



**International multi-ethnic state-building through  
power-sharing arrangements: a comparative study of  
Kosovo and Macedonia**

by

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## *Dedication*

*This thesis aims to contribute for peace and love.*

*I dedicate this thesis to my beloved parents, Remza and Arni, to whom I will be grateful all my life. They taught me to believe in three important things in life:*

*Democracy - since I was four years old, through a family voting process deciding where should we spend the weekends.*

*Peace - to listen to each other even if we think differently.*

*Love - the strongest force in this life.*

## Acknowledgements

This work has been a journey in the past, in the present, always looking forward to a better future.

This difficult journey could not have been possible without inspiration, persistence, determination, trust and help. Therefore, I wish to express my most grateful sentiments to the persons who have helped me in this journey.

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I am so lucky to have you in my life.

I love you!

## Abstract

After the Cold War, international state-building has taken place in several countries as a response to ethnic conflicts. The dissolution of Yugoslavia was also characterized with ethnic conflicts, which ended after international interventions. The inter-ethnic violence destabilized the nexus between eponymous states, nationalizing states, and the minorities living in the latter. The international actors - primarily the EU and the US - involved in state-building saw consociational power-sharing arrangements as a key feature in multi-ethnic state-building processes, notably in post-war Bosnia, Kosovo, and Macedonia.

Using Smith's quadratic nexus and Germane's "fifth element" as a theoretical framework, this thesis examines one segment of the nexus - the correlation of international relational field and national minorities relational field – in a 'top down' approach. Two central questions are asked: how have international actors influenced power-sharing arrangements in reaction to separatism; and how has the interplay between different ethnic groups from the same ethnic minority living in the same state affected power-sharing arrangements? These questions are addressed by engaging in a comparative case analysis of two ethnically divided states, namely Kosovo and Macedonia, having adopted consociational power-sharing arrangements under the international influence. The work in this thesis examines the international influence on power-sharing arrangements in reaction to separatism through three processes: international mediations, implementation of power-sharing arrangements into the constitutions and the functionality of power-sharing systems in practice.

The thesis revolves around these central arguments: the role of international actors in reaction to separatism and the degree of local ownership in the drafting and constitutionalisation of power-sharing arrangements is reflected in asymmetric power-

sharing arrangements between the two compared cases and on the functionality of the power-sharing systems; and, relationship between different groups of minorities from the same ethnicity living in the same state - “the sixth element” - has an impact on the functionality of power-sharing systems, giving rise to “the sixth element” as a new relational field within the quadratic nexus, proposed in this thesis.

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## List of Acronyms

AAK	Aleanca per Ardhmerine e Kosoves / Alliance for the Future of Kosovo
ASZ	Air Safety Zone
ASH	Aleanca per Shqiptaret / Alliance for Albanians
BDI	Bashkimi Demokratik per Integrim / Democratic Union for Integration
BiH	Bosnia and Herzegovina
CPS	Ahtisaari's Plan - Comprehensive Proposal for the Kosovo Status Settlement
EU	European Union
EOM	European Union Election Observation Mission
EULEX	European Union Rule of Law Mission in Kosovo
GSZ	Ground Safety Zone
ICJ	International Court of Justice
ICO	International Civilian Office (Kosovo)
LDK	Lidhja Demokratike e Kosoves / Democratic League of Kosovo
LS	Lista Srpska / Serbian List
NATO	North Atlantic Treaty Organization
OFA	Ohrid Agreement or Ohrid Framework Agreement
OSCE	Organization for Security and Co-operation in Europe

PDK	Partia Demokratike e Kosoves /Democratic Party of Kosovo
PDSH	Partia Demokratike Shqiptare / Democratic Party of Albanians
SDSM	Socijaldemokratiski Sojuz na Makedonija / Social Democratic Union of Macedonia
SLS	Samostalna Liberana Stranka / Independent Liberal Party
SRSG	Special Representative of Secretary General
UN	United Nations
UNMIK	United Nations Mission in Kosovo
USA	United States of America
USAID	United States Agency for International Development
	Vnatrešna Makedonska Revolucionerna Organizacija / Internal Macedonian
VMRO	Revolutionary Organization
VV	Levizja Vetvendosje / Self-Determination Movement
WB	Western Balkans



# Chapter 1.

## Introduction

Since the end of the Cold War the study of state-building has been experiencing a 'renaissance' in the academic debate. As an inter-disciplinary topic, state-building has drawn attention from different disciplines such as: political sciences, law, international relations, economics, anthropology, security studies and history. In literature, the concept of state-building is typically used interchangeably with nation-building or peace-building to describe the same activity, that of state-building. The tendency to associate state-building with nation-building has emerged under the influence of Bush's administration for the interventions in Iraq and Afghanistan in 2003 and 2001 respectively, to describe the state-building activities, under the term nation-building (Scott, 2007).

Despite the similarities, the concept of state-building should be distinguished from nation-building. While state-building focuses on activities to build an effective, legitimate and sustainable governing system within certain borders, nation-building focuses on the component of 'ethnic identity', which may have a broader aspect than the existing borders of a society. Marko summarizes the relationship of the concepts of 'state' and 'nation' in the European history, by two 'ideal types': "the 'French' model of a 'state-nation' based on 'cultural indifference' and the 'German' model of the 'nation-state' by constructing 'ethnic difference' and ascribing political and legal significance to it" (Marko, 2011, p. 236).

In contrast to state-building and nation-building, less attention has been given to multi-ethnic state-building. While state-building and nation-building contain a dose of

homogeneity, being a process driven typically by a single ethnic group, the multi-ethnic state<sup>1</sup> has two or more ethnic groups as stakeholders within the state. Consequently, the academic debate on multi-ethnic state-building is still in its embryonic phase. The concept of multi-ethnic state-building became pertinent at the beginning of 1990s, with the dissolution of Yugoslavia, where multi-ethnic states have emerged and became subject of research. By contrast with former Yugoslav republics such as Slovenia and Croatia that went through an *endogenous* process of state-building after independence, the other Republics such as Bosnia and Herzegovina, Kosovo<sup>2</sup> and Macedonia<sup>3</sup> have emerged as independent States with their multi-ethnic character enshrined in their constitutions, after conflict and the engagement of international actors in the state-building process. This process was characterized by an *exogenous* multi-ethnic state-building influenced and determined by international actors that have used power-sharing arrangements as the main tool for conflict management between the conflicting ethnic groups. As such, power-sharing provisions have been incorporated into the constitutions of the countries, establishing the constitutional multi-ethnic core.

The literature on power-sharing arrangements is broad. There is an ongoing academic debate between the two principal forms of power-sharing: consociationalism and centripetalism. Consociationalism, mainly advocated by Arend Lijphart (Lijphart,

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<sup>1</sup> See Chapter 2 for more information on multi-ethnic states, compared to multi-national states.

<sup>2</sup> This thesis refers to Kosovo as a state following the point of view of most western democratic states which recognize Kosovo as an independent state and in accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010, p.403. Kosovo is referred as “an unfinished state” (Woelk, 2013) since it is not a Member State in the United Nations and is not recognized by all UN Member States. Being aware that the constitutional name of Kosovo after its independence is Republic of Kosovo, for the purpose of simplicity the term Kosovo is used in this study. See section 1.4 on the terminology.

<sup>3</sup> Being aware that after constitutional changes in 2019, the constitutional name of Macedonia is North Macedonia, the term Macedonia is used in order not to confuse the reader, since the study covers a period before and after Constitutional changes of 2019. See section 1.4 on the terminology.

1977; Lijphart, 1977b; Lijphart, 2008), John McGarry and Brendan O'Leary (McGarry & O'Leary, 2004; McGarry & Brendan, 2006; McGarry & O'Leary, 2008; McGarry & O'Leary, 2016) relies on inclusive governing institutions, while centripetalism mainly advocated by Donald L. Horowitz (Horowitz, 2000; Horowitz, 2004; Horowitz, 2014) and Benjamin Reilly (Reilly, 2001; Reilly, 2002; Reilly, 2007; Reilly, 2018) focuses on governing models involving electoral rules which intend to appeal voters across ethnic groups.

McCulloch reminds us of three crucial questions which have to be answered when power-sharing arrangements are analysed: how power-sharing measures are adopted, how are they implemented, and how they bring political stability if so. This is because “how power-sharing is institutionalized has important consequences for the pursuit of political stability” (McCulloch, 2014, p. 1). As McCulloch suggests “power-sharing is difficult to love” (Heinrich Boell Foundation, 2020). Nevertheless, power-sharing arrangements remain a solution to ethnic conflicts, including in the compared cases of this study, Kosovo and Macedonia. Both countries share a similar history within the jurisdiction of Yugoslavia. Nevertheless, the constitutionalized power-sharing system have taken place in differently created realities: in Kosovo becoming an independent state and in Macedonia within the existing borders. International actors involved in Kosovo's and Macedonia's state-building have seen consociational power-sharing systems as solutions to ethnic conflicts, but these solutions have been supported differently related to separatist demands of Kosovo Albanians and Albanians of Macedonia.

For a better understanding of the context of this study, the following sub chapter will be dedicated to a short historical perspective of both countries' ways towards statehood with the dissolution of Yugoslavia.



Some research addresses forms of consociational power-sharing which have been constitutionalized after the conflicts in these countries (Bieber, 2005; Bieber & Keil, 2009). Yet, there is no comparison of power-sharing arrangements in Kosovo and Macedonia in reaction to separatism, which answers three crucial questions at the same time: how power-sharing arrangements are adopted, how are they institutionalized and how they affect the functionality of the institutions.

Furthermore, there is a theoretical gap in the academic debate which suggests solutions to enhance the functionality of power-sharing arrangements. Beside McCulloch's three crucial the questions on power-sharing arrangements, in cases when power-sharing arrangements in multi-ethnic states fail to function, it is crucial to raise the question: 'How to improve and make power-sharing work?'. This work seeks to provide a potential solution to this issue.

There is no comparison of international actors' influence on post-conflict power-sharing arrangements in terms of a territorially contested country (Kosovo) and territorially non contested country (Macedonia). The academic debate suggests that there is a theoretical gap in the study of international multi-ethnic state-building through consociational power-sharing arrangements in territorially contested countries. As constitutionalized consociational power-sharing arrangements rely on formal rules, the literature has little understanding on 'behind closed doors' or informal power-sharing arrangements functionality and the role of international actors within. Another gap in the literature of consociational power-sharing is a more detailed analysis of 'national minorities' aspect where the 'intra-ethnic relations' are ignored. This study therefore attempts to fill this gap by comparing the cases of Kosovo and Macedonia.

In addressing the aforementioned gap, this work uses Smith's quadratic nexus (Smith, 2002) as a theoretical framework. Quadratic nexus is a critical response to Brubaker's "triadic nexus". Brubaker has discussed the minority/majority relations and the state/nation relations in the post-Communist states in the Western Balkans suggesting the existence of an interplay between the nationalizing state, eponymous state and the national minorities living in the former. Quadratic nexus posits that there is another relational field - the international organisations - in this interplay. This work supports Smith's argument on the relevance of 'the international organisations' in the nexus. Nevertheless, it goes further, criticizing the concept of 'international organisations' suggesting that a broader concept should be used instead, 'the international actors'.

Brubaker and Smith did not engage in the debate of the triadic nexus and the quadratic nexus, as they say, in the context of nationalism and nation-state debate but with the "actually existing nationalism of a particular – and particularly volatile - region" (Brubaker, 1996, p. 3). Their work does not assess interdependence of relational fields in the power-sharing systems established in independent states after the dissolution of Yugoslavia. This work aims to do what Smith has not assessed, applying the quadratic nexus in the context of power-sharing systems of the compared cases of this work: Kosovo and Macedonia. The quadratic nexus interplay between the eponymous state, the nationalizing state, the nationalities living in the latter and the international actors is evident in both countries. The multi-ethnic state-building of Kosovo is a product of accommodation of the interdependence between international actors involved in the state-building, Kosovo, Serbia and national minorities living in Kosovo. The case of Macedonia reflects a specific interdependence between the international actors involved in the state-building, Macedonia, national minorities living in Macedonia and two eponymous countries, Albania and Kosovo. The interdisciplinary approach will complement the assessment of power-

sharing provisions with political behavior. The legal aspect assesses what formal power-sharing arrangements have been constitutionalized and the political aspect responds to the question: how are they applied in practice by the political class in power.

Quadratic nexus was further extended by Germane (Germane, 2013) that proposed “the fifth element” - an additional relational field in the nexus - capturing ‘the relations between minorities of different ethnic groups’ living in the nationalizing state. “The fifth element” is relevant to this study since in both compared cases (i.e. Kosovo and Macedonia), as ethnic minorities play an important role due to the constitutionalized power-sharing systems. The quadratic nexus framework is complex; therefore, many researchers do not examine all the relational fields at once. This study is no exception. It focuses within the segment of ‘international’ relational field and the ‘national minorities’ field. Other relational fields will be touched upon in the function of explanation of the segment ‘international – national minorities’. The theory this thesis posits that there is another relational field in the nexus – the relations between ethnic minorities of the same ethnicity from different groups living in the same state - “the sixth element”, which might affect the functionality of power-sharing arrangements. The summarized theory is shown graphically as follows:

# Quadratic nexus – revisited

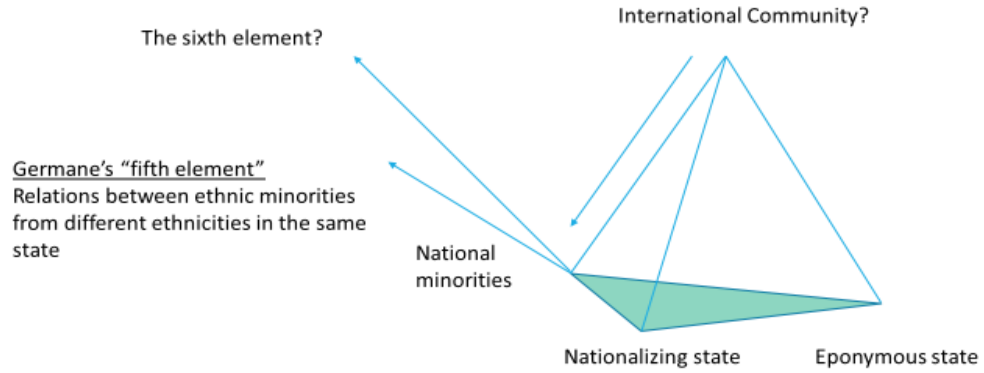


Figure 1 Quadratic Nexus revisited.

## Quadratic Nexus Revised

- 4.a. Germane’s “fifth element”  
Inter-ethnic minority relations between different groups in the same state
- 4.b. “The sixth element”  
Intra-ethnic minority relations between different groups in the same state

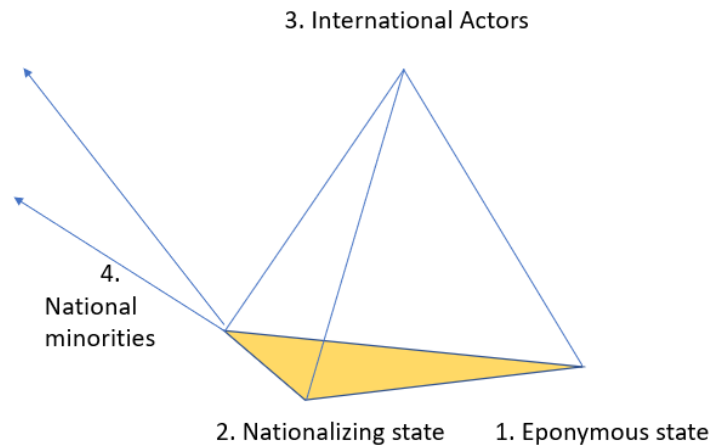


Figure 2. Quadratic nexus revised.

## **1.1. A short historical perspective of Kosovo's and Macedonia's way towards statehood with the dissolution of Yugoslavia**

Kosovo and Macedonia share a common history within the Federation of Yugoslavia and a similar inter-ethnic violence. Both countries share a history of the ethnic power-sharing system of the 1974 Yugoslavian Constitution following the principle of *equal collective representation*. The power-sharing of Federation of Yugoslavia was reflected in the bicameral federal parliament and in the presidency. The federal parliament was composed of the House of Republics and Provinces, where each republic was represented by twelve deputies and the lower chamber 'the Federal Parliament', where each republic was represented by thirty deputies<sup>4</sup>. The power-sharing system in the Yugoslav presidency was regulated with the representation of one representative from each republic and autonomous province in Yugoslavia in the presidency<sup>5</sup>. The Constitutions of 1974 for Kosovo<sup>6</sup> and Macedonia<sup>7</sup> were promulgated in conformity with the SFR Yugoslav Constitution of 1974. Nevertheless, the paths to multi-ethnic states after the conflicts have followed different directions, reflecting the complexity of Kosovo's case over Macedonia's case.

In post-conflict Kosovo, the multi-ethnic state-building process from the legal point of view is closely connected with attempts to resolve its final status. Visoka (Visoka, 2018)

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<sup>4</sup> Article 291 and 292 of the Constitution of Socialist Federal Republic of Yugoslavia of 1974

<sup>5</sup> Article 321 of the Constitution of Socialist Federal Republic of Yugoslavia of 1974.

<sup>6</sup> See the Constitution of Socialist Autonomous Province of Kosovo 'Official Gazette of SAPK, no.4, 27 February 1974

<sup>7</sup> See the Constitution of Socialist Republic of Macedonia 'Official Gazette of SRM, no.7, 25 February 1974

categorizes the crafting of statehood in Kosovo in three phases: The first phase between 1990 and 1999, when Kosovo parallel structures started the detachment from the Serbian-dominated Yugoslav structures as means of peaceful resistance ending with violent conflict and international intervention. The second phase between 1999 and 2008, which begins with the NATO intervention and is characterized by the presence of UN transitional administration (UNMIK) and other international actors involved in the state-building process preparing the grounds for its statehood. The third phase starts from the 17 February 2008 with Kosovo's declaration of independence, in accordance with the US and other Western countries.

From the legal point of view the process of statehood in Kosovo had already started back in 1974 when a wider status of autonomy had been enacted in the Kosovo's Constitution (1974)<sup>8</sup>. The calls for independence date back before the adopted SAPK Constitution of 1974. As argued by one of the former leaders of Kosovo, Mahmut Bakalli (Marsi i Thyer , 2006) during his meeting with the President of Yugoslavia Josip Broz Tito before the adoption of the Constitution of 1974, he was asked by Tito whether he was satisfied with the discussions being held regarding constitutional changes. His response was that the aspirations of Kosovo people were for an independent state. When Tito asked why Kosovars needed an independent state, Bakalli replied that Kosovo Albanians are different from Serbs, thus needed to govern their own economic matters, culture, police, education and foreign affairs independently. Tito advised him to represent all these requests to the Commission, but he affirmed that he did not support the idea of an Independent Kosovo because that would bring troubles with Serb chauvinism.

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<sup>8</sup> See the Constitution of Socialist Autonomous Province of Kosovo 'Official Gazette of SAPK, no.4, 27 February 1974

The adoption of the Constitution of Yugoslavia (1974) was followed by the adoption of the Constitution of Socialist Autonomous Province of Kosovo. As predicted by Tito, the Constitution did not endorse Kosovo as a Republic, but it did grant other important prerogatives of a state and competences within the Federation as explained above, transforming Serbia in a kind of federal system inside a federation (Yugoslavia). Kosovo's autonomous status within SFRY (ex-Yugoslavia) was abolished in 1989, sparking unrest among Kosovo Albanians. On 2 July 1990, 114 out of 180 Kosovo delegates of the Kosovo Assembly declared Kosovo's independence and on 7 September 1990 the disbanded Assembly of Kosovo promulgated the Constitution of the Republic of Kosovo, known as Kacanik's Constitution. The declaration of Kosovo's independence (1990) and Kacanik's Constitution were held and adopted in a democratic way, but they were ignored by the international community, due to their engagement in preventing the war in Bosnia and Herzegovina and stopping the war in Croatia. These acts were occurred as a "reaction to the abolition of the territorial autonomy and the establishment of an unconstitutional regime of discrimination and violent suppression of Albanian speaking citizens by Serb state authorities – so that authorities could no longer be qualified as "representative government" in the legal terms of the Friendly Relations Declaration of the UN" (Marko, 2008, p. 440).

Furthermore, the 90'ties were characterised with local organisation of parallel structures of Kosovo Albanians and the increase of Serbian repression, which had ended with international attempts to find a solution on Kosovo's issue. As early as 1992 the US had warned with the intervention should the FRY military uses the force in Kosovo, and when the hostilities increased, the US with the involvement of Contact Group started shuttle diplomacy guided by the US special envoys Christopher R. Hill and Jim O'Brian, which led to a dead end (Weller, 1999, p. 11). Nevertheless, the end of the 90-ties marks

the intensification of international attempts on finding a solution to Kosovo and the beginning of considerations for a power-sharing multiethnic system in Kosovo. A fully-fledged power-sharing system was introduced during the Rambouillet Conference in the Interim Agreement for Peace and Self Government (Rambouillet Accords). The failure of signing the Rambouillet Accords (UN, 1999) led to NATO bombing and the approval of UN Resolution UN SC Res 1244 (1999) on 10 June 1999 (UN, 1999), authorizing the deployment of United Nations Mission in Kosovo (UNMIK), as an interim civilian administration until the definition of Kosovo's final status. Under the authority of Special Representative of Secretary General (SRSG) the 'Constitutional Framework for Provisional Self-Government' (Reg.2001/9, 2001) came into force creating Interim Self-Governing Institutions under strict supervision of UNMIK and SRSG. The Constitutional Framework involved a power-sharing system; however, the document itself had no local ownership, as the comments from local members of the drafting commission have not been taken into consideration leading to their resignation at the end of the process (Reka, 2019). As a temporary document until the final status was resolved, which did not come from an international mediation process, the Constitutional Framework is not subject to this study. On the contrary, the Comprehensive Proposal for the Kosovo Status Settlement (Ahtisaari's Plan), which came as final solution to Kosovo's status in the Vienna negotiations, is the focus of this study.

The complexity of Kosovo's case towards statehood with the dissolution of Yugoslavia was not followed in Macedonia's path. Similar to the SAP Kosovo Constitution (1974), the constitutional design of the Constitution of the Socialist Republic of Macedonia (1974)<sup>9</sup> was a reflection of the SFR Yugoslav Constitution of 1974. The approval of

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<sup>9</sup> See the Constitution of Socialist Republic of Macedonia 'Official Gazette of SRM, no.7, 25 February 1974



constitutional amendments to the SRM Constitution (1974) in 1990, led to substantial changes on the political system moving from a socialist a democratic system. Following the first democratic elections, the parliament adopted the Declaration of Sovereignty of the Socialist Republic of Macedonia referring to Article 1 of the 1966 International Covenant of Political and Civic Rights, which was approved in a referendum held on September 1991 and verified in a declaration on verification of the referendum results by Macedonia's Assembly. These events traced the path for the new Constitution to be adopted in November 1991. Macedonia's new Constitution had sparked protest among Albanians of Macedonia claiming that their rights were truncated when compared with the SRM Constitution of 1974. A referendum on autonomy organized by Albanians in 1992 (Ackermann, 1996) was not recognized as valid by the Macedonian government, resulting in ethnic unrest. The Kosovo conflict in 1999 sparked concerns of the Macedonian government over the arms smuggling in Macedonia-Kosovo border and over the stability of Macedonia in general. The situation culminated in 2001 when ethnic Albanian insurgents began attacks on Macedonian authorities, mainly in the areas inhabited by the majority of Albanians. Following the international mediation in Ohrid, the main political parties reached an agreement guaranteed by international actors, on implementation of a power-sharing system, subject of this research. This internationally brokered compromise proposed a series of constitutional reforms designed to reduce power asymmetries between the Macedonian majority and the Albanian minority. In exchange for these concessions, the Agreement reasserted territorial integrity, state unity and the sovereignty of the Republic of Macedonia.

## 1.2. Research problem and objectives

This work is focused on the specific role of international actors in power-sharing arrangements originated from multi-ethnic state-building frameworks, through a comparison between two countries in which the separatist demands have been accommodated differently. The number of cases which employ a power-sharing system is very large and diverse in terms of the modality employed: consociationalism or centripetalism. While the academic debate between consociationalism and centripetalism continues, two main arguments have advanced: centripetalism is difficult to adapt and even if adopted it tends to reinforce instability, in contrast to consociationalism which is more likely to promote stability in deeply divided societies (McCulloch, 2014). Bieber considers the debate between consociationalism and centripetalism “old and by now stale” which needs to move forward (Bieber, 2019). This is one of the reasons, this research focuses on consociational power-sharing, moving the debate forward in a new approach. This research does not aim to find a universal solution to consociational power-sharing systems as it would not be feasible. The academic debate has a long way to go in this direction. Rather the focus is on consociationalism as solution after the conflict between ethnic groups and its post-conflict functionality. Since “the tension between consociationalism as a short-term solution to civil war and a long-term problem for political and social integration” (Bogaards, 2017) continues, authors agree that the search for a “biodegradable consociationalism”<sup>10</sup> should continue (Bogaards, 2017; Bieber, 2019). This research aims to contribute to this direction, by proposing a new relational field in the

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<sup>10</sup> Bieber points out that the idea power-sharing system will outlive in time is naïve stressing out the need of thinking other solution to it.

quadratic nexus, which might affect the power-sharing system's functionality and could be a key to "biodegradability" of consociational power-sharing system.

Power-sharing arrangements and their relationship with international state-building fall within the perimeter of this research. The focus lies on challenges and opportunities of international multi-ethnic state-building through power-sharing in the post-conflict periods. However, it should be specified that even several years after the end of the conflict, both, Kosovo and Macedonia, remain affected by the consequences of the conflicts. Western Balkans regional conflicts from the past suggest a kind of conflict interdependence between today's formally independent states. The post-conflict ethnic constellations and their interdependence with their eponymous states, after the dissolution of Yugoslavia, may prolong this interdependence in the future as well<sup>11</sup>. In this regard, Smith (Smith, 2002) and Germane (Germane, 2013) shed light on the model of interdependence between nationalizing state – national minorities - external homelands – international organisations. This research seeks to further develop the interdependence model by examining a specific segment of interdependence: between international organisations and national minorities. The other segments of the quadratic nexus – the nationalizing state and the eponymous state – are also taken into consideration, but they are not examined in detail. Examining all relational fields of the nexus has been avoided by many scholars due to its complexity. In a study, such as this thesis which engages a 'top-down' approach<sup>12</sup>, focusing on the relevant segment of the quadratic nexus to this study - international relational field in relation to national minorities – increases the focus for a

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<sup>11</sup> Bosnia and Herzegovina is the most notable example of the interdependence between national groups living in it, such as Croats of BiH with Croatia and Serbs of Republika Srpska with Serbia

better answer to the research questions. This work rather seeks to explore whether the concept of international organisations in the quadratic nexus should receive more attention and have a broader meaning. It will examine an additional relational field, which I call “the sixth element” and its accommodation within the “national minorities” field. This will be done by investigating the role of international mediated processes in multi-ethnic state-building, the constitutionalisation and the functionality of power-sharing arrangements. By looking into power-sharing arrangements of peace settlements, which have served as multi-ethnic state-building frameworks, the research examines the nexus between the international actors involved in international mediation and the outcome in terms of accommodating separatism through power-sharing provisions which affect the inclusion of ethnic minorities living in the nationalizing state. Further, by comparing power-sharing provisions in multi-ethnic state-building frameworks and the process of their incorporation in the constitutions of the compared cases, the research examines how power-sharing arrangements have been implemented at constitutional level and which role international actors have played in the process. To this extent, constitutional power-sharing arrangements and their impact on the institutional stability and functionality of Kosovo and Macedonia are analysed and compared.

The overall aim is to contribute to the study of international state-building, in which Kosovo and Macedonia could be seen as important testing grounds of power-sharing systems that proceed with two processes at the same time: building states and multi-ethnicity through power-sharing provisions, in reaction to separatism. It is important to emphasize that the focus of this study is not separatism as a phenomenon. Would it be like that, the study would have required an assessment from 1913 when parts of territories subject of this thesis were left outside their eponymous state. Kosovo is often studied as a case study to address separatism and it is considered as special case (Zellweger, 2015).

Nevertheless, the focus is the role of international actor in reaction to separatism in the internationally brokered power-sharing arrangements of the compared cases, which are in the center of this study. Which lessons can be learnt regarding the role of international actors involved in this process?

It should be noted that the research does not aim to analyze the role of all international actors involved in post conflict state-building processes, to find an answer whether they have been successful in multi-ethnic state-building. By contrast, the focus is on international actors which have influenced power-sharing systems and designed them during international mediations, which were afterwards constitutionalized under the international influence.

The objectives of this research give responses to three aspects of the first research question with respect to the role of international actors in the power-sharing systems in reaction to separatism: i) the origin of power-sharing provisions; ii) their incorporation into the constitutions; iii) their impact on the institutional stability and functionality.

Furthermore, the third aspect leads to an additional research question. Following the quadratic nexus model, the second research question through analysis of the intra-ethnic relations investigates whether there is an additional element in the quadratic nexus which may affect power-sharing arrangements.

Therefore, the two principal research questions that this thesis will address are:

- How have international actors influenced power-sharing arrangements in Kosovo and Macedonia in reaction to separatism?

- How has the interplay between different groups from the same ethnic minority living in the same state, affected power-sharing arrangements in Kosovo and Macedonia?

First, this work seeks to investigate the role and impact of international mediation in the power-sharing provisions of multi-ethnic state-building frameworks, answering the first sub-research question:

- How has international mediation influenced power-sharing arrangements incorporated in the peace settlements in reaction to separatism?

It is important to emphasize that the research does not examine all the multi-ethnic state-building frameworks after conflicts. Rather, it focuses on the analysis of internationally mediated frameworks which were then incorporated into the constitutions of both countries.

Second, this work seeks to investigate i) the process of implementation of power-sharing provisions from multi-ethnic state-building frameworks into the constitutions of both countries; and ii) the degree of influence of international actors involved in the process. This leads to the second sub-research question:

- How have international actors influenced the process of constitutionalisation and the substance of power-sharing provisions in Kosovo and Macedonia in reaction to separatism?

The focus is analyzing and comparing only power-sharing provisions from multi-ethnic state-building frameworks and power-sharing provisions incorporated into the constitutions. This study does not aim to analyze the whole content of the constitutions,

rather only the aspects related to the specific multi-ethnic situation that were influenced by the international actors.<sup>13</sup>

Third, it seeks to analyze the constitutional power-sharing provisions in Kosovo and Macedonia, how they work in practice and their impact in the state functionality, institutional stability, and the role of international actors within. Therefore, the third sub-research question would be:

- How do the constitutional power-sharing arrangements affect the functionality and the institutional stability and the role of international actors within?

Fourth, this study aims to foster the academic debate finding if there is another relational field within the quadratic nexus through application of the nexus in power-sharing systems. In consociational democracies with power-sharing systems, the political parties and the coalitions among ethnic political parties are important for the stability of ethnically divided societies. Thus, power-sharing empirically requires plurality (Bieber, 2019, p. 3). As such, political parties and “well-structured democratic institutions allow conflicts to formulate, find expression and be managed in a sustainable way, via institutional outlets such as political parties and representative parliaments, rather than being suppressed or ignored” (Reilly, 2001, p. 5). However, political plurality is not necessarily reflected only within the biggest ethnic group, but also in other ethnic minorities living in the nationalising state. This political plurality reflects political aspirations of ethnic groups. Through analyses of different political parties belonging to the biggest

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<sup>13</sup> An example is Kosovo’s Constitution (2008), where some parts of the Constitution were incorporated under international influence (such as power-sharing provisions), but others were incorporated after an internal debate with the different social groups without the international influence (such as family and marriage provisions). See Chapter 4.

ethnic minorities, and their impact on the institutional functionality and stability, this work aims to investigate whether there is another relation field within Smith's quadratic nexus related to intra-ethnic interplay in the state.

For analytical purposes, a working definition of 'international actors' and 'power-sharing arrangements' will be provided. Smith uses the concept "international organizations" to describe the 'international' component within the quadratic nexus. Instead, the concept 'international actors' in this work is used to describe the 'international' influence, which has a broader meaning than "international organizations". The concept 'international actors' includes states and groups of states and international organizations having influenced the multi-ethnic state building processes in the compared cases. States such as the US, Great Britain, Germany and groups of states such as the Contact Group (composed of Germany, Italy, France, the Russian Federation, the UK and the United States); the international troika (European Union, Russia and the United States) proposed by German Foreign Minister - Steinmeier, on taking charge of the discussions on the final status of Kosovo, which later was composed of US, Russia, Germany (as the EU representative); the NATO Quint (the US, Great Britain, Germany, France and Italy) have had an important role together with international organizations involved.

Power-sharing arrangements are defined based on Lijphart's four characteristics of power-sharing in consociational democracy: the grand coalition government, the veto power, proportional representation, and cultural autonomy of ethnic minorities (Lijphart, 2008). The dependence of 'international' and 'national minorities' segment in the quadratic nexus is examined based on these four characteristics.



### 1.3. Methodology

One of the purposes of a constitutional comparative study (subject of the work in this thesis) is to understand a more functional perspective on constitutional institutions, and eventually find solutions which may improve the functionality of these institutions. This study uses contextualized functionalism as a research method, among different comparative constitutional methodological approaches that exist. Contextualized functionalism is considered an adequate method for a good comparative analysis in which a reconciliation between expressivism and functionalism is reached (Jackson, 2012, p. 72). Expressivism considers constitutions emerging out of each nation's distinctive history and express its distinctive character, while functionalism considers political institutions to have been designed to perform certain tasks revolving around the institutions whose task is to ensure stability in a political environment and to resolve conflicts between components of that system (Tushnet, 1999). The countries' expressive identities may be complex and shift over time considering the role of politics in reshaping constitutional law (Jackson, 2012). As such:

Contextualized functionalism requires a willingness to question whether functions, concepts, or doctrines that appear to be similar may in fact be quite different in different societies; an attention to how seemingly separate institutions or legal practices are connected to, and influenced by, others; and a commitment to be open to noticing how legal rules or doctrines may be affected by the identarian or expressivist aspects of the constitution (Jackson, 2012, p. 66).

The object of the comparison of this research is power-sharing provisions, which represent the 'core' of institutionalization of multi-ethnicity in Kosovo and Macedonia. The

research aims to study the origin of power-sharing provisions, how they are constitutionalized, how they work in practice and the influence of international actors regarding their adoption, design and functionality. The contextualization will involve the processes of international mediations by means of which multi-ethnic state-building power-sharing provisions in peace settlements and constitutions have taken form in reaction to separatist demands. This is a multidisciplinary study which intertwines the constitutional law and political behavior. The study is focused on a special region, the Western Balkans. Even though this study uses the same concepts on consociational power-sharing they may appear and be applied differently in Kosovo and Macedonia.

This work aims to contribute to the debate of multi-ethnic state-building using Smith's quadratic nexus. Smith criticizes Brubaker's approach of the dynamic interaction between the eponymous state, nationalizing state and national minorities and his claims that "the future displayed by Europe to the world looks distressingly like the past" and Europe is moving back to the nation-state (Brubaker, 1996, p. 2). The dissolution of Yugoslavia might have given that impression, but the international multi-ethnic state-building after the conflicts has proven that Smith's criticism towards Brubaker stands. Multi-ethnic state-building is gaining its momentum, especially in Europe. With the violent dissolution of Yugoslavia, new independent states have been created by former Yugoslav republics: Slovenia, Croatia, Bosnia and Herzegovina, Serbia, Montenegro, Macedonia and by a former autonomous province of Kosovo. International actors involved in state-building have seen multi-ethnicity as the main solution to ethnic conflicts in Bosnia and Herzegovina, Kosovo and Macedonia. Following the example "United in diversity", the European Union has promoted multi-ethnicity in line with the European history based on

overcoming the ideas of the 19th century on nation-states and preventing the ideas on ethnically clean states<sup>14</sup>.

Therefore, this work partially applies Smith's quadratic nexus in its methodology. Smith's quadratic nexus includes the correlation: eponymous state, nationalizing state, national minorities living in the nationalizing state and international organisations. This work assesses the correlation between international state-building and national-minorities living in the nationalizing state. The compared countries have been established as multi-ethnic states under the influence of international actors. Most likely both states would not have been established as multi-ethnic in the way power-sharing arrangements are institutionalized, due to separatist demands that have existed, but they were accommodated under the influence of international actors. For this reason, this study adopts a top-down approach. The top-down approach relies on higher authority figures to determine the power-sharing rules affecting lower levels of the society. The internationally brokered power-sharing arrangements have been influenced by the international actors in the elected representatives of the compared countries establishing multi-ethnic states. This corresponds with the segment of the quadratic nexus in focus of this study, international actors – national minorities.

The sources will be the postwar peace settlements which have served as multi-ethnic state-building frameworks, documents from the process of constitutionalisation of power-sharing provision from peace settlements, interviews with political actors and

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<sup>14</sup> See the declaration of the High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission, Federica Mogherini, on the 31.08.2019, emphasizing that EU does not support ethnically clean states. Retrieved on <http://www.mediatshqiptare.com/aktuale-lajme/74969/mogherini-be-nuk-mbeshtet-shtete-te-pastra-etnikisht/>

experts, scholarly articles, reports and commentaries, newspaper accounts, public statements by officials and former government employees and interviews to support interpretations based on printed sources. Since the topic of this research is current, direct observation is also used to cover the up to date events. Eventual gaps in the available material on this topic are partially addressed by examining the annual reports of civil society organizations and international organizations.

The interviews will be used as source material. Therefore, it is important to discuss their advantages and limitations. Interviewing is a supplementary source of this research which may help the researcher build a more complete overview on the political choices of the political elites. This project consists of a comparative study of power-sharing arrangements, which are legal solutions originating by political choices. Since the research consists on a top down approach<sup>15</sup>, a process of influence originating from the international actors into local political elites and affecting the societies, interviews will supplement this study in collecting behavioral data of the political elites involved in the processes of power-sharing building systems, to have a better understanding why political actors have taken relevant decisions subject to this study, and if there are other factors which have influenced their decision-making.

I have conducted 18 semi-structured interviews with top profile politicians in both countries. It is important to emphasize that some top profile politicians have had (and still have) different important posts and roles not just as politicians, but also as constitutional makers, negotiators and experts. Therefore, the same person was interviewed in different capacities. For example, the same person who was interviewed in Macedonia has been an expert negotiator at the Ohrid negotiations, a politician, a constitutional expert, and was

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<sup>15</sup> See the explanation of top down approach above.

seen as a 'nationalist' by ethnic minorities of the given country. Or the same interviewed person has held several important posts in both countries. For this reason, the balance between both countries and ethnicities is not necessarily represented by the number of the interviewed people based on the ethnicity.

I have included representatives relevant to the international mediation where possible. Unfortunately, the international mediator such as Albert Rohan no longer lives, Ahtisaari and Pardew were not available, but they have published their experience they had in the international mediations, explaining in details the processes, which I used as sources. I have also interviewed a politician who had connections with the Ahtisaari's Office. I have complemented this process with interviews with local actors who have been present in the international mediations in both countries, in the constitutionalisation of power-sharing arrangements and have held (and some still hold) important governing positions. For those ethnic minorities which it was not possible to interview in Kosovo, I used their recent interviews given recently to BIRN (Balkan Investigative Research Network) relevant to this study. Having access to local languages makes it possible to use the books and relevant published interviews. Since this study covers a recent period (how power-sharing works?) renders it necessary to make use the very recent events where no scientific published work exist but can be found in the local credible media. I have also spent four months doing a direct observation in both countries where I had the opportunity to discuss political views and concerns of ethnic minorities of the biggest groups.

The interviewing process consisted of semi-structured interviews with participants involved in power-sharing building systems subject of this study. Nevertheless, being familiar with the environment, the compared cases do not promise a sufficiently friendly environment for research interviews, especially when participants of the interviewing process are top political actors, some of which prefer to have 'political flexibility in their

opinions' and hesitate to sign written consent on the usage of the interviewing materials. As such this 'political culture' may become one of the limitations in the interviewing process.

Regarding the cultural aspect of the methodology, Legrand believes that in order to carry a legal comparison, a comparative researcher should be familiar with 'insides' of the compared legal system (Legrand, 1996). As an example, in order to compare the Constitution of Macedonia, the researcher must speak and read Macedonian and Albanian, live in the country for a while, and be familiar with the sentiments of the people. These requirements for comparative lawyers set by Legrand: familiarity with the language, the law and the social environment of more than two laws, have raised doubts among scholars, that consequently not many people would qualify as comparative lawyer, if it was strictly applied. Still, the objective of comparison aims to advance the knowledge not only from the legal point of view, but also explore beyond the words of legal materials and going deeper into the other aspects of the compared objects such as: political, economical, historical, sociological aspects (Vanderlinden, 2015). Hoecke suggests there is a risk involved if one is not familiar with the compared legal systems and legal cultures, at least to some extent, and when no information is available how they work in practice (Hoecke, 2015). Being familiar with the languages and cultures of both examined countries, could be considered an advantage in addressing the above-mentioned comparison criteria.

Through contextualized functionalist approach the constitutions and political choices will be analyzed considering cultural factors that may influence the constitutional and political choices. It is important to note that the two compared countries are inhabited by a significant percentage of Albanians. In both compared cases in the Albanian inhabited areas the trust in the infallibility of the US has reached the levels of religious dogma. The trust in the US has become a religious cult, which has turned into political conjuncture

(Surroi, 2020, p. 123). The recent political developments have proven this. Two Kosovo governments have fallen since the former prime ministers Haradinaj and Kurti have been accused as being against the previous US standings on border correction idea. Professor David L. Phillips pointed out “the US does not have many friends in the world, but we do not have better friends than Albanians” (Koha, 2017). Since power-sharing arrangements involve political choices, the political cultural aspect of political actors in their political choice should be taken into consideration. As such, the law and political culture should be analyzed interchangeably, where the law is not longer considered a static dimension, but a larger dimension which includes political actors and a wider context of the social environment. Legrand apprehends ‘culture’ dimension as “frameworks of intangibles within which ascertainable interpretive communities operate and which have normative force for these communities, even though not coherently and completely instantiated” (Legrand, 2006, p. 374). The ‘cultural’ dimension becomes relevant in this research considering that the structure of constitutional power-sharing arrangements came to be as a result of decision-making of political actors under the influence of international actors during international mediations. As such, the ‘political culture’ dimension allows to point power-sharing provisions not only in strict legal terms, but also in their deeper meaning which reveal why power-sharing provisions were created and accepted in the way they are constitutionalized.

The first step of international influence on the process-making of power-sharing provisions in the compared cases are international mediations. Since the ‘international’ relational field is the focus of this work, it is important to set the benchmarks to measure the international influence. As an answer to the first research question, the benchmarks used are those that demonstrate that institutional power-sharing provisions are more

detailed when the international mediators are biased, than when they are neutral (Svensson, 2009, p. 446).

The second step of international influence on power-sharing provisions is the process of their implementation from peace settlements in the constitutions. Consequently, this impacts the relationship of the societies with their constitutionalized power-sharing provisions. To measure the international influence in the process of constitutionalisation of power-sharing provisions, the categorization theorized by Dann and Al-Ali is used who suggest three degrees of influence: total, partial or marginal degree of influence (Dann & Al-Ali, 2006, p. 428).

#### **1.4. Comparative case selection criteria**

This work is an in-depth qualitative analysis of smaller-N studies research that analyses conceptual and empirical work on consociational power-sharing practices. The core of this research relies on the comparison of two Western Balkans cases: Kosovo and Macedonia. As previously explained, this research does not aim to find a panacea for all power-sharing systems, nor for all forms of consociationalism. Using quadratic nexus as a theoretical framework, the focus is set on the correlation between 'international' dimension and multi-ethnicity. The compared cases employ consociational power-sharing which have been influenced by international actors through multi-ethnic state-building frameworks. Nevertheless, the international actors have influenced differently power-sharing system in reaction to the accommodation of separatist demands, in Kosovo's case in an independent state and in Macedonia's case inside the state. The Western Balkans has been chosen by the fact that the region has been traditionally a battlefield of influence



between great powers which has been reflected also in the relations between ethnicities living in the region.

The case selection was motivated from these premises. I have chosen Kosovo and Macedonia based on the power-sharing model they have adopted, consociationalism under the international influence. Both cases are Western Balkans countries constitutionally constituted as multi-ethnic states. The selected cases share a common constitutional history as parts of Yugoslavia and a similar experience of ethno-political violence, although different in degree, following its dissolution. In both cases the exogenous interventions occurred with the objective of establishing sustainable peace. The legal model was influenced by outside actors, resulting in constitutions of these states being products of compromises to settle ethnic conflicts. Kosovo and Macedonia are examples of deeply divided societies along ethnical lines, with a bipolar ethnic split and employ the subject of this analysis - power-sharing systems after the conflicts. The difference between two cases mainly lies on the influence of international actors during the international mediation process, constitutionalisation of power-sharing provisions in reaction to separatism and their applicability in practice. Both countries employ a consociational power-sharing system, established in different ways depending on how international actors have supported their separatist demands. Despite similarities such as inter-ethnic conflicts, consociational power-sharing systems, bipolar ethnic split, the variation on role of international actors in reaction to separatism to be analyzed in a comparative framework makes them suitable cases for comparison.

Even though Bosnia and Hercegovina has been constituted as multi-national state after the conflict, it has been excluded from the comparison for several reasons. International actors involved in peace-building have seen the complex federal system as a way to maintain Bosnia and Herzegovina "identical in its territorial extension with the

former Yugoslav Republic of Bosnia-Herzegovina” (Woek, 2012, p. 3). As a result, Bosnia has been constitutionally constituted in a highly complex institutional set-up, making it a very peculiar case, unfit for comparison.

Furthermore, a definition of “majority” (population) is not easily applicable in the case of Bosnia where there is no dominant nationality, and all ethnic groups can be defined as minority as a result of a complex legal-political constellation of the state - Federation inside a Federation - (Federation, Entities, Cantons and Municipalities). By contrast with Bosnia and Herzegovina, Kosovo and Macedonia are unitary states, in which only two governing levels are constitutionally recognized: the central and the local level. Lastly, Bosnia and Herzegovina is characterized by a tripolar ethnic split (Bosniaks, Serbs and Croats), whereas Kosovo and Macedonia are characterized by bipolar ethnic splits: in Kosovo, Kosovo Albanians and Kosovo Serbs; in Macedonia, Macedonians and Albanians of Macedonia. Bosnia and Herzegovina’s constitutionally highly complex institutional set-up and its tripolar ethnic split constitute a complex form of rivalry between the three ethnic groups, each of them trying to dominate the two other ethnic groups. This form of rivalry is not as complex in Kosovo and Macedonia. Despite political differences in both cases there are political parties from the biggest ethnic minorities’ group which have the good will of cooperation and moving the processes together with the ethnic majority. This makes the chosen cases suitable for comparison and presenting the new relational field in the quadratic nexus. In Bosnia and Herzegovina this is more difficult to do and requires a further research focused on how to stimulate the new relational field of the nexus.

## 1.5. A note on terminology

This research aims to keep the terminology and the concepts as simple and as clear as possible. The whole research is based in a complex theoretical framework - the quadratic nexus - applying in a complex region (Western Balkans) and focusing in complex states. The constitutional language which is used for certain constitutional categories relevant to this study is specific as well. Therefore, a clarification and a congruence on the terminology used in the thesis is required.

First, the terminology used on the state names in the compared cases. During some periods Kosovo and Macedonia, have undergone into changes affecting the constitutional name of the states. Following the declaration of independence in 2008, Kosovo adopted its constitutional name as Republic of Kosovo. Macedonia has resolved its disagreement on constitutional name issue with Greece in 2019 resulting on changes of its constitutional name from Republic of Macedonia to Republic of North Macedonia. Being aware of name changes in both compared cases and contemporary constitutional names, the term Kosovo and Macedonia will be used in this thesis for the sake of clarity.

The terminology used to ethnic groups not belonging in the majority and 'multi-ethnic states' require clarification as well. The constitutions of the compared cases refer to ethnic groups not in the majority as "Communities", "Communities not in the majority" and "Communities not belonging in the majority". These terms have been used in the constitutions avoiding the term "minority" which has had a negative connotation during the former Yugoslavia. Being aware of the constitutional power given to ethnic groups not in the majority, also the numerical power (i.e. more than 25% of the population in Macedonia are Albanians) and the historical circumstances (which qualify Albanians of Macedonia and a group of Kosovo Serbs autochthonous in the country), for the sake of clarity and

congruence with the quadratic nexus, the term minorities, ethnic minorities or national minorities will be used hereinafter, for the ethnic groups belonging to less than fifty percent of the population. The term 'multi-ethnic states' used to describe the ethnic constellation in compared cases. The thesis briefly will briefly elaborate the concepts of nation-building, state-building, multi-ethnic state-building and multi-national state-building in Chapter 2, emphasizing the aspects which may lead to distinct nation-states, multi-ethnic states and multi-national states. Being aware that different points of view may classify Kosovo and Macedonia differently to 'multi-ethnic states', the thesis will use the constitutional categorization for both, as 'multi-ethnic societies'. After all, the overall aim of this thesis is in congruence with the multi-ethnic constitution makers, which is building multi-ethnic nature of states in Kosovo and Macedonia.

Another concept often used deserves further clarification. The concept 'international actors' is a broader concept than Smith's 'international organisations' relational field including states and groups of states and international organizations having influenced the multi-ethnic state building processes in the compared cases of this study. Since the study is focused on constitutional power-sharing arrangements, the term 'constitutionalisation' refers to the implementation process of power-sharing arrangements from peace settlements into the constitutions. The term 'peace settlements' also requires attention as in the text may be found as 'multi-ethnic state-building frameworks'. This is due to the fact that peace settlements relevant to this study have 'framed' the form of multi-ethnic state-building in the compared cases through their power-sharing provisions.

## 1.6. Organization of the thesis

The thesis is organised in 6 chapters. Chapter 2 reviews the literature on state-building illustrating in its first section the theoretical understanding of state-building, different concepts of state-building, its comparison with nation-building, multi-ethnic state-building and multi-national state-building. Section two introduces the debate on international state-building in ethnically deeply divided societies through internationally mediated peace settlements and the use of power-sharing arrangements as tools of inclusion and accommodation of ethnic cleavages. Furthermore, it examines the process of inclusion of power-sharing arrangements originating from peace agreements in the respective constitutions. The final section of the second chapter is dedicated to (Smith's) quadratic nexus and (Germane's) "fifth element". The academic debate on the 'nexus' becomes relevant, since the quadratic nexus and "the fifth element" is used as a theoretical framework to analyze the international impact on power-sharing systems.

Chapter 3 examines the role of international mediation in power-sharing arrangements that were included in the peace settlements. It addresses the questions on the origin of power-sharing arrangements. This chapter analyses two processes of international mediation relevant for power-sharing arrangements in Kosovo and Macedonia: the Vienna negotiations (2006) and the Ohrid negotiations (2001). It also examines the relevant factors which have influenced the content of power-sharing arrangements in peace settlements: international constellation of the mediators, the composition of the conflicting parties' delegations and the way international mediators have influenced conflicting parties to reach the agreements. Finally, this chapter presents the lessons learned from the analysis of internationally mediated processes.

Chapter 4 analyses the process how have power-sharing arrangements from the internationally mediated peace settlements been incorporated into the constitutions of the compared cases. This is done through the comparison between peace settlements' power-sharing provisions and power-sharing provisions incorporated into the constitutions, the processes of constitution-making and constitutional changes, and the role of international actors involved in these processes. Based on the degree of international influence in the constitution-making theorised by Dann and Al-Ali, this chapter measures the international influence in constitution-making in Kosovo (2008) and constitutional changes in Macedonia (2001), suggesting the differences in the compared cases.

Chapter 5 analyses power-sharing arrangements in the Constitutions of Kosovo and Macedonia. Focusing on Lijphart's four characteristics of consociational democracy: the grand coalition, the veto power, proportional representation and cultural autonomy, the chapter analyses how do they effect the institutional stability and how do they work in practice. Using the quadratic nexus and the "fifth element", the chapter analyses the "national minorities" relational field in relation to power-sharing provisions. This chapter also proposes a new relational field in the 'nexus', which may affect consociational power-sharing systems.

Chapter 6 summarizes the main findings of the thesis. Analyses are conducted and measured in the three phases, characterized by three processes: i) international mediations where power-sharing arrangements have their origin; ii) incorporation of the power-sharing arrangement into the constitutions of the compared cases; and, iii) how do power-sharing arrangements work in practice and the international influence in these processes.

Through comparing the two cases the findings show that power-sharing arrangements have been considerably influenced by international actors. However, there is a difference in the way how international actors have influenced power-sharing arrangements and the degree of their influence, both in peace settlements and during the constitution-making in Kosovo and constitutional changes in Macedonia. That was reflected also in the content of constitutionalized power-sharing provisions in both cases. The final section discusses the impact of power-sharing provisions regarding their contribution to institutional stability and their functionality in practice. Ever since the normative implementation of power-sharing arrangements, both countries have faced challenges in terms of both, institutional stability and functionality. Still, the international intervention is necessary on building inter-ethnic trust and maintaining functionality. Analyses of power-sharing provisions, and the 'minorities' relation field in the context of the quadratic nexus, suggest that state functionality and institutional stability do not only depend on inter-ethnic relations, but also on intra-ethnic relations, a factor which has not been considered in the academic debate. To fully explain the complex relations in a post-conflict, multi-ethnic setting, there may be a need to revisit the quadratic nexus by adding a new 'relational field' in the nexus which is dedicated to intra-ethnic relations. In the language of quadratic nexus the new relational field would be 'the relations between ethnic groups from the same ethnicity living in the same state' or as simply named "the sixth element".

## **Chapter 2.**

### **Framing the theory**

#### **2.1. Understanding state-building**

Many authors use the term state-building, to refer the activities and strategies to build/rebuild the states through the building/rebuilding processes of institutions in the state. State-building is a tool of intervention in the institutions of a weak, post-conflict, a failing or a newly established state by establishing functional and legitimate states. As an inter-disciplinary concept state-building is framed and used by scholars based on their expertise, approach and point of view they share not necessarily codified and organised by the discipline of their focus different. There could be different concepts of state-building within the same field of study or similar concepts of state-building within different fields of study and vice versa. This is due to the approach different scholars adopt on concepts on state-building are not necessarily similar with other concepts of state-building within the same field of study. This means that the concept of state-building is not codified within the same field of study or in general. For the purpose of this study, it is important to clarify some concepts of state-building in relation this research. The topic of this research is international multi-ethnic state-building through power-sharing arrangements. Therefore, a comparison between the concept of international (exogenous) state-building versus endogenous state-building and nation-building versus multi-ethnic state building would clarify the concept of international multi-ethnic state-building.



### **2.1.1. Endogenous and exogenous state-building**

The concept of endogenous state-building represents the opposite concept of exogenous state-building and is very much linked with the concept of local ownership. A considerable amount of academic work on state-building is focused on the debate analysing the possibilities of state-building from local actors. Local ownership matters especially in post-conflict societies as the aim of external interventions in state-building is to establish a functional self-sustainable state which would enable international actors withdraw from that state and focus on other parts of the world (Narten, 2009, p. 252).

While there is a general consensus on the central role local ownership should play, there is a lack of advice on the cooperation of ethnic local actors in deep ethnically divided post-conflict societies and in weak states where is little incentive for reforms and cross ethnic cooperation, in an ongoing efforts to build effective and legitimate governing multi-ethnic institutions in post-war societies, as the “state-building is no panacea” (Paris & Sisk, 2009, p. 15).

Efforts of state-building coming from local actors are locally more accepted. The literature of state-building encourages the idea that state-building should be driven by endogenous (local) actors rather than exogenous (international) actors. The argument for doing so is based on the disruption of local ownership and undermining the capability of local actors to govern the state independently. Yet, international interventions in deep divided societies occur when there is no other option to build peace, functional and self-sustained institutions often creating tensions between international and local actors. One fundamental concern of international state-building is establishing more inclusive institutions through arrangements which enable strengthening the position of traditionally weaker stakeholders such as minorities, women who had no voice (Rocha Menocal,

2011, p. 1720). Often international state-building interventions deploy in emergency situations requiring quick decision to be taken by international actors, local actors or both. The literature still does not provide an answer or a 'blueprint' how to react in these circumstances. Nor there is a definitive answer on the intensity and the time frame of international engagement should take place in state-building operations. Scholars are divided in their arguments whether the international interventions should take place. One group of scholars argue in favour of international state-building and preservation of the states. The other group argue the contrary, suggesting that the international community should let the states dissolve and let the emergence of new states. (Scott, 2007, p. 5).

Yet, the definition of state-building puts the emphasize on the international component, indicating the importance of international actors in state-building. Zaum (Zaum, 2005) clearly emphasize the importance of international actors in post-war countries as an attempt on building peace and institutions at the same time defining state-building as:

international intervention to restore order and build institutions of government after conflict including reform and rebuild of public administration, legal system reforms (Constitutions), building new institutions, economic reforms, juridical reforms, political reforms as well as DDR measures (disarming, demobilization, reintegration).

Caplan (Caplan, 2005) finds the role of international actors central to state-building pointing out that in certain situations less international involvement is worse for the country. The international involvement and the local involvement in state-building covers a considerable amount of the literature in state-building. Chesterman (Chesterman, 2004) as well find the role of international actors important. Still scholars such as Bickerton

(Bickerton, 2005) argue in favor of local ownership in state-building strongly criticizing exogenously built states as artificial and without souls.

As the debate on the relationship between international actors involved in the state-building processes and the local ownership continues, many questions remain unanswered. In general, less international involvement is recommended and local ownership should take central role in state-building. Yet, there is no answers on the international and local involvement in 'zero sum' situations when conflicting parties are unable to reach a solution acceptable by all local sides, or the solutions become locally contested during the governance. When is the right moment for the international involvement? How should international involvement take place in those situations? What would be the role of international actors to maintain peace?

### **2.1.2. Nation-building, state-building, multi-ethnic state-building and multi-national state-building**

In the literature of state-building, the concept of nation-building appears with different meanings depending on the context. Nation-building is often used as synonym of state-building describing similar activities falling in the scope of state-building. A group of authors (Bogdandy, et al., 2005) explain the difference between two concepts not always appreciated by several scholars of state-building. Some scholars use both concepts, while the others use nation-building as a synonym of state-building under the US influence. While Simon Chesterman (Chesterman, 2004) believes that nation-building refers to post-colonial situations, it is visible that there is a distinction between the concept of nation-building and state-building especially when the concept of multi-ethnic state-building has become actual. The concept of state-building provided above in this chapter defines state-

building with activities to build the institutions of the states enabling to provide at least minimal functions of the state by ensuring: the protection of the territory and public order, the functionality of public institutions and the collections of taxes and other financial sources to finance these activities. All these activities are closely linked with the sovereignty of the state to exercise these functions. Therefore state-building is framed by territory and the population within the territory of the state undergoing a state-building process.

Even though often used interchangeably with state-building, national-building may cover a broader aspect of state-building transcending state boundaries. Nation-building is linked with national identity of the people. Helman and Ratner (Helman & Ratner, 1993, p. 128) define national identity as common ethnic, religious, cultural and linguistic characteristics of a community which assumes historical aspirations of having a state. Nation-building may overlap state-building if the state is capable to create a common identity of belonging of all ethnic groups living in the same state. This is not an easy task as the tendencies to define nationality often have strong incentives to lead to ethnic political aspirations beyond state borders. In contrast to state-building which is usually characterized by external intervention in the given state, nation-building is an indigenous process of collective identity formation in support to the nation's claim for uniqueness based on national characteristics (Bogdandy, et al., 2005, p. 586). These national claims may transcend borders of the state, as it is often the case the people with a feeling of belonging to the same national identity are located outside the state borders. Here lies the difference between the ethnic group and the national group, which may explain the difference between nation-building, state-building and multi-ethnic state-building. Political aspirations of the national group may rely on territorial demands varying from autonomy within the state to secessionist demands, such as entitlement for an independent state.

Weber asserted the tendency of a nation to create its own state (Weber, 1994, p. 25). These political aspirations tend to create challenges to the state territorial unity, which are not usually characteristics of state-building processes. Most literature on state-building focuses on state-building activities in response to governance problems. Less attention has been paid to state-building activities in response to territorial/sovereignty problems, as the number of cases is very limited. Bosnia and Herzegovina, Kosovo and East Timor could be categorized as states in which state-building processes has faced both governance problems and territorial/sovereignty problems.

Chesterman (Chesterman, 2001) asserts that the meaning of state-building is the process of temporarily assuming sovereign powers at developing the institutions. In relation to territorial/sovereignty dimension, Caplan (Caplan, 2005) considers the international territorial administration a transitional authority and a political enterprise which would consider political outcomes. Nevertheless, the territorial dimension during the state-building process remains very modestly on the focus of state-building literature in comparison to state-building as governance problem. The territory in state-building as governance problem is a defined dimension, as the state-building process is understood an institutional building or rebuilding process in the given borders or boundaries of a territory. The defined borders may not be a characteristic of nation-building as the people with the feeling of the same national identity may inhabit areas of different states, where no definition of borders take place. Political aspirations of this group of people may consider them as a national group. Other groups, being ethnic, religious, cultural or/and linguistic may not share the same political aspiration having no territorial aspirations which might challenge the state unity. This group may be considered as ethnic group.

The nature of the state may be affected depending on if the state is inhabited by national groups or ethnic groups. The states inhabited by national groups having political

aspirations constitute binational states or multinational states, depending on the number of national groups residing in the same state. Political and legal regulation of the states may be complex, such as federations consisting of two or more states. If these states have political aspirations as described above, the term binational and multi-national may be attributed to them as well. Therefore, political aspirations in binational and/or multi-national states may be divided in national political aspirations origination by national groups, states within a complex political and legal state structure. Emphasizing the difference between a nation-state and a multi-national state, Kymlicka (Kymlicka, 1996) defines a multinational state a country containing more than one smaller cultures from ethnic minorities. He defines nation as a “historical community occupying a given territory or homeland, sharing a distinct language and culture” (Kymlicka, 1996, pp. 11-13) in contrast to ethnic groups coming from immigration and having a cooperative approach with other ethnic groups living in the host state. These states hosting these categories of ethnic groups are defined by Kymlicka “polyethnic states” or as it is often used multi-ethnic states. Kymlicka’s definition points out several specifics distinguishing multi-ethnic and multi-national states. The first distinction is the composition of the country by more than one nation, which he distinguishes from other smaller cultures - “national minorities”. The second distinction emphasizing the difference between multi-ethnic and multi-national states is the historical aspect enshrined in the nations living in the multi-national states. By contrast, ethnic groups have no historical aspect in relation to the living state but have come from the immigration inhabiting the given territory, defined by Kymlicka as “polyethnic state” (Kymlicka, 1996).

Despite the historical aspect, the legal aspect and homogeneity or non-homogeneity of the population are important aspects on distinguishing the multi-ethnic state from the multi-national state. The legal aspect may provide important role and

competences to certain ethnic groups in the institutional organisation considering them as co-titular or “constituent” groups of the state with the ethnic majority. The importance and competences given by the Constitution and the law to ethnic minorities may define the multi-ethnic or multi-national nature of the society. The post-war Bosnia and Herzegovina is an example of powerful competences given to “constituent” ethnic groups by the Constitution. Through Bosnia and Herzegovina’s case the homogeneity/non homogeneity aspect of the ethnic groups may be pointed out. The pre-war Bosnia and Herzegovina was characterised with different non homogenous ethnic groups dispersed all over the territory giving the state a multi-ethnic nature. The post-war situation found Bosnia and Herzegovina with a different ethnic constellation homogenised in certain areas of the territory reflecting the ethnic results from the war. BiH post-war Constitution has been criticized to have legalized the ethnic results from the war which have turned the state from multi-ethnic to a multi-national one. The peace agreement (the Dayton Peace Accords) in which the BiH Constitution is enclosed provides interethnic confidence building measures and the return of displaced persons in their homes aiming to reverse the post-war territorially homogenised ethnic constellation into a pre-war territorially heterogenized multi-ethnic constellation. The failure to implement these measures, BiH is characterised as a multi-national state rather than a multi-ethnic one.

Along the legal aspect and the homogeneity/heterogeneity of the ethnic population, an important aspect to consider as the main driver of multi-ethnic or multi-national building nature of the state, should be the political aspirations of the ethnic groups living in the state. Theoretical reflection on conflict regulation is built through generalisations failing to address ethnic divides through, for instance, indicators on ethnic distance by measuring them (Marko, 2014). Despite critiques on the constitutional design of BiH, the deep ethnically division is a more political one. Political aspiration of the “constituent people” in

BiH, Croats, Bosniaks and Serbs are characterised with different political aspirations differing from secession to keeping the unity of the state. Would ethnic groups have unified political aspirations, the heavily criticized political changes in the system and in the Constitution would have been possible. Or at least political aspirations would have made possible the return of refugees in their pre-war homes. "Hence, neither ethnicity nor ethnic groups as 'substantial things' trigger violence, but violence becomes 'ethnic' through the meanings attributed to it by perpetrators, victims, journalists, politicians, diplomats, and others" (Marko, 2014, p. 8).

The literature has failed to address political aspiration in relation to multi-ethnic state-building in post-conflict Kosovo as well. Post-independence Kosovo is an optimal case study for ethnic minorities. The biggest minority group in Kosovo, the Serbian minority is composed by two intra-ethnic different groups having different political aspirations, reflected in the multiethnicity: the first group refusing recognition of Kosovo's institutions and statehood and the second one aiming the multi-ethnic coexistence<sup>16</sup>. The literature's failure to address and measure ethnic divides and ethnic distance is evident in intra-ethnic relations. The literature often refers to ethnic groups living in the same state as being a homogenous political group. Being from the same ethnic group does not necessary mean having the same political aspirations with other ethnic members of the same group. As political aspirations reflect the individual rights on freedom of political

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<sup>16</sup> Serb ethnic minorities in Kosovo are also divided in two 'historical' categories: the first group belongs to autochthonous Kosovo Serbs having lived in Kosovo for generations and the second group belongs to Kosovo Serbs having inhabited Kosovo as a result of colonisation and agrarian reform (1918-1941). For more information see: Dr. Milovan Obradovic "Agrarna reforma i kolonizacija na Kosovu: 1918-1941". Priština: Inst. za Istoriju Kosova, 1981

<https://www.worldcat.org/title/agrana-reforma-i-kolonizacija-na-kosovu-1918-1941/oclc/231752288>



choice and free thinking. Therefore, the political aspirations of ethnic groups represent one of the main drivers on multi-ethnic and multi-national nature of the state.

Scholars have paid less attention to multi-ethnic state-building compared to state-building and nation-building, as the study of national issues has been associated with the political interests of states and nations leaving neglected the diversity of feelings of national, ethnic, religious or cultural groups (Giordan, 1994, p. 5). A study conducted in fifty-one multi-ethnic states indicate a lower level of attachment to the state they live by ethnic minorities than by the majority (Elkins & Sides, 2007, p. 693). Therefore, several institutional designs have been proposed by scholar as solution to ethnic integration and cooperation. Still, the debate on multi-ethnicity has been carried by a dose of skepticism on the ethnic diversity management. Rabushka and Shepsle express their scepticism: "Is the resolution of intense but conflicting preferences in the plural society manageable in a democratic frame-work? We think not" (Rabushka & Shepsle, 1972, p. 217).

A kind of international state-building can be also considered the process of 'member state building' such as that of the European Union, requiring a direct intervention by preparing states for future member states of the EU (Woelk, 2013). This process was defined as Europeanisation of future member states through the institutionalization of formal and informal rules of European standards defined in the EU policy. which includes:

The EU's has had and continues to influence the multi-ethnic state-building processes of Western Balkans countries. Yet, the EU itself has shown sign of disunity among European countries which have been become even more visible with the use of French veto on opening accession talks for EU membership with Macedonia and Albania. Kosovo's case may be as well a clear indicator of European Member States disunity which

is manifested on the lack of recognition of its independence from five EU Member States<sup>17</sup>, as well in different opinions expressed when an idea of 'border correction' between Kosovo and Serbia had been presented in Austria by Serbia's and Kosovo's Presidents<sup>18</sup>. Keil warns that the disunity and the ignorance among European states which is visible on Kosovo's case may create a frozen or escalation of the conflict (Keil, 2013). As the disunity between EU member states continues, other non-Western powers have taken the advantage to spread their influence in the Western Balkans counties (Bieber & Nikolaos, 2019). As EU is experiencing internal problems of coordination, may be an indicator that an extra engagement and help from the US would improve multi-ethnic state-building in Western Balkans countries. The previous experiences in the Balkans, such as the case of Macedonia, which will be explained in the coming chapters, suggest that EU-US joint efforts have produced positive results during different phases of multi-ethnic state-building: international mediation, constitutionalisation of power-sharing arrangements and governance.

## **2.2. International multi-ethnic state-building through power-sharing arrangements**

The asymmetry of multi-ethnic state-building literature compared to state-building and national building literature and its momentum gained in the contemporary multi-ethnic

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<sup>17</sup> Among EU Member states which do not recognize Kosovo's independence are Spain, Greece, Cyprus, Romania and Slovakia.

<sup>18</sup> The idea of 'border correction' proposes an exchange of territories inhabited by Serb majority in Northern Kosovo, with territories inhabited with Albanian majority in Southern Serbia. The details of the idea have still not been published. Nevertheless, Germany is firmly against this idea and Britain as well. Italy did not take a firm decision on the idea, but it had made possible a hidden meeting between Serbia's and Kosovo's Presidents in Rome. France did not publicly take a stance on the idea as well. Austria did not object this idea and the same was promoted from Austria.

issues suggests that more attention must be paid to multi-ethnic state-building debate. The importance of studies on multi-ethnic state-building is relevant in the contemporary world order, especially in Western Balkans and in European Union as the multi-ethnic state-building has been officially promoted by the EU in relation to Western Balkans.

The literature often links multi-ethnicity with power-sharing arrangements. The research on power-sharing systems in intrastate wars and civil conflicts suggest that the application of power-sharing arrangements lowers the risk of return to violence (Hartzell, 1999; Hartzell & Hoddie, 2003). The most dominant academic debate on the form of power-sharing arrangements is between consociationalism and centripetalism. Consociationalism which is mainly advocated by Arend Lijphart (Lijphart, 1977; Lijphart, 1977b; Lijphart, 2008), John McGarry and Brendan O'Leary (McGarry & O'Leary, 2004; McGarry & Brendan, 2006; McGarry & O'Leary, 2008; McGarry & O'Leary, 2016) has been often opposed in the academic debate by centripetalism mainly advocated in the work of Donald L. Horowitz (Horowitz, 2000; Horowitz, 2004; Horowitz, 2014) and Benjamin Reilly (Reilly, 2001; Reilly, 2002; Reilly, 2007; Reilly, 2018). Sisk has considered consociationalism and centripetalism as conceptual poles of power-sharing institutions and practices (Sisk, 1996). Both forms of power-sharing arrangements propose different forms of accommodation for segmental cleavages in the society, varying from consociational proposals for inclusive governing institutions to centripetal proposals on electoral rules designed to appeal voters across ethnic groups. Lijphart suggests that segmental cleavages may be of ethnic nature, religious, cultural, ideological, linguistical, racial or regional (Lijphart, 1977, p. 3). Since the focus of this study is multi-ethnic state-building, ethnic cleavages are the most important societal cleavages to be taken into consideration.

A considerable literature on power-sharing focuses on power-sharing arrangements as solutions to ethnic issues consisting of consociational power-sharing systems. Arend Lijphart is one of the leading scholars on consociationalism. Since 1969, when Lijphart has used the term consociationalism for the first time, the terminology on consociationalism has been used by the same author as a synonym to accommodation, power-sharing, consensus and consociation (Lijphart, 2018, p. 1).

The state-building process quoted as “nation-building” by Lijphart has been closely linked to political development process and its importance in national integration, leading “to the complete equation of the two concepts: political development is nation-building” (Lijphart, 1977). In his work he suggests that consociationalism in democracy encompasses four important principles: grand coalition government, veto power to ethnic minorities, proportional representation of ethnic minorities and cultural autonomy (Lijphart, 2008). Further he considers majority rule incompatible suggesting that consociationalism more democratic and practical than the majoritarian democracy in ethnically divided societies and the only realistic possibility for a viable democratic system (Lijphart, 1977b). According to Lijphart consociational democracy helps to make plural societies become more plural through recognizing and turning segmental cleavages into constructive elements of the democratic (Lijphart, 1977), being a conducive tool to peaceful co-existence of ethnic groups.

By contrast with Lijphart, Donald L. Horowitz and Ben Reilly, advocating for centripetal institutions, suggest adoption of electoral and political rules which would appeal the voters across divided ethnic groups. Despite the advanced academic debate between these two paradigms of power-sharing “centripetalism often proves very difficult to adopt and, even when adopted, its track record is one that tends to reinforce instability rather than to realize its aim of modernisation” (McCulloch, 2014).

In recapitulation of the performance of consociational power-sharing, McGarry argues that variables including the behaviour of external agents, self-determination, security and the institutions and rules chosen are important factors in the functionality of consociational power-sharing. Drawing a contrast on the positive role of external actors in Northern Ireland, Kenya, and Burundi power-sharing systems and negative one in Bosnia and Herzegovina, McGarry stresses out the need for further attention on the role of external actors in the literature of power-sharing (McGarry, 2017). The role of external actors is especially invisible in the power-sharing debate related to informal power-sharing systems which take place behind close doors, outside public's attention. Still there is no study of the role of international actors in the power-sharing arrangements in multi-ethnic states in relation to separatist demands which is the purpose of this study.

Another gap in the literature of power-sharing is that most work focuses on the political aspect of power-sharing, clearly indicating a gap in assessing the legal and multi-disciplinary approach of power-sharing.

Bieber addresses an important gap in the literature of power-sharing which is relevant to multi-ethnic state-building. Being aware of wide range of the literature on identity creation and recreation, such as the work of Brubaker, the reflection of this work should be reflected in the literature of power-sharing as well (Bieber, 2019, p. 3)

### **2.3. Brubaker's 'triadic nexus' and its relation to multi-ethnic states**

As multi-ethnicity is promoted, encouraged and built, Western Balkans countries, post-Cold War Central and Eastern Europe, the former Soviet Union, and post-colonial African countries experience a phenomenon defined by Huntington (Huntington, 1996) as

"kin country syndrome", referring to a situation in which ethnic conflicts, having been developed within one state, tend to be replicated in neighbouring states with the same ethnic population. In post-colonial Africa states have been artificially created by former colonizers, without taking into consideration ethnicity, religion, culture and tradition. In many cases, the new post-colonial state has been imposed on various ethnic and religious communities, which have lacked the feeling of belonging to a common national identity and loyalty toward the state. An example of this nexus is the case of the Great Lakes Region - Burundi, Eastern Congo Rwanda, Uganda - the presence of the same ethnic groups in different states poses a potential risk for exporting and spreading of violence. For Zartman (Zartman, 1995), state failure resulting from ethnic and/or religious causes is not a sudden event, but a long-term degenerative process. He argues that shifting public loyalties away from the state can generate the establishment of opposition groups and turn their resistance into armed uprisings that challenge the very existence of the state. The process of state failure in multi-ethnic states in Africa is not the only example. The dissolution of former Yugoslavian Federation erupted from ethnic or religious groups grievances unable to resolve ethnic conflicts, paving the way to a new process in the region, the multi-ethnic state-building process led by outsiders.

The collapse of multi-ethnic soviet states and later the dissolution of Yugoslavia gave prominence to the academic debate on state-building, nation-building, nationalism, ethnic conflicts and minority rights. It has given rise of one of the most prominent analytical frameworks, Roger Burbaker's triadic nexus for studying the interdependence between the host state, the eponymous state and national minorities in post-communist nationalisms in Central and Eastern Europe (CEE). Brubaker (Brubaker, 1996) has analyzed the triadic nexuses warning that this nexus is not a static phenomenon but rather a dynamic interdependence between the three relational fields, which may form a dynamic

geopolitical nexus. Several cases have illustrated the relevance of triadic nexus in practise, such as in the Western Balkans, when the transborder relations between the eponymous state, its national minorities and the host state have given rise to political tensions and conflicts. Still these days the nexus remains relevant and very visible in Central and Eastern Europe (CEE) and especially in the Western Balkans' post-conflict states. Brubaker illustrates this with the example of Serbian and Croatian nationalism, whose nationalism and inferior perception towards other ethnic groups has given rise to nationalism in other ethnic groups as a response to threatening developments. (Brubaker, 1996, p. 69). Therefore nationalism and nation state remains the main driving force in this interdependence. A nationalizing state, according to Brubaker, is the state whose core nation characteristics such as ethnicity, language, culture, economic position are placed in the center of its policies, by promoting and protecting policies in the light of perception of ownership, through the exercise of state powers (Brubaker, 1996). In the successor states of Yugoslavia, these key elements are present. The new states were generally identified with particular ethnic nations, as a legacy of Yugoslavia's constituent republics. Nevertheless, states like Bosnia and Herzegovina, Macedonia and Kosovo were established as multi-ethnic societies establishing a share of belonging not just to their eponymous nation but to other ethnic minorities as well. Therefore, ethnic minorities do not have just a static role, but a dynamic political role in the multi-ethnic state-building. Kymlicka and Norman (2000) identify four types of ethno-cultural minority groups: i) national minorities, ii) religious minorities, iii) immigrant minorities and iv) sui generis groups of minorities (Kymlicka & Norman, 2000). Ethnic minorities' demands may vary from the very basic human rights demands such as the use of language, their recognition by the state as a distinct ethnic group, the protection of their cultural, linguistic, political and collective rights, to the territorial demands which may be maximised by demands for independence. Minorities residing inside the host state may have different attitude towards

the above mentioned demands, positioning themselves in favor a cooperative behaviour or a non cooperative behaviour with the host state. Belonging to the same ethnic minority is not always translated into 'homogenous' political aspirations. While some ethnic minorities get integrated into the society and the institutions of the host state, other ethnic minorities from the same ethnicity or from a different ethnic minority may have other political demands, such a undermining the institutions, non cooperative behavior, and seeking for independence. Therefore, ethnic minorities from different or same ethnicity may have different approaches towards the host state and its institutions, which is translated to the loyalty or non loyalty towards the host state, through patronage and protection from its eponymous state, others interested states or international organizations (Brubaker, 1996, p. 60). Studies in general have shown that ethnic minorities are less attached to residing states compared to the majority population (Elkin & Sides, 2007). Brubaker has identified additional potential "dangerous' nexuses, including former Yugoslav countries such as Serbia, Montenegro, Macedonia, Croatia, Bosnia and Herzegovina, plus Albania (Brubaker, 1996, p. 56). The triadic nexus framework has been used to analyse nationalism, nationalising and/or integration policies and minorities' rights, in different countries of the world. Brubaker's original work has analysed Central and Eastern Europe. Studies focused on Brubaker's original work have examined different countries, including some of the Western Balkans countries. His work has been used by Stjepanovic (Stjepanovic, 2015) to compare ethnic minorities between Albania and Greece, and between Serbia and Croatia; Krasniqi (Krasniqi, 2013) has compared Albania and Kosovo and in various configurations of the nexus in South East Europe. Kemp (Kemp, 2006) examines triadic nexus in the relationship between Hungary, its neighbouring states Slovakia and Romania, and Hungarian minorities living in those states, considering their behaviour in the context of a fourth variable, the international community. Brubaker's nexus has been used to examine the Irish case during the WWI



(Stanbridge, 2015). States like Malaysia and Indonesia (Prasad, 2013), Lithuania and Slovakia, the Crimea and Russia have been analysed using the triadic nexus (Saari, 2014). The nexus has been analyzed from different perspectives, often avoiding the analysis of the nexus at once due to its complexity.

The 'triadic nexus' and the 'kin country syndrome' is evident in Kosovo's and Macedonia's case as well. Following the NATO military campaign and the declaration of Kosovo's Independence<sup>19</sup> Kosovo Serbs have found themselves in a position of minorities in Kosovo. Serbia - the eponymous state - continues to provide legal, financial and political advice and assistance to the Serbian minority in Kosovo. The parliamentary representatives of the Serbian minority in Kosovo strongly depend on the Belgrade's Government political decisions. An example of dependence of Serbian minority to Belgrade Government has been repeatedly shown. Most recently during September 2017 in a political event, Lista Srpska/the Serbian List party decided to join the cabinet of the Government of Kosovo only after a meeting held in Belgrade with the Director of the Serbian Government's Office for Kosovo and Metohija<sup>20</sup>, Marko Djuric. According to Djuric, the Serb List has 'clearly undertaken the obligation' to contrast the formation of an army in Kosovo and to secure some important concessions for Serbia.<sup>21</sup>

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<sup>19</sup> NATO (North Atlantic Treaty Organization) military campaign against Serb forces begun in March 1999 forcing Serbia to withdraw its military forces from Kosovo. With the UN Security Council Resolution 1244 (1999) Kosovo was placed under a transitional administration, the UN Interim Administration Mission in Kosovo (UNMIK), pending a determination of Kosovo's future status. The UN-led process began in late 2005 to determine Kosovo's final status. The negotiations ran in stages between 2006 and 2007( Vienna negotiations) ending with the Ahtisaari's Plan. On 17 February 2008, the Kosovo Assembly declared Kosovo an independent state.

<sup>20</sup> The Serbian Government uses the term 'Kosovo and Metohija' referring to Kosovo, because according to the Constitution of Serbia, Kosovo is still an autonomous province of Serbia.

<sup>21</sup> For more information see:

[https://www.b92.net/eng/news/politics.php?yyyy=2017&mm=09&dd=11&nav\\_id=102278](https://www.b92.net/eng/news/politics.php?yyyy=2017&mm=09&dd=11&nav_id=102278)

In Macedonia, a considerable number of Albanians are living alongside the majority population; in part they are regionally concentrated in the East of the country.<sup>22</sup> Albania has played the role of kin state for the Albanian minority in Macedonia. The most recent crisis in 2015 occurred due to publications of wiretappings which revealed scandals of corruption, which fueled further the tensions between the opposition Social Democrats (SDSM) and the ruling conservative nationalist party VMRO-DPMNE. These tensions had not have in the center of attention ethnic issues, but rather corruption. Still the elections did not give a clear majority leaving SDSM with less than 2 seats compared to the conservatives. This was not the result that European Union (EU) and the United States of America (USA) hoped for. Since the European Union and the United States of America were interested in a government that can lead reforms in the country, the Albanian political parties played a crucial role in the formation of a pro-european government with the help of the EU and the US. Still the Albanian political parties were divided having no join platform to move forward. With the intervention of the Albanian Prime Minister Edi Rama, these groups settled their differences and signed a joint platform, 'The Joint Statement of the Albanian Political Parties in the Republic of Macedonia' - known as 'The Albanian platform'. The Platform had settled several demands, such as the implementation of the principle of full equality, in compliance with the Ohrid Framework Agreement and the Constitution, in economic-social issues, the rule of law, the building of trust between ethnic groups in the function of multiethnicity and the political stability of the country, resolution of the name issue of Macedonia<sup>23</sup>, in conformity with European values and the principles

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<sup>22</sup> Albanians are the largest ethnic minority in the Republic of Macedonia. According to the latest national census in 2002 Albanians make 25,2% of the population of Macedonia. This census was strongly opposed by Albanian minorities claiming that the percentage is much higher.

<sup>23</sup> The issue with the name of Macedonia dates from the establishment date of Macedonia as a federal component of Yugoslavia during the leadership of Josip Broz Tito, which has sparked tensions with Greece over the concerns that it presaged a territorial claim on the Greek region of Macedonia. In 1993, the UN Security Council endorsed the admission of Macedonia in the United Nations, recommending to the United Nations General Assembly ,that this name is a provisional

of international law, good relations with the neighbours, quick integration in NATO and the EU.<sup>24</sup>

The engagement of Prime Minister Rama in the unification of Albanian political parties and in the signing of the Albanian Platform in Albania has been criticized and considered by Macedonian Politicians as an interference in internal affairs of the Macedonian state.

## **2.4. Quadratic nexus and the fifth element – the model of assessing the exogenous multi-ethnic state building process**

While Brubaker did not consider the role of external organisations, it was David J. Smith that extended the triadic nexus of Brubaker. The quadratic nexus is based on the work of Brubaker (Brubaker, 1996), who defined the triadic nexus as a theoretical framework, to address the interdependence between three relational fields: the nationalizing state, the eponymous state and national minorities living in the latter. Smith (Smith, 2002) has proposed quadratic nexus as a framework of analysis, proposing a new additional relational field in the triadic nexus: the international community. This analytical framework can be used in the state-building studies, especially in the international state-building studies, linking nationalising states, eponymous states, national minorities, and the international institutions and organisations. Smith acknowledges the increasing role of

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name, until the settlement of the difference between Macedonia and Greece. However, for the practical purposes of this study the term Macedonia shall be used instead of 'the Former Yugoslav Republic of Macedonia' and the 'Republic of Macedonia'.

<sup>24</sup> For more detailed information about the Joint Statement of the Albanian Political Parties in the Republic of Macedonia see: <http://bdi.mk/en/lajmi.php?id=5768>.

international actors as intermediaries between minorities, kin-states and nationalising states. The quadratic nexus emerges as a well-suited theoretical framework, since according to Krasniqi (Krasniqi, 2013) it is very relevant and applicable in Western Balkans' cases of state-building. Later, the quadratic nexus was expanded by Germane with another relational field in the quadratic nexus, the inter-ethnic relations in the nationalizing state. That is, the interdependence between ethnic minorities from different ethnic groups, with each other within the nationalizing state, the eponymous state, the nationalizing state and the international organisations (Germane, 2013).

In the academic debate Brubaker (Brubaker, 2011) admits that the existence and the influence of the new relational field, the international community in the post-communist successor states in minorities rights, multiculturalism, and nationhood. Nevertheless, he suggests that the international community should not be as an independent relational field in the nexus, but as a web surrounding the nexus. He suggests that the Western Europe is moving beyond the nation-state, opposite to Eastern Europe and Eurasia which he believes that are moving back to the nation-state (Brubaker, 2011). Since the proposal of the quadratic nexus, the academic debate acknowledges the relevance of international organizations, but the role of the international organizations in the nexus is debated, if it should be recognised as an independent relational field in the nexus or not. Scholars like Tesser (Tesser, 2003) and Pettai (Pettai, 2006) argue in favour of the fourth element in the nexus. Keil has used the quadratic nexus to compare the interplay of international actors, nationalizing states of Bosnia and Herzegovina, Croatia and Kosovo, the Serb community and Serbia as their kin state (Keil, 2017). Despite the visibility of the 'international' relational field in the nexus, some authors argue that triadic nexus should remain within its three elements because the fourth element should be considered what it is foreseen within the international law (Kemp, 2006). Galbreath and McEvoy (Galbreath

& McEvoy, 2010) have emphasized the importance of the nexus in the geopolitical context and in the regional security issues. The geopolitical nexus context, the quadratic nexus and the fifth element are relevant to Kosovo and Macedonia, since both have been constitutionally established as a multi-ethnic society. The rights of minorities are guaranteed with the Constitution of Kosovo (2008) and other international agreements. Changes to the Constitution, must be approved by two thirds (2/3) of the members of the Parliament, including two thirds (2/3) of members holding guaranteed seats for representatives of communities that are not in the majority in Kosovo<sup>25</sup>. The Amendment X of the Constitution of Macedonia requires the majority votes of the members of the Parliament attending and the majority votes of the members of the Parliament from ethnic minorities attending for the laws related to culture, use of language, education, personal documentation, and use of symbols,<sup>26</sup>. Since Germane's fifth element did not receive much attention in the academic debate, in the case studies of Kosovo and Macedonia this element might be taken into consideration, considering both countries are multi-ethnic societies strongly dependant on minorities. In relation to 'geostrategic nexus', Brubaker considered Russia a threat to the global and regional level of security, as a revisionist state in the nexus (Brubaker, 1996, p. 45). Indeed, Russia's geopolitical ambitions, actions and its foreign policy did not destabilize just the neighbouring states but its attempts to expand its influence are recently noticed also in several countries of Western Balkans (Serbia, Montenegro, Macedonia, Kosovo). It is considered that in the riots of 2015 in Macedonia, when several deputies were wounded, it was Russia behind the conservative nationalist party VMRO-DPMNE, trying to prevent the Constitution of the Assembly in

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<sup>25</sup> See Kosovo's Constitution at:

[www.kushtetutakosoves.info/repository/docs/DraftConstitutionEnglish.pdf](http://www.kushtetutakosoves.info/repository/docs/DraftConstitutionEnglish.pdf)

<sup>26</sup> For more details see: Constitution of the Republic of Macedonia, Amendment X.

Macedonia (Phillips L., 2017). Russia and Serbia are trying to extend their influence in the country through some Serbian enclaves in Kosovo, in the municipalities with the majority of Serbs, mostly in the Northern Kosovo. Russia provides support to Serbia related to Kosovo, and to Serb minorities in Northern Kosovo perceiving it as a global and regional partner (Cosmin, 2017). On the 25.09.2017 a memorandum of understanding was signed between the Government of Serbia' and the NGO 'Russian humanitarian mission' to assist the Serbs in Kosovo in the fields of education, health and social protection. This Russian - Serbian action was seen with doubt by the Government of Kosovo, since Russia and Serbia have acted on the same way with Russian Humanitarian Center in Nish. The American government has accused Russia and Serbia that this Centre is not providing humanitarian activities, but it is used as a spy centre of Russian intelligence in order to prevent American interest in the Balkans. The former Kosovar deputy prime minister has reacted after the memorandum of understanding was signed emphasizing that 'Russian humanitarian mission' aims to undermine the westerns investment in the region (Hoxhaj, 2017). The violence and destabilisation in the region of the Western Balkans, including events in Macedonia and Kosovo, has required intervention of international actors with special regard to minority issue leading to what Sasse (Sasse, 2008) describes as a "greater internationalisation of minority rights" (Sasse, 2008, p. 847). The internationalisation of minority issues was characterised by an active involvement by international actors in minority rights issues and the debate on the impact of the EU's conditionality and other European organisations such as Organisation for Security and Cooperation in Europe (OSCE) and the Council of Europe (CoE) (Sasse, 2008) . While the European integration literature has much to say about the impact of the EU on a host state's protection of national minorities, the state – building process in former Yugoslav countries, including Kosovo and Macedonia, due to its conditionality towards 'Europeanisation' in order to access European Union as a member state, the role of the

international actors, especially the US and the European Union, the nexus is notable. Galbreath and McEvoy (Galbreath & McEvoy, 2010) have pointed out that the impact of integration on the transforming relations between the eponymous state and the nationalizing state is missing in the debate. The influence of external factors related to the perspective of European integration is crucial, especially since the EU enlargement process, as stated by Woelk, involves active and direct intervention in order to prepare future member states (Woelk, 2013) and this inherently includes influencing legal decisions that directly affect the rights of minorities. The fragility of the situation and the importance of EU active and direct intervention in Balkans is best illustrated with the latest incident happened in Kosovo, North part of Mitrovica, where a Serbian minority and politician, Oliver Ivanovic was shot dead. The Prime Minister of Bulgaria, Borissov in the occasion of the six-month turn in the Presidency of the Council of EU ministers, emphasized that: "The Balkans have a very fragile structure and if it starts to shake all of Europe will come down. One bullet and the situation changes radically" (Kostaki, 2018) The presence of a high level of drama in the Western Balkans, its fragility and its complexity enmeshing the states of this region, especially multi-ethnic ones, brings the attention in the role of international actors in this context.

As the importance of multi-ethnic state-building in the Western Balkans has been clearly emphasized by the EU and the US, it is evident that the debate on international multi-ethnic state-building and the applicability of the quadratic nexus in this context is further needed.

## 2.5. The puzzle in the literature

A review of the literature above addresses several issues important to this study: the multi-ethnic state-building, power-sharing arrangements, the role of international actors in the power-sharing and the quadratic nexus and its relevance in the context of the Western Balkans.

The multi-ethnic state-building gained its momentum, especially in the 90ties with the dissolution of Yugoslavia. The international intervention did not occur just to stop the inter-ethnic conflicts between the former Yugoslav countries but had the state-building in its core of the mission. Multi-ethnicity in the state-building was seen as a solution to ethnic issues in the three countries where the international intervention has taken place: Bosnia, Kosovo and Macedonia. International state-builders have seen consociational power-sharing arrangements as solution to ethnic cleavages. Nevertheless, the role of international actors in the power-sharing arrangements constitutionalized in these countries has been determined by the international role in reaction to separatist demands. The dissolution of Yugoslavia has followed the principle of commitment to the territorial integrity of the former Republics of Yugoslavia, except in the case of Kosovo (Bieber & Keil, 2009) where its demands for Independence have been supported by the US and other Western Powers.

The power-sharing arrangements have emerged out of the need to include states with multiple named and recognized people and/or territories defined by Todd as unions (Todd, 2020, p. 1). Power-sharing arrangements employ consensus of coexistence between ethnic groups, therefore there are no clear victors. In the cases where the conflict ends via international mediators power-sharing arrangements are used as a normative reconciliation tool regarding to territorial integrity and self-determination promoting



minority rights (McCulloch & McEvoy, 2018). Despite its positive effect the arrangements are considered key on the changes of the context and the concept of the state where minorities play a key role in its survival (Andeva, 2015), such as in the case of Macedonia. The same could be said in the survival of Kosovo, as a multi-ethnic state, and not as a national one. Since the academic debate is more focused on the shortcomings of the exogenous state-building in Kosovo, the study of contemporary state-building, Calu stresses the need to incorporate the role of society and the local factors such as the participation of people from majority and minority matter and shape the multi-ethnic state-building process (Calu, 2017). This study aims to do that, presenting the importance of “the sixth” element in the multi-ethnic state-building.

Despite positive effects of the power-sharing, such as the end of the conflict, the inclusion of minorities in democratic processes and the reduction of insecurity, consociational power-sharing remain contested in the three main points: i) Consociationalism is difficult to adopt; ii) Consociationalism has difficulty functioning; and, iii) Consociationalism has difficulties to be modified, becoming even more difficult to move beyond (McCulloch, 2021).

Despite these challenges, by comparing the role of international actors in the imposed unions in the State Union of Serbia-Montenegro and Bosnia and Herzegovina, Keil questions: “if imposing union states remains an option for conflict resolution, then the question must be asked how these imposed unions can become self-sustainable” (Keil, 2020, p. 15) . This question is relevant in other cases such as in the parliamentary republics of Kosovo and Macedonia. The self-sustainability of the unions has raised further questions of the unionisms, “the movements and ideologies concerned to hold those polities together against separatisms, secessions, irredentism and other forms of boundary change” (Todd, 2020, p. 1)

There is no comprehensive comparative study which addresses the consociational power-sharing in its three crucial questions: the origin of power-sharing arrangements, the way they are incorporated into the constitutions and if they bring political stability (McCulloch, 2014). This study aims to fill in this gap. At the same time, it addresses three contested main points of consociational power-sharing listed above.

The study aims to address what is missing in the literature, assessing the power-sharing arrangements in a comparative study between Kosovo and Macedonia through the application of the quadratic nexus in the context of the Western Balkans. The power-sharing arrangements will be assessed depending on the role of international actors in the power-sharing arrangements in reaction to separatism. Through comparing two cases where international actors have had different approach to separatism, this study aims to fill the gap on the existing literature correlating the internationally brokered power-sharing arrangements with separatism. This may contribute to further studies since many European countries are facing demands for greater autonomy and Independence (Belser, et al., 2015) and worldwide. The application of the quadratic nexus in the context of the Western Balkans, permits a new way of assessing power-sharing in this region. I criticize and propose a new element in the quadratic nexus which may affect the functionality of power-sharing arrangements. I have argued that “the sixth element” should be considered by the multi-ethnic state, the national and international policy makers, because it might affect the functionality and the self-sustainability of the state.



## **Chapter 3.**

# **The role of international mediation in peace settlements' power-sharing arrangements in reaction to separatism**

Many studies have examined the aspect of interventions by external actors in conflicts focusing their analysis on different types of interventions, such as peacekeeping, mediation, direct military intervention, as well as different types of external actors' involvement in peace making processes such as: the UN, single states, multilateral state interventions or coalitions<sup>27</sup>.

External involvement in interethnic conflicts has become an increasingly prominent component of peacemaking compromises among different ethnic belligerents. The conventional wisdom holds that external actors intervene in conflicts to stop interethnic violence, defuse interethnic tensions and increase the chance for negotiated settlements. The rationalist approach suggests that the external actors can help overcome the mistrust and uncertainty of ethnic groups in post conflict situations. From this perspective, war is a costly enterprise and ethnic groups should seek a peaceful solution rather than risk loss of lives, loss of legitimacy and economic losses. The research is mainly focused on peacebuilding operations and military intervention of external actors. Less attention has

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<sup>27</sup> See: (Grieg & Diehl 2005; Regan 1996; Velazquez 2010)

been given to the role of international mediators in multi-ethnic state-building peace settlements in reaction to separatism. There is little research on the role of international mediators in power-sharing negotiated settlements, which varies from those with optimistic conclusions to those with more sceptical ones. Power-sharing is seen beneficial in enhancing internal and regional security and promoting minorities rights in the countries where the conflict ends via international mediations, as a reconciling tool of contrasting norms of self-determination and territorial integrity (McCulloch & McEvoy, 2018). Still, many questions remain unanswered on the role of international mediators in power-sharing provisions of the multi-ethnic state-building frameworks in relation to separatism.

This chapter focuses on the role of external actors involved in peace settlements, having been served as foundations of new multi ethnically built states after conflicts. The states established in the wake of Yugoslavia's dissolution are clear examples of internationalized multi-ethnically built states after the wars of the 90's. Bosnia and Herzegovina, Kosovo and Macedonia are examples of post conflict multi-ethnically built states<sup>28</sup>, that have been created through the implementation of negotiated settlements.

The role of international actors has been central in the multi-ethnic state-building frameworks, the Ahtisaari Plan and the Ohrid Agreement, in the compared cases of Kosovo and Macedonia. Through this comparison, this chapter is developed supporting Smith's main critique on Brubaker's "triadic nexus" emphasizing that the relational field 'international organisations' should be added in the nexus. Looking at the role of international mediation I further propose that the relational field 'the international

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<sup>28</sup> There is an academic debate whether these states should be considered multi-ethnic or multinational. For the purpose of this study I use the term 'multi-ethnic', a term which is used by both constitutions in Kosovo and Macedonia. See: (Marko 2000; McKinna 2012)

organisations' should be replaced with a broader meaning 'the international actors'. In the case of Kosovo, the role international actors during the international mediation will be examined by analysing their influence in: the Vienna final status negotiations and the Ahtisaari's Plan. In the case of Macedonia, the role international actors during the international mediation will be examined by analysing their influence in the Ohrid negotiations and Ohrid Agreement. Even though both countries share similar features in the international mediation, such as the engagement of the 'Contact Group', the central role of the US in stopping the conflicts, the international mediation has produced different final results of multi-ethnic state-building: Kosovo as a multi-ethnic independent country from Serbia, and Macedonia enhancement of minority rights inside the state of Macedonia without changing the state's borders.

Drawing on the examples of Kosovo and Macedonia, this chapter assesses how international actors involved in the international mediation processes have affected power-sharing arrangements incorporated in peace settlements having served as frameworks for building multi-ethnic states in reaction to separatism. In this respect, this chapter addresses the following sub-question:

- How has international mediation influenced power-sharing arrangements incorporated in the peace settlements in reaction to separatism?

For the purpose of this research, mediation will be limited to: the context of international mediation in ethnic conflicts; the context of intrastate conflicts; the context of formal internationalized mediation; and, the role of international actors involved in international mediations in drafting the final documents being used as multi-ethnic state-building frameworks.

I use the work of Arend Lijphart on definition of power-sharing arrangements (Lijphart, 1977; Lijphart, 2008) and the work of Isak Svensson who suggests that peace agreements that were concluded in the presence of biased mediators contain more elaborate power-sharing provisions than those with neutral mediators (Svensson, 2009).

### **3.1. International mediation as a method for peaceful settlements of ethnic conflicts**

In international relations states have different interests which may overlap with the interests of other states. This may bring conflictual situations between states. In order not to endanger the international peace and security, the international system has established a system dealing with conflicts. After the Second World War, the United Nation came into being, aiming to maintain the international peace and stability. Promoting the principle of peaceful settlement of conflicts, the Article 2(3) of the UN Charter promotes settling their international disputes between the states by peaceful means to maintain the international peace and security. The UN Charter, Article 33, further specifies the available methods of peaceful settlement of the conflicts seeking a solution by: “by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice” (UN, 2019). From all these peaceful methods, the UN Charter promotes the main methods for the peaceful management of international conflicts: direct negotiation, mediation and arbitration (Young, 2010). When the conflicting parties fail to reach an acceptable solution working out the differences during direct negotiations, a third party may intervene. As recognized by UN Charter this method is defined as mediation.

The field of international mediation has been widely explored by different scholars<sup>29</sup>, in different contexts, using different variables which have led to different outcomes. Still, the findings are not harmonised to have a common pattern which leads to an efficient mediation. Thus, a lot of questions related to mediation remain unanswered. The mediation process is defined from different points of views. For some authors mediation is “a voluntary process in which the parties retain control over the outcome (pure mediation), although it may include positive and negative inducements (mediation with muscle)” (Miall, et al., 1999, pp. 21-22). Moore defines mediation as an intervention by a third party which is neutral and has no authorizations and power in the decision making but it just assists the conflicting parties to reach voluntarily a settlement. (Moore, 1986). Bercovitch goes further in defining mediation as a conflict management tool, where conflicting parties seek or accept the help for conflict resolution from an outsider avoiding physical force or invoking the authority of law as means to change their behaviour or perception (Bercovitch, 2007).

However, a generally accepted definition of mediation is given by Zartman and Touval, which does not focus on the outcome of the help and on the method of the third party but as a mode providing the help to the conflicting parties to find or reach a solution when it is not possible to do that without this help and/or assistance (Zartman & Touval, 2007). When it comes to the definition of formal mediation Rubin considers it as an extension to a legal process based on a formal and explicit understanding between disputing parties (Rubin, 1981).

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<sup>29</sup> See: (Touval & Zartman 2001; Zartman & Touval 2007; Wall, et al. 2001; Sisk 2009; Wilkenfeld, et al. 2005; Greig & Diehl 2012; Bercovich 2011)



Many factors may define the role of mediators. In post conflict countries, for some mediators the main purpose is to prevent a violent conflict; to reach a non legally binding agreement (non formal agreement) or a legally binding agreement; to substantially transform the relations between conflicting parties or just to formally change the relations between the conflicting parties. The mediators' role may be different also in the terms of helping or not helping the conflicting parties to recognize their interests, especially in the situations when the conflicting parties do not know what they really want.

However, motivating the conflicting parties settling the dispute is the main aim of international mediators. Several factors are mentioned to be determinant in motivating the conflicting parties to reach an agreement: timing, ownership and reinforcement. Timing is choosing the momentum to motivate the conflicting parties to reach an agreement. This moment is elaborated by Zartman and it is related to the concept of Mutually Hurting Stalemate (MHS) of the conflicting parties, finding themselves in a situation where neither side from the conflicting parties wants to accept the loss and/or back down. Zartman describes this as a situation a painful deadlock which can not escalate to victory (Zartman, 2001), a pain that should not necessary be for the same reason and in an equal degree. When the conflicting parties are blocked, feeling that they are in an uncomfortable position which would be costly for them, they may be open for other modalities for a way out This moment is known as ripe moment (Zartman, 2008). Finding the right time and doing the right thing, the ripe moment is an opportune moment to encourage the conflicting parties to reach an agreement.

An important dimension in the mediated negotiations is the ownership of the process. For the conflicting parties it is important to have the control over the process. Having the feeling of ownership conflicting parties gain more responsibility on their role about the outcomes and the consequences during the mediated negotiations. Having into

the consideration the high responsibility the negotiating process carries out for the conflicting parties; their behaviour can be irrational or even aggressive. The mediators' role in this situation is to help conflicting parties neutralize these standings and to help them to control their destiny. The preferred solution is when conflicting parties reach an agreement with their own free will, without having to be pushed by the mediator.

Mediators may use mechanisms such as reinforcement referring to the rewards and punishments the conflicting parties experience during the mediated negotiations, but may also refer to the discussing agenda during the talks. Mediators sometimes prefer to start the negotiations with less sensitive issues continuing with the hardest topics, or resolving the hardest issues first considering that the less difficult ones would be resolved easier at the end. And this would be a reward for the conflicting parties reaching to resolve the hardest issues first (Young, 2010). An example of this kind of mediation and tactics are Brussels' negotiations between Kosovo and Serbia for the normalization of relations mediated by EU<sup>30</sup>

Beside the broad academic debate on mediation, the linkage between the mediators' role and the outcomes remains underdeveloped. This aspect of mediation is even more underdeveloped concerning the role of the international mediation on peace settlements used as frameworks for multi-ethnic state-building in reaction to separatism. The role of the international mediators on the peace settlements mediated by international actors in the ethnic conflicts is the primary step taken when analysing frameworks used for building post conflict multi-ethnic states. Most of the academic work on the role of

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<sup>30</sup> For more information see: David L. Phillips "Implementation Review of the Kosovo-Serbia Dialogue" accessed at: [https://www.humanrightscolumbia.org/sites/default/files/2017\\_09\\_05\\_kosovo-serbia\\_report.pdf](https://www.humanrightscolumbia.org/sites/default/files/2017_09_05_kosovo-serbia_report.pdf)

external actors is focused on the violent conflicts of high intensity. The question of the role of the external actors' involvement depends on two defining elements: intensity of the conflict and escalation of the conflict. If the conflict is of low intensity before it has entered a violent phase, the external actors' involvement is a preventive diplomacy. In contrast, when a conflict has entered in a violent phase the external actors' involvement is no longer preventive diplomacy, 'but crisis management or something else' (Zartman, 2001). Zartman promotes conflict prevention, management and resolution as good politics, morality and business which should have to continue as such (Zartman, 2005).

Mediation is legally foreseen by the UN Charter endorsing Secretary General to call the disputing parties to meet, hear all the parties involved in the conflict and propose solutions to facilitate resolving the dispute (UN, 2019). However, there are known cases in practice when mediation was also conducted by a state, intergovernmental organisation, a supranational organisation, or a group of states. Some states, especially great powers prefer to act with or without authorization of UN. Thus, it's not a surprise that United States is the most frequent mediator, in comparison to China being the least engaged great power as a mediator (Greig & Diehl, 2012).

International mediations have been carried out by different international actors. For example, mediation by a state has been carried out by USA in Israeli-Palestinian conflict; UN as an intergovernmental organisation has mediated the conflict in Cyprus between Turkey and Greece; EU has mediated and it is still in charge mediating the negotiations between Kosovo and Serbia; Groups of states having had mediated the conflict between Kosovo and Serbia during the Vienna Talks were the Contact Group, composed of France, Germany, Italy, the Russian Federation, the UK and the United States; Troika: composed of US, Russia and Germany as the EU representative. There are also cases when mediation was carried out by a combination of international actors, such as a superpower

and a supranational organization, such as mediation process in Macedonia (2001), carried out by USA and EU. There is a discussion focusing on the actor carried out the mediation, such as regional organizations, UN led mediation and superpowers (Bercovich & Jackson, 1997; Hansen, et al., 2008; Greig & Diehl, 2012). Bercovich & Jackson (Bercovich & Jackson, 1997) interlinks the involvement of the superpowers in the mediation processes from 1956 with the decline of the mediation processes led by UN. While Wallensteen & Svensson correlate the success of the mediation with the international actor involved arguing that the success in mediation is correlated with the USA's and international organizations (UN and regional organizations) involvement (Wallensteen & Svensson, 2014). The international mediators themselves may be found in a conflicting position, especially when the mediation is carried out by a group of states, which may have different interests, including geopolitical ones and different motivations. This is evident in several mediation processes, especially when divergent superpowers carry on the mediation process. An example is when both U.S. and Russia were included as international mediators between the conflicting parties coming from conflicting zones when both U.S. and Russia have different geopolitical interests. Thus, mediation is often engagement with and in the global and regional interests and actors (Wallensteen & Svensson, 2014, p. 10). The academic debate on international mediation has put in the centre of attention the question of bias in the mediation linking the final results with biased mediators. Svensson differentiates biased mediation in a biased source mediation referring to the mediator which has closer ties with one of the conflicting party, and the biased content mediation referring to the mediator's settlement proposal (Svensson, 2009, p. 446). Biased or 'committed' mediators have a grounding, special, long standing relationship with one of the conflicting parties. Such cases include the special relationship between the United States and Israel in the Middle East Processes of negotiations, or the traditional relationship between Russia and Serbia during the peace negotiations in the context of

Yugoslavian conflicts. The role of biased mediators is linked with their leverage over parties (Bercovitch, 1991; Touval & Zartman, 2001). According to the mediation leverage theory, great powers would be especially useful and effective as mediators, given their resources and power threat (Touval, 1992). The final results in the negotiations may strongly depend on how and what kind of solution would the mediator back. Depending on the mediators' interests and the positions of the conflicting parties the outcome may be: "mutual gains (win - win), compromises (mini-win – mini-win), or competitive winner takes all (zero-sum)" (Young, 2010). *Mutual gains and compromises* are possible options in the situations where the conflicting parties have different interests and positions but may advance their interests by agreeing to compromises, even if the parties' interests differ. In these situations, the outcomes will advance the interests of both sides. An illustrative case of mutual gains and compromises is the Ohrid Agreement. The Albanian side has gained additional constitutional rights leaving aside their territorial demands, while the Macedonian side has maintained territorial integrity by agreeing to grant constitutional rights to Albanian side. *The competitive winner takes all* option leads to outcomes where one side receives the benefits, while the other receives nothing. The Rambouillet Agreement illustrates a zero-sum game. The act of signing the agreement by the Albanian side has opened the opportunity for NATO intervention in Kosovo. Followed by Kumanovo Agreement the process led to a zero-sum result at the expense of FRY military forces. FRY Forces' were sanctioned to dislocate 5 km away from Ground Safety Zone (GSZ) and 25 km away from the Air Safety Zone (ASZ)<sup>31</sup>. Ahtisaari's Plan has been designed as a *mini-win - mini-win* solution, granting to Kosovo Serbs one of the most advanced

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<sup>31</sup> See: Military Technical Agreement between the International Security Force ("KFOR") and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, (Kumanovo Agreement), accessed at: <https://www.nato.int/kosovo/docu/a990609a.htm>

Constitutional position in return for an independent Kosovo. The three mentioned cases: The Rambouillet Agreement, the Ahtisaari Plan and the Ohrid Agreement involve power-sharing systems as outcomes of international mediation processes: the Rambouillet Conference, the Vienna negotiations and the Ohrid negotiations. The Rambouillet Agreement had failed to be implemented because it was only signed by Kosovo's delegation under the US influence (Albright, 2003), but it was not signed by Serbia's delegation. The Rambouillet Agreement had comprised a Constitution similar to Bosnia's Dayton style. An overall analysis of it would complement the continuity of the Vienna Negotiations and Ahtisaari's Plan. Nevertheless, the Rambouillet Agreement is not in the focus of this study since its power-sharing provisions were never implemented.

In terms of international influence in the process, the Ohrid negotiations were finalized under a US-EU cooperation successfully neutralizing separatist demands from the Albanian side. On the contrary, the Vienna negotiations on the final status of Kosovo is a complex example of overlapping interests between great powers in the region, and conflicting parties' different demands. As a result, the outcomes were not accepted by both sides. The Kosovo Albanian separatist demands for an independent Kosovo were backed by the US and followed by the western states of the Contact Group, but were not accepted by Russia and Serbia.

### **3.2. Vienna negotiations on the final status of Kosovo and Ahtisaari's Plan**

Vienna negotiations on the final status of Kosovo has been the most influential phase in shaping the contemporary multi-ethnic Kosovo. The outcome of this process has

strongly influenced the contemporary multi-ethnic Constitutional design of the Republic of Kosovo.

Following the NATO intervention and the approval of the Resolution 1244 of the Security Council, which authorised an international civil and military presence in the Federal Republic of Yugoslavia and established the United Nations Interim Administration Mission in Kosovo (UNMIK), Serbia had successfully managed to maintain the territorial integrity of the remaining Federal Republic of Yugoslavia, comprising Serbia as the dominant state, Montenegro and Kosovo.

However, the resolution had authorized the United Nation Organisation to facilitate a political process to determine Kosovo's future status. In the meantime, the Special Representative of Secretary General had already adopted the Constitutional Framework for Provisional Self-Government in 2001 as UNMIK Regulation 2001/9 (UNMIK, 2001). Its multi-ethnic content has been strongly influenced by the UN 's legal advisors and international experts. While the Serbian representatives boycotted the process, Kosovo Albanian representatives remained, nevertheless some of them resigned during the drafting process as a sign of protest of not taking into the consideration their submitted draft, thus strongly removing the drafting process from local 'ownership' (Weller, 2009). Constitutional Framework for Provisional Self-Government, its drafting process and power-sharing arrangements will be examined in the next chapter.

Following the failure of the adopted policy 'Standards before status' by the United Nations Mission in Kosovo (UNMIK), international community was aware of the situation that Kosovo's status should not be postponed further. The adoption of the Security Council Resolution 1244 (1999) has reasserted the 'substantial autonomy within the Federal Republic of Yugoslavia' to the people of Kosovo. Following the fall of Milosevic, the

dysfunctionality of Federal Republic of Yugoslavia became more evident. The failure to find a compromise between Belgrade and Podgorica was followed by an intensive shuttle diplomacy by the European Union's High Representative Javier Solana to get an agreement for a continued joint state. For this reason, the state-union soon came to be called "Solania"<sup>32</sup>. After the declaration of independence by Montenegro, Federal Republic of Yugoslavia ceased to exist. Following the process of the dissolution of Yugoslavia, resolving Kosovo's status became evident.

The Vienna negotiations were a continuation process of international attempts to resolve the final status of Kosovo. As Weller points out, the Vienna negotiations would have been very difficult for any international mediator, no matter how much experienced, considering the diametrically opposing positions of the negotiating parties (Weller, 2009, p. 191) considering the Vienna negotiations as a zero-sum game (Weller, 2008). Kosovo's separatist demands were diametrically different from Serbia's demands to maintain the territorial integrity. Kosovo did not back down from its initial claim for an independent state, while Serbia insisted on the territorial integrity of Serbia including Kosovo as its part.

On November 10, 2005, the UN Security Council approved the appointment of Martti Ahtisaari by the Secretary General Kofi Annan as special representative for the future status of Kosovo. As argued by Weller (2008), the UN special envoy had four options for dealing with the Kosovo's future status. The first one was Serbia's point of view that after the termination of international supervision, Kosovo had to be returned to Serbia's territorial jurisdiction based on the UN Resolution 1244. The second was western point of view of Resolution 1244 which referred to the autonomy as an interim governance leaving open other options for the final status of Kosovo. The third option adopted in the

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<sup>32</sup> For more information, see: (Caspersen, 2003)



end by the UN Special Envoy was the 'status neutral' attitude. The discussion had to be conducted only on technical issues. The UN Special Envoy had to give his recommendations on the status to the Security Council only if there was no agreement between parties. If the recommendations fail to be endorsed by the Security Council, if needed, impose the substantive comprehensive settlement package (Weller, 2008). And the fourth option in the negotiations was a potential agreement between Kosovo and Serbia, but this was not a promising approach, considering the political standings and domestic circumstances which would have been politically very costly for those leaders who would have eventually agreed to the compromises.

The conflicting parties were invited by the mediators to Vienna to discuss certain topics on the agenda. Kosovo was represented by a 'unity team' that included the President, the Prime Minister, and other politicians from the largest political parties and an independent expert. Serbia was represented by its Foreign Ministry, experts and included its chosen ethnic representatives of Kosovo.

The negotiations mainly focused on the basic positions of the conflicting parties, diametrically opposed on key issues. Since the Contact Group members were steering the negotiations, similar to Rambouillet Conference, the issue of 'committed' mediators came into play. Serbia's representatives received guarantees from its biased mediator, Russia, that no decision would be imposed against its will, while the Kosovo representatives were advised by its biased mediator, the US, to "negotiate generously". One of the interviewed participants in the Vienna negotiations revealed that the Kosovo representatives received signs from international actors for a solution that goes toward independence. "In the Vienna negotiations internationals have told us that we are not here to make a compromise. We are here to find a solution" (Hamiti, 2019). On this premise, Kosovo was pressed into making concessions hoping that this was the price to gain an

independent Kosovo at the end. The negotiations included power-sharing arrangements on which the Kosovo representatives were hesitant, due to the lessons learned from Bosnia and Herzegovina that would make Kosovo an unstable state, exacerbate ethnic divisions and the territory ungovernable. However, Kosovo representatives' fears and warnings were not considered by international mediators, who attempted to 'revive' the negotiations mainly by pressing Kosovo representatives for further power-sharing concessions.

In this 'game of negotiations', the conflicting parties seemed to adapt their strategies accordingly. Being aware of the principle of the negotiations that no party had the right to block the process, Serbia was seeking to buy time, hoping that Kosovo representatives will make mistakes. This momentum of negotiations was pointed out by Weller (Weller, 2008):

If negotiations stalled as a result of the parties' inability to agree, there would most likely be pressure for further talks. Kosovo would be impelled at least to delay unilateral action. Finally, if the talks were to collapse as a result of Kosovo's intransigence, even those governments that supported Pristina's ambitions might find it very difficult to recognize unilaterally declared independence. Hence, during the negotiations it appeared that Serbia had opted for a strategy of seeking to gain time. It would participate in the negotiations to the extent necessary to avoid the allegation that it was obstructing the process. It might also hope that the Kosovo side would lose patience, or be unable to present a unified front, or be provoked into a walk out, thereby becoming itself responsible for a failure of the process (Weller, 2008, p. 668).

However, Serbia's representatives failed to engage seriously and in a substantive way during the negotiations that followed, obstructing the process and suspending the cooperation between UNMIK and the municipal authorities in the north of Kosovo. In this situation the Contact Group released a statement emphasizing that the conclusions will be drawn based on constructive engagement of the conflicting parties (Weller, 2008, p. 675).

There are scholars who believe that the mediator involved in the mediations "does not have authority to impose an outcome" (Wall, et al., 2001, p. 375). However, as it is often the case when there is no solution found between parties, the third party draws the solution for the conflicting parties and eventually imposes it. The failure to reach an acceptable solution between Kosovo Albanian leaders and Belgrade Government, ended this phase with the draft of 'Comprehensive proposal for the Kosovo Status Settlement' which was incorporated in the Constitution of Kosovo. "The secrecy can facilitate bargaining and consensus building" (Wallis, 2014). Possibly this was the main reason why the content of Ahtisaari's Plan was kept secret.

Similar to Rambouillet Agreement, power-sharing arrangements were used as a convincing tool to accept the Plan. The 'status neutral' attitude adopted by Ahtisaari did not convince Serbian delegation nor Russia, to accept and approve the Plan in the Security Council.<sup>33</sup> Ahtisaari himself admitted that the process was not neutral: "The train has left the station and we know where it should end. In all my negotiations I knew from the beginning what would be the result" (Phillips, 2019). Furthermore, Ahtisaari recognized importance of US involvement in Vienna negotiations, expressing his concerns about the

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<sup>33</sup> See U.N. Doc S/2007/168 of 26 March 2007

lack of unity among European countries: “American leadership was so firm and determined. My biggest problem was Europeans” (Phillips, 2019).

International actors involved in the Vienna negotiations had three tasks: to find a solution, the solution would had to be acceptable by both conflicting parties, Kosovo and Serbia, and by the great powers involved in the international mediation. Under the influence of the US, with the consent of the Western states of the Contact Group, the separatist demands of Kosovo Albanians were supported by the US but were not accepted by Russia and Serbia. However, Ahtisaari’s Plan was implemented by Kosovo’s authorities, having a substantial impact in the legal and political system of Kosovo. Caught in the interdependence of quadratic nexus: international actors, Serbia, Kosovo and multiethnic state-building, power-sharing arrangements in the Ahtisaari’s Plan reflect the accommodation of separatist demands by the Kosovo. The demands for an independent Kosovo were backed by the US and the western states of the Contact Group in attempt to convincing Serbia and Russia to accept the Ahtisaari’s Plan by accommodating the interests of Serbia in the Plan through power-sharing arrangements.

### **3.3. The Ohrid peace negotiations and the Ohrid Agreement**

Macedonia was one of the constituent Republics of Yugoslavia, in contrast to Kosovo which had a considerable degree of autonomy as an autonomous province of Serbia (revoked by Serbia on March 1989). Following the events of the dissolution of Yugoslavia<sup>34</sup>, Macedonia adopted the Declaration of sovereignty of the Socialist Republic

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<sup>34</sup> Self-determination of the constituent Republics of Yugoslavia has divided scholars among those who claim that the Constitution of Yugoslavia proclaimed the right of self-determination of the constituent republics, and those who claim that the constituent republics could decide on self-determination just upon the consent of all constituent republics of Yugoslavia. To consider the applications for recognition of independences from Constituent Republics of Yugoslavia the

of Macedonia, based on Article 1 of the International Covenant on Political and Civil Rights of 1966, which guarantees the right of self-determination to all nations. In a referendum organized on September 1991, most of the citizens of Macedonia voted in favour, manifesting their will for an independent Macedonia. Nine days after, the Assembly passed the Declaration on affirmation of the results of the referendum. In contrast to other Republics of Yugoslavia, Macedonia declared its independence without undergoing any ethnic violence.

Nevertheless, ethnic conflicts flared up in 2001, between Macedonian government troops and Albanian insurgents, as a result of a newly adopted Constitution in 1991, leaving ethnic Albanians living in Macedonia discontented. The Ohrid peace negotiations were an internationally brokered peace effort to prevent a war in Macedonia. When the ethnic conflict deteriorated in Macedonia, the US had considerably invested in the region. Being a supreme global power, its engagement remained important.

In contrast to the complex multi-phased process of negotiations for the final status of Kosovo, the Ohrid Negotiations were concluded with an agreement, known as the Ohrid Agreement, that served as a key framework for multi-ethnic state building in Macedonia. Compared to Kosovo, the fighting in Macedonia took place for a shorter period of time (from February 2001) and ended with the ratification of the Agreement, weeks after negotiations, under an intense international influence. Two international mediators, François Léotard for the EU and James W. Pardew for the USA, were appointed as special

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Arbitration Commission of the Conference on Yugoslavia, known as Badinter Arbitration Committee has been established. In its Opinion No 6, The Badinter Committee recommended that the request of the Republic of Macedonia for recognition should be accepted, holding that Macedonia had given the necessary guarantees to respect human rights, international peace and security. Further, on July 1992, the Badinter Committee Opinion No 8 on Completion of the process of the dissolution of the SFRY, decided that the legal process had completed, and that the SFRY no longer existed.

representatives of a joint US-EU diplomatic effort. As Macedonia was moving towards civil war, President Bush decided to remain engaged in the Balkans by appointing James W. Pardew as a US envoy on a joint US-EU diplomatic peace effort declaring that “Pardew will stay until a deal is made” (Pardew, 2018). The second international envoy engaged to prevent a war in Macedonia was Francois Leotard, a former French minister of defence. This combined US-EU engagement in Macedonia was also a test of cooperation and success of the US and the EU. At the same time the US engagement was an important factor as a confidence building (Pardew, 2018). Similar to Kosovo and Bosnia, the representatives of the states of Contact Group were active: the US, the UK, Germany, France and Italy. The difference was that Russia was not active this time.

Unlike the “enforced negotiations” in Rambouillet Conference, the President of Macedonia Boris Trajkovski, a religious person believed that this is the God’s will for him to be in power in this critical moment in Macedonia’s history (Pardew, 2018), thus being open to peace settlement negotiations, even though as a president he had a weak Constitutional power, because the Constitution entitled the prime minister with executive power. However, he played a constructive role in concluding the deal. On the other side the Albanian parties were willing to engage in negotiations, due to the US involvement in preparing the terrain to a discussion. It was Robert Frowick, the former chief of OSCE Mission in Bosnia, who took initiative to pressure the National Liberation Army (NLA) to stop fighting in order to establish a ground for peace negotiations. Veton Surroi, a Kosovar newspaper publisher was preparing the ground for a unifying Albanian position that would include the NLA commander, Ali Ahmeti in the negotiating proposal. An agreed Albanian proposal was reached on June 23 and published in Surroi’s newspaper, Koha Ditore in Prishtina (Surroi, 2011) creating a firestorm in Macedonia. The document was also signed by Ali Ahmeti, thus becoming a reason for the Macedonian side to accuse Frowick of

negotiating with 'terrorists'. Frowick was considered persona non grata, even though he had never met Ahmeti, even 10 years after the deal. However, his engagement paved the way for successful negotiations leaving behind lessons learned. As Pardew notes, the valuable lessons for him to learn from 'this incident' were the limits of who could be included in the future talks and the division and volatility of Macedonian leadership when confronted with new proposals (Pardew, 2018, p. 274).

Unlike some EU diplomats who were seen as having more friendly approach towards Macedonians, Pardew was seen as a biased mediator backing the Albanian side, thus being monitored from the locals all the time, except in the area of the US embassy. He was privately warned that he was going to be 'Frowicked', expecting him to fail in his mission (Pardew, 2018, p. 293). However, the opposite happened. The negotiations started in July, and the final Agreement was signed in August. The Albanian wing of war was not included in the negotiations due to the lessons learned from the 'Frowick' case. When interviewed, Ljubomir Frckoski former Minister of Foreign Affairs of Macedonia, one of the drafters of the Ohrid Agreement, revealed the importance of the American engagement in the negotiations. Europeans were engaged too, but Americans were the leaders of the process. The internationals used a method in negotiations techniques called Maximal Consensual Level, asking conflicting parties about their red lines and demands. Firstly, they asked the conflicting parties to make a list of their priorities and demands.

First make three or four priorities of yourself leaving the history aside. This sounds arrogant, but it functions when you have so much history. We could have behaved like Milosevic did, saying that you don't know the history, but we didn't. But we used this point to press our nationalists behind our back (Frckoski, 2019).

Albanian representatives' priorities focused mainly on the language issue, the Macedonians priorities focused mainly on the territorial integrity of Macedonia, as a unitary state. This is due to the fears and bad experience with Bosnia and Herzegovina.

Frckovski shares his experience and fears during the Ohrid negotiations. "It's interesting when you are asked to speak about priorities in the Macedonian side you don't speak about language, culture, but we speak about unitary state. We don't want to have cantonisation, federalization, because our fear is those cantonisations will go with Kosovo or Albania" (Frckoski, 2019).

The international mediators had a threefold agenda: "They prepared the Albanian side, making the linkage between the guys who are in the mountains and the guys who are in the table" (Frckoski, 2019), referring to the linkage between Albanian 'peaceful' leaders engaged in the negotiations and Albanian 'war' leaders. This resulted in "making pressure and persuading the Albanian side that the negotiations will be firstly directed towards the human rights, minority rights and language rights. However, this was not the initial Albanian war wing agenda. Secondly, the negotiation process was organized in such a way that the negotiations were not directly with Albanians, but with Americans, mainly with Laurel Miller from Pardew's team" (Frckoski, 2019), who had worked on Kosovo's and Bosnia's Constitutions as well. This point of view was clearly described by Pardew who described the Macedonian party understanding the negotiations as talks between US and EU Envoy and them, without considering the position of Albanians. This was seen a serious problem by international mediators, putting them into a delicate position when communicating the demands of one party to the other, since there was the risk of negotiations to fail. Thus, their agenda included making the demands understandable for each of the conflicting parties. "The third agenda was to press us, Macedonians, from that position. They made Albanian claims reasonable and they framed them in a classical



human rights agenda, doing the racist nationalistic agenda into human rights agenda” (Frckoski, 2019).

Comparing the demands and the red lines of the conflicting parties, international mediators established a common position about how to move the process into a common framework between the conflicting parties. With the recommendation of mediators Pardew and Leotard an international draft paper was presented to the conflicting parties. The international draft prepared by the US and EU experts, reviewed by Solana and the Quint capitals (Pardew, 2018, p. 287) had served as a good starting point to find a common ground between the conflicting parties. I have searched this draft at the Archives in Macedonia, but the draft does not exist there. Frckoski and Reka had confirmed that the draft does not exist. Reka had stated that other researchers have also sought to find it.

The international actors involved in the mediation compared the human rights guaranteed with the Yugoslav Constitution with the Constitution in force. Frckoski sheds light on this turning point during the negotiations: “Americans have asked us, Macedonians, why do Macedonians refuse the use of the Albanian language in the institutions now? The Yugoslav Constitution had guaranteed the use of Albanian language in the institutions and in the parliament. This was the end of discussion” (Frckovski, 2019). Macedonians accepted that the use of the Albanian language should be discussed. The framework of the negotiations was set between the use of language and “non territorial solutions to ethnic issues” explicitly emphasized in the Ohrid Agreement. In comparison to Kosovo, where the conflicting parties didn’t have access to the drafting process of the Rambouillet Agreement and Ahtisaari’s Plan, after setting the framework of the negotiations the conflicting parties “agreed article by article” (Frckoski, 2019). A draft negotiating document with elements of power-sharing arrangements was presented to the conflicting parties. The draft document included principles, such as: a wider degree of

decentralisation at the local level, a qualified of two-thirds majority vote system, improvement of ethnic minority hiring in the government.

The principles were generally accepted by the Macedonian side and were finalized in the Ohrid Agreement. The top two Albanian priorities were: making the Albanian language an official language and local control of the police. Macedonian representatives found unacceptable both Albanian priorities. Under the influence of international mediators as a compromise, Albanian Language was referred as the language spoken by at least 20 percent of the population.

The events of the 7<sup>th</sup> and the 8<sup>th</sup> of August had seriously endangered the Ohrid peace process. Macedonian security forces had executed five NLA fighters who had returned in their homes. Being affected by the violence, Albanian side wanted to reopen the closed areas of the agreement and the day after was followed by the ambush of the Macedonian army convoy by NLA leaving 10 soldiers dead. Deeply affected Trajkovski asked to sign the deal that day (Pardew, 2018, p. 306). In order not to imperil the peace process further Albanians were given just 5 minutes to conclude the deal (Thaci, 2018), with same the content of the deal as it was signed. The EU-US brokered mediation process was finalized with the Ohrid Agreement. Since Russia had no interest to obstruct the peace process, negotiations were less complex than Vienna Negotiations.

### **3.4. Power-sharing provisions in Ahtisaari's Plan and Ohrid Agreement**

The conflict in Kosovo and Macedonia occurred mainly because of ethnic divisions. In both cases, the international actors involved in international mediation used power-sharing arrangements as tools to bridge ethnic divisions. This may sound paradoxical,

bearing in mind the legal reason for the dissolution of Yugoslavia was power-sharing. Precisely the centralization and the decentralization of power, including the right to vote at the federal level, accelerated ethnic divisions within the Federation of Yugoslavia, and ended with violent dissolution of the Federation.

The international actors involved in state-building of Bosnia and Herzegovina, Kosovo and Macedonia used power-sharing arrangements as the main tool to bridge the coexistence between ethnicities inside states. As previously explained, international actors used different ways of international mediation to finalize power-sharing arrangements in peace frameworks. Lijphart's four components of power-sharing: the veto power, grand coalition, equal participation and cultural autonomy have been designed differently in the Rambouillet Agreement, Ahtisaari Plan and Ohrid Agreement. Even though power-sharing arrangements from the Rambouillet Conference have not been implemented, a brief comparison with Ahtisaari's Plan power-sharing arrangements may amplify the explanation of the implemented model of power-sharing in Kosovo.

### ***Veto power***

In the Rambouillet Conference, the conflicting parties did not draft the Rambouillet Agreement, but they were given the opportunity to comment and change the agreement including articles on power-sharing arrangements. The conflicting parties mainly focused on two substantial elements: the future arrangement of international military presence in Kosovo and the political status of Kosovo. Power-sharing arrangements were seen as a secondary focus. Power-sharing arrangement were mainly used to revise the draft agreement in favour of the FRY delegation as an attempt by international mediators to make the draft acceptable to the FRY delegation. The term 'communities' which is still being used in the Constitution of the Republic of Kosovo (2008), was initially proposed by

FRY representatives during the Rambouillet Conference. The Constitution of Kosovo incorporated in the Agreement, provided mechanisms of veto power.

Initially, the proposal was to establish a bicameral assembly, which would have consisted of the Chamber of Citizens and the Chamber of National Communities (Krasniqi, n.d.). The Chamber of Citizens would have comprised 120 members, 80 of which would have been directly elected. The 40 reserved seats would have been guaranteed for non-majority national communities: 10 for those belonging to more than 0,5 % and 30 for those belonging to more than 5% of the population of Kosovo. The Chamber of National Communities would have consisted of 100 members who would have been democratically elected by the members of qualifying communities: Turks, Gorani, Romanies, Egyptians, Muslims and national communities which constitute more than 0.5 per cent of the population in Kosovo. The Chamber of National Communities would have had veto power to protect the interests of National Communities. Any group represented in the assembly would have had the right to initiate the vital interest motion on any legislation in the assembly, thus using this tool to veto that legislation. The bicameral version of the assembly had been rejected by the Kosovo representatives, who argued that the second chamber would further deepen the ethnic division. The same version was abandoned by FRY representatives, who were focused on strengthening the veto powers in the one cameral version of the assembly. As a compromise, the Kosovo representatives proposed establishing a consultative body for ethnic minorities in the Office of the President (Krasniqi, s.d.), a model which was also foreseen by Ahtisaari's Plan.

The model of the assembly established by Article II, 1(a) was one cameral assembly of 120 members, with the same structure as the Chamber of Citizens. The majority of every single national community would have had the right to adopt a motion if a decision or a law violated the vital interests of the national community. They would have

the right to appoint a mediator of their choice, whose task was to reach an agreement between the national community who adopted the motion and the proposer of the decision or the law. If the agreement could not have been reached within seven days, a panel composed of one Serbian, one Albanian and one member of other national communities would have decided upon the upholding of the motion. The panel would have to have been elected by consensus of the Presidency of the Assembly which would have consisted of one Albanian, one Serbian and one member from other national communities. The composition of the Presidency of the Assembly itself would have to hold a veto power. There would have been always the risk to block the decisions by any national community member of the Presidency of the Assembly because decisions would have been taken just by consent of the three national communities.

The Rambouillet Agreement would have had a veto mechanism on constitutional changes. Article X provided the constitutional changes could have been passed by two-thirds of the Assembly members, including the majority of each national community members<sup>35</sup>. As a guarantee mechanism to national communities' constitutional rights, Article X and VII were prohibited to eventual amendment.

Unlike the Rambouillet Agreement, the conflicting parties did not have preliminary draft of the Ahtisaari Plan (Comprehensive Proposal for the Kosovo Status Settlement), nor the possibility to comment and change the Settlement. However, they were given the chance to discuss and make compromises on the negotiated topics, including power-sharing arrangements. Ahtisaari Plan did not contain a Constitution, but Annex I determined the future constitutional provisions of the Constitution of Kosovo.

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<sup>35</sup> Badinter double majority is a veto power mechanism which requires the votes of the majority of the members of the parliament (assembly), including the majority of votes from communities not belonging to the majority.

Ahtisaari Plan provided veto mechanisms in future constitutional provisions. The majority of the Assembly members present, and the majority of the Assembly members holding seats reserved or guaranteed were required to adopt, amend or repeal the laws categorized as of vital interest. Unlike in the Rambouillet Agreement, the Article 3.7 of Ahtisaari's Plan specified which law fall under the category of vital interest. These laws included: laws which regulate the changing of municipal boundaries, establishing or abolishing municipalities, defining the scope of powers of municipalities and their participation in intermunicipal and cross-border relations; the rights of Communities and their members, the use of language; local elections; education; the protection of cultural heritage; religious freedom, and the use of symbols (including Community symbols) and public holidays (Ahtisaari, 2007). Article 10 of Annex I with regard to amendments to the Constitution, provided that any amendment to the Constitution shall require the approval of two-thirds of the members of the Assembly including two-thirds of the Assembly members holding seats reserved or guaranteed<sup>36</sup> for the representatives of Communities that are not in the majority in Kosovo (Ahtisaari, 2007).

Similar to the Ahtisaari Plan, the Ohrid Agreement specified laws on which communities not belonging to majority of the population had a veto mechanism. The laws on the use of language, education, personal documents, and use of symbols, culture, local finances, local elections, the city of Skopje, and boundaries of municipalities, must receive a majority of votes, within which must be voted by a majority of the Representatives claiming to belong to the communities not in the majority in the population of Macedonia.<sup>37</sup>

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<sup>36</sup> Twenty reserved seat were assigned for representatives of ethnic minorities that are were not in the majority of the population in Kosovo, including guaranteed seats for the two first mandates, which refer to seats gained through elections, in addition to the ten reserved seats allocated to the Kosovo Serb ethnic minorities and ten other seats for other ethnic minorities.

<sup>37</sup> Article 5.2 of the Ohrid Agreement

A veto mechanism on constitutional amendments in Annex A of the Ohrid Agreement, provided a requirement of a qualified majority of two thirds of votes, within which there must be a majority of the votes of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.

### ***Grand coalition***

Grand coalition is one of the features of power-sharing arrangements which aims to recognize ethnic cleavages in a deep divided society and to include ethnic groups in the governing institutions. The Rambouillet Agreement would have recognized the ethnic cleavages as the most important one in the governing system of Kosovo. The attention would have been put mainly in representation of national communities belonging to more than 5% of the population of Kosovo.

The specifics of Rambouillet Agreement would have been the grand coalition nature in FRY. The citizens of Kosovo would have had the right to be represented in three governmental levels: In the Federal level, in the Republic of Serbia and in Kosovo. The Constitution included in the Rambouillet Agreement would had given the right to the citizens of Kosovo to participate in the election of at least 10 deputies in the House of Citizens of the Federal Assembly and at least 20 deputies in the National Assembly of the Republic of Serbia.<sup>38</sup> The procedures of such elections would had been left open for further determination by the Federal Republic of Yugoslavia and the Republic of Serbia in accordance with the Chief of the Implementation Mission. At least one citizen in Kosovo would had been entitled to serve in the Federal Government, and in the Government of the Republic of Serbia<sup>39</sup> Article II.1 of the Rambouillet Agreement provided an assembly

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<sup>38</sup> Article IX.1 of the Rambouillet Agreement

<sup>39</sup> Article IX.3 (a) of the Rambouillet Agreement

of 120 members with 40 reserved seats guaranteed for non-majority national communities, 10 for those belonging to more than 0,5 % and less than 5% of the population of Kosovo, and 30 for those belonging to more than 5% of the population of Kosovo, which would have been divided equally between Kosovo Serbs and Kosovo Albanians. The rest, 80 members, would have been directly elected. The Assembly would have been comprised by the President of the Assembly, who would had to belong to national communities different to the President of Kosovo. The Vice Presidents would have had to belong to other national communities belonging to more than 0,5 % and less than 5% of the population of Kosovo<sup>40</sup>. Government would have consisted of Prime Minister and Ministers, including at least one person from each national community belonging to more than 5 % of the population of Kosovo<sup>41</sup>.

The Rambouillet Agreement found percentage of the population the main determinant of the governing composition. The representatives of the population of Kosovo would have been divided by the Constitution into three statistical categories: national communities belonging to the majority of the population, national communities belonging to more than 5 % of the population and national communities belonging to more than 0,5% and less than 5 % of the population. The ethnicity of national communities which would have been represented in the governing system would have been firmly determined by their percentage.

In contrast to Rambouillet Agreement, the Ahtisaari Plan did not find the ethnic percentage as a feature to determine the ethnic structure of the governing system. Ahtisaari found ethnic affiliation the main societal cleavage. Based on ethnic affiliation, the

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<sup>40</sup> Article II.10 of the Rambouillet Agreement

<sup>41</sup> Article IV.1 (a) of the Rambouillet Agreement



Ahtisaari Plan provided the reserved and the guaranteed places in Kosovo Assembly for ethnic minorities. The percentage of the ethnic groups was not found firmly relevant. 20 out of 120 places were guaranteed for communities not belonging to majority. Annex 1, Article 3.2 of the Ahtisaari Plan explicitly provided the number of reserved and guaranteed places in the Assembly in relation to the ethnicity:

For the first two electoral mandates upon the adoption of the Constitution, the Assembly of Kosovo shall have twenty (20) seats reserved for representation of Communities that are not in the majority in Kosovo, as follows: Ten (10) seats shall be allocated to the parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb Community and ten (10) seats shall be allocated to other Communities as follows: the Roma community one (1) seat; Ashkali community one (1) seat; the Egyptian community one (1) seat; and one (1) additional seat will be awarded to either the Roma, the Ashkali or the Egyptian community with the highest overall votes; Bosniak community three (3) seats; Turkish community two (2) seats; and Gorani community one (1) seat. Any seats gained through elections shall be in addition to the ten (10) reserved seats allocated to the Kosovo Serb Community and other Communities respectively (Ahtisaari, 2007).

Further, the Ahtisaari Plan determined government should include at least one Minister from the Kosovo Serb Community and one Minister from another Kosovo ethnic minority. If there are more than twelve Ministers, the Government had to appoint a third Minister representing a Kosovo ethnic minority. Ahtisaari's Plan guaranteed a position for at least two Deputy Ministers from the Kosovo Serb Community and two Deputy Ministers

from other Kosovo ethnic minorities. If there were more than twelve Ministers, the Government had to appoint a third Deputy Minister representing the Kosovo Serb Community and a third Deputy Minister representing another Kosovo ethnic minority. Ahtisaari's Plan also foresaw a high-degree of local self-government that would allow municipalities with Serbian majority inter municipality communication and entitlement of extra funding from Serbia (Ahtisaari, 2007).

Ahtisaari Plan provided reserved and guaranteed places in the governing system just for the Albanian, Serbian, Bosnian, Turkish, Goran, Roma, Ashkali and Egyptian communities. Despite the presence of the Montenegrin and Croatian communities in Kosovo, they were left unrepresented in the governing system.

In comparison to the detailed power-sharing provisions in the Rambouillet Agreement and Ahtisaari's Plan, the Ohrid Agreement is less detailed in power-sharing provisions. The Ohrid Agreement does not provide a grand coalition rule in its power-sharing arrangements.

### ***Proportional representation***

Proportionality is the third result of consociational democracy established in post conflict Kosovo and Macedonia. As previously explored the Rambouillet Agreement and Ahtisaari Plan have firmly applied the principle of proportionality in the representation of ethnic minorities in the assembly and in the government. Besides that, the principle of proportionality would have been guaranteed in high level institutions, such as Prosecution, Constitutional Court, Supreme Court, Federal Court and Supreme Court of Serbia. The office of the chief prosecutor should have had at all levels staff representative from the

population of Kosovo<sup>42</sup>. The Rambouillet Agreement would have guaranteed that at least one Constitutional Judge and Supreme Court Judge would have been elected from each national community belonging to more than 5% of the population of Kosovo.<sup>43</sup> The Assembly would have been entitled to present a list to respective authorities of at least one judge on the Federal Constitutional Court, one judge on the Federal Court, and three judges on the Supreme Court of Serbia<sup>44</sup>. Ethnicity and percentage of the population would have not been a criterion of representation in this case. Further, Article IV.2 (a) in Rambouillet Agreement would have provided the principle of fair representation of national communities at all levels of the administration and equal access to employment in public services<sup>45</sup>. Besides the proportional representation in the Assembly and in the Government, the Ahtisaari Plan required from the Kosovo authorities to guarantee that the Kosovo judiciary and prosecution service reflects the multi-ethnic character of Kosovo and employs the principle of equitable representation of all ethnic groups<sup>46</sup>. Ahtisaari Plan guaranteed places for ethnic minorities in other high-level institutions: Central Election Commission<sup>47</sup>, Local Government<sup>48</sup>, Kosovo Security Force, public bodies and publicly owned enterprises at all levels, and in the police services in areas inhabited by the ethnic minorities<sup>49</sup>. Therefore, one may argue that Ahtisaari Plan had embraced the principle of

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<sup>42</sup> Article IV.3 of the Rambouillet Agreement

<sup>43</sup> Article V.5 and V.9 of the Rambouillet Agreement

<sup>44</sup> Article IX.3 (b) of the Rambouillet Agreement

<sup>45</sup> Article VII.5 (b) of the Rambouillet Agreement

<sup>46</sup> Article 6.6 of Ahtisaari's Plan

<sup>47</sup> Article 7 of Ahtisaari's Plan

<sup>48</sup> Annex II, Article 4.5 of Ahtisaari's Plan

<sup>49</sup> Annex II, Article 4.4 of Ahtisaari's Plan

proportionality. Furthermore, the reserved and guaranteed places had the effect of over representation of ethnic minorities<sup>50</sup>.

Ohrid Agreement is less detailed on proportional representation. Unlike in the case of Kosovo, the Ohrid Agreement does not guarantee governing places for communities not belonging to majority of the population. Article 4 contains the principle of non-discrimination, measures to ensure equal treatment and representation in respect to employment in public administration and public enterprises. The term 'equitable representation' becomes unclear considering the fact that Macedonia's last census dates back in 2002, making the appropriate quota of representation unclear.

### ***Cultural autonomy***

The principle of multi-ethnicity had been employed by Rambouillet Agreement, Ahtisaari Plan and Ohrid Agreement.

Rambouillet Agreement would have recognized the national, cultural, religious and linguistic identity of each ethnic group in Kosovo. National communities would have had additional individual rights guaranteed to preserve their national, cultural, religious, and linguistic identities, such as the right to use: their languages and alphabets, national symbols, and to establish cultural and religious associations<sup>51</sup>. National communities who would have acted through their democratically elected institutions would have been entitled with additional rights by: providing for education and establishing educational

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<sup>50</sup> A simple statistical calculation would show that ethnic minorities are overrepresented in the Parliament of Kosovo. For example, Serbian minorities in Kosovo belong to 5 % of the population. Without considering the percentage of Serbian minorities eligible to vote, if 10 out of 120 places in the Parliament are reserved for Serbian minority (12% of the places), this shows that Serbian minorities are overrepresented.

<sup>51</sup> Article VII.5 of the Rambouillet Agreement

institutions; being represented in public broadcast media and in their own language; implementing public health and social services; protecting national traditions on family law; naming the towns, villages, squares and streets accordingly.<sup>52</sup>

The multi-ethnic character of Kosovo's society was affirmed in Ahtisaari's Plan<sup>53</sup>. Annex II, Article 1.3 provides the rights of communities "to freely express, foster and develop their identity and community attributes" (Ahtisaari, 2007). A special attention had been paid to the rights, privileges, immunities and protection of the Serbian Orthodox Church in Kosovo (SOC).<sup>54</sup> Special protection of other cultural and religious monuments were required. Communities were entitled to individual and collective rights similar to Rambouillet Agreement<sup>55</sup>. Albanian and Serbian language were set as official languages. Other languages could have become official languages at the local level. The requirements to become an official language in the local level had been left to be regulated by law.

Similarly, one of the basic principles of the Ohrid Agreement include the preservation and reflection of the multi-ethnic character of Macedonian society<sup>56</sup>. Unlike in the case of Kosovo, Ohrid Agreement is less detailed in terms of cultural autonomy. Article 7 on expression of identity guarantees the right to the majority community in the municipality to place the emblem which mark the identity of the community. The freedom of expression of the identity and symbols is also regulated by article 48 in Annex A. Further members were guaranteed to have the right to establish institutions of art, science, culture

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<sup>52</sup> Article VII.4 of the Rambouillet Agreement

<sup>53</sup> Annex I.3 of Ahtisaari's Plan

<sup>54</sup> Article 7 of Ahtisaari's Plan

<sup>55</sup> Annex II, Article 3 of Ahtisaar's Plan

<sup>56</sup> Point 1.3 of the Ohrid Agreement

and education, as well as the right to use their language in primary and secondary education. The freedom of religion was also guaranteed<sup>57</sup>. International community and OSCE have been invited for assistance on implementation of cultural autonomy<sup>58</sup>.

Many parts of the Ohrid Agreement were dedicated to the use of language. The official language in use is Macedonian language. Any other language spoken by 20 percent of the population in Macedonia is an official language, which should be regulated by law, as suggested by Article 6.5, Article 7 of Annex A and Annex B.8. Sanctioning the use of language as a statistical category has raised doubts about the effect of the Agreement in the long term peace. Albanian community is the only community in Macedonia that fulfils the percentage requirement. On one side, Blerim Reka, one of the participants in the Ohrid Negotiations, believes that it was the weakness of the Albanian delegation who did not insist further to include the Albanian language explicitly as an official language. He believes that Albanian language should explicitly be regulated by Constitution as an official language in the central and in the local level (Reka, 2019). On the other side, Ljubomir Frckoski, one of the drafters of the Ohrid Agreement revealed that the international mediators have convinced the Macedonian side to compromise on the issue of language, pointing out that the Albanian language had been used in the parliament based on the Yugoslav Constitution (Frckoski, 2019).

Conflicting parties have managed to include their main demands in the Ohrid Agreement, the territorial integrity, and the use of the language. However, including the right to use the language as a statistical category raises the question about future relations

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<sup>57</sup> Article 19, Annex A of the Ohrid Agreement

<sup>58</sup> Annex C.6 of the Ohrid Agreement

between Macedonians and Albanians of Macedonia, if the percentage of the Albanian population changes and it eventually drops below 20 percent.

The ethnic composition of the compared cases is different. Kosovo has a more homogenous ethnic composition than Macedonia. Nevertheless, as Svensson suggested (Svensson, 2009), negotiations with unbiased mediators produced less elaborated power-sharing arrangements in the Ohrid Agreement than in the Ahtissari's Plan. This is because the international actors involved in the international mediation in Vienna negotiations had to accommodate several issues at once: to resolve Kosovo's status, to convince Serbia's and Russia's by accommodating their claims towards Kosovo Serbs, to avoid the division of Kosovo from its existing boundaries and protect the rights of minorities. That was not the cases in Macedonia where the demands of Albanians of Macedonia have not included separatism, but collective rights within the existing state borders.

### **3.5. Lessons learned from international mediation in Kosovo and Macedonia**

International mediations on the processes discussed above, prevented the escalations of the conflicts.

In both countries, Kosovo and Macedonia, the outcomes from the processes of international mediations related to power-sharing arrangements in building stable multiethnic states are open for further discussions and will be touched upon in the coming chapters. However, there are many important lessons to extract by comparing the international mediation processes in Kosovo and Macedonia related to final results in reaction to separatism. While Macedonia is successfully moving forward toward Euro-Atlantic structures, Kosovo still remains outside the family of the UN member states, as

'an unfinished state' (Woelk, 2013), contested from outside and inside 'non recognizers'. At this point of view, the international mediation on the issue of Kosovo remains an 'unfinished international mediation'. This comparison and lessons learned might be useful blueprints for the future ongoing process of international mediation between Kosovo and Serbia in Brussels, which is more likely to put into attention power-sharing arrangements again. As previously explained one of the factors of a successful international mediation is correlated with the fact who has mediated the process, having into consideration regional interests related to global actors. The mediation processes in the compared cases had a common pattern of involvement, the Contact Group. The difference was that Russia was not active in the case of Macedonia. Unlike in the case of Kosovo where Russia had interest to back Serbia's demands, as her traditional ally, in the case of Macedonia, its territorial integrity was not perceived as a threat to Serbia's and Russia's interests.

Delivery and non-delivery by the conflicting parties during the negotiations is another important factor in the negotiation process. Previous experiences on the mentioned international mediated processes have shown that those parties who did not deliver during the process have faced consequences. Constructivism and cooperation during the negotiations were considered to represent values of international liberal order. Experience in Kosovo and Macedonia during the international mediation had shown that the conflicting party who does not deliver, faces the consequences. It is not unusual, compared from the previous experience of the negotiations, when David Hale, Vice Secretary for Political Issues of the US State Department had declared that "if Kosovo remains guilty for the failure of the dialogue, it will pay the price" (RTK, 2019), referring on the coming round of the dialogue between Prishtina and Belgrade, which is going to take place.



The willingness of the conflicting parties to negotiate was another different element in Kosovo and Macedonia. Unlike Serbia's 'forced negotiations', the former Macedonian President Trajkovski had welcomed the negotiations. The Macedonian side accepted only the 'peace wing' as a legitimate negotiating team from Albanian's side. Excluding Albanian 'war wing' from the negotiating team, Albanian territorial demands became invisible in the negotiating team, making reaching a deal more likely. In both Kosovo's processes, Kosovo was represented by a 'Unity Team' involving the highest state leaders from 'war wing' and 'peace wing' sides. That was not the case with Serbia. Milosevic during the Vienna negotiations he was in Hague being accused before the ICTY, where he passed away in March 2006. The Serbia's negotiating team had missed the 'key play leaders' in the team. The demands of the conflicting parties in the case of Kosovo were strongly related to territorial demands, opposite to each other. On one side, Belgrade insisted on keeping territorial integrity, Prishtina did not accept less than an independent Kosovo. It was unlikely to find an acceptable solution for both sides when none of the conflicting parties was able to step back from their demands. Even though, the power-sharing arrangements had foreseen enough space for Serbia to keep its influence in Kosovo, Serbia had shown minimal cooperation during negotiations. On the other side, following the advice from the US, Pristina had shown some 'elasticity' while signing the Rambouillet Agreement, excepting to continue to be temporarily an integral part of FRY until the international actors would had determine a mechanism for a final settlement for Kosovo<sup>59</sup>. Further, Kosovo delegation had 'negotiated generously' in Vienna as it was advised, eventually making compromises on power-sharing arrangements hoping that at the end that would lead them

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<sup>59</sup> Article I.3, Chapter 8 of the Rambouillet Agreement had foreseen that: "Three years after the entry into force of this Agreement, an international meeting shall be convened to determine a mechanism for a final settlement for Kosovo, on the basis of the will of the people, opinions of relevant authorities, each Party's efforts regarding the implementation of this Agreement, and the Helsinki Final Act, and to undertake a comprehensive assessment of the implementation of this Agreement and to consider proposals by any Party for additional measures"

toward an independent state. Ahtisaari's Plan was seen as a solution, expected to eventually be accepted by Serbia and Russia as a compromise, foreseeing a multiethnic society of Kosovo, instead of a national state of Kosovo. Due to the disagreements between the United States of America and Russia, the Ahtisaari's Plan could not earn the approval of the Security Council, thus it was implemented unilaterally by Prishtina's side in close cooperation with the US and other western international actors who had backed this solution. Still these days, because of Russia's veto in the Security Council, Kosovo is not a UN member state.

It's not a coincidence that in her speech at the United Nations' Security Council, Federica Mogherini, the High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President of the European Commission has pointed out that the UN Security Council's role is key for the final agreement between Belgrade and Prishtina. "A final agreement will need to be in line with international law, and it will have to be supported by the UN Security Council" (EEAS, 2019).

The aim is reaching an agreement acceptable not only for the conflicting parties, but also for the Kosovo's main 'non recognizers' in the UN Security Council, Russia and China. An eventual agreement acceptable only by the conflicting parties, excluding Russia and China would hardly resolve the problem of Kosovo's membership in the UN and other international organizations. In this case, Kosovo may eventually try to reinterpret its Constitution and eventually join Albania, leaving its power-sharing obligations aside. Border changes in the Western Balkans most of the time have been a factor of instability, and it's difficult to see them as a factor of stability in the future.

The above analysed international mediation in Kosovo and Macedonia has showed that the role of international organisations in the multiethnic state-building has

been crucial. Nevertheless, the process of multi-ethnic state-building has not been influenced only by the international organisations. The analysis of international mediation suggests that also single states and groups of states play an important role in the process in relation to separatist demands. In both cases the US's role was central in supporting or neutralising separatist demands. The multi-ethnic state has taken shape in the existing borders or as a new state depending on if the separatist demands were supported by the US, Russia as single states and the contact group as a group of states in charge.

In these interdependent relations between the states and minorities in the state-building process the 'international' component seems to have a broader meaning. Smith has criticized Brubakers triadic nexus suggesting that the 'international organisations' has not been taken into consideration as relational field. The above comparison supports his criticism suggesting the relevance of the 'international organisations'. It further suggests that not only 'the international organisations' are relevant in this interdependence. Single states and groups of states have also been relevant in this interplay. The region would have had different state borders and possibly power-sharing systems would have been different or would not exist at all, if the US and the Contact Group's approach had been different to separatist demands and power-sharing.

Therefore, I suggest that the relational field suggested by Smith, the 'international organisations' should be replaced by a broader concept, the 'international actors'. In this manner it covers not only the international organisations as a relevant interplay, but it includes single states and groups of states as relevant in the interplay between the international actors, the eponymous state, the state and minorities living in the latter.

### 3.6. Conclusions

The chapter described the importance of international actors in multi-ethnic state-building through international mediation in Kosovo and Macedonia suggesting a revision in Smith's 'quadratic nexus'. The international mediation had a substantial impact on the state-building processes in both countries, transforming them into multi-ethnic societies. Power-sharing arrangements were used as a main tool to bridge multi-ethnic cleavages. This was done under the influence of international actors involved in international mediation processes that have used power-sharing to accommodate separatist demands.

The comparative analysis suggests that in Kosovo's case, the process was more complicated. In the international mediation processes, Russia was actively involved in backing the interests of Serbia. Due to disagreements between the US and Russia, the negotiations became a battlefield not just for the conflicting parties, but also an arena of disagreements between great powers. Prishtina was represented by 'the unity team' involving the highest representatives, while Belgrade did not have the presence of 'the key leaders'. Territorial demands have remained the main unresolved issue since the Rambouillet Conference. Due to opposite positions of the conflicting parties, the representatives were unlikely to reach a deal acceptable to both parties. International actors attempted to overcome the contradiction of the conflicting parties by including a wide range of power-sharing arrangements in Ahtisaari's Plan. The conflicting parties did not draft the Ahtisaari Plan themselves. Ahtisaari Plan was exclusively drafted by Ahtisaari. Unilateral implementation of Ahtisaari's Plan by Prishtina has created a multi-ethnic state through a wide range of power-sharing arrangements. Still, it did not resolve the conflict between the parties, including the disagreement between the US and Russia. Kosovo remains a contested state, unable to join the UN due to the veto power of Russia

and China in the Security Council. The Ahtisaari's Plan was supposed to be neutral, nevertheless the elements of statehood in it suggest for a biased international mediation. As suggested by Svensson (Svensson, 2009), the biased mediation led to more detailed power-sharing arrangements in Ahtisaari's Plan, than in Ohrid Agreement led by international neutral mediation. The international mediation process was characterized by rifts between the members of the Contact Group relating to the eventual use of force and political settlement, which redirected the talks more about relations within the Contact Group and less about Kosovo. Power-sharing provisions were used as a tool to convince the Serbian delegation and Russia to accept the Agreement. Unlike, the Rambouillet Agreement which has included ethnic percentages as a feature to determine the ethnic structure of the governing system, the Ahtisaari Plan did not use the ethnic percentage to determine the ethnic structure of the governing system. Ethnic affiliation was the main feature of multi-ethnic governing representation. The Albanian, Serbian, Bosnian, Turkish, Goran, Roma, Ashkali and Egyptian communities were found to be the only relevant communities in the governing system of Kosovo. The Montenegrin and Croatian communities were left unrepresented in the governing system. The power-sharing provisions in Ahtisaari's Plan failed to convince Serbia and Russia to support and endorse the Ahtisaari Plan by the Security Council, an international disagreement between great powers, which is still reflected in an unfinished multi-ethnic state of Kosovo.

In Macedonia's case, Russia did not have any interest in being involved in the international mediation, because Macedonia was considered an ally of Serbia, which was a traditional ally of Russia. Because the US and the EU had common interests in Macedonia, reaching a deal acceptable by both conflicting parties remained the main goal. The composition of the representatives of the conflicting parties was different from Kosovo's case. After the Albanian 'war wing' was excluded from the negotiations, territorial

demands became less important, consequently increasing the possibility of reaching a deal. Unlike Kosovo, in the case of Macedonia, the conflicting parties had the opportunity to draft the articles of the Agreement before it was signed by both sides. The coordinated US-EU efforts, without Russia's engagements in the process were concluded with a peace agreement - the Ohrid Agreement - acceptable by all sides, conflicting parties and international actors. Power-sharing arrangements included in the Ohrid Agreement were perceived as having 'local ownership'. In contrast to Kosovo's mediation, the Ohrid negotiations led by unbiased US-EU mediators produced less detailed power-sharing provisions. Many power-sharing arrangements were left open for interpretation and regulation by constitutional changes and laws. Unlike the Ahtisaari Plan, the Ohrid Agreement did not provide guaranteed and reserved places for minorities in the Assembly. The grand coalition principle was not included in power-sharing arrangements. The conflicting parties agreed to use an additional official language, which would be a language spoken by at least 20 percent of the population, avoiding mentioning 'the Albanian language' explicitly.

The results of established power-sharing system would not have been possible without the international involvement. The results of multiethnic state-building process are very much dependent on the international involvement establishing an interdependence between the state, minorities, their eponymous state and the international involvement. The compared cases have shown the relevance of the quadratic nexus in this context. Smith has rightly suggested 'the international organisations' as a relational field in the quadratic nexus. Nevertheless, I further suggest that the relational field suggested by Smith, the 'international organisations' should be replaced by a broader concept, the 'international actors' including single states and groups of states as relevant in the

interplay with other relational fields: the eponymous state, the state and minorities living in the latter.

## **Chapter 4.**

# **Implementing internationally mediated power-sharing arrangements into the constitutions of Kosovo and Macedonia**

Implementation of power-sharing provisions from the peace settlements into the Constitution represents a crucial question on the role of international actors in multi-ethnic state-building process. This is because it directly influences local acceptance of power-sharing arrangements. The role of international actors in the implementation of power-sharing provisions from peace agreements into the Constitution may vary from case to case. Cases such as South Tyrol, Northern Ireland, Burundi and Belgium are examples of power-sharing system which came as a result of local initiatives, without international involvement in the processes. Other cases such as Afghanistan, Bosnia and Hercegovina, Kosovo, Macedonia and Iraq have built their power-sharing system under the international influence.

In some cases, peace settlements processes and constitution-making processes have occurred at the same time, with direct international involvement, such as in the case of Bosnia and Hercegovina and in the case of Kosovo (during the Rambouillet Conference), which had enclosed constitutions within peace settlements. In other cases, peace processes and constitution-making processes have occurred separately, varying on the degree of international influence in the processes.



The previous chapter has analysed the role of international actors in the power-sharing arrangements enclosed in peace settlements originated from international mediations in Kosovo and Macedonia.

This chapter focuses on the role of international actors in the incorporation of power-sharing provisions from peace settlements into the constitutions in Kosovo and Macedonia, building multi-ethnic states as opposed to national ones. This process was characterised by the interplay of three relational fields of the quadratic nexus: the international actors, the nationalizing states and its ethnic minorities, while the fourth relational field, the eponymous states, Serbia and Albania have remained neutral in this process. The characteristic of this phase is that due to the US support and other Western powers for separatist demands of Kosovo Albanians, Kosovo declared its independence on the 17<sup>th</sup> of March 2008. This has affected Kosovo Serbs, which have found themselves as minorities in the new circumstances. In Macedonia the position of Albanian minorities had remained the same. Still the newly independent Kosovo may be considered as an additional eponymous state beside Albania. The international actors have supported a multi-ethnic independent Kosovo, in contrast to Macedonia where they have supported the advancement of collective rights of minorities within the same borders of the state. This has determined how the power-sharing arrangements have been incorporated into Kosovo's and Macedonia's constitution. The declaration of independence has required a completely new constitution. While the implementation of power-sharing arrangements in Macedonia has not required a new constitution but has followed a usual path of constitutional changes as the Ohrid agreement had provided.

This chapter begins with a brief elaboration of the concept of *pouvoir constituant* in the internationalised constitution-making, continuing with a short historical description of Kosovo's and Macedonia's way to a multi-ethnic statehood. It further analyses the role

of international actors in the constitution-making in post-conflict Kosovo and constitutional changes of 2001 in Macedonia and the main phases of constitution-making and constitutional changes, the time frame, the type of the institution that was designated to draft the power-sharing provisions and the opportunity for public participation. The last part compares the international influence on constitutionalisation of power-sharing arrangements with the other parts of the constitutions.

The aim of this chapter is to investigate:

- How have international actors influenced the process of constitutionalisation and the substance of power-sharing provisions in Kosovo and Macedonia in reaction to separatism?

The degree of international influence on the procedure and the substance of constitutional power-sharing provisions, is measured by the categorisation theorised by Dann and Al-Ali (Dann & Al-Ali, 2006) distinguishing total, partial and marginal degree of international influence.

#### **4.1. Pouvoir constituant in the internationalized constitution-making process**

Constitution-making is distinguished in two traditions: the first, based on the examples of France and the US, understands *pouvoir constituant* making a new Constitution by eradicating the old political system and establishing a new one; and, the second, based on British and German history, as an “ongoing process of limiting the powers of the existing and persisting Government” (Dann & Al-Ali, 2006, p. 426)

The traditional concept of *pouvoir constituant* imagined the will of the people of a country to formulate a Constitution, to adopt it, to propose amendments or revisions and to ratify them. This concept is considered foundational for the legitimacy of constitutions (Kumm, 2016). *Pouvoir constituant* means the people on the given country as a political body (Dann & Al-Ali, 2006, p. 426) The Constitution therefore represents the final product of *pouvoir constituant*, which possesses the constituted power and the people that are superior to the state but subordinate to the *pouvoir constituant*. With the establishment of modern states, the concept of constitution-making has evolved in a wider context. The revised cosmopolitan and post-positivist understanding of the concept of *pouvoir constituant* includes also “the international community” as a co-constitutive power of national constitutions, putting into focus the importance of its implication in the international law (Kumm, 2016), due to evolving trends of an increasing interplay between national and international legal orders (Qerimi, 2018).

In post-conflict, ethnically divided societies, international interventions have included the creation of new constitutional orders as a tool of state-building and conflict management among other activities of state-building. International constitution-making processes occurred within different historical, geographical and political circumstances, reaching a particular momentum during the 90-ies and at the beginning of 21st century with the new internationalized constitutional orders created in Cambodia, Bosnia and Herzegovina, South Africa, East Timor, Kosovo, Iraq and Afghanistan (Qerimi, 2018, p. 3).

This momentum in the international constitution-making has raised the debate among scholars focusing not only on the issues of transitional democracy, minority protection and human rights law, but also considering its effects in all areas of constitutional law moving the focus in divided societies as well (Grewe & Riegner, 2011), integrating international law and constitutional law in a form of ‘Progressive

Constitutionalism<sup>60</sup> and raising questions about international constitutional engineering's effectiveness and legitimacy with state sovereignty and popular self-determination (Grewe & Riegner, 2011).

A study conducted by J. Blount, Z. Elkins and T. Ginsburg includes independent states between 1789 and 2005, identifying 935 different constitutional systems (Blount, et al., 2012) and suggesting the importance of the Constitution in organization and in the functionality of societies. Jennifer Widner has analysed a dataset of 195 cases of constitution writing process covering the period from 1975 until 2002 emphasizing that to measure the success of a constitution and a constitution-making process one should measure the degree of the displacement of a conflict from the streets into the institutions (Widner, 2008). To do so, three fundamental questions, proposed by Blount, Elkins and Ginsburg (2012) on organization and process during the constitutional design are important: *who is (to be) involved; when does the involvement take place; and how do the actors formulate, discuss and approve the text* (Blount, et al., 2012). These questions are important for this study since they lead to the objective of this chapter, which is analysing the role of international actors in the incorporation of power-sharing arrangements into the constitutions. The three fundamental questions are focused on 'who is involved', 'when is involved' and 'how are they involved' in the constitutionalisation of power-sharing provisions, provides us with the answer whether the international actors are involved in the process. If they are involved, when are they involved and how have they influenced the constitutionalisation of power-sharing arrangements. The third question 'how do the actors formulate, discuss and approve the text' provide us with the answer on the role of

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<sup>60</sup> Mark Tushnet defines 'progressivism' as a form of practical politics, suggest that the concept of 'progressive Constitutionalism' should be understood in the framework of political rather than judicial Constitutionalism (Tushnet, 1999) .

international actors on formulation, discussion and approval of power-sharing provisions from the Constitution. The focus of three fundamental questions is set in power-sharing arrangements - the object of this study – while not examining the whole content of the constitutions. Examining the role of international actors in the whole content of the constitutions would lead to different results, as in different parts of the constitutions compared in this study, the degree of international involvement may vary. Dann and Al-Ali have theorized the degree of international influence categorising it to total, partial and marginal international influence (Dann & Al-Ali, 2006). The categorisation had been done based on the international influence in the content and in the process of constitution-making. The total international influence is characterised by total international influence in the content and in the process of constitution-making, such as in the case of Bosnia and Hercegovina (the Constitution attached to the Dayton Peace Agreement) and in the case of Kosovo (the Constitution attached to the Rambouillet Agreement). The partial international influence is characterised by a process directed by international actors affecting the constitution-making process and/or the content, “while the ultimate power of drafting and adopting remains in domestic hands” (Dann & Al-Ali, 2006, p. 430). Finally, the marginal international influence consists in the international advice voluntarily required by local actors, in a process driven and controlled by local actors (Dann & Al-Ali, 2006, p. 429).

## **4.2. International involvement in Kosovo's constitution-making and Macedonia's constitutional changes after the conflicts**

The international interventions in Macedonia and Kosovo occurred with the aim of stability and establishing sustainable peace. In both cases the multi-ethnic model of the state was influenced by outside actors. As a result, the constitutions are product of compromises to settle conflict in these ethnically divided societies. Thus, there is a tension between an internationally brokered peace-agreement and the multi-ethnic constitutional basis for a sustainable functioning of the preserved states. For this reason, it is important to analyse the role of international actors in the constitution-making and constitutional changes to measure the local acceptance of the new multi-ethnic constitutional design.

The process of constitution-making in Kosovo, from the very beginning, was highly influenced by international actors, especially by the US State Department. Because of the extensive influence the international community in Kosovo's state-building, the drafting process of Kosovo's Constitution (2008) reflects both the international influence and international constraints imposed on its statehood (de Hert & Korenica, 2016). Kosovo institutions in close cooperation with 'pro-independence' international actors had started the preparations for the Constitution-making process since 2006.

For the first time publicly, the green light to an independent Kosovo was given by the former President of the United States of America, George W. Bush, during his speech in Albania in 2007, where he backed the Independence of Kosovo as a solution for its final

status.<sup>61</sup> As a response, the Kosovo Government began preparations for the transitional phase. Following the declaration of independence of Kosovo in 2008, Kosovo's Government appointed the Transition Coordinator for the transfer of powers from the international administration to the local institutions of an independent Kosovo. In the line of these preparatory activities the drafting of the Constitution of the Republic of Kosovo was one of the main tasks. Following twenty-five rounds of discussions between Prishtina, Belgrade and the Ahtisaari team, it was expected that the supervised independence was to become the final status of Kosovo. The international community had to decide and prepare the structure of the future international institutions which would be endorsed with the task of supervision of the Independence of Kosovo, including the Constitution making process, the compliance of laws, decisions and other legal acts with the Constitution of Kosovo and Ahtisaari's Plan. Considering the political circumstances, it was still too early to establish a full-fledged European Union office in Kosovo. Following the formula more competences than in Skopje but less competences than in Sarajevo (ICO, 2012), international actors involved in the process, mainly EU and US, decided to initially establish an office with a smaller and lighter international presence, but once it became clear that agreement on Kosovo's status between all EU member states could not be reached, the ICO grew in scope and structure conceived of as an EU-US office, where the head of the ICO, the International Civilian Representative, was to be a European and his deputy was to be an American (ICO, 2012). At the beginning, the Mission was deployed as ICO Planning Team, subsequently to be transformed into the International Civilian

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<sup>61</sup>After Bush's declarations about the independence of Kosovo, the former President of Albania, Sali Berisha had immediately requested an urgent meeting with the Kosovo Prime Minister, Hashim Thaci, to give the news to Kosovan leadership that the President of the U.S. has given the green light for an Independent Kosovo. "At some point in time, sooner rather than later, you've got to say enough is enough, Kosovo is independent," he told a news conference in the first visit to Albania. Retrieved at: <https://www.reuters.com/article/us-bush-albania/bush-says-kosovo-to-be-independent-delights-albania-idUSTZO01747120070611?pageNumber=1>

Office. The ICO Planning Team had a four-point approach in relation to the drafting process and legislative agenda: provide technical assistance in the Constitution and legislation drafting process, verify their compliance with Ahtisaari's plan, ensure the inclusion of ethnic minorities and political opposition to contribute to the drafting process and detect eventual problems in the process (ICO, 2012). As such, the first cooperation between the Constitution drafters and internationals related to the Constitution-making process was carried out by the ICO Planning Team, continuing with the ICO upon its fully establishment in Prishtina.

As a compromise solution for an independent Kosovo, international actors involved in this process required to adopt the Ahtisaari Plan as a core document incorporated in the Constitution. Following this principle, the drafters of the Constitution had taken the task of drafting the preamble, basic principles, and other chapters of the Constitution, having in mind that the core of the Constitution will be determined by the content of Ahtisaari's Plan. After fulfilling this task, the draft Constitution should have undergone further international supervision and certification. The preliminary discussion about the Constitution making process between the local drafters of the Constitution and international representatives were done with the ICO Planning Team. The discussions have officially continued with the International Civilian Office (ICO) after the establishment of its office in Prishtina, until the certification of the final draft of the Constitution from the ICO in the 2<sup>nd</sup> of April 2008.

In Macedonia the multi-ethnic constitutional design has carried out through constitutional changes. This way the tensions and misunderstandings on the interpretations of the Ohrid Agreement between local actors, Macedonians and Albanians were relativized. "Constitutional installations" from the Ohrid Agreement holding the power-sharing system tend to be interpreted by some Macedonians as of temporary use



(Karakamisheva - Jovanovska, 2014), while the leader of Albanians of Macedonia, Ali Ahmeti welcomed the compromise considering that these changes have transformed Macedonia into the state of Albanians as well (McEvoy, 2015).

As stated in the previous chapter the international actors have played an important role on the conclusion of the Ohrid Agreement. When the peace process escalated, the US mediator gave five minutes to the negotiators to conclude the deal (Thaci, 2018). In such a fragile peace environment the time dimension between the conclusion of the deal and its implementation into the Constitution was important. The international actors did not play a determinant role in the process of constitutional changes as in the case of Kosovo. Nevertheless, they were guarantors to the Ohrid Agreement and its implementation into the Constitution. As such their engagement was to make sure that the Annex A on Constitutional Amendments of the Ohrid Agreement will be implemented into the Constitution in the period of forty-five days as provided in the Settlement. In contrast to Kosovo, no international supervisory paradoxes were imposed along the process of constitutional changes allowing the process to flow on local political elites. Probably, this was possible in Macedonia's case because there was a political will from the then President of the State, Trajkovski and the local political elites finding an acceptable compromise which would bring peace. Nevertheless, the role of international actors was crucial, putting pressure on political elites to implement the constitutional changes in a shorter period, as provided in the Settlement. Later it turned out that the timeframe given in the Settlement was not sufficient and the obstacles on the way required the international engagement on putting pressure on the local political elites to move forward with the process of constitutional changes. As the deadline for the implementation of constitutional amendments passed, the EU envoy Francois Leotard had to explicitly put pressure on the political elites emphasizing that if the constitutional changes do not pass, no financial

support will be given to the State. As a consequence, the EU donor Conference planned on the October was called off and a shuttle diplomacy between Brussels and Skopje was activated to overcome the deadlocks (Schneckener, 2003, p. 150). The constitutional changes were passed in the parliament by political elites with ninety-four votes in favour and fourteen votes against, in conformity with the rules of constitutional changes. It is important to emphasize that beside some Macedonian deputies voting against the constitutional changes, two Albanian deputies had voted against as well (Ademi, 2019) .

### **4.3. Main phases of the constitution-making in Kosovo, constitutional changes in Macedonia and the time frame for the processes**

The phases of constitution-making in Kosovo (2008) and constitutional changes in Macedonia (2001) are important milestones on how power-sharing systems were constitutionalised. Still the steps taken to adopt power-sharing provisions have substantial differences due to the political circumstances and the role of international actors in both cases.

Kosovo's constitution-making process corresponds with the multi-ethnic state-building, the same as Macedonia's multi-ethnic state-building corresponding with constitutional changes of 2001. Nevertheless, the process in Kosovo is more complex, divided into five phases, namely: i) preparatory phase; ii) constitutional drafting phase; iii) public consultation phase; iv) final review; and, v) adoption and implementation phase. These phases have been presented by international experts in a parliamentary and expert round table on constitutional issues organized by OSCE that took place from 20-22 July 2006 in Skopje (OSCE, 2006, p. 15) and the same have been applied as a blueprint of the

constitution-making process in Kosovo. According to the roundtable discussions, the preparatory phase included the initial negotiations concerning the constitution-making procedure, an outline and the timetable of the process; public consultation, national dialogue of the constitution-making process and the establishment of a Constitutional Commission. The constitutional drafting phase included the establishment of a final authority, an elected Constitutional Commission that will oversee the drafting of the final document; close cooperation and consultation with legal experts and advisors, political parties, the international community, and the public receiving comments from the public dialogue, domestic and international legal advisors, on the initial draft of the Constitution, ensuring broad ownership. The public consultations period included media campaigns, a website related to constitution-making process and the content of draft Constitution, public comments and suggestions. In the final review and adoption phase, the comments and suggestions received by the public and legal experts are included in the draft Constitution. Constitutional Commission had to review the draft Constitution, while the ICO had had to certify the final text of the Constitution before sending it for a final approval at the parliament.

Kosovo's constitution-making process was initiated with an uncertain time frame due to political developments. On the 24 of January 2007 the Assembly of the Council of Europe approved the Resolution 1533 (Assembly, 2007) related to the final status of Kosovo, stating the preference for a negotiated solution; however, if such a solution was not achieved, then it was necessary to impose the final solution. The political developments, discussions between Prishtina, Belgrade and the Ahtisaari team, the public support for an independent Kosovo from the former US President Bush in Albania in 2007, pushed the Kosovo Albanian leadership to start thinking about future steps they should undertake preparing for the future statehood, including the constitution-making process.

The main issue was that nobody from the political class knew when Kosovo should declare its independence, nor the content of Ahtisaari's Plan, as these steps were determined by international actors. Kosovo was using the Constitutional Framework for Provisional Self-Government in Kosovo – 'Constitutional Framework' – as a temporary Constitutional Framework, when the process of making the new Constitution started. The Constitutional Framework was an UNMIK Regulation which was approved by the Special Representative of the Secretary General, and was the only authority entitled to change it<sup>62</sup>. The Comprehensive Proposal on Kosovo's Status Settlement and the Declaration of Independence on 17.02.2008 created a different political situation requiring a completely new Constitution which would accommodate the Ahtisaari's Plan and the new political reality. The Constitution of Kosovo was approved on the 9<sup>th</sup> of April 2008, seven days after its content was certified by the ICO.

The paradox of final certification of the Constitution by international actors has not been applied in Macedonia, where the procedure of constitutional changes had already been provided in the Constitution of 1991. As such, the political elites had to follow the constitutional amendment procedures as provided by the Constitution of 1991. The Constitution of Macedonia is considered to have a rigid constitutional amendment procedure, requiring the application of several procedural steps. Four phases are identified on constitutional amendment procedure: i) the proposal to initiate constitutional changes; ii) the Assembly's decision to initiate constitutional changes by two-thirds votes of representatives; iii) the draft-amendment confirmation by the majority of representatives

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<sup>62</sup> See: Chapter 14.3 of the UNMIK Regulation no. 2001/9. Retrieved at: [http://www.unmikonline.org/regulations/unmikgazette/02english/E2001regs/RE2001\\_09.pdf](http://www.unmikonline.org/regulations/unmikgazette/02english/E2001regs/RE2001_09.pdf)

and submission of constitutional amendments to public debate; and iv) the decision on constitutional changes by two-thirds votes of total number of representatives.

These phases on constitutional amendments originate from the constitution-making process of 1991 having no international influence while setting the rules of procedure on constitutional changes. The Constitution of 1991 and its constitutional amendment procedure was drafted by local Macedonian actors, including Frckoski and Popovski. As such the constitutional amendment rules had local ownership in contrast to Kosovo having had a process set by international actors. Nevertheless, obstacles on the way of constitutional changes required the international assistance and pressure. The Ohrid agreement provided that constitutional changes set in Annex A had to be implemented in a time frame of forty-five days from the signature of the agreement (the 13<sup>th</sup> of August 2001). Hence the final expected implementation day was the 27<sup>th</sup> of September 2001. Nevertheless, the time frame was not respected due to several obstacles. The call for a referendum on the Ohrid Agreement delayed the process of constitutional changes endangering the fragile peace process. As the constitutional changes were subject of a rigid procedure of constitutional changes requiring two-thirds votes of representatives in the assembly, an intensive mobilisation was required to push the process forward. The international engagement had given its results using the 'the carrot and stick' strategy, by pushing the National Liberation's Army disarmament, constitutional amendments and financial assistance. This strategy and the EU's shuttle diplomacy had produced the results on the 16<sup>th</sup> of November 2001, when the constitutional amendments were ratified.

### **4.3.1. The type of the institution that was designated to draft the Constitution in Kosovo and the constitutional changes in Macedonia**

The process of constitution-making in Kosovo had started before the declaration of independence. Since the political process was leading towards an independent state, a 'constitutional working group' was established consisting of experts and political representatives. The 'constitutional working group' had been transformed into the Constitutional Commission of Kosovo following the publication of Ahtisaari's Plan which provided that a group of 21 experts should be to be formed to proceed with Constitution-making process. The 'Constitutional working group' held its primary consultations, related to constitution-making process, with the EU Planning Team. Two days after the declaration of independence, the President of Kosovo mandated the Constitutional Commission of Kosovo, which had to be voted by the assembly. The Constitutional Commission of Kosovo has been comprised by a group of local experts and political representatives and international experts provided by USAID, representing US Administration. The group had comprised twenty-one experts, which were divided into ten different sub working groups. Each group was assigned to work on a special part of the Constitution, such as the preamble, founding principles, fundamental rights and freedoms, Institutions of the Republic of Kosovo, judiciary, communities' rights, security, local governance, economic relations and independent agencies. One of the former members of the 'Constitutional working group', later an elected member of the Constitutional Commission of Kosovo (Anon., 2018), has argued that the election process of the 'constitutional working group' and its transformation into the Constitutional Commission of Kosovo has been an emergency situation, which was organized ad hoc in a short period of time. She recalls the day when it was communicated to her, by one of the highest state officers in charge for the constitution-making process, that from that day and on, from

being a member of the 'constitutional working group', she will continue to act as a member of the Constitutional Commission, because her name has already passed the voting process by the assembly. This is an argument that even the members of the Constitutional Commission had to adapt quickly to new circumstances and rapid political developments which affected the constitution-making process.

One of the primary tasks of the Constitutional Commission had been the drafting of the preamble of the future Constitution, a task that had been taken by a member of the Constitutional Commission. The content of the first draft of the preamble had been drafted in a nationalistic spirit ignoring the multi-ethnic spirit given to the future Constitution by Ahtisaari's Plan. The translated version in English had been spread to the international experts raising concerns among them on the capability of the Constitutional Commission to carry out the drafting process of the Constitution in conformity with Ahtisaari's Plan. The mistake with the nationalistic content in the preamble had been attributed to an administrative officer with an excuse that it was a technical mistake and he had distributed the wrong version of the preamble. To save the integrity of the Constitutional Commission the administrative assistant had been expelled from work undeservedly (Ramajli, 2019). The act of the drafting of the preamble in a Kosovo Albanian nationalistic spirit is a proof that even some members of the Constitutional Commission were not prepared for a multi-ethnic state, having a national state in mind instead.

The issue of the preamble has been the most sensitive topic in Macedonia as well. The Annex A of the Ohrid agreement had precisely provided what should the future text of constitutional amendments include, and which articles of the Constitution should be amended. The future text of the Articles 7, 8, 19, 48, 56, 69, 77, 78, 84, 86, 104, 109, 114, 115, 131 and the text of the future preamble as well had already been drafted during the Ohrid negotiations and had been attached to Annex A of the Ohrid Agreement. The

drafting process had been accomplished in the Ohrid negotiations. It was expected from the political elites to implement the text provided in the Annex A of the Ohrid Agreement into the Constitution within the time frame provided. The parties had already agreed to implement the Annex A on constitutional changes within forty-five days from the signature of the agreement. Consequently, the article provided in the annex A of had been implemented into the Constitution with the same text as provided in the Ohrid Agreement. This form of drafting and implementation has been criticized as an unconstitutional constitutional-amending process (Andonovski, 2018) which led to violation of Article 62 and 68 of the Constitution. Article 62 of the Constitution stipulates that the Parliament and the members of the parliament represent the citizens of Macedonia and take decisions based on their personal convictions, and changes the constitution<sup>63</sup>. The drafting process which had been accomplished in during the negotiations had represented the drafting process of the Constitutional Articles subject to Constitutional changes. An exception has been in the text of preamble provided in Annex A which had raised tensions among ethnic groups. The text in the Annex A on which the negotiation parties agreed during the negotiation in Ohrid stated:

“The citizens of the Republic of Macedonia, taking over responsibility for the present and future of their fatherland, aware and grateful to their predecessors for their sacrifice and dedication in their endeavours and struggle to create an independent and sovereign state of Macedonia” (Agreement, 2001, Annex A)

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<sup>63</sup> Article 68 of Macedonia's Constitution, retrieved at: [https://www.sobranie.mk/the-Constitution-of-the-republic-of-macedonia-ns\\_article-Constitution-of-the-republic-of-north-macedonia.nspx](https://www.sobranie.mk/the-Constitution-of-the-republic-of-macedonia-ns_article-Constitution-of-the-republic-of-north-macedonia.nspx)



Due to ethnic tensions the international assistance had been required to find a compromise solution. The negotiations had been facilitated by Javier Solana, who had frequently travelled to Skopje and his contribution was especially on facilitating the negotiations between Macedonians and Albanian political elites on the new text of preamble between 25 and 28 of October (Schneckener, 2003, p. 151). The new text which was approved by the assembly has included and mentioned ethnic minorities such as Macedonians, Albanians, Vlachs, Serbians, Romas, Bosniaks and others.

The case with the preamble proves that no violation of the Macedonia's Constitution had occurred as the representatives of the assembly had the chance to agree or disagree with the constitutional changes and express their will through their vote at the end of the process.

#### **4.3.2. The opportunity for public participation**

The findings on Constitution design and state-building suggest different outcomes on the effect of the degree of participation during the drafting of constitutions. Through an analysis of a dataset of 194 constitution-writing cases with 130 procedural and contextual features carried out since 1975, Widner has found that the degree of participation in the drafting of constitutions “has no major effect on post-ratification levels of violence in some parts of the world, such as Europe, but does make a difference in Africa, the Americas and the Pacific” (Widner, 2005, p. 503). Without denying the substantial role of the political elites in the new structure of the institutions, the best practices on constitution-making suggest ensuring public participation to improve the chances on legitimacy of the newly built institutions, through engaging the majority of the population, keeping the public informed and involved and enabling the ordinary people to make effective contribution, engaging the civil society and making the process open to different views in the society

(Widner, 2005, p. 504). The informed choices are considered to have a vital role especially in deep divided societies characterised with fragile peace and inexperienced leadership (Samuels & Hawkins Wyeth, 2006). The studies in deeply divided societies suggest that public participation in constitution-making can partially address the question of accommodation and adjustment of divided segments in state structures. A comparative study between Bougainville and Timor-Leste suggest that extensive public participation played a positive role on creating legitimate institutions and a common identity, in contrast to minimal public participation in Timor-Leste leading to largely illegitimate and ineffective institutions failing to create a unifying national identity (Wallis, 2016).

The constitution-making and constitutional changes in the compared cases of this study, Kosovo and Macedonia, occurred after international engagement in Bosnia and Herzegovina (where several lessons were learned as follows). The Constitution of Bosnia and Herzegovina which came enclosed inside the peace agreement (Dayton Agreement) excluded completely local participation from the constitution-making process leading to the lack of legitimacy and deepening of ethnic divisions. International actors involved in the constitution-making in Kosovo had made sure the mistakes of Bosnia and Herzegovina's case would not be repeated in Kosovo. Still the constitution-making process in Kosovo had been dependent on political developments.

The public was informed on the 'substantial content' of the future Constitution when Ahtisaari's Plan was published for the first time by a Kosovar daily newspaper 'Gazeta Express' after a Kosovo Albanian high officer had received its draft from one of the members of Ahtisaari's team (Anon., 2018). The aim of the publication of the draft was a test of reaction of the public's opinion regarding the content. In the literature it is argued that bargaining and consensus can be easier in the secrecy (Wallis, 2014). Possibly this may have been the main reason why the content has been kept secret until then.

Ahtisaari's Plan had been officially delivered to Belgrade and Prishtina on 02.02.2007. The publication of Ahtisaari's Plan was followed by the protests of 10.02.2007, because it had raised concerns on the public opinion of Kosovo that the word 'independence' had not been mentioned in the text. The protests turned violent resulting in death of two people. The leader of Self Determination Movement and the organizer of these protests, Albin Kurti claims that only after these violent protests Ahtisaari had sent his recommendation to the General Secretary of the United Nations, recommending a supervised independence on 26.03.2007<sup>64</sup>.

The 'constitutional working group' had started the informative campaign of constitution-making before Kosovo's declaration of independence. It had started to draft the Constitution before the publication of the content of Ahtisaari's Plan. Their work had mainly focused on general principles, but they could not draft the main chapters of the Constitution because they had been aware that its final draft should incorporate the Ahtisaari's Plan (Anon., 2018).

The first phase of public debate about the constitution-making process was held from the 27th of January 2008 until the 8th of February 2008 in nineteen municipalities of Kosovo. It had mainly started as an informative debate about the constitution-making process, explaining to the public about the main principles of constitution-making process in Kosovo, which were: the free will of the citizens of Kosovo, respecting the rights and freedoms of minorities, and incorporation of Ahtisaari's Plan in the Constitution (Ramajli & Kryeziu, 2008). The public opinion was informed about the general contents of the draft Constitution, such as the number of chapters, the inclusion of minorities rights, the decentralisation process, the organisation of judiciary, the defence issues, and for the first

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<sup>64</sup> See <https://insajderi.com/protestat-e-vetevendosjes-sollen-pavaresine-e-kosoves/>

time the public was informed about the establishment of the Constitutional Court in Kosovo.

Following Kosovo's declaration of independence on 17.02.2008, the President of Kosovo had mandated the Constitutional Commission two days after the declaration of independence. The Constitutional Commission had had a time frame till the end of March 2008 to finalise all its tasks, drafting the Constitution, public discussions, incorporation of comments and analysis in the draft and consultations with International Civilian Office (ICO) and other local and international legal experts.

The second phase of public consultation had started from 19 February to March 2008. The Constitutional Commission had published the first draft of the Constitution in the media, including the web site, and made possible to access a draft (Kushtetues, 2008). The initial Draft Constitution had emphasised that 'The Republic of Kosovo is a state of its citizens' without mentioning ethnic Albanians. Following the public reaction, the article has been formulated by including 'Albanians and other communities' as titulars of the state. In its web page the Constitutional Commission had emphasised that 35% of the comments, suggestions and recommendations received during three weeks of public debate had been fully or partially included in the Constitution. Nevertheless, the civil society was sceptical on the role of public participation arguing that the way the Constitutional Commission had consulted citizens, civil society and independent expert had been just a cover to give an impression that the formal aspect of the constitution-making process had been fulfilled, which according to them was the main intention of the Constitutional Commission (GAP, 2011).

Harsh critiques on the exclusion of public participation had been addressed also in the process of constitutional changes of 2001 in Macedonia. The Ohrid Agreement had

provided a short time frame, forty-five days for implementation of constitutional amendment in the Constitution. The critiques were related to the top-down approach having had an impact on the drafting process and public participation as well. Andonovski (Andonovski, 2018) criticizes the process of the constitutional changes (2001) which led to uninformed choices and lack of public debate having excluded university professors, civil society activists and experts. The short time frame on the adoption of Constitutional amendments has influenced the procedure lacking sufficient time of public participation. This has happened in order not to endanger the peace process. The more time passed, the more skepticism on implementation had been accumulated among local stakeholders, requiring the engagement of international actors to push the implementation process forward. Nevertheless, the evolvement of the process suggests that the critiques on the lack of ownership on the drafting process and on exclusion of the assembly representatives to have a say in the process, do not stand. First, the drafting of constitutional amendments during the Ohrid negotiations had been done by Macedonian local experts, Ljubomir Frckoski and Vlado Popovski, both university law professors known as the founding fathers of 1991 Constitution. Hence, the most eminent experts had been involved in the drafting process of constitutional amendments. Second, the critique regarding exclusion of assembly representatives to have a say does not stand. Would the Assembly representatives in Macedonia had found the content on constitutional amendments inappropriate, they had the opportunity to raise their voice and to vote against it. The changes on the content of preamble which was attached to Annex A of the Ohrid Agreement in contrast to the constitutionalized content of the preamble is an example that modifications were possible. Assembly representatives as the representatives of the people in Macedonia had the possibility to have a say and vote against any content they did not agree. The process had not been a perfect one, but it was the only way to guarantee and maintain the peace process. In both compared cases,

Kosovo and Macedonia, there have been critiques on the process of public participation as being simply a façade or having a lack of public debate. Nevertheless, the way the processes were accomplished were the most viable solutions, considering ethnic relations. In both cases there were segments of the societies which have been against the process of constitution-making in Kosovo and constitutional changes in Macedonia. The question would be whether the peace process would have been possible if the process would have been left completely in the hands of local actors. Possibly not. In Kosovo's case, Serbia believes that Kosovo's supervised independence is illegal, while segments within the Kosovo society, such as Self-Determination Movement believes that Ahtisaari's Plan was unjust, building a multi-ethnic state instead of a national one. In Macedonia's case, from both sides Macedonians and Albanians there are segments believing that the Ohrid Agreement was a treason. In such circumstances there would always be segments within the societies which ask more than they got with peace agreements. Hence, the way how the process went could have been more inclusive in terms of public participation, but that could have endangered the peace processes which have been made possible just being fostered by international actors.

#### **4.4. The difference in the constitutionalisation of power-sharing arrangements from other parts of the constitutions**

Implementation process of power-sharing arrangements from peace settlements marks the initial phase in the processes of multi-ethnic state-building in Kosovo and Macedonia. In Kosovo, the implementation of power-sharing arrangements into the Constitution occurred at the same time with the constitution-making, a process which had

started before Kosovo's declaration of independence. Kosovo's declaration of independence in 2008 has generated a significant debate among scholars and academics whether this act is in conformity with international law or whether it violates Serbia's sovereignty and territorial integrity. One campus of scholars argue that Kosovo's independence can be supported considering several arguments from a long list, including: the violation of human rights in Kosovo committed by the Serbian regime, the context in the constitutional circumstances after the dissolution of Yugoslavia considering the process of independence as the last step of the dissolution of the Yugoslav state, and the international attempts to resolve the conflict and the final status of Kosovo (Weller, 2009; Hannum, 2011). The other campus of scholars challenges the unilateral declaration, considering it a violation of international law and referring to the necessity of getting the consent from the host state and respecting its territorial integrity (Ker-Lindsay, 2009; Wilde, 2011). For this reason, authors often use phrases such as "a state in limbo", "a state less than a state" or "an unfinished state" (Krasniqi, 2018; Ionita, 2017; Woelk, 2013).

The constitution-making process has been closely connected with the process of multi-ethnic state-building aiming a collective recognition of Kosovo's state through inclusion of power-sharing arrangements. As stated by (Ker-Lindsay, 2015) "the collective recognition is the most effective method for entering into international society as it reduces the burdens of bilateral recognition, as well as it enhances the legitimacy of the new state" (Visoka, 2018, p. 30) citing (Ker-Lindsay, 2015, pp. 273-274). The drafter of power-sharing arrangements, Ahtisaari himself acknowledged that power-sharing provisions drafted in the way they are constitutionalised today were proposed as a compromise for Prishtina and Belgrade, trying to accommodate the concerns and aspirations of both sides (Ahtisaari, 2008, p. 185), rather than originating from the Kosovan society within. Nevertheless, the compromise had not been accepted by Belgrade, nor Russia even

though the latter has accepted the Contact's Group guiding principles in 2005, which hold forth towards Kosovo's independence. The UN secretary general had endorsed Ahtisaari's Plan but due to Russia's veto it could not pass in the UN Security Council. As such, Ahtisaari's Plan had been implemented unilaterally by Kosovan authorities as a compromise for an independent state<sup>65</sup>. Kosovo's Constitution (2008) had been drafted under a strict international supervision, having Ahtisaari's Plan the main guide document to a multi-ethnic model of the Constitution. Ahtisaari's Plan has strictly stated that the future Kosovo's Constitution should include the principles and provisions from Annex I dedicated to constitutional provisions of the future Kosovo's Constitution. The international supremacy over the future Constitution had been provided at the Article 1.1 of the Annex I on 'constitutional provisions' requiring that Kosovo's Constitution should:

Be consistent in all its provisions with this Settlement and be interpreted in accordance with this Settlement: in the event of a conflict between the provisions of the Constitution and the provisions of this Settlement, the latter shall prevail.

The Ahtisaari's Plan (the Settlement) supremacy over the Constitution has constituted a temporary paradox of Kosovo's grundnorm proving the international supremacy over the Kosovo's constitutional order. Kelsen (Kelsen, 1970) defines

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<sup>65</sup> Nevertheless, Kosovo remains a contested State recognized by 115 UN member states. This number is debatable due to a derecognition campaign led by Serbia and backed by Russia, where around 15 UN member states have reconsidered their position towards recognition of independence. Visoka (2018) emphasizes that 40 states that do not recognize Kosovo as a state have at least one active internal secessionist group. Among the recognizers of an independent Kosovo, 62 countries are considered democratic countries, 30 semi-authoritarian and 20 undemocratic. Recent statistics show that most countries who withhold the recognition of Kosovo as an independent state are non-democratic countries, precisely, 29 of them, 25 are categorized as semi-democratic countries and 25 as democratic countries (Visoka 2018). Five EU Member States which do not recognize Kosovo as a state are: Spain, Greece, Cyprus, Romania and Slovakia.



grundnorm as “the basic norm that constitutes the unity in the multitude of norms by representing the reason for the validity of all norms that belong to this order” arguing that “coercive acts ought to be performed under the conditions and in the manner which the historically first Constitution, and the norms created according to it, prescribe” (Kelsen, 1970, p. 201). Therefore, the Constitution should be the frame and the source of every other legal norm. This was not the case with Kosovo’s Constitution. In fact, Article 16 of the Constitution gives the Kosovo’s Constitution the qualification of the highest legal act in Kosovo, but then Article 143 provided the supremacy of the Comprehensive Proposal for the Kosovo Status Settlement over the Constitution. As such, the constitution-making process and the power-sharing system have been constitutionalised taking into consideration Article 1.1 on the annex I of the Settlement and under the strict guidance of the International Civilian Office (ICO) established as the final authority competent to certification of the final draft of the Constitution<sup>66</sup>.

The implementation of power-sharing arrangements from the Ahtisaari’s Plan into the constitutions had followed the constitution-making process as it was stated previously in this chapter. Nevertheless, unlike some parts of the Constitution which were available for eventual changes, ideas and new formulations, the power-sharing provisions were ‘a prohibited zone’ for new formulations, discussions, and changes. A comparison between constitutional provisions from Ahtisaari’s Plan Annex I, clearly argue that constitutional power-sharing arrangements have been implemented in a copy paste mode written in a constitutional language with the same content in it.

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<sup>66</sup> See Peter Faith et al. “State Building and Exit - The International Civilian Office and Kosovo's Supervised Independence 2008 – 2012”, ICO, Prishtina, Kosovo, 2012

The overall international impact on the constitutional power-sharing system and its multiethnicity can be best illustrated in the Article 3 of the Constitution defining Kosovo as “a multi-ethnic society”. The article had defined Kosovo as a multi-ethnic society instead of a multi-ethnic state, as required by Ahtisaari’s Plan, Annex I, Article 1: “The Constitution of Kosovo shall: ...1.3 Affirm that Kosovo is a multi-ethnic society...” (Ahtisaari, 2007).

It is important to emphasize that this ‘copy and paste’ procedure which had characterised the implementation process of power-sharing arrangements into the Constitution, has not been a characteristic of all the parts of the Constitution. Some parts of the Constitution such as Article 37 on the right to marriage and family had been constitutionalised providing a neutral definition of marriage balancing the requirements of different segments of the society. The public debate had raised public reactions from different segments of society. On one side, traditional Muslim religious groups had required definition of marriage between a man and up to four women. On the other side, modern segments of society have seen as unjust the definition of marriage between a man and a woman, requiring LGBT rights to be taken into consideration. As a result, the definition of Article 37 on the right to marriage and family has been constitutionalised as a balanced solution to the requirements of different segments of the society without international influence in the content of the Article.

As a conclusion, when the analysis of constitution-making process in Kosovo would be carried out, a distinction between different parts of the Constitution should be taken into consideration, as they differ on the degree of international influence in the content and in the process. In comparison with power-sharing arrangements on which the degree of international influence had been a total influence, other parts of Constitution may be categorised as marginal or partial depending on the degree of international influence.

Similarly, in case of Macedonia, the degree of international influence in other parts of the Constitution (1991) differs from constitutional amendments of 2001. Frckoski and Popovski are widely known as the founding fathers of the Constitution of 1991. The drafting and the approval of the Constitution had been done by local actors, without international involvement, reaffirming local ownership in the Constitution of Macedonia (1991). The implementation of power-sharing arrangements into the Constitution is more internationalised.

The procedure of constitutional changes (2001) analysed above in this chapter is apparently the same procedure of implementation of power-sharing arrangements from Ohrid Agreement into the Macedonia's Constitution, as Annex A of the Ohrid Agreement hold only power-sharing arrangements in their content. International actors involved in the process of drafting and implementation of constitutional amendments into the Constitution have been careful to ensure local ownership in these processes in Macedonia, due to lessons learned in Bosnia and Herzegovina where the lack of ownership has led to serious problems in acceptance, implementation and functionality of power-sharing system in practice. First, the international actors had fostered Ohrid negotiations through an initial international draft paper proposing several ideas for the settlement, which Frckoski refers as "legal considerations" (Frckoski, 2016, p. 117). Still, local Macedonian experts, Frckoski and Popovski had drafted the provisions Article by Article (Frckovski, 2019), and together with main local political actors reaffirming local ownership in the process. Second, the implementation process of power-sharing arrangements into the Constitution would have hardly been possible without the international influence, due to local resistance on its implementation<sup>67</sup>. The international guarantees did not include the international temporary

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<sup>67</sup> According to Frckovski (2016), the support for Ohrid Agreement among Albanians has dropped from 90% to 80%, meanwhile among the Macedonians the support grew from 1.5% to 62 %.

paradox of supremacy over the Constitution, as it was in Kosovo's case. Nevertheless, the international actors have played an important role during the Ohrid negotiations ensuring that the Ohrid Agreement would have attached the implementation annex and the international actors would guarantee its implementation. The EU-US financial assistance, EU membership, the future security of the country through NATO membership and the recognition of Macedonia's constitutional name 'the Republic of Macedonia' had been the main international leverages in the implementation phase (Pardew, 2018, p. 283). Without these international leverages the implementation of power-sharing arrangements into the Constitution had low probability of being implemented. In a process, such as Macedonia's case, where the international actors to a certain degree direct the constitutional process in the procedural and/or the substantial way, while leaving the final drafting and adopting power in domestic hands, the role of international actors falls on the category of partial international influence (Dann & Al-Ali, 2006, p. 430). This process is in contrast with the implementation of power-sharing arrangements in Kosovo's Constitution which was characterised with total international influence in the procedural aspect and in the substance of power-sharing arrangements. Finally, an important element which has given a new multi-ethnic identity to Macedonia had been the US leverage towards Albanians. As the Albanian guerrilla had the ability to take Skopje under their control, the American leverage had prevented further escalation of the situation in attempt to keep the situation calm, preventing the planned attack to Skopje as a response to eventual Macedonian paramilitary attacks on Albanian civilian population in Tetovo (Pardew, 2018, p. 296). Without this international involvement, the implementation of power-sharing system would had been put into question, and the situation in the terrain would had been different as well.

This chapter is focused mostly on the way how power-sharing arrangements have been implemented from internationally mediated settlements into the constitutions of the compared cases. When analysing the implementation of power-sharing arrangements it is important to emphasize that in both compared cases, along annexes on constitutional amendments, the internationally mediated settlements have also provided annexes on legislative agenda which would reflect the multi-ethnic nature of both states. In Kosovo case, the Annex XII of Ahtisaari's Plan had provided the legislative agenda to be formally approved during the transition period of 120 days and after the transition period necessary to implement Ahtisaari's Plan. The legislation which had been formally approved during the transition period had included: laws related to General and Local elections, the Law on Local Self-Government, the Law on Municipal Boundaries the Law on the Establishment of Protective Zones and Rules of procedures of the Assembly<sup>68</sup>. The legislation which had to be approved after the transition period included: laws on the rights of communities and their members, the law on the establishment of the Kosovo Security Council, legislation on Civil Aviation Authority, Local finances, laws related to distribution of competences in education and health, Amendments to the Assembly Rules of Procedure for the Establishment of an Assembly Security Oversight Committee, Law on the Kosovo Security Force, Law on Service in the Kosovo Security Force, Law on Service in the Kosovo Police, Law on the Establishment of Kosovo Intelligence Agency, Law on Kosovo Citizenship, Law on National Symbols and Public Holidays and Law on Restitution<sup>69</sup>. Kosovo assembly had passed the above-mentioned laws in an accelerated procedure without public debate, in order to fulfil Ahtisaari's Plan requirements for a supervised independence. An exception had been the Law on Restitution which was never

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<sup>68</sup> See Annex XII of Ahtisaari's Plan on Legislative Agenda, Article 1.

<sup>69</sup> See Annex XII of Ahtisaari's Plan on Legislative Agenda, Article 2.

proceeded in the assembly and makes Kosovo unique in contrast other post conflict ex-Yugoslavian countries which have approved the law on restitution. Nevertheless, the end of the Kosovo's supervision of independence had been declared on the 10.09.2012 and the ICO mandate came to an end with the argument that Ahtisaari's Plan:

“had been substantially implemented and noting that consistent with their commitments the Kosovo institutions have now passed packages of amendments to the Constitution and to the primary legislation satisfactorily capturing the remaining elements of the CPS [ Settlement] within the Kosovo Constitutional and legal framework...the CPS no longer exists as a separate and superior legal power and the Constitution of the Republic of Kosovo now constitutes the sole basis for the country's legal framework ” (ICO, 2012)

Such strong international supervision on the legislative implementation had not been set in Macedonia's case. Nevertheless, the legislative modification required to be undertaken by the Ohrid Agreement would not had been possible without international leverage (as explained above). The Annex B of the Ohrid Agreement had provided an agenda on the legislative modification under Annex B listing the approval of law on local self-governance within 45 days; laws pertaining to police located in the municipalities before the end of the term of the Assembly; laws on civil service, public administration and on the use of languages, law on local finances and rules of procedures of the assembly by the end of the term of the Assembly, law on municipal boundaries, law on electoral districts, law on public attorney by the end of 2002. Macedonia could not pass the legislation within the deadlines set in the Ohrid Agreement. Nevertheless, the legislation had passed with the international assistance and using leverage toward local actors. Still these days the international assistance helps on confidence building between

Macedonians and Albanians on laws requiring double majority voting. This is done through Americans for laws proposed by Macedonians on which Albanians are suspicious (Ademi, 2019; Frckovski, 2019). This indicates that still there is no trust among the biggest ethnic groups, Macedonian and Albanians.

## **4.5. Conclusions**

The incorporation of power-sharing arrangements into the constitutions of Kosovo and Macedonia has been determined by the influence of international actors and the nationalising state interplay, which has affected minorities' rights of the newly created, constitutionally multi-ethnic states. The process of incorporation of power-sharing arrangements into the constitutions was characterised by the interplay of three relational fields of the quadratic nexus: the international actors, the nationalizing states, and its ethnic minorities. The eponymous states, Serbia and Albania have remained neutral in this process. It is important to emphasize that after the declaration of Kosovo's independence, unlike in the international mediation where Albania was Kosovo Albanians eponymous state, now Kosovo Serbs have found themselves in a new reality where Serbia is the new eponymous state. Things have remained unchanged in Macedonia since Albanian minorities have agreed to advance their rights within the state borders. Therefore, Albania has remained their eponymous state.

The Western powers' approach towards separatism or continuation of unionism within the same state borders has had an effect on the process how of the power-sharing arrangements have been incorporated into Kosovo's and Macedonia's constitution. The international actors' support for a multi-ethnic independent Kosovo and the declaration of independence has required a completely new constitution. While the implementation of

power-sharing arrangements in Macedonia has not required a new constitution, but it has followed a normal path of constitutional changes as the Ohrid Agreement had provided.

Among three crucial questions related to power-sharing arrangements: their origin, their implementation and their functionality in practice, this chapter has considered the second question on the way how power-sharing arrangements were implemented into post-conflict constitutions and the role of international actors in the process through a comparison between constitutional power-sharing arrangements in Kosovo and Macedonia. The way how power-sharing arrangements are institutionalised are considered critical to their success (McCulloch, 2014, p. 4). The multi-ethnic nature of Kosovo and Macedonia came to be as a result of implementation of power-sharing arrangements into their constitutions. The origin of the implemented power-sharing arrangements derives from the internationally mediated settlements which have served as multi-ethnic state-building frameworks. The processes of constitutionalisation of power-sharing arrangements have been characterised with different degree of international influence in the contents and in processes. The categorisation of total, partial and marginal international influence theorised by Dann and Al-Ali suggests that the processes had different degree of international influence in Kosovo and Macedonia.

In Kosovo's case the process has been much more complex than in Macedonia's case. The process of implementation of power-sharing arrangements into Kosovo's Constitution had occurred at the same time with constitution-making. Power-sharing arrangements have been drafted by Marti Ahtisaari as a compromise and a solution to resolve Kosovo's final status. Power-sharing provisions which had a lack of ownership provoked local resistance among some segments of the society, such as Self-Determination Movement requiring the establishment of a national state instead of a multi-ethnic one. In such circumstances the international actors had established a process of



power-sharing implementation into the Constitution giving international actors total control over the process and in the content of power-sharing provisions. As a result, a “temporary constitutional paradox on grundnorm” has been constituted in Kosovo’s Constitution giving Ahtisaari’s Plan supremacy over the Constitution as a guarantee to establishing a constitutional multi-ethnic nature of the state. As a result, the degree of international influence in the content and in the process of the implementation of power-sharing arrangements in the Constitution has been a total international influence, as theorised by Dann and Al-Ali.

Macedonia followed a different path from Kosovo. Since the Ohrid peace negotiations local actors have had the will to find a solution to inter-ethnic conflict. Two well-known local legal experts, the drafters of Macedonia’s Constitution of 1991, Popovski and Frckoski have been involved in the drafting process of power-sharing arrangements, subject of constitutional changes occurred in 2001. International actors have not imposed direct measures on implementation of power-sharing provisions like in Kosovo’s case. Still, the EU and the US had been the main guarantors and accelerators on the implementation of power-sharing arrangements into the Constitution influencing partially the content and the process. Since the peace process had been fragile, time factor was of importance in the implementation process. The Ohrid Agreement was given a time frame of forty-five days for implementation of constitutional provisions. The role of international actors has been on assuring the implementation within the shortest time period, possibly within the given time frame in the Agreement. The implementation process of constitutional amendments had followed the constitutional procedure as provided in the Constitution. The process of implementation and the content of constitutional power-sharing arrangements has been subject of local critiques on the lack of public debate and on being exclusive rather than inclusive. Even though the content

and process of constitutional power-sharing implementation had been carried out by local actors, the international actors accelerated the process through diplomatic engagement and international leverages, mainly with the EU financial assistance and EU and NATO Membership promises. Without the international influence, the implementation of constitutional power-sharing arrangements, transforming the state from a national one into a multi-ethnic one, would have been hardly possible. Following the categorisation of international influence in the constitutionalisation, the degree of international influence in the implementation of power-sharing arrangements from peace settlement into the Constitution falls within the category of partial international influence.

## **Chapter 5.**

# **The functionality of constitutional power-sharing arrangements and their impact in the institutional stability of Kosovo and Macedonia**

The previous chapters have provided answers to two crucial questions related to power-sharing arrangements in ethnically divided societies: How have international actors influenced power-sharing arrangements incorporated in the peace settlements in the international mediation and the constitutionalisation in reaction to separatism. This chapter seeks to answer the third sub-research question:

- How do the constitutional power-sharing arrangements affect the functionality and the institutional stability and the role of international actor within?

This will be done by comparing constitutional power-sharing arrangements in multi-ethnic Kosovo and Macedonia using Lijphart's characteristics of consociational democracy: the grand coalition, the veto power, proportional representation and cultural autonomy. Lijphart has considered the grand coalition principle, more precisely the government by a grand coalition as the first and the most important principle (Lijphart, 1977, p. 25) . Therefore, this chapter is principally focused on the grand coalition principle.

For the purpose of this study, I define functionality as a stable, long lasting multi-ethnic grand coalition capable of taking decisions for the benefit of all its citizens.

Next, I test the functionality of power-sharing principles using Smith's quadratic nexus assessing the interplay between nationalizing states, national minorities living in the nationalizing state, the eponymous states and the role of international actors. This chapter also considers Germane's theory on the "fifth element" looking at the inter-ethnic relations and its applicability in the context of consociational democracy as established in Kosovo and Macedonia.

I address the second central research question of the thesis:

- How has the interplay between different groups from the same ethnic minority living in the same state, affected power-sharing arrangements in Kosovo and Macedonia?

The consociational power-sharing debate acknowledges the benefits of this system such as the inclusion of minorities, reduction of group-based insecurities, its support to end the violent conflicts, but it remains contested in three points: Consociationalism is difficult to adopt, has difficulty functioning and is difficult to be modified and even harder to move beyond (McCulloch, 2021, p. 2).

The previous chapters have addressed the adoptability of consociational power-sharing arrangements. This chapter addresses the issue of functionality of power-sharing arrangements and proposes new solutions by looking at the intra-ethnic relations from the same ethnic minority living in the same state. Further, I suggest the revision of David J. Smith's quadratic nexus proposing the accommodation of a new relational field in the nexus, the interplay between different groups belonging to the same ethnicity living in the same state, which I call, "the sixth element". This is following Germane's "fifth element",

the inter - ethnic relations between minorities from different ethnic groups living in the nationalizing state, also relevant to this chapter.

## **5.1. Some aspects of comparison of power-sharing arrangements**

Power-sharing mechanisms have been frequently used for conflict management between ethnic majority and minority. The conflict between ethnicities is managed by mechanisms which allow to share the power between ethnic groups. Florian Bieber (Bieber, 2005) rightly points out that power-sharing is comprised of two components: power and sharing. These two components are enshrined together in the collective administration of power by ethnic groups. The modalities of how ethnic groups should collectively administer the power has been at the center of power-sharing academic debate. Power-sharing arrangements can be constitutional, electoral, military, executive or legislative reforms. The appropriate choice of power-sharing approaches depends on the nature of the conflict and its dynamics. Power-sharing mechanisms are common in modern peace agreements between different ethnic groups. Peace agreements with power-sharing mechanisms have been concluded driven from local and domestic actors like in the cases of South Tyrol, Northern Ireland, Belgium and those firmly driven by international actors like in the case of Bosnia and Herzegovina, Kosovo, Iraq and Afghanistan.

I have argued in Chapter 3 and Chapter 4 that the model of democracy installed in Kosovo and Macedonia has been an international driven process characterised by different international degrees of influence in the content and in the process. The degree of international influence has had an impact on constitutional power-sharing choices

depending on whether the international actors support separatist demands. The constitutional power-sharing choices correspond with consociational power-sharing system in both cases. Nevertheless, the rules and their functionality in practice is different between Kosovo and Macedonia. International actors have influenced the process of accommodation of ethnic demands in different ways due to the specific circumstance and due to the lessons learned from the past, having seen consociational democracy as a solution to ethnic cleavages, through building multi-ethnic states, as explained in the previous chapters. Both states have experienced inter-ethnic violence after the dissolution of Yugoslavia fulfilling the independent variables: international involvement in the design and normative implementation of power-sharing arrangements, and institutionalized power-sharing arrangements. I will further compare the similarities and differences between the constitutionalized power-sharing arrangements, their functionality in practice and the role of international actors in their functionality.

Bieber rightly points out that “power-sharing is not just a peace agreement”, but also allows for stable democracy, the reduction of ethnic distance and polarization (Bieber, 2019, p. 3). The imposed or chosen power-sharing rules remain an important aspect of the functionality of power-sharing systems, nevertheless the political will to apply those rules is determinative.

When comparing power-sharing systems, three distinctions relevant to comparison studies presented by McCulloch should be taken into consideration: formal or informal, liberal or corporate and direct or indirect power-sharing (McCulloch, 2017). The first distinct: the difference on formal and informal power-sharing consist whether power-sharing arrangements are formalised in a legal aspect, such as in the Constitution and/or legislation, or whether the power-sharing operates through informal rules, such as ‘closed doors’, gentlemen’s agreements or other forms of sharing power not provided by the

Constitution and/or the legislation. The second distinct on liberal or corporate power-sharing consist of whether predetermining or not which groups are entitled to power-sharing and in which domains. The third aspect of power-sharing differentiating direct and indirect power-sharing consist of consociational power-sharing as a direct form of sharing power and indirect centripetal power-sharing by having biggest political parties seeking support across other ethnic-political divide (McCulloch, 2017).

These comparative aspects are important when comparing case studies to this study, with an exception to the third aspect of power-sharing – consociationalism vs. centripetalism - as the study focuses just in consociational power-sharing system.

It is important to clarify that being aware that both Kosovo and Macedonia have had power-sharing systems even before the conflict, in Kosovo's case after the conflict as well, the object of comparison will be constitutional power-sharing from Kosovo's Constitution (2008) and constitutional changes in Macedonia (2001). Kosovo will be examined from 2008, because the power-sharing provisions which have resulted from the international mediation have been incorporated in the Constitution of 2008. Macedonia will be examined from the period of 2001, a year which indicates the initial phase of the implementation of power-sharing arrangements from the Ohrid Agreement in the Constitution.

## **5.2. Constitutional power-sharing arrangements, their functionality in Kosovo and Macedonia and the role international actors within**

Adoption the appropriate rules is an important aspect of power-sharing system. McCulloch defines adoptability as “which institutions are likely to be agreed upon by political actors” (McCulloch, 2019). Palermo and Woelk rightly point out the importance of functionality of any power-sharing system (Palermo & Woelk, 2011). How power-sharing systems work in practice remains an important aspect as well. Acknowledging the difficulty on reaching power-sharing agreements, McCulloch correlates the hybrid nature of many power-sharing cases with Horowitz’s “oxymoron” of constitutional design suggesting “only partial measures that are doomed to fall short of the coherent package stand a real chance of adoption most of the time” (Horowitz, 2000, p. 262). More often conflicting parties fail to formally agree on important aspects of power-sharing relevant on maintaining peace in the country. Nevertheless, the political elites informally agree on certain power-sharing arrangements when assessing that that would be essential to maintain peace and institutional functionality. Bieber has pointed out that this ‘informal power-sharing’ aspect is little know and has not been sufficiently addressed to power-sharing debate. The comparison between Kosovo, a case comprising a formalised complete set of Lijphart’s consociational principles, and Macedonia, comprising a weak consociation formally, will bring the formal and informal aspects of power-sharing. The main attention will be given to the grand coalition principle, qualified by Lijphart as the most important among four power-sharing principles.



Serving as tools of ethnic conflict management the power-sharing provisions incorporated in the constitutions of two countries compared have the same purpose: integrating ethnic minorities in the post-conflict societies. Still the question remains if the purpose of establishing a multi-ethnic society has been achieved by implemented power-sharing mechanisms?

Further, Bieber considers naive the idea that power-sharing systems will outlive itself over time, stressing out the need of power-sharing literature to consider more seriously 'biodegradable' solutions and leaders which have been empowered through violence or elections claiming to represent an ethnic group (Bieber, 2019). The biodegradability will be addressed regarding the original contribution of this thesis - "the sixth element" – consisting of the interplay of ethnic minorities groups from the same ethnicity living in the same state, as a possible relational field having an effect on the functionality of power-sharing systems.

This element is especially visible in Kosovo's case. Due to political changes on the interplay of ethnic minorities from the same ethnicity living in the same state, the four characteristics of consociation have been affected, dividing the functionality of power-sharing system into two periods:

1. The period from the declaration of Kosovo's independence in 2008 until the First Brussels Agreement (2013)
2. The period after the First Brussels Agreement (2013) when Lista Srpska/Serbian List party - a Serb minority political party - entered in Kosovo's political scene.

The effects of political changes in the Serb minority political parties has made visible the importance of the interplay between ethnic minorities from the same ethnicity living in the same state in Lijphart's four characteristics of consociation, which will be addressed below.

### **5.2.1. Grand coalition government**

Grand coalition government is the most important characteristic of power-sharing mechanism (Lijphart, 1977). The grand coalition principle gives a mandatory status to the appointment of ethnic minorities in the executive posts, such as ministerial ones. Despite the eventual discrepancies on the popular vote outcome between majority and minority, the principle provides for the inclusion of ethnic minorities in the executive branch of government.

Since 2008, when Kosovo declared its independence<sup>70</sup>, the ethnic minorities have been included in the governing coalition. Since then, none of the post-independence governments managed to complete its four-year mandate. The scarce longevity of the governing coalitions which were formed, can be explained with the dominance of conflicting daily interests of the political parties' leaders. Since the entering into force of the Constitution of Kosovo (2008), the role of ethnic minorities has become constitutionalized and mandatory in decision making in all governing levels. The Article 96 of the Constitution determines that the government should be multi-ethnic, guarantying Ministerial and Deputy ministerial posts for ethnic minorities. The members of ethnic minorities are entitled by the Constitution to the guaranteed posts without considering the popular vote in relation to the members of the majority. Thus, the government is

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<sup>70</sup> See Chapter 4.

considered a consociational government, rather than a government of majority in terms of popular vote. The application of the principle of grand coalition in the executive level has had an important role on the representation of ethnic minorities in executive level. In terms of decision-making process of governmental meetings there is no mechanism to enforce the ethnic minorities, such as the veto. The Government regulates its work with a regulation, since there is no law which regulates the work of the government, including the decision-making process. According to the Article 19.2 of the Regulation of rules and procedure of the Government of the Republic of Kosovo no. 09/2011, decisions in governmental meetings are taken by simple majority of the members present in the meetings (Government, 2011). Having in consideration Article 96 of the Constitution which guarantees posts for two Ministers and four Deputy Ministers from ethnic minorities, one may argue that Albanian majority has the possibility to determine decisions in the executive level, as no veto mechanism for ethnic minorities is provided in governmental decision-making meetings. Thus, one may conclude that minorities have a mere representative role in the governmental meetings.

The changes into political scene of political representatives of Serb minorities has divided the grand coalition power-sharing functionality into two periods, as explained above. The political representation of political parties belonging to Serbian ethnic minorities has experienced substantial change during these two periods. After the declaration of independence since the first Brussels Agreement (2013), Serbian minorities were represented by Independent Liberal Party / Samostalna Liberalna Stranka (SLS), the oldest Serbian political party in Kosovo since independence. SLS is a Kosovo Serbian liberal political party which recognizes and cooperates with the post-independence institutions of Kosovo. Being aware that Belgrade is losing its influence over Kosovo institutions, a new political party controlled by Belgrade - Serbian List / Lista Srpska (LS)

– has been established after the First Brussels Agreement (2013). In the following elections (November 2013) the political landscape of Kosovo Serbs had changed substantially across Kosovo. The President of a Kosovo Serb political party, Democratic Progressive Party / Progresivna Demokratska Stranka (PDS), has expressed his concerns that the Brussels Agreement (2013) has had a negative effect on the integration of Kosovo Serbs. Further he explained that from that period Kosovo Serbs have been disintegrated than integrated in Kosovo (Koha, 2021). In the local elections, LS had won a majority in nine out of ten municipalities, and eleven seats in the Fifth Legislation Period (17.07.2014 - 10.05.2017), replacing SLS which had had eight seats in the Fourth Legislation Period (12.12.2010 - 07.05.2014)<sup>71</sup>. This political rotation between SLS and LS has been reflected in the political constellation of Kosovo Serbs representatives in governments. Unlike SLS which has cooperated with Kosovo's institutions, LS does not recognize Kosovo's independence and with its political decisions on boycotting Kosovo's institutions and noncooperation often undermines Kosovo's the functionality of the institutions. In the executive, LS representatives have often abandoned governmental meetings, an attitude which has continued during Haradinaj's Government.<sup>72</sup> Driven by the non-cooperative behavior of LS, Haradinaj had started to fill the governmental positions dedicated to Serbian minorities with Kosovo Serbs belonging to other Serbian political parties than LS. An example is the Ministry of Agriculture which was given to a SLS member. This decision was contested by LS protesting that the governmental positions were given to 'unqualified private Serbs'. SLS denied all allegations, recalling that SLS has been a parliamentary

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<sup>71</sup> For more information on previous legislatures in Kosovo, see: <http://old.kuvendikosoves.org/?cid=1,158>

<sup>72</sup> The last time when Lista Srpska abandoned Kosovo's Government was after Haradinaj's government decision to impose 100 % taxes on the Serbian products.

party for a long time and the appointed minister of agriculture is much more coalified than any other proposed LS member (Kossev, 2019).

During Haradinaj's Government, as solution to the institutional blockade and boycott from LS, the government appointed Kosovo Serbian minorities belonging to other Serbian political parties willing to cooperate and recognize Kosovo's institutions. More precisely a SLS member was appointed in a Ministerial post as required by the Constitution. Yet, this form of appointment may not always be a solution.

The appointment of Ministers and Deputy minister from ethnic minorities has to follow the procedure as required by Article 96.5 of the Constitution:

The selection of these Ministers and Deputy Ministers shall be determined after consultations with parties, coalitions or groups representing Communities that are not in the majority in Kosovo. If appointed from outside the membership of the Kosovo Assembly, these Ministers and Deputy Ministers shall require the formal endorsement of the majority of Assembly deputies belonging to parties, coalitions, citizens' initiatives and independent candidates having declared themselves to represent the Community concerned (Constitution, 2008).

During Haradinaj's Government, SLS won one seat out of ten guaranteed seats for Serb minorities in the Parliament, leaving the possibility on consultations to be done with SLS or LS for the guaranteed posts in the Government. Consequently, the consultations on the selection of the Minister were done with SLS due to its more cooperative political standings.

By the time these arguments are presented<sup>73</sup> all the governments have built governing coalition with minorities, enabling the formation of multi-ethnic governments as required by Article 96 the Constitution. Therefore, no international influence was required to end eventual institutional deadlocks in relation to ethnic minorities. In fact, the international influence has been present on government formations not related to ethnic minorities, but rather fostering consensus building between Kosovo Albanian political parties. A high official points two main international influencers on government formations: the US and Merkel's Christian Democratic Union (CDU). (Anonymous, 2019). According to him, the US influences the governing coalition as a US state, while CDU does not act as German state level, but rather supports the Kosovo Albanian party Democratic League of Kosovo / Lidhja Demokratike e Kosovo (LDK) as a party with the same political affiliation with CDU in the European People's Party group. CDU has influenced the formation of governing coalition in 2014 encouraging the PDK-LDK governing coalition and by now is encouraging the entrance of LDK in governing coalition with Self-determination Movement / Vetevendosje (VV). Germany as a state does not influence governing coalitions in Kosovo. By contrast, the US has been more actively involved of government coalitions. The governing coalitions in 2007 and 2014 have been encouraged by the US. Interestingly the same governing coalition of 2014 has been canceled with the consent of the US (Anonymous, 2019) indicating the role of the US in governing coalitions. Nevertheless, since a daily newspaper Koha Ditore had published messages of the US ambassador, Christopher Dell influencing the election of Kosovo's Presidents Behgjet Pacolli and Ahtifete Jahjaga, the US has been more careful towards public in relation to its influence on government formations. Still, the US influence remains active on government formation. The latest case is the meeting of the US ambassador with the winner of October

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<sup>73</sup> 7<sup>th</sup> of January 2020.

the 6<sup>th</sup> parliamentary elections, Albin Kurti warning him about the constitutional requirements on government coalition in relation to LS. The results of the October the 6<sup>th</sup> 2019 parliamentary elections have produced an extreme result between two largest ethnic groups. The winner of these elections - Self-determination Movement/Levizja Vetevendosje (VV) - has in its political programme joining Kosovo with Albania within the same state, which contrasts the political standings of LS on non-recognition of Kosovo's Independence. The leader of VV elected as a candidate for the Prime Minister, Albin Kurti, has declared that he will not form a coalition with LS and no member of LS will be part of his Government. He prefers to appoint Serbs from other Serb political parties which are willing to cooperate with Kosovo institutions and to recognize its statehood. At the other side, LS the winner of all guaranteed seats for Serb minorities has warned that any selection of other Serb than LS members in Governmental post would be unconstitutional. Having no other representative from other Serb political parties in the Parliament, the appointment of Serb minister other from LS without LS consent as required by the Constitution, does not seem to be possible in practice.

Article 96.5 of the Constitution requires the consent of Serb representatives of minorities if a candidate other than LS would be appointed. The Constitution does not explicitly provide how this consent would be taken. But the commentary of the Constitution clarifies that the consent of the representatives means the majority votes from the representatives of ethnic minority group the government has chosen to consult<sup>74</sup>.

In the given case, LS has won all ten guaranteed seats in the parliament being the only Serb Political party entitled to be consulted. Therefore at least six votes from LS are

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<sup>74</sup> See Commentary of Kosovo's Constitution: <http://jus.igjk.rks-gov.net/487/>

required in favor of the Serb Minister to be appointed. The formation of the government would have been possible without LS votes if other Serb political parties would have won at least one guaranteed place in the parliament. But the current situation requires at least an implicit governing coalition with the winning Serb Political party, LS.

Kurti's government has followed the advice of the US Ambassador that the constitution should be respected. He had formed the government, with a LS member, nevertheless his government lasted just fifty days because its coalition partner LDK had left the coalition accusing VV of being anti-American. This was the period when the Trump's Administration was putting pressure to sign the Kosovo-Serbia Agreement.

This situation as explained above is an indicator that even though in Kosovo power-sharing arrangements are constitutionalized and explained in detail, there are tendencies to overcome Constitutional requirements in relation to grand coalition principle, by not applying them. These tendencies of noncompliance indicate the lack of ownership on drafting and adopting these principles, producing local resistance on their application.

Unlike in the case of Kosovo, the Macedonian Constitution does not provide for a grand coalition constitutional rule between the majority and other ethnic minorities. However, following the Ohrid Agreement establishing a grand coalition government has turned into a tradition. Since after the Ohrid Agreement, one of the biggest Macedonian party has always invited into coalition one Albanian party, for the sake of political stability and institutional functionality, which based on power-sharing arrangements is dependent on Albanians votes. Furthermore, the situation in Macedonia is less complex than in Kosovo because no ethnic Albanian party contests the Macedonian statehood and its state borders. The political program of Macedonian Albanian political parties is similar to each other. In general, their political programmes include achievement of equality,



especially in the economic regional development equality and societal wellbeing, rule of law, Euro-Atlantic integration process, good inter-ethnic relations and good relations with the neighbours. However, the relation between Albanian political parties in Macedonia remain important for the institutional stability, including in the government. Following the parliamentary elections of 2006, Macedonia experienced an institutional crisis after the biggest Albanian political party - Democratic Union for integration / Bashkimi Demokratik per Integrim (BDI) - left the parliament. The main reason for abandoning the parliament was that the Macedonian winning political - Internal Macedonian Revolutionary Organization / Vnatrešna Makedonska Revolucionerna Organizacija (VMRO) - formed a coalition with the second biggest Albanian political party – Democratic Party of Albanians / Partia Demokratike Shqiptare (PDSH). The crisis occurred in the period of the expected international mediated negotiations on the status of Kosovo and Macedonia's expected invitation to join NATO. For these reasons international representatives were very much interested to maintain the institutional and political stability. In the presence of the international representatives, as a result of the EU pressure and conditionality and the US Embassy in Skopje, the political parties VMRO-DPMNE and BDI reached an agreement, among which was the BDI's return to Parliament and the agreement of parties to continue the discussions on the method of Government formation. The agreement which was reached between VMRO-DPMNE and BDI, known as the May's Agreement, was more a gentlemen's agreement between the leaders of VMRO-DPMNE, Nikola Gruevski and BDI, Ali Ahmeti. The leaders agreed on the future formula of the government formation, which would be a government coalition between the winner from the Albanian political parties and the winner from the Macedonian political parties. The agreement did not include the signatures of the leaders and international representatives present in the meeting when the agreements was achieved. However, it was successfully implemented in government formation after parliamentary elections of 2008, 2011 and 2014. The parliamentary

elections of 2016 mark an exception on its implementation. Brokered by the EU, Macedonian political parties agreed on holding the parliamentary elections in 2016 in attempt to end the unrest.<sup>75</sup> The new elections were considered as an opportunity to move the country towards EU integration. The EU Enlargement Commissioner, Johannes Hahn emphasized that the crisis should be used by the leaders “as an opportunity to modernise the country and to give it a European perspective”, attributing the international responsibility and obligation, especially the European Union’s and the US’s support to reach an agreement for elections (Commission, 2015). With the nationalists in power the EU had lost its leverage towards Macedonia. Therefore, it was in the EU’s interest formation of a pro-European government. However, the results of the elections did not subtract the expected results. The Macedonian nationalist coalition VMRO-DPMNE won the elections, leaving the pro-European Macedonian coalition "For life in Macedonia", led by Socijaldemokratski Sojuz na Makedonija / Social Democratic Union of Macedonia (SDSM) behind<sup>76</sup>. The momentum required the formation of a government that undertakes the necessary reforms to move the country forward towards EU Integration and NATO. The reforms were very delicate: the new government was expected to find a solution on the name dispute with Greece and to undertake the necessary constitutional changes. The victory of VMRO-DPMNE coalition in the elections, raised two ‘obstacles’ on pro-European government formation: 1) How to form a pro-European government, when the

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<sup>75</sup> The unrest was sparked after then opposition leader Zoran Zaev released recordings which appear to show reveal corruption at the highest levels of government, ministers plotting vote-rigging, mismanagement of funds, criminal prosecutions of opponents. Zaev had accused the then government of wiretapping 20,000 people, including politicians, journalists and religious leaders.

<sup>76</sup> In the final results VMRO-DPMNE won 51 seats out of 120 (10 seats less than in the previous legislation), LSDM - 49 seats ( 15 seats more than in the previous legislation), BDI - 10 seats (9 seats less than in the previous legislation), PDSH - 2 seats, ASH (Aleanca per Shqiptaret/Alliance for Albanians) – 3 seats and LB (Levizja “Besa”/ Besa Movement) - 5 seats

winner of the elections was the nationalist euro sceptic Coalition VMRO-DPMNE?; 2) whether the President of the State, Ivanovski, a supporter of VMRO-DPMNE coalition, would have given the mandate on formation of the government to another political subject – which would have ensured majority in the parliament - other than the winning coalition VMRO-DPMNE?

Taking into consideration the agreement of May, the winners from both biggest ethnic parties, VMRO-DPMNE coalition and BDI, informally agreed to form a government together on the winner-winner principle. They even agreed on how to share the ministerial posts (Reka, 2019). It was the US diplomatic engagement, a decisive factor, which convinced BDI leaders to abandon the idea of a coalition with VMRO-DPMNE, and to form a coalition with SDSM coalition (Anonym., 2019). After securing a pro-European coalition between Zaev's SDSM and Ahmeti's BDI, the challenge moved to the second obstacle: obtaining the mandate to form the government. The President of the State, Ivanovski, openly rejected to give the mandate for forming a government to Zaev. Furthermore, Macedonia was shaken by the attacks on Members of Parliament inside Parliament after an Albanian Politician, Talat Xhaferi was elected as Speaker of the Parliament. The supporters of the former ruling right-wing VMRO DPMNE party, including two members of Russian intelligence service stormed the building of the Parliament<sup>77</sup>. It was the visit of the Assistant Secretary of State for European and Eurasian Affairs at the US Department of State, Hoyt Brian, with the President of the State, Ivanovski convincing the latter that giving the mandate to majority is the right thing to do (Jakov Marusic, 2017).

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<sup>77</sup> During the protests more than hundred people were injured, including journalists and at least ten Members of the Parliament, including the leader of SDSM, Zoran Zaev and the leader of ASH, Zijadin Sela.

A pro-European government has been in the Interest of EU, which had lost the leverage when the country was led by nationalist VMRO-DPMNE party. A pro-European government has been in the interest of the US as well, which was interested to foster the reforms moving the country towards NATO Membership. The pro-European government in Macedonia and the reforms achieved, including the signature of Prespa Agreement by a pro European government would have not been possible without the EU-US led joint efforts. As the EU-US led efforts have produced positive results in government coalitions in Macedonia, this has not been visible in Kosovo's case, not even when the coming government is expected to conclude an agreement on Kosovo-Serbia relations.

### **5.2.2. The veto power of ethnic minorities**

Veto power is one of the Lijphart's three complementary secondary instruments, beside proportional representation and segmental autonomy. The most important mechanism of consociationalism - the grand coalition – does not guarantee the protection of vital interests of ethnic minorities in the decision making in the governmental level. It is more likely that the decisions in the executive level may be outvoted by the majority, endangering inter-ethnic elite cooperation. For this reason, Lijphart suggests that an ethnic minority veto must be added to the grand coalition, when the vital interests of ethnic minorities are important and need to be protected. Recognizing the danger that the use of veto power may turn it into a minority tyranny, he believed that this danger is not serious. Lijphart did not see the frequent use of veto power to be in the interest of the given segments because the deadlock and immobilism resulted from the unrestrained use of veto (Lijphart, 1977). On the contrary, Bieber warns that veto power can have the most serious negative effects on the functionality of the institutional arrangements (Bieber, 2005)

What Lijphart missed to consider is: What if the deadlock is convenient for ethnic minorities, or for a segment of ethnic minorities who are granted with veto power? The answer to this question may be found by comparing Kosovo – a state territorially contested from inside and outside, and Macedonia – a state territorially uncontested. Both states have restrictive systems of veto power. McCulloch defines the distinction between restrictive -the constitutionally protected predetermined set of areas and permissive vetoes that permits groups to determine themselves their vital interests (McCulloch, 2018).

In the previous chapter I have argued that veto power granted to ethnic minorities in Kosovo, due to the Ahtisaari's Plan package, includes one of the most advanced systems of power-sharing in terms of minorities' rights. In the case of Bosnia, the veto power mechanism is an extensive one. Bosnia and Herzegovina recognises three forms of veto: entity veto in the Presidential level, vital national interest veto in the House of People and the quorum in the Parliament requiring for each decision a minimum of all groups to be present. This constitutionalized veto mechanism has enabled the veto players 'to use and abuse' the veto power to its extreme. Putting forward their exclusionary ethnic interests it enables the veto players to "hijack" the parliament, discouraging cooperation and compromise between them (Bahtic-Kunrath, 2011). Having had a negative experience in Bosnia and Herzegovina on veto power abuse, international actors where more careful when influencing power-sharing systems of Kosovo and Macedonia. Both countries do not have a direct veto like in Bosnia and Herzegovina, but rather a voting mechanism known in the literature as "special majorities" requiring the votes from majority and ethnic minorities in the voting process. This power-sharing mechanism is known as "indirect veto power" (McEvoy, 2015, p. 172; Bieber & Keil, 2009, p. 353). Because both states are Parliamentary Republics, the indirect veto powers constitutionalized as power-sharing systems after the conflicts depend on voting process of the representatives of the

ethnic minorities in the parliament. This is the reason the seats of ethnic minorities in the parliament determine the indirect veto power. In comparison to Macedonia where the ethnic minorities elect their MPs in a competitive regular electoral voting process, in Kosovo ethnic minorities have twenty guaranteed seats in the parliament despite the electoral vote. More precisely even if a candidate from Albanian majority wins more votes than a candidate from ethnic minorities whose seats are guaranteed, the candidate from ethnic minorities whose seats are guaranteed is entitled to be a MP. As a consequence, the indirect veto power and the proportional participation are necessary to be discussed interchangeably.

The indirect veto power in Kosovo was regulated by Article 144 of the Constitution which requires two-thirds of all Members of the Parliament holding reserved or guaranteed seats for representatives of ethnic minorities of Kosovo within two-thirds of all Members of the Parliament for amending the Constitution.<sup>78</sup> After the end of the supervised independence period, the Constitution of Kosovo no longer provides reserved seats for ethnic minorities. The term 'reserved' has remained from the past but is no longer applicable. Another veto power of ethnic minorities is granted on the adoption, amendment and repeal of vital laws. Laws which regulate the changing of municipal boundaries, cross-border cooperation, establishing or abolishing municipalities, on cultural heritage, religious freedom, and the use of community symbols and public holidays are listed in the category of legislation of vital interest<sup>79</sup>. The adoption, amendment, and repeal of this category of legislation requires the votes of the majority of the Members of the Parliament, including the majority of the Members of the Parliament who hold guaranteed seats for

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<sup>78</sup> Article 144 has been moved to Chapter I by Constitutional Amendment 5, published in the Official Gazette of the Republic of Kosovo, No.25, 7 September 2012, Prishtina.

<sup>79</sup> Article 81 of the Constitution on the legislation of vital interest.

representatives of ethnic minorities<sup>80</sup>. Twenty seats out of one hundred and twenty seats are guaranteed to ethnic minorities in the Parliament. Due to the low percentage of ethnic minorities in Kosovo within the population, the number of guaranteed places has never extended twenty. Since the number of guaranteed seats is fixed, the votes required to ensure two-thirds of the ethnic minorities' votes during the double majority voting is thirteen. Representatives of ethnic minorities from Turkish, Bosnian, Gorani, Roma, Askali, Egyptian communities, which have ten votes in total, tend not to use the veto power, or usually follow the political preferences of the majority. Consequently, the Serb representative's vote remains decisive in the legislative level. Three more votes are required from Serb Members of the Parliament to ensure ethnic minorities' votes for a double majority voting system. In fact, this rule was designed aiming to protect the interests of Serbs in Kosovo.

The use (and abuse) of indirect veto in Kosovo is related to the division in two periods as explained above. This division is related to Kosovo Serb political forces which have represented Serbian minorities in the legislative level. With the approval of the Constitution (2008), until the end of the supervised independence of Kosovo, Serbian minorities were represented by Samostalna Liberalna Stranka (SLS) for two consecutive parliamentary mandates. Since then, SLS had used the veto power in important developments of state-building of Kosovo. An important momentum of state-building in Kosovo had emerged at the end of the second mandate of reserved places dedicated to ethnic minorities, in 2014. The position of ethnic minorities MPs during that period was significantly important, due to their twenty constitutional guaranteed places, and reserved places guaranteed by the transitional articles in the Constitution, aiming to encourage

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<sup>80</sup> Article 81 of the Constitution, as amended by Constitutional Amendments 2 and 3, published in the Official Gazette of the Republic of Kosovo / No. 25 / 7 September 2012, Prishtina.

ethnic minorities' participation in the institutions during the first two mandates. The Democratic Party of Kosovo / Partia Demokratike e Kosoves (PDK) led by Thaci was in favour of starting the Kosovo Security Forces transformation into Kosovo Armed Forces through constitutional changes. Two-thirds of the Members of the Parliament were required, including two-thirds of ethnic minorities' MPs votes. The creation of an army was a delicate step in Kosovo's ethnically divided society. The ethnic conflicts in the former Yugoslav countries were still fresh in the collective memories and the region had not passed under a reconciliation process. Despite the delicacy of the process, SLS had not used firmly its veto power. In return, SLS conditioned their votes in favour of transformation of KSF into armed forces, if the MPs would had approved their request for extension of the reserved places for another mandate. The request had found support from 'war wing parties', political parties established by former Kosovo Liberation Army leaders after the conflict, Democratic Party of Kosovo and Alliance for the Future of Kosovo, but it was firmly opposed by Democratic League of Kosovo / Lidhja Demokratike e Kosoves (LDK) and Self-Determination Movement/ Levizja Vetvendosje (VV), who had refused to extend reserved places for ethnic minorities for another mandate. The SLS had chosen to use the veto power as a 'political trade off', using the veto power as a tactic 'give the vote and get something in return'. Then it was up to the main political forces of the majority to decide if the 'political trade off' is worth to implement<sup>81</sup>.

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<sup>81</sup> It is important to notice that the transformation of KSF into armed forces did not occur due to the opposition of Democratic League of Kosovo and Self-determination Movement, who refused to extend reserved places of ethnic minorities for another mandate. However, the KSF was transformed into the Kosovo Armed Forces in a controversial process between NATO and the US in 2019. NATO was against transformation without constitutional changes. The US supported the idea of Kosovo having an army. The transformation has been proceeded without constitutional changes, following the US' ambassador Phillip Kosnett declaration that Kosovo is an independent state and it is its right to have an army.



After the First Brussels Agreement of 2013, when Lista Srpska entered the political scene in Kosovo, political decision-making has become more complex. Lista Srpska's political behavior controlled by Belgrade, promotes Belgrade's interests first and is perceived within the Serbian community as 'Vucic puppets' (Fort, 2018, p. 12), reflecting the actual political position of Belgrade's government towards Kosovo, which is non recognition of Kosovo's independence and undermining of its institutions<sup>82</sup>. The indirect veto power was used for these purposes, including in the approval of vital laws. An example is the law on the higher education. Still these days the parliament cannot pass the law due to the veto power of Lista Srpska. The argument on the use of veto power by Lista Srpska is that they refuse to recognise the University of Prishtina with its seat in Northern Mitrovica, as an integral part of the educational system of Kosovo. Such a political standing on the mechanism of veto power might be considered an abuse of veto power, rather than a use of it. Furthermore, it turns the veto power into a 'minority tyranny' which Lijphart describes as "the great danger of minority veto... which may strain the cooperation in a grand coalition as much as the outvoting of minorities" (Lijphart, 1977, p. 37) . The assessment of the grand coalition suggests that minorities do not have a veto power in the decisions of the government, but they may use their indirect veto powers as a mechanism which may undermine certain vital fields of state-building such as education and defence. Bieber notes that the veto power may have "the most serious negative repercussions on the functioning of any institutional arrangement" (Bieber, 2005, p. 85), although the role of the indirect veto power is a constructive one, preventing the outvoting of minorities, helping their voice to be heard and fostering cooperation between ethnic

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<sup>82</sup> See the declaration of Serbia's Foreign Minister, Ivica Dacic on Serbia's priorities: <https://exit.al/en/2020/01/07/dacic-serbias-priority-to-undermine-kosovo-statehood-and-foster-regional-cooperation/>

groups. The correlation of the indirect veto and the representation in the parliament has recently produced new events. The representatives of political parties of Kosovo Serbs other than LS, Nenad Rashic and Slavica Petkovic have warned that LS even though have secured the votes for ten seats for the Serb minorities, now is supporting three initiatives from other ethnic minorities: a Bosnian list in Mitrovica, one Roma in Gracanica and one Gorani in Gora. This is done to control the seats guaranteed to other minorities as well to eventually block the processes that require the votes of minorities. The former Serb Minister, Petkovic called this a criminal act and the change of the will of the people (Xharra, 2021). This indicates the interplay between ethnic groups of different ethnicities in the same state are relevant in Kosovo, and even though not a direct veto, the indirect veto that minorities have in Kosovo turned out to be a powerful tool.

In Macedonia, the Ohrid Agreement has served as a framework to constitutionalize the veto power. The Ohrid Agreement excluded territorial solutions for ethnic conflicts in Macedonia. Since then, none of the leading political parties from ethnic groups has had territorial solutions in their political programme. Macedonian leading political parties have had no interest to find territorial solutions for ethnic issues. Similarly, Albanian political parties have envisaged their future political vision by approving a joint political platform<sup>83</sup> which does not hold any idea affecting the integrity of state territory. These political standings were reflected also on the use of veto power by Albanian representatives. The veto power was mainly used for political purpose to gain power, like in the crisis after the parliamentary elections of 2006, which was resolved with the mediation of the US-EU representatives, as explained above. The Democratic Union for integration/ Bashkimi Demokratik per Integrim (BDI) had left the Parliament with the main

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<sup>83</sup> For more on the 'Albanian Platform', see: <https://www.bdi.mk/en/lajmi.php?id=5768>

explanation that the laws requiring the Badinter majority voting system had passed without the BDI's votes. The 'Badinter system laws' had passed with the votes of the Albanian Democratic Party/Partia Demokratike Shqiptare (PDSH) and the votes from representatives of other ethnic communities in Macedonia. The Constitution requires the majority vote of the representatives present, including the majority of representatives from ethnic communities for laws related to culture, education, use of language, personal documentation, and symbols.<sup>84</sup> The Committee on Inter-Community Relations is entitled to resolve any dispute on the application of this rule. The Committee consists of 19 members: seven Members of Parliament who are Macedonians, seven Members of Parliament who are Albanians, and one Turk Member of Parliament, one Vlach Member of Parliament, one Roma Member of Parliament, one Serb Member of Parliament, and one Bosniak Member of Parliament in the Assembly of the Republic of Macedonia<sup>85</sup>. This ethnic constellation of the Committee is different compared to the previous one, which comprised "two members each from the ranks of the Macedonians, Albanians, Turks, Vlachs and Romanies, as well as two members from the ranks of other nationalities in Macedonia" (see: Constitution 1991, Art.78). The new committee has increased the role of Albanians in expense of other ethnic minorities. Nevertheless, in terms of decision making, the Committee has an equal number between Macedonians and Albanian community, a constellation which factorizes members of other communities when there are decisions to be taken in which Macedonians and Albanians do not agree with each other. Aziz Pollozhani, a former participant in the Ohrid negotiations reveals that in terms of relations between members of Albanian community with other communities,

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<sup>84</sup> Article 69 of the Constitution, amended with the amendment X, Official Gazette of the Republic of Macedonia No.91/01.

<sup>85</sup> The Law on Inter-Community Relations Committee, Official Gazette of the Republic of Macedonia, No.150 of 12.12.2007

Albanian community did not work to strengthen the relations with other communities not belonging to the majority (Pollozhani, 2019). Similar as in Kosovo, other communities tend to support the community belonging to the majority of the population. However, the Committee has faced difficulties in fulfilling its tasks due to politicized inter-ethnic relations. It was not able to hold any session, during the period 2006 - 2008 and until 2011 the convened sessions often never took place (Petkovski, 2014). Still, these days the Committee is not functional (Pollozhani, 2019).

The Constitution also guarantees a veto mechanism on constitutional changes which affect the preamble, self-government, constitutional changes, and other provisions on the rights of ethnic minorities. Unlike in the case of Kosovo where double threshold two-thirds are required for constitutional changes, in Macedonia the Constitution requires two-thirds majority vote of the representatives, within the majority vote from the representatives from ethnic minorities. This veto power was used by Albanian representatives on constitutional changes in 2019, when Macedonia was going into an important phase of constitutional changes, necessary on implementation of the 'Prespa Agreement'. Having been in a delicate situation on the number of votes required to pass the constitutional amendments, the votes of ethnic minorities, including the votes from Albanian opposition party Besa and Alliance for Albanians / Aleanca per Shqiptaret (ASH) were very important. Four members of the parliament from Besa party objected to the wording of one of the constitutional amendments, claiming it fails to reflect Macedonia's multi-ethnic character. The necessary votes to secure the Badinter double majority voting on the constitutional amendments were provided after Prime Minister Zaev managed to reach an agreement with Albanian representatives, including the Albanian opposition parties Besa and Alliance for Albanians whose votes were decisive in the final moments. In contrast to the Commission for Interethnic Relations, where the votes of other

communities are decisive in decisions where Macedonians and Albanians do not agree with each other, for legislative and constitutional amendments other communities not belonging in the majority are dependant in the veto rights of Albanian community representatives. Kelleher points out that smaller minorities than Albanians in Macedonia have to have the support of Albanians to protect their vital interests as they can never veto legislation (Kelleher, 2005) due to their small number of representatives in the parliament. Minimisation of the role of ethnic minorities, other than Albanians, gives the minority veto power a mono-ethnic character rather than a multi-ethnic one reflecting the Macedonian-Albanian conflict and purpose of power-sharing arrangements which were accommodating Albanians' rights rather than focusing on other ethnic minorities.

Nevertheless, the veto power system cannot be predictable as in the case of Kosovo, where the number of votes required to ensure the Badinter double majority voting is thirteen. The power-sharing system in Macedonia does not provide reserved and guaranteed seats, nor requires votes from reserved or guaranteed seats, like in the case of Kosovo. Even though the voting culture in Macedonia is ethnically based voting and the Macedonian and Albanian communities have no common ground on political party common ground (Bakiu & Sela, 2015), that does not make the number of indirect veto power predictable. Macedonian political parties may attract ethnic minorities to join their political parties and eventually, if they reach to be elected as members in the parliament, their vote could be used for the purposes of Badinter double majority voting system. Prime minister Zaev has started to attract people from other ethnic communities than Macedonians, but this has raised uncertainties among Albanians, who fear that such a move would undermine the position of Albanians in the veto power system (Anon., 2019). The "indirect veto power" is the strongest constitutionalised power-sharing arrangement that Albanians have to protect and advance their interests. Therefore, any change in this

system which advances the positions of other ethnic minorities but undermines Albanians position is seen by Albanians as losing the most powerful constitutionalised power-sharing tool, which has been used to balance the Macedonian-Albanian conflict.

In contrast to Kosovo's case where the interplay between "the fifth" and the "sixth" element affects the power-sharing principles such as grand coalition, the indirect veto and proportional representation, the numerical power of Albanians of Macedonia in the parliament gives them the power to move their political aspirations independently from other minorities in Macedonia.

### **5.2.3. Proportional representation**

Proportional representation is an instrument of consociational democracy which enables ethnic minorities to be a part of the state's decision making and policy making. In ethnically divided societies proportional representation enables allocation of parliamentary seats, civil service positions and other representative positions between ethnic groups. It enables ethnicities which do not belong to the ethnic the majority, to represent themselves in the state decision making and policy making institutions. Lijphart divides proportional representation in two variations, with opposite effect: the deliberate overrepresentation and parity of representation. The parity representation aims to reach a level of equality with the majority and is useful when the society is divided into two segments of unequal size. It is regarded as the maximum extension of overrepresentation of small segments, in contrast to the overrepresentation which reflects segmental strengths (Lijphart, 1977).

The principle of proportionality is constitutionalized in both states of Kosovo and Macedonia. Nevertheless, there is a difference on the principle area of application in both states. As previously explained above, like all other Lijphart's power-sharing

characteristics of consociational democracy, the proportional principle in Kosovo is affected by the division in two periods explained above.

Previously I have argued that the new Kosovo's Constitution of 2008 explicitly holds a multi-ethnic government coalition, in which the principle of proportionality is explicitly applied.<sup>86</sup> Further the Constitution applies the principle of proportionality at the legislative level. Estimates made prior to the 2011 census, considered that Albanians make 92% of the general population, Serbs 5.3%, Roma 1.1%, Turks 0.4% and others 1.2% of the population in Kosovo. International and local institutions had used these percentages to draft the formula of reserved seats for the representation of the ethnic group in the Kosovo institutions (GAP, 2012). After the Constitution entered in force, the reserved seats were endorsed to ethnic minorities the two first mandates, along with guaranteed seats<sup>87</sup>. The role of the reserved seats was to encourage and empower further the political and decision-making position of ethnic minorities and their participation in the elections. The reserved seats together with guaranteed seats had strengthened numerically the position of ethnic minorities in the Parliament. Beside ten guaranteed seats for representatives of Kosovo Serb community and ten guaranteed seats for other communities: Roma, Ashkali, Egyptian, Bosnian, Turkish and Gorani community, the ethnic communities were Constitutionally entitled for additional seats won in the elections. As a result, non-majority representatives had a total of twenty-five seats in the last legislation of reserved seats.

The actual Constitution no longer entitles reserved seats for ethnic minorities, after the transitional Constitutional provisions were abrogated with the ending of the supervised

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<sup>86</sup> Article 96, paragraph 3 and 4, Kosovo's Constitution (2008)

<sup>87</sup> See Chapter 3

independence. Numerically ethnic minorities are weaker. They secure their representation in the parliament by twenty constitutionally guaranteed seats. However, a numerically strengthened position is not necessarily translated into 'political strength', nor in institutional stability and functionality.

Since the approval of the Constitution (2008) till these days the inter-ethnic relations between the representatives of Roma, Ashkali, Egyptian, Bosnian, Turkish and Gorani community and majority rely on mutual cooperation and compromise. The first period of proportional principle in the parliament was characterized with possibilities of inter-ethnic cooperation and compromise between Serb representatives from Samostalna Liberalna Stranka (SLS) and Albanian majority. In the second period, Samostalna Liberalna Stranka (SLS) lost its seats reducing the number of the party representatives into one. Just Slobodan Petrovic managed to enter the Parliament. The 2014 election were the first elections called after the Brussels Agreement on the normalisation of Belgrade-Pristina relations. The main aim of the Agreement was the integration of Serbian parallel structures in the Kosovo legal system. In return, Kosovo took the responsibility to establish the Association/Community of Serb Majority Municipalities in Kosovo. The Agreement had foreseen new elections, preceded by establishment of Lista Srpska, a new Kosovo Serbs political party which acts under Vucic's directives. This political party promotes Belgrade's interests "having almost no legitimacy within the Serbian community who perceive them as 'Vucic puppets'. They are often presented as unqualified for the job and primarily interested in personal gains than defending the interests of the Serbian community" (Fort, 2018, p. 12). Since LS promotes Belgrade's policies towards Kosovo, the inter-ethnic relations turned into a complicated phase. The politics of the Serbian state is being perceived as having a negative impact Kosovo Serbs (Fort, 2018, p. 8). Depending when and what kind of instructions it gets from Belgrade authorities, LS often



blocks the laws on the vital interests, abandons Parliament and in the previous government it abandoned the governing coalition as well. Still, international intervention is required to guarantee the functionality of the institutions, especially the Parliament, as the main institution in a parliamentary republic. The chancellor Merkel personally convinced the President of Serbia, Aleksandar Vucic, after his visit in Berlin in 2017, to instruct LS their return in the parliament after several months of boycott (Zeri, 2017).

Since its establishment, Lista Srpska has managed to be the winning party of Kosovo Serbs community. However, elections have been fraught with irregularities, incidents, intimidation of Kosovo Serbs and the members from other Kosovo Serbs political parties, and violence in Serb majority municipalities. The pressure towards Kosovo Serbs had culminated on January 16<sup>th</sup>, 2018 with the assassination of Oliver Ivanovic-the leader of Civic Initiative SDP / Srbija Demokratija Pravda, who were seen as main political rival by Lista Srpska. The investigation is leading to Milan Radoicic, the vice president of Lista Srpska as the main suspect on Ivanovic's murder. Ivanovic was shot dead a few days after his interview where he described Radoicic as the main powerbroker of Serb majority municipalities in northern Kosovo. Before his car and his party office had been demolished. Four days before his assassination Ivanovic declared: "I'm afraid that in this unstable situation an innocent person could come to harm, and I must admit I also fear for my own safety" (Srna, 2018). Ivanovic was among Kosovo Serbs politicians who had gained respect among Kosovo Serbs. Further, he had started to collaborate with EULEX and had spoken publicly for the security of Kosovo Serbs:

"Of the hundred people I spoke with during the first few weeks of freedom, there is not one who in the first few sentences did not raise the issue of security. Let's understand each other immediately: these people are not

afrail of Albanians but of Serbs, of local thugs and criminals driving Jeeps without number plates” (Vreme, 2018)

The lack of security and state strategy for protection of Kosovo Serbs has been confirmed by the former Vice-Minister of Internal affairs in Kosovo (Hoxha, 2019). The recently approved security strategy of the Republic of Kosovo does not address the protection of Kosovo Serbs, as well (Government, 2019). Using the unstable situation, Kosovo’s Serbs lack of security and freedom of political choice, Lista Srpska’s and Belgrade’s political structures pressure continues towards other Kosovo Serbs political parties. Threats and intimidations were also reported by other Kosovo Serbs politicians: Slobodan Petrovic from Samostalna Liberalna Stranka / Independent Liberal Party and Rada Trajkovic from Evropskog pokreta Srba sa Kosova i Metohije / European Movement of Serbs from Kosovo and Metohija. The former was stopped and threatened by Serbian intelligence services, while crossing Kosovo-Serbia border. The later was accused by a Belgrade based newspaper close to Belgrade’s Government ‘Vecernje Novosti’ claiming that British intelligence agents are preparing the ground for a party which would be a counterpart to Lista Srpska, in which Kosovo Serb politicians, Rada Trajkovic, Nenad Rasic, Slavisa Petkovic and Aleksandar Jablanovic will join. Further ‘Vecernje Novosti’ claimed that the goal is to push out the influence of Belgrade in Kosovo and to integrate Serbs into Pristina institutions, as well as to create a climate of ‘common resistance’ to the idea of delimitation<sup>88</sup> (V.N., 2018). Both politicians had received police protection after

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<sup>88</sup> The idea of delimitation or border correction has been publicly presented for the first time at Alpbach Forum in 2018. In the presence of EU representatives, politicians and experts, in a panel entitled “New perspectives on EU enlargement”, Presidents of Kosovo and Serbia, Hashim Thaçi and Aleksandar Vučić, had discussed about a proposal for a border correction between the two countries. No details were given on the proposal which foreseen territorial changes between Kosovo and Serbia. Nevertheless, the idea itself has provoked controversial reaction among politicians, experts and EU Member states. One group considers the idea a danger, which might affect the whole region, the other group believes that this idea is the solution to the Kosovo-Serbia complex problem.

feeling endangered for their safety. On the 28<sup>th</sup> of August 2019, four political parties of Kosovan Serbs agreed on the pre-election coalition “Sloboda / Freedom” for October the 6<sup>th</sup> early parliamentary elections to compete against their main Serbia-backed Serb List opponent. The agreement was signed by Rada Trajkovic, Nenad Rasic, Branislav Markovic and Dragica Miric (Express, 2019). The coalition together with other Kosovo Serb political parties were targeted as ‘Albanian representatives of Serbs’. The head of the Kosovo Office in Serbia’s Government, Marko Djuric, called Kosovo Serbs to vote for Srpska Lista which he considers to be “an important instrument of the state of Serbia, Belgrade – for cooperation and communication in the fight” for their interests (PrishtinaInsight, 2019).

The political programmes presented in the electoral campaign reflected different political standings of state-building and policy making of Kosovo Serb political parties: Samostalna Liberalna Stranka, Partije Kosovskih Srba, Koalicija ‘Sloboda’ and Lista Srpska. Samostalna Liberalna Stranka, Partije Kosovskih Srba and Koalicija ‘Sloboda’ have the survival of Kosovo Serbs in their political programme, oppose Belgrade’s official authorities’ pressure on Kosovo Serbs and do not support any agreement which would lead to border changes between Kosovo and Serbia. Lista Srpska follows Belgrade’s policies and has Belgrade’s official authorities’ support. Belgrade’s policies, in relation to Kosovo, are focused on undermining Kosovo’s statehood, putting pressure on Kosovo Serbs, boycotting Kosovo’s institutions, and any possible agreement on border changes between Kosovo and Serbia, is not excluded.

Elections of the October the 6<sup>th</sup> 2019 have resulted with an intimidation of Kosovo Serb candidates and voters not aligned with Srpska List. Despite the Quint's statement<sup>89</sup> to avoid intimidation as in previous parliamentary elections of 2017 (Election Observation Mission, 2017), Kosovo institutions were found unprepared responding insufficiently to violence and intimidation in the Kosovo Serb areas. Kosovo has no strategy at the state level on how to prevent intimidation of Kosovo Serbs and how to guarantee the freedom of political choice to Kosovo Serb. Furthermore, all political parties were focused on their own interests how to collect votes from the electorate, leaving aside security issues of Kosovo Serbs. This has resulted with intimidations in the areas with majority of Serbs, an environment which was considered with "abnormal conditions" for the electoral campaign. Nenad Rasic, Kosovo Serb opposition politician from the Coalition Freedom told Radio Free Europe (RFE) that:

"everyday someone gets fired because they are not loyal to Serb List. There is no person who hasn't been called at least five times... The conditions are abnormal. I don't see how these elections could be presented as democratic since the situation on the ground is horrible. I feel sorry for what people here have to go through, and I'm more worried about them than myself" (Beta & RFE, 2019).

The report on the 6 October parliamentary elections in Kosovo from the European Union Election Observation Mission (EU EOM) considered the elections transparent and well-administered but marred by intimidation of candidates not belonging to Lista Srpska

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<sup>89</sup> See the Statement by the Ambassadors of France, Germany, Italy, the United Kingdom and the United States: [https://xk.usembassy.gov/joint\\_statement\\_by\\_ambassadors/](https://xk.usembassy.gov/joint_statement_by_ambassadors/)

and their supporters and lack of freedom of political choice in the Kosovo Serb areas (Election Observation Mission, 2019). Consequently, the elections were partially democratic due to the lack of democratic standards in the area with Serb majority. With the rise to power of Aleksandar Vucic and Serbian progressive party / Srpska Napredna Stranka in 2012, authoritarianism emerged in Serbia (Bieber, 2020). With the help of Lista Srpska, Vucic has succeeded in having direct impact and spreading his authoritarianism also in the areas with Serb majority in Kosovo.

The parliamentary elections of the 14th of February 2021 continued to be characterized with the lack of freedom of political choice for Kosovo Serbs. The representative of Democratic Progressive Party/ Progresivna Demokratska Stranka (PDS), Nenad Rashiq and the former Serb minister in the Kosovo's Government Slavisha Petkovic have publicly accused LS of putting pressure in Kosovo Serbs, putting them in a collective apathy. Petkovic has revealed that the empowerment of LS in Kosovo has been done in cooperation with some Kosovo Albanian political elites such as Hashim Thaci, Kadri Veseli and Ramush Haradinaj who have seen LS as a partner of doing business. He has further accused Albanian authorities in helping LS in money laundering. Nenad Rashiq has further warned that LS have secured more votes than necessary to win the guaranteed seats for Serb minorities in the last elections. Rashiq has further explained that these votes LS is winning through irregularities and pressure among Kosovo Serbs especially in the northern Kosovo, where even in front of an ambassador of a powerful state the same person has voted several times. Even though the ambassador has reported the case at OSCE Mission nothing has been undertaken to stop these irregularities (Xharra, 2021). This surplus of votes LS is attempting to allocate in initiatives belonging to other minorities. Therefore, in the February the 14th 2021 elections they are supporting three newly established initiatives from other ethnic minorities: a Bosnian list

in Mitrovica, one Roma in Gracanica and one Gorani in Gora. The aim is to control the seats of minorities, other than Serbs. Petkovic has called this a criminal act and a change of the will of the people (Xharra, 2021).

The election process has raised concerns on the legitimacy of LS and its role in power-sharing mechanisms guaranteed by the Kosovo's Constitution. Proportional representation principle through guaranteed seats for minorities has had an effect in the indirect veto mechanism that Kosovo's constitution provides for its minorities. Therefore these two principles should be analyzed interchangeably in the case of Kosovo. What has been said above indicates that in the quadratic nexus, the interplay between ethnic groups of different ethnicities in the same state are relevant in Kosovo, as much as the interplay between different groups of the same ethnicity. The interplay between LS and other Kosovo Serbs political parties has an impact on power-sharing arrangements, such as the indirect veto power and proportional representation, as much as the interplay of Kosovo Serbs parties with other parties belonging to Kosovo's minorities other than Serb minority.

As the debate over the role of LS and other Serb political parties continues in the public opinion of Kosovo, the results of the elections will determine not only further functionality or non-functionality of legislative level, but it will affect the grand coalition, and other institutions as well<sup>90</sup>.

The entrance of Lista Srpska in the political scene of Kosovo, did not impact just the legislative level. It has affected also other institutions where the principle of proportionality is applied, such as Security Forces of Kosovo. Under Lista Srpska and Belgrade parallel structures' pressure, a considerable number of Serb Kosovo Security

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<sup>90</sup> See the grand coalition section above.

Forces members were forced to abandon their jobs (AlsatM, 2019). The pressure on Kosovo Serb members to abandon their jobs was lower in other institutions, within which in the police services continuing to maintain the ethnic proportionality (BalkanInsight, 2018). The Constitution of Kosovo guarantees places for ethnic minorities in the Judicial Council of Kosovo<sup>91</sup>, in the Constitutional Court<sup>92</sup>, in the Supreme Court of Kosovo<sup>93</sup>, in the state courts<sup>94</sup>, in the Central Election Commission<sup>95</sup>, in the Kosovo Security Force<sup>96</sup>, in the local government<sup>97</sup> and in public bodies and publicly owned enterprises, with special emphasize to police services and public administration<sup>98</sup>. Table 1 shows the ethnic structure in the civil service in the central and local level based on the data taken from the Department on Administration and Civil Service from the Ministry of Public Administration.

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<sup>91</sup> Article 108 of the Kosovo Constitution of 2008, paragraph 6

<sup>92</sup> Article 114 of the Kosovo Constitution of 2008, paragraph 3

<sup>93</sup> Article 103 of the Kosovo Constitution of 2008, paragraph 3 and 6

<sup>94</sup> Article 108 of the Kosovo Constitution of 2008, paragraph 10

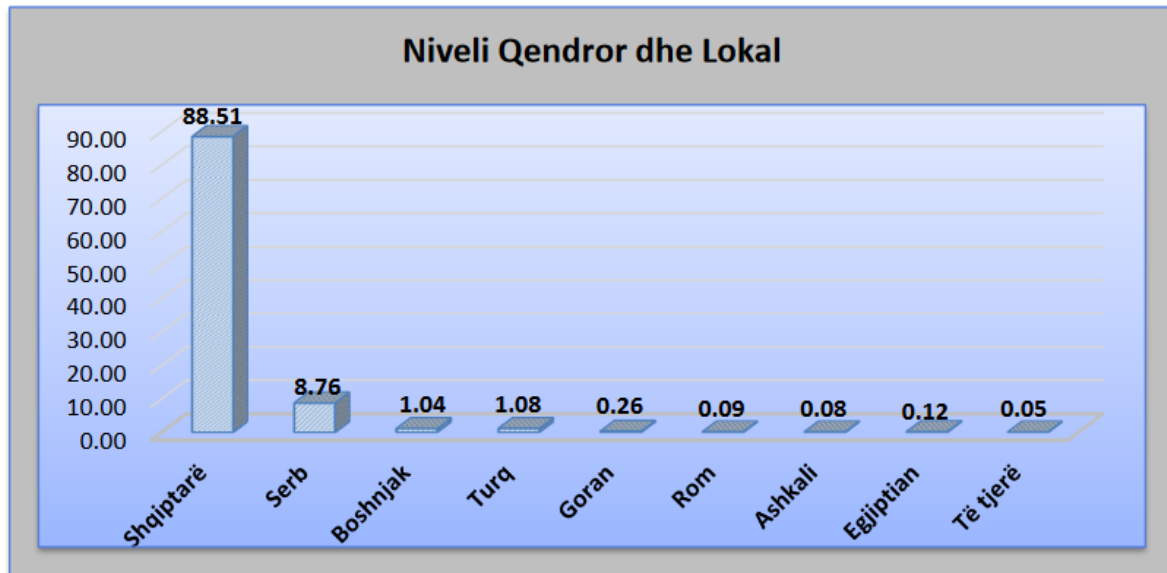
<sup>95</sup> Article 139 of the Kosovo Constitution of 2008, paragraph 4

<sup>96</sup> Article 126 of the Kosovo Constitution of 2008, paragraph 4

<sup>97</sup> Article 62 of the Kosovo Constitution of 2008, paragraph 1

<sup>98</sup> Article 61 of the Kosovo Constitution of 2008

Table 1. The percentage of ethnic structure in the civil service in the central and local level (Columns translated from left to right: Albanians, Serbs, Bosniaks, Turks, Gorani, Roma, Ashkali, Egyptians, Others)



Source: (Department on Administration of Civil Service, 2018)

The last Kosovo census of 2011 had given the ethnic percentage as follows: 91.9 percent are Albanians, 1.5 Serbs, Turks 1.1, Bosniaks 1.6, Romas 0.5, Ashkali 0.9, Egyptians 0.7, Gorani 0.6. These data are not complete due to census boycott by four Serb majority municipalities of North Mitrovica, Leposavic, Zubin Potok and Zvecan. GAP has estimated a percentage of 3.55 % Kosovo Serbs, based on the data from the previous registration of population (GAP, 2012). The data from the last census reveals that all ethnicities not belonging in the majority are underrepresented in the general ethnic representation in the central and local institutions. The move of the population from all ethnicities requires a new census in the list of priorities, which would help a clear and



recent examination of the application of proportional representation principle in the institutions. Nevertheless, with LS in power a possible boycott on the new census is likely.

Unlike in the case of Kosovo, in Macedonia the largest group of minorities, Macedonia Albanians, are represented by political parties which do not have territorial demands on their political programme. Four main Macedonia Albanian political parties: Bashkimi Demokratik per Integrim / Democratic Union for Integration (BDI), Partia Demokratike Shqiptare / Democratic Party of Albanians (PDSH), Aleanca per Shqiptaret / Alliance for Albanians (ASH) and Besa / Faith are focused on advancing Albanian collective rights in Macedonia and aim a Euro Atlantic integration of Macedonia. In contrast to Kosovo, Macedonia has no constitutional principle of proportionality at the legislative level. The Macedonian Constitution does not provide reserved and guaranteed seats for Albanian representatives in the Macedonian Parliament. Nevertheless, Albanian representatives win considerable number of seats in the parliament due to their numerical power, ethnic based voting attitude and the fact that a “political party which unites two major ethnic communities almost does not exist” in Macedonia (Bakiu & Sela, 2015). Other ethnic communities not in the majority, have established ethnic based political parties. Due to a numerically small number of their ethnic voters, they do not manage to win seats in the parliament themselves, but only through coalitions mostly with Macedonian political parties. The numerical power of Albanians of Macedonia and the constitutional power-sharing principles have guaranteed Albanians of Macedonia the independence to realise their political aspiration just in cooperation with Macedonian majority, independently from other ethnic minorities. For this reason, Albanians of Macedonia have not taken efforts to build closer relations with other ethnic minorities (Pollozhani, 2019) .

Since 2005, there were attempts to introduce guaranteed seats for smaller communities than Macedonian Albanians. Different modalities were proposed on the

guaranteed seats: eight to twelve seats for other ethnic minorities than Albanians, one seat for each ethnic minority, plus the distribution of other seats based on the elections results. The proposals were seen with scepticism by the biggest Macedonian Albanian party, Democratic Union for Integration, with the argument that the Badinter principle would have been jeopardised (Pendarovski, et al., 2017). Still these days, there are no concrete steps towards constitutionalized guaranteed seats for ethnic minorities. Nevertheless, the ethnically based voting attitude instead of political party programme voting and inter-ethnic voting attitude may serve as an equitable representation mechanism in the legislative level.

The Macedonian Constitution determines equitable representation as a fundamental value in the constitutional order. Article 8 of the Constitution guarantees “equitable representation of citizens belonging to all communities in state bodies and other public institutions at all levels”<sup>99</sup>. The Constitution does not provide a clear percentage on ethnic equitable representation. Since there is no explicit constitutional definition of ethnic quotas, the last census of the population should be taken as a measurement tool on equitability. The last census held in 2002 shows that in 64.2 percent are Macedonian population, 25.2 percent Albanian population (Macedonian Albanians contest the percentage claiming to be more than 30 percent Albanians within the population), 3.9 percent of Turks, 2.7 Romani, 1.8 Serbs, 0.5 Vlachs (Aromanians), Bosnians 0.8<sup>100</sup>. Though, the principle may be considered to be fulfilled when the representation of

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<sup>99</sup> Article 8 of Macedonia’s Constitution, Official Gazette of the republic of North Macedonia” No.91/01

<sup>100</sup> For more information see State Statistical Office:

<https://web.archive.org/web/20040504205942/http://www.stat.gov.mk/pdf/10-2003/2.1.3.30.pdf>

communities in the state bodies and public institution reaches the official percentage of the population.

The Ombudsman in Macedonia is the institution which monitors every year the implementation of the principle of equitable representation. In its latest report the Ombudsman finds that the principle of adequate and equal representation from 2007 until 2017 has been implemented as shown in Table 2.

**Table 2 Implementation of the principle of adequate and equal representation between 2007 and 2017. (Each column of the table is translated as follows (left to right): Years, Number of institutions involved in the research, Total employed, Macedonians (total, %), Albanians, Turks, Roma, Serbs, Vlloch, Bosnjakë and Te tjere)**

Vitet	Numri i institucioneve/organave të përfshira me hulumtimin		Maqedonas		Shqiptarë		Turq		Romë		Serbë		Vlleh		Boshnjakë		Te tjere	
	Gjithesj	të punësuar	Gjithesj	%	Gjithesj	%	Gjithesj	%	Gjithesj	%	Gjithesj	%	Gjithesj	%	Gjithesj	%	Gjithesj	%
2017	1339	131488	97542	74,2	25173	19,2	2584	2,0	1715	1,3	1989	1,5	918	0,7	641	0,5	926	0,7
2016	1272	130309	96631	74,2	25020	19,2	2587	2,0	1736	1,3	1934	1,5	882	0,7	590	0,5	927	0,7
2015	1206	120513	89967	74,7	22651	18,8	2234	1,9	1698	1,4	1815	1,5	782	0,6	525	0,4	841	0,7
2014	1077	108848	81387	74,8	20197	18,6	2045	1,9	1497	1,4	1689	1,6	716	0,7	482	0,4	835	0,8
2013	1084	108078	81406	75,3	19565	18,1	1976	1,8	1365	1,3	1700	1,6	710	0,7	447	0,4	909	0,8
2012	1101	107336	80667	75,2	19083	17,8	2162	2,0	1380	1,3	1701	1,6	735	0,7	584	0,5	1024	1,0
2011	1082	102103	77879	76,3	17598	17,2	1691	1,7	1304	1,3	1665	1,6	678	0,7	387	0,4	901	0,9
2010	886	82555	63761	77,2	13966	16,9	1340	1,6	574	0,7	1315	1,6	570	0,7	256	0,3	773	0,9
2009	387	69148	55266	79,9	9712	14,1	895	1,3	551	0,8	1301	1,9	524	0,8	259	0,4	640	0,9
2008	373	67728	55193	81,5	8642	12,8	825	1,2	527	0,8	1269	1,9	449	0,7	205	0,3	618	0,9
2007	360	59629	49923	83,7	6429	10,8	649	1,1	464	0,8	1050	1,8	405	0,7	201	0,3	508	0,9

Source: (Ombudsman, 2018)

The research was focused on independent bodies, Government of Macedonia, ministries, corrective – educative institutions, public enterprises, funds, center for social welfare, courts, prosecutions, units of local governance, institutions of public health, cultural public institutions and other public institutions with different activities.

The data reveal that during the years 2007-2017 not all ethnicities are underrepresented. If the last census is taken as a measurement tool, Macedonians and Vlachs belong to the overrepresented ethnic groups. During this period, the average percentage of Vlach representation is 0.7 out of 0.5 of the population. The Macedonian representation has dropped during this period from 83.7 to 74.2. Still, they remain overrepresented with 74.2 out of 64.2 of the population. Other ethnicities remain underrepresented. In 2017 Turks remain underrepresented with 2.0 percent out of 3.9 percent of the population, Romas with 1.3 out of 2.7, Serbs 1.5 out of 0.5, Bosniaks with 0.5 out of 0.8. Albanian percentage of representation has been increased from 10.8 in 2007 to 19.2 in 2017 but remaining underrepresented with 19.2 out of 25.2. In this percentage civil servants who receive salaries, but since there was no need for them, or due to the lack of physical facilities they remained at home should be considered. This category is defined by Risteska as “stay at home civil servants” (Risteska, 2013). This form of representation constitutes a paradox, as the main purpose of representation is cooperation and inclusion of other ethnic groups in the institutions. Receiving salaries without working in the institutions does not contribute to this purpose. The state institutions have ‘tolerated’ this category of civil servants, in order to implement the principle of equitable representation, more precisely to reach the statistical requirement of the principle of representation, ignoring the purpose of the principle which is the inclusion of ethnic groups in the institutions. Nevertheless, the implementation of the principle in this form produced frustrations among Albanians, who remained at home without having opportunities to do professional careers, among other ethnic minorities who felt less important and discriminated and among Macedonians who objected double standards in recruitment (Risteska, 2013, p. 33). These frustrations which are spread among all ethnic groups in Macedonia are a signal that the way of implementation of the principle of proportional representation must be reconsidered. Furthermore, this form of

implementation of the equitable representation indicates the deep division of the society among ethnic lines.

As in the case of Kosovo, a new census accepted by all ethnicities is needed, as a primary step to have a clear picture of ethnic representation, the data should include “stay at home civil servants” as well, which would help to do the proportional representation policy accordingly. The newly elected deputy Prime Minister and the Minister for political system and relations between ethnicities in Macedonia, Artan Grubi, recently has addressed this issue and has undertaken the necessary steps to accommodate the “stay at home civil servant” in the institutions (North Macedonia, 2021).

#### **5.2.4. Cultural autonomy for ethnic minorities**

Cultural autonomy is one of the characteristics of consociational democracy, which Lijphart considers to be important, along with the grand coalition principle. The two other characteristics: the veto power and proportional representation “occupy a lower position of importance” (Lijphart, 2008, p. 4). Lijphart divides cultural autonomy for religious and linguistic groups in power-sharing democracies into three forms:

(1) federal arrangements in which state and linguistic boundaries largely coincide, thus providing a high degree of linguistic autonomy, as in Switzerland, Belgium, and Czecho-Slovakia;

(2) the right of religious and linguistic minorities to establish and administer their own autonomous schools, fully supported by public funds, as in Belgium and the Netherlands; and

(3) separate “personal laws” – concerning marriage, divorce, custody and adoption of children, and inheritance – for religious minorities, as in Lebanon and Cyprus (Lijphart, 2008, p. 46).

The first form of cultural autonomy is not relevant for the two case studies: Kosovo and Macedonia, because both countries have a unitary state regulation. Hereinafter, I identify whether the implemented model of cultural autonomy holds two other forms of cultural autonomy and their implementation.

The Kosovo Constitution (2008) recognizes Kosovo as a ‘multi-ethnic’ society consisting of Albanian and other communities (Constitution, 2008)<sup>101</sup>, which is reflected in its flag, its seal and its anthem<sup>102</sup>.

Due to the lessons learned in Bosnia, international actors involved in the multi-ethnic state-building of Kosovo were more careful to maintain the unity of the society. Ethnicities living in Kosovo shared a common past within the Yugoslavian system, under the same legal system. The Constitution of Kosovo defines Kosovo as a secular state and neutral in matters of religious beliefs<sup>103</sup>. The latest study of the “Friedrich Ebert” Foundation (FES) on Kosovo’s Youth finds that one third (1/3) of the youth may be considered connected with the religion because they practice religion once a month or more often. Young men practice religion more than women (FES, 2019). Secularity and the common legal past within Yugoslavia, made unnecessary the approval of separate “personal laws” – concerning family matters and inheritance for different ethnic groups. The Kosovo Constitution 2008 guarantees to religious and linguistic minorities receiving

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<sup>101</sup> Kosovo Constitutions 2008, Article 3, paragraph 1.

<sup>102</sup> Kosovo Constitutions 2008, Article 6, paragraph 1.

<sup>103</sup> Kosovo Constitutions 2008, Article 8.

public education of all levels in their own language and managing their own private educational institutions leaving the possibility to be supported by public funds<sup>104</sup>. Despite their ethnic composition, the schools are obliged to operate under Kosovo's system of education and to report to the Ministry of Education, Technology and Science, in the Kosovo Government. In practice, until today the Kosovo Serbian schools operate under Serbia's system of education and do not report to the Ministry of Education, Technology and Science in Kosovo. This bifurcated system of education has substantial differences on the laws they apply and there is no cooperation between them. Kosovo Serb system of education applies Serbia's laws which have substantial differences with applicable laws in Kosovo. The University of Pristina (UP) - the biggest university in Kosovo - is also bifurcated into two ethnically segregated structures: University of Pristina located in Prishtina and University of Prishtina located in Northern Mitrovica. UP in Prishtina is dominated by Kosovo Albanians and operates under Kosovo's system of education, while UP in Northern Mitrovica is dominated by Kosovo Serbs and operates under Serbia's system of education. Since after 1999, attempts to integrate the bifurcated system of education under Kosovo's institutions has failed. Furthermore, this bifurcated system of education has become an obstacle for educational legislative development for the entire Kosovo system of education. Due to the use of veto power in vital laws, Kosovo Serb Members of the Parliament from Lista Srpska refuse the approval of the law on higher education. The project law foresees unitary system of education which also includes the UP in Northern Mitrovica. Serb members of parliament from Lista Srpska refuse to approve the law, with the argument that UP in Northern Mitrovica does not belong to the Kosovo legal system and should not be considered a part of it and integrated as such. The solution to this blockade in the future could be if Kosovo Serbs would be represented in

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<sup>104</sup> Kosovo Constitution 2008, Article 59, paragraph 1, 4 and 5

the parliament by other Kosovo Serb political parties which do not obstruct and block Kosovo institutions.

The Kosovo Constitution 2008 also guarantees other cultural rights to ethnic and religious minorities. Albanian and Serbian language are recognized as official languages<sup>105</sup>. Other languages such as Turkish, Bosnian and Roma are recognized as official languages, as provided by law<sup>106</sup>. Kosovo uses the Law on the Use of Languages No. 02/L-37 approved by the Assembly of Kosovo before Kosovo declared its independence and promulgated by UNMIK Regulation No. 2006/51. Article 2 gives the Albanian and Serbian language equal status in Kosovo Institutions. Other languages are also recognized as official languages in the municipalities where at least five percent of the population belong to ethnicities whose mother tongue is different from Albanian and Serbian language. Whereas, in the municipalities where more than three percent of the population have a different mother tongue from Albanian and Serbian, their language has the status of a language in official use<sup>107</sup>. To ensure the applicability of the Law on the Use of Languages the Office of the Language Commissioner was established in the Prime Minister's Office. His 2019 annual report concludes that very little progress has been made related to the implementation of the Law. The number of translators is lower (Language Commissioner, 2019). The dropping knowledge of Serbian among non-native speakers for younger generations is linked with the abolition of obligatory system of learning Serbian

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<sup>105</sup> Kosovo Constitutions 2008, Article 5, paragraph 1.

<sup>106</sup> Kosovo Constitutions 2008, Article 5, paragraph 2.

<sup>107</sup> Article 8 of the Law on the Use of Languages ( Law No. 02/L-37 ) provides that in the municipalities where the language is in official use, entitled ethnic minorities "have the right to present oral or written submissions and documents, and to receive a reply in their own language, from municipal institutions and officials... Members of municipal representative bodies, and their committees, belonging to communities whose mother tongue is not an official language of the municipality, have the right to use their languages in the work and meetings of the municipal representative bodies, and their committees as well as in public meetings organized by the municipality"



as a second language during the autonomous status of Kosovo in the socialist Yugoslavia. This system was abolished in the 90-tie, i.e., after the abolition of Kosovo's autonomy, addressing the problem of monolingualism in Kosovo municipalities in the long-term period (ERAC, 2018).

In Macedonia cultural autonomy plays an important role in inter-ethnic relations. Similar to Kosovo, Macedonia shares a common past within the Yugoslavian system, under the same legal system.

The sensitivity of the cultural autonomy is demonstrated with the fact that the use of the language, education and other cultural rights have been the main demands of Macedonian Albanians during the Ohrid Agreement. These demands were normatively implemented through the Ohrid Framework Agreement (OFA) and comprise most parts of it. From the signature of the Ohrid Agreement, Macedonia has made steps towards the improvement of cultural autonomy. Even though a high inter-ethnic hostile environment dominated the post-conflict political scene, for the first time since the independence of Macedonia, an Albanian minister of education was appointed in 2002. The responsibility to manage the sensitive post-conflict educational reform was given to the member of war wing party DUI, Aziz Pollozhani. An important impact on post-conflict educational and language reforms have played power-sharing mechanisms. The veto power is the most important power-sharing mechanism, which is constituted when the Badinter double-majority voting is required in the parliament. The second mechanism is the Committee on relations among the communities, which is responsible to adopt decisions within the domain of cultural autonomy. Due to the politization of the Committee, there were cases when the ethnicity of the members of the Committee was misused for political purposes. Since there are no reserved seats for ethnic minorities in the parliament, the Committee is not always represented by all ethnicities as provided by the Constitution. In case there

is no member representing its ethnic group, the Ombudsman after consultations with the representatives of that ethnic group proposes to the parliament a person from that ethnicity (Law on the Committee on Relations among the Communities 2007 (Republic of Macedonia), Art.4). Pollozhani reveals that due to the politicization of the Committee, there was a case when the ethnicity was misused. One case was when a Vlach member had to be appointed in the position reserved for a Vlach representative in the Committee. Since there was no Vlach representative in the Parliament, the Ombudsman had to propose a member as required by the procedure. Being afraid that the proposed member from the Ombudsman would not be politicised and would not follow Macedonian political interests in the Committee, a Macedonian member declared to be Vlach, instead of Macedonian. This case had caused dissatisfaction among Albanian ethnic representatives which had considered the act a misuse of the will of the people. Consequently, this case had served as a reason to draft and approve the Law on the Committee on relations among the communities in 2007 (Pollozhani, 2019). The law directly addresses the issue of pre-declaration of ethnic belonging. The Candidates running for Members of the Parliament are required to submit a statement of their ethnic belonging to the State Election Commission. This statement shall be considered relevant upon the establishment of the Committee<sup>108</sup>. The law did not prevent the second most important veto mechanism on cultural issues - the Committee - becoming non-functional. The non-functionality of the Committee which continues these days<sup>109</sup>, reveals that the domain of cultural autonomy is still a sensitive issue among ethnic groups.

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<sup>108</sup> See: Article 5 of the Law on the Committee on Relations among the Communities, Official Gazette No.150/2007

<sup>109</sup> See the veto power section above.

The post-conflict tradition to form a grand coalition has had an important impact in accomplishing reforms related to education and language, such as establishing the separate primary and secondary educational institutions in Albanian language, and the State University of Tetovo<sup>110</sup>. The international pressure from the international actors such as the USAID and OSCE has served as the main acceleration on the educational reforms. Nevertheless, the Macedonian and Albanian political elites interpret power-sharing provisions differently. Macedonian nationalist political elites interpret the power-sharing provisions as temporary, while the Albanian political elites interpret power-sharing provisions as constitutional.<sup>111</sup> Any language rights' demands were perceived by Macedonians as internal attacks on the statehood and Macedonian nation<sup>112</sup>. Macedonian and Albanian government coalition partners often had language rights and education at the center of their post-conflict political tensions, revealing the inability of the post-conflict political system in Macedonia to resolve problems with minority education" (Koneska, 2014). There were also attempts to bypass the role of Parliament in the education matters, which fall under the Badinter voting system. Facing an international pressure on the segregated educational system, the Ministry of Education adopted a decision on the changes in the curricula of the educational system of Macedonia. Macedonian language was introduced as a compulsory subject from the first class to Albanian pupils. The decision was highly contested by international community in Macedonia, Macedonian Albanians and civil society. The then government coalition VMRO - DUI entered into a deep political crisis which was resolved after an extensive diplomatic engagement of international actors. The coalition continued and the power -sharing provision were

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<sup>110</sup> See: Law on establishing State University in Tetovo, Official Gazette of Republic of Macedonia (No.05/2004), 23 February 2004

<sup>111</sup> By the time I submit this thesis, the Ohrid Agreement has become a Constitutional category in 2019.

<sup>112</sup> For more information on nationalism in Macedonia see: (Frckoski, 2016)

interpreted by the Constitutional Court who ruled that the decision of the Minister of Education was unconstitutional, because it did not follow the Badinter system of voting in the Parliament. The ruling of the Constitutional Court was important also on the clarification of the nature of power-sharing arrangements, which were often interpreted differently between Macedonian and Albanian political elites. Constitutional Court's ruling reasserted the importance of the Parliament in the power-sharing system of Macedonia, considering that the Parliament was the only institution in Macedonia that adopts the laws when Badinter double voting is required<sup>113</sup>. The ruling also reaffirmed the role of the Committee on Relations among the communities in cases of dispute as foreseen by the law<sup>114</sup>. What is most important, the ruling of the Constitutional court affirmed that the power-sharing mechanisms in Macedonia are a Constitutional category. These mechanisms do not have temporary nature, as it was interpreted by some political elites, and should be in accordance with the Constitutionalized Badinter system of voting in the parliament. The Constitutional Court's ruling was an important step on the clarification of future steps and procedures which should be followed by political elites in relation to power-sharing mechanisms. Ultimately, by clarifying the nature of power-sharing arrangements, the ruling has contributed to avoid similar situations, which would undermine the functionality and institutional stability.

What was said above, reveals that educational reforms have been closely linked with use of the language, which has been a sensitive topic since the Ohrid Negotiations. It has often raised fears among Macedonian and Albanians in relation to their national identity. On one side, the decision of the Minister of Education to have compulsory

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<sup>113</sup> See: Constitutional Court of Republic of Macedonia, *Ruling No.70/2010-0-1*, 14 July 2010. Accessed at: <http://www.ustavensud.mk/domino/WEBSUD.nsf>

<sup>114</sup> See: Article 10, paragraph 2 of the Law on the Committee on Relations among the Communities, Official Gazette No.150/2007

Macedonian language classes for Albanian pupils from the first class is considered by Albanians as a measure of assimilation of Albanians in Macedonia. On the other side, the use of the Albanian language in the Macedonian institutions and other matters is considered by Macedonians as an internal attack on the Macedonian national identity and the state.

In post-conflict Macedonia the issue of language has been improved. Nevertheless, it took seventeen years from the Ohrid Negotiations, until 2018 when Prime Minister Zaev considered that with the approval of the Law on the Use of Languages (2018), the normative part of the Ohrid Agreement has been implemented based on the concept “one society for all” (Iljazi, 2018). The law boosts the use of the Albanian language at national level. Albanian language which was already allowed to be used by Members of the Parliament in the parliamentary sessions, can be used also by the Speaker who can lead the sessions in that language. The use of the language is busted also in other matters such as: police, judicial, administrative, health, uniforms, banknotes and other official matters.

The approval of the law on the use of languages was one of the conditions of the Albanian political parties to form a coalition with Zaev’s SDSM. The winner of December the 2016th elections, VMRO-DPMNE, could not make an agreement with DUI, after the US influence on DUI not to form a coalition with VMRO-DPMNE. As a non-winning party, being short of numbers, SDSM was not sure if it reaches the necessary support to pass the constitutional changes in parliament. Consequently, the political support was required not just from DUI, but also from other Albanian political parties. Despite political different opinions, the Albanian political party Aleanca per Shqiptaret / Alliance for Albanians (APA) decided to enter into the governing coalition until the law on the use of languages was approved, reasserting that after the approval of the law, APA would leave the governing

coalition and all its governing posts (Strugaexpres, 2017). The law was approved in a tense atmosphere, which was followed by reactions from the ethnic Macedonian nationalist VMRO-DPMNE party, who stated that the law “deepens the differences and damages the homogeneity of Macedonian society”, considering that “the bilingualism will create chaos in the legal order, and it will create inefficient institutions” (Casule, 2018). Nevertheless, the President of Macedonia, Ivanov, refused to sign the Law, considering it unconstitutional. The law was sent in the Parliament for the second time and it was approved. Still, the President refused to sign it as required by the Constitution. This act was considered unconstitutional because the Constitution allows the President just once to refuse the decree of the law. If the same law is approved for the second time in the Parliament, the Constitution obliges the President to sign it (DW, 2019). The law was signed by the Albanian Speaker of the Parliament and the same was published in the Official Gazette. Nevertheless, the governing coalition agreed to send the Law at the Venice Commission for a final decision. The meeting between the representatives from the governing coalition, opposition and experts of the Venice Commission in 2019, revealed different opinions on the law. The governing coalition representatives shared their opinion that the law has been sent to Venice Commission based on a political agreement, which holds that just the Article 8 on the use of the Albanian language in the banknotes and army’s uniform, should be evaluated by the Commission. The Macedonian opposition VMRO-DPMNE expressed its remarks on the approval procedure, constitutionality and the refusal of more than thirty-six thousand amendments proposed by VMRO-DPMNE. The Albanian opposition party expressed their concerns on the status of the Albanian language in Macedonia. Alliance for Albanians (AFA) found offending to consider the Albanian language as a “language spoken by 20% of the population”, pointing out that this gives the impression that the use of language is a temporary right (Aktuale.mk, 2019). These political standings reveal the dissatisfaction of the opposition from both

ethnicities. The governing coalition keeps a balanced standing on the issue of the use of languages. The Albanian coalition partner DUI shares the same view with its coalition partner SMSD – that with the approval of the law on the languages ‘the normative part of the Ohrid Agreement is implemented’. It is important to notice that the political standing of the Alliance for Albanians / Aleanca per Shqiptaret (ASH) – its dissatisfaction with the status of the Albanian language as a “language spoken by 20% of the population” – which aims to further boost the status of the Albanian language until it becomes equal with the Macedonian language. A similar view has been shared by the Albanian candidate for the presidential elections of 2019, Blerim Reka, who’s candidacy was mainly supported by Alliance for Albanians. The actual status of the Albanian language as a “language spoken by 20% of the population” does not give guarantees in the hypothetical case if the Albanian percentage of the population falls under twenty percent in the future. As such, he believes that the status of the Albanian languages should have a similar Constitutional status as the Macedonian language (Reka, 2019). Despite the Joint Statement of the Albanian political parties - “the Albanian Platform” – these political standings reveal that Albanian political parties may have different political standings on the same issue. Reactions over the political elites sparked again when the medias published some opinions from the draft opinion 946/2019<sup>115</sup> of the Venice Commission related to the Law on the use of languages. According to Plusinfo, the Venice Commission recommends reconsidering the implementation of the Law since it exceeds European standards foreseen by the Council of Europe Framework Convention for the Protection of National Minorities, and its implementation may have financial impacts and judicial delays (Plusinfo,

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<sup>115</sup> The draft-opinion is listed in the official web site of the Venice Commission, but the final version is expected to be published in the coming months. See: [https://www.venice.coe.int/WebForms/documents/by\\_opinion.aspx?v=ongoing&lang=EN](https://www.venice.coe.int/WebForms/documents/by_opinion.aspx?v=ongoing&lang=EN)

2019). The most controversial reactions were between VMRO-DPMNE and ASH. At one side, Antonio Milloshoski, a VMRO DPMNE member of the Parliament declared that Prime Minister's Zaev bargaining with laws to form the government are non-functional and have resulted with the recommendations from the Venice Commission which are a legal knockdown for the government. At the other side Arta Toçi from ASH believes that the right on use of languages may be improved, but there should be no turning back (KDP, 2019).

The political reactions on the opinion from Venice Commission reflect the fragility of government, the delicacy of the issue and its impact in the future institutional stability in Macedonia.

### **5.3. Improving the institutional power-sharing arrangements functionality: revisiting the quadratic nexus**

Power-sharing provision which were compared in the cases of Kosovo and Macedonia show the complexity of power-sharing systems in the multi-ethnic societies. The institutional stability and functionality of multi-ethnic societies which have power-sharing mechanisms, depends in the interplay and interdependence between different factors which are more complex than in national societies. This complexity can be described by Smith's quadratic nexus (Smith, 2002), which involves a dynamic interdependence among four fields: a newly emergent "nationalizing state," an ethno cultural or "national minority" residing within it, and an external "national homeland" state of the expatriate "national minority" and international organisations. Yet, Germane proposed another "relational field" - interplay among different minorities within the same state – naming it as "the fifth element". For multi-ethnic states she suggested the analytical



model of the nexus as follows: “nationalizing state – national minorities - external homelands – international organisations” (Germane, 2013).

The comparative analyses of constitutional power-sharing arrangements between Kosovo and Macedonia raise the question if the quadratic nexus should be revised. Quadratic nexus emerges as a well suited theoretical framework, since according to Krasniqi it is applicable in almost every case of state-building and state transformation in the Western Balkans (Krasniqi, 2013), due to the international engagement in the process. The quadratic nexus and “fifth element” become applicable in Kosovo and Macedonia when considering their constitutional power-sharing mechanisms and the importance of ethnic minorities. Both countries imply power-sharing mechanisms which determine the functionality of the institutions. As such, the presence of multiple ethnic minorities that play a crucial role in the state-building of Kosovo and Macedonia necessitates incorporation of the “fifth element” in the model. Within the relational field of the quadratic nexus - national minorities - which includes the “fifth element”, I suggest the inclusion of a new “element”. The above analysis of the two cases suggest that a new relational field - the relations of ethnic minorities from the same nationality living in the same state - should be considered. As it was illustrated by the two cases, ethnic minorities from the same nationality living in the same state should not be considered as “a homogeneous element” which interplays “homogeneously” with other relational fields of the nexus. This is best illustrated in the case of Kosovo with the political parties from Serb ethnic minorities. The above analysis has shown that representatives of the same ethnic minority have different political aims, policies and opinions, in relation to the state of Kosovo. The political standings and actions of Lista Srpska party substantially differ from other Kosovo Serbian political parties. Being under Belgrade’s directives, the previous does not consider Kosovo as an independent state and aims to undermine Kosovo’s institutions and statehood. By using Constitutional

power-sharing mechanism, Lista Srpska has become a serious threat on institutional functionality, stability and an inside threat to the statehood. Other Kosovo Serb political parties do not share the same the political standings and actions as Lista Srpska. They are committed to continue building the future in a multi-ethnic Kosovo, being open for cooperation with other ethnic groups and the Kosovo's institutions. It is important to emphasize that other Kosovo Serb political parties oppose any agreement between Kosovo and Serbia which includes the idea of "Border Correction".

Unlike Kosovo, Macedonia's political parties of the ethnic groups not in the majority do not contest its territorial integrity and statehood. Political parties belonging to the biggest ethnic minority in Macedonia, Albanians, have similar political platforms, which is recapitulated in the so-called Albanian Platform. Nevertheless, the important issues such as the status the Albanian language and which candidate should be supported for the 2019 presidential elections, have shown that Albanian political parties may have different standings which may have affected the institutional stability. It is important to emphasize that the votes of opposition party, Alliance for Albanians / Aleanca per Shqiptaret (ASH) where important to secure the necessary votes for constitutional changes in 2019. Presidential election in 2019 between, Blerim Reka, an Albanian candidate, Stevo Pendarovski, a pro-European candidate from SDSM-BDI. Being a coalition partner with SDSM, BDI found itself in an uncomfortable position, between Albanian voters, its coalition partner SDSM, and a nationalist candidate. ASH's decision to support the Albanian candidate in the presidential elections in 2019, had raised concerns that this may undermine the victory of the pro-European candidate supported from the governing coalition SDSM-BDI, in favour of the nationalist candidate who promised to pull back and revise important agreements such as Prespa Agreement and Ohrid Agreement (Marusic, 2019). The results were very tight between the pro-European candidate and the nationalist

candidate in the first round of elections<sup>116</sup>. Pendarovski succeeded to win the presidential elections in the second round with the support of the Albanians' votes<sup>117</sup>.

These interplays among political parties representing the same ethnic minority living in the same state, may lead to the questions: Does the nexus need to be revisited? Is there another relational field in the quadratic nexus? Can the interplay between ethnic minorities from the same ethnicity living in the same state be accommodated in the nexus?

In relation to the quadratic nexus: nationalizing state – national minorities - external homelands – international organisations, previous chapters have argued that international organisations such as NATO, EU, OSCE, UN and other organizations have played an important role in multi-ethnic state-building of Kosovo and Macedonia. Nevertheless, international organisations were not the only actors which influence the multiethnic state-building processes. Previous chapters have argued that single states and groups of states have influenced the exogenously built states of Kosovo and Macedonia. Beside international organisations, states such as the US, Great Britain, Germany and groups of states such as the Contact Group, composed of France, Germany, Italy, the Russian Federation, the UK and the United States; Troika - US, Russia, Germany as the EU representative; the Quint format (the US, Great Britain, Germany, France and Italy); have influenced the multi-ethnic state building process. In this regard, I consider that in “the quadratic nexus”, the relational field “international organisations” should have a broader inclusion in the meaning “international”. I consider that using the term “international actors” would be more inclusive, instead of the actual relational field “international organisations”.

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<sup>116</sup> See the results: <http://www.electionguide.org/elections/id/3141/>

<sup>117</sup> See the final results: <https://rezultati.sec.mk/sq-AL/1/r>

As such the revised quadratic nexus, applicable in the states where there are at least two different ethnic minorities living in the same state, would look as follows:

4.a. Germane's "fifth element"

Inter-ethnic minority relations between different groups in the same state

4.b. "The sixth element"

Intra-ethnic minority relations between different groups in the same state

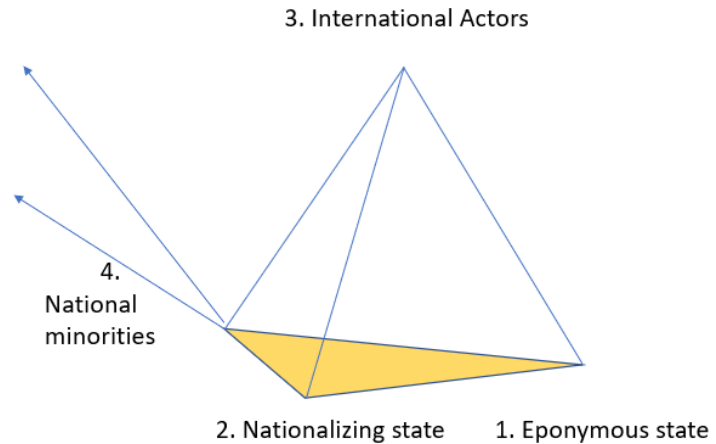


Figure 2 Quadratic Nexus revised

The revised quadratic nexus, which would include a broader meaning of "international" relational field – the "international actors" and includes the additional relational field of the "relations between the same ethnic minorities living in the same state", would be a more practical model to study power-sharing arrangements in ethnically divided societies. This model would be useful and more practical to study power-sharing arrangements in parliamentary republics, where the interplay between minorities from different ethnicities and the interplay between minorities from the same ethnicity living in the same state are important factors on the institutional stability and functionality.

## 5.4. Conclusions

Western powers involved in the multi-ethnic state-building of Kosovo and Macedonia have considered power-sharing arrangements to be an important tool of conflict management and inter-ethnic cooperation after conflicts. With the approval of the

Constitution in 2008, Kosovo has normatively implemented power-sharing arrangements that originated from Ahtisaari's Plan. More time was required for Macedonia to normatively implement Ohrid Agreement's power-sharing arrangements. This was because the law on the use of languages was approved only in 2019, which was considered the final step in normative implementation of the Ohrid Agreement in line with the Constitution (DW, 2019). The normatively implemented power-sharing arrangements in both countries generally follow Lijphart's model of power-sharing arrangements with the following elements: grand coalition, veto power, proportional representation and cultural autonomy. An exception is the grand coalition principle, which does not normatively exist in Macedonia. Nevertheless, these constitutional power-sharing arrangements raise questions about their impact in the functionality and institutional stability of post-conflict, ethnically divided societies.

Ever since the normative implementation of power-sharing arrangements, both countries have challenges in terms of institutional stability and functionality. In the ethnically divided societies of Kosovo and Macedonia, I suggest that state functionality and institutional stability does not depend only on inter-ethnic relations. In inter-ethnic relations of minorities residing in the same state, constitutional power-sharing arrangements have put the biggest ethnic minorities in the position of king makers. In this respect, one can hardly imagine functional and stable institutions without the cooperation of Kosovo Serbs and Macedonian Albanians with the ethnic majority. Since other smaller ethnic minorities tend to follow the ethnic majority and not to use their indirect veto power, they do not present an obstacle to the functionality and stability of the institutions.

An additional factor which should be considered is intra-ethnic relations of political parties. That is, in pluralist, consociational democracies where power-sharing arrangements are applied, political parties from the same ethnicity do not always have the same political programmes and goals. More precisely political parties which represent

ethnic minorities use (and abuse) constitutional power-sharing arrangements differently. This pattern is more notable among the representatives of the biggest ethnic minorities in Kosovo, than in Macedonia.

The contested nature of the state has further contributed to functional complexity and institutional stability in Kosovo. From the approval of the Constitution in 2008, until the First Brussels Agreement in 2013, Kosovo's Serb ethnic minorities were represented by the political party Samostalna Liberalna Stranka, which cooperated and participated in Kosovo's institutions. This development has contributed to a successful ending of Kosovo's supervised independence. However, after the Brussels Agreement Belgrade established a new Kosovo Serbian political party – Lista Srpska, which follows Belgrade's directives. Lista Srpska is seriously undermining the functionality and stability of the institutions, following Belgrade's policies to weaken Kosovo's institutions and statehood. Recent events have demonstrated that Lista Srpska may have an impact on the inter-ethnic relations between other ethnic minorities in Kosovo.

Unlike the case of Kosovo, Albanian political parties in Macedonia have similar political programmes and goals as they have chosen to advance their rights within the state, instead of secession. Due to constitutional power-sharing arrangements, the functionality and stability of the society depends upon the Albanian political parties. Consequently, even though the grand coalition principle is not constitutionalized, for the sake of institutional stability and functionality, the Macedonian winning party traditionally constitutes the government with an Albanian political party. Nevertheless, the presidential elections of 2019 have shown that the intra-ethnic relations of Albanian political parties are important. Having been divided between a pro-European Macedonian presidential candidate and an Albanian presidential candidate, the Albanian political parties have found themselves divided, thus increasing the chances of a nationalist candidate, whose

objective was to undermine the Prespa Agreement and the whole process of European integration.

The power-sharing arrangements described thus far show that there may be a need to revisit the well-established elements of the quadratic nexus: the interdependence between the eponymous state, the nationalising state, minorities living in the latter and international organisations. These arrangements and intra-ethnic relations between minorities political parties from the same ethnic group suggest a need for a revised model.

The case studies analysed above suggest that the term “international actors” instead of the element “International organisations” would be more appropriate. Comparison of both case studies suggest that the list of international actors involved in the nexus is wider than “international organisations”. The quadratic nexus would be more practical if the “fifth element” would be reorganised as a sub-element under the element of “minorities”. Yet, the two cases show that a new element - “the relations between different ethnic groups of minorities from the same ethnicity living in the same state” - plays an important role in the functionality and stability of the institutions. As such, it may be added as a sub-element in the nexus, under the element of “minorities”. Furthermore, this new element may be a solution to what Bieber suggests “a biodegradable solution” to power-sharing arrangements. Cases studies have shown that national minorities from the same ethnicity living in the same state do not always present a homogenous structure in terms of political standings and actions. Therefore, “the sixth element” does not only have an impact on the functionality of consociational power-sharing systems, but it may have an impact on future solutions to inter-ethnic issues. Which are those solutions and when is the right time for ‘biodegradability’ of power-sharing system is an issue that should be address in the future academic debate.





## Chapter 6.

### Conclusions and recommendations

#### 6.1. Conclusions

This work has three main objectives.

The first objective is contributing to the debate of consociational power-sharing arrangements and finding new elements which may affect their functionality. The recent debate on power-sharing suggests that the power-sharing debate between consociationalism and centripetalism is old and stale (Bieber, 2019) and the attention should be focused more in consociational power-sharing finding innovative solutions to it. This because centripetalism was proved less functional in practice. Therefore, the debate of this work is focused on and contributes to consociationalism. Lijphart's four characteristics of consociationalism are used in order to explore power-sharing systems in the comparison of this study: grand coalition, the veto power, proportional representation and cultural autonomy (Lijphart, 2018, p. 1)

The second objective is the application of Smith's quadratic nexus in assessing power-sharing in the Western Balkans, a region in which Smith has not tested his theory. Smith's theory posits that there is an interplay between the eponymous state, the nationalizing state, national minorities living in the latter and international organisations. Smith has used this theory in the nationalities studies addressing the national question in Estonia as a critique to Brubaker's "triadic nexus". Brubaker and Smith have pointed out

that is not “to engage in an unproductive debate about nationalism and nation state” (Smith, 2002, p. 3). This work aims to address the critiques to the quadratic nexus assessing the nexus in the context of international multi-ethnic state-building, through a multidisciplinary study where the constitutional law and political behavior are entwined in a new particular region, the Western Balkans.

With the dissolution of Yugoslavia, the new independent states of the former Yugoslavia: Bosnia, Kosovo and Macedonia have been established as multi-ethnic states under the influence of international actors characterized by an interplay between other elements of the nexus: the eponymous state, the nationalizing state and national minorities living in the latter. This work criticizes quadratic nexus suggesting that the element in the nexus “international organisations” should be broader, because not just the international organisations play an important role in the interplay of the international multi-ethnic state-building, but states and groups of states have an important role as well. The study proposes that the term “international actors” should be used instead of using the term “international organisation” for one of the elements in the quadratic nexus. Through comparing Kosovo and Macedonia, the study goes further criticizing the quadratic nexus and suggesting a new element in the nexus which might have an effect consociational power-sharing systems, the so called “the sixth element” consisting of the interplay between different groups of the same ethnic minority living in the same state.

The third objective is to contribute to the power-sharing debate through a comparative study between two states which have been exogenously built in a different way in reaction to separatist demands of minorities. Kosovo and Macedonia were chosen for this comparison study because both have been established as multi-ethnic states, under the influence of international actors involved in the processes of international mediation, constitutionalisation of power-sharing provisions and their functionality. Both

countries were characterized by separatist demands, which have been accommodated differently by international actors.

In order to explore this complex interdependence, the thesis adopts the segment “international actors – national minorities” of “the quadratic nexus to analyze the impact of international actors on power-sharing arrangements relevant to multi-ethnic state-building in post-conflict Kosovo and Macedonia in reaction to separatism. Through a comparative study, the work focused on three aspects of the influence of international actors on power-sharing arrangements: i) international mediation; ii) incorporation of power-sharing arrangements into the constitutions; and iii) power-sharing arrangements and their functionality in practice.

These general conclusions recall the findings of each chapter of the dissertation, to then highlight the theoretical implications of the study, recommendations, and the avenues for further research.

### **6.1.1. International mediation**

This study demonstrated how international mediated processes have produced different outcomes on power-sharing arrangements in peace settlements in reaction to separatism. This was done through a comparison between internationally mediated processes, in particular the Vienna negotiations on the final status of Kosovo (Kosovo) and the Ohrid negotiations (Macedonia), in which the respective constitutional power-sharing arrangements have their origin.

In both cases the outcomes in reaction to separatism were assessed in terms of the “quadratic interdependence” between the international actors, the eponymous state, the nationalizing state and its national minorities, focusing on the nexus international

actors – national minorities. As a result of the comparative analysis, several factors were identified as having had influence on the final outcome, including: i) the coordination/divergence of political positions and attitudes of great powers in the international mediations in relation to separatist demands; ii) the absence/presence of separatist groups in the negotiating teams; iii) the local ownership of power-sharing arrangements and, iv) biased and unbiased international mediation, special regional circumstances which have affected the separatist demands v) the neutral/meddling attitude of eponymous state in reaction to separatist demands of ethnic minorities.

In the case of Kosovo, its political status was negotiated together with a consociational power-sharing system in the Vienna negotiations. The Rambouillet Agreement had reaffirmed (at least temporary) the territorial integrity of Federal Republic of Yugoslavia, but it failed to be implemented due to refusal of FRY representatives to sign the Agreement. Vienna negotiations was a continuation attempt to resolve Kosovo's status, in different circumstances compared to Rambouillet Conference: the presence of FRY military had been substituted by the NATO-led Kosovo force (KFOR) and Federal Republic of Yugoslavia ceased to exist with the declaration of independence of Montenegro. Also, in the case of Macedonia, the power-sharing system was central in the negotiations, but territorial change was excluded categorically, and Macedonia's territorial integrity was reaffirmed. The presence of a moderated Albanian politician, Arben Xhaferi, the absence of the representatives from the Albanian guerrillas in the negotiation and the role of US international mediator, Pardew, played an important to exclude territorial demands and the escalation of the conflict (see: Pardew, 2018) The Vienna negotiations were conducted under the direct involvement of a collective body, the Contact Group, composed of the US, UK, Germany, Italy, France and Russia, characterized by antagonizing interests, most notable between the US supporting Kosovo's separatist

demands, Russia supporting the Serbia's territorial integrity and between the conflicting parties. As such, power-sharing arrangements were used as 'convincing' tool to make the settlement acceptable for the conflicting parties. Unable to find a compromise, the power-sharing arrangements in the Comprehensive Proposal for the Kosovo Status Settlement (Ahtisaari's Plan) were exclusively drafted by Ahtisaari's Office, having no local ownership. Nevertheless, Ahtisaari's Plan was not accepted by Belgrade and Russia. The US support for separatist demands of Kosovo Albanians were clear to Ahtisaari, but he has expressed his concern for the disunity between the EU representatives on the final solution (Phillips L., 2017). The overall failure is attributed to Russia's role in UN Security Council against the Plan, as Ahtisaari himself witnessed that despite initial agreement between great powers, including Russia, to accept whatever the outcome of the Plan would be, at the end Russia has changed its mind (Ahtisaari, 2008). The findings show that Ahtisaari's Plan was supposed to be unbiased towards the conflicting parties, but the elements of statehood in it seem to reveal a partially biased mediation, a mediation which favors one conflicting party related to separatism. On the contrary, the Ohrid negotiations mediated under the direct involvement of the Contact Group, composed of the US, UK, Germany, Italy and France, were characterized without Russia's involvement, avoiding eventual antagonising positions between Great Powers. The US-EU engagement synchronized on a joint effort to reach a peace settlement has brought a peace agreement acceptable by conflicting parties. Macedonia's Ohrid Agreement had local ownership as authoritative local experts from Macedonia were involved in the drafting process and all the local political actors approved the content. Both cases, were not characterised by the meddling of the eponymous state Albania, in the negotiations and in the final outcome.

The power-sharing arrangements in Kosovo's case concluded in a biased international mediation in relation to separatism, contain more elaborated institutional

provisions than power-sharing arrangements in Macedonia, where international mediators have not supported directly any conflicting party but have mediated on the power-sharing arrangements without having to deal with state border changes. These findings support Svensson's claim that biased mediators are more likely to lead to a more elaborated institutional power-sharing, than neutral mediators, since biased mediators use their access and leverage to convince the side they support making costly concessions which include power-sharing agreements, "considered conducive to democracy and durable peace" (Svensson, 2009, p. 446). A comparison between ethnic composition in the compared cases may lead to a hypothesis that a country with a more ethnically homogenous population results in less power-sharing arrangements. Nevertheless, the comparison between Kosovo and Macedonia suggest that the role of international actors have influenced asymmetrically power-sharing arrangements. This is because the support for Kosovo's independence has required to accommodate not just minorities rights but also their eponymous state's claims on Kosovo through power-sharing arrangements.

The comparison between both case studies expresses the relevance of the quadratic nexus. In Kosovo the interplay between the Contact Group and single great powers, Serbia and its national minorities. In Macedonia the interplay between the Contact Group without Russia, in a joint EU-US effort, Macedonia and its national minorities. Interplays in both cases have been characterised by the neutrality eponymous state Albania in reaction to the final outcome of the negotiations. The final results have not been influenced only by the international organisations, as Smith suggests in his work, but states and groups of states have had an important influence in the final outcome in reaction to separatist demands. Therefore, I have proposed that the term 'international actors' should be used instead of 'international organisation' relational filed in the quadratic nexus.

## **6.1.2. Implementation of power-sharing arrangements in the constitutions**

The second aspect of the study focused on the implementation of power-sharing arrangements from peace settlements in the constitutions of the compared cases and the degree of international influence in the process. As a transitional phase between conflict and new constitutional order, the process of implementation of power-sharing arrangements from peace settlements into the constitutions has been an important phase on how 'acceptable' the new multi-ethnic constitutional order for the societies would be.

The findings show that the transitional phase of constitutionalisation of power-sharing arrangements has developed differently in Kosovo and Macedonia. As a state in the making, Kosovo has incorporated power-sharing provisions in a constitution-making process strongly influenced by international actors, especially the US. On the contrary Macedonia has chosen to implement power-sharing arrangements through constitutional changes.

The incorporation of power-sharing arrangements in Kosovo's Constitution had followed a 'sui generis' way due to the Declaration of Independence from Kosovo in coordination with Western Powers, and internal resistance to the newly proposed multi-ethnicity. The implementation of power-sharing arrangements in the Constitution occurred along the constitution-making in 2008, as a 'carbon-copy' of Ahtisaari's Plan under strict supervision of an international civilian office (ICO) as the final authority to approve the content of the Constitution. The approval occurred during a formal procedure of Kosovo's Assembly, having no opportunity for a formal voting process and dissenting opinions. The

paradox in all this process, was the Article 143<sup>118</sup> which had given supremacy to Ahtisaari's Plan and its power-sharing provisions over Kosovo's Constitution. Despite Article 16 which has given Kosovo's Constitution the attribution of the highest legal act in the state, Article 143 had constituted a temporary paradox on Kosovo's Grundnorm providing that in case of inconsistencies between the provisions of the Constitution, laws or other legal acts in Kosovo and the provisions of Ahtisaari's Plan, the latter should prevail<sup>119</sup>. This temporary Grundnorm paradox had been eliminated at the end of the supervised independence. Nevertheless, it has indicated the total international supremacy on the constitutionalisation of power-sharing arrangements.

Macedonia followed a different path. Since territorial secession had been excluded from the internationally mediated negotiating table, unlike Kosovo, Macedonia's was not a 'state in the making', whereas solutions to ethnic issues were search within the territorial integrity of the state. Hence, instead of writing a whole Constitution, the incorporation of power-sharing arrangements had been done through constitutional changes, changing the state from a national one into a multi-ethnic one. The adoption of constitutional amendments took three months, taking into consideration that any delay could have undermined the peace process. The procedure on the constitutional amendment had been done in a rush excluding the possibility for public debate and changes on the Articles under Annex A of the Ohrid Agreement. Nevertheless, the members of Parliament had the possibility to vote and express their dissenting opinions. Unlike Kosovo's lack of ownership in power-sharing provisions, Ljubomir Frckoski and Vlado Popovski, the "founding fathers" of the 1991 Constitution (Vankovska, 2013) are known as local drafters from the Macedonian side. Furthermore, the Ohrid Agreement did not contain articles that would

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<sup>118</sup> See Chapter IV.

<sup>119</sup> Article 143.3 of Kosovo's Constitution.



give it supremacy over the Constitution, thus avoiding Kosovo's temporary paradox on the Grundnorm. The analysis shows that in the Macedonian case the international influence on implementation of power-sharing arrangements was important, still the influence had a lower degree in comparison to Kosovo's case. The international actors had mostly influenced the implementation of power-sharing arrangements from the Ohrid Agreement into the Constitution through overcoming inter-ethnic disagreements on the preamble of the Constitution and through conditioning the implementation process with financial assistance. Therefore, international influence falls under the partial degree of international influence.

### **6.1.3. Functionality of power-sharing arrangements**

The third aspect of this study analyzed two issues: i) how do constitutionalized power-sharing arrangements impact institutional stability and functionality, and ii) considering the quadratic nexus and "the fifth element", is there an additional element in the nexus that may have an impact on power-sharing arrangements. The analysis showed that Kosovo represents a fully-fledged consociational power-sharing system holding more detailed institutional power-sharing elements than Macedonia, employing Lijphart's all four elements of consociational power-sharing. Nevertheless, having a fully-fledged power-sharing system did not guarantee stable and functional institutions as suggested by Svenson (Svensson, 2009). Therefore, the assistance of international actors involved in multi-ethnic state-building was often required to break the institutional crisis and deadlocks. In Kosovo, international assistance has become necessary after power-sharing competences given by the Constitution were used to block and undermine institutional functionality by Lista Srpska - a Kosovo Serb political party directed by Belgrade. Besides inter-ethnic tensions, the entrance of Lista Srpska in Kosovo's political

scene has raised intra-ethnic tensions among Serbs living in Kosovo as well. Divergent political standings and interests of Lista Srpska compared to other Kosovo Serb political parties suggest that beside inter-ethnic relations, the relations between ethnic political parties from the same ethnicity in the state play an important role as well. This dimension can also be observed in Macedonia. As a non-fully fledged power-sharing system, Macedonia does not to constitutionally employ all Lijphart's power-sharing principles. No grand coalition principle or reserved places for ethnic minorities are employed in the Constitution. Still, as the functionality and stability of the society depends upon the Albanian political parties, the Macedonian winning party traditionally constitutes the government with an Albanian political party. Nevertheless, the institutional crisis after the parliamentary elections of 2006, which had intra-ethnic relations in its core, the 2015-2017 period of unrest which was stabilised after the EU-US assistance, and the presidential elections of 2019 have shown that the intra-ethnic relations of Albanian political parties are important.

Constitutional power-sharing arrangements have resulted in the biggest ethnic minorities becoming king makers: in Kosovo through the double majority voting system, guaranteed places in the parliament and government, and in Macedonia through the double majority voting system and the Committee on Inter-Community Relations. In both cases, double majority voting system requires the necessary votes from ethnic minorities. The difference is that in Kosovo in order to advance their rights, all ethnic minorities are dependent on the votes of each other when double majority voting of 2/3 is required. This gives the state a multi-ethnic character. By contrast, Albanians in Macedonia do not depend on the votes of other ethnic minorities in order to advance their rights, but other ethnic minorities depend on their votes, expressing their supremacy over other ethnic minorities, giving the state a bi-national character. As such, the power-sharing system in

Macedonia has become strongly dependent on the relations between different Albanian political parties with the Macedonian political parties of the nationalising state.

However, this study finds that state functionality and institutional stability do not depend only on inter-ethnic relations. In a parliamentary system with a consociational power-sharing system, intra-ethnic relations between ethnic minority political parties may impact institutional stability and functionality. The importance of intra-ethnic relations of political parties in consociational power-sharing arrangements and the role of international actors in the compared cases above respond to question of the second aspect of the third issue of this study. The study concludes that another additional relational field in the quadratic nexus and “the fifth element” may exist and the same may have an impact on power-sharing arrangements. The two cases compared show that a new relational field - “the relations between the same ethnic minorities of different groups living in the same state” - plays an important role in the functionality and stability of the institutions. When Germane presented “the fifth element” - the relations between different ethnic groups from different ethnicities living in the same state - she named it as a separate relational field for the clarification of the conceptual framework. Whereas in the analytical model consisted as: “nationalising state – national minorities – external homelands – international organisations” in order not to overload the model (Germane, 2013). In this line, the study suggests the new relational field - the relations between different ethnic minority groups from the same ethnicity living in the same state - to be named as “the sixth element” for additional conceptual clarity. Whereas in the analytical model, it may be added as a sub-element in the nexus, under the element of “national minorities”. The comparison of both case studies suggests that the list of international actors involved in the nexus is wider than “international organisations” and includes states and groups of states which affect

the relational fields. As such, the concept of “International organisations” should be reframed into the concept of “international actors”.

## **6.2. Theoretical implications of the study**

The existing literature on power-sharing suggest that the debate between the two forms of power-sharing: consociationalism and centripetalism is “old and by now stale debate” (Bieber, 2019, p. 1). In practice centripetalism is less applicable and when it is applicable it does not work (McCulloch, 2014). Therefore, consociationalism requires more attention. This study focused in consociational power-sharing contributing to the academic debate on that direction. McCulloch rightly suggests that if power-sharing has to be examined, three crucial questions should be asked: the origin of power-sharing arrangements, the way they are incorporated into the constitutions and if they bring political stability (McCulloch, 2014). This study responds to these three crucial questions in its three empirical chapters through a comparison between Kosovo and Macedonia. The work is built based on the theory of David Smith suggesting the existence of an interplay between the international organisations, the eponymous state, the nationalizing state and its national minorities (Smith, 2002). However, Smith did not apply his theory in the Western Balkans context. With the dissolution of Yugoslavia, new multi-ethnic states have been created under the influence of international actors. Bosnia, Kosovo and Macedonia are example of post-conflict, newly established states under the influence of international actors. Nevertheless, the degree and the way how international actors have influenced power-sharing arrangements was different in reaction to separatist demands that existed in these countries. Therefore, the comparison between Kosovo and Macedonia contributes to the power-sharing debate shedding light to similarities and differences of the power-sharing systems influenced by international actors in reaction to

separatist demands, always focusing on the “quadratic nexus” segment of the interplay ‘international actors – ethnic minorities’. This is important to address a gap in the academic debate, since the multi-ethnic state-building framework, such as the Ahtisaari’s Plan does not explicitly mention separatist issues, but it has elements of statehood in it - the opposite of the Ohrid Agreement, which explicitly excludes separatism as solution to ethnic conflict reaffirming territorial integrity of the state of Macedonia.

The third chapter analyses the role of international actors in the power-sharing arrangements during the international mediations, Vienna negotiations in Kosovo and Ohrid negotiations Macedonia, through the perspective of the inter-player fields of the quadratic nexus. Both countries were characterised by international mediations where the group of superpowers in charge, the Contact group and single states have played an important role on the outcome. Most notably the role of the US has been active in reaction to separatist demands, but in different directions. In Kosovo the US has firmly supported an independent Kosovo during the Vienna negotiations, opening the possibility for Kosovo Albanians to gain their rights in an independent, multi-ethnic state. On the contrary, in Macedonia, the US has prevented the presence of separatist representatives in the negotiations and the attacks of the Albanian guerrilla minimizing the separatist demands (see: Pardew, 2018). Therefore, the study suggests that the relational field which has been added by Smith in the nexus, ‘the international organisations’ should have a broader meaning. This relational field should include other relevant international actors in its meaning, such as states and groups of states. Therefore, instead of the term ‘international organisations’ the term ‘international actors’ would be appropriate to be used in the quadratic nexus.

The role of the international mediators is analyzed under Svensson’s neutral versus biased mediation and their impact in relation to the content of power-sharing

arrangements. Svensson claims that biased mediators are more likely to lead to more elaborated power-sharing institutional arrangements than neutral mediators. The comparison of power-sharing arrangements in the multi-ethnic state-building frameworks between Kosovo and Macedonia support his claim. Power-sharing arrangements in Ahtisaari's Plan are more elaborated than power-sharing arrangements in the Ohrid negotiations.

The fourth chapter analyses the degree of international influence on the procedure and the substance of constitutional power-sharing provisions, measured by the categorisation theorised by Dann and Al-Ali (Dann & Al-Ali, 2006) distinguishing total, partial and marginal degree of international influence. Following the US support for an independent Kosovo, the constitutional process in Kosovo has been highly influenced by the US Administration, represented by USAID and its own experts (Marko, 2008, p. 442). Kosovo's Declaration of Independence required a completely new constitution, differently from the case of Macedonia which has maintained its territorial integrity and has included power-sharing arrangements in the existing constitution. The analyses of the constitutional making process in Kosovo (2008) and constitutional changes in Macedonia (2001) suggest that the degree of international influence in the power-sharing arrangements are different. More precisely Kosovo's constitutional making process has had a total international influence in the constitutional power-sharing system, unlike Macedonia's constitutional changes process which have had a partial international influence. In order to ensure a constitution making process which guarantees a multi-ethnic state the international actors have imposed the Article 143 giving supremacy to Ahtisaari's Plan and its power-sharing provisions over Kosovo's Constitution. This constitutes a temporary paradox on Kosovo's grundnorm in the process of the incorporation of power-sharing

provisions in the Constitution, unusual and unseen before in the literature of constitutionalized power-sharing provisions of multi-ethnic states.

The fifth chapter address the functionality of constitutional power-sharing arrangements in practice. The chapter contributes to the power-sharing academic debate in a pragmatic perspective. John McGarry rightly calls for focusing on adoptability assessing the question: what could work in a power-sharing system? (McGarry, 2017). Bogaards and Bieber discuss the challenge of how to make the power-sharing systems 'biodegradable' (Bogaards, 2017; Bieber, 2019). Bieber considers naïve the idea that power-sharing will outlive itself over time, expressing the need that the power-sharing literature should consider more seriously 'biodegradable solutions', which would reduce the ethnic distance and its polarization (Bieber, 2019, p. 3). The fifth chapter contributes exactly on this direction, assessing the intra-ethnic relations between political parties of the biggest minority in the compared countries, proposing a new element in the quadratic nexus, which I named "the sixth element". I further argue that this new element is important not just in functionality of power-sharing arrangements but also is important in relation to the reduction of ethnic distance and separatist demands. In both compared cases, Kosovo and Macedonia, the international actors have imposed a form of unionism, more extensively in the former and less in the latter. Todd defines unions "in a broadest meaning to include states or polities with multiple (named and recognized) peoples and/or territories. Unionisms are the movements and ideologies concerned to hold those polities together against separatisms, secessions, irredentism and other forms of boundary change" (Todd, 2020, p. 1). Further she divides unions into five types: imperial unionism, ethnic / particularist unionism, majoritarian unionism, constructive unionism and project unionism (Todd, 2020, p. 8). Todd classifies the form of unionism which emerged in Macedonia after the conflict in 2001 as a constructive unionism, still re-

emerged after the unrest in 2016-2017 “with international and some ethnic Albanian support” (Todd, 2020, p. 12). A similar form of unionism has involved the power-sharing arrangements which have been constitutionalized from the Ahtisaari’s Plan in Kosovo’s Constitution (2008), although they incorporate much more detailed and fully-fledged power-sharing principles as explained in Chapter 3. Still a majoritarian resistance remains to these unions in both states, Kosovo and Macedonia. This is not surprising, since the international actors, most notably the US, have supported separatist demands of Kosovo Albanians for an independent state. Still, the international imposed union after the independence is facing difficulties in its functionality since the biggest Serb minority party, Lista Srpska is undermining its functionality following Belgrade’s policies towards Kosovo. The role of international imposed unions has been analyzed by Keil through a comparison between the State Union of Serbia-Montenegro and Bosnia and Herzegovina. Keil rightly questions the issue that “if imposing union states remains an option for conflict resolution, then the question must be asked how these imposed unions can become self-sustainable” (Keil, 2020) . The same question is relevant to unions of parliamentary republics such as in the compared cases of this study, Kosovo and Macedonia. I have argued that “the sixth element” should be considered by the multi-ethnic state, the national and international policy makers, because it might affect the functionality and the self-sustainability of the state. I am aware that the functionality and self-sustainability of the state depends on the political elite belonging to the majority as well. But since we are focusing on multi-ethnic states, minorities play an important role in the functionality and self-sustainability of the state. Therefore, “the sixth element” deserves further attention in the academic debate when these issues are discussed.



### 6.3. Recommendations

The analysis in this thesis suggests that role of international actors in reaction to separatist demands has had an impact on the content of power-sharing arrangements constitutionalized in the compared cases. The international efforts for an independent Kosovo have required more elaborated power-sharing arrangements as a convincing tool for Serbia and Russia to accept the deal. That was not the case with Macedonia, where power-sharing arrangements were discussed without having to address the separatist demands. This has had an impact on the degree and the way how international actors have influenced the content, the constitutionalisation and the functionality of power-sharing arrangement in practice. The power-sharing arrangements constitutionalized in the compared cases reflect the nature of the conflict, mainly focusing on the accommodation of ethnic groups subject of the conflicts. Despite being a significantly larger minority, Albanians in Macedonia have fewer rights than Serbian minorities in Kosovo. Therefore, the comparison suggests that the role of international actors in power-sharing arrangement has produced asymmetry between the minority rights in the compared cases. This asymmetry is not reflected just in relation to human rights such as the right to use the language, but also in relation to the eponymous state of ethnic minorities.

The accommodation of Kosovo Albanians' separatist demands has been done in such a way as to address several issues. An analysis of the Ahtisaari's Plan suggests that the plan had four purposes: To resolve Kosovo status, to convince Serbia and Russia, to protect minorities rights in an independent Kosovo and to avoid the division of Kosovo. In contrast to Kosovo, The Ohrid Agreement in Macedonia has addressed only the power-sharing principles, without having to accommodate any other divergent issues, such as

the influence of the eponymous state of Albanians of Macedonia - Albania. Ahtisaari's Plan has given enough space to Serbia, the eponymous state of Kosovo Serbs, to maintain its influence among Kosovo Serbs in Kosovo. That is not the case with the Ohrid Agreement where no provisions endorse the influence of the eponymous state of Albanians of Macedonia, Albania in the nationalizing state, Macedonia. Therefore, where power-sharing arrangements were drafted by international actors, the eventual impact of the interplay between the eponymous state and ethnic minorities in the functionality of power-sharing arrangements has not been taken into consideration.

There is a lack of an adequate conceptualization of international multi-ethnic state-building practices through consociational power-sharing provisions in unfinished ethnically divided states. Kosovo's case has shown that international actors have failed to accomplish the main purpose for which power-sharing arrangements were used: to make the peace settlements (Rambouillet Agreement and Ahtisaari's Plan) acceptable for Serbia, Russia and all political actors in Kosovo, ii) to complete the multi-ethnic state-building of Kosovo and ii) to build a consociational model of democracy which would have an inclusionary effect for ethnic groups. Whereas Macedonia's case has shown that while the peace agreement (Ohrid Agreement) was accepted by the conflicting parties, the consociational power-sharing arrangements in it have reflected the Macedonian-Albanian ethnic conflict, thus giving the country a binational character rather than a multi-ethnic one. The society is characterized by the lack of trust among the two biggest ethnic groups, which was reflected in the implementation and the functionality of power-sharing provisions, which have often required the international assistance. Nevertheless, Macedonia has implemented power-sharing principles, such as the grand coalition, even though the same principle is not required by the constitution.

The recommendations for international multi-ethnic state-building through power-sharing arrangements are three-fold.

First, the study has shown that international mediation may not produce optimal results in multi-ethnic state-building, if peace settlements along with their power-sharing arrangements are not accepted by all the international mediators and the conflicting parties. The Kosovo case has shown that during the international mediation, great powers did not have unified standings towards the Kosovo issue, and divergent political standings of the conflicting parties left no room for an acceptable peace agreement by all actors. On the contrary, the case of Macedonia has shown that chances for a peaceful solution increase when great powers have unified standings, and the conflicting parties have the will and flexibility to reach a peace agreement. This became more possible when the US used the political leverage towards Albanians to exclude the war wing from the negotiating team, thus avoiding territorial demands and eventual attacks in Skopje. As a result, there is a need to eliminate divergent political standings among international and local actors, during the international mediations. To do so, the leverage of great powers towards local actors<sup>120</sup> should be considered as well. This may increase the chances for the conflicting parties on willing to negotiate inter-ethnic obstacles on the way, including the power-sharing arrangements. Despite being in Europe the cases studies have shown that the US has strong leverage in the compared cases. In Kosovo's case divergent political standings and interest have been present not just between the US and Russia, but between the EU States as well, sometimes characterised with ego race between the US and the EU as well. Therefore, there is a need to overcome the ego between great powers, at least

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<sup>120</sup> This means the influence of great powers on political and legal decision making on the local political elites.

between the US and EU, as Macedonia's case has shown that coordinated US-EU joint efforts bring better results.

Second, the study has shown that power-sharing arrangements in Kosovo had multiple purposes: To resolve Kosovo's status, to convince Serbia and Russia to accept the Plan, to protect minorities rights in an independent Kosovo and to avoid the division of Kosovo. As a result, the power-sharing arrangements have given enough space to Serbia, the eponymous state of Kosovo Serbs, to maintain its influence among Kosovo Serbs in Kosovo. Nevertheless, where power-sharing arrangements were drafted by international actors, the eventual impact of the interplay between the eponymous state and ethnic minorities in the functionality of power-sharing arrangements has not been taken into consideration. The problems that later aroused with the functionality of the internationally brokered power-sharing arrangements had the interplay between the national minorities of the biggest group and their eponymous state. Therefore, the study suggests that the international state-builders should take into consideration the quadratic interplay when power-sharing arrangements are internationally brokered in the multi-ethnic state-building process.

The aforementioned concessions in the Ahtisaari's Plan have not been popular in Kosovo, therefore their incorporation into the constitution was done under a strict international supervision. The procedure of approval in the assembly had excluded dissenting opinions and formal voting process by members of the assembly, using acclamation as a consent. Article 143 of the Constitution, paradoxically had given supremacy Ahtisaari's Plan over the Constitution, reaffirming the total influence of international actors in power-sharing arrangements. In contrast to Kosovo, Macedonians had no lack of local ownership in power-sharing arrangements originating from the Ohrid Agreement. The incorporation of power-sharing system into the Constitution occurred with

approval of Constitutional changes, where the members of the parliament had the possibility to vote in favor or reject the constitutional changes, indicating partial degree of international influence in their constitutionalisation. As such the study recommends further attention to 'the temporary grundnorm paradox' as an indicator of the total international influence on the constitutionalisation of power-sharing arrangements from inside and outside the state.

Third, the study has shown that the quadratic nexus is relevant and the interplay between the international actors, the eponymous state, nationalizing state and its national minorities should be taken into consideration by the international state-builders aiming to build multiethnicity through power-sharing systems. In both compared cases, international intervention was required to resolve the inter-ethnic institutional crisis. Kosovo is an example of a consociational power-sharing system, which failed to build inter-ethnic inclusionary institutions. This is mainly as a result of the negative impact of the eponymous state, Serbia on the Serb minorities, especially with the entrance of LS in the political scene. Serb minorities perceive as negative the impact of LS and the eponymous state (Fort, 2018, p. 8) On one side, the power-sharing system was used by Lista Srpska to block and undermine Kosovo's institutions, through boycotting and noncooperation. On the other side the candidate for prime minister of Kosovo of October 2019 elections has declared that no coalition will be done with Lista Srpska, but with other Kosovo Serbs, causing counter reactions by Lista Srpska warning that it would abandon Kosovo institutions if not included in the governing coalition (Express, 2019). Unlike Kosovo, Macedonia does not hold the grand coalition principle. However, the political tradition on grand coalition formation between the Macedonian party with an Albanian party has served as an inter-ethnic conflict absorber. Further, the constitutionalized double majority voting system which puts Albanians of Macedonia in a position where they are able to

further advance their rights in cooperation with Macedonian majority, without being dependent on the votes of other ethnic minorities. This is an opportunity to use the legislative changes as solutions to eventual Macedonia-Albanian inter-ethnic conflicts on the rights. However, the study has also shown that still there is no trust among ethnic groups. When there is no confidence in laws which require double majority voting system proposed by Macedonians, confidence is built by sending the laws to Albanians through Americans (Frckoski, 2019; Ademi, 2019)<sup>121</sup>. The study suggests that there is a need of international assistance even in the future, to maintain the institutional stability and functionality and to build trust among ethnic groups.

When analyzing multi-ethnic state-building the focus is rightly put on inter-ethnic relations. However, the study has found that also intra-ethnic relations play an important role in power-sharing arrangements of the compared cases. A comparison between political parties of the same ethnic minority living in the nationalizing states suggests different political standings and discourses may exist between them, effecting the multi-ethnic state-building as well. The study finds some political parties of ethnic minorities have more nationalistic political standings. The two case studies have illustrated that ethnic minorities from the same nationality living in the same state are not a “homogenous” political structure with a “homogeneous” interplay related to other relational fields of the nexus. In democratic countries diversity and “heterogeneity” in political thinking and political action derive from individual rights such as freedom of political thinking guaranteed for every person.

As such the intra-ethnic relations should be considered in future policy making. I have proposed to accommodate the ‘intra-ethnic relations’ into the ‘quadratic nexus’ as

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<sup>121</sup> See Chapter 3 and 5.

'the sixth element'. The new concept of 'the sixth element' may be considered on policy making not just in the compared cases, but also in other consociational power-sharing systems where there are more than one political party of ethnic minorities from the same ethnicity living in the same state.

#### **6.4. Avenues for further research**

The work on this dissertation is based on the quadratic nexus, where one segment of the nexus has been analyzed in detail: the correlation between international actors and national minorities. Even though the correlation between eponymous state and nationalizing state on national minorities has been briefly touched upon, the analysis has not studied deeply other segments of the "nexus". Therefore, future research may focus on deeper analysis of other segments of the "nexus". Compared cases of this study are interesting grounds for further research on other correlational fields of the nexus. On one side, Albanians of Macedonia for example are specific case related to eponymous state, whether they consider as eponymous state Albania, Kosovo, or both and their relations. On the other side, Kosovo Serbs are divided into two categories, as 'the sixth element' suggests: those who recognize Kosovo's independence and those who do not recognize it. From the point of view of the latter category, Kosovo is an integral territorial part of Serbia and as such it is not recognized as an independent state. From the point of view of the former category, Kosovo is an independent state and as such Serbia is considered as an eponymous state. These complex relations are promising avenues for further detailed research, which could contribute to study of Kosovo-Serbia relations.

The proposed relational field in this study, 'the sixth element' could be a promising avenue for further research in other Western Balkans countries, where the "triadic nexus"

or “the quadratic nexus” could be used as a theoretical framework. Example of countries for such an analysis are: Montenegro, Serbia, and Bosnia and Herzegovina. Although the two former states do not have constitutionalized power-sharing systems, they are characterized by multiple party system from the same ethnic minorities with divergent political standings. As a specific constitutionalized consociational power-sharing system, Bosnia and Hercegovina represents an interesting case for further study of ‘the sixth’ element. However, due to its specific multi-national state organization, federation inside a federation, I would not encourage a comparative research with other states. An interesting avenue for further research of the quadratic nexus could be the examination of the interplay between ethnic minorities from the same ethnicity living in different states with their eponymous state and nationalizing states<sup>122</sup>.

The two cases compared in this study have shown that political parties from the same ethnic group living in nationalizing states could have different political standings, but they could also have different discourse regarding nationalism. As such, the ‘sixth element’ should be tested not just in legal studies, but also in the nationalities studies.

Broadening the picture in regions other than Western Balkans, further avenues of study could consist of other countries in Europe, Africa and Middle East. In Europe, cases such as South Tyrol and Northern Ireland could be promising avenues to test the ‘quadratic nexus’. A comparative research between these two countries vis a vis kin-minority parties’ the Südtiroler Volkspartei (SVP) and the Social Democratic and Labor Party (SDLP) focuses on the impact of Europeanisation process on their political positioning, suggesting “further research on the Europeanization of party politics in border

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<sup>122</sup> I am thankful to Professor Joseph Marko for pointing out this interesting aspect of research, which could be tested in the cases were ethnic minorities from the same ethnicity live in more than one nationalizing state.



regions and more generally, on the relationship between functional interdependences and ethnoterritorial identities” (Utz, 2019). In this regard, further research could employ ‘the sixth element’ as well.

Other non-European countries where ‘the sixth element’ could be tested in relation to consociational power-sharing system could be South Africa, Burundi and Afghanistan. ‘The sixth element’ could have a broader testing ground in nationalizing states of African countries, with more than one political party from the same ethnic minority vis a vis eponymous state.

Finally, an interesting case study in the Middle East could be the Kurdish issue. Kurdish minorities’ position is specific since they do not have an eponymous state. Kurdish minorities are currently divided and located in other Middle East states: Iran, Iraq, Syria and Turkey. Despite their geographical division in four states, Kurds are also divided in different political parties living in these nationalizing states. Being a region of different interests between great powers and regional powers the ‘international’ relational field in this context is relevant. The latest research suggests the incorporation of autonomy and self-governance mechanisms into the international community’s efforts on the Kurdish issue (Gunes, 2019), in which the dimension of Kurdish intra-ethnic relations and its impact could be considered as well.

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