.

CoE, etc.), the fact is that in the period between 2001 and 2006, many new institutions were created at state level, and existing ones were made more functional. Some of the largest state-building reforms led to the creation of the State Judiciary, the public administration at state and at lower levels of government, the Election Commission, unification of armies and a single Ministry of Defence, the Indirect Tax Administration, unified Intelligence Agency and State Investigation and Protection Authority, Communication Regulatory Agency, a unified system of management of personal identity information, a single passport, single car registration plates, and tens of other executive agencies at state level.

The Study of BiH Governance Structures (2007) noted that the conditionality from the EU, and even more importantly from the World Bank and the International Monetary Fund, were instrumental in promoting domestic adoption of state-building legislation. They note that “without detailed, prescriptive conditions, it is doubtful that there would have been any voluntary transfer of competencies to the state from the entities” (Foreign Policy Initiative BH, 2007, p. 11). In early 2006, state-building was still an issue which the international community and civil society were debating with the political elites – how to make this multi-layered system more functional and how to provide it with substance. However, the intensification of nationalist rhetoric by domestic political elites in 2006, shifted the discourse away from pragmatic issues of state functionality to the emotionally charged issues. This view is confirmed by an EU official in Sarajevo who said that “EU officials, together with other international actors, have been active in the past lobbying legislators to bring domestic law, and to a lesser extent practice, in line with EU norms, including through the so-called structural dialogues between the European Commission and the domestic authorities. This approach was at its height when the international community’s role in BiH was at its strongest, and is less evident as the BiH authorities have shown less and less interest in conforming to EU requirements” (“Personal interview with an EU official in Sarajevo,” 2013). In Chapter IV, I discuss further the role of the EU as a state-builder, and how the processes of state-building and democratisation of BiH were not mutually reinforced, and in Chapters VI and VII, I show the deliberate attempts of some domestic elites to reverse the process of state-building and counteract any international efforts to strengthen the state.

The Concept of ‘Constituent’ Peoples

In the second empirical Chapter, I discuss equality/participation as a substantive dimension of democracy, which is not sufficiently supported by the EU, and is deliberately undermined by some nationalist elites. At the core of this fault-line is the voting system that was established in Dayton, which was also informed by an ethnic view of the conflict and the peace settlement. In the manner explained in previous sections, the ethnic predicament was translated into a discriminatory electoral system that gives prevalence to collective ethnic rights over individual rights. One of the categories thus instituted is that of the ‘constituent peoples’ as per the Preamble to the BiH Constitution, Article II.4, Article II.6 and Article III.3 (b) (“The General Framework Agreement,” 1995). According to those articles there are three constituent peoples - Bosniacs, Croats and Serbs. Although in the very same sentence of the Preamble to the Constitution, also mentioned are ‘all others’ as well as ‘citizens of Bosnia and Herzegovina’, the fact is that the remainder of the Constitution created a political system in which only Serbs, Bosniacs and Croats have full political participation and representation. Moreover, the decision-making mechanisms as well as the representative bodies are designed to be reflections of the existence of three separate ‘constituent’ groups. No representation is envisaged or enabled that would surpass the category of ‘constituent’ peoples and provide for a wider, cross-ethnic, social base.

In its Partial Decision on the Constituent Peoples in BiH, the Constitutional Court of Bosnia and Herzegovina recognised that there is a “lack of a definition of the status of Bosniacs, Croats, and Serbs as constituent peoples...” (“Constitutional Court of BiH,” 2000). In instituting proceedings before the Constitutional Court of BiH in 1998, Mr. Alija Izetbegović, at that time Chairman of the Presidency of Bosnia and Herzegovina, requested evaluation of the consistency of the Constitution of Republika Srpska and the Constitution of the Federation of Bosnia and Herzegovina with the Constitution of Bosnia and Herzegovina, with regard to the all three peoples being constituent on the entire territory of BiH. In line with that, the Constitutional Court declared the wording Bosniacs and Croats as constituent peoples in the Constitution of FBiH unconstitutional. It also decided that Article 1 of the RS Constitution “violates the right to liberty of movement and residence, the right to property and the freedom of religion in a discriminatory way on the grounds of national origin and religion as guaranteed by Article II. paragraphs 3 and 4 in connection with paragraph 5 of the Constitution of BiH” (“Constitutional Court of BiH,” 2000). The Court ruling was thus primarily interpreted as regards a majority or minority position of constituent peoples in the entities, i.e. it declared that “the express recognition of Bosniacs, Croats and Serbs as constituent peoples by the

Constitution of BiH can only have the meaning that none of them is constitutionally recognised as a majority, or, in other words, that they enjoy equality as groups” (“Constitutional Court of BiH,” 2000). Due to a lack of political agreement on implementation of the Constitutional Court decision, the High Representative intervened in 2002 and imposed decisions amending the Constitutions of FBiH and RS so as to ensure that “constituent peoples and members of the group of Others shall be proportionally represented in public institutions” (“Decision on Constitutional Amendments in Republika Srpska,” 2002; “Decision Amending the Constitution of the Federation of Bosnia and Herzegovina,” 2002; Art. LXXXV). However, in spite the Court ruling and OHR’s intervention, proportional representation of constituent peoples has been only partially applied to some public offices at entity level, while ‘others’ and citizens of BiH are still underrepresented, and even unrecognised in the normative framework.

Judges of the BiH Constitutional Court debated heavily the very term ‘constituent peoples’, for which they had to resort to the interpretation of the negotiating process in Dayton. They thus state that because the term was inserted into the text of the Dayton Constitution at a later stage, it leads to a conclusion that “...the adopters of the Dayton Constitution would not have designated Bosniacs, Croats and Serbs as constituent peoples in marked contrast to the constitutional category of a national minority if they wanted to leave them in such a minority position in the respective Entities...” (“Constitutional Court of BiH,” 2000). Although this argument worked in favour of the judgement on equality of the three constituent peoples, it shows an open recognition of the fact that the Peace Agreement treats minorities and others as less equal, regardless of whether that was the intention of peace makers or not. This is further accentuated by one section of the Venice Commission opinion, which states that the use of terms Bosniac, Croat and Serb “may be more flexible than they appear, as there is no constitutional or legal definition of who is a Bosniac, Croat or Serb. Current electoral rules simply require electoral candidates to make a declaration as to their ethnicity” (“Opinion on the Electoral Law of Bosnia and Herzegovina, 48th Plenary Meeting,” 2001).

The BiH Constitutional Court decision prohibits any special privilege for one or two constituent peoples, “any domination in governmental structures or any ethnic homogenisation through segregation based on territorial separation”, and states very clearly that “equality of groups is not the same as equality of individuals through non-discrimination”. In elaborating on the last point, the Constitutional Court said that “the mix of the ethnic principle with the non-ethnic principle of *citoyenneté* in the compromise formula should avoid that special

collective rights violate individual rights by definition” (“Constitutional Court of BiH,” 2000). The Constitutional Court thus establishes that “ethnic separation through territorial delimitation does not meet the standards of a democratic state and pluralist society as determined by Article I. 2. of the Constitution of BiH in conjunction with paragraph three of the Preamble”. Finally, it declares that “ethnic segregation can never be a legitimate aim with regard to the principles of democratic societies” nor can “ethnic homogeneity based on territorial separation serve as a means to uphold peace on these territories”.¹³ However, political inequality continues to exist in the BiH Constitution, in spite the EU’s continued attempts to remove it on the grounds of institutionalised discrimination.

Fault-lines in Democratic Legitimacy

Democratic legitimacy in BiH is undermined by different forms of divisions and cleavages that exist in the society, which are debated in Chapter III. Legitimacy is crucial for the success of the democratisation process; it is a necessary but insufficient condition for democracy to survive, but it is not easy to obtain in new democracies “where legacies of hate, mistrust and conflict remain” (Potter, 2005, p. 527). Diamond (1999) claims that “at the mass level, there must be a broad normative and behavioural consensus – one that cuts across class, ethnic, nationality, and other cleavages – on the legitimacy of the constitutional system, however poor or unsatisfying its performance may be at any point in time” (p. 65). This is evidenced when “no significant collective actors challenge the legitimacy of democratic institutions or regularly violate its constitutional norms, procedures, and laws. Any democracy will have its share of cranks, extremists, and rejectionists on the margins of political (and social) life. If democracy is to be consolidated, however, these antidemocrats must be truly marginal” (L. Diamond, 1999, p. 67). However, democratic legitimacy in BiH is challenged at many levels, and in different ways, not out of ignorance, but by those who can be described as ‘anti-democrats’ whose actions are not marginal, but deliberate actions undermining the state. Those different levels in which democratic legitimacy can be undermined include: geographical, constitutional and political legitimacy (Potter, 2005).

I argue that different groups in BiH challenge the legitimacy of BiH on each of those grounds. Geographical legitimacy means that “those who live within the state accept its

¹³ This was an argument asserted by the representative of the National Assembly of Republika Srpska in the Court proceeding.

territorial definition and the appropriateness of their place in it” (Potter, 2005, p. 525). Democracy is under threat if people do not consider the state legitimate, “in the extreme case, the threat might take the form of a secessionist movement” (2005, p. 525). I show examples of this in Chapter VI, when discussing an election narrative of SNSD that promotes secession of Republika Srpska from BiH. Constitutional legitimacy refers to the acceptance of constitutional structure of political power, which in the case of BiH is challenged by different groups, each on their own terms and out of their own motivations. The EC Progress Report for 2009 highlights some examples of the undermining of constitutional legitimacy in which “nationalist rhetoric from all political leaders challenging the DPA and, by implication, the constitutional order remained commonplace“ (European Commission, 2010). The EC points to the questioning of the existence of Republika Srpska by politicians in FBiH, who claim that it is the result of a genocide. Politicians from Republika Srpska, on the other hand, frequently challenge the State institutions, competencies and laws, including in the context of the European accession of BiH. Political legitimacy relates to the extent the electorate considers the government to be legitimate (Potter, 2005, p. 526). I argue that the political legitimacy of the state has been undermined in a number of ways, mainly through excessive possibilities for political obstructionism, the misuse of constitutional provisions for the protection of ethnic interests, such as the entity voting and the vital national interest. If elites and representative groups show continuous support for democracy, so will the wider public (L. Diamond, 1999, p. 70). This I argue is not evident in the case of BiH, where elites undermine the public trust and belief in the political system. In Chapters VI and VII, I show that democratic legitimacy in BiH has been undermined primarily through elite-agency in all three of its aspects mentioned here.

Nationalistic Political Culture

Chapter VI looks at nationalistic political culture expressed in negative narratives, and the rhetoric which undermines the state and its institutions, damages the inter-ethnic relations, and threatens the future of the country. Nationalism is also considered as one of the main impediments to the diffusion of EU norms in BiH, often mobilised for the purpose of constructing counter-norms and mobilising ethnic homogenisation. Nationalism is seen as one of the most prominent confining conditions shaping the political culture, because it has “an enormous potential for mobilising identities and political emotions, not to mention for being exploited by ruthless politicians...”, for which I provide ample evidence in Chapter VI (Gallagher & Pridham, 2000, p. 16). The 1960s literature which introduced the notion of

political culture, treats it as “people’s predominant beliefs, attitudes, values, ideals, sentiments, and evaluations about the political system of their country and the role of the self in that system” (L. Diamond, 1999, p. 163). The primary function of political culture is to “balance cleavage and conflict with the need for consensus” (L. Diamond, 1999, p. 166).

As discussed in previous sections, and as I explain in the following Chapters, the political culture in BiH is determined by interaction of a number of factors: the prevalence of nationalist rhetoric, the lack of state and social identity, inflammatory discourse, unhelpful religious communities, political interference in the judiciary and media, weak civil society, lack of consensual politics, etc. The European Commission’s Progress Reports on BiH point to a number of cases which substantiate those claims, including voting along ethnic lines in Parliament, failure to comply fully with the requirements of the European Convention for Human Rights (ECHR), inflammatory rhetoric on identity and ethnicity-related issues which impact legislative reforms requiring transfer of competencies from Entities to the State, etc. (European Commission, 2010). Nationalism in BiH permeates ethnicity based party-politicking, creates confrontational discourse, puts political pressure on the press and media, causes reform stalemate, inspires inflammatory political rhetoric, and extends perpetuation of political crisis. The lack of legitimacy discussed earlier, and the general lack of identification with the Dayton state, primarily by its political leaders, the historical legacies, as well as the consequences of the war, partly explain why nationalism proves to be a dominant force. By placing itself at the core of political rhetoric, nationalism is well positioned to expand into other areas where there is a vacuum – institutional structures, political interests and identities.

Nationalistic political culture nurtures instability (and vice versa), it uses symbols and myths to sustain the group homogeneity and is thus opposed to religious and ethnic diversity (Bianchini in Gallagher & Pridham, 2000). I use an assessment approach in Chapter VI to examine trust in BiH by showing how nationalist myths and symbols are used to construct and sustain homogeneity within an ethnic group. I pay particular attention in Chapter VI to the use of ‘hate-language’ as a means of sustaining nationalism, generating fear, and undermining pluralism (Gallagher, 2000, p. 123).

Dahl ((1971), cited in Przeworski, Alvarez, Cheibub, & Limongi, 2000) adopted a view that “nationality differences within states restricted participation for some citizens” (p. 19). The causes of that could be attributed to the institutional failure, to which people respond by

emphasising their cultural differences and engaging in ethnic outbidding (Przeworski et al., 2000, p. 21). Nationalism, according to this view, does not cause the collapse of central institutions; it is the failures of the centre that provide a “context in which regionally based nationalists can effectively mobilise to promote an autonomy movement” (Przeworski et al., 2000, p. 22). In the case of BiH evidence can be found towards both sides of this argument. As discussed in previous sections, nationalism was employed in order to amplify differences between ethnic communities and to mobilise populations in the former state and in the current state against the central government. At the same time, the weak and shallow institutions created in Dayton do inspire adverse feelings, and are not able to counteract continued nationalistic endeavours in undermining the state. The constitutional arrangement created in Dayton does not enjoy legitimacy of any of the three major ethnic groups in BiH, for different reasons.

Pridham (2000) sees nationalism as one of the most prominent fault-lines that influences the political culture of elites. He argues that nationalism mobilises identities and political emotions, and is also exploited by politicians (2000, p. 16). Crucial to the construction of nationalistic political culture in BiH are the rhetoric, language and discourses (Christiansen, 2001, p. 5). The role of dominant narratives and their discursive power are reflections of actors interests and beliefs, which in the case of BiH are fashioned in an inflammatory manner, further drifting apart the already divergent positions on ethnicity, the state, democracy, etc. The best illustration of those practises is a statement of the RS President, Milorad Dodik, who explained the purpose of his rhetoric: “when I speak at election rallies, I speak about integration, Europe, rule of law, economy, future... and my audiences behave as if in theatre. And then I throw at them a slogan ‘We won’t let go of Republika Srpska’ and my job is done. Neither I nor they know what this means, or who’s taking it away from us. But the theatre audiences suddenly reach a boiling point, and that is how I recruit a large part of my voters” (Kurspahić, 2012).

The case study I use in Chapter VI is based on Dodik’s 2010 election campaign in which he deployed a number of negative narratives that undermine democracy in BiH, and the integrity of the state. Dodik was for a long time considered to be a moderate politician, originally elected to the Assembly of the Republic of Bosnia and Herzegovina in the first multiparty parliamentary elections in 1990, as a representative of a non-nationalist party, the Reformists. During the conflict in BiH, he became a member of the National Assembly of Republika Srpska, and acted as opposition to the governing Serb Democratic Party (SDS) until the Peace Agreement was signed. He then formed a new opposition party and came to power

in Republika Srpska in 1998 for a short period of time, backed by strong international support and assistance. He enjoyed generous international support and assistance throughout his fight to return to power which he managed again in early 2006 through a political deal with the ever weakening SDS.

In order to win forthcoming elections in Republika Srpska in October 2006, Dodik turned to nationalist rhetoric, which he successfully sustained for the next four years. During that time, the intensity and intention of his policies and rhetoric exceeded that of SDS, which bore the legacy of war crimes, ethnic cleansing, and ambition to split up the country. His rhetoric was closely matched by that of a Bosniac politician, Haris Silajdžić, leader of Party for BiH (SBiH). In a fashion similar to that of Dodik, Silajdžić saw the nationalist rhetoric as a way to return to power. He used to be the war-time Minister of Foreign Affairs of the Republic of Bosnia and Herzegovina, who disagreed with policies of SDA, his party at the time, and departed from them in order to create his own political party, SBiH.

SBiH gained popularity for a short time, placing themselves closer to the centre than SDA. However, the party was based pretty much on Silajdžić's war time legacies and his charisma, and started to loose support following their ineffective participation in the 2001 - 2003 government formed by the Alliance for Changes. Silajdžić saw an opportunity to return to power again in 2006, when he filed a candidacy for the Presidency of BiH. His election strategy was two-fold: he decided to play the nationalist card, calling for the abolition of Republika Srpska, and also ran an intensive campaign against a package of constitutional amendments, known as the 'April package'.¹⁴

Silajdžić is often accused of provoking Dodik's nationalism, although those claims are difficult to substantiate given that Dodik had wholeheartedly adopted the nationalist agenda and sustained it ever since. Nonetheless, Dodik and Silajdžić can both be blamed for dramatically polarising political and social life along ethnic lines within a short period of time. The following nine years have been marred by an unprecedented political stalemate with lowest government

¹⁴ The 'April package' of constitutional reforms was proposed in early 2006. It was the first and last serious attempt to change the Dayton Constitution in order to make the state more participatory, less discriminatory, and more functional. The package was initially negotiated among members of various political parties, facilitated by a local NGO, the Dayton Project. Once elaborated into a set of amendments, the 'April package' was endorsed by the US Department of State, the EU, and European countries individually, as well as members of the Peace Implementation Council. It was also supported by parties from Republika Srpska. However, it failed in parliament by the votes of two of Silajdžić's supporters in Parliament.

activity, which partly reversed ten years of peace building and reforms that had opened up ways for BiH to join the EU and NATO. The rhetoric deployed by both leaders inflamed the general political discourse and imposed zero-sum positions on both sides. Silajdžić was not re-elected in 2010, and his party lost all seats in state Parliament at the 2014 general elections. He left the SBiH Party in 2010, and has not participated publicly in political life in BiH since.

Dodik, on the other hand, has been able to sustain and benefit electorally from the nationalist rhetoric in all subsequent elections. It is, however, important to note that his nationalist rhetoric came as a surprise to both local political actors, as well as the international community which carried a large part of responsibility for Dodik's political success. During their moderate years, Dodik's party SNSD was a long standing partner of the National Democratic Institute from Washington and other foreign political foundations, which provided training on campaigning, message and platform development, voter communication, etc. ("NDI," n.d.). On top of the acquired techniques to formulate a message and frame issues, Dodik's Government also sought help from professionals and signed a contract with a couple of lobbying and PR firms from the United States, which resulted in a carefully planned and very successfully delivered election strategy, as well as a lobbying campaign in Washington D.C. and Brussels. Although initially used to win the 2006 elections, over four years of the government mandate, this strategy turned into a more ambitious project of undermining the state of BiH and requesting more autonomy, and even independence of Republika Srpska. Dodik's rhetoric was carefully engineered to serve that goal, slowly crumbling the little trust that had been built in the first ten years following the Peace Agreement, as I explain in Chapter VI.

Given the fact that by the year 2006 most of the other parties from Republika Srpska had moderated their discourse compared to the first few years after the war, Dodik's radicalised campaign was not expected within the RS either. Nationalist extremism on the part of the primarily right-wing RS parties in the few years prior to 2006 was expressed more in terms of opposition to reforms and transfer of competencies to the State level, rather than as an outright policy towards RS secession and autonomy. That was hardly even a part of the political rhetoric, also due to the fact that the High Representative of the International Community in BiH (HRep) had been energetically removing officials on the grounds of any serious undermining of the Dayton Peace Agreement in the period between 1997 and 2005. As the influence of the international community declined in 2005, Dodik saw this as an opportunity to revive the

nationalist and secessionist rhetoric and deployed it in a successful attempt to mobilise voters on the grounds of extremism and fear of others. His cause was helped by ten years of the international community's deliberate circumventing of nationalist parties in RS, which had weakened the strongest Serb Democratic Party (SDS), and also open international support for Dodik himself. Also, by 2006 the then leadership of SDS had started to openly favour pragmatic policies of moving on with practical and technical reforms required by the EU, including their support for the 'April package' that would have made the State more functional. Dodik used this fact heavily against the SDS while radicalising the RS electorate and opened the way for a revived opposition to the State. His rhetoric and the promise of organising a referendum on RS's independence in 2018, have polarised society at levels unimaginable even in 1995.

Low Levels of Trust

The second substantive dimension of democratic quality that is analysed in Chapter VI is trust. The weakening of the institutions, the intensification of nationalist rhetoric, and the reform stalemate that was thus created, generated a sense of despair and apathy among the population since 2006, which created unprecedented social fault-lines manifested in declining levels of trust. A Report conducted by the United Nations Development Programme (UNDP) in 2009 "The Ties that Bind" suggests that relations between the various ethnic groups in BiH had deteriorated since 2006, which they partly attribute to the rise of the nationalist rhetoric of Dodik and Silajdžić. The Survey showed that the Interethnic Stability Index was down on the previous reporting period, and attributes this fall to the worsening political situation in the country, and the long-standing failure of political negotiations between the political leaders, principally on constitutional change. Furthermore, the Report states that "there is little bridging or linking social capital. The resulting social fabric is characterised by fragmentation and segmentation rather than cohesion and solidarity" (UNDP, 2009b, p. 10).

Other reports corroborate those findings. The UNDP National Human Development Report for 2009 examines the very low levels of social trust in BiH, and finds that very few interviewees feel that most people can be trusted. Although as they argue, it would be expected that the level of trust would increase over time and as the community moved further away from the past conflict, it is clearly the case that the level of trust had fallen as the political situation deteriorated after 2006. In support of that argument, the UNDP's Early Warning Survey conducted on the basis of the results of the public opinion poll in November 2009, shows that

there have been very few positive developments in BiH in terms of political life and in how the domestic political process is unfolding. In actual fact, they state that the opposite is the case as the political crisis has deepened further (UNDP, 2009a, p. 6). Most of this research, whether looking at institutions or individuals, is essentially concerned with inter-ethnic trust. The inter-ethnic trust that was gradually built after the conflict in BiH was fragile to begin with, but a number of institutional mechanisms were put in place in order to safeguard those efforts. However, the power-sharing mechanisms, which rely so heavily on ethnic consensus, were dependent on a high degree of political will in order to function fully. As mentioned in previous sections, whenever political will was absent, institutional mechanisms became powerless in protecting inter-ethnic trust against the rhetoric that deliberately sought to undermine it.

In the same manner in which trust can be viewed from a cultural and institutional perspective, distrust can also be viewed using those two perspectives. Mishler and Rose (2001, p. 37) hypothesise that four factors influence varying degrees of trust, including national culture, individual socialisation, government performance, and individual evaluations. Several studies which look into the case of BiH take a cultural perspective, basing it on primordialist theories of ancient hatreds, and assume that the legacy of distrust in BiH is eternal and precedes the conflict. However, the majority of literature I reviewed not only dismisses such notions, but even shows that the level of distrust among people with personal experience of the conflict is not as high as expected. Ward et al. (2007) link trust to peace, which can be constructed or is more of 'a natural societal trait'. They argue that, conversely, conflict destroys trust, which is why their research focuses on factors that are likely to bring about or promote trust, in particular inter-ethnic trust in post-conflict societies. One important finding they point to is that although the overall level of trust in BiH is low, it is clear that "inter-ethnic trust is not uniformly negative, as suggested by some" (Ward et al., 2007, p. 65).

Pickering (2006, p. 85) examines the development of social routes for resisting interethnic conflict and focuses on how ordinary people react to the policies of elites. In line with the findings of the UNDP survey, Pickering also finds that people struggle with "raw wartime memories, propaganda, impoverishment, ... an outflow of intellectuals, and nationalist rule" (2006, p. 87). Research conducted by Whitt and Wilson (2007) "lends further credence to the argument that the roots of the Bosnian conflict are not derived from widespread and enduring ethnic hatred. Instead, our results underscore the importance of institutional and entrepreneurial explanations of the Bosnian conflict and for understanding post-war divisions

in Bosnian society” (p. 666). Although different studies reviewed in this section point to a variety of underlying socio-economic and cultural conditions that contributed to the decline of trust, they mostly miss out on elite-agency as a key factor in explaining why the underlying causes of distrust were triggered to cause such a sharp decline since 2006 elections. My argument is that the sudden decline in trust, so long after peace was signed, can only be fully explained by looking at deliberate attempts of political elites to destroy generalised trust in BiH by particularising the trust within ethnic communities, as I will support with evidence used in Chapter VI.

Conclusion

The purpose of this Chapter was to contextualise democracy and democratisation in BiH through a discussion of social and political fault-lines. I have argued that the fault-lines which have been created since the late 1980s provide explanations of the endurance of nationalism, and its peculiar relationship with democracy in BiH. Understanding the exceptionalism of that relationship is crucial to explaining the nature of resistance to democratic consolidation, which the EU faces in BiH. In Chapters IV, VI and VII, I focus more on the EU’s own shortcomings in overcoming those obstacles. However, I needed to emphasise through this Chapter the magnitude of structural as well as ideational obstacles to democratic consolidation. Also important for my arguments in subsequent Chapters is the understanding of the tenacity of endeavours that create new, and strengthen the existing fault-lines in democracy. I will make a strong argument in the next Chapter that those endeavours are primarily results of deliberate elite-agency, but also reflections of the restrictive political context.

As I have emphasised in this Chapter, in order to explain the role of the international players in BiH, and the EU in particular, it is important to fully comprehend the philosophy behind the ‘peace-making’ aspect of the DPA. As I have reiterated already, that philosophy was to keep the three groups apart so as not to go to war again, and to give each as much as possible of the political rights they desired in order to stop fighting, even if at the expense of the political rights of minorities. This false assumption was adopted by the EU as the main state- and democracy-builder in BiH, which undermined any serious prospects of strengthening and consolidating democracy. The EU thus consoled itself with enabling inter-ethnic cooperation through the power-sharing institutions, hoping that it would eventually create progress. However, as I argued in this Chapter, the ethnic power-sharing to a large degree legitimised the

ethnic partition of a complex and heterogeneous society (Campbell, 1998). Under the pressure to achieve peace and given the complex nature of the conflict, the results were imperfect, comprising many fault-lines, but resembling a ‘permanent ceasefire’ (Chivvis, 2010).

Implicit to this philosophy are many structural fault-lines, to which I return in the next Chapter in more detail. First and foremost, the Dayton Peace Agreement built discrimination into the voting system, which the international community and the EU tolerated until 2009. However, the partial judgement by the European Court of Human Rights in the ‘Sejdić/Finci’ case in 2009 demanded that this system would be changed. The judgement confirmed that ethnicity-based exclusion was introduced in Dayton in the pursuit of the restoration of peace, but that the time had come to change it (“Case of Sejdić and Finci v. Bosnia and Herzegovina,” 2009, para. 45). Part and parcel of that discriminatory system is the preoccupation with representation of ‘constituent peoples’, which instilled institutional mechanisms of discrimination.

As stated, I put strong emphasis on the role of the nationalist elites in crumbling democracy in BiH, and for that purpose it was important to explain how the nationalist legacies were created and sustained through the electoral system in BiH. The new electoral system was applied for the first time in 1996, just months after peace was signed, allowing the war-time ethnic elites to re-enter the new political system. Ironically, the elections were based on the new voting rules created by those same elites in Dayton under international supervision. Entrenching the political elites of the time so firmly and so early on into the political system ensured that the war-time legacies gained legitimacy and imposed even more firmly their visions of society, crowding out any political ideas that would advocate democratisation. This was particularly important for the endurance of nationalism, as most of the re-elected parties were the nationalist parties which were elected in the 1991 elections. Their appetite for nationalism had intensified and strengthened after the war, exacerbated by the atrocities committed during the war. The fear of other ethnic groups had grown multi-fold after the war, creating fertile ground for emotional manipulation by the nationalist elites, and resulting in low levels of trust in the society.

The international supervision of the implementation of the Peace Agreement, the heavy interventions of the international community in state-building, and demands created by the EU and NATO accession, held this system together for a while, and the country made significant

progress between 2001 and 2006. However, deterioration of the political situation since 2006 has placed nationalism back at the centre of politics and public life in BiH ever since. The society has polarised even further, while there have been successions of futile governments which jumped from one crisis to another, creating a sense of permanent crisis. Although the EU signed the Stabilisation and Association Agreement (SAA) with BiH in 2008, following the EU's extensive concessions on some of the conditionality as discussed in Chapter IV, the SAA only came into force in 2015. The reform stalemate that has marked the period in-between has generated a widespread sense of apathy among the population, which resorted to extensive support for nationalist parties again in the 2014 General Elections.

Democracy and democratisation in BiH have been developing in such an adversarial and divisive context, burdened by the fault-lines that lead to an intensified disintegration of the society. In the following Chapters, I argue that those fault-lines are the cause of a decline in democracy in BiH, which can be described as “defective”, ‘illiberal’, or ‘pseudo-democracy’. The fault-lines which thus undermine democracy include ethnic polarisation, weak and shallow institutions, a lack of legitimacy, a discriminatory electoral system, nationalistic political culture, and low levels of trust. The EU on its part fails to account for all the fault-lines in a hostile domestic context that have either deepened, or have been newly created since 2006, all the while the EU remained the chief external democratiser in BiH.

Chapter III – Democracy and Democratisation

Introduction

This thesis exposes the limits of the EU normative power in democratising BiH as a post-conflict society. In the next Chapter, I look at the ineffectiveness of the EU conditionality in BiH, particularly in regards to the EU's own limitations and shortcomings in promoting democratic values. In this Chapter, I continue discussion about ways in which the nature of democracy and democratisation in BiH thwart the EU's efforts.

My first argument is related to the nature of obstacles to EU democratisation in BiH. Correctly assessing the nature of democracy in BiH is important for understanding different obstacles which the EU faces in promoting democracy. As discussed in the previous Chapter, this restrictive domestic context poses structural/institutional, as well as ideational impediments to the spread of EU norms, which is why the EU's 'cookie-cutter approach' that was applied elsewhere in the region and in CEE, is not contributing to substantive democracy in BiH. In the next Chapter, I discuss the EU's procedural democratisation, and argue that it undermines substantive democracy in BiH. In this Chapter, I address the second part of that argument by explaining what substantive democracy represents, and which aspects of substantive democracy are side-lined by the focus on procedural democracy. That task is even more demanding given my preference for understanding democracy as an open-ended, highly contextualised process (Whitehead, 2002). That is why I do not entirely reject the procedural and structural aspects of democratisation; on the contrary, they are accounted for in order to determine how they are mutually constituted with dimensions of substantive democracy. That choice determines my use of a constructivist approach in designing a framework of analysis in Chapter V.

My second argument in this Chapter is that values and norms entrenched in BiH society (ethnic division, predominance of collective over individual rights, nationalism, etc.) are contradictory and incompatible with the normative basis of the EU (democracy, rule of law, social justice and respect for human rights). In the empirical Chapters I show how that contradiction is manifested in practice. In this Chapter, however, I begin to lay out the basics of the clash of values that exists between BiH and the EU in order to show that EU values may not be appealing enough if they jeopardise the status-quo. Relying on some basic assumptions

presented in the previous Chapter, my central argument in this Chapter is that ethnic nationalism is a barrier to salience of EU democratic norms, and an ideational obstacle to democratisation.

My third argument in this Chapter is that BiH continues to be an unconsolidated democracy that contains features of different models of unsuccessful democracies that I describe as an eclectically unconsolidated democracy. Democratic consolidation of BiH is still under construction, and has not produced democratic quality.

I resort to interpretativist approaches, which do not predict the outcome of democratisation in deterministic terms, but see it as open-ended and dependent on the context (Whitehead, 2002; Diamond, 1999).¹⁵ Democracy can be weakened or even diminish “not merely through the breakdown of formal institutions but also through the more insidious processes of decay” (1999, p. 19). This ‘insidious decay’ is a neglected but important feature of new democracies, and extremely important for recognising flaws in the quality of democracy in BiH. However, apart from the institutional decay, I am also interested in the decay which results from elite-agency. In Chapter V I explain the use of a related, but more elite-centred criteria of ‘subversions’ of democracy, which can explain reversals to undemocratic practices.

In the remainder of this Chapter, I proceed by discussing the nature of democracy in BiH from the perspective of definitions of democracy, and make a case that BiH is a democracy in procedural, but not in a substantive sense. In the second part of this Chapter, I describe BiH as an unconsolidated democracy that contains features of many different models of unsuccessful democratisations. In the third part of the Chapter, I describe BiH as an ‘eclectically unconsolidated democracy’, and explain how I intend to analyse it as such.

Between Procedural and Substantive Definitions of Democracy

As I argue throughout this thesis, BiH is not an example of an emerging democracy, which the EU was involved with in Central and Eastern Europe. BiH is a case that shows reversals to undemocratic practices, and the centrifugal forces which drive EU norms away from democracy in BiH. The EU lacks that understanding and applies its misplaced ‘cookie-cutter approach’, which undermines substantive democracy in BiH. In order to be able to

¹⁵ Interpretativist approaches see democratisation as an open-ended process, which is seen as dynamic, complex and not linear. This approach abandons the quest for a universally applicable concept and emphasises the importance of a context.

underline the important difference between ‘procedural’ and ‘substantive’ democracy in BiH, I resort to several definitions of democracy.

There can be no single definition of democracy, or as Dahl (2000) put it: “democracy has been discussed off and on for about twenty-five hundred years, enough time to provide a tidy set of ideas about democracy on which everyone, or nearly everyone, could agree. For better or for worse, this is not the case” (pp. 2–3). However, I am more interested in individual elements of democracy, procedural and substantive, rather than the universality of the concept. As I will show in this section, BiH fulfils the main procedural requirements of a democracy, but its democracy is short on substance. Defining correctly the type of democracy in BiH serves the purpose of describing the restrictive domestic context, and the nature of impediments to EU norms. It shows that obstacles to democracy are not just structural, but are also ideational and strongly embedded in the type of unconsolidated democracy that BiH has become. In the following sections I discuss some of the elements of democracy which are undermined in BiH, including political competition, freedom of speech, free media, civil society and the freedom to form associations, equality and trust, and the role of informal structures.

Democracy in BiH fits the minimalist definition of democracy, which requires institutional arrangements enabling political competition (Schumpeter, 1962, p. 242), or elements of opposition and participation (Przeworski, 2000, pp. 50–51). Political competition was enabled as soon as the first general elections in BiH as an independent state, which were held in 1996. The overall winning parties were the same parties that won in 1991, the nationalist parties claiming to represent the interests of respective ethnic groups, Party for Democratic Action (SDA), Croat Democratic Union (HDZ), and Serb Democratic Party (SDS). Most of the war-time leaders were re-elected into the new state institutions. The subsequent general elections were held in 1998, 2000, 2002, 2006, 2010, and 2014. Although political competition is enabled, the fact is that nationalist parties held majorities ever since, with the exception of the elections in 2000 and 2010, when some opposition parties formed governments at different levels for a short time, and with the help of nationalist parties in the second instance.

In the RS, political competition was always problematic, existing only in form, but not in substance. Although there have been frequent changes of political parties in government before 2006, most of them won on the basis of nationalist rhetoric, rather than on programmatic issues. As I discuss in Chapter VI, the choice of nationalist rhetoric for parties in the RS is a

matter of pragmatism that ensures the winning of votes. The best example is the Party of Independent Social Democrats (SNSD) under the leadership of Milorad Dodik, which managed to form a majority government for the first time in 1998 based on an economic agenda, but soon lost elections, and decided to deploy strong nationalist narratives in all elections since 2006 in order to secure stable governments. A somewhat reformed SDS party returned to the RS Government only briefly between 2005-2006, after which SNSD took over power again in all subsequent elections including those held in 2014. Political competition in BiH thus remains only at procedural level, fulfilling the basic requirement of holding regular elections and occasionally changing the government. However, when looking at substance of political competition that is dominated by nationalist narratives, the rhetoric and policies thus generated show how elite-agency and nationalist values actually thwart political competition as a democratic norm.

Apart from the basic institutional arrangements enabling competition, BiH also fulfils the procedural requirements on opposition and participation. In 2014, there were one hundred and eighty three political parties registered in Bosnia and Herzegovina, which is more than in any other country in the region. Although there is no recent data about the registered number of civil society organisations, according to the last such study conducted in 2008, that number might be as high as 12,000 (Žeravčić, 2008). However, from a substantive perspective, both political competition and participation are very weak. Weaknesses in civil society in BiH are usually attributed to low-capacity, poor organisation and weak articulation of interests inside the civil society. However, such a view does not take into account the enormous tenacity of the elites and their capacity to resist pressures from civil society organisations (Diamandouros & Larrabee, 2000, p. 31). According to Diamandouros and Larrabee, this capacity to resist is particularly rooted in the dominant pattern of state-society relations in South-East Europe, where the 'highly personalised and unmediated exercise of power' weaken the role of formal structures. Civil society plays an indispensable role during the consolidation, in creation of democratic political culture, in setting the norms of democratic behaviour, and in sustaining democracy. I argue in Chapters VI and VII that the absence of such influences are one of the reasons why democratic norms have not taken root in BiH. By being an 'elite-packed' democracy (L. Diamond, 1999), BiH suffers from the fact that the political parties have monopolised the political process and robbed civil society of their autonomy and substantive influence (1999, p. 97). In Chapter VI, I take into account the role of elites in resisting pressures from civil society, as well as the historical and cultural legacies that determine the patterns of

state-society relations, which are highly personalised and undermine the role of formal structures.

In order to highlight the ideational impediments to the EU's promotion of democracy in BiH, I also look into definitions which include some elements of quality of democracy. One such definition is provided by Dahl (1962), who defines "polyarchies" as the polities and social organisations at or above the threshold identified by seven basic elements. Of those, BiH fulfils partly two: elected officials do exercise control over governmental decisions; and elected officials are chosen and removed in frequent, fair and free elections. However, it comes short on the condition requiring that all adults have the right to vote in elections. It will be recalled from the previous Chapter, that there are constitutional restrictions in place in regards to the choice of candidates in elections.

There are restrictions in regards to the fourth element too, because not all adults have the right to run for public office, and this discrimination is at the core of the ECHR's ruling in the Sejdić/Finci case. The most prominent constitutional mechanism that is based on exclusion is the election of members of BiH Presidency. The Serb member of Presidency can only be elected by voters registered in Republika Srpska.¹⁶ This means that Croats and Bosniacs and all others living in Republika Srpska can in practice only elect a Serb member of Presidency and cannot themselves be elected, while Serbs living in Federation of BiH cannot elect a Serb or be themselves elected for Presidency, but need to choose between Croat and Bosniac candidates. Minorities and those that do not declare themselves as belonging to any of the three ethnic groups are not at all allowed to run for the Presidency, neither are they represented in the House of Peoples. This also includes individuals who come from so called 'mixed marriages', i.e. whose parents belong to two different ethnic groups. This case is analysed as the main empirical example in Chapter VII.

In regards to the remaining three elements, it can be said that there are mechanisms in place to fulfil those conditions, but there is a question as to how effective or efficient they are. The freedom of expression is guaranteed in the Constitution,¹⁷ but that freedom is not "effectively enforced" as required by Dahl's definition. Although freedom of expression ranks very high as an EU norm, over the past few years it has been seriously jeopardised in Republika

¹⁶ The state Presidency is composed of three members, each from one ethnic group/constituent peoples.

¹⁷ The General Framework for Peace, Annex IV – Constitution, Article II.3.h.

Srpska. This culminated in the RS Government's decision in early 2015 to criminalise social media postings that disrupt social order, display symbols, images, drawings or texts containing indecent, offensive or disturbing content or insult or engage in rude or insolent behaviour. The Law on Public Peace and Order was approved by the National Assembly of Republika Srpska in February 2015, which was condemned by a number of international organisations, including the EU and OSCE (OSCE, 2015). OSCE Representative on Freedom of the Media, Dunja Mijatović stated: "I am disappointed that so many local and international voices of concern were simply ignored - this new law paves way for legal restrictions to online free expression and free media. By including social media in the law, there is a danger that officials could interpret ill-defined terms to sanction and limit the free flow of information and free expression online." (OSCE, 2015).

The fifth element of a 'polyarchy' is that citizens have access to alternative sources of information that are not monopolised by the government, which is the case to some degree, but the new RS Law on Public Peace and Order might limit that access by putting restrictions on social media, which remain more independent than other electronic and print media. The public broadcasters and other media are "divided on ethno-territorial lines, reflecting divisions in the body politic. Attempts to operate a multi-ethnic, state-wide public broadcaster have been undermined by political obstruction, particularly from the Republika Srpska (RS) political elite. The RS president called for the state public broadcaster to be abolished in December 2011" (Bertelsmann Foundation, 2014, p. 10). It is important to note here that the Government of the RS regularly subsidises the private media in the amount of approximately three million Euros per year, without any transparent criteria ("Personal interview with Aleksandar Trifunović, BUKA Portal," 2015). This raises doubts about the impartiality of the private electronic media, while the public media remain under considerable control of the RS Government.

And finally, the citizens' right to form and join autonomous associations, including political associations, has also been threatened in the RS in 2015. Even though there is state-level and entity-level legislation regulating the work of Non-Governmental Organisations (NGOs), in May 2015, the RS Government decided to put into procedure a draft Law on Publicity of Work of Non-Profit Organisations. According to an independent analysis, the Law "discriminates against NGOs, it limits citizens' rights, undermines democracy and free society" ("BUKA analiza," 2015). It prohibits any action by non-governmental organisations intended to create public opinion for achieving political goals. The draft Law was withdrawn from the

agenda following strong rhetoric from the international community, and because of inadequate support among members of the RS National Assembly.

Schmitter and Karl (1991) supplement Dahl's seven 'procedural minimum' conditions for democracy with another two - popularly elected officials must be able to exercise their constitutional power without being subjected to overriding opposition from un-elected officials, and the polity must be self-governing, independent from some other political system. Although those conditions are formally fulfilled in BiH, both are undermined by the strong role of informal structures. A study that examined the relationship between formal and informal institutions concluded that there is "a mutually endogenous relationship between confidence in formal institutions and reliance on informal institutions" acknowledging also that there is "a substituting relationship between formal and informal institutions" (Efendic, Pugh, & Adnett, 2011, pp. 532–4). Another influential non-elected actor in public and political life are religious communities which "became key components of influential informal elite structures during the disintegration of Yugoslavia. Religious leaders continue to use their positions to shape political discourse and events in the country" (Bertelsmann Foundation, 2014, p. 7).

The examples in this section show that democracy in BiH poses a number of structural and ideational impediments to EU norms. I have used definitions of democracy in order to highlight the exceptional development of democracy in BiH, which defies procedural and substantive definitions. The nature and magnitude of impediments to democracy thus emphasised show that democracy in BiH has not consolidated.

Problems of Democratic Consolidation

I borrow the term 'consolidation of democracy' from different theories of transition. However, I reject the linearity of the transition approaches, and insist on understanding democracy as an open-ended, contextualised process. In this section I suggest that consolidation should be understood as a normative framework for analysis, rather than as a stage of democratic transition. In that sense, I seek to show the absence of substantive features of democracy through the assessment of consolidation of democracy in BiH, i.e. seeing consolidation as an outcome rather than as a process of democratisation.

In this section I come to the third argument presented in this Chapter, that unconsolidated democracies create unprecedented obstacles to the promotion of EU norms. As a democracy which is attempting to consolidate, BiH cannot be treated the same as emerging democracies. It should rather be looked upon as a case of reversal to undemocratic practices, which the EU is addressing adequately. In the next Chapter I return to the inadequacy of the EU's response to the challenges posed by an unconsolidated democracy. I first return to defining and describing BiH as an unconsolidated democracy.

Unconsolidated democracies. Diamond (1996) has argued that Huntington's (1993) third 'wave'¹⁸ of democratisation was 'drawing to a close', but was not complete. Democracies thus created have not consolidated, and many of them even show signs of possible democratic decline and regression to some 'old' practices. In this section I argue that democracy in BiH has some attributes of each of those unsuccessful democracies, which is why I prefer to call it an eclectically unconsolidated democracy. Calling such a democracy the right name is not only a matter of terminology. Labelling it correctly helps frame my arguments that the EU is not adequately addressing the nature of the problem in BiH. The main reason why I need to determine the nature and level of the failure to democratise BiH is to be more precise in assessing the underlying context in which defects occur, and defining the character of potential resistance to democratisation. Identifying the obstacles will further inform my discussion about appropriateness of democratisation policies, and measuring defects (or 'subversions', a term that I borrow and adopt) in Chapters V, VI and VII.

In the previous section I argued that BiH fulfils some of the basic criteria of a procedural democracy, but that it comes short of democratic substance. Diamond (1996, p. 21) considers electoral democracy to be one of the contemporary minimalist conceptions of democracy. The expansion and growing number of electoral democracies is in itself evidence of the superficial nature of the 'third-wave' democratisation and transitional theories (Diamond, 1999, p. 55). He argues that instead of a full regression to authoritarianism, the 'third wave' democracies are more likely to continue in the direction in which they have been developing, and the best that

¹⁸ Samuel Huntington (1993) describes the spread of democracy in terms of the 'three waves of democratisation' and attributes the regime changes in the last wave (1970s, 1980s) to multiple factors: deepening legitimacy problems of the authoritarian regimes; global economic growth, which raised living standards, level of education and urbanisation, which increased popular expectations and demand for regime change; changes in religious institutions, which found themselves in opposition to the authoritarian regimes; external factors, which promoted human rights and democratisation; geographic proximity and the 'snowballing effect' which encouraged the spread of democracy across national borders.

can be expected is their consolidation as mere electoral democracies, through legitimation and institutionalisation (Diamond, 1999, p. 22). Depending on the character and level of their failure to consolidate, the cases of unsuccessful democratisations can be labelled as delegative, illiberal, “defective” and pseudo-democracies.

Delegative democracies. Diamond (1999) argues that conditions which make electoral democracies shallow, unaccountable, and illiberal can be attributed to the weakness of political institutions. Democracies in which “the gap between democratic form and substance in the world is an institutional gap” are labelled as delegative democracies (Diamond, 1999, p. 34). The institutional gap between procedural and substantive democracy is of particular relevance to BiH, which suffers from the weakness of institutions that is a consequence of a number of factors. As described in the previous Chapter, the Dayton Peace Agreement created a limited number of institutions at state level, while coordination between different levels of government has been poor and inefficient. The internationally driven state-building process was intended to strengthen the existing institutions, and create new ones in line with the country’s needs and international commitments. Although some progress has been achieved and many new institutions created, the system as a whole remains shallow and weak.

The state has limited decision-making capacities, with the entities and national caucuses in the parliament able to paralyse decision-making process by extensive veto mechanisms built into the institutional structure (Bieber, 2011, p. 1788). Mechanisms of protection of ‘national interests’ are designed to provide protection only to constituent ethnic groups against majority decisions by others, and are numerous to the point of obscuring the decision-making process, as described in the previous Chapter. The extensive use of veto mechanisms, often inspired by a denial of the state’s competencies by entity representatives, or purely for the purpose of political obstruction, have impacted the flow of the decision-making process and ultimately the quality of legislation passed through a labyrinth of vetoes. The decision-making process in most cases is steered not in the direction of legislating the will of citizens, but in the direction of avoiding or overcoming the barriers placed by ethnic veto powers.

The Study of BiH Governance Structures notes that “much of the post-war ‘state-building’ process in BiH has been based on the principle of ‘institutional layering’, in which pre-war, wartime and post-war institutions have been allowed to coexist, with serious mandate and authority overlaps” (Foreign Policy Initiative BH, 2007, p. 52). The structural weakness of

institutions therefore stems from such a complex distribution of powers, the extensive use of veto mechanisms, and the unfinished process of state-building, which cumulatively qualify BiH as partly being a delegative democracy.

Pseudodemocracies. Lipset (1981), Linz (1996) and Diamond (1999) label ‘pseudodemocracies’ as those democracies which are less than minimally democratic but still not authoritarian. Diamond (1999) argues that the existence of formally democratic political institutions “masks the reality of authoritarian domination” (p. 15). This type includes semi-democracies, which are dominated by a single ruling party, which discourages opposition, denies it the right to compete for power, and regularly ‘wins massively’.

Although BiH as a multiparty electoral system is not a semi-democracy, it does contain some features which would partly qualify it as a pseudodemocracy. Some of those features have been discussed already and include the weakness of institutions, the existence and strong influence of informal structures, low participation, dominance of nationalist parties, and inefficient opposition. However, even more important for the arguments I make in Chapter VI is the element of “highly personalistic and poorly institutionalised” undemocratic dominance of the ruling party (L. Diamond et al., 1999, p. 16). This is not a prevailing feature in all of BiH, and political parties are internally institutionalised and democratic to different degrees. Some parties have regular internal elections, whereas some hold party elections just for the sake of form. In most cases, the party leaderships have been in place for ten years or more. The current president of the HDZ, Dragan Čović was elected in 2005, the late Sulejman Tihić was president of SDA between 2001 and 2014, Milorad Dodik has been president of SNSD since its formation in 1996. Zlatko Lagumdžija was the president of SDP between 1997 and 2014, Mladen Bosić has been president of SDS since 2006, and Fahrudin Radončić, the president of one of the youngest parties SBB (Party for Better Future), has presided over it since 2009 without any chance of contestation. As a result of such protracted and uncontested party leaderships, the parties had become highly personalistic, and this feature of the main political parties in the country has reflected on the style of politics and governance as well.

There are some variations between individual parties and their leaders, but the only example of undemocratic dominance of the ruling party is that of SNSD and Milorad Dodik in Republika Srpska. This is not a feature unique to the RS, but unique to this particular party. Other political parties which governed in the RS between 2001 and 2006, primarily SDS and

PDP, had started to make some progress in democratising the country and making the state institutions stronger and more functional. During those five years, those political parties had participated in the most intensive period of state-building, which resulted in a series of successful reforms, such as the unification of armies and formation of a single Ministry of Defence at state level, unification of indirect tax systems, unification of intelligence agencies, establishment of a single system of citizens records, etc. Reforms carried out in that period enabled the initiation of the Stabilisation and Association Agreement with the EU. However, since Milorad Dodik won power in 2006, the RS authorities have blocked major reforms from the EU agenda, while the political situation in the RS itself has started to feature many illiberal practices, some of which I have mentioned already. In Chapter VI, I provide additional evidence which shows how Dodik uses nationalistic narratives and undemocratic practices primarily to secure a strong grip on power and preserve his dominance in the RS, but also to counteract the EU's efforts to strengthen democracy in the country. In that Chapter I focus more on his 'personalistic' style of government, which is a strong feature of a pseudodemocracy.

Illiberal democracies. 'Illiberal' democracies are 'third-wave' democracies where resurgence to authoritarian practices is present and evident. Their institutions are weak, hollow and unstable, but they still abide by the basic criteria for being an electoral democracy. According to Diamond (1999, p. 55), two important 'empirical gaps' exist, between liberal democracy and electoral democracy, and between liberal democracy and 'pseudodemocracies'. The difference between illiberal and pseudodemocracies is that in the latter the election system is also hollow and weak.

Although slightly further away from my case study and not so relevant for my empirical Chapters, this concept is nonetheless useful as it points to the weaknesses of the electoral system, which is the subject of my Chapter on political equality and participation. When it comes to the 'resurgence to authoritarian practices', this has become a defining feature of Dodik's governance in Republika Srpska, especially since 2010 when his majority strengthened and he was elected as the President of the RS with overwhelming majority. His rule has since been described as '*demokratura*' (Kebo, 2013) – a compound word consisting of *demokratija* (democracy) and *diktatura* (dictatorship), which designates his style of government as short of a democracy, but not a fully-fledged dictatorship. I depict Dodik's specific undemocratic practices in Chapter VI, which include frequent verbal attacks and humiliations of journalists, sexist, racist and chauvinistic insults, curses and threats to journalists ("History of Dodik's

‘Media Freedoms,’” 2015), accusations of NGOs receiving money from abroad in order to destabilise the RS (“The era of Dodik ends?,” 2013), etc. This is once again a feature peculiar to Dodik's style of government, and is not widespread in the country. However, because of its institutional weaknesses the state is powerless to prevent or sanction undemocratic behaviour and illiberal practices, and Dodik’s policies and behaviour have to a large degree shaped the content and style of politics in Bosnia since 2006.

‘defective’ democracies. Merkel (2004) states that the paradigm ‘electoral democracy’ insufficiently describes the stage of development of democracy in a country, because it falsely implies consolidation of democracy. As such, it misleads and narrows down discussions on democratic development to a mere account of existence of free elections (2004, p. 33). His concept of ‘embedded democracies’ consists of five ‘partial regimes’: electoral regime, political rights, civil rights, horizontal accountability, and effective power to govern. Absence of any elements of ‘partial’ regimes, or a lack of interdependence between individual partial regimes, indicates that such democracy might be “‘defective’”. Particularly relevant for BiH is Merkel’s argument that “an emergence of (ethnically) exclusive and illiberal democracies is more probable if social capital is accumulated along ethnic and religious lines” - the more society is organised “along ethnic cleavages”, the more it contributes to “political polarisation” and ultimately, to “‘defective’” democratisation (2004, p. 53). A democracy is considered to be embedded if it is capable of “coping with the structural conditions of modern rule”, i.e. if it is able to manage complex internal conditions and challenging external environments (2004, p. 36). Practically, an embedded democracy should not be vulnerable to destabilising internal or external conditions. In this section I show to which extent democracy in BiH is not able to cope with the internal and external challenges, which has resulted in a series of government crisis over the past ten years. As the following examples show, between 2004 and 2015, there has been a government crisis every year, which paralysed government activities for months and even years. Examples presented in this section show to which degree democracy in BiH is vulnerable to intentional undermining of its functionality.

In December 2004, then Prime Minister of the RS, Dragan Mikerević, as well as a couple of ministers from the RS in the BiH Council of Ministers (CoM) resigned following a decision of the High Representative at the time, Paddy Ashdown, to remove six RS officials and freeze their assets on account of obstruction of the defence and police reform, and a lack of cooperation with the Hague War Crimes Tribunal (“Put postdejtonske BiH ka Briselu,” 2004). This crisis

stretched through to 2005, when the two ministers in the CoM eventually renounced their resignations. In the following year, between May and June 2006, members of the House of Representatives of BiH Parliament from Republika Srpska boycotted the work of the Parliament by not attending its sessions because the CoM had not met their request to form a Commission for investigation of atrocities committed in Sarajevo between 1992 and 1995 (“Poslanici iz RS-a ni danas nisu došli na sjednicu predstavničkog doma Parlamenta BiH,” 2006).

In 2007, the then High Representative, Miroslav Lajčak, imposed changes to the Law on Council of Ministers and the Rules of Procedures of BiH House of Representatives, which would stop government boycotts by absenteeism that triggered a resignation of the Chairman of the CoM at the time, Nikola Špirić, and another months-long crisis of the government (“Špirić,” 2007). Most of the year 2008 was marked by a political crisis, which sparked after Dodik proposed that the implementation of the police reforms be continued without the SDA, whose leader, Sulejman Tihić, rejected the earlier agreed upon declaration regarding the police reform (“Bosnia descends into fresh political crisis - - on,” 2008). The crisis aggravated after Dodik intensified his campaign for the autonomy and secession of the RS, leading some analysts to suspect the renewed threats of violence and conflicts (Bilefsky, 2008).

Next year, in February 2009, the Bosnian Serb leaders again threatened to pull out of state institutions and threatened with requests for the RS independence, after the country’s state police agency sent a report to the State Prosecutor’s Office with allegations against Dodik on the account of alleged corruption, fraud and misuse of finances involving several important government contracts, including a \$146 million contract for the government building in Banja Luka (Bilefsky, 2009). Formation of the FBiH Government and BiH Council of Ministers following the 2010 General Elections took over a year, slowing down all government activity in that period. The situation was exacerbated by a decision of the Central Election Commission, which declared the election of the President of FBiH, and his subsequent decisions that included appointment of the government, as illegal. The High Representative, Valentin Inzko, intervened and suspended the two rulings until the Constitutional Court of the FBiH responded to the previous requests for their review, which enabled the formation of FBiH Government and avoided a legal crisis that would have been caused by a legal uncertainty inflicted by the Central Election Commission (OHR, 2011).

However, that government too was riddled with uncertainties. The frequent changes of coalition partners (first the removal of SDA from the government in 2013, and then also of SBB in early 2014), a lack of agreement on the key issues on the government's agenda such as budget adoption and BiH Law on Residence, and repeated calls for the RS independence, caused a series of crises between 2012 and 2014, paralysing government institutions for weeks and months. The ensuing government had a similar fate. The FBiH Government which was formed after the 2014 General Elections was short-lived, and it entered a crisis only one month after its formation that has resulted in ministerial resignations and change of coalition partners.

Boycotts continued in 2015 as well. The SNSD Members of Parliament in the BiH House of Representatives have walked out of every session of the Parliament since January 2015, after their refusal to attend sessions chaired by SDA representative, Šefik Džaferović, who was reported as allegedly being involved or having information about crimes committed against Serbs during the war ("Napuštanjem sjednice Parlamentarne skupštine nije ugroženo entitetsko glasanje," 2015). In March 2015, the BiH Office of the Prosecutor declared that those allegations were unfounded and there were no legal grounds for investigation, but SNSD continued to boycott sessions of the Parliament nonetheless ("Tužilaštvo BiH odbacilo optužbe protiv Džaferovića," 2015).

Taking into account all evidence presented in this section, democracy in BiH can be characterised as having weak and hollow institutions, strong informal structures of power, highly personalistic policies dominated by political elites, a weak and unstable electoral system, inability of the system to manage complex internal conditions and challenging external environments, a decision-making system dislocated outside formal institutions, social capital accumulated along ethnic cleavages resulting in political and social polarisation, etc. Given my claim that individual features of each of the four concepts of unsuccessful democratisations are present and evident in the case of BiH democratisation, democracy thus described can be labelled as eclectically unconsolidated.

An Eclectically Unconsolidated Democracy

I decide to call such democracy eclectic because its dysfunctionality is derived from a broad and diverse range of sources. The compilation of the features which make it dysfunctional and unconsolidated can be found in different models of unsuccessful democratisations, which

are not necessarily related, they are unpredictable in terms of their scale and presence in different stages of democratisation process, and provide little grounds for determining modes of causality and consistency. In other words, I see democracy in BiH as eclectic because it is inconsistently and sporadically unsuccessful, while remaining highly dysfunctional.

Analysing an eclectically unconsolidated democracy. In order to be able to assess the nature of obstacles which BiH as an unconsolidated democracy poses for the spread of EU norms, I need to identify specific variables which determine the nature and level of the failure to democratise BiH, define the underlying context in which defects occur, and define the character of potential resistance to democratisation. In Chapter V, I introduce the notion of ‘subversions’ of democracy, which I consider to be important criteria for measuring the quality of democracy. As mentioned earlier, I look at consolidation as an outcome rather than as a process of democratisation, and as a “behavioural and attitudinal embrace of democratic principles and methods by both elites and masses” (L. J. Diamond, 2002, p. 20). It is a concept which describes a deeper and more authentic democracy, which I borrow as a key criterion for assessing the level of democratic consolidation in BiH.

Conclusion

In this Chapter, I have looked at the peculiarity of democracy and democratisation in BiH in order to lay out the basic features of the context, actors and domestic norms, which the EU is trying to influence and change by acting as a normative power. A key to my argument that the EU is not able to spread democratic norms in BiH is an understanding of BiH as an exceptional case with characteristics that individually, and combined, present extraordinary impediments to EU norms. The key underlying conditions understated or neglected by the EU in that process have been: the exclusive electoral system, a complex and crippling decision-making system that puts ethnicity at its core, the social capital accumulated along ethnic lines, and nationalism as the dominant political platform, ideology and political *raison d’etre*.

In this chapter I made three core arguments: first, that the restrictive domestic context poses structural and ideational impediments to the spread of EU norms; second, that values and norms existing in BiH society are incompatible with the normative basis of the EU; and third, that BiH is an ‘eclectically unconsolidated democracy’. In the next Chapter I will show that the EU as the main external democratiser in BiH is ill-prepared to face the challenges created by

internal divisions in BiH, the overwhelming ethnic rationale and dominance of nationalism on politics and society, while relying on weak government institutions as a key partner in that endeavour.

At the core of the EU's misplaced approach to BiH is the lack of understanding of the key problems which have hampered democratisation so far. The disintegrative nature of the entire government system in BiH is incompatible with the integrative nature of the EU accession process. This restrictive context is delineated by both structural/institutional limits, as well as substantive/ideational obstacles, which are threatened by the EU's democratic norms. Furthermore, the EU-sponsored democratisation is compromised by nationalism as a barrier to salience of EU norms and as an ideational obstacle to democracy. The EU acts as if the government system in BiH is devoid of nationalism, while, in fact, nationalism is at the centre of constitution, the power-sharing arrangement, government structures, politics and democracy in BiH. Nationalism in BiH has been institutionalised through the constitutional structure and the power-sharing arrangement, as I discussed in Chapter II.

Based on the evidence of unsuccessful democratisation in BiH, another assumption can be made, which I will discuss in the next Chapter. External democratisation is often considered imperative during the initial or early stages in a country's break-up from authoritarian rule. Such thinking assumes that democratisation proceeded successfully on its own terms after that. The lack of such linearity of democratisation in the case of BiH also makes it an exceptional case. In the early years following the war, BiH was under three parallel processes: state-building, post-war recovery, and democratisation, which were heavily assisted by international actors. When the EU assumed the dual role of a state-builder and external democratizer, it based its approach on a false premise that those processes would continue routinely, without external intervention. This wrong presumption derailed EU democratisation efforts in the direction of superficial procedural requirements, while the core problems of BiH dysfunctionality as democracy remain. The EU also wrongly assumes that BiH elites would make efforts to cooperate in that endeavour, and neglect the deliberate and insidious decay of democracy that can be largely attributed to elite-agency. Much of that decay has developed during the EU's mandate as the chief democratizer in the country, which is why the EU partly bears the responsibility for the failing democratisation in BiH.

Relying on the experience of democratising the countries of Central and Eastern Europe, the EU ignores the nature of democracy in BiH. The inflexible integration agenda obfuscates the EU's view of a need to democratise the country in a substantive sense before it is capable and ready for the accession process. This leads it to apply the procedural instruments of norm diffusion, which are not effective in BiH, while its political conditionality is inconsistent and sporadically used. In this Chapter, I laid out the contours of the contradiction and clash of normative frameworks between BiH and the EU. In Chapters VI and VII, I present further empirical evidence to support this claim, while in the next Chapter I make a case that the EU's focus on procedural democratisation distracts it away from the substantive elements of democracy.

Another important development discussed in this Chapter is that democratisation in BiH was not a result of a long historical struggle, but rather it is an assumed process that followed after the Peace Agreement was signed, which set the new rules of the game. The Peace Agreement itself created an intrinsic link between democratisation and nationalism in which democratisation conceals the destructive effects of nationalism. Those processes are masked by the rhetoric that is identical for both democratisation and ethnic homogenisation, thus making it more difficult to discern one process from another. What the EU perceives to be a stalemate in procedural democratisation is in fact intensification of the decay of substantive democracy induced by the expansion of nationalism into the spheres of political life where democracy should reside.

Chapter IV – the EU as a Normative Power

Introduction

This chapter explores the limitations of the EU as an actor in the context of Bosnia and Herzegovina. I take the position that the EU is an actor, and define it as an independent entity with its own identity and interests, decision-making powers, and capabilities to construct and perform that identity, and pursue its interests internally and externally.¹⁹ In this Chapter I look at the EU as an actor through the theoretical framework on EU conditionality in BiH in order to identify factors hindering compliance with EU norms. In the empirical chapters I assess specific mechanisms of norm diffusion, as well as contextual variables affecting compliance. Throughout this thesis I argue against explanations which support the application of EU conditionality in the context of BiH.

External democratisation has been extensively discussed within the framework of linkage to the West and Western leverage, which are considered as most effective when combined (Levitsky & Way, 2005, p. 21)²⁰. However, those explanations are related mainly to early democratisations, which followed after liberation from an authoritarian regime. As I discussed in more detail in Chapter II, the most intensive period of democratisation in BiH followed after a violent conflict, and it cannot be treated as an emerging democracy. That is why twenty five years since the first multi-party democratic elections were held in the country, the EU-sponsored democratisation can hardly be explained in terms of early democratisation efforts that could rely on linkage and leverage. Although Levitsky and Way see the EU enlargement as an exception to the ‘blunt’ political conditionality unsuccessfully applied elsewhere, I argue that the case of democratisation in BiH shows many shortcomings of the EU enlargement as a framework for democratisation in post-conflict societies (2005, p. 22). Strong linkage and leverage with the EU are evident in BiH, but I believe they are ineffective due to

¹⁹ Whether the EU is an actor is subject to many debates and opposing views. One view is that the “EU is neither a state nor non-state actor” (Ginsberg, 1999, p. 432). Another view is that the EU is at the same time an actor, a process and a project (Manners & Lucarelli, 2006, p. 7). The EU’s actorness can be defined using institutional (White, 1999; Carlsnaes, Sjørnsen, & White, 2004; Ginsberg, 1999), functional (Schmitter & Karl, 1991) and synthetic explanations (Ginsberg, 1999; Gunnar Sjöstedt, 1998; Allen and Smith, 1998).

²⁰ Leverage is defined as governments’ vulnerability to external pressure, i.e. elite-based influences by external actors. Linkage is defined as the density of a country’s ties to Western actors, i.e. bottom-up connections through actors other than the elites. (Levitsky & Way, 2014, p. 21)

the constraints posed by domestic context, impeding domestic norms, role of national elites, and the EU's failure to recognise those limitations and address them adequately.

Factors affecting the EU's conditionality in BiH have been explained through a number of variables: weak legitimacy of EU demands (Noutcheva, 2009), cost-benefit calculations and limited appeal of EU norms (Džihic & Wieser, 2011), the strength of identity and sovereignty issues (Freyburg & Richter, 2010), a lack of clarity and consistency in EU approaches (Anastasakis, 2008), material incentives (Vachudova, 2014), etc. Lavenex and Schimmelfennig have included governance as a third model of democracy promotion, which "rests in functional cooperation between administrations" (2011, p. 885). The third model is rather new to the relationship between the EU and BiH, which signed the Stabilisation and Association Agreement in 2008, and had an Interim Agreement in force between 2008 and 2015. Nonetheless, I make a case that the constraining factors hindering this relationship are detrimental to the spread of EU norms regardless of the model of democratisation which the EU applies. In this chapter, I focus on conditionality as the most dominant mechanism that the EU has used in the context of BiH.

In order to focus on the ideational aspects of the EU as a democracy promoter, I borrow the concept of EU normative power from Ian Manners (2002), who argues that the EU normative power stems from a basis of core norms and values of the EU. The three key features of a normative power which I focus on in this Chapter are: the EU's 'pre-disposition' to act normatively, the importance it attaches to norms and values, and its transformative power. In this chapter I show that those three key features are undermined by the EU's confused identity about what kind of power it is, a discrepancy between its principles and policies, and a 'cookie-cutter approach' that heavily relies on conditionality. I accept that the EU can be defined as a normative power, but I argue that it does not act as a normative power in BiH. In the following sections I will relate to theoretical arguments on the effectiveness of conditionality in external democratisation while making three core arguments:

- i. As a normative power, the EU should have a coherent and identifiable international identity that is based on a set of common norms, which the EU should promote inside and outside its borders. However, I argue that the EU international identity is torn between divergent self-perceptions of its various actors. Based on the examples in the first section of this Chapter, I argue that the EU actors accept a certain set of norms

internally, but that they compromise them externally in the face of contextual and actor-based challenges. Given that it willingly compromises its norms and its international identity externally, the EU cannot be ‘predisposed’ to act normatively (Manners, 2002).

- ii. The recurring inconsistencies in the promotion of EU norms and values undermine the very nature of the EU as a ‘normative power’. I argue that this is due to a discrepancy between the EU principles and its policies, which is a result of a lack of ‘self-perception’ of the EU as a normative power, and a hesitancy to fully embrace the identity of a normative power. In other words, those who act on behalf of the EU do not identify with its normative role, and they lack an awareness of how the EU principles should inform the use of instruments, the shaping of policies, and choice of actions. I argue that their actions are driven more by pragmatic choices on the ground, than by a strategic choice to promote the EU principles.
- iii. The EU’s ‘cookie-cutter approach’, which relies heavily on the classic use of conditionality in external democratisation fails to address the core obstacles in BiH’s context – the existence of ‘gatekeepers’ to democratisation, and the changing and volatile international context, while being reluctant to use sanctions. I argue that the reliance on conditionality, and an approach that treats BiH as any other aspirant country, without recognising its exceptionalism, has crippled the EU’s attempts to democratise BiH.

I am addressing each argument through three questions about the EU that are put forward in the context of BiH: what it is, what it does, and how it does it; i.e. the EU’s international identity, substance of its policies and actions, and instruments it uses.

The EU’s Confused International Identity

A complementary approach to the notions of the EU’s actorness is the concept of ‘international identity’ (Manners & Whitman, 1998). Manners and Whitman (1998) challenge the way in which the EU identity is commonly perceived. They propose a shift from purely descriptive views of EU identity, to the view of ‘international identity’ as an ontology in itself. The EU international identity they define is identifiable and coherent, but is not a synonym for ‘foreign policy’ or ‘external relations’ (Manners & Whitman, 1998, p. 237). It is rather a network

of relations that the EU has cultivated, and maintains through a set of instruments. Karen Smith (2003) equates the question of what sort of actor the EU is, with the question of its ‘international identity’. Her conceptualisation of the EU’s international identity is defined in terms of what the system produces (what policy results), and how it pursues its policy objectives. In the following sections I search for those two aspects of the EU’s international identity through examples of the EU’s recent democratisation approaches in BiH. I argue that the EU international identity is not identifiable or coherent as previously suggested by Manners and Whitman (1998). The way in which the EU pursues its objectives is a result of an interaction between member state interests, contextual variables, and complex decision-making at the level of the EU, rather than a reflection of EU norms and principles. Noutcheva (2009) argues that “the EU’s involvement in the region for the time being cannot be clearly categorised under either foreign or enlargement policy“ (p. 1066). Moreover, I argue that the EU in BiH suffers from a confused international identity, which is a consequence of the way in which the various EU actors see their role in BiH, and how they see the role of the EU. In the case of BiH, that confusion of identity is manifest in four ways:

- a. in confusing the technical or political aspects of the EU accession of BiH;
- b. indecisiveness and dissent among various EU actors on key problems in BiH;
- c. divergent views of EU actors on the role of the EU as a state-builder, and failure to create a substantive connection between state-building and the EU accession process;
- d. inadequate EU response to the manipulation of issues by national elites in BiH, especially the ethnicisation and politicisation of technical EU conditions.

EU accession - technical or political process? This riddle has affected several aspects of the EU’s approach to BiH: choice of actors, choice of conditions and rewards, the dynamic and process of negotiations. In discussion with many interviewees it was pointed out that generally speaking the view of the actors from the European Commission is that the accession process is mainly technical, while those representing member states, as well as those at higher levels of the EU, view the process as predominantly political (“Personal interview with a senior BiH diplomat in Brussels,” 2014; “Personal interview with a participant in negotiations on implementation of the Sejdić/Finci ruling,” 2014). I argue that the balance shifts in favour of the political or technical approaches depending on the level of involvement of the EU’s different actors. As long as the European Commission (EC) is in the driving seat, an issue mainly retains

its technical character. The more an issue is elevated to a diplomatic level, whether at the level of the EU or its member states, the more it becomes political. The result is that many issues which are in fact technical in nature are sometimes politicised, while issues which are clearly political in nature are sometimes wrongly addressed through a technical process. In both cases, treating an issue faultily as political or technical results in inadequate use of instruments and conditionality.

In early negotiations about the implementation of the Sejdić/Finci ruling, between 2009 and 2013, the EU officials treated this issue as primarily technical (“Personal interview with a participant in negotiations on implementation of the Sejdić/Finci ruling,” 2014), as is described at greater length in Chapter VII. Interviewees from the European Commission confirmed that they view the framework for accession primarily as a technical process, whether looking at this specific issue, or speaking more broadly. They believe that the technical nature of the process cannot be, and should not be, easily influenced or changed by political means. EC officials insist that the accession of Bosnia and Herzegovina must follow the same path as any other potential candidate country, particularly those within the Western Balkan region, which were all encompassed by the Stabilisation and Association Process (“Personal interview with a senior EU official in Brussels,” 2012; “Personal communication with an EC official in Brussels,” 2012). This is also the underlying thinking behind the ‘cookie-cutter approach’, which I discuss in the last section of this Chapter.

For a long time, the EU lacked the understanding that the Sejdić/Finci case was a political issue and tried to resolve it through technical means. It was around the time of the 2014 European Elections that high ranking officials in the European Commission acknowledged that the BiH accession process had come to a halt. Taking action in the last few months of his term, Štefan Füle, the European Commissioner for Enlargement and European Neighbourhood at the time, opted to try to resolve the issues of implementation of the Sejdić/Finci ruling through a political approach by initiating a High Level Dialogue with Bosnian political leaders. The High Level Dialogue had several rounds, including a 13 hours meeting behind closed doors, which resulted in a complete failure. Following the last failed attempt to negotiate a solution with Bosnian leaders in Sarajevo in February 2014, Štefan Füle defensively stated: “This is not my failure. This is the failure of the leaders” (Malagic, 2014). During the ensuing press conference, Füle removed all doubts about the nature of this condition: “it is an international obligation of Bosnia and Herzegovina that, following the will of the Member States, is now a key to progress

on the EU path” (“Press Conference by European Commissioner for Enlargement and Neighbourhood Policy, Štefan Füle, during his visit to Bosnia and Herzegovina,” 2014). Füle confirmed those were clearly political conditions after almost five years of failed technical negotiations on the issue. What was recognised late in the process is that being clearly political conditions, this reform needed a political approach rather than a technical one. Füle admitted that the process was initially treated in a technical manner, but subsequently recognised as political, which justified a need to use all means possible: “Do not forget that since 2010, three formal initiatives had been tried, via the Bosnia and Herzegovina institutions, to resolve this matter. They had not met with success. It was right that we tried to resolve it, working with the political leaders, because we could leave no possible method aside“ (“Press Conference by European Commissioner for Enlargement and Neighbourhood Policy, Štefan Füle, during his visit to Bosnia and Herzegovina,” 2014). One interviewee explains that a failure to address this issue adequately before 2014 was due to it being relegated to a low level priority, which was delegated to lower ranking officials within the European Commission, i.e. the technical people who do not have the remit to deal with it in a political manner. Once raised to the level of the Commissioner, the issue gained political significance and opened up possibilities for the use of a wider range of instruments, including the High Level Dialogue (“Personal interview with a former BiH diplomat,” 2014).

Within the context of BiH, confusing the technical and political conditions has not only resulted in an ineffective conditionality, but it has impacted the legitimacy of the EU as an actor. The legitimacy of the EU as an actor, and the legitimacy of its demands are considered to be the key to compliance with the EU conditionality (Noutcheva, 2009). The EU’s weakened legitimacy has in many ways affected the substance and form of the accession process in BiH. In the following examples I show that the confusion between the EU’s political and its technical role in BiH has compromised its international identity and has undermined the consistency and clarity of the EU’s conditionality.

Indecisiveness and dissent among EU actors. Once exposed to a larger number of actors within the EU, the issue became subject to their own motivations, intentions, capabilities and political will. The views of different EU actors were often dissenting, especially between the European Commission and EU Parliament, as I show in the examples in this section. Füle’s own motivations have been subject to a debate, which reveal interesting relations among the EU actors. One interpretation is that the issue was raised to the political level because of Füle’s

personal ambitions in the forthcoming European elections. This group of interviewees believe that Füle's personal desire to declare a success in the region at the end of his term as Commissioner was the main motivation behind his willingness to engage so heavily through the High Level Dialogue ("Personal interview with a senior BiH diplomat in Brussels," 2014; "Personal interview with a senior official from BiH MFA," 2015; "Personal interview with a mid-ranking diplomat from the BiH MFA," 2014).

However, those who participated in the actual negotiations chaired by Füle dismiss his personal motivations as the main driving factor ("Personal interview with a participant in negotiations on implementation of the Sejdić/Finci ruling," 2014; "Personal interview with a former BiH diplomat," 2014). In fact, they argue that Füle had been successful in bringing together BiH political leaders, and in proposing solutions which would have been implementable and effective. They have claimed that Füle's personal persistence, rather than the engagement of any EU institution, sustained negotiations through seven rounds between 2013 and 2014. On the occasion of the last meeting, Füle had allegedly invested extraordinary personal energy to come to an agreeable solution, and transmitted immense frustration that he was not backed by the political representative of the US State Department, who attended the meeting, but did not get involved. Füle also seemed to be left alone by the EU member states, which did not engage in finding a solution, or putting pressure on the BiH political leaders to support the solution that Füle proposed. Interviewees who participated in those meetings state that there was a visible lack of decisiveness of the political level of the EU, US, and member states. One interviewee said that "Füle's efforts would have been successful had the EU member states supported him at that point" ("Personal interview with a participant in negotiations on implementation of the Sejdić/Finci ruling," 2014). He also claims that Füle seemed abandoned even by the rest of the European Commission, which was not willing to put his solution forward as their firm commitment. The indecisiveness of EU actors was apparent to the public in the aftermath of failed negotiations, when the EU again opted not to expose the parties which had actually refused Füle's proposals and blamed all party leaders equally.

The party which actually refused Füle's proposal of a solution on the Sejdić/Finci issue was HDZ, which ground their electoral support within the Croat people. As I discuss in much greater detail in Chapter VII, HDZ took the opportunity of the negotiations on the Sejdić/Finci ruling to put the question of Croat representation in BiH institutions on the table. In the 2006 General Elections, a Croat member of the BiH Presidency, Željko Komšić, a Social-Democratic

Party candidate, was directly elected. That was the first time that an HDZ candidate for the Croat member of the Presidency was not elected directly. HDZ claimed that Komšić was elected also by the votes of the Bošnjak and other people, which is why they claimed he could not be a 'legitimate Croat representative'. HDZ constructed and successfully sustained the concept of legitimate ethnic representation, even though it goes directly against the right of all people to freely choose members of the Presidency, which is the gist of the ECHR ruling. Their rhetoric was further intensified following the 2010 elections, when HDZ was not included in the government coalition in FBiH, which they used to emphasise the issue of 'legitimate ethnic representatives'.

What is relevant for the arguments in this section is the fact that representatives in the European Commission and some member states accepted and adopted HDZ's rhetoric that the issue of Croat representation needed to be addressed through the solution to the Sejdić/Finci case. Once the EU agreed to address this issue in the Sejdić/Finci negotiations, they conceded to the ethnic prism of the problem, and abandoned the prism of citizenship. This went against the very nature of the ECHR's ruling, which demanded equality of all BiH citizens in the election process, regardless of their ethnic background. Nonetheless, Füle's proposal did go quite a long way to meet the demands of the HDZ for pragmatic reasons, but there was a limit to which they could be pragmatic without going against the ECHR ruling. In spite of the EU's willingness to find compromise and a pragmatic approach, the HDZ still tabled maximalist demands and refused the compromise solution, which meant the end of the negotiations ("Personal interview with a participant in negotiations on implementation of the Sejdić/Finci ruling," 2014; "Personal interview with a former BiH diplomat," 2014).

In the aftermath of failed negotiations lead by Füle the issue of the Sejdić/Finci ruling was addressed by Croatian HDZ Members of the European Parliament (MEP). Supported by other Croatian MEPs, they used the occasion of the adoption of the Resolution on the 2014 Progress Report on BiH, to include HDZ's language on legitimate ethnic representation: "the future constitutional reform should also take into account the principles of federalism, decentralisation, subsidiarity and legitimate representation to ensure the efficient and smooth integration of BiH into the EU" (European Parliament, 2015). They also referred to HDZ's deal-breaking demand to include the cantonal level of government in the EU coordination mechanism: "Calls on the political leaders to give priority to establishing an effective EU coordination mechanism, efficiently linking institutions at all governance levels" (European

Parliament, 2015). The European Commission had openly refused such demands during negotiations purely for practical reasons, as the presence of the cantons would have made the coordination mechanism too complex to manage. The European Parliament (EP) resolution showed a lack of consistency and agreement between different EU actors on those two important issues. Although the European Parliament resolution supported the EU's approach to BiH, it essentially supported the request of a domestic political party, which caused the breakdown of previous negotiations. This again showed how heavier involvement of the EU's technical or political actors can determine the nature of the EU's intervention, and the choice made between technical and political instruments.

Divergent views of the EU as a state-builder. The reverse example, when the EU treats technical issues as political, can be seen in the EU's role in state-building in BiH. In June 2012, the European Commission introduced another requirement for the entry into force of the Stabilisation and Association Agreement (SAA) with BiH. The EC asked BiH authorities "to agree on an effective coordination mechanism for engagement with the EU which will enable Bosnia and Herzegovina to come to an agreed position on EU issues" (European Commission, 2012). This also became a precondition for both the use of new IPA II funds and for answering the Questionnaire that would be sent to BiH by the European Commission as part of the accession process. Most of the state-building measures in BiH, including the coordination mechanism, were intended to fill in the legal and constitutional gaps left in the Dayton Peace Agreement (DPA). The DPA originally created very few basic functions of the state,²¹ and major domestic and international efforts invested between 1995 and 2005 resulted in significant expansions of the competencies, including defence, intelligence, single indirect taxation authority, and many others. The expansion of the functions and competencies of the state required strong political support domestically and internationally, including heavy pressure and conditionality from the international agencies in BiH, as well as legal impositions by the Office of the High Representative. A significant turn in this approach occurred around the tenth anniversary of the Dayton Peace Accords in 2005, when "the state building in BiH had become largely an EU affair" (Bieber, 2011, p. 1789).²² Since then the state-building process has come

²¹ The original competencies of the state included foreign policy, foreign trade policy, customs policy, monetary policy, finances of the institutions and of the international obligations, immigration, refugee, and asylum policy and regulation, international and inter-Entity criminal law enforcement, including relations with Interpol, establishment and operation of common and international communications facilities, regulation of inter-Entity transportation, air traffic control (General Framework for Peace, 1995, Annex IV, Article III 1.).

²² Between 2002 and 2010, the High Representative was 'double hatted', being also the EU Special Representative. Once the two functions were 'decoupled', the role of the OHR diminished, and the EU took over the prerogatives in driving the main

to a halt, or at best, the watered down solutions have been put in place. The European Union's ineffectiveness as a state builder thus became fully exposed (Bieber, 2011).

A former high-ranking BiH diplomat who used to be involved in negotiations with the EU expressed a view that the EC officials fail to see a clear link between state-building reforms and reforms required by the accession process. ("Personal interview with a former BiH diplomat," 2014). During his service in Brussels, the European Commission officials used to categorically refuse the notion that the state-building process was their responsibility, claiming that it was rather the responsibility of domestic political leaders ("Personal interview with a mid-ranking diplomat from the BiH MFA," 2014). In my view, the EC misses the crucial point about how EU accession reforms can underpin state-building in BiH, and thus support democratisation of the country.

Instead, the EU too readily accepts the view of the national elites that certain state-building reforms impinge on ethnic issues. This has been the case in many examples: the framework for regulating the state aid, the strategy for agricultural reform, the Law on Wine, and even the participation of BiH in the EU Community Programmes, such as MEDIA, and ERASMUS+. Those were all situations in which the EU originally requested that a single authority be established at state level, responsible for harmonising policies and legislation across the country, only to give in to the claims of the elites, primarily from Republika Srpska, that such undertaking would lead to centralisation of the country, which they claim is against the Serb national interests. By taking such view for granted, the EC accepts the politicisation and ethnicisation of issues that are primarily technical in nature. The manipulation of those issues by the national elites thus becomes legitimised by the EU's acceptance that they are issues of high ethnic relevance. In response, the EU makes compromises and gives concessions on ethnic rather than technical grounds, which cripples their attempts to find a workable or functional solution. As a result, the EU agrees to solutions which represent the lowest common denominator among maximalist demands of each ethnic elite, which in the end weakens instead of strengthening the state. That way, instead of being a state-builder, the EU actually contributes to the weakening of the state.

reform processes. Soonafter, the EU also took over the leadership of the international military and police missions in BiH. The last major US-led state-building effort was constitutional reform in 2006, which resulted in the so called 'April package' of amendments, which was refused by BiH Parliament in April 2006 by a slim majority of one vote. It included amendments related to the coordination mechanism and the discrimination in the election of Presidency and House of People (subsequently addressed in the ECHR Sejdić/Finci ruling).

Bieber (2011) also attributes the EU's ineffectiveness to "the inability to transfer accession conditionality to state building and in the disjointed and haphazard manner in which state building has been pursued by the EU" (p. 1785). However, other authors believe that the roots of the problem are not so much within the EU itself, but in the nature of the state-building in BiH. Those authors refer to the transfer of competencies to the state level, which has in many cases been required by the EU integration, as being of high relevance for ethnic identity (Džihic & Wieser, 2011, p. 1808). Bieber (2011) has argued that state-building generally "extends beyond a mere collection of institution-building measures: it focuses on core governing functions, and thus directly impacts on the sovereignty of a state" (p. 1791). They argue that as such, those issues incur high political costs for the elites, which results in low compliance. The view that the issues of high ethnic appeal, which impinge on the issues of sovereignty or identity, create greater challenges to the EU's leverage is widespread (Noutcheva, 2009; Vachudova, 2014; Džihic & Wieser, 2011). Although I agree with this view, I oppose the view that the state-building process *per se* has been ethnically sensitive, especially when entailing the transfer of competencies or coordination between levels of government. I argue that those issues have been fashioned into ethnic issues by domestic elites, which have in the meanwhile learned how to manipulate the EU conditionality in the case of nationally sensitive issues.

Ethnicisation and politicisation of EU conditions. As I will discuss at greater length in Chapters VI and VII, some of the genuinely technical EU conditions have been fashioned into ethnic or national issues by domestic political elites through the process of social construction. By using a number of rhetorical and narrative techniques, some BiH elites create ethnic constructs out of the EU state-building requirements mainly for two purposes: to justify their resistance to EU conditionality, and as a 'political shelter' (Noutcheva & Aydin-Düzgit, 2012), or even a political cloak that masks their true intentions and motivations. In the context where domestic elites openly resist EU efforts and pose counter-narratives, which directly undermine the EU norms, neither linkage nor leverage can be effective (Schimmelfennig, 2000). I believe that the assumption of authors such as Vachudova (2014) that it is in the interest of BiH elites to comply for the purpose of faster EU membership is misplaced. The expected domestic costs of non-compliance do not actually affect domestic elites, who seek rewards in keeping the status quo. Because of that, I cannot accept an argument that conditionality can be credible because the "EU is willing to stop the process when a government is not making progress on crucial domestic reforms" (Vachudova, 2014, p. 134), simply because in many

cases which I will discuss in this thesis, the elites actually benefit from the lack of progress and oftentimes, they themselves deliberately stop the process. Any change of the context that actually challenges the status quo, even if inspired by faster EU accession, may not be in the interests of domestic elites, as I will substantiate in chapters VI and VII.

That is why I argue that an assessment of the effectiveness of the EU's conditionality in the case of state-building purely in terms of the costs of compliance would be an oversimplification. Viewing the EU rewards as simply weighed against so called ethnic issues, diverts attention away from the root causes of the problems of low compliance, which Vachudova (2014) describes as the Bosnian elites' ability "to manipulate the EU to get around its requirements" (p. 134). In my view, the EU underestimates the ability of domestic elites to manipulate the EU conditionality and the negotiating process. That is why I disagree with authors who see the EU conditionality as simply weakened by the limited appeal of EU rewards for the national elites (Džihic & Wieser, 2011). The problem is not only in the strength of the EU appeal. My argument is that the problem also lies within the national elites in BiH and their true motives, and with an unfavourable context that creates a fertile ground for generating competing domestic norms, which contest the appeal of EU norms. Those counter-norms, or subversions of democracy as I call them more specifically in the next Chapter, are purposefully constructed to undermine international influences in BiH. The EU's fault is in failing to recognise the true intentions and motivations of national elites and their ulterior motives, in accepting the rules of the game which they impose, and in treating all national elites as potential champions of democratisation, when in reality, they just might be the opposite.

Compromised EU Conditionality

In making the case for the EU international identity, Manners and Whitman (1998) accept "the premise that Europe, Western Europe, the European Union and its Member States represent a set of varied but interrelated identities constructed and represented through different means and mechanisms" (p. 235). In this section I have looked at one element of the EU's international identity, which Manners and Whitman (1998) describe as the "EU's attempt to assert its identity rather than to reach a definitive definition of its status in international relations" (p. 238). Counter to the arguments of Manners and Whitman (1998), the examples I used show that the EU international identity is not coherent or even identifiable as an

independent ontology, but rather riddled with divergent and sometimes opposing approaches of different EU actors.

The varied positions of the EU actors on human rights issues such as is the example of the Sejdić/Finci ruling can be viewed as a “dynamic relationship among political identity, legitimacy and politics” (Balfour, R. in Cerutti & Lucarelli, 2008a). This contention between EU institutions and member states over the interpretation of conditions and application of conditionality is also addressed by Anastasakis (2008). He states that although the European Commission is equipped with technical capacities to oversee assessment of conditionality, when it comes to interpretation of conditions that are nationally sensitive for a country, then external actors may become divided between a more rigorous or flexible approach to conditionality (Anastasakis, 2008, p. 372). Balfour also sees the application of human rights issues, such as is the Sejdić/Finci ruling, as a “divisive endeavour between the member states”, which forces the EU to make compromises which undermine their values (In Cerutti & Lucarelli, 2008b, p. 169).

However, the question I ask is whether any explanation can justify division among EU actors on an issue that is as strongly embedded in the EU normative framework, as is the case with the ECHR ruling in the Sejdić/Finci case. As I will argue more in Chapter VII, the poor effectiveness of EU conditionality in this case is falsely attributed to the sensitiveness of an issue. Equality as a core EU and European norm, especially when expressed as explicitly as in an ECHR ruling, should not be compromised by extensive and exaggerated consideration for national norms. The essence of the EU’s external democratisation should be exactly the opposite – to change domestic norms that are in breach of European norms, especially on human rights issues, and not to compromise its own norms out of a concern for being seen as insensitive. I thus agree with Balfour that even though divisions between EU actors may not be on values themselves, they eventually divide on the issue of the means and opportunities to promote norms externally (In Cerutti & Lucarelli, 2008b, p. 171).

Therefore, although there may be a broad consensus on the content of a norm, the EU conditionality is compromised by differences between EU actors in the choice of means and opportunities to promote them. The EU actors thus emanate a confused international identity, which lacks assertiveness and decisiveness within the BiH context. That undermines the EU legitimacy and hence, thwarts the effectiveness of its conditionality. Such a mix of different

and conflicting identities being asserted in the EU's pursuit of its international objectives cannot result in a single international identity, but only in a compromised, and sometimes confused international identity. Although the EU alone cannot and should not be blamed for the failure to move BiH forward in the accession process, the EU's frequent changes in approach have contributed to the inconsistencies in its goals and objectives, as discussed in the following section.

Normative Power vs. Rationalist Power

As argued by Džihić and Wieser (2011), the EU became the main actor of external democracy promotion in BiH and the Western Balkans following the Thessaloniki Summit in 2003. The Declaration thus signed by all countries from the region, as well as the EU, sent a message of respect for the EU principles and values: "We all share the values of democracy, the rule of law, respect for human and minority rights, solidarity and a market economy, fully aware that they constitute the very foundations of the European Union" (2003, para. 1). However, over the past ten years, the EU has often departed from those principles, although the EU representatives would not concede to any inconsistency.

Low compliance that results from inconsistent EU approaches has been extensively discussed by many authors (Noutcheva, 2009; Vachudova, 2014; Anastasakis, 2008; Levitsky & Way, 2014). Anastasakis (2008) explains the changing of the criteria as influenced by "the changing international circumstances, the internal EU anxieties and balances, and the regional and country-specific contexts" (Anastasakis, 2008, p. 368), some of which I have discussed in the previous section. In this section I partly address the third factor, the 'country-specific context' as the predominant constraining factor. However, that alone is not sufficient explanation. The inconsistency which becomes prominent in this section is that between the EU *being* a normative power and the EU *acting* as a 'rational' power. One aspect of this discrepancy is addressed by Noutcheva (2009), who has argued that the EU's policy in the Western Balkans is "better explained by the rational motives of the EU member states rather than by the EU's norms and rules of governance or by universal principles of fairness and justice" (p. 1081). I argue that the factor of 'rational motives of members states' creates a discrepancy between the EU principles and its actual policies abroad to some extent, as shown in the following three examples.

The most striking example of past inconsistencies is the police reform, which has been thoroughly documented by Aybet and Bieber (2011). The reform of the complex system of policing in BiH has been linked to the signing of the Stabilisation and Association Agreement (SAA) with the EU. The original demand from the European Commission was that the police reform would rest on three principles²³ (EC, 2005). However, after almost three years of unsuccessful negotiations, and a series of actions that undermined the international community in general, “a watered-down police reform package” (Aybet & Bieber, 2011, p. 1925) was adopted, with the three principles being more or less abandoned. It enabled the EU to declare that the condition had been met, the SAA was signed in June 2008.

The police reform was not originally a technical condition in the EU accession process, because it could not be grounded in any part of the *Acquis Communautaire*. However, it was a good opportunity for the EU to build its credibility as a state-builder. The police reform became a condition for the signing of the SAA upon the insistence of the former High Representative and EU Special Representative, Paddy Ashdown (Aybet & Bieber, 2011, p. 1918). This gave the process the much necessary dimension of the political conditionality, which it had lacked in previous reforms. Ashdown secured the backing of his own country, the United Kingdom, and also had a direct channel of communication with Chris Patten, the European Commissioner for External Relations at the time, both of which he utilised to place the police reform as a condition for the SAA (“Personal interview with a senior BiH diplomat in Brussels,” 2014). The European Stability Initiative reported that the European Commission (EC) eventually succumbed to pressure by the OHR and introduced police reform as a condition for the signing of an SAA (“Bosnia and Herzegovina and the EU,” 2014). However, the EC subsequently abandoned the three principles in the search for a compromise that would lead towards the signing of the SAA. This example revealed the inconsistency in the EU approach, and also disagreements among its various actors on how principled the EU should be in the face of strong opposition from domestic actors. Even more importantly, it revealed how uncomfortable and indecisive the European Commission was in setting the political criteria, and in supporting it. The EU looked particularly weak in its role as a state-builder, to which I return at later point.

Another example is a demand for the closure of the Office of the High Representative (OHR). The European Commission's Enlargement Strategy, published on 14 October 2009,

²³ That the legislative and budgetary competencies for all police matters are vested at the state level, that there is no political interference with operational policing, and that the functional local police areas are defined according to the technical criteria.

stated that "the European Union would not be able to consider an application for membership by Bosnia and Herzegovina until the OHR has been closed". This condition was softened at the General Affairs Council on 7 December 2009. The Council reiterated determination to close down the OHR, but concluded that the EU would not be in a position to consider an application for membership "until the transition of the OHR to a reinforced EU presence has been decided" (EU General Affairs Council, 2009). By the meeting of the EU General Affairs Council held on 14 December 2010, this condition was abandoned and no longer mentioned by the EU. As confirmed by a couple of interviewees, the reasons why the OHR closure was abandoned as a condition is the deterioration of the political situation in BiH, in which the OHR was seen as an instrument of stability in case of a worsening of the crisis ("Personal interview with a senior official from BiH MFA," 2015).

The initiative to include the OHR's closure as a condition for the accession process of BiH originally came from Germany. For the past ten years, the most agile advocate of the OHR's closure was Russia, but Russia did not make it official before 2009. German diplomats had started to test the waters for the OHR's closure as early as 2008 (Senior German diplomat, personal communication, January 2008). Over the course of 2009, the German diplomats became more vocal in those demands, and gradually put pressure on the European Commission to include it in the 2009 Enlargement Strategy for BiH ("Personal interview with a senior official from BiH MFA," 2015). The biggest opponent to this initiative within the EU was the United Kingdom, and outside the EU, it was the United States. While the main political processes in BiH were pushed by the US in the period between 2001 and 2006, Germany did not engage so heavily bilaterally in BiH. However, as the US influence weakened following a mutual agreement that the EU would become more prominent within BiH, Germany became more engaged both bilaterally and through the EU structures. A month after the October 2010 General Elections in BiH, the German Chancellor Angela Merkel invited the leaders of the five largest political parties to Berlin, with the exception of the RS Prime Minister at the time, Milorad Dodik. As reported by the Democratisation Policy Council, the talks which were repeated again in early 2011 were fruitless in finding a deal on constitutional reform in BiH (including the implementation of the Sejdić/Finci ruling), but they also 'irritated' the EU and other member states because the talks were meant to be secretive, and other European capitals were not consulted (Weber, n.d., p. 13).

In March 2011, the EU Foreign Affairs Council decided to “establish a reinforced, single EU Representative in Bosnia and Herzegovina who will take the lead in supporting Bosnia and Herzegovina on EU related matters“ (EU Foreign Affairs Council, 2011). The objective of this exercise was to 'decouple' the EU Special Representative and the High Representative of the International Community, which was a single person up until then (Weber, n.d., p. 14). Germany had limited influence within the OHR structures where it shared power with the US, Russia and other members of the Peace Implementation Council. Strengthening the role of the EU at the expense of the OHR gave Germany greater influence over the EU agenda in BiH. Germany seized the momentum of a strengthened EU presence in 2011, and sent a letter to other member states complaining that the OHR no longer had a strong political influence, and that it needed to close down ‘as soon as possible’ in order not to hinder the European future of the country (“Personal interview with a senior BiH diplomat in Brussels,” 2014).

The third example of an inconsistent approach that was driven by member states is the ‘renewed approach to Bosnia and Herzegovina’, adopted by the Council of the European Union on December 15, 2014 (Council of the European Union, 2014). At the very beginning of their statement, the Council emphasised that they are ‘renewing’ rather than changing their approach, and that they will do so “without changing the EU accession conditions”. However, in a fashion much similar to the example of the police reform, the EU did in fact alter and lower the criteria in order to unblock the accession process of BiH. It did so gradually over a period of four years. On 14 December 2010, the Council of the EU concluded that “Bosnia and Herzegovina needs to align its constitutional framework with the European Convention on Human Rights“ in order for the SAA to come into force (Council of the EU, 2010). Four months later, on 21 March 2011, the Foreign Affairs Council concluded also that “as a matter of priority, the country needs to bring the Constitution into compliance with the European Convention of Human Rights”. However, it softened the language and lowered the bar by adding that “a credible effort in this regard is key to fulfilling the country's obligations under the Interim/Stabilisation and Association Agreement” (EU Foreign Affairs Council, 2011). The EU never defined what the ‘credible effort’ would mean or represent. In December 2014, the Council of the EU reiterated that implementation of the ECHR ruling remains a condition. However, it declared that it is no longer a condition for entry into the force of the Stabilisation and Association Agreement, but has been relegated to some later stage of the accession process, without defining at which stage this condition would be reinstated.

The three examples show inconsistency in policy, inconsistency between the EU values and its policies, and a discrepancy between EU norms and the rationality of member states. They show that EU norms have succumbed to pragmatic goals and rational objectives. The issue of norm compliance is a running theme throughout this thesis, and I will touch upon it from various angles in subsequent sections and chapters, particularly through the role of domestic elites and the constraining context. What the examples presented here show is the variance in compliance which originates from the EU's own inconsistencies and ulterior motivations of member states. When it comes to the EU's own inconsistencies, Vachudova (2014) has shown that the EU weakens its hand by "being inconsistent in laying out and enforcing the requirements for moving forward in the pre-accession process" (p. 124). In terms of the rationality of member states, Noutcheva (2009) has argued that the elites in the Western Balkans are well aware that the EU is riddled by a dilemma - whether it is "genuinely concerned about spreading its norms", or it acts out of rational interest to ensure the stability in the region and in Europe (p. 1076). This, she argues, has resulted in 'fake or partial' compliance. "When the EU's policy lacks strong normative foundations, political leaders in non-EU countries tend to reject EU-sponsored ideas about what is right and appropriate..." and they refuse the legitimacy of the EU's demands, while reverting to "domestic sources of legitimacy, no matter whether these are based on rationality or identity" (Noutcheva, 2009, p. 1076). The lowering of the bar, or the 'softening of EU conditionality' diminishes the significance of the EU conditionality in the eyes of domestic elites, especially those which oppose the accession process, and inspires them to question, and ultimately to manipulate the EU demands (Džihic & Wieser, 2011, p. 1814). The EU's inconsistency and the undermining of its normative basis is a tool in the hands of domestic elites, who use it to not only undermine the EU conditions, but to undermine the EU's credibility and its international identity (Noutcheva, 2009, p. 1081).

EU Conditionality – a 'Cookie-Cutter Approach'

In this section I look at conditionality in terms of the basic argument that it is based on a cost-benefit calculation of domestic actors when faced with the choice of rewards or sanctions for compliance with EU norms (Levitsky & Way, 2005; Schimmelfennig, 2000; Richter, 2012). Compliance is claimed to be most effective when both the linkage and leverage are high (Levitsky & Way, 2005, p. 22). However, in this section I show that there has been low compliance in BiH in spite of strong ties with the EU in terms of both the linkage and leverage, and as of lately, including governance as a model of democracy promotion (Lavenex &

Schimmelfennig, 2011). Low compliance in BiH has also been attributed to limited incentives (Džihic & Wieser, 2011), but the following examples show that compliance does not occur even when the incentives have been rather generous. Another argument is that if the costs of compliance are too high for domestic elites, they will not be willing to make the required change (Džihic & Wieser, 2011). This argument too is dismissed by a case which shows that even when the EU lowers the bar to require minimum or no costs for domestic elites, they still do not comply. Instead, I side with Tolstrup's (2014) view that political choices made by domestic actors determine leverage because "domestic elites act as "gatekeepers" who can and do decide to increase or decrease ties with this or that external actor" (p. 23). In Chapter VI, I provide a detailed account of the way in which domestic elites in BiH engage in 'thinning' the EU leverage (Tolstrup, 2014). In this section, I use Tolstrup's arguments to illustrate the link between 'gatekeepers' and EU conditionality in BiH. I look at three factors that significantly impact non-compliance in BiH: political choices made by domestic 'gate-keepers' (Tolstrup, 2014), the absence of sanctions from the EU conditionality, and a changing international environment (Anastasakis, 2008).

The EU's new approach to BiH, which I mentioned in previous sections was formally launched on November 5, 2014 by the German and British foreign ministers, Frank-Walter Steinmeier and Philip Hammond. The new initiative is a classic case of political conditionality and a 'cookie-cutter approach' that offers to simply reward compliance, oblivious to the domestic structural, normative and political constraints. In an open letter to the people of BiH, the two foreign ministers offered 'dramatic progress' towards EU membership if political leaders agree on a set of socio-economic reforms, previously agreed in the EU's initiative 'Compact for Growth and Jobs' ("UK, Germany Launch Joint Initiative on Bosnia," 2014). They sent a message to the people that "if your political leaders can do this, then we ask the European Union, in response, to bring the long-delayed Stabilisation and Association Agreement into force so that BiH can benefit from the much needed financial investment that comes with it" ("UK, Germany Launch Joint Initiative on Bosnia," 2014). This first step would be followed by a series of other steps and rewards until BiH would be granted the candidate status. This initiative followed soon after the General Elections in BiH which were held a month before. The formation of a new government was an occasion which the UK and German governments deemed a good opportunity to change the EU's approach. Although both conditions, implementation of the Sejdić/Finci ruling and coordination mechanism, remained in place, it was the sequencing of each condition and attachment of a tangible reward to each

one that was meant to make the difference in the dynamics of the accession process. In other words, although softened, the EU conditionality was made more explicit. The new initiative thus increased the rewards by offering 'dramatic progress' towards membership, and lowered the cost by removing the implementation of the Sejdić/Finci case as a condition for the entry into force of the SAA. It did not envisage any sanctions in the case of non-compliance.

This kind of rationale for the change of the approach is explained by Milada Vachudova, who says that in BiH "the EU has backed away from some of its requirements for the entry into force of the SAA – not because it is trying to relegate Bosnia to second-tier membership, but because it is desperate to see Bosnia move forward in the process since an SAA would give the EU more tools to influence Bosnian politics" (Vachudova, 2014, p. 134). Besides being convincing in terms of the motivations of the UK and German administrations, Vachudova's explanation also confirms the argument that the EU member states rather choose pragmatic solutions over the EU principles and values when faced with the realities of politics in BiH. Such an approach results in inconsistent policies, as well as the loss of identity and credibility of the EU as an actor. Richter argues that consistency "requires that rewards are explicitly and reliably linked to the fulfilment of EU criteria" (Richter, 2012, p. 512). Looking at the three examples discussed in the preceding section, we can see that although rewards are explicitly linked to some EU criteria, they are not linked to them reliably. The inconsistency is evident both in the interpretation of the criteria, and the arbitrary granting of rewards for pragmatic reasons and for a self-serving agenda.

The EU also gave a rhetorical boost to the new conditionality through a narrative that would demonstrate their strong commitment. The High Representative of the Union for Foreign Affairs and Security Policy, Federica Mogherini, shared great enthusiasm that this change in approach, and inherently of the EU's conditionality, is the beginning of a new era in Bosnia and Herzegovina's EU accession: "Yes, there can be a new start for the EU and Bosnia and Herzegovina. We are ready to engage. We are ready to reciprocate in the moment when this commitment will be adopted by the parliament. This could be a turning point in the way of Bosnia and Herzegovina towards the European Union." (Council of the European Union, 2014). The rhetoric was matched by more intensive contacts - a condition as low as adoption of a statement required three official visits to Sarajevo by Mogherini within less than six months since her appointment as the EU High Representative, more than to any other single country in the world. The statement was endorsed and finally adopted by BiH Parliament on 23 February,

2015, only after very intensive contacts and personal visits to BiH Parliament by Mogherini, the German and UK Foreign Ministers Frank-Walter Steinmeier and Phillip Hammond. The authorities of Republika Srpska reluctantly agreed to support this statement and its adoption was delayed several times due to a lack of support from the RS, as well as President Dodik's initial open refusal to provide his endorsement.

The level of commitment by Mogherini was an indication of the extent to which the EU was desperate to move the country forward. While addressing the BiH Parliament on the day they adopted the statement, Mogherini pronounced it a 'historical moment' three times during her short speech (European External Action Service, 2015). However, moments prior to Mogherini's address to Parliament, representatives of Dodik's Party of Independent Social-Democrats (SNSD) left the room, resulting in the upper house of Parliament being left without enough Serb representatives for a decision-making quorum. The stated reasons for their departure were media allegations that the Chairman of the lower house may have been involved in war crimes against Serbs, which is why they decided to boycott all Parliament sessions during his chairmanship. However, the joint session of two houses scheduled for that day did not have any other item on the agenda, and was organised purely for the purpose of Mogherini's address. The striking absence of SNSD's representatives from the Parliament and their symbolic walk-out was therefore a manifestation of the way in which 'gatekeepers' can thwart linkage symbolically and procedurally. However, no reaction from the EU ensued, they praised all parties equally for their support, and did not in any way condemn SNSD's behaviour.

In June 2014, the SAA came into force following the adoption of the Statement of Commitment of BiH institutions to adopt the new reform agenda, containing a set of measures meant to "establish institutional functionality and efficiency, to launch reforms at all governance levels, to accelerate the process of reconciliation and to strengthen administrative capacity" (Presidency of BiH, Parliament of BiH, 2015). Adoption of the Statement replaced the previous condition on implementing the Sejdić/Finci ruling. The next expected step would be putting into place a mechanism for coordination of EU affairs, which would be rewarded by an invitation to submit an application for membership. That step would need to be followed by implementation of the Sejdić/Finci ruling, after which the UK and German governments would support the granting of candidate status to BiH. The philosophy behind the new approach was that a new political climate would be created by "stabilising and stimulating the economy, creating jobs, strengthening the rule of law, reducing bureaucracy and cutting the costs of

government” (“UK, Germany Launch Joint Initiative on Bosnia,” 2014). This set of tasks was formulated through a document called the Reform Agenda, which was adopted by the Council of Ministers of BiH and the Government of FBiH in June 2015, but it was rejected by the RS Government, thus bringing the whole process back to square one, and bringing to a close the EU’s newly established conditionality before the process could even begin.

The EU did not issue any public statements to condemn the lack of compliance by the RS Government, while sanctions were never on the table anyway. The EU officials did not see any need for sanctions, because in their view compliance should be the free choice of domestic political elites, made without any external pressure (“Personal interview with a senior EU official in Brussels,” 2012). In response to the failure to fully adopt the reform agenda, the EU Commissioner for European Neighbourhood Policy and Enlargement Negotiations, Johannes Hahn, cancelled his planned visit to Sarajevo. The EU Delegation in Sarajevo issued a press statement expressing their disappointment that the visit had to be cancelled and urged all “BiH authorities to find agreement on the outstanding issues without delay” (Delegation of the EU to BiH, 2015), even though it was a single domestic actor which failed to deliver on the joint promise to adopt the reform agenda. This once again showed the EU’s complete miscalculation of sanctions and elites’ interests, and their false assumption that faster EU integration is in the interest of all national elites equally.

The official reason for the change of EU’s approach initiated by the UK and Germany was said to be citizens’ protests that took place in February 2014. In an unprecedented turnout since the war, demonstrations took place throughout Bosnia and Herzegovina, although with very modest turnout in cities of Republika Srpska. Protests were sustained for days and in some places took a more violent form, demolishing government buildings and setting the building of BiH Presidency on fire. Citizens demanded more jobs and better living conditions, as well as fight against corruption and improved economy. The UK and German delegations had discussed a new approach as early as February 27, 2014, at the time of the protests, when the German Chancellor Angela Merkel met UK Prime Minister David Cameron in London, but the actual initiative was not launched until later in the year (“Merkel dashes Cameron’s hopes for fundamental reform of EU,” 2014).²⁴

²⁴ The Croatian foreign minister, Vesna Pusić, also launched an initiative for a new approach in BiH in order to break the current deadlock. Her proposal went as far as requesting EU membership for BiH under the condition that the pace and progress of European integration of BiH is matched by improvements in internal political and administrative efficiency.

Although citizens' protests may have been the cause for the new approach, external contextual factors also need to be taken into account. I argue that the shift in the EU policy towards BiH was also made in reaction to Russia's growing influence in the Western Balkans, and in relation to the crisis in Ukraine. The protests of BiH citizens coincided with the protests of Ukrainian citizens that also began in February 2014. The deterioration of the situation in Ukraine after the annexation of Crimea by Russian troops in March 2014, had some spill over in the Balkans, which alerted the EU member states. The RS President Milorad Dodik was among the first foreign politicians to back the referendum in Crimea on joining Russia as "legitimate and democratic in accordance with international law and the U.N.-guaranteed right to self-determination" ("With an eye on Crimea, Bosnian Serb leader calls for confederation," 2014). Dodik followed up by a concrete move of visiting Moscow in the middle of the Crimea crisis, where he was awarded by Russian Patriarch Kirill for his efforts "to consolidate the unity of Orthodox nations" ("Russia stoking Bosnian Serb separatism in echo of Crimea," 2014). This was, on one hand, an opportunity for Russia to reward anti-EU behaviour, and, on the other hand, an example of Dodik's own opportunism in seeking any chance to sustain the symbolic narrative on the historical and cultural/religious legacies between the RS and Russia. Furthermore, in 2014 Russia threw its strongest blow to the EU efforts in BiH when they denied their support for the EU membership efforts of BiH. For the first time in 14 years, Russia abstained from the vote at the occasion of the UN Security Council debate about the extension of the mandate of EU Forces in BiH. Russia's ambassador to Bosnia, Petar Ivancov stated that they do not want "the resolution to be used as an instrument to advance objectives that we were not part of, and that is Bosnia-Herzegovina becoming part of NATO or the European Union" (Cerkez, 2014). A couple of interviewees confirmed the view that the EU's change of heart on BiH is "partly a response to Putin's policies in the region and in Ukraine, and Dodik's open support to Putin" ("Personal interview with a participant in negotiations on implementation of the Sejdić/Finci ruling," 2014).

As the example of a 'new approach' showed, the EU miscalculated the costs and benefits of compliance for the domestic elites. Although the EU had ample experience of low compliance that could not be explained in the simple terms of cost-benefit calculation, its assumptions are still based on the experiences in democratising the countries in Central and

Slovenian Foreign Minister Karl Erjavec also sent a petition to Baroness Catherine Ashton in February, requesting that the situation in Bosnia and Herzegovina is pushed higher on the EU agenda.

Eastern Europe (CEE), where calculations between costs and benefits were more clean-cut. In BiH, the context is more complex, volatile and unpredictable than in the CEE (Anastasakis, 2008), although there is equally widespread public support for EU integration.²⁵ The problem for the EU is a declarative support of all political parties and national elites for the EU integration, which the EU takes for granted. Even though it is formally hard to divide political parties between pro-European and anti-European as suggested by Konitzer (2011), the parties can be divided between liberal and illiberal, however fine-lined that distinction may be. Although this was a crucial distinction in choosing partners in the CEE countries, the EU is not willing to make that distinction in BiH. That is why it keeps falling into the same trap of trying to reward good behaviour, which is lacking, while refusing to sanction the ample examples of obstructive behaviour. In doing so, the EU fails to see that withholding benefits is not considered a valid sanction by some national elites. If making a choice between all seemingly pro-European parties is difficult on ideological or normative grounds, the EU could judge each party based on their actions and specific positions on issues that are subject to negotiations. However, a clear resistance to such ideas by the EU leaves doubt in regards to its ability to repeat its former successes of democratisation in BiH through a basic conditionality approach applied in the CEE countries (Freyburg & Richter, 2010).

Another key obstacle is the existence of 'gatekeepers', which are not new to the EU either. The EU already had to face 'gatekeepers' during Mečiar's government in Slovakia, Tuđman in Croatia, and Milošević in Serbia. Konitzer (2011) rightly rejects "the idea that parties and party leaders will inevitably evolve or lead their parties into pro-EU directions" (p. 1855). In spite of the past evidence elsewhere in Europe, and experiences within the Bosnian context, the EU continues to treat national elites as rational actors, who might be cajoled or compelled to make the required change through the offer of rationalist choices. Sceptical of that scenario, Konitzer boils down the success or failure of EU efforts to a number of factors, two of which apply to my arguments about 'gatekeepers'. The first critical prerequisite for meaningful change is the removal of a stigmatised charismatic leader, such as was the death of Tuđman and Milošević, which opened up room for programmatic manoeuvres within their respective parties (Konitzer, 2011, p. 1884). The second factor is the EU's faulted rewarding of 'less principled extroverts in favour of introverts' who may provide viable policy alternatives

²⁵ The 2010 Opinion Poll showed 88.2% public support for the EU integration of BiH (Directorate for European Integration of BiH, 2010).

(Konitzer, 2011, p. 1885). Both arguments will be further substantiated by evidence in Chapter VI.

Conclusion

This chapter has examined the limitations of the EU as an actor in BiH through the concept of EU normative power, and within the framework of literature on EU conditionality. I have challenged the notion that the EU is predisposed to act normatively, I have shown the weak link between EU norms and its actions in BiH, and underscored the shortcomings of the EU's 'cookie-cutter approach' in the use of conditionality.

Manners' (2002) argument that the EU is 'predisposed' to act normatively cannot be justified because: EU actions result in unprincipled interpretations of its own norms; member states sometimes have conflicting objectives; challenging aspirations of non-EU players; and domestic actors and context pose unprecedented challenges. The EU rather acts pragmatically in line with its internal and external context, and in reaction to challenges and opportunities that arise. In doing so, the EU compromises its own values, and its international identity and uniqueness as an actor that promotes norms externally. I have argued that the EU's self-perception as a normative power is diluted by a discrepancy between its principles and its policies in BiH, by the choice of pragmatic solutions instead of principled belief in its norms, and dissenting views of the EU's various actors about its role and the nature of the EU as an actor. The EU actions lack normative legitimacy, and the domestic elites know how to take advantage of that weakness and to manipulate it. I agree with Anastasakis (2008), who states that the EU blends normative, functional and *real-politik* dimensions, which results in a lack of clarity about the EU's role in BiH. Those inconsistencies and unprincipled behaviours are a reflection as well as a cause of the confused identity of the EU as a power. The result is a confused and compromised EU international identity, and ineffective external democratisation.

The EU's confused international identity, constraining domestic and international contexts, as well as normatively defiant domestic elites, individually and cumulatively compromise the concept of EU conditionality. I have argued against the application of conditionality in BiH, because it misses the target, it misinterprets motivations of domestic elites, it offers inadequate incentives, and is weak on sanctions. The example of BiH undermines the basic assumptions of the three models of external democracy promotion – the

linkage, leverage, and governance. Conditionality has not worked in BiH in an ideal situation in which the linkage and leverage are both high, not even after a governance model had been established through a new contractual relationship between the EU and BiH. The result has been no compliance, even in a situation when incentives were high and costs very low. I attribute this to constraining and volatile domestic and international contexts, the role of domestic elites as ‘gatekeepers’ to external democratisation, and the EU’s inability to recognise the exceptionalism of this situation and to adapt to it. All three factors are addressed respectively in individual empirical chapters.

In the next Chapter, I discuss the need for the EU to promote substantive democracy, which should set the boundaries of what is ‘normal’ in a democratic society. That too should be the essence of the EU’s normative agenda (Manners 2002). However, the evidence presented in this Chapter supports Anastasakis' (2008) argument that “what is ‘normal’ for the EU is not always perceived as ‘normal’ and ‘appropriate’ by applicant countries, especially in post-conflict societies where the notion of normalcy and justice is affected by irreconcilable perceptions and misperceptions” (p. 370). The conceptions of what is ‘normal’ in a democracy differs not only between the EU and domestic actors, but also among various national actors, especially when it comes to the issues of constitutional change and power-sharing arrangements in BiH (Anastasakis, 2008, p. 371). The EU not only fails to see those divergent aspirations, but it also fails to consider or condemn behaviour and actions of domestic actors which are not only undemocratic, but cannot be considered ‘normal’ in a democratic society. Due to that obliviousness, the EU not only fails to recognise and sanction undemocratic behaviour, but in some cases it even adapts to it. I have briefly referred to some examples in support of that argument in this Chapter, but I provide ample evidence to that end in Chapters VI and VII.

Chapter V – Research Approach and Methodology

Hypotheses

The failure of EU democracy promotion in BiH can be attributed to a number of internal and external factors. Factors internal to the EU can be attributed to the nature of the EU as an actor, and how it approaches democratisation in BiH. Factors external to the EU are related to the nature of democracy and democratisation in BiH. Based on that, I have proposed three hypotheses:

1. In terms of the EU's internal constraints that are attributed to the nature of the EU as an actor, two are under-researched. First, the EU-sponsored democratisation suffers from a lack of self-perception that the EU is a normative power, which should strive to exert normative influence internationally. Because of that, the EU is not 'pre-disposed' to act normatively. Secondly, the EU undermines ideational and immaterial aspects of democratisation in BiH, limiting its efforts to procedural aspects. The EU's focus on procedural democratisation hampers substantive democratisation, which precludes the transformation and internalisation of EU democratic norms in BiH.

2. BiH is an unconsolidated democracy, which is a result of a restrictive normative, social and political context, the domestic agent-structure interaction, and deliberate elite agency, which generate two sets of external impediments to democratisation. The first set of external impediments are domestic values and norms which are contradictory and incompatible with the normative basis of the EU, creating a normative gap between the EU and BiH. The second set of external impediments to the spread of EU norms can be described as 'subversions' of democracy, i.e. features evident in unconsolidated democracies, which are taken for granted in 'consolidated' democracies. The first set of variables are contextually predetermined, while the second set are a product of deliberate elite agency.

3. Internal constraints that are related to the EU's approach to democratisation in BiH are grounded in the EU's failure to recognise the exceptionalism of BiH. Due to that spuriousness, the EU applies a 'cookie-cutter approach' that treats BiH as any other

transitional society. However, BiH defies democratic transition and is a post-conflict society in which democracy is struggling to consolidate. The EU tools and instruments which may have worked in early democratisations elsewhere have not produced democratic quality in BiH. The EU's 'cookie-cutter approach' underestimates the salience of ethnic nationalism in BiH, which presents an ideational obstacle to its democratisation and demands a tailor-made approach to the unconsolidated democracy in BiH.

A Social-Constructivist Approach

I use a social-constructivist approach because it enables me to address different aspects of the three hypotheses: the role of agents and structures, domestic and international; the importance of the context and agent-structure interaction; and the ideational and immaterial aspects of democracy promotion. Interaction between actors can be understood as a pattern of action that is mutually constitutive by and with identities and structures, as well as the underlying context and scope conditions (Ruggie, 1998, p. 879). Their actions have 'intended and unintended consequences', which also depend on the interaction with structures. Structures also evolve and are constituted through interaction with actors. Structures are not 'fixed or external' to agent interaction, nor are identities of actors formed exogenously. Actors and structures are mutually constituted through patterns of opportunity and constraint offered by structures, which actors are aware of, and in relation to which they take certain positions (Bretherton, 2006, p. 21). Actors' identity and behaviour is also shaped by the context of social and cultural norms, and historical circumstances that influence their interests. The role of context and scope conditions are thus given a central place in constructivist research, which looks at the way in which "changing identities and interests are invested with social and political meaning" (Fierke & Wiener, 1999, p. 123).

Variants of constructivism have been determined according to where they stand along the rationalist – reflectivist divide, distinguishing between the 'thin' and 'thick' constructivism. 'Thin' constructivism is seen as 'less radical' (Christiansen, 2001, p. 535), studying the impact of norms on actors' identities, interests and behaviour (Haas, 1961; Finnemore & Sikkink, 2001; O'Brennan, 2000). It supposes the constructive power of language in the processes of 'arguing' (Risse, 1999) or 'persuasion' (Checkel, 2001). This variant is termed by Ruggie (1998, p. 881) as 'postmodernist constructivism', and emphasises the linguistic construction of subjects. The

term ‘thick’ constructivism was coined by Tonra (2007). Wiener (2001) sees this variant as more ‘radical’, seeking to understand the ways in which the world is constructed. Its main assumption is that, “language constitutes meaning within specific contexts, leading to rule following” (p. 535).

The early constructivist research of EU integration sided more with its ‘thin’ variants, focusing largely on final outcomes, such as internalisation and institutionalisation of rules and norms, and construction of political communities. Less attention was paid to the processes of construction, constitution and transformation of identities. One of the areas underappreciated by ‘thin’ constructivism is agency, which is an important element in my hypotheses. This is why I opt for a ‘thick’ constructivist approach, which enables me to study many aspects of EU normative power, including diffusion and internalisation of norms, identity formation, and studying the context and scope conditions. Instead of viewing constructivism as a theory of European integration, I rather prefer to apply “constructivist thinking about European integration” (Christiansen, 2001, p. 11).

Applying a Social-Constructivist Approach

When it comes to the processes of EU integration and enlargement, constructivist research has mainly looked at the context in which identities and interests are mutually constituted through interaction with EU structures (Fierke & Wiener, 1999, p. 125). Their key concern has been the context in which the EU expansion would be meaningful and rational. My interest is in the mechanics of the construction of norms in BiH through interaction with the EU, which is challenged by a restrictive domestic context, potentially competing norms, and encumbering elite-agency.

I consider approaches which look at the transformative power of the EU simply in terms of procedural aspects as too descriptive and in risk of omitting the important processes of substantive subversion of democratisation. Procedural approaches overlook the constitutive and transformative aspects of promotion and internalisation of EU norms because they fail to ‘deconstruct’ the nature of EU power, which is why they need to be supplemented by an assessment of substantive transformation. In Chapter VII, I turn to the processes of interest and identity formation in order to fully apprehend those aspects of transformation through EU democratisation in BiH.

When it comes to identity formation constructivists place different weight on international or domestic norms in shaping state identities. More emphasis can be placed also on the impact of the international environment, while identity is mainly a domestic attribute based on national ideologies and a sense of collective distinctiveness (Finnemore & Sikkink, 2001). In the following empirical Chapters I will look at both, the impact of the international environment, and the role of domestic factors, primarily nationalism, on identity formation in BiH in relation to EU norms. Christensen et al. (2001) argue that “if the study of identity formation is accepted as a crucial component of constructivist research, the role of language and of discourses becomes crucial” (p. 541). I apply discourse analysis in Chapter VI to analyse the use of nationalist rhetoric and discourse in the construction of interests in BiH. I subscribe to the notion that interests and identities cannot exist independent of the context in which agents and structures interact (Diez, 1999; Manners & Lucarelli, 2006). I analyse the nationalist rhetoric of Milorad Dodik as a performative act that constructs actors’ interests in a structural context that is characterised by ethnic divisions and weak institutions. His rhetoric is intended to shape collective understandings of that context and the identities of the actors involved (Manners & Lucarelli, 2006, p. 4).

I apply constructivist ‘thinking’ in my research approach, which demands looking into norms, mechanisms of norm diffusion, and the context of norm diffusion or scope conditions.

Norms

Constructivists view norms as “...shared, collective understandings that make behavioural claims on actors” (Checkel, 1999, p. 551). Norms can shape and be shaped (or constructed) in a relationship between actors, context, and structures (Fierke & Wiener, 1999, p. 125). Compliance with norms may be conditioned by characteristics of norms (appropriateness, validity, ideational commitment), by the role of norm entrepreneurs, norm origin, and norm character. I analyse each of these elements of EU norms in Chapters VI and VII in relation to two specific democratic norms, trust and equality/participation.

Norm characteristics. The first feature of norms that shape the behaviour of actors with a certain identity is appropriateness of behaviour (Finnemore & Sikkink, 1998, p. 891). Norm

conformance may be driven by material self-interest, so that norms and rationality could not be separated (Finnemore & Sikkink, 1998). Motivations implied by this concept may include habit, duty, sense of obligation and responsibility as well as principled belief (1998, p. 888). Alternatively, the motivations might stem from the fact that behavioural alternatives were never considered, that behavioural alternatives are considered useless or normatively objectionable, and that certain behaviour is chosen because it is considered appropriate for maximising social rewards (Johnston, 2005, p. 1041). Secondly, universal validity of norms mobilises compliance in collectivities with a 'thick' sense of cultural identity (Sjursen, 2006, p. 175). They are not specific cultural values, but norms that have more universal appeal and establish what is 'fair or just', bearing a persuasive sense of validity and legitimacy. The third set of norm features that condition compliance include subjective criteria such as 'empathy, altruism, and ideational commitment' (Finnemore & Sikkink, 2001, p. 898). Norm compliance thus takes place due to a belief in the ideals and values embodied in the norms.

Norm entrepreneurs. Finnemore and Sikkink (1998) emphasise that norm entrepreneurs are critical for norm emergence. They bring attention to issues or even 'create' issues by using language that names, interprets, and dramatises them (1998, p. 896). Checkel states that norm entrepreneurs are individuals with skills to turn their individual beliefs into broader normative beliefs when opportunity arises (2001, p. 553).

Origin of norms. Norms can be of domestic or international origin. Finnemore and Sikkink (2001, p. 893) argue that many international norms started as domestic norms and were subsequently internationalised by norm entrepreneurs. Domestic norms sometimes act as 'filters', which affect compliance and interpretation of international norms. Such influences are stronger in early stages of norm promotion, and lessen when a norm becomes internationalised. Also, norm entrepreneurs can sometimes use international norms to justify their position on domestic norms (2001, p. 896). Domestic norms can have a strong influence on promotion of international norms in young democracies with ethnic cleavages and with political parties organised along ethnic lines (Kelley, 2004, p. 431). In those cases allegiances are likely to be stronger with domestic rather than international norms. Johnston (2005, p. 1043) also refers to the strength of domestic allegiances in the face of promotion EU norms. He suggests looking into other criteria such as national symbols, 'intensity effects' of socialisation at local and international level, 'boundary policing' of in-group identity, and 'localisation' of international norms under the influence of local beliefs and practices (2005, p. 1027).

Character of norms. Character of norms can be discussed in terms of its legitimation, prominence, and issues at stake. Finnemore and Sikkink (2001, p. 906) define legitimation as a main motivation for normative shifts. States and elites which are insecure about their international status or reputation might adapt to international norms more easily. In terms of their prominence, some norms may be more prone to internationalisation than others, which can be affected by the quality of the norm itself or by the quality of the states promoting the norm. Other relevant criteria which I account for in empirical Chapters are norm clarity, specificity and content (Johnston, 2005, p. 1028).

Mechanisms of Norm Diffusion

Constructivists identify a range of mechanisms of norm diffusion. Given my focus on the concept of EU normative power, I first take into account diffusion mechanisms proposed by Ian Manners (2002, pp. 245–6):

- a. Contagion - diffusion of norms results from the unintentional diffusion of ideas from the EU to other political actors
- b. Informational diffusion is the result of the range of strategic communications, such as new policy initiatives by the EU, and declaratory communications, such as initiatives from the presidency of the EU or the president of the Commission.
- c. Procedural diffusion involves the institutionalisation of a relationship between the EU and a third party, such as an inter-regional co-operation agreement, membership of an international organisation or enlargement of the EU itself.
- d. Transference - diffusion takes place when the EU exchanges goods, trade, aid or technical assistance with third parties through largely substantive or financial means.
- e. Overt diffusion occurs as a result of the physical presence of the EU in third states and international organisations.
- f. Cultural filter which affects the impact of international norms and political learning in third states and organisations leading to learning, adaptation or rejection of norms.

However, in order to be able to assess the transformative impact of the EU norms, Manners' (2002) mechanisms of norm diffusion need to be complemented by social

constructivist mechanisms, such as norm internalisation mechanisms proposed by Checkel (2005):

- a. Norm compliance – Compliance focuses on processes leading to internalisation, such as coercion and sanctions, cost/benefit calculations, persuasion, etc. Checkel (2005, p. 549) looks at motives and attitudes which change according to a set of norms, and gives speech and language a central role in his analysis.
- b. Social learning - Agent compliance comes not so much through political pressure, but through learning. When exposed to the prescriptions embodied in norms, agents adopt new interests. Rationalists and constructivists explain learning differently. Constructivists seek to capture the shaping of actors' interest and identities 'through and during interaction'.
- c. Role playing / mimicking - When role-playing occurs, the shift from logic of consequences toward logic of appropriateness has begun, as it involves non-calculative behavioural adaptation (Checkel, 2005, p. 810). 'Mimicking' happens when an actor copies behavioural norms or discursive practices of a group (Johnston, 2005, p. 1021).
- d. Persuasion - Argumentative persuasion implies interaction, while manipulative persuasion is asocial and devoid of genuine interaction (Checkel, 1999, p. 12). Persuasion is prone to social learning and may lead to interest redefinition and identity change, depending on the intensity, duration, and quality of exposure to norms as explanations of the success of persuasion (Johnston, 2005, p. 1030).
- e. Socialisation is the "process of inducting actors into the norms and rules of a given community" (Zurn & Checkel, 2005, p. 804). Socialisation is the process through which an actor moves from the logic of consequences to a logic of appropriateness (2005, p. 1048). Zurn and Checkel (2005, p. 1050) propose two routes of socialisation (through structures and through actors) using three principal socialisation mechanisms: strategic calculation, role playing, and normative suasion.

The key to triggering any of those mechanisms are favourable scope conditions. They may include properties of the international institutions, properties of the political systems and agents that become socialised, properties of the issues or norms regarding which socialisation takes place, properties of the interaction between socialising and socialised agents (Checkel, 2005, p. 1055). Schimmelfennig (2000) suggests that when populations are weakly mobilised 'because of underdeveloped party systems', political elites are under less bottom-up pressure

to conform to demands for normative changes from other states or international institutions. In a similar fashion, Mansfield and Snyder (2002) argue that population can actually be ‘overmobilised’ in new democracies with underdeveloped party systems, particularly through appeals to nationalism.

Analytical Strategy for the Empirical Chapters

The two empirical Chapters, each of which assesses one dimension of democratic substance, are based on two case studies. I have decided to use a case study approach because it is seen as the best research strategy when ‘how’ and ‘why’ questions are being asked, when the investigator has little control over events, and when dealing with contemporary events (Yin, 2002, p. 1). Particularly important is the view that case study is a useful empirical inquiry when the “boundaries between phenomenon and context are not clearly evident” (2002, p. 13). Case study method is used to uncover contextual conditions which are germane to the phenomena I want to explore. My analytical strategy for the assessment of each case study is based on Yin’s approach to case study analysis, which includes three general strategies: relying on theoretical propositions, thinking about rival explanations, and developing a case description (2002, p. 115).

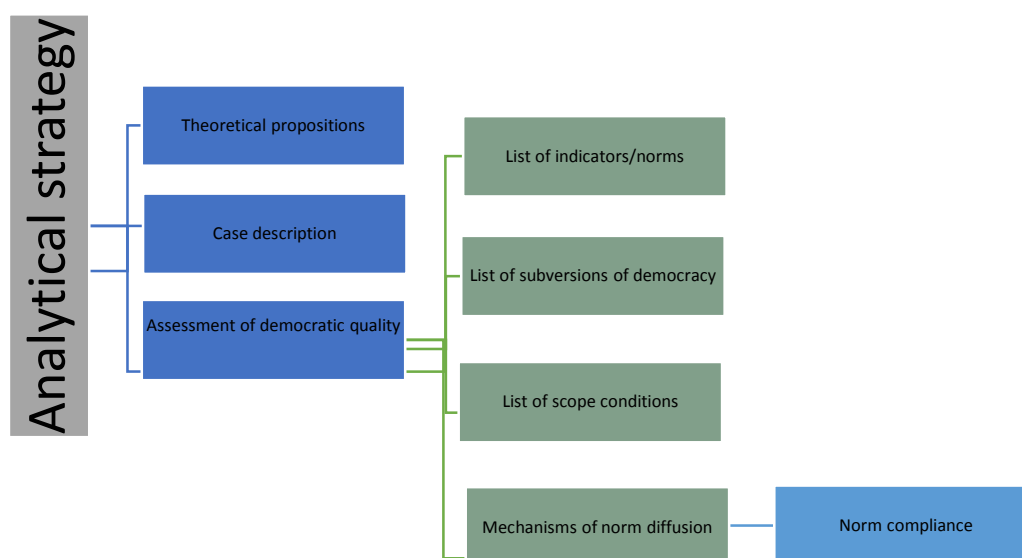


Figure 3 - Analytical strategy

The conclusions drawn in each empirical Chapter refer to specific hypotheses I have proposed. The conclusions have been reached by triangulating information from the three sections of each Chapter. Yin (2002, p. 98) lists four different types of triangulation. The most relevant for my study is the methodological triangulation. It is used when data is collected through several sources and analysed using different methods. Validity of findings is established if similar conclusions have been reached using different methods. In my case studies triangulation is conducted in the following way:

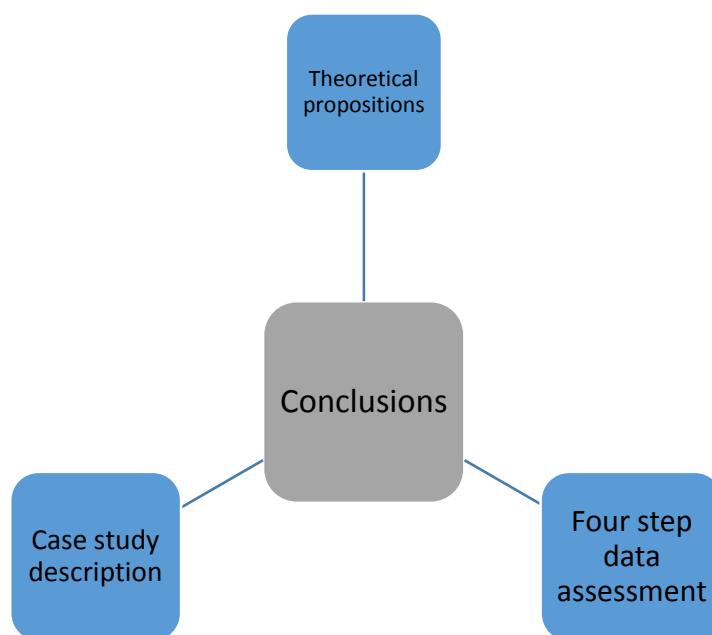


Figure 4 - Methodological triangulation

Yin proposes that each analytical strategy underlies a specific analytic technique, which are used to develop internal validity and external validity in doing case studies. He proposes five techniques that lay ground for case studies. However, instead of adopting any of those techniques, I have developed a tailor-made framework of analysis using the constructivist approach to studying EU normative power described above. In the next section I explain the four-step assessment of each dimension of democratic quality which will corroborate my analytical strategies.

Assessing Democratic Quality

There is no single framework for measuring the quality of democracy, which would be “right and true for all societies” (L. Diamond & Morlino, 2005, p. xii). Democracies differ in the normative weights they place on different dimensions of democratic quality, so a research approach needs to explain variations based on indicators that are specific to a country. Diamond and Morlino’s list of dimensions of democratic quality links the procedural dimensions to democratic substance by measuring eight dimensions (five procedural, two substantive, and one result dimension). The procedural dimensions are: the rule of law, participation, competition, vertical accountability, and horizontal accountability. Substantive dimensions are freedom and equality, and the result dimension is responsiveness in the sense of a democratic process through which the government designs and implements policies which citizens demand and want (2005, pp. xxv–xxxix).

Potter (2005, p. 527) points out that all these are necessary but insufficient conditions for a democratic polity to survive and they are not easy to obtain in democracies where legacies of hate, mistrust and conflict remain. This is why my framework of analysis needs to include dimensions that capture democratic ‘substance’ more closely, and which can reflect the difficult circumstances the EU faces in a “defective” democracy such as BiH.

I have made an argument in Chapter III that consolidation can for my purposes be understood as an outcome rather than as a process of democratisation. In order to assess and measure democratic consolidation as an outcome of democratisation, I borrow Diamond’s definition (1999) of consolidation: “a behavioural and attitudinal embrace of democratic principles and methods by both elites and mass” (p. 20). The task of democratic consolidation in a “defective’ democracy’ such as Bosnia and Herzegovina, is “to balance cleavage and conflict with the need for consensus” (1999, p. 166). The two key substantive dimensions of democratic quality which can ensure fulfilment of this task are trust and equality/participation.

Trust. Almond and Verba (1965) argue that political trust is crucial for a consolidated democracy. Political trust focuses on the sentiments of the citizens towards the key institutions of their society and gives a sense of the legitimacy of the governance arrangements in the eyes of the population. Social trust is also regarded as a precondition for the smooth functioning of the society and its institutions and it is one of the core elements of Putnam’s theory of social

capital which he introduced in “Making Democracy Work“ (1994). Putnam sees declining trust as a major challenge for societies, particularly those with a history of conflict. Uslaner and Inglehart (2002) see democratic societies as trusting societies. In their view, more trust leads to “better” government and happier public. Democracy does not make people become more trusting, but rather “trust leads to better institutions” (2002, p. 172). Other authors link trust to the second dimension I will assess, participation/equality, and suggest that trust is able to motivate political participation, and to improve the quality of this participation (Lenard, 2005).

Equality/participation. Diamond and Morlino (2005) include participation in procedural rather than substantive dimensions of democratic quality. However, I argue that decays in participation subvert democratic substance, particularly in respect of social and political equality and political culture. Subversions of participation can be due to several factors such as the apathy of citizens, doubt in the efficacy of democratic mechanisms, alienation from the democratic process, systemic flaws, etc. (L. Diamond & Morlino, 2005, p. xvii). In that respect, participation is related to political equality, because political inequalities result in lesser consumption of democratic right of participation by under-privileged groups (2005, p. xvi). Another supporting condition of participation is the political culture, which should value participation and equality of all citizens (2005, p. xvii).

Beetham (2003) points out that developing, or more challenging, democracies can alert us to features that are taken for granted in ‘consolidated’ democracies. Those features he calls ‘subversions’. However, he sees this term as too restrictive because it may imply intentionality, whereas democracy can also be undermined by unintended inadequacies in institutions, procedures or elites. As I mentioned in the introduction, Beetham (2003) deliberately excludes the cases of countries which have been ‘debilitated by a civil war’ from his research. Unfortunately, Bosnia and Herzegovina fits this description, so the use of the term ‘subversion’ is seen as appropriate and even desirable. In this case it encompasses intentional as well as unintentional undermining of democratic consolidation. My framework of analysis stems from Beetham’s focus on such substantive flaws.

Framework of Analysis

Based on the two dimensions of democratic substance identified above, I have designed a specific framework of analysis that captures ‘subversions’ of trust and equality/participation

in order to assess the quality of democracy in BiH. Based on that framework of analysis, the next stage of my research will identify specific assessment criteria of what can subvert democracy. Using a modification of Beetham's four-step model my research follows this route:

- I. Using the two dimensions of democratic quality given above as a starting point, identify specific indicators for each which would represent EU democratic 'norms'. As pointed out earlier, the EU normative basis is defined in a range of documents, which will be analysed in search of indicators. Attention is also paid to informal democratic norms, which have not been enshrined in EU documents, but which have acquired a taken for granted quality in democratic societies.

- II. For each indicator of EU 'norms', identify procedural and substantive 'defects' or 'subversions' of democracy in BiH through research. In line with the constructivist thinking about the mutual interaction between structures and actors, and the importance of scope conditions, I will identify a procedural and substantive aspect for each dimension of democratic quality. My research will seek to identify both procedural and substantive 'subversions' for each indicator representing an EU norm.

- III. Identify scope conditions, instruments and processes of norm diffusion, and obstacles to norm diffusion for each indicator, and analyse them. My intention is to reveal the effectiveness, or otherwise, of the EU's procedural approach by looking at the nature and character of obstacles to its diffusion mechanisms and the way they are (or are not) tackled. While assessing and analysing each of the indicators and their 'subversions' I will identify which of the five mechanisms the EU deploys to diffuse that particular norm: informational diffusion, procedural diffusion, transference, overt diffusion, and cultural filter. Those six mechanisms may not necessarily reveal actors' motives for complying. That is why the next stage of assessment encompasses the following elements: contagion, human agency/norm entrepreneurs, appropriateness, origin of norms (domestic vs. international), and norm character.

- IV. Based on an analysis of the relationship between EU norms and identified democratic ‘subversions’, determine the level of norm transformation. The final step is to assess EU normative influences and impact according to a range of instruments and outputs identified in previous steps. In line with Michael Smith’s (2004, p. 181) assertion, I will seek to extend that assessment beyond mere ‘impact’ or ‘influence’ to more extensive measures of ‘effectiveness’ or ‘success’. Based on the discussion about norm compliance in the second Chapter, I propose the following set of measures of assessment of the level of compliance with EU norms: overt subversions, low compliance, procedural compliance, institutionalisation, internalisation, and transformation.

The four steps of assessment are illustrated in the following figure. As Beetham points out, these stages are not necessarily separate in practice, but form part of an iterative or reflexive process. Separating them analytically, however, is a useful guide to a procedure of assessment.

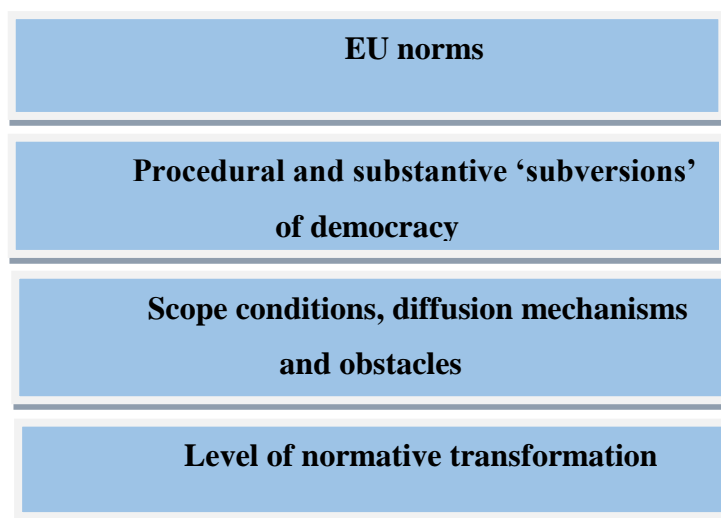


Figure 5 - Procedure for assessment of democratic quality

Access to Information

I was based in Bosnia and Herzegovina throughout the process of conducting research. This enabled me to have first-hand access to individuals, organisations and information that were relevant to my research. But even more so, by being present in the country throughout that period, I was directly exposed to events, media coverage, public and informal debates and processes surrounding those cases. Access to information was therefore not an issue, and I

needed to focus on methodologies of collecting, organising and managing data. My framework of analysis was a central place around which I organised the data.

Throughout this period, I performed various professional roles, which enabled me to have very easy access to information and I hardly experienced any obstacles to collecting information. I have been professionally engaged by the Council of Ministers of BiH (originally as an advisor and eventually appointed as Deputy Minister of Civil Affairs), I worked as an advisor and project manager for various international organisations and projects in BiH (OSCE, Office of the High representative, EU, USAID, NDI, etc.), and I was also very active as a member of the NGO sector (I set up and ran a think tank for the Foreign Policy Initiative BH). I have published articles in newspapers, weeklies, policy papers, books and other publications. My network of contacts is rich and wideranging from journalists, government officials and civil servants, politicians and members of parliament across all political parties, analysts, academics, foreign diplomats, etc. My personal contacts and network obtained me direct access to individuals who have been directly engaged in the process which I observed. I used attendance at conferences at home and abroad to widen access to individuals outside BiH. I used trips to Brussels and many European capitals to interview as many stakeholders as possible.

I collected the majority of material for my thesis before I became a government minister in February 2012. This ensured that I approached the topic from an unbiased and non-political perspective. Given the timeframe of my case study, the majority of empirical material was collected in the three years before 2012. The EU and government's joint effort on finding a solution to the implementation of the Sejdić/Finci ruling continued throughout this period and intensified in 2013 and 2014, which is the timeframe I have looked at.

Sources of Information

Participant observation. Several projects in which I was professionally engaged were related to the EU integration of BiH. For several years I ran the project entitled 'Monitoring the European Integration Processes of BiH' implemented by the Foreign Policy Initiative BH (FPI). Through that project I had direct access to information that FPI researchers were gathering. I attended numerous focus group meetings and conducted surveys that were also relevant to my research topic. As a part of that project, I organised and attended many international conferences, round table discussions and workshops on EU integration. Those events

continually exposed me to a variety of views of domestic and international political players, analysts and experts.

Documents and legislation. I have used various EU documents, which have elaborated on and added to the original Copenhagen criteria set out in 1993. Those documents include the EU Treaties, Zagreb Declaration of 2000, the Thessaloniki Agenda for the Western Balkans of 2003, the Stabilisation and Association Agreement, the European Partnership, EU annual Progress Reports for BiH, EU Parliament Resolutions on BiH, Council of Europe and Venice Commission documents, etc. However, I have also included in my research criteria that which is not so explicitly declared in EU documents, but rather representative of democratic norms which have acquired a taken for granted quality in democratic societies, and which come through the public statements of EU officials. I also studied various relevant constitutional documents and legal frameworks in BiH.

Interviews. My knowledge of the context is wide and deep, so the purpose of interviews was not to obtain basic information about the country, different players and processes. I was able instead to focus interviews on more substantive in-depth issues and seek a wide variety of viewpoints. The official lines of interviewees were publicly available and known to me, so my questions rather referred to substantive accounts, informed opinions and a variety of interpretations. Given my various roles in BiH society, when conducting interviews I had to emphasise that their purpose was my PhD research. Although most interviewees agreed to answer my questions, they often asked not to use direct quotations. Many of them were senior officials who agreed to provide informed opinions, rather than positions representative of their organisation. This is why many of them opted for strict identity confidentiality.

Although in effect I conducted tens of interviews, the most relevant ones are the following, even though in the end I do not refer to all of them in my thesis: five interviews with senior and mid-ranking EU officials from Brussels, five interviews with EU officials based in Sarajevo, three interviews with officials from EU member states, twenty five interviews with BiH politicians, seven interviews with direct stakeholders, five interviews with political analysts from BiH, and several with analysts from the region and EU countries, and three interviews with journalists from BiH.

Media monitoring. For the purpose of monitoring the rhetoric during the campaign for 2010 General Elections in BiH, I used two sets of resources. Media Intelligence Agency morning briefs, which are compiled on the basis of daily monitoring of 3 news agencies, 11 radio and TV news broadcasts, 11 newspapers, over 20 international outlets, as well as 9 weekly/biweekly print magazines and 10 weekly current affairs TV programs (produced in English language).²⁶ MIA briefs include situation analyses on media scenes, politics, education, judiciary, social issues, etc. Secondly, news reports published on six major web-based news portals (in languages of BiH).²⁷ Information for Chapter VI was collected during the month of formal election campaign, from September 3rd – October 4th 2010. Evidence for Chapter VII was collected in the period since the ECHR Decision in April 2009 until the introduction of the EU's new approach to BiH in 2014 and 2015.

Other sources. Evidence on citizens' perceptions was collected using three methods: the public opinion survey conducted by UNDP (2009b) and Foreign Policy Initiative BH;²⁸ a questionnaire I designed on motives and perceptions of citizens that collected data from three groups of 10-15 interviewees, each belonging to one of three constituent peoples in BiH; through focus groups (three focus group meetings were conducted, each within one of the three ethnic groups).²⁹ Other sources of information included academic journals, official documents and reports from different organisations, media and press accounts, policy analyses, think-tank reports, government papers and documents, etc.

Content analysis.

Methodology - Chapter VI (trust). Research in Chapter VI was based mainly on information from documents and media reports. After collecting empirical data from the media I managed it through content analysis software. In the first step, I ran a word frequency search in order to identify one thousand terms most prominent in the media during the election campaign. After removing terms of grammatical purpose only (pronouns, conjunctions, numbers, prepositions, and articles), I produced a table of 150 terms, which appeared most in

²⁶ Media Intelligence Agency, Sarajevo, Bosnia and Herzegovina.

²⁷ Web-portals were monitored using the Google reader tool, which receives RSS feeds from the following web sites: www.sarajevo-x.com, www.vijesti.ba, www.6uka.com, www.frontal.rs, www.vecernji.ba

²⁸ Because I participated in the design of this survey, I included in it several questions that were required for my research. Prior consent was granted by the Assembly of FPI BH.

²⁹ Focus groups were also conducted as part of a larger research project by FPI BH. However, consent was granted to include a number of questions for the purpose of my research, and participants were informed about the purpose of those questions.

the media during the elections campaign. The first fifteen words were indicative enough of the issues and actors which dominated the campaign.

What this research revealed is that the current President of Republika Srpska, Milorad Dodik, and his party SNSD (Party of Independent Social Democrats) were the most prominent political actors during the campaign. Dodik's name was the fourth most mentioned word in all media,³⁰ and SNSD was the most mentioned political party. Other major political parties were also among the first thirty words, but were about half times less mentioned than SNSD (e.g. SDA was mentioned 196 times, SDP 194). Significantly enough, the word 'war' also came within the first fifteen words, which revealed a strong connection between the election rhetoric and the past.

Because of such dominance of one leader and his party, I decided to focus my research on the campaign of Milorad Dodik and SNSD in order to explore the connection between their campaign and issues which also emerged as prominent (relationship with the State, international obligations i.e. EU accession, treatment of political opponents, relationship with the past through references to the war, etc.).

In the next step, I used nVivo software in order to produce 'word trees' for the terms that dominated Dodik and SNSD's campaign. I used the word trees as illustrations of the context in which those terms were used, and thus isolated a number of narratives that shaped SNSD's campaign.

I then collected evidence of rhetoric used to substantiate those narratives through the search of media outlets which reported on election rallies, speeches, election messages, press releases, press conferences, etc. The information collected through this process was then entered into a table of evidence, using the adapted framework of analyses proposed by Beetham. In the final stage, this information was interpreted using the concept of narratives. Clandinin and Connelly (1991) argue that narrative 'captures and investigates experiences' of human beings based on the perspective of their lives placed in time, space, person, and relationship. In the *Acts of Meaning*, Bruner (1993) states that narrative provides interpretive meaning in a given context. He states that meaning is not "out there" but is constructed in the human sphere

³⁰ Primarily on the list of one thousand most mentioned words in media, even before it was reduced.

of culture. According to social psychologist Kenneth J. Gergen (2009), human beings retain the capacity to review the past in the light of the present, and so change the future. These insights apply across cultures, and people act to change their social context and even revise the meaning of their own history. Such revisions, according to Bruner, come through narrative. People tell stories about themselves and others in an effort to provide coherence to the past, an explanation for the present, and goals for the future.

Analysing a narrative, or narrative inquiry, needs to encompass a "three-dimensional inquiry space" — the temporal, the spatial, and the personal-social. Although usually applied to individual behaviour, particularly in the study of education systems, Clandinin and Connelly (1991, p. 2) do allow for narrative inquiry to be sociologically concerned with groups and the formulation of community. In addition to the three-part structure of time, Carr (1991) relates the narrative structure to three dimensions of human experience – significance, value, intention. Past conveys significance, the present conveys value, and the future conveys intention. Narrative meaning thus consists of significance, value and intention. This structure helps convey a sense of purpose as temporal data are fit into the past, present and future oriented parts of the narrative. Clandinin and Connelly's (1991) three-dimensional inquiry can be applied to distil themes or purposeful narratives in the sense that I apply the term here, to explain the social interaction, the temporal dimension, and the context.

Methodology - Chapter VII (equality/participation). This Chapter relied more on information from interviews, documents and participant observation, but also to a lesser extent on media reports. This is why in this Chapter, I opted to analyse information through interpretative content analysis, rather than using content analysis software as in the previous Chapter. Aaron Ahuvia (2001, p. 147) notes that coding rules are far more straightforward in traditional content analysis. However, such a method cannot ensure a popular or widespread interpretation of the text. In Chapter VII my objective is rather to underlie motivations for accepting or rejecting EU norms, for which I needed an interpretive account. When a researcher seeks to interpret social reality in a subjective, yet scientific manner, then qualitative content analysis is seen as an appropriate analytical route. It does not merely count words or extract content from texts. It rather examines meanings, themes and patterns that may be manifest or latent in a particular text (Zhang, 2009). Qualitative content analysis is mainly inductive.

In Chapter VII, I bring together my interpretive account and the social constructivist approach in line with Thomas Diez' (1999) view that there is an evident neglect of the role of language in studies of European integration. This is also in line with my view that meaning and language are central to the research of constitution of identity and interests. My objective is to illustrate how identity, discourse and narratives are mutually shaped with and by the declared EU democratic norms. Discourse and language analysis also shed light on specifying scope conditions regarding the effects of norms on identity change and actor behaviour, by asking 'when, how and why such identity formation occurs' (Checkel, 2001, p. 556). Diez claims that language does more than describe; that all our accounts of the world are embedded in certain discourses; that the meaning of words is dependent on their discursive context; that this context is not rigid but in constant flux; and that recent transformations of the discursive context enable the construction of Europe as a 'network'. I will use Diez' (2005, p. 99) concept of discourse in order to explain interaction between structure and agency by seeing political articulation as a constitutive part of discourse.

Chapter VI – The First Dimension of Democratic Quality – Trust

Introduction

In this Chapter I address the EU's shortcomings in addressing the rising nationalism in BiH during the process of democratisation. In Chapters II and III, I laid out the basic premises of the system in which nationalism has been institutionalised through a power-sharing arrangement, and a series of fault-lines in democracy. In Chapter IV, I introduced some of the weaknesses of the EU as an external democratiser in BiH, including the EU confused international identity, the perplexity surrounding the riddle as to whether the accession process is technical or political in nature, the indecisiveness among EU actors on key problems in BiH and how to tackle them, the divergent views of EU actors in the role of the EU as a state-builder, and a discrepancy between being a normative power and acting as one. In this Chapter I return to the argument made in Chapter IV that the weak legitimacy of the EU results in 'fake, partial, or imposed' compliance (Noutcheva, 2009). This I attribute to the EU's reliance on a 'cookie-cutter approach' to conditionality in BiH, in which it relies on the use of procedural instruments. In this Chapter, I show how the EU applies the 'cookie-cutter approach' in practice, and attribute the pitfalls in its procedural approach to three factors identified in Chapter IV: the tenaciousness of 'gatekeepers' to democracy (Tolstrup, 2014), the volatile domestic context, and the EU's reluctance to use sanctions. These first two factors are attributed to the dominance of nationalism in BiH, whereas the third factor stems from the EU's 'confused international identity'.

The international community invested immense efforts, time, and money in strengthening the institutions and state of BiH between 1995 and 2005, which was only possible by suppressing the interference of nationalism in the processes of state-building and democratisation. However, as argued in Chapter II, as soon as the international community's influence decreased, nationalism rose again, and not only has it stalled the EU integration processes, but it has reversed some of the previous international successes in state-building. I have already made a point that the resurgence of nationalism coincided with the EU's appointments as the chief external state-builder and democratiser in BiH. Under those circumstances, it would be simple to assume that the compliance with EU norms is affected by the strength of identity and nationality based issues (Freyburg & Richter, 2010). However, as I already argued in Chapter IV, the nationalist elites in BiH have learned that they can create

obstacles to the EU's norm diffusion on just about any issue, as long as it is fashioned into an issue of importance for the identity or nationality of their respective ethnic groups. In this Chapter, I show the process of politicising and 'ethnicising' issues in order to create 'counter-norms' as obstacles to the promotion of EU norms. In the first part of this Chapter, I describe the kinds of obstacles which nationalism has posed to the EU, which illustrate the restrictive context in which the EU-sponsored democratisation is taking place.

In the second part of this Chapter I look into the EU's own approach in dealing with such a context, and its inability to adequately approach and face the resistance to EU norms by domestic elites. As this Chapter relies on empirical evidence collected through a case-study approach, I analyse and describe specific instruments to which the EU resorts. The EU has at its disposal a much wider range of instruments, which it refrains from using in BiH, thus restricting its own choices of actions. The main arguments to which I return in this Chapter are: BiH as an 'eclectically unconsolidated democracy' poses unprecedented challenges to EU norms; the EU fails to see the exceptional role of destructive nationalism in the process of democratisation in BiH; the EU undermines substantive democracy by its focus on procedural democracy and through the extensive use of procedural instruments; and it excessively relies on a misplaced 'cookie-cutter approach' in norm promotion.

In the preceding Chapter, I described my tailor-made framework of analysis, which is based on the assessment of two substantive dimensions of democratic quality, trust and equality/participation. In this Chapter, I look at a distinct relationship between trust and democracy. There is a general consensus that trust and democracy are interdependent, but authors disagree about the nature of that relationship. One body of literature argues that too much trust, in the sense of deference to the ruling powers, can inhibit democracy. Citizens are often motivated to participate in politics precisely because they distrust politicians and wish to hold them accountable. On the other hand, some scholars agree that a minimum level of trust is essential for decision-making to be delegated and democracy to function. This approach sees trust as an important aspect of a democratic political culture, although there is extensive debate in literature about whether trust is necessarily a product of democracies (Uslaner, 2002), or the other way round (Inglehart, 1997a). Also relevant is Inglehart's (1997b, p. 142) argument that trust can be destroyed by authoritarian states for the purpose of maintaining control. As I stated in Chapters II and III, BiH is not an authoritarian state, but some of the practices introduced in

Republika Srpska by Dodik since 2006 can be described as authoritarian, which further underlines a need for rebuilding trust, and re-instating democratic practices.

With that in mind, this Chapter seeks to shed more light on the relationship between trust as a substantive dimension of democracy, and democratic consolidation, by looking at ways in which Dodik's undemocratic practises destroy trust, and how, if at all, the EU attempts to counter such undermining of democracy. As I have argued in Chapter II, the underlying structural fault-lines in trust do not fully explain the recent growth of distrust in BiH, neither can it be attributed to the alleged reappearance of eternal hatreds. I have already made an argument about the prevalent role of human agency in that endeavour, and elite entrepreneurship in destroying trust. I substantiate that point further in this Chapter by providing more evidence, which includes populism, negative, divisive rhetoric, 'hate-language', radicalism, extremism, and nationalism.

My intention is not to look into the initial post-1995 international or domestic efforts to build trust, to which I referred partly in Chapter II. I rather look at how trust is being destroyed in BiH two decades after peace was signed, and how that contributes to a 'defective' democracy. I claim that trust as a component part of democratic culture promoted by the EU is challenged by competing concepts of nationalism and secessionism. The EU in that regard faces the challenge of a 'clashing' normative basis that is incompatible with the norms of the EU, and it fails to address it adequately. In this Chapter I apply the analytical strategy described in the previous Chapter, and I proceed by providing a brief description of the case study, followed by theoretical propositions on trust, and then I analyse the empirical evidence by looking at the rise of nationalism since 2006, and the EU's failed management of those counter-influences.

Description of the Case-Study – the SNSD 2010 Election Campaign

The case study analysed in this Chapter is the rhetoric deployed during the 2010 election campaign by the Party of Independent Social Democrats (SNSD) and their leader Milorad Dodik. In the previous Chapter I explained the technique which I used to select the specific party and leader whom I would analyse in this Chapter. But even more importantly, the reason why I analyse the rhetoric of only one leader and this specific political party is because they provide the most illustrative examples of how nationalism re-entered the mainstream of politics in BiH in 2006, and it also vividly shows the EU's ineffectiveness in counteracting those

influences. In Chapter III, I provided some evidence in support of my claim that BiH has many features of different types of unconsolidated democracies. In this Chapter I provide evidence that shows how deep those ‘defects’ are.

As discussed in Chapter II, the nationalist parties which were formed in 1990, and their many spin-offs, still dominate the political scene in BiH. Although some left-wing parties did manage to secure a significant number of votes in the 2010 and 2014 elections, none of them was able to form the government at any level without the support of nationalist parties. SNSD alone cannot be blamed for the resurgence and rise of nationalist rhetoric between 2006 and 2015, especially having in mind that different ethnic nationalisms have a spill over effect, one cannot exist without the other. They create a vicious circle in which one ethnic nationalism feeds another, which then ignites the nationalism of a third group, and so on. This system works on the principle of connected vessels, whereas raised levels of nationalism in one ethnic group raises the level of nationalism in another. As I briefly referred to in Chapter II, Dodik’s re-energised nationalism appeared around the same time when Haris Silajdžić, a leader of a Bosniac political party, was seeking opportunities to return to power. Both leaders employed violent language, they presented maximalist, radicalised positions on all issues, and played a tit-for-tat populist game, throwing nationalist slogans back and forth each time one of them would make a statement about an issue. Dodik presented his rhetoric as a defence of Republika Srpska against Silajdžić who called for its abolition, whereas Silajdžić positioned himself as the defender of the state of BiH, which was under threat from Dodik’s dis-integrationist politics, and his calls for the autonomy of Republika Srpska. It will be recalled from Chapter II that Silajdžić’s efforts could not be sustained over time, and he lost power in the following elections, whereas Dodik won majorities in all succeeding elections before 2015.

One of the explanations as to why Dodik’s nationalism resonates more strongly in the RS, than Silajdžić’s did in FBiH, is partly to do with the RS being more centralised as an entity. By being in power at state, entity and municipal level, Dodik was better positioned to shape the public opinion and to crowd out any opposition. Also, by 2008, he had gained full control of the publicly owned media in the RS, and had successfully curtailed any opposition, whether from the non-governmental sector, or the media. In Chapter III, I provided some examples of undemocratic practices deployed by Dodik in order to curb the freedom of speech and free organisation. That has allowed him to spread the nationalist rhetoric without fear of it being strongly opposed within the RS. The opposition parties had already been weakened, initially by

the international community on the grounds of the obstruction to peace implementation while they were in power for most of the period between 1995 and 2006, and subsequently by the new government on the grounds of alleged corruption. Dodik has also used nationalist rhetoric to undermine Serb opposition parties, by portraying them as unpatriotic and accusing them of betraying Republika Srpska because of their support to state-level reforms which brought the country closer to the EU and NATO. Dodik has played that card very successfully, as I will show in some of the examples in this Chapter.

When it comes specifically to the undermining of trust in BiH, this case study illustrates the purposeful use of events, symbols, situations and manipulation of group interests by SNSD in order to construct issues that appeal to voters' deepest emotions at the expense of a more rational choice of European integration. The focus of SNSD's election campaign on emotionally-powered issues diverted attention away from the requirements of Bosnia's EU integration, and in some cases it even managed to dismiss the importance of EU norms in favour of ethnic issues. That campaign tenaciously exploited the existing fault-lines in democracy in BiH in order to deepen the emotional appeal of their rhetoric. The nationalist rhetoric resonated better in cases where those fault-lines were deeper, for example in the case of weak institutions, the myths of eternal hatreds, the indecisiveness of the international community in implementing peace, in undermining the democratic legitimacy, etc. By over-utilising and sustaining the nationalist rhetoric, the nationalist parties polarise different communities along the existing ethnic cleavages, and revive strong feelings of past injustices and wartime memories in order to manipulate the public support for nationalism and secessionism.

As already mentioned, in the second part of this Chapter I return to the analysis of EU instruments in promoting trust as a norm engrained in the EU treaties, having first contextualised it in the negative background of nationalist rhetoric. Before I do so, I first look at the ways in which language and rhetoric are used during election campaigns to construct 'competing' norms, which is central to one of my main hypotheses. I have claimed that the EU norms in BiH are challenged by 'counter-norms', which downplay the appeal of EU norms. My research example shows how 'counter-norms' to democracy thus constructed, as well as the political culture of division are powerful enough to cause a great deal of instability in democracy, and even more importantly, how the EU ignores and underestimates those influences while promoting democracy in BiH. The final election results in 2010, and in 2014 eventually, proved this effort was successful for the Party of Independent Social Democrats

(SNSD). Milorad Dodik won the post of the President of Republika Srpska twice, while his party won enough seats in the National Assembly of Republika Srpska to be able to form government with only minor support from a couple of coalition parties.

Theoretical Propositions on Trust

Definitions of trust. Political scientists offer various definitions of ‘trust’. Warren (1999) defines trust as “a judgement, however tacit or habitual, to accept vulnerability to the potential ill will of others by granting them discretionary power over some good” (p. 311). Particularly relevant for examples in this Chapter, which shows how trust can be purposefully destroyed, is the notion of ‘distrust’ proposed by Offe (2001). He claims distrust is not the opposite of trust, but the “attitude in which the cognitive assumptions are continuously tested and scrutinised which regulate the allocation of trust” (2001, p. 77). The choice of where to allocate trust, at which level, community, ethnic group, individual, is in my view crucial for understanding the polarisation within communities, as I will explain further.

It is also important to distinguish between social and political trust, as I have already mentioned in Chapter V. Societies which experience a decline in social trust face numerous challenges, including failure to identify with the community. Political trust is defined “as the ratio of people's evaluation of government performance relative to their normative expectations of how government ought to perform” (Hetherington & Husser, 2012, p. 313). Many authors, such as Levi (2000, p. 493) and Putnam (2001), contend that social and political trust are related, but they ask whether social trust inspires political trust or the other way around. However, even more relevant for this case study is a distinction between generalised and particularised trust.

Uslaner (2002) describes generalised trust as directed towards people who are strangers, and particularised trust as limited to one's family or group. Democracy is more related to generalised trust, which is a precondition for building large-scale, complex, interdependent social networks and institutions, and consequently the social capital (Uslaner in Warren ed., 1999, p. 9). Uslaner (In Warren ed., 1999, p. 123) also links generalised trust to democratic culture thorough tolerance for pluralism and criticism, while conversely particularised trust is characterised by intolerance and is more typical of authoritarian and totalitarian societies. Moreover, he argues that “particularised trust works to counter the effects of generalised trust” (Uslaner, in Warren ed., 1999, p. 129). In line with that, I do not look specifically at a decline

of political trust in terms of lower confidence in institutions or elites, which I accounted for in Chapter II, nor at dimensions of declining social or interpersonal trust. These are the subject of numerous existing quantitative studies, discussed below. Following Uslaner's line of thought, this Chapter instead examines ways in which political elites 'particularise' trust within their own ethnic groups at the expense of generalised trust in the society as a whole.

In order to do that, I also rely on the notion of 'top-down' trust. Offe (In Warren ed., 1999, p. 44) combines the mass/elite and horizontal/vertical dichotomies in order to observe four realms in which trust relations can unfold: citizens to citizens, citizens to elites, among elites, and 'top-down' from elites to citizens. This Chapter is concerned with the fourth realm, the 'top-down' dimension of trust. The 'top-down' approach requires building trust among citizens who are at the same time strangers to each other. The gap can be bridged by attaching some abstract and indirect bonds of trust to the citizenry as a whole, claiming some shared commitment of all members of the political community to the 'identity' of a nation, its history, territory, culture, or institutions. This process is described as 'bridging anonymity' and in this Chapter I demonstrate how it is used to create particularised trust at the level of an ethnic community.

I argue that the 'top-down' approach can be used to build both generalised and particularised trust, subject to where elites draw a boundary around the community to which they appeal. My view is that if 'anonymity' is being bridged at the level of multi-ethnic society as a whole, across ethnic communities, then this effort can be seen as contributing to the building of generalised trust and, hence, strengthening democracy. However, if the 'top-down' approach is limited to bridging anonymity at the level of individual ethnic communities, then it is strengthening particularised trust and weakening democracy. In the latter case, nationality and national identity perform a "trust-conferring function bridging political divisions, anonymity of cultural diversity and the strangeness of fellow-nationals" (Offe in Warren ed., 1999, p. 60). In this case, the thin and abstract generalised trust across ethnic communities is weakened by fragmentations that occur along the thick religious and ethnic divisions. The next section looks at different ways in which generalised trust is weakened.

Destroying generalised trust. Generalised trust can be weakened or destroyed by several factors, and in this section I list only those that are related to the fault-lines in democracy which I discussed in Chapter II. The first factor constituting a major fault-line in BiH democracy

is the weakness of institutions and structures, discussed in Chapters II and III, which led me to argue that BiH could be described as a ‘procedural’ democracy. Offe (In Warren ed., 1999, pp. 76–9) argues that institutions can have the generalisation effect working in either direction – if performing reasonably, horizontal and vertical trust flourishes. Malfunctioning institutions can undermine the very cohesion of modern political communities and can trigger regressive phenomena such as the ethnic and religious forms of mediation of trust. In particular, this can be related to young institutions which have not had sufficient time to earn trust, as would be the case with the fairly young post-Dayton constitution. Offe (In Warren ed., 1999) finds this development particularly relevant for cases in which institutional regimes consist of a patchwork of old and new rules, which is also the case in BiH. Unconvincing institutional capacities incapable of projecting generalised trust create space for invoking particularised trust using ‘communal and quasi-communal ties and symbols’, which are another major fault-line in BiH democracy.

Offe (In Warren ed., 1999) argues that the scope of generalised trust is limited by the use of signals of particularised trust, based on “strong loyalty to tribal, ethnic, or familial group, matched with xenophobia” (p. 65). The more particularised trust is based on group identity, the more it is likely to be withheld from anyone outside the group, which leads to discrimination. The anonymity within such groups is bridged by another substitute for personal experience, which Offe (1999, pp. 63–4) describes as categorical trust. It can be understood in terms of three properties: not possible to acquire at will, not easily given up, and associated with visual and linguistic markers that are easily detected from outside and inside the group. Belonging to a group is invoked by a non-experiential rule of trustworthiness based on a presumably distinctive history, identity, or spirit. The way in which this phenomenon affects democracy in BiH was briefly explained in Chapter II, when discussing the role of myths of ethnic hatreds and the implication that today’s inter-ethnic resentments stretch as far back as ancient history. In this Chapter I show how those myths continue to be utilised today, and how new myths are created in order to give an ethnic group ‘personal’ qualities, which invite trust within a single ethnic group through populism.

Populism is also related to the fault-lines created by nationalistic political culture to which I alluded in Chapter II. Populism is used to ‘re-personalise’ trust relations, so that the trust in political leaders is based on their personal style, appearance, charisma and other personality features, rather than their track record (Offe, in Warren ed., 1999, p. 77). It relies

on loyalty and support to a 'quasi-familiar' person by a community which is otherwise diverse and amorphous. Put simply, it is a 'shortcut' to political trust. Deployed in 'vertical' or 'top-down' cases, populism helps elites observe their targeted objects, and enables them to shape citizens' attitudes through sending "trust-inviting and trust-confirming signals" (Cited in Warren, 1999, p. 61). Signals used by populist elites are often personal values or characteristics of identity, used as a unifying bond that bridges the distance between citizens, and between elites and citizens.

In Chapter III, I made a case that BiH is an 'elite-packed' democracy (L. Diamond, 1999), and that elites use a variety of techniques to invite trust among the population. In this Chapter I show how elites amplify the effect of signals inviting particularised trust by appealing to emotions. Marcus (2000) argues that emotions have a dual effect: they cause people to "deviate from their characteristic dispositions", and also "enable people to steadfastly remain true to their most deeply held values and attitudes" (pp. 223–4). Based on various factors that weaken generalised trust, Warren (1999) argues that political campaigns can particularise trust by evoking the distrust of other communities of interest. Offe (In Warren ed., 1999, p. 61) also sees particularisation of trust as a means used for the purpose of electoral campaigning. In the view of Offe and Warren, and in my own view, a political candidate can win an office having cultivated particularised trust of a significant number of constituents, and in Dodik's case at the level of the ethnic community.

A number of studies that have examined trust in BiH since the war have noted a strong link between politics expressed through elite-agency and the level of trust among ethnic groups, taking into account different fault-lines in democracy such as inter-ethnic barriers, weak institutions, experiences of conflict, and the influence of nationalism. A decline in the nationalist party vote since the end of the war was noted in early research conducted before 2004, but it still concluded that moderate liberal parties fail to maintain political support, showing that society remains divided if not polarised along ethnic lines (Steil & Woodward, 1999; Chandler, 2000; Caspersen, 2004). A study dated years later found that there is a general problem of trusting others beyond close kinship and friendship circles after violence, but this distrust is not related to ethnicity (Whitt, 2010, p. 289). It noted that "co-ethnics are not universally trusted nor are out-groups categorically distrusted as an 'ethnic hatred' explanation might propose" (Whitt, 2010, p. 289). This study also examined the credibility of institutions as a factor of trust across ethnicity, and concluded that institutions appear to help alleviate

barriers to trust after violence, but that the institutional collapse is often the starting point for many conflicts (Whitt, 2010, p. 278). Research on social trust conducted in BiH in 2005, found that “respondents who do not express strong ethnic pride and with friends from a variety of ethnic backgrounds are more likely to trust members of other national groups”. Although assuming that “personal experiences with ethnic violence would have a negative impact on inter-ethnic trust”, they find the opposite: respondents with personal experiences of ethnic violence trust more the members of other ethnic groups (Ward cited in M. Pickering, 2006, p. 82). Particularly relevant for my study is the research conducted by Levi and Stoker, who conclude that it is evident that “whether citizens express trust or distrust is primarily a reflection of their political lives, not their personalities nor even their social characteristics” (2000, p. 481). This argument is supported by a view that citizens may not share equal levels of political trust. The differences in their attitudes stem from their “varying political perceptions and values and the influence of their local social and political contexts” (2000, p. 483). The case study I have chosen for this Chapter looks specifically at the way in which Dodik and SNSD have used all the factors described here during the election campaign in order to particularise trust at the level of their ethnic community, and at the expense of generalised trust in BiH.

Undermining of Trust as a Norm

Procedural and substantive subversions of trust. In Chapter V, I reviewed literature which treats trust as a substantive dimension of democracy, and I have also explained the use of the term ‘subversion’ to encompass intentional undermining of democratic consolidation. Referring back to my earlier arguments about three main impediments to compliance, in this section I focus on two in particular: the role of the ‘gatekeepers’ to democratisation (Tolstrup, 2014), and the volatile domestic context. Having identified trust as an important component of substantive democracy, it may seem strange to refer to it as being subverted in a procedural sense. By procedural in this section I mean the use of institutions, laws and procedures in order to undermine trust. This is done, most notably, by undermining the overarching authority of the State of BiH and its various institutions, whether executive, legislative, or judicial. Substantive subversions refer to more profound ways of constructing various themes and narratives which destroy trust. However, although I separated them analytically in my research strategy, I report on both the substantive and procedural subversions of trust together through four narratives employed by Dodik and SNSD, including: undermining the State of BiH, secession of Republika Srpska, denial of Srebrenica genocide, and victimisation and idealisation of Serbs

and the RS. They each consisted of a series of sub-narratives that were deliberately deployed to undermine trust.

Undermining the State of BiH. As will be clear from examples which follow, emotions, signals, events and symbols were used in order to create substantive and procedural subversions of trust. In an interview given to a Serbian weekly, *Danas*, Dodik asserted that the State of Bosnia-Herzegovina is “a mistake made in the process of disintegration of the former Yugoslavia” (“Bosnian Serb election winner says Bosnia ‘mistake’, urges ‘loose union,’” 2010). He elaborated on this by saying that “Bosnia-Herzegovina is impossible as a state - it never has been and it never will be a state and this is a reality”. Also, upon his return from reform negotiations held in Washington, Dodik said “for me, Republika Srpska is a Holy Grail, BiH can be or not be” (“Dodik: Za mene je RS svetinja, a BiH može i biti i ne biti,” 2007). Some more examples of messages sent during the election rallies throughout the RS are summarised as follows, such as: “We won’t let go of Republika Srpska, it is a permanent category. ... Our message is clear – RS forever and BiH only until it is a must. We live in BiH even though we do not love it, and in the next period we will try to return everything that had been taken away from us.” (Milorad Dodik, Mrkonjić grad, 10/9/10); and “seek a veto in Sarajevo whenever they try to do something against the RS, because RS is our only state, which we will protect and defend. Either the RS will be equal or BiH won’t be” (Nebojša Radmanović, Petrovo, Bijeljina, and Banja Luka, September 2010). This section shows how issues of state competencies have been deliberately fashioned into issues of importance for identity and ethnicity.

Looking at the macro approach of destroying trust, this could be seen as the broadest level at which the State is being portrayed as untrustworthy. By making it look like an unstable, novel and temporary entity, this narrative creates the negative stereotypes of untrustworthiness. This is done by attaching negative trust values to the State – that it is a mistake, a failure, and ‘impossible’ as a state. By giving it a temporary character, this narrative serves the purpose of creating an impression that its future is subject to debate, so all options are open, including secession of Republika Srpska. Dodik’s construal of BiH as a ‘mistake’ was further reinforced by a dimension of narrative construction, the creation of a personal/social interaction. Being a ‘mistake’ implies an accidental creation of a political reality, and also a reality which by virtue of being a ‘mistake’ needs to be ‘straightened’ or ‘corrected’. By recognising, on behalf of his

electorate, BiH as a 'mistake' and calling it so out loud, Dodik imposes himself as a person or leader who has a solution and the capacity to correct this mistake.

Following Offe's (2001) argument about ways in which personal qualities of a leader are 'transcribed' onto collective self-perceptions, it can be said that Dodik extends his charisma of a 'trustworthy' ethnic leader onto his electorate in order to 'correct' mistakes made since Dayton. He thus calls for a loose union, the looser the better, and the restoration of all powers belonging to the Serb Republic in keeping with what is actually written down in the Dayton Agreement. In terms of the construction of this narrative, Dodik imposes himself as a 'story-teller' who uses his public appearances to build upon the Serb voters' public distrust of BiH, which had been gradually constructed over the preceding years (Connelly & Clandinin, 1991, pp. 2–14). He does so in order to utilise the existing negative emotions towards the state to tell his own story of how he sees the past, present and future of BiH. According to Offe (2001), populism 're-personalises' trust relations and the low trust in institutions is compensated for by a 'leader's charismatic personality'. By establishing the interaction between himself as a 'story-teller' and the RS public as his audience, Dodik seeks to 'quasi-familiarise' himself with the public, so that the public accepts him as trustworthy.

Furthermore, this narrative serves not only to deny BiH as a state today, but also to deny the way it used to be before the 1990s, i.e. a trusting and trustworthy multi-ethnic society. In order to 'un-bridge' the legacy of trust and the state as it is today, this narrative creates a clear distinction between the past and present. In both cases it seeks to destroy trust in several ways. First, by denying the legacy of social trust prior to Dayton. Secondly, by detaching any links between such legacy and post-Dayton society. This is an effort to re-produce and re-engineer the symbolic representation of BiH as a multi-ethnic society. By denying the legacy of a multi-ethnic society, this narrative tries to re-tell in an untruthful way the trust relations among ethnic communities. And thirdly, it projects a temporary character to the State. It incorrectly interprets the Dayton legal arrangements, by claiming BiH statehood as stemming from the Dayton Agreement, rather than being the successor of the Republic of BiH. This serves to give BiH a provisional status created only to settle peace; i.e. a compromise made after the conflict. This compromise is portrayed as too costly for the Serbs and their interests. Being such a painful compromise, the State is again attributed a negative value in order to evoke distrust of Serbs. Following Carr's (1991) interpretation of the temporal dimension in the way that past conveys significance, it can be said that denying the State of BiH its past is used here to deny its political

significance prior to Dayton, which makes it an open book, a blank canvas which will be subject to debate and a different design in future (Carr, 1991). The future is used here to convey 'intention', in a way described by Carr - to reinforce the 'temporary' character of BiH on one hand, and, on the other hand, to convey the message that for the purpose of future intentions, the RS is the only permanent category, and thus the only political entity worthy of investing any trust into. Populist symbols and 'signals' were used to imply and suggest the kind of feelings which all Serbs should have towards the State.

Tannen ((1998) cited in Connelly & Clandinin, 1991, p. 8) suggested that a reader of a story connects with it by recognising particulars, by imagining the scenes in which particulars could occur, and by reconstructing them from remembered associations with similar particulars. It is the particular and not general that triggers emotion and moves people and gives rise to authenticity. The two key symbols constantly used as 'particulars' that trigger negative emotions among the RS electorate are the BiH flag and the capital city, Sarajevo. In one incident in July 2008, Dodik was caught on camera removing the BiH flag from the table during a visit to the town of Trebinje.

This illustrated the way in which RS political elites associate the BiH flag only with the Bosniac community. This is not so much due to any symbolic meaning of the flag itself, but due to a perception that the state is worthy only of the trust of Bosniacs, because, in their view, it only works in favour of Bosniacs. The BiH flag is thus being undermined simply because it represents the State as seen through Dodik's eyes. The flag was imposed by the High Representative of the International Community in 1998, and was only confirmed by the BiH Parliament (including Serbs and RS representatives) in 2001. It was thus created to represent the post-Dayton BiH and was not initially disputed by any side. Moreover, because it does not carry any state, national, or ethnic symbols, most people for a long time could hardly relate to it and most still struggle to describe it accurately. It was designed to represent the colours of the EU, the shape of BiH, and stars, again symbols of the EU. However, for the purpose of Dodik's campaign, the flag was used to symbolise and visualise the state of BiH, and undermining the flag was illustrative of undermining the trust in the State.

Even in simply referring to Sarajevo, Dodik makes a distinction between 'us and them' and tries to create a sense that 'they' in Sarajevo 'envy' and hate Serbs in the RS ("Banja Luka SNSD party rally," 2010). During the 2010 election campaign, denial of Sarajevo as the capital

city was often repeated and utilised. In giving a statement to Nova TV evening news Dodik repeated “I do not accept Sarajevo as my capital city, even though it is a political centre of BiH” (Bago, 2010). He stated that “what I said about Sarajevo looking like Teheran I still believe, because I still think there are more mosques in Sarajevo than in Teheran” (“Dodik: Sarajevo ima više džamija od Teherana,” 2010). Messages which were spread out during the election rallies served the same purpose: “the capital city for all Serb people is Belgrade, and so it will be” (Milorad Dodik, Sokolac, September 2014); and “SNSD is a brave team ready to go into fight with Sarajevo and international community in order to protect our interests” (Nebojša Radmanović, Petrovo, 6/9/2014).

Given the fact that functioning of the power-sharing arrangements at the State level depends so much on trust and political will, the best way to undermine it is to destroy that trust. This narrative served a function which otherwise I did not find in other literature on trust. In order to destroy generalised trust at the level of the State, this narrative identified the State with a particular ethnic community (Bosniacs) and implied that only Bosniacs should trust the State to act in their interests. This narrative first ascribed to the State the particulars and stereotypes that are otherwise associated with the Bosniac community. It then portrayed the survival and functioning of the State as purely Bosniac interest and as a threat to Serbs. They were then finally linked together through the use of symbols, populism and emotional discourse. The result is that trust in the State was ‘particularised against’, or seen as being the opposite of the particularised trust among the Serb people. The symbolic level at which the particularised trust among the Bosniac community is hence located is the level of the State, rather than the level of that ethnic community. This example supports my disagreement expressed in Chapter IV with authors who claim that the transfer of competencies to state level is of high relevance to the ethnic identity (Džihic & Wieser, 2011). Rather than actually being of high relevance for ethnic groups, those issues are instead constructed to be issues of identity by Dodik in ways described in this section. In Chapter IV I argued that nationalist elites create ethnic constructs out of the EU state-building requirements for two purposes: to resist the EU leverage, and to use it as a ‘political shelter’ (Noutcheva, 2009).

Secession of Republika Srpska. The secession of Republika Srpska emerged as a narrative in its own right in early 2006, and has since then gained political momentum and was positioned as another deliberate mechanism for sowing distrust during the campaign in the run up to the 2010 elections. The construct of the state of BiH as an enemy and a threat has been

used as a foundation on which the narrative was built of a need to separate from the state as an untrustworthy category. The narrative on trust in the RS and a need for its secession has been built in contrast to the perceived ‘instability’ and ‘dis-functionality’ of the State, as a mechanism for protection from it, and even as blackmail in case any serious threat to the RS is extended from ‘Sarajevo’. This is what gave this narrative a sense of legitimation. In terms of other aspects of the character of this counter-narrative, the means to hold a referendum, and a timeframe for such action, all remain vague and indefinite categories, although in 2015 Dodik finally announced that the referendum would be scheduled for 2018. Nonetheless, the emotional strength of this narrative made it legitimate from the perspective proposed by SNSD during the election campaign in 2010. Using the construction of populist messages in ‘trust-inviting’ signals as described by Offe (1999) and as already discussed, the socially constructed qualities of the Serb people were again invoked to glorify and personify their ethnic community. Several messages were sent in that way, including that a stronger Srpska is a need felt by all, which imposes an almost universal necessity which requires power and bravery on behalf of the people. The use of battleground vocabulary reinforces the sense of legitimation through existence of a looming threat, while offering the referendum on secession as a means to counteract that threat. Also, the right to a referendum is given a taken for granted quality as a moral rather than a legal right. It thus serves a ‘trust-conferring’ function, bridging other differences inside the ethnic community and constructing shared and cross-appealing interests.

The terminology describing the RS is used in contrast to the terms applied to BiH – so the RS is presented as stable, strong and catering for the needs of its citizens. Its distinctiveness from the State in that sense creates more cohesion among its members, and it is more trustworthy. Invoking secession as a moral right gives a sense of obligation that deserves and demands trust, and thus legitimises it. The strong group loyalty reinforces stereotypes of unity, bravery and other symbolic representations of categorical trust.

Denial of Srebrenica genocide. In its judgement passed on 26 February 2007, concerning Serbia's involvement in the massacre of Bosnian Muslims (Bosniacs) at Srebrenica in 1995, the International Court of Justice (ICJ) found that there was “conclusive evidence that killings and acts causing serious bodily or mental harm targeting the Bosnian Muslims took place in Srebrenica in July 1995. These acts were directed by the Main Staff of the VRS (the army of the Republika Srpska) who possessed the specific intent required for genocide” (International Court of Justice, 2009, para. 8). The key element of this mass murder which

enabled the Court to establish it as genocide was “the specific intent to destroy in part the group of the Muslims of Bosnia and Herzegovina as such” (International Court of Justice, 2009, para. 8). According to the Research and Documentation Center, 7,711 persons went missing or were killed in that period (“Research and Documentation Center,” n.d.). The International Criminal Tribunal for Former Yugoslavia (ICTY) convicted the former Bosnian Serb Army (VRS) officers Vidoje Blagojević and Dragan Jokić for crimes against humanity and violations of laws and customs of war committed against Bosnian Muslims in the area of Srebrenica in July 1995 (“Appeals Chamber acquits Vidoje Blagojević of aiding Srebrenica genocide, affirms other convictions against him and Dragan Jokić,” 2009). In 2001, the ICTY convicted General Radislav Krstić as the first person to be convicted of genocide since World War II. The Trial Chamber stated that it was “convinced beyond any reasonable doubt that a crime of genocide was committed in Srebrenica” (“Radislav Krstic becomes the first person to be convicted of genocide at the ICTY and is sentenced to 46 years imprisonment,” 2001).

By 2006 the right-wing parties from Republika Srpska had begun to cooperate with the international community on a number of issues, and finding truth about the events in Srebrenica was one of them. In 2004, the international community and then High Representative Lord Paddy Ashdown put pressure on the RS Government led by SDS to form a Commission for investigation of events in Srebrenica in July 1995. Later that year, the Commission published a Final Report which confirmed that 8,373 persons went missing or were killed, of which 7,793 were killed between 10th and 19th July 1995 (“Izvjestaj - Vlada Republike Srpske, - SMG-bh-doc-izvjestaj-vlada-republike-srpske-2004.pdf”, 2004.).³¹ While announcing the Report, the RS and SDS President at the time, Dragan Čavić, said that “the massacre of thousands of Bosnian Muslims at Srebrenica is a black page in the history of the Serb people” (“Serb leader’s Srebrenica regret,” 2004). In a special TV broadcast he said he understood the pain of the relatives of those who died in the incident. Čavić’s statement split public opinion in the RS in an unprecedented way. The international community at the time described the work of the Commission and their report as ‘historical and revolutionary’ as it was the first time that the RS Government had officially reviewed those events and publicly recognised what had happened in Srebrenica. However, this event was one of the causes of Čavić and SDS’ immediate political demise, and he voluntarily handed over the Government to Milorad Dodik in early 2006.

³¹ The final report was published by the RS Government on 15 October 2004.

The narrative created to deny the Srebrenica genocide is multi-layered in terms of its intentions, targets and means of delivery. If we take the recognition of genocide as a norm clearly promoted by the EU for the purpose of building trust and sustaining peace, then denial of that norm can be discussed in terms of numerical, discursive, and geographical aspects of norm subversion. Srebrenica featured prominently from the very start of Dodik's election campaign when on September 1, speaking at a rally in Srebrenica, he stated "more Bosniacs left Srebrenica and went to Tuzla and Sarajevo in those months, than were killed here. That then is not genocide" (*SNSD Rally Srebrenica*, 2010). He thus unfolds the numerical layer of the narrative on denial of Srebrenica genocide. Deprecating the number of victims serves the purpose of defying the normative definitions of what constitutes genocide. Dodik thus implies that proportionality and outnumbering of the victims by those who managed to survive, was a sufficient proof that it did not constitute genocide. Through the numerical argument he tries to deny the key aspect which decided in favour of pronouncing this crime a genocide - the intent to destroy one particular group of the population.

Dodik also seeks reciprocity by amplifying the number of Serb victims and proposing that it is proportionate to Bosniac victims. Dodik insists on the reciprocity argument throughout his campaign and demands in several rallies that "it is recognised that during the war there were also mass killings of Serbs" (*SNSD Rally Srebrenica*, 2010). For that purpose, Dodik augments the number of Serb victims in the hope that a larger figure would alarm his audiences while disguising the truth behind that claim. "They say, Serbs are to blame for Srebrenica. Not true. Serbs were also killed during war. 30,000 Serbs were killed here. Someone killed them too. A victim is a victim, and if they do not respect our victims, why would we respect theirs?" asked Dodik in an election rally in Milići near Srebrenica (*SNSD Rally Milići*, 2010). The message he thus sends is that respect is a matter of reciprocity and not a value in its own right. This narrative is constructed by saying that the respect for victims is an ethnic betrayal. If we go back to the definition of categorical trust as being built by appealing to a 'distinctive history, identity or spirit' of an ethnic community, then invoking a sense of pride and loyalty is a clear case of an appeal to a distinctiveness. Building and sustaining categorical trust is a thread that runs throughout the narrative on denial of war crimes. Respect for victims is thus portrayed as a potential national betrayal rather than a virtue.

Dodik also minimises the effect of the Srebrenica genocide by treating it as a single event rather than the murder of thousands. Dodik stated this in an interview given to a Croatian

daily, *Vecernji list*: “telling a story of Srebrenica puts us in a situation that all atrocities in our unfortunate war years boil down to a single event, which minimises all other victims, of whom there are many” (“Srbi nisu Srebrenica,” 2010). In an interview to the Austrian daily, *Der Standard*, Dodik openly stated that “insisting on numbers is a wrong policy” (“Geben uns für die EU nicht her,” 2010). Instead of using numbers, Dodik said he preferred describing Srebrenica as a single event and declared that “it is unacceptable to us to single out Srebrenica and to give it historical significance” (“Dodik odbija rezoluciju o Srebrenici,” 2010). He portrays the case of Srebrenica as a conspiracy that shifts the attention away from crimes against Serbs, and the ICJ ruling is used as proof of that conspiracy. For that purpose, Dodik promised voters that the list of victims prepared by the SDS-led Government would be reviewed because he did not think it reflected the facts.

The revisionism behind Srebrenica served the purpose of portraying the political opponents as traitors and showing an internal threat that needed to be resisted. This was clearly the thinking behind Dodik’s campaign to invalidate the previous RS Government’s decision to address the issues of genocide in Srebrenica. The very act of undermining that effort was a demonstration of Dodik’s open rejection of interethnic dialogue, dealing with the past, tolerance, reconciliation and interethnic trust. Weighed against a regained categorical trust, interethnic trust was clearly on the losing side, as it could never mobilise as much political participation among the deliberately radicalised electorate as the policy of demonstrating distrust. This example also illustrated that the only relationship of trust Dodik politically invests in is the one between himself and his electorate. Invocation of categorical trust to destroy interethnic trust amplified his trustworthiness as a leader who does not betray his own people.

The discursive layer of this narrative is constructed through application of several new terms, which are used metaphorically and are specific to the context of the Srebrenica genocide. The first of those terms is ‘genocidal people’, which was originally launched by right-wing Bosniac politicians following the ICJ ruling. However, Dodik repeatedly exploited the term ‘genocidal people’ during the election campaign in order to reinforce the impression of victimisation of Serbs as subjects of a hate campaign. Speaking at an election rally in Banja Luka Dodik said that Srebrenica “cannot be a motif for generalising the blame and condemnation of Serbs as a genocidal people” (*SNSD final central rally Banja Luka*, 2010).

Addressing audiences in Srebrenica Dodik deployed a term launched earlier by Dobrica Ćosić³² - ‘srebrenisation’ of the Serb people, which became the hallmark of deliberate victimisation of Serbs (“Hrle: Dodika na srebrenizaciju rata uputio ideolog Dobrica Ćosić ” 2010). ‘Srebrenisation’ is used to epitomise intentional demonisation of Serbs by ‘Sarajevo’ and internationals. Dodik breathes air into alleged conspiracies about ‘srebrenisation’ of Republika Srpska by saying that “the global srebrenisation of Republika Srpska is being carried out by politicians from Sarajevo and international community” and repeating that “we will not accept that it was genocide” (*SNSD Rally Srebrenica*, 2010).

Dodik victimises Serbs by inverting the very paradigm of atrocities committed by the RS Army. Srebrenica in this manner becomes an instrument of demonisation of Serbs and a symbol of degradation of all other crimes. Dodik is quite explicit about this, in saying that “I am not prepared to accept the politicisation and srebrenisation of this war because crimes were not only committed in Srebrenica – it was only concentrated in that time and space” (“Geben uns für die EU nicht her,” 2010). Two core legal aspects of genocide are thus devalued, the intent of genocide and the fact that it was targeted against a single ethnic group. Instead, Dodik insists that its significance is only in temporal and spatial ‘concentration’ of the crime. It can thus be said that this narrative too is constructed not within its own context and temporal dimensions, but based on the denial of those elements on the existing narrative in genocide. That is what makes this narrative unique and for the reasons of the manner in which it is constructed I claim to be a deliberately constructed ‘counter-narrative’.

The term genocide was also belittled by being described as a ‘localised’ or ‘municipal’ genocide. This term was also launched in early 2010 during the debate in Serbia about a proposal before the Serbian Parliament to adopt a Declaration condemning the crime in Srebrenica. Dodik opposed such a move by the Serbian parliament in an interview to *Vecernji list* responding that “the International court of Justice in an appeal by BiH against Serbia declared that it was a local genocide” (“Dodik: u Srebrenici se dogodio lokalni genocid,” 2010). He sustained this rhetoric throughout 2010, repeating in March in an interview to *Radio Bobar* that the crimes were “characterised in the Hague as some kind of a local genocide, but it cannot be the only place of atrocities and killings during the war” (2010). As in the previous case, this

³² President of the Federal Republic of Yugoslavia during the war in BiH, one of the most influential members of the Serbian Academy of Arts and Sciences, which has been considered the ‘spiritual leadership’ behind Slobodan Milošević and wars in former Yugoslavia.

discourse, bounding the scope of genocide rhetorically to a limited geographical area, minimises the vastness of its civilizational connotations.

Victimisation and idealisation of Serbs and the RS. Unlike the example of state-building, which was constructed into an ethnically-sensitive issue, the victimisation and idealisation of Serbs are subversions of democracy that are very much relevant to the issues of identity. As such, those issues do present a greater challenge to the EU leverage as argued by some authors (Džihić & Wieser, 2011; Vachudova, 2014; Noutcheva, 2009).

Dodik paints a picture in which the threat to the RS is most immediate, coming right after the elections – “threats to curtail the RS are waiting immediately after elections, although we want to strengthen it. Constitutional reforms will be on the table. But we know how to respond to them, we have a team which knows how to defend the RS in Sarajevo” (*SNSD rally Obilićevo*, 2010). Sarajevo as the administrative capital is thus once again portrayed as the ‘battlefield’ in which foreigners and Bosniacs threaten to curb the power of the RS, and where Serbs from the RS need to have tighter bonds and be even more unified against any attempts to reform the Constitution. The main mechanism through which this would be done is said to be the constitutional reform, through which the RS would be ‘further deprived of its rights’. The main messages sent during election rallies include: “For the difficult time in front of us. There will be pressures to reform the Constitution. There are those in BiH who wish the RS was gone, and some in international community wish so too.” (Milorad Dodik, Šipovo, 11/9/10); and “Only those who stood up the test of their own identity made it to Europe. It is not true that future is bright for us if we lose the RS and go to Europe” (Milorad Dodik, Petrovo, 6/9/10).

The RS was also said to be victimised at an emotional level, which sought to provoke feelings of being slandered because of the RS being “falsely accused and blackened as a ‘genocidal entity created through ethnic cleansing” (“Dodik’s letter to voters,” 2010). Some of the electoral messages used for that purpose include: “political concepts coming from the Bosniac people, seeking to majorise Serbs and keep them at the level of the people which need to be punished” (Milorad Dodik, Milići, 10/9/10); “RS is exposed to numerous attacks by many, and it needs to be said to those from Sarajevo that if we have to leave BiH, we are taking Republika Srpska with us ... the time will come when it will just part, like a ripe pear from a tree” (Milorad Dodik, Vlasenica, 9/9/10); and “Serbs are victims, who have to be treated with respect. Our people have been unjustly demonised.” (Milorad Dodik, Višegrad, 17/9/10). The

feeling of being victimised is counterbalanced again by categorical trust, for which it is necessary to idealise the RS. Mobilising the sense of pride was already discussed in the previous section, but here it is presented as a ballast against victimisation of the RS, and also for the purpose of provoking a feeling of revolt against threats to the RS.

Dodik also employed a narrative on idealisation of the RS, which was built on the grounds of real, but temporary economic progress made in the previous four years of government. After coming into power in 2006, the SNSD-led Government engaged in hasty privatisation of the largest public companies, which generated large direct investments that suddenly boosted the RS budget. Most of that income was then used as public expenditure which for a short while boosted incomes of all those receiving some benefits or salaries from the Government. The economic situation in the RS temporarily but visibly improved, and for the first time since Dayton, it was better than the economic situation in the other entity. This success did not last for long, and by 2010 the RS Government was heavily dependent on borrowing from the International Monetary Fund (IMF), but it nonetheless sustained the narrative of a ‘better entity’ as long as it could. To that end Dodik said that “we promised four years ago to stop denigrating Republika Srpska and make it a better and more developed part of BiH. We kept that promise” (*SNSD rally Petrovo*, 2010). This discourse was extensively used during the election campaign, even though at that stage the government had already resorted to the IMF for financial support and it had to undertake severe austerity measures to cut public spending, SNSD kept promising prosperity of the entity.

The narrative on idealisation of Republika Srpska is another example of construction of a ‘counter-narrative’ which enables a contrast between a ‘dysfunctional’ State and a ‘better and more functional’ Republika Srpska. This dimension of idealisation of the RS is thus being constructed as a contrast to the State which continues to ‘unjustly appropriate’ its competencies. The RS is being presented as a ‘politically and economically’ strong entity, which has prevented the ‘humiliation’ (*SNSD rally Petrovo*, 2010) of the transfer of competencies and has “reinstated its dignity” (*SNSD rally Doboje*, 2010). Republika Srpska is being compared to a united family, which has to be defended with ‘pride and unity’ which is why “today we can proudly say that there will not be any abolishment of the RS even if it means not entering Europe” (*SNSD rally Šamac*, 2010). Another metaphor used to describe the RS is a “community of happy people” (*SNSD rally Trebinje*, 2010). Radmanović praises the RS as “our pride, which we love” (*SNSD rally Višegrad*, 2010).

As pointed out by Inglehart and Uslaner (2002) when discussing factors that increase trust, optimism about economic security, and optimism more generally are closely related to higher trust levels. This narrative thus mobilises optimism and positive messages to strengthen the idealisation of the RS. As argued at the beginning of this section, the RS is portrayed as a trustworthy goal and as an object of particularised trust. This example shows an important distinction that has not been emphasised by academic literature on trust. I would designate this distinction as that between particularised trust through positive campaigning and particularised trust through negative campaigning. While most of the previous narratives illustrated the latter, the above example illustrates the former.

Construction of counter-norms. I use examples presented in the four narratives that were used during the 2010 election campaign in order to show how elites engage in the process of construction of counter-norms. For that purpose I take a macro-level analysis described by Offe (2001), which enables me to look at alternative routes and instruments, such as elite-based entrepreneurial use of symbols, narratives, populism and emotions. It will be recalled that my hypotheses claim that domestic elites in BiH engage in the process of constructing counter-norms, i.e. norms which are in their substance opposite to EU norms, and as such position themselves as barriers to the diffusion of democratic norms, or at best neutralise them. It is particularly important to emphasise the engagement of elites as counter-norm-entrepreneurs, who engage in construction and promotion of counter-norms. The process of constructing and promoting a counter-norm is a deliberate effort which can be analysed by looking at the same three aspects of properties of counter-norms as I am using later to analyse the properties of EU norms: norm appropriateness, norm origin and norm character.

Based on the subversions of trust discussed above, I analyse evidence in support of my argument that in order to inhibit the promotion of EU norms, Dodik and his party act as entrepreneurs of counter-norms. I use the example of the narrative on the denial of genocide in Srebrenica, and monopolisation of truth about war in order to describe mechanisms through which the notion of appropriateness of counter-norms is constructed.

The ICJ decision which confirmed genocide was committed in Srebrenica was used by Dodik as a trigger to deny genocide and downplay the number of victims and significance of that crime. By targeting so precisely the EU condemnation of genocide in Srebrenica, Dodik

has positioned himself as a counter-norm entrepreneur. He built a sense of the appropriateness of this counter-norm by invoking categorical trust, which he achieved by appealing to a ‘distinctive history, identity and spirit’ of the Serb people, ascribing the entire ethnic group the qualities of pride and loyalty. Dodik anticipates that the interest formation among the Serb population would be inspired by such ideational motivations, which would inform a belief in the appropriateness of his narrative by the electorate. By presenting a risk of ‘ethnic betrayal’ if compassion for the victims were expressed, Dodik engages in a process redefinition of interests and preferences, using persuasion to convince his electorate that ‘betrayal’ is not tolerable in an ethnic community which “prides itself on loyalty to their collectivity” (Checkel, 2005, p. 812).

As mentioned earlier, Dodik thus attempted to construct and invoke the categorical trust among the Serb electorate. Secondly, he invoked a sense of “oughtness”, which is according to some authors embodied in norms by definition (Finnemore & Sikkink, 2001, p. 892). Because this is a counter-norm that is under construction, and does not have that taken-for-granted quality of “oughtness”, Dodik appealed to the community’s shared moral assessment, i.e. he declared this counter-norm to be a matter of categorical trust, a matter of the community’s ‘pride’ and ‘justice’ in order to artificially ascribe it a sense of “oughtness” or appropriateness. Dodik as a counter-norm entrepreneur invokes the appropriateness of this counter-norm by repeating it consistently, and by endowing it with the taken-for-granted qualities of pride, loyalty, identity, spirit, etc., so that audiences are eventually simply unaware of consenting to the group conformity (Johnston, 2005). In that way, ideational motivations are invoked by the symbolic representation of the ethnic community, which results in norm appropriateness (Offe, 2001). Belonging to a community is invoked by Dodik as a non-experiential trustworthiness that appeals to a presumably distinctive history, identity, or spirit, which had previously been constructed through a range of myths that have been sustained for decades.

The character of a (counter)norm can be discussed in terms of its legitimation, prominence, and issues at stake, as well as its clarity, specificity and content. The context of perceived threats (the Kosovo declaration of independence, the invocation of a right to self-determination against the State of BiH, international condemnation, etc.) provided opportunities to legitimise counter-narratives. In the example of the invocation of the moral and political motives for secession, a narrative construction provides history with ‘moral, emotional, and

aesthetic' legitimacy (Connelly & Clandinin, 1991). Linking in such a way 'knowledge, context, and identity' creates what Clandinin and Connelly call 'stories to live-by'.

The narrative on the RS secession is socially situated between SNSD and Dodik as 'story-tellers' and their audiences with whom they familiarise and thus become more intimate by sharing a common past and joint visions of the future. The search for categorical trust in the 'right to secede' additionally strengthens the legitimization of that proposed act. In order to gain legitimacy, the right to secede is rested within the concept of a shared community through the technique of 'broadening'. This is, for example, used by Nebojša Radmanović when addressing the party supporters in Petrovo. He puts the responsibility for the RS existence and future on voters by saying that "BiH cannot be without the RS, because the RS is an expression of your will" (*SNSD rally Petrovo*, 2010). In order to 'broaden' his views on the RS secession he creates a sense that it is 'a matter of popular will', the 'will of the people'. SNSD officials thus construct an idea of widespread legitimacy of such an act, and prepare the ground for it becoming a matter of popular demand rather than the unilateral political act of the RS leadership. By fabricating legitimacy of a counter-norm the elites shift the debate away from legal arguments about how realistic or implementable the RS secession would be. In that way, they use the rhetorical legitimization in order to compensate for the lack of legal means to execute the intention to secede, which was sufficient for the purpose of generating support during elections. Even though this counter-norm only had a temporary character, used for the purpose of consolidating electoral support, it nonetheless served its primary purpose and was not subsequently questioned in any way.

The prominence of counter-norms was provided through repetition and persistence of messages in speeches throughout election rallies. In most of the narratives discussed, references to the future are only used to declare intention, rather than providing a realistic and fully endorsed timeframe. Making a reference to any future point in time, however vague, still works to provide specificity of information that conveys rhetorical intention rather than being an execution plan in its own right. Prominence of the counter-norm provided by consistent repetitions of similar messages during the election campaign was thus used to compensate for the vagueness of the timeframe and lack of specificity of mechanisms for secession.

The example of the narrative on RS secession is also most illustrative of the process of constructing the specificity of a counter-norm. The RS secession was for a very long time a

looming but tacit threat, which the parties that were in power before SNSD abandoned in their public rhetoric, mainly due to the fact that the High Representative had powers to remove them from office for such breaches of the Dayton Peace Agreement, but also because it is unrealistic. Dodik is the first leader in Republika Srpska who has been able to provide this intention with specificity without a fear of being removed from office. With this narrative Dodik is implying not only that the State itself is unstable, but that it can actually destabilise the RS too (*SNSD final central rally Banja Luka, 2010*).

The specificity of this counter-norm is provided through several messages. In an interview to the Reuters News Agency Dodik said that his priority is to achieve greater autonomy for the RS within the Dayton Agreement, and if that is not possible then he will “advocate for an RS independence of BiH” (Tanner, 2011). Speaking at an election rally in Banja Luka, Dodik said that without the RS “the Serb people would be exiles” and the important thing is to “keep a stable Republika Srpska” (*SNSD final central rally Banja Luka, 2010*). Those messages attempt to make the RS secession a matter of rational choice as it implies that the RS would be better off and more stable on its own. Being more rational implies seeking higher goals which invite more respect and more trust. However, more motivations are being brought into the equation because rationality alone, although potentially convincing, may not necessarily be powerful enough to mobilise popular emotions. The indecisiveness and a lack of consensus within the international community on whether such rhetoric should any longer be sanctioned, provided Dodik with an opportunity to be very specific and to declare his intentions openly and publicly.

The content of this counter-norm is based on a constructed moral ideal of the Serb people to have a ‘right’ to secession. Conferring such a right on Serbs alone offers it unprecedented moral distinctiveness that demands categorical trust. For example, Radmanović said in Petrovo that “Republika Srpska has a right to call a referendum and it will use that right when you say so” (2010). As in some previous examples, what is at play here again is the use of the past to give authenticity to this argument. Namely, the right to self-determination existed in the Constitution of the former Yugoslavia, which was used as a legal basis for calling a referendum on independence of the former Socialist Republics of Slovenia, Croatia and Bosnia and Herzegovina. However, according to the BiH Constitutional Court decision “the Constitution of BiH does not give room for any sovereignty of the Entities or a right to self-organisation based on the idea of territorial separation” (“Constitutional Court of BiH,” 2000).

So the invocation of a 'right' to secede relies more on historical experiences and emotional validation, rather than the actuality of the constitutional provisions or any legal means to execute it.

Aware of this fact, Dodik resorts to the technique of 'borrowing' and for that purpose makes reference to the independence of Kosovo. He thus states that "the decision of the International Court of Justice on Kosovo represents a legal precedent for RS secession" ("Milorad Dodik : Odluka Međunarodnog suda pravde je razočaravajuća," 2010). Also invoked is a moral argument that "if Kosovo Albanians have a right to secede on the grounds of ethnic hatred and lack of unity with Serbia, why would not we have the same right in BiH" ("Milorad Dodik : Odluka Međunarodnog suda pravde je razočaravajuća," 2010). What is 'borrowed' from the Kosovo experience is the categorical interpretation that the 'political right' to secede is a matter of moral standards, a matter of perception of injustices, and is granted by virtue of being an acquired right, rather than by any law. By paralleling this situation with that of a tight and strongly bound community of Kosovars, this narrative seeks to create mirror images of categorical trust that draws its legitimacy from the sense of righteousness and trustworthiness. Nikola Špirić substantiates this right also by involving logic, and appealing that "it is illogical that Serbs would be the only people in Europe and world without a democratic right to self-determination" (*SNSD rally Bijeljina*, 2010). On the same occasion Špirić acclaimed that it is also a "right to have a dream", again appealing to higher community ideals.

The character of counter-norms that appear in Dodik's narratives are such that they have many features which make them powerfully resistant to any influence of EU norms. Counter-norms are constructed as legitimate, clear and specific. The consistent and frequent use during the election campaign provided them with prominence, while the construction of categorical trust was used to provide them with content, legitimacy and specificity. A sense of intention and means of conveying that intention, the particularity of information that anchored the narratives to the level of an ethnic community, all created a taken for granted quality to the counter-norms which made them more resistant to the EU norms and its normative basis on trust.

The EU Approach to Promoting Trust in BiH

In the following sections I assess the EU's approach to promoting trust in BiH, in the face of the difficulties presented in the previous sections. I have argued earlier that the EU faces unprecedented challenges to the promotion of its norms in BiH, but that it lacks an understanding and recognition of the tenacity and potency of the counter-norms which are constructed purposefully to resist the efforts to strengthen democracy in BiH. Because its unwillingness to admit that BiH is a case with exceptional resistance to EU norms, the EU acts as if the promotion of EU norms is simply a matter of the will of domestic political elites. The EU thus treats their declarative support for BiH's integration in the EU as sufficient proof of that political will, and does not deem it necessary to make any extra efforts to reverse the negative effects of the influences created by domestic elites.

This informs the EU's 'cookie-cutter approach' to BiH used previously in other aspiring countries in the past. The EU tries to apply the same rhetoric and mechanisms of norm diffusion as it did in countries in which the will to join the EU was far more explicit and evident in the actions of the government. In the case of BiH, the EU ignores or underestimates the obstinacy of domestic elites in deliberate creation of obstacles to the promotion of EU norms and strengthening of democracy. As I stated at the beginning of this Chapter, its first part reviewed the actions of domestic elites in resisting the EU norms on trust, and in the second part of this Chapter I review the EU's approach to promotion of trust in BiH by looking into the EU normative basis, the properties of EU norms on trust, and the mechanisms it uses to diffuse those norms.

The EU normative basis on trust. In Chapter V, I suggested that in assessing how successfully trust has been diffused in BiH it is necessary to identify specific indicators for trust which would represent EU democratic 'norms'. As explained in Chapter IV, Manners (2002) identifies five 'core' norms: peace, liberty, democracy, the rule of law and respect for human rights and fundamental freedoms. Although not a core norm in itself, trust can be considered a value inherent to the EU's core norms, and also underlying both the core and the 'minor' EU norms (solidarity, anti-discrimination, sustainable development, and good governance). Trust is also strongly linked to peace as a norm central to the EU normative basis, whereas, conversely, conflict destroys trust. This is why the building of trust, particularly inter-ethnic trust, is crucial to sustaining peace in post-conflict societies and consolidating new democracies.

Understood as such, the importance of trust can be traced back to the early documents establishing the EU, but it has also been implicitly built into a number of EU documents that subsequently define the EU path of the Western Balkans and BiH specifically. The EU normative basis on trust exists at three levels, going from a wider basis of the EU treaties, over a narrower level of regional documents, to the level of country-specific documents.

EU documents. The Rome Treaty (1957, Preamble) defines the normative basis based on Europe's core values, i.e. "the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law" as well the 'ideals' of Europe such as 'peace and liberty'. Sharing those ideals is a criterion for joining Europe, and its intention was to end 'the division of the European continent'. Implicitly, sharing ideals involves sharing trust, and trust can be considered as the antidote to divisions that ransacked Europe during and after World War II, and the basis for establishing new European structures aimed at sustaining peace. The preamble to the Treaty of Maastricht (1992) also includes 'solidarity between peoples' and respect for their history, culture and traditions. It contains a strong link between respect and tolerance on one hand, but it does not mention trust explicitly.

The Lisbon Treaty (2007) amendment to the Preamble of the Treaty of the European Union confirms those values and emphasises the "cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law". It also confirms "the solidarity which binds Europe and the overseas countries" as belonging to the EU's normative basis. Because the Council of Europe documents are not explicit in mentioning trust, I asked, in one of the interviews a CoE official, about how the CoE values trust. The response was that "the value of trust as in confidence of citizens in the system, which protects them and building confidence between ethnic, religious, linguistic or other communities within a society is a key element for genuine enjoyment of rights guaranteed under CoE instruments and the other norms and standards which member states subscribe to or aspire to" (2012).

Regional declarations. The Thessaloniki Summit Declaration (2003), which BiH signed, supports the 'core norms' of the EU by stating that: "We all share the values of democracy, the rule of law, respect for human and minority rights, solidarity and a market economy, fully aware that they constitute the very foundations of the European Union" (2003, para. 1). The Thessaloniki Declaration expands the EU's normative basis to address issues of

recent past in the region, and although it does not explicitly quote trust as a value to which those countries should aspire, it is nonetheless implied in the call to “vigorously condemn extremism, terrorism and violence, be it ethnically, politically or criminally motivated” (2003, para. 1). Fragmentation and divisions along ethnic lines are thus considered as “incompatible with the European perspective” (2003, para. 5). The emphasis of this level thus shifts towards tolerance and ethnic and religious coexistence as integral parts of the EU’s normative basis.

Country specific documents. Trust is somewhat more explicitly evoked in the EU documents which refer to BiH specifically, which is in itself a recognition of the importance of this norm for the future of BiH. Trust is explicitly included in a normative focus of the country-specific documents, which recognise normative incompatibilities between the EU and BiH, and call for narrowing down of that gap. The EU Enlargement Strategy and Main Challenges 2010-2011 states: “the integration of ethnic communities remains limited and greater dialogue is needed to foster trust especially in the areas of culture and language” (2010, p. 38).

The EU Parliament Resolution on BiH from 2009 refers to tolerance, common vision on the country’s future, peace and stability: “any questioning of the territorial integrity of BiH... would also run counter to the principles of tolerance and peaceful cohabitation between ethnic communities on which the stability of the whole Western Balkans is founded” (2009, para. E.). It also “regrets, therefore, the inability of BiH politicians to agree on a common political vision for their country, compromising for reasons of short-sighted nationalism the objective of joining the EU, an objective which would bring peace, stability and prosperity to BiH citizens” (2009, para. 1.). Finally, it “reminds political leaders in BiH that joining the EU means accepting the values and rules on which the EU is based, namely respect for human rights, ...solidarity between peoples and communities, tolerance, including tolerance of different traditions and cultures... and urges political leaders to abstain from hatred politics, nationalist agendas and secessionism” (2009, para. 2.). The Resolution also links reconciliation to the country's progress towards European integration, since it is “based essentially on the same values as those on which the EU rests” (2009, para. C.).

The EU 2010 Progress Report emphasises other areas which are problematic due to a lack of social and political trust. It particularly states that the October 2010 elections “reinforced the tendency of political parties and government officials on all sides to engage in nationalistic

rhetoric” (European Commission, 2011, p. 10). The EU’s norms that apply to the example of the Srebrenica genocide were pronounced very clearly through a European Parliament resolution on Srebrenica adopted on 15 January 2009. In the Resolution, the European Parliament calls on “the Council and the Commission to commemorate appropriately the anniversary of the Srebrenica-Potočari act of genocide by supporting Parliament's recognition of 11 July as the day of commemoration of the Srebrenica genocide all over the EU, and to call on all the countries of the western Balkans to do the same” (2009, para. 2.). Furthermore, the Resolution “stresses the importance of reconciliation as part of the European integration process” and emphasises the role of domestic actors so that “all ethnicities may overcome the tensions of the past and begin a peaceful and sincere coexistence in the interests of enduring peace, stability and economic growth” (2009, para. 4.).

As can be seen from those documents, trust is rarely mentioned directly, but, judging by the EU documentation, the main indicators for trust are tolerance and inter-ethnic cooperation. These are the norms directly specified in EU documents, norms which must be based on trust if they are to be successfully internalised by the population of BiH and its political elites. As outlined in Chapter V, trust could be viewed as an ‘informal’ norm, but this might seem to belittle the concept since the theoretical discussion at the beginning of this Chapter has illustrated its fundamental importance for democracy, and especially for democratic consolidation. Having such a normative basis, it could be assumed that the EU could be ‘predisposed’ to act normatively as argued by Manners (2002). However, as argued in Chapter IV, having a clear normative basis does not make the EU a normative power, neither does it predispose it to act normatively. As becomes clear from the examples on mechanisms of norm diffusion, the EU does not act as a normative power although many of those representing it do understand the importance of EU norms, and some claim to use it in ‘everything the EU does’. As the following examples show, this view of EU officials cannot be corroborated by evidence of the EU using norms in practice. Using the same route of assessment as in the previous section on counter-norms constructed by Dodik, in the next section I look at the properties of EU norms which are outlined here, including norm appropriateness, norm character, and norm origin.

Properties of norms. In order to illustrate the appropriateness of EU norms, I again look at the example of the genocide in Srebrenica. This example is interesting because it clearly does not fall into the EU’s technical criteria, and yet is related to norms which are very important to the EU, such as peace, justice, tolerance, etc. Being a political, rather than a

technical issue, this example reveals difficulties in finding the right instruments to diffuse a norm beyond the technical criteria. In Chapter IV, I referred to this as a riddle between the EU's technical and political roles, and I have argued that different EU actors take a more or less prominent role depending on the nature of the issue. Given that this issue is clearly more political, it was evidently a matter in which the European Parliament would be most prominently involved, using one of its most used instruments, i.e. a parliamentary resolution. As I pointed out in the section on EU normative basis, the EU Parliament very clearly condemned the act of genocide, and for that purpose used the language of appropriateness or 'oughtness', recommending that all countries commemorate 11 July, and that recognition of that crime is necessary for further peace, reconciliation and economic growth.

Due to the overwhelming position in the EU and the region that genocide ought to be condemned, Dodik's denial of the genocide in Srebrenica provoked a series of strong reactions by the EU officials. Their clear and unequivocal positions on Srebrenica genocide gave a sense of appropriateness to the EU position. Doris Pack, member of the European Parliament and rapporteur for BiH saw Dodik's statements as "harmful to the interests of the people of the Republika Srpska" and as endangering the process of regional stability ("Srebrenica: Dodik statements harm Republika Srpska. Doris Pack MEP - EPP Group," 2010). At the end of March 2010, the Parliament of Republic of Serbia passed a declaration condemning "the crime committed against the Bosnian Muslim population of Srebrenica in July 1995 as determined by the International Court of Justice ruling" ("Serbian Lawmakers Condemn Srebrenica Massacre," 2010). The European Union welcomed the adoption of this declaration as a step in facing the country's past ("Joint statement by EU HR Ashton and EU Commissioner Füle on Serbian Declaration on Srebrenica," 2010). The Head of the EEAS Department for Western Balkans, Jonas Jonsson, on behalf of Catherine Ashton stated that "EU is paying great efforts in order to overcome the tensions from the past among all countries in Western Balkans" and that "the European Union is fully behind the Resolution on Srebrenica, and it was encouraging the Western Balkan countries to accept what Serbia did in March 2010" ("Zaštite Rezoluciju o Srebrenici od Dodika," 2011). To that end, the EU High Representative Lady Ashton issued statements every year on the July 11 Srebrenica commemoration "underlining that the EU condemns this genocide unequivocally" ("Personal interview with a senior EU official in Sarajevo," 2013).

This case was a rare example in which the EU used such explicit language in standing up for one of its norms, and a policy for which there is a clear consensus across the EU member states. It was also a good example of different EU actors working in concert. However, even though there is strong consensus on condemning the genocide in Srebrenica, there is no consensus on how far the EU needs to go in defending those values against their denial by Dodik and SNSD. In my interviews I asked EU officials about such situations in which elites try to play down or undermine an EU norm. One of the respondents said: “There is some confusion in the EU about how to deal with a would-be member-state where the political elites don't seem to want EU integration. In most other countries, including Croatia and Serbia, political elites desire quick EU membership, and take difficult domestic decisions in order to gain legitimacy and progress towards membership. This may not be the case for all elites across BiH, and this poses fundamental challenges for the EU enlargement model” (“Personal interview with an EU official in Sarajevo,” 2012). This perception is quite widespread and it came up in many interviews with EU officials. Even though there is an explicit recognition that this poses a ‘fundamental challenge for the EU enlargement’, the EU nonetheless willingly delegates the responsibility for the country’s progress entirely to domestic political elites, which clearly do not have an interest in integrating. It appears somewhat paradoxical that the EU would rely entirely on the political will of domestic elites, recognising at the same time that such political will does not exist. That paradox supports one of my main arguments in this thesis – that the EU fails to see the destructive role nationalism plays in democratisation of the country. As will also be clear in the next example, EU norms may be consistent, explicit, have a sense of appropriateness, so low compliance is clearly not a question of the properties of EU norms, but a question of properties of the EU as norm promoter, including its self-perception.

In order to illustrate the character of EU norms, I again return to the example of the undermining of the State of BiH, which I discussed in Chapter III, and also earlier in this Chapter. It will be recalled that I argued in Chapter IV that EU actors have divergent views on the role of the EU as a state-builder, which cripples the EU’s effectiveness as the main state-builder in the country. Instead of standing firmly against any undermining of the state by nationalist elites, the EU sometimes even accepts the views of nationalist elites and takes them for granted. This example is interesting because state-building would be thought of as a technical matter, when in fact, protecting the integrity of the state of BiH is a matter of high political importance for the EU. This is again confirmed by the involvement of the EU Parliament, which issued rather explicit statements about a need to protect the integrity of BiH:

“any questioning of the territorial integrity of BiH would not only constitute a violation of the DPA, under which no entity has the right to secede from BiH, but would also run counter to the principles of tolerance and peaceful cohabitation between ethnic communities on which the stability of the whole Western Balkans is founded; therefore, the international community and the EU will under no circumstances accept or tolerate any partition of BiH” (“European Parliament resolution on the situation in Bosnia and Herzegovina 2009,” 2009, para. E.).

Furthermore, the same April 2009 Resolution of the EU Parliament recalls “that the prospect of EU membership has been offered to BiH as a single country, not to its constituent parts, and that, consequently, threats of secession or other attempts to undermine the sovereignty of the State are completely unacceptable” (2009, para. 3.). The EU thus “urges all relevant authorities and political leaders, in this regard, to focus much more on reconciliation, mutual understanding and peace-building measures, in order to support the stability of the country and inter-ethnic peace” (2009, para. 4.).

The same can be said about the EU position on the Srebrenica genocide, and the functionality of the state institutions. Every single EU Progress Report on BiH since the SAA was signed, clearly states a need to create a functional state, and makes a point about strengthening its institutions. A senior EU official in Brussels pointed out that their norms are clear and legitimate, but that the problem lies elsewhere. He said that “political elites and parties need to show responsibility in accordance with democratic processes. They need to put the interests of BiH before the interests of the party” (“Personal interview with a senior EU official in Brussels,” 2012). In subsequent sections I look in more detail the EU mechanisms of norm promotion, but it can already be noted that the EU persists in the use of the procedural mechanisms, such as statements, declarations, progress reports, but in the examples used here, the EU did nothing more to show dedication and commitment to their norms, or preparedness to defend them.

I have made an argument throughout this thesis that the EU’s focus on procedural democracy undermines substantive democracy, and this point is further substantiated by the examples used here. The EU’s procedural approach in facing Dodik’s destructive and tenacious statements on Srebrenica and integrity of the State, undermined the substance of democracy, which in this case would be the promotion of trust. By tolerating Dodik’s language and rhetoric on those two subjects, i.e. by not taking action beyond verbal condemnation of his rhetoric, and

by putting the responsibility for progress solely on the shoulders of domestic elites, the EU denounces its own responsibility for protecting the norms of tolerance and peace upon which the EU itself rests. By renouncing ownership of those norms through inaction, the EU delegitimises those norms, and gives signals to domestic elites that their undermining of EU norms can go unpunished.

The EU's ignorance of the construction of counter-norms is further evidence to this point. It will be recalled from Chapter IV that international norms have to work through the 'filter of domestic structures and domestic norms', which results in variations in compliance and interpretation of norms (Finnemore & Sikkink, 1998, p. 893). Looking at examples of procedural and substantive subversions, it can be seen that the election campaign was used as a platform for building and sustaining a series of counter-norms. The counter-norms were created in order to act not just as a filter, but even as a barrier to the promotion of EU norms. The reason why the election campaign proved to be a clever choice to lay out the counter-norms is because of a widespread perception, among domestic as well as international actors, that commenting on election speeches might look like taking sides in the campaign. The EU officials thus refrained from taking any steps that might look like favouritism. This was confirmed by a number of the EU interviewees, one of whom stated: "In the election campaign we try very hard to avoid any hint of favouritism or any 'endorsement' or not of parties/candidates. That does not mean we are silent though - we will continue to talk publicly about the generic policy issues of concern to us and citizens and hope that some of that feeds through to voter choices" ("Personal interview with a senior EU official in Sarajevo," 2013).

Another EU official also made a statement to that end: "There is a strong sense that open criticism of political parties and leaders during the campaign would over-step our mandate and be counter-productive" ("Personal interview with an EU official in Sarajevo," 2013). The international norms receive less prominence during that time because of the EU's position on impartiality, while counter-norms are at their highest. Further to my earlier point about the EU disowning its own norms, those examples also show that the EU relegates its substantive norms to a lower priority for the sake of perceived impartialness during the election campaign. This again is an example in which the procedural aspects are given priority before the substantive aspects of democratisation. In my view, for the sake of the EU's credibility and integrity, it should be prepared to risk looking politically partial, if that partiality serves the purpose of protecting EU norms. If the EU would be decisively partial to its norms that would send a

message to the electorate that the counter-norms are not acceptable to the EU, which would somewhat weaken the support for the domestic elites which position themselves against the EU norms. However, the EU is clearly not prepared to take that risk, even if it has to pay the price of undermining its own norms and looking inconsistent.

On their part, the EU officials provided little understanding of the nature of challenges they face in norm diffusion. To many EU interviewees the lack of trust in BiH was a given, seen as primordial and engrained in local mentalities, based on myths of eternal hatreds, which is why they should not be contested, even by EU norms. This position also relates to the power-sharing mechanisms, which are seen primarily as means of upholding peace and ensuring ethnic representation, even if in breach of some basic EU norms. The EU officials admitted to adhering to this distinction between domestic and international norms: “When there is an apparent attempt to impede implementation, first we ask ‘is this an issue for us - or is it internal politics that needs to play out?’. If we jump in with both feet do we undermine the very thing we are trying to promote, i.e. domestic democratic dialogue” (“Personal interview with a senior EU official in Sarajevo,” 2013). The EU thus juxtaposes the promotion of ‘trust’ against ‘domestic democratic dialogue’, clearly deciding that the procedural norm of ‘democratic dialogue’ is more important than ‘trust’ as the substantive norm.

Another interesting aspect related to the origin of norms was pointed out in the same interview: “I think it is also fair to say that we know that some 'EU norms' are new to BiH society and even socially/politically sensitive, so we try to avoid situations that would lead to people saying we are ramming foreign doctrines down their throats. We are looking to facilitate a consensus on values that is sustainable and this will take a long time in BiH because it is in my view an essentially inward looking country. We need BiH to take on the values as its own for the integration project to be truly successful” (“Personal interview with a senior EU official in Sarajevo,” 2013). What can be concluded from this is that not only are domestic norms successful in counteracting EU norms, but that the EU officials do not see it as their job to challenge such views.

Furthermore, some of them even change their own perceptions under the influence of domestic context. This was evidenced by many responses which indicated that EU officials often play by the local rules of the game and even adopted some of the local rhetoric that is contradictory to that which would be an EU norm. This was evidenced in a phrase which was

originally coined by Dodik, but which was stated to me by an EU official: “Relations in BiH are regulated by the Dayton Peace Agreement, every change needs to be agreed upon by all three constituent peoples” (“Personal interview with a senior EU official in Brussels,” 2012). As discussed in Chapter II, the Dayton Peace Agreement includes many mechanisms for the protection of ethnic interests and power-sharing, but it does not in any of its aspects maintain an agreement among the ‘three constituent peoples’, which would now also be against the very substance of the ECHR ruling on representation of all citizens of BiH. As such, the use of this language by the EU is a proof of their adoption of the rhetoric of domestic elites, a reverse effect of the process of socialisation.

When it comes specifically to the promotion of trust, one final important distinction was raised by an EU official, who said: “I would hope that all of our actions promote trust - trust in the EU and in working together across the country. However I think it is fair to say that the EU is not about post-conflict peacebuilding - we are no longer funding peace camps and things that help people to meet each other as the main objective, although that may be a side effect. We work on the assumption that BiH is a country that has decided to join the EU and we deal with it from that point” (“Personal interview with a senior EU official in Sarajevo,” 2013). The EU thus recognises the exceptionalism of BiH only insofar as it was treated as a post-conflict country. However, the EU fails to recognise the exceptionalism of democracy in BiH, created by numerous, deep fault-lines, which it did not face in other aspiring members in the past. The EU clearly does not consider it to be its own responsibility to endorse wider aspects of democratisation in BiH, which would encompass the more substantive elements of democracy, including trust-building.

Nonetheless, there is a strong perception among EU officials that the promotion of EU norms is at the core of all activities of the EU in BiH, to the degree that international institutions are themselves the values they represent: “The EU promotes its values basically 'in everything we do'. EU integration is about BiH eventually taking on the values of the EU so all of our work/activity is based on this. To try and cut it down: we do this both rhetorically and in our activities. Like any other organisation, we try to be our values” (“Personal interview with a senior EU official in Sarajevo,” 2013). This view also relates to the personnel representing EU institutions: “I think all EU officials and staff recognise and understand their role in espousing EU values. We urge 'what the EU would do' on politicians, officials and interlocutors on all sorts of issues. We are always giving our advice to our BiH counterparts and that advice

emerges from our values, which are in a more mundane way the Copenhagen criteria and the *Acquis*” (“Personal interview with a senior EU official in Sarajevo,” 2013).

EU mechanisms of norm diffusion. According to Manners (2002), diffusion mechanisms need to be looked at because ‘accepting the normative basis of the EU does not make it a normative power’ (pp. 245–6). In my framework of analysis, and on the basis of the theory Chapters, I have divided mechanisms of norm diffusion into ‘procedural’ and ‘substantive’. Procedural mechanisms include informational diffusion, procedural diffusion, transference, overt diffusion, and cultural filter. Substantive (constructivist) mechanisms include contagion, compliance, social learning, socialisation, role playing/mimicking, and persuasion.³³ Given the fact that the EU does not deploy all of the proposed mechanisms of norm diffusion in BiH, I report only on those that were recorded through my research. Evidence presented in previous sections showed that the EU has underestimated the importance of the immaterial and ideational aspects of equality in norm promotion. As argued in one of my hypotheses, if those aspects of norm promotion are undermined, the EU efforts are bound to remain limited to procedural aspects.

In this section I show how the EU limits itself to the use of procedural mechanisms of norm promotion, which in most cases results in diffusion of procedural rather than substantive norms. This in turn hampers the constitutive and transformative aspects of internalisation of norms. This was also a view expressed by a CoE official who stated: “The EU engages with values through a process-oriented approach, particularly in candidate and potential candidate states where convergence with standards is expected rather than meeting them. CoE is dealing with member states through a peer monitoring approach to meeting or surpassing adopted norms. The EU engages heavily through its financial instruments to promote and assist, while its political instruments may be more timid due to the nature of the organisation. CoE, not having ability to engage in a financially significant manner, engages through expertise, multilateral support and best practice, peer pressure” (“Personal interview with CoE Official,” 2012). The over-reliance on procedural mechanisms of norm diffusion that are discussed in this section provide evidence in support of that argument, as well as my argument that the EU undermines substantive democracy through the extensive use of procedural instruments.

³³ See the discussion in Chapter IV and V on the origins of these terms and the distinctions between them.

When it comes to the size of the EU Delegation to BiH, the interviewees confirmed the fact which is often mentioned, that the size of their mission reflects the EU's political commitment to BiH: "BiH is a relatively large mission. However, the size of mission reflects the fact that the Head of Delegation also doubles as EU Special Representative. The bulk of EU delegation staff work in traditional project management roles, as is typical for other missions in potential candidate countries, overseeing the spending of EU project funds. The EUSR mandate is linked to peace-building, stabilisation and, in order to achieve the latter, furthering BiH's EU membership prospects" ("Personal interview with an EU official in Sarajevo," 2012). One of the interviewees also felt a strong need to address one of the local prejudices about the EU institutions and how they are integrated. Namely, there is widespread thinking in BiH that EU institutions on the ground and in Brussels are in discord. There are often attempts by some politicians and media representatives to play one side of the mission against the other, or to seek or provide information to Brussels by bypassing the Delegation to Sarajevo. However, such allegations were strongly dismissed: "The EU as an organisation is far more integrated than assumed. The staff in the field are in daily contact with our counterparts in Brussels. Of course what happens is Brussels asks our advice on the answers, and vice versa, and we come up with a harmonised answer! But this links to the first point about being overly concerned with geography - it is not one group of people on the ground and a wholly different set of people in HQs, we are all the same" ("Personal interview with a senior EU official in Sarajevo," 2013)

Procedural mechanisms.

Informational diffusion. EU missions run a range of information campaigns, which, initially, did not necessarily target specific issues, but were rather broad based and promoting EU integrations in general. Since the EU Delegation to BiH has been transferred responsibilities from the OHR to also support the EU Special representative to BiH, their informational campaigns have been targeting some specific issues. In doing so, over the last few years they developed a wide range of instruments, which was confirmed by one of my interviewees: "We use everything! Financial assistance of course but also our daily working contacts, outreach events and projects, media engagement. You name it, I think we do it. The Ambassador gives press statements, writes op-eds, holds public and private meetings with BiH officials and leaders. There are projects that bring EU member state experts to BiH to share experience (and values along with that) - such as TAIEX. High level visitors come from Brussels and repeat the messages" ("Personal interview with a senior EU official in Sarajevo," 2013). The Office of

the EU Special Representative (EUSR) has been running an 'EU Outreach Programme' for several years, which is designed to "facilitate a broader debate on EU integration in BiH. It focuses on the security, stability and prosperity that deeper integration will bring" ("European Union (EU) - Delegation of the European Union to Bosnia and Herzegovina," n.d.). It originally targeted citizens, while later phases included some members of parliament, civil society, trade unions, and the media. However, many of those campaigns were promoting the EU itself, rather than any of its specific values or norms. They were aimed to convince target groups that the 'EU road' is the right way forward for Bosnia and did not go into the substance of what the EU itself is about or which values it is based on. The campaign messages were broad, general and designed to campaign for the sake of campaigning rather than for the sake of sending out a message.

As discussed in the section on subversions of trust, various EU documents clearly recognise that nationalist rhetoric is deployed purposefully to entrench divisions and undermine social and inter-ethnic trust. Based on those documents, it comes as obvious that the EU institutions had a strong awareness that the 2010 election campaign would again be dominated by nationalist rhetoric, and the 2010 EU Progress Report admits that was eventually the case. However, the EUSR did not run any specific campaign that would have targeted the nationalist rhetoric during the 2010 elections. Instead, in April 2010 the EU Special Representative, Valentin Inzko embarked on a mission that included participation in ten public debates throughout BiH which ran just short of the start of the formal election campaign, ending in July 2010. The issues promoted through this campaign were more practical and pragmatic, such as economy, unemployment, local development, regional cooperation, tourism, youth, education, access to EU funds, environmental issues, investments, fight against corruption and rule of law, social issues and agriculture, market competitiveness, movement of goods, capital and people and free travel. Issues of stability and democratic values were mentioned only vaguely and rarely ("www.reci.ba," 2010).

Based on the issues discussed, it can be said that the aim of the campaign was to engage citizens in issues that are not emotionally charged and instead affect their daily lives. However, the title of public debates was somewhat misleading: "There is only one direction for BiH - to build a prosperous and democratic society in the heart of Europe" ("www.reci.ba," 2010). Discussions touched upon a range of issues that would affect the prosperity of BiH, but they barely addressed the building of democratic society. Not in a single public debate were any of

the EU ‘core democratic values’ mentioned, implied or illustrated through any examples. Instead, a series of conventional and clichéd phrases were repeated such as ‘joining the European family’, ‘BiH could remain a black hole in European continent’, ‘there is only one way forward’, ‘BiH has no other alternative than Europe’, ‘we remain committed to BiH integration into the EU’, ‘EU is knocking on the door of BiH’, ‘EU is the strategic destination of BiH, but the EU does not have a magic wand’, ‘EU is determined to accept you into our club’, ‘the road to EU is thorny and difficult’ (“www.reci.ba,” 2010).

Procedural diffusion. The main instrument of procedural diffusion is the Stabilisation and Association Agreement (SAA), which BiH signed with the EU on June 16, 2008. During the process of ratification of the SAA by the EU member states, an Interim Agreement on Trade and Trade-related Matters (IA) was brought into force (2008). However, the Interim Agreement had to remain in force long after the SAA was ratified because there was breach of Article 1 of IA (Article 2 of the SAA) – the failure to implement the ECHR decision in Sejdić/Finci case, discussed in the next Chapter. Even though Article 1 refers to a much broader framework of democratic principles and human rights, it is clearly not related to undemocratic practices and rhetoric that were evident during the election campaign. In interviews with diplomats from EU member states, it became clear that they consider rhetoric to be of purely performative nature, and as such cannot be taken as a breach of democratic principles. The Interim Agreement according to that logic does not apply to examples presented in this Chapter, which makes procedural diffusion of norms impotent in responding to counter-norms such as distrust.

Transference. The EU financial support to BiH is consolidated in an instrument for pre-accession assistance (IPA), which aims at providing targeted assistance to countries which are candidates and potential candidates for membership to the EU. One EU official underlined the importance of IPA funds for the promotion of values: “IPA is directed not just at sectors but at promoting our values in those sectors, e.g. efficient, impartial justice and rule of law, fair public administration serving citizens, decent sewage systems, anti-corruption work, projects to promote civil society activism and engagement of civil society with institutions. All of these are expressions of our values as much as concrete work/reform programmes” (“Personal interview with a senior EU official in Sarajevo,” 2013). According to the EU Delegation, “IPA will help strengthen democratic institutions and the rule of law...” (“europa.ba - IPA,” n.d.). The Commission recognises that significant political risks are associated with the core reform areas, including resistance of key political stakeholders, which may impede the success of the

reforms. Those problems are considered by the Commission in relation to the programming of its assistance (“europa.ba - IPA,” n.d.). However, election rhetoric which clearly undermined some of the reforms and EU norms was not considered a viable or sufficient risk that would affect the programming of EU funds.

One example of misplaced sanctions in the case of IPA allocation is a decision of the European Commission to withhold IPA funds in support of the processing of war crimes at the Court of BiH. The Court of BiH has been one of Dodik’s main targets, and since 2008 he has extensively engaged to undermine it. In 2008 Dodik stated that the RS will not be “judged by Muslim judges”, referring to the Court of BiH, which had previously rejected a complaint by the RS Government in a court case (“Za Dodika neprihvatljivo da u Republici Srpskoj ‘sude suci muslimani,’” 2008). This statement was strongly condemned by the EU and US officials. The EU Special representative at the time Miroslav Lačak found this statement chauvinistic and stated: “Dodik's statement about the BiH Court would mean an end to a political career in a democratic country”. The US Embassy issued a statement which was equally strong, saying that “Such intolerance is unacceptable. There is no room for ethnic or religious politics in the judiciary”. However, no sanctions were ever deployed against Dodik following this occasion, even though everyone clearly considered his statement as ‘crossing the line’.

In 2015, however, the EC decided to withhold 2.9 million Euros from IPA funds that were intended to fund the salaries of seven judges, twenty prosecutors, and one hundred and fifteen legal staff engaged at various courts in BiH on prosecution of war crimes (“Pod pritiskom EU dogovorena strategija reforme pravosuđa u BiH,” 2015). That decision was made because the authorities from Republika Srpska refused to agree on a new Strategy for the Reform of the Judiciary. By withholding funds necessary for war crimes prosecution, the EU not only missed the target with sanctions, but in fact rewarded those whose goal it was to obstruct the Court of BiH, and the processing of war crimes through political blockages. The EU only helped them in that pursuit. In Chapter IV I referred to an argument put forward by Vachudova (2014), who stated that the EU conditionality is seen as more credible because the EU is capable and willing to stop the process when the government is not making progress. However, as this example shows, by stopping the process the EU sometimes undermines its own credibility, and rewards the lack of support of domestic elites to EU-sponsored projects. This is a consequence of two factors outlined in Chapter IV: the EU as poorly embedded in the local political context, and the misplaced ‘cookie-cutter approach’ which wrongly assumes that

progress is a reward in itself, miscalculating the real interests of domestic elites that often benefit more from the status quo.

Conclusion - procedural mechanisms. As can be seen from those examples, the EU does not deploy all six procedural mechanisms of diffusion of norms, and it deploys them to various degrees. I have not identified specific resistance to the actual diffusion of EU norms through procedural mechanisms during the election campaign. Moreover, the role of the EU and international community was marginalised, both by international actors themselves, as well as by domestic actors. Procedural mechanisms alone do not indicate the extent of the effectiveness of the EU's procedural approach as they do not reveal whether internalisation of norms occurs and at which stage. Procedural mechanisms provide avenues for diffusion of norms, but these are mainly one-way streets, and go only as far as introducing a norm.

One general observation that can be made following an inventory of EU procedural mechanisms is that none of them in any way relates to the underlying context in which nationalist rhetoric is constructing resilient opposition to the internalisation of EU norms. There is an evident and wide gap between the underlying context and the objectives of the EU procedural mechanisms. If the EU procedural mechanisms were seen in isolation from the scope conditions and context outlined earlier in this Chapter, one would wonder if they both refer to the same country. Referring back to Finnemore and Sikkink's (1998, p. 888) patterned 'life cycle', I argue that the procedural mechanisms only go as far as the first stage – norm emergence. The characteristic mechanism of the first stage, norm emergence, is persuasion by norm entrepreneurs, which we saw being the case with the EU's information campaigns.

Substantive mechanisms.

Contagion. The research of election narratives showed that political actors are aware of EU norms in spite of the fact that they openly reject some. However, the very fact that counter-narratives and counter-norms are constructed in contrast to EU norms is evidence to the fact that unintentional diffusion of European ideas has had some influence in BiH. Given the sheer size, density and physical international presence in BiH since the Dayton Agreement, unintentional diffusion through contagion should not come as a surprise. Apart from bilateral presence and projects by EU member states in BiH, at present the EU itself has several sizable missions including the EU Delegation (including the Office of the EU Special Representative),

EU Police Mission, and Operation Althea (EUFOR). Apart from their regular activities and projects, each mission also runs an independent information campaign.

Compliance. This case study revealed three aspects limiting the use of compliance instruments (coercion, sanctions, cost/benefit calculation, etc.). First, this case study is somewhat specific in the way that the very context of elections limited the use of instruments by the EU. Given the fact that SNSD in particular, but many other parties as well, put nationalism at the focus of their election campaign through different narratives, condemning such rhetoric in any aspect, or even pointing to norms or values that counter those proposed by nationalism would have been seen as giving preference to a different political option, and endangering the EU's impartiality. Given this limited context, the EU actors refrained from more assertively deploying substantive instruments during the election campaign.

Secondly, the EU officials believe that the use of sanctions against elites in BiH may not have desired effects: "We see this when sanctions are applied to BiH. In other countries, sanctions may have encouraged compliance from local decision-makers, but there was little reaction or concern expressed by political leaders in BiH, who seem to have calculated that the loss of EU financial assistance is not worth losing sleep over" ("Personal interview with an EU official in Sarajevo," 2013). I have already argued in Chapter IV that literature which sees compliance simply in terms of cost-benefit calculations does not apply to the case of nationalist elites in BiH, because their interests lay elsewhere. In some cases, as is the case with state-building, non-compliance is actually rewarded by stopping EU programmes and funding, which only prolongs the status-quo in which nationalist rhetoric thrives. Another EU official made a different point: "If it comes to it, however, there are tools at the EU's disposal to send a message - these range from public statements of unhappiness/concern delivered by the Delegation or from Brussels to more concrete ones like cutting the IPA budget because not enough progress was made towards EU integration. At the very far end there are restrictive measures, such as travel bans, assets freezes, etc., but they are for use only under very specific conditions as laid out in the mandate of the EUSR" ("Personal interview with a senior EU official in Sarajevo," 2013). However, none of those have ever been used by the EU to sanction non-compliance by nationalist elites, or the undermining of the state and explicit obstruction of democratisation processes.

Thirdly, in order to decide on the use of particular instruments, the EU needs specific examples at which it can target the use of sanctions. This became evident through interviews with EU actors. In the absence of a high level of specificity, the EU actors find it hard to identify a ‘red line’ marking unacceptable norms. They find this falls into a subjective category that no actor feels responsible to judge on. For example, a CoE representative stated: “freedom of speech includes the freedom of unpleasant speech. When the line is crossed with hate speech then the CoE has a role to react, but generally does not interfere with political speech in election campaigns” (“Personal interview with CoE Official,” 2012). When asked to clarify when ‘unpleasant speech’ becomes hate speech, this interviewee referred to the official CoE definition of hate speech: “Hate speech, as defined by the Council of Europe, covers all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin” (“Personal interview with CoE Official,” 2012).

However, even when it is blatantly clear that ‘the line has been crossed’ and hate speech used, there is a striking absence of the use of sanctions. In a similar vein, the examples of subversions of trust during the election campaign showed that Dodik’s election rhetoric included many elements which clearly constituted hate speech. However, even in those cases, and most likely due to the position on impartiality during election campaigns, I did not identify any instances when Dodik’s hate speech was condemned, never mind sanctioned by the EU. The CoE official justified this by saying that it is not all “that black and white” (2012). This revealed one of the main reasons explaining the EU preference for the use of procedural instruments of norm diffusion. Procedural instruments provide specificity of use, there are clear definitions of when and how such mechanisms are deployed. Substantive instruments are based on value judgements, and require a subjective assessment of when to be deployed, which would be difficult to reach among many EU actors.

Finally, during the election campaign which was dominated by nationalist policies, the nationalists were very determined not to comply with EU norms. For them, cost/benefit calculation worked against EU norms. As the SNSD’s narratives showed, a need to create a sense of community among their potential voters required an outsider that would strengthen the sense of belonging to that community. One interviewee put this in the following way: “If there is a full frontal assault on the EU we will of course respond especially to anything that is false,

we will however try to depersonalise it as much as possible as in some quarters a fight with the EU will win people votes” (“Personal interview with a senior EU official in Sarajevo,” 2013). In the case study I analysed, it was the EU and international community which were portrayed as outsiders who sought to challenge the entrenched or constructed community values and norms. So not only were the EU actors limited in promotion of their own norms, but they were in fact targeted directly by the counter-narratives. Therefore, the calculation on the part of local actors has been that the benefit of rejecting EU norms outweighed any cost of sanctions. In other words, the benefit of winning elections outweighed the cost of rejecting any EU position.

Social learning. The scope conditions and underlying context prevented interaction between EU norm entrepreneurs on one side, and counter-norm entrepreneurs on the other. As my section on the mechanisms of norm diffusion for procedural democracy showed, the EU norm entrepreneurs engaged in extensive and structured campaigns. However, these were not sufficiently interactive and did not provide opportunities for social learning. They were in some aspects one-directional without opportunities for feedback and the EU representatives were sometimes seen by political actors as completely detached from the issues and norms they promote. At the same time, Serb political elites engage in construction of counter-narratives which take the attention away from EU norms and narratives. They are emotionally charged and have more discursive power. My research thus did not identify real opportunities for interaction, or two-way communication that would result in social learning based on this case study.

Also, the analysis of scope conditions showed that during the actual election campaign, the visibility of the EU actors on the ground was very low-profiled which resulted in an absence of more assertive rhetorical as well as practical insistence on EU norms. There was no scrutiny by a wider range of institutions with international normative roles. Moreover, the EU officials considered it politically incorrect to engage in rhetorical campaigns during the election campaign, even if for the sake of promotion of EU norms. This resulted in the lack of prominence of EU democratic norms as counterweights to undemocratic behaviour during the election campaign and the perceived tacit agreement with counter-norms actually cultivated scope conditions for subversions of democratic trust.

Finally, this case study showed different levels of importance attached to the use of language and rhetoric by domestic and international actors. Interviews I conducted showed

greater awareness among domestic actors of the use of rhetoric and narratives in construction of narratives, than among EU actors. An expert on political parties, who worked for an international agency in Sarajevo told me that they treat Dodik's rhetoric as purely performative, just an instrument for winning elections ("Interview with a representative of USAID in Sarajevo," 2008). A similar view was expressed in a discussion with a representative of a German political foundation in Sarajevo, which is working with a number of political parties, who said: "We do not pay much attention to Dodik's words, it will all change after elections" ("Personal communication with a representative of a German political foundation in Sarajevo," 2010). However, the view of domestic and regional actors is different. Speaking at a lecture on the integration of South-Eastern European countries into the EU, held at the World Policy Institute (WPI) in New York, the former President of Croatia, Stjepan Mesić warned the US and EU representatives of the dangers of Dodik's rhetoric: "Just as the world failed to recognise Milošević's policy then, it does not recognise Dodik's policy today" (Somun, 2008).

Socialisation. Following the same line of argument as with social learning, scope conditions are perceived to be the key obstacle to the process of socialisation too. This is in line with Checkel's assertion that when strategic calculation operates alone, there can be no socialisation and internalisation. In this case the narratives deployed during the election campaign, particularly against the international institutions prevented the normative switch from the logic of consequences to the logic of appropriateness (Checkel, 2005, p. 809). Dodik was in this case instrumentally rational, calculating and maximising his election interests, instead of adapting his behaviour to the norms and rules favoured by the international community. In doing so, he understood very clearly that the position of the EU would be that he is a democratically elected leader, which is why they would continue to interact with him even though he speaks openly against the values they promote. This was also expressed by one EU official: "Visits by our top leadership and officials to towns around BiH, outreach events where we show our concern and desire for engagement with communities especially young people and political liaison. On this last one, while we know BiH politicians are not popular, they are duly elected and we are at the end of the day a diplomatic mission and have to deal with the representatives elected by the people" ("Personal interview with a senior EU official in Sarajevo," 2013).

This is another major obstacle to socialisation evident from the case study I analysed in this Chapter. As argued earlier, rational choice argument could not be applied to the

construction of narratives that shaped SNSD's election campaign. Aware of consequences of non-compliance, and also aware of the fact that rewards of compliance were not greater than localised rewards of non-compliance, political elites chose the latter. Political conditionality as an important element of the socialisation process was also not seen as persuasive enough. The policy costs of non-compliance with EU norms were not compelling enough, while rewards of compliance were distant, uncertain and incomparable to the rewards of winning elections.

Persuasion. Although evidence collected through this research did not account for many cases of persuasion during the election campaign itself, interviews with EU officials confirmed that persuasion nonetheless does take place through their direct interaction with political elites. However, that persuasion is usually issue-based, focusing on specific reforms. Its objective is not a wider sense of 'socialising' political elites. Given the fact that democratic norms which strengthen social and political trust are not issue-focused, EU officials confirmed they are barely discussed as such. This case thus shows that persuasion can be effective if more narrowly focused, and not as a mechanism of wider appeal to norm internalisation. Along those lines, Checkel (2001) and Johnston (2005) raise the question of the intensity, duration, and quality of exposure to norms as explanations of the success of persuasion. However, Johnston is rightly concerned whether "intensity or duration are independent of other elements of exposure, such as the autonomy of the agent, the authoritativeness of the persuader, the content of the message, and the cognitive characteristics of the persuader" (2005, p. 1023). Research of the SNSD narratives substantiate this argument, as they show that the autonomy of political elites, the lack of authoritativeness of EU officials, the opacity of EU informational campaigns, and the implied political correctness on the part of EU officials as regards the boundaries of persuasion, all work against the intensity or duration of exposure to EU norms.

Conclusion - Level of Compliance with EU Norms on Trust

In Chapter IV, I made several arguments about the EU as an actor, and as a normative power that seeks to instil democratic values and norms in BiH society. I have followed up on some of those arguments in this Chapter in order to substantiate the view of the EU as an ineffective democratiser that fails to recognise the obstacles imposed to it by an unfavourable context in BiH. Contending the view that compliance with EU norms can be seen simply in terms of linkage and leverage (Levitsky & Way, 2005), I have first made a case that neither linkage nor leverage can be effective in an environment in which domestic elites openly resist

EU efforts (Schimmelfennig, 2000). It is not in the interests of the nationalist elites to integrate and comply with EU norms, so the literature which assumes that compliance would be compelled by the prospect of faster EU membership does not apply to BiH (Vachudova, 2014). Examples presented in this Chapter show that the nationalist elites not only fail to comply, but they engage in deliberate and tenacious efforts to resist the influence of EU norms, and to create real obstacles to their diffusion. I have also referred earlier to the literature which shows that the EU is willing to adopt a more flexible approach on issues which are seen as nationally sensitive for a country (Anastasakis, 2008). In this Chapter I supplemented that argument with a view that nationalist elites in BiH have learned over time that the EU is prepared to lower the bar in case of ‘nationally-sensitive’ issues, so they have engaged extensively in fitting many technical issues into the mould of identity and ethnicity. Moreover, in cases when the nationalist elites require a ‘political cover’ for obstruction and non-compliance, they simply fabricate new national issues, which surface to the mainstream politics through carefully crafted techniques of construction of counter-norms that render irrelevant any issues which the EU tries to impress on the society.

I looked at trust as a norm through the concepts of generalised and particularised trust, in order to demonstrate ways in which political elites ‘particularise’ trust within their own ethnic group at the expense of generalised trust. Opting for the top-down approach and a focus on elites’ utilisation of populism, negative and divisive rhetoric, hate language, radicalism, extremism and nationalism, I showed how entrepreneurs of counter-norms deploy rhetoric against fragile social relations in order to particularise trust at the level of a single ethnic community to which they appeal.

When I introduced the notion of compliance in Chapter IV, I referred to appropriateness, universal validity and ideational commitment as important elements in internalisation of norms. The successes of Dodik’s rhetoric, manifested in his election win as well as high rates of popular support, suggested that many voters did not consider EU norms to be appropriate or universally valid. It showed that citizens are more committed to counter-norms imposed on them through a process of social construction, which has resulted in their lack of commitment to EU norms. Apart from a lack of external pressure and insistence on EU norms, the lack of popular acceptance of universality of EU norms and ideational commitment to domestic norms, are also important factors for the explanation of non-compliance.

This case study shows that the EU operates on a clear and well-structured normative basis, which gives it some credibility as a normative power, but does not ‘predispose’ it to act as a normative power (Manners, 2002). Although trust is not explicitly stated to be a core EU norm, the EU does preach a message of tolerance and inter-ethnic cooperation which can only be based on trust. Moreover, it clearly sees itself as a norm diffuser, even though EU officials can be reluctant to specify unacceptable norms very exactly. However, being a norm diffuser is still not sufficient to qualify the EU as a normative power, because it fails to act as a normative power. I have previously argued that this uncoupling of the EU’s identity as a normative power on one hand, and its behaviour as a rationalist power on the other hand, can be attributed to the weak self-perception of a normative power. As some evidence in this Chapter shows, and as I argued in Chapter IV, the EU’s normative role is more prominently expressed at higher levels of policy-making and within the EU’s political bodies, such as the European Parliament. However, that self-perception fades away at the technical level. Although most of the EU representatives are aware of the importance of EU norms and believe they are present in everything the EU does, they fail to see their explicit role as norm-entrepreneurs.

The EU fails to see the exceptional nature of democratisation in BiH, which is characterised by an exceptional role of nationalism in a very restrictive political context, and the role of nationalist elites as ‘gatekeepers’ to the spread of democratic norms. This case study showed that the EU officials recognise in a very general way the obstacles to its norms in the form of counter-norms and counter-narratives. Moreover, as already stated, the EU has a very clear and concrete normative basis upon which to address them; it has resources and instruments available. On the other hand, it has also missed some obvious opportunities to promote democracy in meaningful ways, and fight back against the spread of counter-norms. The inadequacy of the EU response to counter-norms can be attributed to the officials’ perceptions of BiH as a society, and their lenience towards the theories of ancient hatreds and perpetuity of ethnic divisions. Interviews with EU representatives showed that they assumed nationalist rhetoric was deployed simply for the purpose of making gains in domestic politics, rather than being harmful to the EU norms or its presence in BiH. Since they saw the issue as being one of hostility among different nationalist leaders or political parties, they did not want to intervene in case they were seen to be favouring one group over another, and they did not see a need for the EU to become involved in the rhetorical warfare in defence of its own norms. This showed how poorly the EU is integrated in the local context, and how easily it can isolate itself from that context, thus failing to see its own role in strengthening democracy in such a negative and

divisive context. This attitude harms the EU legitimacy, which is seen as crucial for norm compliance and for the effectiveness of the EU conditionality (Noutcheva, 2009).

Another key argument which I have made throughout this thesis is that the EU undermines substantive democracy by its focus on procedural democracy and through the extensive use of procedural instruments. I have referred back to this point on several occasions in this Chapter, using different examples of narratives employed by Dodik. I have thus argued that part of the reason why the EU is weak is also the nature of the instruments at its disposal for diffusion of EU norms. These provided more avenues for promoting procedural rather than substantive democracy. The EU efforts go only as far as engaging in encouraging norm emergence, without following through with compliance and internalisation. It can thus be said that the EU mechanisms of norm diffusion come short of substantive engagement. The absence of deliberate application of mechanisms that would trigger processes of social construction revealed that the EU does not strategically approach normative compliance in BiH. Given Dodik's popularity one must conclude that his subversions of procedural and substantive democratisation have successfully placed obstacles in the way of substantive internalisation of norms.

An argument also needs to be made that many of the above factors are due to a lack of perception among the EU officials that they play a role in substantive democratisation. Most of them see themselves as '*acquis*-entrepreneurs' rather than as 'norm-entrepreneurs' in the sense used by Finnemore and Sikkink (1998) or Checkel (2001, 2005) (as discussed in Chapter V). One senior EC official said to me in his interview: "Democratic values are intrinsic to the *Acquis*, and the *Acquis* remains the basis for promotion of EU values. EU values and the *Acquis* are inseparable" ("Personal interview with a senior EU official in Brussels," 2012). This implies a very technical approach to monitoring the implementation of the technical criteria, while normative and substantive criteria are seen as too abstract and not within their remit.

This brings me to the core of the understanding of the inadequacies of the EU response to the challenges to its normative power in BiH. In Chapter IV I referred to this phenomenon as the EU's 'confused international identity'. That confusion, I have argued, is a result of the way in which various EU actors see their own role in BiH, and how they see the role of the EU. Although examples used in this Chapter did not show as many discrepancies in the views of various EU actors as examples in Chapter IV did, it can be argued nonetheless that the

underlying thinking behind the approach of all EU actors to problems in BiH is essentially rationalist, while the challenges to the EU's normative power are clearly social constructivist. The EU treats nationalist elites as rationalist actors who would be prepared to make rationalist choices based on a simple cost-benefit calculation. However, the nationalist elites actually engage in social-constructivist projects of constructing counter-norms and creating various obstacles to the diffusion of EU norms. Responding to a social-constructivist project with rationalist instruments is what confuses the EU's international identity in this case, disabling the EU influences against the nationalist rhetoric. The ultimate evidence in support of this conclusion is the response of an overwhelming majority of EU officials that Dodik's rhetoric is simply utility for winning elections, and it has no wider or more permanent structural consequences for the society as a whole, or for the internalisation of EU norms. They see this as a matter of concern for domestic politicians in BiH, and not as a challenge to the EU's international identity and its self-perception as a normative power.

Recalling some of the main arguments of different literature on conditionality outlined in Chapter IV, it can be said that the EU conditionality is dependent on its legitimacy (Noutcheva, 2009), and clarity and consistency of its conditions (Levitsky & Way, 2005). Based on the examples analysed in this Chapter it can be said that the EU weakens its own legitimacy, while willingly compromising the clarity and consistency of its conditions. To reiterate the point made at several places in this Chapter, the EU fails to see that the prospect of membership, especially given how distant a goal, is not necessarily in the interest of the nationalist elites in BiH. Moreover, the EU miscalculates and underestimates the real interests of nationalist elites, which enables them to manipulate EU requirements (Vachudova, 2014). The result, in the case of diffusion of trust as a norm, is low or no compliance. This EU norm is diffused and promoted, but no transformation or internalisation takes place because the obstacles to norm diffusions are insurmountable for the EU's unprincipled conditionality, and unrealistic in the absence of any concerted and well-targeted sanctions. This leads me to return to one final argument made in Chapter IV that is pertinent to the case study analysed in this Chapter. One critical prerequisite for meaningful change, which the EU resolutely dismisses, but which worked in Slovakia, Croatia, and Serbia, is the removal of a stigmatised charismatic leader, which would open up room for programmatic manoeuvres in the process of democratisation (Konitzer, 2011, p. 1884).

Chapter VII – The Second Dimension of Democratic Quality – Equality/Participation

Introduction

My main three hypotheses are that the EU lacks perception that it is a normative power, which is why it is not predisposed to act normatively; that BiH is an ‘eclectically unsuccessful democracy’ which poses exceptional impediments to the EU-sponsored democratisation; and that the EU fails to recognise the exceptionalism of BiH, which is why it extensively relies on a ‘cookie-cutter approach’. In the previous Chapter I put more emphasis on the exceptional role of nationalism, and the EU’s shortcomings in counter-acting those influences, as well as the lack of perception among EU actors that the EU is a normative power. In this Chapter the emphasis is put on the EU’s ‘cookie-cutter approach’, and I provide further evidence to the argument that the EU’s over-reliance on a procedural approach undermines substantive democratisation in BiH. Nonetheless, I account for many examples of dominance of nationalism, and the exceptionalism of politics in BiH, which cannot be even partly divorced from the arguments about the EU as an actor.

Whereas in Chapter IV I discussed the most recent failed attempts to find a solution for the problem of implementation of the Sejdić/Finci ruling, in this Chapter I return to this example in order to look at both the procedural and substantive aspects of earlier efforts to implement the ECHR ruling. I do so by looking at that example through the perspective of participation as a substantive dimension of the quality of democracy in BiH. To remind, Dervo Sejdić, a Roma, and Jakob Finci, a Jew, appealed before ECHR against provisions of the BiH Constitution that prevent them from running for Presidency. The Constitution allows only Serbs from Republika Srpska, and Croats and Bosniacs residing in Federation of BiH the right to stand for elections to the State Presidency and to be represented in the House of Peoples (the upper Chamber of the BiH Parliament). The ECHR ruled in 2009 that the provisions of Annex IV of the Dayton Peace Agreement, which is the Constitution of BiH, discriminates against all individuals who do not ethnically declare themselves as Serbs, Croats or Bosniacs. Although the main responsibility for the failure to implement the ruling rests with domestic elites in BiH, this example is nonetheless tribute to the EU’s failed ‘cookie-cutter approach’. While looking more closely at the EU, I return to arguments made in Chapter IV about the lack of legitimacy and inconsistency in applying EU conditionality, as well as the limited appeal of EU norms to the

nationalist elites which seek to preserve the status quo. Although the EU clearly stated that the progress of BiH on the road to the EU will be subject to the implementation of the ECHR ruling, the failure to find a solution in the next two election cycles is evidence that this could not be a matter of simple cost-benefit calculation.

Within the broader notion of political participation, and while looking into this example, this Chapter focuses on the concept of political equality and the EU's mechanisms of diffusion of this norm. This Chapter looks at ways in which the EU has engaged in promoting equality as a part of its normative basis, which mechanisms it has deployed to that end, and how the underlying scope conditions have enabled or disabled EU efforts in norm promotion. Using the research approach described earlier, I identified procedural and substantive subversions of the basic political equality in order to describe discriminatory political context and inequalities in access to political participation it creates. At the core of my argument about subversions of democracy in BiH is discrimination, defined in the basic sense of unequal access to political participation. In the following sections I will put special emphasis on two distinct aspects of equality – equality in the sense of instrumental participation, and equality as an element of substantive democracy. Following closely my research approach, I first present the case study then discuss theoretical propositions on equality, and finally I run my assessment of the EU's approach to equality as a substantive dimension of democratic quality.

Description of the Case Study - The ECHR Ruling in the Sejdić/Finci Case

Dervo Sejdić is of Roma and Jakob Finci of Jewish origin, both citizens of BiH. On February 10, 2006 and January 3, 2007, they received written confirmation from the Central Election Commission that they were ineligible to stand for election to the Presidency and the House of Peoples of the Parliamentary Assembly because they do not fulfil the criteria of ethnic origin. Upon originally challenging this situation in the domestic courts, they appealed to the ECHR. Sejdić and Finci argued that despite possessing experience comparable to that of the highest elected officials, they were prevented by the Constitution of BiH and the Election Law from being candidates for the Presidency and the House of Peoples of the Parliamentary Assembly. They appealed against prohibition to participate in public life, which is in violation of Article 14 ECHR (non-discrimination) taken together with Article 3 of Protocol No.1 ECHR (right to free elections), as well as Article 1 of Protocol No. 12 ECHR (general prohibition of discrimination). By a vote of 14 votes to three, the Grand Chamber of the European Court of

Human Rights found that the applicants' continued ineligibility to stand for election to the House of Peoples of BiH lacked an objective and reasonable justification and was therefore discriminatory. The Court also held, by 16 votes to one, that there had been a violation of Article 1 of Protocol 12 as regards the applicants' ineligibility to stand for election to the Presidency of BiH. This case is the first ruling by the Court under Protocol 12.

This landmark ruling strikes at the heart of the power-sharing arrangements established under the Dayton Peace Agreement and assesses the compatibility of constitutional mechanisms with the fundamental principle of non-discrimination in the EU normative basis. Dervo Sejdić and Jakob Finci are not excluded explicitly because they are of Roma or Jewish origin, but implicitly because they do not belong to 'constituent' peoples. The system was reinforced by a decision of the BiH Constitutional Court which gave the three ethnic groups the status of 'constituent' peoples. Any individuals who thus do not declare themselves as belonging to 'constituent' peoples are discriminated against through the design of the electoral system, or excluded simply by virtue of not declaring themselves as one of the 'constituent' peoples. Such an electoral system excludes all individuals who fall within the following categories: Serbs living in Federation of BiH, Bosniacs and Croats living in the RS, individuals belonging to one of the 17 minorities (as described by the Constitutional Court) (2000), individuals whose parents belong to two different ethnic groups (unless they themselves decide to declare as belonging to either), any other individuals not declaring themselves as belonging to any of the three ethnic groups.

This is also the case with the status of Slaviša Šućur (2011) a member of the House of Representatives of FBiH, and a Serb living in Federation. He does not qualify to run for the Presidency or to be represented in the State House of Peoples as a Serb residing in the Federation. Even though he declares as one of the constituent peoples, he too is discriminated against because he does not fulfil the 'territorial' criteria to run for the Presidency. Šućur agrees that implementation of the ECHR judgement should help restore the protection of individual rights and make everyone equal regardless of ethnicity or territory ("Personal interview with Slaviša Šućur," 2011).

Meanwhile, a similar, parallel situation has been addressed through the Court again. On 20 September 2006, Ilijaz Pilav filed an appeal with the Constitutional Court of Bosnia and Herzegovina against the Ruling of Court of BiH of 10 August 2006, and Decisions of Central

Election Commission of 1 August 2006 and of 24 July 2006, which rejected his application for candidature for the Presidency of Bosnia and Herzegovina, stating that he cannot be elected from the territory of Republika Srpska as he declares himself as Bosniac. The cases of Šućur and Pilav demonstrate that the problem does not lie only in discriminatory treatment of minorities, but in inequality of individual political rights, irrespective of ethnic belonging.

Individual and minority rights in BiH. Ethnic affiliation in former Yugoslavia, according to the ECHR, was “decided solely by that person, through a system of self-classification. Thus, no objective criteria, such as knowledge of a certain language or belonging to a specific religion were required” (“Case of Sejdić and Finci v. Bosnia and Herzegovina,” 2009, para. 11). The BiH Constitution does not contain criteria on one's ethnicity either, but leaves it to the traditional self-classification. In its Partial Decision on the Constituent Peoples in BiH, the Constitutional Court of Bosnia and Herzegovina recognised that there is a “lack of a definition of the status of Bosniacs, Croats, and Serbs as constituent peoples...” (2000, para. 52). This is further affirmed by one section of the Venice Commission Opinion on the BiH Election Law (48th Plenary Meeting, 2001), which states that the use of terms Bosniac, Croat and Serb “may be more flexible than they appear, as there is no constitutional or legal definition of who is a Bosniac, Croat or Serb. Current electoral rules simply require electoral candidates to make a declaration as to their ethnicity” (“Opinion on the Electoral Law of Bosnia and Herzegovina, 48th Plenary Meeting,” 2001, para. 21).

In an argument presented by Wheatley (2002), the “regime on minority rights, as part of a wider human rights regime, recognises that membership of a minority group is a matter of personal choice” (p. 3). The ECHR Judge Hajiyeu also makes a point that “in the context of Bosnia and Herzegovina, ethnic affiliation is not to be taken as a legal category, since it depends exclusively on one's self-classification... a subjective criterion” (“Partly concurring and partly dissenting opinion of judge Mijović, joined by judge Hajiyeu,” 2009, para. 2). Everyone has a right to declare ethnicity, but it is not obligatory, neither is it objective. It only matters when a person decides to enter political life, whether to vote or to be elected. Ethnic affiliation is thus a subjective and political category.

Anyone not declaring themselves as belonging to one of the three ‘constituent’ groups falls into the category of ‘others’. Although the category of ‘others’ is recognised in the Constitution, they receive what Jakob Finci designated as “treatment of the second class

citizens” (“Personal interview with Jakob Finci,” 2011). Dervo Sejdić, the other appellant before the ECHR, finds the term ‘others’ in itself offensive and discriminatory. He also believes it designates everyone other than constituent peoples as ‘second class citizens’ and states that even though “I was born here, my ancestors lived here, I now don’t belong here” (“Personal interview with Dervo Sejdić,” 2011). He says this was his motivation for recourse to the Court to seek ‘justice’. Finci insists that this question is not about representation of minority groups, but equality of individuals and reducing the salience of ethnicity in criteria of political participation. That was his motivation for filing an appeal before the ECHR, after he realised that political parties were not prepared to voluntarily change the system and there was no other visible pressure from the outside. He was not seeking a solution that would positively discriminate in favour of minorities, which is dealt with by the BiH Law on Rights of National Minorities (2003). His was primarily driven by a motivation to give all individuals equal status in terms of the constitution, which would in his view serve to preserve Bosnian plurality and diversity.

I thus argue that the core of the issue of ethnic self-declaration is an individual right to equal treatment. Wheatley (2002) argues that political equality “demands the recognition of the equality of individuals, not groups” (p. 16). According to Jakob Finci (“Personal interview,” 2011), the Jews are treated as a minority only in a few countries (Croatia being one example), while most countries with an ethnically homogenous population treat Jews as citizens of different religion, rather than an ethnic minority. He quotes the examples of Serbia where Jews are considered Serbian nationals. Finci states that active and passive political participation is a matter of individual rights, and it demands that all are treated equally and not as more or less equal. He argues that unlike the ‘others’, minorities are not recognised in the Constitution, and their rights have been dealt with only since adoption of the Law on Minorities in 2006. But Finci sees a problem with the Law on Minorities, which was again drafted by those declaring as constituent peoples. The Law in his view weakens the ‘others’ because in legal terms it ‘breaks up’ a whole group of ‘others’ into smaller units of 17 minorities, which makes them politically even less influential.³⁴

³⁴ The Law on Minorities requires quite a high threshold for minority representation, so they need to constitute over 3% in order to claim minority rights. Finci claims that according to the 1991 census over 240.000 people declared as ‘others’ and as such presented a significant political ‘force’ within the population of under 4 million.

All the interviewees whose rights are clearly breached put emphasis more on political equality as an element which binds the community together and makes up the fabric of what they all saw as the ‘specificity’ of Bosnian pluralism. Related to that point is an argument by Ben Reilly (2002) that mitigating the ‘destructive patterns of divided societies’ cannot be done by ‘replicating existing ethnic divisions in the legislature’, but by ‘reducing the salience of ethnicity’ in the electoral system.

The EU position on discrimination in the BiH Constitution. Although the problem of discrimination in the BiH Constitution had existed since the Peace Agreement was signed, the EU took a more assertive approach in addressing those normative incompatibilities only after the ECHR judgement. In this Chapter I argue that in doing so, the EU relied more on procedural rather than on substantive instruments of norm diffusion, including heavy reliance on conditionality. It will be recalled from Chapter IV that this condition was treated as a technical issue between 2009 and 2014, which yielded no compliance. While debating the riddle as to whether this is a technical or political issue for years, the EU made several attempts to deal with it through procedural instruments, which weakened the EU’s credibility and legitimacy. After a series of failed attempts by political leaders to address this and other issues of constitutional change, the Head of the EC Delegation threatened that the Stabilisation and Association Agreement could be suspended if the Constitution was not harmonised in line with the ECHR ruling. For a threat like this to be credible, the EU should first have some legacies of executing similar threats in the past, which it did not, and also the sanction itself would need to be harmful to those against whom it is being applied, which it is not.

Nonetheless, Lady Catherine Ashton, High Representative of the European Union (EU) Foreign Policy and Security and Vice President of the European Commission repeated the same message while visiting in February 2010. Ashton reminded the public and government that constitutional reform was necessary for the further integration process in the EU, and that the implementation of the ECHR decision in the Sejdić/Finci case was an opportunity for substantial changes of the Constitution (“EU High Representative Catherine Ashton visited BiH,” 2010). Meanwhile, because of a political deadlock that followed the October 2010 elections, the EU member states tacitly agreed to delay the coming into force of the SAA until this basic condition was fulfilled, even though all member states had ratified the Agreement by the end of 2010. EU officials publicly declared that BiH’s application for membership would

not be considered 'credible' before they saw a 'credible effort' in finding a solution to implement the ECHR ruling.

Since then, strong diplomatic efforts by the Council of Europe, EC, EU Presidencies, and member states have sought to sustain pressure in order to change this constitutional provision, as described in Chapter IV. I argue that although the EU has more leverage and instruments at its disposal, in this case it was the CoE that presented itself more robustly as a normative power than the EU did. The CoE proved to be more categorical in protection of its principles when it comes to discriminatory clauses of the BiH Constitution. The EU, on its part, only reinforced the image of an inconsistent player who undermines its own legitimacy. It first failed to recognise the real nature of a highly political problem and invested huge efforts in dealing with it technically and procedurally, only to reverse in a matter of weeks upon the initiative of the UK and German governments. Although the new approach is better suited to address this clearly political problem, it is nonetheless another tribute to the EU's inconsistency and indecisiveness.

Theoretical Propositions on Equality

Using the same route of assessment as in the previous Chapter, in this section I look into the theoretical propositions on equality as a dimension of democratic quality. In defining political equality Almond and Verba (1998) refer to "the extent to which citizens have an equal voice over governmental decisions" (p. 2). Lijphart (1991, p. 2) argues that voting is the most basic form of participation and it should be made as equal as possible, while other forms of participation are bound to remain unequal. Dahl (2000) looks at equality primarily in terms of the access to and utilisation of instruments of participation along the five criteria: voting equality, effective participation, enlightened understanding, control of the agenda, and inclusion of all adult members in collective decisions. He defines political equality as a reflection of political participation - "all the members of the association are adequately qualified to participate on an equal footing with the others in the process of governing the association" (Dahl, 1991, pp. 2-3).

The issue of unequal participation in BiH is not a matter of minority representation. The literature on political rights of minorities defines majorities in statistical terms, i.e. as constituting over 50% of the population (Hodzic & Stojadinovic, 2011). However, this

definition does not apply to BiH in which no ethnic group can be considered an absolute majority in the statistical meaning of the word, which is why I argue this perspective needs to be supplemented by alternative views of equality. Participation can be viewed from the perspective of belonging to the society and being “constitutive of membership in the polity” (Almond & Verba, 1989, p. 3). Under ideal circumstances, this understanding of participation would benefit BiH in the way in which “political equality builds community: societies are bound together by cooperative activity toward shared goals. This is how that precious commodity of social capital is formed” (1989, p. 3). Minorities can also exist in the sense of victims of open or implicit discrimination, or the status given through the political and constitutional system. Although legally and constitutionally the constituent peoples of BiH are in most cases guaranteed political rights, in areas and communities where they are statistically a minority, they are often subject to implicit or explicit discrimination, not only in political rights, but also in terms of social rights, e.g. employment, education, social care, healthcare, etc.

Substantive participation would imply a broad normative and behavioural consensus that would cut across those cleavages and would result in support for the legitimacy of the system (L. Diamond, 1999, p. 65). As argued by Diamond (1999), legitimacy in this sense involves more than normative commitment – “it must also be evident and routinised in behaviour” (p. 65), which is often not the case in BiH.

However, the definition of participation which is most relevant for this case study is the one proposed by Przeworski (2000), who emphasises a neglect of the importance of political institutions and state structures in creating opportunities for and influencing the nature of political participation. He argues that in places where people emphasise their cultural differences, inequality is more likely to be “a consequence of institutional failure rather than a cause of it” (Przeworski, 2000, p. 21). Beetham (2003) puts responsibility for protection of rights with states - “rights belong to individuals; the duties to protect them reside with states” (p. 72).

Having in mind those three perspectives, some propositions can be made about the case-study analysed in this Chapter. The political exclusion that occurs through the design of the electoral system in BiH does not purposefully disadvantage any particular groups, including formal minorities, by not protecting their cultural, ethnic, linguistic, or religious distinctiveness.

Instead, the problem of political inequality and unequal participation is far more basic – it is about an individual right to elect and be elected. The reason why I emphasise this particular understanding of equality is because it enables me to highlight discrimination against all individuals who are excluded from enjoying full political rights in BiH. The question I thus ask is not that of granting special political rights for the protection of minority groups which could be achieved through positive discrimination. I rather ask the question of the protection of basic, individual, human rights that are breached through the salience of ethnicity in the design of the electoral system. This enables me to highlight one of the main hypotheses I have presented so far, that the domestic system of norms is incompatible with the EU normative basis. I seek to show that restrictions on these rights, particularly on the suspect grounds of race and ethnicity, are not only discriminatory, but also undermine the overall compatibility between the normative systems of the EU and BiH.

Undermining of Equality

Procedural and substantive subversions of equality.

Procedural subversions of equality. Most of the procedural subversions of equality are rooted in the constitutional system, which was made incongruent with the international human rights norms in its very design. The very process of reaching peace was compromised by dominance of ethnicity in designing the BiH Constitution. Šarčević (2009) argues that through the very fact that local negotiators were brought to the table to represent their ethnic groups, this gave ‘ethnic groups’ the status of ‘pre-constitutional categories’. In order to provide for the interests of three ethnic groups, the DPA was thus designed to give preference to the protection of rights of each ethnic collectivity, rather than protecting individual rights or providing a vision for the society as a whole.

Due to the demographic consequences of the conflict in BiH, primarily caused by the concept of ‘ethnic cleansing’, the ethnic composition of territorial units in BiH has become highly homogenous. This has *de facto* created ethnically homogenous electoral constituencies, which create a mirror image of ethnic/territorial divisions at the level of political representation in the state, in Presidency, Parliament, as well as in all executive and judicial institutions. Šarčević (2009, p. 60) describes this outcome as ‘ethnicisation’ of the BiH constitutional system, which in his view was not a cause, but a consequence of the international peace-

building strategy, as I myself argue. Because the very design of the system was in breach of human rights at the very beginning, it was nonetheless kept because the international negotiators considered it temporary, yet necessary in sustaining peace, at least until such time when its incompatibility with the human rights regime could be addressed.

The European Court of Human Rights in its partial judgement in the *Sejdić/Finci* case confirms that ethnicity-based exclusion was introduced in Dayton in the pursuit of the restoration of peace. The Court states: “When the impugned constitutional provisions were put in place a very fragile ceasefire was in effect on the ground. The provisions were designed to end a brutal conflict marked by genocide and ‘ethnic cleansing’. The nature of the conflict was such that the approval of the ‘constituent peoples’ (namely, the Bosniacs, Croats and Serbs) was necessary to ensure peace. This could explain, without necessarily justifying, the absence of representatives of the other communities (such as local Roma and Jewish communities) at the peace negotiations and the participants' preoccupation with effective equality between the ‘constituent peoples’ in the post-conflict society” (2009, para. 45). Further to the same argument, David Campbell maintains that peace negotiators may have desired the reintegration of Bosnia, but “their reliance on a powerful set of assumptions about identity, territoriality and politics - a particular political anthropology - has meant the ethnic partition of a complex and heterogeneous society is the common product of the international community's efforts” (1998, p. 395). In the following sections I describe three phenomena, which are the basis for a series of procedural subversions of democracy, including: the status of constituent peoples, ethnic/racial discrimination, and mechanisms for protection of collective rights.

When it comes to diffusing norms related to equality and human rights, the first obstacle faced by the EU is the concept of ‘constituent’ peoples, to which I referred as one of the fault-lines in Chapter II. The BiH Constitutional Court in its ruling on constituent peoples debates an argument proposed in the submission by the BiH government that the disputed constitutional provisions were a result of a search for peace and as such require the power-sharing mechanisms peculiar to Bosnia and Herzegovina. However, even though the Court recognises a need to have found a peace settlement at the time, it nonetheless points out a crucial fact that BiH has since then signed and ratified a number of European human rights instruments. The state has thus formally accepted European norms and has taken responsibility to implement them. The formal conditions for diffusion of norms are thus in place, which shows that powerful resistance to their full implementation comes from inside the system itself. The ECHR thus refers to the

Opinions of the Venice Commission which demonstrate that alternative mechanisms of power-sharing could be designed which do not automatically lead to the total exclusion of representatives of the other communities (“Draft Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative,” 2005).

The specific language in the BiH Election Law (2001), which regulates this principle states the following: “the declaration of affiliation with a particular 'constituent people' or the group of 'others' ... shall be used for purposes of the exercise of the right to hold an elected or appointed position for which such declaration is required in the election cycle”. Should a candidate choose not to declare affiliation to a 'constituent people' the Election Law states that “such failure to declare affiliation shall be considered as a waiver of the right to hold an elected or appointed position for which such declaration is required” (“BiH Election Law,” 2001, sec. 4.19 & 5 –7).

Incompatibility of this principle with EU norms is expressed by the ECHR which observed that “The applicants, who describe themselves to be of Roma and Jewish origin respectively and who do not wish to declare affiliation with a “constituent people”, are, as a result, excluded” (“Case of Sejdić and Finci v. Bosnia and Herzegovina,” 2009, para. 45). On this very point, the ECHR, based on applicants’ submissions to the Court that they are discriminated against based on their ethnic origin, establishes that the concepts of ethnicity and race are related: “Whereas the notion of race is rooted in the idea of biological classification of human beings into subspecies on the basis of morphological features such as skin colour or facial characteristics, ethnicity has its origin in the idea of societal groups marked in particular by common nationality, religious faith, shared language, or cultural and traditional origins and backgrounds. Discrimination on account of a person's ethnic origin is a form of racial discrimination” (“Case of Sejdić and Finci v. Bosnia and Herzegovina,” 2009, para. 43). The ECHR resorted to definitions of racial and ethnic discrimination provided by The International Convention on the Elimination of All Forms of Racial Discrimination, which establishes that the term 'racial discrimination' means “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life” (“International Convention on the Elimination of All Forms of Racial Discrimination,” 1969, para. 1).

In Chapters II and III, I described the mechanisms of protection of ‘national interests’, which are designed to provide protection only to constituent ethnic groups against majority decisions by others, and include various and numerous veto points that often obscure the decision-making process. This procedural subversion of equality is emphasised by the Venice Commission Opinion on the BiH Election Law, which states that “in a multi-ethnic State such as Bosnia it appears also legitimate to ensure that a State organ reflects the multi-ethnic character of society. The problem is however the way in which the territorial and the ethnic principle are combined” (2001, para. 17). In its 2005 opinion on the constitutional situation in BiH, the Venice Commission found that “the combined effect of these provisions... makes effective government extremely difficult, if not impossible” (“Draft Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative,” 2005, para. 29). Šarčević (2009, p. 68) affirms that the extension of the effects of veto powers on the House of Representatives, and the cumulative effect of the required approval by the House of Peoples, deprives the House of Representatives of its legitimacy as representatives of citizens.

In reference to the actual incompatibilities with the European norms, the Venice Commission says that “granting precisely to those people who are already dominant such a veto and not to small groups requiring protection is a questionable practice” (“Opinion on the Draft Amendments to the BiH Constitution Bosnia and Herzegovina, CDL-AD (2006)019:,” 2006, para. 21). This mechanism is thus the opposite of what is meant by ‘treating unequal situation differently’, because it actually makes the system unequal in favour of majorities, rather than boosting the representation and protection of the rights of minorities or individuals. In that sense, this example shows incompatibility with the European treatment of minorities at the very basic level of their exclusion from the electoral process and depriving them of basic protection mechanisms in the decision-making system, while using those same mechanisms to strengthen the already dominant position of ‘constituent’ peoples.

Substantive subversions of equality. Substantive subversions of equality are described in terms of three phenomena: the lack of political commitment, construction of conspiracy theories, and the contesting of the meaning of equality.

Following the ECHR judgement delivered on 22 December 2009, the BiH Council of Ministers (CoM) passed a decision on 11 February 2010 and tasked three ministers (Human Rights, Civil Affairs and Justice) to prepare an action plan for implementation of the judgement within 20 days. Following that step, on 4 March 2010 the Council of Ministers set up a formal Working Group composed again of the three ministers plus representatives of the seven party caucuses represented in the BiH House of Representatives, who were instructed to draft relevant constitutional amendments by 29 March with a view to amending the Election Law by 15 April, so that the general elections scheduled for October 2010 could take place according to the new rules.

The ECHR ruling received enormous media attention and the pressure by the international community intensified in its aftermath. According to representatives from the European Commission Delegation and those from the Council of Europe (Personal interviews with high ranking officials from both representations), the working group itself was created under some international pressure and under the spotlight of the media and civil society. However, the very composition of this working group went against the nature of the ECHR ruling. Namely, according to the current constitutional and legal provisions ministerial positions are allocated based on ethnic quotas among the constituent peoples,³⁵ so the three Ministers that were appointed to the working group represented constituent peoples, and in this case they were each selected in order to ensure equal ethnic representation on behalf of the government - Human Rights (Bosniac), Civil Affairs (Serb) and Justice (Croat). None of the seven parliamentary party representatives came from a minority group. Neither did the Working Group include representatives of the Minorities Council, which formally has an advisory role to the Parliament of BiH. According to Finci ("Personal interview," 2011), this in itself showed the lack of interest on the part of the ruling parties to involve so called 'others' in the process of finding a solution to the problem of their political participation and representation.

In protest against such composition of the working group, a designated representative of the Social Democratic Party, Mirjana Malić ("Personal interview," 2009) resigned at the very first meeting of the working group and did not take part in further meetings. She stated that the working group was an attempt by the Council of Ministers to shift responsibility for implementation of the ECHR ruling on to Parliament. Her interpretation of the decision is that

³⁵ The only exception ever was the Foreign Minister, Mr. Sven Alkalaj, who is Jewish.

it is the 'government' which has been tasked with finding a solution for implementation of the decision, i.e. the Council of Ministers, as it was the government which was the subject of the appeal before the Court and ultimately the Court's ruling. On top of this, she claims that the Council of Ministers had no legal authority to pass a decision which prescribed which parties represented in the Parliament would participate in the working group. This responsibility rests solely with Parliament which decides on formation of its own working bodies. In her view, the very set up of the working group showed that there was no genuine commitment to address this issue and the whole attempt was only intended to satisfy the form and silence criticisms. Jakob Finci believes there was no direct pressure from any international institution to set-up a working group, but there was a general understanding that setting the process into motion would please the international community and would be viewed as something positive.

The lack of commitment to find a solution was further demonstrated through the functioning of the working group. Three meetings were held during March 2010 and before the deadline expired. In the first meeting the working group debated rules of procedure, the second time they met to request written proposals of constitutional amendments, and finally met on March 29, and concluded that no written proposals had been received. It took the Council of Ministers a further four weeks to acknowledge the conclusion of the working group and demand a new action plan. On April 29, the Parliamentary Assembly of the Council of Europe (PACE) held an urgent debate on 'the urgent need for constitutional reform in BiH' and adopted Resolution 1725 calling for the setting-up of a domestic, institutionalised constitutional reform process ("Urgent need for constitutional reform in Bosnia and Herzegovina," 2010). The PACE Resolution recognised some of the flaws in the attempt to implement the ECHR judgement and thus recommended that an "institutionalised process, based on a clear political mandate, should seek to involve a broad range of domestic legal experts, in order to make a comprehensive analysis of all existing proposals and produce a package of concrete amendments which would generate consensus among the key political stakeholders" (2010, para. 6).

Meanwhile, the working group was used as yet another platform for inter-party confrontations and creation of further political divisions. It thus became clear through the statements of members of the working group that two separate visions of the problem had crystallised through this process. Dušanka Majkić, a Serb from the party of Independent Social Democrats from RS, thus stated that "representatives of Croats and Bosniacs in the working group do not care about implementation of the judgement, but only care about opening a wide

range of constitutional issues, which is unacceptable to us Serb representatives” (“Radna skupina bez dogovora,” 2010). Even though she was herself appointed to represent a parliamentary party and not to represent ethnicities, Majkić showed that members of the group identified themselves primarily as representatives of ethnic groups and were there to protect their own ethnic interests. RS President Dodik also portrayed the issue in terms of ‘us and them’, and said “we agree to find a solution, if Sarajevo agrees” (“Milorad Dodik Press Statement,” 2010).

After a meeting in Banja Luka, Milorad Dodik and HDZ leader Dragan Čović stated that the ‘political atmosphere’ was not favourable to constitutional changes, and this question should not be addressed until after elections (“Nije realizovana odluka u slučaju Sejdić- Finci,” 2010). This position meant that political leaders consciously delayed decision until after elections even though holding elections based on old rules was a clear breach of the ECHR ruling which had already come into force. According to Finci (“Personal interview,” 2011), this showed a degree of arrogance on the part of representatives of constituent peoples, who managed to find an ‘ethnic’ interest for each of the constituent peoples that were anyway in a majority, on an issue that was otherwise concerned with the rights of those whose representation was restricted to begin with. Debate has since then polarised between Serbs who want minimalist changes to the Constitution that would take off the discriminatory label, and Bosniacs and to some degree Croats who saw the ECHR judgement as an opportunity for an overhaul of the system that would remove wide-scale discrimination across the board. The lack of interest and commitment to find a solution was recognised by PACE, which called “the key political stakeholders to engage in meaningful and constructive dialogue about concrete proposals for constitutional amendments” (“PACE Resolution 1701 - Functioning of democratic institutions in Bosnia and Herzegovina,” 2010, para. 9).

Following the PACE Resolution, one more attempt was made and the group met for the fourth time on May 5, the actual deadline when the Election Commission announced General Elections. This meeting was held upon strong suggestions from the CoE representatives, and a Special Representative of the Secretary General of the CoE was present at the meeting in order to communicate conclusions of the PACE Resolution. The meeting, however, did not result in an agreement. In respect to this effort the CoE Sixteenth Report (June 2009–May 2010) monitoring the compliance with obligations and commitments and implementation of the post-accession co-operation programme noted: “Despite the stated readiness of the authorities and

the apparent consensus among the key stakeholders in the country, that the Sejdić and Finci judgement must be implemented, no serious discussions took place within the working group. Each party tabled its own, sometimes opposing, proposals of constitutional reforms with no ‘meaningful negotiations’ on the amendments” (Council of Europe, 2010, para. 31).

The working group scheduled ten more meetings between May and October 2010, six of which could not be held due to a lack of quorum, three finished inconclusively, and in the final meeting Dušanka Majkić opposed adoption of the agenda, which included draft acts for establishment of a body for constitutional reform, arguing that the working group only had a mandate to propose amendments to the Constitution and electoral law to implement the Sejdić and Finci judgement and not to instigate formation of new bodies. She was supported by the other three Serb members of the working group, so the agenda could not be adopted. No further attempts to formally address this issue were made in the nine months following the October elections. The media in BiH generally take this working group as an example of insincere attempts to address a reform issue.

The ECHR made it certain that the BiH Constitution would need to be changed sooner or later and the EU and CoE sent that message very clearly. Even though the ruling itself extensively elaborates that what needs to be changed is the treatment of equality and participation in the broadest sense, the negotiations on constitutional reform that ensued resulted in gradual narrowing down of the interpretation of the ECHR ruling. The EU itself contributed to this restrictive interpretation. When the EU Council conclusions were adopted, indicating that execution of the judgement would be a condition for entry into force of the SAA and further EU progress, the tone of the discussions shifted more and more towards the second priority - respecting the legal order and executing the judgement first and ending discrimination/violation second (and in an increasingly narrow sense related only to the confines of the judgement HoP and Presidency). One very senior EU official said to me in an off the record conversation that the EU was primarily interested in BiH fulfilling conditions for submitting its membership application, and that they were prepared to accept any solution, however minimalist. He also admitted that the CoE has a different position on this, but that interpretation of the EU conditionality was ultimately the EU’s own responsibility. With the EU taking the lead it had a tendency to cut off other institutional frameworks, both in BiH and internationally, from exerting pressure or contributing to the process. The CoE Committee of Ministers, Parliamentary Assembly and other human rights monitoring instruments slowed

down or averted their attention from the matter in order to "give space" to the EC led process, the Venice Commission avoided directly addressing the case and instead provided advisory services. The CoE was not involved in any formal negotiations on the ruling that ensued. In order to understand what the implications are of either approach, narrow or wide, it is necessary to look at the content of the minimalist solution, as well as the broader interpretation of constitutional reform.

Instead of the current system in which a Serb member of the Presidency is elected from Republika Srpska, and a Bosniac and Croat from Federation of BiH, Milorad Dodik proposed a solution in which one member of the Presidency would be elected from Republika Srpska and two from Federation, without prescribing the nationality of any of them ("Dodik - Slučaj Sejdić/Finci se može brzo riješiti," n.d.). The Constitution in this case would, however, prescribe that no two members of the Presidency should be from the same constituent peoples or 'others'. Because Republika Srpska is ethnically homogenous, this would in effect mean that although candidates from any other ethnic groups (all of which are in minority in RS) could formally run for the Presidency, the likelihood would be that the successful candidate would almost certainly be a Serb. This decision would be difficult to implement because it is based on an assumption that the final selection of candidates would not be ultimately decided by the actual number of votes, but through a process that would need to ensure that no two candidates come from the same peoples. In effect, this would mean that if a Serb residing in Federation was the most successful candidate in that part of the country, and there was another Serb elected from the territory of the RS, one of them would need to be eliminated.

In contacts with European representatives, Milorad Dodik made it clear that his only concern was eliminating obstacles for further EU integration and not the respect for human rights *per se*.³⁶ A number of statements he gave after meeting EU officials showed that he was only paying lip service to the demands to change constitution and shared little concern for the respect of human rights. Following a meeting with the German Chancellor Angela Merkel in Berlin, Dodik stated "our approach is clear and I have explained it, that we need to eliminate discrimination and ensure constitutional change takes place in line with the ruling" ("Dodik:

³⁶ As the following sections will explain, although no formal decision was passed by any EU institution, the EU assumed an approach after the ECHR was not implemented before the October 2010 elections that the SAA which had since been ratified by all member states, would not come into force before the ruling was implemented. This position was based on the fact that Article 2. of the Interim Agreement between BiH and the EU demands respect of human rights, and the EU interpreted the lack of an agreement in this case as a breach of that Article.

Njemačka ima fer odnos prema BiH,” 2011). What this statement meant in the context of different constitutional proposals was that he would agree to amendments that would eliminate discrimination in the strictest sense, but was not prepared to agree to wider changes that would improve the treatment of human rights and rights of minorities in the Constitution. His main motivation was to fulfil EU conditionality and avoid sanctions, and not necessarily to improve the status of ‘others’ in a substantive sense.

This was also evident from a statement he gave following a meeting with the Minister of Foreign Affairs of Sweden Carl Bildt in Banja Luka, when Dodik stressed that by “resolving these issues BiH would gain additional credibility and possibility to apply for the candidate status in the EU by the end of the year” (“Press release, Office of the RS President,” 2011). In a meeting with the EU Enlargement Commissioner Štefan Füle, Dodik emphasised the fact that implementation of the ruling was a condition for submission of BiH’s application for EU membership (“Dodik: Evrointegracije uz ojačanu autonomiju RS,” 2011). He spoke in the same vein in a meeting with Renzo Daviddi, acting Head of the EU Delegation in BiH at the time (“Daviddi - Pitanje referenduma u RS vrlo iritantno u ovom trenutku,” 2011). Unlike Dodik, the leader of the Serb Democratic Party, Mladen Bosić emphasised that this issue was about ‘the respect of human rights’. However, even he limited the interpretation of the ECHR ruling by adding that “if anyone thinks that based on this judgement we would enter fundamental changes of the Dayton Agreement, they are heading for a situation which would block progress” (“Statement by Mladen Bosić,” 2010). As I will show in the following sections, and as became evident in subsequent attempts to negotiate a solution, the EU gradually subscribed to this view and made it clear that a minimalist solution would be sufficient for unblocking the SAA enforcement. In cases like this, proposed solutions are not really aimed at ‘internalising’ a norm, but rather at satisfying the form and silencing foreign pressures. In regard to the character of norm, this example shows that however prominent and salient a norm may be, its effects can still be moderated by localising the norm, i.e. by proposing solutions which accommodate the European norms to the domestic context, instead of the other way around. In a procedural sense it could then be claimed that the norm has been accepted, but in reality division and inequalities would still persist.

Speaking in a conference held on 2 December 2010 entitled “How to implement the ECHR judgement in the Sejdić/Finci case?” and organised by the Konrad Adenauer Foundation in Sarajevo, President of the Party of Democratic Action Sulejman Tihić said that this issue is

only 'the tip of the iceberg'. For him, the gist of the problem is in fact that discrimination is widespread and abundant. Two of the so called 'Croat parties', HDZ and HDZ1990, both argued that this is primarily about the respect of human rights, but each emphasised different aspects of it. HDZ president Dragan Čović said that "it needs to be said again: this is BiH, we have to protect the spirit of BiH" (2010). He clarified this by saying that constitutional reforms need to respect the 'individual and collective identity of Bosnian citizens'. Božo Ljubić pledged for new definitions of collective and individual rights, and argued that abolishment of discrimination of the 'others' will not be sufficient, and that it is also necessary to improve the status of Croats, whom he sees as unequal to Serbs and Bosniacs in many respects (Kovačević, 2010). In the view of SDP Vice-President, Lidija Korač, citizens bear the consequences of the lack of respect for international agreements and the issue of discrimination needs to be addressed, while the collective rights of constituent peoples need to be protected too ("Personal interview," 2010). She believes such solutions exist and they need to be designed in a way to prevent any future discrimination on the same basis. Specifically, she referred to the case of Ilijaz Pilav, who had also filed an appeal before the ECHR because as a Bosniac residing in the RS, he cannot run for the Presidency of BiH.

When I interviewed Jakob Finci he said that from his perspective it looked like the parties had said "yes, we want to do something about it, but we do not know how" ("Personal interview," 2011). He believes there is a general political will to address the issue, but that all parties would prefer if someone would impose the decision on their behalf so that they would not need to take responsibility for changing the system. In an interview given to a radio station, Finci said that "everyone is trying to achieve their ulterior goals, and they do so by taking advantage of the ECHR ruling" (Karabeg, 2011). He built on this statement by explaining to me that the sudden outbursts of political will were only a result of the fact that the pressure had been taken off when the next elections were announced. This gave parties another four years to find a solution. In the absence of that pressure an agreement would not be a hard sell for the public, and parties would probably see it as less harmful to reach an agreement so far ahead of the next election campaign.

Dervo Sejdić, on the other hand, was more sceptical of the will of the political parties to resolve this issue. He admits he has never heard any politician speak openly against the ECHR ruling, but thinks that there is 'silent resistance', particularly having in mind that "all proposals that came from minority groups have so far been rejected" ("Personal interview,"

2011). Budryte (2008, p. 160) points to a similar situation in Lithuania, where poor legislation was adopted due to the fact that legislation drafters did not have ‘effective consultation with the Roma community’.

Construction of counter-norms. At this point in the previous Chapter I included a section which showed how domestic elites, based on subversions of democracy, were able to deliberately construct counter-norms. Counter norms were created in order to obstruct diffusion of EU norms. In this Chapter, however, rather than repeating the point about counter-norms, I used evidence from the sections on subversions of democracy to identify mechanisms which also serve the purpose of obstructing diffusion of EU norms. I believe this part of my research and analysis has revealed some influences that are distinct and novel:

- Rationalisation of subversions - Appropriateness of the European norms as an element of persuasion and conviction was counteracted by rationalisation of norm subversions.
- Norm contextualisation - This process was supported by localisation of norms, i.e. processes of adapting the international norm to the domestic context and ascribing it a new meaning. European norms were de-internationalised, and contextualised with the local frame of reference, i.e. domestic elites managed to impose their ‘world view’ on their international interlocutors.
- ‘Demonising’ norms - In regards to the origin of norms, the construction of conspiracy theories in which promotion of EU norms was portrayed as a threat ascribed European norms a negative meaning. This enabled domestic elites to ‘demonise’ European norms and strengthen resistance against them.
- Norm re-construction - Apart from the negative meaning, in some instances, European norms were ascribed alternative meanings, which I describe as ‘norm re-construction’. This was particularly clear from the evidence about different leaders’ positions on implementation of the ECHR ruling. Some interpreted it in a very narrow sense, which would possibly eliminate discrimination in the strictest sense, but would not improve the status of minorities. Others interpreted it in a very wide sense, which would not only implement the ruling itself, but would produce a domino effect in other related legislation. To be able to do that, leaders resorted to the process of norm re-construction through which they ascribed to this norm a different meaning or interpretation.
- Norm relativisation – Domestic actors presenting European efforts to diffuse a norm as over-exaggerated, and European norms as less important than local norms. Relativising

a norm can help relieve public pressure if portrayed as not affecting citizens lives significantly or directly.

- Disowning norms – This was a part of the process of shifting the blame. In one instance there were attempts to shift the responsibility for norm implementation between Government and Parliament, whereas there were also attempts to shift the responsibility onto the international community.
- Unspecifying norms – one of the important properties of the norm character is its specificity and clarity. The more specificity a norm has, the more chances it has to be internalised. As I already argued, in the case of equality, one of the key strengths of EU efforts was the clarity and specificity of the norm itself and its supporting legal framework. This fact was counteracted by attempts to un-specify the norm and to present it as vague, inconclusive, and unaccommodating to the local context in order to reduce the chances of its diffusion and internalisation.
- Re-focusing norms – The focus on the norm content that is required if appealing to norm appropriateness or its clarity, specificity and other features of norm character, was replaced by the focus on the process of norm implementation. This was initially an effort by domestic elites, but it was soon followed by the CoE and EU, which then formalised the focus on the process through conditionality, rather than content. The ‘credible effort’ became a requirement for further accession, rather than implementation of the norm itself. This was done in order to avoid sanctions.
- Out-voicing norm entrepreneurs – the timing of the norm promotion (election campaign) enabled domestic elites to out-voice European norm entrepreneurs by the powerfulness of their rhetoric and by diverting attention to more emotionally powered issues. This was done in a similar fashion to the case on trust.

Conclusion – subversions of equality/participation. As became evident from the examples on subversion of democracy, compliance with the EU or European norms is hampered by dominance and excessive protection of ethnic interests of the three constituent peoples, discrimination against all who do not declare as such, as well as by the complex decision-making process at the State level. The design of the decision-making system based on ethnic power-sharing creates imperatives of protection of ethnic interests. Because ethnic power-sharing is replicated onto all mechanisms where decisions are required, participants in those structures assume the role of ethnic groups’ representatives and identify primarily in terms of their ethnic belonging. This blinds them to the ‘greater good’ and interests of the country as a

whole, particularly in the context of EU integrations. The identity of Members of Parliament and Government as representatives of ethnic groups thus prevails over their role of political appointees representing citizens and constituencies.

Properties of domestic institutions influenced actor behaviour during the effort to implement the ECHR judgement by channelling political positions into a rhetorical divide, which in my hypotheses I identified as a ‘normative gap’ between domestic structures and the EU – on one side there is the EU normative basis that contains clear human rights standards, and on the other side is a discriminatory electoral system that gives preference to collective over individual rights. This normative gap is manifest through the salience of ethnicity in the power-sharing system, and through a paradox that changing the electoral system requires the support of the very parties whom the system currently favours. Both of these manifestations create resistance to diffusion of EU norms. The result is a complex, inefficient and often ineffective legislative process that at best produces legislation that contains lowest common denominators based on compromises between different ethnic interests. The ineffectiveness of the decision-making process is particularly relevant in regard to the adoption of EU legislation, which is often blocked by ethnic veto mechanisms in spite being previously accepted as a commitment through the accession process. An example of this is the fact that during 2010, the State Parliament passed 27 laws in total, only three of which were requirements for EU integration (Foreign Policy Initiative BH, 2010).

The EU Approach to Promoting Equality/Participation in BiH

As stated at the beginning of this Chapter, I have put stronger emphasis in this Chapter on the assessment of the EU's procedural and ‘cookie-cutter approach’ to the promotion of equality and participation as norms in a democratic society. This was a typical case of the EU's conditionality, both in the way it was designed, but also in the way in which it failed to produce compliance. The Sejdić/Finci case is also useful as an example because it shows the extent of the international attention that could hardly be reciprocated in future. The number of international institutions engaging in the Sejdić/Finci case and intensity of their efforts rapidly increased following the ECHR ruling. Up until that point, the issue of unequal participation and representation was widely recognised by most international actors on the ground, but it was originally the Council of Europe that was most prominently engaged in raising the issue of compliance of the BiH Constitution with human rights conventions. However, it was only after

the ECHR ruling that this issue obtained a true 'European' label and prominence among other EU required reforms. Until then, constitutional reform was an issue that was strongly promoted primarily by the US.

The issue was brought to the fore within the domestic public domain in 2006 through a US-led effort to change the Constitution, subsequently known as the April package, to which I have already referred in Chapter II. The project embarked upon a mission to engage as many local political leaders in a reform effort to change the Constitution. Through a consultative process involving many political actors, and also by organising public debates throughout the country, they came up with a comprehensive package that had the support of most political parties and got the full backing of the international community. One of the most important changes it proposed was to abolish discrimination and introduce mechanisms of election of the Presidency and the House of Peoples. The April package solutions relied heavily on previously issued opinions of the Venice Commission of the Council of Europe, and the Venice Commission also issued an opinion on the amendments proposed through the April package (“Opinion on the Draft Amendments to the BiH Constitution Bosnia and Herzegovina, CDL-AD (2006)019:,” 2006).

This was the most comprehensive constitutional reform package that sought to eliminate many flaws of the Dayton Agreement, e.g. elimination of discrimination and changing the system of electing Presidency and House of Peoples, reducing the powers of the Presidency and strengthening the role of the Parliament, a reform of the decision-making in the Council of Ministers, expanding the size of the House of Representatives and limiting the competence of the House of Peoples, transfer of competencies and setting up of new state-level ministries in line with EU integration, etc. The US Administration provided the highest level of political support, and following the occasion of the 10th anniversary of signing of the Dayton Agreement, BiH political leaders gathered in Washington in November 2005 and signed an agreement to change the Constitution in the presence of the US Secretary of State at the time, Condoleezza Rice who therein stated: “To advance the promise of peace and progress, we must now move beyond the framework constructed a decade ago. A weak, divided state was appropriate in 1995. But today in 2005, the country needs a stronger, energetic state, capable of advancing the public good and securing the national interest” (“Bosnian political leaders pledge constitutional changes,” 2005).

The April package had the support of all major political parties in FBiH and RS, except Stranka za BiH (Party for BiH) and HDZ 1990, and as such was the first and last effort since the Dayton Agreement that secured such a level of political agreement and on so many issues.³⁷ However, back in BiH the April package faced strong opposition primarily from SBiH leader, Haris Silajdžić, who was seeking an opportunity to return to political life after four years of absence, which I described in Chapter II. Silajdžić and a team of his advisors ran an intensive public campaign against the April Package on the grounds that it was ‘legalising’ Dayton arrangements and that it did not go far enough in reversing the effects of the war and ethnic divisions, and curbing the autonomy of the RS. The package thus ended up short of two votes in the House of Representatives in April 2006. As mentioned earlier, in the following four years, the political situation deteriorated dramatically with Silajdžić and Dodik taking a very confrontational stance and intensifying nationalist rhetoric to levels unprecedented since peace was signed. In the atmosphere of amplification of ethnic divisions, parties from Republika Srpska gradually withdrew their support for changes that had been proposed in the April package and announced they had no intention to return to that level of Dayton revisionism.

The debate on constitutional reform thus came to a halt, and although elimination of discrimination remained a high priority on the agenda of international agencies, the credibility of the international agencies had been significantly shaken after the April package and they had little leverage to renew the discussion. The international community lacked mechanisms to bring it to the attention of leaders or the public. Jakob Finci, who was present at the signing of the party agreement in Washington in 2005, said it was the failure to adopt the April package which prompted him to file a case before the ECHR (“Personal interview,” 2011). He said that the fact that protocol 12 came into force in 2005 gave him safe legal grounds to challenge the discriminatory provisions of the Constitution. The failure to adopt the April package made him realise that change would not come voluntarily from the political parties, and given the fact that the international community's efforts lost power and credibility, he looked for a mechanism that would force political leaders to come to the table again. In October 2009, the issue was unsuccessfully tabled for discussion between party leaders at a last, also failed, attempt to negotiate a solution outside formal institutions before the 2010 elections. Negotiations came to be known as the Butmir process and were held under the leadership of the Swedish EU

³⁷ HDZ1990 was formed after they split up from HDZ during the process of constitutional negotiations because of dissenting opinions from a group of party members.

Presidency, and Swedish Foreign Minister Carl Bildt personally, as well as the US Assistant Secretary James Steinberg.³⁸

As discussed in Chapter IV, the implementation of the ECHR judgement has been made a condition for submission of BiH's application for EU membership, and the coming into force of the Stabilisation and Association Agreement has been delayed until there was a 'credible effort'³⁹ to implement the judgement, although this condition was dropped in 2015. The judgement of the European Court of Human Rights thus served the purpose of an anchor to which the EU was able to attach its further conditionality, and also to raise the public profile of the issue. Having set the background for the EU's approach to the issue of equality/participation, I now turn to the EU's approach in order to analyse the EU normative basis, the properties of EU norms, and its mechanisms of norm diffusion.

The EU normative basis on equality/participation. The evolution of the issue from a human rights norm, to a requirement for further EU integration, is important to note because it once again emphasises the EU's procedural approach to norm promotion. As it became clear from efforts to raise the issue of constitutional change, even though it was recognised ever since BiH joined the Council of Europe that its Constitution was in breach of human rights conventions, the EU did not make it an issue of concern for EU integration until the ECHR judgement. The important thing to note is that all along, and even after the ECHR judgement, the EU itself never tabled any specific proposals for change, only emphasised a mere need for change.⁴⁰ The US, on the other hand, engaged legal teams which provided expert support and drafted proposals that were discussed in Washington and in Butmir, while the US Administration and diplomacy stood behind those proposals. The CoE also provided legal assistance and was directly involved in negotiating the content of reforms. This reminds of a similar situation in Hungary where the EU was not willing to engage in the drafting of legal recommendations for the protection of minorities in spite of its other efforts to that end (Vizi, 2008). With that in mind, I argue that the EU engaged procedurally in promotion of this norm, while the US and CoE took more of a normative and substantive role.

³⁸ Named after the Butmir EUFOR base in Sarajevo where negotiations were held.

³⁹ The phrase was coined by EU officials in Brussels.

⁴⁰ This excludes the Venice Commission opinions, which did offer many solutions for changes and commented on the existing proposals. However, the EU officials or institutions always emphasised that they had no preference for any solution.

Following the same method as in the previous Chapter, I reviewed different documents which refer to equality as a value inherent to the EU, its legacy and heritage. I have done so in order to outline a normative basis which established equality as a key component of normative power Europe, as described by Ian Manners (2002, p. 242), and in order to measure it against the procedural and substantive subversions of democracy in the area of equality. Even more explicitly than has been the case with the example of trust, equality has been integrated into the broad normative basis of the European Union during decades of its evolution and development through treaties, policies, criteria and conditions. Equality is implied in the fifth of Manners' five 'core' norms (2002, p. 243), the respect for human rights and fundamental freedoms, and also resonates strongly in one of the four 'minor' norms, namely anti-discrimination.

EU documents. Wheatley (2002) points out the difference arising from the status of the norm of 'non-discrimination' in the framework of a treaty and its language, so it can be an 'accessory right', related to another substantive right, or an 'independent right' to equality demanding material justice. The 12th Additional Protocol to the European Convention adopted in 2000 introduces the right to non-discrimination as an independent right and also, related to the case study under review in this Chapter, establishes the responsibility of a state which may fail to prevent or remove discrimination ("Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms," 2000, para. 1 & 2).

Bosnia and Herzegovina joined the Council of Europe on 24 April 2002 and based on Opinion No. 234 (2002) of the Parliamentary Assembly of the Council of Europe, it assumed a series of commitments to be met following the accession. Commitment III.c is "to examine continuously the compatibility of legislation with the ECHR". The initial Conference on compatibility of legislation of BiH with the European Convention on Human Rights and its Protocols and Case-law was held in Sarajevo on 12-13 December 2002, and in the follow-up a Study on compatibility of all Laws with the Convention was drafted, and monitoring teams set up. Meanwhile, the Venice Commission of the Council of Europe issued a number of opinions which discussed in detail specific provisions of the BiH Constitution and Election Law, and gave concrete proposals for changes. When Protocol 12 of the European Convention became effective on 1 April 2005 it strengthened guarantees for the protection of the right to equal treatment without discrimination. Specific provisions of the European Convention on Human Rights which relate to this case study are:

- Article 14 of the Convention provides: “The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”
- Article 3 of Protocol No. 1 to the Convention provides: “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”
- Article 1 of Protocol No. 12 to the Convention provides: “1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. 2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1”.

The relationship between EU norms and norms promoted by the Council of Europe was summarised to me by a CoE official: “all EU member states being CoE member states, the CoE norms can be also taken as European, even the *Acquis*, and this is the case when it comes to most of the aspects of democracy, human rights and rule of law in practice or in detail” (“Personal interview with CoE Official,” 2012).

Country-specific documents. A key difference between this and the previous example on trust is that the normative basis upon which the EU has been able to promote equality as its own norm has been enshrined in a ruling by the European Court of Human Rights. The Grand Chamber of the European Court of Human Rights found that the ineligibility of Dervo Sejdić and Jakob Finci to stand for election to the House of Peoples of BiH lacked an objective and reasonable justification and was therefore discriminatory. The ECHR also reminded BiH that by becoming a member of the Council of Europe in 2002 and by ratifying the Convention and the Protocols thereto without reservations, BiH has voluntarily agreed to meet the relevant standards, specifically to “review within one year, with the assistance of the European Commission for Democracy through Law (Venice Commission), the electoral legislation in the light of Council of Europe standards, and to revise it where necessary” (“Case of Sejdić and Finci v. Bosnia and Herzegovina,” 2009).

In terms of the actual violation of specific European norms, the Court ruled that there had been a violation of the following articles of Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms:

- Article 14 taken in conjunction with Article 3 of Protocol No. 1 of the European Convention on Human Rights as regards the applicants' ineligibility to stand for election to the House of Peoples of Bosnia and Herzegovina
- Article 1 of Protocol No. 12 as regards the applicants' ineligibility to stand for election to the Presidency of Bosnia and Herzegovina.

As pointed out by many authors, this is the first instance in the Court's history that it challenged the constitutional order of a country, signatory to the European Convention for the Protection of Human Rights and Fundamental Freedoms. What is even more striking is that it has done so on the grounds of racial/ethnic discrimination (Hodzic & Stojadinovic, 2011).

Nonetheless, the high level of importance attached to this issue by the CoE is demonstrated through the fact that the Committee of Ministers currently has around 8,000 cases on its agenda and holds four sessions per year devoted to the execution of judgements. The Sejdić and Finci judgement was examined for the first time at the session held from 2 to 4 March 2010, so very soon after the judgement was actually made. It was again put on the agenda in June and December of 2010 (CoE Committee of Ministers, 2010). An interviewee from the CoE confirmed that even though sometimes they took years to implement, all judgements of the ECHR in the last 60 years have always been executed ("Personal interview," 2012).

Incompatibilities of this system with international norms on equality and non-discrimination are expressed in the "concluding observations" on Bosnia and Herzegovina of the Committee on the Elimination of Racial Discrimination, the body of independent experts set up to monitor the implementation of this treaty, which notes that 'legal distinctions that favour and grant special privileges and preferences to certain ethnic groups' are incompatible with the Convention ("Concluding observations of the Committee on the Elimination of racial Discrimination - Bosnia and Herzegovina," 2006, para. 11).

Properties of norms. As the previous section showed, inter-ethnic cooperation was sought through the creation of joint state institutions based on principles of ethnic power-sharing. According to the ECHR ruling, "Fully aware that these arrangements were most

probably conflicting with human rights, the international mediators considered it to be especially important to make the Constitution a dynamic instrument and provide for their possible phasing out” (“Case of Sejdić and Finci v. Bosnia and Herzegovina,” 2009, para. 14). The subsequent prevailing assumption on the part of the international representatives was that power-sharing institutions of the state would proliferate under international supervision and sponsorship, diminishing the need to immediately eliminate discrimination. Rather, the Constitution which gives primary rights to ethnic communities and excludes all those who do not declare themselves as ‘constituent peoples’ from enjoying any political rights, as such creates fertile ground for entrenching discrimination also at the substantive level. On top of this, the legitimacy of the ethnic elites inherited from war, and which negotiated the DPA, was built into the system with the elections held in 1996 (less than a year after signing the DPA), based on the new voting rules they jointly designed in Dayton. Entrenching the political elites of the time so firmly and so early on into the political system ensured that the war-time legacies gained legitimacy and imposed even more firmly their visions of the society, crowding out any opposing political ideas. Following the same route of assessment as in the previous Chapter, three sets of properties of norms are assessed in terms of substantive equality: norm appropriateness, norm origin, and norm character.

When it comes to considerations of why equality as a norm should be integrated into the constitutional and electoral system in BiH, the motivations of most politicians I interviewed were similar. Two key rationalist arguments were most prominent: because it is mandated by international conventions, and because it is a condition for further EU integration. However, the fact is that those motivations were not compelling enough to make the required changes before the new elections were announced, so as to have them conducted according to the new rules. This was true in spite of the fact that it constituted a clear breach of the Stabilisation and Association Agreement, a breach of the actual judgement of the ECHR, and in spite of a threat of sanctions both on the part of the EU and CoE.⁴¹ On the other hand, the interviewees representing the EU clearly stress the substantive aspects of the appropriateness of this norm: “The protection of minorities and respect for human rights are values that are at the foundation of the European Union. They must remain essential elements of every aspect of the EU accession process” (“Personal interview with a senior EU official in Brussels,” 2012).

⁴¹ I will discuss these threats in the following section on EU mechanisms of norm promotion.

Because rationalist arguments were not sufficient to explain why this norm could not be adopted, it was necessary to look into the substantive subversions of equality. That process revealed that subjective motivations prevailed over rationalist reasoning. The true motivations that prevailed were a lack of political commitment to equality as an international norm, redefinition of the meaning of equality to accommodate the view through the ethnic lens, separate visions of diversity and pluralism in society, and fears of foreign conspiracies.

It also has to do with self-perceptions. As examples of substantive subversions of equality showed, domestic political actors see themselves primarily as protectors of ethnic interests rather than as entrepreneurs of European human rights norms. They are thus mainly driven by the ideational commitment to their ethnic group and the EU norms are not necessarily seen as more 'appropriate'. The continued attempts to 'ethnicise' every issue, regardless of how clear as an international norm, proved to be a detrimental factor in the process of implementation of this norm. This example shows the level of ideational resistance in the pursuit of a widely accepted norm. As I already said in the preceding section, the EU on its part accepted and even supported the process designed by the government in spite of the general opinion that it was not going to generate any results in the desired timeframe. On top of that, no European actors engaged in promoting the norm itself, but rather focused efforts on supporting the process.

This also showed that individuals assigned as 'norm implementers' feel stronger affiliation with the ideals embodied in domestic norms of divisions and group identities even though norm implementation may not affect them directly. They feel stronger 'ideational commitment' and ethnic allegiance to the norms embedded in the Dayton Agreement, than new norms promoted by the CoE and EU. According to Rechel (2008, p. 83), the situation was similar in Bulgaria where historical legacy, domestic party constellations, and popular attitudes proved stronger factors than the EU or CoE norms. It was also the case in Lithuania where history and domestic elites proved more important than international intervention (Budryte & Pilinkaite-Sotirovic, 2008, p. 160).

What was also striking in this example was that within the domestic political context, the need to eliminate racial discrimination was emphasised far less than the simple fact that this was an international commitment. Regardless of such a high degree of otherwise generally accepted 'righteousness' or 'goodness' (Finnemore & Sikkink, 1998, p. 899) of equality and

non-discrimination, the strong commitment to social relations inside the country proved more powerful. Also, the strong commitment to group identities over individual interests, coupled with still fresh memories of war and inter-ethnic fears, obscure awareness of the form of discrimination created by ethnic allegiances. The commitment to domestic 'norms' as opposed to an international norm, was further entrenched by building a notion that EU norm promotion is a part of wider international conspiracies, and by a deliberate undermining of the credibility of international representatives.

Important proof of how a procedural approach undermines substantive democratisation, is the EU's view of their very presence or interest in this issue as a form of commitment: "The EU continues to supervise talks on implementation of the Sejdić/Finci ruling. That shows that the EU is committed to the democratic processes in BiH" ("Personal interview with a senior EU official in Brussels," 2012). However, this case-study showed that not only have the EU efforts faced ideological barriers created by the emotional appeal of domestic norms, but domestic political elites deliberately engaged in counter campaigns, aware that the EU commitment may be strong, but its substance is negotiable. I call that the counter-informational diffusion. Domestic actors resorted to the construction of conspiracy theories, to construction of an alternative meaning of equality and by withdrawing political will from any efforts to substantively change the constitution. By targeting the EU itself to undermine its credibility, and to portray its efforts as potentially detrimental to domestic values, political elites are seizing the public space at the expense of the EU's informational campaign and thus diminishing its potential effects.

As demonstrated in the section on the EU normative basis that defines equality, the international legal instruments provide a high degree of clarity of norms when it comes to equality and human rights as was the case in Chapter VI. Schweltnus (2008) points out that non-discrimination is a well-established norm of the EU common law, so the EU is not confronted with promoting double standards. He thus sees non-discrimination as a norm that due to its consistent and uncontested character is more acceptable to domestic structures (2008, p. 32). He also points out the importance of timing and argues that in Central and Eastern Europe, most countries accepted non-discrimination legislation towards the end of their accession process. However, the EU's conditionality has actually prevented the country from moving forward before it resolves this issue.

Specificity of norms, and hence its credibility and consistency, was in this case provided through the ECHR judgement and in terms of the instruments at the disposal of the European institutions, this could be said to be the most specific way to relate a norm to the local context outside the EU structures. The clarity and specificity of the norms on equality and non-discrimination provided their legitimation as well, but that legitimation was limited by the prevalence of domestic norms allegiances and commitments to the existing situation, thus establishing credible normative basis. However, as argued before, that in and of itself is not a guarantee that the EU would be predisposed to act normatively.

As will be clarified further in the next section, but as quite evident from earlier examples, the intensity and prominence of European norms was in this case also quite strong in terms of the attention given to the implementation of the ECHR decision and the level of importance it has been assigned by European institutions. However, in spite of the high intensity of European norms, they proved impotent against the prominence of ethnic divisions in public life, institutional structures, decision making systems, and simply the general 'view of the world' on the part of domestic political actors. In this case, therefore, the question was not how intensive were the efforts of European norm entrepreneurs, but how resistant were the forces of nationalism.

EU Mechanisms of Norm Diffusion. When looking at the properties of EU norms, I stated that the normative basis of the EU on equality has a strong substantive dimension that emphasises the ideational aspects of norm promotion. However, in this section I show the EU's reliance on procedural instruments of norm promotion, as was also the case in promotion of trust. Evidence collected in this section once again supports my argument that the extensive reliance on procedural instruments limits its effectiveness and restricts the substantive internalisation of equality. The type and number of procedural instruments is evidence of a 'cookie-cutter approach', which fails to recognise that equality is undermined in the very substance of the BiH Constitution that is based on discrimination. This lack of recognition of the nature of the issue misinformed the EU's technical approach that was applied for years before the EU decided to adopt a new strategy to resolving this issue.

However, even the change of the approach, which was meant to accommodate the political nature of the problem of discrimination in the Constitution, did not yield results, which can only be attributed, once again, to the nationalistic views on this issue. While accepting the

view of the nationalist elites that the search for a solution should be limited to the minimalist understanding of equality and participation in the sense of removal of discriminatory provisions of the BiH Constitution, the EU tacitly agreed to undermine the broader human rights issues which are implied by the ECHR ruling. Being more concerned with finding a pragmatic solution that would move the country forward, as I discussed in Chapter IV, the EU opted to turn a blind eye to the discriminatory nature of the entire system of governance in BiH. Although the pragmatic approach might serve the short-term interests of both the EU and nationalist elites in BiH, the EU is in fact just postponing the real debate about the built-in discrimination, which might come to haunt them once the country comes closer to EU membership.

Procedural mechanisms. In the previous Chapter I argued that in the case of promotion of trust as an EU norm, the procedural mechanisms only go as far as the first stage – norm emergence. The characteristic mechanism of the first stage, norm emergence, is persuasion by norm entrepreneurs, which we saw being the case with the EU's information campaigns. In this Chapter I argue that the promotion of equality as a norm went a step further, which I attribute primarily to the ECHR judgement as a powerful procedural normative instrument. However, I make a case that this example reveals some developments uncharacteristic of the norm 'life cycle' (Finnemore & Sikkink, 1998). I argue that although promotion of equality has gone beyond the first stage, it may progress through the second stage and even be internalised in procedural terms, i.e. integrated through constitutional changes, but that it may continue to lack features characteristic of substantive internalisation such as 'mimicking' and having the 'taken-for-granted quality'.

Informational diffusion. As discussed in the preceding sections, it was the Council of Europe, Venice Commission and US administration which originally raised the issue of discrimination in the Constitution. When it comes to the EU, its individual institutions engaged to varying degrees up until the ECHR judgement. Before the judgement, the European Parliament passed one resolution in 2006 ("European Parliament resolution on the outlook for Bosnia and Herzegovina, P6_TA-PROV(2006)0065," 2006) which mentioned this issue,⁴² but only after the constitutional reform effort that was backed by the US. Prior to that the European Commission informed the Council in quite vague terms about a need in BiH to "respect

⁴² The previous three EU parliament resolutions were on the following issues: 14 April 2005 on the state of regional integration in the western Balkans, on 17 November 2004 on the European Union military operation 'Althea' in Bosnia and Herzegovina, and on 7 July 2005 on Srebrenica.

democratic principles and human rights as proclaimed in key international documents such as the Universal Declaration of Human Rights... should form the basis of the domestic and external policies of parties to a SAA. ... BiH presidential elections are still based on ethnic/territorial principles” (“European Parliament resolution on the outlook for Bosnia and Herzegovina, P6_TA-PROV(2006)0065,” 2006, para. 1). So, apart from 'noting' the situation, the Communication did not actually say that the mentioned constitutional provisions were not in line with the previously stated instruments for the protection of human rights. In the European Partnership with Bosnia and Herzegovina adopted by the Council in 2006, one of the mid-term priorities of the Partnership was to amend electoral legislation regarding the Bosnia and Herzegovina Presidency members and the House of Peoples delegates, to ensure full compliance with the European Convention on Human Rights and the Council of Europe post-accession commitments (“Council Decision on the principles, priorities and conditions contained in the European Partnership with Bosnia and Herzegovina,” 2006, sec. 4).

The European Parliament resolutions became more explicit in anticipation of the ECHR decision and in its aftermath. The 2009 Resolution stated that “all minority communities must enjoy the same rights as constituent peoples” (“European Parliament resolution on the situation in Bosnia and Herzegovina 2009,” 2009, para. 6.d.). However, it was only after the ECHR judgement that the European Parliament resolution recognised that the issue was less to do with minority rights, but that it was about general discrimination which disabled a large number of individuals from full participation on the simple grounds that they did not declare to belong to one of the constituent peoples (“European Parliament Resolution on the situation in Bosnia and Herzegovina 2010,” 2010). One of my interviewees confirmed that the judgement provided the EU with additional argumentation as to why constitutional reform was necessary (“Personal interview with an EU official in Sarajevo,” 2012).

In the aftermath of the ECHR judgement, the EU engaged more openly in the informational diffusion of norms, including public statements by its highest ranking officials. During his visit to Sarajevo following the 2010 elections, Štefan Füle regretted that “the constitution and electoral law were not aligned to the European Court of Human Rights to allow citizens not belonging to the three constituent people to have full voting rights” (Turković, 2010, p. 2). As the EU delegation officials and European Commission representatives showed, their priority remained the procedural aspect and instrumental equality. Their approach was thus to focus on the process of compliance rather than on norm internalisation. However, some

higher-level officials did engage in some normative efforts, as was the case with the President of the European Commission, José Manuel Barroso, who visited BiH in April 2011 and delivered a message that the Constitution needs to be amended to comply with the ruling of the European Court of Human Rights. Respect of minority rights and anti-discrimination are basic values for the EU. He stated: “So let us be clear: Bosnia is not alone. The EU is ready to help you through its reinforced presence and policies, and substantial aid. But Bosnia and Herzegovina has to do its own part“ (“Remarks by President Barroso following his meeting with the Presidency of Bosnia and Herzegovina,” 2011). Catherine Ashton, High Representative of the European Union (EU) Foreign Policy and Security and Vice President of the European Commission visited Bosnia and Herzegovina on 17-18 February 2010 and stressed that it is necessary for furthering the integration process in the EU, and that the implementation of the HRC decision in the Sejdić-Finci case is an opportunity for substantial changes of the Constitution (“EU High Representative Catherine Ashton visited BiH,” 2010).

Messages delivered by the CoE officials were of a more substantive nature, and made the threat of sanctions more explicit. During his visit to Bosnia-Herzegovina in March 2010, the President of the CoE Parliamentary Assembly, Mevlüt Cavousoglu, stated that BiH needs constitutional change “otherwise it faces the risk that its institutions are considered illegitimate, a flow of new complaints to the European Court and a possible challenge in the Assembly” (“Mevlut Cavusoglu u zvaničnoj posjeti BiH,” 2011). Therefore, it can be said the EU itself did not deliver clear or authoritative messages prior to the ECHR judgement. However, with the ECHR argumentation in hand, all of the EU institutions engaged in a very explicit diffusion of information about a need to comply with the European Convention and the judgement of the ECHR.

Procedural diffusion. BiH signed a Stabilisation and Association Agreement (SAA) with the EU on June 16, 2008. Soon afterwards an Interim Agreement on Trade and Trade-related Matters (IA) came into force. By the end of 2010, all 27 members of the EU had ratified the SAA with BiH. However, it did not come into force immediately and its publication was delayed. Although the EU did not officially declare that the SAA implementation would be delayed, it became clear after it had not reached the EU Council several months later, and in interviews I conducted with EU officials it was confirmed that this was a deliberate policy.⁴³

⁴³ Due to a lack of formal decisions on this matter, interviewees were reluctant to speak on record on matters discussed in this section, but relevant information was provided nonetheless in confidence.

The reason for this is the fact that Bosnia and Herzegovina was the only country in the region which breached the Interim Agreement by failing to meet the set deadlines for the commitments it undertook. This primarily refers to the failure to implement the Sejdić/Finci ruling. As confirmed through interviews with EU officials, legally speaking there are no real obstacles before the SAA could enter into force as the Interim Agreement has no provisions linked to human rights. Politically, however, the EU never provided clear direction as to the content and level of constitutional reform that is needed.

The EU's futile procedural approach was particularly evident through the insistence on a 'credible effort'. The European Council pledged it would not give a green light to put the SAA into force until it saw 'credible effort' on implementing the ECHR judgement. However, it was not possible to clarify what would be accepted as a 'credible effort', particularly having in mind the experience with the working group that had been established previously for that purpose. Emphasis has been put on the process being locally owned, as stated by one interviewee: "The EU has not and will not give any suggestions related to constitutional changes to BiH authorities. BiH authorities need to find consensus, they must not isolate themselves from the process. The EU will not impose any solutions on constitutional reform. We tried to do that in the past and it did not work. The only sustainable solution for BiH is to enter the EU. But that takes time, we need to be patient and slowly help BiH achieve that goal" ("Personal interview with a senior EU official in Brussels," 2012). As evident in Chapter IV, this approach was abandoned in 2014 upon the initiative of UK and German governments. What became particularly evident from this example is the lack of clarity of the EU's 'credible effort'. It nonetheless remains unclear how the EU would be able to judge the sincerity of a 'credible effort'. The only answer I got to that end was that "The only criteria the EU expects to be fulfilled is that the system produces positive results and is compatible with EU values" ("Personal interview with a senior EU official in Brussels," 2012).

At the same time, the actual judgement in the Sejdić/Finci case is legally binding. However, some of the European collocutors confirmed that many of the EU member states have numerous cases pending before the ECHR, and BiH has only a few less than its neighbours. Though the precedent is the fact that breaches of the European Convention in the case of BiH are actually generated by the Constitution. This was explained to be the decisive factor in such a strong emphasis to implement the judgement, and also explains to some extent the expediency of the ECHR in addressing this case.

Transference. For several years since the Parliament failed to adopt the April package in 2006, the European Commission was reserving funds in the amount of one million Euro as a part of the IPA funds to provide expertise and technical support in the process of constitutional change. These funds remained available until 2013, when they were re-directed towards projects in the area of culture (“Personal interview with an EU official in Sarajevo,” 2013).

Overt diffusion. Manners (2002, p. 245) points out that overt diffusion could also occur through monitoring missions that are deployed to follow up on a particular situation in the country. In this case again, however, it was the Council of Europe’s Monitoring Missions, which assess on an annual basis the fulfilment of post-accession commitments, which proved to be more categorical in protection of European principles, clear, specific and overt in communicating it to domestic authorities. They also questioned the sincerity of the government effort by saying that “Despite the stated readiness of the authorities and the apparent consensus among the key stakeholders in the country, that the Sejdić and Finci judgement must be implemented, no serious discussions took place within the working group” (Council of Europe, 2010, para. 21). Compared to the language used in the CoE documents, the EU’s regular Annual Progress Report on BiH for 2010 does not appear as categorical and simply acknowledges the situation on the ground, therefore no real overt diffusion of norms takes place (European Commission, 2011, para. 1.2.).

Substantive mechanisms. Substantive (constructivist) mechanisms include contagion, compliance, social learning, socialisation, role playing/mimicking, and persuasion.

Contagion. In respect to ‘unintentional’ diffusion of ideas from the EU to domestic political actors, evidence presented in earlier sections showed that politicians in BiH have accepted the rhetoric on human rights after the ECHR judgement, but are more reluctant to use the words ‘discrimination’ or ‘equality’. This might indicate that although they agreed to discuss the issue of human rights in the context of the Sejdić/Finci case, intimately they may not see it necessarily as discrimination, neither are they concerned with the broader human rights issues. Their view of equality is prejudiced by the importance of collective equality between ethnic groups. This became clear through a series of conversations I conducted with various political figures, mainly members of parliament at all levels of government, the majority of whom did not comprehend the Sejdić/Finci situation as an individual inequality, and in

discussing solutions, their proposals mainly concentrated on mechanisms of representing groups rather than individuals. In other words, there has been no real contagion.

Compliance. I interviewed a number of senior EU officials and asked them to what degree the EU was willing to go in sanctioning political elites for the purpose of greater compliance with EU norms. The first answer I got from most of them is that ‘sanctions’ are not in the vocabulary of the EU, and the EU prefers to use the term measures (“Personal interview with a senior EU official in Brussels,” 2012). When it comes to breaching of contractual commitments already undertaken, as was the case with the breach of the Interim Agreement and failure to implement the ECHR ruling, the answer from the EU officials is that Bosnian politicians punish themselves for failing to comply because this way they personally delay Bosnia’s integration into the EU. Delaying the SAA implementation is seen as a punishment in itself. As in the previous Chapter, this again showed the degree to which EU officials fail to recognise the political elites’ priorities and interests. As was made clear in interviews with EU officials, they rely on an assumption that it is in the interest of elites to comply with a norm, oblivious to the fact that the status quo only works in favour of the elites, continuing their grip on power (Vachudova, 2014). Rewards promised through norm compliance are not perceived by political elites as greater than the costs of compliance. As I also argued in the previous Chapter, this showed the extent to which the EU officials perceive themselves primarily as the ‘*acquis*-entrepreneurs’ and do not necessarily perceive themselves as entrepreneurs of norms, while the basic principle of conditionality, the cost-benefit calculation, has a very limited impact.

The Council of Europe, on the other hand, has been far more explicit in expressing the need to execute the judgement. Hence, implementation of the judgement has been supervised by the CoE Committee of Ministers at a minimum twice a year.⁴⁴ It has also been followed by Parliamentary Assembly of the Council of Europe (PACE) at political level based on the fact that BiH was failing to meet its CoE post-accession commitments. The CoE originally took a stance that if the 2010 elections were not conducted according to rules, legitimacy of institutions might be questioned. However, under the pressure from the EU, this position was abandoned in 2010 and again in the 2014 elections, both of which were held according to the old discriminatory rules.

⁴⁴ First examination of the case took place at a session on the 3rd March, 2010, next in June and December 2010, then again in March 2011.

Possible measures by the CoE that would be taken in case of non-compliance were also communicated and made public, although there were some doubts left as to the certainty of the use of those instruments. It was mentioned there could be possible challenging of credentials of the BiH Delegation to PACE on substantial grounds, and even excluding BiH from the CoE, but this never happened. This would have been a very rare case, almost a precedent, since something similar happened only in the case of Belarus, which was not a full member but an observer. The former Special Representative of the Secretary General of the CoE spoke about those possibilities in various public events organised to discuss the implementation of the ECHR judgement.

Social learning. This case study revealed several obstacles to norm promotion through social learning, primarily stemming from unfavourable scope conditions and formidable subversions to equality. As I discussed in the section on norm character and origin, equality as a democratic norm proved to be too conceptual for both norm entrepreneurs, as well as subjects to norm promotion. This is why social learning faced obstacles in the form of claims to cultural distinctiveness and specificity of social circumstances that are based on ethnic divisions. Ignoring this fact, in this case more so than in the example of trust, the EU engaged extensively in deploying procedural mechanisms of norm diffusion. But again, the nature of those activities was not sufficiently interactive and did not provide opportunities for social learning as such.

Socialisation. Kelley (2004) and Vachudova (2014) argues that EU membership conditionality was the key rationale behind acceptance of EU norms in central and Eastern Europe. However, they also point out the importance of socialisation in terms of the sustainability of norms in the domestic context. Based on wide research throughout Central and Eastern Europe, Rechel (2008, p. 18) points out that socialisation alone cannot bring change, but it is an important factor that complements EU's conditionality. Vizi (2008) argues that aspiration for EU membership was the key motivation behind Hungary's acceptance of non-discrimination norms and Rechel argues the same was the case in Bulgaria.

Socialisation in the case of the implementation of the ECHR ruling was limited to occasional meetings with high level EU and CoE officials, participation of BiH delegation in PACE, meetings with CoE monitoring missions and occasional roundtables and public debates. However, even in those interactions, the emphasis of discussions was on conditionality and a

need to meet EU and CoE requirements in order to prevent a halt in integration processes and subsequently to unblock them. These limited socialisation efforts did not involve substantive promotion of equality as a wider norm that is at the core of the EU, it was purely promoted as instrumental and calculative, once again emphasising the EU's procedural approach at the expense of substantive democratisation.

Persuasion. As I argued was the case in the previous Chapter, here as well, persuasion was issue-based, and did not have a wider-base of 'socialising' political elites. Even as such, persuasion was rare and not so interactive. The interviewed EU officials believed they do engage in persuasion at some level while interacting with political elites. In this case, equality and non-discrimination were discussed more openly as value-driven norms. This case thus showed that persuasion can be effective if more narrowly focused, and not as a mechanism of wider appeal to conceptual norms. The character and origin of a norm, as well as underlying scope conditions, presented far more decisive elements of norm promotion than the actual nature of persuasion, its intensity or duration.

Conclusion - Level of Compliance with EU Norms on Equality

In this Chapter I addressed more closely the EU's own shortcomings in democratising BiH and transforming values in BiH society. Although the focus of this Chapter was on the EU's lack of legitimacy and a 'cookie-cutter approach', the example used here also shows the impact of nationalism on EU norm promotion. However, even more so than the case study analysed in Chapter VI, this Chapter showed the extent to which the EU relies on a procedural approach, and how much it suffers from a confused international identity.

Following my research approach, this Chapter included sections on case study description, theoretical propositions on equality, subversions of equality/participation, and the EU's approach to the promotion of equality/participation. The framework of analysis has followed the same route as in the previous Chapter. I have accounted for the EU normative basis of equality, its procedural and substantive subversions, and procedural and substantive mechanisms for diffusion of EU norms. Each section has revealed obstacles of different nature and character, and this section analyses the level of compliance thus achieved. It emphasises equality as an antidote to any form of discrimination, stating that the equality of rights, including electoral rights is a necessary prerequisite for any broader notion of equality.

This Chapter reveals that the EU operates on a very clear and well-structured normative basis, which makes it very explicit that equality is a core EU norm in broad terms, and is also engrained in narrower country-specific normative documents. The EU normative basis is directional, giving a very high importance to equality in its core documents. However, unlike the CoE documents, the EU adopts a procedural approach which prevents it from engaging in specifying remedies or proposing solutions for addressing the issues of discrimination and equality. As such, the EU appears to be less of a normative power than the CoE, or even the US in the case of constitutional reform.

In assessing the role of the CoE and EU in norm promotion in Bulgaria, Rechel (2008) points out that they both played a key role. However, there was some distinction between them. In Bulgaria, the CoE was crucial in the process of adoption of norms, i.e. ratification of various international legal instruments. The EU, however, was crucial in adoption of the plan of implementation. The same could be said to have been the case in BiH in the case of acceptance of norms. However, as I argued in the example of the working group for the implementation of the ECHR judgement, it was the Council of Europe that was still more engaged at that stage. Based on the Bulgarian example, Rechel shows that the CoE was not vested with additional leverage from the European Commission. I argue that the same was the case in BiH up until the point when the ECHR passed its judgement. That was the tipping point when the EU decided to put its leverage behind its own and the CoE efforts. This is also different from the Bulgarian experience where the EC basically ignored ECHR rulings in the cases of the Roma and Macedonian minorities (Rechel, 2008, p. 85). In Rechel's view, one of the reasons why Bulgarian government failed to change its constitution is because of a lack of consistent and persistent monitoring by the EC.

The judgement itself is very categorical and specific, but its legitimation has been challenged conceptually with appeals to the exceptionalism of the Bosnian situation that is based on predetermined constitutional categories enshrined in the Constitution, which is part of an international peace agreement. The EU was thus faced with a powerful clash of values and visions of the present and future of BiH, which was justified and rationalised by beliefs in ancient hatreds and perpetuity of ethnic divisions. In such circumstances, domestic political actors proved uncompromising on their vision in which BiH is constituted of ethnic collectivities, rather than being a pluralist society that respects diversity and provides equality

of rights, and they even managed to transfer that vision onto the EU actors. This meant that the EU was faced with stronger affiliations and ideational commitment to local as opposed to European norms, and the EU itself showed weak allegiance to its norms.

My research has revealed that instruments at the disposal of the EU for diffusion of EU norms provide avenues for both procedural and substantive engagement. On the procedural side, the standard EU toolbox contains a range of instruments that have been used extensively in this case. However, the EU has again limited itself to the use of procedural instruments, particularly in the service of conditionality. Unlike the case study of promotion of trust, in the example of equality, the 'life cycle' (Finnemore & Sikkink, 1998) of the norm has gone a step further and it is in the stage of cascading and will likely proceed to internalisation. However, it needs to be pointed out that the EU mechanisms of norm diffusion come short of substantive engagement, and there are no broader understandings of why discrimination needs to be abolished. The motivations to comply with the norms on equality that were expressed are driven more by a sense of duty to implement a Court judgement, and not out of a principled belief in equality. The EU accommodated this approach, and rather than promoting a norm, the EU was promoting a procedure, i.e. implementation of the judgement for the sake of moving the country forward in the accession process. That in itself has been sufficient proof of the EU's undermining of substantive democracy by a focus on the procedure.

The Council of Europe, on the other hand, was more consistent in promoting a norm and being categorical about it. This is why domestic political actors engaged in strategic calculation as a mechanism of socialisation (Checkel, 2005, p. 809) - the choice was made between perceived social sanctions (status in PACE, shaming) and material rewards (financial assistance, enforcement of the SAA, acceptance of application for candidacy status). In this case, neither the threat of social sanction nor the promise of material rewards could outweigh the potency of the entrenched localised norms and the strength of belief in a need to protect collective over individual rights, and the interest in sustaining ethnic divisions. Aware of the consequences of non-compliance, and also aware of the fact that rewards of compliance were not greater than localised rewards of non-compliance, particularly in light of the upcoming elections, and the favourable conditions which the existing system creates for nourishing nationalism and nationalist parties, domestic actors calculated in favour of the latter, however irrational.

The EU's 'cookie-cutter approach' in BiH determined their choice of diffusion mechanisms and, in line with promotion of procedures rather than promotion of norms, the EU deployed a range of procedural diffusion mechanisms. This was evidenced by the fact that their efforts intensified only after the ECHR ruling, even though existence of discrimination was recognised quite early on in developing a contractual relationship with BiH. An interviewee from the CoE confirmed that this was the case: "CoE, through its various institutions, pointed out the problematic constitutional arrangements throughout the accession process of BiH to CoE and thereafter, but the discrimination with respect to elected offices became subject to a formal procedure only after the *Sejdić/Finci* judgement was issued and the Committee of Ministers became charged with the supervision of the execution of the judgement" ("Personal interview with CoE Official," 2012).

Based on the evidence presented, I argue that by the time of the October 2010 election (the first deadline for compliance set by the ECHR judgement), promotion of equality had gone as far as the second stage, low compliance. The elites publicly declared their political will to move to procedural compliance and institutionalisation in future, but that did not happen even after the EU applied a new, more political approach in 2015. If that does happen at some stage, internalisation would be achieved only once elections are held according to new rules, and newly elected officials have assumed their responsibilities. In terms of the broader acceptance of equality through transformation, that may take years and needs to be fully supported by the EU's substantive mechanisms of norm diffusion. If the EU's long-term goal is to internalise equality and seek social transformation that would value equality of individuals over collective equidistance, then a more devoted use of substantive instruments of norm diffusion will be necessary.

Chapter VIII - Conclusion

However hard nationalists try to amplify the ethnic divisions and evoke myths of ethnic hatreds, most of the people in BiH have not entirely buried the sense of tolerance and pluralism that is imperative in a multi-ethnic society. An extreme example of the way in which people instinctively resort to solidarity in order to raise themselves above the constructed differences, and the structural and political divisions, took place in May 2014, when BiH suffered from the worst floods in its history. The floods and landslides affected almost half the country's territory, putting in danger hundreds of thousands of people, killing at least thirty. In a crisis of apocalyptic proportions, the issues of identity and ethnicity became irrelevant within hours, and people rushed to help their neighbours from another village, another city, another entity, regardless of their ethnicity or political beliefs. The entity lines got wiped out for a couple of weeks, people hopped onto rubber boats to save those who were stranded on upper floors of their houses and buildings, with little food and no running water or electricity. Women, children and the elderly were evacuated to the nearest safe places in FBiH and the RS. It was the manifestation of country-wide solidarity, in which basic human empathy prevailed over any social cleavages. People shared food, shelter, medicines, they helped dig out entire cities from the mud and landslides that accompanied the floods.

The floods also exposed the absurdity of the Dayton constitutional structure and dysfunctionality of the system more than ever before. The Council of Ministers of BiH had previously put in place a Coordination Body for Rescue and Protection,⁴⁵ but the RS Government decided to boycott it because they refused to be coordinated from the state level ("Personal interview with a representative of the BiH Ministry of Security," 2014). The Law authorises the Coordinating Body to lead rescue efforts, to coordinate the entity and other authorities, including requests for international assistance. Because of the RS boycott, and under the pressure to provide emergency assistance, the state authorities resorted to bilateral agreements with the neighbouring countries in order to request helicopters, boats and water pumps, as well as other means of assistance. However, formal assistance from the EU Mechanism for Civil Protection could not be requested without declaring a state of emergency, which was not possible without the consent of ministers from the RS. Meanwhile, desperate calls and requests were coming from municipalities across the RS and FBiH, from mayors and

⁴⁵ Established according to the BiH Law on rescue and protection of people and goods from natural and other disasters.

local police, and from cantonal authorities. The RS authorities tried for days to avert coordination through the state institutions, and declared that they would request international assistance on their own, and would take control of the rescue operations within the RS independently. Neither was possible, and they eventually sent their representative into the BiH Coordinating Body, after which the Council of Ministers was able to declare a state of emergency. Meanwhile, the BiH army forces had been rescuing people across the country with their helicopters and boats, which the entity governments would not have been able to do on their own, simply because of the lack of staff and equipment.

The floods blew the whistle on the weaknesses of the constitutional structure, and exposed the absurdities of a decision-making system that is dependent on the political will of all levels of government, even in the most extreme situations. However, it also disclosed why nationalist elites are dependent on persistent projection of ethnic division upon the society. The fact that people in cities and villages mobilised independently to help those in need regardless of their ethnicity or entity borders, showed a craving for more normal ethnic relations and an instinct for pluralism that has survived decades of imposition of nationalist vision on the society. Only two weeks after the worst of the floods had passed, Dodik engaged in moderating the effects of the floods on multi-ethnic coexistence, by stating that the “floods had not wiped out the entity borders” (“Dodik: Poplave nisu odnijele entitetske granice,” 2014). He said that the perceived solidarity was a spin by the international community, which wanted to seize the opportunity to take away some of the responsibilities from the RS.

In this thesis I have argued that BiH is an exceptional case in which nationalism has perverted the political and social life, the constitutional structures, functioning of institutions, the flavour and style of democracy. Nationalism, above all, has created numerous fault-lines in democracy, which create obstacles to the consolidation of democracy, and yet many international representatives, including the EU, still see those divisions as given and natural. Nationalism and democracy have had an ambiguous relationship in BiH since 1980s. Nationalism has become an integral part of the political culture in BiH, and the process of democratisation has been seen by the elites, as well as some international actors, through a nationalistic world view. In that sense, nationalism has superseded democracy.

I have argued in Chapter II that democratisation was never nationalists’ goal, and they only used the rhetoric on democracy as a cover for their ambition to secure maximum power

for themselves and their respective ethnic groups. For that purpose they deployed the myths of eternal hatreds among ethnic groups, and imposed the view of inevitability of divisions and political turmoil. This view of relations in BiH instructed the EU's failure to prevent and stop the conflict in BiH, and it still dissuades their policy of norm promotion in BiH. By accepting the view of nationalist elites that ethnic divisions are absolute or preordained, the EU underestimates the power of its own norms to reverse the effects of nationalism. As a result, the potency of the internal institutional, political and ethnic divisions in BiH prevails over the attempts of EU normative power to embed democracy in this country. This realisation informed my focus on norms and values, because I felt that the procedural view of the EU-sponsored democratisation could not adequately respond to the root causes of obstacles and obstructions in that process.

I have claimed that the EU's tolerance of nationalism in BiH cripples their efforts to democratise the country, and fails to address the root causes of obstacles and obstructions to democratic consolidation. Most importantly, and blatantly obvious after the floods, the EU fails to see that an ethnicity-based power sharing system is not functional enough to meet the demanding requirements of the integration process. The system is struggling to function even without the pressure of the negotiating process, and given the numerous obstacles to smooth decision-making, it is hard to imagine how the country will be able to move forward in the negotiating process. The EU's failure to recognise that can be attributed to its focus on form as opposed to substance. The obstacles to the integration of BiH into the EU are of substantive nature, while the EU's response continues to be formal and procedural.

This is why I chose the concept of the EU normative power, which provided me with a framework for addressing the gap between substance and procedure/form. It enabled me to look into norms, which could highlight this gap, and provide insights into the substantive incompatibility between two normative systems. For me the focus on norms was the lens through which I could magnify the root causes of the incompatibilities and obstacles to the EU democratisation of BiH. That way I was able to see the striking absence of the ideational impact of the EU's democratisation efforts on the fault-lines in BiH democracy. Although I have accepted the view that the EU is a normative power, my argument has been that the EU may be a normative power in principle, but it does not act as a normative power. Based on that basic premise, I have proposed three hypotheses. In the following sections, I summarise the main findings for each of the proposed hypotheses.

Conclusions Based on the Hypotheses

1. First, the EU-sponsored democratisation suffers from a lack of self-perception that the EU is a normative power, which is why the EU is not 'pre-disposed' to act normatively. Secondly, the EU undermines ideational and immaterial aspects of democratisation in BiH, limiting its efforts to procedural aspects, which hampers substantive democratisation.

The EU does not have a coherent and identifiable international identity, as claimed by Manners (2002). Its identity is confused and perplexed by a riddle as to whether the EU democratisation in BiH is a technical or political process. The EU identity is also torn between divergent self-perceptions of its various actors, who accept the EU norms internally, but willingly compromise them externally for pragmatic reasons. This confused international identity lacks assertiveness and decisiveness within BiH context, thus thwarting the effects of the EU's conditionality.

The EU suffers from a discrepancy between the EU principles and its policies, which results from the hesitancy to fully embrace the identity of a normative power. EU actors fail to substantially identify with the EU's normative role, and lack understanding of how the EU norms need to inform their policies and actions. The EU thus acquires only partial identity of a normative power, but it acts as any other rationalist power. Therefore, the underlying thinking behind its approach to problems in BiH is essentially rationalist, while the challenges to its normative power are clearly social-constructivist. Responding to a social-constructivist project with rationalist instruments is what disables the EU influences against the nationalist rhetoric.

Both case-studies showed that the EU has a very clear and concrete normative basis upon which to challenge those counter-norms, and it also has resources and instruments available with which to address them. In both empirical Chapters it was made clear that the EU normative basis is directional, giving a very high importance to equality and trust in its core documents. However, the EU allows itself the luxury of being dissuaded by declarative support by most of the political parties for EU integration of BiH, even though in practice some of them extensively obstruct those processes. The EU thus falls into a trap of searching for equidistance

and neutrality among different political parties, failing to support those which help its efforts to strengthen democracy, and failing to sanction those who obstruct it. This exaggerated political correctness disables the EU from finding the partners with whom it could constructively engage in the process of promotion of democratic norms.

The lack of self-perception of the EU as a normative power was also visible through the contrast with the role ascribed to the Council of Europe. I noted quite a widespread perception that normative influences are more the responsibility of the CoE, which in most cases was not vested with additional leverage from the EU. To me this revealed a tacit division of responsibilities, attributing to the CoE a more normative role than to the EU. However, the second case-study showed that this may change, and was the case in BiH up until the point when the ECHR passed its judgement. The court ruling was the tipping point after which the EU decided to put its leverage behind its own and the CoE efforts to promote norms on equality and participation. This was further evidenced in support of the hypothesis that the EU is not 'pre-disposed' to act normatively, but only does so when prompted by an external intervention. However, unlike the CoE documents, the EU does not go as far as specifying remedies or proposing solutions for addressing breaches of its norms.

I have argued at several points in this thesis that the EU's procedural approach undermines substantive democratisation. First I have attributed this to the EU's overreliance on procedural instruments of norm diffusion, which are not effective in BiH, and can, at best, lead to the stage of norm emergence and low compliance. Secondly, the EU's focus on procedural democratisation distracts it away from the substantive elements of democracy, thus neglecting the need to democratise the country in a substantive sense before it is capable and ready for the procedural aspects of the accession process. Thirdly, the absence of deliberate application of mechanisms that would trigger processes of social construction revealed that the EU does not strategically approach normative compliance in BiH. The EU rather bases its approach on a false premise that democratic consolidation can continue routinely, without external intervention. This wrong presumption derailed EU democratisation efforts in the direction of superficial procedural requirements, while the core problems of BiH dysfunctionality as a democracy remain. And finally, the EU also wrongly assumes that BiH elites would be cooperative in the process of democratisation as that would bring them closer to the EU. However, that assumption neglects the deliberate and insidious decay of democracy that I have attributed to elite-agency.

I have provided several examples that support those findings. In Chapter VI, I showed that the EU persists in the use of the procedural mechanisms, such as statements, declarations, progress reports, but does very little to show dedication and commitment to their norms, or preparedness to defend them. By tolerating Dodik's rhetoric on the issues of state integrity and Srebrenica genocide, the EU denounces its own responsibility for protecting the norms of tolerance and peace upon which the EU itself rests. The EU delegitimises those norms by renouncing its ownership of those norms through inaction. In that way, the EU signals to domestic elites that their undermining of EU norms can go unpunished.

The EU also undermines substantive norms by relegating them to a lower priority for the sake of perceived impartialness. The EU is not willing to risk looking partial to its norms if that could in any way imply partialness to any of the sides in BiH. This is another example in which the procedural aspects are given priority before the substantive aspects of democratisation, which harms the EU's credibility and legitimacy. By staying impartial and thus neglecting its own norms, the EU fails to send a message that the counter-norms are not acceptable to the EU, which would somewhat weaken the support for the obtrusive nationalist elites. In the examples provided in Chapter VI, the EU juxtaposed the promotion of 'trust' against 'domestic democratic dialogue', giving preference to the procedural norm of 'democratic dialogue' over 'trust' as the substantive norm.

2. There is a deep normative gap between the EU and BiH, which is rooted in an integrationist view of democracy on the side of the EU, and disintegrationist values promoted by nationalists in BiH. The domestic values and norms are contradictory and incompatible with the normative basis of the EU, and the spread of EU norms is hampered by 'subversions' of democracy, i.e. features evident in unconsolidated democracies, which are taken for granted in 'consolidated' democracies.

Domestic political actors proved uncompromising on their vision in which BiH is constituted of ethnic collectivities, rather than being a pluralist society that respects diversity and provides equality of rights. The EU was thus faced with stronger affiliations and ideational commitment to local as opposed to European norms. In Chapter VI, the narratives analysed in order to assess the scope conditions and norm appropriateness showed the role of counter-norm

entrepreneurs in constructing categorical trust and thus entrenching a belief in the appropriateness of domestic norms as opposed to EU norms. In Chapter VII, I showed that motivations to comply with the norms on equality were driven more by a sense of duty to implement a Court judgement and not out of a principled belief in equality. Instead of challenging such perceptions, the EU actors accommodated to this view of the world, failing to promote a norm, but promoting a procedure instead, i.e. implementation of the judgement. The Council of Europe, on the other hand, was more consistent in promoting a norm and being categorical about it.

The EU overwhelmingly underestimates the domestic context, which is structurally and institutionally complex, it is volatile and unpredictable. Such context poses obstacles to the EU norms in the form of counter-norms and counter-narratives, which are in many cases purposefully crafted and deliberately deployed to construct new or to entrench the existing political realities. I have concluded that procedural and substantive subversions of trust do not necessarily impede norm diffusion, but are rather positioned as obstacles to their substantive internalisation. The EU misunderstands this context, mixing causes with consequences of the problem. Many interviewees that represented either the EU or member states, pointed to a need for Bosnians to face the new realities of ethnic divisions and start creating a society that would take into account that fact. They thus see ethnic divisions as a result, rather than as a cause of the subversions of democracy. They do not recognise the hypocrisy in promoting trust and integration as EU norms, while supporting the process of cementing ethnic divisions.

Because this perception is almost uncontested among EU actors, it overshadows a perceptible normative clash between the supposed ‘realities’ and the actual EU norms. In other words, to many European interviewees the lack of trust in BiH was a given, seen as primordial and engrained in local mentalities, which is why it should not be contested, even by EU norms. This position also relates to the power-sharing mechanisms, which are seen primarily as pragmatic solutions for upholding peace and ensuring ethnic representation, even if in breach of some basic EU norms. That additionally weakens the EU’s potency to request a change and to insist on it.

The substantive subversions of trust proved an even bigger challenge to the EU. In a similar fashion as with procedural norms, the EU takes those subversions for granted and assumes them to be prevalent over any EU norms. Because subversions of trust, however

undemocratically expressed, are justified as deep-rooted and entrenched in the local customs, mentalities, and ways of doing politics, many interviewees from the EU expressed a clear concern that changing subjective domestic norms would be ‘politically incorrect’ or inappropriate. What can be concluded from this is that not only are domestic norms successful in counteracting EU norms, but that the EU officials do not see it as their job to challenge any domestic norms. Furthermore, some of them even change their own perceptions under the influence of domestic context. This was evidenced by many responses which indicated that EU officials often play by the local rules of the game and even adopted some of the local rhetoric that is contradictory to that which would be an EU norm. This showed that the thick sense of identity within ethnic groups and strong ethnic allegiances proved far more powerful against the European confused international identity.

Another way in which the EU undermines substantive democracy is by failing to set the boundaries of what is normal in a democratic society. In Chapter IV I showed that the perception of what is normal in politics differs not only between domestic and EU actors, but even more among the various domestic actors who take very divergent positions on what would be appropriate behaviour in a democracy. By failing to take the side of ‘normal’ democratic behaviour, the EU sends a message that undemocratic behaviour is tolerable in the EU framework.

3. The EU fails to recognise the exceptionalism of BiH, and applies a ‘cookie-cutter approach’ that treats BiH as any other transitional society. The EU’s ‘cookie-cutter approach’ underestimates the salience of ethnic nationalism in BiH, which presents an ideational obstacle to its democratisation and demands a tailor-made approach to the unconsolidated democracy in BiH.

The question I asked in both case-studies was not only how intensive the efforts of European norm entrepreneurs were to counter the strength of nationalism, but how resistant were the forces of nationalism to EU influences. In that regard, I have illustrated how counter-norms can be exploited by populism, negative and divisive rhetoric, hate language, radicalism, extremism and nationalism. Opting for the top-down approach and a focus on elites’ utilisation of populism, nationalism and negative rhetoric, I showed how entrepreneurs of counter-norms deploy fragile social relations to particularise trust at the level of a single ethnic community to

which they appeal. By over-utilising and sustaining the nationalist rhetoric, the nationalist parties polarised different communities along existing ethnic cleavages and revived strong feelings of past injustices and wartime memories in order to manipulate the public support for nationalism and secessionism.

I found that European norms were ‘localised’ in an attempt to accommodate them to local norms and structures, rather than the other way around. In the first empirical Chapter this was evident through the fact that SNSD put nationalism at the focus of their election campaign through different narratives, while the EU did not condemn such rhetoric in any aspect, or even pointed to norms or values that counter those proposed by nationalism. As already explained, the EU actors avoided that because they considered that this would have been seen as giving preference to a particular political option. The EU actors argued that this was the reason why they refrained from more assertively deploying substantive instruments during the election campaign.

In the empirical Chapters I showed the EU’s extensive use of procedural instruments, which neglect the internalisation of norms and normative transformation. My research has revealed that instruments at the disposal of the EU for diffusion of EU norms provide avenues for both procedural and substantive mechanisms of norm diffusion. However, the EU limited itself to the use of procedural instruments. This finding is very much related to the previous arguments, that the inadequacy to recognise the nature of obstacles results in inadequate deployment of instruments. The lack of recognition of substantive subversions of democracy informs the choice of procedural rather than substantive instruments by EU actors. Procedural instruments can only go as far as affecting the procedural aspects of democratisation, while its substantive dimensions remain neglected.

The use of procedural instruments thus limits the EU’s focus on the diffusion of norms, which travel only as far as low compliance, but rarely result in a transformation of local norms. This is evidence of a neglect of ideational aspects of the constitutive role of EU normative power, and its failure to influence the identities and interests of domestic actors. Interviews with EU officials revealed that at the technical level there is a widespread perception that the EU does not play a role in substantive democratisation. Most EU actors see themselves as ‘*acquis-entrepreneurs*’ rather than as ‘*norm-entrepreneurs*’. This implies a very technical approach to

monitoring the implementation of the technical criteria, while normative and substantive criteria are seen as too abstract and not in their remit.

The EU's compromising of its norms reflects on its legitimacy and credibility as an actor, which have been considerably weakened as the EU showed numerous inconsistencies and lacked clarity in applying conditionality in BiH. The choice of conditionality as the main instrument of influence in BiH is at the core of the EU's ineffective 'cookie-cutter approach'. Although some literature argues that compliance may be high in cases when both linkage and leverage are high (Way & Levitsky, 2007), the case of the use of conditionality in BiH shows low compliance even in such situations. In the example of the EU's new approach to BiH, in which the incentives are generous and costs very low, compliance still did not occur. The EU miscalculated the costs and benefits of compliance for the domestic elites, in spite of the evidence of numerous examples from the past when low compliance could not be explained in the simple terms of cost-benefit calculation. Rather than learning from its own experience in BiH, the EU bases its assumptions on the experiences in democratising the countries in Central and Eastern Europe, where compliance occurred through basic conditionality in many cases. I have attributed the low compliance in BiH to three factors: the existence of 'gatekeepers' to democratisation, the EU's weakened legitimacy, and a volatile domestic and international context.

Even though I subscribe to the view expressed by Vachudova (2014) that the EU lowers the bar because it is desperate to see BiH move forward, as was the case with the entry into force of the SAA, it is nonetheless a proof of the EU's unprincipled behaviour for pragmatic reasons. In spite of its good intentions and strong commitment, the lowering of the bar still does not help the country move forward because change, especially democratic change, is not in the interest of the nationalist elites. The oversimplified view that domestic elites in BiH would willingly adopt and internalise EU norms based on a cost-benefit calculation misinformed many of the EU's policies. That position was founded on a wrong assumption that faster EU integration is in the interests of nationalist elites in BiH. That could not be further from the truth, given the fact that nationalist elites benefit from a status-quo which does not demand responsibility or accountability. Nationalist elites thrive on the status quo, in which they can continue to manipulate the public through emotional rhetoric and appeals to ethnic distinctiveness, benefiting from many divisions and fault-lines that have been created. The failure to recognise that is the primary reason for the lack of success in applying the 'cookie-

cutter approach' through conditionality. Both BiH and the EU would benefit far more from a consistent approach, which would value EU norms and promote them more strongly. Otherwise, the EU signals indecisiveness, which is exploited and manipulated by nationalist elites.

Nationalist elites have learned how to manipulate the EU over time, which has shown lenience and flexibility on issues that are more ethnically sensitive or identity-related. The nationalist elites have thus engaged in numerous projects of constructing ethnically sensitive issues, and fashioning the technical reforms into ethnic constructs. Nationalist elites act as 'gatekeepers' (Tolstrup, 2014), who regulate the intensity and effectiveness of EU influences. 'Gatekeepers' engage in 'thinning' the EU leverage, as could be seen in the cases of the norms on equality and trust. That way, they have been able to justify their resistance to EU reforms and failure to adopt EU conditions, while using those same excuses as a 'political shelter' in the eyes of the wider population. The EU has largely underestimated the ability of nationalist elites to manipulate EU conditionality, and divert their attention away from the required reforms. The EU have in particular refrained from using sanctions in any of their endeavours, even when the actions or rhetoric of nationalist elites threatened the integrity of BiH, or had the potential to reverse the previous state-building and democracy-building reforms.

Another important factor in applying conditionality is the use of explicit and clear rewards, which in some examples in BiH was the case, but the criteria were not linked to conditionality reliably, i.e. the EU retained its flexible, pragmatic approach in order to be able to make compromises if necessary. Not only has that approach not worked, but it has in fact weakened the EU's legitimacy and consistency. Without recognising that strong motivations of nationalist elites to integrate were absent, the EU was not able to develop the logic of appropriateness and remained limited to the logic of consequence. In that respect, BiH was looked at through the same lens as other aspirant countries before it, and the same tools and instruments are applied to its accession as to other non-post-conflict and better integrated states. A 'cookie-cutter approach' thus applied did not take into account the potency of counter-norms and counter-narratives, which undermine motivations to integrate into the EU.

To conclude, by adopting a 'cookie-cutter approach', the EU neglects the underlying social, historical and cultural context, which is in the case of BiH very restrictive and limits the EU normative power. I have labelled democracy in BiH as 'eclectically unconsolidated' due to

the fact that it contains many features of the four types of unsuccessful democratisations discussed in Chapter III. Those features are not necessarily mutually related, they are unpredictable in terms of their scale and presence during democratisation, without any causality or consistency. Moreover, democracy in BiH can be described as “defective” (Merkel, 2004) due to the potency of the internal institutional, political and ethnic divisions to prevail over the external efforts to embed democratic norms. The restrictive context, the nationalist elites who act as ‘gatekeepers’ to democracy, and the EU weakened legitimacy in BiH, were all reasons that got in the way of the EU’s ‘cookie-cutter approach’. The fact that the EU has been unable to recognise the destructive effects of those factors only shows how poorly the EU is embedded in the local context in BiH, and that it continues to lack understanding of the core problems in BiH. The EU’s ‘new approach’ is new only in the sense of a different focus and more flexibility, but in terms of the instruments, actors, and results, it is still the same old ‘cookie-cutter approach’.

Future Research

A comparative analysis of the rhetoric of individual parties over several election cycles, and its reflection on the country's progress in the EU accession and intensity of democratic consolidation, would provide evidence about trends which the rhetoric has produced over a prolonged period of time and its effects on the EU accession process of BiH. Discourse analysis of the rhetoric of other parties applied in a similar way as in the case of the election campaign of SNSD, would provide a variety of perspectives on the country's future progress in European integration and democratisation.

It would be interesting to apply the research model which I have used to assess two dimensions of democratic quality onto other dimensions related to the EU core norms, such as human rights, rule of law, etc., particularly to define the nature of subversions of democracy in those areas and to acquire a broader picture about the role of the EU as a normative power. In a similar fashion, the framework of analysis which I have designed for the purpose of this thesis could be applied in any other context of unconsolidated democracies in order to identify procedural and substantive subversions, and to evaluate the process of norm transformation. It would be particularly interesting to apply this model to media and civil society organisations in order to see how they are impacted by EU normative power, and whether democratic norms travel farther when diffused outside the political society.

I would be personally interested to more deeply explore the notion that the self-perception of the EU as a normative power substantively impacts the process of norm promotion. I am also curious about the wider aspects of the quality of democracy in BiH, involving a wide range of factors and dimensions, the totality of which is under-researched.

I hope that my approach and findings widen theoretical debates about the EU normative power and the conceptual understanding of this subject, and that it inspires future interest in the subject areas, resulting in new and original academic works.

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