

Police Restructuring in Bosnia-Herzegovina: Problems of Internationally-Led Security Sector Reform

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The police restructuring efforts in Bosnia and Herzegovina driven by the international community, using in particular the leverage of European integration, attempted to achieve a reform that would transform a very fragmented police system into a de-politicised single structure and ended in the signing of a rather weak political agreement. The main reason why the process proved to be so difficult was that police restructuring touched upon the fundamentals of a delicate ethno-political power-sharing model in a post-conflict situation. But also, the approach chosen by international community had serious deficiencies as the international community was far from speaking with one voice, thereby limiting its leverage.

Introduction

The rule of law is essential in post-conflict situations: without establishing a coherent system, where the different elements fit well together, a sustainable peace is put at risk. While focusing more on other elements in the early phases of the international intervention in Bosnia-Herzegovina (Bosnia hereafter), notably the organisation of elections, this became increasingly obvious over time. Consequently, when Lord Ashdown took office as High Representative/European Union Special Representative (EUSR) for Bosnia in 2002, he declared the reform of the security sector as a priority for his term. He focused on reform of the defence and intelligence sectors before embarking on the reform of policing.

Once the discussion on this topic was kickstarted in early 2004, police restructuring increasingly dominated the political life and public debate in Bosnia during 2004 and 2005. Undoubtedly the 10th anniversary of the Srebrenica massacre, the issue of the cooperation with the International Criminal Tribunal for Yugoslavia (ICTY), defence reform, and other topical issues and government crises were also highlights, but no issue hit the headlines more regularly and prominently

nor was more emblematic of where Bosnia stands currently in its political development. At the outset of the debate, Ashdown considered it in internal discussions as *the* critical issue of his term as High Representative – and was to be proved right.

The Bosnian political system, structured by the Dayton Agreement, was built on a complex, de-centralised, multi-layer and mainly ethno-political power-sharing model (GFA 1995). It balanced zones of influence of the main ethnic groups in the country - the Bosniaks, the Bosnian Serbs and the Bosnian Croats¹ - at the expense of a coherent state. It foresaw a weak state level, while most competencies were vested on the level of the two entities, the Republika Srpska and the Federation, the latter again sub-divided into ten cantons. While the Republika Srpska, a more centralized entity, created one unified police body that was regionally subdivided, the fragmented Federation entity created eleven different and independent police forces (ten cantonal and one Federation level) all commanded under different regulations. Furthermore, Brcko District, which enjoyed a special status in Bosnia, had its own legal system. All these police forces were very different in size and had different legal bases, preventing the formation of one single security area within Bosnia.

In addition, the total number of serving police officers was excessive, 16,800 police officers in 2004 (a number proportionate to most Western European countries would be 11,000).² This, along with similar overstaffing in all other parts of the administration system, led to an excessive financial burden, raising fears of bankruptcy at both entity and state levels. Another downside of the system was that the boundaries of police districts had been drawn according to front-lines during the war rather than on technical policing criteria. While the division made sense in some areas, the system created was totally dysfunctional in others. This fragmented system encouraged a tendency of non-cooperation among different police elements and a lack of willingness to create institutional frameworks.

It allowed for ethnically-composed policing elements which acted largely independently from each other and remained under the influence of their war-time political masters. There was an unhealthy political interference in operational policing – a legacy of the war and also of the Communist past of the country. Despite the fact that the police played a key role in war-time atrocities, many police officers stayed in the newly created police forces, which therefore continued to employ both passive and active sympathizers of the support networks for persons indicted for war

crimes. As a consequence, the tripartite system which emerged from the Dayton Agreement helped to protect criminal networks, which, in turn, were often linked to war criminals and parts of the political establishment. Widespread crime and corruption were considered to be endemic and organized crime was judged to be one of the major future threats to the peace, not least because of the links to politics and the danger of eroding weak state structures.

Almost ten years of international policing in Bosnia, under the leadership of the UN-led International Police Task Force (IPTF) and the European Union Police Mission (EUPM) (which took over from the IPTF in early 2003), tried to cope with the challenges of the Bosnian policing system and to increase its effectivity and efficiency. Reforms concentrated mostly on the professional and technical level: such as improving policing skills and physically re-establishing police premises. Much progress was achieved in raising basic policing standards, but the problem of the fundamental political interests in the policing system, including the structure of the police was not tackled. As the International Crisis Group reports correctly identified: 'the essence of the problem – political control – has largely been ignored. Especially in the Republika Srpska, police still act according to the will of their political masters, particularly when it comes to war crimes.' (ICG 2005: 2)

Taking the initiative in 2004 to trigger the restructuring of the Bosnian police was based on a variety of very sound reasons. Politically it was necessary to create a modern police force, without political interference in operational police work, within an efficient political and legal framework. Economically it was necessary, to make the system sustainable and financially viable in the long-run. And, from a policing perspective, it was necessary, in order to create a single security space for the country, sub-divided according to technical policing criteria, fit to fight crime and organised crime in particular. For the international community, this restructuring was also seen as a necessary step to an exit strategy, defined as bringing Bosnia irreversibly on the path to NATO Partnership for Peace membership as well as that of EU integration, facilitating negotiations on a Stabilisation and Association Agreement (SAA) within the framework of the Stabilisation and Association Process (SAP).³

What followed was a long, eighteen-month, uphill struggle by the international community against entrenched political resistance from local leaders determined to maintain the power-sharing model and to defend their influence over the police. The discussions circled around the oppositions of nationalism versus

European integration, politically motivated versus effective policing, split competencies versus centralized and unified structures, maintainance of the structures created by the Dayton Agreement versus moving beyond them. The Serbs/Republika Srpska were the main proponents of the objections, not least because the outcomes were expected to be more harmful to their perceived interests.

But it would be wrong to blame only the Serbs for the difficult discussions – after all, they had the most at stake. The Bosniaks knew that the reforms pushed for by the international community would most probably favour their interests, while the Croats could mainly hide behind Serb opposition, only needing to ensure that any final agreement did not compromise their position with the Federation. In the end, the political representatives of all three groups pursued their own political interests in the discussion on police reform. After extremely hard debates, the country ended up agreeing a political document on the issue which was far from the original ambitions of the international community and was expected to be reshaped again when it was translated into specific legal reforms and implemented.

Considering these police restructuring discussions as a 'case study' for internationally-led negotiations in the area of security sector reform, the case of Bosnia is a very telling one. It started from a valid point – an insufficient police structure – but it was an internationally-imposed discussion, including imposed timelines that fitted the main international proponents, but were not compatible with the importance that such fundamental changes to the security sector (at the very heart of every political system) – signified for the political elite of Bosnia. In particular, the Serbs saw the parameters proposed by the international community as an attempt to set the scene for a change of the system established by the Dayton Agreement and consequently as a direct attack on the very existence of the Republika Srpska in the long run.

Of course, the international community was aware that consensus on such a sensitive issue was difficult to achieve, however, the real dimensions of the problem were underestimated. Some of the proponents of this reform appear to have looked at police restructuring from a purely policing perspective, genuinely desiring to improve policing in Bosnia through technically-driven changes. For them, it was probably surprising to face such sustained resistance from the Bosnian political elites. Others were clearly trying to link this reform issue with others to gain

leverage in the political negotiations. Faced with a political spin, that soon unintendedly got out of control, the international community, notably High Representative Lord Ashdown, answered by raising the stakes higher, by playing the European card. This almost led to a failure of the whole process, which would not only have been detrimental for the reputation of the international organisations involved, but more importantly could have easily jeopardised the European future of the country. Only when the international community backed away from their original requests did they manage to get a face-saving, but not very viable, solution.

The following will give a short account of what happened between the start of discussions and a political agreement which was reached in autumn 2005. This is followed by an analysis of the results and reasons for the lack of success – both because of the political dimension of the envisaged reform, as well as other factors which hindered the process, such as the problematic attempts to use international leverage in Bosnia. The conclusion will sum up and look ahead to what might still come with regard to police restructuring in Bosnia.

Chronology of Events – A Summary

The EUPM, in close coordination with the Office of the High Representative (OHR), worked from its start, on 1 January 2003, on different concepts of police restructuring. Probably inspired by the successful completion of reforms in the defence area, Lord Ashdown decided to go for discussions on the most ambitious option, i.e. providing a completely new structure to Bosnian policing and, to this end, amending the relevant constitutional provisions. Leverage was provided, among other things, by the European Commission (EC) Feasibility Study published in November 2003 which identified weaknesses in the policing system and concluded with the following key sentence: 'Proceed with structural police reform with a view to rationalising police services.' (EC 2003) Broader international blessing for his endeavours was given in December 2003 by the Peace Implementation Council (PIC) Steering Board (SB),⁴ welcoming the High Representative's 'intention to focus on improving the effectiveness of the police in Bosnia, in close co-operation with EUPM' (see PIC 2003).

Lord Ashdown decided to begin the process by setting up a commission, following the use of internationally-led commissions to lead policy discussions in

controversial areas such as the establishment of the indirect tax administration at state level, reform of the defence and intelligence services and the new statute for the city of Mostar. Its task was to present options or solutions for a future structure before then involving the political institutions for ratification. After some research and discussions - in particular with the EC Delegation in Bosnia, who agreed to finance the Chairperson if a candidate acceptable to them was chosen - Wilfried Martens, the former prime minister of Belgium, was selected to chair the Police Restructuring Commission (PRC). Furthermore, a PRC secretariat was set up with some 20 members, including representatives of the OHR and the EUPM.

The commission started its work after the NATO Istanbul Summit in June 2004, which denied Bosnia Partnership for Peace (PfP) membership and gave Ashdown additional backing for the envisaged reforms. The Summit Communiqué stated in this regard that:

We are concerned that Bosnia and Herzegovina, particularly obstructionist elements in the Republika Srpska entity, has failed to live up to its obligation to cooperate fully with ICTY, including the arrest and transfer to the jurisdiction of the Tribunal of war crimes indictees, a fundamental requirement for the country to join PfP. We also look for systemic changes necessary to develop effective security and law enforcement structures. (NATO 2004)

The formal basis for the PRC was a High Representative Decision establishing the remit for the Commission: the elaboration of proposals for '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 2006). Twelve guiding principles were established, which called – among other things – for a structure reflecting the ethnic structure of Bosnia, the protection of the police from improper political interference and, implicitly, for a reduction of the number of serving police officers. The Decision foresaw the inclusion of twelve members from the political sphere: including the minister of security, both entity ministers of the interior, two cantonal ministers of the interior, representatives of the mayoral level as well as a representative of the chairman of the council of ministers. Besides Martens, the international community was also represented by the EUPM Head of Mission Kevin Carty and David Blakey (a

retired senior police officer from the United Kingdom), who would serve as deputy chairman. Seven associate members – the Bosnia chief prosecutor, representatives of the State Investigation and Protection Agency, State Border Service, Interpol directors, the entity directors of police, and a cantonal police commissioner – completed the commission.

The first meeting of the PRC took place on 22 July with the initial presence of Chris Patten, the then European Commissioner responsible for external affairs. This meeting focused on the presentation of a functional review of the Bosnia police forces which had been commissioned by the EC beforehand (FOAA 2004). This meeting was then followed by seven additional meetings until 15 December 2004 as well as one trip of the PRC to Brussels, meeting the representatives of the European institutions, and two public hearings, mainly with invited representatives of non-governmental organisations.

Martens distributed a concept paper sketching out his and the international community's ideas on a future single police structure for Bosnia. These ideas were in line with three main principles, which from then on were called the three EC principles that were necessary for any outcome of the PRC to satisfy the EC requirement of 'sustainable progress' in police restructuring as requested in the Feasibility Study:

- Exclusive constitutional competency for all police matters vested at state level, i.e. – inter alia – all legislative and budgetary authority for the state level.
- Local police shall operate in policing areas which are designed according to technical and functional police criteria. This would mean the crossing of the IEBL at least in certain areas.
- Elimination of political influence in operational police work

In this framework, EUPM presented its proposal for the second level of policing, which foresaw five police regions all crossing the IEBL.

The Serb side, in particular Republika Srpska minister of interior, Darko Matijasevic, tried to oppose the direction the discussions were taking, even leading a temporary walk out of the PRC. The issue of police regions became of particular contentiousness. The EUPM proposal of five regions was based on policing criteria

including factors like size of population, ethnic composition of population, the levels of crime, traffic accidents, etc. The continued existence of the Republika Srpska ministry of interior was not foreseen. The Serb side, clearly motivated by political considerations rather than professional policing criteria, immediately rejected the proposal taking a unified stance, shared by all Serb representatives, government and opposition.

As the deliberations of the PRC were approaching their conclusion, and it appeared that no compromise could be achievable, the international community geared up its efforts once more. To follow up the visit to Brussels and to firm up the EC position on police reform, Chris Patten sent a letter to the chairman of the council of ministers, Adnan Terzic, in which he underlined the need for PRC recommendations that would address the systemic deficiencies in Bosnian policing. Secretary General/High Representative Solana gave interviews providing the same message. In parallel, bilateral contacts between the international community and individual members of the PRC or representatives of the political elite intensified from mid-November on.

During that time, it became increasingly apparent that the Serb and international community positions were almost impossible to bring together. While the Serbs insisted that the mandate of the PRC had not foreseen going beyond the current constitutional framework, the international community, and the EU in particular, emphasised that Bosnia must not hide behind a dysfunctional system and the constitution, but must propose a functioning policing system with the necessary constitutional amendments.

The last meeting of the PRC started on 12 December and attempted to find a final compromise. In a final ploy, the OHR tried to split opinion on the Serb side by persuading some of the Serb police experts to come out in support of what had been proposed. However, the Serbs refused to consent to the Martens proposals and failed to accept a solution in accordance with the three principles. The OHR policy to split them, did not only fail but brought the opposite result: the Serbs showed a more unified front. Last-minute secret OHR talks on the eve of the PRC meeting with some PRC members further soured the atmosphere. In fact, the OHR spectacularly failed with this strategy: while those not present were offended and reacted aggressively, the participants of this secret meeting partly blamed the OHR for instigating it. Under

these conditions, an atmosphere of compromise – realistically unlikely anyway – could not emerge.

The question of the second level of policing and design of police regions dominated discussions. Three different options were floated: one proposal, originating from the EUPM, was the 5 regions model, the others were the so-called 9+1 regions model (9 regions, most of them cross-cutting the IEBL, as well as the Sarajevo Metropolitan Area) and the 10+1 regions model (10 regions and the Sarajevo Metropolitan Area). Despite a majority of PRC members expressing themselves in favour of the 5 regions model, Martens did not see an emerging consensus and directed the discussions towards the 9+1 regions model but then failed to assure more support for this option. Divergences of interests, in combination with the soured atmosphere, led to a failure of the talks. Therefore, Martens had no choice other than to end the meeting, concluding that it had been impossible to reach a complete consensus on the future structure. Nevertheless, he established an acceptable level of consensus for a single structure of policing in accordance with the High Representative Decision and promised to present a final chairman's report on the basis of discussions.

The work of the PRC formally ended with its last session on 15 December. But Martens and de facto the OHR, with the help of EUPM, still had the task of finalising the chairman's final report. This report was eventually presented with the three different map proposals to the High Representative on 13 January, accompanied by a covering letter characterising the proceedings as:

...reaching an acceptable level of professional consensus on exclusive state competency for policing and for technical policing criteria determining the local police areas... I should note that political restrictions placed by the Republika Srpska National Assembly on the PRC participants from the Republika Srpska prevented the full endorsement of the main recommendations. Therefore, it is my best judgement that the final report reflects an acceptable professional consensus but that political obstacles not directly related to professional policing remain. Therefore, I am submitting the final report in my role as Chair. (PRC 2004: 3-4)

Once on his desk, Ashdown decided to delay publication. Instead, he started another round of bilateral consultations to inform his decision on which of the three models should be pursued. Ashdown went for the 9+1 regions model, because it had the best odds of being accepted by the various political factions in Bosnia. The reactions of the various political players were predictable. The Serb side – government, opposition and civil society representatives unanimously – protested, claiming that only Croat and Bosniak proposals were reflected in the report. They contested that ‘an acceptable level of consensus’, as Martens had worded it, had ever been achieved in the PRC. They considered constitutional amendments and the weakening of the entities, in particular, as unacceptable and beyond the mandate of the Commission. Ashdown was attacked for his alleged violation of Dayton and autocratic behaviour.⁵

Bosniaks expressed their disappointment that the professionally best model of five regions had not been pursued further. The Croat position was more complicated: minister of security and then acting president of the HDZ, Barisa Colak, expressed positive views but he came under increasing pressure from within his party because of the danger of losing control over areas which were currently Croat-dominated through the cantonal structure. After an intensive public information campaign by EUPM and OHR in the form of posters, TV spots, road shows, interviews, talks to trade unions and parliamentarians – again using international leverage in the form of letters and articles of the European Commissioner for Enlargement, Olli Rehn, and Secretary General/High Representative Solana as well as the PIC Steering Board – Ashdown decided to enter the next phase of political negotiations in April 2005.

Ashdown invited the leaders of the eleven most important parties in Bosnia to a meeting in Vlasica from 24 to 27 April for political negotiations on the basis of the chairman's report. At the meeting, the Serb side repeatedly insisted on changes that would not necessitate constitutional amendments and requested the continued existence of the Republika Srpska Ministry of Interior. The international community repeatedly turned these proposals down, stating that the creation of dual structures would not be in line with EC principles. In any event, rather than discussing the final report chapter by chapter, discussion concentrated on what could be given to the Serb side to bring them on board. Little by little, the international community introduced elements in addition to the PRC final report. These included major concessions to the Republika Srpska ensuring entity representation and influence on all levels, thus *de facto* adding an additional layer of bureaucracy into the model

developed by the PRC. Despite the OHR and EC position that the proposals were in line with the three key principles, other voices raised serious concerns over the reintroduction of a strengthened entity role in policing matters.

After a short break, around the Orthodox Easter, the discussion continued outside of formal meetings. The participants of the Vlastic talks were very busy in justifying the compromises they had agreed to during the negotiations despite their very different rhetoric beforehand. On the other side, the politicians who had not participated in the talks tried to benefit from this fact. Dragan Cavic was under immense pressure from the international community, his situation was further complicated when a petition against the Vlastic concept was signed by 15 delegations from the Eastern Republika Srpska. As any change of the Republika Srpska constitutions would need a two-thirds majority in the RSNA, this petition was – if it had not been clear enough before – a very clear warning that SDS members, in combination with some smaller parties if necessary, intended to prevent any changes to the Republika Srpska Constitution. The 11 May SDS main board expressed reservations about fundamentally changing the Dayton Agreement. It underlined further that any police reform had to respect the constitutional and functional role of the Republika Srpska Ministry of Interior and that police regions could not cross the IEBL.

On 16 May, after Solana had again called Cavic to push for the necessary decisions, the Vlastic talks resumed, in the guest house of the Bosnian government in Sarajevo, focused mainly on the issue of the police regions. The Serbs emphasised that they had no mandate from the RSNA to discuss police regions crossing the IEBL. The meeting broke up much earlier than planned without a commitment from the Serb side to lobby for the crossing of the IEBL. As a consequence, the High Representative declared the negotiations a failure. This was confirmed when the RSNA session of 30 May concluded, with 62 votes in favour and 14 votes against, that it would only support police restructuring within the framework of the Bosnian and Republika Srpska constitutions without police regions crossing the IEBL.

The immediate phase after the failure of agreement was characterised by all sides officially blaming each other for failure and emphasising their positions again. A series of meetings of different formats took place over the summer, with the Republika Srpska side trying to balance out their interests with the necessary concessions in order not to lose out on the SAA. The international community

coordinated by Ashdown still upheld its position, but softened a little on the timing. It was now ready to accept a phased implementation over a three to five year period. On the contentious issue of the police regions, the international community would now accept general agreement on crossing the IEBL in three regions without finalizing the exact borders of the regions at this point in time.

Institutional talks resumed, on this basis, in Banja Luka on 12 September. When these talks looked likely to fail, Adnan Terzic tabled a new proposal which represented the final compromise the international community was ready to accept. It basically consisted of further concessions on timelines and transitional competencies of the entity ministries. Also, it foresaw more time for the Republika Srpska government to get the reform through the RSNA. The EC confirmed its readiness to go along this proposal and was even ready to accept a parliamentary endorsement at a later stage as long as the executive branches would sign. The Terzic proposal was then put before the RSNA, which again voted down the proposal on 14 September. Instead, the RSNA confirmed – 56 votes to 10 – its conclusions of 30 May 2005 and obliged the government to stick to them in negotiations.

In consequence, Ashdown decided to take punitive action against the SDS. The OHR had already been assembling evidence of the non-compliance of SDS party officials, including on ICTY cooperation. During the discussions of police restructuring there had been no wish to sour the political atmosphere by disclosing such evidence, but now the situation had changed Ashdown chose to implement a policy of zero tolerance and of 'death by a thousand cuts', mainly targeting SDS funds. For instance, he ordered all financial transactions, regardless of the amount, to go through a central bank account. The party branch in Dobojski was forced to pay back money received illegally and to provide monthly reports on its financial transactions and reports on the transactions of other branches were requested.

On 5 October 2005, Cavic finally came up with a new official proposal and turned the regular session of the RSNA on 6 October 2005 into an emergency one to discuss it. In essence, this was an extremely watered down proposal compared to the original aims of Ashdown. Any decision on the design of police regions was to be taken at a later stage without even mentioning the crossing of the IEBL, or even qualifying it somehow with 'where necessary'. Furthermore, elements were built in trying to prevent such an agreement on policing from being used as a precedent or a pretext for other reforms undermining the Republika Srpska, both substance-wise

(no implications for prosecutorial or judicial areas) as well as procedural-wise (full involvement of entity representatives in all steps). The proposed agreement left many questions open and was clearly contrary to the expressed wishes of the international community. Nevertheless, the international community, and Ashdown in particular, had reached a point where a face-saving way out was desperately needed.

The international community therefore held its breath, while this proposal was dealt with in the RSNA. Some members of the RSNA tried to block the meeting by using the rules of procedure but failed to do so. The majority favoured the continuation of the session and the Cavic proposal was in the end accepted by a majority (55 votes for, 5 against with 15 abstentions) (for the text, see OHR 2005). The yes-votes came mainly from the SDS and SNSD as well as the non-Serb parties, no-votes came from the radical side, the SRS and the Centre Club.

The PIC Steering Board immediately welcomed the agreement on 7 October. However, despite Ashdown's wish, it did not manage to find an agreement on a reference to the crossing of the IEBL – something he had wanted as it was not referred to in the political agreement. Instead, the participants could only agree to the rather weak language of 'local police areas that meet the European Commission's requirements' (PIC 2005). The agreement endorsed in the RSNA was immediately endorsed by the council of ministers on 7 October, followed by the Federation government on 10 October. After this, the proposal passed the Federation House of Representatives and finally the Federation House of Peoples on 18 October. On the state side, the House of Representatives and the House of People confirmed the agreement on 14 and 18 October respectively.

The progress achieved in October 2005 finally enabled the EC to recommend the start of SAA negotiations on 21 October 2005. It could judge that considerable progress had been made in tackling crime, in particular organised crime. It noted positively the adoption of the agreement, but warned at the same time that the:

...pace at which Bosnia and Herzegovina draws closer to the EU depends essentially on its speed in adopting and implementing the necessary reforms. Continued focus by the authorities on European integration is, therefore, key to the sustainability of the process. In order to progress through the various stages of the process, both before and during the negotiations, Bosnia and

Herzegovina must, in particular... ensure the implementation of the police reform... (EC 2005)

On 7 November the Council welcomed the EC Communication and agreed to the recommendations. It 'welcomed the significant progress made by Bosnia and Herzegovina with its reform agenda... in particular the recent political agreement on police reform and called for implementation to begin without delay' (CEU 2005). SAA negotiations therefore started officially on 25 November.

With this decision, a page in Bosnia's recent history was turned and a new chapter began. The question is only whether the page has been turned too early regarding police reform. It needs to be seen if the agreement - achieved by strong international pressure against the will of the respective local political elite and which, as a result of these compromises, was highly ambiguous regarding some key aspects - will hold when it comes to its implementation. The months following the agreement have already proved difficult in this respect, when discussions resumed and were soon dragged into political discussions leading to a stalemate in the course of 2006.

Assessments

The initial OHR timetable for police reform foresaw a six month period of PRC work followed by a one year period where all the legal changes would be passed by the respective parliaments. This would have then - according to the plan - been followed by a 24 to 48 month long period of practical implementation. However, one-and-a-half years after the official start of police restructuring discussions in spring 2004, i.e. the time when legal amendments should have been already in place, Bosnia found itself at the end of 2005 with a very weak political agreement that sketched out in broad terms a process over the coming five years with the most disputed issues still not resolved. The initial plans has proved to be unrealistic, unforeseen problems made the negotiations almost a complete failure, the result was far from what had been envisaged at the beginning of the process.

Nevertheless, everybody seemed to be satisfied, not least the international community, where one could almost hear a sigh of relief. The international community's determination to drive reform through quickly and Serb resistance to reform created a show-down which almost led to disaster for the country. In this

very publicized process - where the wish to occupy more media space than the other side also became an important strategic aim - the international community, under Ashdown's leadership, took the strategic choice of combining this particular question with other issues such as ICTY cooperation and, most importantly, with EU integration. The longer negotiations lasted, the more the EU card dominated the arguments and approach of the international community. Ashdown, in particular, put everything on this card and played a very risky game. He risked destroying his reputation in Bosnia – he himself had declared police reform as *the* crucial issue of his term as High Representative and stated that he would be measured on whether he achieved or failed in this area. In addition, he was increasingly under the pressure of time, as he desperately wanted a deal under his tenure, due to come to a close at the start of 2006.

But more importantly than his personal reputation, Ashdown put at risk the future of Bosnia's European integration. Bosnia risked falling behind the rest of the Western Balkans region because of its lack of results in the area of police restructuring. In the end, Ashdown realised that he had overplayed the leverage of European accession. During the last weeks and months of negotiations, therefore, he back-tracked from his initial negotiation positions and accepted a major watering-down of his stated 'principles'. This time-pressure should not surprise anybody. Generally, international interventions are characterised by short-term time horizons and frequent rotations of internationals. Even Ashdown's tenure of three-and-a-half years in Bosnia was rather short for changing the political setup of the country. Security sector reform touches the heart of any political system and normally needs long discussions and negotiations to balance out the different political interests with professional necessities. The importance of the police restructuring question for Bosnia was therefore in clear conflict with Ashdown's ambitions to push through reforms within a few months.

What stood at the end of the process was an agreement which was far weaker than would have been acceptable only a few months earlier, which was not detailed enough and was open to interpretation from all sides. It left many important and contentious decisions for later. In particular, the setup of the future police regions was left out. The agreement talked about functionality and efficiency but fell short of mentioning the important issue of 'including the crossing of the IEBL where necessary'. The agreement spoke about implementation in accordance with the

Bosnian Constitution as well as the entity constitutions. This compromise therefore left enough room for interpretation when actually implementing the reform. The agreement should be seen as an enforced concession to international pressure on the Serb side, conceded to in order to ensure that European integration proceeded. The subsequent negotiations have already provided more than a hint that the implementation phase will be difficult.⁶

Furthermore, despite the original intention to promote local ownership, the process was in reality totally internationally-driven. Obstructionism from the Serb side remained consistent throughout the process. For them, their tactics were successful, they bought time; they have been able to continue with the present system over the next few years and to argue in front of their electorate that they had heroically fought for the interests of the Republika Srpska. In fact, one could even argue that in this poker game, the Serbs waited successfully for the first international community moves and got the maximum out of their negotiating positions, because the international community in general – and Ashdown in particular – lost its nerve first. Despite the fact that the High Representative on several occasions, when the negotiations failed, underlined that the international community would wait for the Serbs to call them, the international community continued to work behind the scenes and gave away clear signals indicating how much they wanted the reform. Basically, the international community put all its trump cards on the table even at moments when it was not necessary and showed the vulnerable nature of its position. The reasons why the international community were so vulnerable and unable to impose a clearer structure of police reform will be discussed below.

The Domestic Dimension

Many reforms, which would have been unthinkable not so long ago, have been pushed through under consistent international pressure in recent years. The international community managed to pressure the entities into passing some competencies to the state level, such as a state level ministry of defence or the indirect tax administration giving, for the first time, some power to the state level to generate tax revenues (rather than being dependent on transfer payments by the entities). In all this, the need for constitutional reform had been at the back of all

stakeholders' minds, both national and international, without anybody daring to make it a topic of debate.

In this context, one must not forget the recent past of the country and the impossibility of unifying all different wishes into the new state structure. The Dayton Agreement created what many called a 'monster', but was successful in ending the war – something which cannot be appreciated highly enough. It was only possible by a power-sharing formula that everybody – admittedly under pressure – could finally agree to. As with every good compromise, nobody's interests were satisfied fully, creating a mounting desire to adapt the system to one's own benefit. Nevertheless, such changes were rarely proposed because of a fear of opening a Pandora's box. Very prudently and with a low key approach, adjustments were made, but without really touching on the fundamentals of the Dayton Agreement.

Police reform, however, entered a different dimension, as it was the most far-reaching reform envisaged by the international community up to that point in time. Police reform was not a technical undertaking, merely about improving security and policing, it also meant making decisive changes in the political and constitutional landscape of Bosnia. The way that implementation was designed by the international community meant that it would be a clear threat to the territorial integrity of the Republika Srpska entity. There could be no guarantee that further steps in other areas would not follow – despite official denials – as it became obvious that police reform would create a precedent for the imminent constitutional discussions. In the end, police reform was the starting point of discussions on a future state system and a new division of power between the main stakeholders.

This possible re-distribution of zones of influence beyond Dayton opened for all three main ethnic groups the possibility of extending their power base and, concomitantly, the risk of losing their political influence and territorial control. Undoubtedly, the Bosniaks would have most to gain in a centralized structure with fewer police regions; fewer regions, with multiethnic constituencies, would ensure their control over most of them, simply by virtue of being the majority. For them, the five regions model came closest to what they dreamed 'their' Bosnia should look like. For Serbs, such a scenario would be a nightmare, even ten years after the war, many Serbs did not trust Bosnian institutions and dreamt of unification with Serbia or independence. In Serb minds, everything they had fought for in the Dayton Agreement was suddenly at risk. For them, centralisation of policing meant the first

decisive step towards unification with diminishing competencies for the Republika Srpska and was therefore entirely unacceptable.

While the Republika Srpska wanted to preserve its integrity, i.e. ensure the integrity of a predominantly Serb inhabited area, the Croats wanted to ensure control over Croat inhabited areas. The Croats could hide behind them, as long as the international community would not promise too much to the Serbs. While the Serbs fought for the long-term existence of the entities (and against the abolition of the Republika Srpska), the Croats and their main party HDZ saw their interests best served by the current cantonal system or by a model based on a higher number of police regions. Their main concern, as the smallest of the three main ethnic groups, was equal rights for each of them. Plans abolishing the cantons and leaving the entities untouched were seen as a threat as this would turn the Federation in a Bosniak-dominated entity and would leave the Croats as a minority. Equally, the equivalent of the Republika Srpska police, if maintained, had in Croats eyes to be the cantonal police forces and not the Federation police. This would be basically compatible with their long promoted vision of the creation of a Croat dominated area, at times called the 'Third Entity'.

Having these positions in mind, it would be wrong to blame only the Serbs for the breakdown of negotiations. The key question on which every solution depended was the larger question of power-sharing and the ethno-territorial division of a post-Dayton system. If one has this in mind, then it is not difficult to understand why it was so difficult to find a compromise. All negotiations on police reform followed political considerations rather than real policing needs – a frustration that was heard many times from professional police officers with no or little political agenda.

The negotiations also created new political dynamics within the Republika Srpska. At the beginning of the process, the SDS was basically on a downward path, losing more and more supporters in the population. By making the subject of police reform so important and by putting himself at the forefront of the international community attempts, Ashdown contributed to the revival of the party's fortunes. For the SDS, this confrontational situation in a pre-election period provided a good trump card to regain votes. After a period where it was verging on political irrelevance, the SDS could portray itself in a martyr role for the Republika Srpska. Therefore, the threats of sanctions against the SDS were counterproductive, since the SDS was – not least because of tactical election considerations – ready to bear them. After ten

years of being constantly in the spotlight and already being subject to various sanctions (including financial penalties and the removal from office of leading officials), the threat had already been somewhat over-played.

With the SDS playing the nationalistic card, other Serb parties were in a dilemma, particularly the second main party, the SNSD. It usually liked to project itself as reformist, but had to find a fine balance to avoid being accused of betraying Republika Srpska. Dodik made it clear that if he had – in the case of incompatibility – to choose between the Republika Srpska and EU integration, he would choose the former. In the end the public position taken was to stress that the SNSD would vote in line with the SDS. Thus they could not be accused of betraying Serb interests or of blocking any solution which the SDS and the international community might agree upon. This pattern was consistently upheld; voting in favour of and against reform, but always aligning themselves to the SDS.

In turn, Republika Srpska President Cavic could be understood as accepting the need for police reform as 'entry ticket into Europe'. But he was a politician and, as such, if he did not want to be voted out of power could only afford to be a small step ahead of the electorate and his party. He was close to an agreement already in Vlasic, but pulled back in the end because he probably feared for his political career. He needed at least to get his party on board and that needed time – time he was not granted by Ashdown. Cavic had managed to get many of his people into the SDS main board in spring 2005 but still faced many local boards dominated by SDS hardliners. During this time, the SDS was characterized by a power struggle and it would have probably taken Cavic over the summer of 2005 to attempt to redirect the composition of those boards. But after the failure of the May talks and under the guidance of Ashdown, the international actors in Bosnia publicly put pressure on the SDS and on Cavic. Ashdown personally pushed Cavic very hard and, by doing this, weakened and politically isolated his only important ally in the SDS. This was evident in the fact that RSNA sessions were called without even consulting Cavic, while leading SDS figures turned against him in public.

Given the complex political picture, the externally forced timings for reform were problematic. The Republika Srpska in particular had already in earlier, less far reaching reforms, never agreed voluntarily, but had been pushed heavily. No wonder therefore that police reform – bringing in an even bigger dimension – was so difficult to negotiate. The idea of a single policing structure as given by the High

Representative Decision proved to be too great a step. Seen in the political context and the constant pressure in other areas, the Serbs could hardly be expected to easily give way in this sensitive matter.

The External Dimension

The Ashdown Factor

In such processes, much depends on personalities. In that regard, the High Representative as the main proponent of the reforms had a particular role to play. However, despite all his tireless efforts, his way of driving the discussions also contributed to the confrontational relations with the local political elites.

Lord Ashdown had a clear vision for Bosnia: to put Bosnia irreversibly on the track of European and Euro-Atlantic integration. This was for him the logical exit strategy not only for him personally, but for the OHR and the top-heavy international intervention in Bosnia as such.⁷ He followed this aim with high commitment and forced through many reforms in his attempts to strengthen the state level, which he considered as the key for a sustainable Bosnia. During his term, Bosnia introduced, for instance, reforms in the defence, tax and intelligence service sectors – areas where such reforms would have been unthinkable just a few years ago. To achieve this in his limited time as High Representative, Ashdown acted very pro-actively, coercively and with impressive personal engagement. He forcefully exercised his powers, imposing heavy sanctions on domestic actors, if he considered that they were not pulling in the right direction. He took up a lot of the oxygen from political life, leaving little for others. This kind of leadership was of course highly controversial and he was regularly exposed to criticism concerning his style and methods, including the extensive use of the Bonn Powers.

Coming from a military background, his emphasis was very much on security aspects, making the rule of law one of his priorities during his tenure. Police reform was the last piece in this puzzle, and therefore had a particular importance for him. As a consequence, he invested immense efforts in pushing the reforms through. His lack of patience soon meant that reform was pushed through without local ownership. He failed to provide enough time to convince people of the necessity of cutting the link between politics and policing and tried to change the system by

imposition. He wanted a quick success in order to crown his presence as High Representative, which was to finish at the start of 2006, despite the fact that he was requesting far more than in previous reforms. Such changes required a change of political culture and understandings, something which could not be achieved overnight.

To increase international leverage, he attempted to link police reform with the question of EU integration. Using his diplomatic contacts he convinced the EU and NATO to consider police reform as a necessary requirement for pursuing membership status. In various statements, these organisations emphasised the need for structural changes as did the EUPM, OHR and Ashdown himself when, for instance, addressing the United Nations Security Council on a regular basis.⁸ He increasingly instrumentalised the membership negotiations with these organisations to satisfy his reform aims.

While he had the international leverage Ashdown lacked a strong case for police reform in the Republika Srpska. In fact, it was the Federation which had a very split internal structure, while the Republika Srpska was already organised in a centralised way. The three principles which Ashdown established in order to challenge the RS set-up had little standing in police practice within the EU, where only a few member states organised their police in this way. Of particular importance, in this regard, was the fact that the Swiss, German and Belgian models, which had been specifically looked at in more detail, definitely did not follow the centralised approach intended for Bosnia. The argumentation was, from the start, on a weak footing.

Nevertheless, Ashdown repeated the arguments tirelessly. Due to his pressure, the issue of police restructuring became the focal point of a multidimensional conflict between the Serb side and Ashdown, in which many more factors played in (for instance the unfinished business of ICTY cooperation, the links of politicians with the networks for persons indicted for war crimes, etc.) and through which it appeared he wanted to force the SDS to its knees. The real arguments – policing at the service of the people and cost savings – got sidelined in view of this over-politicised confrontation. This personal dimension was even more acute as Ashdown was seen as bosniakophile in many eyes even before the idea of police restructuring became the focal point of Bosnian politics.

Ashdown's most prominent opponent was the SDS and Republika Srpska President Cavic, who, in fact, was far from being an SDS hardliner and generally supportive of necessary reforms. Cavic's attempts to overcome significant resistance from within the SDS and the Serb side were not given enough time by Ashdown. On the contrary, the High Representative – being under time pressure – put extreme public pressure on him, which was not necessarily very helpful, as it supported politisation and polarization. With his impatience, he therefore harmed his probably most important, if not only, relevant ally in the Republika Srpska.

There is a final important aspect: Lord Ashdown's role as EU Special Representative. For the public information campaign it had been intended to position Ashdown in his function as EUSR as he had made it abundantly clear that he would not impose any solution by using the Bonn Powers as police restructuring was a precondition for EU integration. However, this was never achievable due to a number of reasons. First and foremost, Lord Ashdown had always put the emphasis on his High Representative role and neglected his second 'hat' as EUSR. The High Representative hat was of course much stronger and Ashdown gave this one a particular spin. Probably because of his personal background, he preferred to use a martial language to persuade the Bosnian population and the political class to take the directions he wished them to. His constant imminent threat to make use of his Bonn Powers to remove from office obstructionist political representatives gave his hat as High Representative a high visibility and made it the centre of controversy and polarisation. As a consequence, his EUSR hat suffered as it had much less visibility.

Additionally, only very limited efforts were made available to position Ashdown as EUSR. The creation of a certain image costs time and money as well as personnel. However, Ashdown refused until late 2004 to accept any EUSR staff for himself. Only when practically forced to do so, he embedded two persons into his OHR Political Department and 'double hatted' a few of his OHR staff. With such a strategy it was obvious from the beginning that no serious effort was made to position him also as EUSR. Any attempt to do so at very short notice during the public campaign on police reform had little chance of success. Therefore, the strategy to make police restructuring a clear EU issue was bound to fail.

The Commission Model

Taking the political difficulties as given, the results of the PRC were nevertheless rather modest. In this context, the model of the PRC contributed to the increasing difficulties. The model was based on flying-in an external person (and surrounding staff) who would bring international reputation and credibility to the table in order to convince the local politicians to take the right steps. Dominating the work of the PRC were key players who were unfamiliar with the country and its political culture. The problem with this was probably not the existence of international PRC members as such - they could have provided very valuable input into the commission's work.

Rather, the problematic decision was to allow an international, flown-in expert to chair the PRC for the short timeframe of just six months. As an outsider, one could hardly get into the dynamics and details of the politics that decisively influenced the complex process. However, without such deep knowledge, an international chairman was almost bound to fail to recognise and understand the political dynamics of the discussions or the basis of alliances among commission members. This also brought him into conflict with international community representatives who had been in the country for much longer, saw themselves as the 'real' experts and sought to 'remote-control' the flown-in international community representatives.

The lack of knowledge of the country led to a loss of time during the first months, during which time, no contentious issues were substantially dealt with. Martens did not spend enough time in Bosnia during the negotiations. As a pattern, he flew in for the meetings and left thereafter, only one summer trip visiting a few towns can be counted as an extra stay in Bosnia. Also, he did not orchestrate his chairmanship always as the OHR machinery's rule book had foreseen. Without any prior consultations, for instance, he suggested in the second meeting to travel to two countries in Europe to make a fact-finding mission of the respective policing systems. After that, his team and the OHR were kept busy attempting to find the financial means to sponsor this trip as such expenses had not been foreseen.

In the beginning, Martens and his closest advisors were still able to act fairly independently and traveled through the country discussing his ideas, not always to the like of the OHR and other key international stakeholders in Bosnia. As a consequence, Ashdown and the OHR took more and more control over the process and disempowered Martens and his team: Martens increasingly became the 'assistant' of Ashdown's people. This was also reflected in the media appearances,

where Martens less frequently provided interviews. In the final phase, after the last meeting, it was again the OHR that took the lead in drafting the Final Report in consultation, as necessary, with the EUPM. Martens was not even in the country during this period.

The EU and the PIC

Despite Ashdown's efforts to ensure a unified international position, the international community on many occasions was split in opinions and also projected this to the public. The main dispute was over the emphasis given to the three principles. It was not least the EC itself that was in the beginning very reluctant to take the three principles on board in formulating their conditions for a positive assessment on the preparedness of the country for SAA negotiations. The EC had requested improvements in the policing system including structural amendments, but it had not requested such a major reform as envisaged by Ashdown, not least because it was difficult to explain the legitimacy of some of the key elements. Only very few EU countries had a policing structure in conformity with the three 'holy' principles; in particular, a centralized competency of policing. Therefore, the EC was never too enthusiastic or hard-line during the negotiations, but it was partially instrumentalised by Ashdown in order to satisfy his agenda as High Representative.

The EC had also never been too fond of such a show-down scenario 'police reform or no SAA' as orchestrated by Ashdown. As a consequence, the EC relativised Ashdown's strong position several times and gave evasive signals to the Bosnian authorities. It feared that the strong position held by the High Representative would put at risk the European perspective of the country. Ashdown had to use all his influence to keep the EC on board. In the end, the EC was happy to accept the final political agreement despite all its deficiencies, as it showed the way out of an almost dead end in negotiations.

Also, other key players were hard to keep fully onboard, not least in the PIC Steering Board, where two members, in particular, had difficulty in supporting Ashdown's tough negotiation position, they were not alone in not always completely following the High Representative's line and his tactics of coming down hard on the Serbs.⁹ Despite a general support for the need of reform, the question of crossing the IEBL was also a controversial issue within the international community. Despite

Ashdown's insistence, and very much to his frustration, the PIC Steering Board failed to acknowledge that police reform would require police regions to cross the IEBL. There was no consensus of opinion within the PIC on such a formulation.

Conclusion

After a very vigorous start with high expectations, High Representative Lord Ashdown came to realise that he had pushed too far and that Bosnia was not yet ready for the far reaching reforms he envisaged in the policing area. After successes in pushing certain dossiers forward – notably in the defence and intelligence areas – and gradually strengthening the state level over time, the intended police reform was still too demanding for the political elite of Bosnia. Not even the link to the start of negotiations on a SAA used as a bargaining chip by Ashdown helped in the end. On the contrary, this orchestration almost led to total failure and led finally to a painful compromise far from Ashdown's initial plans.

The recent past of the country has made inter-ethnic trust and cooperation extremely difficult; rebuilding these will be essential for establishing the trust and legitimacy of state-level institutions. The lesson of police reform is that neither the stick of the Bonn powers, nor the carrot of EU accession can drive top-down reforms which do not have a basis of support within Bosnian society. A new constitution foreseeing a simplified structure is needed. But interests are very different, a consensus will be difficult as, in the end, it is all about power sharing, zones of influence and security (through control over the police) and the projection of power. If the delicate power balance between the three main groups established at Dayton is to be replaced with another, it will require a strategy of debate and public engagement rather than one of confrontation and imposition.

Acknowledgements

I would like to express my gratitude to Dr. Erwin Schmidl, from the Austrian National Defence Academy, and to Superintendent John Hester, currently working in the Police Unit of the General Secretariat of the Council of the European Union, for their

constructive comments on an earlier draft of this text. This article will be published in the *Journal of Intervention and Statebuilding*, Volume 2, Number 1, March 2008.

Notes

1 For easier reading, the Bosnian Serbs and Bosnian Croats will be referred to simply as Serbs and Croats respectively.

2 Comparisons are of course difficult to make. Nevertheless, the FOAA (2004) mentions comparable figures in other European countries. In the Netherlands and Switzerland for instance, the 'figure shows that in densely populated areas the ratio is about 200 inhabitants per officer, while in the more rural areas the ratio is one officer per 400-500 inhabitants' (2004: 58). Based on these comparisons, the general feeling within the international community was that for a country in the size of Bosnia a police force of some 11,000 police officers should be sufficient. The FOAA itself speaks about 12,700 to 14,000 authorised police officers (2004: 123).

3 The Stabilisation and Association Process (SAP) is the EU's policy framework for the Western Balkan countries, of which the Stabilisation and Association agreement is the centrepiece, for more information see: <http://europa.eu/scadplus/leg/en/s05055.htm>.

4 The Peace Implementation Council is a *constructus sui generis* created by the Dayton agreement comprising a coalition of some 55 states and international organisations in charge of the implementation of the agreement. For the daily implementation, a Steering Board was created comprising the US, Canada, Russia, Germany, the UK, France, Italy, Japan, The Presidency of the European Union, the European Commission as well as Turkey as representative of the Organisation of Islamic Countries, for more information see: <http://www.ohr.int/ohr-info/gen-info/#pic>.

5 Newspapers in the RS were full of negative statements the days after the publication of the report. As an example, the RS daily *Glas Srpske* quoted a professor of the Banja Luka Law School saying that Ashdown 'sometimes behaves as if he was a God' ('Between Nothing and Zero', 3 February 2005). The RS weekly *Reporter* even compared him with Karadzic, as both seemed only be politically interested in maps ('Stake and Rope', 2 February 2005).

6 In fact, already at the end of 2005, the establishment of the directorate for police restructuring implementation proved difficult, its work was soon paralysed by political quarrels, different interpretations of the agreement and a boycott by the Republika Srpska side, which turned its 'participation' in the directorate into merely observer status and tried to block all decisions, leading to missing deadlines. In this context, the general elections in October 2006 cast their shadow on this process leading to a reluctance to make political compromises.

7 Ashdown would have liked to have been the last High Representative and to have the reputation of having finally moved Bosnia on. Over time, he had to realize that his intended point of departure would not yet collide with a fully self-sustainable Bosnia. But with police reform 'ticked in the box' and Bosnia on the SAA track, he could see Bosnia enter a new phase with a process of winding-down the OHR over time.

8 To a certain extent, the link between the lack of ICTY cooperation, because of structural deficits, and the need for police restructuring, went in a different direction than expected. The Serbs started to deliver on the ICTY front by convincing persons indicted for war crimes to surrender voluntarily. Consequently, they argued that the positive developments had proven the efficiency and effectivity of the Republika Srpska police – thus there was no need to discuss its abolition.

9 For instance, the cancellation of a Foreign Ministers Troika with the Serb Bosnia foreign minister Mladen Ivanic in New York in September 2005 (prime minister Terzic participated instead), the increasingly confrontational behaviour vis-à-vis Matijasevic or the harsh insistence on the crossing of the IEBL was disputed within the international community.

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