



Centar za
sigurnosne studije - BiH
Centre for
Security Studies - BH

**THE OFFICE OF THE HIGH
REPRESENTATIVE AND SECURITY
SECTOR REFORM IN BOSNIA AND
HERZEGOVINA**

Denis Hadžović

February 2009

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Generous financial support from the Geneva Centre for Democratic Research (DCAF) has enabled this research to be published. Views expressed in this research are those of the author and do not reflect those of DCAF.

PREFACE

In the after-math of conflict, Bosnia and Herzegovina (BiH) made significant progress in the development and sustainment of a peaceful environment; a progress that can be indicated, amongst others, with the establishment of state-level institutions in the field of security. Their inception represents, firstly, a conflict-prevention element and secondly a vital instrument that can be utilised towards Euro-Atlantic integrations. To that end, immeasurable support has been provided by the international community, primarily through the Office of the High Representative (OHR) in BiH, an *ad hoc* institutions that were established to overlook the implementation of the civil component of the Dayton Peace Accords.

With the efforts of the OHR and international community, BiH has executed one of the most successful reforms of the judicial system in the region. It has also seen the establishment of a unified armed force and intelligence-security agency, a state protection and a investigation agency, state border police, customs control and the state court. All of these institutions were established either following a direct legislative instruction or indirect pressure from the OHR operating under a quest to reach a compromise between the ruling political actors in Bosnia and Herzegovina.

With these accomplishments in mind, the intention of the author was to offer practitioners and academics who deal with peacebuilding a modest contribution in view of supporting the further development of these processes, and present an insight into the OHR experience gained during the implementing period of these reforms and peacebuilding in BiH, with particular focus on security sector reform.

I would like to use this opportunity to express my gratitude to the Geneva Centre for the Democratic Control of Armed Forces (DCAF) on their financial support of this research, as well as to the staff of the Centre for Security Studies, Mr. Armin Krzalic, Mr. Jasmin Ramovic, Ms. Sanja Mihajlovic, Ms. Lana Tancica and Ms. Andrea Tefterdarija, who worked in the capacity of a junior professional during the period of the research, on their invaluable contributions.

Our gratitude is also extended to everyone who directly or indirectly contributed to the implementation of the research, either through interviews or literature that was used for the needs of the research, and library of PSOTC – Peace Support Operations Training Centre Sarajevo.

We sincerely hope this research, which also encompassing a local perspective, will serve as a contribution to discussions regarding peacebuilding and security sector reform in post-conflict societies.

Sarajevo, February 2009

Denis Hadžovic

INTRODUCTION

The Office of the High Representative (OHR) was established as an *ad hoc* institution to oversee implementation of the civilian component of the Dayton Peace Agreement (DPA) and is accountable to the Peace Implementation Council (PIC).¹ Following a two-year impasse of DPA implementation activity (1995-1997), OHR was authorised to directly impose laws and dismiss elected officials found to be obstructing implementation of the DPA. This new authority accelerated the peace process and enabled some of the most significant peacebuilding achievements in post-war Bosnia and Herzegovina (henceforth Bosnia or BiH), namely in the establishment of state-level institutions related to the security field. Thanks to the efforts of the OHR, Bosnia is currently conducting one of the most successful reforms of the judiciary in the region² and has established a single army, single intelligence-security agency, single border service and unified customs. These institutions were established either by the laws imposed directly by OHR, or indirectly through significant pressure from OHR, which eventually led to compromise amongst political actors in Bosnia. At the same time, their establishment embodies one of the most important accomplishments of the international community which has helped reduce the possibility of Bosnia slipping back into conflict, and moved the country forward in the Euro-Atlantic integration process. To date, the establishment of these institutions represents one of the most controversial areas of international involvement in the peacebuilding process in Bosnia with some critics of this approach labelling the Office of the High Representative as the “European Raj”³ and comparing it to the Austro-Hungarian rulers of Bosnia from the end of nineteenth century.⁴ The debate on the subject has drawn even more attention as international actors in peacebuilding are gradually beginning to apply lessons learned from OHR’s experience in Bosnia. To a certain extent the UN-envoy’s final plan for Kosovo foresaw an institution similar to the OHR to oversee “conditional” independence of the

¹ The Peace Implementation Council, a body created at the Peace Implementation Conference in London following successful negotiations over the peace agreement in Dayton, provides political guidance for the OHR. It consists of fifty-five countries and international agencies which assist the peace process in Bosnia and Herzegovina (BiH).

² The overall process of judiciary reform in BiH was recognised as one of the most advanced in the region, even in comparison to the neighbouring Croatia, an EU-candidate-country. See the European Commission report: *Bosnia and Herzegovina: 2007 Progress Report*, 2007.

³ Gerald Knaus and Martin Felix, “Lessons from Bosnia and Herzegovina: Travails of the European Raj,” *Journal of Democracy*, Vol.4, No. 3, 2003, pp. 60–74.

⁴ *BH Dani*, ‘Bosanski barometer’, 19 April 2002, No. 253.

former Yugoslav province. Also, the country-specific committees of the Peacebuilding Commission, a newly-founded UN body, follow the organisational pattern used by the PIC in Bosnia.

This paper will show that the periods of more robust approach by the OHR has benefited peacebuilding in Bosnia and has helped the country assume the roles that states usually exercise in liberal democracies regarding the security sector. To that extent, it will be demonstrated that establishment of the OHR has proved to be one of the well-calculated provisions of the international community included in the DPA. Designating the High Representative as “the final authority in theatre regarding interpretation of this Agreement on the civilian implementation of the peace settlement”⁵ enabled the international community to accomplish major successes in peacebuilding in BiH. The efforts of the OHR, in particular, those related to the contested area of security sector reform (SSR), can provide valuable and significant lessons for any future peacebuilding efforts and academic and practical peacebuilding matters worldwide. These lessons, combined with the latest developments in SSR policy, can offer significant contributions to academic and practical peacebuilding matters worldwide. In relation to this, one of the primary aims of the paper is to further these developments by providing an insight into the experience of OHR peacebuilding activities, with special emphasis on SSR. The main argument of the paper, the beneficial impact of the OHR’s robust approach to the security sector in Bosnia, will be shown through an evaluation of state-level security institutions established during this SSR/OHR period. This evaluation will be conducted using the framework of measurement developed by the Organisation for Economic Co-operation and Development - Development Assistance Committee (OECD – DAC).⁶

Chapter One will discuss the existing theoretical underpinnings pertaining to peacebuilding and international relations in general, with focus on the role of the OHR in Bosnia. The development of the peacebuilding concept will be discussed as well as different camps of opinion; those who oppose the interventionist approach of the international community, and those who support it. Even though this paper will focus mostly on the most prominent foreign authors, it will also consult contributions by Bosnian authors and professionals in order to provide local points of view on these issues. Chapter Two will focus on provisions of the DPA that were used in pursuit of SSR in Bosnia. Provisions directly

⁵ DPA, Annex X, Article 4.

⁶ The framework of measurement developed by the OECD-DAC is included in the *Handbook on Security System Reform* published in 2007.

related to SSR will be discussed, as well as those that indirectly influenced these developments. Chapter Three will further elaborate provisions related to the OHR, namely Annex 10 of the DPA, and will focus on causes which led to granting Bonn Powers to the High Representative. Chapter Four will compare and contrast the policies of international governmental organisations (IGOs) applied with regards to SSR in Bosnia. Some of the main international actors in Bosnia will be discussed such as the North Atlantic Treaty Organisation (NATO), the European Union (EU), Organisation for Security and Cooperation in Europe (OSCE) as well as the United Nations (UN) and the Council of Europe (CoE). Chapter Five is the central chapter of the paper and will present evidence on how successful the state-level security and judicial institutions have been since their establishment. It will also provide background on developments that led to their establishment, with focus on the role of the OHR in that process. Chapter Six will discuss the current state of SSR in the country and its reflection on the position of the OHR. The final chapter will elaborate the findings of the paper and summarise the main points and lessons that can be learned from the OHR experience. Overall, it will be shown that the robust approach of the OHR has provided necessary ground for SSR in Bosnia and that it was invaluable for the accomplishments of the international community in this field.

1. THEORETICAL APPROACHES TO PEACEBUILDING AND THEIR REFLECTIONS ON OHR

1.1 BACKGROUND

‘We are living in a changing world’ is an expression often found in literature addressing the foundations of peacebuilding operations in the past few decades. What is it that has in fact changed in our world when both academics and politicians have started noticing it? The turning point in the thinking about conflicts and how to respond to them is the end of the Cold War. Roland Paris, for example, argues that the practice of post-conflict peacebuilding started emerging only in the period towards the end of the Cold War.⁷ It should be noted however that Fearon and Laitin argue that the changes brought about by the cessation of the Cold War did not cause the occurrence of civil conflicts in the 1990s as the roots of these conflicts were present well before the beginning of the new world order.⁸ Furthermore, although it can be concluded that the ‘need’ for multilateral peace operations was present before the end of the Cold War, towards its end, the character of these peace operations started to change. The international system underwent a major transformation as a consequence of the demise of main East-West tensions. This cleared the way for the UN and other international organisations to deploy multilateral peace operations to end long-standing conflicts.⁹ This changing environment brought along new opportunities for the UN and was acknowledged by its former Secretary General Boutros Boutros Ghali in his report *Agenda for Peace*, drafted in the early 1992. In the beginning of his report he stated that:

(...) a conviction has grown, among nations large and small, that an opportunity has been regained to achieve the great objectives of the Charter - a United Nations capable of maintaining international peace and security, of securing justice and human rights and of promoting, in the words of the

⁷ Roland Paris, *At War's End: Building Peace After Civil Conflict*, Cambridge: Cambridge University Press, 2004, p. 13.

⁸ James Fearon and David Laitin, ‘Ethnicity, Insurgency and Civil War’, *American Political Science Review*, Vol. 97, Issue 1, (March 2003), 75-90, p. 75.

⁹ Roland Paris, *At War's End*, 2004, p. 16.

Charter, ‘social progress and better standards of life in larger freedom’. This opportunity must not be squandered. The Organization must never again be crippled as it was in the era that has now passed.¹⁰

Having given notice to the changed environment, new challenges and new possibilities the new world order had created, Boutros Ghali in his report also introduced important new means to achieving peace in a changing world. Next to the already operational concepts within UN peace missions - preventive diplomacy, peacemaking and peacekeeping, Boutros Ghali launched the new concept of post-conflict peacebuilding. This new idea, introduced to the UN peace discourse, was to be seen as a fourth pillar of UN’s approach to strengthening world peace. It was furthermore to be viewed as complementary to UN’s previous efforts at making the world a more peaceful place. As Boutros Ghali stated “Preventive diplomacy is to avoid a crisis; post-conflict peace-building is to prevent a recurrence.”¹¹ Whereas the first three types of mandates (preventive diplomacy, peacemaking and peacekeeping) are aimed at ending a conflict, operations of post-conflict peacebuilding go beyond this aim and are to ensure that the newly-established peace remains stable and becomes sustainable. For this aim to be achieved, a wide range of instruments is required. Boutros Ghali emphasised the need to (re)build government institutions and strengthen democratic structures and promote elements of good governance.¹² Post-conflict peacebuilding thus entails a long-term commitment of the parties and is to be seen as a *process*. This significantly distinguishes post-conflict peacebuilding from peacekeeping; whereas peacekeeping is primarily a military undertaking, peacebuilding operations have a considerable civilian component.

Three years after the introduction of post-conflict peacebuilding as the fourth pillar of UN efforts of maintaining peace in the world, Secretary General Boutros Ghali issued the *Supplement to an Agenda for Peace* summarising the results of the implementation of the points formulated in the previous report as well as the new challenges the organisation was facing as the world was “still in a time of transition”.¹³ The *Supplement* recognised that *Agenda for Peace* might have welcomed the new world order too enthusiastically as the challenges posed by it might be bigger than UN’s capacity. The UN together with several other ‘agents of peacebuilding’ believed that liberalisation, meaning a combination of democratisation (the

¹⁰ Boutros Boutros Ghali, *Agenda for peace: Preventive Diplomacy, Peacemaking, and Peace-keeping*, New York: United Nations, 1992.

¹¹ Ibid.

¹² Ibid.

¹³ Boutros Boutros Ghali, *Supplement to an Agenda for Peace: Preventive Diplomacy, Peacemaking, and Peace-keeping*, New York: United Nations, 1995.

promotion of liberal democracy) and marketisation (the promotion of market economy) was the appropriate strategy for post-conflict peacebuilding.¹⁴ Many provisions of the 1992 *Agenda* failed to be implemented as the UN Member States became increasingly sceptical of the *Agenda* in consequence of events which occurred in the first half of the nineties, such as the calamities in Somalia, Rwanda and BiH.¹⁵ Six years after the *Supplement to an Agenda for Peace* the world was faced with another major challenge once the 9/11 attacks took place. The war in BiH, together with those in Somalia and Rwanda, have influenced the development of the peacebuilding concept, and have led to an altered approach to that presented in the *Agenda for Peace*, while the aftermath of the terrorist attacks of 9/11 marked the beginning of the definitive end of the post-Cold War international consensus on post-conflict peacebuilding.

The enthusiasm and the euphoria of the early 1990s slowly faded away. It became clear that even though the East-West tensions were gone, the emphasis on conflicts between states had shifted towards conflicts *within* states. The 2001 event made it clear that the challenges of the new world order were growing out of proportion and that priorities had to be set. The academic literature observed this shift as well: it was not only the agents of peacebuilding who had become convinced of the dangers of the new world order, but scholars also abandoned their belief in the unprecedented possibilities of peacebuilding by means of spreading liberal democracy and market economy and expressed concern for the new security dilemmas.

1.2 THEORY

The academic literature on peacebuilding can roughly be divided into two segments; the first one consists of theoretical approaches to peacebuilding while the second segment focuses on the operational level of peacebuilding, that is to say the practical implications of peacebuilding operations. Another distinction is made by Elisabeth Cousens, who distinguishes between deductive and inductive approaches to peacebuilding. While the former asks the questions of ‘what’ and ‘who’, the latter focuses on questions of ‘how’, ‘why’ or ‘to what end’.¹⁶ The focus of IR analyses of peacebuilding combines the questions posed from the philosophical perspective, referring to the moral dimension of (humanitarian) intervention and

¹⁴ Paris, *At War's End*, 2004, p. 37.

¹⁵ UNUK: ‘An Agenda for Peace Ten Years On’ *United Nations Association of the United Kingdom*, 3 February, 2002.

¹⁶ Elisabeth Cousens et al., *Peacebuilding as Politics: Cultivating Peace in Fragile Societies*, London: Boulder, 2001, p. 5-10.

peacebuilding, and the perspective of International Law. International Relations (IR) approaches to peacebuilding put forward questions related to the motives of states to - unilaterally or multilaterally - engage in peacebuilding operations. Overall it can be said that most theories of peacebuilding are rooted in one of the strands of international relations theory. Peacebuilding operations have from their beginning had a 'liberal' (originating from 'liberalism') character, and the liberal institutionalist conceptions of peacebuilding have dominated the literature on this topic ever since. Liberal institutionalist approaches to peacebuilding follow the Kantian democratic peace theory and hold that promoting democracy will ultimately lead to a significant improvement of peace in the world. When the euphoria of the end of the Cold War had passed, when it became clear that new security issues had arisen and that peacebuilding operations encountered more problems than previously expected, a shift within academic literature on peacebuilding emerged. Critiques on liberal institutionalist approaches came from the realist corner and from scholars of critical theory and were aimed at questioning the legitimacy of peacebuilding missions and pointing out the limits of the liberal institutionalist paradigm of peacebuilding. Very often the intentions of the scholars of liberal internationalism were severely questioned, suspecting them of having a 'hidden agenda' of realist intentions which were carried out under the flag of humanitarianism.¹⁷ Generally however, there has been a tendency among scholars to acknowledge the primacy as well as the importance of the peace-through-liberalisation approach¹⁸ but to nevertheless continue scrutinising this approach on a regular basis.

In evaluations of peacebuilding, scholars analyse the previously deployed missions in order to extract the best way to approach the practical questions in aiming to build lasting peace in a post-conflict area. In their evaluations they address a range of issues which have to be implemented in order to achieve the goal of consolidated peace. Topics covered generally vary from the actual design of a peace accord to more complicated matters such as security and demilitarisation, political transition, development, reconciliation and social rehabilitation and coordination between the various levels of peacebuilding agency.¹⁹ The practical questions posed by the authors include 'what level of intervention should drive the process?', 'what activities should be included?' and 'when and for how long should the peacebuilding process

¹⁷ See for example Michael Ignatieff, *Empire Lite, Nation-building in Bosnia, Kosovo and Afghanistan*, London: Vintage, 2003.

¹⁸ See Sumantra Bose, *Bosnia After Dayton*. London: Hurst, 2002; Michael Ignatieff, *Empire Lite*, 2003, and Roland Paris, *At War's End*, 2004.

¹⁹ See Ho-Won Jeong, *Peacebuilding in Post-conflict Societies: Strategy and Processes*, London: Boulder, 2005. Jeong's work provides a thorough summary of issues usually covered by peacebuilding scholars.

happen?'.²⁰ The recommendations in these fields vary greatly and there is little agreement on the level of intervention, the time frame and the sequence of the peacebuilding activities.

The level of intervention is probably the most debated topic among scholars who discuss practical implications of peacebuilding. Closely related to this topic is the question of the time frame of the peacebuilding mission. These two issues are probably the most essential ones as the design of every important activity which has to be undertaken during a peacebuilding mission inevitably has to take into account the nature of intervention and its temporal aspects. Therefore, peacebuilding missions have been considerably criticised by scholars on the topic of their mandates. While some argue that the mandates are too large and that one should avoid creating 'protectorates'²¹ or dependencies such as the British raj in the nineteenth century²², others argue in favour of a more proactive approach by the agents of peacebuilding, recommending that as much interference as possibly needed should be applied in order to achieve consolidated peace.²³ This begs the question of the time frame of the peacebuilding mission. The extension of several peacebuilding mandates has led some scholars to conclude that peacebuilding should be understood as a long-term project from the beginning; Lederach for example argues that the time frame for a successful peacebuilding mission cannot be reduced to less than a decade.²⁴ These questions have grown in popularity over the past few years, especially when it became clear that some peacebuilding operations were not progressing as fast as hoped and predicted. Also, weakening of local capacity as a consequence of peacebuilding interventions has raised many scholars' concern.²⁵ Michael Ignatieff, for example, points out the importance of (re)building local capacity at an early stage of implementation of the peacebuilding process as the international peacebuilding agents are, as Ignatieff argues, very "impatient for quick results".²⁶ The sequence of peacebuilding activities is the third topic frequently discussed by scholars evaluating peacebuilding missions. Which parts of the peacebuilding process should be implemented first in order to achieve consolidated peace as soon as possible? Roland Paris argues that the democratisation and

²⁰ Monica Llamazares, Centre for Conflict Resolution Working Paper 14 - *Post-War Peacebuilding Reviewed: A Critical Exploration Of Generic Approaches To Post-War Reconstruction*, University of Bradford, February 2005.

²¹ David Chandler, *Bosnia: Faking Democracy After Dayton*, London: Pluto Press, 2000.

²² Gerald Knaus and Martin Felix, "Lessons from Bosnia and Herzegovina: Travails of the European Raj," *Journal of Democracy*, Vol.4, No. 3, 2003, pp. 60–74.

²³ Mary Kaldor, *Restructuring the Global Military Sector: New Wars – Volume 1*, London: Pinter, 1997.

²⁴ John Paul Lederach - *Building Peace: Sustainable Reconciliation in Divided Societies*, Washington DC: United States Institute of Peace Press, 1997; Monica Llamazares, Centre for Conflict Resolution Working Paper - *Post-War Peacebuilding Reviewed*, February 2005.

²⁵ See Jenny Pearce, *The International Community and Peacebuilding Development*, 2005, 48(3), (41–49) 2005 Society for International Development; David Chandler, *Bosnia: Faking Democracy After Dayton*, 2000; Ignatieff, *Empire Lite*, 2003.

²⁶ Ignatieff, *Empire Lite*, 2003, p. 115-126.

liberalisation process has been pushed too quickly in certain cases and that this has had destabilising effects.²⁷ He therefore proposes a peacebuilding strategy labelled 'Institutionalization Before Liberalization', based on the idea that the negative effects of the democratisation and liberalisation processes can be reduced by postponing their introduction until after consolidated state institutions have been built.²⁸ Jack Snyder similarly points out that destabilising effects of democratisation, such as the (re)emergence of ethnic nationalism can be avoided if the development of civic institutions is far advanced well before the first post-conflict elections are held.²⁹

The questions raised by peacebuilding scholars have also arisen during and in the aftermath of the war in BiH. The developments in this country have stirred the debate on peacebuilding and challenged the initial approaches of scholars from this field. This was a case with the UN Secretary General's *Agenda for Peace* as well as with the traditional liberal institutionalist approach that marked the beginning of DPA implementation. The first few years of DPA implementation showed that promotion of democracy does not necessarily lead to immediate stabilisation of the post-conflict environment. The shortcomings of this approach were best reflected in provisions of the DPA that refer to the first elections in Bosnia scheduled to be held only nine months into the implementation of the DPA. Early elections were originally envisaged as an exit strategy as it was presumed that holding elections would be sufficient for stabilisation of the country. Criticisms of the liberal institutionalist approach seem to be valid in this case, as this provision of the DPA really poses a question of the purpose of international involvement. It begs the real reason behind the intervention: was it supposed to actually bring stability and prevent the return of conflict, or to provide quick wins for those who decided to intervene? This approach seemed to be a blatant manifestation of the 'hidden agenda' of the liberal institutionalist approach as argued by Ignatieff. Fortunately, circumstances in the field dictated changes in the originally-foreseen approach of the international community, and over time their efforts were committed to long-term engagement and were streamlined in accordance with the sequence of peacebuilding activities, as the one argued by Paris.³⁰ These changes helped the OHR to overcome the limitations of the peacebuilding concept and provided new insight into the possibilities of intervening in post-

²⁷ Paris, *At War's End*, 2004.

²⁸ Ibid, p. 7 and 'Towards More Effective Peace Building: A Conversation with Roland Paris', Interview conducted by Alina Rocha Menocal and Kate Kilpatrick, *Development in Practice*, Vol. 15, No. 6, November 2005.

²⁹ Jack Snyder, *From Voting to Violence: Democratization and Nationalist Conflict*, New York: Norton, 2000, p. 321.

³⁰ Paris, *At War's End*, 2004.

conflict societies. The robust role that the OHR assumed after the initial stalemate of DPA implementation led to a much longer commitment to the stabilisation of the country and provided major accomplishments in terms of stabilisation of the peace process and further integration of Bosnia into Euro-Atlantic structures. However, this approach had its critics as well. They are reflected in scholarly approaches to peacebuilding in Bosnia which can be divided in two camps: those who oppose the robust approach of the OHR, such as Chandler,³¹ Knaus and Martin³², and those who support the approach exercised by the OHR which are mainly local authors such as Dizdarević,³³ Pejanović,³⁴ Kazazović.³⁵ Approaches of local authors are probably best summed up by Lovrenović who stated that, “In Bosnia and Herzegovina of today ... the least important thing is whether the high representative governs autocratically. What is of far greater and even fateful importance is that he should govern effectively”.³⁶ Pajić sees these two camps as having originated from DPA provisions. He classifies them into those who employ “positive” and “negative” interpretations of the DPA. He sees positive interpretation as the one that strives to establish a single state in accordance with international standards of human rights and civil society. The negative interpretation is seen as the one seeking further partition of the country along ethnic lines, and “strengthening ethnic based institutions in all walks of life.”³⁷ As the following chapters will show, the peacebuilding headed by the OHR provided valuable lessons for the future practice and theoretical approaches in this field, but it also pointed out the main obstacles that were contained in the provisions of the peace agreement for Bosnia. These provisions were also broadly discussed in SSR efforts undertaken by OHR, which will be shown in the following chapter.

³¹ See Chandler, *Bosnia: Faking Democracy After Dayton*, 2000 and David Chandler, “From Dayton to Europe”, *International Peacekeeping*, Vol.12, No.3, Autumn 2005, pp. 336–349.

³² Knaus, and Martin, “Travails of the European Raj”, *Journal of Democracy*, 2003. See also their articles in section on Bosnia at www.esiweb.org.

³³ Srđan Dizdarević, “Dayton Today: The Role of the International Community for (non)implementation of the Dayton Agreement”, *Review of Free Thought*, No. 25-26, January March 2000.

³⁴ Mirko Pejanović, *Post-Dayton Political Development of Bosnia and Herzegovina*, Sarajevo: Šahinpašić, 2005.

³⁵ Neven Kazazović, “With or Without the Office of the High Representative”, Friedrich Ebert Stiftung, 19 February 2007.

³⁶ Ivan Lovrenović, ‘Is Paddy Ashdown Bosnia’s Last Governor?’, *Feral Tribune* 31st July 2003.

³⁷ Zoran Pajić, “The Role of Institutions in Peace Building” in *International Support Policies to see Countries – Lessons (not) Learned in Bosnia-Herzegovina*, *Open Society Fund Bosnia-Herzegovina*, Sarajevo, 2001, p. 4.

2. OHR AND PROVISIONS OF THE DAYTON PEACE AGREEMENT RELATED TO SSR

The DPA is not an exception to the generally acknowledged fact that SSR has not been a priority in most peace agreements.³⁸ The composition of the agreement in terms of SSR reveals the difficult compromises that were dictated by the situation in the field during the negotiations in Dayton. These compromises eventually influenced the inclusion of SSR provisions in the agreement and rather limited the mandate of the international community in this regard. Many analysts agree on the existence of a gap between what is desirable to include in a peace agreement - from a purely security perspective - and what is politically desirable and feasible.³⁹ In the Bosnian case this was reflected in the 'enforcement gap' as the discrepancy between DPA's ambitions and limited means for implementation of its provisions - in terms of scope and authority - was enormous⁴⁰, which impeded the implementation of the DPA in the first two years. The role of the international community in terms of security issues was mostly restricted to cessation of hostilities and provision of an environment sufficiently secure for holding the first post-war elections, which had to be accomplished within a period of nine months after the agreement entered into force.⁴¹ Implementation of the agreement was additionally burdened because the mandate of the NATO-led Implementation Force (IFOR)⁴² was limited to only one year and was strictly confined to military matters. The international community in BiH soon realised that in order to effectively deal with the obstructionists of the DPA, a much longer commitment would be necessary. In order to provide such a long-term commitment/to legally base such commitment the international community relied on an array of provisions contained in the DPA. Therefore, this chapter discusses the provisions of the DPA that enabled major accomplishments in terms of SSR. It discusses the provisions of the agreement that were directly related to the security field and enabled initial movements in this

³⁸ African Security Sector Network (ASSN) on SSR Provisions in Peace Agreements, <http://www.africansecuritynetwork.org/projects-assn/SSR%20Provisions%20in%20Peace%20Agreements.doc>, Accessed on 10th February, 2008.

³⁹ Report for the World Bank and UNDP: 'Peace Process and Statebuilding: Economic and Institutional Provisions of Peace Agreements', *Chr. Michelsen Institute*, Bergen-Norway, 2007, http://www.undp.org/cpr/documents/we_do/Peace_agreements_Study_Final.pdf p. 11.

⁴⁰ Ivo H. Daadler, *Getting to Dayton*, (Washington D.C.: Brookings Institution Press, 2000), p. 176.

⁴¹ DPA, Annex 3, Article II/4.

⁴² With a grant of authority from the UN, Multinational military Implementation Forces under the command of NATO, acting under Chapter VII of the United Nations Charter, were established to provide secure environment.

field, but also those provisions that are not directly related but which helped the international community to assume a more robust role in peacebuilding in BiH and therefore additionally influence developments in SSR.

Annex 1 of the agreement contains provisions that directly deal with security matters. It regulates the military aspects of the peace settlement, such as deployment of IFOR and its role in the provision of a secure environment, redeployment of forces and the establishment of the Joint Military Commission - a body comprised of key military actors, local and international, brought together to oversee implementation of this annex. In addition, Annex 1-B also contains similar provisions as it pertains to security-building measures and arms control in the region under the auspice of the OSCE. Annex 11, dealing with civil structures of security, can also be classified as the one containing provisions directly related to security matters. It regulates the deployment of the International Police Task Force (IPTF), a UN operation established to overhaul local police forces and to assist them in operating according to internationally recognised standards.⁴³ Although these provisions were rather limited in terms of meaningful SSR, they have nonetheless provided a solid foundation for the stabilisation of peace in the country and helped initiate the (re)establishment of trust between former warring factions which was quickly replicated in other fields. They served as valuable entry points for SSR which ensued at a later stage of DPA implementation. However, serious steps in the direction of SSR were only feasible once the international community decided to apply a robust approach to the peace process. In order to do that it had to look for DPA provisions that contained instruments that would help the international community assume that role.

As negotiations over peace agreements often demand a high level of compromise, provisions contained in these agreements can usually be interpreted in different ways in order to meet the requirements of all parties in the negotiation process. Pehar calls these provisions the ‘multiple-meaning provisions’ and argues that DPA is a constructive example of those.

“Sometimes the important provisions of an agreement can deliberately be made as multiple-meaning provisions in order for every signatory party to interpret these provisions in its own way which would satisfy close interests and objectives that each party was fighting for during the conflict. To that extent, there is only one, common text of the agreement, but the multiple-meaning provisions offer two different interpretations.”⁴⁴

⁴³ DPA, Annex 11, Article 1, Item. 1.

⁴⁴ Dražen Pehar, “Urban Spirit of Compromise and Post-Dayton Bosnia“, *Forum Bosnae*, No. 5, 1999, p. 62.

As following chapters will show, these provisions have enabled OHR to undertake essential reforms in the country – SSR inclusive - and have equipped Bosnia with prerogatives usually exercised by states in modern democracies. To that extent, Pehar points out that Article III of Annex 4, which discusses competencies of state-level institutions, provides such provisions.⁴⁵ Although this article clearly stipulates the responsibilities of institutions at the state level, it still leaves space for different interpretations; following a list of state responsibilities, item 2 of this article states that, “Each Entity shall provide all necessary assistance to the government of Bosnia and Herzegovina in order to enable it to honour the international obligations of Bosnia and Herzegovina.” This is followed by item 3 which stipulates: “All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.” One would think that this was a final outcome when it comes to division of responsibilities between state and entities. However, OHR resorted to provisions contained in item 5 of the same Article.

“Bosnia and Herzegovina shall assume responsibility for such other matters as are agreed by the Entities; ... or are necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina, in accordance with the division of responsibilities between the institutions of Bosnia and Herzegovina. Additional institutions may be established as necessary to carry out such responsibilities.”

In 2005, in an address to the conference that marked the ten years of the Dayton agreement, James O’Brien, a leading constitutional lawyer at the U.S. State Department, who partook in composing some of the text of the agreement, pointed out that there are places in the text that could be used in order to advance reforms.⁴⁶ This was also confirmed by Lord Paddy Ashdown, former High Representative who expressed his gratitude to those who placed such instruments within Dayton and thus enabled reforms.⁴⁷ These provisions were used to establish security-related institutions at state level, especially in cases where a transfer of authority from

⁴⁵ Annex 4 of the DPA contains the Constitution of Bosnia and Herzegovina.

⁴⁶ James O’Brien, “Changing Bosnia’s Constitution?” Keynote address to the conference on Dayton: Ten Years After. Conflict Resolution and Co-operation Perspectives, Sarajevo, Bosnia-Herzegovina, 29th November, 2005, as quoted in Gearóid Ó Tuathail (Gerard Toal), John O’Loughlin, and Dino Djipa, “Bosnia-Herzegovina Ten Years after Dayton: Constitutional Change and Public Opinion”, *Eurasian Geography and Economics*, 2006, 47, No. 1, p. 63.

⁴⁷ Address of Lord Ashdown to the conference in Dayton: Then and Now: Peacebuilding Challenges in Bosnia and Herzegovina, Dayton, U.S.A., 18th November 2005.

an entity to state level was required. In order for local politicians to reach compromise over these issues, a lot of pressure had to be exercised by the OHR. In some instances, reaching a desired compromise proved to be impossible and the OHR had to impose decisions to establish these institutions. Vesting the OHR with powers that enabled the infliction was yet another example of the use of these provisions – as shown below - in DPA implementation.

Annex 10 of the agreement contains provisions on the role of the OHR in civilian implementation of the peace agreement. Article V of this Annex offers another example of multiple-meaning provisions as it defines the High Representative as “the final authority in theatre regarding interpretation of this agreement on the civilian implementation of the peace settlement.” Although this provision – that is not directly related to security field - was present in the DPA from the outset of the OHR mandate, it was only in 1997 that the PIC decided to interpret it in a different way. Following the first two years of implementation which saw little progress in the implementation of the DPA, PIC used this provision to vest the High Representative with additional powers, known as the Bonn Powers, which will be discussed in more detail in later chapters. Multiple meanings of this provision enabled the OHR to assume a different more robust role making it capable of imposing laws and removing elected officials found to be obstructing peacebuilding efforts in Bosnia. The international community was now able to begin serious efforts regarding SSR and could finally tackle the two main issues that determine the quality and success of peace agreement implementation: a) presence of spoilers, and b) presence or absence of coercive capability or intent required to overcome the obstructions imposed by spoilers.⁴⁸ The more robust approach of the OHR silenced the spoilers, and equipped the international community with coercive capability that enabled major reforms to take place.

Among other useful annexes is Annex 6 which includes provisions on human rights issues which were used to advance respect for human rights in post-conflict Bosnia. Closely related to it is Annex 4, which contains the Constitution of BiH, stipulates that the rights and freedoms contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall have priority over all other law.⁴⁹ This provision of the peace agreement was the basis for the decision of the Constitutional Court of BiH

⁴⁸ African Security Sector Network (ASSN) on SSR Provisions in Peace Agreements, <http://www.africansecuritynetwork.org/projects-assn/SSR%20Provisions%20in%20Peace%20Agreements.doc>, Accessed on 10th February, 2008. When it comes to spoilers role in implementation ASSN have referred to the work of Stephen J. Sedman who pioneered a study on spoilers in peace processes. He defines spoilers as “leaders who believe that peace threatens their power, worldview, and interests, and use violence to undermine attempts to achieve it.” See Stephen J. Sedman, ‘Spoiler Problems in Peace Processes’, *International Security*, Vol. 22, No. 2, (Fall, 1997), p. 5.

⁴⁹ DPA, Annex 4, Article II, Item 2.

(CCBiH) pursuant to this convention, to re-establish the constituency of all three peoples in the entire territory of BiH.⁵⁰ In terms of SSR, this decision helped establish appropriate ethnic representation in state-level institutions in accordance with the last census of 1991. Additionally, provisions regulating the composition of CCBiH can also be considered as those that assisted reforms in the security field in Bosnia. The DPA stipulates the CCBiH is to be composed of four judges selected by the House of Representatives of Federation of BiH (FBiH), and two judges selected by the National Assembly of RS respectively. Three remaining judges are to be selected by the President of the European Court of Human Rights.⁵¹ This provision brought credibility to the court as it helped cast away doubts on the possibility that CCBiH decisions might be politically or ethnically influenced. Also, this provision was copied into the laws of some of the institutions established through SSR as they were managed or closely assisted by foreign experts. As the following chapters will show, some of these institutions still have international experts as their members. Their presence is needed due to the continuous questioning of the credibility of these institutions, and it can also be seen as a transitional phase in reaching sustainability of these institutions, which should be marked with local counterparts assuming full local ownership over their functioning.

The instruments contained in the DPA were only consulted once the international community realised that a much more intense engagement would be required. The eventual use of these instruments led to significant reforms in the security field. A lesson that can therefore be drawn from the provisions of the Dayton agreement is that the limited number of SSR provisions in the agreement, did not necessarily prevent the international community - headed by the OHR – to push its reform agenda forward. Multiple-meaning provisions, as well as provisions related to human rights, constitutional courts and powers of the international envoy helped take this process to a more meaningful level of peacebuilding. This allowed for the conditions necessary for the stability of the country as its state-level security institutions were established. On the other hand, these provisions also reveal that the approach of the international community with regards to SSR was reactive, rather than proactive. Only after they were faced with obstacles in all fields of DPA implementation did they decide to consult the provisions that were there since the very first day of signing of the agreement. The most important shift in approach of the international community was (re)interpretation of the above-mentioned Annex 10 and its provisions on designation of the High Representative. This

⁵⁰ CCBiH, Decision on the Constituency of Peoples, (U-5/98).

⁵¹ DPA, Annex 4, Article VI, Item 1(a) and (b). Those three judges cannot be citizens of BiH or citizens of any neighbouring country.

reinterpretation has been possible thanks to the ad hoc character of OHR and the PIC. It is doubtful that a similar robust approach as that exercised by OHR would have been agreed to had a UN mission been in charge of peacebuilding in the country. Therefore, the following section will elaborate on how OHR has been established and how the process that led to the allocation of the so-called ‘Bonn Powers’ unfolded.

2.1. THE BONN POWERS OF OHR

The role prescribed to the High Representative by the DPA was to a large extent influenced by the state of affairs between the European powers and the United States (U.S.) and their different approach to the war in Bosnia. Originally, the U.S. planned to have control over both military and civilian implementation included in the agreement, and envisaged a powerful role for the High Representative.⁵² This, however, changed once the Europeans got involved in the talks and eventually it was arranged for High Representative to be a European, while one of the two deputies would be from the U.S. A compromise between the U.S. and the Europeans resulted in an ambiguous description of the High Representative’s role in DPA⁵³.

In addition to disagreement over the role of the OHR, the U.S. opposed the idea that the UN should oversee the implementation of the agreement, which led the Europeans to propose establishment of the Peace Implementation Council (PIC), a body which was to oversee the implementation and provide some international legitimacy as the role of the UN in the process was brought to a minimum. The PIC was officially established at a Peace Implementation Conference held in London soon after the DPA negotiations were completed in November 1995.⁵⁴ The PIC played an important part in the OHR’s reform efforts in BiH, especially in matters related to security. The crucial steps undertaken by the PIC took place at conferences in Sintra, Portugal, and Bonn, Germany, in 1997 when the High Representative was granted with much broader powers.

⁵² Chandler, ‘From Dayton to Europe’, *International Peacekeeping*, , 2005.

⁵³ DPA, Annex 10, Article.

⁵⁴ Conclusions of the Peace Implementation Conference held in London on 8th and 9th December (UN Doc. S/1995/1029 of 12th December 1995); The PIC is comprised of 55 countries and agencies that support the peace process in many different ways. The primary body of PIC is its Steering Board comprised of ambassadors of countries and IGOs that are the most significant contributors to the peacebuilding in BiH. The members of PIC’s Steering Board are United Kingdom, United States, the Presidency of the European Union, the European Commission, Canada, France, Germany, Italy, Japan, Russia, and the Organisation of the Islamic Conference (OIC). Ambassadors of the Steering Board meet with the High Representative on weekly basis and provide him with political guidance.

The DPA established a weak central government with most of the prerogatives exercised in liberal democracies being devolved to the level of two entities, Federation of BiH (FBiH) and Republika Srpska (RS). This was one of the main reasons why the OHR faced obstructions directed towards implementation of the DPA in the beginning of its mandate. As RS wanted to preserve its “statehood” given by the DPA at all costs, building institutions at state level was not in its interest. Paddy Ashdown, former High Representative saw this as a number one priority in his mission to Bosnia: “One of my first jobs was to persuade the Serbs in Republika Srpska that they were not a state, but a part of state and that they can have no future in Europe or NATO or anywhere else, until they recognised this.”⁵⁵ In order to do this, his predecessors had to pave the way for his actions through passing of decisions that reinforced the state-level institutions.

Two years into the implementation of the DPA, official TV channel of the RS⁵⁶ was still spreading propaganda against the SFOR troops. This led to the PIC conference in Sintra, Portugal, where the High Representative was granted with powers to suspend media whose program was in opposition to the spirit and letter of DPA.⁵⁷ During one of their broadcasts on this TV channel, photos of SFOR soldiers were compared to Nazi soldiers from World War II. As a result, Carlos Westendorp, the High Representative at that time requested that SFOR seize three towers of the RS television. Once this action was successfully conducted, the High Representative dismissed the steering board of RS television and established control over its broadcast. The success of this mission led the PIC to vest the OHR with additional powers at its conference in Bonn. The Bonn conference of the PIC was held on 9 and 10 December 1997. The conference actually confirmed the role of the High Representative as prescribed in the DPA. “The High representative is the final authority in theatre regarding interpretation of this Agreement on the civilian implementation of the peace settlement.”⁵⁸ The PIC welcomed the intention of the High Representative to use his final authority in theatre in order to facilitate the resolution of difficulties by making binding decisions.⁵⁹ The High Representative could now impose laws and dismiss officials found to be obstructing the implementation of the DPA. Carlos Westendorp, the first High Representative with Bonn powers, used them to break the impasse on implementation of DPA’s provisions related to state-level matters. He imposed

⁵⁵ Paddy Ashdown, *Swords and Ploughshares: Bringing Peace to the 21st Century*, London: Weidenfeld & Nicholson, 2007, p. 223.

⁵⁶ At that time the official title of that TV channel was Serb Radio Television – SRT. Later on it changed its name to the Radio and Television of the Republika Srpska - RTRS.

⁵⁷ PIC, Sintra Declaration, 30 May 1997.

⁵⁸ DPA, Annex X/4).

⁵⁹ PIC, Bonn Conclusions, 10 December 1997.

decisions on a national flag and anthem, citizenship, common license plates, and a single currency. The first real test of the Bonn powers came with the decision on the dismissal of Nikola Poplašen, the directly elected president of the RS.⁶⁰ After lingering for a few months in office and being ignored by the international community and gradually by other RS officials, Poplašen finally admitted defeat by leaving the office. A number of dismissals followed against individuals found to be obstructing the peace agreement. This enabled major achievements in the DPA implementation with subsequent High Representatives.

Westendorp was succeeded by Wolfgang Petritsch who in the beginning of his mandate advocated a policy of “ownership” whereby local officials were supposed to slowly assume responsibility for the reforms. This soon changed as obstructionists had to be tamed again in order for the peace process to progress and Petritsch had to renounce the ‘ownership’ agenda. His tenure is closely linked to one of the most significant shifts in the Bosnian peacebuilding process. In May 2000, the PIC convened a meeting in Brussels and decided to concentrate international efforts on building state institutions that would make Bosnia function as an independent and integral state. This was seen as “the turning point” of the peace process in BiH.⁶¹ The PIC Brussels conference explicitly called for the establishment of mechanisms for the independent funding of state institutions, professional civil service, state-level regulatory bodies in telecommunications, media, transport and energy, and urged international policies to be supportive of the creation of a single economic space.⁶² The use of Bonn powers by Petritsch shows examples of security and judicial institutions that were created through laws imposed by the High Representative. Establishment of these institutions was required by the “EU Road Map.” Some of these institutions will also be evaluated to show how they are functioning since their establishment.

Petritsch’s peacebuilding efforts were not enough for Bosnia to fulfil the requirements set in the PIC Brussels Declaration or the Euro-Atlantic integration process. Meeting the requirements called for more significant decisions as this meant that the entities would have to transfer their authority to state institutions. In May 2002, Paddy Ashdown, former leader of UK liberals was chosen to do just that. Ashdown left the most significant legacy of all the High Representatives.⁶³ Examples of the institutions established during his mandate shows the significance of the leverage that the Bonn Powers provided to the High Representative.

⁶⁰ OHR, *Decision removing Mr. Nikola Poplasen from the Office of President of Republika Srpska*, 5 March 1999.

⁶¹ ESI Paper, ‘Turning Point – The Brussels PIC Declaration and a State-Building Agenda for Bosnia and Herzegovina’, 2000.

⁶² PIC Brussels Declaration, 24 May 2000.

⁶³ ICG, ‘Ensuring Bosnia’s Future: A New International Engagement Strategy’, 15 February 2007, p. 5.

Ashdown's inaugural speech was marked with the sentence "Dayton is the floor, not the ceiling,"⁶⁴ which basically summarised his view of the DPA and the scope of future actions of the OHR. He underlined the difference between a decentralised state and a fractured state, and stated that those opposing the building of state institutions seem to think that Bosnia can be accepted in the EU "as two, or, as some even say, three failed statelets within a failed state."⁶⁵ Regarding the use of Bonn Powers, he said that he would use them "from time to time," and that he saw these powers acceptable "only if they are used on behalf of the people of Bosnia and Herzegovina as a whole."⁶⁶ The efforts undertaken by Ashdown in the field of SSR shows how the robust powers of the High Representative were used to drive the building of state-level security institutions. In 1995 when the DPA was signed, no one would have believed that ten years later Bosnia would have a single army, comprised of what once were warring parties. Also it would have been hard to imagine that the state would collect tax revenue for entities, and have a single intelligence service under the control of the state parliament. These institutions were not foreseen in the DPA but its provisions that allow transfer of authority from an entity to state level, together with tactical use of Bonn Powers, made this possible. Unlike direct imposition of laws which established the Border Police and the Court of BiH in Petritsch's case, for Ashdown the Bonn Powers worked in the background. He used them to remove officials, to order audits of major public companies, to establish reform commissions but he never used them to impose laws on establishing state-level institutions. Another important thing is that Ashdown tackled reforms in three fields at the same time, therefore the effects of the Bonn Powers, e.g. removal of President Mirko Šarović⁶⁷ – directly related to defence reform - spilled over into the reform of an indirect taxation system, as well as intelligence reform. "There has been surprisingly little reaction to most of the High Representative's dismissals", notes the European Stability Initiative (ESI) in 2000 and concludes that "there has often been a positive response from members of the public."⁶⁸ Considering that all of this was done in a period not so favourable for Bosnia, when the attention of major world powers was shifted to other corners of the world, such as Afghanistan and Iraq, the achievements of Ashdown's team need to be valued even more. Another difficulty that Ashdown had to deal with was the return of nationalists after the 2002 elections. He decided not to follow the steps of his predecessor and pursue "the vain quest for

⁶⁴ Paddy Ashdown, *Swords and Ploughshares*, 2007, p. 302.

⁶⁵ Ibid, p. 303.

⁶⁶ Ibid, p. 305.

⁶⁷ More details on this removal will be provided in subsequent chapters.

⁶⁸ ESI, 'Reshaping International Priorities in Bosnia and Herzegovina – Part Two', 2000, p. 33.

‘moderates’⁶⁹ which resulted in a weak Alliance for Change in 2000. Instead, Ashdown used his powers as a stick to remove obstructionists, and the appeal of the EU and NATO membership as a carrot in order to push nationalists on the road of needed reforms.

Combined with requests of the Euro-Atlantic integration process, the Bonn Powers proved to be invaluable in the creation of the state-level security institutions. These powers served as a drive for local politicians to reach compromise on important issues. Claims that local factors lack political autonomy to reach their own compromise⁷⁰ could be valid if they at the first place expressed willingness to initiate reforms over which they could have reached compromise. However, it was the threat of the High Representative’s powers that made them negotiate difficult issues until a compromise was found.⁷¹ Without these powers, the peace process would have stalled just as it was in the first two years of DPA implementation. To that extent, the robust approach of the international community proved to be inevitable in circumstances of post-war Bosnia that were entrenched with the DPA. However, one of the main reasons why these powers worked in the first place was the ad hoc nature of the OHR. It is doubtful that had a UN been mission in charge of DPA implementation they would have been able to reach necessary consensus on the introduction of these powers, and to facilitate their use during the peacebuilding process. The example of the OHR – guided by the PIC - shows an alternative approach to the one where usually the UN is a lead agency in peacebuilding operations. This is probably one of the reasons why lessons learned through OHR and PIC practice are now being applied in other areas of the world, and by some IGOs. These lessons can be summed down to a necessity for the international community to exercise a robust approach in post-conflict societies in order to achieve significant reforms, especially those in security field. As the following chapters will show, exercising the robust role was not always an easy thing to do and the High Representative had to deal with much criticism coming from local politicians and from academic circles. However, not all High Representatives used the powers at their disposal. This was the case with Ashdown’s successor, Dr. Christian Schwarz-Schilling. The progress achieved under Ashdown led the international community to believe that their job in Bosnia was coming to an end. In January 2006, the PIC appointed Schwarz-Schilling, a former International Mediator for FBiH, to oversee the process of closure of the OHR and the transfer of its authority to the European Union Special Representative (EUSR). Schwarz-Schilling exercised a completely different

⁶⁹ ICG, ‘Bosnia’s Nationalist Governments: Paddy Ashdown and the Paradoxes of State Building’, 22 July, 2003.

⁷⁰ Chandler, “From Dayton to Europe”, *International Peacekeeping*, 2005.

⁷¹ Wolfgang Petritsch, *From Dayton to Brussels*, Sarajevo: Svjetlost, 2002, p. 124.

approach to the one of Ashdown's. He almost completely denounced – while trying to implement policies of the international community in BiH - the robust role of OHR which led to a completely different political developments and eventually brought all the reforms in security sector into question. During his mandate he imposed around 70 decisions mostly related to the lifting of the ban placed on persons acting in the public sphere imposed by previous HRs and appointed the foreign judges.⁷² This led to two additional extensions of OHR mandate and to the appointment of new High Representative. However, Schwarz-Schilling's tenure left a legacy whose outcome seems to be impossible to revert and to bring the process of initiated reforms to successful completion. This will be further discussed in Chapter Five.

⁷² <http://www.ohr.int/decisions/archive.asp?m=&yr=2006>

3. OHR AND POLICIES OF INTERGOVERNMENTAL ORGANISATIONS INVOLVED IN PEACEBUILDING AND SSR ISSUES

The peacebuilding process in Bosnia involved an array of intergovernmental organisations (IGOs), most of them designated by the DPA to implement certain aspects of the agreement. Notwithstanding the provisions of the agreement, they ultimately evolved into the key players of the SSR process in the country. This chapter will discuss the policies and norms of some of the most prominent organisations involved in SSR in BiH and will show how they influenced the SSR agenda pursued by the OHR. Emphasis will be put on NATO, EU, and OSCE, but the UN and the Council of Europe (CoE) will also be discussed.

One of the main drives for reform in the first place was the motivation of Bosnian authorities to join Euro-Atlantic integration processes. Although in practice political elites in BiH showed significant reluctance on this matter, the reforms that were taking place in the region and in the wider area of the post-communist region eventually led Bosnia on this path. As the following sections will show, SSR in Bosnia was to a great extent made possible thanks to the policies of conditionality of the IGOs that Bosnia aspired to become a member of.

3.1 NATO

The key IGOs in Bosnia had their mandate prescribed by the DPA, which was the case of NATO, charged with providing a secure environment that eventually enabled other security-related processes to take place.⁷³ NATO was mandated by the UN Security Council to establish a multinational military force, Implementation Force (IFOR), with 60,000 soldiers and was charged with achieving a lasting cessation of hostilities, as well as separating and disarming warring parties. IFOR was a successor to the failed mission of United Nations Protection Forces (UNPROFOR), a mission whose outcome resulted in the restriction of UN involvement in post-conflict Bosnia, to be discussed in one of the following sections. In terms of security reform, IFOR was in charge of conducting the initial reform of defence forces as arranged within the framework of the Joint Military Commission.⁷⁴ This commission was originally in

⁷³ Annex 1-A, DPA prescribes the tasks foreseen for NATO with regards to security and stabilisation of Bosnia.

⁷⁴ Article VIII of Annex 1-A of DPA lists the tasks envisaged for Joint Military Commission.

charge of solving possible disputes between former warring militaries. After IFOR achieved its mandate a year after establishment, its forces were reduced and reorganized into SFOR (Stabilisation Forces), with a force of 30,000 soldiers. However, as defence reform advanced, the Joint Military Commission and SFOR gradually assumed the position of assisting the process of accession of BiH into the NATO's programme Partnership for Peace (PfP). PfP was created in order to integrate the former communist countries into the alliance and as NATO enlargement became the top issue on the agenda of the organisation so did this programme gain recognition of its importance. Therefore, in early 2000 alliance officials welcomed the aspirations expressed by some Bosnian politicians on membership in Euro-Atlantic structures, but also pointed out that there were many conditions that a country had to meet before it could actually become a member of the Euro-Atlantic family.⁷⁵ This condition based policy – involving certain benchmarks – became better known as conditionality policy and has become one of the most effective incentives for norm implementation of by NATO within aspiring countries.⁷⁶ The alliance's PfP programme therefore served - and still does - as a first step that a potential member country was supposed to meet in order to become a member of the organisation. NATO officials soon made it clear that in order for Bosnia to access the PfP, the first condition that it would have to be met was to establish a single command structure within its forces. This requirement represented one of the main drives for defence reform and proved to be a crucial leverage in the hands of the OHR once the defence reform was in full swing. It required painful compromises within the defence segment of SSR but it resulted in the unification of former warring parties, an outcome which was unimaginable in 1995 when the DPA was signed. Therefore, it can be concluded that NATO benchmarks assisted the robust approach of OHR in its pursuit of defence reform, and proved to be crucial for these undertakings.

NATO was not the only IGO exercising the policy of conditionality. While the alliance's influence with benchmarks was mostly pertaining to the defence aspect of SSR, the conditionality policies pursued by the EU were much wider in range than those of NATO.⁷⁷

⁷⁵ AIM Press, 'BiH with One Army?', <http://www.aimpress.ch/dyn/pubs/archive/data/200007/00731-006-pubs-sar.htm>, Accessed on 2nd April 2008.

⁷⁶ Oksana Myshlovska, 'Overview and Typology of IGO Norms for Security Sector Reform and Governance', in *International Organisations and Security Sector Reform*,

⁷⁷ Although NATO-led SFOR was replaced by European Union Forces (EUFOR) in 2004, it still remains present in Bosnia through its headquarters in Sarajevo, and is closely monitoring the integration process.

3.2. EUROPEAN UNION

One of the main conditions that a potential member state must meet in order to join the EU is contained in Article 49 of the EU Treaty. It stipulates that aspiring countries must respect the principles listed in Article 6(1) of the Treaty which are democracy, liberty, respect for human rights and fundamental freedoms and the rule of law. In 1993 at a meeting in Copenhagen, the European Council had brought up the accession criteria, which were additionally strengthened with other criteria that were agreed at a meeting of the European Council in Madrid in 1995.⁷⁸ The conclusions outlined three criteria that a new member state must meet: political, economic and legal. In order to open negotiation, the political criteria are the first to be met and they include stability of institutions guaranteeing democracy, the rule of law, respect for human rights and protection of minorities.

Three major stages constitute the process of BiH integration into the EU: the road map, the feasibility study and the process of the European partnership. The Road Map for BiH was announced in 2000 and it contained eighteen key conditions that the country had to meet before the Feasibility Study on opening talks on stabilisation and association process with the EU could be launched. One of the conditions related to the SSR in the Road Map was establishment of state-level border service in order to fight illegal immigration, smuggling and corruption in BiH. The Road Map constituted a ground work for the long process of European integration that lied in front of Bosnia. It was followed with the Feasibility Study in 2003, a report that the European Commission prepares for the European Council on the preparedness of a country for institutional relations with the EU. This document again addressed the SSR issues. Among the sixteen key areas that the study had identified, Bosnia had to address the establishment of High Judicial and Prosecutorial Council of BiH; provide proper staffing and financing of State Court of BiH as well as the Ministry of Security and State Information and Protection Agency (SIPA). It also required Bosnia to continue the structural reform of the police, an issue that with certain modifications remained interwoven with further steps of the integration into the EU, such as European partnership within the framework of the Stabilisation and Association Process which ensued after the Feasibility study was approved. Implementation of the partnership is assessed through annual reports prepared by the European Commission. Each one of these reports included conditions related to SSR that BiH was

⁷⁸ European Council Presidency conclusions, Copenhagen and Madrid inclusive, can be found at http://europa.eu/european_council/conclusions/index_en.htm , Accessed on 20 March 2008.

supposed to meet in order to advance further on this track, the most notable one being the above-mentioned police reform as well as further strengthening of the remaining security structures in the country.

Failure to prevent and stop the war in former Yugoslavia, among other reasons, led the EU to establish the Common Foreign and Security Policy (CFSP) and later to develop European Security and Defence Policy (ESDP) which led the EU to become acknowledged as “the most important resource provider for SSR programmes”.⁷⁹ The EU has in due course realised the importance of SSR and now values it as “an important part of conflict prevention, peacebuilding and democratisation [which] contributes to sustainable development”.⁸⁰ Along with these developments, the role that the EU has played in peacebuilding in Bosnia started to expand. After an initial fragmented approach to post-conflict Bosnia, the EU has, through ESDP and process of integration become much more involved in stabilisation of Bosnia. The European Union Police Mission (EUPM) in Bosnia and Herzegovina - the first ESDP mission - was launched in 2003, while in 2004, the EU took over the military mission from NATO-led forces and established the European Union Forces (EUFOR). In addition, in 2002 the High Representative became double-hatted as he assumed the additional role of the European Union Special Representative (EUSR). Together with the European Union Monitoring Mission (EUMM) and the Delegation of the European Commission, the EU has reaffirmed its commitment to peacebuilding in Bosnia and the potential integration of the country into the EU. Along that road, the EU had pursued the objectives set by the OHR in the field of SSR, and at the same time dedicated more attention to this issue in the development of its own security policies. It is important to emphasise that just as in the rest of the Balkans, it was political pressure from the EU at the very highest political levels and the prospect of membership in the EU that drove SSR in Bosnia, rather than technical assistance or specific SSR funding.⁸¹ One of the primary reasons why the EU was in a position to exert political pressure and employ the conditionality policy is because of the appeal that the EU membership has among Bosnian population, in all three constituent peoples of the country.⁸² This in the end provided the OHR with crucial leverage in pursuing the reform and provided legitimacy for its decisions.

⁷⁹ Intergovernmental Approaches to the Security Sector Reform (SSR), Background paper, DCAF 2006.

⁸⁰ ‘A Concept for European Community Support for Security Sector Reform’, European Commission, May 2006.

⁸¹ Andrew Sherriff, ‘Security Sector Reform and EU Norm Implementation’ in David M. Law (ed.)

Intergovernmental Organisations and Security Sector Reform, DCAF, 2007, p. 95.

⁸² Report entitled ‘The Silent Majority Speaks’ established that one of the long-term aspirations among all three constituent peoples of BiH was membership in the EU. The research for the report was conducted by Oxford Research International, on behalf of the United Nations Development Programme (UNDP). It constitutes the most comprehensive and thorough examination of the social and political profile of BiH ever undertaken.

3.3 OSCE

The OSCE in cooperation with the OHR played an important part in the SSR process in BiH, especially in the first years after the conflict when it facilitated communication between representatives of the three former warring parties through its confidence-building measures and agreements established in accordance with Annex 1-B of DPA. At a later stage, OSCE's policy of pursuing the fulfilment of obligations from the *Code of Conduct on Politico-Military Aspects of Security* proved to be solid leverage that the international community had in its hand during SSR. The OSCE also provided some of the preliminary steps for reforms in this field in order for NATO and the EU to pursue its conditionality policies in the SSR process.

This organisation was involved in the DPA implementation from its outset as Annex 1B of the agreement regulates the OSCE's role in terms of security issues in Bosnia. Article II of this Annex designates this organisation with confidence-building tasks in accordance with the *1994 Vienna Document of the Negotiations on Confidence and Security-Building Measures*. Additionally, Article IV provides measures for sub-regional arms control and designates the OSCE with assistance in negotiations pertaining to these issues. Following the signing of the DPA, OSCE in 1996 helped broker two agreements related to security building and arms control.⁸³ In line with provisions of Article II, the OSCE also provided signatories to these agreements with different seminars related to democratic control of armed forces, institution building and civil-military cooperation which proved to be a valuable preliminary step in the direction of defence reform.⁸⁴ Confidence building activities undertaken by the OSCE provided a foundation for overcoming divisions in the BiH military sector that existed right after the war. This helped re-establish confidence between representatives of former warring parties and provided a solid ground for future reforms in the security sector which in the end resulted in the termination of Article II of Annex 1-B and the resulting *Agreement on Confidence and Security Building Measures* as the BiH Defence Law was passed and parties to the agreement were merged into a single armed force.

⁸³ *Vienna Agreement* on confidence and security-building measures (signed between BiH state and two entities), and *Florence Agreement* on sub-regional arms control (signed between BiH parties, Croatia and Federal Republic of Yugoslavia).

⁸⁴ See OSCE Mission in Bosnia and Herzegovina, http://www.oscebih.org/security_cooperation/accontrol.asp , Accessed on 5 March 2008.

The principle of conditionality was not applied for Bosnia's membership in the OSCE as was/is the case with the Council of Europe, NATO and the EU.⁸⁵ The main policy pursued by the OSCE was to rely on its *Code of Conduct on Politico-Military Aspects of Security* and to assist the country in meeting its obligations pertaining to that document. The Code played an important part in the SSR process as it contained basic principles that BiH had to adhere to if it was to carry out the commitments required by the OSCE. The Code provided a 'transmission belt'⁸⁶ for future reforms in the security field, as it constrained different actors in BiH in avoiding the obligations that the country had to meet in fulfilling the conditions set by the Code. It was clear that the existing apparatus in the country would stand in the way of BiH meeting these obligations, therefore the OSCE, together with other OHR, NATO and the EU pressured local counterparts to fulfil these commitments.

The OSCE was also involved in the follow-up to the 'Orao' affair, where high officials from Republika Srpska were implicated in selling aircraft parts to Iraq, which constituted a breach of the UN embargo over this country. The High Representative requested the OSCE to become involved in the preparation of a state-level law that would regulate foreign arms exports. This led to a first transfer of military matters to a state level as this affair was a clear violation of international agreements and therefore constituted a foreign trade matter, which was under competency of state-level Ministry of Foreign Trade and Economic Relations. This was one of the first steps made by the international community in BiH in relation to establishing a state-level competence over defence issues, which will be further elaborated in the section dealing with the defence reform. Furthermore, the OSCE was also assigned with the downsizing of armies, and was assisted in this process by other IGOs, such as the World Bank and the International Monetary Fund (IMF). During the defence and intelligence reform, the OSCE was also involved in overseeing the process of the establishment and the functioning of the Joint Committee for Security and Defence, as well as the Joint Committee on Oversight over the Intelligence and Security Agency. Democratic oversight constitutes one of the main conditions set in the OSCE's Code of Conduct, as well as one of the main requirements for membership in PfP. Additionally, the OSCE played an important role in reinterpretation of the competencies over defence which were "re-allocated" to the state level. This role of the OSCE, combined with OHR's robust approach to the SSR, made these activities possible in the first

⁸⁵ Bosnia was admitted to the OSCE on 30th April 1992.

⁸⁶ Vetschera and Damian, 'Security Sector Reform in Bosnia and Herzegovina: The Role of the International Community', *International Peacekeeping*, Vol. 13, No. 1, March 2006, p. 37.

place, and eventually resulted in reforms in the security field that are considered to be exceptionally successful.

3.4 UNITED NATIONS

Taking into account the failure of the UNPROFOR to protect the civilians during the Bosnian war, the DPA deliberately limited the role that the UN was going to play in the aftermath of the war. One of the reasons for establishing the OHR in the first place was to avoid installing a UN mission that would oversee the entire peace process in the country. However, in accordance with international law practice, the UN Security Council is in charge of approving appointments of High Representatives as well as prolonging the mandate of foreign troops in charge of providing a secure environment in Bosnia. When it comes to actual participation in the peacebuilding process, Annex 11 of DPA has designated the UN with tasks of overhauling local police forces. This was to be done through its IPTF which was authorised to conduct vetting, certifying, or dismissing police officers from local police forces. IPTF also brokered two agreements on the restructuring of the Police in Federation, and later in RS.⁸⁷ These agreements also included significant downsize in entities' police forces. IPTF was also involved in the training of senior police officers in transition to democratic policing as well as training of new cadets according to the internationally accepted policing standards.⁸⁸ These activities provided a solid ground in terms of enabling police forces to operate in a democratic environment, and also provided trained police officers which were then hired by State Border Service (SBS) and State Investigation and Protection Agency (SIPA), agencies that were set up through the SSR process. In terms of judiciary, United Nations Mission in Bosnia (UNMIBH) established a Judicial System Assessment Programme in 1998 in order to monitor and assess the work of judiciary in BiH. The two-year programme resulted in identification of main struggles that the legal system in the country was facing. The results were transferred to the Independent Judicial Commission (IJC) set up by the OHR and mandated judicial reform in the country.

⁸⁷ The Agreement on Restructuring the Police of the Federation was signed on 25 April 1996 (also called the Bonn-Petersberg Agreement). The Framework Agreement on Police Restructuring, Reform and Democratization in RS was signed on 9 December 1998.

⁸⁸ See United Nations Department for Peacekeeping Department (UNDPKO) web page on United Nations Mission in Bosnia and Herzegovina (UNMIBH) <http://www.un.org/Depts/dpko/missions/unmibh/>, Accessed on 25 March 2008.

3.5. THE COUNCIL OF EUROPE

The role of the Council of Europe (CoE) in the DPA is mentioned in Annex 5, ‘Agreement on Human Rights’, where this organisation is designated with activities related to the establishment of a Human Rights Chamber and the task of overseeing of its work. Also, one of CoE’s bodies, the European Court of Human Rights is mentioned in Article VI of Annex 4, whereby the president of this court appoints international judges of the CCBiH. The court confirmed many decisions brought by the OHR and determined that they were consistent with the constitution of the country. The international judges in the court provided balance between different ethnic interests and ensured its decisions were in the interest of all three peoples. The role of CoE in SSR significantly increased when Bosnian authorities expressed interest in becoming a member of the organisation. Just as well as NATO and the EU, the CoE also exercised the policy of conditionality and in terms of SSR requested that Bosnia implement the amendments to the constitution based on the Decision of the CCBiH on constituent peoples in BiH. It further requests that BiH adopts a new Criminal Code and Criminal Procedure Code at the state and entity level; that it conduct reforms in judiciary and establish professional and independent judicial and prosecutorial system; and restructures the armed forces in a way that would be compatible with the international standards and procedures, with special emphasis on democratic control of defence forces.⁸⁹ It is also worth mentioning that apart from CoE and UN involvement in SSR, the WB and IMF have also had a role in this reform which was reflected in terms of providing expertise on levels of security expenditure, demobilisation and reintegration of former soldiers.

This chapter illustrated that despite the limited input on SSR in the DPA, international organisations have, over time, created conditions for serious steps in this field and assumed the role of key players in SSR in BiH. The most successful leverage that they had at their disposal was the policy of conditionality that was exercised by the NATO, EU and to some extent the CoE. This approach proved to be invaluable to peacebuilding in Bosnia and has resulted in achievements that were unthinkable at the outset of the peace process. Throughout this process the OHR enjoyed the support of the PIC. Although not always an easily earned support, the

⁸⁹ Parliamentary Assembly of the Council of Europe, Opinion No. 234 (2002): Bosnia and Herzegovina’s application for membership of the Council of Europe, <http://assembly.coe.int/main.asp?link=http://assembly.coe.int/documents/AdoptedText/TA02/EOP1234.htm>, Accessed on 23 March 2008.

OHR could count on it most of the time as the majority of the PIC's Steering Board members were also the most influential members of IGOs that pursued these policies. Still, the main reason why the policy of conditionality worked is because of the public consent that existed in terms of support to the integration of Bosnia into Euro-Atlantic structures among all three ethnic constituencies of the country. It is due to this fact that High Representatives decisions – even those on removal of directly elected officials – have never provoked major outburst of public discontent.

The downside of the policy of conditionality is that the above-mentioned IGOs have quite often dropped the conditions that they appeared to be so vigorously pursuing during some stages of the SSR process. Such is the case with NATO's conditioning Bosnia's membership in the PfP. After a number of years when membership in PfP was conditioned on full cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) – i.e. arrest of the most wanted war criminals – Bosnia was admitted to the programme in 2006 without fulfilling these conditions.⁹⁰ A similar pattern can be observed with CoE admitting Bosnia into the organisation after the country adopted an election law that clearly violates provisions of the European Convention on Human Rights as only citizens of BiH from certain ethnic groups can be elected into public institutions.⁹¹ Recent developments in police reform, where the EU has in essence given up on all three principles that were once proclaimed as conditions for signing SAA are yet another example. The EU required that police reform should result in having the police organized at state level, financed from a single budget and free of political interference. However, the agreement that was reached only created institutions that are supposed to coordinate police agencies only at state level without any competence over entities' and cantonal police forces. It additionally created police agencies that are going to replicate those at entity level. The process of implementation of police reform laws also shows that even this zero-sum agreement on reform is prone to political interference that caused significant delays in implementation and establishment of institutions foreseen by these laws.

Inconsistency in pursuing own policies may represent an attempt of these IGOs to attract the country into membership, and then exert pressure through institutional mechanisms

⁹⁰ Failure to put Radovan Karadžić and Ratko Mladić under arrest was the only reason why Bosnia was not accepted in PfP at NATO's Istanbul summit in 2004.

⁹¹ See Saida Mustajbegovic, 'Constitution Taken to Court', BalkanInsight.com, available at [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/BF037A88F356A4D2C125741E0051A98E/\\$file/BalkanInsight_com+-+Constitution+Taken+to+Court.htm](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/BF037A88F356A4D2C125741E0051A98E/$file/BalkanInsight_com+-+Constitution+Taken+to+Court.htm)

to meet the remaining conditions.⁹² However, this practice is very delicate and can largely backfire as is the case with the current state of reforms in Bosnia. By sending signals that most conditions are flexible and that sometimes they do not even have to be met, the international community has brought itself into a position whereby political leaders in BiH think that they will even be able to implement SAA on their terms. The following chapter will show how the institutions established through SSR -in most cases thanks to the policy of conditionality - are performing in practice.

92 This was especially the case with the CoE. See for example Rick Fawn; 'Chechnya, the Council of Europe and the Advocacy of Human Rights in the Toughest of Cases' in *Russia and Globalization: Identity, Security, and Society in an Era of Change*; Douglas W. Blum (ed); Woodrow Wilson Center and Johns Hopkins University Press; Washington; 2008.

4. EVALUATION OF STATE-LEVEL SECURITY INSTITUTIONS CREATED THROUGH SSR

David M. Law identifies three phases in the building of a new security sector in Bosnia: first phase refers to conflict termination and pacification; second phase represented institution-building at the entity level; and a final phase included the building of security institutions at state level.⁹³ The OHR was actively involved in all three stages. However, the third stage caused a major debate between local counterparts and OHR officials in charge of these reforms. The controversy that surrounded this stage, as it required the transfer of competencies from entity to state level, is one of the main reasons why it is in the focus of this paper. It is important to mention that the underlying reason behind this debate is the diametrically different vision of the country's future by the three constituent peoples. Fortunately, integration into the EU and NATO sets requirements that will oblige a change which will hopefully lead to a more harmonised vision of the future. At the end of the day a reform of the constitution will be needed in order for the country to be able to successfully integrate into the EU and NATO, as the current structure is unsustainable.

The main focus of this chapter is to show how successful OHR was in its efforts now that the institutions created through SSR have existed for some time. An overview of the OHR's role in the establishment of functioning institutions will precede the actual evaluation of these institutions. Evaluation itself will be conducted on the basis of a framework for measuring progress of SSR programmes developed by the OECD DAC.⁹⁴ This framework contains general objectives that can be applied to the SSR in Bosnia as well. The objectives are accompanied with a whole range of criteria and indicators, but for the purpose of this research only those relevant to the BiH context will be considered. Also, additional indicators, specific to the context of this country will be used. Therefore the framework of measurement applied in this paper will be based on following objectives and indicators:⁹⁵

- a) *Local ownership (level of international involvement, political support, cooperation with other institutions);*

⁹³ David M. Law, 'The Post-Conflict Security Sector', Policy Paper No. 14, DCAF, Geneva, June 2006.

⁹⁴ *OECD DAC Handbook on Security Sector Reform: Supporting Security and Justice*, 2007, p. 73.

⁹⁵ Quantitative indicators will also be shown for institutions where statistical data is applicable.

- b) *Democratic governance (accountability and oversight, equal (ethnic) representation and professionalism);*
- c) *Service delivery (effectiveness in terms of delivery of results, responsiveness to the public, accessibility);*
- d) *Sustainability (financial stability of the institution, technical equipment of the institution).*

4.1. BORDER POLICE⁹⁶

Prior to the establishment of this agency, state borders were controlled by the Ministry of Interior of RS and Ministries of Interior – Cantonal and Entity - in the FBiH. In total, thirteen different ministries had control over the border. Since BiH did not have any external borders before the dissolution of Yugoslavia, the infrastructure at border crossings was in poor condition, while cooperation and exchange of information because of the legacy of war was at an extremely low level. BiH thus had very porous borders, making it susceptible to any type of trans-border crime. Human trafficking, smuggling of goods and illegal immigration were the most common offences.⁹⁷ The lack of control over borders not only encouraged crime, it also undermined the economy and sovereignty of the country.

The PIC first addressed the issue of borders in its conclusions from the Bonn Conference. “The Council expresses concern that regulations applied to the entry and exit of persons, goods and vehicles to and from Bosnia and Herzegovina differ at the various border points.”⁹⁸ Considering that porous borders pose a serious threat to the security and the economy of the country it invited OHR and the IPTF to assist local authorities in drafting a law on a border service agency. The next step was the call for the actual establishment of BiH Border Service.⁹⁹ This caused a heated debate between the international community, and local politicians as the Border Service was the first law-enforcement agency to be established at state level. Discussion over the laws regarding the Border Service endured much obstruction and went on for seven months. RS representatives in the BiH House of Representatives saw adoption of this law as an attempt to revise the BiH Constitution. It took additional pressure of

⁹⁶ Border Police used to be entitled State Border Service. The change of the name came with adoption of best European practices.

⁹⁷ According to the overview of the UNMIBH by the United Nations Department for Peacekeeping Department (UNDPKO) the number of illegal migrants decreased from 25,000 in 2000 to a few hundred in 2002. The overview is available at <http://www.un.org/Depts/dpko/missions/unmibh/background.html>.

⁹⁸ PIC, Bonn Conclusions, 10 December 1997, IV/6.

⁹⁹ PIC Madrid Declaration, 16 December 1998.

the international community to push things forward on this issue. During a visit to the Security Council of the United Nations, U.S. ambassador to the UN and a creator of Dayton Agreement, Richard Holbrook, brokered a deal between the three members of the BiH Presidency which became known as the “New York Declaration” where all three of them supported the establishment of border service in accordance with principles laid out by the OHR. Still, once the law reached the BiH House of Representatives, members of parliament from RS voted against the law which caused Jacques Klein, Chief of UN mission in BiH, to call for OHR to impose the Law on Border Service because it was “obstructed by hard-liners among the Serb and Croat leaders in BiH”.¹⁰⁰ The DPA did not refer to border security; therefore the OHR consulted Article III of Annex 4 that prescribes a possibility for Bosnia to establish additional institutions to carry out responsibilities necessary to preserve international personality of the country. Following the protracted obstructions, Wolfgang Petritsch, the High Representative at that time, imposed the Law on State Border Service in January 2000.¹⁰¹ As a result, he stated, “I will not allow a few irresponsible State representatives from the RS to dash an entire country’s hopes for a prosperous and open future”.¹⁰² Eleven representatives from the RS in the state parliament challenged the imposed law before the CCBiH, however the court decided that the Law on State Border Service was in accordance with BiH constitution.¹⁰³ The State Border Service became operational in June 2000 and gradually established control over the entire Bosnian border. It now covers fifty-five international border crossings as well as thirty-four local border crossings. As prescribed by the law the competence of the SBS covers enforcement of the Law on Surveillance and Control of the State Border, the Law on Movement and Stay of Aliens and Asylum in BiH, as well as prevention and detection of criminal acts directed towards the security of the state border. In the meantime, SBS was subordinated to the state Ministry of Security as one of its administrative organizations with operative independence.

¹⁰⁰ BETA News Agency, “OHR should impose Law on BiH Border Service – Klein”, 10 January, 2000.

¹⁰¹ OHR, *Decision Imposing the Law on State Border Service*, 13 January, 2000.

¹⁰² OHR Press Release, 13 January, 2000.

¹⁰³ Constitutional Court of BiH: Decision – The Law on State Border Service, U-9/00, 3 November, 2001.

Evaluation

a) Local Ownership

According to external reviewers, the Border Police has been functioning well.¹⁰⁴ Border Police is functioning without any direct operational involvement by the international community. The international community did however play an important part in the establishment of the agency. At first, IPTF oversaw the process of the establishment of the agency, especially in the hiring and training of its servicemen. All the personnel of the Border Police had to go through vetting and appointment procedures established by IPTF in accordance with internationally accepted standards.¹⁰⁵ Currently, the EUPM has only an advisory role, while the Assistant Director of Border Police, Žarko Laketa, stating in an interview that support of the international community is still needed because politicians still cannot agree over certain issues.¹⁰⁶ In terms of cooperation with other agencies, the Border Police has an outstanding cooperation with the Indirect Taxation Administration (ITA) which was also recognised in the EU progress report for 2007.¹⁰⁷ It is important to mention that once the initial lack of political support was surmounted, the existence of the Border Police has not been brought into question by politicians although the agency has been a matter of discussion in political circles ever so often as the mandate of a director is coming to an end, raising the debate on potential candidates.

b) *Democratic governance* has much improved since the Joint Security and Defence Committee (JSDC) in the Parliamentary Assembly of Bosnia and Herzegovina was established and since the agency was placed under the Ministry of Security. The JCS D is exercising immediate parliamentary oversight over the Border Police. Members of the committee regularly follow the work of the agency and each year visit all border crossings. They also propose amendments to laws regulating the work of Border Police officers, in order to facilitate their operations and streamline the legislation related to this agency in accordance with EU standards. Overall, the cooperation with this committee can be rated as exceptional,

¹⁰⁴ Jasmin Ahić, 'Bosnia's Security Sector Reform – State Border Service of BH as an efficient Border Management Agency', in Anja H. Ebnöther et. al (eds.), *Security Sector Governance in the Western Balkans: Self-Assessment Studies on Defence, Intelligence, Police and Border Management Reform*, DCAF, 2007, pp. 309-324. See also European Commission report: *Bosnia and Herzegovina: 2007 Progress Report*, SEC, 2007, p. 48.

¹⁰⁵ See United Nations Department for Peacekeeping Department (UNDPKO) web page on United Nations Mission in Bosnia and Herzegovina (UNMIBH) <http://www.un.org/Depts/dpko/missions/unmibh/>. Accessed on 25 March 2008.

¹⁰⁶ Interview with Žarko Laketa, Assistant Director with Border Police, 27 May 2008.

¹⁰⁷ European Commission report: *Bosnia and Herzegovina: 2007 Progress Report*, p. 49.

and it is also worth mentioning that a committee initiative has managed to get the budget of the Border Police increased by eight million Convertible Marks (KM).¹⁰⁸ Žarko Laketa pointed out that the Border Police is taking equal ethnic representation, as stipulated by law, very seriously.¹⁰⁹ On every border point the staff has to reflect this ethnic composition. This however creates an important problem as this cannot be maintained throughout BiH. When asked whether equal ethnic representation carries greater importance than sufficient staff operating on every border point, Laketa said that this is the realistic provision of the law that has to be respected.¹¹⁰

c) Service delivery

When it comes to service delivery the number of persons caught illegally crossing the border was 530 persons in 2001, and amounted to 1,289 persons in 2006. However, figures from 2007 and 2008 suggest that the number of attempted illegal crossings is decreasing as the number of persons detected fell to 851 persons in 2007 and to 393 in 2008. At the same time, person from Republic of Croatia that are accepted accordingly to the readmission agreement fell from 5,361 persons in 2000 to only 203 persons in 2008. However, despite this very encouraging data, BiH is still a very attractive transition country for trafficking on the Balkan route. Also, according to the UNMIBH data, border control by the Border Police generated over \$1.2 million for the Treasury in the first nine months of 2002, of which almost \$900,000 was in seized goods.¹¹¹ Additionally, the efforts of the Border Police have moved Bosnia from Tier III in 2003 to Tier II in 2004 in classification of the US Department of State that is published annually in the “Trafficking in Persons Report.”¹¹² The US DoS report has qualified Bosnia as a country whose governments are making significant efforts to fight against human trafficking. The Border Police played a significant part in this achievement and has helped Bosnia remain in the same tier in this years’ report as well, unlike some of the neighbouring countries.¹¹³

¹⁰⁸ Interview with Žarko Laketa.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ See United Nations Department for Peacekeeping Department (UNDPKO) web page on United Nations Mission in Bosnia and Herzegovina (UNMIBH) <http://www.un.org/Depts/dpko/missions/unmibh/>. Accessed on 25 March 2008.

¹¹² *US Department of State*, “Trafficking in Persons Report”, 2004, <http://www.state.gov/g/tip/rls/tiprpt/2004/33187.htm>

¹¹³ Montenegro and Albania were placed in Tier II Watch List this year. See *US Department of State*, “Trafficking in Persons Report”, 2008, <http://www.state.gov/g/tip/rls/tiprpt/2008/105383.htm>

d) *Sustainability*

In terms of financial sustainability most of the Border Police budget is spent on salaries. Nevertheless, salaries represent the biggest problem in terms of financial issues. In the beginning of its operational work this agency had much higher salaries in comparison with other law-enforcement agencies, and therefore attracted a lot of quality personnel. Over time, however, this has changed in favour of local and entity police forces and Border Police is now facing a drain of quality staff similar to most of other institutions established through SSR at state level. In the long run, this might cause significant downturn in performance of the Border Police and can influence the current levels of professionalism.¹¹⁴ Salaries have thus been the core reason why there is a drain of personnel from the service over the last few years. However, the new law on salaries in BiH institutions – adopted on 4 June 2008 - has to some extent improved their payment quotas, but not sufficiently enough. Jasmin Ahić is very critical of the sustainability of the Border Police, not only in terms of salaries but also in terms of personnel, equipment, education and training.¹¹⁵ As the biggest portion of the budget is spent on salaries and regular expenses, there is virtually no money to buy specialised equipment while the old equipment received from donor countries needs to be modernised. The EU progress report for 2007 also recognises this problem and blames limited political attention for the lack of technical equipment.¹¹⁶ Most of the equipment has come from donations, as is the case also with information technologies where the most significant donations over previous years were given by the U.S. Department of Justice Program – International Criminal Investigative Training Assistance Program (ICITAP) and the European Commission.

4.2. ARMED FORCES OF BiH

The DPA did not envision the existence of a unified military at the state level. Military matters were left at the entity level, therefore making two armies out of the former three warring parties: the Croatian Defence Council (HVO), the Army of Republika Srpska (VRS) and the Army of Bosnia and Herzegovina (ABiH). According to the Washington Agreement

¹¹⁴ Interview with Žarko Laketa.

¹¹⁵ Jasmin Ahić, 'Bosnia's Security Sector Reform – State Border Service of BH as an efficient Border Management Agency', in Anja H. Ebnöther et. al (eds.), *Security Sector Governance in the Western Balkans* DCAF, 2007, p. 321.

¹¹⁶ European Commission report: *Bosnia and Herzegovina: 2007 Progress Report*, p. 49.

HVO and ABiH were to be merged into the Army of Federation of BiH (VFBiH).¹¹⁷ Following the signing of Dayton agreement, significant amounts in budgets were still spent on financing of different armies in the country. In its Brussels Declaration from 2000, the PIC criticised the high levels of defence spending in Bosnia and saw them as unsustainable: “BiH needs to have armed forces with a unified command and control capable of joint deployment and action under international and regional security organisations”.¹¹⁸ As Bosnia was moving on the path toward potential membership in the EU and NATO, the so-called Euro-Atlantic integration process, the creation of a single military force at the state level became a requirement for membership in NATO’s Partnership for Peace (PfP). This was declared by Robert Serry, NATO’s Director for the Balkans, who visited Sarajevo and Banja Luka in January 2002. He said, “it is not possible for us in the Partnership for Peace program to make contact with two Entities within one state” and called for the unification of defence policy for the entire country, as well as the establishment of democratic control of the armed forces.¹¹⁹

An affair involving the armaments company *Orao* provided an excellent entry point for the High Representative in terms of defence reform. In October 2002, SFOR conducted a raid at *Orao* which confirmed that this company sold aircraft parts and arms to Iraq. Not only was this in contravention with the DPA, but it was also a breach of the UN embargo against Iraq, and could have resulted in UN sanctions against Bosnia. Although the company was based in RS, sanctions would be imposed over the whole country. The High Representative ordered the RS government to conduct a full investigation into the affair and produce a report. After a few attempts to place the blame on insignificant factors, the RS government, under pressure from the OHR, finally prepared a report which accepted political responsibility.¹²⁰ At the time when the *Orao* affair took place, Mirko Šarović was President of RS and also Chairman of the RS Supreme Defence Council, the body which oversaw the deal made with Iraq. It was clear that action had to be taken against him, who at the time when the affair was made public was a directly elected member of the BiH Presidency. Time did not work in Šarović's favour as in March 2003, another affair involving RS defence structures was made public. SFOR conducted a raid in the RS Parliament building and found that a VRS intelligence unit was conducting surveillance and spying on international officials from the U.S., OHR, NATO and EU, as well as FBiH officials. This added additional pressure to remove Šarović and when given choice by

¹¹⁷ Washington Agreement, Article VI, 1st March 2004

http://www.usip.org/library/pa/bosnia/washagree_03011994.html#mil ,Accessed on 25th February 2008.

¹¹⁸ PIC Brussels Declaration, 24th May 2000.

¹¹⁹ ONASA News Agency, 24th January 2002.

¹²⁰ 'Šarović', *Oslobođenje*, 2nd April, 2003, p. 2.

Ashdown to resign, he accepted it. “He seemed genuinely shocked when I told him that I had decided that the right thing to do was for him to resign and if he didn’t by midday tomorrow I would have to act to remove him” accounts Ashdown.¹²¹ Šarović resigned the next morning. These two affairs involving the VRS, Šarović’s removal and NATO’s requirements for PfP - provided the initial push for real defence reform.

The High Representative hence established the Defence Reform Commission (DRC) on 8 May 2003, which was chaired by James R. Locher, III former U.S. Assistant Secretary of Defence.¹²² The commission was mandated to propose legislation that would be in line with the principles of modern European practice, and at the same time fulfil the requirements for membership in PfP. The Commission’s report outlined the required legislation that needed to be adopted in advance of PfP membership. It proposed state level command and control of the armed forces. This report envisaged the creation of the Armed Forces of Bosnia and Herzegovina (AFBiH) as well as a Ministry of Defence (MoD) at the state level.¹²³ However, this proposal included preservation of ministries of defence at the entity level. Day-to-day operations of the armed forces were also left at the entity level. “The Army of the Federation of BiH and Army of the Republika Srpska will continue to exist and provide operational capabilities of the Armed Forces of Bosnia and Herzegovina.”¹²⁴ The parties in the RS showed defiance when it came to this reform, especially in relation to conscription in the army, advocating demilitarisation of BiH. Serb members of the BiH Parliament protested by walking out of the Parliament and opposed the reform while claiming that the majority of their amendments were not supported.¹²⁵ However, by 3 December 2003 defence reform laws were adopted by BiH and entity parliaments. Ibrahim Prohić, journalist in Sarajevo-based daily *Oslobodjenje*, called this a “cheap alibi, an already seen scenario where local politicians obstruct, resist and threaten for a while, but eventually adopt what the international community has prescribed.”¹²⁶ For a while it seemed that this step of defence reform was completed, but soon enough it was clear that even the limited authority given to the state level was facing obstacles and was being prevented from exercising control over the entity armies.

In December 2004, the EUFOR - which earlier replaced SFOR - conducted a raid in Han Pijesak in one of the underground facilities of the VRS. The results of the raid showed that

¹²¹ Paddy Ashdown, *Swords and Ploughshares: Bringing Peace to the 21st Century*, London: Weidenfeld & Nicholson, 2007, p. 281.

¹²² OHR, *Decision Establishing Defense Reform Commission*, 8th May 2003.

¹²³ DRC, Report of the Defense Reform Commission, ‘*The Path to Partnership for Peace*’, 25th September 2003.

¹²⁴ *Ibid*, p. 4.

¹²⁵ *Oslobodjenje*, ‘SDS boycotts the Defence Law’, 28th November 2003, p. 7.

¹²⁶ Ibrahim Prohić, ‘Alibi’, *Oslobodjenje*, 1st December, 2003, p. 2.

Ratko Mladić, former VRS general indicted for war crimes by the ICTY, had been hiding there earlier that year.¹²⁷ Seized documentation also showed that the VRS provided support for general Mladić and that he was a member of the VRS until 2002.¹²⁸ This flagrant violation of the DPA, combined with the fact that by 2004, RS authorities have not apprehended a single war criminal, caused one of the strongest reactions by the international community in Bosnia. “While the authorities in Banja Luka were telling anyone who would listen of their efforts to apprehend war criminals, members of their own army sat in their own military base, celebrating VRS day with Ratko Mladic” stated Ashdown.¹²⁹ He also made it clear that he will not hesitate “to take measures that deal, directly and powerfully, with the assets and institutions of the RS. And I can tell you now, no options are currently ruled out, if it comes to this.”¹³⁰ In order to get his message across he removed nine RS officials and ordered Serb Democratic Party (SDS) assets frozen. Ashdown decided to extend the mandate of the DRC which was now requested to draft legislation for federal and entity parliaments on transfer of authority from entity level to state level MoD, thereby abolishing both entity MoDs. This caused furious reactions among politicians in the RS. Dragan Mikerević, RS Prime Minister at that time said that the High Representative's measures presented “a dictate without precedent” which obliged everyone to accept the ideas and projects of the High Representative. RS ruling elite were facing a difficult task as Ashdown’s decision predicted a transfer of authority from entity to the state level which would soon show “how much is the Republika Srpska leadership ready to pay for the lack of cooperation with The Hague.”¹³¹

On 18 July 2005 DRC released their final report which stated that entity defence ministries were to be abolished as of 1 January 2006.¹³² There would be a single defence budget at state level, starting on the same date, and the new AFBiH would be comprised exclusively of professional personnel. Additionally, the BiH Parliamentary Assembly would preserve its responsibility for parliamentary control over defence institutions. The Commission’s report suggested that “under this concept, the infantry elements of the two components of the VFBiH and the VRS would be organised into three infantry regiments.”¹³³ The process of adopting these new recommendations of the DRC was similar to the first stage of the defence reform in 2003. In the beginning representatives of RS authorities opposed the

¹²⁷ *Dnevni Avaz*, ‘Leakey: RS Army Assisted Hiding of The Hague Fugitives’, 17th December 2004, p. 2.

¹²⁸ *Nezavisne Novine*, ‘A Part of Facilities of RS Army Was Sealed’, 17th December 2004, p. 4.

¹²⁹ OHR Press Conference, 16th December 2004.

¹³⁰ *Ibid.*

¹³¹ Ivica Glibušić, *Dnevni List*, ‘Paddy’s Sanctions’, 17th December 2004, p. 2.

¹³² DRC, Report of the Defense Reform Commission, ‘*AFBiH: A Single Military for the 21st Century*’, Sarajevo, September 2005.

¹³³ *Ibid.*, p. 5.

adoption of these recommendations as they saw them only as another transfer of competencies from entity to state level. In March 2005, Republika Srpska National Assembly (RSNA) first concluded that the abolishment of the RS Defence Ministry was unacceptable; however under a lot of pressure from the international community they accepted this proposal in August 2005 with two-thirds majority and provided a local legitimacy for the decision. Fortunately the defence reform - as the following paragraphs will show - turned out to be one the most successful reforms undertaken in the security sector and BiH is now steadily advancing toward full membership in NATO.

Evaluation

a) Local ownership

One of the reasons why the defence reform is deemed to be successful is due to the continuous involvement of NATO in the reform process. The policy of conditioning exercised by NATO throughout the defence reform proved to be invaluable to the creation of a single armed force in the country. Although this seemed an impossible task to achieve, following the vicious conflict that ravaged Bosnia in the 1990s, constant oversight and involvement from NATO's side enabled success in this field which continues to this date.¹³⁴ Defence reform in BiH is considered a success¹³⁵ even though the road towards this success has been long and rough. Though the defence sector is now under well-established democratic (parliamentary) governance (see below), there is still a lack of involvement of civil society in defence matters and no public debate on defence requirements.¹³⁶ In terms of political support, the calls for demilitarisation of BiH continue, however this remains to be out of touch with reality due to the requirements that the country has to meet on the road into Euro-Atlantic structures. It is also worth mentioning that there is not much room for political interference in the ongoing defence reform, the reason being that this was the reform that went all the way through, meaning that there are no overlapping authorities exercised from different levels of governments in BiH. The two entity ministries were abolished and only state-level MoD exists

¹³⁴ Interview with Hamza Višća, Head of the International Cooperation Cell of Armed Forces of BiH, 30 May 2008.

¹³⁵ See Frederike van de Poll, "The effects of the international community's presence on the defense sector in Bosnia and Herzegovina", *Centre for Security Studies Sarajevo*, 2004. See also Vetschera and Damian, 'Security Sector Reform in Bosnia and Herzegovina: The Role of the International Community', *International Peacekeeping*, Vol. 13, No. 1, March 2006.

¹³⁶ Denis Hadžović, 'Defence Reform in Bosnia and Herzegovina', in Anja H. Ebnöther et. al (eds.), *Security Sector Governance in the Western Balkans: Self-Assessment Studies on Defence, Intelligence, Police and Border Management Reform*, DCAF, 2007.

which prevents entities to raise serious concerns in terms of the flow of reform. Unfortunately, this was not the case in other examples evaluated in this paper, namely those related to the reform of BiH judiciary.

b) *Democratic governance*

The chain of command runs from Presidency of BiH to the Minister of Defence to the Chief of Joint Staff of AFBiH down to the Commander of Operational Command and Commander of Support Command. Commanders then issue orders to brigades and other subordinate units. Ministry of Defence of BiH is in charge of strategy and policies related to defence system of BiH. Standing Committee on Military Matters plays an important part in this process as it reviews and advises the Presidency of BiH on the Security and Defence Police of BiH. The Standard Committee on Military Matters has been established by the Constitution of BiH as an instrument of the Presidency in order to co-ordinate the activities of armed forces in BiH. Many competencies of this committee have been transferred to the Ministry of Defence through defence reform, however it still retained competencies over advising the Presidency on the appointment of the Chief and Deputy Chiefs of the Joint Staff of Armed Forces as well as Commanders and Deputy Commanders of the Operational Command and Support Command of the Armed Forces of BiH. Parliamentary oversight of the defence sector is in the hands of the JSDC. Both members of the Committee as well as AFBiH officials have assessed this cooperation as very positive.¹³⁷

The good governance of AFBiH was also recognised by NATO as Bosnia became a member of the PfP on 14 December 2006,¹³⁸ while on 14 August 2007 NATO agreed to allow the exchange of highly-confidential information with BiH authorities which is the highest possible level of access for countries that are not full members of NATO. The reason why Bosnia managed to attain this level of access was due to the “efficient establishment of the appropriate mechanisms for protection of confidential information in accordance with NATO standards, which was done in record time.”¹³⁹ This level of access has not been achieved by any other country in the region. In the meantime Bosnia has entered the Individual Partnership Action Plan (IPAP) with NATO, while at the last summit of Alliance, held in Bucharest in April 2008, BiH was invited – together with Montenegro - to begin an Intensified Dialogue with the

¹³⁷ Interview with Hamza Višća, Head of the International Cooperation Cell of Armed Forces of BiH, 30 May 2008.

¹³⁸ NATO, ‘Bosnia and Herzegovina to Join Partnership for Peace’, 12 December 2006.

¹³⁹ *BusinessHR* (2007), BiH dobila veći pristup NATO-vim povjerljivim informacijama od Hrvatske, <http://business.hr/Default2.aspx?ArticleID=3f24dc6a-d297-4634-9f76-424779ae03bf>, Accessed on 19th March 2008.

organisation.¹⁴⁰ In terms of ethnic representation, AFBiH composition follows the constitution of BiH and the last census of 1991.¹⁴¹

c) *Service delivery*

In an interview with Brigadier General Hamza Višća, Head of the International Cooperation Cell of AFBiH, the level of professionalism of the Armed Forces was emphasised, mentioning that their role in NATO and UN operations has been very positively evaluated.¹⁴² BiH security is guaranteed by the EUFOR hence the role of AFBiH in this regard is quite limited and restrained by the circumstances in the field and limitations imposed by the DPA. The primary objective of the AFBiH is to become a member of NATO and enter the so-called collective security arrangements. To that extent it is worth mentioning that AFBiH have already participated in military missions abroad: in Eritrea and Ethiopia, Congo and Iraq. With participation in these missions, BiH shows that its Armed Forces are capable of carrying out the complex tasks of these missions. As Brigadier Višća mentioned in an interview, AFBiH officers have always been commended for their work in these missions, and have most of the times kept high-level positions. The experience of the AFBiH from the war and the period after the war, when security was provided by foreign peacekeeping troops, has equipped its officers with skills necessary for successful completion of peacekeeping mandates. In that sense the defence sector is functioning properly and is achieving its objectives. More attention should, however, be given in the field of public relations; the defence sector was a closed sector during communist rule; hence this new sector should make a more decisive effort at improving accessibility to information on the military institutions. When it comes to cooperation with the rest of the society, AFBiH are obliged by the Law on Defence, Article 4 “to provide military defence of the state and its citizens in the event of an attack, including combating terrorism; assist civil authorities in responding to natural and other disasters and accidents; and mine action in BiH.”¹⁴³ On a number occasions so far, the AFBiH have assisted civil authorities in their actions related to natural disasters and accidents.¹⁴⁴

¹⁴⁰ NATO, *Bucharest Summit Declaration*, Available at <http://www.nato.int/docu/pr/2008/p08-049e.html>, Accessed on 16 April 2008.

¹⁴¹ DRC, Report of the Defence Reform Commission, September 2005, p. 9.

¹⁴² Interview with Hamza Višća.

¹⁴³ The Law on Defence of BiH, Article 4, Items b, c and d.

¹⁴⁴ Interview with Hamza Višća,.

d) *Sustainability*

In the defence sector, the insecurity with regard to financial resources is also one of the threats to long-term sustainability of the MoD and the Armed Forces. Most of the NATO member countries adopted practices for defence budgets spending based at around 2% of the GDP; in BiH, this standard has not yet been reached. The defence sector is constantly dependent on the political will of individuals who decide on these issues. Lieutenant General Sifet Podzic, Chief of the Joint Staff of the AF BiH indicated that the wages of the military personnel are too low. Also, the MoD staff is massively leaving their current positions and are accepting jobs in other Ministries. Nevertheless, 80%¹⁴⁵ of the budget is spent on the wages, however low they might be, and there is virtually no money left for modernisation of the Armed Forces in order to be able to achieve interoperability and participate in NATO missions.¹⁴⁶ Another issue for sustainability with regard to Euro-Atlantic relations, mentioned by Brigadier Višća is the serious lack of knowledge of foreign languages among the MoD and AFBiH staff.¹⁴⁷

4.3. INTELLIGENCE SECURITY AGENCY

After DPA, three intelligence services operated in BiH, defined according to the major ethnic constituencies: Serb, Croat, and Bosniak. After several years, a new structure was agreed to, which established two intelligence agencies existed in Bosnia: the Federation Intelligence Security Service (FOSS) in the FBiH and Intelligence and Security Service (OBS) in the RS. The *Orao*, as well as the espionage affair – as mentioned above - together with an ongoing defence reform facilitated the establishment of a single intelligence service. The affairs provided the necessary leverage for the OHR to pursue this reform and to push local counterparts into accepting the reform agenda, which was also supported by some of the political elite in the country such as Šefik Džaferović, the Speaker of the BiH Parliament's House of Representatives, deemed that there is a need to address the issue of intelligence structures in the country and that “the key role in the process should be played by the international community.”¹⁴⁸ On 29 May 2003, the High Representative announced the

¹⁴⁵ NATO standard is 55-60%.

¹⁴⁶ Denis Hadžović, ‘Defence Reform in Bosnia and Herzegovina’, in Anja H. Ebnöther et. al (eds.), *Security Sector Governance in the Western Balkans*, p. 99.

¹⁴⁷ Interview with Hamza Višća.

¹⁴⁸ *Večernji List*, ‘Civilian Control of the Intelligence Structures’, 2nd April 2003, p. 4.

establishment of an Expert Commission on Intelligence Reform.¹⁴⁹ The commission was set up to propose legislation for the establishment of a state-level intelligence agency in line with European principles and practices, since the establishment of this agency was one of the requirements of the EU Feasibility Study. The High Representative appointed Kalman Koscis, a former Hungarian Ambassador to BiH who, prior to his appointment in Bosnia, successfully oversaw the reform of intelligence services in Hungary.

Not only did the legacy of the war seem to be an obstacle in establishing intelligence services, intelligence in the former communist system had a very negative reputation since it was seen as an instrument of political control. Nerzuk Ćurak, professor at the Faculty of Political Science at the University of Sarajevo called it a “dinosaur resisting the modern age” whose resistance is supported by “uninventive, narrow-minded politicians who would like to have their people in the intelligence community, who would provide to them ... intelligence which will be used by them to increase their political power.”¹⁵⁰ Luckily, local resistance was not as serious as predicted, but some disagreements still occurred. Once proposed by the commission, the implementation of Law on BiH Intelligence Agency was delayed due to different ideas on the number of regional centres: Bosniaks wanted four regional centres, Serbs two, and Croats three.¹⁵¹ When negotiations over the reform reached a stalemate, the media started to speculate whether the High Representative would impose the law.¹⁵² BiH Prime Minister Terzić thought that the High Representative “should use his powers and impose the law”.¹⁵³ On the other side, Mladen Ivanić, BiH Foreign Minister at that time, still refused to discuss the law and believed that RS authorities should maintain control over intelligence. The High Representative eventually broke the deadlock at the level of Council of Ministers by using his authority to send the law to the BiH Parliament for adoption in March 2004. The High Representative did not use the Bonn Powers to enact the law on the establishment of the Intelligence Security Agency since at the same time defence and indirect taxation system reforms were taking place. It seemed that these two reforms were a much more serious front to fight than that of intelligence. However, he took advantage of the leverage of Bonn Powers being used in the other two reforms and managed to get the law on intelligence service passed through persuasion. The Intelligence and Security Agency (OSA) became operational on 1 June 2004, and now has jurisdiction throughout the entire territory of BiH. It works under the

¹⁴⁹ OHR, *Decision Establishing the Expert Commission on Intelligence Reform*, 29 May, 2003.

¹⁵⁰ Nerzuk Ćurak, *Dayton's Nationalism*, Sarajevo: Buybook, 2004, p. 140.

¹⁵¹ Blažica Krišto, ‘One Secret Service, Three Offices’, *Slobodna Dalmacija*, 2 October 2003, p. 17.

¹⁵² *Dnevni Avaz*, ‘Will OHR Impose the Law?’, 10 December, 2003, p. 9.

¹⁵³ *Oslobođenje*, ‘Terzić calls for Ashdown’, 10 December, 2003, p. 3.

executive authority of the Council of Ministers and is subject to oversight by a parliamentary commission for supervision over OSA. It cooperates with the ICTY and other agencies in both BiH and abroad.

Evaluation

a) Local ownership

Kalman Koscis, former Chairman of the Intelligence Reform Commission,¹⁵⁴ stated that intelligence reform in BiH is complete and enjoys full domestic ownership. He called intelligence reform in BiH a true success story.¹⁵⁵ Although Mr. Koscis, as a person directly overseeing the process of intelligence reform would like to see his work in the best possible light, evaluation of the intelligence reform reveals that there is some room for improvement in terms of functioning of OSA in a democratic manner. It has to be noted though that the ‘international community’ has, except for its initiation, hardly been involved in the actual reform as there are no specialised intelligence-related international organisations. Although under the ever-present oversight of OHR, international involvement was limited during the reform process as the maximum number of external experts involved was four.¹⁵⁶ In terms of cooperation with different spheres of society, it is important to mention that there is little dialogue between the media, academia and the intelligence service. Denis Hadzovic, Secretary General of the Centre for Security Studies in Sarajevo, blames this on the underdeveloped civil society sector,¹⁵⁷ but it can also be argued that cooperation must be two-sided in this case. It is difficult to judge to which extent the OSA is reformed or locally owned¹⁵⁸, but the closed character of this institution reveals plenty of information in terms of democratic governance.

b) Democratic governance

The OSA is a highly closed organisation. There is a lack of transparency and accountability which tends to be blamed on the legacy of the communist system,¹⁵⁹ and the institution seems to be slow in adjusting to new democratic norms and values. A specialised

¹⁵⁴ He was also a former Hungarian intelligence officer who oversee the reform of this sector in Hungary.

¹⁵⁵ *BH Dani*, ‘Interview with Kalman Koscis: The Law for Bosnian Spies’, No. 351, 5 March 2004.

¹⁵⁶ *Ibid.*

¹⁵⁷ Denis Hadžović, ‘Intelligence Sector in Bosnia and Herzegovina’ in Anja H. Ebnöther et. al (eds.), *Security Sector Governance in the Western Balkans: Self-Assessment Studies on Defence, Intelligence, Police and Border Management Reform*, DCAF, 2007, p. 240.

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*, p. 240.

parliamentary committee¹⁶⁰ has been established which is responsible for the oversight of the OSA. Mirko Okolić, Chairman of this committee, told in an interview that, based on the reports of the work of the OSA and a number of complaints to the Committee against OSA - as well as ratings provided by the international community on the security situation in BiH - it can be concluded that performance of the Agency is at a satisfactory level. However, Okolić also noted that the OSA has repeatedly failed to comply with several obligations required by law, such as a failure to provide periodical briefings on the work of the institution.¹⁶¹ The committee is however putting an effort in overseeing the work of the OSA in the best way they can. It can be concluded that even considering the secretive nature of the agency, it still lacks significant amount of democratic governance.

c) *Service delivery*

There is no public information on the effectiveness of the work of this institution. The information on the organisational structure is also unavailable.¹⁶² All inquiries are being forwarded to the parliamentary committee. Also, the web site of the Agency has not been updated in years. The Information and Announcement section of the web site contains only a single comment: the Agency was honoured with George W. Bush medal for excellence in counterterrorism in 2005. This is certainly not the only achievement made by the Agency; however it appears that it is the only one they deem the public should be aware of. It is obvious that the legacy of communism inherited by the staff of OSA is yet to be tackled within the Agency. The ability of humans to evolve from one system to the other – that Koscis is arguing for¹⁶³ – is still to be seen in OSA. Okolić also noted that the number of complaints (only two) against OSA can lead to two conclusions: either the work of OSA is in perfect accordance with the law, or the public is not aware of whom to turn to when it comes to complaints against the Agency.

¹⁶⁰ Joint Security and Intelligence Committee on Supervision of the work of Intelligence and Security Agency of BiH.

¹⁶¹ Interview with Mirko Okolić, Chairman of the Joint Security and Intelligence Committee on Oversight of the Work of Intelligence and Security Agency of BiH, Sarajevo, 21 April, 2008.

¹⁶² Denis Hadžović, 'Intelligence Sector in Bosnia and Herzegovina' in Anja H. Ebnöther et. al (eds.), *Security Sector Governance in the Western Balkans*, p. 239.

¹⁶³ *BH Dani*, 'Interview with Kalman Koscis: The Law for Bosnian Spies', No. 351, 5 March 2004.

d) *Sustainability*

Few things are known about the budget and long-term sustainability of the OSA. Okolić said that the budget is satisfactory, but that the new challenges which the organisation faces (such as anti-terrorism measures), require a higher budget.¹⁶⁴ He also noted that a lot has to be invested in equipping the Agency in order to be updated with current scientific and technological achievements in this field. In 2007 a significant technological improvement occurred as high-tech wiretapping equipment was donated by the European Commission to OSA. Recently, telecom operators in the country have started mounting this equipment intended to wiretap telephone conversations, SMS messages, e mail and internet.¹⁶⁵ Wiretapping can only be conducted by orders from the Court of BiH.

4.4. INDIRECT TAXING ADMINISTRATION (CUSTOMS)

One of the paradoxes contained in the DPA is the creation of a state without any competencies in the control and collection of public revenue. The entities therefore defined the collection of tax duties as their own revenue. Čaušević notes that allowing local authorities to exercise that kind of control over public revenue, created a room for “huge customs and excise fraud and allowed political structures in power ... to create an economic basis for strengthening their own position and undermining the sustainability of the BiH economy as a whole.”¹⁶⁶ Regarding the state budget the constitution prescribes that FBiH shall provide two-thirds, and the Republika Srpska one-third, of the revenues required.¹⁶⁷ The rest of the budget was to be collected from administrative fees and revenues from the activities of the state.

As state-building in Bosnia progressed, it became obvious that there was a need for the independent funding of state institutions, as well as a need for a single economic space. A World Bank report noted that “the state’s roles are very limited, and its funding sources are precarious. As a result, the state’s sustainability is in question”.¹⁶⁸ The international community estimated that tax evasion amounted to 600 million KM per year (300 million

¹⁶⁴ Interview with Mirko Okolić, Chairman of the Joint Security and Intelligence Committee on Oversight of the Work of Intelligence and Security Agency of BiH, Sarajevo, 21 April, 2008.

¹⁶⁵ *Oslobođenje*, ‘Telecom Operators Give in to Requests of the Parliament’, 14 June 2008.

¹⁶⁶ Fikret Čaušević, “Fiscal Structure in BiH and the Problems it Generates” in *International support policies to see countries – lessons (not) learned in Bosnia-Herzegovina*, Sarajevo: Open Society Fund Bosnia-Herzegovina, 2001, p. 1.

¹⁶⁷ DPA, Annex IV.

¹⁶⁸ World Bank, “Fiscal Federalism in Bosnia and Herzegovina”, Sarajevo, 1997, p. 9.

Euro).¹⁶⁹ Želimir Rebac, Director of the FBiH Customs Administration, stated in early 2003 that in a period of eight months (since he assumed that position) they revealed customs evasion amounting to 200 million KM which made international assumptions realistic to him.¹⁷⁰ He also suggested that the only way for customs to function was establishment of a single customs service.

Indirect taxation reform appeared among the priorities of the OHR only when Ashdown took office in 2002. It was to include abolishment of the complex sales tax system and replacement with a single Value Added Tax (VAT) for the entire country, as well as the abolishment of two entity customs services, and ultimately the establishment of a single customs service at the state level. Donald Hays, the Principle Deputy of the High Representative, was appointed to oversee this reform. *BH Dani* commented on Ashdown's economic agenda as having a "serious intention to turn BiH into a serious state."¹⁷¹

As expected, opposition to these proposals was voiced immediately. Mladen Ivanić, BiH Foreign Minister at that time, sent a letter to Hays, offering his proposals on VAT collection and customs reform. He wanted the VAT to be raised only by entities and spent by them, not the state. He also completely opposed the creation of single customs service at the state level. Hays replied reiterating that while the technical details on the distribution of revenues would be discussed, "the principle of a single unified customs administration for Bosnia and Herzegovina, is non-negotiable".¹⁷² Ivanić's proposals ignored the basic issue of the existence of three customs services which served criminals benefiting from these divisions, while the citizens of Bosnia were losing money due to an uncoordinated customs system.

The OHR was firm in its claims that the proposed reforms were not designed to cut revenues to the entities. They would in fact, bring more money to the entities since existing practices of fraud and tax evasion would be brought to a minimum. The ideas of the OHR were influenced by the experience of Belgium where economic indicators had shown that separate systems of collection of taxes would not work. However, opposition among RS parties to the single system for collection of public revenue led to speculations in the media that the OHR was ready to simply impose a law.¹⁷³

In the meantime OHR put together a team of local and international experts to conduct audits under the guidance of the OSCE. Electric companies were of main interest as they were

¹⁶⁹ CAFAO, Revenue Loss from Tax and Customs Fraud in BiH Identified by CAFAO, 1 October, 2002.

¹⁷⁰ *Večernji List*, "Interview with Želimir Rebac," 22 January 2003.

¹⁷¹ Snježana Mulić-Bušatlija, "Paddy's Added Value." *BH Dani*, 18 October 2002.

¹⁷² *OHR Press Conference*, 2 January, 2003.

¹⁷³ *Večernji List*, "State Customs and Economic Collapse of RS", 12th February 2003, p. 4.

known for corruption involving high-level politicians. The audits showed that corruption existed in all three companies researched, each under the control of a different ethnic group, and was even more serious than first expected, especially in RS. Ashdown didn't publish the results of these audits right away, but used them later as leverage to push further reforms. "I wanted to drop this bombshell at the best time for maximum effect in the context of our struggles with the Republika Srpska on VAT and customs," recalls Ashdown.¹⁷⁴ Since the evidence in these audits clearly showed the involvement of high-ranking officials, Ashdown used the Bonn Powers to remove them from office. One of those officials was Dragan Čović, elected Croat member of the BiH Presidency who was immediately processed before the state court.¹⁷⁵ The use of the Bonn Powers in Čović's case together with the now-enabled criminal processing before the state court proved to be a good leverage in the reform process in BiH. Fearing possible removal based on the involvement of their parties in illegal activities in audited companies, Bosnian politicians were ready to compromise. ICG quoted a former OHR official: "It is amazing what can happen when they think their careers are at risk but also amazing how, left to their own devices, they will not take responsibility for anything."¹⁷⁶

In February 2003, Ashdown established the Indirect Taxation Policy Commission (ITPC). He appointed Joly Dixon, former European Commission official and an expert in EU indirect tax policy, as the head of the commission.¹⁷⁷ The commission was to prepare a draft Law on the Indirect Taxation System in Bosnia and Herzegovina which would then be presented for consideration to BiH parliaments at entity and state levels. The ITPC soon completed the draft law which proposed the establishment of the ITA, which would administer customs, and eventually VAT, in accordance with European standards. The existing nineteen customs branches would be reduced to four, based on the requirements of a single economic space and economic efficiency. This required a lot of arm-twisting by OHR, and speculations over the use of Bonn Powers to remove officials who were hampering progress. In October 2003, RSNA agreed to transfer authority over the sector of indirect taxation to the BiH Parliamentary Assembly. Hadži-Jovan Mitrović of the opposition party the Democratic National Alliance (DNS) commented that voting for the Law on Indirect Taxation at the latest RSNA session represents "an act of crime and grand betrayal of people."¹⁷⁸ Once this issue was brought to the state-level, MPs from the RS tried to water down the original draft law by

¹⁷⁴ Paddy Ashdown, *Swords and Ploughshares*, 2007, p. 266.

¹⁷⁵ The Court of BiH, Case No. X-K-05/02.

¹⁷⁶ ICG Report, *Ensuring Bosnia's Future*, 2007, p. 5.

¹⁷⁷ OHR, *Decision Establishing the Indirect Tax Policy Commission*, 12 February, 2003.

¹⁷⁸ *Nezavisne Novine*, 'Parliament Majority Betrayed People', 3 November, 2003.

proposing seven customs branches within entities' boundaries. Eventually, in December 2003, obstructions carried out by MPs from the RS were defeated and both houses of BiH Parliament adopted the Law on Indirect Taxation. The ITA would have four regional branches, one each in Banja Luka, Tuzla, Mostar and Sarajevo. In 2004, former customs administrations of the entities and Brčko District were merged, and the VAT was introduced on 1 January 2006 at a single rate of 17% and a single collection system. ITA became the largest state-level institution, and for the first time administrative areas in the country were established to conform the natural economic regions of BiH, unlike the entity-based separation that was practiced until then.

Although indirect taxation was one of the most contested reforms undertaken by OHR, it proved to be successful once it got out of hands of politicians. As a result, the state now has sound sources for funding the increasing number of its institutions necessary to meet the requirements on the road to EU membership. Collection of revenue for entities has also increased because the new system is not susceptible to malfunctions as was the previous entity-based system.

Evaluation

a) Local ownership

Peter Nicholl, former Governor of the BiH Central Bank, was in 2006 appointed as the Chairman of the Steering Board of ITA. His mandate had been extended by the High Representative a few times, the last one being in January 2008.¹⁷⁹ As in other institutions where international officials are involved in the day-to-day work of the institution, Nicholl's involvement in the ITA is also justified by the credibility that a foreign expert provides. In terms of political support, the ITA has been under frequent attacks over supposed underpayments to entities, namely RS. The Prime Minister of RS even threatened to file criminal charges against the Chairman of the ITA Steering Board and its Director for the alleged halting of payments to the RS.¹⁸⁰ Joly Dixon, who at that time was the Chairman of the

¹⁷⁹ OHR, *Decision Extending mandate of Mr. Peter Nicholl as an initial Chairman of Governing Board of the Indirect Taxation Authority*, 8 January 2008.

¹⁸⁰ *Dnevni Avaz*, 'Dodik Also Holds Čaušević Responsible for Halting Payments of Tax Incomes for RS', 7 March, 2006. See also *Dnevni Avaz*, 'Dixon: Dodik Can Go to the Court but all Decisions are Legal', 27 April, 2006.

Governing Board of the Agency denied all the allegations and openly called for the RS Prime Minister to file charges and test the work of the Agency at court.¹⁸¹

In an interview with Saudin Terzić, Assistant Director for the Law Enforcement Sector of ITA BiH, the work of this institution has been graded positively. Mr. Terzić explained that the cooperation between the ITA and other security institutions is regulated by the law and that they cooperate on a daily basis with the Border Police and other law-enforcement institutions in the country.¹⁸² This was also confirmed in an interview with Bogdan Novaković, Assistant Director for the Customs Sector of the ITA.¹⁸³ Cooperation with civil society has improved since the establishment of an anonymous ‘Stop Smuggling Hotline’ in the beginning of 2007. Cooperation between ITA and international institutions, such as INTERPOL, has been satisfactory according to Terzić. The EU progress report for 2007 has, however, not been very positive about the implementation of the *acquis communautaire*: “As far as customs rules are concerned, the customs legislation reflects the *acquis* as it stood in September 2003. It needs to be adjusted to subsequent changes.”¹⁸⁴

b) Democratic governance

The JCDS has sound cooperation with the ITA. The interview with Mr. Terzić revealed that the Joint Committee has on a few occasions requested information on the work of the ITA, but that this does not happen on a regular basis.¹⁸⁵

Representation in the steering board involves ministers from all levels of governance in the country i.e. ministers of finance from the Federation, from the RS and the state level. Representatives of Brcko District and Central bank of BiH are involved in the role of observers. This structure of the management body of the agency acknowledges the interests of all parties affected by the ITA operations. In terms of ethnic representation the composition of ITA is based on the last census conducted in the country in 1991.

c) Service delivery

The indirect taxation reform resulted in a 70% increase in the collection of indirect taxes from 2002 to 2006.¹⁸⁶ This was achieved based on the benefits of the VAT in relation to

¹⁸¹ *Dnevni Avaz*, ‘Dixon: Dodik Can Go to the Court but all Decisions are Legal’, 27 April, 2006.

¹⁸² Interview with Saudin Terzić, Assistant Director for the Law Enforcement Sector of the Indirect Taxation Authority of BiH, Banja Luka, 13 May 2008.

¹⁸³ Interview with Bogdan Novaković, Assistant Director for the Customs Sector of the Indirect Taxation Authority of BiH, Banja Luka, 13 May 2008.

¹⁸⁴ European Commission report: *Bosnia and Herzegovina: 2007 Progress Report*, p. 34.

¹⁸⁵ *Ibid.*

reducing the grey economy, increasing taxpayers' compliance, and increasing efficiency when it came to indirect tax collection. As provided in the report of the Unit for Economic Policy Planning of the Council of Ministers of BiH, total indirect taxation increased by almost one billion KM once the VAT was introduced. The tax base was also broadened since the ITA expected to have 20,000 taxpayers by the date of VAT introduction. In January 2006, when the VAT was introduced, ITA had 32,843 taxpayers registered. By the end of 2006 their number increased to 37,309 taxpayers. Ninety-eight percent of registered VAT taxpayers filed tax forms on time.¹⁸⁷ As one of the objectives of the ITA is protection of the society and border security with regard to customs and foreign trade, the ITA has achieved progress towards this objective over the past three years. One of the statistical indicators provided by the ITA is the value of the temporarily seized goods which increased from 2.786.077,11 KM in 2005 to 13.225.225,56 KM in 2007. Though information on large seized shipments appears in the media frequently, it is difficult to say whether smuggling is effectively prevented by the ITA, mainly because of limited access to information. With regard to accessibility, as said earlier, not all information is made available to the public. The institution is, however, very service-oriented, and is open to inquiries from the public. The website is highly professional and regularly updated.

d) Sustainability

The ITA is one of the biggest contributors to the Single Account of the country, but still encounters big problems with regard to the funding of training and equipment. The heads of the anti-smuggling department and the Department of Investigation, Nail Čaušević and Nikica Gligorić, agreed that the lack of equipment poses serious problems for the detection of smuggling and corruption¹⁸⁸. Another disturbing fact is that the equipment which they do possess is mainly donated, from the U.S. Embassy and EU in particular. Mr. Novaković also pointed out that employees are not satisfied with the level of their salaries and, in terms of technical equipment, he stated that it should be much better; however, no funds are allocated

¹⁸⁶ Council of Ministers of BiH, Unit for Economic Policy Planning and Coordination of the Implementation of the BiH Mid-term Development Strategy, *Bosnia and Herzegovina Economic Trends – Annual Report 2006*, p. 28.

¹⁸⁷ ITA BiH, (2005), Indirect Taxation Administration BiH, <http://www.uino.gov.ba/>, Accessed on 30 April, 2008.

¹⁸⁸ Interview with Nikica Gligorić, Head of the Department of Investigation of the Indirect Taxation Authority of BiH and Nail Čaušević, head of the Anti-smuggling Department of the Indirect Taxation Authority of BiH, Banja Luka, 13 May 2008.

for this in the budget.¹⁸⁹ This poses important questions for the sustainability of the customs office.

4.5. STATE INVESTIGATION AND PROTECTION AGENCY (SIPA)

The PIC Madrid Declaration was made on 15 and 16 December 1998 and it highlighted the need to establish rule of law in BiH. Paragraph 12, Item 1 of this Declaration called for the establishment of a rule of law in which all citizens would have confidence, a prerequisite for lasting peace. Once the Court of BiH was established, the need appeared for a state agency which would act in accordance with instructions given by the Court or the Prosecutor's Office of BiH. The Law on State investigation and protection agency (Law on SIPA) was passed in July 2002, while the agency itself became operational by the High Representative's decision on the nomination of the Director and Deputy Director of Agency.¹⁹⁰ The original structure of SIPA involved the Directorate comprised of a Director and two Deputy Directors. It also had three departments: Criminal Intelligence Department, VIP Protection Department and Department for Protection of Diplomatic and Consular Missions and State Institutions. In the beginning the agency was supposed to serve the State Court and Prosecutor's Office, and according to the initial law it did not have police authorities except for the VIP Protection Department and the Department for Protection of Diplomatic and Consular Missions and State Institutions. Once the High Representative imposed the Criminal Procedure Code of BiH and Criminal Code of BiH the crimes that fall under the authority of state institutions were defined.¹⁹¹ It was soon revealed that in practice some of the provisions of the Law on SIPA could not be implemented. Therefore, and in the light of adoption of the Criminal Code and Criminal Procedure Code of BiH, the new Law on SIPA was enacted on 15 June 2004. SIPA was now recognised as an administrative organisation within the Ministry of Security of BiH with operational autonomy, established for the purposes of performing police tasks, headed by a director and financed from the state budget. In June 2006, when the OHR imposed the Law on Amendments to the Criminal Procedure Code of BiH, the SIPA was given police authorities.

¹⁸⁹ Interview with Bogdan Novaković, Assistant Director for the Customs Sector of the Indirect Taxation Authority of BiH, Banja Luka, 13 May 2008.

¹⁹⁰ OHR *Decision Appointing a Director and Deputy Directors of the Agency of Bosnia and Herzegovina for Information and Protection*, 7 October 2002.

¹⁹¹ OHR *Decision Enacting the Criminal Code of Bosnia and Herzegovina*, and *Decision Enacting the Criminal Procedure Code of Bosnia and Herzegovina*, 24 January 2003.

Evaluation

a) Local ownership

SIPA is the biggest state-level security institution. It has a wide range of sectors and responsibilities and cooperation with other institutions is crucial. In the latest EU progress report, SIPA's cooperation/coordination with entity and cantonal police is graded as being improved.¹⁹² SIPA has tackled most of its coordination problems, but some issues still remain due to an overlap in mandates between various law-enforcement institutions in the country. The involvement of civil society in the work of SIPA is evident through the *Krimolovci* campaign, which calls upon citizens to share information with the police. This program was however initiated and funded by external donors.¹⁹³ International organisations continue to play a large role in the work of SIPA, however mainly in an advisory role, as is the case with EUPM that works closely with the institution on a range of issues. When it comes to political support, SIPA is under great pressure from political elites which is the most evident during the selection process of a new director, as was the case with the last one in 2007, which was protracted into 2008. The pressure is mainly exercised due to high-profile investigations carried out by this agency in terms of organised crime and war crimes.

b) Democratic governance

The SIPA falls under the mandate of the JCDS. The professional level of the SIPA is not as it should be, but this problem mainly has to do with the budget of the institution (see item d for more details). SIPA received a major blow to its credibility as a law enforcement agency when the Head of Section for Security of Persons and Property was suspended in December 2007, due to alleged commitment of war crimes.¹⁹⁴ Two weeks later, two more SIPA employees were suspended on the same grounds. In terms of ethnic representation, SIPA follows the principles laid out by other security agencies at the state level which foresees representation based on the census from 1991.

¹⁹² European Commission report: *Bosnia and Herzegovina: 2007 Progress Report*, p. 53.

¹⁹³ Mainly EUPM and Government of the United Kingdom.

¹⁹⁴ BIRN, "Two more SIPA officials suspended", *Balkan Investigative Reporting Network*, 11 December, 2007.

c) *Service delivery*

SIPA is a highly fragmented organisation with many sectors and departments. Therefore, getting information requires approvals from various SIPA officials. The website does not contain enough information for the public, and the institution is not very responsive through electronic or ordinary mail. Although not willing to share internal information with authors of this paper, the Director of SIPA, in an interview with local news agency stated that during 2007 this agency conducted twenty-five arrests of persons indicted for war crimes and that at the moment it is conducting sixty-three investigations on organised crime.¹⁹⁵ With regard to its objectives, SIPA functions well in some sectors e.g. war crimes and VIP protection and in others there is still significant room for improvement. Major problems are present in the fight against money laundering (responsibility of the Financial Intelligence Unit)¹⁹⁶ and terrorism-related issues (Sector for the Fight against Terrorism and Illegal Trade).¹⁹⁷

d) *Sustainability*

Although not facing problems when it comes to budgeting,¹⁹⁸ a huge problem in the work of SIPA is the drain of qualified personnel. For instance, Ivica Bošnjak from the Internal Control Department of SIPA argued that SIPA has to cope with the problem of personnel leaving the institution and going to work for entity and cantonal law enforcement agencies.¹⁹⁹ Raffi Gregorian, Deputy High Representative, confirmed that this was the problem of the entire security sector as entities attracted qualified people by offering them higher wages which state-level institutions simply could not afford.²⁰⁰ Ivica Bošnjak of the SIPA complains that educated people are leaving and uneducated ones are coming in their place and that this in turn leads to problems with law enforcement and can in the end lead to a deteriorated security situation.²⁰¹

¹⁹⁵ *SRNA*, 'SIPA Conducting 63 Investigations on Organised Crime', 20 February 2008.

¹⁹⁶ *Freedom House Report 2007*, 'Nations in Transit', p. 182.

¹⁹⁷ European Commission report: *Bosnia and Herzegovina: 2007 Progress Report*, p. 53.

¹⁹⁸ SIPA budget has been gradually increasing over the years.

¹⁹⁹ Interview with Ivica Bošnjak, Internal Control Department, SIPA, Sarajevo, 22 May 2008.

²⁰⁰ Interview with Raffi Gregorian, Deputy High Representative, Sarajevo, 22 May 2008.

²⁰¹ Interview with Ivica Bošnjak, Internal Control Department, SIPA, Sarajevo, 22 May 2008.

4.6. REFORM OF JUDICIARY IN BOSNIA AND HERZEGOVINA

The first PIC conference to address reforms in the judicial sector was the one held in November 1996.²⁰² It called for the creation of a secure environment, establishment of democratic police forces, re-establishment of law and order and development of an independent judiciary. Conclusions of the PIC Bonn and Luxembourg Conference – held in December 1997, and June 1998, respectively - addressed the issue of these reforms in a similar manner, while the PIC's Madrid Declaration emphasised the importance of an independent, impartial and multiethnic judiciary, and for the first time called for the establishment of judicial institutions at the state level, in accordance with the opinion of the Venice Commission.²⁰³ The PIC conclusions were guided by the situation in the field. In order for Bosnia to establish the rule of law, it had to reform its judicial system and criminal law. According to the DPA, the judiciary in BiH was left fragmented, guided by different laws and dependent on the ruling elites.²⁰⁴

It was the UNMIBH that first addressed the issue of judiciary in BiH. In 1998 it established a Judicial System Assessment Programme (JSAP), charged with the assessment and monitoring of BiH judiciary. After completion of this two-year programme, its results were taken over by the Independent Judicial Commission (IJC) which was established by the High Representative's Decision.²⁰⁵ The role of the IJC was to guide and co-ordinate the reform of BiH judiciary which was to result in improvements in procedural laws, quality of judges and funding of courts. It was also tasked with the establishment of facilities for continuous training of judges and provision of sustainable solutions for the appointment process that would be free of political interference. At first it was decided that the quality of judges was to be provided through a review process whereby all judges and prosecutors would be assessed by local commissions, and those unsuitable would be removed. However, this proved as a non-efficient method as local judges were hesitant to bring decisions directed against their colleagues. This

²⁰² PIC Paris Conclusions, 14 November 1996.

²⁰³ PIC Madrid Declaration, 15 and 16 December 1998. See also the opinion of the Venice Commission No. CDL(1998)079, 'Draft Opinion of the Venice Commission on the Need for a Judicial Institution at the Level of the State of Bosnia and Herzegovina'.

²⁰⁴ According to the BiH Constitution, the only court at the level of state is the BiH Constitutional Court. The judiciary was left at the entity level, together with a Final Award of the Brcko Arbitral Tribunal which established another autonomous judicial layer in the country. Therefore, it can be said that Bosnia has four separate judicial systems: state, entity (RS and FBiH), and Brcko system.

²⁰⁵ OHR, *Decision Providing the Independent Judicial Commission with a Comprehensive Mandate*, 14th March 2001.

led the High Representative to apply a different and more intrusive approach to the appointment procedure. All judges and prosecutors would now have to apply for their positions and meet the given criteria for their posts which were now publicly advertised.²⁰⁶ The High Representative established the High Judicial and Prosecutorial Councils (HJPC) at entity and state levels to carry out the reappointment process.²⁰⁷ Eventually, in 2004, - thanks to the OHR/IJC efforts - existing HJPCs were merged into a single body at state level. State-level HJPC was designated with the appointment of judges and prosecutors; with disciplinary procedures against them that were now to be conducted without political influence; judicial administration and statistics; budgets of judiciary as well as supervisory, and a coordination role over training as well as introduction of information technologies and reforms in the judiciary.²⁰⁸ The reappointment procedure of all judges and prosecutors was successfully conducted and ethnic balance was re-established in accordance with the last census conducted in 1991. The court system was restructured whereby the number of first instance courts in BiH was reduced by 41%, and the number of judges within the system reduced by 28%.²⁰⁹ New Criminal Codes and Laws on Enforcement Procedures were adopted at entity and state level, and were harmonised to the maximum possible extent. Additionally, Judicial and Prosecutorial Training Centres were established in each entity in 2002 and now provide continuous training for judges and prosecutors.

The establishment of HJPC as a state-level institution was preceded by the establishment of two other institutions at the same level, the Court of BiH and the Prosecutor's Office of BiH. The Court of BiH was one of the first institutions to be set up at this level overall. The establishment of this court was a requirement for admission to the Council of Europe, and it was also one of the conditions of the "EU Road Map." Once the law on this court was brought before the BiH Parliament, Serb delegates in the House of Peoples decided to reject the law on the grounds that it gave too much power to the state at the expense of entities. The High Representative imposed the Law on Court of BiH once the Chairman of the Council of Ministers of BiH at that time decided not to put it on the agenda for adoption, despite the fact that the draft law was approved by a working group of the Council of Ministers.²¹⁰ Although the constitutionality of this decision was challenged by twenty-five MPs of the RSNA, the CCBiH decided that the decision was in conformity with the constitution of

²⁰⁶ See *IJC Final Report*, November 2004.

²⁰⁷ On 23 May 2002, the High Representative brought decisions that enacted the Law on the High Judicial Council of Bosnia and Herzegovina, FBiH and RS.

²⁰⁸ HJPC Web Page, <http://www.hjpc.ba/intro/>, Accessed on 2nd April 2008.

²⁰⁹ *IJC Final Report*, November 2004.

²¹⁰ OHR, *Decision Establishing the BiH State Court*, 12th November 2000.

BiH.²¹¹ However, at state level, the Court of BiH does not represent the top tier of the BiH judiciary and it is only given limited first-instance jurisdiction. The competencies of the Court of BiH are regulated by the Law on the Court of BiH and are related to criminal, administrative and appellate jurisdiction. Section I of the Criminal department of the Court of BiH tries war crimes, while Section II tries organised crime, economic crime and corruption cases. In 2002 the High Representative also passed the decision enacting the Law on Prosecutor's Office of BiH thereby establishing another judicial body at state level.²¹² The responsibility of this office was to prosecute the offences in the jurisdiction of the Court of BiH in accordance with the Criminal Procedure Code of BiH and other applicable laws. Unlike the Court of BiH, OHR's decision to establish the Prosecutor's Office at the state-level did not provoke similar reactions from RS politicians. This was due to the fact that this decision was passed during the ongoing process of reforms in judiciary and when the OHR was exercising its robust role to the maximum, which to a certain extent created a consensus that it is necessary to strengthen the state-level with these institutions. However, as the following chapter will show, this has not been the case lately as the OHR gradually started to denounce its intervening role.

Evaluation

a) Local Ownership

In terms of local ownership, political support is what lacks with regards to the functioning of the HJPC, the Court of BiH, and the Prosecutor's Office of BiH. Once the initial obstructions seemed to have been surmounted and consensus reached on the implementation of requirements necessary for integration into EU structures, the international community had to face new resistance coming from the newly elected RS government in early 2006. Headed by Milorad Dodik, this government soon started to question the authorities that were given to the state through the reform process. The first blow to reforms in the judiciary came soon after this government came into power when it established a Special Prosecutor's Office of RS to deal with organised and economic crime - same types of crime that fall under competence of the Court of BiH. This was done without consultations with the HJPC which provoked the reaction of this body. The HJPC expressed their regret that the RS government did not consult with them when preparing the law on this body as many of its provisions are in contravention with

²¹¹ Constitutional Court of BiH, *Decision – The Law on Court of BiH*, 18th September 2001.

²¹² OHR, *Decision Enacting the Law on Prosecutors's Office of BiH*, 6th August 2002.

the Law on HJPC.²¹³ It also noted that the appointment of prosecutors in this office was against the Law on HJPC, hence appointed prosecutors cannot perform assigned duties.²¹⁴ Furthermore, this was seen as an attempt to undermine OHR efforts in establishment of the state court and efforts undertaken by the HJPC. Nevertheless, this was not an end to attacks on judicial institutions at state level. In a few public speeches Dodik said that “the reform of judiciary ... is a total failure ... judiciary is the weakest segment of the system in the RS.”²¹⁵ He also implied that these institutions at the state-level are working only against Serbs.²¹⁶ This caused the HJPC to address these accusations. This caused the HJPC to reply saying that Dodik’s observations are baseless and pointed out that the HJPC is “one of the few BiH institutions which have earned a positive assessment in the report of the European Commission on the achievements on the road to accession to the EU.”²¹⁷ They also emphasised that the *Freedom House* has rated judiciary in BiH with the best grade in the region.

Another important aspect in terms of local ownership in the Bosnian context is the level of international involvement in the work of these institutions. Out of the three institutions established at the state-level, the international community’s involvement in the work of the HJPC seems be the lowest. Although in the beginning the HJPC was comprised and led by international experts, today it has only one foreign member. Branko Peric, former President of the HJPC, stated in an interview that it is important to still have an international expert in order to achieve a certain balance and to provide legitimacy for HJPC.²¹⁸ The situation with regards to the need of having the international involvement is similar in the Court of BiH and the Prosecutor’s Office of BiH, where international judges and prosecutors still constitute an important element. Meddžida Kreso, President of the Court of BiH, recently suggested the extension of the mandate of international judges beyond the originally foreseen deadline of 2009. She justified this proposal with the tense political situation in the country, which brings about different allegations of court bias to the detriment of one or the others of the constituent peoples. She said that “despite the fact that local judges are capable of dealing with the most complex proceedings ... international judges have provided credibility and confidence in the court.”²¹⁹ This was confirmed in an interview with Paul Brillman, International Judge at the

²¹³ HJPC Press Release, ‘Appointment of Prosecutors in the Special Prosecutor’s Office of RS is Not in Accordance with the Law on HJPC’, 17 May 2006.

²¹⁴ HJPC Press Release, ‘Appointment of Prosecutors in the Special Prosecutor’s Office of RS is Not in Accordance with the Law on HJPC’, 17 May 2006.

²¹⁵ *Nezavisne Novine*, ‘The Judiciary is Inefficient’, 1st September 2007, p. 5.

²¹⁶ *Nezavisne Novine*, ‘Prosecutors Indecisive in Dudaković Case’, 11th August, 2007, p. 2.

²¹⁷ *Oslobodenje*, ‘Why are You Undermining the Reputation and Success of our Judiciary?’, 26 August 2007, p. 7.

²¹⁸ Interview with Branko Perić, President of the HJPC, 20 May 2008.

²¹⁹ BIRN – Justice Report, Interview with Meddžida Kreso, President of the Court of BiH, 24 April 2008.

Court of BiH, who said that the quality of BiH judges is excellent but the presence of international judges is needed in order to provide balance and credibility to sensitive cases in the War Crimes Chamber.²²⁰ Also, this is one of the reasons why Perić said that the backing of the OHR is still indispensable when it comes to state-level judiciary.²²¹

b) Democratic governance

The IJC-led process of judicial reform in BiH was streamlined in accordance with internationally-accepted standards of accountability and transparency, whereby professionalism and independence were always the highest priority.²²² The most important achievement is the appointment procedure that is now carried out by the HJPC, which made this process free of political interference and ensured that the best quality candidates are appointed. It also provided ethnic representation in judiciary, consistent with the 1991 census. To that extent, the Law on HJPC prescribed that this body has to be comprised of six Bosniaks, five Serbs, three Croats and one representative of the non-constituent peoples.²²³ In addition – as another indicator of democratic governance - budgeting of BiH judiciary is conducted in coordination with the HJPC which makes this process much more consistent and transparent. It is also worth mentioning that the web pages of Court of BiH, the HJPC and the Prosecutor’s Office of BiH are among the most advanced web presentations of public administration in BiH. Information provided at their web pages is continuously updated and it enables access to a wide range of data necessary for insight into their work.

c) Service delivery

This aspect has been streamlined to establish a modern judicial system in the country. The HJPC, Court of BiH and Prosecutor’s Office of BiH, as leaders of this shift to the modern judiciary, played an important part in these strivings. The regulatory role of the HJPC has probably put it under more pressure to provide results than the state court or the prosecutor’s office. Therefore, since its establishment, the HJPC appointed over 1,200 judges, prosecutors and expert associates.²²⁴ It also established training centres for judges and prosecutors, developed modern information technology system, adopted an ethical code for judges and prosecutors, and established the Centre for Judicial Documentation. Finally, the HJPC

²²⁰ Interview with Pauls Brilman, International Judge at the Court of BiH, Sarajevo, 28 May 2008.

²²¹ Interview with Branko Peric, former President of the High Judicial and Prosecutorial Court (HJPC), Sarajevo, 20 May 2008.

²²² See IJC Final Report, November 2004.

²²³ The Law on HJPC, *Official Gazette of BiH*, No. 25/04.

²²⁴ HJPC, *Annual Report for 2007*, May 2008.

conducted training in management and computer skills for more than 2,000 judiciary staff.²²⁵ The Council also worked on the preparation of a strategy for reform of the justice sector and strategy for war crimes, as well as on preparation of legislation related to salaries of judicial officials, court taxes and changes of the Criminal Procedure Code of BiH.²²⁶ HJPC's efforts have contributed to the improvement of quality of judges and prosecutors - in terms of their professionalism - and also provided more efficient judicial procedures which in the end will result in better services for citizens. The Office of the Disciplinary Counsel played an important part in terms of service delivery for citizens. The policy of this office within the HJPC is that anyone can file a complaint in any form and sometimes an investigation can also be initiated on the basis of a newspaper article. Disciplinary measures include: written warning; public reprimand; salary decrease, removal from office and resignations. The most-often-pronounced measure from 2004 till the end of 2007 was the salary decrease, while the total number of measures pronounced in this period is sixty-one. The highest number of measures pronounced in total twenty-five, was in 2007.²²⁷

When it comes to the service delivery of Court of BiH, it is necessary to mention that although established in 2000, judges for the Court of BiH were appointed only in 2002. The competencies of the court have in the meantime been extended and apart from organised crime, economic crime and corruption cases now they also include processing of war crimes. The War Crimes Chamber of the court was established in October 2003 upon the decision of ICTY legal experts who decided that this was the most suitable institution for processing war crimes in the country. The first war-crime case transferred from the ICTY was tried in 2004. It was the case of Radovan Stanković who was indicted for the enslavement and rape of women and girls in Foča in 1992²²⁸ and sentenced to twenty years in prison.²²⁹ Section I of the criminal division of the court – war crimes – has so far brought seventeen final decisions, while Section II – organised crime, economic crime and corruption – has brought twenty-four decisions.²³⁰ Section II has so far tried some of the high-level officials of BiH such as three former members of presidency, Jelavić, Šarović and Čović. Also, the first indictments for terrorism were brought in 2006.²³¹ In 2007, the ICTY commended the way that the Court of BiH was dealing

²²⁵ Ibid.

²²⁶ Ibid.

²²⁷ Ibid., p. 34.

²²⁸ CBiH, X-K-05/70, *Court of BiH Stanković Radovan*.

²²⁹ CBiH, Judgment H-KRŽ-05/70, Stanković Radovan, Court of BiH 28 March, 2007.

²³⁰ Data obtained from the Court of BiH web page, <http://www.sudbih.gov.ba/>, Accessed on 14th April 2008.

²³¹ CBiH, X-K-06/190, Court of BiH, Bektašević Mirsad and Others.

with cases transferred from this tribunal.²³² Judicial activity in this court is increasing, especially in the administrative division of the court. Also, the time needed for completing the backlog has been reduced from one year to 0,8 years.²³³ The work of the C BiH has justified the decision of the High Representative to establish the court. Criminal proceedings against high-level officials would have been impossible had it not been for the State court. The processing of war crimes has been enabled through this court and will provide satisfaction for the victims of war crimes as those who committed them will not avoid justice once the ICTY closes down. The *Freedom House* Report for 2007 commended the overall work of the Court of BiH, and rated the proceedings in war crimes cases as fair.²³⁴

The Prosecutor's Office of BiH also offers results in the field of service delivery. This is evident in the number of total entries per year. In 2005, the total number of entries was 903, and grew to 1,303 in 2007.²³⁵ Also, the number of indictments brought by the Prosecutor's Office of BiH that were confirmed by the Court of BiH – which amounts to around 95% - shows that there is sound stability in the work of the Prosecutor's Office. However, the Chief Prosecutor of this office has been under constant criticism for not doing more in terms of prosecution of organised crime and war crimes. A couple of high-profile indictments that have had an unsuccessful outcome in the court have harmed the reputation of the Chief Prosecutor whose work came under great scrutiny by some of the local media.²³⁶ In early 2008 he reported to be on an extended sick leave, and according to the writings of some media, it is unlikely that he will return to work. This move is considered to be equal to a resignation which occurred under pressure and the underachievements in some of the organised crime cases.²³⁷

External reports have been positive about the progress made by the judicial institutions on the state-level since their establishment. Freedom House's assessment of judicial reform in BiH has been more positive each year and BiH's judicial reform has received higher grades than its neighbouring countries.²³⁸ A remaining problem however is the complexity of the judicial system in BiH with its fourteen ministries of justice and four jurisdictions leading to incoherency and lack of transparency.

²³² *Oslobođenje*, 'Hague Pleased with the Work of Court of BiH', 22nd February 2007, p. 2.

²³³ HJPC, *Annual Report for 2007*, p. 142.

²³⁴ *Freedom House* Report 2007, 'Nations in Transit', p. 180.

²³⁵ HJPC, *Annual Reports for 2005, 2006 and 2007*.

²³⁶ See Dženana Karup – Druško, 'Marinko Jurčević – A Prosecutor or a Defence Attorney', *BH Dani*, No. 440, 18th November 2005. See also Vildana Selimbegović, 'Marinko Jurčević – An Ideal Prosecutor for High-Profile Criminals', *BH Dani*, No. 536, 21st September 2007.

²³⁷ See an interview with Meddžida Kreso, President of the Court of BiH, 'Momčilo Mandić was Acquitted by the Prosecutor', *BH Dani*, No. 528, 27th July 2007. See also Suzana Mijatović, 'The Drama of BiH Judiciary', *Slobodna Bosna*, No. 595, 10th April 2008.

²³⁸ *Freedom House* Report 2007.

d) Sustainability

Regarding sustainability, Perić said that there is a financial stability when it comes to the BiH judiciary – including the three evaluated institutions.²³⁹ They are completely funded from domestic budgets, although different projects are being funded from donations from foreign countries and international organisations. In terms of salaries, the judiciary overall enjoys a privilege of high salaries ever since 2000 when the High Representative brought a decision that significantly increased their salaries.²⁴⁰ It remains to be seen whether these institutions at the state-level are sustainable over the long term for three reasons. Firstly, the complexity of the judicial system in Bosnia and Herzegovina troubles the work of the Court and the HJPC. Secondly, the constant attacks on state-level judiciary from individual entity-based politicians pose a threat to the existence of the institutions once the OHR departs. Thirdly, as judge Brilman has underlined, the budgetary issue must be solved as an increase in budgetary resources is continually blocked by the same individuals who are even trying decrease the budget foreseen for these institutions each year - thereby undermining the existence and importance of state-level judiciary institutions. Also, the donor resources are drying up slowly but surely and something has to be done to ensure the maintenance of these institutions.²⁴¹

4.7. SUCCESS OF FAILURE?

Based on the evaluations of institutions established during SSR it can be concluded that they are quite successful in terms of the work that they do. As the process of their formation was overseen by international organisations, guided by the OHR, most of these institutions have applied the highest standards to their day-to-day functioning. Their performance is also exposed to the oversight of parliamentary committees and continuous advice and support from the international community. Thanks to the Decision of the CCBiH on constituency of people throughout the country, ethnic representation in these institutions follows the last census of 1991, which makes these institutions a model that other institutions should follow, if the CCBiH decision is to be implemented fully. To some extent, actual implementation of this

²³⁹ The budget of Court of BiH and Prosecutor's Office of BiH enjoyed a steady growth over the years. From only 2,9 million in 2003, the budget of the Court of BiH grew to 8,2 million in 2007. Also, the budget of the Prosecutor's Office of BiH grew from 2 million in 2003 to 5,3 million in 2007.

²⁴⁰ OHR, *Decision imposing the Law on Judicial and Prosecutorial Service in the Federation*.

²⁴¹ Interview with Paul Brilman, Judge, Court of BiH, Sarajevo, 28 May 2008.

decision has reverted results of ethnic cleansing conducted during the war as this has helped increase the trust in judiciary by refugees who returned to their pre-war households. In terms of service delivery, public access is what makes most of these institutions stand out from those at other levels. Professionalism has been recognised in reforms in judiciary institutions as they were graded with highest grades in the region. The latest EU report on the progress of BiH toward membership in EU has commended the continued progress of Border Police in terms of border control.²⁴² Zarko Laketa, Assistant Director of Border Police, the Border Police of BiH even went further and claimed that this agency is the most successful border service in the region. Additionally, as confirmed by Brigadier Višća, AFBiH soldiers in peacekeeping missions have always been commended for their performance in these missions and have usually performed duties of high-level officers. Progress of AFBiH in NATO integration process is also one indicator of the quality of their performance. In 2006 when most of the SSR process was finished BiH had a single army, a single customs service, single border service and single intelligence-security agency. What seemed impossible at time of signing of the DPA, became reality only ten years later.

However, some of these institutions still heavily rely on support from or even the presence of international experts in their day-to-day operations as it is still difficult to attain credibility due to constant pressure from political circles on these institutions. The main reason behind this is the lack of political support for these institutions which is also reflected in the general salaries for employees at state-level institutions. As shown in the beginning of this chapter, different visions of the country by the three ethnic communities have influenced the establishment and performance of these bodies. This also influenced the approach of the international community to the peacebuilding process in the country. The beginning of implementation of the DPA was characterised by obstructions and stalemate, however, once the OHR was granted robust powers at the Bonn PIC conference, the willingness of local political elites to cooperate and compromise significantly improved. This trend continued for a few years and peaked during Paddy Ashdown's term in the office. However, as the use of Bonn Powers were renounced by his successor, Schwarz-Schilling, the willingness of local political elites to negotiate and reach common ground also declined. This has continued throughout Lajcak's mandate too. The causes of these struggles and the role of the OHR in them will be further discussed in the following chapter.

²⁴² European Commission, 'Bosnia and Herzegovina Progress Report 2008', Brussels, 5 November, 2008, p. 53.

5. CURRENT DEVELOPMENTS IN SSR IN BOSNIA AND HERZEGOVINA: WHAT ROLE FOR THE OHR?

Most of the institutions evaluated in the previous chapter were established – or started their operations – during Paddy Ashdown’s tenure. As previously stated, he left the most significant legacy of all High Representatives and also made possible some of the greatest achievements of the international community in peacebuilding in Bosnia. His accomplishments led the international community to believe that Bosnian authorities were ready to take over the process of further stabilising the country and the new High Representative was appointed mainly to oversee closure of the OHR and transfer competencies to EUSR. As a result, Christian Schwarz-Schilling assumed the role of High Representative on 31 January 2006. His appointment brought a drastic turn with regard to the use of Bonn Powers **which has** significantly influenced the implementation of SSR.

In his first TV address to the BiH public, Schwarz-Schilling said that in order for Bosnia to take further steps to integration with Euro-Atlantic structures it needs to be a fully sovereign country: “That means I must step back,” said Schwarz-Schilling.²⁴³ Additionally, in an interview with a daily newspaper he said, “I won’t impose laws,”²⁴⁴ and further clarified his intentions in an address to the OSCE in Vienna.

The days when OHR micromanaged the political process in BiH by using – or simply by threatening to use – the Bonn Powers are over. This causes some people – in the International Community but also in the BiH political establishment – to throw up their hands in horror. Well, change is often challenging. And we are entering challenging times.²⁴⁵

Schwarz-Schilling appeared to be right. Not only was the OHR challenged, but also were all the hard-won reforms in post-Dayton Bosnia. The report on Bosnia by the International Crisis Group (ICG) quoted one of the senior OHR officials who said, “the statements completely

²⁴³ OHR Speeches - High Representative’s TV Address to Citizens of BiH, 31 January, 2006.

²⁴⁴ *Nezavisne Novine*, ‘I Won’t Impose Laws’, 6 February, 2006, p. 2.

²⁴⁵ OHR Speeches - Address by the High Representative, Christian Schwarz-Schilling to the Permanent Council of the OSCE, 16 March 2006.

emasculated us and gave a road map to everyone who wanted to obstruct us.”²⁴⁶ As a result, there was no further progress in the reform of the security sector during Schwarz-Schilling’s tenure and earlier reforms were brought under question. This stalemate was especially reflected in the police reform as it remained the only obstacle for Bosnia to sign the SAA with the EU.

Renouncing the Bonn Powers was also combined with events in the field. The RS Government led by the SDS was voted out in early 2006, and Milorad Dodik, leader of Alliance of Independent Social Democrats (SNSD) was appointed a new Prime Minister in the beginning of March. This was not Dodik’s first time as RS Prime Minister. Brought to power with the assistance of the international community in late 1990s he was seen as a desperately-needed moderate from the RS. Unlike during his first mandate he did not waste time relying on the support of the international community to attract voters. He resorted to well-known tactics of nationalist rhetoric which scored him a sweeping victory in October 2006 general elections. Bose seemed to be right in his assessment of Dodik’s first tenure in office, “obvious evidence by 1999 [showed] that the moderate government headed by Dodik ... was incompetent, deeply corrupt and almost as hostile as previous SDS regimes towards minority, particularly Bosniacs, return to the RS.”²⁴⁷ This time around it was not refugee returns Dodik obstructed but the ongoing SSR initiated during Ashdown’s tenure and the work of newly-established state-level institutions. Also, not fearing possible retaliatory measures from the OHR, he began issuing frequent calls for a RS referendum on independence.²⁴⁸ Negotiations over Kosovo’s final status further influenced the political climate in Bosnia. Belgrade politicians regularly used the RS issue as leverage in negotiations over Kosovo. Serbian Foreign Minister Vuk Drašković said “citizens of Republika Srpska would have the same right to self-determination and independence inasmuch as the UN Security Council would accept a similar demand from the Kosovo Albanians.”²⁴⁹

In addition to these developments, talks over constitutional reform – under the auspices of the U.S. Embassy - were taking place throughout 2005 and resulted in a list of amendments that was sent before the BiH Parliament for adoption in April 2006. These amendments to the BiH constitution aimed at strengthening the state-level by equipping it with more authority and streamlining the complex constitutional structure. Adoption of the amendments fell short by one vote. The opposition to the adoption of amendments was led by Haris Silajdžić - leader of

²⁴⁶ ICG, ‘Ensuring Bosnia’s Future’, February 2007.

²⁴⁷ Sumantra Bose, *Bosnia After Dayton*, New York: Oxford University Press, 2002, p. 231.

²⁴⁸ Gojko Berić, ‘The Stench of Separatism’, *Oslobođenje*, 01 June, 2006. See also *Danas*, ‘Dodik: Referendum Only on RS Status, not on merging with Serbia’, 13 June 2006.

²⁴⁹ *Nezavisne Novine*, ‘If Kosovo Gets Independence, the RS Might Ask for the Same’, 16 January, 2007, p. 2.

SBiH party – who advocated rejection of these amendments on the grounds that withholding the provision on entity-based voting in state parliament was unacceptable.²⁵⁰ It only heated up the nationalist rhetoric and led to further divisions in the country which immensely jeopardised the success achieved through reforms in the security field. Schwarz-Schilling passively observed these developments and explained his “inactivity” as an attempt to show the international community how BiH politicians would behave, how things would be without the OHR.²⁵¹ Regardless of the sincerity of his motives, it has to be noted that public renouncing of robust powers – except for extreme cases - by the High Representative has significantly influenced the pace of reforms in Bosnia and permanently undermined the role of the OHR.

Dodik’s SNSD won a sweeping victory at the elections, while Silajdžić won a majority of votes for Bosniak place in BiH tripartite Presidency. This prompted even more heated nationalist rhetoric and further undermining of reform accomplishments which eventually brought the operations of some of the state-level institutions established through SSR in question. All of the events finally led the PIC to extend the mandate of the OHR until June 2008 and to appoint a new High Representative. Although Miroslav Lajčák, Schwarz-Schilling’s successor in the office tried to re-establish the robust approach, it soon proved to be impossible. In October 2007, Lajčák tried to streamline the voting procedure at state parliament and to make the work of the Council of Ministers of BiH more efficient.²⁵² He was faced with furious reactions from RS politicians which resulted in an unchanged situation in terms of the original purpose of his decision. The demise of the OHR influence in SSR is also illustrated in its attempt at police reform. On 11th April 2008, a set of laws was adopted that established additional police bodies at the state-level in charge of coordinating police forces in BiH that operate on state level. Although ambiguous in nature, the text of the law clearly shows that none of the three principles proclaimed by the EU as a requirement for signing the SAA were met.²⁵³ Aftermath delay in the process of the implementation of police reform laws also indicated that even this zero-sum agreement failing to contain a minimum of EU principles, despite the fact that EU stated it did, are the best indicators of the serious intention

²⁵⁰ This provision of the constitution was later assessed by the CoE and actually found to be inconsistent to the European Charter of Human Rights. See Parliamentary Assembly of the Council of Europe, Resolution 1513 (2006), ‘Constitutional Reform in Bosnia and Herzegovina’, 29 June, 2006.

²⁵¹ *BH Dani*, ‘BiH Without the High Representative Equipped with Bonn Powers is a Formula for New Chaos’, No. 535, 14 September, 2007.

²⁵² OHR, *Decision Enacting the Law on Changes and Amendments to the Law on the Council of Ministers of Bosnia and Herzegovina*, 19 October 2007.

²⁵³ The three EU principles for police reform were: 1) No political interference with operational policing; 2) All legislative and budgetary competencies for all police matters must be vested at the State level; 3) Functional local police areas must be determined by technical policing criteria, where operational command is exercised at the local level.

of BiH politicians to conduct such reform. Lajčak's performance in the role of High Representative was not only influenced by the inactivity of his predecessor; the personality of each one of the High Representative also played a significant – if not the most significant – role in the functioning of the Office as it undoubtedly added to its credibility. This is particularly evident in the last seven years of international peacebuilding in Bosnia.

Following the signing of the DPA, Bosnia enjoyed an enviable level of commitment of world powers in terms of stabilisation and development of the country. Therefore, first three High Representatives²⁵⁴ although they lacked any significant professional background in peacebuilding or international state-building operations benefited from vast support of the international community regarding their agenda. However, after 11 September the focus of key international actors shifted to other crisis areas of the world and funds that Bosnia was getting over the years started to shrink. Fortunately, the international community at that time appointed Ashdown as the High Representative. Although not enjoying a support similar to his predecessors, in terms of resources and time framework he still managed to mobilise support for his reform agenda – particularly in the security field – and to achieve the most significant results in peacebuilding of all High Representatives. The primary reason why Ashdown was able to tackle the “untouchable” issues of post-Dayton Bosnia was his experience in the dynamic British political arena where he was involved as a leader of the Liberal Democrats in the UK. Years of sharpening his political skills and a broad network of influential contacts proved to be priceless during his term in the Office and served Ashdown in obtaining constituency for the reform agenda pursued by the OHR. Although his successor Schwarz-Schilling has had some active political background – served as a Minister in THE German Government - and in the same time somewhat different guidelines from PIC, his reluctance to effectively use the prerogatives of the Office were of little use to Bosnia and eventually led to a further decline in international attention.²⁵⁵ The appointment of Miroslav Lajčak, especially in the circumstances of volatile political climate that were created during Schwarz-Schilling's tenure, shows failure of international community in grasping the lessons from Bosnia. Young, and at the beginning of his international career, Slovak diplomat Lajčak soon revealed that the influence that he could project in major centres of political power was minimal and that BiH could not expect much of him in terms of further stabilisation of the country. This was evident in the case of police reform, and in his only noteworthy use of Bonn Powers to strengthen the

²⁵⁴ Carl Bildt, Carlos Westendorp and Wolfgang Petritsch.

²⁵⁵ For detailed overview of Schwarz-Schilling's rule as the High Representative see the last report of ICG on Bosnia, 'Ensuring Bosnia's Future, 2007.

state-level government and parliament. Soon enough Lajčak gave up on the pursuit of meaningful reforms and mostly achieved reforms on paper, which did not comply with the requirements that were set by the EU for effective Bosnian integration. The actual content of the watered-down reforms seems to be neglected by Lajčak on purpose. Additionally, he chose to stay on the path entrenched by Schwarz-Schilling and continued to ignore threats to stability of the country. This also influenced the sustainability of the SSR pursued by his predecessors. Therefore, it can be said that current developments in the security field in Bosnia offer a bleak picture and question the purpose of further OHR involvement.

The future role of the OHR has been a matter of discussion in a number of think tanks. ICG and United States Institute for Peace (USIP) argue that the OHR should be closed and call for the EU to assume the leading role in peacebuilding in the country.²⁵⁶ ICG argues that the EUSR should take over the peacebuilding process in the country while preserving robust powers as this would enable further progress in reforms and provide self-sustainability for institutions created through SSR. USIP argues that the EU should apply special conditions to Bosnia when it comes to negotiation on various chapters of SAA and that the EUSR should continue intensive involvement in BiH, “as opposed to the passive SAA role traditionally played by the EC.”²⁵⁷ However, it emphasises that the OHR should not be closed before the conditions set by the PIC in February 2008 are met.²⁵⁸ The proposals of these two think tanks seem to be much more realistic than those of the ESI or David Chandler who argue for immediate transfer of ownership to local authorities.²⁵⁹ Current developments in Bosnia clearly indicate that Bosnia is still not ready to assume responsibility and if the international community was to hand over the process to local counterparts all the achievements in DPA implementation and stabilisation of the country would be brought into question. The ICG and USIP also discusses the constitutional reform in Bosnia and call for the international community to re-initiate negotiations on this issue. Agreeing on a new constitution would be the only way to permanently entrench the accomplishments of OHR reforms in Bosnia as their inclusion in the new constitution would ensure their sustainability. As Perić, President of the

²⁵⁶ ICG, ‘Ensuring Bosnia’s Future’, 2007; *United States Institute for Peace*, ‘Making Bosnia Work: Why EU Accession is Not Enough?’, June 2008.

²⁵⁷ *United States Institute for Peace*, ‘Making Bosnia Work’, 2008, p. 2.

²⁵⁸ The PIC agreed on five objectives that have to be met before the OHR was to close: 1. Acceptable and sustainable resolution of the Issue of apportionment of property between state and other levels of government; 2. Acceptable and sustainable resolution of defence property; 3. Completion of the Brčko Final Award; 4. Fiscal Sustainability, and 5. Entrenchment of the Rule of Law.

²⁵⁹ See ESI Discussion paper, ‘The worst in class: How the international protectorate hurts the European future of Bosnia and Herzegovina’, 8 November 2007. See also David Chandler, *Bosnia: Faking Democracy After Dayton*, London: Pluto Press, 2000; David Chandler, “From Dayton to Europe”, *International Peacekeeping*, Vol.12, No.3, Autumn, 2005, pp. 336–349.

HJPC stated in an interview, one of the reasons why HJPC is exposed to political pressure and obstructions is because this institution is not contained in the constitution.²⁶⁰ This is a problem shared by other judicial institutions established at state-level, as well security institutions established at the same level. Therefore, before the international community withdraws from Bosnia, or assumes a less robust role, it will be necessary to remove the misgivings that perpetuate the vicious circle of obstructions intrinsic to the spoilers of the peace process. The role of the OHR would be to – inasmuch as it can, given the circumstances – bring an end to the demise of reforms and provide an environment that would lead to new talks on constitutional reform in line with the recommendations of the Venice Commission.²⁶¹ Miscalculation on tackling the constitutional reform seems to be the major failure of the OHR. Even when the first round of talks on these reforms was taking place in 2005 and 2006, the OHR, headed by Schwarz-Schilling at that time, only passively observed the process. Had the OHR reacted differently and used some of its still available credibility it would be regarded as a much more successful institution. Its accomplishments would not only benefit the careers of those who headed it, but also Bosnia as a receiving party would see great benefits from it. Long-term sustainability of state-level security institutions would have been ensured and the crisis of the last two years would have been avoided. However, what remains to be seen now is how the withdrawal of OHR will go, and how successful the EU's troubled foreign and security policy will be in addressing Bosnia's issues.

²⁶⁰ Interview with Branko Peric, former President of the HJPC.

²⁶¹ *Venice Commission*, CDL-AD(2005)004, Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative, 11 March 2005.

6. CONCLUSION

The primary aim of this paper has been to show the lessons that can be learned from the OHR's involvement in SSR in Bosnia. The ad hoc nature of this institution enabled some of the most significant achievements in peacebuilding operations in general, and has labelled Bosnia as a success story in terms of reforms undertaken and the level of stability. Critical in that pursuit was the exercise of robust powers by the OHR, the so-called Bonn Powers. Designating the High Representative as "the final authority in theatre regarding interpretation of this Agreement on the civilian implementation of the peace settlement"²⁶², enabled the international community to accomplish major successes in peacebuilding in BiH. The character of the OHR and the exercise of these powers made a significant contribution to the theoretical and practical underpinnings of the peacebuilding concept and hopefully set a new track for similar operations in the future where efforts of the intervening countries will not be abused by endless obstruction poised by the spoilers to the peace processes.

The peacebuilding experience in Bosnia shows that regardless of the widely-accepted fact that SSR provisions are usually brought down to a minimum in peace agreements, the multiple-meaning provisions can still offer a sufficient entry point for reforms in this field. By putting an emphasis on human rights, and by administering the clauses of the agreement in a way that offer wide interpretation, peacebuilding actors have many more instruments at their disposal once the implementation of the peace agreement gets under way. If this is followed with provisions of a similar nature regarding the role of the intervening actors, the combination of these provisions can benefit the peace process once the situation in the field calms down in the aftermath of the war. These provisions, combined with benchmarks set by the IGOs – exercised through the policy of conditionality – can work in achieving major breakthroughs in terms of SSR. What once seemed impossible in terms of security reforms is now a reality in Bosnia. The country now has a single army, single intelligence service, single border service and unified customs. Also the judiciary in the country is being commended for its success by independent evaluators. None of this would have been possible had the PIC interpreted the role of OHR as it did during the first two years of DPA implementation. The stalemate characteristic of this period was only broken when the international community decided to

²⁶² DPA, Annex X/4.

assume a much more intrusive role. Multiple-meaning provisions of the DPA enabled that process. A fortunate circumstance in the Bosnian case was also that the decisions of the High Representative were given legitimacy through public support as polls showed that members of all three ethnic communities in the country were significantly in favour of integration into Euro-Atlantic structures. Therefore the policy of conditionality worked in favour of the OHR's efforts in this field and took away the obstruction leverage from spoilers of the peace process.

Evaluation of institutions created through SSR showed - in most of the cases reviewed - that these institutions have immense capacity to function properly when the right conditions are provided. Results achieved by some of these institutions have brought international recognition to their efforts and in most cases they have been regarded as the most successful institutions in this region in their respective fields. The influence that international experts had - or still have - has to be valued appropriately, as it proved critical in obtaining credibility for these institutions. Starting with the CCBiH, the policy of inclusion of foreign experts proved to be beneficial to the peace process as it provided balance between ethnic interests on one side and the general interests of the entire population of the country on the other side. However, the newly-established security institutions at the state-level are still not strong enough to deal with the outbursts of inflaming nationalism and ethnic particularism which threatens to destroy the achievements of the OHR. The OHR itself is also to be partly blamed for contributing to current developments in the SSR field, and in the peacebuilding process in general. Had it pursued constitutional reforms more vigorously and looked for a way to include the achievements of SSR into new constitutional arrangements, its accomplishments would have been permanently preserved. Another aspect that should be taken into account, that this paper has also argued for, is that the influence of the personality of the High Representative should not be underestimated. The High Representative's ability to mobilise support in world centres of power proved to be critical in the Bosnian case, especially during Ashdown's tenure. His successors, on the other hand, have brought the OHR to a point where any future reluctance to exercise powers vested in it by the PIC would only further undermine the achievements of the last twelve years of peace process in Bosnia.

The authors of this paper therefore hope that efforts of the OHR, especially those in the field of SSR, will provide valuable lessons for those responsible for deciding on the future role of the OHR or subsequent international mission. We also hope that the insights into the work of the OHR provided in this paper, will contribute to further developments in peacebuilding and SSR matters worldwide.

LIST OF ACRONYMS

ABiH – Army of Bosnia and Herzegovina
AFBiH – Armed Forces of Bosnia and Herzegovina
ASSN - African Security Sector Network
BiH – Bosnia and Herzegovina
CCBIH – Constitutional Court of BiH
CAFAO – Customs and Fiscal Assistance Office
CFSP – Common Foreign and Security Policy
CoE – Council of Europe
DNS – Democratic National Alliance
DRC - Defence Reform Commission
DPA – Dayton Peace Agreement
ESI – European Stability Initiative
EU – European Union
EUFOR – European Union Forces
EUMM – European Union Monitoring Mission
EUPM – European Union Police Mission
EUSR – European Union Special Representative
FBiH – Federation of Bosnia and Herzegovina
FOSS - Federation Intelligence Security Service
HJPC – High Judicial and Prosecutorial Council
HR – High Representative
HVO – Croatian Defence Council
ICG – International Crisis Group
ICITAP – International Criminal Investigative Training Assistance Program
IEBL – Inter-Entity Boundary Line
IGOs – International Governmental Organisations
IFOR – Implementation Forces
IJC – Independent Judicial Commission
IPAP - Individual Partnership Action Plan
IPTF – International Police Task Force
IR – International Relations

ITA – Indirect Taxation Authority
JSAP - Judicial System Assessment Programme
JSDC – Joint Security and Defence Committee
MoD – Ministry of Defence
NATO – North Atlantic Treaty Organisation
OBS - Intelligence and Security Service in RS
OECD-DAC – Organisation for Economic Cooperation and Development - Development Assistance Committee
OSA – Intelligence-Security Agency of BiH
OSCE – Organisation for Security and Cooperation in Europe
PfP – Partnership for Peace
PIC – Peace Implementation Council
RS – Republic of Srpska
RSNA – National Assembly of the Republic of Srpska
SAA – Stabilisation and Association Agreement
SAP – Stabilisation and Association Process
SBiH – Party for Bosnia and Herzegovina
SBS – State Border Service
SDP – Social-Democratic Party
SDS – Serb Democratic Party
SFOR – Stabilisation Forces
SIPA – State Investigation and Protection Agency
SNSD – Alliance of Independent Social-Democrats
SSR – Security Sector Reform
UN – United Nations
UNMIBH – United Nations Mission in Bosnia and Herzegovina
UNPROFOR – United Nations Protection Forces
USAID – United States Agency for International Development
USIP - United States Institute for Peace
VAT – Value Added Tax
VFBiH – Army of Federation of BiH
VRS – Army of the Republic of Srpska
UN – United Nations
USAID – United States Agency for International Development