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The Limits of State Building

A Comparative Research on the Negative Aspects of State Building Regarding Human Rights in
Slovenia and Bosnia and Herzegovina

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Abstract

This thesis focusses on the relation between state building and human rights and. How and why did the state building processes differentiate between Slovenia and Bosnia and Herzegovina. After the breakup of Yugoslavia both states conducted a state building process where in the areas of the government, legal settlement and output levels, different actions have been undertaken to produce strong state institutions. While this is normally seen as a prerequisite to adequate protection of human rights within states, this thesis has found that there are numerous negative consequences of this process for the human rights of both states. In Slovenia the process was done out of an ideological move away from Yugoslavia and because of this, identity played a large role. The largest issue was the discrimination on (former) Yugoslav minorities that came to be known as the erased. In Bosnia and Herzegovina, state building was centered around limiting the possibility of renewed violence. Because of this the process became more decentralized, and in turn giving way to the emergence of ethnically based politics and policies hindering successful state building.

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Table of contents

• Introduction.....	4
• Historiography.....	9
• Literature and methodology.....	12
• Chapter One.....	16
- Slovenia.....	17
- Bosnia.....	23
- Conclusion.....	31
• Chapter Two.....	32
- Slovenia.....	33
- Bosnia.....	41
- Conclusion.....	47
• Chapter Three.....	48
- Slovenia.....	49
- Bosnia	54
- Conclusion.....	60
• Conclusion.....	62
• Bibliography.....	66

Introduction

The breakup of Yugoslavia, where one multi-ethnic federation shattered into what would eventually become seven new states, has in many ways become one of the most relevant source of academic literature regarding human rights in Europe. The Yugoslav wars brought forth numerous war crimes, and the first genocide on European soil since the Second World War. The International Criminal Tribunal for the former Yugoslavia (ICTY) has further developed the idea of personal criminal responsibility for war crimes and genocide.¹ After the wars finished the new states were tasked with the difficult job of building up their societies, infrastructure, state apparatus and the reconciliation with a violent past. Needless to say, is that while the former Yugoslav republics were all part of the same political system, the future processes diverged greatly. The transition from war to peace, from a socialist to a capitalist society and from a one state party to a multiparty democratic system required large transformative efforts that would be felt in all levels of society. From the very political top, down to the average citizen, the political, economic and social fabric of what was once Yugoslavia would rapidly change.

This change would not happen in a vacuum, the international community would not only look on but take an active part in the reconfiguration of the geographical area of the Western Balkans. In varying degrees, international organisations and global powers influenced or directly engaged in state building efforts. Over the last 35 years since the beginning of the breakup, the political character of the region has changed considerably. Slovenia could be seen as the biggest success coming out of Yugoslavia, according to Freedom House they have one of the highest scores of people's access to political rights and civil liberties with a score of 97/100.² Other states have not fared this well, Bosnia and Herzegovina (BiH) for instance, scored only 52/100.

The reason for this divergence is complex, and libraries can be written (and are) regarding the specifics of all ex-Yugoslav states. One of the most obvious factors is that the breakup of Yugoslavia had extremely uneven impacts across the region, with Slovenia's war lasting only ten days, and Bosnia and Herzegovina's lasted from 1992 to 1995. The destructive aspect of the Bosnian War increased the international involvement with the peace, and state building process during and after the war. To ensure

¹ Natalie Wagner, "The Development of the Grave Breaches Regime and of Individual Criminal Responsibility by the International Criminal Tribunal for the Former Yugoslavia," *Revue Internationale de La Croix-Rouge/International Review of the Red Cross* 85, no. 850 (June 2003): 351–83, <https://doi.org/10.1017/s1560775500115202>, 382.

² "Slovenia: Freedom in the World 2025 Country Report," Freedom House, 2025, <https://freedomhouse.org/country/slovenia/freedom-world/2025>.

peace on in Europe, international intervention characterized the settlement of the Bosnian war with the Dayton Peace Accords (DPA). Not only did this settle the war, but it also established the new constitution of Bosnia and Herzegovina. The settlement spurred on externally induced state building. As weak or failing states are seen as the source of many problems, a lot of effort was put into the creation of a robust and functioning pluralist and democratic Bosnian state.³ Even though the international community was present in large numbers in the state building process in Bosnia and Herzegovina (BiH) as opposed to Slovenia's state building process, BiH seems to be far behind when it comes to the realization of political rights and civil liberties. The difference between Slovenia and BiH, in the context of their independence stipulates great differences in their securing of a state and the building of this. Therefore, these two states make for a good comparison on how state building is conducted and influenced based on the independence process.

The main avenue of securing human rights is the state, therefore a vital part of state building is the creation of structures that can guarantee human rights for its citizens. One way of seeing state building focuses on state strengthening as the solution for problems associated with weak state. These include human suffering, underdevelopment, the spread of violence and the potential of weak states to spread conflict and transnational criminal organizations.⁴ The reconstruction of a state apparatus remains the default response to weak or failing states. It should therefore be only logical that state building should be tasked with directly improving the human rights apparatus within the state where this process takes place.

This is however not a simple equation as state building makes a strong state and therefore produces human rights mechanisms. Across the former Yugoslav area, different and very asymmetric state building processes took place with varying degrees of success. While it might seem logical to look at the endpoint of these processes and deem them failed or not. The process itself might give more insight into how the endpoints turn out the way they do and the direct relationship between state building and human rights. For this reason, this thesis will look at this relationship within the state building efforts and human rights of Slovenia and Bosnia and Herzegovina. More specifically this thesis will assess the ways state building creates and alters the political, social, economic, and legal context that might influence human rights in a negative way. This does not mean that state building is an inherently problematic undertaking per se, on the contrary, the creation of a pluralistic, democratic and strong state can be the

³ Francis Fukuyama, "The Imperative of State-Building," *Journal of Democracy* 15, no. 2 (April 2004): 17–31, <https://doi.org/10.1353/jod.2004.0026>, 17.

⁴ Melissa M. Lee, "International Statebuilding and the Domestic Politics of State Development," *Annual Review of Political Science* 25, no. 1 (May 12, 2022): 261–81, <https://doi.org/10.1146/annurev-polisci-051120-110830>, 264.

most effective way to reduce human rights risks and create a positive and safe environment for its citizens. But in the process of this, a highly volatile situation is created with a large degree of uncertainty and change. It is therefore necessary to look at the issues state building can generate.

To critically assess the differences in these two Yugoslav successor states a number of concepts need to be aligned. Firstly, although both states have a shared past in both being part of Yugoslavia, there are vast differences between both territories in numerous areas. Consequently, this thesis will create a critical comparison aiming to avoid any generalization that might be problematic. Therefore, a short historical contextualization shall be brought forth in order to shed light on the very different starting points of both state building processes. Not only will this serve to create a basis of understanding regarding the starting points, but this will also shed light on the question why different aspects were prioritized in both contexts. After this a literature review shall move onward in trying to explain and reconcile differentiating views regarding state building. Here the main theories regarding state building shall be examined. To look at state building in different contexts, one needs to understand the different forms and views on this process, and how these theories might shed different lights on the contexts that will be examined. For example, the post Yugoslav situation of state building differs greatly from Slovenia and BIH, therefore different theories, perspectives and practices will apply to both cases. Both the historiography and the literature shall provide a basis on which the rest of the research will be carried out. This leads into the methodology used in the research. This section will explain how the research was conducted and what different types of sources were used and why. After the overview of the methodology and the review of the literature the thesis will delve into answering the main question; how state building influenced human rights in Slovenia and Bosnia Herzegovina respectively. To answer this question, the concept of state building needs to be broken down into the elements that make up this practice. For this Fritz and Menocal's domains of state building will be used and slightly altered into larger thematic sections. They provide a hierarchy of state building domains starting with the political settlement of the government. They argue that this is the core of the functional capacities of the state.⁵ Moving outward, one will find the arena of public administration, rule of law, and security. These core functions of the state need a political basis upon which they can base their direction. Once these functions have been established one can see the state outputs; services, education, justice, and economic management. This hierarchy is well suited to explaining the interlinked character of state building exercises, but as this

⁵ Verena Fritz and Alinna Rocha Menocal, "Understanding State-Building from a Political Economy Perspective," *Report for DFID's Effective and Fragile States Teams*, September 2007, 1–71, https://doi.org/https://cdn.odi.org/media/documents/ODI_state_building_paper.pdf, 24.

thesis is aimed at analysing the effects of these practices, it will be better suited to create three different thematic areas of state building, where different aspects of the tranches explained by Fritz and Menocal will be placed in. The three thematic areas will be each individually examined in the following chapters.

The first thematic area will be solely devoted to the creation of the creation of governmental (democratic) institutions, since this influences all other proceedings and focuses on constitutive elements of the key domains like; the constitution, election, state-society relations and the creation of an administrative governance. The chapter will thus focus on what choices were made in the political settlement in the early and later stages of both state building processes of the states examined. It is important to tackle this chapter first because choices made in this process will influence the institutions that follow.

The second chapter will focus on the creation of judicial institutions including rule of law, establishing of courts and international law. These includes both constitutive elements like the creation of a legal framework that regulates state-society interactions and publicly known rules that political actors should abide by. As well as output elements like the administration of justice, transitional justice and the legal culture. Both rule of law and security should be considered as results and causes of (un)successful state building.⁶ Therefore this chapter will assess the starting point of both concepts, and the development to the present-day status to measure the success in these areas.

The third and final chapter will focus mostly on the output levels of the states and specifically on the transition of the states from socialist economies to free market economies. This process includes the privatization of property, capital and healthcare. All of these areas can have negative and positive consequences depending on how they are conducted. While both states can be seen as states in transition in this area, they have varied degrees of success, but also very different problems in this process. This chapter will not only see if privatization can cause human rights grievances, but also how different strategies can cause different problems. These problems of course stem largely from the context of the case study and as will be shown from the decisions made in earlier stages of state building.

The three thematic areas will analyse the efforts of national and international actors from the core outward. Beginning at the constitutive level and ending at the service output level giving an in-depth overview of how state building was carried out. Only is this not the main interest of this thesis. As the literature review will point out there has been a lot of research into the success (or lack thereof) of state

⁶ Verena Fritz and Alinna Rocha Menocal, "Understanding State-Building from a Political Economy Perspective," *Report for DFID's Effective and Fragile States Teams*, September 2007, 1–71, https://doi.org/https://cdn.odi.org/media/documents/ODI_state_building_paper.pdf, 29.

building in various contexts in the western Balkans, where the research turns slim is the relationship between state building and human rights. Where it was already soon known that the peacebuilding process of the Yugoslav experience was a very bad example of how the relationship between peace and human rights should be handled.⁷ This thesis will argue that the same can be said for the state building processes that followed. And that the actions of both the international community and national actors contributed to numerous single acts and systematic human rights offences.

⁷ Manfred Nowak, *Lessons for the International Human Rights Regime from the Yugoslav Experience*, Volume VIII (The Hague: Kluwer Law International, 2000).

Historical background and introduction of the case studies

In order to analyse the two cases brought forth, a short historical instruction should be given, since the limits of this thesis this will not be an in-depth historical analysis regarding the fundamental difference between the two states, but it will serve as a short introduction to the time period and the events leading up to the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY).

One can pinpoint the start date of Yugoslav history in different times. After the First World War and the creation of the first Yugoslavia or the kingdom of Slovenes Croats and Serbs is the most likely starting point. This is where the territories of the two cases were conjoined for the first time in the modern era as an autonomous state independent from any bigger empires.⁸ During this time the Communist party was founded in 1919 and subsequently outlawed in 1921. It is the communists that during World War Two would form the resistance and eventually overthrow the Axis occupiers without much help from outside. After the Partizans had won, the communist party with Tito at its head had virtually free reign over the construction of the new Socialist Yugoslav state.

One of the vital parts in this era of socialist state building was making sure that the ideology took over as the binding factor of the state as opposed to the nationalistic ideas that were present in the region. The goal was for these nationalistic ideals to recede and eventually disappear over time and for them to be replaced with a supranational attachment to the socialist ideology.⁹ This chance was also done for the reconstruction of the education system where the developmental objectives focussed on economic growth, improvement of the general cultural standard and raising political awareness according to the ideological goals of the state.¹⁰ While originally Yugoslavia aimed to create an economic system similar to the one found in the USSR. But due to a break between Tito and Stalin, Yugoslavia had to look in other avenues for economic restructuring and gradually moved away from the soviet model, opting for a freer market system with less importance to a central planned economy (although still present) and a focus on worker management and social capital.¹¹ Still, economic disparity within the SFRY was a problem to create a unified Yugoslav identity. While changes in the economic policy did cause some

⁸ Jože Rant, *The Slovenian Exodus of 1945*, trans. Jerry G. Zupan (Buenos Aires: Jože Rant, 2007), 34.

⁹ Sergej Flere and Rudi Klanjšek, "Construction and Reification in Nation Building: The Case of Yugoslavia Fully Explained?," *Ethnicities* 16, no. 6 (July 25, 2016): 842–68, <https://doi.org/10.1177/1468796815620442>, 848

¹⁰ Niska Nikola Soljan, "The Saga of Higher Education in Yugoslavia: Beyond the Myths of a Self-Management Socialist Society," *Comparative Education Review* 35, no. 1 (February 1991): 131–53,

¹¹ Nurbay Sey and Bayram Aydın, "The Economic Conjuncture before and after the Dissolution of Yugoslavia: Determinants of Economic Growth in Former Yugoslavian Countries," *Istanbul Journal of Economics / İstanbul İktisat Dergisi* 75, no. 2 (January 15, 2026): 351–74, <https://doi.org/10.26650/istjecon2025-1676359>, 353.

internal migration it did not break down regional inequality and economic nationalism only increased from the 1970's. The degree of Yugoslav identification remained low throughout the period with identity still being largely tied to ethnicity or religion.¹²

The disparities in identifications came again head-to-head during the breakup of Yugoslavia. Spurred on by financial trouble, relations between the Yugoslav republics worsened and the political debate entered the public sphere.¹³ The national parties slowly started to move in separate directions. It is also here where the situation of Slovenia and Bosnia starts to diverge greatly. Newspapers in Slovenia openly raised the question of independence and demanded democratization efforts. In 1990 the first democratic elections were held and the Socialists lost to the newly formed democratic party. This change resulted in a new focus on Slovenian national identity and sovereignty.¹⁴ Due to the autonomy given to the republics and the 'independent' character of Slovenia these elections resulted in a start of state building efforts already before Slovenia was formally independent. The Citizenship Act of the Republic of Slovenia and the Law on Foreigners were seen as necessary acts regarding the forming of a sovereign nation with control over its own permanent population along with their own internal constitutional amendments.¹⁵ The autonomy of the nations of the SFRY can therefore cause a headstart in state building efforts, this of course, entirely depends on the actions taken within the republics while they are not yet independent, and the way they realized their independence.

Where Slovenia only had a 10-day war after they had declared their independence in 1991, while Bosnia's war would last for five destructive years. Slovenia had a few sporadic clashes with the Yugoslav Army after which a settlement was reached. In contrast neighbouring Croatia who declared independence at the same time war endured until 1995.¹⁶ In Bosnia and Herzegovina war came as a surprise to most, but the ethnic fragmentation already started after the 1990 elections. The elections boosted the power of newly formed nationalist parties like the Serbian Democratic Party (SDS) the Croatian Democratic Union (HDZ) and the Party of Democratic Action (SDA). Their agendas were mutually exclusive and ethnically

¹² Dusko Sekulic, Garth Massey, and Randy Hodson, "Who Were the Yugoslavs? Failed Sources of a Common Identity in the Former Yugoslavia," *American Sociological Review* 59, no. 1 (February 1994): 83, <https://doi.org/10.2307/2096134>, 85

¹³ Veronika Bajt, "Slovenian Nationalism," *Nationalities Affairs*, no. 24–25 (2005): 9–32, <https://doi.org/https://www.cceol.com/search/article-detail?id=4293>, 21

¹⁴ Mojmir Mrak, Matija Rojec, and Carlos Silva-Juregui, *Slovenia from Yugoslavia to the European Union* (Washington, DC: World Bank, 2013), 9.

¹⁵ Bojko Bučar, "Chapter 3, Independence and Integration into the International Community: A Window of Opportunity," essay, in *Slovenia from Yugoslavia to the European Union* (Washington, DC: World Bank, 2004), 37.

¹⁶ Adam Moore, *Peacebuilding in Practice: Local Experience in Two Bosnian Towns* (Ithaca: Cornell University Press, 2016), 38.

driven.¹⁷ The most destabilizing element was the parties push for ethno-territorial administrative lines. Nearly three quarters of the country was claimed by nationalists by the end of 1991 and by the beginning of 1992 all governmental institutions had ceased to function and the SDS proclaimed an autonomous Serb Republic of Bosnia and Herzegovina. All three sides were actively working to establish military formations. Despite ethnic tensions Bosnia still moved forward with a referendum for independence. The SDS had boycotted this referendum and pledged to secede, and when 90% of voter chose independence war broke out. The war ended with the Dayton accords signed in 1995, putting an end to all the hostilities and laying the groundwork for state building efforts. The Dayton Peace Agreement (DPA) was a multifaceted document with its purpose to not only end the war in Bosnia and Herzegovina but to also create the state and to temper future ethnic conflict. The specifics of the agreement relating to this thesis will be outlined largely in the following chapters. The former High Representative for BiH (2002-2006) described the agreement as “a superb agreement to end a war, but a very bad agreement to make a state.”¹⁸ While the agreement would bring peace, it would also galvanize the ethnic differences into a constitutional system and a shared state, while creating separate entities. One for the Croats and Bosniaks, that would be the Federation of Bosnia and Herzegovina (FBiH) and one for the Serbs that would be Republika Srpska (RS). The dividing of Bosnia along ethnic boundaries created a political system in which progress would be difficult to achieve because of ethnic voting, and it limited state building efforts due to the entities actively trying to undermine larger statewide legislation in favour for their own power and control.

¹⁷ Adam Moore, *Peacebuilding in Practice: Local Experience in Two Bosnian Towns* (Ithaca: Cornell University Press, 2016), 39.

¹⁸ Pol Bargués and Pol Morillas, “From Democratization to Fostering Resilience: Eu Intervention and the Challenges of Building Institutions, Social Trust, and Legitimacy in Bosnia and Herzegovina,” *Democratization* 28, no. 7 (May 17, 2021): 1319–37, <https://doi.org/10.1080/13510347.2021.1900120>, 1319.

Literature and methodology.

As seen above Slovenia and Bosnia and Herzegovina have had a very different path regarding their abilities to create a functioning state, with Slovenia having a headstart and already starting before official independence. Bosnia and Herzegovina however, suffered a devastating civil war which solidified ethnic conflict into a political stalemate. Because of this, two different types of state building emerge. In essence the term state building refers to domestic processes that strengthen the states authority throughout its territory. Using this terminology both cases fall neatly into this description, but the international involvement in Bosnia and Herzegovina has created a vastly different landscape. Therefore, the situation of BIH would align more with the term of ‘international state building’.¹⁹

The term of international state building is more colluded and is often referred to as peace building or nation building, while others see colonialism as a form of international state building.²⁰ Peace building is the project of transforming a post-conflict countries sociopolitical landscape to prevent the reemergence of a hostilities and armed conflict.²¹ The same aspects can be used interchangeably for nation and state building, the terminology used is largely based on who you ask. While the UN refers to this task as *peace-building*, the US calls this *stability operations*, and many European governments refer to *state-building*.²² While these terms are often used interchangeably there exists the underlying notion with the UN definition as it presupposes the existence of a conflict that has gone before and the possibility of re-emergence that needs to be avoided. While the practice of state building is something that is done continuously by states whether they have engaged in recent conflict or not. Where International state building is often preceded by a conflict, domestic state building is not. To encompass both cases in this comparison, the term state building is best suited.

The link between state building and human rights is an important one. In a modern rule of law centred state, human beings should be a central element of the entire system and their rights and freedoms should be used as the primary benchmark of state policy.²³ When talking about state capacity, scope,

¹⁹ Melissa M. Lee, “International Statebuilding and the Domestic Politics of State Development,” *Annual Review of Political Science* 25, no. 1 (May 12, 2022): 261–81, <https://doi.org/10.1146/annurev-polisci-051120-110830>, 264.

²⁰ Ibid

²¹ Naazneen H. Barma, *Peacebuilding Puzzle: Political Order in Post -Conflict States* (Cambridge Universal Press, 2018), 12.

²² James Dobbins, *Europe’s Role in Nation-Building: From the Balkans to the Congo* (Santa Monica, CA: RAND Corp, 2008), 3.

²³ Maksym Lysak, “The Mechanism for Ensuring Human Rights under Contemporary State-Building Conditions,” *Legal Horizons* 4, no. 27 (December 31, 2025): 56–64, <https://doi.org/10.54477/lh.25192353.2025.4.pp.56-64>, 56.

strength and virtually any form of measuring the success of a state it is important to keep humans at the centre of analysis. State building is not a process of merely building a state, but a process of building a state for its people. Changes should serve the people living in the state and not merely the state as an entity. Human rights therefore should be considered as a key instrument of state building as well as a goal, since it embodies the states responsibility towards individuals.

Both cases (and most in general) are often measured in success of the whole state building enterprise, that whether the state functions well or is the conflict avoided. The degree of success of both cases changes on the way aspects of state building are measured. Since the practice of state building affects all aspects of a state, it is difficult to measure. One way of doing this is created by Doyle and Sambanis, where a successful ‘‘peacebuilding’’ mission is determent on the country’s capacities, the availability of international assistance, and the depth of war related hostility.²⁴ Another way of measurement the one that is deployed by the World Bank, is solely focusing on economic state capital.²⁵ Both measurement models focus on macro models of state capacity, and therefore fail to assess direct and indirect effects of state building has on human rights. Labelling Slovenia as a success because of its peaceful transitions to a market economy and strong state capacity ignores particularities that have affected the people living in its territory. That’s why this thesis will move away from measurement of state capacity but tries to look at direct effects of state building effects on the population. State capacity approaches look at the core functions of the state: protection from external threats, maintenance of internal order, the administration and provision of basic infrastructure necessary to sustain economic activity and the extraction of revenue. This thesis will look more at the actions made to achieve increased state capacity and how both the actions themselves and the outcomes contribute to human rights abuses caused by state policy.

The choice of Slovenia and Bosnia and Herzegovina as the case study subjects was made because their similarities while at the same time large differences. While their paths have largely been separated although being geographically close, they were merged after the First World War in the kingdom of Yugoslavia. While Slovenia is considerably smaller in terms of size and population (Slovenia’s population in 1981 was 1.9 million compared to BiH’s 4.1 million)²⁶, both states would be considered

²⁴ Michael W. Doyle and Nicholas Sambanis, ‘‘International Peacebuilding: A Theoretical and Quantitative Analysis,’’ *American Political Science Review* 94, no. 4 (December 2000): 779–801, <https://doi.org/10.2307/2586208>, 782.

²⁵ Mojmir Mrak, *Slovenia: From Yugoslavia to the European Union* (Washington, DC: World Bank, 2004).

²⁶ LaMBDa – IOS Regensburg. ‘‘Demographic Data of the Socialist Federal Republic of Yugoslavia.’’ *Based on Statistical Yearbooks 1948–1991*.

small states in terms of population and area. After World War Two, both states were subject to the same process of de-privatization during socialist rule. While both Republics had some freedoms during their time under Yugoslav rule, the fact that they constituted to the same state makes them adequate cases for a direct comparison. Additionally, both states have had varying a degree of success in their rode to independence, with Slovenia being the most successful, having a war that lasted ‘only’ 10 days. Their differences during Yugoslavia and their process towards and after independence gives numerous examples of how different contexts can wholly transform the state building process further anchoring the idea that state building is not a ‘one size fits all’ endeavour.

In order to analyse state building efforts in both states the following method will be used. The key domains of state building brought forth by Frits and Menocal will be used as a way of structuring the research in a way that they argue also structures the premise of state building.²⁷ This thesis will alter some of this to encompass a clearer image of where different human rights violations can occur. These will be divided along the chapters mentioned in the introduction. By starting with the political settlement domain i.e. the foundation of the state and its political arena bound together by its constitution, a solid base of understanding can be created which gives a better understanding of the context in which judicial and output changes (Chapter Two and Three respectively) were made. These domains will not only be analysed according to their functioning but also the way they were set up and the consequences of this on their development. For example when in BiH’s legal system was created with the addition of foreign judges this may seem like a good idea in regard to the functioning of the courts, but the undemocratic, from outside imposed, idea of foreign involvement might distance Bosnians from their legal system and hinder the development of rule of Law.

The main research question as already mentioned in the introduction is therefore how did state building influence human rights in Slovenia and BiH. More specifically this thesis will analyse how the context of the independence of both states brought with it specific changes in the state building exercises and how these changes influenced state building in a negative way regarding human rights. The main argument will be that both states have had a problematic way of conducting state building but that the reason for this is very different. One can see that in Slovenia, the state building efforts were more ideological, that is, moving away from the idea of anything Yugoslav. In Bosnia and Herzegovina however also because of the international involvement, the state building efforts were more limited to

²⁷ Verena Fritz and Alinna Rocha Menocal, “Understanding State-Building from a Political Economy Perspective ,” *Report for DFID’s Effective and Fragile States Teams*, September 2007, 1–71, https://doi.org/https://cdn.odi.org/media/documents/ODI_state_building_paper.pdf, 24.

make sure ethnic violence would be avoided, therefore having a less robust ideological direction. Both instances would have their own distinct violations caused by these different contexts.

research itself will be mostly based on secondary literature, with addition of official documents from the states like gazettes and legal texts. Since this thesis focuses on the aspects of state building on human rights rather than just the violations themselves, personal accounts of victims will not be featured.

Chapter One: human rights and governmental structures in state building

In this first chapter the foundation of state building exercises shall be examined with a strong view on its direct effects on human rights in the two case studies. The core of state building activities is determined by a political settlement or a government. This of course should not be seen as a black box, but an area of politics with varying goals and internal differences. The building of a democratic state based on pluralism is seen as the main contributor to human rights protection. It is in the core of the state function, the political settlement, where choices about the theory become reality. As the central mechanism to ensure human rights protection is the modern state, encompassing a set of legal, organizational and procedural elements, the choices made in the settlement can have positive or dire consequences for human rights later down the line.²⁸

We will see that at the start of state building activities, Slovenia had a far more universally accepted political settlement than BiH. Because of this, state building efforts were agreed on by most and could therefore be implemented more easily. Bosnia and Herzegovina on the contrary, remained largely divided after the Dayton agreement and the core of the state building efforts was therefore more conflict ridden. As this chapter will examine the core of the state building can be highly influential regarding the effectiveness and the character of the state building efforts. Although it must be noted that even though a strong core structure in Slovenia was already established, they are also not exempt from large mistakes with far reaching consequences.

The first chapter will be structured along the following lines. Firstly, the development of both states is separated looking first at Slovenia and then at BiH. Both cases will be reviewed following the same pattern. A short historical introduction to the context of the political settlement along with the creation of the constitution and the political system. Issues regarding the topic of the thesis will be highlighted and discussed accordingly. In doing this, important considerations regarding human rights will be analysed early on, to make them clear in the case of further compounded violations in later chapters. As will become clear, one violation might lead to more, but it is important to understand the initial issues which might arrive in the political settlement, this is also the reasoning for discussing this in the first chapter.

²⁸ Maksym Lysak, "The Mechanism for Ensuring Human Rights under Contemporary State-Building Conditions," *Legal Horizons* 4, no. 27 (December 31, 2025): 56–64, <https://doi.org/10.54477/lh.25192353.2025.4.pp.56-64>, 62.

Slovenia

To examine the process of Slovenian state building one needs to go back to the period before its independence because in reality the state building process was started already before this. Already in 1989 Slovenia started a process of gradual democratization with the adding amendments to their constitution. Even though these amendments were created in a socialist context, the changes were already geared towards political pluralism, human rights and democracy. The first amendments guaranteed the right to freely form political organizations and trade unions and the right of the Slovenian state to secede from Yugoslavia.²⁹ In April 1990 the first multiparty elections took place and the Democratic Party (DEMOS) overwhelmingly won over the Communist party. The new president would be Milan Kučan of the reformed Communist party winning 58,3% of the vote (against the 41,7% for the DEMOS representative).³⁰

With a clear mandate DEMOS planned to enact legislation and more constitutional amendments that created a legal, administrative and mental separation between the Slovenian Republic and Yugoslavia.³¹ Part of this was formally removing “Socialist” from the official name of the Socialist Republic of Slovenia. In September 1990 the Slovenian constitution was officially placed above the federal constitution effectively giving the Slovenian constitution primacy over the federal one. Following this an independence referendum was held in late December. With a poll turnout of 93,2%, 88,2% voted for independence. While the international community was largely displeased (voices differed within Europe) the overwhelming support enabled the Slovenian government to legitimately claim the move towards independence.³² The process to sovereignty was continued in the next year when amendment XCIX revoked any transfer of sovereignty from Slovenia to Yugoslavia rendering Slovenia able to enter into bilateral agreements with other states and international organizations.

Even in light of these changes and the obvious widening of the distance between Slovenia and the Federal state of Yugoslavia there still was a possibility of a transformation of Yugoslavia on the basis of Slovenian sovereignty (as well as Croatian) but negotiations in this pathway became increasingly

²⁹ József Dúró and Zoltán Egeresi, *Political History of the Balkans (1989–2018)* (Budapest: Dialóg Campus, 2020), 159.

³⁰ Dejan Jović, “The Slovenian-Croatian Confederal Proposal,” *State Collapse in South-Eastern Europe*, October 30, 2007, 249–80, <https://doi.org/10.2307/j.ctt6wq21x.15>, 261.

³¹ Robert Redding and Blaž Torkar, *Slovenian Independence and the Resistance Operating Concept: A Comparative Analysis*, January 1, 2025, <http://www.jstor.org/stable/10.2307/48844366?refreqid=fastly-default>, 88.

³² Veronika Bajt, “Slovenian Nationalism,” *Sprawy Narodowościowe*, no. 24–25 (2004): 9–32, <https://doi.org/https://www.cceol.com/search/viewpdf?id=4259>, 26.

difficult, the new Slovenian president Kučan, viewed the confederal proposal primarily as a means of preserving the Yugoslav name, while the DEMOS led government saw it as the first step towards independence. DEMOS would not stand for a confederalist approach without radical depart from communism. From the Yugoslav point of view, Slovenia looked united in their quest for independence, however differences in opinion largely shaped the period between the elections and the independence. While Kučan remained in favour of a unified confederate Yugoslavia, Slovenia was not a presidential democracy but a parliamentary one. This allowed DEMOS to use their institutional advantage to impose laws and enforce decisions that would lead to Slovenia's full independence. Kučan confederate wish was largely ignored.³³

Another dimension that should be mentioned here is the one of outside influence on the progress of independence. The first factor of this was the unification of Germany on October 3, 1990. This event openly challenged the Helsinki principle of maintaining all the borders in Europe as is. Kučan believed that due to this the international community would look unfavourably on Slovenian independence (which they did). This unification based on the principle of self-determination, the same principles the Slovenes used to plead their case, created a very difficult situation for non-separatists in Slovenia.³⁴ Adding to this a second influence was the position of the European community. It warned Slovenia that it would not be recognized if it were to secede unilaterally and to demonstrate its support for a democratic Yugoslavia, the EC included it in the PHARE program. The prospect of a united Yugoslavia albeit democratic joining the EC made Slovenian secessionists nervous, producing an unwanted consequence namely the speeding up of the independence efforts by the secessionists.³⁵

Finally and despite warnings of non-recognition by the EC, Slovenia (and Croatia) declared full independence on June 25, 1991. Slovenia did so by adopting the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia.³⁶ Herein the assembly declared that 'in the Socialist Federal Republic of Yugoslavia, human rights, national rights and rights of the republics are seriously violated and it does not function as a legally regulated state.' The Charter further explicitly guarantees the protection of human rights and fundamental freedoms to all persons on Slovenian territory

³³ Dejan Jović, "The Slovenian-Croatian Confederal Proposal:," *State Collapse in South-Eastern Europe*, October 30, 2007, 249–80, <https://doi.org/10.2307/j.ctt6wq21x.15>, 262.

³⁴ Ibid, 272.

³⁵ Ibid, 262.

³⁶ Temeljna ustavna listina o samostojnosti in neodvisnosti Republike Slovenije [Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia], Official Gazette of the Republic of Slovenia, No. 1/91-I.

no matter their ethnic origin.³⁷ Slovenia made it clear that the secession from Yugoslavia was based on the principle of the right of self-determination and the failure of human rights systems in Yugoslavia. In doing so the fledgling state actively tried to align itself with existing human rights structures present in Europe.

Following the declaration of independence, the Ten-Day War with the Yugoslav People's Army (JNA) followed. It is estimated that 19 Slovenian soldiers and policemen were killed and 182 injured. The JNA suffered 44 deaths and 146 wounded. During the war there were approximately 70 armed clashes most of them being small skirmishes.³⁸ While not diminishing the importance of the casualties during this relatively short war, the effect on the ability of state building was very much lower than in other wars of the Yugoslav dissolution. The withdrawal of the JNA from Slovenian territory secured the de facto sovereignty of the Slovenian independent state and paved the way for the constitution that would follow in December of 1991.

The key outline of the constitution and the political system has largely remained in place till this day. Slovenia became a parliamentary system with a proportionate electoral law. The president is directly voted into office with a 5-year term, the powers attributed to the office include appointing ambassadors and issuing pardons etc. The real political power is present in the government which forms according to the elections of the national assembly which is made up of 90 seats. Two of these 90 seats are reserved for Italian and Hungarian national minorities. There is also an upper chamber, the national council, with 40 seats, 22 of these are reserved for representatives of local communities and 18 are reserved for interest groups like trade unions and employer organizations. Its powers are however limited and thus depicts the Slovene political system as a 'one-and-a-half parliamentary system'.³⁹ The Slovenian political transition has been praised for its very proportionate parliamentary system and strong electoral rules which are not broken. The most significant changes were the increase of the electoral threshold for parties and restrictions on referendums, both measures that would increase political stability.⁴⁰ The constitution has a large focus on human rights and fundamental freedoms modelled on modern constitutional practice and international standards. The human rights commitments are present in both the Preamble and the General Provisions. The Slovenian constitution incorporated the two United

³⁷ Benjamin Flander, "The Protection of Human Rights under the European Convention on Human Rights in Slovenia," *European Integration Studies* 21, no. 2 (December 30, 2025): 71–154, <https://doi.org/10.46941/2025.2.3>, 85.

³⁸ Maciej Chmielewski, "Slovenian Territorial Defense in the Ten-Day War," *Scientific Journal of the Military University of Land Forces* 201, no. 3 (September 15, 2021): 585–601, <https://doi.org/10.5604/01.3001.0015.3411>, 598.

³⁹ József Dúró and Zoltán Egeresi, *Political History of the Balkans (1989–2018)* (Budapest: Dialóg Campus, 2020), 158.

⁴⁰ Ibid, 159.

Nations Human Rights Covenants and the European Convention of Human Rights. Furthermore, it provides a comprehensive framework for the protection of human rights. Following its independence Slovenia's policy was strategized with moving away from the Balkans. Although never formally codified, this was practiced in both external relations and internal moves. The importance of image creation and alteration as a direct tool of state building should not be lost. Along reinventing its own image as a peaceful and stable democratic state based on a market economy, Slovenia had to reinvent its own reinterpretation of history and its relationship with the people residing in its territory.⁴¹ On the first hand, Slovenia strived to be part of as many Western European fora. On the other hand, Slovenia internally tried to actively distance itself from its Yugoslav past and anything associated with this. This included reinterpretations of national histories but also most critically a program of active discrimination against citizens of other former Yugoslav republics in the establishment of citizenship acts.

The process of democratization in Slovenia was largely accompanied with a process of re-nationalization of the Slovenian identity.⁴² Herin Slovenia actively tried to shed itself from its multinational Yugoslav past. Despite emerging democratic structures and the adoption of human rights structures along the lines of international standards, minority groups were being exposed to discrimination. One of the problems herein is the issue of xenophobia, something that already existed in Slovenia during Yugoslav times, but found more footing in the build-up to, during, and after the moves towards independence. In the 1970's this took form in negative attitudes towards economic migrants from other republics, this however was not yet based on an ethnonationalist difference that came about in the 1980's and 90's. Opinion poll and survey data postindependence record a pattern of anti-southerner or anti-Balkan sentiment among the Slovenian public, state officials and media.⁴³ During the formation of the state around the independence these xenophobic sentiments were codified into the constitution and citizenship acts, starkly counter acting the human rights orientation that the Slovenian state prides itself in. There exist numerous legal instruments in which these sentiments were turned into a legal reality. These actions shed light on the dark side of Slovenian state building and how a state that incorporates a large human rights regime, can

⁴¹ Ana Bojinović Fenko, Soeren Keil, and Zlatko Šabič, "Europeans from the Start? Slovenia and Croatia between State-Building, National Identity and the European Union," *Journal of Intervention and Statebuilding* 17, no. 2 (February 8, 2023): 136–55, <https://doi.org/10.1080/17502977.2022.2162674>, 141.

⁴² Damjan Mandelc and Tjaša Učakar, "Perforated Democracy: Disintegration, State-Building, Europeanisation and the Erased of Slovenia," *Revija Za Sociologiju*, 2011, 27–49, <https://doi.org/10.5613/rzs.41.1.3>, 29.

⁴³ Brad K. Blitz, "Statelessness and the Social (de)Construction of Citizenship: Political Restructuring and Ethnic Discrimination in Slovenia," *Journal of Human Rights* 5, no. 4 (December 2006): 453–79, <https://doi.org/10.1080/14754830600978257>, 459.

at the same time turn discrimination and xenophobia into state policy in defining its citizenry. The largest example of this came to be known as the case of the erased.

During Yugoslavia, members of the other Republics could travel in relative freedom to find employment. Gaps in the Slovenian labour market increased the arrivals of migrants mostly coming from Bosnia and Herzegovina.⁴⁴ Members of other nations were not only viewed as workers but also as foreigners who were expected to adapt to the Slovenian way of life as soon as possible. During the dissolution of Yugoslavia, it is estimated that there were 203,000 citizens of other republics with permanent residency residing in Slovenia.⁴⁵ It is these people that would be caught between the formation of the new independent state of Slovenia and the past of Yugoslavia. In many ways these people were viewed as a remnant of the past, something that Slovenia wanted to rid itself of.

The first chapter in defining Slovenian citizenship came in December 1990 when the Assembly adopted the ‘statement of good intentions’, promising that all those with a permanent residency would be able to acquire Slovenian citizenship if they wished to do so.⁴⁶ Following the independence, Slovenia adopted legislation on internal affairs, citizenship and sovereignty, most importantly, the Citizenship Act (CA). This act explains the principles of acquiring Slovenian citizenship. The main criterion in this is the principle of *ius sanguinis*; the possession of Slovenian blood or origin.⁴⁷ The CA also adds that a person is automatically a citizen of Slovenia if he or she is born within the territory of Slovenia to at least one parent that holds citizenship. On the 25th of June 1991, all inhabitants in possession of Slovenian citizenship within the SFRY acquired their new Slovenian citizenship without procedure. According to article 40 of the CA permanent foreign residents had to apply for Slovenian citizenship within six months after the adoption of the CA. To obtain naturalization they had to meet two additional conditions however, they had to actually live in Slovenia, and they did not ‘endanger the public order and safety of Slovenia’.⁴⁸ Everyone who was in the process of obtaining permanent residence, were automatically given the status of Alien upon Slovenian independence.

⁴⁴ Olga Vuković and Neža. Kogovšek, *The Scars of the Erasure: A Contribution to the Critical Understanding of the Erasure of People from the Register of Permanent Residents of the Republic of Slovenia* (Ljubljana: Peace Institute, 2010), 25.

⁴⁵ Barbara Gornik, “The Dark Side of the Moon: Nationalism, Human Rights, and the Erased Residents of Slovenia,” *Nationalities Papers* 47, no. 3 (March 14, 2019): 477–91, <https://doi.org/10.1017/nps.2018.10>, 480.

⁴⁶ *Ibid.*, 479.

⁴⁷ Irena Šumi, Cirila Toplak, and Kristina Toplak, “From Raw Ideology to Cooked Legality: Nation and Citizenry in Post-Socialist Slovenia,” *ANTHROPOLOGICAL NOTEBOOKS* 22 (3) (2016): 125–43, <https://doi.org/https://anthropological-notebooks.zrc-sazu.si/Notebooks/article/view/136>, 129.

⁴⁸ *Ibid.*, 137.

On the 26th of February the deadline expired and 25,671 people, formally permanent residents of Slovenia officially became aliens, or erased, under article 81 of the Aliens Act.⁴⁹ The ministry of interior ordered that they were stripped of all ID's and had their passports invalidated. The justification for this act was that the people who were erased did not apply for citizenship within the prescribed time limit. However, there can be numerous reasons seen why this justification cannot stand. Firstly, most people were not informed about the deadline. Some did not wish to acquire citizenship but to just remain a citizen of the SFRY but reside in Slovenia.⁵⁰ Here it should be noted that the status of a permanent resident is different than citizenship. Many believed that applying for Slovenian citizenship meant that they would lose their original citizenship. Many wanted to continue to live in Slovenia under a permanent residence permit but as a foreigner.⁵¹ The erased were purged from all government records of permanent citizens without being notified and went on to live their lives without knowing.⁵² They only found out when renewing documents, being stopped in traffic, seeking school enrolment or medical help that they were essentially illegal in the country that some of them had lived in for years. Such a way of not informing people prohibits the control of one owns legal status and violates the constitutional right of legal remedies and the right of equal protection.⁵³

While some authors label erasure as an act of ‘administrative ethnic cleansing’ or an attempt to homogenise the populations ethnicity.⁵⁴ The fact that the citizenship act actually altered the ethnic structure of Slovenia by allowing roughly 90% of Yugoslav migrants to obtain Slovenian citizenship disproves this. Although it might not have been the main focus of the act, ethnicity still played an important role, since it was only applied to citizens of the former Yugoslav republics, and not to people of other backgrounds. It implies that the fact that they had Yugoslav ancestry was crucial. As mentioned above, politically Slovenia tried to steer away from their Yugoslav past. Because of their Yugoslav past, the erased were seen as potentially threatening the existence of Slovenia. Slovenians not only started to see themselves as western European but also distanced themselves from all the meanings carried in the

⁴⁹ Barbara Gornik, “The Dark Side of the Moon: Nationalism, Human Rights, and the Erased Residents of Slovenia,” *Nationalities Papers* 47, no. 3 (March 14, 2019): 477–91, <https://doi.org/10.1017/nps.2018.10>, 479.

⁵⁰ Ibid, 479.

⁵¹ Jelka Zorn, “The Politics of Exclusion Citizenship, Human Rights and the Erased in Slovenia,” *Fakulteta Za Socialno Delo*, April 26, 2004, 1–7, [https://doi.org/341.231.14\(497.4\)](https://doi.org/341.231.14(497.4)), 2

⁵² Sumi, et al, “From Raw Ideology to Cooked Legality, 137.

⁵³ Gornik, “The Dark Side of the Moon: Nationalism, Human Rights, and the Erased Residents of Slovenia,”

⁵⁴ Jelka Zorn, “The Politics of Exclusion Citizenship, Human Rights and the Erased in Slovenia,” *Fakulteta Za Socialno Delo*, April 26, 2004, 1–7, [https://doi.org/341.231.14\(497.4\)](https://doi.org/341.231.14(497.4)), 2

⁵⁵ Veronika Bajt, “Slovenian Nationalism,” *Sprawy Narodowościowe*, no. 24–25 (2004): 9–32, <https://doi.org/https://www.cceeol.com/search/viewpdf?id=4259>. & Jelka Zorn, “The Politics of Exclusion Citizenship, Human Rights and the Erased in Slovenia,” *Fakulteta Za Socialno Delo*, 2004, 1–7, [https://doi.org/UDK 341.231.14\(497.4\)](https://doi.org/UDK 341.231.14(497.4)).

name of ‘‘Balkan’’ and ‘‘Yugoslavia’’. Furthermore, due to the tensions of the breakup, Yugoslav nationalities were often seen with suspicion.⁵⁵

The story of erasure does not stop here, but the further legal connotations and effects on their personal lives shall be explained further in this thesis in Chapter Two and Chapter Three. The political settlement of Slovenia is characterized with a large push to democracy and plurality. This however created differentiating views regarding their independence. Furthermore, the distancing of Slovenia from its Balkan past has created large scale human rights violations in the case of the erased. Although a country democratizes fast and successful it does not mean all its people in its territory will enjoy the same benefits of this transition.

Bosnia and Herzegovina

The story of Bosnian state building differs vastly compared to that of Slovenia. While there were some internal differences in Slovenia regarding its political settlement, this does not compare to the vast differences that can be found in Bosnia and Herzegovina. While this could already account for the divergence of state building policy, the presence of the international community in the Bosnian state building process created an extra dimension within this process. Due to the war official state building was delayed as compared to Slovenia. Still, to find the start of these processes one needs to look at the last days of Yugoslavia.

While in neighbouring Croatia the independence war had been going on for about a year, war in Bosnia came as quite the surprise. Obscured from the larger public eye Bosnia had seen a period of social and political polarization and division along ethno-territorial lines. Although the multi-party-reforms of 1990 led to a surprising coalition of three parties, each representing one of the future constituent peoples of Bosnia, they all pushed for a deepening of political territorial lines.⁵⁶ While on the surface level, the coalition of the three parties might have seemed as a political success bridging ethnic boundaries, wishes of the Serbian and Croatian party to align themselves with their respective states, Serbia (by then still

⁵⁵ Barbara Gornik, ‘‘The Dark Side of the Moon: Nationalism, Human Rights, and the Erased Residents of Slovenia,’’ *Nationalities Papers* 47, no. 3 (March 14, 2019): 477–91, <https://doi.org/10.1017/nps.2018.10>, 481.

⁵⁶ Adam Moore, *Peacebuilding in Practice: Local Experience in Two Bosnian Towns* (Ithaca: Cornell University Press, 2016), 39.

named Yugoslavia) and the newly independent Croatia created a political situation based on ethnic allegiances.

The stark differences in the Bosnian government created a vastly different climate in the leadup for independence. While in Slovenia DEMOS could largely start the state building process in the leadup to the independence. The Bosnian political arena was preoccupied with the different paths and the territorialization of ethno-political parties. As a result of this, by the beginning of 1992, Bosnia's formal institutions had effectively stopped to function. To calm the aspirations of the Serbian party the Bosnian government tried hard to negotiate a confederalist approach in which under which all ethnicities would be satisfied together with their respective 'mother' states. However, this plan became untenable when the European Community recognized Slovenia and Croatia as independent states.⁵⁷ When the confederate plan fell through, instead of a unified push for independence, the differences between the parties intensified. The SDS fell and was replaced by the Assembly of the Serb People who proclaimed an autonomous Serb Republic, which would later become Republika Srpska. The tax system largely collapsed, and many firms started paying taxes to nationalist parties. All three sides started working to establish a quasi-military for themselves. In this the Serbian side was largely aided by Milosevic and the Yugoslav People's Army.⁵⁸ The period before the Referendum in Slovenia was characterized by early stages of state building, in Bosnia this period was characterized by an almost complete state disintegration. Yet at the same time, and with the support of the European Community and the United States, Parliament moved forward with the referendum for independence. The Serbs who were in favour of independence of the Serbian territories from a Bosnian state, making up a total of 31% of the electorate, stood no chance of winning, and subsequently boycotted the Referendum. Because of this, 64% of the people voted, out of which 98% voted for independence.⁵⁹ The EC and the US recognized Bosnia and Herzegovina as an independent state in April of that year, and in May, BiH became a member of the UN.⁶⁰

Sporadic clashes between Serb paramilitary forces and their Bosnian counterparts characterized the month between the referendum and the international recognition. When the results of the referendum were announced in March, Serb forces blockaded Sarajevo, by this time Eastern Bosnia was already

⁵⁷ Ešref Kenan Rašidagić, "Modern Political History of Bosnia and Herzegovina," *Bosnian Studies: Journal for Research of Bosnian Thought and Culture*, April 5, 2021, 20–39, <https://doi.org/10.47999/bos.2021.5.1.20-39>, 22.

⁵⁸ Adam Moore, *Peacebuilding in Practice: Local Experience in Two Bosnian Towns* (Ithaca: Cornell University Press, 2016), 44.

⁵⁹ Rašidagić, "Modern Political History of Bosnia and Herzegovina", 22.

⁶⁰ Damir Banović, Saša Gavrić, and Mariña Barreiro Mariño, *The Political System of Bosnia and Herzegovina: Institutions, Actors, Processes* (Cham: Springer, 2021), 2.

enveloped in Violence.⁶¹ In the first month of the conflict Milosevic's Yugoslav army claimed to be fighting in Bosnia to defend Yugoslavia. Not long after Milosevic declared a new Yugoslavia without Slovenia, Croatia and Bosnia, the Yugoslavs people's army (JNA) withdrew leaving behind weapons, supplies and units to continue fighting as the Army of Republika Srpska (VRS) under the leadership of general Ratko Mladic.⁶²

The war in Bosnia is characterized by widespread atrocities and human rights violations, switching allegiances and different forms of international intervention. Due to the scope of this thesis, it is impossible to enter into all the detail. What is important for this thesis is the level of international involvement and the positions of the three warring factions regarding a future unified Bosnia and Herzegovina.

The alliance between the Bosniaks and Bosnian Croats was built on a shaky foundation, as the Bosnian Croat forces (HVO) at first claimed to be fighting alongside the Army of Bosnia and Herzegovina (ARBIH), but given the Croat aspirations of a large, united Croatia and the support of the Milosevic. The Serb Croat agreement was short-lived as the Croats facilitated between pursuing a greater Croatia and defending their territory against the VRS.

The international community already began proposing peace initiatives. In the London conference of 1992 the following principles were recognized: non-recognition of territorial gains achieved by force, unconditional release of civilian prisoners, the closing of the Serbian-Bosnian detention camps, the protection of minority rights, flying prohibition over Bosnia, the international monitoring of the Serbian Bosnian Border, the recognition of Bosnia-Herzegovina by all former Yugoslav Republics, the acceptance of the existing borders and respect for all treaties and agreements.⁶³ One of the most influential policies of the international community, in terms of direct effect on the ground, was the refusal to lift the arms embargo on the warring forces. Due to the supply of arms coming out of Yugoslavia, the VRS was not affected by this embargo. The most prominent argument to keep this embargo in place, the most common of which is that the armament of the Bosnian forces would only serve to prolong the fighting.⁶⁴ In 1993 a new plan was proposed, namely the Vance-Owen peace plan. Herein was proposed

⁶¹ Christina M. Morus, "Violence Born of History/History Born of Violence: A Brief Context for Understanding the Bosnian War," *The Development of Institutions of Human Rights*, 2010, 65–81, https://doi.org/10.1057/9780230109483_5, 73.

⁶² Ibid, 73.

⁶³ Hasan Korkut and Muhidin Mulalic, "Implications of Dayton Peace Agreement on Current Political Issues in Bosnia-Herzegovina," *SDU Faculty of Arts and Sciences Journal of Social Sciences*, no. Special Issue on Balkans (2012): 107–17, <https://doi.org/https://izlik.org/JA25UE84RG>, 109.

⁶⁴ Ešref Kenan Rašidagić, "Modern Political History of Bosnia and Herzegovina," *Bosnian Studies: Journal for Research of Bosnian Thought and Culture*, April 5, 2021, 20–39, <https://doi.org/10.47999/bos.2021.5.1.20-39>, 23.

that Bosnia should be organized as a decentralized state of three constituent people with ten provinces and a special status for Sarajevo as its capital. The problem that arose is that after the plan was proposed in 1993, the ethnic entities tried to gain more control over territory so that they would enjoy a larger share of the country if the plan was realized.⁶⁵ Due to this obvious flaw, the UN dropped the plan and moved on to a new plan for the division of Bosnia. This time the territorial divide should be established beforehand in order to avoid intensification of the conflict. The result of this was to be known as the Owen-Stoltenberg plan. Although the proposal ultimately failed, what it did achieve was the allocation of territory to the various factions. The Bosnian would receive 33,3% of the territory, the Croats got 17,5 % and (together amounting 51%) and the Serbs got 49%.⁶⁶ It is important to note that this division was largely based on ways to ensure peace, and future parity between the ethnic groups since this division does not reflect the actual ethnic buildup of the country at the time. The next important involvement of the IC in the still ongoing war was the 1994 Washington Agreement. This agreement managed to secure a peace between the Croat and Bosniak forces who were allied at the beginning of the war. In addition to this, the agreement proposed a federal constitution. The Federation of Bosnia-Herzegovina was to be divided into 10 cantons. The first Assembly of the federation of Bosnia and Herzegovina was held in March of that year.⁶⁷

Although up until now the international involvement within the Bosnian war had not led to peace, clearly the IC was already deeply involved in the state building process that would take place in Bosnia after the war would be over. It seems as the IC learned from the Vance-Owen peace plan, that territorial gains should not be considered as a negotiation asset by the fighting parties. In reality this is of course different, as the bargaining position of the factions was largely based on the territory they control and their willingness to prolong the conflict. These positions would come to the forefront in the negotiations that would end the war, the Dayton Agreements. In these agreements the future of Bosnia would largely be decided. It is here that the process of peacebuilding and the process of state building directly overlap. The aim of the negotiations of the Dayton Peace Agreement (DPA) was primarily the ending of the war, however in doing so they outlined new standards for peace agreements. Besides the focus on a peaceful conflict resolution, it also incorporated the protection of human rights, minority rights, equality, political

⁶⁵ Ešref Kenan Rašidagić, "Modern Political History of Bosnia and Herzegovina," *Bosnian Studies: Journal for Research of Bosnian Thought and Culture*, April 5, 2021, 20–39, <https://doi.org/10.47999/bos.2021.5.1.20-39>, 24.

⁶⁶ Ibid, 25.

⁶⁷ Hasan Korkut and Muhidin Mulalic, "Implications of Dayton Peace Agreement on Current Political Issues in Bosnia-Herzegovina," *SDU Faculty of Arts and Sciences Journal of Social Sciences*, no. Special Issue on Balkans (2012): 107–17, <https://doi.org/https://izlik.org/JA25UE84RG>, 109.

representation, good governance and the rule of law.⁶⁸ The DPA was reached at Wright Peterson Air Force Base near Dayton Ohio (US) on the 21 November 1995. Signatory to the agreement were the Republic of Bosnia, Croatia the Federal Republic of Yugoslavia (by authorization of Republika Srpska). Witnessing signatures were made by representatives of the EU, France, Germany, the United Kingdom, the US and Russia.⁶⁹ Surprisingly absent from the DPA was the UN. While very much involved regarding peace proposals in the beginning of the conflict, due to the failure to terminate the conflict which was largely blamed on the UN they're role in Dayton was modest at best.⁷⁰ The largest part of the agreement consist of the 11 annexes;⁷¹

- Annex 1-A Agreement on Military Aspects of the Peace Settlement;
- Annex 1-B Agreement on Regional Stabilization;
- Annex 2 Agreement on the Inter-Entity Boundary Line and Related Issues;
- Annex 3 Agreement on Elections;
- Annex 4 Constitution of BiH;
- Annex 5 Agreement on Arbitration;
- Annex 6 Agreement on Human Rights;
- Annex 7 Agreement on Refugees and Displaced Persons;
- Annex 8 Agreement on the Commission to Preserve National Monuments;
- Annex 9 Agreement on BiH Public Corporations;
- Annex 10 Agreement on Civilian Implementation, and
- Annex 11 Agreement on International Police Task Force

⁶⁸ Hasan Korkut and Muhidin Mulalic, "Implications of Dayton Peace Agreement on Current Political Issues in Bosnia-Herzegovina," *SDU Faculty of Arts and Sciences Journal of Social Sciences*, no. Special Issue on Balkans (2012): 107–17, <https://doi.org/https://izlik.org/JA25UE84RG>, 110.

⁶⁹ Igor Milinković, "The Universal Protection of Human Rights and Eastern Europe: Bosnia and Herzegovina," *Central European Journal of Comparative Law* 6, no. 1 (June 22, 2025): 333–60, <https://doi.org/10.47078/2025.1.333-360>, 336.

⁷⁰ Gro Nystuen, *Achieving Peace or Protecting Human Rights?: Conflicts between Norms Regarding Ethnic Discrimination in the Dayton Peace Agreement* (Leiden: Martinus Nijhoff Publishers, 2005), 58.

⁷¹ General Framework Agreement for Peace in Bosnia and Herzegovina, signed 21 November 1995, initialed 14 December 1995, UNTS 2187, no. 35112.

Only reading the names of the annexes it becomes clear that the DPA goes further than only a peace agreement. It is effectively a direct political settlement upon which the state of Bosnia and Herzegovina would be built. The agreement as a whole is too large to delve into detail on every annex, therefore this thesis will naturally focus on the aspects that directly relate to the building of the BiH state. For the rest of this chapter the focus will be mostly on annex 3 and 4, the agreement on elections and the Constitution.

Annex 3 regulates the electoral system and the provisions for elections. Herein the conditions for democratic elections are set out. As well as the role of the OSCE, the formation of the Provisional Election Commission, the exercise of voting rights and the formation of the permanent election commissions.⁷² Annex 4 contains the constitution of BiH. The basic outline of the constitution largely follows the model of the US constitution. It has a preamble, 12 articles, two annexes and one amendment. Together these establish the basic principles upon which the state of BiH rests. The fact that this constitution was in essence by itself an annex of the DPA, means that the other annexes of the DPA are included in the material sources of constitutional law in BiH.⁷³ Both annexes regulate the way the Bosnian government would take shape. The political settlement created peace, it at the same time set Bosnia on a path of a constant political impasse and the exclusion of minorities in politics.

According to the Dayton agreements, the state of Bosnia and Herzegovina would comprise of one republic, one federation and one State-District. The complexity of this situation is not standard practice and is a direct result of the political agreement made to end the war. Firstly, there is the republic, Republika Srpska. Although the Bosnian Serbs had wished for independence, in the settlement of the peace they had to give up this aspiration, although they did achieve recognition as a legal entity within the Bosnian State.⁷⁴ Secondly there exists the Federation of Bosnia and Herzegovina, herein fall the Bosniaks and the Bosnian Croats. This federation is further divided into ten different cantons which by themselves enjoy a large degree of executive power. Out of these ten, two cantons are very much ethnically mixed, causing them to further increase political power on the local level. Finally, there is the Brcko District, a territory shared by the two entities but possesses its own autonomous local government.⁷⁵

⁷² General Framework Agreement for Peace in Bosnia and Herzegovina, signed 21 November 1995, initialed 14 December 1995, UNTS 2187, no. 35112.

⁷³ Vlaški, Bojan, Jens Woelk, and Domagoj Galić. "General Framework Agreement for Peace in Bosnia and Herzegovina–Dayton Peace Agreement." In *Грађани, устав, Европа: рјечник основних уставних појмова у БиХ*= Citizens, Constitution, Europe: glossary of essential constitutional concepts in BiH, pp. 445-449. Univerzitet u Sarajevu–Pravni fakultet, 2023.

⁷⁴ Gro Nystuen, *Achieving Peace or Protecting Human Rights?: Conflicts between Norms Regarding Ethnic Discrimination in the Dayton Peace Agreement* (Leiden: Martinus Nijhoff Publishers, 2005), 68.

⁷⁵ Adam Moore, *Peacebuilding in Practice: Local Experience in Two Bosnian Towns* (Ithaca: Cornell University Press, 2016), 50.

The main structure as described above had largely already been laid down before the negotiations started. Same as the basic features of the political system, mainly that there would be a common Presidency, parliament, Cabinet of Ministers and a constitutional court.⁷⁶ The disagreements arose regarding the question of how the power would be shared between the central government and the entity governments. During the negotiations, both the Serb and Croat parties wished for a weak central state as opposed to Bosnia who wished for a strong one. Since the Bosniaks comprised of a relative majority over the population, they wished for a strong central state based on democratic principles so that they could enjoy considerable political control. Both Serb and Croat agendas were focussed on a weak central state, so they could in the long run secede and join their respective mother countries.⁷⁷

The DPA in the end created a complex system with ethno-territorial autonomy. The three groups were named the ‘‘constituent’’ peoples of Bosnia and Herzegovina, each with a constitutionally underlined right for political representation in Bosnia’s political arena. The shared presidency was made up of one Serb elected from Republika Srpska, one Croat and one Bosniak from the Federation.⁷⁸ The council of ministers must include at least one member from each group. The parliament of BiH is composed of two chambers; The house of peoples contains fifteen members divided equally between the constituent peoples. The house of representatives is elected through proportional representation with fourteen seats guaranteed for the RP and twenty-eight to the Federation. A large issue with the ethnic division of political representatives is that the Presidency and the BiH house of peoples are impossible to enter as a person that is not a member of the constituent peoples.⁷⁹

The parties signatory to the DPA were deeply divided over how citizenship would be regulated. As opposed to Slovenia, where it was clear that citizens of Slovenia would simply receive Slovenian Citizenship the political structure of BiH created multiple state like structures within the overarching Bosnian State. Bosniaks, wanted a single Bosnian Citizenship for everybody within Bosnia and Herzegovina, whereas Bosnian Serbs wanted their own Republika Srpska citizenship.⁸⁰ Article one of the Constitution (7) states that ‘‘ There shall be a citizenship of Bosnia and Herzegovina (..) and a

⁷⁶ Gro Nystuen, *Achieving Peace or Protecting Human Rights?: Conflicts between Norms Regarding Ethnic Discrimination in the Dayton Peace Agreement* (Leiden: Martinus Nijhoff Publishers, 2005), 67.

⁷⁷ Ibid

⁷⁸ Adam Moore, *Peacebuilding in Practice: Local Experience in Two Bosnian Towns* (Ithaca: Cornell University Press, 2016), 50.

⁷⁹ Ljiljana Aulić and Zoran Kalinić, ‘‘Institutional Design in Bosnia and Herzegovina,’’ *Slovak Journal of Political Sciences* 16, no. 4 (October 1, 2016): 409–29, <https://doi.org/10.1515/sjps-2016-0020>, 424.

⁸⁰ Nystuen, *Achieving Peace or Protecting Human Rights*, 69.

citizenship of each entity”⁸¹. The compromise meant that there is a two-tiered citizenship, one overarching BiH one and one specifically for the entities. If anyone is a citizen of an entity, they become a member of BiH automatically. This arrangement both satisfied the Bosnians giving one single citizenship to all, and the Serbs, allowing them to have control over who gets citizenship of Republika Srpska.

Although the citizenship question was relatively simple, although on paper more complicated than Slovenia, the issues arise in the level of democratic participation of said citizens. The Constitution in reality, divides BiH citizens into three distinct groups;⁸²

1. The constituent peoples, comprising Bosniaks, Serbs and Croats;
2. National minorities, of which there are 17 according to the Law on National Minorities;
3. The nationally undeclared: persons who, for certain ideological reasons, choose not to declare their ethnic identity; do not have the ethnic identity of persons belonging to the constituent peoples or national minorities; view identity as a fluid and changeable category, or potentially persons from so called mixed marriages.

Since the presidency and the house of peoples are divided solely between the members of the first group, the people who fall in the second and third group do not have the possibility to stand for election in these posts. The exclusion of these ‘‘others’’ hampers their ability to participate and be represented in political and democratic processes. In addition to the exclusion of others, it also hampers the constituent peoples living in other entities. Serbs living in the Federation of Bosnia and Herzegovina, and Bosniaks and Croats living in RS are also not eligible to stand for office. The repercussions of these discriminations can be found largely in the case of *Sejdić and Finci v. Bosnia and Herzegovina* at the ECtHR of 2009. The legal follow up and the inability of Bosnia’s legal system shall be addressed in the next chapter when this thesis moves on to the legal elements of state building.

⁸¹ General Framework Agreement for Peace in Bosnia and Herzegovina, signed 21 November 1995, initialed 14 December 1995, UNTS 2187, no. 35112

⁸² Damir Banović, “Collective Rights of Constituent Peoples and National Minorities in the Legal System of Bosnia and Herzegovina,” *SSRN Electronic Journal*, 2014, 1–37, <https://doi.org/10.2139/ssrn.2757625>, 2.

Conclusion

At the basis of state building exists the political settlement upon which further actions are placed upon. With new states, it is crucial that this settlement is agreed upon by the political elite and the electorate. When analysing Slovenia and BiH, it is evident that the differences in their respective paths towards independence have had a tremendous impact on the way state building can progress. While Slovenia's path was somewhat clear and uniform, one mustn't forget that there were internal disagreements on what course towards democratization should be followed. In spite of this, early democratization and a relatively unified population made it possible to peacefully transition toward a sovereign state. When this was achieved, the question regarding Slovenia's identity and its relationship with its past trickled into questions about citizenship eventually leading towards erasure. Herin the political settlement was based on the idea of drifting more towards the EU and away from the Balkans, the erased in this were the casualty of the move. At the same time Slovenia built robust and rightfully praised democratic institutions which largely remain in place to this day.

Bosnia had a very different path, the civil war created a very hostile political settlement in which unity could only be achieved with international intervention. The process of state building was done in parallel with peacebuilding. The result of this was an attempt to create a state while at the same time keeping violence in check. Due to this, certain concessions had to be made, most crucially in the workings of the political top, and the duality of the BiH state into two distinct Entities. While one could say that the process of State building has failed, at the same time war has not broken out after Dayton so peacebuilding wise it could be seen as a relative success. However, as will become evident in the next two chapters the workings of the Bosnian state are largely limited by the political settlement created in Dayton Ohio. The next chapter will focus on the legal implications of the state building process in both states, as defined in the legal institutions, rule of law, and also the application of international treaties regarding human rights.

Chapter Two Legal systems and processes

As seen in the first chapter of this thesis, the political settlement and the creation of a regime encompasses the foundation of the state and the way its institutions interact with its population. The outcome of this is largely based on the way the nation was formed and the interactions with its past. The following chapter will base on the areas of Rule of Law (ROL) and the output of the justice system and processes. These areas encompass the establishment of a legal framework, beyond the ROL this includes the administration of justice, access to justice and the application of international law.⁸³

The legal institutions created in the onset of state building and most notably their degree of success can be both a symptom of and a contributor in failed or imperfect state building exercises. While the political settlement often charts the course that fledgling states will take, the application of justice (as well as the output domains in Chapter Three) will largely contribute to the legitimacy of the new state institutions. It is in essence these institutions that are meant to safeguard the human rights established in the political settlement and in some cases were actively denied in the period before the establishment of the state. If these institutions fail, the state by itself loses its legitimacy. It is important to realize that changes in legal systems do not happen overnight. As will become clear in this chapter, the remnants of history will be very much present in the new legal systems created by both states, and (in)directly influence the presence or aggravation of problems present in the legal systems. Additionally, it is not only the form of the legal system, but also the availability of justice and length of proceedings that constitute to the success or failure of the system. After their independence, both states slowly became actors within the international law framework. This chapter will also assess what impact this had on the application of human rights.

The structure of the chapter will follow the same recipe as in Chapter One, with first outlining Slovenia and then BiH. Both parts will focus on legal systems, court structure and international involvement. The international involvement in Slovenia is however more akin to a normal state that would slowly ascend to international treaties and systems, while the international involvement in Bosnia is more internal, as the international actors have a direct link with domestic courts in BiH

⁸³ Verena Fritz and Alinna Rocha Menocal, "Understanding State-Building from a Political Economy Perspective," *Report for DFID's Effective and Fragile States Teams*, September 2007, 1–71, https://doi.org/https://cdn.odi.org/media/documents/ODI_state_building_paper.pdf, 26.

Slovenia

As is accustomed to being a new state Slovenia had to reinvent its own legal systems. In similar light to the question of citizenship, Slovenia tried to shed its Yugoslav identity in its legal system, although many laws and characteristics remained. While this transformation happened, the fledgling state also had to align itself with numerous international agreements regarding human rights, and due to their wishes to join the EU, their legal obligations. In many ways the legal aspect of Slovenian state building was characterized with a move northward, away from Yugoslav Socialism and into European Liberalism. While this may have felt as a huge step forward for the Slovenian state, this also meant more accountability for human rights violations under international courts. As will become clear numerous cases were brought before the ECtHR and some can be seen as a result of the difficulty Slovenia experienced in establishing its own legal systems.

Slovenia largely inherited its legal system from history. This can be seen as a starting point for Slovenian Lawmakers. After 1991 Slovenia was able to chart its own course regarding legal culture. Differences in legal systems depend on the larger legal systems they are a part of. Take for example the legal families Roman-German versus Anglo-Saxon. The historical overview of the Slovene legal system is a mix of different influences over time. Originating with Roman Law during the Roman Empire until the arrival of Germanic and Slavic tribes. After more than a thousand years of Germanic influence with the fall of the Habsburg empire the Slovene legal system could be characterized as a typical Central European system. One of the strongest incentives was the Austrian Civil Code. The Austrian influence continued into education with the establishment of the Faculty of Law at the University of Ljubljana in 1919, with the education of lawyers being mostly Austrian up until that point. Slovenia only moved away from the Germanic influence when it became a part of the kingdom of Yugoslavia. While they could finally chart their own course, the king's dictatorship was far from an ideal environment for legal developments.⁸⁴ After World War Two, with the beginning of Socialist Yugoslavia all previous laws were officially annulled. New laws were mainly introduced in the area of criminal laws and nationalisation regarding land and factories. Where gaps existed, the Austrian Civil Code *de facto* still applied.⁸⁵ Under the socialist regime the Communist Party controlled the judiciary both politically and in terms of staffing. The

⁸⁴ Marko Novak, "Central European with a Post-Socialist Limp," *Public Governance, Administration and Finances Law Review* 8, no. 1 (June 30, 2023): 121–37, <https://doi.org/10.53116/pgaftr.6811>, 123.

⁸⁵ *Ibid*, 124.

independence and impartiality were far from guaranteed.

When Slovenia declared its independence in 1991 it wanted to steer away from the Socialist legal tradition and veer more towards the Central European legal culture due to the historical influence of Austrian law upon the territory.⁸⁶ However it is impossible to fully change one's legal system entirely from one day to the other. Therefore, Slovenia did still rely on the principle of continuity with the former Yugoslav and Socialist Slovene law unless it was contrary to the new constitution. While some areas of the legal system have been changed extensively, most notably the nationalisation and privatization laws, the criminal and procedural laws in 1994, and the major civil laws in 2002. Other laws were kept in place, for instance the inheritance law from 1976.⁸⁷ While trying to distance itself from the Yugoslav Legal system, common problems of Socialist legal systems persisted.

There seems to exist a commonality between other ex-Communist countries in Europe, where the trust of the people in legal systems is generally low. In Europe as a whole, the trust in legal systems averaged 64% at the end of the last century, while in Slovenia this was only 44%. Trust of people in legal institutions points to an internalisation of legal values and norms.⁸⁸ Since trust is the main source of legitimacy for the judiciary, their effectiveness and their influence on the general state of RoL largely depends on the internalization of the legal system in Slovenia resulting in the trust of the population.⁸⁹ While one could think that after their independence trust would rise due to the breakaway from the legal system of Yugoslavia the population had become disenfranchised with, the contrary is true. In the years following independence, trust would decrease. While in 1992 the percentage of trust was 50%, it had fallen to 35% in 1995.⁹⁰ The falling trust in legal institutions stems from unfulfilled expectations after the optimism during the process towards independence and greater media attention towards the weak performance of the state.⁹¹ Contradictory to the failing of trust, is that there was a rise in the number of cases brought before Slovenian courts.⁹² This often indicates a rise in trust in judicial institutions as people try to solve disputes more through the avenues within the law.

The break with the previous regime in a judicial sense was not done with the same careful

⁸⁶ Marko Novak, "Central European with a Post-Socialist Limp," *Public Governance, Administration and Finances Law Review* 8, no. 1 (June 30, 2023): 121–37, <https://doi.org/10.53116/pgaftr.6811>, 132.

⁸⁷ Ibid, 124.

⁸⁸ Albin Iglicar, "Slovenian Legal Culture," *Slovenian Law Review* 5, no. 1 (2008): 11–30, <https://doi.org/HeinOnline>, 17.

⁸⁹ Jernej Letnar Čerňič et al., *Reform of Democracy and the Rule of Law in Slovenia Jernej Letnar Čerňič ... et al. ; Editor Jernej Letnar Čerňič ; Translated by Aleš Lampe* (Kranj: New University, Faculty of Government and European Studies, 2019), 34.

⁹⁰ Iglicar, "Slovenian Legal Culture," 17.

⁹¹ Ibid, 19.

⁹² Ibid, 22.

planning regarding the political one. The chair of the Supreme Court was held until 1993 by a prominent member of the League of Communists, additionally the majority of judges from the communist system were appointed for life tenure without any critical examination.⁹³ While the break with the previous regime was heralded as large and impactful, in reality a lot of aspects carried over. One important aspect of this is the functioning of the legislative branch of the government.

One of the surviving socialist remnants in the Slovenian Constitution is the jurisdiction of the National Assembly compared to other “Western” parliaments. Due to the Socialist system being based on a unification instead of separation of powers, some of these unified ideals can still be seen. In a democratic way, the directly appointed parliament is of course the most democratic part of the government, however the separation of powers is equally vital, and meddling of the parliament in judiciary matters may politicize courts and judgements. Article 130 of the Slovenian Constitution stipulates that judges are elected by the national assembly on the proposal of the Judicial Council. However, these elections are more appointments as the Judicial Council normally only nominates one candidate per vacant post. There have been two instances where the National assembly has rejected the nominee without providing official reasons for the decision. This system makes Slovenia the only state in Europe where judges are appointed by a parliament. Regarding the position of the judges and the president of the Supreme Courts the situation is the same. This means that for one to become President of the Supreme Court, one must be appointed by the National Assembly on three different occasions. The Group of States against Corruption (GRECO) has criticised this process several times in their reports since it poses a serious threat to the independence of judges and the Supreme Court.⁹⁴

The result of this symbiosis between the legislative and judiciary branch means that the independent judiciary is filled with a mentality and organizational context that is not compatible with the current context of division of powers. In practice judges as individuals are caught between an externally independent judiciary but they themselves are a part of a system of government that in an informal sense increases the dependency of judges and negatively affects the readiness to take responsibility of judgments. In this sense, judges are expected to serve the judicial system, be loyal, and understand how

⁹³ Jernej Letnar Čerňič et al., *Reform of Democracy and the Rule of Law in Slovenia* Jernej Letnar Čerňič ... et al. ; Editor Jernej Letnar Čerňič ; Translated by Aleš Lampe (Kranj: New University, Faculty of Government and European Studies, 2019), 35.

⁹⁴ Ibid, 13.

the system really works. The independence of each individual judge is therefore fundamental to protect against outside interests making their way into courts.⁹⁵

The working and establishment of courts is another important element of state building in a legal sense. Alongside reforms within the law itself, the courts themselves were also subject to great changes after the independence of Slovenia. The organization of the courts at the moment of independence was the result of the Ordinary Courts Act of 1977 that was finally implemented in 1979. The result of this was that the network of regular courts consisted of 8 basic courts and their 42 territorial units, 4 higher courts and the Supreme Court. The management of the court units were in the hands of the residing president of the relevant basic court, the head of the unit had mostly logistical competences. The Supreme Court of the Socialist Republic of Slovenia operated above the 4 higher courts located in; Celje, Koper, Ljubljana and Maribor. These 4 higher courts in turn monitored the 8 basic courts that fell beneath them. And those in turn monitored the local, external units of which there were 42.⁹⁶

This system remained essentially the same after independence until it was changed in 1995 when a new Courts Act was implemented. This act reorganized the system of courts by removing basic courts and their units and establishing in their place district (11) and local courts (44). This change was a departure from the previous (Yugoslav) court structure and a return to the old Austrian system, in line with the earlier discussed wishes to return to a Central European Legal Culture. The difference to the Austrian system is however that district courts in some way retained a certain degree of supervisory competency over the local courts, according to the system introduced in 1995, this competency fell to the 4 higher courts (which largely remained the same). The new system created a difficulty of implementation where for some months it was not clear on how cases would be redistributed between the courts. Additionally, the new system caused a redistribution of judges where most experienced judges of the basic courts either left the judiciary or were assigned to the district courts leaving the mostly inexperienced and novice judges to handle the increased caseloads. Taking into account that the criteria for the promotion of judges favoured mostly quantitative data and not qualitative, the least complicated

⁹⁵ Jernej Letnar Čerňič et al., *Reform of Democracy and the Rule of Law in Slovenia Jernej Letnar Čerňič ... et al. ; Editor Jernej Letnar Čerňič ; Translated by Aleš Lampe* (Kranj: New University, Faculty of Government and European Studies, 2019), 38.

⁹⁶ Zoran Skubic, "Evolving Justice: The Constitutional Relationship between the Minister of Justice and the Judiciary and a Short Overview of Recent Developments in the Area of Court Management in the Republic of Slovenia," *International Journal for Court Administration* 4, no. 1 (December 15, 2011): 17, <https://doi.org/10.18352/ijca.67>, 23.

cases were mostly solved first, with the difficult cases remaining unsolved.⁹⁷

The backlog caused by these new issues eventually culminated in the case *Lukenda v. Slovenia* at the European Court of Human Rights in Strasbourg. The right to a fair trial within a reasonable time was being systematically violated by the state. Additionally, the right to an effective remedy was also not given. The case of Mr. Lukenda took over 4 years at first instance. In this case the ECtHR found that were not an isolated incident but a problem present in the entire court organization of Slovenia.⁹⁸ By aiming to create their own ‘new’ organizational system of the courts, Slovenia might have changed the system to sudden causing an overload of work that was too much to handle. While in most aspects of state building Slovenia is seen taking a more gradual approach (from their independence movement in Chapter One, and privatization as will become clear in Chapter Three), the fast past court reforms might have been too much to handle. The court called on the Slovenian authorities to emend the existing legal framework or to introduce new mechanisms to ensure enforcement of trials in line with the convention. These changes were at first introduced with the *Act regulating the protection of the Right to a Trial without Undue Delay*. This act gives parties the possibility to file an appeal to accelerate the proceedings including the right to compensation if the time requirement has been exceeded.⁹⁹ Additionally to the act making appeals possible, Slovenia also introduced further legislation aimed at streamlining court proceedings.

The Act amending the Courts Act of 2009 aimed to solve most of these issues. To achieve this the reform transferred control of court management in local courts into the hands of the relevant district courts, instead of directly to the higher courts.¹⁰⁰ Under this new regulation the president of the district court had the competence to set the annual schedule of all de local judges in his or her local district. It also created the possibility to ‘shuffle’ judges around when staff issues in local courts were present. In some ways this organizational system harks back to the system that was in place before the 1995 reforms.¹⁰¹ While the situation today has definitely improved regarding the circumstances that led to the *Lukenda* judgment, judicial proceedings remain in some instances unreasonably lengthy. While Slovenia here might have been successful in the assessment and the implementation of the initial violation, total

⁹⁷ Zoran Skubic, “Evolving Justice: The Constitutional Relationship between the Minister of Justice and the Judiciary and a Short Overview of Recent Developments in the Area of Court Management in the Republic of Slovenia,” *International Journal for Court Administration* 4, no. 1 (December 15, 2011): 17, <https://doi.org/10.18352/ijca.67>, 25.

⁹⁸ Case of *Lukenda v. Slovenia*, App. No. 3032/02, 6 October 2006.

⁹⁹ Benjamin Flander, “The Protection of Human Rights under the European Convention on Human Rights in Slovenia,” *European Integration Studies* 21, no. 2 (December 30, 2025): 71–154, <https://doi.org/10.46941/2025.2.3>, 117.

¹⁰⁰ Skubic, “Evolving Justice”, 27.

¹⁰¹ *Ibid*, 28.

and full compliance with the convention is a very difficult task.¹⁰² In this theme Slovenia actions cannot be seen in an internal state building paradigm alone as the ascension of Slovenia to international instruments of human rights monitoring and international is crucial to the further development of human Rights in Slovenia as exemplified by the *Lukenda v. Slovenia* case.

The ascension of Slovenia to international institutions was seen as a milestone by the country itself and the international community. Coming from a socialist regime and breaking away from it very successfully made sure that the eyes of the world looked at Slovenia in the hope that the shift from socialism towards liberalism could be achieved in a smooth manner. In many ways this was the case, before joining institutions like the Council of Europe (COE) and later the European Union (EU) Slovenia managed to conduct state building in such a way that no serious barriers were present regarding their acceptance. Within Slovenia joining international institutions was seen as a significant step in consolidation Slovenia as an independent country, together with reaffirming the commitment to the protection of human rights and fundamental freedoms.¹⁰³

Slovenian politicians understood that international recognition was vital for the success of the process of independence. This was not easy at first, since the west hoped to keep Yugoslavia together. By the time the first states started to recognize Slovenia had already fulfilled all preconditions for independent statehood, including full control of its territory.¹⁰⁴ Slovenia's democratic character and its far reaching constitution when it comes to the protection of human rights resulted in a swift ascension to the UN and the ESCE.¹⁰⁵ In 1993 Slovenia joined the COE, before this the Slovenian Assembly adopted the *Declaration on Compliance with the Fundamental Conventions of the Council of Europe* in which the parliament acknowledged the vital role of the COE in the advancement of human rights. Additionally, the assembly declared that Slovenia recognized the COE's body of conventions. At the time of joining the COE the Slovenian legal order already incorporated the Universal Declaration of Human Rights and

¹⁰² Veronika Fikfak and Ula Kos, "Slovenia - an Exemplary Complier with Judgments of the European Court of Human Rights?," *SSRN Electronic Journal*, 2021, <https://doi.org/10.2139/ssrn.3801105>, 18.

¹⁰³ Benjamin Flander, "The Protection of Human Rights under the European Convention on Human Rights in Slovenia," *European Integration Studies* 21, no. 2 (December 30, 2025): 71–154, <https://doi.org/10.46941/2025.2.3>, 86.

¹⁰⁴ Anton Bebler, "The Republic of Slovenia - Internal Politics and International Relations," *Perspectives* 4 (1995): 25–33, <https://doi.org/https://www.jstor.org/stable/23615771>, 28.

¹⁰⁵ *Ibid.*

the two International Covenants.¹⁰⁶ Following the independence and the ascension to the COE Slovenia became a contracting party to the majority of the nearly 230 conventions and treaties adopted by the COE. After joining the COE and ratifying the convention Slovenia became subject to the monitoring instruments and the European Court of Human rights. Regarding the monitoring, Slovenia is praised for submitting their reports on time and showing a lot of goodwill inside of the dialogue with the monitoring bodies.¹⁰⁷ Similarly the compliance rate regarding ECtHR judgements seems to be exemplary with a 96% compliance rate regarding adverse judgments.¹⁰⁸

Since 1994 the ECtHR has dealt with numerous cases regarding Slovenia. The most frequently violated right was the right to an effective remedy and the right to a fair trial due to length of proceedings. Both violations came forth under the earlier mentioned case *Lukenda v. Slovenia*. The solution for Slovenia lied in the numerous reforms introduced to improve the working of the courts. However, while the case has been closed, and the situation has improved, cases in Slovenian courts still take a long to solve.

The issue of the in Chapter One mentioned ‘erased’ also culminated in the ECtHR. The court found that in the case *Kuric and Others v. Slovenia*. The applicants lodged the case based on their discriminations they suffered as consequence of the new citizenship laws. Due to their legal status being taken they suffered a lot of hardships; they could not work, have health insurance, renew their documents and had difficulty securing their pensions, some were even deported.¹⁰⁹ Because of this, the court found violations of Article 8 (right to respect for family and/or private life), Article 13 (right to an effective remedy) in combination with Article 8 and Article 14 (prohibition of discrimination). The state had failed to regulate the status of the Erased and provide them with an adequate redress when they were in a position of legal insecurity and vulnerability.¹¹⁰ The court held that the Slovenian government should compensate the six applicants of this case between 29.400 and 72.770 euros each. Additionally, the government should set up a compensation scheme for all erased.

Within the Slovenian context, authors present Slovenia as a country that is comparatively open in

¹⁰⁶ Benjamin Flander, “The Protection of Human Rights under the European Convention on Human Rights in Slovenia,” *European Integration Studies* 21, no. 2 (December 30, 2025): 71–154, <https://doi.org/10.46941/2025.2.3>, 86.

¹⁰⁷ Ibid, 103.

¹⁰⁸ Veronika Fikfak and Ula Kos, “Slovenia - an Exemplary Complier with Judgments of the European Court of Human Rights?,” *SSRN Electronic Journal*, 2021, 1–30, <https://doi.org/10.2139/ssrn.3801105>, 3.

¹⁰⁹ Flander, “The Protection of Human Rights under the European Convention on Human Rights in Slovenia,” 127.

¹¹⁰ Case of *Kurić and Others v. Slovenia*, App. No. 26828/06, 26 June 2012 and 12 March 2014.

regarding the application and jurisdiction of the ECHR, however maybe relies a bit too much on ECtHR judgments to implement reforms instead of proactive domestic initiatives.¹¹¹

While the EU ascension process for Slovenia is part of extensive academic dialogue on multiple fronts, there is not enough room in this thesis to delve in to the specifics of this process.¹¹² In short, Slovenia aimed to join the EU even before their independence. The European idea was deeply ingrained in Slovenian political aspirations from the start, both ideologically and economically speaking. The road to the EU seemed to be a road away from the memories of Yugoslavia. This shift in identity is reflected in the changing of Slovenian citizenship education curricula. The Curriculum was change to be more befit that of a (European) Slovenian state, and featured more European symbols in textbooks to foster a sense of belonging within the European context, instead of the other former Yugoslav Republics who belong to the “non-European” Balkans.¹¹³ While the joining of the EU and the subsequent Europeanization firmly underscored Slovenia as the first Yugoslav republic to join the European family adding to the already existing status of a good pupil regarding human rights. The joining of the EU exposed existing human rights cleavages and introduced a few new ones.

Following the ascension, Slovenia solidified its commitment to the rule of law and the protection of human rights. The joining in 2004 solidified normative frameworks and the Chapter of Fundamental Rights of the European Union has become a vital component of human rights protection. However there still exist disparities between formal commitments and actual implementation. While no notable challenges have arisen related to applying the EU Charter of Fundamental Rights, the issues highlighted in Chapter Two regarding judicial inefficiency still existed. Just as the joining of the COE the joining of the EU would not be a cure for all regarding human rights issues in Slovenia. Court systems still had to be optimized internally to guarantee adequate remedies for violations.¹¹⁴ The Slovenian constitutional court has however increasingly made reference to EU law as well as references to the Court of Justice of

¹¹¹ Benjamin Flander, “The Protection of Human Rights under the European Convention on Human Rights in Slovenia,” *European Integration Studies* 21, no. 2 (December 30, 2025): 71–154, <https://doi.org/10.46941/2025.2.3>, 110.

¹¹² A good deep dive into the different aspects of Slovenia’s relationship with the EU can be found in Kaeding & Udovič’s *Slovenia and the EU 20 Years of Membership in Perspective* (2024)

¹¹³ Marinko Banjac and Tomaž Pušnik, “Making Citizens, Being European? European Symbolism in Slovenian Citizenship Education Textbooks,” *Compare: A Journal of Comparative and International Education* 45, no. 5 (June 5, 2014): 748–71, <https://doi.org/10.1080/03057925.2014.916972>, 761.

¹¹⁴ Jernej Letnar Čerňič et al., *Reform of Democracy and the Rule of Law in Slovenia Jernej Letnar Čerňič ... et al. ; Editor Jernej Letnar Čerňič ; Translated by Aleš Lampe* (Kranj: New University, Faculty of Government and European Studies, 2019), 81.

the EU and its case law.¹¹⁵ At the same time the Slovenian Constitutional Court remains uncertain when or if it should refer certain questions to the CJEU for preliminary rulings, relying more on domestic solutions.¹¹⁶

Another dimension to the EU framework in Slovenia is that of Border control. As Slovenia joined it became a new frontier of the EU until Croatia's ascension. And as a part of the EU it had to conform with European Migration Policy. This bound Slovenia in basic guarantees set forth for people seeking protection. In reality since access to asylum procedures is difficult, meaning that most people enter EU territory irregularly. As a result in the period from 2007 until 2013, the border had become a hard border. The migration crisis in Europe was in a way intensified in Slovenia because of them sitting on the Border. Anti-migration related Xenophobia had been on the rise since the 2008/2009 economic crisis and as in most European countries migrants were criminalized. In 2018 reports from Amnesty international reported that Slovenian Authorities restricted access to asylum and forced the return of several refugees. Due to this, watchdog organizations have repeatedly concluded that Slovenia is in breach of the *non-refoulment* principle.¹¹⁷

Bosnia and Herzegovina

The creation of Bosnia and Herzegovina's legal system differs greatly from that of Slovenia. The great changes stem from the differences in the political settlement as already implicated in Chapter One. Because of Dayton, BiH's legal developments were subject to a large degree of influence from the international community. Since Dayton divided BiH into 2 entities, the legal system became less centralized and, in most instances, split as the country itself was. Because of this, one could argue that it is hard to talk simply about a singular legal system in BiH, because many institutions operate with a large degree of autonomy. Also, between the two entities there exist large differences in the working of the legal system. Dayton and the international involvement ensured that there was little room for a normal or 'natural' evolvement of judicial practices in BiH, and most changes to the structure of the judiciary

¹¹⁵ Katarina Vatovec and Jernej Letnar Čerňič, "The Slovenian Constitutional Court and EU Law: Some Aspects and Future Challenges," *European Studies* 10, no. 2 (December 1, 2023): 50–77, <https://doi.org/10.2478/eustu-2023-0012>, 58.

¹¹⁶ Ibid, 73.

¹¹⁷ Veronika Bajt, "The Schengen Border and the Criminalization of Migration in Slovenia," *Südosteuropa* 67, no. 3 (November 30, 2019): 304–27, <https://doi.org/10.1515/soeu-2019-0024>, 324.

were made for political reasons opposed to economical or efficiency-based changes.¹¹⁸ The case of the BiH judiciary is a prime example of how peacebuilding has taken primacy over state building and how it effects a democratic and natural way of creating a judiciary.

Similar to Slovenia, the historic legal system in the territory of Bosnia is based largely on the Austrian Civil Code (ABGB). The differences stem from the time period before, while Bosnia only came under Austrian influence after the fall of the Ottoman Empire, Slovenia has had a long history of Austrian influence. Still despite the relative short period of Austrian influence, when the SFRY replaced virtually all laws after World War Two, in some instances the ‘old’ ABGB could still apply. The fall of the Yugoslavia meant the end of the Socialist legal tradition, and due to the democratic transitions that meant a return to a western (Roman-Germanic) legal culture. However due to the specific circumstances of the newly independent states it could be said that these states could be better categorized as ‘states in transition’. These cultures are characterized by the introduction of democracy, rule of law and legal transplants from western cultures.¹¹⁹ This transition is especially present in BiH due to the international involvement in the peace and state building processes.

As opposed to Slovenia the judicial reforms came not from an internal drive to move away from the past, but it was largely imposed by international actors and a result of a peace agreement. Annex 4 of the DPA contained the constitution and set provided that “Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections,” that “all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities, shall apply and conform to [stated] human rights and fundamental freedoms.”¹²⁰ Annex 10 appointed a High Representative, with large powers to oversee the implementation of the peace agreement and to coordinate the activities of the agencies working at the transition of the state. In 1996 the Office of the High Representative (OHR) had already reported numerous shortfalls regarding the judiciary.¹²¹

One of the main topics in the early reports was the independence of the judiciary. As mentioned

¹¹⁸ Sveto Puric and Dijana Savic-Bozic, “Division of the Courts in Bosnia and Herzegovina and Efficiency of the Courts,” *Ekonomika* 62, no. 3 (2016): 79–91, <https://doi.org/10.5937/ekonomika1603079p>, 81.

¹¹⁹ Lana Bubalo, “An Introduction to the Legal Cultures of Bosnia and Herzegovina, Croatia, and Serbia (Western Balkan),” *Handbook on Legal Cultures*, 2023, 145–96, https://doi.org/10.1007/978-3-031-27745-0_6, 150.

¹²⁰ General Framework Agreement for Peace in Bosnia and Herzegovina. Signed at Dayton, Ohio, 21 November 1995; initialed in Paris, 14 December 1995. United Nations, Treaty Series, vol. 2187, no. 35112.

¹²¹ David Pimentel, “Post-Conflict Judicial Reform in Bosnia and Herzegovina: The False Promise of Judicial... Independence,” *POST-CONFLICT JUDICIAL REFORM IN BOSNIA AND HERZEGOVINA: The False Promise of Judicial... Independence* (dissertation, Routledge, 2026), 24.

in the case of Slovenia, the political arm of the judiciary was meant to serve the political and economic system during Yugoslav times.¹²² Remnants of this idea can be seen in most post-Yugoslav states, as exemplified by the appointment of judges by parliament. This aspect of the Yugoslav legal culture was to be replaced with a clear division of power and rule of law. It is therefore logical to see that the independence of the judiciary was on the top of the list of presupposed changes in the BiH judiciary. In 1998 the United Nations Mission in Bosnia and Herzegovina established the Judicial System Assessment Program (JSAP) to examine institutional, legislative and political factors that undermined the independence of the BiH judiciary. The reports brought forth issues varying from delays and detention to political influence.

Alongside the JSAP, the OHR created the independent Judicial Commission (IJC) in 2001. Tasked with creating a program of judicial reform addressing the problems discovered by JSAP, they prioritized creating a system based on judicial independence.¹²³ The IJC went to work, firstly by creating the High Judicial and Prosecutorial Council (HJPC). Due to the constitution this council had to be split up, one council for each entity, with a similar council operating at state level. The HJPC was in a way a “High Judicial Council” in all but name. To elevate the council above ethno-politics within the entities it was necessary to centralize the HJPC into a single state level entity. This was done in 2004 (still frustrating RS to this day). In order to encompass all ethnicities and create a balance the membership was constructed as follows:

- Ten judges or prosecutors (five from each entity) representing different levels of court and prosecutors’ office within that entity, elected by their peers
- Two lawyers (one from each entity), elected by their respective bar associations
- Three persons of high moral character, one from each entity appointed by the entity President, and a third appointed by the BiH Presidency
- Two judges from the Court of BiH
- One prosecutor from the Prosecutor’s office of Brčko
- One judge from Brčko

¹²² Alan Uzelac, “Survival of the Third Legal Tradition?,” *SUPREME COURT LAW REVIEW* 49 (2010): 377–96, <https://doi.org/https://ssrn.com/abstract=2498760>, 377.

¹²³ David Pimentel, “Post-Conflict Judicial Reform in Bosnia and Herzegovina: The False Promise of Judicial... Independence,” *POST-CONFLICT JUDICIAL REFORM IN BOSNIA AND HERZEGOVINA: The False Promise of Judicial... Independence* (dissertation, Routledge, 2026), 7.

- One person of high moral character and integrity appointed by the Presidency of BiH¹²⁴

The second area of reforms created by the IJC was the reappointment of judges and the restructuring of the courts. The vetting and gathering of information sufficient to be a burden of proof to remove a public official was a large task to say the least. But there were serious concerns that many judges and prosecutors owed their position to nepotism, political connections or to their ethnicity. However, due to the extreme task in 2001 the IJC found that the most effective was to dismiss all judges and invite anyone to apply for a position in the reformed judiciary. The Council of Europe heavily objected the strategy of reappointment arguing that the approach violated judicial independence principles.¹²⁵ The workaround of this was that while the removal of judges without cause violates judicial independence, the elimination of judgeships did not. Therefore, instead of getting reappointed, the judges would get a ‘new job’ in a completely overhauled judiciary.

The court structure of BiH would be divided between the entities. There are 16 higher courts in BiH, 5 in RS, and 10 cantonal courts in the federation of Bosnia and Herzegovina, additionally there is one higher court in the Brčko District. Republika Srpska has 19 courts of general jurisdiction, 5 district courts, 5 district commercial courts one High Commercial Court and one Supreme Court. The Federation had 32 municipal courts, 10 Cantonal courts and one Supreme Court. Brčko District has one Court of General Jurisdiction and one Appellate Court.¹²⁶ While normally the court administration would be under the overseeing eye of the ministry of Justice (MoJ), in BiH this is not the case as there is no singular MoJ for the entire state. Instead, the Federation and RS have their own ministries, and Brčko district has a Justice Commission which fills this role. Within the Federation, each canton has its own Ministry of Justice.¹²⁷ The court structure in BiH brings some issues with it. The absence of a Supreme Court at state level, hinders the harmonization of judicial practices which in turn both hinders the equality before law of the citizenry, and the development of a singular legal culture. The only state centred court is the court of BiH established in 2002. This court has jurisdiction over crimes such as terrorism, war crimes, human trafficking, organized crimes and economic crimes.

The Constitutional Court of BiH and the Court of BiH are ‘hybrid’ courts that are staffed by a

¹²⁴ David Pimentel, “Post-Conflict Judicial Reform in Bosnia and Herzegovina: The False Promise of Judicial... Independence,” *POST-CONFLICT JUDICIAL REFORM IN BOSNIA AND HERZEGOVINA: The False Promise of Judicial... Independence* (dissertation, Routledge, 2026), 30.

¹²⁵ Ibid, 32.

¹²⁶ Sveto Puric and Dijana Savic-Bozic, “Division of the Courts in Bosnia and Herzegovina and Efficiency of the Courts,” *Ekonomika* 62, no. 3 (2016): 79–91, <https://doi.org/10.5937/ekonomika1603079p>, 81.

¹²⁷ Ibid, 83.

mix of local and foreign judges. The foreign judges are meant to prevent ethnic outvoting and contribute their expertise and experience to the court. Nonetheless, there is a high level of disagreement about the foreign judges as this seems incompatible with the Sovereignty of BiH and the fact that the legal culture in BiH is operationalized by foreigners impacts the ideas and expectations of the Law in BiH. While they do provide legal certainty to the system as these judges provide expertise and neutrality, on the other side it might diminish trust as these judges are seen as transnational control in the state of BiH.¹²⁸

From an international law perspective, the constitution would make sure that BiH would remain or become a contracting party to the international agreements listed in Annex 1 of the constitution. This annex lists 15 international rights conventions and agreements. The position of the international agreements have a constitutional character. Meaning that applicants can refer to them to claim their rights.¹²⁹ To regulate the application of these agreements and human rights in general, Annex 6 of the DPA created the Human Rights Commission consisting of the Human Rights Ombudsman and the Human Rights Chamber. The real value of these institutions is that they act at a state level and not just entity level. The post is made up of three people designed to reflect the ethnic composition, but differentiating from the presidency, people who are not part of a constituent peoples can still be elected.¹³⁰ The Human Rights Chamber is an independent judicial body tasked with considering and deciding on cases to alleged human rights violations and ensuring the enforcement of ECtHR decisions. The majority of the violations claimed by applicants are individual violations such as obstruction of refugee returns, freezing of foreign currency savings accounts, employment discrimination, enforced disappearances, and the systematic failure of domestic courts to resolve cases within reasonable timeframes.¹³¹

BiH ratified the ECHR on December 2, 2002. With the court of Strasburg now able to take on cases from BiH, numerous cases outlying the aforementioned discriminatory aspect of the DPA would be brought forth. The most widely known of these would be the Sejdić-Finci case, where a Bosnian Roma citizen and a Bosnian Jewish citizen appealed claiming ethnic discrimination because they could not run for presidency or the house of peoples.¹³² More cases would however follow caused by the same

¹²⁸ Lana Bubalo, “An Introduction to the Legal Cultures of Bosnia and Herzegovina, Croatia, and Serbia (Western Balkan),” *Handbook on Legal Cultures*, 2023, 145–96, https://doi.org/10.1007/978-3-031-27745-0_6, 157.

¹²⁹ Igor Milinković, “The Universal Protection of Human Rights and Eastern Europe: Bosnia and Herzegovina,” *Central European Journal of Comparative Law* 6, no. 1 (June 22, 2025): 333–60, <https://doi.org/10.47078/2025.1.333-360>, 339.

¹³⁰ *Ibid*, 341

¹³¹ *Ibid*, 345

¹³² Emilian Mădălin Buzea, “Decisions of the European Court of Human Rights on Ethnic Discrimination in Bosnia and Herzegovina: Endless Solutions.,” *International Scientific Conference Strategies XXI: Strategic Changes in Security and International Relations* 21 (2024): 514–23, <https://doi.org/DOI: 10.53477/2668-2001-25-59>, 516.

discriminatory principle. Azra Zornić, a Bosnian who did not identify as any ethnic group, Ilijaz Pilav, A Bosniak residing in RS was unable to run for presidency because he lived in the Serb entity and many more cases can follow until the constitution is amended.¹³³

Another problem that Bosnia and Herzegovina faced in the implementation of rights had to do with the large number of displaced persons due to the war and the issues they encountered in their wish to return. The war had caused a large number of people to leave their homes and flee either abroad or internally, 2.2 million citizens constituting almost half of the population would be forced to relocate.¹³⁴ Due to the ethnic conflict of the war many people fled to parts controlled by their own ethnicity causing a hominization of many municipalities. After the war the return of these refugees was seen as a way to reverse ethnic cleansing, therefore, the rights of returnees were defined in Annex VII of the DPA. Returnees are guaranteed their right to return to their place of origin and a safe return without harassment, intimidation, persecution or discrimination.¹³⁵ However while leaving the refugees might have lived in ethnically mixed municipalities, the war had transformed this and most places became more ethnically homogenous, returnees would face discrimination and exclusion upon their return. The reality is that Dayton redrew the maps and people could suddenly be part of a minority in the same town where they were a majority, or at least one of the major ethnicities. Now with ethnicity firmly galvanized into a political reality, barriers hindering the realization of rights for returnees would be built in the entities. Both entities enacted laws to regulate the return of refugees and internally displaced persons. The Law on Displaced Persons and returnees in the FBiH and the Law on Displaced Persons, Returnees and Refugees in RS, both from 2005, define the basic rights and obligations, financial assistance and other important issues like healthcare and education.¹³⁶ While the legal provisions are there, the issue for the returnees exist mostly in the application of this and the transformed landscape of their homes causing their return to be hindered. As will be explained in Chapter Three, both entities actively hindered the return of people not from their own ethnicity and limited others the opportunity to share in privatization. While there is a strong depart from the legal system that existed in Yugoslavia, Bosnia and Herzegovina is an exceptional case as it has so far been unable to introduce its own distinct legal system. The category

¹³³ Emilian Mădălin Buzea, “Decisions of the European Court of Human Rights on Ethnic Discrimination in Bosnia and Herzegovina: Endless Solutions.,” *International Scientific Conference Strategies XXI: Strategic Changes in Security and International Relations* 21 (2024): 514–23, <https://doi.org/DOI: 10.53477/2668-2001-25-59>, 517.

¹³⁴ Sanela Šadić, “Social Rights of Displaced Persons and Returnees in Postwar Bosnia and Herzegovina,” *Journal of Human Rights and Social Work* 4, no. 1 (October 10, 2018): 45–54, <https://doi.org/10.1007/s41134-018-0075-2>, 45.

¹³⁵ Ibid, 47.

¹³⁶ Ibid, 48.

of a system in transition seems to be a lot more fitting than in Slovenia. While there are large efforts by the institutions like the IJC to further widen the division of powers, the persistence of a divided legal system creates an unharmonized character of the legal culture. While the presence of foreign judges maybe changes the legal system for the better in terms of applying the law fairly, their presence at the same time hinders the internalization of Bosnian citizens.

Conclusion

Both states changed a lot of parts within their legal systems. The central idea was to move away from the Yugoslav system where political interference was one of its main problems. The issue is that the legacy of Yugoslavia is not easily changed. In Slovenia, the appointing procedure is still problematic, with judges being appointed by parliament. Bosnia charted a different course of action, dismissing all judges and making them apply again with the new procedures in place. This decision was made largely based on efficiency. It would be easier to make all judges apply again then to evaluate all judges and then start the procedures to remove them if they were deemed unfit. Another issue in the BiH judiciary is the involvement of foreign judges. Since the functioning of a legal system is also based on the internalization of legal values of the public and the fact that foreigners have a large role, disenfranchises the public with legal proceedings. The organization of the courts remains problematic in both states. Unacceptable long proceedings stemming from organizational changes has for both states led to large issues and also ECtHR proceedings. While this seems to be a commonality for post Yugoslav countries, the changes made by Slovenia to move away from the Yugoslav system actually increased organizational problems. In BiH, the split within the country also created a split between courts, as the organization is much less centralized. This is even more evident in the Federation with each different canton having their own ministry of justice. Because of this harmonization between courts is extremely difficult.

The problems in the judicial system for both countries stem from their different political settlement. Similar to Chapter One, Slovenia's issues are created by their push away from the Yugoslav identity, while Bosnia's issues stem from the need to keep all the ethnicities in line, thus giving them more institutional power sacrificing the state power. This chapter has shown not only that the functioning of legal systems is crucial for the application of human rights, but also that recent history can have a large influence on the legal systems created. In both states the character of their breaking away, created a unique context wherein the legal systems were built.

Chapter Three State output

Even though state building is seen as an internal affair, as already became evident in the first two chapters changes in state structures hardly happen in a vacuum. The involvement of international actors was definitely not parallel between Slovenia and BiH. Even though Slovenia has much less involvement of international actors, it had to conform to existing international frameworks regarding human rights law. But it is not only the realm of law where international standards had to be recognized. It is also the economy of both post-socialist states that had to align with the free-market standards of the world economy and notably the EU. However the change from a socialist economy to a liberal one is often paired with large challenges and pitfalls, and the countries of the Western Balkans would experience this as well. The third and final chapter will be devoted to the liberalization of the economies of Slovenia and BiH. The functioning of economic governance as seen as an output domain of state building are a fundamental rationale for creating state legitimacy.¹³⁷ The government output institutions are the most present in the everyday lives of the population, herein fall economic governance, as well as service delivery like health and education. This chapter will look at the connection of privatization of economies and health and human rights in both cases. The case of privatization and state building is an interesting one because it operates on a fine line of neo-liberal thought. The increase of the involvement of the state is seen as a necessary prerequisite for development, while the state involvement on the economy should be minimized to ensure development.¹³⁸ The goal (according to liberalists like Francis Fukuyama) should be to create a state where the scope of state functions is limited, allowing a lot of freedoms when it comes to the economic sphere, but at the same time the strength of state institutions should be high. A strong state with a low scope, would be able to ensure the best economic growth without compromising on a weak state. This idea would be carried out in the transitions of both countries, but the degree of success would vary greatly.

In both countries the idea was exactly this, create strong institutions with limited economic interference. This caused both countries to put privatization of capital to be one of their core goals within the state building endeavour. However, as this chapter will point out, privatization comes with large risks

¹³⁷ Verena Fritz and Alinna Rocha Menocal, "Understanding State-Building from a Political Economy Perspective," *Report for DFID's Effective and Fragile States Teams*, September 2007, 1–71, https://doi.org/https://cdn.odi.org/media/documents/ODI_state_building_paper.pdf, 31.

¹³⁸ Francis Fukuyama, "The Imperative of State-Building," *Journal of Democracy* 15, no. 2 (April 2004): 17–31, <https://doi.org/10.1353/jod.2004.0026>, 20.

regarding human rights, these risks would be intensified by choices made in the political settlement chapter. This chapter will look at the privatization of companies, property and health. These areas will create a picture on how the state scope/strength dynamic influences policy and ultimately human rights. While privatization of economies can already endanger certain human rights by itself, the fact that these changes were made while both states also only just got their independence created extra risks. This chapter aims at highlighting the consequences of these actions by looking at the areas described above to ultimately answer the question on how privatization within a state building context can lead to human rights risks.

Slovenia

Following the dissolution, economic growth has been achieved at different paces among the republics. Out of all, Slovenia has made the successful experience in terms of GDP. Slovenia's exports have increased tenfold and it managed to attract significant foreign direct investment to the country.¹³⁹ The reasons for the economic disparities between the republics after the breakup of Yugoslavia is twofold. Both economic differences during Yugoslav times and different policies and economic performance after the breakup play a part in this. Investments Slovenian industry before independence already gave the new state the right cards to build further on this, contrary to the other states which were lacking strong industries. While the growth of Slovenia's economy is evident, little attention is given to the pitfalls this has created in terms of human rights. Some of the issues related to the privatization of Slovenia that will be discussed in this chapter are; job loss, workers' rights, property rights violations and the privatization of health care. Parallel to these issues and a driver of the privatization process was Slovenia's ascension process to the EU. Slovenia economic development cannot be examined without due consideration for the role the EU played in shifting economic policy, but also on a mental level, placing Slovenia further away from the Balkans and more in Central Europe.

When Slovenia became independent its tasks in the economic sphere was setting up some crucial institutions befitting a sovereign state. The creation of a national bank, currency, customs, systems and a diplomatic network. Slovenia inherited Yugoslavia's quasi-market system with relatively independent enterprise management structures, the tradition of the self-management system influenced Slovenia to take a more gradualist approach to privatization. The gradualist approach was also chosen to give

¹³⁹ Nurbay Sey and Bayram Aydın, "The Economic Conjuncture before and after the Dissolution of Yugoslavia: Determinants of Economic Growth in Former Yugoslavian Countries," *Istanbul Journal of Economics / İstanbul İktisat Dergisi* 75, no. 2 (January 15, 2026): 351–74, <https://doi.org/10.26650/istjecon2025-1676359>, 352.

Slovenian economic actors more time to adapt, and the minimize negative consequences associated with economic shock transitions like the temporary loss of output, growing unemployment and the threat of social instability.¹⁴⁰ The privatization process would be structured around a hybrid process. The main methods were management employee buyouts, direct sales to outside buyers and voucher-based privatization.¹⁴¹ Slovenia's system of privatization was labelled by the International Monetary Fund as a decentralized approach where enterprises could largely privatize autonomously within the pre-determined parameters. While from an enterprise point of view this might have been decentralized, as we will see, it would be a lot more centralized from a state point of view as opposed to BiH. Slovenia opted for a decentralized system, giving more freedoms to the enterprises, largely keeping political actors out of the direct process. Keeping the political actors outside of the process did not mean however, keeping politics outside of the process itself.

One issue of the Slovenian privatization is the seeming undemocratic character of the changes. The issue of denationalization of property was not a subject of the elections and the first law; the Law on Denationalization, adopted in 1991 was mostly kept outside of the public debate. The economic consequences of denationalization and privatization were also kept outside the public picture, the then vice president of the Slovenian put it as follows "Privatization was not at all an economic issue, but purely a political one. It was an issue of how to destroy socialism, i.e., communism, quickly."¹⁴²

In order to make these changes possible a shift away from the socialist supremacy of the role of the workers and working people which had before been a constitutional foundation. This change allowed the introduction of economic restructuring and introduced the concept of redundancy of workers, allowing layoffs and encouraging early retirement. The period between 1989 and 1993 was marked by economic contraction and restructure. Slovenia had shed 20% of its workforce and bankruptcies were widespread.¹⁴³ The response of the Slovenian state was to create multiple agencies to supervise failing businesses; the Development Fund and the Agency for Restructuring and Privatization. In 1993 the

¹⁴⁰ Mojmir Mrak, Peter Stanovnik, and Franjo Stiblar, "Slovenia – Understanding Reforms," *The Wiiw Balkan Observatory* 043 (May 2004): 1–59, <https://doi.org/https://hdl.handle.net/10419/226081>, 3.

¹⁴¹ International Monetary Fund, "Slovenia: Selected Issues," *IMF Staff Country Reports* 98, no. 20 (1998): i, <https://doi.org/10.5089/9781451835670.002>, 8.

¹⁴² Sergej Flere, "Human Rights and the Ideology of Capitalist Globalization: A View from Slovenia," *Monthly Review* 52, no. 8 (January 2, 2001): 52, https://doi.org/10.14452/mr-052-08-2001-01_2, 56.

¹⁴³ Alexander Mesarovich, "Bring the Right One in: International Organizations and Privatization Strategies in Slovenia, Croatia and Serbia," *LIMESplus*, no. 1 (2018): 79–101, [https://doi.org/UDC:338.246.025.88\(497.1-89\)](https://doi.org/UDC:338.246.025.88(497.1-89)), 87.

government invited companies unable to generate profits to apply for assistance under multiple conditions; social capital was transferred to the Development Fund, workers councils were dissolved and enterprises were transformed into limited liability companies.¹⁴⁴ While this move might seem as an un-privatization of the companies, it was made pure out of the necessity to save the jobs of the employees of the companies. Out of the 96 companies that almost went under at the end of 1999 only 27 remained under the Development Fund, saving a total of 35.000 jobs out of 52.000.

While this process was going on, changes in company structures effected workers heavily. The numbers of violations increased steadily. From 1990 to 1991 the Labour Court had a 100% increase in cases. The most prominent of these violations were the disrespect of wage agreements, intolerable delays of payment and illegal proceedings on compensation regarding sickness and the ceasing of employment.¹⁴⁵ Additionally, the Slovenian Labour Court had emphasized that the management of some companies have held disciplinary proceedings without authorization, this was especially present in the companies that were transformed in the beforementioned limited liability companies. A large reason for the strong rise of disputes is the shift away from a socialist human rights idea where the notion of human rights was directly linked with labour law and employment. The new wave of liberal values undermined labour values in practice. Adding to this the overburdened courts in some way represented a guarantee for potential violators to get of free, because they would not be properly sanctioned.¹⁴⁶

Another consequence of the move towards a market economy was the need to privatize some of the state-owned property. During the 1980's and 90's criticisms of public property grew, and the supposed privatization of property was held as a correction of the injustices carried out by the former Communist Regime. The injustices translated into the idea that the denial of private property was a denial of human rights. The Law on Denationalization (adopted in 1991) would return publicly owned property to its "former" private owners. These restitutions reinstated not only the pre-World War Two capitalist models of ownership but in some cases even Feudal ones, since the Roman Catholic Church would

¹⁴⁴ Neven Borak, "Slovenian Transformations: The Continuity of Changes," *South-East Europe Review for Labour and Social Affairs* 2, no. 4 (1999): 29–40, 33.

¹⁴⁵ Sergej Flere, "Human Rights and the Ideology of Capitalist Globalization: A View from Slovenia," *Monthly Review* 52, no. 8 (January 2, 2001): 52, https://doi.org/10.14452/mr-052-08-2001-01_2, 30.

¹⁴⁶ Boštjan Zalar, "The Transformation of Companies from the Standpoint of Participation Rights: The Case of Slovenia," *Journal of East European Management Studies* 3, no. 1 (1998): 26–46, <https://doi.org/10.5771/0949-6181-1998-1-26>, 31.

become owner of large plots of arable land and huge forests.¹⁴⁷ Lobbyists from the Church used the idea of the property rights as a human right in their justification to obtain ownership invoking that their rights had previously been violated and even threatened to take the matter up with the ECtHR.¹⁴⁸

The housing act stipulates the privatization as follows; the landlord (local authority) is obliged to sell the unit to the sitting tenant if the tenant or any of their immediate family members express a willingness to purchase the property. In this case the tenant is entitled to a 30% discount on the total value of the property, a deduction of the amount the tenant was obliged to pay during their tendency as a contribution to the social housing fund and a discount equivalent to the personal investment in the housing unit in the form of improvement.¹⁴⁹ The housing act also stipulates that all housing forcefully acquired by the previous regime be returned to their rightful owners (including their families) with immediate re-establishment of individual ownership over the property.

Similar to the restructuring of the health system, the privatization of property fell very negatively on the erased peoples. While by law tenants could purchase their residence under favourable circumstances, this did not apply to the erased.¹⁵⁰ At the same time erased could not exercise their right to own property, not even through inheritance. While even people who are not a citizen of Slovenia have a right to ownership of property through inheritance, during the period the erased were without documents they could not register an inherited property to their name. Similar to the health system, the erased had to resort to workarounds to acquire property. One of the solutions to own property was to get someone with Slovene citizenship to purchase the property while they provided the money and live in the property and possibly inherit it. Until the erased were able to regulate their status the people who legally ‘owned’ the property could essentially sell the property without them knowing.¹⁵¹

Alongside the corporate sector the sector of health also went large transformations because of the independence of Slovenia. The main reason for this was the that the privatization was expected to bring

¹⁴⁷ Sergej Flere, “Human Rights and the Ideology of Capitalist Globalization: A View from Slovenia,” *Monthly Review* 52, no. 8 (January 2, 2001): 52, https://doi.org/10.14452/mr-052-08-2001-01_2, 56.

¹⁴⁸ Ibid, 57.

¹⁴⁹ Richard Sendi, “Housing Reform and Housing Conflict: The Privatization and Denationalization of Public Housing in the Republic of Slovenia in Practice,” *International Journal of Urban and Regional Research* 19, no. 3 (September 1995): 435–46, <https://doi.org/10.1111/j.1468-2427.1995.tb00519.x>, 436.

¹⁵⁰ Maja Breznik and Rastko Močnik, “Erasing Residence Rights in Slovenia,” *Refugee Watch* 38 (2011): 47–62, 57.

¹⁵¹ Olga Vuković and Neža. Kogovšek, *The Scars of the Erasure: A Contribution to the Critical Understanding of the Erasure of People from the Register of Permanent Residents of the Republic of Slovenia* (Ljubljana: Peace Institute, 2010), 116.

more efficiency and a patient friendly atmosphere. Another reason was to eliminate the practice of ‘informal payment’ practices.¹⁵² The suffering of health care because of; managerial efficiency, loss of motivation and financial losses, low salaries for health professionals and general under funding. The main health reforms of 1992 were tasked with introducing a compulsory health insurance system (CHI) based on employment, the introduction of co-payments for various health care services, legislation for private (independent) practitioners, the devolution of planning functions from the state to professional associations and municipalities and the introduction of licencing compulsory education of health professionals.¹⁵³ Unlike other socio-economic transitions in different countries, the economic changes in the Slovenian healthcare system enhanced positive developments in the populations health status such as life expectancy.¹⁵⁴ However the combination of CHI and the introduction of co-payments has increased the level of inequality in access to medical procedures. It is important to note that while this has led to inequality of some health procedures, law ensures no co-payment for conditions such as communicable diseases, cancer, STD’s etc. Higher co-payments would apply to non-acute services.

Another issue connected to the system of CHI is that since the change health services were largely tied to health insurance. Before the 1992 Slovenia had universal entitlement to health insurance based on a decentralized relation between labour and health access,¹⁵⁵ instead of the new centralized *Bismarckian* model that tied employment to health insurance. In the new system and the connections to the CHI those not insured were met with denial of treatment. This was the reality for the erased mentioned in Chapter One and Two. The erased were excluded from the health care system not because they had no means of payment, but because the insurance policy was tied to the status of citizenship, permanent residence permits, and (legal) forms of employment.¹⁵⁶ The denial of access to health meant that the erased people frequently went undiagnosed for different sicknesses. In a survey conducted in the research on health issues caused by erasure, the data shows that 46,57% of illnesses among erased do not have an official diagnosis.¹⁵⁷ The inability to obtain insurance for the erased meant that many had to navigate the health system in different unorthodox ways like using their connections, using another person’s medical card

¹⁵² Tit Albrecht and Niek Klazinga, “Privatisation of Health Care in Slovenia in the Period 1992–2008,” *Health Policy* 90, no. 2–3 (May 2009): 262–69, <https://doi.org/10.1016/j.healthpol.2008.10.007>, 263.

¹⁵³ Ibid, 50

¹⁵⁴ Ibid.

¹⁵⁵ Ana Vračar, Sopo Japaridze, and Matthew Read, *MISDIAGNOSED: SOCIALIST HEALTH CARE MODELS IN RETROSPECT* (Berlin: Zetkin Forum for Social Research, 2025), 59.

¹⁵⁶ Olga Vuković and Neža. Kogovšek, *The Scars of the Erasure: A Contribution to the Critical Understanding of the Erasure of People from the Register of Permanent Residents of the Republic of Slovenia* (Ljubljana: Peace Institute, 2010), 38.

¹⁵⁷ Ibid, 162.

or pro-bono treatments. In the same light many to be mothers choose to give birth at home instead of in a hospital, causing numerous births to go unregistered, because of the mother's risk to be noticed and face consequences for their status.¹⁵⁸

While the reforms in the healthcare system in Slovenia had solved previous issues regarding efficiency and adequate salaries for professionals along with an increase in life expectancy. The reforms reduced overall solidarity and equality in terms of health treatments. The introduction of more restrictive health insurance resting on the economic argument resulted in a system geared more to money saving strategies than health deliverance.

Privatization in Slovenia is often seen as one of the reasons of the success of the state compared to other Yugoslav Republics. While it is true that the state has booked extreme growth, the changes in the economic system have did come with negative effects in some areas. The privatization in the work sphere led to large unemployment and changes in labour relations resulting in an increase in labour disputes. Healthcare and housing reforms were extra harmful for those who had previously been erased. While it was not the goal of the reforms to disadvantage this group, the changes compounded on their already negative situation. While the entire country was privatizing, they were largely left out, having to resort to unconventional methods to keep their lives going.

Bosnia and Herzegovina

The case of Bosnia and Herzegovina differs greatly from the Slovenian one. While Slovenia from the onset was focused on aligning itself with the European system, and with that, the European markets. BiH can not only be deemed a post socialist society but also a post conflict one. As seen in Chapters One and Two this had large implications on the restructuring of the state on a political and legal level, the state output levels also followed a different path marked with large involvement of international actors. While Slovenia joined the EU already in 2004, BiH is as of now still only part of the EU's Stabilisation and Association process (SAP) aimed at providing European assistance to the region. From the EU's perspective officials point out that in order to ultimately integrate into the EU the country needs to strengthen its institutions to guarantee democracy, the rule of law, human rights and respect for and

¹⁵⁸ Olga Vuković and Neža. Kogovšek, *The Scars of the Erasure: A Contribution to the Critical Understanding of the Erasure of People from the Register of Permanent Residents of the Republic of Slovenia* (Ljubljana: Peace Institute, 2010), 184.

protection of minorities. As a part of their strategies, the EU has intensified their commitment to the western Balkans becoming its principal investor, trading partner and assistance provider.¹⁵⁹

However as seen in the previous chapters the current political system in Bosnia and Herzegovina is a unique situation due to the ethnic divides still present and as a result of this, the functioning and legitimacy of its institutions has been limited compared to other states in the region. However, one way to greatly increase the legitimacy of state, is the effectiveness of output institutions like economic governance, health, and infrastructure. Especially in a post conflict situation like Bosnia found herself in the working of these institutions are especially important while at the same time the very character of a post conflict situation makes the task of strengthening these institutions very hard.

The economic recovery of Bosnia was seen as a crucial part of the peacebuilding process and the chances of survival of the Bosnian state after the hostilities had seized. Because of that an initial reconstruction package of 5.1 billion US Dollars was seen as an essential part of the process at Dayton in 1995.¹⁶⁰ Additionally economic recovery and most notably marketization was seen as a way to improve interethnic relations, since economic opportunity would provide interaction which in turn would show the people of Bosnia that they could live in a mixed society.¹⁶¹

While Slovenia opted for a gradualist approach to privatization, Bosnia did not. The Privatization programme for Bosnia was done largely under the guidance of the US Agency for International Development (USAID). USAID aimed for an extremely high pace, transparent privatisation process which would be completed in within two years.¹⁶² USAID and other major international donors like the World Bank, began to put pressure on the local governments to approve faster mass privatisation. In 1998 the High Representative decided to impose a privatisation law that in essence split privatisation between the two entities. Entities were now able to privatize non-privately owned businesses and banks inside of their territories. While the decision was made to unblock the political stalemate and speed up privatization laws, the strategy to impose the reforms on entity level meant that ethnic conflict would now be built into

¹⁵⁹ Pol Bargaúes and Pol Morillas, "From Democratization to Fostering Resilience: Eu Intervention and the Challenges of Building Institutions, Social Trust, and Legitimacy in Bosnia and Herzegovina," *Democratization* 28, no. 7 (May 17, 2021): 1319–37, <https://doi.org/10.1080/13510347.2021.1900120>, 1320.

¹⁶⁰ Timothy Donais, "The Politics of Privatization in Post-Dayton Bosnia," *Southeast European Politics* 3, no. 1 (2002): 1–19, 3.

¹⁶¹ Ibid, 4.

¹⁶² Ibid.

the very fabric of privatisation.¹⁶³

The way privatisation was conducted in both entities both followed the same ‘voucher’ based model. While based somewhat on the Yugoslav model of worker-ownership, this time it would be *citizen ownership* this was conducted by enrolling the citizens in a list and dividing the capital amongst them. However, when earlier models of worker shares prioritized workers above others, now occupations like teachers, veterans were now handed more shares. Veterans of all warring factions would have priority in their access to privatization vouchers for their contributions in the war. This priority for veterans is on both a clear link between the new entities governments to ally with veteran groups and a link between nationalism and privatisation.¹⁶⁴ The veterans embodied a larger practice of favouritism in the distribution of share vouchers along political and ethnical lines.

Since there was no legislative state level umbrella for privatisation, entities could distribute the share vouchers. For example, since RS was Serb dominated, distributing property meant favouring Serb members of the community. While on paper each member of the state of Bosnia and Herzegovina had the right to contribute to privatisation in RS without any discrimination, in reality ethnic minorities and returnees faces big obstacles in becoming owners of housing and companies, since more almost half of share vouchers were already given to ‘their’ veterans. Additionally, this system made it possible to block minorities to become owners of 51% of the shares of a firm’s capital, this made sure that minorities could not acquire property in the process while at the same time Serbs were being discounted in the price of buying shares.¹⁶⁵ Similar processes happened within the FBiH. Legislation allowed the Federation to overvalue the vouchers while selling them at only 3-5 % of their face value, allowing Bosnians or Croats to buy companies at extremely low rates compared to Serbians.¹⁶⁶ While privatization was aimed to reconcile the ethnic division, it was worsened. The system created a reality where investing in or owning businesses outside of your own ethnically dominated entity was harder, further solidifying ethnic divide.

Within the privatisation process BiH’s ruling nationalists had a two pronged strategy to manoeuvre their way through the process and increase their position at the cost of institutional legitimacy and actual process of BiH as a state. First, they would delay the process as much as possible because the within the Bosnian political structure at the time state-owned enterprises are as good as a party owned

¹⁶³ Anna Calori, “Making Transition, Remaking Workers: Market and Privatisation Reforms in Bosnia and Herzegovina: The Case of Energoinvest (1988-2008),” *Making Transition, Remaking Workers: Market and Privatisation Reforms in Bosnia and Herzegovina: The Case of Energoinvest (1988-2008)* (dissertation, University of Exeter, 2019), 245.

¹⁶⁴ Ibid, 249.

¹⁶⁵ Bosnia’s Precarious Economy: Still Not Open for Business.’ ICG Balkans Report. Sarajevo/Brussels: International Crisis Group, August 7, 2001, 19

¹⁶⁶ Ibid.

enterprises. Secondly ensure that when privatisation does take place capital falls in the hands of either, the ruling parties themselves, their friends or their own ethnicity.¹⁶⁷

In the end the international communities wishes, to accelerate the privatisation process caused the process to fall out of the scope of the centralized state and into the lap of the ethnic cantered rulers of the entities. This in turn caused an intensified ethnic prioritization of privatisation. In hindsight it is of course easy to say that a gradual approach as conducted by the Slovenian government would have been better. However, even then the still very warm ethnic tensions and the lack of involvement of a central state could have caused the same problems.

Not only was the independence a large shift in the way that property was realized like in Slovenia, but the Bosnian context regarding property rights also involved two processes that influenced the access to one's property. On the one hand there was the shift from the socialist system of state and socially owned property to the western idea of private property. On the other hand, the war has led to a large degree of destroyed property and displaced people (both externally and internally together totalling 2.6 million) who should be allowed to return to the properties they lived in before the war.¹⁶⁸ The DPA positioned the return of these people as a core element of the agreement (Annex 7). This was particularly important since it was seen as a vital way to reverse the ethnic cleansing that had happened during the war.¹⁶⁹

Even though the attention the return of displaced persons received in the DPA, the post war entities passed post war regulations to try and consolidate the status quo and to hinder displaced people returning. Steps undertaken by entity level authorities were started with the transformation of the property that was previously deemed 'social property' into 'state-owned property'. This change is problematic for two reasons; there exist a conceptional difference between state owned property and socially owned, and secondly the definition of 'state' adopted in the legislation regarding this was aimed at the entity level and not at the overarching state level.¹⁷⁰ This practically usurped the properties that would have been properties of the state, and therefore subject to possible universal policies. Instead, the implementation

¹⁶⁷ Timothy Donais, "The Politics of Privatization in Post-Dayton Bosnia," *Southeast European Politics* 3, no. 1 (2002): 1–19, 6.

¹⁶⁸ Leopold Von Carlowitz, "Resolution of Property Disputes in Bosnia and Kosovo: The Contribution to Peacebuilding," *International Peacekeeping* 12, no. 4 (December 2005): 547–61, <https://doi.org/10.1080/13533310500201969>, 549.

¹⁶⁹ Deniz Sert, "Reversing Segregation? The Property Restitution Process in Post-War Bosnia," *Ethnopolitics* 10, no. 2 (June 2011): 219–33, <https://doi.org/10.1080/17449057.2011.570984>, 221.

¹⁷⁰ Harun Halilović and Muhemmed Huzeyfe Küçükaytekin, "Fulfillment of Property Rights in Bosnia and Herzegovina," *IUS LAW JOURNAL* 2, no. 2 (2023): 74–92, <https://doi.org/https://www.cceol.com/search/article-detail?id=1343181>, 79.

of return and privatisation policies, like that of the companies fell to the entities.

With this, the entities themselves had control over the properties that refugees would return to. While numerous laws and amendments were aimed at easing the procedures for the returnees, both entities set up bureaucratic strategies to violate property rights. Adding to this the already existing conditions (absence of ROL, intimidation of returnees, presence of war criminals, discrimination in privatization and access to the labour markets and the generally bleak economic outlook) caused limited returns by refugees to their former domiciles.¹⁷¹ One of the strategies to hinder returnees is that the legal provisions established that after the property had returned to its owner, the temporary users have a claim to reimbursement of the expenses they invested while they were living there.¹⁷² The fees for the invested funds, interest and the covering of the legal fees, often surpassed the value of the property, discouraging the previous owners to return. Due to international pressure returns became easier and more common after the year 2000. The Commission on real Property Claims and Displaced Persons (CRPC) created by the DPA would in total issue decisions regarding 312,000 properties plus 200,000 claims closed by local procedures.¹⁷³ Statistics further show that 10 years after Dayton, more than a million registered refugees and displaced persons returned to their prewar homes.¹⁷⁴ However those who returned found that because of the redrawing of the borders and the new ethnic composition of their region, the towns and cities they returned to were not the same. As an old Bosniak couple had remembered, the war had transformed even the meaning of home. Local life before the war was characterized by trust openness and security, while now their home felt more like a fortress.¹⁷⁵ While access to homes would improve due to the efforts of the remedies given by the CRPC and local authorities, the feeling of home would be forever changed and returnees who found themselves suddenly being a minority in a different region were often victims of abuse.

One of these instances' centres around the court proceedings of Ms Orlovic and 13 other applicants for the removal of an unlawfully built church on their lands. After a failure to enforce the decision that the church should be taken down it ultimately led to a case in front of the ECtHR. While the court ultimately ruled in her favour and assessed that there had been a violation of Article 1 of

¹⁷¹ Anders H. Stefansson, "Homes in the Making: Property Restitution, Refugee Return, and Senses of Belonging in a Post-war Bosnian Town," *International Migration* 44, no. 3 (July 24, 2006): 115–39, <https://doi.org/10.1111/j.1468-2435.2006.00374.x>, 119.

¹⁷² Halilović and Küçükaytekin, "Fulfillment of Property Rights in Bosnia and Herzegovina," 84.

¹⁷³ Leopold Von Carlowitz, "Resolution of Property Disputes in Bosnia and Kosovo: The Contribution to Peacebuilding," *International Peacekeeping* 12, no. 4 (December 2005): 547–61, <https://doi.org/10.1080/13533310500201969>, 25.

¹⁷⁴ "Refugee Data Finder - Key Indicators," UNCHR Refugee Data Finder, accessed June 27, 2026, <https://www.unhcr.org/refugee-statistics>.

¹⁷⁵ Stefansson, "Homes in the Making", 116.

Protocol No. 1 to the Convention and Article 6 of the Convention, during the proceedings she had suffered abuse and physical attacks from police officers.¹⁷⁶

As of result of the prioritization of a permanent seize-fire, social policies received little attention in the Dayton agreement.¹⁷⁷ According to the constitution virtually all aspects of social policy (health, pensions employment etc.) were not the responsibility of state institutions but were instead meant to be regulated at entity level. Therefore, there exist two separate health care systems, with another smaller system in the Brčko District. Within the Federation of Bosnia and Herzegovina, the health system is, like the legal system, further divided into the different cantons. The differences in the system favours RS because they can organize the health system in a much more centralized manner. In contrast the highly divided organization within the federation increases costs and significantly affects efficiency, while also fostering differences in the quality of healthcare between richer and poorer cantons.¹⁷⁸

On the ground in post Dayton BiH the health system was in disarray as a result of the war, increasing the difficulty of building a good functioning health system. The war had left about 30% of the country's health facilities destroyed and it caused the loss of about 30% of its health professionals.¹⁷⁹ The solution in the early stages were also divided between the entities. The World Health Organization regional office for Europe would support two plans for health care reform in 1997 for RS and in 1998 for the Federation.¹⁸⁰ Both plans followed the same structure as they would focus on the restructuring of the public health network, providing education and training to staff, and improving the health system's information and statistical abilities. The objectives in the FBiH would also include further efforts to decentralize on cantonal level.

Across the different entities health policy would be funded based on universal health insurance, much like the Slovenian model. In theory coverage should be universal as all employees are insured by registering and paying in the form of wage contributions deducted by their employers. Unemployed people are eligible for free health care after registration. However there exists a large group of people

¹⁷⁶ Harun Halilović and Muhemmed Huzeyfe Küçükaytekin, "Fulfillment of Property Rights in Bosnia and Herzegovina," *IUS LAW JOURNAL* 2, no. 2 (2023): 74–92, <https://doi.org/https://www.cceol.com/search/article-detail?id=1343181>, 84.

¹⁷⁷ M. Stambolieva and Stefan Dehnert, *Welfare States in Transition: 20 Years after the Yugoslav Welfare Model* (Sofia, Bulgaria: Friedrich-Ebert-Stiftung, 2012), 17.

¹⁷⁸ *Ibid*, 24.

¹⁷⁹ Jennifer Cain et al., *Health Care Systems in Transition; Bosnia and Herzegovina* (Copenhagen: European Observatory on Health Care Systems, 2002), 87.

¹⁸⁰ *Ibid*, 89 & 91.

who are not covered due to them being in a ‘grey zone’. Jobs in construction and retail, and seasonal jobs often leave a lot of people unregistered and thus not covered.¹⁸¹ For the employed this also means that their payment towards their health plan is dependent on their employer, and if the employer doesn’t contribute to their healthcare, it would leave the employed receiving no money at all towards their health plan. Finally, while the unemployed receive free healthcare in theory, women are disproportionately affected because they are not registered. This is especially evident among Roma women and impoverished women mostly living in rural areas.¹⁸²

Conclusion

The conjuncture of privatization and state building created different problems regarding the two states. Regarding the strength/scope dilemma outlined in the introductions of this chapter both states were positioned differently. Slovenia opted for a strategy with less broad scope of governmental institution granting relatively a lot of independence of companies regarding privatization, with strong institution to regulate the changes when needed as seen in the Development Fund. Slovenia did have a centralized system of privatization making sure different political actors could not have too much influence in the process. The caveat of this, was that the erased people fell completely out of contention for the distribution of capital towards the population. The same can be said for the privatization of health. Erased suffered the consequences of their status the hardest in the context of privatization. It is therefore not only the fact that erasure happened that constituted the biggest harm, but also the fact that this happened while the whole country was privatizing causing them to fall between the cracks of the new system. This compounding of negative changes shows clearly how changes in the political arena (in this case regarding citizenship) causes further harm later down the line. It could therefore be argued that privatization worsened the issue of erasure.

Bosnia’s privatization was in reality very different. While on paper both states had similar voucher-based privatization, the pace of changes in Bosnia was a lot higher due to external pressure. This caused privatization to be done at entity level. While the idea was that privatization would reverse ethnic polarization, in reality it would only be solidified. Not having a central authority to regulate privatization made it possible for the entities to resist privatization where they could and prioritise their own ethnicities

¹⁸¹ M. Stambolieva and Stefan Dehnert, *Welfare States in Transition: 20 Years after the Yugoslav Welfare Model* (Sofia, Bulgaria: Friedrich-Ebert-Stiftung, 2012), 28.

¹⁸² Hannes Jarke, Amra Džindo, and Lea Jakob, “Healthcare Access in Bosnia and Herzegovina in the Light of European Union Accession Efforts,” *South Eastern European Journal of Public Health*, January 24, 2023, <https://doi.org/10.56801/seejph.vi.138>, 5.

before the minorities. Similar problems arose regarding the returnees. People who fled the war often found their homes occupied and the local institutions changed. They encountered bureaucratic barriers to limit their returns. Both entities would try to curb the return of minorities in order to realize ethnic homogeneity within their territory. People who eventually did return, found the regions and borders changed. Suddenly people were minorities in their own homes. Discrimination and abuse were widespread.

This chapter has shown that privatization is not a cure for state issues. While sometimes economic gains can be realized, this is highly dependent on how this process is conducted. The restructuring of economic systems creates an uncertain environment where human rights cleavages are exposed and can lead to worsening of conditions. Even a gradualist approach taken by Slovenia is not exempt from issues, while it is evidently a better route to take than the one Bosnia was on.

Conclusion

The birth of new states and the large changes that come create new possibilities for the population to create a new destiny. Often in the leadup to the independence of a state, there is a positive atmosphere to be found, a positive outlook if you wish. However, in reality this positive outlook is often obscured by the realities of an independence progress and state building in the early stages. While peaceful transition to statehood is possible, devastating wars seem to be more common and impactful. These wars might shape the future of the state building process. Whether the independence process is done in a peaceful way or not, or anything in between, the founding of a new state creates a volatile environment where choices made in any topic can have long lasting implications on the character of the state and its institutions. The creation of strong state institutions is crucial in this period on multiple levels. Firstly in the direct applications of governmental functions and the application of human rights, secondly in establishing state legitimacy which in turn largely influences rule of law. Since states are the main guarantors of human rights within their territory, gaining independence means that to fulfil this responsibility can no longer be diverted to others. It is therefore crucial that the foundation of a state human rights protection is placed central.

Both Slovenia and Bosnia and Herzegovina saw the protection of human rights as a central part of their identity as is evident by the attention given to it in both their constitutions. The foundation of both states is however built on very different footing. Slovenia had a relatively easy process compared to that of Bosnia and Herzegovina with their war lasting only ten days. Therefore, it would be unrealistic to label Slovenia truly as a post-conflict state. The difference between peace building and state building becomes extremely relevant in this case as in no way did Slovenia had to prioritize peace over future stability like BiH had to do. While Slovenia could conduct its state building efforts in a stable environment, BiH had to focus a lot in keeping renewed conflict at bay.

The Bosnian War created a volatile environment, one that was only put to rest with the Dayton agreement. The priority of Dayton was a permanent cease fire, this was achieved, but only by giving a large degree of power to the warring factions and sacrificing a strong central state. The DPA partitioned BiH into two entities and the district of Brčko. The three main ethnicities were given special status to ensure no ethnic domination by one over the other. While this might have been achieved it created numerous problems for people not part of the main three ethnicities. They could not stand for election for the presidency or the house of peoples. This ultimately culminated in a case at the European Court of

Human Rights. While the court ruled in the favour of the applicants, the implementation is still not realized. The implementation of changes to the constitution has also been proved to be near impossible with all ethnicities having a veto power. This has created a deadlock in Bosnian politics which has to be broken for further changes to be possible. Dayton created a system of simultaneous processes of state building, one on state level, and one on entity level, both pulling the cart in different directions. A centralized government in Bosnia would certainly be better able to deal with human rights protection in a better way, although I would argue that the main problem is the politization of ethnicity that continues to this day.

Even though Slovenia had none of the problems the foundation of their state cannot be seen as purely successful from a human rights standpoint. In Slovenia's objective to distance itself from Yugoslavia and to align more with Europe they actively discriminated people of former Yugoslav republics (legally) living on their territory. The case known as erasure would affect more than 25.000 people of Yugoslav decent and cause them to become stateless. This was a direct result of the Slovenian state trying to construct their citizenry along the lines of people who they thought would fit in the Slovenian system. It was because of this that it was made impossible for the erased to remain an ethnic minority, something that was still possible for other (European) minorities. While the issues stemming from state building in Bosnia stem from a more institutional problem, Slovenia's issues stemmed from an identity one. The active move away from their Yugoslav past culminated in discriminatory actions to its peoples.

Both states show how mistakes in the political settlement process can happen whether one prioritizes peace over state institutions or not. It is clear that in these two cases the types of problems are different. In BiH the problems are more institutional, stemming from the need for governmental compromises in the foundation processes. In Slovenia this was not needed and a single unified idea, or wish, could be carried out. This wish is not purely the erasure, but a move away from their Yugoslav past, erasure was just a part of this.

The changes made in both countries would not only be on a political level. Both states passed huge reforms in order to fix existing problems in their legal systems. As this thesis has shown, one does not simply change its legal system, and remnants of the past legal system can still remain. The effectiveness of a legal system is crucial when it comes to monitoring human rights and making sure human rights violations (or any violations of the law) are effectively addressed. The way the changes were made follow a similar dynamic in how and why they are done so as in Chapter One. Slovenia would make changes out of a wish to depart from anything Yugoslav and Bosnia would make changes that are centred around

the division of ethnicities. Slovenia aimed to change its legal system by overhauling it to fit more in the legal systems of central Europe. The court structure was completely overhauled, this however would only decrease court efficiency. The trial durations would increase significantly. One of these examples is the ECtHR case of *Lukenda v. Slovenia*. Overly long court proceedings violated the applicants right to a fair trial and an effective remedy for this. The court also found that this is not the only instance and the rights were violated widespread. Similarly to Slovenia, Bosnia's courts were also extremely inefficient, although the priority of the government and the international actors was to decrease the political dependency of judges. This was done by dismissing all judges and making them apply anew. While this problem also exists in Slovenia, it is more a remnant from the previous Yugoslav system than a problem caused by state building, even if state building did definitely not fix this.

Both states have tried actively to chart a new course as newly independent state by creating their own legal traditions, with varying success. While Slovenia has been able to create this, it's not without problems. Bosnia has had a harder time at this, since the international involvement in the Bosnian legal system limits the internalization of legal values of the Bosnian politics. Another issue with creating a Bosnian legal identity is the large degree of decentralization. Due to the courts being so divided along ethnic lines harmonization between courts remains difficult.

It seems that both states issues with the creation of legal systems stem from the past, or their reaction to the past. While Slovenia may have overcompensated in their wish to move away from Yugoslavia, radically overhauling their court system for the worst, Bosnia's past and the ethnic divide still lingers in the application of justice.

While both the political settlement and the legal changes were going on, a third extremely impactful change was happening, the privatization of the economy. Both states coming from a socialist economic system (although more market based than most socialist systems) aimed to privatize since this was seen as the best way to increase GDP and deliver the important right to property. While in both states the changes were similar in idea, the reason why and execution was vastly different. In Slovenia it was mainly a political one. The best method to root out communism was the privatization of the market. Still, they proceeded with caution, implementing a gradualist voucher-based method of privatization. The standard issues of privatization, homelessness, increase of inequality and unemployment were present although limited compared to other states. The largest issue was the possibility of the erased to participate in the privatization. With their presence erased, they became stateless and unable to participate in the process even though they also helped build the national and social capital in the decades they were working in Slovenia. Privatization compounded the violations because due to them not being registered

they would face numerous problems from access to healthcare and the ability to own property. Erasure was not conducted with the idea to exclude them from these processes, nor were these processes designed to exclude the erased, but since they existed simultaneously, the issues compounded.

In Bosnia, privatization was seen as the method to reverse ethnic cleansing. By bringing all ethnicities into a common market the international community hoped to create more commonality. Therefore, this was seen as a priority, causing them to push for a rapid process. To realize this, political concessions had to be made and privatization policy fell to the entities bringing the ethnic politics into the process. The entities tried all they can to slow the process down, and if it could not be slowed down, to prioritize their own ethnicity to enjoy first pickings. This caused numerous problems for minorities living in the entities and returnees as bureaucratic barriers were created to stop them owning businesses and claim their properties.

As this thesis has shown, state building is not merely the process of creating state institutions, but it is closely linked to a state's past and identity. The way a state has acted before and during its independence creates a context wherein state building is conducted. It is also not just a process of improving the rights of its citizens as it can bring numerous pitfalls for human rights within the states. How these are created and why, is again heavily dependent on the larger context where the state is a part of. This thesis has set out to highlight the shortcomings of state building, and in doing so found that the issues are not limited to the cards a state has been dealt. From the outside it may be easy to say that Slovenia has been more successful because they did not have a destructive war and large divisions within its population. This would however obscure the very different issues Slovenia had to deal with in their state building processes.

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