

# Minority Rights and Realpolitik: Justice-based vs. Pragmatic Arguments for Reserving Seats for National Minorities

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**ABSTRACT** This article explores the arguments used in parliamentary debates, in 2008, to justify the adoption of reserved seats for national minorities in local parliaments in Bosnia and Herzegovina. Content analyses of two parliamentary debates at the state level and nine municipal assembly sessions reveal two dominant frames: an ‘obligation frame’ and a ‘constituent peoples frame’. The former refers to the adoption of reserved seats for minorities as an international and legal obligation, while the latter challenges this institution, emphasizing the rights of the three constituent peoples (Bosniaks, Croats, and Serbs) to be guaranteed reserved seats in addition to, or in place of, national minorities. Interestingly, the frame based on an idea of justice and suggesting the right of minorities to political representation is absent from parliamentary debates. The article discusses the implications of these findings, with a reference to the functioning of the institution of reserved seats in the long run.

## 1. Introduction

Ethnic quotas have become a standard tool for enhancing political representation and participation of minorities in multi-ethnic societies (see, e.g. Bird, 2014).<sup>1</sup> While they can take various forms—for example, reserved seats for ethnic groups, special electoral districts, and intra-party electoral quotas that guarantee or foster the inclusion of minorities via pan-ethnic parties—the underlying rationale can be divided into two broad categories: normative and pragmatic.

On the one side there are *normative* arguments concerned with the ideal of justice and the kind of collective rights that should be granted to minorities. According to liberal multiculturalists, minorities should have guaranteed representation because their members have been victims of discrimination and social marginalization (Williams, 1998; Young, 1990) or because better descriptive representation could increase their ‘context of choice’ (Kymlicka, 1995) and equal say in political decisions (Phillips, 1995). Here, the accent is on specific *rights* that minorities should enjoy in the larger polity.

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The other set of arguments is *pragmatic*, insofar it sees political representation of minorities as a necessary (albeit not sufficient) condition for achieving a stable and peaceful democracy in a multi-ethnic setting (Lijphart, 1977), and also for improving the quality of democratic decisions (Mansbridge, 1999). Notice, however, that advocates of this approach are typically concerned with the political representation only of significant groups (i.e. demographically larger minorities) whose consent is deemed indispensable for democratic stability. As a result, they are less sensitive towards the individual and/or group rights of politically less significant (i.e. demographically smaller) minorities.

The different scopes of these two justifications for group representation and the tension between them is evident, for example, in the recent volume by McCruddin and O'Leary (2013, p. xiv) in which the authors openly criticize 'the dictates of global justice and liberal individualist preferences of international human rights institutions' and argue that group representation via consociational power-sharing arrangements should trump these concerns and may be justified 'to preserve peace and integrity of political settlements'. According to the consociational model of democracy, only the significant segments of a society need group representation (see Lijphart, 2004). So, for instance, the Flemish and the French speakers in Belgium, with approximately 60% and 40% of the population, respectively, require guaranteed seats in government and parliament, but not the tiny German-speaking community (less than 1%) or immigrant populations such as Arab speakers in Brussels.

While, as mentioned above, there is a wide range of *theoretical* arguments put forward to justify quotas and other institutional tools for the inclusion of minority groups, there are many fewer studies exploring the arguments offered to justify the adoption and implementation of such tools in *practice*. Have social and political actors framed the issue by referring to a conception of justice and minority rights? Or have they employed predominantly pragmatic arguments by relying on quotas as a conflict-preventing, stability-oriented, and democracy-enhancing tool to be employed in multi-ethnic societies?

Against this background, Bosnia and Herzegovina (BiH) is an interesting case study. It is, to our knowledge, the only country in the world in which ethnic quotas in the form of reserved seats are used to distribute positions in all major political institutions: the presidency, the parliament (second chamber), the cabinet, the judiciary, the civil service, and so on (see Bieber, 2006). In addition, the quotas are applied at all levels of government: the central state, the two entities (the Federation of BiH and Republika Srpska) and the District of Brčko, the 10 cantons of Federation of BiH, and in a number of municipalities (especially in major cities). These quotas reserve seats for the three largest ethnic groups, the so-called constituent peoples, whose accommodation is considered crucial to the very survival of the state. So there is no doubt that the second, pragmatic category of arguments underpins the adoption and the practice of ethnic quotas in BiH.

More puzzling is the adoption of ethnic quotas for *smaller* 'national minorities' in BiH.<sup>2</sup> In this case, it appears evident that the pragmatic reasons could hardly be employed to justify reserved seats for these minorities in municipal assemblies. While BiH cannot survive without the political inclusion of Bosniaks, Croats, and Serbs as constituent peoples, the presence of Roma, Jews, Albanians, Ukrainians, Italians, or other national minorities in state institutions is not critical for its peace and stability.<sup>3</sup> So why did the political representatives of Serbs, Croats, and Bosniaks decide to open the door of political representation to the 17 tiny national minorities? Did they rely on justice-related

arguments for minority representation or rather on the second, pragmatic category of arguments to reserve these municipal assembly seats?

This article looks closely at the issues raised by the adoption of reserved seats for national minorities, exploring both the arguments that were used to support it and the arguments that were raised on the other side. To accomplish this task, we rely on analytical concepts derived from the literature on the ‘argumentative turn’ (Fischer & Gottweis, 2012) and frame analysis, that is, we analyse the frames that dominated the debates in state and local parliaments.

The analysis of the debates surrounding the adoption of reserved seats for national minorities in BiH is relevant for the larger, and rapidly emerging, literature on quotas. Indeed, while there is some literature exploring the influence of international norms on the adoption of state policies in the field of minority rights (see, e.g. Vermeersch, 2003) or on the impact of ethnic quotas and reserved seats on the representation of minorities (see, e.g. Bird, 2014; King & Marian, 2012), there has been relatively scarce scholarly interest with regard to specific *reasons* behind the adoption of such quotas (but see Krook, 2006, on the diffusion of gender quotas).

As we will show in the following sections of this article, our analysis of the use of frames in the two sessions of the BiH state parliament and in nine sessions of selected municipal assemblies indicates that the reform of the Electoral Law allowing the adoption of reserved seats for national minorities at the local level was not justified through arguments based on concerns for justice and minority rights. Instead, two alternative frames emerged: an ‘obligation frame’ and a ‘constituent peoples frame’. The former *supports* the adoption of reserved seats for minorities as an international and legal obligation, whereas the latter *challenges* this institutional tool, emphasizing the need to maintain and possibly increment the number of seats reserved for constituent peoples only. However, both frames suggest a lack of true commitment to fostering minority participation and representation in institutions.

The article is structured as follows. Section 2 introduces the theoretical and methodological framework of interpretive policy analysis and describes how the frame analysis was applied to interpret the dominant ideas when reserved seats for national minorities in BiH were introduced. Section 3 presents the results of the frame analysis of two state parliamentary debates and nine local level ones. Section 4 provides an in-depth analysis of debates in the two municipalities of Prnjavor and Prijedor that diverge from the general frame of discourses used in municipal assemblies. Section 5 concludes.

## 2. Analytical Framework and Data

In this article we explore the arguments put forward by political actors to justify the adoption of reserved seats for national minorities in BiH local parliaments. We scrutinize the various ideas and justifications used by BiH political actors in the debates about introducing ethnic quotas and, particularly, whether these correspond to mainstream justice-based arguments found in the discourse about international standards of minority participation. So the primary focus is on types of justificatory discourses structuring the debates in BiH in the 2000s surrounding the adoption of reserved seats.

Following Schmidt (2010, p. 3), we explore the type of ideas conveyed (cognitive ideas using ‘interest-based logics and necessity’ vs. normative ideas appealing to ‘values and appropriateness’) and the ways through which they are represented in discourses (e.g.

through frames, narratives, collective memories, stories, etc.). Using an interpretive analytical approach, we focus on argumentation as a communicative practice that constitutes this specific policy process (Fischer & Gottweis, 2012, p. 13). Furthermore, we analyse the dominant frames used in debates in the state parliament as well as in the municipalities that introduced reserved minority seats in 2008.

According to Entman (1993, p. 52), frames have a number of functions: (a) they define problems; (b) they diagnose the causes of problems; (c) they make moral judgements; and (d) they suggest remedies to problems. Regarding the lines of argument used by BiH policy actors to frame policy issues and solutions in relation to the adoption of reserved seats for national minorities, it is interesting to see whether the argumentational frames had unintended consequences, for example by spilling over into larger debates on ethno-political issues. Were the frames used more utilitarian, highlighting the benefits of reserved seats or the costs of not adopting them, or more normative, conveying solidarity with national minorities in their right to political participation? Can we identify differences and potential conflicts between discourses, in addition to potential shifts in positions that were brought closer through discourse?

To gather materials for analysis, we requested information from all 32 municipalities in BiH whose assemblies decided to reserve seats for national minorities starting with the 2008 local elections. These municipalities were asked to provide (1) draft amendments and proposals for amendments to the municipality's statute with narrative justifications of both; (2) minutes/transcripts/audio recordings of local council/assembly sessions where the draft amendments and the proposed amendments were discussed; (3) materials from any other session where the sponsor of the amendments gives reasons for the amendments; and (4) minutes of any public hearings on amendments to the statute. The audio files, transcripts, and minutes of the two sessions in the state parliament where the amendments to the Election Law were adopted (first in 2004, then in 2008) were already available online.<sup>4</sup>

While 26 municipalities replied to our request, the difference in kind, quality, and detail of documents we received limited our methodology.<sup>5</sup> Only a few municipalities provided minutes from the sessions of municipal assemblies in which the amendments were discussed and/or adopted. Instead, we received primarily final drafts of the amendments. In addition, in a couple of cases a discussion did take place, but it was not transcribed. To therefore identify frames, we had to limit our analysis to nine sessions of local parliaments (one from each of nine different municipal assemblies) and two sessions of the state parliament (see Table 1). Additionally, due to the difference between transcripts and minutes—detailed content versus summaries of discussions, respectively—not all documents were comparable. However, when this was the case, we relied on comprehensive minutes containing quotes/remarks of political actors, as these were similar to transcripts.<sup>6</sup> Consequently, our in-depth analysis of dominant discourses stems from the transcripts of two state parliamentary sessions, the transcripts of seven municipal assembly sessions, and the comprehensive minutes of two additional sessions of municipal assemblies.

An important caveat about data gathering and analysis is the fact that we can speak of ideas only in terms of what was expressed in the local assemblies and in the state parliament. A general limitation of this analysis, thus, lies in the absence of the views of the voiceless: those who, for example, voted against amendments to the statute, but did not express why.

### 3. Overview of Findings

Materials coded in line with our analytical categories point to the fact that the debates on the adoption of reserved seats did not rely on an idea of *justice* with regard to minorities, such as an explicit recognition of the right of national minorities to (descriptive) representation. Instead, *pragmatic* arguments dominated the debates. Among the arguments that were put forward in those debates, we are in fact able to identify two dominant frames:

- (a) the Obligation Frame in which *advocates* of this institutional reform typically argue that introducing reserved seats is a matter of legal or international obligation; and
- (b) the Constituent Peoples Frame, in which *critics* question the adoption of reserved seats for members of national minorities by arguing that the same right has not been granted to constituent peoples who are in a minority position in given municipalities.

Each of these frames can be broken down further into sub-frames. In the case of the Obligation Frame, the commitment is either to the international community (EU conditionality, Council of Europe post-accession requirements) or, at the municipal level, to the rules and/or instructions of the Election Law and the Central Election Commission (CEC) of BiH. As for the Constituent Peoples Frame, one line of argument is that constituent peoples who are in a minority position in given municipalities should be given priority in terms of seats. The other line of argument is that constituent peoples in a minority position should at least be granted the same rights (here: number of seats) as national minorities.

In addition to these dominant frames, a number of other frames—for example, that national minorities ‘deserve’ reserved seats or that municipalities have an obligation to introduce reserved seats in order to reaffirm their ‘multicultural reputation’—were expressed in the municipalities of Prnjavor and Prijedor, and will be discussed separately (see Section 4). [Table 1](#) summarizes the two frames dominating the parliamentary sessions.

With regard to arguments brought to justify the adoption of reserved seats into the Election Law, the transcripts of BiH Parliamentary Assembly sessions, where the proposed amendments to the Election Law were first discussed in 2004 and later in 2008, point to a very limited debate on the issue. A first reading of the proposed amendments, in 2004, with the CEC as the drafter and sponsor, raised no discussion among MPs. The law was unanimously adopted at the same session. The chairman of the Assembly, who introduced the proposal, explained that by adopting the amendments to the Election Law ‘Bosnia and Herzegovina would fulfil one of its significant, post-accession obligations stemming from the membership to the Council of Europe.’<sup>7</sup>

A similar line of argument was used in 2008, when the amendments were first read out in parliament and eventually adopted. One MP sponsoring the law<sup>8</sup> stated that a reason for adopting it was

our obligation towards the international community, or our path towards the European Union, where we had to complete the part of the law concerning minorities and their representation in parliaments, and this was one reason why we addressed the issue.<sup>9</sup>

**Table 1.** Dominant frames in municipal and state parliamentary debates on the adoption of reserved seats for national minorities in BiH

	F1: Obligation Frame		F2: Constituent Peoples Frame	
<i>Frame</i>	International obligation ( <i>N</i> = 3)	Legal obligation ( <i>N</i> = 8)	Constituent peoples' rights more important than national minority rights ( <i>N</i> = 4)	Constituent peoples' rights being at least as important as national minority rights ( <i>N</i> = 3)
<i>Problem definition</i>	Matter of international obligation (towards EU/CoE)	Matter of legal obligation (harmonization with Election Law)	Not a matter of minority rights, but rights of constituent peoples in a minority position	Not a matter of minority rights only; also complementary issue of the rights of constituent peoples in a minority position
<i>Moral judgment</i>	Pragmatic, devoid of references to specific values such as minority rights	Pragmatic, devoid of references to specific values such as minority rights	Constituent peoples' rights; no recognition of national minority rights	Constituent peoples' rights in addition to national minority rights
<i>Suggested remedies</i>	Adoption of changes to Election Law	Adoption of changes to the municipal statutes	Seats for constituent peoples in a minority position	Seats for national minorities and constituent peoples in a minority position
<i>Consequences of action</i>	If adopted, obligation fulfilled. If not adopted, sanctions will occur	If adopted, obligation fulfilled. If not adopted, sanctions will occur	If adopted, minorities are represented and constituent peoples are not	If adopted, minorities are represented and constituent peoples are not

*Notes:* This table takes into account arguments offered in the minutes and transcripts of council/assembly sessions. It does not consider narrative legal justifications for making a change to a statute, but it should be noted that 16 out of the 17 municipalities relying on such justifications used the legal obligation frame, referring to the Election Law. Framing functions used in this table are based on Entman (1993, p. 52). *N* = number of parliamentary sessions in which this argument was raised.

So, clearly, the frame used here defines the issue in terms of international obligation and commitment, without mentioning the right of national minorities to political participation and representation, nor their equal membership in the political community. This framing of the problem and its causes is significant because it lacks explicit parliamentary recognition of minority rights. The value is arguably for the country's advancement rather than empowering the vulnerable. Generally speaking, the cognitive justification of EU/CoE accession is presented in pragmatic and utilitarian terms. It is void of a moral meaning

and purpose with regard to national minorities. A more normative discourse, appealing to solidarity with minorities and pertaining to their right to equal political participation, is fully absent.

The constituent peoples frame, very present in the parliamentary debates in 2008, is equally telling. In the proposed amendment's first reading, two representatives of the (Bosniak) Party of Democratic Action (SDA) used this frame to illustrate the 'paradox' of introducing reserved seats for national minorities rather than for constituent peoples in municipalities in which they are a minority:<sup>10</sup>

We will ensure the representation of national minorities in municipal assemblies. However, after the last election in a dozen of municipalities, both in the Federation and Republika Srpska, we have a situation where, despite the last census results where there was 15 or 20% of [minority] constituent peoples, we have mono-ethnic municipal assemblies. [...] Now we have a paradoxical situation: because we didn't take care of [this], we ensure [seats for] national minorities, while constituent peoples [...] who are a statistical minority in a particular area, are not addressed. I think this should also be solved by an amendment. (Halid Genjac, SDA)

I think it is in the interest of us all that if the national minorities in BiH have guaranteed representation in municipal assemblies—and we have to do this because we have adopted such a law, but also because it is ultimately humane and honest—it is also humane and honest to do the same for constituent peoples. I expect amendments on the subject. (Šefik Džaferović, SDA)

In fact, amendments to the law that would have introduced reserved seats for constituent peoples were submitted by these two delegates to the parliamentary committee working on the law, but were not adopted by all members of the committee. Some political parties also expressed their interest to introduce such changes at the second reading of the proposed law via an MP who was acting president of the Social Democratic Party (SDP). He pointed to a letter of the CEC president addressing the need to define an obligation that members of each constituent people be represented in relevant municipal assemblies:

You have given us a proposal [...] that practically guarantees representation to members of the national minorities, which we support, but the guarantee of representation for constituent peoples is left out. The CEC demanded this. [...] Isn't it in principle illogical that someone who belongs to a national minority should be guaranteed [the right to representation] while the same right is not guaranteed to constituent peoples to be represented in each municipal assembly? [...] This principle is unfair. (Zlatko Lagumdžija, SDP)

All three MPs quoted above use the frame of constituent peoples' rights. They claim that representation rights for constituent peoples are at least as important as those for national minorities. The MPs are not against descriptive representation of national minorities—in fact, they seem to support it—but they maintain that an electoral reform which reserves seats for national minorities is 'illogical' and 'paradoxical' if the same right is not granted to constituent peoples. In other words, the problem is not defined positively in

terms of the political rights of national minorities, but in terms of the lack of such a right for constituent peoples where they are in a minority. Therefore, introducing reserved seats for national minorities is seen as a step towards adopting similar measures for constituent peoples in the future.

In municipal assemblies, however, a top-down approach was used to silence such debates. The dominant perception observed in all local communities was that the reform was dictated from above (i.e. by the Election Law and the CEC) and should therefore be implemented without much commentary or discussion. The materials used by delegates at the sessions of municipal assemblies frequently cited the obligation to harmonize municipal statutes with the state Election Law. For example, many narrative justifications attached to drafts and proposals of amendments to municipal statutes referred to an urgent letter coming from the CEC.<sup>11</sup> No other justification, such as reference to international treaties or minority rights, was mentioned in these written comments.

In the very limited number of discussions on this topic in municipal assemblies, the dominant issue was the group right to representation for BiH constituent peoples who make up a statistical minority locally. Similar to state MPs quoted above, members of local parliaments pointed to the inconsistency of granting rights to national minorities but not to constituent peoples. In the municipality of Lukavac, for example, representatives of the SDP proposed to introduce four guaranteed seats for constituent peoples in a minority position. They suggested that the municipal assembly should submit a proposal to the CEC to change the Election Law accordingly.<sup>12</sup> An SDP representative in the municipality of Gradačac suggested a clause that at least one seat in the municipal assembly should be reserved for each constituent people, in addition to one reserved seat for a representative of national minorities.<sup>13</sup>

The following quotes show that in a number of municipalities, the frame prioritizing constituent peoples' right to representation above that of national minorities was dominant even when the constituent people was in a local *majority* position.

As it is proposed [at least one reserved seat for national minorities]—and as it should be adopted—we will be in a situation where we, the Bosniaks, with a population of 95 or 98% in this municipality, will not have a guarantee in the statute for at least one representative in the municipal assembly. [...] Theoretically speaking, the municipal assembly could by statute not have any Bosniaks. The assembly is [today] without Serbs and Croats, and theoretically, it could be without Bosniaks, but it would not be theoretically possible to have no representative of national minorities. (Mirsad Bajramović, SDA, Gradačac)<sup>14</sup>

We have mentioned equality [...] but I need a clarification here. [...] Does this mean that there must be one national minority representative, but no representative from constituent peoples? Does the law say so? Does this mean that the assembly can be composed of only Bosniaks, plus one Roma, but that it doesn't need to have Bosniaks, Croats, Serbs, and one Roma? (Svjetlan Bešić, SDP, Srebrenik)<sup>15</sup>

The latter frame not only fails to define the issue in terms of the national minorities' right to political representation and participation. In fact, in some cases, it explicitly denies this right and refers only to the group right to representation for constituent peoples. In one case (see the quote by Mr Bajramović), the seat reserved for national minorities is seen as a



potential threat not only to constituent peoples in a minority position, but even to the dominant constituent people; the law does not guarantee even one seat for the majority group.

It is also interesting to note that members of municipal assemblies typically referred to the Roma community as an example of a recognized national minority that might benefit from the reserved seat. Given the widespread prejudice and discrimination against Roma in BiH (as elsewhere in Europe), this can be interpreted as a rhetorical tool to ridicule the adoption of reserved seats for national minorities. By highlighting the (commonly disdained) Roma as the minority deserving rights, the reference implies that the amendment is unbalanced, diminishing the rights of the (allegedly ‘superior’) constituent peoples. A sign of the perception that minority seats could harm the ruling majority is the fact that in four municipalities there were proposals to increase the overall number of seats in the municipal assembly, in order to ensure that the majority group would not have to sacrifice its own seats to accommodate the representatives of national minorities.

#### **4. A Matter of Merit and Image: The Divergent Cases of Prnjavor and Prijedor**

In this section, we focus more in depth on the municipalities of Prnjavor and Prijedor as they diverge from the general pattern in which other municipalities have addressed the adoption of reserved seats for national minorities. As we will see, two further frames emerged in debates in the assemblies of these two municipalities: a ‘merit’ frame and an ‘image’ frame.

The town of Prnjavor, situated in Republika Srpska, is home to a large number of different national minorities, so it is not surprising that a lively discussion on minority rights occurred during the municipal assembly session in which amendments to the municipal statute were raised. In addition to the obligation and constituent peoples frames, two other frames emerged prominently during a debate between the opposition (in this case, the Alliance of Independent Social Democrats—SNSD) and the party in power (the Serb Democrat Party—SDS) on whether to introduce one or two reserved seats for national minorities.

Advocating for the amendments, the SDS (Bosnian Serb) mayor expressed that, in addition to the legal obligation, there were two further reasons why there should be no dilemma in granting national minorities a seat. First, because ‘these folks have been here the entire time [during the 1992–95 war] and a good part of them [ . . . ] participated in our defensive war and the establishment of Republika Srpska.’ Second, because ‘we have always been proud to have 19 national minorities [in Prnjavor] [ . . . ] and even the Council of Europe is aware of this.’<sup>16</sup>

This first, ‘merit’ frame was also expressed by other delegates. One delegate said that national minorities were ‘integrated in the best possible way in Prnjavor’s society’ and they seemed to ‘promote [the notion of] coexistence and the values of Prnjavor in their kin states.’<sup>17</sup> This frame was also to some extent expressed by the mayor of Prijedor, who referred to good collaboration between the municipal administration and national minority associations. He said that ‘these are our citizens who have been here for hundreds of years and who are fully involved in the life of our community’.<sup>18</sup>

A different sort of argument—the ‘public image’ frame—focuses on projecting the public image of coexistence between people of different ethnic backgrounds and the

negative consequence of a bad reputation for not accommodating national minorities. This frame is similar to pragmatic/utilitarian justifications in the international obligation frame that figured prominently in the state parliament. So a delegate in the assembly of Prnjavor spoke of possible repercussions for the municipality's reputation if a reserved seat were not introduced. He warned delegates that the municipality has always emphasized to foreign observers its good relations with national minorities and that the international community will be carefully watching the outcome of the debate on reserved seats.<sup>19</sup> Another delegate claimed that it would be 'strange and disgraceful' if this were not done, although he questioned the purpose of this Election Law provision in the first place.<sup>20</sup> According to yet another delegate, Prnjavor 'has a [good] reputation because of its [good relations with] national minorities'<sup>21</sup> and by adopting the proposed amendments the municipality would

send a message to those who left during the war that the local community is ready to permit their representation in the local parliament in greater numbers and to fight for the rights of national minorities on the territory of Prnjavor.<sup>22</sup>

Although he mentioned the issue of national minority rights, the same delegate admitted that without the legal obligation, no local community would address this issue and national minorities would, like other citizens, have to gain seats via political parties. Similarly, a representative in Prijedor expressed that introducing reserved seats was a bad solution because the municipality should guarantee equality for all citizens, whatever the group belonging:

This [no guarantee of group representation] is a far better solution. Instead of adopting such laws [for reserved seats], the interests of national minorities would be better defended in this way [free and democratic elections]. With the proposed solution someone [belonging to a national minority with a reserved seat] who receives only five votes might be elected, whereas someone else, belonging to a different group [and receiving more votes] would not. I think that this is a violation of equality. (Vlado Radić, Democratic People's Alliance DNS, Prijedor)<sup>23</sup>

Even though the frame negating reserved seats is not obvious here—a number of delegates in Prnjavor and Prijedor expressed their dissatisfaction with the legal provisions, but were in favour of introducing reserved seats, even if for purely formal reasons—four delegates did question why minorities could not simply be represented through mainstream political parties. Although one might argue that a 'liberal' frame is at play here, which emphasizes the equality of individuals rather than of ethnic groups, delegates did not seem to be aware of a *de facto* discrimination against national minorities. Quite the contrary, minorities were seen as potentially privileged because they would receive reserved seats instead of running for political office through party lists, like everyone else. This kind of discourse is not much different from the constituent peoples frame: basically, 'privileging' minorities undermines equality. However, nobody asked why political parties failed to include national minorities in their electoral lists: it was simply assumed that individuals from minority groups are equally capable of being included. This question may not have been asked due to the very absence of a frame based on minority rights.

## 5. Conclusion

In this article, we have explored the frames dominating debates over the adoption of reserved seats for national minorities within the state parliament and nine municipal assemblies in BiH. Our analysis has shown that arguments used by political elites in state and local parliaments did not correspond to the idea that political participation of national minorities is a matter of justice. In fact, arguments raised during the debates referred neither to the more traditional perspective of introducing positive measures in order to address the exclusion and marginalization of minorities, nor to the more recent ‘rights perspective’, focusing on non-discrimination. Even in the rare statements where support for national minorities was expressed, such support was usually not backed by corresponding justifications, but was seen as an act by which BiH had to adopt international regulations or, in Prnjavor and Prijedor, for the sake of ‘merit’ and ‘image’.

Fischer and Gottweis (2012, p. 15) write that ‘we nearly always discover that shared values are the forces behind the interest groups and social movements that struggled to achieve them’, citing the end of slavery or the introduction of women’s right to vote as obvious examples. The latter occurred when a change in societies’ views about equality and opportunity ‘cleared away the long-standing entrenched political opposition that had blocked the path of such legislation for more than a century’ (Fischer & Gottweis, 2012, pp. 15, 16). Such historic change highlights the power of ideas in public affairs. By contrast, the frames used in the BiH debates—especially the constituent peoples frame—suggest that such an ‘ideational change’ (see Schmidt, 2010) did not occur despite policy actors’ opting to formally adopt an institution favourable to national minorities. The fact that politics in BiH is played out in the frame of ethno-politics between three constituent peoples explains why the frame of minority rights did not gain a foothold in the debates on the adoption of reserved seats for national minorities. The international community’s strong interventionist role in BiH since the war (Merdžanović, 2015)—continuously imposing a pro-reform course that not always matched the local institutional context—explains further why the frame of obligation dominated the state’s parliamentary debates.

Our analysis shows that since reserved seats were accompanied by discourses not inspired by claims of justice and the rights of national minorities, nor reflect any ideational change in that respect, we cannot therefore expect them to yield such effects. Instead, the normative terminology of human rights was almost entirely replaced by a discourse of constituent peoples. In other words, we saw that rights of national minorities in BiH could be legitimized only through the prism of constituent peoples’ rights. A formal, institutional change could result from a recognized legal obligation rather than the acceptance of principles of multiculturalism, such as minority group representation. Therefore, the adoption of reserved minority seats hardly reflects a true commitment to ensuring fair representation in local parliaments, even though this might have been the original intention of those who advocated for the reform of the Electoral Law.

Empirical research available to date shows that political change in terms of opportunities for national minorities has not taken place at the local level in BiH. In fact, reserved seats for minorities have generally not resulted in enhanced political participation of national minorities in BiH’s municipalities (Hodžić, 2011; see also Hodžić and Mraović, 2015). Since directly linking discourse with practice was not the aim of this article, this should be further explored in the Bosnian context as national minorities

continue to exercise representation through reserved seats over time. Future research may consider whether the absence of positive values and ideas pertaining to minorities' right to political participation may impact whether an institution is able to affect substantive representation and the fulfilment of minority interests in the long run.

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### Notes

1. All documents cited in the present article that were originally written in Bosnian Serbo-Croat have been translated into English by the authors.
2. The Law on the Protection of Rights of Persons Belonging to National Minorities (2003, Article 3) recognizes 17 national minorities: Albanians, Czechs, Germans, Hungarians, Italians, Jews, Macedonians, Montenegrins, Poles, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenians, Turks, and Ukrainians. In 2008, following a reform of the Electoral Law at the state level, the national minorities were given the right to reserved seats in municipal assemblies. According to the law, at least one legislative seat must be reserved for national minorities in municipalities in which the national minorities, taken together, had a population of at least 3% in the 1991 census (Amendments to the Electoral Law, 2008, Article 61). Municipalities were supposed to amend their statutes accordingly before the 2008 local elections. However, not all municipalities complied with this rule while, on the other hand, a number of municipalities where national minorities made up less than 3% of the 1991 populace introduced one or even two reserved seats for them.
3. The political marginalization of national minorities in BiH, along with all other 'Others' (e.g. citizens without any ethnic identity), has been an issue of international concern for years. It has culminated in the 2009 landmark judgement of the European Court for Human Rights (*Sejdic and Finci v. Bosnia and Herzegovina*), in which the Court accepted the claims brought by representatives of two official national minorities—the Roma and the Jews—and declared that some top Bosnian institutions discriminate against Others (see Hodžić & Stojanović, 2011). In a less publicized but equally significant judgement (*Zornić v. Bosnia and Herzegovina*), in 2014 the Court accepted a similar accusation brought by a Bosnian citizen claiming that she has exclusively a non-ethnic and civic identity ('Bosnian'), and, therefore, belongs neither to constituent a people nor to a national minority.
4. The Election Law was changed to introduce reserved seats for the first time in 2004, but since the 2004 amendments entered into force after the deadline for the registration of 2004 electoral candidates the implementation of reserved seats did not take place until the 2008 elections.
5. Nineteen municipalities sent the minutes of their sessions; nine municipalities sent transcripts or audio files (subsequently transcribed); 17 municipalities sent narrative justifications of their decision to amend the statute. Of the 26 municipalities, 25 sent excerpts from minutes or transcripts/audio files.
6. An exception is the municipality of Lukavac, where the minutes were not comprehensive, but a frame still could be identified, albeit not analysed thoroughly. It is therefore not included in Table 1, nor analysed in-depth since justifications for the frame were not provided. The case is referred to in the

- subsequent analysis because of representatives' attempts to send an initiative to the Central Election Commission (CEC) to introduce constituent peoples' seats.
7. Martin Raguž, Croat Democratic Union 1990 (HDZ 1990), transcript of the 34th Session of the Parliamentary Assembly of Bosnia and Herzegovina held on 23 April 2004.
  8. Sponsors were from three ethnic parties (Bosniak, Croat, and Serb) of the ruling parliamentary coalition at the time.
  9. Milorad Živković, Alliance of Independent Social Democrats (SNSD), transcript of the 20th session of the Parliamentary Assembly of Bosnia and Herzegovina, 16 January 2008.
  10. Transcript of the 20th session of the Parliamentary Assembly of Bosnia and Herzegovina, 16 January 2008.
  11. The CEC sent letters in 2007 and early 2008 to all municipalities in BiH, instructing them to harmonize their statutes with the amended Election Law.
  12. Excerpt of the minutes of a municipal council session, Lukavac, 8 January 2008.
  13. Excerpt of the minutes of the 30th municipal council session, Gradačac, 27 February 2008.
  14. See note 13.
  15. Excerpt of the transcript of the 37th municipal council session, Srebrenik, 15 November 2007.
  16. Vlado Živković, SDS, excerpt of the transcript of the 33th municipal assembly session, Prijedor, 13 November 2007.
  17. Željko Simić, SNSD, excerpt of the transcript of the 46th municipal assembly session, Prnjavor, 30 April 2008.
  18. Marko Pavić, Democratic People's Alliance (DNS), excerpt of the transcript of the 46th municipal assembly session, Prnjavor, 30 April 2008.
  19. Željko Simić, SNSD, excerpt of the transcript of the 46th municipal assembly session, Prnjavor, 30 April 2008.
  20. Brano Žunić, Party of Democratic Progress (PDP), excerpt of the transcript of the 46th municipal assembly session, Prnjavor, 30 April 2008.
  21. Dragomir Đurđević, SDS, excerpt of the transcript of the 46th municipal assembly session, Prnjavor, 30 April 2008.
  22. Borislavko Peulić, SNSD, excerpt of the transcript of the 46th municipal assembly session, Prnjavor, 30 April 2008.
  23. Excerpt of the transcript of the 33th municipal assembly session, Prijedor, 13 November 2007.

## References

- Bieber, F. (2006). *Post-war Bosnia. Ethnicity, inequality and public sector governance*. Basingstoke: Palgrave Macmillan.
- Bird, K. (2014). Ethnic quotas and representation worldwide. *International Political Science Review*, 35(1), 12–26.
- Entman, R. M. (1993). Framing: Towards clarification of a fractured paradigm. *Journal of Communication*, 43(4), 51–58.
- Fischer, F., & Gottweis, H. (2012). Introduction: The argumentative turn revisited. In F. Fischer & H. Gottweis (Eds.), *The argumentative turn revisited: Public policy as communicative practice* (pp. 1–27). Durham, NC: Duke University Press.
- Hodžić, E. (2011). *Political participation of national minorities in local governance in Bosnia and Herzegovina: State of the art, prospects and ways forward*. Sarajevo: Center for Social Research Analitika.
- Hodžić, E., & Mraović, B. (2015). Political representation of minorities in Bosnia and Herzegovina: How reserved seats affect minority representatives' influence on decision-making and perceived substantive representation. *Ethnopolitics*, 14(4). doi:10.1080/17449057.2015.1032004
- Hodžić, E., & Stojanović, N. (2011). *New-old constitutional engineering: Challenges and implications of the European court of human rights decision in the case of Sejdić and Finci v. BiH*. Sarajevo: Center for Social Research Analitika.
- King, R. F., & Marian, C. G. (2012). Minority representation and reserved legislative seats in Romania. *East European Politics and Societies*, 26(3), 561–588.
- Krook, M. L. (2006). Reforming representation: The diffusion of candidate gender quotas worldwide. *Politics & Gender*, 2(3), 303–327.

- Kymlicka, W. (1995). *Multicultural citizenship: A liberal theory of minority rights*. Oxford: Clarendon Press.
- Law on the protection of rights of persons belonging to national minorities [Zakon o zaštiti prava pripadnika nacionalnih manjina], Official Gazette of Bosnia and Herzegovina, 12/03 (2003).
- Law on amendments of Bosnia and Herzegovina's election law [Zakon o izmjenama i dopunama izbornog zakona Bosne i Hercegovine], Official Gazette of Bosnia and Herzegovina, 33/08 (2008).
- Lijphart, A. (1977). *Democracy in plural societies: A comparative exploration*. New Haven, CT: Yale University Press.
- Lijphart, A. (2004). Constitution design for divided societies. *Journal of Democracy*, 15(2), 96–109.
- Mansbridge, J. (1999). Should blacks represent blacks and women represent women? A contingent 'yes'. *The Journal of Politics*, 61(3), 628–657.
- McCruddin, C., & O'Leary, B. (2013). *Courts and consociations: Human rights versus power-sharing*. Oxford: Oxford University Press.
- Merdžanović, A. (2015). *Democracy by decree: Prospects and limits of imposed consociational democracy in Bosnia and Herzegovina*. Stuttgart: Ibidem.
- Phillips, A. (1995). *The politics of presence*. Oxford: Clarendon Press.
- Schmidt, V. A. (2010). Taking ideas and discourse seriously: Explaining change through discursive institutionalism as the fourth 'new institutionalism'. *European Political Science Review*, 2(1), 1–25.
- Vermeersch, P. (2003). EU enlargement and minority rights policies in Central Europe: Explaining policy shifts in the Czech Republic, Hungary and Poland. *Journal on Ethnopolitics and Minority Issues in Europe*, 1, 1–32.
- Williams, M. S. (1998). *Voice, trust, and memory: Marginalized groups and the failings of liberal representation*. Princeton: Princeton University Press.
- Young, I. M. (1990). *Justice and the politics of difference*. Princeton: Princeton University Press.