

# ‘Conquered’ vs. ‘Octroyée’ Ownership: Police Reform and Conditionality in the EU’s Peace/Statebuilding of Bosnia and Herzegovina

Giulio Venneri<sup>1</sup>

<sup>1</sup> Lecturer at School of Government, Libera Università Internazionale degli Studi Sociali (LUISS), Rome, Italy

Correspondence: Giulio Venneri, Lecturer at School of Government, Libera Università Internazionale degli Studi Sociali (LUISS), Rome, Italy. E-mail: giulio\_venneri@yahoo.it

Received: March 12, 2013 Accepted: July 3, 2013 Online Published: July 5, 2013

doi:10.5539/res.v5n3p57

URL: <http://dx.doi.org/10.5539/res.v5n3p57>

## Abstract

In 2004, police reform was identified as a key prerequisite for progress in the European Union (EU) accession process of Bosnia and Herzegovina. Three years later, that conditionality sparked one of the most severe crises in the country’s post-Dayton history. At that time, analysts focused mostly on the technical and security-related aspects of this reform. This article instead analyses the political developments that accompanied the reform, specifically the difficult confrontation between the EU and local elites. The paper posits that the failure of conditionality induced the EU to accept a more flexible and domestically-owned reform agenda. With the credibility of the whole European integration project for Bosnia and Herzegovina at risk, the EU refrained from further confrontation and softened its most critical demands, thus enabling local politicians to perform a ‘conquest’ of the reform agenda.

**Keywords:** EU operations, Balkans, police reform, conditionality

## 1. Introduction

Lord Paddy Ashdown promoted the link between police reform and the European Union (EU) accession process in 2004 during his tenure as ‘double-hatted’ High Representative and EU Special Representative to Bosnia and Herzegovina (HR/EUSR). In 2005, this reform became a priority criterion for opening negotiations on a Stabilisation and Association Agreement (SAA) between the EU and Bosnia and Herzegovina (BiH). In the early stages of the reform talks, an agreement between political representatives from the three main Bosnian ethno-religious groups—Bosniak Muslims, Catholic Croats, and Orthodox Serbs—on the reconfiguration of policing was almost reached. At the same time, BiH assembled its SAA negotiating team and the team began a successful interaction with the European Commission (henceforth, the Commission).

However, hopes for a fast-track deal on police reform soon faded and the initial apparent willingness to cooperate gave way to exasperated logics of relative gains. The link between police reform and progress on the SAA actually led the country to experience one of the most severe crises of its post-Dayton history. In danger of compromising the credibility of the whole European integration project, the EU decided at the end of 2007 to cease confronting BiH domestic elites and watered down the most critical elements of its pre-SAA requests. Local politicians were thus enabled to assume control of the reform agenda. So long as domestic interlocutors demonstrated enough activism and goodwill (e.g., by organising a series of meetings among their leaders, who signed a plan of action and agreed on a vague reform timetable), the EU turned a blind eye to its conditionality and rewarded them by allowing the initialling of the long-awaited SAA in December 2007. Six months later, the EU approved final signing of the SAA.

Following these events, the academic literature and policy analysis mostly focused on the technical and security-related aspects of police reform (ICG, 2005) and, even more predominantly, on the operational challenges faced by EU Police Mission (EUPM), installed in BiH to supervise police restructuring and support local law enforcement agencies in the fight against organised crime and corruption (Nowak, 2003; Merlingen, 2005a; 2005b; Penksa, 2006; Wisler, 2007). Only sporadic attention (Eralp, 2007; Muehlmann, 2007) was paid to the political dynamics that characterized the lengthy showdown among Bosnian politicians, as well as between them and the HR/EUSR. In an attempt to fill this gap, the following pages reconstruct the politico-diplomatic dynamics related

to police reform in BiH, concentrating on the period from HR/EUSR Ashdown's initial efforts until the signing of the SAA in June 2008.

The analysis clarifies that confrontation on structural reforms in BiH is heavily conditioned by the latent sovereignty struggle; therefore, associating ideological aspects to technical changes exposes a reform process to extreme politicisation. As it will be explained, the tension is mostly related to division of competences between state level institutions and the two Entities which compose the BiH constitutional structure: the Bosniak-Croat Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS) (Note 1). The article also posits that the failure of heavy conditionality favours the emergence of local ownership of the reform agenda, as a secondary policy option. Once strict conditionality generates a point of no return in the internal dialogue and becomes unmanageable, external actors are more inclined to yield to a domestically managed reform schedule. Offering a more benevolent attitude, external actors withdraw from the core of domestic confrontation and allow the conquest of the reform agenda by domestic elites, with a view to avoid being associated with stalemate. Furthermore, the specific way in which conditionality over police reform in BiH was introduced, managed specifically by the HR/EUSR, and then eventually obfuscated from the negotiation table, reflects the tendency, characteristic of multilateral institutions operating in crisis areas to protect their legitimacy by defending a 'no mistake policy' (Note 2).

## **2. Police Restructuring as Technical Change: The Picture Presented by the HR/EUSR**

At the beginning of the reform talks in 2005, it seemed that an agreement on the reconfiguration of the BiH police was going to be reached within a few months. Bosnian Serb politicians even accepted the plan to redraw 'police regions' across the Inter-Entity Boundary Line (Moore, 2005). All Bosnian parties subscribed to an operational agreement in October 2005, which included a detailed working schedule. Amongst other provisions, the agreement implied the creation of a Directorate for Police Restructuring Implementation, which 'shall be assigned to make a proposal of a plan for implementation of police structures reform in BiH per phases, *including proposals of police regions*' (OHR 2005a: emphasis added). Prospects for a smooth deal started to fade when local politicians began to believe that restructuring the police would be the final centralising effort undertaken by HR/EUSR Ashdown, which was potentially going to have a substantial impact on the allocation of powers and responsibilities within the domestic arena.

### *2.1 Ashdown's Centralization Strategy and Technical Packaging of Police Reform*

As a former Head of the Office of the High Representative (OHR) Legal Department explained, Ashdown's agenda aimed to 'build Bosnia's central government and undermine the country's sub-sovereign political units: only in this way ... Bosnia could become *a normal European state* and put its violent war behind it' (Parish, 2007: 16, emphasis added). As Parish further expands, in order to achieve the objective of centralisation, Ashdown 'became a one-man legislative machine, repeatedly using the Bonn Powers (Note 3) to enact legislation, creating new institutions, and implicit threats to remove officials to push the Entities to agree to transfer new powers to central government' (Parish, 2007: 16-17). This analysis is confirmed by looking at the OHR statistical record. When compared with all other HR equipped with the Bonn Powers, Ashdown has been the most active user of these prerogatives and a staunch promoter of what could be referred to as 'centralization-no-matter-what' policy.

The debut of Ashdown's exercise of the Bonn Powers dates back to June 2002, when he dismissed Nikola Grabovac from his post as Finance Minister of the FBiH (OHR, 2002). From that moment to the end of his mandate (June 2002 - January 2006), Ashdown adopted 447 decisions. Particularly in the first half of his tenure, decisions were focused on the area of judicial reform (almost one hundred by the end of 2004 alone) as well as on state-level matters and constitutional issues (almost forty during the same period). By contrast, limited direct intervention was attempted in the field of economic reform (only 34 decisions). The HR/EUSR also devoted particular attention to the removal of public officials, both elected and civil servants. In summer 2004, Ashdown issued a ban from public office on over sixty individuals (Note 4).

In summary, Ashdown's activism was characterized by three key centralising moves—reorganisation of the judicial system, completion of the reunification of the army, and tax reform (which enabled the merging of the country's three separate customs administrations into a single state-wide VAT system)—as well as one ambitious plan to clean up the BiH public administration and governmental institutions by removing corrupt and nationalist officials. Approaching the apex of this simultaneous piece-by-piece centralization and clean-up effort, the HR/EUSR focused on police reform as the last challenge in the rationalization of the state structure.

Input from the Commission on this specific matter had been rather general. For instance, reference to the need for police restructuring was made in the Commission report, 'on the preparedness of Bosnia and Herzegovina to negotiate a Stabilisation and Association Agreement with the European Union', a feasibility study published in

November 2003. In this document, the police was only one of several areas in which Bosnian authorities were asked to intervene with substantial reforms and institutional improvements. Police reform was approached in a highly technical manner and—possibly more than other areas—with an exclusive focus on the equation between costs and performances. In 2003, the Commission mainly criticised fragmentation and jurisdictional conflicts among different police forces in the country, stressing that ‘the complexity of the existing multiple police forces increases costs and complicates co-ordination and effectiveness. ... Costs are high because of duplication in areas such as training and equipment. Financial and technical constraints limit crime fighting abilities’ (European Commission, 2003: 26).

The emphasis on efficiency and operational aspects was maintained by the Commission, even after the Police Reform Commission (PRC, 2004) issued a detailed report on how to implement restructuring. In a letter to the then BiH Prime Minister Adnan Terzić, the EU Commissioner for External Relations Chris Patten emphasised the connection between counter-crime measures in BiH and security in Western Europe. According to Patten, the direct and pressing involvement of the EU in the police reform process was legitimised by the fact that, ‘if BiH is not able to tackle crime effectively, this has a bearing on crime elsewhere in Europe, including within the EU’ (European Commission, 2004: 1).

## 2.2 *The Difficult Balance between Political Objectives and Technocratism*

The technical focus the Commission attached to the fight against organised crime should not distract from Ashdown’s strategic objectives regarding police reform. The PRC mandate suggests that while efficiency arguments were prioritized, the HR/EUSR was nonetheless ready for a more political confrontation with BiH political elites. The PRC was established as a result of a decision adopted directly by the HR/EUSR (OHR, 2004). In the first article of the mandate, Ashdown clarified that the new body was expected to elaborate ‘a single structure of policing for Bosnia and Herzegovina under the overall political oversight of a ministry or ministries in the Council of Ministers’ (OHR, 2004).

The strategic intentions become more obvious when one recalls that police restructuring was somehow detached from judicial reform. Ashdown presented reform of the judicial system as one of his major success stories when it was completed, but he did not propose it as a point of reference for police reform. This link was absent in the mandate given to the PRC and appeared only as a sporadic term of reference in the final report issued by the same PRC. In what became a 283-page handbook, the problem of effective cooperation between police officers and prosecutors appears only in the section, ‘Legal Provisions for the Single Structure of Policing’. Handbook article 63, ‘Duties and Responsibilities of the Local Police Commissioner’, clarified that commissioners must *inter alia* ‘ensure proper implementation of the guidelines and directives of the Prosecutor concerning the activities of police officials in relation to criminal proceedings within his/her police area’ (PRC, 2004: 139).

The absence of a clear link between the two reform processes is striking, especially considering that the HR/EUSR originally called for an assessment of policing in BiH on the basis of the feasibility study published in November 2003 by the Commission. That study offered a clearer technical focus on the overall law enforcement capabilities of the country. The Commission enumerated the most critical operational difficulties of BiH law enforcement agencies, highlighting what changes would improve the general counter-crime capabilities of the BiH authorities. The analysis made in Brussels highlighted the following weaknesses: ‘police forces in one Entity have no right of “hot pursuit” into another; there is no central data base, different Entity forces use different information systems’ (European Commission, 2003).

The decision not to link the two reform processes seems particularly strange if one considers that symmetries between judicial districts and police areas should be common sense, especially in a country like BiH, where internal boundaries of any kind are systematically ‘exploited’ and turned into insurmountable barriers by politicians who find it convenient to feed their constituency with nationalism, and by civil servants who tend to offer more privileges to the ethnic group to which they belong. Interviewed on this specific matter when the debate on BiH police reform was still ongoing, an OSCE official serving in Sarajevo as Legal Adviser on Judicial and Legal Reform confirmed the impression that, in spite of the rhetoric on efficiency, institutional centralization was the primary objective pursued by the HR/EUSR.

The police reform has been presented by the HR/EUSR in a very weird way. Paradoxically, the EU principles could potentially turn the police structures into something more expensive and complicated than today. Moreover, it is probable that this reform can even produce a less efficient police. A reorganization of the police should be indeed structured in parallel with the reform of the judicial system. Without doing so, the potential costs and the series of inefficiencies could be

detrimental. We alerted OHR/EUSR officials repeatedly to the problem, but so far without success (Note 5).

Anna Ibrisagić, Member of the European Parliament who has served on the Foreign Affairs Committee since the 2004-2009 legislature, confirmed that police reform was packaged with and linked to the SAA to serve more strategic and ambitious institutional objectives by the OHR/EUSR. When the political crisis erupted in BiH after Summer 2007, Ibrisagić met the key actors in the political confrontation over police reform to explore grounds for mediations. In particular, she followed firsthand the negotiation between Milorad Dodik and Haris Silajdžić, which eventually paved the way for the Mostar Declaration (the agreement that helped to overcome the police reform impasse in 2007) and that had an initial positive implication in the drafting of a police reform protocol (Note 6) signed by the two leaders on 28 September 2007 (Reuters, 2007). Interviewed at the European Parliament in the aftermath of the Dodik/Silajdžić compromise, Ibrisagić strongly criticised the scepticism with which the HR/EUSR Offices ‘handled’ the September protocol. According to Ibrisagić:

The link between police reform, EU principles, and the SAA has become exasperation. Did the International Community realize that the Dodik/Silajdžić compromise was the first kind of agreement between the two sides after years? Why did they make only negative comments on that? I believe that all has to do with the divisions inside the EU. Some countries in the PIC Steering Board are not satisfied with the developments and want to boycott any result that is far from their high expectations on centralisation. What these diplomats and politicians miss is that their work in BiH should be about reconciliation instead of being about pushing their own specific visions and strategic interests. The story is simple: different countries have different visions and they try to dismiss the protocol since they see it as an insufficient result (Note 7).

This quotation highlights several problematic aspects of the international and EU commitment to BiH, which can be extended, more generally, to the experience of other multilateral organizations involved in peacebuilding initiatives and post-conflict stabilization in crisis areas. First, Ibrisagić highlighted the problem of conflicting interests amongst EU member states. The literature points out, ‘International agencies are not simply staunch defenders of human rights, but are also organisation with their own institutional interests, priorities and objectives resulting from the self-interest of their member states’ (Belloni, 2007: 175-76). Second, Ibrisagić offers an interesting assessment of the specific situation in BiH and the showdown on police reform, suggesting the HR/EUSR and the rest of the international community shared an ‘exasperated’ attitude. When the Dodik/Silajdžić protocol received attention from the international community, the HR/EUSR Miroslav Lajčák offered a moderate, but nevertheless positive, comment on the achievement (OHR, 2007h). However a press release later clarified that: ‘OHR and EUSR have received the Dodik/Silajdžić Protocol which is now under review by the relevant EU institutions. We urge everyone to refrain from interpreting the document as only the European Commission can give an opinion on whether this agreement is in line with the three principles for police reform’ (OHR, 2007u). This statement, and the emphasis on the Commission’s authority, mirrors the the HR/EUSR’s decision to emphasize the technical aspects of the process and obfuscate the highly political and strategic nuances of the proposed reform.

Two days after the release of the statement, the importance of this ‘entente cordiale’ was completely downplayed, since it became clear that the BiH Parliament could not follow up on it rapidly. Hence, on October 1 (the deadline for police reform chosen by the HR/EUSR) Lajčák commented: ‘I received a paper reflecting the views of SBiH and SNSD (Note 8). ... It is positive that these two party leaders have taken the police issue and the future of the country seriously and decided to work towards a solution. ... The document however leaves some key questions unresolved’ (OHR, 2007r).

### **3. Police Restructuring as a Ground for Ethnic Gains: the Picture from Sarajevo and Banja Luka**

The prolonged stalemate described above suggests that attempts from the EU headquarters to maintain a focus on the technical aspects of police reform were overwhelmed by domestic political tensions and the difficulties the HR/EUSR encountered attempting to manage the conditionality on the ground. A diplomat from an EU Member State who at that time served in the competent working group at the EU Council said, ‘through the police reform, we were dragged down into politics. We wanted this process to be something technical that could hold a political point. But BiH politicians reminded us that it was all about politics’ (Note 9). In other words, the technical ‘maquillage’ over police reform survived until 2006. After the October general elections that year, the Bosniak leader Haris Silajdžić tried to gain control of the process and used it to question the existence of RS, thus causing

resistance in Banja Luka to the reform package (Note 10). When this happened, HR/EUSR diplomatic efforts in BiH stressed the idea that police reform was a necessary ‘technical’ step for the adoption of European standards and principles. As clarified by the OHR/EUSR, Bosnian politicians were expected to agree on a reform based on three ‘European’ principles: place exclusive competence for police legislation and budget at the State level; recast regional police areas on the basis of functional police criteria; help protect the police from improper political interference (OHR, 2005b). The introduction of these apparently technical principles, which in essence encompassed strategic objectives, exposed the conditionality managed by the HR/EUSR to the tensions of the latent domestic sovereignty struggle.

### *3.1 Conflicting Ethnic Aspirations over the Reconfiguration of the Bosnian State*

When the EU nominated Miroslav Lajčák in 2007 as the new HR/EUSR, reform priorities dramatically switched compared with the tenure of his predecessor Christian Schwarz-Schilling, who took over as HR/EUSR for Ashdown in 2006: broad constitutional issues were taken out of the negotiation table so that emphasis could again be focused, almost exclusively, to police restructuring as key pre-SAA conditionality. Facing the breakdown of the talks on police reform, Schwarz-Schilling engaged in negotiations for the definition of a constitutional reform framework (Venneri, 2010: 167-71). The lack of support from the EU headquarter induced Schwarz-Schilling to abandon the project and resign from his post. Nevertheless, a few days prior to his departure from Sarajevo, he emphasised the importance of constitutional reform as the basis for reconciliation. Schwarz-Schilling’s pre-departure admonition, published by three newspapers (*Dnevni Avaz*, *Nezavisne Novine*, and *Vecernji List*), emphasised, ‘now that the peace implementation process and with it the institution of the High Representative are gradually coming to an end—and Euro-Atlantic integration is the key task—it is time to reform the constitution and develop a stable, self-sustaining and efficient state structure’ (OHR, 2007s).

In spite of this warning, HR/EUSR Lajčák went to BiH with an unwritten mandate by the EU to break the police reform deadlock. This policy change paved the way for one of the most severe crises experienced in post-Dayton BiH. The crisis was facilitated by the structural rifts affecting the BiH socio-political scenario. To some extent, in BiH there is no social contract between the different political communities at war in the early 1990s. Currently, BiH is not a single political entity, but a state divided into three political ethno-religious groups that are suspicious of each other in the ongoing sovereignty struggle. A pre-requisite for the construction of the state is sufficient cohesion at the socio-political level. Currently, BiH resembles a mere assemblage of ethnic groups amongst which there is no substantial and shared commitment to the state, but rather a state of a permanent confrontation. As Roberto Belloni (2007: 1) stated, the Bosnian peace process, since its inception, has mostly resulted in an ‘attenuation of historical ethnic and national rivalries’ rather than grassroots reconciliation of a complex multi-ethnic polity.

This approach to statebuilding is generally justified amongst EU policy-makers by the argument that technocracy can be slow to induce political developments, it should nevertheless be prioritised because it preserves local ownership of changes (Note 11). By favoring functionalism and gradualism, the EU has thus focused predominantly on conditionalities that—even when they clearly encompass complex political changes for the target state—are presented in a technical form. An example of this can be found in the set of priorities assembled by the Commission (2005) and then adopted by the EU Council as the main terms of the official ‘European Partnership’ between Brussels and Sarajevo (European Council, 2006) (Note 12).

In the opinion of EU policy makers, technical conditions could be used to unblock crucial political and institutional deadlocks that appeared to prevent BiH from developing into a more efficient state structure. The emphasis on technical developments can be justified per se, and supported, at least until conditionality is not packaged with the idea to support mostly ideological views and purely political outcomes. However, in spite of the externally-facilitated institutional restructuring and the EU perspective, there has been no agreement amongst BiH elites on how to move beyond Dayton. Similar to the immediate aftermath of the peace settlement in 1995, the main institutional lines set out in the Dayton Agreement represent a ‘ceiling’ for the Serbs, a ‘starting ground’ for more drastic centralization for the Bosniaks, and something in between for the Croats.

Given these three conflicting understandings on the general configuration of the state and the main institutional architecture established at Dayton, BiH elites approach cooperation by relying mostly on the logic of relative gains. Institutional adjustments that bring potential benefits receive almost no cross-ethnic support when they are perceived as steps that push the central state towards the ideal configuration sponsored by one ethno-religious group or another. Interethnic cooperation has remained sporadic even after the 2006 and 2010 renewals of the Parliament. Despite the 2006 defeat of nationalist parties, the new supposedly moderate parties that emerged have

thus far confirmed—in their strategies, interactions, and *modus operandi*—that confrontation based on ethnicity remains the crucial feature of BiH politics.

Reporting to the Foreign Affairs Committee of the European Parliament in November 2007, HR/EUSR Lajčák proposed an analysis that summed up the elements on the domestic sovereignty struggle between Bosniaks, Serbs and Croats on the organization of Bosnian central institutions:

There are three different concepts of the organisation and functioning of the country and two out of the three are in clear opposition to each other. Serbs' loyalty to the state is conditional upon the others' acceptance of the RS as a legitimate and permanent part of the constitutional architecture. Croats remain fundamentally dissatisfied with a two-entity setup that they feel consigns them to the status of a minority in all but a few Federation cantons. Meanwhile, most Bosniaks want a constitutional order that will do away with the entities and provide for an effective central government, even if it also devolves many powers to multinational regions. ... In theory, these separate stances should be possible to reconcile. In practice, each of the political leadership is still not looking for the lowest common denominator to find a mutually acceptable solution, but clearly wants to impose its own vision of the country. The legacy of war and the logic of nationally based and zero-sum politics make any significant compromise profoundly difficult if not entirely impossible (OHR 2007t).

### *3.2 A Matter of Sovereignty and Survival: RS Opposition to Police Reform*

In 2007, the then Prime Minister (Note 13) of RS Milorad Dodik strenuously defended the autonomy of RS Entity police as one of the last pillars of his entity's 'sovereignty' against the suspected Bosniak strategy to create, allegedly, a centralized and Muslim dominated BiH. Interestingly, from an RS perspective, Dodik's opposition to police reform was, 'anti-economic'. The norms that define the partition of budgetary obligations between RS and the FBiH for responsibilities attributed to the state level leave no ground for doubt: the centralization of an issue implies that two thirds of the related budget is provided by the FBiH and one third by RS. Article VIII of the state constitution states that for issues dealt with at state level, 'the Federation shall provide two-thirds, and the Republika Srpska one-third, of the revenues required by the budget, except insofar as revenues are raised as specified by the Parliamentary Assembly' (Note 14).

On this basis, the first principle set by the EU as a key term of reference for police reform (police legislation and budget must be placed at state level) should have offered Dodik an economic incentive to accept a scheme for reform as a way to contain a possible source of social instability. At the time, the salaries of RS police officers were far lower than the average salaries in FBiH, and less again than those paid to officers in the Brčko District. However, the RS Prime Minister preferred to minimize considerations exclusively focused on economic convenience. This choice was financially sustainable for Dodik since in the course of his 18 months in office he achieved two important privatization plans, one in the oil market and one in the telecommunication sector. Six months after the 2006 general elections, the RS Entity government issued two international tenders: the first to sell 65% of Telekom Srpske and a second to privatize a state-owned oil refinery in Brod. With these actions, the RS Prime Minister managed to channel an incredible amount of Russian petrol-dollars into the RS entity budget.

Taking economic considerations out of the mix, police reform became for Dodik and the RS government a setting of purely political confrontation. To a certain extent, the repeated crises indicate that police reform became a battlefield between supporters of two interpretations of BiH's original sovereignty trajectory. Dodik presented himself as the beacon of what can be referred to as a 'confederal' interpretation of the Dayton agreement and the creation of a multi-ethnic state built on the two separate Entities (Note 15). According to such a view, the creation of a unified post-war BiH in 1995 was possible thanks to the compromise between the representatives of the Entities, who 'permitted' the emergence of a multi-ethnic state by transferring some powers to the central government level. From this perspective, the original sovereignty trajectory could thus be idealised as a bottom-up release of powers, based on the consent of the two Entities.

But Croats oppose this understanding and, more strongly, Bosniaks also reject it, as do most international observers who are concerned about Serb nationalist rhetoric and therefore seek to contain the institutional drifts that could stem from the Serb interpretation of the BiH state level. Bosniaks, in particular, support the idea that a centralization of powers has taken place with the state assuming responsibilities and jurisdiction over key functions, roles, agencies and departments. The central state, via a top-down exercise of power, can deliberately place functions and responsibilities under its direct control. The legitimacy of any centralization move would

hence depend on the capacity of the central government to concentrate governance, with a view to enhancing efficiency and reducing asymmetries between the Entities. But the *leit motiv* in Banja Luka has been that, whenever the centralization of an area of governance takes place, this is not due to an arbitrary assumption of responsibilities by the state, but rather as an implicit concession from the two Entities to the central government.

### 3.3 A Matter of Law Enforcement Capacity: HR/EUSR's Public Diplomacy

After the arrival of HR/EUSR Lajčák in June 2007, the OHR intensified a publicity campaign, already in progress in 2005, aiming to dispel all the political myths around police reform. In particular, one of the core messages was that 'police re-structuring is only about establishing a professional police service and will not abolish the Entities' (OHR, 2007a). In the same text, the OHR tried to dispel another so-called myth: 'there are no EU requirements for police reform'. The OHR stated, 'the EU has said clearly that BiH must adopt police restructuring if it is to move forward towards the EU. The three key principles must be adhered to and the Police Restructuring Commission report is one way to do this' (OHR, 2007a).

The OHR made this point in response to comments by Milorad Dodik. The RS leader questioned the rhetoric on the three 'European' principles that should guide reform. On several occasions, Ashdown, and then Lajčák argued that these principles would align the BiH police with consolidated European standards and 'customs'. Dodik questioned this argument in the pages of the *International Herald Tribune*:

There is no single European model for the reforms that Bosnia and Herzegovina must implement to move toward this European future. Instead, the European Union is resplendent in its diversity in models of governance. There is significant variety with the European Union in taxation, court systems, and law enforcement, among others. Yet this potpourri of technique is not an indicator of disunity; it merely evidences the imperative of local representation and the diversity thus reflected in authentic democracy (Dodik, 2007a).

Dodik repeatedly reiterated this criticism of the arbitrary nature of the three principles. For example, in a long interview with Senad Pećanin—editor of the local *BH Dani* magazine—the RS Prime Minister discussed his belief in the lack of technical rationale for the reform:

If you would want to seriously and analytically examine all that today represents a problem in BiH, you would see that behind these problems there are decisions by some internationals, which years after, as we see, turn out to be totally ill-intentioned for BiH itself. First, the police reform that was made in the way as described by Paddy Ashdown in his book, I hope that you've read it, believe me, I did. And I saw in which way serious things were created (Dodik, as quoted in Pećanin 2007: 9).

In this statement, Dodik referred comments made by Ashdown in his diary on his experience as HR/EUSR. The British politician said that the need to propose a centralizing strategy for the police represented his personal conviction, which was 'as always' blessed by EU Commissioner Chris Patten over a quick morning phone-call (Ashdown, 2007: 249).

Facing repeated accusations that the EU had launched an arbitrary process, the HR/EUSR developed a new communication strategy. Lajčák said that the absence of a European common model of policing should not prevent the EU from proposing basic principles that should be respected. Lajčák message to Bosnian Serb politicians can be summarised with the ideas that follow: it was not important whether these principles reflected the average situation in Europe; what mattered was that the EU has identified them as being appropriate for BiH (OHR, 2007p). At the same time, the HR/EUSR repeated the statement, 'no police reform = no SAA' (Supova, 2007), which Brussels supported. Backed by Commissioner Olli Rehn, the HR/EUSR sent a clear message to domestic elites. Less than two months after he moved to his Sarajevo offices, Lajčák announced: 'the European Union is following the police reform negotiations very closely, and their outcome will be a clear indication of the political maturity of the country's leaders and their readiness to lead Bosnia and Herzegovina towards the European Union' (OHR, 2007i).

In spite of this double-track communication strategy, during Summer 2007 the police reform controversy was strengthened by two manoeuvres, one from Silajdžić one from Dodik. The former—leader of SBiH, who could count also on important support from the head of SDA Sulejman Tihić—opposed the new framework concepts for reform, which were amongst Lajčák's first official acts. Lajčák countered: 'I am deeply disappointed. ... By

rejecting the draft proposal on police reform before all the major political leaders have even received it, [Silajdžić and Tihčić] have demonstrated a disdain for their colleagues and the political process” (OHR 2007o).

Possibly, relations with Banja Luka, the RS Entity’s seat and the second largest city in BiH, were more tense. Speaking on the *Radio Televizija Republike Srpske*, Dodik opposed *a priori* any institutional development, claiming that change was mostly being promoted by Bosniak interests to challenge the integrity and existence of RS. Lajčák replied: ‘[Dodik’s] statements questioning the sovereignty and territorial integrity of BiH are *detrimental* to the country’s ongoing efforts to continue reforms and integrate into Euro-Atlantic institutions’ (OHR 2007d). These declarations opened a period of tough confrontation. At the end of Summer 2007 Lajčák imposed a one-month deadline for police reform; however, once the deadline had passed the HR/EUSR could only take note of the lack of agreement (OHR, 2007q). The HR/EUSR thus found himself in the middle of an unprecedented crossfire between Bosniaks and Serbs, while new fears grew amongst the Bosnian population. We are back to 1992(!)—was a frequent refrain heard in Sarajevo from average Bosnian citizens when asked to comment on the domestic political situation during 2007 (Note 16).

Despite the controversy, Lajčák enjoyed certain support from key EU Member States, contrary to the experience of his German predecessor on constitutional reform, and he could thus keep the promise made to the Bosnian people in his inaugural TV address. On that occasion, Lajčák stated: ‘we will not tolerate any activities or statements that push BiH back into the atmosphere of tension and hatred’ (OHR, 2007g). Amongst other protagonists at EU level, Javier Solana, witnessing the recalcitrant attitude of Bosnian politicians towards negotiations, blamed them for ‘gambling with the future of their own country’ (Associated Press, 2007). With that support, Lajčák raised the level of confrontation and in October 2007 adopted *manu sua* a reform of the voting procedure of the Council of Ministers (CoM). This use of the Bonn Powers was resolutely contested by **Nikola Špirić**, a Bosnian Serb politician, who resigned from his post as Prime Minister on the state level government (BBC News, 2007). The HR/EUSR called Špirić’s resignation as an irresponsible act and argued: ‘It is paradoxical that the Chairman of the Council of Ministers should resign over measures that are designed to make the Council of Ministers, the body that he chairs, ... the country needs functioning institutions for the reform processes to be re-launched’ (OHR, 2007e). Speaking before the UN Security Council in New York, Lajčák reiterated the need for CoM reform and said political stalemate in BiH inevitably required ‘robust and creative’ initiatives (OHR, 2007n).

Analyzing the press statement for the reformed CoM voting procedures offers a key passage in understanding the extent of Lajčák’s dispute with domestic politicians:

We cannot consider our mission complete until changes are made in the direction of establishing a stable, European, democratic, multiethnic society in Bosnia and Herzegovina. There are several ways how this objective can be achieved. The most favourable of them is to achieve this goal through European integration. This is a road that ... has no alternative for a European country such as Bosnia and Herzegovina ... This is why I have put in so much effort to lift the blockage on the European integration process for this country, a process which resolves current problems and leads to the future at the same time. But, as you know, this is a process for which only domestic politicians take responsibility voluntarily.

Apart from Špirić’s resignation, the move encountered firm opposition from Banja Luka. One of Dodik’s advisers claimed that Lajčák’s decision was a source of tension, rather than the origin of solutions and efficiency:

The current political crisis has been triggered because the Decision imposed by the High Representative, Miroslav Lajčák, creates the possibility that one constituent people can be outvoted within the decision-making institutions of BiH. This is not an artificial crisis that the RS government has purposefully created, but justified concerns for the safety and future for all the peoples of BiH. Agreements in multi-ethnic and decentralised countries should and must be made by consensus between the different ethnicities (Milosevic, 2007).

Dodik sent a letter of complaint to the European Parliament. In this communication he accused Lajčák of having ‘directly shaken the foundations of the Dayton Peace Agreement’ and of being the one to blame for the negative political climate affecting BiH (Dodik, 2007b: 68). A few weeks later, the HR/EUSR issued an ‘Authentic Interpretation’ of the changes made to the CoM working and voting procedure. He also published a list of strategic arguments in support of the imposed reform. This choice respected a tradition to communicate by issuing Decalogues and explanatory notes over the Internet as well as in the local press (OHR, 2007v).

In parallel with the CoM voting mechanisms reforms, Lajčák made two other procedural improvements: a series of amendments to the rules of procedure of the House of Representatives and to the House of Peoples of the Parliamentary Assembly. These two packages were accepted within a relatively short time frame by BiH Parliamentarians. Lajčák welcomed this development, saying ‘agreement opens the door for the BiH institutions to return to the European agenda and formally adopt the Action Plan for Police Reform. This would bring Bosnia and Herzegovina back to European integration process’ (OHR, 2007l).

### 3.4 *The Mostar Agreement and the Sarajevo Action Plan for Reform*

When the impasse seemed unbreakable (also due to the tensions over the CoM imposed reform) a ceasefire occurred when the SAA was initialled in December 2007. The EU granted technical approval of the agreement on the basis of a general compromise signed by the main Bosnian party leaders in Mostar (OHR, 2007f) and the related ‘Action plan’ for reform adopted later in Sarajevo (OHR, 2007b). Meeting the Slovenian Foreign Minister Dimitrij Rupel—who was then about to assume the Presidency of the EU Council of Ministers—Lajčák emphasised that the initialling of the SAA reflected a ‘good atmosphere of compromise [which] needs to be used to bring the country closer to the European Union. The EU’s support for the European integration of Bosnia and Herzegovina will only yield results if it is not abstract. Last week’s initialling of the SAA showed that the EU is prepared to reward progress’ (OHR, 2007m). However, in the attempt to keep pressure on local elites, the HR/EUSR said the crucial assessment would be made on the actual reform that political leaders transformed into laws. While commending the work that resulted into the Mostar agreement—which he recognised as a good basis for police reform—Lajčák said that the deal needed to be ‘followed-up by concrete steps, primarily the drafting of laws [since] EU requirements will not go away, and party leaders must finally meet their commitments and deliver results’ (OHR, 2007j).

In spite of the scepticism expressed by some EU Member States and the vague character of the promises made in Mostar and Sarajevo, the HR/EUSR said: ‘the political debate in Bosnia and Herzegovina is entering a new phase. Politicians have shown leadership and a willingness to reach compromise for the benefit of all citizens. This is commendable and I am confident that the European Union will value this new political dynamic’ (OHR 2007k). On December 11, the leaders of the six main BiH political parties gathered in Laktasi and ‘re-installed’ Špirić as chair of the state-level CoM. On that same occasion they committed to following up, at least in their statement, the action plan for police reform with concrete legislative measures (OHR, 2007c).

Interviewed on 5 December 2007 by the Bosnian newspaper *Dnevni Avaz* on the possible future steps that BiH had to make, Olli Rehn confirmed: ‘first *the police reform must be implemented and a functionality of state institutions should be restored. After that, there is the reform of BiH Constitution. That is a crucial question and its solution represents an obligation of people and leaders in BiH*’ (Rehn, 2007). *This position indicates ambiguity in the EU approach. By approving moving forward with the SAA signature on the basis of the Mostar compromise and the subsequent Sarajevo working plan, the EU accepted an unusual working schedule. While the Sarajevo plan foresaw the imminent creation of a series of new state-level institutions and recognised that ‘relevant issues of relationship between these and local police bodies shall be regulated through a new and single police structure of BiH, on the basis of the three principles of the European Commission’, it nevertheless proposed that these substantial changes would only ‘be established pursuant to the provisions of the Constitution of BiH to be elaborated in a constitutional reform process’* (OHR, 2007b). In other words, the issue of implementation was left out; at the same time, by linking further restructuring of the police to the reform of the constitution, BiH leaders postponed *sine die* finding a solution to the more critical demands of the EU conditionality.

Following the initialling of the SAA, party leaders gathered on 26 January 2008 in Sikori Brijeg to agree on the next steps. At the same time, the EU began to intensify pressure at the local level. For example, a letter from the EU Commissioner for Justice, Freedom and Security addressed to the state level Minister of Security highlighted the connection between progress on police reform and EU visa liberalization for Bosnian citizens (European Commission, 2008b).

### 3.5 *The Police Reform Laws Adopted in April 2008*

In spite of the renewed pressure, the so-called ‘fresh political dynamism’ had a short lifespan. On 16 April 2008, the BiH Parliament adopted two technical laws on policing: a ‘Law on Directorate for Coordination of Police Bodies and on Agencies for Support to Police Structure of Bosnia and Herzegovina’ and a ‘Law on Independent and Supervisory Bodies of Police Structure of Bosnia And Herzegovina’ (Note 17). At the same time though, discussions on the police structure were suspended until an agreement on the constitution could be reached. The small technical steps adopted on paper, despite all uncertainty related to their implementation, were welcomed by EU member states.

The international press welcomed the development far more cautiously and, in some cases, highlighted how distant the reform laws were from the goals previously set by the EU. An editorial in the online publication *EUbusiness* clarified that the laws were, in both quantitative and qualitative terms, far from the conditionality that the EU had maintained for the previous four years: '[the police] reform laws ... barely touch the tip of a massive iceberg of changes needed to streamline the way the police service is run, and indeed add new layers of agencies to an already complex system' (AFP, 2008). The same commentary also emphasised that 'the reforms also help entrench the divide between communities that the EU has carefully tried to avoid' (AFP, 2008).

Undoubtedly, it was not entirely fair to condemn a reform before it begun to be implemented and its effect could be tested in more concrete terms. What matters, however, is the clear distance that separated the strategic goals set by the EU with its conditionality and the limited changes agreed on by the main BiH political parties that were slowly enacted. Moreover, the Commission itself eventually acknowledged all the shortcomings of the adopted reforms. In the Progress Report 2008, the Commission stated, 'cooperation and information exchange between law enforcement agencies remain weak' (European Commission, 2008a: 56). Moreover, the Progress Report noted, 'these laws provide for establishment of seven new agencies at State level. Given that no agreement was reached on a transfer of policing powers, the new bodies have no coordination role vis-à-vis the Entities, cantonal and Brčko District police forces' (European Commission, 2008a: 56-57).

Accepting what might be referred to as 'an agreement on procrastination' amongst the leaders involved, EU approval for signing the SAA was nevertheless granted in June 2008. An OHR/EUSR official commented metaphorically: 'Our conditionality bar was three meters high, they made a jump of less than one meter and we took it for good' (Note 18). Why did the EU give up on a conditionality that had been so strenuously promoted? Turning a blind eye was the only way for the EU to literally drop a conditionality that had been badly conceptualized and ended up being stretched by international stakeholders operating on the field. As Muehlmann (2007: 41) emphasised, 'only when the international community backed away from their original requests did they manage to get a *face-saving, but not viable*, solution'. Moreover, the choice was also motivated by a need to defend the emphasis the EU attached to the Stabilisation and Association Process (SAP). The prolonged difficulties of BiH regarding the pre-conditions had become 'embarrassing' for the EU. The stalemate suggested that the technical anchorage of the country via the SAP was not eliciting cooperation. As one observer pointed out, the EU was trapped in an uncomfortable situation: '[t]he collapse of the SAA process would reflect a failure of the key principle that has guided international policy in the region over the past years – the notion that the prospect of EU integration will be sufficient to put aspirant countries on a reform course' (Vogel, 2007).

#### 4. Conclusions: 'Conquered' vs. 'Octroyée' Ownership

The political showdown on police reform in BiH demonstrates that the EU allowed domestic politicians to perform a conquest of the reform agenda. In other words, the failure of conditionality, and particularly its mismanagement on the ground, induced external actors to withdraw from the main stage of confrontation and to favour the predominance of domestic actors in setting up the reform agenda. According to Christophe Solioz, the patterns of other internationally-sponsored reforms that were previously undertaken specifically in BiH also confirm that the eventual failure of conditionality paved the way for a greater focus on ownership as an alternative methodological and policy option. Building on this argument, Solioz cites the example of the state-level Central Bank of Bosnia and Herzegovina (CBB&H) as another case in which 'conditionality led to ownership, but more generally it was the failure of "conditionality" that introduced "ownership" as an alternative approach' (Solioz, 2007: 35-36).

Similarly, police reform represents an area where the failure of conditionality led to the acceptance of a more flexible and domestically-owned reform agenda. Specifically, the mismanagement of conditionality—in its conceptual, but especially in the enforcement phases on the ground—placed external agents in an uncomfortable position. The EU could have promoted at an earlier stage different items on the reform agenda, thus indirectly admitting the need to correct a mistake in the strategic approach, or could have publicly removed the link between police reform and the SAA agreement. The latter option would have openly discredited the management by the various HR/EUSRs. However, a reluctance to give up its 'no mistake policy' by the responsible field offices, conditioned the overall EU approach and, despite unfeasibility, the original conditionality links were maintained until the project became increasingly untenable and discussions completely unproductive. Only then were external policy-makers serving in BiH forced to give up conditionality and accept a domestically-owned reform agenda, which was rewarded in spite of its weaknesses and clear unfeasibility. Ownership was thus portrayed as an achievement, despite the fact that the eventual reform was not fully satisfactory.

The story of policy reform in BiH also highlights the difficult relations between EU Headquarters and field presence, particularly the OHR/EUSR, which has often suffered the double-chain of command related to the

double-hatted configuration of its offices (Note 19). The need for success-stories encourages external state-builders present on the ground to favour relationships with a selected group of bureaucrats, which allows them to avoid confrontation with a turbulent political class. This 'more comfortable' way of interacting can be traced back to some very basic principles that are a feature of international missions pursuing highly-intrusive field activities. The recent history of the Western Balkans (and that of BiH in particular) shows that once a crisis is under control and reconstruction has been launched, the prolonged involvement of the international community, also with the maintenance of executive powers, is typically justified by the occurrence of small crises and, equally important, periodic and partial successes. Crises allow a mission to be kept in place and legitimised in the eyes of the host country population; success stories make the field efforts justifiable to taxpayers in contributing countries. Moreover, the sustainability of an international mission is based on its capacity to perpetuate the above mentioned 'no mistake policy'.

What could be referred to as 'conquered ownership' must be distinguished from 'octroyée ownership' (Note 20). The latter occurs when international agencies define the main terms of the reform agenda and *genuinely* allow domestic elites, from the very beginning of the process, to negotiate internally and decide in their own way how to implement it. Instead, the ownership of the reform agenda is 'conquered' when international actors fail to steer a reform process towards their pre-defined strategic objectives and national elites, exploiting the mismanagement of conditionality, raise internal confrontation to a critical point. When the political conflict reaches its apex and domestic instability is of increasing concern, internationals begin to fear that a break-up is possible and that responsibility for the crisis must be publicly shared with the recalcitrant domestic politicians. At this point, external policy-makers are bound to consider two alternative options: either they can admit to having supported the conditionality that caused the collapse of the national dialogue on reform, and negotiate openly a correction of strategy; or, alternatively, they can accept the lack of progress and favour a silent transfer of responsibilities to domestic elites, who in turn are expected to act as if they are taking on ownership of the reform process with a renewed spirit of cooperation. Needless to say, it is convenient for both sides that this change does not take place in the form of a clear top-down concession, but rather appears as a bottom-up affirmation of domestic ownership over the reform agenda. Credit for responsible action can be then shared by domestic actors, for their supposedly resumed conscientiousness, as well as by international actors, for passing the baton. Once this ideal 'handover of convenience' takes place, international policy-makers can drop the specific conditionality without compromising the credibility of the wider reform project and broader policies towards the country, while the international state-building agency that has managed the conditionality on the ground preserves its own integrity.

Witnessing the failure of its long promoted conditionality, the EU saw a way out in the emergence of full domestic ownership of the reform agenda. Stepping back and disowning a mantra that it had repeated for over three years (no police reform equals no more progress of the SAP) allowed domestic politicians to set the reform agenda. The discrete abandonment of conditionality allowed the EU to avoid an open and more problematic correction of policy. The subtle manoeuvre helped particularly the OHR/EUSR to defend its 'no mistake policy' on the ground.

## References

- AFP. (2008). Bosnia's Limited Police Reform Enough to Open EU Door: officials. *EUBusiness*, May 6. Retrieved September 30, 2009, from <http://www.eubusiness.com/news-eu/1210084339.65/>
- Ashdown, P. (2007). *Swords and Ploughshares. Bringing Peace to the 21st Century*. London: Weidenfeld & Nicolson.
- Associated Press. (2007). BiH Politicians Urged to End Impasse over Police Reform. *Southeast European Times*. September 27. Retrieved September 30, 2009, from [http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/features/2007/09/27/feature-01](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2007/09/27/feature-01)
- BBC News. (2007). *Bosnian PM resigns over reforms November 1*. Retrieved September 30, 2009, from <http://news.bbc.co.uk/2/hi/europe/7072908.stm>
- Belloni, R. (2007). *State Building and International Intervention in Bosnia*. New York: Routledge.
- Dodik, M. (2007a.) Bosnia, reform and the EU, *International Herald Tribune*. September 18.
- Dodik, M. (2007b). Letter to the EU Parliament from Milorad Dodik, Prime Minister of Republika Srpska. *Journal of Intervention and Statebuilding*, 1(Special Supplement), 68-69.
- Eralp, U. D. (2007). The Police Reform in BiH: the Way to Move Forward into the EU. Paper prepared for the 9th Annual Kokkalis Graduate Student Workshop, J. F. Kennedy School of Government at Harvard University (Cambridge, MA - USA).

- EU. (2011a). Council Conclusions on Bosnia and Herzegovina, Brussels, March 21. Retrieved September 15, 2011, from [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/missionPress/files/BosnieHEN210311.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/missionPress/files/BosnieHEN210311.pdf)
- EU. (2011b). Council Decision 2011/173/CFSP Concerning Restrictive Measures in View of the Situation in Bosnia and Herzegovina, Brussels, March 21. Retrieved September 15, 2011, from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:076:0068:0071:EN:PDF>
- EU. (2011c). Council Decision 2011/426/CFSP on Appointing the European Union Special Representative in Bosnia and Herzegovina, Brussels, July 18. Retrieved September 15, 2011, from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:188:0030:0033:en:PDF>
- EU. (2011d). Declaration by the High Representative on Behalf of the European Union on the Alignment of Certain Third Countries with the Council Decision 2011/173/CFSP Concerning Restrictive Measures in View of the Situation in Bosnia and Herzegovina, Brussels, March 31. Retrieved September 15, 2011, from [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/cfsp/121089.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/cfsp/121089.pdf)
- EU. (2011e). Peter Sørensen to be new Head of EU Delegation in Bosnia and Herzegovina, Brussels, May 30. Retrieved September 15, 2011, from [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/122312.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/122312.pdf)
- European Commission. (2003). *Report from the Commission to the Council on the Preparedness of Bosnia and Herzegovina to Negotiate a Stabilisation and Association Agreement with the European Union*. Brussels COM(2003) 692 final. Retrieved September 30, 2011, from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0692:FIN:EN:PDF>
- European Commission. (2004). Letter from the EU Commissioner for External Relations Mr. Christopher Patten to Mr. Adnan Terzic, Chairman of the Council of Ministers, Brussels, November 16. Retrieved September 30, 2011, from <http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-letters/pdf/patten-letter.pdf>
- European Commission. (2005). Proposal for a Council decision on the Principles, Priorities and Conditions Contained in the European Partnership with Bosnia and Herzegovina. Presented by the European Commission, Brussels: COM (2005) 555, November 9. Retrieved September 30, 2011, from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0555:FIN:EN:PDF>
- European Commission. (2008a). *Bosnia and Herzegovina 2008 Progress Report. Accompanying the Communication from the Commission to the Parliament and the Council on Enlargement Strategy and Main Challenges 2008-2009*. Brussels: SEC(2008) 2693 final. Retrieved September 30, 2011, from [http://ec.europa.eu/enlargement/pdf/press\\_corner/key\\_documents/reports\\_nov\\_2008/bosnia\\_herzegovina\\_progress\\_report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key_documents/reports_nov_2008/bosnia_herzegovina_progress_report_en.pdf)
- European Commission. (2008b). Letter from the EU Commissioner for Justice, Freedom and Security Mr. Franco Frattini to Mr. Tarik Sadović, Minister of Security of Bosnia and Herzegovina, Brussels, March 12 [Unpublished].
- European Council. (2006). *Council Decision of 30 January 2006 on the Principles, Priorities and Conditions Contained in the European Partnership with Bosnia and Herzegovina and repealing Decision 2004/515/EC*. Brussels: 2006/55/EC. Retrieved September 30, 2011, from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:035:0019:0031:EN:PDF>
- ICG. (2005). *Bosnia's Stalled Police Reform: No Progress, No EU*. Sarajevo, Brussels: ICG - Europe Report N 164. Retrieved September 30, 2011, from <http://www.crisisgroup.org/home/index.cfm?id=3645>
- Merlingen, M., & Ostrauskaite, R. (2005a). ESDP Police Missions: Meaning, Context and Operational Challenges. *European Foreign Affairs Review*, 10(2), 215-235.
- Merlingen, M., & Ostrauskaite, R. (2005b). Power/Knowledge in International Peacebuilding: The Case of the EU Police Mission in Bosnia. *Alternatives: Global, Local, Political*, 30(3), 297-323.
- Milosevic, G. (2007). A Response to The Balkan Line: "Bosnia's Status Quo Finale" from the Republika Srpska, *New Europe*, November 24. Retrieved September 30, 2011, from <http://www.neurope.eu/articles/80217.php>
- Moore, P. (2005). Bosnia-Herzegovina: Finally On The Path To The EU?, *RFE/RL*, October 6. Retrieved December 15, 2009, from <http://www.rferl.org/content/article/1061931.html>
- Muehlmann, T. (2007). Police Restructuring in Bosnia-Herzegovina: Problems of Internationally-Led Security Sector Reform. *Journal of Intervention and Statebuilding*, 1(Special Supplement), 37-64. Retrieved

- September 30, 2009, from <http://www.wmin.ac.uk/ssh/pdf/JISB%20BOS%205%20-%20Muehlmann%20Police%20Restructuring.pdf>
- Nowak, A. (2003). *L'Union en Action: la Mission de Police en Bosnie*. Paris: EU Institute for Security Studies - Occasional Paper N. 42. Available September 30, 2009, from: <http://www.iss-eu.org/occasion/occ42.pdf>
- OHR. (2002). Decision Removing Mr. Nikola Grabovac from his Position of Minister of Finance of the Federation of Bosnia and Herzegovina. Retrieved September 30, 2009, from [http://www.ohr.int/decisions/removalsdec/default.asp?content\\_id=8974](http://www.ohr.int/decisions/removalsdec/default.asp?content_id=8974)
- OHR. (2004). Decision Establishing the Police Restructuring Commission, July 5. Retrieved September 30, 2009, from [http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-key-doc/default.asp?content\\_id=34149](http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-key-doc/default.asp?content_id=34149)
- OHR. (2005a). Agreement on Restructuring of Police Structures in BiH, October 5. Retrieved September 30, 2009, from [http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-key-doc/default.asp?content\\_id=36200](http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-key-doc/default.asp?content_id=36200)
- OHR. (2005b). *The EU Accession Process*. Retrieved September 30, 2009, from [http://www.ohr.int/dwnld/?content\\_id=34264](http://www.ohr.int/dwnld/?content_id=34264)
- OHR. (2007a). *5 Common Misconceptions about Police Restructuring*. Retrieved September 30, 2009, & March 10, 2009, from [http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/default.asp?content\\_id=34263](http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/default.asp?content_id=34263)
- OHR. (2007b). Action plan for the implementation of the Mostar Declaration with aim to fulfill commitments needed for initialing and signing the Stabilization and Association Agreement Sarajevo, November 22. Retrieved September 30, 2009, from <http://www.eusrbih.eu/policy-docs/?cid=2205,1,1>
- OHR. (2007c). Agreement of Six Political Party Leaders on Formation of the Council of Ministers of BiH and Implementation of the Action Plan on Police Reform in BiH, Laktasi, December 11 [Unpublished].
- OHR. (2007d). Attempts to Undermine Bosnia and Herzegovina Will Not Be Tolerated, August 22. Retrieved September 30, 2009, from [http://www.ohr.int/ohr-dept/preso/pressr/default.asp?content\\_id=40362](http://www.ohr.int/ohr-dept/preso/pressr/default.asp?content_id=40362)
- OHR. (2007e). CoM BiH To Function In Technical Mandate, November 1. Retrieved September 30, 2009, from [http://www.ohr.int/ohr-dept/preso/pressr/default.asp?content\\_id=40769](http://www.ohr.int/ohr-dept/preso/pressr/default.asp?content_id=40769)
- OHR. (2007f). Declaration on assuming the commitments for implementation of the police reform with aim to initial and sign the Stabilisation and Association Agreement, Mostar, 28 October. Retrieved September 30, 2009, from <http://www.eusrbih.eu/policy-docs/?cid=2109,1,1>
- OHR. (2007g). *High Representative's and EU Special Representative's TV Address to Citizens of BiH*. Retrieved September 30, 2009, from [http://www.ohr.int/ohr-dept/preso/presssp/default.asp?content\\_id=40108](http://www.ohr.int/ohr-dept/preso/presssp/default.asp?content_id=40108)
- OHR. (2007h). HR/EUSR Welcomes SDA's Commitment to a European Future, September 28. Retrieved September 30, 2009, from [http://www.ohr.int/ohr-dept/preso/pressr/default.asp?content\\_id=40587](http://www.ohr.int/ohr-dept/preso/pressr/default.asp?content_id=40587)
- OHR. (2007i). Lajčák and Rehn: "No Progress Towards EU Without Police Reform", August 10. Retrieved September 30, 2009, from [http://www.ohr.int/ohr-dept/preso/pressr/default.asp?content\\_id=40446](http://www.ohr.int/ohr-dept/preso/pressr/default.asp?content_id=40446)
- OHR. (2007j). Lajčák Expects Party Leaders to Make Progress on EU Agenda, November 21. Retrieved September 30, 2009, from [http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-pr/default.asp?content\\_id=40872](http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-pr/default.asp?content_id=40872)
- OHR. (2007k). Lajčák meets Rehn: Long-Awaited Agreement On Police Reform Adopted, December 3. Retrieved September 30, 2009, from [http://www.ohr.int/ohr-dept/preso/pressr/default.asp?content\\_id=40923](http://www.ohr.int/ohr-dept/preso/pressr/default.asp?content_id=40923)
- OHR. (2007l). Lajčák Welcomes Adoption of New Rules of Procedure for BiH Parliament, November 30. Retrieved September 30, 2009, from [http://www.ohr.int/ohr-dept/preso/pressr/default.asp?content\\_id=40920](http://www.ohr.int/ohr-dept/preso/pressr/default.asp?content_id=40920)
- OHR. (2007m). Lajčák: The EU is Prepared to Reward BiH's Progress, December 13. Retrieved September 30, 2009, from [http://www.ohr.int/ohr-dept/preso/pressr/default.asp?content\\_id=40998](http://www.ohr.int/ohr-dept/preso/pressr/default.asp?content_id=40998)
- OHR. (2007n). Lajčák: We Must Act Robustly And Creatively, November 16. Retrieved September 30, 2009, from [http://www.ohr.int/print/?content\\_id=40842](http://www.ohr.int/print/?content_id=40842)
- OHR. (2007o). Leaders Should Think About The Whole Of BiH, August 30. Retrieved September 30, 2009, from [http://www.ohr.int/ohr-dept/preso/pressr/default.asp?content\\_id=40403](http://www.ohr.int/ohr-dept/preso/pressr/default.asp?content_id=40403)
- OHR. (2007p). Police Restructuring The Greatest Immediate Priority, July 18. Retrieved September 30, 2009, from [http://www.ohr.int/ohr-dept/preso/pressr/default.asp?content\\_id=40215](http://www.ohr.int/ohr-dept/preso/pressr/default.asp?content_id=40215)

- OHR. (2007q). Press Conference by the High Representative and EU Special Representative Miroslav Lajčák, October 1. Retrieved January 10, 2009, & September 30, 2009, from [http://www.ohr.int/ohr-dept/preso/pressb/default.asp?content\\_id=40608](http://www.ohr.int/ohr-dept/preso/pressb/default.asp?content_id=40608)
- OHR. (2007r). Press Conference Statement by the High Representative Miroslav Lajčák, October 1. Retrieved September 30, 2009, from <http://www.ohr.int/ohr-dept/preso/pressb/archive.asp>
- OHR. (2007s). Schwarz-Schilling: Time to Re-launch Constitutional Reform, June 15. Retrieved September 30, 2009, from [http://www.ohr.int/ohr-dept/preso/presa/default.asp?content\\_id=39972](http://www.ohr.int/ohr-dept/preso/presa/default.asp?content_id=39972)
- OHR. (2007t). *Speech by High Representative and EU Special Representative Ambassador Miroslav Lajčák to the Foreign Affairs Committee of the European Parliament*. Retrieved September 30, 2009, from [http://www.ohr.int/ohr-dept/preso/presssp/default.asp?content\\_id=40890](http://www.ohr.int/ohr-dept/preso/presssp/default.asp?content_id=40890)
- OHR. (2007u). Statement: OHR/EUSR Comment on Silajdzic-Dodik Protocol, September 28. Retrieved September 30, 2009, from [http://www.ohr.int/ohr-dept/preso/pressr/default.asp?content\\_id=40593](http://www.ohr.int/ohr-dept/preso/pressr/default.asp?content_id=40593)
- OHR. (2007v). Ten facts on the High Representatives Decision Imposing Changes and Amendments to the Law on the Council of Ministers of Bosnia and Herzegovina, October 25. Retrieved September 30, 2009, from [http://www.ohr.int/ohr-dept/preso/pressb/default.asp?content\\_id=40720](http://www.ohr.int/ohr-dept/preso/pressb/default.asp?content_id=40720)
- Parish, M. T. (2007). The Demise of the Dayton Protectorate. *Journal of Intervention and Statebuilding*, 1(Special Supplement), 11-23. Retrieved September 30, 2009, from <http://www.wmin.ac.uk/ssh/pdf/JISB%20BOS%203%20-%20Parish.pdf>
- Pećanin, S. (2007). Silajdžić is not a Monster. Exclusive Interview with Milorad Dodik, Prime Minister of Republika Srpska, *BH Dani Magazine*, November 23.
- Penksa, S. E. (2006). *Policing Bosnia and Herzegovina 2003-05: Issues of Mandates and Management in ESDP Missions* Brussels: Centre for European Policy Studies, Working Document No. 255. Retrieved September 30, 2009, from [http://shop.ceps.be/downfree.php?item\\_id=1421](http://shop.ceps.be/downfree.php?item_id=1421)
- PRC. (2004). *Final Report on the Work of the Police Restructuring Commission of Bosnia and Herzegovina*. Sarajevo. Retrieved September 30, 2009, from <http://www.ohr.int/ohr-dept/preso/pressr/doc/final-prc-report-7feb05.pdf>
- Rehn, O. (2007). BiH Stands Firmly on the European Road. *Dnevni Avaz*, December 5.
- Reuters. (2007). BiH politicians strike last-minute deal on police reform. *Southeast European Times*. Retrieved from [http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/newsbriefs/setimes/newsbriefs/2007/09/30/nb-01](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/newsbriefs/setimes/newsbriefs/2007/09/30/nb-01)
- Soliz, C. (2007). Turning Points in Post-War Bosnia. *Ownership Process and European Integration* (2nd ed.). Baden-Baden: Nomos Verlagsgesellschaft.
- Supova, T. (2007). Lajčák: Without Police Reform, the Door to the EU will be Closed, *Lidove noviny*, September 27. Retrieved January 10, 2009, & September 30, 2009, from [http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-articles/default.asp?content\\_id=40560](http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-articles/default.asp?content_id=40560)
- Venneri, G. (2010). Beyond the Sovereignty Paradox: EU 'Hands-up' Statebuilding in Bosnia and Herzegovina. *Journal of Intervention and Statebuilding*, 4(2), 153-178.
- Vogel, T. K. (2007). Lowering the Bar for Bosnia? *European Voice*, September 30. Retrieved September 30, 2009, from <http://www.europeanvoice.com/article/imported/lowering-the-bar-for-bosnia-/58264.aspx>
- Wisler, D. (2007). The International Civilian Police Mission in Bosnia and Herzegovina: From Democratization to Nation-Building *Police Practice and Research*, 8(3), 253-268.

## Notes

Note 1. In addition to the state level and the two Entities, the constitutional arrangement agreed upon at Dayton in 1995 provided for an independent District of Brčko. This territory was attributed a special status and administration. Located at the most critical point of the Inter-Entity Boundary Line, was placed outside the jurisdictions of the two Entities.

Note 2. No mistake policy is an expression that is often used by practitioners to stress that their public diplomacy must do its best to present their activities as impeccable. In other words, no mistake policy can be defined as the

systematic denial of objective miscalculation, mistaken politico-diplomatic choices, and unproductive reform strategies by international statebuilding missions.

Note 3. Gathered in Bonn on December 1997, the members of the Peace Implementation Council (PIC) authorised the HR to adopt legislative measures when domestic parties seem unable or unwilling to act, as well as to remove public officials who violate or obstruct the Dayton implementation process.

Note 4. A complete list of the actions undertaken in this specific field by the HR/EUSR in 2004 is available at <http://www.ohr.int/decisions/war-crimes-decs/archive.asp?m=&yr=2004>

Note 5. Interview with the author, Sarajevo, 11 November 2007.

Note 6. Protokola o ispunjavanju uvjeta za reformu policije koji su potrebni za parafiranje i potpisivanje Sporazuma o stabilizaciji i pridruživanju / Draft Protocol on fulfilling the police reform requirements necessary for initialling and signing the Stabilization and Association Agreement as a basis for police reform in BiH.

Note 7. Interview with the author, Brussels, 3 October 2007.

Note 8. SBiH is the Party for Bosnia and Herzegovina (Stranka Za Bosnu i Hercegovinu) guided by the Bosniak leader Haris Silajdžić. SNSD or Alliance of Independent Social Democrats (Savez Nezavisnih Socijaldemokrata) is guided by the Bosnian Serb Prime Minister of RS Milorad Dodik.

Note 9. Interview with the author, Brussels, 21 September 2007.

Note 10. In a report by the US Embassy in Sarajevo, it is possible to find a confirmation of this assessment. The report summarizes the outcome of high level talks on police reform, emphasizing that despite some concessions made by Dodik and the readiness to accept them of one BiH political leader, Suleiman Tihic, Silajdžić maintained an intransigent position: "There was consensus among the international participants in the March 12 talks that Dodik had made a major concession, one that would have paved the way for a deal on police reform (albeit after some additional likely tough negotiating over the addendum to the PRD report), had Silajdzic and Tihic accepted it. For the first time since political talks began, Tihic presented positions at odds with those offered by Silajdzic, which suggests, unlike Silajdzic, he may have grasped the significance of Dodik's proposal." Cable available online at <http://wikileaks.org/cable/2007/03/07SARAJEVO595.html> [accessed 30 September 2011].

Note 11. Extensive interviews were carried out in the period 2005-2009 with participants and observers of the EU decision-making processes that concern BiH. Interviewees included permanent staff and seconded personnel at the Brussels offices of the Commission (particularly those serving at the Directorate General for Enlargement and that for External Relations, now transformed into the European External Action Service) and the EU Council (particularly at the Western Balkans Task Force); Members of the European Parliament (MEPs) with a competence on enlargement-related issues or with a role in the delegation for relations with the countries of South-East Europe; and officials employed at the various EU field offices in BiH. Specifically, this last category included: the Delegation of the European Commission in Sarajevo (now renamed EU Delegation to BiH, in accordance to the requirements of the Lisbon Treaty), EUPM, the Offices of the then 'double-hatted' HR/EUSR, and the European Force Mission Althea (EUFOR). Systematic interviews were also undertaken with diplomats from EU Member States employed at their respective national embassies in Sarajevo, as well as at the Permanent Missions to the EU in Brussels. Extensive contacts were established for the most part with those Brussels-based diplomats who served at that time in the COWEB, the geographic committee of the EU Council responsible for the Western Balkans issues. Interviews were 'semi-structured', thus combining both open- and closed-ended questions.

Note 12. The priorities identified in the European Partnership included: full cooperation with the ICTY; full implementation of the agreement on police restructuring of October 2005; adoption of all the necessary public broadcasting legislation at State and Entity level and beginning of its implementation; adoption and beginning of implementation of a comprehensive action plan for public administration reform.

Note 13. After the 2010 general elections Milorad Dodik was nominated President of RS.

Note 14. The full text of the constitution is available at [http://www.ccbh.ba/eng/p\\_stream.php?kat=518](http://www.ccbh.ba/eng/p_stream.php?kat=518)

Note 15. Dodik has consistently defended this position throughout his political career. Addressing the Republika Srpska National Assembly in April 2011, he confirmed a very strong position on the issue of transfer of competences: "the past practice of the parties participating in the agreement on transfers of competencies (BiH and entities) does not accord the right to BiH to be a party which the validity of entity agreements depends on" (Dodik 2011: 9). In the same speech, the now President of RS has claimed that centralisation has been the

outcome of a persistent practice by the international community and the OHR: “out of the total of 6 institutions of Bosnia and Herzegovina, the interventionist policy and acts of the High Representatives resulted in 87 institutions of BiH. This was the result of the transfer of competences from the level of Entities, by the practice of imposing, pressures and blackmails” (Dodik 2011: 8).

Note 16. Opinions and feelings of BiH citizens were gathered by the author through prolonged field presence during in 2007. Spreading fears for a new conflict were also extensively reported on the local media back then. Among others, the newspaper Dnevni Avaz on 20 November 2007 published a sarcastic cartoon depicting a couple of BiH citizens discussing the spreading rumour on a new possible conflict. On the lowest part of the drawing, a man reassures his wife by saying, ironically, that after all everybody was also repeatedly talking about war in 1992.

Note 17. The laws have been published on the “Official Gazette of Bosnia and Herzegovina”, 36/08.

Note 18. Interview with the author, Sarajevo, 12 June 2008.

Note 19. Since mid-2010, the EU made several efforts to streamline its policies towards BiH and guarantee reinforced coherence to its actions. The process of establishing a coherent EU “toolbox” was on the main negotiation tables in Brussels for several months. An agreement was finally reached by the EU Foreign Ministers in March 2011. In concrete terms, the streamlining process has been hinged on the decoupling of the EUSR from the OHR and the creation of a double-hatted Head of EU Delegation to BiH (HoD) and EUSR. The first to be nominated in this capacity has been Amb. Peter Sørensen (EU 2011e; 2011c). In the conclusions adopted on March 2011 by the EU Foreign Affairs Council it has been clarified that the new HoD/EUSR “will have a broad and balanced set of instruments to maximise the incentives provided by the EU” (EU 2011a). In particular these include: “continued political facilitation on issues related to the EU integration process, IPA financing and the monitoring and support of reform progress through bodies established by the SAA/IA” (EU 2011a). The Foreign Affairs Council also agreed that perspective of a EU reinforced presence would allow launching a broader reconfiguration of the international presence in BiH, “including consideration of the possible relocation of the OHR” (EU 2011a). The debate on the new EU toolbox also culminated into the adoption of a decision on restrictive measures (EU 2011d; 2011b).

Note 20. This French adjective is used by constitutional historians to refer to a custom in XVIII and early XIX century Europe, whereby self-professed enlightened kings conceded as a favour, in a top-down manner, constitutional schemes to the people they ruled.

### **Copyrights**

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/3.0/>).