Soeren Keil

Multinational Federalism in Bosnia and Herzegovina

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Multinational Federalism is deserving and receiving more attention in recent years: after the volume by Michael Burgess and John Pinder (Multinational Federations, Taylor & Francis) in 2007, further important books have been published on the topic in 2012 (Karl Kössler, Multinationaler Föderalismus in Theorie und Praxis. Kompetenz- und verfassungsrechtliche Aspekte der territorialen Self-Rule in Kanada, Belgien und Spanien, Baden-Baden: Nomos, 2012, and Michel Seymour and Alain-G. Gagnon (eds.), Multinational Federalism, Problems and Prospects. Comparative Territorial Politics, Palgrave Macmillan, 2012).

Soeren Keil's profound study of the case of Bosnia and Herzegovina originates from the interest in federalism and the use of this principle as a tool for conflict-management. In fact, in the Bosnian context, federalism has rather been an instrument for stabilisation than an end in itself. Therefore, the author rightly identifies Bosnia and Herzegovina as "one case in a wide range of new federal models in the post-Cold War era" (p. 3). In fact, due to its extraordinary complexity, Bosnia and Herzegovina can certainly be considered as a paradigmatic case for the greater regional context of the Western Balkans. And a thorough analysis of the Bosnian case is of even wider interest considering a number of new federal systems in other parts of the world, such as Ethiopia, Nepal, Iraq, which all have also been established after a conflict in order to stabilise the respective states and to accommodate diversity of the respective populations. In all these cases the important question is how, after a conflict, the living-together of different groups can be organized and guaranteed within the same territory and whether federalism can be a means to do so while at the same time preserving the unity of state (which is often contested)? Thus, the main aims of the study are to understand the Bosnian case, in particular its federal structure and political system, and its wider implications thus contributing to further clarification of the theoretical concept of multinational federalism.

The book's structure is clear and functional: After a brief introduction with the definitions of key terms related to democracy, (various concepts of) federalism and nationalism, the analysis starts with a theoretical chapter (chapter 2). In search of a clear definition of the term "multinational federalism", which is "both, descriptive and contested", the concepts of Liberal Nationalism and Consociationalism are analysed. Within a democratic framework, both concepts address the multinational nature of a state; the same is true – in a territorial dimension – for (multinational) federalism. Three "core problems of multinational federations", citizenship, secession and asymmetry, are discussed at the end of the chapter.

The continued importance of historical elements for the Bosnian federal system is the focus of the analysis in the third chapter. The intent is to understand the country's federal tradition as well as the origins of a number of elements of its federal system. This is not an easy enterprise as Bosnia and Herzegovina has neither been itself a federal system until 1995, nor has it been a state. In fact, for most parts of its history, the country used to be a (more or less) autonomous entity within larger state systems (Ottoman Empire, Austro-Hungarian Empire, two Yugoslavias). However, the continuity in some important elements of territorial decentralisation as well as autonomy and power-sharing features based on ethnic/national/religious diversity (most notably the Ottoman Millet system) justify reading Bosnian history in terms of arrangements coming close to federal and multinational experiences. Despite these precedents, the current federal organisation of the country clearly is the result of the International Community's constitutional engineering in order to end the Bosnian war. These have introduced new features and added, as is well known, complexity and contradictions.

"The Bosnian Federation" is analysed in its structural elements in the fourth chapter, highlighting the absence of a fundamental compromise or consensus on the state. The federal system established by the Dayton Peace Agreement in 1995 in order to save the integrity of the Bosnian state as well as later changes are not based upon voluntary decision, but imposed by the International Community and its High Representative. The absence of a federal compact or common vision of the state contrasts with traditional "coming-together" (Switzerland, USA, or Germany) or more recent "holding-together" federations (such as Belgium). The country has

therefore been generally considered a model of "imposed federalism" and an internationally administered federation. While this makes it difficult to conceptualise the federal system, it has increasingly raised uncomfortable questions as to the legitimacy of continuous international intervention, e.g. imposed legislation, which interferes with the democratisation process. While imposition by external actors is a constant feature in Bosnian history, it is neither compatible with the current process of democratisation nor with the future objective of becoming a Member State of the European Union. The process character of the country's on-going transition is highlighted in the analysis of different policy areas which illustrate the dynamics of a parallel process: transformation from a "confederal-like" arrangement into a multinational federal system through a series of changes mainly induced by the High Representative and the Constitutional Court and the democratisation process with its complex interaction between external actors and the ruling elites organised in political parties mostly reflecting national cleavages. This web of complex relations is illustrated in a clear and comprehensive manner, and disentangled.

Nearly 20 years after the war, all external actors have reduced their direct engagement (including the High Representative). At the same time, the need for "correcting" the initial compromise is increasingly emphasized: imposed decisions have to be reduced (Venice Commission 2005) and liberal values and principles respected, especially the right of "Others" guaranteed by the European Convention of Human Rights (European Court of Human Rights 2009, Sejdic-Finci-case). Constitutional reforms are considered as necessary, sometimes even as a panacea. They would mark the beginning of the end of the country's transition, as reforming the Constitution would mean taking over general "ownership" of its transformation process. Currently, Bosnia and Herzegovina seems stuck in its transition process. The annual reports of the EU Commission might be entitled "No-Progress Reports" and in its latest report the International Crisis Group (ICG) states: "There is no consensus on where to start, but Bosnia may have to break from its political system based on constituent peoples and their rights."[1] The fundamental problem (on which all agree) is exactly the missing consensus among Bosnian politicians regarding the reform process and, more widely, regarding a common vision of the state. The analysis of different policy areas in Keil's book helps to identify the

1 Crisis Group, Bosnia's Future, Europe Report N°232, 10 July 2014 [http://www.crisisgroup.org].

respective positions and objectives and to illustrate and clarify the impact of national differences on federal debates.

Both power sharing and federalism require a constructive attitude to make things work. The Bosnian case illustrates the consequences of a lack of consensus between elites which are supposed to cooperate, but also that a substitution by external intervention and guarantee is possible, at least for a short time.

With its profound analysis of federalism Soeren Keil's book adds a valuable contribution to the already rich literature on Bosnia and Herzegovina. The book is characterized by impressive depth of analysis, a convincing, functional structure, and clarity of presentation and argumentation. By linking federal theory to the debate on democratisation, conflict-resolution and post-conflict management, the volume sheds light on the lesser explored concept of multinational federalism, also beyond the examined case of Bosnia and Herzegovina.

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